

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

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

**APPELLANTS’ DESIGNATION OF ITEMS TO BE INCLUDED
IN THE RECORD ON APPEAL**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, appellants the Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (collectively, “**AFSCME**” or the “**Appellants**”), respectfully submit this designation of items for inclusion in the record on appeal in connection with AFSCME’s appeal [Docket Nos. 1907, 1956] (the “**Appeal**”) from the bankruptcy court’s (i) decision, announced from the bench on December 3, 2013, finding the City of Detroit, Michigan eligible for relief under chapter 9 of the Bankruptcy Code (the “**Bench Decision**”); (ii) Order for Relief Under Chapter 9 of the Bankruptcy Code, dated December 5, 2013 finding the City of Detroit, Michigan eligible for relief under chapter 9 of the Bankruptcy Code [Docket No. 1946] (the “**Order for Relief**”); and (iii) accompanying Opinion Regarding Eligibility, dated December 5, 2013 [Docket No. 1945] (the “**Opinion**,” together with the Bench Decision and Order for Relief, are collectively the “**Eligibility Order**”).

Designation of Items for the Record

The Appellants hereby designate the following items, together with all exhibits, schedules and other attachments thereto (whether or not explicitly listed below), for inclusion in the record of the Appeal of the Eligibility Order:

Item No. (Attached)	Docket No./ Trial Exhibit No.	Date of Filing/Entry	Description
1.	481	8/19/13	Attorney General Bill Schuette's Statement Regarding the Michigan Constitution and the Bankruptcy of the City of Detroit
2.	509	8/19/13	Declaration of Steven Kreisberg (including Exhibit C attached thereto, "June 14, 2013 City of Detroit Proposal for Creditors")
3.	765	9/6/13	City of Detroit's Consolidated Reply to Objections to the Entry of an Order for Relief
4.	1156	10/11/13	The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees' Amended Objection to the City of Detroit's Eligibility to Obtain Relief Under Chapter 9 of the Bankruptcy Code
5.	1159	10/11/13	Declaration of Michael Artz
6.	1162	10/11/13	Declaration of Steven Kreisberg
7.	1217	10/17/13	Order Regarding Further Briefing on Eligibility
8.	1227	10/17/13	The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees' Pretrial Brief Regarding the City of Detroit's Eligibility to Obtain Relief Under Chapter 9 of the Bankruptcy Code
9.	1228	10/17/13	Supplemental Declaration of Michael Artz
10.	1353	10/24/13	Notice Regarding Briefing on "Good Faith Negotiations"
11.	1467	10/30/13	AFSCME's Supplemental Brief Regarding Eligibility
12.	1556	11/6/13	City of Detroit's Supplemental Brief in Support of Entry of an Order for Relief
13.	1945	12/5/13	Opinion Regarding Eligibility
14.	1946	12/5/13	Order for Relief Under Chapter 9 of the Bankruptcy Code
15.	1984	12/9/13	Transcript Order Form of Hearing on October 15, 2013 Filed by Creditor Michigan Council 25 Of The American

			Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
16.	1985	12/9/13	Transcript Order Form of Hearing on October 16, 2013 Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
17.	1986	12/9/13	Transcript Order Form of Hearing on October 21, 2013 Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
18.	1987	12/9/13	Transcript Order Form of Hearing on October 23, 2013 Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
19.	1988	12/9/13	Transcript Order Form of Hearing on October 24, 2013 Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
20.	1989	12/9/13	Transcript Order Form of Hearing on October 25, 2013 Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
21.	1990	12/9/13	Transcript Order Form of Hearing on October 28, 2013 Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
22.	1991	12/9/13	Transcript Order Form of Hearing on October 29, 2013 Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees

23.	1992	12/9/13	Transcript Order Form of Hearing on November 4, 2013 Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
24.	1993	12/9/13	Transcript Order Form of Hearing on November 5, 2013 Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
25.	1995	12/9/13	Transcript Order Form of Hearing on November 7, 2013 Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
26.	1996	12/9/13	Transcript Order Form of Hearing on November 8, 2013 Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
27.	1997	12/9/13	Transcript Order Form of Hearing on December 3, 2013 Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
28.	All Admitted Trial Exhibits, including but not limited to the Admitted Trial Exhibits listed below ¹	N/A	
29.	Trial Exhibit 29	7/18/13	Letter from Governor Snyder re: Authorization to Commence Chapter 9 Bankruptcy Proceeding
30.	Trial Exhibit 43	6/14/13	City of Detroit Proposal for Creditors

¹ A list of admitted Trial Exhibits is contained at Docket Nos. 1356 and 1800. Pursuant to instructions from the Bankruptcy Clerk's office, Trial Exhibits are not being attached to this designation, rather will be delivered only at the request of the District Court.

31.	Trial Exhibit 44	6/14/13	City of Detroit Proposal for Creditors Executive Summary
32.	Trial Exhibit 402	1/31/13	E-mail from D. Moss to K. Orr
33.	Trial Exhibit 403	1/31/13	E-mail from K. Orr to C. Ball
34.	Trial Exhibit 414	7/18/13	Declaration of Kevyn D. Orr in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code
35.	Trial Exhibit 833	1/29/13	Jones Day Presentation to the City of Detroit
36.	Trial Exhibit 844	6/5/12	E-mail from T. Wilson to H. Lennox
37.	Trial Exhibit 846	3/2/12	E-mail from J. Ellman to C. Ball
38.	Trial Exhibit 847	12/7/12	E-mail from J. Ellman to C. Ball
39.	Trial Exhibit 851	3/24/12	E-mail from J. Ellman to K. Herman
40.	Trial Exhibit 860	1/28/13	E-mail from C. Ball to J. Ellman

Dated: December 19, 2013

LOWENSTEIN SANDLER LLP

By: /s/ Sharon L. Levine

Sharon L. Levine, Esq.

Philip J. Gross, Esq.

65 Livingston Avenue

Roseland, New Jersey 07068

(973) 597-2500 (Telephone)

(973) 597-6247 (Facsimile)

slevine@lowenstein.com

pgross@lowenstein.com

-and-

Herbert A. Sanders, Esq.

THE SANDERS LAW FIRM PC

615 Griswold St., Suite 913

Detroit, MI 48226

(313) 962-0099 (Telephone)

(313) 962-0044 (Facsimile)

hsanders@miafscme.org

-and-

Richard G. Mack, Jr., Esq.
Miller Cohen, P.L.C.
600 West Lafayette Boulevard
4th Floor
Detroit, MI 48226-3191

*Counsel to Michigan Council 25 of the American
Federation of State, County and Municipal
Employees (AFSCME), AFL-CIO and Sub-Chapter
98, City of Detroit Retirees*

**U.S. Bankruptcy Court
Eastern District of Michigan (Detroit)
Bankruptcy Petition #: 13-53846-swr**

Date filed: 07/18/2013

Assigned to: Judge Steven W. Rhodes
Chapter 9
Voluntary
No asset

Debtor In Possession
City of Detroit, Michigan
2 Woodward Avenue
Suite 1126
Detroit, MI 48226
WAYNE-MI
Tax ID / EIN: 38-6004606

represented by **Bruce Bennett**
555 S. Flower Street
50th Floor
Los Angeles, CA 90071
(213) 489-3939
Email: bbennett@jonesday.com

Judy B. Calton
Honigman Miller Schwartz & Cohn LLP
2290 First National Building
Detroit, MI 48226
(313) 465-7344
Fax : (313) 465-7345
Email: jcalton@honigman.com

Eric D. Carlson
150 West Jefferson
Suite 2500
Detroit, MI 48226
313-496-7567
Email: carlson@millercanfield.com

Timothy A. Fusco
150 West Jefferson
Suite 2500
Detroit, MI 48226-4415
(313) 496-8435
Email: fusco@millercanfield.com

Jonathan S. Green
150 W. Jefferson
Ste. 2500
Detroit, MI 48226
(313) 963-6420
Email: green@millercanfield.com

David Gilbert Heiman
901 Lakeside Avenue
Cleveland, OH 44114
(216) 586-7175
Email: dgheiman@jonesday.com

Robert S. Hertzberg
4000 Town Center
Suite 1800

Southfield, MI 48075-1505
248-359-7300
Fax : 248-359-7700
Email: hertzbergr@pepperlaw.com

Deborah Kovsky-Apap
Pepper Hamilton LLP
4000 Town Center
Suite 1800
Southfield, MI 48075
(248) 359-7300
Fax : (248) 359-7700
Email: kovskyd@pepperlaw.com

Kay Standridge Kress
4000 Town Center
Southfield, MI 48075-1505
(248) 359-7300
Fax : (248) 359-7700
Email: kressk@pepperlaw.com

Stephen S. LaPlante
150 W. Jefferson Ave.
Suite 2500
Detroit, MI 48226
(313) 496-8478
Email: laplante@millercanfield.com

Heather Lennox
222 East 41st Street
New York, NY 10017
212-326-3939
Email: hlennox@jonesday.com

Marc N. Swanson
Miller Canfield Paddock and Stone, P.L.C
150 W. Jefferson
Suite 2500
Detroit, MI 48226
(313) 496-7591
Email: swansonm@millercanfield.com

U.S. Trustee
Daniel M. McDermott

represented by **Sean M. Cowley (UST)**
United States Trustee
211 West Fort Street
Suite 700
Detroit, MI 48226
(313) 226-3432
Email: Sean.cowley@usdoj.gov

Retiree Committee
Official Committee of Retirees

represented by **Sam J. Alberts**
1301 K Street, NW
Suite 600, East Tower
Washington, DC 20005-3364
(202) 408-7004
Email: sam.alberts@dentons.com

Paula A. Hall
401 S. Old Woodward Ave.
Suite 400
Birmingham, MI 48009
(248) 971-1800

Email: hall@bwst-law.com

Claude D. Montgomery

620 Fifth Avenue
New York, NY 10020
(212) 632-8390

Email: claudemontgomery@dentons.com, docketny@dentons.com

Carole Neville

1221 Avenue of the Americas
25th Floor
New York, NY 10020
(212) 768-6889

Email: carole.neville@dentons.com

Matthew Wilkins

401 S. Old Woodward Ave.
Suite 400
Birmingham, MI 48009
(248) 971-1800

Email: wilkins@bwst-law.com

Filing Date	#	Docket Text
08/19/2013	<u>481</u>	Brief Attorney General Bill Schuette's Statement Regarding the Michigan Constitution and the Bankruptcy of the City of Detroit Filed by Interested Party Bill Schuette (RE: related document(s) <u>1</u> Voluntary Petition (Chapter 9)). (Bell, Michael) (Entered: 08/19/2013)
08/19/2013	<u>509</u>	Corrected Objection to Eligibility to Chapter 9 Petition <i>Kreisberg Declaration</i> Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit A # <u>14</u> Exhibit B # <u>15</u> Exhibit C) (Levine, Sharon) (Entered: 08/19/2013)
09/06/2013	<u>765</u>	Brief /City of Detroit Consolidated Reply to Objections to the Entry of an Order for Relief Filed by Debtor In Possession City of Detroit, Michigan (RE: related document(s) <u>1</u> Voluntary Petition (Chapter 9), <u>10</u> Declaration). (Bennett, Bruce) (Entered: 09/06/2013)
10/11/2013	<u>1156</u>	Objection to Eligibility to Chapter 9 Petition / <i>The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees Amended Objection to the City of Detroit's Eligibility to Obtain Relief Under Chapter 9 of the Bankruptcy Code</i> Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (Levine, Sharon) (Entered: 10/11/2013)
10/11/2013	<u>1159</u>	Declaration of Michael Artz Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (RE: related document(s) <u>1156</u> Objection to Eligibility to

			Chapter 9 Petition). (Levine, Sharon) (Entered: 10/11/2013)
10/11/2013		<u>1162</u>	Declaration of <i>Steven Kreisberg</i> Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (RE: related document(s) <u>1156</u> Objection to Eligibility to Chapter 9 Petition). (Levine, Sharon) (Entered: 10/11/2013)
10/17/2013		<u>1217</u>	Order Regarding Further Briefing on Eligibility (RE: related document(s) <u>821</u>). (ckata) (Entered: 10/17/2013)
10/17/2013		<u>1227</u>	Brief <i>The Michigan Council 25 of the American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees Pretrial Brief Regarding the City of Detroit's Eligibility to Obtain Relief Under Chapter 9 of the Bankruptcy Code</i> Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees. (Levine, Sharon) (Entered: 10/17/2013)
10/17/2013		<u>1228</u>	Declaration / <i>Supplemental Declaration of Michael Artz</i> Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (RE: related document(s) <u>1227</u> Brief). (Levine, Sharon) (Entered: 10/17/2013)
10/24/2013		<u>1353</u>	Notice Regarding Briefing on "Good Faith Negotiations" (RE: related document(s) <u>821</u> Amended Order, Order To Set Hearing) Deadline is 11/13/13 (jjm) (Entered: 10/24/2013)
10/30/2013		<u>1467</u>	Supplemental Brief <i>Regarding Eligibility</i> Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (RE: related document(s) <u>1217</u> Order (Generic)). (Levine, Sharon) (Entered: 10/30/2013)
11/06/2013		<u>1556</u>	Brief / <i>City of Detroit's Supplemental Brief in Support of Entry of an Order for Relief</i> Filed by Debtor In Possession City of Detroit, Michigan. (Bennett, Bruce) (Entered: 11/06/2013)
12/05/2013		<u>1945</u>	Opinion Regarding Eligibility (RE: related document(s) <u>821</u> First Amended Order Regarding Eligibility Objections). (ckata) (Entered: 12/05/2013)
12/05/2013		<u>1946</u>	Order for Relief Under Chapter 9 of the Bankruptcy Code (Related Document <u>1945</u> Opinion Regarding Eligibility) (ckata) (Entered: 12/05/2013)
12/09/2013		<u>1984</u>	Transcript Order Form of Hearing October 15, 2013 at 10:00 a.m., Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees. (Levine, Sharon) (Entered: 12/09/2013)
12/09/2013		<u>1985</u>	Transcript Order Form of Hearing October 16, 2013 @ 10:00 a.m., Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO

			and Sub-Chapter 98, City of Detroit Retirees. (Levine, Sharon) (Entered: 12/09/2013)
12/09/2013		<u>1986</u>	Transcript Order Form of Hearing October 21, 2013 @ 1:00 p.m., Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees. (Levine, Sharon) (Entered: 12/09/2013)
12/09/2013		<u>1987</u>	Transcript Order Form of Hearing October 23, 2013 @ 9:00 a.m., Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees. (Levine, Sharon) (Entered: 12/09/2013)
12/09/2013		<u>1988</u>	Transcript Order Form of Hearing October 24, 2013 @ 9:00 a.m., Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees. (Levine, Sharon) (Entered: 12/09/2013)
12/09/2013		<u>1989</u>	Transcript Order Form of Hearing October 25, 2013 at 9:00 a.m., Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees. (Levine, Sharon) (Entered: 12/09/2013)
12/09/2013		<u>1990</u>	Transcript Order Form of Hearing October 28, 2013 @ 9:00 a.m., Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees. (Levine, Sharon) (Entered: 12/09/2013)
12/09/2013		<u>1991</u>	Transcript Order Form of Hearing October 29, 2013 @ 9:00 a.m., Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees. (Levine, Sharon) (Entered: 12/09/2013)
12/09/2013		<u>1992</u>	Transcript Order Form of Hearing November 4, 2013 @ 9:00 a.m., Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees. (Levine, Sharon) (Entered: 12/09/2013)
12/09/2013		<u>1993</u>	Transcript Order Form of Hearing November 5, 2013 @ 9:00 a.m., Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees. (Levine, Sharon) (Entered: 12/09/2013)
12/09/2013		<u>1995</u>	Transcript Order Form of Hearing November 7, 2013 @ 9:00 a.m., Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees. (Levine, Sharon) (Entered: 12/09/2013)
12/09/2013		<u>1996</u>	Transcript Order Form of Hearing November 8, 2013 @ 9:00 a.m., Filed by Creditor Michigan Council 25 Of The American

			Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees. (Levine, Sharon) (Entered: 12/09/2013)
12/09/2013		<u>1997</u>	Transcript Order Form of Hearing December 3, 2013 @ 10:00 a.m., Filed by Creditor Michigan Council 25 Of The American Federation of State, County &Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees. (Levine, Sharon) (Entered: 12/09/2013)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: Chapter 9

CITY OF DETROIT, MICHIGAN. No. 13-53846
Debtor.

HON. STEVEN W. RHODES

**ATTORNEY GENERAL BILL SCHUETTE'S
STATEMENT REGARDING THE MICHIGAN CONSTITUTION
AND THE BANKRUPTCY OF THE CITY OF DETROIT**

Bill Schuette
Attorney General

John J. Bursch
Solicitor General

B. Eric Restuccia
Deputy Solicitor General

Larry Brya
Special Assistant Attorney General

Michael Bell
Patrick Fitzgerald
Linus Banghart-Linn
Heather Meingast
Will Bloomfield
Assistant Attorneys General

Attorneys for
Attorney General Bill Schuette
P.O. Box 30754
Lansing, Michigan 48909
(517) 373-3203
BellM1@michigan.gov
P47890

Dated: August 19, 2013

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Other Authorities

1 Official Record of the State of Michigan Constitutional Convention of 1961, 770–71	10, 12
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5 William J. Norton, Jr. & William L. Norton III, Norton Bankruptcy Law and Practice § 90:4 (3d ed. 2009).....	8
6 Collier on Bankruptcy ¶ 903.02 (Alan N. Resnick and Henry J. Sommer eds. 16 th ed.)	6
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CONCISE STATEMENT OF ISSUE PRESENTED

1. Whether the City of Detroit was eligible to file Chapter 9 bankruptcy under 11 U.S.C. § 109(c).

STATEMENT OF INTEREST OF ATTORNEY GENERAL

The Attorney General is the chief legal officer for the State of Michigan and is empowered by State law to intervene and appear in any legal action in which the People of Michigan “in his own judgment” have an interest. Mich. Comp. Laws § 14.28. His office is created by the Michigan Constitution, and he is elected by the people. Mich. Const. art. V, § 21. He is sworn to uphold the Michigan Constitution. Mich. Const. art. XI, § 1.

Consistent with this responsibility and authority, Attorney General Bill Schuette participates in this case to ensure that all necessary actions are taken to fully protect (a) the City’s pensioners (as required by the Michigan Constitution and other applicable law), (b) the art collection of the Detroit Institute of Arts, and (c) all other interests of the People of Michigan.

The City of Detroit is Michigan’s largest city and municipal employer. It is imperative that this bankruptcy yield a new, revitalized City, but this process must occur in such a way as to ensure the City abides by its constitutional limitations. The State’s most fundamental law—its Constitution—cannot be sacrificed during the process.

INTRODUCTION

Michigan Attorney General Bill Schuette does not take issue with the City of Detroit’s eligibility to file a Chapter 9 bankruptcy under 11 U.S.C. § 109(c)(2). Michigan Governor Rick Snyder had the authority to and did properly authorize the City’s filing, and there is no serious question that the City is insolvent. Accordingly, this Court is the proper venue to decide the issues related to the City’s financial crisis.

But a bankruptcy filing does not relieve the City and its emergency manager of their obligation to follow Michigan’s Constitution. And that restriction includes the constitutional provision that prohibits a political subdivision like Detroit from diminishing or impairing an accrued financial benefit of a pension plan or retirement system. Mich. Const. art. IX, § 24.

Unlike other chapters of the Bankruptcy Code, Chapter 9 authorizes only one party to propose a plan in a municipal bankruptcy—the debtor. *Compare* 11 U.S.C. § 941 (Chapter 9 debtor “shall file a plan”) *with* 11 U.S.C. § 1121(a), (c) (“any party in interest” “may” file a plan). And when the City proposes its plan, it must act within all of the state-law limits that guide the City’s conduct. 11 U.S.C. § 943(b)(4).

For example, under Michigan law, the City and its emergency manager have no authority to propose a plan that supports a particular religion or violates an individual's right to religious liberty. Mich. Const. art. I, § 4. Nor could they propose a plan that limits citizens from petitioning the City for redress. Mich. Const. art. I, § 3. Similarly, the City cannot propose a plan that diminishes or impairs accrued pension rights of public employees. Mich. Const. art. IX, § 24.

It has been suggested that the constitutional protection of public pensioners is akin to Michigan's Contracts Clause, which prohibits any law "impairing the obligation of contract." Mich. Const. art. I, § 10. Not so. State and United States Supreme Court decisions have oft recognized that the Contracts Clause prohibition is not absolute and must be "accommodated to the inherent police power of the State 'to safeguard the vital interest of its people.'" *Romein v. General Motors Corp.*, 462 N.W.2d 555, 565 (Mich. 1990) (quoting *Energy Reserves Group, Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 410 (1983)). Insolvency is undoubtedly an exigency that authorizes such an accommodation; thus, there is no conflict between the bankruptcy laws and the Contracts Clause of the U.S. or any state constitution.

But under Michigan law, there is no such accommodation when it comes to the accrued financial benefits of a public pension plan or retirement system. The constitutional protection is absolute. So the City can no more authorize a plan that reduces accrued obligations to public pensions than a plan that discriminates on the basis of religion. Accordingly, while the City has the ability to address health benefits or *unaccrued* pension benefits (neither of which Michigan's Constitution specifically protects), *vested* pension benefits are inviolate.

This result is as it should be. According to the Detroit General Retirement System, general City workers like librarians or sanitation workers receive an average payment of roughly \$18,000 per year. For retired City police and firefighters, the figure is roughly \$30,000 per year, and without the benefit of Social Security payments. These retirees are among Michigan's most vulnerable citizens. The People of Michigan recognized as much and sought to protect them when enacting article IX, § 24. Accordingly, the City of Detroit is constitutionally obligated to keep the People's promise as it proposes a plan that will allow the City to flourish while honoring the lifelong commitment of Detroit's retired public servants.

ARGUMENT

I. The City of Detroit is eligible to proceed under Chapter 9, but the City remains subject to Michigan’s Constitution.

Under Public Act 436 of 2012, the City’s emergency manager acts as its receiver, and stands in the place of its governing body and chief executive officer. Mich. Comp. Laws § 141.1549(2). The manager also represents the City in bankruptcy. Mich. Comp. Laws § 141.1558(1). He is a public officer subject to the laws applicable to public servants and officers. Mich. Comp. Laws § 141.1549(3)(d) and (9)(a), (b), and (c). And the emergency manager has taken an oath to uphold the Michigan Constitution. Mich. Comp. Laws § 15.151; Mich. Const. art. XI, § 1.

As a public officer, and like any citizen of the State, the emergency manager must follow the Michigan Constitution and statutes enacted by the Legislature pursuant to its constitutional authority. This interplay of Michigan’s Constitution and Public Act 436 requires that the emergency manager abide by all applicable laws in governing the City.

The same obligation to comply with the Michigan Constitution applies to the emergency manager during this Chapter 9 proceeding. “Indeed, absent a specific provision to the contrary, a municipality is required to continue to comply with state law during a Chapter 9 case.”

6 Collier on Bankruptcy ¶ 903.02 (Alan N. Resnick and Henry J. Sommer eds. 16th ed.) This is significant, because under Chapter 9, the City, through the emergency manager, is the only party with authority to propose a plan of adjustment, 11 U.S.C. § 941, and therefore controls the plan process in a way that is unique to bankruptcy law.

The scope of a state’s authorization of a municipal-bankruptcy filing is a “question of pure state law” and thus “state law provides the rule of decision.” *In re City of Stockton*, 475 B.R. 720, 728–29 (Bankr. E.D. Cal. 2012). The Michigan Legislature cannot enact laws that authorize local governments to violate the Michigan Constitution, and the Legislature’s enactment of Public Act 436—specifically the bankruptcy authorization in § 18(1), Mich. Comp. Laws § 141.1558(1)—must thus be construed according to this basic legal principle. This means that when the Legislature enacted Public Act 436 and empowered the City and its emergency manager to pursue bankruptcy, the City and the manager’s actions in proposing a reorganization plan remain subject to applicable Michigan law, including article IX, § 24 of Michigan’s Constitution.

Article IX, § 24 unambiguously prevents public officials from diminishing vested public-employee pension rights:

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which *shall not be diminished or impaired* thereby.

Mich. Const. art. IX, § 24 (emphasis added). This provision prohibits the State, its officers, and any of its political units, including the City and its officers, from diminishing or impairing the pension benefits currently being received by retired City pensioners.

The fact that § 18(1), Mich. Comp. Laws § 141.1558(1), does not incorporate article IX, § 24 is of no moment, because the proscription arises by operation of constitutional law. Moreover, it is plain that the Michigan Legislature was aware of this constitutional provision when it enacted Public Act 436 because the Act requires emergency managers appointed under the act to “fully comply with . . . section 24 of article IX of the state constitution of 1963,” in the event an emergency manager becomes the trustee for a local unit’s pension fund. Mich. Comp. Laws § 141.1552(1)(m)(ii).

The continued application of state constitutional law during the Chapter 9 case is also consistent with state sovereignty principles, which are incorporated under 11 U.S.C. § 903 (Chapter 9 “does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality . . .”). See also *New York v. United States*, 505 U.S. 144, 155–66 (1992) (recognizing dual sovereignty and observing that “the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress’ instructions”); 5 William J. Norton, Jr. & William L. Norton III, *Norton Bankruptcy Law and Practice* § 90:4 (3d ed. 2009) (“Without the consent of the municipality, the court may not interfere with any of the political or governmental powers of the debtor, any property or revenues of the debtor, or the debtor’s use or enjoyment of any income-producing property.”).

Based on these principles, as the City and its emergency manager progress under Chapter 9 and ultimately propose a plan for the City’s reorganization, they remain subject to applicable state laws, including the Michigan Constitution and article IX, § 24.

II. Michigan’s Constitution bars the diminution or impairment of pensions by any means.

A. The Michigan Constitution established that pensioners have a contractual right to their pensions.

At common law, public pensions in Michigan were viewed as gratuitous allowances that could be revoked at will because a retiree lacked any vested right in their continuation. *See, e.g., Brown v. Highland Park*, 30 N.W.2d 798 (Mich. 1948); *Attorney General v. Connolly*, 160 N.W. 581 (Mich. 1916). That view is captured succinctly in the Michigan Supreme Court’s holding in *Brown*:

[A] public pension granted by public authorities is *not* a contractual obligation, that the pensioner has *no* vested right, and that a pension is *terminable at the will* of a municipality, at least while acting within reasonable limits.

Brown, 30 N.W.2d at 800 (emphasis added).

The People of Michigan reversed this public policy when they adopted art. IX, § 24 in the 1963 Michigan Constitution. The purpose for adopting this provision was made clear by delegates to the 1963 Constitutional Convention. In particular, delegate Richard VanDusen, one of the chief drafters of § 24, explained that accrued financial benefits were a kind of “deferred compensation”:

Now, it is the belief of the committee that the benefits of the pension plans are in the same deferred compensation for work performed. And with respect to work performed, it is the opinion of the committee that the public employee should have a contractual right to benefits of the pension plan, which should not be diminished by the employing unit after the service has been performed.

1 Official Record of the State of Michigan Constitutional Convention of 1961, 770–71 [hereinafter *Constitutional Convention Record*].

Michigan courts have supported this conclusion and have recognized, repeatedly, that article IX, § 24 is an express and unambiguous statement of the will of the People of the State of Michigan that the accrued financial benefits of each pension plan and retirement system of the State and its political subdivisions “shall not be diminished or impaired.” This constitutional promise thus ensures that there is never a time, a place, or a method for diminishing or impairing the State’s *or a political subdivision’s* obligation with respect to the accrued financial benefits of a pension plan or retirement system.

For example, based on § 24, the Michigan Court of Appeals has held that the City of Detroit’s attempt to increase the age at which an employee could receive his vested pension (and thereby *decrease* the amount of pension payments) violated art. IV, § 24. *Ass’n of Prof’l &*

Technical Employees v. City of Detroit, 398 N.W.2d 436 (Mich. Ct. App. 1986). The Court of Appeals has also held that § 24 prohibits the State or a local pension plan from reducing a retiree’s pension. *Seitz v. Probate Judges Ret. Sys.*, 474 N.W.2d 125 (Mich. Ct. App. 1991).

Similarly, § 24 prohibits the City of Detroit and its emergency manager from unilaterally reducing the pensions of existing retirees, because any reduction would diminish or impair the accrued financial benefits previously earned by such retirees. Just as the City and its manager have no authority to propose a plan that supports a particular religion or violates an individual’s right to religious liberty (or, for that matter, a plan that seizes the assets of retired employees in violation of the Michigan Constitution’s Takings Clause, *see* Mich. Const. art. X, § 2), the City and the emergency manager cannot propose a plan that has the effect of diminishing or impairing the accrued rights of public-employee pensions.¹

¹ Article 11, §11-101, ¶ 3 of the City of Detroit’s Home Rule City Charter equally treats and protects the accrued financial benefits of active and retired city employees as contractual obligations that “shall in no event be diminished or impaired.”

The entire thrust of article IX, § 24 is to safeguard a level of benefits for governmental employees who make a decision to retire. The public employees performed the work relying on a “particular level of benefits.” 1 *Constitutional Convention Record* at 770–71 (“the service in reliance upon the then prescribed level of benefits”). The *post hoc* reduction of these vested rights would create an untenable position for the retirants by reducing their compensation after the benefits have already vested. See *In re Advisory Opinion re Constitutionality of 1972 PA 258*, 209 N.W.2d 200, 202–03 (Mich. 1973) (rejecting any new conditions on accrued financial benefits that were “unreasonable and hence subversive of the constitutional protection”). It is analogous to forcing the pensioners to return deferred compensation. It is this very kind of reduction of pension payments that the constitutional provision is designed to prevent.

In sum, it cannot be reasonably disputed that the City has been authorized for and is eligible to file Chapter 9 bankruptcy. But in moving forward and proposing a plan, the City and its manager are bound by the strictures of Michigan law, including article IX, § 24 of Michigan’s Constitution.

B. Michigan’s constitutional protection of pensions is broader than that afforded to ordinary contracts.

At the core of a bankruptcy process is the adjustment of the relationship between a debtor and its creditors, and attendant in that process is the impairment of contracts. *In re Stockton*, 478 B.R. at 15. The State of Michigan’s Contracts Clause, Mich. Const. art. I, § 10, mirrors that of the United States Constitution and the contracts clauses of other states, and it is well understood that such a provision must stand aside in the bankruptcy process. But the subversion of a state constitution’s contracts clause does not come about as a result of bankruptcy law or the Supremacy Clause of the United States Constitution; a contracts clause steps aside as a matter of state law.

Both the Michigan Supreme Court and the United States Supreme Court have recognized that a constitutional contracts clause is not absolute. The prohibition against impairing contracts must be “accommodated to the inherent police power of the State ‘to safeguard the vital interests of the people.’” *Romein*, 462 N.W.2d at 565 (quoting *Energy Reserves Group*, 459 U.S. at 410). Thus, state action can impair a contract provided that there is a legitimate public purpose for the impairment (i.e., the state is validly exercising its police power and not

merely providing a benefit to special interests), and the means of adjustment are necessary and reasonable. *Romein*, 462 N.W.2d at 565–66 (citing *United States Trust Co. v. New Jersey*, 431 U.S. 1, 22-23 (1977)). Accordingly, a Michigan political subdivision is cloaked with the authority of Michigan law when it proposes a plan that impairs ordinary contracts. Here, for example, it cannot be disputed that the police power of the State and the City of Detroit is being exercised for a necessary and reasonable public purpose—to restore basic governmental services (police and fire protection, street lights, ambulance services, etc.) to the citizens of Detroit.

But article IX, § 24 is not similarly subject to such exigencies.² The 1963 Constitution and the language of § 24 is understood according to its plain meaning. *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 806 N.W. 2d 683, 693 (Mich. 2011); *Studier v. Michigan Pub. Sch. Employees’ Retirement Bd.*, 698 N.W.2d 350, 356–57 (Mich. 2005).

² Article IX, § 24 makes the City of Detroit’s bankruptcy quite different than the one at issue in *In re Stockton*, because the California Constitution contains no specific protection for pensions, only a generic Contracts Clause. Cal. Const. art. I, § 9.

In other words, article IX, § 24 is an impermeable imperative, and its place in the pantheon of Michigan constitutional rights is akin to the prohibition on taking property without just compensation, Mich. Const. art. X, § 2, or any other constitutional prohibition on the power of a government to affect the life, liberty, and property of its citizenry. Constitutional provisions of this nature are innate to the People of Michigan—not subject to discharge by exigency including a Chapter 9 proceeding under the federal Bankruptcy Code. The City and its emergency manager therefore cannot jettison article IX, § 24 when they propose a reorganization plan.³

Importantly, article IX, § 24 is not an absolute bar on the City's ability to adjust its debts in a Chapter 9 proceeding. The City may negotiate to adjust contractual terms under pension plans and retirement systems. *Cranford v. Wayne County*, 402 N.W.2d 64, 66 (Mich. 1986); *see also Stone v. State*, 651 N.W.2d 64 (Mich. 2002).

Similarly, the City is not prevented from taking even unilateral action

³ The same is true for similar reasons with respect to the City's role as trustee of the art collection of the Detroit Institute of Arts. Because the collection is held in charitable trust, the beneficial interest in the collection ultimately rests with the People of Michigan and is likewise inviolate. See AG Op. No. 7272, June 13, 2013.

with respect to *unaccrued* financial benefits. *Advisory Opinion re Constitutionality of 1972 PA 258*, 209 N.W.2d at 202–03 (1973) (“the legislature cannot diminish or impair accrued financial benefits, but we think it may properly attach new conditions for earning financial benefits which have not accrued.”); *see also Seitz*, 474 N.W.2d at 127. And § 24 does not implicate the City’s obligation with respect to promised health benefits. *Studier*, 698 N.W.2d at 358 (“the ratifiers of our Constitution would have commonly understood ‘financial’ to include only those benefits that consist of monetary payments, and not benefits of a nonmonetary nature such as health care benefits”).

These are all constitutionally acceptable ways for the City of Detroit to reduce its liabilities for its pension plans without violating the constitutional rights of existing retirees. But to the extent the City or its manager desire to diminish or impair *vested* pension benefits, Michigan law prohibits them from even proposing such a plan.

C. The Bankruptcy Code recognizes the State’s constitutional limits on municipalities in Chapter 9 bankruptcy.

Independent of the City’s obligation to act within state-law limits when proposing a plan, article IX, § 24 applies to a Chapter 9 bankruptcy by virtue of 11 U.S.C. § 903. Section 903 guarantees that state law continues to bind a political subdivision’s actions once in bankruptcy:

This chapter [9] does not limit or impair the power of a State to control, *by legislation or otherwise*, a municipality of or in such State in the exercise of the political or governmental powers of such municipality

11 U.S.C. § 903. In § 903, Congress protected the “States as States” as dual sovereigns under the federal Constitution. State participation in the national political process is the “fundamental limitation that the [United States] constitutional scheme imposes on” the powers granted to the federal government. *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 554 (1985). Section 903 is a result of the states’ place in the constitutional framework and participation in federal government and enacted legislation. *Id.* at 552. By including § 903 in the Bankruptcy Code, Congress preserved state constitutional protection provisions, like § 24, within the Code’s structure and purpose.

Indeed, nowhere in the Bankruptcy Code provisions applicable to Chapter 9 did Congress expressly provide for the treatment of municipalities' pension plans or retirement systems. Chapter 9's applicable provisions, structure, and purpose do not disclose any Congressional intent to preempt state constitutional protection provisions like § 24.⁴

Moreover, through Chapter 9 Congress has recognized that the bankruptcy of a State's political subdivision is a particular concern of a state and its relations with its political subdivisions. This conclusion is embedded in the preservation of the states of complete control over their political subdivision in the exercise of the political or governmental powers of such subdivisions, 11 U.S.C. § 903.

Consistent with § 903, the Bankruptcy Code imposes strict limitations on the power of this Court to direct municipal action regarding its political process, property, or revenue "unless the debtor consents." 11 U.S.C. § 904. Just as the City lacks the authority under

⁴ The pension obligations in question are not executory contracts subject to rejection under 11 U.S.C. § 365. This further distinguishes them from the collective bargaining agreement treatment set forth in *Vallejo*. *In re City of Vallejo*, 432 B.R. 262 (E.D. Cal. 2010); *In re City of Vallejo*, 403 B.R. 72 (Bankr. E.D. Cal. 2009).

Michigan law to propose a plan that diminishes accrued pension rights, it similarly lacks power to consent to any proposed action that would violate the Michigan Constitution.

CONCLUSION AND RELIEF REQUESTED

This matter is only at the eligibility stage, and, as noted above, the Attorney General does not take issue with the City's eligibility to file bankruptcy. Michigan Governor Rick Snyder had the authority to and did properly authorize the City's filing, and there is no serious question that the City is insolvent.

But through this submission, the Attorney General seeks to illuminate the legal rights and obligations of the City and its emergency manager as they move forward and exercise their exclusive Chapter 9 authority to propose a plan of reorganization. Those obligations include the requirement to act in accord with State law, including article IX, § 24's prohibition on a Michigan political subdivision's authority to diminish or impair accrued pension rights. In this initial filing, the Attorney General also seeks to apprise the Court of his legal positions, and he will offer additional arguments and support for his positions at the appropriate stages of this important proceeding.

Respectfully submitted,

Bill Schuette
Attorney General

John J. Bursch
Solicitor General

B. Eric Restuccia
Deputy Solicitor General

Larry Brya
Special Assistant Attorney General

/s/ Michael Bell

Michael Bell
Patrick Fitzgerald
Linus Banghart-Linn
Heather Meingast
Will Bloomfield
Assistant Attorneys General

Attorneys for
Attorney General Bill Schuette
P.O. Box 30754
Lansing, Michigan 48909
(517) 373-3203
BellM1@michigan.gov
P47890

Dated: August 19, 2013

CERTIFICATE OF SERVICE (E-FILE)

I hereby certify that on August 19, 2013, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

/s/ Michael Bell
Assistant Attorney General
Attorney for
Attorney General Bill Schuette
Revenue and Collections
Division
P.O. Box 30754
Lansing, Michigan 48909
(517) 373-3203
BellM1@michigan.gov
P47890

Dated: August 19, 2013

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

CITY OF DETROIT, MICHIGAN,

Debtor.

)
) Chapter 9
)

) Case No. 13-53846
)

) Hon. Steven W. Rhodes
)

DECLARATION OF STEVEN KREISBERG

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

1. I serve as Director of Collective Bargaining and Health Care Policy of the American Federation of State, County & Municipal Employees, AFL-CIO ("**AFSCME**"), and I submit this declaration in support of *The Michigan Council 25 Of The American Federation Of State, County & Municipal Employees, AFL-CIO And Sub-Chapter 98, City Of Detroit Retirees' Objection To The City Of Detroit's Eligibility To Obtain Relief Under Chapter 9 of The Bankruptcy Code*. Unless otherwise stated below, I have personal knowledge of the matters set forth herein and, if called, could competently testify to the information provided below.

2. Attached hereto as Exhibit 1 is a copy of an email dated January 31, 2013 4:10:58 PM between Kevyn Orr ("**Orr**") and his colleague.

3. Attached hereto as Exhibit 2 is a copy of an email dated January 31, 2013 10:52 between Orr and his colleague.

4. Attached hereto as Exhibit 3 is a copy of an email dated January 31, 2013 3:45:47 PM between Orr and his colleague.

5. Attached hereto as Exhibit 4 is a copy of an email dated January 31, 2013 5:23:09 PM between Orr and his colleagues.

6. Attached hereto as Exhibit 5 is a copy of my June 17, 2013 letter to Miller Buckfire & Co., LLC.

7. Attached hereto as Exhibit 6 is a copy of a June 14, 2013 letter from counsel to the City of Detroit to AFSCME.

8. Attached hereto as Exhibit 7 is a copy of a June 27, 2013 letter from counsel to the City of Detroit to AFSCME.

9. Attached hereto as Exhibit 8 is a copy of my July 2, 2013 letter to counsel to the City of Detroit.

10. Attached hereto as Exhibit 9 is a copy of a July 3, 2013 letter from counsel to the City of Detroit to AFSCME.

11. Attached hereto as Exhibit 10 is a copy of an email dated June 28, 2013 from counsel to the City of Detroit to AFSCME.

12. Attached hereto as Exhibit 11 is a copy of my August 6, 2013 letter to counsel to the City of Detroit.

13. Attached hereto as Exhibit 12 is a copy of an August 8, 2013 letter from counsel to the City of Detroit to AFSCME.

14. Attached hereto as Exhibit A is a copy of a Temporary Restraining Order dated July 18, 2013.

15. Attached hereto as Exhibit B is a copy of an Order of Declaratory Judgment dated July 19, 2013.

16. Attached hereto as Exhibit C is a copy of the City of Detroit's "Proposal for Creditors" presented by the City of Detroit on June 14, 2013.

17. During the June 20, 2013 meeting with unions (including AFSCME) regarding the City's pensions, the City of Detroit represented that the meeting was "not a negotiation."

18. At the inception of the July 10, 2013 meeting between the City of Detroit and various union (including AFSCME), the City of Detroit announced that the meeting would be a discussion but not a negotiation.

19. On August 2, 2013, the City of Detroit convened a meeting of local union representatives and discussed active health insurance.

20. During the August 2, 2013 meeting, the City of Detroit specifically advised those in attendance (including AFSCME representatives) that the meeting was not a negotiation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19th day of August, 2013


Steven Kreisberg

Exhibit 1

From: CN=Daniel T Moss/O=JonesDay
Sent: 1/31/2013 4:10:58 PM
To: Kevyn Orr/JonesDay
Subject: Re: Fw: D

That's true too - but it may be one of the less bad alternatives among the many other bad alternatives. Is her idea that the Bloomberg Foundation would fund part of this exercise? If so, that too only echoes the liberal talking points (as outlined in those news articles) of a fascist takeover of a local government by the right (not that Bloomberg is a right-winger, but, nonetheless, he is big business). I can't see that being a politically popular solution to an already plagued arena of options.

It seems that the ideal scenario would be that Snyder and Bing both agree that the best option is simply to go through an orderly Chapter 9. This avoids an unnecessary political fight over the scope / authority of any appointed Emergency Manager appointed and, moreover, moves the ball forward on setting Detroit on the right track. Appointing an Emergency Manager, whose ability to actually do anything is questionable given the looming political and legal fights, would only serve to kick the can down the wrong path and unreasonably delay any meaningful resolution of Detroit's problems.

Dan T. Moss
Associate
51 Louisiana Ave. NW, Washington, DC 20001-2113 • Direct: 202.879.3794 • Fax:
202.626.1700 • dtmoss@jonesday.com
Please consider the environment before printing this e-mail.

Exhibit 2

From: Daniel T Moss/JonesDay
To: Kevyn Orr/JonesDay
Date: 01/31/2013 10:52 AM

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13-538616 vswr Doc 2-2 Filed 08/19/13 Entered 08/19/13 13:26:15

JD-RD-0000300
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Subject: Re: Fw: D

Making this a national issue is not a bad idea. It provides political cover for the state politicians. Indeed, this gives them an even greater incentive to do this right because, if it succeeds, there will be more than enough patronage to allow either Bing or Snyder to look for higher callings--whether Cabinet, Senate, or Corporate. Further, this would give you cover and options on the back end to make up for lost time there.

Dan T. Moss

Associate

51 Louisiana Ave. NW, Washington, DC 20001-2113 • Direct: 202.879.3794 • Fax: 202.626.1700 • dtmoss@jonesday.com

Please consider the environment before printing this e-mail.

Exhibit 3

From: CN=Kevyn Orr/O=JonesDay
Sent: 1/31/2013 3:45:47 PM
To: CN=Corinne Ball/O=JonesDay@JonesDay
CC: "Stephen Brogan" <sjbrogan@jonesday.com>
Subject: Re: D

CB,

Thank you for thinking about alternative ways to skin this cat. But I don't think we should look at this right now for at least two reasons. First, the state already has EMs appointed or five cities and four school districts. I wouldn't want it to seem like I have a special deal. Second, in thinking about the EM position I went back and looked at the SIGTARP legislation and the federal law authorizing the creation of the D.C. Control Board in 95. Both gave those managers tremendous powers, but neither was subject to questions about the authority of the Congress to enact them and the President's authority to sign them into law. By contrast Michigan's new EM law is a clear end-around the prior initiative that was rejected by the voters in November. The new EM law gives local governments four choices to fix their financial emergency:

Consent Agreement, in which local leaders remain in charge but must meet certain conditions in an agreement negotiated with the state (Detroit is already under a CA and it sounds like it's not working);
A state appointed EM that has broad authority over local finances;
Chapter 9 bankruptcy with the Governor's approval; and
Mediation, in which the local government and interested parties meet with a neutral party to resolve financial issues, such as employee contracts (this is essentially required to file a Chapter 9 petition).

So although the new law provides the thin veneer of a revision it is essentially a redo of the prior rejected law and appears to merely adopts the conditions necessary for a chapter 9 filing. The news reports state that opponents of the prior law are already lining up to challenge this law.

Nonetheless, I'm going to speak with Baird in a few minutes to see what his thinking is. I'll let you know how it turns out. Thanks.

Kevyn

Kevyn D. Orr
51 Louisiana Ave. NW, Washington, DC 20001-2113 • Direct: 202.879.5560 • Fax:
202.626.1700 •
Cell: Redacted korr@jonesday.com

CONFIDENTIAL

Exhibit 4

From: CN=Kevyn Orr/O=JonesDay
Sent: 1/31/2013 5:23:09 PM
To: CN=Stephen J. Brogan/O=JonesDay;CN=Corinne Ball/O=JonesDay@JonesDay
Subject: Re: D

I had a good conversation with Rich Baird this morning. I explained that although I was interested in the job, there are a number of reasons (not wanting to leave the firm and familial constraints) that made it impractical for me to do so. He suggested that I give it some additional consideration and if, upon reflection, I could say that there was a glimmer of hope that I would take the job, then I should at least take the next step of meeting the Governor, Lt. Governor and the rest of the team. We agreed to get back in touch next week. He also mentioned that irrespective of whether I take the job, as far as he's concerned, he liked our presentation and is pulling for us to represent the city. I then reiterated that even if I did not take the EM position, I and the firm are committed to working in lockstep with the city and I would be more than willing to undertake any role in this respect.

Kevyn D. Orr
51 Louisiana Ave. NW, Washington, DC 20001-2113 • Direct: 202.879.5560 • Fax:
202.626.1700 •
Cell: Redacted korr@jonesday.com

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Exhibit 5



Leo Saunders
President
Laura Rayot
Secretary-Treasurer

Vice Presidents

Kan Allen
Portland, OR
Henry L. Bayer
Chicago, IL
Ken DeLo, RN
San Dimas, CA
Grag Duverson
Olympic, WA
Danny Donohue
Albany, NY
David R. Filman
Harrisburg, PA
Michael Fox
Harrisburg, PA
Kathleen Garrison
Latham, NY
Regan George Jr
New York, NY
Mandi Harrell
Wilkes-Barre, PA
Johanna Pano Hester
San Diego, CA
Dancy J. Horan
Dux Malver, MA
Salvatore Luciano
New Britain, CT
John A. Lyall
Worthington, OH
Kathryn Lyburger
Oakland, CA
Roberta Lynch
Chicago, IL
Christopher Paba
Westerville, OH
Geard S. Middleton Sr.
Baltimore, MD
Ralph Miller
Los Angeles, CA
Gary Mitchell
Madison, WI
Douglas Moore Jr.
San Diego, CA
Frank Moroney
Boston, MA
Henry Nicholas
Philadelphia, PA
Randy Perrotta
Honolulu, HI
Greg Powell
Austin, TX
Lillian Roberts
New York, NY
Eddie Rodriguez
New York, NY
Lawrence A. Roehrig
Lansing, MI
Joseph R. Ruggia
Columbus, OH
Eliot Seida
South St. Paul, MN
Mary E. Sullivan
Albany, NY
Brutino Torres
San Juan, PR
David Wierick
Indianapolis, IN
Jovanica D. Wynn
Tallahassee, FL

June 17, 2013

Mr. Kyle Herman
Miller Buckfire & Co., LLC
601 Lexington Avenue, 22nd Floor
New York, NY 10022
kyle.berman@millerbuckfire.com

Dear Mr. Herman:

In accordance with the instructions of the Detroit Office of the Emergency Financial Manager (EFM), I request the following information:

1. A copy of the preliminary actuarial analysis, to include a full description of all assumptions relied upon, used to support the revised cost estimates and funding condition of the PFRS and GRS pension systems. Data should show projected normal cost for each plan and the proposed UAAL amortization payment as a percent of payroll.
2. The basis for the cost estimates of retiree health care (OPEB) including a description of all assumptions relied upon (including eligibility for benefits under the plan and benefits under the plan), the annual net OPEB obligation, and projected pay-as-you-go funding requirements for the next ten years.
3. A description of the proposed retiree health care plan that will rely upon Medicare Advantage and the Exchange Marketplace under the Affordable Care Act and the basis for the estimated annual City cost of between \$27.5 million and \$40 million. To the extent eligibility for benefits is revised from the assumption in item 2 above, please describe the new eligibility criteria.
4. A description of all assumptions, data, and documents relied upon to support the following revenue projections:
 - a. Municipal income tax
 - b. Wagering taxes
 - c. Property taxes
 - d. State revenue sharing
 - e. Utility users' and other taxes
 - f. "Other revenue" (page 52 of the Proposal to Creditors)

American Federation of State, County and Municipal Employees, AFL-CIO

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1044-12
12/12

Mr. Kyle Herman
June 17, 2013
Page 2

5. A description of all projected services and investments included in the "Reorganization (Capital investments and Professional fees)" budget line item in the ten year Restructuring Scenario (page 97 of the Proposal to Creditors). Detail related to the development of major initiatives (for example, investments on technology) should be provided as well. Documents and other supporting data that support the cost projections should be provided as well. If the identity of vendors has been established, please provide that information.

I am assisting AFSCME locals and AFSCME Council 25 with issues related to the Proposal. We have been asked to meet with the EFM's representatives on Thursday. Accordingly, information related to items 1 through 3 should be provided prior to our meeting and the remaining information as soon as possible. I appreciate your cooperation. Feel free to call me at (202)429-1237 or email skreisberg@afscme.org if you have any questions or are in need of clarification.

Sincerely,


Steven Kreisberg
Director of Collective Bargaining and
Health Care Policy

SK.tem

Exhibit 6

JONES DAY

77 WEST WACKER • CHICAGO, ILLINOIS 60601.1692
TELEPHONE: +1.312.782.3939 • FACSIMILE: +1.312.782.8585

June 14, 2013

VIA E-MAIL

Ed McNeil
Assistant to the President
AFSCME, MI Council 25
600 W. Lafayette, Ste. 500
Detroit, MI 48226
emcneil@miafscme.org

Re: Retiree Benefit Restructuring Meeting

Dear Mr. McNeil:

As a follow-up to my letter dated May 20, 2013, a meeting has been scheduled for Thursday, June 20, 2013, at 10:00 a.m. at the Coleman A. Young Municipal Center, 2 Woodward Ave., 13th Floor Auditorium, Detroit, Michigan 48226 to review the restructuring plan for retiree benefits developed by Emergency Manager Kevyn Orr. On behalf of the Emergency Manager, I am inviting the American Federation of State, County and Municipal Employees, Michigan Council 25 to attend this meeting to learn about the City's restructuring plan. Due to space limitations, we are requesting that only two representatives from each union or retiree association attend the meeting. This meeting is not open to the general public or to the media, and no video devices, phone cameras, or other recording devices will be permitted in the auditorium. Please arrive at least 30 minutes before the start of the meeting to allow enough time to register. Proof of identification and your affiliation is required and will be checked prior to entering the meeting.


Please confirm in writing (including names, contact information, and affiliation) the two representatives of your union or association that will be attending the meeting no later than Tuesday, June 18, 2013. To the extent one or both of your representatives will need to be released from work to attend the meeting, please note this in your response and we will coordinate with the City's labor and employee relations department to ensure such employees are excused from work to attend the meeting.

We appreciate the willingness of the American Federation of State, County and Municipal Employees, Michigan Council 25 to participate in these discussions and look forward to your input with respect to these important issues.

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JONES DAY

June 14, 2013
Page 2

Sincerely,

Brian West Easley

cc: Mr. Kevyn Orr
Mr. Lamont Satchel
Mr. David Birnbaum

Exhibit 7

JONES DAY

77 WEST WACKER • CHICAGO, ILLINOIS 60601-1692
TELEPHONE: 312-782-3939 • FACSIMILE: 312-782-8585

June 27, 2013

VIA E-MAIL

James Williams
President
AFSCME, Local 207 – Non-Supervisory Unit
600 W. Lafayette, Ste. L-106
Detroit, MI 48226
afscme207@sbcglobal.net

Re: City of Detroit Restructuring

Dear Mr. Williams:

Thank you for participating in the June 20, 2013 informational meetings pertaining to the City of Detroit's (the "City's") proposals to restructure the City's retiree medical and pension obligations. We appreciated your questions and input and look forward to discussing these issues with the American Federation of State, County and Municipal Employees, Local 207 – Non-Supervisory Unit in the coming weeks.

The City recognizes that representatives of active and retired employees will need access to additional information to analyze the restructuring proposals outlined in the June 20 meetings. Information relevant to these proposals will be made available in the on-line data room established for creditors and other stakeholders. If you do not yet have access to the data room, please contact Dan Merrett (dmerrett@jonesday.com/ (404) 581-8476), who will provide you with further instructions.

To the extent you will need additional information beyond that provided in the data room to analyze and provide input with respect to the City's retiree benefits restructuring proposals, please forward requests for such information directly to my attention. We will make every effort to make responsive and relevant information available in a timely manner.

The City is very much looking forward to the unions' feedback with respect to the City's retiree benefits restructuring proposal. As we repeatedly stated during the meeting, to the extent that your organization has additional ideas about restructuring retiree benefits in a manner consistent with the City's financial limitations, the City will consider any such ideas. Please let me know if you would like to set up a time to further discuss these issues.

Sincerely,


Brian West Easley

cc: Kevyn Orr, Esq.
Mr. Lamont Satchel

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Exhibit 8



Lee Saunders
President
Laura Reyes
Secretary-Treasurer

Vice Presidents

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Portland, OR
Henry L. Bayer
Chicago, IL
Ken Deltz, RN
San Dimas, CA
Greg Devenoux
Olympia, WA

Danny Donahue
Albany, NY

David R. Fillman
Harrisburg, PA

Michael Fox
Harrisburg, PA

Kathleen Garrison
Latham, NY

Raglan George Jr.
New York, NY

Macie Harrell
Williamstown, NJ

Johanna Pardo Hestzer
San Diego, CA

Danny J. Homan
Des Moines, IA

Salvatore Luciano
New Britain, CT

John A. Lyell
Worthington, OH

Kathryn Lyberger
Oakland, CA

Roberta Lynch
Chicago, IL

Christopher Mabe
Westerville, OH

Glenard S. Middleton Sr.
Baltimore, MD

Ralph Miller
Los Angeles, CA

Gary Mitchell
Madison, WI

Douglas Moore Jr.
San Diego, CA

Frank Maroney
Boston, MA

Henry Nicholas
Philadelphia, PA

Randy Peetrera
Honolulu, HI

Greg Powell
Austin, TX

Lillian Roberts
New York, NY

Eddie Rodriguez
New York, NY

Lawrence A. Roehrig
Lansing, MI

Joseph P. Rugola
Columbus, OH

Eliot Seide
South St. Paul, MN

Mary E. Sullivan
Albany, NY

Braulio Torres
San Juan, PR

David Warrick
Indianapolis, IN

Jeanette Q. Wynn
Tallahassee, FL

July 2, 2013

Mr. Brian West Easterly
Jones Day
77 West Wacker
Chicago, IL 60601

Via Fax: (312) 782-8585

Dear Mr. Easterly:

You have contacted a number of Local unions affiliated with AFSCME for the purpose of offering information and inviting "feedback" on the Emergency Financial Manager's (EFM) proposal to "restructure" retiree benefits. The undersigned, in conjunction with AFSCME Council 25 President Albert Garrett and Council 25's Assistant to the President Ed McNeil will be representing our affiliated Locals in these matters. We are not representing current retirees.

I have followed the procedures and have been provided access to the on-line data room established by the EFM. I have also been in touch with Kyle Herman from Miller Buckfire as instructed by the EFM in his "Proposal to Creditors" on June 14. As I stated in an e-mail message to Mr. Herman, the electronic data room does not have all of the information I have requested of the EFM in a letter dated June 17, 2013 (copy enclosed). To reiterate, I have requested the following:

1. A copy of the preliminary actuarial analysis, to include a full description of all assumptions relied upon, used to support the revised cost estimates and funding condition of the PFRS and GRS pension systems. Data should show projected normal cost for each plan and the proposed UAAL amortization payment as a percent of payroll. Subsequent to June 17, I have been given access to Milliman analysis of the pension system which is partially responsive to my request.
2. The basis for the cost estimates of retiree health care (OPEB) including a description of all assumptions relied upon (including eligibility for benefits under the plan and benefits under the plan), the annual net OPEB obligation, and projected pay-as-you-go funding requirements for the next ten years.
3. A description of the proposed retiree health care plan that will rely upon Medicare Advantage and the Exchange Marketplace under the Affordable Care Act and the basis for the estimated annual City cost of between \$27.5 million and \$40 million. To the extent eligibility for benefits is revised from the assumption in item 2 above, please describe the new eligibility criteria.

American Federation of State, County and Municipal Employees, AFL-CIO

TEL (202) 429-1000 FAX (202) 429-1293 TDD (202) 659-0446 WEB www.afscme.org 1625 L Street, N.W., Washington, DC 20036-5687



Brian West Easterly
July 2, 2013
Page 2 of 2

4. A description of all assumptions, data, and documents relied upon to support the following revenue projections:
 - a. Municipal income tax
 - b. Wagering taxes
 - c. Property taxes
 - d. State revenue sharing
 - e. Utility users' and other taxes
 - f. "Other revenue" (page 52 of the Proposal to Creditors)

5. A description of all projected services and investments included in the "Reorganization (Capital investments and Professional fees)" budget line item in the ten year Restructuring Scenario (page 97 of the Proposal to Creditors). Detail related to the development of major initiatives (for example, investments on technology) should be provided as well. Documents and other supporting data that support the cost projections should be provided as well. If the identity of vendors has been established, please provide that information.

To clarify, we are seeking the data relied upon by the EFM as he developed his retiree benefits restructuring proposal. Detailed information related to reorganization and restructuring initiatives consists of a one page financial summary. I am seeking the data relied upon to develop that summary, especially and including, the back-up data associated with estimated expenditures addressing "blight."

In response to your offer to provide "feedback" on the proposed restructuring of retirement benefits, we hereby request to meet with authorized representatives of the EFM on July 10, 2013 at 10:00 a.m. To date, your representatives have provided presentations, and scheduled an additional presentation on pension benefits for the afternoon of July 10, but the EFM has not provided AFSCME with a meaningful opportunity to engage in a good faith negotiation of these issues. That process should start as soon as possible. We suggest we meet at our offices in Detroit, 600 West Lafayette. It would be extremely helpful if you could provide the requested information in advance of the meeting.

Please contact me at (202)429-1237 or skreisberg@afscme.org to discuss these matters, if necessary, and to confirm our proposed meeting.

Sincerely,


Steven Kreisberg
Director of Collective Bargaining and
Health Care Policy

SK/dd

cc: Albert Garrett, AFSCME Council 25 President
Kevyn Orr, Emergency Financial Manager

Exhibit 9

JONES DAY

77 WEST WACKER • CHICAGO, ILLINOIS 60601-1692
TELEPHONE: 312-782-3939 • FACSIMILE: 312-782-8585

July 3, 2013

VIA E-MAIL

Mr. Steven Kreisberg
Director of Collective Bargaining and Health Care Policy
American Federation of State, County and Municipal Employees, AFL-CIO
1625 L Street, NW
Washington, DC 20036-5687
skreisberg@afscme.org

Re: City of Detroit Restructuring

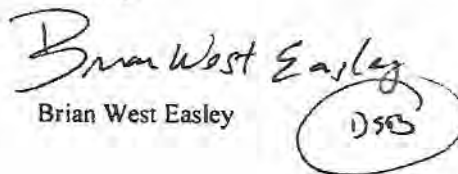
Dear Mr. Kreisberg:

We are in receipt of your letter dated July 2, 2013 in which you, among other things, request a meeting with representatives of Emergency Manager Kevyn Orr on July 10, 2013 at 10:00 a.m. In your letter, you acknowledge that a meeting has been scheduled for July 10, 2013 at 1:00 p.m. to discuss issues related to pension restructuring. However, you suggest that the scheduled meeting will be a "presentation," and state that AFSCME would prefer a meaningful opportunity for discussion.

The meeting currently scheduled for July 10, 2013 will not be a presentation but rather will be a discussion between the Emergency Manager's advisors and a relatively small group of key stakeholders who may include, the GRS and its advisor only team, high level representatives of up to four (4) non-uniform unions, and representatives from the Detroit Retired City Employees Association. The City believes that a discussion between and among these key stakeholders will be most beneficial and efficient for all parties. As such, while we are not available to meet with AFSCME at 10:00 a.m. on July 10, 2013, we encourage AFSCME to attend and participate in the scheduled meeting. Similarly, we are hopeful that AFSCME will attend the meeting regarding retiree health restructuring currently scheduled for 10:00 a.m. on July 11, 2013.

Please confirm whether AFSCME plans to attend the July 10, 2013 meeting at 1:00 p.m. and the July 11, 2013 meeting at 10:00 a.m. and provide the names of your proposed attendees.

Sincerely,


Brian West Easley

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JONES DAY

July 3, 2013
Page 2

cc: Evan Miller, Esq.
Kevyn Orr, Esq.
Mr. Lamont Satchel

Exhibit 10

From: Edward McNeil [<mailto:emcneil@miafscme.org>]
Sent: Friday, June 28, 2013 9:58 PM
To: Steve Kreisberg
Subject: Fwd: City of Detroit -- Pension Restructuring Discussions (GRS)

Sent from my iPhone

Begin forwarded message:

From: David Birnbaum <dbirnbaum@jonesday.com>
Date: June 28, 2013, 4:39:23 PM EDT
To: agarrett@miafscme.org, emcneil@miafscme.org
Cc: Evan Miller <emiller@jonesday.com>, Brian Easley <beasley@jonesday.com>, Heather Lennox <hlennox@jonesday.com>, "David G. Heiman" <dgheiman@jonesday.com>
Subject: City of Detroit -- Pension Restructuring Discussions (GRS)

Mr. Garrett and Mr. McNeil:

Following the presentations made on June 20th, outside counsel for GRS reached out to the City of Detroit for more information on, and to discuss, a pension restructuring proposal. GRS and the City of Detroit have tentatively scheduled a meeting on pension restructuring for Wednesday, July 10th, at 1 pm (location to be determined). The City will be prepared to provide more information on its developing pension restructuring proposal. Because the City expects that the proposal will impact the pension benefits of active participants of GRS, who include your members, the City would like to invite you to this meeting on July 10th, at 1 pm to participate in the discussion. We expect the meeting will last approximately 2 hours. GRS will be sending an advisor-only team (attorneys and financial advisors), and the City believes this is a good way to proceed. Please let us know at your earliest convenience if you will attend and the names of the attendees. We will contact you as soon as practicable to provide details about the meeting location.

Regards,

David



David S. Birnbaum

77 West Wacker Drive, Suite 3500 • Chicago, IL 60601
DIRECT 312.269.4005 • FAX 312.782.8585 • EMAIL dbirnbaum@jonesday.com

Exhibit 11



August 6, 2013

- Lee Saunders
President
- Laura Reyes
Secretary-Treasurer
- Vice Presidents
 - Ken Allen
Portland, OR
 - Henry L. Bayer
Chicago, IL
 - Ken Delcz, RN
San Dimas, CA
 - Greg Devereaux
Olympia, WA
 - Danny Donohue
Albany, NY
 - David R. Fillman
Harrisburg, PA
 - Michael Fox
Harrisburg, PA
 - Kathleen Garrison
Latham, NY
 - Raglan George Jr.
New York, NY
 - Mattie Harrell
Williamstown, NJ
 - Johanna Fumo Hester
San Diego, CA
 - Danny J. Horan
Des Moines, IA
 - Salvatore Luciano
New Britain, CT
 - John A. Lyall
Worthington, OH
 - Kathryn Lybarger
Oakland, CA
 - Roberta Lynch
Chicago, IL
 - Christopher Mabe
Westerville, OH
 - Glennard S. Middleton Sr.
Baltimore, MD
 - Ralph Miller
Los Angeles, CA
 - Gary Mitchell
Madison, WI
 - Douglas Moore Jr.
San Diego, CA
 - Frank Moroney
Boston, MA
 - Henry Nicholas
Philadelphia, PA
 - Randy Parrera
Honolulu, HI
 - Greg Powell
Austin, TX
 - Lillian Roberts
New York, NY
 - Eddie Rodriguez
New York, NY
 - Lawrence A. Roehrig
Lansing, MI
 - Joseph P. Rugola
Columbus, OH
 - Eliot Seide
South St. Paul, MN
 - Mary E. Sullivan
Albany, NY
 - Braulio Torres
San Juan, PR
 - David Warrick
Indianapolis, IN
 - Jeanette D. Wynn
Tallahassee, FL

Mr. Evan Miller
Jones Day
51 Louisiana Av, NW
Washington, DC 20001

Via Email: emiller@jonesday.com

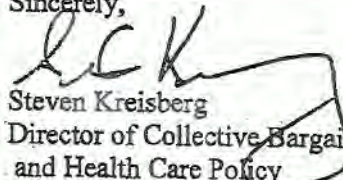
Dear Mr. Miller:

On August 2, 2013 you convened a meeting among local city union representatives to convey, in your capacity as a representative of the City of Detroit, an "Active Employee Health Insurance Proposal." During that meeting, you specifically advised those of us in attendance that the meeting was not a "negotiation" but you requested "feedback" on the proposal. At the meeting, it was brought to your attention that the City of Detroit Coalition Unions (CDCU), led by AFSCME Council 25 Assistant to the President Ed McNeil, had engaged in health benefit negotiations in 2011-12 and had achieved an agreement with the city for health care concessions valued at \$60 million annually (at that time). That agreement was never implemented.

In accordance with Michigan Public Employment Relations Act (MERA), MCL 423.201 et seq., AFSCME Council 25, on behalf of the CDCU, hereby demands bargaining in good faith on the City's August 2 health insurance proposal. We see no exemption under Chapter 9 of the bankruptcy code or the Emergency Financial Manager law (Public Act 436) from the City's duty to bargain in good faith with the exclusive representatives of city employees over terms and conditions of employment.

Ms. Samantha Woo from Jones Day has contacted Mr. McNeil to schedule a meeting with him, yourself and Brian West Easterly to discuss active employee health benefits. Attached for your reference is a summary of the CDCU proposal, including cost savings estimates, from the previous negotiations. We suggest we convene a meeting between you and Ed McNeil who will be accompanied by Richard Mack, on August 13, 2013 at 2:00 p.m. to discuss this matter. Msrs. McNeil and Mack were the CDCU's lead negotiators in 2011-12. Please respond to the undersigned at (202) 429-1237 or skreisberg@afscme.org or to Ed McNeil at (313)964-1711 or emcneil@miafscme.org.

Sincerely,


Steven Kreisberg
Director of Collective Bargaining
and Health Care Policy

SK/gm

American Federation of State, County and Municipal Employees, AFL-CIO

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DRAFT - SUBJECT TO CHANGE

**EXHIBIT A
MEDICAL CONCESSIONS**

		Union	Management ¹
<u>PPO plan:</u>			
Employee premium contribution	20% for all plans	\$ 8,100,000	\$ 8,100,000
Plan deductible	\$250/\$500	\$ 10,310,000	\$ 10,310,000
Insurance maximum	\$1,000/\$2,000	\$ 9,006,000	\$ -
Insurance maximum	\$1,500/\$3,000	\$ -	\$ 9,480,000
Office visit & urgent care co-pay	\$15	\$ 656,667	\$ -
Office visit & urgent care co-pay	\$25	\$ -	\$ 1,970,000
Emergency room co-pay	\$100	\$ -	\$ 610,000
Hospital co-pay	\$100	\$ -	\$ 520,000
Rx drugs - CVS Caremark plan		\$ 28,175,445	\$ -
Rx drugs - 3 tier co-pay structure	\$5/\$15/\$30	\$ -	\$ -
Rx drugs - 3 tier co-pay structure	\$10/\$20/\$30	\$ -	\$ 10,500,000
Rx drugs - Pharmacy Initiatives		\$ -	\$ 11,000,000
<u>HMO plan:</u>			
Health Alliance Plan changes ²	various	\$ -	\$ 3,715,000
<u>Other changes:</u>			
Eliminate BCN		\$ 2,950,000	\$ 3,100,000
Eliminate Total Health		\$ -	\$ 900,000
Eliminate US Health		\$ 1,190,000	\$ 1,190,000
Dental - convert all plans to Dencap		\$ -	\$ 1,215,000
Dental/Vision employee contribution	20% for all plans	\$ -	\$ 2,977,000
Adjustment for Weiler class retirees	45% of retirees	\$ -	\$ (16,527,924)
Total savings		\$ 60,388,112	\$ 49,059,076
<u>Incremental changes to reach \$60m target:</u>			
Plan deductible (PPO)	\$750/\$1500	\$ -	\$ 3,744,633
Insurance maximum (PPO)	\$2,500/\$5,000	\$ -	\$ 3,744,633
Health Alliance Plan changes ³	various	\$ -	\$ 2,436,750
Other			\$ 1,014,907
Total savings including incremental savings		\$ 60,388,112	\$ 60,000,000

Notes:

1. Management estimate assumes PPO plan changes are underwritten by BCBS
2. Savings from HAP changes assumes \$250 ded, 20% co-ins, \$1,500 co-ins max, \$1,750 OOP max, \$25 OV, \$75 ER, \$25 UC, Rx \$10/\$20/\$30
3. Incremental savings from HAP changes assumes \$750 ded, 20% co-ins, \$2,500 co-ins max, \$3,250 OOP max, \$25 OV, \$75 ER, \$25 UC, Rx \$10/\$20/\$30

Exhibit 12

JONES DAY

77 WEST WACKER • CHICAGO, ILLINOIS 60601, 1692
TELEPHONE: +1.312.782.3939 • FACSIMILE: +1.312.782.8585

August 8, 2013

VIA EMAIL

Mr. Steven Kreisberg
Director of Collective Bargaining and Health Care Policy
AFSCME, AFL-CIO
1625 L Street, NW
Washington, D.C. 20036
SKreisberg@afscme.org

Re: City of Detroit and AFSCME Council 25

Dear Mr. Kreisberg:

I am in receipt of your letter dated August 6, 2013 in which AFSCME Council 25, on behalf of the City of Detroit Coalition Unions, "demand[ed] bargaining in good faith on the City's August 2 health insurance proposal." While the City of Detroit (the "City") previously was subject to a statutory duty to "bargain collectively with the representatives of its employees" pursuant to section 15(1) of the Michigan Public Employment Relations Act ("PERA"), the duty to bargain was suspended when the City was placed in receivership under Public Act 436 ("PA 436"). MICH. COMP. LAWS § 423.215(1); § 141.1567(3). Specifically, PA 436 provides that "[a] local government placed in receivership . . . is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for a period of 5 years from the date the local government is placed in receivership or until the time the receivership is terminated, whichever occurs first." MICH. COMP. LAWS § 141.1567(3). As such, the City currently is not subject to a statutory duty to bargain under PERA.

Although the City will exercise its current right not to engage in collective bargaining with AFSCME Council 25, the City is more than willing to meet with representatives of your union to discuss any feedback they may have regarding its health care restructuring plans. We are available to meet with Mr. Ed McNeil and Mr. Richard Mack on Wednesday, August 14, 2013 at 2:00 p.m. to discuss the City's active employee health insurance proposal. Please let me know at your earliest convenience if this date and time are acceptable.

We look forward to working closely with your union as we attempt to restructure the City's finances and operations.

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MEXICO CITY • MIAMI • MILAN • MOSCOW • MUNICH • NEW YORK • PARIS • PITTSBURGH • RIYADH • SAN DIEGO
SAN FRANCISCO • SÃO PAULO • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

JONES DAY

Mr. Steven Kreisberg
August 8, 2013
Page 2

Sincerely,

Evan Miller/suo

Evan Miller

cc: Brian West Easley, Esq.
Ed McNeil

Exhibit A

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE GENERAL RETIREMENT SYSTEM
OF THE CITY OF DETROIT, and THE
POLICE AND FIRE RETIREMENT
SYSTEM OF THE CITY OF DETROIT,

*Gracie Webster
and Veronica Thomas*

Plaintiffs,

Case No. ~~13-768-CZ~~

*13-000734-CZ
C30*

vs.

State of Michigan

Hon. *Rosemarie*

Aquilina

~~KEVYN D. ORR, in his official capacity as the
EMERGENCY MANAGER OF THE CITY OF
DETROIT, and RICHARD SNYDER, in his
official capacity as the GOVERNOR OF THE
STATE OF MICHIGAN,~~

and Andy Dillon,

Defendants.

Treasurer in his official Capacity

Ronald A. King (P45088)
Aaron O. Matthews (P64744)
Michael J. Pattwell (P72419)
CLARK HILL/PLC
212 East Grand River Avenue
Lansing, Michigan 48906
(517) 318-3100
Attorneys for Plaintiffs

*John R. Canzano P30417
McKnight, McCloy, Canzano Smith
& Radtke PC
400 Galleria Office Center*

TEMPORARY RESTRAINING ORDER

At a session of said Court, held in the City of
Lansing, County of Ingham, State of Michigan
on 18 July 13

PRESENT: HON. *Rosemarie Aquilina*
CIRCUIT COURT JUDGE

*and having appeared
during the hearing
for a TRO in 13-000734*

This matter having come before the Court on Plaintiffs' Complaint with verification and
Declaratory Judgment and Preliminary Injunction
Ex Parte Motion for a Temporary Restraining Order; the Court being fully advised in the
premises; Plaintiffs having shown a likelihood of success on the merits of the claims in

Plaintiffs' Complaint; Plaintiff having adequately shown that a failure to immediately issue a Temporary Restraining Order will cause irreparable injury to Plaintiffs by permitting the Governor and the Emergency Manager ("Defendants") to authorize and file a Chapter 9 bankruptcy petition wherein Plaintiffs' accrued financial benefits will be impaired prior this Court's scheduled preliminary injunction hearing on Monday, July 22, 2013; and the Court being otherwise fully informed in the premises and finding good cause:

IT IS HEREBY ORDERED that Plaintiffs' Motion is granted;

which has already occurred

IT IS FURTHER ORDERED that Defendants are immediately and temporarily enjoined and restrained from taking any action (including the authorization of an unconditional Chapter 9 bankruptcy proceeding for the City of Detroit and/or the filing of a Chapter 9 bankruptcy petition) that may: (i) cause the accrued financial benefits of the Retirement Systems or their participants from in any way being diminished or impaired as mandated by Article IX, section 24, of the Michigan Constitution, or (ii) otherwise abrogate Article IX, section 24, of the Michigan Constitution;

IT IS FURTHER ORDERED that the Court shall hold a hearing on July 22, 2013 at 9:00 AM whereby Defendants shall show cause why a Declaratory Judgment and/or Preliminary Injunction shall not issue; and

IT IS FURTHER ORDERED that this temporary restraining order shall remain in full force and effect until further order of the Court, 2013 at 5:00 p.m.

IT IS SO ORDERED.

Rosemarie E. Aquilina
CIRCUIT COURT JUDGE
P37670

DATE: 18 July 13
TIME: 4:25 p.m.

^{30th} STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE GENERAL RETIREMENT SYSTEM
OF THE CITY OF DETROIT, and THE
POLICE AND FIRE RETIREMENT
SYSTEM OF THE CITY OF DETROIT,

Plaintiffs,

vs.

KEVYN D. ORR, in his official capacity as the
EMERGENCY MANAGER OF THE CITY OF
DETROIT, and RICHARD SNYDER, in his
official capacity as the GOVERNOR OF THE
STATE OF MICHIGAN,

Defendants.

Case No. 13-~~468-CZ~~

Hon. Rosemarie E. Aquilina

*Flowers
caption*

729-CZ

Ronald A. King (P45088)
Aaron O. Matthews (P64744)
Michael J. Pattwell (P72419)
CLARK HILL PLC
212 East Grand River Avenue
Lansing, Michigan 48906
(517) 318-3100
Attorneys for Plaintiffs

Flowers attorneys

TEMPORARY RESTRAINING ORDER,

At a session of said Court, held in the City of
Lansing, County of Ingham, State of Michigan
on 18 July 13

PRESENT: HON. Rosemarie E. Aquilina

CIRCUIT COURT JUDGE

Amended Verified

This matter having come before the Court on Plaintiffs' Complaint with verification and
~~Ex Parte~~ *Preliminary Injunction* Motion for a Temporary Restraining Order; the Court being fully advised in the
premises; Plaintiffs having shown a likelihood of success on the merits of the claims in

Plaintiffs' Complaint; Plaintiff having adequately shown that a failure to immediately issue a ~~Temporary Restraining Order~~ ^{Final Preliminary Injunction} will cause irreparable injury to Plaintiffs by permitting the ~~Governor and the Emergency Manager~~ ^{and the State Treasurer} ("Defendants") to authorize ~~and file a Chapter 9 bankruptcy petition~~ ^{or otherwise proceed with} wherein Plaintiffs' accrued financial benefits will be impaired ~~prior to this Court's scheduled preliminary injunction hearing on Monday, July 22, 2013;~~ ^{on behalf of the City of Detroit, or to aid in such a filing proceeding} and the Court being otherwise fully informed in the premises and finding good cause:

IT IS HEREBY ORDERED that Plaintiffs' Motion is granted;

IT IS FURTHER ORDERED that Defendants are immediately and temporarily enjoined and restrained from taking any action (including the authorization of an ~~unconditional~~ ^{preliminary} Chapter 9 bankruptcy proceeding for the City of Detroit and/or the filing of a Chapter 9 bankruptcy petition) ^{or any action or in aid and assistance as to the same,} that may: (i) ~~cause the accrued financial benefits of the Retirement Systems or their participants from in any way being diminished or impaired as mandated by Article IX, section 24, of the Michigan Constitution, or (ii) otherwise abrogate Article IX, section 24, of the Michigan Constitution;~~

IT IS FURTHER ORDERED that the Court shall hold a hearing on _____, 2013 at _____ whereby Defendants shall show cause why a Preliminary Injunction shall not issue; and

IT IS FURTHER ORDERED that this ~~temporary restraining order~~ ^{preliminary injunction} shall remain in full ^{force and effect until} ~~force and effect until~~ _____, 2013 at 5:00 p.m. ^{Further order of the court}

IT IS SO ORDERED.

DATE: 18 July 13
TIME: 4:25 p.m.

Rosemarie Edguitina
CIRCUIT COURT JUDGE
P.37670

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE GENERAL RETIREMENT SYSTEM
OF THE CITY OF DETROIT, and THE
POLICE AND FIRE RETIREMENT
SYSTEM OF THE CITY OF DETROIT,

Plaintiffs,

vs.

Case No. 13-768-CZ

Hon. *Rosemarie E. Aquilina*

KEVYN D. ORR, in his official capacity as the
EMERGENCY MANAGER OF THE CITY OF
DETROIT, and RICHARD SNYDER, in his
official capacity as the GOVERNOR OF THE
STATE OF MICHIGAN,

Defendants.

Ronald A. King (P45088)
Aaron O. Matthews (P64744)
Michael J. Pattwell (P72419)
CLARK HILL PLC
212 East Grand River Avenue
Lansing, Michigan 48906
(517) 318-3100
Attorneys for Plaintiffs

TEMPORARY RESTRAINING ORDER

At a session of said Court, held in the City of
Lansing, County of Ingham, State of Michigan
on 18 July 13

PRESENT: HON. *Rosemarie E. Aquilina*
CIRCUIT COURT JUDGE

This matter having come before the Court on Plaintiffs' Complaint with verification and
Ex-Parte Motion for a Temporary Restraining Order; the Court being fully advised in the
premises; Plaintiffs having shown a likelihood of success on the merits of the claims in

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13-53846-swr Doc 56 Filed 07/19/13 Entered 07/19/13 18:09:37 Page 68 of 82

~~13-53846-swr Doc 529-3-2 Filed 02/19/13 Entered 02/19/13 13:20:15 Page 61 of 7~~

Plaintiffs' Complaint; Plaintiff having adequately shown that a failure to immediately issue a Temporary Restraining Order will cause irreparable injury to Plaintiffs by permitting the Governor and the Emergency Manager ("Defendants") to authorize and file a Chapter 9 bankruptcy petition wherein Plaintiffs' accrued financial benefits will be impaired prior this Court's scheduled preliminary injunction hearing on Monday, July 22, 2013; and the Court being otherwise fully informed in the premises and finding good cause:

IT IS HEREBY ORDERED that Plaintiffs' Motion is granted;

IT IS FURTHER ORDERED that Defendants are immediately and temporarily enjoined and restrained from taking any action ^{Further} ~~(including the authorization of an unconditional Chapter 9 bankruptcy proceeding for the City of Detroit and/or the filing of a Chapter 9 bankruptcy petition)~~ that may: (i) cause the accrued financial benefits of the Retirement Systems or their participants from in any way being diminished or impaired as mandated by Article IX, section 24, of the Michigan Constitution, or (ii) otherwise abrogate Article IX, section 24, of the Michigan Constitution;

IT IS FURTHER ORDERED that the Court shall hold a hearing on 22 July, 2013 at 9:00 AM whereby Defendants shall show cause why a Preliminary Injunction shall not issue; and

IT IS FURTHER ORDERED that this temporary restraining order shall remain in full force and effect until 1 AUG, 2013 at 5:00 p.m.

IT IS SO ORDERED.

Rosemarie E Aquilina
CIRCUIT COURT JUDGE *P37670*

DATE: 18 July 13

TIME: 4:25

Exhibit B

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and
VERONICA THOMAS,

Plaintiffs,

vs

Case No. 13-734-CZ
Hon. Rosemarie Aquilina

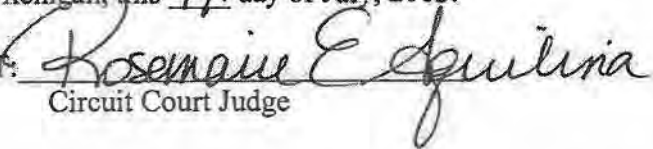
THE STATE OF MICHIGAN;
RICHARD SNYDER, as Governor
of the State of Michigan; and
ANDY DILLON, as Treasurer of
the State of Michigan,

Defendants.

ORDER OF DECLARATORY JUDGMENT

At a session of said Court held in Ingham County Circuit Court,
State of Michigan, this 19th day of July, 2013.

PRESENT:


Circuit Court Judge

Plaintiffs request declaratory relief pursuant to MCR 2.605 concerning (1) the constitutionality under Article IX Section 24 of the Michigan Constitution of the Local Financial Stability and Choice Act, 2012 PA 436, MCL 141.1541, *et seq.* ("PA 436"), insofar as PA 436 permits the Governor to authorize an emergency manager to proceed under chapter 9 of the bankruptcy code, chapter 9 of title 11 of the United States Code, 29 USC 901 to 946 ("Chapter 9") in a manner which threatens to diminish or impair accrued pension benefits; and (2) the

authority of the Governor and/or State Treasurer to authorize an emergency manager to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits.

Plaintiffs have requested, and Defendants have agreed in their Response, that the hearing in this matter may be advanced pursuant to MCR 2.605(D) and the court finds that expedited treatment is appropriate and that final declaratory relief is proper at this time.

The Court having reviewed the parties filings and submissions, and having heard oral argument by counsel for the parties, and being otherwise fully advised in the premises, and for the reasons stated on the record,

IT IS HEREBY ORDERED:

PA 436 is unconstitutional and in violation of Article IX Section 24 of the Michigan Constitution to the extent that it permits the Governor to authorize an emergency manager to proceed under Chapter 9 in any manner which threatens to diminish or impair accrued pension benefits; and PA 436 is to that extent of no force or effect;

The Governor is prohibited by Article IX Section 24 of the Michigan Constitution from authorizing an emergency manager under PA 436 to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits, and any such action by the Governor is without authority and in violation of Article IX Section 24 of the Michigan Constitution.

On July 16, 2013, City of Detroit Emergency Manager Kevyn Orr submitted a recommendation to Defendant Governor Snyder and Defendant Treasurer Dillon pursuant to Section 18(1) of PA 436 to proceed under Chapter 9, which together with the facts presented in Plaintiffs' filings, reflect that Emergency Manager Orr intended to diminish or impair accrued pension benefits if he were authorized to proceed under Chapter 9. On July 18, 2013, Defendant

Governor Snyder approved the Emergency Manager's recommendation without placing any contingencies on a Chapter 9 filing by the Emergency Manager; and the Emergency Manager filed a Chapter 9 petition shortly thereafter. By authorizing the Emergency Manager to proceed under Chapter 9 to diminish or impair accrued pension benefits, Defendant Snyder acted without authority under Michigan law and in violation of Article IX Section 24 of the Michigan Constitution.

In order to rectify his unauthorized and unconstitutional actions described above, the Governor must (1) direct the Emergency Manager to immediately withdraw the Chapter 9 petition filed on July 18, and (2) not authorize any further Chapter 9 filing which threatens to diminish or impair accrued pension benefits.

A copy of this Order shall be transmitted to President Obama.

It is so Ordered.

Rosemarie E. Aquilina
Circuit Court Judge P37670

Exhibit C

CITY OF DETROIT
PROPOSAL FOR CREDITORS

JUNE 14, 2013



CITY OF DETROIT **PROPOSAL FOR CREDITORS**

JUNE 14, 2013

This proposal is based on numerous projections and assumptions concerning future uncertain events including estimates of tax revenues and forecasts of future business and economic conditions in the city, all of which are beyond the control of the city. Actual results may differ from the assumptions and projections presented herein, and such differences could be material.

Additional data are being gathered or developed, and various critical financial and operational analyses remain in process. Thus, this proposal remains subject to material change.

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DETROIT FACES STRONG ECONOMIC HEADWINDS

DETERIORATING MACROECONOMIC CONDITIONS.

During the past several decades, the City of Detroit (the “City”) has experienced changes that have adversely affected the economic circumstances of the City and its residents.

Declining Population. The City’s population has declined 63% since its postwar peak, including a 26% decline since 2000:

- June 1950: 1,849,600
- June 1990: 1,028,000
- June 2000: 951,270
- June 2010: 713,777
- December 2012: 684,799

High Unemployment. Despite some recent improvement, the City’s unemployment rate has nearly tripled since 2000:

- June 2000: 6.3%
- June 2010: 23.4%
- June 2012: 18.3%

Number of Detroit Residents Employed.

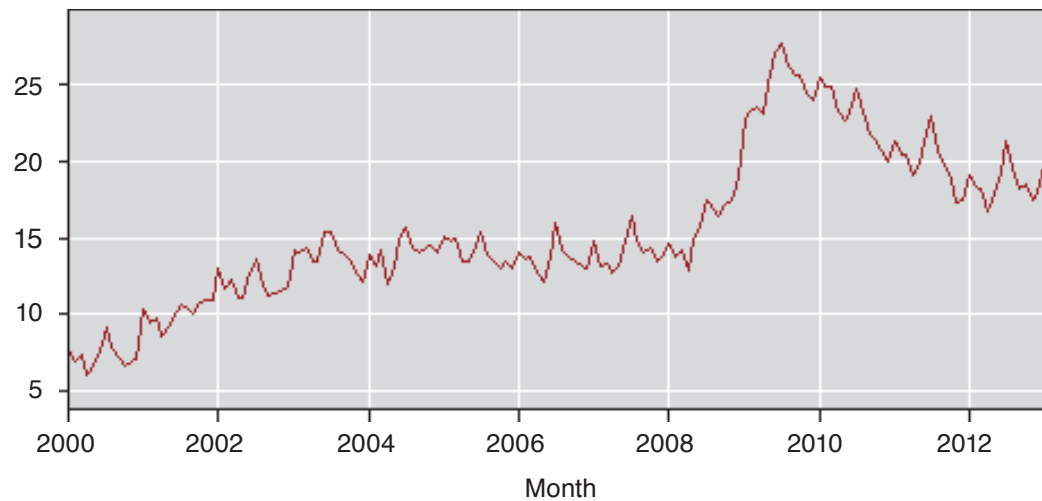
	2000	2010	2012
Labor force	381,498	361,538	343,856
Employment	353,813	278,063	279,960
Unemployment	27,685	83,475	63,896
Unemployment rate	7.3%	23.1%	18.6%

- The number of employed Detroit residents has dropped more than 53% since 1970.

EMPLOYMENT IN DETROIT



UNEMPLOYMENT RATE IN DETROIT



Eroding Tax Base and Reductions in State Revenue Sharing.

- Property Taxes.
 - Property tax revenues have decreased by approximately 19.7% over the past five years as a result of declining assessed values (\$1.6 billion from 2008 to 2012) and lower collection rates (from 76.6% in 2008 to 68.3% in 2011).
 - Projected FY 2013 property tax revenues are \$135 million, a reduction of \$13 million (or approximately 9%) from FY 2012 levels.
- Income Taxes.
 - Income tax revenues have decreased by \$91 million since 2002 (approximately 30%) and by \$44 million (approximately 15%) since 2008. The primary cause of these decreases has been high unemployment driving lower taxable income of City residents and non-residents working in the City.
 - Income tax revenues may be showing signs of stabilization. This results from a modest decrease in unemployment, the indefinite deferral of a previously planned decrease of the City's 2.4% resident income tax rate and an increase in the corporate income tax rate from 1% to 2% in January 2012.
 - The income tax rate for residents and non-residents was set to decrease due to criteria set by the City Income Tax Act, but legislation has been put in place to hold the tax rates at the current level (2.4% for residents and 1.2% for non-residents) in order to avoid a loss of income tax revenues.
- Utility Users' Excise Tax.
 - Revenues from the City's utility users' tax have declined from approximately \$55.3 million in FY 2003 to approximately \$39.8 million in FY 2012 (approximately 28%).
- Wagering Taxes.
 - Annual receipts of wagering taxes have remained steady at about \$170–\$180 million, but gaming tax receipts are projected to decrease through FY 2015 due to expected loss of gaming revenue to casinos opening in nearby Toledo, Ohio.

- State Revenue Sharing.
 - State revenue sharing has decreased by \$161 million since FY 2002 (approximately 48%) and by \$76 million (approximately 30.6%) since 2008 due to the City's declining population and significant reductions in statutory revenue sharing by the State.
 - Revenue sharing is calculated based on population; revenue sharing amounts will decrease further if the City's population continues to decline.
- **The City is currently levying all taxes at or near statutory maximum rates.**

RESIDENTS AND BUSINESSES ARE LEAVING DETROIT TO ESCAPE HIGH TAXES AND INSURANCE COSTS.

Comparative Tax Burden.

- **Per Capita Tax Burden.** Per capita tax burden on City residents is the highest in Michigan. This tax burden is particularly severe because it is imposed on a population that has relatively low levels of per capita income.
- **Resident Income Tax.** Income tax burden on residents is greater than that of residents in the surrounding area. The City's income tax — 2.4% for residents, 1.2% for nonresidents and 2.0% for businesses — is the highest in Michigan.
- **Property Taxes.** Detroit residents pay the highest total property tax rates (inclusive of property taxes paid to all overlapping jurisdictions; *e.g.*, the City, the State, Wayne County) of those paid by residents of Michigan cities having a population over 50,000. The total property tax rate (including property taxes assessed by the City, the State and various special authorities) imposed on Detroit homeowners is approximately 67.07 mills; for businesses the total property tax rate is approximately 85.35 mills.
 - At more than 19.95 mills, the City's property tax rate for general operations is close to the statutory maximum of 20.00 mills.
- **Utility Users Tax.** Detroit is the only city in Michigan that levies an excise tax on utility users (at a rate of 5%).

Comparative Tax Burden.

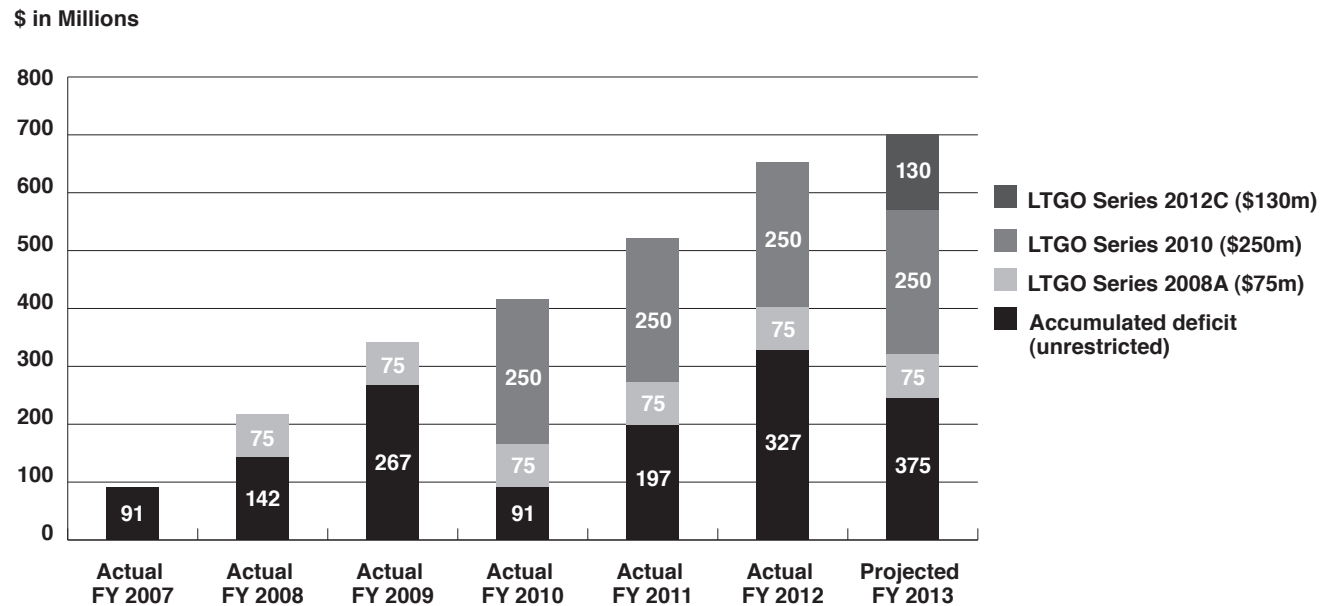
City	Population	Per Capita Income	TAX BURDEN		
			Per Capita Tax Burden	Resident Income Tax Rates	Resident Property Tax Rates
Detroit	684,799	\$15,261	\$1,207	2.4%	67.07 mills
Local Comparison					
Dearborn	98,153	\$22,816	\$668	N/A	60.23 mills
Livonia	96,942	\$31,959	\$590	N/A	36.81 mills
Southfield	71,739	\$29,228	\$930	N/A	60.70 mills

Comparative Insurance Costs.

City	Average Cost of Homeowner's Insurance	Average Cost of Automobile Insurance
Detroit	\$1,543	\$3,993
Local Comparison		
Dearborn	N/A	\$2,908
Livonia	N/A	\$2,052
Southfield	N/A	\$3,108

CONTINUING BUDGET DEFICITS.

Excluding the effect of recent debt issuances (e.g., \$75 million in FY 2008, \$250 million in FY 2010 and \$129.5 million in FY 2013) that funded the City's operating deficits, the City's accumulated general fund deficit has grown continuously over an extended period.



At the end of FY 2012, the City's accumulated general fund deficit was \$326.6 million.

The City's operating deficit for FY 2013 (which excludes the impact of the \$129.5 million debt issuance in August of 2012) is estimated to be approximately \$47 million.

If not for the City's recent debt issuances, the accumulated deficit for FY 2013 would have been approximately \$700 million.

THE CITY IS INSOLVENT.

Liquidity Crisis. Absent ongoing cash intervention (primarily in the form of payment deferrals and cost cutting), the City would have run out of cash before the end of FY 2013.

- The City had negative cash flows of \$115.5 million in FY 2012, excluding the impact of proceeds from short-term borrowings. In March 2012, to avoid running out of cash, the City borrowed \$80 million on a secured basis (of which the City spent \$50 million in FY 2012).
- The City is projecting to have positive cash flows of \$4.0 million in FY 2013 after deferring approximately \$120 million of current and prior year pension contributions and other payments.
- Absent intervention and/or restructuring, the City is projecting to have negative cash flows of \$198.5 million in FY 2014.
- As of the end of May 2013, the City had \$68 million of cash before property tax distributions, but had outstanding deferrals and amounts due to other funds and entities of approximately \$216 million. These are effectively borrowings and must be repaid.

The City is Not Paying Its Debts as They Come Due.

- The City is not making its pension contributions as they come due. The City has deferred payment of its year-end Police and Fire Retirement System contributions (and finances such deferrals at a rate of 8%). As of May 2013, the City had deferred approximately \$54 million in pension contributions related to current and prior periods and will defer approximately \$50 million on June 30, 2013 for current year PFRS pension contributions. Therefore, by fiscal year end the City will have deferred over \$100 million of pension contributions.
- The City will not make the scheduled \$39.7 million payments due on its pension-related certificates of participation on June 14, 2013.

Plummeting Credit Ratings.

The City’s credit ratings have continuously declined during the past decade and are well below investment grade. No major U.S. city has lower credit ratings.

Ratings on the City’s Uninsured General Obligation Bonds

	Moody’s	Standard & Poor’s	Fitch
June 30, 2003	Baa1	A-	A
June 30, 2004	Baa1	A-	A
June 30, 2005	Baa1	BBB+	BBB+
June 30, 2006	Baa2	BBB	BBB
June 30, 2007	Baa2	BBB	BBB
June 30, 2008	Baa2	BBB	BBB
June 30, 2009	Ba2	BB	BB
June 30, 2010	Ba3	BB	BB
June 30, 2011	Ba3	BB	BB-
June 30, 2012	B3	B	CCC

CURRENT LEVELS OF MUNICIPAL SERVICES TO RESIDENTS AND BUSINESSES ARE SEVERELY INADEQUATE.

The City Must Reduce High Crime Rates.

- In 2012, the City had the highest rate of violent crime of any U.S. city having a population over 200,000 (based on the FBI's Uniform Crime Reports database). The City's violent crime rate is five times the national average.
- All crime, not just violent crime, is prevalent in the City, with more than 136,000 crimes being reported in 2011.
 - See charts on following pages.
- EMS and DFD response times are extremely slow when compared to other cities (15 minutes and 7 minutes, respectively).
- Residents and business owners have been forced to take their safety into their own hands; some relatively well-off sections of the City have created private security forces.

Comparable Data Regarding Public Safety.

Crime Data – National & Local Comparables

OFFENSES KNOWN TO LAW ENFORCEMENT

by State by City, 2011

City	Population	Violent crime	Murder and nonnegligent manslaughter	Forcible rape	Robbery	Aggravated assault	Property crime	Burglary	Larceny-theft	Motor vehicle theft	Arson
Detroit	713,239	15,245	344	427	4,962	9,512	43,818	15,994	16,456	11,368	957

Local Comparison

Dearborn	98,079	359	3	22	104	230	3,757	612	2,705	440	12
Livonia	96,869	168	1	19	40	108	2,108	308	1,589	211	11
Southfield	71,685	377	4	33	116	224	2,681	710	1,592	379	5

National Comparison

Cleveland	397,106	5,426	74	354	3,156	1,842	25,323	10,706	10,524	4,093	319
Pittsburgh	308,609	2,476	44	67	1,126	1,239	10,063	2,686	6,897	480	195
St. Louis	320,454	5,950	113	188	2,127	3,522	25,669	7,015	15,285	3,369	191
Milwaukee	597,426	5,969	85	194	2,963	2,727	30,097	6,669	18,890	4,538	262

Incidents and Case Clearance Rates – National and Local Comparables

City	Violent Crime	Murder	Force Rape	Robbery	Aggravated Assault	Simple Assault	Property Crime	Burglary	Larceny Theft	MV Theft	Arson	Total
Detroit												
Cases Assigned	15,254	344	426	4,976	9,508	17,240	43,759	16,032	16,500	11,227	958	136,224
Cleared	2,841	39	54	401	2,347	2,427	1,844	730	578	536	57	11,854
Clearance Rate	18.6%	11.3%	12.7%	8.1%	24.7%	14.1%	4.2%	4.6%	3.5%	4.8%	5.9%	8.7%
Pittsburgh												
Cases Assigned	2,476	44	67	1,126	1,239	5,619	10,063	2,686	6,897	480	195	30,892
Cleared	1,247	22	61	435	729	3,963	1,997	498	1,312	187	55	10,506
Clearance Rate	50.4%	50.0%	91.0%	38.6%	58.8%	70.5%	19.8%	18.5%	19.0%	39.0%	28.2%	34.0%
Milwaukee												
Cases Assigned	6,637	86	205	3,091	3,255	7,253	30,669	7,079	19,030	4,560	272	82,137
Cleared	2,465	58	159	764	1,484	4,701	4,718	808	3,769	141	34	19,101
Clearance Rate	37.1%	67.4%	77.6%	24.7%	45.6%	64.8%	15.4%	11.4%	19.8%	3.1%	13%	23.3%
St. Louis												
Cases Assigned	5,950	113	188	2,127	3,522	4,866	25,669	7,015	15,285	3,369	191	68,295
Cleared	2,835	75	135	619	2,006	3,745	3,296	1,109	1,987	200	19	16,026
Clearance Rate	47.6%	66.4%	71.8%	29.1%	57.0%	77.0%	12.8%	15.8%	13.0%	5.9%	9.9%	23.5%
Cleveland												
Cases Assigned	5,431	74	356	3,157	1,844	16,257	25,418	10,724	10,598	4,096	319	78,274
Cleared	1,072	26	89	447	510	3,346	1,685	793	718	174	46	8,906
Clearance Rate	19.7%	35.1%	25.0%	14.2%	27.7%	20.6%	6.6%	7.4%	6.8%	4.2%	14.4%	11.4%

City	Violent Crime	Murder	Force Rape	Robbery	Aggravated Assault	Simple Assault	Property Crime	Burglary	Larceny Theft	MV Theft	Arson	Total
Detroit												
Cases Assigned	15,254	344	426	4,976	9,508	17,240	43,759	16,032	16,500	11,227	958	136,224
Cleared	2,841	39	54	401	2,347	2,427	1,844	730	578	536	57	11,854
Clearance Rate	18.6%	11.3%	12.7%	8.1%	24.7%	14.1%	4.2%	4.6%	3.5%	4.8%	5.9%	8.7%
Southfield												
Cases Assigned	380	4	36	116	224	1178	2688	710	1602	376	5	7319
Cleared	149	3	8	27	111	276	398	58	312	28	3	1373
Clearance Rate	39.2%	75.0%	22.2%	23.3%	49.6%	23.4%	14.8%	8.2%	19.5%	7.4%	60.0%	18.8%
Livonia												
Cases Assigned	168	1	19	40	108	552	2,114	309	1,595	210	11	5,127
Cleared	69	1	1	15	52	201	563	33	505	25	0	1,465
Clearance Rate	41.1%	100.0%	5.3%	37.5%	48.1%	36.4%	26.6%	10.7%	31.7%	11.9%	0.0%	28.6%
Dearborn												
Cases Assigned	361	3	24	104	230	1,346	3,756	609	2,709	438	12	9,592
Cleared	180	3	6	37	134	419	1,229	70	1,124	35	3	3,240
Clearance Rate	49.9%	100.0%	25.0%	35.6%	58.3%	31.1%	32.7%	11.5%	41.5%	8.0%	25.0%	33.8%

THE CITY MUST PROVIDE FUNCTIONING STREET LIGHTS.

As of April 2013, approximately 40% of the City's street lights were not functioning. The lights that are functioning are scattered across the City's historical population footprint (and thus are not focused to meet the current population's actual needs).

City	Total Functioning Street Lights	Functioning Lights per square mile
Detroit	52,800	370

Local Comparison

Dearborn	6,500	265
Livonia	5,000	204
Southfield	2,356	90

National Comparison

Cleveland	67,000	812
Pittsburgh	39,779	682
St. Louis	52,000	785
Milwaukee	77,000	795

As of April 2013, the City estimated there was a backlog of approximately 3,300 complaints regarding the City's street lights.

THE CITY MUST OVERHAUL ITS OPERATIONS.

Police Department.

- Over the last five years, the DPD has had five different police chiefs, all having varying approaches to DPD's operations.
- DPD's efficiency (response times), effectiveness (case closure rate, crime reduction) and employee morale are extremely low.
- Data driven policing has not been fully adopted within DPD. Compstat (i.e., data driven policing) meetings (which would enhance accountability) are not fully implemented.
- DPD receives over 700,000 calls for service annually. DPD response times are extremely high.

Response Time Data – Detroit Police Department

CITY OF DETROIT

Priority One Response Time (In Minutes)

Precinct	2012	2013	% Change
1	23	37	60.81%
2	22	40	78.42%
4	30	42	41.03%
5	39	78	99.46%
6	32	55	75.19%
7	22	41	89.05%
8	40	115	185.31%
9	38	68	78.95%
10	24	31	31.37%
11	24	41	71.78%
12	21	34	62.58%
13	25	42	73.31%
AGENCY	2012	2013	
DPD	30	58	94.73%

Priority Other Response Time (In Minutes)

Precinct	2012	2013	% Change
1	34	38	11.57%
2	48	58	22.56%
4	42	47	12.19%
5	56	97	75.20%
6	44	50	15.36%
7	38	60	57.05%
8	56	64	15.93%
9	54	49	-8.45%
10	30	43	44.28%
11	45	70	54.82%
12	37	54	47.35%
13	35	61	74.89%
AGENCY	2012	2013	
DPD	43	56	30.59%

- The national average response time is 11 minutes. Police response times for Dearborn and Livonia are approximately nine minutes and 24 minutes, respectively.
- The DPD's extremely low 8.7% case clearance rate is driven by the DPD's lack of a case management system, lack of accountability for detectives, unfavorable work rules imposed by collective bargaining agreements and a high attrition rate in the investigative operations unit.
- The DPD's manpower has been reduced by approximately 40% over the last 10 years causing constant strain on the organization; the DPD needs to evaluate appropriate uniform staffing levels.
 - Over 450 uniformed DPD employees are eligible for retirement in 2013. An additional 150 officers are eligible for retirement in each of the following five years.
- The DPD has restructured its operations multiple times over the past ten years due to dwindling budgets, severely hampering its operations.
- Employee accountability is limited. Individual employee performance metrics do not exist for either positive or negative police activity. Morale is extremely low. Disciplinary processes are slow and cumbersome, preventing leadership from effectively managing the Department.
- Community policing efforts are underfunded, uncoordinated and have been deemphasized by the DPD. "Citizens Radio Patrol" participants have lost confidence in the DPD's commitment to this important effort.

Assessor's Office and Property Tax Division.

- The City lacks a state-required Level IV Assessor and currently has a former employee contractor in the position, whose contract expires in June 2013. Due to inadequate compensation, among other things, there are no available candidates to fill this position.
- The Assessor's Office has approximately 15,000 parcels per employee. The State recommends 4,000 parcels per employee.
- The City has not updated residential property values on a regular basis. Therefore, residential property values are likely overstated. Due to a significant number of complaints, the Michigan Tax Board is investigating Detroit's allegedly inflated property values.

Detroit Department of Transportation.

- Grant dollars are not maximized. These are typically a significant revenue source for bus transit systems.
- DDOT fares are lower than comparable bus transit systems.
- Maintenance operations are highly inefficient.
- High absenteeism among bus drivers causes inefficiencies and higher costs.

THE PHYSICAL DETERIORATION OF THE CITY MUST BE ADDRESSED.

- There are approximately (i) 78,000 abandoned and blighted structures in the City, nearly half of which are considered “dangerous” and (ii) 66,000 blighted and vacant lots within the City limits.
- The number of City parks is dwindling, and many are in poor or fair condition as a result of neglect due to lack of funding.
 - The closure of 210 parks in the 2008-09 fiscal year reduced the City’s park portfolio by 66% — from 317 parks to 107 parks.
 - The City announced in February 2013 that 50 of its remaining 107 parks would be closed, another 38 parks would shift to limited maintenance, and Belle Isle (already suffering from a lack of funding) would receive decreased services.
 - Thanks to \$14 million in civic donations, the 50 parks slated to be closed will temporarily remain open through the summer of 2013.
- Approximately 70 superfund sites have been established in Detroit.
- The City’s electricity grid has not been adequately maintained and is deteriorating.
- The City’s fire stations are old and are not adequately maintained.
 - The average age of the City’s 35 fire stations is 80 years.
 - Maintenance costs often exceed \$1 million annually. Major items requiring constant repairs: apparatus doors, plumbing, electrical, boiler and roof problems.
- The vehicles and equipment employed by the City’s police, fire, EMS and transportation personnel are aging, poorly maintained and lack adequate information technology.

THE CITY HAS INCURRED AND CONTINUES TO INCUR ENORMOUS COSTS ASSOCIATED WITH UNOCCUPIED PROPERTY.

Land and Structures.

- The City's population decline and declining property values have resulted in large amounts of abandoned, forfeited or foreclosed land and structures within the City.
 - 85% of the City's land area has experienced population decline over the last decade.
- There are approximately 66,000 vacant and blighted lots within the City limits.
- There are approximately 78,000 vacant structures in the City.
 - Approximately 38,000 structures are considered dangerous buildings. The number of dangerous structures is constantly increasing due to vacancy (particularly foreclosures) and house fires.
 - 16,700 have been inspected and classified as dangerous.
 - 14,263 have open complaints of being dangerous.
 - 6,657 to go before City Council for order of demolition.
 - 1,159 are considered emergency demolitions.
- Blight contributes to fire, crime and depressed property values.
 - The City has seen between 11,000 – 12,000 fires each year for the past decade. Approximately 60% of these occur in blighted or unoccupied buildings.
 - The Fire Department spends a disproportionate (and arguably unnecessary) amount of time and money fighting fires in vacant structures. These incidents could be remedied by blight removal.

- Average cost to demolish a residential structure is approximately \$8,500, with an equalized total cost of \$5.74 per square foot.

Expense	Amount
Demolition Contract	\$5,000
Survey and Abatement	\$1,500
Gas Disconnect Fee	\$750
Administration Costs	\$720
Water Disconnect Fee	\$550
<i>Lis Pendens</i> (interest in structure)	\$15
Total Cost of Demolition	\$8,535*

* Cost will vary depending on size of unit and construction materials used.

ADDITIONAL CHALLENGES FACING BLIGHT REMOVAL EFFORTS.

Addressing blight will require the coordination of several state, county and local agencies (*e.g.*, the State Fast Track Land Bank Authority; Wayne County Treasurer and Land Bank; various City departments; the Detroit Land Bank Authority; the Detroit Housing Commission; and NGOs (*e.g.*, the Detroit Economic Growth Corporation and the Blight Authority)).

Blight removal is governed by multiple codes and regulations and a number of overlapping jurisdictions.

- **Code Enforcement and Adjudication** (*e.g.*, State of Michigan Housing Law; Zoning Ordinance, Chapter 61; Property Maintenance Ordinance, Chapter 9; Blight Violations Ordinance, Chapters 8.5 and 22; Sale of 1 and 2-family Ordinance).
- **Condemnation and Demolition** (*e.g.*, State of Michigan Housing Law; City Ordinance 290-H — wrecking structures; Industry Standard Building Officials Code Administration).
- **Foreclosure and Land Disposition** (*e.g.*, State of Michigan PA 123; various City codes addressing non-federal property).
- The current regulatory framework increases demolition costs and slows the process.

Ordinance and regulatory reform are needed to expedite demolition.

DETROIT HAS ENDURED INADEQUATE INVESTMENT IN INFRASTRUCTURE AND EQUIPMENT FOR YEARS.

Fire Department.

- **Fire Apparatus.** The Detroit Fire Department (“DFD”) fleet includes (i) 26 engines; (ii) 15 ladder trucks; (iii) six squads (specialized rescue vehicles with no watering or laddering capacity); (iv) one hazardous material apparatus; (v) one TAC unit (a mini-pumper for use in low-clearance structures such as parking garages) and (vi) 36 ambulances and other light vehicles.
- DFD’s fleet has “many mechanical issues,” contains no reserve vehicles and lacks equipment ordinarily regarded as standard.
 - The Apparatus Division’s mechanic to vehicle ratio of 1:39 (once staffed with 63 people; currently 26) results in an inability to complete preventative maintenance on schedule.
 - Detroit firefighters frequently operate shorthanded due to a lack of serviceable equipment; one DFD captain recently called his equipment “junk,” and expressed frustration at the lack of working trucks, pumps and other essential equipment across many City neighborhoods.
 - In February 2013, Detroit Fire Commissioner Donald Austin ordered firefighters not to use hydraulic ladders on DFD ladder trucks except in cases involving an “immediate threat to life” because the ladders had not received safety inspections “for years.” On May 15, 2013, AAA Michigan donated \$23,500 towards inspections of fire ladders on trucks and ground ladders because the City could not afford required inspections.
- **Fire Stations.** DFD operates 35 fire station buildings (average age = 80 years).
 - DFD has difficulty accommodating the size of modern firefighting equipment in older stations.
- **EMS Fleet.**
 - During the first quarter of 2013, frequently only 10 to 14 of the City’s 36 ambulances were in service.
 - Some of the City’s EMS vehicles have been driven 250,000 to 300,000 miles, and break down frequently.
 - In March 2013, a group of corporations pledged to donate \$8 million to the City, a portion of which will be used to upgrade the city’s fleet of EMS vehicles. The donation is expected to add 23 new leased EMS vehicles to the City’s fleet as replacements for older vehicles.

Police Department.

- **Age of Police Cars.**

- The DPD operates with an “extremely old fleet” of 1,291 vehicles. Most DPD police cruisers lack necessary information technology.
- A majority of vehicles in the fleet have reached replacement age (a typical replacement cycle is three years). Operating with an aged fleet drives up maintenance costs.
- The combination of an aging fleet of police cruisers and layoffs of city-employed auto mechanics has resulted in delayed maintenance and a reduction in the number of police cruisers on patrol.
- As part of the approximately \$8 million pledged by a group of corporations in March 2013, DPD expects to receive 100 new leased cruisers in 2013.

- **Facilities.**

- The DPD has not invested in or maintained its facility infrastructure for many years. DPD has closed or consolidated multiple precincts.
- The DPD’s facility infrastructure has reached a critical level of disrepair and no longer meets its needs, contributing to low employee and citizen morale.

Information Systems

- **Challenges generally:**

- Old and outdated technology assets and applications must be updated.
- Information technology infrastructure is not integrated between departments and functions (*e.g.*, there is no integration between core City finance system and Department level systems) or even within Departments (*e.g.*, police precincts and districts cannot share information across their systems).
- The City **urgently** needs to upgrade or replace the following IT systems, among others: payroll; financial; budget development; property information and assessment; income tax; and DPD operating system.
- The City lacks a formal documented IT governance structure (development of structure in process).

- **DPD, DFD and EMS**

- DPD, DFD and EMS information technology systems are obsolete; vendors do not provide full support; core functions are sporadic.
- DPD, DFD and EMS have non-integrated solutions that result in redundant data entry, no meaningful reporting and limited query capabilities.
 - DPD's IT systems, in particular, are outdated with multiple disparate systems with limited information sharing capability and requiring highly manual processes. The result is highly inefficient DPD operations.
 - DPD has no IT systems for jail management, electronic ticketing and activity logs. DPD vehicles lack necessary IT infrastructure.

- **Payroll System.**

- The City currently uses multiple, non-integrated payroll systems. A majority of employees are on an archaic payroll system that has limited reporting capability and no way to clearly track, monitor or report expenditures by category.
- The cost of payroll administration for the City is significantly higher than for comparable entities. Current cost to process payroll is \$62 per check (\$19.2 million per year), which is more than 4 times more costly than the overall average of \$15 per paycheck, and almost 3.5 times more costly than other public sector organizations, which average \$18 per paycheck.
 - The primary driver of excess cost is labor, which is more than 70% of the total cost for the City.
 - 149 full-time employees are involved in the payroll process, 51 of which are uniformed officers (*i.e.*, high-cost personnel performing clerical duties).
- Current process is highly manual (some done by hand) and prone to human error, including erroneous payments to individuals.

- **Income Tax Division**

- Income tax collection and data management are highly manual.
- The City's Income Tax System is outdated (purchased in the mid-1990s), has little to no automation capability and is "catastrophic" per an IRS audit completed in July 2012.

- Updating the current Income Tax System could (i) increase revenues for the City through improved revenue tax processing, tax compliance and collection and (ii) improve reporting, efficiency and accuracy.
 - A new tax system that allows for automated processing and e-filing capability will free up City resources to focus on compliance.

- **Property Tax Division.**
 - The City's billing, processing and collection of property taxes is inefficient.
 - Recommendations made by consultant in 2011 have not been followed, even though implementation promises to increase efficiency of collection process.

- **Budgeting, Accounting & Financial Reporting Systems.**
 - Oracle-based Financial Reporting system (DRMS) was implemented in 1999. It is not being utilized to its full capabilities and is no longer supported by its manufacturer.
 - Budget Development system (BRASS) is over ten years old and requires a manual interface with DRMS.
 - Approximately 70% of journal entries are booked manually.
 - The City lacks a true fail-over and backup system.
 - The integration of Accounting, Budget Development and Financial Reporting systems into a single process is necessary to provide for improved reporting, efficiency, accuracy and accountability.

- **Grant Management System.**
 - Grant tracking systems are fragmented. Thus, the City is unable to comprehensively track citywide grant funds and status.
 - Grant reporting is not standardized, such that the City is unable to prevent disallowed costs.

- **Permitting.**

- The Buildings, Safety Engineering and Environmental Department’s system for licensing and permitting is more than ten years old and needs to be upgraded.
- The Fire Marshall Division’s system for inspections and permitting is more than 20 years old and needs to be replaced.
- Current information technology system deficiencies lead to bottlenecks in permit invoicing and collection of fees.

- **Department of Transportation.**

- To improve service and safety, both on buses and at DDOT facilities, DDOT requires technology updates (*e.g.*, automatic vehicle location systems; bus cameras).

Electrical Transmission Grid and Fixtures.

- The City’s Public Lighting Department (“*PLD*”) is responsible for operating and maintaining 88,000 streetlights and owns and operates a distribution-only electricity grid providing power for lighting and serving 114 customers.
- The City-owned Mistersky power plant has been idle for 2-3 years, but has not been decommissioned. In addition, the City has 31 sub-stations that would need to be decommissioned. The City is in the process of obtaining estimates for decommissioning costs.
- Approximately 40% of Detroit’s 88,000 streetlights are not functioning due, in large part, to disrepair and neglect; outages exist on both DTE Energy Company (“*DTE*”) and PLD-powered lights.
 - Outages affecting DTE-powered lights are primarily bulb-related. Outages on PLD-powered lights are partly bulb-related. Others are caused by problems related to PLD’s obsolete grid and wiring.

THE CITY'S DEBT AND LEGACY LIABILITIES HAVE GROWN CONSIDERABLY OVER TIME.

Balance Sheet Liabilities.

The City estimates that, as of the close of its 2013 fiscal year (*i.e.*, June 30, 2013), the City will have liabilities reflected on its balance sheet of approximately \$9.05 billion, including approximately:

- \$5.85 billion in special revenue obligations (*e.g.*, Enterprise Fund debt);
- \$1.43 billion in pension-related Certificate of Participation (“COPs”) liabilities;
- \$343.6 million in marked-to-market swap liabilities related to COPs (as of May 31, 2013 valuation);
- \$1.13 billion in unlimited and limited tax general obligation bond liabilities and notes and loans payable; and
- \$300 million in other liabilities.

Off-Balance Sheet Liabilities.

- **OPEB Liabilities.** Unfunded OPEB liabilities increased from \$4.8 billion to \$5.7 billion from June 30, 2007 through June 30, 2011 (the most recent actuarial data available).
- **Pension Liabilities.**
 - As described in further detail below, the City’s reported pension UAAL (based on 2011 actuarial valuations) of \$643,754,109 is substantially understated.
 - Estimated UAAL for FY 2012 was \$829.8 million (for the General Retirement System (“GRS”) and \$147.2 million (for the Police and Fire Retirement System (“PFRS”)), based on 2011 actuarial assumptions.
 - Further analysis by the City using more realistic assumptions (including by reducing the discount rate by one percentage point) suggests that pension UAAL will be approximately \$3.5 billion as of June 30, 2013.
 - UAAL under the GRS and the PFRS increased by over \$1 billion between June 30, 2007 and June 30, 2011, even (i) using the actuarial assumptions used to calculate 2011 UAAL and (ii) after consideration of the contribution of the COPs proceeds in 2005 and 2006.

- For the five years ending with FY 2012, pension payments exceeded contributions and investment income by approximately \$1.7 billion for the GRS and \$1.6 billion for the PFRS, resulting in liquidation of pension trust principal.

System	Benefit Payments	Contribution / Investment Income	Net Trust Loss
GRS	\$1,601,193,045	(\$60,113,101)	\$1,661,306,146
PFRS	\$1,445,581,026	(\$127,803,339)	\$1,573,384,365

- **Increasing Legacy Liabilities.** During FY 2012, more than 38% of the City’s actual revenue was consumed servicing legacy liabilities. Going forward, legacy liabilities are expected to consume increasing portions of City revenues.
 - Projected unfunded OPEB liabilities for FY 2013 are currently being evaluated. As of the most recent valuation (June 30, 2011), OPEB unfunded liabilities totaled \$5.7 billion and are expected to grow absent restructuring.
 - Required pension contributions are projected to increase in light of (i) an increasingly mature population already in pension pay status, (ii) deferral of recognition of prior losses, (iii) the anticipated revision of actuarial assumptions used in the past and (iv) past deferrals of contributions.
 - In addition, the Governmental Accounting Standards Board has issued a statement (No. 67), effective during the City’s 2014 fiscal year, requiring municipalities to recognize their unfunded pension benefit obligation as a liability and to more comprehensively measure the annual costs of pension benefits.
 - Even if the City were not to change prior actuarial assumptions, pension UAAL is projected to grow to nearly \$2 billion by 2017. The adoption of realistic actuarial assumptions would result in a significantly higher number for UAAL.
- Debt service for the City’s general fund, including payments related to unlimited tax general obligations and COPs, is projected to exceed \$240 million in FY 2013.

Obligations Secured by Special Revenues

- The City estimates that, as of the end of FY 2013 (*i.e.*, June 30, 2013), it will have:
 - \$5.34 billion in outstanding principal amount of revenue bonds; and
 - \$494 million in related state revolving loans.
- The revenue bonds and the revolving loans are related to the following funds:
 - Sewage Disposal Fund
 - \$2.82 billion in outstanding principal amount of notes maturing July 1, 2013 through July 1, 2039, as of June 30, 2013.
 - \$472.8 million in outstanding principal amount of state revolving loans, as of June 30, 2013.
 - Substantially all revenues of the sewage disposal system, net of operating expenses, pledged to secure payment of principal and interest. Net system revenues of \$227,447,337 versus debt service requirements of \$199,990,125 in FY 2012.
 - A schedule of the sewage disposal system bonds and related state revolving loans as of June 30, 2012 is attached hereto as Appendix A.
 - Water Fund
 - \$2.52 billion in outstanding principal amount of various series of notes maturing July 1, 2013 through July 1, 2041, as of June 30, 2013.
 - \$21.4 million in outstanding principal amount of state revolving loans, as of June 30, 2013.
 - Substantially all of the revenues of the City's water system, net of operating expenses, pledged to secure payment of principal and interest. Net system revenues of \$178,842,057 versus debt service requirements of \$153,441,666 in FY 2012.
 - A schedule of the water system bonds and related state revolving loans as of June 30, 2012 is attached hereto as Appendix B.

- Automobile Parking Fund
 - \$9.3 million in outstanding principal amount of Detroit Building Authority Revenue Refunding Bonds: Parking System, Series 1998-A maturing July 1, 2013 through July 1, 2019, as of June 30, 2013.
 - Substantially all revenues of the parking system, net of operating expenses, pledged to secure payments of principal and interest.
 - Net system revenues of \$2,708,223 versus debt service requirements of \$2,923,454 in FY 2012.
- A chart setting forth the annual debt service on the foregoing special revenue obligations is attached hereto as Appendix F.

General Fund Obligations

- The City estimates that, as of the close of FY 2013 (*i.e.*, June 30, 2013), it will have \$1.01 billion in outstanding principal amount of limited and unlimited tax general obligation bonds, consisting of:
 - \$469.1 million in outstanding principal amount of unlimited tax general obligation (“*UTGO*”) bonds maturing from April 1, 2013 through November 1, 2035.
 - \$100 million of the foregoing bonds are secured by a second lien on distributable state aid.
 - \$540.3 million in outstanding principal amount of limited tax general obligation (“*LTGO*”) bonds maturing April 1, 2013 through November 1, 2035.
 - Issuance of LTGO bonds do not require voter approval. They are payable from general non-restricted funds.
 - \$249.8 million of the LTGO bonds are secured by a first lien on distributable state aid. \$129.5 million of the LTGO bonds are secured by a third lien on distributable state aid.

- The City estimates that, as of June 30, 2013, the City will have \$121.5 million in other outstanding installment notes and loans payable related to various public improvement projects.
 - \$87.8 million in notes payable, which notes were issued in connection with the “Section 108” HUD Loan Guarantee Program and are secured by future “Block Grant” revenues.
 - \$33.7 million in loans payable (\$33.6 million of which is a non-interest bearing unsecured loan payable to the Downtown Development Authority as general operating funds become available).
- On August 23, 2012, the City issued \$129.5 million of LTGO bonds at a \$9.1 million premium (generating \$137 million in proceeds after issuance costs) in part to defease short term bonds issued March 2012. The remaining proceeds of this issuance were set aside with a trustee bank in an escrow account to provide funds for reforms and liquidity in FY 2013. The current amount of the escrow is approximately \$80 million.
- A schedule of the secured general obligation bonds and secured notes and loans payable as of June 30, 2012 is attached hereto as Appendix D. A schedule of the unsecured general obligation bonds and unsecured loans payable as of June 30, 2012 is attached hereto as Appendix E. A chart setting forth the annual debt service on the foregoing general fund obligations (and other liabilities) is attached hereto as Appendix G.

Certificates of Participation (Pension).

- In 2005, service corporations established by the GRS and PFRS created a trust that issued the COPs. The proceeds of the COPs were contributed to the City’s pension trusts.
- Principal and interest on the COPs is payable solely from payments made by the City to the service corporations pursuant to service contracts.
- The City estimates that, as of the close of FY 2013 (*i.e.*, June 30, 2013), the following amounts were outstanding under the COPs:
 - \$480.3 million in outstanding principal amount of \$640,000,000 Certificates of Participation Series 2005 A maturing June 15, 2013 through 2025; and
 - \$948.54 million in outstanding principal amount of \$948,540,000 Certificates of Participation Series 2006 A and B maturing June 15, 2019 through 2035.

- The City has allocated portions of the COP liabilities among the transportation, sewage disposal, water and library funds based on each fund's share of the aggregate UAAL determined at the time of issuance of the COPs.
- The City has identified certain issues related to the validity and/or enforceability of the COPs that may warrant further investigation.
- A schedule of the COPs and related swap liabilities as of June 30, 2012 is attached hereto as Appendix C.

Swap Liabilities Related to Certificates of Participation.

- In connection with the COPs, the City entered into eight pay-fixed, receive-variable interest rate swap contracts, effective as of June 12, 2006, with a total notional amount of \$800 million.
 - Recent valuations establish the negative fair value of the swaps at approximately \$343.6 million (as of May 31, 2013).
 - January 2009 — The City received notice from the swap contract counterparties that downgrading of the COPs and certain swap insurers would constitute an “Additional Termination Event” under the swap contracts if not cured.
 - June 2009 — The City and the swap contract counterparties agreed on an amendment to the swap agreements, eliminating the Additional Termination Event and the potential for an immediate demand for a termination payment. Pursuant to the amendment:
 - The swap counterparties waived their right to termination payments; and
 - The City agreed to:
 - direct certain wagering tax revenues to a trust as collateral for the quarterly payments owing to the swap counterparties;
 - increase the interest rate of the swap agreements by 10 basis points effective July 1, 2010; and
 - include new termination events, including if COP ratings were withdrawn, suspended or downgraded.
 - March 2012 — COPs were further downgraded which triggered another Termination Event; City and the swap counterparties are in negotiations regarding the Termination Event.
 - March 2013 — Appointment of Emergency Manager constitutes an event of default triggering another Termination Event.

- Although this proposal reflects treating the swap obligations as special revenue debt secured by the wagering tax revenues, that treatment is still being reviewed by the Emergency Manager.
- A chart setting forth the annual debt service on the COPs and related swap liabilities is attached hereto as Appendix H.

UNSUSTAINABLE RETIREE BENEFITS.

OPEB Liabilities Are Large and Unfunded.

- The OPEB plans consist of the Health and Life Insurance Benefit Plan and the Supplemental Death Benefit Plan.
- As of June 30, 2011 (the most recently published actuarial valuation), there were 19,389 retirees eligible to receive benefits under the City's OPEB plans. The number of retirees receiving benefits from the City is expected to increase over time.
- 99.6% of the City's OPEB liabilities are unfunded.
- **Health and Life Insurance Plan**
 - Defined benefit plan providing hospitalization, dental care, vision care and life insurance to current employees and substantially all retirees.
 - City generally pays for 80% to 100% of health care coverage for eligible retirees.
 - \$5,718,286,228 in actuarial liabilities as of June 30, 2011. An updated actuarial valuation based on more recent census data is currently being developed by third party professionals.
 - The Health and Life Insurance Plan is 0% funded; financed entirely on a "pay-as-you-go" basis.
 - \$177,460,627 cost to the City on account of retiree benefits during FY 2012 provided under the Health and Life Insurance Plan.
 - City's contribution is in addition to \$23,516,879 in FY 2012 contributions by retirees.

- The City's OPEB costs are expected to increase as a result of the City's growing number, and young age, of retirees (pension and health care plans have no age restrictions and early vesting ages) as well as increases in health care costs, particularly hospitalization costs.
- Health and Life Insurance Plan is secondary to Medicare for eligible employees over the age of 65; however, many retired police/fire employees are *not* eligible to receive free Medicare Part A benefits due to State-regulated social security "opt-out" provisions.
- **Supplemental Death Benefit Plan**
 - Pre-funded single-employer defined benefit plan providing death benefits based upon years of creditable service.
 - \$34,564,960 in actuarially accrued liabilities as of June 30, 2011.
 - 74.3% funded; UAAL of \$8.9 million.

OPEB Obligations Arise Under a Multiplicity of Plans

- The City's OPEB obligations arise under 22 different plans (15 different plans alone for medical/Rx) having varying structures and terms. This creates a high level of complexity and cost in benefit administration.

Weiler Class OPEB Benefits.

- In July 2006, the City made a number of unilateral changes to the healthcare benefits for unionized police and firefighter retirees. Retiree Alan Weiler filed a class action lawsuit on behalf of approximately 7,000 retirees alleging violations of collective bargaining agreements.
- The City and the *Weiler* class settled before trial, and the court entered a Consent Judgment approving the parties' settlement agreement. The settlement agreement requires the City to provide *Weiler* class members with generous health benefits for as long as class members receive a City pension.
- The *Weiler* plaintiffs are expected to assert that the settlement restricts the ability of the City to alter the benefit provisions included in the settlement.

- The *Weiler* class retirees/beneficiaries currently cost the City approximately \$75 million per year, representing over 40% of retiree benefits costs under the Health and Life Insurance Plan.

Pension Liabilities Are Not Fully Funded – Shortfall Has Been Understated.

Aggressive Actuarial Assumptions Generate a Perception that Pensions are Modestly Underfunded.

- GRS: Reported UAAL of \$639,871,444 out of \$3,720,167,178 in accrued liabilities as of June 30, 2011 (82.8% funded).
- PFRS: Reported UAAL of \$3,882,665 out of \$3,808,642,553 in accrued liabilities as of June 30, 2011, as a result of awards received under Public Act 312 of 1969 (99.9% funded).
- These funding levels were based on the following assumptions:

	GRS	PFRS
Amortization Period	30 years (refinanced anew each year)	30 years
Asset valuation method	7-year smoothed market	7-year smoothed market
Investment rate of return (net of expenses)	7.9%	8.0%
Projected salary increases	4.0%-8.9%	5.0%-9.2%
Inflation rate	4.0%	0% for four years; 4.0% thereafter
Cost-of-living pension adjustments	2.25%	2.25%

More Realistic Assumptions Reveal That Funding Levels Have Been Overstated.

- The combined reported UAAL of approximately \$644 million for the GRS/PFRS (estimated at \$977 million as of June 30, 2012) is **substantially** understated.
- Current actuarial valuations project aggressive and unrealistic annual rates of return on investments net of expenses (GRS — 7.9%; PFRS — 8.0%).

- Pension plan funding levels calculated based upon assumed annual rates of return of 7%, or even 7.5%, would further reduce funding levels.
- Smoothing of funding levels over seven years masks funding shortfall — pension plan funding levels calculated based on the current market value of the plans’ assets show substantially reduced funding levels (GRS – 65% funded; PFRS – 78% funded).
- A 30-year amortization period for unfunded liabilities — which in GRS is applied anew each year to the full amount of unfunded liability, akin to annually refinancing a 30-year mortgage — allows unfunded liabilities to continue to grow rapidly (due to compounding).
- Although many governmental plans have significant amortization periods for unfunded benefits (*e.g.*, MERS applies a 27-year amortization period with a goal of moving down to 20 years by the December 31, 2017 valuation), 30 years is longer than most and is far too long for these mature plans. Especially in the case of GRS, such a long period has the effect of deferring efforts to meaningfully reduce underfunding into the future.
- The City has consistently deferred payment of its year-end PFRS contributions (and finances such deferrals at a rate of 8%). As of June 30, 2012, the City owed the PFRS its full contribution for FY 2012 in the amount of approximately \$50 million. As of May 2013, the City had deferred approximately \$58 million in pension contributions owing for FY 2013. Contributions made in the form of notes have been treated as timely funding contributions made to the pension trust during the applicable financial year.
- The City was granted a funding credit by PFRS in the amount of \$25 million for each of the fiscal years 2008 through 2010 resulting in under-contributions by the City toward its pension liabilities for each of those years.

Past Pension Practices. Certain past trustee practices contributed to the pension plans’ significant underfunding (*e.g.*, annuity savings accounts; “13th checks”; ad hoc “sweeteners”; and various changes to eligibility (*e.g.*, lowered years of service, combined years of employment)).

- For example, in both pension plans (and especially GRS), hundreds of millions of dollars contributed by the City and invested to support the defined benefit arrangement have instead been used to fund investment returns selected (but not actually earned) on employee contributions made under a separate defined contribution arrangement known as the Annuity Savings Accounts.

Anticipated Increase in Pension Contributions. Using current actuarial assumptions, the City’s required pension contributions are projected to grow from 25% (for GRS) and 30% (for PFRS) of eligible payroll expenses in FY 2012 to 30% (for GRS) and 60% (for PFRS) of such expenses by FY 2017. Changes in actuarial assumptions would result in further increases to the City’s required pension contributions.

OTHER LIABILITIES

The City estimates that, as of the end of FY 2013, the City will have \$300 million in other liabilities outstanding.

As of June 30, 2012, the City owed at least \$264.6 million in other liabilities, consisting primarily of:

- \$101.2 million in accrued compensated absences, including unpaid, accumulated vacation and sick leave balances;
- \$86.5 million in accrued workers’ compensation for which the City is self-insured;
- \$63.9 million in claims and judgments, including lawsuits and claims other than workers’ compensation claims; and
- \$13.0 million in capital leases and accrued pollution remedies.

	FUND						Total
	General Governmental	Sewage Disposal	Transportation	Water	Parking	Other Proprietary	
Accrued compensated absences	82,099,713	5,502,481	3,895,416	9,421,311	276,814	53,442	\$101,249,177
Accrued workers’ compensation	66,231,000	3,554,000	5,569,812	10,339,000	667,000	92,000	\$86,452,812
Capital leases payable			12,678,358				\$12,678,358
Claims and judgments	62,003,257	1,519,500		286,500	110,497	2,000	\$63,921,754
Accrued pollution remediation		340,613					\$340,613
Total	\$210,333,970	\$10,916,594	\$22,143,586	\$20,046,811	\$1,054,311	\$147,442	\$264,642,714

Steady State Projection of Legacy Expenditures (assuming no restructuring)

(\$ in millions)	FISCAL YEAR ENDED ACTUAL					PRELIMINARY FORECAST				
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Legacy expenditures										
Debt service (LTGO)	\$(66.6)	\$(106.2)	\$(63.5)	\$(64.5)	\$(62.6)	\$(70.8)	\$(70.9)	\$(61.8)	\$(61.8)	\$(38.5)
Debt service (UTGO)	(67.2)	(71.5)	(72.4)	(72.8)	(73.0)	(70.6)	(64.9)	(62.5)	(57.6)	(57.6)
POC - principal and interest (GF)	(24.6)	(20.9)	(23.6)	(33.5)	(33.0)	(46.8)	(51.4)	(53.3)	(55.0)	(56.9)
POC - principal and interest (EF, excl. DDOT)	(1.8)	(1.4)	(1.5)	(1.8)	(2.0)	(5.3)	(5.9)	(6.1)	(6.4)	(6.6)
POC - principal and interest (DDOT)	(3.5)	(2.8)	(3.0)	(3.6)	(4.0)	(3.3)	(3.7)	(3.8)	(3.9)	(4.1)
POC - swaps (GF)	(38.6)	(43.9)	(44.7)	(44.7)	(44.8)	(42.9)	(42.8)	(42.8)	(42.7)	(42.7)
POC - swaps (EF, excl. DDOT)	(2.3)	(2.0)	(2.0)	(2.0)	(2.0)	(4.8)	(4.8)	(4.8)	(4.9)	(4.9)
POC - swaps (DDOT)	(4.5)	(4.0)	(4.0)	(4.0)	(4.0)	(3.0)	(3.0)	(3.0)	(3.0)	(3.0)
Pension contributions - Public Safety	(58.9)	(31.4)	(32.8)	(81.6)	(49.8)	(46.1)	(139.0)	(163.0)	(180.0)	(198.0)
Pension contributions - Non-Public Safety	(10.6)	(27.0)	(11.1)	(28.3)	(25.4)	(19.9)	(36.9)	(42.5)	(47.7)	(53.1)
Pension contributions - DDOT	(6.8)	(7.3)	(6.9)	(9.5)	(10.9)	(12.3)	(23.6)	(27.7)	(31.2)	(34.8)
Health benefits - retiree - Public Safety	(73.7)	(80.2)	(70.4)	(79.6)	(90.6)	(91.5)	(88.6)	(95.2)	(101.7)	(108.0)
Health benefits - retiree - Non-Public Safety	(47.4)	(51.6)	(50.6)	(49.0)	(49.2)	(49.7)	(38.8)	(41.5)	(44.6)	(47.7)
Health benefits - retiree - DDOT	(8.2)	(11.8)	(11.2)	(11.1)	(10.3)	(10.4)	(13.3)	(14.3)	(15.3)	(16.3)
Total legacy expenditures	\$(414.6)	\$(462.0)	\$(397.9)	\$(486.1)	\$(461.6)	\$(477.3)	\$(587.6)	\$(622.4)	\$(655.9)	\$(672.3)
Total revenues (excl. financing proceeds)	\$1,397.7	\$1,363.3	\$1,291.0	\$1,316.8	\$1,196.9	\$1,121.9	\$1,082.8	\$1,046.2	\$1,041.5	\$1,041.4
Total legacy expenditures as a % of total revenues	29.7%	33.9%	30.8%	36.9%	38.6%	42.5%	54.3%	59.5%	63.0%	64.6%

HIGH LABOR COSTS AND RESTRICTIVE EMPLOYMENT TERMS

High Labor Costs.

Despite recent headcount reductions, labor costs related to General Fund active employees (*i.e.*, wages, pension and benefits) represent more than 41% of the City's estimated FY 2013 gross revenues. Accordingly, savings related to such costs are a critical component of any restructuring.

- Estimated General Fund FY 2013 Wages: \$333.8 million (29.8% of estimated FY 2013 revenues).
- Estimated General Fund FY 2013 Benefit Costs (fringes including health for *active* employees): Approx. \$66.5 million (5.9% of estimated FY 2013 revenues).
- Estimated General Fund FY 2013 pension contributions (including normal and UAAL portion): \$66.0 million (5.9% of estimated FY 2013 revenues).
 - While pension contributions are based on active payroll, some portion of the contribution is intended to cover the unfunded actuarial accrued liability which technically benefits all participants in the plan, including retirees.
 - Benefit and pension costs per *active* employee have increased from ~\$18,000 in FY 2000 to ~\$24,000 in FY 2013.
- **Increasing Benefit Costs.** Some of the savings related to medical benefits achieved through the City Employment Terms (the "CETs") will be offset by anticipated medical cost inflation.

Collective Bargaining Landscape.

The City's unionized employees are represented by 47 discrete bargaining units. The CBAs covering 44 of those bargaining units were expired as of September 30, 2012, and the majority of the employees represented thereby are subject to the CETs. The CBAs with the three remaining bargaining units expire as of June 30, 2013, at which point the employees represented thereby will become subject to the CETs as well. See Appendix I (identifying all City employee bargaining units).

Restrictive Employment Terms.

The City's CBAs impose work rules and other restrictions that have impaired the efficient functioning of City government. The CETs provide some relief from work rules and other restrictions (in part through incorporation of a broad management rights clause).

- **“Bumping” Rights.** Employees have been permitted to transfer across departments based solely on seniority (without regard to merit, relevant qualifications or experience for the new position). The City has amended the criteria for transfers and assignments and based them upon experience, attendance, work performance, sick time use and demonstrated ability rather than seniority.
 - The CETs also negated seniority protections in various CBAs by changing shifts, hours of operation and overtime procedures; and revising or eliminating job classifications.
- **Limitations on Management Rights.** The City's ability to manage policies, goals and the scope of operations for many City departments (most notably with respect to the right to implement and modify disciplinary policies) have been impaired by limitations on management rights and responsibilities. The CETs have replaced these limitations with a broad management rights clause, granting the City broad discretion with respect to the design and implementation of work rules.
- **Arbitration Rights.** The CETs curtail the ability of arbitrators to uphold future grievances based on expired bargaining agreement provisions or past practice.
- **Lack of Reimbursement Rights.** The unions historically did not (i) reimburse the City for full-time and part-time paid union officials or (ii) pay any fees for the City's collection and remittance of union dues and service fees. Under the CETs, the City is reimbursed for paid officials and collects a 2% administrative fee in connection with efforts related to union dues/service fees.
- In addition to concessions imposed by the CETs, additional concessions have been granted through statutory interest arbitration. These concessions have not been uniformly applied to all bargaining units, and some City employees have not been affected by these measures.
- In some cases, changes to the City Charter and the City Code, or other legislative initiatives, may be necessary to support needed operational enhancements and reduce unnecessary bureaucracy.

DETROIT WATER AND SEWERAGE DEPARTMENT MUST BE RESTRUCTURED.

The Detroit Water and Sewerage Department (“DWSD”) is one of the largest municipal water and sewerage departments in the nation, providing water and wastewater services to the City and many suburban communities in an eight-county area, covering 1,079 square miles.

DWSD Capital Expenditures.

- Municipal securities broker/dealers and the City’s advisors’ analyses suggest that DWSD’s cost of capital is inflated due to the DWSD’s association with the City (and its financial circumstances). This increased cost of capital, coupled with the inability to raise rates and other factors, has resulted in significant under-spending on capital expenditures.
- DWSD’s January 2013 Capital Improvement Program totals approximately \$1.2 billion over the next four years with approximately \$322.4 million budgeted for water and sewer projects for FY 2013-14 and \$361.8 million budgeted for FY 2014-15.

The EPA Litigation (E.D. Mich., Judge Cox).

- In 1977, the United States Environmental Protection Agency sued the City and the DWSD, alleging violations of the Clean Water Act (“CWA”). The case remained pending in the United States District Court for the Eastern District of Michigan — and the DWSD operated under federal oversight — for more than 35 years owing to “a recurring cycle” of compliance failures with regard to the CWA and National Pollutant Discharge Elimination System (“NPDES”) permits required by the Michigan Department of Environmental Quality (“MDEQ”).

Administrative Consent Order.

- In July 2011, the DWSD agreed to undertake remedial measures pursuant to an Administrative Consent Order (“ACO”) with the MDEQ. The ACO instituted a compliance program with regard to areas of persistent dysfunction (*e.g.*, maintenance; inadequate capital expenditures and related planning; inadequate staffing; restrictive procurement policies).
- Following the dismissal of the EPA Litigation, the ACO is the only order through which the MDEQ maintains oversight of the DWSD.

Root Cause Committee Plan of Action.

- Determining that the ACO, by itself, could not guarantee the DWSD's long-term compliance with CWA and NPDES standards, the district court ordered a "Root Cause Committee" comprised of City/DWSD officials to submit a plan addressing the "root causes" of the DWSD's noncompliance.
- The Root Cause Committee drafted – and the district court adopted – a "Plan of Action," which proposed to restructure the DWSD in order to address systemic dysfunction and achieve long-term compliance with federal and state standards (including, but not limited to, the imposition of changes on DWSD employees otherwise forbidden by applicable CBAs).
- A report submitted by the Root Cause Committee in March 2013 recommended an autonomous DWSD. Implementation of the Root Cause Committee's recommendation would require creation of two unique authorities (with one authority owning the assets and the other authority leasing the assets and making recurring payments to the City in lieu of taxes in the estimated annual amount of \$50,000,000 in consideration for the transfer of DWSD assets).

Order Dismissing Case.

- By an order dated March 27, 2013, the district court closed the case, stating that it was satisfied that the court's orders and the ACO "have been substantially implemented." Closing the case was appropriate, the court said, "because the existing [ACO] is a sufficient mechanism to address any future issues regarding compliance with the DWSD's NPDES permit and the [CWA]."
- The district court did not order the implementation of the DWSD transaction proposed by the Root Cause Committee, citing its lack of authority to do so.
- The City appealed the district court's order dismissing the EPA Litigation on May 22, 2013.

OTHER LITIGATION AFFECTING THE CITY'S FINANCIAL CONDITION

The City generally has been successful in defending against legal challenges to its attempts to restructure its financial affairs, but numerous cases have been filed and remain pending and additional cases may well be filed. Some of these cases could affect the ability of the City to successfully restructure its affairs.

Litigation Challenging Consent Agreement.

Decision Voiding CBA-Related Sections of Consent Agreement Reversed on Procedural Grounds.

- In September 2012, the Ingham County Circuit Court struck down Sections 4.1 and 4.3 of the Consent Agreement, which provisions (i) granted the Mayor “authority to negotiate, renegotiate, execute, amend, modify, reject or terminate collective bargaining agreements” (§ 4.1) and (ii) gave the Financial Advisory Board approval rights over CBAs and allowed the Program Management Director to impose CBAs not approved by the City Council (§ 4.3). The Court overturned these provisions on the grounds that they improperly granted powers to Mayor Bing and other officials that are reserved exclusively to emergency managers.
- In October 2012, the Court of Appeals for the State of Michigan reversed the Ingham County court. The Court of Appeals’ ruling was based on procedural grounds (*i.e.*, that the Circuit Court had lacked jurisdiction where the plaintiff had failed to establish standing).

Litigation Regarding Imposition of CETs.

Over 15 legal challenges and grievances related to the imposition of the CETs have been filed in several state courts and before the Michigan Employment Relations Commission (“MERC”). These cases challenge the enforceability of the Financial Stability Agreement and, thus, the legality of the CETs. These challenges generally have not prevented the City’s imposition of the CETs.

- **Imposition of CETs on Police Department.** In August of 2012, the Wayne County Circuit Court denied the Detroit Police Officers Association’s request for a permanent injunction against imposition of the CETs.
- **Imposition of CETs on DWSD Employees.** In the long-standing EPA Litigation, the United States District Court for the Eastern District of Michigan (i) required that DWSD employees enter into new CBAs with the DWSD (as opposed to with the City) and (ii) clarified that, although its orders did not restrict the DWSD from implementing CETs with respect to DWSD employees prior to negotiation of new CBAs, neither did such orders enjoin employees from challenging the CETs to the extent imposition thereof was inconsistent with applicable law. AFSCME Local 207 – the largest union in the DWSD – has challenged the imposition of the CETs upon DWSD employees before the MERC.
- **Restoration of Certain Pay Cuts.** In *In re City of Detroit and Detroit Police Officers Association*, Case No. D12 D-0354, the Detroit Police Officers Association, among other things, sought the restoration of a 10% across-the-board pay cut imposed upon all City police officers pursuant to the CETs. The City argued that such wage cuts were needed in light of the City’s ongoing financial emergency. The MERC panel ordered a 5% restoration of the officers’ wages, effective January 1, 2014 (and encouraged the emergency manager, the Mayor and the State Treasurer to consider instituting the 5% salary restoration effective July 1, 2013).

KEY OBJECTIVES FOR A FINANCIAL RESTRUCTURING AND REHABILITATION OF DETROIT

To the fullest extent possible under all of the circumstances:

- Provide incentives (and eliminate disincentives) for businesses and residents to locate and/or remain in the City.
 - The City cannot stabilize or pay creditors meaningful recoveries if it continues to shrink.
 - Achieving this goal requires improvements in City services, particularly in the area of public safety and tax reform to reduce the cost of living in the City to more closely approximate costs of living in nearby areas.
- Maximize recoveries for creditors.
 - Since the City will not generate sufficient cash to pay all liabilities, alternatives have to be considered.
- Provide affordable pension and health insurance benefits, and restructure governance of pension arrangements.
- Eliminate blight to assist in stabilizing and revitalizing neighborhoods and communities within the City.
- Reform the City government operations to improve efficiency and reduce costs.
 - In many areas, longer term benefits will require immediate increases in capital investment.
- Maximize collection of taxes and fees that are levied or imposed.
- Generate value from City assets where it is appropriate to do so.

CURRENT FINANCIAL STATUS

HISTORICAL REVENUE AND EXPENDITURE TRENDS, INCLUDING PRELIMINARY FY 2013.

General Fund summary

(\$ in millions)	FISCAL YEAR ENDED ACTUAL					PRELIM.
	2008	2009	2010	2011	2012	2013
Total revenues	\$1,397.7	\$1,363.3	\$1,291.0	\$1,316.8	\$1,196.9	\$1,121.9
Operating expenditures	(1,111.1)	(1,025.3)	(964.7)	(887.5)	(857.1)	(692.0)
Legacy expenditures	(414.6)	(462.0)	(397.9)	(486.1)	(461.6)	(477.3)
Deficit (excl. financing proceeds)	(127.9)	(124.1)	(71.7)	(56.9)	(121.8)	(47.4)
Financing proceeds	75.0	-	250.0	-	-	137.0
Total surplus (deficit)	\$(52.9)	\$(124.1)	\$178.3	\$(56.9)	\$(121.8)	\$89.6
Accumulated unrestricted General Fund deficit	\$ (219.2)	\$ (331.9)	\$ (155.7)	\$ (196.6)	\$ (326.6)	\$ (237.0)

The City has made significant progress decreasing operating costs; however, revenues have declined more quickly and legacy costs have increased.

Excluding proceeds from debt issuances, the City's expenditures have exceeded revenues from FY 2008 to FY 2012 by an average of \$100 million annually.

Revenues

(\$ in millions)	FISCAL YEAR ENDED ACTUAL					PRELIM.
	2008	2009	2010	2011	2012	2013
Municipal income tax	\$276.5	\$240.8	\$216.5	\$228.3	\$233.0	\$238.7
State revenue sharing	249.6	266.6	263.6	239.3	173.3	182.8
Wagering taxes	180.4	173.0	183.3	176.9	181.4	173.0
Sales and charges for services	191.3	166.7	154.1	155.0	145.4	120.4
Property taxes	155.2	163.7	143.0	182.7	147.8	134.9
Utility users' and other taxes	73.0	71.5	64.8	64.8	57.1	54.8
Other	271.8	281.0	265.6	269.8	258.8	217.4
Total revenues	\$1,397.7	\$1,363.3	\$1,291.0	\$1,316.8	\$1,196.9	\$1,121.9

Municipal income tax

- Income tax revenues decreased in FY 2009 and FY 2010 primarily due to lower taxable income of City residents and non-residents working in the City as a result of the economic recession. The recovery in the last 3 years was due to increased taxable income as well as the recent increase in the corporate tax rate.

State revenue sharing

- State revenue sharing decreased in FY 2011 primarily due to the 2010 census population decline affecting constitutional revenue sharing payments.
- FY 2009 and FY 2010 include \$15 - \$20 million payments that were held from the previous year due to late CAFR submission.
- Statutory revenue sharing was replaced by the Economic Vitality Incentive Program funds. The total amount available to be paid to municipalities decreased and the payment method is now based on performance metrics to reward "best practices".

Wagering taxes

- Wagering tax revenues from Detroit’s three casinos have remained steady. Wagering tax receipts are projected to decrease through FY 2015 and beyond due to expected loss of gaming revenue to casinos opening in nearby Toledo, Ohio.
- Beginning January 2006, the City began receiving an additional 1% of adjusted gross receipts as percentage payment revenues. In addition, the City receives \$4 million from each casino when the casino reaches \$400 million in adjusted gross receipts during the calendar year.

Property taxes

- Property tax revenues have been decreasing primarily due to declining taxable property valuations (~12% since FY 2008) and increasing charge-backs due to delinquency rates (charge-backs have been increasing at a quicker pace than delinquent bills transferred to Wayne County).
- Delinquent property tax bills are transferred to Wayne County and the City receives payment for the full amount submitted, less charge-backs for prior period uncollectible bills, which ultimately the City has to repay.
- Revenues were higher in FY 2011 due to (non-cash) adjustments to property tax distributions and charge-back liabilities that were overstated in prior years.

Operating expenditures

(\$ in millions)	FISCAL YEAR ENDED ACTUAL					PRELIM.
	2008	2009	2010	2011	2012	2013
Salaries/overtime/fringe	\$(509.9)	\$(506.6)	\$(466.4)	\$(454.8)	\$(431.5)	\$(357.3)
Health benefits - active	(49.9)	(54.4)	(70.8)	(64.6)	(54.3)	(43.1)
Professional and contractual services	(66.9)	(73.5)	(54.2)	(48.5)	(43.1)	(42.7)
Materials & supplies	(85.8)	(70.9)	(60.1)	(67.1)	(62.2)	(63.6)
Utilities	(35.6)	(38.6)	(27.8)	(30.1)	(27.1)	(25.5)
Other	(362.9)	(281.2)	(285.4)	(222.4)	(238.9)	(159.8)
Operating expenditures	\$(1,111.1)	\$(1,025.3)	\$(964.7)	\$(887.5)	\$(857.1)	\$(692.0)

Salary/overtime/fringe

- The City has significantly reduced its payroll related costs since the peak in FY 2009 based on a variety of cost reduction efforts, including headcount reductions, furlough days, wage reductions, etc.

Other expenses declining

- Other expenditures, including expenses covered by grant revenue, claims for self-insurance, professional/contractual services and purchased electricity and gas/fuel costs have declined by more than \$266 million (44%) over the past six years.

Legacy expenditures

(\$ in millions)	FISCAL YEAR ENDED ACTUAL					PRELIM.
	2008	2009	2010	2011	2012	2013
Debt service (LTGO & UTGO)	\$(133.8)	\$(177.6)	\$(135.9)	\$(137.3)	\$(135.6)	\$(141.4)
POC - principal and interest	(29.8)	(25.1)	(28.1)	(38.9)	(39.0)	(55.4)
POC swaps	(45.3)	(49.9)	(50.7)	(50.7)	(50.7)	(50.6)
Pension contributions	(76.3)	(65.7)	(50.8)	(119.5)	(86.1)	(78.3)
Health benefits - retiree	(129.3)	(143.7)	(132.3)	(139.7)	(150.1)	(151.6)
Legacy expenditures	\$(414.6)	\$(462.0)	\$(397.9)	\$(486.1)	\$(461.6)	\$(477.3)

Debt service and COP payments

- COP-related payments include swap interest payments and principal and interest.
- COP-related payments have been increasing due to increasing scheduled maturities and increasing swap interest rates through FY 2010.
- Debt service was higher in FY 2009 due to a balloon payment due in 2009 on debt related to the Greater Detroit Resource Recovery Authority.
- COP-related payments are forecast to increase due to a back-loaded amortization schedule.

Pension contributions

- The City has consistently deferred year-end PFRS contributions by using a payment plan financing arrangement paying 8% interest (~\$50 million for FY 2012).
- The City was granted a \$25 million credit in each of the years 2008, 2009, and 2010. If not for these credits, the contribution would have been \$25 million higher in each of those years, thereby saving the City a cumulative \$75 million. Therefore, the contributions for 2008, 2009, and 2010 are effectively understated.

Health Benefits - Retiree

- The total cost of healthcare benefits City-wide in FY 2012 was approximately \$275 million, of which approximately \$177 million related to retirees.
- The General Fund’s portion of healthcare costs in FY 2012 was approximately \$204 million, of which approximately \$150 million related to retirees.

FY 2013 Cash Flow

FY 2013 Forecast.

- At the end of FY 2012, the City held cash of \$29.8 million, subject to accumulated property tax distributions in the amount of \$27.9 million, or cash net of distributions of \$1.9 million.
- Based upon actual results through May 31, 2013 and forecasted results through the end of FY 2013, the City is projecting positive net cash flow of \$4.0 million for FY 2013.
 - However, as of June 30, 2013, the City will have accumulated deferrals of approximately \$120 million, primarily related to pension contributions. If not for the deferrals of payments, the City would have already run out of cash.
- In August 2012 (FY 2013), the City issued \$129.5 million in self-insurance and capital improvement bonds (proceeds of \$137 million) with the assistance of the Michigan Finance Authority; however, \$80 million was used to repay a short-term borrowing in FY 2012 and the balance was placed in escrow subject to State Treasury approval of withdrawal.
- In December 2012, the State authorized the City to draw an additional \$10 million from the escrowed proceeds.
- The forecast assumes an additional \$20 million will be drawn in June 2013.

Interfund Loans and Other Outstanding Amounts Due.

- As of May 31, 2013, the City's general fund had outstanding deferrals and amounts due to other funds and entities of approximately \$202.6 million. These are effectively borrowings and must be repaid.
 - Cash owed to other funds: As of May 31, 2013, the General Fund owed approximately \$41.2 million to other funds (*e.g.*, Risk Management Fund).
 - Cash commingled with General Fund: As of May 31, 2013, the General Fund held \$52.6 million of other funds' cash in its operating account (*e.g.*, Major and Local Street Funds).
 - Property tax distributions: As of May 31, 2013, the General Fund owed \$55.1 million to other taxing authorities (*e.g.*, Detroit Public Schools and Wayne County).
 - Deferred pension contributions: As of May 31, 2013, the General Fund owed \$53.7 million in delinquent pension contributions to the GRS and PFRS systems.
 - On June 30, 2013, the City will owe an additional \$50 million (estimated) related to the FY 2013 required PFRS contribution, which will increase the amount of deferred pension contributions to over \$100 million.

Cash conservation measures include:

- Issuance of short-term (RANs & TANs) and long-term debt.
- General fund borrowing from other funds, deferrals of payments to other funds and cash pooling (as described above).
- Deferral of trade payments and management of accounts payable with reference to available cash. Current accounts payable are approximately aged 60 to 75 days. Issues related to unvouchered accounts payable could increase the aging profile of the City's A/P.

FY 2013 Forecasted Cash Flow to Year End

\$ in millions

	Actual FY 2012	Actual Jul-12	Actual Aug-12	Actual Sep-12	Actual Oct-12	Actual Nov-12	Actual Dec-12	Actual Jan-13	Actual Feb-13	Actual Mar-13	Actual Apr-13	Actual May-13	Forecast Jun-13	11A + 1F FY 2013
Operating Receipts														
Property taxes	\$567.0	\$34.0	\$198.0	\$14.8	\$6.9	\$4.2	\$24.4	\$139.1	\$42.3	\$5.4	\$1.3	\$3.1	\$58.0	\$531.6
Income & utility taxes	276.2	23.1	25.1	21.5	25.8	23.6	21.9	25.4	23.9	20.4	30.2	30.8	18.4	290.1
Gaming taxes	177.5	12.4	15.2	17.2	12.4	20.8	11.0	11.5	19.6	14.4	12.8	16.5	9.2	173.0
Municipal service fee to casinos	19.8	-	7.6	-	-	4.0	4.0	1.8	-	-	-	-	-	17.4
State revenue sharing	194.3	28.5	-	28.7	-	30.9	-	30.4	-	30.6	-	29.7	-	178.9
Other receipts	480.8	26.1	37.8	26.0	22.5	26.6	31.7	16.7	58.0	25.6	29.3	41.4	19.4	361.2
Refinancing proceeds	50.0	-	-	-	-	-	10.0	-	-	-	-	-	20.0	30.0
Total operating receipts	1,765.5	124.2	283.8	108.2	67.5	110.1	103.1	225.0	143.9	96.5	73.6	121.4	125.0	1,582.2
Operating Disbursements														
Payroll, taxes, & deductions	(454.2)	(37.5)	(35.0)	(32.5)	(28.0)	(41.1)	(30.1)	(23.6)	(30.1)	(25.9)	(26.3)	(36.2)	(27.2)	(373.6)
Benefits	(203.4)	(18.3)	(21.0)	(20.4)	(16.7)	(16.2)	(19.5)	(9.7)	(15.8)	(17.7)	(4.7)	(14.9)	(16.0)	(191.0)
Pension contributions	(103.9)	-	(11.7)	(7.2)	-	(1.2)	(8.8)	(1.9)	-	-	-	-	-	(30.8)
Subsidy payments	(50.0)	(0.6)	(4.9)	(6.2)	(1.1)	-	(0.1)	(0.2)	(5.7)	(5.0)	(3.9)	(1.6)	(10.9)	(40.1)
Distributions - tax authorities	(374.4)	(0.9)	(110.1)	(34.3)	(2.1)	(4.2)	(1.5)	(8.1)	(79.4)	(14.7)	(0.6)	-	(27.2)	(283.2)
Distributions - UTGO		-	(1.5)	(11.0)	(1.3)	-	-	-	(1.3)	(52.1)	(1.3)	-	-	(68.6)
Distributions - DDA increment	(8.6)	-	-	-	-	-	-	(5.9)	-	-	-	-	(5.5)	(11.4)
Income tax refunds	(16.9)	(1.9)	(3.3)	(0.6)	-	(1.8)	(1.0)	(0.5)	(0.4)	(0.4)	(1.9)	(1.6)	(3.8)	(17.2)
A/P and other disbursements	(477.5)	(43.8)	(48.1)	(34.5)	(31.4)	(37.1)	(25.2)	(24.3)	(34.7)	(29.3)	(27.7)	(36.9)	(32.2)	(405.3)
Professional fees		-	-	-	-	-	-	-	-	-	-	-	-	-
Sub-total operating disbursements	(1,688.9)	(103.1)	(235.7)	(146.8)	(80.6)	(101.7)	(86.1)	(74.1)	(167.4)	(145.0)	(66.5)	(91.3)	(122.8)	(1,421.1)
POC and debt related payments	(142.1)	(4.2)	(5.4)	(4.9)	(9.0)	(7.9)	(14.9)	(3.1)	(8.5)	(4.8)	(32.2)	(25.6)	(36.6)	(157.1)
Total disbursements	(1,831.0)	(107.3)	(241.1)	(151.7)	(89.6)	(109.6)	(101.0)	(77.2)	(175.9)	(149.8)	(98.8)	(116.9)	(159.4)	(1,578.2)
Net cash flow	(65.5)	16.9	42.6	(43.5)	(22.0)	0.5	2.1	147.8	(32.1)	(53.3)	(25.2)	4.6	(34.4)	4.0
Cumulative net cash flow		16.9	59.5	16.0	(6.0)	(5.5)	(3.4)	144.4	112.3	59.0	33.9	38.4	4.0	
Beginning cash balance	95.3	29.8	46.7	89.3	45.8	23.8	24.3	26.4	174.2	142.1	88.8	63.7	68.2	29.8
Net cash flow	(65.5)	16.9	42.6	(43.5)	(22.0)	0.5	2.1	147.8	(32.1)	(53.3)	(25.2)	4.6	(34.4)	4.0
Cash before required distributions	\$29.8	\$46.7	\$89.3	\$45.8	\$23.8	\$24.3	\$26.4	\$174.2	\$142.1	\$88.8	\$63.7	\$68.2	\$33.8	\$33.8
Accumulated property tax distributions	(27.9)	(48.1)	(77.8)	(31.8)	(32.9)	(31.5)	(48.0)	(149.8)	(89.5)	(26.9)	(26.0)	(28.5)	(19.7)	(19.7)
Cash net of distributions	\$1.9	\$(1.4)	\$11.5	\$14.0	\$(9.1)	\$(7.1)	\$(21.5)	\$24.4	\$52.6	\$61.9	\$37.6	\$39.7	\$14.1	\$14.1
Memo:														
Accumulated deferrals	(64.4)	(66.2)	(56.3)	(50.9)	(52.7)	(53.2)	(46.3)	(44.2)	(53.9)	(57.7)	(61.5)	(65.8)	(118.7)	(118.7)
Refunding bond proceeds in escrow	28.6	28.6	81.7	81.7	81.7	81.7	71.7	71.7	71.7	71.7	71.7	51.7	51.7	51.7
Reimbursements owed to other funds	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd

FY 2014 Forecasted Cash Flow to Year End

<i>\$ in millions</i>	Forecast Jul 13	Forecast Aug-13	Forecast Sep-13	Forecast Oct-13	Forecast Nov-13	Forecast Dec-13	Forecast Jan-14	Forecast Feb-14	Forecast Mar-14	Forecast Apr-14	Forecast May-14	Forecast Jun-14	Forecast FY 2014
Operating Receipts													
Property taxes	\$37.8	\$166.6	\$13.0	\$6.6	\$3.1	\$21.5	\$139.1	\$20.8	\$4.8	\$1.3	\$2.5	\$51.1	\$468.4
Income & utility taxes	28.7	22.7	22.3	28.3	22.7	22.3	28.3	23.5	22.7	28.3	22.3	22.7	294.7
Gaming taxes	14.6	14.1	8.9	23.1	10.4	9.4	22.1	9.9	15.1	17.4	13.2	11.8	170.0
Municipal service fee to casinos	-	7.6	-	-	4.0	4.0	1.8	-	-	-	-	-	17.4
State revenue sharing	30.7	-	30.7	-	30.7	-	30.7	-	30.7	-	30.7	-	184.3
Other receipts	27.2	25.8	25.9	32.9	26.3	25.9	32.9	27.1	26.3	32.9	25.9	26.3	335.9
Refinancing proceeds	-	-	-	-	-	-	-	-	-	-	-	-	-
Total operating receipts	139.1	236.9	100.9	91.0	97.2	83.2	255.0	81.3	99.6	80.0	94.6	111.9	1,470.7
Operating Disbursements													
Payroll, taxes, & deductions	(31.0)	(26.6)	(26.6)	(35.5)	(26.6)	(26.6)	(31.0)	(26.6)	(26.6)	(35.5)	(26.6)	(26.6)	(345.6)
Benefits	(15.5)	(15.5)	(15.5)	(15.5)	(15.5)	(15.5)	(15.5)	(14.0)	(14.0)	(14.0)	(14.0)	(14.0)	(178.6)
Pension contributions	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(175.9)
Subsidy payments	(7.6)	(5.0)	(6.3)	(6.3)	(6.3)	(6.3)	(6.3)	(6.3)	(6.3)	(6.3)	(6.3)	(6.3)	(75.6)
Distributions - tax authorities	(14.8)	(72.4)	(40.0)	(5.7)	(1.0)	(1.3)	(57.3)	(20.9)	(14.0)	(1.7)	-	(24.0)	(253.1)
Distributions - UTGO	-	(12.0)	-	-	-	-	-	-	(44.9)	-	-	-	(56.9)
Distributions - DDA increment	-	-	-	-	-	(8.0)	-	-	-	-	-	(1.0)	(9.0)
Income tax refunds	(2.5)	(2.7)	(.06)	(0.3)	(1.5)	(1.0)	(0.6)	(0.3)	(0.4)	(2.3)	(1.2)	(3.7)	(17.0)
A/P and other disbursements	(36.3)	(37.9)	(29.3)	(37.1)	(30.1)	(25.6)	(40.8)	(23.0)	(33.5)	(39.7)	(30.0)	(30.0)	(393.2)
Sub-total operating disbursements	(122.3)	(186.7)	(132.8)	(115.1)	(95.6)	(98.9)	(166.0)	(105.8)	(154.4)	(114.3)	(92.8)	(120.3)	(1,504.9)
POC and debt related payments	(7.4)	(4.2)	(5.8)	(8.5)	(7.3)	(15.4)	(7.3)	(4.2)	(5.7)	(51.9)	(7.3)	(39.1)	(164.2)
Total disbursements	(129.6)	(191.0)	(138.6)	(123.5)	(102.9)	(114.3)	(173.4)	(110.0)	(160.2)	(166.1)	(100.1)	(159.3)	(1,669.1)
Net cash flow	9.5	45.9	(37.7)	(32.6)	(5.7)	(31.1)	(81.6)	(28.7)	(60.6)	(86.1)	(5.5)	(47.4)	(198.5)
Cumulative net cash flow	9.5	55.4	17.7	(14.9)	(20.6)	(51.7)	29.9	1.1	(59.4)	(145.6)	(151.0)	(198.5)	
Beginning cash balance	33.8	43.3	89.2	51.5	18.9	13.2	(17.9)	63.7	34.9	25.6	(111.8)	(117.2)	33.8
Net cash flow	9.5	45.9	(37.7)	(32.6)	(5.7)	(31.1)	81.6	(28.7)	(60.6)	(86.1)	(5.5)	(47.4)	(198.5)
Cash before required distributions	\$43.3	\$89.2	\$51.5	\$18.9	\$13.2	\$(17.9)	\$63.7	\$34.9	\$(25.6)	\$(111.8)	\$(117.2)	\$(164.7)	\$(164.7)
Accumulated property tax distributions	(29.8)	(55.4)	(24.0)	(22.7)	(23.7)	(38.6)	(86.5)	(82.2)	(27.1)	(26.5)	(28.5)	(19.7)	(19.7)
Cash net of distributions	\$13.5	\$33.8	\$27.4	\$(3.8)	\$(10.5)	\$(56.5)	\$(22.8)	\$(47.2)	\$(52.7)	\$(138.2)	\$(145.7)	\$(184.4)	\$(184.4)
Memo:													
Accumulated deferrals	(119.3)	(112.4)	(112.8)	(113.5)	(113.9)	(114.4)	(115.0)	(115.5)	(116.0)	(116.6)	(117.1)	(117.6)	(117.6)
Refunding bond proceeds in escrow	51.7	51.7	51.7	51.7	51.7	51.7	51.7	51.7	51.7	51.7	51.7	51.7	51.7
Reimbursements owed to other funds	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd

IN THE ABSENCE OF A COMPREHENSIVE FINANCIAL RESTRUCTURING, BUDGET DEFICITS WILL CONTINUE FOR THE FORESEEABLE FUTURE.

The City Has Limited Options for Further Revenue Generation and, in the Absence of a Comprehensive Financial Restructuring, Cost-Saving Measures.

- Legacy obligations continue to increase;
- Limited or no access to capital markets;
- Diminishing, if any, returns from further tax increases; and
- Minimal potential for further payroll related reductions.

Absent Structural Changes, the City's Accumulated Deficit is Expected to Grow to Unprecedented Levels.

- At the City's current run rate, its accumulated deficit could grow to 3-4 times its current level of \$326.6 million to over \$1.35 billion by FY 2017.

A Look at the Future in the Absence of Restructuring Initiatives

***Note:** The following projections were prepared based solely on the City's current levels of operating expenses and capital expenditures and do *not* account for (i) increases in expenditures necessary to restore City services to adequate levels, (ii) additional investment by the City in services, assets or infrastructure or (iii) any changes to legacy liabilities.

(\$ in millions)	FISCAL YEAR ENDED ACTUAL					PRELIMINARY FORECAST					5-YEAR TOTAL
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	
Revenues											
Municipal income tax	\$276.5	\$240.8	\$216.5	\$228.3	\$233.0	\$238.7	\$243.4	\$247.3	\$249.0	\$250.7	\$1,229.1
State revenue sharing	249.6	266.6	263.6	239.3	173.3	182.8	184.3	186.1	187.9	189.5	930.4
Wagering taxes	180.4	173.0	183.3	176.9	181.4	173.0	170.0	168.3	170.0	171.7	853.0
Sales and charges for services	191.3	166.7	154.1	155.0	145.4	120.4	124.8	119.4	118.2	117.0	599.7
Property taxes	155.2	163.7	143.0	182.7	147.8	134.9	118.4	110.2	105.7	100.8	570.0
Utility users' and other taxes	73.0	71.5	64.8	64.8	57.1	54.8	47.2	40.9	40.9	41.3	225.0
Other revenue	156.9	142.7	134.2	152.4	125.5	93.4	75.6	55.8	55.8	55.9	336.4
General Fund reimbursements	34.7	55.7	47.6	32.3	47.6	31.2	30.3	30.3	30.3	30.3	152.2
Transfers in (UTGO millage & non-General Fund POCs)	80.1	82.5	83.8	85.1	85.8	92.8	89.0	87.9	83.8	84.4	438.0
Total revenues	1,397.7	1,363.3	1,291.0	1,316.8	1,196.9	1,121.9	1,082.8	1,046.2	1,041.5	1,041.4	5,333.8
Expenditures											
Salaries/overtime/fringe	(509.9)	(506.6)	(466.4)	(454.8)	(431.5)	(357.3)	(341.5)	(341.9)	(346.4)	(352.5)	(1,739.7)
Health benefits - active	(49.9)	(54.4)	(70.8)	(64.6)	(54.3)	(43.1)	(51.2)	(54.0)	(57.4)	(61.0)	(266.7)
Other operating expenses	(551.2)	(464.3)	(427.5)	(368.2)	(371.3)	(291.6)	(292.9)	(288.2)	(295.9)	(301.5)	(1,470.2)
Operating expenditures	(1,111.1)	(1,025.3)	(964.7)	(887.5)	(857.1)	(692.0)	(685.7)	(684.1)	(699.7)	(715.0)	(3,476.6)
Net operating surplus	286.7	338.0	326.3	429.2	339.8	429.9	397.2	362.0	341.8	326.3	1,857.2
Debt service (LTGO & UTGO)	(133.8)	(177.6)	(135.9)	(137.3)	(135.6)	(141.4)	(135.9)	(124.4)	(119.4)	(96.1)	(617.2)
POC - principal and interest	(29.8)	(25.1)	(28.1)	(38.9)	(39.0)	(55.4)	(61.0)	(63.2)	(65.4)	(67.6)	(312.6)
POC swaps	(45.3)	(49.9)	(50.7)	(50.7)	(50.7)	(50.6)	(50.6)	(50.6)	(50.6)	(50.6)	(253.1)
Pension contributions	(76.3)	(65.7)	(50.8)	(119.5)	(86.1)	(78.3)	(199.5)	(233.1)	(258.9)	(285.9)	(1,055.8)
Health benefits - retiree	(129.3)	(143.7)	(132.3)	(139.7)	(150.1)	(151.6)	(140.7)	(151.1)	(161.6)	(172.0)	(776.9)
Legacy expenditures	(414.6)	(462.0)	(397.9)	(486.1)	(461.6)	(477.3)	(587.6)	(622.4)	(655.9)	(672.3)	(3,015.6)
Deficit (excl. financing proceeds)	(127.9)	(124.1)	(71.7)	(56.9)	(121.8)	(47.4)	(190.5)	(260.4)	(314.1)	(346.0)	(1,158.4)
Financing proceeds	75.0	-	250.0	-	-	137.0	-	-	-	-	137.0
Total surplus (deficit)	\$(52.9)	\$(124.1)	\$178.3	\$(56.9)	\$(121.8)	\$89.6	\$(190.5)	\$(260.4)	\$(314.1)	\$(346.0)	\$(1,021.4)
Accumulated unrestricted General Fund deficit	\$(219.2)	\$(331.9)	\$(155.7)	\$(196.6)	\$(326.6)	\$(237.0)	\$(427.5)	\$(687.9)	\$(1,002.0)	\$(1,348.0)	

THE CITY HAS TAKEN ACTION TO ADDRESS ITS FINANCIAL CHALLENGES

The City has already taken numerous steps to improve its financial position including expense savings and revenue increases. These initiatives save the City an estimated \$200 million per year but they also impose substantial burdens on the City's workforce and residents.

Headcount Reductions.

- Since 2011, the City has reduced its headcount by more than 2,700 employees (from 12,302 employees as of close of FY 2010 to approximately 9,560 as of May 31, 2013).
- The City's headcount reductions have resulted in annual savings of over \$100 million.

Reductions of Labor Costs through Implementation of City Employment Terms.

- On July 12, 2012, the Financial Advisory Board approved the CETs for (i) employees in unions with expired CBAs and (ii) nonunion employees, effective as of July 17, 2012.
- Among other things, the CETs provide for (i) wage reductions (implemented through imposition of furlough days); (ii) caps/reductions on vacation/holiday pay/overtime/sick days; (iii) the reduction of pension multipliers; and (iv) changes to healthcare coverage.
- Implementation of the CETs provides for an estimated \$102 million in annual savings.
 - \$25 million in savings attributable to wage reductions (24% of savings).
 - \$59 million in savings attributable to reduced active and retiree benefits (59% of savings).
 - \$9 million in savings attributable to reduced pension costs (9% of savings).
 - \$8 million in savings attributable to changes to work rules (8% of savings).

- **Police Work Rules.** The CETs implement a number of changes to work rules governing the DPD. For example, the CETs implement changes related to (i) the establishment of a joint labor/management committee to determine the assignment of civilians to certain job functions (*i.e.*, “civilianization”); (ii) the ability of the chief of police to hire and deploy personnel; (iii) limitations on court time pay, holiday pay, eligibility for overtime pay, holiday pay and bonus vacation days; (iv) elimination of educational reimbursement programs; (v) elimination of “wage differential” compensation while employees are on roster for promotion; and (vi) delaying separation payments.
- **Other Union Rules.** The CETs also implement a number of changes to work rules governing those unions with contracts that expired on or before June 30, 2012. For example, the CETs implement changes related to (i) freezing sick leave banks and eliminating reserve sick leave accrual; (ii) elimination of sick time cash payouts for future earned time; (iii) reserving the City’s right to reinstate furlough days; (iv) elimination of the \$3-per-day allowance for daily car usage; (v) elimination of four to six annual bonus vacation days; and (vi) reduced vacation accrual to 160 hours from 320 hours.

Revenue Generating Initiatives.

- **Increased Corporate Tax Rate.** In January 2012, the City’s corporate income tax rate was raised to 2.0% from 1.0%. This increased rate was projected to generate an estimated \$6 million in additional annual revenue.
- **Enhanced Tax Collection Initiatives.** The City has implemented, and is implementing, initiatives designed to (i) improve collection of past due taxes and (ii) enhance collection efforts on a prospective basis. These efforts to enhance collection of taxes could generate an estimated \$13 million in additional annual revenue.
- **Increased Lighting Rates.** In January 2013, the PLD increased its rates to more closely align with market rates/ eliminate practice of charging customers less for power than the City itself was paying. Increased PLD rates could generate an estimated \$9 million in additional annual revenue.

Significantly Reduced Operating Expenses.

- **Reductions in Vendor Costs.** The City is implementing an initiative to reduce its vendor-related costs by 10%. Reductions in vendor costs are expected to save an estimated \$10 million annually.
- **Reduction in Subsidy to DDOT.** In 2012, the City undertook steps to improve the efficiency of the Detroit Dep’t of Transportation (*e.g.*, through route rationalization), thereby reducing the subsidy from the City’s General Fund to the DDOT enterprise fund by approximately \$15 million annually.

Deferred Capital Expenditures.

- The City has deferred capital expenditures.
 - Average aggregate capital outlays for the fiscal years 2008 – 2012 were only \$82.98 million. Average aggregate capital outlays for the preceding fiscal years 2003 – 2007 were \$151.94 million.
 - For fiscal years 2014 – 2023, it is estimated that General Fund necessary capital expenditures will average approximately \$145 million.

Demolition Initiative.

Program launched in April 2010 with the goal of demolishing 10,000 vacant structures in 3 years.

- Over 5,000 structures have been demolished; the remaining portion of the 10,000 structures in the program are planned to be demolished by December 2013.
- Despite \$72 million in committed and expended funds for this initiative, there is a funding gap of \$40 million to complete the demolition of 10,000 structures and achieve the program's goal.
- Demolition initiative only addresses 13% of the vacant buildings in the City and 26% of such buildings that are classified as dangerous.
 - Ancillary demolition initiative in partnership with State allocated \$10 million related to mortgage-related settlement to targeted demolition of 1,234 structures around schools. 179 structures demolished as of February, 28, 2013 (with another 56 under contract).

Execution of Consent Agreement/Creation of Financial Advisory Board.

- **Early 2012:** City and State negotiate a “Financial Stability Agreement” (often referred to as the “Consent Agreement”) in an effort to achieve (i) financial stability for the City and (ii) a stable platform for future growth.
- The City Council approved the Consent Agreement on April 4, 2012. The Consent Agreement was executed by the Mayor, the members of a State-appointed Financial Review Team, the State Treasurer and the Governor as of April 5, 2012.

- The Consent Agreement created a “Financial Advisory Board” (the “*FAB*”), of nine members selected by the Governor, the State Treasurer, the Mayor and City Council.
 - Under the Consent Agreement, the FAB had an oversight role and limited powers over certain City reform and budget activities.
 - The FAB has held, and continues to hold, regular public meetings and continues to exercise its oversight functions consistent with the Consent Agreement.
- To implement the reform efforts set forth in the Consent Agreement, the positions of “Chief Financial Officer” and “Program Management Director “were established. Each report to the Mayor.

Legislation Authorizing Appointment of an Emergency Manager (“*EM*”).

- In 1990, the Michigan Legislature enacted Public Act 72 (“*PA 72*”), which empowered the State to intervene in municipalities facing financial crisis through the appointment of an EM who, once appointed, assumed many of the powers ordinarily held by local elected officials.
- Effective March 16, 2011, the Legislature repealed PA 72 and enacted Public Act 4 (“*PA 4*”). PA 4 enhanced the State’s power to intervene in financially troubled municipalities by, for example, giving EMs the authority to unilaterally modify, reject or terminate municipal contracts.
- Michigan voters rejected PA 4 by referendum on November 5, 2012.
- The Michigan Court of Appeals ruled that the rejection of PA 4 automatically revived PA 72.
- Effective March 28, 2013, the Legislature enacted Public Act 436 (“*PA 436*”), which repealed and replaced the revived PA 72.
 - Like PA 4, PA 436 empowers EMs to modify, reject or terminate municipal contracts.
 - PA 436 contains an appropriations provision that immunizes the law from referendum.

Appointment of EM.

- Pursuant to PA 72, on December 19, 2012, Governor Snyder appointed a Financial Review Team to examine the City's financial situation.
- On February 19, 2013, the Financial Review Team issued a report concluding that Detroit was in a state of financial emergency.
- Based upon the Financial Review Team's findings, on March 1, 2013, the Governor determined that a financial emergency existed in Detroit — a determination that, under PA 72, required the Local Emergency Financial Assistance Loan Board (“LEFALB”) to appoint an EM for Detroit.
- On March 14, 2013, the LEFALB appointed Kevyn Orr as EM for Detroit.
 - Mr. Orr's first employment contract became effective on March 25, 2013, the day Mr. Orr began work as EM. Three days later, on the date PA 436 repealed and replaced PA 72, Mr. Orr and the State entered into a second contract.

Litigation Relating to Detroit EM Appointment.

- In *Davis v. Local Emergency Financial Assistance Loan Board*, pending in the Ingham County Circuit Court, the plaintiff (i) alleges violations of Michigan's Open Meetings Act by the LEFALB in connection with Mr. Orr's appointment as Detroit EM and (ii) requests that the court invalidate that appointment.
 - Case law indicates that the LEFALB is not a public body subject to the Open Meetings Act.
 - Parties are currently engaged in various discovery disputes and dispositive motion practice; answer yet to be filed.
- In *Citizens United Against Corrupt Government v. Local Emergency Financial Assistance Loan Board*, pending in the U.S. District Court for the Eastern District of Michigan, the plaintiff (i) argues that Mr. Orr could not have been appointed under PA 72, because that law could not have been in effect and (ii) asks the court to reverse its previous opinion that voter rejection of PA 4 revived PA 72.

Litigation Challenging PA 436

- In *Phillips v. Snyder*, pending in the U.S. District Court for the Eastern District of Michigan, the plaintiffs seek, among other things, (i) declaratory relief that PA 436 violates, among other things, the U.S. Constitution and the Voting Rights Act; and (ii) injunctive relief, among other things, preventing the Defendants and any EMs from exercising rights under PA 436. A hearing on the defendants' motion to dismiss is scheduled for August 21, 2013.
- In *Detroit NAACP v. Snyder*, pending in the U.S. District Court for the Eastern District of Michigan, the plaintiffs seek an order declaring that PA 436 violates the Due Process and Equal Protection clauses of the U.S. Constitution. The plaintiffs assert that the Michigan Legislature violated the pre-clearance requirement of section 5 of the Voting Rights Act in passing PA 436. The plaintiffs seek injunctive relief against any actions taken pursuant to PA 436, including all actions initiated by EMs.

Litigation Concerning Actions Taken by Other EMs.

- Since 1990, EMs have been appointed to restructure the finances of Hamtramck, Highland Park, Flint, Three Oaks, Pontiac, Ecorse, Benton Harbor, Allen Park — and now Detroit. Except for Hamtramck, Highland Park, Ecorse and Three Oaks, each of these municipalities remains under the control of an EM. The school districts of Detroit, Highland Park and Muskegon Heights also are currently operating under EM control.
- Opponents have challenged various EM actions in administrative proceedings, arbitration and lawsuits with mixed results.
 - **Litigation Relating to Actions Affecting CBAs.** Under PA 4, EMs have ordered unilateral modifications to CBA provisions. Plaintiffs have challenged such modifications on federal and state law grounds, including constitutional challenges based on Contracts Clause and Due Process arguments.
 - **Limitation on EM Power to Modify CBAs.** On March 29, 2013, the United States District Court for the Eastern District of Michigan enjoined an EM's unilateral modifications to CBAs with unions representing municipal retirees. The EM had shifted certain health care costs from the municipality to retirees. The court granted the plaintiffs' motion for a preliminary injunction on Contracts Clause and Due Process Clause grounds. An appeal is pending before the Sixth Circuit Court of Appeals.

- **Litigation Relating to Changes in Salaries of Local Elected Officials.**
 - EMs have reduced the compensation paid to mayors and city council members, at least on a temporary basis. Courts have held that local elected officials do not have property rights to continued compensation at a pre-existing level, and that an EM can eliminate elected officials' salaries entirely.
- **Litigation in Connection with Termination of Unelected Municipal Employees with “For Cause” Contracts.**
 - While an EM's broad power to hire and terminate at-will municipal employees has not been subject to any legal challenges, the Sixth Circuit Court of Appeals recently affirmed a ruling that, under PA 72, an EM did not have authority to fire a municipal employee who was not a department head, and whose employment contract provided for dismissal only “for cause,” without first providing notice and an opportunity to be heard.
- **Litigation in Connection with Modification or Termination of Municipal Contracts.**
 - PA 4 contained a provision authorizing an EM to “[r]eject, modify, or terminate 1 or more terms and conditions of an existing contract.” PA 436 contains identical language.
 - Although no ruling to date has invalidated the statutory authority of an EM to modify or reject contracts, a Michigan circuit court recently ruled PA 4's contract-modification provision unconstitutional as applied.
 - The U.S. District Court for the Eastern District of Michigan recently rejected cross-motions for summary judgment and scheduled a bench trial to resolve a claim that an EM's termination of real estate leases violated the Contracts Clause of the U.S. Constitution.
- **Litigation in Connection with Bidding Processes for Municipal Contracts.**
 - Recent litigation regarding the fairness and transparency of a contract bidding process instituted by an EM was settled prior to decision (and after denial of injunctive relief).
- **Litigation Concerning Michigan's Open Meetings Act.**
 - The Michigan Court of Appeals has held that an EM is not subject to the state Open Meetings Act, even when the EM assumes the duties of a body that is subject to the act (*e.g.*, the city council).
- **Litigation Concerning Restructuring a Municipal Pension Board.**
 - In a case that may be particular to PA 72, displaced pension board members and others obtained an injunction staying an EM's decision to restructure a city's largest pension board (reducing its membership from 11 to 5) in Michigan circuit court. The defendants have moved for leave to appeal in the Michigan Court of Appeals.

Continuing Role of Mayor and City Council.

- Under PA 436, Mr. Orr acts for and in the place of the Detroit mayor and city council.
- PA 436 prohibits Detroit's local elected officials from exercising any powers except as expressly authorized by PA 436 or as authorized in writing by Mr. Orr and subject to any conditions he may impose.
- Nevertheless, both the Mayor and the City Council have continuing legal roles and rights under PA 436. Maintaining such offices should help ensure that the executive and legislative branches of City government can resume full functioning upon the City's transition out of receivership.
- On March 25, 2013, Mr. Orr issued an order restoring the full salaries and benefits of the mayor and city council, which compensation otherwise would have been automatically eliminated on PA 436's effective date of March 28, 2013.
- On April 11, 2013, Mr. Orr issued an order authorizing the mayor and city council to continue conducting the day-to-day business of the City, subject to limitations imposed by PA 436 and Mr. Orr's ultimate approval.
- Since Mr. Orr's appointment, the FAB continues to serve, but its responsibilities and powers remain subject to modification.

RESTRUCTURING AND REINVESTING IN CITY GOVERNMENT

To address the crises confronting the City and remedy the deficiencies in services addressed above (including, in particular, deficiencies in services relating to public safety), and to achieve a sustainable restructuring that promotes the longterm health, safety and growth of the City, the City must aggressively pursue – and devote substantial resources to – the objectives described below.

The City proposes to spend approximately \$1.25 billion over the next ten years to, among other things, (i) improve the performance and infrastructure of its Police, Fire, EMS and Transportation Departments, (ii) comprehensively address and remediate urban blight, (iii) modernize its information technology systems on a City-wide basis and (iv) address lingering issues plaguing the City’s electrical grid and lighting.

A detailed summary of the reinvestments to be made in the City – and the associated costs – is attached hereto as Appendix J.

PUBLIC SAFETY

Police.

- **Key Issues and Deficiencies to Be Addressed.**
 - Exceedingly high crime rates.
 - Outdated and obsolete information technology.
 - Poor quantitative performance (*e.g.*, low response times; low case closure rates)
 - Inadequate staffing, low employee morale and lack of employee accountability.
 - Aging infrastructure (*e.g.*, fleet and facilities).

- **Measurable Objectives.**

- Reduce response times to the national average.
- Improve closure rates and first responder investigations.
- Update and overhaul police fleet and facilities.
- Modernize the Department’s information technology.
- Achieve compliance with federal consent decrees.
- Refine structure, staffing and organization of department to better serve citizens; hold all members (sworn and civilian) of the department accountable to effectively maintain core responsibilities of policing.

- **Expected impact on restructuring/reinvestment expenses in FY 2014 and going forward**

(numbers in brackets represent increases in expenditures):

(\$ in millions)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Total Restructuring/Reinvestment					
Facility Costs	(5.7)	(5.5)	(4.3)	(3.4)	(3.9)
Fleet Update - Repairs & Maintenance	(11.6)	(11.0)	(10.7)	(10.6)	(9.8)
Technology/Other	(9.0)	(6.2)	(1.1)	(1.1)	(1.1)
Total	(26.3)	(22.7)	(16.1)	(15.1)	(14.8)

- **Initiatives To Be Undertaken to Achieve Objectives.**

- Hiring of new police chief to drive DPD restructuring (in process).
- Implement Compstat (*i.e.*, data-driven policing) model to increase accountability of command staff; evaluate outsourcing crime analysis to a third party with deep statistical analysis capabilities; implement key performance metrics driven by crime data.
- Restructure department and streamline cumbersome processes to improve operational efficiency; evaluate precincts, districts and special units; utilize accountability metrics and IT systems to eliminate non-productive policing time.
- Enhance DPD collaboration with all facets of community (*e.g.*, individuals, neighborhood groups, clergy, schools, private social service agencies); facilitate relationships with all facets of government.
- Expand “Citizens Radio Patrol” to serve as extended eyes and ears of the DPD, thereby increasing law enforcement effectiveness; deploy to all areas of Detroit. A recently-implemented “Broken Windows” pilot project has achieved positive results in the 8th Precinct’s Rosedale Park neighborhood. This pilot project could be expanded City-wide.
- Restructured operations and deficient sworn staffing levels will be addressed by a comprehensive workload analysis and crime statistics trends; redeploy sworn members based on data-driven approach.
- Civilianize eligible administrative functions and redeploy sworn officers.
- Hold all members (sworn and civilian) of the department accountable; redesign disciplinary process and ensure it is transparent, consistent and effective.
- Develop strategy to address low employee morale.
- Provide adequate operational and technological resources to officers (*e.g.*, uniforms, vests, tasers, vehicles, IT, etc.).
- Better utilize police reserves.
- Develop detailed recruiting strategy (with respect to both new recruits and experienced hires); explore outsourcing all or a portion of Police Academy training to local MCOLES certified academic institutions; continue to provide training courses on DPD rules, regulations, policies, and City ordinances; develop overall training plans for metrics, financials and operations.

- Evaluate location, number and condition of facilities (owned and leased); refresh vehicle fleet; increase facility and fleet maintenance expenditures to appropriate levels.
- Select and implement a fully integrated IT system; implement Jail Management System.
- Develop contracts and memoranda of understanding with neighboring law enforcement agencies for the sharing of resources (police, fire and EMS); enhance regional public safety with local and state public safety community cooperation.
- Increase fees for service (\$2-3 million potential opportunity); expedite Eticketing implementation; identify additional grant funding to support public safety initiatives; pursue opportunities for donations; evaluate improving/outsourcing collections efforts.
- Restructure budget process to eliminate silos; implement budget to actual process; transfer budget and actual financial ownership to Command officers.
- Implement outsourcing contract with the Michigan Department of Corrections (“MDOC”) to consolidate all DPD pre-arraignment jail operations into one centralized jail.

Fire and EMS.

- **Key Issues and Deficiencies to Be Addressed.**

- Aging infrastructure (e.g., fleet and facilities).
 - Inadequate maintenance and faulty equipment.
 - Outdated and obsolete information technology.

- **Measurable Objectives.**

- Modernize fleet and facilities to ensure that DFD has adequate and reliable infrastructure and equipment to perform its duties.
- Modernize information technology.
- Improve operating efficiency and cost structure.

- **Expected impact on restructuring/reinvestment expenses in FY 2014 and going forward**
(numbers in brackets represent increases in expenditures):

(\$ in millions)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Total Restructuring/Reinvestment					
Facility Costs	(4.5)	(4.0)	(4.1)	(18.4)	(1.1)
Fleet Update - Repairs & Maintenance	(0.6)	(1.9)	(2.0)	(2.0)	(2.1)
Technology/Other	(1.3)	(0.2)	(0.2)	(0.2)	(0.2)
Total	(6.3)	(6.1)	(6.2)	(20.6)	(3.4)

- **Initiatives To Be Undertaken to Achieve Objectives.**

- Substantial investments in assets and new information technology are required to improve delivery of services.
- Evaluate and implement revenue enhancements to improve and streamline billing and collections processes, increase charges and fees and enhance grant identification and management.
- Take steps to improve operating efficiency and cost structure, including:
 - Implementing flexible labor work rules and employment terms;
 - Evaluating opportunities to more fully integrate fire-fighting and EMS;
 - Civilianizing administrative functions;
 - Transferring apparatus maintenance to General Services Department in an effort to more efficiently manage the fleet; and
 - Increasing the use of technology to drive efficiencies.
 - Seek assistance from independent experts to assist with designing and vetting DFD-specific restructuring plan.
 - Evaluate opportunities to share administrative costs within public safety structure.
 - Evaluate opportunities to combine fire and/or EMS services with other local municipalities.

Blight Removal.

- **Key Issues and Deficiencies to Be Addressed.**

- Large numbers of abandoned and blighted structures.
- Contribution of blight to high fire and crime levels and depressed property values.
- High cost of demolition of blighted structures.
- Cumbersome statutes and regulations governing blight removal efforts.

- **Measurable Objectives.**

- Stabilize and revitalize neighborhoods and communities within the City and improve quality of life.
- Decrease incidence of crime and fire in blighted buildings and areas.
- Increase property values and property taxes.
- Improvement in appearance of City.
- Reduce migration from City.

- **Expected impact on restructuring/reinvestment expenses in FY 2014 and going forward**

- Costs associated with blight removal include demolition, brush removal, recycling centers, disposal of debris, logistics, administration, and legal costs associated with clearing title and preserving the City's right to reimbursement of costs.

(\$ in millions)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Total Blight Costs	50.0	50.0	100.0	100.0	100.0

- **Initiatives to Be Undertaken to Achieve Objectives.**

- The City has begun and will continue to remediate blight within the City by partnering with public and private initiatives and utilizing a mix of Federal, State, municipal and private (commercial and non-profit) resources.
- The City's will participate in broader State initiatives coordinated by the Michigan State Housing Development Authority (MSHDA) and focus on collaboration across public entities holding underutilized lands; effective and appropriate blight removal policies and regulation; efficient and safe demolition and clearing activities from publicly owned properties; and returning properties to the private tax base to create value.
- To the extent that resources become available to remediate blight within the City, the City may be able to accelerate its residential, commercial and industrial blight remediation, or reallocate budgeted resources to other initiatives or spending items, including supporting its liabilities.
- Pursue grant funds to pay for the demolition of abandoned structures.
- Review and, where appropriate, revise ordinances and regulations to speed and reduce the cost of the demolition process.
- Support construction of recycling centers for local demolition materials via volume or other commitments.
- Consolidate and integrate Police and Fire activity data to use strategic demolition activities as a means to reduce crime and arson.

Electrical Transmission Grid.

- **Key Issues and Deficiencies to Be Addressed.**
 - Inadequate maintenance and deterioration of grid.
 - Need to de-commission segments of the grid, sub-stations and the Mistersky power plant.
 - Inefficient billing and collection efforts.
- **Measurable Objectives.**
 - Improvement in performance of grid and services to citizens.
 - Decommissioning of grid, sub-stations and power plant.
 - Increased revenue collection from customers.
- **Initiatives to Be Undertaken to Achieve Objectives.**
 - The City is considering alternatives to exit the electricity business.
 - An alternative being considered consists of migrating customers to an alternative provider over a five- to seven-year period with the alternative provider providing reimbursement to the City to maintain the distribution grid on the provider's behalf.
 - Five- to seven-year build-out:
 - i. Year 1 — meters changed to alternative provider's system and customers transitioned. PLD continues to operate and maintain the system during the transition period.
 - ii. Years 2-7 — customers migrate to alternative provider's grid on a substation by substation basis as the PLD operation is simultaneously scaled down.
 - Customers (including City) would pay alternative provider's rate book (which could be higher than the current rate charged/incurred by City).
 - PLD workers and/or third party contractors will operate and maintain City grid until build-out is finished (cost reimbursed by alternative provider subject to negotiation). Requires regulatory approval.

Street lights

- **Key Issues and Deficiencies to Be Addressed.**
 - High percentage of non-functioning streetlights.
 - Working lights not adequately serving current population footprint.
 - Dated infrastructure requiring upgrade and modernization.
- **Measurable Objectives.**
 - Implementation current population-based streetlight footprint.
 - Outsource operations and maintenance to the newly-created Public Lighting Authority structure (in consultation with the City).
 - Improved service to citizens and better cost management.
- **Initiatives to Be Undertaken to Achieve Objectives.**
 - Short term: address outages systematically in an effort to restore light and facilitate the transition of streetlights to the new structure.
 - Long term: newly-established authority to upgrade, operate and maintain streetlights, resulting in an approximately 46,000-55,000 light footprint servicing today's Detroit.
 - Three year build-out (1/3 of lights each year).
 - Alternative provider will potentially manage project for Authority (subject to competitive bid).
 - Authority or City will negotiate special rate for operations and maintenance/electricity of lights as no regulated rate exists for operations and maintenance of municipal-owned system.
- **Expected impact on restructuring/reinvestment expenses in FY 2014 and going forward.**
 - Under the proposed structure, the PLD's net tax cost is expected to be approximately \$12 million annually.
 - The \$12.5 million of utility users' tax will be directed to the Authority as per statute. The Authority may seek to issue debt of \$160 million secured by tax receipts to fund its activities.

Information Systems Upgrades

- Investment by the City in upgraded information technology is an indispensable aspect of the restructuring and reinvestment proposals and is critical to achieving almost all of the objectives described herein.
- **Key Issues and Deficiencies to Be Addressed.**
 - Old and outdated technology assets and applications.
 - Lack of integration of IT infrastructure between departments and functions.
 - Deficiencies in IT infrastructure present throughout City government.
- **Measurable Objectives.**
 - Enhance City-wide IT infrastructure to assist with effectuating change and augmenting workflows.
 - Increase integration between finance and operational systems City-wide resulting in lower labor costs and improved efficiencies.
 - Improve financial and operational reporting, resulting in:
 - Ability to monitor and improve operating performance.
 - More timely and accurate financial reporting to interested parties.
 - Improve revenue and collection efforts as a result of streamlined processes.
- **Initiatives to Be Undertaken to Achieve Objectives.**
 - **DPD, DFD & EMS.**
 - DPD has identified a fully integrated public safety solution (SunGard/OSSI) that can provide DPD, DFD and EMS (all of which support the solution) with integrated computer aided dispatch, records management and reporting.
 - Regional solution that integrates the City of Detroit with Wayne County, Detroit Public Schools, Wayne State University, Down River communities, etc.
 - Costs to implement Public Safety IT solution: approximately \$5 million.
 - An integrated product will allow for much-needed data exchanges between agencies and will improve efficiency and operations.

- **Payroll System Upgrade.**

- In November 2012, the City contracted to transition its payroll (and benefits and human resources) operations to ADP Payroll Services. The transition is expected to be complete in March 2014.
- Benefits of payroll system upgrade:
 - Approximately \$10 million annual reduction in payroll processing costs.
 - Approximately \$10 million annual reduction to payroll inflation from errors.
 - Improved reporting, efficiency and accuracy.
 - Approximately 50+ uniformed policemen to be re-deployed.

- **Overhaul and Centralize Grant Management System.**

- City receives approximately \$293 million in grants related to its services each year.
- City may invest in an overhaul of the administration of its grant management system, including centralizing oversight and support and standardizing information technology.
- City may appoint an auditor general to screen for potential mismanagement of grant funding.
- Benefits:
 - Implementing a centralized and standardized grant IT system is expected to result in the City receiving more grant funds with better compliance at a lower cost.
 - Ability to comprehensively track Citywide grant funds and status.
 - Citywide accountability structure to prevent disallowed costs and improve service delivery.
 - Improved relations with federal, state and private funders.
 - Ability to discover and apply for more grant opportunities.

- Costs:
 - Training modules to migrate system (cost TBD).
 - Implementation of grants IT module and related training.
 - Potential operating costs for grants management operating unit are approximately \$700,000.
- **Assessor's Office and Property Tax Division.**
 - Recommendations made by consultant in 2011 have not been followed, even though implementation promises to increase efficiency of collection process.
 - A consultant is currently engaged to identify issues and make recommendations at Assessor's Office Division. The consultant's Property Tax Transformation Project engagement includes a review and assessment of operations and related recommendations, assistance with the Property Tax software upgrade and assistance with the preparation of the Summer Tax Bill for mail and distribution on July 1, 2013.
 - Preliminary recommendations to improve the Assessor's Office functionality include additional resources to create a more robust valuation function, additional employee training and updated technology to increase efficiency and improve customer service.
- **Integrate Budgeting, Accounting & Financial Reporting Systems.**
 - Integration of Accounting, Budget Development and Financial Reporting systems into a single process would provide for improved reporting, efficiency, accuracy and accountability.
 - Costs to implement such an integration initiative are not currently known.

- **Permitting.**
 - Implement “Enterprise Resource Planning” system to replace the two systems currently being utilized.
 - Total costs to implement Enterprise Resource Planning system: approximately \$3 million.
- **36th District Court.**
 - State legislature is currently evaluating ability of all courts to go paperless; if accepted, paperless solution would provide many advantages to 36th District Court.
 - Transition to paperless court requires substantial investments in assets and new information technology.
 - Perform process mapping to determine workflow improvements and implement full use of JIS.
- **Income Tax Division.**
 - Update the current Income Tax System, which will result in (i) increased revenues for the City through improved revenue tax processing, tax compliance and collection; and (ii) improved reporting, efficiency and accuracy.
 - A new tax system that allows for automated processing and e-filing capability will free up City resources to focus on compliance.

Detroit Department of Transportation.

- **Key Issues and Deficiencies to Be Addressed.**

- Grant dollars not maximized.
- Poor maintenance.
- Relatively low rate for fares.
- High employee absenteeism.

- **Measurable Objectives.**

- Reduce general fund subsidy through increased revenue and reduced costs.
- Determine best strategic direction for DDOT.

- **Initiatives to Be Undertaken to Achieve Objectives**

- A consultant is currently identifying short and long-term efficiencies. Preliminary identified efficiencies include:
 - Grants for preventative maintenance (Summer 2013).
 - Increased fares (long-term potential).
 - Less overtime in vehicle maintenance (long-term potential).
 - Less bus operator overtime (long-term potential).
- City could transition DDOT to new Regional Transit Authority (“RTA”) at some point in the future.
 - No change in DDOT’s status is currently included in restructuring plan or budget; foregoing discussion contemplates restructuring of DDOT as a continuing Department within the City.
 - DDOT could be merged with SMART or another private carrier prior to potential transition into RTA.
 - Outsourcing certain portions or all of DDOT operations:
 - Would likely require certain regulatory approvals.
 - City of Detroit would have to subsidize third party operations, which subsidy may be less than current general fund subsidy.

- Outsourcing could assist in creating appropriate incentive structure to discourage status quo operations.
 - Some City employees would still be required to oversee transferred bus operations.
 - Allow for easier potential transition to RTA.
 - Limited labor and financial resources could be deployed to other city core services.
 - Bus service could improve for residents (e.g., on-time; safety) at lower cost to the City.
- Expected impact on restructuring/reinvestment expenses in FY 2014 and going forward – not including outsourcing of operations or transition to a regional authority (*numbers in brackets represent increases in expenditures*):

(\$ in millions)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Total Restructuring/Reinvestment					
Facility Costs	(6.3)	(8.0)	(1.5)	(2.0)	
Fleet Update - Repairs & Maintenance	(1.0)	(1.0)	(1.0)		
Technology/Other	(3.5)				
Total	(10.8)	(9.0)	(2.5)	(2.0)	–

Leases and Contracts.

- The City’s restructuring will entail a comprehensive review of the City’s contracts (vendor; employee; construction; financial) and recommendations regarding modification/termination in various restructuring contexts.
 - The City will review its key leases and contracts to determine if such agreements are the most cost-effective approach to managing Detroit’s infrastructure
 - City currently working to assemble database of unexpired contracts and leases.
 - City to analyze and overhaul procurement process to ensure ability to acquire goods and services necessary to restructuring initiatives.

Labor Costs and Terms and Conditions.

As part of the City's overall financial restructuring, reductions in costs associated with represented and unrepresented workers will be necessary. The adoption of modifications to wages and work rules similar to those imposed pursuant to the CETs will serve as a baseline position for the City in its union negotiations (although the City may seek (i) cuts/ changes beyond those included in the CETs and (ii) different language that that used in the CETs). Key elements of the strategy for making these modifications include the following:

- **Collective Bargaining Agreements.**

- Significant modifications to CBAs and labor-related obligations will be necessary to optimize staffing and reduce employment costs.
- The City currently does not have agreements with the majority of labor unions representing its employees. Instead, most employees are working under the CETs. As part of its restructuring effort, the City will work cooperatively with organized labor to improve existing relationships and, where possible, reach agreements to implement changes in terms and conditions of employment that mirror the changes included in the CETs.
- The City will attempt to structure all new labor agreements using a common form of agreement that will promote ease of administration and enable a known, measurable basis for cost evaluation and comparison.
- If it is not possible to reach agreements with labor representatives to restructure employment liabilities, the City will retain the authority to unilaterally implement restructuring initiatives pursuant to the emergency manager powers established under PA 436.
- Pursuant to Section 13(c) of the Federal Transit Act, the City is required to engage in collective bargaining with labor unions representing transportation workers and has certain limitations in terms of its rights to make unilateral changes to employment terms. The City will work within the framework established by the FTA to achieve any labor cost reductions for these workers through collective bargaining.

- **Salaries and Wages.**

- The City must reduce employment costs for both represented and unrepresented workers as part of its restructuring. However, the potential for reductions in wages and salaries must be balanced against likely reductions in benefits and the City's need to attract and retain skilled workers.
- Both represented and unrepresented City workers have already been subjected to salary and wage reductions; most City workers covered by CETs already have taken 5-10% salary and/or wage reductions. As a result, the City will need to carefully evaluate the utility of any additional reductions.
- Reductions in non-wage compensation, overtime and premium payments may be achievable.
- Other areas where the City is evaluating potential cost reductions include: (i) attendance policies; (ii) leaves of absence; (iii) vacation days; (iv) holidays; (v) union reimbursement of City costs associated with paid union time and dues check off; (vi) tuition reimbursement and other loan programs; (vii) overtime; (viii) shift scheduling; (ix) shift premiums; (x) creation of new positions (and establishment of wage scale for new positions); and (xi) temporary assignments.

- **Operational Efficiencies/Work Rules.**

- Significant labor cost reductions may be possible by restructuring jobs and streamlining work rules for both represented and unrepresented workers using the work rule changes implemented pursuant to the CETs as a template.
- The City will work with labor representatives to make these improvements, including restructuring the Police Department, Fire Department, and other groups to improve operating efficiency and effectiveness.
- Dispute resolution procedures under the City's CBAs will be simplified and expedited to achieve predictability for both sides. Further, the City will attempt to eliminate undesirable practices and assure that these practices cannot be revived through dispute resolution procedures.
- The City will attempt to restructure CBAs so that employment decisions including promotions, transfers and assignments will be based upon the quality of the employee (*e.g.*, performance, attendance, experience, skill, ability, etc.) rather than by seniority.

- The City will attempt to (i) reduce lateral transfers by limiting bumping rights in its CBAs to job classifications that an employee currently holds or held within the prior year and (ii) increase flexibility to assign employees to work out of classification.
- Joint labor-management committees, if any, will be patterned in structure and role after the committees included in the State's CBAs.
- **Staffing Levels and Headcount.**
 - Significant labor cost savings may be achievable by rationalizing staffing levels and reducing employee headcounts. Consolidation of departments and elimination of redundant functions will be implemented where service improvements or cost savings can be achieved.
 - If necessary, the City will retain the right to reduce salary and wage costs by implementing unpaid furlough days.
 - The City will work with labor representatives to minimize the effects of any headcount reductions and enter into effects bargaining agreements in connection with headcount reductions when appropriate.
- **Outsourcing.**
 - Where cost savings or service improvements can be achieved, the City will explore potential outsourcing of functions.
 - The City will provide unions with advance notice of competitive bids and allow the unions to bid on the work.
 - The City will work with labor representatives to minimize the effects of any headcount reductions resulting from outsourcing initiatives and enter into effects bargaining agreements when appropriate.

REVENUE ADJUSTMENTS AND TAX REFORM

EXPANDING THE TAX BASE.

- The personal income tax base can be increased through economic growth, for example, more people working, higher wages, or both.
- Expansion of the property tax base results from appreciation in the value of existing real estate, adding newly constructed buildings to the tax rolls, or expanding the universe of property included in the base (e.g., parcels that are currently exempt, such as churches and public schools).

RATIONALIZING NOMINAL TAX RATES.

- The City's already high tax rates are widely believed to have contributed to its population loss and economic decline. For a number of reasons, higher tax rates could have a negative effect on revenue.
- The City is currently levying taxes at or near the statutory maximums.
- The City believes that lowering selected tax rates – primarily income and property tax rates – to levels that are at least competitive with surrounding jurisdictions is critical to reversing the City's crippling population and job losses.
- Although tax rate reform will likely lead to decreased revenue in the short term (which decreases may be partially offset by improved collection efforts), the City anticipates that the long term benefits promise to render such reform at least revenue neutral over a reasonable time frame.
- The City's analysis of necessary tax reforms is ongoing.

INCREASING COLLECTION RATES.

- The City is implementing and will continue to implement initiatives designed to (i) improve collection of past due taxes and (ii) enhance collection efforts on a prospective basis.
- **Income Tax Collection Initiatives:**
 - **Efforts to Improve Collection of Past Due Taxes**
 - Compuware has identified historical non-filers with outstanding tax obligations totaling approximately \$250 million. The City is pursuing the collection of these taxes.
 - The City loses approximately \$30 million to \$45 million of income tax revenue annually (approximately 15% to 20% of the total tax collected) from reverse commuter non-filers.
 - As of March 2013, approximately 50,000 letters were sent to individual and business nonfilers. Goal is to send 100,000 letters total by the end of FY 2013.
 - As of January 31, 2013, the City had received approximately \$870,000 in collections as a result of letters sent to non-filers.
 - Income Tax Amnesty Program: between January 22, 2013 and March 2, 2013, parties with outstanding income tax balances for tax years 2011 and prior could pay their back taxes without penalty.
 - Expected to result in \$3 million in collections and \$1.5 million in payment agreements as of March 2013.
 - **Efforts to Enhance Collection Going Forward**
 - Tax Compliance & Enforcement Unit created in October 2012.
 - Business on-line registration initiative to electronically capture W-2 data from employers launched in January 2013.
 - City considering purchasing a new tax system and moving to a common form.
 - Purchase of new income tax system — \$2 million to \$3 million one-time cost — would improve reporting, efficiency and accuracy.

- 19 of 22 cities in Michigan that collect taxes currently are using the “common form.” Moving to the common form could result in a potentially smoother transition to a new income tax system, although the cost of such a move presently is unknown.
- City also intends to pass legislation to require withholding of City income taxes for reverse commuters.

- **Property Tax Collection Initiatives:**

- Only 53% of City property owners paid their 2011 property taxes. Approximately \$246.5 million in taxes and fees went uncollected for 2011, of which \$131 million was due to the City.
- Treasury Department received recommendations for process improvements from an outside consultant and the City’s own audit department in 2011.
- Subsequently, the City engaged a consultant to conduct a four-week *pro bono* review of the City’s property tax process. The consultant recommended that the City create an actionable work place using existing recommendations supplemented with the consultant’s recommendations.
- As described above, in December 2012, the City engaged a different consultant to implement improvements in the Property Tax and Assessors Offices.

- **Permitting and Licensing Collection Initiatives:**

- **Efforts to Collect on Past Due Invoices**

- City is developing a structured collection effort for the \$50 million outstanding accounts receivable owed to the Buildings, Safety Engineering and Environmental Department (BSEED).
 - City has identified, and is seeking payment of, approximately \$8 million due from Wayne County for past due bills for permits and licenses (among other similar fees).
 - Updates to information technology systems (discussed earlier) should alleviate bottlenecks in invoicing and collections for permitting and licensing.

- **Efforts to Improve Going Forward**

- The goal is to increase the revenues derived from permits and licenses issued by the City.
 - City ceased waiving permit fees in March 2012.
 - City is developing recommendations for action, including a possible survey of businesses operating in the City and their outstanding permit and license requirements.
 - Currently, only 30% of businesses operating in the City have valid licenses. As of July 26, 2012, approximately 2,000 businesses were identified as being without a proper license.

REALIZATION OF VALUE OF ASSETS

DETROIT WATER AND SEWERAGE DEPARTMENT.

The form of transaction described herein is based upon the form of transaction contemplated in the Root Cause Committee report. Any transaction would be contingent upon the City and relevant third parties reaching agreement on many matters, including, but not limited to, governance, amounts to be paid to the City, and the form and terms and conditions of such transaction. Thus, all of the terms and conditions of the transaction described below may change and it is possible that the current structure will not change.

Creation of New Metropolitan Area Water and Sewer Authority. The City may form an authority (the Metropolitan Area Water and Sewer Authority, or “MAWSA”) to conduct the operations currently conducted by the Detroit Water and Sewerage Department (“DWSD”).

- MAWSA would operate as a standalone public authority and, depending on the form of any transaction, may be the employer of the employees engaged in operating the water/sewer systems who are employed by DWSD as of the effective date of any DWSD Transaction (defined below).
- MAWSA would be governed by a Board of Commissioners. The Mayor would have the authority to appoint four of the Board’s members in accordance with the provisions of the February 2011 stipulated order entered in the EPA Litigation (the “February Order”), except that one of the four mayoral appointments would be made from a list of three names presented by the Detroit City Council. The other three Board members would be appointed as set forth in the February Order. The bylaws of MAWSA would include provisions to allow major customers to appoint additional Board members upon a super-majority vote of MAWSA’s Board.
- MAWSA would have all of the powers of a public body corporate in Michigan including, but not limited to, the power to:
 - Hold property in its own name;
 - Contract in its own name;
 - Collect water and sewer fees;
 - Issue taxable and tax exempt revenue bonds or incur other indebtedness;

- Apply for and receive loans from local, private, State and/or Federal sources including SRF loans;
 - Sue and be sued in its own name;
 - Subject to applicable approvals, apply for NPDES and any and all other permits required to operate the water and sewer systems;
 - Subject to applicable approvals, if any, implement the powers delegated by prior Court orders; and
 - Act on its own with respect to local ordinances and regulations that impact MAWSA operations (*i.e.*, downspout disconnects, etc.).
- All other powers granted or reserved to the City, the Mayor or the City Council with respect to DWSD under the State constitution, State statutes, the City's Charter (as it may be revised as part of the City's comprehensive restructuring) or Court orders that are not expressly continued would be eliminated for as long as MAWSA continues to operate.
 - The Detroit City Council would have the authority to appoint each year an individual to serve as a customer advocate for Detroit retail customers. The advocate's compensation would be set by the director of MAWSA or MAWSA's Board of Commissioners in accordance with MAWSA's procurement policy.

Benefits and Legacy Liability Treatment (*applicable where MAWSA is the employer of persons operating the water and sewer system*).

- From and after the effective date of the City's comprehensive restructuring plan, for new hires and current employees, MAWSA would establish and serve as its own plan sponsor and administrator with respect to the establishment of a new, separate pension or retirement plan. The new pension or retirement arrangement would govern the future pension or retirement rights of current DWSD employees and the pension or retirement rights of future MAWSA employees, consistent with applicable future CBAs and/or other terms and conditions of employment.
- From and after the effective date of the City's comprehensive restructuring plan, for new hires and current employees, MAWSA would determine whether to provide healthcare to future retirees, and at what level.

- From and after the effective date of the City’s comprehensive restructuring plan, current DWSD retirees and beneficiaries who have vested benefits in the City’s General Retirement System would remain in GRS and receive the same treatment afforded to all other retirees in the GRS as part of the City’s comprehensive restructuring plan. Current DWSD active employees who have accrued vested pensions in GRS would, as to those accrued pensions, receive the same treatment afforded to all other active participants in the GRS as part of the City’s comprehensive restructuring plan. GRS would continue to be liable for pension benefits accrued as of the date of the effective date of the City’s comprehensive restructuring plan, consistent with that restructuring plan.
- From and after the effective date of the City’s comprehensive restructuring plan, current DWSD retirees and beneficiaries who are receiving, or entitled to receive in the future, retiree healthcare benefits from the City would receive the treatment afforded to all other similarly-situated participants as part of the City’s comprehensive restructuring plan. Current DWSD employees who are entitled to receive in the future retiree healthcare benefits from the City would no longer be entitled to such healthcare as of the Effective Date of the comprehensive restructuring plan, and would receive whatever retiree healthcare program is established by MAWSA from and after the effective date of the City’s comprehensive restructuring plan.
- As indicated above, the City would retain DWSD’s accrued pension liabilities and retiree healthcare liabilities as of the effective date of the City’s restructuring plan, as both will be modified by such plan (collectively with DWSD’s allocable portion of the COP payments, “*DWSD Legacy Benefits Obligations*”). As consideration for being relieved of those obligations, from and after the effective date of the City’s comprehensive restructuring plan, MAWSA would include an amount attributable to the value of such relief from the DWSD Legacy Benefits Obligations as part of the Transaction Payment (as defined below).

Potential Asset Transaction.

- The City would either permit MAWSA to operate the DWSD assets through a concession agreement or lease the assets of DWSD to MAWSA pursuant to a lease agreement (either form of agreement for purposes of this document will be referred to as the “*City/MAWSA Agreement*”). If a transaction were effected pursuant to a lease agreement rather than a concession agreement, the City/MAWSA Agreement would be structured as a capital lease, and the initial term of the City/MAWSA Agreement would (i) be tied to the length of MAWSA’s bonded indebtedness (but would not exceed 40 years) and (ii) automatically be extended as new bonds are issued by MAWSA as long as MAWSA remains in compliance with the terms of the City/MAWSA Agreement. To the extent that additional value may be obtained for the City, MAWSA could accept the sewer or water assets of other governmental entities. All of the foregoing is collectively referred to herein as the “*DWSD Transaction*.”

- In exchange for the concession for/lease of the DWSD assets in favor of MAWSA and for the relief from DWSD Legacy Benefits Obligations, MAWSA would pay to the City a monthly PILOT, lease or other form of payment (the “*Transaction Payment*”).
- The Transaction Payment would be paid to the City monthly and would be an amount equal to the sum of (i) an amount calculated on either the basis of the value of the DWSD assets or a percentage of water and sewer rates plus (ii) an amount calculated by reference to the value of the relief from DWSD Legacy Benefits Obligations plus (iii) any other amount based on relevant factors as agreed to by the parties in connection with the negotiation of the DWSD Transaction.
- The City would have customary market remedies in the event that MAWSA fails to make payment or otherwise defaults under the City/MAWSA Agreement.
- The City’s use of the new payment stream from the Transaction Payment would be unrestricted, and the City could encumber or otherwise monetize all or a portion of that revenue stream.
- The effective date of the DWSD Transaction would be the effective date of the City’s comprehensive restructuring plan.
- On the effective date of the DWSD Transaction, the existing bond debt of the DWSD would either be refinanced and redeemed or holders of the existing bond debt would receive new or restructured tax-exempt bonds. See Section IX (Restructuring Proposal) *infra*.

COLEMAN A. YOUNG AIRPORT.

- Coleman A. Young International Airport is a two-runway general aviation airport located within and operated by the City. It includes approximately 263 acres.
- The airport has not offered commercial passenger service since 2000 (runways are too short to serve standard economic carrier traffic); approximately 225 corporate and private flights originate from, or terminate at, the airport daily.
- The airport’s 2012-13 annual budget was \$275,000.

- In November 2012, a consultant prepared a 10-year capital improvement program for the airport which included several rehabilitation plans, ranging from approximately \$55 million (for upgrades to facilities other than runways) to \$273 million (for a rehabilitation including a replacement runway funded in part by federal grants).
- Revitalization of the airport is a long-term project that will be addressed at a later date. The City will continue to subsidize operations as closing of airport would terminate certain federal subsidies and require the repayment of certain FAA grant monies previously received.

DETROIT-WINDSOR TUNNEL.

- The 83-year-old Detroit-Windsor Tunnel is an automotive tunnel (*i.e.*, cars only; no trucks) connecting Detroit and Windsor, Ontario. Approximately 2 million vehicles pass through the tunnel annually.
- The City of Detroit owns the U.S. portion of the tunnel; the City of Windsor owns the portion located in Canada.
- Detroit Windsor Tunnel LLC leases the City's portion of the tunnel for an annual rental payment equal to 20% of the average annual revenue derived from the operations of the Detroit side of the tunnel over the most recent five years, which recently has been less than \$1 million per year. Operating revenue for the Detroit side of the tunnel is less than \$5 million per year. The lease runs through 2020.

BELLE ISLE PARK.

- The City owns Belle Isle Park, a 982-acre park on an island in the Detroit River featuring a museum, a conservatory, golf courses and other attractions. The Detroit Recreation Department manages Belle Isle Park at a cost of approximately \$6 million per year in maintenance and operating expenses.
- In January 2013, Governor Snyder proposed that the City lease Belle Isle Park to the State of Michigan, turning it into a state park and charging an admission fee to cover maintenance costs. Mayor Bing supported the proposal, but the offer was rescinded after the Detroit City Council failed to vote on the proposal.
- The City intends to enter into lease transaction with State on generally the same terms as the State's prior proposal.

DETROIT INSTITUTE OF ARTS.

- As has been widely reported, representatives of the Emergency Manager met with representatives of the nonprofit corporation (“*DIA Corp.*”) that currently operates the Detroit Institute of Arts to discuss the art collection exhibited there.
- It has also been reported that *DIA Corp.* contends that the collection is held by a public trust and cannot be used for any purpose other than exhibition or to maintain and enhance the collection itself.
- Further dialogue is anticipated.

CITY OWNED LAND.

- An estimated 22 square miles of land within City limits is government-owned, including parcels owned by the City, Wayne County and the State of Michigan. The vast majority of this property has limited current commercial value.
- The City will continue to participate in broader initiatives consistent with the Consent Agreement, focusing on collaboration across public and private entities, blight removal and returning properties to the private tax base to create value.

PARKING OPERATIONS.

Parking Garages/Lots.

- The City’s Municipal Parking Department (“MPD”) manages nine parking garages containing a total of 8,688 spaces, and two public parking lots together containing 1,240 spaces.
- The City owns certain of these parking facilities; others are owned by the Detroit Building Authority.

Parking Meters.

- MPD also operates 3,404 on-street metered parking spaces; tickets collected through a private vendor.

- MPD's projected revenue for 2012-13 is \$12,900,314. Expenses are projected to be approximately \$19 million (with the General Fund's portion being approximately \$6 million).
- The City intends to market its parking related assets to private operators through a sale, long term lease or concession arrangements (and shutter the related departments) and use any proceeds that may be received to pay down \$10 million in related special revenue debt.
- Transaction involving parking assets could potentially be consummated within six months of commencement of marketing process.

JOE LOUIS ARENA.

- Joe Louis Arena is an indoor arena located in downtown Detroit, Michigan and is the home to the Detroit Red Wings of the National Hockey League. Completed in 1979, the 20,058 seat arena is Detroit's largest indoor venue and regularly hosts professional sports, college hockey, concerts, ice shows, circuses and other entertainment.
- It has been reported that the Illitch Holdings, owner of the Detroit Red Wings, is looking to build a new downtown arena for the team.
- The City is evaluating alternatives for Joe Louis Arena.

TEN-YEAR PROJECTIONS

(General Fund Only)

(\$ in millions)

	PRELIMINARY FORECAST										10-YEAR TOTAL
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	
Revenues											
Municipal income tax	\$243.4	\$247.3	\$249.0	\$250.7	\$252.4	\$254.0	\$255.6	\$257.8	\$260.9	\$264.0	\$2,535.0
State revenue sharing	184.3	186.1	187.9	189.5	191.2	193.0	194.8	188.3	190.0	191.7	1,896.4
Wagering taxes	170.0	168.3	170.0	171.7	173.4	175.1	176.9	178.7	180.4	182.2	1,746.7
Sales and charges for services	124.8	119.4	118.2	117.0	115.7	114.5	113.4	112.3	113.2	114.2	1,162.6
Property taxes	118.4	110.2	105.7	100.8	100.5	99.6	99.7	100.2	100.8	102.1	1,038.0
Utility users' and other taxes	47.2	40.9	40.9	41.3	41.7	42.1	42.5	43.0	43.4	43.8	426.8
Other revenue	75.6	55.8	55.8	55.9	55.9	56.0	56.0	56.0	56.1	56.1	579.2
General Fund reimbursements	30.3	30.3	30.3	30.3	30.3	30.3	30.3	30.3	30.3	30.3	302.6
Transfers in (UTGO millage & non-General Fund POCs)	89.0	87.9	83.8	84.4	83.9	81.2	80.6	80.0	65.0	61.2	797.1
Total revenues	1,082.8	1,046.2	1,041.5	1,041.4	1,045.0	1,045.7	1,049.8	1,046.3	1,040.1	1,045.7	10,484.5
Expenditures											
Salaries/overtime/fringe	(341.5)	(341.9)	(346.4)	(352.5)	(358.8)	(365.1)	(371.4)	(378.4)	(386.0)	(393.7)	(3,635.7)
Health benefits - active	(51.2)	(54.0)	(57.4)	(61.0)	(64.5)	(67.9)	(71.2)	(74.6)	(78.4)	(82.3)	(662.5)
Other operating expenses	(292.9)	(288.2)	(295.9)	(301.5)	(309.7)	(313.5)	(320.0)	(326.5)	(335.3)	(339.7)	(3,123.2)
Operating expenditures	(685.7)	(684.1)	(699.7)	(715.0)	(733.1)	(746.5)	(762.5)	(779.5)	(799.6)	(815.7)	(7,421.5)
Net operating surplus	397.2	362.0	341.8	326.3	311.9	299.2	287.2	266.8	240.5	230.0	3,063.0

Ten-Year Projections – Continued

(\$ in millions)	PRELIMINARY FORECAST										10-YEAR TOTAL
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	
Debt service (LTGO & UTGO)	(135.9)	(124.4)	(119.4)	(96.1)	(95.0)	(92.5)	(91.8)	(91.5)	(74.8)	(70.9)	(992.4)
POC - principal and interest	(61.0)	(63.2)	(65.4)	(67.6)	(69.9)	(68.1)	(69.0)	(69.9)	(70.7)	(71.4)	(676.3)
POC swaps	(50.6)	(50.6)	(50.6)	(50.6)	(50.6)	(50.6)	(49.8)	(48.9)	(48.1)	(47.4)	(498.0)
Pension contributions	(199.5)	(233.1)	(258.9)	(285.9)	(314.7)	(321.4)	(331.5)	(337.2)	(339.5)	(343.0)	(2,964.8)
Health benefits - retiree	(140.7)	(151.1)	(161.6)	(172.0)	(182.3)	(192.3)	(201.9)	(212.0)	(222.6)	(233.7)	(1,870.0)
Legacy expenditures	(587.6)	(622.4)	(655.9)	(672.3)	(712.6)	(725.0)	(744.0)	(759.5)	(755.8)	(766.4)	(7,001.5)
Deficit (excl. financing proceeds)	(190.5)	(260.4)	(314.1)	(346.0)	(400.7)	(425.8)	(456.8)	(492.6)	(515.3)	(536.4)	(3,938.5)
Financing proceeds	-	-	-	-	-	-	-	-	-	-	-
Total surplus (deficit)	\$(190.5)	\$(260.4)	\$(314.1)	\$(346.0)	\$(400.7)	\$(425.8)	\$(456.8)	\$(492.6)	\$(515.3)	\$(536.4)	\$(3,938.5)
Accumulated unrestricted General Fund deficit	(427.5)	(687.9)	(1,002.0)	(1,348.0)	(1,748.7)	(2,174.5)	(2,631.3)	(3,123.9)	(3,639.2)	(4,175.6)	
Reinvestment in the City											
Department revenue initiatives	\$22.9	\$22.1	\$24.4	\$24.2	\$24.5	\$24.7	\$25.0	\$25.3	\$25.6	\$25.9	\$244.6
Additional operating expenditures	(53.7)	(37.0)	(21.3)	(22.0)	(21.7)	(22.7)	(29.3)	(29.3)	(29.7)	(30.7)	(297.4)
Capital investments	(107.7)	(74.5)	(38.8)	(51.9)	(33.3)	(30.8)	(28.4)	(29.5)	(28.5)	(29.0)	(452.3)
Blight (excludes heavy commercial)	(50.0)	(50.0)	(100.0)	(100.0)	(100.0)	(100.0)	-	-	-	-	(500.0)
Total reinvestment in the City	(188.5)	(139.3)	(135.7)	(149.7)	(130.5)	(128.8)	(32.8)	(33.4)	(32.6)	(33.8)	(1,005.2)
Adjusted surplus (deficit)	\$(379.0)	\$(399.7)	\$(449.8)	\$(495.6)	\$(531.2)	\$(554.6)	\$(489.6)	\$(526.1)	\$(547.9)	\$(570.2)	\$(4,943.7)
Adj. accumulated unrestricted General Fund deficit	(615.9)	(1,015.6)	(1,465.4)	(1,961.0)	(2,492.2)	(3,046.8)	(3,536.4)	(4,062.5)	(4,610.4)	(5,180.6)	

ASSUMPTIONS IN TEN-YEAR PROJECTIONS

Revenues

- Municipal Income Tax.
 - Based on State employment, wage and corporate income tax growth estimates adjusted for Detroit specific trends; population estimates considered as well. Increases due to improved employment outlook. Income tax policy is under review and income tax rate could be reduced as a part of the final restructuring plan.
- State Revenue Sharing.
 - Increases due to anticipation of higher taxes collected/distributed by State; based on estimates provided by the State.
- Wagering Taxes.
 - Decreases through FY 2015 due to competition from Ohio casinos and recovers thereafter due to improved economic outlook.
- Sales and Charges for Services.
 - Primarily consists of court fees, public safety service charges, electrical and personal service fees. Declines primarily due to transition of Health and Wellness and Public Lighting Department Distribution business.
- Property Taxes.
 - Based on Michigan home sales, new construction and population data adjusted for Detroit specific trends. Decreases through FY 2017 due to declining values and collection rate with modest increases beginning FY 2021.
- Utility Users' & Other Taxes.
 - Decreases beginning FY 2014 due to the annual allocation of \$12.5 million to the Public Lighting Authority (half-year impact in FY 14). 1% annual increase beginning FY 2017 due to assumed increase in utility usage and inflation.

- Other revenue.
 - **Licenses/Permits/Inspection Charges.** Primarily consists of business licenses, street use permits and fire marshal and construction inspections charges. Based on recent trends. FY 2013 includes one-time permit and inspection revenues from utility providers.
 - **Revenue from Use/Sale Assets.** FY 2012 includes loss from sale of asset. FY 2014 includes proceeds from sale of Veteran's building.
 - **Parking/Court Fines & Other Revenue.** Primarily consists of traffic, criminal and parking fines. Based on recent trends.
 - **Grant Revenue.** Decreases in FY 2014 due to transition of Health and Wellness department and expiration of certain public safety grants.
 - **General Fund reimbursements.** Reflects reimbursements from other departments for expenses incurred by the General Fund. FY 2012 includes \$16 million one-time contribution from DDOT.
 - **UTGO Property Tax Millage.** Property tax millage for UTGO debt service. Revenues and associated expenses offset.
 - **COP Allocation (Governmental).** Transfer from general City, non General Fund for allocated COP debt service. Revenues and associated expenses offset.
 - **COP Allocation (Enterprise Funds (excl. DDOT)).** Transfer from enterprise funds for allocated COP debt service. Revenues and associated expenses offset.

Operating Expenditures

- Salaries & Wages.
 - Includes CET changes implemented in FY 2013 and continuing through the projection period. 10% wage reduction for uniformed employees beginning FY 2014 for contracts expiring FY 2013; 2% wage inflation assumed for all City employees beginning FY 2015. Headcount changes in projection period primarily due to PLD transaction and transition to ADP payroll and benefits administration services.
- Overtime.
 - Decreases due to wage cuts and FY 2013 run rates. Increases beginning FY 2015 due to wage inflation.
- Health Benefits (Actives).
 - Includes CET changes implemented in FY 2013 and continuing during the projection period. Average 6% inflation assumed annually for hospitalization costs.
- Other operating expenses
 - **Other Benefits.** Based on recent trends.
 - **Professional/Contractual Services.** Assumes higher costs in election years (FY 2014 and every four years thereafter).
 - **Materials/Supplies.** Decreases due to transition of PLD distribution business. 1% cost inflation assumed beginning in FY 2015.
 - **Utilities.** Based on recent trends with minimal changes with 1% cost inflation assumed beginning in FY 2015.
 - **Purchased Services.** Increases beginning in FY 2014 due to costs associated with payroll processing management and prisoner pre-arraignment functions. 1% cost inflation assumed beginning in FY 2015.
 - **Risk Management/Insurance.** Includes costs related to worker's compensation, litigation and other claims. 1% cost inflation assumed beginning in FY 2015.
 - **Maintenance Capital (current run rate).** Represents the General Fund payment for capital expenditures based on recent spend levels. 1% cost inflation assumed beginning in FY 2015.

- **Other Expenses.** Primarily includes printing, rental and other operating costs. 1.0% cost inflation assumed to certain costs beginning FY 2015.
- **Contributions to Non-Enterprise Funds.** Represents General Fund transfers to Municipal parking, the vehicle fund, Museum of African American History, etc. Increases beginning FY 2014 primarily due to contributions to operations to the Public Lighting Authority.
- **DDOT Subsidy.** Reflects the General Fund contribution to cover the DDOT deficit. Excludes DDOT related legacy expenditures shown below the line. Increases primarily due to personnel and operating cost inflation.
- **Grant-Related Expenses.** Decreases in FY 2014 due to transition of Health and Wellness Department. Increases primarily due to wage and operating cost inflation.

Legacy Expenditures

- Debt Service (UTGO & LTGO).
 - Reflects currently scheduled principal and interest payments.
- COPs (Principal, Interest & Swaps).
 - Reflects principal, interest and swap payments as currently scheduled.
- Pension.
 - Per preliminary actuarial analysis. Subject to further analysis. Starting in FY 2014, significant increases attributable to use of more realistic actuarial assumptions and use of closed, 15-year amortization period for PFRS and closed, 18-year period for GRS rather than current open 30-year amortization period.
- Retiree Health Benefits.
 - Includes impact of CET changes implemented in FY 2013 and continuing during the projection period. Average 6% inflation assumed annually for hospitalization costs.

Financing Proceeds.

- FY 2013 includes \$137 million in refunding bond proceeds.

Operational Restructuring Initiatives/Reinvestment in the City.

- Department revenues initiatives.
 - Reflects increases to fees, improved billing and collection efforts and collection of past due receivables.
- Additional Operating Expenditures.
 - Primarily reflects increases to headcount in order to improve and provide adequate level of City services. Potential efficiencies not reflected.
- Capital investments (Technology).
 - Reflects costs associated with information systems upgrades and maintenance.
- Capital investments (Capital Expenditures).
 - Primarily reflects City's capital improvement plan to invest in facilities and vehicles.
- Capital investments (Implementation Costs).
 - Primarily reflects non-recurring costs associated with implementing technology initiatives.
- Blight.
 - Reflects costs associated with demolition and clean-up efforts of residential and light commercial. Heavy commercial blight removal would require significant additional funding.

RESTRUCTURING SCENARIO.

(\$ in millions)

	PRELIMINARY FORECAST										10-YEAR TOTAL
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	
Total revenues	\$1,082.8	\$1,046.2	\$1,041.5	\$1,041.4	\$1,045.0	\$1,045.7	\$1,049.8	\$1,046.3	\$1,040.1	\$1,045.7	\$10,484.5
Department revenue initiatives	22.9	22.1	24.4	24.2	24.5	24.7	25.0	25.3	25.6	25.9	244.6
Operating expenditures	(685.7)	(684.1)	(699.7)	(715.0)	(733.1)	(746.5)	(762.5)	(779.5)	(799.6)	(815.7)	(7,421.5)
Additional operating expenditures	(53.7)	(37.0)	(21.3)	(22.0)	(21.7)	(22.7)	(29.3)	(29.3)	(29.7)	(30.7)	(297.4)
Net operating surplus	\$366.4	\$347.2	\$344.9	\$328.5	\$314.6	\$301.2	\$282.9	\$262.9	\$236.4	\$225.2	\$3,010.2
Reinvestment expenditures/adjustments											
Reorganization (Capital investments & Professional fees)	(167.0)	(111.7)	(38.8)	(51.9)	(33.3)	(30.8)	(28.4)	(29.5)	(28.5)	(29.0)	(548.8)
Blight (excludes heavy commercial)	(50.0)	(50.0)	(100.0)	(100.0)	(100.0)	(100.0)	-	-	-	-	(500.0)
DC Pension contribution (10% Police/Fire, 5% other)	(25.4)	(25.7)	(26.2)	(26.6)	(27.2)	(27.7)	(28.2)	(28.7)	(29.3)	(29.9)	(274.8)
POC reimbursements	(24.1)	(25.4)	(26.2)	(26.8)	(27.5)	(27.1)	(27.3)	(27.4)	(27.4)	(27.4)	(266.7)
PLD decommission	-	(25.0)	(25.0)	(25.0)	-	-	-	-	-	-	(75.0)
Increased tax revenues	7.4	12.2	16.4	23.8	28.3	36.0	42.0	48.5	56.3	63.8	334.5
Total restructuring	(259.1)	(225.6)	(199.8)	(206.6)	(159.6)	(149.6)	(42.0)	(37.1)	(29.0)	(22.6)	(1,330.9)
Funds available for legacy liabilities	107.3	121.6	145.2	122.0	155.0	151.6	240.9	225.7	207.4	202.6	1,679.3

Restructuring Scenario – Continued

(\$ in millions)

	PRELIMINARY FORECAST										10-YEAR TOTAL
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	
Payments to secured claims (subject to review/negotiation)											
LTGO - secured	(18.7)	(29.2)	(29.2)	(29.2)	(29.2)	(29.2)	(29.2)	(29.2)	(29.2)	(29.2)	(281.6)
UTGO - secured	(8.0)	(9.8)	(9.8)	(9.8)	(9.8)	(9.8)	(9.8)	(9.8)	(9.8)	(9.8)	(96.4)
POC swaps ¹	(50.6)	(50.6)	(50.6)	(50.6)	(50.6)	(50.6)	(49.8)	(48.9)	(48.1)	(47.4)	(498.0)
Notes/loans payable	-	-	-	-	-	-	-	-	-	-	-
Total payments to secured claims	(77.3)	(89.7)	(89.7)	(89.7)	(89.7)	(89.7)	(88.9)	(88.0)	(87.2)	(86.4)	(876.0)
Funds available for unsecured claims	\$30.0	\$31.9	\$55.5	\$32.3	\$65.4	\$62.0	\$152.1	\$137.7	\$120.2	\$116.2	\$803.3
Asset monetization / revenue opportunities	tdb	tdb	tdb	tdb	tdb	tdb	tdb	tdb	tdb	tdb	-
Funds available for unsecured claims w/opportunities	\$30.0	\$31.9	\$55.5	\$32.3	\$65.4	\$62.0	\$152.1	\$137.7	\$120.2	\$116.2	\$803.3

Estimated unsecured claims	
Unsecured debt	
LTGO - unsecured	\$161.0
UTGO - unsecured	369.1
POC principal balance	1,428.8
Notes/loans payable	33.6
Sub-total: Unsecured debt	1,992.5
Unsecured pension & OPEB	
OPEB liability	5,718.3
Pension unfunded liability (PFRS)	1,437.0
Pension unfunded liability (DGRS)	2,037.0
Sub-total: Pension & OPEB	9,192.3
Other unsecured items	
Other liabilities (FY 2012 CAFR)	264.6
Other potential claims	tdb
Sub-total: Other	264.6
Estimated total unsecured claims	\$11,449.4

Footnote:

(1) Assumes continued payments as scheduled. Treatment to be determined.

- Reorganization (capital investment and professional fees).
 - Consistent with above Technology, Capital Expenditures, and Implementation Costs.
- Blight.
 - Consistent with above.
- DC Pension contribution.
 - Preliminary estimates to be further refined by additional analysis. Assumes new DC plans with employer contributions equal to 10% of wages for uniformed employed and 5% of wages for non-uniform employed.
- POC reimbursements.
 - Represents reversal of revenue received from enterprise and other Non-General Fund agencies.
- PLD decommission.
 - Represents preliminary estimate of cost required to decommission existing substations and Mistersky Plant (to be further refined by additional analysis).
- Increased Tax Revenues.
 - Represents potential revenue opportunities primarily due to increased property values and employment conditions resulting from restructuring efforts.
- Payments on Secured Claims.
 - Includes the unaltered payment schedules of secured debt, COP related swaps and other notes payable. There are no scheduled payments on secured notes payable.

CONCLUSIONS BASED UPON PROJECTIONS.

- The City acknowledges that it must exert reasonable efforts to maximize recoveries for all creditors.
- As demonstrated by the 10-year projections, however, the City's expected revenues will fall significantly short of the levels required to fund the City's operations and fully satisfy its liabilities.
- Given the City's (i) substantial debt levels (LTGO; UTGO; COPs; Swaps), (ii) significant labor related liabilities and (iii) continuing operating expenses, shared sacrifice will be required from all stakeholders to achieve the City's dual (and complementary) goals of maximizing returns for its stakeholder constituencies while simultaneously establishing the framework for a healthy and growing Detroit moving forward.
- All of the City's stakeholders can benefit from a restructured and revitalized Detroit.

RESTRUCTURING PROPOSAL

SUMMARY OF TREATMENT OF DEBT.

Secured Debt.

DWSD Debt. The existing DWSD water and sewer bond debt may be divided into two classes, if applicable:

- **DWSD Class A Debt Claims.**
 - DWSD Class A Debt Claims shall consist of claims under or evidenced by certain debt that may be paid prior to the effective date of the City’s comprehensive restructuring plan without incurring a material premium or penalty.
 - On the effective date of the City’s comprehensive restructuring plan, accrued principal and interest for DWSD Class A Debt Claims accrued through the restructuring plan’s effective date will either (i) be repaid in full in cash or (ii) receive such treatment as may be agreed upon by the parties.
 - **Source of funds for repayment:** New longterm bond issuances with MAWSA as the issuer.
 - **New Series A Bond Principal:** An amount equal to the sum of the principal of the outstanding debt that was issued to redeem the DWSD Class A Debt Bonds plus interest thereon accrued through the restructuring plan effective date and fees incurred in connection with the new financings.
 - **New Series A Bond Collateral:** Lien on net revenues generated by MAWSA assets with the same priorities as the DWSD Class A Debt, but subordinate to the operating and maintenance costs of the system, including the Transaction Payment.
 - **New Series A Bond Interest Rate:** Prevailing market rate for similar long-term municipal bonds at the time of issuance.
 - **New Series A Bond Maturities:** The various series of new municipal bonds would have long-term maturities determined at the time of issuance on the basis of then-existing market conditions.

- **DWSD Class B Debt Claims.**

- DWSD Class B Debt Claims shall consist of all claims under or evidenced by each series of existing water or sewer bond debt (whether callable or not) that are not DWSD Class A Debt Claims.
 - On the effective date of the City's comprehensive restructuring plan, holders of DWSD Class B Debt Claims shall receive Series B Restructured Bonds or such treatment as may be agreed upon by the parties.
- **Series B Restructured Bond Terms:** Series B Restructured Bonds would be issued by MAWSA to holders of outstanding DWSD Class B Debt Claims.
 - **Series B Restructured Bond Principal:** For each series of Series B Restructured Bonds, an amount equal to the sum of the principal of the outstanding DWSD Class B Debt Bonds for which such Series B Restructured Bonds are to be exchanged plus interest thereon accrued through the restructuring plan Effective Date.
 - **Series B Restructured Bond Collateral:** Lien on net revenues generated by MAWSA assets in the same priorities as currently exist for the DWSD Class B Debt Bonds for which such Series B Restructured Bonds are to be exchanged, subordinate to the operating and maintenance costs of the system, including the Transaction Payment.
 - **Series B Restructured Bond Interest Rate:** Prevailing market rate for similar long-term municipal bonds at the time of issuance.
 - **Series B Restructured Bond Maturities:** The same maturity dates as the DWSD Class B Debt Bonds for which the Series B Restructured Bonds will be exchanged.

Secured General Obligation Debt.

- There are six series of secured General Obligation Debt:
 - \$100,000,000 original principal amount Distributable State Aid Second Lien Bonds (Unlimited Tax General Obligation), Series 2010(A) (Taxable-Recovery Zone Economic Development Bonds-Direct Payment).
 - \$249,790,000 original principal amount Distributable State Aid General Obligation Limited Tax Bonds, Series 2010.
 - \$38,865,000 original principal amount Self-Insurance Distributable State Aid Third Lien Bonds (Limited Tax General Obligation), Series 2012(A)(2).
 - \$30,730,000 original principal amount Self-Insurance Distributable State Aid Third Lien Refunding Bonds (Limited Tax General Obligation), Series 2012(B2).
 - \$6,405,000 original principal amount General Obligation Distributable State Aid Third Lien Capital Improvement Refunding Bonds (Limited Tax General Obligation), Series 2012(B).
 - \$53,520,000 original principal amount Self-Insurance Distributable State Aid Third Lien Bonds (Limited Tax General Obligation), Series 2012(A2-B).

- Total annual debt service is approximately \$39 million per year from FY 2015 through FY 2033.

\$ in millions	FISCAL YEAR						Total for Period
	2013	2014	2015 - 2033	2034	2035	2036	
\$100,000,000 original principal amount Distributable State Aid Second Lien Bonds (Unlimited Tax General Obligation), Series 2010(A) (Taxable - Recovery Zone Economic Development Bonds-Direct Payment)	4.0	8.0	9.8	9.8	9.8	9.8	228.2
\$249,790,000 original principal amount Distributable State Aid General Obligation Limited Tax Bonds, Series 2010	6.3	12.6	18.9	18.8	18.8	18.8	433.5
\$129,520,000 aggregate original principal amount of Distributable State Aid Third Lien Bonds (Limited Tax General Obligation), Series 2012(A)(2), (A2-B), (B) & (B)(2) (Combined)	4.2	6.1	10.4				207.2
Annual Total	14.5	26.7	39.0	28.7	28.7	28.7	868.9

- Treatment: Subject to negotiation with holders.

Secured Claims Arising in Connection with Installment Notes Payable.

- The City has issued \$87.8 million in installment notes related to various public improvement projects, which notes were issued in connection with the “Section 108” HUD Loan Guarantee Program and are secured by future “Block Grant” revenues.
- Treatment: Subject to negotiation with holders.

Secured Claims Arising under Service Agreements Related to COP-Related Interest Rate Swaps.

- Eight interest rate swaps (the “COP Swaps”) were entered into by the Service Corporations in reference to the COPs.
- The City entered into Service Contracts with the Service Corporations that purport to obligate the City to pay the Service Corporations, among other things, amounts equal to the amounts the Service Corporations are obligated to pay under the COP Swaps.
- The following table shows the estimated amounts due annually under the COP Swaps to maturity:

\$ in millions

FISCAL YEAR(S)									Total
2013	2014	2015	2016	2017	2018-2022	2023-2027	2028-2032	2033-2035	
50.7	50.6	50.6	50.6	50.6	248.0	226.9	135.6	15.1	878.7

- Treatment: Subject to negotiation with holders.

Secured Automobile Parking Fund Claims.

- \$9.3 million in outstanding principal amount of Detroit Building Authority Revenue Refunding Bonds: Parking System, Series 1998-A are secured by a pledge of all revenues of the parking system, net of operating expenses.
- Treatment: In the event that the City executes a sale of its parking-related assets, principal and interest accrued through the effective date will be paid in full in cash using proceeds of sales of City’s parking-related assets. In the event that sales are not negotiated and consummated prior to the effective date, treatment of such claims will be subject to negotiations with holders.

Unsecured Debt.

Consideration for Unsecured Claims.

- Limited Recourse Participation Notes (the “Notes”).
 - **Relevant Definitions:**
 - “Adjusted Base Covered Revenues” means for a Fiscal Year following the Initial Revenue Participation Year, Base Covered Revenues adjusted for inflation for the period beginning on the first day of the Initial Revenue Participation Year and ending on the first day of the Fiscal Year using the positive change, if any, in the Consumer Price Index during such period.
 - “Base Covered Revenues” means one half of the sum of Covered Revenues for the first two Fiscal Years beginning after the Effective Date.
 - “Covered Revenues” means amounts actually collected by the City’s General Fund in a Fiscal Year on account of (a) Property Taxes, Income Taxes and Gaming Taxes levied for such Fiscal Year and (b) Revenue Sharing Payments, determined based upon the City’s audited financial statements.
 - “Dutch Auction” means a method for pricing the Notes whereby the price of the Notes offered by the City is the lowest price (the “Auction Price”) at which there are bids to sell Notes for an aggregate purchase price equal to the amount the City is required to pay in respect of Revenue Participation Payments and/or Asset Disposition Proceeds then due and payable. During bidding, each Noteholder will indicate how many Notes it is willing to sell to the City and the price such Noteholder is willing to accept. All Notes offered at the Auction Price or at a lower price will be sold to the City at the Auction Price.

- “Effective Date” means the closing date of a comprehensive restructuring of the City’s finances on which the Notes shall be issued.
- “Final Participation Year” means the Fiscal Year beginning on the 20th anniversary of the first day of the Initial Participation Year.
- “Fiscal Year” means a period commencing on July 1 of a year and ending on June 30 of the following year. For greater certainty, the Fiscal Year beginning on July 1, 2014 and ending on June 30, 2015 is the 2015 Fiscal Year.
- “Initial Participation Year” means the second full Fiscal Year following the Effective Date.
- “Trustee” means an indenture trustee or other agent for the Noteholders as defined in definitive documentation for the Notes.
- **Terms:**
 - Initial Principal Amount: \$2,000,000,000.00.
 - Interest Rate: 1.5% per annum on the outstanding principal amount of the Notes, payable semiannually. No interest shall be paid or accrued for any period following the end of the Final Participation Year.
 - Maturity Date: The first September 30 following the Final Participation Year. The City shall have no obligation to pay any amounts other than the Revenue Participation Payment in respect of the Final Participation Year on the maturity date. The Notes may be prepaid in whole or in part at any time without premium or penalty.
 - Revenue Participation Payments: On the September 30 after the end of each Fiscal Year beginning with the Initial Participation Year, an amount equal to the product of (a) 30% (0.30), multiplied by (b) (i) the amount by which Covered Revenues for such Fiscal Year exceed (ii) Adjusted Base Covered Revenues shall be applied to reduce the principal amount of the Notes. No Revenue Participation Payments shall be made for any Fiscal Year after the Final Participation Year.

- Grants and Other Amounts Received to Offset Costs of Addressing Blight: If the City receives any cash grants or other cash payments after the Effective Date and before the Maturity Date from the State of Michigan, the Federal government, or any other government or nonprofit entity not affiliated in any way with the City for the purpose of funding programs or activities to address blight that are included in the 10 Year Plan (“Blight Revenues”) and that can be utilized in place of the General Fund sums in the 10 Year Plan projections, an amount equal to 75% of the General Fund revenues that would otherwise be spent on blight but for the outside funds shall be applied to reduce the principal amount of the Notes.
- Asset Disposition Proceeds: If the City receives cash consideration in connection with the transfer of Specified Assets after the Effective Date and before the Maturity Date, an amount equal to 75% of such cash shall be applied to reduce the principal amount of the Notes. For greater certainty, the assumption of indebtedness shall not constitute cash consideration.
- The City shall make distributions of Blight Revenues and Asset Disposition Proceeds when the amount of such payments that are due equal or exceed \$50 million or at the time a Revenue Participation Payment is due, whichever is sooner.
- **Dutch Auctions.** Any Revenue Participation Payment, Blight Revenues, Asset Disposition Proceeds and other amount made available by the City may be used to fund offers to purchase Notes through a Dutch Auction process. The City shall give notice of its intent to conduct a Dutch Auction using a Revenue Participation Payment on or before the July 15th following the end of the pertinent Fiscal Year and shall conclude the auction and purchase notes offered and accepted in the auction no later than the 90 days following the date such notice is given. The City shall give notice of its intent to conduct such a Dutch Auction using Asset Disposition Proceeds or Blight Revenues on or before the 30 days following the date when the City becomes obligated to make apply Asset Distribution Proceeds and shall conclude the auction and purchase notes offered and accepted in the auction no later than 90 days following the date such notice is given. The City may give notice of its intent to conduct a Dutch Auction using funds provided by the City which are not otherwise required to be applied to repayment of the Notes at any time.
- **Limited Recourse.** The City’s obligation to pay interest on the Notes shall be a general obligation of the City. The City shall have no obligation to pay the principal amount of the Notes except to the extent that Revenue Participation Payments, Blight Revenues, or Asset Disposition Proceeds become due in accordance with the terms hereof.
- **Requirements of Law.** The terms of the Notes may be revised to conform with requirements of law.

Claims Under Unsecured General Obligation Bonds/Notes.

- Aggregate amount: Approximately \$650 million.
- Treatment: Exchanged for a pro rata (relative to all unsecured claims) principal amount of new Notes.

Claims of Service Corporations (or affiliated trusts) on Account of COPs.

- Aggregate amount: Approximately \$1.4 billion.
- Treatment: Exchanged for a pro rata (relative to all unsecured claims) principal amount of new Notes

Claims for Unfunded OPEB Liabilities.

- Current retirees will receive modified medical benefits plans utilizing either the exchanges to be created by January 1, 2014 under the Patient Protection and Affordable Care Act or Medicare, as applicable. The proposed replacement program is preliminarily estimated to have a cost to the City of between \$27.5 million and \$40 million annually depending on choices to be made.
- Claims will result from the modification of benefits. The amount of such claims has not been finally determined.
- Treatment for Allowed Claim: Exchanged for a pro rata (relative to all unsecured claims) principal amount of new Notes.

Claims for Unfunded Pension Liabilities.

- As set forth above, preliminary analysis indicates that the underfunding in the GRS and the PFRS is approximately \$3.5 billion. At this level of underfunding, the City would have to contribute approximately \$200 million to \$350 million annually to fully fund currently accrued, vested benefits. Such contributions will not be made under the plan.
- Claims for the underfunding will be exchanged for a pro rata (relative to all unsecured claims) principal amount of new Notes.
- Because the amounts realized on the underfunding claims will be substantially less than the underfunding amount, there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons.

Claims on account of Other Liabilities.

- Aggregate Amount: Approximately \$300 million.
- Treatment: Exchanged for a pro rata (relative to all unsecured claims) principal amount of new Notes.

CEMENTING THE CITY’S RESTRUCTURING: DETROIT AFTER THE EMERGENCY MANAGER

In accordance with PA 436 – and similar to post-receivership governance structures established in other municipalities (e.g., New York) – Emergency Manager Orr intends to adopt various measures and impose certain requirements to ensure that the restructuring achieved by the City is sustainable.

APPOINTMENT OF “TRANSITION ADVISORY BOARD”

In accordance with Section 23(1) of PA 436, the Emergency Manager may recommend that the Governor appoint a “receivership transition advisory board” (a “*Transition Advisory Board*”) to monitor the affairs of the City prior to removing it from receivership.

- The Transition Advisory Board would consist of (i) the State Treasurer (or his/her designee), (ii) the director of the Department of Technology, Management and Budget (or his/her designee) and (iii) in the Governor’s discretion, one or more individuals with relevant professional experience.
- The Transition Advisory Board would be empowered to do any of the following:
 - Require the City to annually convene a consensus revenue estimating conference for the ensuing fiscal year;
 - Require the City to provide monthly cash flow projections and a comparison of actual and budgeted revenues and expenditures;
 - Review and approve the City’s proposed and amended budgets;
 - Review requests by the City to issue debt under applicable law;
 - Review and approve proposed CBAs negotiated under applicable law;.
 - Review the City’s compliance with any deficit elimination plan; and
 - Perform any other duties assigned by the Governor at the time the Transition Advisory Board is appointed.

Revisions to Model Charter.

- Consistent with Section 22(4)(b) of PA 436, the Emergency Manager may recommend that the Governor require the City to adopt a model City Charter or model charter provisions developed by the Emergency Manager.

Development of Two-Year Budget.

- Pursuant to Section 21 of PA 436, before the conclusion of the Emergency Manager’s term (or before the appointment of a Transition Advisory Board), the Emergency Manager must adopt and implement a two-year budget (including all contractual and employment agreements) for the City, which budget commences upon the termination of the City’s receivership.
- The City Council is prohibited by Section 21(2) of PA 436 from
 - amending the Emergency Manager’s two-year budget (absent the approval of the State Treasurer); and
 - revising any order or ordinance implemented by the Emergency Manager prior to one year after termination of the receivership.

Potential Appointment of New Emergency Manager.

- Pursuant to Section 24 of PA 436, the Governor may, at his own initiative or at the recommendation of a Transition Advisory Board, determine that the City’s financial condition has not been corrected in a sustainable fashion and appoint a new emergency manager.

CALENDAR AND CONTACTS

Requests for additional information: June 17, 2013 - June 24, 2013

Initial round of discussions with stake holders: June 17, 2013 -July 12, 2013

Evaluation: July 15, 2013 - July 19, 2013.

CONTACTS

MILLER BUCKFIRE & CO., LLC

601 Lexington Avenue, 22nd Floor
New York, NY 10022
(212) 895-1800

Kenneth Buckfire
Co-President & Managing Director

James Doak
Managing Director

JONES DAY

David G. Heiman, Esq.
901 Lakeside Avenue
North Point
Cleveland, Ohio 44114-1190
(216) 586-3939

Bruce Bennett, Esq.
555 South Flower Street,
50th Floor
Los Angeles, CA 90071
(213) 489-3939

Heather Lennox, Esq.
222 East 41st Street
New York, NY 10017
(212) 326-3939

Appendix A — Schedule of the sewage disposal system bonds and related state revolving loans as of June 30, 2012

	Bond Date	Amount Issued	Range of Interest Rates	Maturity Date	Balance June 30, 2012	Insurer	
Sewage Disposal System Revenue Bonds:							
Series 1998-A	12-14-06	\$18,540,000	5.50 %	7/1/12-17	\$ 16,440,000	MBIA	
Series 1998-A	12-14-06	49,075,000	5.25	7/1/18-23	49,075,000	MBIA	b
Series 1998-B	12-14-06	18,750,000	5.50	7/1/12-17	16,510,000	MBIA	
Series 1998-B	12-14-06	48,770,000	5.25	7/1/18-23	48,770,000	MBIA	b
Series 1999-A (* *)	12-1-99	33,510,118	0.00	7/1/12-21	69,931,075	FGIC	
Series 2001-B	9-15-01	110,550,000	5.50	7/1/23-29	110,550,000	FGIC	
Series 2001-C (1)	6-5-09	6,360,000	5.25	7/1/12-19	4,930,000	Assured Guaranty	
Series 2001-C (1)	6-5-09	148,510,000	6.50 to 7.00	7/1/20-27	148,510,000	Assured Guaranty	b
Series 2001-C (2)	5-8-08	3,275,000	3.50 to 4.00	7/1/12-18	2,305,000	FGIC/Berkshire Hathaway	
Series 2001-C (2)	5-8-08	119,630,000	4.00 to 5.25	7/1/19-29	119,630,000	FGIC/Berkshire Hathaway	b
Series 2001-D	9-23-01	92,450,000	Variable (a)	7/1/32	21,315,000	MBIA	b
Series 2001-E	5-8-08	136,150,000	5.75	7/1/24-31	136,150,000	FGIC/Berkshire Hathaway	b
Series 2003-A	5-22-03	158,000,000	3.30 to 5.00	7/1/12-13	84,125,000	Assured Guaranty	
Series 2003-A	5-22-03	441,380,000	3.50 to 5.50	7/1/14-32	128,940,000	Assured Guaranty	b
Series 2003-B	6-5-09	150,000,000	7.50	7/1/32-33	150,000,000	Assured Guaranty	b
Series 2004-A	1-09-04	101,435,000	5.00 to 5.25	7/1/12-24	74,380,000	Assured Guaranty	
Series 2005-A	3-17-05	3,765,000	3.40 to 3.70	7/1/12-15	2,495,000	MBIA	
Series 2005-A	3-17-05	269,590,000	3.75 to 5.125	7/1/16-35	236,770,000	MBIA	b
Series 2005-B	3-17-05	40,215,000	3.40 to 5.50	7/1/12-22	40,215,000	MBIA	
Series 2005-C	3-17-05	22,065,000	5.00	7/1/12-15	16,185,000	MBIA	
Series 2005-C	3-17-05	41,095,000	5.00	7/1/16-25	41,095,000	MBIA	b
Series 2006-A	5-8-08	123,655,000	5.50	7/1/34-36	123,655,000	FGIC/Berkshire Hathaway	b
Series 2006-B	8-10-06	11,850,000	4.00 to 5.00	7/1/12-16	7,960,000	FGIC	
Series 2006-B	8-10-06	238,150,000	4.25 to 5.00	7/1/17-36	238,150,000	FGIC	b
Series 2006-C	8-10-06	8,495,000	5.25	7/1/16	8,495,000	FGIC	
Series 2006-C	8-10-06	18,065,000	5.00	7/1/17-18	18,065,000	FGIC	b
Series 2006-D	12-14-06	370,000,000	Variable (a)	7/1/12-32	289,430,000	Assured Guaranty/FSA	b
Series 2012-A	6-26-12	95,445,000	5.00	7/1/14-22	95,445,000	Assured Guaranty	
Series 2012-A	6-26-12	564,335,000	5.00 to 5.50	7/1/23-39	564,335,000	Assured Guaranty	b
Total Sewage Disposal System Revenue Bonds					\$ 2,863,856,075		

* * - Capital Appreciation Bonds

a - Interest rates are set periodically at the stated current market interest rate.

b - Indicates bonds are callable under terms specified in the indenture; all other bonds are noncallable.

Appendix A – Continued

	Bond Date	Amount Issued	Range of Interest Rates	Maturity Date	Balance June 30, 2012
State Revolving Loans:					
Series 1992-A-SRF	6-25-92	\$ 4,360,000	2.00%	4/1/13	\$ 260,000
Series 1992-B-SRF	9-10-92	1,915,000	2.00	10/1/12-13	230,000
Series 1993-B-SRF	9-30-93	6,603,996	2.00	10/1/12-14	1,150,000
Series 1997-B-SRF	9-30-97	5,430,174	2.25	10/1/12-18	2,160,000
Series 1999-SRF-1	6-24-99	21,475,000	2.50	4/1/13-20	9,880,000
Series 1999-SRF-2	9-30-99	46,000,000	2.50	10/1/12-22	28,110,000
Series 1999-SRF-3	9-30-99	31,030,000	2.50	10/1/12-20	15,890,000
Series 1999-SRF-4	9-30-99	40,655,000	2.50	10/1/12-20	20,815,000
Series 2000-SRF-1	3-30-00	44,197,995	2.50	10/1/12-22	23,947,995
Series 2000-SRF-2	9-28-00	64,401,066	2.50	10/1/12-22	39,191,066
Series 2001-SRF-1	6-28-01	82,200,000	2.50	10/1/12-24	57,965,000
Series 2001-SRF-2	12-20-01	59,850,000	2.50	10/1/12-24	42,210,000
Series 2002-SRF-1	6-27-02	18,985,000	2.50	4/1/13-23	11,590,000
Series 2002-SRF-2	6-27-02	1,545,369	2.50	4/1/13-23	935,369
Series 2002-SRF-3	12-19-02	31,549,466	2.50	10/1/12-24	20,554,466
Series 2003-SRF-1	6-28-03	48,520,000	2.50	10/1/12-25	36,415,000
Series 2003-SRF-2	9-25-03	25,055,370	2.50	4/1/13-25	17,550,370
Series 2004-SRF-1	6-24-04	2,910,000	2.125	10/1/12-24	2,025,000
Series 2004-SRF-2	6-24-04	18,353,459	2.125	4/1/13-25	12,748,459
Series 2004-SRF-3	6-24-04	12,722,575	2.125	4/1/13-25	8,832,575
Series 2007-SRF-1	9-20-07	156,687,777	1.625	10/1/12-29	142,272,777
Series 2009-SRF-1	4-17-09	22,684,557	2.50	4/1/13-30	10,164,557
Series 2010-SRF-1	1-22-10	6,793,631	2.50	4/1/13-31	3,338,631
Total State Revolving Loans Payable					\$ 508,236,265

Appendix B — Schedule of water system bonds and related state revolving loans as of June 30, 2012

	Bond Date	Amount Issued	Range of Interest Rates	Maturity Date	Balance June 30, 2012	Insurer	
Water Supply System Revenue Bonds:							
Series 1993	10-15-93	\$ 38,225,000	6.50%	7/1/14-15	\$ 24,725,000	FGIC	
Series 1995-B	10-15-95	60,485,000	5.55	7/1/12	8,480,000	MBIA	
Series 1997-A	8-01-97	186,220,000	6.00	7/1/14-15	13,430,000	MBIA	
Series 2001-A	5-01-01	301,165,000	5.00	7/1/29-30	73,790,000	FGIC	b
Series 2001-C	5-08-08	4,055,000	3.50 to 4.25	7/1/12-18	2,565,000	FGIC	
Series 2001-C	5-08-08	186,350,000	4.50 to 5.75	7/1/19-29	186,350,000	FGIC	b
Series 2003-A	1-28-03	234,805,000	4.50 to 5.00	7/1/19-34	178,785,000	MBIA	b
Series 2003-B	1-28-03	41,770,000	5.00	7/1/34	41,770,000	MBIA	b
Series 2003-C	1-28-03	4,335,000	Variable(a)	7/1/13-14	4,335,000	MBIA	
Series 2003-C	1-28-03	25,325,000	4.25 to 5.25	7/1/15-22	25,325,000	MBIA	b
Series 2003-D	8-14-06	3,180,000	4.00 to 4.20	7/1/12-16	1,625,000	MBIA	
Series 2003-D	8-14-06	139,575,000	4.25 to 5.00	7/1/17-33	139,575,000	MBIA	b
Series 2004-A	8-14-06	17,600,000	3.75 to 5.25	7/1/12-16	17,580,000	MBIA	
Series 2004-A	8-14-06	55,165,000	4.50 to 5.25	7/1/17-25	55,165,000	MBIA	b
Series 2004-B	8-14-06	52,840,000	4.00 to 5.00	7/1/12-16	35,740,000	MBIA	
Series 2004-B	8-14-06	100,990,000	4.25 to 5.00	7/1/17-23	100,990,000	MBIA	b
Series 2005-A	3-11-05	20,965,000	3.40 to 5.00	7/1/12-15	8,445,000	FGIC	
Series 2005-A	3-11-05	84,035,000	3.90 to 5.00	7/1/16-35	84,035,000	FGIC	b
Series 2005-B	5-08-08	19,070,000	4.00 to 5.50	7/1/12-18	15,465,000	FGIC	
Series 2005-B	5-08-08	175,830,000	4.75 to 5.50	7/1/19-35	175,830,000	FGIC	b
Series 2005-C	3-11-05	36,405,000	5.00	7/1/12-15	23,175,000	FGIC	
Series 2005-C	3-11-05	90,200,000	5.00	7/1/16-22	90,200,000	FGIC	b
Series 2006-A	8-14-06	42,795,000	5.00	7/1/13-16	26,900,000	Assured Guaranty/FSA	
Series 2006-A	8-14-06	237,205,000	5.00	7/1/17-34	237,205,000	Assured Guaranty/FSA	b
Series 2006-B	4-1-09	900,000	3.00 to 5.00	7/1/12-19	800,000	Assured Guaranty/FSA	
Series 2006-B	4-1-09	119,100,000	5.50 to 7.00	7/1/20-36	119,100,000	Assured Guaranty/FSA	b
Series 2006-C	8-14-06	12,585,000	4.00 to 5.00	7/1/12-16	10,650,000	Assured Guaranty/FSA	
Series 2006-C	8-14-06	208,060,000	5.00	7/1/17-33	208,060,000	Assured Guaranty/FSA	b

Appendix B – Continued

	Bond Date	Amount Issued	Range of Interest Rates	Maturity Date	Balance June 30, 2012	Insurer	
Series 2006-D	8-14-06	4,430,000	4.00 to 5.00	7/1/12-16	3,465,000	Assured Guaranty/FSA	
Series 2006-D	8-14-06	142,160,000	4.25 to 5.00	7/1/17-32	142,160,000	Assured Guaranty/FSA	b
Series 2011-A	12-22-11	37,880,000	3.00 to 5.00	7/1/12-21	37,880,000	N/A	
Series 2011-A	12-22-11	341,710,000	5.00 to 5.75	7/1/22-41	341,710,000	N/A	b
Series 2011-B	12-22-11	7,455,000	2.496 to 5.00	7/1/12-21	7,455,000	N/A	
Series 2011-B	12-22-11	9,740,000	6.00	7/1/22-33	9,740,000	N/A	b
Series 2011-C	12-22-11	3,925,000	3.00 to 5.00	7/1/12-21	3,925,000	N/A	
Series 2011-C	12-22-11	99,965,000	4.50 to 5.25	7/1/23-41	99,965,000	N/A	b
Total Water Supply System Revenue Bonds					\$ 2,556,395,000		

State Revolving Loans:

Series 2005 SRF-1	9-22-05	\$ 13,805,164	2.125%	10/1/12-26	\$ 10,575,164
Series 2005 SRF-2	9-22-05	8,891,730	2.125	10/1/12-26	6,621,730
Series 2006 SRF-1	9-21-06	5,180,926	2.125	10/1/12-26	3,945,926
Series 2008 SRF-1	9-29-08	2,590,941	2.500	10/1/12-26	1,810,941

Total State Revolving Loans Payable

\$ 22,953,761

a - Interest rates are set periodically at the stated current market interest rate.
 b - Indicates bonds are callable under terms specified in the indenture; all other bonds are noncallable.

Appendix C — Schedule of COPs and related swap liabilities as of June 30, 2012

	Bond Date	Amount Issued	Range of Interest Rates	Maturity Date	Balance June 30, 2012	Insurer
Pension Obligation Certificates:						
Series 2005-A	6/2/05	\$ 640,000,000	4.00 to 4.95%	6/15/13-25	\$ 503,365,000	FGIC/Syncora
Series 2006-A	6/12/06	148,540,000	5.989%	6/15/34-35	148,540,000	FGIC
Series 2006-B	6/12/06	800,000,000	Variable	6/15/19-34	800,000,000	FGIC/Syncora
Total Pension Obligation Certificates					\$ 1,451,905,000	

Cash-Flow Hedges, Pay-Fixed Interest Rate Swaps	Notional Amount	Effective Date	Fixed Rate Paid	Rate Received	Fair Value	Swap Termination Date	Final Maturity of Bonds
Taxable Certificate of Participation:							
SBSFPC-0009	\$ 96,621,000	6/12/06	6.36%	3mth LIBOR + .34%	(57,173,124)	6/15/2034	6/15/2034
SBSFPC-0012	45,252,000	6/12/06	6.32	3mth LIBOR + .30%	(23,055,836)	6/15/2029	6/15/2029
37380341	96,621,000	6/12/06	6.36	3mth LIBOR + .34%	(57,181,711)	6/15/2034	6/15/2034
37380291	45,252,000	6/12/06	6.32	3mth LIBOR + .30%	(23,056,802)	6/15/2029	6/15/2029
SBSFPC-0010	153,801,500	6/12/06	6.35	3mth LIBOR + .34%	(91,309,463)	6/15/2034	6/15/2034
SBSFPC-0011	104,325,500	6/12/06	6.32	3mth LIBOR + .30%	(48,098,696)	6/15/2029	6/15/2029
37380313	153,801,500	6/12/06	6.35	3mth LIBOR + .34%	(91,322,376)	6/15/2034	6/15/2034
37380351	104,325,500	6/12/06	6.32	3mth LIBOR + .30%	(48,104,661)	6/15/2029	6/15/2029
Total	\$ 800,000,000				(439,302,669)		

Appendix D — Schedule of secured general obligation liabilities as of June 30, 2012

	Issue Date	Amount Issued	Range of Interest Rates	Maturity Date	Balance June 30, 2012	Insurer
General Obligation Bonds -						
Unlimited Tax Series 2010-E	12/16/10	100,000,000	5.129 to 8.369	11/1/14-35	100,000,000	N/A
Limited Tax Distributable State Aid 2010	3/18/10	249,790,000	4.25 to 5.25	11/1/14-35	249,790,000	N/A
Total General Obligation Bonds					349,790,000	
Notes and Loans -						
Ferry Street Project	6/12/08		2.62 to 4.62	8/1/12-18	2,041,000	N/A
Garfield Project	6/12/08		2.62 to 4.62	8/1/13-15	750,000	N/A
Stuberstone Project	6/12/08		2.62 to 4.62	8/1/13-16	120,000	N/A
Vernon Lawndale Project	9/14/06		5.05 to 5.74	8/1/13-25	1,800,000	N/A
New Amsterdam Project	8/1/02		4.67 to 6.12	8/1/12-22	8,480,000	N/A
Mexicantown Welcome Center Project	9/14/06		5.03 to 5.70	8/1/13-24	3,600,000	N/A
Book Cadillac Project	9/14/06		5.07 to 5.77	8/1/14-26	7,300,000	N/A
Book Cadillac Project Note 1	6/12/08		4.00 to 5.38	8/1/13-29	10,700,000	N/A
Garfield II Note 1	9/14/06		3.44 to 5.30	8/1/13-25	6,422,000	N/A
Garfield II Note 2	9/14/06		5.07 to 5.77	8/1/14-26	2,058,000	N/A
Garfield II Note 3	9/16/09		LIBOR + 0.2	8/1/12-29	1,723,000	N/A
Garfield II Note 4	9/16/09		LIBOR + 0.2	8/1/17-29	6,697,000	N/A
Fort Shelby Project	6/12/08		3.82 to 5.34	8/1/12-26	18,700,000	N/A
Woodward Garden Project 1	6/12/08		4.48 to 5.05	8/1/16-21	7,050,000	N/A
Woodward Garden Project 2	12/9/08		LIBOR + 0.2	8/1/16-28	6,197,000	N/A
Woodward Garden Project 3	4/20/12		LIBOR + 0.2	8/1/16-31	5,753,000	N/A
Loan Payable GE Capital Schedule –013	4/9/04		4.07	7/1/12-6/1/14	248,289	N/A
Loan Payable GE Capital Schedule – 030	4/30/08		4.57	8/1/12	358,928	
Total Notes and Loans					89,998,217	
Total Secured General Obligation Liabilities					\$439,788,217	

Appendix E — Schedule of unsecured general obligation liabilities as of June 30, 2012

	Bond Date	Amount Issued	Range of Interest Rates	Maturity Date	Balance June 30, 2012	Insurer	
GOVERNMENTAL ACTIVITIES							
General Obligation Bonds –							
Unlimited Tax:							
Series 1999-A	4-1-99	\$ 28,020,000	5.00 to 5.25%	4/1/13-19	\$ 21,040,000	Assured Guaranty	b
Series 2001-A(1)	7-15-01	83,200,000	5.0 to 5.375	4/1/13-21	80,400,000	MBIA	b
Series 2001-B	7-15-01	23,235,000	5.375	4/1/13-14	13,680,000	MBIA	b
Series 2002	8-2-02	29,205,000	4.00 to 5.13	4/1/13-22	6,645,000	MBIA	b
Series 2003-A	10-21-03	9,640,000	3.70 to 5.00	4/1/2013	2,575,000	Syncora	
Series 2003-A	10-21-03	34,380,000	4.00 to 5.25	4/1/14-23	34,380,000	Syncora	b
Series 2004-A(1)	9-9-04	39,270,000	4.25 to 5.25	4/1/19-24	39,270,000	Ambac	b
Series 2004-B(1)	9-9-04	23,720,000	3.75 to 5.00	4/1/13-14	16,175,000	Ambac	
Series 2004-B(1)	9-9-04	29,365,000	4.0 to 5.25	4/1/15-18	29,365,000	Ambac	b
Series 2004-B(2)	9-9-04	17,270,000	4.16 to 5.24	4/1/13-18	865,000	Ambac	
Series 2005-B	12-1-05	13,840,000	4.00 to 5.00	4/1/13-16	8,955,000	Assured Guaranty	
Series 2005-B	12-1-05	37,920,000	4.30 to 5.00	4/1/17-25	37,920,000	Assured Guaranty	b
Series 2005-C	12-1-05	20,010,000	4.00 to 5.00	4/1/13-16	12,230,000	Assured Guaranty	a
Series 2005-C	12-1-05	10,795,000	4.30 to 5.25	4/1/17-20	10,795,000	Assured Guaranty	b
Series 2008-A	6-9-08	15,120,000	5.00	4/1/14-18	15,120,000	Assured Guaranty	
Series 2008-A	6-9-08	43,510,000	4.00 to 5.00	4/1/19-28	43,510,000	Assured Guaranty	b
Series 2008-B(1)	6-9-08	66,475,000	5.00	4/1/13-18	37,905,000	Assured Guaranty	
Total General Obligation Bonds - Unlimited Tax					\$ 410,830,000		

Appendix E – Continued

	Bond Date	Amount Issued	Range of Interest Rates	Maturity Date	Balance June 30, 2012	Insurer	
GOVERNMENTAL ACTIVITIES (continued)							
General Obligation Bonds –							
Limited Tax:							
Self-Insurance Bonds:							
Series 2003	10-2-03	\$ 98,895,000	4.32 to 4.97%	5/1/2013	\$ 17,770,000	Assured Guaranty	
Series 2004	9-9-04	62,285,000	4.16 to 4.85	4/1/13-14	25,405,000	Ambac	
General Obligation:							
Series 2005-A(1)	6-24-05	21,325,000	4.27 to 4.53	4/1/13-15	11,320,000	Ambac	
Series 2005-A(1)	6-24-05	52,175,000	4.61 to 5.15	4/1/16-25	52,175,000	Ambac	b
Series 2005-A(2)	6-24-05	4,055,000	3.50 to 4.50	4/1/12-15	2,145,000	Ambac	
Series 2005-A(2)	6-24-05	9,475,000	4.00 to 5.00	4/1/16-25	9,475,000	Ambac	b
Series 2005-B	6-24-05	4,845,000	3.50 to 5.00	4/1/13-15	2,835,000	Ambac	
Series 2005-B	6-24-05	6,940,000	5.00	4/1/16-21	6,940,000	Ambac	b
Series 2008-A(1)	6-9-08	43,443,278	5.00	4/1/13-16	43,443,278	N/A	
Series 2008-A(2)	6-9-08	25,000,000	8.00	4/1/2014	25,000,000	N/A	
Total General Obligation Bonds - Limited Tax					196,508,278		
Loans - Downtown Development Authority					33,600,000		
Total Unsecured General Obligation Liabilities					\$ 640,938,278		

a - Indicates interest rates are reset periodically at the stated market interest rates.
 b - Indicates bonds are callable under terms specified in the indenture; all other bonds are noncallable.

Appendix F – Annual Debt Service on Special Revenue Obligations (\$ in millions).

Fiscal Year	Sewage Disposal Fund		Water Fund		Parking Fund		Total Special Revenue
	Principal	Interest	Principal	Interest	Principal	Interest	
2013	76.58	123.42	33.20	120.25	1.17	0.50	\$355.12
2014	78.39	143.45	41.46	131.24	1.22	0.44	\$396.20
2015	86.66	140.42	53.43	129.31	1.29	0.38	\$411.49
2016	89.28	137.53	58.75	126.49	1.35	0.31	\$413.71
2017	91.58	134.41	61.81	123.38	1.42	0.24	\$412.84
2018-22	503.05	621.32	353.35	568.23	4.03	0.30	\$2,050.28
2023-27	584.93	515.60	447.03	468.72			\$2,016.28
2028-32	733.64	380.44	555.24	344.23			\$2,013.55
2033-37	810.06	220.48	656.86	193.56			\$1,880.96
2037-42	338.56	35.90	318.25	51.62			\$ 744.33
Total	\$3,392.73	\$2,452.97	\$2,579.38	\$2,257.03	\$ 10.48	\$ 2.17	\$10,694.76

Appendix G – Annual Debt Service on General Obligation Debt & Other Liabilities (\$ in millions).

Fiscal Year	General Obligation Bonds		Notes and Loans Payable		Transportation Fund Liabilities		Total
	Principal	Interest	Principal	Interest	Principal	Interest	
2013	\$82.71	\$51.81	\$1.56	\$3.85	\$0.81	\$0.31	\$141.07
2014	\$81.63	\$47.73	\$3.25	\$3.76	\$0.00	\$0.27	\$136.64
2015	\$68.36	\$42.72	\$3.38	\$3.62	\$2.66	\$0.27	\$121.02
2016	\$66.87	\$39.27	\$3.65	\$3.46	\$2.80	\$0.14	\$116.19
2017	\$49.89	\$35.87	\$6.09	\$3.24	\$0.00	\$0.00	\$95.10
2018-22	\$254.12	\$139.73	\$31.33	\$12.03	\$0.00	\$0.00	\$437.21
2023-27	\$150.59	\$81.99	\$30.46	\$4.61	\$0.00	\$0.00	\$267.65
2028-32	\$101.54	\$47.46	\$10.26	\$0.24	\$0.00	\$0.00	\$159.50
2033-37	\$101.43	\$13.26	\$33.60	\$0.00	\$0.00	\$0.00	\$148.29
Total	\$957.13	\$499.84	\$123.60	\$34.83	\$6.27	\$1.00	\$1,622.67

Figures above do NOT include \$129.5 million in general fund refunding bonds issued in FY 2013, which have increased outstanding debt balance further from FY 2012 balances.

Appendix H – Annual Debt Service on Pension Obligation Certificates and Related Swap Liabilities (\$ in millions).

Fiscal Year	Principal	Interest	Swap Liability	Total
2013	23.1	39.6	50.7	113.4
2014	29.6	38.5	50.6	118.8
2015	33.3	37.2	50.6	121.1
2016	37.0	35.7	50.6	123.2
2017	41.0	33.9	50.6	125.4
2018-22	242.8	140.5	248.0	631.3
2023-27	311.2	88.3	226.9	626.5
2028-32	416.3	61.8	135.6	613.7
2033-35	317.6	26.4	15.1	359.1
Total	1,451.9	501.9	878.7	2,832.5

APPENDIX I – City Bargaining Units

Category	Name of Bargaining Unit	Active CBA?	CBA Expiration	Subject to CETS?	No. of Employees Represented
Uniform	AFSCME - ESOs	Yes	6/30/13	No	93
	Detroit Fire Fighters Ass'n	Yes	6/30/13	No	927
	Detroit Police Command Officers Ass'n		As of 9/30/12	Yes	24
	Detroit Police Lieutenants and Sergeants Ass'n	Yes	6/30/13	No	530
	Detroit Police Officers Ass'n		6/30/12	Yes	1,991
	Emergency Medical Service Officers Ass'n (EMS)		As of 9/30/12	Yes	10
	Police Officers Ass'n of Michigan (EMS)		As of 9/30/12	Yes	187
Coalition and other nonuniform	AFSCME Crossing Guards		6/30/12	Yes	157
	AFSCME Forestry and Landscape Foreman		6/30/12	Yes	4
	AFSCME Motor City Seasonals		6/30/12	Yes	240
	AFSCME Non-Supervisory		6/30/12	No	1,656
	AFSCME Paving Foreperson's		6/30/12	Yes	9
	AFSCME Supervisory, Local 2394		6/30/12	Yes	47
	Assist. Supervisors of Street Maint. & Constr.		6/30/12	Yes	4
	Ass'n of Munic. Engineers (Supervisors of ADE)		6/30/12	Yes	15
	Ass'n of City of Detroit Supervisors		6/30/12	Yes	35
	Ass'n of Detroit Engineers		As of 9/30/12	Yes	82
	Ass'n of Municipal Inspectors		6/30/12	Yes	12
	Ass'n of Prof. & Technical Employees		As of 9/30/12	Yes	102
	Ass'n of Prof. Construction Inspectors		6/30/12	Yes	37
	Building Construction Trades – Foreman		6/30/12	Yes	14
	Building Construction Trades - Non-Supervisory		6/30/12	Yes	172
	Building Construction Trades - Special Service		6/30/12	Yes	26
	Buildings and Safety Inspectors – Tripartite		6/30/12	Yes	19
	Detroit Income Tax Investigators Ass'n		6/30/12	Yes	15
	Detroit License Investigators Ass'n		6/30/12	Yes	0
	Field Engineers Ass'n		6/30/12	Yes	2

Appendix I – Continued

Category	Name of Bargaining Unit	Active CBA?	CBA Expiration	Subject to CETS?	No. of Employees Represented
	International Union of Op. Engineers - Local 324		9/30/12	Yes	27
	Local 324 Park Management Ass'n		6/30/12	Yes	7
	Local 324 Principal Clerks Unit		6/30/12	Yes	64
	Police Officers Labor Council (Detroit Fac. Officers)		6/30/12	Yes	9
	Police Officers Labor Council (Health Department)		6/30/12	Yes	1
	SEIU Local 517M - Non-Supervisory		6/30/12	Yes	5
	SEIU Local 517M – Prof. & Tech. Unit		6/30/12	Yes	22
	SEIU Local 517M - Supervisory		6/30/12	Yes	11
	Senior Accountants, Analysts & Appraisers		6/30/12	Yes	141
	Teamsters, Local 214		6/30/12	Yes	430
	UAW Local 212 (Civilian Police Investigators)		6/30/12	Yes	14
	UAW Local 2211 (Public Attorneys Ass'n)		6/30/12	Yes	37
	UAW Local 412-Unit 86 (Law Dep't Paralegals)		6/30/12	Yes	8
13(c) protected employees	AFSCME Non-supervisory Locals 214 & 312		6/30/12	No	317
	Amalgamated Transit Union (ATU)		6/30/12	No	622
	Building Construction Trades – Non-supervisory		6/30/12	No	4
	DOT Foreman's Ass'n		6/30/12	No	6
	International Union of Op. Engineers		9/30/12	No	2
	Supervisor Chapter of DOT Foreman's Ass'n		6/30/12	No	24
	Teamsters, Local 214		6/30/12	No	9
Total					8,270

Appendix J – Summary of Capital Improvements in 10-Year Plan

Department / Category	Project	Total Budget Impact	Start Date	Duration
Non-Departmental / Citywide (Included in GSD)	Elevator Improvements Program	\$3,503,911	FY 2014	10 years
	Space Consolidation Improvements	\$16,118,541	FY 2014	10 years
	Other	\$1,517,528	FY 2014	10 years
	Subtotal	\$21,139,980		
Manoogian Mansion	Roof Replacement	\$114,643	FY 2020	2 years
	Subtotal	\$114,643		
Police	Police Academy Improvements	\$1,255,932	FY 2014	4 years
	Existing District/Precinct Improvements	\$2,896,861	FY 2014	9 years
	New PCT #1 & 2	\$6,000,000	FY 2014	2 years
	New PCT #3 & 4	\$6,000,000	FY 2016	2 years
	New PCT #5 & 6	\$6,000,000	FY 2018	2 years
	Electrical Improvements	\$2,000,000	FY 2014	2 years
	Contingent Projects	\$14,000,000	FY 2014	10 years
	Other	\$2,027,887	FY 2014	9 years
	Subtotal	\$40,180,681		
Fire	Fire Training Building Replacement	\$17,010,540	FY 2016	2 years
	Fire Apparatus	\$543,525	FY 2014	5 years
	Engine House Improvements	\$2,022,077	FY 2014	10 years
	Structural Improvements	\$6,000,000	FY 2014	6 years
	Electrical Improvements	\$4,000,000	FY 2014	2 years
	Exhaust System Improvements	\$4,500,000	FY 2014	10 years
	Contingent Projects	\$17,300,000	FY 2016	8 years
	Subtotal	\$51,376,142		
DDOT	Facility Improvements	\$20,800,000	FY 2014	4 years
	Subtotal	\$20,800,000		
Airport	Facility Improvements/Expansion	\$13,264,808	FY 2014	10 years
	Subtotal	\$13,264,808		
Public Lighting	PLD HQ HVAC System Replacement	\$1,500,000	FY 2015	1 year
	Other	\$243,432	FY 2014	10 years
	Subtotal	\$1,743,432		
Municipal Parking	Facility Improvements	\$382,698	FY 2014	5 years
	Subtotal	\$382,698		
Health (transferred to DPD)	Animal Control Building Replacement	\$10,899,020	FY 2014	2 years
	Subtotal	\$10,899,020		

Appendix J — Continued

Department / Category	Project	Total Budget Impact	Start Date	Duration
Elections	Facility Improvements	\$1,275,000	FY 2014	1 year
	Contingent Projects	\$2,000,000	FY 2020	4 years
	Subtotal	\$3,275,000		
Fleet Purchases	Police Fleet Purchases	\$102,597,588	FY 2014	10 years
	Fire Fleet Purchases	\$19,059,144	FY 2014	10 years
	Grounds Maintenance Fleet Purchases	\$11,872,447	FY 2014	10 years
	Municipal Parking Fleet Purchases	\$3,532,245	FY 2015	9 years
	Subtotal	\$137,061,424		
Information Technology	Administrative Hearings	\$500,000	FY 2014	1 year
	Finance / Budget	\$50,500,000	FY 2014	10 years
	Fire	\$1,800,000	FY 2014	10 years
	Grants	\$400,000	FY 2014	10 years
	Human Resources	\$300,000	FY 2014	1 year
	Law	\$100,000	FY 2014	1 year
	Police	\$19,900,000	FY 2013	11 years
	Ombudsperson	\$7,900,000	FY 2014	10 years
	36th District Court	\$2,200,000	FY 2014	10 years
	Subtotal	\$83,600,000		
General Services	Facility Improvements	\$3,420,151	FY 2014	8 years
	Contingent Projects	\$17,500,000	FY 2015	9 years
	Subtotal	\$20,920,151		
General Fund Capital Improvement Project Total		\$404,757,979		
Reorganization Costs		\$45,800,000		
Training Costs	HR Training (catch-up costs)	\$1,300,000		
	DDOT Training	\$500,000		
Total Including Reorganization and Training Costs		\$452,357,979		
Blight		\$500,000,000	FY 2014	6 years
Additional Operating Expenditures		\$297,400,000		
GRAND TOTAL		\$1,249,757,979		

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

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

**CITY OF DETROIT'S CONSOLIDATED REPLY TO
OBJECTIONS TO THE ENTRY OF AN ORDER FOR RELIEF**

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- Exhibit B: Individual Objections to Eligibility, Summary of Arguments Set Forth Therein & City's Responses
- Exhibit C: Letters from various union representatives to Brian Easley
- Exhibit D: Letter from Brian Easley to James Williams, President, AFSCME, dated June 27, 2013
- Exhibit E: Letter from Evan Miller to Dennis McNamara, President, Detroit Fire Fighters Association, *et al.*, dated July 17, 2013
- Exhibit F: Letter from Steven Kreisberg, Director of Collective Bargaining and Health Care Policy, AFSCME, to Brian Easley, dated July 2, 2013

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6 COLLIER ON BANKRUPTCY ¶ 921.04[2]
(Alan N. Resnick & Henry J. Sommer eds. 16th ed. 2013)69
DETROIT CITY CHARTER § 1-10239
1 RESTATEMENT (SECOND) OF JUDGMENTS § 28 (1982)36

The City of Detroit (the "City" or the "Debtor") respectfully submits this consolidated reply to the objections (each, an "Objection")¹ to the entry of an order for relief in this chapter 9 case (any such order, an "Order for Relief").

I. PRELIMINARY STATEMENT

Confronting a state-declared "financial emergency" that includes approximately \$18 billion in debt, over 100,000 creditors, over 100 discrete bond issuances and related loans (as well as multiple insurers of such bonds) and nearly 50 union bargaining units representing the City's employees – all of which rendered any out of court solution impracticable – the City commenced this chapter 9 case on July 18, 2013 (the "Petition Date") by filing a Petition for Relief (the "Petition"). The financial condition of the City is detailed in the Memorandum in Support of Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (Docket No. 14) (the "Eligibility Memorandum") and the City's first-day declarations.² These documents demonstrate the City's overwhelming need for debt relief.

¹ Attached hereto as Exhibit A and Exhibit B, and incorporated herein by reference, are charts specifying, for Objections filed by non-individual entities and individuals, respectively, on an Objection-by-Objection basis: (a) each Objection's docket number; (b) the arguments set forth therein (identified by category where appropriate); and (c) the City's response thereto.

² Capitalized terms not otherwise defined herein have the meanings given to them in the Declaration of Kevyn D. Orr in Support of City of Detroit,

Despite these realities, over 100 persons and entities objected to the City's eligibility for relief under chapter 9 and to the entry of an Order for Relief. Most Objectors rely on anticipated treatments of their claims as a platform to argue that the City is not authorized to be a chapter 9 debtor. However, as this Court has observed,³ neither the determination of claim amounts nor the potential treatment of claims in a plan of adjustment are before the Court at this time.

Notwithstanding the Objectors' arguments, the City is eligible to be a chapter 9 debtor and has demonstrated that an Order for Relief should be entered. First, the City is authorized to be a chapter 9 debtor because:

- After the fulfillment of certain conditions, PA 436 – which was validly passed by the Michigan legislature⁴ – "empowers the local government for which an emergency manager has been appointed to become a debtor

(continued...)

Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (Docket No. 11) (the "Orr Declaration"), filed on the Petition Date.

³ Order Regarding Eligibility Objections, Notices of Hearings and Certifications Pursuant to 28 U.S.C. § 2403(a) & (b) (Docket No. 642) (the "Eligibility Scheduling Order"), entered on August 26, 2013.

⁴ Recently, the Sixth Circuit questioned the validity of PA 4 (the predecessor statute to PA 436) on the grounds that the Michigan legislature may have violated the Michigan Constitution when it declared PA 4 immediately effective. City of Pontiac Retired Emps. Ass'n v. Schimmel, No. 12-2087, 2013 WL 4038582, at *5-6 (6th Cir. Aug. 9, 2013). No such potential constitutional infirmity afflicts PA 436, which became effective on March 28, 2013, more than 90 days after its enactment on December 27, 2012.

under title 11 of the United States Code ... as required by section 109 of title 11 of the United States Code" (see MCL § 141.1558(1));

- Each of the requirements of PA 436 relating to the authorization of the commencement of the City's chapter 9 case – i.e., a recommendation by the Emergency Manager to the Governor and Treasurer that the City be authorized to proceed under chapter 9 and the written approval of that recommendation by the Governor – were satisfied prior to the filing of the Petition;
- Following the satisfaction of the foregoing conditions, PA 436 specifically authorizes emergency managers to commence chapter 9 cases (see MCL § 141.1558(1));
- The actual text of the Michigan Constitution does not prohibit the commencement of chapter 9 cases by municipalities or condition the steps that might be taken by any State or municipal official in connection with authorizing or effecting such a filing;
- The actual text of the Michigan Constitution does not create or require the imposition of any condition on actions the City might take in this chapter 9 case; and
- No statute passed by the Michigan legislature prohibits the commencement of chapter 9 cases by municipalities.

None of the Objections contest any of the foregoing points. Instead, the Objectors invent additional requirements, not found in the Michigan Constitution, and then allege that these additional requirements have not been met. We demonstrate below that there are no conditions to the City's becoming a debtor under chapter 9 other than those identified above. Accordingly, the City satisfied section 109(c)(2) of the Bankruptcy Code prior to the commencement of this case.

Moreover, objections contending that the City does not desire to adjust its debts, that the City may not be insolvent, that negotiations to adjust debts owed to

more than 100,000 holders were practicable and that the City did not file the

Petition in good faith likewise fall short. The Objections:

- do not include any evidence contradicting or undermining the extensive showing of the City's insolvency included in the Eligibility Memorandum (indeed, the majority of relevant Objectors do not actually state a cognizable objection on the issue, thereby conceding that no information available to them as of the objection deadline supports their Objection);
- (A) implicitly admit that none of the Objectors represent all of the City's more than 20,000 retirees in prepetition negotiations and some Objectors that claim to represent retirees do not represent any of the active employees who have vested pension benefits, (B) ignore certain Objectors' prepetition *refusal* to represent retirees in negotiations concerning pension and retiree healthcare benefits and (C) ignore the impracticability of negotiations with the City's bondholders altogether, all of which are facts that demonstrate that it was impracticable for the City to negotiate an out of court settlement of its debts and other legacy liabilities;
- mischaracterize and omit inconvenient facts relevant to the City's demonstrated efforts to negotiate in good faith a restructuring of its debts with its creditors; and
- misapply the standards governing whether the Petition was filed in good faith to side-step the demonstrated reality that the City intends to file a chapter 9 plan to adjust the City's unsustainable \$18 billion debt burden.

Accordingly, as set forth in the Statement of Qualifications, the Eligibility Memorandum and herein, the City is eligible to be a debtor under chapter 9, and the Court should promptly enter an Order for Relief.

II. THE COURT HAS AUTHORITY AND JURISDICTION TO DETERMINE THE CONSTITUTIONALITY OF CHAPTER 9 AND PA 436

There is no doubt that this Court has the authority and jurisdiction to determine whether the City is eligible to be a debtor under chapter 9. Eligibility is a question of federal law, governed by section 109(c) of the Bankruptcy Code, relevant only for purposes of accessing the federal bankruptcy scheme and the determination of which is specifically committed to the bankruptcy court by section 921(c) of the Bankruptcy Code. As the United States Supreme Court (the "Supreme Court") made clear in Stern v. Marshall, 131 S. Ct. 2594 (2011), non-Article III courts, such as bankruptcy courts, have traditionally been permitted to enter judgment in cases involving "public rights," which are matters "susceptible of judicial determination, but which congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper." Stern, 131 S. Ct. at 2612 (quoting Murray's Lessee v. Hoboken Land & Improvement Co., 59 U.S. 272, 284 (1856)). Included within this category are cases that "can be pursued only by grace of the other branches" of the federal government (id. at 2614) because "[i]n those cases 'it depends upon the will of congress whether a remedy in the courts shall be allowed at all,' so Congress could limit the extent to which a judicial forum was available." Id. at 2612 (quoting Murray's Lessee, 59 U.S. at 284).

The eligibility proceeding fits squarely within this category of "public rights" cases recognized by the Supreme Court. The City's ability to adjust its debts in a federal bankruptcy case is, of course, only possible because Congress enacted the Bankruptcy Code. Because a chapter 9 case "can be pursued only by grace" of Congress (Stern, 131 S. Ct. at 2614), Congress can control access to chapter 9 by tasking a non-Article III judge with determining a municipality's eligibility, as it has done. 11 U.S.C. §§ 109(c), 921(c). Stern, therefore, poses no obstacle to bankruptcy court resolution of the City's eligibility to access chapter 9.

Indeed, no Objector has challenged the Court's ability to make a final determination regarding the City's eligibility for chapter 9. However, by selective quotation to Stern, some Objectors argue that this Court is powerless to rule on certain *objections* to the City's eligibility for chapter 9 that involve federal or state constitutional questions. See AFSCME Objection, at ¶ 70 (substituting Stern's actual reference to "common law counterclaims such as Vickie's" with "constitutional questions such as this one; misleadingly quoting Stern's actual language "on a common law cause of action" as "on a [constitutional] cause of action").⁵ Such a radical expansion of Stern is unsupported by that case or any subsequent authority.

⁵ See Stern, 131 S. Ct. at 2615 ("The 'experts' in the federal system at resolving *common law counterclaims such as Vickie's* are the Article III

Stern involved a statutorily core, state common law counterclaim asserted by the debtor against a creditor. Stern, 131 S. Ct. at 2620. The Supreme Court contrasted this "state law action independent of the federal bankruptcy law and not necessarily resolvable by a ruling on the creditor's proof of claim in bankruptcy" with claims "that were themselves federal claims under bankruptcy law, which would be completely resolved in the bankruptcy process of allowing or disallowing claims." Id. at 2611. While the former required the bankruptcy court to impermissibly exercise the judicial power of the United States, the latter "stem[med] from the bankruptcy itself" and could, as a result, be resolved by the bankruptcy court. Id. at 2618; see also id. ("Vickie's claim, in contrast, is in no way derived from or dependent upon bankruptcy law; it is a state tort action that exists without regard to any bankruptcy proceeding.").⁶

(continued...)

courts, and it is with those courts that her claim must stay.... What is plain here is that this case involves the most prototypical exercise of judicial power: the entry of a final, binding judgment by a court with broad substantive jurisdiction, on a *common law* cause of action....") (emphasis added). See also Crittendon Objection at ¶¶ 9-10.

⁶ The Supreme Court was careful to clarify that its holding should be interpreted narrowly. Stern, 131 S. Ct. at 2620 ("We do not think the removal of counterclaims such as Vickie's from core bankruptcy jurisdiction meaningfully changes the division of labor in the current statute; we agree with the United States that the question presented here is a 'narrow' one."); id. (noting that Congress had exceeded constitutional limitations "in one isolated respect").

Stern poses no obstacle for the Court in this case because there are no state or federal constitutional *claims* before the Court on which it could even purport to enter a final judgment. What is before the Court is a determination regarding the eligibility of the City of Detroit to be a chapter 9 debtor – a question that unquestionably "stems from the bankruptcy itself."⁷ Id. at 2618. That this determination requires the Court to consider federal and state constitutional questions does not implicate Stern. Even if the Court were to conclude that chapter 9 or PA 436 is unconstitutional, it has not been called upon – indeed, it would not be permitted – to issue any relief based on those arguments beyond declaring that the City is ineligible for chapter 9 and dismissing the Petition.

For the foregoing reasons, Stern is simply not implicated by the Objectors' constitutional arguments against eligibility. See First Horizon Home Loan Corp. v. Apostle (In re Apostle), 467 B.R. 433, 436 (Bankr. W.D. Mich. 2012) ("[T]he Stern decision is extremely narrow; except for the types of counterclaims addressed in Stern v. Marshall, a bankruptcy judge remains empowered to enter final orders in all core proceedings.").

⁷ Even if federal or state constitutional *claims* were before the Court, Stern would still pose no obstacle to this Court's ability to resolve the City's eligibility for chapter 9 in the first instance because the constitutionality of PA 436 is a pure legal issue, which will be reviewed *de novo* on appeal. Thus, none of the concerns regarding deferential review of bankruptcy court judgments animating Stern would be present (see Stern, 131 S. Ct. at 2611), and any error would be harmless after appellate review.

III. CHAPTER 9 IS CONSTITUTIONAL UNDER LONGSTANDING SUPREME COURT PRECEDENT

The constitutionality of chapter 9 has been settled for more than 70 years. In United States v. Bekins, 304 U.S. 27 (1938), the Supreme Court upheld against constitutional challenge the municipal bankruptcy provisions of the Bankruptcy Act of 1937, the predecessor of the current chapter 9. Although the relevant statutory provisions have remained substantially unchanged since then, the Objectors argue nevertheless that intervening developments in the Supreme Court's jurisprudence on both the Contracts Clause of the United States Constitution (the "Contracts Clause")⁸ and federalism have "*effectively* overruled" Bekins and that chapter 9 is no longer constitutional.⁹ The Objectors' argument is wrong for two reasons. First, because the Supreme Court does not overrule binding precedents by mere implication, Bekins remains good law. Second, nothing in the Supreme Court's developing jurisprudence on either the Contracts Clause or federalism casts even the slightest doubt on the fundamental soundness of Bekins and the constitutionality of chapter 9.

⁸ U.S. Const., art. I, § 10 ("No State shall ... pass any ... Law impairing the Obligation of Contracts").

⁹ See AFSCME Objection, at ¶¶ 44-46 (emphasis added).

A. The Supreme Court's Decision in Bekins Remains Binding Precedent

AFSCME contends that chapter 9 is unconstitutional in light of federalism principles because it "allows Congress to set rules controlling State fiscal self-management – an area of exclusive state sovereignty."¹⁰ This argument is nothing short of an attempt to relitigate an issue that the Supreme Court resolved over seven decades ago.

In Bekins, the Supreme Court specifically addressed "whether the exercise of the federal bankruptcy power in dealing with a composition of the debts of [a municipality], upon its voluntary application and with the State's consent, must be deemed to be an unconstitutional interference with the essential independence of the State as preserved by the Constitution." Bekins, 304 U.S. at 49. Two years earlier, in Ashton v. Cameron County Water Improvement District Number One, 298 U.S. 513 (1936), the Supreme Court had held that municipal bankruptcy was unconstitutional because it "might materially restrict [the subdivision's] control over its fiscal affairs," such that it would "no longer [be] free to manage [its] own affairs." Ashton, 298 U.S. at 530-31. Responding to the Supreme Court's concerns, Congress enacted a slightly revised version of the municipal bankruptcy

¹⁰ AFSCME Objection, ¶¶ at 40.

statute. Bekins, 304 U.S. at 50; In re City of Stockton, 486 B.R. 194, 198 (Bankr. E.D. Cal. 2013).

This revised statute was challenged and upheld in Bekins. The Supreme Court concluded that the revised statute was "carefully drawn so as not to impinge upon the sovereignty of the State." Bekins, 304 U.S. at 51. Specifically, the Court explained that the "State retains control of its fiscal affairs" and that the "bankruptcy power is exercised in relation to a matter normally within its province and only in a case where the action of the [political subdivision] in carrying out a plan of composition approved by the bankruptcy court is authorized by state law." Id.

Central to the Court's reasoning was its observation that "the essence of sovereignty" is the ability to "give consents bearing upon the exertion of governmental power." Id. at 51-52. Because the adjustment of debts "was not available under state law by reason of the [Contracts Clause]," the Court held that the "bankruptcy power [was] competent to give relief," and "if there [was] any obstacle to its exercise ... it [was] in the right of the State to oppose federal interference." Id. at 54.

The Objectors do not point to any subsequent change in the text of chapter 9 that would warrant a different outcome than Bekins.¹¹ None of the cases cited by the Objectors addresses the constitutionality of chapter 9 or casts doubt on Bekins.¹² Nevertheless, the Objectors invite this Court to treat Bekins as having been implicitly overruled. To do so, however, would violate the fundamental and well-established precept that "[i]f a precedent of [the Supreme Court] has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, [courts] should follow the case which directly controls, leaving to [the Supreme Court] the prerogative of overruling its own decisions." Rodriguez de Quijas v. Shearson/Am. Express, Inc., 490 U.S. 477, 484 (1989); see also Agostini v. Felton, 521 U.S. 203, 237 (1997) (same). Because Bekins directly controls the Objectors' constitutional challenge to chapter 9, the Court must follow it and hold that chapter 9 is constitutional.

¹¹ See AFSCME Objection, at ¶¶ 44-46.

¹² Indeed, only one of the cases cited by the Objectors – Faitoute Iron & Steel Co. v. City of Asbury Park, 316 U.S. 502 (1942) – so much as mentions Bekins.

B. Subsequent Legal Developments
Have Not Undermined the Soundness of
Bekins and the Constitutionality of Chapter 9

Although Bekins is dispositive of the Objectors' constitutional claim, it is also evident that legal developments since Bekins do not undermine the Bekins decision, the soundness of its reasoning or the constitutionality of chapter 9.

First, contrary to the Objectors' contention,¹³ States are not generally free to adjust municipal debts by unilateral state action. If the Objectors were correct, the Contracts Clause would be a dead letter, but the Supreme Court has made clear that "[w]hen a State itself enters into a contract, it cannot simply walk away from its financial obligations." Energy Reserves Grp., Inc. v. Kansas Power & Light Co., 459 U.S. 400, 412 n.14 (1983). When a State seeks to impair its own contracts, "complete deference to a legislative assessment of [the] reasonableness and necessity [of the impairment] is not appropriate because the State's self-interest is at stake." United States Trust Co. of N.Y. v. New Jersey, 431 U.S. 1, 26 (1977). For that reason, "a state is not completely free to consider impairing the obligations of its own contracts on a par with other policy alternatives." Id. at 30-31.

In chapter 9, by contrast, there is no risk of state self-interest because the impairment can be carried out only by an impartial federal judge. Indeed, as one bankruptcy court put it: "A financially prostrate municipal government has one

¹³ See AFSCME Objection, at ¶¶ 44-45.

viable option to resolve debts in a non-consensual manner. It is in a bankruptcy case. Outside of bankruptcy, non-consensual alteration of contracted debt is, at the very least, severely restricted, if not impossible." In re Jefferson Cnty., 474 B.R. 228, 279 (Bankr. N.D. Ala. 2012), aff'd, No. CV-12-J-2203-5, 2012 WL 3775758 (N.D. Ala. Aug. 28, 2012).

It comes as no surprise, therefore, that Faitoute Iron & Steel Co. v. City of Asbury Park, 316 U.S. 502 (1942), the case so prominently relied upon by the Objectors, is the *only* case "in this and the last century when the Supreme Court of the United States has sustained the alteration of a municipal bond contract outside a bankruptcy case." In re Jefferson Cnty., 474 B.R. at 279 n.21; see also United States Trust Co., 431 U.S. at 27. In Asbury Park, the Court rejected a Depression-era Contracts Clause challenge to a state-law-approved plan of adjustment pursuant to which certain defaulted bonds could only be converted into new bonds with the same principal amount but bearing a lower interest rate. Asbury Park, 316 U.S. at 504-07. Clarifying that "[w]e do not go beyond the case before us" and that "[d]ifferent considerations may come into play in different situations" (Asbury Park, 316 U.S. at 516), the Court was careful not to extend its holding beyond the facts of the case.

Therefore, far from being an authoritative pronouncement of the States' sweeping authority to adjust municipal debts, Asbury Park is an outlier and stands

only for the unremarkable point that States may adjust municipal debts in very limited ways under extraordinary circumstances without violating the Contracts Clause. "In almost every case," however, "the Court has held a governmental unit to its contractual obligations when it enters financial or other markets." Energy Reserves Grp., 459 U.S. at 412 n.14 (citing United States Trust Co., 431 U.S. at 25-28; W.B. Worthen Co. v. Kavanaugh, 295 U.S. 56 (1935); Murray v. Charleston, 96 U.S. 432 (1877)); see also, e.g., Mascio v. Public Emps. Ret. Sys. of Ohio, 160 F.3d 310, 313-15 (6th Cir. 1998) (barring the enforcement of a State law impairing vested pension benefits).

States must seek the aid of federal bankruptcy courts under chapter 9 precisely because they are *not* at liberty under the Contracts Clause to impair their own contracts. See Bekins, 304 U.S. at 54. For this reason, the Objectors' next contention – that a State unconstitutionally relinquishes its sovereignty to the Federal Government by authorizing chapter 9¹⁴ – is also fundamentally flawed. As the Bekins Court explained: when a State authorizes chapter 9, it "acts in aid, and not in derogation, of its sovereign powers. It invites the intervention of the bankruptcy power to save its agency which the State itself is powerless to rescue. Through its cooperation with the national government the needed relief is given. We see no ground for the conclusion that the Federal Constitution, in the interest of

¹⁴ See AFSCME Objection, at ¶¶ 46-57.

state sovereignty, has reduced both sovereigns to helplessness in such a case."

Bekins, 304 U.S. at 54. The irony of the Objectors' argument is that it would actually impede, rather than protect, the States' sovereignty.

The Objectors also rely on the Supreme Court's anti-commandeering cases – New York v. United States, 505 U.S. 144 (1992), and Printz v. United States, 521 U.S. 898 (1997) – which involved involuntary federal regulatory regimes that "commandeered" State legislative processes or officials. In New York, the challenged statute required States either to take title to low-level radioactive waste or to enact legislation regulating the waste pursuant to Congress's direction. New York, 505 U.S. at 174-75. In Printz, the challenged statute required State law enforcement officers to participate in the administration of a federal regulatory scheme. Printz, 521 U.S. at 903-04. The Supreme Court invalidated both statutes because "[t]he Federal Government may not compel the States to enact or administer a federal regulatory program." Id. at 933 (quoting New York, 505 U.S. at 188).

Chapter 9, by contrast, does not *compel* the States to enact, administer or otherwise participate in the federal bankruptcy scheme. Most fundamentally, chapter 9 is "administered" by the federal bankruptcy court, not by States. Moreover, States cannot be "forced" to participate in chapter 9 because their participation is completely voluntary. By extending the benefits of bankruptcy to

consenting States, chapter 9 operates much like federal programs that extend the benefits of federal money to States that voluntarily submit to federal requirements. E.g., South Dakota v. Dole, 483 U.S. 203, 205-06 (1987) (conditioning federal transportation funds on the States' adoption of a national minimum drinking age). Such programs are not constitutionally problematic where the "State has a legitimate choice whether to accept the federal conditions in exchange for federal funds." Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2602-03 (2012) (plurality opinion).

Because States have a "legitimate choice" whether to allow their municipalities to invoke chapter 9, chapter 9 is not an unconstitutional infringement of State sovereignty. Nor is there any danger of misplaced political accountability.¹⁵ Where, as here, the State has a "legitimate choice" whether to participate in the federal scheme, "state officials can fairly be held politically accountable for choosing to accept or refuse the federal offer." Nat'l Fed'n of Indep. Bus., 132 S. Ct. at 2603 (plurality opinion).

Indeed, even after a State authorizes its municipalities to proceed under chapter 9, the bankruptcy court's powers are designed "to preserve the niceties of the state-federal relationship." Ass'n of Retired Emps. v. City of Stockton (In re City of Stockton), 478 B.R. 8, 20 (Bankr. E.D. Cal. 2012). For that reason, the

¹⁵ See AFSCME Objection, at ¶¶ 47-57.

Objectors are wrong to suggest that State consent to chapter 9 is a futile effort to cure "an otherwise unconstitutional infringement of state sovereignty."¹⁶ Even if there is some non-delegable core of sovereign state functions that cannot be ceded to the federal government by State consent, chapter 9 itself prohibits the bankruptcy court from intruding on those core functions. 11 U.S.C. § 903 (prohibiting the bankruptcy court from "limit[ing] or impair[ing] the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality").

Finally, the Objectors also argue that chapter 9 violates the uniformity requirement of Article I, § 8, clause 4 of the United States Constitution.¹⁷ "[B]y ceding to each state the ability to define its own qualifications for a municipality to declare bankruptcy," argue the Objectors, "Chapter 9 permits the promulgation of non-uniform bankruptcies within states." *Id.* The very case that the Objectors cite, Hanover National Bank v. Moyses, 186 U.S. 181 (1902), proves otherwise. In Hanover National Bank, the Supreme Court approved federal bankruptcy provisions that relied on state law for determining exempt property. *Id.* at 188-90. The Supreme Court held that such a system was, "in the constitutional sense, uniform throughout the United States," even though "it may result in certain

¹⁶ AFSCME Objection, at ¶¶ 60-62.

¹⁷ AFSCME Objection, at ¶ 58.

particulars differently in different States." Id. at 190. Insofar as the Objectors contend that chapter 9 is unconstitutional because PA 436 is non-uniform within Michigan, that argument is erroneous because the uniformity requirement is "only controlling as to the congressional exercise of power," not as to the underlying state law. In re Vasko, 6 B.R. 317, 320 (Bankr. N.D. Ohio 1980). In any event, the process set forth in PA 436 is plainly uniform because it applies to all local governments. E.g., MCL § 141.1558. Notwithstanding the Objectors' speculation that PA 436 might have "wildly divergent effects on different cities" (AFSCME Objection, at ¶ 58), "it is not the outcome that determines the uniformity, but the uniform process" by which a defined class of debtors is treated. Richardson v. Schafer (In re Schafer), 689 F.3d 601, 611 (6th Cir. 2012).

IV. THE CITY WAS PROPERLY AUTHORIZED TO COMMENCE THIS CHAPTER 9 CASE

On July 16, 2013, consistent with MCL § 141.1558, the Emergency Manager provided the Governor and Treasurer with his written recommendation that the City be authorized to file for chapter 9 relief.¹⁸ The recommendation was predicated upon, among other things, the Emergency Manager's:

¹⁸ Orr Declaration, at Exhibit J (copy of Emergency Manager's written recommendation); MCL § 141.1558(1) ("If, in the judgment of the emergency manager, no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the emergency manager may recommend to the governor and the state treasurer that the local government be authorized to proceed under chapter 9.").

(A) determination that the City could not adopt a feasible financial plan that can satisfactorily rectify its financial emergency in a timely manner; and (B) judgment that no reasonable alternative to chapter 9 would allow him to rectify the City's financial emergency in a timely manner.¹⁹

On July 18, 2013, the Governor approved in writing the Emergency Manager's recommendation to commence this chapter 9 case.²⁰ Finally, also on July 18, 2013, consistent with the Governor's written approval, the Emergency Manager issued a written order directing the City to commence this chapter 9 case.²¹ Accordingly, under applicable State law and pursuant to the specific approval of the Governor in accordance with MCL § 141.1558(1), the City has

¹⁹ MCL § 141.1558(2)(a) (requiring that an emergency manager's recommendation include, among other things, "[a] determination by the emergency manager that no feasible financial plan can be adopted that can satisfactorily rectify the financial emergency of the local government in a timely manner.").

²⁰ Orr Declaration, at Exhibit K (copy of Governor's written approval of Emergency Manager's recommendation); MCL § 141.1558(1) ("the governor shall inform the state treasurer and the emergency manager in writing of the decision [to approve]....").

²¹ Orr Declaration, at Exhibit L (copy of Emergency Manager's order directing commencement); MCL § 141.1558(1) (providing that, "[u]pon receipt of the written approval [of the Governor], the emergency manager is authorized to proceed under chapter 9. This section empowers the local government for which an emergency manager has been appointed to become a debtor under title 11 of the United States Code, 11 USC 101 to 1532, as required by section 109 of title 11 of the United States Code, 11 USC 109, and empowers the emergency manager to act exclusively on the local government's behalf in any such case under chapter 9.").

been specifically authorized to be a debtor under chapter 9 of the Bankruptcy Code.

V. THE STATE'S AUTHORIZATION OF CHAPTER 9 DID NOT VIOLATE THE PENSIONS CLAUSE

Several of the Objectors claim, in one form or another,²² that the State's authorization of the City's chapter 9 filing violated Article IX, Section 24 of the Michigan Constitution (the "Pensions Clause").²³ They are mistaken. As explained below, the Pensions Clause itself makes no mention of bankruptcy or chapter 9 authorization. Nor does the State's authorization of a chapter 9 filing, or even the City's becoming a chapter 9 debtor, "diminish[] or impair[]" any pension. These are simply steps that begin the bankruptcy process, where pensions *may* be impaired by order of a federal bankruptcy court at some later date.

A. The Authorization of Chapter 9 Does Not "Diminish or Impair" Pension Benefits

In authorizing the City to file for chapter 9, the State did not violate the Pensions Clause because it did not "diminish[] or impair[]" any pension.

The authorization was merely one of several conditions to the City's becoming a

²² See, e.g., AFSCME Objection, at ¶¶ 76-81; Retiree Associations Objection, at ¶¶ 35-50; UAW Objection, at ¶¶ 27-40; Detroit Retirement Systems Objection, at pp. 30-43.

²³ Mich. Const. art. IX, § 24 ("The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.").

chapter 9 debtor. After the Governor authorized the City to file this case, and even after the City filed the Petition, the City's pension obligations have remained unimpaired. The Objectors frame their argument as if nothing stands between authorization and the confirmation of a plan that may reduce pension benefits. The only way pensions could be impaired without the consent of the pertinent beneficiaries, however, is by an order of this Court at some future date. As another court has recently indicated, the "main event" of pension impairment is not properly addressed until well after the eligibility stage – at the time of plan confirmation. In re City of Stockton, 493 B.R. 772, 797 (Bankr. E.D. Cal. 2013).

For the same reason, there is no merit to the Objectors' argument that the enactment of PA 436 violated the Pensions Clause (and, thus, that PA 436 is unconstitutional as a threshold matter)²⁴. The enactment of the underlying statute empowering the Governor to authorize (and the Emergency Manager to file) a chapter 9 case is even further removed from any possible impairment of pensions than the Governor's authorization itself.

B. The Pensions Clause Simply Extends the Protection of the Federal and State Contracts Clauses to Cover Public Pensions

The unmistakable function of the Pensions Clause is to extend the protection of the federal and state contracts clauses to cover public pensions by treating them

²⁴ See, e.g., Detroit Retirement Systems Objection, at p. 43.

as contractual obligations.²⁵ The text of the Pensions Clause states that "[t]he accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions *shall be a contractual obligation thereof* which shall not be diminished or impaired thereby." Mich. Const. art. IX, § 24 (emphasis added). As the Michigan Supreme Court has recognized, "*[t]he obvious intent of § 24 ... was to ensure that public pensions be treated as contractual obligations that, once earned, could not be diminished.*" In re Constitutionality of 2011 PA 38, 806 N.W.2d 683, 694 (Mich. 2011) (emphasis added).

It is important to note that prior to the adoption of the Pensions Clause in 1963, "[i]t had long been the general rule that pensions granted by public authorities were not contractual obligations but gratuitous allowances which could be revoked at will by the authority because the pensioner was not deemed to have had any vested right in their continuation." In re Enrolled Senate Bill (Advisory Opinion re Constitutionality of 1972 PA 258), 209 N.W.2d 200, 202 (Mich. 1973). Against this backdrop, public employees in Michigan sought "[t]o gain protection of their pension rights," and thus "effectively lobbied for a constitutional

²⁵ The contracts clause contained in the Michigan Constitution (the "State Contracts Clause") is indistinguishable from the federal version, and the Michigan courts have accordingly interpreted the two as having the same effect. See Fun 'N Sun RV, Inc. v. Michigan (In re Certified Question), 527 N.W.2d 468, 473-74 (Mich. 1994) (noting "virtually identical" language of state and federal contracts clauses, and relying on federal case law to apply state clause).

amendment *granting contractual status* to retirement benefits." Kosa v. State Treasurer, 292 N.W.2d 452, 454-55 (Mich. 1980) (emphasis added). The result was the Pensions Clause, which elevated public pensions to the same level of constitutional protection that applied to "obligations of contract" under the Contracts Clause.

While the Contracts Clause prohibits States from impairing contracts, it does not pose any obstacle to chapter 9. As the Supreme Court has recognized, a State's authorization of municipal bankruptcy does not itself constitute an impairment of contracts but merely "invites the intervention of the bankruptcy power to save its agency which the State itself is powerless to rescue." Bekins, 304 U.S. at 54. Consequently, Bekins makes clear that the Contracts Clause is perfectly consistent with chapter 9 proceedings from start to finish. This is true for two reasons. First, a State does not impair contracts merely by authorizing a municipality to file for bankruptcy, because no contracts are impaired at the time of authorization. Second, any impairment of contracts that occurs in chapter 9 does not implicate the Contracts Clause, because the Contracts Clause only prohibits impairment *by the State*, while chapter 9 only allows impairment by the federal bankruptcy court. As one court has observed, "the Bankruptcy Code ... permits *the federal courts through confirmation of a Chapter 9 plan* to impair contract rights ... and such impairment is not a violation by the state or the municipality of [the Contracts

Clause] which prohibits a state from impairing such contract rights." In re Sanitary & Improvement Dist., No. 7, 98 B.R. 970, 973 (Bankr. D. Neb. 1989) (emphasis added). Indeed, if chapter 9 truly involved an impairment of contractual obligations by the State, then the Contracts Clause would prevent the impairment of any contract in municipal bankruptcy (or at least require a stringent Contracts Clause analysis for every contractual impairment).

Like the Contracts Clause, the Pensions Clause applies only to impairments that are imposed "[]by" the State and its political subdivisions. Mich. Const. art. IX, § 24. Thus, as with the Contracts Clause, chapter 9 is not limited by the Pensions Clause because the impairment of pensions and other contractual obligations in chapter 9 can only occur by order of a federal bankruptcy court.

The framework of chapter 9, including the role of States in authorizing municipal bankruptcy, was well established when the Pensions Clause was ratified in 1963. Nevertheless, the Pensions Clause does not include any restriction on the authorization or filing of municipal bankruptcy cases. Given the absence of any language regarding bankruptcy in the Pensions Clause, and the well-established principle that constitutional protection for "contractual obligations" is not a bar to chapter 9, there is no basis for concluding that the Pensions Clause was intended to give pensioners a right to block municipal bankruptcy. Cf. In re Constitutionality of 2011 PA 38, 806 N.W.2d at 697, n.24 ("Given that neither the actual language

of § 24 nor the Address to the People mentions [a right to tax-free pension benefits], the ratifiers would have had absolutely no reason to suppose that, by adopting § 24, they would be creating" such a right).

Indeed, when the Pensions Clause was ratified in 1963, Michigan law specifically authorized instrumentalities of the State to commence cases under the Bankruptcy Act of 1898. See Public Act 72 of 1939, MCL § 141.201(1) (repealed in 1982) ("Any ... instrumentality in this state as defined in [the Bankruptcy Act of 1898 and amendments thereto] ... may proceed under the terms and conditions of such acts to secure a composition of its debts.... The governing authority of any such ... instrumentality, or the officer, board or body having authority to levy taxes to meet the obligations to be affected by the plan of composition may file the petition and agree upon any plan of composition authorized by said act of congress"). It seems extremely unlikely that, by enacting the Pensions Clause, the framers of the Michigan Constitution intended to overrule Public Act 72 of 1939, which remained on the books for another 20 years, without so much as mentioning the Act's existence.

No court has ever held that a State's constitutional protection of pensions poses any obstacle to a municipality's eligibility to be a chapter 9 debtor. For example, in California, the state Constitution prohibits the diminishment or impairment of pension benefits unless some "new comparable or offsetting benefit

appear[s] in the modified plan." Olson v. Cory, 636 P.2d 532, 541 (Cal. 1980). Nonetheless, California courts have found municipalities eligible to be chapter 9 debtors in several recent cases where pensions might be vulnerable to impairment in the bankruptcy process. E.g., Stockton, 493 B.R. 772; Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo (In re City of Vallejo), 408 B.R. 280 (B.A.P. 9th Cir. 2009). Similar constitutional protection for pensions applies in Alabama (see Bd. of Trs. v. Cary, 373 So.2d 841 (Ala. 1979)), where chapter 9 has not only been authorized but, consistent with constitutional protections for contracts, has also been used to reduce pensions (see In re City of Prichard, No. 99-13465 (Bankr. S.D. Ala. Oct. 6, 2000) (Docket No. 123), at pp. 6-7 (order confirming plan of adjustment reducing all existing and future pension benefits payments by 8.5%)). As in these cases, the Pensions Clause does not prohibit the State from authorizing the City to be a debtor under chapter 9.

Indeed, if the mere prospect of impairing pensions in bankruptcy were enough to violate the Pensions Clause, then the same prospect of impairing contracts in bankruptcy would be enough to violate the State Contracts Clause (and, for that matter, the federal Contracts Clause). If that were true, no Michigan municipality (or any municipality in any other State throughout the nation) could ever enter chapter 9, where the impairment of contracts is always on the table.

That absurd result proves that the authorization of a chapter 9 case does not equate to an impermissible impairment under the Pensions Clause.

C. The Pensions Clause Does Not Require Chapter 9 Authorization to Be Conditioned on the Non-Impairment of Pensions

The Objectors fare no better in their argument that the Pensions Clause allows the State to authorize chapter 9 only on the condition that pensions not be impaired.²⁶ Once again, the Objectors cite no authority in support of this novel argument, which has no basis in text or precedent.

To begin, the only relevant question at the eligibility stage is whether the State has specifically authorized the City "to be a debtor under ... chapter [9]." 11 U.S.C. § 109(c)(2). If the State has granted authorization, it is entirely irrelevant for eligibility purposes whether the State has also purported to impose some further conditions.

Perhaps conceding this point, the Objectors appear to argue that the State has not validly authorized the City to become a chapter 9 debtor because the State violated the Pensions Clause by failing to make the non-impairment of pensions a condition of authorization.²⁷ This argument, too, is incorrect. As we have already seen, the Pensions Clause nowhere mentions bankruptcy in general or chapter 9

²⁶ See AFSCME Objection, at ¶ 82; UAW Objection, at ¶ 30; Detroit Retirement Systems Objection, at pp. 43-44.

²⁷ See AFSCME Objection, at ¶ 82-84; UAW Objection, at ¶ 30.

authorization in particular. It also does not say anything about conditions that must be imposed on the authorization of chapter 9. As discussed above, the Pensions Clause simply has the same effect as the Contracts Clause, which has never been interpreted by any Court to require any conditions on the authorization of chapter 9.

Apparently dissatisfied with the actual wording of the Michigan Constitution, the Objectors base their argument on a constitutional provision of their own imagining. Instead of adhering to the plain terms of the Pensions Clause that require the State to *refrain* from impairing pensions, the Objectors contend that the Pensions Clause should be read to require State officials to take *affirmative steps* to prevent even the possibility of the federal bankruptcy court from impairing pensions in chapter 9. This is not an interpretation of the Pensions Clause but a complete rewriting of it.

Even if the Pensions Clause could be interpreted so broadly as to require that limits be placed on the authorization of a chapter 9 case in order to restrict a municipality's *use* of various provisions of the Bankruptcy Code once in chapter 9, any such limits would be both prohibited and preempted by federal law. The Bankruptcy Clause of the United States Constitution empowers Congress to "establish ... uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. art. I, § 8, cl. 4. Pursuant to that authority, Congress has enacted chapter 9 as a comprehensive scheme for municipal bankruptcy, including

various powers that a municipal debtor may invoke to adjust its debts. Under the Supremacy Clause of the United States Constitution,²⁸ this comprehensive federal scheme displaces any contrary state-law provisions that purport to alter or impair a debtor's powers under the Bankruptcy Code. "The federal bankruptcy power ... by operation of the Supremacy Clause, trumps the ... state constitution." Stockton, 478 B.R. at 16. Thus, while the State may act as a gatekeeper in determining whether to authorize a chapter 9 filing, State law cannot alter or override the federal scheme for determining the tools of debt adjustment that a municipal debtor may use once it is in bankruptcy.

In light of the comprehensive scheme that Congress has enacted, "[i]ncorporating state substantive law into chapter 9 to amend, modify or negate substantive provisions of chapter 9 would violate Congress' ability to enact uniform bankruptcy laws." In re City of Vallejo, 403 B.R. 72, 76-77 (Bankr. E.D. Cal. 2009), aff'd sub nom. Int'l Bhd. Of Elec. Workers, Local 2376 v. City of Vallejo (In re City of Vallejo), 432 B.R. 262 (E.D. Cal. 2010); see also Cnty. of Orange v. Merrill Lynch & Co. (In re Cnty. of Orange), 191 B.R. 1005, 1020 (Bankr. C.D. Cal. 1996) (deviating from federal scheme would "violate the constitutional mandate for uniform bankruptcy laws" by determining creditor

²⁸ U.S. Const. art. VI, cl. 2 ("[T]he Laws of the United States ... shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

priorities based on factors that vary from state to state).²⁹ Thus, a State "must accept chapter 9 in its totality; it cannot cherry pick what it likes while disregarding the rest." Cnty. of Orange, 191 B.R. at 1021; see also Stockton, 478 B.R. at 16 (holding that "[a] state cannot ... condition or [] qualify, i.e. to 'cherry pick,' the application of the Bankruptcy Code provisions that apply in chapter 9 cases after such a case has been filed"); Vallejo, 432 B.R. at 267-68 (same); Mission Indep. Sch. Dist. v. Texas, 116 F.2d 175, 178 (5th Cir. 1940) (same).

For these reasons, the Pensions Clause by its plain terms did not require the Governor to impose any of the conditions sought by the Objectors, and in any event, such conditions would be prohibited by federal law.³⁰

²⁹ In establishing uniform bankruptcy laws, it is for Congress to determine how and whether State law will be incorporated. See In re Schafer, 689 F.3d at 611 (noting that Congress "may" incorporate state law in bankruptcy). In chapter 9, Congress has chosen to allow state law to govern the question of whether a municipality is authorized to become a debtor but not to govern the powers that debtors may invoke to adjust their debts.

³⁰ The City raises these arguments not to seek the Court's determination today whether pension benefits can or should be modified in this case but merely to respond to the Objectors' argument that the Governor's authorization of this case must necessarily have placed a condition on the filing. It need not have. It could not have.

In this vein, the Court – consistent with its findings at Section VI of the Eligibility Scheduling Order – should reject the request that any Order for Relief require that all actions taken by the Emergency Manager, including the eventual proposal of a plan of adjustment, "comply with the State

VI. COLLATERAL ESTOPPEL DOES NOT PRECLUDE THIS COURT FROM DETERMINING THE CITY'S ELIGIBILITY FOR CHAPTER 9

Pointing to the declaratory judgment entered in Webster v. Michigan, No. 13-734-CZ (Ingham Cnty. Cir. Ct.), certain of the Objectors contend that the City is barred by collateral estoppel from litigating whether the City's authorization to file for chapter 9 bankruptcy was valid under the Michigan Constitution.³¹ The Objectors' collateral estoppel argument fails for numerous reasons.

Collateral estoppel applies only to issues that have been "actually litigated and determined by a valid and final judgment." Monat v. State Farm Ins. Co., 677 N.W.2d 843, 845 (Mich. 2004). But the judgment in Webster was not "valid" because the state court lacked jurisdiction at the time the judgment was entered. Under 28 U.S.C. § 1334(a), federal district courts have "exclusive" jurisdiction over "all cases under title 11." An essential component of that exclusive

(continued...)

Constitution." See AFSCME Objection, at ¶¶ 82-84. Such amorphous and premature requests, including requests that the Court decide questions related to section 943 of the Bankruptcy Code months in advance of the filing of a plan of adjustment, are wholly unrelated to eligibility and unwarranted at this stage.

³¹ See Retirement Systems Objection, at pp. 44-58. The Objectors' resort to collateral estoppel is necessary, of course, because a state trial court's interpretation of state law is not binding on this Court. See Weisberg v. Powell, 417 F.2d 388, 393 (7th Cir. 1969) ("We are not necessarily bound by the decision of a state trial court on a point of state law where the highest court of the state has not spoken on it.").

jurisdiction is to determine whether a municipality was "specifically authorized ... to be a debtor under [chapter 9] by State law." 11 U.S.C. § 109(c)(2); see also 11 U.S.C. § 921(c) (instructing the court, as part of the bankruptcy case, to determine whether "the petition ... meet[s] the requirements of this title"); Transcript of Hearing, dated July 24, 2013, at pp. 71-72 ("The Court concludes that the issue of eligibility and each of the elements relating to eligibility are within this Court's exclusive jurisdiction under 28 U.S.C., Section 1334(a). Under that statute, United States District Courts have original and exclusive jurisdiction of all cases under Title 11, that original and exclusive jurisdiction referred to the Bankruptcy Courts of each jurisdiction under 28 U.S.C., Section 157. Our District Court has referred all matters relating to bankruptcy jurisdiction to the Bankruptcy Court under Local Rule 83.30. This is not a proceeding within 28 U.S.C., Section 1334, over which Bankruptcy Courts would have concurrent jurisdiction with the state courts.").

In Webster, after the City had already filed the Petition, the state court purported to determine that the City was not validly authorized to be a debtor under State law. See Order of Declaratory Judgment, at 2, Webster, No. 13-734-CZ (July 19, 2013) (declaring that the State could not "authoriz[e] an emergency manager ... to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits"). By passing judgment on the

validity of the City's authorization to proceed under chapter 9, the Webster court purported to adjudicate an issue that fell squarely within this Court's exclusive jurisdiction. Because the Webster court lacked jurisdiction, the judgment is void. See Twin City Fire Ins. Co. v. Adkins, 400 F.3d 293, 299 (6th Cir. 2005) ("Where a federal court finds that a state-court decision was rendered in the absence of subject matter jurisdiction or tainted by due process violations, it may declare the state court's judgment void *ab initio* and refuse to give the decision effect in the federal proceeding.").

Even if the Webster court had been able to exercise jurisdiction over eligibility questions (which it was not), the declaratory judgment in Webster would still be invalid because it was entered in violation of the automatic stay imposed by section 362 of the Bankruptcy Code as of the time of the filing of the Petition. The Objectors argue that the automatic stay did not apply to suits against the Webster defendants – the State of Michigan, the Governor, and the Treasurer – until the stay was extended to those defendants on July 25, 2013.³²

As the City made clear in its motion to extend the automatic stay, certain prepetition lawsuits – including Webster – violated the automatic stay imposed as of the Petition Date to the extent that such suits sought "directly or indirectly to

³² See Order Extending the Chapter 9 Stay (Docket No. 166); Retirement Systems Objection, at p. 51.

enforce the plaintiffs' claims against the City or to exercise control over the City's property rights, including its powers and rights under chapter 9." Motion of Debtor for Entry of Order Extending the Chapter 9 Stay (Docket No. 56) at p. 15 n.4; see Amedisys, Inc. v. Nat'l Century Fin. Enters., Inc. (In re Nat'l Century Fin. Enters., Inc.), 423 F.3d 567, 578 (6th Cir. 2005) (holding that "[a]n action taken against a nondebtor which would inevitably have an adverse impact upon the property of the estate must be barred by the [§ 362(a)(3)] automatic stay provision") (quoting Licensing by Paolo, Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 392 (2d Cir. 1997)). By entering judgment – a day after the Petition Date – declaring that the City's bankruptcy filing was not properly authorized under the Michigan Constitution, the Webster court sought to exercise control over the City's legal and property rights in violation of the automatic stay. Such a judgment is likely void *ab initio* (see Easley v. Pettibone Mich. Corp., 990 F.2d 905, 911 (6th Cir. 1993) (holding that "actions taken in violation of the [automatic] stay are invalid and voidable and shall be voided absent limited equitable circumstances")) and, thus, would be invalid for purposes of collateral estoppel. See Control Module, Inc. v. Morello (In re Morello), No. 07-02052, 2012 WL 1945509, at *18 (Bankr. D. Conn. May 30, 2012) (holding, where a state court entered a postpetition "supplemental judgment" against a debtor, that "because the Supplemental Judgment was issued after the filing of the Debtor's bankruptcy, the judgment of

the [state] court is void and neither side may claim that the [state] court's finding[s] are entitled to collateral estoppel....").

Collateral estoppel further fails because the City did not have "a full and fair opportunity to litigate the issue." Monat, 677 N.W.2d at 845 (quotation marks and alteration omitted). "A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts...." Id. at 845 n.2 (quoting 1 RESTATEMENT (SECOND) OF JUDGMENTS § 28, at 273 (1982)). The state court in Webster took the unusual step of issuing a final declaratory judgment on an expedited basis after the Petition had already been filed and without the benefit of full briefing on the merits. At the time of the declaratory judgment, the Webster case was little more than two weeks old, and the defendants' briefs had focused mainly on justiciability issues and the preliminary injunction standard rather than the merits of the plaintiffs' arguments. Indeed, the Webster court's failure to provide a well-reasoned explanation for its decision attests to the gross inadequacy of the process afforded to the defendants. Thus, even if (somehow) collateral estoppel otherwise could apply, the abbreviated nature of the proceedings in the state court would warrant a fresh determination of the issue by this Court.

Finally, even if (A) the Michigan state court's postpetition exercise of jurisdiction over Webster had been proper (which it was not), (B) the automatic

stay did not apply to the Webster litigation (which it did) and (C) the City had a full and fair opportunity to litigate (which it did not), collateral estoppel *still* would not apply because the City was not a party to the Webster lawsuit and was not otherwise in privity with the Webster defendants. Collateral estoppel "precludes relitigation of an issue in a different, subsequent action between the same parties or their privies...." Dearborn Heights Sch. Dist. No. 7 v. Wayne Cnty. MEA/NEA, 592 N.W.2d 408, 411 (Mich. Ct. App. 1998). "In its broadest sense, privity has been defined as mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right." Sloan v. City of Madison Heights, 389 N.W.2d 418, 422 (Mich. 1986) (internal quotation marks omitted).

The Objectors contend that, although the City was not a party to the Webster litigation, the City was in sufficient privity with the Webster defendants to trigger collateral estoppel,³³ but the Objectors cannot have it both ways. They cannot maintain that there is an *insufficient* identity of interest between the Webster defendants and the City for purposes of the automatic stay but a *sufficient* identity of interest between the two for purposes of collateral estoppel. If there was

³³ The two plaintiffs in Webster are potentially in privity only with the General Retirement System of the City of Detroit, in which they were participants, not with any other Objector. See Complaint, at ¶¶ 2-3, Webster, No. 13-734-CZ (July 3, 2013).

sufficient privity between the City and the Webster defendants for collateral estoppel to apply, then, by necessity, that privity would have triggered the protections of the automatic stay.

VII. PA 436 IS CONSTITUTIONAL

The Objectors also claim that PA 436 violates the Michigan Constitution because: (A) the enactment of PA 436 violated the Pensions Clause by authorizing a chapter 9 filing without prohibiting the impairment of pension obligations therein; (B) PA 436 violates Michigan's home rule doctrine; and (C) PA 436 unconstitutionally delegates power to the Emergency Manager. PA 436's consistency with the Pensions Clause is addressed at Section V.A *supra*. The remaining objections to PA 436's constitutionality generally have nothing to do with eligibility, and, where they might, are baseless.

A. PA 436 Does Not Conflict with Home Rule and Reflects the State Legislature's Power To Address Local Fiscal Emergencies

The home rule provisions of Michigan law give municipalities and their residents rights of self governance by empowering residents to elect their own officials (e.g., People ex rel. Le Roy v. Hurlbut, 24 Mich. 44, 46-47 (1871)), and by according "the electors of each city" with "the power and authority to frame, adopt and amend [the municipality's] charter." Mich. Const. art. VII, § 22. The Objectors contend that PA 436 violates home rule provisions by placing the

Emergency Manager in the shoes of local officials and allowing the Emergency Manager to take actions that are arguably inconsistent with the city's charter.³⁴

The Objectors are mistaken. As an initial matter, most of the Objectors' challenges – such as their concerns about the Emergency Manager's ability to set budgets and pass ordinances – have nothing to do with the Emergency Manager's authority to file for chapter 9 and thus need not be addressed here. Moreover, there is, in fact, no conflict because Detroit's charter recognizes that its provisions are "subject ... to the limitations ... imposed by statute." DETROIT CITY CHARTER § 1-102; see Detroit City Council v. Mayor of Detroit, 770 N.W.2d 117, 124 (Mich. Ct. App. 2009) (recognizing that by its own terms Detroit's Charter gives way to statutes).

Even if there were a conflict between PA 436 and Detroit's Charter regarding the Emergency Manager's authority to commence this chapter 9 case, PA 436 would prevail. "Where a city charter provision conflicts with general statutory law, the statute controls in all matters which are not of purely local character." Bd. of Trs. v. City of Detroit, 373 N.W.2d 173, 175 (Mich. Ct. App. 1985); see also Public Act 279 of 1909, the Home Rule City Act, MCL § 117.36 ("No provision of any city charter shall conflict with or contravene the provisions of any general law of the state."). General laws are those capable of

³⁴ See AFSCME Objection, at ¶¶ 85-94.

covering new localities over time. See, e.g., Houston v. Governor, 810 N.W.2d 255, 257 (Mich. 2012).

PA 436, including its authorization to file for chapter 9, is most certainly a general state law. As the Michigan legislature's findings with respect to the impact of local financial emergencies on the rest of the State make clear (MCL § 141.1543), how financially distressed local governments overcome their situation is decidedly not a matter of "purely local" character or concern. See, e.g., Brimmer v. Village of Elk Rapids, 112 N.W.2d 222, 226 (Mich. 1961) (statutes involving municipal utility rates, municipal debt limitations and municipal tax rates are general rather than purely local). Indeed, the Michigan Constitution itself instructs the State legislature to pass "general laws ... restrict[ing] the powers of cities and villages to borrow money and contract debts." Mich. Const. art. VII, § 21.

Nor does temporarily substituting the Emergency Manager for Detroit's elected officials violate home rule by eliminating Detroit's residents' right to choose their officials. "[A] municipal corporation[']s ... existence is entirely dependent on the legislation that created it, and the Legislature that may also destroy it." Bd. of Cnty. Road Comm'rs v. Mich. Prop. & Cas. Guar. Ass'n, 575 N.W.2d 751, 760 (Mich. 1998). Accordingly, the Michigan Supreme Court has long recognized that the legislature must have authority to temporarily replace

local officials when exercising its undisputed power to "supervis[e] and control in matters of municipal regulation." Hurlbut, 24 Mich. at 111 (opinion of Cooley, J.). That is all PA 436 does: it authorizes the Governor to appoint an emergency manager in a fiscal crisis (MCL § 141.1549(1)), but the emergency manager's term ends once the crisis ends or, if he has been in office more than 18 months, if an elected local government votes him out (MCL §§ 141.1549(6)(b), (c)).

B. PA 436 Does Not Delegate Power to Pass Local Legislation

Article IV, Section 29 of the Michigan Constitution provides that "[t]he legislature shall pass no local or special act in any case where a general act can be made applicable" and that "[n]o local or special act shall take effect until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected." Because PA 436 grants the Emergency Manager authority to adopt local ordinances (MCL § 141.1552(1)(dd)), the Objectors contend it unconstitutionally authorizes the Emergency Manager to enact local legislation that not even the State legislature could pass.³⁵

Once again, this objection has nothing to do with the City's eligibility for bankruptcy: filing a chapter 9 case is not passing legislation, the only conduct covered by Article IV, Section 29. In any event, Article IV, Section 29 restricts

³⁵ AFSCME Objection, at ¶¶ 95-97.

only the State *legislature*; municipalities are free to enact "local" laws as they see fit. When the Emergency Manager acts, he exercises the *local government's* powers, not the State legislature's, so the legislature did not (and could not) violate Article IV, Section 29 when it enacted PA 436. See, e.g., MCL § 141.1552(1)(dd); see also MCL § 141.1552(2) (allowing local leaders to repeal the Emergency Manager's ordinances after his term ends).

C. PA 436 Does Not Violate the Non-Delegation Doctrine

Under Michigan's non-delegation doctrine, the legislature may not task executive officials with formulating "legislative policy" unless the legislature provides "sufficient standards and safeguards" to "check[] the exercise of delegated power." Blue Cross & Blue Shield of Mich. v. Milliken, 367 N.W.2d 1, 27 (Mich. 1985). The Objectors argue that PA 436 runs afoul of this rule by giving the Emergency Manager authority to act for the City in chapter 9 without providing guidance as to what he should do.³⁶

The Objectors are again mistaken. First, as explained above, the Emergency Manager exercises the local government's authority, not powers of the State legislature's. The Emergency Manager acts for the City, not the State. Thus the anti-delegation principles that govern when the State legislature delegates the State legislature's powers do not apply here.

³⁶ See AFSCME Objection, at ¶¶ 98-99.

Second, when deciding whether the legislature has provided "reasonably precise" standards (Blue Cross, 367 N.W.2d at 27) in delegating its powers, Michigan courts have emphasized that the statute "must be read as a whole" and "carries a presumption of constitutionality." Id. As a result, the "reasonably precise" test is easy to satisfy (see, e.g., Blue Cross & Blue Shield of Mich. v. Demlow, 270 N.W.2d 845, 854 (Mich. 1978) (approving delegation using a "fair and reasonable" standard)); Mich. State Highway Comm'n v. Vanderkloot, 220 N.W.2d 416, 419 (Mich. 1974) (approving use of eminent domain upon an executive finding of "necessity")).

PA 436 contains sufficient standards to guide the Emergency Manager in seeking bankruptcy protection. It clearly tells the Emergency Manager to look at various possibilities for fixing the City's financial problems and instructs him to recommend bankruptcy only if "no reasonable alternative to rectifying the financial emergency ... exists." MCL § 141.1558(1). PA 436 also instructs the Emergency Manager to ameliorate those problems while "assur[ing] the fiscal accountability of the local government and the local government's capacity to provide ... necessary governmental services essential to the public health, safety, and welfare." MCL § 141.1549(2).

The Objectors also contend that PA 436 unconstitutionally delegates authority by not providing for judicial review of the Emergency Manager's actions

in bankruptcy.³⁷ The Objectors, however, ignore the fact that, in many circumstances, this Court will review actions of the Emergency Manager.³⁸ The Objectors argue that the Emergency Manager can escape judicial review because, under 11 U.S.C. § 904, municipalities need not seek court approval of settlements. Yet, if the City does not seek this Court's approval of a particular settlement, that settlement does not escape scrutiny forever: "the day of reckoning comes at the plan confirmation hearing," where any "untoward settlements" would shed considerable light on whether a cram-down plan "discriminate[s] unfairly," is "fair and equitable," and has been "proposed in good faith." Stockton, 486 B.R. at 199-200 (quoting 11 U.S.C. § 1129(a)(2), (b)(1)).

In sum, PA 436 neither violates Michigan's home rule doctrine nor unconstitutionally delegates authority to the Emergency Manager. To the extent, if any, that such claims have anything to do with eligibility, the Objectors' arguments in support of these claims lack merit, and this Court should determine that PA 436 is constitutional.

³⁷ See AFSCME Objection, at ¶100.

³⁸ Whether or not Stern prohibits this Court from considering "freestanding state-law claims," it does not impact this Court's role in implementing provisions of the Bankruptcy Code that may involve determination of state law issues. See Section II *supra*.

VIII. THE CITY SATISFIES SECTION 109(c)(5) OF THE BANKRUPTCY CODE BECAUSE IT WAS IMPRACTICABLE TO BARGAIN WITH THOUSANDS OF BONDHOLDERS AND OVER 20,000 RETIREES

In the Eligibility Memorandum, the City demonstrated the impracticability of conducting negotiations with its very numerous creditors and that the requirement for eligibility set forth at section 109(c)(5)(C) of the Bankruptcy Code was satisfied. Specifically, the City explained that: (A) the "impracticability" requirement was added to the Bankruptcy Code to facilitate relief under chapter 9 for major American cities (i.e., precisely this circumstance); (B) the numerosity and fragmented nature of the City's creditors made negotiations with the creditor body impracticable; (C) in many instances, the City was unable to negotiate with representatives with authority to bind creditors because there were no such representatives; and (D) the City did not have time to conduct extended creditor negotiations. See Eligibility Memorandum, at pp. 40-53. None of the Objectors succeeds in undermining any of the foregoing.

As a threshold matter, certain facts that, by themselves, establish impracticability under section 109(c)(5)(C) of the Bankruptcy Code are ignored by the Objectors. Thousands of separate entities hold the City's billions of dollars in bond debt. For the reasons set forth in the Eligibility Memorandum (i.e., the inability to restructure key terms of the City's bond debt absent unanimous bondholder consent and the lack of any representatives with authority to bind all

such bondholders) (Eligibility Memorandum, at pp. 46-47), negotiations with the City's bondholders were impracticable. No Objection disputes this. Moreover, no holder of bonds has objected to the City's eligibility on the ground that negotiations with bondholders were practicable. These realities demonstrate that the requirements of section 109(c)(5)(C) of the Bankruptcy Code have been met.

Many of the Objectors explicitly or implicitly assert that section 109(c)(5)(C) of the Bankruptcy Code cannot be satisfied if negotiations with *any* creditor constituency (specifically, the City's retirees) were potentially practicable. This cannot possibly be the law. It would be an absurdity to interpret the phrase "is unable to negotiate with creditors" to mean "[can negotiate with some creditors but] is unable to negotiate with [other] creditors" as there will always be *some* creditor with which a municipality could negotiate.³⁹ Thus, courts have consistently determined that the "impracticability" requirement of section 109(c)(5)(C) of the Bankruptcy Code is satisfied where negotiations with any significant creditor constituency is impracticable. See Vallejo, 408 B.R. at 298 (holding that the impracticability of debtor's negotiations with its unions satisfied section 109(c)(5)(C) of the Bankruptcy Code because "labor costs comprised the

³⁹ For example, if such an interpretation were credited, a municipality would be required to delay filing its chapter 9 petition while it engaged those creditors with whom it could negotiate despite the facts that (a) negotiations with other creditors were impracticable and (b) the municipality ultimately would have to file and effectively restart the negotiation process.

largest slice of Vallejo's budget [and] it would have been futile to negotiate with other creditors without an agreement with the Unions"); In re Vills. at Castle Rock Metro. Dist. No. 4, 145 B.R. 76, 85 (Bankr. D. Colo. 1990) (holding that negotiations were impracticable for purposes of 109(c)(5)(C) of the Bankruptcy Code where negotiations with single class of bondholders holding one third of the debtor's total bond debt would have been futile).

In any event, the Objections fail to rebut the City's showing that negotiations with its pension beneficiaries were impracticable. For example, the RDPFFA and the DRCEA characterize themselves as "the natural representative capable of bargaining on [the retirees'] behalf" and argue that the City's alleged failure to engage the RDPFFA/DRCEA in negotiations forecloses the City's ability to argue that negotiations with its retiree constituency were impracticable. See Retiree Association Objection, at ¶¶ 64-74. The premise that the RDPFFA and the DRCEA are the natural representatives of retirees is not self evidently correct. First, the RDPFFA and the DRCEA are but two of at least five associations purporting to represent City retirees.⁴⁰ Neither the RDPFFA nor the DRCEA have any greater claim to being the natural representative of the retirees than any other

⁴⁰ The Detroit Firemen's Fund Association, the Detroit Police Benefit and Protective Association and the recently-formed Retired Detroit Police Members Association also purport to represent the interests of at least some percentage of the City's retirees.

informal retiree association (and the Retiree Association Objection offers no such reason). Second, neither the RDPFFA nor the DRCEA are "the" anything. They are two separate organizations, and there is no reason to believe that the RDPFFA and the DRCEA will agree on every – or any – relevant issue. Third, the RDPFFA and the DRCEA are not the only entities claiming to be natural bargaining representatives for the City's retirees. The City's unions now claim to be appropriate bargaining representatives for their retirees as well.⁴¹ These competing claims to bargaining authority undermine the RDPFFA/DRCEA's assertion that they are "the natural bargaining representatives" for retirees. Fourth, the Retiree Association Objection concedes that the RDPFFA and the DRCEA lacked – and still lack – the authority to bind the City's retirees. See Retiree Association Objection, at *14 (noting that the RDPFFA and the DRCEA are just now in the process of obtaining proxy forms from their retiree members and have collected only 5,000 such proxies to date (there are over 20,000 retirees and active employees that have vested pension benefits)). RDPFFA/DRCEA's assertion that

⁴¹ See AFSCME Objection, at ¶ 123 (stating that "creditors such as AFSCME and similar union representatives ... could have negotiated regarding the largest portion of the City's unsecured debt"); Objection (Docket No. 506) filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"), at ¶ 9 (stating that the "UAW is representing the interests of active and retired employees in this case."). As set forth below, these claims are directly at odds with these Objectors' prepetition refusal to negotiate on behalf of retirees.

they are the "natural representative[s] capable of bargaining on [the retirees'] behalf" cannot be reconciled with their recognition of a lack of legal authority to bind retirees absent express authorization. Fifth, even if the RDPFFA and the DRCEA had been able to bind their retiree members (which they could not), the associations themselves only purport to represent "approximately 70% of all City retirees." Retiree Association Objection, at ¶ 9. Accordingly, there was no possibility that negotiations with the RDPFFA and the DRCEA – or, for much the same reasons, any other party – could have bound the more than 20,000 City retirees to a proposed restructuring, thus rendering the City's good faith attempt at such negotiations impracticable.⁴² Finally, even if there were a "natural bargaining representative" of all retirees, that would still not make negotiations concerning pension benefits practicable; approximately 8,225 active employees have vested pension benefits too. Neither the RDPFFA nor the DRCEA even purports to represent the interests of these people and it is not clear that active employees would rely on such representation even if the RDPFFA and DRCEA both declared that they were "natural representatives of active employees having vested benefits."

⁴² Moreover, the RDPFFA and the DRCEA attended multiple meetings at which the City set forth its restructuring proposals and solicited counter-proposals and other feedback. Neither the RDPFFA nor the DRCEA responded to any proposals made by the City.

The AFSCME Objection's similar argument that negotiations with "creditors such as AFSCME and similar union representatives that could have negotiated regarding the largest portion of the City's unsecured debt" (AFSCME Objection, at ¶ 123) would have been practicable rewrites the history of those negotiations. In fact, the City *did* reach out to AFSCME and the City's other Unions regarding their willingness to represent the interests of their respective retirees in negotiations over the City's restructuring proposal.

As set forth in the Eligibility Memorandum, *the majority of the Unions either expressly indicated unwillingness or legal inability to represent retirees or neither agreed nor refused to represent retirees*. Only eight Unions (comprising 10 of the City's 47 bargaining units) agreed to represent retirees in connection with the City's restructuring. See Eligibility Memorandum, at p. 51. Notably, both AFSCME and the UAW – each of which filed Objections challenging the impracticability of negotiations with retirees – *expressly declined* to represent retirees.⁴³ It is difficult to see how it would be practicable for the City to conduct

⁴³ Letter from Edward L. MacNeil, Special Assistant to the President of AFSCME to Brian Easley of Jones Day, dated May 24, 2013 (advising that AFSCME "has no authority in which to renegotiate the Pension or Medical Benefits that members of our Union currently receive."); Letter from Laurie Townsend Stuart, President of UAW Local 2200, to Brian Easley of Jones Day, dated May 23, 2013 (stating that the UAW would represent the interests only of "current employees" of the local Union); Letter from Robyn Brooks, President of UAW Local 2211, to Brian Easley of Jones Day, dated

negotiations with AFSCME and other Unions that refused to negotiate with the City on retirees' behalf.

Both the AFSCME and the UAW argue that, because the City allegedly made no effort to negotiate with creditors in good faith, the City should not be able to claim that such negotiations were impracticable.⁴⁴ Thus, AFSCME and the UAW essentially argue that, if the City cannot satisfy section 109(c)(5)(B) of the Bankruptcy Code (which requires good faith negotiations with creditor constituencies), then the City cannot satisfy the disjunctive requirement for eligibility set forth in section 109(c)(5)(C) of the Bankruptcy Code either. Neither the UAW nor AFSCME offer any precedent or citation for this reading of the Bankruptcy Code and the plain meaning of the statute (which connects the clauses of section 109(c)(5) with the word "or") contradicts such a reading. Indeed, the courts that have considered section 109(c)(5) of the Bankruptcy Code have

(continued...)

May 22, 2013 (stating that "[t]his Union does not... represent current retirees and has no authority to negotiate on their behalf"); Letter from John Cunningham, International Representative, UAW Region 1, to Brian Easley of Jones Day, dated May 22, 2013 (stating that UAW Local 412 and UAW Local 212 "do not ... represent current retirees and have no authority to negotiate on their behalf"), attached hereto, collectively, as Exhibit C.

⁴⁴ AFSCME Objection, at ¶¶ 121-123; UAW Objection, at ¶ 46, n.19 and Public Safety Unions Objection (Docket No. 512), at p. 17 ("It should also be axiomatic that an entity should not be able to claim that it is impracticable to negotiate if, as here, there is no sincere intent to negotiate....").

determined that it is sufficient for a chapter 9 debtor to demonstrate the existence of one of the four alternatives included in that section. In re Valley Health Sys., 383 B.R. 156, 162, 163 (Bankr. C.D. Cal. 2008) (noting that "§ 109(c)(5) is written in the disjunctive" and, as such, must be construed "as setting out separate and distinct alternatives;" holding that "[t]here is nothing in the language of § 109(c)(5)(C) that requires a debtor to either engage in good faith pre-petition negotiations with its creditors to an impasse or to satisfy a numerosity requirement before determining that negotiation is impracticable under the specific facts and circumstances of a case.").

Finally, the argument that the City "manufactured" impracticability through the imposition of artificial time constraints is just false.⁴⁵ If anything, the fact that the City could not delay filing its Petition in light of its financial and operational crises – and thus extend its opportunity for negotiation – *supports* the City's impracticability arguments. See Valley Health Sys., 383 B.R. at 163 ("Negotiations may also be impracticable when a municipality must act to preserve its assets and a delay in filing to negotiate with creditors risks a significant loss of those assets."). That the City's cash was rapidly dwindling and public health and

⁴⁵ See Public Safety Unions Objection, at pp. 16-17 ("The difficulty in the negotiation process is the result of an artificial time constraint.... The Court should not find that negotiations were impracticable, because the City created the impediment to continued negotiations based on the artificial time constraint created by the filing.").

safety would have been threatened by any further delay in the filing of the Petition (Eligibility Memorandum, at pp. 52-53), (A) mandated a shorter time frame for determining if good faith negotiations with creditors could generate an agreement capable of implementation outside chapter 9 and (B) is a separate ground showing satisfaction of section 109(c)(5) of the Bankruptcy Code. They are not reasons for reading that section *out* of the Bankruptcy Code.

For all of the foregoing reasons (and those set forth in the Eligibility Memorandum), the City has satisfied the requirements of section 109(c)(5)(C) of the Bankruptcy Code.

IX. THE CITY'S GOOD FAITH NEGOTIATIONS WITH ITS CREDITORS SATISFY SECTION 109(c)(5) OF THE BANKRUPTCY CODE

Numerous objections assert that the City failed to negotiate in good faith with its creditors within the meaning of section 109(c)(5)(B) of the Bankruptcy Code.⁴⁶ The Objections generally sound a common theme: that the City's restructuring proposals were presented to creditor constituencies at non-interactive

⁴⁶ E.g., AFSCME Objection, at ¶¶ 101-114; UAW Objection, at ¶¶ 44-46; Joinder of Local 324, International Union of Operating Engineers as Interested Party to Objections to Detroit's Eligibility for Relief Under Sections 109(c) and 921(c) of the Bankruptcy Code (Docket No. 484) (stating, without reference to or inclusion of supporting affidavits, that "the City consistently and continuously refused to engage in any bargaining with representatives of Local 324, and presented its proposals only on a 'take it or leave it' basis.").

meetings on a "take it or leave it" basis that precluded any prospect of actual "negotiation."⁴⁷ The Objections' characterization of the discussions initiated by the City and the multiple meetings that the City conducted with its creditors is false and misleading. The City did *not* present its restructuring proposal as an immutable, "take it or leave it" proposition with respect to which the City had no intention of honestly engaging its creditors. Rather, the evidence demonstrates that the City (A) actively sought continuing dialogue with, *and counter-proposals from*, its counterparties but (B) received no concrete proposal or comprehensive feedback from any Objector prior to the commencement of this case.⁴⁸

⁴⁷ See id.

⁴⁸ Also false and misleading is the attempt by certain Objectors to characterize statements made by the Emergency Manager in connection with the issuance of his "Financial and Operating Plan," dated May 12, 2013, as having been made within the context of negotiations with creditors over the restructuring of their claims. See, e.g., AFSCME Objection, at p.2 (quoting the Emergency Manager as having stated, on May 12, 2013, that "The public can comment [on the City's proposed financial restructuring plan], but it is under the statute, it is my plan and it's within my discretion and obligation to do it. This isn't a plebiscite, we are not, like, negotiating the terms of the plan. It's what I'm obligated to do.") (bracketed text in original; emphasis removed from original). As the Objectors know, the "proposed financial restructuring plan" addressed by the foregoing quote is not the June 14 Creditor Proposal (i.e., the starting point for creditor negotiations), but a discrete "Financial and Operating Plan" issued *a month earlier* (which plan did *not* address the specific treatment of creditors' claims against the City). As the Objectors also know, the "statute" referenced in the foregoing quote is not section 109(c)(5)(B) of the Bankruptcy Code, but section 11 of PA 436. See MCL § 141.1551(2) (requiring an emergency manager to submit a financial and operating plan 45 days after appointment). Put

As set forth at pages 55-59 of the Eligibility Memorandum, in addition to the June 14 Creditor Meeting (at which the City initially presented its restructuring proposal to all creditors in attendance and answered every question asked), the City held numerous additional meetings with creditors in the weeks prior to the Petition Date. At these meetings (including the City's meetings with its unions and four retiree associations), the City repeatedly stated that it welcomed its creditors' feedback with respect to its proposed restructuring and invited counter-proposals from all parties. E.g., Letter from Brian Easley to James Williams, President, AFSCME, dated June 27, 2013) (the "June 27 Easley Letter") (noting the City's appreciation of questions and input received from AFSCME at the June 20 Union/Retiree Meeting; offering access to City data room; requesting feedback and additional ideas with respect to the City's restructuring proposal), attached hereto as Exhibit D.⁴⁹ The City urged that any feedback and/or counter-proposals be

(continued...)

simply, the foregoing quote is *completely unrelated* to the City's negotiations with creditors over the treatment of their claims. The Objectors' flagrant misuse of the Emergency Manager's words out of context speaks volumes about the sincerity of their protests that the City refused to negotiate in good faith.

⁴⁹ The complaint that the City refrained from characterizing its discussions with its unions as "negotiations" is a red herring. The City has generally avoided characterizing its meetings and discussions with its unions as formal "bargaining negotiations" to avoid any argument that it has triggered obligations to collectively bargain under Michigan law that are currently

consistent with the City's financial condition but otherwise placed no restrictions on the form or substance of any counter-proposal. See, e.g., id. (requesting "additional ideas about restructuring retiree benefits in a manner consistent with the City's financial limitations"; offering access to the Data Room and assistance acquiring any additional information); Letter from Evan Miller to Dennis McNamara, President Detroit Fire Fighters Association, *et al.*, dated July 17, 2013 ("We are interested in hearing any pension benefit redesign thinking and proposals that come from key union leadership, including ideas to avoid a freeze."), attached hereto as Exhibit E.

Accordingly, comparisons between the City's good faith negotiation efforts and the facts of In re Ellicott School Building Authority, 150 B.R. 261 (Bankr. D. Colo. 1992), are inapposite. The Ellicott court held that, in addition to its failure to satisfy sections 109(c)(1), 109(c)(2), 109(c)(3) and 109(c)(5)(C) of the Bankruptcy Code, the putative debtor failed to satisfy section 109(c)(5)(B) of the Bankruptcy

(continued...)

suspended by PA 436. See MCL § 141.1567(3) ("A local government placed in receivership under this act is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for a period of 5 years from the date the local government is placed in receivership or until the time the receivership is terminated, whichever occurs first."). The City's reticence to jeopardize its legal rights under PA 436, however, does not alter the fundamental character of the meetings conducted by the City (as described herein), nor the fact that its requests for feedback and counter-proposals were unanswered.

Code where (A) its efforts at prepetition negotiation were limited to three public meetings and (B) the debtor conceded that it had presented its proposed plan of restructuring as non-negotiable. Ellicott, 150 B.R. at 266. In this case, however, (A) in addition to the public June 14 Creditor Meeting (i.e., the analogue to the three public meetings held by the Ellicott debtor), the City held numerous, non-public meetings with representatives of creditors, and (B) the City never presented its restructuring proposal as "non-negotiable." Indeed, the City solicited responses and counter-proposals from other parties.

Moreover, it is especially significant that no Objector transmitted a written counter-proposal on any aspect of the City's restructuring proposal. Some of the City's invitations for further dialogue were essentially rebuffed (and in a manner that seemed designed to support a future objection to eligibility rather than actually engage in discussions with the City). See Letter from Steven Kreisberg, Director of Collective Bargaining and Health Care Policy, AFSCME, to Brian Easley, dated July 2, 2013 (meeting the City's request for feedback with respect to its restructuring proposal with a request for further meetings and statements that the City "has not provided AFSCME with a meaningful opportunity to engage in a good faith negotiation of these issues"), attached hereto as Exhibit F.

Of course, good faith negotiation is a two-way street. All of the City's creditors – including each of the Objectors – had more than a month to provide the

City with counter-proposals to, or other ideas concerning, the restructuring plan set out and supported in the June 14 Creditor Proposal. All of those entities had multiple opportunities to meet with the City's representatives to discuss the restructuring proposal and access to the information necessary to formulate an informed response. That none of the Objectors chose to respond to any aspect of the June 14 Creditor Proposal does not render the City's efforts to engage and negotiate with its creditors as having been undertaken in anything other than good faith.

Finally, the Court should reject the argument that the City is unable to satisfy section 109(c)(5)(B) of the Bankruptcy Code unless it can demonstrate that the terms of its restructuring proposal constitute a confirmable plan of adjustment under section 943(b) of the Bankruptcy Code. No Objector cites to any authority that supports this proposition in any way.⁵⁰ Consistent with Section VI of the

⁵⁰ AFSCME's citation to In re Sullivan County Regional Refuse Disposal District, 165 B.R. 60 (Bankr. D.N.H. 1994), and In re Cottonwood Water & Sanitation District, 138 B.R. 973 (Bankr. D. Colo. 1992), in support of this argument is misleading. Neither of those cases addresses the confirmability of the debtors' proposed restructuring plan within the context of section 109(c)(5)(B) of the Bankruptcy Code at all. Rather, each case requires only that negotiations be based on "some sort of comprehensive plan." Sullivan Cnty., 165 B.R. at 78 (noting that the debtor need not even propose a "formal plan," but finding that debtor's failure to propose *any* plan could not satisfy section 109(c)(5)(B) of the Bankruptcy Code); Cottonwood, 138 B.R. at 978 (addressing the requirements of section 109(c)(5)(B) of the Bankruptcy Code with no reference to whether a proposed plan must satisfy

Eligibility Scheduling Order, the eligibility requirements of section 109(c) of the Bankruptcy Code simply do not oblige the City to demonstrate that the as-yet-undetermined terms of whatever plan of adjustment it may ultimately propose will be confirmable.

For the reasons set forth above and in the Eligibility Memorandum, the City has satisfied the requirements of section 109(c)(5)(B) of the Bankruptcy Code.

X. THE CITY IS INSOLVENT

The Eligibility Memorandum demonstrates that, unfortunately, the City meets all of the disjunctive tests for municipal insolvency contained in section 101(32)(C) of the Bankruptcy Code. Specifically, the City demonstrated that: (A) it was not paying its debts as they came due; (B) it was "cash insolvent," "budget insolvent" and "service delivery insolvent;" (C) applicable law does not require it to exhaust all possible opportunities for revenue generation or adopt every conceivable cost-cutting measure prior to seeking relief under chapter 9; (D) it has experienced and, absent restructuring, will continue to experience negative cash flows for years; (E) its revenues cannot be meaningfully increased; and (F) its expenditures cannot be further reduced. Eligibility Memorandum,

(continued...)

confirmation standards). In re Sanitary & Improvement District, Number 7, 98 B.R. 970 (Bankr. D. Neb. 1989), cited by multiple Objectors on this point, does not address the standards governing eligibility at all.

at pp. 12-35. All of the foregoing is supported by evidence, including the extensive data contained in or accompanying the Orr Declaration and Malhotra Declaration.

No Objector challenges any of this with evidence. Indeed, the Objections offer little more than innuendo and supposition.⁵¹

For example, multiple Objectors accuse the City of having "deliberately budgeted and spent itself into insolvency (so as to qualify under § 101(32)(C)(ii)), when other realistic avenues and scenarios were possible." AFSCME Objection, at ¶ 137; RDPMA Objection, at p. 22. Of course, no Objection offers any

⁵¹ The City notes that, despite a wealth of financial information having been available to all interested parties for months (e.g., the City's cash flow projections and other financial data were set forth in the June 14 Creditor Proposal and contained in the Data Room (which was accessible to and accessed by many of the Objectors, including AFSCME and the Retirement Systems), none of the Objectors cite any facts already known to support their Objections to insolvency. Although the City is aware that, pursuant to Section VII of the Eligibility Scheduling Order, the Court has permitted discovery with respect to the matter of the City's insolvency, the filing of placeholder objections to insolvency is inconsistent with the direction provided by the Court during a colloquy with the City's counsel at a hearing on August 2, 2013. See Transcript of Hearing, dated August 2, 2013, at pp. 26-27 ("Mr. Bennett: We fully understand that facts currently unknown could conceivably surface later, and we would certainly not object if a fact unknown today found its way into a subsequent brief, but we think the August 19th deadline should require and call for an objection – all grounds stated and facts then known to support the objection.... The Court: I agree, counsel. There certainly are circumstances in which the law permits amendments to pleadings. They are limited. They apply here, but as a general matter, the Court wants to set a firm deadline for the filing of objections to eligibility.").

examples of "realistic avenues and scenarios" that might have allowed the City to have avoided insolvency. The AFSCME Objection essentially recommends a more aggressive approach to the collection of unspecified accounts receivable, and the RDPMA Objection does no more than cite to examples of revenue generation applicable *in an entirely different case*. There is no suggestion how these "realistic avenues and scenarios" might eliminate the negative cash flows identified in the Orr and Malhotra Declarations.

Moreover, none of the Objections contests the City's financial data beyond the citation of press reports and references to old financial data irrelevant to the determination of insolvency as of the Petition Date. Thus, the data presented by the City demonstrating its insolvency within the meaning of section 109(c)(3) of the Bankruptcy Code stands unrebutted by any evidence.

All Objections to the City's eligibility based on speculation that the City may be solvent should be overruled.

XI. THE CITY DESIRES TO EFFECT A PLAN TO ADJUST ITS DEBTS

At Section VI of the Eligibility Scheduling Order, this Court determined that, despite the "extraordinary importance of the pension rights of the City's employees and retirees in this case and of how the City will ultimately propose to treat those rights," (A) section 109(c)(4) of the Bankruptcy Code does not "obligate the City to prove that any particular plan that it might later propose is confirmable" and

(B) "the Court will not consider the issue of the treatment of pension rights" when considering objections to eligibility based on the City's alleged failure to satisfy section 109(c)(4) of the Bankruptcy Code. Eligibility Scheduling Order, at § VI.

Only two objections – the UAW Objection and the RDPMA Objection – argue that the City does not satisfy section 109(c)(4) of the Bankruptcy Code.⁵² Each of these Objections, however, is based on the contention that the City will not be able to confirm a plan that impairs vested pension benefits. Thus, in light of Section VI of the Eligibility Scheduling Order, no Objection challenges the City's eligibility to be a debtor under section 109(c)(4) of the Bankruptcy Code on grounds that the Court will consider, and the Court should find that eligibility requirement satisfied for the reasons set forth in the Eligibility Memorandum.

XII. THE CITY FILED ITS PETITION IN GOOD FAITH

Certain Objectors have challenged the City's Petition on the grounds that it was not filed in "good faith" within the meaning of section 921(c) of the

⁵² Three other Objectors – (a) Local 324, International Union of Operating Engineers (Docket No. 484); (b) Local 517M, Service Employees International Union (Docket No. 486); and (c) Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington and Bruce Goldman (Docket No. 504) – filed joinders in the UAW Objection, but their Objections do not contain any additional facts related to section 109(c)(4) of the Bankruptcy Code.

Bankruptcy Code.⁵³ These challenges generally rely on the following arguments:

(A) the filing of the Petition in advance of a hearing in Michigan state court requesting a temporary restraining order is evidence of the City's hasty decision to file the Petition and, thus, of its bad faith (AFSCME Objection, at ¶ 130; RDPMA Objection, at p.13); and (B) the City never investigated alternatives that might have avoided the need to file the Petition (AFSCME Objection, at ¶ 131; RDPMA Objection, at p.13). Even if taken at face value (which they should not be), neither of these arguments demonstrate any lack of good faith on the part of the City in filing the Petition.

⁵³ The brief attached to the Public Safety Unions Objection (the "Public Safety Unions Brief") states that "[t]his Objection focuses on the requirements of § 109(c)(2) and (5) and the good faith requirement of Section 921(c)." Public Safety Unions Brief, at p. 2. However, at no point in the Public Safety Unions Objection or the Public Safety Unions Brief is any standard for "good faith" identified or applied to the City's conduct or Petition. Rather, the Public Safety Unions Objection appears to regard an analysis of "good faith" within the meaning of section 921(c) of the Bankruptcy Code as co-extensive with the determination of whether the City has satisfied the eligibility requirements set forth in section 109(c) of the Bankruptcy Code. The Retirement Systems Objection also incorrectly equates these differing standards. See Retirement Systems Objection, at p.16, n.10 ("While the arguments in this Objection focus on the City's inability to satisfy the eligibility requirements under sections 109(c)(2) and (5) of the Bankruptcy Code, the same arguments support a dismissal of the City's petition for lack of good faith."). Because the Public Safety Unions Objection and the Retirement Systems Objection rely on the City's alleged failure to satisfy such requirements as evidence of the City's lack of good faith in filing the Petition, those Objections should be overruled.

The purpose of the "good faith" requirement set forth in section 921(c) of the Bankruptcy Code is to ensure that debtors are seeking relief under chapter 9 for purposes consistent with the Bankruptcy Code. Stockton, 493 B.R. at 794 (observing that the good faith requirement "serves a policy objective of assuring that the chapter 9 process is being used in a manner consistent with the reorganization purposes of the Bankruptcy Code."); In re Cnty. of Orange, 183 B.R. 594, 608 (Bankr. C.D. Cal. 1995) ("[T]he purpose of the filing must be to achieve objectives within the legitimate scope of the bankruptcy laws."); Sullivan Cnty., 165 B.R. at 80 (looking to chapter 11 case law for guidance and stating that "[t]he primary function of the good faith requirement has always been to ensure the integrity of the reorganization process by limiting access to its protection to those situations for which it was intended."); Vills. at Castle Rock, 145 B.R. at 81 (good faith "prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefitting them in any way or to achieve reprehensible purposes").

A municipality's good faith "is assessed on a case-by-case basis in light of all the facts, which must be balanced against the broad remedial purpose of chapter 9." Stockton, 493 B.R. at 794. "Relevant considerations in the comprehensive analysis for § 921 good faith include whether the City's financial problems are of a nature contemplated by chapter 9, whether the reasons for filing

are consistent with chapter 9, the extent of the City's prepetition efforts to address the issues, the extent that alternatives to chapter 9 were considered, and whether the City's residents would be prejudiced by denying chapter 9 relief." Id.;⁵⁴ see also Cnty. of Orange, 183 B.R. at 608 (applying chapter 11 case law and finding the debtor's financial condition and motives, local financial realities and whether the debtor was seeking to "unreasonably deter and harass its creditors or attempting to effect a speedy, efficient reorganization on a feasible basis" as relevant factors).

In light of the foregoing, the City's good faith in filing the Petition is manifest. The City's reasons for filing – to adjust its debts and resolve its liquidity crises – are perfectly congruent with the rehabilitative purposes of chapter 9.⁵⁵ The Objectors' suggestion that the City's Petition was prompted not by its financial collapse, but rather by the hurried and urgent need to evade an adverse ruling from a Michigan state court is wrong as a matter of fact. As the Objectors are aware, the Emergency Manager had always indicated that the commencement of a chapter 9

⁵⁴ Both the AFSCME Objection (at ¶ 128) and the RDPMA Objection (at p.12) cite the factors set forth by the Stockton court as the relevant considerations under the "good faith" analysis.

⁵⁵ Moreover, the City's financial problems – \$18 billion in debt, cash insolvency, budget insolvency, service delivery insolvency and the inability to either materially increase revenues or slash expenditures – are clearly problems of the sort contemplated by chapter 9.

case was an option for the City if its negotiations with creditors regarding an out-of-court restructuring proved impracticable or fruitless. Once the City determined that it was impracticable for the City to negotiate with all of its creditors and achieve a settlement that could be implemented outside of chapter 9 and that some creditors were unwilling to either accept the necessary adjustments to the City's debts or to engage the City at all, a chapter 9 filing became the City's only feasible option. Moreover, the process for authorizing the City's chapter 9 filing had been set in motion in advance of the state court hearing that ostensibly prompted the City's actions. The Emergency Manager sent his written recommendation that the City be authorized to file for chapter 9 relief to the Governor and the Treasurer on July 16, 2013 – two days in advance of the emergency, *ex parte* hearing before the Michigan state court.⁵⁶

Finally, even if the state court hearing were a factor in the timing of the City's Petition, that fact would not render the filing as having been made in bad faith. In re McCurtain Municipal Authority, No. 07-80363, 2007 WL 4287604 (Bankr. E.D. Okla. Dec. 4, 2007), is instructive on this point. In McCurtain, a creditor sought the dismissal of the debtor's petition under section 921(c) of the Bankruptcy Code on the grounds that "the Debtor demonstrated a lack of good

⁵⁶ Indeed, it seems far more likely that the state court's hearing was prompted by the City's preparations for bankruptcy (which had been reported based upon rumors and anonymous sources in advance of the Petition Date).

faith because its purpose in filing for bankruptcy relief was to avoid the appointment of a receiver." McCurtain, 2007 WL 4287604, at *5. An application for the appointment of a receiver for the debtor had been filed the day before a previously-noticed meeting at which the debtor's board of trustees voted to retain a bankruptcy attorney. Id. The McCurtain court determined that "[w]hile the appointment of a receiver certainly was a concern to the Debtor, it was not the only reason for filing bankruptcy," citing testimony from the chairman of the debtor's board of trustees that the motivation for the filing of the debtor's petition was its economic circumstances (specifically, its inability to pay a large judgment). Id.

The reasoning of the McCurtain court translates to the City's circumstances. Even if the state court hearing were a factor in the timing of the City's decision to file its Petition, it could scarcely be considered either (A) the city's primary motivation for commencing this case in light of the City's well-established financial crisis or (B) evidence of any bad faith on the part of the City.

The Objectors' remaining argument – that the City did not adequately explore alternatives to bankruptcy prior to the filing of the Petition – is easily dispatched. The Orr Declaration is filled with examples of actions taken by the City to stave off insolvency and avoid the need for bankruptcy protection. See Orr Declaration, at ¶¶ 58-73 (describing various measures taken by the City over the past 16 months to address its financial challenges and avoid bankruptcy, including,

but not limited to: the execution of a consent agreement with the State of Michigan and creation of a financial advisory board; employee headcount reductions; reduction of labor costs through the implementation of CETs; the increase of corporate tax rates; and the implementation of tax collection initiatives). The Objections, on the other hand, fail to identify even one unexplored alternative that might demonstrate a lack of good faith on the part of the City.

Finally, there can be no question that the residents of the City would be prejudiced by the dismissal of the Petition. As set forth in the Orr Declaration and the Eligibility Memorandum, the City's ability to provide even the most basic municipal services to its citizens has been crippled by its dire financial circumstances. See Orr Declaration, at ¶¶ 31-44 (describing how acute underfunding of the City's core services has contributed to a violent crime rate that is the highest of any large U.S. city and five times the national average, compromised EMS and fire-fighting capabilities, resulted in a lack of adequate lighting and prevented the city from adequately addressing blight); Eligibility Memorandum, at pp. 2-3, 23-26 (describing how massive debt and other legacy liabilities have prevented the City from adequately addressing shortfalls in its provision of basic services for years, and establishing that the City is "service delivery insolvent").

This chapter 9 case is the City's sole remaining option to address its financial condition and enhance its ability to provide its citizens with core municipal services. As COLLIER ON BANKRUPTCY states:

For the financially distressed municipality, chapter 9 may be the only forum for protecting the long-term interests of the municipality and its residents.... A finding that a municipality did not file its chapter 9 petition in good faith will result in the municipality's not being able to impair its contractual obligations, and may result in considerable prejudice to the residents of the municipality. Accordingly, a finding that a municipality did not file in good faith should be reserved for those situations in which the evidence is compelling.

6 COLLIER ON BANKRUPTCY ¶ 921.04[2] (Alan N. Resnick & Henry J. Sommer eds. 16th ed. 2013). Here, the evidence that the City filed the Petition in anything other than good faith is not only not compelling, it is non-existent. The arguments that the City did not file its Petition in good faith should be rejected.

XIII. NOTICE OF THE DEADLINE FOR OBJECTIONS TO ELIGIBILITY WAS PROPER AND SUFFICIENT

Numerous Objections argue that the notice of the deadline for objections to the Petition and the Statement of Qualifications (the "Eligibility Objection Deadline") – i.e., August 19, 2013 – was inadequate. See, e.g., Objection (Docket No. 384) filed by Krystal Crittendon, at ¶ 8 ("This Notice provides inadequate notice and opportunity to be heard by the date of August 19, 2013 when objections

may be filed, as the Notice was received less than two (2) weeks before the date by which Objections must be filed.").

All Objections related to the alleged inadequacy of notice of these proceedings should be overruled. A motion setting forth a preliminary timeline for eligibility issues – which schedule proposed a deadline for objections to eligibility that was consistent with the Eligibility Objection Deadline ultimately adopted by the Court – was filed by the City on the day after the Petition Date, and all interested parties had ample opportunity to object. See Motion of Debtor for Entry of an Order (A) Directing and Approving Form of Notice of Commencement of Case and Manner of Service and Publication of Notice and (B) Establishing a Deadline for Objections to Eligibility and a Schedule for Their Consideration (Docket No. 18). The order granting that motion (Docket No. 296) (the "Case Commencement Order") established the form of the notice of commencement of this chapter 9 case, which notice (A) conspicuously identified the Eligibility Objection Deadline and (B) was served on all interested parties within three business days of its entry. Certificate of Service re: Documents Served on August 6, 2013 (Docket No. 325).

The adequacy of notice of the Eligibility Objection Deadline is further demonstrated by the number and substance of the Objections received. Over 100 parties filed Objections to the Petition and Statement of Qualifications, many

of which are elaborately argued (as indicated above). Accordingly, all interested parties were provided sufficient notice of the Eligibility Objection Deadline, and Objections to any alleged inadequacy of notice should be overruled.

XIV. CONCLUSION

For the foregoing reasons, the Court should promptly enter an Order for Relief in this case.

Dated: September 6, 2013

Respectfully submitted,

/s/ Bruce Bennett

Bruce Bennett (CA 105430)
JONES DAY
555 South Flowers Street
Fiftieth Floor
Los Angeles, California 90071
Telephone: (213) 243-2382
Facsimile: (213) 243-2539
bbennett@jonesday.com

David G. Heiman (OH 0038271)
Heather Lennox (OH 0059649)
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
dgheiman@jonesday.com
hlennox@jonesday.com

Jonathan S. Green (MI P33140)
Stephen S. LaPlante (MI P48063)
MILLER, CANFIELD, PADDOCK AND
STONE, P.L.C.
150 West Jefferson
Suite 2500
Detroit, Michigan 48226
Telephone: (313) 963-6420
Facsimile: (313) 496-7500
green@millercanfield.com
laplante@millercanfield.com

ATTORNEYS FOR THE CITY

EXHIBIT A

EXHIBIT A TO CONSOLIDATED REPLY TO OBJECTIONS TO ELIGIBILITY

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

TERM	DESCRIPTION	CITY'S RESPONSE
ARGUMENTS THAT CHAPTER 9 VIOLATES THE UNITED STATES CONSTITUTION		
Federal Structure Violation	<p>Chapter 9 of the Bankruptcy Code is an unconstitutional violation of federalism because chapter 9 allows Congress to set rules controlling state fiscal self-management, which is an area of exclusive state sovereignty.</p> <p>The Supreme Court's justifications for upholding a municipal bankruptcy statute in <u>United States v. Bekins</u>, 304 U.S. 27 (1938), are no longer valid because: (i) a federal municipal bankruptcy statute is no longer necessary to accomplish an adjustment of municipal debts, where states are permitted to pass their own municipal debt adjustment legislation; and (ii) the Supreme Court's development of constitutional federalism doctrine has effectively overruled <u>Bekins</u>.</p> <p>Chapter 9 eviscerates the accountability of Michigan to its citizens and creditors.</p> <p>Chapter 9's requirement of state consent cannot cure its violation of individual constitutional rights under the Tenth Amendment.</p>	<p>The Supreme Court's decision in <u>Bekins</u> — to uphold the constitutionality of a municipal bankruptcy statute that (i) provided for states to retain control of their fiscal affairs and (ii) constrained the bankruptcy power to cases authorized by state law — remains binding precedent. The Objecting Parties do not point to any change in statutory text that would warrant a different outcome than <u>Bekins</u>, and binding Supreme Court precedent cannot be overruled by mere implication. <u>See</u> Reply, at § III.A.</p> <p>Subsequent legal developments have not undermined the <u>Bekins</u> decision, the soundness of its reasoning or the constitutionality of chapter 9. States are not at liberty under the Contracts Clause of the United States Constitution to impair their own contracts. States must seek the aid of federal bankruptcy courts to impair contracts by authorizing chapter 9. In making the decision to do so, states exercise their sovereignty rather than relinquish it. Once a state authorizes a municipality to proceed under chapter 9, the bankruptcy court's powers are designed to preserve the state-federal relationship and prohibit intrusion on the state's core functions. <u>See</u> Reply, at § III.B.</p> <p>Chapter 9 relies on state law for determining which municipalities are authorized to seek bankruptcy protection. Although this rule may result in differences in and among states, the rule itself is "uniform throughout the United States," such that chapter 9 does not violate the uniformity requirement of Article I, § 8, clause 4 of the United States Constitution. <u>See</u> Reply, at § III.B.</p>

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

TERM	DESCRIPTION	CITY'S RESPONSE
Lack of Jurisdiction: <u>Stern</u>	The Bankruptcy Court lacks jurisdiction to decide whether chapter 9 violates the United States Constitution as a result of <u>Stern v. Marshall</u> .	<p>The Court has the authority and jurisdiction to determine whether the City is eligible to be a debtor under chapter 9. As the Supreme Court made clear in <u>Stern</u>, non-Article III courts, such as bankruptcy courts, have traditionally been permitted to enter judgment in cases involving "public rights." Included within the category of "public rights" are cases that "can be pursued only by grace of the other branches" of the federal government. Here, the City's ability to adjust its debts in a federal bankruptcy case is only possible because Congress enacted the Bankruptcy Code and, thus, this case involves "public rights." As such, <u>Stern</u> poses no obstacle to bankruptcy court resolution of the City's eligibility to access chapter 9. <u>See Reply</u>, at § II.</p> <p>The argument that the Court is powerless to rule on certain <i>objections</i> to the City's eligibility that involve federal or state constitutional questions would constitute a radical expansion of <u>Stern</u> that is unsupported by that case or any subsequent authority. Under <u>Stern</u>, while state law actions independent of the federal bankruptcy law cannot be decided by the bankruptcy courts, federal claims stemming from the bankruptcy itself can be. Here, there are no state or federal constitutional <i>claims</i> before the Court; what is before the Court is a determination regarding the eligibility of the City of Detroit to be a chapter 9 debtor – a question that unquestionably "stems from the bankruptcy itself." Thus, <u>Stern</u> simply is not implicated by the Objectors' constitutional arguments against eligibility. <u>See Reply</u>, at § II.</p>

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

TERM	DESCRIPTION	CITY'S RESPONSE
THE CITY HAS NOT SATISFIED 11 U.S.C. § 109(C)(2)		
<p>Governor's Authorization Invalid</p>	<p>The Governor's authorization of the City's chapter 9 filing violated Article IX, Section 24 of the Michigan Constitution, which provides that the "accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby."</p> <p>This includes arguments that:</p> <ul style="list-style-type: none"> • The authorization violated the Michigan Constitution by failing to condition the City's chapter 9 petition on the complete preservation of vested pension rights; • The Governor is required to uphold the Michigan Constitution and cannot abrogate provisions of the Michigan Constitution directly or indirectly; • The Governor's unconditional authorization of the City's bankruptcy was <i>ultra vires</i> and <i>void ab initio</i>; and • The power of the Bankruptcy Court to entertain a municipal bankruptcy is constrained by the dual sovereignty principles embodied in the Tenth Amendment and, as such, chapter 9 petitions should be scrutinized. This includes arguments that: <ul style="list-style-type: none"> ○ Chapter 9 requires strict adherence to principles of state sovereignty such that the Court must (a) find that the filing of the petition was authorized by, and consistent with, the Michigan Constitution and applicable state law; and (b) find that the debtor's plan of adjustment is consistent with state law; ○ Section 903 of the Bankruptcy Code makes clear that nothing in chapter 9 should be construed to limit a state's power to control its municipalities. 	<p>The State's authorization of the City's chapter 9 filing did not violate the Pensions Clause because it did not "diminish[] or impair[]" any pension. The only way pensions can be impaired is by an order of the Court at some future date. For the same reason, the enactment of PA 436 did not violate the Pensions Clause. <u>See Reply</u>, at § V.A.</p> <p>The function of the Pensions Clause is to extend the protection of the federal Contracts Clause to cover public pensions by treating them as contractual obligations, where they had previously been treated as "gratuitous allowances" that could be revoked at will by the authority. While the Contracts Clause prohibits <i>states</i> from impairing contracts, it does not pose any obstacle to chapter 9, as made clear by <u>Bekins</u>: a state does not impair contracts merely by authorizing a municipality to file for bankruptcy, and any impairment of contracts that occurs in chapter 9 is imposed by the federal bankruptcy court, <i>not</i> the state. <u>See Reply</u>, at § V.B.</p> <p>When the Pensions Clause was ratified in 1963, (i) the framework of chapter 9, including the role of states in authorizing municipal bankruptcy, was well established and (ii) Michigan law specifically authorized instrumentalities of the State to commence cases under the Bankruptcy Act of 1898. Nevertheless, the Pensions Clause includes no restrictions on the authorization or filing of municipal bankruptcy cases. Moreover, no court has ever held that a state's constitutional protection of pensions poses any obstacle to a municipality's eligibility to be a chapter 9 debtor. <u>See Reply</u>, at § V.B.</p> <p>The Pensions Clause does not require chapter 9 authorization to be conditioned on the non-impairment of pensions. If the State has specifically authorized the City to be a debtor under chapter 9, it is irrelevant for eligibility whether the State also has purported to impose further conditions, and the Pensions Clause says nothing about conditions that must be imposed on the authorization of chapter 9. <u>See Reply</u>, at § V.C.</p>

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

TERM	DESCRIPTION	CITY'S RESPONSE
Emergency Manager's Commencement Invalid	<p>The Emergency Manager's commencement of the City's chapter 9 case was invalid / violated Article IX, Section 24 of the Michigan Constitution because:</p> <ul style="list-style-type: none"> • The Governor's authorization was invalid, for the reasons discussed above; • The Emergency Manager is required to uphold the Michigan Constitution, but has stated that he intends to modify pension benefits, notwithstanding Article IX, Section 24 of the Michigan Constitution; and/or • The Emergency Manager's authorization of the City's bankruptcy without imposing conditions prohibiting the diminishment or impairment of accrued pension benefits violated the Municipal Code of the City of Detroit. 	<p>As discussed above, the State's authorization of the City's chapter 9 filing was valid; as such, the Emergency Manager's commencement of the City's chapter 9 case also was valid. <u>See</u> Reply, at § V.</p> <p>Consistent with its findings at Section VI of the Eligibility Scheduling Order, the Court should reject the request that any Order for Relief require that all actions taken by the Emergency Manager, including the eventual proposal of a plan of adjustment, comply with the State Constitution. Such requests are unrelated to eligibility and unwarranted at this stage. <u>See</u> Reply, at § V.C.</p> <p>Detroit's Charter recognizes that its provisions are subject to the limitations imposed by statute. Even if there were a conflict between PA 436 and Detroit's Charter, PA 436 would prevail because, where a city charter provision conflicts with general statutory law, the statute controls. PA 436, including its authorization to file for chapter 9, is a general state law. As the Michigan legislature's findings with respect to the impact of local financial emergencies on the rest of the State make clear, how financially distressed local governments overcome their situation is not a matter of "purely local" character or concern. <u>See</u> Reply, at § VII.A.</p>

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

TERM	DESCRIPTION	CITY'S RESPONSE
Michigan Law Not Preempted	<p>Explicit and implicit arguments that the Supremacy Clause of the United States Constitution and concepts of preemption do not apply because Congress gave the states the authority to regulate their municipalities' access to chapter 9, such that compliance with the Michigan Constitution and other Michigan law is required.</p> <p>This include arguments that:</p> <ul style="list-style-type: none"> • Section 109(c)(2) expressly reserves the question of eligibility to state law, and where the Bankruptcy Code reserves authority to the states, the Supremacy Clause and preemption do not apply; • <i>Even if</i> the City is eligible to proceed under chapter 9 pursuant to PA 436, the City remains subject to applicable state laws and the Michigan Constitution, in particular its prohibition on the impairment of accrued pension benefits; • The continued application of state constitutional law during a chapter 9 case is consistent with state sovereignty principles; • Pensioners have a contractual right to their pensions; • Pensions should not be considered a debt; • Pension benefits should not be modified; • Michigan's constitutional protection of pensions is broader than that afforded to ordinary contracts; and • The Bankruptcy Code (sections 903 and 904) recognizes the state's constitutional limits on municipalities in chapter 9. 	<p>Even if the Pensions Clause could be interpreted so broadly as to require that limits be placed on the authorization of a chapter 9 case in order to restrict a municipality's use of various provisions of the Bankruptcy Code once in chapter 9, any such limits would be both prohibited and preempted by federal law.</p> <p>Pursuant to the Bankruptcy Clause of the United States Constitution, Congress has enacted chapter 9 as a comprehensive scheme for municipal bankruptcy. Under the Supremacy Clause of the United States Constitution, this comprehensive federal scheme displaces any contrary state-law provisions that purport to alter or impair a debtor's powers under the Bankruptcy Code. Thus, while the State may act as a gatekeeper in determining whether to authorize a chapter 9 filing, State law cannot alter or override the federal scheme for determining the tools of debt adjustment that a municipal debtor may use once it is in bankruptcy.</p> <p>In light of the comprehensive scheme that Congress has enacted, "[i]ncorporating state substantive law into chapter 9 to amend, modify or negate substantive provisions of chapter 9 would violate Congress' ability to enact uniform bankruptcy laws." Thus, the Objectors' arguments that compliance with the Michigan Constitution and other Michigan law is required in chapter 9 fail. <u>See</u> Reply, at § V.C.</p>

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

TERM	DESCRIPTION	CITY'S RESPONSE
<p>PA 436 Unconstitutional</p>	<p>PA 436 itself is unconstitutional. This includes arguments that:</p> <ul style="list-style-type: none"> • If PA 436 permits the impairment of accrued pension benefits, PA 436 is unconstitutional and the Governor's authorization thereunder was, therefore, <i>ultra vires</i> and <i>void ab initio</i>; and • PA 436 violates the strong "home rule" provisions of the Michigan Constitution because it: (a) violates the right of Detroiters to select their own local officers and to structure their own government via the City Charter; (b) purports to delegate authority to the Emergency Manager in excess of that possessed by the legislature; and (c) unconstitutionally delegates legislative authority to the Emergency Manager because it lacks adequate standards to guide the Emergency Manager's actions in bankruptcy, which are not subject to judicial review. 	<p>The State's authorization of the City's chapter 9 filing did not violate the Pensions Clause because it did not "diminish[] or impair[]" any pension. The only way pensions can be impaired is by an order of the Court at some future date. For the same reason, the enactment of PA 436 did not violate the Pensions Clause. <u>See Reply</u>, at § V.A.</p> <p>PA 436 does not conflict with the home rule provisions of Michigan law because (i) Detroit's Charter recognizes that its provisions are subject to the limitations imposed by statute, and (ii) even if there were a conflict between PA 436 and Detroit's Charter, PA 436 would prevail because where a city charter provision conflicts with general statutory law, such as PA 436, the statute controls. Temporarily substituting the Emergency Manager for Detroit's elected officials also does not violate the home rule because the legislature has the authority to temporarily replace local officials when exercising its undisputed power to supervise and control matters of municipal regulation. <u>See Reply</u>, at § VII.A.</p> <p>The argument that because PA 436 grants the Emergency Manager the authority to adopt local ordinances, it unconstitutionally authorizes the Emergency Manger to enact local legislation that not even the state legislature could pass, fails. Filing a chapter 9 case is not passing legislation, and this argument has nothing to do with the City's eligibility. <u>See Reply</u>, at § VII.B.</p> <p>PA 436 does not violate Michigan's non-delegation doctrine. The anti-delegation principles that govern when the <i>State</i> legislature delegates its powers do not apply here because the Emergency Manager exercises the <i>local</i> government's authority. Moreover, PA 436 contains sufficient standards to guide the Emergency Manager in seeking bankruptcy protection to satisfy the requirement that "reasonably precise" standards be provided when the legislature delegates it powers. In addition, because the Court will review many actions of the Emergency Manager, he cannot escape judicial review. <u>See Reply</u>, at § VII.C.</p>

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

TERM	DESCRIPTION	CITY'S RESPONSE
THE CITY HAS NOT SATISFIED 11 U.S.C. § 109(C)(3)		
Insolvency	<p>The City has not satisfied section 109(c)(3) of the Bankruptcy Code because the City has not demonstrated that it is insolvent.</p> <p>The City could have taken steps that would have avoided insolvency.</p> <p>Most Objecting Parties either (a) reserved their right to argue Insolvency after discovery or (b) raised general questions about whether the City has satisfied section 109(c)(3).</p>	<p>The data presented by the City demonstrating its insolvency within the meaning of section 109(c)(3) of the Bankruptcy Code stands unrebutted by any evidence, and all Objections to the City's eligibility based on speculation that the City may be solvent should be overruled. The Objections offer little more than innuendo and bald supposition. For example, several Objectors accuse the City of having "deliberately budgeted and spent itself into insolvency," but offer no examples of how the City might have avoided insolvency. Moreover, none of the Objections contests the City's financial data beyond the citation of press reports and references to old financial data irrelevant to the determination of insolvency as of the Petition Date. <u>See</u> Reply, at § X.</p>
THE CITY HAS NOT SATISFIED 11 U.S.C. § 109(C)(4)		
Desires to Effect a Plan to Adjust Debts	<p>The City has not satisfied section 109(c)(4) of the Bankruptcy Code — which requires the debtor to desire to effect a plan to adjust its debts — because the City has proposed a restructuring plan that cannot be confirmed under section 943(b)(4) of the Bankruptcy Code, which provides that a plan can be confirmed only if "the debtor is not prohibited by law from taking any action necessary to carry out the plan."</p>	<p>At Section VI of the Eligibility Scheduling Order, the Court determined that (i) section 109(c)(4) of the Bankruptcy Code does not "obligate the City to prove that any particular plan that it might later propose is confirmable" and (ii) "the Court will not consider the issue of the treatment of pension rights" when considering objections to eligibility based on the City's alleged failure to satisfy section 109(c)(4). The Objections that argue that the City does not satisfy section 109(c)(4) are based on the contention that the City will not be able to confirm a plan that impairs vested pension benefits. Thus, no Objection challenges the City's eligibility to be a debtor under section 109(c)(4) on grounds that the Court will consider, and the Court should find that eligibility requirement satisfied for the reasons set forth in the Eligibility Memorandum. <u>See</u> Reply, at § XI.</p>

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

TERM	DESCRIPTION	CITY'S RESPONSE
THE CITY HAS NOT SATISFIED 11 U.S.C. § 109(C)(5)		
No Good Faith Negotiations	The City did not negotiate with creditors in good faith as required by section 109(c)(5)(B) of the Bankruptcy Code because the prepetition meetings were not truly negotiations involving collaboration and concessions from both sides, but rather discussions regarding the City's "take it or leave it" proposal.	The evidence demonstrates that the City actively sought continuing dialogue with, and counter-proposals from, the various parties to its multi-faceted negotiations, but received no concrete proposal or comprehensive feedback from any Objector prior to the commencement of the case. The <u>Ellicott</u> case relied upon by the Objectors is distinguishable, where the City held numerous non-public meetings with representatives of creditor constituencies and never presented its restructuring proposal as non-negotiable. It is also important to note that no Objectors transmitted a written counter-proposal on any aspect of the City's restructuring proposal, and, in certain circumstances, the City's invitations for further dialogue were rebuffed. <u>See</u> Reply, at § IX.

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

TERM	DESCRIPTION	CITY'S RESPONSE
Negotiations Not Impracticable	<p>The City has not satisfied section 109(c)(5)(C) of the Bankruptcy Code because the City has not proven that it was unable to negotiate with creditors because such negotiation is impracticable.</p> <p>This includes arguments that:</p> <ul style="list-style-type: none"> • The proper standard is whether there is a "natural representative capable of bargaining" on a creditor's behalf (not whether a party can bind creditors); that the City's retiree associations are such natural representatives; and that the City cannot argue that it would have caused extreme and unreasonable difficulty to engage in negotiations with such associations; • The City predetermined that negotiations would fail and should not be able to claim that negotiations were impracticable where it had no sincere intent to negotiate and the time for negotiations was limited; • The City has in the past negotiated for retiree health and pension benefits outside of a chapter 9 proceeding; and • The City created an impediment to negotiations based on the artificial time constraint created by the filing on July 18. 	<p>The Objectors have not succeeded in undermining the City's showing that it has satisfied section 109(c)(5)(C) of the Bankruptcy Code.</p> <p>The Objections fail to rebut the City's showing that negotiations with its pension beneficiaries were impracticable. For example, even if the City's retiree associations are the "natural representatives of retirees" (which is incorrect), they cannot bind the City's 20,000 plus retirees, rendering the City's good faith attempt at such negotiations impracticable.</p> <p>The City could not have conducted practicable negotiations with its unions where only 8 unions (comprising 10 of the City's 47 bargaining units) agreed to represent their retirees in connection with the City's restructuring and many unions expressly declined to represent their retirees.</p> <p>Section 109(c)(5) is written in the disjunctive, such that section 109(c)(5)(C) (regarding impracticability) can be satisfied even if section 109(c)(5)(B) (regarding good faith negotiations) is not. Section 109(c)(5)(C) can be satisfied even if negotiations with certain creditors, such as retirees, are potentially practicable.</p> <p>The argument that the City manufactured impracticability through the imposition of artificial time constraints also fails. To the contrary, the fact that the City could not delay filing its petition in light of its financial and operational crises – and thus extend its opportunity for negotiation – <i>supports</i> the City's impracticability arguments. <u>See Reply</u>, at § VIII.</p>

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

TERM	DESCRIPTION	CITY'S RESPONSE
ARGUMENTS RELATING TO 11 U.S.C. § 921(C)		
Filing Not in Good Faith	<p>The City's petition should be dismissed pursuant to section 921(c) of the Bankruptcy Code because the City did not file the petition in good faith.</p> <p>This includes arguments that:</p> <ul style="list-style-type: none"> • The City rushed to file its petition to avoid the impending temporary restraining orders that ultimately were entered in various prepetition lawsuits; • The prepetition actions of the Emergency Manager indicate that, at all times since his appointment, the City was planning on commencing a chapter 9 case; and • The filing was in bad faith for the same reasons that the City failed to satisfy section 109(c)(5)(B) (failure to negotiate in good faith). 	<p>The purpose of the "good faith" requirement set forth in section 921(c) of the Bankruptcy Code is to ensure that debtors are seeking relief under chapter 9 for purposes consistent with the Bankruptcy Code. The City's reasons for filing – to adjust its debts and resolve its perennial liquidity crises – are perfectly congruent with the rehabilitative purposes of chapter 9.</p> <p>Even if the state court hearing on the request for a temporary restraining order were a factor in the timing of the City's decision to file its Petition, it could scarcely be considered either the city's primary motivation for commencing its case in light of the City's well established financial crisis. The argument that the City did not adequately explore alternatives to bankruptcy prior to commencing its case also fails, where the Orr Declaration is replete with examples of actions taken by the City to stave off insolvency and avoid the need for bankruptcy protection. Lastly, there is no evidence – much less the compelling evidence that is required – that the City filed its petition in anything other than good faith, and the City's residents would be prejudiced by the dismissal of the petition. <u>See</u> Reply, at § XII.</p>
ARGUMENTS RELATING TO 11 U.S.C. § 943		
Best Interests of Creditors	<p>The City's proposed restructuring plan could not be confirmed pursuant to the "best interests of creditors" test set forth at section 943(b)(7) of the Bankruptcy Code and, thus, the City has failed to satisfy section 109(c)(5)(B).</p>	<p>No Objector cites to any authority that supports this proposition in any way. Consistent with Section VI of the Eligibility Scheduling Order, the eligibility requirements of section 109(c) of the Bankruptcy Code simply do not oblige the City to demonstrate that the as-yet-undetermined terms of whatever plan of adjustment it may ultimately propose will be confirmable. <u>See</u> Reply, at § IX.</p>

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

TERM	DESCRIPTION	CITY'S RESPONSE
Unconfirmable Plan	The City's proposed restructuring plan cannot be confirmed under section 943(b)(4) of the Bankruptcy Code — which provides that a plan can be confirmed only if "the debtor is not prohibited by law from taking any action necessary to carry out the plan" — such that the City has failed to satisfy either section 109(c)(2) or (c)(5) of the Bankruptcy Code.	Requests that the Court decide questions related to section 943 of the Bankruptcy Code months in advance of the filing of a plan of adjustment, are wholly unrelated to eligibility and unwarranted at this stage. <u>See Reply</u> , at § V.C.
OTHER ARGUMENTS		
Collateral Estoppel	<p>Collateral estoppel precludes the City from relitigating the issue of whether the City received valid authorization from the Governor to commence the chapter 9 case because that issue has already been litigated and a declaratory judgment rendered.</p> <p>This includes arguments that (a) the declaratory judgment entered in the state court <u>Webster</u> litigation is entitled to full faith and credit; (b) the preclusive effect of the declaratory judgment is governed by Michigan law; and (c) the elements for collateral estoppel under Michigan law are satisfied.</p>	<p>Collateral estoppel applies only to issues that have been "actually litigated and determined by a valid and final judgment." The <u>Webster</u> court exceeded its jurisdiction by entering its declaratory judgment after the commencement of the City's case because the Bankruptcy Court has original and exclusive jurisdiction over the case, including questions related to eligibility. As such, the declaratory judgment is void and not "valid" for purposes of collateral estoppel.</p> <p>In any event, the declaratory judgment in <u>Webster</u> is void <i>ab initio</i> and not "valid" for purposes of collateral estoppel because it was entered in violation of the automatic stay imposed by section 362 of the Bankruptcy Code.</p> <p>In addition, other elements of collateral estoppel are not satisfied. The City did not have a full and fair opportunity to litigate the issue where the declaratory judgment was issued on an expedited basis, and the City was not a party to the <u>Webster</u> lawsuit and was not otherwise in privity with the <u>Webster</u> defendants. <u>See Reply</u>, at § VI.</p>
Joinder	An indication that this Objecting Party has joined in one or more other Objections.	N/A

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

OBJECTION DOCKET NO(S)	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY RESPONSE
438; 453 (Notice of Constitutional Challenges); 505 (Corrected Motion); 509 (Corrected Kreisburg Declaration)	Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (" <u>AFSCME</u> ")	<ul style="list-style-type: none"> • Federal Structure Violation (§§ 40-62). • Lack of Jurisdiction (§§ 67-71). • Governor's Authorization Invalid (§§ 75-84). • PA 436 Unconstitutional (§§ 85-100). • No Good Faith Negotiations (§§ 101-108). • Unconfirmable Plan (§§ 109-110). • Best Interests of Creditors (§ 111). • Negotiations Not Impracticable (§§ 115-123). • Filing Not in Good Faith (§§ 124-131). • Reserves the right to argue Insolvency (§§ 132-140). 	<ul style="list-style-type: none"> • <u>See</u> Reply, at §§ III (Federal Structure Violation); II (Lack of Jurisdiction); V (Governor's Authorization Invalid); V.A, VII (PA 436 Unconstitutional); IX (No Good Faith Negotiations); V.C (Unconfirmable Plan); IX (Best Interests of Creditors); VIII (Negotiations Not Impracticable); XII (Filing Not in Good Faith).
481	Attorney General Bill Schuette	<ul style="list-style-type: none"> • Concedes that the City is eligible to be a chapter 9 debtor, but argues that the City remains subject to the Michigan Constitution (pp. 5-8). • Michigan Law Not Preempted (pp. 5-19). 	<ul style="list-style-type: none"> • <u>See</u> Reply, at § V.C (Michigan Law Not Preempted).
482	Association of Professional and Technical Employees	<ul style="list-style-type: none"> • PA 436 Unconstitutional. • Insolvency. • Michigan Law Not Preempted. • Wages and fringe benefits are subject to collective bargaining according to state and federal labor laws. 	<ul style="list-style-type: none"> • <u>See</u> Reply, at §§ V.A, VII (PA 436 Unconstitutional); X (Insolvency); V.C (Michigan Law Not Preempted).

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

OBJECTION DOCKET NO(S)	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY RESPONSE
484	Local 324, International Union of Operating Engineers	<ul style="list-style-type: none"> • Joinder to UAW's Objection (Docket No. 506) and AFSCME's Objection (Docket No. 505). 	<ul style="list-style-type: none"> • <u>See</u> Response to UAW's Objection; AFSCME's Objection.
486	Local 517M, Service Employees International Union	<ul style="list-style-type: none"> • Joinder to UAW's Objection (Docket No. 506) and AFSCME's Objection (Docket No. 505). 	<ul style="list-style-type: none"> • <u>See</u> Response to UAW's Objection; AFSCME's Objection.
497; 502 (502 appears to be duplicative of 497)	Retired Detroit Police & Fire Fighters Association (" <u>RDPFFA</u> "); Donald Taylor, individually and as President of RDPFFA; Detroit Retired City Employees Association (" <u>DRCEA</u> "); Shirley V. Lightsey, individually and as President of DRCEA	<ul style="list-style-type: none"> • Governor's Authorization Invalid / Emergency Manager's Commencement Invalid (¶¶ 31-50). • Insolvency (¶¶ 51-57). • No Good Faith Negotiations (¶¶ 58-63). • Negotiations Not Impracticable (¶¶ 63-74). 	<ul style="list-style-type: none"> • <u>See</u> Reply, at §§ V (Governor's Authorization Invalid); V, VII.A (Emergency Manager's Commencement Invalid); X (Insolvency); IX (No Good Faith Negotiations); VIII (Negotiations Not Impracticable).
506	International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (" <u>UAW</u> ")	<ul style="list-style-type: none"> • Governor's Authorization Invalid / Emergency Manager's Commencement Invalid (¶¶ 16-34, 40). • Michigan Law Not Preempted (¶¶ 35-39). • Desires to Effect a Plan to Adjust Debts (¶¶ 41-42). • Filing Not in Good Faith/No Good Faith Negotiations (¶¶ 43-47). • Negotiations Not Impracticable (¶ 46, n.19). 	<ul style="list-style-type: none"> • <u>See</u> Reply, at §§ V (Governor's Authorization Invalid); V, VII.A (Emergency Manager's Commencement Invalid); V.C (Michigan Law Not Preempted); XI (Desires to Effect a Plan to Adjust Debts); XII (Filing Not in Good Faith); IX (No Good Faith Negotiations); VIII (Negotiations Not Impracticable).

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

OBJECTION DOCKET NO(S)	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY RESPONSE
512	Detroit Fire Fighters Association; Detroit Police Officers Association; Detroit Police Lieutenants & Sergeants Association; Detroit Police Command Officers Association	<ul style="list-style-type: none"> • Emergency Manager's Commencement Invalid (Brief at pp. 3-8). • Filing Not in Good Faith (Brief at pp. 4-5, 18). • Unconfirmable Plan (Brief at pp. 4-6). • No Good Faith Negotiations (Brief at pp. 8-16). • Negotiations Not Impracticable (Brief at pp. 16-18). 	<ul style="list-style-type: none"> • <u>See</u> Reply, at §§ V, VII.A (Emergency Manager's Commencement Invalid); XII (Filing Not in Good Faith); V.C (Unconfirmable Plan); IX (No Good Faith Negotiations); VIII (Negotiations Not Impracticable).
514	Center for Community Justice and Advocacy	<ul style="list-style-type: none"> • Emergency Manager's Commencement Invalid (¶¶ 13-14). • Michigan Law Not Preempted (pp. 7-12). • Alternatively, PA 436 Unconstitutional (pp. 12-13). 	<ul style="list-style-type: none"> • <u>See</u> Reply, at §§ V, VII.A (Emergency Manager's Commencement Invalid); V.C (Michigan Law Not Preempted); V.A, VII (PA 436 Unconstitutional).
517	Michigan Auto Recovery, Inc.	<ul style="list-style-type: none"> • No Good Faith Negotiations (¶¶ 3-5). 	<ul style="list-style-type: none"> • <u>See</u> Reply, at § IX (No Good Faith Negotiations).
519	Police and Fire Retirement System of the City of Detroit; General Retirement System of the City of Detroit	<ul style="list-style-type: none"> • Michigan Law Not Preempted (pp. 19-25). • Governor's Authorization Invalid / Emergency Manager's Commencement Invalid (pp. 27-43). • Alternatively, PA 436 Unconstitutional (pp. 43-44). • Collateral Estoppel (pp. 44-58). • No Good Faith Negotiations/Negotiations Not Impracticable (pp. 59-61). 	<ul style="list-style-type: none"> • <u>See</u> Reply, at §§ V.C (Michigan Law Not Preempted); V (Governor's Authorization Invalid); V, VII.A (Emergency Manager's Commencement Invalid); V.A, VII (PA 436 Unconstitutional); VI (Collateral Estoppel); IX (No Good Faith Negotiations); VIII (Negotiations Not Impracticable).

NON-INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN AND CITY'S RESPONSES

OBJECTION DOCKET NO(S)	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY RESPONSE
520	Retired Detroit Police Members Association	<ul style="list-style-type: none"> • PA 436 Unconstitutional (pp. 9-10). • Emergency Manager's Commencement Invalid (pp. 10-11). • Governor's Authorization Invalid (pp. 11-12). • Filing Not in Good Faith (pp. 12-13). • Michigan Law Not Preempted (pp. 14-19). • Desires to Effect a Plan to Adjust Debts (pp. 18-19). • No Good Faith Negotiations (pp. 13, 19-22). • Insolvency (pp. 22-23). 	<ul style="list-style-type: none"> • See Reply, at §§ V.A, VII (PA 436 Unconstitutional); V, VII.A (Emergency Manager's Commencement Invalid); V (Governor's Authorization Invalid); XII (Filing Not in Good Faith); V.C (Michigan Law Not Preempted); XI (Desires to Effect a Plan to Adjust Debts); IX (No Good Faith Negotiations); X (Insolvency).
660	St. Martins Cooperative		<ul style="list-style-type: none"> • Overruled as untimely per order entered on August 28, 2013 (Docket No. 665).

EXHIBIT B

EXHIBIT B TO CONSOLIDATED REPLY TO OBJECTIONS TO ELIGIBILITY

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

TERM	DESCRIPTION	CITY'S RESPONSE
ARGUMENTS THAT CHAPTER 9 VIOLATES THE UNITED STATES CONSTITUTION		
Due Process	The notice of the commencement of the City's bankruptcy case (the " <u>Case Commencement Notice</u> ") did not provide adequate notice or opportunity to be heard.	The Case Commencement Notice conspicuously identified the Eligibility Objection Deadline and, consistent with the Case Commencement Order, was served on all interested parties within three business days of its entry. The adequacy of notice of the Eligibility Objection Deadline is further demonstrated by the fact that over 100 parties filed Objections to the Petition and Statement of Qualifications, many of which are elaborately argued. <u>See</u> Reply, at § XIII.

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

TERM	DESCRIPTION	CITY'S RESPONSE
THE CITY HAS NOT SATISFIED 11 U.S.C. § 109(C)(2)		
<p>Governor's Authorization Invalid</p>	<p>The Governor's authorization of the City's chapter 9 filing violated Article IX, Section 24 of the Michigan Constitution, which provides that the "accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby."</p> <p>This includes arguments that:</p> <ul style="list-style-type: none"> • The authorization violated the Michigan Constitution by failing to condition the City's chapter 9 petition on the complete preservation of vested pension rights; • The Governor is required to uphold the Michigan Constitution and cannot abrogate provisions of the Michigan Constitution directly or indirectly; • The Governor's unconditional authorization of the City's bankruptcy was <i>ultra vires</i> and <i>void ab initio</i>; and • The power of the Bankruptcy Court to entertain a municipal bankruptcy is constrained by the dual sovereignty principles embodied in the Tenth Amendment and, as such, chapter 9 petitions should be scrutinized. This includes arguments that: <ul style="list-style-type: none"> ○ Chapter 9 requires strict adherence to principles of state sovereignty such that the Court must (a) find that the filing of the petition was authorized by, and consistent with, the Michigan Constitution and applicable state law; and (b) find that the debtor's plan of adjustment is consistent with state law; ○ Section 903 of the Bankruptcy Code makes clear that nothing in chapter 9 should be construed to limit a state's power to control its municipalities. 	<p>The State's authorization of the City's chapter 9 filing did not violate the Pensions Clause because it did not "diminish[] or impair[]" any pension. The only way pensions can be impaired is by an order of the Court at some future date. For the same reason, the enactment of PA 436 did not violate the Pensions Clause. <u>See Reply</u>, at § V.A.</p> <p>The function of the Pensions Clause is to extend the protection of the federal Contracts Clause to cover public pensions by treating them as contractual obligations, where they had previously been treated as "gratuitous allowances" that could be revoked at will by the authority. While the Contracts Clause prohibits <i>states</i> from impairing contracts, it does not pose any obstacle to chapter 9, as made clear by <u>Bekins</u>: a state does not impair contracts merely by authorizing a municipality to file for bankruptcy, and any impairment of contracts that occurs in chapter 9 is imposed by the federal bankruptcy court, <i>not</i> the state. <u>See Reply</u>, at § V.B.</p> <p>When the Pensions Clause was ratified in 1963, (i) the framework of chapter 9, including the role of states in authorizing municipal bankruptcy, was well established and (ii) Michigan law specifically authorized instrumentalities of the State to commence cases under the Bankruptcy Act of 1898. Nevertheless, the Pensions Clause includes no restrictions on the authorization or filing of municipal bankruptcy cases. Moreover, no court has ever held that a state's constitutional protection of pensions poses any obstacle to a municipality's eligibility to be a chapter 9 debtor. <u>See Reply</u>, at § V.B.</p> <p>The Pensions Clause does not require chapter 9 authorization to be conditioned on the non-impairment of pensions. If the State has specifically authorized the City to be a debtor under chapter 9, it is irrelevant for eligibility whether the State also has purported to impose further conditions, and the Pensions Clause says nothing about conditions that must be imposed on the authorization of chapter 9. <u>See Reply</u>, at § V.C.</p>

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

TERM	DESCRIPTION	CITY'S RESPONSE
Emergency Manager's Commencement Invalid	<p>The Emergency Manager's commencement of the City's chapter 9 case was invalid / violated Article IX, Section 24 of the Michigan Constitution because:</p> <ul style="list-style-type: none"> • The Governor's authorization was invalid, for the reasons discussed above; • The Emergency Manager is required to uphold the Michigan Constitution, but has stated that he intends to modify pension benefits, notwithstanding Article IX, Section 24 of the Michigan Constitution; and/or • The Emergency Manager's authorization of the City's bankruptcy without imposing conditions prohibiting the diminishment or impairment of accrued pension benefits violated the Municipal Code of the City of Detroit. 	<p>As discussed above, the State's authorization of the City's chapter 9 filing was valid; as such, the Emergency Manager's commencement of the City's chapter 9 case also was valid. <u>See</u> Reply, at § V.</p> <p>Consistent with its findings at Section VI of the Eligibility Scheduling Order, the Court should reject the request that any Order for Relief require that all actions taken by the Emergency Manager, including the eventual proposal of a plan of adjustment, comply with the State Constitution. Such requests are unrelated to eligibility and unwarranted at this stage. <u>See</u> Reply, at § V.C.</p> <p>Detroit's Charter recognizes that its provisions are subject to the limitations imposed by statute. Even if there were a conflict between PA 436 and Detroit's Charter, PA 436 would prevail because, where a city charter provision conflicts with general statutory law, the statute controls. PA 436, including its authorization to file for chapter 9, is a general state law. As the Michigan legislature's findings with respect to the impact of local financial emergencies on the rest of the State make clear, how financially distressed local governments overcome their situation is not a matter of "purely local" character or concern. <u>See</u> Reply, at § VII.A.</p>

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

TERM	DESCRIPTION	CITY'S RESPONSE
Michigan Law Not Preempted	<p>Explicit and implicit arguments that the Supremacy Clause of the United States Constitution and concepts of preemption do not apply because Congress gave the states the authority to regulate their municipalities' access to chapter 9, such that compliance with the Michigan Constitution and other Michigan law is required.</p> <p>This includes arguments that:</p> <ul style="list-style-type: none"> • Section 109(c)(2) expressly reserves the question of eligibility to state law, and where the Bankruptcy Code reserves authority to the states, the Supremacy Clause and preemption do not apply; • <i>Even if</i> the City is eligible to proceed under chapter 9 pursuant to PA 436, the City remains subject to applicable state laws and the Michigan Constitution, in particular its prohibition on the impairment of accrued pension benefits; • The continued application of state constitutional law during a chapter 9 case is consistent with state sovereignty principles; • Pensioners have a contractual right to their pensions; • Pensions should not be considered a debt; • Pension benefits should not be modified; • Michigan's constitutional protection of pensions is broader than that afforded to ordinary contracts; and • The Bankruptcy Code (sections 903 and 904) recognizes the state's constitutional limits on municipalities in chapter 9. 	<p>Even if the Pensions Clause could be interpreted so broadly as to require that limits be placed on the authorization of a chapter 9 case in order to restrict a municipality's use of various provisions of the Bankruptcy Code once in chapter 9, any such limits would be both prohibited and preempted by federal law.</p> <p>Pursuant to the Bankruptcy Clause of the United States Constitution, Congress has enacted chapter 9 as a comprehensive scheme for municipal bankruptcy. Under the Supremacy Clause of the United States Constitution, this comprehensive federal scheme displaces any contrary state-law provisions that purport to alter or impair a debtor's powers under the Bankruptcy Code. Thus, while the State may act as a gatekeeper in determining whether to authorize a chapter 9 filing, State law cannot alter or override the federal scheme for determining the tools of debt adjustment that a municipal debtor may use once it is in bankruptcy.</p> <p>In light of the comprehensive scheme that Congress has enacted, "[i]ncorporating state substantive law into chapter 9 to amend, modify or negate substantive provisions of chapter 9 would violate Congress' ability to enact uniform bankruptcy laws." Thus, the Objectors' arguments that compliance with the Michigan Constitution and other Michigan law is required in chapter 9 fail. <u>See</u> Reply, at § V.C.</p>

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

TERM	DESCRIPTION	CITY'S RESPONSE
<p>PA 436 Unconstitutional</p>	<p>PA 436 itself is unconstitutional.</p> <p>This includes arguments that:</p> <ul style="list-style-type: none"> • If PA 436 permits the impairment of accrued pension benefits, PA 436 is unconstitutional and the Governor's authorization thereunder was, therefore, <i>ultra vires</i> and <i>void ab initio</i>; and • PA 436 violates the strong "home rule" provisions of the Michigan Constitution because it: (a) violates the right of Detroiters to select their own local officers and to structure their own government via the City Charter; (b) purports to delegate authority to the Emergency Manager in excess of that possessed by the Legislature; and (c) unconstitutionally delegates legislative authority to the Emergency Manager because it lacks adequate standards to guide the Emergency Manager's actions in bankruptcy, which are not subject to judicial review. 	<p>The State's authorization of the City's chapter 9 filing did not violate the Pensions Clause because it did not "diminish[] or impair[]" any pension. The only way pensions can be impaired is by an order of the Court at some future date. For the same reason, the enactment of PA 436 did not violate the Pensions Clause. <u>See</u> Reply, at § V.A.</p> <p>PA 436 does not conflict with the home rule provisions of Michigan law because (i) Detroit's Charter recognizes that its provisions are subject to the limitations imposed by statute, and (ii) even if there were a conflict between PA 436 and Detroit's Charter, PA 436 would prevail because where a city charter provision conflicts with general statutory law, such as PA 436, the statute controls. Temporarily substituting the Emergency Manager for Detroit's elected officials also does not violate the home rule because the legislature has the authority to temporarily replace local officials when exercising its undisputed power to supervise and control matters of municipal regulation. <u>See</u> Reply, at § VII.A.</p> <p>The argument that because PA 436 grants the Emergency Manager the authority to adopt local ordinances, it unconstitutionally authorizes the Emergency Manger to enact local legislation that not even the state legislature could pass, fails. Filing a chapter 9 case is not passing legislation, and this argument has nothing to do with the City's eligibility. <u>See</u> Reply, at § VII.B.</p> <p>PA 436 does not violate Michigan's non-delegation doctrine. The anti-delegation principles that govern when the <i>State</i> legislature delegates its powers do not apply here because the Emergency Manager exercises the <i>local</i> government's authority. Moreover, PA 436 contains sufficient standards to guide the Emergency Manager in seeking bankruptcy protection to satisfy the requirement that "reasonably precise" standards be provided when the legislature delegates it powers. In addition, because the Court will review many actions of the Emergency Manager, he cannot escape judicial review. <u>See</u> Reply, at § VII.C.</p>

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

TERM	DESCRIPTION	CITY'S RESPONSE
THE CITY HAS NOT SATISFIED 11 U.S.C. § 109(C)(3)		
Insolvency	<p>The City has not satisfied section 109(c)(3) of the Bankruptcy Code because the City has not demonstrated that it is insolvent.</p> <p>The City could have taken steps that would have avoided insolvency.</p> <p>Most Objecting Parties either (a) reserved their right to argue Insolvency after discovery or (b) raised general questions about whether the City has satisfied section 109(c)(3).</p>	<p>The data presented by the City demonstrating its insolvency within the meaning of section 109(c)(3) of the Bankruptcy Code stands unrebutted by any evidence, and all Objections to the City's eligibility based on speculation that the City may be solvent should be overruled. The Objections offer little more than innuendo and bald supposition. For example, several Objectors accuse the City of having "deliberately budgeted and spent itself into insolvency," but offer no examples of how the City might have avoided insolvency. Moreover, none of the Objections contests the City's financial data beyond the citation of press reports and references to old financial data irrelevant to the determination of insolvency as of the Petition Date. <u>See</u> Reply, at § X.</p>
THE CITY HAS NOT SATISFIED 11 U.S.C. § 109(C)(5)		
No Good Faith Negotiations	<p>The City did not negotiate with creditors in good faith as required by section 109(c)(5)(B) of the Bankruptcy Code because the prepetition meetings were not truly negotiations involving collaboration and concessions from both sides, but rather discussions regarding the City's "take it or leave it" proposal.</p>	<p>The evidence demonstrates that the City actively sought continuing dialogue with, and counter-proposals from, the various parties to its multi-faceted negotiations, but received no concrete proposal or comprehensive feedback from any Objector prior to the commencement of the case. The <u>Ellicott</u> case relied upon by the Objectors is distinguishable, where the City held numerous non-public meetings with representatives of creditor constituencies and never presented its restructuring proposal as non-negotiable. It is also important to note that no Objectors transmitted a written counter-proposal on any aspect of the City's restructuring proposal, and, in certain circumstances, the City's invitations for further dialogue were rebuffed. <u>See</u> Reply, at § IX.</p>

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

TERM	DESCRIPTION	CITY'S RESPONSE
ARGUMENTS RELATING TO 11 U.S.C. § 921(C)		
Filing Not in Good Faith	<p>The City's petition should be dismissed pursuant to section 921(c) of the Bankruptcy Code because the City did not file the petition in good faith.</p> <p>This includes arguments that:</p> <ul style="list-style-type: none"> • The City rushed to file its petition to avoid the impending temporary restraining orders that ultimately were entered in various prepetition lawsuits; • The prepetition actions of the Emergency Manager indicate that, at all times since his appointment, the City was planning on commencing a chapter 9 case; and • The filing was in bad faith for the same reasons that the City failed to satisfy section 109(c)(5)(B) (failure to negotiate in good faith). 	<p>The purpose of the "good faith" requirement set forth in section 921(c) of the Bankruptcy Code is to ensure that debtors are seeking relief under chapter 9 for purposes consistent with the Bankruptcy Code. The City's reasons for filing – to adjust its debts and resolve its perennial liquidity crises – are perfectly congruent with the rehabilitative purposes of chapter 9.</p> <p>Even if the state court hearing on the request for a temporary restraining order were a factor in the timing of the City's decision to file its Petition, it could scarcely be considered either the city's primary motivation for commencing its case in light of the City's well established financial crisis. The argument that the City did not adequately explore alternatives to bankruptcy prior to commencing its case also fails, where the Orr Declaration is replete with examples of actions taken by the City to stave off insolvency and avoid the need for bankruptcy protection. Lastly, there is no evidence – much less the compelling evidence that is required – that the City filed its petition in anything other than good faith, and the City's residents would be prejudiced by the dismissal of the petition. <u>See</u> Reply, at § XII.</p>
OTHER ARGUMENTS		
Joinder	An indication that this Objecting Party has joined in one or more other Objections.	N/A

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

OBJECTION DOCKET NO(S).	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY'S RESPONSE
335	Lou Ann Pelletier	<ul style="list-style-type: none"> Michigan Law Not Preempted. 	<ul style="list-style-type: none"> <u>See</u> Reply, at § V.C.
337	Michael K. Pelletier	<ul style="list-style-type: none"> Michigan Law Not Preempted. 	<ul style="list-style-type: none"> <u>See</u> Reply, at § V.C.
338	Regina G. Bryant	<ul style="list-style-type: none"> As a property owner, objects to changes in tax status, any property value changes, and any deterioration or privatizing of City services. 	<ul style="list-style-type: none"> Objection does not address eligibility of City to be a chapter 9 debtor.
339	Regina G. Bryant	<ul style="list-style-type: none"> Seeks reinstatement of position with DWSD and full salary restoration, with sick and vacation time, for the period March 1, 2010 to August 31, 2013. 	<ul style="list-style-type: none"> Objection does not address eligibility of City to be a chapter 9 debtor.
388	Michael G. Benson	<ul style="list-style-type: none"> Insolvency. Michigan Law Not Preempted. Asserts that bankruptcy case illegal and morally wrong. 	<ul style="list-style-type: none"> <u>See</u> Reply, at §§ X (Insolvency); V.C (Michigan Law Not Preempted). Objection that chapter 9 filing morally wrong does not address eligibility of City to be a chapter 9 debtor.
398	Karl E. Shaw	<ul style="list-style-type: none"> Insolvency. Michigan Law Not Preempted. 	<ul style="list-style-type: none"> <u>See</u> Reply, at §§ X (Insolvency); V.C (Michigan Law Not Preempted).
401	Olivia Gillon	<ul style="list-style-type: none"> Insolvency. Michigan Law Not Preempted. 	<ul style="list-style-type: none"> <u>See</u> Reply, at §§ X (Insolvency); V.C (Michigan Law Not Preempted).

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

OBJECTION DOCKET NO(S).	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY'S RESPONSE
402	Russ Bellant	<ul style="list-style-type: none"> • Objects to the transfer of the Public Lighting Department to a private party. • Due Process. 	<ul style="list-style-type: none"> • Objection to transfer of PLD does not address eligibility of City to be a chapter 9 debtor. • <u>See Reply</u>, at § XIII (Due Process).
405	Russ Bellant	<ul style="list-style-type: none"> • Objects to the outsourcing of the City's waste removal services. • Due Process. 	<ul style="list-style-type: none"> • Objection to outsourcing of waste removal services does not address eligibility of City to be a chapter 9 debtor. • <u>See Reply</u>, at § XIII (Due Process).
411	William Curtis Walton	<ul style="list-style-type: none"> • Michigan Law Not Preempted (¶¶ 1-5). • No Good Faith Negotiations (¶ 6). • Emergency Manager's Commencement Invalid (¶ 7). 	<ul style="list-style-type: none"> • <u>See Reply</u>, at §§ V.C (Michigan Law Not Preempted); IX (No Good Faith Negotiations); V, VII.A (Emergency Manager's Commencement Invalid).
412	Dwight Boyd	<ul style="list-style-type: none"> • Insolvency. 	<ul style="list-style-type: none"> • <u>See Reply</u>, at § X.
415	Mary W. Dugans	<ul style="list-style-type: none"> • Michigan Law Not Preempted. 	<ul style="list-style-type: none"> • <u>See Reply</u>, at § V.C.
417	William D. Ford	<ul style="list-style-type: none"> • Michigan Law Not Preempted. 	<ul style="list-style-type: none"> • <u>See Reply</u>, at § V.C.
418	Stephen Johnson	<ul style="list-style-type: none"> • Michigan Law Not Preempted.. 	<ul style="list-style-type: none"> • <u>See Reply</u>, at § V.C.
426	Kwabena Shabu	<ul style="list-style-type: none"> • Emergency Manager's Commencement Invalid (p. 2). • Michigan Law Not Preempted (p. 2). • Joinder in all other Objections (p. 2). 	<ul style="list-style-type: none"> • <u>See Reply</u>, at §§ V, VII.A (Emergency Manager's Commencement Invalid); V.C (Michigan Law Not Preempted). • <u>See also</u> Response to all other Objections.

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

OBJECTION DOCKET NO(S).	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY'S RESPONSE
435	Sylvester Davis	<ul style="list-style-type: none"> Emergency Manager's Commencement Invalid. 	<ul style="list-style-type: none"> <u>See</u> Reply, at § V, VII.A.
446	Dennis Taubitz	<ul style="list-style-type: none"> Due Process (pp. 1-3). Insolvency (pp. 3-4). No Good Faith Negotiations (pp. 4-5). 	<ul style="list-style-type: none"> <u>See</u> Reply, at §§ XIII (Due Process); X (Insolvency); IX (No Good Faith Negotiations).
448	David Dye	<ul style="list-style-type: none"> Insolvency (pp. 1-2). Swap contracts not valid (p. 2). PA 436 Unconstitutional (p. 3). Emergency Manager has conflicts of interest due to his affiliations with Jones Day and due to the fact that Jones Day has clients that are creditors of the City (p. 3). Michigan Law Not Preempted (pp. 3-4). No Good Faith Negotiations (p. 4). 	<ul style="list-style-type: none"> <u>See</u> Reply, at §§ X (Insolvency); V.A, VII (PA 436 Unconstitutional); V.C (Michigan Law Not Preempted); IX (No Good Faith Negotiations). Allegations of fraud related to interest rate swap contracts (which fraud allegedly renders such contracts invalid) are (a) unsupported by evidence and (b) unrelated to the City's eligibility to be a chapter 9 debtor. The Emergency Manager's alleged conflict of interest is (a) unsupported by evidence and (b) unrelated to the City's eligibility to be a chapter 9 debtor.
459	Phebe Lee Woodberry	<ul style="list-style-type: none"> Michigan Law Not Preempted. Asserts that City holds in escrow an undisclosed amount of money for its taking of her apartment using its power of eminent domain. 	<ul style="list-style-type: none"> <u>See</u> Reply, at § V.C (Michigan Law Not Preempted). Issues related to funds allegedly held by City in connection with alleged eminent domain proceeding are unrelated to the City's eligibility to be a chapter 9 debtor.

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

OBJECTION DOCKET NO(S).	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY'S RESPONSE
460; 491 (Corrected)	Charles D. Brown	<ul style="list-style-type: none"> • Emergency Manager's Commencement Invalid (p. 2). • Michigan Law Not Preempted (p. 2). • Joinder in all other Objections (p. 2). 	<ul style="list-style-type: none"> • <u>See Reply</u>, at §§ V, VII.A (Emergency Manager's Commencement Invalid); V.C (Michigan Law Not Preempted). • <u>See also</u> Response to all other Objections.

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

OBJECTION DOCKET NO(S).	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY'S RESPONSE
461	Thomas Stephens	<ul style="list-style-type: none"> • Due Process (¶ 2). • Seeks a stay of the bankruptcy case and suggests that the Court formally request expedited consideration of all pending litigation raising legal and constitutional challenges to PA 436 (¶¶ 3-6). • Emergency Manager has conflicts of interest due to his affiliations with Jones Day and due to the fact that Jones Day has clients that are creditors of the City. Emergency Manager and Jones Day are acting in their private interests rather than the interest of the City (¶¶ 8, 12). • City and its professionals have violated the First Amendment in connection with public informational meetings held in April and June of 2013 (¶ 9). • PA 436 Unconstitutional (¶¶ 10-12, 14). • PA 436 abridges citizens' rights to engage in core First Amendment activities (¶ 13). • Michigan Law Not Preempted (¶ 10). • This court lacks jurisdiction to enter final orders implicating constitutionality of PA 436 (¶ 14). 	<ul style="list-style-type: none"> • Argument that chapter 9 case should be stayed pending the resolution of state court litigation challenging authority of Governor and Emergency Manager should be overruled. Only state court litigation identified by Objector (a) is subject to the automatic stay pursuant to (i) sections 362 and 922 of the Bankruptcy Code and (ii) this Court's orders (Docket Nos. 166, 167) entered on July 25, 2013, confirming the application of, and extending, the automatic stay to certain entities and (b) has been administratively closed by the relevant state court. Objectors' argument is a procedurally improper attempt to obtain reconsideration of previous Court orders rather than an objection to eligibility. • The Emergency Manager's/Jones Day's alleged conflicts of interest and alleged actions in their private interests are (a) unsupported by evidence and (b) unrelated to the City's eligibility to be a chapter 9 debtor. • Allegations of violations of First Amendment rights are framed generically and are not supported by any specific instance of such a violation. • <u>See Reply</u>, at §§ XIII (Due Process); V.A, VII (PA 436 Unconstitutional); V.C (Michigan Law Not Preempted).

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

OBJECTION DOCKET NO(S).	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY'S RESPONSE
472	Alice R. Pruitt	<ul style="list-style-type: none"> • PA 436 Unconstitutional. • No Good Faith Negotiations. • Michigan Law Not Preempted. • Emergency Manager's Commencement Invalid. • Insolvency. 	<ul style="list-style-type: none"> • <u>See</u> Reply, at §§ V.A, VII (PA 436 Unconstitutional); IX (No Good Faith Negotiations); V.C (Michigan Law Not Preempted); V, VII.A (Emergency Manager's Commencement Invalid); X (Insolvency).
474	Linda Bain	<ul style="list-style-type: none"> • Asserts that (a) the Emergency Manager's priority will be to sell Detroit's "precious and valuable assets" to stakeholders who have "illegally set up the emergency management operations"; and (b) the Emergency Manager is not going to address the inadequacy of the various City services in the bankruptcy case. 	<ul style="list-style-type: none"> • Objector's allegations of bad faith and illegality on the part of the Emergency Manager, the Governor and the Treasurer are (a) unsupported by evidence and (b) unrelated to the City's eligibility to be a chapter 9 debtor.
477	Lucinda J. Darrah	<ul style="list-style-type: none"> • Objects to alleged secured status of "predatory and criminal acting" banks (p. 1). • Michigan Law Not Preempted (p. 2). • Objects to potential privatization of PLD (p. 3). 	<ul style="list-style-type: none"> • Secured status of institutional creditors and potential privatization of PLD unrelated to City's eligibility to be a chapter 9 debtor. • <u>See</u> Reply, at § V.C (Michigan Law Not Preempted).
489	Timothy King	<ul style="list-style-type: none"> • Emergency Manager's Commencement Invalid. • PA 436 Unconstitutional. 	<ul style="list-style-type: none"> • <u>See</u> Reply, at §§ V, VII.A (Emergency Manager's Commencement Invalid); V.A, VII (PA 436 Unconstitutional).

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

OBJECTION DOCKET NO(S).	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY'S RESPONSE
490	Jo Ann Watson	<ul style="list-style-type: none"> • Governor's Authorization Invalid. • PA 436 Unconstitutional. • Michigan Law Not Preempted. • Reserves the right to join in "the objections raised by others which are relevant to my specific objection or this matter in general." 	<ul style="list-style-type: none"> • Objector's unsupported argument that the Bankruptcy Code requires that "local elected officials" commence any municipal bankruptcy is contrary to the plain language of section 109(c)(2) of the Bankruptcy Code and applicable case law. • Objector's argument that PA 72 was invalid at the time of the Emergency Manager's appointment is false, unsupported and contrary to applicable case law. • <u>See Reply</u>, at §§ V (Governor's Authorization Invalid); V.A, VII (PA 436 Unconstitutional); V.C (Michigan Law Not Preempted).
492	Cynthia Blair	<ul style="list-style-type: none"> • Due Process. • Emergency Manager's Commencement Invalid. • Michigan Law Not Preempted. • Objects to the assertion that pensions are underfunded. • Insolvency. • No Good Faith Negotiations. 	<ul style="list-style-type: none"> • <u>See Reply</u>, at §§ XIII (Due Process); V, VII.A (Emergency Manager's Commencement Invalid); V.C (Michigan Law Not Preempted); X (Insolvency); IX (No Good Faith Negotiations). • Challenge to underfunding amount of pensions unrelated to City's eligibility to be a chapter 9 debtor.

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

OBJECTION DOCKET NO(S).	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY'S RESPONSE
493	James Thomas McBride, filing as The Chair of Saint Peter	<ul style="list-style-type: none"> • Insolvency. • Asserts that: (a) the 300 year old "City of Detroit" is solvent, but the 80 year old legal fiction "The City of Detroit" is intentionally insolvent; (b) the "petition" is "intentionally confusing and misleading" and contains words with "diabolically opposed meanings;" (c) the City has tricked people into pledging their property as collateral, which has fraudulently converted the "true Creditors" into debtors, reducing the creditors to the status of insolvent paupers with no rights; and (d) the City holds "private matching funds" and refuses to execute the set off of debt for the settlement and closure of the accounts to return the City to solvency. 	<ul style="list-style-type: none"> • <u>See</u> Reply, at § X (Insolvency). • Allegation that "petition" is "intentionally confusing and misleading" unrelated to City's eligibility to be a chapter 9 debtor. Objector also fails to (a) specify which document filed by the debtor is "confusing and misleading;" and (b) comprehensibly explain how certain words in the referenced document have "diabolically opposed meanings." • Allegations that (a) the City has tricked people into pledging their property as collateral; and (b) the City refuses to apply "private matching funds" to set off its debts are non-specific, factually unfounded and unrelated to the City's eligibility to be a chapter 9 debtor.
494	Gretchen R. Smith	<ul style="list-style-type: none"> • Emergency Manager's Commencement Invalid. • No Good Faith Negotiations. 	<ul style="list-style-type: none"> • <u>See</u> Reply, at §§ V, VII.A (Emergency Manager's Commencement Invalid); IX (No Good Faith Negotiations).
495	David Sole	<ul style="list-style-type: none"> • Emergency Manager's Commencement Invalid (pp. 5-8). • Michigan Law Not Preempted (pp. 8-11). 	<ul style="list-style-type: none"> • <u>See</u> Reply, at §§ V, VII.A (Emergency Manager's Commencement Invalid); V.C (Michigan Law Not Preempted).
496	Floreen Williams	<ul style="list-style-type: none"> • PA 436 Unconstitutional. 	<ul style="list-style-type: none"> • <u>See</u> Reply, at §§ V.A, VII.

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

OBJECTION DOCKET NO(S).	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY'S RESPONSE
504	Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington, Bruce Goldman	<ul style="list-style-type: none"> • Joinder in UAW's Objection (Docket No. 506) (¶¶ 9-10). • Michigan Law Not Preempted / Governor's Authorization Invalid (¶¶ 11-18). 	<ul style="list-style-type: none"> • See Response to UAW's Objection. • See Reply, at §§ V.C (Michigan Law Not Preempted); V (Governor's Authorization Invalid).
510	Michael Joseph Karwoski	<ul style="list-style-type: none"> • Objects to the "inclusion" of GRS in these proceedings without an objective determination of the extent to which GRS is underfunded (¶ 1). • Michigan Law Not Preempted (¶ 2). • Emergency Manager's Commencement Invalid (¶¶ 3-11). 	<ul style="list-style-type: none"> • Extent to which GRS is underfunded is unrelated to City's eligibility to be a chapter 9 debtor. • See Reply, at §§ V.C (Michigan Law Not Preempted); V, VII.A (Emergency Manager's Commencement Invalid).
513	Heidi Peterson	<ul style="list-style-type: none"> • No Good Faith Negotiations (¶ 11(a), (c)). • The City's dealings with Ms. Peterson with respect to her pending lawsuit were fraudulent (¶ 11(b)). • The City allowed itself to become overburdened with debt "by virtue of down right idiotic business practices" (i.e., policies regarding the assessment and collection of property taxes) (¶ 12). 	<ul style="list-style-type: none"> • See Reply, at § IX (No Good Faith Negotiations). • Objector fails to substantiate vague allegation that the City's failure to negotiate with the Objector prior to filing for bankruptcy protection constituted fraud. Challenged City actions were the result of the imposition of the automatic stay. • City policies relating to the assessment and collection of property taxes unrelated to City's eligibility to be a chapter 9 debtor.
530	Diane Hutcherson		<ul style="list-style-type: none"> • Overruled as untimely per order entered on August 26, 2013 (Docket No. 642).

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

OBJECTION DOCKET NO(S).	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY'S RESPONSE
532	Andrea Edwards		<ul style="list-style-type: none"> Overruled as untimely per order entered on August 26, 2013 (Docket No. 642).
534	Nettie Reeves		<ul style="list-style-type: none"> Overruled as untimely per order entered on August 26, 2013 (Docket No. 642).
536; 568 (Order Denying Motion for Extension of Time)	Richard Johnson El-Bey		<ul style="list-style-type: none"> Overruled as untimely per order entered on August 26, 2013 (Docket No. 642).
539	Charles E. Chatman		<ul style="list-style-type: none"> Overruled as untimely per order entered on August 26, 2013 (Docket No. 642).
541	Xylia Hall		<ul style="list-style-type: none"> Overruled as untimely per order entered on August 26, 2013 (Docket No. 642).
549	Michael D. Jones		<ul style="list-style-type: none"> Overruled as untimely per order entered on August 26, 2013 (Docket No. 642).
565	Hassan Aleem; Carl Williams		<ul style="list-style-type: none"> Overruled as untimely per order entered on August 26, 2013 (Docket No. 642).
633	Donald Richardson		<ul style="list-style-type: none"> Overruled as untimely per order entered on August 26, 2013 (Docket No. 642).
650	Alma Armstrong		<ul style="list-style-type: none"> Overruled as untimely per order entered on August 28, 2013 (Docket No. 672).
651	Brenda Taylor		<ul style="list-style-type: none"> Overruled as untimely per order entered on August 28, 2013 (Docket No. 664).

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

OBJECTION DOCKET NO(S).	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY'S RESPONSE
667	Josué Zizi		<ul style="list-style-type: none"> • Overruled as untimely per order entered on August 28, 2013 (Docket No. 674).

INDIVIDUAL OBJECTIONS TO ELIGIBILITY, SUMMARY OF ARGUMENTS SET FORTH THEREIN & CITY'S RESPONSE

OBJECTION DOCKET NO(S).	OBJECTOR(S)	SUMMARY OF ARGUMENTS	CITY'S RESPONSE
<p>384; 385; 386; 387; 389; 390; 391; 392; 393; 394; 395; 396; 397; 399; 400; 403; 404; 407; 408; 409; 413; 414; 416; 419; 420; 421; 422; 423; 425; 427; 428; 429; 430; 431; 432; 433; 436; 437; 439; 440; 442; 443; 444; 447; 451; 454; 455; 456; 457; 458; 462; 463; 464; 465; 466; 467; 468; 469; 470; 475; 479; 480; 485</p>	<p>Krystal A. Crittendon; Michael J. Abbott; Donald Glass; Calvin Turner; Joseph H. Jones; Tracey Tresvant; Charles Williams II; Joyce Davis; David Bullock; Lewis M. Dukens; Shirley Tolliver; Zelma Kinchloe; LaVern Holloway; Althea Long; Alma Cozart; Lorene Brown; Helen Powers; Preston West; Claudette Campbell; Raleigh Chambers; Johnnie R. Carr; Elmarie Dixon; Jacqueline Esters; Sallie M. Jones; Larene Parrish; Deborah Pollard; Samuel L. Riddle; Charles Taylor; Edward Lowe; Keetha R. Kittrell; Lorna Lee Mason; Ulysses Freeman; William Davis; Paulette Brown; Jerry Ford; William L. Howard; Frank M. Sloan, Jr.; Joann Jackson; Jean Vortcamp; Mary Diane Bukowski; William Hickey; Michael D. Shane; Judith West; Lucinda J. Darrah; Sheila Johnson; Leola Regina Crittendon; Angela Crockett; Dolores A. Thomas; Ailene Jeter; Cheryl Smith Williams; Aleta Atchison-Jorgan; Arthur Evans; Horace E. Stallings; Lavarre W. Greene; Leonard Wilson; Rakiba Brown; Roosevelt Lee Sr.; Sandra Caven; Deborah Lela Moore; Marzelia Taylor; Fraustine Williams; Randy R. Beard; Anthony G. Wright, Jr.</p>	<ul style="list-style-type: none"> • "Form" objections entitled "Objections to the Petition Filed by One Kevyn D. Orr Seeking to Commence a Case Under Chapter 9 of Title 11 of the United States Code on Behalf of the City of Detroit, Michigan," into which creditors insert their name and date of birth and the date on which they received the Case Commencement Notice. • Due Process. • Seek a stay of the bankruptcy case pending the resolution of all litigation raising legal and constitutional challenges to PA 436. 	<ul style="list-style-type: none"> • <u>See Reply</u> at § XIII (Due Process). • Argument that chapter 9 case should be stayed pending the resolution of all litigation raising legal and constitutional challenges to PA 436 should be overruled. The state court lawsuits referenced by Objectors are subject to the automatic stay pursuant to (a) sections 362 and 922 of the Bankruptcy Code and (b) the Court's orders (Docket Nos. 166, 167) entered on July 25, 2013, confirming the application of, and extending, the automatic stay to certain entities. Objectors' argument is a procedurally improper attempt to obtain reconsideration of previous Court orders rather than an objection to eligibility.

EXHIBIT C



MICHIGAN COUNCIL 25

American Federation of State, County, and Municipal Employees, AFL-CIO
Detroit Office • 600 W. Lafayette, Ste. 500 • Detroit, Michigan 48226
Phone: 313.964.1711 • 1.800.AFSCME25 • Fax: 313.964.0230 • www.miafscme.org

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Region 2

Chris Vandebussche
Region 3

Russell Williams
Region 11

Sam Zettner
Region 3

*Advanced copy via facsimile
(312) 782-8585*

May 24, 2013

Brian West Easley, Esq.
Jones Day
77 West Wacker
Chicago, IL 60601-1692

**Re: Letter from Brian West Easley Dated 5/20/13 Entitled "City of Detroit
Restructuring"**

Dear Mr. Easley:

This communication is sent in response to your letter concerning the above stated matter, in which you requested to meet concerning restructuring of Pension and Retiree Medical Benefit liabilities. Please be advised that in accordance with Michigan law, we have no authority in which to renegotiate the Pension or Medical Benefits that members of our Union currently receive. However, we are willing to meet with you per your request. Please propose several alternative dates in which you are available.

Further you should be aware that for the first time in history, over 30 Unions came together in negotiating concessions. The cost-savings and revenues within this proposed Coalition Contract reached **hundreds of millions of dollars annually**. The Contract also contained many restructuring ideas for the City to engage. Ernst & Young participated during every facet of the negotiations and approved the final deal on behalf of the State. The Unions then ratified the concessions. The Coalition and the City celebrated the Ratification.

Unfortunately, the City did not execute the Coalition Contract. The Mayor claimed the State ordered him not to do so. City Council was not permitted to vote to ratify the Contract. By doing this, the City lost **tens of millions of dollars** in actual savings that the City should have realized from these concessions. This has been acknowledged by the City's financial expert.

Indeed, the Milliman Company being used by the City now, acknowledged that the City could have saved well over **50 million dollars** by the healthcare package called for in the Tentative Agreement. Given that the changes were not implemented as of

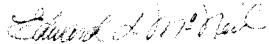
July 1, 2012, as called for in the Contract, the City lost the savings. Even when the City did unilaterally impose a healthcare plan, it botched the implementation with an excessive amount of plans and problematic rollouts.

We have repeatedly asked the reason why the Governor ordered the City not to execute and implement the Tentative Agreement. Indeed, during a hearing in Federal Judge, Arthur Tarnow's courtroom, he asked the City and State attorneys the same question, as well as what were the work rule changes they were seeking. The lawyers could give no answer.

You should know that we stand ready to meet and negotiate in an effort to save the City. We have been doing so for decades. We hope; however, that the City takes a look at the concessions our Unions already offered in lengthy negotiations last February. The Governor and the Mayor have talked frequently about "**shared sacrifices.**" However, employees are the only ones who have "**truly sacrificed.**"

I look forward to hearing from you in the near future.

Sincerely yours,



Edward L. McNeil
Special Assistant to the President

cc: LaMont Satchel, Labor Relations, City of Detroit

dat/324iuoeaficio



UAW LOCAL 2211

(Public Attorneys Association)

CAYMC • Detroit, Michigan 48226
2 Woodward Ave., Ste. 500



May 22, 2013

Brian West Easley
Jones Day
77 West Wacker
Chicago, IL 60601-1692

Re: City of Detroit

Dear Mr. Easley:

Thank you for your letter of May 20, 2013, regarding the City of Detroit's restructuring efforts. I write to confirm that this Union – Local No. 2211 of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") – represents active employees, and thus future retirees, within its bargaining unit. This Union does not, however, represent current retirees and has no authority to negotiate on their behalf. On behalf of the active employees it does represent, I accept your invitation to participate in the discussions concerning health care and pension benefits. Because these issues are so vital to members, this Union requests bargaining with respect to any changes which the Emergency Manager (or City) might propose to make in those benefits. The Union requests the earliest possible dates for meeting, and proposes that the meetings be held at the Office of Labor Relations, on the third floor of the Coleman A. Young Municipal Center, where bargaining has taken place to date.

Please advise me of possible dates and location for our meeting at your earliest convenience.

Also, if the City has developed any proposals, potential options, or possible modifications to health care or pension plans applicable to this bargaining unit, please advise and provide me with a copy of same in advance of our meeting. Also in advance of our meeting, please provide documents showing any calculations relating to health care costs and pension costs (both present and future) as well as the assumptions upon which the calculations are based.

Sincerely,

Robyn Brooks
President

cc: Jack Dietrich
Lamont Satchel



Metropolitan Detroit Professionals

UAW-Local 2200
5201 Woodward Avenue
Detroit, Michigan 48202



May 23, 2013

Brian West Easley
Attorney
Jones Day
77 West Wacker
Chicago, IL 60601

Dear Mr. Easley:

I am in receipt of your letter dated May 20, 2013 regarding City of Detroit Restructuring.

Today I spoke with Ms. Ms. Samantha Woo in your office. I gave her my verbal reply that UAW LU 2200 will participate in discussions and represent the interests of current employees at the Detroit Water and Sewerage Department's Wastewater Treatment Plant who are members of this Local Union.

Please contact me at your earliest convenience with proposed dates and times for the discussions. Telephone: 313-706-0081 or email: mimilaurie@yahoo.com.

Sincerely,

Laurie Townsend Stuart
President, UAW LU 2200

cc: Gloria Morgan, International Representative, UAW Region 1
Tiffani Simon, Vice President, UAW LU 2200
DeShawn Benson, Unit Chair,
Wastewater Treatment Plant Supervisors, UAW LU 2200
Samantha Woo, Jones Day



REGION 1

27800 George Merrell Drive
Warren, MI 48092

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW



BOB KING, *PRESIDENT*

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VICE-PRESIDENTS: JOE ASHTON • CINDY ESTRADA • GENERAL HOLIEFIELD • JIMMY SETTLES

CHARLES E. HALL
DIRECTOR, UAW REGION 1

May 22, 2013

Mr. Brian West Easley
Jones Day
77 W. Wacker
Chicago, IL 60601-1692

RE: City of Detroit

Dear Mr. Easley:

Thank you for your letter of May 20, 2013, regarding the City of Detroit's restructuring efforts. I am writing to confirm that Local No. 412 and Local No. 212 of the International Union, United Automobile, Aerospace and Agricultural Implement workers of America ("UAW") represent active employees, and thus future retirees, within their bargaining units. These locals do not, however, represent current retirees and have no authority to negotiate on their behalf. On behalf of the active employees we do represent, I accept your invitation to participate in discussions concerning healthcare and pension benefits. Because these issues are so vital to members, the locals request bargaining with respect to any changes which the Emergency Manager (or city) might propose to make in those benefits. We request the earliest possible dates for meeting, and propose that the meetings be held at the Office of Labor Relations on the third floor of the Coleman A. Young Municipal Center, where bargaining has taken place to date.*

Please advise me of possible dates and location of our meeting at your earliest convenience.

Also, if the city has developed any proposals, potential options or possible modifications to healthcare or pension plans applicable to this bargaining unit, please advise and provide me with a copy of same in advance of our meeting. Any calculations regarding healthcare and pension costs (both present and future) are likewise requested.

Sincerely,

John Cunningham
International Representative
UAW Region 1

JC:ja/opeiu494

cc: Tony Feyers, UAW Region 1
Jeff Hagler, UAW Local 412
Jeff Jarema, UAW Local 212
Gloria Morgan, UAW Region 1
Frank Stuglin, UAW Region 1

*Your letter made reference to UAW Local 414 – apparently a typographical error. Please be advised that it is Local No. 412 which represents legal assistants.

EXHIBIT D

JONES DAY

77 WEST WACKER • CHICAGO, ILLINOIS 60601-1692
TELEPHONE: 312-782-3939 • FACSIMILE: 312-782-8585

June 27, 2013

VIA E-MAIL

James Williams
President
AFSCME, Local 207 – Non-Supervisory Unit
600 W. Lafayette, Ste. L-106
Detroit, MI 48226
afscme207@sbcglobal.net

Re: City of Detroit Restructuring

Dear Mr. Williams:

Thank you for participating in the June 20, 2013 informational meetings pertaining to the City of Detroit's (the "City's") proposals to restructure the City's retiree medical and pension obligations. We appreciated your questions and input and look forward to discussing these issues with the American Federation of State, County and Municipal Employees, Local 207 – Non-Supervisory Unit in the coming weeks.

The City recognizes that representatives of active and retired employees will need access to additional information to analyze the restructuring proposals outlined in the June 20 meetings. Information relevant to these proposals will be made available in the on-line data room established for creditors and other stakeholders. If you do not yet have access to the data room, please contact Dan Merrett (dmerrett@jonesday.com/ (404) 581-8476), who will provide you with further instructions.

To the extent you will need additional information beyond that provided in the data room to analyze and provide input with respect to the City's retiree benefits restructuring proposals, please forward requests for such information directly to my attention. We will make every effort to make responsive and relevant information available in a timely manner.

The City is very much looking forward to the unions' feedback with respect to the City's retiree benefits restructuring proposal. As we repeatedly stated during the meeting, to the extent that your organization has additional ideas about restructuring retiree benefits in a manner consistent with the City's financial limitations, the City will consider any such ideas. Please let me know if you would like to set up a time to further discuss these issues.

Sincerely,


Brian West Easley

cc: Kevyn Orr, Esq.
Mr. Lamont Satchel

EXHIBIT E

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3840
EMILLER@JONESDAY.COM

July 17, 2013

Mr. Daniel F. McNamara
President
Detroit Fire Fighters Association
Suite 644
243 West Congress
Detroit, Michigan 48226-3217

Mr. Steve Dolunt
President
Detroit Police Command Officers Association
Post Office Box 2625
Detroit, Michigan 48202

Mr. Mark Young
President
Detroit Police Lieutenants
& Sergeants Association
Suite 700
28 West Adams
Detroit, Michigan 48226

Mr. Mark Diaz
President
Detroit Police Officers Association
1938 East Jefferson Street
Detroit, Michigan 48207

Re: City of Detroit Pension Restructuring

Gentlemen:

Thank you for your letter of July 12, 2013, and thank you further for continuing to discuss in good faith the difficult issue of pension restructuring. The Office of the Emergency Manager appreciates your strong cooperation.

Consistent with the position Dave Heiman and I expressed at the meeting, we still think it makes sense to first try to reach common ground with key unions and association leaders on actuarial assumptions and methods, and the amount of PFRS underfunding, and then tackle contributions and attendant benefit changes. Nonetheless, we are interested in hearing any pension benefit redesign thinking and proposals that come from key union leadership, including ideas to avoid a freeze. We stand ready to meet to discuss such ideas.

We also took seriously the concern expressed at our meeting last Thursday on two issues: (1) that the City's retiree health proposal for uniform retirees should include amounts for pre-age 55 early retirees and not begin at age 55; and (2) if there were to be a hard freeze at PFRS, active employees who do not have sufficient service at the freeze date to obtain a vested pension be given an opportunity to earn such service and not lose their entire pensions. The City's advisors are looking hard at those issues and we intend to report back to you shortly.

WAI-3135350v1

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Mr. Daniel F. McNamara
Mr. Steve Dolunt
Mr. Mark Young
Mr. Mark Diaz
July 17, 2013
Page 2

JONES DAY

Thank you for your letter and please keep the lines of communication open.

Sincerely,



Evan Miller

cc: David G. Heiman, Esq.

WAI-3135350v1

EXHIBIT F



1625 L Street, NW
Washington, DC 20036
Phone: 202-429-1215, Fax: 202-223-3255
Website: www.afscme.org



Fax



Department of Research and Collective Bargaining Services

To: Brian West Easterly From: Steve Kreisberg
 Fax: 312-782-8585 Pages: 4, including cover
 Phone: _____ Date: 7-2-2013
 Re: _____ CC: _____

- Urgent For Review Please Comment Please Reply Please Recycle



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Mary E. Sullivan
Albany, NY

Braulio Torres
San Juan, PR

David Warrick
Indianapolis, IN

Jeanette D. Wynn
Tallahassee, FL

July 2, 2013

Mr. Brian West Easterly
Jones Day
77 West Wacker
Chicago, IL 60601

Via Fax: (312) 782-8585

Dear Mr. Easterly:

You have contacted a number of Local unions affiliated with AFSCME for the purpose of offering information and inviting "feedback" on the Emergency Financial Manager's (EFM) proposal to "restructure" retiree benefits. The undersigned, in conjunction with AFSCME Council 25 President Albert Garrett and Council 25's Assistant to the President Ed McNeil will be representing our affiliated Locals in these matters. We are not representing current retirees.

I have followed the procedures and have been provided access to the on-line data room established by the EFM. I have also been in touch with Kyle Herman from Miller Buckfire as instructed by the EFM in his "Proposal to Creditors" on June 14. As I stated in an e-mail message to Mr. Herman, the electronic data room does not have all of the information I have requested of the EFM in a letter dated June 17, 2013 (copy enclosed). To reiterate, I have requested the following:

1. A copy of the preliminary actuarial analysis, to include a full description of all assumptions relied upon, used to support the revised cost estimates and funding condition of the PFRS and GRS pension systems. Data should show projected normal cost for each plan and the proposed UAAL amortization payment as a percent of payroll. Subsequent to June 17, I have been given access to Milliman analysis of the pension system which is partially responsive to my request.
2. The basis for the cost estimates of retiree health care (OPEB) including a description of all assumptions relied upon (including eligibility for benefits under the plan and benefits under the plan), the annual net OPEB obligation, and projected pay-as-you-go funding requirements for the next ten years.
3. A description of the proposed retiree health care plan that will rely upon Medicare Advantage and the Exchange Marketplace under the Affordable Care Act and the basis for the estimated annual City cost of between \$27.5 million and \$40 million. To the extent eligibility for benefits is revised from the assumption in item 2 above, please describe the new eligibility criteria.

American Federation of State, County and Municipal Employees, AFL-CIO

TEL (202) 429-1000 FAX (202) 429-1293 TDD (202) 659-0446 WEB www.afscme.org 1625 L Street, NW, Washington, DC 20036-5687

PAGE 2/5 * RCVD AT 7/2/2013 11:49:42 AM [Eastern Daylight Time] * SVR:NAFX02MS/20 * DNIS:80572 * CSID:202 223 3255 * DURATION (mm-ss):01-37

Brian West Easterly
 July 2, 2013
 Page 2 of 2

4. A description of all assumptions, data, and documents relied upon to support the following revenue projections:
 - a. Municipal income tax
 - b. Wagering taxes
 - c. Property taxes
 - d. State revenue sharing
 - e. Utility users' and other taxes
 - f. "Other revenue" (page 52 of the Proposal to Creditors)


5. A description of all projected services and investments included in the "Reorganization (Capital investments and Professional fees)" budget line item in the ten year Restructuring Scenario (page 97 of the Proposal to Creditors). Detail related to the development of major initiatives (for example, investments on technology) should be provided as well. Documents and other supporting data that support the cost projections should be provided as well. If the identity of vendors has been established, please provide that information.

To clarify, we are seeking the data relied upon by the EFM as he developed his retiree benefits restructuring proposal. Detailed information related to reorganization and restructuring initiatives consists of a one page financial summary. I am seeking the data relied upon to develop that summary, especially and including, the back-up data associated with estimated expenditures addressing "blight."

In response to your offer to provide "feedback" on the proposed restructuring of retirement benefits, we hereby request to meet with authorized representatives of the EFM on July 10, 2013 at 10:00 a.m. To date, your representatives have provided presentations, and scheduled an additional presentation on pension benefits for the afternoon of July 10, but the EFM has not provided AFSCME with a meaningful opportunity to engage in a good faith negotiation of these issues. That process should start as soon as possible. We suggest we meet at our offices in Detroit, 600 West Lafayette. It would be extremely helpful if you could provide the requested information in advance of the meeting.

Please contact me at (202)429-1237 or skreisberg@afscme.org to discuss these matters, if necessary, and to confirm our proposed meeting.

Sincerely,


 Steven Kreisberg
 Director of Collective Bargaining and
 Health Care Policy

SK/dd

cc: Albert Garrett, AFSCME Council 25 President
 Kevyn Orr, Emergency Financial Manager



Lee Saunders
President
Laura Reyes
Secretary-Treasurer

Vice Presidents
Ken Allen
Portland, OR

Heary L. Bayer
Chicago, IL

Ken Deika, RN
San Dimas, CA

Greg Deveraux
Olympia, WA

Danny Donahue
Albany, NY

David R. Filman
Harrisburg, PA

Michael Fox
Harrisburg, PA

Kathleen Garrison
Latham, NY

Raglan George Jr.
New York, NY

Mazie Harrell
Wilmington, NJ

Johanna Puno Hester
San Diego, CA

Danny J. Homan
Des Moines, IA

Salvatore Luciano
New Britain, CT

John A. Lyell
Worthington, OH

Kathryn Lyberger
Oakland, CA

Roberta Lynch
Chicago, IL

Christopher Mabe
Waukesha, WI

Glennard S. Middleman Sr.
Baltimore, MD

Ralph Miller
Los Angeles, CA

Gary Mitchell
Madison, WI

Douglas Moore Jr.
San Diego, CA

Frank Moroney
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Braulio Torres
San Juan, PR

David Warrick
Indianapolis, IN

Jeanette D. Wynn
Tallahassee, FL

1064-12
12/12

June 17, 2013

Mr. Kyle Herman
Miller Buckfire & Co., LLC
601 Lexington Avenue, 22nd Floor
New York, NY 10022
kyle.herman@millerbuckfire.com

Dear Mr. Herman:

In accordance with the instructions of the Detroit Office of the Emergency Financial Manager (EFM), I request the following information:

1. A copy of the preliminary actuarial analysis, to include a full description of all assumptions relied upon, used to support the revised cost estimates and funding condition of the PFRS and GRS pension systems. Data should show projected normal cost for each plan and the proposed UAAL amortization payment as a percent of payroll.
2. The basis for the cost estimates of retiree health care (OPEB) including a description of all assumptions relied upon (including eligibility for benefits under the plan and benefits under the plan), the annual net OPEB obligation, and projected pay-as-you-go funding requirements for the next ten years.
3. A description of the proposed retiree health care plan that will rely upon Medicare Advantage and the Exchange Marketplace under the Affordable Care Act and the basis for the estimated annual City cost of between \$27.5 million and \$40 million. To the extent eligibility for benefits is revised from the assumption in item 2 above, please describe the new eligibility criteria.
4. A description of all assumptions, data, and documents relied upon to support the following revenue projections:
 - a. Municipal income tax
 - b. Wagering taxes
 - c. Property taxes
 - d. State revenue sharing
 - e. Utility users' and other taxes
 - f. "Other revenue" (page 52 of the Proposal to Creditors)

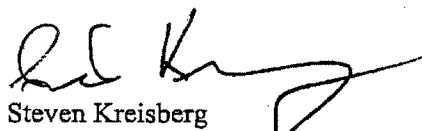
American Federation of State, County and Municipal Employees, AFL-CIO
TEL (202) 429-1000 FAX (202) 429-1293 TDD (202) 659-0446 WEB www.afscme.org 1625 I Street, NW, Washington, DC 20036-5687

Mr. Kyle Herman
June 17, 2013
Page 2

5. A description of all projected services and investments included in the "Reorganization (Capital investments and Professional fees)" budget line item in the ten year Restructuring Scenario (page 97 of the Proposal to Creditors). Detail related to the development of major initiatives (for example, investments on technology) should be provided as well. Documents and other supporting data that support the cost projections should be provided as well. If the identity of vendors has been established, please provide that information.

I am assisting AFSCME locals and AFSCME Council 25 with issues related to the Proposal. We have been asked to meet with the EFM's representatives on Thursday. Accordingly, information related to items 1 through 3 should be provided prior to our meeting and the remaining information as soon as possible. I appreciate your cooperation. Feel free to call me at (202)429-1237 or email skreisberg@afscme.org if you have any questions or are in need of clarification.

Sincerely,



Steven Kreisberg
Director of Collective Bargaining and
Health Care Policy

SK:tem

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

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

**THE MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF STATE,
COUNTY & MUNICIPAL EMPLOYEES, AFL-CIO AND SUB-CHAPTER 98, CITY
OF DETROIT RETIREES' AMENDED OBJECTION TO THE CITY OF
DETROIT'S ELIGIBILITY TO OBTAIN RELIEF UNDER CHAPTER 9 OF
THE BANKRUPTCY CODE**

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The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (the AFSCME retiree chapter for City of Detroit retirees) (collectively, “**AFSCME**”) -- the representative of the interests of between at least forty and fifty percent (40-50%) of the about 11,943 retired City of Detroit (the “**City**” or “**Debtor**”) non-uniformed employees (the “**Retired AFSCME Employees**”), and about 2,523 active City employees (the “**Active AFSCME Employees**”, or about seventy percent (70%) of the active non-uniformed union-represented employees, and together with the Retired AFSCME Employees, collectively, the “**AFSCME Detroit Employees**”) -- through its counsel and in accordance with the Court’s *First Amended Order Regarding Eligibility Objections Notices of Hearings and Certifications Pursuant to 28 U.S.C. § 2403(a) & (b)* [Docket No. 821] (the “**Scheduling Order**”) submits this **amended**¹ objection (the “**Objection**”) to the City’s eligibility for relief under chapter 9 of the Bankruptcy Code and opposition to the City’s (A) *Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code* [Docket No. 10] (the “**Statement of Eligibility**”); (B) *Memorandum in Support of Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code* [Docket No. 14] (the “**Eligibility Brief**”); (C) declarations of Kevyn D. Orr [Docket No. 11] (the “**Orr Declaration**”), Gaurav Malhotra [Docket No. 12] (the “**Malhotra Declaration**”) and Charles M. Moore [Docket No. 13] (the “**Moore Declaration**”); (D) *City of Detroit’s*

¹ Pursuant to Section VII. of the Scheduling Order, “[b]ased on evidence obtained during discovery, any objecting party may file an amended objection by October 11, 2013. Any such amended objection shall supersede the party’s original objection.” Given that this objection supersedes AFSCME’s original eligibility brief (*The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub Chapter 98, City of Detroit Retirees’ Objection to the City Of Detroit’s Eligibility to Obtain Relief Under Chapter 9 of the Bankruptcy Code* [Docket No. 505] (the “**Original AFSCME Objection**”)), AFSCME has included all legal and factual arguments asserted in the Original AFSCME Objection in this Objection, and further has supplemented and added additional arguments based, *inter alia*, on developments in the discovery process. Given that discovery remains ongoing, and AFSCME continues to learn new facts and information daily, AFSCME reserves the right to assert additional factual and legal arguments at trial.

Consolidated Reply to Objections to the Entry of an Order for Relief (the “**Debtor’s Reply**”) [Docket No. 765]; and (E) *The State of Michigan’s Response to Eligibility Objections Raising Only Legal Issues* [Docket No. 756] (the “**State’s Response**”). In support of its Objection, AFSCME (a) relies on the previously submitted *Declaration of Steven Kreisberg* [Docket No. 509] (the “**Kreisberg Declaration**”); (b) submits the (i) *Supplemental Declaration of Steven Kreisberg* (the “**Supp. Kreisberg Declaration**”), and (ii) *Declaration of Michael Artz* (the “**Artz Declaration**”); and (c) respectfully states as follows:

PRELIMINARY STATEMENT

“The public can comment [on the City’s proposed financial restructuring plan], but it is under the statute, it is my plan and it’s within my discretion and obligation to do it. **This isn’t a plebiscite, we are not, like, negotiating the terms of the plan.** It’s what I’m obligated to do.” --Kevyn D. Orr, May 12, 2013²

1. The City’s petition for relief under chapter 9 of the Bankruptcy Code should be dismissed. First, chapter 9 of the Bankruptcy Code violates federalism under the United States Constitution through an unholy alliance permitting federal encroachment on the states’ governance rights over fiscal affairs in exchange for an unlawful extension of state powers in excess of those the state would otherwise possess under the law and which denies Michigan citizens their constitutional right to make the rules for their own bankruptcy. Second, Michigan Public Act 436 of 2012, the Local Financial Stability and Choice Act, MCL § 141.1541, *et seq.* (“**PA 436**”), purportedly authorizing the Emergency Manager to file for chapter 9 protection runs afoul of the Michigan Constitution as applied in this chapter 9 case by not explicitly prohibiting the diminishment or impairment of vested pension rights in bankruptcy, which rights are prescribed in the Michigan Constitution, and further offends the Constitutional rights

² Kevyn D. Orr Interview to Detroit WWJ Newsradio 950/AP, *Detroit EM Releases Financial Plan; City Exceeding Budget By \$100M Annually*, May 12, 2013, available at <http://detroit.cbslocal.com/2013/05/12/kevin-orr-releases-financial-plan-for-city-of-detroit/>.

of individual Detroit citizens to local self-governance. Third, the City fails to establish that it engaged in good faith negotiations with the City's creditors or that these negotiations were impracticable under section 109(c) of the Bankruptcy Code, and indeed the entire chapter 9 petition was filed in bad faith. Fourth, the City does not qualify for chapter 9 relief because it failed to establish that it is insolvent. Further, the Bankruptcy Court lacks authority or jurisdiction over matters related to the federal constitutionality of chapter 9 of the Bankruptcy Code or the state constitutionality of PA 436.

2. The City, led by its unelected, politically appointed Emergency Manager, Kevyn D. Orr ("**Orr**" or the "**EM**"), hastily commenced this unconstitutional, unlawfully authorized chapter 9 proceeding seeking the haven of bankruptcy to illegally attempt to slash pension and other post-employment benefit obligations and cram such reductions down the throats of current and former City employees such as the AFSCME Detroit Employees. These proceedings were commenced without any good faith negotiations with the City's retirees or unions such as AFSCME, and the chapter 9 filing was a *fait accompli* long prior to the appointment of Orr as the City's EM – in fact, at a time when Orr was still a partner at the City's lead counsel's law firm.

3. While AFSCME expects that the City's witnesses will testify that chapter 9 bankruptcy was always the last option and the City preferred an out-of-court settlement, those are nothing more than talking points. In reality, the City's strategy of holding "check the box" meetings with creditors pre-petition at which the City purposefully refused to bargain in good faith was for the sole purpose of "making its record". Indeed, the City's eventual strategy (under the leadership of Orr) was first suggested by the City's lead bankruptcy counsel (the "**Law Firm**") beginning with a "pitch" presentation made by the Law Firm to the City on

January 29, 2013 (the “**Pitch Presentation**”, a copy of which is attached to the Supp. Kreisberg Declaration, Exhibit B) in the presence of State of Michigan (the “**State**” or “**Michigan**”) officials who wanted to steer the City towards chapter 9. As part its presentation, the Law Firm provided a roadmap to chapter 9. The Pitch Presentation provided in part:

- an out-of-court restructuring was “[e]xtremely difficult to achieve in practice” (Pitch Presentation, p. 13);
- “Ultimately, the Emergency Manager could be used as political cover for difficult restructuring decisions.” (Pitch Presentation, p. 16);
- “Bolster Eligibility for – and Success in – Chapter 9 By Establishing Good-Faith Record of Seeking Creditor Consensus” (Pitch Presentation, p. 17);
- “[a] good-faith effort to pursue an out of court restructuring plan will establish a clear record of seeking creditor consensus before seeking chapter 9 relief. This will deflect any eligibility complaints based on alleged failure to negotiate or bad faith.” (Pitch Presentation, p. 18);
- “Include All Constituents in Planning and Negotiations” (Pitch Presentation, p. 22);
- “Establish a Strong Record of Inclusiveness and Consideration of All Options” (Pitch Presentation, p. 22);
- “Input should be obtained from all sources, documented and treated seriously, even if proposals appear unrealistic. Good listening skills are helpful.” (Pitch Presentation, p. 23);
- “Establish a strong record (i.e., for future litigation) of (i) inclusiveness with respect to all constituencies and (ii) consideration of all options and proposals received.” (Pitch Presentation, p. 23);
- “A record should be established that all avenues have been explored . . . to support the City’s case for debt reduction if a Chapter 9 ultimately is commenced.” (Pitch Presentation, p. 28);
- “unique and creative structures for asset monetization can and should be explored. . . Regional initiatives also could be explored (joint redevelopment, sharing of services, joint purchasing arrangements). Note: Asset monetization outside of bankruptcy may implicate eligibility requirement that City be insolvent (e.g., measured by short-term cash).” (Pitch Presentation, p. 17); and

- “OPEB [retiree health benefits] has less legal protections under state law than pensions, providing a greater ability to cut and equitably restructure” and “[i]f needed, chapter 9 could be used as a means to further cut back or compromise ‘accrued financial benefits’ [*i.e.* accrued pension obligations] otherwise protected under the Michigan Constitution.” (Pitch Presentation, pp. 39; 41).

4. Apparently, as discussed further below, the State officials at the January 29, 2013 pitch (including the Governor’s Transformation Manager, Richard Baird (“**Baird**”)) liked what they heard and decided that the Law Firm would be their firm of choice, with Orr and his extensive bankruptcy experience being utilized as the EM to complement the Law Firm’s legal ability to move the City swiftly into chapter 9. Thus, the day after the Pitch Presentation was given, on January 30, 2013, Baird reached out to The Law Firm about the potential of hiring Orr as the EM, and this led to discussions between the Governor, Baird, Orr, other State officials and the Law Firm, and the ultimate hiring of both Orr and the Law Firm to guide the City into chapter 9.

5. This is all against the backdrop of:

- The average non-uniformed employee pension currently averages slightly less than \$18,000 per year (according to a June 30, 2012 General Retirement System of the City of Detroit pension valuation report); and
- The AFSCME Retirees and AFSCME Active Employees look to their government pension and City-provided medical benefits for retiree benefits. Unlike private sector employees and retirees with defined benefit pension benefits, whose pension benefits are protected even in bankruptcy by government insurance through the Pension Benefit Guaranty Corporation, or those with multiemployer pension benefits, where even if one employer withdraws or goes bankrupt the vested pension benefits to the retirees continue unchanged by that withdrawal, the AFSCME Retirees and AFSCME Active Employees’ pensions are not backstopped. **Therefore, if this Court allows the chapter 9 proceeding to go forward with the ultimate result of the pension or other retiree benefits being lost, they are lost without a safety net.**

6. In light of recent Supreme Court precedent, chapter 9 of the Bankruptcy Code violates the United States Constitution and should be struck down by an Article III Court with authority and jurisdiction to make this crucial Constitutional law determination. Under *Stern v.*

Marshall, 131 S. Ct. 2594 (2011), such a decision is plainly outside the realm of authority properly delegated to an Article I tribunal like this Court.

7. However, to the extent this Court disagrees and determines that it has jurisdiction to uphold the Constitutionality of chapter 9 generally, this Court should find that the City is not eligible for relief under chapter 9 pursuant to sections 109(c) and 921(c) of the Bankruptcy Code for the following reasons.

8. *First*, under section 109(c)(2) of the Bankruptcy Code, **as already determined by at least one state court ruling** issued against Michigan Governor Richard D. Snyder (the “**Governor**”) prior to entry of the Stay Extension Order [Docket No 166], the purported authorization by the Governor permitting the chapter 9 filing by the EM was and remains an overt act by the Governor and others in violation of the Michigan Constitution, as the filing seeks to impair or diminish the AFSCME Detroit Employees’ pension benefits. Indeed, the very law purporting to allow the EM to unconditionally file for chapter 9 protection, PA 436, violates several provisions of the Michigan Constitution as applied in this chapter 9 case, including (i) Article IX, Section 24 because PA 436 does not explicitly prohibit the diminishment or impairment of vested pension rights in bankruptcy, which is the goal sought in this chapter 9 proceeding; (ii) Article VI, Section 29 because PA 436 delegates power to the EM in excess of that possessed by the legislature; and (iii) Article VII because PA 436 strips power from the electors of each city and village and runs ramshackle over the principles of local self-government firmly embedded in Michigan law.

9. *Second*, despite factual arguments to the contrary in the City’s Eligibility Brief and Debtor’s Reply, the City has failed to establish that it has negotiated in good faith or that such negotiations were impracticable as required under section 109(c)(5) of the Bankruptcy

Code. In fact, AFSCME submits (and AFSCME expects to show further at trial) that the City conducted **no good faith negotiations** with significant unions such as AFSCME prior to the filing. Rather, the City commenced this proceeding in **bad faith** and in haste in violation of section 921(c) of the Bankruptcy Code, with the sole goal of preventing a “bad” state court ruling (i) upholding the Michigan Constitution and (ii) preventing the City from taking the very inappropriate and unconstitutional journey it now seeks to embark on.

10. If the Court ultimately were to find that the City satisfied the eligibility requirements, the EM will seek (i) to unconstitutionally and illegally abridge vested pension and other AFSCME Detroit Employee benefits; (ii) to proceed under section 365 of the Bankruptcy Code and illegally seek to reject vested pension and other retiree benefits; and/or ultimately (iii) to propose a chapter 9 plan of adjustment that reduces vested pension and other benefits but that cannot possibly be better for creditors like AFSCME Detroit Employees than the alternative of staying out of chapter 9 where pensions are guaranteed protection under the state constitution - a clear breach of the chapter 9 “best interests test.” Such an outcome should not be countenanced.

11. Finally, AFSCME submits that the City has failed to satisfy its high burden of proving – through expert evidence or otherwise – insolvency pursuant to section 109(c)(3) of the Bankruptcy Code. In reality, the evidence reveals (and AFSCME expects to further demonstrate at trial) that the City may well be solvent, particularly when (i) discounting the City’s unproven assertions regarding the unfunded amount of the City’s pension and other retiree benefits actuarial underfunding; (ii) taking into account un-monetized assets that the City purposefully ignored (as suggested in the Pitch Presentation given by the City’s lead counsel) to make the City appear insolvent; (iii) considering the possibility of funding sources

not included in the City's financial projections, which projections lack any expert evidence as to their reliability and indeed do not have any reliable evidentiary basis; and (iv) considering the significant swap deal reached and finalized by the City immediately prior to the chapter 9 filing which itself helped significantly with cash flow issues. The City filed for chapter 9 protection on July 18, 2013 not because of any true budgetary insolvency or inability to pay its debts as they came due, rather because the City (i) disliked the direction in which the various pre-petition state court litigations (including the Webster Litigation, as defined below) were proceeding and (ii) worried that failure to file when it did – despite having failed to negotiate in good faith – would potentially limit or forestall the City's clear goal, as guided by the Law Firm, the EM, and other high ranking State officials, of attacking the City's pension obligations in chapter 9. It is telling (and should be shocking to all citizens of Detroit and Michigan) that despite spending millions of dollars of taxpayer funds on the City's chapter 9 cases to hire a multitude of bankruptcy and restructuring professionals, the City fails to offer even one person to stand up as an *expert* and testify to the City's insolvency.

12. In addition the City, by proceeding on its current course, has ignored some of the advice provided by its own counsel that that the “City should characterize its residents as ‘customers,’ a class of constituents that ordinarily is accorded significant benefits in business reorganizations” and that “[a] viable restructuring for a strong and vibrant Detroit must treat its citizens with respect, just as a successful business in the private sector treats its customers.” Pitch Presentation, p. 27. Based on all of the reasons set forth herein, this Court (to the extent it finds that it has authority and/or jurisdiction) should deny the Debtor's requested eligibility for chapter 9. By doing so, the ordinary residents and citizens of Detroit (including the many

dedicated AFSCME Detroit Employees) will regain their voices in government and be protected from the mistaken path of the EM.

RELEVANT BACKGROUND

13. Orr currently serves as the EM of the City under PA 436.

14. The Governor appointed Orr as EM for the City on March 14, 2013, effective as of March 25, 2013. On March 28, 2013, upon the purported effectiveness of PA 436, Orr became, and continues to act as, EM for the City under PA 436.

15. On June 14, 2013, Orr issued a “Proposal for Creditors” which expressly stated that “there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons.” The same day, Orr publicly threatened, in an interview with the Detroit Free Press Editorial Board,³ that vested pension benefits would not be protected in a chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state laws protecting vested pension benefits would “not . . . protect” retirees in bankruptcy court. The EM stated as follows in the interview:

Q You said in this report that you don't believe there is an obligation under our state constitution to pay pensions if the city can't afford it?

A. The reason we said it that way is to quantify the bankruptcy question. We think federal supremacy trumps state law. Which the Ninth Circuit agrees with for now.

A. It is what it is - so we said that in a soft way of saying, “Don't make us go into bankruptcy.” If you think your state-vested pension rights, either as an employee or a retiree - that's not going to protect you. If we don't reach an agreement one way or the other, we feel fairly confident that the state federal law, federalism,

³ See *Q&A with Kevyn Orr: Detroit's Emergency Manager Talks About City's Future*, Detroit Free Press (June 16, 2013), available at <http://www.freep.com/article/20130616/OPINION05/306160052/kevyn-orr-detroit-emergency-manager-creditors-fiscal-crisis>.

will trump state law or negotiate. The irony of the situation is we might reach a deal with creditors quicker because employees and retirees think there is some benefit and that might force our hand. That might force a bankruptcy.

16. As discussed below, the Governor (and other State officials) and the EM were well aware both prior to and subsequent to the issuance of the letter on July 18, 2013 from the Governor to the EM authorizing the EM to have the City commence its chapter 9 case without any conditions or limits (the “**Governor’s Authorization Letter**”) of the City’s intentions to modify and/or terminate vested pension obligations in chapter 9 without limit in derogation of the Michigan Constitution.

A. The Webster Litigation And The Governor’s Unconditional Authorization

17. On July 3, 2013, against the backdrop of the threatening statements made by Orr regarding Michigan state law and protected pension benefits, plaintiffs (the “**Webster Plaintiffs**”) Gracie Webster (a City retiree) and Veronica Thomas (a current employee of the City vested in her pension) commenced a lawsuit against the State of Michigan, the Governor and the State Treasurer seeking: (a) a declaratory judgment that PA 436 violated the Constitution of the State of Michigan to the extent that it purported to authorize chapter 9 cases within which vested pension benefits might be sought to be compromised; and (b) an injunction preventing the defendants from authorizing any chapter 9 case for the City within which vested pension benefits might be sought to be reduced. *See Webster v. State of Mich.*, No. 13-734-CZ (Ingham County Cir. Ct. July 3, 2013) (the “**Webster Litigation**”).⁴

18. In briefing submitted in support of a preliminary injunction and declaratory order against the Governor, the Webster Plaintiffs explained that Article IX, Section 24 of the Michigan Constitution provides that “[t]he accrued financial benefits of each pension plan and

⁴ Two additional lawsuits were also filed raising similar issues in addition to the Webster Litigation.

retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby;” that there could not be a more clear and plain constitutional mandate; and that Article IX, Section 24 means what it says: accrued pension benefits shall not be reduced.

19. Further, as the Webster Plaintiffs noted, the Official Record of the 1963 Michigan Constitutional Convention makes clear that no governmental entity or its officials can do anything to diminish or impair vested pension benefits: “This is a new section that requires that accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions be a contractual obligation which cannot diminished or impaired by the action of its officials or governing body.” 2 Official Record, Constitutional Convention 1961, p. 3402.

20. The Webster Plaintiffs also noted that PA 436 explicitly recognizes that accrued pension benefits shall not be diminished or impaired outside the bankruptcy context. For example:

- Section 11 of PA 436 requires that an emergency manager develop a written financial and operating plan for the local government and that such plan “shall provide” for “the timely deposit of required payments to the pension fund for the local government.”
- Section 13 of PA 436 authorizes the emergency manager to eliminate the salary, wages or other compensation and benefits of the chief administrative officer and members of the governing body of the local government, but expressly provides that “[t]his section does not authorize the impairment of vested pension benefits.”
- Section 12(m) of PA 436 authorizes an emergency manager under certain circumstances to be appointed as the sole trustee of a local pension board and to replace the existing trustees, and requires that “the emergency manager shall fully comply with . . . Section 24 of Article IX of the state constitution . . .” when acting as the sole trustee.

21. But, in violation of Article IX, Section 24 of the Michigan Constitution, PA 436 fails to similarly forbid the Governor explicitly from authorizing a chapter 9 bankruptcy filing if accrued pension benefits may be sought to be diminished or impaired as a consequence of that filing. Section 18 of PA 436, which purportedly empowers the Governor to authorize a municipality to file for bankruptcy under chapter 9, nowhere prohibits the Governor from authorizing such a filing if accrued pension benefits may be sought to be diminished or impaired. Clearly, the Legislature understood and honored the Michigan constitutional mandate not to diminish or impair accrued pension benefits outside of bankruptcy. Just as clearly, the Legislature omitted any constitutional protection against the impairment or diminishment of accrued pension benefits when the Governor purports to authorize a chapter 9 bankruptcy filing under Section 18 of PA 436.

22. In other words, if accrued pension benefits may be diminished or impaired, in violation of Article IX Section 24 of the Michigan Constitution, the section of PA 436 purporting to authorize this bankruptcy, Section 18, must be unconstitutional as applied.

23. On July 18, 2013, the same date this chapter 9 case was commenced, the Ingham County Circuit Court for the State of Michigan (the “**State Court**”) entered a temporary restraining order (the “**TRO**”, attached to the Kreisberg Declaration, Exhibit A) enjoining the Governor, the State Treasurer and the other defendants in the Webster Litigation from authorizing a chapter 9 filing and taking any further action “with respect to any filing which has already occurred” including the authorizing of an “unconditional” chapter 9 filing (*i.e.* one in which the EM would represent himself as having authority to modify and/or terminate pension obligations without limit in derogation of the Michigan Constitution).

24. Despite the issuance of the TRO and the State Court's clear directive to the Governor regarding not authorizing any further filings by the City, the Governor did not seek to prevent the City from filing all of its "first day pleadings." Indeed, the Governor authorized and the EM directed the chapter 9 filing just minutes before the July 18, 2013 TRO hearing was set to begin (and during a brief delay in the TRO hearing requested by the Governor's attorney) in order to potentially "cut off" any argument that the filing was not properly authorized (because the Governor knew and the EM expected that the State Court Judge was prepared to grant the TRO).

25. On July 19, 2013, the State Court held a further hearing on the Webster Litigation and entered an Order of Declaratory Judgment (the "**Declaratory Judgment**," attached to the Kreisberg Declaration as Exhibit B). The Declaratory Judgment (a) finds PA 436 unconstitutional and of no force and effect to the extent it permits the Governor to authorize the EM to proceed under chapter 9 in any manner that threatens to diminish or impair pension benefits and (b) rules that the Governor must direct the EM "to immediately withdraw the chapter 9 petition ... and ... not authorize any further chapter 9 filing which threatens to diminish or impair accrued pension benefits." *See* Declaratory Judgment at 3.

26. To the extent there was any authorization for the chapter 9 filing, the State Court clearly ordered that the Governor revoke it to the extent it was intended to lead to the diminishment or impairment of accrued pension benefits. However, subsequent to the issuance of the Declaratory Judgment, on July 25, 2013, this Court granted the City's motion to extend the automatic stay, which, *inter alia*, stayed pending appeals of the Declaratory Judgment (and other similar state court proceedings). *See* Docket No. 166.

(i) The Governor (And Other State Officials) And City Intended Through The Chapter 9 Filing To Impair And/Or Terminate

**Pension Obligations, And The Governor Was Aware Of This
Prior To His Authorizing The Chapter 9 Filing**

27. The evidence obtained to date (as will be further demonstrated at trial) reveals that the Governor (and other State officials) and the EM were well aware both prior to and subsequent to the issuance of the Governor's Authorization Letter of the City's intentions to modify and/or terminate vested pension obligations in chapter 9 without limit in derogation of the Michigan Constitution.

28. First, the June 14 Restructuring Plan (defined below) expressly provided that "there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons", and the Governor has admitted in deposition testimony to (i) having viewed drafts of the June 14 Restructuring Plan; (ii) being specifically aware that the Restructuring Plan provided for significant cuts to accrued, vested pensions for active and retired employees; and (iii) being specifically aware when he signed the July 18 letter authorizing the City's chapter 9 filing that Orr's position was "that there had to be significant cuts in accrued pension benefits." See Governor Snyder October 9, 2013 Transcript (the "**Governor 10/9 Transcript**", a copy of which is attached to the Artz Declaration, Exhibit A),⁵ at 46:3-23; 63:9-64:18. Furthermore, in a letter dated July 16, 2013 from Orr to the Governor (and Treasurer Andy Dillon) recommending that the City be authorized to immediately commence a chapter 9 bankruptcy case, Orr noted that the City met with all of the City's unions and four retiree associations to "solicit the unions and retirees' view on their preferred way to address the **dramatic, but necessary, benefit modifications**." See Orr Declaration, Exhibit J, p. 8

⁵ Throughout this Objection, AFSCME has cited deposition testimony provided by various witnesses in connection with the City's chapter 9 eligibility litigation. AFSCME relies on the relevant portions of these various depositions as evidence, and will be attaching copies of the full deposition transcripts to the Artz Declaration filed contemporaneously with this Objection.

(emphasis added). The Governor admitted to reading this letter. *See* Governor 10/9 Transcript, at 52:13-15.

29. Additionally, the City has unequivocally admitted that it intends to impair or diminish pension benefits of City active and retired employees through this chapter 9 proceeding. *See, e.g., City of Detroit, Michigan's Objections and Responses to Detroit Retirement Systems' First Requests for Admission Directed to the City of Detroit Michigan* [Docket No. 849], at p. 12 (admitting that "City intends to seek to diminish or impair the Accrued Financial Benefits of the participants in the Retirement Systems through this Chapter 9 Case."); *see also* Kevyn Orr September 16, 2013 Transcript (the "**Orr 9/16 Transcript**", a copy of which is attached to the Artz Declaration, Exhibit B), at 252:25-253:16; 288:2-9 (admitting that City intended to diminish or impair accrued pension benefits of Detroit pensioners, preferably through a consensual plan but preserving all rights to do so possibly through the use of the cramdown provisions of the bankruptcy code).

B. The City's Pre-petition Machinations And Subsequent Meetings (But Not Negotiations) With Creditors Such As AFSCME

(i) The City's Bankruptcy Was Orchestrated Based On The Advice Of The City's Lead Bankruptcy Counsel And Discussed Before The EM Was Even Hired

30. In emails, documents and deposition testimony that surfaced following the City's chapter 9 filing going back to late January 2013, long prior to any alleged good faith negotiations with creditors (more about this point below), secret discussions were being held between Detroit and officials in the Governor's office and the City's legal counsel suggesting that the best course for the City would be to send it through chapter 9 bankruptcy. These facts collectively expose Orr's and the City's charade of pre-petition "negotiations" (in reality, one-

sided meetings) in the month prior to the City's chapter 9 filing. In fact, all along, the clear goal was for the City to end up in chapter 9.

31. For example, the Law Firm was among a number of firms to provide a "pitch" presentation made to the City on January 29, 2013 in the presence of State officials. *See* Pitch Presentation (dated January 29, 2013); *see also* Orr 9/16 Transcript, at 18:12-21:20 (discussing how Orr came with the Law Firm in late January to pitch for the City's restructuring work before a "restructuring team [of] advisors"). During that pitch, Orr (among other lawyers that would be working on the proposed engagement) was presented primarily as a "bankruptcy and restructuring attorney." Orr 9/16 Transcript, at 21:3-6. As part of the Pitch Presentation, as discussed extensively *supra*, ¶ 3, the City's lead bankruptcy counsel presented, in part, the following playbook for the City's road to chapter 9: (i) the difficulty of achieving an out of court settlement and steps to bolster the City's ability to qualify for chapter 9 by establishing a good faith record of negotiations (Pitch Presentation, pp. 13; 16-18; 22-23; 28); (ii) the EM could be used as political cover for difficult decisions such as an ultimate chapter 9 filing (Pitch Presentation, p. 16); (iii) warning that pre-chapter 9 asset monetization could implicate the chapter 9 eligibility requirement regarding insolvency, thus effectively advising the City *against* raising money in order to will itself into insolvency (Pitch Presentation, p. 17); and (iv) describing protections under state law for retiree benefits and accrued pension obligations and how chapter 9 could be used as means to further cut back or compromise accrued pension obligations otherwise protected by the Michigan constitution ((Pitch Presentation, pp. 39; 41).

32. Following the Law Firm's pitch in late January 2013, State officials (including Baird) informed attorneys at the Law Firm and Orr that they were interested in bringing Orr on board as EM, and Orr began to consider the offer. *See* Orr 9/16 Transcript, at 24:24-25:31:5).

Orr commented regarding his proposed consideration for appointment as EM and discussed with his law firm at the time how to go about leading the City into chapter 9. In an email (attached to the Kreisberg Declaration, Exhibit 1) dated January 31, 2013, Orr's colleague at the firm stated in an email to Orr that the "ideal scenario would be that [Michigan Governor] Snyder and [Detroit Mayor] Bing both agree that the best option is simply to go through an orderly Chapter 9. This avoids an unnecessary political fight over the scope/authority of any appointed Emergency Manager appointed and, moreover, moves the ball forward on setting Detroit on the right track." *Id.*⁶. Indeed, this was the exact suggestion by the City's current lead bankruptcy counsel in its pitch presentation. *See* Pitch Presentation, p. 16 ("Ultimately, the Emergency Manager could be used as political cover for difficult restructuring decisions.").

33. Orr's colleague then stated his own reservations about whether an emergency manager would be useful outside of bankruptcy where his "ability to actually do anything is questionable given the looming political and legal fights" *Id.* In contrast, he observed in an earlier email, "[m]aking this a national issue . . . provides political cover for the state politicians" and gives them an "incentive to do this right" because "if it succeeds, there will be more than enough patronage to allow [them] to look for higher callings—whether Cabinet, Senate, or Corporate." *See* Kreisberg Declaration, Exhibit 2.⁷

34. As noted above, others involved in the discussions prior to the chapter 9 filing included Baird, the Governor's Transformation Manager. In an email also dated January 31, 2013, Orr, in anticipation of a conversation he was to meet with Baird "in a few minutes" about

⁶See also Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

⁷See also Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

whether to accept the EM position, observed that PA 436 “is a clear end-around the prior initiative” to repeal the previous Emergency Manager statute, Public Act 4, “that was rejected by the voters in November.” *See* Kreisberg Declaration, Exhibit 3.⁸ According to Orr “although the new law provides the thin veneer of a revision it is essentially a redo of the prior rejected law and appears to merely adopt the conditions necessary for a chapter 9 filing.” *Id.*

35. In a further email dated January 31, 2013, Orr indicated that Baird wanted Orr to be hired as the EM and his firm to represent the City (regardless of whether Orr took the EM job), and that Orr indicated that he would be glad to work together with the City, even if not as EM, indicating that “I [Orr] and the firm are committed to working in lockstep with the [C]ity.” *See* Kreisberg Declaration, Exhibit 4.⁹

(ii) No Good Faith Negotiations Took Place Following The Appointment Of The EM With Parties Such As AFSCME Prior To The City’s Chapter 9 Filing

36. As indicated above, the die was cast for the City’s inevitable chapter 9 filing prior to the March appointment of Orr as EM. Following Orr’s appointment, the City and Orr maneuvered to establish the veneer of formal pre-petition creditor negotiations, when in reality, Orr and the Governor knew all along that the non-interactive meetings would be held on a *pro forma* basis so the City could attempt to establish alleged good faith negotiations.

37. The facts belie the notion of any pre-filing negotiations, whether in good faith or otherwise. Indeed, the City itself admitted both in letters and at the meetings held in the month or so prior to the filing that the City was only interested in one-way discussions, not

⁸ *See also* Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

⁹ *See also* Kate Long, *Who is representing Detroit?* <http://blogs.reuters.com/muniland/2013/07/25/who-is-representing-detroit/> (last visited on August 19, 2013).

negotiations. As discussed below, **evidence obtained in discovery reveals that while these meetings were ongoing – indeed, before ever meeting face-to-face with union representative alone – the City had already made a determination as early as the beginning of July 2013 that it would be filing for chapter 9 protection on or about July 19, 2013.**

38. On June 14, 2013, the City held a meeting of representatives of the City’s creditors (the “**June 14 Meeting**”) to present the City’s comprehensive restructuring plan/ “Proposal for Creditors” (the “**Restructuring Plan**”, attached to the Kreisberg Declaration as Exhibit C). Even prior to these meetings, Orr confirmed that the City’s discussions of a predecessor to its ultimate Restructuring Plan, the EM’s May 12, 2013 “Financial and Operating Plan”, would not involve any negotiations, explaining that “it is under the [PA 436] statute, it is my plan and it’s within my discretion and obligation to do it. **This isn’t a plebiscite, we are not, like, negotiating the terms of the plan.** It’s what I’m obligated to do.” See Kevyn Orr Interview to Detroit WWJ Newsradio 950/AP, *Detroit EM Releases Financial Plan; City Exceeding Budget By \$100M Annually*, May 12, 2013, available at <http://detroit.cbslocal.com/2013/05/12/kevin-orr-releases-financial-plan-for-city-of-detroit/> (emphasis added).

39. On June 17, 2013, Steven Kreisberg, AFSCME’s director of collective bargaining and health care policy, submitted a letter requesting from the EM various categories of information, assumptions, and data for AFSCME to honestly review all the information presented and begin good faith negotiations. See Kreisberg Declaration, Exhibit 5. AFSCME made this request prior to a scheduled June 20, 2013 meeting with unions (including AFSCME) representing the City’s non-uniform employees regarding the City’s pensions. At that meeting,

the City represented that the meeting was “not a negotiation.” *See* Kreisberg Declaration, ¶ 17. Furthermore, the letter inviting AFSCME to the June 20 meeting characterized the purpose of the meeting as being to “review” the Restructuring Plan (not negotiate it) and to have AFSCME “learn” about the Restructuring Plan. Kreisberg Declaration, Exhibit 6.

40. In a letter dated June 27, 2013 to an AFSCME local union, the City indicated that it was posting certain information to a data room and was looking forward to the unions’ “feedback” (again not negotiation) with respect to the EM’s retiree benefits restructuring proposal. *See* Kreisberg Declaration, Exhibit 7.

41. In a follow up letter to the City dated July 2, 2013, Mr. Kreisberg again reiterated his request for information and data, including the backup data supporting the City retiree benefits proposal (support for which previously consisted of only a one-page financial summary). AFSCME requested relevant information and the opportunity (in conjunction with a meeting scheduled with the City’s unions on July 10-11) to begin meaningfully engaging “in a good faith negotiation of these issues.” *See* Kreisberg Declaration, Exhibit 8.

42. In a response letter to Mr. Kreisberg on July 3, 2013, the City advised that it would not meet separately with AFSCME, and that the July 10, 2013 scheduled meeting with the unions would be a “discussion” (again not a negotiation). *See* Kreisberg Declaration, Exhibit 9. Similarly, in an email dated June 28, 2013, the City confirmed that it wanted to meet on July 10, 2013 to “discuss” its “developing pension restructuring proposal,” clearly implying that the proposal itself was not even complete yet. *See* Kreisberg Declaration, Exhibit 10. Additionally, and tellingly, at that July 10, 2013 meeting, counsel for the City attempted to invoke Rule 408 confidentiality provisions stating that doing so was a tool used in every bankruptcy, so it should be invoked that day. *See* Supp. Kreisberg Declaration, ¶ 7. This

statement made more than a week before bankruptcy was authorized or filed further demonstrating that the City intended to file for bankruptcy in any event.

43. At the July 10, 2013 meeting, the City announced at the inception that the meeting would be a discussion but not a negotiation. *See* Kreisberg Declaration, ¶ 18. At a similar meeting with AFSCME and certain and other unions held on July 11, 2013, again there was no negotiation.

44. Despite this evidence, it appears that the City now seeks to characterize its limited requests to creditors for feedback – but admitted refusal to bargain with them – on the Restructuring Plan at the four meetings held regarding that plan as satisfying chapter 9’s good faith negotiation requirement. Yet, in the City’s reply brief regarding eligibility and recent deposition testimony by Orr, the City and Orr have explicitly denied that the City’s discussions with creditors were negotiations. *See* Debtor’s Reply, at p. 55 n.49; Orr 9/16 Transcript, at 137:25-138:8 (“Q. And was there any bargaining that took place at those sessions [on June 20th, July 10th, and July 11th] where the City said it would be willing to agree to something that was different from what was in June 14? A. Here again, I’m going to stay away from bargaining as a legal conclusion, duty to bargain is suspended. I will say there was a back and forth and my understanding discussions and invitations for further information.”).

45. Furthermore, and critically, Orr recently testified that media reports prior to the City’s chapter 9 filing that the City was planning on filing on July 19, 2013 were inaccurate. Orr 9/16 Transcript, at 301:19-302:8 (indicating that there was no plan for the City to file on July 19, 2013 and that Orr’s plan was “to have the permission, the authority, to file them and make that call at some point after I transmitted my letter of July 16 [requesting authorization from the Governor to file for chapter 9].”). Yet, evidence produced in discovery includes an

Excel/spreadsheet document attached to e-mails circulated (i) to and from Bill Nowling (who works in the EM's office) sent to individuals in the Governor's office, entitled "Chapter 9 Communications Rollout" which makes clear that during the same time period that the City was purporting to conduct ongoing "good faith negotiations" with creditors regarding the Restructuring Plan, **in fact the City was, as early as July 1, 2013 planning on filing for chapter 9 on Friday, July 19, 2013.** See Supp. Kreisberg Declaration, Exhibit C (spreadsheet document dated July 4, 2013 attached to e-mail from EM's office to State officials entitled "Chapter 9 Communications Rollout" indicated that Friday, July 19, 2013 was "FILING DAY").

(iii) The City's Bad Faith Refusal To Negotiate With Unions Such As AFSCME Has Continued Following The City's Bankruptcy Filing

46. The City's pattern of bad faith refusal to negotiate any of its proposals regarding pensions or health insurance benefits changes has continued post-petition.

47. For example, on August 2, 2013, the City convened a meeting of local union representatives and discussed active health insurance. See Kreisberg Declaration, ¶ 19. However, during that meeting, the City specifically advised those in attendance (including AFSCME representatives) that the meeting was not a negotiation. *Id* at ¶ 20. Mr. Kreisberg sent a follow up letter to the City on August 6, 2013 requesting good faith bargaining, and referenced cost savings estimates which AFSCME previously proposed in prior negotiations with the City before the development of the Emergency Manager's initial financial restructuring plan in May. See Kreisberg Declaration, Exhibit 11. In an August 8, 2013 response, the City advised that it would not engage in collective bargaining with AFSCME, but rather simply "discuss any feedback they may have regarding its health care restructuring plans." See Kreisberg Declaration, Exhibit 12.

48. On August 14, 2013, the City held a follow up meeting with AFSCME on the subject of active medical benefits but did not accept any counterproposals or suggestions, but simply responded by further explaining its current intention with respect to active medical benefits.

49. Given Orr's repeated statements to the media about the City's willingness to bargain with its unions, AFSCME has been surprised by the City's unwillingness to negotiate, pre or post-petition. While AFSCME has repeatedly stated its desire to move forward with constructive negotiations with the City on behalf of all AFSCME Detroit Employees, AFSCME cannot negotiate with an employer that is unwilling to come to the table for arms-length talks.

(iv) The City Has Previously Negotiated Labor Concessions With Unions That Modified Both Active And Retiree Benefits

50. The City argues, in part, that negotiations with its retirees were impractical or impossible as the City could not bind the disparate group of retirees in any agreement. However, the City should be well aware (and indeed its advisors have admitted) that in February 2012, City labor negotiators reached a tentative agreement (the "**Tentative Agreement**") with a "Coalition of City of Detroit Unions", including several AFSCME local bargaining units. See Supp. Kreisberg Declaration, ¶ 4, Exhibit A (attaching copy of the Tentative Agreement). Pursuant to deposition testimony given by Gaurav Malhotra of Ernst & Young ("**E&Y**") on September 20, 2013 (one of the City's restructuring advisors), E&Y was actively involved "in assisting quantify some of the savings in conjunction and collaboration with the City as the City negotiated with the – its unions [regarding the Tentative Agreement]." See Gaurav Malhotra September 20, 2013 Transcript (the "**Malhotra 9/20 Transcript**", a copy of which is attached to the Artz Declaration, Exhibit C), at 86:20-23.

51. While the Tentative Agreement was never implemented, changes with respect to benefits in the proposed Tentative Agreement would have directly impacted retiree benefits, and indeed, based on projections at the time, AFSCME understands that the Tentative Agreement could have saved the City approximately \$50 million annually, a number which included retiree health benefit changes. *See* Supp. Kreisberg Declaration, ¶¶ 5-6.

52. Despite this evidence, Orr has now testified that he was unaware of the Tentative Agreement (and, thus implicitly, unaware of the City's prior success at bargaining in good faith with the City's unions, which led to changes to both active and retired employees' benefits):

- 15 Q. Are you aware of a coalition among certain of the
16 City's unions put together in order to try and deal
17 with some of the restructuring issues with regard to
18 labor that you've been focused on?
19 A. A coalition? Can you please explain? Informal
20 coalition or the retiree committee or --
21 Q. Not the retire committee. A coalition of unions with
22 regard to trying to deal with some of the labor issues
23 that you --
24 A. Under the AFSCME umbrella?
25 Q. No, no, no.

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- 1 A. Or separate union? I'm trying to -- I'm trying to
2 understand.
3 Q. Well, I think your answer indicates to me that perhaps
4 the answer is no.
5 A. Yeah. Okay.

Orr 9/16 Transcript, at 237:15-237:5. Given that Orr himself was unaware of the City's ability to negotiate deals affecting both active employees and retirees outside of bankruptcy, the City's assertion that negotiations regarding changes to retiree and pension benefits were "impracticable (if not impossible)" is misguided. Orr could not possibly have attempted to

negotiate in good faith if he had not done even the most preliminary investigation as to whether Detroit's several unions had ever negotiated with the city collectively in the past, indeed the very recent past.

C. The City Has Failed to Establish It Is Insolvent, And The City's Chapter 9 Case Was Not Commenced Due to Any Imminent Financial Emergency, Rather To Avoid The Webster Litigation (And Other State Court Proceedings)

53. The City at first glance seems to provide thick volumes which it calls evidence regarding its alleged insolvency. *See, e.g.*, Orr Declaration, ¶¶ 52-57; Malhotra Declaration, ¶¶ 10-26; Moore Declaration, ¶¶ 9-20. However, what becomes apparent from reviewing these declarations (which serve as the basis for the City's insolvency arguments) is that (i) each often cross-relies (as purported evidence as to the truth of particular statements) on other (non-expert) testimony, other documents prepared by the City, or other assumptions/evidence convenient to the City but without any real foundation. *See, e.g.*, Orr Declaration, ¶¶ 52-57 (citing, in part, the June 14 Restructuring Plan and Malhotra Declaration as evidence); Moore Declaration, ¶¶ 13-14 (estimating pension underfunding using what the "City" believes are more realistic assumption)); Malhotra Declaration, ¶¶ 11; 15; 21-22 (discussing manner in which City's financial forecasts and projections were prepared based on certain complex assumptions, calculations and input from other City officials). Furthermore, the City offers no expert witness to testify regarding the City's asserted insolvency despite the City having spent millions of dollars and having gone out and hired a multitude of legal, financial, actuarial and restructuring advisors. Ultimately, the fact remains that **despite the pile of "evidence" submitted by the City, the City does not have a single witness who can stand up as an expert and testify as to the City's insolvency.**

54. Furthermore, the City misleadingly cited its insolvency as what drove its chapter 9 filing, not the imminent state court rulings in the Webster Litigation and other state court proceeding, further casting doubt on the reality of its conclusion that it is insolvent. *See, e.g.,* Debtor's Reply, at pp. 65-66. Yet, in reality (and as will be further demonstrated at trial), the discovery process has revealed several interesting facts that cut against insolvency as the true basis for the filing (*see* Debtor's Reply, at p. 65-66), and indeed Orr's recent testimony indicates that insolvency was not the driving factor behind the filing on July 18, 2013, rather the filing at that time was driven by the state court litigations. Orr testified:

19 When did you decide that the timing of the
20 Chapter 9 filing should be July 18th or July 19th?
21 A. Well, I didn't. I decided to make the request and my
22 intent was to have the ability to file available and
23 possibly executed as soon as I got it. It was without
24 talking or waiving privileges from my counsel or
25 counsel and investment bankers, the concerns about us

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1 losing control or being put in a situation because of
2 the ongoing litigation where I would not be able to
3 discharge my duties in an orderly fashion, in a
4 comprehensive matter to put the city on a sustainable
5 footing because of the litigation grew . . .
6 and it was made clear to me that **my desire to try to**
7 **continue to engage in discussions was running the risk**
8 **of putting my obligations under the statute in peril**
9 **and I think I was even counseled that I was being**
10 **irresponsible.**

Orr 9/16 Transcript, at 220:19-221:6-10.

55. In addition, the City's evidence regarding insolvency is built upon unproven assertions regarding, *inter alia*, the alleged unfunded amount of the City's pension and other retiree benefits. Indeed, in the June 14 Restructuring Plan discussing the actuarial accounting underfunding on the City's pension plans, the City suggested that such underfunding using

more “realistic assumptions” would be approximately \$3.5 billion, up from the \$644 million from the City’s 2011 reported underfunding. Restructuring Plan, pp. 23, 109 (noting that “preliminary analysis indicates that the underfunding in the GRS and the PFRS is approximately \$3.5 billion); *see also* Orr Letter Dated July 16, 2013 to Governor Snyder and Treasurer Dillon (copy attached as Exhibit J to Eligibility Brief (recommending chapter 9 filing and discussing \$3.5 billion in underfunding of pension liabilities)).

56. However, these allegedly “realistic assumptions” were directly dictated by the City to their actuarial advisor, Milliman, Inc. For example, Charles Moore of Conway MacKenzie admitted in his deposition that the City really had no idea what the underfunded portion of the pension obligations might be (as of September 18, 2013) because “until the City completes its analysis [which is had not yet done] and completes its own actuarial valuation, neither the City nor its actuary [Milliman] nor I would be able to say what all the assumptions are that could be used to either overstate or understate the funded position [of the pensions].” *See* Charles Moore September 18, 2013 Transcript (the “**Moore 9/18 Transcript**”, a copy of which is attached to the Artz Declaration, Exhibit D), at 62:2-7; *see also* Moore 9/18 Transcript, at 63:10-12 (indicating that 7 percent rate of return figure used by Milliman in running certain calculations regarding pension underfunding “was used for illustrative purposes” only and was not recommended by any specific actuary). Furthermore, in an e-mail dated July 9, 2013 from Treasurer Dillon to the Governor and others regarding a meeting Orr would be having with the Detroit retirement systems on July 10, 2013, Treasurer Dillon indicated that “[b]ecause pensions have such a long life there are a lot of creative options we can explore to address how they [the pensions] will be treated in a restructuring.” *See* Supp. Kreisberg Declaration, Exhibit D. In fact, experts that reviewed the actuarial assumptions of

Detroit's pension systems conclude that the current assumptions generally fall within industry standards. *See, e.g., Detroit's Current Pension Assumptions Fall Within Standards: Morningstar*, available at <http://www.mandatepipeline.com/news/detroits-current-pension-assumptions-fall-within-standards-morningstar-242817-1.html> (last visited October 8, 2013).

57. Furthermore, as discussed above, the Law Firm highlighted at the January 29, 2013 pitch that "Asset monetization outside of bankruptcy may implicate eligibility requirement that City be insolvent (e.g., measured by short-term cash)" (Pitch Presentation, p. 17), and the City accordingly chose not to monetize certain assets prior to the filing to limit the appearance of short-term cash on the books. This is evidenced, in part, by the (i) recent announcement by the EM of the deal to lease Belle Isle to the Governor and (ii) Orr's strong hints that he is considering monetizing artwork at the Detroit Institute of Arts.¹⁰

58. Additionally, the City's financial projections which serve, in part, as the City's basis for establishing insolvency (which themselves were built on various assumptions not established by any **expert** testimony) fail to consider the possibility of possible funding sources outside those included in the City's financial projections. For example, Malhotra testified that the City's financial projections assume that the City will have no other funds beyond the City's general fund and that the water and sewer fund was not incorporated into the City's projections. *See* Malhotra 9/20 Transcript, at 44:21-45:17. Yet, Orr testified that with respect to the pension underfunding (which is cited throughout the City's Eligibility Brief and included as one of the major factors in the City's insolvency in numerous documents and pleadings), of the estimated \$644 million in underfunding (based on the pensions funds' 2012 calculations), the majority of

¹⁰ *See State Signs Deal To Lease Belle Isle*, available at <http://detroit.cbslocal.com/2013/10/01/reports-state-signs-deal-to-lease-belle-isle/> (last visited October 8, 2013); *Orr tells DIA to earn money from its treasures; long-term leases of artworks next?*, available at <http://www.freep.com/article/20131003/NEWS01/310030115/Kevyn-Orr-Economic-Club-Detroit> (last visited October 8, 2013).

that underfunding is attributable to the water and sewer fund which generates its own revenue and which “does have some capacity” to raise rates to generate more funds. *See* Kevyn Orr October 4, 2013 Transcript (the “**Orr 10/4 Transcript**”, a copy of which is attached to the Artz Declaration, Exhibit E), at 377:1-380:13.

59. Finally, it bears noting that on July 16, 2013, the City reached a deal with its swap counterparties, which provided for such parties to (i) forbear from pursuing remedies and (ii) allowed the City to redeem the swaps until October 31, 2013 which would result in the City saving between \$70 and \$85 million. *See* Supp. Kreisberg Declaration, Exhibit E (e-mail from Ken Buckfire dated July 17, 2013). Given these immediate savings and other possible avenues (noted above) for the City avoiding bankruptcy, it is clear that the City’s filing had very little to do with any purported insolvency and everything to do with the City’s plan to impair or modify its pension obligations.

ARGUMENT

I. THE CITY’S PETITION VIOLATES THE UNITED STATES CONSTITUTION

A. Chapter 9 Violates The Federal Structure Of Government

60. Chapter 9 of the Bankruptcy Code is an unconstitutional violation of federalism because chapter 9 allows Congress to set rules controlling State fiscal self-management – an area of exclusive state sovereignty – as part of an unholy alliance in which the State receives in exchange powers in excess of those it would otherwise possess under the law. The losers here are citizens, such as the AFSCME Employees, who, particularly as creditors of the State, benefit from the State and Congress acting within their constitutionally defined roles so that the State remains accountable during the trying process of a municipal debt adjustment.

61. The Supreme Court recognized this violation explicitly in 1936 when the Court declared the first federal municipal bankruptcy statute unconstitutional for the following two

independent reasons: (1) the goal of a municipal bankruptcy is to enable state governments to unconstitutionally escape their debts, but states cannot accomplish the “end” of an unconstitutional act simply “by granting any permission necessary to enable Congress to do so”; and (2) municipal bankruptcy represents an incursion by Congress into the “sovereignty of the State” and its political subdivisions, which renders them “no longer free to manage their own affairs” independent of “interference” by Congress, yet the Constitution does not permit Congress to “pass laws inconsistent with the idea of sovereignty.” *Ashton v. Cameron County Water Improvement Dist. No. 1*, 298 U.S. 513, 530-32 (1936).

62. *Ashton* applies with even greater force to chapter 9 than it did to the first federal bankruptcy statute. Chapter 9, like the municipal bankruptcy statute struck down in *Ashton*, is designed to empower municipalities – whose “fiscal affairs are those of the State, not subject to control or interference by the National Government,” *id.* at 528 –to “change, modify or impair the obligation of their contracts” in ways not permissible outside of bankruptcy. *Id.* at 530-31. Under chapter 9 but not under the prior federal municipal bankruptcy statute at issue in *Ashton*, states are explicitly barred from designing their own process for municipal debt adjustment, further infringing on the constitutionally defined role of the states to manage their own financial affairs. See 11 U.S.C. § 903.

63. As *Ashton* recognized, that municipalities may not, unlike states, be immune from suit under the 11th Amendment is entirely unrelated to the question of whether their essential role in the federal system of government has been unconstitutionally diminished by an act of Congress. *Ashton*, 298 U.S. at 531. The Supreme Court recently reaffirmed this distinction in *Printz v. United States*: “[T]he distinction in our Eleventh Amendment jurisprudence between States and municipalities . . . is peculiar to the question of whether a

governmental entity is entitled to Eleventh Amendment sovereign immunity, [and does not] apply [] to the question of whether a governmental entity is protected by the Constitution's guarantees of federalism, including the Tenth Amendment.” 521 U.S.898, 531 n. 15 (1997) (citations omitted).

64. To take just one extremely salient example, the City seeks to reduce its retiree health care obligations *permanently* in bankruptcy, which the Michigan Court of Appeals has held it could not do under state or federal law. *See AFT Michigan v. State*, 297 Mich. App. 595, 825 N.W.2d 595 (2012). Thus, under chapter 9 the City seeks to skirt the laws governing its debts outside of bankruptcy in exchange for submitting to the rules enacted by Congress for a chapter 9 filing, thereby ceding sovereign control over some of its own fiscal affairs to the federal judiciary during the bankruptcy process.

65. Neither of the justifications provided by the Supreme Court less than two years after *Ashton* when it upheld Congress’s next, substantially similar, municipal bankruptcy statute in *United States v. Bekins*, 304 U.S. 27 (1938) – (1) that the contracts clause of the federal constitution makes the passage of a state law adjusting municipal debts impossible and thus the need for a federal law providing for municipal bankruptcy pressing, and (2) that a State has a right to consent to federal intrusion into its own fiscal affairs – remains valid. This is because intervening Supreme Court precedent holds that states can fashion their own municipal reorganization statutes but cannot consent to any derogation of their sovereign powers.

(i) A Federal Municipal Bankruptcy Statute Is No Longer Necessary To Accomplish An Adjustment Of Municipal Debts

66. As a threshold matter, the Supreme Court has held since *Bekins* that states *can* pass legislation to adjust municipal debts in a financial emergency. *See Faitoute Iron & Steel Co. v. City of Asbury Park*, 316 U.S. 502 (1942). In doing so, the Supreme Court scoffed at the

presumption that the federal government could “completely absorb” from a State a power “so peculiarly local as the fiscal management of its own household.” *Asbury Park*, 316 U.S. at 508-09. See also *United States Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1 (1977) (recognizing that state legislation repealing a contractual obligation of a state may not violate the contracts clause under certain circumstances). For this reason alone, *Bekins*, which relied heavily on the Supreme Court’s perception that some mechanism was needed to permit states to adjust their debts during the “[e]conomic disaster” of the Great Depression, 316 U.S. at 53-54, is no longer binding.

(ii) The Supreme Court’s Development Of Constitutional Federalism Doctrine Has Effectively Overruled *Bekins*

67. Over the past two decades the Supreme Court issued a series of opinions clarifying both the importance of the federal system of government to *individual* liberty and, concomitantly, the inability of a state to consent to an affront by Congress to that federal system. The fountainhead of these cases is *New York v. United States*, 505 U.S. 144 (1992). There, Justice O’Connor, writing for the majority, explained at length that any statute exercising federal control over a power which “is an attribute of state sovereignty” – as is the case here with respect to a state’s management of the fiscal affairs of its political subdivisions, see *Ashton, supra* – is “necessarily” an exercise of “a power the Constitution has not conferred on Congress” and therefore unconstitutional. 505 U.S. at 156. “The States ‘form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere.’” *Alden v. Maine*, 527 U.S. 706, 714 (1999) (quoting *The Federalist* No. 39, p. 245 (C. Rossiter ed. 1961) (J. Madison)). Thus the Supreme Court’s duty, Justice O’Connor has explained, is to “invalidate[] measures deviating from” the federalist “form of government” set forth in the

Constitution, however “formalistic” the result may appear in light of “the era’s perceived necessity.” *New York*, 505 U.S. at 187.

(a) **Chapter 9 Impinges On The AFSCME Employees’ Individual Rights To Federalism By Eviscerating The Accountability Of Michigan To Its Citizens And Creditors**

68. *New York* and its progeny represent a direct rebuff to *Bekins* and other Depression-era cases, which softened the requirements of federalism in moments of perceived peril, by setting forth since then a robust vision of federalism which “divides authority between federal and state governments for the protection of individuals.” *New York*, 505 U.S. at 181. That vision begins with the “incontestable” truth “that the Constitution established a system of ‘dual sovereignty,’” under which the sovereignty reserved to a State and its citizens is “‘inviolable.’” *Printz*, 521 U.S. at 918-20 (quoting *The Federalist* No. 39, at 245 (J. Madison)) (other citations omitted). “Residual state sovereignty was also implicit, of course, in the Constitution’s conferral upon Congress of not all governmental powers, but only discrete, enumerated ones, Art. I, § 8, which implication was rendered express by the Tenth Amendment’s assertion that ‘[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.’” *Printz*, 521 U.S. at 920.

69. The premise of the federal constitutional structure is that “Congress would exercise its legislative authority directly over individuals rather than over States.” *New York*, 505 U.S. at 166 (citing 1 Records of the Federal Convention of 1787, p. 313 (M. Farrand ed. 1911) (explaining the “rejection of the New Jersey Plan in favor of the Virginia Plan”)). As a corollary, individual citizens possess a vested right in the guarantee of a strongly demarcated

separation of power between the state and federal government to ensure that each remains responsible to the citizens for the tasks with which it was charged:

The great innovation of this design was that “our citizens would have two political capacities, one state and one federal, each protected from incursion by the other”—“a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it.” [*Printz*, 521 U.S. at 920 (quoting *U. S. Term Limits, Inc. v. Thornton*, 514 U. S. 779, 838 (1995) (Kennedy, J., concurring)).]

70. This structural separation of powers protects individual liberty in myriad ways by creating a “double security as to the rights of the people.” *Printz*, 521 U.S. at 922 (quoting *The Federalist* No. 51, at 323 (J. Madison)). It ensures that neither branch will accumulate “excessive power,” thereby reducing “the risk of tyranny and abuse from either front.” *Printz*, 521 U.S. at 921 (quotation omitted). The separation of powers principle further “contemplates that a State’s government will represent and remain accountable to its own citizens.” *Printz*, 521 U.S. at 920 (citations omitted). For “[i]f, as Madison expected, the Federal and State Governments are to control each other, see *The Federalist* No. 51, and hold each other in check by competing for the affections of the people, see *The Federalist* No. 46, those citizens must have some means of knowing which of the two governments to hold accountable for the failure to perform a given function.” *United States v. Lopez*, 514 U.S. 549, 576-77 (1995) (Kennedy, J., concurring). See also *United States v. Morrison*, 529 U.S. 598, 615-16 (2000) (citing the bulk of Justice Kennedy’s concurrence in *Lopez* and holding that Congress may not “use the Commerce Clause to completely obliterate the Constitution’s distinction between national and local authority”). Accordingly, “[t]he Framers thus ensured that powers which ‘in the ordinary course of affairs, concern the lives, liberties, and properties of the people’ were held by governments more local and more accountable than a distant federal bureaucracy.” *Nat. Fed’n*

of Indep. Business v. Sibelius, 132 S. Ct. 2566, 2578 (2012) (Roberts, C.J.) (quoting The Federalist No. 45, at 293 (J. Madison)).

71. Chapter 9 does unconstitutional violence to the federal structure by obfuscating the system of direct accountability protected by federalism. By outsourcing to the federal judiciary the problem of a state reorganizing its obligations, chapter 9 provides states with unconstitutional – as well as unnecessary, given *Asbury Park* – cover from its citizens by confusing them as to whom to accord “blame” and “credit” for the results. *Printz*, 521 U.S. at 931; *New York*, 505 U.S. at 169. *See also Gregory v. Ashcroft*, 501 U.S. 452, 459 (“These twin powers will act as mutual restraints only if both are credible.”). “The resultant inability to hold either branch of the government answerable to the citizens is more dangerous even than devolving too much authority to the remote central power.” *Lopez*, 514 U.S. at 576-77 (Kennedy, J., concurring) (citations omitted).

72. In point of fact, on January 31, 2013, Orr’s colleague himself touted the deflection of accountability for state and city politicians as a benefit. “Making this a national idea is not a bad thing,” he wrote, because “[i]t provides political cover for the state politicians. Indeed, this gives them an even greater incentive to do this right because, if it succeeds, there will be more than enough patronage to allow either [Mayor] Bing or [Governor] Snyder to look for higher callings—whether Cabinet, Senate or Corporate.” Kreisberg Declaration, Exhibit 2. In a subsequent reply to Orr later that day, Orr’s colleague provided a clear indication of his idea of the “right” way to do “this,” stating: “the ideal scenario would be that Snyder and Bing both agree that the best option is simply to go through an orderly chapter 9.” Kreisberg Declaration, Exhibit 1.

73. This veil over accountability is woven into the very structure of chapter 9. While the City must consent to a chapter 9 filing and retains some control over the chapter 9 process, even before the City proposes a plan the Bankruptcy Judge is able to commandeer the City's operation in exchange for the protection of the Bankruptcy Code by using its equitable powers, as it already has in this case, to order the City to, *inter alia*, turn over documents and engage in mediation and negotiations which the City would not need to submit to outside of Bankruptcy. See *Mediation Order* [Docket No. 322] ("the Court concludes that it is necessary and appropriate to **order** the parties to engage in the facilitative mediation of any matters that the Court refers in this case," moreover, the mediator is "authorized to enter any order necessary for the facilitation of mediation proceedings", including regarding discovery issues).

74. Moreover, Bankruptcy Code section 926 provides that "[i]f the debtor refuses to pursue a cause of action under section 544, 545, 547, 548, 549(a) or 550 of this title, then on request of a creditor, the court may appoint a trustee to pursue such cause of action." 11 U.S.C. § 926(b). In at least one reported case, *In re Alabama State Fair Authority*, 232 B.R. 252 (N.D. Ala. 1999), the bankruptcy court appointed a trustee to pursue preference actions. Thus, the bankruptcy court has discretion, despite a municipal debtor having made the policy choice to settle a pre-petition debt, to appoint a third-party trustee to ignore the municipality's decision and pursue avoidance of such a settlement. With regard to preference avoidance, this is a power an individual creditor could not independently assert under state law. This power also exerts a strong effect on the City throughout bankruptcy as to what actions it can and cannot take, long before ever proposing a plan, without being rebuked by the bankruptcy judge.

75. If the City wishes to obtain the true spoils of bankruptcy – a plan of adjustment – it must submit to a much greater degree of federal interference, thus further blurring the line

between Congress and the State as to who is to blame for the contents of that plan. This is because, in order for a debtor's plan to receive approval under chapter 9, it must incorporate priorities of distribution according to the Bankruptcy Code. The tension between chapter 9 and state law rights was highlighted in *In re County of Orange*, 191 B.R. 1005 (Bankr. C.D. Cal. 1996), where the court, on preemption grounds, invalidated California's law providing for the establishment of a trust with respect to certain securities. Relying on the doctrine of preemption alone, the County of Orange court held that "The California legislature cannot rewrite the bankruptcy priorities." *Id.* at 1017.

76. If the people of Michigan were to enact their own laws for adjusting municipal debts – as is their constitutional right, but which they have been unconstitutionally prevented from doing by chapter 9 as amended since *Asbury Park* – those laws might have very different priorities than chapter 9. Chapter 9, for instance, allows administrative expenses under Bankruptcy Code section 503 and gives them priority under Bankruptcy Code section 507(a)(2), and adopts the definition of secured claims from Bankruptcy Code section 506, to name a few. 11 U.S.C. § 901(a). Importantly, in contrast, the people of Michigan might very well decide to treat issues such as claim priority quite differently. For instance, they might choose to place unsecured retiree health claims before administrative expenses, thus benefitting the AFSCME retirees. This is, after all, a state whose constitution explicitly protects pension rights. But chapter 9 prevents the AFSCME employees from exercising their right to petition their state government to enact a municipal debt adjustment law of this nature, in turn allowing the state to shirk its responsibility to the voice of its citizens by blaming any unjust result in bankruptcy on the claim priorities, rules, and procedures of the Bankruptcy Code. Until

chapter 9 is struck down as unconstitutional, state officials can tell their constituents that they had no other choice besides chapter 9 to adjust municipal debts

77. That the City retains some autonomy over its affairs under chapter 9 is irrelevant, for the mere incursion into territory reserved to the states is sufficient to violate the Constitution. “[W]here, as here, it is the whole object of the law to direct the functioning of the state [government], and hence to compromise the structural framework of dual sovereignty . . . a ‘balancing’ analysis is inappropriate. It is the very principle of separate state sovereignty that such a law offends, and no comparative assessment of the various interests can overcome that fundamental defect.” *Printz*, 521 U.S. at 932.

78. Ultimately, the allocation of state resources as between competing creditors of the City should be determined “by the political process established by the citizens of the State, not by judicial decree mandated by the Federal Government.” *Alden*, 527 U.S. at 751. “When the Federal Government asserts authority over a State's most fundamental political processes, it strikes at the heart of the political accountability so essential to our liberty and republican form of government.” *Id.* While the road to adjusting the City’s debts may be longer if it must first involve “greater citizen involvement in democratic processes . . . in shaping the destiny of” the City’s reorganization process via state law, rather than accessing the process set forth in chapter 9, as a result of “the political processes that control a remote central power,” *Bond v. United States*, 131 S. Ct. 2355, 2364 (2011), “the Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day.” *New York*, 505 U.S. at 187.

79. The unconstitutionality of chapter 9 is further confirmed by its unsuccessful attempt to preserve some independence for state sovereigns within the constraint of the grant of power to Congress by Article I, Section 8 Clause 4 (the “Bankruptcy Clause”) to establish “uniform” bankruptcy laws. Although the bankruptcy code for private debtors may treat debtors differently in different states due to variations in state law and still pass muster as “uniform,” within a state there must be “geographical” uniformity for debtors. *Hanover Nat’l Bank v. Moyses*, 186 U.S. 181, 188 (1902). But by ceding to each state the ability to define its own qualifications for a municipality to declare bankruptcy, chapter 9 permits the promulgation of non-uniform bankruptcies within states – as in Michigan, where Act 436 has wildly divergent effects on different cities, whose authority to declare bankruptcy purports to rest on the discretion of a Governor who can attach whichever contingencies he wishes. *See* MCL 141.1558. As a result, nationwide the basic eligibility for an entire class of debtors – municipalities – has no uniform federal law. This is not a question of which state substantive law applies to a class of debtors which is universally eligible for chapter 9, rather it is a foundational problem of who among the class of debtors is even covered by the federal statute in the first place.

80. It is no surprise that this attempt to elude the demands of federalism thereby fails for this additional reason of non-uniformity, for municipal bankruptcy would have been an entirely foreign concept to the framers who modeled much of our federal Constitution on British law which did not then, and still does not today, even contemplate municipal bankruptcy. *See, e.g.*, Janie Anderson Castle, *The People’s Mayor for London?*, 5 J. Loc. Gov’t L. 29, 32 (2002); Annerose Tashiro, *Sovereign Insolvency*, 99 Eur. Law. 5 (2010)

(“There is no such thing today anywhere in Europe as a sovereign insolvency regime.”) (advocating implementation of a bankruptcy regime mirroring that of chapter 9 in the EU).

81. It cannot be adequately emphasized that under *Asbury Park* the State has the authority to amend its own laws to allow for its municipalities to adjust their debts without resorting to a coercive federal statute which unconstitutionality denies the state that right, obscures accountability and is not a uniform bankruptcy law. The State could even, furthermore, seek federal financial assistance to help meet those debts – as indeed it already has. *See, e.g., South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (Rehnquist, C.J.) (“[O]bjectives not thought to be within Article I’s enumerated legislative fields may nevertheless be attained through the use of the spending power and the conditional grant of federal funds.” (internal quotation omitted)). What the State cannot do – but what chapter 9 demands – is to submit to federal rules which would not merely incentivize the State’s use of lawful power, but engorge that power at the expense of its citizens’ inviolable right to control the operation of their sovereign by setting the rules by which it adjusts its own debts.

(b) Chapter 9’s Requirement Of State Consent Cannot Cure The Violation Of Individual Rights

82. The Supreme Court squarely held in *New York* that “[t]he constitutional authority of Congress cannot be expanded by the ‘consent’ of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States.” 505 U.S. at 182. Even when such consent is accomplished by statute. *See, e.g., Buckley v. Valeo*, 424 U.S. 1 (1976) (Congress infringed the President’s appointment power via a law signed by the President); *INS v. Chadha*, 462 U.S. 919 (1983) (legislative veto violated the constitutional requirement of presentment even where President signed law with legislative veto provision).

83. The decision in *Bekins* therefore erred in concluding that the then-operative municipal bankruptcy statute was not unconstitutional simply because the statute required the municipality's petition and plan of composition to be authorized by state law. 304 U.S. at 52. To the contrary, the conclusion in *Bekins* that the only "obstacle" to the exercise of federal bankruptcy over state political subdivisions "lies in the right of the State to *oppose* federal interference," 304 U.S. at 52-54, is squarely foreclosed by the Court's subsequent decision in *New York*. Thus the prior rule from *Ashton* – "Neither consent nor submission by the States can enlarge the powers of Congress," and therefore states cannot "accomplish" an unavailable "end by granting any permission necessary to enable Congress to do so," 298 U.S. at 531 – remains the correct one.

84. The Court concluded in *New York* that State consent cannot cure an otherwise unconstitutional infringement of state sovereignty for the same reason that municipal bankruptcy violates constitutional federalism in the first place: the design of federalism is meant "for the protection of individuals," not States. *New York*, 505 U.S. at 181 ("The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States."). State government officers may even have "powerful incentives" to consent to a diminishment of state sovereignty to evade one of the core benefits federalism promises to individual citizens: direct accountability of political officials for actions taken in their clearly demarcated domains of authority. *Id.* at 182-83 ("[I]t is likely to be in the political interest of each individual official to avoid being held accountable to the voters."). Therefore state consent cannot not be allowed to dismantle the delicate balance of powers protecting the accountability of each dual sovereign to its citizens.

(iii) AFSCME Does Not Seek To Relitigate *Bekins* And The City's Reply Brief Arguments Regarding The Constitutionality Of Chapter 9 Ignore And Misapply The Relevant Authority Discussed Above

85. While the City argues (*see* Debtor's Reply, at p. 10) that AFSCME (among other objectors) seeks to "relitigate" *Bekins*, this is simply not the case. As a threshold matter, when the Supreme Court decided *Bekins*, it reasoned that a federal municipal bankruptcy statute was constitutional in large part because "[t]he natural and reasonable remedy through composition of the debts of the district was not available under state law by reason of the restriction imposed by the Federal Constitution upon the impairment of contracts by state legislation." 304 U.S. 27 at 54. Four years later, the Supreme Court reversed course and held that states can pass state statutes for composition of municipal debts, an area of law it now deemed to be "peculiarly local" because it involved "the fiscal management of its own household." *Asbury Park*, 316 U.S. at 309. Had *Asbury Park* been decided at the time of *Bekins*, certainly the litigation of the issues would have taken a very different form.

86. Nor have the "relevant statutory provisions remained substantially unchanged" since *Bekins*. Debtor's Reply, at p. 9. To the contrary, the federal municipal bankruptcy statute has been amended numerous times, most notably four years after *Asbury Park* to undo the victory for states' rights won by the city of Asbury Park in that case. Since then, the federal municipal bankruptcy has prohibited state composition procedures such as those upheld in *Asbury Park*. *See* 6-903 Collier on Bankruptcy P 903.LH[2]; 11 U.S.C. § 903(1) ("[A] State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition."). The harm, emphasized by AFSCME above and below, is that chapter 9 after *Asbury Park* represents "an unholy alliance in which the State receives in exchange [for its consent] powers in excess of those it would otherwise

possess under the law.” *See supra*, ¶ 60. *See also infra*, ¶¶ 100-103 (“[B]ecause chapter 9 allows the City a process for adjusting its debts which is not identical to the process for doing so under state law – either as it currently exists or if the state were to pass its own municipal composition law” – AFSCME’s members rights to the protection of dual sovereign governments have been violated). This harm is enhanced by the provision of chapter 9 forbidding the states from adopting their own municipal debt adjustment laws, which coerces states into accessing chapter 9 just to receive a constitutional right it already possesses under *Asbury Park*.

87. With respect to the continued constitutionality of chapter 9, the City’s core contentions are that (1) the Court’s ruling in *Asbury Park* provides no meaningful opportunity for debt adjustment to municipalities, (2) chapter 9 is essential to states because they need it to sidestep the otherwise-applicable constitutional limit that “they are *not* at liberty under the Contracts Clause to impair their own contracts”; and (3) chapter 9 cannot violate federalism principles because it does not compel state or local governments to take any action. Debtor’s Reply at 13-15. The first two of these arguments only further confirms the unconstitutionality of chapter 9, and the third is off-target.

88. First, the City is technically correct that a chapter 9 bankruptcy is currently the “one viable option” for a “financially prostrate municipal government” wishing to “resolve debts in a non-consensual manner,” (Debtor’s Reply. at pp. 13-14 (citation omitted)), but that is only because chapter 9 itself unconstitutionally bars – as a matter of statute – the type of state statute approved by the Supreme Court in *Asbury Park* which would allow adjustment of municipal debts over the objections of creditors under state law. The municipal debt

adjustment legislation in *Asbury Park*, for example, required that any plan of adjustment only be “approved by 85 percent in amount of the creditors” of the municipality. 316 U.S. at 505.

89. It is for this reason – and *not*, as the City misleadingly contends, for any reason of constitutional law stemming from the *United States Trust* line of cases – that it “comes as no surprise” that *Asbury Park* is the only case sustaining the alteration of a municipal bond contract outside a bankruptcy case. See Debtor’s Reply at 13-14. *United States Trust* did not consider the constitutionality of a state municipal reorganization statute enacted “for the purpose of benefiting” creditors by adjusting their debts – the issue in *Asbury Park* – but rather the statutory “repeal” of a discrete contractual promise made by state obligors to bondholders, with no state-law process for the bondholders to adjust their debts. *United States Trust Co. of NY v. New Jersey*, 431 U.S. 1, 28 (1977).

90. The City is thus wrong to argue that AFSCME’s argument “would actually impede, rather than protect, States’ sovereignty.” Debtor’s Reply, at p. 16. Rather, it is Bankruptcy Code section 903 that impedes state sovereignty. Prior to the addition of section 903 to chapter 9 of the federal municipal bankruptcy statute, the Supreme Court held in *Asbury Park* that that statute could not preempt New Jersey’s state municipal reorganization law because New Jersey was not “powerless in [the] field” of “the autonomous regulation of problems so peculiarly local as the fiscal management of its own household[.]” 316 U.S. at 509. The “explicit limitation” on state municipal reorganization statutes now found at Section 903 “was added to overturn the holding in *Asbury Park*.” See Michael W. McConnell & Randal C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. Chi. L. Rev. 425, 462 (1993). As such, it represents “congressional overreaching in violation of the Tenth Amendment.” 6-903 Collier on Bankruptcy P 903.03[2]. In the wake of

Asbury Park and its subsequent Congressional overruling, the states' sovereign power to control municipal reorganization are not aided by chapter 9, they are unconstitutionally limited.

91. Second – after misleading the Court to believe that *Asbury Park* represents a jurisprudential “outlier” whose rule has been ineffective rather than a watershed decision which Congress rushed to nullify by statute only four years later in “one of the more interesting turnabouts in the history of bankruptcy legislation,” 6-903 Collier on Bankruptcy P 903.LH[2] – the City pivots to argue that because the state municipal adjustment statute sanctioned in *Asbury Park* must still satisfy the Contracts Clause of the United State Constitution, U.S. Const., Article I, § 10 (the “**Contracts Clause**”), states need chapter 9 “to impair their own contracts” in violation of the Contracts Clause. Debtor’s Reply, at p. 15. AFSCME, in contrast, maintains that the Contracts Clause continues to constrain all municipal bankruptcies.

92. Having thus conceded, in a surprising display of candor, that the purpose of the City’s bankruptcy filing is not merely to accomplish what it cannot accomplish under a state municipal composition law as a matter of preemption by Section 903, but what it is expressly prohibited from accomplishing as a matter of unconstitutionality by the Contracts Clause, the City’s papers effectively also concede that chapter 9 and/or PA 436 are unconstitutional. The reason: the State of Michigan cannot “impair contracts” beyond what the Contracts Clause allows, and Congress lacks the power under Article I to consent to Michigan doing so.

93. Neither *Bekins* nor *Asbury Park* directly addressed this question: whether Congress exceeded its Article I powers by passing a municipal bankruptcy law purporting to empower states to violate the Contracts Clause. *Bekins*, instead, considered “whether the exercise of the federal bankruptcy power in dealing with a composition of the debts of [a municipality] . . . must be deemed to be an unconstitutional interference with the essential

independence of the State,” *i.e.*, the federalism question raised in *Ashton* and at issue in *Bekins*. 304 U.S. at 49; *see also* *When Cities Go Broke*, *supra*, at 451-52 (noting that “a plausible argument against the Act might have been based on the rights of the creditors” to complain “that Congress could not extend its own Contracts Clause immunity to a state or local government,” but that argument was not raised in *Ashton*). *Asbury Park*, meanwhile, unequivocally held that the Contracts Clause applied to state municipal reorganization legislation, and also gave every indication that a state’s authority to pass municipal reorganization laws was coextensive with Congress’s. 316 U.S. at 507-08. The only time a member of the Supreme Court has ever identified a potential Contracts Clause problem with the federal municipal bankruptcy statute is found in Justice Cardozo’s dissent in *Ashton* but the Court in *Bekins* declined to follow Justice Cardozo’s lead. *See* 298 U.S. at 541-42 (rejecting argument that federal municipal bankruptcy law violated Contracts Clause). This leaves the majority opinion in *Ashton* – which effectively rejected Justice Cardozo’s argument, and which was not explicitly overruled by *Bekins* – as the only evidence consideration by a majority of the Court.

94. The Constitution does not simply disappear once a bankruptcy petition is filed, even for holders of unsecured claims. *See, e.g., City of New York v. New York, N. H. & H. R. Co.*, 344 U.S. 293 (1953) (unsecured creditors possess right to notice and hearing under Fifth Amendment before debts can be discharged). So too with the Contracts Clause found at Article I, Section 10 of the U.S. Constitution. Article I, Section 10 contains three clauses, the last two of which permit Congress to consent to a number of otherwise-unconstitutional state acts, for example the right to “enter into any Agreement or Compact with another State,” an example of which was the contract at issue in *United States Trust*. The Contracts Clause, however, is

found in the first clause of Section 10, which grants Congress no right to consent to a violation thereof. Thus, assuming *arguendo* that the City is correct that the intent of chapter 9 and PA 436 are both to skirt the constraints of the Contracts Clause by means of Congressional consent, Congress lacks the authority under Article I to grant that consent, and the Contracts Clause further prevents the State from passing a law like PA 436 intending to end-run the Contracts Clause. The result would be equally unconstitutional, and absurd, if Congress were to pass a statute, under its Section 8 power to coin money, which set up Article I courts to approve applications from individual states to coin their own money despite the blanket prohibition in Article I, Section 10 against states doing so.

95. Third, no state, as argued *supra*, can “consent” to “enlarge the powers of Congress; none can exist except those which are granted.” *Ashton*, 298 U.S. at 531. The City’s attempt to distinguish the Court’s line of federalism cases since *New York v. United States* completely misses this point by insisting that chapter 9 does not violate the federalism principles articulated in those cases merely because “chapter 9 is ‘administered’ by the federal bankruptcy court, not the States.” Debtor’s Reply, at p. 16. But these cases cannot be oversimplified and read in a vacuum as the City suggests. The Court’s new federalism stands not for the narrow proposition that Congress cannot force states to administer federal regulatory programs, but for a broader constitutional rule: “if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress,” and “the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress’ instructions” even with “the ‘consent’ of the governmental unit whose domain is thereby narrowed.” *New York*, 505 U.S. at 156, 162, 182.

96. As described *supra*, chapter 9 does exactly that – if a state consents, a federal bankruptcy judge enforces a set of instructions from the Code, most notably the requirements for plan confirmation, and takes over municipal decision-making during the bankruptcy by controlling the municipality’s right not to engage in discovery or mediation and by wielding the power to appoint a trustee to recover preferential transfers over the municipality’s objection. These elements of chapter 9 – which the City entirely ignores in its brief – violate the Supreme Court’s clear direction that “[t]he Constitution’s division of power among the three branches is violated where one branch invades the territory of another, whether or not the encroached-upon branch approves the encroachment.” *Id.* at 182. The City points to general language in Section 903 prohibiting interference with “political or governmental powers,” (Debtor’s Reply, at p. 18), but that language is belied by other provisions of the Code explicitly permitting interference by the bankruptcy judge.

97. The City’s related argument that “chapter 9 operates much like federal programs that extend the benefits of federal money to States that voluntarily submit to federal requirements,” (Debtor’s Reply, at pp. 16-17) is inapposite because the state does not obtain money in exchange for taking some action clearly within its power but desired by the federal government, rather the state *reacquires* its inherent power under *Asbury Park* to access a process for adjusting its debts. In exchange for a power it already would possess in the absence of chapter 9, the state is forced to give the federal government control over state sovereign functions not available to Congress under the Constitution.

98. This aspect of chapter 9 – its nullification of all state laws for municipal debt adjustment in favor of an exclusive federal remedy which subjects state and local officials to federal rules – highlights the accountability problem of allowing state and local officials to

represent to their constituents that the only way to escape financial catastrophe is to access chapter 9 and accept the rules therein, such as claim priorities in the Code, which voters in the state might wish to alter. For if a state declines Congress's offer of access to chapter 9, it has no recourse to adjust municipal debts *en masse* as a result of Section 903. Yet if a municipality is as financially distressed as the City contends it is, it faces the problem which motivated the Court in *Asbury Park* to find that states can design their own debt adjustment statutes consistent with the Contracts Clause: the City has no reasonable alternative.¹¹ Under such circumstances, state and local government officials face an unconstitutional conundrum: accept federal interference with their sovereign fiscal self-management, or default on municipal debt in violation of the Contracts Clause. If the former is chosen, the City accepts rules and instructions from a federal judge, which state and local officials can refer to when attempting to shift blame for the hard decisions of municipal reorganization instead of confronting a local debate over legislation at the state level about how to adjust municipal debt.

99. Finally, the City is incorrect that chapter 9 is a uniform bankruptcy law. As noted *supra* – but ignored in the City's reply – a municipal bankruptcy law would have been inconceivable to the framers. But even had they imagined the unimaginable, they surely would have recognized that chapter 9 is a non-uniform law because it fails to “apply uniformly to a defined class of debtors.” *Railway Labor Executives Ass'n v. Gibbons*, 455 U.S. 457, 473 (1982). Surely, as the City notes, the Code can give way to state substantive law, such as the exemptions at issue in *Hanover National Bank*, which apply generally within a state as to all

¹¹ In *Asbury Park*, the Court observed that “the practical value of an unsecured claim against the city is inseparable from reliance upon the effectiveness of the city's taxing power.” 316 U.S. at 509-10. Where, as in *Asbury Park*, financial crisis has rendered “the effective taxing power of the municipality prostrate without state intervention to revive the famished finances of the city,” *id.* at 516, the Court recognized that “what is needed is a temporary scheme of public receivership over a subdivision of the State” allowing for the “discharge[.]” of municipal debt obligations, *id.* at 510-11. The City, like the municipality in *Asbury Park*, has contended that its need for bankruptcy protection stems from it having exhausted its ability to raise revenue through taxation. *See* Eligibility Brief, pp. 28-30.

debtors in the same class. But by outsourcing to the states the decision of *who* is eligible for chapter 9 protection, Congress has enacted a bankruptcy law that, rather than “define classes of debtors and . . . structure relief accordingly,” *Gibbons*, 455 U.S. at 473, fails to define a class of debtors under federal law. This yields statutes like PA 436, which is not uniform within Michigan because it does not grant the right to file for bankruptcy to all municipalities who meet defined criteria, but rather leaves the eligibility question to the unchecked discretion of the Governor. *See* MCL § 141.1558 (placing no standards on gubernatorial decision whether or not to grant permission to file). Whether on its face because it allows such a result, or as applied here in the context of PA 436, chapter 9 therefore violates the limitation that Congress only pass bankruptcy laws which are uniform.

B. AFSCME’s Active And Retired Members Have Individual Standing To Assert That Chapter 9 Violates Their Individual Rights To A Federal System Of Government

100. The Supreme Court has squarely held that individuals – and not just states – have standing to challenge that Congress has “exceeded its powers under the Constitution, thus intruding upon the sovereignty and authority of the States.” *Bond v. United States*, 131 S. Ct. 2355 (2011). As also analyzed *supra*, individuals have their “own constitutional interests” to “assert injury from governmental action taken in excess of the authority that federalism defines,” and their “rights in this regard do not belong to the State.” *Id.* at 2363-64.

101. Two aspects of the Court’s conclusion in *Bond* are of special relevance to the instant case. First, the Court emphasized that federalism protects not just “the integrity of the [state and federal] governments themselves,” but also, distinctly, “the people, from whom all governmental powers are derived.” *Id.* at 2464. Individual citizens’ interests in pressing federalism complaints include the “liberties that derive from the diffusion of sovereign power,” such as (1) “greater citizen involvement in democratic processes” and citizens’ consequent

ability to use their voices “in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power”; and (2) the promise that “laws enacted in excess of delegated governmental power cannot direct or control their actions” and the consequent protection of citizens from the “arbitrary power” caused by giving any one government too much sway over “the concerns of public life.” The City’s chapter 9 petition threatens AFSCME’s members with both of these harms insofar as it (1) shields the City from a democratic process of resolving its fiscal crisis by rejecting the accountability of local politicians responsive to Detroit’s citizenry in favor of an unelected federal judiciary, and (2) allows the federal government to concoct rules for the resolution of disputes in an “area of traditional state concern.” *Lopez*, 514 U.S. at 580 (Kennedy, J., concurring).

102. Second, the *Bond* Court rejected the argument, pressed by the respondent, that a state’s waiver of any interference with its sovereignty should trump objections by individual citizens on Tenth Amendment grounds. See Brief for the Amicus Curiae Appointed to Defend the Judgment Below at 25, *Bond v. United States*, 131 S. Ct. 2355 (2011) (No. 09-1227) (“Particularly when the private party’s interests are not aligned with those of the State, as may well be true in this very case . . . private party suits have the potential to frustrate and undermine state policies and decisions.”). To the contrary, the Court held, a claim that “a law was enacted in contravention of constitutional principles of federalism . . . need not depend on the vicarious assertion of a State’s constitutional interests, even if a State’s constitutional interests are also implicated.” *Bond*, 131 S. Ct. at 2365. Whether the State has invited the federal incursion upon State authority is irrelevant. Only whether the individual claimant’s injury so much as “*might* not have come about if the matter were left for the [State] to decide” on its own matters to the analysis. *Id.* at 2366.

103. No doubt exists that if the State of Michigan were left to devise its own scheme for adjusting municipal debts – as is squarely within its authority under *Asbury Park* – the State *might* devise a system different from the United States Bankruptcy Code. Under the microscope of “greater citizen involvement” at the local level, the City, fulfilling the promise of federalism to its citizens, would be more directly constrained to create a process responsive to their needs – including, perhaps, the same needs which prompted the passage of the state constitutional amendment protecting the very diminishment or impairment of vested pension rights which the City now seeks to accomplish under the cover of chapter 9. Regardless, because chapter 9 creates for the City an exclusive process for adjusting its debts which is not identical to the process for doing so under state law – either as it currently exists or as it would exist if the state were to pass its own municipal composition law – AFSCME’s members, as creditors of the City, have standing to object to the City’s use of chapter 9 on federalism grounds.

C. This Court Lacks The Authority Or Jurisdiction To Decide Whether Chapter 9 Violates The United States Constitution Or Whether Pa 436 Violates The Michigan Constitution

104. This Court lacks jurisdiction to decide whether chapter 9 violates the U.S. Constitution (or for that matter whether PA 436 and the authorization for the City’s chapter 9 filing violates the Michigan constitution). As the Supreme Court recently explained in *Stern v. Marshall*, Article III of the Constitution assigns the job of resolving questions of constitutional law to the “judicial power of the United States.” 131 S. Ct. at 2609. Because bankruptcy judges are appointed under Article I—unlike judges appointed under Article III, who have life tenure and protection from removal or diminishment of salary – Congress may not grant to bankruptcy judges the right to exercise that power. *Id.*

105. No doubt exists either that the resolution of federal constitutional questions comes under the “judicial power” and is not subject to any exception thereto. *Stern*, building on the Court’s decisions in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), and *Granfinanciera, S.A. v. Nordberg*, 492 (U.S. 33) (1989), held that any narrow “public rights” exception permitting bankruptcy judges to issue certain final orders does not apply to any legal claim “independent of the federal bankruptcy law and not necessarily resolvable by a ruling on the creditor’s proof of claim in bankruptcy.” 131 S. Ct. at 2611. The federal constitutional claims of AFSCME’s members stem from the Constitution, not the Bankruptcy Code, and cannot be resolved by the very claims process whose legality is the subject of the constitutional challenge. Though technically an objection to eligibility, AFSCME’s state and federal constitutional claims in fact sound as affirmative allegations that their constitutional rights have been violated by the City’s filings, such as would be brought under Section 1983 (and were brought in the Webster Litigation) but for the automatic stay and its extension by this Court pursuant to Section 105 of the Code

106. Moreover, the instant constitutional challenges have nothing to do with a federal regulatory scheme. *Stern* is quite clear that the “public rights” exception is limited to claims asserting rights “integrally related to particular federal government action,” *i.e.*, claims challenging action undertaken pursuant to “a federal regulatory scheme” or whose resolution “by an expert government agency is deemed essential to a limited regulatory objective within the agency’s authority.” *Id.* at 2613. Where, as is the case with this purely constitutional argument, the determination of a legal question has nothing to do with the contours of federal regulations or expert agency fact-finding, the argument must be resolved by an Article III judge.

107. At its core, the “public rights” exception is designed to address situations where – unlike here – a party seeks to enforce rights which Congress has created by statute. *See Granfinanciera*, 492 U.S. at 51 (citations omitted). The constitutional challenges raised herein invoke no such public right; “Congress has nothing to do with it.” *Stern*, 131 S. Ct. at 2613. Nor do bankruptcy judges possess any special expertise at resolving constitutional challenges to their own authority or jurisdiction. “The experts in the federal system at resolving” constitutional questions such as this one “are the Article III courts, and it is with those courts that [this] claim must stay.” *Id.* at 2615. The words of the Supreme Court in *Stern* apply with equal force here:

What is plain here is that this case involves the most prototypical exercise of judicial power: the entry of a final, binding judgment by a court with broad substantive jurisdiction, on a [constitutional] cause of action, when the action neither derives from nor depends upon any agency regulatory regime. If such an exercise of judicial power may nonetheless be taken from the Article III Judiciary simply by deeming it part of some amorphous “public right,” then Article III would be transformed from the guardian of individual liberty and separation of powers we have long recognized into mere wishful thinking. [*Id.*]

108. While the City argues (*See Debtor’s Reply*, at pp. 5-8) that AFSCME seeks to radically expand *Stern* and that no private rights are at issue in this Court’s determination regarding the federal constitutional issues raised above and the state constitutional issues raised extensively below, in fact, critical private rights (including rights of City pension plan participants) are ultimately at issue here, including rights specifically raised prior to the City’s filing of its chapter 9 petition by parties in, *inter alia*, the Webster Litigation (and other state court proceedings).

109. The arguments against this Court’s authority or jurisdiction to render any decision regarding the constitutionality of chapter 9 or, for that matter, the constitutionality of

PA 436 have (since the filing of the Original AFSCME Objection) been extensively briefed in the Official Committee of Retiree's (the "**Retiree Committee**") (i) *Motion to Withdraw the Reference* [Docket No. 806] (the "**Withdrawal Motion**") and (ii) *Reply Memorandum of Law* in support of the Withdrawal Motion (Case No. 13-cv-13873, Docket No. 12] (the "**Reply Withdrawal Motion**"). The Withdrawal Motion is now pending before the United States District Court for the Eastern District of Michigan and rather than duplicate efforts, AFSCME hereby adopts **as if fully set forth herein** all of the arguments raised by the Retiree Committee in both the Withdrawal Motion and Reply Withdrawal Motion in support of why this Court lacks the authority or jurisdiction to render any decision regarding the federal constitutional questions raised above or the state constitutional issues raised below.

110. Accordingly, and with respect, this Court should immediately refer this constitutional challenge to chapter 9 along with the state constitutional challenges (raised below) to the United States District Court for the Eastern District of Michigan for adjudication.

II. THE CITY IS NOT ELIGIBLE TO FILE FOR CHAPTER 9 PROTECTION UNDER SECTION 109(C) OF THE BANKRUPTCY CODE

111. The City, as a purported municipal debtor, bears the burden of establishing it is eligible for relief under chapter 9. *See, e.g., In re City of Stockton*, 475 B.R. 720, 725-26 (Bankr. E.D. Cal. 2012) (citing cases); *In re Valley Health Sys.*, 383 B.R. 156, 161 (Bankr. C.D. Cal. 2008); *In re County of Orange*, 183 B.R. 594, 599 (Bankr. C.D. Cal. 1995); *In re Sullivan County Regional Refuse Disposal Dist.*, 165 B.R. 60, 72 (Bankr. D.N.H. 1994). "[A]ccess to Chapter 9 relief has been designed to be an intentionally difficult task." *Sullivan County*, 165 B.R. at 82; *see also In re Cottonwood Water and Sanitation Dist.*, 138 B.R. 973, 979 (Bankr. D. Colo. 1992) (explaining that, although the Bankruptcy Code, as remedial legislation, is generally broadly construed, "municipal bankruptcies involve significant

problems . . . not encountered in the private sector” and raise important constitutional issues, so that “Congress consciously sought to ‘limit accessibility to the bankruptcy court’ by municipalities.” (internal citation omitted)). As a result, “[t]he bankruptcy court’s jurisdiction should not be exercised lightly in chapter 9 cases.” *Sullivan County*, 165 B.R. at 82.

112. As demonstrated below and as will be further demonstrated at trial, the City necessarily fails to carry its burden with respect to the following eligibility requirements: (i) valid authorization under Michigan state law (section 109(c)(2) of the Bankruptcy Code); and (ii) good faith negotiations or impracticability of such negotiations (section 109(c)(5) of the Bankruptcy Code). Further, as has become apparent through discovery and as shown below (and AFSCME expects will be further shown at trial), the City’s evidence regarding insolvency is woefully inadequate, supported by no expert testimony or other reliable evidence, and accordingly the City fails to satisfy the insolvency requirement under section 109(c)(3) of the Bankruptcy Code.

113. Finally, the evidence reveals that the City’s bankruptcy petition was filed in bad faith and not motivated by a proper purpose under chapter 9 and should be dismissed pursuant to section 921(c) of the Bankruptcy Code. *See e.g., In re McCurtain Municipal Authority*, 2007 WL 4287604 at *3 (Bankr. E.D. Okla. Dec. 4, 2007) (holding that “the inability to pay debts as they become due depend[s] upon the inescapable quality of the obligation and the certainty that it cannot be met. Mere possibility or even speculative probability is not enough.”) (citations omitted).

114. Before proceeding to address the merits of each of these arguments regarding (i) valid authorization, (ii) good faith negotiations/impracticability of such negotiations, and (iii) bad faith filing, it bears noting that during Orr’s original deposition on September 16, 2013

(and subsequent October 4, 2013 deposition), Orr continued to hide behind the common interest privilege to essentially cover up any discussions or communications Orr had with State government officials under an alleged common interest privilege.

115. While this Court determined the common interest privilege may apply to such communications, AFSCME believes that the discussions and deliberations between City and State officials leading up to the City's filing for chapter 9 in the period prior to July 18, 2013 – discussions which the City and State have clearly worked hard to keep secret – relate to the crux of AFSCME's (and other objectors') arguments set forth below that the City filed its chapter 9 petition in bad faith, without real negotiations with significant creditors, and that the authorization was tailored by City and State officials to circumvent the Michigan constitution's Pensions Clause. Given the presumption that government is supposed to be transparent (*e.g.*, FOIA statutes), and the fact that significant e-mails between the State, City and the Law Firm (including between the State and Orr) were already produced in this and other litigations, to the extent that the common interest ever applied, such privilege has been waived and AFSCME **asserts its continued objection to the City and State refusing to give deposition testimony or provide documents** (some of which may have been waived by prior documents produced and deposition testimony given by the State and City in this and other proceedings) subject to an asserted common interest privilege.

116. AFSCME believes that it already has sufficient evidence to rebut the City's case regarding authorization, good faith negotiations, general bad faith filing, and insolvency, but notes that the City and State's continued reliance on a purported common interest should be

reconsidered and AFSCME provided further testimony and documents prior to trial so AFSCME can have proper due process.¹²

A. The City Is Not Authorized By Michigan State Law To Be A Debtor Under Chapter 9

117. The City contends that it is authorized to be a debtor under state law because Section 18 of PA 436, M.C.L. 141.1558, provides that “[u]pon receipt of the written approval [of the Governor], the emergency manager is authorized to proceed under chapter 9,” and further “empowers the emergency manager to act exclusively on the local government’s behalf in any such case under chapter 9.” *See* Eligibility Brief, p. 10. However, the Governor’s blanket grant of permission to file for bankruptcy under Section 18 of PA 436 violated the Michigan Constitution because it failed to explicitly prohibit the impairment or diminishment of vested pension rights, which the Governor was fully aware was the intention of the instant chapter 9 petition. Moreover, the appointment of the Emergency Manager under PA 436 violates the “strong home rule” provisions of the Michigan Constitution. Where, as here, a state constitution bars the purported state law authorization, a chapter 9 petition must be dismissed. *See In re City of Harrisburg, PA*, 465 B.R. 744 (Bankr. M.D. Pa. 2011) (analyzing Pennsylvania Constitution to determine whether city was authorized to file under chapter 9).

(i) Governor Snyder’s Authorization Of The City’s Petition Under Section 18 Of PA 436 Violated Article IX, Section 24 Of The Michigan State Constitution

118. As a Michigan Circuit Court Judge has already held, Michigan State law forbids authorization of the City’s bankruptcy petition insofar as it seeks to reduce accrued pension

¹² AFSCME did not appeal the Court’s common interest ruling which was interlocutory, but reserves the right to argue on appeal that the City and State’s failure to testify and produce documents on relevant subject matters, including regarding the EM and State’s plans for the EM commencing the City’s chapter 9 case, prevent AFSCME from a full and fair opportunity to litigate its objections to the City’s eligibility. Accordingly, AFSCME reserves all rights in this regard, including all appellate rights upon entry of a final appealable order regarding the City’s eligibility.

benefits in violation of the State Constitution. Yet the Emergency Manager has been very clear that he intends to use this chapter 9 proceeding to do just that. Indeed, the Emergency Manager had made that intent known well prior to requesting the Governor's permission to file under chapter 9. For instance, on June 14, 2013 he both (a) issued a "Proposal for Creditors" expressly stating that "there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons," and (b) publicly threatened, in an interview with the Detroit Free Press Editorial Board, that vested pension benefits will not be protected in a chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state laws protecting vested pension benefits will "not . . . protect" retirees in bankruptcy court.

119. Article IX, Section 24 of the Michigan Constitution (the "**Pensions Clause**") provides: "The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby." It means what it says: "[U]nder Art. 9, § 24, a retirement benefit *cannot be reduced.*" *Seitz v. Probate Judges Retirement System*, 189 Mich. App. 445, 474 N.W. 2d 125, 128 (1991) (emphasis added); see *also id.* at 127 ("Article IX, § 24 protects those persons covered by a state or local pension or retirement plan from having their benefits reduced." (citing *Detroit Police Officers Ass'n v. Detroit*, 391 Mich. 44, 69, 214 N.W.2d 803 (1974))).

120. Article IX, Section 24 completely protects the "receipt of pension benefits related to work already performed by" any City employees, whether active or retired – i.e., any pension benefits which have "accrued" and thus become "vested pension benefits" – from being diminished *at all*. *APTE v. Detroit*, 154 Mich. App. 440, 398 N.W.2d 436, 439-40 (1986); *Advisory Opinion re Constitutionality of 1972 PA 258*, 389 Mich. 659, 663 (1973)

(holding that “the intention of the people in adopting” Article 9, Section 24 was that “the benefits of pension plans are in a sense deferred compensation for work performed . . . which should not be diminished by the employing unit after the service has been performed.” (quoting 1 Official Record, Constitutional Convention 1961, 770-71)). Vested pensions rights covered by Article IX, Section 24 differ in this important respect from contractual benefits protected solely by Article I, Section 10 of the Michigan Constitution (the State’s “Contracts Clause”), which in a narrow set of cases may not prohibit the State from effecting “a modest, temporary impairment” of those other types of “governmental contracts . . . as a matter of last resort to address a fiscal emergency.” *AFT Michigan v. State*, 297 Mich. App. 597, 602, 825 N.W.2d 595 (2012) (noting that “[a]ll parties agree that . . . accrued financial benefits under Const. 1963, art. 9, § 24 . . . may not be impaired,” but concluding that the retiree health benefits in question were not “accrued financial benefits” within the wholesale protection of Article IX, Section 24 and thus proceeding to consider whether they could be impaired under the Contracts Clause); *BCBSM v. Governor*, 422 Mich. 1, 22-23, 367 N.W.2d 1 (1985) (“The federal balancing approach has been adopted by our Court for purposes of adjudicating state Contract Clause claims as well as federal Contract Clause claims.”).

121. Governor Snyder violated Article IX, Section 24 – and with it the requirement, set forth at 11 U.S.C. § 109(c)(2), that he be “empowered by State law to authorize” the City to become a debtor – when he failed to condition the City’s chapter 9 petition on the complete preservation of vested pension rights despite the Governor’s clear knowledge (admitted to by the Governor in deposition testimony provided on October 9, 2013, *see supra*, ¶28) that the Emergency Manager intended to use the Governor’s authorization to diminish constitutionally sacrosanct pension benefits. Section 18 allows the Governor to “place contingencies on a local

government in order to proceed under Chapter 9,” but does not explicitly require that compliance with Article IX, Section 24 be one of those contingencies. In this case, the Governor explicitly chose “not to impose such contingencies.” *See* Docket No. 1 at p. 16.

122. Section 18 is unconstitutional as applied where, as here, the Governor has abused his discretion by purporting to authorize a bankruptcy which “would violate the constitution.” *Taxpayers of Michigan Against Casinos v. State*, 478 Mich. 99, 107-08 & n.3 (2007) (even “broad discretion” granted to Governor by statute to act unilaterally must be exercised “within the limits of the constitution”). Moreover, Governor Snyder’s authorization has itself unconstitutionally caused an “immediate, concrete injury” to Council 25’s members by creating a “contingent liability” that their inviolable rights will be disregarded, causing them to reorder their financial affairs. *See Clinton v. New York*, 524 U.S. 417 (1998) (plaintiffs had standing to challenge constitutionality of executive action which, if left unchecked, would leave undisturbed potential future harm posing, by virtue of its magnitude, immediate and direct financial consequences to plaintiffs).

123. The strings left unattached to the Governor’s sign-off speak volumes because PA 436 is not ignorant of Article IX, Section 24. To the contrary, other sections of the Act explicitly reiterate that accrued pension benefits shall not be diminished or impaired outside the bankruptcy context. *See, e.g.*, MCL 141.1551(1)(d) (requiring that the Emergency Manager’s financial and operating plan provide for “[t]he timely deposit of required payments to the pension fund for the local government”); MCL 141.1552(i)(m)(ii) (allowing the Emergency Manager in certain circumstances to serve as the sole trustee of a municipality’s pension fund, but requiring that he “fully comply with . . . section 24 of article IX of the state constitution”); MCL 141.1553 (eliminating the “the accrual of postemployment benefits” of local government

officers but prohibiting “the impairment of vested pension benefits”). Thus the Governor’s contingency-free permission reads like an open invitation to the Emergency Manager to violate the State Constitution in bankruptcy, and therefore is unconstitutional.

124. In the alternative, this Court should hold that any authorization the Governor sought to provide under Section 18 carried with it the implicit contingency that all actions taken pursuant to it by the Emergency Manager, including the proposal of any plan of adjustment under 11 U.S.C. § 943, must comply with the State Constitution, including Article IX, Section 24. In his letter to the Emergency Manager giving unconditional permission to file under chapter 9, Governor Snyder observed that the Bankruptcy Code “contains the most important contingency – a requirement that the plan be legally executable” under 11 U.S.C. § 943(b)(4). Docket No. 1 at p. 16. Because a plan of adjustment which would reduce vested benefits would not be legally executable under the Michigan Constitution – and because, as Governor, Snyder is forbidden from authorizing any violation of the state constitution – his letter to the EM should, in the alternative, be construed as requiring compliance with Article IX, Section 24.

125. AFSCME and its members must not be made to wait to raise a § 943(b)(4) argument until the moment a plan is proposed – though of course they reserve the right to do so – because of the harm being suffered by the AFSCME Detroit Employees *now* as a result of their credible fear that the Emergency Manager will force them to accept the unconstitutional impairment or diminishment of their vested pension rights - the threat of which he is attempting to use as leverage against them *now*. Thus, if this Court plans to find the City eligible to file for bankruptcy under chapter 9, it should hold on the record *now* that any plan proposed by the City will have to comply with Article IX, Section 24 because the Governor could not have given permission to file under chapter 9 without including the implicit contingency that the

City's plan of adjustment not reduce vested pension benefits. Otherwise creditors with vested pension rights will continue to suffer an unconstitutional injury throughout the course of this bankruptcy as a result of the threats of the Emergency Manager , and the Court will be virtually powerless to prevent that harm unless and until the City proposes its plan of adjustment. To prevent that harm *now*, the Court at the very least should clarify, as a preliminary condition of eligibility, that these bankruptcy proceedings cannot reduce vested pension benefits. *Cf. Seitz*, 189 Mich. App. at 456 (declining to “throw out” a pension-reform statute in its entirety where none of the plaintiff state court judges could show that they would receive reduced pension benefits under said statute, but clarifying that the state was required “to honor its obligations” not to enforce the statute wherever doing so would in fact result in a reduction to a retired judge’s vested pension rights). *See also Lansing School Educ. Ass’n v Lansing Bd. of Educ.*, 487 Mich. 349, 372 n.20; 792 N.W.2d. 686 (2010) (declaratory judgment appropriate under Michigan law to accomplish a “sharpening of the issues raised” (quotation omitted)).

126. Whatever its route – either by holding that the Governor violated Article IX, Section 24 by granting the City blanket permission to file under chapter 9 despite knowing full well that the Emergency Manager plans to use chapter 9 to cram down unconstitutional pension reductions, or that the Governor’s permission carried with it the implicit condition that Article IX, Section 24 not be violated in bankruptcy– this Court must, when applying state law, hold the Governor to the truism that he cannot take actions “that would violate the constitution” even where he is acting with “broad discretion” delegated to him by statute. *See Taxpayers of Michigan Against Casinos, supra*.

(a) Despite the City’s Arguments to the Contrary, Parties Have Already Been Unconstitutionally Harmed By The Governor’s Authorization

127. Addressing the above arguments, the City in the Debtor’s Reply does not contest that (1) “the Emergency Manager has been very clear that he intends to use this chapter 9 proceeding to” “reduce accrued pension benefits” and “had made that intent known well prior to requesting the Governor’s permission to file under chapter 9,” *supra* at ¶ 118; (2) Governor Snyder’s grant of permission to file under chapter 9 has caused an “‘immediate, concrete injury’ to Council 25’s members by creating a ‘contingent liability’ that” they will have to “reorder their financial affairs” to address possible diminution to their pensions, *supra* at ¶ 122; (3) the EM is using this harm, which is being suffered by the AFSCME Detroit Employees now, as leverage against them in this bankruptcy, *supra* at ¶ 125; and (4) the Governor “cannot take actions that would violate the constitution even where he is acting with broad discretion delegated to him by statute,” *supra* at ¶ 126. Moreover, since the City filed its reply brief, the Governor has testified to the fact that he was entirely aware that his purported authorization of this bankruptcy was intended to enable the reduction of vested pension benefits which would not be possible outside of bankruptcy court due to Article IX, Section 24 of the Michigan Constitution.

128. These four uncontested points, taken together with the Governor’s testimony, are dispositive in answering the City’s chief counterargument – made multiple times in only slightly varied terms (*see, e.g.*, Debtor’s Reply, at pp. 21-22; 28-31) – that the Governor cannot have violated the state constitution’s “Pensions Clause” by granting the City permission for bankruptcy, and the EM could not have done so by filing the chapter 9 petition, because, the City contends, neither act in and of itself impaired or diminished any vested pension rights.

129. Boiled down, the City's claim is that no retiree has yet suffered any injury as a result of the Governor's action. *See, e.g.*, Debtor's Reply, at p. 22 (emphasizing that "the City's pension obligations have remained unimpaired"). Not so. Contrary to the City's argument – and left entirely unaddressed in its briefing – is the fact that the threat of diminishment posed by the Governor's grant of permission is presently causing real economic harm to vested pensioners, diminishing the value of their vested pensions right now due to the uncertainty surrounding continued vitality of those pensions in bankruptcy.

130. An imminent threat of future harm provides standing to assert a constitutional injury, even where that injury stems from the contingent effects caused by a plan of reorganization in bankruptcy. *In re Global Indus. Technologies, Inc.*, 645 F.3d 201, 213 (3d Cir. 2011) (en banc) ("[A]n injury's having a contingent aspect does not necessarily make that injury incognizable."). Thus, in *Clinton v. New York*, the Supreme Court made crystal clear that where an executive branch officer takes an action which could cost a private party money, but where that cost remains contingent on the actions of another branch of government, the private party has already experienced real, justiciable harm to its "borrowing power, financial strength, and fiscal planning." *Clinton*, 524 U.S. at 430-31. The Court in *Clinton* analogized this injury to the injury stemming from a pending trial in a "multibillion dollar" case, *id.*, which is not unlike the harm here. Indeed, the testimony of many individual objectors before this Court on September 19 confirmed the real harm being caused right now to the pension rights of retirees. *See generally* September 19 Hearing Transcript.

131. For an act of a state to impair a contract, that act need not change the contract terms itself; it is enough that the state act makes impairment possible in the future. Just as "the First Amendment is implicated whenever free speech is *either threatened* or impaired," so too

is “the Contract Clause [i]mplicated whenever the *passage* of a law impairs the ability to negotiate and enter into contracts” even if no term of a contract currently in effect has yet been altered pursuant to the challenged law. *Donohue v. Mangano*, 886 F. Supp. 2d 126, 151 (E.D.N.Y. 2012). In *Donahue*, the County passed a law which, much like PA 436, permitted the cancellation of CBAs upon the order of a county executive. *Id.* at 134. Although no such executive order had yet been issued, the court found that the underlying law had caused an irreparable harm warranting a preliminary injunction because the specter of future contract cancellation had effectively impaired a number of existing contracts.

132. In reaching its conclusion, the *Donahue* court made two crucial observations about the harm caused by the law at issue there, despite the law itself not yet having caused the formal cancellation of any actual contracts. First, “[i]f a public employer can gain through legislation what it gave up during good faith negotiations . . . the negotiations that bore [that] agreement become meaningless.” *Id.* at 153. Second, “even if” no further action is taken to cancel or alter a particular contract, “this law arguably places a knife to the throat of the unions to coerce them into making certain concessions, under the threat of the [government] taking more egregious actions” in the future pursuant to the passed law. *Id.* The same, of course, is true as a result of the Governor’s grant of permission and the filing of the City’s bankruptcy petition: regardless of what happens to vested pension rights in bankruptcy, the mere availability of bankruptcy to the City “places a knife to the throat of the unions” and retirees “to coerce them into making certain concessions” of their vested pension benefits. The retirees experience this harm whether or not their pensions are cut in bankruptcy pursuant to a voluntary settlement or a cram-down. As such, it violates the Pensions Clause under any reasonable analysis.

133. In any case, this Court can only confirm a plan if “the debtor is not prohibited by law from taking any action necessary to carry out the plan.” 11 U.S.C. § 943(b). In *In re Sanitary & Improvement District, No. 7*, 98 B.R. 970 (Bankr. D. Neb. 1989), the court held that a plan could not be confirmed where that plan required less than full payment to bondholders, because although such a plan is generally permissible under chapter 9, Nebraska law required full payment to bondholders. *Id.* at 974-75. The important insight of *Sanitary & Improvement District* is that implementation of a plan of adjustment ultimately requires “action” *attributable to the debtor*, which must honor the requirements of state law. Accordingly, any reduction to pension benefits ordered by this Court would ultimately require acts attributable to the City, and thus would violate the Pensions Clause and be unconfirmable under section 943 of the Bankruptcy Code. This is especially true with respect to pension benefits because the state and its instrumentalities are forbidden by the language of the Pensions Clause from reducing vested pensions by any means whatsoever (“shall not be diminished or impaired *thereby*”). With respect to other contractual rights, the plain language of the contracts clauses of the federal and state constitutions require only that no “law” impairing such rights “be enacted.”

134. No doubt aware that any plan reducing vested pension benefits could be effectively challenged under section 943 of the Bankruptcy Code, the City argues that such a determination must wait until the City proposes a plan, so that the City in the meantime can wield the uncertainty of the outcome of such a challenge as leverage over the retirees to force them to agree to a plan which unconstitutionally reduces their pensions. This is precisely the type of injury which the *Donohue* court found to constitute an impairment warranting an injunction, and therefore this issue should be addressed *now*.

135. *In re City of Stockton*, 493 B.R. 772 (Bankr. E.D. Cal. 2013) – which the City contends stands for the proposition that “the ‘main event’ of pension impairment is not properly addressed until well after the eligibility stage,” (Debtor’s Reply, at p. 22) – is easily distinguishable. In *Stockton*, no creditor challenged that the city’s petition was not authorized by state law as it related to pensions. The actual statement which the City relies on is mere *dicta* in *Stockton* referring to the fact that there, unlike here, the pension system (CalPERS) was “bellowing and pawing the sidelines during the eligibility phase” rather than challenging eligibility. 493 B.R. at 797. Thus, the *Stockton* eligibility opinion is completely inapposite. AFSCME, meanwhile, has identified no other bankruptcy court which has held that a state constitutional protection for pensions is not relevant at the eligibility stage. This Court thus writes on a clean slate.

136. Relatedly, the City completely misunderstands AFSCME’s argument as to why the Governor’s failure to attach conditions to his grant of permission to the EM to file under chapter 9 has harmed the Detroit AFSCME Employees’ rights to their vested pensions. Contrary to the City’s mischaracterization, AFSCME’s argument is *precisely* that the State must “*refrain* from [diminishing or] impairing pensions,” Debtor’s Reply at 29 – it is just that once the Governor was aware of the unconstitutional threat to pension rights posed by the EM’s plan to file under chapter 9, the Governor *failed to refrain* from injuring retirees by purporting to authorize the petition *without* exercising his discretion to avoid an unconstitutional result by attaching contingencies thereto. As noted above, the City has not contested that the Governor’s exercise of his discretion is no excuse for taking actions which violate the state constitution. See ¶ 126, *supra*.

137. The City’s fallback argument that any such conditions would have been pre-empted by the Bankruptcy Code ignores the requirement in section 903 of the Bankruptcy Code that a State may “control . . . a municipality of or in such State” with respect to chapter 9. Section 903, of course, is the provision on which the City excessively relies in its attempt to ward off AFSCME’s federalism challenge to chapter 9 writ large. But the City cannot have it both ways. Especially if section 903 of the Bankruptcy code is anywhere close to as forceful as the City contends elsewhere in its papers (*see, e.g.*, Debtor’s Reply, at pp. 17-18), the correct rule from *Sanitary & Improvement District* is as follows: because Section 943(b) ultimately requires that any confirmable plan not cause the debtor to violate state law, state law does definitively constrain a chapter 9 debtor. 98 B.R. at 974-75. Any other rule leads inexorably to an unconfirmable plan, or else redoubles the inherent federalism problems of chapter 9, regardless of pre-emption issues.

(b) Michigan’s Pensions Clause Absolutely Protects Vested Pension Rights

138. The City’s second core counterargument in the Debtor’s Reply – that Michigan’s Pensions Clause does not absolutely protect vested pension rights (Debtor’s Reply, at pp. 22-31) – contradicts both the plain language of the clause and state court decisions based thereon. For starters, the text of the Pensions Clause differs significantly from both the federal and state contracts clauses (together, the “Contracts Clauses”). While the contracts clauses, each found in Article I of its respective constitution, only prohibit any “law *impairing* the obligation of contract,” the Pensions Clause, found in Article IX of the Michigan Constitution, states that pension benefits “shall be a contractual obligation thereof *which shall not be diminished or impaired* thereby.”

139. As the Attorney General has noted, “[t]he Constitution and the language of § 24 is understood according to its plain meaning,” by virtue of which it “is an impermeable imperative.” See Attorney General Bill Schuette’s Statement Regarding the Michigan Constitution and the Bankruptcy of the City of Detroit [Docket No. 481], at pp. 14-15. Importantly, Section 24 prohibits not only the impairment of pensions – arguably a prohibition coextensive with the contracts clauses, which also speak in terms of impairment – but *also* their diminishment. Because the drafters of the amendment used the disjunctive word “or” to separate the word “diminished” from the word “impaired” in Section 24, “[c]anons of construction” require that each mean something different. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979). As emphasized by AFSCME – but entirely ignored by the City – that difference is reflected in the Michigan Court of Appeals’ holding that “under Art. 9, § 24, a retirement benefit *cannot be reduced.*” *Seitz*, 474 N.W. 2d at 18.

140. The City’s “strained construction,” in contrast, “would have us ignore the disjunctive ‘or’ and rob the term” *diminished* “of its independent and ordinary significance[.]” *Reiter*, 442 U.S. at 338-39. Had the framers of the Pensions Clause wished it to mirror the Contracts Clause, they could easily have ended the Pensions Clause with the phrase “shall be a contractual obligation.” Or they could have limited the clause to read “shall be a contractual obligation thereof which shall not be impaired thereby.” But they did not.

141. Instead, the framers drafted, and the People of Michigan ratified, broader language, which they placed in an entirely different section of the Constitution – one which expressly controls, in minute detail, the financial decision-making of state and local governments. For example, and further indicating how strongly the people of Michigan sought to protect their pensions through constitutional amendment, Article IX, § 24 also includes an

affirmative requirement that all pension benefits “arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.” The Pensions Clause must be read in the context of the entirety of Art. IX, § 24, and its comprehensive dual protection of vested pension rights both from diminishment and from underfinancing.

142. Thus properly read, Art. IX, § 24 belies the City’s contention that the limited intent of the Pensions Clause is to make pension benefits akin to any other contract. To the contrary, as explained by one of its chief drafters, § 24 was designed to acknowledge that pension benefits constitute “deferred compensation for work performed . . . *which should not be diminished by the employing unit after the service has been performed.*” 1 Official Record of the State of Michigan Constitutional Convention of 1961, 770–71. As such – and as argued *supra* in ¶ 120, but, yet again, entirely unanswered by the City – Michigan courts have held that vested pensions are different from other types of “government contracts,” which may be subject to “a modest, temporary impairment . . . as a matter of last resort to address a fiscal emergency.” *AFT Michigan*, 297 Mich. App. at 602. Ironically, the sole precedential Michigan opinion that the City cites in support of its argument that § 24 merely grants “contractual status” to pension benefits – *Kosa v. State Treasurer*, 292 N.W. 2d 452 (Mich. 1980) – uses that phrase offhandedly in prefatory language, *see id.* at 455, and then goes on to emphasize in its substantive discussion “the firmly established right of public employees to receive pension payments as those payments become due.” *Id.* at 460.

143. Against this overwhelming evidence that the people of Michigan ratified Article IX, Section 24 in order to render public pension benefits inviolable, the City contends that because the amendment fails to mention municipal bankruptcy, it must not have been intended

to be able to forestall a filing under chapter 9. Debtor's Reply at 25-26. In support of this argument, the City cites to an advisory opinion of the Michigan Supreme Court holding that the Pensions Clause does not create a right to receive pensions tax-free. *Id.* (citing *In re Constitutionality of 2011 PA 38*, 806 N.W.2d at 697, n.24). This argument confuses the right with the remedy. The issue in *In re Constitutionality of 2011 PA 38* was the scope of the right protected by the Pensions Clause, not the ability of that constitutional right to trump a particular state statute. As with other constitutional rights, the absolute right to vested pension benefits constrains all state statutes when they come into conflict with the right, as here. With respect to an *as applied* challenge like AFSCME's, concluding otherwise would be akin to saying that the Governor could grant an emergency manager permission to file under chapter 9 knowing full well that the EM proposed to seek approval from the bankruptcy judge for a plan loaning Detroit's credit to private investors in violation of Art. VII, § 26 – a right only protected by the state constitution.

144. Therefore, even assuming *arguendo* that the City is correct that the contracts clause in the U.S. Constitution “does not pose any obstacle to chapter 9,” (*see* Debtor's Reply, at p. 24), these important differences between the contracts clauses and the Pensions Clause would avoid what the City characterizes as the “absurd result” that no Michigan municipality “could ever enter chapter 9, where the impairment of contracts is always on the table.” Debtor's Reply, at pp. 27-28. For as the City admits, Michigan courts interpret Michigan's contracts clause and the federal contracts clause “as having the same effect.” Debtor's Reply, at p. 23 n.25 (citing *Fun 'N Sun RV, Inc. v. Michigan (In re Certified Question)*, 527 N.W. 2d 468, 473-74 (Mich. 1994)). This would also presumably be true in most other states, because contracts clauses in state constitutions have largely been interpreted as “mirroring provision[s]”

subject to the same Supreme Court jurisprudence as the federal contracts clause, a result “consistent with the notion that a substantively identical state constitutional protection against impairment could not supplement the federal protection.” See Darryl B. Simko, *Emerging Issue in State Constitutional Law: Of Public Pensions, State Constitutional Contract Protection, and Fiscal Constraint*, 69 Temple L. Rev. 1059, 1077-78 (1996).

145. When dealing with state law other than a state constitutional provision which only reiterates its federal counterpart, state law constraints on bankruptcy should govern unless expressly rejected by the Code. See *In re Sanitary & Improvement Dist., No.7*, 98 B.R. 970 (Bankr. D. Neb. 1989). Chapter 9 explicitly recognizes this fact by requiring in Section 109(c)(2) that petitions be “specifically authorized . . . by State law” at the outset, and in Section 943(b)(4) that a plan not be confirmed in the end unless “the debtor is not prohibited by law from taking any action necessary to carry out the plan.” After all, even though federalism concerns are less of a concern for bankruptcies filed under other chapters of the Code, in those proceedings too incorporation of substantive state law constraints is common. See, e.g., *Butner v. United States*, 440 U.S. 48, 56 (1979) (“[T]he federal bankruptcy court should take whatever steps are necessary to ensure that the mortgagee is afforded in federal bankruptcy court the same protection he would have under state law if no bankruptcy had ensued.”).

146. The recent reported *Stockton* and *Vallejo* decisions cited by the City, see Debtor’s Reply at 26-27, are not to the contrary. In the *Stockton* case, as noted *supra*, no party contended that a constitutional protection for pensions rendered the state ineligible for chapter 9 for want of state-law authorization under Section 109(c)(2). In fact, the opposite was true at the eligibility stage: prior to bankruptcy, the municipal debtor did *not* propose “to impair its pension obligation to the California Public Employees’ Retirement System (“CalPERS”),” and

other creditors therefore complained that the debtor had failed to negotiate in good faith because the debtor should have been “more aggressively attacking its pensioners by way of CalPERS.” 493 B.R. at 782, 786. Nor was a § 109(c)(2) challenge brought in *Vallejo*. See *In re City of Vallejo*, 408 B.R. 280, 285 (B.A.P. 9th Cir. 2009) (addressing eligibility problems solely under §§ 109(c)(4) and 109(c)(5)).

147. Finally, the City is flat wrong that *Prichard* approved reductions to vested pension benefits despite “[s]imilar constitutional protection for pensions” in Alabama. Debtor’s Reply, at p. 27. In support of the purported similarity between Michigan and Alabama law, the City cites to *Bd. of Trs. v. Cary*, 373 So. 2d 841 (Ala. 1979), which held that vested pension benefits could not be altered by state legislation by virtue of Art. 1, § 22 of the Alabama Constitution of 1901. 373 So. 2d at 842 (per curiam). But Art. 1, § 22 of the Alabama Constitution is merely Alabama’s catch-all contracts clause, which, like Art. 1, § 10 of the Michigan Constitution, just “reaffirms . . . the inhibitions of the Federal Constitution (art. 1, § 10) against ex post facto laws, or laws impairing the obligations of contracts.” *Dunn Const. Co. v. State Board of Adjustment*, 234 Ala. 372, 386 (1937). See also *Opinion of the Justices*, 598 So.2d 1362, 1365 (Ala. 1992) (interpreting Art. I, Section 10 of the United States Constitution and Article I, Section 22 of the Alabama Constitution in tandem); *Sweet v. Wilkinson*, 252 Ala. 343, 348 (1949) (applying Supreme Court precedent about the federal contracts clause to interpret Article I, Section 22 of Alabama Constitution). Alabama thus has no explicit protection for pensions in its state constitution distinct from the federal contracts clause. Moreover, the City cites no evidence to suggest that pensioners objected either to (a) Prichard’s eligibility to file for chapter 9 due to lack of state-law authorization under § 109(c)(2), or (b) Prichard’s plan of reorganization due to violation of state law under § 943(b).

Accordingly, the City's reliance on *Prichard* is simply incorrect, and the City's arguments in this regard should be rejected.

(ii) PA 436 Violates The Strong Home Rule Provisions Of The Michigan Constitution

148. "Michigan is strongly committed to the concept of home rule," a structural state-local federalism under which "[t]he charter of a city stands as its 'constitution,'" and "once adopted by a vote of the electors, a city's charter may be amended only by a vote of the electors." *Bivens v. Grand Rapids*, 443 Mich. 391, 400-01 (1993) (quotations omitted) (striking down local ordinance which conflicted with local charter because local government could not "effectively amend the charter without subjecting the amendment to the scrutiny and approval of the local electorate"). This "strong home rule" regime reflects a bedrock principle of state law, which has been true for each of Michigan's three Constitutions beginning with the Constitution of 1850 and continuing through the current Constitution of 1963: all officers of cities are to "be elected by the electors *thereof*, or appointed by such authorities *thereof*," not by the central State Government. See *Brouwer v. Bronkema*, 377 Mich. 616, 652, 141 N.W.2d 98 (1966) (quoting *People ex re. Le Roy v. Hurlbut*, 24 Mich. 44, 65 (1871) (Cooley Court)).

149. In blatant disregard of this constitutional mandate, PA 436 – pursuant to which the Emergency Manager contends he has authority to file under chapter 9 on behalf of the City – strips the local electorate of its constitutional right to select its own officials, as well as to "frame, adopt and amend its charter" under Article VII, Section 22; to approve, by a two-thirds majority, any local act of the state legislature under Article IV, Section 9; and to be subject to administrative authority only where that authority is guided by standards created by the legislature and subject to due process of law, see *BCBSM v. Governor*, 367 N.W. 2d 1, 51 (Mich. 1985). For each of these reasons, PA 436 offends the "strong home rule" of Detroit,

and the Emergency Manager is not lawfully authorized to file for bankruptcy on behalf of the City or to act as its representative during chapter 9 proceedings

(a) **PA 436 Violates The Right Of The People Of Detroit To Select Their Own Local Officers And To Structure Their Own Government Via Charter**

150. In one of its first cases interpreting the meaning of Michigan’s current Constitution, the Michigan Supreme Court reaffirmed the hallmark holding of the legendary Cooley Court: city residents have the state constitutional right to select their own local representatives. *Brouwer*, 377 Mich. at 651-61. As Justice Cooley held in his seminal *Hurlbut* opinion – the wellspring of the so-called “Cooley Doctrine” of local government, *see* David J. Barron, *The Promise of Cooley’s City: Traces of Local Constitutionalism*, 147 Univ. Penn. L. Rev. 487 (1999) – the right “to choose in some form the persons who are to administer the local regulations” is a right of local electors so basic to the “traditions, practice and expectations” of Michigan that it undergirds the State’s Constitution even in the absence of express constitutional language to that effect. *Hurlbut*, 24 Mich. at 29-33.

151. Having lived under the Cooley doctrine for 90 years at the time of Michigan’s most recent constitutional convention, the framers of the 1963 Constitution would have understood *Hurlbut* as an even more foundational constitutional norm than Cooley himself. Indeed, the framers sought, in adopting the strong home rule regime which as now set forth in Article VII, to continue the “trend . . . toward strengthening inherent local government powers” which Justice Cooley “led” when he set forth the “rule” of local self-government in *Hurlbut*. 1 Official Record, Constitutional Convention 1961, 1052-53. As a result, Article VII provides that “[t]he legislature *shall* provide by general laws for the incorporation of cities and villages,” Art. VII, § 21; that under those general laws, “the electors of each city and village *shall* have the power and authority to frame, adopt and amend its charter,” Art. VII, § 22; and that “[t]he

provisions of this constitution and law concerning counties, townships, *cities* and villages *shall* be liberally construed *in their favor*,” Art. VII, § 34. (Emphases added.)

152. PA 436 offends Article VII in myriad ways. First, it effectively adopts a new charter for Detroit which substitutes the *unelected* Emergency Manager for the Mayor *and* City Council collectively – including by granting the EM the power to, *inter alia*, issue orders directing the mayor and city council; set the local government budget unilaterally; enter into, and break, contractual agreements for the City, including CBAs, loans, and property transfers; seize control of the pension fund from its trustees; and, most relevant here, act “exclusively on the local government’s behalf in chapter 9.” See MCL 141.1549(2) (“Upon appointment, an emergency manager shall act for and in the place and stead of the governing body and the office of chief administrative officer of the local government.”); MCL 141.1550(1) (“An emergency manager shall issue to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government the orders the emergency manager considers necessary[.]”); MCL 141.1552 (EM may amend local government budget; make contracts; terminate CBAs; enter loan agreements; transfer property); MCL 141.1558 (EM directs bankruptcy).

153. It is a direct violation of *Hurlbut* and *Brouwer* that the EM serves in the role of mayor and city council without being selected by Detroit.

154. Moreover, despite the existence of detailed procedures in the Detroit Charter concerning the method of passing local laws and the interplay of authority between the local legislative and executive officers, the EM may even exercise, according to PA 436, all authority of the mayor and city council *simultaneously* “concerning the adoption, amendment, and enforcement of ordinances or resolutions of the local government” and “[t]ake any other

action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government.” MCL 141.1552(1)(dd-ee).

155. To the drafters of the current Michigan Constitution, PA 436 would appear to parody Article VII. The provisions of Article VII directing the legislature to provide for the incorporation of cities to be governed by charters written by the cities’ voters is “mandatory,” and even before the 1963 Constitution – which *increased* the home rule powers of cities – it was well-established that, in executing that mandate, ““under the Constitution the legislature [does] not have the power to change the law as embodied in the charter [of a local government] without a ratifying vote of the village electors.” *Utica State Sav. Bank v. Village of Oak Park*, 279 Mich. 568, 273 N.W. 271, 274 (1937) (state statute retroactively ratifying all contracts for purchase of lands by local governments could not ratify land contract which was unlawful under local charter). This is because “the power vested in the [local] electors by the Constitution” to amend their own charter necessarily requires that “the Legislature does not have the power to alter or amend a [local] charter without the approval of the [local] electors.” *Id.* at 577. Nor does the Legislature have the power to enter into contracts on behalf of the local government. *Id.* at 578. Yet PA 436 purports to empower Emergency Manager to assume all the powers of the local charter – including the ability to bind a city by contract for generations to come – without the core structural accountability for those powers baked into the charter in the form of local elections and separation of powers.

156. While it cannot be denied that the state possesses a robust role in demarcating the limits within which a municipality may structure the form of its government via charter, PA 436 swallows whole the rights reserved to local electors in Article VII to execute, within limits,

their own vision of local government. For instance, typically “municipal officers can bind a municipality only if they are empowered to do so by the city charter.” *Manning v. City of Hazel Park*, 202 Mich. App 685, 691; 509 N.W. 2d 874 (1993). The Emergency Manager, however, possesses no such constraint under the terms of PA 436, which grants him his extreme powers “notwithstanding any charter provision to the contrary.” MCL 141.1552(1). Under PA 436, therefore, the Emergency Manager not only violates the charter by purporting to act with all of the power of the entire municipal government simultaneously as a matter of procedure, but also by doing so in direct violation of any substantive limitation that charter places on the local government. In effect, each time the Emergency Manager takes an act which contravenes the City Charter – a charter which, to be clear, has not formally been repealed – he decrees an amendment to that charter. But, as discussed *supra*, Detroit’s citizens have a constitutional right to be the ones to amend their own charters. Here too PA 436 egregiously violates Article VII.

157. Article VII does not permit such a scorched earth approach to local democracy. The Emergency Manager’s purported statutory authority to act for the City is antithetical to Article VII, and therefore the Emergency Manager was never authorized by state law to file the City’s chapter 9 petition. As fundamentally, the “City” has therefore not *voluntarily* filed a petition under Section 301 as incorporated by Section 901(a) of the Bankruptcy Code.

(iii) Neither The City Nor State Pleadings Answer How Detroit’s Voters Could Have Constitutionally Lost Their Right To Local Self-Government Entirely, And The Loss Of That Right Invalidates Actions By The Emergency Manager Inextricably Intertwined With The Chapter 9 Petition And The Case Itself

158. Contrary to the City’s assertion in the City’s reply brief (*see* Debtor’s Reply, at p. 39), the EM’s power to set budgets, pass ordinances, and approve contracts under PA 436 is

inextricably intertwined with the lawfulness of the City's chapter 9 petition. The EM wielded these core local government powers as he allegedly endeavored (unsuccessfully, in AFSCME's view) to satisfy the requirements for a chapter 9 filing: negotiations with creditors, work on the City's budget as related to solvency, and so forth. The bankruptcy filing resulted from a process directed by the EM using the virtually absolute powers accorded him by PA 436, despite his having not been elected. The exercise of those powers under PA 436 is not severable from the EM's power to file for bankruptcy under Section 18. Because he lacked the power to take those predicate acts, and for the independent reason that he was not selected by Detroit's voters, the culminating chapter 9 filing was unlawful. For the same reason, the City did not voluntarily file its petition.

159. The pre-filing orders of the EM, which are part of the public record, demonstrate the breadth of the EM's exercise of purely local powers, ranging from his explicit suspension of the City Charter, to discrete financial decisions about City expenditures, to control over potential attempts by the City to raise revenue. For example, the Order No. 10, issued by the EM on July 8, 2013, suspends the Detroit Charter's requirement for filling vacancies on City Council. See <http://www.detroitmi.gov/Portals/0/docs/EM/Order%2010.pdf> (last accessed Oct. 7, 2013). Order No. 6, issued by the EM on May 2, 2013, directs the precise amount of deposits from the City to the Public Lighting Authority. See <http://www.detroitmi.gov/Portals/0/docs/EM/Order%206.pdf> (last accessed Oct. 7, 2013). Order No. 5, issued by the EM April 11, 2013, requires that the EM approve in writing of any transfers of the City's real property. <http://www.detroitmi.gov/Portals/0/docs/EM/Order%205.pdf> (last accessed Oct. 7, 2013).

160. While the State correctly asserts that Article VII, § 21 of the Michigan Constitution subjects municipalities to general laws related to taxation and debt (*see* State’s Response, at p. 14), the State Constitution contains no like limitation for run-of-the-mill real estate contracts, public service expenditures, and other purely local acts related to the City’s budget and fiscal self-management. Yet, as the State also admits, PA 436 “transfers authority to perform these duties and responsibilities to the Emergency Manager” (*see* State’s Response, at p. 14), thus diverting municipal self-governance at the purely local level from the City’s elected officials to an unelected “contractor to the State of Michigan” as the EM has described himself. *See* Orr 10/4 Transcript, at 454:10-14. This is not a case in which a particular local ordinance collides with a statewide regulatory scheme, as in *City of Taylor v. Detroit Edison Co.*, 475 Mich. 109 (2006). It is, instead, a comprehensive seizure of the City’s right to self-governance in all areas, no matter how local the question at hand.

161. Similarly, while the City may be right that, at a broad level, the Detroit Charter, Home Rule Cities Act, and case law recognize limitations on the “exercise of [City] power” stemming from general state laws, Detroit Charter, § 1-102, such general state laws do not determine *who* exercises the powers granted by the State to the City or inherent to the City’s purely local affairs. Even assuming such limitations make it lawful for the legislature to pass a general statute granting certain powers to city councils rather than mayors, *see, e.g., Detroit City Council v. Detroit Mayor*, 238 Mich. App. 442 (2009), it is another thing entirely for the state legislature to designate *who* those city council members are, how they are selected, or who is to manage quintessentially local affairs on a day-to-day basis. These are questions “of purely local character” assigned by Article VII to the will of the Detroit voters regardless of whether PA 436 is a general law. *See id.* at 175 (As against the City Charter, a general state “statute

controls in all matters *which are not of purely local character.*” (emphasis added)). The EM has nevertheless wielded his power under PA 436 in purely local matters, even suspending the City Charter requirements for the selection of City Council members.

162. On such basic questions of self-determination, the rule remains that the local electors must select their own local government officials, whatever the powers of those officials may be, and retain control over purely local matters. *See Brouwer*, 377 Mich. at 652. As the State concedes, the powers of the legislature to amend City Charters are limited “to matters of general concern,” and “the power to amend a charter is vested in the local electors in purely local matters.” *See State’s Response*, at p. 12. Who is to govern them is one such “purely local matter,” firmly established by the Cooley Doctrine as ratified by Article VII.

163. The City’s two attempts to shield PA 436 from the Cooley Doctrine both fail. Its first response – that the State may destroy a municipality entirely (*see Debtor’s Reply*, at p. 40) – is inapposite, because, of course, the State has done no such thing here, and Detroit retains the rights granted to it by the State Constitution as a municipality.

164. The City’s second response – that the legislature has authority to temporarily replace local officials (*see Debtor’s Reply*, at p. 40) – mischaracterizes the *Hurlbut* opinion. In *Hurlbut*, Justice Cooley stated in dicta that during the “inauguration and modification of local government” forms – *i.e.*, when creating entirely new formats for permanent local government – the State may make “provisional appointments to put the new system in operation.” 1871 WL 3042, at *35. PA 436, in contrast, makes no provision for any new or modified permanent form of municipal government in Detroit. Instead, it simply seizes the existing reins of power from elected officials and transfers them to an unelected individual.

165. Moreover, while the appointment of the EM *may* prove to be temporary – if, for instance, the financial emergency ends or the City Council removes the EM by a 2/3 vote after he completes 18 months of service (*see* MCL § 141.1549) – it may also prove to be indefinite if the financial crisis is not deemed to have ended and the local government cannot muster the 2/3 of City Council votes and the mayoral approval which are both required for removal. Where, as here, the EM has asserted the power to suspend the charter as it pertains to the makeup of City Council, the ability of the EM to perpetuate his tenure is all the more real. Moreover, the Governor might simply try to reappoint the EM, as he successfully did the Emergency Manager of the Detroit Public Schools. *See Davis v. Emergency Manager for Detroit Public Schools*, 491 Mich. 899, 903 (Young, C.J., concurring) (“Neither MCL 141.1501 et seq. nor the statutes applicable to emergency managers preclude reappointment of a person to the office of emergency manager if that person previously held the position.”).

166. As to the State’s Response, it is curious – and telling – that the State’s otherwise comprehensive and strongly worded reply to AFSCME’s home rule objections neglects to cite either the *Hurlbut* case or the Cooley Doctrine at all. The State does appeal to federal case law holding that local governments are not sovereign entities subject to the “one person, one vote” rule of the federal Equal Protection Clause and are subordinates of the State for federal constitutional purposes. State’s Response, at pp. 15-16. However, the case on which the State relies, *Sailors v. Board of Education of Kent County*, considered *only* whether federal constitutional law created a *federal* right to elect “state or local officers of the *nonlegislative character*.” *See* 387 U.S. 105, 108 (1967) (emphasis added). The Cooley Doctrine, in contrast, is a rule of *state* constitutional law, and *Sailors* certainly does not cast doubt on the right to elect local officials if state law so provides, as in the case of the Michigan Constitution.

167. Furthermore, because the City Council and Mayor whose duties the EM has captured possess “general government powers over an entire geographic area,” they could in fact be subject to the “one person, one vote” rule. *Avery v. Midland County, Texas*, 390 U.S. 474, 485-86 (1970) (distinguishing *Sailors*). If anything, subjecting the people of Detroit to governance by an Emergency Manager who has been appointed by the Governor – over whose election Detroit electors have only a fractional influence – violates the “one person, one vote” rule when compared to other cities in Michigan who still possess the right to elect their own local government.

**(b) PA 436 Purports To Delegate Authority To The
Emergency Manager In Excess Of That Possessed By
The Legislature**

168. Section VII is not the exclusive mechanism protecting the “home rule” rights of local electors in the Michigan Constitution. Municipalities are further protected by Article IV, Section 29, which forbids the legislature from passing a local act both (a) “in any case where a general act can be made applicable, and (b) “until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected.” “The requirement of a 2/3 vote of both houses and a majority vote in the area affected protects localities against arbitrary action.” *Advisory Opinion on Constitutionality of 1975 PA 301*, 400 Mich. 270, 287, 254 N.W. 2d 528 (1977) (quoting 2 Official Record, Constitutional Convention 1961, p 2415).

169. PA 436 allows the Emergency Manager to adopt local ordinances and take purely local legal acts which would otherwise be assigned to the local government. *See* MCL 141.1552. Before the EM takes a local act of this nature, however, neither he nor the legislature makes any determination whether a general act could accomplish the same purpose; seeks the approval of two-thirds of the legislature; or submits the proposed act to the local

electors for ratification. PA 436 therefore delegates to the EM power that the legislature simply does not possess. For even assuming *arguendo* that PA 436 is a general as opposed to local law, it contemplates the future passage of limitless local ordinances without the prophylactic mechanisms built into Article IV, Section 29 to preserve “the settled purpose of the framers of the [Constitution] and of the people who adopted it to forever insure to the people the right to control their affairs purely local.” *Attorney General v. Lacy*, 180 Mich. 329, 337, 146 N.W. 871 (1914) (striking down local law passed by legislature).

170. The legislature cannot delegate power beyond that which it possesses. “That the Michigan Legislature may legislate absent constitutional limitations does not mean that it may wield legislative power in a manner other than that carefully prescribed by the Michigan Constitution.” *Blank v. Dep’t of Corrections*, 462 Mich. 103, 119, 611 N.W.2d 530 (2000). Yet PA 436 does just that, subjecting Detroit’s citizens to purely local acts – including the instant chapter 9 petition – taken by a central authority without the protection of Article IV, Section 29. In this case that local legislation includes not only this illegal bankruptcy, but all of the legislative acts undertaken by the EM leading up to and in support of the chapter 9 petition.

(iv) Despite Arguments To The Contrary By The State And City, The EM Is Not A State Agent And Therefore His Use of Unlimited Power To Pass Local Acts Which Led To This Bankruptcy Violated The State Constitution

171. The City’s reply brief attempts to insulate its chapter 9 petition from these impermissibly local acts of the Emergency Manager (*see* Debtor’s Reply, at p. 41), in the process again ignoring the crucial fact that the petition was the culmination of the EM’s exercise of total control over the City’s local affairs during the course of four crucial months. *See* ¶¶ 158 - 159, *supra*. As demonstrated, the EM pursued a chapter 9 filing for the City as a foregone conclusion. Had the City’s voters, rather than the State, remained in control of

Detroit's own local affairs – as required by Article IV, Section 29 of the State Constitution – the City's elected officials could have used that power in ways which might have taken the City off the path to bankruptcy designed by the EM. But the EM explicitly took that power away by Order No. 5, a local act removing from City Council and the Mayor any ability to raise revenue using City property. By delegating the power to legislate locally entirely to the EM, the State effectively robbed the City of its local lawmaking ability and instead transferred that power – a power the State legislature cannot exercise under the State Constitution without approval of the local electors – to the EM.

172. The City concedes that the State legislature may not pass local acts under Article IV, Section 29, but nevertheless contends that there is no violation of that provision when the EM exercises that power because *municipalities* are free to do so. *See* Debtor's Reply, at pp. 41-42. The State makes essentially the same argument. *See* State's Response, at pp. 17-18 (“This is no different from the authority generally granted by law to local elected officials but exercised locally.”). Both are wrong, however, that the EM exercises the “local government's powers, not the State legislature's.” Debtor's Reply, at p. 42; *see also* State's Response, at p. 18-19.

173. PA 436 gives every indication that the EM exercises power as an officer of the State, not the City. He is appointed by the Governor. MCL § 141.1549(1). The EM serves “at the pleasure of the governor,” making him accountable to the State, not the City. MCL § 141.1549(3)(d). The State pays his salary. MCL § 141.1549(3)(e). The EM is “subject to” the Michigan “Conflict of Interest” statute – which applies to “members of the legislature *and state officers*,” 1968 PA 318 – “as if he or she were a state officer.” MCL 141.1549(9)(c). That PA 436 elsewhere states that the EM exercises his powers “for and on behalf of the local

government,” MCL § 141.1552(1)(d), does not alter the reality of whose authority he exercises. The EM’s powers derive not from the people of Detroit, but from the State Legislature which passed PA 436 to enable the transfer of those powers from Detroit voters to the EM as a state officer – or “contractor to the State of Michigan” as the EM has described himself. *See* Orr 10/4 Transcript, at 454:10-14.

174. The core issue here is not whether PA 436 itself is a general law, as the State insists (*see* State’s Response, at pp. 13-14), but instead whether that general law includes within it an additional delegation of power permitting limitless local acts to be undertaken in the future with absolutely no limitation as to scope. The limitation placed on the legislature’s power to pass local legislation by Article IV, Section 29 would be entirely meaningless if the legislature could simply delegate the power to legislate locally, without any limitation, to a State appointee. Yet that is exactly what PA 436 does, and therefore the authority exercised by the EM under PA 436 is unconstitutional and the bankruptcy petition filed as part of the exercise of that authority by the EM in violation of state law.

(c) PA 436 Unconstitutionally Delegates Legislative Authority To The Emergency Manager Because It Lacks Adequate Standards To Guide The Emergency Manager’s Actions In Bankruptcy, Which Are Not Subject To Judicial Review

175. Even assuming *arguendo* that the legislature had the authority to delegate its illegally asserted control over local self-governance, that delegation must include (1) “sufficient standards and safeguards” to “direct[] and check[] the exercise of delegated power,” as well as (2) “due process requirements” ensuring judicial review of the delegated action. *BCBSM v. Governor*, 367 NW 2d 1, 51-52 (Mich. 1985). PA 436 lacks both with respect to an Emergency Manager’s control of the City during bankruptcy.

176. First, PA 436 provides no standards whatsoever to the Emergency Manager – other than any “contingencies” which the Governor, and not the legislature, may (but did not in this case) designate – for how to exercise the City’s affairs under chapter 9. MCL 141.1558. Thus the Emergency Manager is unfettered, for example, to enter into settlements resolving claims by creditors – settlements which, under Section 7-5-203 of the Detroit City Charter, are legislative acts of the City which must be approved by the City Council – without following any guidelines provided by the State. While the Bankruptcy Court may apply its own *federal law* constraints in the course of approving, or not, such settlements – though the authority of a bankruptcy judge to do so is questionable in light of federalism principles, *see infra* – there is simply no *state law* standard to refer to evaluate whether the Emergency Manager, in entering the settlements, is effectively legislating in bankruptcy within the intent of the legislature. “This complete lack of standards is constitutionally impermissible.” *BCBS*, 367 N.W. 2d at 55, and therefore the Emergency Manager is not authorized under state law to carry out the Legislature’s attempted delegation of authority under chapter 9.

177. Second, and relatedly, even assuming *arguendo* that PA 436 does contain standards constraining the absolute power of the Emergency Manager to act for the City under chapter 9, those standards are not subject to the requisite judicial review. As a result of the automatic stay, the Emergency Manager’s actions during chapter 9 can only be litigated to the bankruptcy court, which itself lacks authority to decide freestanding state-law claims. *See* 11 U.S.C. §§ 902(a), 362 (automatic stay); *Stern v. Marshall*, *supra* (Article I judge prohibited from deciding independent state law claims unhinged from bankruptcy). But the City can arguably enter into settlements with creditors under chapter 9 *without* receiving approval from the Bankruptcy Judge, even if a competing creditor requests judicial review. *See In re City of*

Stockton, California, Case No. 12-32118-C-9 (Bankr. E.D. Cal. Feb. 5, 2012) (“11 U.S.C. § 904 gives a chapter 9 debtor freedom to decide whether to ignore or to follow Rule 9019 compromise-approval procedure[.]”). The Emergency Manager thus acts in a legal vacuum, accountable neither in state court nor federal court for exercising the legislative power delegated to him by the State. The Michigan Constitution does not permit such insulation.

(v) The City And State Cannot Evade The Non-Delegation Doctrine Because The EM Acts With The State Legislature's Authority In Bankruptcy Without Any Standards Or Judicial Review

178. Here, again, the City and State in their respective reply briefs seek refuge in the assertion that the EM exercises the powers of the City in chapter 9, not the powers of the State Legislature. And here too, for the same reasons explained *supra*, the City and State arguments fail. The EM may have been tasked by the State with governing the City, but he does so with the authority of the State as delegated by statute, not the authority of Detroit’s voters. Neither the City nor State cites any case in which a Michigan Court has held that the non-delegation doctrine did not apply because the delegated powers were of either an “executive” or “local” character. *See, e.g.*, State’s Response, at p. 19. The simple fact is that whatever powers the EM exercises, he does so by virtue of the State legislature’s delegation of its own authority.

179. The alternative contention by the City and State that PA 436 does provide “reasonably precise” standards to the EM for use in chapter 9 fails because it relies on standards applicable to the EM only outside of bankruptcy. *See* Debtor’s Reply, at p. 43; State’s Response, at pp. 19-20. The City and State each cite to MCL § 141.1558, but that provision only provides a standard for use by the EM in exercising his discretion to recommend chapter 9 to the Governor. Once the EM makes that recommendation and the Governor approves it, the EM is granted power “to act exclusively on the local government’s behalf in

any such case under chapter 9” with no state-law standards whatsoever to guide him, including in the ultimate determination of whether to file for bankruptcy or not after receiving permission. *See* MCL § 141.1558(1). Nor does MCL § 141.1549(2), which the City and State also rely on, provide the EM any governing standards in bankruptcy. The City only partially quotes MCL § 141.1549(2) (*see* Debtor’s Reply, at p. 43), but the full relevant quote from MCL § 141.1549(2) grants the EM virtually limitless powers rather than constraining him to any meaningful standards. MCL § 141.1549(2) states: “The emergency manager *shall have broad powers* in receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and local government’s capacity to provide or cause to be provided necessary government services essential to the public health, safety, and welfare.” Put otherwise: the EM is to do whatever he needs to run the City as he sees fit. This is a grant of absolute power, not a limiting standard.

180. In any case, the City does not explain how either of the standards it asserts as governing the EM’s actions in chapter 9 is enforceable by judicial review during the bankruptcy. The City claims that “this Court will review actions of the Emergency Manager,” (Debtor’s Reply, at p. 44), but does not explain how or whether this Court’s review includes application of any standards contained in PA 436. Instead, the City admits that the only authority this Court has over the City consists of “*implementing provisions of the Bankruptcy Code* that may involve determination of state law issues.” Debtor’s Reply, at p. 44 n.38. The City cites to no provision of the Code which would require this Court to assess whether the EM has followed the alleged state-law standards in PA 436 for his actions during chapter 9 which have been identified by the City.

181. The State, meanwhile, alone asserts that judicial review is possible because AFSCME can move for relief from the automatic stay to sue the City in state court if the EM violates the standards set forth in PA 436. This argument fails for two reasons. First, the ability to *request* that the Bankruptcy Judge grant relief from the automatic stay provides no *right* of judicial review of the EM’s actions during the course of the bankruptcy, as this Court could readily deny the stay and thus foreclose any hearing on the merits of a claim that the EM has violated PA 436. Indeed, this Court has already extended the automatic stay to cover the State precisely to *prevent* creditors from obtaining judicial review of actions taken by the EM under PA 436. Second, and just as important, PA 436 itself “provides no administrative or judicial review to challenge” the EM’s decisions, either inside or outside of bankruptcy. *See BCBSM*, 367 N.W.2d at 53. Thus, even if relief from the stay were to be granted, there is no sure route to judicial review of actions undertaken by the EM pursuant to PA 436.

B. The City Failed To Participate In Any Good Faith Negotiations With Creditors Prior To Filing For Bankruptcy As Required For Eligibility Under Chapter 9

182. The City cannot meet its burden under section 109(c)(5) of the Bankruptcy Code of proving that it conducted good faith negotiations with its creditors or that such negotiations were impracticable.

183. Congress enacted the “negotiation” requirement of section 109(c) to prevent capricious filings of chapter 9 petitions, and Courts do not “view lightly the negotiation requirements of 11 U.S.C. § 109(c)(5).” *See In re Villages at Castle Rock Metro. Dist. No. 4*, 145 B.R. 76, 85 (Bankr. D. Colo. 1990); *In re Town of Westlake, Tex.*, 211 B.R. 860, 867-68 (Bankr. N.D. Tex. 1997) (suggesting that section 109(c)(5) requires that a municipality have an intent to negotiate with creditors it intends to impair). “The ‘creditor protection’ provided by section 109(c)(5). . . insures that the creditors have an opportunity to negotiate concerning a

plan on a level playing filed with the debtor before their rights are further impaired by the provisions of section 362 of the Code.” *Sullivan County*, 165 B.R. at 78-79).

184. In *Cottonwood Water*, the Court explained the good faith negotiation requirement under section 109(c)(5) of the Bankruptcy Code as follows:

Congress consciously sought to limit accessibility to the bankruptcy court by municipalities [by requiring] . . . the municipal entity, before rushing to . . . Court, to first seek to negotiate in good faith concerning the treatment the creditors may be expected to receive under a plan to be filed under section 941 of the [Bankruptcy] Code. . . . The ‘creditor protection’ provided by section 109(c)(5) . . . insures that the creditors have an opportunity to negotiate concerning a plan on a level playing field with the debtor before their rights are further impaired by the provisions of section 362 of the [Bankruptcy] Code.

138 B.R. at 979.

185. Accordingly, the burden is on the City to demonstrate (i) that it engaged in good faith negotiations with its creditors concerning the possible terms of a plan or (ii) why it was unable to engage in such negotiations. ASFSCME respectfully submits that the City cannot demonstrate any negotiations with creditors such as AFSCME, let alone “good faith” negotiations, and further given that the City conducted no pre-petition negotiations with significant creditors such as AFSCME, the City should not be heard to argue that negotiations were impracticable.

(i) The City Failed To Negotiate With Creditors Such As AFSCME

186. The City claims it satisfies the section 109(c)(5)(B) requirement for negotiating with its creditors prior to the bankruptcy filing by negotiating with creditors, including unions such as AFSCME, in a few meetings held with its unions where the City discussed its restructuring proposals and took certain questions. *See* Eligibility Brief, pp. 53-61 (citing, *inter alia*, Orr Declaration, ¶¶ 90-96). What the City fails to mention is that, as discussed

extensively above and as indicated by Orr himself prior to the scheduling of these meetings, it was made clear throughout these series of 3 or 4 relatively short meetings that the meetings were “discussions” and the City was not willing to conduct any negotiations. The City argued that the EM “openly invited the City’s creditors to contact the City and its advisors to begin negotiations.” Eligibility Brief, p. 55. In fact, the City rebuffed negotiations, which require concessions from both sides and collaboration between the debtor and its significant creditors. The City (acting through Orr) simply was not interested in negotiations (and as Orr indicated regarding the predecessor to the ultimate Restructuring Plan, the EM’s May 12, 2013 “Financial and Operating Plan”, “[t]his isn’t a plebiscite, we are not, like, negotiating the terms of the plan”).

187. *In re Ellicott School Building Authority* is directly on point. There, the debtor held three public meetings with large creditors regarding its proposed restructuring, although creditors were advised that the economic provisions of the proposed plan were not negotiable. 150 B.R. 261, 266 (Bankr. D. Colo. 1992). The court held that even though the debtor conducted three public meetings explaining its proposed plan of restructuring to bondholders, it did not negotiate in good faith because it indicated that the economic terms of its proposed plan were non-negotiable. *Id.* (debtor must be open to negotiating the substantive terms of a proposed plan); *cf. Int’l Ass’n of Firefighters, Local 1186 v. City of Vallejo (In re City of Vallejo)*, 408 B.R. 280, 289 (9th Cir. B.A.P. 2009) (finding that the city did not satisfy section 109(c)(5)(B) because it “never negotiated with Unions or any of its creditors over the possible terms of a plan of adjustment.”); *Sullivan County*, 165 B.R. at 78-79 (“The ‘creditor protection’ provided by section 109(c)(5) . . . insures that the creditors have an opportunity to negotiate

concerning a plan on a level playing field with the debtor before their rights are further impaired” (citation omitted)).

188. The City’s a “take it or leave it” Restructuring Plan proposal that was not really open to any negotiations (good faith or otherwise) should be rejected as the court did in *Ellicott School*. The City failed to engage in any negotiations with its significant creditors such as AFSCME regarding the Restructuring Plan. Flatly refusing to conduct any negotiations (despite repeated requests by AFSCME both prior to and subsequent to the City’s bankruptcy filing) falls far short of the standard required under section 109(c)(5) of the Bankruptcy Code.

189. The City has publicly proclaimed its willingness to negotiate, yet it and its representatives’ (i) statements that the meetings held to discuss the Restructuring Plan were not negotiations and (ii) continued bad faith refusal for a period of time post-petition (until required mediation began) to hold negotiations (despite requests from AFSCME to jump start negotiations) makes it more than clear that the City has conducted no good faith negotiations with AFSCME and similarly situated creditors.

190. Moreover, as described extensively *supra* (¶¶ 3, 36, 45), to the extent that the City held a series of pre-petition meetings with creditors to discuss its Restructuring Plan, such meetings were simply scheduled as part of the EM and City’s plan to bolster the City’s “record (i.e. for future litigation)” as suggested by the City’s lead bankruptcy counsel in the Pitch Presentation back in January 2013. In addition, the evidence further reveals that the City had planned on filing for chapter 9 as of early July 2013 by the specific date of Friday, July 19, 2013 – even as alleged creditor “negotiations” were ongoing – regardless of how the discussions were progressing. *See* Supp. Kreisberg Declaration, Exhibit C (spreadsheet document dated July 4, 2013 attached to e-mail from EM’s office to State officials entitled

“Chapter 9 Communications Rollout” indicated that Friday, July 19, 2013 was “FILING DAY”). This evidence further establishes that the City was not really interested in any serious negotiations.

(a) Despite The City’s Creative Arguments To The Contrary, The City Cannot Escape The Fact That It Refused To Negotiate In Good Faith

191. In the City’s reply brief and in recent deposition testimony provided by Orr on October 4, 2013, the City and Orr have now taken the position that while the City may have made statements that its pre-petition meetings with the unions regarding its Restructuring Plan were not a “negotiation”, such characterizations were simply to avoid any argument that the City triggered obligations to collectively bargain, which obligations may be suspended by PA 436. *See* Debtor’s Reply, at p. 55 n.49; *supra*, ¶ 44. The City now argues that it was flexible in its negotiations and willing to consider other proposals, but received no counter-proposals from creditors, despite requests for same. The City’s statements in that regard, however, do not establish the good faith negotiations required by the Bankruptcy Code. Requesting “feedback” or “invitations for further information” simply does not satisfy the City’s burden of proof.

192. AFSCME (and other objectors) offered on more than one occasion to engage in good faith bargaining and negotiations which were continually rebuffed by the City, and indeed as of late June/early July 2013, the City did not even have any complete proposal with respect to the restructuring of pension and other retiree benefits. Rather, the City’s proposal to its creditors was no more than an ultimatum, with the City showing no real intention of negotiating economic or substantive terms. As noted, the City was interested in and spent months mapping out its path to chapter 9, and never had any real intention of bargaining in good faith.

(ii) Even Assuming That The City Engaged In Negotiations, Such Negotiations Did Not Relate To A Plan That Is In The Best Interests Of Creditors As Required By Section 109(c)(5)(B)

193. While AFSCME submits that the City did not engage in any good faith negotiations with creditors such as AFSCME prior to the City's chapter 9 filing, even assuming this Court were to find otherwise, the City also has not satisfied section 109(c)(5)(B) of the Bankruptcy Code because the plan or terms of a plan being negotiated must be a plan that can be effectuated in chapter 9. *See Sullivan County*, 165 B.R. at 78 (debtor failed to meet burden of showing that it negotiated in good faith because the plan that was proposed was not a plan that could be effectuated in chapter 9); *Cottonwood Water.*, 138 B.R. at 979 (finding that "in order for this Debtor to be entitled to the entry of an order for relief, it must be prepared to show that it engaged in good faith negotiations with its creditors concerning the possible terms of a plan to be effected pursuant to section 941 of the Bankruptcy Code.").

194. Here, the proposed Restructuring Plan is patently unconfirmable because it unconstitutionally looks to reduce or eliminate guaranteed vested pension benefits pursuant to a plan that would presumably be crammed down on creditors, including those City retirees and employees that participate in the various pension and other retirement benefit plans, without their consent. Given that creditors owed pension obligations have absolute rights to those vested pension benefits under Michigan law as set forth extensively above, and one of the main goals of this proceeding is to modify vested pension and other retiree benefits, the City has no ability to confirm any plan of adjustment modifying such rights. *See* 11 U.S.C. §943(b)(4) (stating that the Court shall confirm a chapter 9 plan only if "the debtor is not prohibited by law from taking any action necessary to carry out the plan.").

195. Additionally, the Restructuring Plan is not in the "best interests of creditors" and thus could not be confirmed pursuant to section 943(b)(7) of the Bankruptcy Code. The "best

interests of creditors” test in the context of a chapter 9 case does not compare treatment under a plan of liquidation, but rather to other alternatives to creditors to the plan. *See, e.g., In re Sanitary & Improvement Dist., #7*, 98 B.R. 970, 974 (Bankr. D. Neb. 1989); (“Section 943(b)(7) [with respect to the best interest of creditor’s provision] ... simply requires the court to make a determination of whether or not the plan as proposed is better than the alternatives.”); *In re Mount Carbon Metropolitan Dist.*, 242 B.R. 18, 34 n.50 (Bankr. D. Colo. 1999) (“The ‘best interest’ requirement of § 943(b)(7) is generally regarded as requiring that a proposed plan provide a better alternative for creditors than what they already have.”) (citing 4 Collier on Bankruptcy, 943.03[7] (Lawrence P. King, ed., 15th ed.1999)).

196. Had there been no chapter 9 filing by the City, pension creditors could not be impaired under the Michigan Constitution, and any impairment of those rights under a plan of adjustment would violate Michigan law and be patently non-confirmable. Accordingly, because the Restructuring Plan proposes to unconstitutionally wipe out guaranteed vested pension benefits, the proposal cannot satisfy the requirements of good faith negotiations over a plan that could be effectuated in chapter 9.

197. Orr failed to consider before filing for bankruptcy protection or since the filing, an equitable argument for the pension fund beneficiaries that other creditors extending debt after funding concerns surfaced publically should be subject to equitable subordination/fraudulent conveyance under Bankruptcy Code sections 510(c) and 544(b)/548(a) and pension benefits should take priority over those claims.

198. Further, under Bankruptcy Code section 928(b), Orr should be exploring whether certain other creditors should bear the burden of some of the City’s operating expenses during bankruptcy process, before benefit cuts are implemented.

199. The City in its reply brief (*see* Debtor’s Reply, at p. 58 n.50) argues that AFSCME is incorrect that to satisfy the good faith negotiation requirement of section 109(c)(5)(B), negotiations must be conducted regarding the terms of a confirmable plan. The City cites no authority for rejecting AFSCME’s arguments in this regard, and the weakness of the City’s argument is belied by its relegation to a footnote. There can be no doubt that the reference to good faith negotiations of the terms of a plan in section 109(c)(5)(B) of the Bankruptcy Code is to negotiations of the terms of a plan that can be effectuated in chapter 9, *i.e.*, a confirmable plan, as argued above. It is illogical for the statute to reference negotiations regarding an unconfirmable plan. Were that the case, then the whole point of good-faith negotiations would be meaningless and rendered moot, or simply, be deemed bad faith. As one recent court has explained in the chapter 9 context:

The structure of the sentence [*i.e.* section 109(c)(5)(B)] strongly implies that in the negotiations, municipalities are seeking the creditors’ agreement *to a bankruptcy plan*. **What other agreements can they be seeking?**

In re Mendocino Coast Recreation and Park District, No. 12-cv-02591-JST, 2013 U.S. Dist. LEXIS 139697, at *19 (N.D. Cal. Sept. 27, 2013) (*emphasis* in original; **emphasis** added).

200. The City attempts to rebut AFSCME’s reliance on *Sullivan County* and *Cottonwood*, *supra*, with respect to the meaning of a plan in section 109(c)(5)(B) of the Bankruptcy Code. Debtor’s Reply, at p. 58 n.50. Although *Sullivan* does acknowledge that a *formal* plan is not required, that court states that, to be in good faith, negotiations must “revolve around the negotiating of the terms of a plan that could be effectuated if resort is required to chapter 9 of the Bankruptcy Code.” *Sullivan*, at 78. For a plan to be effectuated under chapter 9, it clearly must satisfy the parameters of and be confirmable under section 943(b) of the Bankruptcy Code and be in the best interests of creditors. The *Sullivan* court’s statement

that the plan need not be a “formal plan”, *id.*, at 78, is underscored by the language that follows (and conveniently omitted by the City):

While the statutory requirement does not require a formal plan as such, some sort of comprehensive plan is required as one of the ‘screening factors’ to avoid a too early and rapid resort to the bankruptcy courts by municipalities.

Sullivan, 165 B.R. at 78 (emphasis added). This language is telling and clearly negates the City’s position with respect to the nature of the “plan.” Both the *Sullivan, supra*, and *Cottonwood, supra*, courts concluded that, even where the parties engaged in good-faith pre-petition negotiations, the municipality failed to satisfy section 109(c)(5)(B) because the negotiations did not include the terms of a plan under chapter 9 of the Bankruptcy Code. The City would further have this Court ignore the finding in *Ellicott*, adopting the well-reasoned analysis of *Cottonwood*, that a municipality must establish that “‘it engaged in good faith negotiations with creditors concerning the possible terms of a plan to be effected under section 941 of the Bankruptcy Code.’” *Ellicott*, 150 B.R.at 266 (citing *Cottonwood*, 138 B.R at 138) (emphasis added). The City failed to negotiate in good faith as any purported negotiations were not related to a plan that could be effectuated under section 941 and 943(b) of the Bankruptcy Code. The City, therefore, does not satisfy section 109(c)(5)(B) of the Bankruptcy Code.

(iii) Negotiations With Certain Categories Of Creditors Such As AFSCME Were Not Impracticable

201. The City alleges that it alternatively qualifies for eligibility under section 109(c)(5)(C) of the Bankruptcy Code because negotiations were impracticable.

202. As with the other eligibility requirements, the burden of proving impracticability rests with the City. *See In re Pierce County Housing Authority*, 414 B.R. 702, 713 (Bankr. W.D. Wash. 2009); *Vallejo*, 408 B.R. at 289 (citing *Valley Health*, 383 B.R. at 161). Courts

considering section 109(c)(5)(C) define the ordinary meaning of “impracticable” as “not practicable; incapable of being performed or accomplished by the means employed or at command; infeasible.” See, e.g., *Vallejo*, 408 B.R. at 298 (citing *Valley Health*, 383 B.R. at 163). Whether negotiations were impracticable is fact specific and depends upon the circumstances of the case. See *Vallejo*, 408 B.R. at 298.

203. The City alleges that negotiations were impracticable because, in part, the City had (i) numerous series of bonds and indebtedness held by multiple holders and (ii) approximately 20,000 retirees not represented by any formal agent or committee and other potential involuntary creditors. Furthermore, the City claims that the refusal of certain creditor constituencies to engage in good faith negotiations rendered negotiations impracticable.

204. In fact, AFSCME believes that the exact opposite is true here. The City predetermined that its pre-bankruptcy negotiations (which, as discussed above, were not negotiations) would fail. As discussed extensively above, the Governor and his staff orchestrated for several months prior to the hiring of Orr as EM to bring in Orr, as an experienced bankruptcy attorney, to lead the City on a clear path towards a chapter 9 filing, and any negotiations were a façade – the City went through the motions of pre-petition meetings but, as is evident from its pre-petition conduct *vis a vis* AFSCME, never had any intention of negotiating outside of bankruptcy.

205. While the City alleges that it has over 100,000 creditors, it is clear that the main creditors the City had to negotiate with were the unions, its retirees, and the bond trustees.

206. Moreover, as discussed extensively *supra* (¶¶ 50-51), The City itself has in the past negotiated with its unions with respect to concessionary agreements which changes impacted retiree benefits outside of a chapter 9 proceeding (even where such unions were not

explicitly representing their retirees). Thus, it is a red herring to say that negotiating medical benefits or pensions is impractical *per se*.

207. While courts have made clear that impracticability can be demonstrated by the volume of creditors to negotiate with, in no case AFSCME is aware of did a court find that negotiations were impracticable where the Debtor did not even attempt to negotiate pre-petition with its largest creditors such as AFSCME (and after repeated requests to do so). In *Ellicott School*, the court determined that the debtor holding “public meetings to which all bondholders were invited” showed that negotiations were practicable.

208. AFSCME is not suggesting that pre-petition negotiations could have bound everyone or must have involved all of the City’s thousands of creditors. Rather, some level of negotiation with principal creditors could have led the City to a non-bankruptcy solution. By way of analogy, section 109(c)(5)(B) of the Bankruptcy Code contemplates pre-bankruptcy negotiations with creditors that municipality intends to impair, not all creditors.¹³

209. Given the City’s lack of negotiations with creditors such as AFSCME and similar union representatives that could have negotiated regarding the largest portion of the City’s unsecured debt, the City’s arguments that negotiations were impracticable should be rejected.

210. In the City’s reply brief, the City cites only one case (and no cases to support its rejection of AFSCME’s arguments *supra*) to support its position that negotiations were impracticable, and mainly relies on, in part, various facts, including (i) the large number of unrepresented entities holding substantial amounts of bond debt which required unanimous

¹³ Importantly, the City describes in the Orr Declaration that of the City has nearly \$12 billion in unsecured debt, but 75% of that (approximately \$9.2 billion) relates to accounting liabilities for post-employment benefit or underfunded pension liabilities.

consent to restructure; and (ii) the apparent refusal of certain parties, including AFSCME, to negotiate on behalf of retirees. *See* Debtor's Reply, at pp. 45-46; 50-52.

211. However, the City ignores that serious bargaining and negotiations with bond trustees (even where bondholders could not have been bound 100%) and the City's unions could have yielded the major deals necessary to prevent the crash landing in chapter 9 that occurred. Additionally, while local unions may have refused to represent the interests of retirees, AFSCME never refused to bargain or negotiate in connection with the City's Restructuring Plan;¹⁴ to the extent that the City had other organizations actively representing retirees, the City could have negotiated in good faith with such parties. In reality, the City was not truly interested in negotiating in good faith (whether or not such negotiations were impractical) because the City strongly desired a swift landing in chapter 9.

C. The City's Petition Should Be Dismissed Under Section 921(c) As Filed In Bad Faith

212. The City's bankruptcy petition is subject to dismissal pursuant to section 921(c) of the Bankruptcy Code because the filing was in bad faith. Section 921(c) of the Bankruptcy Code provides that "[a]fter any objection to the petition, the court, after notice and a hearing, may dismiss the petition if the debtor did not file the petition in good faith or if the petition does not meet the requirements of this title."

¹⁴ The City (Debtor's Reply, at p. 50 n.43) cites a May 24, 2013 letter sent by Ed McNeil on AFSCME Council 25's behalf several weeks prior to any good faith negotiations of the actual Restructuring Plan began as evidence of AFSCME's refusal to negotiate. Mr. McNeil indicated that at that time, AFSCME had "no authority in which to renegotiate the Pension or Medical Benefits that members" of AFSCME currently receive, but would be willing to meet with the City anyway. The letter then went on to indicate that "we stand ready to meet and negotiate in an effort to save the City." Furthermore, the fact that AFSCME as of early July 2013 was not formally representing retirees did not mean that AFSCME could not negotiate an agreement on behalf of actives or retirees. Other parties were explicitly representing retirees, and AFSCME had previously (in 2012 via the Tentative Agreement and in earlier agreements) negotiated agreements which effectuated changes that affected both active and retired employees. Subsequently, AFSCME attended all of the public meetings offered it by the City and attempted to engage the City. Thus, the City clearly had parties to negotiate with if it truly desired to reach a negotiated non-bankruptcy solution.

213. “Good faith is not defined in the Bankruptcy Code.” *In re McCurtain Mun. Auth.*, No. 07-80363, 2007 WL 4287604, at *4 (Bankr. E.D. Okla. Dec. 4, 2007). Courts have determined, however, that the primary function of the good faith requirement in chapter 9 is to “ensure the integrity of the reorganization process by limiting access to its protection to those situations for which it was intended.” *Sullivan County*, 165 B.R. at 80 (citation omitted); *see also In re City of Stockton, California*, 493 B.R. 772, 794 (Bankr. E.D. Cal. 2013) (“Section 921(c) “good faith” serves a policy objective of assuring that the chapter 9 process is being used in a manner consistent with the reorganization purposes of the Bankruptcy Code”); *Villages at Castle Rock*, 145 B.R. at 81 (describing good faith as requirement that “prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefiting them in any way or to achieve reprehensible purposes”) (internal quotation marks and citation omitted).

214. While good faith in the chapter 9 context is not defined in the Bankruptcy Code, courts have looked to discussions of good faith in the chapter 11 context to determine whether a chapter 9 petition has been filed in good faith. *McCurtain Mun. Auth.*, 2007 WL 4287604, at *4 (referencing chapter 11 good faith standards to determine whether chapter 9 petition was filed in good faith) (quoting *Villages at Castle Rock*, 145 B.R. at 81); *County of Orange*, 183 B.R. at 608 (observing that “courts have ... applied to chapter 9 cases the judicial reasoning that developed in chapter 11 cases” regarding good faith); *Sullivan County*, 165 B.R. at 82 (examining and applying chapter 11 good faith requirements to chapter 9 petition)).

215. In the chapter 11 context, courts explain that the requirement of good faith

prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefitting them in any way or to achieve reprehensible purposes. Moreover, a good faith standard protects the jurisdictional integrity of the bankruptcy

courts by rendering their powerful equitable weapons . . . available only to those debtors and creditors with ‘clean hands.’

In re Little Creek Dev. Co., 779 F.2d 1068 (5th Cir. 1986).

216. Relevant considerations regarding good faith under chapter 9 include “whether the City’s financial problems are of a nature contemplated by chapter 9, whether the reasons for filing are consistent with chapter 9, the extent of the City’s pre-petition efforts to address the issues, the extent that alternatives to chapter 9 were considered, and whether the City’s residents would be prejudiced by denying chapter 9 relief.” *Stockton*, 493 B.R. at 794.

217. Here, a review of the various relevant factors considered by courts when analyzing good faith under section 921(c) lead to the inescapable conclusion that the City’s chapter 9 case was filed in bad faith and with unclean hands.

218. First, the City’s filing came several minutes prior to a Michigan State Court issuing a TRO enjoining the Governor from authorizing the filing. The State lawyers at the hearing on the TRO asked for a short delay when they realized that an adverse ruling was forthcoming with respect to the City’s ability to authorize any chapter 9 authorization which did not proscribe the reduction of pension benefits violated the Michigan constitution. During that recess, the City filed for chapter 9 protection. Thus, the City commenced this proceeding “in the dark of night” to avoid a ruling it viewed as not in its favor. Such a filing is the antithesis of the careful, deliberative decision to file required under chapter 9, as “[t]he legislative history indicates that the strict hurdles to filing Chapter 9 were implemented to ensure that it was considered by a municipality only as a last resort.” *Pierce County*, 414 B.R. at 714 (citation omitted) (noting debtor decided to file a chapter 9 petition only after several years of failed negotiations and attempts at mediation); *cf. Valleo*, 408 B.R. at 295 (“The evidence needs to show that the ‘purpose of the filing of the chapter 9 petition not simply be to

buy time or evade creditors.’”). The City filed chapter 9 to evade what it viewed as an imminent negative state court ruling – enjoining this very filing.

219. Moreover, as discussed above, while the City was purporting to negotiate with its creditors in good faith by holding several meetings, such meetings were employed as a mere strategy to bolster the record and never truly given the chance to succeed. The City simply does not have “clean hands”.

220. Additionally, as discussed extensively above, the City did not reasonably consider any alternatives to chapter 9, did not give negotiations any real chance to succeed, and was preparing for a chapter 9 filing months before any creditor meetings to discuss restructuring options even started (and indeed had finalized a decision to file as of early July 2013 well before significant creditor meetings were scheduled to take place), and refused to negotiate with major creditors such as AFSCME as required. Simply put, the predetermined filing was done in bad faith and should be dismissed.

221. The City argues in its reply brief that the reason for filing the chapter 9 petition was not the imminent entry of the State Court TRO, but rather “to adjust its debts and resolve its liquidity crises [consistent] with the rehabilitative purposes of Chapter 9.” Debtor’s Reply, at p. 65. The City states further that it was no secret that Chapter 9 was an option if negotiations with creditors proved impracticable (which, of course, AFSCME disputes as set forth *supra*). *Id.* at 65-66. However, the City has not and cannot establish that negotiations with its creditors were impracticable under Section 109(c)(5)(C). Thus, any reliance by the City on the impracticability of negotiations with creditors to establish good faith is misplaced.

222. Moreover, the City’s attempts to lay blame on the movants in the state court TRO proceeding by suggesting that it was the City’s preparation for bankruptcy that prompted

the request for the TRO (*see* City Reply, at 66, n. 56), rather than the opposite (*i.e.* that the imminent entry of the TRO prompted the chapter 9 filing) is incorrect. Indeed, as discussed above, Orr admitted that the filing was being driven by the state court litigations and that he was being “irresponsible” by not authorizing the filings when he did.

223. The City relies on the *McCurtain Municipal Authority*, decision to support its position regarding the timing of its filing and the state court TRO hearing. In *McMurtain*, a creditor filed an application for the appointment of a receiver the day before the trustees of the municipal authority met to discuss a chapter 9 filing. Notice of the trustees’ meeting was provided before the filing of the application for the receiver. The municipal authority argued that the potential appointment of a receiver may have been a concern, but it was not the only reason for the authority to ultimately file its petition. *McCurtain* at *5 (identifying other concerns considered by the authority trustees that precipitated the chapter 9 filing).

224. Here, in contrast, the evidence show that the City very much sought to avoid the effects of the State Court litigation and a ruling that the Governor could not authorize a filing that did not place contingencies on the EM from changing pension benefits in a chapter 9. The City likely would have considered giving creditors more time to negotiate (as was required for any significant bargaining to take place), and there was no cash crisis and the City had actually as of July 17, 2013 inked a deal with its swap counterparties which helped the City’s anticipated liquidity. The City has simply not proceeded in good faith.

D. The City Has Failed To Meet Its Burden Of Proving Its Insolvency, And Only Does So Based On Assumptions Used By The City To Show Its Insolvency

225. The Bankruptcy Code does not offer relief to a city simply because it is suffering economic difficulties. *See, e.g., In re City of Bridgeport*, 129 B.R. 332, 339 (Bankr. D. Conn. 1991) (although City projected \$16 million budget deficit, it was not insolvent, and

“financial difficulties short of insolvency are not a basis for chapter 9 relief”); *In re Hamilton Creek Metro. Dist.*, 143 F.3d 1381, 1386 (10th Cir. 1998) (debtor not eligible for relief simply because it was severely economically distressed).

226. In order to carry its burden on insolvency, the City must prove either that it is “(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or (ii) unable to pay its debts as they become due.” 11 U.S.C. § 101(32)(C). The test under the first prong requires current non-payment of obligations, but the test under the second prong is prospective, looking to the debtor’s future inability to pay. *Bridgeport*, 129 B.R. at 336-37. Solvency is measured as of the petition date. *See, e.g., In re Town of Westlake, Texas*, 211 B.R. 860, 866 (Bankr. N.D. Tex. 1997) (citing cases).

227. The purposeful refusal to make a few payments comprising a relatively small part of the City’s budget does not satisfy the definition of “insolvent” under 11 U.S.C. § 101(32)(C)(i). *See, e.g., Uecker & Assocs. v. Tenet Healthsystem Hosps., Inc. (In re West Contra Costa Healthcare Dist.)*, No. 06-41774 T, 2010 Bankr. LEXIS 994, at *8 (Bankr. N.D. Cal. Mar. 26, 2010) (failure to pay \$1.3 million out of \$10-\$11 million total operating expenses did not mean the debtor was “generally not paying its debts”)

228. First, the City “deliberately budget[ed and] spen[t] itself into insolvency (so as to qualify under § 101(32)(C)(ii)), when other realistic avenues and scenarios [were] possible.” *Town of Westlake*, 211 B.R. at 867. Second, “[t]he mere fact that a municipality has adopted a budget that reflects a cash flow shortfall is not independently sufficient to meet the requirement of the ‘unable to pay’ test.” COLLIER ON BANKRUPTCY ¶ 900.02[2][c][i] (16th ed. 2011). A municipal budget “must be evaluated in light of past and current practices, the practices of similar municipalities, and the extant facts and circumstances.” *Id.*

229. The City puts forward three declarations from Orr, Malhotra and Moore which appear to provide a voluminous amount of data to “establish” the City’s insolvency, including on the basis of budget and service delivery insolvency, negative cash flows and inability to increase revenues or reduce expenses.

230. However, as discussed above, when one digs into all of the “facts” cited by these three declarants, it becomes apparent that the City failed to provide this Court or the citizens of Detroit evidence to establish insolvency.

231. It is telling (and should be shocking to all citizens of Detroit and Michigan) that despite spending millions of dollars of taxpayer funds on the City’s chapter 9 cases to hire a multitude of bankruptcy and restructuring professionals, the City fails to offer even one person to stand up as an *expert* and testify to the City’s insolvency. Courts in the non-chapter 9 context note that “[i]t is generally accepted that whenever possible, a determination of insolvency should be based on . . . expert testimony . . .” *Brandt v. Samuel, Son & Co., Ltd. (In re Longview Aluminum, L.L.C.)*, Case No. 03B12184, 2005 Bankr. LEXIS 1312, at *18-*19 (Bankr. N.D. Ill. July 14, 2005); *see also Lawson v. Ford Motor Co. (In re Roblin Indus.)*, 78 F.3d 30, 38 (2d Cir. 1996); *Klein v. Tabatchnick*, 610 F.2d 1043, 1048 (2d Cir. 1979) (stating that “a finding on the issue of insolvency often depends upon the factual inferences and conclusions of expert witnesses”).

232. Here, the insolvency “evidence” offered by the City focuses on the non-expert testimony of Orr, Malhotra, and Moore. This testimony relies on unaudited and unfounded assumptions, unsupported statements and a complete lack of expert opinion. For example, as purported evidence for the City’s insolvency, Orr (*see* Orr Declaration, ¶¶ 52-57) cites to the June 14 Restructuring Plan prepared by the City and to conclusory statements by Malhotra, one

of the City’s restructuring advisors (who of course all had one goal in mind: demonstrating insolvency).

233. While the City alleges that it was forced to suspend certain payments to “conserve its dwindling cash”, the main portion of the payments not made revolve around the City’s pension obligations, and those obligations are subject to dispute as to the ultimate amount required to be paid, and indeed evidence (discussed *supra*, ¶ 53-59) shows that (i) the City may have funds (or be able to raise funds from other sources such as revenues generated from the water and sewer fund) not calculated as part of its financial projections to cover such shortfalls and (ii) the City apparently chose to not actually calculate through an expert report the correct underfunding liability with respect to the pension obligations (despite presenting “definitive” numbers of such underfunding in the Restructuring Plan and other documents produced by the EM and his staff). Thus, the City “deliberately budget[ed and] spen[t] itself into insolvency (so as to qualify under § 101(32)(C)(ii)), when other realistic avenues and scenarios [were] possible.” *Town of Westlake*, 211 B.R. at 867.

234. Second, “[t]he mere fact that a municipality [adopts] a budget that reflects a cash flow shortfall is not independently sufficient to meet the requirement of the ‘unable to pay’ test.” COLLIER ON BANKRUPTCY ¶ 900.02[2][c][i] (16th ed. 2011). The City’s budget “must be evaluated in light of past and current practices, the practices of similar municipalities, and the extant facts and circumstances.” *Id.*

235. Here, the City’s past and current practices, as well as current facts and circumstances, not only show that the City has many available (but unexplored) options to enable it to pay its debts as they become due, but also that the City chose to deliberately not monetize certain assets (or explore the value of such assets) prior to the filing to limit the

appearance of cash or revenue on its books. It is telling that the City's prized artwork collection and potential deal to lease Bell Isle are only now on the table – if these assets and other possible increased tax revenue collection could have collectively solved all of the City's short term cash issues. But, as indicated above, the City did not want such assets monetized because the City's goal and clear path was to end up in chapter 9, which the City believed provided the only means to attack its vested pension obligations.

236. Thus, in light of all of the above, the information provided in the City's current budget provides at most only "insufficient credible proof" of insolvency. *Town of Westlake*, 211 B.R. at 867; *see also Bridgeport*, 129 B.R. at 338 (requiring concrete proof "that [the city] will be unable to pay its debts as they become due in its current fiscal year or, based on an adopted budget, in its next fiscal year" and noting that "[o]bviously, it is necessary for cities to make informed financial projections").

237. The City's current financial difficulties currently are actually less severe than in some prior years, the City entered into a deal prior to the chapter 9 filing with its swap counterparties which potentially freed up significant cash and did not make the filing imminent, and AFSCME believes (and as will be further demonstrated at trial) that there are numerous means already show to be available to solve the City's current financial difficulties and generate sufficient funds to pay its debts coming due in the coming fiscal year. AFSCME recognizes that all parties (including current and former employees) will be required to sacrifice, but reasonable concessions outside of bankruptcy – which is not necessary and which the City does not and cannot qualify for based on all the reasons discussed above – from all significant creditors would easily bring the City back to financial stability.

CONCLUSION

For the reasons set forth herein, AFSCME respectfully requests that this Court issue an order dismissing the City's chapter 9 petition and granting such other and further relief as is just and proper under the circumstances.

Dated: October 11, 2013

LOWENSTEIN SANDLER LLP

By: /s/ Sharon L. Levine

Sharon L. Levine, Esq.

John K. Sherwood, Esq.

Philip J. Gross, Esq.

Ira M. Levee, Esq.

Keara M. Waldron, Esq.

65 Livingston Avenue

Roseland, New Jersey 07068

(973) 597-2500 (Telephone)

(973) 597-6247 (Facsimile)

slevine@lowenstein.com

wjung@lowenstein.com

pgross@lowenstein.com

-and-

Herbert A. Sanders, Esq.

THE SANDERS LAW FIRM PC

615 Griswold St., Suite 913

Detroit, MI 48226

(313) 962-0099 (Telephone)

(313) 962-0044 (Facsimile)

hsanders@miafscme.org

-and-

Richard G. Mack, Jr., Esq.

Miller Cohen, P.L.C.

600 West Lafayette Boulevard

4th Floor

Detroit, MI 48226-3191

Counsel to Michigan Council 25 of the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and Sub-Chapter 98, City of Detroit Retirees

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

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

CERTIFICATE OF SERVICE

The undersigned certifies that on October 11, 2013, *The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees' Amended Objection to the City of Detroit's Eligibility to Obtain Relief Under Chapter 9 of the Bankruptcy Code* was filed with the Clerk of the Court using the CM/ECF system, which provides electronic notification of such filing to all counsel of record.

Dated: October 11, 2013

/s/ Lisa M. Bonito
Lisa M. Bonito
LOWENSTEIN SANDLER LLP
65 Livingston Avenue
Roseland, New Jersey 07068
(973) 597-2500 (Telephone)
lbonito@lowenstein.com

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

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

DECLARATION OF MICHAEL ARTZ

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

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

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

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

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

Executed on this 11th day of October, 2013

/s/ Michael Artz
 Michael Artz, Esq.

EXHIBIT A

In Re: City of Detroit, Debtor

*Governor Richard D. Snyder
October 9, 2013*

*Moretti Group
471 W. South Street
Suite 41B
Kalamazoo, MI 49007
800-536-0804*



Original File 100913RS.TXT

Min-U-Script® with Word Index

1 UNITED STATES BANKRUPTCY COURT
 2 FOR THE EASTERN DISTRICT OF MICHIGAN
 3 SOUTHERN DIVISION - DETROIT
 4 -----
 5 In re: Chapter 9
 6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846
 7 Debtor, Hon. Steven W. Rhodes
 8 -----
 9 V I D E O T A P E D D E P O S I T I O N O F
 10 WITNESS: GOVERNOR RICHARD D. SNYDER
 11 LOCATION: The Romney Building
 12 111 S. Capitol Avenue
 13 Lansing, Michigan
 14 DATE: Wednesday, October 9, 2013
 15 8:38 a.m.
 16 APPEARANCES:
 17 FOR PLAINTIFFS FLOWERS:
 18 LAW OFFICE OF WILLIAM A. WERTHEIMER
 19 30515 Timberbrook Lane
 20 Bingham Farms, Michigan 48025
 21 248.644.9200
 22 billwertheimer@gmail.com
 23 BY: WILLIAM A. WERTHEIMER (P26275)
 24 FOR INTERNATIONAL UNION, UAW:
 25 COHEN, WEISS and SIMON, LLP
 330 West 42nd Street
 New York, New York 10036-6976
 212.563.4100
 pdechiara@cwsny.com
 BY: PETER D. DeCHIARA, ESQUIRE
 FOR THE RETIREES COMMITTEE:
 DENTONS US LLP
 1221 Avenue of the Americas
 New York, New York 10020-1089
 212.768.6881
 arthur.ruegger@dentons.com
 BY: ARTHUR H. RUEGGER, ESQUIRE

1 APPEARANCES, CONTINUING:
 2 FOR THE STATE OF MICHIGAN:
 3 MICHIGAN DEPT. OF ATTORNEY GENERAL
 4 Assistant Attorney General
 5 Solicitor General Bureau
 6 7th Floor G. Mennen Williams Building
 7 525 West Ottawa Street
 8 P.O. Box 30212
 9 Lansing, Michigan 48909
 10 517.373.1124
 11 nelsonm9@michigan.gov
 12 BY: MARGARET A. NELSON (P30342)
 13 MICHIGAN DEPT. OF ATTORNEY GENERAL
 14 Chief Legal Counsel
 15 Executive Division
 16 7th Floor G. Mennen Williams Building
 17 525 West Ottawa Street
 18 P.O. Box 30212
 19 Lansing, Michigan 48909
 20 517.373.1110
 21 schneiderm7@michigan.gov
 22 BY: MATTHEW SCHNEIDER (P62190)
 23 OFFICE OF THE GOVERNOR-LEGAL DIVISION
 24 George W. Romney Building
 25 111 South Capitol Avenue
 P.O. Box 30013
 Lansing, Michigan 48909
 517.241.5630
 gadolam@michigan.gov
 BY: MICHAEL F. GADOLA (P43960)
 DICKINSON WRIGHT, PLLC
 215 South Washington Square, Suite 200
 Lansing, Michigan 48933-1816
 517.487.4710
 pellsworth@dickinsonwright.com
 BY: PETER H. ELLSWORTH (P23657)

1 APPEARANCES, CONTINUING:
 2 FOR AFSCME, AMERICAN FEDERATION OF STATE, COUNTY AND
 3 MUNICIPAL EMPLOYEES, AFL-CIO:
 4 AFSCME GENERAL COUNSEL'S OFFICE
 5 1101 17th Street, NW, Suite 900
 6 Washington, D.C. 20036
 7 202.775.5900
 8 martz@afscme.org
 9 BY: MICHAEL L. ARTZ, ESQUIRE
 10 LOWENSTEIN SANDLER, LLP
 11 65 Livingston Avenue
 12 Roseland, New Jersey 07068
 13 973.597.2374
 14 slevine@lowenstein.com
 15 BY: SHARON L. LEVINE, ESQUIRE
 16 FOR GENERAL RETIREMENT SYSTEM; CITY OF DETROIT POLICE AND
 17 FIRE RETIREMENT SYSTEM:
 18 CLARK HILL
 19 212 E. Grand River Avenue
 20 Lansing, Michigan 48906
 21 517.318.3060
 22 sgallagher@clarkhill.com
 23 BY: SEAN PATRICK GALLAGHER (P73108)
 24 CLARK HILL
 25 500 Woodward Avenue, Suite 3500
 Detroit, Michigan 48226
 313.965.8274
 jgreen@clarkhill.com
 BY: JENNIFER K. GREEN (P69019)
 FOR THE FINANCIAL GUARANTY INSURANCE CORPORATION:
 WILLIAMS WILLIAMS RATTNER &
 PLUNKETT, PC
 380 North Old Woodward Avenue
 Suite 300
 Birmingham, Michigan 48009
 248.642.0333
 eje@wwrplaw.com
 BY: ERNEST J. ESSAD, JR. (P32572)

1 APPEARANCES, CONTINUING:
 2 FOR THE CITY OF DETROIT:
 3 JONES DAY
 4 51 Louisiana Avenue, NW
 5 Washington, D.C. 20001-2113
 6 202.879.3939
 7 gshumaker@jonesday.com
 8 BY: GREGORY M. SHUMAKER, ESQUIRE
 9 VIDEO BY: Tim Reitman, Reitman Video Specialists
 10 REPORTED BY: Laurel A. Jacoby, CSR-5059, RPR
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 12
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Lansing, Michigan
October 9, 2013
8:38 a.m.

- - -

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

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

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

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

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

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

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

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

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

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

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

Page 15

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

Page 16

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

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

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

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

Page 20

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

Page 21

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

Page 22

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

Page 23

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

Page 24

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

Page 25

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

Page 26

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

Page 27

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

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

Page 29

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

Page 30

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

Page 31

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

Page 32

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

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1 that year.

2 When it was clear the consent agreement

3 wasn't working, there was a subsequent review

4 started in December of late 2012. The review team

5 came up with a determination that there's a

6 financial emergency without a sufficient plan. I

7 agreed with that conclusion. There was then a

8 hearing and a review process of that. That was

9 appropriately done.

10 I reaffirmed my review after receiving a

11 report that concluded the same measure, that there

12 was a financial emergency without a sufficient plan.

13 And given that circumstance, then we had a need for

14 an emergency manager.

15 Q. Okay. So the last step in that process, was that

16 the point at which you were interviewing candidates

17 that resulted in the selection of Kevyn Orr?

18 A. We started some -- the interview process prior to

19 that to be prepared as a contingency in case that

20 was the outcome of the review and the hearing

21 process.

22 Q. Were you involved personally in that selection

23 process?

24 A. Yes.

25 Q. Who else was involved with you?

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1 A. Rich Baird and several other people from the staff.

2 The Mayor of Detroit was involved in the process.

3 Q. Mayor Bing was involved?

4 A. Yes.

5 Q. Was Mr. Dillon involved?

6 A. Yes.

7 Q. Was your chief of staff involved?

8 A. Yes.

9 Q. Did you rely on any outside consultants, bankruptcy

10 attorneys, financial advisors in making this

11 decision also?

12 A. I didn't personally during that process.

13 Q. Did you establish a list of criteria or

14 qualifications that you were looking for that you'd

15 think favorably upon in making the selection as to

16 who should be the emergency manager for Detroit?

17 A. There was criteria we discussed to go through this

18 process.

19 Q. Did that criteria include familiarity with

20 bankruptcy?

21 A. It wasn't necessarily required. It could be viewed

22 as a positive and not in the context of bankruptcy

23 but bankruptcy and restructuring experience.

24 Q. Did you view as a positive ties to Detroit?

25 A. Yes.

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1 Q. Were you looking at residency?

2 A. Not necessarily residency but familiarity with

3 Detroit.

4 Q. Did you take into account political affiliations?

5 A. No.

6 Q. Race?

7 A. Again, that would be a factor that could be of some

8 consideration.

9 Q. Did you take into account any history of political

10 party ties, political involvement or political

11 appointments?

12 A. What I would say, those would be viewed as

13 negatives.

14 Q. Did you take into account any municipal

15 redevelopment background?

16 A. In terms of restructuring or having municipal

17 experience, that would be a positive.

18 Q. Would that also include municipal budgeting or

19 financial planning?

20 A. It could.

21 Q. Did you take into account any land use or zoning

22 experience?

23 A. We didn't get to that degree of specificity, as I

24 recall.

25 Q. Were there in-person interviews in connection with

Page 36

1 the selection process that resulted in the selection

2 of Kevyn Orr?

3 A. Yes.

4 Q. Who ran that process for you?

5 A. Rich Baird.

6 Q. And were you personally involved in the in-person

7 interviews?

8 A. Some.

9 Q. Did you personally interview Kevyn Orr?

10 A. Yes.

11 Q. Where did that interview take place?

12 A. I met with him more than once. I believe -- I don't

13 recall specifically which location.

14 Q. Was there a list or a slate of candidates that you

15 personally interviewed for the emergency manager

16 position?

17 A. I interviewed more than one candidate in person.

18 Q. How many candidates did you interview in person?

19 A. I recall two for sure.

20 Q. Were there more than two?

21 A. Not that I recall.

22 Q. Was Kevyn Orr a candidate before Jones Day was

23 interviewed as counsel for Detroit?

24 A. I don't believe so.

25 Q. Was he asked to be -- to consider the emergency

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 characterization.

2 Q. Let me rephrase the question then or ask another

3 question.

4 A. Yes.

5 Q. Do you recall any conversations you had with Mr. Orr

6 with or without attorneys present between the time

7 that he became emergency manager and the Chapter 9

8 filing relating to the pension issue that he might

9 have construed in such a way that he would answer

10 affirmatively a question about getting out of the

11 pension obligations that the City owed?

12 MS. NELSON: Objection; form, foundation,

13 calls for speculation. He can't testify about how

14 Mr. Orr might have thought or formed or understood a

15 question.

16 MR. WERTHEIMER: Go ahead, you can answer,

17 Governor.

18 MS. NELSON: Go ahead.

19 THE WITNESS: I just want to make sure I

20 understand it. You're saying whether it was

21 potentially covered by privilege or not.

22 BY MR. WERTHEIMER:

23 Q. Yes, whether it's covered by privilege or not.

24 A. Yes. Was there a discussion on pension liabilities?

25 Q. Well, yes, or any other kind of discussion where

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1 somebody of Mr. Orr's sophistication might have as a

2 result of that conversation answered a question

3 affirmatively about getting out of pension

4 obligations.

5 MS. NELSON: Same objection. Go ahead.

6 THE WITNESS: Yes.

7 BY MR. WERTHEIMER:

8 Q. Okay. And what do you remember you said and what

9 did he say relative to that, as best you remember?

10 MS. NELSON: If you --

11 THE WITNESS: Okay.

12 MS. NELSON: You can answer that.

13 THE WITNESS: I'm just checking. I'm

14 sorry.

15 BY MR. WERTHEIMER:

16 Q. No, no. That's okay.

17 A. You guys have been objecting enough, I'm trying to

18 figure out --

19 Q. For what it's worth, after she makes an objection

20 unless she instructs you not to answer --

21 A. Yeah.

22 Q. -- she's making an objection for the record.

23 A. No, I was just double-checking.

24 Q. I understand, yeah. No, that's fine.

25 A. Could you run it by me one more time then, and I

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1 won't look at her this time.

2 Q. Feel free to look at her.

3 I'd like to know what you can tell me you

4 said and Mr. Orr said in the conversation you did

5 have, the one or more conversations you had, between

6 the time he became emergency manager and the

7 Chapter 9 filing relative to the pension obligations

8 that the City owed?

9 A. Yeah, I would say there would be two or three pieces

10 to that. One is a concern about who is representing

11 the retirees.

12 Q. Who's saying what -- to the extent you can,

13 Governor, and I understand you're not going to

14 remember exact words, but to the extent you can I'd

15 like you to break down what you're saying and what

16 Mr. Orr is saying so that we can identify who is

17 saying what to the extent you remember.

18 A. Okay.

19 Q. Go ahead.

20 A. Sure. Well, let me start at the terms of the

21 discussion. One is there is clearly a concern

22 for the retirees. These are people that worked for

23 the City for many years. And I shared this thought

24 that I am concerned about the retirees.

25 The second piece ties into what was the

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1 situation about representing the retirees. Mr. Orr

2 brought that to my attention because he was having

3 difficulty finding people to represent the retirees.

4 The way it was described to me is there are a number

5 of unions that were not willing to potentially

6 represent the retirees versus their active members;

7 that all the retirees were not going to have

8 representation in some capacity during the

9 negotiation process with creditors. And that was a

10 concern because there are many parties to this.

11 This is very complex. We're talking potentially

12 20,000 retirees.

13 In terms of that, again, I'm kind of --

14 time frame, we had a general discussion about that

15 being a problem. When it ultimately came down to

16 looking at the bankruptcy -- possibility of a

17 bankruptcy filing, one of the things that he brought

18 forward and I really pushed was the issue about

19 asking very quickly that there be representation for

20 the retirees as part of the bankruptcy process

21 because I believe it's important.

22 And I've been public with that in addition

23 to those private discussions that it's very

24 important that they have a seat at the table so

25 their voice can be heard during this process and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 said it was in an email and we have the email being
 2 7:47 so I would suggest --
 3 MS. NELSON: He just corrected that. He
 4 indicated it could have been by some other means and
 5 that it was earlier than this time frame, so we'll
 6 get it to you.
 7 MS. LEVINE: Let's talk for a second. We
 8 have a lot of attorneys testifying. I think they
 9 should stop it.
 10 MS. NELSON: Correct.
 11 MS. LEVINE: To the extent that there's a
 12 transmittal other than this one that exists, we'll
 13 ask the State to produce it to us. In response to
 14 the direct request, we've got the production from
 15 Jones Day with regard to the transmittal.
 16 MR. GADOLA: I'm confident we can do that.
 17 MR. SCHNEIDER: That's fine.
 18 MR. WERTHEIMER: Thank you.
 19 MS. NELSON: Absolutely.
 20 MR. WERTHEIMER: Thank you, Governor.
 21 THE WITNESS: All done?
 22 MR. WERTHEIMER: All done.
 23 THE WITNESS: Okay. Thank you.
 24 VIDEO TECHNICIAN: Deposition's concluded
 25 at 12:04 p.m.

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1 MS. GREEN: The Retirement Systems join the
 2 prior objection and reservation of rights placed on
 3 the record earlier. We also received documents late
 4 last night from the City, and those documents relate
 5 to both City and State officials.
 6 To the extent our rights have been
 7 prejudiced and those documents reveal a need for
 8 further deposition testimony, we hereby join the
 9 prior objection placed on the record by counsel.
 10 (Deposition concluded at 12:05 p.m.)
 11 - - -
 12
 13 (Deposition Exhibit 11 was marked post deposition)
 14
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1 CERTIFICATE
 2 STATE OF MICHIGAN)
 3 COUNTY OF OAKLAND) SS:
 4
 5 I, LAUREL A. JACOBY, Certified Shorthand
 6 reporter, a Notary Public, hereby certify that I recorded
 7 in shorthand the examination of GOVERNOR RICHARD D.
 8 SNYDER, the deponent in the foregoing deposition; and that
 9 prior to the taking of said deposition the deponent was
 10 first duly sworn, and that the foregoing is a true,
 11 correct and complete transcript of the testimony of said
 12 deponent.
 13 I further certify that no request was made for
 14 submission of the transcript to the deponent for reading
 15 and signature and that no such submission was made.
 16 I also certify that I am not a relative or
 17 employee of a party or an attorney for a party; or
 18 financially interested in the action.
 19
 20
 21 LAUREL A. JACOBY, CSR-5059, RPR
 22
 23 Notary Public, Oakland County, Michigan
 24 My commission expires: 9/1/18
 25 Dated: This 11th day of October, 2013.

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EXHIBIT B

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<p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 EASTERN DISTRICT OF MICHIGAN 3 SOUTHERN DIVISION 4 5 In re Chapter 9 6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846 7 Debtor. Hon. Steven W. Rhodes 8 _____/ 9 VIDEOTAPED DEPOSITION 10 11 DEPONENT: KEVYN ORR 12 DATE: Monday, September 16, 2013 13 TIME: 10:08 a.m. 14 LOCATION: MILLER CANFIELD PADDOCK & STONE PLC 15 150 West Jefferson, Suite 2500 16 Detroit, Michigan 17 REPORTER: Jeanette M. Fallon, CRR/RMR/CSR-3267 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES (continued): 2 3 LOWENSTEIN SANDLER LLP 4 By: Sharon L. Levine 5 65 Livingston Avenue 6 Roseland, NJ 07068 7 973.597.2374 8 -and- 9 AFSCME 10 By: Michael L. Artz 11 Tiffany Ricci 12 1101 17th Street, NW 13 Suite 900 14 Washington, D.C. 20036 15 202.775.5900 16 Appearing on behalf of AFSCME 17 18 CLARK HILL PLC 19 By: Jennifer K. Green 20 500 Woodward Avenue, Suite 3500 21 Detroit, MI 48226 22 313.965.8274 23 Appearing on behalf of Retirement Systems 24 25</p>
Page 2	Page 4
<p>1 APPEARANCES: 2 3 JONES DAY 4 By: Gregory M. Shumaker 5 Dan T. Moss 6 51 Louisiana Avenue, NW 7 Washington, D.C. 20001.2113 8 202.879.3939 9 Appearing on behalf of the Debtor 10 11 DENTONS 12 By: Anthony B. Ullman 13 620 Fifth Avenue 14 New York, NY 10020.2457 15 212.632.8342 16 Appearing on behalf of Retirees Committee 17 18 COHEN WEISS AND SIMON LLP 19 By: Peter D. DeChiara 20 330 West 42nd Street 21 New York, NY 10036.6979 22 212.356.0216 23 Appearing on behalf of UAW 24 25</p>	<p>1 APPEARANCES (continued): 2 3 WILLIAMS WILLIAMS RATTNER & PLUNKETT PC 4 By: Ernest J. Essad, Jr. 5 380 N Old Woodward Ave Ste 300 6 Birmingham, MI 48009 7 248.642.0333 8 Appearing on behalf of FGIC 9 10 SIDLEY AUSTIN LLP 11 By: Guy S. Neal (appearing via LiveNote Streaming) 12 1501 K St., NW 13 Washington, D.C. 14 202.736.8000 15 Appearing on behalf of National Public Finance 16 Guarantee Corp. 17 18 WINSTON & STRAWN LLP 19 By: Bianca M. Forde (appearing via LiveNote Streaming) 20 200 Park Avenue 21 New York, NY 10166.4193 22 212.294.4733 23 Appearing on behalf of Assured Guaranty Municipal 24 Corp. 25 ALSO PRESENT: Mark Meyers, videographer</p>



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<p style="text-align: right;">Page 6</p> <p>1 E X H I B I T S</p> <p>2 NUMBER IDENTIFICATION PAGE</p> <p>3 Exhibit 9 Proposal For Creditors</p> <p>4 June 14, 2013 102</p> <p>5 Exhibit 10 July 16, 2013 Letter from Orr</p> <p>6 to Snyder and Dillon 115</p> <p>7 Exhibit 11 July 18, 2013 Letter from Snyder</p> <p>8 to Orr and Dillon 115</p> <p>9 Exhibit 12 July 12, 2013 Letter from DFFA 134</p> <p>10 Exhibit 13 July 17, 2013 Letter from Jones Day 138</p> <p>11 Exhibit 14 Retiree Legacy Cost Restructuring</p> <p>12 September 11, 2013 153</p> <p>13 Exhibit 15 Declaration of Mr. Orr 157</p> <p>14 Exhibit 16 Detroit News Article, 7/16/2013 200</p> <p>15 Exhibit 17 City of Detroit, Michigan's Objections and</p> <p>16 Responses to Detroit Retirement Systems'</p> <p>17 First Requests for Admission Directed to</p> <p>18 the City of Detroit, Michigan 251</p> <p>19 Exhibit 18 June 27, 2013 Letter from Jones Day 266</p> <p>20 Exhibit 19 City of Detroit, Michigan's Objections and</p> <p>21 Responses to Detroit Retirement Systems'</p> <p>22 First Set of Interrogatories Directed to</p> <p>23 the City of Detroit, Michigan 300</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Okay.</p> <p>2 MR. ULLMAN: Before we begin I would just</p> <p>3 like to note for the record that we received the</p> <p>4 document production that the City made on Friday and</p> <p>5 it was in image file, essentially TIF images, over a</p> <p>6 hundred thousand pages which were essentially, as the</p> <p>7 City knows, very difficult to work with. We obviously</p> <p>8 have not been able to get through them all in time for</p> <p>9 this morning's deposition. We're going to continue to</p> <p>10 review the documents and we're reserving our rights to</p> <p>11 recall Mr. Orr for further deposition if after review</p> <p>12 of the documents we feel it's appropriate to do so.</p> <p>13 MR. SHUMAKER: We'd just note for the</p> <p>14 record that we're abiding by the schedule set by the</p> <p>15 Court and that the documents that were produced were</p> <p>16 responsive to the more than hundred document requests</p> <p>17 that the City received in connection with this motion</p> <p>18 and so we reserve all rights and I'm sure we'll oppose</p> <p>19 any effort to continue the deposition.</p> <p>20 MR. ULLMAN: Duly noted.</p> <p>21 Q. Mr. Orr?</p> <p>22 A. Yes.</p> <p>23 Q. You've been deposed before; correct?</p> <p>24 A. Yes.</p> <p>25 Q. So you know I will ask questions and I would</p>

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



Page 29

1 used the word nationalized?

2 A. No, I don't know if she meant raises the profile of

3 the issues to help Detroit, I don't know.

4 Q. And you never asked her what she meant?

5 A. I don't recall asking her what she meant.

6 Q. In the top email in this exhibit you say that you had

7 a good conversation with Rich Baird this morning.

8 This is the 31st of January?

9 A. Yes.

10 Q. So obviously either you called him or you called him

11 as of the 31st of January?

12 A. Yes, yes.

13 Q. It says in this email that you told him you were

14 interested in the job but there were some things that

15 made it impractical. Is that a fair summary of

16 your --

17 A. Yes.

18 Q. -- your conversation with Baird?

19 A. Yes.

20 Q. And then he suggested you give it additional

21 consideration and you said you could say that there's

22 a glimmer of hope you would take it?

23 A. Right.

24 Q. And then you agreed to get back in touch next week?

25 A. Right.

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1 Q. He said -- you go on to say that he tells you, he

2 Baird, that he likes your presentation, he's pulling

3 for us to represent the City.

4 A. Yes.

5 Q. Is that what he told you?

6 A. Yes.

7 Q. Do you remember anything else about that conversation

8 with Mr. Baird?

9 A. No, I remember we had a conversation. I said I was

10 flattered, but I really wasn't interested in the job,

11 I was very comfortable at Jones Day, didn't want to

12 leave my family, I had young children, but I would

13 give it some consideration and I think we ended it by

14 saying, you know, I probably don't want to take the

15 job but I am committed to working and I did say

16 working in lockstep with the City and would be willing

17 to take any role in this respect.

18 Q. And was there any discussion during this conversation

19 as to what you would do if you ultimately did take the

20 job of EM?

21 A. No. As I recall in this conversation based upon this,

22 the discussion was very high level and I think

23 Mr. Baird asked me to at least give it some reflection

24 and consideration and not turn it down outright.

25 Q. And you accommodated that request; right?

Page 31

1 A. I started considering it, yes.

2 Q. Now, when he says we're pulling for us to represent

3 the City, that's as a restructuring counsel as you

4 talked about before?

5 A. Yes.

6 Q. And there was a program, wasn't there, that had been

7 designed to solicit counsel to act as restructuring

8 counsel for Detroit?

9 A. I don't know if it was a program. I know that there

10 was a process that we and 20 other firms participated

11 in. I believe it was one day, maybe two, where we

12 flew out to the airport and presented our credentials

13 over 45 minutes.

14 Q. And was there a particular firm that had designed or

15 that oversaw that process?

16 A. I don't know.

17 Q. Were you aware that Buckfire -- are you familiar with

18 Buckfire?

19 A. I know Miller Buckfire. They were at the

20 presentation. I don't know if they designed it.

21 Q. Were you aware they were playing a role in the --

22 A. Selection process?

23 Q. -- in the selection process?

24 A. Yes.

25 Q. And are you aware that they were in fact effectively

Page 32

1 assigning points to the various firms that

2 participated and doing some sort of tally to help a

3 decision be made?

4 A. Yes.

5 MR. SHUMAKER: Objection, foundation.

6 Q. And is it correct that Miller Buckfire was a banker

7 for Chrysler in the Chrysler bankruptcy?

8 A. No.

9 Q. They weren't?

10 A. No. I'm trying to think. Did Miller Buckfire play a

11 role in Chrysler? I -- let's put it this way, I had

12 not met anyone from Miller Buckfire in the Chrysler

13 representation.

14 Q. Okay. Let me show you the next document, which we'll

15 mark as, what are we up to, 3?

16 (Marked Exhibit No. 3.)

17 Q. What we've marked as Exhibit 3 is a chain of emails,

18 the first page ends in Bates number 300. Have you

19 seen these before, Mr. Orr?

20 A. Yes.

21 Q. Let's first look at the first three emails in this

22 chain.

23 A. Uh-huh.

24 MR. SHUMAKER: The last chronologically or

25 the first ones?



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

Page 34

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

Page 35

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

Page 36

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



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1 be given acknowledgment for the success. Further, it
 2 might give me the ability to come back to the firm and
 3 make up for the time that I'd lose if I did this job.
 4 Q. The job being the Emergency Manager job?
 5 A. Yes.
 6 Q. Okay. Now, in the next email that's going up the
 7 chain that is on the first page you say you wouldn't
 8 do it.
 9 A. Yes.
 10 Q. And when you say you wouldn't do it, again, do you
 11 have -- what is the it that's being referred to? So
 12 far no one's ever really identified what nationalizing
 13 meant.
 14 A. I'm telling you what I can think, what I meant by this
 15 writing.
 16 Q. Okay.
 17 A. What I meant was I wouldn't necessarily make it a
 18 national issue and I think I say it would just bring
 19 in the Demo/Republican polarization on a national
 20 scale and make Detroit a fall for the agendas of both
 21 sides, meaning that people would try to use it as an
 22 allegory for whatever their particular perception was.
 23 I go on to say that the president would have to
 24 criticize the trampling of democracy, and that's been
 25 done here, not by the president I might add, and the

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1 filing?
 2 A. Yes.
 3 Q. And was this something that you discussed specifically
 4 with Mr. Moss?
 5 A. We probably did.
 6 Q. Okay. And did you discuss the possibility -- so at
 7 this point it was understood that one possibility, one
 8 potential route of action, would be to file a Chapter
 9 9 for Detroit if you took the Emergency Manager job;
 10 is that right?
 11 A. Yeah, I think that since we have been reviewing
 12 background information on Detroit and the possibility
 13 of a Chapter 9 filing had been mentioned in 2005,
 14 2006, 2009, 2011, 2012, up until this point, in fact I
 15 think it was, as I said, I testified earlier this
 16 morning, the possibility of Chapter 9s in other cities
 17 have been discussed, that the issue of a potential
 18 Chapter 9 filing for the City of Detroit was not a
 19 particularly surprising discussion. That had been
 20 discussed on many levels in the national press, in the
 21 local press, it had been recommended by a prior -- in
 22 2005 I think it was recommended by a prior employee --
 23 senior employee of the City, so I think that
 24 discussion was the typical type of discussion that
 25 you'd have with your colleagues.

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1 Republicans would rail against any further federal
 2 bailouts and that's been said, plus if the feds did
 3 anything for Detroit, a number of other municipals
 4 would have their hands out at a time when no one's in
 5 the mood to dole out federal largess. I think I go on
 6 to say this is a morass of problems.
 7 So my thought was there, to be clear, that
 8 I did not think it, meaning to try to give the issues
 9 of Detroit national prominence, was particularly
 10 productive.
 11 Q. Now, in the top email you write -- or I'm sorry,
 12 Mr. Moss writes back to you and in the second
 13 paragraph he goes on to say, it seems the ideal
 14 scenario would be that Snyder and Bing both agree that
 15 the best option is simply to go through an orderly
 16 Chapter 9. And then he goes on to say that that
 17 avoids a political fight over the scope of any
 18 appointed Emergency Manager, moves the ball forward.
 19 And then he goes on to say, appointing Emergency
 20 Manager whose ability to actually do anything is
 21 questionable, would only serve to kick the can down
 22 the wrong path.
 23 A. Yes.
 24 Q. And can you tell me -- obviously this is -- Mr. Moss
 25 here is referring to the possibility of a Chapter 9

Page 40

1 Q. And were you in fact at this time having those types
 2 of discussions with your colleagues at Jones Day as to
 3 the possibilities of a Chapter 9 filing if you took
 4 the Emergency Manager job and how that would be
 5 implemented?
 6 A. Yes, but I don't want to give you the wrong impression
 7 because I think based upon what I've seen from some of
 8 the briefing and some of the interrogatories the
 9 impression is that that was predetermined and that's
 10 not true. The reality is there was much discussion
 11 about what the alternatives would be and the need to
 12 bring something that would bring order and efficiency
 13 to the process given the number of interests that were
 14 involved.
 15 Q. But it was certainly one of the possibilities that was
 16 on the table as a course that might need to be
 17 followed; is that right?
 18 A. Oh, sure, it had been discussed for the better part of
 19 the prior decade.
 20 Q. And in fact, Mr. Moss is recommending the simplest
 21 thing, the best option would be to have the -- Snyder
 22 and Bing, the mayor and the governor, both agree to go
 23 through an orderly Chapter 9?
 24 MR. SHUMAKER: Object to form, calls for
 25 speculation.



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1 Q. That's what it says here; doesn't it?

2 A. Well, I mean, the document speaks for itself.

3 Q. My question is did you agree with that?

4 A. No. In fact, I think we had discussions back and
5 forth about, one, me not wanting to take the job and
6 two, whether or not the parties could reach concession
7 short of a Chapter 9, which would provide benefit to
8 the City in an orderly way.

9 Q. And ultimately that didn't happen; did it? The City
10 did file Chapter 9; didn't they?

11 A. Well, I mean, I think that we took a lot of time, I
12 took 30 days when I came into the City, I said --

13 Q. Mr. Orr, I don't mean to interrupt you, but I don't
14 want to waste time. My question was pretty simple. I
15 was simply asking ultimately the City did file a
16 Chapter 9; didn't it?

17 A. Yes, and I was giving you an explanation for why that
18 occurred.

19 Q. I'll get to that later.

20 A. Okay.

21 Q. Now, in this email Mr. Moss goes on to say, appointing
22 of Emergency Manager whose ability to do anything
23 questionable would only serve to kick the can down the
24 wrong path. And he's referring there to the can of
25 the Chapter 9 filing; isn't he?

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1 MR. SHUMAKER: Objection, form. Calls for
2 speculation.

3 A. No, no.

4 Q. Now, in this email Mr. Moss recommends or suggests the
5 best path would be for Snyder and Bing to voluntarily
6 go through a Chapter 9 and not go through the
7 Emergency Manager process; is that right?

8 A. No, you've asked that question before but you put a
9 little color on it this time and I don't think that's
10 accurate.

11 Q. Well --

12 A. Perhaps you can rephrase it.

13 Q. Certainly. He says, he Moss says, it seems the ideal
14 scenario would be that Snyder and Bing both agree that
15 the best option is to simply go through an orderly
16 Chapter 9. This avoids an unnecessary political fight
17 over the scope of authority of any appointed Emergency
18 Manager. I'm not going to read the rest.

19 You see his recommendation, his advice, his
20 belief that the best option is for Bing and Snyder to
21 file Chapter 9?

22 MR. SHUMAKER: Objection to form.

23 A. I think you're coloring the email. As I said before,
24 this is pretty typical banter between co-workers and
25 colleagues about what could happen. You said it was

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1 advice and recommendation. To the best of my
2 knowledge we hadn't been retained then and we were
3 just going back and forth about potential options.

4 Q. Okay.

5 A. So I don't want to give -- my testimony to give this
6 email more import and lead to the conclusion as some
7 have already said in this litigation, that there was a
8 predetermination to file Chapter 9.

9 Q. But ultimately it was the Emergency Manager, the
10 appointed Emergency Manager, who filed the Chapter 9,
11 not Bing and Snyder; is that right?

12 A. Yes, after he had been sued multiple times and didn't
13 get a comprehensive proposal from any interested party
14 or creditor.

15 Q. Let me show you another document, which we'll mark as
16 Exhibit 4.
17 (Marked Exhibit No. 4.)

18 Q. This is a chain of emails, it starts with Bates number
19 295.

20 A. Yes.

21 Q. Have you seen this before, Mr. Orr?

22 A. Yes.

23 Q. In fact, you wrote some of this; didn't you?

24 A. Yes.

25 Q. If we focus on the top email --

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1 A. Yes.

2 Q. -- you're talking again -- at this point in time had
3 you decided whether to accept the Emergency Manager
4 job? This is later in the afternoon on January 31.

5 A. No, I didn't. I -- no, there was no time in the
6 initial two days that this came up that I decided to
7 accept the Emergency Manager job.

8 Q. Okay. And in this email you're giving some thoughts
9 on some of the issues that pertain to that; aren't
10 you?

11 A. Yes.

12 Q. And in particular you start talking about the
13 legislation that pertains to the EM position. You
14 said you went back and reviewed various laws; do you
15 see that?

16 A. Yes.

17 Q. And you talked about some laws in DC control board and
18 then you go on in the last sentence -- or I'm sorry,
19 the second to the last sentence to write, and I quote,
20 "By contrast Michigan's new EM law is a clear
21 end-around the prior initiative that was rejected by
22 the voters in November."
23 You wrote that?

24 A. Yes.

25 Q. And by the new EM law, you were referring to PA 436?



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1 A. Yes, I believe so.

2 Q. And by the end run you're talking about the voter --

3 the fact that PA 436 was enacted in response to the

4 fact that the voters had rejected the prior law, PA 4;

5 is that right?

6 A. Yes.

7 Q. And PA 436 was able to avoid another referendum by

8 including tacking onto it a relatively minor

9 appropriation provision; is that right?

10 MR. SHUMAKER: Objection, calls for

11 speculation.

12 A. I don't know if that's the sum total of the difference

13 between 436 and the prior law, but that was one of the

14 components, yes.

15 Q. And when you wrote this question, Michigan's new EM

16 law is a clear end-around the prior initiative, it was

17 rejected by the voters in November, were you writing

18 truthfully?

19 A. I think I was writing my opinion at that time, yes.

20 Q. And then you go on and you say, the -- and that was

21 based on the analysis that you had done as of that

22 date?

23 A. Yeah, I think you would recognize that between the

24 30th when this first came up and the 31st, I think

25 this is later that afternoon, I spent some time just

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1 going through the other laws on a very cursory basis

2 to try to get a better understanding of what was being

3 asked.

4 Q. And the conclusion you reach is what you set out in

5 the email here; correct?

6 A. At that time.

7 Q. You go on to say, the new EM law gives local

8 governments four choices and you go on to list them?

9 A. Yes.

10 Q. And that is the list of the four choices you have,

11 that comes from the statute PA 436; doesn't it?

12 A. I believe so. I don't have it in front of me, I have

13 it here, but I believe so without looking at it.

14 Q. And so at that point in time you obviously were

15 familiarizing yourself with 436 and had read it;

16 correct?

17 A. Yes, I think what happened during this day is that I

18 initially thought of rejecting the concept of being an

19 EM, I then went back and said let me start informing

20 myself on what's required EM in looking under the law,

21 and then I was providing musings and streams of

22 consciousness about what my initial conclusions were.

23 Q. And you mention that in your writing here that one

24 option is a Chapter 9 bankruptcy with the governor's

25 approval; correct?

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1 A. Yes.

2 Q. And you also make note that another option is

3 Emergency Manager; is that right? State appointed EM

4 is what you say?

5 A. Yes.

6 Q. And under PA 436 the Emergency Manager also had the

7 authority with the governor's approval to file for

8 Chapter 9; is that right?

9 MR. SHUMAKER: Objection, calls for legal

10 conclusion.

11 A. Yeah, the statute speaks for itself, but yes.

12 Q. And you were aware of that at the time you wrote this

13 email; correct?

14 A. I don't know if I read through the entire statute at

15 this time. As I said, I have trying to get some

16 familiarity. I think it's fair to say that I at some

17 point pretty close -- if I wasn't aware of it at that

18 time, I pretty closely became aware of it.

19 Q. Because you would certainly want to know what powers

20 the Emergency Manager would have if you decided to

21 take the job; correct?

22 A. I began to inform myself about the powers that the

23 Emergency Manager would have. But please understand

24 here again at this time I was trying to avoid taking

25 the job.

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1 Q. And you go on then in the -- and you were -- I guess

2 -- were you aware that for either the case of the

3 Chapter 9 being filed with the governor's approval

4 without the Emergency Manager being involved or the

5 Chapter 9 filing with the Emergency Manager, that in

6 either case PA 436 did not require the governor to

7 impose any contingencies on the bankruptcy filing?

8 MR. SHUMAKER: Objection, calls for legal

9 conclusion.

10 A. I don't recall if I had done a deep dive in that

11 question at this time. Please understand, counselor,

12 at this time I was doing a preliminary review of the

13 statute based upon I believe some published reports

14 and a look at it online. I may have gotten to that

15 point, I just don't recall if at this time during that

16 day I had.

17 Q. Okay.

18 A. But I did at some point.

19 Q. But you certainly knew that ultimately?

20 A. At some point I did, sure.

21 Q. Obviously. And then you go on in the next sentence in

22 this email to say, "So although the new law provides

23 the thin veneer of a revision, it is essentially a

24 redo of the prior rejected law and appears to merely

25 adopt the conditions necessary for Chapter 9 filing."



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1 A. Yes, I said that.

2 Q. And were you writing truthfully when you said that?

3 A. Yeah, and I think the balance of the paragraph, the
4 news reports state that opponents of the prior law are
5 already lining up to challenge this law. So as I just
6 testified, this was my preliminary analysis based upon
7 a number of sources, some of them were the news
8 reports.

9 Q. And you were aware in fact that as you just indicated
10 that there were either challenges already made or that
11 were going to be made to the law?

12 A. I was not aware that there were challenges already
13 made. I was aware the news report states that
14 opponents of the prior law were already lining up to
15 challenge the law.

16 Q. And did you have any understanding at this time as to
17 what those grounds of challenge were or may be?

18 A. No. As I said, this was, you know, within the span of
19 a day when this was going back and forth about what it
20 may require, I was beginning to familiarize myself to
21 some degree with the statute.

22 Q. Your email goes on to say you're going to speak with
23 Baird in a few minutes and see what his thinking is.

24 A. Yes.

25 Q. Did you speak with Mr. Baird that day?

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1 A. I don't recall, but I probably did.

2 Q. And do you recall any discussions with Mr. Baird that
3 day on the subject of the possibility of a Chapter 9
4 filing by the City?

5 A. No. I don't recall any discussions with Rich Baird
6 about the possibility of a Chapter 9 filing at this
7 point, no.

8 Q. Okay. But clearly at this point in time one of the
9 things you were focused on was the possibility of a
10 Chapter 9 filing and the legal issues that might
11 pertain to that as reflected in this email; correct?

12 A. As I have said before, the issue of a Chapter 9 filing
13 had been discussed many, many times with regard to
14 Detroit for the better part of the prior decade, so in
15 doing my sort of due diligence of what the statute
16 required, part of what I was doing was reading some of
17 those very articles that I mentioned earlier today
18 where some of the prior City employees were
19 recommending that there was a filing in 2005 in
20 connection with the cops, 2006 with the cops, 2009
21 with the SWAPs, so yes, Chapter 9 had been discussed
22 many, many times in the papers I was reading.

23 Q. And from all the discussions that you had to date with
24 various people including those at Jones Day, were you
25 aware that one of the issues with PA 436, one

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1 potential ground for challenge, was that it allowed
2 the governor to authorize a bankruptcy filing without
3 imposing a condition that would prevent pension
4 obligations from being impaired?

5 A. I don't know if I was aware of that issue at this
6 time, no.

7 Q. Well, were you aware -- you became aware of it if not
8 then at some point shortly thereafter; correct?

9 A. Yeah, let me say this. There was no broad based
10 concern at this point about with what the authority
11 was with regards to pensions so any sort of
12 insinuation that that was the focus at this point is
13 just inaccurate. That wasn't true. This as I said
14 before was a very cursory and initial sort of review
15 of what I was being asked to do so when I had a
16 discussion with Mr. Baird later I would have some
17 information and that's what I gleaned based upon a few
18 hours since apparently I got the call -- I was
19 informed that day, that morning or the day before to
20 the time I was going to have a call that afternoon.

21 Q. But I take it at some point in time you became aware
22 that Article 9, Section 24 of the Michigan
23 Constitution protects pension benefits from being
24 diminished or impaired?

25 A. I believe at some point in time I became aware that

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1 Article 9, Section 24 purports to protect pensions and
2 benefits in certain circumstances, yes.

3 MR. ULLMAN: Let's mark Exhibit 5.
4 (Marked Exhibit No. 5.)

5 Q. Exhibit 5 is just a printout of Article 9, Section 24
6 of the Michigan Constitution. Do you recognize it as
7 such?

8 A. I mean, the document speaks for itself, but that
9 appears to be what it is, yes.

10 Q. Okay, and I think your last answer you said that in
11 your view Section 24, Article 9 purports to protect
12 pensions and benefits in certain circumstances.

13 A. Yes.

14 Q. And are you contending that the words of Article 9,
15 Section 24 means something other than what they say?

16 MR. SHUMAKER: Objection, calls for legal
17 conclusion.

18 A. Yeah, I -- here again, I think the document speaks for
19 itself. I think that my response to that issue is
20 throughout the arc of my career, whether in federal
21 government or in private practice at the Chrysler
22 case, there have been many state laws, some of them
23 quite sacrosanct, that have been abrogated by federal
24 law, not just bankruptcy law. At the RTC we preempted
25 state, New York state, rent control litigation, law;



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

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

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

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



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

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

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

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



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1 meeting between me and the mayor's personal assistant.

2 Q. He says, we'll broker a meeting via note between you

3 and the mayor's personal assistant who is not FOIAble?

4 A. Yeah, as I read this email -- I never met with the

5 mayor's personal assistant so let's get that out of

6 the way. As I read this email, we were talking about

7 a meeting between me and the mayor.

8 Q. Right, and isn't he -- fair enough. And isn't Baird

9 saying that he wants to set up a meeting via going

10 through the mayor's personal assistant who is not

11 FOIAble?

12 A. I think that's a fair reading.

13 Q. And do you know why he wanted to go through the route

14 of setting up this meeting through someone who is not

15 FOIAble?

16 A. No.

17 Q. Did you subsequently have a meeting with the mayor?

18 A. Yes.

19 Q. And what was said at that meeting?

20 A. I think the first meeting was -- my impression of the

21 first meeting was just a meet and greet. I think the

22 mayor wanted to get an assessment of who I was as

23 potentially coming into the City as a potential

24 Emergency Manager and to sort of get to know me, start

25 to get to know me.

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1 Q. How many meetings were there with the mayor before you

2 became the EM?

3 A. At least two.

4 Q. Do you recall when they took place?

5 A. I do not.

6 Q. Okay.

7 A. Somewhere around this time frame.

8 Q. And was the subject of Chapter 11 filing discussed at

9 either of those meetings?

10 A. No.

11 Q. Was the subject of a potential Chapter 11 filing

12 discussed at either of those meetings? I'm sorry.

13 Let me rephrase my question.

14 A. I can answer your question. No, neither Chapter 9 nor

15 Chapter 11.

16 Q. So you didn't discuss even the potentiality of a

17 Chapter 9 filing at either of those meetings with the

18 mayor; is that your testimony?

19 A. Yes. I don't recall -- let me. We may have -- I was

20 a bankruptcy attorney, we may have discussed it, but I

21 don't recall discussing specific issues regarding

22 Chapter 9 or to the extent people are suggesting that

23 that was predetermined. I don't recall those kinds of

24 discussions.

25 Q. Do you recall any discussion with the mayor as to the

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1 issues that the City faced as a result of the pension

2 obligations?

3 A. No. Frankly, our first meeting was more me telling

4 him how happy I was to meet him, I was a basketball

5 fan, particular fan of his for many years, getting his

6 understanding of the City --

7 Q. I'm sorry, Mr. Orr, I don't mean to interrupt you, but

8 that really wasn't responsive. My question was really

9 a yes or no question. I didn't ask tell me everything

10 you said. I asked a specific question.

11 MR. ULLMAN: Why don't you read it back?

12 THE WITNESS: What was your question again?

13 (Record read back as requested.)

14 A. No, I don't recall that discussion.

15 Q. And the same question for both meetings, so I'm not

16 sure if that question was limited to the first

17 meeting.

18 A. I don't recall having those discussions in either

19 meeting.

20 Q. Do you recall any discussion in either meeting with

21 the mayor about the issues the City was facing with

22 its obligations for healthcare benefits for retirees?

23 A. No, I don't recall either meeting having those

24 discussions.

25 Q. Show you the next document, which we'll mark as

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1 Exhibit 7.

2 (Marked Exhibit No. 7.)

3 Q. And I would like you to in particular if you would to

4 focus on the email at the top of -- let me identify

5 this first. This is an email chain beginning at Bates

6 page 459 and what I would like you to do, Mr. Orr, is

7 focus on Bates page 461, the email at the top of that

8 page.

9 A. 461?

10 Q. Please.

11 A. Yes.

12 Q. You see at the top there's an email from you to

13 Mr. Baird?

14 A. Yes.

15 Q. Eight o'clock, 8:17 at night?

16 A. Yes.

17 Q. And you talk among other things about what would be

18 expected on day one. Do you see that at the bottom?

19 A. Yes.

20 Q. So is it fair to say that by this time you had already

21 known that you were going to take the EM job?

22 A. No.

23 Q. So why were you then asking about what you can expect

24 on day one?

25 A. Because at this point I was still considering whether



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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1 healthcare benefits, right, and then the top headings?

2 A. Yes.

3 Q. And for pensions, just using 2014 as an example, we

4 see the number is 199.5 million?

5 A. Yes.

6 Q. And for the health benefits for 2014 it's

7 140.7 million?

8 A. Yes.

9 Q. And obviously if you look over the next several years,

10 it goes up?

11 A. Yes.

12 Q. Okay. And then so that I understand this, if you look

13 at pages 97 to 98, this is the same spreadsheet but

14 now showing what the figures would look like if this

15 proposal for restructuring were to go through; is that

16 right?

17 A. Yes.

18 Q. And so if we look again comparably for 2014, let's

19 see, and let's start with -- I guess we can start with

20 the pensions. On page 97, for 2014, we now see an

21 item DC pension contribution.

22 A. Uh-huh.

23 Q. And that's -- that DC stands for what?

24 A. You mean the DC?

25 Q. Yeah, what do the words stand for?

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1 A. Defined contribution.

2 Q. Defined contribution?

3 A. Uh-huh.

4 Q. Now, the existing -- the pension plan that exists

5 under the steady state projections, is that defined

6 contribution plan?

7 A. That would be switched over. No, no, defined -- the

8 steady state scenario?

9 Q. That's a defined benefit?

10 A. That's a defined benefit plan.

11 Q. So what you're projecting here is a switch over to a

12 defined contribution program and for 2014 we see the

13 number for the city's contributions is now

14 25.4 million; is that right?

15 A. Yes, that's -- yes.

16 Q. And that compares with the -- what was the figure?

17 199.5 million that we saw under the as is?

18 A. Yes, projections.

19 Q. Yes. So the diminution it looks just on the rough

20 math that the City's pension contributions under the

21 restructuring are being cut by about 80 percent; is

22 that right?

23 A. Under 75 million, 80 percent, sure, roughly.

24 Q. And for health, the health benefits, which we saw that

25 were, what, under the current scenario something like

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1 147 million?

2 A. Retiree health, yes.

3 Q. For retiree health?

4 A. Uh-huh.

5 Q. Under this proposal, the restructuring proposal, I

6 don't see any line entry for the retiree health

7 benefits.

8 A. Yes.

9 Q. So they're essentially being cut; correct?

10 A. Well, the obligation is being provided with a

11 different program, but yes, the City would not have an

12 obligation going forward of that magnitude.

13 Q. And going back to the pension contributions, you know,

14 we had talked about a diminution on the order of 80

15 percent from the 199.5 figure, and I think it's the

16 City's contention that the 199.5 figure is really

17 understated, right, because the obligations are really

18 a lot higher?

19 A. I think we think the liabilities -- this is the steady

20 state projection on 91. I think we think the

21 liabilities are higher because what we represented on

22 the second page of 98 is the estimated undersecured

23 claims for out years as opposed to a ten-year

24 projection.

25 Q. Right. And if the liabilities were really greater

Page 108

1 than the diminution from the steady state to the

2 restructuring scenario would be greater than 80

3 percent; wouldn't it?

4 A. It might be. I mean, we've said 80 percent. I mean,

5 199.5 less 25, you know, you just roughly cut those in

6 half, that's a 12 and 1/2 percent, but you know, 88

7 percent, somewhere in that neighborhood.

8 Q. Now, the people who are -- the retirees who are

9 getting impacted from these -- by these cuts in the

10 proposed restructuring, these are who? These are men

11 and women who previously served the City and are now

12 retired?

13 A. Yeah, they're two pension plans: one for General

14 services and the other for Police and Fire.

15 Q. And these individuals that serve the City in both

16 public safety and nonpublic safety capacities?

17 A. Uniform and nonuniform, yes.

18 Q. And were these -- I guess the issue comes because the

19 pension liabilities and the healthcare benefits that

20 may be due are not -- there's not sufficient funding

21 that was put into them; correct?

22 A. Well, the healthcare benefit has no funding, the

23 \$5.7 billion. And the pension underfunding has our

24 estimate of the level of underfunding, the unfunded

25 portion of the pensions, in them. There are assets



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

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

Page 111

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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1 after June 14th.

2 Q. So we're clear, no additional proposals that provided

3 for the pension cuts or the health benefit cuts in a

4 way that was different from what was in substance set

5 out on June 14?

6 A. Well, you say what was different.

7 Q. You haven't changed what was set out in the June 14th

8 proposal; have you?

9 A. You're not letting me respond. Can I respond?

10 Q. Let me withdraw the question.

11 A. Okay.

12 Q. Had there been any modifications to the June 14

13 proposal as of July 12, 2003 -- '13?

14 MR. SHUMAKER: Object to the form.

15 A. There could have been discussions that could qualify

16 as modifications, but generally speaking, the broad

17 outline of the proposal we submitted on June 14th was

18 still the proposal that we were talking about.

19 Q. Okay, and what were the discussions that you were

20 referring to that you said could qualify as

21 modifications?

22 A. Discussions we had with all members at the due

23 diligence follow-up sessions where we requested their

24 input.

25 Q. And was there any bargaining that took place at those

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1 sessions where the City said it would be willing to

2 agree to something that was different from what was in

3 June 14?

4 A. Here again, I'm going to stay away from bargaining as

5 a legal conclusion, duty to bargain is suspended. I

6 will say there was a back and forth and my

7 understanding discussions and invitations for further

8 information.

9 Q. Thank you.

10 I'm going to show you the next document,

11 which is a response to the one that we have as Exhibit

12 12, which we'll mark as Exhibit 13.

13 (Marked Exhibit No. 13.)

14 Q. Exhibit 13 a letter from Jones Day in response to what

15 we have marked as Exhibit 12; do you see that?

16 A. Yes, I believe so.

17 Q. And you see this is -- the letter starts out by

18 thanking the authors for their letter of July 12th?

19 A. Yes.

20 Q. And then in the second paragraph Jones Day goes on to

21 say, consistent with the position Dave Heiman and I

22 expressed at the meeting, we still think it makes

23 sense to first try to reach common ground with key

24 unions and association leaders on actuarial

25 assumptions and methods and the amount of PFRS

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1 underfunding and then tackle contributions and

2 attendant benefit changes. Do you see that?

3 A. Yes, it speaks for itself.

4 Q. And was that the position of the City as of July 17,

5 2013?

6 A. Yes, we said that before.

7 Q. As of July 17th now, 2013, had the City presented any

8 proposals that were different from the proposals set

9 out in the June 14th document?

10 A. As I said previously, subject to that testimony about

11 discussions that were had at these meetings, I think

12 this letter speaks for itself. We were requesting

13 input from the various interested parties as far as

14 our June 14th proposal.

15 Q. And the discussions were the same ones that you

16 answered about in the very last question --

17 A. Yes.

18 Q. -- when I asked you what the discussions were?

19 A. Yes.

20 Q. And as of June 17th -- I'm sorry, July 17th, had the

21 City actually sat down with any union or retiree

22 association to attempt to reach an agreement on a

23 restructuring plan that had terms that were different

24 from the terms in the June 14th proposal?

25 A. July 17th?

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1 Q. I'm sorry, yes.

2 A. Yes.

3 Q. If I misspoke, I'm asking as of July 17th.

4 A. Yes, we may have.

5 Q. You say you may have. Did you?

6 A. I was aware that there were ongoing confidential

7 negotiations with at least one union --

8 Q. Okay.

9 A. -- about a proposal.

10 Q. Okay. Were you present during those negotiations --

11 those discussions?

12 A. I have -- I have not -- I have met with members'

13 representatives of those unions. I'm not sure I was

14 in on all negotiations.

15 Q. Are these discussions that the City has stated are

16 subject to privilege under Federal Rule of Evidence

17 408?

18 A. Yes.

19 Q. Okay. And other -- so will you tell me what was said

20 at those sessions?

21 MR. SHUMAKER: Objection to the extent it

22 calls you to reveal privileged communications.

23 A. Yeah, those discussions are ongoing and so I'm -- I

24 have to be a little circumspect. Suffice it to say

25 there were discussions along the line of this exchange



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

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1 THE VIDEOGRAPHER: Going off the record at
 2 1:53 p.m.
 3 (A brief recess was taken.)
 4 THE VIDEOGRAPHER: We're back on the record
 5 at 1:57 p.m.
 6 BY MR. ULLMAN:
 7 Q. Okay, will you answer my question, Mr. Orr?
 8 A. No, I think this is -- concerns commercially sensitive
 9 potentially confidential settlement negotiations and
 10 implicates the attorney-client privilege so I cannot
 11 answer your question.
 12 Q. Okay, so apart from the discussions that you won't
 13 tell me about, would the City actually sit down with
 14 any union or retiree association in an attempt to
 15 reach an agreement on a structuring plan on terms that
 16 are different than the terms set out in the June 14th
 17 proposal as of July 17th?
 18 A. As I said before, subject to the meetings we've had,
 19 we've exchanged information which may constitute the
 20 type of sit down you're talking about. Other than the
 21 ones that have been recounted and phone calls and
 22 meetings I may not be aware of, this is what I know in
 23 my declaration.
 24 Q. And as of June 17th then, I take it you had not
 25 received any actual proposal -- I'm sorry, I keep

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

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



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

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

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

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



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

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

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

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



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1 recall.

2 Q. Okay. Let me show you another document.

3 A. There may -- none that I recall with specificity.

4 Q. Okay. And you were aware that they represented other

5 nonuniformed retirees?

6 A. Yes.

7 Q. But you can't recall anything --

8 A. None I recall with specificity.

9 MR. ULLMAN: Okay. Let's mark the next

10 document, which is, what, 15?

11 THE COURT REPORTER: Fourteen.

12 MR. ULLMAN: Fourteen.

13 (Marked Exhibit No. 14.)

14 Q. Okay, 14 is a document entitled retiree legacy cost

15 restructuring, September 11, 2013.

16 A. Yes.

17 Q. Are you familiar with this document?

18 A. Yes.

19 Q. And does this represent the City's current position as

20 to what it's going to do, what it's going to provide

21 for retirees?

22 A. This represents the slide deck that we proposed last

23 week at the initial meeting with the retiree

24 committee.

25 Q. Okay, and does it represent the position for the City

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1 currently as to what it's --

2 A. Yes, this is the current --

3 Q. -- planning to propose or planning to put through?

4 A. Yes, this is the City's current thinking.

5 Q. And as I understand this roughly, on the health side

6 what the City was saying it will do is essentially the

7 retirees who are Medicare qualified can sign up for

8 some various Medicare plans and the City will help

9 them with the payment of the premium for that?

10 A. Yes.

11 MR. SHUMAKER: Objection, document speaks

12 for itself.

13 A. But yeah, on page 4 it starts that discussion, yes.

14 Q. Okay. And essentially for nonMedicare retirees in

15 terms of getting healthcare, they're on their own and

16 the City says it will give them \$125 stipend; is that

17 right?

18 MR. SHUMAKER: Objection to form.

19 A. Yeah, you say they're on their own, but I think

20 there's a proposal here that they be able to go onto

21 the exchanges provided by the Affordable Care Act and

22 the City would give them a stipend.

23 Q. Right, and that's if to the extent they can do it, but

24 it's up to them to do something like that; right?

25 A. Yeah, like Harris Teeter did last week, yes.

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1 Q. And on the pension side of things has there been any

2 change from what was set out in the June 14th

3 proposal? As I understand this, it's still a defined

4 contribution plan for current employees and no

5 contributions being made by the City for retired --

6 for retirees; is that right?

7 MR. SHUMAKER: Object to the form.

8 A. Yeah, the general consensus is that you would close

9 the plan and there would be contributions for

10 currents, yes.

11 Q. And so again, just to be clear, that means for

12 retirees no ongoing contributions provided by the

13 City?

14 A. None other than their participation in the note that's

15 proposed in the June 14th proposal.

16 Q. And with no new funding for their pensions the

17 payments will stop -- to the retirees would stop being

18 made when the retirement funds run out; is that right?

19 A. That's a loaded question. I mean, the -- and the

20 reason I say it's a loaded question, some of the

21 retirement funds have said their payments won't run

22 out so that's why we want to have a dialogue. We

23 think they're at risk. They've told us they're not.

24 Q. And by the City's estimation the pension funding will

25 run out when? If no new funds are put in?

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1 A. Well, as you can see from our proposal, we have -- not

2 so much from the proposal but June 14th as well, we

3 made certain assumptions as to when the funds might

4 run out if nothing is adjusted one way or the other.

5 We've been told that we're wrong so --

6 Q. I'm asking. I'm asking the City's point of view.

7 A. The City's point of view is that we've made an

8 accurate and fair assumption that the funds will run

9 out at some point within the next two decades.

10 Q. And that's if no new money is contributed?

11 A. If -- well, and I'm being very careful. It's not just

12 if there's no new money, it depends upon actuarial

13 rates, it depends upon rate of return. Pensions could

14 invest in the Microsoft of their day and have more

15 than enough funds for the foreseeable future. But

16 assuming certainly reasonable assumptions that is the

17 conclusion of the City.

18 Q. And just to be clear, and that assumption as to when

19 it would run out assumes no further contributions by

20 the City; correct?

21 A. Yes, it assumes we close the plan. Other than the

22 note.

23 Q. And do you have any more specific recollection as to

24 when the funds would run out other than within the

25 next two decades?



<p style="text-align: right;">Page 157</p> <p>1 A. It's in my papers. If you want to point me to it, 2 that's fine, but I'll stand by what's in the papers. 3 Q. Now, you recall of course putting in a declaration in 4 the bankruptcy? 5 A. Yes. 6 Q. I guess I can actually give you a copy in case you 7 want to refer to it. 8 A. Okay. 9 MR. ULLMAN: Which we'll mark as 15. 10 (Marked Exhibit No. 15.) 11 Q. Okay, and Exhibit 15 is your declaration? 12 A. Yes. 13 Q. There's a lot of financial information that you put 14 out in your declaration; right? 15 A. Yes. 16 Q. One thing I didn't see in here is a balance sheet 17 showing the assets and liabilities of the City. 18 A. That is correct. 19 Q. Does one exist? 20 A. Not in the traditional sense that you're speaking of. 21 I think in our June 14th proposal we try to provide -- 22 and in other proposals we try to provide for some 23 listing of the City's potential assets of any 24 substantial form. But is their traditional corporate 25 balance sheet, for instance, for the City, no, not</p>	<p style="text-align: right;">Page 159</p> <p>1 you make a number of statements about insolvency? 2 MR. SHUMAKER: What page? 3 MR. ULLMAN: Sure, it's 37. 4 A. Yes. 5 Q. And in particular you cite a lot of figures with 6 respect to cash flow and you give projections? 7 A. Yes. 8 Q. Now, I think you indicated you're not an accountant? 9 A. No, I'm not. 10 Q. And is it correct that you yourself did not prepare 11 the cash flow numbers and projections? 12 A. That is correct. 13 Q. The underlying work was done by others? 14 A. Yes. 15 Q. And in your declaration you cite a number of sources 16 for the figures that you give in paragraphs 54 through 17 57? 18 A. Yes. 19 Q. You don't cite Ernst & Young as one of the sources? 20 A. No, that's because Ernst & Young submitted a parallel 21 affidavit at the time of this filing of Gaurav 22 Malhotra. 23 Q. Didn't the City in fact retain Ernst & Young to 24 prepare these cash flow projections? 25 A. The City retained Ernst & Young I believe over two</p>
<p style="text-align: right;">Page 158</p> <p>1 yet. 2 Q. Do you have schedules of assets and liabilities that 3 exist, though? 4 A. Yes, yes. 5 Q. Have those been produced? 6 A. I don't know if we've completed the schedules so -- 7 you're talking about the schedules of assets and 8 liabilities? I don't know. 9 MR. ULLMAN: I'll call for their 10 production. 11 MR. SHUMAKER: We will see. 12 MR. ULLMAN: I'm sorry? 13 MR. SHUMAKER: We'll look into it. I'm not 14 sure whether they've been produced or not right now as 15 I sit here. 16 A. Well, just to be clear, as you know, under Chapter 9 17 the time frame of it -- 18 Q. That wasn't my question. 19 A. But I'm answering your question so it won't be unclear 20 on the record. 21 Q. But there isn't a question. 22 A. No, I'm being responsive. So it won't be unclear on 23 the record. Under Chapter 9 they're actually not due 24 yet, so let's just be clear. 25 Q. Now, at paragraphs 52 through 57 of your declaration</p>	<p style="text-align: right;">Page 160</p> <p>1 years ago to work on liquidity, cash flow and 2 analysis. I don't think it was limited to just cash 3 flow projections. 4 Q. But that's one of the things that Ernst & Young did? 5 A. Yes. 6 Q. And that's one of the things in fact that -- what's 7 his name -- Gaurav Malhotra did? 8 A. Gaurav Malhotra. 9 Q. I'm sorry. 10 A. No problem. 11 Q. And Mr. Malhotra was in fact one of the lead Ernst & 12 Young players involved in working with the City; 13 wasn't he? 14 A. Yes, he's a principal at Ernst & Young. 15 Q. And is it correct that the figures that you're citing 16 in these paragraphs of your declaration in fact come 17 from work that come from Mr. Malhotra? 18 MR. SHUMAKER: Which figures are we talking 19 about, counsel? 20 MR. ULLMAN: Basically by my recollection 21 all of -- pretty much all of the figures. Certainly 22 in 54 these numbers about the 225 million, the 23 schedule that appears on page 39, the information 24 about the retiree legacy obligations being 8 percent 25 of revenues and this was all -- and going on, I just</p>

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

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

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

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



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1 Q. But that's never been subject to an audit; has it?

2 A. To the best of my knowledge I don't know when they

3 have or when they haven't.

4 Q. Okay. And I think you indicated that in coming up

5 with these figures various people were consulted in

6 various fields and a number of assumptions were made;

7 is that right?

8 A. I believe so.

9 Q. And I think you also indicated in your structuring

10 proposal from June 14th that the numbers are subject

11 to various assumptions which could or could not prove

12 right; correct?

13 A. Well, I think in June 14th we've said that it's a

14 proposal and there may be various issues that may or

15 may not be correct.

16 Q. Yeah. Okay, and obviously if any of the assumptions

17 that went into the underlying numbers that appear in

18 your declaration are wrong, then the numbers

19 themselves would also be subject to inaccuracy; true?

20 A. Let me say this about that. Both in June 14th

21 presentation and in this declaration, we've tried to

22 present an accurate picture of the City's books and

23 records and status to the best extent possible that we

24 have. Where there were questions we have tried to err

25 on the side of reasonable assumptions as opposed to

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1 unreasonable assumptions either way. But your general

2 question as to whether or not if the information going

3 in was inaccurate, revealed an inaccurate result, I

4 think it's true as a matter of just common sense and

5 logic.

6 Q. And the same thing as to assumptions. If the

7 assumption made was wrong, then the output would be

8 wrong also?

9 A. I think that's why we asked several times to have a

10 discussion about the assumptions that are necessary

11 for pension benefits.

12 Q. Now, the cash flows that are being reported in your

13 declaration, those do not include any assumptions as

14 to the monetization of various assets that the City

15 continues to hold; is that right?

16 MR. SHUMAKER: This is paragraph 56 that

17 you're referring to, counsel?

18 MR. ULLMAN: Yeah, I'm looking in general.

19 MR. SHUMAKER: In cash flow?

20 MR. ULLMAN: Yeah, cash flow.

21 A. You're talking about generally do the cash flows

22 include any monetization of any City assets?

23 Q. Yeah.

24 A. No, they do not.

25 Q. And obviously if assets currently held by the City

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1 were monetized, that would provide additional cash to

2 pay obligations including retirement and health

3 obligations; correct?

4 A. Well, additional cash from onetime asset sales may not

5 necessarily equal cash flows. As I understand the

6 analysis we've tried to present is cash flows based

7 upon a recurring basis as opposed to onetime assets

8 but it would yield additional cash.

9 Q. Yes. If you sold an asset and had money, you would

10 have the money available to pay something?

11 A. Yeah, you might have a onetime -- I'm not an

12 accountant, but you might have a onetime cash charge,

13 yes.

14 Q. And if the cash, the amount you got was large, it

15 could last for a long period of time; correct?

16 A. Well, it depends upon what --

17 MR. SHUMAKER: Objection, form.

18 A. Depends upon what it was used for. I mean, what are

19 you talking about? When you say could last for a long

20 period of time, it could be a one -- you could sell

21 one asset for \$5 million and that wouldn't last a

22 month.

23 Q. Yes, and depending on the amount of assets that were

24 sold, if you got a substantial amount of money, that

25 could enable the City of Detroit to pay ongoing bills

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1 for some period of time; true?

2 MR. SHUMAKER: Objection to form.

3 A. Here again, depending upon the size of the asset, but

4 anything is possible.

5 Q. Okay. Now, the City of Detroit owns certain pieces of

6 art that are stored at the Detroit Institute of Art;

7 is that right?

8 A. Yes.

9 Q. And how many is that?

10 A. I think the City owns approximately 66,000 pieces of

11 art.

12 Q. Now, those --

13 A. No, strike that. Let me be clear so we can move on.

14 Q. Yeah.

15 A. I think there are 66,000 pieces of art over at Detroit

16 Institute of Art. I'm not sure the City owns all

17 66,000 pieces. I've been informed that it owns 35,000

18 of those pieces in an undisputed capacity.

19 Q. Okay, that's what I was getting at. And that's

20 distinct from art that is subject to a public -- or is

21 or may be subject to a public trust or something like

22 that. This is 35,000 pieces that the City owns, as

23 you said, in an undisputed capacity?

24 A. Outright, yes.

25 Q. Outright. Now, is it correct that the City has



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

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

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

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



<p style="text-align: right;">Page 173</p> <p>1 procurement, accounting and managerial 2 responsibilities, but as it's stated in that opinion, 3 it remains an asset in the department of the City. 4 Q. And is it correct that the water and sewer department 5 has issued secured bonds? 6 A. Yes, they're in my June 14th proposal. 7 Q. Okay, and I don't recall. What was the value of the 8 bonds that were issued? 9 A. The secured portion of the bonds all in, but this also 10 includes some parking -- parking was 95 million, some 11 dedicated state revenue bonds was a couple hundred 12 million, but generally speaking about 5.7 billion. 13 Q. And those bonds -- the 5.7 billion is secured by the 14 assets of the department? 15 A. Yes, yes. 16 Q. And as you understand it, does the value of the assets 17 of the department of water and sewers exceed the 18 values of the secured bonds? 19 A. I don't know if there's been a formal appraisal, but I 20 certainly would hope so. 21 Q. Do you have an understanding of the value of the water 22 and sewer assets? 23 A. Not sitting here today. 24 Q. Do you have a general understanding, a general 25 recollection?</p>	<p style="text-align: right;">Page 175</p> <p>1 department's operations, not the assets, from the City 2 and perhaps increase additional value as a byproduct 3 of that process. 4 Q. And this is what is referred to in the June 14th 5 proposal or this transaction with this new authority? 6 A. Yes. 7 Q. And that would involve some sort of payment by the 8 authority to the City? 9 A. Yes, some sort of lease payment or like kind payment. 10 Q. Do you have any understanding -- can you give me any 11 idea as to the value that would be achieved by that, 12 the amount of cash that the City would be achieving, 13 realizing, if that went through? 14 A. Judge Cox's opinion, and I'm referencing the opinion 15 to state what's already in the record, references I 16 believe a \$62 million payment, which he called wildly 17 speculative. But there may be payments in that 18 regard, somewhere between 40 or lower to maybe up to 19 100. It's unclear. 20 Q. Right now who has control over the revenues that are 21 taken in by the department of water and sewers? 22 A. City does. 23 Q. Now, the department of water and sewers also had 24 retirement obligations for its -- 25 A. Well, they have employees that are members of the</p>
<p style="text-align: right;">Page 174</p> <p>1 A. When you talk about asset values, you're talking about 2 switches, pipes, valves, things along that nature. I 3 don't think I've ever seen an appraisal of the value 4 of the assets of the water and sewer department. 5 Q. Do you have a general understanding of what the value 6 of the assets -- 7 A. No. 8 Q. -- is worth? 9 A. No. 10 Q. Have you taken any steps to monetize the value of the 11 assets owned by the water and sewer department? 12 A. When you say monetize, I'm going to respond to the 13 question on the basis that monetize is in the broad 14 sense -- 15 Q. Uh-huh. 16 A. -- not whether it's a lease, whether it's a sale, 17 getting authority. 18 Q. Just get money for it. 19 A. Get money for it, get some dough, okay, just want to 20 be clear. Discussions are ongoing in that regard. 21 Q. What are those discussions in a nutshell? 22 A. Those are commercially sensitive so I don't want to 23 interfere. Suffice it to say, the -- Judge Cox's 24 opinion spoke to the possibility of creating an 25 authority that would remove the water and sewer</p>	<p style="text-align: right;">Page 176</p> <p>1 General retirement fund. 2 Q. Right. And how were payments to the retirement fund 3 for those employees to be made? In other words, were 4 they to be made directly by the department of water 5 and sewer, to the Retirement Systems or were they made 6 by the department of water and sewer to the City, 7 which then was to remit them to the Retirement 8 Systems? 9 A. You're talking about the transaction or steady state 10 now? 11 Q. The steady state. 12 A. Steady state now. My understanding is that's part of 13 the City's obligation. 14 Q. So the DWS, department of water and sewers, is to give 15 the money for the retirement to the City, the City 16 was -- 17 A. City makes it. 18 Q. -- was then supposed to make the payment to the 19 Retirement Systems? 20 A. Uh-huh. 21 Q. And are you aware of any funds that were transmitted 22 by the department of water and city (sic) to the City 23 for the purpose of funding pensions that were then 24 used by the City for other purposes? 25 A. I don't know if you can identify specific water and</p>

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

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

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

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



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1 department?

2 A. Let me say it this way. We have examined a number of

3 options and alternatives related to DWSD including

4 those that might be implicated by your question.

5 Q. So is the answer to my question yes, you have

6 considered that?

7 A. We have considered all operations at DWSD including

8 those that might be implicated by your question. I

9 said before I'm going to be very careful so I don't

10 interfere with the commercial aspects with what's

11 going on now.

12 Q. And can you tell me how much you believe or understand

13 the City can take from the capital fund from DWSD in

14 order to satisfy its ongoing obligations if it chose

15 to do that?

16 A. I didn't say --

17 MR. SHUMAKER: Objection to form.

18 A. I didn't say that we would take any capital, I said

19 we'd consider it.

20 Q. I didn't -- I'm asking can you tell me how much would

21 you understand is available to take if the City

22 decides to go down that route?

23 A. No, I can't tell you that.

24 Q. Have you done any analysis of that?

25 A. Analysis is a strong word. Have we looked at the

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1 options and related to the transaction all

2 potentialities, but I can't tell you what that number

3 would be.

4 Q. Who within the City would be most knowledgeable about

5 the capital funds that are available at the DWSD?

6 A. At the City?

7 Q. Yeah.

8 A. Probably the operations at DWSD.

9 Q. You also made reference in the June 14th proposal to

10 the parking systems that the City owns.

11 A. Yes.

12 Q. And as I understand it there are nine garages?

13 A. Yes.

14 Q. Two lots with over 1,200 spaces?

15 A. Yes.

16 Q. And over 3,400 meters?

17 A. Yes.

18 Q. Do you have an understanding as to the value of those

19 assets?

20 A. No, we're currently doing our analysis as to the value

21 of those assets now.

22 Q. And you have no preliminary view as to what they're

23 worth? Nothing's been reported back to you on at

24 least a tentative basis?

25 A. No, nothing has been reported back to me on -- because

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1 when you talk about values, there's a range of values

2 from asset disposition and outright sale and

3 privatization to creating an operation or an authority

4 where someone has brought in, as has been done in

5 Washington, D.C., to actually operate the garages and

6 meters. So we're looking at a range of alternatives

7 to determine what those values could be.

8 Q. What's the range of values you're looking at so far?

9 A. We don't have that yet.

10 Q. How concrete have you -- let me withdraw that.

11 What specific steps have been taken so far?

12 A. Our investment advisors and consultants are beginning

13 discussions with various parties that undertake these

14 types of operations within a range of alternatives to

15 try to assess values.

16 Q. And the investment advisors, would that be Buckfire?

17 A. Yeah, it would be our investment banker, Ken Buckfire,

18 Miller Buckfire.

19 Q. Okay. In the June 14th proposal you also make

20 reference to about 22 square miles of land that the

21 City owns?

22 A. City-owned land, yes.

23 Q. Do you have an understanding as to the value of that

24 land?

25 A. I've been informed that some of the value is at best

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1 nominal, but no, sitting here today, I do not have a

2 number as to the value of the land.

3 Q. Have any steps been taken to try to monetize that

4 value, to get dough as you put it?

5 A. Yeah. Well, here again, you're -- to get income

6 realization perhaps I should say more articulately,

7 but here again, we're at the preliminary steps of

8 examining potential alternatives regarding land.

9 Q. So you don't know yet?

10 A. No.

11 Q. The Belle Isle Park, that's also referenced in the

12 June 14th proposal?

13 A. Yes.

14 Q. It's indicated that there's a prospective lease to the

15 state?

16 A. Yes.

17 Q. Okay. And do you expect that to go through?

18 A. I'm going to ask for it. It was proposed and was not

19 accepted in time so the state withdrew it, but I do

20 believe we're going to intend to ask that that lease

21 be renewed.

22 Q. And what's the annual rent the City would get under

23 that lease?

24 A. The City has a \$6 million maintenance obligation and

25 that would be taken up by the state so that wouldn't



<p style="text-align: right;">Page 185</p> <p>1 be cash to the City, that would relieve us of an 2 obligation. It has several millions to tens of 3 millions of dollars in deferred maintenance at some of 4 the structures on the island and the state would 5 undertake that obligation as well. 6 Q. So it would essentially relieve the City of Detroit -- 7 A. Take it off. 8 Q. -- of debt burden it would otherwise bear? 9 A. Yes. 10 Q. You also mention the Joe Louis Arena? 11 A. Yes. 12 Q. Any steps taken to monetize that? 13 A. Here again, we're under initial analysis and 14 appraisals about what can be done with that. 15 Q. Do you have any understanding so far as to what the 16 potential cash value is that could be gotten from the 17 use of that stadium? 18 A. Well, there are existing statements regarding cash 19 flows and use of that stadium, but we're reviewing 20 different ways to look at it in some fashion. 21 Q. Do you have any understanding or belief as to the 22 value that can be realized from that? 23 A. No. 24 Q. Now, in your June 14th proposal you also make 25 reference to trying to increase the tax collection</p>	<p style="text-align: right;">Page 187</p> <p>1 determine whether or not it would yield a net positive 2 benefit. 3 Q. Are you aware in the recent past of a tax write-off, 4 an actual write-off of taxes, on the order of around 5 700 million? 6 A. I have -- I didn't hear that particular figure. I had 7 heard that there was a write-off. Am I aware of it? 8 Yes, I'm aware of it. 9 Q. And what's your understanding as to what that 10 write-off was? Was it 700 million, 800 million? 11 What's the figure you heard? 12 A. I don't know what the figure was, but I heard that it 13 was based on noncollectibles. That the probability of 14 collecting it was very low. 15 Q. Are you aware of any report that indicates that there 16 was a write-off on the order of 700 million, possibly 17 more, the figure I heard was 700 million, that may in 18 fact be collectible? 19 A. I've heard that some people have maintained that is 20 collectible, but I've also heard that the general 21 consensus is it may not be. 22 Q. Okay, and is there a specific set of taxes that that 23 pertains to, this figure we're talking about, seven or 24 800? 25 A. I don't know. I know that that is one of the -- in</p>
<p style="text-align: right;">Page 186</p> <p>1 rate. 2 A. Yes. 3 Q. Does the City keep a ledger, a line item, for 4 uncollected taxes? 5 A. The City keeps many line items. I think we -- you 6 mean uncollected taxes? 7 Q. Yeah, listing of -- 8 A. Yes. 9 Q. -- this is the amount for uncollected taxes? 10 A. Yes. 11 Q. Are you aware of any uncollected taxes that have in 12 the past been written off the City's books in the 13 recent tax but may in fact be collectible? 14 MR. SHUMAKER: Objection to form. 15 A. No. No. In fact, discussions that I've had is that 16 that -- the 50 percent compliance rate is not linear, 17 that is for every dollar put in to collect additional 18 taxes doesn't necessarily mean you're going to yield a 19 dollar plus in doing it. It might actually be a loss 20 leader so we're examining ways of trying to increase 21 collections. I assume you're talking about real 22 estate property taxes or income taxes? 23 Q. Or income, any kind of taxes. 24 A. Yeah, we're examining a number of different 25 alternatives in that regard, but we're trying to</p>	<p style="text-align: right;">Page 188</p> <p>1 the presentation we talk about various City assets, 2 airport, Belle Isle, parking, City-owned land, 3 City-owned buildings, others, we also have talked 4 about account receivables and I know that that fits in 5 that bucket, potential account receivables. 6 Q. Are you aware that the treasurer, Andy Dillon, has 7 acknowledged that there's a report that exists that 8 talks about the 700 or so million figure written off 9 that really is collectible? 10 A. That's what I had heard. That's what I meant when I 11 said I heard to that extent, yeah. 12 Q. And do you know what this report is? 13 A. No, I just -- I just heard about it coming in in the 14 process of doing some due diligence, but one, I 15 haven't seen it; two, we're looking into it. 16 Q. So you're in the process of trying to run down that 17 report and see what it is? 18 A. We're trying to run down a number of reports, rumors 19 and suggestions that there are account receivables due 20 the City. 21 MR. ULLMAN: And I would like to request a 22 copy of that report. 23 MR. SHUMAKER: We'll look into it. 24 THE WITNESS: If we have it. 25 Q. Now, did the City put in place tax programs -- tax</p>

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

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

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

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



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

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

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

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



<p style="text-align: right;">Page 197</p> <p>1 A. Yes, I am aware that in the history of Detroit there 2 have been concessionary bargains to certain benefits 3 without a Chapter 9. 4 Q. Okay, now, prior to the filing of this Chapter 9 -- 5 A. Uh-huh. 6 Q. -- are you aware of any concessionary bargaining 7 changes that affected retirees? 8 A. I'm hesitating because I'm trying to recall the 9 briefing papers I went through and your specific 10 question is retirees. I'm well aware of concessionary 11 bargaining changes for actives, now I'm thinking about 12 retirees. I don't know. 13 Q. Prior to the filing of this Chapter 9 petition you 14 previously discussed what I believe were four 15 meetings, June 10, June 20, July 10 and July 11; is 16 that correct? 17 A. Yes. I think we were talking about -- there were more 18 meetings than that, but I think we were talking about 19 the four meetings that were referenced on page I 20 believe 55 I believe of my declaration. Well, 21 actually it starts on 54. Okay. 22 Q. What other meetings were there? 23 A. I had had -- meetings with? 24 Q. Meetings -- well, my understanding is that the 25 meetings on June 10, 20, July 10 and July 11 were with</p>	<p style="text-align: right;">Page 199</p> <p>1 Q. Who would have placed those phone calls on your 2 behalf? 3 A. I don't know if they would have placed or if they 4 would have received them. I'm not sure, but if they 5 would have been, it would have been somebody probably 6 on labor benefits team, Evan Miller, Brian Easley or 7 others who work with them or others on the City's 8 labor department. 9 Q. If they were substantive meetings with anybody on 10 behalf of AFSCME, would that have been reported to 11 you? 12 A. More than likely, yes. 13 Q. Were there any substantive meetings with AFSCME prior 14 to the filing? 15 MR. SHUMAKER: Objection to form. 16 A. I'm going to -- outside of the meetings I mention in 17 my declaration? 18 Q. Outside of what we'll call the big four. 19 A. Okay, big four. Thank you. Sitting here today none 20 that I recall. 21 Q. Are you familiar with the so-called Webster 22 litigation? 23 A. Yes. 24 Q. Okay, that litigation was filed on July 3? 25 A. I believe so.</p>
<p style="text-align: right;">Page 198</p> <p>1 employees or retirees. Did you have other meetings 2 with employees or retirees? 3 A. You mean in a time frame? 4 Q. Yes. 5 A. Yes. Those were the formal structured meetings that 6 we recounted. My understanding is there were other 7 meetings that occurred outside of a formal process and 8 certainly a number of phone calls. 9 Q. With whom -- who is the counterparty to those 10 meetings? 11 A. I'm not sure I can capture every counterparty to every 12 meeting because my professional team and staff would 13 have various discussions, but I tried to recount ones 14 that I'm aware of and who the counterparties were in 15 my declaration. 16 Q. Was AFSCME one of the counterparties that you met with 17 outside of the four meetings we were previously 18 discussing? 19 A. I didn't meet with them, but I understand that there 20 may have been meetings or telephone calls with others. 21 Q. Were there meetings with others? 22 A. I don't know if there were meetings or phone calls. 23 There may have been meetings or phone calls. 24 Q. Were there phone calls? 25 A. I don't know. I understand there may have been.</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. And you sent your request to Governor Snyder on July 2 16th? 3 A. Yes. 4 Q. And Governor Snyder authorized the Chapter 9 filing on 5 July 18th? 6 A. Yes. 7 MS. LEVINE: Could we have it marked as Orr 8 16? 9 (Marked Exhibit No. 16.) 10 (Discussion held off the record.) 11 Q. We've just marked a document as Orr 16. It's 12 really -- it's just a Detroit News report from July 13 18th or July 17th actually at 11:00 p.m. 14 MR. SHUMAKER: I'm sorry, counsel. I see a 15 July 16 reference at the bottom. 16 MS. LEVINE: Sorry, July 16th at 11:00 p.m. 17 MR. SHUMAKER: Yeah. 18 Q. Mr. Orr, do you recall reading this press coverage at 19 the time that it was -- that it came out? 20 A. I do not recall reading this, but I can read it now. 21 Q. The -- is it your understanding that as of the date of 22 this article, the governor was not thinking about -- 23 actually I'm going to correct myself. It looks like 24 according to the printout at the bottom of the page 25 it's September 13 -- no -- that's when it was printed,</p>

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1 never mind.

2 Was it your -- is it your understanding

3 that as of the time of this press coverage, Governor

4 Snyder was not yet recommending a Chapter 9 filing for

5 Michigan --

6 MR. SHUMAKER: Objection, foundation.

7 Q. -- for Detroit?

8 MR. SHUMAKER: Sorry. Objection,

9 foundation, form.

10 A. I don't think -- I think I was the one recommending

11 and Governor Snyder was either going to approve or

12 disapprove of my request. This is 11:00 p.m. I

13 haven't seen this and it appears to be 11:00 p.m. It

14 says -- so give me your question again.

15 Q. What was your understanding at this point in time of

16 Governor Snyder's view with regard to whether or not

17 he would recommend -- he would accept your

18 recommendation that Detroit file a Chapter 9 petition?

19 A. It was unclear. I had gotten to the point at least on

20 the 16th of thinking it was time for me to make the

21 recommendation. It was unclear what the response was

22 going to be.

23 Q. Did you discuss the Webster litigation with the

24 governor?

25 A. I don't think so.

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1 Q. Did you discuss the Webster litigation with anybody in

2 the governor's office?

3 A. Was the Webster litigation the first lawsuit filed

4 against the governor and the treasurer on the 3rd?

5 And then the next week AFSCME joined that litigation?

6 Was that by the UAW the first litigation and AFSCME

7 joined that litigation the next week?

8 Q. One was Flowers and one was Webster.

9 A. Right. So I want to make sure we're talking about the

10 right one. So you're talking about Webster?

11 Q. Did you discuss either the Flowers or the Webster

12 litigation with the governor?

13 A. No, I didn't discuss it with the governor.

14 Q. Did you discuss either the Webster or the Flowers

15 litigation with anybody at the state?

16 A. You mean on the 16th?

17 Q. No, at any point in time.

18 A. At any time. Let me -- let me -- let me then clarify

19 my answer. I think -- my recollection is that there

20 were lawsuits being filed that we did not discuss at

21 the beginning of July. I think there was a piece of

22 litigation that had been filed the morning of the 16th

23 -- in direct response to your question did I discuss

24 the litigation with the governor? At some point, yes.

25 Q. Do you recall whether you had that discussion with the

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1 governor before July 18th?

2 A. Yes, I believe I did.

3 Q. And was it before July 18th?

4 A. Yeah, I believe it was.

5 Q. What did you discuss?

6 A. Well, was it? I think generally, and here I'm going

7 to be very careful, there were discussions I had --

8 I'm not sure I had any discussions with the governor

9 without either my counsel being on the line or counsel

10 on behalf of the state and the governor being on the

11 line so I don't know if that implicates

12 attorney-client.

13 MR. SHUMAKER: It certainly could.

14 THE WITNESS: Okay.

15 A. Without disclosing what was discussed, we had

16 discussions.

17 Q. Okay, so it's your position -- well, let's go back.

18 So on July 3rd, for example, who was your

19 counsel?

20 A. Well, my restructuring counsel was Jones Day, but --

21 Q. And who was the governor's counsel?

22 A. The governor's counsel would be -- I believe in the

23 governor's office generally heading up that group

24 would be Mike Gadola and Valerie Brader and I think

25 this corrects the discussion I had earlier this

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1 morning. I may clarify a discussion I had earlier

2 this morning but I -- well, direct response to your

3 question, those are the people in the governor's

4 office.

5 Q. Okay, so if you and the governor were on the phone --

6 A. Right.

7 Q. -- then those conversations -- I'm not asking you

8 about conversations that you had just you and

9 Jones Day, I'm asking you what conversations you had

10 with representatives -- with either the governor or

11 representatives of the state prior to July 18th after

12 the Webster and Flowers litigations were filed on July

13 3.

14 A. Okay. I think we did have conversations. I'm not

15 sure they're not protected by attorney-client

16 because --

17 MR. SHUMAKER: If you believe lawyers were

18 on those phone calls.

19 THE WITNESS: I know lawyers were on the

20 phone, I just don't -- I'm not acting as an attorney

21 so I don't know -- I know there were lawyers on the

22 phone. I know my lawyers were on the phone so I

23 don't --

24 MR. ULLMAN: The fact that there were

25 lawyers on the phone doesn't make it a privileged



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1 conversation.

2 MS. LEVINE: Well, let him get the

3 statement out and then we'll --

4 THE WITNESS: I believe there was a common

5 interest. Can I consult my attorneys?

6 MR. SHUMAKER: Certainly. You want to take

7 a quick break?

8 THE VIDEOGRAPHER: Going off the record at

9 3:24 p.m.

10 (Discussion held off the record.)

11 THE VIDEOGRAPHER: We're back on the record

12 at 3:31 p.m.

13 BY MS. LEVINE:

14 Q. Did you reach a --

15 MS. LEVINE: Can you read back my last

16 question?

17 Actually I'll rephrase it.

18 Q. Prior to July 17th did you have conversations with the

19 governor or anybody in the governor's office?

20 A. Prior to July 17th?

21 Q. But since July 3.

22 MR. SHUMAKER: About?

23 Q. About Flowers and Webster.

24 A. Oh.

25 MR. SHUMAKER: Yes or no?

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1 A. Yes.

2 Q. Prior to July 17th but after July 3, did you have any

3 discussions with the governor or anybody in the

4 governor's office about filing a -- filing for Chapter

5 9 for Detroit?

6 A. Between the 3rd and 17th?

7 Q. Yes.

8 A. Yes.

9 Q. With whom did you have the discussions about the

10 Flowers litigation, the Flowers/Webster litigations?

11 A. Attorneys in the governor's office.

12 Q. Which ones?

13 A. I believe Valerie Brader and Mike Gadola.

14 Q. Anybody else?

15 A. I'm trying to recall if in one of my discussions with

16 the governor we discussed that specific litigation or

17 just that there were cases being filed and I don't --

18 I don't recall any specific discussion about that

19 particular piece of litigation, just that there were

20 lawsuits being filed.

21 Q. So you discussed with Valerie Brader and Mike Gadola

22 the Flowers and the Webster litigation, you discussed

23 with the governor just the fact that there was the --

24 the litigations were pending now? And we're still

25 within the July 3 through July 17 time frame.

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1 A. I don't know if I ever discussed both cases. I think

2 I discussed one with Brader and/or Gadola.

3 Q. Okay, and what did you discuss about the litigation

4 with Brader or Gadola?

5 MR. SHUMAKER: Objection. I'm going to --

6 the question calls for the witness to reveal

7 privileged attorney-client communications as part of a

8 common interest agreement with the state and therefore

9 I'm going to instruct him not to answer.

10 MS. LEVINE: Okay, we'll reserve our

11 rights.

12 MR. SHUMAKER: Understood.

13 Q. With regard to the conversations that you had with the

14 governor with regard to July 3 through July 17, with

15 regard to the potential for filing for Chapter 9, do

16 you recall specifically on what days you had those

17 conversations?

18 A. No.

19 MR. SHUMAKER: Objection to form.

20 THE WITNESS: Oh, okay.

21 MR. SHUMAKER: Counsel, you're saying just

22 between him and the governor? No one else?

23 Q. Did you have conversations that involved the governor

24 between July 3 and July 17 with regard to the

25 potential for filing a Chapter 9 for Detroit?

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1 MR. SHUMAKER: Where counsel was not a part

2 of the conversation?

3 MS. LEVINE: No, no, I'm just asking if he

4 had conversations. I haven't asked him yet who's

5 participating and it's not privileged even with a

6 joint defense agreement, which we're reserving our

7 rights about, for him to tell me that conversations

8 took place, then we will get into who participated and

9 which conversations and then we'll decide whether or

10 not he can talk to me about them.

11 MR. SHUMAKER: Okay, I'm just making sure

12 the witness doesn't reveal anything.

13 THE WITNESS: Okay, and waive anything.

14 MR. SHUMAKER: And waive anything.

15 THE WITNESS: For the record there is no

16 effort to waive anything. But I'm trying to be

17 accurate.

18 Q. Let me try to ask it more succinctly so that we can

19 parse it, because I'm going to ask you questions with

20 regard to conversations where you and the governor

21 participated and there were other people present.

22 A. Right.

23 Q. I'm going to ask you questions with regard to you and

24 other people --

25 A. Right.



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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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



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1 said before, I think my family and I were out that
 2 preceding Friday, Saturday and Sunday and we actually
 3 ran into the governor's family coming onto the island
 4 I believe that Sunday so I don't think we had that
 5 meeting that week so it may have actually been the
 6 following week.
 7 Q. Meaning sometime during the week of July 15th?
 8 A. No, or the end of --
 9 Q. So it was during --
 10 A. -- the week of the 8th. The 8th. But I did not have
 11 a meeting with the governor that week.
 12 Q. Well --
 13 A. Now that I look at the calendar.
 14 Q. Okay.
 15 A. Okay.
 16 Q. So just to clarify, it appears more likely than not
 17 that you did not have a meeting between you and the
 18 governor the week of July 8th but your understanding
 19 is that during the week of July 8th, probably the
 20 latter part of that week, somebody on behalf of the
 21 Emergency Manager let the governor or the state know
 22 that you were drafting or starting to draft the July
 23 16th request and that you had concerns about the
 24 Flower s/Webster litigations?
 25 A. Yeah, and here again, I don't know if so much concerns

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1 -- it wasn't like we were focused on Flowers/Webster,
 2 we were saying in the universe of the world that
 3 litigation, whatever name, and the Syncora struggle,
 4 were creating a situation that was untenable and
 5 threatening what we had wanted to do.
 6 Q. Lamont Satchel.
 7 A. Yes.
 8 Q. He's your -- what's his title?
 9 A. He is the, I believe, labor negotiator for the City.
 10 Q. And what's his scope of authority?
 11 A. His scope of authority initially as labor negotiator
 12 was to oversee, monitor and lead labor relationships
 13 with the City and its labor partners.
 14 Q. And to whom -- and who is his direct report?
 15 A. At this point Lamont's direct report -- well, it is --
 16 the org chart is being revised, but his direct report
 17 would have been to the chief operating officer.
 18 Q. And who was that?
 19 A. At that time it would have been Gary Brown.
 20 Q. And who is it today?
 21 A. It still goes through Gary Brown, but I am intimately
 22 involved with the process.
 23 Q. And do you know whether or not during the month of
 24 June prior and up through -- starting with June 1
 25 through July 18th --

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1 A. Yes, July 18th.
 2 Q. -- did Lamont Satchel have any meetings with the labor
 3 organizations?
 4 A. Do I know? I know that during this time the CBAs,
 5 some of the City's Collective Bargaining Agreements
 6 were expiring and I believe that Lamont did have
 7 meetings during that time not just related with that
 8 but with other issues as well.
 9 Q. During your prior testimony -- and I apologize for
 10 skipping around, but I don't want to duplicate what's
 11 already been done.
 12 A. That's okay.
 13 Q. You spoke about Jones Day doing a presentation or
 14 interview to the state back in January, the end of
 15 February.
 16 A. Yeah, the documents I was shown this morning would
 17 make it January.
 18 Q. And with whom did Jones Day meet at that time, who
 19 physically was in the room?
 20 A. Treasurer Dillon, then CFO Jack Martin, Rich Baird,
 21 Kriss Andrews, Ken Buckfire and one of his colleagues.
 22 Q. Any other outside consultants besides Miller Buckfire?
 23 A. Well, Rich Baird is on contract to the state, but I
 24 don't -- I think -- I don't recall if Ernst & Young
 25 was there. There was a member of the financial

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1 advisory board.
 2 Q. Do you recall who that was?
 3 A. As soon as you said that, it went out of my head.
 4 Very, very sharp, as -- Ken -- Ken Whipple was there.
 5 I'm just going through the room. Andy, Ken Whipple,
 6 Jack Martin, Kriss Andrews, Rich Baird. That's all
 7 that I recall off the top of my head and Miller
 8 Buckfire and one of his colleagues.
 9 Q. And who was there from Jones Day?
 10 A. Aaron Agenbroad -- they were all partners. Aaron
 11 Agenbroad, Bruce Bennett, Heather Lennox, myself,
 12 Corinne Ball, Steve Brogan, and I think that was -- I
 13 think that was our team.
 14 Q. What was Aaron's last name again?
 15 A. Agenbroad, A-G-E-N-B-R-O-A-D.
 16 Q. What department is he in?
 17 A. Aaron Agenbroad is a partner in charge of the
 18 San Francisco office. He is in the labor.
 19 Q. He's in the labor group?
 20 A. Uh-huh.
 21 Q. Corinne, all the rest of the attorneys on the team
 22 were bankruptcy?
 23 A. No. Bruce Bennett is in the bankruptcy group.
 24 Corinne Ball was in the bankruptcy group. Heather
 25 Lennox is in the structured finance and bankruptcy.



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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1 Q. Are you saying --

2 A. The following week, yes.

3 Q. When you say one of those meetings, are you sure you

4 attended June 14th?

5 A. No, no, no, when I say one, I mean one of the

6 subsequent. I'm sure I attended June 14th. June 10th

7 was Monday, June 14th was Friday, my public meeting

8 was Monday, June 14th was the all creditors meeting.

9 There was subsequent due diligence meetings the

10 following week and I recall attending at least one of

11 those that week. That was the those I was referring

12 to.

13 Q. I'm a little confused. Are you sure you attended June

14 14th?

15 A. Yes.

16 Q. Okay. So do you recall whether you attended June

17 20th?

18 A. I think I did, but I don't recall.

19 Q. Okay. What about July 11th?

20 A. I don't recall.

21 Q. Okay. So I already asked you about whether at the

22 June 14th meeting you said anything to the effect of

23 that this was not a negotiation. Let me ask you the

24 same question for the June 20th and July 11th. Do you

25 recall at that -- at those meetings saying anything to

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1 A. Yes, I believe so.

2 Q. Okay. And some of those individuals spoke?

3 A. Yes.

4 Q. Okay. Do you recall whether at any of those meetings

5 that you attended whether any of the other individuals

6 who were there on behalf of the City said words to the

7 effect of this is not a negotiation?

8 A. Do I recall? No.

9 Q. At the June 20th meeting, is it true that the

10 attendees, and by the attendees I mean the people who

11 were not there on behalf of the City but the other

12 people, that in order to be heard they needed to fill

13 out a card and submit the card to someone who was

14 running the meeting? Is that how things worked?

15 A. Where was the June 20th meeting?

16 Q. I don't know.

17 A. I -- I know at my June 10th meeting that we had

18 speakers. I don't recall. I don't recall June 20.

19 Q. Let me clarify. Let's talk about the June 14th

20 meeting, the one you're sure you attended.

21 A. Right.

22 Q. Was there a system in place at that meeting where for

23 an attendee to be heard he or she had to write -- fill

24 out a card and submit it?

25 A. Yes, I believe so.

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1 the effect of this is not a negotiation?

2 A. I may have. As I've said several times today, you

3 know, bargaining negotiations is suspended for five

4 years so I may have said that, but I don't recall.

5 Q. And again, if there were witnesses who testified they

6 heard you say that at one or more of these meetings,

7 would you be in a position to deny that?

8 A. I don't know if I would deny it or if I would confirm

9 it. I mean, their recollection of what was said could

10 be different than mine or what they heard.

11 Q. Did you attend a meeting on July 10th with creditors?

12 A. I may have.

13 Q. Same question for July 10th. Do you recall saying

14 anything to the effect that that meeting was not a

15 negotiation?

16 A. I think I generally, when I would go to these

17 meetings, say we're having discussions and exchange,

18 but I would try -- if I said this is not a

19 negotiation, I would try to make sure that I did not

20 waive the suspension of bargaining under 436, so I may

21 have said that, yes.

22 Q. You may have said what?

23 A. This is not a negotiation, yeah, I may have said that.

24 Q. Okay. Apart from you there were others who attended

25 those meetings on behalf of the City; correct?

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1 Q. Okay, and describe how -- how did that -- what was

2 that process, how did that work?

3 A. That process was arranged by my staff. My

4 understanding is that if people wanted to speak, they

5 could fill out a card and a question would be asked

6 and members who were on the DS on the panel would

7 answer the question.

8 Q. Who would read out the card?

9 A. Initially it was the -- someone I believe on my staff

10 or some of my consultant's staff, but toward the end

11 of the meeting people just started asking questions

12 outright.

13 Q. Did -- that same process of attendees having to fill

14 out a card, did that occur at any of the other

15 meetings? And by the other meetings I mean either

16 June 20th, July 10th or July 11th?

17 A. I don't recall.

18 Q. It may have?

19 A. It may have, but I don't recall.

20 Q. Okay. Have you ever in your career as an attorney

21 attended a negotiation session of any kind?

22 A. Yes.

23 Q. Have you ever been at a negotiation session where one

24 side or the other has to fill out a card and have it

25 read by someone else to be heard?



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1 A. You're using the phrase negotiation session, and I
2 want to be clear that what we were saying is make sure
3 that we did not waive any rights under 436. I have
4 been at meetings where for purposes of to engage in
5 oral discussion, yes, you've had to fill out cards to
6 be heard, yes. I have been at auctions. Yes, I have
7 been at meetings like that.

8 Q. At auctions?

9 A. Yeah, I've been at auctions, been at meetings, been at
10 negotiations, yes, many different types of meetings.

11 Q. What kind of negotiations where those where
12 participants had to fill out a card to be heard?

13 A. They could have been negotiations for finance, they
14 could have been negotiations for procedures, they
15 could have been negotiations for a number of different
16 subjects, but it's happened on more than one occasion.

17 Q. Have you ever attended a collective bargaining
18 negotiation?

19 A. Yeah, I think I have.

20 Q. Okay. Did you ever see that type of system used in a
21 collective bargaining negotiation?

22 A. I don't think I saw it at the one I attended, but
23 collective bargaining is suspended.

24 Q. Did you -- before any of these meetings -- and by
25 these meetings, I mean the June 14th, June 20th, July

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1 10th or July 11th meetings -- did you consult with the
2 governor or any other state official about how the
3 meetings would be conducted?

4 A. No, not to the best of my knowledge.

5 Q. Did you consult with anyone, the governor or anyone,
6 any state official, regarding what the purpose or
7 nature of the meetings would be?

8 A. When you say consult, you know, I've testified earlier
9 today that we had regular communications with the
10 governor's office, but my understanding was that how
11 we ran meetings was substantially left up to me and my
12 team. So no, we didn't consult in that regard on how
13 the meetings were run.

14 Q. Okay, just to clarify what I mean by consult. I mean
15 did you talk?

16 A. Not at that level of detail how we're going to run, no
17 we didn't talk, no.

18 MR. DeCHIARA: Let me mark a document,
19 which I'll mark as -- ask the court reporter to mark
20 as Exhibit 18.
21 (Marked Exhibit No. 18.)

22 Q. Have you -- have you ever seen this document before?

23 A. Yes.

24 Q. And let me just identify it for the record. It's a
25 letter from Jones Day to Larry Stewart dated June 27,

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1 2013.

2 A. I'm --

3 MR. SHUMAKER: We have a different letter I
4 think.

5 A. I have John Cunningham.

6 MR. SHUMAKER: We have John Cunningham.
7 MR. DeCHIARA: I'm sorry, let's use that
8 one.

9 THE WITNESS: Okay.
10 MR. DeCHIARA: Thank you.

11 Q. Orr Exhibit 18 will be a Jones Day letter to John
12 Cunningham dated June 27, 2013. Let me ask you, have
13 you seen this Orr Exhibit 18 before?

14 A. Yes.

15 Q. And the first sentence of the letter says, thank you
16 for participating in the June 20th, 2013 informational
17 meetings pertaining to the City of Detroit's, and then
18 it continues --

19 A. Uh-huh.

20 Q. -- and you can read the rest --

21 A. Yes.

22 Q. -- but I won't read it aloud.
23 Do you concur with the description in the
24 sentence that I read of the June 20th meeting as an
25 informational meeting?

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1 A. Yes.

2 Q. Let me refer you back to your June 14th, 2013
3 proposal.

4 A. Yes.

5 Q. And to page -- the original page 109. And the third
6 to the last bullet point which we read earlier and
7 again I'm going to focus on the bottom line of that
8 bullet point that says, "There must be significant
9 cuts in accrued vested pension amounts for both active
10 and currently retired persons."
11 At the time of the meetings that I've been
12 referring to, the June 14th, June 20th, July 10th and
13 July 11th meetings, were -- would you have been
14 willing had there been negotiations that took place to
15 compromise and accept -- accept an outcome of the
16 restructuring effort that resulted in there not being
17 cuts in accrued vested pension amounts for both active
18 and currently retired persons?

19 A. Well, that's a hypothetical question that could depend
20 upon a number of things. I don't know. I would have
21 to see the proposal. We were willing to listen to any
22 proposal or counter that came in.

23 Q. Okay, and I'm not trying to phrase it as a
24 hypothetical, I want to focus on what was in your mind
25 at the time of these meetings. So let me ask you.



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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

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

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1 counsel present?
 2 A. No.
 3 Q. And are you not willing to answer even what topics --
 4 in broad categories of topics that were discussed?
 5 MR. SHUMAKER: Again, to the extent that
 6 they reveal what the communications are, I'm going to
 7 instruct him not to answer.
 8 Q. Do you know if anyone else from your team had
 9 conversations, outside of conversations with counsel,
 10 relating to the timing of the filing?
 11 A. There may have been conversations. I'm not aware of
 12 any specific ones.
 13 MS. GREEN: I don't have any further
 14 questions. Do you have follow-up?
 15 MR. SHUMAKER: Thank you, counsel.
 16 THE VIDEOGRAPHER: This concludes the
 17 deposition and we're going off the record at 6:12 p.m.
 18 (Deposition adjourned at 6:12 p.m.)
 19 * * *
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1 State of Michigan)
 2 County of Genesee)
 3 Certificate of Notary Public
 4 I certify that this transcript is a complete, true and
 5 correct record of the testimony of the witness held in this
 6 case.
 7 I also certify that prior to taking this deposition,
 8 the witness was duly sworn or affirmed to tell the truth.
 9 I further certify that I am not a relative or an
 10 employee of or an attorney for a party; and that I am not
 11 financially interested, directly or indirectly, in the
 12 matter.
 13 WITNESS my hand this 19th day of September,
 14 2013.
 15
 16
 17
 18 *Jeanette M. Fallon*
 19 Jeanette M. Fallon, CRR/RMR/CLR/CSR-3267
 20 Certified Realtime Reporter
 21 Registered Merit Reporter
 22 Certified LiveNote Reporter
 23 Certified Shorthand Reporter
 24 Notary Public, Genesee, Michigan
 25 Acting in Oakland County, Michigan
 My Commission Expires: 9-19-18



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1 DEPOSITION ERRATA SHEET

2

3 Our Assignment No. 471048/NYC 337176

4 Case Caption: In re City of Detroit, Michigan

5

6 DECLARATION UNDER PENALTY OF PERJURY

7

8 I declare under penalty of perjury that I have read

9 the entire transcript of my Deposition taken in the

10 captioned matter or the same has been read to me, and the

11 same is true and accurate, save and except for changes

12 and/or corrections, if any, as indicated by me on the

13 DEPOSITION ERRATA SHEET hereof, with the understanding that

14 I offer these changes as if still under oath.

15 Signed on the ____ day of _____, 20__.

16 _____

17 KEVYN ORR

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1 DEPOSITION ERRATA SHEET

2

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5 Reason for change: _____

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23 Reason for change: _____

24 SIGNATURE: _____ DATE: _____

25 KEVYN ORR

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1 DEPOSITION ERRATA SHEET

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24 SIGNATURE: _____ DATE: _____

25 KEVYN ORR

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EXHIBIT C

Page 1

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

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

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

Page 3

APPEARANCES: (Continued)

LOWENSTEIN SANDLER LLP,
(65 Livingston Avenue,
Roseland, New Jersey 07068,
973-597-2346), by:
MR. S. JASON TEELE,
steeler@lowenstein.com,
appeared on behalf of AFSCME;

CLARK HILL PLC,
(151 South Old Woodward, Suite 200,
Birmingham, Michigan 48009,
248-642-9692), by:
MR. JOHN R. STEVENSON,
jstevenson@clarkhill.com,
appeared telephonically on behalf of the
Police and Fire Retirement System of the
City of Detroit and the General Retirement
System of the City of Detroit;

WEIL, GOTSHAL & MANGES LLP,
(767 Fifth Avenue,
New York, New York 10153,
212-310-8257), by:
MS. DANA KAUFMAN,
dana.kaufman@weil.com,
appeared telephonically on behalf of
Fidelity Guaranty Insurance Company;

LIPPITT O'KEEFE, PLLC,
(370 East Maple, 3rd Floor,
Birmingham, Michigan 48009,
248-646-8292), by:
MR. RYAN C. PLECHA,
rplecha@lippittokeefe.com,
appeared telephonically on behalf of the
Detroit Retired Police and Fire Fighters
Association, Detroit Retired City
Employees Association, Don Taylor,
individually and as president of the
RDPFFA, and Shirley Lightsey, individually
and as president of the DRCEA;

Page 2

APPEARANCES:

JONES DAY,
(51 Louisiana Avenue, N.W.,
Washington, D.C. 20001-2113,
202-897-3939), by:
MR. GEOFFREY S. STEWART,
gstewart@jonesday.com;
MR. CHRISTOPHER DiPOMPEO,
cdipompeo@jonesday.com,
appeared on behalf of the Debtor
and the witness;

LATHAM & WATKINS LLP,
(355 South Grand Avenue,
Los Angeles, California 90071-1560,
213-485-1234), by:
MR. WAYNE S. FLICK,
wayne.s.flick@lw.com,
appeared telephonically on behalf of
Ernst & Young;

DENTONS,
(233 South Wacker Drive, Suite 7800,
Chicago, Illinois 60606-6306,
312-876-2572), by:
MS. LEAH R. BRUNO,
leah.bruno@dentons.com;
MS. MELISSA A. ECONOMY,
melissa.economy@dentons.com,
appeared on behalf of Retirees Committee;

COHEN WEISS AND SIMON LLP,
(330 West 42nd Street,
New York, NY 10036-6979,
212-356-0216), by:
MR. PETER D. DeCHIARA,
pdechiara@cwsny.com,
appeared telephonically on behalf of the
International Union, UAW;

Page 4

APPEARANCES: (Continued)

STROBL & SHARP, P.C.,
(300 East Long Lake Road, Suite 200,
Bloomfield Hills, Michigan 48304-2376,
248-540-2300), by:
MS. MEREDITH E. TAUNT,
mtaunt@stroblpc.com,
appeared telephonically on behalf of the
Retired Detroit Police Members
Association.

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



Page 5

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

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

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

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



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

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

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

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



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

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

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

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



<p style="text-align: right;">Page 17</p> <p>1 would think it would have been the former Chief of 2 Staff Kirk Lewis, it would have been the former Chief 3 Operating Officer Chris Brown. I think those are the 4 folks at least I remember. It could have been the 5 Mayor, but I don't recall at this juncture. 6 Q. And can you give me some more detail on 7 what you understood your engagement would include in 8 those initial discussions? 9 A. Sure. It was just to get an understanding 10 of what the City's cash flow position was and what the 11 short-term outlook for the City's liquidity 12 projections could look like. 13 Q. Was there any discussion about the 14 prospect of the City filing Chapter 9 bankruptcy in 15 those initial discussions? 16 A. No. 17 Q. Prior to entering into the engagement, was 18 there any formal presentation or pitch provided by 19 Ernst & Young? 20 A. I do not recall. 21 Q. If there was one, would you have been part 22 of it? 23 A. Yes. 24 Q. Mr. Malhotra, I'm going to hand you what</p>	<p style="text-align: right;">Page 19</p> <p>1 original agreement, correct? 2 A. That is correct. 3 Q. In your prior deposition, there was a 4 request made for the production of the original 5 engagement letter. 6 Do you recall that? 7 A. Possibly. I don't recall specifically 8 because there were a lot of requests, but this -- I 9 assume this is the engagement letter you are referring 10 to, but if there is more, probably -- 11 MR. STEWART: It was memorialized in a letter 12 you responded to. 13 THE WITNESS: Okay. 14 BY MS. BRUNO: 15 Q. Mr. Malhotra, I'll represent to you this 16 is the only document that we've been able to locate 17 with respect to the Ernst & Young engagement, so I'm 18 going to have to use this to kind of backtrack because 19 I don't have a copy of the original engagement letter. 20 A. Sure. 21 Q. And we'll request that an additional 22 effort be made to produce that to your counsel. 23 MR. STEWART: If you could, just do that in a 24 letter after we are done, so otherwise it gets</p>
<p style="text-align: right;">Page 18</p> <p>1 we're going to mark as Exhibit 8. 2 MR. TEELE: I'm sorry. What number? 3 MS. BRUNO: 8. 4 (WHEREUPON, a certain document was 5 marked Malhotra Deposition 6 Exhibit No. 8, for identification, as 7 of 09/20/13.) 8 BY MS. BRUNO: 9 Q. And you can take your time to look at this 10 document. I'm going to ask you some questions about 11 it. Let me know when you are ready to proceed with 12 some questions. 13 A. Sure. I'm ready. 14 Q. Mr. Malhotra, I'll represent to you that 15 I've handed you what is titled Amendment No. 7 to 16 Statement of Work. 17 Can you tell me what this document is? 18 A. This is our most recent engagement letter 19 with the City. 20 Q. And reviewing the introductory paragraph, 21 it is clear that there was an original agreement, 22 correct? 23 A. That is correct. 24 Q. And that this is Amendment No. 7 to that</p>	<p style="text-align: right;">Page 20</p> <p>1 confusing to try and go back to the transcript. 2 MS. BRUNO: We will do that. 3 BY MS. BRUNO: 4 Q. Can you tell me, Mr. Malhotra, in the 5 original SOW or original agreement, was there similar 6 to what's in this a bullet point listing of the items 7 that would be included in the original statement of 8 work? 9 A. Yes. 10 Q. Who drafted the specific items that would 11 be involved in the original statement of work? 12 A. It would have been myself along with the 13 rest of the team. 14 Q. When you say "the rest of the team," how 15 are you referring to? 16 A. I would say the rest of the EY team that 17 would have gone through all of our quality review team 18 that looks at any scope of work with respect to what 19 we are putting out in general would be the folks from 20 our EY standpoint. 21 Q. How is that process, and what I'm 22 referring to is the identify -- let me start over. 23 How does that process work, and I'm 24 talking about the identification of the specific</p>

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

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

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

Page 24

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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1 excuse me, "were limited to the City's general fund,"

2 is that correct?

3 A. That is correct.

4 Q. In other words, the projections assume

5 that there are no other funds available to the City

6 beyond the general fund, is that correct?

7 A. It -- it assumes that the general fund

8 will not have additional funds from other funds, yeah,

9 that's generally correct.

10 Q. What about the City having available --

11 other available funds outside of the general fund?

12 A. The City has multiple funds outside the

13 general fund. The main one is the water and sewer,

14 which we did not perform a ten-year projection on the

15 water and sewer funds. My understanding is that those

16 funds are not necessarily available to the general

17 fund.

18 Q. To the general fund that may be correct,

19 but it would be available to the City, would it not?

20 MR. STEWART: Objection.

21 BY THE WITNESS:

22 A. It would be available to the City for the

23 purposes those funds were raised for, which is

24 generally maintenance and capital improvements on the

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1 water and sewer side.

2 BY MS. BRUNO:

3 Q. Let's backtrack a little bit. I think

4 we've gone in a different direction than I'm trying to

5 focus on.

6 My question to you is: The forecasts that

7 you provided in this declaration are limited solely to

8 the general fund, is that correct?

9 A. They are generally limited to the general

10 fund, other than if they were other enterprise funds

11 the City was subsidizing, like the Department of

12 Transportation, those would have been included in the

13 general fund as it is a -- a fund that the City

14 subsidizes and has historically subsidized.

15 Q. So you would agree, though, that subject

16 to your exception there that the assumptions and

17 forecasts provided in this declaration do not take

18 into account other funds available to the City?

19 MR. STEWART: Objection.

20 BY THE WITNESS:

21 A. You have to rephrase your question.

22 BY MS. BRUNO:

23 Q. The forecasts and cash flows, the

24 projections, the information that is discussed in your

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1 declaration here are solely limited with the caveat

2 that you provided to the general fund, is that

3 correct?

4 MR. STEWART: Objection.

5 BY THE WITNESS:

6 A. The cash flow forecasts and the ten-year

7 projections with respect to the receipts and

8 disbursements and the revenues and expenses are

9 generally reflective of the general fund and the

10 Department of Transportation. That's the way I would

11 characterize it.

12 BY MS. BRUNO:

13 Q. You would agree that the City does have

14 access to other funds, correct?

15 MR. STEWART: Objection.

16 BY THE WITNESS:

17 A. I don't understand when you say the City

18 has access to.

19 BY MS. BRUNO:

20 Q. There is other enterprise funds available

21 to the City, correct?

22 MR. STEWART: Objection.

23 BY THE WITNESS:

24 A. Available to the City for what?

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1 BY MS. BRUNO:

2 Q. Well, if you are talking about the cash

3 available to the City, certainly there is other

4 sources of cash available to the City outside of the

5 general fund, you would agree with that?

6 MR. STEWART: Objection.

7 BY THE WITNESS:

8 A. No. It depends on what purpose you are

9 asking the question, the context of.

10 BY MS. BRUNO:

11 Q. You would agree with me that the general

12 fund is not the only source of available cash to the

13 city, would you not?

14 MR. STEWART: Objection.

15 BY THE WITNESS:

16 A. The general fund -- the cash that is

17 available to the general fund is generally the only

18 cash that is available to the City for its core

19 operations that are not related to any other

20 enterprise funds. So, my answer would be, that the

21 cash flows that are reflective in here and are

22 generally available for the general fund is the City's

23 operating cash in general.

24 BY MS. BRUNO:



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1 Q. How do you have that understanding?

2 A. That is my general understanding. So,

3 my -- my understanding is that the monies that are

4 available or are attributable to the bank accounts of

5 the enterprise funds have specific reasons for what

6 that cash can be spent. So we have made the

7 assumption that that cash is not available for the

8 general fund. But I would think that would be a

9 further legal determination. It is our understanding

10 that that cash is not available to fund the operations

11 of the general fund.

12 Q. And how did you obtain that understanding?

13 That's what I'm trying to get to.

14 A. I don't recall. That's our general

15 understanding that there are revenue bonds that have

16 been issued at the Water and Sewer Department, and

17 those revenue bonds are associated with specific

18 maintenance and capital improvements for the Water and

19 Sewer Department, and that those funds are generally

20 not available to fund the operations of the general

21 fund.

22 Q. Do you recall having a conversation with

23 anyone at the City to that effect?

24 A. Yes. I'm -- I think all of the

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1 discussions from the very front end of our engagement

2 would have been in the context that, you know, whether

3 any other cash is available, so the answer would be

4 yes.

5 Q. Who at the City do you recall having that

6 conversation with?

7 A. I don't recall of a specific conversation,

8 but I'm sure that the discussions would have been with

9 Chris Brown and with Kirk Lewis and any of the other

10 folks that we have reported to during the City, but I

11 do not recall of a specific conversation in terms of

12 the funds available to the Water and Sewer Department.

13 Q. If I turn your attention to Exhibit 8,

14 which is the Amendment 7 to the SOW, on page 2 there

15 are a number of specific references to work and

16 analysis of the City's general fund. And it's in many

17 places defined General Fund with a capital G and a

18 capital F.

19 Do you see what I'm referring to?

20 A. Yes. I'm trying to find the capital G and

21 the capital F, but I generally -- I'm on page 2, that

22 the context is for the general fund.

23 Q. Sure. Just if you look at the second bold

24 bullet point, "Preparation of 10-Year tax revenue

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1 estimates for the General Fund."

2 A. Okay.

3 Q. That's one example that I can see.

4 Are there similar -- my question is -- I'm

5 trying to get to the original SOW. I'm using the

6 Amendment 7 to discuss the original SOW.

7 Did the original SOW limit the work to the

8 general fund in the same way that Amendment No. 7

9 does?

10 A. I don't recall specifically. But I can

11 say that earlier on in our engagement, I would say in

12 the 2011 timeframe, we were looking at the cash flows

13 of the water and sewer fund and the other enterprise

14 funds as well. But that process stopped, I would say,

15 in the first four or five or six months of the

16 engagement because there was sort of water and sewer

17 funds were tracking their cash on their own, and so

18 were some of the other enterprise funds, that our

19 focus really was on the general fund.

20 But just for clarity, the work that would

21 have been done in the front end was to look at the

22 funds that water and sewer had and the receipts and

23 disbursements associated with that versus any

24 transfers that were coming back to the general fund.

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1 So they were looking at those forecasts in isolation.

2 But that work sort of stopped I think right around in

3 the first four or five months of the engagement.

4 Q. And why did that work stop?

5 A. It was because the focus continued to be

6 on the general fund and these were self-sustaining

7 funds with respect to at least the Water and Sewer

8 Department. And so they were monitoring their -- and

9 dealing with their cash activity, although connected

10 to the City, but we weren't helping forecast receipts

11 and disbursements because they were not impacting the

12 general fund.

13 Q. You previously testified in your prior

14 deposition that Ernst & Young was not asked to look at

15 possible disposition of City assets, is that correct?

16 A. That's correct.

17 Q. Why -- did you have a discussion with the

18 City regarding whether that would be valuable work for

19 Ernst & Young to provide?

20 MR. STEWART: Objection.

21 BY THE WITNESS:

22 A. I -- I'm not sure I follow the question.

23 BY MS. BRUNO:

24 Q. How did it come about that Ernst & Young



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

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

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

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



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1 would improve the overall profile is my assumption.
2 BY MS. BRUNO:
3 Q. I have heard estimates that a more
4 accurate estimate of outstanding tax debt is
5 significantly higher than \$250 million.
6 Are you familiar with these higher
7 estimates that are being discussed?
8 MR. STEWART: Objection.
9 BY MS. BRUNO:
10 Q. Have been discussed?
11 MR. STEWART: Objection.
12 BY THE WITNESS:
13 A. No.
14 BY MS. BRUNO:
15 Q. You have not heard that the outstanding
16 tax debt available to the City could be as much as
17 \$700 million?
18 A. I have not heard that, that I recall.
19 Q. To be clear, your forecasts don't account
20 for the collection, any type of truly significant to
21 this degree of outstanding debt, is that correct?
22 MR. STEWART: Objection.
23 BY THE WITNESS:
24 A. That's correct.

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

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1 forecasts and analysis was based upon the
2 comprehensive annual finance report of the City, the
3 C-A-F-R, CAFR.
4 Do you see where you discuss that in this
5 paragraph?
6 MR. STEWART: Objection.
7 BY THE WITNESS:
8 A. It was one of the documents that -- that
9 we used in terms of helping pull together the
10 forecast.
11 BY MS. BRUNO:
12 Q. Was -- it was the primary document,
13 correct, primary document, wasn't it?
14 MR. STEWART: Objection.
15 BY THE WITNESS:
16 A. No.
17 BY MS. BRUNO:
18 Q. What would you consider to be the primary
19 document then?
20 A. There was not one single primary document.
21 It was a compilation of all of the different sources
22 of data that we got that included the CAFR, that
23 included the raw files that we got from the City, that
24 included some of the information we saw in terms of

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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

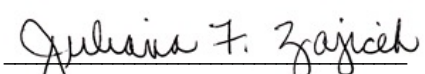
Page 110

1 MS. TAUNT: Meredith Taunt on behalf of the
2 Retired Detroit Police Members Association. We do not
3 have any questions.
4 MS. BRUNO: Anyone else on the phone?
5 MS. KAUFMAN: This is Dana Kaufman for Financial
6 Guaranty Insurance Company. We do not have any
7 questions.
8 MR. STEWART: This is Jeff Stewart, I have just
9 a few questions of Mr. Malhotra, from Jones Day. I
10 represent the witness and also the City, just a few
11 questions.
12 EXAMINATION
13 BY MR. STEWART:
14 Q. Mr. Malhotra, you were asked in your
15 deposition about a document called the Comprehensive
16 Annual Financial Report of the City of Detroit.
17 Do you remember being asked about that?
18 A. Yes.
19 Q. That's sometimes called a CAFR, C-A-F-R?
20 A. Yes.
21 Q. Did E&Y audit the CAFR?
22 A. No.
23 Q. Or audit the accounts that led to the
24 creation of the CAFR?

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1 A. No.
2 Q. Was the CAFR audited?
3 A. Yes.
4 Q. Audited by who?
5 A. KPMG.
6 Q. And tell us who or what is KPMG?
7 A. KPMG is the City's auditor and it is
8 another Big 4 accounting firm.
9 Q. Is it one of the international accounting
10 firms that is known in the United States and
11 elsewhere?
12 A. Yes.
13 Q. Comparable to E&Y in terms of what it
14 does?
15 A. Generally, yes.
16 MR. STEWART: Okay. That's all I have.
17 Thank you.
18 MR. TEELE: I have no questions.
19 MR. STEWART: So is the record closed?
20 MS. BRUNO: It is at this time.
21 MR. STEWART: Okay.
22 (Time Noted: 12:32 p.m.)
23 FURTHER DEPONENT SAITH NOT.
24

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1 REPORTER'S CERTIFICATE
2 I, JULIANA F. ZAJICEK, C.S.R. No. 84-2604,
3 a Certified Shorthand Reporter, do hereby certify:
4 That previous to the commencement of the
5 examination of the witness herein, the witness was
6 duly sworn to testify the whole truth concerning the
7 matters herein;
8 That the foregoing deposition transcript
9 was reported stenographically by me, was thereafter
10 reduced to typewriting under my personal direction and
11 constitutes a true record of the testimony given and
12 the proceedings had;
13 That the said deposition was taken before
14 me at the time and place specified;
15 That I am not a relative or employee or
16 attorney or counsel, nor a relative or employee of
17 such attorney or counsel for any of the parties
18 hereto, nor interested directly or indirectly in the
19 outcome of this action.
20 IN WITNESS WHEREOF, I do hereunto set my
21 hand on this 21st day of September, 2013.
22
23 
24 JULIANA F. ZAJICEK, Certified Reporter



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I N D E X

1

2 WITNESS: PAGE:

3 GAURAV MALHOTRA

4 EXAM BY MS. BRUNO..... 7

5 EXAM BY MR. TEELE..... 81

6 EXAM BY MR. STEWART..... 110

7

8 *****

9

E X H I B I T S

10 MALHOTRA EXHIBIT MARKED FOR ID

11

12

13 No. 8 Amendment No. 7 to Statement of 18
Work; DTF0TA0000001 - 008.....

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

15

16

17

18

19 No. 10 Document titled: Detroit City 94
Council Rational for Appeal;
DTM100117210 - 215.....

20

21 No. 11 37-page document titled: City of 95
Detroit - Restructuring Plan,
Mayor's Implementation Progress
Report, March 2013.....

22

23

24 REQUEST FOR DOCUMENTS
Page 16

Page 115

DEPOSITION ERRATA SHEET

1

2 Page No. _____ Line No. _____ Change to: _____

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4 Reason for change: _____

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22 Reason for change: _____

23 SIGNATURE: _____ DATE: _____

24 GAURAV MALHOTRA

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DEPOSITION ERRATA SHEET

1

2

3 Assignment No. 472371

4 Case Caption: In Re: City of Detroit, Michigan

5

6 DECLARATION UNDER PENALTY OF PERJURY

7

8 I hereby certify that I have read the

9 foregoing transcript of my deposition given at the

10 time and place aforesaid, consisting of Pages 1 to

11 111, inclusive, and I do again subscribe and make

12 oath that the same is a true, correct and complete

13 transcript of my deposition so given as aforesaid,

14 and includes changes, if any, so made by me.

15

16 GAURAV MALHOTRA

17

18 SUBSCRIBED AND SWORN TO

19 before me this day

20 of , A.D. 200 .

21

22 Notary Public

23

24

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DEPOSITION ERRATA SHEET

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21 _____

22 Reason for change: _____

23 SIGNATURE: _____ DATE: _____

24 GAURAV MALHOTRA



EXHIBIT D

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 EASTERN DISTRICT OF MICHIGAN 3 SOUTHERN DIVISION 4 5 In re Chapter 9 6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846 7 Debtor. Hon. Steven W. Rhodes 8 _____/ 9 10 DEPONENT: CHARLES M. MOORE 11 DATE: Wednesday, September 18, 2013 12 TIME: 10:02 a.m. 13 LOCATION: MILLER CANFIELD PADDOCK & STONE PLC 14 150 West Jefferson, Suite 2500 15 Detroit, Michigan 16 REPORTER: Jeanette M. Fallon, CRR/RMR/CSR-3267 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (continued): 2 3 COHEN WEISS AND SIMON LLP 4 By: Thomas N. Ciantra 5 330 West 42nd Street 6 New York, NY 10036.6979 7 212.356.0216 8 Appearing on behalf of UAW 9 10 LOWENSTEIN SANDLER LLP 11 By: Sharon L. Levine 12 65 Livingston Avenue 13 Roseland, NJ 07068 14 973.597.2374 15 -and- 16 Michael L. Artz (appearing telephonically) 17 Appearing on behalf of AFSCME 18 19 CLARK HILL PLC 20 By: Andrew Mast 21 Ed Hammond (appearing telephonically) 22 500 Woodward Avenue, Suite 3500 23 Detroit, MI 48226 24 313.965.8384 25 Appearing on behalf of Retirement Systems</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 JONES DAY 4 By: Evan Miller 5 51 Louisiana Avenue, NW 6 Washington, D.C. 20001.2113 7 202.879.3939 8 -and- 9 MILLER CANFIELD PADDOCK AND STONE PLC 10 By: Jonathan S. Green 11 150 West Jefferson, Suite 2500 12 Detroit, MI 48226.4415 13 313.496.7997 14 Appearing on behalf of the Debtor 15 16 DENTONS US LLP 17 By: Arthur H. Ruegger 18 1221 Avenue of the Americas 19 New York, NY 10020.1089 20 212.768.6881 21 Appearing on behalf of Retirees Committee 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES (continued): 2 3 WILLIAMS WILLIAMS RATTNER & PLUNKETT PC 4 By: Ernest J. Essad, Jr. 5 380 N Old Woodward Ave Ste 300 6 Birmingham, MI 48009 7 248.642.0333 8 Appearing on behalf of FGIC 9 10 WINSTON & STRAWN LLP 11 By: Bianca M. Forde (appearing telephonically) 12 200 Park Avenue 13 New York, NY 10166.4193 14 212.294.4733 15 Appearing on behalf of Assured Guaranty Municipal 16 Corp. 17 18 STROBL & SHARP 19 By: Meredith Cox (appearing telephonically) 20 300 East Long Lake Road, Suite 200 21 Bloomfield Hills, MI 48304 22 248.540.2300 23 Appearing on behalf of Retired Detroit Police Members 24 Association 25</p>



<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 SILVERMAN & MORRIS PLLC</p> <p>4 By: Thomas Morris (appearing telephonically)</p> <p>5 30500 Northwestern Hwy Ste 200</p> <p>6 Farmington Hills, MI 48334</p> <p>7 248.539.1330</p> <p>8 Appearing on behalf of Detroit Retired City Employees</p> <p>9 Association and Retired Detroit Police and</p> <p>10 Firefighters Association</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 7</p> <p style="text-align: center;">E X H I B I T S</p> <p>1</p> <p>2 NUMBER IDENTIFICATION PAGE</p> <p>3 Exhibit 11 DTMI00078909 through 78969 90</p> <p>4 Exhibit 12 DTMI00103661 through 103663 112</p> <p>5 Exhibit 13 FAB Discussion Document, 3/1/2013 115</p> <p>6 Exhibit 14 Restructuring Recommendations,</p> <p>7 4/5/2013 116</p> <p>8 Exhibit 15 FAB Discussion Document, 4/8/2013 117</p> <p>9 Exhibit 16 DTMI00066196 through 66200 132</p> <p>10 Exhibit 17 DTMI00066201 through 66210 135</p> <p>11 Exhibit 18 DTMI00066218 through 66223 141</p> <p>12 Exhibit 19 DTMI00066224 through 66230 147</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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1 Retirement Systems.
 2 MR. ESSAD: Ernest Essad, Williams,
 3 Williams, on behalf of FGIC.
 4 MR. GREEN: Jonathan Green, Miller
 5 Canfield, Paddock and Stone, for the City.
 6 MR. MILLER: Evan Miller, Jones Day, for
 7 the City.
 8 THE WITNESS: Charles Moore,
 9 Conway MacKenzie, the deponent.
 10 MR. RUEGGER: Okay, that takes care of
 11 people at the table. On the phone, please?
 12 MR. MILLER: Ladies and gentlemen on the
 13 phone, please identify yourselves.
 14 MR. FORDE: Bianca Forde, Winston & Strawn,
 15 on behalf of Assured Guaranty Municipal Corp.
 16 MR. HAMMOND: Ed Hammond, Clark Hill, for
 17 the Retirement Systems.
 18 MS. COX: Meredith Cox, Strobl & Sharp, on
 19 behalf of the Retired Detroit Police Members
 20 Association.
 21 MR. MORRIS: Thomas Morris of Silverman &
 22 Morris on behalf of the retired Detroit cities
 23 employees association and the -- I'm sorry, let me
 24 restate that. The Detroit Retired City Employees
 25 Association and the Retired Detroit Police and

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

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

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



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

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

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

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



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

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

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

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



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1 A. Yes, sir.

2 Q. And just so I'm clear, I apologize, it was the
3 employment retirement system of the Government
4 Development Bank that you did this work for?

5 A. The Government Development Bank was the engaging
6 entity. The pension system for which our work related
7 was the employee retirement system.

8 Q. For what entity or group?

9 A. For the Commonwealth of Puerto Rico.

10 Q. Thank you.

11 A. It was a public pension plan. Mr. Ruegger, I'll just
12 clarify as well that my firm did work -- other work
13 related to the Commonwealth of Puerto Rico for a
14 different client prior to the assignment where we
15 worked for the government.

16 Q. All right. Can you identify what that other client
17 was?

18 A. Yes. We were engaged by both AFSCME and UAW.

19 Q. And what were you engaged to do for those unions?

20 A. Assist in analysis related to a plan that the governor
21 had prepared and analysis of the upcoming budget.

22 Q. Do you remember approximately when that work was done?

23 A. I believe that may have been in 2009.

24 Q. And how long did you work in the engagement for those
25 two unions?

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1 A. Approximately two months, if I recall correctly.

2 Q. It's set out in your declaration that -- and I believe
3 it's paragraph 6 --
4 (Discussion held off the record.)

5 Q. -- that you're a Certified Public Accountant. That's
6 accurate; correct?

7 A. Yes, sir.

8 Q. And you are also a certified turnaround professional?

9 A. Yes, sir.

10 Q. Do you have any other formal certificates?

11 A. I am also, as is listed here, certified in financial
12 forensics.

13 Q. Any others that you recall?

14 A. No, sir.

15 Q. Other than -- any other formal training that you've
16 had or certifications?

17 A. Can you define formal training?

18 Q. Sure. We'll try to break it down. How about any
19 other classroom training or work at an educational
20 institution?

21 A. Through the course of my certifications as well as
22 professional organizations to which I belong I
23 regularly attend educational sessions every year.

24 Q. So seminars, conferences, those kind of things you
25 attend on a regular basis?

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1 A. Yes, sir.

2 Q. Anything other than seminars and conferences and what
3 you've mentioned already?

4 A. Over the course of my career I've also spent time with
5 a few other certifications related to operational
6 items; as an example, I don't believe it's called this
7 anymore, but formerly the American Production
8 Inventory Control Society, APICS, A-P-I-C-S. And I
9 have been certified in certain operational information
10 system applications used by businesses.

11 Q. Can you identify any of the operational information
12 system applications that you just mentioned?

13 A. Yes, I have multiple certifications from QAD is the
14 name of the company related to its software enterprise
15 resource planning application known as MFG Pro.

16 Q. Any others you can recall right now?

17 A. No, I think that's it.

18 Q. We're going to come back to the declaration in a
19 second, but have you ever testified under oath before,
20 Mr. Moore?

21 A. Yes, sir.

22 Q. Approximately how many times?

23 A. If you count testifying in the same matter multiple
24 times as each individual instance, it would be perhaps
25 15 -- 10 to 15 I think would be a fair number.

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1 Q. And of the 10 to 15 how many were in court?

2 A. I've testified in court perhaps five to eight times.

3 Q. Any instances where you testified in an arbitration
4 proceeding?

5 A. Not that I can recall.

6 Q. And approximately how many of those instances were
7 deposition testimony?

8 A. I have been deposed approximately five times.

9 Q. Other than the court and the deposition instances,
10 have you testified under oath in any other context?

11 A. Not that I can recall.

12 Q. I'm going to ask you to identify for us the cases that
13 you've testified -- in which you've testified, so
14 let's start with the instances in court. When was the
15 first time you testified in court?

16 A. The matter would have been DCT, Inc., and I believe I
17 testified in 2002.

18 Q. Were you a fact or an expert witness?

19 A. I was a fact witness.

20 Q. And what issues did you testify to?

21 A. This goes back 11 years so I'm stretching my memory
22 here.

23 Q. Just do the best you can, sir.

24 A. But this was an involuntary bankruptcy filing where
25 Conway MacKenzie was engaged on behalf of the debtor



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

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1 Q. And what court did Wohlert file for Chapter 11?
2 A. The Western District of Michigan.
3 Q. And what issues did you address in your testimony?
4 A. I testified multiple times for different issues in the
5 case. There was a motion to convert the case to
6 Chapter 7 that was filed, I testified related to
7 postpetition financing, I testified related to a sale
8 transaction, I believe.
9 Q. In each instance there was a separate incident of
10 testimony in court?
11 A. Yes, sir.
12 Q. Any other cases where you testified in court other
13 than the two you've mentioned?
14 A. Yes, sir. The next matter was Hastings Manufacturing
15 and that was a Chapter 11 in the Western District of
16 Michigan.
17 Q. And who was Conway MacKenzie's client there?
18 A. Hastings Manufacturing.
19 Q. And what issues did you address in your testimony?
20 A. I believe that I testified -- I'm just skipping my
21 mind on the specific testimony, but I think I
22 testified related to a sale transaction that was
23 occurring and this would have been in perhaps 2005 --
24 2005 or 2006.
25 Q. So you testified in support of a proposed sale

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1 transaction?
2 A. Yes, sir.
3 Q. Any other court cases you testified -- where you
4 testified in court other than the three you've
5 mentioned?
6 A. Yes, sir. Greektown Casino and Hotel.
7 Q. And who was Conway MacKenzie's client in that case?
8 A. Greektown Casino.
9 Q. And what issues did you address in your testimony?
10 A. I testified multiple times during that Chapter 11 case
11 related to postpetition financing, plans of
12 reorganization, disclosure statements, and a variety
13 of other issues. There were many instances of
14 testimony in that case.
15 Q. So when you say -- you said multiple or many, can you
16 give me an approximate number of times you testified
17 in court in that case?
18 A. Perhaps five or six.
19 Q. Thank you.
20 Other than the four cases we've identified
21 so far, have you testified in court in any other
22 instance?
23 A. Not that I can recall right now.
24 Q. Fair enough.
25 I believe you said you testified in

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1 deposition approximately five times?
2 A. Yes, sir.
3 Q. Were any of those depositions in the four court cases
4 that you've identified so far?
5 A. Yes, sir.
6 Q. In which of the cases that you identified so far have
7 you also testified in a deposition?
8 A. Greektown Casino.
9 Q. And approximately how many times were you deposed in
10 Greektown Casino?
11 A. At least two.
12 Q. Related to the same issues that you had mentioned
13 earlier that you testified to in court?
14 A. Yes, sir.
15 Q. Other than the depositions in the Greektown Casino
16 case can you give us the names and subject matters of
17 any -- of other cases where you were -- testified in a
18 deposition?
19 A. Yes, sir. Synergy Data, which was a Chapter 11 case
20 in the district of Delaware, and I don't believe,
21 Mr. Ruegger, that I testified in court in that
22 instance; however, I was deposed. I can't recall
23 exactly if I testified in court in that one or not.
24 Q. Do you remember what issues you addressed when you
25 testified in the Synergy Data case?



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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

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

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

8 Q. Very well.

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

14 A. Yes, sir.

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

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

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

25 Q. I understand Milliman has prepared a variety of

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

5 MR. MILLER: Object to form.

6 A. Yes.

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

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

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

17 MR. MILLER: Object to form.

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

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

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

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1 by actuaries related to pension projections; correct?

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

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

8 MR. MILLER: Object to form.

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

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

15 MR. MILLER: Object to form.

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

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

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

24 MR. MILLER: Object to form.

25 A. Well, I can tell you, Mr. Ruegger, later this year new



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

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

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

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



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

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

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

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

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1 Q. Were there conversations that involved you, anybody
2 from the -- somebody from the State and somebody from
3 the City in or about that same time frame with regard
4 to Conway MacKenzie's engagement by the City?
5 MR. MILLER: Object to form.
6 A. You're referring to at the same time?
7 Q. Yes.
8 A. Not that I can recall.
9 Q. Were you having separate conversations with Mayor Bing
10 or anybody else on behalf of the City with regard to
11 your engagement in or about the May/June time frame
12 2012?
13 MR. MILLER: Object to form.
14 A. In around May I don't think so. As I had indicated in
15 previous questioning, my partner, Van Conway, had
16 spoken to Mr. Bing -- or Mayor Bing, but that would
17 have been before the financial stability agreement and
18 my next interaction with the City would have been
19 after Kriss Andrews was identified as the program
20 management director, which wasn't until, if I recall
21 correctly, June of 2012.
22 (Marked Exhibit No. 6.)
23 Q. I'm going to show you what's been marked Moore 6 for
24 identification. Mr. Ciantra made a fair request. The
25 document number is DTMI00078512.

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1 Do you recognize this email?
2 A. No, I don't.
3 Q. Okay. There's a discussion in this email of two or
4 three firms providing financial restructuring services
5 to the City. In or about December of 2012 was
6 Conway MacKenzie being considered for a role with the
7 City?
8 MR. MILLER: Well -- are you finished with
9 your question? I'm sorry.
10 MS. LEVINE: There was -- that was the end
11 of the question.
12 MR. MILLER: Object to form.
13 A. Ms. Levine, if you can just give me a minute to review
14 the email.
15 Ms. Levine, can you repeat your question?
16 Q. Let me do it a different way.
17 There's a -- were you being considered for
18 the role of restructuring advisor to the City?
19 A. In December of 2012?
20 Q. Yes.
21 A. That's my understanding, yes.
22 Q. Were you also being considered for the role of
23 operational advisor?
24 A. If I recall correctly, the RFP that went out was just
25 for restructuring advisory services. There was not a

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

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1 Q. Generally what are the scope of services or what's
2 your understanding of the scope of services a firm
3 like Conway MacKenzie would perform as a restructuring
4 advisor?
5 MR. MILLER: Object to form.
6 A. Rather than speculate on what was in that RFP --
7 Q. No, I changed the question. What's your understanding
8 of what a firm like yours, what would be the scope of
9 services you would perform as a restructuring advisor?
10 A. You're asking me in general if a company or a
11 governmental entity is asking for restructuring
12 advisory services, what --
13 Q. Conway MacKenzie prefers a role as restructuring
14 advisor. I'm asking you what's your understanding of
15 the services a firm like Conway MacKenzie would
16 perform in the role of restructuring advisor?
17 A. Ms. Levine, you're asking a question that is somewhat
18 vague and so I'm just trying to clarify. My -- and
19 what I want to understand is are you asking about the
20 services --
21 Q. Let me ask it a different --
22 A. -- the services --
23 MR. MILLER: No, let him finish.
24 A. Are you asking about the services that we would
25 provide in this situation or in any situation?



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

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

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

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



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

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

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

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



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1 MR. MILLER: Object --

2 Q. -- in or about December 2012?

3 A. If you can just be clear on when you say negotiate,

4 what are you referring to?

5 Q. Did you have any discussions with -- okay, we're -- I

6 forgot, negotiate's a big word in this case. Strike

7 that, I'll rephrase it.

8 Did you have any discussions with anybody

9 at the State with regard to the terms of your

10 engagement in or about December of 2012?

11 A. I seem to recall, yes.

12 Q. With whom did you have those discussions?

13 A. Rich Baird and probably Andy Dillon.

14 Q. Anybody else?

15 A. Not that I can recall.

16 Q. Did you have discussions with anybody at the City

17 level with regard to the terms of your engagement in

18 or about December of 2012?

19 MR. MILLER: Object to form.

20 A. As I indicated before, Kriss Andrews.

21 Q. Anybody else?

22 A. Not that I can recall.

23 MR. MILLER: Object to form.

24 Q. Were any of these discussions either with

25 representatives of the State or representatives of the

Page 86

1 City in person?

2 A. I believe so, yes.

3 Q. Who was present in the in person meetings?

4 MR. MILLER: Object to form.

5 MR. CIANTRA: Can you specify, Mr. Miller,

6 what your formal objection is to that question so we

7 can obviate any dispute in the future?

8 MR. MILLER: Yes, it doesn't parse as to

9 whether the in person meetings are with

10 representatives of the State or representatives of the

11 City.

12 MR. CIANTRA: Thank you.

13 Q. Did you have any meetings with either representatives

14 of the State or the City in or about December of 2012

15 with regard to the terms of your -- or the scope of

16 your engagement by the City?

17 A. In person?

18 Q. Yes.

19 A. Yes.

20 Q. How many meetings took place?

21 A. I don't recall.

22 Q. Were there any meetings that took place just with

23 representatives of the State?

24 A. Yes.

25 Q. Do you recall how many of those meetings took place?

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1 A. Perhaps two.

2 Q. Who was present?

3 A. At one meeting I met with Rich Baird and Darrell Burks

4 was present in his capacity as a member of the

5 financial advisory board and then in another meeting

6 that would have been with Andy Dillon.

7 Q. Was anybody else present at the meeting you were at

8 with Andy Dillon?

9 A. I recall Andy's assistant was in the room and I think

10 Tom Saxton was on the phone.

11 Q. Who's Tom Saxton?

12 A. Tom, as I understand it, works in Andy's area, the

13 treasury department for the State of Michigan.

14 Q. Were there any meetings in or about this same time

15 frame with just representatives of the City?

16 A. Yes.

17 Q. And how many of those meetings took place?

18 A. I don't recall.

19 Q. More than five?

20 A. Face-to-face meetings, I don't think so.

21 Q. How many -- were there more than five meetings

22 telephone and face-to-face?

23 A. Very possibly. This was -- the RFP -- our response to

24 the RFP went out early in November and this is

25 obviously mid to later December so that's a lot of

Page 88

1 time to have discussions.

2 Q. Were there any discussions that took place between you

3 in which both the State and City representatives

4 participated?

5 A. The initial meetings that all of the firms -- or at

6 least the firms that the State and the City invited in

7 as a result of the responses to the RFPs were both the

8 City and the State. There was at least one follow-up

9 interview with representatives of both the City and

10 the State, there may have been two follow-up

11 interviews, I can't recall.

12 Q. Were there any telephone conferences where

13 representatives of both the City and the State

14 participated in or about December of 2012?

15 A. I don't recall if there were telephone calls where

16 both the City and the State were on.

17 (Marked Exhibit No. 10.)

18 Q. I'm going to show you what's been marked Moore 11.

19 Document DTMI00079528.

20 MR. MILLER: There's no Moore 10 that's

21 been introduced.

22 MS. LEVINE: I'm sorry, this is Moore 10

23 and this one, I don't know, I must have gotten ahead

24 of myself.

25 Q. Okay, Exhibit A, scope of services, do you see that



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1 document?

2 A. Yes, ma'am.

3 Q. Is this --

4 MR. MILLER: Wait one moment because of the

5 confusion generated by the identification of this

6 document, let's specifically identify it as

7 DTMI00079528 through 530.

8 Q. Do you see that document in front of you? It's

9 Exhibit A, scope of services?

10 A. Yes, ma'am.

11 Q. Does this -- is this the Exhibit A that was attached

12 to the emails we were just discussing?

13 A. I have no idea.

14 MR. MILLER: Wait.

15 Q. Okay. Do you recall providing this document to the

16 State and the City in or about December of 2012?

17 A. I don't recall.

18 Q. I want to show you the first paragraph where it says,

19 the terms of this contract shall begin on January 9,

20 2013 and shall terminate on December 31, 2013.

21 Did you respond to an RFP for the City to

22 provide services during that time frame?

23 A. Yes, ma'am.

24 Q. Did you provide -- did you provide -- respond to an

25 RFP to provide services as the chief restructuring

Page 90

1 officer for the City of Detroit?

2 MR. MILLER: Object to form.

3 Q. During that time frame?

4 A. Chief restructuring officer?

5 Q. Sorry, chief restructuring advisor.

6 A. I don't recall if the RFP asked specifically for that.

7 Q. Well, the document that we're looking at says, the

8 services to be performed, the contractor will serve as

9 chief restructuring advisor to the City of Detroit.

10 In its capacity as CRA, contractor will be the lead

11 restructuring agent for the City of Detroit and will

12 coordinate activities of the various City of Detroit

13 advisors.

14 Does that refresh your recollection?

15 A. Ms. Levine, this is a document that could have been

16 drafted by Conway MacKenzie, it could have been

17 drafted by the City of Detroit, I'm not sure. What

18 does appear to me, though, is based on what you just

19 read this is not the scope of services that wound up

20 in the final contract.

21 (Marked Exhibit No. 11.)

22 Q. I'm going to show you what's been marked Moore 11.

23 Document number DTMI00078909. Do you recognize this

24 document?

25 A. This appears to be the final contract that was entered

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1 into between Conway MacKenzie and the City of Detroit.

2 Q. Did you participate in the negotiation of this final

3 contract?

4 A. Yes.

5 Q. Did you review this final contract before it was

6 executed?

7 A. Yes.

8 Q. Did you sign-off on the terms of this contract before

9 it was executed?

10 A. Yes.

11 Q. On the page marked DTMI00078925, it appears to be a

12 January 7, 2013 letter, which is part of -- is it your

13 understanding that this letter is part of the

14 contract?

15 MR. MILLER: Object to form.

16 A. Ms. Levine, I would just point out that that appears

17 to me to be a bit of a legal question as to whether

18 this is part of a contract and I don't know if I'm

19 able to answer that question.

20 Q. Okay. Is it your understanding that the City is

21 responsible for half of your fees and the State is

22 responsible for half of your fees?

23 A. That is my understanding, yes.

24 Q. How did you -- how did that agreement come into being

25 if you're -- and well, let me do it a different way.

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1 Are you engaged by the City?

2 A. Yes, ma'am.

3 Q. How did it come to pass that the State pays for half

4 of your fees?

5 A. I don't know if I actually can respond to that. When

6 the City decided to issue an RFP for restructuring

7 services, it had been indicated, at least I read

8 through public reports, that the State was going to

9 pay for half of that.

10 Q. Is it your understanding that the City is your client?

11 A. Yes, ma'am.

12 MR. MILLER: Wait, object to form.

13 MS. LEVINE: What's the objection to the

14 form?

15 MR. MILLER: Among other things it calls

16 for a legal conclusion.

17 MS. LEVINE: I'm asking him his

18 understanding.

19 Q. Is it your understanding that the City is your client?

20 MR. MILLER: Go ahead.

21 A. Yes.

22 Q. Who did you -- upon you -- upon becoming engaged

23 initially, to whom did you report on behalf of the

24 City?

25 A. I reported primarily to Kriss Andrews. I interacted



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

Page 94

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

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1 identified yesterday and the day before?
2 MR. MILLER: Objection, and I'm going to
3 instruct the witness not to respond.
4 MS. LEVINE: Lunchtime.
5 (Luncheon recess between
6 12:55 p.m. and 1:30 p.m.)
7 MS. LEVINE: Mr. Moore, before we go onto
8 another topic I just want to clarify. Your counsel
9 directed you not to answer just prior to the lunch
10 break. Are you asserting the attorney-client
11 privilege?
12 MR. MILLER: Yes, Mr. Moore has consented
13 to having Jones Day represent him in connection with
14 this deposition and if I recall, you, AFSCME, have
15 consented to have the City put Mr. Moore forward as a
16 representative of the City in connection with the
17 30(b)(6) deposition. So yes, we represent Mr. Moore
18 in connection with this deposition and I am
19 instructing him not to answer the question on the
20 grounds of attorney-client privilege.
21 MS. LEVINE: And just to clarify so you're
22 not representing Conway MacKenzie, you're representing
23 Mr. Moore in his capacity as the 30(b)(6) witness for
24 the City --
25 MR. MILLER: In --

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



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

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1 know --
2 Q. No, no. Sometimes when an expert takes the stand,
3 first you do voir dire and then he starts to testify
4 and in between asking about your background and CV and
5 starting the substantive testimony the judge will say
6 I qualify you as an expert or no I don't qualify you
7 as an expert. What I'm trying to understand is in
8 those two cases did the judge qualify you as an expert
9 and if so in what categories?
10 A. Yes, I understand that process exactly. As I
11 indicated before, the GM case settled before I had to
12 testify.
13 Q. Okay.
14 A. So I was deposed in that case.
15 Q. Okay, so you were deposed but you didn't have to take
16 the stand in court?
17 A. Yes, ma'am.
18 Q. Okay, good.
19 In regard to Greektown did you have to take
20 the stand in the courthouse?
21 A. Yes, ma'am.
22 Q. And did the judge in that case qualify you as an
23 expert?
24 A. Yes, ma'am.
25 Q. And this what area did the judge qualify you as an

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1 expert?
2 A. As it relates to the restructuring -- bankruptcy
3 restructuring of Greektown.
4 Q. And the -- were you qualified as an expert in relation
5 to pensions?
6 A. Pensions were not an issue with Greektown.
7 Q. Were you qualified as an expert with regard to
8 actuarial findings?
9 A. Actuarial findings were not an issue in Greektown.
10 Q. So for both of those questions then the answer is no?
11 A. Correct.
12 Q. Did you have any role in the hiring of Kevyn Orr as
13 the Emergency Manager or the Emergency Financial
14 Manager for the City of Detroit?
15 A. No, ma'am.
16 Q. Did Conway MacKenzie have any role in the hiring of
17 Kevyn Orr in either of those two capacities?
18 A. No, ma'am.
19 Q. Did you have any role in the financial review team?
20 A. No, ma'am.
21 Q. Did Conway MacKenzie have any role in the financial
22 review team?
23 A. No.
24 Q. From -- when was the first time you had a conversation
25 with anybody with the City with regard to Detroit

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1 filing for Chapter 9 protection?
2 A. Can you just clarify that just the -- whether that was
3 a possibility or --
4 Q. I want to know the first time the word Chapter 9 came
5 up in discussions with regard to the City of Detroit.
6 Possibility, options, alternatives, any context.
7 MR. MILLER: But the conversation is with
8 somebody in the City?
9 MS. LEVINE: Yes.
10 A. I don't recall specifically.
11 Q. Do you recall if it was before the end of 2012?
12 A. I don't recall.
13 Q. When was the first time you had a conversation with
14 anybody from the State or on behalf of the State with
15 regard to the potential for Detroit filing for Chapter
16 9 bankruptcy protection?
17 A. I don't recall.
18 Q. Did those conversations come up during the interview
19 process with the State and Conway MacKenzie?
20 MR. MILLER: Object to form.
21 A. I don't recall.
22 Q. So when you interviewed with the State for your role
23 with the City, you don't recall having discussions
24 with regard to Chapter 9 as an alternative?
25 MR. MILLER: Object to form.



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

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1 conversations with anybody at the City with regard to
 2 Detroit filing for Chapter 9 protection?
 3 A. Yes.
 4 Q. During that time period did you have any conversations
 5 with representatives of the City at which the State
 6 were present -- at which representatives of the State
 7 were present with regard to Detroit filing for Chapter
 8 9 bankruptcy protection?
 9 A. I don't recall.
 10 Q. Between June 14 and July 17, what was the first
 11 conversation that you had with anybody from the City
 12 with regard to filing for Chapter 9 bankruptcy
 13 protection on July 19?
 14 MR. MILLER: Mr. Moore, in connection with
 15 that question be careful to consider not revealing
 16 attorney-client communications to the extent that
 17 those conversations may have included attorneys.
 18 MS. LEVINE: Wait, let's clarify that for a
 19 second. How is it that if he's present there's an
 20 attorney-client privilege if he did not sign an
 21 engagement letter with Jones Day but signed it
 22 directly with the City and the State?
 23 MR. MILLER: He's the -- he and
 24 Conway MacKenzie are the City's professional advisors
 25 and Jones Day is taking the position that the

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

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



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1 A. Can you define filings?
2 Q. Pleadings that were filed on the docket in connection
3 with the Chapter 9 filing including, for example, your
4 declaration.
5 A. Only one and that is my declaration.
6 Q. And what was the -- what was the date of the first
7 meeting you had -- actually let me say this
8 differently.
9 What was the date of the first discussion
10 you had with regard to preparing that declaration?
11 A. I don't recall.
12 Q. Was it in June?
13 A. I don't believe so.
14 Q. Was it in July?
15 A. I would assume so, yes.
16 Q. Was it before the actual filing occurred?
17 A. Yes.
18 Q. Was it a week before the actual filing occurred?
19 A. It may have been, I don't recall.
20 Q. Was it more than ten days before the actual filing
21 occurred?
22 A. It may have been.
23 Q. Was it before or after the July 4th weekend?
24 MR. MILLER: If you recall.
25 A. I don't recall.

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1 MS. LEVINE: Let's not coach the witness.
2 Q. Did you receive -- after having the initial
3 conversation -- was that initial conversation with
4 Jones Day?
5 A. Yes, ma'am.
6 Q. Did you receive a draft of your declaration to review?
7 MR. MILLER: You can answer that question.
8 A. At some point I received a draft, but I recall having
9 an initial conversation first with an attorney from
10 Jones Day laying out a number of the key issues
11 relating to pensions.
12 Q. When was that conversation?
13 A. I don't recall.
14 Q. Who participated in it?
15 A. An attorney from Jones Day.
16 Q. Do you recall the name of the attorney?
17 A. I actually don't at this point.
18 Q. Was anybody else on the phone with you from Conway?
19 A. No, ma'am.
20 Q. Was anybody else on the phone with you from the City?
21 A. No.
22 Q. Was anybody else on the phone with you?
23 A. Just the attorney from Jones Day.
24 Q. Did that conversation take place after the July 4th
25 weekend?

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1 A. I don't recall.
2 Q. How long before you had this initial conversation were
3 you provided with a first draft of your declaration?
4 A. I don't recall how long.
5 Q. Was it more than a week?
6 A. I don't recall.
7 Q. Was it more than two weeks?
8 A. I don't recall.
9 Q. Did you read -- did you have your declaration -- did
10 you review your declaration over the July 4th weekend?
11 A. I don't recall.
12 Q. Did you have the declaration as of the July 4th
13 weekend?
14 A. I don't recall.
15 MR. MILLER: Wait. Objection. Object to
16 form. Asked and answered.
17 Q. When did you sign your declaration?
18 A. I can't recall if it was July 17th or 18th.
19 Q. And how many drafts did it go through before you
20 actually signed it?
21 A. I don't recall that.
22 Q. More than one?
23 A. Yes.
24 Q. More than three?
25 A. Could have been.

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



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1 A. Could you be more specific on Flowers litigation?

2 Q. Have you heard the term the Flowers litigation before?

3 A. Ms. Levine, I come across so much on a day-to-day

4 basis. I need something more to spur my memory to

5 know whether I've heard of it or not.

6 Q. Does the name Webster litigation mean anything to you?

7 A. Again, if you could please provide a little bit more

8 detail, I can tell you if I've heard of it or not.

9 Q. What's your understanding of the reason why Detroit

10 determined to file for Chapter 9 protection on July 18

11 as opposed to some other day?

12 A. I don't have an under --

13 MR. MILLER: Object to form.

14 A. I don't have an understanding. I was not involved in

15 that decision.

16 Q. So after you -- so when you first learned that you

17 were going to do a declaration, was it your

18 understanding that Detroit had already made the

19 decision to file in July?

20 A. No.

21 Q. When you first started working on your declaration,

22 was it in anticipation of a specific filing date?

23 A. No. Just add too I've had a number of clients where I

24 have prepared something -- a pleading for a potential

25 bankruptcy filing that has never happened.

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1 Q. Were you aware of any litigation pending just prior to

2 the Chapter 9 filing with regard to the question of

3 authorization for the City to actually file a Chapter

4 9 petition?

5 MR. MILLER: Object to form.

6 A. I am generally aware --

7 MS. LEVINE: Wait, what's the form

8 objection?

9 MR. MILLER: Vague and ambiguous with

10 respect to the question of authorization for the City

11 to actually file a Chapter 9 petition and foundation.

12 Q. Prior to the time of the bankruptcy filing were you

13 aware that there was litigation pending challenging

14 the authorization for the City to file for Chapter 9

15 protection?

16 A. I am generally aware of litigation filed in a state

17 court where I believe that that was one of the

18 elements of the litigation.

19 Q. When did you first become aware of that state court

20 litigation?

21 A. Sometime within the week before the actual filing

22 perhaps.

23 Q. Did you -- had you prepared your declaration before or

24 after you became aware of that state court litigation?

25 A. Because I can't recall specifically when I started

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1 working on my declaration, I don't know.

2 Q. Did you begin preparing your declaration at or about

3 the same time you became aware of the state court

4 litigation?

5 A. I don't know.

6 Q. Was it months before you became aware of the state

7 court litigation?

8 MR. MILLER: Object to form.

9 A. Ms. Levine, I think I've already answered that I don't

10 believe that there was anything done preparation wise

11 on my declaration in the month of June.

12 Q. Okay.

13 Were you involved in any restructuring

14 initiatives in or about February of 2013 with regard

15 to the removal of blighted homes in the City of

16 Detroit?

17 A. Was I specifically involved or was Conway MacKenzie

18 involved?

19 Q. Well, starting with you and then we're going to ask

20 about Conway MacKenzie.

21 A. Blight has been an area of focus that our firm has had

22 and I have been involved in some of those activities.

23 Q. Were you point on the issue with regard to the

24 blighted homes?

25 A. Generally speaking there was another individual on the

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1 team that I delegated some items to.

2 Q. And with -- and on the other side of that, who was the

3 point person for the State on that issue?

4 MR. MILLER: Objection to form, foundation.

5 Q. Did you contact -- were you in contact with the State

6 with regard to this issue?

7 A. There have been numerous people at the State with whom

8 blight has been discussed.

9 Q. Do you recall who was the point person for that

10 initiative?

11 A. From the State?

12 Q. Yes.

13 A. I don't know if the State actually has a point person

14 for blight. There is the Michigan -- Michigan State

15 Housing Development Agency or Authority, MSHDA, that

16 is involved with some of these activities. Treasury

17 department has had some involvement. The department

18 that Moore Corrigan heads up, which I can't recall the

19 name of it right now, has been involved.

20 (Marked Exhibit No. 12.)

21 Q. I'm going to show you what's been marked Moore 12 for

22 identification. It's an email chain but the second

23 email has three CCs with Michigan email addresses and

24 I was just wondering if you recognize those names and

25 could identify those people. Document number



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

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

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

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



<p style="text-align: right;">Page 117</p> <p>1 meeting I believe that this was summarized. 2 Q. Prior to this report, which makes reference to 3 restructuring pensions and OPEB, had you previously 4 considered or made recommendations with regard to 5 restructuring pensions and OPEB? 6 MR. MILLER: Object to form. 7 A. Where are you referring to that this makes reference 8 to restructuring pension and OPEB? 9 Q. Well, let me ask the question a different way. 10 Does this report suggest restructuring 11 pension and OPEB? 12 A. Not that I recall. 13 Q. Okay. Did you discuss with the city council 14 restructuring recommendations that included pension 15 and OPEB? 16 MR. MILLER: Object to form. 17 Q. Prior to the Chapter 9 filing did you discuss with the 18 city council restructuring recommendations that 19 included pension and OPEB? 20 A. No. 21 Q. When was the first -- did you ever discuss with the 22 city council recommendations for pensions and OPEB? 23 A. No. 24 (Marked Exhibit No. 15.) 25 Q. I'm going to show you what's been marked Moore 15.</p>	<p style="text-align: right;">Page 119</p> <p>1 OPEB restructuring? 2 MR. MILLER: Object to form. 3 A. When I came -- when I was first engaged, the City had 4 already started a process related to healthcare for 5 both active and retired employees at various cost 6 reduction efforts and the pension topics I believe 7 began maybe in the beginning of March or thereabouts. 8 Q. In connection with the work that you did with regard 9 to pension and OPEB, did you review the City's history 10 with regard to negotiations with the unions with 11 regard to the OPEB issues? 12 A. When you say history, are you referring to recent 13 history or what period of time? 14 Q. Prior to your engagement, what was the last time that 15 the City entered into concessionary agreements with 16 its unions or concessionary negotiation with its 17 unions just prior? 18 MR. MILLER: Objection to form, foundation. 19 A. Just to clarify, Ms. Levine, I am not the primary 20 point person on OPEB. I certainly have participated 21 in meetings where OPEB has been discussed. My 22 understanding is that the most recent time related to 23 changes in healthcare would have been the 24 implementation of the City Employment Terms during 25 2012.</p>
<p style="text-align: right;">Page 118</p> <p>1 MR. MILLER: Yes. 2 MS. LEVINE: Sorry, I gave you my copy too. 3 Q. Do you recall seeing that document before today? 4 A. Yes. 5 Q. What is it? 6 A. This appears to be the presentation document for the 7 financial advisory board meeting on April 8th. 8 Q. Okay, would you turn to page 12, please? I'm reading 9 from the bottom of the page CM -- which I'm assuming 10 is an abbreviation for Conway MacKenzie; is that 11 correct? 12 A. Yes, ma'am. 13 Q. -- is also working on various work streams that span 14 across the City or multiple departments including 15 pension and OPEB restructuring. 16 Do you see where I'm reading? 17 A. Yes, ma'am. 18 Q. Does that refresh your recollection with regard to 19 whether or not you were working on pension and OPEB 20 restructuring? 21 A. I don't believe you asked me that before. 22 Q. Were you during this time period working on pension 23 and OPEB restructuring? 24 A. Yes. 25 Q. When did you first raise with the City pension and</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. Are you familiar with those employment terms? 2 A. Generally. 3 Q. Okay. Were there OPEB concessions made as part of 4 those terms? 5 A. I don't recall if the changes to the actives were 6 pushed through to retired employees or not. 7 Q. Did your role with regard to the pensions increase 8 over -- at any point in time in April? 9 A. I don't know about during the month of April. It may 10 have been in April, but essentially as pension issues 11 certainly became a focal point, there was the 12 establishment of a task force and I was asked by 13 Kriss Andrews to lead that task force. 14 Q. Did Milliman participate in that task force? 15 A. Yes, ma'am. 16 Q. Who else participated in that task force? 17 A. Attorneys from Jones Day and Miller Canfield. 18 Q. And what exactly was the role of the pension task 19 force? 20 A. I believe it states in my declaration, but essentially 21 we were to look at causes of the underfunding, 22 evaluate the underfunding amount and options that may 23 exist as it relates to the defined benefit pension 24 plans. 25 Q. Was there -- was any -- was anybody on behalf of the</p>

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

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

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

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



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

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

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

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1 A. Good afternoon.
2 Q. Let me go back just a little bit in terms of your
3 background. You had indicated that back in or around
4 2007, 2008 you were named to a commission to look at
5 governmental operations here in the State of Michigan?
6 A. Yes, sir.
7 Q. And as I understand it, that appointment was made by
8 the then speaker of the Michigan house of
9 representatives, Mr. Dillon, and the majority leader
10 of the Michigan senate; is that correct?
11 A. Yes, sir, Mike Bishop.
12 Q. Okay. Had you known Mr. Dillon before that
13 appointment?
14 A. No.
15 Q. Or Mr. Bishop?
16 A. No.
17 Q. And at that time had you actually done any work in
18 terms of restructuring of governmental operations?
19 A. Yes, sir, I had been involved in my engagement with
20 the Wayne County Circuit Court.
21 Q. Okay. And the Wayne County Circuit Court and you had
22 mentioned that you had done some work for the Detroit
23 Public School System?
24 A. Yes.
25 Q. Those are your -- that's your governmental



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

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

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

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



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

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

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

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



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

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

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

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



<p style="text-align: right;">Page 141</p> <p>1 conclusion as a task force that the actuarial 2 valuations don't comply with actuarial standards. 3 Q. Right. I mean, your declaration does not take the 4 position that any of the assumptions that you identify 5 in it are in fact inconsistent with actuarial 6 standards of practice; isn't that right? 7 A. That's correct. 8 Q. Have you asked for -- has your task force asked for 9 any -- have you asked the Milliman firm for an opinion 10 as to whether the actuarial standards that you discuss 11 in your declaration and were the subject of your 12 testimony earlier, have you asked them whether -- for 13 an opinion as to whether those assumptions are 14 consistent or inconsistent with actuarial standards of 15 practice? 16 A. We have discussed that, yes, and they have opined, if 17 I recall correctly, that they are -- there is not a -- 18 they don't breach, if you will, or go against 19 actuarial standards. 20 Q. Okay. And was that opinion rendered in writing or was 21 that an oral discussion? 22 A. That would have been an oral discussion. 23 (Marked Exhibit No. 18.) 24 Q. And I'm back to the series of letters where I'm 25 handing what I've marked as Moore Exhibit 18. This is</p>	<p style="text-align: right;">Page 143</p> <p>1 further benefits accrue going forward? 2 A. That's correct. 3 Q. Okay. So that was the assumption that's being made 4 here. And then you wanted to ask them essentially 5 when is the General Retirement System going to run out 6 of money if we make certain further other assumptions 7 with respect to the amount of its investment return, 8 etc., as specified on page 1 of the letter? 9 A. Yes, sir. 10 Q. Where did the -- I notice the third bullet point there 11 on page 1, annual city contributions of 13.6 million. 12 Do you see that? 13 A. Yes, sir. 14 Q. Where did that number come from? 15 A. That was a calculation based on one scenario taking 16 into account an allocation of funds available based on 17 percentage of claims. 18 Q. Okay, so why don't you spell that out for me? How did 19 you get -- how did you get to 13.6 million? What was 20 the claim assumption? 21 A. I don't recall what the exact amount was for the claim 22 assumption. 23 Q. So would I be correct that the 13.6 million reflects a 24 distribution on the underfunding claim to the pension 25 fund?</p>
<p style="text-align: right;">Page 142</p> <p>1 another letter from Milliman to Mr. Miller, copied to 2 you. This one's dated July 26. 3 So just so that make sure I have the time 4 sequence right. This is -- this is after the 5 presentation to creditors; correct? 6 A. Yes, sir. 7 Q. Like a week or two? That was the 14th? 8 A. This is July 26. 9 MR. MILLER: This is July. 10 Q. Right. 11 A. The initial meeting with the creditors, the one that 12 we're referring to as the June 14th meeting. 13 Q. Right. So this is six weeks or so later? 14 A. Yes, sir. 15 Q. Okay. Why don't you tell me what was the discussion 16 that led up to tasking the Milliman firm with what is 17 discussed in Moore Exhibit 18? 18 A. This analysis related to a scenario that we asked 19 Milliman to evaluate, which is what is the impact on 20 plan assets based on certain contribution assumptions. 21 Q. Okay. And in the context of freezing the plan? 22 A. In the context of freezing the plan, that's correct. 23 Q. At the risk of offending benefits lawyers that may be 24 present here, freezing the plan I understand to mean 25 that as of the date that the plan is frozen, no</p>	<p style="text-align: right;">Page 144</p> <p>1 A. Yes, sir. 2 Q. So if we were to take the -- I guess the present value 3 of that \$13.6 million stream of payments through the 4 2022, 2023 fiscal year, we'd come up with the 5 distribution on the underfunding claim? 6 MR. MILLER: Before you answer that, let me 7 just review this question for a moment. 8 No objection. 9 A. Not necessarily. This is a certain amount of cash 10 that would go towards that underfunded claim. There 11 certainly could be other assets that could also go 12 towards that claim. 13 Q. Okay, but I guess when you -- when you were doing this 14 analysis, were you assuming that the 13 -- that 15 \$13.6 million stream of payments represented all of 16 the consideration that would go towards the 17 underfunding claim or some of it? 18 A. I don't think we made an assumption either way. 19 Q. So how did you come up with the 13.6 as opposed to 20 14.6 or 12.6? Just help me out if you can. 21 MR. MILLER: Object to form. Asked and 22 answered. 23 A. As I indicated before, the -- this scenario looked at 24 cash available over a certain period of time and then 25 allocating that cash based on a relative percentage of</p>

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

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

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

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



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

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

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

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



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

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

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

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



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1 Q. There were different views that were expressed?

2 A. There wasn't -- there wasn't a consensus that we tried

3 to come up with. As I indicated before, the existence

4 of the provision was acknowledged and it was

5 discussed, but the pension task force did not come to

6 an opinion as it relates to anything regarding that

7 provision in the Michigan Constitution.

8 Q. Was it something that you were concerned about?

9 A. Can you clarify in terms of concern?

10 Q. You were aware of this provision; right? You were

11 aware at least from the actuarial reports that the

12 plans were underfunded; correct?

13 A. Yes.

14 Q. And you were aware that in the proposal to creditors

15 that we just looked at the Emergency Manager states

16 that there must be significant cuts in accrued vested

17 pension amounts for both active and currently retired

18 persons. So my question is were you concerned about

19 that in light of your understanding of the Michigan

20 State Constitution?

21 A. To the extent that retirees would face some sort of

22 cut, certainly as a human being I would be concerned

23 about that.

24 Q. I'm not asking as a human being, I'm asking in light

25 of your understanding of the State's Constitution.

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1 MR. MILLER: Objection to form. Calls for

2 a legal conclusion.

3 Q. You can answer the question.

4 A. I'm not sure that I understand the question. You

5 asked if I was concerned and I sought clarification

6 for that and I'm not sure I understand what additional

7 you're asking about concern.

8 Q. Were you concerned that the -- let me ask

9 specifically.

10 Were you concerned that the position that

11 the Emergency Manager took with respect to accrued

12 pension benefits was inconsistent with your

13 understanding of what the State Constitution requires?

14 A. That to me is a legal opinion that I'm not equipped to

15 make.

16 Q. Did you have any discussions with anyone in the State

17 government with respect to this issue that -- the

18 interplay between the Michigan State Constitution

19 provisions and the Chapter 9 filing by the City?

20 A. Not that I can recall.

21 Q. So there may have been such discussions?

22 A. There may have been.

23 Q. And if there had been such discussions, who from the

24 State would likely have been involved in it?

25 A. My interactions have been essentially exclusively with

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1 the treasury department for the State of Michigan, so

2 if there were discussions, it would have been with the

3 treasury department.

4 Q. So that would have been Mr. Dillon or one of his

5 subordinates?

6 A. Yes.

7 Q. With --

8 MR. MILLER: Tom, excuse me, are you going

9 to shortly wrap up? Because otherwise, I need a

10 five-minute break.

11 MR. CIANTRA: Take your five-minute break.

12 I won't be that long, Evan, afterwards.

13 MR. MILLER: Yes, that's fine. Thanks.

14 (A brief recess was taken.)

15 MR. MILLER: Back on the record?

16 MR. CIANTRA: Yeah, whenever you're ready.

17 Sharon?

18 MS. LEVINE: No, I'm good. I'm just

19 stretching.

20 MR. CIANTRA: You're just stretching.

21 Okay, back on the record.

22 BY MR. CIANTRA:

23 Q. In connection with your work on the pension task

24 force, Mr. Moore, did you inquire as to the level of

25 benefits that pensioners were receiving from the two

Page 160

1 pension plans?

2 A. Just to clarify, are you referring to those in pay

3 status?

4 Q. Yeah, in pay status, right.

5 A. Yes, sir.

6 Q. And am I correct that with respect to the General

7 Retirement System the average annual benefit is a

8 little less than \$20,000 a year?

9 A. We never calculated the average across all people on

10 pay status. We looked at it in different increments

11 in terms of the number of people at various ages

12 receiving certain monthly amounts.

13 Q. Okay. What's the -- do you recall what's the median?

14 A. We never calculated the median.

15 Q. Okay, how about the mean?

16 A. We never calculated the mean.

17 Q. Did you do that with respect to the Police and Fire

18 plan?

19 A. Yes, sir.

20 Q. Okay, what was the average that was received under

21 that plan?

22 A. We did not calculate the average, similar -- we pulled

23 similar data to -- for both plans.

24 Q. You don't recall a presentation by Mr. Orr where

25 certain representations were made as to what the



Page 161

1 average pension benefit was under these two systems?

2 A. Not offhand.

3 Q. Let me ask. With respect to -- my understanding is at

4 least with respect to the police officers and firemen

5 in the City that they are not covered by the Social

6 Security system?

7 A. Participants in the Police and Fire Retirement System

8 do not participate in Social Security, that's correct.

9 Q. To this day; correct?

10 A. Yes, sir.

11 Q. So for their earnings, a police officer in the City of

12 Detroit would -- for their earnings from the City of

13 Detroit would have no Social Security; correct?

14 A. They don't pay in and then they don't receive,

15 correct.

16 Q. Okay. And is that the case for certain of the

17 retirees in the General Retirement System as well?

18 A. I don't believe so. The reason for two different

19 pension systems is specifically because one system is

20 for those that participate in Social Security and one

21 system is for those that do not.

22 Q. Okay, so your understanding is that none of the

23 participants in the General Retirement System are not

24 eligible for Social Security?

25 A. That could -- there could be people in GRS that don't

Page 162

1 participate in the Social Security based on their age

2 or when they worked for the City, that's a

3 possibility, I don't know for sure.

4 Q. Okay, so there may be some of the retirees who are

5 covered by that plan who have -- whose earnings were

6 not subject to Social Security?

7 A. It's possible.

8 Q. But you don't know?

9 A. I don't know for sure.

10 Q. And is that something that someone was tasked to find

11 out?

12 A. Not that I recall.

13 Q. Would you agree that that might be a relevant

14 consideration in evaluating what to do with that --

15 with those accrued -- the accrued pension benefits of

16 folks in that system?

17 A. It may be relevant, yes, depending on what gets looked

18 at.

19 MR. CIANTRA: I have no further questions.

20 Thank you.

21 MR. MILLER: Can we go off the record?

22 (Discussion held off the record.)

23 MR. MILLER: Back on the record.

24 MR. RUEGGER: Yes, this won't take too

25 long.

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1 BY MR. RUEGGER (continued):

2 Q. Do you have your declaration in front of you,

3 Mr. Moore?

4 A. Yes, sir.

5 Q. If you could open it up to page 10 where you start a

6 discussion of past practices?

7 A. Yes.

8 Q. I'd first like to talk about the annuity savings plan,

9 which you discuss in paragraph 18. Do you know what

10 years the annuity savings plan was in active mode or

11 being pursued?

12 A. Based on our investigation it appears that it has been

13 available since at least 1973 and we have reviewed

14 certain documentation that would suggest that some

15 form of annuity savings plan has been in existence all

16 the way back perhaps into the 1930s.

17 Q. I take it -- well, withdrawn.

18 Do you know whether the annuity savings

19 plan in any form is continuing at present?

20 A. Yes, it is.

21 Q. Is it continuing in the format described in your

22 declaration in paragraph 18?

23 A. Could you be more specific in terms of -- there are --

24 is a number or there's a lot of information in

25 paragraph 18.

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1 Q. Sure. You'll see the third sentence where you say,

2 under the terms of the GRS plan, active city employees

3 may elect to invest 3, 5 or 7 percent of their

4 paychecks into an annuity savings plan.

5 Does that aspect of the annuity savings

6 plan continue to this day?

7 A. Yes.

8 Q. And is that available to all GRS covered active

9 employees?

10 A. I believe so.

11 Q. And the next part of that sentence says that the

12 investment earns interest based on a rate of return

13 established at the discretion of the GRS Board of

14 Trustees.

15 Is that still accurate?

16 A. Yes; however, there was an ordinance passed in 2011

17 that provides parameters within which the board may

18 specify the interest.

19 Q. Do you know what interest rate is current -- has

20 currently been specified by the board?

21 A. As I understand it, it's 7.9 percent.

22 Q. And is it true -- okay, turning to the next page,

23 we're still on paragraph 18, you state in the sentence

24 that begins but in many years. Do you see that

25 sentence?



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1 A. Yes.

2 Q. The GRS trustees chose to credit these annuity savings

3 plan employee accounts with rates of return that were

4 far greater than the actual GRS rate of return earned

5 on the investments.

6 So I take it from your prior testimony that

7 that is still an accurate aspect of the annuity

8 savings plan; correct?

9 MR. MILLER: Object to form.

10 A. The ordinance passed in 2011 that I just referred to

11 addresses this issue.

12 Q. And what does it provide generally? I know you don't

13 have it in front of you but to your memory.

14 A. Yes, generally it provides that the interest rate

15 credited to the annuity savings fund accounts cannot

16 exceed the assumed rate of return on the plan assets.

17 Q. Only active employees were allowed to participate in

18 this plan; correct?

19 A. Yes, sir. From the standpoint of making new

20 contributions, when an employee retires, the employee

21 has the choice of taking a lump sum of their annuity

22 savings fund account or having it paid in an annuity,

23 so there could be retired employees that are still

24 getting payments from the annuity savings fund but

25 they would not be contributing to it.

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1 Q. In the last sentence of paragraph 18 you say that

2 hundreds of millions of dollars of plan assets

3 intended to support the City's traditional defined

4 benefit pension arrangements were converted by GRS

5 trustees to provide a windfall to the annuity savings

6 accounts of active employees outside of a defined

7 benefit pension plan.

8 Has Conway MacKenzie or any other firm to

9 your knowledge quantified the dollar amount of plan

10 assets that were converted to the annuity savings

11 accounts?

12 A. Yes.

13 Q. And what is that amount, if you remember?

14 A. One analysis that I've looked at was performed by

15 Joe Esuschanko, E-S-U-S-C-H-A-N-K-O.

16 Q. Okay.

17 A. And he analyzed the impact from both the annuity

18 savings fund as well as 13th checks between 1985 and

19 2008 and he quantified that to be, based on the

20 principal amount as well as the lost interest earnings

21 on those funds, to be approximately \$1.9 billion.

22 Q. Okay. I want to make sure I understand what you --

23 that last answer. That would be both the annuity

24 savings plan and the 13th check program that you

25 reference in paragraph 19?

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1 A. Yes. Amounts that were used to credit interest on the

2 annuity savings fund accounts and pay 13th checks.

3 Q. The 1.9 billion does not include any principal or the

4 3 or the 5 or the 7 percent of the paycheck that was

5 invested; correct?

6 A. That's correct.

7 Q. But the interest being calculated there, is that all

8 interest or just the amount of interest in excess of

9 the interest earned under the plan?

10 A. In excess. The interest in excess of what was earned

11 by plan assets.

12 Q. And of the 1.9 billion, did Mr. Esuschanko break it

13 down between the 13th check and the annuity savings

14 plan?

15 A. Yes.

16 Q. How much of the 1.9 was attributable to the annuity

17 savings plan?

18 A. I don't recall that breakdown.

19 Q. Do you know what documents or records might contain

20 that breakdown?

21 A. Yes, there was a memo that was prepared by the city

22 council fiscal analysis division in around November of

23 2011 in support of the ordinance that I just

24 previously mentioned that has attached to it

25 Mr. Esuschanko's report.

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1 Q. Thank you. And do you recall whether Mr. Esuschanko's

2 report breaks down the amounts on each year or was it

3 an accumulation of 2005 through 2008?

4 A. It shows by year.

5 Q. Turning to the 13th check subject, which is in

6 paragraph 19 of your declaration, do you have an

7 understanding as to what years the 19th check program

8 was pursued?

9 A. Just to clarify, you had indicated -- you just said

10 19th check, I think you're referring to the 13th

11 check.

12 Q. I'm sorry, my apologies. Strike that again. I'll

13 answer it again -- or I'll ask it again.

14 Do you recall in what years the 13th check

15 program was utilized?

16 A. Mr. Esuschanko's analysis I believe has 13th check

17 amounts in that same time period, 1985 through 2008.

18 I have seen information that would suggest that 13th

19 checks may have occurred before 1985 for the GRS

20 system.

21 Q. And if I understand your declaration correctly, this

22 13th check program was used for both the GRS and the

23 PFRS systems?

24 A. The 13th check, if we use that term as it relates to

25 the Police and Fire Retirement System, is also -- or



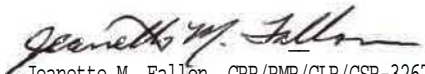
Page 169

1 has also been referred to as gain sharing.
 2 Q. So it's only referred to as gain sharing related to
 3 the PFRS system?
 4 A. I have seen references to both 13th checks and gain
 5 sharing for PFRS. The reason why there's a
 6 distinction is payouts that happen from PFRS went to
 7 both active and retired employees whereas on the GRS
 8 side those payments just went to retired employees.
 9 Q. Are you aware whether a portion of the 13th check
 10 program or payments pursuant to the 13th check program
 11 were made to the City itself?
 12 A. Well, the 13th check didn't go to the City, but
 13 typically the board would approve a total amount and
 14 allocate a portion to annuity savings fund interest,
 15 another portion to 13th checks and then a third
 16 portion to be used as a credit to the City.
 17 Q. And are you aware -- you may have already addressed
 18 this in your testimony, I apologize -- but are you
 19 aware of whether any payments among those allocated
 20 went to active employees other than the -- not in the
 21 annuity savings plan context but in the 13th check
 22 program?
 23 A. Speaking just about GRS, if we exclude the crediting
 24 of the annuity savings fund accounts, I'm not aware of
 25 13th checks going to active employees.

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1 MR. CIANTRA: I believe this has been the
 2 subject of discussion between people in your firm and
 3 my firm, but I just want to confirm with Mr. Moore
 4 what his understanding is as to the October 23rd
 5 hearing.
 6 Q. Do you have any understanding as to whether you are
 7 expected to testify at the October 23rd hearing?
 8 A. It has not been discussed.
 9 Q. So I take it that if you haven't discussed whether
 10 you're going to testify, you similarly have not
 11 discussed what you might testify to; is that correct?
 12 A. Correct.
 13 MR. RUEGGER: I don't have any other
 14 questions.
 15 MR. MILLER: Thank you. No questions.
 16 (Deposition concluded at 4:06 p.m.)
 17 * * *
 18
 19
 20
 21
 22
 23
 24
 25

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

Page 172

1 DEPOSITION ERRATA SHEET
 2
 3 Our Assignment No. 471793/NYC337236
 4 Case Caption: In re City of Detroit, Michigan
 5
 6 DECLARATION UNDER PENALTY OF PERJURY
 7
 8 I declare under penalty of perjury that I have read
 9 the entire transcript of my Deposition taken in the
 10 captioned matter or the same has been read to me, and the
 11 same is true and accurate, save and except for changes
 12 and/or corrections, if any, as indicated by me on the
 13 DEPOSITION ERRATA SHEET hereof, with the understanding that
 14 I offer these changes as if still under oath.
 15 Signed on the ____ day of _____, 20__.
 16 _____
 17 CHARLES M. MOORE
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Page 173

1 DEPOSITION ERRATA SHEET
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25 CHARLES M. MOORE

Page 174

1 DEPOSITION ERRATA SHEET
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24 SIGNATURE: _____ DATE: _____
25 CHARLES M. MOORE



EXHIBIT E

Page 308

1 UNITED STATES BANKRUPTCY COURT
 2 EASTERN DISTRICT OF MICHIGAN
 3 SOUTHERN DIVISION
 4 -----X
 5 IN RE) Chapter 9
 6 CITY OF DETROIT, MICHIGAN,) Case No. 13-53846
 7 Debtor.) Hon. Steven W. Rhodes
 8 -----X
 9
 10
 11 CONTINUED VIDEOTAPED DEPOSITION OF
 12 KEVYN D. ORR
 13 Volume II
 14 Washington, D.C.
 15 Friday, October 4, 2013
 16
 17
 18 Pages: 308 - 496
 19 Reported by: Cindy L. Sebo, RMR, CSR, RPR, CRR,
 20 CCR, CLR, RSA
 21 Assignment Number: 14008
 22 File Number: 105824

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1 APPEARANCES:
 2
 3 JONES DAY
 4 For the Debtor:
 5 51 Louisiana Avenue, Northwest
 6 Washington, D.C. 20001-2113
 7 202.879.3939
 8 BY: GREGORY M. SHUMAKER, ESQUIRE
 9 gshumaker@jonesday.com
 10 BY: DAN T. MOSS, ESQUIRE
 11 dtmoss@jonesday.com
 12
 13 DENTONS US LLP
 14 For the Retirees Committee:
 15 1221 Avenue of the Americas
 16 New York, New York 10020-1089
 17 212.632.8342
 18 BY: ANTHONY B. ULLMAN, ESQUIRE
 19 anthony.ullman@dentons.com
 20
 21
 22

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1 October 4, 2013
 2 11:11 a.m.
 3
 4
 5 Continued Videotaped Deposition of KEVYN D.
 6 ORR held at the law offices of:
 7
 8 Jones Day
 9 51 Louisiana Avenue, Northwest
 10 Washington, D.C. 20001
 11
 12
 13 Pursuant to notice, before Cindy L. Sebo,
 14 Registered Merit Reporter, Certified Shorthand
 15 Reporter, Registered Professional Reporter,
 16 Certified Real-Time Reporter, Certified Court
 17 Reporter, Certified LiveNote Reporter, Real-Time
 18 Systems Administrator, a Notary Public in and for
 19 the District of Columbia.
 20
 21
 22

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1 APPEARANCES (Continued):
 2
 3 LOWENSTEIN SANDLER LLP
 4 For the AFSCME:
 5 65 Livingston Avenue
 6 Roseland, New Jersey 07068
 7 973.597.2374
 8 BY: SHARON L. LEVINE, ESQUIRE
 9 slevine@lowenstein.com
 10
 11 COHEN, WEISS AND SIMON LLP
 12 For the United Auto Workers Union:
 13 330 West 42nd Street
 14 New York, New York 10036-6979
 15 212.356.0216
 16 BY: PETER D. DECHIARA, ESQUIRE
 17 pdechiara@cwsny.com
 18
 19
 20
 21
 22



<p style="text-align: right;">Page 312</p> <p>1 APPEARANCES (Continued):</p> <p>2</p> <p>3 WINSTON & STRAWN LLP</p> <p>4 For the Assured Municipal Guaranty Corporation:</p> <p>5 200 Park Avenue</p> <p>6 New York, New York 10166-4193</p> <p>7 212.294.3520</p> <p>8 BY: STACEY L. FOLTZ, ESQUIRE (via telephone)</p> <p>9 SFoltz@winston.com</p> <p>10 BY: BIANCA M. FORDE, ESQUIRE</p> <p>11 (via LiveNote Stream)</p> <p>12 bforde@winston.com</p> <p>13</p> <p>14 CLARK HILL PLC</p> <p>15 For the General Retirement System of the City</p> <p>16 of Detroit and the Police and Fire Retirement</p> <p>17 System of the City of Detroit:</p> <p>18 500 Woodward Ave, Suite 3500</p> <p>19 Detroit, Michigan 48009</p> <p>20 313.965.8274</p> <p>21 BY: JENNIFER K. GREEN, ESQUIRE</p> <p>22 (via telephone)</p>	<p style="text-align: right;">Page 314</p> <p style="text-align: center;">C O N T E N T S</p> <p>2 EXAMINATION OF KEVYN D. ORR: PAGE:</p> <p>3 By Ms. Levine 316</p> <p>4 By Mr. Ullman 358, 477</p> <p>5 By Mr. DeChiara 382, 489</p> <p>6 By Ms. Green 483</p> <p>7</p> <p style="text-align: center;">E X H I B I T S</p> <p>8</p> <p>9 ORR DEPOSITION EXHIBITS: PAGE:</p> <p>10 20 E-mail string 352</p> <p>11</p> <p>12 21 Jones Day Presentation to the</p> <p>13 City of Detroit; Detroit,</p> <p>14 Michigan, January 29, 2013 359</p> <p>15</p> <p>16 22 City of Detroit - Restructuring</p> <p>17 Plan, Mayor's Implementation</p> <p>18 Progress Report, March 2013 369</p> <p>19</p> <p>20 23 E-mail string 457</p> <p>21</p> <p>22 24 Excerpt from report 462</p> <p>23</p> <p>24 25 E-mail string 464</p>
<p style="text-align: right;">Page 313</p> <p>1 APPEARANCES (Continued):</p> <p>2</p> <p>3 Weil, Gotshal & Manges LLP</p> <p>4 For the Financial Guaranty Insurance Company:</p> <p>5 767 Fifth Avenue</p> <p>6 New York, New York 10153-0119</p> <p>7 212.310.8257</p> <p>8 BY: DANA KAUFMAN, ESQUIRE</p> <p>9 dana.kaufman@weil.com</p> <p>10</p> <p>11</p> <p>12 ALSO PRESENT:</p> <p>13 NOONAH ETTEHAD, Videographer</p> <p>14 MICHAEL NICHOLSON, UAW</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 315</p> <p style="text-align: center;">EXHIBITS (Continued):</p> <p>2 ORR DEPOSITION EXHIBITS: PAGE</p> <p>3 26 Contract for Emergency</p> <p>4 Financial Manager Services 471</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 * (Exhibits Attached to Original Transcript.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>



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1 PROCEEDINGS

2

3 Washington, D.C.

4 Friday, October 4, 2013; 11:11 a.m.

5

6 - - -

7 KEVYN D. ORR

8 after having been previously duly sworn, was

9 examined and testified further as follows:

10 - - -

11 THE VIDEOGRAPHER: This is the

12 continuation of the deposition of Kevyn Orr on

13 Friday, October the 4th of 2013 at 11:12 a.m.

14 (Sotto voce discussion.)

15 THE VIDEOGRAPHER: Yeah. The witness

16 is still sworn.

17 MS. LEVINE: Okay.

18 - - -

19 EXAMINATION (CONTINUED) BY COUNSEL FOR AFSCME

20 - - -

21 BY MS. LEVINE:

22 Q. Mr. Orr, thank you for coming back.

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1 Again, we --

2 A. Sure --

3 Q. -- appreciate it.

4 A. -- um-hum.

5 Q. As we understand from the court

6 reporter before we started the deposition, you've

7 been previously sworn. You're continued to be

8 sworn, and we're not going to go through again,

9 unless you'd like me to repeat it, the ground

10 rules for the deposition.

11 A. No, that's fine. I understand I'm

12 still under oath.

13 Q. Good.

14 Mr. Orr, we were talking the last

15 time we met about some of the discussions that you

16 had with the Governor leading up to the filing of

17 the bankruptcy, and some of those discussions, as

18 the Court has directed, are protected by the

19 common interest agreement --

20 A. Yes.

21 Q. -- but -- but our understanding is

22 that some of them may not be.

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1 So I'm going to ask you a series of

2 questions. I'm assuming you'll take a breath and

3 let your -- let -- let your attorney tell you

4 whether or not you can answer --

5 A. Okay.

6 Q. -- and depending upon his direction,

7 we'll go to the next question.

8 A. That's fine.

9 Q. Did you consider, just prior to the

10 filing of the Chapter 9 petition, whether there

11 were political ramifications associated with

12 dealing with the pension's retiree benefits, other

13 employee issues in the course of the Chapter 9?

14 MR. SHUMAKER: Go ahead.

15 THE WITNESS: Did I consider?

16 BY MS. LEVINE:

17 Q. (No audible response.)

18 A. No.

19 Q. Was it your understanding that any of

20 the City's elected officials were concerned about

21 political considerations impacting their workforce

22 pension's retiree benefits as a result of the

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1 Chapter 9 filing?

2 A. Was it my understanding that any of

3 the City officials were concerned?

4 Q. The Mayor, anybody working with the

5 Mayor.

6 A. I'd be speculating. They might have

7 been, but I don't know for sure.

8 Q. Did you have any discussions with the

9 Mayor or any of the City officials about the

10 political ramifications of a Chapter 9 filing?

11 A. No, not really political

12 ramifications, no.

13 Q. Did you discuss with the Governor any

14 of the political ramifications surrounding a

15 Chapter 9 filing?

16 A. Outside of any attorney-client

17 communications?

18 Q. (No audible response.)

19 A. You're shaking your head, so I

20 don't --

21 Q. Well, the political -- I'm -- I'm

22 asking the question about political ramifications,



Page 320

1 so I'm intentionally not asking the question with
 2 regard to any --
 3 A. Okay.
 4 Q. -- legal discussions.
 5 A. Explain for me, if you will, what you
 6 mean by "political ramifications." Just -- just
 7 so I make sure I understand what --
 8 Q. Well, let's put it this way --
 9 A. -- what you mean.
 10 Q. -- what would -- what's your
 11 understanding of political ramifications?
 12 A. Well, I'm -- I'm not sure. That's
 13 why I'm asking you.
 14 Q. Did you consider any political
 15 consequences at all in connection with the
 16 Chapter 9 filing?
 17 A. Did I consider?
 18 Q. Yes.
 19 A. No.
 20 Q. Do you believe that -- do you
 21 understand -- did you have any discussions with
 22 regard to whether or not the Governor was

Page 321

1 considering any political ramifications as a
 2 result of the Chapter 9 filing?
 3 A. I'm -- I'm trying to understand --
 4 let me put it to you this way: The answer would
 5 be no, because I believe the Governor wasn't
 6 concerned about political ramifications as you
 7 asked.
 8 Q. Okay.
 9 And what do you base that
 10 understanding on?
 11 Why do you believe the Governor
 12 wasn't concerned about political ramifications?
 13 A. Without -- and -- and let me just say
 14 this throughout the deposition. It is not my
 15 intent to waive or in any way impact the
 16 attorney-client privilege.
 17 So I'm going to try to be responsive,
 18 but I don't want to bleed over into any arguments
 19 later that I somehow waived the privilege.
 20 My impression is in any of my
 21 discussions outside of attorney-client
 22 communications with the Governor, he never

Page 322

1 demonstrated any concern about political
 2 ramifications as they're being used today.
 3 Q. Did you understand that reductions in
 4 vested pension benefits would be a necessary part
 5 of any restructuring for Detroit?
 6 A. I think that was certainly
 7 anticipated, yes.
 8 Q. Is it your understanding that the
 9 Governor understood that the reduction in vested
 10 pension benefits would be part of any
 11 restructuring for Detroit?
 12 MR. SHUMAKER: Objection: foundation.
 13 MS. LEVINE: I'm asking him his
 14 understanding.
 15 THE WITNESS: I'm not sure what the
 16 Governor understood. You'd have to ask him.
 17 BY MS. LEVINE:
 18 Q. Did the Governor ever communicate to
 19 you that he expected that vested pension benefits
 20 would be part of any restructuring for Detroit?
 21 A. The Governor communicated to me that
 22 he expected -- no.

Page 323

1 Q. Did you discuss the reduction in
 2 vested in pension benefits with the Governor prior
 3 to the filing of the Chapter 9 petition?
 4 A. Not outside of any attorney-client
 5 communications.
 6 Q. Did you discuss the reduction of
 7 vested pension benefits, without going into what
 8 was discussed, prior to the filing of the
 9 Chapter 9 petition with the Governor?
 10 A. Without waiving the attorney-client
 11 privilege, we may have.
 12 Q. You -- when you say "we may have,"
 13 you don't recall?
 14 A. I -- I don't recall a specific
 15 conversation with the Governor outside of
 16 attorney-client communications talking about
 17 reductions in pension benefits.
 18 The Governor generally -- without
 19 waiving the privilege, would generally say, you
 20 make the decision that's best for the City in your
 21 mind.
 22 Q. Was it your understanding, prior to



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1 the bankruptcy filing, that there was an issue
 2 with regard to whether or not pension benefit
 3 reductions would violate Michigan's State law or
 4 the State constitution?
 5 A. Can you repeat the question?
 6 MS. LEVINE: Can you read back the
 7 question, please?
 8 THE WITNESS: Yeah.
 9 - - -
 10 (Whereupon, the court reporter read
 11 back the pertinent part of the
 12 record.)
 13 - - -
 14 THE WITNESS: Yes.
 15 BY MS. LEVINE:
 16 Q. And was it -- and did the Governor
 17 also have an understanding that that was an issue?
 18 MR. SHUMAKER: Objection: foundation.
 19 BY MS. LEVINE:
 20 Q. Was it your understanding that the
 21 Governor also had an understanding that that was
 22 an issue?

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1 A. Without speculating as to what the
 2 Governor would understand, I believe -- to the
 3 extent I believe the Governor was aware that --
 4 what was being reported in the press and being
 5 discussed, I would say yes.
 6 Q. Was it your understanding that the
 7 only way to reduce pension benefits was to use
 8 or -- use Chapter 9 or file for Chapter 9
 9 protection?
 10 A. No.
 11 Q. Was it the Governor's understanding
 12 that the only way to reduce pension benefits or
 13 to -- was to use Chapter 9 or to file for
 14 Chapter 9 bankruptcy protection?
 15 MR. SHUMAKER: Objection: foundation;
 16 calls for speculation.
 17 THE WITNESS: Yeah. Here again, I
 18 don't know what the Governor's understanding was.
 19 MS. LEVINE: That's fine. I'm
 20 expecting objections, but please don't coach the
 21 witness. The objections --
 22 MR. SHUMAKER: I'm not coaching the

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1 witness --
 2 MS. LEVINE: -- the objection --
 3 MR. SHUMAKER: -- I'm just stating my
 4 objection.
 5 MS. LEVINE: I don't want -- yeah,
 6 but objection as to speculation, then, suddenly,
 7 he doesn't -- he -- his answer is I'm -- I don't
 8 want to speculate.
 9 Objections to form are fine.
 10 THE WITNESS: I -- I think I said
 11 before I want to be very careful about testifying
 12 to what the Governor's state of mind was. I can
 13 only testify as to what I understood.
 14 BY MS. LEVINE:
 15 Q. And that's all I'm asking --
 16 A. Okay.
 17 Q. -- we're only asking for your
 18 understanding --
 19 A. Okay.
 20 Q. -- I'm trying to use your
 21 understanding to avoid legal conclusions or
 22 speculation or anything else.

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1 I just want to -- I'm -- I just -- I
 2 just want to understand your understanding.
 3 A. Okay.
 4 MR. SHUMAKER: If you phrase the
 5 question that way, that will help us all out.
 6 BY MS. LEVINE:
 7 Q. What's your understanding of the
 8 Mayor's view with regard to the reduction in
 9 pension benefits?
 10 A. I don't have an understanding what
 11 the Mayor's view is.
 12 Q. Did you discuss, prior to the
 13 Chapter 9 filing, pension reductions with the
 14 Mayor?
 15 A. I don't believe so.
 16 Q. Did you discuss, prior to the
 17 Chapter 9 filing, pension reductions with anybody
 18 on behalf of the City Government?
 19 A. Let -- let me -- let me phrase my
 20 an -- outside of any public discussions and
 21 presentations I may have made at, say, for
 22 instance, the June 10th creditor's meeting or the



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1 June 14th meeting for creditors, I don't recall
 2 any specific discussions with anyone on behalf of
 3 the City about reductions.
 4 Q. You -- you testified at your last
 5 deposition that, in your view, concessionary
 6 bargaining changes to pensions could not occur
 7 within the time frame that you had to work with.
 8 And I have an extra copy here if you
 9 want to see the -- the transcript, but --
 10 A. Um-hum.
 11 Q. -- the question is what time period
 12 were you talking about?
 13 A. I think I said at the June 10th
 14 public meeting and, again, at the June 14th
 15 proposal for creditors -- I think I was fairly
 16 clear that we would need to have some agreements
 17 in principle or term sheets and the like within
 18 the next 30 days, and that if we were making
 19 movement, we might be willing to have further
 20 discussions for an additional 30 days.
 21 In fact, I believe at the back of the
 22 June 14th proposal, we learned -- we -- we

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1 identified an evaluation time frame. So that's
 2 the time frame that I thought I was being fairly
 3 clear about.
 4 Q. And were either the June 14 or the
 5 June 20 meetings audiotaped?
 6 A. The June 10th or the June 14th
 7 meeting --
 8 Q. Right. Was -- were -- were either
 9 the June 10th or the June 14th meeting audiotaped?
 10 A. I believe the June 10th meeting was
 11 audio and videotaped. I think I've seen that on
 12 the Internet.
 13 I don't know about the June 14th
 14 meeting for creditors.
 15 Q. Did -- did you videotape those
 16 meetings or did the EM -- were they videotaped on
 17 behalf of EM?
 18 A. To be honest with you, that -- that
 19 would have been done at a staff level. I don't
 20 know.
 21 I just know that I've seen the
 22 June 10th meeting -- my June 10th presentation on

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1 various Internet sites. I don't recall seeing my
 2 June 14th presentation.
 3 MS. LEVINE: Can we request a copy of
 4 that if -- if it exists?
 5 MR. MOSS: Which one? It's --
 6 MR. SHUMAKER: Both of them if you
 7 have them.
 8 THE WITNESS: I think they're on
 9 YouTube.
 10 MR. SHUMAKER: I'd ask you to put the
 11 request into writing so we have that.
 12 BY MS. LEVINE:
 13 Q. When you gave the presentation at the
 14 June 10th and the June 14th meeting, did you
 15 believe that it was possible to reach consensual
 16 agreements within the 30-day period that you
 17 outlined?
 18 MR. SHUMAKER: Can I just state an
 19 objection here? Where are you're going, Counsel?
 20 I'm going to be patient and allow you to -- to
 21 ask -- ask questions, but let's be very clear from
 22 the outset as to what Judge Rhodes ordered and

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1 what ASME requested in its -- its motion to compel
 2 additional testimony from Mr. Orr.
 3 The request that you made was -- to
 4 the Judge was that Mr. Orr reappear for three
 5 hours of deposition testimony concerning his
 6 communications with State officials in the
 7 presence of legal counsel since his appointment as
 8 emergency manager.
 9 That is what the subject of today's
 10 deposition is.
 11 MS. LEVINE: Right. And this is a
 12 foundation question.
 13 MR. SHUMAKER: Okay. I just want --
 14 I -- I'm just going to caution you from the --
 15 from the get-go that we're not going to meander
 16 all over that -- that's what the order is and
 17 that's why we're here.
 18 MS. LEVINE: Can you read back the
 19 question, please?
 20 - - -
 21 (Whereupon, the court reporter read
 22 back the pertinent part of the



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1 record.)

2 - - -

3 THE WITNESS: Yes.

4 BY MS. LEVINE:

5 Q. Did you discuss that with the

6 Governor before the June 10th meeting?

7 A. Let -- as I think I said at my

8 September 16th deposition, I would have regular

9 meetings with the Governor, typically weekly.

10 There were attorneys present at all of those

11 meetings.

12 I am not -- and I'll take guidance

13 from my counsel, but this is in terms of how I

14 intend to respond today.

15 I am not trying to assert the

16 privilege for people who have legal degrees but

17 were not acting as attorneys. For instance, the

18 Governor has a JD, and the Treasurer has a JD. So

19 I'm not trying to say that the privilege attaches

20 for their capacity as Governor and Treasurer, not

21 acting as attorneys. But there are attorneys in

22 those meetings on the Governor's staff acting as

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1 attorneys.

2 Without violating the privilege

3 during those meetings, what I can say is that --

4 well, if I could have the question again.

5 Q. It's really a simple -- it -- it's

6 a -- it's a narrow question --

7 A. Right.

8 Q. -- I understand the concern, but it's

9 a narrow question.

10 A. Right.

11 Q. Did you discuss -- you -- as I

12 understand your testimony, you indicated on

13 June 10th and June 14th that you were looking at

14 a 30-day time frame.

15 A. Um-hum.

16 Q. Did you discuss that 30-day time

17 frame prior to the June 10 meeting with the

18 Governor?

19 A. I'll look for a little guidance. If

20 I had discussions, they probably were during

21 meetings where attorneys were present.

22 Without disclosing what those

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1 communications were, we typically would have

2 discussed what we would have needed to present --

3 I don't recall so much for the June 10th public

4 meeting, so the answer is no for there.

5 For the June 14th meeting, we

6 probably would have discussed at a very high level

7 the nature of the presentation. I don't recall

8 discussing with specificity the exact time frames.

9 Q. In order to meet the 30-day time

10 frame that you're discussing, were there any

11 benchmarks or criteria that you thought would have

12 to be met -- would have to be met within that

13 30-day period in order to conclude what you needed

14 to conclude at the end of the 30-day period?

15 A. Well, I think what I said was that

16 that was an initial 30-day period, but if we were

17 moving forward and making progress, we'd be

18 willing to extend it for another 30-day period or

19 so. I think that's what I said.

20 So when you say "benchmarks," we were

21 looking for good-faith negotiations and movements

22 in the nature, I think I said on June 14th,

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1 agreements in principle, term sheets and the like.

2 So it's -- it's not as stringent as I

3 think -- I don't want to give the impression that

4 our expectation was as stringent as there had to

5 be specific benchmarks, but we wanted for people

6 to come in with good-faith, credible proposals to

7 show that we were moving forward on these issues,

8 and we would continue to negotiate on those

9 issues.

10 Q. Did you have -- following the June 10

11 and June 14 meeting, did you have any discussions

12 with the Governor with regard to the progress or

13 lack of progress being made in that regard?

14 A. Probably. Without violating the

15 privilege, we probably had discussions without

16 saying what those discussions were, because there

17 would have been -- would have been attorneys

18 present.

19 Q. When did those discussions take

20 place?

21 A. They would typically have taken

22 place, as I've said, at the weekly meetings that



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1 the Governor and I and his team and members of my
2 team would have.
3 Q. So after June 14, when was your next
4 weekly meeting?
5 A. I don't know specifically, but I'm --
6 I said it's typically weekly.
7 So I'm -- I think we probably had one
8 the next week.
9 Q. Do you recall what day the next week?
10 A. I do not.
11 Q. Do you recall if there was one
12 because it was -- do you recall if there was one
13 the following week?
14 A. I do not.
15 Q. Were there one or two meetings with
16 the Governor from the time of the June 14 meeting
17 to the time of the filing of the Webster
18 litigation on June 3?
19 A. Well, there could well have been more
20 than two. I do recall, and I think I said on
21 September 16th, I don't think we had one the 4th
22 of July -- week of the 4th of July, which was a

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1 Thursday.
2 Q. Understood. Not the question.
3 The question is, from June 14 up
4 until July 3, how many times did you meet with the
5 Governor?
6 A. No. Your question was did we have
7 one or two meetings, and my answer was I believe
8 we probably had more than two.
9 Q. And did you discuss the pension
10 and/or healthcare benefit issues that you had
11 discussed during the June 10 and June 14 meeting
12 with the Governor during those two, maybe more,
13 meetings?
14 A. Ms. Levine, let me -- let me say
15 this: We probably discussed them broadly, but
16 there were no discussions that I recall in detail
17 about what our plan would have to be in those
18 meetings, such as what level of cuts they would be
19 and the like, if any.
20 Q. Did -- did you get any proposals
21 during that two-week period in response to those
22 meetings?

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1 A. I think I said on June 16th, we've
2 had some discussions with some bargaining units.
3 I don't recall if they were between the June 14th
4 time frame -- if they were -- I think we were in
5 discussions with some bargaining units during that
6 time. So, yes, I believe we did get some
7 proposals.
8 Q. Did you report on those proposals to
9 the Governor?
10 A. I -- generally speaking, yes.
11 Q. Did you indicate to the Governor that
12 you were making progress?
13 A. I probably indicated that we were
14 making some progress, yes.
15 Q. Did you discuss with the Governor
16 whether there were additional proposals you were
17 hoping to receive?
18 A. We probably did express a wish for
19 additional proposals. We were hoping for a global
20 solution.
21 Q. Did you come up with an action plan
22 to solicit further proposals?

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1 A. I thought we began that on June 14th,
2 a proposal for creditors, where we ended it by
3 saying we're interested in responses.
4 Q. In any of the meetings that you had
5 with the Governor between June 14th and July 3rd
6 where you didn't get proposals, for -- did you
7 discuss constituents from whom you didn't get
8 proposals that you wish you would have gotten
9 proposals from?
10 A. No, I didn't --
11 MR. SHUMAKER: Objection to the form.
12 THE WITNESS: -- no, I don't recall
13 discussing at that level of specificity.
14 BY MS. LEVINE:
15 Q. The Governor authorized the Chapter 9
16 filing on July 18th.
17 Do you know who drafted the
18 Governor's authorization?
19 A. I do not.
20 Q. Do you know whether the language in
21 the Governor's authorization was discussed with
22 your attorneys at Jones Day?

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1 A. I do not.
2 Q. Did the Governor ask you to request
3 authorization to file the Chapter 9 or was it your
4 independent decision on July 16th?
5 A. It was my independent decision.
6 Q. Did you have any specific discussions
7 with the Governor concerning the conditions or
8 the -- or with respect to specific directions from
9 the Governor with regard to pension benefits?
10 MR. SHUMAKER: Object to the form.
11 THE WITNESS: No, not with the
12 Governor.
13 BY MS. LEVINE:
14 Q. Was it your understanding that the
15 Governor was seeking political cover by not taking
16 a position with respect to pension reductions, but
17 only citing to Section 943 of the Bankruptcy Code?
18 MR. SHUMAKER: Objection: form.
19 THE WITNESS: No.
20 BY MS. LEVINE:
21 Q. Did -- did you suggest the citing
22 to 943 of the Bankruptcy Code to the Governor?

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1 A. No. I had no involvement in the
2 letter -- the Governor's letter.
3 Q. Were there any discussions about
4 citing to 943 of the Bankruptcy Code outside of
5 the letter as a -- as of -- as a way to deal with
6 issues with regard to pension reductions?
7 MR. SHUMAKER: I'm just going to
8 caution the witness again. To the extent you can
9 answer the question without revealing
10 attorney-client communications, you may do so.
11 THE WITNESS: The -- there were none
12 with the Governor.
13 BY MS. LEVINE:
14 Q. Is it your understanding that the
15 language regarding conditions, specifically the
16 use of the reference to 943 of the Bankruptcy
17 Code, authorizes you to alter vested pension
18 benefits?
19 A. That seems to call for a legal
20 conclusion.
21 Let -- let me just say this
22 generally --

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1 Q. I'm just asking your understanding.
2 A. Let me -- let me just say this
3 generally.
4 I was not involved in any fashion in
5 drafting the Governor's response. My
6 understanding is that without citing to a specific
7 section of the code, because I have not analyzed
8 it, that the letter grants me authority to use any
9 resources that are available to propose a plan of
10 adjustment.
11 Q. After you got the letter, did you
12 discuss with the Governor what the meaning was in
13 the letter of the reference to Section 543 [sic]
14 of the Bankruptcy Code?
15 A. No.
16 Q. 943, I'm sorry.
17 A. Yeah, I knew -- I knew what you
18 meant.
19 No.
20 Q. Between June 14th -- or June 10th and
21 the filing on July 18th, besides legal
22 conclusions, besides pension benefits, did you

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1 discuss with the Governor certain ideas that you
2 had with regard to how to restructure or deal with
3 the financial situation in Detroit?
4 A. Yes, we likely did without divulging
5 any privileges, yes.
6 Q. I'm looking for the business
7 financial terms, not the legal terms.
8 In other words, did you --
9 A. Um-hum.
10 Q. -- discuss, for example, selling
11 assets?
12 A. No.
13 Q. Did you discuss generating additional
14 revenue with the Governor?
15 A. Here again, some of these
16 discussions, in fact, every meeting we had on a
17 regular basis would have had attorneys present, so
18 I want to be very careful.
19 For instance -- for instance, if
20 there are discussions about a millage rate and the
21 maximum legal millage amount, I would not want
22 those to bleed over into disclosing



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1 attorney-client protected communications.
 2 What I can say is that at -- at a
 3 high level, we discussed ways to potentially
 4 generate revenue.
 5 Q. Did you discuss privatization with
 6 the Governor during that same time frame from
 7 June 10th through the filing?
 8 MR. SHUMAKER: I'll just caution the
 9 witness, if you had discussions with the Governor
 10 where counsel was present in connection with a
 11 request for an indicia of legal advice --
 12 THE WITNESS: Right.
 13 MR. SHUMAKER: -- I don't want you to
 14 answer to that; but if you can do so outside of
 15 any such request or provision of legal advice, you
 16 can answer.
 17 THE WITNESS: Okay.
 18 Without disclosing legal advice, we
 19 may have discussed nonlegal-related issues, for
 20 instance, with an outstanding solid waste RFP and
 21 how that could save the City money and produced a
 22 higher level of services for the City.

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1 Legal issues regarding the RFP, I --
 2 I won't talk about, but, for instance, the --
 3 those privatization in that sense would have been
 4 discussed.
 5 Privatization in a broader sense, I
 6 don't recall having discussions of a philosophical
 7 issue about privatization. We probably would have
 8 had discussions about specific RFPs outstanding.
 9 BY MS. LEVINE:
 10 Q. Did you have any other specific
 11 discussions with regard to RFPs or outsourcing in
 12 connection with improving the financial
 13 condition -- or allegedly improving the financial
 14 condition of the City?
 15 A. Well, improving it. Like I said,
 16 I -- I do recall discussions about the solid waste
 17 RFP which we were somewhat excited about, save
 18 money and increase quality of services.
 19 I'm trying to think of anything else
 20 that could be called privatization. That's the
 21 one that sticks out in my mind. I don't recall
 22 anything else.

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1 Q. During the course of these
 2 conversations, did you have any conversations with
 3 the Governor about preserving jobs for the
 4 citizens of Detroit?
 5 A. Yes.
 6 Q. And what were those conversations?
 7 A. Well, for instance, in the solid
 8 waste RFP, one of the bidders -- I -- we probably
 9 discussed that one of the bidders had come in who
 10 had done this before and was able to move the City
 11 jobs over to private sector jobs with the same
 12 employees. And so there would be no net loss of
 13 jobs.
 14 Q. Did you discuss how that might impact
 15 vested benefits and vested pension rights?
 16 A. No, we really didn't have -- no.
 17 Q. You -- you approved the retention of
 18 Jones Day under EM Order Number 4 and officially
 19 approved Jones Day's contract on April 20 --
 20 THE COURT REPORTER: I -- I'm sorry.
 21 I can't hear you here.
 22 MS. LEVINE: Sorry.

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1 BY MS. LEVINE:
 2 Q. You approved the retention of
 3 Jones Day under EM Order Number 4 and officially
 4 approved Jones Day's contract on April 23, 2010;
 5 is that correct?
 6 A. If your represent -- representation
 7 is accurate, yes. I don't independently recall
 8 the dates, but that sounds correct.
 9 Q. Okay. So after April 23, 2013, you
 10 and Jones Day had an attorney-client relationship,
 11 yes?
 12 A. I think that's a legal conclusion.
 13 The attorney-client relationship could attach
 14 before then.
 15 Q. What was your understanding of when
 16 your legal attorney-client relationship with
 17 Jones Day attached?
 18 A. I don't know. That's what I'm saying
 19 it calls for a legal conclusion.
 20 My understanding of the days I
 21 practiced law is that the attorney-client
 22 relationship can attach prior to the actual



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1 formalization of an attorney-client relationship.
 2 Q. When did you first -- all right.
 3 Let me ask you this: Did Jones Day
 4 represent the City in any capacity before
 5 April 23, 2013?
 6 A. I don't know. That's why I keep
 7 saying it could be a legal conclusion.
 8 I know that their contract was before
 9 City -- the Mayor had selected them, and their
 10 contract was below -- before City Council before
 11 then.
 12 Q. What was the date that the Mayor
 13 selected Jones Day to represent the City?
 14 A. I don't recall.
 15 Q. Was it prior to February of 2013?
 16 A. I -- I don't recall. I don't recall.
 17 I don't think so.
 18 Q. Did Jones Day represent the State of
 19 Michigan in any capacity before April 2000 --
 20 April 2013?
 21 MR. SHUMAKER: Objection: foundation.
 22 THE WITNESS: Jones Day may have --

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1 I -- I don't know. They may have represented the
 2 State in other matters, but if you're talking
 3 about with regard to this matter, I don't recall.
 4 BY MS. LEVINE:
 5 Q. What does NERD stand for?
 6 MR. SHUMAKER: Object to the form.
 7 BY MS. LEVINE:
 8 Q. Do you know what NERD -- do you --
 9 have you heard the phrase "NERD" in connection
 10 with the New Energy to Reinvest Diversity Fund?
 11 A. Yeah. When you said "NERD," it
 12 stands for a kid who was like me when he was
 13 growing up, sort of a geek.
 14 But if you're talking about the
 15 acronym related to something affiliated with the
 16 Governor, then, yes, I've heard of that.
 17 Q. All right.
 18 Do you know what it is -- let me
 19 ask --
 20 A. I --
 21 Q. -- it this way: What's your
 22 understanding of what it is?

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1 A. I -- I -- only what I've read in the
 2 papers. I know nothing about the NERD Fund other
 3 than what I've read in the papers.
 4 Q. Do you know who any of the donors are
 5 to the NERD Fund?
 6 A. I haven't got a clue.
 7 Q. So it's not you?
 8 A. It is -- I've never donated to the
 9 NERD Fund, no.
 10 Q. Has Jones Day?
 11 A. Not that I know of.
 12 Q. Has any City retained professional?
 13 A. I have no idea.
 14 Q. Do you know whether any of the City's
 15 creditors are -- have donated to the NERD Fund?
 16 A. I know nothing about the NERD Fund
 17 other than what I've read in the papers. The
 18 first time I heard about the NERD Fund is when I
 19 read about it in the paper --
 20 Q. So do --
 21 A. -- I know nothing about the donors.
 22 Q. Do you know whether any -- do you

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1 know whether any of the SWAP parties have donated?
 2 A. No, I do not.
 3 Q. If you had access to the
 4 information -- if you have access to the
 5 information, would you be willing to disclose the
 6 donors?
 7 A. I don't have access to the
 8 information, and I think that's a question -- if
 9 it's a fund run by someone else, that's their
 10 decision. I don't have access to any information
 11 related to the NERD Fund.
 12 Q. Would you be willing to ask the
 13 Governor to have that information disclosed?
 14 A. Sitting here today, no.
 15 Q. Have any of your expenses as
 16 emergency manager been paid or reimbursed by the
 17 NERD Fund?
 18 A. Not --
 19 MR. SHUMAKER: I think we're getting
 20 pretty far afield here -- here, Counsel. This is
 21 not really --
 22 MS. LEVINE: Yeah, it is --



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1 MR. SHUMAKER: It's starting to
2 get --
3 MS. LEVINE: -- I'll be bring it
4 back.
5 MR. SHUMAKER: Okay.
6 THE WITNESS: What I read in the
7 paper is that my housing is paid for by the
8 NERD Fund. I've never seen the lease, and I've
9 never seen a payment.
10 That's the extent of what I know of
11 the NERD Fund and its involvement with me.
12 MS. LEVINE: This is Exhibit 20.
13 MR. SHUMAKER: Do you have an extra
14 copy?
15 MS. LEVINE: Yeah, one.
16 MR. SHUMAKER: Thank you.
17 - - -
18 (Whereupon, an e-mail string was
19 marked, for identification purposes,
20 as Orr Deposition Exhibit
21 Number 20.)
22 - - -

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1 A. Yeah, I do. Yes, I do.
2 Q. And it discusses the base
3 compensation of \$275,000 a year?
4 A. Yes, among other things.
5 Q. And contract period of -- include --
6 including a contract period not to
7 exceed 18 months?
8 A. Yes.
9 Q. Did your final contract have an
10 incentive if the job was completed sooner?
11 A. No.
12 Q. It also discusses an intent to raise
13 private funding for performance measure/outcome
14 bonus?
15 A. Yes.
16 Q. Does your final contract have a
17 performance measure/outcome bonus?
18 A. No. We never talked about it yet.
19 Q. Did you discuss the private funding
20 referenced in that e-mail?
21 A. No.
22 Q. Did you under -- do you -- did you

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1 MS. LEVINE: For -- for the record,
2 the -- the Bates number is JD-RD-0000334.
3 (Whereupon, the witness reviews the
4 material provided.)
5 BY MS. LEVINE:
6 Q. Mr. Orr, there are two e-mails on the
7 first page of this document.
8 A. Um-hum, yes.
9 Q. I'm going to ask you to look at the
10 second e-mail.
11 It's from --
12 A. Yes.
13 Q. -- Richard Baird to you?
14 A. Yes.
15 Q. Dated February 12, 2013, correct?
16 A. Yes.
17 Q. And it discusses -- well, let me ask
18 the question.
19 Is this e-mail discussing your
20 potential retention as the emergency manager?
21 A. Yes, it appears to do that.
22 Q. Do you recall receiving this e-mail?

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1 have any understanding of what the source of that
2 private funding would be?
3 A. Not at all.
4 Q. It discusses a sublease for a
5 furnished apartment in the City?
6 A. Yes.
7 Q. And that made it to the final
8 contract?
9 A. Actually, it's not in my contract, I
10 believe.
11 Q. But you have a subleased apartment in
12 the City -- or a leased apartment in the City?
13 A. I -- I have an apartment that I stay
14 in in the City; the arrangement I -- I can't speak
15 to.
16 Q. How did you learn that there was an
17 apartment available to you?
18 A. I believe the first day, I stayed in
19 a hotel room, and the next day, someone -- and I
20 really can't tell you if it was on behalf of the
21 State or if it was someone related to the hotel --
22 when I came back from work that day, took me to --



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1 and my suitcase to the apartment.

2 Q. Is it your understanding that the

3 City's paying for that apartment?

4 A. I -- I don't know who's paying for

5 the apartment.

6 Q. And you get your expenses reimbursed?

7 A. I haven't had any of my expenses

8 reimbursed.

9 Q. Does anybody -- who pays for your

10 flying, for example, back and forth from D.C.?

11 A. I do.

12 Q. And that -- and none of those have

13 been reimbursed?

14 A. Not a dime.

15 Q. And you get a security detail?

16 A. Yes.

17 Q. 24/7?

18 A. Certainly -- well, they say 24/7, but

19 I -- they walk me to my apartment and lock me in,

20 and then I see them in the morning. So I assume

21 it's 24/7. That's -- that's my detail.

22 Q. Do you know who's paying for that

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1 security detail?

2 A. I do not, but they are Michigan State

3 Police; they're not private.

4 Q. So there was no discussion, though,

5 back in or around February of 2013 with regard to

6 the source of any funding to help subsidize the

7 cost of the emergency manager?

8 A. No. In fact, I think there's an

9 e-mail that has been produced somewhere where I

10 say back I -- you know, the -- the -- something to

11 the effect the job is the job is, and I'm not

12 expecting anything supplemental.

13 Q. No, I'm not asking you if you were

14 expecting anything supplemental. I'm asking the

15 source of the funding to pay for you --

16 A. Oh, I've --

17 Q. -- as a --

18 A. -- had -- yeah, I -- I -- I -- my

19 checks come from a -- a Michigan State Government

20 Web site. I assume that's from the State, but I

21 have no idea if -- if there's any other

22 arrangement -- my direct deposits.

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1 MS. LEVINE: I have no further

2 questions. Thank you.

3 THE WITNESS: Okay.

4 THE VIDEOGRAPHER: Go off the record?

5 Going off the record at 11:50.

6 - - -

7 (Whereupon, a discussion was held off

8 the record.)

9 - - -

10 THE VIDEOGRAPHER: Going back on the

11 record at 11:53.

12 - - -

13 EXAMINATION (CONTINUED) BY COUNSEL

14 FOR RETIREES COMMITTEE

15 - - -

16 BY MR. ULLMAN:

17 Q. Good morning, Mr. Orr.

18 A. Good morning.

19 Q. As you know, I'm Anthony Ullman

20 and -- for the Retirees Committee from Dentons,

21 and I have some additional questions for you this

22 morning.

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1 A. Good morning, Mr. Ullman.

2 Q. First of all, I'd like to put a

3 document before you which we will mark as

4 Exhibit --

5 MR. ULLMAN: Are we up to 21?

6 THE COURT REPORTER: Yes.

7 THE WITNESS: Twenty-one.

8 MR. ULLMAN: Twenty-one. I need a

9 sticker for that.

10 - - -

11 (Whereupon, Jones Day Presentation to

12 the City of Detroit; Detroit,

13 Michigan, January 29, 2013 was

14 marked, for identification purposes,

15 as Orr Deposition Exhibit

16 Number 21.)

17 - - -

18 MR. ULLMAN: Here's a copy for you.

19 I want to get rid of my extras.

20 MR. SHUMAKER: Let me state on the

21 record a couple of things. One, I'm not sure

22 technically whether the Retirees even joined



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1 ASME's motion, so I'm not even certain that it's
2 proper that Mr. Ullman be asking questions.
3 Secondly, this is -- Mr. Ullman can
4 identify it, but this document is the Jones Day
5 presentation to the City of Detroit on January
6 29th, 2013.
7 I don't see how that funnels into the
8 request that was made to Judge Rolls -- Rhodes
9 regarding three hours of deposition testimony
10 concerning Mr. Orr's communications with State
11 officials in the presence of legal counsel since
12 his appointment as emergency manager.
13 That said, this document was produced
14 after the deposition, and I'm going to let you go
15 into it. But I am going to say --
16 MR. ULLMAN: I --
17 MR. SHUMAKER: -- within reason --
18 MR. ULLMAN: -- I don't -- I don't
19 intend to dwell very long on it --
20 MR. SHUMAKER: Okay.
21 MR. ULLMAN: -- and I appreciate your
22 recognition. This was produced after the last

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1 deposition.
2 BY MR. ULLMAN:
3 Q. Okay. Mr. --
4 THE COURT REPORTER: I have to mark
5 it there first.
6 BY MR. ULLMAN:
7 Q. Okay. Mr. Orr, what we've marked as
8 Exhibit 21 is entitled, Presentation to the City
9 of Detroit; Detroit, Michigan, January 29, 2013
10 from Jones Day.
11 Can you identify this document for
12 me, Mr. Orr?
13 A. Yes.
14 Q. Okay. And what is it, please?
15 A. I believe it's a slide deck
16 presentation to the City of Detroit for a -- in
17 response to a solicitation the firm received for
18 representation regarding potential restructuring
19 work on behalf of the City dated January 29th,
20 2013 marked confidential.
21 Q. Okay. And this is in connection with
22 the presentation that you testified about last

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1 time; is that correct?
2 A. Yes, when I said the end of January.
3 It's commonly referred to as a "pitch book."
4 Q. Okay. And you -- you were part of
5 the Jones Day team, and your picture appears on
6 Page 3 of this document; is that right?
7 A. Yes, I was part of the presentation
8 team, yes.
9 Q. Okay. And did you have any role in
10 the preparation of this document?
11 A. Yes. I mean, it -- it was a
12 collaborative effort from a number of different
13 attorneys in the Jones Day law firm, but I was
14 involved in that process as well.
15 Q. Okay. And did you review the
16 document -- can we refer to this as the pitch
17 book?
18 A. Yes.
19 Q. Okay. Did you -- did you review the
20 pitch book, Exhibit 21, before it -- before the
21 presentation?
22 A. Yes.

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1 Q. Okay. And I just note -- I'm not
2 going to go into my particular specifics here, but
3 if, for example, just picking one, if you look at
4 Page 18, there's what's called Speaker Notes,
5 which -- I assume this was a PowerPoint
6 presentation, so someone would be talking --
7 speaking orally as a slide goes on the screen; is
8 that right?
9 A. Well, it was -- it -- it -- it -- it
10 could have been a PowerPoint. As I recall, we did
11 not -- there weren't PowerPoint capabilities, so
12 we intended to work off the document --
13 Q. Um-hum.
14 A. -- but the discussion, within a
15 minute or two, veered away from the document and
16 more was a dialogue, so . . .
17 Q. Okay. So what we have as Exhibit 21
18 was the -- the internal -- at least was this
19 internal version of the pitch book; in other
20 words, were there speaker notes?
21 A. Yes, were the speaker -- this --
22 the -- the speaker notes were not presented to --



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1 Q. That's --
 2 A. -- the review team.
 3 Q. -- that's what I wanted to clarify.
 4 A. Yes.
 5 Q. Okay. And when you say that you
 6 reviewed the document before -- before it went out
 7 in its final form to the -- to the people you were
 8 pitching to at the meeting, you know, with the
 9 City, you reviewed the speaker notes as well?
 10 A. Mr. Ullman, to be honest, I -- I
 11 reviewed -- I can't be -- this document was not
 12 generated solely by me --
 13 Q. I understand.
 14 A. -- it was generated by a team effort.
 15 I think I reviewed a number of
 16 different drafts of the document. I'm not -- I --
 17 I believe I reviewed the final draft of the pitch
 18 book that went out. I am not sure I reviewed the
 19 final draft of the draft of the speaker notes,
 20 because at that time, I think I was involved in
 21 the actual mediation of another matter. So I was
 22 doing this in between some other matters.

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1 But generally speaking, I'm familiar
 2 with this document.
 3 Q. Okay. And was there -- was there
 4 anything in the document that you disagreed with?
 5 MR. SHUMAKER: Object to the form.
 6 THE WITNESS: Without reviewing it
 7 today, generally speaking, no.
 8 BY MR. ULLMAN:
 9 Q. Okay. And can you tell me were there
 10 any particular portions of Exhibit 21 that you had
 11 primary responsibility for preparing?
 12 A. No. The -- the document evolved
 13 through -- as you are probably familiar with the
 14 pitch books for attorneys seeking legal work, the
 15 document evolves as you go through it, a number of
 16 conversations, e-mails with a number of different
 17 sources.
 18 I don't recall being -- I don't
 19 recall looking at this document and saying, oh, I
 20 only did Pages 23 through 23 [verbatim], for
 21 instance. I may have commented and edited
 22 different pages. I may have made suggestions on

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1 who should be on the team, who should be on the
 2 representation team, what -- what potential legal
 3 services might be necessary.
 4 And, for instance, at the back, you
 5 have team members, things along those lines,
 6 but -- but there was no specific section that was
 7 dedicated solely to me.
 8 Q. Okay. I'm not asking whether it was
 9 dedicated solely to you, but whether you had
 10 primary responsibility for preparing.
 11 A. No.
 12 Q. Okay.
 13 A. No.
 14 Q. And I think you indicated that the
 15 slides themselves were given over to the City at
 16 the meeting or -- was it the City or the State?
 17 I'm trying to remember, did you --
 18 A. It -- it was a review team composed
 19 of I think --
 20 Q. Buckfire was there?
 21 A. -- the -- the investment bankers were
 22 there --

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1 Q. Yeah.
 2 A. -- for the City who had been
 3 retained, the City representatives were there and
 4 the State representatives were there.
 5 Q. Okay. I'll talk -- call that the --
 6 the review team --
 7 A. Review team --
 8 Q. -- is that the term you like?
 9 Okay --
 10 A. -- yeah.
 11 Q. -- so as I understand what you're
 12 saying, the -- the -- the slides themselves were
 13 present -- given over to the review team as a --
 14 a -- a bound --
 15 A. Yes.
 16 Q. -- volume or attached in some way?
 17 A. Yes, the -- the -- the slide deck as
 18 the pitch book was given to the review team.
 19 Q. Okay. And then, at the presentation,
 20 were -- how did that work? Did you -- did people
 21 sort of go through the slides orally and then --
 22 and -- and make comments as they were going



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1 through the different pages in the pitch book?

2 A. No. As I recall, we handed out the

3 pitch book and began sort of going through the

4 slide, but within the first page or two, the

5 discussion exceeded the slides. And we really

6 ended up not going through the pitch book in any

7 meaningful manner --

8 Q. Okay.

9 A. -- at the presentation.

10 Q. Okay. And this -- at the time of the

11 presentation, you were indeed still part of

12 Jones Day --

13 A. Yes.

14 Q. -- and part of the pitch team?

15 A. Yes, absolutely.

16 Q. Okay.

17 Okay. I'm going to mark another

18 document, Mr. Orr, and ask if you've ever seen

19 this, which is Number 22.

20 A. Two.

21 MR. ULLMAN: Here's a copy for you,

22 two copies for you, and an extra, and an extra. I

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1 don't want to bring these back with me is all.

2 - - -

3 (Whereupon, City of Detroit —

4 Restructuring Plan, Mayor's

5 Implementation Progress Report was

6 marked, for identification purposes,

7 as Orr Deposition Exhibit

8 Number 22.)

9 - - -

10 THE WITNESS: Thank you.

11 BY MR. ULLMAN:

12 Q. Okay. What we've marked as

13 Exhibit 22, Mr. Orr, is entitled, City of Detroit

14 — Restructuring Plan, Mayor's Implementation

15 Progress Report, with the date of March 2013.

16 Have you ever seen this document

17 before?

18 A. I think I've seen it before, but I

19 think that was after I became emergency manager.

20 Q. Okay. That's fine.

21 And what I'd like to do is try to

22 just ask you about one page of this.

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1 A. Um-hum.

2 Q. If you could look at Page 6.

3 A. Um-hum.

4 Q. Okay. What we --

5 MR. SHUMAKER: Of the -- of the

6 actual document?

7 MR. ULLMAN: Of the -- yes. I'm

8 sorry, yeah.

9 And just for clarity, this document

10 bears Bates Number DTMI00129416, and Page 6 of the

11 document bears the Bates number ending in 422.

12 THE WITNESS: Um-hum.

13 BY MR. ULLMAN:

14 Q. Okay. And this page, in general, is

15 entitled, The Mayor's plan includes strategies to

16 implement changes that will significantly reduce

17 general fund long-term liabilities.

18 I'd like you to focus on Number -- or

19 Letter (b) --

20 A. Yes.

21 Q. -- you see 3(b)?

22 A. Um-hum.

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1 Q. It says, Pension unfunded

2 liabilities, and the first bullet point says,

3 Approximately 650 million of unfunded liability as

4 of fiscal year 2012, of which only 250 million

5 relates to general fund.

6 A. Yes, I see that.

7 Q. And do you have an understanding as

8 to what's being said there and what that reference

9 is?

10 MR. SHUMAKER: Objection: foundation.

11 THE WITNESS: Yeah. I was obviously

12 not responsible for drafting, developing or the

13 due diligence behind the document. The document

14 speaks for itself.

15 But what I think is being said there

16 is that the unfunded liability for the -- and I

17 assume it's speaking to both pension funds; it may

18 be one or the other --

19 BY MR. ULLMAN:

20 Q. Um-hum.

21 A. -- but the unfunded liability for

22 fiscal year 2012 is 250, and 250 million of that



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1 is somehow an obligation of the general fund.
 2 Q. Okay. Did you say 250? It's -- you
 3 meant to say 650, right?
 4 A. No, no. It's 650 total --
 5 Q. Right.
 6 A. -- but 250 million of that is an
 7 obligation of the general fund.
 8 Q. You had misspoken and said 250 both
 9 times --
 10 A. Oh, I'm sorry --
 11 Q. -- so --
 12 A. -- oh, no -- okay. 650 and 250, I'm
 13 sorry. I was --
 14 Q. Okay.
 15 A. -- thinking ahead, thinking quicker
 16 than my mouth moved.
 17 Q. Okay. And as I -- I understand that
 18 the 650 million that's referred here -- to here by
 19 the Mayor corresponds pretty closely, if I recall,
 20 to the \$644 million figure that was referred to in
 21 the June 14th proposal; is that right?
 22 A. I would -- I -- yes, I -- I would

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1 think it does --
 2 Q. Okay.
 3 A. -- I'm -- I'm -- here again, I'm
 4 not -- I'm assuming it -- it speaks for itself and
 5 it's facially correct; but, yes, I would think
 6 that's the reference.
 7 Q. Okay. And so can you tell me what --
 8 what is your understanding when the Mayor says
 9 here that 250 million relates to the general fund,
 10 what the other 300 --
 11 A. 400.
 12 Q. -- 400 million relates to? And
 13 what's -- what is the distinction being drawn
 14 between what relates to the general fund versus
 15 what relates to something other than the general
 16 fund?
 17 A. I'm not sure.
 18 Q. Well, is it correct that -- that some
 19 portion -- let's just stick with the -- we can use
 20 the \$644 million number --
 21 A. Um-hum.
 22 Q. -- because I think that's what you

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1 would probably say is more accurate.
 2 That's the number that's cited in the
 3 June 14th proposal, right?
 4 A. Yeah, they may have -- they may have
 5 rounded up here --
 6 Q. Okay.
 7 A. -- but we'll -- it's -- it's
 8 approximately that amount.
 9 Q. Okay. Is it correct that for the
 10 approximately 644 million unfunded pension
 11 liability that you refer to in the June 14th
 12 proposal, that some portion of that is allocable
 13 to a payment source other than the general fund?
 14 A. I think that's correct.
 15 Q. Okay. And what are those --
 16 what is -- what are the other payment sources to
 17 which the total 650 -- or I'm sorry -- 644 million
 18 is allocable other than the general fund?
 19 A. Well, there are other sources, but it
 20 could be principally related to the Water
 21 department.
 22 Q. Okay. And what is your understanding

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1 as to how much of the approximately 644 million
 2 unfunded pension liability relates to liability
 3 for personnel from the Department of Water and
 4 Sewer?
 5 A. Approximately that difference.
 6 Q. Okay. So it's about 450 million?
 7 A. Approximately, yeah.
 8 Q. Okay. And I'm trying to recall from
 9 your last testimony.
 10 For the -- the pension monies that
 11 are due relative to personnel from the Department
 12 of Water and Sewer, are the pension payments made
 13 directly by the Department of Water Sewer to the
 14 retirement systems, or is the money paid first by
 15 the retirement -- I'm sorry -- by the Water and
 16 Sewer Department to the City, which then transmits
 17 it to the retirement system, or is there another
 18 mechanism for the payment?
 19 MR. SHUMAKER: Objection to form.
 20 THE WITNESS: I believe it's the -- I
 21 believe it's the latter.
 22



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1 BY MR. ULLMAN:
 2 Q. "The latter" meaning there's
 3 another --
 4 A. To the City --
 5 Q. -- payment mechanism?
 6 A. -- no, no, no, not -- the latter --
 7 not the -- not the discount; "the latter" meaning
 8 to the City and then to the fund.
 9 Q. Okay.
 10 A. I could be wrong, because may be --
 11 but I believe it's -- I believe it's that process.
 12 Q. Okay. I'm asking because I thought I
 13 had seen some other document which said that
 14 the -- maybe it's the same thing -- the City gets
 15 the money or has the right to bill the -- the
 16 funds or the -- the liabilities to the Department
 17 -- Department of Water and Sewer, and then the
 18 Department of Water and Sewer would pay the City.
 19 That's your understanding?
 20 A. Yeah, that -- that's -- that's what I
 21 was saying; that's the approximate mechanism.
 22 Q. Okay.

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1 A. I could go back and check it to be
 2 sure, but I think that's the approximate mechanism
 3 as I understand it.
 4 Q. Okay. Now, by my math -- I make no
 5 representations as to my math, but just looking at
 6 the numbers, it looked -- actually, do I have a
 7 calculator here? I don't think I do.
 8 What percentage is 250 over 650? I
 9 actually didn't do the math.
 10 A. Four -- it's 40-some odd.
 11 Q. It's 40-some -- yeah, we can get it
 12 precisely.
 13 Zero? Oh.
 14 250 divided by 6 -- let's say 650 --
 15 shoot, I didn't do that right. I apologize. Let
 16 me try to clear this and do it again.
 17 250 divided -- 6. This isn't right.
 18 Okay. It looks like about
 19 38 percent.
 20 A. Right.
 21 Q. Okay. You recall that -- that during
 22 the last deposition, you indicated that you

Page 378

1 thought that the actual unfunded liability was --
 2 was higher than the 644 number and could be as
 3 much as 3.5 billion or something like that?
 4 A. Yes.
 5 Q. Okay. My question is, does the --
 6 does the -- is the proportion of unfunded
 7 liability allocable to the general fund versus the
 8 Department of Water Sewer personnel constant if
 9 you -- if you use a higher liability figure?
 10 In other words --
 11 A. If we went up to 3.5 --
 12 Q. Yeah, yeah --
 13 A. -- million, would it be --
 14 Q. -- would the Department of Water and
 15 Sewer still be approximately 38 percent of the
 16 total unfunded liability?
 17 A. I'm -- I'm not sure. I would think
 18 that a rough estimate might be. But as I said, I
 19 think, in September 16th, part of those
 20 calculations had to do with a number of factors,
 21 so I don't want to say that my testimony is as
 22 exactly proportioned.

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1 Q. Okay. And is it correct that the
 2 Department of Water and Sewer itself, I think you
 3 indicated last time, is run as a separate entity,
 4 even though it's, I think, technically part of the
 5 City, but it has its own books and records?
 6 A. The Department of Water and Sewer is
 7 a department of the City both technically and
 8 practically. Pursuant to Judge Cox's order, it
 9 has certain functions, which it can run
 10 semiautonomously, but it remains a department of
 11 the City.
 12 Q. Okay. And as -- as a separate --
 13 as -- as an entity or a department of the City
 14 that keeps its own books and records, the
 15 Department of Water and Sewer itself shows a
 16 profit for its own operations; is that right?
 17 A. I'm not sure it shows a profit for
 18 its own operations. I -- I'd have to look into
 19 the word "profit" --
 20 Q. Okay.
 21 A. -- but -- but it -- it stands -- it
 22 generates revenue of its own and pays its



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1 obligations as they become due.
 2 Q. Okay. And is it correct the
 3 Department of Water and Sewer also has the
 4 ability, if it -- if it exercises it, to increase
 5 its revenues by raising the rates?
 6 A. I'm not sure. There are a number of
 7 things that go into rate increases --
 8 Q. Um-hum.
 9 A. -- it -- it might well have that
 10 capacity.
 11 You also have to consider the impact
 12 on customers, but I don't want to mislead you. It
 13 does have some capacity, yes.
 14 Q. Okay. Now, prior to the filing of
 15 the bankruptcy petition on July 18th, did you have
 16 any discussions with the Governor concerning the
 17 allocation of the unfunded pension liability
 18 between the general fund and the Department of
 19 Water and Sewer?
 20 A. No.
 21 Q. Did you have any such discussions
 22 with the Governor after the filing of the

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1 bankruptcy petition?
 2 A. No.
 3 MR. ULLMAN: Yeah. Good idea.
 4 Okay. Greg, could I ask you to
 5 produce the final version of the pitch book,
 6 the -- the one that was actually given over to the
 7 review team?
 8 MR. SHUMAKER: We'll look into it.
 9 I -- I believe that has been produced, but
 10 we'll --
 11 MR. ULLMAN: Okay.
 12 MR. SHUMAKER: -- certainly check.
 13 MR. ULLMAN: Okay. I appreciate it.
 14 Okay. I think, at least for the
 15 moment, that's all I have.
 16 THE WITNESS: Okay. Thank you.
 17 MR. ULLMAN: Peter?
 18 I'll pass the baton.
 19
 20
 21
 22

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1 - - -
 2 EXAMINATION (CONTINUED) BY COUNSEL
 3 FOR UNITED AUTO WORKERS UNION
 4 - - -
 5 BY MR. DECHIARA:
 6 Q. Good afternoon, Mr. Orr.
 7 Peter DeChiara from the law firm of Cohen, Weiss
 8 and Simon LLP for the United Auto Workers
 9 International Union.
 10 A. Good afternoon -- well, good
 11 afternoon.
 12 Q. Is -- is it your testimony that you
 13 don't know who's paying for your housing in
 14 Detroit while you serve as emergency manager?
 15 A. Yes. I'd -- I've read in the papers
 16 that it's the aforementioned NERD Fund, but I've
 17 never seen a list -- a lease, and I've never
 18 really inquired into it.
 19 Q. Okay. You testified when Mr. Ullman
 20 was questioning you about a meeting at which there
 21 was discussion in connection with Exhibit 21,
 22 which is what you refer to as "the pitch book."

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1 Do you remember that testimony?
 2 A. Yes.
 3 Q. Do you -- do you know whether
 4 Richard Baird was present when Jones Day made its
 5 presentation?
 6 A. Yes, he was present.
 7 Q. Do you recall whether he said
 8 anything, whether statements or questions, at the
 9 meeting?
 10 A. Oh, I think he -- he asked some
 11 questions, yes.
 12 Q. What did he ask?
 13 A. I don't recall with specificity;
 14 generally about the firm's qualifications to do
 15 the work.
 16 Q. Was there discussion at the meeting
 17 about accrued pension liabilities of the City of
 18 Detroit?
 19 A. Not that I recall.
 20 Q. Was there any discussion about the
 21 Michigan Constitution?
 22 A. No.



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1 Q. Did you have any one-on-one or
2 less-than-the-full-room-of-people conversations
3 immediately following the pitch presentation with
4 any of the -- at -- people who were attending on
5 behalf of the City or the State?
6 A. No. The only conversations I had
7 were, as a tested to -- testified to last time,
8 telephone conversations with Mr. Baird that
9 followed up. But we had no other conversations
10 with anyone else.
11 Q. When was the next time after
12 the -- well, was the presentation that Jones Day
13 made to the City on January 29th, 2013?
14 A. I believe so.
15 Q. Okay. When would -- was the next
16 time -- when, after January 29th, 2013, did you
17 speak to Mr. Baird?
18 A. I think it was a series of e-mail
19 exchanges that we went through on September 16th,
20 which was in a day or two after -- it was the 30th
21 of January or the 1st of February. It's that
22 whole discussion chain.

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1 Q. Okay. So within a day or two of the
2 pitch book presentation by Jones Day, Mr. Baird
3 calls Jones Day to make inquiries about having you
4 serve -- having you possibly serve as emergency --
5 emergency manager, correct?
6 A. Yeah, I think it's that discussion,
7 yes.
8 Q. Okay. And did you speak to Mr. Baird
9 on that occasion? And when I say "that occasion,"
10 I'm referring to one or two days after
11 January 29th.
12 A. Yes. I think, on September 16th, we
13 discussed that he reached out to Steve Brogan --
14 MR. SHUMAKER: Just so we're clear --
15 I don't mean to interrupt -- September 16th was
16 your deposition.
17 THE WITNESS: Yes.
18 MR. SHUMAKER: I want you to make
19 sure you get your dates right in your testimony.
20 THE WITNESS: Oh, you -- oh, you
21 mean -- I'm -- let me be clear. As we discussed
22 on September 16th during my deposition, that those

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1 conversations occurred within a day or two after.
2 And -- and I haven't read my deposition or looked
3 at it, but I recall there was a call made.
4 I was asked; I said I'm not
5 interested; they asked -- I assume it was
6 Mr. Baird asked that I at least talk to them; and
7 there was that whole discussion chain that
8 occurred after that.
9 BY MR. DECHIARA:
10 Q. Is it accurate that you were
11 appointed as EFM on March 15th, 2013?
12 A. No.
13 Q. When were you appointed EFM?
14 A. I think my appointment was March 25th
15 or 26th as EFM, yes.
16 Q. You were appointed EFM before you
17 were appointed EM, correct?
18 A. Yeah. I believe the statute changed.
19 Public Act 4, I believe, had been invalidated, so
20 it was under Public Act 72, which described an
21 EFM. And then under Public Act 436, you become an
22 EM.

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1 Q. Okay. So my question was -- and
2 maybe your answer is the same, but just -- I just
3 want to be sure -- what is the date you were
4 appointed EFM?
5 A. I believe it was the 25th or the
6 26th.
7 Q. Of March --
8 A. March --
9 Q. -- 2013?
10 A. -- March 2013.
11 Q. Okay. Before you were appointed EFM,
12 did you have any written exchanges -- and by
13 "written exchanges," I mean e-mails, letters,
14 exchange of memos -- with the Governor?
15 A. No.
16 Q. Did you have any such exchanges
17 before you were appointed EFM with
18 Treasurer Dillon?
19 A. No -- well, strike that.
20 I may have had an exchange with
21 Treasurer Dillon or the Governor just a -- a
22 courtesy, you know, hear you're a candidate, hope



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1 you're interested, hope you'll consider this, but
2 nothing substantive. There may have been courtesy
3 exchanges.
4 Q. Okay. So let me -- let me go back.
5 A. Right.
6 Q. So let me ask just about the
7 Governor.
8 A. Right.
9 Q. So to the best of your
10 recollection -- well, strike that.
11 Is it your testimony that you did
12 have written exchanges with the Governor before
13 you became EFM?
14 A. I believe so.
15 Q. Okay. To the best of your ability,
16 can you tell me what those exchanges were?
17 A. As I said, they were courtesy --
18 there were no substantive discussions; they were
19 more like one line, hear you're interested, hope
20 you consider this, something along those lines.
21 Q. Okay. And were those e-mails?
22 A. There may have been e-mails.

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1 Q. Okay. Do you -- do you recall them
2 being in any form other than e-mails?
3 A. No. I'm just -- I'm trying to
4 distinguish whether they were e-mails or whether
5 they were texts.
6 And I -- I think I recall -- I think
7 I recall e-mails. There may have been a voice
8 mail. I'm not sure.
9 But it -- it was just, you know --
10 it's what I call, you know, sort of a -- a -- a
11 good -- good -- good home training. I mean, you
12 follow-up and say, hey, glad you're interested,
13 hope you consider it, something like that.
14 Q. Okay. Is it your testimony you're
15 not sure whether those exchanges with the Governor
16 before you were EFM were e-mails, voice mails or
17 texts? And when I say "texts" --
18 A. Yeah.
19 Q. -- I assume you're talking about --
20 and tell me if -- if I'm mistaken --
21 A. Right.
22 Q. -- the kind of texts you would send

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1 over a cell phone.
2 A. Yeah, that's what I'm talking
3 about --
4 Q. Okay.
5 A. -- I -- I -- there could have been a
6 voice mail, and there could have been an e-mail or
7 two, or it could have been a text. It wasn't,
8 like, every day or every week. I just seem to
9 recall that there was a text or two and a voice
10 mail or two after the meeting -- after -- or after
11 discussions with Rich.
12 Q. Okay.
13 MR. DECHIARA: The UAW would call for
14 the production of any cell phone texts that are
15 otherwise responsive to our document request.
16 MR. SHUMAKER: If you can put that
17 into an letter. We're not certain it hasn't
18 already been produced, but we'll certainly look
19 into it.
20 MR. DECHIARA: We'll be happy to put
21 it into the letter.
22

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1 BY MR. DECHIARA:
2 Q. Let me now ask you the same question
3 regarding Treasurer Dillon --
4 A. Um-hum.
5 Q. -- again, before you were appointed
6 EFM, did you have any written exchanges in the
7 form of cell phone texts, e-mails or hard copy
8 documents with Treasurer Dillon?
9 A. There may have been one.
10 Q. And what -- do you have a specific --
11 A. -- same -- it was the same, hey, you
12 know, I hope you're interested, please consider it
13 or something like that.
14 I don't recall quite as clearly
15 anything with Treasurer Dillon, but there may have
16 been one.
17 Q. Okay. But not more than one?
18 A. I don't think more than one, no.
19 Q. Okay. And what about -- same
20 question for exchanges with Mr. Baird?
21 A. I think I've seen some of those
22 exchanges during my September 16th, 2013

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1 deposition; so yes.
2 Q. And what -- what's your recollection
3 as you sit here today of what your exchange --
4 written exchanges were with Mr. Baird before you
5 were EFM?
6 A. Kevyn, heard you're not interested --
7 just generally speaking -- hope you'll reconsider;
8 the e-mail exchange that we went through today;
9 things of that -- if you're considering, this is
10 what the job would entail; gee, Rich, I'd have to
11 take myself out of the firm. I'd be willing to
12 work with anyone side by side, but, you know, I
13 don't want to leave my firm. Well, this is an
14 important undertaking. Okay, I'll consider it;
15 public service. Here, we'll propose what the job
16 entails. That's fine, whatever it is, it is.
17 That's the extent of those exchanges.
18 Q. Okay. So the description you just
19 gave of your exchanges with Mr. Baird exhausts
20 your recollection --
21 A. Yeah.
22 Q. -- let me just finish the question --

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1 A. I'm sorry.
2 Q. -- exhausts your recollection of the
3 written exchanges you had with Mr. Baird before
4 you were appointed EFM?
5 A. Yes. I think you have those
6 exchanges.
7 Certainly, I've seen several of them.
8 Q. Okay. Now, I'm going to ask you the
9 same question, but instead of just limiting the
10 question to the Governor, Mr. Dillon and
11 Mr. Baird, I'm going to expand it --
12 A. Um-hum.
13 Q. -- to include their assistants or
14 their staff or people who work for them.
15 Again, did you have any written
16 exchanges of any form with any of those people
17 before you were appointed EFM that you recall?
18 A. I don't recall specifically, but in
19 an effort to be responsive, I think there must
20 have been probably at least one or two talking
21 about the March 13th-14th press conference.
22 Q. Okay. And what -- to the best of

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1 your recollection, what -- who were those
2 exchanges with? Do you -- do you recall?
3 A. I don't recall, but probably someone
4 in the Governor's scheduling office or -- or
5 communications office. I mean, I didn't -- I
6 didn't know who those -- I didn't know who those
7 people were at the time --
8 Q. Okay.
9 A. -- okay? But there was -- it was
10 something about, you know, you need to be here on
11 this date, and we'll have the rollout, something
12 like that.
13 Q. Okay. Was there anything more
14 substantive than scheduling matters?
15 A. No. Nope.
16 Q. Okay. Now, I'm going to change the
17 question -- series of questions and ask about the
18 time period after you were appointed EFM.
19 A. Right.
20 Q. So let me begin with the Governor.
21 A. Okay.
22 Q. Did you have any written exchanges,

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1 meaning e-mails, texts or hard copy
2 correspondence, with the Governor after you were
3 appointed EFM until today?
4 A. Yes, I believe so.
5 Q. And can you tell me what those
6 were -- or what those have been?
7 A. Well, generally, the 25th and 26th
8 was glad you're on board -- they're
9 congratulatory --
10 Q. I understand. So the 26th -- 20 --
11 A. March --
12 Q. -- of what month?
13 A. -- of March --
14 Q. Okay.
15 A. -- after I was actually appointed.
16 I think they were more courtesy and
17 protocol, congratulatory e-mails.
18 After that, there weren't -- after
19 the first day or so, there weren't a lot of
20 e-mails. And sitting here today, I don't recall
21 the last time I got an e-mail or text from the
22 Governor.



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1 Q. Okay. So my question was not limited
2 to e-mails; it was not limited to the last time
3 you got a text --
4 A. Okay.
5 Q. -- the question is, other than the
6 congratulate -- congratulatory exchange in --
7 around March 26th to 27th with the Governor, do
8 you have any recollection of any other exchanges
9 in written form that you've had with the Governor?
10 A. I don't -- I don't have any
11 recollection. I would think that there probably
12 are some, but they weren't very frequent -- it's
13 not like -- the Governor and I meet more than the
14 written exchanges, so it's not like there were a
15 lot of written exchanges or I would have had -- or
16 I would expect there to be a lot.
17 Q. Okay. Well, sitting here today, can
18 you testify as to the substance of any -- let --
19 let me finish --
20 A. Yeah.
21 Q. -- please --
22 A. Um-hum.

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1 Q. -- the substance of any written
2 exchange you've had with the Governor since you
3 became EFM apart from the congratulatory exchange
4 you had with him on March 26th or 27th?
5 A. Generally, I would -- I would
6 classify -- there were no substantive exchanges
7 that I recall. They were more in the nature of an
8 attaboy.
9 If there was a -- a press conference,
10 or something along those lines, or a meeting of
11 creditors or -- or -- I'm just saying, for
12 instance, I don't recall anything with
13 specificity.
14 But there's nothing substantive and
15 there were no directive, do this, do this, do
16 this, something like that -- there was nothing
17 like that. It was more like good job yesterday,
18 nice seeing you again, things along those lines.
19 Q. And who would be -- who would be
20 saying that to whom? The Governor would be saying
21 that to you?
22 A. Yeah. The Governor would typically

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1 reach out, and I'd typically respond, thanks,
2 Governor, I enjoyed our discussion, or something
3 along those lines.
4 Q. Okay. Same question for
5 Treasurer Dillon.
6 Since you were appointed EFM through
7 the present, have you had any written exchanges,
8 whether electronic or in hard copy --
9 A. Yes.
10 Q. -- with Governor Dillon?
11 A. With Treasurer?
12 Q. I'm sorry. Strike that.
13 With Treasurer Dillon. Sorry --
14 A. Yes.
15 Q. -- I didn't mean to give him a
16 promotion.
17 A. Right.
18 Q. Can you tell me what those were?
19 A. Those were initially the attaboy
20 e-mails.
21 I think, since then, for instance,
22 with regard to contracting of restructuring

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1 professionals, I generally have to send an e-mail
2 to the Treasurer and/or his staff seeking
3 permission to retain those professionals, and
4 we've done that --
5 Q. Let me just pause you there.
6 Did one of those exchanges have to do
7 with the retention of Jone- -- the law firm of
8 Jones Day?
9 A. I believe so.
10 Q. And did you -- what was the nature of
11 that exchange?
12 A. That -- that would be a -- a
13 technical -- Treasurer Dillon, attached is the
14 contract of insert restructuring professional. It
15 has been vetted by the City Council or it's been
16 reviewed by my staff. It provides X, Y, Z. Under
17 my contract and statute, I have to seek your
18 approval. Accordingly, I'm requesting your
19 approval of the contract.
20 Q. Okay. So you sought the approval of
21 Treasurer Dillon for the City to retain Jones Day?
22 A. Yes.



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1 Q. And he approved it?
 2 A. Yes.
 3 Q. Okay. Okay.
 4 I'm sorry. I had interrupted you --
 5 A. Yeah.
 6 Q. -- you -- if you could please
 7 continue with giving your recollection of the
 8 exchanges you've had with Treasurer Dillon.
 9 A. Those are the ones that -- that stick
 10 out in my mind. There -- there may have been --
 11 let's see. There are the contract approval
 12 process. There are the attaboys, like, good job,
 13 Kevyn, that sort of thing. They're
 14 nonsubstantive.
 15 There may have been others. None
 16 stick out in my mind and none were particularly
 17 substantive. For instance, if there was a group
 18 or organization that the treasury [verbatim]
 19 thought could provide a service to the City, for
 20 instance, benefits enrollment, he might send me an
 21 e-mail along the lines of this is someone who
 22 might be able to help you with your benefit

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1 outreach. You may want to talk with them.
 2 Similarly, if there was someone who
 3 had reached out to the State or reached out to the
 4 treasury, this is someone who asked that I put you
 5 in touch with them, things of that nature.
 6 Those were probably more regular.
 7 Q. Did you have any written exchanges
 8 with the Treasurer about the City's unfunded
 9 pension liability?
 10 A. Well, the reason I'm -- I'm
 11 hesitating -- I'm -- I think we had regular
 12 reports to the -- okay. I'm obligated to submit
 13 regular -- 30-day, 180-day reports, which I do,
 14 and those are published in public. So I'm going
 15 to --
 16 Q. And who do you submit those to?
 17 A. To -- to the Treasurer Dillon and, in
 18 some cases, the Governor.
 19 So my -- my reports that I'm required
 20 to submit, you know, I -- the staff submits them,
 21 but I'm going to include them in an effort to be
 22 responsive in your question.

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1 I don't technically send them;
 2 somebody on my staff sends them out. I sign the
 3 letter, and they -- they e-mail it.
 4 So I'm going to -- the public
 5 technical reporting requirements are -- could be
 6 qualified in your question.
 7 Q. Yes.
 8 So let me clarify my question --
 9 A. Okay.
 10 Q. -- I'm not limiting it to documents
 11 that you draft yourself, but documents that are
 12 prepared for you.
 13 A. Okay. I'm sure there are a lot of
 14 communications between my staff and the treasury
 15 having to do with the reports that we have. And
 16 when I say "a lot," I don't know how many, but
 17 I'm -- I'm taking them out of the attaboy, good
 18 luck questions and putting them in more to the
 19 substantive questions.
 20 I think my staff or people at my
 21 direction, my contractors, may submit cash flow
 22 projections and cash flows, projections over

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1 actuals, things like that, not
 2 necessarily directly -- I'm trying not to be
 3 technical --
 4 Q. Okay.
 5 A. -- not necessarily to
 6 Treasurer Dillon, but to his staff as well.
 7 Q. Okay. So let me --
 8 A. Okay.
 9 Q. -- I -- I appreciate your -- your --
 10 A. Um-hum.
 11 Q. -- your efforts to respond.
 12 Let me --
 13 A. Okay.
 14 Q. -- see if I can limit my question
 15 now.
 16 A. Um-hum.
 17 Q. So I'm not interested in
 18 correspondence that's official correspondence --
 19 A. Okay.
 20 Q. -- that's required -- you're required
 21 by your official duties to make, but so setting
 22 apart, you know, officially required



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1 correspondence --

2 A. Right.

3 Q. -- so let me -- let me limit my

4 question in that regard.

5 So --

6 A. Okay.

7 Q. -- so let me go back.

8 A. Okay.

9 Q. Do you recall any exchange -- written

10 exchanges with Treasurer Dillon regarding the

11 City's unfunded -- unfunded pension liabilities?

12 A. Outside of the official

13 correspondence?

14 Q. Right.

15 A. No, I don't recall any specific

16 correspondence between me and Treasurer Dillon

17 regarding unfunded pension liabilities, no.

18 Q. Okay. Do you recall ever seeing an

19 e-mail by Treasurer Dillon in the early part of

20 July 2013 where he says he speak -- he spoke to

21 the City consultants and he didn't realize how

22 significant the unfunded pension liabilities were?

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1 Do -- do you have any recollection of

2 ever seeing an e-mail like that?

3 A. Was I copied on it?

4 Q. I -- I -- I'm just asking if you

5 have --

6 A. Do I have any recollection?

7 Q. -- any recollection of an e-mail like

8 that.

9 A. I have no recollection. If you have

10 a writing, I'd be happy to look at it, but I

11 don't.

12 Q. Okay. Other than what you've

13 testified so far in response to my questions about

14 written exchanges with Treasurer Dillon, do you

15 have any recollection of any other written

16 exchanges with Treasurer Dillon?

17 A. No. We -- we have a -- we have --

18 you know, we have reporting requirements; we try

19 to make those. We have approval requirements; we

20 try to make those.

21 If you're looking for, like,

22 exchanges between us that are besides the

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1 congratulatory protocol attaboys, specifically

2 with related to pension liabilities, I don't have

3 any recollection of those exchanges. There might

4 be, I just -- we did not have specific exchanges

5 focused just solely on pension liabilities, and I

6 don't recall any.

7 Q. Okay. So now let me ask about

8 Mr. Baird.

9 A. Yes.

10 Q. Subsequent to your being appointed to

11 EFM --

12 A. Right.

13 Q. -- through to the present, have you

14 had any written exchanges, electronic or hard

15 copy, with Mr. Baird?

16 A. Yes.

17 Q. And can you tell me what those have

18 been?

19 A. Those are generally about staffing

20 decisions; how's it going with your staff; how's

21 it's going with restructuring City operations;

22 good job; generally staffing.

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1 I don't think I've had any exchanges

2 with Mr. Baird about pension liabilities.

3 Q. Okay. Have you had any exchanges

4 with Mr. Baird about any provisions of the

5 Michigan Constitution?

6 A. No, I don't recall. No, I don't

7 think I've had any of those exchanges with

8 Mr. Baird.

9 Q. Okay. Now, let me ask you whether

10 you've had any written exchanges with any State

11 officials or staff of the Governor or the

12 Treasurer or Mr. Baird after you were EFM apart

13 from any official documents -- any correspondence

14 that was required by law that touched on, in any

15 way, the City's unfunded pension liabilities?

16 A. Outside of attorney-client

17 communications?

18 Q. Well, I'm going to ask you about any

19 of them. If you -- if you're going to assert or

20 your attorney is going to assert a privilege,

21 that's your -- your option to do so, but I'm just

22 going to ask the question.



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1 A. Okay. I'll -- I'll answer two
2 ways -- well, three ways.
3 You said with anyone else in -- in
4 Government?
5 Q. In the State Government, right.
6 A. In the State Government.
7 One I may have had -- I certainly
8 recall a call, but I don't recall -- I recall a
9 courtesy call from the Attorney General that he
10 was going to be taking a stand on the
11 constitutionality of pensions. I don't recall a
12 writing.
13 So I'm -- I'm trying to be responsive
14 and going a little broad. You didn't ask about
15 calls, but I'll give it to you.
16 I am confident there are likely
17 communications either between me and my staff and
18 the Governor's office legal team not necessarily
19 about pension obligations, but regarding a
20 potential plan. I think those are privileged.
21 Not a lot.
22 Q. Okay. So -- I'm sorry --

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1 A. Okay.
2 Q. -- anything else come to mind?
3 A. And -- and just -- just -- here
4 again, I'm -- I'm -- you know, I'll lump them in
5 in the protocol calls -- not calls, protocol memos
6 from the Judge's scheduler, can you do this
7 meeting here with the Governor, can you -- just
8 generally protocol discussions like that.
9 Q. Okay. Let me go back to the -- the
10 telephone call you had with the Attorney General.
11 A. Right.
12 Q. When was that?
13 A. I think it was either the -- I think
14 it was the day before he made his public
15 announcement. I don't recall a specific day.
16 Q. Do you know what month it was in?
17 A. I -- I -- I -- I didn't -- it -- it's
18 in the public record. I just don't recall which
19 one. It wasn't March.
20 Q. It was after the bankruptcy filing?
21 A. No. It may have been before. I just
22 don't recall the date.

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1 Q. Okay. So he made a public filing.
2 And when in time in relation to
3 the -- when he made the filing did he call you?
4 A. I'm not sure it was a filing. I'm
5 just saying there was a -- I recall there was a
6 position he was going to take publicly, and he
7 made a courtesy call to me and left a message.
8 Q. Okay. And you don't recall when he
9 took that position publicly?
10 A. No, I don't.
11 Q. Do you remember what the position
12 was?
13 A. Whatever's been reported in the
14 papers as far as his position.
15 Q. Well, I'm asking you do you -- do you
16 remember what his position was?
17 A. I -- I remember his position was that
18 he believed that the Michigan State Constitution
19 protected pensions.
20 Q. Okay. And did he call you or did you
21 call him?
22 A. No. I believe he called me and left

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1 a message.
2 Q. And did you speak to him at some
3 point?
4 A. Not at that -- I think I called him
5 back that afternoon and said thank you, and that
6 was the extent of our conversation -- or that
7 evening, and that was the extent of our
8 conversation.
9 Q. So other than you're saying thank you
10 for the message, there's no other exchange between
11 you and the Attorney General?
12 A. No. It was of the nature of thank
13 you, Attorney General, I understand that you're
14 going to be taking this position. Thank you for
15 the courtesy call.
16 Q. Okay. Did you discuss the substance
17 of his position?
18 A. No, we did not.
19 Q. Okay. Have you ever discussed the
20 substance of his position with him?
21 A. Yes.
22 Q. When did you do that?



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1 A. I think in a meeting with my attorney
2 and someone from his office.
3 Q. Okay. And when was that?
4 A. I don't recall the day. I don't -- I
5 don't recall the -- it was after March. It may
6 have been prior to or after the bankruptcy filing.
7 I don't recall.
8 Q. Okay. And who was at the meeting?
9 A. I was at the meeting;
10 Attorney General Schuette was at the meeting; an
11 attorney from his office, Matt, was there -- I
12 forget his last name -- and my attorney,
13 David Heiman, was on the phone.
14 Q. Okay. And who -- how did the meeting
15 come about? Did someone ask to have the meeting?
16 A. I think -- yes, I think the Attorney
17 General's Office contacted my office and asked to
18 schedule a meeting.
19 Q. Did the person who asked to schedule
20 the meeting explain why they -- the Attorney
21 General wanted a meeting?
22 A. No.

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1 Q. Did you have an understanding of why
2 he wanted a meeting?
3 A. I don't think so. I think -- you
4 know -- no, I don't think so until we got to the
5 meeting. It was in Lansing.
6 Q. Okay. Do you recall the meeting?
7 A. Yes.
8 Q. What was said in the meeting?
9 A. Is that privileged?
10 MR. SHUMAKER: To -- to the extent
11 that there was a common interest between what the
12 Attorney General and his counsel was relating with
13 you and Mr. Heiman, I'm going to ask you --
14 instruct you not to answer.
15 If it related to issues where there
16 was no common interest, you can testify to that.
17 MR. DECHIARA: I -- I just -- can we
18 just pause? Are we on -- is there -- are you out
19 of tape or what's --
20 THE VIDEOGRAPHER: I've got
21 five minutes on the tape.
22 MR. DECHIARA: Okay. You'll tell me

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1 when the tape runs out?
2 THE VIDEOGRAPHER: Two minutes.
3 MR. DECHIARA: Okay.
4 Why don't -- why don't we take a --
5 maybe this is a good time -- do you have to -- how
6 long does it take to change the -- change --
7 THE VIDEOGRAPHER: I can go off the
8 record now and change.
9 MR. DECHIARA: Okay.
10 MR. ULLMAN: Why don't we take a
11 break and --
12 MR. DECHIARA: Why we don't take a
13 break now? Is that --
14 THE WITNESS: Sure.
15 MR. DECHIARA: -- is that good? He
16 has to change the tape.
17 THE VIDEOGRAPHER: Going off the
18 record at 12:42. This marks the end of Tape
19 Number 1.
20 - - -
21 (Whereupon, a brief recess was taken
22 from 12:42 p.m. to 1:06 p.m.)

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1 - - -
2 THE VIDEOGRAPHER: Going back on the
3 record at 1306. This marks the beginning of
4 Tape Number 2.
5 MR. DECHAIRA: Okay.
6 BY MR. DECHAIRA:
7 Q. Mr. Orr, before we broke, I was
8 asking you about a meeting you had with the
9 Michigan Attorney General.
10 And my question was, what was said at
11 that meeting?
12 A. Yes.
13 With Attorney General Schuette, I
14 don't recall the exact date; but, generally
15 speaking, the Attorney General -- at the meeting,
16 as I said, was Mr. Heiman on the phone, the
17 Attorney General and an attorney from his office,
18 Matt, whose last name escapes me right now. And
19 generally what was said, the Attorney General
20 wanted to express why he felt duty-bound to take a
21 position that the Michigan State Constitution
22 protected vested pension obligations.



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1 I believe our side expressed to him
2 that we believed Federal law allowed those
3 obligations to be adjusted.
4 The meeting was cordial, and the
5 meeting concluded fairly quickly with everybody
6 saying their -- their goodbyes.
7 Q. Did you, at the time, have an
8 understanding about the authority of the Attorney
9 General of the State of Michigan to interpret the
10 Michigan Constitution?
11 A. My understanding is that the Attorney
12 General is the chief legal officer of the State.
13 And I presumed -- did I have an understanding of
14 his authority?
15 My -- my understanding was, as chief
16 legal officer of the State, he has the ability to
17 determine what positions he believes he should
18 take on behalf of the State, subject to a ruling
19 by a court of law.
20 Q. Okay. Would it be fair to say that
21 in your mind, the opinions of the Attorney General
22 of the State of Michigan regarding questions of

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1 Michigan State law are -- should be accorded
2 considerable weight?
3 A. No.
4 Q. Okay. And who -- who was it -- were
5 you receiving legal advice from somebody that was
6 contrary to the position that was being asserted
7 by the Attorney General?
8 A. Yes.
9 Q. And was that the Jones Day law firm
10 that was advising you?
11 A. I believe amongst others.
12 Q. Who else?
13 A. Our local counsel at, um -- I'm --
14 I'm -- I'm -- I'm -- I'm drawing a blank on the
15 firms now -- Bob Hurwitz (phonetic) -- our local
16 counsel.
17 Q. Okay. Anyone else?
18 A. Yeah, I don't -- I don't want to
19 violate any attorney-client confidences --
20 Q. No, I'm just asking you to
21 identity -- I'm not asking --
22 A. Okay.

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1 Q. -- you what was said --
2 A. Okay.
3 Q. -- I'm just asking you the identity
4 of the attorneys who were telling you that what
5 the Attorney General was telling you was not
6 correct.
7 And you've identified Jones Day.
8 You've identified your local counsel.
9 I'm just asking you, was there anyone
10 else giving you advice on that matter?
11 A. I wouldn't call it "advice." I mean,
12 I've -- you know, at various meetings and events,
13 other attorneys will come up to me as recently as
14 yesterday and said that the position that we're
15 asserting is the correct one.
16 Q. Who said that to you yesterday?
17 A. An attorney from -- I forget his law
18 firm; but, you know, at various places, different
19 people come up to me and offer their opinions as
20 to what the position should be --
21 Q. Let me --
22 A. -- I wouldn't call that "advice,"

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1 though; it's just, you know, public commentary.
2 Q. Okay. So the -- the lawyers who were
3 giving you -- giving you advice in their capacity
4 as attorneys for the City or as attorneys for the
5 emergency manager were the Jones Day law firm and
6 a local counsel?
7 A. Yes.
8 Q. Okay. Let me now refer you to the
9 June 14th, 2013 meeting with creditors.
10 Do you recall that meeting?
11 A. Yes.
12 Q. Okay. Do you recall being asked a
13 question at that meeting about Article IX,
14 Section 24 of the Michigan Constitution?
15 A. Do I recall?
16 There -- there -- I think there was a
17 question. I don't know if -- I don't think that
18 meeting was recorded. So I don't know if there's
19 something to refresh my recollection. But I don't
20 specifically recall. I think there probably was a
21 question. I just don't recall it with
22 specificity.



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1 Q. Okay. And do you recall if there
2 were any questions about Detroit's pensions?
3 A. I believe there were.
4 Q. Okay. Do you -- in -- do you recall
5 responding to any of those questions?
6 A. I don't recall specifically what I
7 said, but I believe I probably did.
8 Q. Okay. Do you recall -- go ahead.
9 I'm sorry.
10 A. No, I'll answer your question.
11 I -- I think I did recall to a
12 question about pensions, and I think I mentioned
13 that in other cases in which I've been involved,
14 that Federal preemption dealt with states'
15 rights -- states' protections. I think there was
16 that discussion, excuse me, on June 14th.
17 Q. Do you recall making a reference to
18 legislative -- legislative relief?
19 A. Yeah. Yes, I do.
20 Q. Can you tell me what you said in that
21 connection?
22 A. I think it was a pretty short offhand

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1 comment, that I said, well, it could be either
2 Federal preemption, or it might require some
3 legislative relief.
4 Q. And what did you mean by "legislative
5 relief"?
6 A. I didn't really mean anything with
7 specificity other than to say there might be an
8 opportunity to seek some sort of legislative
9 relief. I didn't really have a plan or anything
10 with specifics in mind at that time.
11 Q. Let me now refer you to the
12 bankruptcy petition --
13 A. Yes.
14 Q. -- that was filed on behalf of the
15 City.
16 Do you recall that document?
17 A. Yes.
18 MR. SHUMAKER: You're getting pretty
19 far afield here, Counsel. I hope you can tie it
20 in with the State officials.
21 BY MR. DECHAIRA:
22 Q. Did -- do you recall that that

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1 petition was originally dated July 19th and it
2 said July 19th, 2013 in print on it, and that it
3 was then changed by hand to say July 18th?
4 MR. SHUMAKER: Object to the form.
5 THE WITNESS: I -- I don't recall
6 that then. But I think we talked about this at my
7 September 16th, 2013 deposition. I think someone
8 asked me that question.
9 So I -- I -- I recall it from that
10 deposition.
11 BY MR. DECHAIRA:
12 Q. Well, do you have an independent
13 recollection --
14 A. I -- I don't --
15 Q. Let me just finish for the clarity of
16 the record.
17 Do you have an independent
18 recollection of the bankruptcy petition saying
19 July 19th in print on it and then someone changing
20 it by hand to say the 18th?
21 Do you have an independent
22 recollection of that?

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1 A. It's a little fuzzy, but I think in
2 signing it, I'm the one who changed it.
3 Q. You changed it to the 18th?
4 A. Yeah. Whatever day I signed it, I
5 think I -- I routinely will get documents that are
6 dated with different dates, and I'll change them,
7 interlineate on them the correct date.
8 Q. Okay. Let me just -- I had been
9 asking you a line of questions about written
10 communications you were having with State
11 officials.
12 A. Yes.
13 Q. Let me go back and ask you, do you
14 recall written communications with staff or
15 other -- officials other than the Governor, the
16 Treasurer or Mr. Baird, after you were appointed
17 as EFM, that touched on or concerned in any way
18 the issue of Detroit City pensions?
19 A. No, not really.
20 No.
21 Q. Prior to your being appointed as EFM,
22 did you have any oral exchanges, spoken exchanges,



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1 whether by telephone or in person, with the
2 Governor?
3 A. Yeah, I think I testified this
4 morning that he may have called me prior to my
5 actual appointment to say we hope you consider it
6 and would like you to come on board, things along
7 those lines.
8 Q. Was it -- did it -- was that just one
9 exchange you had with him?
10 A. No, I think I said there may have
11 been one or two along those lines.
12 Q. Were there any exchanges other than
13 where the exchange was limited to, you know,
14 welcome on board?
15 A. There -- there were no substantive
16 exchanges. Mostly exchanges I -- I had --
17 conversations I had with the Governor were
18 pleasantries.
19 Q. Okay.
20 Now let me ask the same question, but
21 I'm going to change the time frame from between
22 the time you were appointed EFM until the Governor

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1 authorized the bankruptcy filing.
2 So --
3 A. Um-hum.
4 Q. -- in that period, did you have any
5 spoken exchanges with the Governor?
6 A. Yes.
7 Q. And do you know how many you had?
8 A. Well, I've said we've -- we've had
9 regular meetings with the Governor. My contract
10 requires me to keep the Governor and the Treasurer
11 apprised as to what we're doing. We have those
12 meetings almost weekly. There may have been a
13 week here or there that we missed, but we have
14 regular weekly meetings.
15 Q. And those are face-to-face meetings
16 with -- with --
17 A. They're typically face-to-face.
18 Occasionally, they're by phone.
19 Q. Okay. Have you had any meetings
20 during that period -- actually, I'm not even going
21 to call them meetings.
22 Have you had any spoken exchanges

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1 with the Governor between the time you were
2 appointed as EFM until the Governor authorized the
3 bankruptcy filing where it was just you and the
4 Governor speaking with no one else present?
5 A. Yes.
6 Q. And how many times did that occur?
7 A. More than a couple. Sometimes after
8 the weekly meetings, if they're in person, the
9 Governor and I -- the Governor will take me aside
10 into his office and we'll have separate one-on-one
11 meetings.
12 Q. And do you have a specific memory of
13 any of those meetings?
14 A. Yeah, those meetings are typically
15 just an opportunity for the Governor -- they --
16 they comprise a combination of -- of
17 personal -- you know, personal inquiries: How's
18 your family doing; do you need anything; how are
19 you holding up; how's your staff; do you need any
20 help in any way fashion, things along those lines.
21 They're not -- they're not really
22 substantive follow-ups of the actual meetings that

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1 we've had just prior to those meetings.
2 Q. Have you ever, in those one-on-one
3 meetings with the Governor, spoken about the issue
4 of Detroit's unfunded pension liability?
5 A. Not that I recall, no.
6 Q. Did you ever discuss with the
7 Governor, in those one-on-one meetings, anything
8 having to do with restrictions or prohibitions in
9 the Michigan Constitution?
10 A. No.
11 Q. Did you ever speak to him about the
12 Attorney General's position on the issue of
13 pensions?
14 A. I -- I may have.
15 Q. And what was said?
16 A. The substance of those conversations,
17 the one-on-one meetings, was that, you know, I
18 understand the Attorney General believes he has to
19 take a position, obviously --
20 Q. Who is speaking when you're saying
21 that?
22 A. Oh, me. I'm -- the Governor and I



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1 are speaking, just the two of us in the room. I
 2 think it was something along the lines, I
 3 understand he's taken a position; we disagree with
 4 it; ultimately, this will be sorted out in court.
 5 Q. And that's -- that's what you said?
 6 A. Yeah, pretty much what I said.
 7 Q. Okay. And did the Governor respond,
 8 or did he say anything?
 9 A. No; the Governor responded, yeah, I
 10 understand you have to take the position that you
 11 have to take in your case.
 12 Q. Has the Governor ever expressed to
 13 you, in a one-on-one meeting, his view of the
 14 Attorney General's position?
 15 A. No.
 16 Q. So it was just a -- when you and the
 17 Governor had a meeting where the issue of the
 18 Attorney General's position came up, it was just a
 19 one-way communication by you saying what it is you
 20 just said?
 21 A. Yeah, as I said, these are not
 22 substantive meetings. These are more sort of what

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1 I call the personal meetings, where the Governor
 2 just takes time out of his schedule to ask me how
 3 things are going; how am I holding up; how my
 4 staff is; and, you know, I -- I would occasionally
 5 say, yeah, you know, I met -- for instance, the
 6 meeting I had with the Attorney General, met with
 7 the Attorney General. He expressed his interests
 8 in the position he has to take. We obviously
 9 disagree with it.
 10 The Governor would take no position
 11 on that. He would say, okay, I understand, you
 12 know, you have to do what you think is appropriate
 13 on behalf of the City.
 14 That was the extent of the
 15 conversations.
 16 Q. So am I correct that the Governor
 17 never actually told you that the Attorney
 18 General's position was wrong?
 19 A. I -- yeah, I don't believe the
 20 Governor ever opined as to the Attorney General's
 21 position.
 22 Q. Let me now speak beyond the -- in the

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1 same time frame between when you were appointed as
 2 EFM until the Governor authorized the bankruptcy
 3 filing.
 4 Let me now refer to meetings you've
 5 had with the Governor where there were other
 6 people present.
 7 A. Yes.
 8 Q. Were there any discussions in any of
 9 those meetings about Detroit's pension
 10 liabilities?
 11 A. Now, these are where attorneys are
 12 present or covered by the common interest
 13 privilege?
 14 Q. Well, I'm just going to ask you about
 15 what was said in those meetings, and if you want
 16 to refuse to answer or if your attorney wants to
 17 instruct you -- you to refuse to answer, that's --
 18 A. Okay.
 19 Q. -- a decision you have to make.
 20 MR. SHUMAKER: You -- you can -- you
 21 can answer that question.
 22 THE WITNESS: Yeah. There were

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1 meetings. As I said before, we have, typically,
 2 weekly meetings. Occasionally, we've missed a
 3 week or two, but typically, weekly.
 4 BY MR. DECHAIRA:
 5 Q. Okay. And in any of those meetings,
 6 were Detroit's pension liabilities discussed?
 7 MR. SHUMAKER: You can answer that.
 8 THE WITNESS: Yes.
 9 BY MR. DECHAIRA:
 10 Q. And what was said?
 11 MR. SHUMAKER: I'm -- I'm going to
 12 object here and caution the witness to the extent
 13 that any of the communications called for by the
 14 question ask for information relating to your
 15 seeking or the provision of legal advice, I
 16 instruct you not to answer. Outside of that, you
 17 can.
 18 THE WITNESS: Those -- I think
 19 those -- those conversations are -- covered by the
 20 attorney-client privilege and the common interest
 21 privilege.
 22 BY MR. DECHAIRA:



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1 Q. Okay. So just so the record's clear,
2 Mr. Orr, you're declining to respond to the
3 question, what was said in those meetings
4 regarding Detroit's pension liabilities?
5 A. Yes, I -- I think, without waiving
6 the privilege -- I want to be very careful here,
7 because I have both the attorney-client privilege
8 and common interest agreement and I don't want to
9 abridge either of those; but without waiving,
10 there were discussions and those discussions
11 probably concerned our perception of what -- what
12 the issues that have been talked about in the
13 public domain concerned regarding vested pension
14 rights.
15 Q. Did the Governor ever say to you
16 whether in a one-on-one -- let me start with a
17 one-on-one meeting.
18 Did the Governor ever say to you in a
19 one-on-one meeting that it was his view that
20 Detroit's pension liability -- strike that -- that
21 Detroit's accrued pension liabilities had to be
22 cut?

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1 Did the Governor ever say that to
2 you?
3 A. No.
4 Q. Okay. And did he ever say that to
5 you in any meeting where there were other people
6 present?
7 MR. SHUMAKER: Again, I'm going to
8 caution the witness to the extent that attorneys
9 were at such meetings and there were -- you were
10 seeking legal advice or legal advice was being
11 given in connection with the Governor's comments,
12 I would instruct you not to answer.
13 If that is not the case, you are free
14 to answer.
15 THE WITNESS: I want to be
16 responsive, but I don't want to waive the
17 privilege.
18 Those discussions were always held in
19 the presence of attorneys generally in discussion
20 of what the rights and positions would be in the
21 case. I can say this, I think -- can I just
22 consult my attorney briefly?

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1 BY MR. DECHAIRA:
2 Q. Not while there's a question pending.
3 A. Okay.
4 Q. Your attorney is free to -- he's
5 already given you guidance on the record.
6 A. I'm -- I'm trying to be responsive to
7 you.
8 I think those discussions are covered
9 by the attorney-client privilege.
10 Q. Okay. So just to be clear, you're --
11 you're declining to answer my question?
12 A. Without further guidance, I think I
13 have to.
14 Q. Okay.
15 Let me now change the time frame to
16 after the Governor authorized the bankruptcy
17 filing.
18 Did you have any one-on-one spoken
19 exchanges with the Governor -- or have you had?
20 A. Yes, I believe so.
21 Q. And one or more than one?
22 A. Maybe more than one.

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1 Q. And what was the context for those?
2 A. Here again, the same nature of the
3 discussions. They were more general check-in:
4 How's things going; how's staff going; how's City
5 operations going; new chief seems to be doing very
6 well, things along those natures.
7 Q. In -- in any of those one-on-one
8 meetings you've had with the Governor since he
9 authorized the bankruptcy filing, did
10 the Governor -- has the Governor ever expressed
11 the view to you that Detroit's accrued pension
12 liabilities should be cut?
13 A. No.
14 The Governor's never expressed the
15 view to me in any of those meetings that Detroit
16 pension liabilities need to be cut either before
17 or after the filing.
18 Q. Okay. And has he ever expressed a
19 view to you regarding whether he agrees or doesn't
20 agree with the position that was publicly taken by
21 the Attorney General that you testified about
22 earlier?



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1 A. No, I don't recall him ever doing
2 that.
3 Q. Did you ever, in any one-on-one
4 conversation with the Governor, speak about any
5 prohibitions or restrictions in the Michigan
6 Constitution?
7 A. No, I don't recall us speaking about
8 that.
9 Q. Okay. Now -- now I'm going to ask
10 you about Treasurer Dillon --
11 A. Yes.
12 Q. -- I'm going to ask you another --
13 the same line of questions -- questions about
14 spoken exchanges --
15 A. Um-hum.
16 Q. -- the time frame is now between --
17 well, let's say before you were appointed EFM.
18 Did you have any spoken exchanges
19 with -- with the Treasurer?
20 A. Yes.
21 Q. And can you tell me what those were?
22 A. Those were more in the nature of,

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1 here again, pleasantries; enjoy you considering
2 being a candidate; I had early on hoped and
3 encouraged you to do so; thank you for doing so,
4 along those lines.
5 Q. Did the -- did the Treasurer in any
6 of those spoken exchanges you had with him ever
7 express any views about the economic distress that
8 was facing the City of Detroit?
9 A. Oh, I think he -- I think we may have
10 discussed the -- yes -- yeah, I think we probably
11 discussed the fact that Detroit was under a
12 consent agreement, things of that nature, but it
13 was very high level; it wasn't with any
14 specificity.
15 Q. Well, did you ever speak to him
16 during that time frame about the burden of accrued
17 pension liabilities that was going on in the City?
18 A. Yeah -- no, not that I recall. There
19 were never any discussions in -- in that level of
20 detail.
21 Q. In the time frame after you were
22 appointed EFM, but before the State authorized the

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1 bankruptcy filing, did you have any spoken
2 exchanges with the Treasurer?
3 A. Yes.
4 Q. And what was the context for those?
5 A. Those discussions were, here again as
6 I said before, generally around retention of
7 professionals, cash flow projections, actuals over
8 projected, potential help that we could get from
9 contractors, sending out the RFP for solid waste,
10 standing up the Public Lighting Authority,
11 standing up the Detroit Land Bank Authority in
12 conjunction with MSHDA, things of those nature.
13 Q. Were these exchanges that you had in
14 the context of meetings with other people present?
15 A. Some of them were, yes.
16 Q. Were any of them one-on-one?
17 A. The Treasurer and I would -- would
18 sometimes -- we -- our meetings were -- the
19 Governor and I would try to have one-on-one
20 meetings after our Detroit team meetings. The
21 Treasurer and I would have one-on-one meetings in
22 a much more irregular ad-hoc basis, if you will.

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1 If he was in the office building, in the Cadillac
2 office building, at the same time, he might stop
3 by my office. But there was no regular --
4 regularly set meeting between me and the
5 Treasurer.
6 Q. Okay. Do you -- do you recall those
7 one-on-ones that you had with the Treasurer on
8 those occasions?
9 A. I recall some of them, yes.
10 Q. Okay. And in those, did you ever
11 speak to him about Detroit's accrued pension
12 liability?
13 A. Not specifically. We may have talked
14 about the -- what I call the "balance sheet
15 issues," the amount of debt that the City had,
16 including pension funds, OPEB and GO bond debt; we
17 may have talked about the -- here again, actuals
18 over projections, things -- financial
19 transactions, yes.
20 Q. Did he ever express the view to you
21 in those one-on-one meetings that Detroit's
22 accrued pension liabilities should be -- could be



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1 or should be reduced?

2 A. I don't recall any specific

3 conversations about what should happen with

4 Detroit pension liabilities.

5 Q. Do you remember the Treasurer talking

6 about that, whether specifically or generally or

7 in any other way, about that subject?

8 A. Not in the one-on-one meetings.

9 Q. Did he talk about that in meetings

10 where there were other people present?

11 A. Yes. The Treasurer attended the

12 Detroit team meetings that we had weekly with the

13 Governor.

14 Q. And did he, at any of those meetings,

15 express the view that -- did he -- strike that.

16 Did he, at those meetings, say

17 anything about whether Detroit's accrued pension

18 liabilities should be reduced?

19 MR. SHUMAKER: Again, I'm going to

20 caution the witness to the extent that any of

21 these communications occurred when counsel was

22 present in connection with the provision or the

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1 seeking of legal advice, I will instruct him not

2 to answer.

3 If that's not the case or there's

4 some nonlegal component to it, you can answer.

5 THE WITNESS: Okay. Let me -- let me

6 try to respond this way. Any of the Detroit team

7 meetings with the Governor would have counsel

8 present, oftentimes several layers of counsel; in

9 fact, I think there were meetings where either my

10 counsel was on the phone or counsel on behalf of

11 the Governor and his office on the phone. There

12 were no team meetings where counsel was not

13 present.

14 In any of those discussions, those

15 discussions would implicate attorney-client

16 communications because we would be seeking legal

17 advice either from my counsel or from State

18 counsel or from both. So I'm going to be very

19 careful with those discussions where the

20 Treasurer, the Governor and counsel were present.

21 So I -- I -- I can't answer about

22 those discussions.

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1 BY MR. DECHAIRA:

2 Q. Okay. Just to be clear. For -- for

3 the reasons you just expressed, you're not going

4 to answer the question?

5 A. Yes.

6 Q. Yes, you're not going to answer?

7 A. Yes, I'm not going to answer the

8 question.

9 Q. Did the Governor -- did the Treasurer

10 in any way -- let me ask you about one-on-one.

11 In any one-on-one meeting you've ever

12 had with him, did he ever express a view about

13 whether the Attorney General's position, that you

14 testified about earlier, was correct or not?

15 A. No.

16 Q. Okay. And if I asked you whether he

17 ever expressed an opinion on that topic in -- in

18 one of the Detroit team meetings, would you

19 decline to answer the question on the grounds that

20 you just declined to answer my prior question?

21 MR. SHUMAKER: I would give the

22 witness the same admonition.

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1 THE WITNESS: Yes, I would decline to

2 answer your question on the grounds it's protected

3 by the attorney-client privilege and joint --

4 and/or joint interest privilege.

5 BY MR. DECHAIRA:

6 Q. Okay. Let me now ask you about

7 Mr. Baird.

8 A. Yes.

9 Q. Prior to your being appointed EFM,

10 did you have any spoken exchanges with Mr. Baird?

11 A. Yes.

12 Q. And can you tell me what those were?

13 A. Yes, I think as I testified on

14 September 16th and, again, earlier today, and as

15 has been represented in the e-mail chains that

16 were gone over on September 16th and the ones that

17 were discussed this day, they were about my

18 potentially becoming the emergency financial

19 manager, subsequently emergency manager for the

20 City of Detroit.

21 Q. Did you have any exchanges with him

22 before you -- spoken exchanges with him before you



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1 were appointed EFM on any topic other than what
2 you just testified to?
3 A. That was generally the broad topic.
4 He -- he may have asked me about how my family
5 would hold up, how I could extricate myself from
6 my then law firm, things of that nature, but no
7 substantive discussions.
8 Q. And when you say "no substantive
9 discussions," would that also mean that you did
10 not discuss anything having to do with Detroit's
11 pension liabilities?
12 A. I -- I don't recall really ever
13 talking to Mr. Baird about Detroit's pension
14 liabilities.
15 Q. At any time?
16 A. At any time.
17 Q. Did you ever speak to Mr. Baird at
18 any time about the issue of the Michigan
19 Constitution?
20 A. I don't recall ever speaking to
21 Mr. Baird about the issue of the Michigan
22 Constitution.

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1 Q. Did Mr. Baird ever express to you a
2 view about whether or not Detroit's accrued
3 pension liabilities could or should be cut?
4 A. No.
5 Q. Did Mr. Baird ever express a view to
6 you about whether or not the position taken by the
7 Attorney General that you testified about earlier
8 was correct or incorrect?
9 A. No.
10 Q. In any one-on-one meetings that
11 you've ever had with the Governor, the Treasurer
12 or Mr. Baird, was there any discussion about when
13 Detroit should file for bankruptcy?
14 A. Well, there are three questions. Not
15 with Mr. Baird; I don't recall any with
16 Treasurer Dillon; and none with specificity with
17 the Governor.
18 Q. Do you do -- do you have any -- when
19 you say "none with specificity," do you mean your
20 recollection is not specific or what was discussed
21 was not specific?
22 A. What was discussed was not specific.

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1 Q. Okay. What was discussed, to the
2 best of your recollection, with the Governor about
3 when Detroit should file for bankruptcy?
4 A. Generally, after -- and I'll just
5 give it to you generally after the June 14th
6 meeting, on the one-on-one meetings, we discussed
7 my hope that we get some settlements in. We were
8 having discussions with some parties.
9 We discussed that, you know, time was
10 drawing -- was -- seemed to be moving quite
11 quickly, but we were hopeful, and we were -- had
12 some initial discussions. Later we discussed, I
13 think June -- I'll do it this way -- June 14th
14 through July 3rd, we continued to have discussions
15 along those lines.
16 In July, in the one-on-one meetings,
17 the one or two that we might have had, the general
18 discussion was there was this litigation, but we
19 were still hoping that we could resolve some
20 issues. And we continued to have those
21 discussions up until a day or so -- no, not until
22 a day or so -- until the week before the filing.

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1 Q. So -- so am I correct that you had
2 multiple one-on-one exchanges with the Governor
3 about the question about when the City should file
4 for bankruptcy?
5 A. We -- as I said, we may have had one
6 or two. I remember one week in there in July was
7 the 4th of July holiday week, and I don't think we
8 had a meeting there. But I -- I don't recall
9 specifically the dates of the meeting. I think we
10 may have had one or two one-on-ones.
11 Q. Okay.
12 So in those one-on -- one-on-ones,
13 those one or two one-on-ones --
14 A. Um-hum.
15 Q. -- to the best of your recollection,
16 what did you say to the Governor in connection
17 with the issue about when the petition should be
18 filed?
19 A. All I said to the Governor is we
20 continue -- I understand that we're trying to work
21 towards some resolutions; we hope people take us
22 seriously; we hope they're listening to what we're

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1 saying. I'm really not hearing any debate on the
 2 level of debt. I'm hearing some people being
 3 concerned about, you know, what our proposal is.
 4 We hope they make a resolution. Towards the end,
 5 the question was hopefully we will be able to work
 6 things out.
 7 Q. And did -- what did the Governor say,
 8 to the best of your recollection, in those
 9 one-on-ones?
 10 A. Thank you for the information. You
 11 know, I appreciate your trying to do -- you're
 12 doing a good job; I appreciate the job you're
 13 trying to do. This is going to be difficult.
 14 Keep trying to work towards a resolution. You
 15 know, it -- make the right decision; it's
 16 ultimately your call.
 17 Q. Did he ever give you any view as to
 18 what he thought you should do or what the City
 19 should do in connection with the timing of the
 20 filing?
 21 A. No.
 22 Q. Did you ever have any one-on-one

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1 meetings with the Governor in which he or you
 2 discussed what the political implications might be
 3 of a bankruptcy filing?
 4 A. It's -- the discussion we had earlier
 5 this morning about political implications, and I'm
 6 going to -- you know, that's -- that's a broad
 7 discussion from people being angry to editorial
 8 pages, things like that.
 9 So there -- there may have been some
 10 discussion in that regard. But I don't recall
 11 anything particularly political about our
 12 discussions.
 13 Q. Okay. Well, I -- I -- I didn't mean
 14 to ask you about whether there's anything
 15 political about your discussions. But my question
 16 was, in any one of your one-on-ones with the
 17 Governor, was there any discussion between the two
 18 of you, whether you were saying something or
 19 whether he was saying something, about what might
 20 be the political implications of the bankruptcy
 21 filing?
 22 And when I say "political

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1 implications," I mean that in a broad sense, so
 2 public reaction is --
 3 A. Oh.
 4 Q. -- broadly -- broadly, would it --
 5 would it be included within that?
 6 A. Well, if you say "public reaction,"
 7 yeah, we probably did have discussions about
 8 potential public reaction.
 9 Q. And what -- and what did you -- what
 10 did you say, or what did he say about that?
 11 A. Generally, you know, this -- this
 12 would be -- and this is towards the end -- well,
 13 you know, I don't know if -- I'm trying to recall
 14 now. I don't know if we had discussions about
 15 that prior to the week of the filing. Because I
 16 don't think we had that many one-on-one meetings
 17 in -- in between June 14th and July because of the
 18 holiday.
 19 So there may have been a discussion,
 20 but I don't think it was in a one-on-one meeting.
 21 I think it was in one of the Detroit team meetings
 22 the week before the filing --

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1 Q. Okay.
 2 A. -- that was the Friday.
 3 Q. So at one of -- your testimony is
 4 that at one of the Detroit team meetings, there
 5 was -- before the filing, there was the discuss
 6 -- a discussion about what might have been the
 7 political implications of the filing?
 8 A. The political implications as you
 9 just defined it meaning public reaction.
 10 Q. Well, let -- let me just be clear --
 11 A. Okay.
 12 Q. -- it -- it would include public
 13 reaction.
 14 A. Okay.
 15 Well, without getting into
 16 discussions, because there were attorneys at that
 17 meeting, and I don't -- here again, I want to be
 18 careful about the privilege. If you include the
 19 definition spanning from political implications
 20 meaning potential public reaction, I believe there
 21 were discussions in that regard, but not in the
 22 sense that political reactions should in any way



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1 impact the decision that we needed to make.
2 The discussions were always about
3 what's the best decision; are we making progress;
4 the discretion is up to me, within my authority,
5 to make a recommendation; and if I make a
6 recommendation, the Governor would take it up in
7 due course.
8 Q. What was said at -- was this said --
9 was this discussion that you just testified about
10 at one or more of the Detroit -- the Detroit team
11 meetings?
12 MR. SHUMAKER: You say "this
13 discussion," are you talking about the discussion
14 about the political --
15 MR. DECHAIRA: Yeah, right.
16 MR. SHUMAKER: -- implications?
17 MR. DECHAIRA: Correct.
18 THE WITNESS: I believe that when you
19 say "political implications," you know, I don't
20 want to give the impression that there was
21 something overt -- there was some overt concern
22 about the political implications. Our general

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1 discussions were we were going to do the right
2 thing as we saw fit --
3 BY MR. DECHAIRA:
4 Q. Okay.
5 A. -- they were not being driven by
6 political concerns. We were aware that it would
7 garner public attention, but we were still going
8 to do the right thing.
9 Q. Can you tell me who said what at
10 those meetings about that -- the issue that you're
11 talking about?
12 A. Here again, there were attorneys
13 present at that meeting giving legal advice, so
14 I'm going to see if I can answer the question
15 without implicating any of the legal advice.
16 And as I just said, the discussion
17 generally centered around we're not getting the
18 progress that we want. As I said at the June 14th
19 meeting, we're not getting the progress we need.
20 We had to make some difficult decisions. As I
21 said at the June 10th meeting, bankruptcy is
22 potentially an option, but we don't want to use

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1 it.
2 We were being involved in litigation,
3 as I said before on September 16th, and the
4 general discussion was we need to make some
5 decisions, let's make the right decision
6 irrespective of any political considerations.
7 Q. Mr. Orr, are you paid by the State of
8 Michigan?
9 A. I believe so.
10 Q. Okay. Is it -- is it correct that
11 you're a -- you're an employee -- are you an
12 employee of the State of Michigan?
13 A. No, I'm a contractor to the State of
14 Michigan.
15 Q. Okay. You're an -- you're an
16 agent -- are you an agent of the State of
17 Michigan?
18 MR. SHUMAKER: Objection --
19 THE WITNESS: I --
20 MR. SHUMAKER: -- calls for a legal
21 conclusion.
22 THE WITNESS: Yeah, that's what I was

Page 455

1 going to say.
2 BY MR. DECHAIRA:
3 Q. Okay.
4 Do you consider yourself bound by the
5 laws and the Constitution of the State of
6 Michigan?
7 A. I consider myself bound by the laws
8 in the Constitution of the United States and the
9 State of Michigan.
10 Q. And do you consider yourself bound by
11 the interpretations of the laws and Constitution
12 of the State of Michigan that are made by the
13 Michigan Attorney General?
14 A. I consider myself bound by the laws
15 of the U.S. Constitution and the State of Michigan
16 as interpreted by the Federal courts.
17 Q. But not the Attorney -- Attorney
18 General of the State of Michigan?
19 A. Not necessarily. If -- if there's a
20 law or a ruling by a Court, I would think that
21 supersedes the interpretation of an attorney
22 general.



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1 Q. Okay. In the absence of a ruling by
2 a Court, do you consider yourself as -- in your
3 capacity as an emergency manager, bound by the
4 interpretations of the Michigan Constitution made
5 by the Michigan Attorney General?
6 A. As I just said, I consider myself
7 bound by the laws of the United States and the
8 State of Michigan as interpreted ultimately by a
9 Court.
10 Q. Right.
11 But my question is, in the absence of
12 a Court ruling on a particular question, do you
13 consider yourself -- on a particular question of
14 Michigan law, do you consider yourself bound by
15 the interpretation of the Michigan Attorney
16 General?
17 A. I'll repeat my answer.
18 I understand what you're getting at.
19 But I'll repeat my answer.
20 I feel ultimately the question has to
21 resolve -- be resolved by the courts of the
22 United States. And I've said that before, and

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1 that's the position we've taken.
2 Q. Did you ever speak to the Governor in
3 a one-on-one meeting about the absence of
4 contingencies in his authorization letter?
5 A. No.
6 Q. I'd like to show you what I'll ask to
7 have marked as Exhibit 23.
8 - - -
9 (Whereupon, e-mail string was marked,
10 for identification purposes, as Orr
11 Deposition Exhibit Number 23.)
12 - - -
13 MR. DECHIARA: And for the record --
14 THE COURT REPORTER: Hold on.
15 (Sotto voce comments by counsel and
16 court reporter.)
17 MR. DECHIARA: Are we on the record?
18 BY MR. DECHAIRA:
19 Q. Mr. Orr, if you look at Exhibit 23,
20 do you see that the bottom two-thirds of the page
21 is in -- appears to be an e-mail from
22 Richard Baird to various people, dated

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1 February 7th, 2013?
2 Do you see that?
3 A. Yes.
4 Q. Okay.
5 And then you see there appears to be
6 a schedule under that?
7 A. Yes.
8 Q. Okay. Did you meet with Andy Dillon,
9 or did you go out to lunch with Andy Dillon and
10 another person on Monday, February 11th?
11 A. Yes.
12 Q. And who was the other person?
13 A. I went out to lunch, actually, with
14 three people: Andy Dillon, Brom Stibitz, and
15 Tom Saxton.
16 Q. Who are those two other people?
17 A. Two other people are employees of the
18 Treasury Department and work under Andy Dillon.
19 Q. Okay. And what was discussed at that
20 lunch?
21 A. Me potentially --
22 MR. SHUMAKER: Let me just -- they're

Page 459

1 not lawyers; is that correct?
2 THE WITNESS: I don't know if Brom
3 and Tom are.
4 BY MR. DECHAIRA:
5 Q. Well, I guess that was the question,
6 is, were they acting in -- in their capacity as
7 attorneys for the State during that lunch?
8 A. I don't know if Brom and -- and Tom
9 Saxton are attorneys.
10 MR. SHUMAKER: You can -- you can
11 answer.
12 THE WITNESS: Okay.
13 This -- my understanding what this is
14 was a schedule for me to come and discuss their
15 interests in me applying to become the emergency
16 manager for the City of Detroit.
17 BY MR. DECHAIRA:
18 Q. Right.
19 But what was -- do you have a
20 recollection of what you talked about at lunch?
21 A. Yeah, generally, what the statute
22 required, the financial stability agreement



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1 provisions, potentially when I would be able to --
 2 to -- to apply; generally, sort of high-level
 3 preliminary discussions about becoming the EM.
 4 Q. Did you talk about pensions?
 5 A. No, we didn't talk about the detail.
 6 I wish I had.
 7 Q. Did you -- after lunch, did you meet
 8 with the Governor and Mr. Baird?
 9 A. Yes.
 10 Q. And who else was present at --
 11 present, if anyone, at that meeting?
 12 A. I -- I believe his scheduler,
 13 Allison, walked me into the room, and it was just
 14 me, the Governor and Rich Baird.
 15 Q. And do you recall what you talked
 16 about in that meeting?
 17 A. Very high level. This was a -- a --
 18 a meet-and-greet, as I call it; get to know you;
 19 are you interested? Frankly, at this time, I was
 20 still on the fence as to whether or not I would
 21 apply for the job, and this -- these were
 22 discussions about, well, this is what the job

Page 461

1 would entail. We're doing our due diligence.
 2 There's some other candidates we're considering,
 3 but we would like you to be interested, things
 4 along those lines.
 5 Q. Did they say who the other candidates
 6 were?
 7 A. No, they did not.
 8 Q. Did they talk about the pitch meeting
 9 that you participated in earlier?
 10 A. No, not so much -- tangentially, I
 11 mean, that -- that discussions were about, you
 12 know, we -- we -- we saw your firm's pitch at the
 13 meeting; we were impressed with your passion for
 14 the City; how you had been a Michigander; the work
 15 you did on other cases related to the City; you
 16 know, would you -- would you at least -- and this
 17 was more -- as I interpreted it, this was more
 18 getting me to -- I was still taking a position I
 19 don't want the job, but this was more me trying to
 20 explore it a little bit and see what it would
 21 entail, and them saying that it's probably -- we
 22 would appreciate it if you would consider it.

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1 Q. Did they -- did Mr. Baird or the
 2 Governor express any views about what they thought
 3 of the substance of the ideas that were put forth
 4 in the Jones Day pitch book?
 5 A. No, not really. They -- they -- I
 6 mean, all they ever said was it -- it was a good
 7 pitch book, but there was not -- there was no
 8 substantive discussion during these meetings.
 9 Q. Mr. Orr, I would like to show you
 10 what I'll now mark as Exhibit 24. It's a
 11 document -- it's a two-page document. It says at
 12 the top, Is the Emergency Manager Moving Fast
 13 Enough, question mark. It's Bates stamped
 14 DTMI00113909 --
 15 A. Right.
 16 Q. -- and -10 --
 17 THE COURT REPORTER: Do you want me
 18 to mark it?
 19 MR. DECHAIRA: Yes, please, as
 20 Exhibit 24.
 21 - - -
 22 (Whereupon, Excerpt from report of

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1 Emergency Manager was marked, for
 2 identification purposes, as
 3 Deposition Exhibit Number 24.)
 4 - - -
 5 THE WITNESS: Thank you.
 6 THE COURT REPORTER: Um-hum.
 7 BY MR. DECHAIRA:
 8 Q. Can you identify what this document
 9 is?
 10 A. Is this a excerpt from one of my
 11 reports --
 12 Q. I'm --
 13 A. -- you're asking me?
 14 Q. I'm asking you.
 15 A. Yeah, because I'd -- I'd -- I'm --
 16 no. Can I identify this document is?
 17 No, it speaks for itself.
 18 Q. Well, let me -- I mean, have you ever
 19 seen this document before?
 20 A. I think I've seen this document
 21 before, but I don't think this is from -- I don't
 22 know if this is from my office.



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1 Q. You don't know who prepared this?

2 A. No.

3 Q. And you don't know what purpose this

4 document was used for?

5 A. No. Now, that's not saying it could

6 have been prepared from my office, but it could

7 have been done in our communications division. I

8 just -- there's so many documents that are

9 prepared in my office, I'm not -- I don't see all

10 of them.

11 Q. I don't want you to guess or

12 speculate.

13 A. Yeah; no, I don't -- I don't --

14 Q. You don't know?

15 A. -- yeah, I don't know.

16 Q. Okay.

17 I'd like to show you what I'll ask to

18 have marked as Exhibit 25, which is a set of

19 e-mail exchanges stamped JD-RD-0000354.

20 - - -

21 (Whereupon, e-mail string was marked,

22 for identification purposes, as

Page 465

1 Deposition Exhibit Number 25.)

2 - - -

3 THE COURT REPORTER: Hold on.

4 THE WITNESS: Thank you.

5 BY MR. DECHAIRA:

6 Q. Let me refer you to the bottom of the

7 first page. Do you see there's an e-mail from you

8 to the Governor?

9 A. Yes.

10 Q. Dated February 13th, 2013?

11 A. Yes.

12 Q. It refers to a meeting you had

13 with -- with the Governor.

14 Do you see that?

15 A. Yes.

16 Q. When was that meeting or was -- was

17 there a meeting?

18 A. I think this refers to the meeting

19 schedule that you showed me on -- for

20 February 11th. I think this is a follow-up to

21 that meeting.

22 Q. Okay. So this is the meeting --

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1 this -- this -- in this e-mail, you're referring

2 to the meeting you had with Mr. -- with the

3 Governor and Mr. Baird?

4 A. Yeah, I think the e-mail chain is, as

5 I said today, there may have been back-and-forth

6 pleasantries, and this is the type of stuff that

7 I -- the type of e-mails I was talking about.

8 It's the Governor saying to me, you know, nice to

9 meet you; excited about the prospect of working

10 with you; job is difficult. I mean, it speaks for

11 itself.

12 He talks about the job, the -- the --

13 the collaborative irrational acts. That's people

14 doing things that seem --

15 Q. And --

16 A. -- insurmountable.

17 Q. -- Mr. Orr, I don't mean to cut you

18 off. I just asked if this was the meeting that

19 you were referring to --

20 A. Yeah, I think -

21 Q. -- I think the answer is yes --

22 A. -- this all speaks for it itself.

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1 Yeah, this all speaks for itself.

2 Q. Let me refer -- show you a document

3 I'll ask to have marked as Exhibit 26. This is a

4 two-page document stamped at the bottom

5 JD-RD-0000334 and -35 on the second page.

6 A. I think this is -- I think this is

7 Exhibit 20.

8 Q. Oh, it may be.

9 A. I think we already talked about this.

10 Q. Okay. Well --

11 A. Yeah. Yeah, it's the same -- no, I

12 have it. It's the same thing.

13 Q. Okay. I don't have Exhibit 20.

14 Okay. Thank you for pointing that

15 out.

16 A. Yeah.

17 Q. Let me refer you to Exhibit 20.

18 A. Okay.

19 Yeah, it's the same -- yes, it's the

20 same document.

21 Q. So if you look in the e-mail that you

22 wrote to Mr. Baird at the top of Exhibit 20 --



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1 A. Um-hum.

2 Q. -- towards the bottom of the

3 paragraph -- that block of text that's at the top

4 of the first page, it says -- there's a sentence

5 that says, In the interim, when you have time, I'd

6 like to speak with you about the timing and

7 process for the retention of the EM and legal

8 counsel --

9 A. Yes.

10 Q. -- you wrote that?

11 A. Yes.

12 Q. And what -- what -- did you -- what

13 did you mean when you wrote that?

14 A. Oh, I just meant -- what I had said I

15 think at the February 11th meeting is that my

16 consideration as EM -- there were a number of news

17 reports going around about how I would not have to

18 resign from my firm, and what I said in order to

19 remove issues -- because trustees and bankers, as

20 I suspect you know, don't typically resign from

21 their law firm -- in order to remove any issues

22 with that regard, that I'd probably have to resign

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1 from my law firm.

2 And what I was saying here is -- and

3 what I said at the February 11th meeting was,

4 look, I don't want my potential candidacy as EM to

5 either help or hurt Jones Day, who originally came

6 into this for pitching the legal work. I want it

7 to be neutral as far as what I do.

8 And -- and to that regard, I think

9 there's an e-mail that we talked about,

10 September 16th, where I recused myself from the

11 Jones Day selection process and I was considering,

12 you know, how I would extricate myself from my

13 firm.

14 I was involved in -- in a couple of

15 very important matters -- in the midst of them, as

16 a matter of fact -- and all I was saying here is

17 let's talk about the process for both the

18 retention of the EM and legal counsel .

19 And what I said February 11th was

20 just, look, whoever -- I'll work with whoever it

21 is, but I don't want this to hurt Jones Day in any

22 way. I don't necessarily want it to help.

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1 I just want it to be neutral if I'm

2 going to consider this, because I don't want to

3 put my interests above the interests of my then

4 law firm.

5 Q. Okay. And then in -- in the e-mail

6 you write, I'd like to speak with you --

7 A. Yes.

8 Q. -- did you subsequently speak to

9 Mr. Baird about this topic?

10 A. I don't know if I spoke to him about

11 this topic. I was probably -- I don't recall if I

12 spoke to him about this topic. I think I probably

13 did speak to him subsequent to this e-mail.

14 Q. Let me show you what I'll mark as

15 Exhibit 27 --

16 THE COURT REPORTER: Twenty-six.

17 MR. DECHAIRA: -- 26, thank you.

18 Right.

19 What I had offered as 26 I'm not

20 offering because, as Mr. Orr correctly pointed

21 out, the e-mail was already in -- it had already

22 been marked as Exhibit 20.

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1 - - -

2 (Whereupon, Contract for Emergency

3 Financial Manager Services was

4 marked, for identification purposes,

5 as Deposition Exhibit Number 26.)

6 - - -

7 BY MR. DECHAIRA:

8 Q. And I'll identify Exhibit 26 as a

9 multipage document, the first page is stamped

10 DTMI00113325.

11 Mr. Orr, is this your employment

12 contract?

13 A. No.

14 Q. Is -- what is this document? Do you

15 know?

16 A. This document is -- this document is

17 substantially similar to my ultimate employment

18 contract. My employment contract, which I think

19 is on the Web site, has the names written in.

20 My employment contract, the initial

21 one, I think was executed on the 25th or 26th, and

22 then a subsequent one was executed on the 28th.



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1 Q. And the subsequent one sets out what
2 your compensation is from the City?
3 A. Yes, substantially, the -- my actual
4 contract is substantially similar. You said "from
5 the City." The subsequent one -- the com -- the
6 compensation on Page 3.2 is the same --
7 Q. Okay.
8 A. -- but it's substantially similar to
9 my contract. But the actual contract is different
10 from this document (indicating).
11 Q. Okay. And then the last sentence on
12 Section 3.2 says, The emergency financial manager
13 shall not receive or accept any compensation from
14 the City except as provided for in this contract.
15 My question is, do you receive any
16 compensation from anybody or any entity for your
17 services as emergency manager other than what's
18 set out in Section 3.2 here or in the analogous
19 3.2 of what -- of your current contract?
20 A. Not one dime.
21 Q. Well, you may -- you may receive
22 housing, a pay for your housing -- pay for your

Page 473

1 housing, correct?
2 A. Yeah; but I think you said as set out
3 in the contract. Maybe you meant 3.2. But
4 whatever we've discussed today, the housing, but I
5 don't receive that. That's -- I receive the
6 housing. I don't get four -- \$4,200 or whatever
7 the rent is; I've never seen it. I get the
8 compensation as stated in the contract, and that's
9 it.
10 Q. Right. But you -- you have -- you
11 live in the housing, correct?
12 A. I live in the housing, yes.
13 Q. And you don't pay for it, correct?
14 A. I don't pay for it --
15 Q. Okay.
16 A. -- that's correct.
17 MR. DECHAIRA: If we -- if I can just
18 have a minute.
19 MR. SHUMAKER: Sure.
20 (Pause.)
21 THE VIDEOGRAPHER: Do you want to go
22 off the record?

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1 MR. DECHAIRA: Yes, please.
2 THE VIDEOGRAPHER: Going off the
3 record at 1359.
4 - - -
5 (Whereupon, a discussion was held off
6 the record.)
7 - - -
8 THE VIDEOGRAPHER: Going back on the
9 record at 1401.
10 BY MR. DECHAIRA:
11 Q. Mr. Orr, do you know what other law
12 firms pitched for the job of restructuring counsel
13 for the City besides Jones Day?
14 A. I -- I don't know them all. I -- I
15 know that there were approximately 20 other law
16 firms, but I don't -- I -- I think Foley was one.
17 I think Weil was one. I -- I don't recall them
18 all, no.
19 Q. Okay. Do you know who else was
20 considered for the EM position besides yourself?
21 A. I do not.
22 Q. Okay.

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1 A. There was some published reports, but
2 I don't recall early on. That's all --
3 Q. Would --
4 A. -- I -- I don't know with specificity
5 who it was. I just remember there were some
6 reports.
7 Q. Okay. Whether -- whether from any
8 source, whether public or otherwise, do you have
9 any -- as you sit here today, do you remember any
10 names of anyone who was considered as EM other
11 than yourself?
12 A. The -- the only report that I
13 remember with specificity is that Andy Williams,
14 the -- the -- essentially the counterpart in the
15 D.C. control board was reported had been
16 considered, and he turned it down. He's a lot
17 smarter than me.
18 Q. Anyone else?
19 A. Not that I remember.
20 (Sotto voce discussion.)
21 THE WITNESS: He has better judgment
22 than me.



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1 BY MR. DECHAIRA:
 2 Q. Do you know who Bill Brandt is?
 3 A. I've -- I've heard that name before.
 4 I -- I think he was -- he's a bankruptcy trustee.
 5 Q. Do you know whether he was considered
 6 for any -- for the EM position?
 7 A. I do not.
 8 Q. Do you know whether he was considered
 9 for any position as -- any professional position
 10 in connection with the restructuring of the City
 11 of Detroit?
 12 A. I do not.
 13 Q. Okay.
 14 MR. DECHAIRA: Thank you for your
 15 time, Mr. Orr. I have no further questions.
 16 THE WITNESS: Thank you.
 17 MR. ULLMAN: I have a few follow-ups.
 18
 19
 20
 21
 22

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1 Q. Okay. And you see we had talked
 2 about the 250 million general fund relative to the
 3 650 million total unfunded liability?
 4 A. Yes.
 5 Q. And we had calculated ratio
 6 approximately 38-1/2 percent?
 7 A. Right.
 8 Q. And I think previously, when I was
 9 asking about this, I had referred to the
 10 38.5 percent as being the amount of the unfunded
 11 liability allocable to the Department of Water and
 12 Sewer. I think I -- I misspoke in that, because
 13 the 250 would be -- the 38.5 percent would be the
 14 amount allocable to the general fund, correct?
 15 A. Yes, I -- I think that's accurate,
 16 yes, we were talking about the numbers, but --
 17 Q. We had them backwards?
 18 A. -- we had them backwards.
 19 Q. And so if the -- if the math is right
 20 and it was about 38.5 percent, then the percentage
 21 of the unfunded liability allocable to the
 22 Department of Water and Sewer would be

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1 - - -
 2 EXAMINATION (CONTINUED)
 3 BY COUNSEL FOR RETIREES COMMITTEE
 4 - - -
 5 BY MR. ULLMAN:
 6 Q. Hello, Mr. Orr.
 7 A. Hello, Mr. Ullman.
 8 Q. I just have a few questions for you
 9 just to clarify the record, because I saw when I
 10 was looking at the transcript that as sometimes
 11 happens when lawyers do math, I got some numbers
 12 transposed.
 13 A. Okay.
 14 Q. So if you could turn back to
 15 Exhibit 22.
 16 A. Okay.
 17 Um-hum.
 18 Okay.
 19 Q. And if you could look at the Bates
 20 page that we were looking at before which ends in
 21 422.
 22 A. Yes.

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1 approximately 61.5 percent?
 2 A. But, remember, I said that you have
 3 to be careful with trying to draw a straight-line
 4 comparison between the two numbers you may
 5 calculate in. But generally speaking, if we're
 6 just talking about the math, that -- that --
 7 Q. Right --
 8 A. -- would be the estimate.
 9 Q. -- I'm right here just talking about
 10 the ratio on the -- the number that's referred to
 11 as the 650 -- the approximately 650 by the Mayor.
 12 A. Yes.
 13 Q. And then I think the next question I
 14 asked you, which I think is what you were alluding
 15 to, that if you assumed a larger liability figure,
 16 would that ratio continue to hold; and my
 17 recollection is, your answer was roughly it would,
 18 but you may have to, you know, fine-tune the math.
 19 A. It -- it -- it might roughly hold,
 20 but you need to be careful to not draw the
 21 conclusion that is -- it's exactly comparable.
 22 Q. Okay. I understand.



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1 A. Okay.

2 Q. Okay.

3 And then the other question I have

4 for you -- this is referring to the unfunded

5 pension liability --

6 A. Um-hum.

7 Q. -- you're also familiar with the

8 medical benefits for retirees --

9 A. Yes.

10 Q. -- the health -- and I think that's

11 sometimes referred to as OPEB?

12 A. Yes, other [sic] employee benefits.

13 Q. Okay. And for the OPEB is -- are --

14 is the -- is the situation similar that some

15 amount of the total OPEB liability that the City

16 faces is allocable to sources other than the

17 general fund?

18 A. You -- you know, I think it is; but

19 I'm not recalling that mechanism as well as I

20 recall the pension mechanism, but I think it is.

21 Q. Okay. And would then some portion of

22 the total OPEB unfunded liability be allocable

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1 also to the Department of Water and Sewer to their

2 retirees?

3 A. It might well be, but I'd need to

4 confirm that.

5 Q. Okay. And have you done any analysis

6 of that question?

7 A. Yes --

8 Q. Okay.

9 A. -- well, our contractors have done an

10 analysis of the question.

11 Q. Okay. And who specifically has done

12 an analysis of that?

13 A. Oh, I think our team at -- the entire

14 team: Conway MacKenzie, Ernst & Young,

15 Miller Buckfire.

16 Q. And do you recall their general

17 conclusions to what percentage of the total

18 unfunded OPEB liability is allocable to the -- A,

19 to the Department of Water of Sewer; or, B, some

20 other fund or entity apart from the general fund?

21 A. I'm -- I'm not -- I don't recall if

22 it is, and I don't recall the percentage.

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1 MR. ULLMAN: Okay. Could I ask for

2 any documents relating to that to be produced,

3 Greg?

4 MR. SHUMAKER: You can certainly put

5 that in writing and look into it. I'm pretty sure

6 that that has already been produced, but we'll

7 certainly look into it.

8 MR. ULLMAN: Okay.

9 I don't believe I have anything else,

10 so --

11 THE WITNESS: Okay.

12 MR. ULLMAN: -- anything further

13 from -- no.

14 MR. DECHIARA: I think Jennifer

15 Green.

16 MR. ULLMAN: Jennifer, are you there?

17 MS. GREEN: No.

18 MR. ULLMAN: Okay.

19 MS. GREEN: My turn?

20 MR. ULLMAN: Yeah, if you are

21 ready -- if you have questions and you want to go.

22 MS. GREEN: I literally have a

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1 handful. Very quickly.

2 MR. ULLMAN: Go -- go ahead. I'm

3 done.

4 Thank you very much, Mr. Orr.

5 THE WITNESS: Thank you very much,

6 Mr. Ullman.

7 Hello, Jennifer -- hello, Ms. Green.

8 - - -

9 EXAMINATION (CONTINUED) BY COUNSEL FOR

10 GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT AND

11 THE POLICE AND FIRE RETIREMENT SYSTEM OF THE

12 CITY OF DETROIT

13 - - -

14 BY MS. GREEN:

15 Q. Hi, how are you?

16 A. Just fine.

17 Q. You began acting as emergency manager

18 as of March 26th, and Jones Day was hired to

19 represent the City after you became emergency

20 manager, correct?

21 A. The relationship was formalized after

22 I became emergency manager, yes.



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1 Q. Are you saying there was an informal
2 relationship before then?
3 A. No. As -- as I said before today,
4 the -- the question of when the attorney-client
5 privilege attaches isn't necessarily based upon
6 just a formalization of a relationship; it's based
7 upon one of confidence and reposed and -- and a
8 relationship is accepted. An exact date of that,
9 I don't know sitting here today from a legal
10 perspective.
11 Q. Can you tell me, from your view as
12 emergency manager, was the firm of Jones Day
13 acting as legal representation -- giving legal
14 representation to the City prior to your being
15 appointed EM on March 26th?
16 A. I don't -- I don't know.
17 I -- as I testified earlier today, I
18 recused myself from that process, so I don't know
19 when that relationship arose.
20 Q. Well, let me ask you this: You
21 worked at Jones Day, and you worked on the pitch
22 materials, correct?

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1 A. Yes.
2 Q. And so you were involved with the
3 process of the pitch and the PowerPoint?
4 A. Yes; but that was in early -- that
5 was in late January and early February, sometime
6 in February, and I think the e-mails have been
7 discussed in my prior deposition.
8 I -- I pulled myself out of that
9 process, it was in early February prior to the
10 meeting we discussed today. So I don't know what
11 happened after I recused myself.
12 Q. I understand that. I understand
13 that.
14 But what I'm saying is, the pitch
15 that occurred, you were not acting as legal
16 counsel when you did the pitch, right?
17 A. No, no, we were not --
18 Q. Okay.
19 A. -- we were soliciting becoming legal
20 counsel.
21 Q. Exactly.
22 So at least it was some point after

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1 the pitch, correct?
2 A. Yes.
3 Q. And similar to that, Jones Day was
4 never hired by the State of Michigan at any point
5 for any sort of representation, correct?
6 MR. SHUMAKER: Object to the form:
7 Foundation.
8 THE WITNESS: Yeah, I think I
9 testified earlier today -- I said earlier today,
10 I -- I don't know if Jones Day has ever
11 represented the State of Michigan, but -- but with
12 regard to this matter, I don't -- I don't know of
13 Jones Day representing the State of Michigan other
14 than --
15 BY MS. GREEN:
16 Q. Okay.
17 A. -- through my office.
18 Q. So in 2011 and in 2012, and prior to
19 spring of 2013, you have no knowledge of there
20 being any attorney-client relationship between
21 Jones Day and the State of Michigan, correct?
22 A. I have no knowledge.

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1 Q. Okay.
2 And, certainly, I would assume if you
3 were preparing pitch materials in a PowerPoint,
4 where you were pitching Jones Day to the State and
5 to the City, you would've, I assume, included any
6 prior representation of the City and the State,
7 correct?
8 MR. SHUMAKER: Objection: calls for
9 speculation.
10 THE WITNESS: Calls for speculation,
11 that's what I was going to say.
12 It -- you know, I -- I don't know.
13 It would be speculative on my part to say that --
14 that it may or may not included it. We -- I would
15 like to think that we -- before the retention, I
16 would like to think that any law firm would have
17 run a conflicts check.
18 I'm not sure whether or not that
19 would have been included in the pitch material.
20 BY MS. GREEN:
21 Q. Well, during the pitch, was there any
22 point where any of the Jones Day attorneys that



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1 you were doing the pitch with said, oh, by the
 2 way, we were -- we were once your legal counsel,
 3 State of Michigan, or we were once your legal
 4 counsel, City of Detroit?
 5 MR. SHUMAKER: Objection to the form.
 6 THE WITNESS: As I said earlier
 7 today, the discussion quickly went off the pitch
 8 materials in the far-ranging; so I don't recall
 9 any -- any statement in that respect.
 10 BY MS. GREEN:
 11 Q. Okay.
 12 So you have no evidence that there
 13 was ever any attorney-client relationship between
 14 Jones Day and the State of Michigan; is that
 15 correct?
 16 MR. SHUMAKER: Object to the form.
 17 THE WITNESS: All -- all the
 18 questions I said earlier today, there -- there
 19 could have been. I'm not aware of any.
 20 MS. GREEN: Okay. That's the only
 21 question I have.
 22 THE WITNESS: Okay.

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1 MR. DECHAIRA: Thank you.
 2 THE WITNESS: Um-hum.
 3 MR. SHUMAKER: Thank you, Counsel.
 4 THE WITNESS: Okay. Thank you.
 5 THE VIDEOGRAPHER: Going off the
 6 record at 1412. This marks the end of
 7 Tape Number 2. This also marks the end of the
 8 deposition.
 9 (Whereupon, at 2:12 p.m., the
 10 deposition was concluded.)
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1 MR. SHUMAKER: Thank you, Jennifer.
 2 MR. DECHAIRA: I have one question.
 3 ---
 4 EXAMINATION (CONTINUED) BY COUNSEL FOR
 5 UNITED AUTO WORKERS UNION
 6 ---
 7 BY MR. DECHAIRA:
 8 Q. Mr. Orr, do you know whether any of
 9 the liabilities of the Detroit -- Detroit's
 10 general pension fund are attributable to the
 11 pensions of employees or retirees of the Detroit
 12 public library system?
 13 MR. SHUMAKER: Getting pretty far
 14 afield here, Counselor.
 15 You can answer that one.
 16 THE WITNESS: I -- I -- specifically,
 17 library employees?
 18 I don't -- I don't know that. I know
 19 that they're attributable to GRS. Service
 20 employees are typically nonuniform. I don't know
 21 if it includes library employees. It might; it
 22 might not.

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C E R T I F I C A T E

2 DISTRICT OF COLUMBIA:
 3 I, Cindy L. Sebo, a Notary Public within
 4 and for the Jurisdiction aforesaid, do hereby
 5 certify that the foregoing deposition was taken
 6 before me, pursuant to notice, at the time and place
 7 indicated; that said deponent was by me duly sworn
 8 to tell the truth, the whole truth, and nothing but
 9 the truth; that the testimony of said deponent was
 10 correctly recorded in machine shorthand by me and
 11 thereafter transcribed under my supervision with
 12 computer-aided transcription; that the deposition is
 13 a true record of the testimony given by the witness;
 14 and that I am neither of counsel nor kin to any
 15 party in said action, nor interested in the outcome
 16 thereof.
 17
 18
 19
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 21
 22

Cindy L. Sebo

 Cindy L. Sebo, RMR, CRR, RPR, CSR,
 CCR, CLR, RSA, Notary Public

District of Columbia, Notary Public
 My Commission Expires
 April 14, 2015



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1 Gregory M. Shumaker, Esquire
2 Jones Day
3 51 Louisiana Avenue, Northwest
4 Washington, D.C. 20001-2113

5 IN RE: City of Detroit, Michigan

6 Dear Mr. Shumaker:

7 Enclosed please find your copy of the continued
8 deposition of KEVYN D. ORR, along with the original
9 signature page.

10 As agreed, you will be responsible for
11 contacting the witness regarding reading and
12 signing the transcript.

13 Within 30 days of receipt, please forward errata
14 sheet and original signature page signed to
15 opposing counsel.

16 If you would like to change this procedure or if
17 you have any questions, please do not hesitate to
18 call.

19 Thank you.

20 Yours,
21 Cindy L. Sebo, RMR, CRR, CSR, RPR, CCR, CLR, RSA
22 Reporter/Notary

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1 CAPTION

2 The Continued Deposition of KEVYN D.
3 ORR taken in the matter, on the date, and at the
4 time and place set out on the title page hereof.

5 It was requested that the deposition
6 be taken by the reporter and that same be reduced
7 to typewritten form.

8 It was agreed by and between counsel
9 and the parties that the Deponent will read and
10 sign the transcript of said deposition.

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1 CERTIFICATE

2 STATE OF :

3 COUNTY/CITY OF :

4 Before me, this day, personally appeared,
5 KEVYN D. ORR, who, being duly sworn, states that the
6 foregoing transcript of his/her Deposition, taken in
7 the matter, on the date, and at the time and place
8 set out on the title page hereof, constitutes a true
9 and accurate transcript of said deposition.

10
11

12 _____
13 KEVYN D. ORR
14 SUBSCRIBED and SWORN to before me this
15 _____ day of _____, 20____ in the
16 jurisdiction aforesaid.

17 _____
18 My Commission Expires _____ Notary Public

19 *If no changes need to be made on the following
20 two pages, place a check here ____, and return only
21 this signed page.

22 DEPOSITION ERRATA SHEET

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1 RE: Esquire Deposition Services, L.L.C.

2 File No. 105824

3 Case Caption: In Re: City of Detroit, Michigan

4 Deponent: KEVYN D. ORR (Volume II)

5 Deposition Date: Friday, October 4, 2013

6

7 To the Reporter:

8 I have read the entire transcript of my
9 Deposition taken in the captioned matter or the same
10 has been read to me.

11 I request that the following changes be entered
12 upon the record for the reasons indicated. I have
13 signed my name to the Errata Sheet and the
14 appropriate Certificate and authorize you to attach
15 both to the original transcript.

16 Page No. ____ Line No. ____ Change to: _____
17 _____

18 Page No. ____ Line No. ____ Change to: _____
19 _____

20 Page No. ____ Line No. ____ Change to: _____
21 _____

22

1 DEPOSITION OF: KEVYN D. ORR
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14 Page No. _____ Line No. _____ Change to: _____
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17 _____
18 Page No. _____ Line No. _____ Change to: _____
19 _____
20 _____
21 SIGNATURE: _____ DATE: _____
22 KEVYN D. ORR



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

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

DECLARATION OF STEVEN KREISBERG

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

1. I serve as Director of Collective Bargaining and Health Care Policy of the American Federation of State, County & Municipal Employees, AFL-CIO ("**AFSCME**"), and I submit this declaration in support of *The Michigan Council 25 Of The American Federation Of State, County & Municipal Employees, AFL-CIO And Sub-Chapter 98, City Of Detroit Retirees' Amended Objection To The City Of Detroit's Eligibility To Obtain Relief Under Chapter 9 of The Bankruptcy Code* (the "**Objection**"). Unless otherwise stated below, I have knowledge of the matters set forth herein from my own personal knowledge and from my review of records and information kept in AFSCME's ordinary course of business and, if called, could competently testify to the information provided below.

2. In the ordinary course of business, through my position at AFSCME, I have access to over 8,000 of the collective bargaining agreements (including but not limited to concessionary agreements) to which AFSCME local unions or other local affiliates enter into and submit to AFSCME as is required by the AFSCME Constitution. Depending on the agreements being negotiated and the requests of the local unions, my staff and I at AFSCME have various degrees of involvement in the local's collective bargaining process. Furthermore, for purposes

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of future collective bargaining and general data gathering purposes, and as required by the AFSCME Constitution, AFSCME obtains copies of collective bargaining and other relevant agreements negotiated by AFSCME locals.

3. Additionally, AFSCME and its locals in Detroit have historically negotiated collective bargaining agreements which provide active employees access to, and employer contributions towards, health benefit plans, and upon their retirement, such employees continue to access the same benefit plans provided for under the then-applicable collective bargaining agreement. To the extent that a collective bargaining agreement is later renegotiated, any changes to health benefit plans (which sometimes recently have resulted in reduced benefits) apply to both active employees and retirees that participate in such benefit plans. Thus, AFSCME and its affiliate Michigan Council 25 regularly negotiate concessionary agreements which directly impact retirees.

4. In this regard, I am familiar with and have specific knowledge regarding (and, indeed, someone from my staff was directly involved in the negotiation of) a certain tentative agreement (the “**Tentative Agreement**”) dated February 1, 2012 between the City¹ and a “Coalition of City of Detroit [non-uniform] Unions”, including several AFSCME local bargaining units. Attached hereto as **Exhibit A** is a copy of the Tentative Agreement.

5. I am further aware that the Tentative Agreement was ratified by the Detroit coalition of unions but never implemented. Had such agreement been implemented, the changes therein regarding health benefits would have directly impacted retiree benefits with respect to retirees that participated in the City’s health plans governed by the Tentative Agreement.

¹ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Objection.

6. Indeed, based on projections provided to AFSCME by the City in 2012, AFSCME understood that the Tentative Agreement would have saved the City approximately \$50 million annually, an amount which included retiree health care changes. Thus, the City has previously effectively put both active and retiree health care savings on the table for negotiations, clearly demonstrating the City's ability to at least negotiate with respect to changes to benefits for active and retired City employees.

7. I attended a July 10, 2013 meeting between the City and various unions (including AFSCME) and other stakeholders. At that July 10, 2013 meeting, counsel for the City attempted to invoke what he termed "Rule 408" confidentiality provisions, and stated that doing so was a tool used in every bankruptcy, so it should be invoked that day.

8. Attached hereto as **Exhibit B** is a copy of the Pitch Presentation given to the City by the City's Law Firm dated January 29, 2013.

9. Attached hereto as **Exhibit C** is a copy of an e-mail dated July 8, 2013 from Bill Nowling in the EM's office to individuals in the Governor's office.

10. Attached hereto as **Exhibit D** is a copy of an e-mail dated July 9, 2013 from Treasurer Andy Dillon to the Governor and other individuals in the Governor's office.

11. Attached hereto as **Exhibit E** is a copy of an e-mail dated July 17, 2013 from Ken Buckfire regarding the deal reached between the City and its swap counterparties.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of October, 2013

/s/ Steven Kreisberg
Steven Kreisberg

EXHIBIT A

**TENTATIVE AGREEMENT 2-1-2012
LETTER OF UNDERSTANDING (“Agreement”)
BETWEEN
CITY OF DETROIT
AND
THE COALITION OF CITY OF DETROIT UNIONS**

The Coalition Employees are the members of the bargaining units who have joined this Coalition. The Coalition was created to respond to a fiscal crisis in the City of Detroit. The Coalition is made up of the following unions (evolving list, given as of this date): Michigan AFSCME Council 25 Non-supervisory unit, Supervisory unit, Forestry and Landscape unit, Emergency Service Operators (yet the entirety of this Agreement will not apply to this unit, as outlined below) Amalgamated Transit Unit, Association of City of Detroit Supervisors, I.U.O.E – Operating Engineers Local 324, Building & Construction Trades Council, I.B.E.W. Local 58, S.A.A.A., UAW Local 2211 – PAA, A.M.I., Teamsters Local 214, Supervisors Chapter of the DOT Foreman’s Association, Income Tax Investigators, and SEIU Local 517. This Agreement excludes the AFSCME units of crossing guards, and Motor City Seasonals.

I. GENERAL PRINCIPLES

A. Coalition Employees And Their Union Contracts

All Coalition Employees work under various collective bargaining agreements of the Coalition Unions. Except for the specific terms outlined below, the terms of the successor collective bargaining agreements for all Coalition Unions will be executed concurrently with the execution of this Agreement and will remain in full force and effect until three years following the execution of this Agreement. The City will execute successor collective bargaining agreements with each Coalition Union simultaneously with execution of this Agreement, and the terms of the successor bargaining agreements shall be identical to the most recent bargaining agreements, which are incorporated in full, except as modified below and except as to the following Unions wherein the successor bargaining agreements are identical to the attached bargaining proposals: ***. The parties acknowledge that these successor bargaining agreements are not extensions of the previous agreement, as addressed in MCLA sec. 423.215b. Also, for each Coalition Union, the terms of the prior bargaining agreement have been in full force and effect up until the execution of the new bargaining agreement. All new Coalition Union bargaining agreements shall remain in full force and effect until three years from the date of the execution of this Agreement.

The bargaining agreements of the Coalition Unions will be modified as reflected below. All changes below are prospective modifications of all Coalition Union bargaining agreements. In other words, the below changes do not have any impact on the respective bargaining units prior to the date of execution of this Agreement.

For each Union contract of this Coalition, the contract will be renewed and extended year-by-year, following the termination date, unless either the Union or City provides written notice of a desire to modify or amend or terminate the Agreement, by or before six (6) months before

contract termination. If either side provides such notice, the contract will extend on a monthly basis unless terminated upon 30 days written notice by either party. Any changes to this Agreement shall be agreed to in writing.

The bargaining agreements of the Coalition Unions will be modified as reflected below. All changes below are prospective modifications of all Coalition Union bargaining agreements. In other words, the below changes do not have any impact on the respective bargaining units prior to the date of execution of this Agreement.

This Agreement does not apply to employees who work within the Detroit Water and Sewage Department, due to the pending opinion of Judge Sean Cox in case number 77-71100.

B. "Me Too"

- 1) All concessions described below must apply equally to all City employees, including public officials (including the mayor, city councilpersons, the city clerk, and other persons appointed or elected who are employed by the City), appointees, management, civilians, and exempt and non-exempt employees, with the exception of Public Safety employees in bargaining units eligible for Act 312 arbitration, who are addressed below, employees in the Detroit of Water and Sewerage Department, crossing guards, Motor City Seasonals, and employees working under grants which prohibit the actions taken by this Agreement. Additionally, Emergency Service Operators and their supervisors (who are Coalition Employees) will receive parity with public safety employees, as to their wages, just as in previous bargaining agreements for those units. During the period for which the Coalition Employees are undergoing wage concessions, no Non-Coalition management level employee or appointee shall receive merit pay or step increases (only Coalition Employees receive such). All step or merit pay increases called for in the White Book, or elsewhere for Non-Coalition management/supervisory level employees, shall be frozen during the period of wage concessions for the Coalition Employees. Wage increases due to a bona fide promotion will not violate this provision, provided the base wage for the new position has been reduced by ten percent. The same shall apply for new hires. If any Non-Coalition employee/official receives any concession lower than a Coalition Employee, then all Coalition Employees will receive the concession applicable to the Non-Coalition employee/official.
- 2) Notwithstanding the above, if any Non-Coalition employee/official receives an increase in any form of compensation (wages or fringe benefits) from December 20, 2011 and throughout the term of this Agreement, then all Coalition Employees will receive an equivalent amount of an increase in compensation. These "Me Too" changes will take place immediately.
- 3) The Union Coalition will have the ability to receive all information, within seven (7) days of request of such, related to all wages and benefits received by any employee/official (Coalition and Non-Coalition employees alike).

- 4) In the event a Non-Coalition Union or non-Union Employee agrees to take economic concessions which are equivalent economically, but not identical to the Wage Concession set forth in this Agreement, such arrangement shall not violate this "Me Too" clause.
- 5) All parties acknowledge that the City of Detroit will assure shared sacrifice from all employees in fixing the City's fiscal concerns. At least one week prior to the ratification of this Agreement but following tentative execution of this Agreement, the City will share with the Coalition Unions all concessions to which public safety employees have agreed, along with all available information substantiating the value of said concessions for the next three years. This information shall be shared with the Coalition Union by no later than three days following agreements being reached with public safety employees. If the Coalition Unions are dissatisfied with the concessions of the public safety employees or the information provided concerning them, they may withdraw from any terms of this Agreement at their choosing, and may make alternative proposals to the City concerning any area of this Agreement. If the City has not ratified agreements with the public safety employees by April 1, 2012, the parties will discuss the consequence of the failure to attain public safety agreements, since the Coalition Unions will not have ratified by that point.
- 6) Notwithstanding the above, all City employees (including public safety) shall be governed by the same healthcare plan designs, options, and costs, as provided for elsewhere in this Agreement, or else the remedies of this section shall apply. This provision does not apply (a) if the public safety employees have a health care plan which is equal to or less in costs, for the public safety group, than the plan proposed by the Coalition Unions as spelled out below or (b) to the COPS Trust plan – with the understanding that the participation in the COPS Trust plan is being frozen at its current participants, or that the plan's costs and/or benefits are comparable to the plan of the Coalition Unions. Further, if the Coalition Unions are dissatisfied with the public safety agreements concerning the COPS Trust plan, when the Coalition reviews the public safety ratified agreements prior to the ratification of this Agreement (see paragraph 5 above), then the Coalition may resort to the remedies outlined above.
- 7) For bargaining units represented by unions who do not sign on as members of the Coalition, or sign the agreement as a separate signatory (except with regard to the employee units excluded from the "Me Too" in Section I.B.1), the City shall have until July 1, 2013 to implement wage and benefits concessions at levels and length similar to that agreed to by the Coalition Unions in this Agreement. If such changes are not implemented by July 1, 2013, the Coalition Employees shall receive an economic adjustment in their wages, at that time, so that the Coalition Employees will receive no greater concession ~~over the life of this Agreement~~ *for a three year term* than the non-Coalition Employees.

Any of the Coalition Unions shall have the ability to file a grievance for a violation of this Me Too provision, pursuant to the Dispute Resolution section below. This may be a

joint grievance when filed, or any Coalition Union may join in the grievance. Once a grievance has been filed concerning this Me Too provision, the City shall have twenty-one (21) days to review and cure the violation of the Me Too provision, before any Coalition Employee is entitled to sanctions for violation of such clause.

C. **Dispute Resolution**

A violation of any provision of this Agreement shall be subject to the following process. Either the City or a Coalition Union may grieve a violation of this Agreement. The grievance may be filed jointly on behalf of any or all Unions within the Coalition. There is no time limit within which to file a grievance concerning the violation of this Agreement. The grievance shall be addressed as normal in the contractual grievance steps. The grievance may be filed at the Labor Relations step (i.e., step 4) of the grievance process, the step immediately prior to the arbitration step. Once the grievance reaches the step of arbitration, the parties shall first submit the grievance to the JBS Committee (described in Section III below). Both the City and the grieving union(s) may have additional representatives involved in the grievance discussions. The Committee shall have its first meeting within 10 days of the grievance being filed, and shall exercise all reasonable efforts to try to resolve the grievance. As necessary, the Committee may meet with any City Department Head, Group Executive, Chief Operating Officer, Chief of Staff, and the Mayor, and those meetings shall take place as soon as possible after request. The Committee shall have 45 days to try to resolve the grievance. If the grievance is not resolved, it shall be submitted to a neutral arbitrator, pursuant to the Grievance Procedure language of the bargaining agreement of the lead Union which filed the grievance. This arbitration shall be expedited to the fullest extent possible, but by no means shall the grievance take longer than six months from the date of filing in order to have an arbitrator issue his/her ruling on the grievance.

If the arbitrator finds a violation of any provision of the Agreement, the arbitrator may order specific performance (ordering the City or Union to take certain action or refrain from certain action to comply with the Agreement). Specific performance shall be the sole remedy for any violation by the City or Union for the commitments made in Section III of this Agreement, "Lean Optimization Commitment and Union Deficit Benchmarks"; except that if an individual employee suffers a wage loss as a result of a violation of Section III, paragraphs 7.g and 10, then the arbitrator may order that the employee be made whole. In addition, in any grievance arbitration in which a grievance claims a violation of Section III of this agreement, the arbitrator shall award costs and reasonable attorneys fees to the prevailing party in such arbitration. If the arbitrator finds a violation of the provisions of Section I, "General Principles," or Section II, "Employee Concessions," he/she may award financial and other remedies. The arbitrator's remedy is subject to an action to enforce or vacate the arbitration award in Circuit Court. The parties stipulate that such action to enforce or vacate shall be expedited, and placed before the court as quickly as possible.

The foregoing provisions do not preempt the rights of an individual employee or Coalition Union to enforce other provisions of collective bargaining agreements through the contractual grievance procedures, or pursuant to law.

The Union and City shall have the right to request information from the other party, to be received at least one week prior to the hearing on the arbitration.

The arbitrator shall require the losing party to pay all arbitration fees and costs, unless there is a split decision in which case the costs are evenly split between the parties.

II. EMPLOYEE CONCESSIONS

1. **Wage Concessions.** The Coalition Employees will incur a reduction in wages of ten (10%) of the base. The concessions will be modified or eliminated as spelled out below. The furlough days being served by the Coalition Employees are terminated. The Wage Concessions hereby terminate at 11:59 pm on the day prior to the termination date of this Agreement, or earlier as outlined otherwise in this Agreement.

A. Trigger of Reduction of the City Deficit. If the City general fund achieves a \$40 million net surplus for fiscal years 2012, 2013 or 2014, regardless of the overall Fund Balance Deficit, then Coalition Employee wages will be adjusted upwards by 2.5% during the next fiscal year starting on the subsequent July 1st. If the City general fund achieves a \$40 million net accumulated surplus over a combination of two or more fiscal years during the life of this Agreement, regardless of the overall Fund Balance Deficit, then Coalition Employee wages will be adjusted up by 2.5% during the next fiscal year on the subsequent July 1st. For any subsequent fiscal year, or combination of fiscal years during the life of this Agreement, where the City achieves a surplus of an additional \$40 million regardless of the overall Fund Balance Deficit, the wages will be adjusted up by another 2.5%. If the City completely eliminates the Fund Balance Deficit, then wages will go back to their original levels prior to the 10% reduction, during the following fiscal year as of July 1st. See examples below.

Example A

Fiscal year 2012 has a surplus of \$70 million. Thus, in fiscal year 2013, wages are increased by 2.5%

Fiscal year 2013 has a surplus of \$20 million; therefore accumulated surplus of \$90 million. Thus, in fiscal year 2014 wages are increased by an additional 2.5%, equating to a total of a 5% increase in wages and leaving 5% in concession.

Example B

Fiscal year 2012 has a surplus of \$80 million. Thus, in fiscal year 2013 wages are increased by 2.5%.

Fiscal year 2013 has a surplus of \$120 million and the general fund balance deficit is eliminated. Thus, in fiscal year 2014 the wages are increased by an additional 6%.

Example C

Fiscal year 2012 has a deficit of \$50 million. Thus, in fiscal year 2013 there is no change in the wages.

Fiscal year 2013 has a surplus of \$80 million ; therefore Accumulated Surplus of \$30 million deficit over the combination of fiscal years 2012-2013. Yet, due to the surplus in fiscal year 2013, wages are increased by 2.5%.

A net surplus is defined as the general fund revenues, less expenses, in that one fiscal year, regardless of the overall Fund Balance Deficit at the time, but not including funds received due to new debt issuance, any one-time surplus resulting from a refinancing transaction (however, savings beyond the initial one time revenue increase from the refinance – such as interest rate reduction – will be included in the calculation of the net surplus addressed in this section), asset sales and any debt principal repayment made beyond its scheduled date of maturity. With respect to proceeds from asset sales, the parties will negotiate regarding any portion of the proceeds of such sale to be included in the net surplus. A net accumulated surplus is defined as the general fund revenues, less expenses, in that combination of two or more fiscal years, regardless of the overall Fund Balance Deficit at the time, but not including funds received due to new debt issuance, any one-time surplus resulting from a refinancing transaction (however, savings beyond the initial one time revenue increase from the refinance – such as interest rate reduction – will be included in the calculation of the net surplus addressed in this section), asset sales any debt principal repayment made beyond its scheduled date of maturity. With respect to proceeds from asset sales, the parties will negotiate regarding any portion of the proceeds of such sale to be included in the net surplus. Fund Balance Deficit means the City's accumulated deficit in its general fund, which is \$196 million as of June 30, 2011. A fiscal year runs from July 1st through June 30th of the following year.

For every year of this Agreement, the City will receive an assessment of the net surplus in its general fund, and the overall Fund Balance Deficit, by or before January 5th of each year of this Agreement, for that current fiscal year. This information will be conveyed to the Coalition Union also by that date. The Coalition Union may have access to all data pertinent to such an assessment.

2. Healthcare.

a. The City has indicated that it needs to attain \$60 million in health care savings (excluding the DWSD employees and the Weiler class retirees), annually, either paid by or subsidized by the general fund. While the Coalition Unions do not bargain concerning retirees' healthcare and nothing regarding this Agreement shall be construed as Coalition involvement in such, ~~Yet,~~ the Coalition Unions agree to changes in the benefit plan design for prescription drugs and medical, dental and vision care which will achieve the active employees' share of this savings target. If the City includes the COPS Trust healthcare plan in the package offered to employees, the calculation for the healthcare savings desired by the City will be reduced by the value of savings to the City's healthcare costs by the amount of money which would have been realized in savings had

COPS Trust been excluded. The Coalition Unions shall discuss plan design costs with healthcare providers. These cost changes shall be applied to all City employees, including public officials, appointees, management, public safety employees, civilians, and exempt and non-exempt employees, however, this provision shall not be violated if the City maintains the COPS Trust plan. Any changes to the above plan design changes will be agreed upon between the parties. The carriers will include Blue Cross & Blue Shield PPO, Health Alliance Plan, Total Health Care, Golden Dental, Dent-Cap, Blue Cross & Blue Shield Dental, Heritage Vision, and Co-op Optical.

b. By or before February 6, 2012, the Coalition Union will report on health care plan design costs from the carriers and provide the data demonstrating such. If the City is not satisfied that the Coalition Union has demonstrated sufficient savings, then it may seek review of the Coalition Union's package by a third party neutral. She will review the data presented by the Coalition Union, as well as the City's proposed plan option (Option 3), in order to assess each package and offer recommendations of employee design plan change ideas to the parties.

c. The plan design proposed by the Coalition Union members for the duration of this Agreement is as follows. The changes will be implemented as soon as possible: The City shall pay no more than 80% of the cost of healthcare, as required by state law in effect at the time of execution of this Agreement.

Plan Deductible: \$250/\$500

Insurance maximum: \$1000/\$2000

Office visit/urgent care: \$15

**Prescription Drug co-pay (purchased through CVS Caremark): \$5/\$15/\$30.
[copayment costs of drugs for generic/brand name/formulary]Elimination of Blue
Care Network**

Elimination of U.S. Health provider

Emergency Room visit: \$75

Hospital visit: no co-pay

Dental contribution: 20%

Vision contributlon: 20%

d. There were Coalition Employees who were under different healthcare plans, prior to the execution of this Agreement. As of the execution of this Agreement, all Coalition Employees will receive the same healthcare plan options and plan designs as all other Coalition Employees.

e. The City shall engage in all reasonable efforts to explore a relationship with Detroit-based hospitals to provide healthcare in direct relationship with City employees, as opposed to going through a health insurance company. The success of said efforts shall be explored in the Joint Budgetary Savings and Revenue Initiatives Committee meetings described below.

3. **Pension Concessions.** The Coalition Employees will agree to the following Pension Concessions and changes set forth in the attached Exhibit B. These changes are effective as of February 28, and are applicable prospectively only. For those employees who have submitted a written application of intent to retire prior to February 28, 2012, those employees shall not be impacted by the changes in the pension benefits, and shall receive pension benefits in effect prior to February 28, 2012. The City represents that it will seek approval of all retirement benefits by all applicable government agencies, including the Internal Revenue Service. If any retirement benefit change fails to attain necessary government agency approval, all other benefits shall remain in effect for the duration of this Agreement.

4. **Early Retirement**

The Coalition Employees will agree to the below early out program for employees who have between 27 and 29 years of service and are any age, employees who have between 7 and 10 years of service and are at least 60 years old, and employees with between 22 and 25 years of service and intend to retire with the Actuarially Reduced 25 Year Option of the Retirement Plan: The City will offer such Coalition Employees the ability to retire three (3) years earlier than otherwise eligible under the contract, with benefits, for employees who have more than [1,000] hours of banked time (i.e., sick time, furlough, vacation or compensatory time) and who relinquish all of their banked time. The City will offer Coalition Employees to retire two years earlier than otherwise eligible under the contract, with benefits, for employees who have between [500] and [1,000] hours of banked time, and who relinquish a maximum of 1000 of banked time. The City will offer Coalition Employees to retire one (1) year earlier than otherwise eligible under the contract, with benefits, for employees who have less than [500] hours of banked time, and who relinquish a maximum of 500 hours of banked time. The utilization of banked time, for purposes of the calculation, begins with sick time.

Employees may purchase service time, to retire early, using their annuity. The City will provide data on the cost of the service time to be purchased by April 1, 2012.

The City will widely advertise the early out program to its employees. The open period for employees to initially apply for the early retirement option shall be no less than 21 days. Upon voluntary retirement, employees will be expected to sign a separation agreement and waiver and release of claims (the terms of which shall be agreed upon by the City and Coalition Unions), and the City will comply with all applicable federal and state laws, and regulations, concerning this early out program.

The City will facilitate quick meetings and exit interviews with employees who seek to retire in conformity with this Agreement.

Coalition Employees who are veterans shall have the ability to purchase service time, at the actuarially determines service cost, for all active duty military service.

III. LEAN OPTIMIZATION COMMITMENT AND UNION DEFICIT BENCHMARKS

A. General Principles Of Lean Optimization

During the 2011 negotiations, the parties discussed the role of the labor management cooperation and collaboration in providing more efficient delivery of services to the people of Detroit. The parties recognize that the efficient delivery of service to the public should be mindful of the cost effectiveness, quality of delivery, accountability and public interest. The parties agree that all stakeholders must work together in an open dialogue manner to achieve best in class public service.

The parties agreed to approach the issue jointly with the goal of facilitating the development of positive programs relative to the effective use of resources. Such effective use of resources may include self-directed work teams or other empowerment initiatives as agreed by the parties to provide front line workers with the support needed to effectively perform their jobs.

The parties recognize that Lean Optimization can be a valuable tool in achieving the effective use of resources. Lean Optimization has the simple goal of helping city government work better for both its customers and its employees. Lean practices rely on joint participation between employees and management at all levels within the City. World class service cannot occur without such employee involvement.

The Mayor and all levels of his administration, and City Council, agree that the below Deficit Benchmarks and all other aspects of this Agreement are among the necessary tools that must be pursued in order to have the City attain financial stability. By executing this Agreement, they agree to comply with these Deficit Benchmarks and all other aspects of this Agreement.

For the below Committees, coordinated training for the Coalition Unions and the City will take place within (30) days after ratification of this Agreement.

B. Committee Creation

1. Joint Budgetary Savings and Revenue Initiatives Committee - Within twenty (20) days after the effective date of this Agreement, a Joint Budgetary Savings and Revenue Initiatives Committee ("JBS Committee") will be established to explore innovative initiatives to deliver better customer service and pursue better value from those who deliver the services. The parties agree to meet on a monthly basis, and shall be responsible for reporting their progress to the City Administration's Chief Operations Officer and the Coalition Unions. The City Representatives to this Committee shall be decided by the City's Director of Labor Relations and the Chief Operating Officer, and the Coalition Unions may elect up to 6 representatives to be on this Committee, and the City shall have 6 representatives appointed to such Committee.

Representatives from the Departments may participate as needed. The Committee will determine the meeting schedule and agenda. The parties agree on the value of utilizing outside independent facilitators trained in business lean practices and will explore funding alternatives to engage mutually agreed upon lean consultants. The any member of the Committee shall have access to all information pertinent to the performance of their duties, from either the Administration or the City Council. Upon request, the information shall be conveyed within seven days of request.

The Committee's responsibility shall also be to monitor the achievement of the Union Deficit Benchmarks spelled out in Section III below, and otherwise to assure compliance with this Agreement.

2. Joint Healthcare Committee - Healthcare Cost Containment. During the 2011 negotiations, the parties discussed the mutual goal of designing and implementing healthcare plans, including ancillary plans, that effectively manage costs and that work to keep members healthy. The Coalition Unions may elect up to 6 representatives to be on this Committee, and the City shall have 6 representatives appointed to such Committee, within 30 days of execution of this Agreement. The Committee will be jointly chaired by the designee of the City and Coalition Unions. To that end, the City and the Coalition Unions will convene a Joint Healthcare Committee (the "Committee") whose charges will include, but not be limited to:

- a. Analysis of current plan performance identifying opportunities for improvement;
- b. Investigate potential savings opportunities from re-contracting pharmacy or other carrier contracts;
- c. Review the current specialty pharmacy program and identify best-in-class specialty programs to use as a benchmark;
- d. Analyze current HMO plans to determine if they are a cost-effective means of providing high quality healthcare;
- e. Investigate impact on outcomes and costs of Value Based Benefit Designs;
- f. Identify opportunities for cost-containment programs and carve out programs;
- g. Investigate opportunities to save costs by modifying or otherwise limiting medical, professional and pharmacy networks;
- h. Review current chronic care management programs to determine effectiveness as well as ongoing member compliance;
- i. Investigate workplace health and wellness programs and make recommendations with the goal of educating and motivating employees toward improved health and well-being;

- j. Make recommendations to increase voluntary participation in health and wellness screenings and benefits included in current health plans;
- k. Identify educational opportunities relative to facility and professional provider quality data, as well as designated centers of excellence.

As mutually agreed by the parties, independent subject matter experts and consultants may be called upon to assist the Committee in carrying out their charges.

Monthly meetings of the Committee shall be scheduled with the first being held no later than 45 days following the effective date of the Agreement.

3. Contracting Out Committee – In order to attain the 10% reduction from third party contractors (discussed in benchmarks below) and otherwise attain savings and efficient practices in privatization, representatives of the City Administration and Union Coalition will form a Contracting Out Committee (“Committee”), with six persons from each group. The Committee will review all contracts with third party persons or entities, that are paid in some part directly, or indirectly, from the general fund. The Committee will oversee the process of the 10% reduction in the gross contract value being asked of all contractors. The Committee will also make recommendations to the Administration on ways to attain efficiencies and savings in the contract procurement process. In making their assessment, the Contracting Committee may:

- * schedule meetings with the contractor and bidders, to discuss the price being offered for the goods/service;
- * review current and proposed contracts for compliance with the Privatization Ordinance;
- Seek evaluation of the contracts by an outside expert mutually agreed to by the City and the Coalition Unions;
- recommend termination of the contract in conformity with its terms and seeking alternative sources of supply for the services;
- Study and consideration of a plan for the work being performed by City employees rather than outside contractors where an objective, demonstrable cost savings can be established.

The Committee will also review contracts which are paid with dollars from the City’s enterprise funds, and recommend similar adjustments to such contracts to the heads of those Departments. The Committee will have access to all data surrounding the contracts of general and enterprise funds.

The Committee will also explore potential savings with insourcing work that is currently being done by a contractor. The Committee will look at objective, and demonstrable savings to be realized by having city employees perform work that contractors now perform. In-sourcing analysis may include the retention of an outside consultant, who shall be mutually acceptable to both the City and the Union Coalition.

The Committee will meet once per month, the first meeting being 10 days following execution of this Agreement, and will report to the City Chief Operating Officer and the Union Coalition chief spokesperson. Their reports will include all of the above information.

C. Deficit Benchmarks

1. **1. 125k Plan.** The City will implement a Section 125 Plan for flexible spending accounts, dependent care accounts, and medical contribution pre-tax accounts. This plan will permit employees to contribute to these accounts, pre-tax. It will begin April 1, 2012. The provider of this plan will be Colonial Life, assuming that the package offered by Colonial is deemed reasonable by both parties.
2. **2. Reducing Contractor Costs.** The City acknowledges that cost reduction efforts should not be limited to employee concessions in wages and benefits. The City will aggressively seek a ten percent (10%) reduction in the gross value of each and every contract the City has with a contractor. Contractor is defined as any person or entity which receives payment from the City's general fund directly or indirectly (i.e., an enterprise fund which is subsidized by the general fund), and includes contracts let through a City agency (i.e., Detroit Building Department), but excluding contracts let to the federal government.

All City Contractors will be told that they have until February 15, 2012 to indicate that their contract can be amended to provide for a 10% reduction in the gross value of the contract.

By February 15, 2012 or one week following ratification, whichever date is the latter, each City Department using Contractors will prepare a written summary of all Contractors that it utilizes. The list will indicate for each Contractor: the name of the Contractor and the contact person, the value of the contract, the services provided by the contract, the gross amount of invoices submitted by the Contractor within the 2011 calendar year, the total paid to the Contractor within the 2011 calendar year, whether or not the Contractor has been asked for a 10% reduction, and the response of the Contractor. The information shall be forwarded to the Union Coalition.

For all Contractors who agree to a 10% reduction in the gross value of the contract, then the City (including the Purchasing Director and City Council) shall immediately modify the contract and adjust the payments to the Contractor accordingly. For those Contractors who either fail to respond, or respond by agreeing to no reduction or a reduction of less than 10%, upon recommendation of the Committee, the Purchasing Director shall promptly send out the previous request for proposal with scope of services to other persons/entities who the Purchasing Director or the Committee feel may be able to replace the current Contractor.

The Committee will oversee the Purchasing Director's submission of the scope of services and request for proposals to other Contractors, which will take place within two weeks of the Contractor's response, or at the latest by February 24, 2012. The bids are due within thirty (30) days, and the bid price sought should be at 10% less than the current Contractor's cost. The Committee will review the bids once submitted and assess

whether the work could be done, or goods can be offered, by any of the bidders for less than the current contractor's cost.

The City and Committee will utilize the services of at least one expert in contract procurement to assist with this evaluation. If the Purchasing Director determines that the work/goods can be offered by another bidder for less than the current Contractor, then the Purchasing Director will terminate the current Contractor's contract, as permitted by law, and initiate the process for securing the contract with the bidder. The Contracting Committee may review the decision of the Purchasing Director, and will have access to all data pertinent to the decision of the Purchasing Director. If any member on the Committee disagrees with the Purchasing Director's decision about whether a bidder should replace the current contractor, then the neutral expert in contract procurement, that the Committee had previously designated to hear such disputes, will make the final determination, after having access to all data pertinent to the current contract and bidders on the contract.

3. **Elimination of Daily Overtime.** The City will eliminate payment of daily overtime for all City employees, except as required by state or federal law or regulation.
4. **Elimination of 35 Hour Work Week.** The City will eliminate the 35 hour work week for all City employees, except as required by state or federal law or regulation.
5. **Quarterly Review of Financials.** The City will conduct a quarterly financial review meeting to which a representative of the Union Coalition will be invited. Each Department Head (or designee) shall appear at the meeting to review all actual expenditures of his/her Department. The Department must demonstrate the amount of all actual expenditures and how actual expenditures track the budgeted spending allotments. If the Department is spending more than allotted, at that point in time, it shall adjust its spending accordingly or seek an amendment of the overall budget, with good cause. The Union Coalition may request pertinent financial information to assist in the departmental financial review.
6. **Efforts for Increased Revenue Collection.**

The City and the Union Coalition believe that there are serious opportunities for the collection of increased revenue as a vital component in meeting the City's fiscal crisis. Accordingly, the following revenue collection measures will be implemented and supported by the City, the Coalition Unions, and Coalition Employees.

- a. Beginning on or before the date of execution of this Agreement, the City will widely advertise an amnesty plan for past due taxes (income taxes, personal property taxes, corporate taxes, property taxes which have not been transferred to Wayne County via revolving fund arrangement), parking tickets, tickets for ordinance, and other outstanding debts. The debtors will be told that they may enter into a payment plan, and if they pay or begin a payment plan between March 15, 2012 through May 15, 2012, the debtors will be relieved of payment of the accrued penalties. Following the end of the amnesty period, the Administration

shall provide to the Union Coalition all data related to the amount of the outstanding debts and the amount of money collected in the amnesty period.

- b. The City shall engage in all reasonable efforts to have state law changed/clarified to require all Employers of City residents to withhold City income taxes via payroll deduction, require Employers within the City to withhold City income taxes via payroll deduction, and to require all Employers to transmit the City withheld income taxes electronically to the City, automatically. Also, the City shall seek all necessary changes in state law to grant it more ability to utilize parking boots on automobiles where owners have past due parking tickets. The Union Coalition will assist in this regard.
- c. As soon as approved by City Council, but certainly no later than February 15, 2012, the Administration and City Council shall increase the corporate tax rate to 2.0% for all applicable entities in the City. This tax rate shall remain at 2.0% for the duration of this three-year Agreement, and certainly as long as Union Coalition members are incurring Wage Concessions.
- d. The City shall continue to take electronic payment for property taxes and will investigate additional areas to set up electronic payments.
- e. The City will engage all reasonable efforts to streamline, and make more efficient and effective, the process and bureaucracy for the use of City services which concern the payment of fees or monies by the public.
- f. The City will continue to actively engage the State of Michigan in seeking a change in state law to permit taxes on non-resident wagering. The Union Coalition will assist in this regard.
- g. Within thirty (30) days of the execution of this Agreement, the JBS Committee will implement and oversee an operational plan for the trial hire of additional employees directly involved in collection of debts owed to the City. The Union Coalition suggested operational plan staffing is outlined below. The JBS Committee will review the below plan and a majority of the Committee may make alterations in the plan. Subject to JBS Committee alteration, the following number of employees will be hired, as soon as they can be successfully recruited by the City, in the following classifications:
 - i. 10 – Income Tax Investigator
 - ii. 10 – Office Assistant II
 - iii. 10 – Senior Clerks
 - iv. 10 – lawyers
 - v. 8 - legal secretaries

- vi. 7 - legal assistants
- vii. 3 - Parking Meter Collection Assistants
- viii. 3 - Meter Repairmen
- xi. 15 - Parking Enforcement Officers
- x. 10 - Building Inspectors

Any employees hired for this project shall be hired as temporary employees for a period of up to six (6) months. During the period of temporary employment, the employees will receive the salary levels as outlined in the relevant Union Contract and have union representational rights, but will not be eligible for accrued time contractual benefits; will not have seniority accrual rights or healthcare. If the employee hired under this plan, collectively, result in revenue being brought in and collected to the City, in an amount 1.5 times greater than what is paid to the entire group of employees in wages, then the entire group of employees will receive all applicable contract benefits and become a full time, permanent employee. The assessment of the employees' revenue brought to the City will be measured by the last five months of the six month period.

The trial period concludes at the end of the six months. If, following the trial period, the trial plan did not result in the entire group bringing in revenue at least as much as 1.5 times the cost of the wages of the employees in the trial plan, the City shall have the right to discontinue the program and such action will not be opposed by the Union Coalition, except to challenge the finding that the above metric was not met.

During this six month trial period, no employees in the above classifications and in the departments and divisions of the operational plan, shall be laid off by the City.

- h. The City's efforts in collecting outstanding revenue, such as past due debts, may also include the hiring of an outside revenue consultant. Should a consultant be hired, he/she shall be agreed upon mutually by the City and designee(s) of the Coalition Unions.
7. **Removing City-Owned Residential Parcels and Vacant Lots From Tax Roles.** The City will use its best efforts to have City-owned residential parcels and vacant lots purchased by private owners. The City represents to the Union Coalition, however, that the vast majority of the residential parcels are not in desirable areas and/or may not be habitable, and that there is currently little demand for the purchase of vacant lots.
 8. **Re-Negotiate and Consolidate Leases.** The City shall continue its current efforts to renegotiate its leased property with its landlords, and attain a reduction in the price of all

rent paid. The City shall also continue its current efforts to consolidate its office with the objective that it is not spending money on leased space unnecessarily. The City anticipates having a plan in place in January 2012 with the objective of saving the City approximately \$1.8 million over the next one to two years.

9. **Supervisory Ratios.** In furtherance of principles of Lean Optimization, the City will evaluate appropriate supervisory/hourly employee ratios in each department or operation. Within thirty (30) days after the execution of this Agreement, the JBS Committee shall provide the City a list of identified departments/operations where it believes an evaluation of supervisory/hourly employee ratios should be performed, and a reduction in the supervisory workforce shall take place. The City shall engage in all reasonable efforts to implement a plan by or before July 1, 2012.
10. **Taxes on Non-Resident Wagering.** The City shall engage all reasonable efforts to have state law changed to permit taxes on non-resident wagering. The Union Coalition will assist in this regard.
11. **Reduction of Expenses.** No City employee or public official will be permitted to utilize City equipment for personal use, unless required by law or by contract. This includes City vehicles.

CITY OF DETROIT

UNION COALITION

By: JUN
Its: COO 2/1/12

By: Edward D. McNeil
Its: Special Asst to President
Aug 2/1/12
SAAA
M. J. A.M.I.

~~IA~~ IU06324

John PAA UA 4 2211

John G. Wallace Mich. Bldg Inds.
AFSCME LOCAL 102
Joseph W. Wain AFSCME 100

Robert A. Stokes AFSCME #2

Richard King ACODS
Uprone Boss AFSCME #2791

Dodd Thompson AFSCME 120

Dan O'Rourke IUOE 324
32CWA AFSCME LOCAL 229

Lennie Walker AFSCME 457
Ken H. Thompson-Mitchell 169

D.I.T.I.

Jim Valente TEAMSTERS 214

Union
AFSCME 534

EXHIBIT B
PENSION CONCESSIONS

1. **Reduction of Multiplier.** Effective upon settlement, reduce multiplier to 1.5, per year, for all years of credited service accrued by non-vested Union members after the execution of this Agreement.
2. **Defined Contribution Plan for New Hires.** All bargaining unit members hired into the City after July 1, 2012, herein will not accrue any benefits under the present defined benefit plan between the parties. Rather, they will receive benefits only pursuant to the defined contribution plan described below:

Employee Contribution Account

- a. **Basic Employer Contributions.** The employer shall contribute an amount equal to five (5%) percent of the participant's base salary to each participant's employer contribution account each pay period.
- b. For members on duty disability, the amount contributed shall be equal to five (5%) percent of the participant's base salary on the date of disability.
- c. **Employee Contribution.** The employee shall contribute an amount equal to five (5%) percent of the participant's base salary to each participant's employee contribution account each pay period.
- d. Employee contributions shall be made on a pre-tax basis subject to the approval of the Internal Revenue Service.

Periods of Absence Due to Non-Duty Disability. Employees on non-duty disability are no longer active participants in the Plan and may not receive employer contributions or make employee contributions.

Vesting. All account balances are subject to the following vesting schedule:

- a. **Employee Contribution Account.** A participant shall always be one hundred (100%) percent vested in such participant's employee contribution account.
- b. **Employer Contribution Account.** A participant shall be vested in the balance of such participant's employer contribution account as follows:

<u>Years of Service</u>	<u>Percentage Vested</u>
5 or more	100%

3. **Effective upon settlement, distributions to Participant Annuity Accounts may not exceed actual earnings by the Fund, but shall neither be greater than the assumed rate of return for the plan year, nor less than zero.**

Participant annuity accounts shall be ratably adjusted, not less frequently than once a year based upon actual returns experienced by the retirement system during the fiscal year preceding the crediting date, provided that such return shall neither be greater than the assumed rate of return as is expressed in the Plan's valuation for that year, nor less than zero. Any final distribution of the account balance to a participant or beneficiary shall be delayed until the final adjustment has been made.

Other than as provided above, bargaining unit members shall not be entitled to any assets, including but not limited to, interest, dividends, or other income of any kind derived from the investments of the retirement system, gifts and bequests received by the retirement system, and all other assets of the retirement system, which shall be used exclusively to fund pension payments on the basis of service performed, disability benefits and death benefits as provided herein.

4. Limitation on Unused Accumulated Sick Leave Inclusion in Final Average Compensation.

a. Any employee with more than 240 hours of unused accumulated sick leave as of the date of ratification of this Agreement may have all such hours included in the employee's final average compensation ("FAC") upon the employee's retirement (unless such hours are subsequently used by the employee for sick time). Any additional unused, accumulated sick leave earned by the employee after the date of ratification of this Agreement may not be included in the employee's FAC upon retirement.

Employees with more than 240 hours of sick time may elect to contribute the full value of all sick time above 240 hours to the employee's participant annuity account. This option is exercised as opposed to the employee receiving a cash payment for the sick time. This sick time contributed to the annuity shall not be withdrawn by the employee, prior to timely distribution upon retirement.

b. Any employee with 240 or less hours of unused, accumulated sick leave as of the date of ratification of this Agreement, and all new City hires after the date of execution of this Agreement, may accumulate a maximum of 240 hours of unused, accumulated sick leave that may be used in determining their FAC upon retirement.

c. If an employee who had more than 240 hours of unused, accumulated sick leave as of the date of ratification of this Agreement, subsequently uses sick leave and falls below the 240 hour level at any time, s/he shall be subject to the maximum 240 hour cap set forth above in determining their FAC upon retirement.

**TENTATIVE AGREEMENT 2-1-2012
 LETTER OF UNDERSTANDING ("Agreement")
 BETWEEN
 CITY OF DETROIT
 AND
 THE COALITION OF CITY OF DETROIT UNIONS CONCERNING RETIREE
 HEALTHCARE**

It is hereby agreed between the parties that the Coalition Unions waive their right to grieve and arbitrate, participate as a party or sponsor legal action brought by retirees concerning the changes in their health care which may arise in 2012.

Will K

Gina M. Thompson-Mitchell Local 1642

Edward D. D'Amico
2/1/12

[Signature] DITIA

[Signature] SAAT

[Signature] Teamsters 214

[Signature] A.M.I.

[Signature] AFSCME 836

[Signature] IUE 324

[Signature] IAA 22144W

[Signature] AFSCME LOCAL 1023

[Signature] AFSCME 1227

[Signature] AFSCME #23

[Signature] AFSCME 62

Richard King ACODS

[Signature] AFSCME #2799

[Signature] AFSCME 1220

Dan O'Rourke IUE 324

[Signature] Mich. Bldg. Trds.

[Signature] AFSCME LOCAL 229

[Signature] AFSCME LOCAL 477

**TENTATIVE AGREEMENT TO EXTEND AND MODIFY
COLLECTIVE BARGAINING AGREEMENT**

This Tentative Agreement ("TA") is entered this 9th day of July, 2012, by and between the City of Detroit ("City") and the Detroit Police Command Officers Association ("Union").

In order to address the City's current fiscal crisis, the City of Detroit ("City") and the Detroit Police Command Officers Association ("Union") hereby agree on the following terms for a new collective bargaining agreement. Unless otherwise stated herein, the provisions of the expired 2004-2009 collective bargaining agreement shall be incorporated into the new Agreement. The Union's acceptance of this TA to extend and modify collective bargaining agreement enumerated below is conditioned upon agreement and execution by the Treasurer of the State of Michigan and/or his agent. Upon execution the DPCOA shall submit the TA below for membership ratification.

1. Terms of Agreement. The new collective bargaining agreement shall be effective from the expiration date of the prior collective bargaining agreement between the parties and shall continue in full force and effect through June 30, 2015.
2. Wages. There shall be no changes in wages after the term of the current agreement and through June 30, 2015. The City agrees to open up wage discussions at the end of the term of this agreement. The applicable law will apply to the negotiation of a subsequent collective bargaining agreement.
3. Performance Bonus. Members shall be entitled to receive an annual bonus calculated as 20% of the annual savings achieved as a result of the implementation of item #6 of this agreement.
4. Suspension of Educational Reimbursement. The provisions of Article 34, "Educational Reimbursement," of the new Agreement shall be suspended until July 1, 2015.
5. Holiday Pay. Article 27 "Holidays," shall be modified in the new Agreement to provide that of the twenty-four (24) hours of compensation paid to members who work on contractual holidays, twelve (12) hours will be paid as cash, and twelve (12) hours will be credited as compensatory leave time to the member's leave bank.
6. Bonus Vacation Days. Bonus vacation days of Union members that are not utilized during the fiscal year will be banked and paid at the rate of pay and rank at time of banking
7. Early Retirement. An Early Retirement Incentive Program ("ERIP") will be offered to a limited number of officers in the Department and the participation will be based on seniority. The total maximum number of early retirements will be 150, to be allocated to members of the DPOA (76%), the DPLSA (23%) and the DPCOA (1%).

Employees will be eligible to participate in the ERIP if they (a) are three (3) years or less away from completing 25 years of service, and (b) have sufficient banked time to purchase the remaining service time. Officers participating in the program will retire immediately using their years of service and banked time to get to 20 years of service and their pension will be calculated based on 20 years of service. All banked time will be relinquished in exchange for retirement service credit.

The City will offer members with between 22 and 25 years of service the ability to early retire as follows: The City will offer such members the ability to retire three (3) years earlier than otherwise eligible under the contract, with benefits to the extent otherwise eligible, for employees who have more than [1,000] hours of banked time (i.e. sick time, furlough, vacation or compensatory time), and who relinquish all of their banked time. The City will offer members to retire two (2) years earlier than otherwise eligible under the contract, with benefits to the extent otherwise eligible, for employees who have at least [500] or more hours of banked time, and who relinquish all of their banked time. The City will offer members to retire one (1) year earlier than otherwise eligible under the contract, with benefits to the extent otherwise eligible, for employees who have less than [500] hours of banked time, and who relinquish all of their banked time. The utilization of banked time, for purposes of the calculation, begins with sick time.

8. Attrition and Members Leaving Through Early Retirement. The Union agrees that it will not grieve or otherwise challenge any decision by the City not to replace members leaving the Department between July 1, 2011 and June 30, 2012, and the elimination of such positions from the 2012-2013 budget. Nothing in this provision shall be interpreted as limiting the right of the City to eliminate positions thereafter.
9. Elimination of Merit Pay. Members will no longer receive annual merit payments.
10. Separation Payments (not including DROP). All provisions of the collective bargaining agreement relating to separation payments shall be modified to provide that, for future separation payments to members who were already eligible to retire as of the effective date of this TA, a member will have the option of receiving (a) a lump sum payment ninety (90) days after separation, or (b) semi-annual installments for a period of three (3) years after separation, with no interest unless payment is not made on the date it is due. This option shall not be available to members in the ERIP established as part of this TA.
11. Payment of accumulated banked time upon election to participate in the D.R.O.P. The provisions of Article 42, "Retirement 'DROP' Plan," of the collective bargaining agreement shall be modified in accordance with the Memorandum of Understanding attached hereto as **Exhibit B**.
12. Use of Furlough. Article 30 shall be modified to provide as follows: A member shall be able to use furlough time in daily or one week increments as long as their command/assignment is adequately staffed and as long as their absence does not compromise the daily operation of that command. Additionally, the furlough

must be used within the furlough period or there must be permission from the Chief of Police to carry over a furlough to next furlough period. All furlough must be exhausted before separation from the Department.

13. Promotions. Article 49 shall be modified as follows: The member must have a minimum of three (3) years in the rank of Lieutenant to be eligible to be promoted to the rank of Inspector. Additionally, any member promoted to the rank of Inspector must have attained a Bachelor's Degree to be eligible for consideration to the rank of Commander. Any member currently holding the rank of Commander who does not have a Bachelor's Degree shall be grandfathered in that rank. All other members will be required to have a minimum of a Bachelor's Degree to be eligible for consideration for promotion to the rank of Commander or above.

14. Promotions – Disciplinary History. Article 49 shall be modified to provide as follows: A member will not be eligible to be considered for promotion to the rank of Inspector or above, if he or she has a significant disciplinary history within the previous five (5) years. The following would be grounds for disqualification for promotion to Inspector or above: (a) having a conviction of a felony or misdemeanor under the laws of any jurisdiction; (b) being on the third step of attendance control; (c) being under a last chance agreement for any reason; (d) having been disciplined for a violation of substance abuse, and (e) harassment or violence in the workplace in the three years preceding the anticipated date of promotion.

15. Medical, Dental and Vision Benefits for Employees. COPS Trust can maintain its current design. The City's maximum contribution for any health plan shall be 80% of the Option 1 Plan offered by BCBSMI/CVS Caremark (**Exhibit A**).

Initial rates for the BCBSMI/CVS Caremark Option 1 shall be maintained in full force and effect from March 1st, 2012 to June 30th, 2013. These rates may not be implemented until there has been an Open Enrollment after reasonable notice to employees.

The mutually agreed upon methodology establishing illustrative rates on BCBSMI/CVS Caremark Option base plan are attached hereto and marked as **Exhibit D**.

16. Spousal Medical Coverage. The City will provide coverage for working spouses eligible for insurance coverage through their employer, only under the COPS Trust Plan and subject to the cost sharing arrangement set forth under Item 15.

17. Pension Benefits. Article 41, "Pension Provisions," shall be modified in accordance with the following provisions:
 - a. Eliminator of Escalator. Pension benefits earned based on service rendered after the date of settlement would no longer receive a 2.25% per annum escalation.

- b. Reduction of Multiplier. Reduce multiplier from 2.5% to 2.1% for the first 25 years of credited service accrued by Association members after the date of settlement. The multiplier would remain at 2.1% for the 26th through 35th years.
- c. Defined Contribution Plan for all Bargaining Unit Members. All bargaining unit members hired into the Department after June 30, 2012 shall not accrue any further benefits under the present defined benefit plan between the parties. Rather, they will receive benefits only pursuant to the defined contribution plan described below:

Employee Contribution Account

- i. Basic Employer Contributions. The City shall contribute an amount equal to 10% of the participant's base salary to each participant's employer contribution account each pay period.
- ii. For Members On Duty Disability, the amount contributed shall be equal to 10% of the participant's base salary on the date of disability, or 25 years of credited service, which includes time spent on duty disability. On July 1st each year, the amount contributed shall be increased by adding an additional 2.25% to the initial base salary amount at the time the duty disability began. The amount contributed shall be the product of 10% of both the initial base salary and these yearly increments.
- iii. Employee Contribution. The employee shall contribute an amount equal to 5% of the participant's base salary to each participant's employee contribution account each pay period.
- iv. Employee contributions shall be made on a pre-tax basis subject to the approval of the Internal Revenue Service.

Periods of Absence due to Non-Duty Disability. Employees on non-duty disability are no longer active participants in the Plan and may not receive employer contributions or make employee contributions.

Vesting. All account balances are subject to the following vesting schedule:

- i. Employee Contribution Account. A participant shall always be 100% vested in such participant's employee contribution account.
- ii. Employer Contribution Account. A participant shall be vested in the balance of such participant's employer contribution account as follows:

<u>Years of Service</u>	<u>Percentage Vested</u>
5 or more	100%

d. Police and Fire Pension Board Composition. The Mayor of the City of Detroit may appoint an additional Trustee(s) as necessary to maintain an equal number of participant Trustees and non-participant Trustees on the Board as awarded in the matter of *City of Detroit -and- Detroit Police Command Officers Association*, Case No. D07 K-1456.

18. State Review of Collective Bargaining Agreement. If, during the term of this TA a consent decree is entered into pursuant to the State Financial Authority Recovery Plan and/or Continuing Operations Plan pursuant to the Local Government and School District Accountability Act, Act Number 4, Public Acts of 2011, MCL 141, 1501 et.seq. the terms of the collective bargaining agreement extended herein and this TA shall be maintained in whole and cannot be terminated, modified and/or changed whatsoever during its terms for any reason except by mutual agreement between the parties. This provision applies and covers a consent decree Recovery Plan and/or Continuing Operations Plan and/or any Plan, however titled and by whatever description. In the event the paragraph herein is breached the contractual modification agreed to in this TA shall automatically revert back to the language that existed prior to this extension and modification agreement.

19. Grievances. A violation of any provision of this TA shall be subject to the CBA's grievance/arbitration procedure (Articles 7 and 8 et. al.) with the exception of paragraph 18.

20. More Favorable DFFA Wage, Healthcare or Pension Provisions. In the event that the wage, healthcare or pension provisions of any agreement reached with the DFFA to extend and modify their current collective bargaining agreement with the City are more favorable than those stated in this agreement, the terms of this TA, the terms of this TA shall be modified to incorporate the more favorable provisions.

CITY OF DETROIT

By: [Signature]
COO

DETROIT POLICE COMMAND OFFICERS ASSOCIATION

By: [Signature] 2/9/12

By: [Signature] 2/9/12

EXHIBIT A

OUTLINE OF MEDICAL, DENTAL AND VISION PLANS

PPO Plan, HAP/BCN plan(s), THC plan	In-Network	Out-of-Network **
Participant Premium Contribution	20% for all plans	20% for all plans
Plan Deductible	\$250/\$500	\$500/\$1000
Co-insurance %	20%	40%
Co-insurance maximum (OOP Max)	\$1,000/\$2,000	\$2,000/\$4,000
Office visit	\$15	Subject to deductible and coinsurance
Urgent care co-pay	\$15	Subject to deductible and coinsurance
Emergency room	\$75	\$75
Hospital co-pay	\$0	\$0
Rx Drug Plan		
Co-pay (retail, mail 2x for 90 day supply)	\$5/\$15/\$30	
Mandatory mail	After 34 days	
Mandatory generic	Required	
Traditional generic – step therapy	Required	
Exclusion of lifestyle drugs	Required	
COPS Trust		
Deductible	\$175/\$350	
Coinsurance %	10%	
Co-insurance maximum (OOP Max)	\$825/\$1650	
Office visit/Urgent Care co-pay	\$10	
Emergency Room co-pay	\$75	
Hospital co-pay	\$0	
COPS Trust Rx Drug Plan		
Co-pay (retail, mail 2x for 90 day supply)	\$5/\$15	
Mandatory mail	N/A	
Mandatory generic	N/A	
Traditional generic – step therapy	N/A	
Exclusion of lifestyle drugs	N/A	
Other Changes		
Participants contribute 20% for dental and vision coverage		
Participants may choose any dental benefit currently in force with the City of Detroit including COPS Trust.		
Participants may choose any vision benefit currently in force with the City of Detroit including COPS Trust. Co-op Optical eliminated		

EXHIBIT A

OUTLINE OF MEDICAL, DENTAL AND VISION PLANS

Vision Plans

	BCBSM VSP Plan	Heritage Vision	COPS Trust -Spectera
Eye Exam	Covered	Covered	Covered
Frame Allowance	\$75*	\$100*	Up to \$130*
Eye Glass Lenses	Covered	Covered	Prism & Oversized Not Covered
Contacts in lieu of Glasses	\$175	\$90	Up to \$210
Progressive Myopia	Up to Age 19*	Up to Age 19*	Not Covered
Dependents	Up to 19 Covered*	Up to 19 Covered*	Up to 19 Covered*
Adult Dependents	Not Covered	Not Covered	Covered*

*some restrictions apply

EXHIBIT A

OUTLINE OF MEDICAL, DENTAL AND VISION PLANS

Rates

Initial Dental Rates to 6/30/2013

BCBSM Dental (\$1,000 Orthodontia)	\$ 3.28 per pay period
BCBSM Dental (\$3,000 Orthodontia)	\$ 15.95 per pay period
Golden Dental	\$ 2.77 per pay period
DenCap	\$ 2.77 per pay period
COPS Trust Dental	\$ 3.28 per pay period

Initial Vision Rates to 6/30/2013

Heritage Optical	\$ 0.54 per pay period
BCBSM -VSP Vision	\$ 2.19 per pay period
Spectera Optical	\$ 0.54 per pay period
COPS Trust Vision	\$ 0.54 per pay period

Initial Medical Rates to 6/30/2013

BCBSM Option 1	
Single	\$ 43.25 per pay period
2 Person	\$ 90.74 per pay period
Family	\$ 101.48 per pay period
Total Health Care Option 1	
Single	\$ 32.81 per pay period
2 Person	\$ 67.95 per pay period
Family	\$ 88.59 per pay period
Blue Care Network Option 1	
Single	\$ 43.72 per pay period
2 Person	\$ 97.94 per pay period
Family	\$ 110.18 per pay period
COPS Trust	
Single	\$ 50.98 per pay period
2 Person	\$ 106.24 per pay period
Family	\$ 125.54 per pay period

EXHIBIT A

OUTLINE OF MEDICAL, DENTAL AND VISION PLANS

Hospitalization Plan Design Changes – Effective April 1st, 2012:
(Items A&B below apply to all plans with the exception of COPS Trust)

- A. **Mandatory Use of Generic Drugs.** Generic drugs required unless pre-determined that brand name drug is medically required or a generic equivalent is not available. If brand drug requested but not medically required or generic is available, employee, retiree, or covered dependent must pay the applicable brand name co-pay amount plus the difference between the cost of the generic drug and brand name drug, even if dispense as written (DAW) is written on the prescription. Appeal procedure for any dispute is available under applicable healthcare plan.
- B. **Limitation on Prescription Drugs.** City will not pay for fertility or impotence prescription drugs under the City's prescription drug programs. This provision does not apply to prescription birth control pills.
- C. **Medicare Advantage.** Enrollment options for retirees and covered dependents that are Medicare-eligible shall be limited to the Medicare advantage plans offered by the City. In the event such Medicare Advantage plans are no longer offered or not cost effective, enrollment in alternate plans will be permitted as determined by the City.
- D. **New Hire.** Eligibility qualifier for hospitalization-medical coverage is the first of the month after new hire completes 91st day of employment.
- E. **New Hire.** Optical coverage eligibility qualifier changed from 60 days to 6 months.
- F. **Sponsored Dependent coverage eliminated in its entirety.**
- G. **Remarriage.** If a retiree marries or remarries after retirement, new spouse and his/her dependents are not eligible for coverage under the City's healthcare plans.
- H. **Dependent Health Care Coverage.** The child of a divorced spouse or a new spouse of a retiree who is neither the biological, legally adopted nor legally guardian child of the employee or retiree is ineligible for dependent health care coverage under this Agreement.
- I. **Requirement to Obtain Medicare A & B.** Consistent with current practice, all retirees and covered dependents are required to enroll into Medicare Parts A & B. Failure to enroll or maintain Medicare Parts A & B, City hospitalization-medical coverage will be terminated.

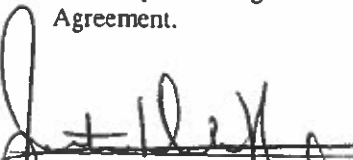
EXHIBIT B

Memorandum of Understanding


The City of Detroit ("CITY") and the Detroit Police Officers Association ("DPOA") together with the Detroit Police and Lieutenants and Sergeants' Association ("DPLSA") and the ("DPCOA") Detroit Police Command Officers Association enter into this Memorandum of Understanding ("Agreement") with the intent to bring closure to any and all claims, charges, grievances, civil litigation, appellate procedures, administrative charges, and any other disputes between the respective parties on the issue of the Deferred Retirement Option Plan ("DROP") and the lump sum payouts that members can elect upon their entry into the DROP Plan.

1. All DPOA, DPCOA, & DPLSA members who applied to participate in the DROP on or before the effective date of this agreement will be paid their lump sum amounts not later than sixty (60) days from the execution of this Agreement.
2. All DPOA members paid pursuant to paragraph 1 above will receive interest on their payouts consistent with Umpire George Roumell's Opinion and Award dated April 29, 2011 in Grievance No. 10-082.
3. All DPLSA members paid pursuant to paragraph 1 above will be paid Michigan Judgment Interest if that member does not receive their lump sum DROP payment in accordance with Paragraph 1 of this Agreement. For those DPLSA members who have already elected to participate in the DROP plan prior to the effective date of this Agreement, where as the City failed to make payments of lump sums within the 90 days of their election will receive the Michigan Judgment Interest on the late payments.
4. The City will withdraw its appeal in Detroit v DPOA, Wayne County Circuit Court Case No. 11-006114CA, Court of Appeals Case No. 306474.
5. DPOA and the DPLSA agree to the voluntary dismissal with prejudice of the following administrative charges and civil litigation: DPOA v DETROIT Wayne County Cir. Ct. C. A. No. 10-007575 CL; DPLSA v CITY OF DETROIT, WCCC Case NO. 11-014543-CL; & DPLSA v CITY OF DETROIT, MERC Case NO. C10 J-250.
6. DPOA, DPLSA, & DPCOA members who elect to participate in the DROP Plan after the effective date of this agreement will receive payment as follows:
 - a. In semi-annual installments, over a period of three (3) years, after approval of their DROP Plan application, submission of appropriate documentation, and verification of all documentation by police payroll, on the following dates: August 1, and February 1, with no interest due unless the semi-annual payments are not made by the date they are due.
7. If a member elects to enter into the DROP Plan but suffers an injury or illness (not a casual or intermittent condition and one that lasts for two weeks or more) prior to that member receiving their lump sum payment for accumulated banked time, it is agreed that notwithstanding the absence of sick leave, the member will be paid sick leave, which will result in a reduction in the final installment payment or payments equivalent to the amount of sick leave paid out. (For example, if a member receives \$5,000 in sick leave under these circumstances the final installment will be reduced by \$5,000.) This provision only applies if the member has sick leave time available under the DROP Plan.

8. In the event that a member who has elected to participate in the DROP Plan and has submitted the appropriate documentation retires or otherwise leaves active employment (before any Drop Plan payment becomes due under Paragraph 5 of this Agreement), any lump sum payment owed shall be paid within sixty (60) days of the termination of employment with no interest due unless the payout is not paid within the sixty (60) day period.
9. Effective January 15, 2012, members, who receive lump sum payouts from sick leave and/or other banks, will be allowed to have a portion of that payout, up to maximum permitted by the Internal Revenue Service Rules, placed into their 457 accounts.
10. The City will pay to DPOA and DPLSA attorney fees in the following amounts; DPOA - \$14,397.50, DPLSA \$8,000.00* (*Amount subject to change pending final Transcript cost). Payment will be made within 90 days after ratification of this Agreement and after all required documentation has been received and approved by the City.
11. This Agreement shall remain in effect even if a Consent Agreement is implemented pursuant to Public Act 4 or if an Emergency Manager is appointed.
12. The signatories for the City of Detroit, DPLSA, DPOA, and the DPCOA state explicitly and unequivocally that they have the authority to make the foregoing representations on behalf of their respective organizations and that they have the authority to bind their organizations to this Agreement.


 Julie Wynn, President of the DPLSA 2/9/2012 7:26 pm


 Date


 Joseph Dunnean, President of the DPOA 2/9/12

 Date


 Steven Dolunt, President of the DPCOA 2/9/12

 Date


 Patrick Aquart, HR Director, City of Detroit 2/9/12

 Date


 Chris Brown, COO, City of Detroit 2/9/12

 Date

EXHIBIT C

Targeted Savings Goals for Payment of Performance Bonus

Bonus is dependent upon total savings

Items - #6

DPCOA

#6 Bonus Vacation Days	\$ 21,790.00
Total	\$ 21,790.00

EXHIBIT D

ILLUSTRATIVE RATES METHODOLOGY

- Each year beginning April 1st illustrative rates will be developed and utilized for the purpose of determining the employees and employer share of plan costs for the plan year that begins on July 1 and ends June 30th of the following year. The parties agree that the accuracy of the illustrative rates used to determine the cost sharing formula is critical to each party and therefore recognize the need to use actuarial best practices to develop the illustrative rates to address the financial cost passed on the bargaining unit that may result from an inaccurate illustrative rate. The calculation of net cost shall include, for example, amounts recouped for RX rebates, part D subsidies and stop loss recoveries.
- It is acceptable to the Union that actuarial standard practices will be used to develop illustrative rates per rate category for each plan for the calendar year.
- For the purpose of rate setting it is acceptable to the Union that BCBSMI "Option 1", pricing be the same for all bargaining units offered that plan.
- For the purpose of establishing the employee contribution for COPS Trust enrollees, the City will calculate "BCBSMI Option 1" illustrative rates. The City will determine its contribution based upon the 80% of the budgeted cost on or about April 1st. The illustrative rates will be based upon the most recent 12 months of costs for the plan year adjusted to an incurred basis, trended forward for the plan year, and with the inclusion of administrative expenses and/or other plans fees. The new rates and employee contributions will be effective beginning each July 1st. The City will deduct its Option 1 contribution amount from the rates offered by COPS Trust to determine the employees' contribution for the COPS Trust plan.
- The City will annually identify the actual plan cost variance by comparing the budgeted plan cost for the calendar year to the actual plan cost incurred for the same calendar year. If the actual plan cost exceeds the budgeted plan cost by more than 2.5% then the plan participants enrolled in COPS Trust will receive a credit equal to 20% of the actual cost variance over 2.5% which shall be applied towards their next year employee contribution credited equally in each pay period. If the actual plan cost is less than the budgeted plan cost by 2.5% or more then the plan participants enrolled in BCBS Option 1 will receive a credit equal to 20% of the actual cost variance under 2.5% which shall be applied towards their next year employee contribution credited equally in each pay period.
- All employee bi-weekly contributions will be determined by calculating the monthly employee contribution amount as described and multiplying that monthly amount by 12 and dividing by 26.
- The illustrative rates for the self-funded plan(s) will be developed independently from the rates for any fully-insured plans. The City will provide and, upon request, review with the union all rates for the new rating period (self-funded and fully-insured) at the same time. The rates will remain unchanged throughout the rating period unless mutually agreed upon.

**TENTATIVE AGREEMENT TO EXTEND AND MODIFY
COLLECTIVE BARGAINING AGREEMENT**

This Tentative Agreement ("TA") is entered this 9th day of Feb, 2012, by and between the City of Detroit ("City") and the Detroit Police Officers Association ("Union").

In order to address the City's current fiscal crisis, the City and the Union agree to extend the term of the current collective bargaining agreement as set forth herein, with the following modifications. All modifications to the collective bargaining agreement shall be effective after ratification of this TA by the Union's membership and its approval by the Detroit City Council. The Union's acceptance of this TA to extend and modify collective bargaining agreement enumerated below is conditioned upon agreement and execution by the Treasurer of the State of Michigan and/or his agent. Upon execution the DPOA shall submit the TA below for membership ratification.

1. Extension of the Current Collective Bargaining Agreement. The current collective bargaining agreement between the City and the Union shall be extended until June 30, 2015.
2. Wages. There shall be no changes in wages after the term of the current agreement and through June 30, 2015. The City agrees to open up wage discussions at the end of the term of this agreement. The applicable law will apply to the negotiation of a subsequent collective bargaining agreement.
3. Performance Bonus. Members shall be entitled to receive an annual bonus calculated as 20% of the annual savings achieved as a result of the implementation of items #4 through #9 of this agreement, provided that the mutually agreed upon savings goals attach hereto as **Exhibit C** are met.
4. Off-Duty Court Appearances. Article 13, "Off Duty Court Appearances," of the collective bargaining agreement shall be modified through June 30, 2015 to provide as follows:
 - a. The minimum period of compensation for an off-duty court appearance shall be reduced from three (3) to two (2) hours.
 - b. Unless otherwise compelled by the Fair Labor Standards Act, all time worked by any member in any off-duty court appearance shall be compensated on a straight-time basis and not time and a half.
 - c. Each fiscal year, the first sixty (60) hours of off-duty court time for any member shall be compensated through credited compensatory leave time placed in the member's leave bank and not through a cash payment. After the sixty (60) hours of off-duty court time are worked in the fiscal year, the member shall have the option of being paid in cash or being credited with compensatory time as set forth in Article 13, Section D.

5. Suspension of Educational Reimbursement. The provisions of Article 20, "Educational Reimbursement," shall be suspended until July 1, 2015.
6. Overtime. Article 14, "Overtime," shall be modified to provide that unless otherwise compelled by the Fair Labor Standards Act, members shall not be eligible for any overtime compensation in any pay period in which the member fails to work at least eighty (80) hours. Sick time shall not be considered as time worked in meeting the 80 hour work requirement, but time off due to furlough, liquidation of compensatory time, and other paid absences shall continue to be considered as time worked.
7. Holiday Pay. Article 31, "Holidays," shall be modified to provide that of the twenty-four (24) hours of compensation paid to members who work on contractual holidays, twelve (12) hours will be paid as cash, and twelve (12) hours will be credited as compensatory leave time to the member's leave bank.
8. Suspension of Wage Differential. The 2% wage differential paid to members on a promotional roster shall be suspended until July 1, 2015.
9. Bonus Vacation Days. Article 37, "Bonus Vacation Days," shall be modified to provide that bonus vacation days that are not utilized during the fiscal year will be banked and paid at the rate of pay and rank at time of banking.
10. Early Retirement. An Early Retirement Incentive Program ("ERIP") will be offered to a limited number of officers in the Department and the participation will be based on seniority. The total maximum number of early retirements will be 150, to be allocated to members of the DPOA (76%), the DPLSA (23%) and the DPCOA (1%).

Employees will be eligible to participate in the ERIP if they (a) are three (3) years or less away from completing either 20 or 25 years of service, and (b) have sufficient banked time to purchase the remaining service time. Officers participating in the program will retire immediately using their years of service and banked time to get to 20 years of service and their pension will be calculated based on 20 years of service. All banked time will be relinquished in exchange for retirement service credit.

The City will offer members with between 17 and 20 years of service the ability to early retire as follows, as well as between 22 and 25 years: The City will offer such members the ability to retire three (3) years earlier than otherwise eligible under the contract, with benefits to the extent otherwise eligible, for employees who have more than [1,000] hours of banked time (i.e. sick time, furlough, vacation or compensatory time), and who relinquish all of their banked time. The City will offer members to retire two (2) years earlier than otherwise eligible under the contract, with benefits to the extent otherwise eligible, for employees who have at least [500] or more hours of banked time, and who relinquish all of their banked time. The City will offer members to retire one (1) year earlier than otherwise eligible under the contract, with benefits to the extent otherwise

eligible, for employees who have less than [500] hours of banked time, and who relinquish all of their banked time. The utilization of banked time, for purposes of the calculation, begins with sick time.

DROP participants with 22 years of service who have not received their lump sum payout from their banks may use such banked time to participate in the ERIP in accordance with the above.

11. Separation Payments (not including DROP). All provisions of the collective bargaining agreement relating to separation payments shall be modified to provide that, for future separation payments to members who were already eligible to retire as of the effective date of this TA, a member will have the option of receiving (a) a lump sum payment ninety (90) days after separation, or (b) semi-annual installments for a period of three (3) years after separation, with no interest unless payment is not made on the date it is due. This option shall not be available to members in the ERIP established as part of this TA.
12. Payment of accumulated banked time upon election to participate in the D.R.O.P. The provisions of Article 33, "Pension Provisions," pertaining to 'DROP' payments shall be modified in accordance with the Memorandum of Understanding attached hereto as **Exhibit B**.
13. Medical, Dental and Vision Benefits for Employees. COPS Trust can maintain its current design. The City's maximum contribution for any health plan shall be 80% of the Option 1 Plan offered by BCBSMI/CVS Caremark (**Exhibit A**).

Initial rates for the BCBSMI/CVS Caremark Option 1 shall be maintained in full force and effect from March 1st, 2012 to June 30th, 2013. These rates may not be implemented until there has been an Open Enrollment after reasonable notice to employees.

The mutually agreed upon methodology establishing illustrative rates on BCBSMI/CVS Caremark Option base plan are attached hereto and marked as **Exhibit D**.
14. Spousal Medical Coverage. The City will provide coverage for working spouses eligible for insurance coverage through their employer, only under the COPS Trust Plan and subject to the cost sharing arrangement set forth under Item 13.
15. 4/10 Work Schedule. After the implementation of the terms of this TA there will be a collaborative effort between the Detroit Police Department (DPD), the City and all Associations within the DPD to develop a pilot program for the implementation of a 4/10 work schedule that will be cost neutral to the City and the DPD.
16. State Review of Collective Bargaining Agreement. If, during the term of this TA a consent decree is entered into pursuant to the State Financial Authority Recovery Plan and/or Continuing Operations Plan pursuant to the Local Government and School District Accountability Act, Act Number 4, Public Acts

of 2011, MCL 141, 1501 et.seq. the terms of the collective bargaining agreement extended herein and the TA shall be maintained in whole and cannot be terminated, modified and/or changed whatsoever during its terms for any reason except by mutual agreement between the parties. This provision applies and covers a consent decree Recovery Plan and/or Continuing Operations Plan and/or any Plan, however titled and by whatever description. In the event the paragraph herein is breached the contractual modification agreed to in this TA shall automatically revert back to the language that existed prior to this extension and modification agreement.

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CITY OF DETROIT

By: [Signature]
COO

DETROIT POLICE OFFICERS ASSOCIATION

By: [Signature] 7:20 PM
By: [Signature] 7:20 PM
By: [Signature] 7:20 PM
By: [Signature] 7:20 PM

EXHIBIT A

OUTLINE OF MEDICAL, DENTAL AND VISION PLANS

PPO Plan, HAP/BCN plan(s), THC plan	In-Network	Out-of-Network **
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Co-insurance maximum (OOP Max)	\$1,000/\$2,000	\$2,000/\$4,000
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Urgent care co-pay	\$15	Subject to deductible and coinsurance
Emergency room	\$75	\$75
Hospital co-pay	\$0	\$0
Rx Drug Plan		
Co-pay (retail, mail 2x for 90 day supply)	\$5/\$15/\$30	
Mandatory mail	After 34 days	
Mandatory generic	Required	
Traditional generic – step therapy	Required	
Exclusion of lifestyle drugs	Required	
COPS Trust		
Deductible	\$175/\$350	
Coinsurance %	10%	
Co-insurance maximum (OOP Max)	\$825/\$1650	
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Emergency Room co-pay	\$75	
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COPS Trust Rx Drug Plan		
Co-pay (retail, mail 2x for 90 day supply)	\$5/\$15	
Mandatory mail	N/A	
Mandatory generic	N/A	
Traditional generic – step therapy	N/A	
Exclusion of lifestyle drugs	N/A	
Other Changes		
Participants contribute 20% for dental and vision coverage		
Participants may choose any dental benefit currently in force with the City of Detroit including COPS Trust.		
Participants may choose any vision benefit currently in force with the City of Detroit including COPS Trust. Co-op Optical eliminated		

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Eye Glass Lenses	Covered	Covered	Prism & Oversized Not Covered
Contacts in lieu of Glasses	\$175	\$90	Up to \$210
Progressive Myopia	Up to Age 19*	Up to Age 19*	Not Covered
Dependents	Up to 19 Covered*	Up to 19 Covered*	Up to 19 Covered*
Adult Dependents	Not Covered	Not Covered	Covered*

*some restrictions apply

EXHIBIT A

OUTLINE OF MEDICAL, DENTAL AND VISION PLANS

Rates

Initial Dental Rates to 6/30/2013

BCBSM Dental (\$1,000 Orthodontia)	\$ 3.28 per pay period
BCBSM Dental (\$3,000 Orthodontia)	\$ 15.95 per pay period
Golden Dental	\$ 2.77 per pay period
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Single	\$ 50.98 per pay period
2 Person	\$ 106.24 per pay period
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EXHIBIT A

OUTLINE OF MEDICAL, DENTAL AND VISION PLANS

Hospitalization Plan Design Changes – Effective April 1st, 2012: (Items A&B below apply to all plans with the exception of COPS Trust)

- A. **Mandatory Use of Generic Drugs.** Generic drugs required unless pre-determined that brand name drug is medically required or a generic equivalent is not available. If brand drug requested but not medically required or generic is available, employee, retiree, or covered dependent must pay the applicable brand name co-pay amount plus the difference between the cost of the generic drug and brand name drug, even if dispense as written (DAW) is written on the prescription. Appeal procedure for any dispute is available under applicable healthcare plan.
- B. **Limitation on Prescription Drugs.** City will not pay for fertility or impotence prescription drugs under the City's prescription drug programs. This provision does not apply to prescription birth control pills.
- C. **Medicare Advantage.** Enrollment options for retirees and covered dependents that are Medicare-eligible shall be limited to the Medicare advantage plans offered by the City. In the event such Medicare Advantage plans are no longer offered or not cost effective, enrollment in alternate plans will be permitted as determined by the City.
- D. **New Hire.** Eligibility qualifier for hospitalization-medical coverage is the first of the month after new hire completes 91st day of employment.
- E. **New Hire.** Optical coverage eligibility qualifier changed from 60 days to 6 months.
- F. **Sponsored Dependent coverage eliminated in its entirety.**
- G. **Remarriage.** If a retiree marries or remarries after retirement, new spouse and his/her dependents are not eligible for coverage under the City's healthcare plans.
- H. **Dependent Health Care Coverage.** The child of a divorced spouse or a new spouse of a retiree who is neither the biological, legally adopted nor legally guardian child of the employee or retiree is ineligible for dependent health care coverage under this Agreement.
- I. **Requirement to Obtain Medicare A & B.** Consistent with current practice, all retirees and covered dependents are required to enroll into Medicare Parts A & B. Failure to enroll or maintain Medicare Parts A & B, City hospitalization-medical coverage will be terminated.

EXHIBIT B

Memorandum of Understanding

The City of Detroit ("CITY") and the Detroit Police Officers Association ("DPOA") together with the Detroit Police and Lieutenants and Sergeants' Association ("DPLSA") and the ("DPCOA") Detroit Police Command Officers Association enter into this Memorandum of Understanding ("Agreement") with the intent to bring closure to any and all claims, charges, grievances, civil litigation, appellate procedures, administrative charges, and any other disputes between the respective parties on the issue of the Deferred Retirement Option Plan ("DROP") and the lump sum payouts that members can elect upon their entry into the DROP Plan.

1. All DPOA, DPCOA, & DPLSA members who applied to participate in the DROP on or before the effective date of this agreement will be paid their lump sum amounts not later than sixty (60) days from the execution of this Agreement.
2. All DPOA members paid pursuant to paragraph 1 above will receive interest on their payouts consistent with Umpire George Roumell's Opinion and Award dated April 29, 2011 in Grievance No. 10-082.
3. All DPLSA members paid pursuant to paragraph 1 above will be paid Michigan Judgment Interest if that member does not receive their lump sum DROP payment in accordance with Paragraph 1 of this Agreement. For those DPLSA members who have already elected to participate in the DROP plan prior to the effective date of this Agreement, where as the City failed to make payments of lump sums within the 90 days of their election will receive the Michigan Judgment Interest on the late payments.
4. The City will withdraw its appeal in Detroit v DPOA, Wayne County Circuit Court Case No. 11-006114CA, Court of Appeals Case No. 306474.
5. DPOA and the DPLSA agree to the voluntary dismissal with prejudice of the following administrative charges and civil litigation: DPOA v DETROIT Wayne County Cir. Ct. C. A. No. 10-007575 CL; DPLSA v CITY OF DETROIT, WCCC Case NO. 11-014543-CL; & DPLSA v CITY OF DETROIT, MERC Case NO. C10 J-250.
6. DPOA, DPLSA, & DPCOA members who elect to participate in the DROP Plan after the effective date of this agreement will receive payment as follows:
 - a. In semi-annual installments, over a period of three (3) years, after approval of their DROP Plan application, submission of appropriate documentation, and verification of all documentation by police payroll, on the following dates: August 1, and February 1, with no interest due unless the semi-annual payments are not made by the date they are due.
7. If a member elects to enter into the DROP Plan but suffers an injury or illness (not a casual or intermittent condition and one that lasts for two weeks or more) prior to that member receiving their lump sum payment for accumulated banked time, it is agreed that notwithstanding the absence of sick leave, the member will be paid sick leave, which will result in a reduction in the final installment payment or payments equivalent to the amount of sick leave paid out. (For example, if a member receives \$5,000 in sick leave under these circumstances the final installment will be reduced by \$5,000.) This provision only applies if the member has sick leave time available under the DROP Plan.

8. In the event that a member who has elected to participate in the DROP Plan and has submitted the appropriate documentation retires or otherwise leaves active employment (before any Drop Plan payment becomes due under Paragraph 5 of this Agreement), any lump sum payment owed shall be paid within sixty (60) days of the termination of employment with no interest due unless the payout is not paid within the sixty (60) day period.
9. Effective January 15, 2012, members, who receive lump sum payouts from sick leave and/or other banks, will be allowed to have a portion of that payout, up to maximum permitted by the Internal Revenue Service Rules, placed into their 457 accounts.
10. The City will pay to DPOA and DPLSA attorney fees in the following amounts; DPOA - \$14,397.50, DPLSA \$8,000.00* (*Amount subject to change pending final Transcript cost). Payment will be made within 90 days after ratification of this Agreement and after all required documentation has been received and approved by the City.
11. This Agreement shall remain in effect even if a Consent Agreement is implemented pursuant to Public Act 4 or if an Emergency Manager is appointed.
12. The signatories for the City of Detroit, DPLSA, DPOA, and the DPCOA state explicitly and unequivocally that they have the authority to make the foregoing representations on behalf of their respective organizations and that they have the authority to bind their organizations to this Agreement.

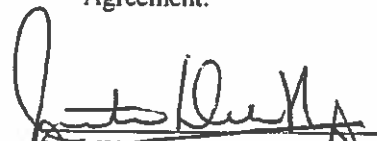
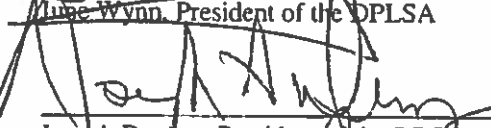
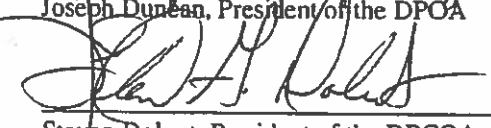
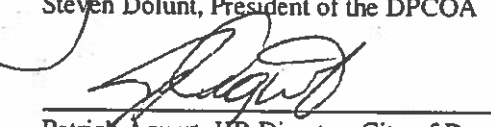
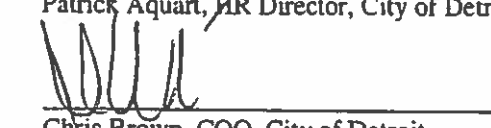
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Julie Wynn, President of the DPLSA	Date
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Joseph Dunnean, President of the DPOA	Date 720
	<u>2/9/12</u>
Steven Dolunt, President of the DPCOA	Date
	<u>2/9/12</u>
Patrick Aquart, HR Director, City of Detroit	Date
	<u>2/9/12</u>
Chris Brown, COO, City of Detroit	Date

EXHIBIT C

Targeted Savings Goals for Payment of Performance Bonus
Bonus is dependent upon total savings
Items #4 - #9
DPOA

#4 Off Duty Court Appearance	\$ 850,543.00
#5 Suspension of Educational Reimbursement	\$ 24,500.00
#6 Overtime	\$ 598,884.00
#7 Holiday Pay	\$ 2,933,808.00
#8 Suspension of Wage Differential	\$ 332,147.00
#9 Bonus Vacation Days	\$ 1,457,402.00
Total	\$ 6,197,284.00

EXHIBIT D

ILLUSTRATIVE RATES METHODOLOGY

- Each year beginning April 1st illustrative rates will be developed and utilized for the purpose of determining the employees and employer share of plan costs for the plan year that begins on July 1 and ends June 30th of the following year. The parties agree that the accuracy of the illustrative rates used to determine the cost sharing formula is critical to each party and therefore recognize the need to use actuarial best practices to develop the illustrative rates to address the financial cost passed on the bargaining unit that may result from an inaccurate illustrative rate. The calculation of net cost shall include, for example, amounts recouped for RX rebates, part D subsidies and stop loss recoveries.
- It is acceptable to the Union that actuarial standard practices will be used to develop illustrative rates per rate category for each plan for the calendar year.
- For the purpose of rate setting it is acceptable to the Union that BCBSMI "Option 1", pricing be the same for all bargaining units offered that plan.
- For the purpose of establishing the employee contribution for COPS Trust enrollees, the City will calculate "BCBSMI Option 1" illustrative rates. The City will determine its contribution based upon the 80% of the budgeted cost on or about April 1st. The illustrative rates will be based upon the most recent 12 months of costs for the plan year adjusted to an incurred basis, trended forward for the plan year, and with the inclusion of administrative expenses and/or other plans fees. The new rates and employee contributions will be effective beginning each July 1st. The City will deduct its Option 1 contribution amount from the rates offered by COPS Trust to determine the employees' contribution for the COPS Trust plan.
- The City will annually identify the actual plan cost variance by comparing the budgeted plan cost for the calendar year to the actual plan cost incurred for the same calendar year. If the actual plan cost exceeds the budgeted plan cost by more than 2.5% then the plan participants enrolled in COPS Trust will receive a credit equal to 20% of the actual cost variance over 2.5% which shall be applied towards their next year employee contribution credited equally in each pay period. If the actual plan cost is less than the budgeted plan cost by 2.5% or more then the plan participants enrolled in BCBS Option 1 will receive a credit equal to 20% of the actual cost variance under 2.5% which shall be applied towards their next year employee contribution credited equally in each pay period.
- All employee bi-weekly contributions will be determined by calculating the monthly employee contribution amount as described and multiplying that monthly amount by 12 and dividing by 26.
- The illustrative rates for the self-funded plan(s) will be developed independently from the rates for any fully-insured plans. The City will provide and, upon request, review with the union all rates for the new rating period (self-funded and fully-insured) at the same time. The rates will remain unchanged throughout the rating period unless mutually agreed upon.

**TENTATIVE AGREEMENT TO EXTEND AND MODIFY
COLLECTIVE BARGAINING AGREEMENT**

This Tentative Agreement ("TA") is entered this 9th day of Feb, 2012, by and between the City of Detroit ("City") and the Detroit Police Lieutenants and Sergeants Association ("Union").

In order to address the City's current fiscal crisis, the City and the Union agree to extend the term of the current collective bargaining agreement as set forth herein, with the following modifications. All modifications to the collective bargaining agreement shall be effective after ratification of this TA by the Union's membership and its approval by the Detroit City Council. If this agreement is not ratified by the Union's membership, the terms of the current collective bargaining agreement (2009-2013) shall remain in effect for its term. The Union's acceptance of this TA to extend and modify collective bargaining agreement enumerated below is conditioned upon agreement and execution by the Treasurer of the State of Michigan and/or his agent. Upon execution the DPLSA shall submit the TA below for membership ratification.

1. Extension of the Current Collective Bargaining Agreement. The current collective bargaining agreement between the City and the Union shall be extended until June 30, 2015. In the event of Act 312 arbitration after the termination of this agreement, the arbitrator shall take into consideration the concessions given during these negotiations.
2. Wages. There shall be no changes in wages after the term of the current agreement and through June 30, 2015. The City agrees to open up wage discussions at the end of the term of this agreement. The applicable law will apply to the negotiation of a subsequent collective bargaining agreement.
3. Performance Bonus. Members shall be entitled to receive an annual bonus calculated as 20% of the annual savings achieved as a result of the implementation of items #4 through #9 of this agreement, provided that the mutually agreed upon savings goals attach hereto as **Exhibit C** are met.
4. Court Time. Article 26, "Court Time," of the collective bargaining agreement shall be modified to provide as follows:
 - a. The minimum period of compensation for an off-duty court appearance shall be reduced from three (3) to two (2) hours.
 - b. Unless otherwise compelled by the Fair Labor Standards Act, all time worked by any member in any off-duty court appearance shall be compensated on a straight-time basis and not time and a half.
 - c. Each fiscal year, the first sixty (60) hours of off-duty court time for any member shall be compensated through credited compensatory leave time placed in the member's leave bank and not through a cash payment. After the sixty (60) hours of off-duty court time are worked in the fiscal year, the member shall have the option of being paid in cash or being credited with compensatory time as set forth in Article 25.

5. Suspension of Educational Reimbursement. The provisions of Article 42, "Educational Reimbursement," shall be suspended until July 1, 2015.
6. Overtime. Article 25, "Overtime," shall be modified to provide that unless otherwise compelled by the Fair Labor Standards Act, members shall not be eligible for any overtime compensation in any pay period in which the member fails to work at least eighty (80) hours. Sick time shall not be considered as time worked in meeting the 80 hour work, but time off due to furlough, liquidation of compensatory time, and other paid absences shall continue to be considered as time worked.
7. Holiday Pay. Article 37, "Holidays With Excused Time," shall be modified to provide that of the twenty-four (24) hours of compensation paid to members who work on contractual holidays, twelve (12) hours will be paid as cash, and twelve (12) hours will be credited as compensatory leave time to the member's leave bank.
8. Suspension of Wage Differential. The 2% wage differential paid to members on a promotional roster shall be suspended until July 1, 2015.
9. Bonus Vacation Days. Bonus vacation days of Union members that are not utilized during the fiscal year will be banked and paid at the rate of pay and rank at time of banking
10. Early Retirement. An Early Retirement Incentive Program ("ERIP") will be offered to a limited number of officers in the Department and the participation will be based on seniority. The total maximum number of early retirements will be 150, to be allocated to members of the DPOA (76%), the DPLSA (23%) and the DPCOA (1%).
11. Employees will be eligible to participate in the ERIP if they (a) are three (3) years or less away from completing 25 years of service, and (b) have sufficient banked time to purchase the remaining service time. Officers participating in the program will retire immediately using their years of service and banked time to get to 25 years of service and their pension will be calculated based on 25 years of service. All banked time will be relinquished in exchange for retirement service credit.

The City will offer members with between 22 and 25 years of service the ability to early retire as follows: The City will offer such members the ability to retire three (3) years earlier than otherwise eligible under the contract, with benefits to the extent otherwise eligible, for employees who have more than [1,000] hours of banked time (i.e. sick time, furlough, vacation or compensatory time), and who relinquish all of their banked time. The City will offer members to retire two (2) years earlier than otherwise eligible under the contract, with benefits to the extent otherwise eligible, for employees who have at least [500] or more hours of banked time, and who relinquish all of their banked time. The City will offer members to retire one (1) year earlier than otherwise eligible under the contract, with benefits to the extent otherwise eligible, for employees who have less than [500] hours of banked time, and who relinquish all of their banked time. The utilization of banked time, for purposes of the calculation, begins with sick time.

DROP participants with between 22 and 25 years of service who have not received their lump sum payout from their banks may use such banked time to participate in the ERIP in accordance with the above.

12. Separation Payments (not including DROP). All provisions of the collective bargaining agreement relating to separation payments shall be modified to provide that, for future separation payments to members who were already eligible to retire as of the effective date of this Agreement, a member will have the option of receiving (a) a lump sum payment ninety (90) days after separation, or (b) semi-annual installments for a period of three (3) years after separation, with no interest unless payment is not made on the date it is due. This option shall not be available to members in the ERIP established as part of this TA.
13. Payment of accumulated banked time upon election to participate in the D.R.O.P. The provisions of Article 51, "Pension," pertaining to 'DROP' payments shall be modified in accordance with the Memorandum of Understanding attached hereto as Exhibit B.
14. 20 & Out Program. Members with less than 25 years, but more than 20 years of service, shall have the opportunity to elect early retirement as follows:
 - a. There shall be a period of ten (10) days to elect early retirement the first year.
 - b. The maximum number of members eligible to retire in the first year shall not exceed one hundred (100).
 - c. Retirements will be made available in twenty-five (25) member increments per quarter for one (1) year.
 - d. After the first year, a DPLSA member or participant with 20 years or more of credited service may retire. Upon the members or participant's retirement, the participant will be paid the total balance of the participant's accounts. Only participants with 20 years or more of credited service may participate in the City's group healthcare plans pursuant to the CBA.
 - e. Any DPLSA member who exercises the option to retire between 20 and 25 years of service shall have their retirement benefits calculated at their actual time of service (and not at 25 years).
15. Medical, Dental and Vision Benefits for Employees. The plan Options shall include BCBSMI/CVS Caremark Option 1, COPS Trust, HAP and Total Healthcare. COPS Trust can maintain its current design. The City's maximum contribution for any health plan shall be 80% of the Option 1 Plan offered by BCBSMI/CVS Caremark (Exhibit A).

Initial rates for the BCBSMI/CVS Caremark Option 1 shall be maintained in full force and effect from March 1st, 2012 to June 30th, 2013. These rates may not be implemented until there has been an Open Enrollment after reasonable notice to employees.

The mutually agreed upon methodology establishing illustrative rates on BCBSMI/CVS Caremark Option base plan are attached hereto and marked as Exhibit D.

16. Spousal Medical Coverage. The City will provide coverage for working spouses eligible for insurance coverage through their employer, only under the COPS Trust Plan and subject to the cost sharing arrangement set forth under Item 14.
17. 4/10 Work Schedule. After the implementation of the terms of this TA there will be a collaborative effort between the Detroit Police Department (DPD), the City and all Associations within the DPD to develop a pilot program for the implementation of a 4/10 work schedule that will be cost neutral to the City and the DPD.
18. State Review of Collective Bargaining Agreement. If, during the term of this TA a consent decree is entered into pursuant to the State Financial Authority Recovery Plan and/or Continuing Operations Plan pursuant to the Local Government and School District Accountability Act, Act Number 4, Public Acts of 2011, MCL 141, 1501 et.seq. the terms of the collective bargaining agreement extended herein and this TA shall be maintained in whole and cannot be terminated, modified and/or changed whatsoever during its terms for any reason except by mutual agreement between the parties. This provision applies and covers a consent decree Recovery Plan and/or Continuing Operations Plan and/or any Plan, however titled and by whatever description. In the event the paragraph herein is breached the contractual modification agreed to in this TA shall automatically revert back to the language that existed prior to this extension and modification agreement.
19. Grievances. A violation of any provision of this TA shall be subject to the CBA's grievance/arbitration procedure (Articles 7 and 8 et. al.) with the exception of paragraph 17.
20. More Favorable DFFA Wage, Healthcare or Pension Provisions. In the event that the wage, healthcare or pension provisions of any agreement reached with the DFFA to extend and modify their current collective bargaining agreement with the City are more favorable than those stated in this agreement, the terms of this TA, the terms of this TA shall be modified to incorporate the more favorable provisions.

CITY OF DETROIT

By: _____

[Signature]
CEO

DETROIT POLICE LIEUTENANTS AND SERGEANTS ASSOCIATION

By: _____

By: _____

By: _____

[Signature] 7:15 PM 3/9/2012
[Signature] 7:15 PM 2012
[Signature] 7/9/12 7:12 PM

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EXHIBIT A

OUTLINE OF MEDICAL, DENTAL AND VISION PLANS

PPO Plan, HAP/BCN plan(s), THC plan	In-Network	Out-of-Network **
Participant Premium Contribution	20% for all plans	20% for all plans
Plan Deductible	\$250/\$500	\$500/\$1000
Co-insurance %	20%	40%
Co-insurance maximum (OOP Max)	\$1,000/\$2,000	\$2,000/\$4,000
Office visit	\$15	Subject to deductible and coinsurance
Urgent care co-pay	\$15	Subject to deductible and coinsurance
Emergency room	\$75	\$75
Hospital co-pay	\$0	\$0
Rx Drug Plan		
Co-pay (retail, mail 2x for 90 day supply)	\$5/\$15/\$30	
Mandatory mail	After 34 days	
Mandatory generic	Required	
Traditional generic – step therapy	Required	
Exclusion of lifestyle drugs	Required	
COPS Trust		
- Deductible	\$175/\$350	
- Coinsurance %	10%	
- Co-insurance maximum (OOP Max)	\$825/\$1650	
- Office visit/Urgent Care co-pay	\$10	
- Emergency Room co-pay	\$75	
- Hospital co-pay	\$0	
COPS Trust Rx Drug Plan		
Co-pay (retail, mail 2x for 90 day supply)	\$5/\$15	
Mandatory mail	N/A	
Mandatory generic	N/A	
Traditional generic – step therapy	N/A	
Exclusion of lifestyle drugs	N/A	
Other Changes		
Participants contribute 20% for dental and vision coverage		
Participants may choose any dental benefit currently in force with the City of Detroit including COPS Trust.		
Participants may choose any vision benefit currently in force with the City of Detroit including COPS Trust. Co-op Optical eliminated		

EXHIBIT A

OUTLINE OF MEDICAL, DENTAL AND VISION PLANS

Vision Plans

	BCBSM VSP Plan	Heritage Vision	COPS Trust -Spectera
Eye Exam	Covered	Covered	Covered
Frame Allowance	\$75*	\$100*	Up to \$130*
Eye Glass Lenses	Covered	Covered	Prism & Oversized Not Covered
Contacts in lieu of Glasses	\$175	\$90	Up to \$210
Progressive Myopia	Up to Age 19*	Up to Age 19*	Not Covered
Dependents	Up to 19 Covered*	Up to 19 Covered*	Up to 19 Covered*
Adult Dependents	Not Covered	Not Covered	Covered*

*some restrictions apply

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OUTLINE OF MEDICAL, DENTAL AND VISION PLANS

Rates

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Family	\$ 125.54 per pay period

EXHIBIT A

OUTLINE OF MEDICAL, DENTAL AND VISION PLANS

Hospitalization Plan Design Changes – Effective April 1st, 2012:
(Items A&B below apply to all plans with the exception of COPS Trust)

- A. **Mandatory Use of Generic Drugs.** Generic drugs required unless pre-determined that brand name drug is medically required or a generic equivalent is not available. If brand drug requested but not medically required or generic is available, employee, retiree, or covered dependent must pay the applicable brand name co-pay amount plus the difference between the cost of the generic drug and brand name drug, even if dispense as written (DAW) is written on the prescription. Appeal procedure for any dispute is available under applicable healthcare plan.
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- C. **Medicare Advantage.** Enrollment options for retirees and covered dependents that are Medicare-eligible shall be limited to the Medicare advantage plans offered by the City. In the event such Medicare Advantage plans are no longer offered or not cost effective, enrollment in alternate plans will be permitted as determined by the City.
- D. **New Hire.** Eligibility qualifier for hospitalization-medical coverage is the first of the month after new hire completes 91st day of employment.
- E. **New Hire.** Optical coverage eligibility qualifier changed from 60 days to 6 months.
- F. **Sponsored Dependent coverage eliminated in its entirety.**
- G. **Remarriage.** If a retiree marries or remarries after retirement, new spouse and his/her dependents are not eligible for coverage under the City's healthcare plans.
- H. **Dependent Health Care Coverage.** The child of a divorced spouse or a new spouse of a retiree who is neither the biological, legally adopted nor legally guardian child of the employee or retiree is ineligible for dependent health care coverage under this Agreement.
- I. **Requirement to Obtain Medicare A & B.** Consistent with current practice, all retirees and covered dependents are required to enroll into Medicare Parts A & B. Failure to enroll or maintain Medicare Parts A & B, City hospitalization-medical coverage will be terminated.

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1. All DPOA, DPCOA, & DPLSA members who applied to participate in the DROP on or before the effective date of this agreement will be paid their lump sum amounts not later than sixty (60) days from the execution of this Agreement.
2. All DPOA members paid pursuant to paragraph 1 above will receive interest on their payouts consistent with Umpire George Roumell's Opinion and Award dated April 29, 2011 in Grievance No. 10-082.
3. All DPLSA members paid pursuant to paragraph 1 above will be paid Michigan Judgment Interest if that member does not receive their lump sum DROP payment in accordance with Paragraph 1 of this Agreement. For those DPLSA members who have already elected to participate in the DROP plan prior to the effective date of this Agreement, where as the City failed to make payments of lump sums within the 90 days of their election will receive the Michigan Judgment Interest on the late payments.
4. The City will withdraw its appeal in Detroit v DPOA, Wayne County Circuit Court Case No. 11-006114CA, Court of Appeals Case No. 306474.
5. DPOA and the DPLSA agree to the voluntary dismissal with prejudice of the following administrative charges and civil litigation: DPOA v DETROIT Wayne County Cir. Ct. C. A. No. 10-007575 CL; DPLSA v CITY OF DETROIT, WCCC Case NO. 11-014543-CL; & DPLSA v CITY OF DETROIT, MERC Case NO. C10 J-250.
6. DPOA, DPLSA, & DPCOA members who elect to participate in the DROP Plan after the effective date of this agreement will receive payment as follows:
 - a. In semi-annual installments, over a period of three (3) years, after approval of their DROP Plan application, submission of appropriate documentation, and verification of all documentation by police payroll, on the following dates: August 1, and February 1, with no interest due unless the semi-annual payments are not made by the date they are due.
7. If a member elects to enter into the DROP Plan but suffers an injury or illness (not a casual or intermittent condition and one that lasts for two weeks or more) prior to that member receiving their lump sum payment for accumulated banked time, it is agreed that notwithstanding the absence of sick leave, the member will be paid sick leave, which will result in a reduction in the final installment payment or payments equivalent to the amount of sick leave paid out. (For example, if a member receives \$5,000 in sick leave under these circumstances the final installment will be reduced by \$5,000.) This provision only applies if the member has sick leave time available under the DROP Plan.
8. In the event that a member who has elected to participate in the DROP Plan and has submitted the appropriate documentation retires or otherwise leaves active employment (before any Drop Plan

payment becomes due under Paragraph 5 of this Agreement), any lump sum payment owed shall be paid within sixty (60) days of the termination of employment with no interest due unless the payout is not paid within the sixty (60) day period.

9. Effective January 15, 2012, members, who receive lump sum payouts from sick leave and/or other banks, will be allowed to have a portion of that payout, up to maximum permitted by the Internal Revenue Service Rules, placed into their 457 accounts.
10. The City will pay to DPOA and DPLSA attorney fees in the following amounts; DPOA - \$14,397.50, DPLSA \$8,000.00* (*Amount subject to change pending final Transcript cost). Payment will be made within 90 days after ratification of this Agreement and after all required documentation has been received and approved by the City.
11. This Agreement shall remain in effect even if a Consent Agreement is implemented pursuant to Public Act 4 or if an Emergency Manager is appointed.
12. The signatories for the City of Detroit, DPLSA, DPOA, and the DPCOA state explicitly and unequivocally that they have the authority to make the foregoing representations on behalf of their respective organizations and that they have the authority to bind their organizations to this Agreement.


June Wynn, President of the DPLSA

2/9/2012 7:00 pm
Date


Joseph Duncan, President of the DPOA

2/9/12
Date


Steven Dolunt, President of the DPCOA

2/9/12
Date


Patrick Aquart, HR Director, City of Detroit

2/9/12
Date


Chris Brown, COO, City of Detroit

2/9/12
Date

EXHIBIT C

**Targeted Savings Goals for Payment of Performance Bonus
Bonus is dependent upon total savings
Items #4 - #9
DPLSA**

#4	Off Duty Court Appearance	\$4,175,349.00
#5	Suspension of Educational Reimbursement	\$ 10,500.00
#6	Overtime	\$ 239,803.00
#7	Holiday Pay	\$ 827,485.00
#8	Suspension of Wage Differential	\$ 115,770.00
#9	Bonus Vacation Days	\$ 964,460.00
	Total	\$6,333,367.00

EXHIBIT D

ILLUSTRATIVE RATES METHODOLOGY

- Each year beginning April 1st illustrative rates will be developed and utilized for the purpose of determining the employees and employer share of plan costs for the plan year that begins on July 1 and ends June 30th of the following year. The parties agree that the accuracy of the illustrative rates used to determine the cost sharing formula is critical to each party and therefore recognize the need to use actuarial best practices to develop the illustrative rates to address the financial cost passed on the bargaining unit that may result from an inaccurate illustrative rate. The calculation of net cost shall include, for example, amounts recouped for RX rebates, part D subsidies and stop loss recoveries.
- It is acceptable to the Union that actuarial standard practices will be used to develop illustrative rates per rate category for each plan for the calendar year.
- For the purpose of rate setting it is acceptable to the Union that BCBSMI "Option 1", pricing be the same for all bargaining units offered that plan.
- For the purpose of establishing the employee contribution for COPS Trust enrollees, the City will calculate "BCBSMI Option1" illustrative rates. The City will determine its contribution based upon the 80% of the budgeted cost on or about April 1st. The illustrative rates will be based upon the most recent 12 months of costs for the plan year adjusted to an incurred basis, trended forward for the plan year, and with the inclusion of administrative expenses and/or other plans fees. The new rates and employee contributions will be effective beginning each July 1st. The City will deduct its Option 1 contribution amount from the rates offered by COPS Trust to determine the employees' contribution for the COPS Trust plan.
- The City will annually identify the actual plan cost variance by comparing the budgeted plan cost for the calendar year to the actual plan cost incurred for the same calendar year. If the actual plan cost exceeds the budgeted plan cost by more than 2.5% then the plan participants enrolled in COPS Trust will receive a credit equal to 20% of the actual cost variance over 2.5% which shall be applied towards their next year employee contribution credited equally in each pay period. If the actual plan cost is less than the budgeted plan cost by 2.5% or more then the plan participants enrolled in BCBS Option 1 will receive a credit equal to 20% of the actual cost variance under 2.5% which shall be applied towards their next year employee contribution credited equally in each pay period.
- All employee bi-weekly contributions will be determined by calculating the monthly employee contribution amount as described and multiplying that monthly amount by 12 and dividing by 26.
- The illustrative rates for the self-funded plan(s) will be developed independently from the rates for any fully-insured plans. The City will provide and, upon request, review with the union all rates for the new rating period (self-funded and fully-insured) at the same time. The rates will remain unchanged throughout the rating period unless mutually agreed upon.

EXHIBIT B

**JONES
DAY**

One Firm Worldwide™



Presentation to The City of Detroit

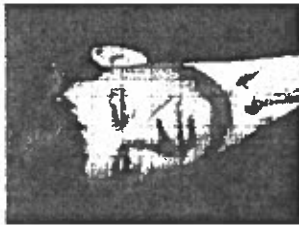
Detroit, Michigan
January 25, 2010

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PART I – INTRODUCTION



The Jones Day Team



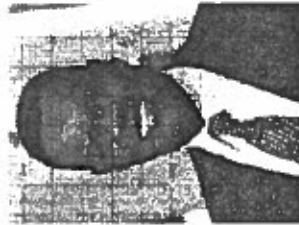
Stephen Brogan



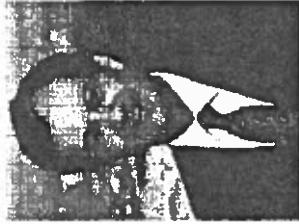
Corinne Ball



Heather Lennox



Kevyn Orr



Bruce Bennett



Aaron Agenbroad



[Speaker Notes For Slide: 3]

The Jones Day Team:

Stephan Brogan
Corinne Ball
Heather Lennox
Keyyn Orr
Bruce Bennett
Aaron Agenbroad

[Brogan voicover: Although I will not be heavily involved in the representation, I wanted to (i) provide my personal statement of Jones Day's commitment to this project and (ii) highlight the qualities of the team members that will manage this project on a day-to-day basis.]



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Jones Day's Qualifications and Commitment

- **Midwestern Roots – Continuing Presence and Practice**
- **Substantial Ties to Michigan and the 6th Circuit**
- **Belief in the Importance of a Strong Detroit**
- **Unsurpassed Expertise Where Detroit Needs It**
- **Historical Focus on Teamwork and Collaboration**
- **Know and Work Well With City's Other Advisors**
- **Firm-Wide Commitment to Detroit**



[Speaker Notes For Slide: 5]

Jones Day's Commitment to the Detroit Project

Jones Day's roots are in the Midwest and a large part of our practice is centered there.

Many of Jones Day's clients are based in Detroit and in Michigan.

(Over 100 Michigan-based clients in the past 2 years.)

Long-standing representation of GM.

Special benefits counsel to, and good contacts with, Blue Cross of Michigan.

25 lawyers were 6th Circuit Clerks.

27 lawyers were clerks in federal courts in the 6th Circuit (Ohio, Michigan, Tennessee, Kentucky).

28 lawyers were US Supreme Court Clerks.

116 lawyers have one or more degrees from Michigan institutions (including 98 lawyers with 111 degrees from the University of Michigan alone).

We believe that a strong Detroit is vital to the state, the region and the country.

Jones Day has unsurpassed expertise and capabilities in the areas of greatest importance to Detroit and would be honored to be called upon to help.

Jones Day has a longstanding reputation for teamwork and collaboration, both within our own organization and when working with clients, related parties and other professional firms.

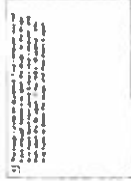
This strength will be particularly important in this matter.

We know and can work well with the other advisors retained by the City and it will be critical that everyone pulls together in the same direction.

When a client engages Jones Day, it engages the entire firm, and this would be regarded as an engagement of utmost importance for the firm as a whole.

We are committed to providing whatever resources are needed to advance Detroit's restructuring goals.

The City will have the support of each and every part of the Firm.



PART II – GENERAL OBSERVATIONS

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Speaker Notes For Slide: 71

Jones Day's Priority for Today's Meeting

It is much more important that we discuss issues the City, the State and the FAB want to discuss rather than issues that we have identified.

We are prepared to walk through the presentation and invite dialog along the way, but are also prepared to put our presentation to one side and cover topics that interest you and address your questions and concerns.

We have studied Detroit's situation extensively and we have some preliminary views on a path forward.



Detroit's Substantial Progress

- Improved Cash Flows
- Significant Headcount Reduction
- Implementation of CETs
- Planning to Address Pension/OPEB
- Payroll Systems Outsourcing
- Public Lighting Authority
- Regional Transportation Authority
- Initiatives to Drive Revenue/Reduce Expenditures



Speaker Notes For Slide: 9|

The City, working with the FAB and the State, already has made substantial progress in addressing its financial challenges.

Improved Cash Flows (Expected improvement of ~\$62MM in FY 2013)

Significant Headcount Reduction (from ~12K in Nov. 2011 to ~10K in Nov. 2012)

Implementation of CETs (Despite delays, large majority of CETs are in place)

Planning to Address Pension/OPEB (e.g., recently closed the Police & Fire Retirement System to new employees, retention of Milliman to assist in revamping benefits for retirees and active employees)

Payroll Systems Outsourced

Public Lighting (Public Lighting Authority established; rate increases)

Regional Transportation Authority (authority established; new funding committed)

Initiatives to Drive Revenue or Reduce Expenditures (Belle Isle lease to the state, funding support for new arena and commercial development via Detroit Downtown Development Authority, grant and loan support for Detroit's Eastern Market through the Community Revitalization Program)



Formidable Challenges Remain

- **Substantial Debt (Bonds, POCs, Swaps)**
- **Pension/OPEB Liabilities**
- **Labor Issues (Costs, Work Rules)**
- **Detroiters' Quality of Life/Redevelopment of the City**
- **Development of Multi-Year Budget**
- **Reversing Economic Trends**
- **Encouraging New Investment in Detroit**
- **Political Obstacles to Reform**
- **EPA/Clean Water Act Case**
- **High Unemployment and Crime Rates**



Speaker Notes For Slide: 11

Notwithstanding the foregoing, many challenges remain.

Debt and related obligations (e.g., swaps)

Pensions and other retiree benefits (OPEB).

Labor costs, work rules and related issues.

Implementation of strategies to improve Detroiters' quality of life and redevelop the City.

Development of multi-year budget upon which restructuring can be based.

Identification of further options for saving/raising funds and stabilizing revenues (reversing trends) and encouraging new investment in Detroit.

Political obstacles to reform.

EPA and Clean Water Case before Judge Cox.

High unemployment.

High crime rate.



Out of Court Solutions Are Preferred

- **Benefits of Well Planned Out-Of-Court Restructuring**
 - **Less Disruptive**
 - **Less Publicity**
 - **Less Expensive**
 - **Less Reputational Damage**
 - **Less Political Impact**
- **Consensus or Near Consensus Necessary for a Successful Out-of-Court Restructuring**
 - ***Extremely Difficult to Achieve in Practice***



[Speaker Notes For Slide: 13]

A well planned and carefully implemented effort to resolve Detroit's difficulties out of court is vitally important for several reasons:

An out-of-court solution is preferable for a number of reasons.

Less disruptive.

Less publicity during process.

Less expensive.

Less damage to City reputation.

Less political impact.

An out of court solution requires consensus or near consensus of affected constituencies.

This is extremely hard to achieve in practice.

Note: Could mention the possibility of a moratorium on payments being negotiated in support of an out of court solution.



Impact of Possible Emergency Manager Appointment

- **Expansive Power**
 - **Power of City Government**
 - **Ability to Reject, Modify or Terminate CBAs**
 - **Ability to Commence Chapter 9 Filing Quickly, if Warranted**
 - ***Can Create Negotiating Leverage (Negotiating with the Backdrop of Bankruptcy)***

- **Hot-Button Political Issue**

- **Relationship With Elected Officials Must Be Established**

- **Possible Legal Challenges (Delay and Risk)**



Speaker Notes For Slide: 15]

Appointment of an Emergency Manager may offer the City greater powers to address some issues.

The appointment of an Emergency Manager could impact the City's restructuring efforts in a number of ways:

Expansive powers over all aspects of City government could be used to promote and expedite restructuring (e.g., budget, procurement, contracts, labor negotiations, ability to adopt ordinances related to financial condition).

Could streamline certain political/bureaucratic/legal requirements to restructuring activities.

Ability to reject, modify or terminate CBAs under certain circumstances.

Ability to commence chapter 9 filing quickly under PA 72 and PA 436 (assuming State approval).

Emergency manager powers can create negotiating leverage (negotiating in the backdrop of bankruptcy).

Hot-button political issue.

Potentially unpopular option with certain segments of the public, unions, other stakeholders.

The Emergency Manager's relationship with elected officials would have to be developed.

Ultimately, the Emergency Manager could be used as political cover for difficult restructuring decisions.

Appointment of an Emergency Manager could result in legal challenges (e.g., federal & state constitutional challenges)

Could delay progress until resolved

Could lead to challenges of the legality and enforceability of any actions taken by the Emergency Manager.



Out-of-Court Plan Should Contemplate the Possibility of Chapter 9

- Simplify and Shorten Any Chapter 9 Case, if Out-of-Court Effort Fails
 - Out-of-Court Agreements Can Be Used in Chapter 9
- Creates Leverage in Creditor Negotiations
 - Negotiating in the Shadow of Chapter 9
 - Motivate Municipal Bond Market Participants
- Bolster Eligibility for – and Success in – Chapter 9 By Establishing Good-Faith Record of Seeking Creditor Consensus



ISpeaker Notes For Slide: 17|

Any restructuring plan should be designed so that it could be implemented in a chapter 9 case, if necessary.

Even if an out-of-court plan cannot be implemented, agreements that are reached can form the basis for a chapter 9 plan of adjustment, thus simplifying and shortening any chapter 9 case.

Creditors understand that a troubled municipality has greater leverage in a chapter 9 case. Accordingly, developing an out-of-court restructuring plan that can later be implemented in chapter 9 if necessary can create leverage in favor of a negotiated deal. This is particularly the case if an Emergency Manager is appointed because the threat of a chapter 9 filing – including a potential moratorium on payments – will be more tangible, and possibly more imminent.

The combination of an Emergency Manager and a proposal that could be implemented in chapter 9 could be the most effective way to motivate investors in the municipal bond market.

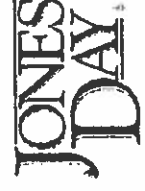
A good-faith effort to pursue an out of court restructuring plan will establish a clear record of seeking creditor consensus before seeking chapter 9 relief. This will deflect any eligibility complaints based on alleged failure to negotiate or bad faith.



If Chapter 9 Needed, Planning Is Key

- Any Bankruptcy Filing Should Be Accompanied By:
 - Fully Developed Plan of Adjustment / Detailed Term Sheet
 - OR-
 - Clearly Articulated, Reasonable Restructuring Plan, Already Shared with Creditors

This approach will help demonstrate that Chapter 9 was commenced to facilitate realistic solutions to problems. Chapter 9 is not an additional symptom of those problems.



[Speaker Notes For Slide: 19]

If a chapter 9 case becomes necessary, the commencement of a bankruptcy should be accompanied by either:

- (1) A fully developed Plan of Adjustment or detailed term sheet for a Plan of Adjustment
- or -
- (2) A clearly articulated, reasonable plan for resolving the City's financial difficulties – previously discussed with key constituencies – that can quickly be incorporated into a Plan of Adjustment.

~ ~ ~

This approach is intended to allow the City to describe a chapter 9 case as facilitating realistic solutions for the City's problems and not as an additional symptom or symbol of the intractability of those problems.



PART III – INITIAL
PLANNING CONSIDERATIONS



Establish Long-Term Goals and Promote Inclusiveness

- Reach Consensus of City Team on Long-Term Goals and Steps to Achieve Them
- Then, Include All Constituents in Planning and Negotiations
 - Obtain – and Seriously Consider – Input From All Sources
 - Defuse Political Opposition Through Listening and Documentation
 - Establish Sub-Teams for Key Issues
 - Coordinated "Hub-and-Spoke" Approach: Sub-Teams Report to Central Hub
 - Establish a Strong Record of Inclusiveness and Consideration of All Options
- *The City (both the Office of the Mayor and City Council), the State and the FAB should strive to coordinate their efforts in all respects. Any differences and tensions among these groups can and will be exploited by adversaries.*



Speaker Notes For Slide: 22

Set Long-Term Goals and Build a Strategy of Inclusiveness

A key to a comprehensive restructuring plan will be to reach consensus at the City (in consultation with its advisors, the FAB and the State) on the restructuring steps needed to achieve a durable long-term solution to the City's issues.

Thereafter, as many constituents as possible should be included in planning and negotiations.

Input should be obtained from all sources, documented and treated seriously, even if proposals appear unrealistic. Good listening skills are helpful. This can help defuse political opposition.

Sub-teams can be established by the City and its advisors to address particular issues (labor, pension/benefits, asset sales, redevelopment, capital markets, etc.).

Individual groups can report regularly to central core team of key officials and advisors (i.e., the Hub).

Jones Day often uses this Hub-and-spokes approach to manage a complex restructuring efficiently and in a coordinated manner.

Establish a strong record (i.e., for future litigation) of (i) inclusiveness with respect to all constituencies and (ii) consideration of all options and proposals received.

The City (both the Office of the Mayor and City Council), the State and the FAB should strive to coordinate their efforts in all respects. Any differences and tensions among these groups can and will be exploited by adversaries.



Multi-Year Budget: Set Spending Priorities Within Realistic Revenue Projections

- **Basis for Any Restructuring Agreements**
 - **Build on Budget Work to Date**
 - **Identify All Revenue Sources (Including Future Sources)**
 - **Strive for Conservative/Achievable Revenue Estimates**
 - **Incorporate Cost Savings from Outsourcing and Other Initiatives**

- ***The Budget should include funds needed to assure the proper functioning of the City and appropriate investments to revitalize the City over the long term.***



[Speaker Notes For Slide: 24]

Set spending priorities within realistic revenue projections.

A multi-year budget that includes revenue and expense projections will be the basis for determining amounts available for distribution to creditors – critical to any restructuring agreements in or out of court.

Jones Day understands that substantial work has been done in this area, and that this is a major challenge.

The City must create credibility in the face of an unsettled revenue picture.

All revenue sources should be identified, including future sources (such as monetizing assets or reallocation of state/county revenue).

At the same time, the City should strive for realistic (conservative) revenue projections to assist in planning and build credibility.

Cost savings through additional outsourcing and other initiatives should be incorporated where reasonable (e.g., exploration of regionally-based options/alternatives).

This Budget should include funds needed to assure the proper functioning of the City and appropriate investments to revitalize the City over the long term.

Projected revenues should be targeted to reinvestment where possible, with a mechanism to cover shortfalls as necessary (e.g., business, state or federal partnerships).



Prepare to Defend the Budget

- **Defend Spending at Levels Needed to Assure Long-Term Viability**
 - **Focus on "Who Does Detroit Serve?"**
 - **Establish Case for Reinvestment**
 - **Defend Against Calls for Expense Reduction and Monetizing Assets to Pay Creditors**
- **Characterize Detroiters as "Customers "**
 - **Must Treat Citizens with Respect**
 - **Attractiveness of City to Residents and Businesses is Key**
- **Restructuring is About Revitalization, Not Just Creditor Recoveries**



Speaker Notes For Slide: 26

Prepare to Defend the Budget.

The Budget will have to be defended against creditor criticism that it provides for excessive expenditures in light of the city's financial circumstances. We are prepared to build this case and address any concerns, including Constitutional or other legal challenges.

Although there is not much law in this area, Jones Day believes that the City can defend a decision to spend revenues at a level necessary to assure that the City functions properly and can attract residents and businesses.

Focus on "Who does Detroit serve?"

The citizens of Michigan benefit from a revitalized Detroit serving as an engine/economic driver for the state economy.

Need to establish a credible case that stability and restoration are key elements of reinvestment in Detroit.

At the same time, need to defend against approaches that focus on expense reduction and monetizing assets to pay creditors.

This will require daily coordinated effort of the City and its advisors, in further collaboration with the State.

We learned this lesson from Orange County - daily collection of information, discussion of core group, documentation of actions taken or considered and communication are key.

City should characterize its residents as "customers," a class of constituents that ordinarily is accorded significant benefits in business reorganizations.

Creditors may attempt to characterize residents as the "owners" or "voters" who should make sacrifices to facilitate payment of creditor claims.

The changes in the population of the City indicates that citizens can "vote with their feet" by leaving. A viable restructuring for a strong and vibrant Detroit must treat its citizens with respect, just as a successful business in the private sector treats its customers.

But also must focus on "absentee" customers to obtain City services without contributing sufficiently to the City.



Explore All Avenues to Pay Creditors

- Creditors (and any Bankruptcy Court) Expect Reasonable Efforts to Minimize Shortfalls to Creditors
- Must Explore Long List of Options for Saving or Raising Money
 - Raising Taxes and Fees
 - Non-Core Asset Sales
 - Reducing Expenses
 - Borrowing Options
 - Pay-Per-Use Taxation
 - Regional Solutions
- Any Savings Must Be Consistent with the City's Revitalization Plans

A record should be established that all avenues have been explored to minimize the concessions sought from stakeholders, to bolster the notion of shared sacrifice and to support the City's case for debt reduction if a Chapter 9 ultimately is commenced.



Speaker Notes For Slide: 28

Creditors – and ultimately the Bankruptcy Court if a chapter 9 case is filed – will expect that the City exert reasonable efforts to reduce or eliminate any shortfall in amounts available to pay creditors.

Must find the right way to fix the deterioration in the City's balance sheet, including the rate and maturity of debt.

Recent events have driven to too much short term debt (for a municipality).

Must be able to assure both municipal debtholders and legacy creditors that this is not just a process of imposing more undesirable terms.

In practice, the City will be required to develop long lists of options for saving or raising money, evaluate the practicality of each of the options identified and pursue promising approaches.

In past cases, creditors have suggested:

Raising taxes and fees.

Selling assets creditors deemed to be excess or not required.

Reducing expenses.

Borrowing against revenue streams generated by municipal assets.

Borrow surplus amounts in funds administered by the municipality

Revenue enhancement alternatives should be explored, encouraged and defended, even in a chapter 9 setting. For example: Pay-Per-Use Taxation. Consider implement pay-per-use taxation model as (1) impetus for voluntary compliance with "Core Detroit" infrastructure and service rationalization initiatives and/or (2) means to capture revenue from surrounding suburban communities that have historically expanded as Detroit's city center strunk.

Regional cooperation/solutions also should be explored.

Any savings ultimately must be consistent with the plans to revitalize Detroit.

A record should be established that all avenues have been explored to minimize the concessions sought from stakeholders, to bolster the notion of shared sacrifice and to support the City's case for debt reduction if a chapter 9 ultimately is commenced.

Even in chapter 9, all pre-bankruptcy efforts should be highlighted to demonstrate the City's good faith efforts to resolve issues.

This also will help drive a model of equitable shared sacrifice of all stakeholders.

Given initiatives underway relating to labor and benefits, it appears that the municipal bondholders, swap participants and monoline insurers likely will be the last contributor and must understand the entire picture of sacrifices obtained over time.



Exploring Creditor Recoveries: Challenges and Lessons Learned

- Raising Taxes: Difficult and Possibly Counterproductive
 - Tax Relief May Be Needed to Promote Investment
- Asset Sales Pose Challenges to Generating Substantial Revenue
 - Sales of Assets to Pay Creditors May Not Promote Revitalization
- Reducing Expenditures Should Not Undermine Restructuring Goals
- Borrowing May Be Limited by Legal Restrictions

Notwithstanding any challenges, the City will have to demonstrate to interested parties that all of these alternatives, and perhaps others, have been fully and fairly evaluated.



ISpeaker Notes For Slide: 30I

In Jones Day's experience:

Raising additional taxes, particularly given the economic hardship in Detroit, may be difficult (if not impossible) and may be counterproductive. In fact, an evaluation of means to increase private investment dollars in Detroit suggest the need for tax relief and incentives.

Efforts by municipalities to sell or monetize asset often pose challenges to generating material value.

Disputes over the use of proceeds can undermine the benefits of an asset sale, while eroding the municipality's asset base.

Notwithstanding the foregoing, there are exceptions and unique and creative structures for asset monetization can and should be explored.

Working with the State to maximize asset revenues and cut costs could be a viable alternative to asset sales.

Regional initiatives also could be explored (joint redevelopment, sharing of services, joint purchasing arrangements).

Note: Asset monetization outside of bankruptcy may implicate eligibility requirement that City be insolvent (e.g., measured by short-term cash).

Troubled municipalities have reduced expenditures repeatedly even before financial difficulties become acute. That is true in Detroit, but additional reductions should be evaluated where feasible without undermining the City's restructuring goals.

Given the recent sacrifices already imposed on employees and legacy creditors, the City should focus prompt attention on municipal debtholders and investors who have in some cases improved their positions.

Borrowing surplus amounts in funds administered by the municipality is complicated by State and/or Federal restrictions encumbering such funds.

Using proceeds of borrowings against revenue streams to pay City obligations is also affected by laws restricting use of the underlying assets and revenue streams.

Notwithstanding any challenges, the City will have to demonstrate to interested parties that all of these alternatives, and perhaps others, have been fully and fairly evaluated.



Equitable Shared Sacrifice Among Creditor Groups

- Equitable Does Not Mean Equal
 - Parties Have Different Rights and Protections (Constitutional, Contractual, Legal)
- Tension Between Employees/Retirees and Bondholders/Investors
 - Employee/Retiree Sacrifices Must Be Sufficient, but Should Not Undermine Ability to Recruit and Retain
 - Employees and Retirees Already Have Made Sacrifices, While Municipal Debtholders Have Improved Position
 - Should Look at Entire Restructuring Process: Equality of Sacrifice Cannot Be Measured at a Single Point in Time
- Legal Uncertainty Regarding Sixth Circuit Treatment of Legacy Claims
- Consider Expanding Sacrifices Regionally

The City will have to develop a proposal for dealing effectively with the issues of equitable sacrifice.



Allocation of Sacrifice Among Competing Creditor Groups

In general, under United States bankruptcy law, including chapter 9 of the Bankruptcy Code, amounts available for distribution to creditors must be allocated in an equitable manner. "Equitable" generally means equally unless there are meaningful distinctions among the rights of competing creditors.

Recent chapter 9 cases and out of court negotiations involving troubled municipalities have involved significant disputes about whether or not work/force related claims (including claims for pension and other retiree benefits) should have some form of priority over claims for borrowed money and other commercial claims.

Pension and employee benefit commitments often are included in executory contracts. This reality may also permit some kinds of distinctive treatment from other creditor claims. In that regard, cuts in employee benefits and wages should be reasonably calibrated so that Detroit civil service compensation is market appropriate: cuts should not be so severe that the City cannot attract and retain qualified civil servants.

While legacy creditors are already being asked to make sacrifices, and have done so over the past number of months, municipal debt investors have been improving their positions. Municipal bondholders, swap participants and monoline insurers must be asked to make sacrifices compared to legacy creditors over an extended look back period. Equality of sacrifice cannot fairly be measured at a single point in time.

Tensions between statutes that protect the rights of municipal employees and the ability of municipal debtors to impair collective bargaining agreements have led to differing outcomes in bankruptcy court.

Outside of bankruptcy, Michigan employees enjoy certain constitutional protections for benefits (primarily accrued pension benefits). These protections have analogues in Michigan statutes and Detroit regulations, separate and apart from protections that may be included in CBAs, but are nevertheless considered "contractual" promises. Section 365 of the Bankruptcy Code – which is applicable to Chapter 9 proceedings – would provide Detroit with the ability to evaluate all of its "executory contracts" (including CBAs). Moreover, certain stringent restrictions on the rejection of CBAs otherwise applicable in bankruptcy do not apply in chapter 9. Sections 903 and 904 of the Bankruptcy Code protect the power of a State to control municipalities and prohibit bankruptcy courts from interfering with the governmental power of the debtor. These provisions can be read to limit the ability of bankruptcy courts to disregard state law within chapter 9. Thus, bankruptcy courts presiding over chapter 9 proceedings have reached differing conclusions with respect to the extent to which state laws protecting employees impact a debtor's ability to address CBA or other contractual benefits issues.

» For example, in Orange County, certain county employee coalitions successfully prevented the debtor from modifying CBAs in a manner inconsistent with California law in connection with certain seniority rights.

» On the other hand, in Vallejo, the bankruptcy court held that the filing of a Chapter 9 petition effectively foreclosed the application of state law in the CBA context. The Stockton court generally seconded Vallejo's approach regarding the primacy of federal law in chapter 9 in upholding the debtor's ability to reduce contractual OPEB benefits.

It is unclear whether bankruptcy courts within the Sixth Circuit – perhaps the most pro-union Circuit in the nation – would adopt the Orange County or the Vallejo/Stockton approach to incorporation of state law into chapter 9 proceedings.

The City also could look to expand sacrifices regionally, particularly in connection with shared services and shared benefits. Pursuing regional sacrifice may generate untested legal issues.

The City will have to develop a proposal for dealing effectively with the issues of equitable sacrifice.

**PART IV – COMPONENTS AND
CONSIDERATIONS FOR RESTRUCTURING PLAN**



Key Plan Components

- **Pensions and Benefits**
- **Labor**
- **Municipal Debt**
- **Funds for Reinvestment**



Contrasting Approaches in Recent Chapter 9 Cases

- **Stockton, California**
 - Continued Pension Contributions to CalPERS as Protected by State Law
 - Ceased Retiree Health Plan Premiums
 - Proposed Impairment of Certain Bond Debt, Pensions Unimpaired
 - Restructuring Opposed by Municipal Bondholders

- **San Bernardino, California**
 - Ceased Pension Contributions to CalPERS, Seeking Impairment
 - Restructuring Opposed by CalPERS and Labor, and Supported by Municipal Bondholders

- **Central Falls, Rhode Island**
 - New State Law Created Lien in Favor of Municipal Debt Service Payments
 - Bondholders Paid 100%; Pensions/Benefits Sharply Cut
 - Policy to Favor Investors and Protect Credit Ratings



Pensions and Benefits in pending California cases

The City of Stockton (population 300,000) and the City of San Bernardino (population 215,000) filed chapter 9 cases within a month of each other in mid-2012.

Like many California municipalities, both cities have very large liabilities in respect of unfunded pension and employee benefit obligations. However, each has taken a different course of action with respect to those liabilities.

Upon filing for bankruptcy, San Bernardino ceased contributions to the California Public Employee Retirement System (CalPERS) for amounts due in respect of unfunded pension obligations (both pre- and post-bankruptcy filing), and indicated that it intends to impair the claims of CalPERS like any other unsecured claim in the bankruptcy case.

Stockton, on the other hand, has continued making contributions to CalPERS and vowed to leave all CalPERS claims (the largest claims in the case) unimpaired under any plan of adjustment.

Stockton – supported by CalPERS – asserts that its obligations to CalPERS are mandated by state law and cannot be impaired in a chapter 9 case due to the limitations of sections 903 and 904 of the Bankruptcy Code.

Interestingly, Stockton has ceased paying retiree health care premiums related to promised health care benefits. Upon motion by the retirees to seek to force the city to resume such payments, the bankruptcy court issued a lengthy and important opinion touching on many questions of state sovereignty and supremacy of bankruptcy law, ultimately holding that section 904 of the Bankruptcy Code prohibited the court from granting the requested injunction against the city. In re City of Stockton, 478 B.R. 8 (Bankr. E.D. Cal. 2012). The effect of the court's opinion was to leave the retirees without a remedy, except for negotiating their treatment under the chapter 9 plan of adjustment.

The Stockton and San Bernardino cases are proceeding along parallel but opposite tracks.

In San Bernardino, due to the city's cessation of contributions to CalPERS, both CalPERS and labor groups have objected to the city's chapter 9 petition and argued, among other things, that the city will be incapable of confirming a plan of adjustment that impairs the CalPERS claims. Bondholders and bond insurers have responded in support of the city and in opposition to the CalPERS and labor objections.

In Stockton, due to the city's statement that it will not seek to impair CalPERS (and instead will seek only to impair bondholders and other unsecured creditors), it is the bondholders and bond insurers who have objected to the city's chapter 9 petition, arguing among other things that the city will be unable to confirm a chapter 9 plan of adjustment that does not impair the CalPERS claim. CalPERS has responded in support of the city and in opposition to the bondholders and bond insurers.

The cases likely will produce one or more decisions that touch upon the role and efficacy of state pension and labor law in a chapter 9 case and, when appeals ensue, ultimately may produce circuit-level authority regarding whether or not federal bankruptcy law governs in this context.

In Rhode Island, a municipality effectively accorded priority to borrowed money creditors.

Central Falls, Rhode Island filed for chapter 9 protection in August 2011, suffering from structural budget deficits and burdensome/unpayable pension and retiree benefit obligations.

Legacy Creditors – Pensions and OPEB

- **Unfunded OPEB and Pension Liabilities Pose Challenges**
 - **Unfunded OPEB Liabilities Pose the Greater Challenge**
- **Pensions Have Substantial Underfunding, but Also Significant Plan Assets**
 - **OPEB is Much Larger and Unfunded**
 - **Health Premiums Exceed Debt Service on General Obligations**
- **Equitable Restructuring of Legacy Obligations Possible**
 - **Fewer Legal Protections for OPEB Than Pensions**
 - **Pensions Constitutionally Protected, but Reasonable Changes Possible**
- **Formulation of Unified Labor Negotiation Strategy Critical to Success**



Speaker Notes For Slide: 38|

Legacy Creditors (Pensions and OPEB)

Detroit has significant OPEB liabilities and unfunded pension liabilities (i.e., unfunded actuarial accrued liabilities reported as approximately \$5.7 billion and \$643 million, respectively). Recent work by Milliman suggests that unfunded pension liabilities are substantially greater than \$643 million and may exceed \$2 billion.

Given the magnitude of these liabilities, sound and long-term restructuring of Detroit's obligations will require across the board sacrifice from legacy creditors.

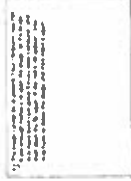
As between pension and retiree health (OPEB), OPEB poses the greater liability challenge. Pensions have substantial underfunding, but also significant plan assets; by contrast, there is no funding of OPEB and it is a significant cash drain. The City's annual health premiums far exceed principal and interest payments on general obligations.

Tools are available for an equitable restructuring.

OPEB has less legal protections under state law than pensions, providing a greater ability to cut and equitably restructure.

Pensions have certain state constitutional protections, but reasonable pension changes may be made that avoid the legal strategy of having to argue that federal bankruptcy law under chapter 9 overrides state constitutional protections.

Formulating a unified labor negotiation strategy will be critical to success. The benefit structure should be holistically analyzed to determine what changes are appropriate and necessary and can be rationally justified by other retained benefits.



Potential Pension Reform Initiatives

- Jones Day Has Significant Public and Private Pension Experience
 - We Know, Respect and Are Prepared to Work with the City's Other Advisors on Benefit Issues
 - Plan Must Be Developed Collaboratively Between City and Its Advisors
- A Framework for Pension Reform Could Include the Following Elements:
 - Require All New Employees to Participate in DCPs, Rather than DBPs
 - Prospectively Eliminate COLAs for active members
 - Raise Retirement Ages, Reduce Early Retirement Subsidies
 - Consider Changes to Secondary/Ancillary Features of DBPs
- *We believe that existing basic pension formulas can be preserved for current active members while saving significant sums for Detroit*



[Speaker Notes For Slide: 40]

Potential Pension Reform Initiatives.

We understand that the City has engaged other pension and benefit experts on these issues. We know, regularly work with and respect the City's other advisors and would look forward to working with them to refine the recommendations to fit within a restructuring or chapter 9 strategy. We have significant public pension experience, and we know the differences between federally-regulated private sector arrangements and public plans.

We have begun the process of evaluating the pension issues facing the City. Any plan would need to be developed based on the collaborative work of the City and its advisors after further review. Based on what we know, and our experience in other matters, we believe a framework for pension could include the following elements:

- Require all new employees to participate in defined contribution plans, rather than defined benefits plans.
- Prospectively eliminate COLAs for all active members.
- Raise retirement ages for certain employees, reduce early retirement subsidies.
- Additional changes to secondary and ancillary features of defined benefit pension arrangements.

Proposed changes could allow most existing basic pension formulas to be preserved for current active members while saving significant sums for the City. But legislative action – e.g., amendment to the City Charter and Ordinances – may be necessary to achieve certain of these changes. If needed, chapter 9 could be used as a means to further cut back or compromise "accrued financial benefits" otherwise protected under the Michigan Constitution.



Potential OPEB Reform Initiatives

- Evaluate Benefits of De-linking Retiree Health Plan from Active Employee Health Plan Design and Contribution Structure
- Design of a New Replacement OPEB Plan Could Include the Following:
 - Increase Retirement Age
 - Transition Younger Retirees to State-Based Exchanges and Federal Subsidies under Affordable Care Act
 - Increase Use of the Medicare Programs – Part A, Part B, and Part D
 - Impose Reasonable Retiree Premiums (For Existing Retirees, Link to COLAs)
 - Audit Records to Cut Off Funding to Unqualified Dependents
 - Consider Defined Contribution Model for Future Retirees
- Consider Funding of OPEB through Tax-Exempt Trust
- Evaluate Required Scope of Coverages under City Code
- Be Prepared for Argument that Adverse 6th Circuit Law Applies
 - 6th Circuit Adverse Cases Involve Private Sector Plans, but Unions Likely Will Argue They Are Applicable Here



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[Speaker Notes For Slide: 42]

Potential OPEB Reform Initiatives.

We have begun the process of evaluating the OPEB issues facing the City. Any plan needs to address both the long-term OPEB liability, and the significant annual cost for coverage. This would need to be developed based on the collaborative work of the City and its advisors after further review. Based on what we know, and our experience in other matters, we believe a framework for OPEB obligations could include some or all of the following elements:

The City Should Evaluate "De-Linking" of Benefits Under Retiree Health Plans from Plan Design and Contribution Structure for Active Employees. Linking OPEB benefits to plan for active employees generates large inefficiencies and costs. It will be more difficult to address the \$5.7 billion underfunding of OPEB benefits without severing this link.

Design New Replacement OPEB Plan

Retiree healthcare currently is provided to many younger individuals who are not objectively recognized as retirees. Modifications could increase retirement age to cover only "true" retirees (as opposed to persons in their 40s), to decrease costs and transition younger retirees to state-based exchanges (based on residence) and available federal subsidies under Affordable Care Act.

Better use of the Medicare programs – Part A, Part B, and Part D (drug benefits) to provide the fundamental coverage to true retirees.

Impose reasonable retiree premiums; link retiree premiums to pension COLAs.

Audit records to cut off funding of benefits to ineligible dependents.

Consider defined contribution model for retirees.

Also Consider Funding of OPEB through a Tax Exempt Trust

Available in the non-ERISA, governmental plan setting based on existing IRS guidance (e.g., Private Letter Ruling 201136007, September 9, 2011).

Provides more flexibility than a VEBA, but still need cash or other assets to fund such a trust, so this may not be a viable approach.

Language in the Detroit City Code establishing the OPEB obligations may allow argument that the scope of currently offered coverages is not required.

Also, unlike accrued pension benefits, OPEB obligations are not constitutionally protected.

Must be aware, and wary, of Sixth Circuit law that is favorable to unions/retirees and adverse to actions the City may wish to take.

Much of the most concerning Sixth Circuit law is predicated on federal ERISA and the Labor Management Relations Act (relating to private sector plans), which are inapplicable to municipal plans.

But we should anticipate an argument that this reasoning should be applied as a matter of state law to municipal plans, and the City should be prepared for that.

Chapter 9 could be used, or threatened, as a means to accomplish a compromise of benefit costs (rejecting contracts or compromising claims).

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Labor Issues

- Renegotiation of CBAs Must Focus on Economic Stability
- Immediately Conduct Supporting Financial Analysis
 - Establish Necessary Savings
 - Demonstrate Fair Allocation Between Personnel and Non-Personnel Costs
- Demonstrate a Commitment to the Unions That They Are Partners
 - Demonstrate That Near-Term Sacrifices Provide Long-Term Benefits
- Formulate Easy-to-Understand Messages for Membership/Public
- Consider Need to Amend City Charter and Code, or other Legislative Action, for Pension/OPEB Changes



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[Speaker Notes For Slide: 44]

Labor

Renegotiating collective bargaining agreements to terms that provide economic sustainability will be key to the City's recovery.

Financial analysis must be conducted at the outset – and must be unimpeachable – to show the savings needed and how those necessary savings are being allocated between personnel vs. non-personnel related costs.

Will need to demonstrate a commitment to unions that they are partners in this process and the near term sacrifices will provide longer term benefits to their members (preservation of jobs – a return to financial health for Detroit).

In addition to conveying these economic needs at the bargaining table, we must be prepared to provide simple, easy to understand messaging to the membership and the public.

City charter and ordinances governing pensions may provide an additional hurdle that will need to be overcome via legislative amendment. Renegotiating collective bargaining agreements will not automatically supersede ordinances and charter. There appears to be somewhat more flexibility on the retiree medical expenses, but here too there may be a need for legislative action.



Municipal Debt – Overview of Approach

- **Viability Threat of Chapter 9 is Critical**
 - **Only Chapter 9 Allows Non-Consensual Impairment of Municipal Debt**
- **Fair Sacrifice Needed from Municipal Debtholders**
 - **Employees/Retirees Already Sacrificed (and May Again)**
 - **Investors Accepted City's Credit and Were Compensated for Risk**
 - **Investors Have Adjusted Credit Terms to Their Benefit as City's Finances Worsened**
- **City Should Make Clear That It is Not Prepared to Dedicate Scarce Resources to Prefer Debtholders over Residents, Businesses and Revenue-Driving Activities**
- **Refinanceable Bond Debt Presents a Unique Opportunity**
 - **Potential for Advantageous Fixed Rates Over an Extended Term**



[Speaker Notes For Slide: 46]

Municipal Debt JE emphasize Jones Day's significant expertise/experience with respect to municipal finance, a core competency that may separate Jones Day from other firms. I

Chapter 9 is only real mechanism to impair significant debt without consent, so the viable threat of chapter 9 is critical especially to deal with municipal debtholders. This creates real leverage.

Sacrifice by municipal debtholders is important, especially since employees and retirees have already made real personal sacrifices, and may be asked for more. Providers and investors in funded debt accepted the City's credit and were compensated for the risk.

We are prepared to deal with these parties as creditors of the City in transparent and fair manner. It should be made clear that the City is not prepared to dedicate scarce resources to prefer debtholders over residents, businesses and revenue driving activities. Any effort of General Obligation creditors to obtain the collateral protections of special revenue bonds should be approached with caution.

Different types of debt receive different treatment in municipal bankruptcy cases.

General obligation bonds are treated as general debt in chapter 9. A municipality is not required to make payments of either principal or interest on account of such bonds during the case.

Certain restrictions on how debt may be readjusted in traditional bankruptcy proceedings do not apply in chapter 9. Thus, Detroit would be able to impose favorable terms upon general obligation bonds (e.g., the imposition of non market interest; drastically extended repayment terms; delays in cash payments) pursuant to a Plan of Adjustment, the only caveat being that such terms are consistent with State law.

Chapter 9, however, provides certain protections to creditors holding liens upon special project revenues. This may be of particular importance to Detroit, given the scope of its special project debt (e.g., bonds issued in connection with the construction/overhaul of water and sewer plants, collateralized with the revenues and fees earned by such projects).

Specifically, the "special revenues" from these projects remain subject to the liens of the bondholders in the specific projects and those revenues (1) must be used to fund the "necessary operating expenses" of the special project or to pay back bondholders and (2) may not be diverted to support the general obligations of the municipality.

Defining what constitutes the "necessary operating expenses" of a given special project has been the subject of litigation in other chapter 9 cases (most recently, Jefferson County); courts appear inclined to interpret the phrase narrowly. The Jefferson County case is for review by the Eleventh Circuit.

With a credible threat of chapter 9, the City has leverage:

Cramdown in chapter 9 is possible if there is one accepting impaired class, meaning that a non-accepting class of debtholders could be bound by the Plan of Adjustment to compromise their debt.

Amortizations of debt suggest that municipal debt holders have been adjusting their credit terms to their benefit as the City's finances have worsened. This supports a greater sacrifice at this point by debtholders.

This also appears to a readily re-finaceable structure, and there is a unique opportunity to obtain advantageous fixed rates for an extended period if the negotiations are conducted properly.



Municipal Debt – Other Issues

- Carefully Evaluate POC Debt and Related Swaps
 - Unique Structure Could Raise Restructuring Issues
- Swap Termination Issues
 - Termination Rights Generally Protected in Bankruptcy
 - Recent Grant of Collateral Still Can Be Evaluated for Fraudulent Transfer
 - Consider Other Market Transactions to Address Swaps
- Engage Monoline Insurers Promptly with Coordinated Message
- Coordinate Funding Solutions with State
 - State Likely Instrumental in Financing, Revenue-Generating and Cost-Cutting Transactions
 - Several Recent Examples
 - Consider Eligibility Ramifications
- Should Pursue Achieving Some Excess Debt Capacity, Flexibility



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Treatment of POC debt and related swaps should be carefully evaluated because the unique structure could raise issues in a restructuring.

Swap counterparties may assert termination rights and must be addressed promptly.

Can build on negotiations that have been ongoing.

Termination rights not impacted by bankruptcy do to safe harbors, but treatment of claims may remain an issue.

Notwithstanding safe harbors, recent granting of collateral on swap debt could be avoidable if there was fraud. LIBOR rate cases may be relevant.

City should consider addressing swaps through market transactions.

For substantial insured debt, the credit insurers will have to be engaged in a meaningful way at the outset.

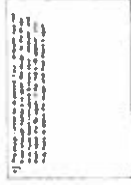
Jones Day is experienced dealing with monoline insurers with the economic interest relating to insured debt.

Monolines are involved in both bond and POC debt.

Funding solutions should be coordinated with the State, which is expected to be an instrumental party in any new financing transaction or other revenue generating or cost cutting transactions (e.g., Belle Isle lease, regional transportation authority, funding to support Detroit Downtown Development Authority and possible new arena and commercial developments).

Again, receipt of State funding out-of-court may implicate eligibility concerns.

Debt negotiations should account for need for some excess debt capacity to cover potential shortfalls, provide flexibility and, if needed, fund any legacy debt solutions.



PART V -
ADDITIONAL PROCESS POINTS



Pay Careful Attention to Political Implications of Restructuring

- All Decisions and Actions Will Have Political Implications and Consequences
- Political Implications of Proposals Should Be Identified and Vetted as Early as Possible
- Ensure that All Statements Are Consistent with Overall Communications Plan

The Jones Day team has extensive experience in cases of national significance and understands this imperative.



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Every decision and action taken by the City in responding to its financial crises will have political implications and, potentially, political consequences.

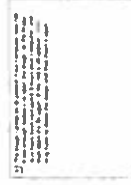
Political aspects of all proposed actions have to be identified and vetted as early as possible.

Every statement (including any court filings or arguments in court) must be consistent with an overall communications plan.

Statements made in collective bargaining must be carefully considered. Prospect of negotiation positions and statements being leaked to media outlets is significant.

Must be strong sensitivity to public relations campaigns by various constituencies.

The Jones Day team has extensive experience in cases of national significance and interest and understands these imperatives.



Understand and Anticipate Positions of Creditors

- **Employees/Retirees Will Argue:**
 - **Obligations Cannot Be Modified as a Matter of Law**
 - **Modifications Make City Less Attractive to Qualified Job Candidates**
 - **Continuing Contractual Relationship Should Be Preferred over Debt**
- **Debtors/Monoline Insurers Will Argue:**
 - **Repayment of Debt Essential to Continuing Access to Credit Markets**
 - **State Has a Moral/Practical Obligation to Ensure Repayment**
 - **Defer – and Provide Security for – Obligations Instead of Impairment**
- **City Responses Must Be Reasoned and Consistent**
- **Concessions Will Not Be Made to Give Any Group an Unfair Advantage**
- **Critically, New Revenues Must Be Preserved for Reinvestment**
 - **New Funders Cannot Be Compelled to Accede to Creditor Demands**
 - **Earmark New Money for Legally/Politically Sound Revitalization Activities**



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Anticipated Positions of Creditors:

Municipal employees and their representatives will contend: Obligations to them cannot be modified as a matter of law.

Obligations to employees should not be modified because the City has to be able to attract job candidates and cannot fall behind pay and benefit packages provided by either nearby municipalities or other unionized businesses.

Obligations to employees do not have to be impaired to the same extent as borrowed money creditors because their claims are connected to contracts that have to continue in effect.

Debt holders and insurers will contend:

Repayment of borrowed money claims is essential to access to financing markets going forward. This argument is used to justify extreme budget austerity and asset sales, whether or not beneficial on a long term basis.

The State of Michigan has a moral or practical obligation to ensure repayment of City debt. This argument is used to attempt to convince the State to contribute State resources to the satisfaction of City debt and to induce the State to make choices favoring debt repayment over other priorities.

Deferral of obligations, even if ability to pay in the future is uncertain or questionable, is a preferred approach to deal with inability to satisfy obligations. Usually this approach is coupled with demands for security that will improve the position of borrowed money creditors in any subsequent debt restructuring.

The City must be prepared to respond to these competing points of view in a reasoned and consistent manner.

Concessions should not be made to one group – such as debtholders – to give them an unfair advantage.

Most critically, as the City gains access to new revenues, it must develop an approach that preserves those revenues for reinvestment in the City and not just to pay off preexisting debts.

As seen in the Chrysler case, new funders or buyers cannot be compelled to accede to creditor demands.

New money may be earmarked for revitalization activities as long as the transaction is legally and politically sound.



Plan of Adjustment Issues

- Enabling Legislation May Be Necessary
 - E.g., Authorization of Financing Techniques
 - Identify and Draft Necessary Legislation Early to Avoid Delays
- Best Interests Test
 - Demonstrate Reasonable Efforts to Satisfy Debts to the Extent Possible
- Cram Down: Impose Terms of Plan on Dissenting Creditor Classes
 - A Municipality Must Raise Taxes to the Extent Possible Without Triggering a “Death Spiral”
 - Expert Testimony on Tax Burdens May Be Needed

It is crucial to focus on the plan approval standards throughout the debt adjustment process in case a Chapter 9 case is required.



Speaker Notes For Slide: 55]

Plan of Adjustment

The goal of a chapter 9 filing for Detroit would be to emerge with a successful "Plan of Adjustment," in which the City's debts are reduced and/or restructured in a manner that is feasible given its budget and consistent with its long term revitalization strategy

The Plan of Adjustment is a document that would establish the treatment of the various classes of creditors' claims against Detroit.

Enabling Legislation May Be Necessary

Often, transactions contemplated by or specified in a Plan of Adjustment must be also authorized by legislation.

Examples of such legislation include authorization of financing techniques.

Needed legislation should be identified and drafted as early in the process as possible to avoid delays as bills move their way through the legislature.

Key Confirmation Standards

Best Interests Test

Applicable to all creditors, whether or not the creditor is in a class that has accepted the plan.

As generally applied, requires a troubled municipality to make reasonable efforts under all the circumstances to satisfy its debts to the greatest extent possible. The strategy outlined above should help us support this finding.

Cram Down

Confirmation of a non-consensual plan is possible under chapter 9.

Senior classes must be paid before more junior classes can receive any distribution.

Applied to municipalities with unlimited taxing power, a municipality must use its ability to raise taxes the extent possible without triggering a "death spiral" that would ultimately destroy the municipality.

Traditionally, this question has been determined based upon expert testimony.

Tax burdens in other comparable municipalities should be important as well.

It is crucial to focus on these standards through the debt adjustment process and continuing to build the case that if necessary, the City can confirm a Plan of Adjustment that does not provide for payment in full of all indebtedness.

Any Chapter 9 Process Should Be Comprehensive

- **Plans of Adjustment Address Narrow Range of Economic Compromises**
- **Other Fundamental Changes Must Occur Outside the Plan Context**
- **Any Chapter 9 Process Should Pursue as Many Revitalization Initiatives as Possible**
- **Negotiating in Chapter 9 – or Its Shadow – Is a Powerful Tool for Revitalization**
- **The City Should Take Advantage of Its Opportunity for Long-Term, Comprehensive Solutions**



[Speaker Notes For Slide: 57]

Any Chapter 9 Process Should Be Comprehensive

A chapter 9 Plan of Adjustment can only accomplish a narrow band of economic compromises.

This type of debt restructuring is critical, but other fundamental changes of great importance can only occur outside of the Plan of Adjustment.

If a chapter 9 case is commenced, the City should use the process to address as many additional items as possible, not just the core debt readjustment issues in a Plan of Adjustment.

Negotiating in the chapter 9 environment – or even in the shadow of chapter 9 – is a powerful tool to pursue the City's revitalization agenda.



Key Restructuring Lessons

- **Develop Comprehensive Plan, Supported by Defensible Budget and Assumptions**
- **Develop Out-of-Court Approach That Translates to Chapter 9**
- **Set Clear Positions Early**
- **Be Inclusive and Communicate**
- **Pursue Shared Sacrifice Without Compromising Long-Term Revitalization Goals**



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Key Restructuring Lessons

Develop comprehensive plan, supported by defensible budget and assumptions.

Develop out-of-court approach that will work if needed in chapter 9.

Set positions early.

Be inclusive and communicate.

Pursue shared sacrifice without compromising long-term revitalization goals.



PART VI – OTHER ISSUES

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Select Asset Monetization Issues

- Evaluate Impact of Any Asset Sale on Chapter 9 Eligibility
- Water and Sewer
 - Various Legal and Practical Challenges Facing Monetization of DWSD Assets
 - Regional Stakeholders Will Seek Input
 - Consider Collaboration with EPA and Regional Partners to Develop Creative Solutions
- Lease/Operating Agreements
 - Could Evaluate for Airport or Other Assets
 - Recent Collaborations with State Could Be a Model
- Airport Privatization Under FAA Pilot Program



Speaker Notes For Slide: 62]

Asset Sale/Privatization/Monitization Issues (Select Issues)

Concerns regarding eligibility for Chapter 9 may be implicated by asset monetization.

Any transaction should be reviewed and structured to address any eligibility issues (e.g., earmarking of funds).

Water and Sewer

Detroit Water and Sewer Department services much of southeast Michigan (Wayne, Oakland, Macomb counties).

Much of the DWSD's infrastructure is owned and operated by these surrounding counties (and the communities located therein), complicating efforts at restructuring. DWSD services nearly 100 "first-tier" and "second-tier" customers (e.g., from the surrounding counties), all of whom would seek input with respect to restructuring.

Monetization of assets could be challenging.

The Detroit City Charter prohibits the sale of "any city-owned public utility furnishing water and sewerage services, unless approved by a majority of city voters voting on the question at a regular or special election."

Statutes/codes/caselaw may require that funds received from disposition be allocated (e.g., to pension/OPEB liabilities) in a fashion that frustrates ability to allocate funds towards restructuring initiatives.

Monetization of assets may trigger consequences under existing debt and derivative documents.

Open question whether limited universe of "purchasers" could assume liabilities.

An emergency manager, a chapter 9 proceeding or changes to law could be required to overcome obstacles.

Consider different rate structures, regional authority.

EPA litigation complicates the circumstances.

Possibly could explore with EPA and other recipients of services how to make this self-sustaining and profitable.

Negotiating in the shadow of bankruptcy could provide useful leverage for creative solutions.

Combination Lease/Operating Agreement

Could be used for airport or other assets.

The proposed Belle Isle lease may be a model for this kind of transaction.

With respect to the Coleman Young airport, for example, Detroit could evaluate entering into an arrangement combining a lease of airport property with an airfield operating agreement, with the end result being similar to the transfer of possession and operating responsibility to a private operator while falling short of a full lease of the airport.

Under this model, Detroit would remain responsible for major operating and development decisions, but the burden of operating the airport on a daily basis would be alleviated.

Might be more attractive to airport than FAA pilot program to sell asset that we can discuss (comes with various conditions).

Airport Privatization Under FAA Pilot Program [Do-emphasize in light of potential unavailability of program]

Privatization of Detroit airports historically impeded by federal aviation law preventing cities from retaining the proceeds of an airport sale or transfer.

A recent FAA pilot program – adopted by Congress in 1996 – for the privatization of airports, however, may allow Detroit to privatize an airport freed from federal restrictions on the use of proceeds.

Program recently used to sell Midway Airport, with cash value going to the City of Chicago

Under the program, the FAA is authorized to exempt up to ten airports from the relevant federal statutory and regulatory requirements (i.e., to repay Federal grants, return

Prepare for Legal Challenges

- In a Chapter 9 Setting, Legal Challenges of Various Actions Are Inevitable
 - Jones Day Is Well Positioned to Address These Challenges
 - Substantial 6th Circuit Experience
 - Knows How to Expedite Review
- Various Challenges to PA 436/Emergency Manager Authority Possible
 - Challenges at Ballot Box: Renewed Referendum Process
 - Other Legal Challenges in Court
 - Challenges Could Cause Delay, Threaten Progress
 - Jones Day Can Work With the City's Current Advisors to Address Efficiently



[Speaker Notes For Slide: 64]

Prepare for Legal Challenges

If a chapter 9 case is commenced, it is anticipated that parties will to raise numerous legal challenges to the City's efforts. Jones Day is well prepared and positioned to address these challenges. We have substantial 6th Circuit experience. Also know how to expedite proceedings.

The City also should be prepared to address expected challenges to PA 436 and the Authority of any Emergency Manager. These challenges could delay restructuring initiatives or threaten to overturn progress made under these authorities.

Challenges could include:

Challenges at Ballot Box. Critics of PA 436 have already indicated that legal challenges to the law will be forthcoming. Stand Up for Democracy (which led the effort to reject PA 4) has suggested that it will begin a similar referendum process with respect to PA 436 (although appropriation component of PA 436 may insulate it). Legal Challenges. Critics of PA 436 are likely to challenge the statute on grounds that the powers over contracts granted to emergency managers (including the power to reject, modify or terminate CBAs) violate the Contracts Clause of the U.S. Constitution. Further challenges could include (1) whether PA 436 can be insulated from the referendum process through inclusion of a minor appropriation, (2) whether the law properly grants unelected emergency managers the power to displace elected officials/disenfranchise the electorate and (3) whether PA 436 was properly enacted in light of the voter rejection of PA 4 (which has been characterized by some as "substantially similar").



EPA Litigation Issues

- **Restructuring Strategy Must Account for EPA Litigation and Rulings of Judge Cox**
- **Consider Approaches to Consolidate Issues with the Rest of the Restructuring Process**
- **Consider How EPA Litigation Could Impede or Assist Detroit in Chapter 9**



[Speaker Notes For Slide: 66]

Other EPA Litigation Issues

Need to coordinate strategy with relevant aspects of EPA litigation, including rulings regarding CBAs and bargaining

Consider approaches to consolidate these discrete issue with the rest of the restructuring process.

Consider how EPA case could impede or be used to assist in any chapter 9 case.

2] The Board shall, in the exercise of its powers, be subject to the supervision and control of the court. The court may, in its discretion, remove any member of the Board who is not acting in good faith or who is incompetent, inefficient, or unable to perform his or her duties. The court may also, in its discretion, remove any member of the Board who is not acting in good faith or who is incompetent, inefficient, or unable to perform his or her duties.

PART VII – CONCLUSION

JONES
DAY

Jones Day Is the Right Choice for Detroit

- We are committed to this project, which we view as a matter of particular importance given our Midwestern, industrial roots
- We are committed to working with the City and its advisors and stakeholders to find and pursue real solutions that will revitalize the City of Detroit
- We have a wealth of experience, expertise, creativity and energy throughout our firm
- We are here to help, as part of the team, in whatever way we can



[Speaker Notes For Slide: 69]

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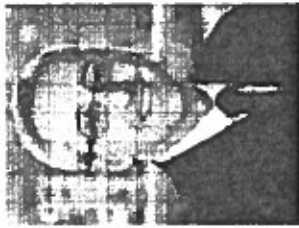
We are here to help, as part of the team, in whatever way we can.



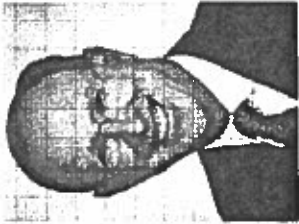
ANNEX A:
THE REST OF THE JONES DAY TEAM



The Jones Day Team



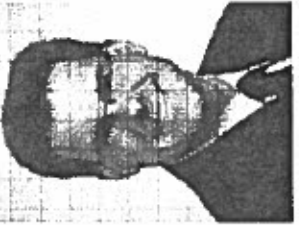
Jeffrey Ellman
Restructuring



Evan Miller
Employee Benefits



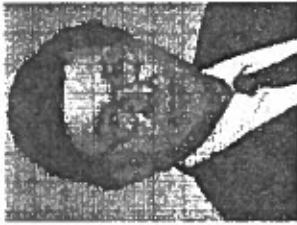
Sarah Heck Griffin
Public Pensions



David Kates
Public Finance



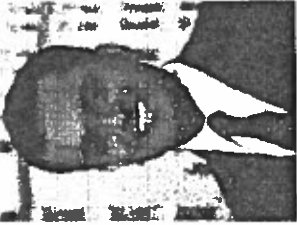
Brian Sedlak
Public Projects
& Infrastructure



Peter Clarke
Public Projects
& Infrastructure



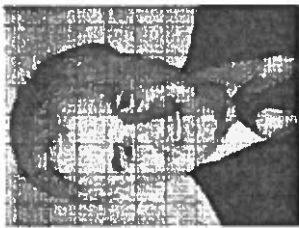
Rebecca MacPherson
Public Projects
& Infrastructure



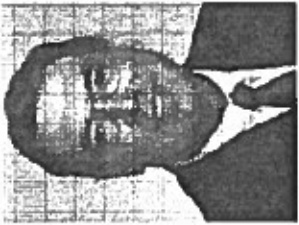
Naveen Rao
Public Projects
& Infrastructure



The Jones Day Team



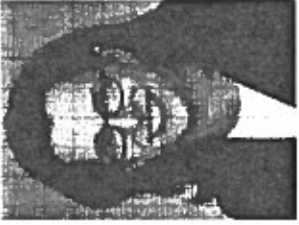
Robert Louis Ford
Labor



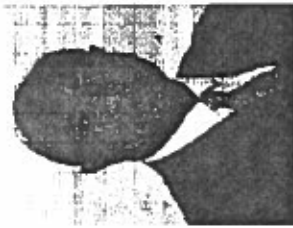
Lawrence DiNardo
Labor



Wesley Johnson, Jr.
Mergers & Acquisitions



Beth Heifetz
Issues & Appeals



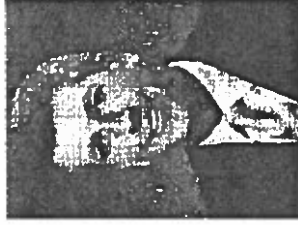
Richard Deane
Litigation



Yvette McGee Brown
Litigation



Jayant Tambe
Litigation



Chad Readler
Litigation



ANNEX B:
CERTAIN REFERENCES



References

The Honorable John E. Ryan (Retired)
United States Bankruptcy Court for the Central District of California
760-522-6016

Thomas W. Hayes
Former Treasurer and Director of Finance, State of California
916-806-6200

Chris Varelas
Founding Partner, Riverwood Capital
650-618-7377



EXHIBIT C

From: Bill Nowling [NowlingB@detroitmi.gov]
Sent: Monday, July 08, 2013 2:28 PM
To: Greg Tedder, Holyfield, Jeff (GOV); Wurfel, Sara (GOV)
Cc: Shani Penn
Subject: DRAFT Comms Planning and Proposed Roll Out
Attachments: Chapter 9 Comms Document Checklist July 1, 2013.docx; Chapter 9 Messages - July 1, 2013.docx; Copy of Ch 9 Comms Rollout July 4, 2013.xlsx

All,

Attached are three files for your review. These are DRAFT documents and are not ready for review beyond staff level at this time.

Bill

Bill Nowling
Office of Emergency Manager Kevyn Orr
Mayor's Office
2 Woodward Ave., Suite 1126
Detroit, MI 48226
(O) 313-628-0950
(M) 313-310-2484
nowlingb@detroitmi.gov

Chapter 9 Communications Rollout

Date	Event	Responsibility
	<i>Monday, July 1st, 2013</i>	
	Begin drafting key communications documents (see document checklist for specific materials and related responsibilities)	AMG / BN / MB / JD / GT
	Send messages, document checklist and rollout to B. Nowling	AMG
	<i>Tuesday, July 2nd, 2013</i>	
	Circulate messages, document checklist and rollout to JD, MB and GT	AMG / BN
	<i>Wednesday, July 3rd, 2013</i>	
2:00 pm ET	Working group update conference call - agree responsibilities for communications materials	AMG / BN / MB / JD / GT
	Continue drafting key communications documents	AMG / BN / GT / HH / JD / KO / MB
	<i>Friday, July 5th, 2013</i>	
	Continue drafting key communications documents	AMG / BN / GT / HH / JD / KO / MB
	<i>Monday, July 8th, 2013</i>	
	Continue drafting key communications documents	AMG / BN / GT / HH / JD / KO / MB
	Identify translation needs / capabilities	AMG
	<i>Tuesday, July 9th, 2013</i>	
	Continue drafting key communications documents	AMG / BN / GT / HH / JD / KO / MB
	<i>Wednesday, July 10th, 2013</i>	
	Continue drafting key communications documents	AMG / BN / GT / HH / JD / KO / MB
	Pension Advisers meeting	JD
	<i>Thursday, July 11th, 2013</i>	
	Circulate draft materials to communications working group	AMG / BN / GT / HH / JD / KO / MB
	Develop media strategy for filing	BN / AMG
	<i>Friday, July 12th, 2013</i>	
2:00 pm ET	Working group update conference call - finalize communications materials	AMG / BN / JD / MB / GT / others as appropriate
	<i>Monday, July 15th, 2013</i>	
	Circulate final communications materials and media strategy to Governor, Treasury	GT / BN
	Engage Bader TV to begin creating B-roll for announcement day press conference and broadcast media use	BN
	<i>Tuesday, July 16th, 2013</i>	
	Finalize all communications materials	AMG / BN / GT / HH / JD / KO / MB
	<i>Wednesday, July 17th, 2013</i>	
	Walk through with Governor	GT / BN / JD / MB
	<i>Thursday, July 18th, 2013</i>	
	Make last-minute revisions to all key documents	AMG / BN / GT / HH / JD / KO / MB

Chapter 9 Communications Rollout

5:00 pm ET

Pre-briefing with selected media

BN / KO / JD / MB

Chapter 9 Communications Rollout

Date	Event	Responsibility
<i>Friday, July 19th, 2013 - FILING DAY (assumes morning filing)</i>		
9:00 am ET	Governor's office transmits authorization to Emergency Manager	Governor / GT
	Kevyn Orr to meet with DB	KO
	Kevyn Orr to call White House	GT
	Governor's office to call legislative leaders	GT
	Governor's DC office to call Congressional legislation	KO
10:00 am ET	File necessary paperwork with court system	JD
	Issue notice of 12 pm ET press conference	BN
	Issue press release via PR Newswire	AMG
	Send citywide employee email from Kevyn Orr	KO
11:00 am ET	Kevyn Orr to meet with department directors: provides update on filing, FAQ and outlines expectations/disperses rumors (government will continue and employees will still get paid)	KO / BN
12:00 pm ET	Press conference with Governor Snyder and Kevyn Orr at Cadillac Place (Governor to handle additional local / national interviews until 3:00 pm ET, with Kevyn Orr taking over for the remainder of the day)	Governor / KO / BN / GT
	FAQs posted to EM/City Website	TBD
	Tape interviews and B-roll for networks	Governor / KO (via Bader TV)
1:00 pm ET	Pitch Kevyn Orr for Sunday morning talk shows: - Face the Nation (CBS - 10:30-11:30 am ET) - Meet the Press (NBC - 9:00-10:00 am ET) - This Week with George Stephanopoulos (ABC - 10:30-11:30 am ET) - Fox News Sunday (Fox - 10:00-11:00 am ET)	BN / AMG
1:30 pm ET	Editorial board briefing with the Detroit News	KO / BN
2:00 pm ET	Pitch New York editorial board briefings with <i>The Wall Street Journal</i> , <i>The New York Times</i> , <i>Financial Times</i> and Bloomberg for week of July 22nd	AMG / BN
2:30 pm ET	Editorial board briefing with the <i>Detroit Free Press</i>	KO / BN
3:30 pm ET	Look-Live recorded in-studio interview - WDIV TV (NBC)	KO / BN
5:00 pm ET	Live interview in-studio - WXYZ TV (ABC)	KO / BN
5:30 pm ET	Live interview in-studio - WJJB TV (FOX)	KO / BN
<i>Saturday July 20th, 2013</i>		
7:00-9:00 am ET	Kevyn Orr to potentially appear on network news shows (remotely via satellite)	KO / BN

Chapter 9 Communications Rollout

Sunday, July 21st, 2013	
7:00-11:30 am ET	Keryn Orr to appear on some combination of CBS, NBC, ABC and Fox morning talk shows KO / BN
<i>Week of July 22nd, 2013 and Ongoing</i>	
	Continue to media monitor, correct inaccuracies AMG / BN
	Continue engagement with key audiences Responsible parties identified in document checklist
	Continue engagement with the media, including strategic use of Governor Snyder, Andy Dillon and third-party supporters BN / KO / Governor / GT / JD / MB / AMG
	Continue to keep financial community and other constituencies updated on progress BN / GT / HH / JD / MB / AMG
<i>Monday, July 22nd, 2013</i>	
7:20 am ET	Keryn Orr on Paul W. Smith Show KO / BN
7:45 am ET	Keryn Orr on WWJ AM KO / BN
8:10 am ET	Keryn Orr on Frank Beckmann Show (taped) KO / BN
9:00-3:00 pm ET	HOLD for TBD hearings KO
<i>Tuesday, July 23rd or Wednesday, July 24th, 2013</i>	
10:00-11:00 am ET	Editorial board briefing with <i>The Wall Street Journal</i> KO / BN / AMG (Governor and Treasurer, schedule)
11:30-12:30 pm ET	Editorial board briefing with <i>The New York Times</i> KO / BN / AMG (Governor and Treasurer, schedule)
1:30-2:30 pm ET	Editorial board briefing with Bloomberg KO / BN / AMG (Governor and Treasurer, schedule)
3:00-4:00 pm ET	Editorial board briefing with the <i>Financial Times</i> KO / BN / AMG (Governor and Treasurer, schedule)

EXHIBIT D

From: Dillon, Andy (Treasury)
Sent: Tuesday, July 09, 2013 11:35 PM
To: Snyder, Rick (GOV); Muchmore, Dennis (GOV); Baird, Richard (GOV)
Cc: Tedder, Greg (GOV); Saxton, Thomas (Treasury); Stibitz, Brom (Treasury)
Subject: Detroit

Governor,

Kevyn will meet with the Detroit Pensions tomorrow after all. There will be no exchange of documents. The premise is that what is discussed shall remain confidential, but I don't expect that to happen. The main focus will be to explain how he has come to the underfunded number he reported to the creditors. He will not translate that into an impact on retirees or employees' vested rights or what share of monies available to unsecured creditors would go to the pension plans. Because pensions have such a long life there are a lot of creative options we can explore to address how they will be treated in a restructuring.

On Thursday, we expect to receive financials that will help us better understand the potential negative impact on pensions and what options may be available to us to avoid them.

Tomorrow's meeting could lead to questions directed to you about your view on this topic. In my view, its too early in the process to respond to hypothetical questions. We remain in many ways at the informational stage. I have some thoughts as to how you could address some pointed questions if you are interested in hearing them.

Regards,

Andy

Sent from my iPad

EXHIBIT E

To: Snyder, Rick (GOV)[snyderr11@michigan.gov]; 'emmittb@michigan.gov'[emmittb@michigan.gov]; 'Dillon, Andy (Treasury)'[DillonA2@michigan.gov]; Tedderg@Michigan.gov[Tedderg@Michigan.gov]
Cc: 'orrk@detroitmi.gov'[orrk@detroitmi.gov]; David G. Heiman[dgheiman@JonesDay.com]
From: Buckfire, Ken
Sent: Wed 7/17/2013 1:14:37 PM
Subject: Forbearance Agreement with Swap Counterparties - City of Detroit

Gentlemen:

Yesterday, 16 July, The City of Detroit executed a Forbearance Agreement with Bank America Merrill Lynch and UBS, its swap counterparties. This was an important development for the following reasons:

1. Demonstrates the City's ability to negotiate in good faith with important creditors and achieve a mutually satisfactory result.
2. The City has been in default to the swap counterparties. This agreement provides that BAML and UBS will forbear from pursuing remedies. These remedies include blocking the City's access to taxes on gaming revenues (approximately \$180 million per year) or demanding the immediate payment of the present value of the swaps (between \$280 and \$340 million).
3. The City now has the option of redeeming the swaps at 75% of present value until 31 October 2013. This would result in the City saving between \$70 and \$85 million. Please note that the City stipulated in the 14 June 2013 plan that it is valuing its secured debt (ie., secured by revenue pledges) at 100%. Therefore, redeeming the swaps (secured by gaming tax revenues) at a substantial discount is real savings for the City.
4. The swaps were intended to hedge interest rate risk associated with the Pension Certificates of Participation. The Forbearance Agreement should reduce the cost (both in dollars and time) of potential litigation associated with these transactions.

Miller Buckfire and Jones Day are available at any time to discuss this Agreement and answer any questions. I hope you find this brief note helpful as you consider the overall situation.

Respectfully,

Ken

Kenneth A. Buckfire

President

Miller Buckfire | A Stifel Company

.....

Direct: +1.212.895.1803 | **Fax:** +1.212.895.1850

E-mail: ken.buckfire@millerbuckfire.com | www.millerbuckfire.com

.....

601 Lexington Avenue, 22nd Floor | New York, NY 10022

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

City of Detroit, Michigan,

Debtor.

Chapter 9

Case No. 13-53846

Hon. Steven W. Rhodes

Order Regarding Further Briefing on Eligibility

For the reasons stated on the record in open Court on October 16, 2013, it is hereby ordered that the objecting parties may file supplemental briefs by October 30, 2013, and the City, the State Attorney General and the United States Attorney General may file supplemental briefs by November 6, 2013. Such supplemental briefs may be no more than 10 pages in length, which page limit will not be extended. Counsel are requested not to address issues that their briefs have already addressed.

Signed on October 17, 2013

/s/ Steven Rhodes

Steven Rhodes

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

**THE MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF STATE,
COUNTY & MUNICIPAL EMPLOYEES, AFL-CIO AND SUB-CHAPTER 98, CITY
OF DETROIT RETIREES' PRETRIAL BRIEF REGARDING THE CITY OF
DETROIT'S ELIGIBILITY TO OBTAIN RELIEF UNDER CHAPTER 9 OF
THE BANKRUPTCY CODE**

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<i>City of New York v. New York, N. H. & H. R. Co.</i> , 344 U.S. 293 (1953)	30
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RULES

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The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (the AFSCME retiree chapter for City of Detroit retirees) (collectively, “**AFSCME**”) -- the representative of the interests of between at least forty and fifty percent (40-50%) of the about 11,943 retired City of Detroit (the “**City**” or “**Debtor**”) non-uniformed employees (the “**Retired AFSCME Employees**”), and about 2,523 active City employees (the “**Active AFSCME Employees**”, or about seventy percent (70%) of the active non-uniformed union-represented employees, and together with the Retired AFSCME Employees, collectively, the “**AFSCME Detroit Employees**”) -- through its counsel and in accordance with the Court’s *First Order Establishing Dates and Deadlines* [Docket No. 280] (the “**Scheduling Order**”) submits this **pretrial brief** (the “**Pretrial Brief**”) regarding the upcoming trial on the City’s eligibility for relief under chapter 9 of the Bankruptcy Code¹ and respectfully states as follows:

¹ AFSCME previously submitted extensive legal and factual arguments in *The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees’ Amended Objection to the City of Detroit’s Eligibility to Obtain Relief Under Chapter 9 of the Bankruptcy Code* [Docket No. 1156] (the “**AFSCME Eligibility Objection**”). The AFSCME Eligibility Objection was submitted in opposition to the City’s (A) Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code [Docket No. 10] (the “**Statement of Eligibility**”); (B) Memorandum in Support of Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code [Docket No. 14] (the “**Eligibility Brief**”); (C) declarations of Kevyn D. Orr [Docket No. 11] (the “**Orr Declaration**”), Gaurav Malhotra [Docket No. 12] (the “**Malhotra Declaration**”) and Charles M. Moore [Docket No. 13] (the “**Moore Declaration**”); (D) City of Detroit’s Consolidated Reply to Objections to the Entry of an Order for Relief (the “**Debtor’s Reply**”) [Docket No. 765]; and (E) The State of Michigan’s Response to Eligibility Objections Raising Only Legal Issues [Docket No. 756] (the “**State’s Response**”), and in support of the AFSCME Eligibility Objection, AFSCME relied on the (a) Declaration of Steven Kreisberg [Docket No. 509] (the “**Kreisberg Declaration**”); (b) Supplemental Declaration of Steven Kreisberg [Docket No. 1162] (the “**Supp. Kreisberg Declaration**”); and (c) Declaration of Michael Artz [Docket No. 1159] (the “**Artz Declaration**”).

Given AFSCME’s extensive AFSCME Eligibility Objection, **AFSCME incorporates by reference as if fully set forth herein all facts presented (or otherwise incorporated therein) and arguments asserted in the AFSCME Eligibility Objection which will be presented at trial, and AFSCME further reserves the right to argue and rely upon all evidence and arguments presented to this Court in filed pleadings, oral argument, and at trial.**

To the extent this Pretrial Brief addresses issues previously covered by other filings or oral argument, this Pretrial Brief is intended to supplement but in no way to limit any of those prior filings or arguments.

PRELIMINARY STATEMENT

1. For all the reasons set forth in the AFSCME Eligibility Objection, and as will be demonstrated at trial and as further set forth herein, the City's petition for relief under chapter 9 of the Bankruptcy Code should be dismissed. First, chapter 9 of the Bankruptcy Code violates federalism under the United States Constitution through an unholy alliance permitting federal encroachment on the states' governance rights over fiscal affairs in exchange for an unlawful extension of state powers in excess of those the state would otherwise possess under the law and which denies Michigan citizens their constitutional right to make the rules for their own bankruptcy. Second, Michigan Public Act 436 of 2012, the Local Financial Stability and Choice Act, MCL § 141.1541, *et seq.* ("**PA 436**") and Governor Snyder's (the "**Governor**") purported authorization thereunder authorizing the Emergency Manager to file for chapter 9 protection runs afoul of the Michigan Constitution **as applied** in this chapter 9 case by not explicitly prohibiting the diminishment or impairment of vested pension rights in bankruptcy, which rights are prescribed in the Michigan Constitution, and further offends the Constitutional rights of individual Detroit citizens to local self-governance. Third, the evidence presented in the AFSCME Eligibility Objection, additional evidence presented herein, and evidence to be adduced at trial collectively will demonstrate that the City has failed to establish that it engaged in good faith negotiations with the City's creditors or that these negotiations were impracticable under section 109(c) of the Bankruptcy Code, and indeed the entire chapter 9 petition was filed in bad faith. Fourth, the City does not qualify for chapter 9 relief because it failed to establish that it is insolvent. Finally, the Bankruptcy Court lacks authority or jurisdiction over matters related to the federal constitutionality of chapter 9 of the Bankruptcy Code or the state constitutionality of PA 436.

2. The evidence discussed herein and further to be presented at trial will demonstrate that the City, led by its unelected, politically appointed Emergency Manager, Kevyn D. Orr (“**Orr**” or the “**EM**”), hastily commenced this unconstitutional, unlawfully authorized chapter 9 proceeding seeking the haven of bankruptcy to illegally attempt to slash pension and other post-employment benefit obligations and cram such reductions down the throats of current and former City employees such as the AFSCME Detroit Employees. These proceedings were commenced without **any** good faith negotiations with the City’s retirees or unions such as AFSCME, and the chapter 9 filing was a *fait accompli* long prior to the appointment of Orr as the City’s EM – in fact, at a time when Orr was still a partner at the City’s lead bankruptcy counsel’s law firm (the “**Law Firm**”).

3. While AFSCME expects that the City’s witnesses will testify that chapter 9 bankruptcy was always the last option and the City preferred an out-of-court settlement, those are nothing more than talking points. In reality, the City’s strategy of holding “check the box” meetings with creditors pre-petition at which the City purposefully refused to bargain in good faith was for the sole purpose of “making its record”. Indeed, the City’s eventual strategy (under the leadership of Orr) was first suggested by the Law Firm beginning with a “pitch” presentation made by the Law Firm to the City on January 29, 2013 (the “**Pitch Presentation**”, a copy of which is attached to the Supp. Kreisberg Declaration, Exhibit B) in the presence of State of Michigan (the “**State**” or “**Michigan**”) officials who wanted to steer the City towards chapter 9.

4. Apparently, as discussed further below, the State officials at the January 29, 2013 pitch (including the Governor’s Transformation Manager, Richard Baird (“**Baird**”)) liked what they heard and decided that the Law Firm would be their firm of choice, with Orr and his

extensive bankruptcy experience being utilized as the EM to complement the Law Firm's legal ability to move the City swiftly into chapter 9. Thus, the day after the Pitch Presentation was given, on January 30, 2013, Baird reached out to The Law Firm about the potential of hiring Orr as the EM, and this led to discussions between the Governor, Baird, Orr, other State officials and the Law Firm, and the ultimate hiring of both Orr and the Law Firm to guide the City into chapter 9.

5. As discussed extensively in the AFSCME Eligibility Objection and for the reasons further set forth herein, in light of recent Supreme Court precedent, chapter 9 of the Bankruptcy Code violates the United States Constitution and should be struck down by an Article III Court with authority and jurisdiction to make this crucial Constitutional law determination.

6. However, to the extent this Court disagrees and determines that it has jurisdiction to uphold the Constitutionality of chapter 9 generally, this Court should find that the City is not eligible for relief under chapter 9 pursuant to sections 109(c) and 921(c) of the Bankruptcy Code.

STATEMENT OF FACTS

7. Orr currently serves as the EM of the City under PA 436.

8. The Governor appointed Orr as EM for the City on March 14, 2013, effective as of March 25, 2013. On March 28, 2013, upon the purported effectiveness of PA 436, Orr became, and continues to act as, EM for the City under PA 436.

9. On June 14, 2013, Orr issued a "Proposal for Creditors" which expressly stated that "there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons." The same day, Orr publicly threatened, in an interview with the

Detroit Free Press Editorial Board,² that vested pension benefits would not be protected in a chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state laws protecting vested pension benefits would “not . . . protect” retirees in bankruptcy court. The EM stated as follows in the interview:

Q You said in this report that you don't believe there is an obligation under our state constitution to pay pensions if the city can't afford it?

A. The reason we said it that way is to quantify the bankruptcy question. We think federal supremacy trumps state law. Which the Ninth Circuit agrees with for now.

A. It is what it is - so we said that in a soft way of saying, “Don't make us go into bankruptcy.” If you think your state-vested pension rights, either as an employee or a retiree - that's not going to protect you. If we don't reach an agreement one way or the other, we feel fairly confident that the state federal law, federalism, will trump state law or negotiate. The irony of the situation is we might reach a deal with creditors quicker because employees and retirees think there is some benefit and that might force our hand. That might force a bankruptcy.

10. As discussed below and as will be further established at trial, the Governor (and other State officials) and the EM were well aware both prior to and subsequent to the issuance of the letter on July 18, 2013 from the Governor to the EM authorizing the EM to have the City commence its chapter 9 case without any conditions or limits (the “**Governor’s Authorization Letter**”) of the City’s intentions to modify and/or terminate vested pension obligations in chapter 9 without limit in derogation of the Michigan Constitution.

² See *Q&A with Kevyn Orr: Detroit's Emergency Manager Talks About City's Future*, Detroit Free Press (June 16, 2013), available at <http://www.freep.com/article/20130616/OPINION05/306160052/kevyn-orr-detroit-emergency-manager-creditors-fiscal-crisis>.

A. The Webster Litigation And The Governor’s Unconditional Authorization

11. On July 3, 2013, against the backdrop of the threatening statements made by Orr regarding Michigan state law and protected pension benefits, plaintiffs (the “**Webster Plaintiffs**”) Gracie Webster (a City retiree) and Veronica Thomas (a current employee of the City vested in her pension) commenced a lawsuit against the State of Michigan, the Governor and the State Treasurer seeking: (a) a declaratory judgment that PA 436 violated the Constitution of the State of Michigan to the extent that it purported to authorize chapter 9 cases within which vested pension benefits might be sought to be compromised; and (b) an injunction preventing the defendants from authorizing any chapter 9 case for the City within which vested pension benefits might be sought to be reduced. *See Webster v. State of Mich.*, No. 13-734-CZ (Ingham County Cir. Ct. July 3, 2013) (the “**Webster Litigation**”).³

12. In briefing submitted in support of a preliminary injunction and declaratory order against the Governor, the Webster Plaintiffs explained that Article IX, Section 24 of the Michigan Constitution provides that “[t]he accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby;” that there could not be a more clear and plain constitutional mandate; and that Article IX, Section 24 means what it says: accrued pension benefits shall not be reduced.

13. Further, as the Webster Plaintiffs noted, the Official Record of the 1963 Michigan Constitutional Convention makes clear that no governmental entity or its officials can do anything to diminish or impair vested pension benefits: “This is a new section that requires that accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions be a contractual obligation which cannot diminished or impaired by the

³ Two additional lawsuits were also filed raising similar issues in addition to the Webster Litigation.

action of its officials or governing body.” 2 Official Record, Constitutional Convention 1961, p. 3402.

14. The Webster Plaintiffs also noted that PA 436 explicitly recognizes that accrued pension benefits shall not be diminished or impaired outside the bankruptcy context. For example:

- Section 11 of PA 436 requires that an emergency manager develop a written financial and operating plan for the local government and that such plan “shall provide” for “the timely deposit of required payments to the pension fund for the local government.”
- Section 13 of PA 436 authorizes the emergency manager to eliminate the salary, wages or other compensation and benefits of the chief administrative officer and members of the governing body of the local government, but expressly provides that “[t]his section does not authorize the impairment of vested pension benefits.”
- Section 12(m) of PA 436 authorizes an emergency manager under certain circumstances to be appointed as the sole trustee of a local pension board and to replace the existing trustees, and requires that “the emergency manager shall fully comply with . . . Section 24 of Article IX of the state constitution . . .” when acting as the sole trustee.

15. But, in violation of Article IX, Section 24 of the Michigan Constitution, PA 436 fails to similarly forbid the Governor explicitly from authorizing a chapter 9 bankruptcy filing if accrued pension benefits may be sought to be diminished or impaired as a consequence of that filing. Section 18 of PA 436, which purportedly empowers the Governor to authorize a municipality to file for bankruptcy under chapter 9, nowhere prohibits the Governor from authorizing such a filing if accrued pension benefits may be sought to be diminished or impaired. Clearly, the Legislature understood and honored the Michigan constitutional mandate not to diminish or impair accrued pension benefits outside of bankruptcy. Just as clearly, the Legislature omitted any constitutional protection against the impairment or

diminishment of accrued pension benefits when the Governor purports to authorize a chapter 9 bankruptcy filing under Section 18 of PA 436.

16. In other words, if accrued pension benefits may be diminished or impaired, in violation of Article IX Section 24 of the Michigan Constitution, the section of PA 436 purporting to authorize this bankruptcy, Section 18, must be unconstitutional as applied.

17. On July 18, 2013, the same date this chapter 9 case was commenced, the Ingham County Circuit Court for the State of Michigan (the “**State Court**”) entered a temporary restraining order (the “**TRO**”, attached to the Kreisberg Declaration, Exhibit A) enjoining the Governor, the State Treasurer and the other defendants in the Webster Litigation from authorizing a chapter 9 filing and taking any further action “with respect to any filing which has already occurred” including the authorizing of an “unconditional” chapter 9 filing (*i.e.* one in which the EM would represent himself as having authority to modify and/or terminate pension obligations without limit in derogation of the Michigan Constitution).

18. Despite the issuance of the TRO and the State Court’s clear directive to the Governor regarding not authorizing any further filings by the City, the Governor did not seek to prevent the City from filing all of its “first day pleadings.” Indeed, the Governor authorized and the EM directed the chapter 9 filing just minutes before the July 18, 2013 TRO hearing was set to begin (and during a brief delay in the TRO hearing requested by the Governor’s attorney) in order to potentially “cut off” any argument that the filing was not properly authorized (because the Governor knew and the EM expected that the State Court Judge was prepared to grant the TRO).

19. On July 19, 2013, the State Court held a further hearing on the Webster Litigation and entered an Order of Declaratory Judgment (the “**Declaratory Judgment**,”

attached to the Kreisberg Declaration as Exhibit B). The Declaratory Judgment (a) finds PA 436 unconstitutional and of no force and effect to the extent it permits the Governor to authorize the EM to proceed under chapter 9 in any manner that threatens to diminish or impair pension benefits and (b) rules that the Governor must direct the EM “to immediately withdraw the chapter 9 petition ... and ... not authorize any further chapter 9 filing which threatens to diminish or impair accrued pension benefits.” *See* Declaratory Judgment at 3.

20. To the extent there was any authorization for the chapter 9 filing, the State Court clearly ordered that the Governor revoke it to the extent it was intended to lead to the diminishment or impairment of accrued pension benefits. However, subsequent to the issuance of the Declaratory Judgment, on July 25, 2013, this Court granted the City’s motion to extend the automatic stay, which, *inter alia*, stayed pending appeals of the Declaratory Judgment (and other similar state court proceedings). *See* Docket No. 166.

(i) The Governor (And Other State Officials) And City Intended Through The Chapter 9 Filing To Impair And/Or Terminate Vested Pension Benefits, And The Governor Was Aware Of This Prior To His Authorizing The Chapter 9 Filing

21. The evidence obtained to date (and as will be further demonstrated at trial) reveals that the Governor (and other State officials) and the EM were well aware both prior to and subsequent to the issuance of the Governor’s Authorization Letter of the City’s intentions to modify and/or terminate vested pension obligations in chapter 9 without limit in derogation of the Michigan Constitution.

22. First, the June 14 Restructuring Plan (defined below) expressly provided that “there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons”, and the Governor has admitted in deposition testimony to (i) having viewed drafts of the June 14 Restructuring Plan; (ii) being specifically aware that the Restructuring

Plan provided for significant cuts to accrued, vested pensions for active and retired employees; and (iii) being specifically aware when he signed the July 18 letter authorizing the City's chapter 9 filing that Orr's position was "that there had to be significant cuts in accrued pension benefits." See Governor Snyder October 9, 2013 Transcript (the "**Governor 10/9 Transcript**", a copy of which is attached to the Artz Declaration, Exhibit A),⁴ at 46:3-23; 63:9-64:18. Furthermore, in a letter dated July 16, 2013 from Orr to the Governor (and Treasurer Andy Dillon) recommending that the City be authorized to immediately commence a chapter 9 bankruptcy case, Orr noted that the City met with all of the City's unions and four retiree associations to "solicit the unions and retirees' view on their preferred way to address the **dramatic, but necessary, benefit modifications**." See Orr Declaration, Exhibit J, p. 8 (emphasis added). The Governor admitted to reading this letter. See Governor 10/9 Transcript, at 52:13-15.

23. Additionally, the City has unequivocally admitted that it intends to impair or diminish vested pension benefits of City active and retired employees through this chapter 9 proceeding. See, e.g., *City of Detroit, Michigan's Objections and Responses to Detroit Retirement Systems' First Requests for Admission Directed to the City of Detroit Michigan* [Docket No. 849], at p. 12 (admitting that "City intends to seek to diminish or impair the Accrued Financial Benefits of the participants in the Retirement Systems through this Chapter 9 Case."); see also Kevyn Orr September 16, 2013 Transcript (the "**Orr 9/16 Transcript**", a copy of which is attached to the Artz Declaration, Exhibit B), at 252:25-253:16; 288:2-9

⁴ Throughout this Objection, AFSCME has cited deposition testimony provided by various witnesses in connection with the City's chapter 9 eligibility litigation. AFSCME relies on the relevant portions of these various depositions as evidence, and has attached copies of the full deposition transcripts from the depositions of Governor Snyder, Kevyn Orr, Charles Moore, and Guarav Malhotra to the Artz Declaration filed in connection with the AFSCME Eligibility Objection. Additionally, AFSCME relies herein on the deposition transcripts of (i) Richard Baird (the "**Baird 10/10 Transcript**"), (ii) Andrew Dillon (the "**Dillon 10/10 Transcript**"), and (iii) Mayor David Bing (rough transcript only, the "**Bing 10/14 Transcript**"), copies of which are attached as Exhibits to the **Supplemental Declaration of Michael Artz** filed in connection with this Pretrial Brief.

(admitting that City intended to diminish or impair accrued pension benefits of Detroit pensioners, preferably through a consensual plan but preserving all rights to do so possibly through the use of the cramdown provisions of the bankruptcy code).

B. The Facts In The Record And To Be Further Adduced At Trial Demonstrate Why PA 436, As Applied To The Facts And Circumstance Here, Violates The Strong Home Rule Provisions Of The Michigan Constitution

24. PA 436 effectively, but unconstitutionally, adopts a new charter for Detroit which substitutes the unelected Emergency Manager for the Mayor and City Council collectively – including by granting the EM the power to, *inter alia*, issue orders directing the mayor and city council; set the local government budget unilaterally; enter into, and break, contractual agreements for the City, including CBAs, loans, and property transfers; seize control of the pension fund from its trustees; and, most relevant here, act exclusively on the local government’s behalf in chapter 9.

25. Here, the evidence shows (as will be further adduced at trial) that the EM (and the City’s agents directed by the EM) has exercised a variety of purely local governmental powers – despite being a “contractor to the State of Michigan”, as the EM has described himself (*See* Orr 10/4 Transcript, at 454:10-14) – ranging from his explicit suspension of the City Charter, to discrete financial decisions about purely local City expenditures, to control over potential attempts by the City to raise revenue. For example: (i) Order No. 10, issued by the EM on July 8, 2013, suspends the Detroit Charter’s requirement for filling vacancies on City Council. *See* <http://www.detroitmi.gov/Portals/0/docs/EM/Order%2010.pdf> (last accessed Oct. 7, 2013); (ii) Order No. 6, issued by the EM on May 2, 2013, directs the precise amount of deposits from the City to the Public Lighting Authority. *See* <http://www.detroitmi.gov/Portals/0/docs/EM/Order%206.pdf> (last accessed Oct. 7, 2013); and

(iii) Order No. 5, issued by the EM April 11, 2013, requires that the EM approve in writing of any transfers of the City's real property.

<http://www.detroitmi.gov/Portals/0/docs/EM/Order%205.pdf> (last accessed Oct. 7, 2013).

26. Furthermore, Mayor Bing has testified extensively that following the appointment of the EM, (i) the Mayor was no longer involved in discussions with unions or coalitions of unions because "that was under the purview of the Emergency Manager"; (ii) the EM (and the consultants retained by the EM) were involved in City's budgeting functions to the exclusion of the Mayor; and (iii) among other concerns, the EM and the City's consultants (like Conway MacKenzie) were exploring outsourcing and reaching conclusions with regard to numbers prior to completing the RFP process first. *See* Bing 10/14 Transcript, at 106:11-108:9.

27. In addition to undertaking the aforementioned purely local acts, which are reserved by Article VII of the Michigan Constitution to the local electors rather than the state which appointed and controls the EM, the EM has continued to exert complete control over all aspects of the City's local affairs during the instant bankruptcy proceedings. This includes the EM's unilateral direction of the bankruptcy process itself, which he has controlled without being subject to any state-law standard of review for his discretion or judicial review thereof.

28. The EM's actions in removing control over the City's operations and finances from elected officials has prevented the City from taking actions designed to raise revenue and avoid insolvency and instead has facilitated the EM's attempt to will the City into insolvency, as discussed below (and to be further supported by facts adduced at trial), thus rendering this entire bankruptcy proceeding a harm stemming from the unconstitutionality of PA 436's grant of authority to the EM (and the consultants controlled by the EM, including Ernst & Young and Conway MacKenzie) of the means of controlling all aspects of the City's finances.

C. The City's Pre-petition Machinations And Subsequent Meetings (But Not Negotiations) With Creditors Such As AFSCME

(i) The City's Bankruptcy Was Orchestrated Based On The Advice Of The City's Lead Bankruptcy Counsel And Discussed Before The EM Was Even Hired

29. As demonstrated herein and will be further shown at trial, in emails, documents and deposition testimony that surfaced following the City's chapter 9 filing going back to late January 2013, long prior to any alleged good faith negotiations with creditors (more about this point below), secret discussions were being held between Detroit and officials in the Governor's office and the Law Firm suggesting that the best course for the City would be to send it through chapter 9 bankruptcy. These facts collectively expose Orr's and the City's charade of pre-petition "negotiations" (in reality, one-sided meetings) in the month prior to the City's chapter 9 filing. In fact, all along, the clear goal was for the City to end up in chapter 9.

30. For example, the Law Firm was among a number of firms to provide a presentation made to the City on January 29, 2013 in the presence of State officials. *See* Pitch Presentation (dated January 29, 2013); *see also* Orr 9/16 Transcript, at 18:12-21:20 (discussing how Orr came with the Law Firm in late January to pitch for the City's restructuring work before a "restructuring team [of] advisors"); Baird 10/10 Transcript, at 13:11-15:10. During that pitch, Orr (among other lawyers that would be working on the proposed engagement) was presented primarily as a "bankruptcy and restructuring attorney." Orr 9/16 Transcript, at 21:3-6; *see also* Bing 10/14 Transcript, at 12:7-13:7 (indicating that Baird explained to Mayor Bing that Baird was "impressed with him [Orr], that he had been part of the bankruptcy team representing Chrysler" and that Orr primarily had restructuring experience in the context of bankruptcy).

31. As part of the Pitch Presentation, the Law Firm presented, in part, the following playbook for the City's road to chapter 9: (i) the difficulty of achieving an out of court settlement and steps to bolster the City's ability to qualify for chapter 9 by establishing a good faith record of negotiations (Pitch Presentation, pp. 13; 16-18; 22-23; 28); (ii) the EM could be used as "political cover" for difficult decisions such as an ultimate chapter 9 filing (Pitch Presentation, p. 16); (iii) warning that pre-chapter 9 asset monetization could implicate the chapter 9 eligibility requirement regarding insolvency, thus effectively advising the City *against* raising money in order to will itself into insolvency (Pitch Presentation, p. 17); and (iv) describing protections under state law for retiree benefits and accrued pension obligations and how chapter 9 could be used as means to further cut back or compromise accrued pension obligations otherwise protected by the Michigan constitution (Pitch Presentation, pp. 39; 41).

32. Following the Law Firm's pitch in late January 2013, State officials (including Baird) informed attorneys at the Law Firm and Orr that they were interested in bringing Orr on board as EM, and Orr began to consider the offer. *See* Orr 9/16 Transcript, at 24:24-25:31:5; Baird 10/10 Transcript, at 19:2-20. Orr commented regarding his proposed consideration for appointment as EM and discussed with his law firm at the time how to go about leading the City into chapter 9. In an email (attached to the Kreisberg Declaration, Exhibit 1) dated January 31, 2013, Orr's colleague at the firm stated in an email to Orr that the "ideal scenario would be that [Michigan Governor] Snyder and [Detroit Mayor] Bing both agree that the best option is simply to go through an orderly Chapter 9. This avoids an unnecessary political fight over the scope/authority of any appointed Emergency Manager appointed and, moreover, moves the ball forward on setting Detroit on the right track." Kreisberg Declaration, Exhibit

1.⁵ Indeed, this was a similar suggestion made by the Law Firm in the Pitch Presentation. *See* Pitch Presentation, p. 16 (“Ultimately, the Emergency Manager could be used as political cover for difficult restructuring decisions.”).

33. Orr’s colleague then stated his own reservations about whether an emergency manager would be useful outside of bankruptcy where his “ability to actually do anything is questionable given the looming political and legal fights” *Id.* In contrast, he observed in an earlier email, “[m]aking this a national issue . . . provides political cover for the state politicians” and gives them an “incentive to do this right” because “if it succeeds, there will be more than enough patronage to allow [them] to look for higher callings—whether Cabinet, Senate, or Corporate.” *See* Kreisberg Declaration, Exhibit 2.⁶

34. As noted above, others involved in the discussions prior to the chapter 9 filing included Baird, the Governor’s Transformation Manager. In an email also dated January 31, 2013, Orr, in anticipation of a conversation he was to meet with Baird “in a few minutes” about whether to accept the EM position, observed that PA 436 “is a clear end-around the prior initiative” to repeal the previous Emergency Manager statute, Public Act 4, “that was rejected by the voters in November.” *See* Kreisberg Declaration, Exhibit 3.⁷ According to Orr “although the new law provides the thin veneer of a revision it is essentially a redo of the prior rejected law and appears to merely adopt the conditions necessary for a chapter 9 filing.” *Id.*

⁵ *See also* Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

⁶ *See also* Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

⁷ *See also* Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

35. In a further email dated January 31, 2013, Orr indicated that Baird wanted Orr to be hired as the EM and his firm to represent the City (regardless of whether Orr took the EM job), and that Orr indicated that he would be glad to work together with the City, even if not as EM, indicating that “I [Orr] and the firm are committed to working in lockstep with the [C]ity.” See Kreisberg Declaration, Exhibit 4.⁸

(ii) No Good Faith Negotiations Took Place Following The Appointment Of The EM With Parties Such As AFSCME Prior To The City’s Chapter 9 Filing

36. As indicated above, the die was cast for the City’s inevitable chapter 9 filing prior to the March appointment of Orr as EM. Following Orr’s appointment, the City and Orr maneuvered to establish the veneer of formal pre-petition creditor negotiations, when in reality, Orr and the Governor knew all along that the non-interactive meetings would be held on a *pro forma* basis so the City could attempt to establish alleged good faith negotiations.

37. The facts belie the notion of any pre-filing negotiations, whether in good faith or otherwise. Indeed, the City itself admitted both in letters and at the meetings held in the month or so prior to the filing that the City was only interested in one-way discussions, not negotiations. As discussed below, **evidence obtained in discovery reveals (as will be further established at trial) that while these meetings were ongoing – indeed, before ever meeting face-to-face with union representatives alone – the City had already made a determination as early as the beginning of July 2013 that it would be filing for chapter 9 protection on or about July 19, 2013.**

38. On June 14, 2013, the City held a meeting of representatives of the City’s creditors (the “**June 14 Meeting**”) to present the City’s comprehensive restructuring plan/

⁸ See also Kate Long, *Who is representing Detroit?* <http://blogs.reuters.com/muniland/2013/07/25/who-is-representing-detroit/> (last visited on August 19, 2013).

“Proposal for Creditors” (the “**Restructuring Plan**”, attached to the Kreisberg Declaration as Exhibit C). Even prior to these meetings, Orr confirmed that the City’s discussions of a predecessor to its ultimate Restructuring Plan, the EM’s May 12, 2013 “Financial and Operating Plan”, would not involve any negotiations, explaining that “it is under the [PA 436] statute, it is my plan and it’s within my discretion and obligation to do it. **This isn’t a plebiscite, we are not, like, negotiating the terms of the plan.** It’s what I’m obligated to do.” See Kevin Orr Interview to Detroit WWJ Newsradio 950/AP, *Detroit EM Releases Financial Plan; City Exceeding Budget By \$100M Annually*, May 12, 2013, available at <http://detroit.cbslocal.com/2013/05/12/kevin-orr-releases-financial-plan-for-city-of-detroit/> (emphasis added).

39. On June 17, 2013, Steven Kreisberg, AFSCME’s director of collective bargaining and health care policy, submitted a letter requesting from the EM various categories of information, assumptions, and data for AFSCME to honestly review all the information presented and begin good faith negotiations. See Kreisberg Declaration, Exhibit 5. AFSCME made this request prior to a scheduled June 20, 2013 meeting with unions (including AFSCME) representing the City’s non-uniform employees regarding the City’s pensions. At that meeting, the City represented that the meeting was “not a negotiation.” See Kreisberg Declaration, ¶ 17. Furthermore, the letter inviting AFSCME to the June 20 meeting characterized the purpose of the meeting as being to “review” the Restructuring Plan (not negotiate it) and to have AFSCME “learn” about the Restructuring Plan. Kreisberg Declaration, Exhibit 6.

40. In a letter dated June 27, 2013 to an AFSCME local union, the City indicated that it was posting certain information to a data room and was looking forward to the unions’

“feedback” (again not negotiation) with respect to the EM’s retiree benefits restructuring proposal. *See* Kreisberg Declaration, Exhibit 7.

41. In a follow up letter to the City dated July 2, 2013, Mr. Kreisberg again reiterated his request for information and data, including the backup data supporting the City retiree benefits proposal (support for which previously consisted of only a one-page financial summary). AFSCME requested relevant information and the opportunity (in conjunction with a meeting scheduled with the City’s unions on July 10-11) to begin meaningfully engaging “in a good faith negotiation of these issues.” *See* Kreisberg Declaration, Exhibit 8.

42. In a response letter to Mr. Kreisberg on July 3, 2013, the City advised that it would not meet separately with AFSCME, and that the July 10, 2013 scheduled meeting with the unions would be a “discussion” (again not a negotiation). *See* Kreisberg Declaration, Exhibit 9. Similarly, in an email dated June 28, 2013, the City confirmed that it wanted to meet on July 10, 2013 to “discuss” its “developing pension restructuring proposal,” clearly implying that the proposal itself was not even complete yet. *See* Kreisberg Declaration, Exhibit 10. Additionally, and tellingly, at that July 10, 2013 meeting, counsel for the City attempted to invoke Rule 408 confidentiality provisions stating that doing so was a tool used in every bankruptcy, so it should be invoked that day. *See* Supp. Kreisberg Declaration, ¶ 7. This statement made more than a week before bankruptcy was authorized or filed further demonstrating that the City intended to file for bankruptcy in any event.

43. At the July 10, 2013 meeting, the City announced at the inception that the meeting would be a discussion but not a negotiation. *See* Kreisberg Declaration, ¶ 18. At a similar meeting with AFSCME and certain and other unions held on July 11, 2013, again there was no negotiation.

44. Despite this evidence, it appears that the City now seeks to characterize its limited requests to creditors for feedback – but admitted refusal to bargain with them – on the Restructuring Plan at the four meetings held regarding that plan as satisfying chapter 9’s good faith negotiation requirement. Yet, in the City’s reply brief regarding eligibility and recent deposition testimony by Orr, the City and Orr have explicitly denied that the City’s discussions with creditors were negotiations. *See* Debtor’s Reply, at p. 55 n.49; Orr 9/16 Transcript, at 137:25-138:8 (“Q. And was there any bargaining that took place at those sessions [on June 20th, July 10th, and July 11th] where the City said it would be willing to agree to something that was different from what was in June 14? A. Here again, I’m going to stay away from bargaining as a legal conclusion, duty to bargain is suspended. I will say there was a back and forth and my understanding discussions and invitations for further information.”).

45. Furthermore, and critically, Orr recently testified that media reports prior to the City’s chapter 9 filing that the City was planning on filing on July 19, 2013 were inaccurate. Orr 9/16 Transcript, at 301:19-302:8 (indicating that there was no plan for the City to file on July 19, 2013 and that Orr’s plan was “to have the permission, the authority, to file them and make that call at some point after I transmitted my letter of July 16 [requesting authorization from the Governor to file for chapter 9].”). Yet, evidence produced in discovery includes an Excel/spreadsheet document attached to e-mails circulated (i) to and from Bill Nowling (who works in the EM’s office) sent to individuals in the Governor’s office, entitled “Chapter 9 Communications Rollout” which makes clear that during the same time period that the City was purporting to conduct ongoing “good faith negotiations” with creditors regarding the Restructuring Plan, **in fact the City was, as early as July 1, 2013 planning on filing for chapter 9 on Friday, July 19, 2013.** *See* Supp. Kreisberg Declaration, Exhibit C (spreadsheet

document dated July 4, 2013 attached to e-mail from EM's office to State officials entitled "Chapter 9 Communications Rollout" indicated that Friday, July 19, 2013 was "FILING DAY").

46. Additionally, Treasurer Dillon, one of the state officials intimately involved in the hiring of the EM and in advising to the Governor to authorize the chapter 9 filing, testified that his understanding of the June 14 Restructuring Plan was that the document was not really a proposal (even though it was so labeled), rather the EM was just "laying out the facts for creditors so they could understand the financial condition of [the] City. . . This is the economic reality of the City of Detroit. From there, as you know, there was various meetings with various creditors to discuss can we get this thing settled out of court." Dillon 10/10 Transcript, at 65:4-24.

(iii) The City's Bad Faith Refusal To Negotiate With Unions Such As AFSCME Has Continued Following The City's Bankruptcy Filing

47. The City's pattern of bad faith refusal to negotiate any of its proposals regarding pensions or health insurance benefits changes has continued post-petition.

48. For example, on August 2, 2013, the City convened a meeting of local union representatives and discussed active health insurance. *See* Kreisberg Declaration, ¶ 19. However, during that meeting, the City specifically advised those in attendance (including AFSCME representatives) that the meeting was not a negotiation. *Id* at ¶ 20. Mr. Kreisberg sent a follow up letter to the City on August 6, 2013 requesting good faith bargaining, and referenced cost savings estimates which AFSCME previously proposed in prior negotiations with the City before the development of the Emergency Manager's initial financial restructuring plan in May. *See* Kreisberg Declaration, Exhibit 11. In an August 8, 2013 response, the City advised that it would not engage in collective bargaining with AFSCME, but

rather simply “discuss any feedback they may have regarding its health care restructuring plans.” See Kreisberg Declaration, Exhibit 12.

49. On August 14, 2013, the City held a follow up meeting with AFSCME on the subject of active medical benefits but did not accept any counterproposals or suggestions, but simply responded by further explaining its current intention with respect to active medical benefits.

50. Given Orr’s repeated statements to the media about the City’s willingness to bargain with its unions, AFSCME has been surprised by the City’s unwillingness to negotiate, pre or post-petition. While AFSCME has repeatedly stated its desire to move forward with constructive negotiations with the City on behalf of all AFSCME Detroit Employees, AFSCME cannot negotiate with an employer that is unwilling to come to the table for arms-length talks.

(iv) The City Has Previously Negotiated Labor Concessions With Unions That Modified Both Active And Retiree Benefits

51. The City argues, in part, that negotiations with its retirees were impractical or impossible as the City could not bind the disparate group of retirees in any agreement. However, the City should be well aware (and indeed its advisors have admitted) that in February 2012, City labor negotiators reached a tentative agreement (the “**Tentative Agreement**”) with a “Coalition of City of Detroit Unions”, including several AFSCME local bargaining units. See Supp. Kreisberg Declaration, ¶ 4, Exhibit A (attaching copy of the Tentative Agreement). Pursuant to deposition testimony given by Gaurav Malhotra of Ernst & Young (“**E&Y**”) on September 20, 2013 (one of the City’s restructuring advisors), E&Y was actively involved “in assisting quantify some of the savings in conjunction and collaboration with the City as the City negotiated with the – its unions [regarding the Tentative Agreement].” See Gaurav Malhotra September 20, 2013 Transcript (the “**Malhotra 9/20**”).

Transcript”, a copy of which is attached to the Artz Declaration, Exhibit C), at 86:20-23. Mayor Bing also testified that he was well aware of the Tentative Agreement ratified by the unions and that would have resulted in savings for the City, but such agreement was ultimately never implemented by the State. *See* Bing 10/14 Transcript, at 100:15-101:13

52. While the Tentative Agreement was never implemented, changes with respect to benefits in the proposed Tentative Agreement would have directly impacted retiree benefits, and indeed, based on projections at the time, AFSCME understands that the Tentative Agreement could have saved the City approximately \$50 million annually, a number which included retiree health benefit changes. *See* Supp. Kreisberg Declaration, ¶¶ 5-6.

53. Despite this evidence, Orr has testified that he was unaware of the Tentative Agreement (and, thus implicitly, unaware of the City’s prior success at bargaining in good faith with the City’s unions, which led to changes to both active and retired employees’ benefits):

- 15 Q. Are you aware of a coalition among certain of the
- 16 City's unions put together in order to try and deal
- 17 with some of the restructuring issues with regard to
- 18 labor that you've been focused on?
- 19 A. A coalition? Can you please explain? Informal
- 20 coalition or the retiree committee or --
- 21 Q. Not the retire committee. A coalition of unions with
- 22 regard to trying to deal with some of the labor issues
- 23 that you --
- 24 A. Under the AFSCME umbrella?
- 25 Q. No, no, no.

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- 1 A. Or separate union? I'm trying to -- I'm trying to
- 2 understand.
- 3 Q. Well, I think your answer indicates to me that perhaps
- 4 the answer is no.
- 5 A. Yeah. Okay.

Orr 9/16 Transcript, at 237:15-237:5. Given that Orr himself was unaware of the City's ability to negotiate deals affecting both active employees and retirees outside of bankruptcy, the City's assertion that negotiations regarding changes to retiree and pension benefits were "impracticable (if not impossible)" is misguided. Orr could not possibly have attempted to negotiate in good faith if he had not done even the most preliminary investigation as to whether Detroit's several unions had ever negotiated with the city collectively in the past, indeed the very recent past.

D. The City Has Failed to Establish It Is Insolvent, And The City's Chapter 9 Case Was Not Commenced Due to Any Imminent Financial Emergency, Rather To Avoid The Webster Litigation (And Other State Court Proceedings)

54. The City at first glance seems to provide thick volumes which it calls evidence regarding its alleged insolvency. *See, e.g.*, Orr Declaration, ¶¶ 52-57; Malhotra Declaration, ¶¶ 10-26; Moore Declaration, ¶¶ 9-20. However, as demonstrated below (and will be further shown at trial), what becomes apparent from reviewing these declarations (which serve as the basis for the City's insolvency arguments) is that (i) each often cross-relies (as purported evidence as to the truth of particular statements) on other (non-expert) testimony, other documents prepared by the City, or other assumptions/evidence convenient to the City but without any real foundation. *See, e.g.*, Orr Declaration, ¶¶ 52-57 (citing, in part, the June 14 Restructuring Plan and Malhotra Declaration as evidence); Moore Declaration, ¶¶ 13-14 (estimating pension underfunding using what the "City" believes are more realistic assumption)); Malhotra Declaration, ¶¶ 11; 15; 21-22 (discussing manner in which City's financial forecasts and projections were prepared based on certain complex assumptions, calculations and input from other City officials). Furthermore, the City offers no expert witness to testify regarding the City's asserted insolvency despite the City having spent millions of

dollars and having gone out and hired a multitude of legal, financial, actuarial and restructuring advisors. Ultimately, the fact remains that **despite the pile of “evidence” submitted by the City, the City does not have a single witness who can stand up as an expert and testify as to the City’s insolvency.**

55. Furthermore, the City misleadingly cited its insolvency as what drove its chapter 9 filing, not the imminent state court rulings in the Webster Litigation and other state court proceeding, further casting doubt on the reality of its conclusion that it is insolvent. *See, e.g.*, Debtor’s Reply, at pp. 65-66. Yet, in reality (and as will be further demonstrated at trial), the discovery process has revealed several interesting facts that cut against insolvency as the true basis for the filing (*see* Debtor’s Reply, at p. 65-66), and indeed Orr’s recent testimony indicates that insolvency was not the driving factor behind the filing on July 18, 2013, rather the filing at that time was driven by the state court litigations. Orr testified:

19 When did you decide that the timing of the
20 Chapter 9 filing should be July 18th or July 19th?
21 A. Well, I didn't. I decided to make the request and my
22 intent was to have the ability to file available and
23 possibly executed as soon as I got it. It was without
24 talking or waiving privileges from my counsel or
25 counsel and investment bankers, the concerns about us

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1 losing control or being put in a situation because of
2 the ongoing litigation where I would not be able to
3 discharge my duties in an orderly fashion, in a
4 comprehensive matter to put the city on a sustainable
5 footing because of the litigation grew . . .
6 and it was made clear to me that **my desire to try to**
7 **continue to engage in discussions was running the risk**
8 **of putting my obligations under the statute in peril**
9 **and I think I was even counseled that I was being**
10 **irresponsible.**

Orr 9/16 Transcript, at 220:19-221:6-10.

56. In addition, the City's evidence regarding insolvency is built upon unproven assertions regarding, *inter alia*, the alleged unfunded amount of the City's pension and other retiree benefits. Indeed, in the June 14 Restructuring Plan discussing the actuarial accounting underfunding on the City's pension plans, the City suggested that such underfunding using more "realistic assumptions" would be approximately \$3.5 billion, up from the \$644 million from the City's 2011 reported underfunding. Restructuring Plan, pp. 23, 109 (noting that "preliminary analysis indicates that the underfunding in the GRS and the PFRS is approximately \$3.5 billion); *see also* Orr Letter Dated July 16, 2013 to Governor Snyder and Treasurer Dillon (copy attached as Exhibit J to Eligibility Brief (recommending chapter 9 filing and discussing \$3.5 billion in underfunding of pension liabilities)).

57. However, these allegedly "realistic assumptions" were directly dictated by the City to their actuarial advisor, Milliman, Inc. For example, Charles Moore of Conway MacKenzie admitted in his deposition that the City really had no idea what the underfunded portion of the pension obligations might be (as of September 18, 2013) because "until the City completes its analysis [which is had not yet done] and completes its own actuarial valuation, neither the City nor its actuary [Milliman] nor I would be able to say what all the assumptions are that could be used to either overstate or understate the funded position [of the pensions]." *See* Charles Moore September 18, 2013 Transcript (the "**Moore 9/18 Transcript**", a copy of which is attached to the Artz Declaration, Exhibit D), at 62:2-7; *see also* Moore 9/18 Transcript, at 63:10-12 (indicating that 7 percent rate of return figure used by Milliman in running certain calculations regarding pension underfunding "was used for illustrative purposes" only and was not recommended by any specific actuary). Furthermore, in an e-mail dated July 9, 2013 from Treasurer Dillon to the Governor and others regarding a meeting Orr

would be having with the Detroit retirement systems on July 10, 2013, Treasurer Dillon indicated that “[b]ecause pensions have such a long life there are a lot of creative options we can explore to address how they [the pensions] will be treated in a restructuring.” See Supp. Kreisberg Declaration, Exhibit D. Dillon further testified that from the period July 9, 2013 through the City’s filing date, the City remained in the “informational stage” regarding the pension issue and what the underfunding status meant for retirees. Dillon 10/10 Transcript, 119:1-25. Dillon explained as follows:

1 Q. The last question is relating to Exhibit 5 which has
2 already been marked. It's the July 9th email.
3 The email states “Tomorrow's meeting could
4 lead to questions directed to you about your view on
5 this topic.” It's relating to the pension issue.
6 Is that a fair characterization of the
7 email?

8 A. Right.

9 Q. "In my view, it's too early in the process to
10 respond to hypothetical questions. We remain in
11 many ways in the informational stage. I have some
12 thoughts as to how you could address some pointed
13 questions if you're interesting in hearing them."

14 What pointed questions were you expecting?

15 A. Anything from -- well, going back in time here, but
16 just obviously the whole gamut of questions
17 regarding what the underfunding status could mean to
18 retirees, and I thought that the situation was not
19 understood enough for the Governor to go on record
20 yet because **I couldn't even tell him with any degree**
21 of confidence what level of funding these pension
22 funds had, so why should he get in the middle of a
23 debate about this. It's obviously a very charged
24 and sensitive issue, and it was my free political
25 comments to him.

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Q. And this was really just over a week before the
2 filing. That was your stance?

3 A. Yeah. I don't -- yeah, obviously. But I don't -- I
4 think it was in the context of this meeting that

5 Kevyn was going to have with the committee that
6 drove this email.

7 Q. Did anything change between the ninth and the filing
8 on the 18th that changed your opinion regarding what
9 you, I believe, just stated was too early to tell
10 him with any degree of confidence what level of
11 funding the pension funds had I believe is what you
12 just stated.

13 A. Yeah, I have not -- my opinion is pretty much the
14 same.

15 Q. The last sentence of the email says "I have some
16 thoughts as to how you could address some pointed
17 questions if you're interesting in hearing them."

18 What were your ideas for how to answer the
19 questions?

20 A. I don't recall specifically at this point.

21 Q. Did you ever have a conversation with him regarding
22 your thoughts on how to answer the questions?

23 A. No.

24 Q. You mentioned in the email "Because pensions have
25 such a long life there are a lot of creative options

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1 we can explore to address how they will be treated
2 in restructuring."

3 What were your creative options that you
4 had on the table?

5 A. There's dozens. I mean, I don't have one that I
6 would pick out. But pension funds do have a long
7 life and there's a lot of creative things that can
8 be done, so I -- I don't have one or two that I
9 would just throw out, but I do know that there's a
10 lot of ways to address that issue.

**11 Q. Have there been any formal reports or proposals
12 identifying and explaining what you consider to be
13 these creative options?**

14 A. No.

**15 Q. Were these creative options ever explored with the
16 pension systems directly --**

17 A. Not to my knowledge.

Dillon 10/10 Transcript, 119:1-121:17 (emphasis added).

58. In fact, experts who reviewed the actuarial assumptions of Detroit's pension systems concludes that the current assumptions generally fall within industry standards. *See, e.g., Detroit's Current Pension Assumptions Fall Within Standards: Morningstar*, available at <http://www.mandatepipeline.com/news/detroits-current-pension-assumptions-fall-within-standards-morningstar-242817-1.html> (last visited October 8, 2013).

59. Furthermore, as discussed above, the Law Firm highlighted at the January 29, 2013 pitch that "Asset monetization outside of bankruptcy may implicate eligibility requirement that City be insolvent (e.g., measured by short-term cash)" (Pitch Presentation, p. 17), and the City accordingly chose not to monetize certain assets prior to the filing to limit the appearance of short-term cash on the books. This is evidenced, in part, by the (i) recent announcement by the EM of the deal to lease Belle Isle to the Governor and (ii) Orr's strong hints that he is considering monetizing artwork at the Detroit Institute of Arts.⁹

60. Additionally, the City's financial projections which serve, in part, as the City's basis for establishing insolvency (which themselves were built on various assumptions not established by any **expert** testimony) fail to consider the possibility of possible funding sources outside those included in the City's financial projections. For example, Malhotra testified that the City's financial projections assume that the City will have no other funds beyond the City's general fund and that the water and sewer fund was not incorporated into the City's projections. *See* Malhotra 9/20 Transcript, at 44:21-45:17. Yet, Orr testified that with respect to the pension underfunding (which is cited throughout the City's Eligibility Brief and included as one of the major factors in the City's insolvency in numerous documents and pleadings), of the estimated

⁹ *See State Signs Deal To Lease Belle Isle*, available at <http://detroit.cbslocal.com/2013/10/01/reports-state-signs-deal-to-lease-belle-isle/> (last visited October 8, 2013); *Orr tells DIA to earn money from its treasures; long-term leases of artworks next?*, available at <http://www.freep.com/article/20131003/NEWS01/310030115/Kevyn-Orr-Economic-Club-Detroit> (last visited October 8, 2013).

\$644 million in underfunding (based on the pensions funds' 2012 calculations), the majority of that underfunding is attributable to the water and sewer fund which generates its own revenue and which "does have some capacity" to raise rates to generate more funds. *See* Kevyn Orr October 4, 2013 Transcript (the "**Orr 10/4 Transcript**", a copy of which is attached to the Artz Declaration, Exhibit E), at 377:1-380:13.

61. Finally, it bears noting that on July 16, 2013, the City reached a deal with its swap counterparties, which provided for such parties to (i) forbear from pursuing remedies and (ii) allowed the City to redeem the swaps until October 31, 2013 which would result in the City saving between \$70 and \$85 million. *See* Supp. Kreisberg Declaration, Exhibit E (e-mail from Ken Buckfire dated July 17, 2013). Given these immediate savings and other possible avenues (noted above) for the City avoiding bankruptcy, it is clear that the City's filing had very little to do with any purported insolvency and everything to do with the City's plan to impair or modify its pension obligations.

ARGUMENT

I. THE CITY'S PETITION VIOLATES THE UNITED STATES CONSTITUTION

62. AFSCME notes for the Court's consideration at trial that under principles of constitutional avoidance, the Court should only consider AFSCME's constitutional challenge if the Court determines that the City is otherwise eligible for chapter 9. Thus, the constitutional challenge is only relevant if the City has proven, among other things, that it is insolvent. Without conceding that AFSCME is insolvent, should the Court reach such a determination, the Court would then necessarily have to consider and rule on AFSCME's argument that for a truly insolvent municipality, chapter 9 – specifically including the prohibition at 11 U.S.C. § 903(1) of state municipal debt adjustment statutes requiring less than 100% creditor consent, such as

that approved in *Asbury Park*¹⁰ – represents an unconstitutional Hobson’s choice that forces the state (and municipality) into a situation where the state essentially must allow for federal interference to achieve the necessary debt adjustments. Moreover, the mere possibility of a state statute which can be used to adjust debts consistent with the Contracts Clause obviates the perceived need for a federal municipal bankruptcy statute which formed the underpinning of the Court’s decision in *Bekins*.¹¹

63. The Constitution does not simply disappear once a bankruptcy petition is filed, even for holders of unsecured claims. *See, e.g., City of New York v. New York, N. H. & H. R. Co.*, 344 U.S. 293 (1953) (unsecured creditors possess right to notice and hearing under Fifth Amendment before debts can be discharged). So too with the Contracts Clause found at Article I, Section 10 of the U.S. Constitution. Article I, Section 10 contains three clauses, the last two of which permit Congress to consent to a number of otherwise-unconstitutional state acts, for example the right to “enter into any Agreement or Compact with another State,” an example of which was the contract at issue in *United States Trust*.¹² The Contracts Clause, however, is found in the first clause of Section 10, which grants Congress no right to consent to a violation thereof. Thus, assuming *arguendo* that the City is correct that the intent of chapter 9 and PA 436 are both to skirt the constraints of the Contracts Clause by means of Congressional consent, Congress lacks the authority under Article I to grant that consent, and the Contracts Clause further prevents the State from passing a law like PA 436 intending to end-run the Contracts Clause. The result would be equally unconstitutional, and absurd, if Congress were to pass a statute, under its Section 8 power to coin money, which set up Article I courts to approve

¹⁰ *Faitoute Iron & Steel Co. v. City of Asbury Park*, 316 U.S. 502 (1942).

¹¹ *United States v. Bekins*, 304 U.S. 27 (1938).

¹² *United States Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1 (1977).

applications from individual states to coin their own money despite the blanket prohibition in Article I, Section 10 against states doing so.

64. Third, no state, as argued *supra*, can “consent” to “enlarge the powers of Congress; none can exist except those which are granted.” *Ashton v. Cameron County Water Improvement Dist. No. 1*, 298 U.S. 513, 531 (1936). The City’s attempt to distinguish the Court’s line of federalism cases since *New York v. United States*¹³ completely misses this point by insisting that chapter 9 does not violate the federalism principles articulated in those cases merely because “chapter 9 is ‘administered’ by the federal bankruptcy court, not the States.” Debtor’s Reply, at p. 16. But these cases cannot be oversimplified and read in a vacuum as the City suggests. The Court’s new federalism stands not for the narrow proposition that Congress cannot force states to administer federal regulatory programs, but for a broader constitutional rule: “if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress,” and “the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress’ instructions” even with “the ‘consent’ of the governmental unit whose domain is thereby narrowed.” *New York*, 505 U.S. at 156, 162, 182.

65. Chapter 9 does exactly that – if a state consents, a federal bankruptcy judge enforces a set of instructions from the Code, most notably the requirements for plan confirmation, and takes over municipal decision-making during the bankruptcy by controlling the municipality’s right not to engage in discovery or mediation and by wielding the power to appoint a trustee to recover preferential transfers over the municipality’s objection. These elements of chapter 9 – which the City entirely ignores in its brief – violate the Supreme Court’s clear direction that “[t]he Constitution’s division of power among the three branches is

¹³ *New York v. United States*, 505 U.S. 144 (1992).

violated where one branch invades the territory of another, whether or not the encroached-upon branch approves the encroachment.” *Id.* at 182. The City points to general language in section 903 of the Bankruptcy Code prohibiting interference with “political or governmental powers,” (Debtor’s Reply, at p. 18), but that language is belied by other provisions of the Code explicitly permitting interference by the bankruptcy judge.

66. The City’s related argument that “chapter 9 operates much like federal programs that extend the benefits of federal money to States that voluntarily submit to federal requirements,” (Debtor’s Reply, at pp. 16-17) is inapposite because the state does not obtain money in exchange for taking some action clearly within its power but desired by the federal government, rather the state *reacquires* its inherent power under *Asbury Park* to access a process for adjusting its debts. In exchange for a power it already would possess in the absence of chapter 9, the state is forced to give the federal government control over state sovereign functions not available to Congress under the Constitution.

67. This aspect of chapter 9 – its nullification of all state laws for municipal debt adjustment in favor of an exclusive federal remedy which subjects state and local officials to federal rules – highlights the accountability problem of allowing state and local officials to represent to their constituents that the only way to escape financial catastrophe is to access chapter 9 and accept the rules therein, such as claim priorities in the Code, which voters in the state might wish to alter. For if a state declines Congress’s offer of access to chapter 9, it has no recourse to adjust municipal debts *en masse* as a result of section 903. Yet if a municipality is as financially distressed as the City contends it is, it faces the problem which motivated the Court in *Asbury Park* to find that states can design their own debt adjustment statutes consistent

with the Contracts Clause: the City has no reasonable alternative.¹⁴ Under such circumstances, state and local government officials face an unconstitutional conundrum: accept federal interference with their sovereign fiscal self-management, or default on municipal debt in violation of the Contracts Clause. If the former is chosen, the City accepts rules and instructions from a federal judge, which state and local officials can refer to when attempting to shift blame for the hard decisions of municipal reorganization instead of confronting a local debate over legislation at the state level about how to adjust municipal debt.

II. THE CITY IS NOT ELIGIBLE TO FILE FOR CHAPTER 9 PROTECTION UNDER SECTION 109(C) OF THE BANKRUPTCY CODE

68. The City, as a purported municipal debtor, bears the burden of establishing it is eligible for relief under chapter 9, and for all of the reasons asserted previously (and as will be further demonstrated at trial), the City necessarily fails to carry its burden with respect to the following eligibility requirements: (i) valid authorization under Michigan state law (section 109(c)(2) of the Bankruptcy Code); and (ii) good faith negotiations or impracticability of such negotiations (section 109(c)(5) of the Bankruptcy Code). Further, as has become apparent through discovery and as shown above and in the AFSCME Eligibility Objection (and AFSCME expects will be further shown at trial), the City's evidence regarding insolvency is woefully inadequate, supported by no expert testimony or other reliable evidence, and accordingly the City fails to satisfy the insolvency requirement under section 109(c)(3) of the Bankruptcy Code.

¹⁴ In *Asbury Park*, the Court observed that “the practical value of an unsecured claim against the city is inseparable from reliance upon the effectiveness of the city's taxing power.” 316 U.S. at 509-10. Where, as in *Asbury Park*, financial crisis has rendered “the effective taxing power of the municipality prostrate without state intervention to revive the famished finances of the city,” *id.* at 516, the Court recognized that “what is needed is a temporary scheme of public receivership over a subdivision of the State” allowing for the “discharge[]” of municipal debt obligations, *id.* at 510-11. The City, like the municipality in *Asbury Park*, has contended that its need for bankruptcy protection stems from it having exhausted its ability to raise revenue through taxation. *See* Eligibility Brief, pp. 28-30.

69. Finally, the evidence reveals that the City's bankruptcy petition was filed in bad faith and not motivated by a proper purpose under chapter 9 and should be dismissed pursuant to section 921(c) of the Bankruptcy Code.

70. It bears noting that at Orr's original deposition on September 16, 2013 (and subsequent October 4, 2013 deposition) and at other State officials depositions, Orr and various State officials (including the Governor, Dillon, and Baird) continued to hide behind the common interest privilege to essentially cover up any discussions or communications between City and State government officials under an alleged common interest privilege.

71. While this Court determined the common interest privilege may apply to such communications, AFSCME believes that the discussions and deliberations between City and State officials leading up to the City's filing for chapter 9 in the period prior to July 18, 2013 – discussions which the City and State have clearly worked hard to keep secret – relate to the crux of AFSCME's (and other objectors') arguments that the City filed its chapter 9 petition in bad faith, without real negotiations with significant creditors, and that the authorization was tailored by City and State officials to circumvent the Michigan constitution's Pensions Clause. Given the presumption that government is supposed to be transparent (*e.g.*, FOIA statutes), and the fact that significant e-mails between the State, City and the Law Firm (including between the State and Orr) were already produced in this and other litigations, to the extent that the common interest ever applied, such privilege has been waived and AFSCME **asserts its continued objection to the City and State refusing to give deposition testimony or provide documents** (some of which may have been waived by prior documents produced and deposition testimony given by the State and City in this and other proceedings) subject to an asserted common interest privilege.

72. AFSCME believes that it already has sufficient evidence to rebut the City’s case regarding authorization, good faith negotiations, general bad faith filing, and insolvency, but notes that the City and State’s continued reliance on a purported common interest should be reconsidered and AFSCME provided further testimony and documents so AFSCME can have proper due process.¹⁵

A. The City Is Not Authorized By Michigan State Law To Be A Debtor Under Chapter 9

73. As set forth in the AFSCME Eligibility Objection and as will be further demonstrated at trial, the Governor’s blanket grant of permission to file for bankruptcy under Section 18 of PA 436 violated the Michigan Constitution because it failed to explicitly prohibit the impairment or diminishment of vested pension rights, which the Governor was fully aware was the intention of the instant chapter 9 petition. Moreover, the appointment of the Emergency Manager under PA 436 violates the “strong home rule” provisions of the Michigan Constitution. Where, as here, a state constitution bars the purported state law authorization, a chapter 9 petition must be dismissed. *See In re City of Harrisburg, PA*, 465 B.R. 744 (Bankr. M.D. Pa. 2011) (analyzing Pennsylvania Constitution to determine whether city was authorized to file under chapter 9).

74. AFSCME notes that the arguments raised in the AFSCME Eligibility Objection (and raised or to be raised at oral argument) that (i) the Governor’s authorization violated of Article IX, Section 24 of the Michigan State Constitution (the “**Pensions Clause Arguments**”) and (ii) PA 436 offends the “strong home rule” of Detroit (and the Emergency Manager is not

¹⁵ AFSCME did not appeal the Court’s common interest ruling which was interlocutory, but reserves the right to argue on appeal that the City and State’s failure to testify and produce documents on relevant subject matters, including regarding the EM and State’s plans for the EM commencing the City’s chapter 9 case, prevent AFSCME from a full and fair opportunity to litigate its objections to the City’s eligibility. Accordingly, AFSCME reserves all rights in this regard, including all appellate rights upon entry of a final appealable order regarding the City’s eligibility.

lawfully authorized to file for bankruptcy on behalf of the City or to act as its representative during chapter 9 proceedings) (the “**Home Rule Arguments**”) are, in part, **as applied** arguments (*i.e.* arguments that involve the establishment of certain facts), and have been established (to the extent necessary) based on the factual evidence discussed above and as will be further adduced at trial.

75. Thus, for the Home Rule Arguments, the evidence discussed herein, in the AFSCME Eligibility Objection, and to be further adduced at trial demonstrates that the EM, an unelected contractor of the State, has and continues to make local laws for the City. Furthermore, regarding the Pensions Clause Arguments, the evidence already adduced reveals, and AFSCME will further establish at trial, that the intent of the City to reduce vested pension rights in chapter 9 was well known to the Governor when he granted the EM authorization to commence the chapter 9 filing, and to the EM when he requested that permission and when he ultimately filed the petition, and that therefore each of those acts violated the Pensions Clause.

B. The City Failed To Participate In Any Good Faith Negotiations With Creditors Prior To Filing For Bankruptcy As Required For Eligibility Under Chapter 9

76. The City cannot meet its burden under section 109(c)(5) of the Bankruptcy Code of proving that it conducted good faith negotiations with its creditors or that such negotiations were impracticable.

77. Congress enacted the “negotiation” requirement of section 109(c) to prevent capricious filings of chapter 9 petitions, and Courts do not “view lightly the negotiation requirements of 11 U.S.C. § 109(c)(5).” *See In re Villages at Castle Rock Metro. Dist. No. 4*, 145 B.R. 76, 85 (Bankr. D. Colo. 1990); *In re Town of Westlake, Tex.*, 211 B.R. 860, 867-68 (Bankr. N.D. Tex. 1997) (suggesting that section 109(c)(5) requires that a municipality have an intent to negotiate with creditors it intends to impair). “The ‘creditor protection’ provided by

section 109(c)(5). . . insures that the creditors have an opportunity to negotiate concerning a plan on a level playing field with the debtor before their rights are further impaired by the provisions of section 362 of the Code.” *Sullivan County*, 165 B.R. at 78-79).

78. In *Cottonwood Water*, the Court explained the good faith negotiation requirement under section 109(c)(5) of the Bankruptcy Code as follows:

Congress consciously sought to limit accessibility to the bankruptcy court by municipalities [by requiring] . . . the municipal entity, before rushing to . . . Court, to first seek to negotiate in good faith concerning the treatment the creditors may be expected to receive under a plan to be filed under section 941 of the [Bankruptcy] Code. . . . The ‘creditor protection’ provided by section 109(c)(5) . . . insures that the creditors have an opportunity to negotiate concerning a plan on a level playing field with the debtor before their rights are further impaired by the provisions of section 362 of the [Bankruptcy] Code.

138 B.R. at 979.

79. Accordingly, the burden is on the City to demonstrate (i) that it engaged in good faith negotiations with its creditors concerning the possible terms of a plan or (ii) why it was unable to engage in such negotiations. ASFSCME respectfully submits that the City cannot demonstrate any negotiations with creditors such as AFSCME, let alone “good faith” negotiations, and further given that the City conducted no pre-petition negotiations with significant creditors such as AFSCME, the City should not be heard to argue that negotiations were impracticable.

(i) The City Failed To Negotiate With Creditors Such As AFSCME

80. The City claims it satisfies the section 109(c)(5)(B) requirement for negotiating with its creditors prior to the bankruptcy filing by negotiating with creditors, including unions such as AFSCME, in a few meetings held with its unions where the City discussed its restructuring proposals and took certain questions. *See* Eligibility Brief, pp. 53-61 (citing, *inter*

alia, Orr Declaration, ¶¶ 90-96). What the City fails to mention is that, as discussed extensively above and as indicated by Orr himself prior to the scheduling of these meetings, it was made clear throughout these series of 3 or 4 relatively short meetings that the meetings were “discussions” and the City was not willing to conduct any negotiations. The City argued that the EM “openly invited the City’s creditors to contact the City and its advisors to begin negotiations.” Eligibility Brief, p. 55. In fact, the City rebuffed negotiations, which require concessions from both sides and collaboration between the debtor and its significant creditors. The City (acting through Orr) simply was not interested in negotiations (and as Orr indicated regarding the predecessor to the ultimate Restructuring Plan, the EM’s May 12, 2013 “Financial and Operating Plan”, “[t]his isn’t a plebiscite, we are not, like, negotiating the terms of the plan”).

81. *In re Ellicott School Building Authority* is directly on point. There, the debtor held three public meetings with large creditors regarding its proposed restructuring, although creditors were advised that the economic provisions of the proposed plan were not negotiable. 150 B.R. 261, 266 (Bankr. D. Colo. 1992). The court held that even though the debtor conducted three public meetings explaining its proposed plan of restructuring to bondholders, it did not negotiate in good faith because it indicated that the economic terms of its proposed plan were non-negotiable. *Id.* (debtor must be open to negotiating the substantive terms of a proposed plan); *cf. Int’l Ass’n of Firefighters, Local 1186 v. City of Vallejo (In re City of Vallejo)*, 408 B.R. 280, 289 (9th Cir. B.A.P. 2009) (finding that the city did not satisfy section 109(c)(5)(B) because it “never negotiated with Unions or any of its creditors over the possible terms of a plan of adjustment.”); *Sullivan County*, 165 B.R. at 78-79 (“The ‘creditor protection’ provided by section 109(c)(5) . . . insures that the creditors have an opportunity to negotiate

concerning a plan on a level playing field with the debtor before their rights are further impaired” (citation omitted)).

82. The City’s a “take it or leave it” Restructuring Plan proposal that was not really open to any negotiations (good faith or otherwise) should be rejected as the court did in *Ellicott School*. The City failed to engage in any negotiations with its significant creditors such as AFSCME regarding the Restructuring Plan. Flatly refusing to conduct any negotiations (despite repeated requests by AFSCME both prior to and subsequent to the City’s bankruptcy filing) falls far short of the standard required under section 109(c)(5) of the Bankruptcy Code.

83. The City has publicly proclaimed its willingness to negotiate, yet it and its representatives’ (i) statements that the meetings held to discuss the Restructuring Plan were not negotiations and (ii) continued bad faith refusal for a period of time post-petition (until required mediation began) to hold negotiations (despite requests from AFSCME to jump start negotiations) makes it more than clear that the City has conducted no good faith negotiations with AFSCME and similarly situated creditors.

84. Moreover, as described extensively above and will be further demonstrated at trial, to the extent that the City held a series of pre-petition meetings with creditors to discuss its Restructuring Plan, such meetings were simply scheduled as part of the EM and City’s plan to bolster the City’s “record (i.e. for future litigation)” as suggested by the City’s lead bankruptcy counsel in the Pitch Presentation back in January 2013. In addition, the evidence further reveals that the City had planned on filing for chapter 9 as of early July 2013 by the specific date of Friday, July 19, 2013 – even as alleged creditor “negotiations” were ongoing – regardless of how the discussions were progressing. *See* Supp. Kreisberg Declaration, Exhibit C (spreadsheet document dated July 4, 2013 attached to e-mail from EM’s office to State

officials entitled “Chapter 9 Communications Rollout” indicated that Friday, July 19, 2013 was “FILING DAY”). This evidence further establishes that the City was not really interested in any serious negotiations.

(a) Despite The City’s Creative Arguments To The Contrary, The City Cannot Escape The Fact That It Refused To Negotiate In Good Faith

85. In the City’s reply brief and in recent deposition testimony provided by Orr on October 4, 2013, the City and Orr have now taken the position that while the City may have made statements that its pre-petition meetings with the unions regarding its Restructuring Plan were not a “negotiation”, such characterizations were simply to avoid any argument that the City triggered obligations to collectively bargain, which obligations may be suspended by PA 436. *See* Debtor’s Reply, at p. 55 n.49; *supra*, ¶ 44. The City now argues that it was flexible in its negotiations and willing to consider other proposals, but received no counter-proposals from creditors, despite requests for same. The City’s statements in that regard, however, do not establish the good faith negotiations required by the Bankruptcy Code. Requesting “feedback” or “invitations for further information” simply does not satisfy the City’s burden of proof.

86. AFSCME (and other objectors) offered on more than one occasion to engage in good faith bargaining and negotiations which were continually rebuffed by the City, and indeed as of late June/early July 2013, the City did not even have any complete proposal with respect to the restructuring of pension and other retiree benefits. Rather, the City’s proposal to its creditors was no more than an ultimatum, with the City showing no real intention of negotiating economic or substantive terms. As noted, the City was interested in and spent months mapping out its path to chapter 9, and never had any real intention of bargaining in good faith.

(ii) Even Assuming That The City Engaged In Negotiations, Such Negotiations Did Not Relate To A Plan That Is In The Best Interests Of Creditors As Required By Section 109(c)(5)(B)

87. While AFSCME submits that the City did not engage in any good faith negotiations with creditors such as AFSCME prior to the City's chapter 9 filing, even assuming this Court were to find otherwise, the City also has not satisfied section 109(c)(5)(B) of the Bankruptcy Code because the plan or terms of a plan being negotiated must be a plan that can be effectuated in chapter 9. *See Sullivan County*, 165 B.R. at 78 (debtor failed to meet burden of showing that it negotiated in good faith because the plan that was proposed was not a plan that could be effectuated in chapter 9); *Cottonwood Water.*, 138 B.R. at 979 (finding that "in order for this Debtor to be entitled to the entry of an order for relief, it must be prepared to show that it engaged in good faith negotiations with its creditors concerning the possible terms of a plan to be effected pursuant to section 941 of the Bankruptcy Code.").

88. Here, the proposed Restructuring Plan is patently unconfirmable because it unconstitutionally looks to reduce or eliminate guaranteed vested pension benefits pursuant to a plan that would presumably be crammed down on creditors, including those City retirees and employees that participate in the various pension and other retirement benefit plans, without their consent. Given that creditors owed pension obligations have absolute rights to those vested pension benefits under Michigan law as set forth extensively above, and one of the main goals of this proceeding is to modify vested pension and other retiree benefits, the City has no ability to confirm any plan of adjustment modifying such rights. *See* 11 U.S.C. §943(b)(4) (stating that the Court shall confirm a chapter 9 plan only if "the debtor is not prohibited by law from taking any action necessary to carry out the plan.").

89. Additionally, the Restructuring Plan is not in the "best interests of creditors" and thus could not be confirmed pursuant to section 943(b)(7) of the Bankruptcy Code. The "best

interests of creditors” test in the context of a chapter 9 case does not compare treatment under a plan of liquidation, but rather to other alternatives to creditors to the plan. *See, e.g., In re Sanitary & Improvement Dist., #7*, 98 B.R. 970, 974 (Bankr. D. Neb. 1989); (“Section 943(b)(7) [with respect to the best interest of creditor’s provision] ... simply requires the court to make a determination of whether or not the plan as proposed is better than the alternatives.”); *In re Mount Carbon Metropolitan Dist.*, 242 B.R. 18, 34 n.50 (Bankr. D. Colo. 1999) (“The ‘best interest’ requirement of § 943(b)(7) is generally regarded as requiring that a proposed plan provide a better alternative for creditors than what they already have.”) (citing 4 Collier on Bankruptcy, 943.03[7] (Lawrence P. King, ed., 15th ed.1999)).

90. Had there been no chapter 9 filing by the City, pension creditors could not be impaired under the Michigan Constitution, and any impairment of those rights under a plan of adjustment would violate Michigan law and be patently non-confirmable. Accordingly, because the Restructuring Plan proposes to unconstitutionally wipe out guaranteed vested pension benefits, the proposal cannot satisfy the requirements of good faith negotiations over a plan that could be effectuated in chapter 9.

91. Orr failed to consider before filing for bankruptcy protection or since the filing, an equitable argument for the pension fund beneficiaries that other creditors extending debt after funding concerns surfaced publically should be subject to equitable subordination/fraudulent conveyance under Bankruptcy Code sections 510(c) and 544(b)/548(a) and pension benefits should take priority over those claims.

92. Further, under Bankruptcy Code section 928(b), Orr should be exploring whether certain other creditors should bear the burden of some of the City’s operating expenses during bankruptcy process, before benefit cuts are implemented.

93. The City in its reply brief (*see* Debtor’s Reply, at p. 58 n.50) argues that AFSCME is incorrect that to satisfy the good faith negotiation requirement of section 109(c)(5)(B), negotiations must be conducted regarding the terms of a confirmable plan. The City cites no authority for rejecting AFSCME’s arguments in this regard, and the weakness of the City’s argument is belied by its relegation to a footnote. There can be no doubt that the reference to good faith negotiations of the terms of a plan in section 109(c)(5)(B) of the Bankruptcy Code is to negotiations of the terms of a plan that can be effectuated in chapter 9, *i.e.*, a confirmable plan, as argued above. It is illogical for the statute to reference negotiations regarding an unconfirmable plan. Were that the case, then the whole point of good-faith negotiations would be meaningless and rendered moot, or simply, be deemed bad faith. As one recent court has explained in the chapter 9 context:

The structure of the sentence [*i.e.* section 109(c)(5)(B)] strongly implies that in the negotiations, municipalities are seeking the creditors’ agreement *to a bankruptcy plan*. **What other agreements can they be seeking?**

In re Mendocino Coast Recreation and Park District, No. 12-cv-02591-JST, 2013 U.S. Dist. LEXIS 139697, at *19 (N.D. Cal. Sept. 27, 2013) (*emphasis* in original; **emphasis** added).

94. The City attempts to rebut AFSCME’s reliance on *Sullivan County* and *Cottonwood*, *supra*, with respect to the meaning of a plan in section 109(c)(5)(B) of the Bankruptcy Code. Debtor’s Reply, at p. 58 n.50. Although *Sullivan* does acknowledge that a *formal* plan is not required, that court states that, to be in good faith, negotiations must “revolve around the negotiating of the terms of a plan that could be effectuated if resort is required to chapter 9 of the Bankruptcy Code.” *Sullivan*, at 78. For a plan to be effectuated under chapter 9, it clearly must satisfy the parameters of and be confirmable under section 943(b) of the Bankruptcy Code and be in the best interests of creditors. The *Sullivan* court’s statement

that the plan need not be a “formal plan”, *id.*, at 78, is underscored by the language that follows (and conveniently omitted by the City):

While the statutory requirement does not require a formal plan as such, some sort of comprehensive plan is required as one of the ‘screening factors’ to avoid a too early and rapid resort to the bankruptcy courts by municipalities.

Sullivan, 165 B.R. at 78 (emphasis added). This language is telling and clearly negates the City’s position with respect to the nature of the “plan.” Both the *Sullivan, supra*, and *Cottonwood, supra*, courts concluded that, even where the parties engaged in good-faith pre-petition negotiations, the municipality failed to satisfy section 109(c)(5)(B) because the negotiations did not include the terms of a plan under chapter 9 of the Bankruptcy Code. The City would further have this Court ignore the finding in *Ellicott*, adopting the well-reasoned analysis of *Cottonwood*, that a municipality must establish that “‘it engaged in good faith negotiations with creditors concerning the possible terms of a plan to be effected under section 941 of the Bankruptcy Code.’” *Ellicott*, 150 B.R.at 266 (citing *Cottonwood*, 138 B.R at 138) (emphasis added). The City failed to negotiate in good faith as any purported negotiations were not related to a plan that could be effectuated under section 941 and 943(b) of the Bankruptcy Code. The City, therefore, does not satisfy section 109(c)(5)(B) of the Bankruptcy Code.

(iii) Negotiations With Certain Categories Of Creditors Such As AFSCME Were Not Impracticable

95. The City alleges that it alternatively qualifies for eligibility under section 109(c)(5)(C) of the Bankruptcy Code because negotiations were impracticable.

96. As with the other eligibility requirements, the burden of proving impracticability rests with the City. *See In re Pierce County Housing Authority*, 414 B.R. 702, 713 (Bankr. W.D. Wash. 2009); *Vallejo*, 408 B.R. at 289 (citing *Valley Health*, 383 B.R. at 161). Courts

considering section 109(c)(5)(C) define the ordinary meaning of “impracticable” as “not practicable; incapable of being performed or accomplished by the means employed or at command; infeasible.” *See, e.g., Vallejo*, 408 B.R. at 298 (citing *Valley Health*, 383 B.R. at 163). Whether negotiations were impracticable is fact specific and depends upon the circumstances of the case. *See Vallejo*, 408 B.R. at 298.

97. The City alleges that negotiations were impracticable because, in part, the City had (i) numerous series of bonds and indebtedness held by multiple holders and (ii) approximately 20,000 retirees not represented by any formal agent or committee and other potential involuntary creditors. Furthermore, the City claims that the refusal of certain creditor constituencies to engage in good faith negotiations rendered negotiations impracticable.

98. In fact, AFSCME believes that the exact opposite is true here. The City predetermined that its pre-bankruptcy negotiations (which, as discussed above, were not negotiations) would fail. As discussed extensively above, the Governor and his staff orchestrated for several months prior to the hiring of Orr as EM to bring in Orr, as an experienced bankruptcy attorney, to lead the City on a clear path towards a chapter 9 filing, and any negotiations were a façade – the City went through the motions of pre-petition meetings but, as is evident from its pre-petition conduct *vis a vis* AFSCME, never had any intention of negotiating outside of bankruptcy.

99. While the City alleges that it has over 100,000 creditors, it is clear that the main creditors the City had to negotiate with were the unions, its retirees, and the bond trustees.

100. Moreover, as discussed extensively *supra*, The City itself has in the past negotiated with its unions with respect to concessionary agreements which changes impacted retiree benefits outside of a chapter 9 proceeding (even where such unions were not explicitly

representing their retirees). Thus, it is a red herring to say that negotiating medical benefits or pensions is impractical *per se*.

101. While courts have made clear that impracticability can be demonstrated by the volume of creditors to negotiate with, in no case AFSCME is aware of did a court find that negotiations were impracticable where the Debtor did not even attempt to negotiate pre-petition with its largest creditors such as AFSCME (and after repeated requests to do so). In *Ellicott School*, the court determined that the debtor holding “public meetings to which all bondholders were invited” showed that negotiations were practicable.

102. AFSCME is not suggesting that pre-petition negotiations could have bound everyone or must have involved all of the City’s thousands of creditors. Rather, some level of negotiation with principal creditors could have led the City to a non-bankruptcy solution. By way of analogy, section 109(c)(5)(B) of the Bankruptcy Code contemplates pre-bankruptcy negotiations with creditors that municipality intends to impair, not all creditors.¹⁶

103. Given the City’s lack of negotiations with creditors such as AFSCME and similar union representatives that could have negotiated regarding the largest portion of the City’s unsecured debt, the City’s arguments that negotiations were impracticable should be rejected.

104. In reality, the City was not truly interested in negotiating in good faith (whether or not such negotiations were impractical) because the City strongly desired a swift landing in chapter 9.

¹⁶ Importantly, the City describes in the Orr Declaration that of the City has nearly \$12 billion in unsecured debt, but 75% of that (approximately \$9.2 billion) relates to accounting liabilities for post-employment benefit or underfunded pension liabilities.

C. The City’s Petition Should Be Dismissed Under Section 921(c) As Filed In Bad Faith

105. The City’s bankruptcy petition is subject to dismissal pursuant to section 921(c) of the Bankruptcy Code because the filing was in bad faith. Section 921(c) of the Bankruptcy Code provides that “[a]fter any objection to the petition, the court, after notice and a hearing, may dismiss the petition if the debtor did not file the petition in good faith or if the petition does not meet the requirements of this title.”

106. “Good faith is not defined in the Bankruptcy Code.” *In re McCurtain Mun. Auth.*, No. 07-80363, 2007 WL 4287604, at *4 (Bankr. E.D. Okla. Dec. 4, 2007). Courts have determined, however, that the primary function of the good faith requirement in chapter 9 is to “ensure the integrity of the reorganization process by limiting access to its protection to those situations for which it was intended.” *Sullivan County*, 165 B.R. at 80 (citation omitted); *see also In re City of Stockton, California*, 493 B.R. 772, 794 (Bankr. E.D. Cal. 2013) (“Section 921(c) “good faith” serves a policy objective of assuring that the chapter 9 process is being used in a manner consistent with the reorganization purposes of the Bankruptcy Code”); *Villages at Castle Rock*, 145 B.R. at 81 (describing good faith as requirement that “prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefiting them in any way or to achieve reprehensible purposes”) (internal quotation marks and citation omitted).

107. While good faith in the chapter 9 context is not defined in the Bankruptcy Code, courts have looked to discussions of good faith in the chapter 11 context to determine whether a chapter 9 petition has been filed in good faith. *McCurtain Mun. Auth.*, 2007 WL 4287604, at *4 (referencing chapter 11 good faith standards to determine whether chapter 9 petition was filed in good faith) (quoting *Villages at Castle Rock*, 145 B.R. at 81); *County of Orange*, 183

B.R. at 608 (observing that “courts have ... applied to chapter 9 cases the judicial reasoning that developed in chapter 11 cases” regarding good faith); *Sullivan County*, 165 B.R. at 82 (examining and applying chapter 11 good faith requirements to chapter 9 petition)).

108. In the chapter 11 context, courts explain that the requirement of good faith

prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefitting them in any way or to achieve reprehensible purposes. Moreover, a good faith standard protects the jurisdictional integrity of the bankruptcy courts by rendering their powerful equitable weapons . . . available only to those debtors and creditors with ‘clean hands.’

In re Little Creek Dev. Co., 779 F.2d 1068 (5th Cir. 1986).

109. Relevant considerations regarding good faith under chapter 9 include “whether the City’s financial problems are of a nature contemplated by chapter 9, whether the reasons for filing are consistent with chapter 9, the extent of the City’s pre-petition efforts to address the issues, the extent that alternatives to chapter 9 were considered, and whether the City’s residents would be prejudiced by denying chapter 9 relief.” *Stockton*, 493 B.R. at 794.

110. Here, a review of the various relevant factors considered by courts when analyzing good faith under section 921(c) lead to the inescapable conclusion (which will be further demonstrated at trial) that the City’s chapter 9 case was filed in bad faith and with unclean hands.

111. First, the City’s filing came several minutes prior to a Michigan State Court issuing a TRO enjoining the Governor from authorizing the filing. The State lawyers at the hearing on the TRO asked for a short delay when they realized that an adverse ruling was forthcoming with respect to the City’s ability to authorize any chapter 9 authorization which did not proscribe the reduction of pension benefits violated the Michigan constitution. During that recess, the City filed for chapter 9 protection. Thus, the City commenced this proceeding

“in the dark of night” to avoid a ruling it viewed as not in its favor. Such a filing is the antithesis of the careful, deliberative decision to file required under chapter 9, as “[t]he legislative history indicates that the strict hurdles to filing Chapter 9 were implemented to ensure that it was considered by a municipality only as a last resort.” *Pierce County*, 414 B.R. at 714 (citation omitted) (noting debtor decided to file a chapter 9 petition only after several years of failed negotiations and attempts at mediation); *cf. Valleo*, 408 B.R. at 295 (“The evidence needs to show that the ‘purpose of the filing of the chapter 9 petition not simply be to buy time or evade creditors.’”). The City filed chapter 9 to evade what it viewed as an imminent negative state court ruling – enjoining this very filing.

112. Moreover, as discussed above, while the City was purporting to negotiate with its creditors in good faith by holding several meetings, such meetings were employed as a mere strategy to bolster the record and never truly given the chance to succeed. The City simply does not have “clean hands”.

113. Additionally, as discussed extensively above, the City did not reasonably consider any alternatives to chapter 9, did not give negotiations any real chance to succeed, and was preparing for a chapter 9 filing months before any creditor meetings to discuss restructuring options even started (and indeed had finalized a decision to file as of early July 2013 well before significant creditor meetings were scheduled to take place), and refused to negotiate with major creditors such as AFSCME as required. Simply put, the predetermined filing was done in bad faith and should be dismissed.

114. The City argues in its reply brief that the reason for filing the chapter 9 petition was not the imminent entry of the State Court TRO, but rather “to adjust its debts and resolve its liquidity crises [consistent] with the rehabilitative purposes of Chapter 9.” Debtor’s Reply,

at p. 65. The City states further that it was no secret that Chapter 9 was an option if negotiations with creditors proved impracticable (which, of course, AFSCME disputes as set forth *supra*). *Id.* at 65-66. However, the City has not and cannot establish that negotiations with its creditors were impracticable under Section 109(c)(5)(C). Thus, any reliance by the City on the impracticability of negotiations with creditors to establish good faith is misplaced.

115. Moreover, the City's attempts to lay blame on the movants in the state court TRO proceeding by suggesting that it was the City's preparation for bankruptcy that prompted the request for the TRO (*see* City Reply, at 66, n. 56), rather than the opposite (*i.e.* that the imminent entry of the TRO prompted the chapter 9 filing) is incorrect. Indeed, as discussed above, Orr admitted that the filing was being driven by the state court litigations and that he was being "irresponsible" by not authorizing the filings when he did.

116. The City relies on the *McCurtain Municipal Authority*, decision to support its position regarding the timing of its filing and the state court TRO hearing. In *McMurtain*, a creditor filed an application for the appointment of a receiver the day before the trustees of the municipal authority met to discuss a chapter 9 filing. Notice of the trustees' meeting was provided before the filing of the application for the receiver. The municipal authority argued that the potential appointment of a receiver may have been a concern, but it was not the only reason for the authority to ultimately file its petition. *McCurtain* at *5 (identifying other concerns considered by the authority trustees that precipitated the chapter 9 filing).

117. Here, in contrast, the evidence show that the City very much sought to avoid the effects of the State Court litigation and a ruling that the Governor could not authorize a filing that did not place contingencies on the EM from changing pension benefits in a chapter 9. The City likely would have considered giving creditors more time to negotiate (as was required for

any significant bargaining to take place), and there was no cash crisis and the City had actually as of July 17, 2013 inked a deal with its swap counterparties which helped the City's anticipated liquidity. The City has simply not proceeded in good faith.

D. The City Has Failed To Meet Its Burden Of Proving Its Insolvency, And Only Does So Based On Assumptions Used By The City To Show Its Insolvency

118. The Bankruptcy Code does not offer relief to a city simply because it is suffering economic difficulties. *See, e.g., In re City of Bridgeport*, 129 B.R. 332, 339 (Bankr. D. Conn. 1991) (although City projected \$16 million budget deficit, it was not insolvent, and "financial difficulties short of insolvency are not a basis for chapter 9 relief"); *In re Hamilton Creek Metro. Dist.*, 143 F.3d 1381, 1386 (10th Cir. 1998) (debtor not eligible for relief simply because it was severely economically distressed).

119. In order to carry its burden on insolvency, the City must prove either that it is "(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or (ii) unable to pay its debts as they become due." 11 U.S.C. § 101(32)(C). The test under the first prong requires current non-payment of obligations, but the test under the second prong is prospective, looking to the debtor's future inability to pay. *Bridgeport*, 129 B.R. at 336-37. Solvency is measured as of the petition date. *See, e.g., In re Town of Westlake, Texas*, 211 B.R. 860, 866 (Bankr. N.D. Tex. 1997) (citing cases).

120. The purposeful refusal to make a few payments comprising a relatively small part of the City's budget does not satisfy the definition of "insolvent" under 11 U.S.C. § 101(32)(C)(i). *See, e.g., Uecker & Assocs. v. Tenet Healthsystem Hosps., Inc. (In re West Contra Costa Healthcare Dist.)*, No. 06-41774 T, 2010 Bankr. LEXIS 994, at *8 (Bankr. N.D. Cal. Mar. 26, 2010) (failure to pay \$1.3 million out of \$10-\$11 million total operating expenses did not mean the debtor was "generally not paying its debts")

121. First, the City “deliberately budget[ed and] spen[t] itself into insolvency (so as to qualify under § 101(32)(C)(ii)), when other realistic avenues and scenarios [were] possible.” *Town of Westlake*, 211 B.R. at 867. Second, “[t]he mere fact that a municipality has adopted a budget that reflects a cash flow shortfall is not independently sufficient to meet the requirement of the ‘unable to pay’ test.” COLLIER ON BANKRUPTCY ¶ 900.02[2][c][i] (16th ed. 2011). A municipal budget “must be evaluated in light of past and current practices, the practices of similar municipalities, and the extant facts and circumstances.” *Id.*

122. The City puts forward three declarations from Orr, Malhotra and Moore which appear to provide a voluminous amount of data to “establish” the City’s insolvency, including on the basis of budget and service delivery insolvency, negative cash flows and inability to increase revenues or reduce expenses.

123. However, as discussed above and as will further be demonstrated at trial, when one digs into all of the “facts” cited by these three declarants, it becomes apparent that the City failed to provide this Court or the citizens of Detroit evidence to establish insolvency.

124. It is telling (and should be shocking to all citizens of Detroit and Michigan) that despite spending millions of dollars of taxpayer funds on the City’s chapter 9 cases to hire a multitude of bankruptcy and restructuring professionals, the City fails to offer even one person to stand up as an *expert* and testify to the City’s insolvency. Courts in the non-chapter 9 context note that “[i]t is generally accepted that whenever possible, a determination of insolvency should be based on . . . expert testimony . . .” *Brandt v. Samuel, Son & Co., Ltd.* (*In re Longview Aluminum, L.L.C.*), Case No. 03B12184, 2005 Bankr. LEXIS 1312, at *18-*19 (Bankr. N.D. Ill. July 14, 2005); *see also Lawson v. Ford Motor Co. (In re Roblin Indus.)*, 78 F.3d 30, 38 (2d Cir. 1996); *Klein v. Tabatchnick*, 610 F.2d 1043, 1048 (2d Cir. 1979) (stating

that “a finding on the issue of insolvency often depends upon the factual inferences and conclusions of expert witnesses”).

125. Here, the insolvency “evidence” offered by the City focuses on the non-expert testimony of Orr, Malhotra, and Moore. This testimony relies on unaudited and unfounded assumptions, unsupported statements and a complete lack of expert opinion. For example, as purported evidence for the City’s insolvency, Orr (*see* Orr Declaration, ¶¶ 52-57) cites to the June 14 Restructuring Plan prepared by the City and to conclusory statements by Malhotra, one of the City’s restructuring advisors (who of course all had one goal in mind: demonstrating insolvency).

126. While the City alleges that it was forced to suspend certain payments to “conserve its dwindling cash”, the main portion of the payments not made revolve around the City’s pension obligations, and those obligations are subject to dispute as to the ultimate amount required to be paid, and indeed evidence (discussed above and to be further adduced at trial) shows that (i) the City may have funds (or be able to raise funds from other sources such as revenues generated from the water and sewer fund) not calculated as part of its financial projections to cover such shortfalls and (ii) the City apparently chose to not actually calculate through an expert report the correct underfunding liability with respect to the pension obligations (despite presenting “definitive” numbers of such underfunding in the Restructuring Plan and other documents produced by the EM and his staff). Treasurer Dillon admitted that as late as the filing date, the City had not calculated the correct underfunding liability with respect to the pension obligations. Thus, the City “deliberately budget[ed and] spen[t] itself into insolvency (so as to qualify under § 101(32)(C)(ii)), when other realistic avenues and scenarios [were] possible.” *Town of Westlake*, 211 B.R. at 867.

127. Second, “[t]he mere fact that a municipality [adopts] a budget that reflects a cash flow shortfall is not independently sufficient to meet the requirement of the ‘unable to pay’ test.” COLLIER ON BANKRUPTCY ¶ 900.02[2][c][i] (16th ed. 2011). The City’s budget “must be evaluated in light of past and current practices, the practices of similar municipalities, and the extant facts and circumstances.” *Id.*

128. Here, the City’s past and current practices, as well as current facts and circumstances, not only show that the City has many available (but unexplored) options to enable it to pay its debts as they become due, but also that the City chose to deliberately not monetize certain assets (or explore the value of such assets) prior to the filing to limit the appearance of cash or revenue on its books. It is telling that the City’s prized artwork collection and potential deal to lease Bell Isle are only now on the table – if these assets and other possible increased tax revenue collection could have collectively solved all of the City’s short term cash issues. But, as indicated above, the City did not want such assets monetized because the City’s goal and clear path was to end up in chapter 9, which the City believed provided the only means to attack its vested pension obligations.

129. Thus, in light of all of the above, the information provided in the City’s current budget provides at most only “insufficient credible proof” of insolvency. *Town of Westlake*, 211 B.R. at 867; *see also Bridgeport*, 129 B.R. at 338 (requiring concrete proof “that [the city] will be unable to pay its debts as they become due in its current fiscal year or, based on an adopted budget, in its next fiscal year” and noting that “[o]bviously, it is necessary for cities to make informed financial projections”).

130. The City’s current financial difficulties currently are actually less severe than in some prior years, the City entered into a deal prior to the chapter 9 filing with its swap

counterparties which potentially freed up significant cash and did not make the filing imminent, and AFSCME believes (and as will be further demonstrated at trial) that there are numerous means already shown to be available to solve the City's current financial difficulties and generate sufficient funds to pay its debts coming due in the coming fiscal year. AFSCME recognizes that all parties (including current and former employees) will be required to sacrifice, but reasonable concessions outside of bankruptcy – which is not necessary and which the City does not and cannot qualify for based on all the reasons discussed above – from all significant creditors would easily bring the City back to financial stability.

CONCLUSION

For the reasons set forth herein, AFSCME respectfully requests that this Court issue an order following the eligibility trial dismissing the City's chapter 9 petition and granting such other and further relief as is just and proper under the circumstances.

Dated: October 17, 2013

LOWENSTEIN SANDLER LLP

By: /s/ Sharon L. Levine

Sharon L. Levine, Esq.

John K. Sherwood, Esq.

Philip J. Gross, Esq.

Ira M. Levee, Esq.

Keara M. Waldron, Esq.

65 Livingston Avenue

Roseland, New Jersey 07068

(973) 597-2500 (Telephone)

(973) 597-6247 (Facsimile)

slevine@lowenstein.com

wjung@lowenstein.com

pgross@lowenstein.com

-and-

Herbert A. Sanders, Esq.

THE SANDERS LAW FIRM PC

615 Griswold St., Suite 913

Detroit, MI 48226

(313) 962-0099 (Telephone)

(313) 962-0044 (Facsimile)

hsanders@miafscme.org

-and-

Richard G. Mack, Jr., Esq.

Miller Cohen, P.L.C.

600 West Lafayette Boulevard

4th Floor

Detroit, MI 48226-3191

Counsel to Michigan Council 25 of the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and Sub-Chapter 98, City of Detroit Retirees

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

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

CERTIFICATE OF SERVICE

The undersigned certifies that on October 17, 2013, *The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees' Pretrial Brief Regarding the City of Detroit's Eligibility to Obtain Relief Under Chapter 9 of the Bankruptcy Code* was filed with the Clerk of the Court using the CM/ECF system, which provides electronic notification of such filing to all counsel of record.

Dated: October 17, 2013

/s/ Lisa M. Bonito
Lisa M. Bonito
LOWENSTEIN SANDLER LLP
65 Livingston Avenue
Roseland, New Jersey 07068
(973) 597-2500 (Telephone)
lbonito@lowenstein.com

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

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

SUPPLEMENTAL DECLARATION OF MICHAEL ARTZ

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

1. I am Associate General Counsel of the American Federation of State, County & Municipal Employees, AFL-CIO (“**AFSCME**”), and I submit this supplemental declaration in support of *The Michigan Council 25 Of The American Federation Of State, County & Municipal Employees, AFL-CIO And Sub-Chapter 98, City Of Detroit Retirees’ Pre-Trial Brief Regarding The City Of Detroit’s Eligibility To Obtain Relief Under Chapter 9 of The Bankruptcy Code* (the “**Pretrial Brief**”).

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

Exhibit A	A copy of a transcript of the deposition testimony given by Richard Baird on October 10, 2013.
Exhibit B	A copy of a transcript of the deposition testimony given by Treasurer Andrew Dillon on October 10, 2013.
Exhibit C	A copy of a transcript of the deposition testimony given by Mayor David Bing on October 14, 2013.

Executed on this 17th day of October, 2013

/s/ Michael Artz

Michael Artz, Esq.

EXHIBIT A

In Re: City of Detroit, Debtor

Richard Baird
October 10, 2013

Moretti Group
471 W. South Street
Suite 41B
Kalamazoo, MI 49007
800-536-0804



Original File 101013RB.TXT

Min-U-Script® with Word Index

1 UNITED STATES BANKRUPTCY COURT
 2 FOR THE EASTERN DISTRICT OF MICHIGAN
 3 SOUTHERN DIVISION - DETROIT
 4 -----
 5 In re: Chapter 9
 6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846
 7 Debtor, Hon. Steven W. Rhodes
 8 -----
 9 V I D E O T A P E D D E P O S I T I O N O F
 10 WITNESS: RICHARD BAIRD
 11 LOCATION: Dickinson Wright, PLLC
 12 215 South Washington Street, Suite 200
 13 Lansing, Michigan 48933
 14 DATE: Thursday, October 10, 2013
 15 1:56 p.m.
 16 APPEARANCES:
 17 FOR PLAINTIFFS FLOWERS:
 18 LAW OFFICE OF WILLIAM A. WERTHEIMER
 19 30515 Timberbrook Lane
 20 Bingham Farms, Michigan 48025
 21 248.644.9200
 22 billwertheimer@gmail.com
 23 BY: WILLIAM A. WERTHEIMER (P26275)
 24 FOR INTERNATIONAL UNION, UAW:
 25 COHEN, WEISS and SIMON, LLP
 330 West 42nd Street
 New York, New York 10036-6976
 212.563.4100
 pdechiara@cwsny.com
 BY: PETER D. DeCHIARA, ESQUIRE
 FOR THE RETIREES COMMITTEE:
 DENTONS US LLP
 1221 Avenue of the Americas
 New York, New York 10020-1089
 212.768.6881
 arthur.ruegger@dentons.com
 BY: ARTHUR H. RUEGGER, ESQUIRE

1 APPEARANCES, CONTINUING:
 2 FOR AFSCME, AMERICAN FEDERATION OF STATE, COUNTY AND
 3 MUNICIPAL EMPLOYEES, AFL-CIO:
 4 LOWENSTEIN SANDLER, LLP
 5 65 Livingston Avenue
 6 Roseland, New Jersey 07068
 7 973.597.2538
 8 jsherwood@lowenstein.com
 9 BY: JOHN K. SHERWOOD, ESQUIRE
 10 FOR GENERAL RETIREMENT SYSTEM; CITY OF DETROIT POLICE AND
 11 FIRE RETIREMENT SYSTEM:
 12 CLARK HILL
 13 212 E. Grand River Avenue
 14 Lansing, Michigan 48906
 15 517.318.3060
 16 sgallagher@clarkhill.com
 17 BY: SEAN PATRICK GALLAGHER (P73108)
 18 CLARK HILL
 19 500 Woodward Avenue, Suite 3500
 20 Detroit, Michigan 48226
 21 313.965.8274
 22 jgreen@clarkhill.com
 23 BY: JENNIFER K. GREEN (P69019)
 24 FOR THE FINANCIAL GUARANTY INSURANCE CORPORATION:
 25 WILLIAMS WILLIAMS RATTNER &
 PLUNKETT, PC
 380 North Old Woodward Avenue
 Suite 300
 Birmingham, Michigan 48009
 248.642.0333
 eje@wwrplaw.com
 BY: ERNEST J. ESSAD, JR. (P32572)
 FOR THE CITY OF DETROIT:
 JONES DAY
 51 Louisiana Avenue, NW
 Washington, D.C. 20001-2113
 202.879.3939
 gshumaker@jonesday.com
 BY: GREGORY M. SHUMAKER, ESQUIRE

1 APPEARANCES, CONTINUING:
 2 FOR THE STATE OF MICHIGAN:
 3 OFFICE OF THE GOVERNOR-LEGAL DIVISION
 4 George W. Romney Building
 5 111 South Capitol Avenue
 6 P.O. Box 30013
 7 Lansing, Michigan 48909
 8 517.241.5630
 9 gadolam@michigan.gov
 10 BY: MICHAEL F. GADOLA (P43960)
 11 DICKINSON WRIGHT, PLLC
 12 215 South Washington Square, Suite 200
 13 Lansing, Michigan 48933-1816
 14 517.487.4710
 15 pellsworth@dickinsonwright.com
 16 BY: PETER H. ELLSWORTH (P23657)
 17 VIDEO BY: Tim Reitman, Reitman Video Specialists
 18 REPORTED BY: Laurel A. Jacoby, CSR-5059, RPR

1 I N D E X

2 WITNESS: RICHARD BAIRD	PAGE NO.
3 Examination by Mr. DeChiara	7
4 Examination by Mr. Wertheimer	68
5 Examination by Mr. Sherwood	80

12 E X H I B I T I N D E X		
13 EXHIBIT NO.	DESCRIPTION	PAGE NO.
14 Exhibit 1	Jones Day Presentation to the	
15	City of Detroit; Detroit, Michigan	
16	Jan. 29, 2013	
17	(Bates Nos. DTMI 000128731-805)	13
18 Exhibit 2	Jan. 30, 2013 email	
19	Subject: Your call	
20	(Bates No. JD-RD 0000113)	21
21 Exhibit 3	Jan. 31, 2013 email	
22	Subject: D	
23	(Bates No. JD-RD 0000303)	24

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EXHIBIT NO.	DESCRIPTION	PAGE NO.
1	E X H I B I T I N D E X	
2	EXHIBIT NO.	DESCRIPTION
3	Exhibit 4	Feb. 11, 2013 email
4		Subject: Revised (Final) Schedule
5		for Kevyn Orr Monday, Feb. 11
6		(Bates No. JD-RD 0000327)
7	Exhibit 5	Feb. 20, 2013 email
8		Subject: Message from
9		RUP0026732F87D1
10		(Bates Nos. JD-RD 0000216 and 218)
11	Exhibit 6	Feb. 22, 2013 email
12		Subject: 11 Point Plan
13		(Bates Nos. JD-RD 0000459-463)
14	Exhibit 7	July 8, 2013 email
15		Subject: Detroit
16		(Bates No. SOM 20003601)
17	Exhibit 8	July 9, 2013 email
18		Subject: Detroit
19		(Bates No. SOM 20003657)
20	Exhibit 9	Outline: Is the Emergency Manager
21		Moving Fast Enough?
22		(Bates Nos. DTMI 00113909-910)
23		
24		
25		

Page 7

October 10, 2013
Lansing, Michigan
1:56 p.m.

- - -

VIDEO TECHNICIAN: Today's date is October the 10th, 2013, and we're on the record at 1:56 p.m. This is the video deposition of Mr. Richard Baird and we're at 211 South Washington Street in Lansing, Michigan. Can the witness be sworn, please.

-RICHARD BAIRD-

called as a witness, being first duly sworn, was examined and testified as follows:

EXAMINATION

15 BY MR. DeCHIARA:

16 Q. Good afternoon, Mr. Baird. My name is Peter DeChiara. I'm a lawyer with the law firm of Cohen, Weiss and Simon LLP. We represent the United Auto Workers International Union in this case.

18 Did you prepare in any manner for this deposition?

20 A. Yes.

21 Q. What did you do?

22 A. I reviewed emails, reviewed other depositions and discussed with my attorneys.

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EXHIBIT NO.	DESCRIPTION	PAGE NO.
1	E X H I B I T I N D E X	
2	EXHIBIT NO.	DESCRIPTION
3	Exhibit 10	Jan. 31, 2013 email
4		Subject: D
5		(Bates Nos. JD-RD 0000300-301)
6		
7		
8		(Exhibits attached to transcript.)
9		- - -
10		
11		
12		
13		
14		
15		
16		
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Page 8

1 Q. What depositions did you review?

2 A. I reviewed the depositions for Kevyn Orr and for Governor Snyder and my own deposition from a case brought by Robert Davis.

3 Q. Okay. That was the May 24th, 2013 deposition?

4 A. I don't recall the exact date.

5 Q. Okay. It was in Davis versus Local Emergency Financial Assistance Loan Board?

6 A. Yes.

7 Q. And it was in the spring of this year?

8 A. Yes.

9 Q. Other than your attorneys, did you speak to anyone else in preparation for this deposition?

10 A. No.

11 Q. Other than the deposition that you gave in the Davis case, have you given any other depositions in 2013?

12 A. No.

13 Q. What about in 2012?

14 A. No.

15 Q. Are you familiar with an organization called MI Partners?

16 A. Yes.

17 Q. What is MI Partners?

18 A. It's actually MI Partners LLC, a limited liability corporation, which is owned by me.

Page 9

1 Q. Okay. Are you an employee of MI Partners LLC?
 2 A. I am.
 3 Q. And what's your position?
 4 A. I am its president.
 5 Q. Are there any other employees?
 6 A. No.
 7 Q. Are there any other owners?
 8 A. No.
 9 Q. What business is MI Partners in?
 10 A. Provides consulting services, mainly organizational,
 11 talent, strategy.
 12 Q. And how many clients does MI Partners have?
 13 A. One.
 14 Q. And who is that or what is that?
 15 A. It is the New Energy to Reinvent and Diversify.
 16 Q. And what services does MI Partners provide to New
 17 Energy to Reinvest and Diversify?
 18 A. New Energy to Reinvent and Diversify is --
 19 Q. I'm sorry, is it Reinvent or Reinvest?
 20 A. Reinvent.
 21 Q. I'm sorry, Reinvent.
 22 A. Is the fund which covers my fees. My services are
 23 provided to the Governor, his executive office and
 24 his extended leadership team.
 25 Q. Do you receive any monies -- do you or do MI

Page 10

1 Partners receive any monies directly from the State?
 2 A. No.
 3 Q. Does New Energy to Reinvent and Diversify receive
 4 any monies from the State?
 5 A. I don't know.
 6 Q. Okay. Do you know whether -- I'm just going to
 7 refer -- so I don't have to keep repeating that
 8 name, I'm just going to refer to it as NERD,
 9 N-E-R-D. Is that okay? Do you understand what I'm
 10 talking about?
 11 A. I will know the fund you're referring to.
 12 Q. Does NERD receive any monies from any of the
 13 creditors in the Detroit bankruptcy case?
 14 A. I don't know.
 15 Q. Okay. Do you know whether NERD receives any monies
 16 from the Jones Day law firm?
 17 A. I don't know.
 18 Q. Do you know whether it receives any monies from
 19 Kevyn Orr?
 20 A. I don't know.
 21 Q. Do you know who or what finances NERD?
 22 A. I don't know the donors. I've been advised that
 23 they are private donors, but I have no way of
 24 knowing who they are.
 25 Q. And for how long has this arrangement existed

Page 11

1 whereby NERD pays MI Partners for you to provide
 2 consulting services to the Governor and his staff?
 3 A. Since January of 2011.
 4 Q. Apart from the arrangement I just mentioned, do you
 5 have any other paid employment?
 6 A. Employment, no.
 7 Q. Do you have any other paid consultancy work that you
 8 perform?
 9 A. No.
 10 Q. Are you an employee of the State of Michigan?
 11 A. No.
 12 Q. Okay. But you have a Michigan government email
 13 address?
 14 A. Yes.
 15 Q. Okay. And do you have -- do you or MI Partners have
 16 offices out of which you work?
 17 A. I have an office out of which I work at Romney and I
 18 have an office off premise in Michigan.
 19 Q. Do you or MI Partners pay rent for your office in
 20 the Romney Building?
 21 A. No.
 22 Q. Have you played any -- as part of your consultancy
 23 for the Governor and his staff, did you play or have
 24 you played any role in connection with the
 25 restructuring of the City of Detroit?

Page 12

1 A. Define restructuring.
 2 Q. The efforts by the City of Detroit to get its
 3 economic house in order beginning before the
 4 bankruptcy, from whenever it began doing that, up
 5 and through to today.
 6 A. I have not consulted with the City of Detroit on its
 7 restructuring directly.
 8 Q. Okay. Have you worked -- in your consultancy for
 9 the Governor, has part of your work for the Governor
 10 been in connection with the -- Detroit's
 11 restructuring efforts?
 12 A. No. Again, I have been involved in talent
 13 identification assessment but not in the direct
 14 restructuring efforts for the City of Detroit.
 15 Q. Okay. Other than talent identification, have you
 16 performed any other work that had to do with or that
 17 related in some way to Detroit?
 18 A. I would -- I have been part of meetings where if
 19 asked an opinion, I would provide an opinion. If I
 20 saw an area where I had some experience or value, I
 21 would render that opinion. But in terms of specific
 22 services of a restructuring nature, no.
 23 Q. Do you as a regular matter as part of your work for
 24 the Governor and his staff attend official meetings
 25 of the Governor and his staff?

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1 A. Yes.
 2 Q. Okay. And how frequently do you do that?
 3 A. Define frequently. Every day?
 4 Q. Well, why don't you just tell me how often you do
 5 it.
 6 A. Well, every day I'm probably in some meetings with
 7 members of his staff.
 8 Q. Would it be fair to say you work intimately with the
 9 Governor and his staff?
 10 A. Sure.
 11 Q. Did you attend a meeting on January 29, 2013, at
 12 which various law firms were making a pitch to be
 13 hired as restructuring counsel by the City of
 14 Detroit?
 15 A. I don't recall the exact date, but it was toward the
 16 end of January.
 17 Q. Okay. I'd like to show you a document which I'll
 18 mark as Exhibit 1.
 19
 20 (Deposition Exhibit 1 was marked.)
 21
 22 BY MR. DeCHIARA:
 23 Q. And for the record, I'll identify Exhibit 1 as a
 24 document that on the first page says Presentation to
 25 the City of Detroit; Detroit, Michigan; January 29,

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1 2013, and it's Bate stamped the first page at the
 2 bottom DTMI 00128731.
 3 Mr. Baird, looking at Exhibit 1, does that
 4 refresh your recollection of the date of what I'll
 5 call the pitch meeting?
 6 A. Well, the document's dated January 29th. If it was
 7 delivered the same day then I was there.
 8 Q. Okay. Who else besides you on behalf of the State
 9 was at that meeting?
 10 A. I'm not sure I recall everyone, but Andy Dillon was
 11 there, and Tom Saxton from Treasury was there.
 12 Those would be the only ones I recall from the State
 13 right now.
 14 Q. Do you have a recollection of what was -- do you
 15 have a recollection of the meeting?
 16 A. Yes.
 17 Q. Okay. And Jones Day was one of the law firms that
 18 made a pitch?
 19 A. Correct.
 20 Q. Do you have any recollection of what the people from
 21 Jones Day said at the meeting?
 22 A. I mean, that was eight, nine months ago but a
 23 directional recollection, yes.
 24 Q. What's the best of your recollection?
 25 A. My recollection is that Jones Day -- well, first of

Page 15

1 all, let me say that this was not a formal pitch.
 2 This meeting was set up to provide the City, the
 3 emergency -- I'm sorry, the program management
 4 director and the CFO with some parameters associated
 5 with what needs to be going into an RFP that had yet
 6 to be completed.
 7 So this was simply bringing together a
 8 number of law firms with relevant experience to
 9 discuss things that the City should contemplate
 10 keeping in mind for a future RFP.
 11 Q. Okay. Before I -- I have a -- I had asked you a
 12 question about what was said by the Jones Day
 13 people, but before I ask you that, let me ask you do
 14 you know whether Jones Day provided any services
 15 paid or unpaid or legal advice to the State prior --
 16 at any time prior to this meeting?
 17 A. I don't know. I was not aware of any such services
 18 provided.
 19 Q. Okay. All right. So what's the best of your
 20 recollection of what the Jones Day people said at
 21 the meeting?
 22 A. Well, they went through this presentation.
 23 Q. You're referring to Exhibit 1?
 24 A. Exhibit 1.
 25 Q. Okay.

Page 16

1 A. They introduced themselves. They talked about their
 2 background and their qualifications. They talked
 3 about experience that they had in Detroit and in
 4 Michigan. They discussed the fact that out-of-court
 5 solutions are absolutely preferred, and they talked
 6 about their experience in out-of-court
 7 restructuring.
 8 And then they talked about various -- the
 9 experience that they had both in out-of-court
 10 restructurings and in-court restructurings.
 11 Q. Did they say anything about a potential bankruptcy
 12 filing by the City of Detroit?
 13 A. I don't recall specifically, but certainly they
 14 indicated a continuum of potential proceeding
 15 depending on what transpired prior to the last
 16 resort, which would be a Chapter 9 filing.
 17 Q. That's what they said? They said that would be a
 18 last resort?
 19 A. I don't recall if they said that specifically, but
 20 members of our team made it very clear that it was
 21 our intent to stay out of the courts.
 22 Q. When you say our team, who are you referring to?
 23 A. Mainly Treasury, and I think that would be shared by
 24 the City leadership that were put in place under the
 25 consent agreement, the CFO and the program

Page 17

1 management director.
 2 Q. Okay. Do you recall whether Kevyn Orr spoke at the
 3 meeting?
 4 A. Yes, he did.
 5 Q. And do you recall what he said?
 6 A. He talked about his background and credentials. He
 7 talked about his experience with Chrysler. He
 8 talked about his broad restructuring expertise. He
 9 talked about his ties to Detroit. His mother was a
 10 professor at University of Michigan. He had
 11 relatives that continued to have ties in Michigan.
 12 He recalled even elements of his education where he
 13 spent a fair amount of time in Detroit.
 14 It was clear that -- I was impressed by the
 15 fact that he had a passion for the City, and I was
 16 very impressed by his knowledge of Michigan and the
 17 City from his years as an undergrad and law school
 18 student.
 19 Q. At the meeting, did you speak to Mr. Orr one-on-one?
 20 At the meeting or after the meeting. When I say
 21 after, I mean that day.
 22 A. I did not speak to -- if you mean one-on-one, did
 23 the two of us have a one-on-one conversation.
 24 Q. Right. Did you break off and have a one-on-one?
 25 A. No. No, I did not.

Page 18

1 Q. Okay. Let me ask you also, did either Jones Day or
 2 Mr. Orr at that meeting say anything about Detroit's
 3 pensions or pension liability?
 4 A. I don't recall.
 5 Q. Let me turn your attention to page 41 of Exhibit 1.
 6 A. Did I just lose my mic?
 7 VIDEO TECHNICIAN: Yeah, you did.
 8 THE WITNESS: What page was that, 41?
 9 BY MR. DeCHIARA:
 10 Q. Right. And I'd like to draw your attention in
 11 particular to the very last line on page 41. I'll
 12 read it for the record. It says "If needed,
 13 Chapter 9 could be used as a means to further cut
 14 back or compromise "accrued financial benefits"
 15 otherwise protected under the Michigan
 16 Constitution."
 17 Do you recall any spoken statements by the
 18 people from Jones Day along the lines of what's --
 19 what I just read?
 20 A. I do not.
 21 Q. Did you get a copy of what's been marked as
 22 Exhibit 1?
 23 A. I believe I did.
 24 Q. And did you -- after the meeting, did you share it
 25 with anybody?

Page 19

1 A. No.
 2 Q. Now, the day after the meeting, you called Jones
 3 Day; isn't that correct?
 4 A. I did.
 5 Q. Okay. And why did you call Jones Day?
 6 A. Specifically, I called Stephen Brogan, the managing
 7 partner for Jones Day, and I asked him for
 8 permission to speak with Kevyn Orr about the
 9 potential of an emergency manager position if, in
 10 fact, Detroit were found to be in emergency
 11 financial distress and the Governor found it
 12 necessary to recommend to the ELB an EM candidate.
 13 Q. So you were as of January 30th interested in Mr. Orr
 14 as a potential candidate to be EM?
 15 A. I was interested in Mr. Orr after seeing him and his
 16 background and experience. I was very impressed,
 17 and that's why I made the call the next day.
 18 Q. Right, but is it fair to say you were interested in
 19 him as a potential candidate for EM?
 20 A. Yes.
 21 Q. And before you made the call, did you speak to the
 22 Governor about your interest in Mr. Orr?
 23 A. I don't recall. I don't think so.
 24 Q. Did you speak to Mr. Dillon?
 25 A. Yes.

Page 20

1 Q. And what did you and Mr. Dillon -- can you recount
 2 what you said to Mr. Dillon and what he said to you?
 3 A. I spoke to Mr. Dillon at the close of the same day,
 4 which according to this was January 29th, and I
 5 indicated to him that I was very impressed with
 6 Mr. Orr and that I was going to call Mr. Brogan the
 7 next day and see if there was any potential that I
 8 could talk to Mr. Orr.
 9 Q. And what did Mr. Dillon say, if anything, in
 10 response to that?
 11 A. My recollection is that he said I don't think you
 12 could ever get him, but he would be an extremely
 13 quality candidate.
 14 Q. Okay. Other than the reasons you've already
 15 testified to today, are there any other reasons you
 16 were interested in Mr. Orr as a potential candidate
 17 for EM?
 18 A. Yeah. Really two. One is that it was always our
 19 intent to see if we could not solve the incredible
 20 financial problems by avoiding a Chapter 9 filing,
 21 and to be honest it was that meeting where it became
 22 clear to me that somebody who knew their way around
 23 the courts would actually stand a much better chance
 24 of keeping us out of the courts in terms of our
 25 negotiations with creditors and other stakeholders.

Page 21

1 Q. I think you said there were two.
 2 A. Yeah.
 3 Q. Was that --
 4 A. That was one. I'm sorry.
 5 Q. What was the second?
 6 A. The second one was that he was -- I didn't learn
 7 this then, but in my first conversation with him I
 8 learned that he was the son of a teacher and he was
 9 also the son of a minister, and as part of the
 10 conversation I had with him going forward I felt
 11 that the man's character was exactly what we would
 12 be looking for. If we could convince him to do this
 13 role he'd do it for the right reasons.
 14 Q. I'd like to show you a document I'll mark as
 15 Exhibit 2.
 16
 17 (Deposition Exhibit 2 was marked.)
 18
 19 BY MR. DeCHIARA:
 20 Q. And it's a one-page document which is stamped at the
 21 bottom JD-RD 0000113.
 22 Mr. Baird, if I can refer your attention to
 23 the bottom of Exhibit 2, is that an email you wrote
 24 to Corinne Ball on January 30th, 2013?
 25 A. Yes.

Page 22

1 Q. And does this refresh your recollection about the
 2 date on which you called Steve Brogan?
 3 A. Yes. It was the day after this date, yes.
 4 Q. Right. So -- well, the email is dated January 30th,
 5 and the email says in the second sentence "Was on
 6 phone with Steve Brogan."
 7 So is it accurate that you called Steve
 8 Brogan on January 30th?
 9 A. As I testified, I called Steve Brogan on
 10 January 30th.
 11 Q. Okay. So the meeting at which Jones Day made a
 12 presentation the day before was January 29th?
 13 A. Correct.
 14 Q. What did Steve Brogan say when you spoke to him?
 15 A. Steve said that you're killing me, I just asked this
 16 man to be the managing partner of our Miami office.
 17 He also said we would not stand in the way of
 18 anything that any of our partners wanted to do, but
 19 frankly, I think the chances of your getting him
 20 would be highly unlikely.
 21 With that said, I would give you permission
 22 to talk to him, and I made it -- no, I take that
 23 back. It's not that I would give you permission to
 24 talk to him. I retract that. He said I will talk
 25 to him, and if there is an interest in him speaking

Page 23

1 with you I will ask that he call you.
 2 At that time I thanked Steve and I told him
 3 that I want you to know whether he talks to us or
 4 not, you will -- Jones Day will neither be hurt nor
 5 helped if there's any further discussions about
 6 Kevyn in this particular role.
 7 Q. Hurt or helped in what regard?
 8 A. With regard to their bid -- potential bid to do work
 9 for the City of Detroit.
 10 Q. And were you in a position to make that commitment
 11 to Jones Day as to what the decisionmaking of the
 12 City of Detroit would be?
 13 A. Actually, on reflection, no.
 14 Q. But you made it anyway.
 15 A. I did.
 16 Q. Okay. Did Mr. Brogan tell you why he thought it
 17 was highly unlikely that you'd be able to get
 18 Kevyn Orr?
 19 A. He said he had two young children, a wife who was a
 20 surgeon at Johns Hopkins and the fact that he'd just
 21 committed to do the Miami deal, and he thought this
 22 would be too much of a deviation from those plans.
 23 Q. Did you speak to Mr. Orr that day, January 30th,
 24 2013?
 25 A. I don't recall.

Page 24

1 Q. Let me show you a document that may help your
 2 recollection. I'm going to mark it as Exhibit 3.
 3
 4 (Deposition Exhibit 3 was marked.)
 5
 6 BY MR. DeCHIARA:
 7 Q. Mr. Baird, is Exhibit 3 an email --
 8 A. Well --
 9 Q. Well, can you identify the top email on Exhibit 3?
 10 MR. SHERWOOD: Is this the document 303 at
 11 the end?
 12 BY MR. DeCHIARA:
 13 Q. Yes. I'm sorry, let me read the Bate stamp. It's
 14 stamped at the bottom JD-RD 000303.
 15 A. Okay. First of all, you asked me if I spoke to
 16 Kevyn Orr on the same day as I spoke to Stephen
 17 Brogan --
 18 Q. Right.
 19 A. -- and I said I did not recall.
 20 And according to this email which you've
 21 handed me it appears that I spoke to Kevyn Orr the
 22 very next day, the 31st.
 23 Q. Okay. So this refreshes your recollection that you
 24 spoke to him the next day?
 25 A. Yes.

Page 25

1 Q. Okay. And what did you -- was it just you and
 2 Mr. Orr on the phone when you spoke to him on
 3 January 31st, 2013?
 4 A. I believe so.
 5 Q. And to the best of your recollection tell us what
 6 you said and what he said in that discussion.
 7 A. I'm going to finish reading this --
 8 Q. Sure.
 9 A. -- for a moment.
 10 Q. Feel free to do that.
 11 A. Okay. Your question?
 12 Q. So apart from the document, although feel free to
 13 look at the document, what is your recollection of
 14 what you said and what he said in the telephone call
 15 you had with him on January 31st?
 16 A. My recollection is I told him that we were very
 17 impressed with his presentation, I was very
 18 impressed with his background and experience and
 19 that I'd asked Steve Brogan for permission to talk
 20 to him.
 21 I said that we did not know whether or not
 22 Detroit would have to have an emergency manager
 23 recommended and appointed, but in the event that
 24 such were the case would he under any circumstances
 25 be willing to consider I think I called it joining

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1 the Governor's irrational act club.
 2 Q. What did he say?
 3 A. He shut it down pretty summarily. And he indicated
 4 the reasons I'd already mentioned, that he had young
 5 children, you know, his schedule -- the scheduling
 6 protocol with a surgeon wife made the situation
 7 already difficult, he'd just agreed to take the
 8 Miami job, and he said he really didn't see under
 9 any circumstances how this might work.
 10 And I said did you talk to your wife about
 11 it? He said well, no, not yet. And I said well,
 12 let me just tell you a little bit about other
 13 members of the team, let me tell you a little bit
 14 about what we've learned about Detroit, and let me
 15 ask if you would at least take a night and sleep on
 16 it and talk to your wife about this because,
 17 frankly, this is the kind of a situation that, you
 18 know, a lot of people would not be able to step up
 19 to, but I firmly think that you are one who could.
 20 Q. Was there any discussion in the conversation about a
 21 potential filing for bankruptcy by the City of
 22 Detroit?
 23 A. No, I don't think so.
 24 Q. Okay. Let me now show you a document I'll mark as
 25 Exhibit 4.

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1
 2 (Deposition Exhibit 4 was marked.)
 3
 4 BY MR. DeCHIARA:
 5 Q. For the record, it's one-page document. Exhibit 4
 6 is a one-page document stamped at the bottom JD-RD
 7 0000327. In the bottom portion of Exhibit 4 there's
 8 an email.
 9 Mr. Baird, is that an email that you wrote
 10 to the various people identified in the email?
 11 A. Yes, I recall -- I recall writing this.
 12 Q. Okay. And it refers, does it not, to a schedule
 13 for Mr. Orr to meet with various people on
 14 February 11th?
 15 A. Correct.
 16 Q. And it refers to a schedule for a 2:30 p.m. meeting
 17 with the Governor and with yourself, correct?
 18 A. Correct.
 19 Q. Did that meeting take place on February 11th?
 20 A. I believe it did.
 21 Q. And was anyone else present for that meeting other
 22 than the three of you; Mr. Orr, yourself and the
 23 Governor?
 24 A. No.
 25 Q. And do you recall what was discussed in that

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1 meeting?
 2 A. Kevyn's background was discussed, the Governor's
 3 passion and commitment for Detroit was discussed. A
 4 fair amount of discussion around the two of them and
 5 their law school experiences being a year apart was
 6 discussed, and that's -- again, most of it was spent
 7 talking about Kevyn and his background and
 8 experience and some was reminiscing about Michigan
 9 law school days.
 10 Q. Was there any discussion of a potential bankruptcy
 11 filing by the City of Detroit?
 12 A. I don't recall; however, in the process of talking
 13 with Kevyn, it would have been -- we would have
 14 discussed the fact that we need to do everything
 15 possible to fix the problem, and the courts should
 16 be avoided, but if they can't be avoided then it
 17 would have been -- it would have been misleading to
 18 suggest that that wasn't a possibility.
 19 Q. When you say -- who is the we in that sentence?
 20 A. Well, you asked me about a specific meeting. It
 21 would have been Governor Snyder and me.
 22 Q. So it's the two -- the Governor and yourself who
 23 were saying what you just said in the prior
 24 sentence?
 25 A. Yes.

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1 Q. In your prior answer?
 2 A. Yes.
 3 Q. Okay.
 4 A. You have to understand, in general, it's difficult
 5 to talk about the financial way forward and the
 6 operating way forward for Detroit without
 7 contemplating all of the avenues of rescue
 8 available. Restructuring is clearly the optimum,
 9 but in the absence of proper movement or ability to
 10 negotiate, you can't have a discussion about the
 11 future without looking at all of the options.
 12 And, of course, the actual discussion with
 13 Kevyn at this point was simply an option because we
 14 didn't know if the review would ultimately find
 15 Detroit in a state of emergency at this point. What
 16 we did know by this point is that there were several
 17 areas under the consent agreement that were falling
 18 short of what had been agreed.
 19 Q. In the February 11th meeting with you and the
 20 Governor and Mr. Orr, did any of the three of you
 21 talk about pensions or pension liability in Detroit?
 22 A. No, I don't believe so.
 23 Q. Did you have meetings or discussions with Mr. Orr
 24 between the -- well, actually, let me back up.
 25 Was the January 31 telephone call that you

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1 had with Mr. Orr the first time you had a
 2 conversation with him?
 3 A. Except for the public back and forth on the 29th.
 4 Q. Okay. So between the 31st of January and this
 5 February 11th meeting, did you have additional
 6 discussions with Mr. Orr?
 7 A. I don't recall explicitly, but I'm sure that I did.
 8 Q. Okay. Do you recall whether in any of those
 9 discussions you talked about Detroit's pensions or
 10 pension liability?
 11 A. I don't believe so.
 12 Q. Okay. Did you talk about the prospect of or a
 13 possibility of Detroit filing for bankruptcy?
 14 A. I don't recall.
 15 Q. Now, Mr. Orr was appointed as EM, correct?
 16 A. He was recommended by the Governor to the Emergency
 17 Loan Board, and the Emergency Loan Board appointed
 18 him as EM, yes.
 19 Q. And do you know the date that that appointment
 20 became effective?
 21 A. I don't remember the exact date. It was around mid
 22 March.
 23 Q. Now, is it correct that before Mr. Orr was appointed
 24 as EM, emergency manager, he had earlier been
 25 appointed under a prior statute, PA 72, as the EFM,

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1 the emergency financial manager?
 2 A. I think that is correct.
 3 Q. And when did -- when did he become -- when was he
 4 appointed as EFM?
 5 A. I don't recall the exact date.
 6 Q. Do you recall the ballpark in relation to mid March?
 7 Was it -- actually, let me strike that.
 8 In relation to the mid March effective date
 9 of Mr. Orr's appointment as EM, was his appointment
 10 as EFM days before or weeks before? Do you have
 11 some order of magnitude?
 12 A. My recollection is it was days before PA 72 was in
 13 effect when he was appointed and then 436 came into
 14 effect I think a matter of days thereafter.
 15 Q. Okay. So he was -- is it fair to say he was
 16 appointed as EFM in early to mid March?
 17 A. Again, I remember mid March. That's all I remember.
 18 Q. Okay. I'd like to show you a document I'll mark as
 19 Exhibit 5.
 20
 21 (Deposition Exhibit 5 was marked.)
 22
 23 BY MR. DeCHIARA:
 24 Q. And for the record, I'll identify it as a three-page
 25 document that's stamped at the bottom. The stamp on

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1 the first page is JD-RD 0000216.
 2 MR. WERTHEIMER: That's five you said?
 3 MR. DeCHIARA: Yes.
 4 BY MR. DeCHIARA:
 5 Q. Mr. Baird, if you could look at the email at the
 6 bottom half of Exhibit 5. If you want to take the
 7 time to look at the whole document, why don't you do
 8 that.
 9 A. Well, I'll let you know if I need to.
 10 Q. All right.
 11 A. I recall the document.
 12 Q. Okay. All right. So is it accurate that the email
 13 at the bottom of Exhibit 5 is an email that you
 14 wrote to Kevyn Orr on February 20th, 2013?
 15 A. I believe so.
 16 Q. What were you -- what was the reference in the first
 17 sentence to the summary of partnership?
 18 A. Mayor Bing crafted a document that he described as a
 19 working arrangement or working partnership or
 20 something, I forget exactly -- summary of
 21 partnership perhaps is what he called it, and he
 22 gave that to me in a meeting. We discussed it.
 23 I told him that if, in fact, there was to
 24 be an emergency manager for Detroit that this would
 25 be something that he or she would have to review. I

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1 also said that this would be a good aspirational
 2 document but that it would be imprudent to bind a
 3 future emergency manager to something that he or she
 4 had not developed.
 5 Q. Had the emergency manager at that point been chosen?
 6 A. No.
 7 Q. Let me refer you to the second -- the second
 8 sentence of your email. It says "Told him that
 9 there were certain things I would not think we could
 10 agree to without your review, assessment and
 11 determination (such as keeping the executive team in
 12 its entirety)."
 13 A. Uh-huh.
 14 Q. Now, the you in that -- the your in that sentence
 15 refers to Mr. Orr, correct?
 16 A. Correct.
 17 Q. So is it -- am I reading this correctly that what
 18 you're saying to Mr. Orr in this sentence is that
 19 unless Mr. Orr agreed to certain things that you
 20 spell out in this sentence -- or you were saying
 21 that Mr. Orr's agreement to certain things that you
 22 refer to in this sentence were necessary.
 23 A. No. I don't think that would be correct.
 24 What I intended is that Kevyn Orr had not
 25 yet agreed if recommended to serve in this capacity.

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1 He was still doing his own due diligence determining
 2 if he could separate from his firm, a number of
 3 other issues. What he did say to me is that if he
 4 were, in fact, to go forward it would be important
 5 to him that he have a working relationship with the
 6 Mayor. And that's actually where this document came
 7 from because I'd mentioned to the Mayor that that
 8 would be important. At this point, the Mayor didn't
 9 know who Kevyn Orr was.
 10 So the purpose of writing this to Kevyn was
 11 that so he could have an understanding of where the
 12 Mayor's thought process was and so that he could use
 13 this information in the event that he and the Mayor
 14 met, which we had been discussing doing because of
 15 the fact that he wanted a strong working
 16 relationship with the Mayor.
 17 Q. Okay. In the sentence it's -- I'll quote part of
 18 the sentence. It says "...I would not think we
 19 could agree to without your review, assessment and
 20 determination."
 21 Who is the we in that sentence?
 22 A. I think I used a poor choice of words. I was
 23 referring to myself, looking at this, and having
 24 some difficulty with a few of the issues here. And
 25 so I think the we would be certainly me, and I may

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1 have been thinking at the time of what I thought the
 2 chief of staff and/or the Governor might be
 3 thinking, but I don't recall who my we was other
 4 than me.
 5 Q. Let me read the third sentence. It says "Will
 6 broker a meeting via note between you and the
 7 Mayor's personal assistant who is not FOIAble."
 8 That's F-O-I-A-b-l-e.
 9 A. Uh-huh.
 10 Q. Did you attempt to broker a meeting -- did you
 11 broker a meeting between Mr. Orr and the Mayor's
 12 personal assistant?
 13 A. I brokered a connection via note.
 14 Q. And when did you do that?
 15 A. I don't recall, but it would have been fairly soon
 16 after this.
 17 Q. Okay. And can you explain what you mean by broker a
 18 meeting by a note?
 19 A. That I would introduce them to one another, provide
 20 their contact information, and step back and ask
 21 them to work out when and where they would meet to
 22 determine the kind of relationship they might seek
 23 to have.
 24 Q. Were there other candidates for EM who were still
 25 being considered as of February 20th, 2013?

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1 A. Yes.
 2 Q. Did you broker a meeting between the Mayor's
 3 personal assistant and those other candidates?
 4 A. No.
 5 Q. Did you write an email similar to this one to the
 6 other candidates where you said I would not think we
 7 could agree to without your review, assessment and
 8 determination?
 9 A. No.
 10 Q. Do you know whether Mr. Bing -- I'm sorry, Mr. Orr
 11 met with the Mayor's personal assistant?
 12 A. I don't know.
 13 Q. Okay. What did you mean by the phrase who is not
 14 FOIAble?
 15 A. The Mayor and Kevyn wished to meet privately, and so
 16 the person who was going to set that up was someone
 17 the Mayor had recommended set it up because she, I
 18 believe, was not a City employee.
 19 Q. Oh, so the Mayor's personal assistant was not a City
 20 employee?
 21 A. I believe when I said personal, it was personal
 22 assistant.
 23 Q. And why did you tell Mr. Orr in this email that the
 24 personal assistant was not FOIAble?
 25 A. Because she was not -- it was my understanding she

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1 was not a City employee.
 2 Q. Why did you think that was something -- that she was
 3 not FOIAble, why did you think that was something
 4 worth mentioning to Mr. Orr in this email? What did
 5 it matter?
 6 A. Because the Mayor wished for a private meeting, not
 7 a meeting that would be publicly disclosed.
 8 Q. Did Mr. Orr say anything about whether he wanted a
 9 private meeting?
 10 A. I don't recall. He said he wanted a meeting. I
 11 don't recall him saying he wanted a private meeting.
 12 Q. Okay. So who was it that wanted the meeting or was
 13 it both? The Mayor or Mr. Orr?
 14 A. Mayor Bing wanted to meet the potential candidate,
 15 and Mr. Orr wanted to assess a potential working
 16 relationship with Mayor Bing as one of the
 17 conditions for success in the event he accepted the
 18 recommendation.
 19 Q. How did Mr. Bing know that Mr. Orr was a candidate?
 20 A. I told him.
 21 Q. Okay. Did you tell him who the other candidates
 22 were?
 23 A. No. And I didn't tell him Mr. Orr's name until such
 24 time as he -- the two of them expressed a desire to
 25 meet.

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1 Q. Okay. I'd like to mark as Exhibit 6 another
 2 document which I'll have the court reporter show
 3 you.
 4
 5 (Deposition Exhibit 6 was marked.)
 6
 7 BY MR. DeCHIARA:
 8 Q. And for the record, I'll identify it as a multipage
 9 document. The first page is stamped at the bottom
 10 JD-RD 0000459.
 11 Mr. Baird, let me refer your attention to
 12 the email that's in the middle of the first page of
 13 Exhibit 6. Is that an email that you wrote to Kevyn
 14 Orr on February 22nd, 2013?
 15 A. Is that the one timed 11:35 a.m.?
 16 Q. I'm looking at the one that says 11:41 a.m.
 17 A. Okay.
 18 Q. That's sort of smack in the middle. Or at least the
 19 date code is sort of right in the middle of --
 20 A. Yes, I believe I sent that.
 21 Q. Okay. And do you recall this email?
 22 A. Vaguely I recall it.
 23 Q. It says "Kevyn, about to be in a car for several
 24 hours so I thought I would send this to you prior to
 25 hearing back from the G a final time."

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1 The G is the Governor?
 2 A. Yes.
 3 Q. Okay. And then it continues "If you agree with what
 4 I have done to the doc based on everyone's input,
 5 and agree that you should be the one to provide it
 6 to the Mayor as fully endorsed by the Governor and
 7 the Treasurer (and you), then I think that clearly
 8 establishes that you are already behaving as an
 9 agent of the State committed to getting Detroit back
 10 on track."
 11 What was the doc? And I assume that was
 12 short for document?
 13 A. Yes.
 14 Q. What was the document you were referring to?
 15 A. It would have been the summary of partnership that
 16 the original draft had been provided by Mayor Bing.
 17 Q. Okay. So you were showing -- in this email you were
 18 showing Mr. Orr certain modifications you had made
 19 to the document; is that correct?
 20 A. Yes.
 21 Q. And were you looking for his input?
 22 A. I was looking for input and/or agreement.
 23 Q. From Mr. Orr?
 24 A. Yes.
 25 Q. Okay. Did you -- this is two days after the

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1 document we were discussing in Exhibit 5.
 2 Were there still other candidates for the
 3 EM position as of February 22nd, 2013?
 4 A. There was one other candidate.
 5 Q. Okay. Did you send that other candidate an email
 6 like this looking for the other candidate's input
 7 and agreement to the document you refer to in
 8 Exhibit 6?
 9 A. No.
 10 Q. Okay. Did Mr. Orr give you his input and/or
 11 agreement?
 12 A. I believe he did.
 13 Q. Okay. And did his giving the input or agreement
 14 clearly establish to you that he was already
 15 behaving as an agent of the State?
 16 A. No. The use of the term agent of the State was my
 17 attempt at continuing the recruiting pressure on
 18 Kevyn Orr because he was clearly not an agent of the
 19 State.
 20 Q. But nonetheless you wrote to him saying that if he
 21 did what you were asking, he -- that would clearly
 22 establish that he was already behaving as an agent
 23 of the State.
 24 Am I reading what you wrote there
 25 correctly?

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1 A. The man had not formally committed to the role, and
 2 I was attempting to recruit him. And it was in that
 3 context that I put that statement, which now would
 4 appear to be a little presumptuous on my part.
 5 Q. Just to be clear, at this point Mr. Orr was still a
 6 partner at the Jones Day law firm?
 7 A. I believe so.
 8 Q. Okay. Well, in fact, he didn't cease to be a
 9 partner until he became EM -- or EFM; is that
 10 correct?
 11 A. I never saw his withdrawal from the partnership, so
 12 you'd have to talk to them about that.
 13 Q. Okay. Do you have a general understanding about
 14 when he severed his ties with the firm?
 15 A. My understanding is he was no longer a partner when
 16 he became the EM.
 17 Q. Was he a partner when he became the EFM?
 18 A. No. Well, I don't know, but my understanding was
 19 that he was not.
 20 Q. Are you familiar with a provision of the Michigan
 21 State Constitution, Article 9 Section 24, that
 22 refers to pensions?
 23 A. I am.
 24 Q. What's your understanding of that provision?
 25 A. Would you like to read it?

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1 Q. No, I just want to know what your general
 2 understanding is of the provision.
 3 A. Well, I'm not an attorney so I'm not going to give a
 4 legal interpretation.
 5 Q. And just for the record, I'm not seeking one.
 6 A. Okay. Good.
 7 Q. But you do have some idea what the provision is
 8 about?
 9 A. I've read the provision.
 10 Q. Okay. What's your understanding of it?
 11 A. My understanding of it is that the Constitution
 12 protects pensions to the extent that they are fully
 13 accrued and then they cannot be altered.
 14 There is some degree of difference of
 15 opinion about whether a fully-funded pension has the
 16 same protection under the Constitution as one that
 17 is not fully funded.
 18 Q. And do you have a view on that subject?
 19 A. No.
 20 Q. Have you ever discussed Article 9 Section 24 with
 21 anybody?
 22 A. Yes.
 23 Q. With whom have you discussed it?
 24 A. I don't recall. Various people.
 25 Q. Have you ever discussed it with Kevyn Orr?

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1 A. Yes.
 2 Q. And on one occasion or more than one occasion?
 3 A. One occasion.
 4 Q. What occasion was that?
 5 A. It was early on in our conversation where I
 6 indicated to him that I was aware of the existence
 7 of the article and that he should be aware of it as
 8 well. He said he was aware of it. And that was our
 9 discussion.
 10 Q. And was this -- can you locate this conversation in
 11 time? Was it, for example, before the February 11th
 12 meeting that you and Mr. Orr and the Governor had?
 13 A. No, sir, I can't. During the course of a
 14 recruitment you cover an awful lot of ground and you
 15 answer a lot of questions and you raise lots of
 16 issues, and you do the best you can to help an
 17 individual get to the best answer as it relates to
 18 an opportunity like this.
 19 Q. Okay. Was it -- the conversation before Mr. Orr
 20 became EM?
 21 A. Yes. I believe it was.
 22 Q. It was while you were recruiting him, correct?
 23 A. Yes.
 24 Q. Okay. So you -- just so I understand, you on one
 25 occasion brought up to him, Mr. Orr, the subject of

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1 Article 9 Section 24?
 2 A. I brought up to him the fact that the Michigan
 3 Constitution has a provision as it relates to
 4 pensions and he should be aware of it.
 5 Q. And what did he respond?
 6 A. He said he was aware of it.
 7 Q. Did you have any further discussion about Article 9
 8 Section 24?
 9 A. No.
 10 Q. Okay. Other than Mr. Orr -- well, strike that.
 11 Did you ever speak to the Governor about
 12 Article 9 Section 24?
 13 MR. ELLSWORTH: Object to the extent that
 14 it may call for lawyer-client privileged
 15 information.
 16 BY MR. DeCHIARA:
 17 Q. Okay. I'm going to modify my question to ask you to
 18 exclude occasions on which you spoke to the Governor
 19 in the presence of counsel.
 20 A. The answer would be no.
 21 Q. Did you ever speak to Mr. Dillon about Article 9
 22 Section 24 with the same caveat as to not in front
 23 of counsel?
 24 A. I don't think so.
 25 Q. Do you recall speaking to anyone at Jones Day about

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1 Article 29 -- Article 9 Section 24 of the Michigan
2 Constitution?

3 MR. ELLSWORTH: Same objection.
4 MR. DeCHIARA: Okay.
5 BY MR. DeCHIARA:
6 Q. Let me modify it to say before Jones Day was
7 retained by the City, did you speak to anyone at
8 Jones Day about Article 9 Section 24?
9 A. No, I don't believe so.
10 Q. Did you ever speak to the Attorney General of the
11 State of Michigan about Article 9 Section 24?
12 A. No.
13 MR. ELLSWORTH: Objection; attorney-client.
14 BY MR. DeCHIARA:
15 Q. Did you ever speak to Mr. Orr about what could or
16 should be done about Detroit's pension liability?
17 A. No.
18 Q. Outside of the presence of counsel, did you ever
19 have a discussion on that subject with the Governor?
20 A. No.
21 Q. What about with Mr. Dillon?
22 A. No.
23 Q. What about with anyone else on the staff of Mr. Orr
24 or on the staff of the Governor or the staff of
25 Mr. Dillon, again, outside the presence of counsel?

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1 A. I recall one conversation where I requested some
2 analytics on the distribution of pensioner income,
3 so instead of dealing with averages I could see the
4 distribution between those at the low end, those at
5 the high end and where it all fell so I could at
6 least have some understanding of what any impact
7 would be in the event of pension reduction.
8 Q. Who did you have that conversation with?
9 A. I know I had it with Kevyn Orr once and I believe I
10 had it with Andy Dillon once.
11 Q. When was your conversation with Mr. Orr on the
12 subject?
13 A. It would have been after he was the emergency
14 manager, but I don't recall how long he'd been in
15 that role.
16 Q. Okay. Was it before the bankruptcy filing?
17 A. I don't believe so.
18 Q. You think it was after the bankruptcy filing?
19 A. I think it was.
20 Q. Okay. And did you say that you requested data on
21 pensions from somebody?
22 A. I requested data on -- whether the data existed on
23 the distribution by pension amount, numbers of
24 pensioners and pension amount, for the current
25 roughly 20,000 pensioners.

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1 Q. And who -- did you ask Mr. Orr for this data?
2 A. I asked Mr. Orr to see if the data could be obtained
3 because I thought it was relevant.
4 Q. And what would it be relevant to in your -- why did
5 you think it was relevant?
6 A. At the time I was wondering if it was possible for
7 the State to consider legislation that would provide
8 an incremental safety net to those at the lower end
9 of the spectrum.
10 Q. And you said you thought that was relevant. What
11 did you think it was relevant to?
12 A. Well, it was relevant to a question I had, and I
13 didn't know the answer so I asked to get the data.
14 Q. What was the question you had?
15 A. My question was whether or not there were other
16 avenues to provide relief to those pensioners that
17 conceivably could be impacted at the lower end of
18 the continuum.
19 And that was not based on discussions with
20 anybody else, it was simply a question that I had
21 because I didn't know the answer.
22 Q. And the question you had, when you say the person --
23 the pensioners who would be impacted, were you
24 thinking impacted in that their accrued pension
25 benefits might be reduced?

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1 A. Yes.
2 Q. And did Mr. Orr provide you the data you requested?
3 A. No.
4 Q. Did he -- when you asked him for it, what did he
5 say, if anything?
6 A. He said it was a good question and he'd get back to
7 me. But to the best of my recollection, he didn't.
8 Q. Did you ever follow up?
9 A. I honestly can't remember.
10 Q. Okay. Did he say anything other than it's a good
11 question?
12 A. Nope.
13 Q. You said you had a conversation with Andy Dillon on
14 the same subject. When was your conversation with
15 him on this subject?
16 A. It would have been about the same time. This was
17 after the bankruptcy had already been filed and
18 there was a lot of noise about whether pensions
19 would be impacted, and I was trying to ascertain the
20 practical implications if they were.
21 Q. And did you ask Mr. Dillon for the data on the
22 distribution of the number of pensioners and --
23 A. No.
24 Q. -- the amount of pensions?
25 A. No. I asked -- I actually told him that I'd ask

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1 Kevyn, that I'd made that question to Kevyn.
 2 Q. And did Mr. Dillon say anything in response when you
 3 told him that?
 4 A. Good question.
 5 Q. Did he ever -- did he or anyone on his staff ever
 6 get back to you with the data you were looking for?
 7 A. Not that I recall.
 8 Q. Did you speak to anyone about your idea to have
 9 legislation that would provide an incremental safety
 10 net for the people on the low end of the spectrum?
 11 A. I spoke with Dennis Muchmore about it, the
 12 Governor's chief of staff, and he's the only one.
 13 Q. And what did he say, if anything?
 14 A. He didn't know. He said I don't know what the
 15 appetite for that would be, but it's a good
 16 question.
 17 Q. Now, were you -- when you spoke to Mr. Muchmore,
 18 were you proposing that Mr. Muchmore take steps to
 19 see if such legislation could be enacted?
 20 A. No. I was asking a question about in the event that
 21 pensions were impacted what is the practical
 22 implication to those depending on the money every
 23 month. I wanted to know.
 24 Q. And do you know now as you sit here today? Have you
 25 ever seen that data?

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1 A. No, I have not.
 2 Q. Okay. But did you speak to Mr. Muchmore about the
 3 idea of the legislation you described?
 4 A. I just mentioned to him -- I asked him the question
 5 what do you think the appetite would be, and he said
 6 he didn't know.
 7 Q. Okay. Do you know whether there had been any
 8 discussions by the Governor and his staff about the
 9 legislation you described?
 10 A. No, I don't.
 11 Q. Have you ever followed up?
 12 A. Not on that, no.
 13 Q. Do you have any sense without having seen the data
 14 of what the practical impact would be on the
 15 individuals at the low end of the spectrum if their
 16 accrued pension benefits were reduced?
 17 A. Only anecdotal.
 18 Q. And what's your anecdotal knowledge?
 19 A. Anecdotal knowledge is that the majority of the
 20 pensioners are at the lower end of the spectrum and
 21 so the implications of a pension reduction probably
 22 couldn't be directed toward the higher end of the
 23 spectrum at a sufficient level to make it feasible.
 24 Q. So your understanding is that -- to make what
 25 feasible?

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1 A. Let me back up. I'm a numbers guy. I wanted to
 2 know of the 20,000 pensioners that exist, where do
 3 they fall along a distribution continuum.
 4 What I was looking to see is whether the
 5 distribution, the standard deviation was such that
 6 if there was a reduction that the number -- would
 7 the numbers be material if that reduction were
 8 weighted toward the larger pension earners versus
 9 the lower pension earners.
 10 And, anecdotally, I was told that the
 11 number of pension earners are at the lower end and
 12 that the standard deviation is not very great.
 13 Q. So in order for there to be a meaningful savings by
 14 the City if it reduced pensions, it would have to
 15 reduce the pensions of many of those people who are
 16 at the low end of the spectrum; is that -- am I
 17 understanding that correctly?
 18 A. Anecdotally, that's my understanding.
 19 Q. Okay. And did you have any practical -- I'm
 20 sorry -- did you have any sense, anecdotally or
 21 otherwise, of what the real world impact would be on
 22 those individuals on the low end of the spectrum if
 23 their pensions were reduced?
 24 A. No, because the data never materialized for me.
 25 Q. Do you have any sense whether if pensions of those

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1 people at the low end of the spectrum were reduced
 2 it would be difficult for those individuals to make
 3 ends meet?
 4 A. I don't know.
 5 MR. ELLSWORTH: I wasn't sure he heard your
 6 question because he was retrieving his microphone.
 7 BY MR. DeCHIARA:
 8 Q. Did you hear my question?
 9 A. Would you repeat it?
 10 Q. Sure. Do you have any sense whether if the pensions
 11 of those people at the low end of the spectrum were
 12 reduced, would it be difficult for those individuals
 13 to make ends meet?
 14 A. I would have no way of knowing in the absence of
 15 real data.
 16 Q. Are you familiar with a letter that the Governor
 17 signed on July 18th, 2013, in which he purported to
 18 authorize the filing of the bankruptcy of the City
 19 of Detroit?
 20 A. I know that that letter existed.
 21 Q. Okay. Did you see the letter in any draft or
 22 nonfinal forms before the Governor signed it?
 23 A. No.
 24 Q. Did you participate in any way in the preparation of
 25 that letter?

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1 A. No.

2 Q. Did the Governor speak to you about the preparation
3 of that letter?

4 A. No.

5 Q. Did he speak to you about the contents of the letter
6 before he signed the letter?

7 A. No.

8 Q. Did you have anything at all to do with that letter?

9 A. No.

10 Q. Okay. You're aware, are you not, that a couple days
11 before the Governor signed that letter that Mr. Orr
12 had sent the Governor a letter in which Mr. Orr
13 requested permission to file for bankruptcy, right?

14 A. I am aware. I don't recall having seen that letter
15 but I am aware one was sent.

16 Q. Have you ever seen that letter?

17 A. I don't think so.

18 Q. Did Mr. Orr ever speak to you about that letter
19 before he sent it?

20 A. He spoke to me, yes.

21 Q. And was it on one or more than one occasion?

22 A. No, just on one occasion.

23 Q. Let me represent to you the letter was dated
24 July 16th, 2013.

25 When did you speak to Mr. Orr about the

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1 letter?

2 A. I don't recall, but it would have been very near
3 when it was sent.

4 Q. Near before or near after?

5 A. Maybe right at the time it was sent. I recall a
6 conversation with Kevyn where he said I'm going to
7 do this.

8 Q. Okay. What else, if anything, do you recall about
9 that conversation?

10 A. The reason I recall it is because he had asked me to
11 circle back to members of the consulting
12 restructuring team to talk to them about their scope
13 and service and fees because it was -- these were
14 conversations he had planned to have but hadn't had
15 a chance, and so I did that.

16 Q. So about the time that -- I just want to see if I'm
17 understanding your testimony.

18 About the time that Mr. Orr sent his
19 July 16th letter to the Governor requesting
20 permission to file for bankruptcy, he spoke to you
21 about the letter?

22 A. I believe he did.

23 Q. Okay. Did he call you?

24 A. I don't recall.

25 Q. Did he initiate the contact?

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1 A. I don't recall.

2 Q. Was it a face-to-face meeting or a telephone call?

3 A. I believe it was telephone.

4 Q. And to the best of your recollection, can you
5 recount what you said and what he said in that
6 telephone call?

7 A. I honestly don't recall other than he said I haven't
8 completed my conversations with the restructuring
9 team relative to their scope and services and fee
10 projections, and I agreed to do that on his behalf.

11 Q. Who was the restructuring team?

12 A. These would have been the principals associated with
13 Conway MacKenzie, Ernst and Young, Jones Day, and
14 Miller Buckfire.

15 Q. And Mr. Orr said he wanted to complete a
16 conversation with those individuals you just
17 mentioned about their fees?

18 A. Yeah. He had been engaged with them around putting
19 a fine point on their fee estimates as opposed to a
20 broad -- you know, sort of broad here's what we
21 think it might cost, but he hadn't had the, you
22 know, detailed discussions and so he asked if I
23 would do that.

24 Q. And did you do that?

25 A. I did.

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1 Q. And what, if anything, did that have to do with the
2 July 16th letter that Mr. Orr sent to the Governor
3 to request permission to file for bankruptcy?

4 A. I think it was important because the fees and the
5 scope once the filing had been completed would not
6 have been subject to much in the way of reduction.

7 Q. Did you have any other -- was that the extent of
8 your conversation with Mr. Orr on that occasion?

9 A. Yes.

10 Q. And did you have any other discussions with Mr. Orr
11 about his July 16th letter before he sent the
12 letter?

13 A. No.

14 Q. Do you -- are you aware that in the Governor's
15 letter, the July 18th, 2013 letter, the Governor
16 said that he was not going to impose contingencies
17 on the filing? Are you familiar with that?

18 A. No, I don't recall actually having ever seen the
19 letter.

20 Q. Okay. Are you aware that there were certain state
21 court lawsuits that were filed prior to the
22 bankruptcy filing concerning issues related to
23 Article 29 Section 24 of the Michigan Constitution?

24 MR. WERTHEIMER: Article 9.

25 MR. DeCHIARA: Thank you.

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1 BY MR. DeCHIARA:
 2 Q. Article 9 Section 24 of the Michigan Constitution?
 3 A. No.
 4 Q. Did you ever discuss with the Governor the timing of
 5 the bankruptcy filing, meaning outside of the scope
 6 of counsel, did you ever discuss with the Governor
 7 when it would be best to -- for the City of Detroit
 8 to file for bankruptcy?
 9 A. No.
 10 Q. Are you aware that the State or at least the
 11 Governor's office had prepared a schedule that
 12 indicated that the bankruptcy filing was to occur on
 13 July 19th, 2013, but it actually occurred the prior
 14 day? Are you aware of that?
 15 A. I'm aware of a communications schedule that had the
 16 19th I think as the date.
 17 Q. And are you aware that the filing actually occurred
 18 the day before?
 19 A. I was aware of the filing when it occurred, which
 20 occurred the day before.
 21 Q. Okay. Do you have any understanding or knowledge as
 22 to why it occurred the day before it had been
 23 planned to occur?
 24 A. No.
 25 Q. Did you ever -- outside of the presence of legal

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1 counsel, did you ever discuss that with the
 2 Governor?
 3 A. No.
 4 Q. Okay. Did you speak with the Governor outside of
 5 the presence of legal counsel since he had his
 6 deposition taken yesterday?
 7 A. Yes.
 8 Q. Did you speak about his deposition?
 9 A. No.
 10 Q. I'd like to show you a document -- well, are you
 11 aware of a document that Mr. Orr presented to
 12 creditors on January 14th, 2013 called --
 13 MR. WERTHEIMER: June 14th.
 14 MR. DeCHIARA: Thank you.
 15 BY MR. DeCHIARA:
 16 Q. June 14th, 2013 called Proposal for Creditors?
 17 A. May I see it?
 18 Q. Yes.
 19 A. Yes, I am familiar with this document.
 20 Q. Okay. And did you participate in its preparation?
 21 A. No.
 22 Q. Did you comment on it before it was in its final
 23 form?
 24 A. No.
 25 Q. Were you asked to review it before it was made

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1 final?
 2 A. No. Well, not that I recall.
 3 Q. Not that you recall?
 4 A. Yeah. If somebody asked me, it's an email I never
 5 saw because I didn't review it.
 6 Q. Okay. Okay. Did you speak to the Governor outside
 7 of the presence of legal counsel about the
 8 June 14th, 2013 proposal?
 9 A. I don't believe so.
 10 Q. Did you speak to Mr. Dillon?
 11 A. Yes.
 12 Q. Outside of the presence of legal counsel about the
 13 June 14th, 2013 proposal?
 14 A. No.
 15 Q. You spoke to him, but it was in the presence of
 16 legal counsel?
 17 A. Yes.
 18 Q. Okay. Did you speak to anyone on the Governor's
 19 staff or Mr. Dillon's staff outside of legal counsel
 20 about the June 14th, 2013 proposal?
 21 A. No.
 22 Q. Did you speak to Mr. Orr about his proposal at any
 23 time on or before June 14th, 2013?
 24 A. No.
 25 Q. Did you speak to him about -- did you speak to

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1 Mr. Orr outside of the presence of legal counsel
 2 about the proposal after June 14th, 2013?
 3 A. I attended that meeting and told him I thought he
 4 did a good job in its presentation.
 5 Q. By that meeting you mean the June 14th, 2013
 6 meeting?
 7 A. Yes.
 8 Q. Okay. Do you recall Mr. Orr at the June 14th, 2013
 9 meeting saying words to the effect to the people who
 10 were in attendance that this was not a negotiation?
 11 A. No.
 12 Q. Are you denying he said it or you just don't
 13 remember if he said it or not?
 14 A. I don't recall him using those words.
 15 Q. Okay. Is it true that those in attendance on
 16 June 14th, 2013 in order to be able to speak had to
 17 fill out a card and have the card read by someone?
 18 A. I don't know.
 19 Q. I'd like to show you a document which I'll mark as
 20 Exhibit 7.
 21
 22 (Deposition Exhibit 7 was marked.)
 23
 24 BY MR. DeCHIARA:
 25 Q. For the record, it's a one-page document stamped at

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1 the bottom SOM 20003601.
 2 MR. WERTHEIMER: Seven?
 3 MR. DeCHIARA: Yes.
 4 BY MR. DeCHIARA:
 5 Q. Do you recall receiving this email from Mr. Dillon
 6 on July 18th -- on July 8th, 2013?
 7 A. Let me just finish reading it.
 8 Q. Please.
 9 A. I believe I've seen this before, yes.
 10 Q. In the first sentence Mr. Dillon refers to the
 11 Detroit consultants.
 12 Do you know who he's referring to?
 13 A. No. I mean, when he says weekly call with the
 14 Detroit consultants, that generally includes Jones
 15 Day, Miller Buckfire, Ernst and Young, Conway
 16 MacKenzie, and at times Milliman.
 17 Q. In the second paragraph it says "We met with the
 18 consultants to get briefed on the pension issue this
 19 afternoon. I invited Baird and Tedder to join."
 20 Did you join that briefing?
 21 A. I don't believe so, but I don't recall.
 22 Q. Next sentence says "Bottom line, the situation is
 23 not good and the view of the consultants is that
 24 current pensions have to be cut significantly."
 25 Did you have any conversations with

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1 Mr. Dillon about that view that current pensions
 2 have to be cut significantly outside of the presence
 3 of legal counsel?
 4 A. I don't recall. I've had -- I have had discussions
 5 with Andy relative to the funding levels of pensions
 6 and have had discussions with him about the 13th
 7 Check, but I do not recall a specific discussion
 8 around the pensions have to be cut significantly.
 9 Q. Do you have a view yourself -- or strike that.
 10 As of the time of this email, July 8th,
 11 2013, at that period of time did you have a view
 12 yourself as to whether current pensions had to be
 13 cut significantly?
 14 A. My view of what's been reported publicly is that the
 15 pension funding is not sustainable for the current
 16 obligations and future obligations.
 17 Q. What do you mean the pension funding?
 18 A. The funding level of the pension -- the pension
 19 funds.
 20 Q. When you say the funding, do you mean the
 21 contributions that are being made are not
 22 sufficient?
 23 A. That's correct.
 24 Q. Okay. And have you -- and, therefore, is it your
 25 view because the funding is insufficient that the

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1 pensions that are being paid out of the funds need
 2 to be cut significantly?
 3 A. I'm not an actuary, and I don't know the answer to
 4 that question.
 5 Q. But do you have a view on that question or an
 6 opinion?
 7 A. I have an opinion.
 8 Q. What's your opinion?
 9 A. My opinion is that underfunded -- significantly
 10 underfunded pensions are not sustainable long-term
 11 for current workers or for workers who are more than
 12 just a few years away from retirement.
 13 Q. Therefore, is it your view that the Detroit
 14 pension -- accrued pension liabilities need to be
 15 reduced?
 16 A. No. It's my view that there's not enough money for
 17 the current pension obligations and the future
 18 pension obligations. It's not my call whether they
 19 get reduced or not.
 20 Q. Well, whether it's your call or not, I'm just asking
 21 do you have a view as to whether or not --
 22 A. My view --
 23 MR. ELLSWORTH: I object to the form, and
 24 he's already answered the question.
 25 BY MR. DeCHIARA:

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1 Q. Can you answer the question, Mr. Baird?
 2 Do you have a personal view as to whether
 3 or not Detroit's accrued pension liabilities need to
 4 be reduced?
 5 A. My view is that if the pensions are underfunded that
 6 there will come a time when the obligations cannot
 7 be met, and you can't create money out of nothing.
 8 It's not my place to ascertain where the
 9 money comes from. It is my place to say to you I
 10 have an opinion that the current pension funds are
 11 not sustainable in the current model.
 12 Q. Okay. But you're aware, are you not, that whether
 13 or not -- the question of whether or not Detroit's
 14 pension liabilities should be cut is a matter that's
 15 been a matter of sharp debate in Detroit over the
 16 course of the last few months?
 17 A. I'm aware there's been a lot of debate around this
 18 issue.
 19 Q. Okay. And have you ever spoken to the Governor
 20 outside of the presence of legal counsel about this
 21 issue, about this debate?
 22 A. Not that I recall.
 23 Q. Okay. Have you ever spoken to anyone on the
 24 Governor's staff outside of legal counsel on this --
 25 about this debate?

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1 A. Not that I recall.
 2 Q. Same question for Mr. Dillon and Mr. Dillon's staff.
 3 A. Generally speaking, I know we've had discussions but
 4 nothing explicit or a course of action forward.
 5 Q. What's your best recollection of the discussions
 6 you've had with Mr. Dillon --
 7 A. Very --
 8 Q. -- outside of the presence of legal counsel?
 9 A. Very general discussions around the sustainability
 10 of the current model and whether it can survive.
 11 Q. Did Mr. Dillon ever say to you words to the effect
 12 that he believed that the pension liabilities of the
 13 City of Detroit need to be reduced?
 14 A. No, I don't recall him ever saying that. I recall
 15 him saying that the issues are significant.
 16 Q. Have you ever spoken to Mr. Orr or his -- anyone on
 17 his staff outside the presence of legal counsel
 18 about this subject?
 19 A. No.
 20 Q. I'd like to show you a document I'll mark as
 21 Exhibit 8.
 22
 23 (Deposition Exhibit 8 was marked.)
 24
 25 MR. SHERWOOD: What's the bates number?

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1 BY MR. DeCHIARA:
 2 Q. It's a one-page document that's stamped SOM
 3 20003657.
 4 A. Okay.
 5 Q. Do you recall receiving this email from Andy Dillon
 6 on July 9th, 2013?
 7 A. No.
 8 Q. Have you ever seen this email before?
 9 A. I don't recall seeing this email before. I get
 10 hundreds of emails every day and I don't look at all
 11 of them.
 12 Q. If you look at the second paragraph of the email,
 13 let me just read it. It says "On Thursday, we
 14 expect to receive financials that will help us
 15 better understand the potential negative impact on
 16 pensions and what options may be available to us to
 17 avoid them."
 18 A. Uh-huh.
 19 Q. Did you ever speak to Mr. Dillon outside of the
 20 presence of legal counsel about what options might
 21 be available to avoid the potential negative impact
 22 on pensions?
 23 A. No.
 24 Q. Let me read the last sentence of the email. It says
 25 "I have some thoughts as to how you could address

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1 some pointed questions if you were interested in
 2 hearing them."
 3 I believe the you in there is -- well,
 4 actually, I don't know who the you in there is. The
 5 email was sent -- oh, I guess it's addressed to the
 6 Governor. So I assume the you in that email is the
 7 Governor.
 8 But let me nonetheless ask you, Mr. Baird,
 9 did Mr. Dillon ever share any thoughts he had with
 10 you outside of the presence of legal counsel
 11 regarding thoughts he had about issues related to
 12 Detroit's pension liability other than what you've
 13 testified to already today?
 14 A. No, not outside presence of legal counsel.
 15 Q. I'd like to show you a document I'll mark as
 16 Exhibit 9.
 17
 18 (Deposition Exhibit 9 was marked.)
 19
 20 BY MR. DeCHIARA:
 21 Q. It's a two-page document that's stamped at the
 22 bottom DTMI 00113909.
 23 My question on this document, Mr. Baird, is
 24 simply can you identify this document?
 25 A. I'm not sure. Some of the content appears familiar,

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1 but this format of the document is not familiar to
 2 me.
 3 Q. Okay. So you're not -- can you testify where this
 4 document came from or what it is?
 5 A. I couldn't tell you that, no.
 6 MR. DeCHIARA: I have no further questions.
 7 Thank you for your time, Mr. Baird.
 8 THE WITNESS: Thank you.
 9 MR. WERTHEIMER: I've got a few questions.
 10 Want to take a break?
 11 VIDEO TECHNICIAN: Off the record 3:31 p.m.
 12 (A brief recess was taken.)
 13 VIDEO TECHNICIAN: We're back on the record
 14 at 3:46 p.m.
 15 EXAMINATION
 16 BY MR. WERTHEIMER:
 17 Q. Mr. Baird, my name is Bill Wertheimer. I represent
 18 what we've been calling the Flowers plaintiffs,
 19 which are a group of Detroit retirees who filed one
 20 of the lawsuits that preceded the bankruptcy, and
 21 I'm going to ask you a few questions.
 22 You testified about a conversation you had
 23 with Kevyn Orr right around the time that he sent
 24 the letter to the Governor seeking authorization for
 25 bankruptcy. Do you recall that?

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1 A. I do.
 2 Q. Did he in any way indicate why he was going to make
 3 the request at that time?
 4 A. No. Well, I don't recall that he did.
 5 Q. Do you recall asking him anything about that, you
 6 know, why now Kevyn or what's happening or --
 7 A. No.
 8 Q. Do you recall whether you were surprised about it;
 9 that is the timing, not the act?
 10 Or put another way had you had any kind of
 11 a warning or anything going on that would lead you
 12 to think that --
 13 A. I had seen a communications document that had
 14 Friday, the -- I don't remember the exact date, but
 15 Friday, might have been the 19th?
 16 Q. Right. Friday was the 19th.
 17 A. Right, Friday the 19th as the date that it appeared
 18 we'd go forward.
 19 Q. Had you seen that document before the conversation
 20 with Orr?
 21 A. No.
 22 Q. After?
 23 A. After.
 24 Q. Okay. Is the document you saw what was marked at
 25 the Governor's deposition as Exhibit 6 or something

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1 like it?
 2 A. Yes.
 3 Q. Okay. And do you remember how you came to see that
 4 document? Was it emailed to you, were you talking
 5 to somebody about it?
 6 A. No, I believe it was emailed to me.
 7 Q. Do you remember by who?
 8 A. I don't.
 9 Q. Do you remember whether you talked to anybody about
 10 it between its issuance and the actual filing?
 11 A. Talked about the communications plan?
 12 Q. Well, broader than the communications plan but just
 13 the fact that it was going to be -- the bankruptcy
 14 was going to occur.
 15 A. No.
 16 Q. Now, you also testified that you had had
 17 conversations or a conversation I think you said
 18 with Orr where you asked him a question about the
 19 distribution of the income of retirees?
 20 A. Yes.
 21 Q. And you also talked to the Governor's is it chief of
 22 staff, Mr. Muchmore?
 23 A. Yes.
 24 Q. About that same issue, not asking a question but
 25 about --

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1 A. I related my conversation with Kevyn to Dennis.
 2 Q. Can you put a time frame on these conversations?
 3 Can you tell us approximately when they occurred?
 4 A. I believe it was after the filing because of all of
 5 the public consternation around pensions, and I --
 6 as I testified earlier, I wanted to know what the
 7 practical impact of any action would be.
 8 Q. And if I understand it right, the reason you wanted
 9 to know is that was kind of the germ of an idea for
 10 maybe some legislation that might be able to at
 11 least in some way ameliorate the condition or the
 12 problem?
 13 A. Correct. I was thinking unilaterally, which I'm
 14 known to do.
 15 Q. I understand. Well, you anticipated my next
 16 question.
 17 At the point you had these conversations,
 18 was it your understanding that it was the Governor's
 19 position that the State was not going to be putting
 20 any money into Detroit at least as it would relate
 21 to the retiree issue?
 22 A. I don't recall if I would know whether that was the
 23 Governor's position, but I was well aware that the
 24 legislative appetite for funding to Detroit was
 25 highly -- was very low.

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1 Q. Okay. Okay. Had you had any conversations up to
 2 that point with the Governor where -- excluding
 3 conversations with counsel present -- where you
 4 discussed that fact; that is, we're not going to be
 5 able to get legislation through to do anything about
 6 that?
 7 A. No, not explicitly.
 8 Q. Implicitly.
 9 A. Not even implicitly. I don't recall any
 10 conversations with the Governor talking about a
 11 strategy where funds would be appropriated for
 12 Detroit.
 13 Q. Do you recall as of the point that you made this
 14 inquiry of Orr and had the conversation with
 15 Muchmore that the Governor publicly was taking the
 16 position that although the State might be willing to
 17 assist relative to services for residents of the
 18 City, it would not be willing to put money in for
 19 pensions or anything other than services for the
 20 City?
 21 A. I wasn't part of those conversations --
 22 Q. Okay.
 23 A. -- if they existed.
 24 Q. All right. You were shown -- well, it's your
 25 deposition, Exhibit No. 1. This is the Jones Day --

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1 A. Uh-huh.
 2 Q. -- pitch from January 31st.
 3 A. Yep. Yep.
 4 Q. The pages you were shown, and I'm going to show them
 5 to you again, where there's these ref -- one or more
 6 references to pensions is in part four of the
 7 written presentation entitled Components and
 8 Considerations for Restructuring Plan.
 9 MR. ELLSWORTH: Do you have a page number,
 10 Mr. Wertheimer?
 11 MR. WERTHEIMER: Yeah, that's page 34.
 12 MR. ELLSWORTH: Thank you.
 13 MR. WERTHEIMER: Sure.
 14 BY MR. WERTHEIMER:
 15 Q. Do you recall who from Jones Day was presenting this
 16 part of the pitch? And, again, I'm assuming it was
 17 actually presented to you. This isn't just a
 18 writing that they handed out.
 19 A. That's correct.
 20 Q. Okay. Go ahead, then.
 21 A. I believe it was Bruce Bennett.
 22 Q. Did Mr. Orr make any part of the presentation?
 23 A. He did.
 24 Q. What part did he make?
 25 A. His was predominantly a presentation around his

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1 background, credentials, experience, and his ties to
 2 Michigan.
 3 Q. Not as to any of the specific parts unless there's
 4 some reference to Orr and his background in this
 5 document?
 6 A. That's correct.
 7 Q. Okay. Now, I think if you take a look at page 43, I
 8 think that's what counsel showed you before, you'll
 9 see the bottom line literally on page 43 reads
 10 "Chapter 9 could be used or threatened..." -- I'm
 11 sorry, let me let you get there.
 12 A. Okay.
 13 Q. Take a look at the bottom line. "Chapter 9 could be
 14 used or threatened as a means to accomplish a
 15 compromise of benefit cost rejecting or compromising
 16 claims." Do you see that?
 17 A. I do see it.
 18 Q. Do you recall the presentation including that point?
 19 A. I do not recall that specific point, and I note that
 20 these are speaker notes which may or may not have
 21 been articulated.
 22 Q. Well, that's one of the reasons I'm asking.
 23 A. Because this is the first time I've seen -- I don't
 24 have a version --
 25 Q. In this form. I understand.

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1 A. -- like this.
 2 Q. I understand. And I think you were -- I had
 3 misspoke before. You were not shown that page by
 4 previous counsel.
 5 You were shown I think if you turn to page
 6 41 the question referenced it. Again, the bottom
 7 line, "If needed, Chapter 9 could be used as a means
 8 to further cut back or compromise accrued financial
 9 benefits otherwise protected under the Michigan
 10 Constitution."
 11 Do you recall that point even in a general
 12 way being made in the presentation?
 13 A. This was back in January.
 14 Q. Right.
 15 A. And I don't recall the specific point, but every one
 16 of those firms would have discussed all of the
 17 various approaches, strategies, options and whatever
 18 their background and experience had them -- had
 19 taught them from other municipal situations.
 20 So generally, it could have been made, but
 21 I don't recall it.
 22 Q. All right. Do you recall that by the time all those
 23 pitches were made that you were of the understanding
 24 that the lawyers, whether Jones Day or one of the
 25 other firms, were of the view that Chapter 9 could

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1 be used as a means to cut back these Michigan --
 2 these benefits that are otherwise covered by this
 3 Michigan constitutional provision?
 4 A. No, I am not. Not explicitly.
 5 I do recall discussions around Chapter 9
 6 but not as it pertains specifically to any Michigan
 7 Constitution article.
 8 Q. Do you recall -- and I think the time frame is May,
 9 I could find it somewhere, but Kevyn Orr was already
 10 emergency manager, he was interviewed by the Detroit
 11 Free Press and rather publicly, and in a way that
 12 ended up getting spread around publicity wise,
 13 talked about the fact that in a Chapter 9 filing the
 14 pension rights of retirees could be trumped, was the
 15 word he used, by federal law.
 16 Do you recall generally the Emergency
 17 Manager making that point at around that point in
 18 time?
 19 A. I've made it a practice to not read the Detroit
 20 newspapers these days.
 21 Q. All right. I'll accept that. Do you recall that at
 22 least by that point in time you knew that, in fact,
 23 that Orr was taking that position; that is, that he
 24 was using Chapter 9 -- I don't want to use
 25 pejorative terms --

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1 A. No.
 2 Q. -- but that he was using the possibility of a
 3 Chapter 9 as a way to try and convince people to sit
 4 down and talk with him --
 5 A. What I --
 6 Q. -- particularly retirees?
 7 A. Right.
 8 Q. Go ahead.
 9 MR. ELLSWORTH: Just let him get his
 10 question out before you answer.
 11 THE WITNESS: Yeah. No, no, I got it.
 12 You'll have to ask Kevyn Orr, but were I he, I would
 13 use every possible means to get people to the table
 14 before petitioning The Court, and I believe he was
 15 doing exactly that.
 16 BY MR. WERTHEIMER:
 17 Q. Okay, fair enough.
 18 At the point he filed bankruptcy, do you
 19 have an understanding as to whether there was any
 20 way that the City could deal with the problem of
 21 pensions without going into bankruptcy?
 22 A. Repeat the question.
 23 Q. As of let's say the time the bankruptcy was filed,
 24 as of that time, did you have an understanding that
 25 bankruptcy was going to be the only way that the

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1 City could deal with its pension problem without
 2 asking for State assistance, State assistance that
 3 you knew you'd have -- that the Governor would have
 4 difficulty getting?
 5 A. I had not contemplated it in terms of the City's
 6 pension problem. I have contemplated it in terms of
 7 \$18 billion in liability and bondings that couldn't
 8 be paid and debt service that it was becoming clear
 9 to me that in the absence of any negotiated
 10 agreements with any of the major constituencies that
 11 bankruptcy was becoming more and more evident with
 12 each passing month.
 13 Q. You had mentioned that you had a -- when I say you
 14 mentioned, you testified in response to earlier
 15 counsel's questions that you do recall having one
 16 conversation with Orr about the issue of this
 17 state constitutional provision that protects
 18 pensions.
 19 Do you recall that?
 20 A. I do.
 21 Q. Okay. Can you put a time frame on that at all?
 22 A. It was back during the early interaction with Kevyn.
 23 I had gotten in the habit of carrying a small
 24 Constitution with me because I was referring to it
 25 on a regular basis across many things, and so I knew

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1 the article was there and I said to Kevyn, are you
 2 aware of this? He said we're aware.
 3 Q. He didn't go beyond that at all. He didn't suggest
 4 in any way, shape or form how he intended to deal
 5 with it?
 6 A. No, not to me.
 7 Q. Okay. And do you have a memory as to what triggered
 8 you to talk to him about it at that point in time
 9 other than that you had the Constitution in your
 10 pocket?
 11 A. No, sir, other than -- you asked about the trigger.
 12 During the recruitment process, we covered
 13 a lot of ground, and that ground included all the
 14 reasons you should do this and all the reasons you
 15 shouldn't do it. And it was a discussion that took
 16 place over a few weeks, and I don't recall any
 17 specific trigger other than an old T square saying
 18 here are the pros and the cons and the things you
 19 ought to be thinking about it.
 20 Q. All right. It's part of you giving him information?
 21 A. Yes, that's fair.
 22 Q. That you are hoping will be helpful to him?
 23 A. That would be a fair characterization.
 24 MR. WERTHEIMER: Okay. All right. I have
 25 nothing further. Thank you.

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1 EXAMINATION
 2 BY MR. SHERWOOD:
 3 Q. Good afternoon, Mr. Baird. I'm Jack Sherwood from
 4 Lowenstein Sandler, and we represent AFSCME in the
 5 City's bankruptcy. I have a few questions. I'll
 6 try not to go over ground that's already been
 7 covered.
 8 Let me just go back to your engagement by
 9 the Governor. In reviewing your testimony from the
 10 prior case, did that start in January 2011?
 11 A. It did.
 12 Q. And I think you also testified that the EM selection
 13 process began in October or November 2012; is that
 14 right?
 15 A. I would not characterize it as a selection process,
 16 but I would characterize it as I began thinking
 17 about planning for the future in a substantive way
 18 about that time.
 19 Q. And I think you said that you were looking for
 20 sources and candidates. Does that sound right?
 21 A. Yes. I would through my own network or the network
 22 of people that I knew and trusted, I would look for
 23 individuals that had characteristics, and then I
 24 would talk to them about either their potential for
 25 a role like this or whether they knew of

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1 individuals.
 2 So that's what I meant by sources or
 3 candidates.
 4 Q. Right. So a source is someone who isn't necessarily
 5 a candidate but might refer someone, a candidate, to
 6 you, correct?
 7 A. They could be both.
 8 Q. Okay. Was Jones Day or anyone from Jones Day a
 9 source that you contacted?
 10 A. Prior to meeting Steve Brogan, no.
 11 Q. And when did you meet Steve Brogan?
 12 A. January 29th, it appears.
 13 Q. So prior to that, no sources from Jones Day. How
 14 about Miller Buckfire source?
 15 A. Yes. Ken Buckfire was a source.
 16 Q. I want to talk a little bit about NERD. We'll use
 17 that acronym again. They pay your bills, correct?
 18 A. They pay my fees, yes.
 19 Q. And that's been the case since January of 2011?
 20 A. Correct.
 21 Q. Can you just give me a little more detail on how
 22 that came about?
 23 A. Do you have specific questions, because I've
 24 testified already.
 25 Q. I -- yeah. I'd like to know how it came about.

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1 A. Okay. My original agreement with Governor Snyder
 2 was once we pulled the cabinet and his direct
 3 reports together after he was elected during the
 4 transition period that I would be returning to my
 5 home at that time in Illinois.
 6 On the first day after his inauguration,
 7 the first working day, he asked me if I would
 8 consider staying on for a year, and I said I would.
 9 And he said -- I said but I don't make for a very
 10 good bureaucrat or government employee, and he said
 11 if you would make me -- if you would make, you know,
 12 the team your exclusive client, how much would it
 13 cost? And I gave him a very cut rate amount, and he
 14 said we could cover that out of this fund to further
 15 good government at non-taxpayer expense.
 16 Q. And would you describe the fund as a lobbyist fund?
 17 A. A lobbyist?
 18 Q. Yeah.
 19 A. What would a lobbyist fund be?
 20 Q. I don't know. I guess you're --
 21 A. If you tell me what a lobbyist fund is, I'll tell
 22 you if I think it's a lobbyist fund.
 23 Q. Well, is --
 24 MR. WERTHEIMER: It's not good.
 25 BY MR. SHERWOOD:

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1 Q. Would you describe the New Energy to Reinvent and,
 2 what is it, Diversify?
 3 A. Yes.
 4 Q. Would you describe that as an entity that engages in
 5 lobbying?
 6 A. No.
 7 Q. And do you know who manages NERD?
 8 A. No.
 9 Q. And you don't know who is on the board? You don't
 10 know who the officers, directors are --
 11 A. No.
 12 Q. -- or trustees?
 13 A. Nope.
 14 Q. You just know the name of the person who signs your
 15 check; is that right?
 16 A. I do. I know who I submit the invoice to and I know
 17 who signs the check. Outside of that, I don't know
 18 anything else.
 19 Q. You don't know who any of their backers are?
 20 A. Don't know a single donor.
 21 Q. Okay. The January 29th meeting -- a couple more
 22 questions -- was Mr. Buckfire there?
 23 A. He was.
 24 Q. And what role did he play in organizing the meeting?
 25 A. Ken advised Andy, Chris Andrews and Jack Martin, the

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1 City's CFO at the time, on considerations and
 2 capabilities of firms that specialized in
 3 restructuring.
 4 And so he identified the firms that he
 5 thought had significant expertise in the areas that
 6 would be of greatest interest to the City, and he
 7 said these are the firms that we should bring in to
 8 help you understand how to construct a request for
 9 proposal to a broader variety of firms.
 10 Q. Did he devise some type of scoring system for the
 11 firms at that meeting?
 12 A. Not that I saw, no.
 13 Q. How about afterwards?
 14 A. No. I'm trying to recall, and I don't think I ever
 15 saw any sort of a scoring mechanism for any of these
 16 firms.
 17 Q. Did you have any role in the selection of Jones Day
 18 as the City's counsel?
 19 A. I did not.
 20 Q. Did you express any preference to the City as to who
 21 should be retained as counsel?
 22 A. I believe Jack Martin asked my opinion from what I
 23 thought at that meeting and from my prior experience
 24 with firms when I was with Price Waterhouse Coopers,
 25 and I believe that I gave him my opinion at the

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1 time.

2 And my opinion was that I didn't think he

3 would go wrong with several of the firms, but that I

4 thought Jones Day by and large had more of the fire

5 power in the various areas that the firm -- that the

6 City was looking for than the others did.

7 Q. During the Jones Day presentation -- hold it. Let

8 me step back.

9 I think you said something like one of the

10 reasons you chose Jones Day was that they have --

11 they'd do a better job of keeping Detroit out of

12 bankruptcy.

13 Do you remember testifying to that?

14 A. No, I don't believe I testified to that. I do

15 recall what I intended to say if that wasn't it.

16 Q. What did you intend to say? Did you think Jones Day

17 had offered the City a better chance to stay out of

18 Chapter 9?

19 A. I don't know that Jones Day as a firm had -- I don't

20 have an opinion whether Jones Day as a firm is --

21 would help the City stay out of Chapter 9 or not.

22 It was my contention that in the

23 recommendation of Kevyn Orr as a great candidate for

24 the emergency manager, that his background and

25 experience would serve as a significant reminder to

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1 folks that they should negotiate in good faith to

2 stay out of the courts because here is a man who

3 understood exactly how to navigate the courts.

4 Q. But isn't it true that Mr. Orr and Jones Day were of

5 the view at all times that it would be extremely

6 difficult to keep the City of Detroit out of

7 Chapter 9?

8 MR. ELLSWORTH: I object to foundation.

9 THE WITNESS: I don't know that.

10 BY MR. SHERWOOD:

11 Q. Can you look at page 13 of the presentation.

12 A. Uh-huh.

13 Q. And if you look at the end of it, basically you'd

14 agree that this slide talks about out-of-court

15 solutions being preferred, but the conclusion at the

16 end is that they are extremely difficult to achieve

17 in practice. Do you see that?

18 A. I do see it.

19 Q. Did anyone from Jones Day convey this message to the

20 group at the meeting on January 29th?

21 A. I don't recall explicitly, no.

22 Q. And if you look at the next page, page 14, you know

23 even for the speaker notes it says an out-of-court

24 solution requires consensus or near consensus of

25 affected constituencies. This is extremely hard to

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1 achieve in practice.

2 Do you recall as part of the oral

3 presentation someone from Jones Day saying that the

4 idea that the City of Detroit is going to avoid

5 Chapter 9 is pretty farfetched?

6 A. I don't recall anyone saying that the idea was

7 farfetched.

8 Q. Well, do you recall them using words like that?

9 A. No, I don't.

10 Q. You don't recall words like extremely difficult, as

11 it says on the slide?

12 A. Well, I don't recall those words, but I wouldn't

13 dispute them.

14 Q. Do you recall words like -- do you recall Mr. Orr

15 having conversations with you wherein he suggested

16 that it would be extremely difficult to achieve an

17 out-of-court solution to Detroit's fiscal problems?

18 MR. ELLSWORTH: Objection to the extent

19 that it would disclose lawyer-client conversations.

20 BY MR. SHERWOOD:

21 Q. Do you recall any such conversations outside the

22 presence of counsel?

23 A. Again, which conversations? That achieving success

24 out of court is difficult?

25 Q. Right.

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1 A. Yes, I do recall those conversations.

2 Q. Do you recall those conversations with Mr. Orr

3 outside of the presence of counsel, correct?

4 A. No, not with Mr. Orr.

5 Q. With who?

6 A. With the principals at McKenna Long.

7 Q. Is that a law firm?

8 A. Yes.

9 Q. And who do they represent?

10 A. We asked them for -- I guess when I say we, Andy

11 Dillon asked them for their best rationale on how to

12 keep us out of the courts and what the implications,

13 you know, of going into the courts were, to educate

14 the team on our resolve to stay out of the courts.

15 MR. ELLSWORTH: Excuse me. Was that

16 another presenter, just to clarify this.

17 BY MR. SHERWOOD:

18 Q. Was McKenna Long making a presentation?

19 A. They were one of the firms in presence at this

20 meeting.

21 Q. Did they have that conversation with you at that

22 meeting or is that something that occurred before or

23 after that meeting?

24 A. It occurred before.

25 Q. How long before?

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1 A. I don't recall.
 2 Q. And at the time, McKenna Long wasn't retained by the
 3 City as its counsel?
 4 A. No, they weren't retained by anyone.
 5 Q. Okay. What was their view on the prospects for
 6 keeping the City of Detroit out of Chapter 9, if you
 7 remember?
 8 A. I don't think they opined on the prospects.
 9 Q. What did they opine on?
 10 A. They opined on all of the benefits associated with
 11 staying out. They were part of the education
 12 process for why you should stay out of the courts.
 13 Q. And but just to be clear, did they opine on the --
 14 on the likelihood that Detroit would be able to stay
 15 out of bankruptcy and still resolve its financial
 16 issues in sort of an out-of-court restructuring?
 17 A. No.
 18 Q. They never opined on that?
 19 A. No.
 20 Q. Getting back to Jones Day, did you recall them
 21 making a presentation at the January 28th meeting
 22 where they stressed the importance of making a
 23 record of good faith negotiations?
 24 A. It was the 29th, now that I've been educated.
 25 Q. Okay. I'm sorry. The 29th meeting.

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1 Did they -- at that meeting did they stress
 2 the importance of making a record of negotiations
 3 with creditors?
 4 A. Did Jones Day stress the importance of making a
 5 record of negotiations?
 6 Q. Right.
 7 A. I don't recall that explicitly.
 8 Q. Now, if we can look at B-5 -- I call it Baird 5.
 9 Can you get that one, sir? I'm really not asking
 10 about this document, but it's February of 2013, and
 11 the email from you to Kevyn Orr on February 20th
 12 talks about brokering a meeting between Mr. Orr and
 13 the Mayor.
 14 Was it important from your perspective to
 15 broker peace between the Mayor and Mr. Orr?
 16 A. It was my belief that a good working relationship
 17 between the two of them would be in the best
 18 interest of the City.
 19 Q. What about the City Council? Did you have the same
 20 view towards the relationship between Mr. Orr and
 21 the City Council for the City of Detroit?
 22 A. If your question is do I believe that a good
 23 relationship between Kevyn Orr and the City Council
 24 would be in the City's best interest, the answer
 25 would be yes.

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1 Q. I guess the question is given that, right, did you
 2 try to broker some type of meeting between Mr. Orr
 3 and the City Council?
 4 A. No.
 5 Q. Why not?
 6 A. Because I did not think that it was possible.
 7 Q. There were members of the City Council that
 8 supported Mr. Orr; were there not?
 9 A. I don't know.
 10 Q. And I know that certain members of the City Council
 11 were very vocal against him or any other emergency
 12 manager; is that right?
 13 A. I read the papers, and there were arguments against
 14 it that came from members of Council that I recall,
 15 yes.
 16 Q. Ultimately, were you able to broker a working
 17 relationship between Mr. Orr and the Mayor?
 18 A. You'd have to ask Mr. Orr and the Mayor.
 19 Q. From your perspective, do you think --
 20 A. I can't opine. I testified that Kevyn Orr thought
 21 it important to meet the Mayor and to determine if
 22 they could work together if he were to accept the
 23 Governor's recommendation. The Mayor indicated the
 24 same about Kevyn Orr.
 25 We did the best to articulate a framework

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1 under which that working relationship could exist,
 2 and you'll have to talk to those two men as to how
 3 successful that arrangement turned out to be.
 4 Q. Now, in February of 2013, I guess we'll use B-5 just
 5 for time purposes. I think you testified that there
 6 was one other candidate that still was sort of in
 7 the running at that point in time?
 8 A. There was a candidate that we had agreed -- we
 9 meaning the Governor and his Chief of Staff and
 10 Treasurer, that we had agreed had the requisite
 11 capabilities and had indicated a willingness to do
 12 the job, but we wished to continue the vetting of
 13 Kevyn to determine whether he would be a better
 14 candidate.
 15 Q. Had you determined at this point that Mr. Orr was
 16 the top candidate February 2013?
 17 A. I don't -- I believe I was still doing due diligence
 18 at this particular time, I think, but I was
 19 cautiously optimistic that Kevyn might be the better
 20 candidate.
 21 Q. And at this time, again, February 20th, 2013, do you
 22 know whether the Governor shared that view?
 23 A. I don't recall on the timetable if that were the
 24 case or not.
 25 Q. What about Mr. Dillon?

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1 A. I think Mr. Dillon, you'd have to ask him as to
 2 whether he thought Kevyn was the better of the two
 3 candidates.
 4 Q. Did Mr. Dillon express to you who he thought was the
 5 better of the two candidates?
 6 A. At some point after Kevyn had indicated that he
 7 could work his way clear of a withdrawal from his
 8 firm and that if nominated by the Governor he would
 9 be in a position to accept an appointment by the
 10 ELB, yes, I think Andy indicated to me at that time
 11 that he thought Kevyn was the better of the two
 12 candidates.
 13 Q. Now, was the other candidate an attorney?
 14 A. No.
 15 Q. Was the other candidate a man or a woman?
 16 A. A man.
 17 Q. Was the other candidate local?
 18 A. Define local.
 19 Q. A Detroit resident?
 20 A. No.
 21 Q. A surrounding area of Detroit resident?
 22 A. I don't -- I won't dance here. I'll tell you he
 23 was -- his residence was south but he had been a
 24 Detroit resident.
 25 Q. Did the person have restructuring experience?

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1 A. He did.
 2 MR. WERTHEIMER: I'm sorry, did you say he
 3 was a Detroit resident?
 4 THE WITNESS: He had been a Detroit
 5 resident, but he was not at the time that I had
 6 discussed with him.
 7 MR. WERTHEIMER: I just missed it. Thank
 8 you.
 9 BY MR. SHERWOOD:
 10 Q. I'd like to ask you to look again at Exhibits 7 and
 11 8. If you could get those and look at 7 first.
 12 You got this email, Exhibit 7; is that
 13 correct?
 14 A. Yeah, I'm looking at 7.
 15 Q. I'm looking at the second paragraph and it appears
 16 that Mr. Dillon is reporting to the Governor and
 17 others including yourself when he says he "...met
 18 with the consultants to get briefed on the pension
 19 issue this afternoon", which consultant -- do you
 20 know what consultants he's referring to?
 21 A. No. I testified earlier that there are weekly
 22 consultant meetings, and I gave you the names of who
 23 were on those calls but I don't recall who he
 24 specifically is referring to here.
 25 Q. Do you know if they were the consultants for the

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1 City or some other consultants?
 2 A. I don't.
 3 Q. And he concluded that the situation was not good and
 4 that current pensions had to be cut significantly,
 5 correct?
 6 A. Well, I mean, I'm reading this. It says "Bottom
 7 line the situation's not good and the view of the
 8 consultants is that current pensions have to be cut
 9 significantly." I don't know which consultants he's
 10 referring to.
 11 Q. Okay. So if you look at -- so at least at some
 12 point as of this date certain consultants were
 13 telling Mr. Dillon and Governor Snyder that the
 14 pensions had to be cut significantly.
 15 Can we agree on that?
 16 A. I can agree that I'm reading the same line that
 17 you're reading.
 18 Q. Okay. Let's look at B --
 19 MR. ELLSWORTH: Were you finished with your
 20 answer, Rich?
 21 THE WITNESS: Yes.
 22 MR. SHERWOOD: I'm sorry.
 23 BY MR. SHERWOOD:
 24 Q. Let's look at the next, Exhibit 8. And this exhibit
 25 also deals with the issue of pension liability.

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1 Would you agree?
 2 A. It would appear so.
 3 Q. And in this email Mr. Dillon reports that in
 4 Mr. Orr's discussion with the pension, he is not
 5 going to translate the underfunded amount into an
 6 impact on retirees or employees vested rights.
 7 Do you see that?
 8 A. I do.
 9 Q. When you read this email on July 9th, the day after
 10 you got Exhibit 7, did you ask Mr. Dillon or the
 11 Governor why Mr. Orr is refusing to send a message
 12 on the underfunding amount to the representatives of
 13 the pensions?
 14 A. I don't recall asking that question, no.
 15 Q. Did it appear to you that Mr. Orr was not being
 16 candid with the pensions by not reporting the fact
 17 that they had to be cut significantly?
 18 A. I'm sorry, say that again.
 19 Q. Did it occur to you that Mr. Orr might not be being
 20 candid with the pensions by not reporting to them
 21 the fact that the pensions had to be cut
 22 significantly?
 23 A. That would be pure speculation on my part.
 24 Q. But this situation didn't cause you to make any
 25 recommendations to Mr. Dillon or the Governor or

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1 Mr. Orr; is that your testimony?
 2 A. Yes. I get copied on a lot of emails but I've
 3 testified that pension liability, pension models are
 4 frankly outside of my wheelhouse, and that's not my
 5 area of focus in consulting to the Governor or his
 6 team.
 7 Q. You testified that one of the things you did in the
 8 pensions is look at the practical impact on the
 9 people losing their pensions.
 10 Do you remember that testimony?
 11 A. I testified that I was -- it was desirable for me to
 12 see what that impact was but that I never received
 13 the data to actually understand the impact.
 14 Q. And but you said you talked to the Governor about
 15 that and I think Mr. Orr and Mr. Dillon and they all
 16 said that that was a good question.
 17 Do you recall that testimony?
 18 A. I don't recall talking to the Governor about that.
 19 I recall talking to Mr. Orr about that. And I
 20 recall saying to Andy that I had that conversation
 21 with Mr. Orr.
 22 Q. And is it -- am I right -- or tell me why you
 23 thought that was important.
 24 A. I'm a curious guy. I don't know what to tell you.
 25 I thought it was important because I did not

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1 understand -- this would be the third time I've
 2 testified to this. I did not understand what the
 3 distribution of those 20,000 pensioners was and what
 4 it meant in real dollars and real lives, and that
 5 was a question that I wanted to know the answer to,
 6 and so I was looking for the data set to ascertain
 7 that.
 8 Q. And the pensioners whose benefits are being cut, you
 9 understand, do you not, that they don't have a
 10 safety net like people in private industry do?
 11 MR. ELLSWORTH: Objection as to the form.
 12 Go ahead and answer, Rich.
 13 THE WITNESS: Which pensioners are being
 14 cut?
 15 BY MR. SHERWOOD:
 16 Q. Well, to the extent pensioners are being cut, they
 17 don't have a safety net like the PBGC, right?
 18 A. Well, I know that they don't have a PBGC; that's
 19 correct.
 20 Q. Are you aware of any other safety net that they
 21 might have?
 22 A. I'm only aware of safety nets that exist for all
 23 citizens once they get below a certain poverty line.
 24 Q. But they don't relate to their pension, do they?
 25 A. I believe that certain benefits are contingent upon

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1 what your income is, and whether that income comes
 2 from a pension or some other form it's your income.
 3 Q. So you're suggesting that these other government
 4 programs act as a safety net in lieu of the PBGC for
 5 lost pension benefits?
 6 A. No, I think you're suggesting that.
 7 Q. I'm just trying to understand what you're saying.
 8 I'm not trying to argue with you. I'm just trying
 9 to --
 10 A. What question is it you would like me to answer?
 11 Q. I'd like to know why -- whether you consider the
 12 fact -- in your investigation of the practical
 13 impact on people, were you doing that investigation
 14 out of concern for the people who were losing or
 15 stood to lose their pensions because they didn't
 16 have a safety net? That's what I want to know.
 17 A. Okay. I am not aware of what safety net does or
 18 doesn't exist for them currently. I was interested
 19 in what the practical implications of material
 20 savings would be against the distribution of those
 21 receiving pensions.
 22 And it was the answer to that question that
 23 led me to ask another question which is whether or
 24 not there might be an appetite for legislative
 25 remedy in the absence of safety net.

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1 Is that sufficiently clear?
 2 Q. Let me read it. And in terms of appetite for
 3 legislative remedy, your prior testimony was that
 4 your understanding was that that appetite was very
 5 low and that's why the inquiries kind of stopped
 6 there?
 7 A. My understanding is that the appetite for a large
 8 scale appropriation to Detroit was pretty low.
 9 I didn't have an opinion about whether or
 10 not there was an appetite for incremental safety net
 11 for impacted pensioners were they to be impacted. I
 12 was simply asking the question.
 13 Q. The June 14th meeting, you were at the meeting and I
 14 think you testified something like that you
 15 indicated that you thought Mr. Orr did a good job
 16 presenting the June 14th proposal.
 17 Do you remember that topic?
 18 A. Yes, I do.
 19 Q. Do you know whether at that meeting Mr. Orr or
 20 anyone on behalf of the City of Detroit requested
 21 that the parties there provide counterproposals to
 22 the proposal that was being made on June 14th?
 23 A. I don't recall the term counterproposal, but I do
 24 recall an invitation being put out to the group that
 25 says once you've digested this financial information

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1 and you understand the wherewithal what exists, to
 2 the extent that you want to sit down and negotiate
 3 in good faith now is not the time to do that, but
 4 there will be that time and here's the information
 5 that you need in order to interact intelligibly.
 6 I do recall that.
 7 Q. And that meeting was approximately a month before
 8 the bankruptcy filing.
 9 Were there follow-up -- were you present at
 10 any follow-up meetings after the June 14th meeting?
 11 A. With creditors?
 12 Q. Right.
 13 A. No.
 14 Q. Did anyone report to you on the status of follow-up
 15 meetings with creditors that occurred after the
 16 June 14th meeting?
 17 A. With counsel, yes.
 18 Q. What about without counsel?
 19 A. Not that I recall.
 20 Q. And what was said?
 21 MR. ELLSWORTH: Well, I -- I object to the
 22 extent that would call for disclosure of
 23 lawyer-client conversations.
 24 I think Mr. Baird said that the
 25 conversations that he had were with counsel present.

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1 He can clarify if I heard that wrong.
 2 THE WITNESS: No, that's correct. Counsel
 3 was present.
 4 BY MR. SHERWOOD:
 5 Q. But counsel was -- was counsel reporting back on how
 6 the negotiations were going with the creditor
 7 groups?
 8 A. No.
 9 Q. Who was making that report?
 10 A. Kevyn Orr.
 11 Q. What did he say?
 12 MR. ELLSWORTH: Well, I object again. If
 13 counsel was present during that discussion then
 14 that's subject to the attorney-client privilege and
 15 I object.
 16 MR. SHERWOOD: Are you instructing him not
 17 to answer --
 18 MR. ELLSWORTH: Yes.
 19 MR. SHERWOOD: -- a conversation between
 20 Mr. Orr and him --
 21 MR. ELLSWORTH: If it was a one-on-one
 22 conversation.
 23 MR. SHERWOOD: -- reporting on what
 24 happened at negotiations with creditors? I just
 25 want to make sure.

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1 MR. ELLSWORTH: It was --
 2 THE WITNESS: This was not a one-on-one.
 3 MR. ELLSWORTH: Was counsel present?
 4 THE WITNESS: Yes.
 5 MR. ELLSWORTH: I object, and I'm
 6 instructing him not to answer.
 7 BY MR. SHERWOOD:
 8 Q. Were you involved in any negotiations or did anyone
 9 report to you on negotiations with the bondholder
 10 creditors of the City of Detroit?
 11 MR. ELLSWORTH: Again, to the extent that
 12 would require a disclosure of lawyer-client
 13 privileged conversations, I object.
 14 MR. SHERWOOD: I just want a yes or no. I
 15 mean, I don't want the content.
 16 MR. ELLSWORTH: That's fine.
 17 THE WITNESS: Updates of those discussions
 18 were provided with counsel present.
 19 BY MR. SHERWOOD:
 20 Q. And none of that happened outside the presence of
 21 counsel?
 22 A. No.
 23 Q. During your discussions with Mr. Orr prior to his
 24 appointment, did he ever say to you that the
 25 appointment of an emergency manager and the filing

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1 of a Chapter 9 provides political cover for the
 2 Governor and/or the Mayor in regard to the process
 3 of making the tough decisions that face the City of
 4 Detroit in the context of the restructuring?
 5 A. He never said that to me.
 6 Q. Did anyone ever say that in your presence?
 7 A. Say it, no.
 8 Q. Write it?
 9 A. I saw an email where it was written, so I know that
 10 somebody said it.
 11 Q. Okay. I think I might have a copy of that email.
 12 Maybe I'll show it to you. Let's look at this one.
 13
 14 (Deposition Exhibit 10 was marked.)
 15
 16 BY MR. SHERWOOD:
 17 Q. We've marked this as Baird 10. You haven't seen it
 18 yet though, huh?
 19 A. Okay. Is this one where I need to start at the
 20 bottom and read it through? This doesn't look like
 21 any that I've ever seen before.
 22 Q. Yeah, it's really just two pages. If you start on
 23 the second page -- actually, you are referred to in
 24 this, so why don't we take a second to go through
 25 this and start with the --

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1 MR. ELLSWORTH: Rich, do you need a chance
2 to read it?
3 THE WITNESS: Yeah, I need to read this.
4 BY MR. SHERWOOD:
5 Q. Okay. Tell me when you're done.
6 A. Okay, I've completed reading it.
7 Q. Let's start with the email on page 301, which is the
8 second page. And Corinne Ball is talking to Kevyn,
9 and she talks about the Bloomberg Foundation and
10 whether we should talk to you, Mr. Baird, about
11 financial support for the project and the EM. And
12 then she refers to Harry Wilson from the Auto Task
13 Force told me about the Foundation and its interest.
14 I can ask Harry for contact info. This kind of
15 support in ways nationalizes the issue and the
16 project. Do you see that?
17 A. I do.
18 Q. Do you know whether the Bloomberg Foundation and
19 Harry Wilson, whether they were ever brought to your
20 attention by anyone at Jones Day?
21 A. They were not.
22 Q. So this is the first you're hearing of this?
23 A. No. I've seen not this entire string of email, but
24 I have seen -- from some emails that were provided
25 in discovery to me, I've seen this, the 1-31-13

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1 8:10 a.m., and I have seen all the way up through
2 the 1-31 11:01 a.m. from Kevyn Orr to Dan Moss, but
3 I have not seen this last piece which is from
4 Dan Moss to Kevyn Orr.
5 Q. And by this last piece, you're referring to really
6 the top of the email string, correct?
7 A. The top of the email string, right. The most recent
8 string of this.
9 Q. So as of January 31st, 2013, do you know who
10 Dan Moss is?
11 A. I believe -- I don't know exactly who he is, but I
12 know he's a colleague of Kevyn Orr's at Jones Day.
13 That's all I know. I've heard the name.
14 Q. As of January 31st, 2013, did Mr. Orr suggest to you
15 that Chapter 9 would be the best solution for the
16 City of Detroit for political reasons?
17 A. No, he did not.
18 Q. Did he suggest to you that Chapter 9 would not be an
19 alternative as of January 31st, 2013?
20 A. I don't believe he placed any priority of any sort
21 on Chapter 9 to me in any conversation or
22 communication.
23 Q. During the course of your discussions with Mr. Orr,
24 did he emphasize the need to have the unqualified
25 support from the Governor during the -- during his

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1 tenure as emergency manager?
2 A. I'm not sure I would use the term unqualified
3 support, but I certainly would testify that he
4 believed that support from the Governor for the
5 undertaking at hand was going to be an important
6 consideration.
7 Q. Did he say why that was important?
8 A. Yes, he did. That he recognized that this was going
9 to be a thankless job, a job where he would probably
10 be vilified and called a traitor to his race and to
11 his Democrat background, and that it would require a
12 great deal of resolve to overcome the difficulties
13 of the past decades that have gotten Detroit to
14 where it is today.
15 Q. Did he also seek the support of the Financial
16 Advisory Board?
17 A. At the -- well, yes, but not during the recruitment
18 process.
19 Q. When did he make the request that the Financial
20 Advisory Board should provide him with support and
21 oversight?
22 A. You'd have to --
23 Q. If he ever did.
24 A. Well, I have heard from members of the Financial
25 Advisory Board that he has made those overtures, but

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1 you'd have to ask him as to when and context.
2 Q. But he never had any discussions with you about
3 whether it would be beneficial to get support from
4 the Financial Advisory Board and how he was going to
5 go about that?
6 A. In general, Counselor, I think he -- we had a lot of
7 discussions about he was going to need all the
8 support he could get from every corner he could get
9 it from including the FAB and City Council.
10 Q. All right. Can I have one second? I think I'm done
11 but I don't want to close the record until I'm sure.
12 I just need one second.
13 (A pause was had in the proceedings)
14 MR. SHERWOOD: All right. I think that's
15 all. Thank you. I appreciate it.
16 THE WITNESS: Okay. Thank you.
17 MR. ELLSWORTH: Anybody else?
18 VIDEO TECHNICIAN: Deposition's concluded
19 at 4:49 p.m.
20 (Deposition concluded at 4:49 p.m.)
21 - - -
22
23
24
25

1 CERTIFICATE
 2 STATE OF MICHIGAN)
 3 COUNTY OF OAKLAND) SS:
 4

5 I, LAUREL A. JACOBY, Certified Shorthand
 6 reporter, a Notary Public, hereby certify that I recorded
 7 in shorthand the examination of RICHARD BAIRD, the
 8 deponent in the foregoing deposition; and that prior to
 9 the taking of said deposition the deponent was first duly
 10 sworn, and that the foregoing is a true, correct and
 11 complete transcript of the testimony of said deponent.

12 I further certify that no request was made for
 13 submission of the transcript to the deponent for reading
 14 and signature and that no such submission was made.

15 I also certify that I am not a relative or
 16 employee of a party or an attorney for a party; or
 17 financially interested in the action.

18
 19

20 LAUREL A. JACOBY, CSR-5059, RPR

21 Notary Public, Oakland County, Michigan

22 My commission expires: 9/1/18

23 Dated: This 13th day of October, 2013.

24
 25

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EXHIBIT B

In Re: City of Detroit, Debtor

*Treasurer Andrew Dillon
October 10, 2013*

*Moretti Group
471 W. South Street
Suite 41B
Kalamazoo, MI 49007
800-536-0804*



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1 UNITED STATES BANKRUPTCY COURT
2 FOR THE EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION - DETROIT
4 -----
5 In re: Chapter 9
6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846
7 Debtor, Hon. Steven W. Rhodes
8 -----
9 V I D E O T A P E D D E P O S I T I O N O F
10
11 WITNESS: TREASURER ANDREW DILLON
12 LOCATION: The Treasury Building
13 430 West Allegan
14 Lansing, Michigan 48909
15
16 DATE: Thursday, October 10, 2013
17 9:17 a.m.
18
19 APPEARANCES:
20 FOR PLAINTIFFS FLOWERS:
21
22 LAW OFFICE OF WILLIAM A. WERTHEIMER
23 30515 Timberbrook Lane
24 Bingham Farms, Michigan 48025
25 248.644.9200
billwertheimer@gmail.com
BY: WILLIAM A. WERTHEIMER (P26275)
FOR INTERNATIONAL UNION, UAW:
COHEN, WEISS and SIMON, LLP
330 West 42nd Street
New York, New York 10036-6976
212.563.4100
pdechiaracwswny.com
BY: PETER D. DeCHIARA, ESQUIRE
FOR THE RETIREES COMMITTEE:
DENTONS US LLP
1221 Avenue of the Americas
New York, New York 10020-1089
212.768.6881
arthur.ruegger@dentons.com
BY: ARTHUR H. RUEGGER, ESQUIRE

Page 2

1 APPEARANCES, CONTINUING:
2 FOR AFSCME, AMERICAN FEDERATION OF STATE, COUNTY AND
3 MUNICIPAL EMPLOYEES, AFL-CIO:
4
5 LOWENSTEIN SANDLER, LLP
6 65 Livingston Avenue
7 Roseland, New Jersey 07068
8 973.597.2538
9 jsherwood@lowenstein.com
10 BY: JOHN K. SHERWOOD, ESQUIRE
11
12 FOR GENERAL RETIREMENT SYSTEM; CITY OF DETROIT POLICE AND
13 FIRE RETIREMENT SYSTEM:
14
15 CLARK HILL
16 212 E. Grand River Avenue
17 Lansing, Michigan 48906
18 517.318.3060
19 sgallagher@clarkhill.com
20 BY: SEAN PATRICK GALLAGHER (P73108)
21
22 CLARK HILL
23 500 Woodward Avenue, Suite 3500
24 Detroit, Michigan 48226
25 313.965.8274
jgreen@clarkhill.com
BY: JENNIFER K. GREEN (P69019)
FOR THE FINANCIAL GUARANTY INSURANCE CORPORATION:
WILLIAMS WILLIAMS RATTNER &
PLUNKETT, PC
380 North Old Woodward Avenue
Suite 300
Birmingham, Michigan 48009
248.642.0333
eje@wwrplaw.com
BY: ERNEST J. ESSAD, JR. (P32572)
FOR THE CITY OF DETROIT:
JONES DAY
51 Louisiana Avenue, NW
Washington, D.C. 20001-2113
202.879.3939
gshumaker@jonesday.com
BY: GREGORY M. SHUMAKER, ESQUIRE

Page 3

1 APPEARANCES, CONTINUING:
2 FOR THE STATE OF MICHIGAN:
3
4 MICHIGAN DEPT. OF ATTORNEY GENERAL
5 Assistant Attorney General
6 Solicitor General Bureau
7 7th Floor G. Mennen Williams Building
8 525 West Ottawa Street
9 P.O. Box 30212
10 Lansing, Michigan 48909
11 517.373.1124
nelsonm9@michigan.gov
12 BY: MARGARET A. NELSON (P30342)
13
14 MICHIGAN DEPT. OF ATTORNEY GENERAL
15 Chief Legal Counsel
16 Executive Division
17 7th Floor G. Mennen Williams Building
18 525 West Ottawa Street
19 P.O. Box 30212
20 Lansing, Michigan 48909
21 517.373.1110
22 schneiderm7@michigan.gov
23 BY: MATTHEW SCHNEIDER (P62190)
24
25 OFFICE OF THE GOVERNOR-LEGAL DIVISION
George W. Romney Building
111 South Capitol Avenue
P.O. Box 30013
Lansing, Michigan 48909
517.241.5630
gadolam@michigan.gov
BY: MICHAEL F. GADOLA (P43960)
DICKINSON WRIGHT, PLLC
215 South Washington Square, Suite 200
Lansing, Michigan 48933-1816
517.487.4710
pellsworth@dickinsonwright.com
BY: PETER H. ELLSWORTH (P23657)
DEPARTMENT OF TREASURY
Richard H. Austin Building, 1st Floor
430 West Allegan Street
Lansing, Michigan 48922
BY: FREDERICK HEADEN (P41197)
VIDEO BY: Tim Reitman, Reitman Video Specialists
REPORTED BY: Laurel A. Jacoby, CSR-5059, RPR

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13 EXHIBIT NO. DESCRIPTION PAGE NO.
14 Exhibit 1 Bond Buyer Online article 23
15 Exhibit 2 State Constitution Excerpt
16 Article 24 38
17 Exhibit 3 July 18, 2013 letter
18 Re: Authorization to Commence
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EXHIBIT NO.	DESCRIPTION	PAGE NO.
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Exhibit 8	March 22, 2013 email Subject: Detroit pension info (Bates Nos. SOM 20009920-921)	116
Exhibit 9	June 11, 2013 email Subject: Professional fees (Bates Nos. DTMI 00234907-08)	118

(Exhibits attached to transcript.)
- - -

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October 10, 2013
Lansing, Michigan
9:17 a.m.

- - -

MS. NELSON: This is for purposes of the record of the Governor's deposition that was taken on October 9th.

There was a request at the conclusion of the Governor's dep for the production of an email which is the transmission email from the Governor's office to Kevyn Orr of what was marked as Governor's Exhibit 2, which was his July 18th, 2013 letter authorizing the filing of the bankruptcy.

I have produced this email and provided it to all counsel that are present today and we have agreed to mark it as Governor's Exhibit 11. The email is dated Thursday, July 18th, 2013. It was transmitted at 3:47 p.m., and the subject is high priority, and the attachment which is identified as 2013 0718 155044034 dot pdf is identical to the attachment identified in Governor's Exhibit 10 that was marked at the deposition yesterday.

And the subject matter I would point out between Governor's Exhibit 11 and Governor's Exhibit 10 is also identical, high priority. So for

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purposes of the record we're marking this as Governor's Exhibit 11. It is the email that was discussed and is now being produced that was the transmission of the July 18th letter from the Governor's office to Kevyn Orr at 3:47 p.m.

And I would also note on the record that the 7-18 letter was attached to the filing that was made with the petition. I believe the time stamp for The Court was 4:06 p.m. for that as well.

- - -

VIDEO TECHNICIAN: Today's date is October the 10th, 2013 and we're on the record at 9:20 a.m.

This is the video deposition of Treasurer Andrew Dillon. We're at the Treasury Building, 430 West Allegan in Lansing, Michigan.

Can the Secretary be sworn, please.

- - -

-TREASURER ANDREW DILLON-
called as a witness, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SHERWOOD:

Q. Treasurer Dillon, good morning. My name is Jack Sherwood from Lowenstein Sandler, and we represent AFSCME in the Detroit bankruptcy case.

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Thanks for being here today.

Have you ever been deposed before?

A. I believe so.

Q. Okay. On how many occasions?

A. A couple probably.

Q. Okay. Let me just give you some of the ground rules as a reminder.

My questions and your answers will be taken down by the court reporter and videotaped. You're under oath so it's like you're testifying in court.

Do you understand that?

A. Yes.

Q. And to the extent that you can wait for me to ask a full question before answering, that would be good, make it easier for the court reporter.

Your attorney might object from time to time, and to the extent that she does, obviously, you'll take your advice from her.

If you don't know the answer to a question or you don't understand a question, please let me know, and I'll try to clear it up for you.

Do you understand those --

A. Yes.

Q. -- instructions?

Is there any reason why you can't testify

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1 truthfully today?
 2 A. No.
 3 Q. And are you taking any medications or suffering from
 4 any illnesses or under the care of a doctor --
 5 A. No.
 6 Q. -- for any medical condition at this time?
 7 A. No.
 8 Q. Okay. Can you just briefly -- you are the Treasurer
 9 of the State of Michigan; is that right?
 10 A. Yes.
 11 Q. And can you -- how long have you held this post?
 12 A. Since January 1 of '11.
 13 Q. And what did you do before that? Just give me, you
 14 know, your previous work history before that.
 15 A. I served in the Michigan Legislature for six years,
 16 the last four as the Speaker of the House.
 17 Q. And prior to that?
 18 A. I worked for a private equity fund based out of
 19 Chicago.
 20 Q. What was the name of that firm?
 21 A. Wynnchurch Capital.
 22 Q. For how long were you at Wynnchurch?
 23 A. Three years.
 24 Q. And what three years were those? Was it like --
 25 A. '01 to '04.

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1 Q. And what was your position there?
 2 A. I was a managing partner. I found opportunities for
 3 them to buy -- companies to buy.
 4 Q. And did Wynnchurch specialize in any type of
 5 industry or financial products?
 6 A. Middle market companies based in the midwest or
 7 Canada was the focus.
 8 Q. And how long have you known Governor Snyder?
 9 A. I met him for the first time when I was in the
 10 Legislature, and it was just a brief meeting. I
 11 drove to Ann Arbor to meet him because Governor
 12 Granholm at the time had announced the 21st Century
 13 Jobs Fund plan, and I had a private equity
 14 background but not a venture capital background, and
 15 his name came to me as someone who understood
 16 venture capital.
 17 So I asked for a meeting, drove to Ann
 18 Arbor. We met for half hour to an hour, and I
 19 incorporated his thoughts and ideas into the 21st
 20 Century Jobs plan. And I didn't see him after that
 21 until he was running for Governor.
 22 Q. And when was that about?
 23 A. Probably 2010.
 24 Q. Did he appoint you as the Treasurer of the State?
 25 A. Yes.

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1 Q. And how did that come to pass?
 2 A. Got a phone call in the fall of 2010, I believe it
 3 was, and they asked if I would consider the
 4 position. Initially, I respectfully declined
 5 because I was ready to go back to the private
 6 sector. And I reconsidered about two weeks later,
 7 called back and said if you haven't filled it, I'll
 8 do it.
 9 Q. What was it about the job that excited you?
 10 A. I was having lunch with a friend of mine. He just
 11 said, hey, it's a great opportunity, why would you
 12 say no to that.
 13 And even though I had spent six years in
 14 Lansing, I didn't fully appreciate the role of the
 15 Treasurer for the State, and it's a fascinating job
 16 and fascinating time to have it.
 17 Q. When you say a fascinating time, what do you mean?
 18 Is it because of economic challenges facing
 19 Michigan?
 20 A. Local units primarily, yes.
 21 Q. Things like school boards and cities and the like?
 22 A. Right.
 23 Q. Did you have, going into the job, discussions with
 24 Governor Snyder about your view of the financial
 25 situations that existed in the local government

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1 units here in the State of Michigan?
 2 A. I don't recall. There may have been some high-level
 3 discussions in December '10 where we understood that
 4 there could be a lot of troubled cities and school
 5 districts in the cue, so it was on our radar before
 6 we started but nothing about my philosophy, what I
 7 would do in this role.
 8 Q. Okay. So when you say high-level discussions, can
 9 you tell me what you recall specifically about the
 10 high -- or even generally about the high-level
 11 discussions?
 12 A. We understood that we would be inheriting some
 13 financial crises throughout the state and we thought
 14 there was more to come and -- but we never got into,
 15 you know, he didn't grill me about what's my
 16 philosophy and how would I approach, you know, the
 17 challenges that would come our way.
 18 Q. Did you have any relevant experience in your career
 19 as a Legislator or Speaker of the House or in your
 20 private career that you thought you could bring to
 21 bear to address the financial issues facing the
 22 local units of government here in the State?
 23 A. A little bit. I have an accounting and a law
 24 degree, but I had three jobs that translated some
 25 relevance. I'd spent three years with GE Capital.

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1 We tended to -- they were called the lender of last
2 resort, so we financed tough credits typically.
3 From there I went to a bankrupt steel mill
4 and helped the owner try to restart that mill, so
5 that was kind of hands-on operational restructuring.
6 And then a lot of the companies we chased
7 at Wynnchurch would either be growth companies or
8 turnarounds, so I would say there was a nine-year
9 window there where I had some experience in the area
10 of turnarounds.
11 Q. What did you do to prepare for your deposition
12 today?
13 A. About a month ago I had a meeting. A couple of
14 Attorney Generals came to -- we didn't know if this
15 deposition was even going to happen because I don't
16 think the judge had ruled yet. And then last week I
17 had a meeting to prepare, and I think that meeting
18 lasted about two hours.
19 Q. Who was in that meeting?
20 A. My friend here to my right and --
21 MR. SCHNEIDER: Matthew Schneider.
22 THE WITNESS: And we have one other.
23 MS. NELSON: Oh, Mark Donnelly, just to
24 refresh his memory.
25 BY MR. SHERWOOD:

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1 Q. So it was Mark Dowling? Who's he with?
2 MS. NELSON: Mark Donnelly.
3 MR. SHERWOOD: I'm sorry.
4 MS. NELSON: Assistant Attorney General.
5 BY MR. SHERWOOD:
6 Q. Sorry. Who else?
7 A. Just the three and myself.
8 Q. Matthew Schneider is with who?
9 A. The Attorney Generals' office. We had a brief
10 meeting this morning at 8:30.
11 Q. Same crew?
12 A. Just the two this morning.
13 Q. I'd like to start talking a little bit about some of
14 the legislation, the State legislation.
15 Do you know what PA 4 is, correct?
16 A. Yes.
17 Q. And my understanding is that was signed into law in
18 March of 2011; is that right?
19 A. I don't recall the specific date but, generally
20 speaking, I think that's pretty close.
21 Q. And PA 4, the predecessor to PA 4 was a statute that
22 people call PA 72; is that right?
23 A. Right.
24 Q. Can you just generally describe your role in the
25 drafting or passage of either of those statutes?

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1 A. PA 72 is before my time. I believe it was 1990 give
2 or take.
3 PA 4, we started talking about it during
4 the transition period. We understood that PA 72 had
5 some limitations. So there was a few folks during
6 the transition that started looking at what you
7 could do to Public Act 72 to improve it, make it a
8 better tool for the State.
9 So my involvement was on the front end at
10 high level, thematic direction of what would later
11 become --
12 MR. WERTHEIMER: I'm sorry, high level
13 what?
14 THE WITNESS: Thematic. But in terms of
15 specific language or, you know, getting under the
16 hood of the actual words that were being
17 incorporated into the bills, I had very limited if
18 any role.
19 BY MR. SHERWOOD:
20 Q. So is it fair to say that PA 4 was passed at the
21 initiative of Governor Snyder?
22 A. I don't know the mechanics, but I would say -- I
23 mean, we obviously at the administration level were
24 focused on it and we had ideas about it in terms of
25 who -- typically what happens is if the

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1 administration wants a law passed they'll work with
2 the Legislature and find a sponsor, and I wasn't
3 part of that but I assume that probably happened
4 here.
5 Q. And is it fair to say that PA 4 was promoted by the
6 Governor to the Legislature?
7 A. I believe so.
8 Q. Okay. And you talked about PA 4 containing
9 improvements.
10 What was it about PA 72 that needed to be
11 improved?
12 A. Well, what we found is -- typically for a
13 governmental unit 75 give or take percent of your
14 costs are wages and benefits which leaves you -- if
15 you have a unit that might have a three-year
16 collectively bargained agreement in place, that
17 takes 75 percent of the ability to reduce expenses
18 off the table. It leaves you 25 percent of the
19 remaining spent. Typically, in government it's very
20 difficult to increase the revenue side of the
21 equation.
22 So that would be the major theme --
23 thematic difference I think from 72 to Public Act 4.
24 Q. So let me make sure I'm hearing you right. Was
25 there something about PA 4 that enabled the State to

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1 deal with wage and benefit issues that presented
 2 themselves to these local government units?
 3 A. Yeah. And I would add also it enabled us to get in
 4 earlier because typically if you can get into a
 5 situation earlier you might be able to avoid more
 6 Draconian or drastic measures that have to be
 7 implemented.
 8 So I'd say the primary goal of Public Act 4
 9 was to allow the State to have an earlier road in
 10 the crisis that a particular school district or
 11 city's encountering. And then in the law we spent a
 12 lot of time on this issue about, you know, the
 13 constitutionality of can you modify a CBA. And by
 14 the word CBA, I use collectively bargained
 15 agreement.
 16 But the thought was that we have two
 17 conflicting constitutional provisions here. One is
 18 the prohibition against impairing of contracts and
 19 then the other is the duty of the State to provide
 20 for the public health, safety and welfare. So those
 21 are your competing constitutional provisions, as I
 22 understand it.
 23 And where we came out on that, to my
 24 memory, is that -- that if you temporarily modify.
 25 So the thought wasn't that you just blow up a

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1 contract or you permanently change the terms of the
 2 contract, but in order to deal with the crisis to
 3 protect the public health, safety and welfare, the
 4 thought was that the State has the ability to
 5 temporarily modify until the crisis or the emergency
 6 is over.
 7 To me that's the two primary differences
 8 between PA 72 and PA 4.
 9 Q. And how is it that PA 4 specifically gave the State
 10 more power to address those issues?
 11 A. On the front end I'd have to review PA 72 and
 12 compare it to PA 4 before I would feel comfortable
 13 answering that, but PA 72 did not have a provision
 14 that allowed for a temporary modification of the
 15 CBA.
 16 Q. Did PA 72 have a provision for the appointment of an
 17 emergency manager?
 18 A. Yes.
 19 Q. And PA 4 retained that?
 20 A. Right. And they had two different terms. I think
 21 under 72 it was emergency financial manager, an EFM.
 22 Q. Right.
 23 A. Under PA 4 it was changed to just an emergency
 24 manager.
 25 There's another big difference I guess as

Page 19

1 well which was my memory is that under schools, an
 2 EFM could pursue a Chapter 9 without the Governor's
 3 consent but not for a city.
 4 Q. I'm sorry, I just want to make sure the record's
 5 clear. I'm reading it here.
 6 Did PA 4 allow a school board to file
 7 Chapter 9 without the Governor's consent?
 8 A. I don't believe -- well, again, I'd like to look at
 9 PA 72 but my memory was --
 10 MS. NELSON: He's speaking about PA 4.
 11 THE WITNESS: Oh, PA 4.
 12 MS. NELSON: His question was to PA 4.
 13 THE WITNESS: No, under PA 4 both cities
 14 and school districts require the Governor's approval
 15 for a filing.
 16 BY MR. SHERWOOD:
 17 Q. Okay. Now, I assume you're aware that PA 4 during
 18 2011 and 2012 was heavily criticized by certain
 19 members of the population here in Michigan, correct?
 20 A. I recall some of that.
 21 Q. And it was referred to as a dictatorship law,
 22 undemocratic, emergency managers don't answer to the
 23 public. Does that sound familiar to you?
 24 A. I have a recollection of that, yes.
 25 Q. And, actually, some of that criticism was directed

Page 20

1 at you, correct?
 2 A. Correct.
 3 Q. And certainly Governor Snyder as well.
 4 Do you think that that was fair criticism?
 5 A. I think it's just a harsh reality that when you have
 6 a -- whether it be a school district or a city in a
 7 severe financial crisis that you've got to have
 8 someone that can make decisions. And often times
 9 what you'll find is the governance more in cities
 10 maybe than school districts is -- makes it very
 11 difficult to navigate through a financial crisis.
 12 So I understand the criticism but the stark
 13 reality is that it's the best path that I'm aware of
 14 to solve a financial crisis.
 15 Q. Now, PA 4 was submitted for a referendum in November
 16 of 2012; is that right?
 17 A. I believe so, yeah.
 18 Q. And did you take a position with respect to the
 19 proposed referendum with respect to PA 4?
 20 MS. NELSON: Are you speaking in his
 21 official capacity as Treasurer or in his personal,
 22 because his personal capacity is privileged.
 23 I assume you're speaking in his official
 24 capacity as Treasurer did he take a position?
 25 MR. SHERWOOD: I never heard of a personal

Page 21

1 capacity of privilege.
 2 MS. NELSON: It's right to vote, his right
 3 to vote.
 4 MR. SHERWOOD: Okay.
 5 BY MR. SHERWOOD:
 6 Q. In your capacity as Treasurer.
 7 A. I don't recall. I do recall that there was six
 8 measures on the ballot and there was really no one
 9 out there advocating in favor of preserving the law,
 10 Public Act 4, but I don't recall if we ever issued a
 11 statement from the Treasurer's Office defending
 12 Public Act 4.
 13 Q. Did you have any conversations with the Governor
 14 about this proposed referendum with respect to PA 4?
 15 A. I think we had a few, and I think there was, as I
 16 said, six measures and some were deemed -- you know,
 17 you can't fight a six-front battle, right, so I
 18 think we all thought PA 4 was a necessary law and we
 19 hoped it would be preserved.
 20 But there was other measures on the ballot,
 21 and often times the electorate only has so much
 22 attention span, so I think we weren't out there
 23 putting a full court press on to preserve the law.
 24 Q. Why did you think -- or when you say we, are you
 25 talking about, you the Treasurer, and the Governor?

Page 22

1 Why did you think that was a necessary law?
 2 A. Because in my experience Public Act 72, you know,
 3 wasn't as effective as the residents or the children
 4 in school districts needed, and I thought that
 5 Public Act 4 was a significant improvement.
 6 Q. One of the other criticisms that I read about about
 7 PA 4 was that it protected bondholders over other
 8 types of creditors.
 9 Are you familiar with that type of
 10 criticism being lodged during the referendum
 11 process?
 12 A. Not specifically.
 13 Q. What about generally?
 14 A. I just don't recall. I mean, I'm certain it was
 15 probably used as a talking point for those that
 16 wanted to repeal PA 4, but I don't have a specific
 17 recollection of it.
 18 Q. Do you remember talking to a publication called Bond
 19 Buyer Online about the referendum to repeal PA 4?
 20 A. I've spoken to them several times so I don't know
 21 the specific interview that you're referring to.
 22 Q. Do you recall saying to Bond Buyer Online that the
 23 criticism of PA 4 reflects a lack of understanding
 24 of the municipal market?
 25 A. I -- that sounds like something I would say, but I

Page 23

1 don't specifically recall saying that.
 2 Q. Tell me what is it about the municipal market that
 3 PA 4 helped.
 4 A. Can you restate that?
 5 Q. What is it -- how does PA 4 help a city or a school
 6 board or a city like the state of Detroit deal with
 7 the municipal market?
 8 A. Can you read my statement again one more time?
 9 Q. It says that "Criticism of PA 4 reflects a lack of
 10 understanding of the municipal market."
 11 Actually, I have a copy of it if that will
 12 help.
 13 A. That's fine. I think if you can go in and address
 14 issues you're going to make that particular unit
 15 more financially stable, and thus you'll have a
 16 healthier community that can provide services and
 17 pay its obligations.
 18 Q. I guess we can mark this as Exhibit 1.
 19
 20 (Deposition Exhibit 1 was marked.)
 21
 22 BY MR. SHERWOOD:
 23 Q. Sorry about the small type and everything, but it
 24 says -- this is just something I pulled off line.
 25 It says Critics of Public Act 4 argue that

Page 24

1 the law protects bondholders above other creditors,
 2 an argument that Dillon said lacks an understanding
 3 of the municipal market.
 4 A. Okay, this helps, having read it.
 5 Q. Okay, sorry.
 6 A. Often times when a unit gets into financial trouble
 7 they can't access the market on their own. So the
 8 way that they can access the market is they'll work
 9 with Treasury where we will say, all right, if
 10 you're going to borrow money we tell the bond money
 11 providers that we will intercept the money, make
 12 certain that you get paid first.
 13 So if someone wanted to say that an
 14 unsecured creditor or a nonbond creditor of a
 15 community could be pari passu, on equal footing of
 16 an existing bondholder, in that circumstance they'd
 17 be misguided because when the bond deal got done for
 18 the troubled unit we have an agreement with the
 19 trustee typically that will intercept the revenues
 20 that come from the State to the unit, pay the debt
 21 of the bonds, and then whatever surplus is left goes
 22 to the City.
 23 So once that deal is put in place, you
 24 can't undo it, per se, and then say well, we're just
 25 not going to pay the bondholders so we can put more

Page 25

1 money into the City so they can pay their bills.
 2 So I think what I'm referring to here is
 3 that situation where there's a trustee in place or
 4 an intercept agreement where the State has an
 5 obligation to make certain that the bond providers
 6 are paid first. And once that's in place you can't
 7 undo it.
 8 Q. Okay. And by an intercept agreement, you're -- I
 9 mean, would that be something like a security
 10 interest in a pledged flow of funds from a
 11 particular source?
 12 A. Can you restate that?
 13 Q. By intercept agreement that's not a concept I've
 14 heard before, but I have heard things like
 15 collateral, pledge, assignment, security interest.
 16 Is that what you mean?
 17 A. I think you're too narrow. There's several
 18 different ways to do this. For example, and this
 19 happens in school districts where state aid can be
 20 intercepted first.
 21 In Detroit, for example, there's a trustee
 22 set up that collects the casino revenues before they
 23 go to the City, and that trustee then transfers
 24 those payments to certain creditors of the City.
 25 So sometimes it's a state acting, sometimes

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1 it could be a private entity, a trustee, that
 2 receives the monies first, and I think there could
 3 be a variety of ways these get structured.
 4 Q. Okay. And by saying -- you say "I appreciate Main
 5 Street saying everyone should share in the pain, but
 6 troubled cities have to structure their deals in a
 7 certain way to get access to the market."
 8 So you're saying that with respect to
 9 creditors that have intercept agreements, they don't
 10 have to share the pain with Main Street?
 11 A. It's harder for them to, I think, because they do --
 12 if -- they have a -- typically, in this case, and I
 13 don't want to overstate it and be too broad here,
 14 but when there's an intercept agreement in place I
 15 think it effectively serves like a filed lien, like
 16 a mortgage on a home.
 17 There may be exceptions to that, but
 18 generally speaking, yes, and you'll find some older
 19 communities before they got in financial trouble
 20 they might have gone out and done unsecured
 21 borrowing, right? So there's no intercept there.
 22 They're then unsecured and in the pool of all the
 23 unsecureds.
 24 When you have an intercept, you know, I
 25 want to be careful not to say every intercept

Page 27

1 agreement creates a secured, you know, lender but
 2 probably most would be effectively a secured lender.
 3 Q. So are you saying that it's your view that to the
 4 extent that a bondholder has an intercept agreement
 5 in a restructuring, particularly in the
 6 restructuring of the City of Detroit, that they
 7 don't have to share the pain with the other
 8 creditors of the City?
 9 A. I don't think I understand your question because
 10 restructuring at what point? I mean, a city can be
 11 restructuring before Treasury is even involved so.
 12 Q. Before or after? At any time? I mean, at what
 13 point is it appropriate if ever for the bondholders
 14 with intercept agreements or other special
 15 collateral arrangements to share the pain?
 16 A. Well, it's my -- I mean, some of this calls for a
 17 legal -- a lot of this calls for a legal conclusion,
 18 but it's my understanding that if you're let's say a
 19 revenue bondholder, right, you're a -- typically,
 20 you're a secured lender, and you're entitled to the
 21 revenue streams that you negotiated at the front end
 22 of the deal.
 23 So in Detroit's case you have a lot of
 24 revenue bondholders that are entitled to revenue
 25 streams that come in to pay for water and sewer

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1 services. Their collateral is that revenue stream,
 2 and if that revenue stream is inadequate to service
 3 the debt then they could be in harms's way. And
 4 it's my understanding that that's how Chapter 9
 5 would deal with revenue bondholders.
 6 There's a myriad of different ways. I
 7 don't mean to be evasive, but there's a lot of
 8 different ways where intercept agreements can get
 9 negotiated. I think that the one as it relates to
 10 the casino revenues in Detroit is rather unique, and
 11 it may not reflect kind of a standard borrowing that
 12 may take place going forward.
 13 We did a financing a year and a half ago
 14 for Detroit. It was \$137 million deal and that to
 15 my knowledge my staff helped secure that, but that
 16 was done with an agreement to intercept State
 17 revenue sharings to make certain that that debt was
 18 serviced.
 19 So if the lenders did their job and got the
 20 legal requirements that they need to have the
 21 priority their first right to that revenue stream,
 22 then they're probably protected. If they have
 23 defects in the legal work or they don't have a
 24 contractual right to that revenue stream, they
 25 probably will be treated like any other creditor.

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1 Q. Well -- all right. So let me just move forward now
2 to the striking down of PA 4 by the voters of the
3 State. That happened in November of 2012; is that
4 right?
5 A. Right.
6 Q. And as State Treasurer, did you have a view on how
7 if at all this would impact Wall Street's view on
8 the subdivisions, the government subdivisions of the
9 State of Michigan and specifically the City of
10 Detroit?
11 A. At least one and maybe more credit rating agencies
12 said the fact that the State of Michigan had Public
13 Act 4 on the books was a credit positive. They
14 viewed it as a favorable environment for lending
15 into the State.
16 So when it got repealed, as it relates to
17 at least those one, maybe two credit rating
18 agencies, it would be deemed a credit negative that
19 Michigan now doesn't have that law which they deemed
20 to be a credit positive on the books.
21 And we then reverted back to Public 72
22 which was in my mind, you know, a good start, but it
23 needed some improvements to be effective.
24 Q. Would the repeal of Public Act 4 have any impact on
25 the credit rating of the State of Michigan?

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1 A. Indirectly. I mean, the State has its own credit
2 rating and its own revenues and expenses and
3 obligations. Local units are stand-alone and have
4 their own responsibilities and obligations. So I
5 would only say it's indirectly.
6 I think if -- the rating agencies, I think
7 if they view that a state is mismanaging its local
8 units I think that they would view that negatively
9 on the State, but it doesn't directly provide a
10 commentary on whether or not the State is going to
11 repay its debt.
12 Q. You said that the markets reflected PA 4 as a credit
13 positive. What was it about PA 4 based on your
14 experience that had a positive impact on the credit
15 rating of the government subdivisions here in
16 Michigan?
17 A. Well, I mean, I think we should pull the statements
18 that were issued by the ratings agencies. I don't
19 remember if it was Moody, Standard or Poor or Fitch.
20 I think it might have been Moody's. I mean, they
21 issued actually statements saying it's a credit
22 positive.
23 I think they appreciate a state that is
24 proactively managing its finances as well as those
25 of their cities and school districts.

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1 Q. So is it the view of Wall Street or the credit
2 markets that where a state has the power to go in
3 and take over or manage a political subdivision,
4 that is positive from the perspective of the
5 markets, based on your experience?
6 MS. NELSON: Compound question, form,
7 foundation. Do you want to talk about a takeover?
8 You said take over or manage.
9 MR. SHERWOOD: You can object.
10 MS. NELSON: Form, foundation.
11 MR. SHERWOOD: And --
12 MS. NELSON: Compound.
13 MR. SHERWOOD: -- Treasurer Snyder can tell
14 me if he doesn't understand the question.
15 Now, can you read back the question?
16 MR. WERTHEIMER: Actually, it's Treasurer
17 Dillon.
18 MR. SHERWOOD: I'm sorry.
19 THE WITNESS: I got a promotion at the
20 deposition.
21 MR. SHERWOOD: Hold on. Let her read back
22 the question.
23 THE WITNESS: Actually, if I give you a
24 comment maybe you can rephrase it. That will make
25 it easier, because you're asking me to say what the

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1 credit markets think, and I'm not the credit
2 markets.
3 BY MR. SHERWOOD:
4 Q. I understand that, but as State Treasurer and a
5 person with substantial experience both in private
6 life and public life, I think you can give me your
7 perception of why PA 4 was viewed by the credit
8 markets as something that was attractive --
9 A. Yeah.
10 Q. -- and I'd like you to do that.
11 A. Detroit's a good example. The health of your
12 biggest city has an impact on the health of the
13 State, right, and if you have a city of 700,000
14 folks that don't have access to public safety, kids
15 can't walk safely to school, there's no lights on,
16 that's going to have a negative impact on the
17 State's economy.
18 So my personal opinion is yes, that's a
19 credit positive, that if you have a state that
20 proactively tries to prevent those types of health,
21 safety and wellness crises within their state to
22 have a healthy vibrant city, it's good to make the
23 state healthy and vibrant.
24 Q. But isn't it in the first instance the job of the
25 city government to fulfill those needs and address

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1 those concerns?
 2 A. That's how we've set it up.
 3 Q. And are you saying that in the case of Detroit, city
 4 government did not fulfill those needs?
 5 A. I think we've found there are circumstances where
 6 local units have been unable to provide essential
 7 services or gotten themselves too far into debt that
 8 it becomes very difficult to navigate out of.
 9 Q. What was your understanding of the repeal of PA 4?
 10 How did that operate practically? Did that mean,
 11 based on your understanding, that there was no
 12 emergency manager law as of the date of that repeal?
 13 A. My memory is the Attorney General told us that upon
 14 the repeal of PA 4, PA 72 was the law that we should
 15 follow.
 16 Q. And but didn't -- wasn't that opinion struck down by
 17 the Supreme Court of the State of Michigan?
 18 A. I don't recall that.
 19 Q. Okay. Was that opinion challenged in court?
 20 A. It may have been. I don't recall.
 21 Q. And you don't know what the result of that legal
 22 challenge was?
 23 A. I don't ever remember that PA 72 was not a law that
 24 we at Treasury were supposed to rely upon during
 25 these windows where PA 4 was repealed and before

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1 PA 436 took effect.
 2 Q. All right. So let's turn to PA 436 real quick.
 3 Why was PA 436 implemented if PA 72 was in
 4 effect?
 5 A. Because the same reason we put PA 4 in place. We
 6 thought PA 72 could be improved upon. So after the
 7 election there's a few meetings where we really did
 8 gather what were the criticisms of PA 4 and looked
 9 to see if we could improve PA 4 to make it address
 10 those concerns.
 11 And then as we had worked with PA 4 for a
 12 period of time, we identified some areas that we
 13 would want to seek improvement, and I'll give you
 14 one example. Often times we would want to give the
 15 reigns, the power back to the local electeds, and in
 16 order to do that under Public Act 4 you'd have to
 17 end the emergency. And we were uncomfortable about
 18 that because we were prepared to give -- return the
 19 power before we were a hundred percent certain that
 20 the financial emergency was over.
 21 So if you see in 436 what we did was we put
 22 in place something called a Transition Advisory
 23 Board, and that allows us to transfer power back to
 24 the Mayor and the City Councils without having to
 25 terminate the emergency status, so it allows us to

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1 get out sooner. That would be something we learned
 2 during, you know, using or relying on Public Act 4.
 3 We also looked at, you know, various
 4 criticisms and we tried to put more local
 5 involvement into Public Act 436. So, for example,
 6 you'll see if the locals don't like a decision, a
 7 material decision being made by a manager, they're
 8 given a chance to come up with a better idea. And
 9 there's various ingredients like that that we added
 10 to address some of the criticisms of PA 4.
 11 Q. So in enacting PA 436 after the repeal of PA 4, it
 12 was not your view that the Legislature and the
 13 Governor were going against the will of the voters?
 14 A. I think we tried to accommodate the criticisms we
 15 heard during the campaign.
 16 Q. Well, the voters didn't -- they didn't like the EM
 17 law. They thought it was a dictatorship, they
 18 thought it was undemocratic.
 19 How specifically did 436 address the
 20 concern of, you know, the EM law being a
 21 dictatorship?
 22 A. Well, for example, one of the changes were, you
 23 know, it wasn't just right to emergency. We had a
 24 path for a consent agreement, we had a path for
 25 emergency, we had a path for a restructuring, and

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1 then the fourth option was an actual Chapter 9 in
 2 case someone was really out of cash.
 3 So we tried to create options for the local
 4 units and we tried to give them a chance to come up
 5 with better ideas if they didn't like the plans of
 6 the manager. From the meetings I sat in, I think
 7 there was a sincere effort to address that. And,
 8 you know, my memory was that the vote on PA 4 was
 9 not a landslide. It was actually -- there was not
 10 anyone advocating for the protection of PA 4, and
 11 the vote was pretty close.
 12 If -- it wasn't one of six ballot measures
 13 and the only one -- I think it was the only one that
 14 you wanted a vote the other way. I forget whether
 15 it was yes or no kept the law, but it was the only
 16 one where I think you had to vote yes to keep it and
 17 all the other ones, you know, required a no vote.
 18 So it was a pretty close vote without one
 19 advocate out there saying why this law makes sense.
 20 And in my experience, I don't know that a lot of
 21 people spent a lot of time really reading through PA
 22 4 and why it was necessary.
 23 Q. Did any of the changes between PA 4 and PA 436 deal
 24 specifically with the ability of the emergency
 25 manager to file bankruptcy?

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1 A. I don't recall if there's differences there.
 2 Q. In your discussions with Mr. Orr, did you discuss
 3 with him the differences between PA 4 and PA 436?
 4 A. I don't recall. I do know that we spent time
 5 briefing him on how 436 works, and I know he spent a
 6 lot of time reading the statutes, and I think he had
 7 a good understanding of what 436 was, but in terms
 8 of a discussion where we compared the two, I don't
 9 recall that.
 10 Q. Give me one second. Did you have any role -- I'm
 11 sorry. We okay?
 12 VIDEO TECHNICIAN: We haven't gone off the
 13 record.
 14 MR. SHERWOOD: Good.
 15 BY MR. SHERWOOD:
 16 Q. Did you have any role in the drafting of PA 436?
 17 A. Not in the drafting, but as I indicated earlier,
 18 there was some meetings probably late November,
 19 early December about trying to address and improve
 20 Public Act 4.
 21 So there was some high-level themes that I
 22 attended meetings and discussed, but in terms of the
 23 actual drafting of language, I didn't have any role
 24 in that.
 25 Q. Let's mark this as Exhibit 2.

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1
 2 (Deposition Exhibit 2 was marked.)
 3
 4 MS. NELSON: Do you have a copy that I can
 5 look at?
 6 MR. WERTHEIMER: For the record, all of us
 7 have seen this before.
 8 BY MR. SHERWOOD:
 9 Q. All right. So we've marked as D-2 Section 24 of the
 10 State Constitution. It's just an excerpt of the
 11 Constitution which says "The accrued financial
 12 benefits of each pension plan and retirement system
 13 of the State and its political subdivision shall be
 14 a contractual obligation thereof which shall not be
 15 diminished or impaired thereby."
 16 Are you familiar with this provision of the
 17 State Constitution?
 18 A. I am aware it existed and I now just read it.
 19 Q. Okay. Based on your review and understanding of PA
 20 436, does PA 436 in any way impact Section 24 of the
 21 Michigan Constitution?
 22 MS. NELSON: Objection; calls for a legal
 23 conclusion.
 24 BY MR. SHERWOOD:
 25 Q. I just want your understanding.

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1 A. Can you restate the question?
 2 Q. During your consideration of PA 436 and your
 3 discussions about it, did anyone ever come out and
 4 say anything like let's try to modify Section 24 of
 5 the Constitution?
 6 A. No, but when we did Public Act 4 we had this
 7 discussion.
 8 Q. Okay. And what was said in that discussion?
 9 A. I asked various lawyers that were involved, you
 10 know, how does this shake out? You know, you have
 11 these -- you know, can you -- the key item of PA 4
 12 that raised a lot of concerns was the ability to
 13 temporarily modify CBAs, and I have a different unit
 14 too.
 15 So we discussed this provision when we
 16 drafted PA 4, and the answer I recall getting at the
 17 time was that you have these competing provisions;
 18 the responsibility to provide for the public, health
 19 safety and welfare as well as that you can't impair
 20 contracts.
 21 And I believe there's a case back in the
 22 thirties, and don't hold me to this, but I think
 23 there was one case that addressed this issue a long
 24 time ago. So in my mind the issue was resolved for
 25 me during the PA 4 discussions, so when 436

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1 resurfaced I didn't revisit the discussion but
 2 others may have.
 3 Q. Was it your understanding based on your experience
 4 and knowledge somehow under the authority of PA 436
 5 that the State of Michigan or the City of Detroit
 6 could disregard the constitutional provision
 7 protecting pension and retirement benefits?
 8 A. I'm sorry, could you read it?
 9 MR. SHERWOOD: You can read it back.
 10 (Reporter read pending question.)
 11 THE WITNESS: Could you read it one more
 12 time?
 13 (Reporter read record as follows:
 14 "Q. Was it your understanding based on your
 15 experience and knowledge somehow under the
 16 authority of PA 436 that the State of
 17 Michigan or the City of Detroit could
 18 disregard the constitutional provision
 19 protecting pension and retirement
 20 benefits?").
 21 THE WITNESS: No, I don't think PA 436 gave
 22 you that right. I think you have economic
 23 realities.
 24 For example, I have a different unit where
 25 their pension fund is funded at less than 10

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1 percent, and I do recall asking for legal advice
 2 about if that thing runs to zero, what happens? And
 3 it's a unit that can't afford to raise taxes or
 4 service that.
 5 And the memory I have is that, yeah, it's
 6 still there in the Constitution, but if the unit
 7 can't pay the pension they can't pay the pension.
 8 So I would say 436 --
 9 BY MR. SHERWOOD:
 10 Q. Why doesn't that logic also apply to the bondholder
 11 creditors of the City of Detroit? If the unit can't
 12 pay, doesn't have enough to pay its pension
 13 obligations and its obligations to Wall Street, why
 14 doesn't that logic also apply?
 15 MS. NELSON: Objection; calls for a legal
 16 conclusion and for speculation.
 17 THE WITNESS: I'm not certain that it
 18 doesn't. If the unit doesn't have the money to pay
 19 their bondholders, there's a problem, and I guess
 20 that's what Chapter 9 is for or some type of effort
 21 to resolve it in a different way.
 22 We do that all the time working with units
 23 to see if we can restructure and help them
 24 restructure debts that they may have. But if
 25 there's no money to pay, whether it be payroll or a

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1 pension or a bondholder, there's no money.
 2 BY MR. SHERWOOD:
 3 Q. But I think you testified earlier that, you know,
 4 because certain bondholders have the protection of
 5 entitlement to revenue streams that they should have
 6 exclusive claims to those streams; is that right?
 7 A. I don't know if I said they should have, but I think
 8 that if they've done their legal work and they've
 9 got the right to that stream, I think the courts
 10 will recognize they have the right to that revenue
 11 stream.
 12 Q. By the same token, the holders of vested pension and
 13 retirement benefits have the protection of the
 14 Constitution of the State of Michigan which prevents
 15 those benefits from being diminished or impaired in
 16 any way.
 17 Why is it that they have to make sacrifice
 18 in the context of the Chapter 9 case but not the
 19 bondholders?
 20 MS. NELSON: Objection; form, foundation,
 21 assumes facts not in evidence. There's no plan
 22 that's even been filed that suggests that.
 23 MR. SHERWOOD: You can object to form.
 24 MS. NELSON: Form, foundation, speculation,
 25 improper hypothetical, and assumes facts not in

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1 evidence.
 2 THE WITNESS: Yeah, I mean, I think those
 3 are decisions that would be made by a judge at some
 4 point.
 5 BY MR. SHERWOOD:
 6 Q. Well, didn't the Governor make that decision by
 7 appointing the emergency manager?
 8 A. I don't believe so.
 9 Q. Wasn't one of the purposes of 436 to enable an
 10 emergency manager to file Chapter 9?
 11 A. I -- I mean, it was in PA 72, it was in PA 4, it was
 12 in 436. I don't think that PA 436 changed that. In
 13 fact, the law we were relying on at the time was
 14 PA 72 that allowed for filing of a Chapter 9, so I
 15 don't think I accept that premise.
 16 Q. Let's -- this has been marked a hundred times, but
 17 let's mark this as Dillon 3. It's the July 18th,
 18 2013 authorization letter.
 19
 20 (Deposition Exhibit 3 was marked.)
 21
 22 MR. WERTHEIMER: It's now Orr 11, Snyder 2
 23 and Dillon 3.
 24 MR. SHERWOOD: Orr 11, Snyder 2 and
 25 Dillon 3, okay.

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1 BY MR. SHERWOOD:
 2 Q. Treasurer Dillon, I assume you've seen Dillon 3
 3 before?
 4 A. Yes.
 5 Q. Okay. Did you review this in preparation for your
 6 deposition today?
 7 A. I did take a glance at it, yes.
 8 Q. Turning to the last page in the contingencies
 9 paragraph, that's a reference to PA 436.
 10 It says "...my approval of the
 11 recommendation to commence a Chapter 9 proceeding
 12 may place contingencies on such a filing.... I am
 13 choosing not to impose any such contingencies today.
 14 Federal law already contains the most important
 15 contingency - a requirement that the plan be legally
 16 executable."
 17 Are you familiar with that language?
 18 A. I am.
 19 Q. Did you help the Governor draft this letter?
 20 A. I did not.
 21 Q. Did you see it in draft form before it went out?
 22 A. I did not.
 23 Q. Okay. In PA 436, do you have an understanding of
 24 why that legislation provided that the Governor
 25 could place contingencies on a Chapter 9 filing?

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1 A. I wasn't part of the drafting of the language, so I
2 don't feel that I can answer that question.
3 Q. During the time leading up to the issuance of this
4 letter on July 18th, 2013, did you have discussions
5 with anybody about this contingency provision of
6 436?
7 A. I believe there was a -- yes, I did.
8 Q. And who did you have those discussions with?
9 A. I don't recall specifically. I had -- there was a
10 conference call, I believe, of the Governor's --
11 folks from the Governor's office as well as some
12 from Treasury where we discussed the pros and cons
13 of the issue and that was, you know, days before the
14 Governor's letter came out.
15 And then I had a brief conference call with
16 some Jones Day lawyers about the concept of it as
17 well.
18 Q. All right. So I think you talked about two
19 conversations?
20 A. I believe that's what I recall.
21 Q. All right. So let's leave out the Jones Day
22 discussion for now.
23 During the first conversation --
24 discussion, what was said about this provision in PA
25 436 concerning contingencies?

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1 MS. NELSON: Objection; attorney-client
2 privilege.
3 BY MR. SHERWOOD:
4 Q. Were attorneys present during that conference?
5 MS. NELSON: You need to answer verbally.
6 THE WITNESS: Oh, yes. Yes, I believe Mike
7 Gadola was on the conference call.
8 BY MR. SHERWOOD:
9 Q. Who is Mike Gadola?
10 A. He's the Governor's general counsel.
11 Q. And was he there to give legal advice?
12 A. I assume so.
13 Q. All right. But when you were -- when -- you can do
14 nothing but assume he was there. He was just there?
15 He wasn't there providing legal counsel to the folks
16 on the phone?
17 A. That was my understanding, that he was the
18 Governor's general counsel and he was advising us on
19 that issue.
20 Q. Did you view the conversation as one that was
21 confidential and privileged? Did you say anything
22 that you wouldn't say if a lawyer was in the room?
23 MS. NELSON: Which question would you like
24 him to answer first? You have two questions there.
25 MR. SHERWOOD: Okay.

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1 BY MR. SHERWOOD:
2 Q. Did you view the conversation as confidential?
3 A. Yes.
4 Q. Did you say anything that you wouldn't have said if
5 a lawyer was not in the room?
6 A. I don't believe so. I don't recall all the
7 specifics of that discussion.
8 Q. But you do know that the contingency provision of PA
9 436 was discussed on that call, right?
10 A. Yes.
11 Q. And then there was a follow-up call which -- when
12 did that call take place? Can you tell me the date
13 of the call, approximately?
14 A. No, but it would be within a week of the Governor's
15 letter coming out, I believe.
16 Q. Okay. And then the call with Jones Day that you
17 also described, did that happen before, did that
18 happen later?
19 A. I believe it happened before that conference call.
20 Q. Okay. So first there was a conference call where
21 Jones Day participated, and who was on that call?
22 A. There was -- I don't recall specifically. The call
23 happened in my office. I probably had one or two of
24 my staff on the call, and then who was on the other
25 end of Jones Day, I don't recall any names, to be

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1 honest with you.
2 Q. Did you ever suggest to the Governor that in
3 authorizing the filing of Chapter 9 the Governor
4 should place a contingency on his authorization that
5 prohibited the emergency manager from violating the
6 constitutional rights of the City's pension and
7 benefit claimants?
8 A. I don't recall having done that.
9 Q. Was that your view?
10 A. I don't believe so. I mean, I appreciated that we
11 had an issue here, but I didn't tell the Governor
12 hey, you can't do that without having a contingency
13 in this constitutional provision.
14 Q. Did the Governor ever solicit your point of view
15 with respect to that issue?
16 A. No.
17 Q. Did you ever suggest to the Governor that the use of
18 the language that's set forth in D-3 under
19 contingencies, that the use of that language was a
20 way to sort of punt the issue to the federal court?
21 A. No. I didn't discuss any of this paragraph with the
22 Governor.
23 VIDEO TECHNICIAN: Secretary Dillon, you're
24 losing your microphone.
25 BY MR. SHERWOOD:

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1 Q. So you're not aware of any discussions where the use
 2 of this language in D-3 was viewed as a way to avoid
 3 having to make a decision as to the constitutional
 4 protections for pension benefits and the like?
 5 A. The first time I saw this letter was on freep dot
 6 com, so I didn't have discussions with the Governor
 7 about this provision.
 8 Q. Did you ever discuss just the idea with the Governor
 9 of how it would -- how he would authorize the filing
 10 of a Chapter 9 given the constitutional protection
 11 for vested pension and retirement benefits?
 12 A. I don't recall any specific discussion in that
 13 context.
 14 Q. What about general discussions in that context?
 15 A. Yeah, I don't recall. I mean, I may have shared
 16 with him the advice I got about another unit who I
 17 was worried about where I knew that they didn't have
 18 any funding in their pension plan and that when the
 19 money runs out, you know, the view was that the
 20 State was not liable for making up that difference.
 21 We may have -- I may have shared that
 22 opinion I got from a lawyer, but I don't remember
 23 the specific date or time or window when that may
 24 have been shared, but I'm pretty certain I probably
 25 did share that concept with him.

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1 Q. During your conversations with the Governor, did
 2 you -- either you or the Governor indicate to one
 3 another that you were looking for a way to avoid the
 4 constitutional obligation to not impair the rights
 5 of vested pensions and benefits?
 6 MS. NELSON: Objection; asked and answered.
 7 Go ahead.
 8 THE WITNESS: Can you read that question
 9 back?
 10 (Reporter read pending question.)
 11 THE WITNESS: We never had a discussion
 12 about the desire to circumvent the Constitution in
 13 any way.
 14 MR. SHERWOOD: Can we take a five-minute
 15 break at this point?
 16 VIDEO TECHNICIAN: Going off the record at
 17 10:21 a.m.
 18 (A brief recess was taken.)
 19
 20 (Deposition Exhibit 4 was marked.)
 21
 22 VIDEO TECHNICIAN: We're back on the record
 23 at 10:30 a.m.
 24 BY MR. SHERWOOD:
 25 Q. Okay, Treasurer Dillon, I've showed you what's been

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1 marked as Dillon 4, and I realize these are emails
 2 that you probably have not seen before, but they are
 3 emails that were sent by the emergency manager where
 4 he describes the new EM law as a "end around the
 5 prior initiative that was rejected by the voters in
 6 November."
 7 MS. NELSON: I'm going to object to your
 8 characterization it was sent by the emergency
 9 manager.
 10 At the date of January 31st, 2013, Kevyn
 11 Orr was not the emergency manager.
 12 MR. SHERWOOD: Okay. And you can only
 13 object to form and privilege so, please, no more
 14 speaking objections.
 15 BY MR. SHERWOOD:
 16 Q. Would you agree with Mr. Orr's statement on
 17 January 31st, 2013, that the EM law was a "end
 18 around the prior initiative that was rejected by the
 19 voters in November"?
 20 A. I don't. I recall sincere meetings where we
 21 examined what were the criticisms of the PA 4 and
 22 tried to address them in the new legislation.
 23 Q. So you don't agree with his characterization?
 24 A. No.
 25 Q. Do you know -- if you look down to the bottom

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1 paragraph where Mr. Orr states that "...although the
 2 new law provides the thin veneer of a revision it is
 3 essentially a redo of the prior rejected law and
 4 appears to merely adopt the conditions necessary for
 5 a Chapter 9 filing."
 6 Do you agree with that statement?
 7 A. No, because I -- we spoke earlier about the tab
 8 added, the four options that the locals have, the
 9 18-month window for which an EM can serve.
 10 So, I mean, those were sincere efforts on
 11 the part of the Governor as well as my staff to
 12 address issues that were raised during the ballot
 13 initiative.
 14 Q. So you disagree with this statement by Mr. Orr as
 15 well; is that your testimony?
 16 A. I disagree with his characterization.
 17 Q. Does the new law 436 adopt the conditions necessary
 18 for a Chapter 9 filing?
 19 A. I believe it does. I don't have a legal opinion to
 20 that effect, but I think it's -- 72 had it, 4 had it
 21 and I believe 436 has it. So we didn't need 436
 22 because we had 72 at the time, so --
 23 Q. Was there any discussion that you were a part of
 24 where the start date for Mr. Orr was discussed?
 25 A. Sure. Yes.

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1 Q. And was there ever a discussion about sort of
 2 coordinating the start date for Mr. Orr with the
 3 expiration of the old EM law?
 4 A. I don't recall.
 5 Q. Do you recall that initially the start date for
 6 Mr. Orr was going to be somewhere in mid March of
 7 2013?
 8 A. I believe -- my memory is his actual start date had
 9 more to do with his schedule than ours.
 10 Q. Did his start date have anything to do with the
 11 expiration of the old EM law and the -- I guess the
 12 start date for the new EM law, 436?
 13 A. I don't believe so.
 14 Q. So you weren't party to any conversations with
 15 Mr. Orr or the Governor where it was discussed that
 16 the start date for the EM should sort of coincide
 17 with either the expiration of the old law or the
 18 effective date of the new law?
 19 A. I don't recall that discussion. It's not that it
 20 didn't happen, I just don't recall it.
 21 Q. Yeah, because the effective date of the new law is
 22 March 28th, 2013, and I believe that's the same date
 23 that he was formally appointed. Isn't that right?
 24 A. My memory is he served three days under 72 give or
 25 take and then the new law kicked in, so he actually

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1 served under both is my memory.
 2 Q. Okay. Do you -- were you part of the search team
 3 for the emergency manager?
 4 A. I don't think we had an official search team, but
 5 yes, I was involved.
 6 Q. Who else was involved with you?
 7 A. Primarily Rich Baird.
 8 Q. And were you at the meeting on I think it was
 9 January 28th, 2013, at the airport in Detroit where
 10 the law firms were interviewed?
 11 A. Yes.
 12 Q. And Mr. Baird was there as well?
 13 A. Yes.
 14 Q. And I think Mr. Buckfire was there?
 15 A. Most likely.
 16 Q. Anyone else on the side of the City and the State
 17 that you remember?
 18 A. I believe Tom Saxton and Brom Stibitz from Treasury
 19 were there. I believe Chris Andrews and Jack Martin
 20 from the City were there. I believe we may have had
 21 some members of the Financial Advisory Board there.
 22 There may have been a few others I don't recall.
 23 Q. Had you known or heard of Mr. Orr before that
 24 meeting?
 25 A. No.

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1 Q. Why was it that people from the State were at a
 2 meeting to select counsel for the City of Detroit?
 3 A. Well, the City, as you might recall at the time, was
 4 under a consent agreement, and we were struggling
 5 with that and we were bringing in some professionals
 6 to help with the City. And December it involved an
 7 investment bank and some restructuring firms; E and
 8 Y and Conway MacKenzie, and then the last piece of
 9 the puzzle was the law firm.
 10 Q. And before that meeting, where did the search for an
 11 emergency manager stand? How many candidates -- how
 12 many serious candidates did you guys have at that
 13 point?
 14 A. Before the -- what meeting?
 15 Q. Before the meeting at the airport with the law
 16 firms.
 17 A. At the Jones Day?
 18 I don't recall specifically but there
 19 wasn't a lot. You know, we -- at that point I would
 20 say we thought we had very few candidates that, A,
 21 could do it and, B, were willing to do it.
 22 Q. And how did it develop that Mr. Orr was identified
 23 as a candidate? Did it happen at that meeting or
 24 after that meeting?
 25 A. I believe it was after that meeting Rich called me,

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1 Rich Baird called me and said what do you think of
 2 Orr? And it was just a phone conversation is how it
 3 started is my memory.
 4 Q. And before that meeting, your only knowledge of or
 5 exposure to Mr. Orr was his being part of the Jones
 6 Day pitch team; is that fair to say?
 7 A. Right.
 8 Q. And your first notice that Mr. Orr was a prospect
 9 was -- came from Mr. Baird?
 10 A. Right.
 11 Q. Do you know whose idea it was to propose Mr. Orr as
 12 a candidate?
 13 A. I believe it was Mr. Baird.
 14 Q. And what was your reaction?
 15 A. I was favorably inclined to explore it. We had only
 16 met him for -- I forget how long those interviews
 17 lasted but give or take an hour. So I had never met
 18 him before then, so my experience with him is
 19 limited.
 20 Q. What was it about Mr. Orr that in your view made him
 21 qualified to be the emergency manager?
 22 A. There's two primary attributes that I appreciated.
 23 One was he had a restructuring background which
 24 clearly we needed and we'd been struggling in the
 25 City, both from an operational as well as a balance

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1 sheet restriction.
 2 The other is my experience as Treasurer
 3 dealing with emergencies in other cities, it's
 4 really important that the manager has the right
 5 personality because there's a way to do the job and
 6 a way that calms the critics and the community, and
 7 there's a way to kind of ruffle feathers. And I
 8 liked Mr. Orr's disposition. I thought he would
 9 have the ability to communicate a clear message as
 10 to the reason why what is being done is being done,
 11 and I thought that in many ways that is in large
 12 measure probably the most important requirement.
 13 Q. Did there come a time when you expressed your
 14 support of Mr. Orr as the potential emergency
 15 manager?
 16 A. Yeah. I had one meeting with him in my memory, and
 17 it was a lunch really and it was more social -- as
 18 much social as business related, but coming away
 19 from that meeting I was impressed and supportive,
 20 and I know Rich was doing a lot of the groundwork to
 21 vet him as a potential candidate and I trust Rich's
 22 judgment.
 23 Q. During those meetings with Mr. Orr, did you discuss
 24 the path to Chapter 9 for the City of Detroit?
 25 A. No. I think it was more us sharing with him what

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1 our experience is in dealing with emergencies and
 2 how the law works, and in a way I think it was more
 3 information coming from Treasury to Orr than the
 4 other way around.
 5 Q. During the Jones Day legal presentation at the
 6 airport on the 28th of January, did Jones Day lay
 7 out to the group a path to Chapter 9 for the City of
 8 Detroit?
 9 A. No.
 10 Q. Did they provide a written slide show or
 11 presentation that laid out bankruptcy issues and
 12 restructuring issues?
 13 A. We interviewed six firms that day, I believe. I
 14 don't remember the specifics of any particular
 15 pitch. I do know that Chapter 9 was a discussion,
 16 you know, in probably most all of the firms that we
 17 met with, but I don't -- I have zero memory of any
 18 discussion about a path.
 19 Q. And just for the record, I've been saying the
 20 January 28th meeting in the airport. I'm told that
 21 it's really January 29th.
 22 A. Okay.
 23 Q. So, for the record, we're talking about the same
 24 meeting.
 25 During your discussions with Mr. Orr, did

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1 he -- did you or he address the political issues
 2 that were confronted by the Governor in terms of the
 3 emergency manager statute and treatment of
 4 retirement and pension benefits for the City
 5 employees?
 6 A. I don't recall that.
 7 Q. You don't recall that at all?
 8 A. I don't recall the specifics of our discussion. I
 9 remember the lunch meeting where I think it was, as
 10 I said before, more of us sharing with him what the
 11 role of an EM is like and less some lessons that
 12 were learned by us.
 13 It wasn't like -- I don't recall any
 14 circumstance where I was with Kevyn and I felt like
 15 I was getting a tutorial about how did we get into
 16 Chapter 9. I don't have any memory of something
 17 like that.
 18 Q. But during those discussions certainly you discussed
 19 the pension exposure, the exposure to the pension
 20 and the obligation to pay retiree benefits and the
 21 impact that -- of that on the financial affairs of
 22 the City of Detroit, didn't you?
 23 A. We would have discussed the City's cash position
 24 because that was front and center at the time. You
 25 know, do they have enough cash to navigate through

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1 the next year was probably the biggest issue.
 2 And I suspect we would have high-level
 3 discussions about the balance sheet of the City, but
 4 there was no discussion about, you know, how do you
 5 circumvent any liability and there was no talk about
 6 hair cutting bondholders or pensioners or walking
 7 away from health care, but there was general
 8 discussions I'm sure about the condition of the
 9 balance sheet.
 10 Q. And you don't recall any specific discussions with
 11 Mr. Orr in all of your interaction with him where
 12 pension and health care obligations of the City
 13 were discussed and plans for dealing with those
 14 obligations were discussed?
 15 MS. NELSON: I'm going to object to form
 16 and foundation. Is there a time frame?
 17 BY MR. SHERWOOD:
 18 Q. Well, I guess it would be January --
 19 MS. NELSON: You said all his
 20 conversations. Are you --
 21 MR. SHERWOOD: January 28th through the
 22 filing date of July 18th.
 23 MR. WERTHEIMER: Yeah.
 24 THE WITNESS: Yes.
 25 BY MR. SHERWOOD:

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1 Q. So you had discussions with him about those issues?
 2 A. Yes.
 3 Q. And what did you say and what did he say?
 4 MS. NELSON: Well, I'm going to object
 5 because that will intrude on attorney-client
 6 privileged communications, so you're going to have
 7 to parse it out.
 8 BY MR. SHERWOOD:
 9 Q. Did you have any conversations without counsel
 10 present?
 11 A. Yes.
 12 Q. Okay. And what was said during those?
 13 A. I mean, there was dozens of conversation so it's
 14 hard for me to pick out one particular one and have
 15 a clear memory of what was said.
 16 Q. Did you talk about the number, how much of -- how
 17 much the pension was underfunded with Mr. Orr
 18 outside the presence of counsel?
 19 A. There was discussions about what the funding status
 20 of the pensions was, and it was and continues to be
 21 a bit of a moving target. So we discussed that yes,
 22 there's a study being done to estimate what is the
 23 current funding status of the pension funds.
 24 Q. Did you discuss with him outside the presence of
 25 counsel the cost of health care to the retired City

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1 employees and the impact of that on the City's
 2 finances going forward?
 3 A. I'm sure we did.
 4 Q. Did you discuss with him the fact that Section 24 of
 5 the State --
 6 MR. WERTHEIMER: Article 9 Section 24.
 7 BY MR. SHERWOOD:
 8 Q. Article 9 Section 24 of the Michigan Constitution
 9 provided that financial benefits of each pension
 10 plan and retirement system shall not be diminished
 11 or impaired?
 12 A. There was a general understanding that there was a
 13 constitutional protection of pensions that was
 14 understood by folks from day one. So I think it
 15 would be a premise of all discussions that were had.
 16 Q. That was something that you understood, right?
 17 A. I understood that there was a constitutional
 18 provision, yes.
 19 Q. And based on your discussions with Mr. Orr, did you
 20 understand that he understood the constitutional
 21 protection?
 22 A. I'm -- I believe he understood there was a provision
 23 in the Michigan Constitution that addressed this
 24 issue.
 25 Q. And certainly the Governor understood that as well?

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1 A. I believe he did.
 2 Q. And you guys all had that understanding before the
 3 bankruptcy was filed, correct?
 4 A. Yes.
 5 Q. And was it your understanding in the course of the
 6 restructuring of the City of Detroit that a proposal
 7 was made on June 14th to address those liabilities?
 8 A. I attended that and I probably flipped through the
 9 book during the presentation, and I believe there
 10 was an area that covered that topic, yes.
 11 Q. And would you describe the treatment of the claims
 12 of the pensions and retirement systems as being
 13 diminished or impaired under that proposal?
 14 A. I'd like to see it before I comment on it.
 15 Q. You'd like to see the proposal?
 16 A. The language in there, yeah.
 17 Q. While they're looking for it, do you know -- if you
 18 look at -- and I'm sorry, everybody's seen this, but
 19 it has been previously marked as Snyder 3, and this
 20 is the June 14th proposal for creditors.
 21 And if you turn to page 109 there is a
 22 underlined bullet point on treatment of pensions.
 23 MR. WERTHEIMER: Just for the record,
 24 that's one or another of us line. It isn't on the
 25 original document.

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1 MR. SHERWOOD: Yeah.
 2 THE WITNESS: I recall this and my memory
 3 is that the intent of this document was to lay out
 4 the facts for the creditors so that they could
 5 understand the financial condition of the City.
 6 BY MR. SHERWOOD:
 7 Q. Can I have it back? Oh, you lost the page.
 8 A. Sorry.
 9 Q. That's okay, I'll find it.
 10 But it does say at the bottom of page 109
 11 that "Given the underfunding amount, there must be
 12 significant cuts in accrued vested pension amounts
 13 for both active and currently retired employees",
 14 correct?
 15 A. That's what the document says.
 16 Q. And would you -- is it your view that the -- that
 17 significant cuts in accrued vested pension amounts
 18 for both active and currently retired persons is
 19 consistent with the Michigan Constitution,
 20 Section 24?
 21 A. That's a legal question that in my mind the courts
 22 will decide.
 23 Q. Okay. But it's really not a legal question. It's
 24 pretty obvious that it is a violation of the
 25 Constitution, isn't it?

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1 A. I don't agree with that.
 2 MS. NELSON: Objection; argumentative.
 3 BY MR. SHERWOOD:
 4 Q. And without giving your -- as a Treasurer, as a
 5 former Legislator, is it your view or do you agree
 6 that the proposed treatment on June 14th, 2013,
 7 providing for cuts in accrued vested pension amounts
 8 for both active and currently retired persons would
 9 be violative of Section 24 of the Michigan
 10 Constitution?
 11 A. No, because that doesn't provide for it. To my
 12 mind, and this is how this Governor does business,
 13 is he hires good people and lets them do their job.
 14 To me that document was laying out the
 15 facts for creditors so they could understand the
 16 financial condition of City.
 17 Q. So this wasn't a proposal even though it's -- even
 18 though the title of the document is proposal for
 19 creditors?
 20 A. I think he's just laying out the facts. This is the
 21 economic reality of the City of Detroit. From
 22 there, as you know, there was various meetings with
 23 various creditors to discuss can we get this thing
 24 settled out of court.
 25 Q. Did you participate in any of those meetings?

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1 A. I don't believe so.
 2 Q. Were you given reports by the emergency manager as
 3 to how those meetings were going?
 4 A. We typically had a weekly either meeting or call
 5 where we were given an update on the status of
 6 events.
 7 Q. Who was on the weekly meeting call?
 8 A. It would be Kevyn and some of the members from his
 9 team, various members of the Governor's office as
 10 well as my office.
 11 Q. And what was reported in terms of the progress that
 12 the emergency manager was or wasn't making with the
 13 out-of-court negotiations?
 14 MS. NELSON: I'm going to object to the
 15 extent that it calls for attorney-client
 16 communications and instruct him not to answer.
 17 That, in fact, is what it calls for.
 18 BY MR. SHERWOOD:
 19 Q. Did you have any communications with Mr. Orr outside
 20 the presence of counsel --
 21 A. Yes.
 22 Q. -- concerning -- concerning negotiations with
 23 creditors before the Chapter 9?
 24 A. Yes.
 25 Q. And what did you say during those communications?

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1 A. I was mostly just listening because I was getting an
 2 update about how things were going.
 3 Q. What was the -- what did he say?
 4 A. The only specific memory I have would be the one
 5 dealing with the SWOPS, discussions with the SWOP
 6 providers and whether or not there could be a
 7 settlement reached with them.
 8 Q. What did Mr. Orr say about the SWOPS?
 9 A. He reached an agreement with two of the SWOP
 10 providers that he could get a discount on the monies
 11 owed on the SWOPS, and that's my only memory of a
 12 specific -- I knew every week that he was meeting
 13 with various creditors, but that's the only one that
 14 I remember kind of a specific deliverable for.
 15 Q. And do you recall anything else about those
 16 nonprivileged conversations?
 17 Did he report that the negotiations were
 18 going well, that they were going poorly, that they
 19 were not going at all, anything along those lines or
 20 do you just recall the specific discussion about the
 21 SWOPS?
 22 A. Yeah. I -- there was, I think, just general
 23 comments that they weren't real productive, right,
 24 that we weren't making progress.
 25 Q. Did he say why?

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1 A. I'm sure he did, but it would require going through
 2 each of the various creditors that he met with at
 3 the time so I don't have specific memories of each.
 4 The only one I have a specific memory right
 5 now about would be very difficult discussions with
 6 the suretys, the insurance companies, a lot of
 7 unwillingness to embrace what the economic realities
 8 were, and then a lot of concern about the number of
 9 retirees and the unions not wanting to represent the
 10 retirees, making it difficult to negotiate for
 11 20,000 people.
 12 Q. Did he say it was impossible to negotiate with all
 13 of the creditors of the City of Detroit? Did he
 14 reach that conclusion in your presence?
 15 A. I don't recall the specific words he used but
 16 clearly he was expressing that it was very difficult
 17 to work and negotiate with a pool of creditors that
 18 include 20,000 individuals, yes.
 19
 20 (Deposition Exhibit 5 was marked.)
 21
 22 BY MR. SHERWOOD:
 23 Q. Treasurer Dillon, we've marked as Dillon 5 an email
 24 from you dated July 9th to the Governor and others.
 25 Are you familiar with this email?

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1 A. Yes.

2 Q. And it says that "Kevyn will meet with the Detroit
3 pensions tomorrow after all."

4 I want to ask you about the word after all.

5 Was there a suggestion before you wrote this email
6 that Kevyn was not going to meet with the Detroit
7 pensions?

8 A. Yeah. I think before that there was some thought
9 that that meeting was going to get cancelled.

10 Q. And who was going to cancel it?

11 A. My memory is Kevyn might have. There was a lawsuit
12 that was filed that I think caused some
13 consternation about whether or not he should meet
14 with them.

15 Q. So initially Mr. Orr was considering not meeting
16 with the pensions on July 10th, 2013, and then he
17 changed his mind and decided to meet with them?

18 A. My memory is there was a plan to meet with them,
19 then some lawsuits got filed which I think he
20 contemplated not going forward with the meeting.
21 And from reading this, apparently he went forward
22 with the meeting.

23 Q. Going down to the last paragraph it says "Tomorrow's
24 meeting could lead to questions directed to you
25 about your view on this topic."

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1 Obviously, you is the Governor, and the
2 Governor's view on this topic, I assume this topic
3 is the Detroit pensions. Would that -- is that
4 right? Am I right saying those things?

5 A. Right.

6 Q. So and then you -- then you say "...it's too
7 early in the process to respond to hypothetical
8 questions. We remain in many ways in the
9 informational stage."

10 Does that mean that at this point in time,
11 July 9th, 2013, you were still in the informational
12 stage vis-a-vis the Detroit pensions?

13 A. We were learning things. We were learning about an
14 annuity program that the City had offered employees.
15 We were learning that there was alternative
16 investments that were made that were not written
17 down. We were learning what assumptions the
18 City's actuarial firm was making versus the ones
19 that Milliman was hired to really appreciate and
20 understand what was the level of underfunding.

21 So on that date in question I couldn't tell
22 you that these funds were funded at X percent
23 because there was too many moving pieces to the
24 puzzle.

25 Q. So your advice to the Governor was in response to

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1 questions about his view on the Detroit pensions was
2 to just say it was too early in the process and you
3 were still in the informational stage; is that
4 right?

5 A. That's right.

6 Q. And this was before the Governor authorized
7 Chapter 9 filing, correct?

8 A. Correct.

9 Q. Did that -- did your view of the Governor's -- what
10 the Governor's position should be change before
11 July 18th, in the next week?

12 A. No.

13 MR. SHERWOOD: All right. I'm going to
14 stop here, Treasurer. Thank you.

15 I reserve the right if we have time to ask
16 a question or two later, but I think as a courtesy
17 to my -- the other lawyers here I'm going to turn
18 over the mic to them.

19 Thank you for your testimony this morning.
20 Should we take a quick break?

21 VIDEO TECHNICIAN: Off the record 11:02
22 a.m.

23 (A brief recess was taken.)

24 VIDEO TECHNICIAN: We're back on the record
25 at 11:06 a.m.

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1 EXAMINATION

2 BY MR. WERTHEIMER:

3 Q. Mr. Dillon, my name is Bill Wertheimer. We've met
4 off the record. I'm going to be asking you some
5 questions.

6 I represented and represent what we've
7 called the Flowers Plaintiffs. That is one of the
8 group of retirees that filed lawsuits in state court
9 before the bankruptcy was filed.

10 You indicated early in your testimony that
11 you were involved in some discussions shortly after
12 you took office as Treasurer about replacing Public
13 Act 72. Do you recall that?

14 A. Uh-huh. Yes.

15 Q. You need to say your answer.

16 A. Yes.

17 Q. And you talked about competing constitutional
18 provisions, one of them being the constitutional
19 provision relating to public health, safety,
20 welfare, correct?

21 A. Correct.

22 Q. And as I understand it, your focus at the time had
23 to do with your ability to modify CBAs; is that
24 right?

25 A. That's right.

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1 Q. Would the competing constitutional provision that
 2 you were discussing at the time have been the
 3 impairment of contracts provision?
 4 A. Yes.
 5 Q. So it wasn't the provision dealing specifically with
 6 pensions?
 7 A. Correct.
 8 Q. Am I right?
 9 A. Right?
 10 Q. Okay, that's what I thought.
 11 Do you recall any discussions that dealt
 12 with the pension provision in those discussions that
 13 led up to Public Act 4?
 14 A. Not specifically, and if -- it may have been at the
 15 time, but when I look back now my memory is really
 16 it was the two competing ones were the impairment of
 17 contract and the health, safety and welfare.
 18 So not that we never discussed nine, but
 19 those were really the two that were the focal point
 20 for me, and it's very likely that the other
 21 Article 9 provision was discussed as well, but I
 22 don't have as much memory about that.
 23 Q. You don't have a memory about it.
 24 When you were talking after the referendum
 25 where Public Act 4 went down and you're now talking

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1 about a replacement for that, were there any
 2 specific discussions relating to the Article 9
 3 provision; that is, the one relating to pensions?
 4 A. Not to my memory.
 5 Q. Do you recall any consideration at all as to whether
 6 you should put any kind of contingencies in the
 7 statute in -- at that point in the statute where
 8 you're giving the emergency manager or the City the
 9 ability to file for bankruptcy?
 10 A. I was not part of discussions in that regard, and I
 11 was not close to the actual drafting and movement of
 12 the legislation through the Legislature.
 13 Q. Okay. You have been -- would it be fair to say
 14 you've been closely involved in the Detroit
 15 situation from the time you took office in January
 16 of 2011?
 17 A. Yes.
 18 Q. Could you briefly tell us what your role has been
 19 since then and how that role has changed, briefly,
 20 from January of 2011 up to date?
 21 A. Yeah. To the best I can, because it goes back a
 22 long time. There's been a lot of activities in
 23 between.
 24 Q. I understand. And we've got underlying documents
 25 with dates and stuff and titles, but I just want

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1 kind of a general framework.
 2 A. I mean, just generally speaking, Detroit was on our
 3 radar when we came in. We knew it was, you know,
 4 potentially in trouble. But the first six months I
 5 think that the dealings were rather limited. I
 6 recall we had some issues regarding Flint and DPS
 7 that predated our more active engagement with
 8 Detroit.
 9 And then Detroit started to experiencing,
 10 you know, cash crunches. And one of the consultants
 11 we used at DPS, we asked if he would help with
 12 Detroit. That was Gora Mahatra (ph.) from Ernst and
 13 Young. And really the focus on the early end was
 14 just understanding the City's cash position and
 15 making certain that they would be able to meet
 16 payroll and their essential obligations.
 17 And I had always told the Governor that to
 18 me kind of the trigger number was if the City got
 19 below 50 million in cash, I would come to him at
 20 that point and likely recommend that we begin a
 21 review, an emergency review. And that was kind of
 22 our benchmark is to -- I didn't want to be in a
 23 situation where the City got below 50 and then we're
 24 starting a review because it might be too late to
 25 help the City at that point.

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1 So on the early end it was a partnership
 2 with the City and just working with them, and then
 3 when the cash got tight, you know, we moved into the
 4 initial -- there was two reviews, right, the initial
 5 review which I think happened in '11 that led to a
 6 consent agreement and --
 7 Q. And the consent agreement was when, approximately?
 8 A. April, I think of '12 --
 9 Q. '12, okay.
 10 A. -- is my memory.
 11 And so during that, prior to the consent
 12 agreement there was a lot of obviously negotiations
 13 to get to that point so that we had an understanding
 14 and that the City had the ability to address their
 15 issues on their own. And then it wasn't until
 16 December of '12 where I had a meeting with Chris
 17 Andrews, and the City had gone through -- don't hold
 18 me to the number -- but tens of millions of dollars
 19 of cash from September through December where their
 20 disposable cash was eroding rapidly.
 21 And immediately after that meeting, I
 22 called the Governor and I said I think they're at
 23 the \$50 million threshold and I think we have to
 24 commence another review immediately. I believe that
 25 was because the law had changed. So the initial

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1 review was no longer valid because it was done under
 2 a prior law. So we initiated the new review in
 3 December of '12 which led ultimately to the
 4 emergency manager's appointment.
 5 Once the manager was appointed our
 6 day-to-day active role diminished somewhat.
 7 Q. Let me ask you a question about that.
 8 Do you have one-on-one conversations with
 9 Mr. Orr?
 10 A. Yes.
 11 Q. How often?
 12 A. It varies. One-on-ones would be -- it could be
 13 twice in a week or it could be zero in a week.
 14 Depends what issues are brewing.
 15 Q. What about larger discussions with other people
 16 ever, either in person or telephone conferences?
 17 How often with Mr. Orr since he's been appointed?
 18 A. We have a standing meeting on Mondays where it could
 19 be face-to-face or it could be over the phone where
 20 it's just a briefing on what happened last week,
 21 what's happening next week, where are we.
 22 Q. Has your role stayed essentially the same from the
 23 time Mr. Orr took over or did it at all change when
 24 he filed Chapter 9?
 25 MS. NELSON: Objection; form, foundation.

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1 You said when he took over and then when he filed
 2 Chapter 9.
 3 MR. WERTHEIMER: Well, there were two
 4 different times and I'm just trying to find out
 5 whether --
 6 BY MR. WERTHEIMER:
 7 Q. Go ahead.
 8 A. I think it's pretty much the same.
 9 Q. Okay.
 10 A. When he first came in, we gave him time to find out
 11 where the desks were and chairs and gave him time to
 12 assemble and then -- but the weekly standing meeting
 13 was pretty much a given.
 14 Q. At either the weekly meetings or in your one-on-one
 15 conversations with Mr. Orr, have you ever discussed
 16 with him either the subject of Article 9 Section 24
 17 of the Constitution specifically or generally the
 18 fact that the State Constitution does have some
 19 special protections for pensions?
 20 Has that subject matter come up in any of
 21 these conversations?
 22 MS. NELSON: Objection; attorney-client
 23 privilege. If you want to go ahead and establish
 24 whether those conversations occurred with or without
 25 counsel, then he can appropriately answer.

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1 BY MR. WERTHEIMER:
 2 Q. I'll ask you to exclude any conversations where your
 3 counsel was present, so either the one-on-ones or if
 4 in any of these group meetings you did not have
 5 attorneys present.
 6 A. I don't have any specific memory of a discussion
 7 about Article 9 with Mr. Orr.
 8 Q. How about discussions about the fact that there was
 9 this state provision that protected pensions?
 10 A. I'm -- I presume that it was discussed early on and
 11 it was understood by people that there was this
 12 provision in the Constitution.
 13 Q. Including Mr. Orr? That is, I assume you're saying
 14 that this came up in some way in your conversations?
 15 A. Yes.
 16 Q. Okay. Did it also come up in your conversations
 17 that the only practical way to deal with this issue
 18 absent getting consent from the 20,000 retirees or
 19 the unions on their behalf was the filing of a
 20 Chapter 9?
 21 A. I don't recall that conversation.
 22 Q. Isn't that, in fact, your understanding; that is,
 23 isn't it your understanding as you sit here that the
 24 only practical way that the State could have dealt
 25 with the State constitutional provision other than

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1 honoring it and the State coming in and making good
 2 on the pensions was for a bankruptcy to be filed?
 3 A. Not necessarily.
 4 Q. How else, as you sit here, do you think it could as
 5 a practical matter be dealt with?
 6 MS. NELSON: Objection; calls for a legal
 7 conclusion.
 8 BY MR. WERTHEIMER:
 9 Q. Go ahead, Mr. Dillon.
 10 A. There's another unit that I referenced earlier that
 11 has virtually no funding in their pension fund,
 12 right? So, I mean, my understanding is the law is
 13 very unsettled here, right?
 14 Q. Which law?
 15 A. That the law is unsettled.
 16 Q. Just the law generally?
 17 A. Right.
 18 Q. Go ahead.
 19 A. So if you have a unit that basically exhausts all of
 20 their pension monies and then has no means by which
 21 to honor those pension payments, what happens? I
 22 can't sit here and tell you, but I've had
 23 discussions. I've asked for legal advice on what
 24 happens, and the advice I got was --
 25 MS. NELSON: It's attorney-client

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1 privilege.
 2 THE WITNESS: Oh, okay.
 3 BY MR. WERTHEIMER:
 4 Q. You know as you sit here -- I'm assuming, I'm
 5 asking -- that the Attorney General has filed papers
 6 in the bankruptcy in which he has said that it's his
 7 legal opinion that Article 9 Section 24 applies in
 8 the bankruptcy; do you not?
 9 MS. NELSON: Objection to form and
 10 foundation. As we indicated yesterday, an Attorney
 11 General opinion has a specific -- you're saying
 12 legal opinion.
 13 MR. WERTHEIMER: Margaret.
 14 MS. NELSON: You're talking about a brief.
 15 MR. WERTHEIMER: Margaret, you are entitled
 16 to make an objection. You are not entitled to
 17 comment.
 18 MS. NELSON: Well, your characterization of
 19 a legal opinion is incorrect. So my objection is
 20 form, foundation,
 21 MR. WERTHEIMER: That's fine.
 22 MS. NELSON: And calls for a legal
 23 conclusion.
 24 MR. WERTHEIMER: Thank you.
 25 BY MR. WERTHEIMER:

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1 Q. Could you answer?
 2 A. I'm aware that the Attorney General has intervened,
 3 but I haven't read his brief and I don't know the
 4 position he's taken.
 5 Q. Haven't you read the press reports?
 6 A. Yeah.
 7 Q. And, I mean, you know that the Attorney General's
 8 position is, would it be fair to say, not consistent
 9 with the position that Emergency Manager Orr has
 10 stated publicly to the Detroit Free Press and
 11 others?
 12 A. I don't mean to be difficult, but that's an overly
 13 broad statement because in my mind -- I haven't read
 14 what the Attorney General is saying. He may be
 15 acknowledging that this constitutional provision
 16 exists, which I assume is one position.
 17 How that's dealt with in a Chapter 9
 18 proceeding, I don't know if the AG's opined or taken
 19 a position on that, so I don't know.
 20 Q. Okay. Has the Attorney General ever communicated to
 21 you as the head of Treasury the opinion that
 22 Article 9 Section 24 applies in the bankruptcy?
 23 A. I haven't discussed this topic with the Attorney
 24 General. And by that I mean the person, Bill
 25 Schuette.

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1 Q. I understand. That's what I thought you meant.
 2 Have you had any one-on-one discussions
 3 with the Governor about -- either specifically about
 4 Article 9 Section 24 or generally about the fact
 5 that there is a state constitutional provision that
 6 protects pensions?
 7 MS. NELSON: Objection; asked and answered.
 8 You can go ahead and answer again.
 9 THE WITNESS: No.
 10 BY MR. WERTHEIMER:
 11 Q. The subject has never come up between the two of
 12 you?
 13 A. Well, you said one-on-one.
 14 Q. You're right, I did say one-on-one.
 15 Has it ever come up in group meetings
 16 without attorneys present?
 17 A. And what precisely was that again? Can we --
 18 Q. A conversation in which you discussed either the
 19 specifics of Article 9 Section 24 or generally the
 20 fact that there is a state constitutional provision
 21 that protects pensions.
 22 A. I don't recall.
 23 Q. Do you recall that in early July initially two
 24 lawsuits were filed against you in your official
 25 capacity and against the Governor in his that

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1 related to what was going on in Detroit and this
 2 pension provision we've been asking you about?
 3 A. That rings a bell.
 4 Q. Okay. Did you learn -- do you recall whether you
 5 learned about them the day they were filed? And if
 6 it helps, they were filed on July 3rd.
 7 A. I don't know the exact number but I think there are
 8 give or take a hundred lawsuits against the Governor
 9 and I related to this topic, so I'm nervous about
 10 saying I have specific memory on any particular one,
 11 but --
 12 Q. You mean among these hundred cases you can't
 13 differentiate either the Flowers or the Webster case
 14 or the case that the pension boards brought that
 15 specifically dealt with the ability of the Governor
 16 to authorize a bankruptcy in the face of Article 9
 17 Section 24? You really can't differentiate?
 18 A. I recall that those suits got filed. The day and
 19 the time I got notified, I don't recall.
 20 Q. Okay. Do you recall learning that there was going
 21 to be a hearing on requests for injunctive relief
 22 that would have in some way precluded the Governor's
 23 ability to authorize a bankruptcy and that that
 24 hearing was scheduled for July 22nd?
 25 A. I recall that there was a hearing scheduled. I

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1 don't recall the specific date.
 2 Q. Okay. But you knew about it before the hearing
 3 itself?
 4 A. Yes.
 5 Q. A week, 10 days before?
 6 A. I don't recall.
 7 Q. Did you have any discussions internal at Treasury
 8 about the fact that there was going to be this
 9 hearing at which a state court judge was going to be
 10 asked to issue injunctive relief along the lines
 11 I've suggested?
 12 MS. NELSON: Objection; attorney-client
 13 privilege. If you want to sort that out because he
 14 does have as legal counsel Fred Headen.
 15 BY MR. WERTHEIMER:
 16 Q. Again, let's exclude any conversations where your
 17 attorneys were present for the purpose of either
 18 giving advice or potentially giving advice.
 19 Did you have any conversations excluding
 20 those between the time you learned of the lawsuit
 21 and learned that there was going to be a hearing
 22 later in July?
 23 A. I don't recall any conversations where a lawyer was
 24 not present for that topic.
 25 Q. So you were -- and how many conversations did you

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1 have about that subject matter with lawyers present?
 2 A. I don't recall, but I would say three or less.
 3 Q. Okay. Did you at any point learn that the
 4 Governor's office planned to -- in conjunction with
 5 the Detroit Emergency Manager planned to file
 6 bankruptcy the Friday before that Monday hearing or
 7 July 19th?
 8 A. I was aware that there was a sequence of events, a
 9 time schedule for when things would happen. And my
 10 memory was I wasn't -- I don't know if I wasn't in
 11 Lansing or I wasn't, you know, having meetings at
 12 the Governor's office during that window and right
 13 prior to the filing.
 14 I wasn't having meetings in those three-
 15 and four-day window with them, so I knew there was a
 16 schedule and a timeline, but I wasn't having direct
 17 discussions with the Governor's office.
 18 Q. Did you know that the plan was to file for
 19 bankruptcy before the court hearings?
 20 A. I -- can you restate the question?
 21 Q. Yes. Did you at least know that the plan was that
 22 if the plan went forward, the bankruptcy filing
 23 would occur before the hearings that were scheduled
 24 in the cases that had been filed against you and the
 25 Governor?

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1 A. I don't remember the sequence of the dates so -- and
 2 I wasn't part of that decision so I --
 3 Q. Okay.
 4 A. I'd have to see some documents to show, yeah, this
 5 is the time schedule we discussed on such and such
 6 date, and I don't remember the date the hearing was
 7 scheduled on the Flowers case.
 8 Q. Let me show you what we marked yesterday at the
 9 Governor's deposition Snyder Exhibit 6, and let me
 10 just direct your -- I'm going to show it to you but
 11 I'm going to direct your attention because there's a
 12 lot of information in the document.
 13 It looks to me from the upper right as
 14 though this is a document created the 17th of July,
 15 which would have been the Wednesday, and it's a
 16 rollout plan that indicates that the Governor's
 17 going to sign the authorization 8 p.m. on Thursday
 18 the 18th, and then the filing is going to be the
 19 morning of the 19th, and all kinds of events follow
 20 that up to and including Fox News Sunday and George
 21 Stephanopoulos and Frank Beckman and you name it.
 22 A. Uh-huh.
 23 Q. Let me just ask you have you ever seen that
 24 document?
 25 A. I don't have a specific memory of it. I think we

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1 met that Monday where the timeline was discussed.
 2 Q. The preceding Monday?
 3 A. Yeah.
 4 Q. Which would have been the 15th? Am I right?
 5 A. I believe so.
 6 Q. Okay.
 7 A. I don't know if this got circulated at that meeting
 8 or was just discussed.
 9 Q. Well, does it refresh your memory as to what the
 10 plan was?
 11 A. Generally speaking, yes.
 12 Q. Okay. And the plan was to -- the Governor would
 13 sign it Thursday night and Orr would file on Friday,
 14 right?
 15 A. That's my memory.
 16 Q. Do you recall that the plan changed at the last
 17 minute?
 18 A. I believe it may have. Yes. I think it --
 19 Q. Were you involved in any conversations with anyone
 20 excluding conversations where attorneys were present
 21 for the purpose of giving legal advice where anyone
 22 gave a reason for that change of plan?
 23 A. I was not present for any of those discussions.
 24 Q. Did you hear secondhand?
 25 A. No.

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1 Q. You never heard why Orr moved it up by a day or it
2 was moved up by a day?
3 A. No, and, in fact, it was -- I'd like to look at my
4 schedule because I don't know if I was even in
5 Lansing during those dates.
6 Q. Okay. But you do -- you have no memory as to ever
7 knowing the reason why it was moved up. That's just
8 what I want to know about.
9 A. I've heard speculation on the street.
10 Q. We're not talking about the street, but if the
11 street includes people at Treasury --
12 A. No. No.
13 Q. -- or people in the Governor's office?
14 A. No one briefed me on why the date moved.
15 Q. Okay. I'm going to show you what we had marked
16 yesterday at the Governor's deposition as Exhibit 8.
17 This is an email from you to the Governor a
18 day before the one that you were previously shown.
19 Could you take a look at that, please.
20 Do you recall sending that email to the
21 Governor?
22 A. Yes.
23 Q. And would I be correct I guess in my arithmetic that
24 last Wednesday would have been July 3rd, as you
25 begin last Wednesday.

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1 A. That sounds about right.
2 Q. Okay. And for the record, that's when the Flowers
3 and Webster's cases were filed, on July 3rd.
4 Is that -- would that have been the
5 reason -- would that be the information you learned
6 on that last Wednesday?
7 A. I don't believe so.
8 Q. What was it, if you recall? There's a reference to
9 Detroit consultants, that's why I am --
10 A. Yeah. No, I think this had to do with the level of
11 funding for the pensions, how it was getting
12 measured. So I was -- the filing of the suit
13 wouldn't tie into this comment about their thought
14 about the impact on the ability to pay pensions.
15 So the number was moving about how well
16 funded the pension plans were, and there were
17 several issues that we were learning about; the
18 annuity program, the failure to write down
19 alternative assets that were on the books, the
20 actuarial assumptions to get to the level of
21 funding, calculus.
22 So there was a lot of activity around the
23 pensions in trying to get our arms around it at that
24 time and --
25 Q. Do you recall, if you look further down in the first

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1 paragraph, the sentence that reads "I learned today
2 that due to the pension funds recent suits against
3 you and me...", is that a reference -- can you tell
4 me what that's a reference to?
5 A. I don't have a specific recollection about if it was
6 the Flowers suit or not.
7 Q. It may have been?
8 A. Probably was.
9 Q. Probably was. Okay.
10 And in this email you're telling the
11 Governor in the next paragraph that the consultants
12 think that current pensions have to be cut
13 significantly, correct?
14 A. I expressed the view of the consultants, yes.
15 Q. Did you agree with that view?
16 A. To me it was -- there's a lot of -- to value the
17 level of funding of a pension fund requires a lot of
18 assumptions on a lot of different factors, and to me
19 it was very fluid. And I think there was an earlier
20 email we looked at before where I just -- I think my
21 advice to the Governor was let's -- we're in the
22 informational stage, so I viewed it that way.
23 I was troubled though by, for example, the
24 annuity program which I thought was very damning and
25 damaging to the status of the pension funds. You

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1 know, The 13th Checks that go out. There's a lot of
2 activities that I thought were doing damage to the
3 pension funds, but until I really knew what the
4 funding status was it was hard to form an opinion
5 about what the impact would be on retirees.
6 Q. Okay. Did you have any personal conversations with
7 the Governor around these issues at this time or was
8 it just the email -- the two emails?
9 A. From reading the one email it looks like I called
10 him.
11 Q. Right. Do you remember whether you just left a
12 message or you had a substantive conversation?
13 A. I think we spoke briefly, yeah.
14 Q. What was the content of that conversation?
15 A. It was one of these issues that was bubbling up that
16 I wanted to get on his radar so --
17 Q. Do you remember which one?
18 A. I'd have to guess, but it would be in this area that
19 I was referring to. But there was one in
20 particular.
21 Q. Are you referring to the Flowers, Webster litigation
22 or are you referring to this other litigation you've
23 been talking about?
24 A. Not litigation. I think I was referring to the
25 information we were learning about the health of the

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1 pension funds.
 2 Q. Okay. All right.
 3 Did you have any conversations with the
 4 Governor about the issue of whether Orr should file
 5 for bankruptcy say in the couple weeks preceding the
 6 filing?
 7 MS. NELSON: Again, are you speaking just
 8 one-on-one other than attorney-client?
 9 BY MR. WERTHEIMER:
 10 Q. One-on-one or in group conversations -- I don't
 11 want -- I'm not asking you to violate the
 12 attorney-client privilege. I think you understand
 13 what we're getting at here.
 14 A. Yeah.
 15 Q. So my questions you should assume are modified in
 16 that respect.
 17 A. Yeah, so can you restate the question?
 18 (Reporter read record as follows:
 19 "Q. Did you have any conversations with the
 20 Governor about the issue of whether Orr
 21 should file for bankruptcy say in the
 22 couple weeks preceding the filing?")
 23 THE WITNESS: I have a question for my
 24 lawyer.
 25 MR. WERTHEIMER: That's fine. If you want

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1 to take a break or just go outside.
 2 VIDEO TECHNICIAN: Off the record 11:35
 3 a.m.
 4 (A brief recess was taken.)
 5 VIDEO TECHNICIAN: We're back on the record
 6 at 11:37 a.m.
 7 THE WITNESS: Yeah, I don't recall any
 8 conversations with the Governor outside the presence
 9 of counsel on that topic.
 10 BY MR. WERTHEIMER:
 11 Q. Okay. If you take a look at the July 9 -- do you
 12 have that one in front -- that's five. This one
 13 here.
 14 A. Okay.
 15 Q. And let me direct your attention to the first
 16 paragraph. You're telling the Governor that the
 17 emergency manager's going to meet relative to the
 18 pensions the next day, and then a couple of
 19 sentences down you say he, meaning Orr, will not
 20 translate that into an impact on retirees or
 21 employees' vested rights or what share of monies
 22 available to unsecured creditors would go to the
 23 pension plans.
 24 What was your understanding of why Orr was
 25 not going to do that? What's the point, and why are

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1 you telling the Governor?
 2 That's -- your attorney's going to object.
 3 That was three questions.
 4 A. Okay.
 5 MS. NELSON: Yes, which one would you like
 6 him to answer first?
 7 MR. WERTHEIMER: He can do it in order or
 8 however he'd like.
 9 MS. NELSON: Well, I don't know that he's
 10 going to remember them all by the time he gets to
 11 the last one.
 12 THE WITNESS: I mean, to me the building
 13 block is what's the funded status. And that issue
 14 was fluid, and I think that's the first issue that
 15 if you're going to reach a settlement with your
 16 creditors it's important to understand, all right,
 17 what's the funding level. From there you can start
 18 to figure out how do you solve this equation going
 19 forward. So I was comfortable with that.
 20 BY MR. WERTHEIMER:
 21 Q. Well, isn't there a political reason to not
 22 translate it into the impact on retirees because the
 23 impact is going to be negative? All we need to do
 24 is look at the June 14th creditors' proposal to know
 25 that, don't we?

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1 MS. NELSON: Objection; form, foundation,
 2 calls for speculation.
 3 BY MR. WERTHEIMER:
 4 Q. Go ahead.
 5 A. That wasn't my thinking. My thinking was until you
 6 really know the funding status, it's hard to really
 7 understand what the impact may be.
 8 So it was more important to understand that
 9 first.
 10 Q. Okay. I have nothing further. Thank you.
 11 MS. NELSON: Is everybody done?
 12 MR. SHERWOOD: I have one or two followup,
 13 but I'll let you go first.
 14 MS. GREEN: You can go. Do your followup
 15 first. We'll wait.
 16 MR. SHERWOOD: Can I use this microphone?
 17 MS. NELSON: Well, you're the Retiree
 18 Committee and I don't believe you --
 19 MR. GALLAGHER: We're not the Committee,
 20 we're the Retirement Systems.
 21 MS. NELSON: I'm sorry, the Retirement
 22 Systems. You did not subpoena -- did not issue a
 23 subpoena to the Treasurer, and it's my understanding
 24 the parties that didn't subpoena aren't entitled to
 25 question.

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1 MR. GALLAGHER: Why would they not be
2 entitled to question?
3 MS. NELSON: Because you didn't subpoena
4 the witness. I thought that was in the judge's
5 order.
6 MR. WERTHEIMER: I've got the judge's
7 order.
8 MS. NELSON: Not the one that we signed.
9 Isn't that in his discovery order, only the parties
10 seeking the discovery?
11 MR. WERTHEIMER: I'm not sure. Let me
12 look. Let me look.
13 MR. SHERWOOD: Do we have to have this on
14 the record?
15 MS. NELSON: No, we don't have to do this
16 on the record.
17 VIDEO TECHNICIAN: Off the record at 11:40
18 a.m.
19 (Discussion held off the record.)
20 VIDEO TECHNICIAN: We're back on the record
21 at 11:43 a.m.
22 RE-EXAMINATION
23 BY MR. SHERWOOD:
24 Q. Treasurer Dillon, Jack Sherwood again for AFSCME. I
25 have just a few follow-up things. It won't be too

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1 much longer, for me anyway. Just following up on
2 the --
3 MS. NELSON: Famous last words of a lawyer.
4 BY MR. SHERWOOD:
5 Q. Following up on the sequence of events that led to
6 the -- on the bankruptcy filing timeline, you know,
7 there was a -- you talk about this July 18th date
8 and you gave prior testimony that you didn't really
9 know what the impact of Flowers and Webster was on
10 that date.
11 Do you recall that discussion?
12 A. Yes.
13 Q. Do you know what drove the filing date of the 18th
14 in the first place? Was there any compelling reason
15 to file on July 18th that you're aware of?
16 A. We were briefed a few times on the schedule, and
17 the -- just there's a lot of events that have to
18 happen postfiling. So I was briefed on it. I don't
19 recall the specifics other than that the process to
20 go through a nine is lengthy, and there was a desire
21 on the Governor's part if you're going to do this he
22 wants it to be fast and efficient.
23 And so we got briefed on several occasions
24 about a calendar and all the events that would have
25 to follow. So precisely that date, I don't think

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1 there was a specific reason other than there's a
2 lengthy process involved with this and it was to
3 deal with that timing.
4 Q. All right. And I think in one of the exhibits the
5 original date reflected the 19th as the proposed
6 filing date.
7 Do you know when the 19th or the 18th was
8 established as the proposed filing date?
9 A. I don't recall.
10 Q. Do you know whether it was before July 1st?
11 A. It was after July 1st.
12 Q. So it's your clear recollection that the 18th or the
13 19th was established as the filing date after
14 July 1st? That's your testimony?
15 A. I don't remember being briefed on a specific date,
16 you know, weeks ahead of time. I remember --
17 Q. Is it possible that it could have been established
18 as the filing date before July 1st?
19 A. If it was, no one told me about it.
20 Q. Are you familiar with the New Energy to Reinvest
21 Diversity Funds a/k/a the NERD Funds?
22 A. I'm sorry?
23 Q. Are you familiar with an organization called New
24 Energy to Reinvest Diversity, also known as NERDs?
25 A. I'm aware that this fund exists.

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1 Q. Do you know what the purpose of the fund is?
2 A. I don't.
3 Q. Do you know whether any of the funds from NERDs,
4 N-E-R-D-s, are being used to fund any expenses of
5 the emergency manager?
6 A. I've read about it in the paper. Rich Baird is
7 closer to that than I am. He may be able to give
8 you more precise information.
9 Q. Do you know any of the major donors for the NERDs
10 Fund?
11 A. No.
12 Q. Do you recall meeting with Al Garrett and Ed McNeil
13 in December of 2012 regarding the City of Detroit?
14 A. I have met with them several times. I have a vague
15 memory of that.
16 Q. And for the record, who are Al Garrett and
17 Ed McNeil?
18 A. Al is the head of AFSCME in Detroit and Ed works for
19 him.
20 Q. Was the last time you met with them December 2012?
21 A. I'm not certain but probably. I think I've seen Ed
22 since then, but I don't recall meeting with Al since
23 then.
24 Q. During that meeting, did you discuss ways to
25 increase revenues for the City of Detroit to satisfy

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1 its liabilities?

2 A. I don't have specific memory of that, but it sounds

3 familiar.

4 Q. And at that point in time do you recall that there

5 was over \$700 million owed to the City by various

6 parties?

7 A. I recall that and I recall that we looked into it,

8 and the information I got back from my staff is that

9 it's virtually uncollectible.

10 Q. What did your staff base that conclusion on?

11 A. I have a Department of Collections here within

12 Treasury so we have some people that are skilled in

13 collections, and they looked at what was available

14 to Detroit, and the view of the world was that over

15 90 percent of these are uncollectible.

16 Q. Did you provide Mr. Orr with access to your people

17 that worked on collection of this \$700 million?

18 A. Indirectly. I mean, we made them available to the

19 City. That might have predated Kevyn.

20 Q. What is the basis for the conclusion that this money

21 is uncollectible?

22 A. It'd be a variety of reasons. Agings, can't find

23 who owes the money. It would probably be five or

24 six different reasons that make up the vast majority

25 of that conclusion.

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1 Q. In February of 2012, were you involved with an

2 effort to have a tentative agreement with a

3 coalition of unions?

4 A. No, but --

5 MS. NELSON: That's all you --

6 THE WITNESS: No.

7 BY MR. SHERWOOD:

8 Q. Did you have any discussions or were you aware that

9 there was a coalition of unions that were working on

10 a tentative agreement in February of 2012?

11 A. I was aware that the City was working with their

12 unions to negotiate solutions to wage and benefit

13 costs.

14 Q. What, if any, was your role in connection with that

15 Coalition-City negotiation?

16 A. My memory is none until they came up with tentative

17 agreements.

18 Q. What was the view of yourself with respect to the

19 tentative agreements?

20 A. I had them reviewed by labor experts, and the advice

21 that came back to me is that they were not something

22 that should be agreed to.

23 Q. Why not?

24 A. A variety of reasons. That it -- fundamental issues

25 about management versus, you know, the ability of

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1 the City to manage itself with some of the

2 provisions of the agreements were problematic.

3 We had -- I don't remember the number of

4 issues, but there was substantial number of issues

5 that were problematic.

6 Q. Did you communicate those issues to the coalition of

7 unions?

8 A. I don't recall.

9 Q. Who did you communicate those issues to?

10 A. To the City. I do recall one meeting I had with

11 Joe Duncan, but that may have been after the fact

12 about this issue. But our communications would have

13 been with the City itself.

14 Q. Isn't it true that the tentative agreement that the

15 City and the unions were working on would have saved

16 the City money?

17 A. I know that they believed it would.

18 Q. And you didn't agree with them?

19 A. The advice that I got from the people I had review

20 this for me was that we shouldn't support these

21 tentative agreements because they won't work. They

22 won't help solve the City's problems.

23 Q. And, in fact, you didn't -- or the Governor didn't

24 support the tentative agreements; isn't that right?

25 A. I don't know if the Governor had any role with

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1 respect to the tentative agreements.

2 Q. So that was your decision to make?

3 A. Yes.

4 Q. And you decided not to support these tentative

5 agreements with the union, correct?

6 A. Correct.

7 Q. Even though those tentative agreements might have

8 saved the City money?

9 MS. NELSON: Objection; asked and answered.

10 BY MR. SHERWOOD:

11 Q. Do you recall whether health care savings were

12 negotiated as part of that tentative agreement with

13 the unions?

14 A. I'd have to review them to recall that.

15 Q. You don't recall whether health care savings for the

16 City was part of the tentative agreement

17 negotiation?

18 MS. NELSON: Asked and answered.

19 THE WITNESS: I don't recall.

20 MR. SHERWOOD: Okay. I just wanted to make

21 sure.

22 BY MR. SHERWOOD:

23 Q. What about efforts to use amnesty as a means of

24 collecting funds by the City, has that been

25 explored?

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1 A. I believe the City did it.
 2 Q. Was it done in 2012?
 3 A. I -- I don't recall.
 4 Q. Have any -- with respect to \$700 million worth of
 5 receivables that we talked about, has any effort
 6 been used to use amnesty as a means to collect that
 7 money?
 8 A. I recall that the City put in place an amnesty
 9 program. Whether any of those receivables in that
 10 700 million were collected through that program, I
 11 can't answer.
 12 Q. When was the last time the City implemented an
 13 amnesty program?
 14 A. I don't know.
 15 Q. Was one -- has one been implemented since December
 16 2012?
 17 A. I know that they did one recently. I don't recall
 18 the date.
 19 Q. Okay. Now I'm really done. Thank you.
 20 EXAMINATION
 21 BY MS. GREEN:
 22 Q. Hi, Mr. Dillon.
 23 A. Hello.
 24 Q. I'm Jennifer Green. I represent the Retirement
 25 Systems for the City of Detroit.

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1 Following up with the prior line of
 2 questioning, you said you think you were traveling
 3 the day the petition was filed; is that correct?
 4 A. I don't recall.
 5 Q. Do you recall where you were when you first found
 6 out the petition was filed?
 7 A. No.
 8 Q. Were you not aware that day that it was going to be
 9 filed?
 10 A. I knew from the meeting on the Monday that there was
 11 a schedule, and I had no reason to believe that that
 12 schedule would change or not change so I was not
 13 aware of any changes until after it happened.
 14 Q. So was it a surprise when you found out that the
 15 petition had indeed been filed?
 16 A. It wasn't like there was this iron clad schedule
 17 that wasn't movable, so I don't think I really gave
 18 it a lot of thought.
 19 Q. You mentioned earlier that the first time that you
 20 saw the Governor's authorization letter was online
 21 on freep dot com. Do you recall?
 22 A. (Nodding head up and down.)
 23 MR. WERTHEIMER: You need to say your
 24 answer.
 25 THE WITNESS: Oh. Yes.

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1 BY MS. GREEN:
 2 Q. Do you remember where you were or what time it was
 3 that you were reading about this, that the petition
 4 had been filed?
 5 A. Vague recollection. I was in the Detroit area when
 6 I read it. The letter, I believe, was addressed to
 7 me so I imagine it came in hard copy, but the first
 8 time I read it was online.
 9 Q. Would have been that night, do you recall?
 10 A. I don't recall.
 11 Q. Did you not see the email prior to the filing that
 12 had sent the authorization letter?
 13 A. I don't recall.
 14 Q. Do you recall getting the email with the
 15 authorization letter?
 16 A. I do not. In fact, I don't know if it came via hard
 17 copy or email.
 18 Q. You testified earlier that you did not have a role
 19 in drafting PA 436. Who was involved in drafting it
 20 as far as outside counsel?
 21 A. I guess I want to be -- 436? I want to be careful.
 22 There was meetings let's say late November, early
 23 December with me and some folks on my staff as well
 24 as the Governor's office where we talked high level
 25 about how could we address some of the issues that

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1 led to the repeal of PA 4.
 2 Once those themes were kind of framed out
 3 then it would be handed off to folks on my staff as
 4 well as the Governor's staff that moved legislation
 5 through the Legislature. And my involvement in any
 6 nuance from that point was pretty much over.
 7 Q. So you don't know?
 8 A. I can name some of the people that were part of
 9 that.
 10 Q. Oh, okay. Who would that be?
 11 A. Howard Ryan on my staff, Brom Stibitz, and the
 12 Governor's office I can only guess who it was, but,
 13 you know, there's someone responsible for dealing
 14 with the Legislature. I assume he was involved.
 15 Q. Who was that?
 16 A. Dick Posthumus.
 17 Q. What about with respect to PA 4; you said you didn't
 18 have a role in drafting PA 436 but what about PA 4?
 19 A. It would be the same. High level, you know,
 20 directional and then pretty much the same team I
 21 just described would have been the arms and legs on
 22 the ground executing the process through the
 23 Legislature.
 24 Q. Do you know who outside of the Legislature or
 25 outside of the State of Michigan would have been

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1 consulted with respect to PA 4?
 2 A. Well, during the transition -- if it's lawyers can I
 3 disclose lawyers?
 4 MS. NELSON: With respect to PA 4, is
 5 that --
 6 THE WITNESS: Initial formation of PA 4.
 7 MS. NELSON: If they're attorney-client
 8 privileged communications, no, they're privileged.
 9 THE WITNESS: Yeah. So some were lawyers
 10 and then some were just people that were on the
 11 transition advisory board. Like Bob Daddow was
 12 involved, Mark Murray was on the Treasury transition
 13 aspect, Brom Stibitz from my staff was involved. I
 14 don't recall -- Dick Posthumus, I believe, was
 15 involved. I don't recall others that were
 16 nonlawyers that were part of the consultants.
 17 BY MS. GREEN:
 18 Q. What about restructuring consultants? Did you have
 19 any restructuring consultants that took part in the
 20 process?
 21 A. For PA 4?
 22 Q. Yes.
 23 A. I don't recall that.
 24 Q. Isn't it true that Jones Day actually provided you
 25 with review and comment of PA 4 at certain times?

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1 A. No.
 2 Q. Did they write memos to you regarding PA 4 or any of
 3 the topics related to the pensions or Chapter 9?
 4 A. I don't recall.
 5 Q. Were you involved in an RFP process relating to
 6 either Chapter 9, the pensions or the emergency
 7 manager law in 2011?
 8 A. Can you restate the question?
 9 Q. Were you involved in an RFP process in 2011 relating
 10 to either PA 4 or the emergency manager law?
 11 A. We did an RFP process here in Treasury that you
 12 could say was related to PA 4 to get a short list of
 13 firms that we could work with when we have a crisis.
 14 Q. And who were they at that time?
 15 A. And there's a list we can provide, and I could name
 16 some of the firms that were on it, but not all.
 17 Q. Was Jones Day one of the firms that was looked at
 18 during the 2011 RFP process?
 19 A. No.
 20 Q. Is it possible that they would have submitted an RFP
 21 related to that and you just didn't know about it?
 22 A. It's possible.
 23 Q. Do you remember having conversations with Jones Day
 24 attorneys relating to PA 4 in 2012?
 25 A. No.

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1 Q. If there's an email dated 3-2-2012 from Jones Day
 2 that just said we spoke to someone in Andy's office,
 3 do you recall those types of conversations back in
 4 2012?
 5 A. Can you show me the --
 6 Q. Yeah. I only have one. We just got it a day ago so
 7 I apologize, I don't have copies for everyone. We
 8 copied some of them.
 9 MR. SHERWOOD: Is it Bate stamped?
 10 MS. GREEN: It is.
 11 MR. WERTHEIMER: Can you identify it?
 12 MS. GREEN: Yeah.
 13 THE WITNESS: Yeah, the only person I
 14 recall knowing prior to 2013 from Jones Day was
 15 Corinne Ball.
 16 BY MS. GREEN:
 17 Q. What about Heather Lennox?
 18 A. I don't think I met her prior to 2013.
 19 Q. Yeah, can we mark that -- well, the problem is I
 20 only have one copy and it has my handwriting on it
 21 because we just got the document, but I can state
 22 for the record the Bates number if that's
 23 appropriate. We can have an agreement on that.
 24 The Bates number is DTMI 00234878 to 880 is
 25 the last page.

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1 MR. SHERWOOD: DTMI 00234.
 2 MS. GREEN: 878.
 3 MR. WERTHEIMER: Why don't we just mark it
 4 and you can identify that it should not include any
 5 of the underlining and handwriting.
 6 MS. GREEN: That's fine.
 7 MS. NELSON: Well, why don't we just have
 8 her produce one that doesn't have handwriting on it
 9 and mark it.
 10 MR. WERTHEIMER: That would be fine too.
 11 MS. NELSON: And mark it -- what's the next
 12 one, six?
 13
 14 (Deposition Exhibit 6 marked post deposition.)
 15
 16 MS. GREEN: I do have copies of the next
 17 one, which we can mark as Exhibit 7.
 18
 19 (Deposition Exhibit 7 was marked.)
 20
 21 BY MS. GREEN:
 22 Q. Do you recognize this email?
 23 A. Yeah. Okay. I mean, I forgot about this but I
 24 think when we were working on the consent agreement
 25 we were seeking advice from Huron Consulting and

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1 Miller Buckfire. They used various law firms on
2 occasion.
3 And in this case, I don't know that I ever
4 actually met Heather other than maybe over the
5 phone, but we were -- through Huron or through
6 Miller Buckfire we were getting advice from various
7 law firms, Jones Day being included.
8 They weren't a vendor to the Treasury
9 Department.
10 Q. And did Jones Day also weigh in on the drafting in
11 preparation of the consent agreement?
12 A. From my reading of this, they did.
13 Q. Do you recall receiving a blackline copy from Jones
14 Day at any time relating to the consent agreement
15 between the City and the State?
16 A. I don't recall. We may have but we had counsel
17 representing us, and this may have been just
18 friendly free advice, but there's other people that
19 can answer that question more precisely than I.
20 Q. Do you recall getting any free advice, any memos
21 given to you by Jones Day during this process?
22 A. I'd have to look in my files to know.
23 Q. Do you know if any of those memos have been produced
24 by the State of Michigan in this case?
25 A. I don't know. I'd have to look.

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1 Q. Would you recall if any of those memos were related
2 to Chapter 9 filing or the pension obligations of
3 the City of Detroit?
4 A. I don't recall any memos covering those topics.
5 Q. During the vetting process for the City of Detroit's
6 restructuring counsel, were you involved in the
7 interview on the 29th of the law firms?
8 A. Yes.
9 Q. I should have restated it. Were you involved in
10 putting together the list of questions that would be
11 asked of the law firms on the 29th?
12 A. I don't believe so.
13 Q. Do you recall the interview topics that were asked
14 of the law firms on the 29th?
15 A. I don't recall. I mean, we had a group I described
16 earlier in the deposition who was there. I think
17 everyone was -- felt free to ask the questions that
18 they had.
19 Q. Do you know who was responsible for putting together
20 the list of interview topics for the law firms at
21 the 29th meeting?
22 A. I don't think it was that structured. I think
23 Miller Buckfire played a significant role in who was
24 invited, and the City worked with them and may have
25 added some names to who was invited.

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1 I don't remember walking in with any
2 proposed questions to ask. We did have a huge
3 volume of submissions from each of the firms.
4 Q. And the State is paying in part the professional
5 fees that are being incurred by the City of Detroit
6 in the Chapter 9 process, correct?
7 A. We agreed to pay half of the cost up to five million
8 prior to the bankruptcy filing.
9 Q. And after the bankruptcy filing?
10 A. Then we suspended contributions. There may be one
11 exception to that. I don't recall specifically but
12 there might have been one vendor contract we
13 supported after the filing.
14 Q. Do you know which one that would have been?
15 A. I'd have to check.
16 Q. Were you familiar with an email from the Treasury
17 Department which sent the Milliman report to the
18 local media?
19 A. Can I see it?
20 Q. Yeah. This can be eight.
21 MS. NELSON: Is in your only copy?
22 MS. GREEN: No, there's several in there.
23 MS. NELSON: Are you going to mark it?
24 MS. GREEN: Eight.
25

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1 (Deposition Exhibit 8 was marked.)
2
3 BY MS. GREEN:
4 Q. Who is Terry Stanton from the Treasury Department?
5 A. He works for Treasury. He's a public information
6 officer.
7 Q. So he's one of your employees?
8 A. Yes.
9 Q. Have you ever seen the email that's in front of you?
10 A. I don't believe I have.
11 Q. Were you made aware after the fact that Mr. Stanton
12 had leaked the Milliman report to Mr. Pluta?
13 MS. NELSON: Objection; form, foundation to
14 the term leaked.
15 BY MS. GREEN:
16 Q. You can still answer.
17 A. Can you restate the question?
18 Q. My question was were you aware after the fact that
19 even if you didn't see this email, were you aware
20 that Mr. Stanton had provided the Milliman report to
21 the news media?
22 A. I imagine he would have advised me that he did this
23 or was going to do it.
24 Q. So if you read the email it does state that the
25 Milliman report was incomplete at the time that it

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1 was provided to the media, and it states it's being
 2 done solely off the record and it's critical this
 3 information is not traced back to the Department
 4 because it has not been finalized.
 5 Is it the practice of the Treasury
 6 Department to allow admittedly incomplete
 7 information regarding the pensions to be leaked to
 8 the media?
 9 A. I would say it's unusual.
 10 Q. Why would it be critical, as stated in the email,
 11 for the Milliman summary that Mr. Stanton had asked
 12 for to be deleted and not in connection to the
 13 Treasury Department?
 14 A. Does it say deleted in here? Oh, yeah. I see.
 15 Okay.
 16 I assume he didn't want to -- yeah, he
 17 thought it was out there with other news media.
 18 Rick Pluta must have been asking about it, so he
 19 shared with him that which he thought other media
 20 outlets probably already had.
 21 Q. You mentioned that there was a cap for the fees that
 22 the State would pay in connection with the
 23 Chapter 9. Have we reached --
 24 A. Actually, you mischaracterized it.
 25 Q. I'm sorry, what was your --

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1 A. We offered to pay 50 percent of consulting fees
 2 prior to the filing.
 3 Q. Up to five million?
 4 A. Up to five million.
 5 Q. And so in June of 2013 that would have been prior to
 6 the filing and the State was still contributing to a
 7 portion of those fees, correct?
 8 A. I believe so.
 9 Q. We can mark this as Exhibit 9.
 10
 11 (Deposition Exhibit 9 was marked.)
 12
 13 BY MS. GREEN:
 14 Q. Do you recall sending this email?
 15 A. I do.
 16 Q. Is it safe to say the five million dollar cap has
 17 been maxed out?
 18 A. What I was reviewing was both the forecast as well
 19 as the historical, so I was looking at more than
 20 just the history.
 21 Q. So what is the summary of fees that you were
 22 referring to?
 23 A. We were given an estimate of what the fees were
 24 looking like and I reviewed it and wasn't very
 25 happy.

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1 Q. The last question is relating to Exhibit 5 which has
 2 already been marked. It's the July 9th email.
 3 The email states "Tomorrow's meeting could
 4 lead to questions directed to you about your view on
 5 this topic." It's relating to the pension issue.
 6 Is that a fair characterization of the
 7 email?
 8 A. Right.
 9 Q. "In my view, it's too early in the process to
 10 respond to hypothetical questions. We remain in
 11 many ways in the informational stage. I have some
 12 thoughts as to how you could address some pointed
 13 questions if you're interesting in hearing them."
 14 What pointed questions were you expecting?
 15 A. Anything from -- well, going back in time here, but
 16 just obviously the whole gamut of questions
 17 regarding what the underfunding status could mean to
 18 retirees, and I thought that the situation was not
 19 understood enough for the Governor to go on record
 20 yet because I couldn't even tell him with any degree
 21 of confidence what level of funding these pension
 22 funds had, so why should he get in the middle of a
 23 debate about this. It's obviously a very charged
 24 and sensitive issue, and it was my free political
 25 comments to him.

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1 Q. And this was really just over a week before the
 2 filing. That was your stance?
 3 A. Yeah. I don't -- yeah, obviously. But I don't -- I
 4 think it was in the context of this meeting that
 5 Kevyn was going to have with the committee that
 6 drove this email.
 7 Q. Did anything change between the ninth and the filing
 8 on the 18th that changed your opinion regarding what
 9 you, I believe, just stated was too early to tell
 10 him with any degree of confidence what level of
 11 funding the pension funds had I believe is what you
 12 just stated.
 13 A. Yeah, I have not -- my opinion is pretty much the
 14 same.
 15 Q. The last sentence of the email says "I have some
 16 thoughts as to how you could address some pointed
 17 questions if you're interesting in hearing them."
 18 What were your ideas for how to answer the
 19 questions?
 20 A. I don't recall specifically at this point.
 21 Q. Did you ever have a conversation with him regarding
 22 your thoughts on how to answer the questions?
 23 A. No.
 24 Q. You mentioned in the email "Because pensions have
 25 such a long life there are a lot of creative options

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1 we can explore to address how they will be treated
 2 in restructuring."
 3 What were your creative options that you
 4 had on the table?
 5 A. There's dozens. I mean, I don't have one that I
 6 would pick out. But pension funds do have a long
 7 life and there's a lot of creative things that can
 8 be done, so I -- I don't have one or two that I
 9 would just throw out, but I do know that there's a
 10 lot of ways to address that issue.
 11 Q. Have there been any formal reports or proposals
 12 identifying and explaining what you consider to be
 13 these creative options?
 14 A. No.
 15 Q. Were these creative options ever explored with the
 16 pension systems directly --
 17 A. Not to my knowledge.
 18 Q. -- to your knowledge?
 19 I don't have any further questions.
 20 MR. SHERWOOD: Anybody else have questions?
 21 MR. WERTHEIMER: I do not.
 22 RE-EXAMINATION
 23 BY MR. SHERWOOD:
 24 Q. I have one question about D-7, which I hadn't seen
 25 before the deposition. It's an email to you from

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1 Heather Lennox.
 2 I just want to know what your understanding
 3 of the sentence "Many provisions in here are
 4 designed to take advantage of PA 4 while it is still
 5 in existence, but this also references other state
 6 laws that would buttress the FCB and PCA powers..."
 7 What is FCB -- what is your understanding
 8 of what FCB and PCA powers, what that means?
 9 A. FCB I don't know. She might be referring to
 10 Financial Control Board, but as opposed to the FAB
 11 I'm surmising.
 12 PCA is not ringing a bell either.
 13 Q. At this time there was a Financial Control Board in
 14 existence, right?
 15 A. No, I think that -- well, I think it was part of the
 16 financial stability agreement, the creation of the
 17 FAB, I think.
 18 Q. And PCA, you don't know what that means?
 19 A. I'm not recalling offhand, no.
 20 Q. Was it -- did you express a desire to buttress the
 21 powers of the Financial Control Board and insulate
 22 those powers from attack in the event of a repeal?
 23 A. Can you restate the question? I'm sorry.
 24 Q. Was it -- were you interested at this point in time,
 25 in March of 2012, to take steps to buttress the

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1 power of the Financial Control Board and insulate
 2 those powers from being attacked in the event PA 4
 3 was repealed?
 4 A. I don't know if buttress is the right word. If
 5 you're going to put in place all the structuring and
 6 negotiate a consent agreement with the City, there's
 7 other ways -- other legal basis to do that through
 8 interlocal agreements. There's other laws that we
 9 could look to that would give us the authority to
 10 have this agreement have meaning to it.
 11 So the thought was, you know, identify all
 12 those legal arguments that would give legal standing
 13 to the Financial Advisory Board and the consent
 14 agreement is my memory.
 15 MR. SHERWOOD: That's all.
 16 MS. NELSON: All right, we're done. Thank
 17 you.
 18 THE WITNESS: Thank you.
 19 VIDEO TECHNICIAN: Deposition has concluded
 20 at 12:23 p.m.
 21 (Deposition concluded at 12:23 p.m.)
 22 - - -
 23
 24
 25

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1 CERTIFICATE

2 STATE OF MICHIGAN)
 3 COUNTY OF OAKLAND) SS:
 4
 5 I, LAUREL A. JACOBY, Certified Shorthand
 6 reporter, a Notary Public, hereby certify that I recorded
 7 in shorthand the examination of TREASURER ANDREW DILLON,
 8 the deponent in the foregoing deposition; and that prior
 9 to the taking of said deposition the deponent was first
 10 duly sworn, and that the foregoing is a true, correct and
 11 complete transcript of the testimony of said deponent.
 12 I further certify that no request was made for
 13 submission of the transcript to the deponent for reading
 14 and signature and that no such submission was made.
 15 I also certify that I am not a relative or
 16 employee of a party or an attorney for a party; or
 17 financially interested in the action.
 18
 19
 20 LAUREL A. JACOBY, CSR-5059, RPR
 21
 22 Notary Public, Oakland County, Michigan
 23 My commission expires: 9/1/18
 24 Dated: This 13th day of October, 2013.
 25

	17:3	25:4,8,13;26:14;27:1,	appears (1)	assets (1)
\$	added (3)	4;28:16;35:24;55:4;	52:4	90:19
\$137 (1)	35:9;52:8;114:25	67:9;76:6,7,12;102:2,	applies (2)	assignment (1)
28:14	address (19)	10;103:14;104:12,16;	81:7;82:22	25:15
\$50 (1)	12:21;18:10;23:13;	111:23;112:24;113:11,	apply (2)	Assistant (1)
76:23	32:25;34:9;35:10,19;	14;122:16;123:6,10,14	41:10,14	14:4
\$700 (3)	36:7;37:19;51:22;	agreements (12)	appoint (1)	assume (12)
101:5,17;105:4	52:12;59:1;63:7;	26:9;27:14;28:8;	10:24	16:3;19:17;20:23;
	76:14;107:25;119:12;	102:17,19;103:2,21,	appointed (3)	44:2;46:12,14;70:2;
	120:16;121:1,10	24;104:1,5,7;123:8	53:23;77:5,17	79:13;82:16;93:15;
A	addressed (3)	AG's (1)	appointing (1)	108:14;117:16
	39:23;62:23;107:6	82:18	43:7	assumes (2)
a/k/a (1)	administration (2)	ahead (8)	appointment (2)	42:21,25
99:21	15:23;16:1	50:7;78:7,23;80:9,	18:16;77:4	assuming (1)
ability (12)	admittedly (1)	18;83:8;96:4;99:16	appreciate (4)	81:4
16:17;18:4;36:24;	117:6	aid (1)	11:14;26:4;30:23;	assumptions (3)
39:12;57:9;72:23;	adopt (2)	25:19	70:19	70:17;90:20;91:18
74:9;76:14;84:15,23;	52:4,17	airport (4)	appreciated (2)	attached (1)
90:14;102:25	advantage (1)	54:9;55:15;58:6,20	48:10;56:22	7:7
able (3)	122:4	AI (4)	approach (1)	attachment (2)
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24:1	49:16;70:25;80:23,24;	7:15	27:13;111:23	122:22
absent (1)	85:18,18;88:21;91:21;	allow (3)	appropriately (1)	attacked (1)
79:18	102:20;103:19;	17:9;19:6;117:6	78:25	123:2
accept (1)	112:25;113:6,18,20	allowed (2)	approval (2)	attended (2)
43:15	advised (1)	18:14;43:14	19:14;44:10	37:22;63:8
access (5)	116:22	allows (2)	approximately (2)	attention (3)
24:7,8;26:7;32:14;	advising (1)	34:23,25	47:13;76:7	21:22;87:11;94:15
101:16	46:18	along (2)	April (1)	attorney (12)
accommodate (1)	Advisory (4)	67:19;85:10	76:8	8:16;13:14;14:4,9;
35:14	34:22;54:21;109:11;	alternative (2)	Arbor (2)	33:13;81:5,10;82:2,7,
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12:23	advocate (1)	although (1)	area (4)	attorney-client (9)
accrued (4)	36:19	52:1	13:9;63:10;92:18;	46:1;61:5;66:15;
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acknowledging (1)	21:9;36:10	75:17	areas (1)	93:8,12;109:7
82:15	affairs (1)	amnesty (4)	34:12	attorneys (6)
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15:7;16:23;17:8;	afford (1)	among (1)	23:25	85:17;88:20;110:24
21:10,12;22:2,5;23:25;	41:3	84:12	argument (1)	attorney's (1)
29:13,24;34:16;35:2,5;	AFSCME (3)	amount (1)	24:2	95:2
37:20;39:6;72:13;	7:25;97:24;100:18	64:11	argumentative (1)	attractive (1)
73:13,25	again (7)	amounts (3)	65:2	32:8
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77:6	25:84;8;86:24;91:2	54:19;76:17	arms (2)	authorization (6)
activities (2)	agencies (4)	Andy's (1)	90:23;108:21	43:18;48:4;87:17;
74:22;92:2	29:11,18;30:6,18	111:2	around (6)	106:20;107:12,15
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actual (5)	ago (4)	announced (1)	arrangements (1)	authorized (1)
15:16;36:1;37:23;	13:13;28:13;39:24;	10:12	27:15	71:6
53:8;74:11	111:6	annuity (3)	Article (11)	authorizing (2)
actually (10)	agree (7)	70:14;90:18;91:24	62:6,8;73:21;74:2;	6:13;48:3
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31:16,23;36:9;53:25;	5;91:15;103:18	50:6;83:7;104:9,18	82:22;83:4,19;84:16	94:22;101:13,18
109:24;113:4;117:24	agreed (3)	apologize (1)	aspect (1)	avoid (3)
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<p>68:11,18;79:18 2010 (2) 10:23;11:2 2011 (7) 14:18;19:18;74:16, 20;110:7,9,18 2012 (12) 19:18;20:16;29:3; 100:13,20;102:1,10; 105:2,16;110:24; 111:4;122:25 2013 (18) 6:1,12,17,20;7:12; 43:18;45:4;51:10,17; 53:7,22;54:9;65:6; 69:16;70:11;111:14, 18;118:5 21st (2) 10:12,19 22nd (1) 84:24 24 (14) 38:9,20;39:4;62:4,6, 8;64:20;65:9;78:16; 81:7;82:22;83:4,19; 84:17 25 (1) 16:18 28th (5) 53:22;54:9;58:6,20; 60:21 29th (5) 58:21;114:7,11,14, 21 <hr/> <p style="text-align: center;">3</p> <hr/> 3 (6) 43:17,20,23,25;44:2; 63:19 3:47 (2) 6:18;7:5 31st (2) 51:10,17 3-2-2012 (1) 111:1 3rd (3) 84:6;89:24;90:3 <hr/> <p style="text-align: center;">4</p> <hr/> 4 (84) 14:15,21,21;15:3,20; 16:5,8,23,25;17:8; 18:8,9,12,19,23;19:6, 10,11,12,13,17;20:15, 19;21:10,12,14,18; 22:5,7,16,19,23;23:3,5, 9,25;29:2,13,24;30:12, 13;32:7;33:9,14,25; 34:5,8,9,11,16;35:2,10, 11;36:8,10,22,23;37:3, 20;39:6,11,16,25;</p>	<p>43:11;50:20;51:1,21; 52:20;73:13,25;108:1, 17,18;109:1,4,6,21,25; 110:2,10,12,24;122:4; 123:2 4:06 (1) 7:9 430 (1) 7:15 436 (35) 34:1,2,3,21;35:5,11, 19;36:23;37:3,5,7,16; 38:20,20;39:2,25;40:4, 16,21;41:8;43:9,12,12; 44:9,23;45:6,25;47:9; 52:17,21,21;53:12; 107:19,21;108:18 <hr/> <p style="text-align: center;">5</p> <hr/> 5 (3) 68:20,23;119:1 50 (3) 75:19,23;118:1 <hr/> <p style="text-align: center;">6</p> <hr/> 6 (2) 87:9;112:14 <hr/> <p style="text-align: center;">7</p> <hr/> 7 (2) 112:17,19 700 (1) 105:10 700,000 (1) 32:13 7-18 (1) 7:7 72 (24) 14:22;15:1,4,7; 16:10,23;18:8,11,13, 16,21;19:9;22:2; 29:21;33:14,23;34:3,6; 43:11,14;52:20,22; 53:24;72:13 75 (2) 16:13,17 <hr/> <p style="text-align: center;">8</p> <hr/> 8 (3) 87:17;89:16;116:1 8:30 (1) 14:10 878 (1) 112:2 880 (1) 111:24 <hr/> <p style="text-align: center;">9</p> </p>	<p>9 (43) 19:2,7;28:4;36:1; 41:20;42:18;43:10,14; 44:11,25;48:3;49:10; 52:5,18;57:24;58:7,15; 59:16;62:6,8;66:23; 71:7;73:21;74:2; 77:24;78:2,16;79:7,20; 81:7;82:17,22;83:4,19; 84:16;94:11;110:3,6; 114:2;115:6;117:23; 118:9,11 9:17 (1) 6:3 9:20 (1) 7:12 90 (1) 101:15 9th (4) 6:7;68:24;70:11; 119:2</p>		
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EXHIBIT C

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 EASTERN DISTRICT OF MICHIGAN 3 SOUTHERN DIVISION 4 5 In re Chapter 9 6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846 7 Debtor. Hon. Steven W. Rhodes 8 _____/ 9 10 DEPONENT: MAYOR DAVE BING 11 DATE: Monday, October 14, 2013 12 TIME: 10:27 a.m. 13 LOCATION: CITY OF DETROIT MAYOR'S OFFICE 14 2 Woodward Avenue 15 11th Floor Conference Room 16 Detroit, Michigan 17 REPORTER: Jeanette M. Fallon, CRR/RMR/CSR-3267 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (continued): 2 3 COHEN WEISS AND SIMON LLP 4 By: Joshua J. Ellison 5 330 West 42nd Street 6 New York, NY 10036.6979 7 212.356.0216 8 Appearing on behalf of UAW 9 10 LOWENSTEIN SANDLER LLP 11 By: Sharon L. Levine 12 65 Livingston Avenue 13 Roseland, NJ 07068 14 973.597.2374 15 Appearing on behalf of AFSCME 16 17 CLARK HILL PLC 18 By: Jennifer K. Green 19 500 Woodward Avenue, Suite 3500 20 Detroit, MI 48226 21 313.965.8384 22 Appearing on behalf of Retirement Systems 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 JONES DAY 4 By: Thomas Cullen 5 Dan T. Moss 6 51 Louisiana Avenue, NW 7 Washington, D.C. 20001.2113 8 202.879.3939 9 Appearing on behalf of the Debtor 10 11 DENTONS US LLP 12 By: Anthony B. Ullman 13 620 Fifth Avenue 14 New York, NY 10020.2457 15 212.632.8342 16 Appearing on behalf of Official Committee of Retirees 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES (continued): 2 3 WILLIAMS WILLIAMS RATTNER & PLUNKETT PC 4 By: Ernest J. Essad, Jr. 5 380 N Old Woodward Ave Ste 300 6 Birmingham, MI 48009 7 248.642.0333 8 Appearing on behalf of FGIC 9 10 CITY OF DETROIT LAW DEPARTMENT 11 By: Portia L. Roberson 12 2 Woodward Avenue, Suite 500 13 Detroit, Michigan 48226 14 313.237.3018 15 Appearing on behalf of the City of Detroit, 16 Residents of the City, Mayor's Office and City Council 17 18 19 20 21 22 23 24 ALSO PRESENT: 25 Patrick Murphy, videographer</p>



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16 Exhibit 2 Emails dated 11/27/12 40

17 Exhibit 3 City of Detroit Restructuring Plan,
18 March 23, 2012 50

19 Exhibit 4 Comprehensive Annual Financial Report,
20 City of Detroit, for its fiscal year-ended
21 June 30, 2012, two pages 62

22 Exhibit 5 Email from Andrews to Bing, 7/10/13 74

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1 Williams, Rattner & Plunkett, on behalf of the FGIC.

2 MR. CULLEN: Tim Cullen, Jones Day, for the

3 City and the Emergency Manager.

4 MS. ROBERSON: Portia Roberson, corporation

5 counsel for the City of Detroit, for Residents of the

6 City, Mayor's Office and City Council.

7 MR. MOSS: Dan Moss, Jones Day, for the

8 City.

9 MAYOR DAVE BING

10 was thereupon called as a witness herein, and after having

11 first been duly sworn to tell the truth, the whole truth,

12 and nothing but the truth, was examined and testified as

13 follows:

14 EXAMINATION

15 BY MR. ULLMAN:

16 Q. Good morning, Mr. Mayor.

17 A. Good morning.

18 Q. Have you ever been deposed before?

19 A. Yes.

20 Q. Okay, so I assume you're generally familiar with the

21 process, but let me just go over a few ground rules.

22 I will ask questions and you will give me answers and

23 I would appreciate it if you could wait until I finish

24 asking the question before you start giving the answer

25 and I'll wait until you answer before asking the next

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1 Detroit, Michigan

2 Monday, October 14, 2013

3 * * *

4 THE VIDEOGRAPHER: We are on the record.

5 This is disk one of the video deposition of David Bing

6 being taken at number 2 Woodward Avenue, 11th Floor in

7 Detroit, Michigan. Today is Monday, October 14th,

8 2013, the time is 9:27 (sic) a.m.

9 This is in re City of Detroit, Michigan,

10 Case Number 13-53846, pending in U.S. Bankruptcy Court

11 for the Eastern District of Michigan.

12 My name is Patrick Murphy, legal

13 videographer, our court reporter today is

14 Jeanette Fallon and we both represent Esquire

15 Deposition Solutions.

16 The attorneys will now introduce themselves

17 for the record.

18 MR. ULLMAN: This is Anthony Ullman from

19 Dentons, counsel for the Official Committee of

20 Retirees.

21 MR. ELLISON: Josh Ellison from Cohen Weiss

22 and Simon LLP, counsel for the UAW.

23 MS. LEVINE: Sharon Levine, Lowenstein

24 Sandler, for AFSCME.

25 MR. ESSAD: Ernest Essad, Williams,

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1 question; otherwise, the court reporter can't get

2 things down if both of us are speaking; okay?

3 If at any point there's anything in a

4 question that I ask that you don't understand, let me

5 know and I'll rephrase it and if you don't indicate

6 that you don't understand the question, the assumption

7 will be that you do; okay?

8 A. Sure.

9 Q. Okay. Now, you are currently the Mayor of Detroit; is

10 that right?

11 A. That is correct.

12 Q. And when did you -- when were you elected Mayor, when

13 did you become Mayor?

14 A. I was elected Mayor May 5th, 2009.

15 Q. And is it correct that at that time when you were

16 elected Mayor that Detroit was in fiscal difficulties?

17 A. That would be correct.

18 Q. And can you describe just in very general terms, I'm

19 not looking for detail, but just generalities what

20 steps if any you took to attempt to address that

21 situation?

22 A. Detroit, when I came in office, was \$330 million

23 accumulated deficit over several different years.

24 Budget for the 2009 period -- '09 and '10 was already

25 in place when I got here. There were several areas



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1 that we had to make cuts. Revenue was going south and
2 the only way that we thought that we could maintain a
3 balanced budget was in cuts. Most of those cuts
4 occurred with layoffs and retirements. There were
5 some areas over in the transportation area that we
6 made some significant improvements, but overall I made
7 it very clear that we could not balance our budget
8 just with cuts, we had to try to generate revenue and
9 that was an ongoing problem.
10 Q. So I take it then that as of the end of 2012, Detroit
11 was still, notwithstanding the efforts you made, in
12 substantial financial difficulties?
13 A. That would be correct.
14 Q. Now, of course you're aware that Kevyn Orr has been
15 appointed the Emergency Manager?
16 A. That is correct.
17 Q. Did you have any involvement in the selection of
18 Mr. Orr as Emergency Manager?
19 A. None whatsoever.
20 Q. And when was Mr. Orr appointed the Emergency Manager?
21 Actually to be technically accurate I believe he was
22 first appointed Emergency Financial Manager; is that
23 right?
24 A. That would be correct.
25 Q. Okay, and then he became automatically the Emergency

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1 Manager under the new law; is that right?
2 A. Under 436, yes.
3 Q. So when, as you understood it, was Mr. Orr selected as
4 the Emergency Financial Manager?
5 A. I met Mr. Orr in mid February of 2012. I was asked to
6 go down and meet him at the law firm of Jones Day in
7 Washington, D.C. I met him, spent maybe a half a day
8 with him, because he at that time was the leading
9 candidate to be selected.
10 (Ms. Green enters deposition room.)
11 Q. Okay, and did you have an understanding as of that
12 time whether Mr. Orr had in fact or a decision had
13 been made to appoint Mr. Orr, assuming he took the
14 appointment?
15 MR. CULLEN: Objection, foundation, form,
16 but you can address the question.
17 A. I believe Mr. Orr had not made his mind up at that
18 point. In my meeting and conversation with him he was
19 going through a process to see whether or not, if the
20 job was offered to him, whether or not he would
21 accept.
22 Q. Okay. And what was your understanding as to the
23 situation from the other side, from the State side?
24 As you understood it, had the State decided that Orr
25 was the man they wanted if he took the job?

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1 A. I believe that the State had made the decision that
2 Orr not only was a leading candidate but was their
3 choice.
4 Q. And do you know as of that time when you met with
5 Mr. Orr in you said mid February were there any other
6 candidates that the State was actively considering?
7 A. If there were, I didn't know, because I met no one
8 else.
9 Q. Okay. How was Mr. Orr's name first brought to your
10 attention? How did you first come to hear of him
11 being a candidate for the Emergency Financial Manager
12 or Emergency Manager position?
13 A. I was contacted by phone by Rich Baird of the
14 Governor's office who said that they thought that they
15 had identified a key candidate for the position of
16 Emergency Financial Manager, so Rich Baird was the one
17 who made contact with him.
18 Q. And do you recall when that contact was?
19 A. Pardon?
20 Q. When, do you recall?
21 A. That would have been in late January, early February.
22 Q. And did Mr. Baird give you any further information
23 about Mr. Orr's background or qualifications for the
24 Emergency Financial Manager position?
25 A. Yes, he did. He said he had met -- in an interview

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1 process that I was not a part of, they were
2 interviewing counsel for the City and Mr. Orr was part
3 of the Jones Day law firm and I think through that
4 interview process Baird was impressed with him and,
5 therefore, moved down the road to try to select him as
6 the candidate.
7 Q. And did Mr. Baird at that time give you any
8 indications as to what he believed Mr. Orr's
9 qualifications were to serve as Emergency Financial
10 Manager?
11 A. No, he didn't. He said he was impressed with him,
12 that he had been part of the bankruptcy team
13 representing Chrysler and I guess from that ordeal was
14 pretty impressed with him.
15 Q. And did you ask Mr. Baird anything else about
16 Mr. Orr's qualifications to serve as Emergency
17 Financial Manager?
18 A. He -- yes, I did, and he felt --
19 Q. Thank you.
20 A. -- and he felt that not only was he a lawyer that
21 dealt with bankruptcy for over 30 years but also had
22 some qualifications as it related to restructuring. I
23 think it was important to Lansing that the financial
24 manager would be of African-American descent. Kevyn
25 also I understand was a graduate of the University of



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1 Michigan and had some understanding of Detroit and our
 2 issues, so those were the background qualifications
 3 that he gave me.
 4 Q. And did Mr. Baird indicate that Orr had qualifications
 5 concerning restructuring outside the context of
 6 bankruptcy?
 7 A. That would be no.
 8 Q. Did you ask Mr. Baird anything further about Mr. Orr's
 9 qualifications?
 10 A. But they were very generic, the questions that I was
 11 asking, trying to find out if in fact he was going to
 12 be selected, you know, how were we going to work
 13 together, because I was not in support of an Emergency
 14 Manager.
 15 Q. And did you ask Mr. Baird how you and the Emergency
 16 Manager were going to work together during that
 17 conversation?
 18 A. The answer would be yes and the conversation was that
 19 he would be responsible, meaning Kevyn Orr would be
 20 responsible for really trying to restructure the
 21 balance sheet in the -- for the City of Detroit and
 22 that me and my administration would continue to try to
 23 restructure City government and run the City on a
 24 day-to-day basis.
 25 Q. That was the plan or the idea, the concept, in -- this

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1 was around -- did you say this was in the February
 2 time frame or January time frame? I forget.
 3 A. That would have been in the February time frame.
 4 Q. So that was the concept that was articulated to you in
 5 the February time frame?
 6 A. That is correct.
 7 Q. And is that how things in fact turned out?
 8 A. That is not how things have turned out.
 9 Q. Had you yourself -- you were aware prior to the time
 10 that you were told about Mr. Orr in the conversation
 11 with Mr. Baird that you just related that there was an
 12 Emergency Manager that was being sought; correct?
 13 A. That is correct.
 14 Q. And had you yourself proposed any candidates for that
 15 position?
 16 A. The answer would be no.
 17 Q. Did you have any discussions with people on your staff
 18 about possibly proposing one or more candidates for
 19 that position?
 20 A. That answer would be no, because I along with my staff
 21 were not in favor of an Emergency Manager coming on.
 22 Q. Do you recall any discussions or communications via
 23 email or otherwise with Kriss Andrews about the
 24 possibility of proposing a candidate for Emergency
 25 Manager?

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1 A. The answer would be yes. I've had conversation with
 2 Kriss and Kriss indicated that he was aware of someone
 3 that he felt could come in and work with us as an
 4 Emergency Manager.
 5 Q. Okay, and just so the record is clear, I made
 6 reference to Kriss Andrews, you made reference to
 7 Kriss, who is Kriss Andrews?
 8 A. Kriss Andrews was the -- his title was director of --
 9 he actually was COO, but he had a different title.
 10 I'm trying to remember what that title was now.
 11 Q. Perhaps program management director?
 12 A. Director of program management.
 13 Q. Okay. And he had been brought on by you, is that
 14 right, or had he been here before you came on?
 15 A. Kriss was selected by Lansing for that position.
 16 Q. And do you know when he had been put in that position
 17 by Lansing?
 18 A. Kriss came in in May of 2012.
 19 Q. Is he still in that same position?
 20 A. Kriss is no longer with City government. He left in
 21 July of '13.
 22 Q. And do you know why he left?
 23 A. He was asked to leave by Lansing.
 24 Q. Let me show you a document that we'll mark as Bing
 25 Exhibit 1.

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1 (Marked Exhibit No. 1.)
 2 Q. Are you familiar with what we've marked as Exhibit
 3 Bing 1, Mr. Mayor?
 4 A. I am familiar with this document.
 5 Q. And just for the record it bears Bates numbers DM --
 6 I'm sorry, DTMI0007955, that's the starting number.
 7 And it's an email from Kriss Andrews to the Mayor,
 8 December 6th, 2012.
 9 Now, before I -- first of all, can you tell
 10 me what this is? Can you identify this for me?
 11 A. This is a memo from Kriss Andrews to me recommending
 12 an individual that he knew that he thought could work
 13 well with us as we move to an Emergency Manager.
 14 Q. Did you have a good working relationship with
 15 Mr. Andrews?
 16 A. Very good working relationship with, yes.
 17 Q. And you had previously indicated that you had been
 18 against the appointment of an Emergency Manager. Why
 19 was that?
 20 A. We thought, meaning this administration thought we --
 21 we could run the City without an Emergency Manager
 22 coming in.
 23 Q. Now turning back to Exhibit Bing 1, Mr. Andrews is
 24 writing this email to you and he starts out with a
 25 phrase, though the Group did not agree.



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1 Do you have an understanding as to what
2 Group Mr. Andrews is referring to? And that's Group
3 with a capital G.
4 A. I think that would have been the representation from
5 Lansing.
6 Q. And who was in that Group? Was that --
7 A. It would have been Rich Baird, it would have been
8 Andy Dillon and I'm not sure who else may have
9 represented the State.
10 Q. And was this Group concerned with the selection of the
11 emergency -- or an Emergency Manager?
12 A. That would be yes.
13 Q. Now, if you go down -- so in this email, as I
14 understand it, Mr. Andrews is proposing a candidate
15 that he says might be a good fit as Emergency Manager
16 who, as he writes, would align with your, meaning the
17 Mayor's, reform agenda; right?
18 A. That's correct.
19 Q. Now, in the third paragraph Mr. Andrews writes, I
20 realize he, referring to the candidate being proposed,
21 does not meet the standards of what the State would
22 want but he would meet the standards of what we would
23 want with you firmly in place to pursue your agenda.
24 Do you have an understanding of what
25 Mr. Andrews is referring to in that paragraph?

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1 A. Yeah, I think what he meant is the State -- you know,
2 my agenda had been laid out for some time going all
3 the way back to 2011 and some of the things that we
4 wanted to do and focus on did not necessarily align
5 with what the State wanted us to do and Kriss felt
6 that this individual would be much more aligned with
7 us.
8 Q. And in brief can you tell me what some of those items
9 were?
10 A. You know, we had somewhere around 21 different items
11 that the State and our administration agreed upon from
12 a restructuring standpoint, but I knew it was
13 impossible for us to attack all of those at one time
14 and have any success, so I selected about six
15 different areas that we should focus on. Number one
16 being public safety. Number two, public lighting.
17 Number three, public transportation. Number four,
18 eradication of blight. And number five, the support
19 and maintenance of our recreation and parks system.
20 Q. And I take it from your prior answer that the State
21 had different priorities?
22 A. I think the State had different priorities. They were
23 never spelled out to us, if you will. Because of the
24 21 that we had agreed upon, I think maybe their focus
25 and mine just wasn't aligned.

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1 Q. And do you recall whether the State had a particular
2 focus with which you disagreed or that you did not
3 think should be the priority?
4 A. I don't really recall that.
5 Q. Now, Mr. Andrews in his email says, I realize he,
6 meaning the candidate attached, does not meet the
7 standards of what the State would want.
8 Do you have an understanding as to what
9 Mr. Andrews is referring to when he writes that this
10 person would not meet the standards of what the State
11 would want?
12 A. I think the standards that he was referring to was
13 whatever the State wanted that person to do, that
14 person would do it and this person was going to be
15 much more aligned with our agenda as opposed to the
16 State's.
17 Q. And did you have discussions with Mr. Andrews on that
18 point?
19 A. Yes.
20 Q. And is that what he conveyed to you orally as well as
21 in writing?
22 A. Yes.
23 Q. And did you have any discussions with Mr. Andrews as
24 to whether Mr. Orr was a person who would essentially
25 follow what the State wanted him to do?

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1 MR. CULLEN: Objection, foundation, form.
2 You can address the question.
3 A. Kriss at that time had not met Mr. Orr --
4 Q. Uh-huh.
5 A. -- so I don't think he had a determination one way or
6 the other about Mr. Orr.
7 Q. And did you have conversations on that topic with
8 Mr. Andrews subsequent to the appointment of Orr as
9 Emergency Manager?
10 A. The answer would be yes.
11 Q. Okay, and what was the substance of those
12 conversations?
13 A. Based on the meeting that I had with Kevyn in
14 Washington, he seemed to understand the plight that we
15 were facing here in Detroit and seemed to be willing
16 to work with us on our agenda.
17 Q. And did he ultimately work with you on your agenda?
18 A. Not to my satisfaction.
19 Q. And did you form an impression as to whether Mr. Orr
20 was someone who was essentially willing to do what the
21 State wanted him to do?
22 MR. CULLEN: Objection, foundation, form.
23 A. He was chosen by the State and so he was taking his
24 direction from the State.
25 Q. And is there anything else that leads you to believe



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1 that he was willing to do essentially what the State
2 was asking him to do?
3 MR. CULLEN: Objection, foundation, form.
4 A. The answer would be no.
5 Q. I take it from your prior testimony that you never in
6 fact proposed this individual that was recommended as
7 a possible candidate by Mr. Andrews; is that right?
8 A. That would be correct.
9 Q. I'm going to show you another document, which was
10 previously marked as Exhibit 6 to the deposition of
11 Mr. Orr, which commenced on September 16 and was
12 continued on October 4th.
13 And just so the record is clear, there are
14 other documents I'm going to show you that were marked
15 as exhibits to the Orr deposition that began on
16 September 16 and continued on October 4 and I'm going
17 to refer to those just generically as Orr Deposition
18 Exhibits and I say that -- we'll use that terminology,
19 because there was a prior deposition with Mr. Orr in
20 connection with the SWAP issues. So when I refer to
21 Orr deposition, it's referring to the ones that were
22 done on September 16th and October 4th. Is that okay?
23 A. Okay.
24 Q. Have you ever seen this Orr Exhibit 6 before, which
25 begins with Bates number JD-RD-0000216, or parts of

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1 it?
2 A. I have.
3 Q. And have you seen the entire document or only parts of
4 it?
5 A. Parts of it.
6 Q. And what part would that be?
7 A. That would be the summary of partnership.
8 Q. And can you tell me what that is? Can you identify
9 that?
10 A. The conversation that I had with Rich Baird and made
11 reference to as I met with Kevyn, I asked for some
12 things that I thought were germane to helping to turn
13 the City around and I spoke to Kevyn about that, I
14 spoke to Rich Baird about that, and I guess Rich Baird
15 and Kevyn spoke after my meeting with Kevyn. So I
16 don't remember seeing the front -- this front page
17 from Rich Baird.
18 Q. Okay, and the document you're referring to is what
19 appears on Bates pages 217 and 218; is that right?
20 A. That would be correct.
21 Q. And this was in fact a summary of partnership document
22 that was -- it was not drafted by you; was it?
23 A. No, it was not.
24 Q. It was given to you by Mr. Baird?
25 A. No, this was -- I think this was prepared by Kriss

Page 23

1 Andrews.
2 Q. Okay, and if you look at the first page of the
3 document, this is an email from Mr. Baird saying -- by
4 the way, just so the record's clear, just tell me
5 quickly who Mr. Baird is. We've used his name and
6 actually haven't identified him.
7 A. He is the advisor to Governor Snyder.
8 Q. And in this email dated February 20th, which is to
9 Mr. Orr, Baird writes, FYI, the summary of partnership
10 prepared by the Mayor from the outline I gave him last
11 week.
12 So I think you indicated that the summary
13 of partnership was actually drafted by Mr. Andrews
14 from your office or the COO for the City?
15 A. Yes.
16 Q. And had Mr. Baird given you an outline previously?
17 A. Not an outline, but he did give me some areas that he
18 thought we could agree upon.
19 Q. Was that in written form?
20 A. Yes.
21 Q. And that was one of the things that Mr. Andrews used
22 to prepare the summary of partnership?
23 A. That is correct.
24 Q. If you'd look at the first page of this document,
25 Mr. Baird is writing about a conversation that he had

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1 with you. He says, told him, meaning you, Mr. Mayor,
2 that there were certain things I would not think we
3 could agree to without your, meaning Mr. Orr's,
4 review, assessment and determination such as keeping
5 the executive team in its entirety.
6 Do you have an understanding what that's
7 referring to?
8 MR. CULLEN: Objection, foundation, form.
9 Mr. Baird's note, he's never seen it before.
10 Q. You can answer my question, Mr. Mayor.
11 A. One of the things that I wanted to keep intact was my
12 executive team. It took me a couple years to really
13 put that team together and I thought not keeping that
14 team together would not be good in terms of helping us
15 turn the City around so I wanted to keep my team in
16 place.
17 Q. Okay, and was Mr. Andrews part of that team?
18 A. He was.
19 Q. And did you have a discussion about keeping the
20 executive team in place with Mr. Baird, as is
21 recounted by Mr. Baird in this email?
22 A. That would be correct.
23 Q. And can you tell me the substance of the conversation
24 on that point you had with Mr. Baird?
25 A. Once again, because it took such a long time, I didn't



Page 25

1 want to see a lot of turnover, additional turnover.
 2 With an Emergency Manager coming in, if we started
 3 losing some of our key players that have been there
 4 with me to put a plan together and then try to execute
 5 the plan, relieving or dismissing any of those people
 6 I thought would be a negative, would take us backwards
 7 and not forward.
 8 Q. And by this in terms of timing, we had talked before
 9 about the call or conversation you had with Baird when
 10 he first told you about Mr. Orr as being considered
 11 for the Emergency Manager position. The conversation
 12 we're talking about now, is this part of the same
 13 conversation or is it subsequent?
 14 A. Same conversation.
 15 Q. Okay. And in the email that Mr. Baird writes, he
 16 says, that Mr. Baird told you during this conversation
 17 that there were some things that he, Baird, couldn't
 18 agree to without first getting Orr's approval.
 19 Do you recall that?
 20 A. Yes.
 21 Q. Can you tell me what -- as much as you can about that
 22 subject matter?
 23 A. No guarantees in terms of making sure that the
 24 executive team in its entirety stayed in place with
 25 their pay level.

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1 Q. And did he talk to you specifically about having a
 2 need to get, as he puts it here, the review,
 3 assessment and determination from this -- on that
 4 subject from Mr. Orr? In other words, did he tell you
 5 that he needed to run that by Orr and get Orr's
 6 approval?
 7 A. Yes, he did.
 8 MR. CULLEN: Objection, foundation, form.
 9 Q. And did he tell you why he needed to get approval from
 10 Mr. Orr?
 11 A. I think he wanted to make sure that Orr was
 12 comfortable with the staff that was already here.
 13 Q. Because the Emergency Manager would have the power to
 14 fire the staff; wouldn't he?
 15 A. That is correct.
 16 Q. Now, if you look at some of the items that are on this
 17 list in the partnership, like number 4, number 5, 6,
 18 7, what are those? Can you just tell me briefly?
 19 MR. CULLEN: Objection, foundation, form.
 20 You want him to go through them one by one, counsel?
 21 MR. ULLMAN: Yeah, just a brief summary of
 22 what each of these points is.
 23 Q. And these are things, as I say, were prepared by
 24 Mr. Andrews and had been discussed at least in concept
 25 with Mr. Baird; is that right?

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1 MR. CULLEN: Objection, foundation, form.
 2 A. That is correct. Number 4 I will respond to. Wanted
 3 to make sure that if I called an executive meeting or
 4 Mr. Orr called an executive meeting, we wanted to make
 5 sure that all the key people were invited to the
 6 meeting and so that, you know, everybody would know
 7 what was going on. That was number 4.
 8 As relates to number 5, back in December of
 9 '12 I had agreed with the Governor in concept that the
 10 State would lease Belle Isle and run it as a State
 11 park, which would relieve us from an expense of
 12 roughly \$6 million a year, it would allow my 38
 13 recreation department employees to be redeployed to
 14 other parks across the City and also the State would
 15 invest somewhere up to 10 to \$20 million to upgrade
 16 Belle Isle over a three-year period.
 17 Q. Okay.
 18 A. I don't know if there were other ones that you --
 19 Q. Number 6 briefly. This is --
 20 A. Okay. We had put together over maybe an 18-month
 21 period with a lot of input from a lot of constituents
 22 across the City developing the Detroit Future City
 23 Plan and I wanted to make sure that we didn't just put
 24 that plan on a shelf somewhere. That with so many of
 25 our constituents involved in that process we needed to

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1 use that as a blueprint to move forward and I never
 2 got heavily involved with Kevyn on the financial
 3 initiatives as it relates to reducing the long-term
 4 liabilities, managing cash flow, achieving the
 5 long-term sustainable financial stability. He's
 6 basically taken that upon himself.
 7 Q. Okay. And what was the Detroit Future City framework
 8 that's referred to in point six?
 9 A. It's a booklet, a plan, that was put together over an
 10 18-month period by -- I don't even -- I think it said
 11 they had over 30,000 meetings with constituents all
 12 across the City so everybody had some input into what
 13 the City's future would look like.
 14 Q. Okay. And those -- those initiatives, were they --
 15 let me ask you this more as a question. Were the
 16 initiatives outlined in that booklet that you
 17 mentioned intended to assist in reducing long-term
 18 liabilities and manage cash flow and achieve long-term
 19 and sustainable financial stability?
 20 MR. CULLEN: Objection, foundation, form.
 21 A. I don't believe -- not with any specificity. It was
 22 more of the areas that we were going to focus on in
 23 the City, so I don't think it had a lot to do with the
 24 financial stability of the City.
 25 Q. Okay. And when had that booklet been put together?



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1 Did you say?
2 A. It was about six months ago so it was in -- probably
3 in March/April of '13.
4 Q. Well, this email is dated February of 2013.
5 A. That -- that book did not come out for public
6 consumption I think until sometime in '13. I think it
7 was really the March/April time frame.
8 Q. Okay. So at this point in time what you're referring
9 to in this draft partnership agreement is something --
10 a booklet that had been drafted but had not yet been
11 published?
12 A. That would be correct.
13 Q. Okay. And what is number 7 on this list?
14 A. There were a lot of negotiations that had gone on
15 prior to Mr. Orr coming on board and we wanted to go
16 back and relook at a lot of those initiatives, things
17 that we had already been negotiating with labor, but
18 once again, I never -- since Kevyn came on board, I
19 never sat in another meeting where labor initiatives
20 were discussed.
21 Q. Now, as of the date of this email, and this is around
22 the time of your conversation with Mr. Baird, had you
23 spoken with anyone else from the State about Mr. Orr
24 as a candidate for the Emergency Manager or Emergency
25 Financial Manager position?

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1 A. Mostly that was done with Rich Baird, but I do think
2 the Governor and I may have had a brief conversation
3 in one of our meetings, because Baird had made the
4 recommendation to the Governor and I think the
5 Governor was receptive to his -- to his
6 recommendation.
7 Q. And do you recall any discussions with the Governor as
8 to the qualifications of Mr. Orr to serve as Emergency
9 Financial Manager or Emergency Manager?
10 A. No.
11 Q. If you turn back to the first page of this Exhibit Orr
12 Number 6, in the bottom email on the first page
13 Mr. Baird is saying, will broker a meeting via Note
14 between you, meaning Mr. Orr, and the Mayor's personal
15 assistant who is not FOIAable.
16 Do you have an understanding as to what
17 that's referring to?
18 MR. CULLEN: Objection, foundation, form.
19 A. I don't think he wanted to send something on my
20 personal email. I don't have -- I should say my City
21 email, because I don't have a personal email, so he
22 wanted to send it to somebody else, he didn't want to
23 send it on a City email.
24 Q. Do you ever recall any discussions with Mr. Baird in
25 which Mr. Baird indicated that he didn't want to send

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1 anything to you on your City email?
2 A. No.
3 Q. Do you have an understanding as to why Mr. Baird would
4 not want to send something to you under City email?
5 A. No.
6 Q. Who is the personal assistant that's referred to here?
7 A. Her name is Sue Ray, R-A-Y.
8 Q. And do you recall Ms. Ray getting an email from
9 Mr. Baird to set up a meeting between you and Mr. Orr?
10 A. I don't recall that. I mean, I knew the meeting, it
11 was by phone that Mr. Baird and I talked about going
12 down to meet Kevyn.
13 Q. I'm going to show you another document which we --
14 which was previously marked as Orr Deposition Exhibit
15 7.
16 And for the record this first page of this
17 document bears Bates numbers JD-RD-0000459.
18 A. Okay.
19 Q. Okay. Mr. Mayor, have you ever seen this document or
20 parts of it before?
21 A. I don't recall seeing this.
22 Q. And if I can direct your attention to the last two
23 pages of the document, there's a summary of
24 partnership again.
25 A. Okay.

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1 Q. Do you recall --
2 A. This --
3 Q. -- seeing specifically the last two pages?
4 A. The last two pages, yes.
5 Q. Okay. And that is, is it not, a revised version of
6 what appears at the end of what we've put in the
7 record as Orr Exhibit 6?
8 MR. CULLEN: Objection, foundation, form.
9 You can address the question.
10 A. I have read all of this. I don't know if this is
11 different from the other one that we saw.
12 Q. Okay, I guess if you look at the date of the last one,
13 you'll see it's dated February 18 and this one is
14 dated February 21.
15 A. Twenty-one.
16 MR. CULLEN: Is there a question, counsel?
17 Q. Do you see that?
18 MR. CULLEN: I beg your pardon?
19 MR. ULLMAN: I asked him if he saw the
20 dates.
21 MR. CULLEN: Okay.
22 A. Yes, I see the dates.
23 Q. Okay. And I think if you look at the text -- do you
24 recall getting an updated version or one or more
25 versions of this partnership agreement?



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1 A. Yes.

2 Q. And I think if you look at the text, you'll see that

3 there are indeed some differences, some of which I'm

4 going to ask you about.

5 A. Okay.

6 Q. First of all, if you look at the first page of this

7 exhibit, there's a note from Mr. Orr who says he spoke

8 with the Mayor this morning, he's writing as of

9 February 22nd, and we're all set to meet Monday

10 morning.

11 The Monday would be the 25th.

12 A. Okay. Yes.

13 Q. Okay, did you in fact meet with Mr. Orr on February

14 25th, Monday?

15 A. If -- yeah, I mean, I think we can go back and track

16 my travel day, and yeah, I do remember going then. I

17 don't know if it was the 25th or not, but I only went

18 there once.

19 Q. Okay, so it was around -- that's the meeting that

20 Mr. Orr --

21 A. Yes.

22 Q. -- is referring to in his email?

23 A. Yes.

24 Q. You said it took place at Jones Day in Washington?

25 A. Correct.

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1 Q. So you actually physically traveled up to Washington

2 to meet with Mr. Orr?

3 A. That is correct.

4 Q. Is there a particular reason he didn't come down to

5 Detroit to meet with you?

6 A. I don't know if there was a reason that he wouldn't

7 come here. He wasn't -- I guess he felt more

8 comfortable with me coming to Washington as opposed to

9 his coming here.

10 Q. Okay. And do you recall discussing a summary of

11 partnership document with Mr. Orr at the meeting?

12 A. Yes.

13 Q. And let me just ask you in particular about number 7

14 here. And if you compare this with a version number 7

15 on what's attached to Orr Deposition Exhibit 6, you'll

16 see that the earlier version from Exhibit 6 has item 7

17 as labor and it says labor initiatives will be pursued

18 jointly by the Mayor and the manager.

19 A. Just a moment here. Now, give me your question again,

20 please.

21 Q. If you look at the first version which is attached to

22 Orr 6, number 7 says labor initiatives will be pursued

23 jointly by the Mayor and the manager?

24 A. Uh-huh.

25 Q. And if you look at number 7 on the February 21 version

Page 35

1 attached to Orr Exhibit 7, item 7 has been revised to

2 say labor, retiree and benefit initiatives will be

3 pursued jointly by the Mayor and the manager to the

4 extent permitted by law.

5 A. And the question is?

6 Q. Okay, do you recall any discussion as to the reason

7 for those changes?

8 A. No.

9 Q. Do you recall any discussion -- let me ask you this.

10 Do you have an understanding as to what

11 labor, retiree and benefit initiatives are being

12 referred to in item 7 of the summary agreement at the

13 end of Orr Deposition Exhibit 7?

14 A. Yes, I do.

15 Q. And what are those?

16 A. One of the things that was being discussed even before

17 Kevyn came on board was the healthcare cost, which we

18 wanted to change. We knew also that we needed to take

19 a look at the pension funds. But we had made no

20 determination as to what direction that we were going

21 to go in.

22 Q. And did you have any discussion with Mr. Orr at this

23 meeting in DC concerning pension related issues?

24 A. No, not to my knowledge, no, I don't remember that.

25 Q. In item 7 on this document it refers to initiatives

Page 36

1 will be jointly pursued to the extent permitted by

2 law. Do you have an understanding as to what that

3 phrase was referring to?

4 A. No, I don't.

5 Q. Did you have any discussion with Mr. Orr at the

6 meeting in DC as to legal constraints on actions that

7 could be taken to address various of the City's

8 financial issues?

9 A. No.

10 Q. Now, this last document is around February 22nd. You

11 had said that you had -- you were taking a look at

12 issues relating to healthcare and pensions but nothing

13 -- no determinations had been made?

14 A. That's correct.

15 Q. And what -- what avenues, what possibilities, were you

16 exploring as regards pensions?

17 A. We were looking at the potential of moving everything

18 to a 401(k) plan, because we knew that we couldn't

19 continue to fund the pension as it had historically

20 been funded. It was -- it was obviously hurting us.

21 The same thing would be true on the healthcare side.

22 We had looked back three or four years where we saw

23 the healthcare costs were increasing by double numbers

24 on an annualized basis and from an affordability

25 standpoint we knew that we could no longer continue to



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1 do that.

2 Q. Now, with respect to the pensions had you given any

3 consideration to how the pension clause in the

4 Michigan Constitution affected your ability to take

5 various actions that you might like to take?

6 A. No.

7 MR. CULLEN: Again -- just going to ask if

8 you had a time frame, counsel, but if it's no, it's

9 no.

10 Q. I'm asking about the time frame we're talking about

11 here as of the end of February of 2013.

12 A. No.

13 Q. At this point in time were you -- I've made reference

14 to the pension clause in the Michigan Constitution.

15 As of February 2013 were you aware of that?

16 Let me withdraw that and ask you, first of

17 all, do you understand what I'm referring to when I

18 use the term pension clause?

19 A. Maybe you want to explain it.

20 Q. Okay. Well, let me show you another document that

21 we've also had marked at the Orr deposition. This is

22 Orr Deposition Exhibit 5. And what we have as Exhibit

23 5 from the Orr deposition is a copy of the Michigan

24 Constitution, Article 9, Section 24.

25 A. Okay.

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1 Q. Have you ever seen that provision before?

2 A. No.

3 Q. You never saw it before today?

4 A. I don't recall it, no.

5 Q. Were you -- prior to seeing it now, were you aware

6 that there is a clause in the Michigan Constitution

7 that provides certain protection for vested pension

8 rights and payments in respect thereof?

9 MR. CULLEN: Objection, foundation, form.

10 You can address the question.

11 A. I think those responsibilities rested with the labor

12 law department. I mean, I didn't get involved in

13 that.

14 Q. So your testimony is similarly that you were

15 completely unaware up till now that there is a clause

16 in the Michigan Constitution that deals specifically

17 with issues pertaining to pensions and payments

18 associated therewith?

19 A. No, I mean --

20 MR. CULLEN: Objection, foundation, form.

21 Q. You can answer the question.

22 MR. CULLEN: You can answer the question,

23 if you can unpack it.

24 THE WITNESS: Yeah.

25 A. I mean, I read in the paper like everybody else, so

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1 this is not -- seeing this here today at this time is

2 not the first time that I'm aware of it. I mean, I've

3 read -- I read the paper.

4 Q. Okay. And were you aware of this clause in the

5 Michigan Constitution at the time while you as Mayor

6 were considering issues that might be taken to lower

7 the pension costs that the City of Michigan -- of

8 Detroit was facing?

9 MR. CULLEN: Objection, foundation, form.

10 You can address the question to the extent you

11 understand it.

12 A. The answer would be no.

13 Q. I think you indicated there was another -- there was a

14 department within the City that was responsible for

15 pension related issues?

16 A. That would be correct.

17 Q. Okay. And who was the head of that?

18 A. What's his -- I'm trying to think of the name right

19 now. I can't -- yes, Lamont Satchel. He heads up our

20 labor law department.

21 Q. And does Mr. Satchel have access to legal advice,

22 legal counsel provided by the City of Detroit?

23 A. I'm sure he does. He's a lawyer himself.

24 Q. And do you recall any discussions with Mr. Satchel as

25 to any constitutional limits on the City's ability to

Page 40

1 take steps with respect to pension rights and related

2 payments?

3 MR. CULLEN: Objection, foundation, form,

4 calls for a -- to the extent you're calling beyond the

5 fact of any such conversations, for the substance of

6 any conversations which would be privileged.

7 Q. You can answer the question.

8 A. No, I had none of those conversations with

9 Mr. Satchel.

10 Q. Okay. I'm going to show you another document. This

11 one we will mark as Bing Number 2.

12 (Marked Exhibit No. 2.)

13 A. Okay.

14 Q. Okay, for the record what we've marked as Bing 2 is a

15 chain of emails, this top one is November 27, 2012.

16 Beginning Bates page number is DTMI00079928.

17 Have you ever seen these emails before,

18 Mr. Mayor?

19 A. Yes, I have.

20 Q. And what was the context in which you saw them?

21 A. That Leonard Fleming, who is a reporter for the

22 Detroit News, wanted to write an article on how close

23 we were to bankruptcy, and I think Bob got in contact

24 with Kriss and Kriss put that document -- put this

25 email together for Bob answering the question from the



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1 media.

2 Q. Okay. And Mr. Andrews writes in the top email, this

3 is recounting his conversation with Leonard Fleming,

4 he says, I made the following three major points: The

5 first one is we fully intend to be successful without

6 the use of bankruptcy.

7 Do you have an understanding of what

8 Mr. Andrews was referring to there?

9 A. Yeah, if we could continue to get the support that we

10 needed from the State on our 21 initiatives that we

11 agreed upon, we should not have to go the route of

12 bankruptcy.

13 Q. And did that -- the substance of what you just said

14 reflect conversations that you had had with Mr. Kriss

15 -- I'm sorry, with Mr. Andrews --

16 A. Yes.

17 Q. -- apart from the email?

18 A. That would be yes.

19 Q. So is it correct then that at least as of the date of

20 this email, which is November 2012, November 27, 2012,

21 the possibility of filing for Chapter 9 had been

22 discussed with you and members of your team?

23 A. I wasn't part of that, maybe Kriss was part of that,

24 but not myself.

25 Q. Okay. But you said you were aware that this -- I'm

Page 42

1 sorry, I thought you said you were aware that the idea

2 was to be successful without the need to file

3 bankruptcy?

4 A. Correct.

5 Q. So the possibility of filing bankruptcy had been

6 something that had been discussed and I take the

7 conclusion was you didn't think you needed to go that

8 route?

9 A. That would be correct.

10 Q. And when did those discussions take place?

11 A. I can't -- I mean, it was in -- I'm sure at the end of

12 2012 and ongoing up until bankruptcy was actually

13 filed.

14 Q. And with whom did you have those discussions?

15 A. That would have been internally with the leadership

16 team, Jack Martin, Kriss, the executive team. None of

17 us wanted to go in that direction.

18 Q. Who is Jack Martin?

19 A. Jack Martin was the CFO.

20 Q. And you made reference to a leadership team. Does

21 that involve individuals other than Martin and

22 Andrews?

23 A. It would have involved -- I don't know if -- I don't

24 think Portia was part of that at that time; but it

25 would have been I think Kirk Lewis was still here, who

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1 was Deputy Mayor; I think at that time I'm not sure

2 that Chris Brown, I don't remember when he left, but

3 Chris Brown was part of that leadership team; and

4 Bob Warfield.

5 Q. And what was the basis on which the people involved in

6 those discussions concluded that the City's finances

7 could be redressed without the need to file a Chapter

8 9 bankruptcy?

9 MR. CULLEN: Objection, foundation, form.

10 You can address the question.

11 A. We all felt that if we got the kind of resources that

12 we needed, the support that we needed from the State,

13 that we could manage our way through the catastrophe

14 without necessarily going bankrupt, filing for

15 bankruptcy.

16 Q. And was that through a combination of raising revenue

17 and cutting costs?

18 A. That would be correct.

19 Q. And the proposal -- the means by which you would do

20 that or wanted to try to do that, was that set out in

21 a document?

22 A. There were several different documents that had been

23 prepared internally. In terms of raising revenue was

24 the collection of taxes, which was a big thing for us,

25 but still, I mean, we wanted to go back to the State,

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1 we thought that from a cash flow standpoint we saw

2 where we were running out of money, we saw where we

3 were hitting the wall, we needed some support from the

4 State and we did get that to the tune of a

5 \$137 million loan that we got. The State was to

6 release over time certain amounts of that loan. We

7 had to repay I think an \$80 million loan that we had

8 prior to the 137. I don't recall all of the details

9 right now, but I do know that some of the initiatives

10 that we and the State had agreed upon releasing those

11 funds was contingent upon us making sure that those

12 were deliverables that we could live up to.

13 Q. And was the -- did the initiatives that you had --

14 that you described and that were proposing entail the

15 City of Michigan -- I keep saying that. Let me

16 withdraw that and start again.

17 Did the initiatives that you described for

18 cost cutting, raising revenue, require the City of

19 Detroit doing anything that was prohibited by Michigan

20 law?

21 MR. CULLEN: Objection, foundation, form.

22 A. I don't know.

23 MR. CULLEN: You're asking for a legal

24 conclusion.

25 A. I don't know the answer to that.



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1 Q. Well, did you -- as part of this initial -- this
2 restructuring program, were you aware in any way that
3 anything that was being proposed was contrary to the
4 laws or Constitution of the State of Michigan?
5 A. No.
6 Q. And do you recall specifically how if at all the
7 pension liabilities were to be dealt with under your
8 proposed approach?
9 A. No.
10 Q. Would that be set out in whatever documents there are
11 that describe your initiatives?
12 A. I didn't understand your question.
13 Q. Would the approach to pensions be set out in whatever
14 documents exist that describe the initiatives that
15 you've referred to?
16 A. Those probably were internal meetings between the CFO
17 and the COO and probably people from the labor
18 department. Those aren't meetings that I sat in.
19 Q. So you don't recall the specifics of how the pension
20 issues were --
21 A. No.
22 Q. -- being dealt with?
23 A. No.
24 Q. But as you understood it, the City's -- if the
25 proposed restructuring, the initiatives that you put

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1 in place went through, you believe that the City would
2 be able to survive without bankruptcy and would
3 continue to be able to meet its legal obligations?
4 MR. CULLEN: Objection, foundation, form.
5 A. The answer would be we wanted that opportunity.
6 Q. Okay. And you thought that if you had that
7 opportunity, you could make it happen; is that right?
8 A. That would be correct.
9 Q. But you weren't given that opportunity; were you?
10 A. That is correct.
11 Q. Let me go back to what we've marked as Orr Exhibit --
12 that we haven't marked but we've identified as Orr
13 Deposition Exhibit 7, which has the proposed summary
14 of partnership.
15 A. Uh-huh.
16 Q. Was this partnership agreement, the document that
17 appears here where it has a draft label on it, was
18 that ever made final?
19 A. Not to my knowledge.
20 Q. When you met with Mr. Orr on -- at the end of February
21 in DC, you indicated that you discussed this with him,
22 though; correct?
23 A. Correct.
24 Q. And did he tell you that he was -- that he was
25 agreeable to it?

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1 A. He was agreeable in working together, but we didn't go
2 step by step and say that I agree or I don't agree.
3 Q. Okay. So did you have an understanding as when you
4 left that meeting in DC whether Mr. Orr had in fact
5 agreed to the points that were set out in this summary
6 of partnership document?
7 MR. CULLEN: Objection, foundation, form.
8 A. One of the areas that I do recall and me saying is
9 that it made reference to keeping the executive team
10 intact. He wanted the opportunity to make an
11 assessment himself.
12 Q. Okay, and did he make an assessment?
13 MR. CULLEN: Objection, foundation, form.
14 A. I think over the time that he's been here, I don't
15 think he personally made an assessment. I think there
16 were others who may have made an assessment and made
17 recommendations to him.
18 Q. And was your team -- your executive team left intact?
19 A. No.
20 Q. And who was gotten rid of besides Mr. Andrews, if
21 anyone?
22 A. Jack Martin is no longer here as the CFO. Karla
23 Henderson, who was the group executive for planning
24 and development and BC, is no longer here. I think
25 before Kevyn came on Kirk Lewis was already gone. I

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1 do think that Chris Brown was already gone. As of
2 today our purchasing director is no longer here,
3 Andre DuPerry. Richard Kay, who was the director of
4 the lighting department, is no longer here. The
5 director of DDOT is no longer here. I think there --
6 that's right off the top of my head. I think there
7 were nine or ten department heads that are no longer
8 here.
9 Q. And were they asked to leave by Mr. Orr or --
10 A. For the most -- for the most part, yes. There was one
11 guy who headed up -- he was the director of homeland
12 security, he left on his own accord because of the
13 environment that he felt he could no longer work in,
14 but for the most part all of those other people were
15 asked to leave.
16 Q. Now -- and are the positions that those people held
17 vacant or have they been replaced with other people?
18 A. There's a mixed bag, quite frankly. I mean, some of
19 them -- I think you got some consultants in some of
20 those positions. I mean, I had no input at all. I
21 mean, I found out after the fact that either people
22 were removed or if somebody was coming in. I had -- I
23 never had the opportunity to interview even the new
24 CFO who came in, the new COO who came in. Those were
25 selected by Kevyn in a vacuum, as far as I'm



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1 concerned.

2 Q. Moving on past February of 2013, as I recall, the

3 official appointment of Mr. Orr as the emergency -- I

4 forget whether it was the Emergency Financial Manager

5 or Emergency Manager, but it took place sometime

6 around the end of March. Is that generally consistent

7 with your recollection?

8 A. Yeah, I think March 25th was his first day.

9 Q. And from the meeting in DC up to March -- say March

10 25th, did you have any conversations with Mr. Orr?

11 A. I may have had one phone -- one other phone

12 conversation with him.

13 Q. And do you recall what the substance of that call was

14 about?

15 A. I think more than anything else it was making sure

16 that when he came on board, we were having a press

17 conference, introducing him as the Emergency Financial

18 Manager and wanted me to stand with he and the

19 Governor at that, because we didn't want, quote

20 unquote, a divided house, if you will, and I thought

21 it was better since an Emergency Manager was coming on

22 board, it was no sense in us continuing to fight that.

23 If he could be helpful to turn this City around, it

24 would be better we do it together.

25 Q. So in that phone conversation was there any discussion

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1 of Chapter 9 filing?

2 A. No.

3 Q. Was there any discussion of anything related to

4 pensions?

5 A. No.

6 Q. I'm going to show you another document, Mr. Mayor,

7 which we'll mark as Bing Number 3.

8 (Marked Exhibit No. 3.)

9 Q. For the record what we've marked as Bing Exhibit --

10 what is this, 4? Three. Actually I think we had

11 previously marked this as Exhibit 22 to the Orr

12 deposition, but since I've forgotten about that, now

13 we'll just leave it as Bing Number 3, but I believe it

14 is the same document.

15 Do you recognize this document, Mr. Mayor?

16 A. Yes.

17 Q. For the record it's entitled City of Detroit

18 Restructuring Plan, dated March 23, begins with Bates

19 number DTMI00129416.

20 A. Yes.

21 Q. And just briefly tell me what this is and I'll ask you

22 a few questions about it.

23 A. Well, it speaks to the things that we were working on,

24 the recommendations that we had put together to get us

25 through a very tumultuous time in the City of Detroit.

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1 We knew that this plan was going to negatively impact

2 a lot of folks in order for us to move forward with

3 implementation, but it was all about trying to manage

4 our way through without going to the route of

5 bankruptcy.

6 Q. And this was a document that was put together by you

7 and people on your team; is that right?

8 A. That would be correct.

9 Q. And I see we've been going for a little over an hour,

10 an hour and 20 minutes. It's probably a good time for

11 a break, but let me ask you first up to this time this

12 is now March 13, towards the -- by the end of March

13 had you had any conversations with anyone else from

14 the Governor's staff or with the Governor himself

15 about Mr. Orr as the Emergency Financial Manager or

16 the Emergency Manager?

17 MR. CULLEN: Objection, foundation, form.

18 You can address the question.

19 A. It was obvious to me in this time frame that Lansing

20 had made their selection, so, I mean, that's something

21 that I couldn't control so it was more important to

22 me, once again, to be part of the team to help fix the

23 City as opposed to constantly fighting and pushing --

24 and pushing back. I didn't think that would get us

25 anywhere.

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1 Q. Okay. So after you had your initial conversations

2 with Baird in February, you then met with Orr in the

3 end -- towards the end of February also in DC, and

4 then Orr -- there was an official announcement at the

5 end of March saying Orr's the new EM or the new EFM.

6 Prior to the meeting in DC and the official

7 announcement of Orr, did you have any contact with

8 anyone from the State about Mr. Orr's being made the

9 Emergency Manager or Emergency Financial Manager?

10 A. The answer would be very little, if any, because they

11 had the right to make the decision, they made the

12 decision, so once again, I would prefer to work with

13 the individual seeing what we could do together to fix

14 the City, a broken City.

15 Q. Okay, so let me just ask more directly. Did you have

16 advanced notice before the public announcement that

17 the City -- the State was going to come out and make

18 an announcement saying Kevyn Orr is our man?

19 A. Yes.

20 Q. And when were you told?

21 A. That had to be in early -- early to mid March.

22 Q. And do you remember the specifics of that discussion,

23 who told you what was said?

24 A. Whether that was Rich Baird or Andy Dillon, it wasn't

25 the Governor.



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1 Q. And other than them telling you that Orr was the man,
2 did you have any other discussions about Mr. Orr with
3 anyone from the State up till the end of March when
4 the formal announcement was made?
5 A. No.
6 MR. ULLMAN: Okay, why don't we just take a
7 short break now, because we've been going for awhile.
8 THE VIDEOGRAPHER: Okay, we're off the
9 record, 11:40 a.m. This completes disk one.
10 (A brief recess was taken.)
11 THE VIDEOGRAPHER: We are back on the
12 record at 11:48 a.m. This is disk two of the
13 deposition of David Bing. Please proceed.
14 BY MR. ULLMAN:
15 Q. Mr. Mayor, I would like you to refer to what we've
16 marked as Bing Exhibit 3 and ask you to turn to the
17 Bates page ending in 421 at the bottom.
18 A. Uh-huh.
19 Q. I guess before I ask you a specific question about
20 this, this document in general was intended to lay out
21 ways to raise -- both raise and save money from the
22 City's perspective; is that right?
23 A. That would be correct.
24 Q. And laid out in here were perhaps not all but a number
25 of the initiatives that you've previously made

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1 reference to; is that right?
2 A. That would also be correct.
3 Q. And I see in some of them there are cost savings that
4 are identified or potential cost savings in
5 parentheses. We were just looking at this page 421;
6 is that right?
7 A. Correct.
8 Q. Now, with respect to item 2C on the page I've asked
9 you to refer to, it's headed identified future cost
10 savings initiatives and there's a parenthetical saying
11 that's in process and there's a long list of various
12 items that the City is pursuing at this time, and the
13 last one says asset monetization strategies; do you
14 see that?
15 A. Yes.
16 Q. Can you explain what that is referring to?
17 A. There was real estate that I knew we had been in
18 discussions in terms of selling some real estate.
19 They also had been -- even going back in the
20 Kilpatrick administration there was discussion about
21 selling our rights in the Detroit/Windsor tunnel.
22 There was -- there was a recreation center that we had
23 a proposal on, a closed recreation center. Those were
24 some of the things that we talked about potentially
25 for monetization.

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1 Q. Did you have an understanding at the time this
2 document was prepared, which was March 2013, as to
3 what the potential or estimated value of the real
4 estate that you referred to was?
5 A. The UAW building across the street is for UAW, that
6 was a \$5 million proposal. The recreation center was
7 a \$1.7 million proposal. I don't recall, because I
8 think there was an updated assessment being done on
9 the valuation for the tunnel.
10 Q. Okay, I'm not sure -- can you explain a little more
11 briefly what you meant about the UAW? You said that
12 there was a --
13 A. There's a building across the street, it's city-owned,
14 but the UAW has been leasing the building.
15 Q. You mean across the street from where we're sitting
16 here now?
17 A. From where we're sitting, yes, across the street on
18 Jefferson Avenue.
19 Q. Okay.
20 A. The UAW is leasing that building from the City. They
21 made a proposal to purchase the building and we had
22 really come to an agreement in principle to the tune
23 of about \$5 million.
24 Q. And what happened?
25 A. It's never closed. It has never closed at this point.

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1 Q. So am I to understand it was effectively taken out of
2 your hands and you don't know what happened to it
3 since?
4 A. That would be --
5 MR. CULLEN: Objection, foundation, form.
6 Go ahead.
7 Q. You can answer the question.
8 A. That would be correct.
9 Q. And the Windsor tunnel, you said you're not certain
10 what the current -- there may be an updated valuation?
11 A. There may be an updated valuation. If I were to go
12 back 60 to 90 days or maybe even more than that, I
13 knew that there was an updated evaluation being done.
14 Q. And what was the valuation that you were familiar with
15 as of March --
16 A. I don't recall. I don't recall what that was.
17 Q. Then you made also reference to a recreation center.
18 You said it was closed but there was some proposal
19 that was made to purchase it; is that right?
20 A. Correct, to the tune of about 1.7 million.
21 Q. Do you know who made that proposal?
22 A. That was the Salvation Army.
23 Q. And as of the time as around March 13th, was that
24 something that looked like it was proceeding towards
25 this closing?



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1 A. Yes, it did.

2 Q. And was that taken out of your hands also?

3 A. Yes, it was.

4 Q. And that like the other real estate you mentioned was
5 taken out of your hands by the Emergency Manager and
6 his team I take it?

7 A. The whole process --

8 MR. CULLEN: Objection, foundation, form.

9 A. -- yeah.

10 Q. And did there come a time when someone -- how did this
11 process come about that it was taken out of your
12 hands? Did the Emergency Manager or someone from his
13 staff actually tell you or your staff, don't worry
14 about these things anymore, it's not your business or
15 words to that effect?

16 MR. CULLEN: Objection.

17 A. No.

18 MR. CULLEN: Foundation, form.

19 Q. How did it come about that it was taken out of your
20 hands?

21 A. I actually went to the Emergency Manager and told him
22 about these potential deals and in order for them to
23 go forward, he had to sign-off on it. He said to me
24 that it looked like they were decent deals and that he
25 would, but obviously that hasn't happened yet.

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1 Q. And has there been any follow-up with the Emergency
2 Manager between him and you as to why he hasn't signed
3 off?

4 MR. CULLEN: Objection, foundation, form.

5 A. I think more than anything else he wants to look at
6 some of the bigger issues that he's got to deal with
7 as opposed to these things which he may consider, you
8 know, not big issues.

9 Q. Even though if these things went through, they would
10 at least bring in some immediate cash; is that right?

11 A. They would.

12 Q. As part of the asset monetization, did you give any
13 consideration to try to monetize art that is owned by
14 the City of Detroit and maintained at the Detroit
15 Institute of Arts?

16 A. The answer would be no.

17 Q. And was there a particular reason you didn't give any
18 consideration to that?

19 A. Back at that time when we were thinking about it, that
20 never came up, that was never a conversation that we
21 had internally. I think since he's been on board, the
22 subject obviously has gotten a lot of heat and a lot
23 of visibility. I'm not sure what's going to happen
24 there.

25 Q. Okay. And do you -- let me ask it this way.

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1 Did you as of the March 2013 time frame
2 have any understanding, just a general understanding,
3 as to what the value was of the art that's owned by
4 the City of Detroit?

5 MR. CULLEN: Objection, foundation, form.

6 A. The answer would be no.

7 Q. And as you sit here today, do you have any
8 understanding as to the value of the art that's owned
9 by the City of Detroit?

10 MR. CULLEN: Same objection.

11 A. The answer would still be no.

12 Q. Are you aware of reports in the press stating that the
13 city-owned art could easily be worth billions of
14 dollars?

15 A. I have read that, yes.

16 Q. And do you have any reason to believe those reports
17 are inaccurate?

18 MR. CULLEN: Objection, foundation, form.
19 Of what they report or the value or what, counsel?

20 MR. ULLMAN: I think my question was clear.

21 Q. You can answer my question.

22 A. I know that he's engaged Christie's to do an
23 evaluation and I'm not sure that that's complete yet,
24 so I have no idea of what the value may or may not be.

25 Q. Okay. Let me ask you to turn now to the next page of

Page 60

1 this document, which is ending in Bates page 422. And
2 this heading says, and I quote, "The Mayor's plan
3 includes strategies to implement changes that will
4 significantly reduce general fund long-term
5 liabilities."
6 Do you see that?

7 A. Yes.

8 Q. And so we're clear, what in brief is the general fund?

9 A. That's the -- the general fund is what we use to run
10 the City on a day-to-day basis.

11 Q. Now, in subpoint A, 3A, you give some -- you give two
12 subpoints, two bullets. The second one says,
13 approximately 6 billion of City debt is owed by the
14 water and sewer department and does not have an impact
15 on the general fund. Do you see that?

16 A. Yes.

17 Q. Can you explain what you were referring to by those
18 words?

19 A. That -- that debt is paid by the users of the water
20 and sewerage department, so there's a revenue stream
21 that pays that debt down, so it's not part of the
22 general fund.

23 Q. Okay, and as you put it here, that that debt, while
24 it's on the books as City debt because the department
25 of water and sewer is part of the City, that doesn't,



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1 as you put it, have an impact on the general fund
2 because it's -- the water and sewer debt is paid for
3 by the department of water and sewer?
4 A. That would be correct.
5 Q. And that, as I understand it, is run as a separate
6 authority and has its own books and records and is
7 solvent; is that right?
8 A. That would be correct.
9 Q. You then go on in the next point, sub B, to refer to
10 pension unfunded liabilities, and you say
11 approximately 650 million of unfunded liability as of
12 FY 2012 of which only 250 million relates to general
13 fund.
14 A. Uh-huh.
15 Q. Do you see that? And could you tell me what you meant
16 when you wrote that?
17 MR. CULLEN: Objection, foundation, form.
18 A. I believe that makes reference to both the payment to
19 the pension fund and maybe even to the healthcare
20 benefits.
21 Q. Okay, I'm going to be a little more specific. The
22 language of this restructuring plan states that
23 there's 650 million of unfunded pension liability. Do
24 you see that?
25 A. Uh-huh.

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1 Q. And then it says of that only 250 million relates to
2 the general fund.
3 Can you tell me what that's referring to?
4 A. No, not right off the top of my head I can't, no.
5 Q. So you don't recall what that level of detail is as to
6 the --
7 A. Correct, correct, correct.
8 Q. Then the next bullet it -- well, I guess -- do you
9 recall where the 650 million liability -- unfunded
10 liability number comes from?
11 A. We have not -- we're not current with our pension
12 contributions.
13 Q. I guess let me ask it a little -- let me mark then
14 another document. We'll mark this as Bing 4.
15 (Marked Exhibit No. 4.)
16 Q. And Bing 4 for the record is an excerpt from a
17 document entitled Comprehensive Annual Financial
18 Report for the City of Detroit for its fiscal
19 year-ended June 30, 2012 and I've attached just two
20 pages of it because it's a very long document.
21 Okay, Mr. Mayor? You've seen -- you know
22 what the Comprehensive Annual Financial Report is;
23 right?
24 A. Yes.
25 Q. And I've attached the pages that pertain to the

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1 pensions and if you look on page 124, it talks about
2 the unfunded AAL on line 3 of that table.
3 A. Uh-huh.
4 Q. And which stands for unfunded actuarial -- as I
5 understand it, actuarial accrued liability?
6 A. Correct.
7 Q. And then if you look at the table, it says for the
8 General Retirement System there's a number of
9 approximately 640 million and on the Police and Fire
10 Retirement System it's about 4 million. Do you see
11 that?
12 A. Yes.
13 Q. And is it correct that that -- so that adds up to
14 about 644 million. Does that correspond to the
15 650 million that's in the restructuring plan that we
16 have as Exhibit 3?
17 A. Yes, yes.
18 MR. CULLEN: Objection, foundation, form.
19 Q. And when you -- the restructuring document refers to
20 the unfunded liability at fiscal year 2012, is that
21 referring to the valuation that's referred to at the
22 top of page 124 of Bing 4 where it says, and I quote,
23 "The funded status of each plan as of June 30, 2011,
24 the most recent actuarial valuation date, is as
25 follows" and then gives a table?

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1 MR. CULLEN: Objection, foundation, form.
2 A. And your question was?
3 MR. ULLMAN: Do you want to read it back?
4 If you don't understand, I'll rephrase it, but --
5 THE WITNESS: Yes. I just need --
6 Q. Would it be easier if I just rephrased the question?
7 A. Go ahead.
8 Q. Okay. When you referred to the approximately
9 650 million of unfunded liability as of fiscal year
10 2012, okay, the unfunded liability as of 2012, is that
11 referring to the underfunding as reported as of the
12 June 30, 2011 actuarial valuation which is referred to
13 on the top of page 124?
14 A. The answer would be --
15 MR. CULLEN: Objection, foundation, form.
16 When you say when you refer, you mean -- are you
17 implying that he wrote this document personally?
18 MR. ULLMAN: No, he and his team.
19 Q. I'm obviously referring to that in the general sense.
20 I didn't intend to imply that you physically drafted
21 this, Mr. Mayor. I understand this was put together
22 by you and people working for you.
23 A. And the answer to that would be yes.
24 Q. And also under this -- going back to page 422 of
25 Exhibit 3 under the subheading B under pension



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1 unfunded liabilities it says, the City is developing a
2 plan to reduce the unfunded liability.
3 Do you have any recollection as to the
4 specifics of that plan?
5 A. No, I don't.
6 Q. Now, you recall -- or let me ask you.
7 Are you aware that on June 14th, 2013 the
8 Emergency Manager had a meeting with creditors?
9 A. I'm aware.
10 Q. Prior to the time that he was appointed or I should
11 say -- let me withdraw that.
12 Prior to the time that the Emergency
13 Manager's appointment was formally announced and June
14 14, 2013, did you have any conversations with the
15 Emergency Manager himself?
16 A. Yes.
17 Q. And do you recall how many?
18 A. We don't -- we don't meet that often. You know, if we
19 meet once or twice a week, that's about it and the
20 meetings are usually very short meetings. Usually
21 called by me.
22 Q. And can you say how long a typical meeting would last?
23 A. Thirty minutes tops.
24 Q. During that time between March 25th and June 14th do
25 you recall any discussions with the Emergency Manager

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1 concerning pensions, anything to do with pensions?
2 A. I -- yes.
3 Q. And tell me what you recall.
4 A. You know, the general conversation was that pensions
5 are a major problem that we have and we've got to
6 address it.
7 Q. And do you recall when those conversations took place?
8 A. Probably more in the May time frame.
9 Q. And was there any conversation with the Emergency
10 Manager as to how the Emergency Manager intended to
11 address the issues of pensions?
12 A. No.
13 Q. Was there any discussion with the Emergency Manager
14 during the period I've been asking about, the end of
15 March and June 14, about the City's filing for Chapter
16 9 bankruptcy?
17 A. I think the only conversations we may have had about
18 that is that's the last resort and that's from him
19 saying, you know, that's not the direction we want to
20 go in and it would be last resort.
21 Q. Did the emergency -- did you have any discussions with
22 the Emergency Manager in which he indicated that he
23 had any approaches or thoughts as to how to address
24 issues relating to pensions other than filing for
25 Chapter 9 bankruptcy?

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1 A. No.
2 Q. And did you have any conversations with him in which
3 he specifically referred to a Chapter 9 bankruptcy as
4 a way to deal with the pension issues?
5 A. I believe the answer to that would be yes. I can't be
6 very specific, I don't recall, but I think -- I
7 believe that conversation -- or a conversation like
8 that did occur.
9 Q. Okay, and can you give me, as best you can recall, a
10 time frame as to when?
11 A. I think it would be in that same May time frame in one
12 of our discussions.
13 Q. And can you tell me with as much specificity as you
14 can remember what the Emergency Manager said during
15 that conversation?
16 A. Once again, with not a lot of specifics, but in order
17 to fix the problems of the City where -- I know this
18 number has been thrown out a lot, the \$3.5 billion of
19 unfunded liabilities, etc., etc., I mean, he talked
20 about that, but that was a generality and so it was no
21 more -- it was not more specific than that.
22 Q. But he referred to Chapter 9 as a way to get rid of or
23 address what he referred to as a 3.5 billion unfunded
24 liability?
25 A. As a possibility.

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1 MR. CULLEN: Objection, foundation, form.
2 You can answer.
3 A. As a possibility.
4 Q. And did Mr. Orr tell you at that time that the
5 unfunded liability was indeed 3.5 billion?
6 A. The answer to that would be yes.
7 Q. And did he tell you that that had been shown through
8 an actuarial valuation?
9 A. The answer to that would be yes.
10 Q. During that conversation or any other conversation
11 with Mr. Orr during the March 25 through June 14 time
12 frame, was there any discussion with Mr. Orr of what
13 we've referred to previously and I've shown you the
14 pension clause in the Michigan Constitution or any
15 other legal impediments to -- affecting pension
16 rights?
17 A. No.
18 Q. Let me ask you the same questions now -- well, let me
19 preface it by saying you're aware, of course, that
20 there was a bankruptcy filing on July 18.
21 A. That would be correct.
22 Q. Okay. Now, during the period between June 14, that
23 was when the creditor proposal was issued, and the
24 filing, did you have any conversations with Mr. Orr?
25 A. About?



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1 Q. Just in general first.
2 A. Yeah, we probably had general conversations, but
3 nothing relative to the filing.
4 Q. Okay. So between June 14th and July 18th did you have
5 any conversations with Mr. Orr regarding pensions at
6 all?
7 A. No.
8 Q. Any discussions with Mr. Orr at all regarding the
9 possibility of a Chapter 9 filing?
10 A. No.
11 Q. So I take it the Chapter 9 filing a complete surprise
12 to you?
13 A. Yes, it was.
14 Q. I've asked you conversations with Mr. Orr concerning
15 pensions and Chapter 9. Going back, we don't have to
16 do it in two time frames, but between March 25th which
17 is when the -- the last point we asked about and July
18 18th, did you have any conversations with anyone from
19 the State about the City's unfunded pension liability?
20 A. No.
21 Q. And during that same time frame did you have any
22 conversations with anyone from the State about the
23 possibility of a Chapter 9 bankruptcy filing?
24 A. No.
25 Q. Now, you said you were not made aware in advance of

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1 the bankruptcy filing. I take it you were made aware
2 of the bankruptcy filing after it happened?
3 A. No. The day that he was going to file is when he told
4 me he was going to file.
5 Q. Okay. And did he -- what was the substance of what he
6 told you? Did he just say we're filing or did he give
7 any explanation?
8 A. That's all he said, we're filing, today.
9 Q. And what time did he say that? Do you remember?
10 A. This was in the afternoon so it had to be somewhere
11 between 3 and 4 o'clock, somewhere in there I think.
12 Q. And at that time he didn't give you any explanation as
13 to why?
14 A. No.
15 Q. And did you have conversations with Mr. Orr subsequent
16 to the filing discussing the reasons why the filing
17 had been done?
18 A. No.
19 Q. Did Mr. Orr ever discuss with you the reasons for the
20 timing, the specific timing, of the filing?
21 A. No, he didn't.
22 Q. Did you have any discussions with anyone from the
23 State as to the specifics of the timing of the
24 bankruptcy filing?
25 A. No.

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1 Q. Now, were you aware that around -- as of the time the
2 bankruptcy filing was made that there was state court
3 litigation that was ongoing that was challenging the
4 ability of the Emergency Manager to file for Chapter
5 11 -- I'm sorry, for Chapter 9 in the first place?
6 A. I read that in the paper.
7 Q. Okay. Did you ever hear that the City made its
8 bankruptcy filing at the time it did in order
9 effectively to get it in before the state court issued
10 what the City expected to be an adverse ruling?
11 A. No.
12 MR. CULLEN: Objection, foundation, form.
13 A. I think I read that in the paper the following day.
14 Q. Now, I think you had indicated previously that you had
15 been opposed to the idea of the City having to file
16 for bankruptcy, you didn't think it was necessary; is
17 that right?
18 A. That's correct.
19 Q. And I remember you gave -- one last -- a couple last
20 questions.
21 You gave an interview with the Emergency
22 Manager I think it was either the day of or the day
23 after the filing. Do you recall that? You -- I think
24 you talked about a troubling day for Detroit.
25 A. Somewhat remember that, yeah.

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1 Q. And you introduced Mr. Orr who then made his comments.
2 In the course of that press conference you made the
3 statement to the effect that Mr. Orr and his team have
4 brought together -- have brought together a lot of
5 history of success or words to that effect. Do you
6 recall making that statement?
7 A. No.
8 Q. Do you -- are you aware of any history of success that
9 Mr. Orr and his team have?
10 A. Only Chrysler.
11 Q. Only in the context of bankruptcy?
12 A. Yeah.
13 Q. Are you aware of any success or history of success
14 that Mr. Orr has had outside the context of
15 bankruptcy?
16 A. No.
17 Q. Now, you obviously, you know, have been following even
18 if you've not been directly involved in what the
19 Emergency Manager has been doing; right?
20 A. Uh-huh.
21 Q. And you've been looking at or since obviously Detroit
22 is impacted by what he's doing in terms of both
23 reducing liabilities and trying to raise or conserve
24 cash; right?
25 A. Correct.



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1 Q. Now, when exactly did Kriss Andrews leave? I forget.
2 You may have told me.
3 A. It was late July of '13.
4 Q. And did you just have discussions with Mr. Andrews
5 before the time he left as to -- with the job that the
6 Emergency Manager was doing, whether he was doing a
7 good job or a bad job, being effective or not being
8 effective?
9 A. Yes.
10 Q. And can you relate -- were you in agreement with the
11 views of Mr. Andrews or did you and he have different
12 views?
13 MR. CULLEN: Objection, foundation, form.
14 That's an unfair question, counsel. Which views?
15 Q. You can answer my question.
16 A. I was in agreement with Mr. Andrews.
17 Q. And can you tell me what the substance of the
18 discussions were and in particular the views expressed
19 by Mr. Andrews with which you agreed?
20 A. I think he felt as far as --
21 MR. CULLEN: Objection, foundation. You
22 can address it.
23 A. I think he felt as far as the balance sheet issues
24 were concerned that Kevyn had the ability to help
25 solve problems in that realm, but from a restructuring

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1 standpoint he didn't think that he had the requisite
2 skills to do an effective restructuring.
3 Q. Now, was this -- these were discussions -- let me ask
4 it this way.
5 Was this a discussion that took place at
6 one point in time or was this --
7 A. It was ongoing.
8 Q. These were ongoing discussions with Mr. Andrews? Just
9 during what time frame?
10 A. I think from probably April through June.
11 Q. Let me mark as the last exhibit I will show you Bing
12 5.
13 (Marked Exhibit No. 5.)
14 MR. ULLMAN: I'll just state for the record
15 what we've marked as Bing 5 is an email from
16 Kriss Andrews to Mayor Bing dated July 10, 2013. The
17 first page bears Bates numbers DTMI00098861.
18 Q. Are you familiar with what we've marked as Exhibit
19 Bing 5, Mr. Mayor?
20 A. Yes.
21 Q. And can you tell me what this is?
22 A. I asked Kriss, because at this time I knew he was
23 leaving and I asked him to give me a kind of overview
24 in terms of what he'd seen since Kevyn came on board
25 and this is the feedback that I got from him.

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1 Q. Okay, and did you have an oral discussion with
2 Mr. Andrews about this?
3 A. Yes, I did.
4 Q. Okay, and did you advise Mr. Andrews that you
5 concurred in the views that he expressed here?
6 MR. CULLEN: Objection, foundation, form.
7 A. I would say the answer would be yes.
8 Q. And then did you in fact agree with the views
9 expressed in this document, Bing 5, by Mr. Andrews?
10 MR. CULLEN: Objection, foundation, form.
11 A. The answer would be yes.
12 Q. Okay, and let me just go through some of this briefly.
13 I think in the first couple of paragraphs Mr. Andrews
14 essentially says that he's giving the Emergency
15 Manager good mark -- good marks in long-term
16 liabilities, stating at least in his view that the
17 Emergency Manager was building on many of the
18 initiatives that you had started previously?
19 A. Correct.
20 Q. And did you agree with that assessment?
21 A. Yes.
22 Q. Then Mr. Andrews goes on and starts discussing
23 operations, which he says are a different matter
24 altogether and basically his -- Mr. Andrews'
25 conclusion is that the Emergency Manager, and I quote,

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1 "threw away the head start we gave him. He frankly is
2 not competent at all. In fact, he's embarrassingly
3 incompetent and only listened to his equally
4 incompetent staff and did not well-exercise the added
5 powers he had."
6 So Mr. Andrews gives him an A in long-term
7 liabilities and an F in operations.
8 And did you agree with that assessment by
9 Mr. Andrews?
10 MR. CULLEN: Objection. Every word of it,
11 counsel? Is that what you're asking?
12 MR. ULLMAN: My question is pretty plain.
13 You can answer.
14 MR. CULLEN: No, it's an objectionable
15 question, but he can answer it.
16 MR. ULLMAN: Then your objection stands and
17 the question would be answered.
18 A. From my vantage point, you know, I'm not going to give
19 him a grade from A to F in either one of those areas,
20 but I would agree that his strength was in dealing
21 with the long-term liabilities and not operations.
22 Q. And Mr. Andrews goes so far as to say that in at least
23 Mr. Andrews' view that he's not doing a competent job
24 in the restructuring aspect and the operational
25 aspect. Did you agree with that?



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1 MR. CULLEN: Objection, form and
2 foundation.
3 A. Yes, I would.
4 Q. And he gives -- he, meaning Mr. Andrews, goes on to
5 discuss some specific points that he believes, he
6 Mr. Andrews, believes support that conclusion. I want
7 to ask you about some of those.
8 Mr. Andrews -- he has items 1 through 4
9 initially. Mr. Andrews first talks about issues
10 with -- you called it DDOT?
11 A. Yes.
12 Q. And he says that they were ready to choose -- I guess
13 MV is someone, is a person?
14 A. No, that's a company --
15 Q. Oh.
16 A. -- that manages transportation.
17 Q. Okay. And then it goes on to say, the Emergency
18 Manager slowed the process down and he says that
19 although he, meaning Orr, gave me a poor excuse for so
20 doing, it does not hold water.
21 Can you tell me in your own words, what was
22 the situation, the issue, with DDOT?
23 A. We had poor management at best at DDOT. And before we
24 wanted to make any long-term decisions, what to do
25 with the transportation department, we felt we had to

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1 get a capable management team in there to do the
2 assessment and make some improvements before we made
3 any final long-term decision and so we chose -- we had
4 chosen MV and Kevyn stopped that process and
5 ultimately, maybe three months later, chose the same
6 company that we recommended. So we think we lost
7 time.
8 Q. Okay, and so during that three-month period the same
9 prior, as you characterize it, bad management
10 continued in place?
11 A. Yes.
12 Q. And that resulted in continued -- were they losing
13 money, DDOT?
14 A. Yes.
15 Q. So it continued -- that perpetrated -- or perpetuated
16 at least for that three-month period the same
17 operation losing money?
18 MR. CULLEN: Objection, foundation, form.
19 A. We didn't see any improvement in efficiencies plus the
20 fact they were still the same kind of complaints that
21 we were getting from the ridership and we felt that if
22 there had been a management team in there sooner, we
23 could have probably made some improvements.
24 Q. Okay. And have there been improvements since MV was
25 put in place as the manager?

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1 A. I would say yes, but they've only been there for the
2 last four to six weeks so maybe it's too soon to
3 really do a good assessment, but they are the right
4 company and I believe given time and tools, they will
5 make major improvements.
6 Q. Okay, and does DDOT have any importance as concerns
7 Detroit's financial viability in terms of being able
8 to offer public transportation to citizens or things
9 like that?
10 MR. CULLEN: Objection.
11 Q. Is that something that's important to have in place
12 for recovery?
13 MR. CULLEN: Objection, foundation -- I'm
14 sorry. I didn't know whether there was going to be
15 another clause in the question.
16 MR. ULLMAN: No, no more clauses.
17 MR. CULLEN: Okay. Objection, foundation,
18 form.
19 MR. ULLMAN: Duly noted.
20 Q. You can answer.
21 A. As one of my initiatives, one of my key initiatives,
22 public transportation is one of the top five
23 initiatives from my vantage point, because it impacts
24 so many of our citizens who have either got to travel,
25 a lot of them don't have cars, a lot of them work

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1 outside of the City and if you don't have dependable
2 public transportation, it does create a major issue.
3 Plus we've been subsidizing DDOT out of our general
4 fund for some time so the quicker that we can fix it,
5 the less subsidizing we have to get -- get over to
6 DDOT.
7 Q. Let me go onto -- the next item listed is number 2.
8 Mr. Andrews writes, we should also be progressing on
9 providing the new management team in PLD.
10 Can you tell me what --
11 A. Public lighting department.
12 Q. Ah, okay. And can you explain what the issue is here?
13 A. We have 88,000 lights in our City with about 40,000
14 that are working. We have a system that is so
15 outdated that even with new technology, you know, we
16 -- we can't fix it. So there's got to be a huge
17 investment into public lighting. It's something that
18 we've been talking about for years and years. We have
19 a plan to put in place to invest in a new lighting
20 grid across the entire City and, once again, we
21 haven't moved the needle on that at all. We had a
22 Lighting Authority legislation was passed in December
23 of 2012 and we had an opportunity I think to put some
24 lights on in different parts of the City, but it
25 hasn't happened as I speak to you now.



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1 Q. And do you know why it -- why things have been, in the
2 words of Mr. Andrews, been slowed down?
3 A. Once again, I would say to you, and this is more
4 hearsay than anything else and this would be from --
5 MR. CULLEN: Objection, foundation.
6 A. What I hear is Lansing wants to take some credit for
7 fixing the lighting system and they're trying to get
8 the funding, 100 -- I think it's \$150 million they
9 want to go to the bond market. That hasn't happened
10 yet. So the investment that's necessary to put on
11 lights and start to fix the system has taken much
12 longer than any of us anticipated.
13 Q. Now, at the time that Mr. Andrews wrote this email to
14 you, he was still part of your team; right?
15 A. Correct.
16 Q. He was still the -- what was his title? Was it
17 program manager director?
18 A. Program director.
19 Q. And you had asked him to write this email to you as
20 part of his job duties?
21 A. Yes.
22 Q. To inform you as to --
23 A. How things were going, yes.
24 Q. And that's what this is? This is the email that he
25 wrote while in the -- employed in the capacity of

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1 program manager director in response to your request
2 that he do so?
3 A. That would be correct.
4 Q. And this was within the ordinary scope of his job
5 activities?
6 A. Yes.
7 Q. And you had asked him as part of his job to observe
8 and monitor what was going on in the City under the
9 direction of the Emergency Manager and report back to
10 you?
11 A. Yes.
12 Q. Now, Mr. Andrews writes in this -- and this is on both
13 points one and two, he writes, and I quote, "He" --
14 the he there referring to Mr. Orr -- "He told me a
15 disaster at DDOT would not be a problem for him since
16 it would highlight how screwed up the City is." And
17 then similarly, if you look at number 2, Mr. Andrews
18 writes that the EM slowed the process here also and
19 said the same thing, a disaster at PLD would not be a
20 bad thing because it would highlight how messed up the
21 City is.
22 Did you ever have any conversations with
23 Mr. Orr in which Mr. Orr conveyed the substance of
24 what is reported here by Mr. Andrews to you?
25 A. No.

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1 Q. Going onto number 3, it says, similar issues surfaced
2 around the Lighting Authority.
3 Let me ask you. What's the difference
4 between the PLD and the Lighting Authority?
5 A. Lighting Authority is independent of PLD. The
6 Lighting Authority is more regional. We had had
7 legislation passed and so those people on the
8 authority are not employees of the City, it's
9 independent.
10 Q. And do they have -- do they deal with different --
11 with lights in different parts of Detroit than PLD?
12 I'm not sure what the interplay between the two is.
13 A. No, it would be the exact same PLD, but see, with PLD,
14 we don't control all the lighting in the City, DTE
15 controls probably at least 40 percent of the lights in
16 the City because they have upgraded and they have made
17 the necessary technology, investments in 40 percent of
18 lights in the City so their grid works, ours doesn't.
19 Q. DTE is what?
20 A. Detroit -- DTE, Detroit -- Detroit Edison.
21 Q. Detroit Edison supplies the electricity or --
22 A. PLD also has the ability to generate electricity, but
23 once again, it's such an old, outdated entity they've
24 not made any kind of investments in their system in 30
25 or 40 years, so a lot of the system is just broken, it

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1 can't even be fixed, you can't even get replacement
2 parts.
3 Q. Okay, just -- so you had indicated there were 88,000
4 lights --
5 A. Correct.
6 Q. -- in Detroit? And some of those --
7 A. Some of them are on the grid with DTE.
8 Q. Okay. And those are DTE's responsibility?
9 A. Correct.
10 Q. And some are the responsibility of PLD?
11 A. That would be correct.
12 Q. And that's about how many?
13 A. That's probably around 55,000.
14 Q. And then are others the responsibility of the Lighting
15 Authority?
16 A. No, no.
17 Q. That's why I'm still a little unclear as to how the
18 Lighting Authority factors into this.
19 A. We went to the outside, because we thought that one of
20 the things we were thinking about doing was
21 outsourcing the responsibility of lighting the City of
22 Detroit. We didn't think that we had the capacity or
23 the capability to do that internal so we were talking
24 to DTE as an alternative source, but we wanted to have
25 the Lighting Authority in place because DTE did not



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1 want to make the necessary investment, so we had to do
 2 that through this Lighting Authority by issuing bonds.
 3 Q. Okay, so one option was to work with DTE, but that
 4 didn't look like it was going to work so the Lighting
 5 Authority is a regional authority and you were going
 6 to like bring them in through the floating of bonds to
 7 have them help take over and fix the lights in
 8 Detroit; is that it?
 9 A. Yep, yep, yep.
 10 Q. And is there a name of this authority or is that a
 11 particular name?
 12 A. No, Detroit Lighting Authority.
 13 Q. Just called the --
 14 A. Yeah.
 15 Q. There you go. Works for me.
 16 Okay, and so what is -- can you explain the
 17 issue that Mr. Andrews is writing about here in item 3
 18 when he says similar issues surfaced with the Lighting
 19 Authority?
 20 A. We -- one of the big issues that we have is with our
 21 union employees, because as you start talking about
 22 outsourcing, in a lot of cases they may very well lose
 23 a job, they're at risk, and as far as the lighting --
 24 the lighting department is concerned, you're not
 25 talking about a lot of people and there were

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1 negotiations, I'm not involved in that, where those
 2 people who wanted to stay as City employees could be
 3 transferred over to an outside third-party and
 4 wouldn't lose their jobs. So a lot of those
 5 negotiations were going on, but what Kriss is saying
 6 is that Kevyn slowed that process down which kept us
 7 from moving forward to try to get the investment in
 8 place and start to get lights on in the City.
 9 Q. And is that process still ongoing to where --
 10 A. That's ongoing.
 11 Q. And are people -- but it's just ongoing, as I think
 12 you had said, in a slower way than you had expected it
 13 would be given the work -- the groundwork that you had
 14 done?
 15 A. That would be correct.
 16 MR. CULLEN: Objection, foundation, form.
 17 Q. And Mr. Andrews writes that they went to Kevyn and got
 18 a deal which forces the City to put in more money than
 19 they need and essentially saying a better deal than
 20 they were able to negotiate with the City without the
 21 Emergency Manager.
 22 Do you have an understanding as to what
 23 Mr. Andrews is referring to here?
 24 A. If I recall, there's a tax that's about \$12.5 million
 25 a year that I think I recall that is utilized once the

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1 -- once you've gone out and you've secured the bonds,
 2 you can use this tax to pay down the loan, and this
 3 Authority did not need the \$12.5 million in year one,
 4 but he's -- I think he told me that Kevyn gave them
 5 the \$12.5 million and his feeling was that they only
 6 needed as a startup entity 2 to \$3 million. Why not
 7 use the rest of the money to put into other areas that
 8 the City needs and I think that's what his -- what he
 9 was referring to.
 10 Q. Okay. In item 4 Mr. Andrews makes a number of -- I
 11 guess it's some general observations. One is ordering
 12 us not to coordinate with the consultants we hired to
 13 help us.
 14 Do you have an understanding as to what
 15 that's referring to?
 16 A. Yeah, Kriss was told not to -- not to have any contact
 17 with the consultants and that the consultants that
 18 were coming in were very inexperienced people, that
 19 had really no knowledge of Detroit and of municipal
 20 government, so it really slowed the process down.
 21 Q. And did Mr. Andrews tell you that he had been told not
 22 to have contacts with the consultants?
 23 A. Yes.
 24 Q. And when did -- did he tell you that directive was
 25 given?

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1 A. Oh, that was given by Kevyn. I don't know the exact
 2 timing of that. It had to be in the April/May time
 3 frame.
 4 Q. And up to the point of that directive had Mr. Andrews
 5 been having contact with the consultants?
 6 A. Yes.
 7 Q. And is that something you would know due to your
 8 supervision of Mr. Andrews?
 9 A. Yes.
 10 Q. And after that directive was given did Mr. Andrews
 11 continue to have contact with the consultants?
 12 A. No.
 13 Q. And then Mr. Andrews goes on to say, putting in place
 14 very inexperienced staff to control things.
 15 Do you have an understanding as to what
 16 Andrews was referring to there?
 17 A. All the consultants.
 18 Q. Well, he's referring specifically to staff. Is
 19 that --
 20 A. Well, they -- they became staff.
 21 Q. Oh, okay. Anyone in particular?
 22 A. It's a bunch of them.
 23 Q. You mean these were people that Mr. Andrews -- Mr. Orr
 24 brought in to take on positions in the City management
 25 structure to replace people that you had previously



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1 installed; is that right?
 2 A. That would be correct.
 3 Q. And can you just give me -- you don't have to name
 4 names but give me some of the positions where you
 5 believe he put in people who are inexperienced or very
 6 inexperienced.
 7 MR. CULLEN: Objection, foundation, form.
 8 Which is it?
 9 MR. ULLMAN: I think we'll go with very
 10 inexperienced.
 11 A. He brought on a CFO from the outside to replace Jack
 12 and everybody said from day one he was not a good fit.
 13 I believe he'll be relieved of his duties for other
 14 reasons this week. Kriss was replaced by Gary Brown,
 15 who was a City Council -- City Councilman who has
 16 never run anything much less 11 different departments
 17 reporting to him. He was a police officer before he
 18 became a City Councilman and he took Kriss' place.
 19 Karla has not been replaced at all, Karla Henderson,
 20 who I think was one of our high profile leaders that
 21 really did an outstanding job in blight elimination
 22 and planning for the City. She's not been replaced to
 23 my knowledge. Only recently our director of
 24 purchasing has left and he has not been replaced. So
 25 a lot of the key people that they're taking out, what

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1 they're doing is putting in consultants in those
 2 positions and, you know, they're learning on the fly
 3 and just, once again, it's not efficient.
 4 Q. I think you mentioned specifically two people who were
 5 replaced who you didn't believe were good people or
 6 experienced people. You mentioned CFO, Jack Martin,
 7 as I recall, and then Kriss Andrews himself who was
 8 replaced by Gary Brown. Anyone else that was put out
 9 and replaced by someone that you believe to be not
 10 suited, not experienced enough for the job apart from
 11 those two? And put aside positions that are currently
 12 unfilled.
 13 A. No, those would be the two key along with Karla and
 14 Karla's just hasn't been replaced. They may be
 15 looking for a person for that, I don't know, but some
 16 of the other positions they've just put young
 17 consultants in those positions. My big concern there
 18 is at some point in time we will come out of
 19 bankruptcy and if you don't have the people internally
 20 that know the system and you have all these
 21 consultants doing the job that City employees ought to
 22 be doing, when Kevyn leaves, which could be within the
 23 next 11 months, and those consultants leave, you
 24 haven't developed anybody to run the City on a
 25 day-to-day basis. That's my biggest concern. We

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1 don't even have a line item in our budget for
 2 training. Somebody's got to get trained to do these
 3 jobs on a long going basis.
 4 Q. So when you said -- you made some reference to young
 5 consultants that were brought in. Is it the case that
 6 the Emergency Manager has put in staff positions
 7 people who are actually consultants rather than
 8 long-term employees of the City?
 9 A. Yes.
 10 MR. CULLEN: Objection, foundation, form.
 11 Q. And do you know the names or positions of those
 12 people?
 13 A. No, I don't.
 14 Q. But that's at a lower level so you don't know the
 15 specific names?
 16 A. Correct.
 17 Q. But it's your understanding that that's what's
 18 happened?
 19 A. Correct. I get feedback from a lot of my department
 20 heads and directors that that's what's going on and
 21 they're frustrated as hell.
 22 Q. And can you tell me who are some of these department
 23 heads who are --
 24 A. All of them.
 25 Q. Mr. Andrews also says that the Emergency Manager is

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1 not listening to Conway MacKenzie. Do you see that at
 2 the top of Bates page 862?
 3 A. Yes, I see that.
 4 Q. Do you have an understanding of what he was referring
 5 to there?
 6 A. No, I don't. Conway MacKenzie is the restructuring --
 7 the primary restructuring firm, but I'm -- you know, I
 8 have no contact with them at all.
 9 Q. So you don't know the specifics of what Mr. Andrews
 10 was referring to?
 11 A. No, no, I don't.
 12 Q. Okay. Let me just go quickly through the last couple
 13 of things. Mr. Andrews continues in this email
 14 stating that the Emergency Manager and his team also
 15 pursued wrong things and he gives a list. First he
 16 talks about focusing on outsourcing solid waste. Do
 17 you have an understanding of what the issue is there?
 18 A. Yeah, trash is getting picked up, garbage and trash is
 19 getting picked up. Maybe not as efficient as it
 20 should be, but it's not like it's not happening. You
 21 know, there may be a delay of several hours or maybe a
 22 day and he's saying that's not an area to overly
 23 concern itself with. You know, the real issues still
 24 are the things that I focused on earlier.
 25 Q. Mr. Andrews states in this paragraph that the



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1 announced savings of 15 million are ridiculous and he
 2 says they don't really know what the savings are, if
 3 there are any.
 4 Do you see that? Do you have an
 5 understanding of what's referred to there?
 6 A. Yeah, I think you first got to know your internal
 7 costs and I think what Kriss is saying if you don't
 8 know your internal costs, how do you know that when
 9 you go out, without quoting other companies, that
 10 you're going to save this money? And so, you know,
 11 that work had not been quoted out.
 12 Q. I'm sorry, what work had not been quoted out?
 13 A. Trash and garbage pickup.
 14 Q. I'm -- I'm not -- I'm sorry, I'm not following.
 15 A. Solid waste.
 16 Q. It had not been quoted out. I thought there was an
 17 RFP that was put out for solid waste?
 18 A. It may have been now, but before -- but I think he was
 19 given information on this 15 million savings before
 20 any information came back from the RFP.
 21 Q. Oh, you're saying that there was an announcement that
 22 there would be a savings of 15 million --
 23 A. Right.
 24 Q. -- before the specifics of the RFP were in --
 25 A. Correct.

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1 Q. -- compared so you could then compare with what the
 2 internal --
 3 A. What the internal cost was, correct.
 4 Q. Okay. And at that time were the internal costs -- had
 5 they been tabulated, calculated?
 6 A. I don't know the answer to that.
 7 Q. Number 2 on this last list of Mr. Andrews is moving
 8 PDD to DEGC.
 9 Can you tell me what that refers to?
 10 A. You got to learn the acronyms here. Planning and
 11 development and DEGC is Detroit Economic Growth
 12 Corporation, and you know you got two functions that
 13 do planning for the City of Detroit. DEGC is a little
 14 different. They're basically about new business
 15 coming into town and they're more growth oriented than
 16 anything else. They don't get into the nitty-gritty
 17 of managing what happens in city departments on a
 18 day-to-day basis. We don't think, meaning my
 19 administration, don't think that that's a good use of
 20 the skill sets that we have in the two departments.
 21 There may be some things and we've even heard from
 22 HUD, which is a big supporter of our Planning
 23 Department, there are things that we can't transfer to
 24 DEGC. And so when people just with blinders on
 25 saying, you know, take all the responsibilities from

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1 the Planning Department and shift it over to DEGC,
 2 DEGC doesn't even want all of that, doesn't make -- we
 3 don't think it makes a lot of good sense right now.
 4 Q. Okay. And there's also the last point that
 5 Mr. Andrews makes, number 3, is about putting a new
 6 chief in place. I think he's suggesting it should be
 7 an existing person as opposed to someone brought in
 8 from the outside?
 9 A. Too late. That's done. Traditionally -- historically
 10 I should say the police chief and the fire
 11 commissioner were always appointees selected by the
 12 Mayor. With the kind of problems that we've had from
 13 a public safety standpoint and with the turnover of
 14 police chiefs since I've been in office, they made a
 15 change so that the Mayor no longer selected the police
 16 chief. The police chief was selected by Lansing going
 17 back -- actually he started July 1st, but they didn't
 18 follow the process and we have a police commission
 19 that purportedly has the responsibility of selecting
 20 and interviewing and they have a process of
 21 identifying police chiefs. It didn't happen that way
 22 with them. And I had no input into it at all and when
 23 I found out that they were ready to name a police
 24 chief and they showed me a couple names, they had no
 25 internal candidates at all and I went to Kevyn and

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1 said, you know, you got to -- we've got almost 3,000
 2 police officers in the City of Detroit, you can't make
 3 me believe that we don't have somebody internally who
 4 has the capability and capacity to be considered and
 5 at the 11th hour they did interview two internal
 6 candidates but the reality is that the die was cast.
 7 The guy who they selected is the guy that's here now
 8 from Cincinnati.
 9 Q. And then lastly, if you look at the second to the last
 10 paragraph in this email, Mr. Andrews makes reference
 11 to a gag order or gag orders from Kevyn, which he says
 12 only support the very poor reporting.
 13 Do you have an understanding as to what
 14 he's referring to when he uses the phrase gag orders
 15 from Kevyn?
 16 A. I think anytime -- we got a different kind of press
 17 here. I don't know. Are you from here?
 18 Q. I'm from New York.
 19 A. Okay, our press may be worse than New York press.
 20 Q. That's a matter of opinion.
 21 A. Having said that, having said that, the negative
 22 stories about Detroit is pretty rampant and you know,
 23 I guess things happen internally that you would hope
 24 would maybe stay inside, but our press does a pretty
 25 good job of digging and so when something happens



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1 internally and the press gets ahold of it, I think
2 what Kevyn is saying, you know, there must be a leak
3 somewhere so, you know, we don't -- we want to make
4 sure that that stops, we don't need to read about some
5 of the things that are being discussed internally,
6 etc., etc., so I'm putting a gag order out and
7 anybody -- if I find out that you are the leak, then
8 I'm going to have to deal with you appropriately.
9 Q. Okay. And then actually as I see in the email above
10 this Mr. Andrews says, we need to talk, we need to
11 plan this communication well, how do we get out a
12 message that helps matters.
13 Do you know what he was referring to by
14 planning this communication well?
15 A. I'm not 100 percent sure on that, but it's one of the
16 things that we talk about internally a lot. You know,
17 I have an administration that have accomplished a lot
18 of things and because the focus is always on the
19 negative things that are happening, we're trying to
20 figure out -- there are some good stories. I mean,
21 even yesterday with 60 Minutes, I guess, it was all
22 pretty negative about the City. It's the same thing
23 over and over and over. Nobody talks about some of
24 the positive things that are going on and I think in
25 deference to staff, I want people to understand that

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1 they've accomplished a lot and so we wanted -- I think
2 Kriss and Bob wanted to make sure that our press
3 understood that there were good things, that we had
4 accomplished things, etc., etc. It's not all about
5 the Emergency Manager coming in and now things start
6 to happen. It's about things were already happening.
7 MR. ULLMAN: Okay, I have no further
8 questions at this time. I will pass the witness.
9 THE VIDEOGRAPHER: We'll go off the record
10 at 12:49.
11 (A brief recess was taken.)
12 THE VIDEOGRAPHER: Back on the record,
13 12:52. Go ahead.
14 EXAMINATION
15 BY MR. ELLISON:
16 Q. Good afternoon, Mr. Mayor. I just have a few
17 questions so I'll be very brief.
18 How many discussions did you have with
19 Mr. Baird about the Emergency Manager; do you recall?
20 A. No more than two.
21 Q. And when was the last one?
22 A. I think after -- after I met with Kevyn.
23 Q. So that would have been in the February or March time
24 frame?
25 A. In late February, yeah.

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1 Q. And earlier you had mentioned Treasurer Andy Dillon.
2 Did you have any discussions with him about the
3 Emergency Manager?
4 A. Not as much. Rich seemed to have taken the lead on
5 that. I think the Treasurer was more involved in what
6 was happening in Detroit in 2012 as opposed to 2013.
7 I've not seen a lot of him in 2013.
8 Q. But did you have any discussion about --
9 A. No, no with Andy, no.
10 Q. Did you have any discussions with him about Detroit's
11 pension issues?
12 A. With Andy, no.
13 Q. Okay. And how about Governor Snyder? Have you had
14 any discussions with him about the Emergency Manager?
15 A. Just once.
16 Q. And when was that?
17 A. That was before I went to DC to meet Kevyn.
18 Q. And what was the substance of that conversation, if
19 you remember?
20 A. That they think that they found the right guy.
21 Q. How long was the conversation?
22 A. Short conversation.
23 Q. Did you say anything back or was it him simply
24 informing you that --
25 A. Just informing me.

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1 Q. Did you have any discussions with the Governor about
2 the possibility of filing for bankruptcy?
3 A. No.
4 Q. And did you have any discussions with him about the
5 City's pension issues?
6 A. No.
7 MR. ELLISON: That's all I have for the
8 witness.
9 EXAMINATION
10 BY MS. LEVINE:
11 Q. Good afternoon, Mr. Mayor.
12 A. Good afternoon.
13 Q. Sharon Levine, Lowenstein Sandler, for AFSCME.
14 A. Okay.
15 Q. Just a couple more questions.
16 Prior to -- going back 18 months before the
17 bankruptcy filing, are you aware that there were
18 negotiations with the City and a coalition of unions
19 with regard to certain tentative agreements?
20 A. Yes.
21 Q. Were you involved in those negotiations?
22 A. Yes.
23 Q. Is it your understanding that those negotiations with
24 your unions actually did result in tentative
25 agreements?



<p style="text-align: right;">Page 101</p> <p>1 A. Yes.</p> <p>2 Q. And is it your understanding that those tentative</p> <p>3 agreements were ratified by the unions?</p> <p>4 A. Yes.</p> <p>5 Q. Were those -- and was it your understanding that those</p> <p>6 tentative agreements would have resulted in savings</p> <p>7 for the City?</p> <p>8 A. Yes.</p> <p>9 Q. Were the tentative agreements -- were the tentative</p> <p>10 agreements ever implemented by the City?</p> <p>11 A. No.</p> <p>12 Q. Do you know why?</p> <p>13 A. They were rejected by the Treasurer, Andy Dillon.</p> <p>14 Q. After the rejection of the tentative agreements did</p> <p>15 there come a point in time where you were involved in</p> <p>16 further negotiations with your unions with regard to</p> <p>17 concessions, specifically including meetings with</p> <p>18 Ernst & Young?</p> <p>19 A. I wasn't actually involved in any of that so I'm not</p> <p>20 100 percent sure what other meetings occurred after we</p> <p>21 didn't get the tentative agreements implemented.</p> <p>22 Q. Were there meetings -- were you aware of meetings</p> <p>23 between various union representatives and E&Y or</p> <p>24 Ernst & Young?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 103</p> <p>1 finish?</p> <p>2 A. Kriss and Jack Martin would have been the two guys,</p> <p>3 the CFO and the COO would have been the guys that were</p> <p>4 heading that up, and I would think HR guy had to be</p> <p>5 involved in that who's no longer here, Patrick Aquart,</p> <p>6 and then our labor person would have been involved in</p> <p>7 that, and they reported to either Jack or Kriss.</p> <p>8 Q. To your knowledge did those meetings result in</p> <p>9 tentative agreements or any agreements with the</p> <p>10 unions?</p> <p>11 A. Not to my knowledge.</p> <p>12 Q. Why did those -- did those discussions come to a halt?</p> <p>13 A. I believe they did, once the determination was made</p> <p>14 that an Emergency Manager was imminent.</p> <p>15 Q. Following the appointment of the Emergency Manager,</p> <p>16 were you -- are you aware of any further discussions</p> <p>17 with your unions or coalition of unions before the</p> <p>18 filing of the Chapter 9 case?</p> <p>19 A. I'm sure there were ongoing meetings, but I've not</p> <p>20 been involved in any of them because that was under</p> <p>21 the purview of the Emergency Manager.</p> <p>22 Q. How are you sure that there were ongoing meetings if</p> <p>23 you weren't involved?</p> <p>24 A. Just conversations, you hear conversation, people let</p> <p>25 you know what's going on.</p>
<p style="text-align: right;">Page 102</p> <p>1 Q. When did those occur?</p> <p>2 A. Those would have been late 2012 and maybe the first</p> <p>3 quarter of '13.</p> <p>4 Q. And who was present at those meetings on behalf of the</p> <p>5 City?</p> <p>6 MR. CULLEN: Objection, foundation.</p> <p>7 Q. Are you aware who was in attendance at those meetings</p> <p>8 on behalf of the City?</p> <p>9 A. That would have been our top labor guy, I don't know</p> <p>10 if he was by himself. I don't know if Kriss was still</p> <p>11 involved in it, Andrews. I'm not sure from the City's</p> <p>12 perspective who all may have been there.</p> <p>13 Q. But these took place before the Emergency Manager was</p> <p>14 appointed in March of 2013; correct?</p> <p>15 A. Correct.</p> <p>16 Q. And these were done under -- although you weren't</p> <p>17 physically there, they were done under your</p> <p>18 supervision and control and the people who were</p> <p>19 involved in those conversations reported to you; is</p> <p>20 that correct?</p> <p>21 A. No, they reported to Kriss.</p> <p>22 Q. To Kriss Andrews and Kriss Andrews reported to you?</p> <p>23 A. Yes, Kriss --</p> <p>24 Q. In other words, they weren't done --</p> <p>25 MR. CULLEN: Could you let the witness</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. So what -- with whom did you have a conversation that</p> <p>2 indicated to you that there were ongoing meetings with</p> <p>3 the coalition of unions after the appointment of the</p> <p>4 Emergency Manager?</p> <p>5 A. Jack or Kriss.</p> <p>6 Q. And when did those meetings take place?</p> <p>7 A. Once again, it was sometime in the first quarter of</p> <p>8 '13. I don't know that there were ongoing meetings.</p> <p>9 Once Kevyn got here I do think there were still</p> <p>10 meetings, but like I said, I'm not involved in that at</p> <p>11 all anymore.</p> <p>12 Q. So while you were in control, there were negotiations</p> <p>13 with the coalition of unions that resulted in a TA</p> <p>14 where the unions ratified those TAs and those were not</p> <p>15 implemented because Mr. Baird declined to implement</p> <p>16 them; is that your understanding?</p> <p>17 A. Not --</p> <p>18 MR. CULLEN: Objection, foundation, form.</p> <p>19 A. Not Mr. Baird. That was the Treasurer, Andy Dillon.</p> <p>20 Q. Andy Dillon, okay.</p> <p>21 After the appointment of Emergency Manager</p> <p>22 you're not sure what meetings took place, although you</p> <p>23 did hear around the halls that some meetings were</p> <p>24 ongoing?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 105</p> <p>1 Q. Before the Emergency Manager was appointed were you 2 involved in budgeting for the City? 3 A. At a very high level. Not so much in budgeting. I 4 mean, the budget director -- 5 Q. Who was responsible -- and did the budget director 6 report to you? 7 A. No, he reported to the CFO. 8 Q. And did the CFO report to you? 9 A. Correct. 10 Q. Okay, since the appointment of the Emergency Manager 11 do you know who's involved in budgeting for the City? 12 A. Brent Hartzell. Brent Hartzell. H-A-R-T-Z-E-L-L. 13 He's the budgeting director. 14 Q. And to whom does he report? 15 A. He reported directly to the new CFO, the guy that I 16 don't think's going to be here after this week, 17 Jim Bonsall. 18 Q. And does he report to you? 19 A. I've never seen an org chart. I've asked for it on 20 several occasions and I've never seen one. 21 Q. So you're not sure what the reporting org chart would 22 be after the appointment of the Emergency Manager? 23 A. That is correct. 24 Q. Do you know whether or not any of the consultants 25 retained by the financial manager are involved in the</p>	<p style="text-align: right;">Page 107</p> <p>1 restructuring standpoint. Maybe Ernst & Young from a 2 financial standpoint. 3 Q. But that's not the -- that's not the -- the line of 4 folks we just discussed with regard to budgeting? 5 MR. CULLEN: Objection, foundation, form. 6 A. I'm not sure your question. 7 Q. Before the Emergency Manager was appointed when you 8 did budgeting, did you look at things in your budget 9 like what, for example, you would spend on solid 10 waste? 11 A. Yes. 12 Q. And did you consider in the budget whether or not 13 there were ways to save costs with things such as 14 solid waste? 15 A. Yes. 16 Q. Okay, and one of the things that you talked about 17 earlier was whether or not you could save money if you 18 outsourced? Without the City would save money by 19 outsourcing various function such as solid waste; 20 correct? 21 A. Correct. 22 Q. And one of the concerns you had was it appeared people 23 were reaching conclusions with regards to numbers 24 about those savings without having gone through an RFP 25 process first; is that correct?</p>
<p style="text-align: right;">Page 106</p> <p>1 budgeting functions? 2 A. I'm sure they are. 3 Q. But you're not involved in those meetings? 4 A. No. 5 Q. And you don't get reports from those meetings? 6 A. No. 7 Q. You discussed earlier a conversation that you had with 8 Kriss around outsourcing. I believe that was with 9 regard to solid waste; is that correct? 10 A. Correct. 11 Q. And I believe you testified that one of the concerns 12 you had was that there was an estimated savings from 13 outsourcing that had been announced before RFPs had 14 gone out and the actual numbers had come in; is that 15 correct? 16 MR. CULLEN: Objection, foundation, form. 17 A. Maybe not before the proposals went out, but before 18 they came back in I think that number of 15 million 19 was out there. 20 Q. Since the appointment of the Emergency Manager, is 21 there somebody who's specifically looking at whether 22 or not outsourcing specific City functions would save 23 money for the City? 24 MR. CULLEN: Objection, foundation, form. 25 A. I think that would be Conway MacKenzie from a</p>	<p style="text-align: right;">Page 108</p> <p>1 A. That would be correct. 2 Q. Okay. My question to you is who's the point person 3 now under the Emergency Manager who was looking at 4 these outsourcing issues? 5 A. I would assume it's somebody from Ernst & Young and 6 somebody from Conway MacKenzie. 7 Q. Do you have any -- have you had any conversations with 8 that person? 9 A. Neither, neither organization. 10 Q. From the period from November 2012 through March of 11 2013 did you have any discussions with anybody from 12 Lansing with regard to the ability to restructure 13 Detroit without the need to appoint an Emergency 14 Manager or an Emergency Financial Manager? 15 A. I think I made it clear to all of those that we were 16 in contact in Lansing that that was not the direction 17 that I supported. 18 Q. And did you -- did you have an opportunity to discuss 19 with the folks in Lansing your particular ideas with 20 regard to how to restructure or rehabilitate Detroit? 21 A. Yes, they had -- they had what we would call a -- we 22 gave them a lot of information in terms of department 23 by department what we thought we needed to do to 24 either create savings or generate some revenue from a 25 reorganization standpoint.</p>

<p style="text-align: right;">Page 109</p> <p>1 Q. During the course of those discussions did you ever 2 have conversations with anybody in Lansing about the 3 prospect of filing a Chapter 9 without appointing an 4 Emergency Manager? 5 A. No. 6 Q. Did your plan or plans or any of the issues you 7 discussed include modifying vested pension benefits? 8 A. Yes. 9 Q. With whom did you have discussions with regard to 10 modifying vested pensions? 11 A. I had personally no discussion. I think the COO and 12 the CFO had those discussions, I believe probably with 13 Andy. 14 Q. Was there any discussion to your knowledge of how to 15 implement a change to vested pension benefits given 16 the Michigan State Constitution? 17 A. No. 18 Q. Did your plan or the plans that were adopted by you 19 include privatization? 20 A. Of? 21 Q. Anything. 22 A. I think we looked at privatization, yes. I mean, we 23 just talked about the DDOT, we just talked about PLD, 24 as two. 25 Q. So in connection with outsourcing or privatization did</p>	<p style="text-align: right;">Page 111</p> <p>1 insurance to cover certain otherwise provided pension 2 benefits that are now lost? 3 MR. CULLEN: Objection, foundation, form, 4 asks for a legal conclusion. 5 A. I wouldn't know the answer to that. 6 Q. I'm asking your understanding. I'm going to try 7 again. 8 Do you understand that in a Chapter 11 9 corporate case if there's a defined pension benefit 10 plan that's terminated, the PBGC provides federal 11 insurance protection for the pension beneficiaries? 12 MR. CULLEN: Why don't you just ask him the 13 foundation question whether he has any understanding 14 about that whatsoever? 15 MS. LEVINE: I did. That's the start of 16 the question is -- is it his understanding. 17 MR. CULLEN: Well, that's not the rest of 18 the question, but I'll object to the form and the 19 foundation and you can address the question. 20 A. You have to ask me the question again I think. 21 Q. If the pension is terminated -- if Detroit's pension 22 is terminated, is there any federal program that 23 provides pension benefits for the retirees who have 24 now lost their benefits? 25 A. Not to my knowledge.</p>
<p style="text-align: right;">Page 110</p> <p>1 your plan include a process for evaluating or valuing 2 whether or not there really truly would be savings to 3 the City as a result of that job loss? 4 A. Yes, that was done through the purchasing department. 5 Q. And what was your process for evaluating outsourcing? 6 A. I can't tell you the process. 7 Q. But did it include getting RFPs before you announced 8 what the purported savings would be? 9 A. Yes, yes. 10 Q. Did your plan include the sale of assets? 11 A. Some. 12 Q. And you discussed them previously with counsel? 13 A. Correct. 14 Q. So I won't do that again. 15 A. Correct. 16 Q. Did your plan include a loss of City jobs? 17 A. Yes. 18 Q. Do you recall how many? 19 A. I don't -- we -- I think it was a number of 1,500 jobs 20 in total. 21 Q. How many of those were nonuniform employees? 22 A. I don't know the answer to that. 23 Q. Do you understand that in a Chapter 11 corporate case 24 if a pension is terminated, the PBGC or the Pension 25 Benefit Guaranty Corp, provides federally provided</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. In a Chapter 11 case or in a bankruptcy case that 2 doesn't involve a municipality, is there a federal 3 program that provides benefits to pension 4 beneficiaries who've lost their benefit from a private 5 pension? 6 MR. CULLEN: Objection, foundation, form. 7 A. I wouldn't know the answer to that. 8 Q. In the plans that you discussed with Lansing what was 9 your understanding of how retirees were going to live 10 post restructuring if pension benefits were going to 11 be cut? 12 A. Never had that conversation. 13 Q. Did you have any input into the retention of 14 restructuring counsel for the City? 15 A. No. 16 Q. How did you learn that Jones Day was retained as the 17 City's restructuring counsel? 18 A. There was a meeting in the airport in the December 19 time frame of 2012. Representing the City was 20 Kriss Andrews and Jack Martin and they're the ones 21 that made me aware. 22 Q. Since November of 2012 have you had any conversations 23 with House Speaker Bolger with regard to Detroit's 24 financial issues? 25 A. No.</p>



<p style="text-align: right;">Page 113</p> <p>1 Q. Any conversations with Randy Richardville? 2 A. I think I was up in Lansing and at that time it was 3 really trying to get the legislature to vote and pass 4 some legislation for the Lighting Authority and the 5 Regional Transportation Authority. 6 Q. And what were those conversations that you had with -- 7 A. We needed them to support it, because we were in dire 8 need of both. 9 Q. Did they agree to support it? 10 A. They did. The legislation was passed in December. 11 Q. Did that provide State assistance? 12 A. It's supposed to. That hasn't happened yet. 13 Q. What's your understanding why that hasn't happened 14 yet? 15 A. They had to get the Authorities' board together and 16 they've been working on that for a long time for both 17 authorities, but I think they're both in play right 18 now and they have both chosen the leadership for the 19 Regional Authority for Transportation as well as for 20 the Lighting Authority. 21 Q. Prior to the appointment of the Emergency Manager did 22 you have any involvement to trying to get access to 23 federal assistance for Detroit? 24 A. Absolutely. 25 Q. Since the appointment of the Emergency Manager do you</p>	<p style="text-align: right;">Page 115</p> <p>1 A. Yes, I've met with our business community leadership, 2 I've met with most of our foundations and I think 3 because of that we've gotten the kind of support we've 4 gotten. 5 Q. Have you continued to have those discussions since the 6 appointment of the Emergency Manager? 7 A. Yes. For the record let me be specific about that. 8 MR. CULLEN: Always a bad idea, but go 9 ahead. 10 A. You know, I've been able to raise -- I raised 11 \$8 million from our corporate community to assist us 12 with 100 police vehicles, with 23 brand-new fleet of 13 EMS vehicles. From the corporate and foundation 14 community, I've been able to generate \$14 million to 15 keep our recreation and parks open. So -- and that's 16 been ongoing. So all of this was before the Emergency 17 Manager and since the Emergency Manager I've continued 18 to do that and will continue. 19 MS. LEVINE: If I can confer for a second. 20 THE VIDEOGRAPHER: We're off the record, 21 1:14. 22 (A brief recess was taken.) 23 THE VIDEOGRAPHER: Back on the record, 24 1:17. Go ahead. 25 MS. LEVINE: Thank you. Just a couple more</p>
<p style="text-align: right;">Page 114</p> <p>1 continue to have involvement in trying to get federal 2 assistance for Detroit? 3 A. Absolutely. 4 Q. Who were you talking to before the appointment of the 5 Emergency Manager? 6 A. Three to four of the different secretaries under the 7 Obama administration. 8 Q. And who have you been talking to since the appointment 9 of the Emergency Manager? 10 A. The same ones, except now there's a new department, 11 there's a new Secretary of Transportation. 12 Q. Prior to the appointment of the Emergency Manager did 13 you have any discussions other than what we've just 14 been talking about with anybody in Lansing with regard 15 to assistance for Detroit? 16 A. Yes. We have talked -- I mean, I've had ongoing 17 conversations with the Treasurer as well as the 18 Governor. 19 Q. Have you continued those discussions post the 20 appointment of the Emergency Manager? 21 A. No. 22 Q. Prior to the appointment of the Emergency Manager did 23 you have any discussions with anybody about accessing 24 private or not-for-profit assistance to help with the 25 financial issues in Detroit?</p>	<p style="text-align: right;">Page 116</p> <p>1 questions. 2 BY MS. LEVINE: 3 Q. We've had some discussion with regard to quoting 4 potential savings from outsourcing without RFPs having 5 gone out. To your knowledge as we sit here today have 6 RFPs -- have any RFPs gone out and come back? 7 A. Not to -- not to my knowledge. I'm not involved in it 8 anymore and I know there's a concern from our 9 purchasing department that the process isn't being -- 10 they got a process that's not being followed. 11 Q. And as we sit here today, is it your understanding 12 that that concern persists? 13 A. Yes. 14 Q. And that's part of the discussion we had earlier where 15 you just hear things in the hall? 16 A. Yes. 17 Q. Is it your understanding that Miller Buckfire has been 18 retained by the City? 19 A. Yes. 20 Q. When were they retained? 21 A. I think they may have been retained back in the 22 December/January time frame. 23 Q. Were they retained as a restructuring professional? 24 A. I think they were as the bank -- the corporate bank 25 representing the City.</p>



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1 Q. Did you hire them?
 2 A. No.
 3 Q. Who retained them?
 4 A. I think -- once again, most of these companies were
 5 being -- they were being pressed by the -- we were
 6 pressed by the State to my understanding, the State
 7 had a lot of input into the selection process and in
 8 some cases where the City has a responsibility for
 9 paying part of the fees, you know, I've always had a
 10 problem that I was not at the table to participate in
 11 the selection process.
 12 Q. Do you pay part of the fees for Miller Buckfire?
 13 A. Yes.
 14 Q. Does the State pay part of the fees for Miller
 15 Buckfire?
 16 A. Yes.
 17 Q. Does the NERD Fund pay part of the fees for Miller
 18 Buckfire?
 19 A. I wouldn't know that.
 20 Q. Do you have a copy of Miller Buckfire's retention or
 21 engagement letter?
 22 A. I would think we have that. I don't -- I don't have
 23 it personally, but I would think we do in the purchase
 24 department and maybe in the law department.
 25 MS. LEVINE: We would request a copy of


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1 that letter. I know that there's been a lot of
 2 documents that have been produced but we didn't happen
 3 to see what in there so we would make that specific
 4 request.
 5 MR. GREEN: And if I may add the 2012
 6 engagement letter from Miller Buckfire as well. I
 7 understand they were initially engaged the prior year.
 8 There may be two engagement letters.
 9 MR. MOSS: Please put that in a letter so
 10 we make sure we get it part of the record. We'll take
 11 a look.
 12 MS. LEVINE: So the request will be for any
 13 engagement letters or contracts with Miller Buckfire
 14 and we'll clarify that.
 15 Q. During the deposition last week with Treasurer Dillon
 16 he made a reference to a report with regard to certain
 17 tax write-offs or uncollected taxes. Are you familiar
 18 with that?
 19 A. No, I'm not. Not specifically.
 20 Q. Are you familiar with any issue with regard to
 21 potential tax write-offs where the taxes could have
 22 been collected?
 23 MR. CULLEN: Objection, foundation, form.
 24 A. No, I'm not. You know, we've got uncollected taxes
 25 that go back ten, 12 years, and so prior

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1 administrations in my -- in my perspective a lot of
 2 that should have been written off a long time ago but
 3 they've been carrying it on books and I just think
 4 that's the wrong approach.
 5 Q. Under your administration were -- how many -- how much
 6 did you write-off in what you believe to be
 7 uncollected taxes?
 8 A. I'm not sure of that. I would have to get with the
 9 CFO.
 10 Q. Do you have an approximate number?
 11 A. No, I don't.
 12 MS. LEVINE: I don't have anything further.
 13 Thank you.
 14 THE WITNESS: Thank you.
 15 MR. GREEN: No, I don't have any questions.
 16 MR. CULLEN: We don't need the Pistons
 17 question on the record?
 18 MR. ESSAD: No.
 19 MR. CULLEN: Thank you very much.
 20 THE VIDEOGRAPHER: This completes the
 21 deposition. We're off the record, 1:22.
 22 (Deposition concluded at 1:22 p.m.)
 23 * * *
 24
 25

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



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1 DEPOSITION ERRATA SHEET

2

3 Our Assignment No. 19355

4 Case Caption: In re City of Detroit, Michigan

5

6 DECLARATION UNDER PENALTY OF PERJURY

7

8 I declare under penalty of perjury that I have read

9 the entire transcript of my Deposition taken in the

10 captioned matter or the same has been read to me, and the

11 same is true and accurate, save and except for changes

12 and/or corrections, if any, as indicated by me on the

13 DEPOSITION ERRATA SHEET hereof, with the understanding that

14 I offer these changes as if still under oath.

15 Signed on the ____ day of _____, 20__.

16 _____

17 MAYOR DAVE BING

18

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1 DEPOSITION ERRATA SHEET

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24 SIGNATURE: _____ DATE: _____

25 MAYOR DAVE BING

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1 DEPOSITION ERRATA SHEET

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25 MAYOR DAVE BING

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

City of Detroit, Michigan,

Debtor.

Chapter 9

Case No. 13-53846

Hon. Steven W. Rhodes

Notice Regarding Briefing on "Good Faith Negotiations"

Parties to the eligibility trial are invited to file briefs on: (1) whether the case law that addresses good faith negotiation under 11 U.S.C. §§ 1113 and 1114, and in labor law, should apply when determining eligibility under 11 U.S.C. § 109(c), and (2) if so, how that case law suggests that the issue should be resolved in this case. The briefs shall be filed by November 13, 2013, and shall not exceed 8 pages. No extensions of that limit will be granted.

Dated: October 24, 2013

/s/ Steven Rhodes

Steven Rhodes

United States Bankruptcy Judge

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

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

AFSCME'S SUPPLEMENTAL BRIEF REGARDING ELIGIBILITY

Pursuant to this Court’s Order Regarding Further Briefing On Eligibility [Docket No. 1217], AFSCME submits this supplemental brief. The guiding principle of AFSCME’s arguments is: whether the state constitution by PA 436 or the federal constitution by chapter 9, legislation cannot rewrite or violate a constitution. The City fails to meet the eligibility requirements because this chapter 9 filing violates both the state and federal constitutions generally and as applied in this case, including by seeking to impair or diminish vested pension benefits. This Court should not allow the challenges facing a distressed municipality, however daunting, to be solved by violating fundamentally protected constitutional rights.¹

I. STATE CONSTITUTIONAL PENSION RIGHTS ARE NON-DISCHARGEABLE RIGHTS NOT PRE-EMPTED BY THE CODE

Because the Pensions Clause creates a constitutional right, not a statutory priority, chapter 9 does not preempt it. Instead, this constitutional right renders the City’s accrued pension obligations non-dischargeable. Even where a state law not enshrined in a state constitution advances “an essential state interest,” the Bankruptcy Code “must be clear and manifest” if it is “[t]o displace” the state law. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 545 (1994). “[W]here the intent to override” state law “is doubtful, our federal system demands deference to long-established traditions of state regulation.” *Id.* at 546.

First, no provision in chapter 9 preempts state constitutional rights, let alone the right to accrued public pensions, which have long been subject to state regulation. To the contrary, chapter 9 explicitly protects state law. *See, e.g.*, 11 U.S.C. §§ 109(c)(2), 903, and 943(b)(4). Most important, a chapter 9 bankruptcy is impossible without state consent. As a result, chapter

¹ The City’s attempt to use chapter 9 to sidestep the Michigan and U.S. Constitutions was outlined in counsel for the City’s journal article for using chapter 9 as a “toolbox that is unavailable outside of bankruptcy” for “compromising a municipality’s pension debt” and as a mechanism to “generate leverage for the municipality and pave the way for consensual modifications to its pension obligations.” Jeffrey B. Ellman & Daniel J. Merrett, *Pensions and Chapter 9: Can Municipalities Use Bankruptcy to Solve Their Pension Woes?*, 27 Emory Bankr. Dev. J. 365, 383-84 (2011).

9 cannot preempt state constitutional rights where, as here, that consent is given by state statute. For even assuming *arguendo* that “a state’s authorization . . . is a declaration of state policy that the benefits of Chapter 9 take precedence over control of its municipalities” and that therefore state *statutes* conflicting with chapter 9 are made inapposite once a state authorizes a municipal bankruptcy, *In re City of Vallejo*, 432 B.R. 262, 268 (E.D. Cal. 2010), state legislatures lack the power to declare *by statute* that state policy takes precedence over the higher authority of the state *constitution*. Rather than preempt state constitutional rights, chapter 9 *requires* that state constitutional rights be honored at the outset as a condition of authorization under Section 109(c)(2), as a mechanism of state control under Section 903, and as a limit on the terms of the plan under Section 943(b)(4).

For this reason, *Matter of Sanitary & Imp. Dist. No. 7*, 98 B.R. 970 (Bankr. D. Neb. 1989), does not support the proposition that the City can impair its constitutional pension obligations through chapter 9. The issue there was whether Nebraska statutes, not the Nebraska *constitution*, which “grant a priority of payment in favor of bonds over warrants” applied in chapter 9. 98 B.R. at 973. The bankruptcy was authorized by a state statute. *See id.* at 971 (citing Neb. Rev. Stat. Section 77–2419). The court’s holding that state priorities could be overcome in bankruptcy merely allowed the state authorization *statute* to trump the state priority *statute*. State statutes routinely trump one another, and state legislatures are free to rewrite their own statutes as a matter of legislative prerogative. But a state legislature cannot, by merely passing a statute, rewrite the state constitution. Likewise, the Michigan legislature cannot authorize municipal bankruptcy by passing PA 436 and thereby rewrite the Pensions Clause, let alone write the Pension Clause out of the Michigan Constitution.

Second, the Supreme Court clearly instructed that “the federal bankruptcy court should

take whatever steps are necessary to ensure that” a creditor is “afforded in federal bankruptcy court the same protection he would have under state law if no bankruptcy had ensued.” *Butner v. United States*, 440 U.S. 48, 56 (1979). Under Michigan law, an AFSCME retiree’s *constitutional right*, as distinct from a statutory priority, provides that accrued pension “shall not be diminished or impaired,” “shall be funded during” the year in which they “arise,” and “shall not be used for financing unfunded accrued liabilities.” The Constitution thus provides not a mine-run contract right, but an absolute guarantee of non-reduction and affirmative funding. See AFSCME Am. Elig. Obj. ¶¶ 119-20, 138-43. *Butner* further holds that the Code should not “afford . . . rights that are not” available “as a matter of state law.” *Id.* Allowing pension rights expressly protected from reduction or non-funding to be discharged as unsecured claims would operate to convert a constitutional right to a claim on par with other unsecured creditors, thereby creating a right of equal treatment for other non-pension creditors they would not have outside of bankruptcy because the Pensions Clause is stronger than the Contracts Clause. See AFSCME Am. Elig. Obj. ¶¶138-43. This result would violate the Code by allowing other non-pension creditors to receive “a windfall merely by reason of the happenstance of bankruptcy.” *Id.* at 55.

Third, not only should the rights created by the Pensions Clause survive bankruptcy under *Butner* because they are constitutional rights rather than statutory priorities, but separately, the Pensions Clause is an exercise of the right to enact “state or local laws designed to protect public health or safety” which cannot be disregarded by the debtor. *Midlantic Nat’l Bank v. New Jersey Dep’t of Env. Protection*, 474 U.S. 494, 502 (1986). In *Midlantic*, the Supreme Court held that a bankruptcy trustee’s power to abandon property of the estate under chapter 11 did not include the power to violate state or local environmental protection laws because “the efforts of the trustee to marshal and distribute the assets of the estate must yield to the *governmental*

interest in public health and safety.” Id. Even a liquidating debtor cannot ignore state disposal requirements if doing so would create a public “hazard with no one clearly responsible for remedial action.” *In re Wall Tube & Metal Prods. Co.*, 831 F.2d 118, 122 (6th Cir. 1987).

If the City cannot dump its toxic waste in violation of state law, surely it cannot put its elderly pensioners in harm’s way by taking away their only source of income and violating their constitutional rights. For just as this “Bankruptcy Court does not have the power to authorize an abandonment without formulating conditions that will adequately protect the public’s health and safety” from environmental danger, *Midlantic*, 474 U.S. at 507, this Court does not have the power to authorize cuts to vested pension rights which the Michigan Constitution recognizes as sacrosanct and not protected by federal government insurance. Until this Court holds conclusively that the state is responsible for the accrued pensions in full (or another funding source is provided by agreement), the Bankruptcy Code will not allow abandonment of this constitutional obligation.

II. CHAPTER 9 VIOLATES THE U.S. CONSTITUTION REGARDLESS OF WHO TECHNICALLY “IMPAIRS” CONTRACT RIGHTS

For three reasons, the City’s argument that chapter 9 is constitutional because the federal government, not the state, technically orders the impairment is flawed.

First, chapter 9 unconstitutionally permits the federal government to consent to a state impairment of contracts. Article I, Section 10, which contains the Contracts Clause, has three paragraphs. The second and third paragraphs prohibit states from taking certain acts “without the consent of Congress.” The first, in contrast, contains a wholesale prohibition on defined state actions, including, along with the impairment of contracts, printing money and the entering into of any treaty, alliance, or confederation, *with no exception for federal consent*.

The plain language of Article I, Section 10 therefore makes clear that Congress cannot

pass a law consenting to an impairment of contracts by the state. Supreme Court case law supporting this interpretation is found in *Rhode Island v. Massachusetts*, 37 U.S. 657 (1838), where the Supreme Court held that it had original jurisdiction over a boundary controversy between states. Reaching that holding required the Court to analyze Article I, Section 10. The Supreme Court interpreted the “first clause” as “a positive prohibition against any state” taking certain actions, and stated conclusively that “no power under the government could make such an act valid, or dispense with the constitutional prohibition.” 37 U.S. at 724-25. The Court thus left no doubt that Article I, Section 10, Clause 1 does not allow an end-run of state contracts.

The plan approval process in chapter 9 constitutes such unconstitutional federal consent. State and municipal actors take all the major steps on the road to debt adjustment: specific legal authorization of chapter 9, filing of the petition, and proposal of the plan. See 11 U.S.C. §§ 109(c)(2) & 941. Only then does the federal bankruptcy court provide *consent* – and violate the Contracts Clause – by confirming a plan proposed by the municipality. See 11 U.S.C. § 943(b).

This issue is a question of first impression on which this Court is not bound by precedent. Any comments in Justice Cardozo’s dissent in *Ashton* are not precedent binding this Court. See, e.g., *United States v. Jahns*, 2012 WL 928725, at *6 (N.D. Ohio Mar. 19, 2012) (“Dissenting Supreme Court opinions are not binding precedent.”). While the City points to language in *Bekins* which it claims “zeroes in on that they’re dealing with this particular issue,” Tr. 10/15/13 at 157:12-13, in fact *Bekins* identified the sole issue decided in that section of the opinion: “whether the exercise of the federal bankruptcy power in dealing with the composition of the debts of the [municipality], upon its voluntary application and with the State’s consent, must be deemed to be an unconstitutional interference with the essential independence of the State as preserved by the Constitution.” 304 U.S. at 49. Thus, the *Bekins* Court reconsidered the

federalism holding from *Ashton*, nothing more.

Second, even assuming *arguendo* (and, AFSCME submits, incorrectly) that chapter 9 only involves state consent to federal impairment, *Bekins* is no longer good law. *Asbury Park* and the Court's federalism jurisprudence since *New York* render *Bekins* inapposite because chapter 9 unconstitutionally allows a state to lose sovereign powers by consent.

Both the Court's decision in *Bekins* and Justice Cardozo's dissent in *Ashton* hinged on two since-disproven notions: (1) that "composition of debts . . . was not available under state law" due to the Contracts Clause, *Bekins*, 304 U.S. at 54; and (2) that "dispensing with the consent of the state" would render a federal municipal bankruptcy law "a dislocation of that balance between the powers of the states and the powers of the central government which is essential to our federal system." *Ashton*, 298 U.S. at 538 (Cardozo, J., dissenting). *See also Bekins*, 304 U.S. at 51-52 ("It is of the essence of sovereignty to be able to make contracts and give consents bearing upon the exertion of governmental power.")

As we know from *Asbury Park*, the first assumption is not true because "the necessity compelled by unexpected financial conditions to modify an original arrangement for discharging a city's debt is implied in every such obligation." 316 U.S. at 511. Thus, although the Contracts Clause continues to apply as a limit on the precise features of "a state insolvency act," *id.* at 513, such acts are allowed under the Constitution as an exercise of a state's "autonomous regulation" of the "peculiarly local" problem of "the fiscal management of its own household." *Id.* at 509.

The second assumption is untrue because in *New York* the Supreme Court made clear that state consent *cannot* enlarge the powers of Congress. AFSCME Am. Elig. Obj. ¶¶ 82-84. As noted, both Justice Cardozo's dissent in *Ashton* and the Court's opinion in *Bekins* assumed that state consent was *precisely* what was required to "remove the obstacle," 304 U.S. at 52, and

extend the power of municipal bankruptcy legislation to Congress. But this enlargement of federal power is what *New York* forbids – the incursion into the sovereign powers of another branch of government by the consent of that branch. The *Bekins* Court apparently tolerated that incursion because it thought the City “was powerless” to adjust debts under state law and therefore acted “in aid, and not in derogation, of its sovereign powers” by consenting to federal bankruptcy. 304 U.S. at 54. Since *Asbury Park* made clear that the City is not so powerless, state consent to federal control in chapter 9 is an encroachment on a sovereign power and therefore is unconstitutional under *New York*.

Third and in the alternative, further assuming *arguendo* (and, AFSCME submits, incorrectly) both that chapter 9 does not violate the constitutional prohibition on federal consent to state impairment and that *Bekins* is still good law, chapter 9 as amended violates the only remaining reasonable reading of *Bekins* consistent with the subsequently decided *Asbury Park* because use of a state municipal debt adjustment scheme requiring less than 100% creditor consent must be a remedy available to states. At the very least, therefore, the federal municipal bankruptcy statute ceased to be constitutional four years after *Asbury Park* when Congress amended it to deny states the sovereign right to adjust the debts of their own municipalities with less than 100% creditor consent, which is still the law today under Section 903(1).

If a municipality is so insolvent that it has no choice but to adjust its debts, Section 903(1) unconstitutionally forces it to reach 100% creditor consent and effectively compels it to resort to chapter 9. Doing so likewise forces the municipality to enlist its officers in designing a plan of adjustment according to federal rules and policies rather than different state rules and policies which might otherwise have been available under state insolvency law passed consistent with *Asbury Park* – for, as the City observed, Section 903(1) constitutes a “prohibition on

competing state municipal schemes.” Tr. 10/15/13 at 161:12-13. Congress’s attempt to coerce states into chapter 9 regardless of their desire to manage their affairs differently constitutes “overreaching in violation of the Tenth Amendment.” 16 Collier’s on Bankruptcy P 903.03[2].

The City’s counterargument that the Code’s prohibition on competing state municipal schemes represents “recognition that they’re not possible or workable” and that therefore Congress could not have “coerced anybody,” Tr. 10/15/13 at 161:12-13. 22, is inaccurate. The House “favored” amending the statute to revive states’ rights under *Asbury Park* in order to provide for “the availability of state composition proceedings as a less drastic alternative than bankruptcy,” but the Senate “opposed” the House “in the interest of national uniformity,” and “[t]he Senate’s view ultimately prevailed[.]” 16 Collier on Bankruptcy § P 903.LH[2]. This attempt to undo *Asbury Park* to deny to States an “alternative” to chapter 9 was unconstitutional coercion. See *Dickerson v. United States*, 530 U.S. 428, 437 (2000) (“Congress may not legislatively supersede our decisions interpreting and applying the Constitution.”).

III. SECTION 109(C)(2) APPLIES A STATE LAW STANDARD AND BECAUSE PA 436 VIOLATES THE STATE CONSTITUTION THEREFORE THE CITY IS NOT ELIGIBLE FOR CHAPTER 9

As a threshold matter, because the state-law-authorization eligibility requirement in Section 109(c)(2) refers explicitly to “State law,” every court to consider the issue has correctly held that Section 109(c)(2) is “governed by a state rule of decision.” *In re City of Stockton*, 475 B.R. 720, 728-29 (Bankr. E.D. Cal. 2012) (collecting cases). An analogy between Section 109(c)(2) and the Supreme Court’s 11th Amendment sovereign immunity jurisprudence confirms this result for two reasons. First, under *Palmer v. Ohio*, 248 U.S. 32 (1918), the question of whether a state has waived sovereign immunity by passing a state law remains a question of state, not federal, law. See *Lee-Thomas v. Prince George’s County Public Schools*, 666 F.3d

244, 249-50 (4th Cir. 2012). Second, cases which have used a federal standard when deciding whether the state has waived sovereign immunity in other circumstances are distinguishable because the 11th Amendment, unlike Section 109(c)(2), does not explicitly refer to state law.

The State suggests that under its interpretation of the Michigan Constitution, the State could pass a law granting to the Governor the right to pick the mayor of Detroit. Tr. 10/16/13 at 14:8-12. But if, as the State contends, “[i]t’s not too simplistic” to say that the City “sets its own form of government through its charter unless the state dictates otherwise through its legislation,” Tr. 10/16/13 at 13:7-14, then the need for a home rule provision in the Constitution vanishes; local government could simply be governed by statute. However, it remains a bedrock principle of Michigan constitutional law that the Legislature *cannot* select the mayor of Detroit, or any other local representative. Any power the Legislature may have to amend the powers of local governments does not extend to the ability to appoint the EM because the legislature at most defines *what* powers the elected government has but not *who* will exercise those powers. As the Michigan Supreme Court has held, the Michigan Constitution incorporates the holdings of the Cooley Court establishing “the importance of elected representatives in any scheme of local government.” *Brouwer*, 377 Mich. at 653. At the local level, “while the people are suffered to go through the forms of an election, there shall not rest in some authority at a distance, the power to deprive the election of any valuable significance.” *Id.* (citation omitted). Local voters have the right to elect local officials, and the State cannot substitute unelected persons in their stead.

The State next argues that PA 436 “allows the emergency manager to simply execute the same executive powers that the elected officials of the community would have” and that therefore, because he is a local official as opposed to a state official, the Legislature has simply delegated to the EM the same powers it has delegated to the local government Tr. 10/16/13 at

16:21-23. The State argues that the EM can execute local power because he is a local official, not a state official, and thus the EM is delegated the same powers delegated to the local government. This argument fails for two reasons. First, the EM is a state official, not a local official. *See AFSCME Am. Elig. Obj. ¶173.* Second and regardless, the Legislature lacks the power to delegate local authority because under Article IV, Section 29 local authority already belongs to the local electors –inherently, with nothing left to delegate. *See AFSCME Am. Elig. Obj. ¶ 151.* The State unconstitutionally delegated this power without any *state law* standards to guide the EM *during bankruptcy.* Because local authority derives from the local electors, the State incorrectly suggests that the EM “is guided by the same standards that would have applied to the local officials when they were exercising that power.” Tr. 10/16/13 at 17:14-16. For if the Mayor or City Council take actions in bankruptcy which the people of Detroit dislike, the people of Detroit who elected them can vote them out of office. Not so for the EM.

CONCLUSION

AFSCME respectfully requests that this Court issue an order dismissing the City’s chapter 9 petition, or, in the alternative, ensuring that accrued pension benefits protected by Article IX, Section 24 of the Michigan Constitution are not endangered by this bankruptcy.

Dated: October 30, 2013

<p>LOWENSTEIN SANDLER LLP By: <u>/s/ Sharon L. Levine</u> Sharon L. Levine, Esq. 65 Livingston Avenue Roseland, New Jersey 07068 (973) 597-2500 (Telephone) (973) 597-6247 (Facsimile) slevine@lowenstein.com</p>	<p>Herbert A. Sanders, Esq. THE SANDERS LAW FIRM PC 615 Griswold St., Suite 913 Detroit, MI 48226 (313) 962-0099 (Telephone) (313) 962-0044 (Facsimile) hsanders@miafscme.org</p>	<p>Richard G. Mack, Jr., Esq. Miller Cohen, P.L.C. 600 West Lafayette Boulevard 4th Floor Detroit, MI 48226-3191</p>
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Counsel to AFSCME Michigan Council 25 of the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and Sub-Chapter 98, City of Detroit Retirees

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

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

**CITY OF DETROIT'S SUPPLEMENTAL BRIEF
IN SUPPORT OF ENTRY OF AN ORDER FOR RELIEF**

The City of Detroit (the "City") respectfully submits this supplemental brief in support of the entry of an Order for Relief¹ in this chapter 9 case and in response to supplemental briefs (each, a "Supplemental Brief") filed by certain Objectors.

I. PA 436 Does Not Violate Art. II, § 9 of the Michigan Constitution

The Objectors suggest that PA 436 violates Article 2, Section 9 of the Michigan Constitution because it is allegedly a "contrive[d] mechanism[] designed

¹ Capitalized terms used but not defined herein shall have the meaning given to them in the (a) Declaration of Kevyn D. Orr in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (Docket No. 11) (the "Orr Declaration") and (b) City of Detroit's Pre-Trial Brief in (I) Support of Entry of an Order for Relief and (II) Opposition to Objections Requiring the Resolution of Issues of Material Fact (Docket No. 1240) (the "City Pre-Trial Brief").

specifically to 'thwart' the referral process." See, e.g., RDPMA Supplemental Brief, at 8-9.² This assertion is unwarranted.

Under Michigan law, the motives of the Michigan legislature in passing PA 436 (or any provision thereof) are irrelevant to an inquiry into the statute's constitutionality. Michigan United Conservation Clubs v. Secretary of State, 630 N.W.2d 297 (Mich. 2001), is instructive on this point. Concurring with the Michigan United majority's reversal of the Court of Appeals' holding that a statute including an appropriations provision was nevertheless subject to referendum, Chief Justice Corrigan observed that

the Legislature's subjective motivation for making a \$1,000,000 appropriation ... – assuming one can be accurately identified – is irrelevant. Intervening defendant contends that ... the "purpose" of the appropriation ... was to evade a referendum. This argument is misplaced. This Court has repeatedly held that courts must not be concerned with the alleged motives of a legislative body in enacting a law, but only with the end result – the actual language of the legislation....

² A related argument offered by the RDPMA – that PA 436 is ineffective and violates Article 2, Section 9 by virtue of having been enacted by the State legislature prior to having been approved by a majority of the Michigan voters – improperly assumes an identity between the rejected PA 4 and PA 436 and is easily dispatched. Unlike PA 4, PA 436 has never been the subject of a referendum pursuant to Article 2, Section 9, and cannot be the target of such power. Voter approval of PA 436 was not a prerequisite to the effectiveness thereof. Likewise, Objectors identify no constitutional prohibition against PA 436's passage solely because it addressed subject matter similar to the recently-rejected PA 4 and none should be implied.

[T]o make legislation depend upon motives would render all statute law uncertain.... Therefore the courts do not permit a question of improper legislative motives to be raised, but they will in every instance assume that the motives were public and befitting the station. They will also assume that the legislature had before it any evidence necessary to enable it to take the action it did take.

Mich. United, 630 N.W.2d at 298-99 (Corrigan, C.J., concurring) (quoting Cooley, Constitutional Law, pp. 154-55).³ The Michigan Supreme Court has made clear that, if the State's citizens believe its legislators to have been improperly motivated, their recourse is not the judiciary, but the constitutional powers of referendum and initiative *and the ballot box*. See, e.g., Houston, 810 N.W.2d at 256 ("[I]t is the responsibility of the democratic, and representative, processes of government to check what the people may view as political or partisan excess by their Legislature."); Mich. United, 630 N.W.2d at 298 (emphasizing that "the intervening defendant retains a direct remedy, the initiative process. Under our

³ See also Houston v. Governor, 810 N.W.2d 255, 256 (Mich. 2012) (stating that "nothing that is relevant [to determining the constitutionality of a statute] can be drawn from the political or partisan motivations of the parties"); Kuhn v. Dep't of Treasury, 183 N.W.2d 796, 799 (Mich. 1971) (rejecting argument that statutory language addressing meeting deficiencies in state funds was "a devious attempt to avoid the people's constitutional power of referendum;" stating that "[w]e will not concern ourselves with the legislators' motives for inserting the language regarding meeting deficiencies in the Act"); People v. Gardner, 106 N.W. 541, 542 (Mich. 1906) ("Nothing is better settled than the rule that the motives of a legislature or of the members cannot be inquired into, for the purpose of determining the validity of its laws.").

state constitution, this remedy is available even when the Legislature has made an appropriation....").⁴

Even if Michigan law did not prohibit an inquiry into the motivations of Michigan's legislators (which it does), the evidence does not demonstrate that the State included appropriations provisions in PA 436 for the sole purpose of improperly insulating the legislation from referendum. The RDPMA's citation to the deposition testimony of Howard Ryan, the State's Rule 30(b)(6) witness, shows only that (A) the appropriations provision was included in the legislation at an early stage in its development and (B) that PA 436 was intended to provide the State with options in the event of a municipal financial emergency should PA 4 be rejected. See RDPMA Supplemental Brief, at 4-5. There is nothing in the testimony cited by the RDPMA that suggests – much less that demonstrates – that such provisions were included for the allegedly improper purpose of frustrating

⁴ Consideration of the evidentiary challenges inherent in the attempt to divine a legislature's motivations demonstrates that the Michigan Supreme Court's long-standing rule against such attempts is well-founded. For example, it would be essentially impossible for a court to determine the intentions of the sundry legislators in each of the legislature's two houses involved in a bill's passage. Even if such a determination were possible, the court would be charged with determining whose intent was relevant (the majority's? a majority of the majority?) and possibly whether such intent was the legislators' sole or even primary motivation. See Houston, 810 N.W.2d at 256 ("[T]his Court possesses no special capacity, and there are no legal standards, by which to assess the political propriety of actions undertaken by the legislative branch.").

Article 2, Section 9.⁵ Mr. Ryan is not a State legislator and, thus, did not vote on the bill, nor could he divine the intent of each legislator that voted on the bill.⁶

Moreover, the inclusion of appropriations provisions in PA 436 is simply irrelevant to an inquiry into the constitutionality of the statute. The inclusion of appropriation provisions may be relevant to a frustrated attempt to subject legislation to the referendum process. See Mich. United, 630 N.W.2d at 299-300 (Young, J., concurring) (describing an unsuccessful attempt to subject legislation to referendum). Yet even a successful challenge to the inclusion of such provisions would not render the legislation unconstitutional; it would merely render it subject to referendum. Where no such challenge has been made and no referendum process ever initiated (as is the case with PA 436), there is no practical, much less constitutional, consequence to the inclusion of such provisions.

⁵ Similarly, contrary to the RDPMA's suggestion, Jones Day and the State did not conspire to include an appropriations provision in PA 436. The document cited to this effect – Objectors' Exhibit 201 – is an email dated March 2, 2012 (i.e., months prior to the drafting and proposal of PA 436) that does not even refer to an emergency manager statute in discussing the effect of appropriations provisions. The notion that a months-old email – on a different topic – might have influenced the drafting of PA 436 is absurd.

⁶ Moreover, on October 28, 2013, the Governor testified – under direct examination from the RDPMA – that the appropriations provisions in PA 436 were included (a) to relieve municipalities of the burden of paying the salaries of emergency managers and the costs of financial consultants and (b) in direct response to concerns raised during the referendum process related to PA 4. See Transcript of Hearing regarding Eligibility Trial conducted on October 28, 2013, at 223:4-14.

Accordingly, PA 436 does not violate Article 2, Section 9 of the Michigan Constitution and the City's satisfaction of section 109(c)(2) of the Bankruptcy Code cannot be undermined by the circumstances of PA 436's passage.

II. *Bekins* Confirms That Impairment of Municipal Contractual Obligations is Effected by the Bankruptcy Court

Numerous Objectors – concerned that the Pensions Clause's prohibition on impairment of pension obligations "[]by" the State would not apply to potential impairments of such obligations pursuant to a plan of adjustment – contest the proposition that any impairment of the City's various contractual obligations in this chapter 9 case will be effected not by the City or the State, but by the federal government through the Court. E.g., AFSCME Supplemental Brief, at 4-8; Retiree Associations Supplemental Brief, at 7-8. Yet the United States Supreme Court in United States v. Bekins, 304 U.S. 27 (1938), made clear that it is federal, and not state, power being exercised. Citing the legislative history of former Chapter X of the Bankruptcy Act (the predecessor to chapter 9), the Bekins court identified the dilemma confronting "taxing agencies" (i.e., Chapter X's version of "municipality") in the absence of federal relief: an inability to pay their debts on one hand and the lack of recourse to state municipal debt adjustment regimes forbidden by the Contracts Clause on the other. "There is no hope for relief through statutes enacted by the States, because the Constitution forbids the passing of State laws impairing the obligations of existing contracts. *Therefore, relief must come from Congress, if*

at all." Bekins, 304 U.S. at 51 (citing S. Rep. No. 911, 75th Cong., 1st Sess.)

(emphasis added).

Chapter X resolved this dilemma:

In the instant case we have cooperation to provide a remedy for a serious condition in which the States alone were unable to afford relief.... The natural and reasonable remedy through composition of the debts of the district was not available under State law by reason of the restriction imposed by the Federal Constitution upon the impairment of contracts by state legislation. The bankruptcy power is competent to give relief to debtors in such a plight.... Through [the State's] cooperation with the national government the needed relief is given.

Id. at 53-54. Thus, Bekins confirms that, through consenting to the filing of a municipality's bankruptcy petition, a State that is constitutionally forbidden from impairing a municipality's improvident contracts nevertheless may allow such municipality to obtain relief from the entity that *is* empowered to impair such contracts: the federal government, acting through the bankruptcy court.

That federal power is exercised to impair municipal contracts in bankruptcy was likewise recognized in Justice Cardozo's dissent in Ashton v. Cameron County Improvement District No. 1, 298 U.S. 513 (1936), which dissent was joined by three of the Justices in the Bekins majority, including Chief Justice Hughes, the author of Bekins.

The Act does not authorize the states to impair through their own laws the obligation of existing contracts. Any interference by the states is remote and indirect.... If

contracts are impaired, the tie is cut or loosened through the action of the court of bankruptcy approving a plan of composition under the authority of federal law. There, and not beyond in an ascending train of antecedents, is the cause of the impairment to which the law will have regard. Impairment by the central government through laws concerning bankruptcies is not forbidden by the Constitution. Impairment is not forbidden unless effected by the states themselves. No change in obligation results from the filing of a petition by one seeking a discharge, whether a public or a private corporation invokes the jurisdiction. The court, not the petitioner, is the efficient cause of the release.

Ashton, 298 U.S. at 541-42 (Cardozo, J., dissenting) (citations omitted). This rationale would be adopted by the Bekins majority just two years later in confirming the constitutionality of chapter 9's predecessor. Accordingly, longstanding Supreme Court precedent confirms that it is the federal – and not state – government that impairs contractual obligations in chapter 9, and the Objectors' arguments to the contrary must be rejected.

III. The Pensions Clause Enjoys No Special Status in Chapter 9

The Objectors contend that the constitutional status of the Pensions Clause renders it qualitatively different than mere state statutory law and, thus, insulates it from pre-emption by the federal Bankruptcy Code. See AFSCME Supplemental Brief, at 2. The Objectors, however, offer no citation that might support their differentiation of one form of state law from another for pre-emption purposes. Indeed, as demonstrated in the City's prior briefing, far from being forbidden, the

pre-emption of state constitutional law – notably, the various state contracts clauses – is a commonplace in municipal bankruptcies. See Ass'n of Retired Emps. v. City of Stockton (In re City of Stockton), 478 B.R. 8, 16 (Bankr. E.D. Cal. 2012) ("The federal bankruptcy power also, by operation of the Supremacy Clause, trumps the similar contracts clause in the California state constitution.").

The Pensions Clause similarly establishes no special priority for claims for pension underfunding. It merely establishes that such claims are contractual obligations of the State. Accordingly, arguments that claims for underfunding require separate classification under a plan of adjustment or that such claims should be exempted from discharge (see Retirement Systems' Supplemental Brief, at 6-8), in addition to being premature and irrelevant to a determination of eligibility, should be rejected.

Finally, multiple Objectors (see, e.g., AFSCME Supplemental Brief, at 3-4) identify the Supreme Court's decision in Midlantic National Bank v. New Jersey Department of Environmental Protection, 474 U.S. 494 (1986), as a source of protection for rights created by the Pensions Clause, which are characterized as necessary to public health and safety. The Objectors offer no citation in support of the proposition that the impairment of monetary claims implicates public health and safety, and the City's research has uncovered none. Accordingly, this argument must be rejected.

For the foregoing reasons, and those set forth in the Prior Submissions and City Pre-Trial Brief, the Court should enter an Order for Relief in this case.

Dated: November 6, 2013

Respectfully submitted,

/s/ Bruce Bennett

Bruce Bennett (CA 105430)

JONES DAY

555 South Flowers Street

Fiftieth Floor

Los Angeles, California 90071

Telephone: (213) 243-2382

Facsimile: (213) 243-2539

bbennett@jonesday.com

David G. Heiman (OH 0038271)

Heather Lennox (OH 0059649)

JONES DAY

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114

Telephone: (216) 586-3939

Facsimile: (216) 579-0212

dgheiman@jonesday.com

hlennox@jonesday.com

Jonathan S. Green (MI P33140)

Stephen S. LaPlante (MI P48063)

MILLER, CANFIELD, PADDOCK AND
STONE, P.L.C.

150 West Jefferson

Suite 2500

Detroit, Michigan 48226

Telephone: (313) 963-6420

Facsimile: (313) 496-7500

green@millercanfield.com

laplante@millercanfield.com

ATTORNEYS FOR THE CITY

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

In re:
City of Detroit, Michigan,
Debtor.

Chapter 9
Case No. 13-53846
Hon. Steven W. Rhodes

Opinion Regarding Eligibility

The Congress shall have Power To . . . establish . . . uniform Laws
on the subject of Bankruptcies throughout the United States. . . .

Article I, Section 8, United States Constitution

No . . . law impairing the obligation of contract shall be enacted.

Article I, Section 10, Michigan Constitution

The accrued financial benefits of each pension plan and retirement
system of the state and its political subdivisions shall be a
contractual obligation thereof which shall not be diminished or
impaired thereby.

Article IX, Section 24, Michigan Constitution

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I. Summary of Opinion

For the reason stated herein, the Court finds that the City of Detroit has established that it meets the requirements of 11 U.S.C. § 109(c). Accordingly, the Court finds that the City may be a debtor under chapter 9 of the bankruptcy code. The Court will enter an order for relief under chapter 9.

Specifically, the Court finds that:

- The City of Detroit is a “municipality” as defined in 11 U.S.C. § 101(40).
- The City was specifically authorized to be a debtor under chapter 9 by a governmental officer empowered by State law to authorize the City to be a debtor under chapter 9.
- The City is “insolvent” as defined in 11 U.S.C. § 101(32)(C).
- The City desires to effect a plan to adjust its debts.
- The City did not negotiate in good faith with creditors but was not required to because such negotiation was impracticable.

The Court further finds that the City filed the petition in good faith and that therefore the petition is not subject to dismissal under 11 U.S.C. § 921(c).

The Court concludes that it has jurisdiction over this matter under 28 U.S.C. § 1334(a), and that the matter is a core proceeding under 28 U.S.C. § 157(b)(2).

II. Introduction to the Eligibility Objections

The matter is before the Court on the parties’ objections to the eligibility of the City of Detroit to be a debtor in this chapter 9 case under 11 U.S.C. § 109(c).

A. The Process

By order dated August 2, 2013, the Court set a deadline of August 19, 2013 for parties to file objections to eligibility. (Dkt. #280) That order also allowed the Official Committee of Retirees, then in formation, to file eligibility objections 14 days after it retained counsel.

One hundred nine parties filed timely objections to the City's eligibility to file this bankruptcy case under § 109 of the bankruptcy code. In addition, two individuals, Hassan Aleem and Carl Williams, filed an untimely joint objection, but upon motion, the Court determined that these objections should be considered timely. (Dkt. #821, ¶ VIII, at 7) Accordingly, the total number of objections to be considered is 110.

In pursuing their eligibility objections, the parties represented by attorneys filed over 50 briefs through several rounds.

Because the constitutionality of chapter 9 was drawn into question, the Court certified the matter to the Attorney General of the United States under 28 U.S.C. § 2403(a), and permitted the United States to intervene. (Dkt. #642 at 7) The United States then filed a brief in support of the constitutionality of chapter 9 (Dkt. #1149) and a supplemental brief (Dkt. #1560).

Also, because the constitutionality of a state statute was drawn into question, the Court certified the matter to the Michigan Attorney General under 28 U.S.C. § 2403(b), and permitted the State of Michigan to intervene. The Michigan Attorney General filed a "Statement Regarding The Michigan Constitution And The Bankruptcy Of The City Of Detroit." (Dkt. #481) He also filed a brief regarding eligibility (Dkt. #756) and a supplemental response (Dkt. #1085).

In an effort to organize and expedite its consideration of these objections, the Court entered an "Order Regarding Eligibility Objections" on August 26, 2013 (Dkt. #642) and a "First Amended Order Regarding Eligibility Objections" on September 12, 2013 (Dkt. #821). Those orders divided the objections into two groups - those filed by parties with an attorney, which were, generally, organized groups (group A), and those filed by individuals, mostly without an attorney (group B). Individuals without an attorney (group B) filed 93 objections. The

remaining 17 objections were filed by parties with an attorney. The objections filed by attorneys were then further divided between objections raising only legal issues and objections that require the resolution of genuine issues of material fact.¹

The Second Amended Final Pre-Trial Order concisely identifies which parties assert which objections. (Dkt. #1647 at 4-11) This opinion will not repeat that recitation.

B. Objections Filed by Individuals Without an Attorney

On September 19, 2013, the Court held a hearing at which the individuals who filed timely objections without an attorney had an opportunity to address the Court. At that hearing, 45 individuals addressed the Court. These objections are discussed in Part V, below.

C. Objections That Raise Only Legal Issues

On October 15 and 16, 2013, the Court heard arguments on the objections that raised only legal issues. These objections are addressed in Parts VII-XII, below. Summarily stated, these objections are:

1. Chapter 9 of the bankruptcy code violates the United States Constitution.
2. The bankruptcy court does not have the authority to determine the constitutionality of chapter 9 of the bankruptcy code.

¹ In their many briefs, some parties narrowly focused their arguments in support of their objections. Other parties, however, asserted an expansive range and number of more creative arguments in support of their objections. This opinion may not address every argument made in every brief. Nevertheless, the Court is satisfied that this opinion does address every argument that is worthy of serious consideration. To the extent an argument is not addressed in this opinion, it is overruled.

3. Public Act 436 of 2012 violates the Michigan Constitution and therefore the City was not validly authorized to file this bankruptcy case as required for eligibility by 11 U.S.C. § 109(c)(2).

4. The bankruptcy court does not have the authority to determine the constitutionality of P.A. 436.

5. Detroit's emergency manager is not an elected official and therefore did not have valid authority to file this bankruptcy case, as required for eligibility by 11 U.S.C. § 109(c)(2).

6. Because the governor's authorization to file this bankruptcy case did not prohibit the City from impairing the pension rights of its employees and retirees, the authorization was not valid under the Michigan Constitution, as required for eligibility by 11 U.S.C. § 109(c)(2).

7. Because of the proceedings and judgment in *Webster v. The State of Michigan*, Case No. 13-734-CZ (Ingham County Circuit Court), the City is precluded by law from claiming that the governor's authorization to file this bankruptcy case was valid, as required for eligibility by 11 U.S.C. § 109(c)(2).

D. Objections That Require the Resolution of Genuine Issues of Material Fact

Beginning on October 23, 2013, the Court conducted a trial on the objections filed by attorneys that require the resolution of genuine issues of material fact. These objections are addressed in Parts XIII-XVII, below. Summarily stated, these objections are:

8. The City was not "insolvent," as required for eligibility by 11 U.S.C. § 109(c)(3) and as defined in 11 U.S.C. § 101(32)(C).

9. The City does not desire "to effect a plan to adjust such debts," as required for eligibility by 11 U.S.C. § 109(c)(4).

10. The City did not negotiate in good faith with creditors, as required (in the alternative) for eligibility by 11 U.S.C. § 109(c)(5)(B).

11. The City was not “unable to negotiate with creditors because such negotiation [was] impracticable,” as required (in the alternative) for eligibility by 11 U.S.C. § 109(c)(5)(C).

12. The City’s bankruptcy petition should be dismissed under 11 U.S.C. § 921(c) because it was filed in bad faith.

In addition, in the course of the briefing, parties asserted certain new and untimely objections. These are addressed in Part XVIII, below.

III. Introduction to the Facts Leading up to the Bankruptcy Filing

The City of Detroit was once a hardworking, diverse, vital city, the home of the automobile industry, proud of its nickname - the “Motor City.” It was rightfully known as the birthplace of the American automobile industry. In 1952, at the height of its prosperity and prestige, it had a population of approximately 1,850,000 residents. In 1950, Detroit was building half of the world’s cars.

The evidence before the Court establishes that for decades, however, the City of Detroit has experienced dwindling population, employment, and revenues. This has led to decaying infrastructure, excessive borrowing, mounting crime rates, spreading blight, and a deteriorating quality of life.

The City no longer has the resources to provide its residents with the basic police, fire and emergency medical services that its residents need for their basic health and safety.

Moreover, the City’s governmental operations are wasteful and inefficient. Its equipment, especially its streetlights and its technology, and much of its fire and police equipment, is obsolete.

To reverse this decline in basic services, to attract new residents and businesses, and to revitalize and reinvigorate itself, the City needs help.

The following sections of this Part of the opinion detail the basic facts regarding the City's fiscal decline, and the causes and consequences of it. Section A will address the City's financial distress. Section B will address the causes and consequences of that distress. Section C will address the City's efforts to address its financial distress. Part D will address the facts and events that resulted in the appointment of an emergency manager for the City. Finally, Parts E-G will address the facts and events that culminated in this bankruptcy filing.

The evidence supporting these factual findings consists largely of the following admitted exhibits:

Exhibit 6 - the City's "Comprehensive Annual Financial Report" for the fiscal year ended June 30, 2012.

Exhibit 21 - "Preliminary Review of the City of Detroit," from Andy Dillon, State Treasurer, to Rick Snyder, Governor, December 21, 2011;

Exhibit 22 - "Report of the Detroit Financial Review Team," from the Detroit Financial Review Team to Governor Snyder, March 26, 2012;

Exhibit 24 - "Preliminary Review of the City of Detroit," from Andy Dillon, State Treasurer, to Rick Snyder, Governor, December 14, 2012;

Exhibit 25 - "Report of the Detroit Financial Review Team," from the Detroit Financial Review Team to Governor Snyder, February 19, 2013;

Exhibit 26 - Letter from Governor Rick Snyder to Mayor Dave Bing and Detroit City Council, March 1, 2013;

Exhibit 28 - Letter from Kevyn D. Orr, Emergency Manager, to Governor Richard Snyder and State Treasurer Andrew Dillon, July 16, 2013;

Exhibit 29 - "Authorization to Commence Chapter 9 Bankruptcy Proceeding," from Governor Richard Snyder to Emergency Manager Kevyn Orr and State Treasurer Andrew Dillon.

Exhibit 38 - Graph, "FY14 monthly cash forecast absent restructuring"

Exhibit 41 - "Financial and Operating Plan," Kevyn D. Orr, Emergency Manager, June 10, 2013;

Exhibit 43 - "Proposal for Creditors," City of Detroit, June 14, 2013;

Exhibit 44 - "Proposal for Creditors, Executive Summary," City of Detroit, June 14, 2013;

Exhibit 75 - "Financial and Operating Plan," Kevyn D. Orr, Emergency Manager, May 12, 2013;

Exhibit 414 - Declaration of Kevyn Orr in Support of Eligibility. (Dkt. #11)

The Court notes that the objecting creditors offered no substantial evidence contradicting the facts found in this Part of the opinion, except as noted below relating to the City's unfunded pension liability.

A. The City's Financial Distress

1. The City's Debt

The City estimates its debt to be \$18,000,000,000. This consists of \$11,900,000,000 in unsecured debt and \$6,400,000,000 in secured debt. It has more than 100,000 creditors.

According to the City, the unsecured debt includes:

\$5,700,000,000 for “OPEB” through June 2011, which is the most recent actuarial data available. “OPEB” is “other post-employment benefits,” and refers to the Health and Life Insurance Benefit Plan and the Supplemental Death Benefit Plan for retirees;

\$3,500,000,000 in unfunded pension obligations;

\$651,000,000 in general obligation bonds;

\$1,430,000,000 for certificates of participation (“COPs”) related to pensions;

\$346,600,000 for swap contract liabilities related to the COPs; and

\$300,000,000 of other liabilities, including \$101,200,000 in accrued compensated absences, including unpaid, accumulated vacation and sick leave balances; \$86,500,000 in accrued workers’ compensation for which the City is self-insured; \$63,900,000 in claims and judgments, including lawsuits and claims other than workers’ compensation claims; and \$13,000,000 in capital leases and accrued pollution remediation.

As noted, the objecting parties do not seriously challenge the City’s estimates of its debt, except for its estimates of its unfunded pension liability. The plans and others have suggested a much lower pension underfunding amount, perhaps even below \$1,000,000,000. However, they submitted no proof of that. The Court concludes that it is unnecessary to resolve the issue at this time, because the City would be found eligible regardless of any specific finding on the pension liability that would be in the range between the parties’ estimates. Otherwise, the Court is satisfied that the City’s estimates of its other liabilities are accurate enough for purposes of determining eligibility, and so finds.

2. Pension Liabilities

The City’s General Retirement System (“GRS”) administers the pension plan for its non-uniformed personnel. The average annual benefit received by retired pensioners or their

beneficiaries is about \$18,000. AFSCME Br. at 3 (citing June 30, 2012 General Retirement System of City of Detroit pension valuation report). (Dkt. #505) Generally these retirees are eligible for Social Security retirement or disability benefits.

The City's Police and Fire Retirement System ("PFRS") administers the pension plan for its uniformed personnel. The average annual benefit received by retired pensioners or their beneficiaries is about \$30,000. Generally, these retirees are not eligible for Social Security retirement or disability benefits. Retirement Systems Br. at 5 (citing 20 C.F.R. § 404.1206(a)(8), 20 C.F.R. § 404.1212). (Dkt. #519)

The Pension Benefit Guaranty Corporation does not insure pension benefits under either plan.

For the five years ending with FY 2012, pension payments exceeded contributions and investment income by approximately \$1,700,000,000 for the GRS and \$1,600,000,000 for the PFRS. This resulted in the liquidation of pension trust principal.

As noted, the two pension plans and the City disagree about the level of underfunding in the plans. Gabriel Roeder Smith & Company is the funds' actuary. In its reports for the two pension plans as of June 30, 2012, it found an unfunded actuarial accrued liability ("UAAL") of \$829,760,482 for the GRS. Ex. 69 at 3. It found UAAL of \$147,216,398 for the PFRS. Ex. 70 at 3.

The City asserts that the actuarial assumptions underlying these estimates are aggressive. Most significantly, the City believes that the two plans project unrealistic annual rates of return on investments net of expenses - 7.9% by GRS and 8.0% by PFRS, and that therefore their estimates are substantially understated. As stated above, the City estimates the underfunding to be \$3,500,000,000.

Using current actuarial assumptions, the City's required pension contributions, as a percentage of eligible payroll expenses, are projected to grow from 25% for GRS and 30% for PFRS in 2012 to 30% for GRS and 60% for PFRS by 2017. Changes in actuarial assumptions would result in further increases to the City's required pension contributions.

3. OPEB Liabilities

The OPEB plans consist of the Health and Life Insurance Benefit Plan and the Supplemental Death Benefit Plan. The City's OPEB obligations arise under 22 different plans, including 15 different plans alone for medical and prescription drugs. These plans have varying structures and terms. The plan is a defined benefit plan providing hospitalization, dental care, vision care and life insurance to current employees and substantially all retirees. The City generally pays for 80% to 100% of health care coverage for eligible retirees. The Health and Life Insurance Plan is totally unfunded; it is financed entirely on a current basis.

As of June 30, 2011, 19,389 retirees were eligible to receive benefits under the City's OPEB plans. The number of retirees receiving benefits from the City is expected to increase over time.

The Supplemental Death Benefit Plan is a pre-funded single-employer defined benefit plan providing death benefits based upon years of creditable service. It has \$34,564,960 in actuarially accrued liabilities as of June 30, 2011 and is 74.3% funded with UAAL of \$8,900,000.

Of the City's \$5,700,000,000 OPEB liability, 99.6% is unfunded.

4. Legacy Expenditures - Pensions and OPEB

During 2012, 38.6% of the City's revenue was consumed servicing legacy liabilities. The forecasts for subsequent years, assuming no restructuring, are 42.5% for 2013, 54.3% for 2014, 59.5% for 2015, 63% for 2016, and 64.5% for 2017.

5. The Certificates of Participation

The transactions described here are complex and confusing. The resulting litigation is as well. Nevertheless, a fairly complete explanation of them is necessary to an understanding of the City's severe financial distress.

a. The COPs and Swaps Transaction

In 2005 and 2006, the City set out to raise \$1.4 billion for its underfunded pension funds, the GRS and PFRS. The City created a non-profit Service Corporation for each of the two pension funds, to act as an intermediary in the financing. The City then entered into Service Contracts with each of the Service Corporations. The City would make payments to the Service Corporations, which had created Funding Trusts and assigned their rights to those Funding Trusts. The Funding Trusts issued debt obligations to investors called "Pension Obligation Certificates of Participation. ("COPs").² Each COP represented an undivided proportionate interest in the payments that the City would make to the Service Corporations under the Service Contracts.

The City arranged for the purchase of insurance from two monoline insurers to protect against defaults by the funding trusts that would result if the City failed to make payments to the

² Confusingly, in some of the exhibits, these COPs are referred to as "POCs." See, for example, Financial and Operating Plan, June 10, 2013. Ex. 41 at 15.

Service Corporations under the Service Contracts. This was intended to make the investments more attractive to potential investors. One insurer was XL Capital Assurance, Inc., now known as Syncora. The other was the Financial Guaranty Insurance Company.

Some of the COPs paid a floating interest rate. To protect the Service Corporations from the risk of increasing interest rates, they entered into hedge arrangements with UBS A.G. and SBS Financial (the “Swap Counterparties”). Under the hedges, also known as “swaps” (bets, really), the Service Corporations and the Swap Counterparties agreed to convert the floating interest rates into a fixed payment. Under the swaps, if the floating interest rates exceeded a certain rate, the Swap Counterparties would make payments to the Service Corporations. But if the floating interest rates sank below a certain rate, the Service Corporations would make payments to the Swap Counterparties. Specifically, there were eight pay-fixed, receive-variable interest rate swap contracts, effective as of June 12, 2006, with a total amount of \$800,000,000.

Under the swaps, the City was also at risk if there was an “event of default” or a “termination event.” In such an event, the Swap Counterparties could terminate the swaps and demand a potentially enormous termination payment.

The Swap Counterparties also obtained protection against the risk that the Service Corporations would default on their quarterly swap payments. The parties purchased additional insurance against that risk from Syncora and the Financial Guaranty Insurance Company. Syncora’s liability for swap defaults is capped at \$50,000,000, even though the Swap Counterparties’ claims may be significantly greater. This insurance is separate from the insurance purchased to protect against a default under the COPs.

b. The Result

In 2008, interest rates dropped dramatically. As a result, the City lost on the swaps bet. Actually, it lost catastrophically on the swaps bet. The bet could cost the City hundreds of millions of dollars. The City estimates that the damage will be approximately \$45,000,000 per year for the next ten years.

c. The Collateral Agreement

As the City's financial condition worsened, the City, the Service Corporations and the Swap Counterparties sought to restructure the swap contracts. In June 2009, they negotiated and entered into a Collateral Agreement that amended the swap agreements. The Collateral Agreement eliminated the "Additional Termination Event" and the potential for an immediate demand for a termination payment. The City agreed to make the swap payments through a "lockbox" arrangement and to pledge certain gaming tax revenues as collateral. The City also agreed to increase the interest rate of the swap agreements by 10 basis points effective July 1, 2010. It also agreed to new termination events, including any downgrading of the credit ratings for the COPs.

Two accounts were set up: 1) a "Holdback Account" and 2) a "General Receipts Subaccount." U.S. Bank was appointed custodian of the accounts. The casinos would pay developer payments and gaming tax payments to the General Receipts Subaccount daily. The City would make monthly deposits into the Holdback Account equal to one-third of the quarterly payment that the Service Corporations owed to the Swap Counterparties. When the City made that monthly payment, U.S. Bank would release to the City the accumulated funds in the General Receipts Subaccount. If the City defaulted, the Swap Counterparties could serve notice on U.S.

Bank, which would then hold or “trap” the money in the General Receipts Subaccount and not disburse it to the City.

Syncora was not a party to the Collateral Agreement.

d. The City’s Defaults Under the Collateral Agreement

In March, 2012, the COPs were downgraded, which triggered a termination event. The Swap Counterparties did not, however, declare a default.

In March, 2013, the appointment of the emergency manager for the City was another event of default. Again however, the Swap Counterparties did not declare a default.

As of June 28, 2013, the City estimated that if an event of default were declared and the Swap Counterparties chose to exercise their right to terminate, it faced a termination obligation to the Swap Counterparties of \$296,500,000. This was the approximate negative fair value of the swaps at that time.

On June 14, 2013, the City failed to make a required payment of approximately \$40,000,000 on the COPs. This default triggered Syncora’s liability as insurer on the COPs and it has apparently made the required payments. However, the City has made all of its required payments to the Swap Counterparties through the Holdback Account. The City contends that as a result, Syncora has no liability to the Swap Counterparties on its guaranty to them.

e. The Forbearance and Optional Termination Agreement

Following the City’s defaults on the Collateral Agreement, the parties negotiated. On July 15, 2013 (three days before this bankruptcy filing), the City and the Swap Counterparties entered into a “Forbearance and Optional Termination Agreement.” Under this agreement, the Swap Counterparties would forbear from terminating the swaps and from instructing U.S. Bank to trap the funds in the General Receipts Subaccount. The City may buy out the swaps at an 18-

25% discount, depending on when the payment is made. That buy-out would terminate the pledge of the gaming revenues. Syncora was not a party to this agreement.

When the City filed this bankruptcy case, it also filed a motion to assume the “Forbearance and Optional Termination Agreement.” (Dkt. #17) Syncora and many other parties have filed objections to the City’s motion. However, because there are serious and substantial defenses to the claims made against the City under the COPs, these objections assert that the agreement should not be approved. After several adjournments, it is scheduled for hearing on December 17, 2013.

f. The Resulting Litigation Involving Syncora

Meanwhile, back on June 17, 2013, Syncora sent a letter to U.S. Bank declaring an event of default, triggering U.S. Bank’s obligation to trap all of the money in the General Receipts Subaccount. The City responded, taking the position that because it had not defaulted in its swap payments and because Syncora has no rights under the Collateral Agreement, Syncora had no right to instruct U.S. Bank to trap the funds.

U.S. Bank did trap approximately \$15,000,000. This represented a significant percentage of the City’s monthly revenue.

As a result, on July 5, 2013, the City filed a lawsuit against Syncora in the Wayne County Circuit Court. It sought and obtained a temporary restraining order that resulted in U.S. Bank’s release of the trapped funds to the City. On July 11, 2013, Syncora removed the action to the district court in Detroit and filed a motion to dissolve the temporary restraining order. On July 31, 2013, Syncora filed a motion to dismiss the complaint. On August 9, 2013, the district referred the matter to this Court. It is now Adversary Proceeding #13-04942. On August 28, 2013, this Court ruled that the gaming revenues are property of the City and therefore protected

by the automatic stay. Tr. 9:17-21, August 28, 2013. (Dkt. #692) As a result, on September 10, 2013, the temporary restraining order was dissolved with the City's stipulation. Syncora's motion to dismiss the adversary proceeding remains pending. It has been adjourned due to a tolling agreement between the parties.

Adding to this drama, on July 24, 2013, Syncora filed a lawsuit against the Swap Counterparties in a state court in New York, seeking an injunction to prevent the Swap Counterparties from performing their obligations under the Forbearance and Optional Termination Agreement. The Swap Counterparties then removed the action to the United States District Court for the Southern District of New York. That court, at the request of the Swap Counterparties, transferred the case to the federal district court in Detroit, which then referred it to this Court. It is Adversary Proceeding No. 13-05395.

g. The COPs Debt

Returning, finally, to the underlying obligations - the COPS, the City estimates that as of June 30, 2013, the following amounts were outstanding:

\$480,300,000 in outstanding principal amount of \$640,000,000 Certificates of Participation Series 2005 A maturing June 15, 2013 through 2025; and

\$948,540,000 in outstanding principal amount of \$948,540,000 Certificates of Participation Series 2006 A and B maturing June 15, 2019 through 2035.

6. Debt Service

Debt service from the City's general fund related to limited tax and unlimited tax GO debt and the COPS was \$225,300,000 for 2012, and is projected to exceed \$247,000,000 in

2013.³ The City estimates that 38% of its tax revenue goes to debt service rather than to city services. It further estimates that without changes, this will increase to 65% within 5 years.

7. Revenues

Income tax revenues have decreased by \$91,000,000 since 2002 (30%) and by \$44,000,000 (15%) since 2008. Municipal income tax revenue was \$276,500,000 in 2008 and \$233,000,000 in 2012.

Property tax revenues for 2013 were \$135,000,000. This is a reduction of \$13,000,000 (10%) from 2012.

Revenues from the City's utility users' tax have declined from approximately \$55,300,000 in 2003 to approximately \$39,800,000 in 2012 (28%).

Wagering taxes receipts are about \$170–\$180,000,000 annually. However, the City projects that these receipts will decrease through 2015 due to the expected loss of gaming revenue to casinos opening in nearby Toledo, Ohio.

State revenue sharing has decreased by \$161,000,000 since 2002 (48%) and by \$76,000,000 (30.6%) since 2008, due to the City's declining population and significant reductions in statutory revenue sharing by the State.

8. Operating Deficits

The City has experienced operating deficits for each of the past seven years. Through 2013, it has had an accumulated general fund deficit of \$237,000,000. However, this includes the effect of recent debt issuances - \$75,000,000 in 2008; \$250,000,000 in 2010; and

³ References to a specific year in the financial sections of this Part are to the City's fiscal year, July 1 to June 30.

\$129,500,000 in 2013. If these debt issuances are excluded, the City's accumulated general fund deficit would have been \$700,000,000 through 2013.

In 2012, the City had a negative cash flow of \$115,500,000, excluding the impact of proceeds from short-term borrowings. In March 2012, to avoid running out of cash, the City borrowed \$80,000,000 on a secured basis. The City spent \$50,000,000 of that borrowing in 2012.

In 2013, the City deferred payments on certain of its obligations, totaling approximately \$120,000,000. As set forth in the next section, these deferrals were for current and prior year pension contributions and other payments. With those deferrals, the City projects a positive cash flow of \$4,000,000 for 2013.

If the City had not deferred these payments, it would have run out of cash by June 30, 2013.

Absent restructuring, the City projects that it will have negative cash flows of \$190,500,000 for 2014; \$260,400,000 for 2015; \$314,100,000 for 2016; and \$346,000,000 for 2017. The City further estimates that by 2017, its accumulated deficit could grow to approximately \$1,350,000,000.

9. Payment Deferrals

The City is not making its pension contributions as they come due. It has deferred payment of its year-end Police and Fire Retirement System contributions. As of May 2013, the City had deferred approximately \$54,000,000 in pension contributions related to current and prior periods and approximately \$50,000,000 on June 30, 2013 for current year PFRS pension contributions. Therefore, the City will have deferred \$104,000,000 of pension contributions.

Also, the City did not make the scheduled \$39,700,000 payments on its COPs that were due on June 14, 2013.

B. The Causes and Consequences of the City's Financial Distress

A full discussion of the causes and consequences of the City's financial distress is well beyond the scope of this opinion. Still, the evidence presented at the eligibility trial did shed some important and relevant light on the issues that are before the Court. These "causes" and "consequences" are addressed together here because it is often difficult to distinguish one from the other.

1. Population Losses

Detroit's population declined to just over 1,000,000 as of June 1990. In December 2012, the population was 684,799. This is a 63% decline in population from its peak in 1950.

2. Employment Losses

From 1972 to 2007, the City lost approximately 80% of its manufacturing establishments and 78% of its retail establishments. The number of jobs in Detroit declined from 735,104 in 1970 to 346,545 in 2012.

Detroit's unemployment rate was 6.3% in June 2000; 23.4% in June 2010; and 18.3% in June 2012. The number of employed Detroit residents fell from approximately 353,000 in 2000 to 279,960 in 2012.

3. Credit Rating

The City's credit ratings are below investment grade. As of June 17, 2013, S&P and Moody's had lowered Detroit's credit ratings to CC and Caa3, respectively. Ex. 75 at 3.

4. The Water and Sewerage Department

The Detroit Water and Sewerage Department (“DWSD”) provides water and wastewater services to the City and many suburban communities in an eight-county area, covering 1,079 square miles. DWSD’s cost of capital is inflated due to its association with the City. This increased cost of capital, coupled with the inability to raise rates and other factors, has resulted in significant under-spending on capital expenditures.

5. The Crime Rate

During calendar year 2011, 136,000 crimes were reported in the City. Of these, 15,245 were violent crimes. In 2012, the City’s violent crime rate was five times the national average and the highest of any city with a population in excess of 200,000.

The City’s case clearance rate for violent crimes is 18.6%. The clearance rate for all crimes is 8.7%. These rates are substantially below those of comparable municipalities nationally and surrounding local municipalities.

6. Streetlights

As of April 2013, about 40% of the approximately 88,000 streetlights operated and maintained by the City’s Public Lighting Department were not working.

7. Blight

There are approximately 78,000 abandoned and blighted structures in the City. Of these, 38,000 are considered dangerous buildings. The City has experienced 11,000 – 12,000 fires each year for the past decade. Approximately 60% of these occur in blighted or unoccupied buildings.

The average cost to demolish a residential structure is approximately \$8,500.

The City also has 66,000 blighted vacant lots.

8. The Police Department

In 2012, the average priority one response time for the police department was 30 minutes. In 2013, it was 58 minutes. The national average is 11 minutes.

The department's manpower has been reduced by approximately 40% over the last 10 years.

The department has not invested in or maintained its facility infrastructure for many years, and has closed or consolidated many precincts.

The department operates with a fleet of 1,291 vehicles, most of which have reached the replacement age of three years and lack modern information technology.

9. The Fire Department

The average age of the City's 35 fire stations is 80 years, and maintenance costs often exceed \$1,000,000 annually. The fire department's fleet has many mechanical issues, contains no reserve vehicles and lacks equipment ordinarily considered standard. The department's apparatus division now has 26 employees, resulting in a mechanic to vehicle ratio of 1 to 39 and an inability to complete preventative maintenance on schedule.

In February 2013, Detroit Fire Commissioner Donald Austin ordered firefighters not to use hydraulic ladders on ladder trucks except in cases involving an "immediate threat to life" because the ladders had not received safety inspections "for years."

During the first quarter of 2013, frequently only 10 to 14 of the City's 36 ambulances were in service. Some of the City's EMS vehicles have been driven 250,000 to 300,000 miles and break down frequently.

10. Parks and Recreation

The City closed 210 parks during fiscal year 2009, reducing its total from 317 to 107 (66%). It has also announced that 50 of its remaining 107 parks would be closed and that another 38 would be provided with limited maintenance.

11. Information Technology

The City's information technology infrastructure and software is obsolete and is not integrated between departments, or even within departments. Its information technology needs to be upgraded or replaced in the following areas: payroll; financial; budget development; property information and assessment; income tax; and the police department operating system.

Payroll. The City currently uses multiple, non-integrated payroll systems. A majority of the City's employees are on an archaic payroll system that has limited reporting capabilities and no way to clearly track, monitor or report expenditures by category. The current cost to process payroll is \$62 per check (\$19,200,000 per year). This is more than four times the general average of \$15 per paycheck. The payroll process involves 149 full-time employees, 51 of which are uniformed officers. This means that high cost personnel are performing clerical duties.

Income Tax. The City's highly manual income tax collection and data management systems were purchased in the mid-1990s and are outdated, with little to no automation capability. An IRS audit completed in July 2012, characterized these systems as "catastrophic."

Financial Reporting. The City's financial reporting system ("DRMS") was implemented in 1999 and is no longer supported. Its budget development system is 10 years old and requires a manual interface with DRMS. 70% of journal entries are booked manually. The systems also lack reliable fail-over and back-up systems.

C. The City's Efforts to Address Its Financial Distress

The City has reduced the number of its employees by about 2,700 since 2011. As of May 31, 2013, it had approximately 9,560 employees.

The City's unionized employees are represented by 47 discrete bargaining units.⁴ The collective bargaining agreements covering all of those bargaining units expired before this case was filed.⁵

The City has implemented revised employment terms, called "City Employment Terms" ("CET"), for nonunionized employees and for unionized employees under expired collective bargaining agreements. It has also increased revenues and reduced expenses in other ways. It estimates that these measures have resulted in annual savings of \$200,000,000.

The City cannot legally increase its tax revenues. Nor can it reduce its employee expenses without further endangering public health and safety.

D. A Brief History of Michigan's Emergency Manager Laws

Before reviewing the events leading to the appointment of the City's emergency manager, a brief review of the winding history of the Michigan statutes on point is necessary.

In 1990, the Michigan Legislature enacted Public Act 72 of 1990, the "Local Government Fiscal Responsibility Act." ("P.A. 72") This Act empowered the State to intervene with respect

⁴ One of the units, Police Officers Labor Council (Health Department), has one represented employee. Two of the units have two employees. Three of the units have four employees. One of the units, the Detroit License Investigators Association, has no represented employees.

⁵ The Financial and Operating Plan reports 48 collective bargaining agreements. Ex. 75 at 13. The discrepancy is not explained but is not material.

to municipalities facing financial crisis through the appointment of an emergency financial manager who would assume many of the powers ordinarily held by local elected officials.

Effective March 16, 2011, P.A. 72 was repealed and replaced with Public Act 4 of 2011, the “Local Government and School District Fiscal Accountability Act.” (“P.A. 4”)

On November 5, 2012, Michigan voters rejected P.A. 4 by referendum. This rejection revived P.A. 72. *See Order, Davis v. Roberts*, No. 313297 (Mich. Ct. App. Nov. 16, 2012):⁶

Petitioner’s reliance on the anti-revival statute, MCL 8.4, is unavailing. The plain language of MCL 8.4 includes no reference to statutes that have been rejected by referendum. The statutory language refers only to statutes subject to repeal. Judicial construction is not permitted when the language is unambiguous. *Driver v Naini*, 490 Mich 239, 247; 802 NW2d 311 (2011). Accordingly, under the clear terms of the statute, MCL 8.4 does not apply to the voters’ rejection, by referendum, of P A 4.

See also Davis v. Weatherspoon, 2013 WL 2076478, at *2 (E.D. Mich. May 15, 2013); Mich. Op. Att’y Gen No. 7267 (Aug. 6, 2012), 2012 WL 3544658.

P.A. 72 remained in effect until March 28, 2013, when the “Local Financial Stability and Choice Act,” Public Act 436 of 2012, became effective. (“P.A. 436”) That Legislature enacted that law on December 13, 2012, and the governor signed it on December 26, 2012.

E. The Events Leading to the Appointment of the City’s Emergency Manager

The following subsections review the events leading to the appointment of the City’s emergency manager.

⁶ This order is available on the Michigan Court of Appeals website at: [http://publicdocs.courts.mi.gov:81/COA/PUBLIC/ORDERS/2012/313297\(9\)_order.PDF](http://publicdocs.courts.mi.gov:81/COA/PUBLIC/ORDERS/2012/313297(9)_order.PDF)

1. The State Treasurer's Report of December 21, 2011

On December 6, 2011, the Michigan Department of the Treasury began a preliminary review of the City's financial condition pursuant to P.A. 4.

On December 21, 2011, Andy Dillon, the state treasurer, reported to the governor that "probable financial stress" existed in Detroit and recommended the appointment of a "financial review team" pursuant to P.A. 4. Ex. 503 at 3. (Dkt. #11-3) In making this finding, Dillon's report cited:

the inability of the City to avoid fund deficits, recurrent accumulated deficit spending, severe projected cash flow shortages resulting in an improper reliance on inter-fund and external borrowing, the lack of funding of the City's other post-retirement benefits, and the increasing debt of the City[.]

More specifically, his report found:

(a) The City had violated § 17 of the Uniform Budget and Accounting Act (Public Act 2 of 1968) by failing to amend the City's general appropriations act when it became apparent that various line items in the City's budget for fiscal year 2010 exceeded appropriations by an aggregate of nearly \$58,000,000, and that unaudited fiscal year 2011 figures indicated that expenditures would exceed appropriations by \$97,000,000.

(b) The City did not file an adequate or approved "deficit elimination plan" with the Treasury for fiscal year 2010. The Treasury found that the City's recent efforts at deficit reduction had been "unrealistic" and that "City officials either are incapable or unwilling to manage its own finances."

(c) The City had a "mounting debt problem" with debt service requirements exceeding \$597,000,000 in 2010 and long term debt exceeding \$8,000,000,000 as of June 2011, excluding the City's then-estimated \$615,000,000 in unfunded actuarial pension liabilities and

\$4,900,000,000 in OPEB liability. The ratio of the City's total long term debt to total net assets for 2010 was 32.64 to 1, which was far greater than other identified cities.

(d) The City was at risk of a termination payment, estimated at the time to be in the range of \$280,000,000 to \$400,000,000, under its swap contracts.

(e) The City's long term bond rating had fallen below the BBB category and was considered "junk" - speculative or highly speculative.

(f) The City was experiencing significant cash flow shortages. The City projected a cash balance of \$96,100,000 as of October 28, 2011. This was nearly \$20,000,000 lower than the City's previous estimates. It would be quickly eroded and the City would experience a cash shortage of \$1,600,000 in April 2012 and would end 2012 with a cash shortfall of \$44,100,000 absent remedial action.

(g) The City had difficulty making its required payments to its pension plans. In June of 2005, the City issued \$1,440,000,000 of new debt in the form of Pension Obligation Certificates ("COPs") to fund its two retirement systems with a renegotiated repayment schedule of 30 years.

2. The Financial Review Team's Report of March 26, 2012

Under P.A. 4, upon a finding of "probable financial stress," the governor was required to appoint a financial review team to undertake a more extensive financial management review of the City. On December 27, 2011, the governor announced the appointment of a ten member Financial Review Team. The Financial Review Team was then required to report its findings to the governor within 60-90 days.

On March 26, 2012, the Financial Review Team submitted its report to the governor. This report found that "the City of Detroit is in a condition of severe financial stress[.]" Ex. 22. This finding of "severe financial stress" was based upon the following considerations:

(a) The City's cumulative general fund deficit had increased from \$91,000,000 for 2010 to \$148,000,000 for 2011 and the City had not experienced a positive year-end fund balance since 2004.

(b) Audits for the City's previous nine fiscal years reflected significant variances between budgeted and actual revenues and expenditures, primarily due to the City's admitted practice of knowingly overestimating revenues and underestimating expenditures.

(c) The City was continuing to experience significant cash depletion. The City had proposed adjustments to collective bargaining agreements to save \$102,000,000 in 2012 and \$258,000,000 in 2013, but the tentative collective bargaining agreements negotiated as of the date of the report were projected to yield savings of only \$219,000,000 for both years.

(d) The City's existing debt had suffered significant downgrades. Among the reasons cited by Moody's Investor Service for the downgrade were the City's "weakened financial position, as evidenced by its narrow cash position, its reliance upon debt financing, and ongoing negotiations with its labor unions regarding contract concessions." Ex. 22 at 10.

3. The Consent Agreement

In early 2012, the City and the State of Michigan negotiated a 47 page "Financial Stability Agreement," more commonly called the "Consent Agreement." Ex. 23. The Consent Agreement states that its purpose is to achieve financial stability for the City and a stable platform for the City's future growth. It was executed as of April 5, 2012. Under § 15 of P.A. 4, because a consent agreement within the meaning of P.A. 4 was negotiated and executed, no emergency manager was appointed for the City, despite the finding by the Financial Review Team that the City was in "severe financial stress."

The Consent Agreement created a “Financial Advisory Board” (“FAB”) of nine members selected by the governor, the treasurer, the mayor and the city council. The Consent Agreement granted the FAB an oversight role and limited powers over certain City reform and budget activities. The FAB has held, and continues to hold, regular public meetings and to exercise its oversight functions set forth in the Consent Agreement.

4. The State Treasurer’s Report of December 14, 2012

On December 11, 2012, the Department of Treasury commenced a preliminary review of the City’s financial condition under P.A. 72. On December 14, 2012, Andy Dillon, State Treasurer sent to Rick Snyder, Governor a memorandum entitled “Preliminary Review of the City of Detroit.” Ex. 24. This was after the voters had rejected P.A. 4 and P.A. 72 was revived.

Treasurer Dillon reported to the governor that, based on his preliminary review, a “serious financial problem” existed within the City. Ex. 24 at 1. This conclusion was based on many of the same findings as his earlier report of December 21, 2011. Ex. 21. In addition he reported that:

(a) City officials had violated the proscriptions in sections 18 and 19 of P.A. 2 of 1968 in applying the City’s money for purposes inconsistent with the City’s appropriations.

(b) The City had projected possibly depleting its cash prior to June 30, 2013. However because of problems in the financial reporting functions of the City, the projections continued to change from month to month. This made it difficult to make informed decisions regarding the City’s fiscal health. The City would not be experiencing significant cash flow challenges if City officials had complied with statutory requirements to monitor and amend adopted budgets as needed. In sum, such compliance requires the ability to produce timely and accurate financial information, which City officials have not been able to produce.

(c) The City incurred overall deficits in various funds including the General Fund. The General Fund's unrestricted deficit increased by almost \$41,000,000 from \$155,000,000 on June 30, 2010 to \$196,000,000 on June 30, 2011, and is projected to increase even further for 2012. This would not have happened if the City had complied with its budgets.

5. The Financial Review Team's Report of February 19, 2013

Upon receipt of Treasurer Dillon's report, the governor appointed another Financial Review Team to review the City's financial condition on December 18, 2012. This was also done under P.A. 72.

On February 19, 2013, the Financial Review Team submitted its report to the governor, concluding, "in accordance with [P.A. 72], that a local government financial emergency exists within the City of Detroit because no satisfactory plan exists to resolve a serious financial problem."⁷ Ex. 25.

This finding by the Financial Review Team of a "local government financial emergency" was based primarily upon the following considerations:

(a) The City continued to experience a significant depletion of its cash, with a projected \$100,000,000 cumulative cash deficit as of June 30, 2013. Cost-cutting measures undertaken by the mayor and city council were too heavily weighted to one-time savings and non-union personnel.

⁷ The Financial Review Team also submitted a "Supplemental Documentation of the Detroit Financial Review Team." Ex. 25. This supplement was "intended to constitute competent, material, and substantial evidence upon the whole record in support of the conclusion that a financial emergency exists within the City of Detroit." *Id.*

(b) The City's cumulative general fund deficit had not experienced a positive year-end fund balance since 2004 and stood at \$326,600,000 as of 2012. If the City had not issued substantial debt, the accumulated general fund deficit would have been \$936,800,000 by 2012.

(c) The City's long-term liabilities exceeded \$14,000,000,000 as of June 30, 2013. Approximately \$1,900,000,000 would come due over the next five years. The City had not devised a satisfactory plan to address these liabilities.

(d) The City Charter contains numerous restrictions and structural details that make it extremely difficult to restructure the City's operations in a meaningful or timely manner.

(e) The management letter accompanying the City's fiscal year 2012 financial audit report identified numerous material weaknesses and significant deficiencies in the City's financial and accounting operations.

(f) Audits for the City's last six fiscal years reflected significant variances between budgeted and actual revenues and expenditures, owing primarily to the City's admitted practice of knowingly overestimating revenues and underestimating expenditures.

6. The Appointment of an Emergency Manager for the City of Detroit

On March 1, 2013, after receiving the Financial Review Team Report of February 19, 2013, the governor announced his determination under P.A. 72 that a "financial emergency" existed within the City. Ex. 26. By that point, P.A. 436 had been enacted but it was not yet effective.

On March 12, 2013, the governor conducted a public hearing to consider the city council's appeal of his determination.

On March 14, 2013, the governor confirmed his determination of a “financial emergency” within the City and requested that the Local Emergency Financial Assistance Loan Board (“LEFALB”) appoint an emergency financial manager under P.A. 72.

On March 15, 2013, the LEFALB appointed Kevyn Orr as the emergency financial manager for the City of Detroit. Second Amended Final Pre-Trial Order, ¶ 42 at 11. (Dkt. #1647)

On March 25, 2013, Mr. Orr formally took office. Second Amended Final Pre-Trial Order, ¶ 43 at 11. (Dkt. #1647)

On March 28, 2013, the effective date of P.A. 436, P.A. 72 was repealed, and Mr. Orr became the emergency manager of the City under §§ 2(e) and 31 of P.A. 436. M.C.L. §§ 141.1542(e) and 141.1571.

The emergency manager acts “for and in the place and stead of the governing body and the office of chief administrative officer of the local government.” M.C.L. § 141.1549(2). He has “broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and the local government’s capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare.” M.C.L. § 141.1549(2).

F. The Emergency Manager’s Activities

1. The June 14, 2013 Meeting and Proposal to Creditors

On June 14, 2013, Mr. Orr organized a meeting with approximately 150 representatives of the City’s creditors, including representatives of: (a) the City’s debt holders; (b) the insurers of this debt; (c) the City’s unions; (d) certain retiree associations; (e) the Pension Systems; and (f) many individual bondholders. At the meeting, Mr. Orr presented the June 14 Creditor Proposal,

Ex. 43, and answered questions. At the conclusion of the meeting, Mr. Orr invited creditor representatives to meet and engage in a dialogue with City representatives regarding the proposal.

This proposal described the economic circumstances that resulted in Detroit's financial condition. It also offered a thorough overhaul and restructuring of the City's operations, finances and capital structure, as well as proposed recoveries for each creditor group. More specifically, the June 14, 2013 Creditor Proposal set forth:

(a) The City's plans to achieve a sustainable restructuring by investing over \$1,250,000,000 over ten years to improve basic and essential City services, including: (1) substantial investment in, and the restructuring of, various City departments, including the Police Department; the Fire Department; Emergency Medical Services; the Department of Transportation; the Assessor's Office and property tax division; the Building, Safety, Engineering & Environment Department; and the 36th District Court; (2) substantial investment in the City's blight removal efforts; (3) the transition of the City's electricity transmission business to an alternative provider; (4) the implementation of a population-based streetlight footprint and the outsourcing of lighting operations to the newly-created Public Lighting Authority; (5) substantial investments in upgraded information technology for police, fire, EMS, transportation, payroll, grant management, tax collection, budgeting and accounting and the City's court system; (6) a comprehensive review of the City's leases and contracts; and (7) a proposed overhaul of the City's labor costs and related work rules. Ex. 43 at 61-78.

(b) The City's intention to expand its income and property tax bases, rationalize and adjust its nominal tax rates, and various initiatives to improve and enhance its tax and fee collection efforts. Ex. 43 at 79-82.

(c) The City's intention to potentially realize value from the Detroit Water and Sewerage Department ("DWSD") through the creation of a new metropolitan area water and sewer authority. This authority would conduct the operations under the City's concession or lease of the DWSD's assets in exchange for payments in lieu of taxes, lease payments, or some other form of payment. Ex. 43 at 83-86.

Regarding creditor recoveries, the City proposed:

(a) Treatment of secured debt commensurate with the value of the collateral securing such debt, including the repayment or refinancing of its revenue bonds, secured unlimited and limited tax general obligation bonds, secured installment notes and liabilities arising in connection with the swap obligations. Ex. 43 at 101-109.

(b) The pro rata distribution of \$2,000,000,000 in principal amount of interest-only, limited recourse participation notes to holders of unsecured claims (i.e., holders of unsecured unlimited and limited tax general obligation bonds; the Service Corporations (on account of the COPs); the pension systems (on account of pension underfunding); retirees (on account of OPEB benefits); and miscellaneous other unsecured claimants. The plan also disclosed the potential for amortization of the principal of such notes in the event that, for example, future City revenues exceeded certain thresholds, certain assets were monetized or certain grants were received. Ex. 43 at 101-109.

(c) A "Dutch Auction" process for the City to purchase the notes. Ex. 43 at 108.

At this meeting, Mr. Orr also announced his decision not to make the scheduled \$39,700,000 payments due on the COPs and swaps transactions and to impose a moratorium on principal and interest payments related to unsecured debt.

2. Subsequent Discussions with Creditor Representatives

Following the June 14, 2013 meeting at which the proposal to creditors was presented. Mr. Orr and his staff had several other meetings.⁸

On June 20, 2013, Mr. Orr's advisors met with representatives of the City's unions and four retiree associations. In the morning they met with representatives of "non-uniformed" employees and retirees. In the afternoon they met with "uniformed" employees and retirees. In these meetings, his advisors discussed retiree health and pension obligations. Approximately 100 union and retiree representatives attended the two-hour morning session. It included time for questions and answers. Approximately 35 union and retiree representatives attended the afternoon session, which lasted approximately 90 minutes.

On June 25, 2013, Mr. Orr's advisors and his senior advisor staff members held meetings in New York for representatives and advisors with all six of the insurers of the City's funded bond debt; the pension systems; and U.S. Bank, the trustee or paying agent on all of the City's bond issuances. Approximately 70 individuals attended this meeting. At this five-hour meeting, the City's advisors discussed the 10-year financial projections and cash flows presented in the June 14 Creditor Proposal, together with the assumptions and detail underlying those projections and cash flows; the City's contemplated reinvestment initiatives and related costs; and the retiree benefit and pension information and proposals that had been presented to the City's unions and pension representatives on June 20, 2013.

⁸ The findings in this section are based on the Declaration of Kevyn D. Orr in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code, (Dkt. #11) as well as his testimony and the testimony of the witnesses who attended the meetings. Mr. Orr's declaration was admitted into evidence as part of the stipulated exhibits in the pre-trial order. It was the objectors' "Common" Ex. 414.

Also on June 25, 2013, the City's advisors held a separate meeting with U.S. Bank and its advisors to discuss the City's intentions with respect to the DWSD, and the special revenue bond debt related thereto; the City's proposed treatment of its general obligation debt, including the COPs; and various other issues raised by U.S. Bank.

On June 26 and 27, 2013, Mr. Orr's advisors held individual follow-up meetings with each of several bond insurers. On June 26, 2013, the City team met with business people, lawyers and financial advisors from NPFGC in a two-hour meeting and Ambac Assurance Corporation in a 90-minute meeting. Financial Guaranty Insurance Corporation had originally requested a meeting for June 26, 2013 but subsequently cancelled. On June 27, 2013, the City team met with business people, lawyers and financial advisors from Syncora in a 90-minute meeting and Assured Guaranty Municipal Corporation in a 90-minute meeting.

On July 10, 2013, the City and certain of its advisors held meetings with representatives and advisors of the GRS, as well as representatives and counsel for certain non-uniformed unions and retiree associations and representatives and advisors of the PFRS, as well as representatives and counsel for certain uniformed unions and retiree associations. Each meeting lasted approximately two hours. The purposes of each meeting were to provide additional information on the City's pension restructuring proposal and to discuss a process for reaching a consensual agreement on pension underfunding issues and the treatment of any related claims.

On July 11, 2013, the City and its advisors held separate follow-up meetings with representatives and advisors for select non-uniform unions and retiree associations, the GRS, certain uniformed unions and retiree associations, and the PFRS to discuss retiree health issues.

G. The Prepetition Litigation

On July 3, 2013, two lawsuits were filed against the governor and the treasurer in the Ingham County Circuit Court. These suits sought a declaratory judgment that P.A. 436 violated the Michigan Constitution to the extent that it purported to authorize chapter 9 proceedings in which vested pension benefits might be impaired. They also sought an injunction preventing the defendants from authorizing any chapter 9 proceeding for the City in which vested pension benefits might be impaired. *Flowers v. Snyder*, No. 13-729-CZ July 3, 2013; *Webster v. Snyder*, No. 13-734-CZ July 3, 2013.

On July 17, 2013, the Pension Systems commenced a similar lawsuit. *General Retirement System of the City of Detroit v. Orr*, No. 13-768-CZ July 17, 2013.

H. The Bankruptcy Filing

On July 16, 2013, Mr. Orr recommended to the governor and the treasurer in writing that the City file for chapter 9 relief. Ex. 28. (Dkt. #11-10) An emergency manager may recommend a chapter 9 filing if, in his judgment, “no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists.” M.C.L. § 141.1566(1).

On July 18, 2013, Governor Snyder authorized the City of Detroit to file a chapter 9 bankruptcy case. Ex. 29. (Dkt. #11-11) M.C.L. § 141.1558(1) permits the governor to “place contingencies on a local government in order to proceed under chapter 9.” However, the governor’s authorization letter stated, “I am choosing not to impose any such contingencies today. Federal law already contains the most important contingency - a requirement that the plan be legally executable, 11 USC 943(b)(4).” Ex. 29. at 4. Accordingly, his authorization did not include a condition prohibiting the City from seeking to impair pensions in a plan.

At 4:06 p.m. on July 18, 2013, the City filed this chapter 9 bankruptcy case.⁹ (Voluntary Petition, Dkt. #1)

IV. The City Bears the Burden of Proof.

Before turning to the filed objections, it is necessary to point out that the City bears the burden to establish by a preponderance of the evidence each of the elements of eligibility under 11 U.S.C. § 109(c). *Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo (In re City of Vallejo)*, 408 B.R. 280, 289 (B.A.P. 9th Cir. 2009); *In re City of Stockton, Cal.*, 493 B.R. 772, 794 (Bankr. E.D. Cal. 2013).

V. The Objections of the Individuals Who Filed Objections Without an Attorney

As the Court commented at the conclusion of the hearing on September 19, 2013, the individuals' presentations were moving, passionate, thoughtful, compelling and well-articulated. These presentations demonstrated an extraordinary depth of concern for the City of Detroit, for the inadequate level of services that their city government provides and the personal hardships that creates, and, most clearly, for the pensions of City retirees and employees. These individuals expressed another deeply held concern, and even anger, that became a major theme of the hearing - the concern and anger that the State's appointment of an emergency manager over the City of Detroit violated their fundamental democratic right to self-governance.

The Court's role here is to evaluate how these concerns might impact the City's eligibility for bankruptcy. In making that evaluation, the Court can only consider the specific requirements of applicable law - 11 U.S.C. §§ 109(c) and 921(c). It is not the Court's role to

⁹ The exact time of the filing becomes significant in Part XII, below.

examine this bankruptcy or these objections to this bankruptcy from any other perspective or on any other basis. For example, neither the popularity of the decision to appoint an emergency manager nor the popularity of the decision to file this bankruptcy case are matters of eligibility under the federal bankruptcy laws.

To the extent that individual objections raised arguments that do raise eligibility concerns, they are addressed through this opinion. It appears to the Court that these individuals' concerns should mostly be addressed in the context of whether the case was filed in good faith, as 11 U.S.C. § 921(c) requires. To a lesser extent, they should also be considered in the context of the specific requirement that the City was "insolvent." 11 U.S.C. § 109(c)(3). Accordingly, the Court will address these concerns in those Parts of this opinion. *See* Part XIII (insolvency) and Part XVII (good faith), below.

**VI. The City of Detroit Is a "Municipality"
Under 11 U.S.C. § 109(c)(1).**

With its petition, the City filed a "Memorandum in Support of Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code," asserting that the City is a "municipality" as defined in 11 U.S.C. § 101(40) and as required by 11 U.S.C. § 109(c)(1). (Dkt. #14 at 8-9) In the "Second Amended Final Pre-Trial Order," the parties so stipulated. (Dkt. #1647 at 11) Accordingly, the Court finds that the City has established this element of eligibility and will not discuss it further.

**VII. The Bankruptcy Court Has the Authority
to Determine the Constitutionality of Chapter 9
of the Bankruptcy Code and Public Act 436.**

**A. The Parties' Objections to the Court's
Authority Under *Stern v. Marshall***

Several objecting parties challenge the constitutionality of chapter 9 of the bankruptcy code under the United States Constitution. Citing the Supreme Court's decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011), these parties also assert that this Court does not have the authority to determine the constitutionality of chapter 9.

Several objecting parties also challenge the constitutionality of P.A. 436 under the Michigan Constitution. Some of these parties also assert that this Court does not have the authority to determine the constitutionality of P.A. 436.

The Official Committee of Retirees filed a motion to withdraw the reference on the grounds that this Court does not have the authority to determine the constitutionality of chapter 9 or P.A. 436. It also filed a motion for stay of the eligibility proceedings pending the district court's resolution of that motion. In this Court's denial of the stay motion, it concluded that the Committee was unlikely to succeed on its arguments regarding this Court's lack of authority under *Stern*. *In re City of Detroit, Mich.*, 498 B.R. 776, 781-87 (Bankr. E.D. Mich. 2013). The following discussion is taken from that decision.

B. *Stern, Waldman, and Global Technovations*

In *Stern v. Marshall*, the Supreme Court held that the "judicial power of the United States" can only be exercised by an Article III court and "that in general, Congress may not withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty." 131 S. Ct. at 2608-12. The Supreme Court held that a bankruptcy court therefore lacks the constitutional authority to enter a final judgment on a

debtor's counterclaim that is based on a private right when resolution of the counterclaim is not necessary to fix the creditor's claim. 131 S. Ct. at 2611-19. The Court described the issue before it as "narrow."¹⁰ 131 S. Ct. at 2620.

The Sixth Circuit has adhered to a narrow reading of *Stern* in the two cases that have addressed the issue: *Onkyo Europe Elect. GMBH v. Global Technovations Inc. (In re Global Technovations Inc.)*, 694 F.3d 705 (6th Cir. 2012), and *Waldman v. Stone*, 698 F.3d 910 (6th Cir. 2012).

In *Global Technovations*, the Sixth Circuit summarized *Stern* as follows:

Stern's limited holding stated the following: When a claim is "a state law action independent of the federal bankruptcy law and not necessarily resolvable by a ruling on the creditor's proof of claim in bankruptcy," the bankruptcy court cannot enter final judgment. *Id.* at 2611. In those cases, the bankruptcy court may only enter proposed findings of fact and conclusions of law. *Ibid.*

694 F.3d at 722. Based on this view of *Stern*, the *Global Technovations* court held that the bankruptcy court did have the authority to rule on the debtor's fraudulent transfer counterclaim against a creditor that had filed a proof of claim. *Id.*

In *Waldman*, the Sixth Circuit summarized the holding of *Stern* as follows:

When a debtor pleads an action under federal bankruptcy law and seeks disallowance of a creditor's proof of claim against the estate—as in *Katchen [v. Landy]*, 382 U.S. 323, 86 S. Ct. 467

¹⁰ Outside of the Sixth Circuit, the scope of *Stern* has been somewhat controversial. See generally Joshua D. Talicska, *Jurisdictional Game Changer or Narrow Holding? Discussing the Potential Effects of Stern v. Marshall and Offering a Roadmap Through the Milieu*, 9 SETON HALL CIRCUIT REV. 31 (Spring 2013); Michael Fillingame, *Through a Glass, Darkly: Predicting Bankruptcy Jurisdiction Post-Stern*, 50 HOUS. L. REV. 1189 (Symposium 2013); Tyson A. Crist, *Stern v. Marshall: Application of the Supreme Court's Landmark Decision in the Lower Courts*, 86 AM. BANKR. L.J. 627 (Fall 2012); Hon. Joan N. Feeney, *Statement to the House of Representatives Judiciary Committee on the Impact of Stern v. Marshall*, 86 AM. BANKR. L.J. 357 (Summer 2012).

(1966)]—the bankruptcy court’s authority is at its constitutional maximum. 131 S. Ct. at 2617–18. But when a debtor pleads an action arising only under state-law, as in *Northern Pipeline [v. Marathon Pipe Line Co.]*, 458 U.S. 50, 102 S. Ct. 2858 (1982); or when the debtor pleads an action that would augment the bankrupt estate, but not “necessarily be resolved in the claims allowance process[.]” 131 S. Ct. at 2618; then the bankruptcy court is constitutionally prohibited from entering final judgment. *Id.* at 2614.

698 F.3d at 919. Based on this view of *Stern*, the *Waldman* court held that the bankruptcy court lacked authority to enter a final judgment on the debtor’s prepetition fraud claim against a creditor that was not necessary to resolve in adjudicating the creditor’s claim against the debtor.

These cases recognize the crucial difference to which *Stern* adhered. A bankruptcy court may determine matters that arise directly under the bankruptcy code, such as fixing a creditor’s claim in the claims allowance process. However, a bankruptcy court may not determine more tangential matters, such as a state law claim for relief asserted by a debtor or the estate that arises outside of the bankruptcy process, unless it is necessary to resolve that claim as part of the claims allowance process. *See City of Cent. Falls, R.I. v. Central Falls Teachers’ Union (In re City of Cent. Falls), R.I.*, 468 B.R. 36, 52 (Bankr. D.R.I. 2012) (“[A]lthough the counterclaim at issue in *Stern* arose under state law, the determinative feature of that counterclaim was that it did not arise under the Bankruptcy Code.”).

C. Applying *Stern*, *Waldman*, and *Global Technovations* in This Case

The issue presently before the Court is the debtor’s eligibility to file this chapter 9 case. A debtor’s eligibility to file bankruptcy stems directly from rights established by the bankruptcy code. As quoted above, *Waldman* expressly held, “When a debtor pleads an action under federal bankruptcy law,” the bankruptcy court’s authority is constitutional. 698 F.3d at 919. In this

case, the debtor has done precisely that. In seeking relief under chapter 9, it has pled “an action under federal bankruptcy law.”

The parties’ federal and state constitutional challenges are simply legal arguments in support of their objection to the City’s request for bankruptcy relief. Nothing in *Stern, Waldman*, or *Global Technovations* suggests any limitation on the authority of a bankruptcy court to consider and decide any and all of the legal arguments that the parties present concerning an issue that is otherwise properly before it.

More specifically, those cases explicitly state that a bankruptcy court can constitutionally determine all of the issues that are raised in the context of resolving an objection to a proof of claim, even those involving state law.¹¹ For the same reasons, a bankruptcy court can also

¹¹ The Supreme Court has never squarely held that claims allowance, which is at the heart of the bankruptcy process, falls within the permissible scope of authority for a non-Article III court as a “public right” or any other long-standing historical exception to the requirement of Article III adjudication. *Stern*, 131 S. Ct. at 2614 n.7; *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 56, n.11, 109 S. Ct. 2782 (1989). However, in *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71, 102 S. Ct. 2858, 2871 (1982) (plurality opinion), the Court came tantalizingly close when it stated, “the restructuring of debtor-creditor relations . . . is at the core of the federal bankruptcy power . . . [and] may well be a ‘public right’[.]”

No court has ever held otherwise. On the contrary, the cases have uniformly concluded that the public rights doctrine is the basis of a bankruptcy court’s authority to adjudicate issues that arise under the bankruptcy code. For example, in *Carpenters Pension Trust Fund for Northern California v. Moxley*, 2013 WL 4417594, at *4 (9th Cir. Aug. 20, 2013), the Ninth Circuit held:

[T]he dischargeability determination is central to federal bankruptcy proceedings. *Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 363–64, 126 S. Ct. 990, 163 L.Ed.2d 945 (2006). The dischargeability determination is necessarily resolved during the process of allowing or disallowing claims against the estate, and therefore constitutes a public rights dispute that the bankruptcy court may decide.

Similarly, in *CoreStates Bank, N.A. v. Huls Am., Inc.*, 176 F.3d 187, 196 n.11 (3d Cir. 1999), the Third Circuit held, “The protections afforded a debtor under the Bankruptcy Code are congressionally created public rights.”

Footnote continued . . .

constitutionally determine all issues that are raised in the context of resolving an objection to eligibility.

D. Applying *Stern* in Similar Procedural Contexts

No cases address *Stern* in the context of eligibility for bankruptcy. Nevertheless, several cases do address *Stern* in the context of similar contested matters - conversion and dismissal of a case. Each case readily concludes that *Stern*'s limitation on the authority of a bankruptcy court is inapplicable. For example, in *In re USA Baby, Inc.*, 674 F.3d 882, 884 (7th Cir. 2012), the Seventh Circuit held that nothing in *Stern* precludes a bankruptcy court from converting a chapter 11 case to chapter 7, stating, "we cannot fathom what bearing that principle might have

In *Kirschner v. Agolia*, 476 B.R. 75, 79 (S.D.N.Y. 2012), the court stated, "[After *Stern*,] bankruptcy courts still have the ability to finally decide so-called 'public rights' claims that assert rights derived from a federal regulatory scheme and are therefore not the 'stuff of traditional actions,' as well as claims that are necessarily resolved in ruling on a creditor's proof of claim (e.g., a voidable preference claim)[.]"

Other cases also conclude that various matters arising within a bankruptcy case are within the public rights doctrine. *See., e.g., In re Bataa/Kierland LLC*, 2013 WL 3805143, at *3 (D. Ariz. July 22, 2013) (scope of Chapter 11 debtor's rights under easement); *Hamilton v. Try Us, LLC*, 491 B.R. 561 (W.D. Mo. 2013) (validity and amount of common law claim against Chapter 7 debtor); *In re Prosser*, 2013 WL 996367 (D.V.I. 2013) (trustee's claim for turnover of property); *White v. Kubotek Corp.*, 2012 WL 4753310 (D. Mass. Oct. 2, 2012) (creditor's successor liability claim against purchaser of assets from bankruptcy estate); *United States v. Bond*, 2012 WL 4089648 (E.D.N.Y. Sept. 17, 2012) (trustee's claims for tax refund); *Turner v. First Cmty. Credit Union (In re Turner)*, 462 B.R. 214 (Bankr. S.D. Tex. 2011) (violation of the automatic stay); *In re Whitley*, 2011 WL 5855242 (Bankr. S.D. Tex. Nov. 21, 2011) (reasonableness of fees of debtor's attorney); *In re Carlew*, 469 B.R. 666 (Bankr. S.D. Tex. 2012) (homestead exemption objection); *West v. Freedom Med., Inc. (In re Apex Long Term Acute Care-Katy, L.P.)*, 465 B.R. 452, 458 (Bankr. S.D. Tex. 2011) (addressing preference actions, stating, "This Court concludes that the resolution of certain fundamental bankruptcy issues falls within the public rights doctrine."); *Sigillito v. Hollander (In re Hollander)*, 2011 WL 6819022 (Bankr. E.D. La. Dec. 28, 2011) (nondischargeability for fraud).

In light of the unanimous holdings of these cases, the Court must conclude that its determination regarding the City's eligibility is within the public rights doctrine and therefore that the Court does have the authority to decide the issue, including all of the arguments that the objectors make in their objections.

on the present case.”¹² In *Mahanna v. Bynum*, 465 B.R. 436 (W.D. Tex. 2011), the court held that *Stern* does not prohibit the bankruptcy court from dismissing the debtors’ chapter 11 case. The court concluded, “[T]his appeal is entirely frivolous, and constitutes an unjustifiable waste of judicial resources[.]” *Id.* at 442. In *In re Thalmann*, 469 B.R. 677, 680 (Bankr. S.D. Tex. 2012), the court held that *Stern* does not prohibit a bankruptcy court from determining a motion to dismiss a case on the grounds of bad faith.¹³ This line of cases strongly suggests that *Stern* likewise does not preclude a bankruptcy court from determining eligibility.

E. The Objectors Overstate the Scope of *Stern*.

Implicitly recognizing how far its objection to this Court’s authority stretches *Stern*, the objectors argue that two aspects of their objection alter the analysis of *Stern* and its application here. The first is that their objections raise important issues under both the United States Constitution and the Michigan Constitution. The second is that strong federalism considerations warrant resolution of its objection by an Article III court. Neither consideration, however, is sufficient to justify the expansion of *Stern* that the objectors argue.

1. *Stern* Does Not Preclude This Court from Determining Constitutional Issues.

First, since *Stern* was decided, non-Article III courts have considered constitutional issues, always without objection.

¹² See also *In re Gow Ming Chao*, 2011 WL 5855276 (Bankr. S.D. Tex. Nov. 21, 2011).

¹³ See also *In re McMahan*, 2012 WL 5267017 (Bankr. S.D. Tex. Oct. 25, 2012); *In re Watts*, 2012 WL 3400820 (Bankr. S.D. Tex. Aug. 9, 2012).

Both bankruptcy courts and bankruptcy appellate panels have done so.¹⁴ More specifically, and perhaps more on point, in two recent chapter 9 cases, bankruptcy courts addressed constitutional issues without objection. *Association of Retired Employees v. City of Stockton, Cal. (In re City of Stockton, Cal.)*, 478 B.R. 8 (Bankr. E.D. Cal. 2012) (holding that retirees' contracts could be impaired in the chapter 9 case without offending the constitution); *In re City of Harrisburg, PA*, 465 B.R. 744 (Bankr. M.D. Pa. 2011) (upholding the constitutionality of a Pennsylvania statute barring financially distressed third class cities from filing bankruptcy).

In addition, the Tax Court, a non-Article III court, has also examined constitutional issues, without objection.¹⁵ Likewise, the Court of Federal Claims, also a non-Article III court,

¹⁴ See, e.g., *Williams v. Westby (In re Westby)*, 486 B.R. 509 (10th Cir. BAP 2013) (upholding the constitutionality of the Kansas bankruptcy-only state law exemptions); *Res. Funding, Inc. v. Pacific Continental Bank (In re Washington Coast I, L.L.C.)*, 485 B.R. 393 (9th Cir. BAP 2012) (upholding the constitutionality of the final order entered by the bankruptcy court); *Richardson v. Schafer (In re Schafer)*, 455 B.R. 590 (6th Cir. BAP 2011), *rev'd on other grounds*, 689 F.3d 601 (6th Cir. 2012) (addressing the constitutionality of the Michigan bankruptcy-only state law exemptions); *Old Cutters, Inc. v. City of Hailey (In re Old Cutters, Inc.)*, 488 B.R. 130 (Bankr. D. Idaho 2012) (invalidating a city's annexation fee and community housing requirements); *In re Washington Mut., Inc.*, 485 B.R. 510 (Bankr. D. Del. 2012) (holding Oregon's corporate excise tax unconstitutional under the Commerce Clause); *In re McFarland*, 481 B.R. 242 (Bankr. S.D. Ga. 2012) (upholding Georgia's bankruptcy-specific exemption scheme); *In re Fowler*, 493 B.R. 148 (Bankr. E.D. Cal. 2012) (upholding the constitutionality of California's statute fixing the interest rate on tax claims); *In re Meyer*, 467 B.R. 451 (Bankr. E.D. Wis. 2012) (upholding the constitutionality of 11 U.S.C. § 707(b)); *Zazzali v. Swenson (In re DBSI, Inc.)*, 463 B.R. 709, 717 (Bankr. D. Del. 2012) (upholding the constitutionality of 11 U.S.C. § 106(a)); *Proudfoot Consulting Co. v. Gordon (In re Gordon)*, 465 B.R. 683 (Bankr. N.D. Ga. 2012) (upholding the constitutionality of 11 U.S.C. § 706(a)); *South Bay Expressway, L.P. v. County of San Diego (In re South Bay Expressway, L.P.)*, 455 B.R. 732 (Bankr. S.D. Cal. 2011) (holding unconstitutional California's public property tax exemption for privately-owned leases of public transportation demonstration facilities).

¹⁵ See, e.g., *Field v. C.I.R.*, 2013 WL 1688028 (Tax Ct. 2013) (holding that the tax classification on the basis of marital status that was imposed by requirement that taxpayer file joint income-tax return in order to be eligible for tax credit for adoption expenses did not violate Equal Protection clause); *Begay v. C.I.R.*, 2013 WL 173362 (Tax Ct. 2013) (holding that the relationship classification for child tax credit did not violate Free Exercise Clause); *Byers v.*

Footnote continued . . .

has considered constitutional claims, without objection. This was done perhaps most famously in *Beer v. United States*, 111 Fed. Cl. 592 (Fed. Cl. 2013), which is a suit by Article III judges under the Compensation Clause of the United States Constitution.

Stern does not change this status quo, and nothing about the constitutional dimension of the objectors' eligibility objections warrants the expansion of *Stern* that they assert. As *Stern* itself reaffirmed, "We do not think the removal of counterclaims such as [the debtor's] from core bankruptcy jurisdiction meaningfully changes the division of labor in the current statute[.]" 131 S. Ct. at 2620. Expanding *Stern* to the point where it would prohibit bankruptcy courts from considering issues of state or federal constitutional law would certainly significantly change the division of labor between the bankruptcy courts and the district courts.¹⁶

C.I.R., 2012 WL 265883 (Tax Ct. 2012) (rejecting the taxpayer's challenge to the authority of an IRS office under the Appointments Clause).

¹⁶ Only one case suggests otherwise. *Picard v. Flinn Invs., LLC*, 463 B.R. 280 (S.D.N.Y. 2011). That case did state in dicta in a footnote, "If mandatory withdrawal protects litigants' constitutional interest in having Article III courts interpret federal statutes that implicate the regulation of interstate commerce, then it should also protect, *a fortiori*, litigants' interest in having the Article III courts interpret the Constitution." *Id.* at 288 n.3.

This single sentence cannot be given much weight. First, it is only dicta. Second, it is against the manifest weight of the case authorities. Third, the quote assumes, without analysis, that the litigants do have an interest in having Article III courts interpret the Constitution, and thus bootstraps its own conclusion. Fourth, nothing in the *Flinn Investments* case states or even suggests that *Stern* itself prohibits a bankruptcy court from ruling on a constitutional issue where it otherwise has the authority to rule on the claim before it. Finally, the district court that issued *Flinn Investments* has now entered an amended standing order of reference in bankruptcy cases to provide that its bankruptcy court should first consider objections to its authority that parties raise under *Stern v. Marshall*. Apparently, that district court's position now is that *Stern* does not preclude the bankruptcy court from determining constitutional issues, including the constitutional issue of its own authority. The order is available at http://www.nysd.uscourts.gov/rules/StandingOrder_OrderReference_12mc32.pdf.

Two other cases are cited in support of the position that only an Article III court can determine a constitutional issue: *TTOD Liquidation, Inc. v. Lim (In re Dott Acquisition, LLC)*, 2012 WL 3257882 (E.D. Mich. July 25, 2012), and *Picard v. Schneiderman (In re Madoff Secs.)*, 492 B.R. 133 (S.D.N.Y. 2013). Both are irrelevant to the issue. *Dott Acquisition* did discuss

Footnote continued . . .

2. Federalism Issues Are Not Relevant to a *Stern* Analysis.

The objectors' federalism argument is even more perplexing and troubling. Certainly the objectors are correct that a ruling on whether the City was properly authorized to file this bankruptcy case, as required for eligibility under 11 U.S.C. § 109(c)(2), will require the interpretation of state law, including the Michigan Constitution.

However, ruling on state law issues is required in addressing many issues in bankruptcy cases. As the Supreme Court has observed, “[B]ankruptcy courts [] consult state law in determining the validity of most claims.” *Travelers Cas. & Sur. Co. of Am. v. Pacific Gas & Elec. Co.*, 549 U.S. 443, 444, 127 S. Ct. 1199, 1201 (2007). Concisely summarizing the reality of the bankruptcy process and the impact of *Stern* on it, the court in *In re Olde Prairie Block Owner, LLC*, 457 B.R. 692, 698 (Bankr. N.D. Ill. 2011), concluded:

[*Stern*] certainly did not hold that a Bankruptcy Judge cannot ever decide a state law issue. Indeed, a large portion of the work of a Bankruptcy Judge involves actions in which non-bankruptcy issues must be decided and that ‘stem from the bankruptcy itself or would necessarily be resolved in the claims allowance process,’ [131 S. Ct.] at 2618, for example, claims disputes, actions to bar dischargeability, motions for stay relief, and others. Those issues are likely within the ‘public rights’ exception as defined in *Stern*.

Other cases also illustrate the point.¹⁷

Stern but only in the unremarkable context of withdrawing the reference on a fraudulent transfer action. *Schneiderman* did not address a *Stern* issue at all, or even cite the case.

¹⁷ See, e.g., *Picard v. Estate of Madoff*, 464 B.R. 578, 586 (S.D.N.Y. 2011) (quoting *In re Salander O'Reilly Galleries*, 453 B.R. 106, 118 (Bankr. S.D.N.Y. 2011)) (“It is clear” from *Stern v. Marshall* and other Supreme Court precedent that “the Bankruptcy Court is empowered to apply state law when doing so would finally resolve a claim.”); *Anderson v. Bleckner (In re Batt)*, 2012 WL 4324930, at *2 (W.D. Ky. Sept. 20, 2012) (“*Stern* does not bar the exercise of the Bankruptcy Court’s jurisdiction in any and all circumstances where a party to an adversary

Footnote continued . . .

The distinction is clear. While in some narrow circumstances *Stern* prohibits a non-Article III court from adjudicating a state law claim for relief, a non-Article III court may consider and apply state law as necessary to resolve claims over which it does have authority under *Stern*. The mere fact that state law must be applied does not by itself mean that *Stern* prohibits a non-Article III court from determining the matter.

Moreover, nothing about a chapter 9 case suggests a different result. In *City of Cent. Falls, R.I.*, 468 B.R. at 52, the court stated, “Nor did [*Stern*] address concerns of federalism; although the counterclaim at issue in *Stern* arose under state law, the determinative feature of that counterclaim was that it did not arise under the Bankruptcy Code. The operative dichotomy was not federal versus state, but bankruptcy versus nonbankruptcy.”

The troubling aspect of the objectors’ federalism argument is that it does not attempt to define, even vaguely, what interest of federalism is at stake here.

In *Arizona v. United States*, 132 S. Ct. 2492, 2500 (2012), the Supreme Court stated, “Federalism, central to the constitutional design, adopts the principle that both the National and State Governments have elements of sovereignty the other is bound to respect.” Accordingly, federalism is about the federal and state governments respecting each other’s sovereignty. It has nothing to do with the requirements of Article III or, to use the phraseology of *Stern*, with the “division of labor” between the district courts and the bankruptcy courts.¹⁸ 131 S. Ct. at 2620. See also *City of Cent. Falls, R.I.*, 468 B.R. at 52, quoted above.

proceeding has not filed a proof of claim, or where the issue in an adversary proceeding is a matter of state law.”).

¹⁸ Genuine federalism concerns are fully respected in bankruptcy through the process of permissive abstention under 28 U.S.C. § 1334(c)(1).

F. Conclusion Regarding the *Stern* Issue

For these reasons, the Court concludes that it does have the authority to determine the constitutionality of chapter 9 under the United States Constitution and the constitutionality of P.A. 436 under the Michigan Constitution.

VIII. Chapter 9 Does Not Violate the United States Constitution.

The objecting parties argue that chapter 9 of the bankruptcy code violates several provisions of the United States Constitution, both on its face and as applied in this case. The Court will first address the arguments that chapter 9 is facially unconstitutional under the Bankruptcy Clause of Article I, Section 8, and the Contracts Clause of Article I, Section 10 of the United States Constitution. The Court will then address the argument that chapter 9, on its face and as applied, violates the Tenth Amendment to the United States Constitution and the principles of federalism embodied therein.

A. Chapter 9 Does Not Violate the Uniformity Requirement of the Bankruptcy Clause of the United States Constitution.

Article I, Section 8 of the United States Constitution provides: “The Congress shall have Power To . . . establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.”

The objecting parties, principally AFSCME, assert chapter 9 violates the uniformity requirement of the United States Constitution because chapter 9 “ced[es] to each state the ability to define its own qualifications for a municipality to declare bankruptcy, chapter 9 permits the promulgation of non-uniform bankruptcies within states.” AFSCME’s Corrected Objection to Eligibility, ¶ 58 at 25 (citing M.C.L. § 141.1558). (Dkt. #505) AFSCME argues that this is particularly so in Michigan, where P.A. 436 allows the governor to exercise discretion when

determining whether to authorize a municipality to seek chapter 9 relief, and also allows the governor to “attach whichever contingencies he wishes.” *Id.*

1. The Applicable Law

The Supreme Court has addressed the uniformity requirement in several cases. In *Hanover Nat’l Bank v. Moyses*, 186 U.S. 181, 22 S. Ct. 857 (1902), the Court held that the incorporation into the bankruptcy law of state laws relating to exemptions did not violate the uniformity requirement of the United States Constitution. The Court stated, “The general operation of the law is uniform although it may result in certain particulars differently in different states.” *Id.* at 190.

In *Stellwagen v. Clum*, 245 U.S. 605, 38 S. Ct. 215 (1918), the Court upheld the Bankruptcy Act’s incorporation of varying state fraudulent conveyance statutes, despite the fact that the laws “may lead to different results in different states.” *Id.* at 613.

In *Blanchette v. Connecticut General Ins. Corps.*, 419 U.S. 102, 159, 95 S. Ct. 335 (1974), the Court held, “The uniformity provision does not deny Congress power to take into account differences that exist between different parts of the country, and to fashion legislation to resolve geographically isolated problems.”

The Supreme Court has struck down a bankruptcy statute as non-uniform only once. In *Railway Labor Executives’ Ass’n v. Gibbons*, 455 U.S. 457, 102 S. Ct. 1169 (1982), the Court struck down a private bankruptcy law that affected only the employees of a single company. The Court concluded, “The uniformity requirement, however, prohibits Congress from enacting a bankruptcy law that, by definition, applies only to one regional debtor. To survive scrutiny under the Bankruptcy Clause, a law must at least apply uniformly to a defined class of debtors.” *Id.* at 473.

More recently, the Sixth Circuit has addressed the uniformity requirement in two cases. In *Schultz v. United States*, 529 F.3d 343, 351 (6th Cir. 2008), the court concluded, “Over the last century, the Supreme Court has wrestled with the notion of geographic uniformity, ultimately concluding that it allows different effects in various states due to dissimilarities in state law, so long as the federal law applies uniformly among classes of debtors.” Summarizing the Supreme Court’s decisions in *Moyses*, *Stellwagen*, and *Blanchette*, the court stated, “Congress does not exceed its constitutional powers in enacting a bankruptcy law that permits variations based on state law or to solve geographically isolated problems.” *Id.* at 353.

In *Richardson v. Schafer (In re Schafer)*, 689 F.3d 601 (6th Cir. 2012), the court stated, “the Bankruptcy Clause shall act as ‘no limitation upon congress as to the classification of persons who are to be affected by such laws, provided only the laws shall have uniform operation throughout the United States.’” *Id.* at 611 (quoting *Leidigh Carriage Co. v. Stengel*, 95 F. 637, 646 (6th Cir. 1899)). It added, “*Schultz* clarified that it is not the *outcome* that determines the uniformity, but the uniform *process* by which creditors and debtors in a certain place are treated.” *Id.*

2. Discussion

Chapter 9 does exactly what these cases require to meet the uniformity requirement of the Bankruptcy Clause of the United States Constitution. The “defined class of debtors” to which chapter 9 applies is the class of entities that meet the eligibility requirements of 11 U.S.C. § 109(c). One such qualification is that the entity is “specifically authorized . . . to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter[.]” § 109(c)(2). As *Moyses* and *Stellwagen* specifically held, it is of no consequence in the uniformity analysis that this

requirement of state authorization to file a chapter 9 case may lead to different results in different states.

It appears that AFSCME objects to the lack of uniformity that may arise from the differing circumstances of municipalities that the governor might authorize to file a chapter 9 petition. That it not the test. Rather, the test is whether chapter 9 applies uniformly to all chapter 9 debtors. It does.

Accordingly, the Court concludes that chapter 9 satisfies the uniformity requirement of the Bankruptcy Clause of the United States Constitution.

B. Chapter 9 Does Not Violate the Contracts Clause of the United States Constitution.

The Contracts Clause of the United States Constitution, which is Article I, Section 10, provides, “No State shall . . . pass any . . . Law impairing the Obligation of Contracts, . . .” AFSCME argues that chapter 9 violates the Contracts Clause. This argument is frivolous. Chapter 9 is a federal law. Article I, Section 10 does not prohibit Congress from enacting a “Law impairing the Obligation of Contracts.” *Id.*

As the court stated in *In re Sanitary & Imp. Dist., No. 7*, 98 B.R. 970 (Bankr. D. Neb. 1989):

The Court further concludes that the Bankruptcy Code adopted pursuant to the United States Constitution Article 1, Section 8 permits the federal courts through confirmation of a Chapter 9 plan to impair contract rights of bondholders and that such impairment is not a violation by the state or the municipality of Article 1, Section 10 of the United States Constitution which prohibits a state from impairing such contract rights.

Id. at 973.

Or, more succinctly stated, “The Bankruptcy Clause necessarily authorizes Congress to make laws that would impair contracts. It long has been understood that bankruptcy law entails

impairment of contracts.” *Stockton*, 478 B.R. at 15 (citing *Sturges v. Crowninshield*, 17 U.S. 122, 191 (1819)).

C. Chapter 9 Does Not Violate the Tenth Amendment to the United States Constitution.

The Tenth Amendment provides, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

This Amendment reflects the concept that the United States Constitution “created a Federal Government of limited powers.” *Gregory v. Ashcroft*, 501 U.S. 452, 457, 111 S. Ct. 2395 (1991); *see also United States v. Darby*, 312 U.S. 100, 124, 61 S. Ct. 451 (1941) (The Tenth Amendment “states but a truism that all is retained which has not been surrendered.”).

The Supreme Court’s “consistent understanding” of the Tenth Amendment has been that “[t]he States unquestionably do retain a significant measure of sovereign authority . . . to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government.” *New York v. United States*, 505 U.S. 144, 156, 112 S. Ct. 2408 (1992) (quoting *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 549, 105 S.Ct. 1005 (1985) (quotation marks omitted); *see also South Carolina v. Baker*, 485 U.S. 505, 511 n.5, 108 S. Ct. 1355 (1988) (“We use ‘the Tenth Amendment’ to encompass any implied constitutional limitation on Congress’ authority to regulate state activities, whether grounded in the Tenth Amendment itself or in principles of federalism derived generally from the Constitution.”); *United States v. Sprague*, 282 U.S. 716, 733, 51 S. Ct. 220 (1931) (“The Tenth Amendment was intended to confirm the understanding of the people at the time the Constitution was adopted, that powers not granted to the United States were reserved to the states or to the people.”).

The objecting parties argue that chapter 9 violates these principles of federalism because, in the words of AFSCME, it “allows Congress to set the rules controlling State fiscal self-management—an area of exclusive state sovereignty.” AFSCME’s Corrected Objection to Eligibility, ¶ 40 at 15-16. (Dkt. #505) The Court interprets this argument as a facial challenge to the constitutionality of chapter 9. The as-applied challenge, as stated by the Retiree Committee and other objecting parties, is that *if* the State of Michigan can properly authorize the City of Detroit to file for chapter 9 relief without the explicit protection of accrued pension rights for individual retired city employees, then chapter 9 “must be found to be unconstitutional as permitting acts in derogation of Michigan’s sovereignty.” Retiree Committee Objection to Eligibility, ¶ 3 at 1-2. (Dkt. #805)

Before addressing the merits of these arguments, however, the Court must first address two preliminary issues that the United States raised in its “Memorandum in Support of Constitutionality of Chapter 9 of Title 11 of the United States Code” – standing and ripeness. (Dkt. #1149)

1. The Tenth Amendment Challenges to Chapter 9 Are Ripe for Decision and the Objecting Parties Have Standing.

The United States argues that the creditors who assert that chapter 9 violates the Tenth Amendment as applied in this case lack standing and that this challenge is not ripe for adjudication at this stage in the case.¹⁹ The Court concludes that the objecting parties do have standing and that their challenge is now ripe for determination.

¹⁹ The standing and ripeness issues are discussed here because the United States and the City framed this issue in the context of the Tenth Amendment challenge to chapter 9 of the

Footnote continued . . .

a. Standing

“As a rule, a party must have a ‘personal stake in the outcome of the controversy’ to satisfy Article III.” *Stevenson v. J.C. Bradford & Co. (In re Cannon)*, 277 F.3d 838, 852 (6th Cir. 2002) (citing *Warth v. Seldin*, 422 U.S. 490, 498, 95 S. Ct. 2197 (1975), quoting *Baker v. Carr*, 369 U.S. 186, 204, 82 S. Ct. 691, 703 (1962)).

In a bankruptcy case, the standing of a party requesting to be heard turns on whether the party is a “party in interest.” See *In re Global Indus. Techs., Inc.*, 645 F.3d 201, 210 (3rd Cir. 2011). A party in interest is one who “has a sufficient stake in the proceeding so as to require representation.” *In re Amatex Corp.*, 755 F.2d 1034, 1042 (3d Cir. 1985).

11 U.S.C. § 1109(b), provides, “A party in interest, including . . . a creditor . . . may raise and may appear and be heard on any issue in a case under this chapter.” 11 U.S.C. § 901(a) makes this provision applicable in a chapter 9 case.

In the chapter 9 case of *In re Barnwell County Hosp.*, 459 B.R. 903, 906 (Bankr. D.S.C. 2011), the court stated, “‘Party in interest’ is a term of art in bankruptcy. Although not defined in the Bankruptcy Code, it reflects the unique nature of a bankruptcy case, where the global financial circumstances of a debtor are resolved with respect to all of debtor’s creditors and other affected parties.”

In a chapter 9 case on point, *In re Suffolk Regional Off-Track Betting Corp.*, 462 B.R. 397, 403 (Bankr. E.D.N.Y. 2011), the court held that a party to an executory contract with a municipal debtor has standing to object to the debtor’s eligibility.

bankruptcy code. To the extent that the argument might also be made to the other constitutional challenges to chapter 9, the same considerations would apply and would lead to the same conclusion.

Similarly, in *In re Wolf Creek Valley Metro. Dist. No. IV*, 138 B.R. 610 (D .Colo. 1992), also a chapter 9 case, the court stated, “[M]any courts have concluded that the party requesting standing must either be a creditor of a debtor . . . or be able to assert an equitable claim against the estate.” *Id.* at 616 (citation and quotation marks omitted). *See also In re Addison Community Hospital Authority*, 175 B.R. 646 (Bankr. E.D. Mich. 1994) (holding that creditors are parties in interest and have standing to be heard).

Under 11 U.S.C. § 1109(b) and these cases, it is abundantly clear that the objecting parties, who are creditors with pension claims against the City, have standing to assert their constitutional claim as part of their challenge to this bankruptcy case.

Nevertheless, the United States asserts that *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S. Ct. 2130 (1992), precludes standing here. In that case, the Supreme Court adopted this test to determine whether a party has standing under Article III of the constitution:

Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”

Id. at 560-61 (internal citations omitted). The United States asserts that the objecting parties do not meet this standard because their injury is not “imminent” at this stage of the proceedings.

The Court concludes that the contours of standing under 11 U.S.C. § 1109(b) are entirely consistent with the constitutional test for standing that the Supreme Court adopted in *Lujan*. A creditor has a direct, personal stake in the outcome of a bankruptcy case and thus has standing to

challenge the bankruptcy filing. Accordingly, the Court concludes that every creditor of the City of Detroit has standing to object to its eligibility to be a debtor under chapter 9.

b. Ripeness

The United States argues that the issue of whether chapter 9 is constitutional as applied in this case is not ripe for determination at this time. The City joins in this argument. City's Reply to Retiree Committee's Objection to Eligibility at 3-5. (Dkt. #918)

The premise of the argument is that the filing of the case did not result in the impairment of any pension claims. Thus the United States argues that this issue will be ripe only when the City proposes a plan that would impair pensions if confirmed. Until then, it argues, their injury is speculative.²⁰

In *Miles Christi Religious Order v. Township of Northville*, 629 F.3d 533 (6th Cir. 2010), the Sixth Circuit summarized the case law on the ripeness doctrine:

The ripeness doctrine encompasses "Article III limitations on judicial power" and "prudential reasons" that lead federal courts to "refus[e] to exercise jurisdiction" in certain cases. *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 808, 123 S. Ct. 2026, 155 L.Ed.2d 1017 (2003). The "judicial Power" extends only to "Cases" and "Controversies," U.S. Const. art. III, § 2, not to "any legal question, wherever and however presented," without regard to its present amenability to judicial resolution. *Warshak v. United States*, 532 F.3d 521, 525 (6th Cir. 2008) (en banc). And the federal courts will not "entangl[e]" themselves "in abstract disagreements" ungrounded in the here and now. *Abbott Labs. v. Gardner*, 387 U.S. 136, 148, 87 S. Ct. 1507, 18 L.Ed.2d 681 (1967); see *Warshak*, 532 F.3d at 525. Haste makes waste, and the "premature adjudication" of legal questions compels courts to resolve matters, even constitutional matters, that may with time be

²⁰ The United States agrees that the objecting parties' facial challenge to chapter 9 is appropriate for consideration at this time. Memorandum in Support of Constitutionality at 3. (Dkt. #1149)

satisfactorily resolved at the local level, *Nat'l Park Hospitality Ass'n*, 538 U.S. at 807, 123 S.Ct. 2026; *Grace Cmty. Church v. Lenox Twp.*, 544 F.3d 609, 617 (6th Cir. 2008), and that “may turn out differently in different settings,” *Warshak*, 532 F.3d at 525.

To decide whether a dispute has ripened into an action amenable to and appropriate for judicial resolution, we ask two questions: (1) is the dispute “fit” for a court decision in the sense that it arises in “a concrete factual context” and involves “a dispute that is likely to come to pass”? and (2) what are the risks to the claimant if the federal courts stay their hand? *Warshak*, 532 F.3d at 525; see *Abbott Labs.*, 387 U.S. at 149, 87 S. Ct. 1507.

Id. at 537.

Although the argument of the United States has some appeal,²¹ the Court must reject it, largely for the same reasons that it found that the objecting parties have standing. The ultimate issue before the Court at this time is whether the City is eligible to be a debtor in chapter 9. This dispute arises in the concrete factual context of the City of Detroit filing this bankruptcy case under chapter 9 of the bankruptcy code and the objecting parties challenging the constitutionality of that very law. This dispute is not an “abstract disagreement ungrounded in the here and now.” It is here and it is now.

The Court further concludes that as a matter of judicial prudence, resolving this issue now will likely expedite the resolution of this bankruptcy case. The Court notes that the parties have fully briefed and argued the merits. Further, if the Tenth Amendment challenge to chapter 9 is resolved now, the parties and the Court can then focus on whether the City’s plan (to be filed shortly, it states) meets the confirmation requirements of the bankruptcy code.

²¹ Early in the case, the Court expressed its doubts about the ripeness of this constitutional issue in the eligibility context. The Court was concerned that the issue of whether pension rights can be impaired in bankruptcy would be more appropriately considered a confirmation issue, as the United States argues now. At the request of the objecting parties, however, the Court reconsidered that position and now agrees that the issue is ripe at this point.

Accordingly, the Court concludes that the objecting parties' challenge to chapter 9 of the bankruptcy code as applied in this case is ripe for determination at this time.

2. The Supreme Court Has Already Determined That Chapter 9 Is Constitutional.

The question of whether a federal municipal bankruptcy act can be administered consistent with the principles of federalism reflected in the Tenth Amendment has already been decided. In *United States v. Bekins*, 304 U.S. 27, 58 S. Ct. 811 (1938), the United States Supreme Court specifically upheld the Municipal Corporation Bankruptcy Act, 50 Stat. 653 (1937), over objections that the statute violated the Tenth Amendment. *Bekins*, 304 U.S. at 53-54.

In upholding the 1937 Act, the *Bekins* court found:

The statute is carefully drawn so as not to impinge upon the sovereignty of the State. The State retains control of its fiscal affairs. The bankruptcy power is exercised in relation to a matter normally within its province and only in a case where the action of the taxing agency in carrying out a plan of composition approved by the bankruptcy court is authorized by state law. It is of the essence of sovereignty to be able to make contracts and give consents bearing upon the exertion of governmental power. . . . The reservation to the States by the Tenth Amendment protected, and did not destroy, their right to make contracts and give consents where that action would not contravene the provisions of the Federal Constitution.

Bekins, 304 U.S. at 51-2.

The Court further noted that two years earlier, it had struck down a previous version of the federal municipal bankruptcy law for violating the Tenth Amendment. *Ashton v. Cameron*

County Water Improvement Dist. No. 1, 298 U.S. 513, 56 S. Ct. 892 (1936).²² The Court found, however, that in the 1937 Act, Congress had “carefully” amended the law “to afford no ground for [the Tenth Amendment] objection.” *Bekins*, 304 U.S. at 50. The Court quoted approvingly, and at length, from a House of Representatives Committee report on the 1937 Act:

²² It is interesting that Justice Cardozo did not participate in the *Bekins* decision. 304 U.S. at 54. In his dissent in *Ashton* two years before, he made this astute observation about the economic realities of municipal bankruptcies:

If voluntary bankruptcies are anathema for governmental units, municipalities and creditors have been caught in a vise from which it is impossible to let them out. Experience makes it certain that generally there will be at least a small minority of creditors who will resist a composition, however fair and reasonable, if the law does not subject them to a pressure to obey the general will. This is the impasse from which the statute gives relief. . . . *To hold that this purpose must be thwarted by the courts because of a supposed affront to the dignity of a state, though the state disclaims the affront and is doing all it can to keep the law alive, is to make dignity a doubtful blessing.* Not by arguments so divorced from the realities of life has the bankruptcy power been brought to the present state of its development during the century and a half of our national existence.

298 U.S. at 541 (emphasis added). He then made this argument regarding the constitutional foundation for municipal bankruptcy law, which, arguably, the Court in *Bekins* adopted:

The act does not authorize the states to impair through their own laws the obligation of existing contracts. Any interference by the states is remote and indirect. At most what they do is to waive a personal privilege that they would be at liberty to claim. *If contracts are impaired, the tie is cut or loosened through the action of the court of bankruptcy approving a plan of composition under the authority of federal law. There, and not beyond in an ascending train of antecedents, is the cause of the impairment to which the law will have regard.* Impairment by the central government through laws concerning bankruptcies is not forbidden by the Constitution. Impairment is not forbidden unless effected by the states themselves. No change in obligation results from the filing of a petition by one seeking a discharge, whether a public or a private corporation invokes the jurisdiction. *The court, not the petitioner, is the efficient cause of the release.*

Id. at 541-42 (citations omitted) (emphasis added).

There is no hope for relief through statutes enacted by the States, because the Constitution forbids the passing of State laws impairing the obligations of existing contracts. Therefore, relief must come from Congress, if at all. The committee are not prepared to admit that the situation presents a legislative no-man's land. It is the opinion of the committee that the present bill removes the objections to the unconstitutional statute, and gives a forum to enable those distressed taxing agencies which desire to adjust their obligations and which are capable of reorganization, to meet their creditors under necessary judicial control and guidance and free from coercion, and to affect such adjustment on a plan determined to be mutually advantageous.

Id. at 51 (quotation marks omitted).

Bekins thus squarely rejects the challenges that the objecting parties assert to chapter 9 in this case and it has not been overruled.

It is well-settled that this Court is bound by the decisions of the Supreme Court. In *Agostini v. Felton*, 521 U.S. 203, 117 S. Ct. 1997 (1997), the Court stated, “[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.” *Id.* at 237 (quoting *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484, 109 S. Ct. 1917 (1989) (quotation marks omitted)). *See also Grutter v. Bollinger*, 288 F.3d 732, 744 (6th Cir. 2002).

Nevertheless, the objecting parties assert that subsequent amendments to the municipal bankruptcy statute and subsequent Supreme Court decisions regarding the Tenth Amendment compel the conclusion that *Bekins* is no longer good law, or at least that it is inapplicable in this case. Specifically, in its objection, AFSCME argues that since *Bekins* was decided, “intervening Supreme Court precedent holds that states can fashion their own municipal reorganization statutes, but cannot consent to any derogation of their sovereign powers.” AFSCME’s

Corrected Objection to Eligibility, ¶ 44 at 17. (Dkt. #505) Although the Court concludes that *Bekins* remains good law and is controlling here, the Court will address these arguments.

3. Changes to Municipal Bankruptcy Law Since 1937 Do Not Undermine the Continuing Validity of *Bekins*.

The only relevant change to municipal bankruptcy law that AFSCME identifies is the addition of § 903 to the bankruptcy code, the substance of which was added in 1946 as § 83(i) of the 1937 Act. That section provided, “[N]o State law prescribing a method of composition of indebtedness of such agencies shall be binding upon any creditor who does not consent to such composition, and no judgment shall be entered under such State law which would bind a creditor to such composition without his consent.”

In slightly different form, § 903 of the bankruptcy code now provides:

This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but—

(1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and

(2) a judgment entered under such a law may not bind a creditor that does not consent to such composition.

11 U.S.C. § 903.

AFSCME argues that this provision created a new exclusivity in chapter 9 that forces the states to adopt the federal scheme for adjusting municipal debts. This exclusivity, the argument goes, deprives the states of the ability to enact state legislation providing for municipal debt adjustment, which is inconsistent with the principles of federalism set forth in *New York v. United States*, 505 U.S. 144, 112 S. Ct. 2408 (1992), and *Printz v. United States*, 521 U.S. 898, 117 S. Ct. 2365 (1997).

This argument fails on two levels. First, other than in one limited instance, *Faitoute Iron & Steel Co. v. City of Asbury Park, N.J.*, 316 U.S. 502, 62 S. Ct. 1129 (1942), courts have always interpreted the Contracts Clause of the United States Constitution to prohibit the states from enacting legislation providing for municipal bankruptcies. The 1946 amendment that added the provision that is now § 903 did not change this law.

Second, neither *New York* nor *Printz* undermine *Bekins*. As developed above, at its core, *Bekins* rests on state consent. As will be developed below, like *Bekins*, both *New York* and *Printz* are also built on the concept of state consent. Indeed, it was the lack of state consent to the federal programs in those cases that caused the Supreme Court to find them unconstitutional.

**a. The Contracts Clause of the United States Constitution
Prohibits States from Enacting Municipal Bankruptcy Laws.**

The Contracts Clause of the United States Constitution, Article I, Section 10, states, “No State shall . . . pass any . . . Law impairing the Obligation of Contracts[.]”

Applying this clause, the Supreme Court has stated, “When a State itself enters into a contract, it cannot simply walk away from its financial obligations.” *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 412 n.14, 103 S. Ct. 697 (1983). “It long has been established that the Contracts Clause limits the power of the States to modify their own contracts as well as to regulate those between private parties.” *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 17, 97 S. Ct. 1505 (1977) (citing *Dartmouth College v. Woodward*, 4 L. Ed. 629 (1819); *Fletcher v. Peck*, 3 L. Ed. 162 (1810)). Section 903 simply restates this principle.

Moreover, contrary to AFSCME’s assertion, it is clear that *Bekins* fully considered this issue. It found, “The natural and reasonable remedy through [bankruptcy] was not available under state law by reason of the restriction imposed by the Federal Constitution upon the impairment of contracts by state legislation.” *Bekins*, 304 U.S. at 54.

b. *Asbury Park* Is Limited to Its Own Facts.

As noted above, only one case, *Asbury Park*, is to the contrary. The Court concludes, however, that this case represents a very narrow departure from these principles and its holding is limited to the unique facts of that case. Indeed, the Court itself stated, “We do not go beyond the case before us.” 316 U.S. at 516.

The adjustment plan at issue in *Asbury Park* was “authorized” by the New Jersey state court on July 21, 1937. This was after the federal municipal bankruptcy law was struck down in *Ashton* and before the enactment of the municipal bankruptcy act that *Bekins* approved. Moreover, in *Asbury Park*, the bonds affected by the plan of adjustment, which the Court found were worthless prior to the adjustment, were reissued without a reduction in the principal obligation and became significantly more valuable as a result of the adjustment. *Asbury Park*, 316 U.S. at 507-08, 512-13.

The limited application of *Asbury Park* to its own facts has been repeatedly recognized. The cases now firmly establish that the Contracts Clause of the United States Constitution bars a state from enacting municipal bankruptcy legislation. In *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 27, 97 S. Ct. 1505 (1977), the Supreme Court observed, “The only time in this century that alteration of a municipal bond contract has been sustained by this Court was in [*Asbury Park*].”²³

²³ Interestingly, in *U.S. Trust Co.*, the Court further observed that when a State seeks to impair its own contracts, “complete deference to a legislative assessment of [the] reasonableness and necessity [of the impairment] is not appropriate because the State’s self-interest is at stake.” *Id.* 431 U.S. at 26. For that reason, “a state is not completely free to consider impairing the obligations of its own contracts on a par with other policy alternatives.” *Id.* at 30-31. The Constitution astutely recognizes that a federal court brings no such self-interest to a municipal bankruptcy case.

In *In re Jefferson Cnty., Ala.*, 474 B.R. 228, 279 (Bankr. N.D. Ala. 2012), *aff'd sub nom. Mosley v. Jefferson Cnty. (In re Jefferson Cnty.)*, 2012 WL 3775758 (N.D. Ala. Aug. 28, 2012), the court stated, “A financially prostrate municipal government has one viable option to resolve debts in a non-consensual manner. It is a bankruptcy case. Outside of bankruptcy, non-consensual alteration of contracted debt is, at the very least, severely restricted, if not impossible.” The court added, “There has been only one instance in this and the last century when the Supreme Court of the United States has sustained the alteration of a municipal bond contract outside a bankruptcy case.” *Id.* at 279 n.21. It further observed that *Asbury Park* has since been “distinguished and its precedent status, if any, is dubious.” *Id.*

Accordingly, the Court concludes that the addition of § 903 to our municipal bankruptcy law does not undermine the continuing validity of *Bekins*.

4. Changes to the Supreme Court’s Tenth Amendment Jurisprudence Do Not Undermine the Continuing Validity of *Bekins*.

a. *New York v. United States*

In *New York v. United States*, 505 U.S. 144, 112 S. Ct. 2408 (1992), the Supreme Court considered a Tenth Amendment objection to the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. § 2021b, *et seq.* Congress enacted that law to address the problem of identifying storage sites for low-level radioactive waste. 505 U.S. at 152-54. The Act provided three different incentives for each state to take responsibility over the nuclear waste generated within its borders. *Id.*

The first was a monetary incentive to share in the proceeds of a surcharge on radioactive waste received from other states, based on a series of milestones. 505 U.S. at 171. The Court found this program constitutional because it was, in fact, nothing more than an incentive to the

state to regulate. Congress had “placed conditions—the achievement of the milestones—on the receipt of federal funds.” *Id.* at 171. The states could choose to achieve these milestones, and receive the federal funds, or not. *Id.* at 173. “[T]he location of such choice in the States is an inherent element in any conditional exercise of Congress’ spending power.” *Id.*

The Court then stated, “In the second set of incentives, Congress has authorized States and regional compacts with disposal sites gradually to increase the cost of access to the sites, and then to deny access altogether, to radioactive waste generated in States that do not meet federal deadlines.” *Id.* The Court held that this provision was also constitutional, again because the states retained the choice to participate in the federal program or not.

The Court explained, “Where federal regulation of private activity is within the scope of the Commerce Clause, we have recognized the ability of Congress to offer States the *choice* of regulating that activity according to federal standards or having state law pre-empted by federal regulation.” *Id.* at 173-74 (emphasis added). “[T]he choice remains at all times with the residents of the State, not with Congress. The State need not expend any funds, or participate in any federal program, if local residents do not view such expenditures or participation as worthwhile.” *Id.* at 174.

These two provisions of the Act passed constitutional muster precisely because states could consent to participation in the federal program or withhold their consent as they saw fit. The Court held that these two programs:

represent permissible conditional exercises of Congress’ authority under the Spending and Commerce Clauses respectively, in forms that have now grown commonplace. Under each, Congress offers the States a legitimate choice rather than issuing an unavoidable command. The States thereby retain the ability to set their legislative agendas; state government officials remain accountable to the local electorate.

Id. at 185.

In contrast, the third of these provisions - the “take title” provision” - forced the states to choose between either regulating the disposal of radioactive waste according to Congress’s standards or “taking title” to that waste, thereby assuming all the liabilities of its producers. *Id.* at 174-75. The Court held that this provision violated the Tenth Amendment, because it offered the states no choice but to do the bidding of the federal government. This provision, the Court determined, did not ask for state “consent” but instead “commandeered” the states.

The Court’s precedent is clear that the federal government may not require the states to regulate according to federal terms. “[T]he Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress’ instructions.” *Id.* at 162. “Congress may not simply ‘commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.’” *Id.* at 161 (quoting *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 288, 101 S. Ct. 2352 (1981)).

The “take title” provision did just that. Although guised as a “so-called incentive” scheme, the Court found that the “take title” provisions offered the states no real choice at all.

Because an instruction to state governments to take title to waste, standing alone, would be beyond the authority of Congress, and because a direct order to regulate, standing alone, would also be beyond the authority of Congress, it follows that Congress lacks the power to offer the States a choice between the two.

Id. at 176. The “take title” provisions did not give the states what the Court deemed the constitutionally “critical alternative[.]” *Id.* at 176. “A State may not decline to administer the federal program. No matter which path the State chooses, it must follow the direction of Congress.” *Id.* at 177.

The cornerstone of *United States v. New York*, then, is state consent. The federal government may constitutionally encourage, incentivize, or even entice, states to do the federal government's bidding. It may not command them to do so.

b. *Printz v. United States*

The Supreme Court reiterated these principles in *Printz v. United States*, 521 U.S. 898, 117 S. Ct. 2365 (1997), and extended them to Congressional efforts to compel state officers to act. At issue in *Printz* were provisions of the Brady Handgun Violence Prevention Act, 18 U.S.C. § 922, that required state and local law enforcement officers to carry out background checks for firearms dealers in connection with proposed sales of firearms. It also required that the background checks be performed in accordance with the federal law. *Printz*, 521 U.S. at 903-04.

The Court concluded that while state and local governments remained free to voluntarily participate in the background check program, the “mandatory obligation imposed on [law enforcement officers] to perform background checks on prospective handgun purchasers plainly runs afoul [of the Constitution].” *Id.* at 933. Again, the stumbling block was a lack of state consent:

We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.

521 U.S. at 935.

**c. *New York and Printz*
Do Not Undermine *Bekins*.**

Printz acknowledged that states could volunteer to carry out federal law. *Id.* at 910-11, 916-17 (describing the history of state officers carrying out federal law as involving “voluntary” action on the part of the states). Concurring, Justice O’Connor added, “Our holding, of course, does not spell the end of the objectives of the Brady Act. States and chief law enforcement officers may voluntarily continue to participate in the federal program.” *Id.* at 936.

By the same token, *New York* acknowledged that states can and do enter into voluntary contracts with the federal government whereby states agree to legislate according to federal terms in exchange for some federal benefit or forbearance. *New York*, 505 U.S. at 166-67.

What makes those federal programs constitutionally permissible, and the commandeering at issue in *New York* and *Printz* impermissible, is consent, and nothing more. If the state is acting voluntarily, it is free to engage with the federal government across a broad range of subject areas. The Tenth Amendment to the United States Constitution is violated only when the state does not consent.

Chapter 9 simply does not implicate the concerns of *New York* and *Printz*. As *Bekins* emphasized, chapter 9 “is limited to *voluntary* proceedings for the composition of debts.” *Bekins*, 304 U.S. at 47 (emphasis added). The *Bekins* Court explained:

The bankruptcy power is competent to give relief to debtors in such a plight and, if there is any obstacle to its exercise in the case of the districts organized under state law it lies in the right of the State to oppose federal interference. The State steps in to remove that obstacle. The State acts in aid, and not in derogation, of its sovereign powers. It invites the intervention of the bankruptcy power to save its agency which the State itself is powerless to rescue. Through its cooperation with the national government the needed relief is given. We see no ground for the conclusion that the Federal Constitution, in the interest of state sovereignty, has reduced both sovereigns to helplessness in such a case.

Id., 304 U.S. at 54.

The federal government cannot and does not compel states to authorize municipalities to file for chapter 9 relief, and municipalities are not permitted to seek chapter 9 relief without specific state authorization. 11 U.S.C. § 109(c)(2). There is simply no “commandeering” involved. *New York*, 505 U.S. at 161. Chapter 9 does not compel a state to enact a specific regulatory program, as in *New York*. Nor does chapter 9 press state officers into federal service, as in *Printz*. Instead, as *Bekins* held, valid state authorization is required for a municipality to proceed in chapter 9.

Moreover, during the pendency of the chapter 9 case, § 904 of the bankruptcy code mandates that the bankruptcy court “may not . . . interfere with (1) any of the political or governmental powers of the debtor; (2) any of the property or revenues of the debtor; or (3) the debtor’s use or employment of any income-producing property.” 11 U.S.C. § 904. At the same time, bankruptcy code § 903 mandates, “This chapter does not limit or impair the power of a State to control . . . a municipality of or in such State in the exercise of the political or governmental powers of such municipality[.]”

Because the state and local officials must authorize the filing of a chapter 9 petition, 11 U.S.C. § 109(c)(2), and because they retain control over “the political or governmental powers” of the municipality, these state officials remain fully politically accountable to the citizens of the state and municipality. *See New York*, 505 U.S. at 186 (“The States thereby retain the ability to set their legislative agendas; state government officials remain accountable to the local electorate.”).

**d. Explaining Some Puzzling
Language in *New York***

To be sure, some language in *New York* (not repeated in *Printz*) lends support to the argument that state consent cannot cure a federal law that would otherwise violate the Tenth Amendment. In *New York*, Justice O'Connor's opinion for the Court explained that federalism does not exist for the benefit of states, as such, but rather is a part of the constitutional structure whose purpose is to benefit individuals. 505 U.S. at 182. Justice O'Connor continued:

Where Congress exceeds its authority relative to the States, . . . the departure from the constitutional plan cannot be ratified by the "consent" of state officials. . . . The constitutional authority of Congress cannot be expanded by the "consent" of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States."

Id.

Some of the parties in this case have seized upon this language to argue that "the Supreme Court has weakened if not rejected *Bekins'* foundation – that a State's consent can remedy any violation of the Tenth Amendment and principles of federalism as they affect individual citizens." Retiree Committee Objection to Eligibility, ¶ 37 at 19. (Dkt. #805)

The difficulty with this argument is that it proves too much. If this language from *New York* has the sweeping force that the objecting parties ascribe to it, then a state's consent could never "cure" what would otherwise be a Tenth Amendment violation. The two incentives in *New York* that were constitutionally sustained would instead have been struck down like the "take title" provision. As the Court emphasized in *New York*, "even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." *New York*, 505 U.S. at 166.

Yet, despite Congress' inability to compel states to regulate according to federal standards, it may unquestionably invite, encourage, or entice the states to do so. *New York* specifically held that Congress may "encourage a State to regulate in a particular way," or "hold out incentives to the States as a method of influencing a State's policy choices." *Id.* The key is consent. *New York* further held, "Our cases have identified a variety of methods, short of outright coercion, by which Congress may urge a State to adopt a legislative program consistent with federal interests." *Id.* Consent to what would otherwise be an unlawful commandeering of state governments was the very basis for upholding two of the regulatory programs at issue in *New York*. *Id.* at 173-74.

It is not entirely clear, therefore, what Justice O'Connor meant when she wrote that states "cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution." *Id.* at 182. In a very real sense, the holding of *New York* rests on the premise that states can do just that. Congress cannot require the states to legislate with respect to the problem of radioactive waste, but it can unquestionably hold out incentives that induce the states to consent to do so. More broadly put, states can "consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution." *Id.*

The Court can only conclude that Justice O'Connor meant something else - that a state cannot consent to be compelled. As the Court saw the "choice" in *New York*, it was a choice between two unconstitutional alternatives - regulating according to federal standards or taking title to all of the low level radioactive waste produced by private parties in the state. Justice O'Connor likely concluded that the latter alternative was so unpalatable that it was really no choice at all. After all, here is where the Court found that "Congress had crossed the line distinguishing encouragement from coercion." *Id.* at 175. Understood this way, Justice

O'Connor may have been saying nothing more than that one cannot consent to have a gun held to one's head. The idea of "consent" in such a scenario is meaningless.

If this understanding is correct, it would be incumbent upon the objecting parties to identify some way in which federal authority has compelled state action here. They have not.

Whatever the intended meaning of this language, it cannot be that state consent can never "cure" what would otherwise violate the Tenth Amendment. That meaning would sweep aside the holding of *New York* itself. Nor does this language undo the holding in *Bekins*, which, as stated before, this Court must apply until the Supreme Court overrules it.

Accordingly, the Court concludes that chapter 9 is not facially unconstitutional under the Tenth Amendment.

5. Chapter 9 Is Constitutional As Applied in This Case.

Several of the objecting parties also raise "as-applied" challenges to the constitutionality of chapter 9 under the Tenth Amendment to United States Constitution. Although variously cast, the primary thrust of these arguments is that if chapter 9 permits the State of Michigan to authorize a city to file a petition for chapter 9 relief without explicitly providing for the protection of accrued pension benefits, the Tenth Amendment is violated.

The Court concludes that these arguments must be rejected.

a. When the State Consents to a Chapter 9 Bankruptcy, the Tenth Amendment Does Not Prohibit the Impairment of Contract Rights That Are Otherwise Protected by the State Constitution.

The basis for this result begins with the recognition that the State of Michigan cannot legally provide for the adjustment of the pension debts of the City of Detroit. This is a direct result of the prohibition against the State of Michigan impairing contracts in both the United

States Constitution and Michigan Constitution, as well as the prohibition against impairing the contractual obligations relating to accrued pension benefits in the Michigan Constitution.

The federal bankruptcy court, however, is not so constrained. As noted in Part VIII B, above, “The Bankruptcy Clause necessarily authorizes Congress to make laws that would impair contracts. It long has been understood that bankruptcy law entails impairment of contracts.” *Stockton*, 478 B.R. at 15 (citing *Sturges v. Crowninshield*, 17 U.S. 122, 191 (1819)).

The state constitutional provisions prohibiting the impairment of contracts and pensions impose no constraint on the bankruptcy process. The Bankruptcy Clause of the United States Constitution, and the bankruptcy code enacted pursuant thereto, explicitly empower the bankruptcy court to impair contracts and to impair contractual rights relating to accrued vested pension benefits. Impairing contracts is what the bankruptcy process does.

The constitutional foundation for municipal bankruptcy was well-articulated in *Stockton*:

In other words, while a state cannot make a law impairing the obligation of contract, Congress can do so. The goal of the Bankruptcy Code is adjusting the debtor-creditor relationship. Every discharge impairs contracts. While bankruptcy law endeavors to provide a system of orderly, predictable rules for treatment of parties whose contracts are impaired, that does not change the starring role of contract impairment in bankruptcy.

It follows, then, that contracts may be impaired in this chapter 9 case without offending the Constitution. The Bankruptcy Clause gives Congress express power to legislate uniform laws of bankruptcy that result in impairment of contract; and Congress is not subject to the restriction that the Contracts Clause places on states. Compare U.S. Const. art. I, § 8, cl. 4, with § 10, cl. 1.

478 B.R. at 16.

For Tenth Amendment and state sovereignty purposes, nothing distinguishes pension debt in a municipal bankruptcy case from any other debt. If the Tenth Amendment prohibits the impairment of pension benefits in this case, then it would also prohibit the adjustment any other debt in this case. *Bekins* makes it clear, however, that with state consent, the adjustment of

municipal debts does not impermissibly intrude on state sovereignty. *Bekins*, 304 U.S. at 52. This Court is bound to follow that holding.

**b. Under the Michigan Constitution,
Pension Rights Are Contractual Rights.**

The Plans seek escape from this result by asserting that under the Michigan Constitution, pension debt has greater protection than ordinary contract debt. The argument is premised on the slim reed that in the Michigan Constitution, pension rights may not be “impaired or diminished,” whereas only laws “impairing” contract rights are prohibited.

There are several reasons why the slight difference between the language that protects contracts (no “impairment”) and the language that protects pensions (no “impairment” or “diminishment”) does not demonstrate that pensions were given any extraordinary protection.

Before reviewing those reasons, however, a brief review of the history of the legal status of pension benefits in Michigan is necessary.

At common law, before the adoption of the Michigan Constitution in 1963, public pensions in Michigan were viewed as gratuitous allowances that could be revoked at will, because a retiree lacked any vested right in their continuation. In *Brown v. Highland Park*, 320 Mich. 108, 114, 30 N.W.2d 798, 800 (Mich. 1948), the Michigan Supreme Court stated:

We are convinced that the majority of cases in other jurisdictions establishes the rule that a pension granted by public authorities is not a contractual obligation, that the pensioner has no vested right, and that a pension is terminable at the will of a municipality, at least while acting within reasonable limits. At best plaintiffs in this case have an expectancy based upon continuance of existing charter provisions.

Similarly, in *Kosa v. Treasurer of State of Mich.*, 408 Mich. 356, 368-69, 292 N.W.2d 452, 459 (1980), the court observed this about the status of pension benefits before the 1963 Constitution was adopted:

Until the adoption of Const. 1963, art. 9, s 24, legislative appropriation for retirement fund reserves was considered to be an *ex gratia* action. Consequently, the most that could be said about “pre-con” legislative appropriations for retirees was that there was some kind of implied commitment to fund pension reserves.

Id. (footnote omitted).

In the 1963 Constitution, this provision enhancing the protection for pensions was included: “The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.” Mich. Const. art. IX, § 24.

In *Kosa*, 408 Mich. at 370 n.21, 292 N.W.2d at 459, the Michigan Supreme Court quoted the following history from the constitutional convention regarding article 9, section 24:

“MR. VAN DUSEN: Mr. Chairman, if I may elaborate briefly on Mr. Brake’s answer to Mr. Downs’ question, I would like to indicate that the words ‘accrued financial benefits’ were used designedly, so that the *contractual right of the employee* would be limited to the deferred compensation embodied in any pension plan, and that we hope to avoid thereby a proliferation of litigation by individual participants in retirement systems talking about the general benefits structure, or something other than his specific right to receive benefits. It is not intended that an individual employee should, as a result of this language, be given the right to sue the employing unit to require the actuarial funding of past service benefits, or anything of that nature. *What it is designed to do is to say that when his benefits come due, he’s got a contractual right to receive them.* “And, in answer to your second question, *he has the contractual right to sue for them.* So that he has no particular interest in the funding of somebody else’s benefits as long as *he has the contractual right to sue for his.*”

“MR. DOWNS: I appreciate Mr. Van Dusen’s comments. Again, I want to see if I understand this. Then he would not have a remedy of legally forcing the legislative body each year to set aside the appropriate amount, but when the money did come due this would be a *contractual right* for which he could sue a ministerial officer that could be mandamus or enjoined; is that correct?”

“MR. VAN DUSEN: That’s my understanding, Mr. Downs.”

1 Official Record, Constitutional Convention 1961, pp. 773-774.

Id. (emphasis added).

Kosa also offered an explanation for the origin of the provision. “To gain protection of their pension rights, Michigan teachers effectively lobbied for a constitutional amendment granting *contractual status* to retirement benefits.” 408 Mich. at 360, 292 N.W.2d at 455 (emphasis added).

The *Kosa* court summarized the provision, again using contract language, as follows:

To sum up, while the Legislature’s constitutional *contractual obligation* is not to impair “accrued financial benefits”, even if that obligation also related to the funding system, there would be no impairment of the *contractual obligation* because the substituted “entry age normal” system supports the benefit structure as strongly as the replaced “attained age” system.

Id., 408 Mich. at 373, 292 N.W.2d at 461(emphasis added).

While counting such blessings as have come to them, public school employees are understandably still concerned about their pension security. In that regard, this opinion reminds the Legislature that the constitutional provision adopted by the people of this state is indeed a *solemn contractual obligation* between public employees and the Legislature guaranteeing that pension benefit payments cannot be constitutionally impaired.

Id., 408 Mich. at 382, 292 N.W.2d at 465 (emphasis added).

More recently, in *In re Constitutionality of 2011 PA 38*, 490 Mich. 295, 806 N.W.2d 683 (2011), the Michigan Supreme Court unequivocally stated, “The obvious intent of § 24, however, was to ensure that public pensions be treated as *contractual obligations* that, once earned, could not be diminished.” *Id.* at 311, 806 NW.2d at 693 (emphasis added).

That historical review begins to demonstrate the several reasons why the slight difference in the language that protects contracts and the language that protects pensions does not suggest that pensions were given any extraordinary protection:

First, the language of article IX, section 24, gives pension benefits the status of a “contractual obligation.” The natural meaning of the words “contractual obligation” is certainly inconsistent with the greater protection for which the Plans now argue.

Second, if the Michigan Constitution were meant to give the kind of absolute protection for which the Plans argue, the language in the article IX, section 24 simply would not have referred to pension benefits as a “contractual obligation.” It also would not have been constructed by simply copying the verb from the contracts clause - “impair” - and then adding a lesser verb - “diminish” in the disjunctive.

Third, linguistically, there is no functional difference in meaning between “impair” and “impair or diminish.” There certainly is a preference, if not a mandate, to give meaning to every word in written law. In *Koontz v. Ameritech Servs., Inc.*, 466 Mich. 304, 312, 645 N.W.2d 34, 39 (2002), the Michigan Supreme Court summarized the familiar command, “Courts must give effect to every word, phrase, and clause in a statute, and must avoid an interpretation that would render any part of the statute surplusage or nugatory.” The court went on to state, however, “we give undefined statutory terms their plain and ordinary meanings.” *Id.*

Under *Meridian Mut. Ins. Co. v. Kellman*, 197 F.3d 1178, 1181 (6th Cir. 1999), discussed in more detail in Part IX A, below, this Court is bound by these commands of statutory interpretation that the Michigan Supreme Court embraced in *Koontz*. But if this Court gives these terms - “diminish” and “impair” - their plain and ordinary meanings, as *Koontz* requires, those meanings would not be substantively different from each other. The terms are not

synonyms, but they cannot honestly be given meanings so different as to compel the result that the Plans now seek. “Diminish” adds nothing material to “impair.” All “diminishment” is “impairment.” And, “impair” includes “diminish.”

Fourth, the Plans’ argument for a greater protection is inconsistent with the Michigan Supreme Court’s interpretation of the constitutional language in *Kosa* and in *In re Constitutionality of 2011 PA 38*. Those cases also used contract language to describe the status of pensions. This is important because the Sixth Circuit has held that on questions of state law, this Court is bound to apply the holdings of the Michigan Supreme Court. *See Kirk v. Hanes Corp. of North Carolina*, 16 F.3d 705, 706 (6th Cir. 1994).

Fifth, an even greater narrative must be considered here, focusing on 1963. *Bekins* had long since determined that municipal bankruptcy was constitutional. That of course meant that even though states could not impair municipal contracts, federal courts could do that in a bankruptcy case. Indeed, Michigan law then allowed municipalities to file bankruptcy.²⁴

It was within that framework of rights, expectations, scenarios and possibilities that the newly negotiated, proposed and ratified Michigan Constitution of 1963 explicitly gave accrued pension benefits the status of contractual obligations. That new constitution could have given pensions protection from impairment in bankruptcy in several ways. It could have simply prohibited Michigan municipalities from filing bankruptcy. It could have somehow created a

²⁴ See Public Act 72 of 1939, MCL § 141.201(1) (repealed by P.A. 70 of 1982) (“Any . . . instrumentality in this state as defined in [the Bankruptcy Act of 1898 and amendments thereto] . . . may proceed under the terms and conditions of such acts to secure a composition of its debts. . . . The governing authority of any such . . . instrumentality, or the officer, board or body having authority to levy taxes to meet the obligations to be affected by the plan of composition may file the petition and agree upon any plan of composition authorized by said act of congress[.]”).

property interest that bankruptcy would be required to respect under *Butner v. United States*, 440 U.S. 48, 99 S. Ct. 914 (1979) (holding that property issues in bankruptcy are determined according to state law). Or, it could have established some sort of a secured interest in the municipality's property. It could even have explicitly required the State to guaranty pension benefits. But it did none of those.

Instead, both the history from the constitutional convention, quoted above, and the language of the pension provision itself, make it clear that the only remedy for impairment of pensions is a claim for breach of contract.

Because under the Michigan Constitution, pension rights are contractual rights, they are subject to impairment in a federal bankruptcy proceeding. Moreover, when, as here, the state consents, that impairment does not violate the Tenth Amendment. Therefore, as applied in this case, chapter 9 is not unconstitutional.

Nevertheless, the Court is compelled to comment. No one should interpret this holding that pension rights are subject to impairment in this bankruptcy case to mean that the Court will necessarily confirm any plan of adjustment that impairs pensions. The Court emphasizes that it will not lightly or casually exercise the power under federal bankruptcy law to impair pensions. Before the Court confirms any plan that the City submits, the Court must find that the plan fully meets the requirements of 11 U.S.C. § 943(b) and the other applicable provisions of the bankruptcy code. Together, these provisions of law demand this Court's judicious legal and equitable consideration of the interests of the City and all of its creditors, as well as the laws of the State of Michigan.

**IX. Public Act 436 Does Not
Violate the Michigan Constitution.**

Section 109(c)(2) of the bankruptcy code requires that a municipality be “specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter.” 11 U.S.C. § 109(c)(2). The evidence establishes that the City was authorized to file this case. The issue is whether that authorization was proper under the Michigan Constitution.

Section 18 of P.A. 436, M.C.L. § 141.1558, establishes the process for authorizing a municipality to file a case under chapter 9 of the bankruptcy code:

(1) If, in the judgment of the emergency manager, no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the emergency manager may recommend to the governor and the state treasurer that the local government be authorized to proceed under chapter 9. If the governor approves of the recommendation, the governor shall inform the state treasurer and the emergency manager in writing of the decision The governor may place contingencies on a local government in order to proceed under chapter 9. Upon receipt of written approval, the emergency manager is authorized to proceed under chapter 9. This section empowers the local government for which an emergency manager has been appointed to become a debtor under title 11 of the United States Code, 11 USC 101 to 1532, as required by section 109 of title 11 of the United States Code, 11 USC 109, and empowers the emergency manager to act exclusively on the local government’s behalf in any such case under chapter 9.

M.C.L. § 141.1558(1).

On July 16, 2013, Mr. Orr gave the governor and the treasurer his written recommendation that the City be authorized to file for chapter 9 relief. Ex. 28. On July 18, 2013, the governor approved this recommendation in writing. Ex. 29. Later that day, Mr. Orr

issued a written order directing the City to file this chapter 9 case. Ex. 30. Thus the City of Detroit's bankruptcy filing was authorized under state law.

Nevertheless, several objectors assert various arguments that the City of Detroit is not authorized to file this case.

First, several objectors argue that the authorization is not valid because P.A. 436, the statute establishing the underlying procedure for a municipality to obtain authority for filing, is unconstitutional. Broadly stated, these are the challenges to P.A. 436:

The Retired Detroit Police Members Association ("RDPMA") challenges the constitutionality of P.A. 436 on the grounds that it was enacted immediately after the referendum rejection of a similar statute, P.A. 4.

The RDPMA also asserts that P.A. 436 is unconstitutional on the grounds that the Michigan Legislature added an appropriation provision for the purpose of evading the peoples' constitutional right to referendum.

Several objectors argue that P.A. 436 is unconstitutional because it fails to protect pensions from impairment in bankruptcy.

AFSCME asserts that P.A. 436 is unconstitutional because it violates the "Strong Home Rule" provisions in the Michigan Constitution.

A. The Michigan Case Law on Evaluating the Constitutionality of a State Statute.

The validity of P.A. 436 under the Michigan Constitution is a question of state law. Determining the several constitutional challenges to P.A. 436 requires this Court to apply state law. In *Meridian Mut. Ins. Co. v. Kellman*, 197 F.3d 1178, 1181 (6th Cir. 1999), the Sixth Circuit provided this guidance on determining state law:

In construing questions of state law, the federal court must apply state law in accordance with the controlling decisions of the highest court of the state. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938). If the state's highest court has not addressed the issue, the federal court must attempt to ascertain how that court would rule if it were faced with the issue. The Court may use the decisional law of the state's lower courts, other federal courts construing state law, restatements of law, law review commentaries, and other jurisdictions on the "majority" rule in making this determination. *Grantham & Mann v. American Safety Prods.*, 831 F.2d 596, 608 (6th Cir.1987). A federal court should not disregard the decisions of intermediate appellate state courts unless it is convinced by other persuasive data that the highest court of the state would decide otherwise. *Commissioner v. Estate of Bosch*, 387 U.S. 456, 465, 87 S. Ct. 1776, 1782, 18 L.Ed.2d 886 (1967).

Similarly, in *Demczyk v. Mut. Life Ins. Co. of N.Y. (In re Graham Square, Inc.)*, 126 F.3d 823, 827 (6th Cir. 1997), the court stated, "Where the relevant state law is unsettled, we determine how we think the highest state court would rule if faced with the same case."

The Michigan Supreme Court has not ruled directly on the validity P.A. 436. As a result, this Court must attempt to ascertain how that court would rule if it were faced with the issue.

In *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich. 295, 307-8, 806 N.W.2d 683, 692 (2011), the Michigan Supreme Court summarized its decisions on evaluating a constitutional challenge to a state law:

"Statutes are presumed to be constitutional, and courts have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent." *Taylor v. Gate Pharm.*, 468 Mich. 1, 6, 658 N.W.2d 127 (2003). "We exercise the power to declare a law unconstitutional with extreme caution, and we never exercise it where serious doubt exists with regard to the conflict." *Phillips v. Mirac, Inc.*, 470 Mich. 415, 422, 685 N.W.2d 174 (2004). "Every reasonable presumption or intendment must be indulged in favor of the validity of an act, and it is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution that a court will refuse to sustain its validity." *Id.* at 423, 685 N.W.2d 174, quoting *Cady v. Detroit*, 289 Mich. 499, 505, 286 N.W. 805 (1939). Therefore, "the burden of proving that a statute is unconstitutional rests with

the party challenging it[.]” *In re Request for Advisory Opinion Regarding Constitutionality of 2005 Pa. 71*, 479 Mich. 1, 11, 740 N.W.2d 444 (2007)[.]

This guidance, as well as the decisions of the Michigan Supreme Court on issues relating to the right to referendum, home rule, and the pension clause, will inform this Court’s determinations on the objectors’ challenges to P.A. 436.

B. The Voters’ Rejection of Public Act 4 Did Not Constitutionally Prohibit the Michigan Legislature from Enacting Public Act 436.

On March 16, 2011, the governor signed P.A. 4 into law. P.A. 4 repealed P.A. 72. However, the voters rejected P.A. 4 by referendum in the November 6, 2012 election. Shortly after that election, on December 26, 2012, the governor signed P.A. 436 into law. It took effect on March 28, 2013.

The RDPMA argues that P.A. 436 is unconstitutional because it is essentially a reenactment of P.A. 4. The City and the State of Michigan assert that there are several differences between P.A. 436 and P.A. 4, such that they are not the same law.

The right of referendum is established in article 2, section 9 of the Michigan Constitution, which provides:

Sec. 9. The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.

Referendum, approval

No law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election.

Mich. Const. art. II, § 9.

In *Reynolds v. Bureau of State Lottery*, 240 Mich. App. 84, 610 N.W.2d 597 (2000), the Michigan Court of Appeals considered the power of the legislature to reenact a law while a referendum process regarding that law was pending. The court explained:

[N]othing in the Michigan Constitution suggests that the referendum had a broader effect than nullification of [the 1994 act]. We cannot read into our constitution a general “preemption of the field” that would prevent further legislative action on the issues raised by the referendum. The Legislature remained in full possession of all its other ordinary constitutional powers, including legislative power over the subject matter addressed in [the 1994 act].

Reynolds, 240 Mich. App. at 97, 610 N.W.2d at 604-05.

This Michigan Court of Appeals decision strongly suggests that the referendum rejection of P.A. 4 did not prohibit the Michigan legislature from enacting P.A. 436, even though P.A. 436 addressed the same subject matter as P.A. 4 and contained very few changes.

As noted above, the Sixth Circuit has instructed, “A federal court should not disregard the decisions of intermediate appellate state courts unless it is convinced by other persuasive data that the highest court of the state would decide otherwise.” *Meridian Mut. Ins. Co.*, 197 F.3d at 1181. No data, let alone any persuasive data, suggests that the Michigan Supreme Court would decide this issue otherwise. Accordingly, the RDPMA’s challenge on this ground must be rejected.

C. Even If the Michigan Legislature Did Include Appropriations Provisions in Public Act 436 to Evade the Constitutional Right of Referendum, It Is Not Unconstitutional.

The RDPMA also contends that P.A. 436 is unconstitutional because the Michigan legislature included appropriations provisions in P.A. 436 for the sole purpose of shielding the Act from referendum. Section 34 of P.A. 436 appropriates \$780,000 for 2013 to pay the salaries of emergency managers. Section 35 of P.A. 436 appropriates \$5,000,000 for 2013 to pay professionals hired to assist emergency managers.

There certainly was some credible evidence in support of the RDPMA's assertion that the appropriations provisions in P.A. 436 were motivated by a desire to immunize it from referendum. For example, Howard Ryan testified in his deposition on October 14, 2013:

Q. I'd just like to ask a follow-up to a question counsel asked you. You said that the appropriation language was put in the - early on in the process; is that correct?

A. Yes.

Q. Based on your conversations with the people at the time, was it your understanding that one or more of the reasons to put the appropriation language in there was to make sure that it could not - the new act could not be defeated by a referendum?

A. Yes.

Q. And where did you get that knowledge from?

A. Well, having watched the entire process unfold over the past two years.

Q. The Governor's office knew that that was the point of it?

A. Yes.

Q. That your department knew that that was the point of it?

A. Yes.

Q. The legislators you were dealing with knew that that was the point of it?

A. Yes.

Howard Dep. Tr. 46:1-23, Oc. 14, 2013.²⁵

Other evidence in support includes: a January 31, 2013 e-mail addressed from Mr. Orr to partners at Jones Day, in which he observed that P.A. 436 “is a clear end-around the prior initiative” to repeal the previous Emergency Manager statute, Public Act 4, “that was rejected by the voters in November.” Ex. 403 (Dkt. #509-3) According to Mr. Orr “although the new law provides the thin veneer of a revision (sic) it is essentially a redo of the prior rejected law and appears to merely adopt the conditions necessary for a chapter 9 filing.” Ex. 403. (Dkt. #509-3)

There are, however, several difficulties with the RDPMA’s argument.

The Court must conclude that the Michigan Supreme Court would not, if faced with this issue, hold that P.A. 436 is unconstitutional. In *Michigan United Conservation Clubs v. Secretary of State*, 464 Mich. 359, 367, 630 N.W.2d 297, 298 (2001), that court concisely held that a public act with an appropriations provision is not subject to referendum, regardless of motive. Concurring, Chief Justice Corrigan added that even if the motive of a legislative body could be discerned as opposed to the motives of individual legislators, “This Court has repeatedly held that courts must not be concerned with the alleged motives of a legislative body in enacting a law, but only with the end result—the actual language of the legislation.” *Id.* at 367.

Similarly, in *Houston v. Governor*, 491 Mich. 876, 877, 810 N.W.2d 255, 256 (2012), the Michigan Supreme Court stated, “[T]his Court possesses no special capacity, and there are no legal standards, by which to assess the political propriety of actions undertaken by the legislative

²⁵ The parties agreed to use Ryan’s deposition testimony in lieu of live testimony. However, in the pre-trial order the City had objected to this portion of testimony on the grounds of speculation, hearsay, format and foundation. (Dkt. #1647 at 118) Those objections are overruled.

branch. Instead, it is the responsibility of the democratic, and representative, processes of government to check what the people may view as political or partisan excess by their Legislature.”

In *People v. Gibbs*, 186 Mich. 127, 134-35, 152 N.W. 1053, 1055 (1915), the Michigan Supreme Court stated, “Courts are not concerned with the motives which actuate the members of the legislative body in enacting a law, but in the results of their action. Bad motives might inspire a law which appeared on its face and proved valid and beneficial, while a bad and invalid law might be, and sometimes is, passed with good intent and the best of motives.” See also *Kuhn v. Dep’t of Treasury*, 384 Mich. 378, 383-84, 183 N.W.2d 796, 799 (1971).

Finally, it must also be noted that on November 8, 2013, the Sixth Circuit vacated pending rehearing *en banc* the decision on which the RDPMA heavily relies. *City of Pontiac Retired Employees Assoc. v. Schimmel*, 726 F.3d 767 (6th Cir. 2013).

Accordingly, the Court concludes that P.A. 436 is not unconstitutional as a violation of the right to referendum in article II, section 9 of the Michigan Constitution.

D. Public Act 436 Does Not Violate the Home Rule Provisions of the Michigan Constitution.

Certain objectors argue that P.A. 436 violates Article VII, Section 22 of the Michigan Constitution, which states:

Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

The argument is that the appointment of an emergency manager for a municipality under P.A. 436 is inconsistent with the right of the electors to adopt and amend the City charter and the city's right to adopt ordinances. AFSCME asserts that "Michigan is strongly committed to the concept of home rule[.]" AFSCME Amended Objection at 75-91. (Dkt. #1156) "This 'strong home rule' regime reflects a bedrock principle of state law, . . . all officers of cities are to 'be elected by the electors thereof, or appointed by such authorities thereof' not by the central State Government." *Id.* (citing *Brouwer v. Bronkema*, 377 Mich. 616, 141 N.W.2d 98 (1966)). AFSCME further asserts that in authorizing the appointment of an emergency manager with broad powers that usurp the powers of elected officials, "PA 436 offends the 'strong home rule' of Detroit and that the Emergency Manager is not lawfully authorized to file for bankruptcy on behalf of the City or to act as its representative during chapter 9 proceedings." AFSCME Amended Objection at 75-91. (Dkt. #1156)

AFSCME's argument fails for the simple reason that the broad authority the Michigan Constitution grants to municipalities is subject to constitutional and statutory limits. This constitutional provision itself embodies that principle. It states, "Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, *subject to the constitution and law.*" Mich. Const. art. VII, § 22 (emphasis added).

State law recognizes the same limitation on local government authority:

Each city may in its charter provide:

(3) Municipal powers. For the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns *subject to the constitution and general laws of this state.*

M.C.L. § 117.4j(3) (emphasis added).

Similarly, M.C.L. § 117.36, states, “No provision of any city charter shall conflict with or contravene the provisions of any general law of the state.”

Indeed, § 1-102 of the Charter of the City of Detroit states: “The City has the comprehensive home rule power conferred upon it by the Michigan Constitution, *subject only to the limitations on the exercise of that power contained in the Constitution or this Charter or imposed by statute.*” *Id.* (emphasis added). *See Detroit City Council v. Mayor of Detroit*, 283 Mich. App. 442, 453, 770 N.W.2d 117, 124 (Mich. Ct. App. 2009) (“The charter itself thus recognizes that it is subject to limitations imposed by statute.”).

“Municipal corporations have no inherent power. They are created by the state and derive their authority from the state.” *Bivens v. Grand Rapids*, 443 Mich. 391, 397, 505 N.W.2d 239, 241 (1993).

The Michigan case law establishes that the powers granted to municipalities by the “home rule” sections of the Michigan Constitution are subject to the limits of the power and authority of the State to create laws of general concern. *Brimmer v. Village of Elk Rapids*, 365 Mich. 6, 13, 112 N.W.2d 222, 225 (1961).

“Municipal corporations are state agencies, and, subject to constitutional restrictions, the Legislature may modify the corporate charters of municipal corporations at will. 12 C.J. [p.] 1031. Powers are granted to them as state agencies to carry on local government. The state still has authority to amend their charters and enlarge or diminish their powers.” [1] *Cooley*, Const. Lim. (8th Ed.), [p.] 393. * * * Its powers are plenary.

City of Hazel Park v. Mun. Fin. Comm’n, 317 Mich. 582, 599-600, 27 N.W.2d 106, 113-14 (1947).

The Home Rule provision of the constitution does not deprive the legislature of its power to enact laws affecting municipalities operation under that provision except as to matters of purely local

concern. . . . *The right to pass general laws is still reserved to the [e]gislature of the state, and consequently it is still competent for the state through the law making body to enact measures pursuant to the police power or pursuant to other general powers inherent in the state and to require municipalities to observe the same.*

Local Union No. 876, Int'l Bhd. of Elec. Workers v. State of Mich. Labor Mediation Bd., 294 Mich. 629, 635-36, 293 N.W. 809, 811 (1940) (emphasis added). *See also Mack v. City of Detroit*, 467 Mich. 186, 194, 649 N.W.2d 47, 52 (2002); *American Axle & Mfg., Inc. v. City of Hamtramck*, 461 Mich. 352, 377, 604 N.W.2d 330, 342 (2000) (In *Harsha* we held that “the legislature might modify the charters of municipal corporations at will and that the State still retained authority to amend charters and enlarge and diminish their powers.”); *Board of Trustees of Policemen & Firemen Retirement System v. City of Detroit*, 143 Mich. App. 651, 655, 373 N.W.2d 173, 175 (Mich. Ct. App. 1985) (“Where a city charter provision conflicts with general statutory law, the statute controls in all matters which are not of purely local character.”); *Oakland Cnty. Board of Cnty. Road Comm’rs v. Mich. Prop. & Cas. Guar. Ass’n*, 456 Mich. 590, 609, 575 N.W.2d 751, 760 (1998) (“Like a municipal corporation, the road commission’s existence is entirely dependent on the legislation that created it, and the Legislature that may also destroy it.”).

AFSCME asserts that P.A. 436 is a “local law” because it gives the emergency manager broad authority to pass local legislation, and that therefore it violates article IV, section 29 of the Michigan Constitution. That section provides, in pertinent part, “The legislature shall pass no local or special act in any case where a general act can be made applicable[.]”

One plain difficulty with this argument is that this provision of the Michigan Constitution constrains the Michigan Legislature, not the emergency manager.

In defining a general law, the Michigan Supreme Court has stated, “A general law is one which includes all persons, classes and property similarly situated and which come within its

limitations.”” *Am. Axle & Mfg., Inc. v. City of Hamtramck*, 461 Mich. 352, 359 n.5, 604 N.W.2d 330, 334 (2000) (citing *Tribbett v. Village of Marcellus*, 294 Mich. 607, 618, 293 N.W. 872 (1940), quoting *Punke v. Village of Elliott*, 364 Ill. 604, 608-9, 5 N.E.2d 389, 393 (1936)).

Clearly, P.A. 436 is a general law, potentially applicable to all municipalities similarly situated within the State of Michigan. According to its preamble, its purposes are: “to safeguard and assure the financial accountability of local units of government and school districts; to preserve the capacity of local units of government and school districts to provide or cause to be provided necessary services essential to the public health, safety and welfare[.]”

Accordingly, the Court finds that P.A. 436 does not violate the home rule provisions of the Michigan Constitution.

E. Public Act 436 Does Not Violate the Pension Clause of the Michigan Constitution.

Many objectors argue that the bankruptcy authorization section of P.A. 436, M.C.L. § 141.1558, does not conform to the requirements of the pension clause of the Michigan Constitution and is therefore unconstitutional. Accordingly, the objectors argue that P.A. 436 cannot provide the basis for authorization as required by 11 U.S.C. § 109(c)(2).

As noted, the premise of this argument is that under the Michigan constitution, pension benefits are entitled to greater protection than contract claims. That premise, however, is the same as the premise of the argument that chapter 9 is unconstitutional as applied in this case.

In Part VIII C 5 b, above, the Court rejected this argument, concluding that pension benefits are a contractual obligation of the municipality.

It follows that if a state consents to a municipal bankruptcy, no state law can protect contractual pension rights from impairment in bankruptcy, just as no law could protect any other types of contract rights. Accordingly, the failure of P.A. 436 to protect pension rights in a

municipal bankruptcy does not make that law inconsistent with the pension clause of the Michigan Constitution any more than the failure of P.A. 436 to protect, for example, bond debt in bankruptcy is inconsistent with the contracts clause of the Michigan Constitution. For this purpose, the parallel is perfect.

Stated another way, state law cannot reorder the distributional priorities of the bankruptcy code. If the state consents to a municipal bankruptcy, it consents to the application of chapter 9 of the bankruptcy code. This point was driven home in the *Stockton* case:

A state cannot rely on the § 903 reservation of state power to condition or to qualify, i.e. to “cherry pick,” the application of the Bankruptcy Code provisions that apply in chapter 9 cases after such a case has been filed. *Mission Indep. School Dist. v. Texas*, 116 F.2d 175, 176–78 (5th Cir. 1940) (chapter IX); *Vallejo*, 403 B.R. at 75–76; *In re City of Stockton*, 475 B.R. 720, 727–29 (Bankr. E.D. Cal. 2012) (“*Stockton I*”); *In re Cnty. of Orange*, 191 B.R. 1005, 1021 (Bankr. C.D. Cal. 1996).

While a state may control prerequisites for consenting to permit one of its municipalities (which is an arm of the state cloaked in the state’s sovereignty) to file a chapter 9 case, it cannot revise chapter 9. *Stockton I*, 475 B.R. at 727–29. *For example, it cannot immunize bond debt held by the state from impairment. Mission Indep. School Dist.*, 116 F.2d at 176–78.

478 B.R. at 16-17 (emphasis added).

For these reasons, the Court concludes that P.A. 436 does not violate the pension clause of the Michigan Constitution.

X. Detroit’s Emergency Manager Had Valid Authority to File This Bankruptcy Case Even Though He Is Not an Elected Official.

AFSCME and most of the individual objectors argue that the emergency manager did not have valid authority to file this bankruptcy case because he is not an elected official. The Court concludes that this argument is similar to, or the same as, the argument that AFSCME made that P.A. 436 violates the home rule provisions of the Michigan Constitution. See Part IX D above.

Accordingly, for the reasons stated in that Part, AFSCME’s argument on this point is rejected. The Court concludes that the emergency manager’s authorization to file this bankruptcy case under P.A. 436 was valid under the Michigan Constitution, even though he was not an elected official.

XI. The Governor’s Authorization to File This Bankruptcy Case Was Valid Under the Michigan Constitution Even Though the Authorization Did Not Prohibit the City from Impairing Pension Rights.

P.A. 436 permits the governor to “place contingencies on a local government in order to proceed under chapter 9.” M.C.L. § 141.1558(1). The governor did not place any contingencies on the bankruptcy filing in this case. Ex. 29 at 4. The governor’s letter did, however, state “Federal law already contains the most important contingency – a requirement that the plan be legally executable.” Ex. 29 at 4.

Several of the objectors argue that the pension clause of the Michigan Constitution, article IX, section 24, obligated the governor to include a condition in his authorization that would prohibit the City from impairing pension benefits in this bankruptcy case.

In Part IX E, above, the Court concluded that any such contingency in the law itself would be ineffective and potentially invalid. For the same reason, any such contingency in the governor’s authorization letter would have been invalid, and may have rendered the authorization itself invalid under 11 U.S.C. § 109(c).

Accordingly, this objection is overruled. The Court concludes that the governor’s authorization to file this bankruptcy case under P.A. 436 was valid under the Michigan Constitution.

XII. The Judgment in *Webster v. Michigan* Does Not Preclude the City from Asserting That the Governor’s Authorization to File This Bankruptcy Case Was Valid.

A. The Circumstances Leading to the Judgment

On July 3, 2013, Gracie Webster and Veronica Thomas filed a complaint against the State of Michigan, Governor Snyder and Treasurer Dillon in the Ingham County Circuit Court. They sought a declaratory judgment that P.A. 436 is unconstitutional because it permits accrued pension benefits to be diminished or impaired in violation of article IX, section 24 of the Michigan Constitution. (Dkt. #1219) The complaint also sought a preliminary and permanent injunction enjoining Governor Snyder and State Treasurer Dillon from authorizing the Detroit emergency manager to commence proceedings under chapter 9 of the bankruptcy code.

On Thursday, July 18, 2013, the state court held a hearing, apparently jointly on a similar complaint filed by the General Retirement System of the City of Detroit. According to the transcript of the hearing, it began at 4:15 p.m. Case No.13-734-CZ, Hrg Tr. 4:2, July 18, 2013. (Dkt. #1219-9) Almost immediately, counsel for the plaintiffs advised the court that the City had already filed its bankruptcy case. Hrg Tr. 6:2-9. (It was filed at 4:06 p.m. on that day.) As a result, counsel asked for an expedited process. Hrg Tr. 7:8-18. The court responded, “I plan on making a ruling Monday. I could make a ruling tomorrow, if push came to shove, but Monday probably would be soon enough. I am confident that the bankruptcy court won’t act as quickly as I will.” Hrg Tr. 7:23-8:2.

The plaintiff’s attorneys then asked that the hearing on their request for a preliminary injunction be advanced from the following Monday, which is when it had been set. Hrg Tr. 8:13-22. Counsel observed that it had been briefed by both sides. Hrg Tr. 9:1-10. After the Court confirmed through its law clerk that in fact the bankruptcy case had been filed, Hrg Tr.10:9-10, counsel asked to amend its requested relief so that the governor and the emergency

manager would be enjoined from taking any further action in the bankruptcy proceeding. Hrg Tr. 10:11-17. The court responded, “Granted, as to all your requests. How soon are you going to present me with an order?” Case No.13-734-CZ, Hrg Tr. 11:1-4, July 18, 2013. (Dkt. #1219-9).

At this point, it must be observed that the judge granted this extraordinary relief with no findings and without giving the state’s representative any opportunity to be heard.

In any event, the plaintiffs’ counsel then used a previously prepared proposed order in the case that the General Retirement System filed and modified it extensively in handwriting, most of which was legible, to change the parties, the case number, and the ordering provisions. Case No.13-734-CZ, Hrg Tr.15:7-15, July 18, 2013. (Dkt. #1219-9) It states that it was signed at 4:25 p.m., which was 10 minutes after the hearing began. Case No.13-734-CZ, Hrg Tr. 17:4-5, July 18, 2013. (Dkt. #1219-9)

A further hearing was held the next day, beginning at 11:25 a.m., on the plaintiffs’ request to amend the order of the previous afternoon. Case No.13-734-CZ, Hrg Tr. 4:2, July 19, 2013. (Dkt. #1219-10) The plaintiffs’ counsel had also filed a motion that morning for a declaratory judgment and asked the court to consider it. Hrg Tr.8:2-13 The state’s attorney then agreed to allow the court to consider it. Hrg Tr. 8:24-25. The judge then addressed the parties. This portion of the transcript is quoted at length here because it is necessary to demonstrate an important point in section B, below, concerning Congress’ purpose in granting exclusive jurisdiction to the bankruptcy court over all issues that concern the validity of a bankruptcy filing:

You know what we’re doing? We are under siege here. Well, we aren’t; I’m not. Technically I am through paper, but all of you are. Detroit is. The State is. So I’m not going to go through the usual court rules and the time and all of that. You are all going to

spend your weekend doing what lawyers do, and that's a lot of homework because we're going to have that hearing Monday unless you're asking me to do it now.

I'm going to hear everything because we're not going to piecemeal this. You all know the case. I know the case: I've done the homework. I don't think myself or my staff got any sleep last night. We've been doing research. I bet if I called all of your wives and asked if you got any sleep, they'd be saying, "No. When is my husband going to get some sleep," right? So we're going to have a hearing, and I don't care if it's today or Monday. I'll come here Saturday, if you would like. I don't care. Let's get some answers, let's get a bottom line, and let's get this moving to the Court of Appeals because that's where you all are headed. I don't care what side you're on. Someone is going up, right? So I have answers for you. Tell me your story. I've got the solution. You might not like it.

Can we move on?

Case No.13-734-CZ, Hrg Tr. 11:7-12:5, July 19, 2013. (Dkt. #1219-10)

The attorneys then agreed and argued the merits. The judge then stated her decision to grant the declaratory relief that the plaintiffs requested. Case No.13-734-CZ, Hrg Tr.33:18-35:19, July 19, 2013. (Dkt. #1219-10)

Later that day, the court entered an "Order of Declaratory Relief." This is the judgment on which the objecting parties rely in asserting their preclusion argument. The judgment is quoted at length here to demonstrate both its scope and its intended impact on this bankruptcy case:

IT IS HEREBY ORDERED:

PA 436 is unconstitutional and in violation of Article IX Section 24 of the Michigan Constitution to the extent that it permits the Governor to authorize an emergency manager to proceed under Chapter 9 in any manner which threatens to diminish or impair accrued pension benefits; and PA 436 is to that extent of no force or effect;

The Governor is prohibited by Article IX Section 24 of the Michigan Constitution from authorizing an emergency manager

under PA 436 to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits, and any such action by the Governor is without authority and in violation of Article IX Section 24 of the Michigan Constitution.

On July 16, 2013, City of Detroit Emergency Manager Kevyn Orr submitted a recommendation to Defendant Governor Snyder and Defendant Treasurer Dillon pursuant to Section 18(1) of PA 436 to proceed under Chapter 9, which together with the facts presented in Plaintiffs' filings, reflect that Emergency Manager Orr intended to diminish or impair accrued pension benefits if he were authorized to proceed under Chapter 9. On July 18, 2013, Defendant Governor Snyder approved the Emergency Manager's recommendation without placing any contingencies on a Chapter 9 filing by the Emergency Manager; and the Emergency Manager filed a Chapter 9 petition shortly thereafter. By authorizing the Emergency Manager to proceed under Chapter 9 to diminish or impair accrued pension benefits, Defendant Snyder acted without authority under Michigan law and in violation of Article IX Section 24 of the Michigan Constitution.

In order to rectify his unauthorized and unconstitutional actions described above, the Governor must (1) direct the Emergency Manager to immediately withdraw the Chapter 9 petition filed on July 18, and (2) not authorize any further Chapter 9 filing which threatens to diminish or impair accrued pension benefits.

A copy of this Order shall be transmitted to President Obama.²⁶

Order of Declaratory Judgment, *Webster v. State of Michigan*, No. 13-734-CZ (July 19, 2013).
(Dkt. #1219-8)

In their eligibility objections in this case, several of the objectors assert that this judgment is binding upon the City under the principles of *res judicata* or collateral estoppel. Specifically, they contend that this judgment precludes the City from asserting that P.A. 436 is constitutional and that the governor properly authorized this bankruptcy filing. In the alternative, these parties

²⁶ The order had been prepared by plaintiffs' counsel before the hearing and was provided to the judge at its conclusion. However, this last sentence of the judgment was handwritten, apparently by the judge herself.

assert that the judgment is at least a persuasive indication of what the Michigan Supreme Court would hold on the issue of the constitutionality of P.A. 436.

The Court concludes that it is neither.

B. The Judgment Is Void Because It Was Entered After the City Filed Its Petition.

There is a fundamental reason to deny the declaratory judgment any preclusive effect in this bankruptcy case.

Upon the City's bankruptcy filing, federal law - specifically, 28 U.S.C. § 1334(a) - gave this Court exclusive jurisdiction to determine all issues relating to the City's eligibility to be a chapter 9 debtor. That provision states, "[T]he district courts shall have original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334(a). The Sixth Circuit has explained:

Several factors highlight the exclusively federal nature of bankruptcy proceedings. The Constitution grants Congress the authority to establish "uniform Laws on the subject of Bankruptcies." U.S. Const. art. I, § 8. Congress has wielded this power by creating comprehensive regulations on the subject and by vesting exclusive jurisdiction over bankruptcy matters in the federal district courts.

Pertuso v. Ford Motor Credit Co., 233 F.3d 417, 425 (6th Cir. 2000). The court went on to quote this from *MSR Exploration, Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910, 914 (9th Cir.1996):

[A] mere browse through the complex, detailed, and comprehensive provisions of the lengthy Bankruptcy Code, 11 U.S.C. §§ 101 et seq., demonstrates Congress's intent to create a whole system under federal control which is designed to bring together and adjust all of the rights and duties of creditors and embarrassed debtors alike.

Pertuso, 233 F.3d at 417.

The wisdom of this grant of exclusive jurisdiction lies in the absolute necessity that any bankruptcy petition be filed, considered, and adjudicated in one court. Foreclosing the

opportunity for parties to litigate a bankruptcy petition in multiple courts eliminates the likely consequence of a confused and chaotic race to judgment, and of the associated multiplication of expenses. It also eliminates the potential for inconsistent outcomes.

Indeed, the necessity to prohibit such collateral attacks on a bankruptcy petition is grounded in the uniformity requirement of Article 1, Section 8 of the United States Constitution, as the Ninth Circuit has observed:

Filings of bankruptcy petitions are a matter of exclusive federal jurisdiction. State courts are not authorized to determine whether a person's claim for relief under a federal law, in a federal court, and within that court's exclusive jurisdiction, is an appropriate one. Such an exercise of authority would be inconsistent with and subvert the exclusive jurisdiction of the federal courts by allowing state courts to create their own standards as to when persons may properly seek relief in cases Congress has specifically precluded those courts from adjudicating. . . . *The ability collaterally to attack bankruptcy petitions in the state courts would also threaten the uniformity of federal bankruptcy law, a uniformity required by the Constitution.*

Gonzales v. Parks, 830 F.2d 1033, 1035 (9th Cir. 1987) (emphasis added). The Ninth Circuit continued, "A Congressional grant of exclusive jurisdiction to the federal courts includes the implied power to protect that grant." *Id.* at 1036. "A state court judgment entered in a case that falls within the federal courts' exclusive jurisdiction is subject to collateral attack in the federal courts." *Id.*

The Court recognizes that Congress has granted to other courts concurrent jurisdiction over certain proceedings related to the bankruptcy case. 28 U.S.C. § 1334(b) provides, "[T]he district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." However, it is not argued that this subsection applies here, and for good reason. It does not. Referring to 28 U.S.C. § 1334(b), the Ninth Circuit stated in *Gruntz v. Cnty. of Los Angeles (In re Gruntz)* 202 F.3d 1074, 1083 (9th

Cir. 2000) (en banc), “[N]othing in that section vests the states with any jurisdiction over a core bankruptcy proceeding[.]”

Indeed, 28 U.S.C. § 1334(b) only demonstrates that Congress knew precisely how to draw the line between those matters that should be within the exclusive jurisdiction of the federal bankruptcy court and those matters over which the jurisdiction could be shared. By denying effect to the Ingham County Circuit Court judgment in this case, this Court is enforcing that line.

The Court therefore concludes that upon the filing of this case at 4:06 p.m. on July 18, 2013, the Ingham County Circuit Court lost the jurisdiction to enter any order or to determine any issue pertaining to the City’s eligibility to be a chapter 9 debtor.

The Sixth Circuit has held that a state court judgment entered without jurisdiction is void *ab initio*. *Twin City Fire Ins. Co. v. Adkins*, 400 F.3d 293, 299 (6th Cir. 2005) (“Where a federal court finds that a state-court decision was rendered in the absence of subject matter jurisdiction or tainted by due process violations, it may declare the state court’s judgment void *ab initio* and refuse to give the decision effect in the federal proceeding.”)

Accordingly, the state court’s “Order of Declaratory Judgment” on which the objectors rely here is therefore void and of no effect, and does not preclude the City from asserting its eligibility in this Court in this case.

**C. The Judgment Is Also Void Because
It Violated the Automatic Stay.**

11 U.S.C. § 362(a)(3) provides that “a petition filed under section 301 . . . operates as a stay, applicable to all entities, of . . . any act . . . to exercise control over property of the estate[.]”

11 U.S.C. § 902(1) states, “In this chapter ‘property of the estate’, when used in a section that is made applicable in a case under this chapter by section 103(e) or 901 of this title, means property of the debtor[.]”

The Sixth Circuit has held, “[A]n action taken against a nondebtor which would inevitably have an adverse impact upon the property of the estate must be barred by the [§ 362(a)(3)] automatic stay provision.” *Amedisys, Inc. v. Nat’l Century Fin. Enters., Inc.* (*In re Nat’l Century Fin. Enters., Inc.*), 423 F.3d 567, 578 (6th Cir. 2005) (quoting *Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 392 (2d Cir. 1997). See also *Patton v. Bearden*, 8 F.3d 343, 349 (6th Cir. 1993).

The thrust of the plaintiffs’ case in *Webster v. Michigan* was to protect the plaintiffs’ pension rights by prohibiting a bankruptcy case which might allow the City to use its property in a way that might impair pensions. It does not matter that neither the City nor its officers were defendants. The suit was clearly an act to exercise control over the City’s property. Accordingly, it was stayed under 11 U.S.C. § 362(a)(3) and the state court’s “Order of Declaratory Relief” was entered in violation of the stay.²⁷

In *Easley v. Pettibone Mich. Corp.*, 990 F.2d 905, 911 (6th Cir. 1993), the court stated, “In summary, we hold that actions taken in violation of the stay are invalid and voidable and shall be voided absent limited equitable circumstances.”

²⁷ The Retirement Systems argue that there was no bankruptcy stay applicable to the state court litigation until July 25, 2013 when this Court entered an order extending the automatic stay to certain state officers. That order specifically included these state court cases as examples of cases that were included in the extended stay. Retirement Systems Br. at 51. (Dkt. #519)

That order, however, did not preclude the City from arguing later that the stay of 11 U.S.C. § 362(a)(3) applied as of the bankruptcy filing. Indeed, at the hearing on the motions that resulted in these orders, the Court expressly stated: “The Court is not ruling on whether any orders entered by the state court after this bankruptcy case was filed violated the automatic stay.” Hrg. Tr. 84:10-16, July 24, 2013. (Dkt. #188)

That issue is now squarely before the Court. For the reasons stated in the text, the Court concludes that the automatic stay of § 362(a)(3) was applicable to the Flowers, Webster and General Retirement Systems state court cases from the moment the City filed its bankruptcy petition.

In this case, no equitable circumstances suggest any reason to find that the state court's order should not be voided. Instead, equitable circumstances suggest that it should be voided. When the plaintiffs' counsel appeared in the state court on July 18 and 19, 2013, they knew that the City had filed its bankruptcy petition, as did the judge. The record of those proceedings establishes beyond doubt that the proceedings were rushed in order to achieve a prompt dismissal of the bankruptcy case. The protection that the stay of 11 U.S.C. § 362(a) affords is for the benefit of both the debtor and all creditors. *St. Paul Fire & Marine Ins. Co. v. Labuzan*, 579 F.3d 533, 541 (5th Cir. 2009); *Johnson v. Smith (In re Johnson)*, 575 F.3d 1079, 1083 (10th Cir. 2009). Condoning the actions that the plaintiffs took in this case would open the floodgates to similar actions by creditors in other bankruptcy cases and thereby vitiate that important protection.

Accordingly, the Court concludes that the judgment in *Webster* is void because its entry violated the automatic stay of 11 U.S.C. § 362(a)(3) and no equitable circumstances suggest that it should not be voided. For this additional reason, that judgment does not preclude the City from asserting its eligibility in this Court in this case.

D. Other Issues

The City disputes the application of *res judicata* and collateral estoppel on several other grounds. Specifically, it contends that the two hearings that resulted in the *Webster* judgment were confused and hurried. It also disputes whether the State was given a full and fair opportunity to be heard, and whether the judgment is binding on it, as it was not a party to the suit.

The Court concludes that in light of its conclusions that the state court lacked jurisdiction and that its judgment is void, it is unnecessary to decide these issues.

Nevertheless, the Court does comment that the transcripts of the two post-petition state court hearings on July 18 and 19, 2013 reflect a very chaotic and disorderly “race to judgment.” (Dkt. #1219-9; Dkt. #1219-10) Those proceedings are perfect examples of the very kind of litigation the Congressional grant of exclusive jurisdiction in bankruptcy to one court was designed to control and eliminate. Moreover, respect for the extraordinary gravity of the issues presented, as well as for the defendants in the case, would certainly have mandated a much more considered and deliberative judicial process. Actually, so does respect for the plaintiffs, and for the City’s other 100,000 creditors.

Finally, for the reasons stated in Part IX, above, the reasoning in the *Webster* declaratory judgment is neither persuasive nor at all indicative of how the Michigan Supreme Court would rule.

This objection to the City’s eligibility is rejected.

XIII. The City Was “Insolvent.”

To be eligible for relief under chapter 9, the City must establish that it is “insolvent.” 11 U.S.C. § 109(c)(3). Several individual objectors and AFSCME challenge the City’s assertion that it is insolvent.

A. The Applicable Law

For a municipality, the bankruptcy code defines “insolvent” as a “financial condition such that the municipality is-- (i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or (ii) is unable to pay its debts as they become due.” 11 U.S.C. § 101(32)(C).

The test under the first prong “looks to current, general non-payment.” The test under the second prong “is an equitable, prospective test looking to future inability to pay.” *Hamilton*

Creek Metro. Dist. v. Bondholders Colo. Bondshares (In re Hamilton Creek Metro. Dist.), 143 F.3d 1381, 1384 (10th Cir. 1998); *see also In re City of Stockton*, 493 B.R. 772, 788 (Bankr. E.D. Cal. 2013) (“Statutory construction rules likewise point to a temporal aspect as the § 101(32)(C)(ii) phrase ‘as they become due’ must mean something different than its § 101(32)(C)(i) partner ‘generally not paying its debts.’”).

A payment is “due” under the first prong if it is “presently, unconditionally owing and presently enforceable.” *Hamilton Creek*, 143 F.3d at 1385. When a municipality is unable to meet its presently enforceable debts, it is said to be “cash insolvent.” *See Stockton*, 493 B.R. at 789.

When considering the second prong, courts take into account broader concerns, such as longer term budget imbalances and whether the City has sufficient resources to maintain services for the health, safety, and welfare of the community. *Id.*; *see also In re Boise Cnty.*, 465 B.R. 156, 172 (Bankr. D. Idaho 2011) (“The test under § 101(32)(C)(ii) is a prospective one, which requires the petitioner to prove as of the petition date an inability to pay its debts as they become due in its current fiscal year, or, based on an adopted budget, in its next fiscal year.”)

Although each test focuses on the City’s ability to meet its financial obligations at different points in time, both are to be applied as of the time of the chapter 9 filing. *Hamilton Creek*, 143 F.3d at 1384-85 (citing *In re Town of Westlake*, 211 B.R. 860, 866 (Bank. N.D. Tex. 1997)).

Finally, the Court notes that “the theme underlying the two alternative definitions of municipal insolvency in § 101(32)(C) is that a municipality must be in bona fide financial distress that is not likely to be resolved without use of the federal exclusive bankruptcy power to impair contracts.” *Stockton*, 493 B.R. at 788.

B. Discussion

The Court finds that the City of Detroit was, and is, insolvent under both definitions in 11 U.S.C. § 101(32)(C). The Court has already detailed the enormous financial distress that the City faced as of July 18, 2013 and will not repeat that here. See Part III A, above.

1. The City Was “Generally Not Paying Its Debts As They Become Due.”

Specifically, in May 2013, the City deferred payment on approximately \$54,000,000 in pension contributions. On June 30, 2013, it deferred an additional \$5,000,000 fiscal year-end payment. Ex. 43 at 8. The City also did not make a scheduled \$39,700,000 payment on its COPs on June 14, 2013. Ex. 43 at 8. It was also spending much more money than it was receiving, and only making up the difference through expensive and even catastrophic borrowings. See Part III A 5, 8 and 9, above.

These facts establish that the City was “generally not paying its debts as they become due,” as of the time of the filing. 11 U.S.C. § 101(32)(C)(i).

AFSCME asserts that this was “[t]he purposeful refusal to make a few payments comprising a relatively small part of the City’s budget.” AFSCME Pre-Trial Br. at 51. (Dkt. #1227)

The Court must reject this assertion. The evidence established that the nearly \$40,000,000 pension-related COPs default was particularly serious because it put in jeopardy the City’s access to its casino tax revenue, which was one of the City’s few reliable sources of income. Eligibility Trial Tr. 185:16-186:23, Oct. 24, 2013. (Dkt. #1490)

Moreover, the City was operating on a “razor’s edge” for several months prior to June 2013. Eligibility Trial Tr. 189:9-10, Oct. 24, 2013. (Dkt. #1490)

As of May 2013, the City stopped paying its trade creditors to avoid running out of cash. Eligibility Trial Tr. 189:14-15, Oct. 24, 2013. (Dkt. #1490) But for these and other deferments, the City would have completely run out of cash by the end of 2013. Ex. 75 at 2.

2. The City Is Also “Unable to Pay Its Debts As They Become Due.”

The evidence was overwhelming that the City is unable to pay its debts as they become due.

The evidence established that there are many, many services in the City which do not function properly as a result of the City’s financial state. The facts found in Parts III B 6-12, above, further firmly support this conclusion.

Most powerfully, however, the testimony of Chief Craig established that the City was in a state of “service delivery insolvency” as of July 18, 2013, and will continue to be for the foreseeable future. He testified that the conditions in the local precincts were “deplorable.” Eligibility Trial Tr. 189:4-6, Oct. 25, 2013. (Dkt. #1501) “If I just might summarize it in a very short way, that everything is broken, deplorable conditions, crime is extremely high, morale is low, the absence of leadership.” Tr. 188:5-7 He described the City as “extremely violent,” based on the high rate of violent crime and the low rate of “clearance” of violent crimes. Tr. 190:11-191:25. He stated that the officers’ low morale is due, at least in part, to “the fact that they had lost ten percent pay; that they were forced into a 12-hour work schedule,” and because there was an inadequate number of patrolling officers, and their facilities, equipment and vehicles were in various states of disrepair and obsolescence. Eligibility Trial Tr. 192:20-193:3, 197:21-23, 198:10-199:18, Oct. 25, 2013. (Dkt. #1501)

In *Stockton*, the Court observed:

While cash insolvency—the opposite of paying debts as they become due—is the controlling chapter 9 criterion under § 101(32)(C), longer-term budget imbalances [budget insolvency] and the degree of inability to fund essential government services [service delivery insolvency] also inform the trier of fact’s assessment of the relative degree and likely duration of cash insolvency.

478 B.R. at 789.

Service delivery insolvency “focuses on the municipality’s ability to pay for all costs of providing services at the level and quality that are required for the health, safety, and welfare of the community.” *Id.* at 789. Indeed, while the City’s tumbling credit rating, its utter lack of liquidity, and the disastrous COPs and swaps deal might more neatly establish the City’s “insolvency” under 11 U.S.C. § 101(32)(C), it is the City’s service delivery insolvency that the Court finds most strikingly disturbing in this case.

3. The City’s “Lay” Witnesses

The objecting parties argue the City failed to establish its insolvency because it failed to present expert proof on this issue. *See* AFSCME Pre-Trial Br. at 52. (Dkt. # 1227) (“Courts in the non-chapter 9 context note that ‘it is generally accepted that whenever possible, a determination of insolvency should be based on . . . expert testimony . . .’” (citing *Brandt v. Samuel, Son & Co., Ltd. (In re Longview Aluminum, L.L.C.)*, No. 03B12184, 2005 WL 3021173, at *6 (Bankr. N.D. Ill. July 14, 2005)). This argument arises from the fact that the City mysteriously declined to qualify its financial analysts as expert witnesses.

At trial, upon the request of the City, the Court determined that under Rule 701, F.R.E., these witnesses - Charles Moore, Ken Buckfire and Gaurav Malhotra - could testify as lay witnesses regarding the City’s finances and their projections of the City’s finances in the future. Eligibility Trial Tr. 39:20-49:8, Oct. 25, 2013. (Dkt. #1501) The Court also admitted extensive

documentary evidence of the analysts' observations and projections. Tr. 49:5-8. These determinations were based upon the Court's finding that the financial consultants "had extensive personal knowledge of the City's affairs that they acquired during . . . the course of their consulting work with the city." Eligibility Trial Tr. 48:14-19, Oct. 25, 2013. (Dkt. #1501); *see, e.g., JGR, Inc. v. Thomasville Furniture Indus., Inc.*, 370 F.3d 519, 525-26 (6th Cir. 2004); *DIJO, Inc. v. Hilton Hotels Corp.*, 351 F.3d 679, 685-87 (5th Cir. 2003) (discussing *In re Merritt Logan, Inc.*, 901 F.2d 349 (3rd Cir. 1990) and *Teen-Ed, Inc. v. Kimball Int'l, Inc.*, 620 F.2d 399 (3rd Cir. 1980)). While the Court questions the City's strategy here, it is clear from these cases that there is nothing improper about the City's decision not to qualify these witnesses as experts, even though it likely could have.

The witnesses testified reliably and credibly regarding their personal knowledge of the City's finances and the basis for their knowledge. In these circumstances, the Court must reject AFSCME's argument that expert testimony is essential for a finding of insolvency under 11 U.S.C. §§ 109(c)(3) and 101(32)(C).

4. The City's Failure to Monetize Assets

Finally, the objecting parties assert that the City could have, and should have, monetized a number of its assets in order to make up for its severe cash flow insolvency. *See e.g., AFSCME Pre-Trial Br. at 53.* (Dkt. #1227)

However, Malhotra credibly established that sales of City assets would not address the operational, structural financial imbalance facing the City. Eligibility Trial Tr. 85:2-86:12, Oct. 25, 2013. (Dkt. #1501) Buckfire also testified similarly. Tr. 197:19-204:14. The undisputed evidence establishes that the "City's expenditures have exceeded its revenues from fiscal year 2008 to fiscal year 2012 by an average of \$100 million annually." Ex. 75 at 2.

When the expenses of an enterprise exceed its revenue, a one-time infusion of cash, whether from an asset sale or a borrowing, only delays the inevitable failure, unless in the meantime the enterprise sufficiently reduces its expenses and enhances its income. The City of Detroit has proven this reality many times.

In any event, when considering selling an asset, the enterprise must take extreme care that the asset is truly unnecessary in enhancing its operational revenue.

For these reasons, the Court finds that the City has established that it is insolvent as 11 U.S.C. § 109(c)(3) requires and as 11 U.S.C. § 101(32)(C) defines that term.

XIV. The City Desires to Effect a Plan to Adjust Its Debts.

To establish its eligibility for relief under chapter 9, the City must establish that it desires to effect a plan to adjust its debts. 11 U.S.C. § 109(c)(4).

A. The Applicable Law

In *Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo (In re City of Vallejo)*, 408 B.R. 280 (B.A.P. 9th Cir. 2009), the Bankruptcy Appellate Panel surveyed the case law under § 109(c)(4):

Few published cases address the requirement that a chapter 9 petitioner “desires to effect” a plan of adjustment. Those cases that have considered the issue demonstrate that no bright-line test exists for determining whether a debtor desires to effect a plan because of the highly subjective nature of the inquiry under § 109(c)(4). *Compare In re County of Orange*, 183 B.R. 594, 607 (Bankr. C.D. Cal. 1995) (proposal of a comprehensive settlement agreement among other steps taken demonstrated efforts to resolve claims which satisfied § 109(c)(4)) *with In re Sullivan County Reg'l Refuse Disposal Dist.*, 165 B.R. 60, 76 (Bankr. D.N.H. 1994) (post-petition submission of a draft plan of adjustment met § 109(c)(4)).

Petitioners may satisfy the subjective requirement with direct and circumstantial evidence. They may prove their desire by attempting to resolve claims as in *County of Orange*; by submitting a draft plan of adjustment as in *Sullivan County*; or by other evidence customarily submitted to show intent. *See Slatkin*, 525 F.3d at 812. The evidence needs to show that the “purpose of the filing of the chapter 9 petition not simply be to buy time or evade creditors.” *See Collier* ¶ 109.04[3][d], at 109–32.

Local 1186, 408 B.R. at 295.

In *Stockton*, the court expanded:

The cases equate “desire” with “intent” and make clear that this element is highly subjective. *E.g.*, *In re City of Vallejo*, 408 B.R. 280, 295 (9th Cir. BAP 2009).

At the first level, the question is whether the chapter 9 case was filed for some ulterior motive, such as to buy time or evade creditors, rather than to restructure the City’s finances. *Vallejo*, 408 B.R. at 295; 2 *Collier on Bankruptcy* ¶ 109.04[3][d], at p. 109–32 (Henry J. Sommer & Alan N. Resnick eds. 16th ed. 2011) (hereafter “*Collier*”).

Evidence probative of intent includes attempts to resolve claims, submitting a draft plan, and other circumstantial evidence. *Vallejo*, 408 B.R. at 295.

493 B.R. at 791. *See also City of San Bernardino, Cal.*, 2013 WL 5645560, at *8-12 (Bankr. C.D. Cal. 2013); *In re Boise County*, 465 B.R. 156, 168 (Bankr. D. Idaho 2011); *In re New York City Off-Track Betting Corp.*, 427 B.R. 256, 272 (Bankr. S.D.N.Y. 2010).

“Since that ‘plan’ is to be effected by an entity seeking relief under Chapter 9, it is logical to conclude that the ‘plan’ referred to in section 109(c)(4) is a ‘plan for adjustment of the debtor’s debts’ within the meaning of section 941 of the Bankruptcy Code.” *In re Cottonwood Water and Sanitation Dist., Douglas County, Colo.*, 138 B.R. 973, 975 (Bankr. D. Colo. 1992).

B. Discussion

Several objectors asserted that the City does not desire to effect a plan to adjust its debts.

The Court concludes that the evidence overwhelmingly established that the City does desire to effectuate a plan in this case. Mr. Orr so testified. Eligibility Trial Tr. 43:1-47:13, October 28, 2013. (Dkt. #1502) More importantly, before filing this case, Mr. Orr did submit to creditors a plan to adjust the City's debts. Ex. 43. Plainly, that plan was not acceptable to any of the City's creditors. It may not have been confirmable under 11 U.S.C. § 943, although it is not necessary to resolve that question at this time. Still, it was evidence of the City's desire and intent to effect a plan. There is simply no evidence that the City has an ulterior motive in pursuing chapter 9, such as to buy time or to evade creditors.

Indeed, the objecting creditors do not contend that there was any such ulterior motive. They assert no desire on the part of the City or its emergency manager to buy time or evade creditors. Rather, their argument is that the plan that the emergency manager has stated he intends to propose in this case is not a confirmable plan. It is not confirmable, they argue, because it will impair pensions in violation of the Michigan Constitution.

Certainly the evidence does establish that the emergency manager intends to propose a plan that impairs pensions. The Court has already so found. See Part VIII C 1, above. Nevertheless, the objectors' argument must be rejected. As established in Part VIII C 5, above, a chapter 9 plan may impair pension rights. The emergency manager's stated intent to propose a plan that impairs pensions is therefore not inconsistent with a desire to effect a plan.

Accordingly, the Court finds that the City does desire to effect a plan, as 11 U.S.C. § 109(c)(4) requires.

XV. The City Did Not Negotiate with Its Creditors in Good Faith.

A. The Applicable Law

The fifth requirement for eligibility is found in § 109(c)(5).

An entity may be a debtor under chapter 9 of this title if and only if such entity—

...
(5)(A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(C) is unable to negotiate with creditors because such negotiation is impracticable; or

(D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.

11 U.S.C. § 109(c)(5).

This section was enacted because Congress recognized that municipal bankruptcy is a drastic step and should only be taken as a last resort. *In re Sullivan Cnty. Reg'l Refuse Disposal Dist.*, 165 B.R. 60, 78 (Bankr. D.N.H. 1994); 5 Norton Bankr. L. & Prac. 3d § 90:25 (“It is the policy of the Bankruptcy Code that a Chapter 9 filing should be considered only as a last resort, after an out-of-court attempt to avoid bankruptcy has failed.”) Therefore, it added a requirement for pre-bankruptcy negotiation to attempt to resolve disputes.

Because § 109(c)(5) is written in the disjunctive, a debtor has four options to satisfy the requirement for negotiation: “[1] it may obtain the agreement of creditors holding a majority in amount of claims in each class [; (2)] it may show that it has negotiated with its creditors in good faith but has failed to obtain their agreement [; (3)] it may show that it is unable to negotiate with creditors because negotiation is impracticable [; or (4)] it may demonstrate that it reasonably believe[s] that a creditor may attempt to obtain a preferential transfer.” *In re Ellicott Sch. Bldg. Auth.*, 150 B.R. 261, 265–66 (Bankr. D. Colo.1992).

In re Valley Health Sys., 383 B.R. 156, 162-63 (Bankr. C.D. Cal. 2008).

The City of Detroit asserts that it has met the requirements of § 109(c)(5)(B) or, in the alternative, § 109(c)(5)(C). City’s Reply to Objections at 45-49; (Dkt. #765) City’s Pre-trial Br. at 49-67. (Dkt. #1240)

The Court finds the recent case, *In re Mendocino Coast Recreation & Park Dist.*, 12-CV-02591-JST, 2013 WL 5423788 (N.D. Cal. Sept. 27, 2013), persuasive on this issue. In that case, the district court for the Northern District of California noted:

[T]he Bankruptcy Court identified two lines of authority about 109(c)(5)(B)'s requirements. The less restrictive view, adopted by the editors of Collier, is that the debtor need not attempt to negotiate any specific plan of adjustment. *Id.* (citing 2-109 Collier on Bankruptcy ("Collier"), ¶ 109.04[3][e][ii] (16th ed.)). As the Bankruptcy Court saw the more restrictive view, adopted by *In re Cottonwood Water and Sanitation Dist.* ("Cottonwood"), 138 B.R. 973, 975 (Bankr. D. Colo.1992) and by dicta in *Vallejo*, 408 B.R. at 297, the debtor must negotiate over "the possible terms of a plan," "at least in concept."

Mendocino Coast, 2013 WL 5423788 at *2. After a thorough analysis of the legislative history of § 109(c)(5)(B), the court was "persuaded by the *Cottonwood* view that Section 109(c)(5)(B) requires municipalities not just to negotiate generally in good faith with their creditors, but also to negotiate in good faith with creditors over a proposed plan, at least in concept, for bankruptcy under Chapter 9." *Mendocino Coast*, 2013 WL 5423788 at *5. This Court is also persuaded by that analysis.

Mendocino Coast also considered how the § 109(c)(5)(B) process compares to analogous provisions in other chapters of the bankruptcy code. The court looked to 11 U.S.C. §§ 1113(b) & (c) and 1114(f)(1), which require debtors to negotiate regarding the post-petition rejection of collective bargaining agreements and pension plans in chapter 11 proceedings. The court stated:

[T]he appropriate standard to apply [under Section 109(c)(5)] is one that is "at least as stringent as those under §§ 1113 and 1114." 1 Norton Bankr. L. & Prac. 3d § 17:8, n.19. Those statutes require courts to, inter alia, determine whether the parties "[met] to confer in good faith in attempting to reach mutually satisfactory modifications," determine whether unions have rejected proposals "without good cause," and "balance . . . the equities." 11 U.S.C. § 1113(b)(2) & (c). In doing so, courts commonly assess both parties' conduct in negotiations.

Mendocino Coast, 2013 WL 5423788 at *7. The Court reached two conclusions regarding § 109(c)(5)(B):

First, courts may consider, based on the unique circumstances of each case and applying their best judgment, whether a debtor has satisfied an obligation to have “negotiated in good faith.” Second, while the Bankruptcy Code places the overwhelming weight of its burdens on petitioners, the provisions that call for negotiation contemplate that at least some very minimal burden of reciprocity be placed on parties with whom a debtor must negotiate.

Mendocino Coast, 2013 WL 5423788 at *7.

Mendocino Coast recognized that its case did not present the issue “of what must occur in a negotiation that satisfies 109(c)(5)(B). It presents the issue of what information, if missing from the debtor’s first attempt to negotiate, bars a municipality from filing Chapter 9 even if a creditor rejects the overture and declines to negotiate.” *Id.* at *8.

This Court faces the same question, and therefore finds *Mendocino Coast*’s analysis very useful, although on the facts of this case the Court ultimately reaches the opposite conclusion.

While recognizing that a determination of what qualifies as a good-faith effort to begin negotiation can depend on several factors, *Mendocino Coast* was able to make its determination upon consideration of three factors.

First, the greater the disclosure about the proposed bankruptcy plan, the stronger the debtor’s claim to have attempted to negotiate in good faith. A creditor might be justified in rejecting the overture of a debtor proposing a frivolous or unclearly described adjustment plan, but a creditor is less justified in ignoring a substantive proposal.

...

Second, the municipality’s need to immediately disclose classes of creditors and their treatment in the first communication will depend upon how material that information would be to the creditor’s decision about whether to negotiate.

...

Third, the creditor’s response, and the amount of time the creditor has had to respond, may also be factors. If a creditor has had a relatively short time to respond to the municipality’s offer to

negotiate, a lack of detail in the opening communication might weigh against a municipality rushing to file. On the other hand, where a creditor has been apprised of the possibility of a debt adjustment and declined to respond after a reasonable period of time, or where the creditor has explicitly responded with a refusal to negotiate, its position as an objector is significantly weakened.

Mendocino Coast, 2013 WL 5423788 at *8-9.

B. Discussion

In the present case, the City of Detroit argues that the June 14, 2013 proposal to creditors, along with its follow up meetings, was a good-faith effort to begin negotiations, and that the creditors refused to respond. It asserts, therefore, it has satisfied 11 U.S.C. § 109(c)(5)(B). City's Reply to Objections at 54-58. (Dkt. # 765)

The Court concludes, however, that the June 14 Proposal to Creditors and the follow up meetings were not sufficient to satisfy the requirements of 11 U.S.C. § 109(c)(5)(B). The first and third factors cited by *Mendocino Coast* weigh heavily against finding that the City's initial efforts satisfied the requirement of good faith negotiation. The Proposal to Creditors did not provide creditors with sufficient information to make meaningful counter-proposals, especially in the very short amount of time that the City allowed for the "discussion" period.

The City's proposal to creditors is a 128 page document. Ex. 43. The City invited many creditors or "stakeholders" to the meeting on June 14, 2013, when it presented the proposal. Its presentation was a 120 deck powerpoint presentation, providing information regarding the financial condition of the City and proposing across the board reductions in creditor obligations.

The restructuring proposal began on page 101. Addressed on page 109 are the proposed treatment of the unsecured general obligation bonds, the claims of service corporations on account of the COPs, the claims for unfunded OPEB liabilities, the claims for unfunded pension

liabilities and the claims on account of other liabilities. Ex. 43. Charitably stated, the proposal is very summary in nature.

For example, the proposed treatment for underfunded pension liabilities is three bullet points in length. The first bullet point states that the underfunding is approximately \$3.5B. The second bullet point states, “Claims for the underfunding will be exchanged for a pro rata (relative to all unsecured claims) principal amount of new Notes.” The third bullet point states, “Because the amounts realized on the underfunding claims will be substantially less than the underfunding amount, there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons.” Ex. 43 at 109.

This is simply not enough information for creditors to start meaningful negotiations. Brad Robins, of Greenhill & Co. LLC, financial advisor to the Retirement Systems, testified, “The note, itself, I thought was not really a serious proposal but maybe a place holder, [because it had] no maturity, no obligation for the City to pay.” Eligibility Trial Tr. 129:1-11, Nov. 7, 2013. (Dkt. #1681)

The City asserts that it provided supporting data in an “electronic data room.” However, several witnesses testified that the data room did not contain all the necessary data to make a meaningful evaluation of the proposal to creditors. Brad Robins testified that the data room was missing “lots of information: value of assets, different projections and build-ups.” Eligibility Trial Tr. 133:7-10, Nov. 7, 2013. (Dkt. #1681) He felt that prior to the filing date, Greenhill was not given complete information to fully evaluate what was laid out in the June 14, 2013 proposal. Eligibility Trial Tr. 135:17-20, Nov. 7, 2013. (Dkt. #1681) Mark Diaz testified that he made a request to the City for additional information and did not receive a response. Eligibility Trial Tr. 192:1-5, Nov. 7, 2013. (Dkt. #1681)

Moreover, the City conditioned access to the data room on the signing of a confidentiality and release agreement. This created an unnecessary hurdle for creditors.

The creditors simply cannot be faulted for failing to offer counter-proposals when they did not have the necessary information to evaluate the City's vague initial proposal.

The proposal for creditors provided a calendar on page 113. Ex. 43. It allotted one week, June 17, 2013 through June 24, 2013, for requests for additional information. Initial rounds of discussions with stakeholders were scheduled for June 17, 2013 through July 12, 2013. The evaluation period was scheduled to be July 15, 2013 through July 19, 2013. This calendar was very tight and it did not request counter-proposals or provide a deadline for submitting them.

The City filed its bankruptcy on July 18, 2013, the day before the end of the evaluation period. Although the objecting creditors argue that in hindsight the bankruptcy filing was a forgone conclusion, they argue that the initial proposal did not make clear the City's intention to file. Regardless, the time available for creditor negotiations was approximately thirty days. Given the extraordinary complexities of the case, that amount of time is simply far too short to conclude that such a vague proposal to creditors rises to the level required to shift the burden to objectors to make counter-proposals.

In addition to the lack of detail in the initial proposal and the short response time, the Court notes that two additional factors support its conclusion.

First, the City affirmatively stated that the meetings were not negotiations. Eligibility Trial Tr. 188:22-24, 189:1-3, Nov. 7, 2013; (Dkt. #1681) Orr Dep. Tr. 129:14-18, 262:1-25, Sept. 16, 2013. The City asserts this was to clarify that the City was not waiving the suspension of collective bargaining under P.A. 436. Orr Dep. Tr. 264:23-265:7, Sept. 16, 2013 (Dkt. #1159-B); Orr Dep. Tr. 63:21-64.20, Oct. 28, 2013. (Dkt. # 1502) This explanation is inadequate,

bordering on disingenuous. The City simply cannot announce to creditors that meetings are not negotiations and then assert to the Court that those same meetings amounted to good faith negotiations.

Second, the format of the meetings was primarily presentational, to different groups of creditors with different issues, and gave little opportunity for creditor input or substantive discussion. Eligibility Trial Tr. 145:7-146:3, Nov. 4, 2013. (Dkt. #1683) For example, at the end of the June 14, 2013 meeting, creditors were permitted to submit questions via notecard. Shirley Lightsey attended the June 20, 2013, July 10, 2013 and July 11, 2013 meetings and testified that there was no opportunity to meet in smaller groups to discuss retiree-specific issues. Eligibility Trial Tr.108:19-20, 109:22-23, 111:1-3, Nov. 4, 2013. (Dkt. #1683) Mark Diaz, President of the Detroit Police Officers Association, testified there was no back and forth discussion. Eligibility Trial Tr. 187:22-25, 189:1-3, Nov. 7, 2013. (Dkt. #1681)

The City argues that these meetings were intended to start negotiations and that they expected counter-proposals from the creditors. Even as a first step, these meetings failed to reach a level that would justify a finding that negotiations had occurred, let alone good faith negotiations. Moreover, the Court finds that the lack of negotiations were not due to creditor recalcitrance. Accordingly, the Court concludes that the City has not established by a preponderance of the evidence that it has satisfied the requirement of 11 U.S.C. § 109(c)(5)(B).

XVI. The City Was Unable to Negotiate with Creditors Because Such Negotiation Was Impracticable.

A. The Applicable Law

Nevertheless, the Court finds that negotiations were in fact, impracticable, even if the City had attempted good faith negotiations. “[I]mpracticability of negotiations is a fact-sensitive inquiry that ‘depends upon the circumstances of the case.’” *In re New York City Off-Track*

Betting Corp., 427 B.R. 256, 276-77 (Bankr. S.D.N.Y. 2010) (quoting *In re City of Vallejo*, 408 B.R. at 298); *In re Valley Health Sys.*, 383 B.R. 156, 162-63 (Bankr. C.D. Cal. 2008) (“There is nothing in the language of section 109(c)(5)(C) that requires a debtor to either engage in good faith pre-petition negotiations with its creditors to an impasse or to satisfy a numerosity requirement before determining that negotiation is impracticable under the specific facts and circumstances of a case.”). See also *In re Hos. Auth. Pierce County*, 414 B.R. 702, 713 (Bankr. W.D. Wash. 2009) (“Whether negotiations with creditors is impracticable depends on the circumstances of the case.”).

“Impracticable” means “not practicable; incapable of being performed or accomplished by the means employed or at command; infeasible.” Webster’s New International Dictionary 1136 (3d ed. 2002). In the legal context, “impracticability” is defined as “a fact or circumstance that excuses a party from performing an act, esp. a contractual duty, because (though possible) it would cause extreme and unreasonable difficulty.” Black’s Law Dictionary 772 (8th ed. 2004).

In re Valley Health Sys., 383 B.R. at 163.

Congress adopted § 109(c)(5)(C) specifically “to cover situations in which a very large body of creditors would render pre-filing negotiations impracticable.” *In re Cnty. of Orange*, 183 B.R. 594, 607 (Bankr. C.D. Cal. 1995) (quoting *In re Sullivan County Reg’l Refuse Disposal Dist.*, 165 B.R. at 79 n. 55.) See also *In re New York City Off-Track Betting Corp.*, 427 B.R. at 276-77; 2 Collier on Bankruptcy ¶ 109.04[3][e][iii]. “The impracticality requirement may be satisfied based on the sheer number of creditors involved.” *Cnty. of Orange*, 183 B.R. at 607. See *In re Villages at Castle Rock Metro. Dist. No. 4*, 145 B.R. 76, 85 (Bankr. D. Colo. 1990) (“It certainly was impracticable for [debtor] to have included several hundred Series D Bondholders in these conceptual discussions.”); *Valley Health Sys.*, 383 B.R. at 165 (finding that the requirement of § 109(c)(5)(C) was met where the debtor’s petition disclosed not more than 5,000

creditors holding claims in excess of \$100,000,000); *In re Pierce Cnty. Hous. Auth.*, 414 B.R. 702, 714 (Bankr. W.D. Wash. 2009) (over 7,000 creditors and parties in interest were set forth on the mailing matrix).

B. Discussion

The list of creditors for the City of Detroit is over 3500 pages. Ex. 64 (Dkt. #1059) It lists over 100,000 creditors. It is divided into fifteen schedules including the following classifications: Long-Term Debt; Trade Debt, Employee Benefits; Pension Obligations, Non-Pension Retiree Obligations; Active Employee Obligations; Workers' Compensation; Litigation and Similar Claims; Real Estate Lease Obligations; Deposits; Grants; Pass-Through Obligations, Obligations to Component Units of the City; Property Tax-Related Obligations; Income Tax-Related Obligations. Ex. 64 at 2-3. (Dkt. #1059) The summary of schedules provided with the list estimates the amount of claims and percent total for each schedule where sufficient information is available to determine those amounts. (Dkt. #1059-1) Some schedules such as Workers' Compensation and Litigation and Similar Claims do not have amounts listed because they are unliquidated, contingent and often disputed claims.

Long term debt, including bonds, notes and loans, capital lease, and obligations arising under the COPs and swaps, is listed at over \$8,700,000,000 or approximately 48.52% of the City's total debt. Within this category are several series of bonds where individual bondholders are not identified. Many of these bondholders are not represented by any organization. Ex. 28 at 10.

As noted above, pension obligations are estimated at almost \$3,500,000,000 or 19.33% of the City's total debt. The City estimates over 20,000 individual retirees are owed pension funds.

Ex. 28 at 9. OPEB amounts are estimated at approximately \$5,700,000,000 or 31.81% of the City's total debt.

The Court is satisfied that when Congress enacted the impracticability section, it foresaw precisely the situation facing the City of Detroit. It has been widely reported that Detroit is the largest municipality ever to file bankruptcy. Indeed, one of the objectors stated that it is “by far the largest and most economically significant city ever to file for chapter 9 bankruptcy.” AFSCME’s Supplemental Br. on Good Faith Negotiations at 7. (Dkt. #1695) The sheer size of the debt and number of individual creditors made pre-bankruptcy negotiation impracticable – impossible, really.

There are, however, several other circumstances that also support a finding of impracticability.

First, although several unions have now come forward to argue that they are the “natural representatives of the retirees,” those same unions asserted in response to the City’s pre-filing inquires that they did not represent retirees. Ex. 32. For example, in a May 22, 2013 letter, Robyn Brooks, the President of UAW Local 2211, stated, “This union does not, however, represent current retirees and has no authority to negotiate on their behalf.” John Cunningham sent the same response on behalf of UAW Locals 412 and 212. In a May 27, 2013 letter, Delia Enright, President of AFSCME Local 1023, stated, “Please be advised that in accordance with Michigan law, I have no authority in which to renegotiate the Pension or Medical Benefits that retired members of our union currently receive.” Several other union representatives sent similar responses.

These responses sent a clear message to the City that the unions would not negotiate on behalf of the retirees. *See Stockton*, 493 B.R. at 794 (“it is impracticable to negotiate with 2,400 retirees for whom there is no natural representative capable of bargaining on their behalf.”).

Several voluntary associations, including the RDPMA, the Detroit Retired City Employees (“DRCEA”), and the Retired Detroit Police and Fire Fighters Association (“RDPFFA”), assert that they are the natural representatives of retirees. However, none assert that they can bind individual retirees absent some sort of complex class action litigation. Ex. 301 at ¶ 6; (Dkt. # 497-2) Eligibility Trial Tr. 115:15-22, Nov. 4, 2013; (Dkt. #1683) Ex. 302 at ¶6; (Dkt. #497-3) Eligibility Trial Tr.164:1-8, Nov. 4, 2013. (Dkt. #1683) Ultimately “it would be up to the individual members of the association to decide if they would accept or reject” an offer. Eligibility Trial Tr. 157:1-4, Nov. 4, 2013. (Dkt. #1683)

Further, several witnesses who testified on behalf of the retiree associations made it clear that they would not have negotiated a reduction in accrued pension benefits because they consider them to be fully protected by state law. As Shirley Lightsey testified, “The DRCEA would not take any action to solicit authority from its membership to reduce pension benefits because they’re protected by the Michigan Constitution.” Eligibility Trial Tr. 125:3-7, Nov. 4, 2013. (Dkt. #1683)

The answers to interrogatories from both organizations reveal a similar inflexibility. “[T]he purpose of the RDPFFA has always been and remains to protect and preserve benefits of retirees, not to reduce such benefits.” Ex. 83, Answers to Interrogatories No. 4. See also Answer to Interrogatories No. 6 for similar statement by DRCEA.

Indeed, as noted above, within two weeks of the June 14, 2013 meeting, some retirees had filed lawsuits attempting to block this bankruptcy based on their state law position. (*Flowers v. Synder*, No. 13-729-CZ July 3, 2013; *Webster v. Synder* No. 13-734-CZ July 3, 2013)

It is impracticable to negotiate with a group that asserts that their position is immutable. *See Stockton*, 493 B.R. at 794 (Bankr. E.D. Cal. 2013) (“it is impracticable to negotiate with a stone wall.”).

The Court concludes that the position of the several retiree associations that they would never negotiate a reduction in accrued pension benefits made negotiations with them impracticable.

Finally, the City has sufficiently demonstrated that time was quickly running out on its liquidity. Ex. 9. (Dkt. #12) The Court therefore rejects the objectors’ assertions that the City manufactured any time constraints in an attempt to create impracticability. Throughout the pertinent time periods, the City was in a financial emergency.

Courts also frequently find that negotiations are impracticable where pausing to negotiate before filing for chapter 9 protection would put the debtor’s assets at risk. *See, e.g., In re Valley Health Sys.*, 383 B.R. at 163 (“Negotiations may also be impracticable when a municipality must act to preserve its assets and a delay in filing to negotiate with creditors risks a significant loss of those assets.”); 2 Collier on Bankruptcy ¶ 109.04[3][e][iii] (“[W]here it is necessary to file a chapter 9 case to preserve the assets of a municipality, delaying the filing to negotiate with creditors and risking, in the process, the assets of the municipality makes such negotiations impracticable.”).

In re New York City Off-Track Betting Corp., 427 B.R. at 276-77.

The majority of the City’s debt is bond debt and legacy debt. Neither the pension debt nor the bond debt are adjustable except through consent or bankruptcy. Negotiations with retirees and bondholders were impracticable due to the sheer number of creditors, and because many of the retirees and bondholders have no formal representatives who could bind them, or

even truly negotiate on their behalf. Additionally, the Court finds that the City’s fiscal crisis was not self-imposed and also made negotiations impracticable.

Accordingly, the Court finds that pre-filing negotiations were impracticable. The City has established by a preponderance of the evidence that it meets the requirements of 11 U.S.C. § 109(c)(5)(C).

**XVII. The City Filed Its
Bankruptcy Petition in Good Faith.**

The last requirement for eligibility is set forth in 11 U.S.C. § 921(c), which provides, “After any objection to the petition, the court, after notice and a hearing, may dismiss the petition if the debtor did not file the petition in good faith or if the petition does not meet the requirements of this title.”

Unlike the eligibility requirements in § 109(c), “the court’s power to dismiss a petition under § 921(c) is permissive, not mandatory.” *In re Pierce Cnty. Hous. Auth.*, 414 B.R. 702, 714 (Bankr. W.D. Wash. 2009) (citing 6 Collier on Bankruptcy ¶ 921.04[4], at 921-7); *In re Cnty. of Orange*, 183 B.R. 594, 608 (Bankr. C.D. Cal. 1995) (citing *In re Sullivan Cnty. Reg. Refuse Disposal Dist.*, 165 B.R. 60, 79 (Bankr. D.N.H. 1994)) (“the court has discretion to dismiss a petition if it finds that the petition was not filed in good faith”).

The City’s alleged bad faith in filing its chapter 9 petition was a central issue in the eligibility trial. Indeed, in one form or another, all of the objecting parties have taken the position that the City did not file its chapter 9 petition in good faith and that this Court should exercise its discretion under 11 U.S.C. § 921(c) to dismiss the case.

A. The Applicable Law

“Good faith in the chapter 9 context is not defined in the Code and the legislative history of [section] 921(c) sheds no light on Congress’ intent behind the requirement.” *In re New York City Off-Track Betting Corp.*, 427 B.R. 256, 278-79 (Bankr. S.D.N.Y. 2010) (quoting *In re Cnty. of Orange*, 183 B.R. at 608) (quotation marks omitted).

In *Stockton*, the Court found:

Relevant considerations in the comprehensive analysis for § 921 good faith include whether the City’s financial problems are of a nature contemplated by chapter 9, whether the reasons for filing are consistent with chapter 9, the extent of the City’s prepetition efforts to address the issues, the extent that alternatives to chapter 9 were considered, and whether the City’s residents would be prejudiced by denying chapter 9 relief.

Stockton, 493 B.R. at 794.

Similarly, the court in *New York City Off-Track Betting Corp.*, 427 B.R. at 279 (quoting 6 Collier on Bankruptcy ¶ 921.04[2]), stated:

The leading treatise lists six different factors that the courts may examine when determining whether a petition under chapter 9 was filed in good faith: (i) the debtor’s subjective beliefs; (ii) whether the debtor’s financial problems fall within the situations contemplated by chapter 9; (iii) whether the debtor filed its chapter 9 petition for reasons consistent with the purposes of chapter 9; (iv) the extent of the debtor’s prepetition negotiations, if practical; (v) the extent that alternatives to chapter 9 were considered; and (vi) the scope and nature of the debtor’s financial problems.

The essence of this good faith requirement is to prevent abuse of the bankruptcy process. *In re Villages at Castle Rock Metro. Dist. No. 4*, 145 B.R. at 81.

In conducting its good faith analysis, the Court must consider the broad remedial purpose of the bankruptcy code. *See, e.g., Stockton*, 493 B.R. at 794; *see also In re Mount Carbon Metro. Dist.*, 242 B.R. 18, 32 (Bankr. D. Colo. 1999) (“The purpose of reorganization under

Chapter 9 is to allow municipalities created by state law to adjust their debts through a plan voted on by creditors and approved by the bankruptcy court.”).

Indeed, “if all of the eligibility criteria set forth in § 109(c) as described above are satisfied, it follows that there should be a strong presumption in favor of chapter 9 relief.” *Stockton*, 493 B.R. at 794. This Court agrees with the analysis set forth in the *Stockton* case on the issue of good faith under § 921(c):

The quantum of evidence that must be produced to rebut the § 921(c) good faith presumption is appropriately evaluated in light of, first, the policy favoring the remedial purpose of chapter 9 for those entities that meet the eligibility requirements of § 109(c) and, second, the risk that City residents will be prejudiced if relief nevertheless is denied.

Stockton, 493 B.R. at 795.

B. Discussion

As explained below, the Court finds that the totality of the circumstances, coupled with the presumption of good faith that arises because the City has proven each of the elements of eligibility under § 109(c)(3), establishes that the City filed its petition in good faith under § 921(c).

1. The Objectors’ Theory of Bad Faith

In section 3, below, the Court will review the factors upon which it relies in finding that the City filed this case in good faith. First, however, it is crucial to this process for the Court to give voice to what it understands is the narrative giving rise to the objecting parties’ argument that the City of Detroit did not file this case in good faith. The Court will then, in section 2, explain that there is some support in the record for that narrative.

It must be recognized that the narrative that the Court describes here is a composite of the objecting parties' positions and presentations on this issue. No single objecting party neatly laid out this precise version with all of the features described here. Moreover, it includes the perceptions of the objecting parties whose objections were filed by attorneys, as well as the many objecting parties who filed their objections without counsel. Naturally, these views on this subject were numerous, diverse, and at times inconsistent.

The Court will use an italics font for its description of this narrative, not to give it emphasis, but as a reminder that these are **not** the Court's findings. As noted, this is only the Court's perception of a composite narrative that appears to ground the objectors' various bad faith arguments:

According to this composite narrative of the lead-up to the City of Detroit's bankruptcy filing on July 18, 2013, the bankruptcy was the intended consequence of a years-long, strategic plan.

The goal of this plan was the impairment of pension rights through a bankruptcy filing by the City.

Its genesis was hatched in a law review article that two Jones Day attorneys wrote. This is significant because Jones Day later became not only the City's attorneys in the case, but is also the law firm from which the City's emergency manager was hired. The article is Jeffrey B. Ellman; Daniel J. Merrett, Pensions and Chapter 9: Can Municipalities Use Bankruptcy to Solve Their Pension Woes?, 27 EMORY BANKR. DEV. J. 365 (2011). It laid out in detail the legal roadmap for using bankruptcy to impair municipal pensions.

The plan was executed by the top officials of the State of Michigan, including Governor Snyder and others in his administration, assisted by the state's legal and financial consultants - the Jones Day law firm and the Miller Buckfire investment banking firm. The goals of the plan also included lining the professionals' pockets while extending the power of state government at the expense of the people of Detroit.

Always conscious of the hard-fought and continuing struggle to obtain equal voting rights in this country and an equal opportunity to partake of the country's abundance, some who hold to this narrative also suspect a racial element to the plan.

The plan foresaw the rejection of P.A. 4 coming in the November 2102 election, and so work began on P.A. 436 beforehand. As a result, it only took 14 days to enact it after it was introduced in the legislature's post-election, lame-duck session.

It was also enacted in derogation of the will of the people of Michigan as just expressed in their rejection of P.A. 4.

The plan also included inserting into P.A. 436 two very minor appropriations provisions so that the law would not be subject to the people's right of referendum and would not risk the same fate as P.A. 4 had just experienced.

The plan also called for P.A. 436 to be drafted so that the Detroit emergency manager would be in office under the revived P.A. 72 on the effective date of P.A. 436. This was done so that he would continue in office under P.A. 436, M.C.L. § 141.1572, and no consideration could be given to the other options that P.A. 436 appeared to offer for resolving municipal financial crises. See M.C.L. § 141.1549(10) ("An emergency financial manager appointed under former 1988 PA 101 or former 1990 PA 72, and serving immediately prior to the effective date of this act, shall be considered an emergency manager under this act and shall continue under this act to fulfill his or her powers and duties."); see also id. § 141.1547 (titled, "Local government options . . .").

The plan also saw the value in enticing a bankruptcy attorney to become the emergency manager, even though he did not have the qualifications required by P.A. 436. M.C.L. § 141.1549(3)(a).

Another important part of the plan was for the state government to starve the City of cash by reducing its revenue sharing, by refusing to pay the City millions of promised dollars, and by imposing on the City the heavy financial burden of expensive professionals.

The plan also included suppressing information about the value of the City's assets and refusing to investigate the value of its assets - the art at the Detroit Institute of the Arts; Belle Isle; City Airport; the Detroit Zoo; the Department of Water and Sewerage; the Detroit Windsor Tunnel; parking operations; Joe Louis Arena, and City-owned land.

The narrative continues that this plan also required active concealment and even deception, despite both the great public importance of resolving the City's problems and the democratic mandate of transparency and honesty in government. The purposes of this concealment and deception were to provide political cover for the governor and his administration when the City would ultimately file for bankruptcy and to advance their further political aspirations. Another purpose was to deny creditors, especially those whose retirement benefits would be at risk from such a filing, from effectively acting to protect those interests.

This concealment and deception were accomplished through a public relations campaign that deliberately misstated the ultimate objective of P.A. 436 – the filing of this case. It also downplayed the likelihood of bankruptcy, asserted an unfunded pension liability amount that was based on misleading and incomplete data and analysis, understated the City’s ability to meet that liability, and obscured the vulnerability of pensions in bankruptcy. It also included imposing an improper requirement to sign a confidentiality and release agreement as a condition of accessing the City’s financial information in the “data room.”

As the bankruptcy filing approached, a necessary part of the plan became to engage with the creditors only the minimum necessary so that the City could later assert in bankruptcy court that it attempted to negotiate in good faith. The plan, however, was not to engage in meaningful pre-petition negotiations with the creditors because successful negotiations might thwart the plan to file bankruptcy. “Check-a-box” was the phrase that some objecting parties used for this.

The penultimate moment that represented the successful culmination of the plan was the bankruptcy filing. It was accomplished in secrecy and a day before the planned date, in order to thwart the creditors who were, at that very moment, in a state court pursuing their available state law remedies to protect their constitutional pension rights. “In the dark of the night” was the phrase used to describe the actual timing of the filing. The phrase refers to the secrecy surrounding the filing and is also intended to capture in shorthand the assertion that the petition was filed to avoid an imminent adverse ruling in state court.

Another oft-repeated phrase that was important to the objectors’ theory of the City’s bad faith was “foregone conclusion.” This was used in the assertion that Detroit’s bankruptcy case was a “foregone conclusion,” as early as January 2013, perhaps even earlier.

Finally, post-petition, the plan also necessitated the assertion of the common interest privilege to protect it and its participants from disclosure.

The Court will now turn to its evaluation of this narrative of bad faith on the City’s part in filing this case.

2. The Court’s Conclusions Regarding the Objectors’ Theory of Bad Faith

The Court acknowledges that many people in Detroit hold to this narrative, or at least to substantial parts of it.

The Court further recognizes, on the other hand, that State and City officials vehemently deny any such improper motives or tactics as this theory attributed to them. They contend that the case was filed for the proper desired and necessary purpose of restructuring the City's debt, including its pension debt, through a plan of adjustment. Indeed, in Part XIV, above, the Court has already found that the City does desire to effect a plan of adjustment.

The Court finds, however, that in some particulars, the record does support the objectors' view of the reality that led to this bankruptcy filing. It is, however, not nearly supported in enough particulars for the Court to find that the filing was in bad faith.

The evidence in support of the objectors' theory is as follows:

- The testimony of Howard Ryan, the legislative assistant for the Michigan Department of Treasury who shepherded P.A. 436 through the legislative process. He testified that the appropriations provisions in P.A. 436 were inserted to eliminate the possibility of a referendum vote on the law, and everyone knew that. Ryan Dep. Tr. 46:1-23, Oct. 14, 2013. To the same effect is Exhibit 403, a January 31, 2013 email from Mr. Orr to fellow Jones Day attorneys, stating, "By contrast Michigan's new EM law is a clear end-around the prior initiative that was rejected by the voters in November. . . . The news reports state that opponents of the prior law are already lining up to challenge this law. Nonetheless, I'm going to speak with Baird in a few minutes to see what his thinking is. I'll let you know how it turns out. Thanks." Ex. 403.
- Email exchanges between other attorneys at the Jones Day law firm during the time period leading up Mr. Orr's appointment as Emergency Manager and the retention of the Jones Day law firm to represent the City. For example, Exhibit 402 contains an email dated January 31, 2013 from Corinne Ball of Jones Day to Mr. Orr, which states:

Food for thought for your conversation with Baird and us - I understand that the Bloomberg Foundation has a keen interest in this area. I was thinking about whether we should talk to Baird about financial support for this project and in particular the EM. Harry Wilson-from the auto task force-told me about the foundation and its interest. I can ask Harry for contact info-this kind of support in ways 'nationalizes' the issue and the project.

Ex. 402 at 2. Exhibit 402 also contains an email dated January 31, 2013, from Dan T. Moss at Jones Day to Mr. Orr, which states:

Making this a national issue is not a bad idea. It provides political cover for the state politicians. Indeed, this gives them an even greater incentive to do this right because, if it succeeds, there will be more than enough patronage to allow either Bing or Snyder to look for higher callings—whether Cabinet, Senate, or corporate. Further, this would give you cover and options on the back end.

Ex. 402 at 2.

- Exhibit 403, containing an email dated February 20, 2013, from Richard Baird, a consultant to the governor to Mr. Orr, stating: “Told [Mayor Bing] there were certain things I would not think we could agree to without your review, assessment and determination (such as keeping the executive team in its entirety). *Will broker a meeting via note between you and the Mayor’s personal assistant who is not FOIA ble.*” Ex. 403 (emphasis added). The Court finds that “FOIA” is a reference to the Freedom of Information Act. Generally, FOIA provides citizens with access to documents controlled by state or local governments. *See* M.C.L. § 15.231.
- The Jones Day Pitch Book. As part of its “Pitch Presentation,” the Jones Day law firm presented, in part, the following playbook for the City’s road to chapter 9:
 - (i) the difficulty of achieving an out of court settlement and steps to bolster the City’s ability to qualify for chapter 9 by establishing a good faith record of negotiations, Ex. 833 at 13; 16-18; 22-23; 28;
 - (ii) the EM could be used as “political cover” for difficult decisions such as an ultimate chapter 9 filing, Ex. 833 at 16;
 - (iii) warning that pre-chapter 9 asset monetization could implicate the chapter 9 eligibility requirement regarding insolvency, thus effectively advising the City against raising money in order to will itself into insolvency, Ex. 833 at 17; and
 - (iv) describing protections under state law for retiree benefits and accrued pension obligations and how chapter 9 could be used as means to further cut back or compromise accrued pension obligations otherwise protected by the Michigan Constitution, Ex. 833 at 39; 41.
- The State’s selection of a distinguished bankruptcy lawyer to be the emergency manager for Detroit. Orr Dep. Tr. 18:12-21:20, Sept. 16, 2013 (discussing how Mr. Orr came with the Law Firm in late January to pitch for the City’s restructuring work before a “restructuring team [of] advisors”); Baird Dep.Tr. 13:11-15:10, Oct. 10, 2013. During that pitch, Mr. Orr (among other lawyers that would be working on the proposed engagement) was presented primarily as a “bankruptcy and restructuring attorney.” Orr Dep. Tr. 21:3-6, Sept. 16, 2013; see also Bing Dep.Tr. 12:7-13:7, Oct. 14, 2013 (indicating that Baird explained to Mayor Bing that Baird was “impressed with him [Mr. Orr], that he had been part of the bankruptcy team representing

Chrysler” and that Mr. Orr primarily had restructuring experience in the context of bankruptcy).

- Jones Day provided 1,000 hours of service without charge to the City or the State to position itself for this retention. Ex. 860 at 1 (Email dated January 28, 2013, from Corinne Ball to Jeffrey Ellman, both of Jones Day, stating: “Just heard from Buckfire. . . . Strong advice not to mention 1000 hours except to say we don’t have major learning curve”). *See also* Eligibility Trial Tr. 103:23-109:17, November 5, 2013; (Dkt. #1584) Ex. 844.

Exhibit 844 provides a list of memos that attorneys at Jones Day prepared prior to June 2012, “in connection with the Detroit matter.” Heather Lennox of Jones Day requested copies of these memos for a June 6, 2012, meeting with Ken Buckfire, of Miller Buckfire, and Governor Snyder. Some of the memos include:

- (1) “Summary and Comparison of Public Act 4 and Chapter 9”
- (2) “Memoranda on Constitutional Protections for Pension and OPEB Liabilities”
- (3) “The ability of a city or state to force the decertification of a public union”
- (4) “The sources of, and the ability of the State to withdraw, the City’s municipal budgetary authority.”
- (5) “Analysis of filing requirements of section 109(c)(5) of the Bankruptcy Code (“Negotiation is Impracticable” and “Negotiated in Good Faith”)

- Exhibit 846, an email dated March 2, 2012, from Jeffrey Ellman to Corinne Ball, both of Jones Day, with two other Jones Day attorneys copied. The subject line is, “Consent Agreement,” and the body of the email states:

We spoke to a person from Andy’s office and a lawyer to get their thoughts on some of the issues. I thought MB was also going to try to follow up with Andy directly about the process for getting this to the Governor, but I am not sure if that happened.

....

The cleanest way to do all of this probably is new legislation that establishes the board and its powers, AND includes an appropriation for a state institution. If an appropriation is attached to (included in) the statute to fund a state institution (which is broadly defined), then the statute is not subject to repeal by the referendum process.

Tom is revisiting the document and should have a new version shortly, with the idea of getting this to at least M[iller]B[uckfire]/Huron [Consulting] by lunchtime.

- Exhibits 201 & 202, showing that Jones Day and Miller Buckfire consulted with state officials on the drafting of the failed consent agreement with the City. They

continued to work on a “proposed new statute to replace Public Act 4” thereafter. Ex. 847, Ex. 851. *See also* Ex. 846.

- The testimony of Donald Taylor, President of the Retired Detroit Police and Fire Fighters Association. He testified about a meeting that he had with Mr. Orr on April 18, 2013: “I asked him if he was - - about the pensions of retirees. He said that he was fully aware that the pensions were protected by the state Constitution, and he had no intention of trying to modify or set aside . . . or change the state Constitution.” Eligibility Trial Tr. 140:9-13, November 4, 2013. (Dkt. #1605)
- At the June 10, 2013 community meeting, Mr. Orr was asked a direct question - what is going to happen to the City employee’s pensions? Mr. Orr responded that pension rights are “sacrosanct” under the state constitution and state case law, misleadingly not stating that upon the City’s bankruptcy filing, his position would be quite the opposite. In response to another question about whether Mr. Orr had a “ball park estimation” of the City’s chances of avoiding bankruptcy, Mr. Orr responded that, as of June 10, there was a “50/50” chance that the City could avoid bankruptcy, knowing that in fact there was no chance of that.
- State Treasurer Andy Dillon expressed concern that giving up too soon on negotiations made the filing “look[] premeditated” Ex. 626 at 2.
- The City allotted only thirty four days to negotiate with creditors after the June 14 Proposal to Creditors. Ex. 43 at 113.

The issue that this evidence presents is how to evaluate it in the context of the good faith requirement. For example, during the orchestrated lead-up to the filing, was the City of Detroit’s bankruptcy filing a “foregone conclusion” as the objecting parties assert? Of course it was, and for a long time.

Even if it was a foregone conclusion, however, experience with both individuals and businesses in financial distress establishes that they often wait longer to file bankruptcy than is in their interests. Detroit was no exception. Its financial crisis has been worsening for decades and it could have, and probably should have, filed for bankruptcy relief long before it did, perhaps even years before. At what point in Detroit’s financial slide did it lose the ability, without bankruptcy help, to restructure its debt in a way that would firmly ground its economic and

social revitalization? Was it after the disastrous COPs and swaps deal in 2005? Or even sometime before?

The record here does not permit an answer to that question. Whatever the answer, however, the Court must conclude that Detroit's bankruptcy filing was certainly a "foregone conclusion" during all of 2013.

For purposes of determining the City's good faith, however, it hardly matters. As noted, many in financial difficulty, Detroit included, wait too long to file bankruptcy.

Then the issue becomes what impact does it have on the good faith analysis that Detroit probably waited too long. Perhaps it would have been more consistent with our democratic ideals and with the economic and social needs of the City if its officials and State officials had openly and forthrightly recognized the need for filing bankruptcy when that need first arose. It is, after all, not bad faith to file bankruptcy when it is needed.

City officials also could have avoided the appearance of pretext negotiations, and the resulting mistrust, by simply announcing honestly that because negotiating with so many diverse creditors was impracticable, negotiations would not even be attempted. The law clearly permits that, and for good reason. It avoids the very delay, and, worse, the very suspicion that resulted here.

The Court must acknowledge some substantial truth in the factual basis for the objectors' claim that this case was not filed in good faith. Nevertheless, for the strong reasons stated in the next section, the Court finds that this case was filed in good faith and should not be dismissed.

3. The City Filed This Bankruptcy Case in Good Faith.

Based on *Stockton* and *New York City Off-Track Betting Corp.*, reviewed above, the Court concludes that the following factors are most relevant in establishing the City's good faith:

- a. The City’s financial problems are of a type contemplated for chapter 9 relief.
- b. The reasons for filing are consistent with the remedial purpose of chapter 9,
- c. The City made efforts to improve the state of its finances prior to filing, to no avail.
- d. The City’s residents will be severely prejudiced if the case is dismissed.

a. The City’s Financial Problems Are of a Type Contemplated for Chapter 9 Relief.

The Court’s analysis of this factor is based on its findings that the City is “insolvent” in Part XIII, above, and that the City was “unable to negotiate with creditors because such negotiation [was] impracticable” in Part XVI, above. 11 U.S.C. §§ 109(c)(3) and 109(c)(5)(C).

The City has over \$18,000,000,000 in debt and it is increasing. In the months before the filing, it was consistently at risk of running out of cash. It has over 100,000 creditors.

“Profound” is the best way to describe the City’s insolvency, and it simply could not negotiate with its numerous and varied creditors. *See In re Town of Westlake, Tex.*, 211 B.R. 860, 868 (Bankr. N.D. Tex. 1997) (finding the debtor filed in good faith because it faced “frozen funds, multiple litigation, and the disannexation of a substantial portion of its tax base”).

It is true that the City does not have a clear picture of its assets, income, cash flow, and liabilities, likely because its bookkeeping and accounting systems are obsolete. But this only suggests the need for relief. It does not suggest bad faith. Moreover, as the City’s financial analysts’ subsequent months of work have sharpened the focus on the City’s finances, the resulting picture has only become worse. Eligibility Trial Tr. 118:4-119:5, Nov. 5, 2013. (Dkt. #1584)

The Court finds that this factor weighs in favor of finding good faith.

**b. The City’s Reasons for Filing Are Consistent
with the Remedial Purpose of Chapter 9.**

One of the purposes of chapter 9 is to give the debtor a “breathing spell” so that it may establish a plan of adjustment. *In re Cnty. of Orange*, 183 B.R. 594, 607 (Bankr. C.D. Cal. 1995).

The Court’s analysis on this factor is based on its finding that the City “desires to effect a plan to adjust such debts.” 11 U.S.C. § 109(c)(4). To show good faith on this factor, “the evidence must demonstrate that ‘the purpose of the filing of the chapter 9 petition [was] not simply . . . to buy time or evade creditors.’” *In re New York City Off-Track Betting Corp.*, 427 B.R. at 272 (quoting *In re City of Vallejo*, 408 B.R. at 295). Notably, this argument was not raised by the objectors in any pleadings or at trial, nor was any evidence presented to support it.

The objectors do assert that the City filed the petition to avoid “a bad state court ruling” in the *Webster* litigation. They argue this is indicative of bad faith. *See, e.g.*, Second Amended Final Pre-Trial Order, ¶ 107 at 30. (Dkt. #1647) This argument is rejected. Creditor lawsuits commonly precipitate bankruptcy filings. That the suits were in vindication of an important right under the state constitution does not change this result. They were suits to enforce creditors’ monetary claims against a debtor that could not pay those claims.

The objectors also argue that the City filed the petition so that its pension obligations could be impaired and that this is inconsistent with the remedial purpose of bankruptcy. *See, e.g.*, Second Amended Final Pre-Trial Order, ¶ 86 at 24. (Dkt. #1647) Again, discharging debt is the primary motive behind the filing of most bankruptcy petitions. That motivation does not suggest any bad faith. That the City “chose to avail itself of a legal remedy afforded it by federal law is not proof of bad faith.” *In re Chilhowee R-IV School Dist.*, 145 B.R. 981, 983 (Bankr.

W.D. Mo. 1992). This is especially true here. The evidence demonstrated that attempting to negotiate a voluntary impairment of pensions would have been futile.

Accordingly, the Court finds that this factor also weighs in favor of finding good faith.

c. The City Made Efforts to Improve the State of Its Finances Prior to Filing, to No Avail.

Although the Court finds that the City did not engage in good faith negotiations with its creditors, Part XV, above, the Court does find the City did make some efforts to improve its financial condition before filing its chapter 9 petition. See Part III C, above.

The City's efforts are detailed in Mr. Orr's declaration filed in support of the petition. Ex. 414 at 36-49. (Dkt. #11) Those efforts include reducing the number of City employees, reducing labor costs through implementation of the City Employment Terms, increasing the City's corporate tax rate, working to improve the City's ability to collect taxes, increasing lighting rates, deferring capital expenditures, reducing vendor costs, and reducing subsidies to the Detroit Department of Transportation. Ex. 414 at 36-49. (Dkt. #11); Eligibility Trial Tr. 231:15-233:7, October 28, 2013. (Dkt. #1502) Despite those efforts, the City remains insolvent.

The fact that the City did not seriously consider any alternatives to chapter 9 in the period leading up to the filing of the petition does not indicate bad faith. By this time, all of the measures described in Mr. Orr's declaration had largely failed to resolve the problem of the City's cash flow insolvency. Ex. 414 at 36-49. (Dkt. #11); Eligibility Trial Tr. 231:15-233:7, October 28, 2013. (Dkt. #1502). In *In re City of San Bernadino, Cal.*, 499 B.R. 776, 791 (Bankr. C.D. Cal. 2013), the Court observed:

Was there an alternative available to the City when it was faced with a \$45.9 million cash deficit in the upcoming fiscal year and inevitably was going to default on its obligations as they came due? The Court answers this question 'no.' To deny the opportunity to reorganize in chapter 9 based on lack of good faith

would be to ignore fiscal reality and the general purposes of the Bankruptcy Code.

The Court finds this factor also weighs in favor of finding good faith.

d. The Residents of Detroit Will Be Severely Prejudiced If This Case Is Dismissed.

The Court concludes that this factor is of paramount importance in this case. The City's debt and cash flow insolvency is causing its nearly 700,000 residents to suffer hardship. As already discussed at length in this opinion, the City is "service delivery insolvent." See Parts III B 6-11 and XIII B, above. Its services do not function properly due to inadequate funding. The City has an extraordinarily high crime rate; too many street lights do not function; EMS does not timely respond; the City's parks are neglected and disappearing; and the equipment for police, EMS and fire services are outdated and inadequate.

Over 38% of the City's revenues were consumed by servicing debt in 2012, and that figure is projected to increase to nearly 65% of the budget by 2017 if the debt is not restructured. Ex. 414 at 39 (Dkt. #11) Without revitalization, revenues will continue to plummet as residents leave Detroit for municipalities with lower tax rates and acceptable services.

Without the protection of chapter 9, the City will be forced to continue on the path that it was on until it filed this case. In order to free up cash for day-to-day operations, the City would continue to borrow money, defer capital investments, and shrink its workforce. This solution has proven unworkable. It is also dangerous for its residents.

If the City were to continue to default on its financial obligations, as it would outside of bankruptcy, creditor lawsuits would further deplete the City's resources. On the other hand, in seeking chapter 9 relief, the City not only reorganizes its debt and enhances City services, but it

also creates an opportunity for investments in its revitalization efforts for the good of the residents of Detroit. Ex. 43 at 61.

This factor weighs heavily in favor of finding good faith.

C. Conclusion Regarding the City's Good Faith

While acknowledging some merit to the objectors' serious concerns about how City and State officials managed the lead-up to this filing, the Court finds that the factors relevant to the good faith issue weigh strongly in favor of finding good faith. Accordingly, the Court concludes the City's petition was filed in good faith and that the petition is not subject to dismissal under 11 U.S.C. § 921(c).

XVIII. Other Miscellaneous Arguments

The objections addressed here were asserted in briefs after the deadline to object had passed. Accordingly, these objections are untimely and denied on that ground. In the interest of justice, however, the Court will briefly address their merits.

A. *Midlantic* Does Not Apply in This Case

In its supplemental brief filed October 30, 2013, AFSCME asserts, "The rights created by the Pensions Clause should survive bankruptcy because the Pensions Clause is an exercise of the right to enact 'state or local laws designed to protect public health or safety' which cannot be disregarded by the debtor." AFSCME's Supplemental Br. at 3-4. (Dkt. #1467) In support of this argument, AFSCME relies on the United States Supreme Court decision in *Midlantic Nat'l Bank v. New Jersey Dep't of Env. Protection*, 474 U.S. 494, 106 S. Ct. 755 (1986).

In *Midlantic*, the Supreme Court held that "a trustee in bankruptcy does not have the power to authorize an abandonment without formulating conditions that will adequately protect

the public's health and safety." 474 U.S. at 507, 106 S. Ct at 762. At issue in that case was whether a trustee in bankruptcy could abandon real property pursuant to 11 U.S.C. § 544(a), when the property was contaminated with 400,000 gallons of oil containing PCB, "a highly toxic carcinogen." *Id.* at 497, 106 S. Ct. at 757.

The case is simply not applicable on AFSCME's point. The City has not "abandoned" its property. Moreover, AFSCME has failed to identify how the pensions clause is a "state or local law designed to protect public health or safety." *Id.* at 502, 106 S. Ct. at 760.

Accordingly, this objection is overruled.

B. There Was No Gap in Mr. Orr's Service as Emergency Manager

In an objection filed on October 17, 2013 (Dkt. # 1222), Krystal Crittendon asserted that Mr. Orr was not validly appointed because the rejection of P.A. 4 did not revive P.A. 72. This argument is rejected for the reasons stated in Part III D, above.

In this objection, Crittendon also contended that Mr. Orr was not validly appointed because his initial emergency manager contract expired before P.A. 436 took effect.

P.A. 436 contains a grandfathering provision which states:

An emergency manager or emergency financial manager appointed and serving under state law immediately prior to the effective date of this act shall continue under this act as an emergency manager for the local government.

M.C.L. § 141.1571.

Mr. Orr's initial emergency manager contract under P.A. 72 stated that it "shall terminate at midnight on Wednesday, March 27, 2013." Crittendon contends that therefore the contract terminated the morning of Wednesday, March 27, and that therefore he was not in office on that day. She asserts that because Mr. Orr's current emergency manager contract became effective

on Thursday, March 28, 2013, there was no emergency manager serving immediately prior to the March 28 effective date of P.A. 436, and the grandfathering clause does not apply.

The City contends that the parties intended for Mr. Orr's initial contract to expire at the end of the day on March 27th and that there was no gap in his service.

In *Hallock v. Income Guar. Co.*, 270 Mich. 448, 452, 259 N.W. 133, 134 (1935), the court assumed "midnight" meant the end of the day. Courts in other jurisdictions, however, have found that the term is ambiguous. See *Amer. Transit Ins. Co. v. Wilfred*, 745 N.Y.S.2d 171, 172, 296 A.D.2d 360, 361 (N.Y. 2002); *Mumuni v. Eagle Ins. Co.*, 668 N.Y.S.2d 464, 247 A.D.2d 315 (N.Y.A.D. 1998).

In *Klapp v. United Insurance Group Agency, Inc.*, 468 Mich. 459, 663 N.W.2d 447 (2003), the Michigan Supreme Court noted, "The law is clear that where the language of the contract is ambiguous, the court can look to such extrinsic evidence as the parties' conduct, the statements of its representatives, and past practice to aid in interpretation." *Id.* at 470, 663 N.W.2d at 454 (quoting *Penzi v. Dielectric Prod. Engineering Co., Inc.*, 374 Mich. 444, 449, 132 N.W.2d 130, 132 (1965)).

The Court finds that the parties to the contracts clearly intended that there would be no gap in Mr. Orr's contracts or in his appointment. Accordingly, Mr. Orr was validly appointed under M.C.L. § 141.1572. The objection is rejected.

**XIX. Conclusion:
The City is Eligible and the Court
Will Enter an Order for Relief.**

The Court concludes that under 11 U.S.C. § 109(c), the City of Detroit may be a debtor under chapter 9 of the bankruptcy code. The Court will enter an order for relief forthwith, as required by 11 U.S.C. § 921(d).

The Court reminds all interested parties that this eligibility determination is merely a preliminary matter in this bankruptcy case. The City's ultimate objective is confirmation of a plan of adjustment. It has stated on the record its intent to achieve that objective with all deliberate speed and to file its plan shortly. Accordingly, the Court strongly encourages the parties to begin to negotiate, or if they have already begun, to continue to negotiate, with a view toward a consensual plan.

For publication

Signed on December 05, 2013

/s/ Steven Rhodes
Steven Rhodes
United States Bankruptcy Judge

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

In re:

CITY OF DETROIT, MICHIGAN,

Debtor.

)
) Chapter 9
)
) Case No. 13-53846
)
) Hon. Steven W. Rhodes
)
)

AMENDED NOTICE OF APPEAL¹

PLEASE TAKE NOTICE THAT The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (the AFSCME retiree chapter for City of Detroit retirees) (collectively, “**AFSCME**”) pursuant to 28 U.S.C. § 158(a) and Rules 8001 and 8002(a) of the Federal Rules of Bankruptcy Procedure, files this **amended** notice of appeal to the United States District Court for the Eastern District of Michigan from the bankruptcy court’s (i) decision, announced from the bench on December 3, 2013, finding the City of Detroit, Michigan eligible for relief under chapter 9 of the Bankruptcy Code (the “**Bench Decision**”); (ii) Order for Relief Under Chapter 9 of the Bankruptcy Code, dated December 5, 2013 finding the City of Detroit, Michigan eligible for relief under chapter 9 of the Bankruptcy Code [Docket No. 1946] (the “**Order for Relief**”); and (iii) accompanying Opinion Regarding Eligibility, dated December 5, 2013 [Docket No. 1945] (the “**Opinion**,” together with the Bench Decision and Order for Relief, are collectively the “**Eligibility Order**”).

This notice of appeal is timely filed pursuant to Federal Rule of Bankruptcy Procedure 8002(a). The names of the parties to the Eligibility Order appealed from and the names,

¹ This Amended Notice of Appeal is submitted pursuant to request of the Clerk’s office.

addresses, telephone and fax numbers of their respective attorneys are attached hereto as “**Exhibit A**”. A “Bankruptcy Matter Civil Cover Sheet” is attached hereto as “**Exhibit B**”.

Dated: December 6, 2013

LOWENSTEIN SANDLER LLP

By: /s/ Sharon L. Levine

Sharon L. Levine, Esq.

Philip J. Gross, Esq.

65 Livingston Avenue

Roseland, New Jersey 07068

(973) 597-2500 (Telephone)

(973) 597-6247 (Facsimile)

slevine@lowenstein.com

pgross@lowenstein.com

-and-

Herbert A. Sanders, Esq.

THE SANDERS LAW FIRM PC

615 Griswold St., Suite 913

Detroit, MI 48226

(313) 962-0099 (Telephone)

(313) 962-0044 (Facsimile)

hsanders@miafscme.org

-and-

Richard G. Mack, Jr., Esq.

Miller Cohen, P.L.C.

600 West Lafayette Boulevard

4th Floor

Detroit, MI 48226-3191

Counsel to Michigan Council 25 of the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and Sub-Chapter 98, City of Detroit Retirees

EXHIBIT A

Appellants

Michigan Council 25 of the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and Sub-Chapter 98, City of Detroit Retirees

Represented by:

Sharon L. Levine, Esq.
Philip J. Gross, Esq.
LOWENSTEIN SANDLER LLP
65 Livingston Avenue
Roseland, New Jersey 07068
(973) 597-2500 (Telephone)
(973) 597-6247 (Facsimile)
slevine@lowenstein.com
pgross@lowenstein.com

-and-

Herbert A. Sanders, Esq.
THE SANDERS LAW FIRM PC
615 Griswold St., Suite 913
Detroit, MI 48226
(313) 962-0099 (Telephone)
(313) 962-0044 (Facsimile)
hsanders@miafscme.org

-and-

Richard G. Mack, Jr., Esq.
Miller Cohen, P.L.C.
600 West Lafayette Boulevard
4th Floor
Detroit, MI 48226-3191

Appellee

City of Detroit, Michigan

Represented by:

David G. Heiman (OH 0038271)
Heather Lennox (OH 0059649)
JONES DAY
North Point

901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
dgheiman@jonesday.com
hlennox@jonesday.com

Bruce Bennett (CA 105430)
JONES DAY
555 South Flower Street
Fiftieth Floor
Los Angeles, California 90071
Telephone: (213) 243-2382
Facsimile: (213) 243-2539
bbennett@jonesday.com

Thomas F. Cullen, Jr. (DC 224733)
Gregory M. Shumaker (DC 416537)
Geoffrey S. Stewart (DC 287979)
JONES DAY
51 Louisiana Ave., N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
tfcullen@jonesday.com
gshumaker@jonesday.com
gstewart@jonesday.com

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
Jonathan S. Green (MI P33140)
Stephen S. LaPlante (MI P48063)
150 West Jefferson
Suite 2500
Detroit, Michigan 48226
Telephone: (313) 963-6420
Facsimile: (313) 496-7500
green@millercanfield.com
laplante@millercanfield.com

Other Interested Parties

**The Police and Fire Retirement System of the City of Detroit
The General Retirement System of the City of Detroit**

Represented by:

CLARK HILL PLC

Robert D. Gordon (P48627)
Shannon L. Deeby (P60242)
Jennifer K. Green (P69019)
Evan J. Feldman (P73437)
151 South Old Woodward Avenue
Suite 200
Birmingham, Michigan 48009
Telephone: (248) 988-5882
Facsimile: (248) 988-2502
rgordon@clarkhill.com

ARNOLD & PORTER LLP

Lisa Hill Penning (admitted *pro hac vice*)
777 South Figueroa Street
44th Floor
Los Angeles, California 90017
Telephone: (213) 243-4000
Facsimile: (213) 243-4199 lisa.fenning@aporter.com

**The Detroit Fire Fighters Association
The Detroit Police Officers Association
The Detroit Police Lieutenants & Sergeants Association
The Detroit Police Command Officers Association**

Represented by:

ERMAN, TEICHER, MILLER, ZUCKER & FREEDMAN, P.C.

Earle I. Erman (P24296)
Craig E. Zucker (P39907)
Barbara A. Patek (P34666)
400 Galleria Officentre, Suite 444
Southfield, MI 48034
Telephone: (249) 827-4100
Facsimile: (248) 827-4106
bpatek@ermanteicher.com

International Union of Operating Engineers, Local 324

Represented by:

SACHS WALDMAN, P.C.
Andrew Nickelhoff (P37990)
Mami Kato (P74237)
2211 East Jefferson Avenue, Suite 200
Detroit, MI 48207
Telephone: (313) 496-9429
Facsimile: (313) 965-4602
anickelhoff@sachswaldman.com
mkato@sachswaldman.com

Service Employees International Union, Local 517M

Represented by:

SACHS WALDMAN, P.C.
Andrew Nickelhoff (P37990)
Mami Kato (P74237)
2211 East Jefferson Avenue, Suite 200
Detroit, MI 48207
Telephone: (313) 496-9429
Facsimile: (313) 965-4602
anickelhoff@sachswaldman.com
mkato@sachswaldman.com

David Sole

Represented by:

JEROME D. GOLDBERG, PLLC
Jerome D. Goldberg (P61678)
2921 East Jefferson, Suite 205
Detroit, MI 48207
Telephone: (313) 393-6001
Facsimile: (313) 393-6007
apclawyer@sbcglobal.net

**The Retired Detroit Police & Fire Fighters Association
Donald Taylor, individually and as President of the Retired Detroit Police &
Fire Fighters Association
The Detroit Retired City Employees Association
Shirley V. Lightsey, individually and as President of the Detroit Retired City
Employees Association**

Represented by:

LIPPITT O'KEEFE, PLLC
Brian D. O'Keefe (P39603)
Ryan C. Plecha (P71957)
370 East Maple Road, 3rd Floor
Birmingham, MI 48009
Telephone: (248) 646-8292 rplecha@lippittokeefe.com

SILYERMAN & MORRIS, P.L.L.C.
Thomas R. Morris (P39141)
30500 Northwestern Highway, Suite 200
Farmington Hills, MI 48334
(248) 539-1330 morris@silvermanmorris.com

**Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington and
Bruce Goldman**

Represented by:

William A. Wertheimer (P26275)
30515 Timberbrook Lane
Bingham Farms, MI 48025
Telephone: (248) 644-9200

**International Union, United Automobile, Aerospace and Agricultural
Implement Workers of America**

Represented by:

COHEN, WEISS AND SIMON LLP
Babette A. Ceccotti
Keith E. Secular
Thomas N. Ciantra
Joshua J. Ellison
330 West 42nd Street

New York, NY 10036
Telephone: (212) 563-4100
Facsimile: (212) 695-5436
bceccotti@cwsny.com

Niraj R. Ganatra (P63150)
Michael Nicholson (P33421)
8000 East Jefferson Avenue
Detroit, MI 48214
Telephone: (313) 926-5216
Facsimile: (313) 926-5240
nganatra@uaw.net
mnicholson@uaw.net

Center for Community Justice and Advocacy

Represented by:

VANESSA G. FLUKER, ESQ. PLLC
Vanessa G. Fluker, Esq. PLLC
2921 East Jefferson, Suite 200
Detroit, MI 48207
Telephone: (313) 393-6005
Facsimile: (313) 393-6007
vgflawyer@sbcglobal.net

Retired Detroit Police Members Association

Represented by:

STROBL & SHARP, P.C.
Lynn M. Brimer (P43291)
Meredith E. Taunt (P69698)
Mallory A. Field (P75289)
300 East Long Lake Road, Suite 200
Bloomfield Hills, MI 48304
Telephone: (248) 540-2300
Facsimile: (248) 645-2690 lbrimer@stroblpc.com
mtaunt@stroblpc.com mfield@stroblpc.com

Krystal Crittendon
19737 Chesterfield
Detroit, MI 48221

The Retiree Committee of the City of Detroit
Represented by:

DENTONS US LLP
Carole Neville
1221 Avenue of the Americas
New York, New York 10020
Tel: (212) 768-6700
Fax: (212) 768-6800
carole.neville@dentons.com

DENTONS US LLP
Sam J. Alberts
1301 K Street, NW Suite 600,
East Tower Washington, DC 20005-3364
Telephone: (202) 408-6400
Facsimile: (202) 408-6399
sam.alberts@dentons.com

SALANS FMC SNR DENTON EUROPE LLP
Claude D. Montgomery (P29212)
Rockefeller Center
620 Fifth Avenue
New York, New York 10020
Telephone: (212) 632-8390
claude.montgomery@dentons.com

BROOKS WILKINS SHARKEY & TURCO PLLC
Matthew E. Wilkins (P56697)
Paula A. Hall (P61101)
401 South Old Woodward, Suite 400
Birmingham, Michigan 48009
Telephone: (248) 971-1711
Facsimile: (248) 971-1801
wilkins@bwst-law.com
hall@bwst-law.com

EXHIBIT B

In re:

City of Detroit, Michigan

Case No.: 13-53846

Debtor.

**Michigan Council 25 of the American
Federation of State, County and
Municipal Employees (AFSCME),
AFL-CIO and Sub-Chapter 98,
City of Detroit Retirees
Appellants,**

v.

**City of Detroit, Michigan
Appellee.**

CAUSE OF ACTION/NATURE OF SUIT: (This matter is referred to the district court for the following reasons)

<u> x </u>	[422] 28 U.S.C. 158	Bankruptcy Appeal
<u> x </u>	[422] 28 U.S.C. 158	Motion for Leave to Appeal
_____	[423] 28 U.S.C. 157(d)	Motion for Withdrawal of Reference
_____	[423] 28 U.S.C. 157(c) (1)	Proposed Findings of Fact and Conclusions of Law
_____	[423] 28 U.S.C. 158 (c) (a)	Order of Contempt

Dated: December 6, 2013

LOWENSTEIN SANDLER LLP

By: /s/ Sharon L. Levine

Sharon L. Levine, Esq.

Philip J. Gross, Esq.

65 Livingston Avenue

Roseland, New Jersey 07068

(973) 597-2500 (Telephone)

(973) 597-6247 (Facsimile)

slevine@lowenstein.com

pgross@lowenstein.com

-and-

Herbert A. Sanders, Esq.
THE SANDERS LAW FIRM PC
615 Griswold St., Suite 913
Detroit, MI 48226
(313) 962-0099 (Telephone)
(313) 962-0044 (Facsimile)
hsanders@miafscme.org

-and-

Richard G. Mack, Jr., Esq.
Miller Cohen, P.L.C.
600 West Lafayette Boulevard
4th Floor
Detroit, MI 48226-3191

*Counsel to Michigan Council 25 of the American Federation
of State, County and Municipal Employees (AFSCME), AFL-
CIO and Sub-Chapter 98, City of Detroit Retirees*

Name and Addresses of Interested Parties:

Appellants

Michigan Council 25 of the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and Sub-Chapter 98, City of Detroit Retirees

Represented by:

Sharon L. Levine, Esq.
Philip J. Gross, Esq.
LOWENSTEIN SANDLER LLP
65 Livingston Avenue
Roseland, New Jersey 07068
(973) 597-2500 (Telephone)
(973) 597-6247 (Facsimile)
slevine@lowenstein.com
pgross@lowenstein.com

-and-

Herbert A. Sanders, Esq.
THE SANDERS LAW FIRM PC
615 Griswold St., Suite 913
Detroit, MI 48226
(313) 962-0099 (Telephone)
(313) 962-0044 (Facsimile)
hsanders@miafscme.org

-and-

Richard G. Mack, Jr., Esq.
Miller Cohen, P.L.C.
600 West Lafayette Boulevard
4th Floor
Detroit, MI 48226-3191

Appellee

City of Detroit, Michigan

Represented by:

David G. Heiman (OH 0038271)
Heather Lennox (OH 0059649)
JONES DAY
North Point

901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
dgheiman@jonesday.com
hlennox@jonesday.com

Bruce Bennett (CA 105430)
JONES DAY
555 South Flower Street
Fiftieth Floor
Los Angeles, California 90071
Telephone: (213) 243-2382
Facsimile: (213) 243-2539
bbennett@jonesday.com

Thomas F. Cullen, Jr. (DC 224733)
Gregory M. Shumaker (DC 416537)
Geoffrey S. Stewart (DC 287979)
JONES DAY
51 Louisiana Ave., N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
tfcullen@jonesday.com
gshumaker@jonesday.com
gstewart@jonesday.com

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
Jonathan S. Green (MI P33140)
Stephen S. LaPlante (MI P48063)
150 West Jefferson
Suite 2500
Detroit, Michigan 48226
Telephone: (313) 963-6420
Facsimile: (313) 496-7500
green@millercanfield.com
laplante@millercanfield.com

Other Interested Parties

**The Police and Fire Retirement System of the City of Detroit
The General Retirement System of the City of Detroit**

Represented by:

CLARK HILL PLC

Robert D. Gordon (P48627)
Shannon L. Deeby (P60242) Jennifer
K. Green (P69019) Evan J. Feldman
(P73437)
151 South Old Woodward Avenue
Suite 200
Birmingham, Michigan 48009
Telephone: (248) 988-5882
Facsimile: (248) 988-2502
rgordon@clarkhill.com

ARNOLD & PORTER LLP

Lisa Hill Penning (admitted *pro hac vice*)
777 South Figueroa Street
44th Floor
Los Angeles, California 90017
Telephone: (213) 243-4000
Facsimile: (213) 243-4199 lisa.fenning@aporter.com

**The Detroit Fire Fighters Association
The Detroit Police Officers Association
The Detroit Police Lieutenants & Sergeants Association
The Detroit Police Command Officers Association**

Represented by:

ERMAN, TEICHER, MILLER, ZUCKER & FREEDMAN, P.C.

Earle I. Erman (P24296)
Craig E. Zucker (P39907)
Barbara A. Patek (P34666)
400 Galleria Officentre, Suite 444
Southfield, MI 48034
Telephone: (249) 827-4100
Facsimile: (248) 827-4106
bpatek@ermanteicher.com

International Union of Operating Engineers, Local 324

Represented by:

SACHS WALDMAN, P.C.
Andrew Nickelhoff (P37990)
Mami Kato (P74237)
2211 East Jefferson Avenue, Suite 200
Detroit, MI 48207
Telephone: (313) 496-9429
Facsimile: (313) 965-4602
anickelhoff@sachswaldman.com
mkato@sachswaldman.com

Service Employees International Union, Local 517M

Represented by:

SACHS WALDMAN, P.C. Andrew
Nickelhoff (P37990) Mami Kato
(P74237)
2211 East Jefferson Avenue, Suite 200
Detroit, MI 48207
Telephone: (313) 496-9429
Facsimile: (313) 965-4602
anickelhoff@sachswaldman.com
mkato@sachswaldman.com

David Sole

Represented by:

JEROME D. GOLDBERG, PLLC
Jerome D. Goldberg (P61678)
2921 East Jefferson, Suite 205
Detroit, MI 48207
Telephone: (313) 393-6001
Facsimile: (313) 393-6007
apclawyer@sbcglobal.net

The Retired Detroit Police & Fire Fighters Association
Donald Taylor, individually and as President of the Retired Detroit Police & Fire Fighters Association
The Detroit Retired City Employees Association
Shirley V. Lightsey, individually and as President of the Detroit Retired City Employees Association

Represented by:

LIPPITT O'KEEFE, PLLC
Brian D. O'Keefe (P39603)
Ryan C. Plecha (P71957)
370 East Maple Road, 3rd Floor
Birmingham, MI 48009
Telephone: (248) 646-8292 rplecha@lippittokeefe.com

SILYERMAN & MORRIS, P.L.L.C.
Thomas R. Morris (P39141)
30500 Northwestern Highway, Suite 200
Farmington Hills, MI 48334
(248) 539-1330 morris@silvermanmorris.com

Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington and Bruce Goldman

Represented by:

William A. Wertheimer (P26275)
30515 Timberbrook Lane
Bingham Farms, MI 48025
Telephone: (248) 644-9200

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America

Represented by:

COHEN, WEISS AND SIMON LLP
Babette A. Ceccotti
Keith E. Secular
Thomas N. Ciantra
Joshua J. Ellison
330 West 42nd Street
New York, NY 10036

Telephone: (212) 563-4100
Facsimile: (212) 695-5436
bceccotti@cwsny.com

Niraj R. Ganatra (P63150)
Michael Nicholson (P33421)
8000 East Jefferson Avenue
Detroit, MI 48214
Telephone: (313) 926-5216
Facsimile: (313) 926-5240
nganatra@uaw.net
mnicholson@uaw.net

Center for Community Justice and Advocacy

Represented by:

VANESSA G. FLUKER, ESQ. PLLC
Vanessa G. Fluker, Esq. PLLC
2921 East Jefferson, Suite 200
Detroit, MI 48207
Telephone: (313) 393-6005
Facsimile: (313) 393-6007
vgflawyer@sbcglobal.net

Retired Detroit Police Members Association

Represented by:

STROBL & SHARP, P.C.
Lynn M. Brimer (P43291)
Meredith E. Taunt (P69698)
Mallory A. Field (P75289)
300 East Long Lake Road, Suite 200
Bloomfield Hills, MI 48304
Telephone: (248) 540-2300
Facsimile: (248) 645-2690 lbrimer@stroblpc.com
mtaunt@stroblpc.com mfield@stroblpc.com

Krystal Crittendon
19737 Chesterfield
Detroit, MI 48221

The Retiree Committee of the City of Detroit

Represented by:

DENTONS US LLP

Carole Neville
1221 Avenue of the Americas
New York, New York 10020
Tel: (212) 768-6700
Fax: (212) 768-6800
carole.neville@dentons.com

DENTONS US LLP

Sam J. Alberts
1301 K Street, NW Suite 600,
East Tower Washington, DC 20005-3364
Telephone: (202) 408-6400
Facsimile: (202) 408-6399
sam.alberts@dentons.com

SALANS FMC SNR DENTON EUROPE LLP

Claude D. Montgomery (P29212)
Rockefeller Center
620 Fifth Avenue
New York, New York 10020
Telephone: (212) 632-8390
claude.montgomery@dentons.com

BROOKS WILKINS SHARKEY & TURCO PLLC

Matthew E. Wilkins (P56697)
Paula A. Hall (P61101)
401 South Old Woodward, Suite 400
Birmingham, Michigan 48009
Telephone: (248) 971-1711
Facsimile: (248) 971-1801
wilkins@bwst-law.com
hall@bwst-law.com

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
TRANSCRIPT ORDER FORM

111 First Street
Bay City, MI 48708

211 W. Fort Street
17th Floor
Detroit, MI 48226

226 W. Second Street
Flint, MI 48502

<p>Order Party: Name, Address and Telephone Number</p> <p>Name <u>Sharon L. Levine, Esq.</u></p> <p>Firm <u>Lowenstein Sandler LLP</u></p> <p>Address <u>65 Livingston Avenue</u></p> <p>City, State, Zip <u>Roseland, NJ 07068</u></p> <p>Phone <u>973-597-2500</u></p> <p>Email <u>slevine@lowenstein.com</u></p>	<p>Case/Debtor Name: City of Detroit, Michigan</p> <p>Case Number: 13-53846</p> <p>Chapter: 11</p> <p>Hearing Judge: Hon. Steven Rhodes</p> <p><input checked="" type="radio"/> Bankruptcy <input type="radio"/> Adversary</p> <p><input type="radio"/> Appeal Appeal No: _____</p>
--	--

Hearing Information (A separate form must be completed for **each** hearing date requested.)

Date of Hearing: 10/15/2013 **Time of Hearing:** 10:00 am **Title of Hearing:** Hearing - Eligibility Objections

Please specify portion of hearing requested: **Original/Unredacted** **Redacted** **Copy #2nd Party)**

Entire Hearing **Ruling/Opinion of Judge** **Testimony of Witness** **Other**

Special Instructions: Entire Day Transcript

Type of Request:

Ordinary Transcript - \$3.65 per page (30 calendar days)

14-Day Transcript - \$4.25 per page (14 calendar days)

Expedited Transcript - \$4.85 per page (7 working days)

CD - \$30; FTR Gold format "You must download the free FTR Record Player™ onto your computer from www.ftr.com"

FOR COURT USE ONLY

Transcript To Be Prepared By _____

_____ Date _____ By _____

Order Received: _____

Transcript Ordered _____

Transcript Received _____

Signature of Ordering Party:

/s/ Sharon L. Levine _____ Date: 12/9/2013

By signing, I certify that I will pay all charges upon completion of the transcript request.

Instructions

Use. Use this form to order transcript of proceedings. Complete a separate order form for each hearing date for which transcript is ordered.

Completion. Complete the entire order form. Do *not* complete the shaded area which is reserved for the court's use.

Order Copy. Keep a copy for your records.

Filing with the Court. All requests must be electronically filed by attorneys. Debtors without counsel or parties without PACER access may mail or deliver the request to the court.

Withdrawal of Request. Decision to withdraw transcript request requires ordering party to (1) contact chambers; (2) notify transcriber; and (3) electronically file a notice of withdrawal. Debtors without counsel or parties without PACER access may mail or deliver the withdrawal to the court. Failure to do so will result in payment obligation to the Transcriber.

Deposit Fee. The Transcriber will notify you if a deposit fee is required and of the amount of the deposit fee. Upon receipt of the deposit, the Transcriber will process the order.

Delivery Time. Delivery time is computed from the date of receipt of the deposit fee.

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Expedited. A transcript to be delivered within seven (7) calendar days after receipt of the order by the Transcriber. The charge is \$4.85 per page effective November 19, 2007.

CD. Audio requests of a hearing are ordinarily completed within two (2) business days after receipt of an order. The ordering party will be notified by telephone when the CD is ready. Payment to the court (checks made payable to "Clerk of U.S. Bankruptcy Court") is required prior to picking up the CD. The charge is \$52.02 per CD.

Note: Full price may be charged only if the transcript is delivered within the required time frame. For example, if an order for expedited transcript is not completed and delivered within seven (7) calendar days, payment would be at the next *delivery* rate.

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Note: Full price may be charged only if the transcript is delivered within the required time frame. For example, if an order for expedited transcript is not completed and delivered within seven (7) calendar days, payment would be at the next *delivery* rate.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
TRANSCRIPT ORDER FORM

111 First Street
Bay City, MI 48708

211 W. Fort Street
17th Floor
Detroit, MI 48226

226 W. Second Street
Flint, MI 48502

Order Party: Name, Address and Telephone Number

Name Sharon L. Levine, Esq.
Firm Lowenstein Sandler LLP
Address 65 Livingston Avenue
City, State, Zip Roseland, NJ 07068
Phone 973-597-2500
Email slevine@lowenstein.com

Case/Debtor Name: City of Detroit, Michigan

Case Number: **13-53846**
Chapter: **11**
Hearing Judge **Hon. Steven Rhodes**
 Bankruptcy Adversary
 Appeal Appeal No: _____

Hearing Information (A separate form must be completed for each hearing date requested.)

Date of Hearing: 10/25/2013 Time of Hearing: 9:00 am Title of Hearing: Trial - Eligibility Objections

Please specify portion of hearing requested: Original/Unredacted Redacted Copy #2nd Party)

Entire Hearing Ruling/Opinion of Judge Testimony of Witness Other

Special Instructions: Entire Day Transcript

Type of Request:

- Ordinary Transcript - \$3.65 per page (30 calendar days)
- 14-Day Transcript - \$4.25 per page (14 calendar days)
- Expedited Transcript - \$4.85 per page (7 working days)
- CD - \$30; FTR Gold format "You must download the free FTR Record Player™ onto your computer from www.ftr.com

FOR COURT USE ONLY

Transcript To Be Prepared By _____

Date By

Order Received: _____

Transcript Ordered _____

Transcript Received _____

Signature of Ordering Party:

/s/ Sharon L. Levine Date: 12/9/2013
By signing, I certify that I will pay all charges upon completion of the transcript request.

Instructions

Use. Use this form to order transcript of proceedings. Complete a separate order form for each hearing date for which transcript is ordered.

Completion. Complete the entire order form. Do *not* complete the shaded area which is reserved for the court's use.

Order Copy. Keep a copy for your records.

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Withdrawal of Request. Decision to withdraw transcript request requires ordering party to (1) contact chambers; (2) notify transcriber; and (3) electronically file a notice of withdrawal. Debtors without counsel or parties without PACER access may mail or deliver the withdrawal to the court. Failure to do so will result in payment obligation to the Transcriber.

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Note: Full price may be charged only if the transcript is delivered within the required time frame. For example, if an order for expedited transcript is not completed and delivered within seven (7) calendar days, payment would be at the next *delivery* rate.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
TRANSCRIPT ORDER FORM

111 First Street
Bay City, MI 48708

211 W. Fort Street
17th Floor
Detroit, MI 48226

226 W. Second Street
Flint, MI 48502

Order Party: Name, Address and Telephone Number

Name Sharon L. Levine, Esq.
Firm Lowenstein Sandler LLP
Address 65 Livingston Avenue
City, State, Zip Roseland, NJ 07068
Phone 973-597-2500
Email slevine@lowenstein.com

Case/Debtor Name: City of Detroit, Michigan

Case Number: **13-53846**
Chapter: **11**
Hearing Judge **Hon. Steven Rhodes**
 Bankruptcy Adversary
 Appeal Appeal No: _____

Hearing Information (A separate form must be completed for **each** hearing date requested.)

Date of Hearing: 10/28/2013 Time of Hearing: 9:00 am Title of Hearing: Trial - Eligibility Objections

Please specify portion of hearing requested: Original/Unredacted Redacted Copy #2nd Party)

Entire Hearing Ruling/Opinion of Judge Testimony of Witness Other

Special Instructions: Entire Day Transcript

Type of Request:

- Ordinary Transcript - \$3.65 per page (30 calendar days)
 14-Day Transcript - \$4.25 per page (14 calendar days)
 Expedited Transcript - \$4.85 per page (7 working days)
 CD - \$30; FTR Gold format (You must download the free FTR Record Player™ onto your computer from [www.ftr.com](#))

Signature of Ordering Party:

/s/ Sharon L. Levine Date: 12/9/2013
By signing, I certify that I will pay all charges upon completion of the transcript request.

FOR COURT USE ONLY

Transcript To Be Prepared By _____

_____ Date By _____

Order Received: _____

Transcript Ordered _____

Transcript Received _____

Instructions

Use. Use this form to order transcript of proceedings. Complete a separate order form for each hearing date for which transcript is ordered.

Completion. Complete the entire order form. Do *not* complete the shaded area which is reserved for the court's use.

Order Copy. Keep a copy for your records.

Filing with the Court. All requests must be electronically filed by attorneys. Debtors without counsel or parties without PACER access may mail or deliver the request to the court.

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
TRANSCRIPT ORDER FORM

111 First Street
Bay City, MI 48708

211 W. Fort Street
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Name Sharon L. Levine, Esq.
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Email slevine@lowenstein.com

Case/Debtor Name: City of Detroit, Michigan

Case Number: 13-53846
Chapter: 11
Hearing Judge: Hon. Steven Rhodes
 Bankruptcy **Adversary**
 Appeal **Appeal No: _____**

Hearing Information (A separate form must be completed for **each** hearing date requested.)

Date of Hearing: 10/29/2013 **Time of Hearing:** 9:00 am **Title of Hearing:** Trial - Eligibility Objections

Please specify portion of hearing requested: **Original/Unredacted** **Redacted** **Copy #2nd Party)**

Entire Hearing **Ruling/Opinion of Judge** **Testimony of Witness** **Other**

Special Instructions: Entire Day Transcript

Type of Request:

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FOR COURT USE ONLY

Transcript To Be Prepared By _____

_____ Date By _____

Order Received: _____

Transcript Ordered _____

Transcript Received _____

Signature of Ordering Party:

/s/ Sharon L. Levine _____ Date: 12/9/2013

By signing, I certify that I will pay all charges upon completion of the transcript request.

Instructions

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
TRANSCRIPT ORDER FORM

111 First Street
Bay City, MI 48708

211 W. Fort Street
17th Floor
Detroit, MI 48226

226 W. Second Street
Flint, MI 48502

Order Party: Name, Address and Telephone Number

Name Sharon L. Levine, Esq.
Firm Lowenstein Sandler LLP
Address 65 Livingston Avenue
City, State, Zip Roseland, NJ 07068
Phone 973-597-2500
Email slevine@lowenstein.com

Case/Debtor Name: City of Detroit, Michigan

Case Number: 13-53846

Chapter: 11

Hearing Judge: Hon. Steven Rhodes

Bankruptcy Adversary

Appeal Appeal No: _____

Hearing Information (A separate form must be completed for each hearing date requested.)

Date of Hearing: 11/4/2013 Time of Hearing: 9:00 am Title of Hearing: Trial - Eligibility Objections

Please specify portion of hearing requested: Original/Unredacted Redacted Copy #2nd Party)

Entire Hearing Ruling/Opinion of Judge Testimony of Witness Other

Special Instructions: Entire Day Transcript

Type of Request:

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By signing, I certify that I will pay all charges upon completion of the transcript request.

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
TRANSCRIPT ORDER FORM

111 First Street
Bay City, MI 48708

211 W. Fort Street
17th Floor
Detroit, MI 48226

226 W. Second Street
Flint, MI 48502

Order Party: Name, Address and Telephone Number

Name Sharon L. Levine, Esq.
Firm Lowenstein Sandler LLP
Address 65 Livingston Avenue
City, State, Zip Roseland, NJ 07068
Phone 973-597-2500
Email slevine@lowenstein.com

Case/Debtor Name: City of Detroit, Michigan

Case Number: **13-53846**
Chapter: **11**
Hearing Judge **Hon. Steven Rhodes**
 Bankruptcy Adversary
 Appeal Appeal No: _____

Hearing Information (A separate form must be completed for **each** hearing date requested.)

Date of Hearing: 11/8/2013 Time of Hearing: 9:00 am Title of Hearing: Trial - Eligibility Objections

Please specify portion of hearing requested: Original/Unredacted Redacted Copy #2nd Party)

Entire Hearing Ruling/Opinion of Judge Testimony of Witness Other

Special Instructions: Entire Day Transcript

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- Ordinary Transcript - \$3.65 per page (30 calendar days)
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Signature of Ordering Party:

/s/ Sharon L. Levine Date: 12/9/2013
By signing, I certify that I will pay all charges upon completion of the transcript request.

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_____ Date By _____

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. October 15, 2013
Debtor. . 10:00 a.m.
.

HEARING RE. OBJECTIONS TO ELIGIBILITY TO CHAPTER 9 PETITION
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day
By: BRUCE BENNETT
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2452
(213) 243-2382

For the State of Michigan: Michigan Department of Attorney General
By: MARGARET A. NELSON
P.O. Box 30758
Lansing, MI 48909
(517) 373-1124

For AFSCME, AFL-CIO, and Sub-Chapter 98, City of Detroit Retirees: Lowenstein Sandler, LLP
By: SHARON L. LEVINE
65 Livingston Avenue
Roseland, NJ 07068
(973) 597-2374

For Detroit Retirement Systems- General Retirement System of Detroit, Police and Fire Retirement System of the City of Detroit: Clark Hill, PLC
By: ROBERT GORDON
151 South Old Woodward, Suite 200
Birmingham, MI 48009
(248) 988-5882

APPEARANCES (continued):

For the Official Committee of Retirees:	Dentons By: CLAUDE D. MONTGOMERY 620 Fifth Avenue New York, NY 10020 (212) 632-8390
For the Inter- national Union, UAW:	Cohen, Weiss & Simon, LLP By: BABETTE A. CECCOTTI PETER D. DECHIARA 330 West 42nd Street, 25th Floor New York, NY 10036-6976 (212) 356-0227
For the Flowers Plaintiffs:	Law Offices of William A. Wertheimer By: WILLIAM WERTHEIMER 30515 Timberbrook Lane Bingham Farms, MI 48025 (248) 644-9200
For the Detroit Fire Fighters Association, the Detroit Police Officers Associa- tion and the Detroit Police Lieutenants & Sergeants Association:	Erman, Teicher, Miller, Zucker & Freedman, P.C. By: BARBARA A. PATEK 400 Galleria Officentre, Suite 444 Southfield, MI 48034 (248) 827-4100
Interested Party:	KRYSTAL CRITTENDON 19737 Chesterfield Detroit, MI 48221
For Retired Detroit Police Members Association:	Strobl & Sharp, PC By: LYNN M. BRIMER 300 East Long Lake Road, Suite 200 Bloomfield Hills, MI 48304-2376 (248) 540-2300
For Detroit Retired City Employees Association, Retired Detroit Police and Fire Fighters Association, Shirley V. Lightsey, and Donald Taylor:	Silverman & Morris, PLLC By: THOMAS R. MORRIS 30500 Northwestern Highway, Suite 200 Farmington Hills, MI 48334 (248) 539-1330

APPEARANCES (continued):

For David Sole: Jerome D. Goldberg, PLLC
By: JEROME GOLDBERG
2921 East Jefferson, Suite 205
Detroit, MI 48207
(313) 393-6001

For the United States: U.S. Department of Justice
Civil Division
By: MATTHEW J. TROY
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044
(202) 514-9038

For Center for Community Justice and Advocacy: Vanessa G. Fluker, Esq., PLLC
By: VANESSA G. FLUKER
2921 East Jefferson, Suite 200
Detroit, MI 48207
(313) 393-6005

Court Recorder: Letrice Calloway
United States Bankruptcy Court
211 West Fort Street
21st Floor
Detroit, MI 48226-3211
(313) 234-0068

Transcribed By: Lois Garrett
1290 West Barnes Road
Leslie, MI 49251
(517) 676-5092

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

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

3 THE COURT: Good morning, everybody. I'd like to
4 take appearances from the attorneys who will be speaking here
5 today first. Can we do that?

6 MR. BENNETT: Thank you, your Honor. Bruce Bennett,
7 Jones Day, on behalf of the city.

8 MS. NELSON: Good morning, your Honor. Assistant
9 Attorney General Margaret A. Nelson on behalf of the State of
10 Michigan.

11 MS. LEVINE: Good morning, your Honor. Sharon
12 Levine, Lowenstein Sandler, for AFSCME.

13 MR. GORDON: Good morning, your Honor. Robert
14 Gordon of Clark Hill on behalf of the Detroit Retirement
15 Systems.

16 MR. MONTGOMERY: Good morning, your Honor. Claude
17 Montgomery, Dentons U.S., for the Official Committee of
18 Retirees.

19 MS. CECCOTTI: Good morning, your Honor. Babette
20 Ceccotti, Cohen, Weiss & Simon, LLP, for the UAW.

21 MR. WERTHEIMER: Good morning, your Honor. William
22 Wertheimer on behalf of the Flowers plaintiffs.

23 MS. PATEK: Good morning, your Honor. Barbara Patek
24 of Erman, Teicher, Miller, Zucker & Friedman on behalf of the
25 Detroit Public Safety Unions.

1 MS. CRITTENDON: Good morning, your Honor. Krystal
2 Crittendon, interested party.

3 MS. BRIMER: Good morning, your Honor. Lynn M.
4 Brimer appearing on behalf of the Retired Detroit Police
5 Members Association.

6 MR. MORRIS: Good morning, your Honor. Thomas
7 Morris of Silverman & Morris on behalf of the Retiree
8 Association parties.

9 MR. GOLDBERG: Good morning, your Honor. Jerome
10 Goldberg on behalf of interested party David Sole.

11 MR. TROY: Good morning, your Honor. Matthew Troy,
12 Department of Justice, Civil Division, on behalf of the
13 United States. It is not my intention to speak this morning,
14 your Honor, unless you have specific questions regarding our
15 filing from Friday.

16 THE COURT: Thank you, sir. Mr. Gordon.

17 MR. GORDON: Thank you, your Honor. I just wanted
18 to provide the introduction relative to our proposed
19 allocation of the time and order of presentation here this
20 morning. As your Honor can see from the document that was
21 filed, there are 11 objectors who wish to speak, and, of
22 course, they all have important points to make, but -- and we
23 very much appreciate the cooperation amongst all of them. It
24 was a good and constructive process. Not only was that easy,
25 but everyone has been very cooperative, and we've allocated

1 the time accordingly to various parties to have the
2 opportunity to speak today.

3 You will note, your Honor, a couple things. One, we
4 did not allocate the full 120 minutes in the morning.
5 There's a few minutes left over. Similarly, in the afternoon
6 there's about five minutes left over of the 90 minutes.
7 That, of course, is not intended to necessarily waive our
8 opportunity to have the full time, but we thought that would
9 build in some flexibility and some error margin as people
10 stand up and sit down to make sure that we fit within the
11 time frame.

12 Also, as footnote one indicates, the presentation
13 order does not necessarily tie -- correspond discretely with
14 each of the issues as listed in your scheduling order, your
15 Honor. There is some correlation, but various parties, as
16 the Court, I'm sure, can understand, have a number of issues
17 that they would like to address. There will be some overlap.
18 The parties are going to try to overlap as little as
19 possible, but it was not really feasible to try to identify
20 discrete issues that each party was going to take on, so
21 instead the hope is that as each party comes to the podium,
22 they'll try to give you a little bit of a road map as to the
23 particular issues that they're going to touch upon.

24 THE COURT: Thank you, and thank you for your
25 extraordinary effort in coordinating this. I'm sure it was a

1 challenge. And I also want to thank all of the attorneys for
2 cooperating with Mr. Gordon and with the Court in trying to
3 organize this as best we can. So we're going to start then
4 with AFSCME's counsel, and we're going to try to run the
5 timing mechanism for your convenience. Kelli, have we got
6 that available? I'm sorry.

7 MS. LEVINE: They were teasing me that if I'm
8 nervous, it'll take 20 minutes, but if I remember to speak
9 slowly, it'll take 35.

10 THE COURT: Okay. So for 35 minutes you may
11 proceed.

12 MS. LEVINE: Thank you, your Honor. First, we
13 appreciate the opportunity. We think these issues are
14 extremely important, and we're glad that we have the
15 opportunity to speak. Second, as Mr. Gordon correctly noted,
16 the parties who are speaking here today have made a concerted
17 effort to divide up the time and to try not to duplicate our
18 comments, so in that regard we're reserving the right to rely
19 on the filed objections along with the other arguments of
20 other counsel simply because we won't have time to do it all
21 ourselves.

22 With that, your Honor, we started this endeavor by
23 looking at PA 436 specifically concerned, as you might
24 imagine, with the pension issues and with the fact that we
25 believe that the Michigan Constitution provides for

1 protections for vested pension benefits, and then that
2 potentially conflicted with PA 436, and, therefore, we
3 started looking at the issue of whether PA 436 was, in
4 fact -- was, in fact, unconstitutional in that it allowed a
5 Chapter 9 filing in light of the pensions -- in light of the
6 pension restriction in the Constitution.

7 In addition to that, we were looking at the
8 governor's authorization in allowing the Chapter 9 filing in
9 light of PA 436 and in light of the Michigan Constitution and
10 grappling with the issue of whether or not that authorization
11 without any contingencies caused this Chapter 9 filing to be
12 unconstitutional as applied.

13 In addition to that, we grappled with the ripeness
14 issue as to whether or not all of these issues should be
15 raised now or whether they should be raised in connection
16 with a plan of adjustment, specifically, your Honor,
17 grappling with the issue as it was presented to us by our
18 members where we have folks literally sitting at their
19 kitchen table deciding whether or not they can take medicine
20 today or do they have to start taking it every other day, do
21 they feed themselves, do they feed their children, do they
22 pay rent, so we came to this Court anxious to have some of
23 these issues decided quickly.

24 On top of that, as it turns out, involved in the
25 mediations and the other efforts with regard to the serious

1 issues that are confronting Detroit, we do think
2 understanding your Honor's views of the rules of the game
3 could be useful for the parties in that process, but that's
4 really by way of introduction because what we've done, your
5 Honor, in addition to that, is we started researching how we
6 thought PA 436 fit in the overall scheme of Chapter 9 and, in
7 looking at those issues, delving into whether or not Chapter
8 9 itself was, in fact, unconstitutional, which is what we
9 will address before your Honor this morning. And I'd like
10 to, with the Court's permission, set the table a little bit
11 but promise to get into Bekins and some of the cases that are
12 cited by folks who disagree with our views later on in the
13 comments.

14 So I'd ask you, your Honor, to come back with me, if
15 you will, to elementary and high school when we first started
16 talking about what the Constitution is and what it means,
17 and, respectfully, when we go back, we remember that the
18 framers of the Constitution were fleeing an oppressive,
19 overbearing, centralized government. So when we started
20 looking at how we framed our Constitution, we were very
21 careful to make sure that there was a federal Constitution
22 that was extremely limited only to specific rights that we
23 believed should transcend every single state in the union,
24 and we've come to call those the unalienable rights, and they
25 refer to things like freedom of speech and freedom of

1 religion. And under the Tenth Amendment, your Honor,
2 everything else is reserved for the states, so specifically
3 reserved for the states are the state municipal governments'
4 rights to handle their own financial management. And this is
5 done, your Honor, not to protect the states, which would have
6 been as suggested by the New Jersey plan, but was actually
7 done to protect the individual citizens, as suggested by the
8 Virginia plan, and the specific rationale behind protecting
9 the individual citizens was in order to have accountability
10 from our government and particularly, more importantly, from
11 our local governments, which were viewed as being more
12 accessible to the citizens that they were -- that they were
13 supposed to be taking care of. So, for example, if somebody
14 infringes on my right of free speech or my right of freedom
15 of religion, I know I point my finger to D.C., and I look at
16 the federal government, and I say to the federal government,
17 who is accountable for those federally protected rights,
18 "Make them stop," but if somebody says to me that there's an
19 inappropriate use of the power over the financial management
20 of a state municipality, of, for example, Detroit, I look to
21 my local government. I look to my local politicians and my
22 local leaders, and I say, "I'm holding you accountable," and
23 we saw that working well very recently with the mayor of
24 Detroit -- with the prior -- apologies -- prior mayor of
25 Detroit, so this direct accountability, which is a

1 cornerstone of how we -- of how we run our country and how we
2 run this democracy, is there for a reason, and it's not there
3 to protect the states. It's there to protect the citizens.
4 The Constitution doesn't start "We the states." It doesn't
5 say, "I the general federal government." It starts, "We the
6 People." So now, as we indicated in our brief, we believe
7 there is what we've called this unholy alliance between the
8 state giving authorization to the federal government to run
9 this Chapter 9 process. And what we said there, your Honor,
10 is that the states are, in essence, ceding the responsibility
11 and the accountability for their own financial management, so
12 by turning over under Chapter 9 to the federal government and
13 being able to hide behind the bankruptcy process and this
14 Court, we lose that accountability that's a cornerstone of
15 what our Constitution requires of us, and we've seen that
16 already. We saw that debtor's counsel correctly noted in an
17 internal e-mail exchange back in January of 2013 that making
18 this a federal issue provides political cover, and we've seen
19 it in the depositions where we're talking to the EM and the
20 governor, and they are talking about the fact that they're
21 not exactly sure what's going to happen with the pensions.
22 The bankruptcy process takes care of that. And we would
23 respectfully submit, your Honor, that we're seeing play out
24 in real time and real life the exact loss of accountability
25 that the Constitution was designed to protect, so --

1 THE COURT: Well, but hasn't state consent been a
2 cornerstone of the Supreme Court's Tenth Amendment
3 jurisprudence?

4 MS. LEVINE: Your Honor, we'll talk about the
5 consent in Bekins, and we don't believe that what we're
6 saying here today is inconsistent with state consent. And if
7 your Honor will give me a little bit more leeway, we'll reach
8 that point --

9 THE COURT: Sure.

10 MS. LEVINE: -- because we understand the issue. So
11 one of the comments that's being made is that in order for
12 there to be -- that the reason why we can't do it at the
13 state level, the reason why the state municipal governments
14 can't do it is because it violates the contract clause, and
15 by violating the contract clause, you can't do a plan of
16 adjustment unless you have a hundred percent consent.

17 Now, we would respectfully submit, your Honor, that
18 there's two responses to that, and they are -- and I'll admit
19 they're diametrically opposed, but under either response you
20 don't get to the place where you get to take it away from the
21 states. Number one, if you believe, as suggested, that you
22 need a hundred percent consent at the state level because of
23 the contract clause, then we would respectfully submit that
24 the states can't cede control to the federal government and
25 then suddenly it becomes legal to do a plan of adjustment

1 without a hundred percent consent. And, your Honor, in doing
2 that, we're actually just reading from the Constitution
3 itself. The contract clause is in Section 10 of Article I of
4 the Constitution. Section 10, Article I, of the Constitution
5 has three subsections, one, two, and three. In the first
6 section, it talks about no state shall enter into treaties
7 with foreign countries, print money, and it's the contract
8 clause. Under sections two and three, not where the contract
9 clause sits, it says, "No State shall without the consent of
10 Congress," so by the plain reading of the Constitution, if
11 "no state shall" means no state shall, then no state shall do
12 it with or without the consent of Congress, and the framers
13 clearly understood that if they wanted the states to be able
14 to do it with the consent of Congress, they could have done
15 what they did in the two other subsections and basically
16 said, okay, instead we'll do it -- we'll do it with a federal
17 municipal bankruptcy statute where the federal government
18 will consent, and, therefore, you can violate the contract
19 clause. So our first point is under the contract clause, "no
20 state shall" means no state shall, and if we're going to be
21 intellectually honest with ourselves, that applies regardless
22 of whether or not Congress consents because it's not, as in
23 Section 10, the second and the third paragraph, "No State
24 shall without the consent of Congress."

25 THE COURT: What Supreme Court case law supports

1 this interpretation?

2 MS. LEVINE: Your Honor, we respectfully submit that
3 it's Ashton.

4 THE COURT: The case that Bekins overruled?

5 MS. LEVINE: Well, we don't believe that Bekins
6 overruled it, and if I can keep going, the alternative
7 approach -- and, frankly, the plain meaning of the statute we
8 don't believe yet -- or I'll admit we haven't found yet a
9 constitutional case that comes right out and says it is or it
10 isn't done this way, but it is the plain reading of the
11 Constitution, which we thought was --

12 THE COURT: Okay.

13 MS. LEVINE: -- a good place to start. But moving
14 past that, let's assume -- and we believe the better answer
15 is that there has to be a way to adjust debts. Then we go
16 back to where we started, your Honor, which is this is
17 absolutely a state municipal right. What Bekins was looking
18 at -- and remember Bekins was decided in -- right in the
19 middle of the Great Depression. Okay. And so up until
20 the -- up until just before Bekins was decided, there was no
21 municipal federal bankruptcy law at all. It wasn't really
22 contemplated by the framers, and I'll get into that a little
23 bit more in a minute, but what Bekins found was we now have
24 this new federal municipal bankruptcy law. There is no state
25 counterpart, so the only option that's available to the state

1 and the only way that the state can be accountable to its
2 citizens to fix this problem if there is no other option
3 available is to then consent to the federal court stepping in
4 and doing this. Consistent with that, your Honor, we
5 believe, is Asbury Park, and we would respectfully submit
6 that Asbury Park was decided after Bekins. It was decided --
7 it wasn't a unanimous decision, but there was only one
8 concurrence, so there was no dissent. It was drafted by
9 Judge Frankfurter, hardly, you know, a slouch, and it
10 specifically upheld Bekins but further found that a state --
11 in that case, New Jersey -- could correctly under its state
12 municipal authority do a plan of adjustment that did not
13 require 100 percent of consent, and in dealing with this
14 issue, it found that to be consistent with Bekins because
15 Bekins was looking at a situation where there was no state
16 alternative for the state to choose, and the state only had
17 one alternative, and it made the alternative to rely on the
18 federal statute. And it further found -- and I'm going to
19 quote just for a moment, Judge, but in dealing with this
20 issue, the Court posed and then answered this very question.
21 "Can it be that a power that was not recognized until 1938,"
22 which is a federal municipal bankruptcy law, "when so
23 recognized, was carefully circumscribed to reserve full
24 freedom" -- that's how Bekins interprets it -- "to the States
25 has now been completely absorbed by the Federal Government -

1 that a State which, as in the case of New Jersey, has after
2 long study devised elaborate machinery for the autonomous
3 regulation of problems as peculiarly local as the fiscal
4 management of its own household, is powerless in this field?
5 We think not." And we think that's very telling, your Honor.
6 And by the way, Asbury Park is still good law. Like Bekins,
7 which it is consistent with, it has not been overruled, so
8 the -- then we were grappling with, well, why hasn't anybody
9 looked at this issue. What happened after Asbury Park was
10 that the Bankruptcy Act incorporated a federal municipal
11 bankruptcy statute, which is a predecessor to 903, which
12 specifically includes a provision that provides, like 903,
13 that no state can enter into a plan of adjustment unless
14 there is a hundred percent consent. We find that interesting
15 that it's the federal statute. Basically, that's Article --
16 that's Chapter 9 saying Chapter 9 is constitutional, and the
17 states can't enter into an alternate separate plan of
18 adjustment with less than a hundred percent because Chapter 9
19 says so. It's a circular argument, we would submit, your
20 Honor, that can't possibly be the reason why the states can't
21 enter into a plan of adjustment, especially in light of
22 Asbury Park, with less than a hundred percent consent.

23 In addition to that, the other telling conclusion in
24 Asbury Park was when they addressed head on the issue of the
25 contract clause, they determined that the contract clause is

1 not violated when you don't actually violate the underlying
2 contract. They were analogizing it to like the property
3 rights, so while you have a contract right and that can't go
4 away or you have a property right and that can't go away,
5 what they were talking about in Asbury Park was what's the
6 remedy, and the remedy in a Chapter 9 -- and we would
7 respectfully submit the remedy in a state -- appropriate
8 state plan of adjustment is to take what is now a valueless
9 right -- contract right because the state municipality is
10 insolvent and create a plan of adjustment that, like in the
11 corporate bankruptcy setting, creates value for a right that
12 had no value. We're not doing away with the contract, and a
13 lot of the cases that come after that -- for example, United
14 Trust that talks about taking away the bonds or changing the
15 bonds -- Asbury Park says you're not taking away the
16 contract, you're not taking away the bonds, you're not taking
17 away our retiree benefits. All you're doing is you're
18 saying, "Look, there's not enough money here to pay for it.
19 We can't get it through taxation. We need to -- we need to
20 fashion a remedy." And that, your Honor, we would
21 respectfully submit is consistent with Bekins, with Asbury
22 Park, and with an appropriate reading of the contract clause.

23 Turning now to the bankruptcy clause, there is a --
24 there is a provision that provides for a national bankruptcy
25 statute. How can Chapter 9 be unconstitutional if we have

1 a -- if we have a bankruptcy clause that says there's a
2 national uniform bankruptcy statute? Number one, we're
3 directing our comments specifically at Chapter 9. We're not
4 saying there is no statute that could be -- that could fit
5 within the parameters. But that said, one of the things we
6 would observe about the bankruptcy clause is when the framers
7 framed the Constitution, it was inconceivable to them that
8 there would be a national municipal bankruptcy law. To this
9 day there is no national municipal bankruptcy law in the EU.
10 And while Chapter 11 provides a very viable way to enable
11 commerce and Chapter 7 provides a very viable way for there
12 to be a fresh start -- and we've avoided debtor's prison and
13 all of the things that the framers were focused on at the
14 time -- there was no -- and there wasn't until the Great
15 Depression a national municipal bankruptcy law.

16 Second, we think there's a problem with Chapter 9
17 specifically because the requirement of the national
18 bankruptcy law is that it be uniform, so whether I'm here in
19 Detroit or in any other state or city in the country, I know
20 what the -- I know what the criteria is to be a corporate
21 debtor. It's right in the Code. I know what the criteria is
22 to be a Chapter 7 debtor. It's right in the Code. But
23 because Chapter 9 is struggling with the difference of the
24 separation of what's a federal power and what's a state
25 power -- and we respectfully submit struggling in a way that

1 didn't work -- Chapter 9 is not a uniform statute. There are
2 some states that have objective standards so that everybody
3 in their particular state has to meet a certain criteria in
4 order to be a Chapter 9 debtor. There are some states that
5 don't even have the ability to be a Chapter 9 debtor, and
6 then there are some states, like Michigan, where even though
7 there's a statute that purports to authorize Chapter 9
8 filings, it is completely and totally subjective with regard
9 to who qualifies, whether they get authorization to file, and
10 whether or not there are any contingencies that are attached
11 to what they do when they're in that filing.

12 THE COURT: Okay. So how do you distinguish the
13 cases that uphold the nonuniformity of exemptions in Chapter
14 7?

15 MS. LEVINE: Your Honor, one of the -- two responses
16 to that. First of all, we understand the case law that says
17 that you can have conformity in a geographic location, so we
18 understand, for example, that if every state had an objective
19 standard the way every state has its own exemptions in
20 Chapter 7, that that could meet the criteria for uniform
21 standards, but we're saying something different. In Chapter
22 9 we don't know that every state has a standard or that
23 they -- and if they don't have a -- and if they don't have a
24 standard for becoming a Chapter 9 debtor, there is no default
25 back to that which is provided under the Code. In other

1 words, in Chapter 7, if I like Detroit's exemptions, I use
2 Detroit's exemptions. If I like the federal exemptions, I
3 use the federal exemptions. But there is no place where I
4 don't get to be a debtor or I don't get exemptions.

5 THE COURT: Well, but still the question remains how
6 does a nonuniformity among states in authorizing or not
7 authorizing Chapter 9 or in having different standards for
8 seeking Chapter 9 protection make the federal law nonuniform?

9 MS. LEVINE: Well, your Honor, if you take that to
10 its natural conclusion, you can say that I have a federal law
11 that basically says you can do whatever you want, but because
12 I'm saying you can do whatever you want to everybody, it's
13 uniform. We would respectfully submit that that doesn't --

14 THE COURT: Isn't that just about what the Chapter 7
15 exemption cases say? Beyond that, federal law outside of
16 Chapter 9 applies state property law, generally speaking,
17 and, of course, the property law differs from state to state
18 to state.

19 MS. LEVINE: Yes. And that goes back to the line of
20 cases that talk about geographic, that they can be -- that
21 they can be uniform within a geographic area. The difference
22 between all of those cases -- and then I'll let the point
23 rest because you are the Judge, and we may have to agree to
24 disagree --

25 THE COURT: I'm just asking questions.

1 MS. LEVINE: But the -- but we view that, as I said
2 earlier, that those exemptions, those criteria are published.
3 Okay. So even if I know that I'm not going to follow -- that
4 if I'm going to follow state law with regard to UCC
5 priorities or if I'm going to follow state law with regard to
6 exemptions, in a specific geographic area I know exactly what
7 that is. In the states that have the subjective test with
8 regard to whether or not to file a Chapter 9, Detroit has a
9 different standard than Lansing and has a different standard
10 than other cities, and that's the issue, and the issue -- and
11 not only that, but none of those cities know what that
12 standard is. And I'll leave it there.

13 THE COURT: Okay.

14 MS. LEVINE: Your Honor, the other argument that's
15 out there is, well, doesn't the state have -- doesn't the
16 state have the ability to cede control if there's federal
17 aid. Your Honor, we would respectfully submit that's a very
18 different situation. If you're looking at a situation, for
19 example, like Sandy or like Katrina where the federal
20 government is saying we're going to give you money under
21 specific terms and conditions, that's different. Nobody is
22 saying to Detroit or nobody is saying to every single Chapter
23 9 debtor if you file Chapter 9, you get "X" amount of money
24 from the United States of America, and in exchange for that,
25 you have to follow these certain rules. There's a difference

1 between entering into a contract for money and for support
2 than ceding control just to do the plan of adjustment with no
3 financial support.

4 THE COURT: Well, but the cases in which the Supreme
5 Court has held the Tenth Amendment is violated by the federal
6 government or the federal government's legislation involve
7 what's called commandeering. Is there any of that here?

8 MS. LEVINE: Well, your Honor, we think that's -- we
9 think that is, in part, what is happening here. The
10 commandeering is they're taking away the state's right or
11 the -- to do their own financial management.

12 THE COURT: But only because the state showed up.

13 MS. LEVINE: But that's not true, and this is where
14 we go back to the Bekins --

15 THE COURT: Is there anything in Chapter 9 that
16 compelled the state to authorize the city to file this case?

17 MS. LEVINE: Yes, and this is -- and this is where
18 the argument comes. Okay. In Bekins there was no state
19 alternative at all. In Asbury Park -- so, therefore, the
20 Bekins Supreme Court made the decision that the state had no
21 choice if it wanted to adjust its debt but to come to the --
22 but to come to the federal court. In Asbury Park there was a
23 state alternative to the federal statute that was -- and that
24 was permitted by both the federal statute and the state
25 statute, so the arguments outside of the federal statute that

1 said you can't go to federal -- you can't do it statewide,
2 you have to go to federal court under the commerce clause and
3 otherwise, were rejected for some of the reasons that we're
4 discussing here today. In Chapter 9 four year -- or the
5 predecessor to Chapter 9, four years after Asbury Park, the
6 Bankruptcy Code in its municipal statute said we can adjust
7 debts at the federal level if you use the Bankruptcy Act, now
8 the Bankruptcy Code, but you, states, cannot because of how
9 we read the commerce clause only -- state municipal
10 governments cannot adjust debt except with a hundred percent
11 consent, so what the -- so what Chapter 9 says to the
12 governor is if you want to do a plan of adjustment without a
13 hundred percent consent, you must come to the federal
14 government, number one. Number two, your Honor --

15 THE COURT: Well, but the commandeering cases
16 address situations where the state and -- the federal
17 government imposes on the state to carry out some federal
18 program, some federal policy. How does that work here? So,
19 for example, in the New York case, which involved the waste,
20 right, nuclear waste or whatever, the state was forced to
21 take title to it under certain circumstances, and the Court
22 held that the state couldn't be imposed upon to do that to
23 carry out the federal policy of how to dispose of this waste.
24 How is that analogous here?

25 MS. LEVINE: Well, your Honor, the reason why we

1 believe it's analogous is because in order to do a plan of
2 adjustment, arguably there's no other way to do that without
3 using Chapter 9 unless you have a hundred percent consent,
4 and that's the commandeering. The requirement that there be
5 a hundred percent consent unless you're the federal
6 government means that the state has no ability to do a plan
7 of adjustment unless it cedes control to the federal
8 government and to the bankruptcy process.

9 Your Honor, I'm coming up on time. If I -- unless
10 your Honor has more questions, if I could just close briefly.

11 THE COURT: Well, the other question I have for you
12 is what about the cases that hold that the lower courts are
13 to apply Supreme Court precedent until the Supreme Court
14 itself overrules it, and this is, of course, the Bekins case?

15 MS. LEVINE: Well, your Honor, our -- we would
16 respectfully submit that Asbury Park was decided after
17 Bekins. Right now where the Supreme Court sits is that
18 Bekins stands for the proposition that in the face of no
19 state alternative, which is what existed there, you can turn
20 to the federal statute. Asbury Park stands for the
21 proposition that side by side an appropriate municipal
22 bankruptcy law and an appropriate state law, that's where the
23 state gets to choose, and if the state, as it did in Asbury
24 Park, chooses an appropriate state law that does permit for
25 the adjustment of debt, then the state is accountable to its

1 citizens. If the state chooses the municipal law, then the
2 state is accountable to its citizens. But either way, it's a
3 true state decision. Consistent with both of those cases, we
4 find ourselves here in Detroit with a situation where there
5 is prohibited by Chapter 9, we believe unconstitutionally, no
6 ability to have that second state decision.

7 THE COURT: Just so I understand, your argument is
8 that the current Chapter 9 is different enough from Bekins
9 because of its exclusivity that Bekins is not binding on this
10 Court.

11 MS. LEVINE: Correct, and secondarily that Bekins
12 never reached the issue because regardless of whether or not
13 Bekins had an inappropriate -- the Bekins statute had an
14 inappropriate clause, the state wasn't looking to have a
15 separate -- you know, here we have PA 436 looking to try and
16 pigeonhole itself into the strictures of Chapter 9 reviewing
17 Chapter 9 as unconstitutional.

18 Your Honor, we believe your Honor is faced with a
19 difficult decision here. We understand that Detroit is --
20 all that's happening here is difficult. Detroit is in dire
21 financial straits, and it's not lost on any of us that the
22 decisions that you make with regard to the criteria for
23 eligibility, particularly with regard to Chapter 9, will have
24 implications for blighted cities throughout the United
25 States. We also understand that constitutional issues are

1 difficult issues. We heard -- you know, we've been grappling
2 since 9/11, for example, with the balancing between homeland
3 security and individual privacy rights. We started talking
4 earlier about the First Amendment, and as a society we
5 grapple between where does First Amendment end and where does
6 a hate crime, for example, begin. This is no less an
7 important constitutional issue because of the impact this
8 will have on state sovereignty and the ability of its
9 citizens to hold its own municipal leaders accountable.

10 Your Honor spent a long time listening to a lot of
11 individual objectors here in this courtroom talk about how
12 bad they felt things were in Detroit trying to deal with the
13 fact that their firemen were using garden hoses, you know,
14 street lights are out, all of these things, and your Honor
15 was clearly sympathetic. And it was -- and concluded that
16 hearing, we believe correctly so, by saying that this was a
17 great day for democracy, but we would also add, your Honor,
18 that despite the fact that these things are at the forefront
19 of your mind and you want to do what's right, that doesn't
20 necessarily mean that you can do what's expedious -- what's
21 expedient. Democracy is hard, and we would respectfully ask
22 that your Honor consider these issues with the same depth and
23 consideration that you've considered everything in this case
24 to date. Thank you.

25 THE COURT: Thank you. Mr. Montgomery also for 35

1 minutes.

2 MR. MONTGOMERY: Yes, sir. Thank you.

3 THE COURT: You may begin.

4 MR. MONTGOMERY: Good morning. Your Honor, my task
5 today is to discuss with you constitutionality as applied,
6 the standing and ripeness issue that the U.S. government has
7 posed to our constitutionality as applied to argument, and to
8 identify for you the predicate of that unconstitutionality as
9 applied, which, of course, we believe is the unconstitutional
10 behavior of Emergency Manager Orr and the governor in the
11 context of PA 436.

12 I'd like to set the stage briefly for you, your
13 Honor, on the question of standing by setting up two lines
14 of -- view of history here. One is that in 1963 the State of
15 Michigan amended its Constitution to protect the pensions of
16 municipal workers. Partly in reliance on that protection, a
17 small minority of the millions of people who have lived and
18 worked in the city went to work directly for the city. Of
19 those, thousands of people who worked, about 23,000 people
20 are alive today who are retirees of the City of Detroit,
21 their beneficiaries and surviving spouses.

22 Now, those 23,000 people have been, in our view,
23 stalked by the emergency manager, who, with the blessing and
24 support of his advisors, has proposed to eliminate pensions
25 through a Chapter 9 process. On July 16th the emergency

1 manager sought permission from the governor to file a Chapter
2 9. On July 18 the governor, with full knowledge of the plans
3 of his emergency manager, gave unconditional permission to
4 the emergency manager to file that Chapter 9 petition. And
5 the first overt harm has, in fact, now been announced. On
6 October 11, the city mailed its books to the retirees
7 announcing the termination of the retiree health insurance
8 program for those same 23,000 people.

9 Now, the committee that I represent, your Honor,
10 consists of nine individuals, including retirees, deferred
11 vested, retirement eligible, surviving spouses and
12 beneficiaries, all of whom are protected by the pension
13 clause, all of whom are adversely affected by the harm that
14 was just announced by the city. Each has or represents
15 vested accrued pension benefits, and they are participants in
16 the city's retirement health system.

17 The retiree committee consists of creditors
18 appointed by the U.S. Trustee to act in connection with the
19 case under 1102 and we think, therefore, have standing under
20 1109. Now, the 1109 standing of being an interested party
21 may not be sufficient for either standing or ripeness on a
22 constitutionality issue, but we say to you -- we ask your
23 Honor to look at the current situation in the following
24 analogy. When can somebody turn and defend themselves when
25 they are being threatened with harm? We think that you don't

1 actually have to wait until the harm has befallen you if the
2 threat is imminent, if the threat is capable of redress by
3 the Court, and it is identifiable. The redress by the Court
4 is, of course, denial of eligibility to the city. The threat
5 is loss of pensions as announced by the emergency manager.

6 THE COURT: Of course, if eligibility is denied, the
7 city is also denied its right to deal with all of its other
8 debts, isn't it?

9 MR. MONTGOMERY: Your Honor, that may be a temporary
10 delay because if your Honor holds that the current
11 authorization papers are not constitutional or if accepted,
12 despite their lack of constitutionality, the challenge to
13 Chapter 9 becomes insurmountable, we think that the
14 reasonable thing this Court could do if it were so inclined
15 would be to deny the city its eligibility for the reasons of
16 the challenge to the pension clause and then invite the city
17 to come back with either a conditional acceptance by the
18 governor or otherwise correct their manifest intent to
19 violate Article IX, Section 24.

20 THE COURT: Well, what do I do if in Detroit two, as
21 you propose, the bondholders come in waving the state
22 contracts clause?

23 MR. MONTGOMERY: Well, your Honor, first, we think
24 that there is a difference between Article IX, Section 24,
25 and both the federal contracts impairments clause and the

1 state's own contracts impairment clause. We think that can
2 be found in two places. First, there are extra words that
3 can be found in Article IX, Section 24. In its entirety,
4 Article IX, Section 24, has a phrase that appears at the end,
5 which says "shall not be diminished or impaired thereby," the
6 entire phrase, if I may, your Honor, "The accrued financial
7 benefits of each pension plan and retirement system of the
8 state and its political subdivisions shall be a contractual
9 obligation thereof which shall not be diminished or impaired
10 thereby," and, of course, your Honor, the second funding
11 clause, which is, "Financial benefits arising on account of
12 service rendered in each fiscal year shall be funded during
13 such year and such funding shall not be used for financing
14 unfunded accrued liabilities." Your Honor, that is, to my
15 mind, certainly textually quite different than the state's
16 own simple contract impairment clause, and we think
17 meaningfully it's different. What Section -- Article IX,
18 Section 24, does for -- in our view, your Honor, is tell the
19 state that no matter what you are doing, you cannot take a
20 step to adversely affect those accrued financial benefits,
21 and we cite, of course, the Seitz case, which is the judicial
22 probate case in which judges in the State of Michigan asked
23 for protection of their pensions, and the Michigan Supreme
24 Court agreed. We think it's also consistent with the
25 Musselman case, which the Michigan Supreme Court said that,

1 again, the funding of retirement benefits that were otherwise
2 protected or protectable had to be done, and the state could
3 not take any action to not do that. Now, of course, that's a
4 mandamus case in which the Court denied mandamus, but the
5 legal proposition was squarely stated.

6 We also think the advisory opinions that the Court
7 entered with respect to the tax exempt nature of retirement
8 benefits clearly show that the Michigan Supreme Court looks
9 to see if the state is doing something to impair the actual
10 benefit. And that particular advisory opinion dealing with
11 the tax exempt nature of retirement benefits, the Michigan
12 Supreme Court said, no, merely taxing you or removing the
13 special exemption is not an impairment of the financial
14 benefit itself, so we step back and we ask your Honor to say,
15 okay, is a plan proffered by the emergency manager with the
16 knowledge and support or blessing of the governor authorized
17 by a statute an unconstitutional series of events? Is the
18 emergency manager's action unconstitutional, is the
19 governor's action unconstitutional, or is the statute itself?
20 Knowing that there is a judicial predilection for the
21 narrowest possible reading of major problems, we submit to
22 you that your Honor can start with the emergency manager's
23 plan. Stop it. No eligibility if the emergency manager's
24 plan is to be put forward. If that isn't enough because the
25 governor authorized it, then you have to challenge the

1 governor.

2 THE COURT: Let me rewind the clock here just --

3 MR. MONTGOMERY: Sure.

4 THE COURT: -- a couple of minutes and ask you about
5 this nonimpairment provision in the Constitution. The
6 question we all are struggling with is what is the meaning,
7 the substantive meaning of that provision in the context of a
8 political subdivision that doesn't have the money to comply
9 with it? What's the meaning of it?

10 MR. MONTGOMERY: First, I think this might be a good
11 opportunity to agree with your Honor that impairment in the
12 classic sense is something the Bankruptcy Code, of course,
13 has dealt with for many years by saying the allocation of
14 assets is not all by itself impairment. I think we -- I
15 think it's fairly well established that just because a
16 creditor gets less than a hundred cents does not mean that
17 their contract is impaired. On the other hand --

18 THE COURT: I thought that's exactly what it meant.

19 MR. MONTGOMERY: That's if the state does it, but
20 that's not that the -- remember the -- it was not a taking of
21 property by the federal government to authorize the
22 Bankruptcy Code. It was --

23 THE COURT: Oh, if that's what you mean --

24 MR. MONTGOMERY: Yes.

25 THE COURT: Absolutely.

1 MR. MONTGOMERY: Totally.

2 THE COURT: Absolutely, sure.

3 MR. MONTGOMERY: But it is a taking of property if
4 the emergency manager says to its retirees, "I, either by
5 virtue of a plan I put in or otherwise, am taking your right
6 to receive pension benefits in the future," which is what he
7 is proposing. He is not merely proposing to alter the
8 funding system in violation of Article IX, Section 24. He is
9 proposing to actually eliminate or reduce already accrued
10 financial benefits.

11 THE COURT: Right, so what's -- how do we give
12 meaning to nonimpairment, as you propose is constitutionally
13 required, if the city doesn't have the money to pay? What
14 does it -- what's the meaning of that requirement?

15 MR. MONTGOMERY: Well, your Honor, I think that if
16 there is to be some allocation -- let's back up for half a
17 moment. Let us assume for the moment that, in fact, the city
18 has proposed to utilize all of its assets to deal with it, so
19 we're not talking about a situation in which the city has
20 capacity on its balance sheet or cash flows to deal with
21 something that it just refuses to do. We think that the
22 proper answer is not for the federal government to invite the
23 state to violate its own Constitution but to have the state
24 adjust its own laws, have the state, using its people, its
25 either constitutional ratification process or the state

1 through its legislative process create the system for
2 adjustments that Asbury Park tells us is still at least
3 viable. Putting that aside, whether or not Asbury Park is or
4 is not still --

5 THE COURT: Well, but hang on, Mr. Montgomery. If
6 the pension right is as inviolate as you say it is, the
7 legislature can't adjust the pensions either.

8 MR. MONTGOMERY: No, but it can adjust other
9 people's assets, other people's entitlements. It can make
10 the accommodations to its Constitution that may be required.
11 It has the capacity to levy. It has the capacity to change
12 property rights. The state legislature has those property --
13 and the only thing we are asking this Court to consider --

14 THE COURT: Well, let me ask this question then.

15 MR. MONTGOMERY: Yes, sir.

16 THE COURT: Is it your position that because of this
17 nonimpairment requirement in the Michigan Constitution, the
18 State of Michigan is a guarantor of retirees' pension rights?

19 MR. MONTGOMERY: We have not garnered nor do we
20 propose to express a view today whether or not the state is a
21 guarantor. What we are proposing to express a view today is
22 that no state actor can do something in violation of the
23 state Constitution and have that act be other than void ab
24 initio. And if those acts are void ab initio, the requisite
25 authorizations either don't exist or, if this Court has the

1 power to accept those authorizations notwithstanding their
2 unconstitutionality under Michigan law, then your Honor is
3 engaged not in aiding the sovereignty of the state, as
4 suggested was required by Bekins, but you are aiding -- you
5 are going in the direction of derogation of the sovereignty
6 of the state. And why do I say that? Because you are
7 telling the people of Michigan they can't control their own
8 Constitution, they can't control their own legislature, they
9 can't control their own executive officers, and we think that
10 is a pure Tenth Amendment problem.

11 You mentioned earlier in discussion with Ms. Levine
12 the commandeering issue. It is absolutely true, as you have
13 identified, that first states must act in aid, not in
14 derogation of sovereignty. That's the Bekins. Under Printz
15 they can't compel a state official to do something that is
16 otherwise the subject of a federal program. They can invite,
17 they can entice, but they can't commandeer. That's the
18 Printz -- that's the Brady Bill decision. And in the New
19 York versus United States case, which, again, your Honor
20 identified, you can't compel ownership of radioactive waste.
21 Again, you can create programs, you can create enticements,
22 you can create an exhaustive federal regulatory scheme that
23 keeps the states out of regulating the business, but here the
24 federal government can't, by virtue of the Tenth Amendment,
25 keep the states out of regulating the financial obligations

1 of its citizens. It can't keep the states out of the
2 business of deciding when their elected officials can or
3 cannot do something, and it is that issue that causes the as
4 applied problem as opposed to the facial and validity issues
5 that were raised by AFSCME in the arguments of Ms. Levine.
6 We think it --

7 THE COURT: I want to -- well, I want you to focus
8 on why the mere filing of this case resulted in an imminent
9 threat to the pension rights of the retirees of the city
10 because the filing itself didn't result in anyone's payments
11 being reduced; right?

12 MR. MONTGOMERY: Well, I will note for you they --
13 on the healthcare side, they apparently are.

14 THE COURT: Well, but that's not a result of the
15 Chapter 9.

16 MR. MONTGOMERY: Well, actually, I don't think that
17 could be done under state law because these are all
18 collectively bargained -- or mostly collectively bargained,
19 and to the extent they were collectively bargained,
20 they're --

21 THE COURT: Well, but with or without the Chapter 9,
22 Mr. Orr was free to do that or not under state law.

23 MR. MONTGOMERY: Or not under state law.

24 THE COURT: There's nothing about Chapter 9 that
25 impacts his decision to do that. He hasn't asked, at least

1 as far as I know, the Court's permission to do that.

2 MR. MONTGOMERY: No. As far as we know, he hasn't
3 asked either. So if I may answer the question, which, if I
4 understood it correctly, was why is the mere filing --

5 THE COURT: An imminent injury.

6 MR. MONTGOMERY: -- an imminent threat, first, I go
7 back to the factual predicate that I think underlays this,
8 that the mere threat of filing -- excuse me -- the mere
9 threat of a filing is not the harm all by itself, but it was
10 preceded by an announced plan, the June 14 proposal, and a
11 series of other events that the emergency manager undertook
12 and statements made, which evidenced -- evidenced -- a desire
13 to violate the state Constitution. Now, the only way in the
14 emergency manager's own mind that he can do that is if he has
15 access to the Bankruptcy Court because he believes it will
16 trump the state constitution with respect to pension
17 protections. Now, right or wrong, it is the -- it is the
18 threat that those pension benefits will be eliminated as part
19 of a plan, a series of steps of which have already been
20 undertaken, the most recent of which was the filing of the
21 Chapter 9 petition. The problem we face, at least in my
22 view, your Honor, is that the world that you face today for
23 deciding whether or not the emergency manager's actions are
24 or are not constitutional under Michigan law is different in
25 the eligibility context than we think you're going to be

1 faced with at a plan confirmation context. Once you're
2 inside the box of bankruptcy -- excuse me -- everyone,
3 putting aside whether -- how vigorously we will try to get
4 state law to say something different, but everyone seems to
5 suggest that the priority schemes and the allocation schemes
6 of the Bankruptcy Code preclude a contrary result that would
7 be allowable under state law.

8 THE COURT: Oh, but you're going to fight that.

9 MR. MONTGOMERY: But, your Honor, I've lost before,
10 and I might lose again. The issue of --

11 THE COURT: Well, but if you lose, it will be on
12 legal grounds.

13 MR. MONTGOMERY: But, your Honor, it will be. If we
14 are fighting this issue at the back end of the case and we
15 are arguing, as we will if we are required to, that
16 notwithstanding 109, that the emergency manager can't propose
17 a plan in good faith in which he violates his constitutional
18 rights for --

19 THE COURT: Constitutional obligations, yeah.

20 MR. MONTGOMERY: Constitutional obligations. I
21 apologize. For that to be a viable argument, in effect, you
22 have to rule today, your Honor, that it would be a violation
23 of his constitutional obligations because if it's not a
24 violation in the context of adhering to the Bankruptcy Code
25 provisions, which some cases say only provide with respect to

1 prospective obligations -- that is, a new pension plan would
2 be subject to the protections -- well, we're not talking
3 about a new pension plan, your Honor. We're talking about
4 one that's been around for 60 or 70 years now, and we're
5 talking about a retirement plan that has people who are a
6 hundred years old.

7 THE COURT: Suppose the plan is confirmable because
8 it results in the consent of those impaired after
9 negotiation.

10 MR. MONTGOMERY: Your Honor, if our understanding of
11 the law is correct, it's going to be very hard for a state
12 official to agree in good faith to propose a plan that
13 impairs financial benefits without a hundred percent of the
14 retirees consenting either under 109 or under state law, and
15 so the -- in order to get to the point where a less than 100-
16 percent majority of the retirees are accepting the plan, you
17 have to have decided that state law doesn't control the
18 exercise of those rights.

19 THE COURT: Suppose you or one of your objecting
20 colleagues decides to assert that the Michigan Constitution
21 requires the state to guarantee the federal -- the retirees'
22 pension.

23 MR. MONTGOMERY: Well, your Honor, the -- again, you
24 are asking for advisory hypotheticals here, but --

25 THE COURT: Well, but that's what looking at

1 ripeness is all about.

2 MR. MONTGOMERY: The issue will be then not whether
3 or not the bankruptcy process has harmed the retirees because
4 it will have -- if the state is a guarantor or arguably a
5 guarantor, it must be sued, query whether or not that lawsuit
6 can be brought in the Bankruptcy Court or some other place,
7 and, secondly, the -- under the Sittler case, I believe,
8 there is a question of whether or not there's a cause of
9 action for damages for unconstitutional behavior. There may
10 be a remedy, an injunction against unconstitutional behavior,
11 but the Michigan Supreme Court has not yet adopted a per se
12 rule that says if there is a violation of the state
13 Constitution --

14 THE COURT: Suppose the state agrees that the
15 Constitution obligates it to guarantee the city's pension
16 obligations.

17 MR. MONTGOMERY: Then the state will have remedied
18 the harm caused by the bankruptcy, your Honor, but the harm
19 was still being caused by the bankruptcy.

20 THE COURT: What harm?

21 MR. MONTGOMERY: The harm was the diminution of
22 pension benefits.

23 THE COURT: Well, but if the state backs it up,
24 there's no diminution.

25 MR. MONTGOMERY: Yeah. If, as part of a plan of

1 arrangement, the state backstops -- you're right, your
2 Honor -- then the -- this is like a situation --

3 THE COURT: Okay. Okay. If I'm right about that,
4 then why is the issue ripe now as opposed to then?

5 MR. MONTGOMERY: This is like the landlord case, if
6 I may, your Honor, in which the -- I think it's Bennett
7 versus City of San Jose, which, if I may, your Honor, since
8 we didn't brief this issue, I can give you the cite for, but
9 as I'm looking for the citation, I believe that case stands
10 for the proposition that a landlord need not await the actual
11 failure to collect more rent than he could under the new
12 ordinance. He's allowed to challenge the ordinance when it's
13 being passed. All right. We think this situation is very
14 similar to that. We have a situation in which the emergency
15 manager has undertaken an act, has sought the aid of this
16 Court, and the question is do we have to wait for this Court
17 to, in effect, put it to us before --

18 THE COURT: No, no. The question isn't that. The
19 question is do you have to wait for the emergency manager to
20 actually propose a plan that impairs pensions -- that's the
21 question -- and then object to that on constitutional
22 grounds.

23 MR. MONTGOMERY: In the Thomas More Law Center case,
24 your Honor, the -- which is the commerce clause challenge to
25 minimum coverage provisions under the Affordable Care Act,

1 three and a half years in advance, the Sixth Circuit found
2 standing because notwithstanding the fact that it was a long
3 way off and many things could occur, including Congress
4 changing the law, different rules being applied, that was
5 enough because there was nothing the party asserting the
6 claim had to do in order to become injured. Now, yes, there
7 were things that any member of the law center group could do
8 that could escape the harm, but the fact that they had to
9 undertake affirmative steps to escape the harm was enough.

10 Here the only thing we can do to escape the harm
11 which the emergency manager has announced he will undertake
12 is to escape, and the only way to escape is through the gates
13 that your Honor is standing at the door of. You are the
14 keeper of the protection for the retirees. You are the one
15 who can stop the emergency manager from doing what is
16 unconstitutional under Michigan law. And apparently, by the
17 way, both the state and the city are inviting you to rule on
18 constitutionality issues, you know. They are perfectly
19 comfortable with your going down that road, your Honor, and
20 notwithstanding our hesitancy --

21 THE COURT: Does that make an otherwise not ripe
22 issue ripe?

23 MR. MONTGOMERY: No, obviously not, your Honor, but
24 we do think that where there's -- where the voluntary
25 cessation by the city or the temporary cessation or the

1 temporary abandonment of its statements that, oh, we are
2 going to impair the pensions does not create a situation that
3 moots the controversy nor do we think it eliminates the
4 ripeness of the controversy because your Honor can still see
5 the identifiable harm and can still issue an order that
6 redresses that identifiable harm by telling the city it may
7 not enter the portals of your courtroom.

8 Now, your Honor, I think we have, in effect,
9 distinguished the Barnwell case, which is cited by, I
10 believe, the U.S. government, because that was an ad hoc
11 committee of citizens instead of an 1102 committee. Here
12 we're clearly creditors. Here 1109 grants us statutory
13 standing as parties of interest, and I think we have
14 indicated to you that the harm is factual, imminent, and you
15 are at the gates.

16 One other thing I might want to sort of identify in
17 this ripeness issue, why now as opposed to what, why later,
18 of course, your Honor is familiar with the City of Stockton
19 case, and we are not urging you to adopt that case obviously,
20 but it does suggest that once in Chapter 11, the State of
21 California couldn't decide which rules it was going to
22 follow.

23 THE COURT: Chapter 9?

24 MR. MONTGOMERY: Right, in Chapter 9, the same thing
25 your Honor might decide here; that is, once inside Chapter 9,

1 the city is not free to do whatever it wants to do except
2 with respect to its own property and its own future
3 governance. That you cannot touch in any way, shape, or
4 form, but that doesn't mean that you have to approve a plan
5 that violates what your Honor thinks are the rules of the
6 road. And it is that danger that you would be called upon to
7 make a ruling inconsistent with Michigan law at the back end
8 of the case that has us asking you at the front end of the
9 case to prevent the city from engaging in that dialogue.

10 Now, the -- I think worth making as a final, if you
11 will, point -- and, again, later this afternoon you will hear
12 a more fulsome discussion, I believe, on all of the issues
13 associated with PA 436, but I think the void ab initio issue
14 is important to our constitutionality position; that is, were
15 it not for the fact that under Michigan law an
16 unconstitutional act is considered void ab initio, we think
17 you might be able to go down the road of accepting the
18 authorization papers as having been legitimately delivered to
19 your Honor without fear of violating our view of how Chapter
20 9 would be unconstitutional as applied; that is, if Michigan
21 law did not regard unconstitutional acts as void ab initio,
22 then all you would be faced with is a remediable situation
23 rather than an absence of action or an absence of
24 authorization action. And with respect to the void ab initio
25 cases, we have cited those in our brief, your Honor, and we

1 think that you should accept as a truism, if you will, the
2 simple words actually uttered by Attorney General Schuette in
3 his paper that the city lacks authority under Michigan law to
4 propose a plan that diminishes accrued pension rights. It
5 similarly lacks power to consent to any proposed action that
6 would violate the Michigan Constitution. The proposed action
7 was the petition. The proposed action was the petition as
8 part of a plan to eliminate the pension rights induced -- the
9 emergency manager got the governor to say yes to an act that
10 was unquestionably contrary to the pension clause. As a void
11 ab initio act, that means that the legitimacy of the filing
12 is called into question, pure question of state law for your
13 Honor to rule upon, pure question of whether or not, in fact,
14 the city has obtained valid authorization papers -- pretty
15 hard to be valid if the underlying actions are void ab
16 initio, which is the norm under Michigan law, and we think,
17 therefore, your Honor has two ways to go down the path of
18 blocking eligibility independently of the factual disputes
19 under 109. One is to hold that it's unconstitutional, the
20 authorization was unconstitutional because it was part of a
21 scheme to eliminate the pension rights or to say even if it
22 wasn't void ab initio, the acceptance of those actions by
23 this Court raise a huge constitutional challenge under the
24 Tenth Amendment to Chapter 9 itself. Obviously the principle
25 of limiting federal constitutionality challenges would favor

1 finding that the narrower ground would be that the emergency
2 manager couldn't have filed his papers. And I think, your
3 Honor, just because I must, I just want to argue we are not
4 arguing -- we are not rearguing today all those issues which
5 we were in front of your Honor before several weeks ago about
6 Stern v. Marshall and whether or not the Court should do
7 that. We are in front of you. You have determined that you
8 have the power to decide issues of state and federal
9 constitutionality. We are asking you to exercise that power
10 and to preclude the city's eligibility.

11 THE COURT: So if you don't -- we have a little time
12 left. I have some more questions for you.

13 MR. MONTGOMERY: Sure. Happy to engage, your Honor.

14 THE COURT: One is sort of a procedural one. You
15 mentioned that you didn't brief the ripeness issue. Would
16 you like an opportunity to do that?

17 MR. MONTGOMERY: That would be fine, your Honor.

18 THE COURT: I'd leave it to your discretion.

19 MR. MONTGOMERY: Yes, yes.

20 THE COURT: How much time --

21 MR. MONTGOMERY: We'd be happy to do that, your
22 Honor.

23 THE COURT: How much time would you like?

24 MR. MONTGOMERY: Give us a week, your Honor.

25 THE COURT: Okay. You have a --

1 MR. MONTGOMERY: Yeah. Give us a week. It'll be --
2 if you don't mind, we'll submit it to you on the first day of
3 the trial.

4 THE COURT: Okay. I want to ask you about a couple
5 of entries in the brief that you did file.

6 MR. MONTGOMERY: Okay.

7 THE COURT: On page 27, you say -- and I want to
8 quote here. This is the brief you filed at Docket Number
9 805.

10 MR. MONTGOMERY: Yes.

11 THE COURT: You say, "As noted by the Sixth Circuit
12 in City of Pontiac Retired Employees Association, 213 Westlaw
13 4038528 at *1-2, the Michigan legislature evidenced an
14 unconstitutional, and undemocratic purpose in crafting PA
15 436," close quote. Similarly, on page 29 of that brief you
16 say, "The Michigan legislature, the Governor, and the
17 Emergency Manager have each made clear that abrogation of
18 municipal retirement compensation rights was the legislative
19 intent of the Act," referring to PA 436, "and is a central
20 purpose of this bankruptcy. That intent also was recently
21 recognized by the 6th Circuit in City of Pontiac Retired
22 Employees Association," same cite at *3. I have to say, Mr.
23 Montgomery, that I have studied that opinion by the Sixth
24 Circuit several times, and I cannot find these references. I
25 cannot find where the Sixth Circuit addressed or even

1 suggested anything about the constitutionality of PA 436. Am
2 I missing something or was this a mistake?

3 MR. MONTGOMERY: Well, unless my memory fails me,
4 your Honor, I think what we're referring to is the fact that
5 the Sixth Circuit said that PA 4, which was the immediate
6 predecessor of 436, had each of those purposes, your Honor,
7 and that, therefore, by extension --

8 THE COURT: Perhaps so, but the Court didn't say
9 anything about PA 436.

10 MR. MONTGOMERY: Well, other than that it was
11 adopted despite the fact that the referendum had overruled PA
12 4 and that it was virtually the same but for -- I believe the
13 phrase was an add-on for --

14 THE COURT: The Sixth Circuit did not say anything
15 about the purpose or intent of PA 436.

16 MR. MONTGOMERY: But it did as to 4, your Honor.

17 THE COURT: It did.

18 MR. MONTGOMERY: And it says 4 -- 436 is the same as
19 4. That's how we got there. Rightly or wrongly, that is how
20 we got there, your Honor. We say if the Sixth Circuit
21 identified a purpose of PA 4 as being the impairment of
22 pension --

23 THE COURT: Well, since you're going to file an
24 amended brief --

25 MR. MONTGOMERY: Yes, sir.

1 THE COURT: -- I want you to tell me very
2 specifically where in this City of Pontiac case the Court
3 said anything or suggested anything about the
4 constitutionality of PA 436.

5 MR. MONTGOMERY: All right. Your Honor, we will --

6 THE COURT: I agree with you it addressed it at
7 length with regard to PA 4 and expressed grave concerns about
8 it, but that's not the act before this Court today, so I
9 invite you to do that in your --

10 MR. MONTGOMERY: Of course.

11 THE COURT: -- new brief.

12 MR. MONTGOMERY: We'll add that discussion to our
13 ripeness supplemental brief.

14 THE COURT: All right. Thank you.

15 MR. MONTGOMERY: Thank you, your Honor.

16 THE COURT: Ms. Brimer, you may proceed for ten
17 minutes, please.

18 MS. BRIMER: Thank you, your Honor. Lynn M. Brimer
19 appearing on behalf of the Retired Detroit Police Members
20 Association. Your Honor, your concluding arguments or
21 discussion with Mr. Montgomery leads directly into the
22 discussion that I will have with you this morning, and that
23 has to do with the constitutionality of PA 436 under the
24 Michigan Constitution, your Honor. And first and foremost,
25 your Honor, I'd like to point out that in our brief we

1 noted -- and we cited the Schimmel case -- we noted that PA
2 436 was passed in what we believe is derogation of the
3 Michigan referendum provision in Article II, Section 9, of
4 the Michigan Constitution. It is well worth noting at the
5 outset of this discussion, your Honor, that that issue was
6 not addressed by either the city or the State of Michigan in
7 the pleadings they have filed.

8 With that, your Honor -- and I'll address that a bit
9 briefly later, your Honor. Article I, Section 1, of the
10 Michigan Constitution specifically provides that, "All
11 political power is inherent in the people. Government is
12 instituted for their equal benefit, security and protection."
13 Consistent with that maxim, Article II, Section 9, of the
14 Constitution specifically provides -- and it's a lengthy
15 provision, your Honor, so I'll read the relevant
16 provisions -- "The people reserve to themselves the power to
17 propose laws and to enact and reject laws, called the
18 initiative, and the power to approve or reject laws enacted
19 by the legislature, called the referendum. The power of the
20 referendum does not extend to acts making appropriations for
21 state institutions or to meet deficiencies in state funds."
22 As has been noted, your Honor, in a handful of cases that we
23 can find that address this case, this provision of referendum
24 is so significant and vital to our Constitution that Article
25 II, Section 9, further provides that, "No law as to which the

1 power of referendum properly has been invoked shall be
2 effective thereafter unless approved by a majority of the
3 electors voting thereon at the next general election."

4 As this Court is aware, I'm sure, on November 6,
5 2012, by referendum, the people of the State of Michigan
6 rejected Public Act 4 on a vote of 52 to 48 percent. That
7 was the Local Government and School District Act --
8 Accountability Act. On December 26, Governor Snyder approved
9 Public Act 436, the Local Financial Stability and Choice Act,
10 a virtually identical law to Public Act 4.

11 In order to avoid subjecting Public Act 436 to
12 referendum, two very minor spending provisions were tacked on
13 at the back end. Section 34 of the Act provides that for the
14 fiscal year ending 9-30, 2013, \$780,000 is appropriated to
15 administer the Act, in essence, to pay the salaries of the
16 emergency managers appointed thereunder, and Section 35
17 provides that \$5 million is appropriated for the same time
18 frame for the professionals such as lawyers and financial
19 consultants that are engaged under the Act. The spending
20 provision was not at all a general spending provision for the
21 State of Michigan but a very limited provision relating
22 directly to the Act.

23 We have researched, your Honor, and cannot find a
24 single instance where the voters of Michigan have
25 specifically rejected a law and shortly thereafter the

1 governor passes a very similar law, if not identical, and
2 tacked on a spending provision in an effort to remove it from
3 the otherwise democratic process of the State of Michigan.

4 There are a handful of cases in Michigan that do
5 address the referendum. In the case of Kuhn v. Department of
6 Treasury at 384 Mich. 378, 1971, the Michigan Supreme Court
7 specifically provided or held that the phrase in the preamble
8 of that -- the Income Tax Act of 1967, which provides that
9 the Act is for the purpose of meeting deficiencies in state
10 funds was not, in fact, sufficient when at the time the state
11 did not have any state deficiencies in its funding, and,
12 therefore, that provision in the preamble did not, in fact,
13 remove the Income Tax Act of 1967 from the power of
14 referendum. Unfortunately, in that case the plaintiff had
15 not complied with the requirements for referring the matter
16 to the -- or the law to the referendum, and so the Court was
17 not able to render any further opinion regarding that
18 language and its impact on the -- whether or not that case
19 had -- that law had it been brought to referendum. However,
20 it's instructive to this Court. The law at issue in that
21 case had not previously been rejected on referendum, so,
22 therefore, it does have some influence in how this Court
23 should interpret how the Michigan Supreme Court may view the
24 two spending provisions tacked onto Public Act 436. Public
25 Act 4 had, in fact, been rejected by the state through a

1 proper referendum. The spending provisions were added on in
2 an effort to remove the case -- the law from the referendum
3 in derogation of the provision in Article II, Section 9,
4 which provides specifically that no law to which the power of
5 referendum had been properly applied shall be effective
6 thereafter unless approved by a majority of the electors
7 voting thereon at the next general election.

8 THE COURT: Okay. So I have this question for you
9 regarding this argument, and it's, again, a ripeness question
10 and a standing question. How does any party have standing to
11 challenge the constitutionality of PA 436 on this ground or
12 why is it ripe until such a party has complied with all of
13 the legal requirements to have a referendum regarding that
14 put on the ballot and it being rejected because the law isn't
15 subject to a referendum because of this appropriations
16 provision?

17 MS. BRIMER: I don't believe, your Honor, that by
18 adding on the spending provision, which on its face took
19 Public Act 436 out of the referendum provision of the
20 statute -- if that is the case, your Honor, then you have
21 read out the referendum from the Michigan Constitution. I
22 think this is precisely the mechanism by which the
23 constitutionality of the law now should be challenged. When
24 that law was then relied upon for purposes of the appointment
25 of an emergency manager, that is precisely, I believe, your

1 Honor, how this would come to a court for review. On its
2 face, the governor attempted to remove this from the
3 referendum. It was removed from the referendum, but you
4 can't read that out of the law and read out of the
5 Constitution the second provision, which requires that any
6 law that has been rejected by referendum be resubmitted to
7 the electorate.

8 I see I'm running out of time, your Honor. What I
9 would like to note, your Honor, is that while you are correct
10 that the Sixth Circuit did not specifically rule on 436 --
11 I've read that case closely several times -- 436 was not
12 before the Court, and, as you'll recall, some of the matters
13 at issue in that case were what precisely is before the Court
14 because some of the arguments had not even been preserved on
15 appeal. However, I think the tone of the Sixth Circuit when
16 it said, "Apparently unaffected that voters had just rejected
17 Public Act 4, the Michigan Legislature enacted, and the
18 Michigan governor signed, Public Act 436. Act 436 largely
19 reenacted the provisions of Public Act 4, the law the
20 Michigan citizens had just revoked. In enacting 436, the
21 Michigan Legislature included a minor appropriations
22 provision, apparently" -- they didn't say "in fact," but
23 "apparently to stop Michigan voters from putting Public Act
24 436 to a referendum." I think that gives us a tone, and I
25 also think it's noteworthy, your Honor, that despite the fact

1 that the city noted on page 15 of Exhibit A to their
2 consolidated response to the objections that we had raised
3 this specific issue, it is not addressed. It is not
4 responded to by either the state or the city. It stands
5 unrefuted at this point, your Honor.

6 THE COURT: Thank you.

7 MR. GOLDBERG: Good morning, your Honor. Jerome
8 Goldberg appearing on behalf of interested party David Sole,
9 who is a city retiree, as is his wife, Joyce Sole.

10 THE COURT: And you may proceed for ten minutes,
11 sir.

12 MR. GOLDBERG: Thank you, your Honor. While I
13 certainly concur with many of the eloquent arguments put
14 forth by counsel prior to myself, I want to approach the
15 issue from a somewhat narrower point of view from the prism
16 of Michigan state law and specifically from the Michigan --
17 how Michigan state law views the issue of statutory
18 construction.

19 As we know, 11 U.S.C. 109 states that a local
20 municipality must be specifically authorized by state law to
21 file a Chapter 9 bankruptcy. The phrase "authorized by law"
22 refers to the law of the state, and I cited Bekins for that
23 principle. States act as gatekeepers to their municipalities
24 and access to relief under the Bankruptcy Code.

25 As we all know, the basis for the state law

1 authorizing the filing of this Chapter 9 is Public Act 436,
2 and Public Act 436 has several different provisions that I
3 think it's worth looking at to get an understanding for why
4 we believe the failure to include a contingency to bar the
5 impairment of pensions is violative of state law. It
6 provides the emergency -- Section 1551(c) provides the
7 emergency manager with the power to carry out the
8 modification, rejection, termination, and renegotiation of
9 contracts. Section 1552 provides the emergency manager again
10 with the power to reject, modify, or terminate, one, terms of
11 an existing contract. Section K gives the emergency manager
12 the power to reject, modify, or terminate an existing
13 collective bargaining agreement. Section 12 contains
14 provisions for the renegotiation of debt, and it's laid out
15 in Section 12. But what Section 1552(m) -- Section 12(m),
16 when it deals with the question of pensions, it explicitly
17 includes within the section, within the statute, the --
18 states that the emergency manager must fully comply with
19 Article IX, Section 24, of the Michigan Constitution, which
20 is the constitutional prohibition on diminishing or impairing
21 contract. In addition, Section 1558 states that the governor
22 may place contingencies on a local government in order to
23 proceed.

24 When you view the statute -- the authorizing statute
25 from the prism of the Michigan rules on statutory

1 construction -- and I cited the Pohutski case, which many --
2 is the seminal case on statutory construction in the State of
3 Michigan, Pohutski -- the Michigan Supreme Court in Pohutski
4 stated, "When parsing a statute, we presume every word is
5 used for a purpose. As far as possible, we give effect to
6 every clause and sentence. 'The Court may not assume that
7 the Legislature inadvertently made use of one word or phrase
8 instead of another.' Similarly, we would take care to avoid
9 a construction that renders any part of the statute
10 surplusage or nugatory." And, in addition, Michigan courts
11 follow the doctrine of expression unius exclusion alterius,
12 the expression of one thing is the exclusion of another.

13 We would submit that in construing Public Act 436 as
14 a whole, in construing it as a whole, any -- you can't allow
15 for the filing of a Chapter 9 unless the Chapter 9 includes
16 the contingency for not impairing the pension rights under
17 Article 24. Otherwise it would negate that section or
18 declare that section void, and that would be an express
19 violation of the Michigan Rules of Statutory Construction,
20 which the Court is bound to follow at this stage in the
21 proceeding because in the eligibility proceeding, it is state
22 law, state law that is dominant. We believe, based on --

23 THE COURT: But aren't there many, many, many
24 conditions that the governor could have put on the filing in
25 order to assure the emergency manager's compliance with state

1 law?

2 MR. GOLDBERG: There are certainly different --

3 THE COURT: Equal protection, due process of law,
4 freedom of speech.

5 MR. GOLDBERG: But what I'm submitting, your
6 Honor --

7 THE COURT: There are lots of constitutional rights.

8 MR. GOLDBERG: Certainly. But what I'm submitting
9 is we have to look at the statute as it is written. That's
10 what the Michigan courts rule over and over again. Those are
11 the fundamental rules of statutory construction enunciated by
12 the Michigan Supreme Court in case after case. In this case,
13 we look at the words of the statute. We don't read into the
14 statute. We look at the words of the statute. This statute
15 contains an explicit guarantee of pensions, a guarantee --

16 THE COURT: Well, and the governor says --

17 MR. GOLDBERG: It includes Article IX.

18 THE COURT: The governor says the filing will comply
19 with state law, doesn't he?

20 MR. GOLDBERG: Well, the governor may say it, but
21 the governor is not the final arbiter, your Honor. That's
22 what the Court is for, and what we -- and the governor is not
23 above the law.

24 THE COURT: Why isn't that a sufficient protection?

25 MR. GOLDBERG: I'm sorry.

1 THE COURT: Why isn't that a specific -- a
2 sufficient protection?

3 MR. GOLDBERG: Why isn't what the governor says a --

4 THE COURT: No. Why isn't the fact that this Court
5 will apply state law a sufficient protection?

6 MR. GOLDBERG: Well, we would submit, your Honor,
7 that state law at this stage of the proceeding, at the
8 authorization stage, is the determinative factor. Once we go
9 into the -- once you make the eligibility determination, as
10 Mr. Montgomery indicated and as the case law as I've read it
11 indicates as well, that's where federal law -- there's a
12 question of federal supremacy over state law, but at this
13 stage it's state law that is determinative, and the state law
14 in this case explicitly mandates a contingency for the
15 guaranteeing of pensions. Otherwise we've written that
16 section --

17 THE COURT: If we're going --

18 MR. GOLDBERG: -- out of the authorization
19 statute --

20 THE COURT: If we're going to look at --

21 MR. GOLDBERG: -- and that's an explicit violation
22 of statutory construction.

23 THE COURT: If we're going to look at statutory law
24 and every word of it, how do you deal with the city's
25 argument that the word "thereby" in the constitutional

1 provision only prohibits the impairment of pensions by the
2 state or its political subdivisions; it does not prohibit the
3 impairment of pensions by a United States Bankruptcy Court?

4 MR. GOLDBERG: That's exactly the point, your Honor.
5 That's exactly the point. At this stage of the proceeding,
6 according to Bekins, according to Harrisburg, and according
7 to every case I've read, according to Collier's, it's state
8 law that is determinative. That's why --

9 THE COURT: And that's what I'm asking.

10 MR. GOLDBERG: That's why the question --

11 THE COURT: And that's exactly what I'm asking you
12 about. If we're going to read every word of the statute and
13 apply every word of the statute, including the word
14 "thereby," why doesn't state law permit the Bankruptcy Court
15 to impair pensions?

16 MR. GOLDBERG: Because the authorization statute
17 that this Court is relying upon, which it has to rely upon
18 because otherwise there would be no Chapter 9 filing, there
19 has to be a specific authorization under state law; correct?
20 I mean there are 20 -- many states don't have one. You have
21 to rely on the state law. That state law contains an
22 explicit clause that impair -- pensions cannot be impaired.
23 It's not just written in one place actually. It's written in
24 two places in that statute. Again, I'm submitting that down
25 the road, if we get past this eligibility question on this,

1 perhaps what you said is correct. At that point federal
2 law -- you make the determination based on federal law, but
3 right now you are duty bound to make that determination based
4 on your examination of state law and by applying the state
5 law --

6 THE COURT: What is the --

7 MR. GOLDBERG: -- principles of statutory
8 construction.

9 THE COURT: What is the exact state law language in
10 PA 436 that you rely on?

11 MR. GOLDBERG: I rely on the language -- here, let
12 me find it right here.

13 THE COURT: Okay.

14 MR. GOLDBERG: "The emergency manager shall fully
15 comply with the public employee retirement system investment
16 act and Section 24 of Article IX of the state Constitution,
17 and any actions taken shall be consistent with the pension's
18 qualified status"; that he's -- this emergency manager has to
19 abide by the constitutional impairment.

20 THE COURT: So my question for you remains if this
21 Bankruptcy Court were to approve a plan -- and I want to say
22 here I have no predisposition on this issue at all. This is
23 strictly hypothetical legal talk to figure out where we are.
24 If this Court were to approve a plan that impairs pensions --
25 again, not presuming at all that it will -- but if it did, is

1 that the city impairing pensions, or is that the Bankruptcy
2 Court impairing pensions because --

3 MR. GOLDBERG: That would be impairing --

4 THE COURT: -- the law prohibits the city from doing
5 it? There's a question about whether it prohibits the
6 Bankruptcy Court from doing it.

7 MR. GOLDBERG: That's precisely why I'm making the
8 argument, your Honor. There is a -- there is a question as
9 to whether -- once we get past the eligibility and this Court
10 is looking at the plan, whether this Court then has the
11 authority under federal law to ignore the state law and state
12 constitutional protection. I'm not saying it does, but
13 there's at least a question, and a lot of the case law
14 indicates that, but we're not at that stage right now. We're
15 at the eligibility stage, and clearly at the eligibility
16 stage it's state law that predominates. It's state law
17 that's determinative, and it's state law that this Court has
18 to look at, not federal law but state law that this Court has
19 to look at in making its determination as to whether the
20 authorization meets the muster. And what I would submit,
21 that under state law principles, as I indicated, we look at
22 the authorization statute, we look at the plain language of
23 the statute, and we look at the Michigan rules on statutory
24 construction as a -- and there's no way to allow for a filing
25 that would not have a contingency that bars the impairment of

1 pensions. It's interesting to me you raised before to Mr.
2 Montgomery --

3 THE COURT: Actually, your time has expired, so I do
4 have to ask you to wrap up.

5 MR. GOLDBERG: Okay. Well, I'll make one last
6 point. You raised very briefly to Mr. Montgomery why not
7 every contract, but, as I indicated, other contracts are
8 provided for the impairment of those contracts under the PA
9 436. It's the impairment of pensions that's explicitly taken
10 away from the authority of the emergency manager, and I
11 submit because of that that any authorization that doesn't
12 include a contingency barring the impairment of pensions
13 would violate Michigan state law and violate the Bankruptcy
14 Code, in essence, itself. Thank you.

15 THE COURT: Thank you.

16 MS. CRITTENDON: Good morning, your Honor. Krystal
17 Crittendon, and I want to thank the Court for giving me the
18 opportunity to speak this morning.

19 THE COURT: Welcome, and you may proceed for five
20 minutes.

21 MS. CRITTENDON: Thank you, your Honor. Before the
22 Court goes any further, I would just ask that the Court step
23 back and look at the process and how we got to where we are
24 from a legal foundational standpoint, and to that end, I make
25 three objections, your Honor.

1 First, the City of Detroit does not have a duly
2 appointed emergency manager because there was no EM or EFM
3 law in place at the time that appointment was made. As the
4 Court knows, in 2011, Public Act 4, commonly known as the
5 Emergency Manager Act, repealed Public Act 72. In November
6 of 2012, the people of the State of Michigan repealed Public
7 Act 4 by referendum. Pursuant to Michigan law -- and this is
8 at MCL, Michigan Compiled Law, 8.4 -- "Whenever a statute, or
9 any part thereof shall be repealed by a subsequent statute,
10 such statute, or any part thereof, so repealed, shall not be
11 revived by the repeal of such subsequent repealing statute."
12 In short, that is saying that when PA 4 repealed Public Act
13 72 and PA 4 was then repealed by referendum, PA 72 was not
14 revived. It did not spring back to life.

15 On March 14, 2013, a contract was purportedly
16 entered into between the State of Michigan and Kevyn Orr
17 appointing him EFM for the City of Detroit. However -- under
18 PA 72. However, because PA 72 was not alive at that time,
19 that appointment was not legal and is defective, and for that
20 reason, Mr. Orr is not a duly appointed emergency manager for
21 the City of Detroit.

22 The second argument, even had there been an
23 emergency manager law in place, Mr. Orr would not have been
24 an EFM at the time PA 436 came into place because his
25 contract, the contract between he and the state, was expired

1 on the day that PA 436 came into place, so he would not have
2 been grandfathered in under PA 436.

3 Finally, under Chapter 9 of the Bankruptcy Code,
4 there is no ability for there to be an involuntary
5 bankruptcy, and because the municipality would had to have
6 filed the petition, and in this case the municipality, being
7 the mayor and City Council, did not file the petition, the
8 petition filed by Mr. Orr was defective, and the filing
9 should be dismissed.

10 For those reasons -- and I see that my yellow light
11 is on -- time goes really really quickly when you have five
12 minutes, but I'd answer any questions the Court has.

13 THE COURT: How much time is left when the yellow
14 goes on, Kelli? Do you know?

15 THE CLERK: Three minutes.

16 THE COURT: It's three minutes, so you only --

17 MS. CRITTENDON: Okay.

18 THE COURT: -- had two under green and three under
19 the yellow, so --

20 MS. CRITTENDON: Okay. Thank you, your Honor.

21 THE COURT: -- you may proceed.

22 MS. CRITTENDON: Mr. Orr's contract at Section 2.2
23 of that contract provides that his contract was effective on
24 Monday, March 25th, and terminated at midnight on Wednesday,
25 March 27th. Midnight March 27th was a Wednesday morning at

1 12 o'clock a.m. The new emergency manager law, PA 436, did
2 not take place -- did not become effective until Thursday,
3 March 28th. Under 14 -- MCL 141.1572, it provides that an
4 emergency manager or emergency financial manager appointed
5 and serving under state law immediately prior to the
6 effective date of this Act shall continue under this Act as
7 an emergency manager for the local government. Because the
8 City of Detroit was without an emergency manager or emergency
9 financial manager for one full day before the Emergency
10 Manager Act, PA 436, became effective, Mr. Orr could not
11 continue in that capacity, as used in this section, because
12 he was without a contract.

13 Finally, I would just say there are a number of
14 cases under the federal Bankruptcy Court law that talk about
15 involuntary bankruptcies. This is akin to an involuntary
16 bankruptcy when someone other than the City of Detroit, which
17 is its mayor and City Council, filed the petition. And for
18 those reasons, the petition was defective. Section 109 of
19 the Bankruptcy Code talks to the authorization of the state
20 to approve a bankruptcy if filed by a municipality. In this
21 case, that is not what happened. It was the state
22 effectively filing the petition and approving the petition
23 being that the emergency financial manager, assuming that we
24 had one, would be an operative of the state and not an
25 operative of the City of Detroit. Thank you, your Honor.

1 THE COURT: Is the contract on which you rely in the
2 record of the case?

3 MS. CRITTENDON: I don't believe it is. I do have a
4 copy of the contract with me if the Court would like to see
5 it. I'm assuming that one of the parties --

6 THE COURT: If you'd like me to consider it, you
7 should --

8 MS. CRITTENDON: I will file it.

9 THE COURT: -- file it.

10 MS. CRITTENDON: I will, and I will file a brief
11 that memorializes everything that was said today.

12 THE COURT: All right.

13 MS. CRITTENDON: Thank you, your Honor.

14 MR. MORRIS: Good morning, your Honor. Thomas
15 Morris on behalf of the Retiree Association parties. The
16 Retiree Association parties who I represent include two
17 individuals. There was some discussion about the committee's
18 standing to raise certain objections. The committee argued
19 those objections very ably. We concur in those objections,
20 and that includes the concurrence of those individuals. We
21 trust that would take care of any standing issue if there
22 were one. And the comments that preceded us -- preceded me
23 were very ably made, so I'm just going to address a very few
24 points.

25 One is a point the Court -- a question the Court had

1 raised about the "thereby" language in the pensions clause.
2 It's important for the Court to note that it's the city that
3 files any plan, the city that proposes any plan, negotiates
4 any plan. Chapter 9 precludes the Court from appointing a
5 trustee, from converting the case, from interfering with the
6 city's ability to manage its fiscal affairs. A case cannot
7 be filed involuntarily under Chapter 9. As the Bekins court
8 said, quoting from the legislative history on page 51, "The
9 taxing agency itself is the only instrumentality which can
10 seek the benefits of the proposed legislation." We think
11 it's clear that any action to impair the pensions by the city
12 would, first of all, be improper, but, second of all, it
13 would be the city's action.

14 Now, the city has taken the position that somehow
15 the pensions clause of the Michigan Constitution is
16 preempted, and we disagree with that, but the city can't have
17 it both ways. They have a theory -- they've made a number of
18 multiple arguments, but they have a theory that once they got
19 into Bankruptcy Court -- or if they get -- are found
20 eligible, then the pensions clause is off. Well, if that's
21 the case -- and it's not the case, but if that were the case,
22 then it would be the action of the authorization of the
23 filing and the action of the city in filing the case which
24 would be impairing the pensions. What happens if the city is
25 found ineligible?

1 THE COURT: Well, but that's true only if as part of
2 eligibility the Court ruled on the issue of pension rights
3 and ruled in the city's favor.

4 MR. MORRIS: This ties in with arguments that were
5 made by other counsel, and if Public Act 436 enables the city
6 to impair the pensions, then Public Act 436 in that respect
7 is unconstitutional. It's inconsistent with the pensions
8 clause. Of course, the pensions clause is part of the
9 Michigan Constitution, the supreme law of our state, and the
10 Public Act 436 must comply with it. Public Act 436, in fact,
11 gives recognition to the pension clause and acknowledges it,
12 and it even authorizes the governor to make compliance with
13 the pension clause a precondition. However, that didn't
14 happen in this case, and that's one of the -- one of the
15 issues that has been raised by other counsel.

16 Your Honor, if the city is found to be ineligible,
17 from the standpoint of the retirees, the city will have to
18 make a choice. It can choose to comply with the pensions
19 clause and not impair pensions, just say we're going to
20 comply with the Michigan Constitution, or it can negotiate
21 with the retirees through their associations. That process
22 was shortcut here, and that will be one of the factual issues
23 we've raised.

24 Now, if the city goes forward with a plan that does
25 not impair pensions, one of the Court -- one of the questions

1 the Court had was what happens then, what happens if the city
2 just doesn't have the money. Well, there's an issue of
3 whether the state is liable. There's the potential issue.
4 But those are all issues apart from -- they're nonlegal
5 issues. The most the retirees can ask for is that the city
6 doesn't impair the pensions. The ultimate solution for the
7 retirees comes elsewhere. Will the city have -- will the
8 state have to step in to help the city? Will the city have
9 to do other things to raise money? I don't know, but those
10 are beyond our legal issues.

11 Your Honor, the city holds the key on this issue of
12 eligibility. It can agree to comply with the Michigan
13 Constitution or it can negotiate with the retirees and reach
14 a resolution. The proper outcome here is for the city to go
15 back -- as Section 109 intends, go back and either not impair
16 the pensions, which is our preference, or negotiate with the
17 retirees. Thank you.

18 THE COURT: Thank you.

19 MS. FLUKER: Good morning, your Honor. Vanessa
20 Fluker on behalf of Center for Community Justice and
21 Advocacy.

22 THE COURT: Would you repeat your name for me,
23 please?

24 MS. FLUKER: Vanessa Fluker.

25 THE COURT: Okay. Thank you.

1 MS. FLUKER: F-l-u-k-e-r. Your Honor, the issue I'm
2 raising today before this Court with respect to eligibility
3 is a failure of the emergency manager to comply with the
4 statutory mandates under PA 436, Section 16, which is
5 actually Section 1556. That section specifically mandates,
6 and I quote, "an emergency manager shall," not "may," not
7 "might, "shall, on his own -- his or her own or upon the
8 advice of the local inspector if a local inspector has been
9 retained, make a determination as to whether possible
10 criminal conduct contributed to the financial situation
11 resulting in the local government's receivership status. If
12 the emergency manager determines that there is a reason to
13 believe criminal conduct has occurred, the manager shall
14 refer the matter to the attorney general or local prosecuting
15 attorney for investigation." There has been some extensive
16 arguments about the tenets of statutory construction, so I
17 won't go through Pohutski step by step, but we're all aware
18 that you must adhere to the plain unambiguous language of the
19 statute.

20 In this particular instance, two of the city's
21 largest creditors, UBS and Bank of America, have been found
22 convicted -- criminally convicted in UBS's case of criminal
23 conduct involving municipal bonds. In fact, the SEC fined
24 UBS \$47,207,180 in Case Number 11-2539, U.S. District Court,
25 New Jersey. Three UBS executives were indicted and convicted

1 of fraud related to municipal bond rigging, and that was in
2 New York, Southern Division, Case Number 10-1217. A Bank of
3 America executive was indicted July 19th, 2012, for bid
4 rigging of fraud municipal bonds. And what's so significant
5 about this, in the criminal conviction with the SEC case, the
6 civil penancy case, it involved a Detroit bond. This
7 provision cannot be ignored, and the mere fact that it's
8 mandatory because it indicates "shall" is very significant.
9 In fact, it is common knowledge at this point that the
10 emergency manager had knowledge of this information and did
11 not act on it. In his deposition on August 30th, 2013, he
12 was specifically asked on these issues,

13 "Are you aware of issues that have come out with
14 regard to the LIBOR specifically with UBS and Bank
15 of America in the setting of using the LIBOR as a
16 standard?

17 Answer: I am aware.

18 Question: Are you aware that UBS has been sued
19 by the Securities and Exchange Commission for
20 rigging in regard to municipal bonds?

21 In past years?

22 There was a final judgment -- yes, in past
23 years.

24 Answer: Yes. I've heard that. I have not read
25 the final judgment.

1 Question: Are you aware that Bank of America
2 has been investigated for potential bond rigging
3 with regard to the municipal bond market?

4 Answer: I am aware that Bank of America has
5 been investigated. The exact specifics of the
6 investigation I am not aware of."

7 This clearly shows that there is not just a
8 noncompliance with 1556, there's a knowing noncompliance with
9 1556. There should have been a criminal investigation, which
10 is mandated by the statute, and, in essence, is necessary to
11 even get to the point of making a recommendation for a
12 bankruptcy. How can you say that we need bankruptcy when you
13 don't know whether there is going to be fraud determined and
14 there may be funds that may be necessary to be paid back to
15 the city that can offset any debt, which also goes to the
16 issue of how are you saying that you're eligible for
17 bankruptcy when you really don't know what the debt is based
18 on the potentiality of fraud in these municipal bond
19 transactions, who are also standing --

20 THE COURT: Are you saying that the emergency
21 manager, whose term in office is limited by law, was required
22 to await what could be years of litigation to determine these
23 issues and UBS's liability before filing bankruptcy?

24 MS. FLUKER: I don't think he had to determine years
25 of litigation, but I think that it would be very evident that

1 you would look at least at the debt that you're alleging that
2 the city owes, and if there is common knowledge of such
3 information, which this is -- this is not something that you
4 have to wait years in litigation. This has been all over the
5 news, the Internet, and everything else. And as he admitted
6 in his deposition, he was aware of it, and that being the
7 case, that actually heightens the duty, in addition to the
8 mandatory language of Section 1556, which says "shall."

9 THE COURT: Shall do what?

10 MS. FLUKER: The statute specifically says the
11 emergency manager shall, on his or her own or upon the advice
12 of a local inspector, make a determination -- there had to be
13 a determination made -- whether there was criminal conduct
14 that affected the financial situation of the city. Even if
15 he didn't know all this, say for some reason this
16 information -- I see my time is up. I'll just complete this
17 sentence. Say this information he had no knowledge of.
18 There was -- we just don't know about it. He still had a
19 duty to make a determination. Well, in my estimation,
20 there's been no criminal conduct that contributed to the
21 financial situation of the city. This provision was not
22 complied with at all, and you cannot try to exercise one part
23 of the statute by totally ignoring and having noncompliance
24 with another. Therefore, I would request that this Honorable
25 Court deny eligibility for the reasons set forth by all the

1 objectors.

2 THE COURT: Thank you.

3 MS. FLUKER: Thank you.

4 THE COURT: Mr. Gordon, may I have your attention,
5 please?

6 MR. GORDON: Yes, your Honor.

7 THE COURT: Are you up next?

8 MR. GORDON: I am.

9 THE COURT: Okay. Do you want to give part of your
10 argument now, or do you want to take a lunch break now and
11 then do your entire argument after lunch? I leave it to you.

12 MR. GORDON: If it's okay with the Court, I would
13 prefer the latter, to just start after lunch.

14 THE COURT: Okay. All right. We will take our
15 lunch break now, and we will reconvene in an hour and a half,
16 so that'll be 1:20, please. Twenty after one we'll
17 reconvene.

18 MR. GORDON: Thank you, your Honor.

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

20 (Recess at 11:48 a.m., until 1:20 p.m.)

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

22 Recalling Case Number 13-53846, City of Detroit, Michigan.

23 THE COURT: Good afternoon, everyone. It looks like
24 everybody is here. Actually, Mr. Gordon, with your
25 permission, before I hear from you, I have a follow-up

1 question for one of your colleagues.

2 MR. GORDON: By all means, your Honor.

3 THE COURT: Ms. Brimer, would you resume the
4 lectern, please?

5 MS. BRIMER: Should I bring something with me, your
6 Honor?

7 THE COURT: Possibly.

8 MS. BRIMER: I didn't know I was going to the
9 principal's office.

10 THE COURT: No, no, no. It's nothing like that.
11 You argued that the enactment of PA 436 violated the people's
12 referendum rights because PA 436 was so similar to PA 4.

13 MS. BRIMER: Yes, your Honor.

14 THE COURT: That was your argument. Was there a
15 statutory basis for that argument, or was it just based on
16 the people's right of referendum?

17 MS. BRIMER: It's based on the constitutional right
18 of referendum, your Honor.

19 THE COURT: Okay. So there's not a statute we
20 should be looking for on that.

21 MS. BRIMER: Not that I'm aware of, your Honor.

22 THE COURT: All right. That was it.

23 MS. BRIMER: Thank you, your Honor.

24 THE COURT: That was it. Okay. Mr. Gordon.

25 MR. GORDON: Thank you, your Honor. Just to give

1 your Honor a little bit of a road map of the things that I
2 want to touch upon, if that's of help, I thought I would
3 touch upon some of the issues regarding the state law
4 consent, some of the issues that have been raised this
5 morning, then move on to a discussion of some other
6 considerations relevant to the difference between the
7 pensions clause and the contract clause, and then address the
8 issue of what would happen if the Court ruled in our favor
9 that the accrued pension benefits cannot be impaired and what
10 that means for the restructuring, and I think I can add some
11 important information there. And then finally, if there's
12 still time, I would touch upon the collateral estoppel
13 Webster issue, which is in our papers.

14 So, your Honor, we will start with the consent
15 issues under 109(c)(2), and to be clear, in our papers, while
16 we talk -- touch upon the possibility of PA 436 being
17 unconstitutional as applied, the thrust of our papers is that
18 PA 436 needs to be read and can be read in a way that's
19 consistent with the pensions clause and so forth so that
20 there's no need to get to issues of constitutionality.
21 109(c)(2) clearly is an issue that is an issue purely of
22 state law. It is a threshold issue. It is an eligibility
23 issue, and we want to emphasize that it stands on its own,
24 and it can't be conflated with plan confirmation issues.

25 THE COURT: And with apologies, I have to stop you

1 there with this question. There seems to be a general thread
2 of assumption that whether a state has given authorization
3 under 109(c)(2) is a question of state law, as you just said.
4 I have to say that's not altogether clear to me. It seems to
5 me there might very well be an argument that the standard as
6 to whether the state has given proper authorization is a
7 federal standard, not a state standard. Why? Because in
8 addressing cases in the amendment right next door to Article
9 X -- that is, Article XI -- sorry -- Amendment XI, the 11th
10 Amendment, when we talk about sovereign immunity, the issue
11 of whether a state has given its consent or its waiver of
12 sovereign immunity is a question to be determined by federal
13 law, not state law.

14 MR. GORDON: Your Honor, in that regard, I think
15 that the Tenth Amendment is different, and it looks first to
16 respect the contours of what is reserved to the states in the
17 first instance, so here I think you have to start with
18 whether there is valid -- I think, at a minimum, the question
19 is is there valid state authorization for submitting a
20 political subdivision of the state to the jurisdiction of the
21 federal government and the federal courts. I would at least
22 put it that way. And so that does turn on state law, and we
23 would submit that all portions of state law need to be looked
24 to and harmonized in that regard, and that's sort of the
25 holding of Harrisburg, which we submit is instructive here

1 and which has not been really in any way refuted by the city.
2 And even the United States Attorney has stated that Congress
3 reserved to the state the right to regulate, and I quote,
4 "under what terms," end quote, its political subdivisions may
5 avail themselves of Chapter 9, so it really is a matter, I
6 believe, of state sovereignty, and it's up to the state to
7 determine how and when a political subdivision can avail
8 itself, and how it does that is in part expressed by the will
9 of the people, as embodied in the pension clause, and it
10 needs to be respected.

11 The response of the city and the state is on two
12 levels. One, first of all, it is asserted that the actions
13 of the governor in authorizing do not conflict with the
14 pensions clause because the authorization itself didn't
15 create any impairment and that it's unclear whether the city
16 will ultimately seek to impair, and if such impairment
17 occurs, it won't be the city or the state that has done it.
18 It'll be the Bankruptcy Court. Respectfully, we say that
19 those arguments are all unavailing. First of all, one of the
20 things that I think has not been made clear this morning is
21 some of the things that have come out in discovery. I don't
22 actually think these things are relevant, but I'll get to why
23 I think they're not relevant in a minute, but I think it's
24 important for the Court to know that in discovery propounded
25 by the Retirement Systems or conducted by the Retirement

1 Systems, the city has admitted that it was an explicit intent
2 in the restructuring plan proposed in June and in the
3 bankruptcy recommendation letter submitted on July 16th by
4 Mr. Orr that accrued pension benefits needed to be impaired.
5 The city has also admitted in admissions that its intent in
6 the Chapter 9 case is to impair and diminish accrued pension
7 benefits, so there is absolutely nothing speculative about
8 that. The governor has also testified that he was aware that
9 accrued pension benefits may be impaired. He also testified
10 that he understood that he could put conditions on the
11 consent and authorization and that he chose not to. Mr. Orr
12 also testified that he could not guarantee that if a
13 consensual plan couldn't be achieved, that he would not
14 resort to cramdown provisions in order to cram down upon the
15 retirees. So there really is nothing speculative here, and
16 for anyone to say that it is speculative is really -- I mean
17 it just is not -- it's just not factual.

18 THE COURT: Well, but what would be the --

19 MR. GORDON: The other thing is that --

20 THE COURT: What would be the impact on that
21 argument if the state, under this Constitution, does have a
22 legal constitutional obligation to guarantee the pension
23 payments, an issue not yet determined? And I don't mean to
24 suggest the outcome of that by raising this possibility.

25 MR. GORDON: Your Honor, I mean if the -- the

1 problem is that today is the day for eligibility, and we
2 don't know that today. If the state came forward today and
3 said that they would backstop, you know, the full accrued
4 pension benefits, that might be a different situation, but it
5 not being here today, that isn't --

6 THE COURT: And you're not prepared to say here
7 today that you're not going to request that conclusion, are
8 you?

9 MR. GORDON: No. I will not say that, but that's --

10 THE COURT: That would not be in your client's best
11 interest.

12 MR. GORDON: Of course not. Of course not, but that
13 has not been determined today. The state is not coming
14 forward today. And eligibility goes to whether this Court
15 even has jurisdiction, and what the city is asking is for the
16 Court to essentially suspend the issue of whether it even has
17 jurisdiction in order to get everybody together, and really
18 you're putting the will of the people and the protections of
19 the Michigan Constitution in jeopardy or being held in the
20 hold while the city wants to move forward with its proposals
21 and bring people to the table, and I would submit that that's
22 inappropriate. This is an eligibility hearing, and the
23 governor's responsibility is an affirmative responsibility to
24 uphold the Constitution. To suggest that we don't know
25 what's going to happen down the road reduces his obligation

1 to sort of a wink and nod type of standard, and we submit
2 that that is just inappropriate. He is to uphold the
3 people's will.

4 THE COURT: Well, he's to uphold the law.

5 MR. GORDON: The other thing is, your Honor, that to
6 say that someone other than the state or the emergency
7 manager would be the one impairing the benefits is just not
8 correct. As the Court well knows, the city is the one that
9 would have to propose the plan. The Court would not propose
10 the plan. Essentially what is happening here would be that
11 the governor, through the authorization, is delegating
12 authority that he does not have. He does not have the
13 authority to abrogate the state Constitution. By authorizing
14 the emergency manager to pursue the bankruptcy -- again,
15 we're at the eligibility stage -- he cannot give authority to
16 the emergency manager that he does not have, so the question
17 becomes --

18 THE COURT: The argument is he doesn't have the
19 authority to impair the pensions.

20 MR. GORDON: That's correct. If he wanted to do
21 that, he'd have to go get a constitutional amendment.

22 THE COURT: And -- okay.

23 MR. GORDON: So he does not have the authority to
24 delegate or to bestow upon anybody else the ability to
25 impair, so the question really is why wouldn't we put a

1 condition today saying that you can move forward in the
2 Chapter 9, but you can't impair the accrued pension benefits?
3 That to us complies with the requirements of the state
4 structure, and there has absolutely been no explanation of
5 why that wouldn't be done today. We think that's the real
6 question is why wouldn't you -- why wouldn't the governor put
7 that condition in or why can't the Court imply that as a
8 matter of law?

9 If I may, your Honor, I'd like to move on to the
10 pensions versus contracts issue.

11 THE COURT: Well, hold on one second. The Sixth
12 Circuit has actually addressed -- I know you're concerned
13 about time --

14 MR. GORDON: Okay.

15 THE COURT: -- the issue of how to determine
16 eligibility in bankruptcy, now not in Chapter 9, but it did
17 so in Chapter 13 because there is a factual eligibility issue
18 there, has to do with debt limits, and there are times when
19 creditors say that the debtor's debts are above the debt
20 limits, and, therefore, the debtor is not eligible, so the
21 Sixth Circuit -- the case is Pearson if you're familiar with
22 it. It says -- it recognizes that at the eligibility stage
23 of a bankruptcy, you don't want to go through the process of
24 fixing claims, but there is this law that sets debt limits,
25 so we have to give it some respect. So the solution it came

1 up with in that context was we're just going to look at
2 whether the debtor in good faith asserts that its debts are
3 below the debt limit. And for those of you who want it, it's
4 773 F.2d 751, 773 F.2d 751, a 1985 case from the Sixth
5 Circuit. Pearson is P-e-a-r-s-o-n. Why not apply a similar
6 standard to eligibility here?

7 MR. GORDON: Because there's no good faith issue
8 here. The question is very simple and can be solved today.
9 Are you going to impair pension -- accrued pension
10 obligations? You can't. The law says so. So put the
11 condition on it today, and we move forward.

12 THE COURT: So your assertion is that it wouldn't
13 even be a good faith argument by the city.

14 MR. GORDON: Doesn't matter what their intention
15 actually is. The condition should be applied today because
16 that is how -- that is the only way a --

17 THE COURT: It wouldn't be a good faith --

18 MR. GORDON: -- political subdivision can avail
19 itself --

20 THE COURT: It wouldn't be a good faith argument for
21 the city to assert that although the Michigan Constitution
22 prohibits it from impairing pensions, it does not prohibit
23 the Bankruptcy Court from impairing pensions. That would not
24 be a good faith argument?

25 MR. GORDON: No, your Honor. I think that that's

1 something that can and should be dealt with today. Let me
2 give an example. What if the only debts of the city today --
3 as we stand here today were pension obligations? Would you
4 say then we should wait and see what happens? We know what
5 would happen. Is it any different because there's other
6 creditors in the room?

7 THE COURT: Well, do we know --

8 MR. GORDON: I haven't --

9 THE COURT: Do we know -- do we know what would
10 happen? Do we know, for example, that there would be no
11 agreed upon negotiation? Do we know, for example, that the
12 state won't fill in the gap?

13 MR. GORDON: Well, let's -- I can talk about that.

14 THE COURT: Now would be the time.

15 MR. GORDON: If you want to talk about that, I'll
16 skip to that. I'll skip to that since that seems to be
17 something that is troubling your Honor or at least on your
18 mind. We have emphasized --

19 THE COURT: A question.

20 MR. GORDON: We have emphasized that the Retirement
21 Systems aren't saying the city can't proceed with a Chapter 9
22 case. It simply must condition the case upon the
23 preservation of the pensions clause. And certainly in some
24 people's minds this begs the question of whether in the event
25 the Court agreed and ruled that accrued pension benefits may

1 not be impaired, could the city still effectively reorganize
2 and restore itself to financial health through a bankruptcy,
3 and while we've indicated that there is still information
4 that we need -- and it's material information -- we continue
5 to do so -- I believe I can stand here today and say that
6 based upon the information that we do have, it is clear that
7 the city can effectively reorganize even if accrued pension
8 benefits cannot be impaired.

9 Just some thoughts and facts for your Honor. The
10 city talks about \$18 billion in debt, but \$6 billion of that
11 \$18 billion is special revenues that are supported by the
12 Detroit Water and Sewer System, so now you really have \$12
13 billion of debt that needs to be supported by the general
14 fund and other cash flows from the enterprise funds and so
15 forth. Of that \$12 billion of debt, roughly half, six
16 billion, is OPEB healthcare actuarially calculated. Another
17 two billion is unsecured bond debt. So fully two-thirds of
18 the \$12 billion of debt is very much subject to restructuring
19 and compromise in bankruptcy. Those are unsecured claims.
20 That's two-thirds of the \$12 billion of debt right there. So
21 there's a tremendous opportunity to unburden the city of the
22 debt obligations -- of these debt obligations and the demands
23 on its cash flow.

24 In addition, although not critical to this position,
25 above the line in the emergency manager's restructuring plan

1 proposed in June is the swap periodic payment, which is
2 soaking up \$50 million a year in casino tax revenues. And as
3 the Court knows -- and, again, I'm not going to argue it
4 here, but, as the Court knows, the Retirement Systems have
5 objected to the treatment of the swaps as secured in those
6 revenues both because the lien is not valid and, even if
7 valid, it does not reach the post-petition revenues. Also --
8 and if it was determined to be an unsecured claim, then you
9 have a \$300 million claim now that is given unsecured status
10 and can also be a compromise in the bankruptcy.

11 Also, it should be kept in mind that we're talking
12 about accrued benefits that need to not be impaired. There
13 are obviously prospective benefits that could be impaired, so
14 there are a number of different ways that the city can
15 achieve real relief from its debts. Obviously it spreads the
16 pain in different directions, but we've -- but by looking at
17 it, your Honor, there is absolutely an opportunity to do
18 something. And when they --

19 THE COURT: Isn't there also a question of fact as
20 to what the underfunded liability is for pensions?

21 MR. GORDON: And let me get to that. It's also
22 critical for the Court to understand that if the Court ruled
23 in our favor and said that there cannot be an impairment of
24 the accrued benefits, that does not mean the Retirement
25 Systems walk away from the table. The Retirement Systems has

1 said that they are committed to working with the city to be
2 part of the solution here. That means a number of things.
3 The city has indicated that it needs to devote significant
4 cash flows in the next five years, according to the proposal
5 in June, \$1.25 billion in the next five years for
6 reinvestment in the city. The Retirement Systems don't
7 object to the concept and understand that the city needs to
8 reinvest, but after that five years, that reinvestment is
9 done. The cash flows of the city become much larger again,
10 and they will improve at five years and the next five years
11 and the next five years. And the Retirement Systems can be
12 flexible because the Retirement Systems issues, the pension
13 issues, are long-term issues. They're not short-term issues.
14 So if there are cash flow issues, the Retirement Systems can
15 work with that. The \$3-1/2 billion number that's been thrown
16 out there is not an amount that is due today if the pension
17 systems are not frozen and closed. That is an actuarial
18 calculation of what will be due over the next 30 years to
19 bring the funding level up to what it needs to be. That's
20 not the amount that is due on a cash flow basis tomorrow or
21 the next day, so there is flexibility there.

22 Also, it should be understood that over time if the
23 economy improves or interest rates rise, and/or, the
24 underfunding level may go up or down, so there's a lot of
25 things in play there, and when you take that all together,

1 we --

2 THE COURT: And I certainly appreciate and commend
3 your clients' willingness to work with the city, but
4 prudentially from the standpoint of ripeness apart from
5 constitutional issues, doesn't that suggest putting off until
6 plan confirmation the issue of the constitutional right?

7 MR. GORDON: Your Honor, again, I would submit that
8 that is conflating eligibility, which is one question, with
9 what can be done under a plan. If this Court does not have
10 jurisdiction because the authorization was not appropriate,
11 if you're putting -- what you're suggesting -- or the city is
12 suggesting is you're putting the uncertainty -- you're
13 putting at risk a state protected benefit in order to
14 leverage people to get in a room and negotiate. And I
15 suggest, as a matter of jurisprudence, that is inappropriate.

16 I wanted to also mention, your Honor, other benefits
17 of a ruling in favor of the concept that the pension benefits
18 cannot be impaired. It, in fact, would help the city in its
19 restructuring in other ways. Absent a ruling on this issue
20 in favor of the nonimpairment of pension benefits, the
21 parties will struggle to negotiate in the shadows of this
22 unresolved issue. What will happen is that the parties will
23 have to negotiate on a dual path against the backdrop of
24 still having these arguments under the pensions clause, under
25 Section 943, and so forth that are all or nothing arguments

1 that would -- if ruled on in a certain way, would come to the
2 conclusion that you can't impair us at all. So it makes the
3 negotiations very difficult, and it also obviously -- as long
4 as that matter is not resolved or if it's not resolved in
5 favor of the pension systems, it becomes -- it makes the case
6 much more litigious and encumbers the entire process. If the
7 Court rules in our favor -- and, again, these are just, you
8 know, some additional thoughts for the Court because I
9 understand the struggle. If the Court rules in our favor,
10 there will be less moving parts for the city to deal with and
11 for the parties to deal with, and it makes the negotiation
12 process much more streamlined. And if at some point in time
13 that decision were reversed and there was a decision that
14 said that the pension clause can be abrogated or impaired in
15 some fashion, having to revise the negotiations at that point
16 and spread the pain around a different way is a lot easier
17 than starting from the other end. If you start from the end
18 that we're at now, it's very hard, again, for the parties to
19 negotiate. And if the -- and if it's determined ultimately
20 that you can't abrogate the pension clause, then you're
21 really going back to square one, and we've lost a ton of time
22 in the negotiation process. We submit that it's much easier
23 to negotiate against a backdrop that says that the pension
24 clause must be upheld.

25 Moreover, a ruling in our favor in that regard helps

1 the city in other ways. It calms the workforce knowing the
2 accrued and prospective accrued pension benefits will be
3 protected. This will enable the city to retain its most
4 talented personnel. In addition, the ultimate commitment of
5 funds to the Retirement Systems as opposed to financial
6 creditors benefits the city because the systems will also
7 invest in the city, as they always have done. And a majority
8 of the pensioners live within the city and pay taxes and
9 consume goods and services in the city, so the Retirement
10 Systems are an economic engine that really is part of the
11 solution for the city, so I want to address all those.

12 THE COURT: Well, but so were the bondholders and
13 the bond investors.

14 MR. GORDON: They don't live in the city, and they
15 aren't putting money back into the city, your Honor. They
16 are not part of that economic engine, and if they get paid
17 their debt service, there's no --

18 THE COURT: Hang on.

19 MR. GORDON: -- guarantee that they're going to
20 reinvest in the city.

21 THE COURT: Didn't I read in the newspaper that the
22 city just got \$350 million?

23 MR. GORDON: I'm sorry.

24 THE COURT: Didn't I just read in the newspaper that
25 the city just got \$350 million to help with its reinvestment?

1 MR. GORDON: No, your Honor. What we read was that
2 there's a proposal to secure unidentified assets at this
3 point but probably to encumber all sorts of assets of the
4 city in order to get \$350 million of which 200 million would
5 immediately go out to pay swap participants who don't deserve
6 to get paid anything as a secured creditor, and then the
7 other 150 million is going to be used in some ways that's
8 been unidentified, so basically you're encumbering assets of
9 the city for purposes that don't benefit the city in any
10 demonstrable way at this time, so I would disagree with that
11 characterization.

12 THE COURT: Okay.

13 MR. GORDON: So, your Honor, for all those reasons,
14 I think that if the Court were to rule, again, as a pragmatic
15 matter, in favor of finding that this case should not move
16 forward without the condition that there cannot be an
17 impairment and that the pension clause must be upheld, it
18 does not mean this case comes to an end by a long -- quite
19 the opposite. In our opinion, it makes this case much more
20 manageable. It makes the negotiations easier. And it, in
21 our minds, provides a much clearer path to a consensual
22 resolution.

23 THE COURT: So you think I can find them eligible
24 and find that pensions can't be impaired? How do I do that
25 because the issue is yes or no, the city is eligible.

1 MR. GORDON: That's correct, your Honor. You would
2 have to -- it would be up to the city to either -- and the
3 state to either agree to -- well, there's a couple different
4 ways.

5 THE COURT: This is the refiling scenario?

6 MR. GORDON: You could either -- you could either
7 rule that the obligation to uphold the pension clause is
8 implied by law because otherwise you don't have valid
9 authorization, there isn't valid state authorization, or you
10 can provide the option to the state and the city to
11 explicitly confirm that process.

12 THE COURT: Oh, I see. So you're saying I can read
13 into the authorization the nonimpairment of pensions even
14 though the governor explicitly rejected that.

15 MR. GORDON: The governor actually didn't. The
16 governor testified that he didn't know whether he had to
17 uphold that, and he decided to choose not to put the
18 condition on it and leave it to the courts, which we suggest
19 is not necessarily appropriate but is --

20 THE COURT: So he rejected the concept of
21 conditioning his authorization on nonimpairment of pensions.

22 MR. GORDON: He did, but he also said he was
23 basically deferring to the courts as to how that should play
24 out, which is ironic because the Webster court has already
25 ruled on that issue.

1 Your Honor, I'll turn to the pensions clause, which
2 is the contracts clause, if I may.

3 THE COURT: Sure.

4 MR. GORDON: The concept that the pensions clause is
5 the same thing as the contracts clause just applying to
6 pensions does violence to the language of the pensions
7 clause, as has already been discussed.

8 THE COURT: Right.

9 MR. GORDON: I won't get into that. Obviously we've
10 pointed out that the pensions clause is more specific and
11 that it was enacted long after the contracts clause and that
12 those things together, as a matter of the canons of
13 construction, would indicate that the pension clause must
14 mean something more and something different from the
15 contracts clause.

16 THE COURT: Right. So what more and what different?

17 MR. GORDON: Well, it starts with looking at why and
18 the environment in which these things were done and looking
19 at the actual language of the two clauses. The contracts
20 clause was adopted back when the government was being formed,
21 and it helps sort of support the structure of the government
22 as it's being developed in terms of federalism and making
23 sure that states don't impair their -- pass laws that impair
24 their own contracts or pass laws that favor their citizens
25 over other citizens. That was the general nature of it. And

1 it's directed, you'll note, to the legislature of the state.
2 The state shall not pass laws that will impair contracts. So
3 that's the contracts clause. Now you fast forward --

4 THE COURT: That's the federal contracts clause.

5 MR. GORDON: And the state, as well as the state
6 contracts clause. So then you fast forward -- I don't know
7 how long -- 150 years to 1963, and you're talking about the
8 constitutional convention and the pensions clause, and what's
9 going on at that point in time? Well, pensions are not being
10 funded. They're underfunded across the state I'm told to the
11 tune of maybe \$600 million, and guess what? Front and center
12 is the City of Detroit that was not paying pensions for its
13 teachers' pensions funds. So the convention decided it
14 needed to do two things.

15 THE COURT: Well, at that point they were also not
16 being treated as contracts; right? They were being treated
17 as gifts I think was the phraseology.

18 MR. GORDON: As gratuities. That's correct, your
19 Honor. So the convention decided it needed to do two things.
20 The convention decided, first of all, to avoid municipalities
21 digging a deeper hole, they were going to put a provision in
22 the Constitution that said that local governmental units will
23 fund their current year's employer contributions in that year
24 to help avoid digging a deeper hole. Secondly, to protect
25 the accrued and unfunded liabilities and to move away from

1 the concept that they are a gratuity, the convention said
2 we're going to call it a contract but not a contract in the
3 sense of a contract but subject to the bankruptcy. I mean
4 there was no -- there was no talk about bankruptcy, nor was
5 there any talk about the contracts clause in this regard.
6 They talked about this is going to be a contract that's in
7 the concept of a solemn binding obligation that will be paid
8 over time, so it is a contract. There's a contractual right,
9 and it shall not be diminished or impaired, meaning it will
10 be paid over time by the state and its political
11 subdivisions. It is absolute. There is no -- there is no --
12 as the attorney general's papers say themselves, there is --
13 it's impermeable unlike the contracts clause, which has
14 developed over time to say otherwise. Now, the difference is
15 in part --

16 THE COURT: But how can the -- how can the state
17 contract -- how can the state promise that given that under
18 the federal Constitution it can't print money?

19 MR. GORDON: It's a matter of insuring that what
20 dollars are available are devoted where they need to be
21 devoted.

22 THE COURT: Suppose there's not enough then.

23 MR. GORDON: I don't know the answer to that
24 question, your Honor, but that's not the issue we have here
25 today. As I've told you, I think that there is enough money

1 here.

2 THE COURT: It's an important issue.

3 MR. GORDON: There is -- I'm sorry.

4 THE COURT: It is an important issue.

5 MR. GORDON: It's an important issue, but --

6 THE COURT: It demonstrates that there's a
7 constitutional right there. It is stated there, but what's
8 it worth? What's it worth? I mean Ms. Levine posed that
9 question. What's it worth if the entity that has the
10 obligation doesn't have the means?

11 MR. GORDON: First of all, I mean every situation is
12 different.

13 THE COURT: Yeah.

14 MR. GORDON: Does it have the means today or will it
15 have the means tomorrow, over time? Musselman, a state
16 Supreme Court case, says, though, that the pension clause
17 cannot be abrogated in the face of financial exigency.
18 That's what it says. If there's a need to amend the state
19 Constitution, then it needs to be amended, but it can't be
20 abrogated by one branch of the government. The will of the
21 people has spoken. The Constitution is a limit, and it
22 circumscribes the power of the government. The government
23 can't say, "Gee, we've got an exigency here. I guess we're
24 going to ignore the state Constitution." It cannot do that.
25 The contracts clause is different, and this is the point --

1 part of the point is there are contracts and then there are
2 contracts.

3 THE COURT: Is there any other constitutional right,
4 state or federal, that is that absolute, any other?

5 MR. GORDON: Sure.

6 THE COURT: And even freedom of the press has its
7 exceptions.

8 MR. GORDON: Well, you know, if you look at even the
9 attorney general's papers, you couldn't -- the legislature
10 can't pass laws that would abrogate freedom of religion,
11 freedom of speech, things of that nature, and it puts the
12 pension clause on the same level. It is absolute in that
13 regard. There are contracts, and there are --

14 THE COURT: We have laws that limit speech. Can't
15 threaten the President; can't yell "fire" in a crowded
16 theater. You can't commit libel.

17 MR. GORDON: So that maybe there's some regulation
18 on the federal level, but this is a state issue. It is an
19 issue that has been -- it is the will of the people of the
20 state.

21 THE COURT: Even the contracts clause has its
22 limits; right?

23 MR. GORDON: Contracts clause does. The reason is
24 different, though. There are contracts, and then there are
25 contracts. And if you look at, for example, you know, some

1 contracts fall under the contracts clause, but the pensions
2 were determined to be different, and that's why you have a
3 pensions clause. That's the whole point of it. The
4 contracts clause recognizes that when you contract with the
5 government, there is an inherent reserve police power to act
6 in the public's welfare, and, therefore, to the extent
7 necessary, in certain situations they can impair contracts.
8 That's the contracts clause. Then you have the pensions
9 clause. It doesn't say that it is subject to the contracts
10 clause. It elevates pensions to a different level, and the
11 reason is fairly clear. If you look at the Musselman case,
12 in particular, again, Musselman says that Michigan
13 governmental -- and I quote. This is from 448 Mich. 503
14 where it talks about the pension clause being absolute and
15 that it -- and it recognizes that the pension clause protects
16 pensions for work performed, so I quote, "Michigan
17 governmental units do not have the option, however, of not
18 paying retirement benefits. Unlike highway construction or
19 police protection, which a governmental unit can choose to
20 receive less of, it is impossible to receive less service
21 from the pensioner. The pension payment is payment for work
22 already completed, or deferred compensation," end quote.
23 What's being referenced there is the complete difference --
24 the relationship between the public employer and labor is
25 different than the relationship between the public employer

1 and a bondholder. A bondholder makes an investment. There's
2 risk involved. That is understood, and that risk is factored
3 into the pricing of the bond. A laborer has -- the
4 relationship with the employer is different. The laborer
5 works. The employer pays. And to the extent that part of it
6 is deferred compensation in the form of a pension, so be it,
7 but it's for -- but what the pension clause protects is
8 accrued benefits.

9 THE COURT: Isn't there an argument that labor takes
10 risks with its employer, too?

11 MR. GORDON: Not in the State of Michigan, your
12 Honor, and I want to emphasize that. Michigan is only one of
13 seven or eight states in the country that has this clause.
14 This is unique to Michigan and the seven or eight other
15 states involved.

16 THE COURT: Excuse me one second. I want you to
17 ignore --

18 MR. GORDON: Oh.

19 THE COURT: No. I want you to ignore that yellow.
20 My staff advises me that Ms. Levine didn't use seven of her
21 minutes, so I'm going to yield them to you.

22 MR. GORDON: Thanks, Sharon.

23 THE COURT: So reset the clock at ten. I assume
24 that's okay with you.

25 MR. GORDON: Yes, absolutely, your Honor. I can't

1 even remember where we were now. Where were we?

2 THE COURT: Oh, I'm sorry. I interrupted your train
3 of thought. Well, take another minute to recollect --

4 MR. GORDON: Oh, yes. I think I finished that
5 point, I suppose. It really is that, you know, some contract
6 rights are just contract rights, and other contract rights do
7 rise to the level of property rights, and that's in the
8 United States Trust Company of New York versus New Jersey,
9 the Supreme Court case, 431 U.S. 1. In Michigan AFT Michigan
10 versus Michigan, 297 Mich. App. 597, the Court held that
11 withheld salary of public school employees constituted the
12 taking of property in violation of substantive due process
13 and the takings clause, so there are relationships,
14 contractual relationships relative to accrued benefits for
15 labor, pension obligations, that are treated as property.

16 THE COURT: Is there a State of Michigan case that
17 holds that pension rights are property rights?

18 MR. GORDON: Well, this relates to salary of public
19 school employees. I don't know --

20 THE COURT: Right. So I was asking you about
21 pensions.

22 MR. GORDON: About pension obligations specifically?
23 I would have to check on that, your Honor, but I believe that
24 there are pension cases in the state that talk about pension
25 rights as property, including in such a situation, as you can

1 imagine, as divorce settlements. There are pension
2 obligations that become property that get part of a property
3 settlement even, but that's just one example, but I can get
4 you --

5 THE COURT: Well, we have to be careful here because
6 a contract right is in the bundle of property rights. Every
7 contract is property of the parties to the contract; right?

8 MR. GORDON: Yes, your Honor. I'm not sure that all
9 contract rights rise to the level if they're abrogated of a
10 taking, but here vis-a-vis the pension --

11 THE COURT: Right. That's exactly the point.

12 MR. GORDON: That's right, but the pension clause --

13 THE COURT: So when the federal, you know,
14 Bankruptcy Court discharges creditors' contract rights
15 against debtors, which we do all day every day, we're not
16 taking the creditors' property rights even though we are
17 discharging those contracts or if we are it's not a Fifth
18 Amendment violation; right?

19 MR. GORDON: True. By the same token, there are
20 other property rights that are determined under state law
21 that -- cases such as Butner and Travelers respect the state
22 law property interest, and it flows through the bankruptcy.

23 THE COURT: Right, but the point is that it has to
24 be a property right under state law over and above what would
25 be the contract right, like, for example, a security

1 interest.

2 MR. GORDON: Or a state constitutionally protected
3 right that is impermeable we would submit, your Honor.

4 THE COURT: Okay.

5 MR. GORDON: It's like a nondischargeable debt, your
6 Honor, and it doesn't mean that it can't be dealt with in a
7 way that doesn't impair it but gets dealt with in a way that
8 is -- you know, provides some flexibility for the
9 reorganizing entity, but it's a nondischargeable debt.

10 THE COURT: Well, nothing in Chapter 9 provides for
11 any nondischargeable debts, is there?

12 MR. GORDON: I'm stating it by analogy, your Honor,
13 obviously.

14 THE COURT: Okay. All right.

15 MR. GORDON: By putting the condition on that you
16 can't impair, it becomes a nondischargeable debt essentially,
17 and the state has that authority to place the appropriate
18 conditions on the filing of the bankruptcy to protect the
19 statutory structure. And it's not just statute. I mean this
20 is -- the difference here again, this is really unique. It's
21 not like California or Alabama.

22 THE COURT: Hypothetically, a state legislature
23 passes a law authorizing municipalities to file Chapter 9 so
24 long as the plan provide -- the municipality's plan provides
25 for a priority of payment, and it turns out that that

1 priority of payment legislatively required by the state
2 legislature is different from the Bankruptcy Code. Let's
3 assume that. Would it be your position that no municipality
4 could file Chapter 9 in that case because the state law
5 contravenes the superior -- or the supreme federal law?

6 MR. GORDON: Well, that's an interesting question
7 because it sounds more like one of those situations where
8 once you're in bankruptcy, you have to accept the structure
9 of the Bankruptcy Code itself, and that highlights --

10 THE COURT: That's exactly what the city is arguing
11 here.

12 MR. GORDON: And that highlights the point here that
13 eligibility has to be dealt with at the eligibility stage and
14 that -- and to put off the question of whether you can impair
15 the pension clause leads to those vagaries of questions
16 about, "Well, now we're in bankruptcy. Does the Bankruptcy
17 Code have vitality and in what regard?" No. You don't get
18 to those questions unless you have valid state authorization.
19 You don't have valid state authorization unless you've taken
20 into account what provisions need to be there to protect the
21 state Constitution and other statutes, and that's sort of
22 what Harrisburg talks about. You may have facial authority
23 under one statute, but you got to look at the other statutes.
24 And in here in this case it's --

25 THE COURT: So in my hypothetical you would say

1 there's no valid authorization.

2 MR. GORDON: I would say that the state may be very
3 disappointed if it authorizes and allows the debtor into
4 bankruptcy only to find that the -- that part of the
5 protection goes away.

6 THE COURT: It's hard for me to be concerned about
7 how the state feels. Is it your position that there would be
8 no authorization, no proper authorization in that case?

9 MR. GORDON: Let me understand the hypothetical
10 then. I know time is short. The hypothetical is that the
11 state would pass a statute that says that you can file
12 Chapter 9, but the priority of payments is going to be --

13 THE COURT: But here are the priorities. Here are
14 the priorities. You got to pay bonds first, and, you know,
15 you got to pay --

16 MR. GORDON: Perish the thought.

17 THE COURT: Sorry?

18 MR. GORDON: Perish the thought, but go ahead.

19 THE COURT: Okay. Perish the thought all you like,
20 but this is the hypo.

21 MR. GORDON: Yes.

22 THE COURT: You got to -- you pay the bonds first,
23 and you got to pay trades, and then you got to pay employees'
24 wages, and then you pay pensioners last, and understand,
25 everyone who's listening to this, this is strictly

1 hypothetical. It's inconsistent with the Bankruptcy Code.
2 I'm sorry.

3 MR. GORDON: I forgot about the overflow. Sorry.

4 THE COURT: Well, and this is being recorded.
5 Anyway, it's inconsistent with the Bankruptcy Code. However,
6 whatever hypothetical you create, and the governor says, you
7 know, "We've got to comply with state law. I'm authorizing
8 this bankruptcy, but the municipality's plan has to comply
9 with the state law that sets forth these priorities." Is
10 that a proper authorization or not?

11 MR. GORDON: I would say not.

12 THE COURT: Okay.

13 MR. GORDON: Well, it's --

14 THE COURT: Now you're saying that when state law
15 says the priority has to be given to pensions --

16 MR. GORDON: Well, let me back up.

17 THE COURT: -- that's not proper if it's
18 inconsistent with the Bankruptcy Code.

19 MR. GORDON: Actually, I would say -- no. I would
20 say that the authorization is proper, but, again, a portion
21 of that authorization is actually going to come into conflict
22 with the Bankruptcy Code itself, so I think it's just a
23 flawed concept. So if you had that provision in there, I --
24 you know what? The difference is -- let me think about this.
25 I think the difference is the cases such as Vallejo and

1 others dealt with situations where someone tried to cherry
2 pick various provisions of the Bankruptcy Code after they got
3 into bankruptcy. It didn't involve the actual state
4 authorization. So here I think if you were presented with
5 that, you would have two choices. You would either have to
6 acknowledge that state authorization as is and agree to that
7 structure and say that will supersede the Bankruptcy Code
8 because that's the only way the state is allowing you to get
9 into bankruptcy, or you would have to dismiss the case.

10 THE COURT: Which should I do?

11 MR. GORDON: In that situation, I think you would
12 give the state the opportunity to decide, but in the first
13 instance, if the state doesn't do anything, you would have to
14 dismiss that case because you don't have the authority to
15 amend the Bankruptcy Code.

16 THE COURT: I would have to give them the
17 opportunity to revise the authorization?

18 MR. GORDON: That's correct, your Honor. They'd
19 either have to amend the --

20 THE COURT: How could --

21 MR. GORDON: -- authorization or understand that if
22 they go into --

23 THE COURT: How could the governor provide an
24 authorization that's inconsistent with the state statute?

25 MR. GORDON: He couldn't. He would either have to

1 go back and --

2 THE COURT: What's there to revise?

3 MR. GORDON: -- change the statute -- he'd either --
4 he has two choices.

5 THE COURT: Oh, go back and change the statute.

6 MR. GORDON: There are two choices. Either the
7 Court agrees to allow the case to go forward with that
8 structure because that's the only way the state will
9 authorize it and that's what 109(c)(2) talks about, or if
10 this Court for some reason believes that that is in conflict
11 with the Bankruptcy Code, then this -- I guess I don't know.
12 The state could either -- the state would have to go back and
13 amend its statute in some fashion. I don't really know, but
14 I think that if the state --

15 THE COURT: Or if it's constitutional, amend its
16 Constitution?

17 MR. GORDON: Wait. What couldn't be done is that
18 this Court could not accept the authorization and then say,
19 "I'm cherry picking. I'm not allowing that part of the state
20 statute to stand because that is the only way that they got
21 into bankruptcy in the first place." That's my answer, your
22 Honor. All right. Can I move on?

23 THE COURT: You can.

24 MR. GORDON: We're really out of time here probably,
25 I notice, in a minute, but I just wanted to touch upon

1 collateral estoppel because I promised I would unless your
2 Honor has a different --

3 THE COURT: No, no. You argue what you like.

4 MR. GORDON: As far as collateral estoppel is
5 concerned, your Honor, the city and the state have argued
6 that there was not a full fair opportunity to litigate in the
7 Webster matter. We've addressed that in our papers. We
8 believe that that is not accurate. There was full briefing.
9 Both sides filed cross-motions for summary disposition, so
10 they addressed the merits of the matter. The Court
11 acknowledged that there had been briefing and oral argument
12 before it entered its order. The city and the state also
13 argued that there was no privity between the city and the
14 defendants in Webster, but on September 19th, your Honor, the
15 city argued in this court that there was a common interest
16 agreement between the city and the state and that there was
17 common interest with respect to the financial situation of
18 the city and the bankruptcy, so privity is certainly there.
19 And then finally the city and the state argued that the state
20 court doesn't have authority or jurisdiction to rule on
21 eligibility issues. The Webster court didn't rule on
22 eligibility issues. It doesn't mention 109(c)(2) of the
23 Bankruptcy Code. It merely ruled on the interplay between
24 two state statutes, PA 436 and the pensions clause, and ruled
25 that those two had to be harmonized and that, therefore, any

1 authorization of a bankruptcy under PA 436 must comport with
2 the pensions clause or otherwise it was unconstitutional, so
3 it did not infringe on this Court's jurisdiction in that
4 regard. So we think that collateral estoppel is valid and
5 applies here under the Webster judgment.

6 THE COURT: Thank you.

7 MR. GORDON: Thank you, your Honor.

8 MS. CECCOTTI: Good afternoon, your Honor. Babette
9 Ceccotti for the UAW.

10 THE COURT: Good afternoon.

11 MS. CECCOTTI: And with admittedly some trepidation,
12 I am also going to cover the authorization under state law,
13 and I think -- I guess I'd like to start with just a couple
14 of threshold comments. First, I think the exchange that
15 you've had with Mr. Gordon and perhaps with others -- and I'm
16 sure it's not going to be limited there -- will probably lead
17 you to conclude that at least some of the issues that you've
18 slated as purely legal will -- are better served awaiting the
19 outcome of the trial. I'm just -- you know, Mr. Gordon took
20 you through a series of numbers. There are all kinds of
21 facts and information that are probably best developed
22 through the evidentiary record, and that may well inform your
23 Honor's views of a number of the questions that you've asked
24 here today so far, so I'll just start with that observation.
25 I'd like to just, if I might, also --

1 THE COURT: Well, just so the record is clear -- and
2 I may have indicated this before even perhaps in writing --
3 it's certainly not the Court's intention to rule on these
4 issues before the trial, and to the extent any of the facts
5 that come out at trial bear on these, sure, they'll be taken
6 into account.

7 MS. CECCOTTI: Thank you, your Honor.

8 THE COURT: But I did hold out to all of you that
9 one of the purposes of today's hearing was to see whether
10 there are any genuine issues of material fact in advance of
11 the trial so that you can address those at the trial, and I
12 intend to do that.

13 MS. CECCOTTI: Thank you, your Honor. I guess
14 the -- let me just interject another thought into the
15 exchange that you had with Mr. Gordon on your hypothetical, a
16 couple of thoughts. First, the -- and I will -- I'm going to
17 start and go through this in a little more organized way, but
18 I just wanted to make sure I get this point out. It's
19 important to keep in mind that as inviolable and as absolute
20 and as definitive as those of us on the objectors' side
21 believe the pension clause is and as much as we believe that
22 it was the right of the citizens of the Michigan -- of
23 Michigan to so provide in adopting it, remember that we are
24 here in the public sector. We are not in the private sector
25 where there is a federally regulated and federally

1 established pension insurance system so that when plans get
2 underfunded, when plan sponsors are overburdened, there is a
3 system that takes over. And I would have to say all --
4 certainly the lion's share of the decisions that have come
5 down on this topic arise because of the -- because of the way
6 that that system is constructed. There's a federal agency
7 that provides a safety net. You know, there are moral hazard
8 issues. There's a whole balancing that goes on in that
9 system. We don't have that here. Michigan pensioners have
10 Article IX, Section 24. That's it. That's what they have.
11 So as, you know, perhaps a -- it might take a bit of a leap
12 to see that that section means what it says and really,
13 really, really means what it says, I think it's important to
14 bear in mind that that is a safety net for pensions for
15 Michigan pensioners. Okay.

16 So, now, to try to get back a little bit towards
17 more of an organized progression here on the 109(c)(2)
18 issues, the governor, as we've been discussing, had issued
19 the letter of authorization -- the letter of authorization
20 without any contingencies, so I think it's in -- and your
21 Honor asked the question this morning -- a couple of
22 questions this morning that have to do with, you know,
23 where's the impairment and where's the harm and questions of
24 that nature, and why wasn't the governor's reference to 943
25 sufficient. So I think what's important to do first is take

1 a look at -- briefly just take a look at the authorization
2 letters. And, again, this is without reference to any
3 testimony or anything else that you're going to hear next
4 week. You know, just looking at the letters that were
5 attached to Mr. Orr's declaration, the July 16th
6 authorization makes quite plain in his situational
7 overview -- he says for an extended period of time, the city
8 has simply failed to make the investments required to provide
9 its residents with an adequate quality of life as limited
10 resources have been diverted elsewhere. He says the city's
11 urgent need to address large and growing legacy liabilities
12 and other substantial debts is self-evident. Failure to
13 address these liabilities will prevent -- excuse me --
14 prevent the city from devoting sufficient resources to
15 providing basic and essential services to its residents.
16 Indeed, significant additional resources are required to
17 improve health and safety. And he goes on to say that the
18 city must devote a larger share of its revenues to
19 effectively providing basic essential services to current
20 residents, attract new residents and businesses to foster
21 growth and redevelopment, ultimately begin -- and ultimately
22 begin what will be a long process of rehabilitation and
23 revitalization for the city. The city's debt and legacy
24 liabilities must be significantly reduced to permit this
25 reinvestment. Plain as day in Mr. Orr's letter. He

1 incorporates his entire proposal, the -- I don't have the
2 whole thing here. I've just got some of it. This is the
3 June 14th proposal. Goes to the governor, and the governor
4 writes back again providing the authorization and saying in
5 part that he's reaffirming his confidence that Mr. Orr has
6 the right priorities when it comes to the City of Detroit. I
7 am reassured to see his prioritization of the needs of
8 citizens to have improved services. I know we share a
9 concern for the public's -- for the public employees who gave
10 years of service to the city and now fear for their financial
11 future in retirement, and I'm confident that all of the
12 city's creditors will be treated fairly in this process. We
13 all believe that the city's future must allow it to make the
14 investment it needs in talent and infrastructure all while
15 making only promises it can keep. So I think it's very clear
16 from these letters -- excuse me -- as it is abundantly clear
17 from the proposal that the city is proposing to take
18 resources from what it's calling the legacy liabilities or,
19 fill in the blank, accrued pensions, and divert those
20 resources to the list that Mr. Orr has laid out here,
21 reinvestment and services and the like, so when we talk about
22 not impairing the pensions and who took what action and when
23 does the impairment happen, the governor's letter, we submit,
24 in fact, is the impairment because it has -- the governor is
25 stating that he is acknowledging Mr. Orr's priorities,

1 including the priorities to take money from the pensions and
2 use them to pay other things. And so when the pension clause
3 talks about -- excuse me. I'm sorry. I just lost my brief.
4 I apologize, your Honor. I think I -- I have it. So when we
5 talk about the text of Article IX, Section 24, "The accrued
6 financial benefits of each pension plan and retirement system
7 of the state and its political subdivisions shall be a
8 contractual obligation thereof which shall not be diminished
9 or impaired thereby," and we look and we are -- we see that
10 among the records in the constitutional convention is the
11 explanation that Article IX, Section 24, quote, "requires
12 that accrued financial benefits of each pension plan and
13 retirement system of the state and its political subdivisions
14 be a contractual obligation which cannot be diminished or
15 impaired by the actions of its officials or governing body,"
16 the impairment occurs when the governor signs this
17 authorization with no contingencies. That's when it happens.
18 So not impairing thereby, meaning -- means very specifically
19 this document, and the "this" I'm holding up here now is the
20 governor's consent. Now, why is --

21 THE COURT: Oh, but this raises two questions.

22 MS. CECCOTTI: Sure.

23 THE COURT: Is there a scenario in which the city
24 would have the ability to meet its pension obligations in the
25 very long term unless it makes the kind of investments that

1 Mr. Orr and Mr. Snyder have suggested should be part of the
2 city's priorities? That's question number one. Question
3 number two is actually a much more important question, and
4 that is is question number one a question for now, or is it a
5 question for plan confirmation?

6 MS. CECCOTTI: It is absolutely a question for now
7 because --

8 THE COURT: What's the answer then? How can the
9 city maximize its chance of paying its pension obligations
10 unless it makes the kind of investments that Mr. Orr and Mr.
11 Snyder are talking about?

12 MS. CECCOTTI: It may be that the investments
13 themselves or the idea for the investments is fine. The
14 question is can it get there lawfully by taking money from
15 pensioners? That is the question that the state Constitution
16 answers by saying no. Now, as Mr. Gordon pointed out or as I
17 think is evident from his presentation, there's a lot of
18 numbers here, Judge. There were numbers in Mr. Orr's
19 request, his July 16th request. You're going to hear an
20 awful lot about those numbers and what they are and what they
21 are not, so I would suggest that the notion that we somehow
22 have already today, quote, no reasonable alternative in the
23 words of PA 436 I would suggest very much should await your
24 Honor's review of the evidence on all of that, so --

25 THE COURT: Okay.

1 MS. CECCOTTI: I realize it's a question that has
2 been on your mind all day, but I really think unless you
3 really want us up here freelancing numbers -- and you really
4 don't -- that it is best to simply --

5 THE COURT: I'll grant you that one.

6 MS. CECCOTTI: Right; right. But I guess my point
7 is the answer cannot be because the problem seems hard, we're
8 just going to try to find a way to say perhaps that this
9 language doesn't mean what it says because I think once you
10 start down that road, you run into all kinds of problems.
11 You run into the Chapter 9 dual sovereignty problems. You
12 run into problems of who gets to decide what, right, whether
13 this Court gets to construe Article IX, 24, to, in fact, say
14 it can be invaded. These are problems that are simply too
15 thorny -- certainly too thorny to start with, and maybe we'll
16 see where your Honor is after the evidence.

17 Okay. So why isn't the reference to 943(b) enough,
18 and I think -- and I think you've heard it, but just to say
19 it again and hopefully crystalize it a bit, I think the
20 governor assumed in wording the letter the way that he did
21 that somehow this all gets sorted out, and I think that seems
22 to be a lot of the presumption here, and I must say I am not
23 in full company with those who say that once you cross the
24 threshold of 109(c) using state law that somehow you can
25 start, you know, running around employing federal supremacy.

1 I think that that -- we'd probably have a lot more
2 conversations about that with a lot more time with a lot more
3 specificity before we get there. We think -- and we spent a
4 bunch of time on this in our brief, Judge, and given your
5 handling of the Addison case you probably didn't need all of
6 this, but our view is that you must look -- in order for
7 Chapter 9 to be constitutional, you have to look at all of
8 these pieces that import or give recognition to the state
9 law. Just to take you back to another colloquy that you had
10 with Mr. Gordon and why I think maybe that the Chapter 13
11 example isn't a good fit here, 109(c) says that an entity may
12 be a debtor under Chapter 9 if and only if such entity is
13 specifically authorized to be a debtor under such chapter by
14 state law. So while we're all here today obviously under
15 109(c) and 109(c) is in the Bankruptcy Code and so you're
16 right -- the law that must be applied is state law, and the
17 Court decides whether -- you, the Court, you, the Bankruptcy
18 Court, decide under 109(c) whether, in fact, the municipality
19 is specifically authorized to be a debtor under Chapter 9 by
20 state law or by a governmental officer empowered by state
21 law. And so I think that that may help to distinguish the
22 Sixth Circuit case that you discussed with Mr. Gordon, but it
23 also points out that getting through the door is a state law
24 question. 903 and 904 are obvious limitations on the Court's
25 authority. 943 is a limitation on the plan. All of these

1 things work together, and I think your Honor's opinion
2 actually in the Addison case on the motion to intervene was
3 exactly right in recognizing the limitations not only of the
4 Court's caution in addressing the questions precisely because
5 of the questions that 903 -- the issues that 903 and 904
6 import into the bankruptcy process, but another observation
7 which takes me back to the letters and the taking of the
8 money from the pensioners and putting it towards something
9 else, which is, I think, your court -- your observation in
10 that case that Chapter 9 is about debt adjustment and should
11 not be overburdened I think applies very well here, too, and
12 I think, again, when we get to the trial and the full array
13 of the plan and everything else comes out and we start
14 talking about that in the evidentiary context, I think that
15 it is at least a question as to whether or not this issue
16 that we're all talking about here is in a narrow sense debt
17 adjustment or whether it is more than debt adjustment and
18 whether that shouldn't inform the Court's caution in ensuring
19 that the state law is being adhered to.

20 And I guess -- and I don't often get to the point of
21 imploring at the podium. It's not always pretty, but I'm
22 going to break my rule on this whole subject of where is the
23 impairment. To me it's like a shell game. Okay. Under
24 which of these cups is the impairment; right? Is the
25 impairment -- I've told you where I think the impairment is;

1 right? I don't think the Court impairs. The debtor proposes
2 the plan. Under Chapter 9 only the debtor can propose the
3 plan. The debtor was supposed to have come up with something
4 that passes muster to meet the 109(c) criteria in advance of
5 getting to this point, and they --

6 THE COURT: Well, but the proposal of a plan, the
7 filing of a plan which proposes to impair pensions doesn't
8 result in the reduction of anyone's pension check any more
9 than the filing of the case did.

10 MS. CECCOTTI: Your Honor, I --

11 THE COURT: That doesn't happen until the Court
12 confirms it under law.

13 MS. CECCOTTI: And, your Honor, then why are we
14 talking about it? Why are we talking about it?

15 THE COURT: Answer that question.

16 MS. CECCOTTI: If it hadn't been --

17 THE COURT: I'm having my issues with that very
18 question. Why are we talking about it?

19 MS. CECCOTTI: We're talking about it because it's
20 in their proposal. We're talking about it because it was in
21 the authorization that went to the governor. We're talking
22 about it because the governor clearly recognized it or at
23 least recognized it sufficiently to draft the letter that he
24 did. We're talking about it because despite weeks and weeks
25 and weeks, no one has disabused the pensioners of the notion

1 that their pension rights are -- that they are intending to
2 impair their pension rights. That's why we're talking about
3 it. It simply does not -- here they are in Chapter 9; right?
4 They're in Chapter 9. They've got the benefit of the
5 automatic stay. They've gotten their stay against the pre-
6 petition lawsuits. They want to have a bar date motion.
7 They're getting all of the -- you know, all of the features,
8 right, of Chapter 9. And the threshold question that has to
9 be asked is can they be here, and the threshold question can
10 only relate to the form in which they show up on the court's
11 doorstep. And the form in which they show up on the court's
12 doorstep is the June 14th proposal, which is abundantly clear
13 on the subject of invading -- impairing accrued pensions.
14 What else would the Court -- what else would we be dealing
15 with? What else would your Honor be dealing with if not for
16 the fact that they evidenced their plan?

17 THE COURT: I think the answer to that question may
18 be the governor's authorization. He says we are here to
19 adjust the city's debts in conformity with law.

20 MS. CECCOTTI: He says that at that end we do that,
21 but what does it mean -- what is supposed to go on before we
22 get there? It can't be that we have a sort of quasi eligible
23 debtor going through all of the -- you know, using all of the
24 processes I just described and then we have a big
25 conflagration at the end. I mean it just --

1 THE COURT: Why not?

2 MS. CECCOTTI: Chapter 9 presupposes through the
3 front door under state law, specially authorized under -- by
4 state law. That is what 109(c) says. It is plain as day.
5 And state law means state law, and it requires giving -- if
6 they hadn't put in this -- the pages --

7 THE COURT: So in response to my question to Mr.
8 Gordon, you would say that if state law requires a different
9 priority scheme than the Bankruptcy Code, the municipality is
10 eligible only if the Court is willing to enforce that state
11 law priority scheme rather than the Bankruptcy Code priority
12 scheme?

13 MS. CECCOTTI: I think that I would say that if a
14 state legislature -- we're not talking about the Constitution
15 here. You're just talking about, in effect, the PA 436 of
16 whatever that state is. I would say that those are the
17 terms. We have -- we allow the states -- states have a
18 variety of authorization. Some of them have no
19 authorization. It is a state-by-state --

20 THE COURT: Every bankruptcy case that has addressed
21 that question has held the other way, hasn't it?

22 MS. CECCOTTI: Well, I don't know the answer to
23 that, your Honor. In the Chapter 9 context?

24 THE COURT: Yes, in the Chapter 9 context.

25 MS. CECCOTTI: Okay. Well, I --

1 THE COURT: Every Bankruptcy Court has held once
2 you're in the door, it's the Bankruptcy Code priorities that
3 apply, not the state law priorities --

4 MS. CECCOTTI: Right. Well, right. And now we're
5 getting into the --

6 THE COURT: -- because the state consents to the
7 Bankruptcy Code or it doesn't.

8 MS. CECCOTTI: Well, and I would say that a state
9 that passes a law such as your Honor proposed maybe, in fact,
10 looked at those cases and said, no, we don't really want to
11 go there. We want to -- you know, we'll let you go if it's
12 this other way. I think the through the door -- once we're
13 in the door -- I know what Harrisburg says. You know, I have
14 a lot of trouble with it just because I think that the
15 doctrine has not evolved in a sufficiently precise manner.
16 You don't always see what the conflict is. You have to come
17 up with notions of what the purpose is. Remember the ancient
18 Supreme Court cases here said bankruptcy is about discharge;
19 right? So can states have discharge laws? So we're way, way
20 far away from that now, so I think -- again, I think we'd
21 have to have a lot more conversations about what happens
22 through the door. Right now we're talking about you're at
23 the door, and you're at the door, and you're presenting
24 yourself, and what you're wearing, right, is something that
25 says we are going to violate Article IX, Section 24.

1 Just want to see if there is anything -- see if I've
2 left anything out here that I wanted to cover. I have some
3 minutes here. I guess I could barter away my minutes, Judge,
4 or I could give them to you to barter them away. Let me just
5 take a quick moment here. I think -- I mean, again, I think
6 we're going to get to the point of duplication if I continue
7 unless, your Honor, you'd like to ask me anything else. I
8 think I've hit the points I wanted to hit.

9 THE COURT: Okay. Thank you.

10 MR. WERTHEIMER: William Wertheimer, your Honor, on
11 behalf of the Flowers plaintiffs. As I'm sure your Honor
12 will recall, although it seems like ages ago now, the Flowers
13 plaintiffs were plaintiffs in one of the state court cases
14 that preceded the bankruptcy, a state court case in which we
15 were making the claim that under state law the governor was
16 required to recognize Article IX, Section 24, if and when he
17 authorized a bankruptcy. I'm not here to speak on bankruptcy
18 law. When I heard the reference to Asbury Park, I thought of
19 the street in northwest Detroit. I'm not a bankruptcy
20 lawyer.

21 THE COURT: Okay.

22 MR. WERTHEIMER: I just want to speak briefly on the
23 state law, which it was my understanding at the stay
24 proceedings everybody kind of understood, including the city
25 attorneys, that although our claim was being delayed, it was

1 not being changed in terms of its nature; that is, that this
2 Court would decide as a matter of state law whether this
3 bankruptcy was properly authorized. It was just that the
4 forum was changing.

5 And I'd just like to make three points as to that
6 state law, three areas where I think this Court can look to
7 what it should do in deciding what I believe is that state
8 law issue; that is, the basic eligibility issue. If you look
9 at the equivalent of legislative history of Article IX,
10 Section 24 -- that is, the constitutional convention
11 record -- there is certainly references to the fact that has
12 been mentioned here today that it was meant in part to deal
13 with the fact that pensions had been considered not to be a
14 matter of contract, but the only specific reference that I
15 found in that record -- and no one has cited anything to the
16 contrary -- is the comment of Mr. Van Dusen, which I -- with
17 the Court's permission, I'll take the liberty to quote. It's
18 not long. "An employee who continues in the service of the
19 public employer in reliance upon the benefits which the plan
20 says he would receive would have the contractual right to
21 receive those benefits" -- he didn't stop there -- "and" --
22 he didn't say "meaning" -- he said "and," in addition -- and
23 I think this goes to what Mr. Gordon was getting at, "and
24 would have the entire assets of the employer at his disposal
25 from which to realize those benefits." That was the

1 understanding of Mr. Van Dusen. There's no contrary
2 understanding on the record as to what the idea was on behalf
3 of the people who were writing Article IX, Section 24.
4 That's point number one, and I think if you look at what
5 Emergency Manager Orr did in his June 14th proposal, Mr. Van
6 Dusen, were he alive to take a look at it, would say, "That's
7 not what I meant," because on June 14th what Mr. Orr proposed
8 and he continues to propose is the retirees get treated like
9 any other creditor. He didn't say words to the effect of
10 "all the assets of the employer," so that's the first piece
11 of state law in the broad sense of the term that I think you
12 can look to.

13 The second piece is the Webster and the Flowers
14 cases and the retirement case. And I'm not repeating
15 Mr. Gordon's argument relative to collateral estoppel or the
16 res judicata argument. I'm simply pointing out that as --
17 excuse me -- as Mr. Gordon indicated, that case was fully
18 briefed, and a state court judge looked at the exact issue --
19 well, maybe not exact but very close to the issue that is in
20 front of you, and that state court judge, after full
21 briefing, decided that in a manner consistent with our
22 position. And I would point out there is no contrary law
23 anywhere. I recognize this Court -- the cases that say you
24 look to the definitive ruling from the highest state court
25 and all that, but Judge Aquilina's decision -- decisions,

1 well-reasoned, are all that's out there. She's a state court
2 judge deciding this issue. That's the second piece of state
3 court law that, as far as I can tell, is out there.

4 There's one other, and that is we have the state
5 attorney general. This isn't law, but the state attorney
6 general enters an appearance a little late in the game. The
7 governor has already authorized the bankruptcy. However, the
8 state attorney general, as an officer of the state, as the
9 chief legal officer of the state, tells this Court that
10 Article IX, Section 24, binds the emergency manager in
11 bankruptcy. Now, we all know that that gets into the issue
12 of is it at the eligibility stage or the plan stage, and I --
13 that's been dealt with. My point is simply that a state
14 officer, the attorney general of the state, saying that the
15 emergency manager in bankruptcy is bound by Article IX,
16 Section 24, is consistent and supports our position that the
17 governor, when he goes to authorize that bankruptcy, is also
18 bound by Article IX, Section 24. And with all due respect to
19 the governor, we think it's up to this Court to hold the
20 governor to that.

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

22 MR. WERTHEIMER: Thank you.

23 MS. PATEK: Good afternoon, your Honor. Barbara
24 Patek on behalf of the Detroit Police Command Officers
25 Association, the Detroit Police Lieutenants & Sergeants

1 Association, the Detroit Police Officers Association, and the
2 Detroit Fire Fighters Association defined in this case as the
3 Detroit Public Safety Unions. As the Court is aware, these
4 are the men and women who provide the police and fire
5 protection that are essential to the survival of the city,
6 and these are exactly the essential services that Chapter 9
7 was designed to preserve and protect.

8 I want to use my time this afternoon to talk a
9 little bit about ripeness, talk very briefly about the
10 supremacy clause and the tension between the supremacy clause
11 and the Tenth Amendment, and then to try to answer some of
12 the questions that the Court has raised with some of the
13 other objectors today.

14 On the issue of ripeness and why this is a question
15 for eligibility, I think that goes to the very nature of
16 Chapter 9, which precisely because of the sovereign immunity
17 and the sovereignty of the State of Michigan, this Court, as
18 it's recognized in so many hearings, is limited in what it
19 can order the city to do. In that respect, this -- not that
20 every bankruptcy isn't a consensual process and not that
21 every bankruptcy doesn't involve a lot of negotiating.
22 Chapter 9 is unique because it incorporates -- it's a largely
23 consensual process at some level precisely because this Court
24 cannot trump the state's sovereignty in particular
25 situations. And in that regard, if one talks about imminent

1 harm, there is -- you know, it's in the record. Mr. Gordon
2 alluded to the fact that the stay authorized the city to come
3 in this court for a very public purpose, and that purpose was
4 to impair the accrued vested pension rights of its public
5 servants. That question, as the city points out in its
6 papers, no court has ever said they can't do it, and no court
7 has ever said they can. It's an unanswered question. We're
8 entitled to know what our rights are, and to suggest that by
9 knowing what our rights are in the door that is to knowing
10 what -- to know what the proper authority is here would
11 somehow skew the process or cause people to walk away from
12 the table I think is wrong. This is a hard question that the
13 Court has to answer, but the Court is here to follow the law.
14 I think this is -- there is imminent harm to these
15 individuals here, and there's a second piece of that by
16 virtue of the vacuum in which there's no legal precedent on
17 this issue, and that is -- I'm just going to throw out to the
18 Court the idea that this is one of those issues where it's
19 capable of repetition but evading review. If every time this
20 gets kicked down the road to confirmation, nobody is ever
21 going to know what their rights are when this issue comes up.
22 I submit that Michigan is a little bit unique, but I think
23 that there are plenty of reasons that this issue is ripe for
24 adjudication today.

25 I'd like to take a crack at some of the questions

1 that the Court raised. You raised the issue of what if the
2 state law requires a different scheme of priorities than is
3 authorized by the Bankruptcy Court. I think if you step out
4 of the weeds on that question and I think you look at what
5 the Code says here, the state has to give its consent to come
6 into Chapter 9. And in giving its consent, the state agrees
7 to certain provisions of Chapter 9. I think a state that
8 authorizes such a scheme simply can't give its consent to
9 come into Chapter 9. I think that's the simple answer to
10 that question.

11 THE COURT: So your answer then in that hypo would
12 be not eligible?

13 MS. PATEK: Correct. I also think -- the Court
14 asked the question and raised the 11th Amendment, and I'm
15 going to go out on a limb here on this and the question of
16 sovereign immunity because I think the answer to a lot of the
17 issues before the Court and whether or not, in fact, the city
18 can impair these rights or use the Court to impair those
19 rights is in some ways answered by the Code. Section 106 of
20 the Code addresses the sections of the Code under which the
21 state waives its sovereign immunity. 109 is not one of them,
22 and I think that makes the eligibility issue as it's framed
23 by 109 a question of state law. And the other place, if
24 we're going to jump ahead to where we'll be down the road,
25 where the state does not waive its sovereign immunity is

1 under Section 943. We know there are some places where to
2 consent to come into this Court and get relief the state has
3 to agree to conform to the rules. 365 is one of those that
4 you've got Bildisco. If you're going to come in and you look
5 at -- that's a place where the state has to agree, consent to
6 be governed by the federal rules. The other place is the
7 automatic stay. But when you get down the road to the plan
8 that only the city can propose, the state does not waive its
9 immunity, and that --

10 THE COURT: I think you might be overanalyzing my
11 question about sovereign immunity. I was only analogizing to
12 the 11th Amendment cases that hold that the issue of whether
13 sovereign immunity is waived is a federal issue, not a state
14 issue. I didn't mean to suggest, as you appear to understand
15 here, that there is -- that there are 11th Amendment issues
16 in this case.

17 MS. PATEK: I'm not suggesting that you are, your
18 Honor, but I'm suggesting that -- and this sort of brings us
19 back to where Ms. Levine started out this morning with this
20 concept of -- this very basic concept, and one of the things
21 that makes this case so hard and one of the things that all
22 the commentators agree makes Chapter 9 so hard is this
23 tension. We have a federalist system. There are rules of
24 the road that were set up by the founders. We have a limited
25 system of federal government. All the other powers are

1 reserved to the states and the individuals. And there's no
2 question that wasn't done so that we could have big and
3 powerful states. That was done by the founders so that the
4 individuals close to the ground would have their rights
5 preserved, and I think within the structure of Chapter 9 and
6 within the limits of the Tenth Amendment, that the state
7 simply cannot use Chapter 9 to impair an express
8 constitutional promise. And I want to talk about that issue
9 for just one moment. This pensions clause is in a very
10 unusual place. Okay. This is -- I think it's fair to say --
11 you talk about there is a contracts clause in the state
12 Constitution just like there's a free speech clause and there
13 are a lot of things that mirror the Bill of Rights, but, as
14 Ms. Levine told us this morning, if somebody is violating my
15 free speech rights, I'm not in state Circuit Court. I'm
16 looking to the federal courts and the federal government to
17 protect those rights. If you're talking about fiscal
18 management, then that's a state issue, and in this case this
19 state and the people of this state chose to enshrine that
20 right to vested accrued -- this isn't all pension benefits,
21 this isn't future benefits, just what people have already
22 earned -- in its state Constitution and say those cannot be
23 impaired.

24 The Court asked the question about what if there's
25 not enough money, which sort of brings me back to the first

1 issue I was talking about. This Court has to rule on the
2 legal issue that's before it, and if there's not enough money
3 just like if you're in a Chapter 11 that you don't want to
4 see liquidation, that's a hard question that the creditors,
5 including the pensioners, including my clients, have to
6 answer along with the city and try to solve this problem
7 within the limits of Chapter 9 because if we don't solve the
8 problem, the only remedy is a dismissal.

9 THE COURT: Well, I guess even that answer troubles
10 me because if the Court holds here that there is this pension
11 right that cannot be impaired and because the governor didn't
12 condition this filing on the city recognizing that right in
13 the bankruptcy, what would happen upon dismissal? There'd be
14 this court holding that there's this unconditional absolute
15 right not to have pensions impaired. On behalf of your
16 retirees, you couldn't negotiate that, could you? How could
17 you?

18 MS. PATEK: I can't negotiate that upon my retirees,
19 but I suggest to the Court there is a solution to this
20 problem, and the solution is for the city to come back again
21 and to authorize -- have the state authorize the filing
22 within the confines of the Constitution, and we move forward
23 on that basis. I don't -- I understand that this has -- you
24 know, we talk about the elephant in the room, but the larger
25 part, the healthcare benefits, are not protected, and the

1 city has already said effective yesterday -- and these aren't
2 my clients, but -- we're done providing that. It's a
3 significant claim. I don't want to minimize that, but I
4 think it is something, given our constitutional structure,
5 that has to be dealt with in the confines of these
6 proceedings, and there are negotiations. There's a huge
7 consensual component to this, and that doesn't stop if the
8 Court rules the way that we've asked to rule.

9 I see my time is up. I just want to wrap up very
10 quickly, and I guess I would say we came into court on the
11 first day, and we supported the city, and we've supported the
12 city in many respects throughout this. We agree that there
13 should be the stay. There has been the breathing space. But
14 I think this is a hard, difficult question. As Ms. Levine
15 said, democracy is hard. This restructuring plan has to be
16 devised in accordance with applicable law, and the city on
17 the front end has to agree that it's going to -- it's going
18 to do so, and in the absence of that, I think they're not
19 eligible. Thank you, your Honor.

20 THE COURT: All right. Thanks to each of you.
21 We'll take our afternoon break now and reconvene at 3:20, a
22 half an hour from now, for the city's arguments.

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

24 (Recess at 2:50 p.m., until 3:20 p.m.)

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

1 Recalling Case Number 13-53846, City of Detroit, Michigan.

2 THE COURT: And it looks like everyone is here.

3 MR. BENNETT: Good afternoon, your Honor.

4 THE COURT: Mr. Bennett, you may proceed.

5 MR. BENNETT: Good afternoon, your Honor. Bruce
6 Bennett of Jones Day on behalf of the city.

7 THE COURT: The only thing I would ask of you, sir,
8 is to leave enough time before our closing time today for me
9 to ask some questions of Mr. Todd. Doesn't need to be now.
10 It can be whenever it's convenient for all of you.

11 MR. BENNETT: Okay.

12 MR. TROY: Mr. Troy, your Honor.

13 THE COURT: Mr. Troy. I'm so sorry, sir. And so I
14 want to do that today because I'm not sure what his travel
15 plans are.

16 MR. BENNETT: Okay. Your Honor should feel free to
17 interrupt me if you think I'm getting too close to the end.
18 And I actually have one procedural question that I'd like to
19 get settled, too, which really has to do with whether you're
20 expecting or would benefit from oral argument at the
21 beginning of the next -- opening argument at the beginning of
22 the next phase because that's -- so I don't know if --

23 THE COURT: You mean tomorrow?

24 MR. BENNETT: No. On the evidentiary phase
25 beginning next week.

1 THE COURT: Oh, well not so much oral arguments as
2 opening statements.

3 MR. BENNETT: Opening statements is what I mean.

4 THE COURT: Yes.

5 MR. BENNETT: Okay. Great.

6 THE COURT: Yes. I think opening statements are
7 very important.

8 MR. BENNETT: Okay. I want to start with some
9 general comments, some of which are designed to respond to
10 things that came up this morning and some of which I think
11 just help, I think, set the stage for what at least the city
12 believes is happening in this Chapter 9 case. And I want to
13 start by saying that the purpose of the Chapter 9 case is to
14 adjust the city's debts, and that means all of their debts,
15 obligations evidenced by bonds, obligations under other
16 contracts, obligations to provide healthcare, and pension
17 obligations. And so that there isn't any confusion, there's
18 been a lot of reference to statements that were made. I
19 think the statement most cited and the one that I think is --
20 it's the same as all the other ones that have been made -- is
21 that there must be -- the statement was there must be
22 significant cuts in accrued vested benefits. It's been cited
23 often, and it's true.

24 I want to make a couple of clarifications. I don't
25 think anyone for the city ever said we were going to

1 eliminate pensions. This has been about the underfunding
2 amounts. It is the underfunding amounts that are problems.
3 I think your Honor understands that, but I think it's
4 important to remind everybody else that we've never said that
5 the objective is to eliminate pensions. The objective is to
6 address the underfunding situation.

7 Now, why did we make that statement? The
8 statement --

9 THE COURT: Well, let me just put it right to you.
10 Is it your intent to propose a plan to reduce pensioners'
11 monthly checks?

12 MR. BENNETT: To be very technical about it, what we
13 have -- what we have -- what we have noted is that it is
14 impossible for the city to fill the underfunding gap in the
15 existing pension trusts, and we have also said that likely
16 requires changing the amounts of pension benefits. Now --

17 THE COURT: By "changing," you mean reducing?

18 MR. BENNETT: Reducing. Now, I do want to -- I'm
19 going to skip a couple points and then come back.
20 Notwithstanding the fact that the Chapter 11 case has been
21 filed, it remains the city's hope that these adjustments will
22 be achieved on a consensual basis pursuant to agreements
23 reached with the holders of the obligations. That is still
24 the objective. And, of course, we are participating in
25 mediation that's intended to facilitate that goal, and,

1 frankly, we'll meet with anyone anyplace anytime to try to
2 achieve that goal. And we're going to discuss at certain
3 points certain statements that have been made by others in
4 this case about this problem which may suggest that those
5 discussions are going to be particularly difficult, but I
6 want there to be absolutely no confusion about where the
7 city -- where the city stands on this.

8 And by the way, the filing doesn't say how
9 ultimately this case is going to end, whether it's going
10 to -- whether we're going to have a consensual plan, whether
11 we're going to have a nonconsensual plan, whether it'll be
12 partly a consensual plan or partly a nonconsensual plan. And
13 although the city did make a proposal that certainly
14 contemplated cuts to the underfunding obligation and
15 ultimately to benefits that absolutely is a part of the June
16 14th proposal, it was a proposal in an out-of-court
17 negotiation, and I want to submit -- and we're going to come
18 back to this point later -- it can't possibly be
19 impermissible to ask to reduce benefits, particularly when
20 you can demonstrate a need to do so. And so far, frankly,
21 that's what the city did pre-petition, and so far that's what
22 the city has done post-petition. We haven't filed a plan
23 yet. It will come soon. And there has not been a request
24 for cramdown, so -- and I think as we get into other parts of
25 the argument -- the fact that we don't quite know what's

1 coming later may have some bearing on some of the legal
2 points that your Honor has talked about and that others have
3 talked about earlier today.

4 THE COURT: Is it the city's position that the State
5 of Michigan does not have the obligation under the Michigan
6 Constitution to guarantee the city's underfunding?

7 MR. BENNETT: I don't know if the city has a
8 position. I will tell you that I have read all of the
9 materials probably more than anyone else in the city's team,
10 and I don't think the state has an obligation to guarantee
11 the pension obligations of a municipality. I think actually
12 when you look at the --

13 THE COURT: Isn't it in the city's best interest to
14 say that -- or to assert that the state does have that
15 obligation?

16 MR. BENNETT: I don't know whether it is or is not
17 in the city's best interest to even take a position on that
18 point, and that's why I said I don't think the city has a
19 position on that point, but I have done a lot of the work,
20 and I think I've made up my own mind as to what I think is
21 there. I do think it's in the city's position that if we
22 could get money from the state, we would want it, and it
23 would be a great thing, and I'm reasonably certain that that
24 sentiment has been expressed on more than one occasion.

25 THE COURT: Well, is there any reasonable prospect

1 that the state will comply with that request in the absence
2 of a legal obligation -- a determined legal obligation?

3 MR. BENNETT: I don't know the answer to that
4 question. Thus far the state has been of the view that the
5 city has to reorganize based upon its own financial
6 resources.

7 Okay. The next point I wanted to touch on is the
8 fact that there are a large array of state and federal
9 statutes that say in all kinds of different ways that the
10 city is obligated to pay its debts. In fact, they say that
11 the city is obligated to pay its debts in all kinds of
12 different ways. And the city itself and the state has no --
13 and we'll get into this in much more detail -- no ability in
14 order to overcome those laws or very, very, very limited
15 ability to overcome those laws. One important point about
16 them that didn't --

17 THE COURT: You mean comply with those laws?

18 MR. BENNETT: No. To overcome them to get past them
19 if they can't pay all of their obligations. And, again, it's
20 a situation that the city is going to prove it's in, but
21 that's for another hearing. The point I wanted to make here
22 that I don't think was made earlier today was that a lot of
23 these priorities collide with each other in all kinds of
24 different ways. We heard, by the way, about the all assets
25 at their disposal comment that was, I guess, from the

1 constitutional convention. Assuming for a second that that
2 is what was intended, the problem is is that the legislature
3 has also passed a law that describes certain debts -- the
4 obligation to pay certain debts as a, quote, "first budget
5 item," close quote. I don't remember the rest of the
6 sentence, but those words are there. There's also other
7 state statutes that don't actually grant a lien but that say
8 proceeds of certain things must be used in certain orders to
9 pay. And when you sit down and try to figure out in any
10 environment where you don't have enough, how do you fit all
11 these different things together, you run into a problem very,
12 very, very quickly. And these are the provisions, by the
13 way, that are protected by the federal contracts clause and
14 also by the Michigan contracts clause because many of these
15 provisions are in ordinances or resolutions that form part of
16 bond contracts, and others are in ordinances and resolutions
17 that form part of employment contracts. So you wind up -- if
18 you look at the world before you even start talking about
19 bankruptcy, you don't just have coherent commands, this is
20 how you pay and this is how you go about doing it and
21 everything works, you have a whole bunch of priorities that
22 actually don't work, and this, frankly, is --

23 THE COURT: Well, but the objecting parties say all
24 of those contract obligations that have protection merely
25 under the contracts clause, federal or state, can be adjusted

1 consistent with state and federal law, but the pension
2 obligation under the state Constitution is inviolate.

3 MR. BENNETT: And we'll get to that if you'll give
4 me a chance. I will explain why --

5 THE COURT: Okay.

6 MR. BENNETT: -- they are, in fact, no different,
7 but I guess my point here is that outside of bankruptcy, you
8 have a -- you don't have coherence, and this is really to the
9 whole point of does it really make any sense to have a rule
10 that says if the state conditions its filing a proceeding
11 based upon complying with its priorities, what do you even
12 have. And in many circumstances, you have something that is
13 just not meaningful in the context of where there's not
14 enough to go around. I think that's the narrow point for the
15 time being. We will generalize when we get to the whole
16 issue of how the --

17 THE COURT: Okay.

18 MR. BENNETT: -- different clauses work. I also
19 want to say that contrary to the papers that were filed --
20 and I'm now referring to the UAW's papers -- the June 14th
21 proposal didn't take broad aim at the city's workers and
22 retirees. It was very, very carefully drafted to try to
23 treat as many classes of creditors the same as we possibly
24 could denying preferences to any except in cases where we
25 were legally compelled to provide them. We thought and the

1 emergency manager thought that that was the best way to go
2 about the problem that confronted us, and, of course, we're
3 not under any illusion that that's going to be the last word
4 on this question. There will be negotiations. There will be
5 a plan filed, which I'm certain will differ from the proposal
6 that was issued on June 14th in part to respond to creditor
7 input, and it will be subjected to enormous and exacting
8 procedures by this Court before it is ever confirmed.

9 I also want to spend just a second about the point
10 that was made using some of the letters, the letters that
11 were exchanged between the emergency manager and the
12 governor. If your Honor hasn't already, I commend you to
13 read all of them, not just the parts that were quoted. I
14 think it's -- I think to fairly summarize the points made in
15 both letters, the city has been -- the city services, city
16 residents, the ability of the City of Detroit to be a city
17 that provides adequate services to its residents has
18 gradually been lost as a result of the constant and
19 consistent diversion of current tax revenue paid by current
20 tax revenue to legacy liabilities, including but not limited
21 to pension claims. That is the problem. It is not as if
22 everything is fine, let's take some money from pensioners and
23 put it to the benefit of residents to make things better.
24 The diversion already occurred. State law has been followed.
25 Pensions have not been impaired or diminished. A consequence

1 has been that the resources available for services, that the
2 resources available for investment have, in fact, been
3 significantly impaired and significantly diminished to the
4 point that lots of the city's infrastructure is no longer
5 serviceable, thus the reference to need for investment. It's
6 not for the new and wonderful. It's to put back things that
7 really need to be updated and, in fact, replaced because
8 they're worn out, and it's to restore budgetary items,
9 budgets that have, in fact, been cut too great. And I think
10 that sense -- if you read the entire document, you will see
11 that that is the historical view of the current situation.
12 Again, it will be proved next week. And the solution is in
13 part a reinvestment program. Again, just to be technically
14 correct, it's 1.25 billion over ten years, not over five
15 years. Five years would be better. I don't think anyone
16 thinks we can afford it.

17 I think the next point and the last point I'm going
18 to make by way of introduction is really to address one of
19 your Honor's questions, which is what happens if the city
20 can't adjust its debts. I think we have to start with the
21 following. Most business owners and residents are smart
22 enough and sophisticated enough to figure out that it's a
23 problem to be the highest -- residents of the highest taxed
24 jurisdiction in the State of Michigan where somewhere between
25 42 and 65 cents of every dollar is spent on something other

1 than services to current residents. That is not a stable
2 situation. That is just not going to work out well. The
3 consequence will be continuing declines in revenue. It may
4 be that debts of all kinds would be paid for awhile, but
5 ultimately debts of all kinds will not be paid, and no
6 provision of any Constitution will change this. Thus, the
7 stakes are very high not just for the city but also for its
8 residents and its creditors, and I think that puts a very
9 sharp point on your Honor's question about what is a
10 constitutional provision worth when you're confronting an
11 economic crisis such as this.

12 Unless your Honor wants to hear much about it, I was
13 next going to talk about your jurisdiction to decide the
14 eligibility question, but no one else raised it on oral
15 argument, and since it wasn't raised on oral argument, I'll
16 leave it to the papers unless your Honor has any particular
17 questions with respect to that point.

18 THE COURT: No.

19 MR. BENNETT: And I'd like to take the same
20 prerogative that if I intentionally pass over a topic because
21 it wasn't covered today, if it's in our papers, we still care
22 about it.

23 THE COURT: Of course.

24 MR. BENNETT: I'm just going to try to use time
25 wisely. So the first place I'm going to spend some time is

1 on the constitutionality of Chapter 9, and I'm going to do it
2 a little bit differently because I think, frankly, if we do a
3 really careful look at Bekins -- and I'm going to call it
4 Bekins because it's a really big company in California that
5 has -- the name is spelled B-e-k-i-n-s, and everybody calls
6 it Bekins, but I don't know what the correct pronunciation in
7 this particular case is concerned. A very careful analysis
8 of Bekins -- and believe it or not, the Cardozo dissent in
9 Ashton is going to provide us with the guidepost to answer a
10 lot of the questions that may not be constitutional questions
11 but that ultimately are resolved by those cases. First, I
12 have to say because it's important that it isn't this Court's
13 place to overrule Bekins. Bekins has been the law for lots
14 of years. And as the U.S. Attorney pointed out, it's not
15 only that Bekins hasn't been overruled, it's actually never
16 been challenged or questioned or otherwise suggested to be
17 worthy of reconsideration by anything that the Supreme Court
18 has done. And, moreover, in all of the discussion that your
19 Honor heard about why Bekins should not be regarded as good
20 law anymore, no one actually said that the -- that Chapter 9
21 has been changed in any material way from the law that was
22 before the Court in Bekins, and that's because in all the
23 ways that mattered it really hasn't changed, not just -- not
24 by a little but really not at all. However, we don't want
25 the Court to write an opinion that says, well, you feel

1 constrained not to overrule Bekins. You think it should be
2 overruled. So I'm going to spend some time talking about why
3 Bekins is absolutely right and why Asbury Park and anything
4 else didn't change anything.

5 Let me start with just a quick word on Asbury Park.
6 Even to the Supreme Court, if you read their own words,
7 Asbury Park is kind of considered an outlier. It has -- the
8 Supreme Court has never since approved a municipality's
9 modification of its own contract on the basis of emergency or
10 anything else. Every time it's been asked to, it's basically
11 talked about Asbury as being, number one, confined to its
12 facts and extraordinary situation and not reflective of a
13 broad doctrine. This same argument was made to Judge Bennett
14 in the Jefferson County case, and he commented on it. I
15 think we've cited to that case in our papers. He does an
16 even better job than I just did of explaining why Asbury is
17 an outlier. It doesn't provide much comfort to any
18 municipality thinking it's going to modify its debts without
19 the help of the Bankruptcy Code and is no good reason to
20 reconsider Bekins.

21 Now, the next thing I want to talk about is what
22 Bekins really does, and the -- a reality that you can find in
23 Bekins if you're looking really hard, but unfortunately you
24 have to look really hard, is that there were two
25 constitutional provisions at stake when the Chapter 9's

1 predecessor was subject to Supreme Court review. One was the
2 Tenth Amendment, and some people have talked about that. And
3 the second part was the contracts clause. And when you read
4 Bekins, the Court kind of touches on all the different
5 features that matter but isn't particularly careful about
6 matching up which features were needed to overcome which
7 constitutional problem. And, frankly, in there we're going
8 to find the answers to a lot of the -- a lot of the other
9 questions that come up in this case.

10 So let's start with the Tenth Amendment. Of course,
11 the Tenth Amendment, if you quote the whole thing -- and when
12 your Honor confronted earlier, I'm not sure the first six or
13 so words were quoted, "powers not delegated to the United
14 States by the Constitution, nor prohibited by it to the
15 states are reserved to the states respectively, or to the
16 people." For starting purposes, "powers not delegated to the
17 United States" are important words, and one of the things
18 Bekins very clearly says is uniform laws on the subject of
19 bankruptcies are delegated to the United States and that laws
20 on the subject of bankruptcies include municipal debt, and I
21 think they used "composition" as opposed to "adjustment," but
22 composition statutes. So it's actually not a close call that
23 the -- at least as far as the Supreme Court is concerned --
24 and I think that's all that matters for this purpose is that
25 we're going to have a municipal Bankruptcy Code that at least

1 covers subjects of bankruptcy and that those are clearly
2 federal functions. Where a Bankruptcy Code applicable to
3 municipalities --

4 THE COURT: Well, but we know from several Supreme
5 Court cases that the mere fact that Congress legislates
6 within its authority does not necessarily by itself mean that
7 it's consistent with the Tenth Amendment.

8 MR. BENNETT: Well, actually I think --

9 THE COURT: Right? You've got Printz --

10 MR. BENNETT: Well --

11 THE COURT: -- in New York at a minimum that hold
12 that.

13 MR. BENNETT: Well, that was the commandeering
14 point. We'll get to commandeering. There's no commandeering
15 in the Bankruptcy Code.

16 THE COURT: Well, I don't mean to suggest that there
17 is, but in the laws that Congress passed that the Supreme
18 Court held unconstitutional there, they were legislating
19 within their commerce clause or other enumerated power.

20 MR. BENNETT: Okay. In the radioactive waste case,
21 the New York case, it was because they used means that were
22 inappropriate that offended the solvency -- excuse me --
23 offended the sovereignty of the states. In the Bankruptcy
24 Code -- in the context of the Bekins case, I think when you
25 read the case, they were worried about something different.

1 They were worried about the -- in Ashton the majority was
2 clearly worried about the bankruptcy parts going too far and
3 intruding on insolvent -- on sovereignty issues that weren't
4 actually close enough to the core bankruptcy problem. That's
5 where we got the governmental and political powers type
6 exception that we have today, and so -- but I don't think
7 there is -- your Honor is correct. If the way that the --
8 that Congress chose to legislate on the subject of
9 bankruptcies affecting municipalities was to tell state
10 courts what state courts had to do, then you would
11 conceivably have a problem, but there's nothing about the
12 Bankruptcy Court that tells -- state any things what states
13 have to do. What the Bankruptcy Code tells courts, what it
14 tells federal courts what they should do when confronted with
15 a municipality that petitions for relief and petitions for
16 relief with proper authorization. And so I don't think that
17 is -- that doesn't implicate the second half of the Tenth
18 Amendment. It only implicates the first half of the Tenth
19 Amendment, and, quite frankly, it's protected by it.

20 And this is going to come up with something later.
21 When we think about the issue of priorities -- and that's a
22 word that encompasses lots of different things, and we can
23 break it down further if we need to -- priorities are at the
24 core of the subject of bankruptcy, absolutely solidly in the
25 core, so a point I want to make and we'll come back to is

1 that we're not really dealing with the part of the Bankruptcy
2 Code that gets closest to offending sovereignty. We are
3 really dealing with -- when we talk about where pension
4 claims stand in the world and where they can be impaired, we
5 are dealing something that is core to the subject of
6 bankruptcies. It's not at the edge of the things that made
7 the difference between the constitutionality and
8 nonconstitutionality of the Bankruptcy Code under the Tenth
9 Amendment.

10 THE COURT: Well, I think possibly your colleagues
11 on the other side might take issue with that because they
12 analogize the pension right to a property right, which is a
13 matter of state law, at least under our present Bankruptcy
14 Code. It probably doesn't need to be, as a matter of
15 constitutional law, but it is.

16 MR. BENNETT: We will come later, and believe it or
17 not, it's going to be implicated in other aspects of the
18 Chapter 9 case not having anything to do with pensions to
19 where the line is between a priority and a property right.
20 When we talk later -- I'll get to it later. I have a whole
21 section on why in this instance a pension is an unsecured
22 claim and not a property right.

23 THE COURT: Okay.

24 MR. BENNETT: If we -- just to take a short part
25 about it now, as I read the cases, there are some cases that

1 talk about an entitlement to money being a property right,
2 but in every single one of those cases the money was there,
3 so, for example, it was in a bank account and the balance was
4 there. In another circumstance, you were dealing with a --
5 an entity was reducing the amount of money that was supposed
6 to be paid to an employee, but there was a hundred cent
7 dollars there, and the three percent that was going to be
8 carved out was going someplace else. There is no
9 constitutional case that deals with a promise that there -- a
10 promise that might or might not be satisfied because there's
11 not enough money and say that kind of a promise is a property
12 right. So I think that if you -- if we apply carefully the
13 Supreme Court cases -- and when I get to them, I'll remember
14 the citations -- we are going to find that an unsecured
15 promise where the actual sum of money can't be pointed to
16 because it's not there yet, that's not a property right and
17 never has been, and so the Fifth Amendment is not implicated
18 here. This is absolutely a contracts clause case, and we'll
19 get to the contracts clause -- clauses in a second.

20 Okay. So I want to -- last point with respect to
21 the Tenth Amendment, of course, Bekins says it's
22 constitutional under the Tenth Amendment. The Bankruptcy
23 Code, in particular, its part relating to municipalities,
24 it's constitutional under the Tenth Amendment. It finds that
25 the combination -- that apart from the fact that it's subject

1 to bankruptcies, it finds that the fact that the Code, then
2 the Act, had carefully carved out governmental and political
3 powers, kind of the -- that is, the relationship between a
4 municipality and its subjects -- it's carved that out. It
5 says that is an appropriate safeguard to states retaining
6 sovereignty, and they say, "And, oh, by the way, there's a
7 consent requirement." So those two things, the consent
8 requirement, the -- what I'll call the 903-904 carveout, and
9 the fact that the uniform laws on the subject of bankruptcies
10 are fair game for the federal government, those three things
11 are the three points that the Bekins court says it's okay for
12 Tenth Amendment purposes.

13 Now, it's time to work about -- talk about the
14 contracts clause problem. Your Honor is clearly familiar
15 with what the contracts clause problem is. You have a
16 contracts clause -- and I have a cheat sheet for everyone.
17 I've provided my colleagues on my left with a copy during the
18 break. If your Honor --

19 THE COURT: Sure.

20 MR. BENNETT: -- will, I'd like to pass up --

21 THE COURT: If you'd like me to look at it, sure.

22 MR. BENNETT: -- copies. And here we have the three
23 clauses that we need to talk about, the federal contracts
24 clause, the state contracts clause, and the pensions clause.
25 As far as the Bekins court is concerned, it's talking only

1 about the federal contracts clause, and where I'm going is
2 it's not going to make any difference. And what the
3 Bekins -- the Bekins court doesn't think that consent of the
4 state has anything to do with getting beyond this clause
5 probably because it knows that there's no consent out to the
6 contracts clause. Instead, it finds that the reason why that
7 the municipal bankruptcy act is constitutional is because the
8 entity that is actually impairing or changing contracts is
9 not the state. It's not the municipality acting by the
10 state. It is the court itself. And the key quote is the
11 state invites the intervention of the federal, my word,
12 bankruptcy power to save its agency -- that's really a
13 synonym for municipality -- which the state itself is
14 powerless to rescue. And the reason the state is powerless
15 to rescue it is because of the contracts clause. Through its
16 cooperation with the national government, the needed relief
17 is given. So under -- so as far as Bekins is concerned,
18 under Chapter 9 the federal government, through its courts,
19 is the pertinent actor.

20 Now, you could write this more elegantly, and it
21 wasn't in our briefs because I actually didn't find it until
22 last night, and that is Ashton. You know, I have to
23 confess --

24 THE COURT: That is what, sir?

25 MR. BENNETT: Pardon?

1 THE COURT: What did you say it was?

2 MR. BENNETT: Ashton. Until yesterday I'd never
3 read Ashton. After all, everybody knew it had been overruled
4 by Bekins. But I read it last night, and I got to the end,
5 and I realized there was a dissent by Cardozo. And I read it
6 because it was by Cardozo because he writes really well. And
7 he took this particular issue head on, and so I'm going to
8 read a lot of sentences from it. It's on page 142. And
9 here's what he says. He, of course, is dissenting, so he's
10 finding the last version constitutional, and he gets to the
11 contract clause problem. And by the way, one of the things
12 about Cardozo's dissent is that he's also much better about
13 dividing the Tenth Amendment analysis from the contracts
14 clause analysis. He kind of does it explicitly separately.
15 And he says this. This is about the contracts clause. "The
16 act does not authorize the states to impair through their own
17 laws the obligation of existing contracts. Any interference
18 by the states is remote and indirect." I'm going to skip
19 some things, some citations and some things that aren't that
20 important, and get to something that's more important. "If
21 contracts are impaired, the tie is cut or loosened through
22 the action of the court of bankruptcy approving a plan of
23 composition under the authority of federal law. There, and
24 not beyond in an ascending train of antecedents" -- it's an
25 amazing sentence -- "is the cause of the impairment to which

1 the law will have regard," skipping some citations.
2 "Impairment by the central government through laws concerning
3 bankruptcies is not forbidden by the Constitution.
4 Impairment is not forbidden unless effected by the states
5 themselves. No change in obligation results from the filing
6 of a petition by one seeking a discharge, whether a public or
7 a private corporation invokes the jurisdiction." We're going
8 to use that sentence again when we talk about whether -- how
9 much we have to decide today. "The court, not the
10 petitioner, is the efficient cause of the release."

11 For some reason Cardozo didn't participate in
12 Bekins. The Bekins court, I think, said the same thing. I
13 just think they said it a lot less clearly and a lot less
14 elegantly.

15 So I think this is very informative about the right
16 way to think about who is doing what and will become
17 important when we get to the authorization problem, which
18 we're going to be at very soon, but I want to --

19 THE COURT: Where do you think in Bekins the
20 majority of the court or the court itself said the same
21 thing?

22 MR. BENNETT: The words I read at the -- I'm sorry.
23 I got to find the back pages. The words I started with,
24 the -- it's at page 54. The state invites the intervention
25 of the federal bankruptcy power to save its agency -- means

1 municipality -- which the state itself is powerless to
2 rescue -- that's the reference to the contracts clause.
3 Through its cooperation with the national government, the
4 needed relief is given. I think the -- I think they're doing
5 exactly the same thing and just managed to do it in a lot
6 fewer words but with -- losing a teeny bit of precision in
7 the process, but it is the same thing. They are basically
8 adopting the Cardozo view of why the bankruptcy law is
9 constitutional under the contracts clause, the federal
10 contracts clause.

11 And, you know, I quoted these words, but there are
12 words before it and words after it that basically zeroes in
13 on that they're dealing with this particular issue at this
14 particular point in time. This is just as much as they say.

15 The Bekins court, of course, there's no dissenting
16 opinions. There's two judges that say they dissent for the
17 reasons expressed by the majority in Ashton. That's all they
18 do. And so that may well be one of the reasons why the court
19 was a little bit less careful. Of course, what Cardozo said
20 isn't precedent. It's just very, very clear thinking,
21 elegantly written about exactly the problem we have in this
22 courtroom today, and I think it's awfully persuasive, and I
23 think it is reflective, although certainly done better, than
24 the work that was done by the Bekins court.

25 A couple of other constitutional issues before we

1 move on to the authority points and the different contracts
2 clauses. AFSCME does take the position in their papers that
3 the contracts clause continues to constrain all municipal
4 bankruptcies. Of course, the federal contracts clause we
5 know from the Supreme Court does not. We'll talk about
6 whether there's any difference in the state courts soon. But
7 why AFSCME takes that position is they know full well that if
8 the contracts clause is easily bypassed by a municipal
9 bankruptcy case -- and we think that it is for precisely the
10 reasoning of Judge -- Justice Cardozo -- then this is over
11 because the contracts clauses, as we're about to get to, are
12 very, very similar. They're almost identical to each other,
13 and they're identical in all the ways that matter. We will
14 go through it very carefully.

15 There was next the point that was made about
16 accountability. I don't think there's any confusion about
17 accountability. I think, again, I appeal to Cardozo's
18 language but also to Bekins on this point. If you don't like
19 the powers that a court has in Chapter 9, write your
20 Congressman. If you don't like the way Detroit was managed
21 so that it wound up in Chapter 9, don't let the people who
22 used to be in office be in office again in Detroit. If you
23 don't like the emergency manager and don't think he was
24 qualified and don't like what he was doing, write the
25 governor or your state legislator. There is no

1 accountability question if you break it down in the way that
2 Cardozo broke it down. And by the way, the other thing
3 Cardozo says and I think also Bekins says, there's nothing
4 wrong with asking. You have to ask if you're going to do
5 this consensually. The emergency manager on behalf of the
6 city had to ask the retirement funds directly, retirees more
7 indirectly, to reduce or change benefits in order to
8 accommodate the needs of current city residents and the
9 ability of the city to survive. They could also ask the
10 Court to exercise its authority to help, too. That doesn't
11 mean they are the one loosening the knot or cutting the knot.

12 We talked about Asbury Park. Anti-commandeering
13 cases. Again, I think -- well, the federal government's
14 brief does a much nicer job on this than I ever could in
15 pointing out that the essence of the commandeering cases are
16 the federal direction to state actors -- in this case, maybe
17 it would be state judges or the emergency manager or the
18 governor -- to do something in a particular way. And, in
19 fact, the -- that's not what happens. That is not the
20 structure of Chapter 9 at all. The structure of Chapter 9 is
21 that there is certain power that is vested in this Court, and
22 that power can be used in certain ways. Frankly, your Honor
23 can't tell the city what kind of plan to file, but your Honor
24 can say whether or not you will approve a plan that is filed,
25 so the request has to be made by the city, and the power has

1 to be exercised by your Honor. Again, the city itself is
2 powerless to escape the contracts clause, but it does not --
3 at no point does the federal government say I have a policy
4 that I am going to ask the states or demands that the states
5 implement for me. That doesn't happen anywhere in Chapter 9,
6 and, frankly --

7 THE COURT: Well, but Ms. Ceccotti doesn't agree
8 with that. What she says is Congress says if you want to
9 adjust your debts, we prescribe the priority scheme to the
10 exclusion of the state. The state can't come in with its own
11 notion of what the priorities should be so that the division
12 of sovereignty that results violates the Tenth Amendment.

13 MR. BENNETT: Well, first, there's a logical failure
14 there, and it has to do with Asbury Park. The UAW starts
15 with the proposition that there is some kind of viable state
16 restructuring process that can actually work and that the
17 federal government took it away from them and made the
18 bankruptcy -- the Chapter 9 exclusive. That isn't reality.
19 Asbury Park, as we've seen, first of all, is an unbelievably
20 exceptional case, which, by the way, the end holding is that
21 that restructuring was done for bonds and made bonds better.
22 That is the holding at the end of the day or the key facts at
23 the end of the day in Asbury Park. Asbury Park is not and
24 never has been construed to be -- and no one cited any case
25 to your Honor showing that in the period of time before

1 Congress claimed the field for itself that there was any
2 viable municipal debt adjustment opportunity created by what
3 we have to call the Asbury Park exception to the contracts
4 clause. And if you believe everything in the UAW's belief --
5 brief and believe their interpretation of the pensions
6 clause, it gets even worse, that even if there were -- was
7 Asbury Park wiggle room and then in the absence of the
8 Bankruptcy Code the pensions clause is absolute, you have
9 worse than nothing. You have worse than the almost
10 meaningless Asbury Park exception. So I don't think it's
11 coercion for the -- for Congress to say you can't do
12 something that you can't do. And I think the prohibition on
13 competing state municipal schemes is, frankly, recognition
14 that they're not possible or workable, and, again, no one has
15 been able to show you either before or after that provision
16 of the Bankruptcy Code what this wonderful municipal scheme
17 is out there that would have been a choice. Cardozo doesn't
18 think there's any choice. Bekins doesn't think there's any
19 choice. And that's the same court that decided Ashton, so
20 I -- about the same time actually or Blaisdell was about the
21 same time. Ashton may have been later. This is a -- I
22 think -- I don't think Congress coerced anybody. I don't
23 think that's possible on the facts.

24 Okay. So to summarize, we've shown that Chapter 9
25 is constitutional and that, in particular, it does not offend

1 the contracts clause in the United States Constitution. I
2 think along the way we've demonstrated that the state's
3 authorization of a municipality's resort to Chapter 9 for
4 relief from contracts generally does not constitute a state
5 impairment of contract because otherwise no -- not a single
6 Chapter 9 would work. We have also along the way noted that
7 the filing of a petition itself doesn't constitute impairment
8 of anything in any event and that if there is an impairment,
9 it's by the federal Bankruptcy Court, so now let's look at
10 our contracts clause cheat sheet and try to find out whether
11 there's any difference because of the fact that there's a
12 state contracts clause or because there's a pensions clause.

13 First, with respect to the state contracts clause, I
14 don't think anyone has suggested to the Court that this is
15 any different than the federal contracts clause, and, in
16 fact, there isn't. There's no difference, and no one
17 suggested it, so -- but, by the way, Justice Cardozo, again,
18 as -- more elegantly and more precisely but -- and the Bekins
19 court both would believe that the state contracts clause --
20 okay -- is also focused on the state. It doesn't bind the
21 federal government. And since the federal government is the
22 relevant actor, the state contracts clause does not impose
23 any obstacle at all to a municipality invoking Chapter 9
24 relief.

25 The only thing I want to pause to say is it couldn't

1 be otherwise because if it were otherwise -- I skipped a
2 step. Every state -- at least every state I looked at, so
3 there may be an exception, but every state has a state
4 contracts clause. It's not surprising. Copied it from the
5 federal Constitution. So if it were the case that the
6 state's contracts clause was different than the federal
7 contracts clause and that it was a barrier to invoking
8 Chapter 9 relief, then every single bondholder in every
9 single -- I should say every single lawyer for every single
10 bondholder in every prior Chapter 9 case has probably been
11 guilty of malpractice because they might have been able to
12 escape their prior Chapter 9 cases -- and there are now
13 hundreds on the books -- on this basis alone. But, again,
14 for the reasons expressed in Bekins and more elegantly by
15 Judge -- Justice Cardozo, they can't.

16 So now we finally get -- we reach the pensions
17 clause also quoted in front of you, and we say, okay, is this
18 pensions clause any different than --

19 THE COURT: But hang on. Isn't there a difference
20 between reconciling the bankruptcy clause with the federal
21 contracts clause on the one hand and trying to reconcile how
22 a state that prohibits itself from impairing contracts with
23 taking advantage of the bankruptcy power that the federal
24 court has enabled -- or that the federal Congress has enabled
25 because of the sovereignty of the state?

1 MR. BENNETT: No difference. Why? Let's remember.
2 The reason why I spent so much time talking about why was the
3 Debt Adjustment Act under the Bankruptcy Act constitutional
4 as far as the federal contracts clause was concerned -- it
5 wasn't about the language of the federal contracts clause.
6 It was because the state isn't an actor. The federal
7 contracts clause acts only on states. The relevant actor is
8 the federal government. It's the Bankruptcy Court. That was
9 the reason why there was no federal contracts clause problem
10 with the Bankruptcy Act in Bekins, and it was the only
11 reason -- the only part of the opinion that had to do with
12 the federal contracts clause part of the problem. The state
13 contracts clause acts again only on the state, not on the
14 federal government. Accordingly, if you believe -- and the
15 Supreme Court has held that the relevant actor for purposes
16 of untying or cutting the knot is the federal Bankruptcy
17 Court and not the state, then the state contracts clause
18 forms no additional barrier to the use of the Bankruptcy Code
19 than the federal contracts clause did. They are the same,
20 and they are both not relevant for the same reason.

21 THE COURT: And your position is that it's a matter
22 of federal law that the pertinent actor is the federal court,
23 not the state entity that's in bankruptcy?

24 MR. BENNETT: The Supreme Court told us along the
25 way to approving the Bankruptcy Act the first -- for

1 municipalities the first time that it's --

2 THE COURT: So even if the state law were to say
3 it's the city that's the pertinent actor, that's not relevant
4 because it's a federal law question.

5 MR. BENNETT: Correct. So for purposes of federal
6 law, the Supreme Court has told us it's the federal
7 Bankruptcy Court that is the relevant actor.

8 So now we get to the pensions clause, and we've got
9 to find that there's a difference. And I think I want to
10 start here. This is going to be somewhat repetitive of the
11 brief. There's nothing in the pensions clause that says
12 anything like, quote, "and the state shall not authorize any
13 municipality to commence a bankruptcy case that would allow a
14 federal court to impair or diminish pension claims." It just
15 doesn't say that. And, of course, it is words like that that
16 the objectors are saying have to be imported into the
17 pensions clause.

18 It's hard, I think, because at the end of the day,
19 apart from the fact that the pensions clause is, quote, "more
20 specific," and it's, of course, more specific because they
21 were looking at pensions because the law in Michigan at the
22 time they were looking at the pensions clause was that
23 pensions weren't a contract. That's the only reason it's
24 more specific. It wasn't because -- there's no other
25 evidence for why it was more specific. The only

1 difference -- the only words that are different are the
2 words, quote, "be diminished." Excuse me. Quote,
3 "diminished or." That's the only difference. "Impaired" is
4 used in all of them. "Prohibition of impairment" is used in
5 all of them. All of them are absolute about prohibitions of
6 impairment.

7 And I'm going to take this in two steps. First of
8 all, the objectors say --

9 THE COURT: Well, but hang on. There's the next
10 sentence, which you didn't include on here, the next sentence
11 of the pension clause.

12 MR. BENNETT: Okay. The funding sentence?

13 THE COURT: Yes.

14 MR. BENNETT: Okay. Well, frankly, that's not
15 focusing on today, and it sounds like it's a --

16 THE COURT: Well, but the objectors argue that this
17 additional consideration that the Michigan Constitution gave
18 to pensions which it didn't give to contracts elevates it,
19 makes it, if not absolute, more absolute than contracts.

20 MR. BENNETT: Well, let's talk about -- I
21 specifically wanted to talk about that because --

22 THE COURT: Okay.

23 MR. BENNETT: -- first of all, why is it -- we
24 should ask ourselves question number one. Why is it that the
25 federal contracts clause and the state contracts clause

1 became less than absolutely binding? It wasn't because of
2 the inadequacies of the language. It was -- in fact, what
3 the courts have done is they put the word "substantial" in
4 front of the word "contract," so an insubstantial impairment
5 doesn't count, and a substantial impairment has some extra
6 hurdles that you have to go over before you can make it. So,
7 frankly, if what they were trying to do was to tighten the
8 pensions clause and make it more distinctive -- and if they
9 went to the books because, of course, all of the cases, you
10 know, Worthen versus Thomas, Home Building & Loan Association
11 versus Blaisdell, these are like cases from the mid-'30s, so
12 they were all on the books in 1961 through 1963, so they knew
13 that, and they knew that the problem was the incorporation of
14 the substantialness concept. So if they were really after
15 solving that problem, why didn't they just put the words
16 right before "impairment" "substantial or insubstantial
17 impairment"? And they could have tightened it up in the way
18 that it had been loosened. They could have prohibited
19 substantial and insubstantial impairments. That would have
20 dealt with -- if they were trying to say we're opting the
21 pensions out of the judge-made doctrines and exceptions that
22 have burdened the federal contracts clause and the state
23 contracts clause, that's how they might do it.

24 Now, by the way, it would be irrelevant to this
25 argument because remember the pensions clause, just like the

1 state contracts clause, just like the federal contracts
2 clause, acts on states and municipalities. It doesn't act on
3 the Bankruptcy Court. It doesn't act on the federal
4 government. And once again, if the right actor -- if the
5 actor that unties the knot or cuts the knot is the federal
6 Bankruptcy Court and the federal government and not the state
7 and not the municipalities, as the Supreme Court says, then
8 the pensions clause, even with the words "substantial or
9 insubstantial" in front of it, doesn't get you all the way
10 home. What they next needed to do in the pensions clause is
11 to say by enacting the pensions clause and giving it -- and
12 making pensions special, we now want to do something else.
13 We really want to say -- objectors thinks the Constitution --
14 that the convention -- that the conventioners really wanted
15 to say, well, in a municipality that has material pension
16 claims, they can't resort to a federal court to seek relief.
17 That's what they really want us to find in the pensions
18 clause. But, frankly --

19 THE COURT: No, no. I don't hear that at all. What
20 I hear is you are welcome to come in that door so long as the
21 city's assets, according to Mr. Dusen, are first allocated to
22 pensions.

23 MR. BENNETT: Well, if there was a lawyer around
24 there at the constitutional convention who was doing
25 research -- and I suspect that there was -- they should be

1 charged with figuring out that the only way to stop the
2 federal courts -- if there is even a way, but the only way to
3 stop federal courts from having the power to impair contracts
4 that maybe a state can't impair is to cut off the -- is to
5 basically say the state cannot ever go to a federal court for
6 a federal -- then it was called composition, you know,
7 federal debt composition case.

8 And the other point that your Honor should note is
9 that -- and we say this in our papers -- during the entire
10 constitutional convention, for years before and almost
11 continuously thereafter, the State of Michigan had authorized
12 the municipalities to file Chapter 9 cases, so if they were
13 really elevating pensions in the way of taking them --
14 distancing themselves from the federal power to impair them
15 and they knew, open paren, one, that the federal debt
16 composition scheme had been determined to be constitutional
17 by the Supreme Court in part because the federal court was
18 doing the work of impairing contracts and they knew -- they
19 have to be presumed to know that Michigan had opted in and
20 had continuously all through the period -- in fact, I think
21 in our papers we say when they repealed it. I think they
22 repealed it around 1980 when general authorization was all
23 that was necessary, so they kind of covered the entire
24 period. No one ever said, gee, we better as hell change
25 this. And in all of the legislative history of the

1 constitutional convention, you don't have a word about
2 bankruptcy and pensions, and the words that you do have --
3 the words that were quoted to you in the papers just filed --
4 I have to find it. Okay. Here's AFSCME's best quote from
5 the official record of the constitutional convention, 2
6 Official Record, page 3402. This is a new section that
7 requires that accrued financial benefits of each pension plan
8 and retirement system of the state and its political
9 subdivisions be a contractual obligation which cannot be
10 diminished or impaired by the action of its officials or
11 governing body. It's in AFSCME's papers, paragraph -- the
12 new ones, the supplemental papers. Actually, those are
13 amended and restated, paragraph 19, page 11. Same brief,
14 paragraph 142, page 71. Pension benefits constitute, quote,
15 "deferred compensation for work performed which should not be
16 diminished by the employing unit after the service has been
17 performed," close quote. Those are the quotes that you were
18 offered by AFSCME about the seriousness and importance of the
19 work done in the constitutional convention from 1961 to 1963,
20 this against the background where it's been the law of the
21 land, at least as far as the Supreme Court is concerned,
22 since 1930 -- I can't remember exactly.

23 THE COURT: So is it your view that the only
24 effective way that the Michigan Constitution could have
25 provided the protection for pensions that the objectors seek

1 here is by the Constitution prohibiting a Chapter 9 filing?

2 MR. BENNETT: Prohibiting authorization of a Chapter
3 9 filing or -- yes, your Honor. That's exactly what they
4 would have had to do, and that's not the kind of thing that
5 they can do by implication.

6 I want to talk a little bit more because I think
7 there's a lot of stress that's put on the words "diminished
8 or," and there is the assertion that "diminished or" has to
9 be given some meaning, but, frankly, the only meaning it
10 could be given is to somehow expand "impaired." I don't
11 personally think it does expand "impaired," and there's -- I
12 want to point out before moving on with a whole bunch of
13 authority to that effect that it's really dangerous for a
14 court to decide that "diminished or" added anything to
15 "impaired" because if the Court decides that "diminished or"
16 filled some gap that's related to the word "diminished and
17 impaired," then in the next case someone is going to come to
18 your Honor and say, "You know that state contracts clause?
19 There's no 'diminished' there, and 'impaired' has to mean
20 less than 'diminished or impaired' in the pensions clause."
21 So it's actually a good thing that there's law out there on
22 this subject -- we had it in our brief -- that basically says
23 that if you run into one of these problems where you've got a
24 list and you want to say that they all have an independent
25 and separate meaning, you've got to propose an independent

1 and separate meaning for the terms on the list that actually
2 solve the problem. And in this case, trying to find an extra
3 meaning for "diminished or" -- again, it's consistent with
4 its place in the sentence -- does -- creates a mess in the
5 state contracts clause in Article I, Section 10.

6 Apart from that, it turns out that when you go look
7 at the books -- and this is not in our papers because this
8 was an issue raised in the responsive papers -- is that every
9 time we found the definition of "impair" in the cases or in
10 dictionaries, it includes diminishment, which should not be
11 terribly surprising. It's a very common sense answer. But
12 if you want a list -- and you might need them in connection
13 with putting together an opinion -- you could start with the
14 Bank of Minden case, which is a Supreme Court case, 256 U.S.
15 126 at 128. Then if you want to go to the Sixth Circuit,
16 Riverview Health Institute, 601 Fed. 3d 505. Black's Law
17 Dictionary, Webster's Third, and then there's a bunch of
18 state courses -- state cases from other states that all say
19 the same thing. I could read the quotes, but I'll save the
20 time because it really is kind of a commonsensical -- a
21 common -- it's common sense that "impaired" has to include
22 "diminished." "Impaired" is much broader than "diminished,"
23 and every so often this is either a -- there's a rhetorical
24 flourish that works its way in, and this may well be what
25 that is, and that's all it can be.

1 Okay. Moving on to the issue of whether or not the
2 authorization to file Chapter 9 is ineffective because the
3 emergency manager or the governor recognized that impairment
4 of pension benefits may be necessary. I don't want to add
5 additional arguments to the constitutional provisions.
6 That's not the purpose of this section. The purpose of this
7 section is to deal with the point made, I think, by only one
8 or two of the objectors that the -- that there's an
9 instruction to the emergency manager to comply with the
10 pension statute, and that should apply to the filing of a
11 Chapter 9 case as well. I'm sure your Honor has your own
12 copy of the Local Financial Stability and Choice Act, Act
13 436, and when you look at the -- most importantly, when you
14 look at the Chapter 9 authorization section, there is no
15 instruction that the emergency manager comply with the
16 protections affecting pensions. By the way, that may well
17 make sense. There are a whole bunch of other provisions that
18 talk about what the emergency manager is supposed to do out
19 of court, and not surprisingly it talks about him having to
20 comply with many laws and to pay many debts and to do many
21 things. He resorts to Chapter 9 when he can't accomplish
22 those things out of court. And if one thought that anything
23 about the emergency manager law meant to say that the
24 emergency manager had to in Chapter 9 continue to not impair
25 pensions, you would think it would belong in the section that

1 is applicable when the emergency manager files Chapter 9.

2 In addition, I think the part that was read to your
3 Honor earlier this morning has a lead-in clause that didn't
4 make it into the record. It reads, "If the emergency manager
5 serves as sole trustee of the local pension board, all of the
6 following should apply," and that's where the provision that
7 was located was read to you, so there is nothing in the
8 emergency manager law -- and, in fact, the structure of the
9 emergency manager law itself suggests that a lot of bets are
10 off in a Chapter 9 context that may not be -- including
11 things that the emergency manager is supposed to try to
12 accomplish if he's in an out-of-court world.

13 Next argument, failing to condition authorization on
14 nonimpairment of --

15 THE COURT: One second. Does that suggest that in
16 order to accomplish what Mr. Orr thinks is necessary to
17 accomplish with regard to pensions, he needs to be a trustee
18 of the plan?

19 MR. BENNETT: No. It's that -- no. He has the
20 right to remove trustees of the plan for other purposes, and
21 these are these extra requirements that are imposed upon him
22 just in those circumstances that it -- I think when your
23 Honor gets a chance to look at it -- what did I do with it?
24 I had it here a second ago, so I'll give you -- let me give
25 the exact section referenced so it's easy to find.

1 THE COURT: Okay.

2 MR. BENNETT: The part I read from is in Section
3 12(m), and it is confined to that relatively narrow
4 circumstance.

5 Okay. First of all, on the issue of whether or not
6 the governor's failure to put conditions on authorization
7 makes the authorization invalid, we indicate in our brief
8 that we don't think that conditions on authorization could be
9 valid, that -- and as I think -- I think I got ahead of
10 myself earlier, so I don't want to take too much time in
11 covering it again now, but we're talking here about one of
12 the core subjects of bankruptcy, which is priorities, who
13 gets paid when there's not enough to go around. If that's
14 not a core subject of bankruptcy -- not in the core versus
15 related, but if that's not the absolute center of the subject
16 of bankruptcies, I don't know what it is. And we've cited a
17 lot of law, and your Honor has pointed out there are many
18 cases, none decided the other way, that say particularly in
19 the context of things touching on priorities and who gets
20 paid first and who gets paid second, who doesn't get paid at
21 all, that the -- that you buy the Bankruptcy Code as a whole.
22 You buy the scheme as a whole. You don't buy parts of it.
23 And in this sense federal law is supreme because once there
24 is a proper bankruptcy case before the Court, it is the
25 federal priority scheme that applies. It is legitimate that

1 the federal priority scheme applies because it's legislation
2 on the subject of bankruptcies, and because it's legislation
3 on the subject of bankruptcies, it is absolutely supreme,
4 period, end of story.

5 So, as to your Honor's hypothetical, if anyone walks
6 into the federal court and says, "I want federal judicial
7 relief. I want to use that federal power to untie and cut
8 knots, but I want the ultimate distribution or really any
9 part of the distribution to be conducted in accordance with
10 my terms," whether they're found in a statute or in a state
11 Constitution, it doesn't matter. The federal law on this
12 issue is supreme, and it's supreme over Constitutions and
13 over statutes, period, end of story.

14 It seems kind of small when done with that to point
15 out that 436 permits but doesn't require conditioning. We
16 can imagine a whole bunch of conditions that might have been
17 very sensible and that might not offend federal jurisdiction
18 like it could have been -- there could have been suggestions
19 or requirements as to exactly how the emergency manager
20 should interact with other elected representatives or with
21 other people. Actually, the governor does have one -- it's
22 not quite a condition. It's a suggestion, but I think he'd
23 be offended if it wasn't followed, which is he wants Mr. Orr
24 to continue to communicate with the governor and the
25 treasurer relating to what he's doing. So I think we can

1 think of several things that could be -- that you could use
2 for the PA 436 conditioning power that would be perfectly
3 okay, but going in and saying, "Gee, as a matter of this
4 particular state law" -- and, by the way, it's -- the
5 governor would -- to do that, he's got to ignore the
6 conflicts that I discussed earlier between a law that says
7 thou shall not impair this one with another law that says
8 you're the first money out. It's mind-boggling what he'd
9 have to reconcile, but the instruction would be, yeah, this
10 one we really meant and the others we didn't really mean,
11 follow that one first. I think that that would be an invalid
12 authorization. I think the Court would have to say that
13 authorization isn't okay for federal court purposes. I think
14 as a prudential matter, the federal court should not get
15 involved in a case where the authorization is conditioned in
16 a way that would offend the federal scheme, but understanding
17 that there may be very extreme and difficult circumstances
18 involved, a creative federal court might want to give people
19 some time to kind of take a couple steps back and figure out
20 how to do it better.

21 THE COURT: Let me ask about Section 943.

22 MR. BENNETT: I need to get a case if you're going
23 to do that because I -- from the --

24 THE COURT: This is the Bankruptcy Code.

25 MR. BENNETT: Yeah.

1 THE COURT: 943(b)(4).

2 MR. BENNETT: Right. There's actually one case
3 that's dealt with that previously, and I think it's --

4 THE COURT: Let me just get my question out.

5 MR. BENNETT: Okay.

6 THE COURT: Thank you. So the question is what does
7 this section mean if it doesn't mean that the state can
8 dictate the priorities?

9 MR. BENNETT: Because it says "from taking any
10 action necessary to carry out the plan," and I --

11 THE COURT: What does that -- what does that
12 language mean? What meaning does it have? How does it come
13 into effect?

14 MR. BENNETT: Okay. I think the best way to work
15 through that is the Sanitary Improvement District Number 7
16 case, 98 B.R. 970, and this is a really fascinating case
17 because the facts gave you every conceivable issue under the
18 sun in terms of the interpretation of this section. What
19 happened in Sanitary Improvement District is that the debtor
20 had -- you know, had claims against it. Let's call them a
21 hundred. I'm using representative numbers, not the actual
22 numbers. As a result of the bankruptcy case, they issued
23 paper, and I think it was like 60. Okay. And the -- but the
24 paper that was 60 had in it a provision that said that if the
25 debtor paid it in full within a certain number -- within a

1 certain number of months -- I think it was 18 months -- after
2 the bankruptcy case is over, it only had to pay 95 cents on
3 the dollar or something like that, and so the creditors came
4 in, and they attacked the whole plan, pointed to a state law
5 that says thou shall pay your bonds. By the way, there are
6 laws like that in Michigan, too. And the court decides very
7 easily that the takedown from a hundred to 60, well, that's
8 supremacy clause bankruptcy. You can do that notwithstanding
9 state law. What you can't do, though, is because state law
10 says you have to pay bonds at a hundred percent of principal,
11 you can't have the five-percent discount feature because
12 that's -- after the bankruptcy, you issued this new bond, you
13 know, with 60 being the new hundred, but you've said that you
14 can still pay that off at a discount. That violates
15 943(b)(4). So what this case illustrates is that this looks
16 at the obligations after they've been restructured and says
17 that the Bankruptcy Court does the restructuring. By the
18 way, very consistent with the Cardozo and the Bekins view of
19 the world, you -- and you're finished. The bankruptcy --
20 there's a confirmation order. New instruments are issued.
21 Those instruments, the ones that you walk out of Bankruptcy
22 Court with, have to be instruments that you can perform in
23 accordance with state law.

24 THE COURT: So this provision, in your view, says
25 nothing about the requirement of the plan itself or the order

1 confirming plan to comply with state law.

2 MR. BENNETT: I don't know if there's any case that
3 says that. There may be. I think Sanitary and Improvement
4 District Number 7 has got it right, that it does not say
5 anything about the Bankruptcy Code restructuring process. It
6 only acts on the debt that is issued after the case is over.

7 I don't think I have to spend time on it, so I'm
8 going to skip over -- again, it's in our papers. There's an
9 assertion in the papers that the Tenth Amendment is not
10 reserved -- that the Tenth Amendment reserves every issue
11 relating to municipal pensions to the states. I think we've
12 dealt with that enough in the constitutional section, and I
13 don't have to deal with -- this really is the -- an argument
14 was built, constructed based upon the fact that in the case
15 of ERISA the federal government didn't make ERISA -- didn't
16 make states or municipalities applicable to ERISA, didn't
17 create the insurance program, PBGC, and the assertion is made
18 because the federal government chose not to go into those
19 areas, they must have done that because they were absolutely
20 precluded from doing so, ergo they are precluded from using
21 the bankruptcy power to modify pensions. I think that fails
22 logically in a lot of places, but most importantly maybe to
23 start with is that it's not clear that there is no possible
24 way for the federal government to apply the ERISA statute or
25 the PBG statute to state municipalities, maybe to states but

1 not to municipalities, and -- at all, by the way, and that
2 Congress didn't may have reflected political realities at the
3 time and not actual constitutional limitations, so I think
4 the starting point of that argument just fails, and I think
5 we've seen that federal -- that a federal bankruptcy power
6 can be applied by the federal court to obligations. Pensions
7 are clearly within the federal bankruptcy power, no dispute
8 in the private context. There's nothing different about
9 Chapter 9 context. And so there is no such part of the Tenth
10 Amendment that constrains this aspect of the subject of
11 bankruptcies.

12 The next point is a really important one, and I
13 could easily have started with it, and I know your Honor has
14 been concerned with it throughout, which is whether or not
15 your Honor really has to deal with the -- whether or not
16 pensions can be impaired in bankruptcy in the context of
17 authorization. I hope it's clear to your Honor that the city
18 is perfectly comfortable with you dealing with it now or
19 perfectly comfortable with dealing with it later. We don't
20 think that this is -- some of these things may be a little
21 bit conceptually difficult and complex, but the
22 constitutional law on the subject is really pretty clear, and
23 so we're prepared to have it decided. We think that there's
24 only one way to decide it. There is, though, a way for your
25 Honor to decide not to decide it, which is to find -- and the

1 next to the last sentence I read from Justice Cardozo in his
2 dissent where he says, "just the filing is not doing
3 anything," we say that, too. It is starting a bankruptcy
4 case. I have said at the beginning -- I mean it -- there is
5 nothing inevitable. A cramdown of revisions to pension
6 benefits, a cramdown of a particular treatment of the
7 underfunded portion of the pension obligation is not
8 necessarily the way this case is going to end, and it's not
9 necessarily the next step in this case. We just don't know.
10 The next -- obviously right now mediation is an important
11 milestone. The next important milestone is the plan, and
12 since your Honor has been around the Bankruptcy Courts for a
13 good long time, you know that the plan that we file before
14 the end of this year is not likely to be the plan that we
15 ultimately confirm. It would be actually a good exercise for
16 different people to figure which amended plan is going to be
17 the plan. The bottom line is nobody really knows. And so it
18 is possible to adopt Justice Cardozo's view that no change in
19 obligation results from the filing of a petition by one
20 seeking a discharge whether a public or private corporation
21 invokes the jurisdiction and basically say since nobody has
22 done anything yet, we're not going to decide anything more.
23 You could do that. I will say that the -- I think that the
24 assertion that there is an imminence that -- an imminence of
25 harm represented by the filing of the Chapter 9 case that

1 requires this Court to act is, frankly, not a fair statement
2 of the law. I think one of the more important cases is
3 Donohue. It's been cited by objectors. The most important
4 part -- Donohue is the Nassau County financial restructuring
5 case, and the most important part of Donohue that led the
6 Court to act I think is mentioned by the Court. It's kind of
7 near the end of the opinion. The Court says the law, the
8 ordinance that gave the county executive all the powers,
9 "provides expansive and seemingly limitless power to the
10 County Executive without any reasonable restraints other than
11 the procedural mechanism of an executive order." This case
12 would be a lot simpler if all Kevyn Orr had to do to
13 reorganize the debts of Detroit was to say how he wanted to
14 do it and sign it as an order. He doesn't think he has that
15 power. I don't think he has that power. No one in this room
16 thinks he has this power. We've talked about the fact that
17 to get to a debt adjustment plan that is nonconsensually
18 confirmed, it has to be filed. There has to be disclosure
19 statement approved. There has to be voting. There has to be
20 more discovery. There has to be a confirmation hearing, and
21 there has to be an order of this Court. That is a very
22 different procedure or array of protections than was
23 available in the Donohue case, which is, frankly, the closest
24 case to this one in terms of the kinds of things that we're
25 talking about here. If your Honor goes through the other

1 cases that have been cited for the proposition of imminent
2 harm, you will find that in all of them there was no judicial
3 step going to occur before the harm might be inflicted. In
4 all of --

5 THE COURT: Let me ask that question here. Can
6 you -- are you willing to identify here on the record or can
7 you identify here on the record any conceivable circumstance
8 in which retiree benefits, pensions won't be impaired by a
9 plan?

10 MR. BENNETT: You know, your Honor, at this point
11 there are a number of major things that I don't know, and I
12 will say I don't know that there won't be money from outside,
13 although I tend to doubt it. I don't know that. I do not
14 know whether there will be -- whether certain other assets
15 will, in fact, be available to the city to address its debts,
16 and I will point out in this regard that while the objectors
17 have cited over and over and over again a pleading filed by
18 the attorney general asserting the primacy of pension claims,
19 they've all managed to have forgotten a formal opinion he's
20 given concerning the accessibility of certain assets in this
21 bankruptcy case, particularly the art, and -- but I have no
22 idea, number one, what's going to happen with that, and I
23 have no idea what the -- whether or not there will, in fact,
24 be a transaction involving the departments of water and
25 sewerage and whether those transactions will deliver material

1 dollars. So while I'd be kidding myself and kidding the
2 Court and kidding everyone here if I said that I thought it
3 was anything but likely that there would be some impairment
4 of the underfunding claims in this case, it's not fair to ask
5 me and I don't think I could say that there's no scenario
6 where impairment will not be necessary. I just don't think I
7 can even say that today.

8 THE COURT: Okay. Even with that much of a
9 disclosure here, why isn't that enough to say there's an
10 impairment here?

11 MR. BENNETT: I'm sorry.

12 THE COURT: Why isn't that enough to say at this
13 point in time there's an impairment?

14 MR. BENNETT: Well --

15 THE COURT: There's a sufficient impairment to get
16 past ripeness anyway.

17 MR. BENNETT: You know, I don't think you can say
18 there's impairment because the Supreme Court has told us
19 there is not. There won't be impairment, your Honor, until
20 you say so. Is there a risk of impairment? There's a risk
21 of impairment. Is the risk of impairment enough to make this
22 ripe? And the answer is is that -- I think this is the
23 answer when -- I mean the Donohue case is a good example, but
24 I think it ripples through all the others, which is that if a
25 court is presented with a situation where there's a risk of

1 impairment and the impairment can occur before there's
2 another opportunity or requirement that people show up in
3 front of a judge, then they start thinking about whether
4 there's interim harm, but there's not a single case that has
5 been cited to you that says there is imminent harm in
6 circumstances where no one is going to suffer anything until
7 and unless a court enters an order after notice,
8 opportunities for discovery, opportunities for hearing, and
9 all the other protections that are available in connection
10 with a plan confirmation process in a Bankruptcy Court. It's
11 just totally different. The cases are dealing with a totally
12 different situation, particularly the Donohue case.

13 Do you have -- we're 20 minutes to.

14 THE COURT: Twenty till five.

15 MR. BENNETT: Do you want to save time for your
16 questions or --

17 THE COURT: If you want to stop now, and we'll pick
18 it up with the government's attorney, that's fine with me,
19 and then we'll pick up the balance of your argument tomorrow.
20 Is that what you're --

21 MR. BENNETT: I think it's a good break point.

22 THE COURT: Okay.

23 MR. BENNETT: I have very minor things left.

24 THE COURT: Good.

25 MR. TROY: Matthew Troy, your Honor, Department of

1 Justice, Civil Division, on behalf of the United States. If
2 it makes any difference to your Honor or the other parties, I
3 am here for tonight and can be available tomorrow as well.

4 THE COURT: I appreciate that, but since you're
5 here, let's have at it.

6 MR. TROY: Fair enough.

7 THE COURT: Well, my primary questions relate to how
8 you address the arguments here that the objecting parties
9 made in response to your brief regarding ripeness.

10 MR. TROY: To be honest with you, your Honor, I've
11 only reviewed those very quickly because I filed the brief on
12 Friday and then went back to furlough status. And on
13 Monday --

14 THE COURT: That.

15 MR. TROY: And on Monday --

16 THE COURT: Well, would it be your preference to
17 have overnight to think about how to respond to the
18 objectors' concerns regarding ripeness?

19 MR. TROY: Sure. I can do that.

20 THE COURT: Would that be your preference?

21 MR. TROY: That would be, yeah, a more fulsome
22 discussion, I think.

23 THE COURT: All right. Then you are excused, and I
24 will hear from you tomorrow regarding that. Do you want to
25 stop for the day now and pick it up tomorrow?

1 MR. BENNETT: Your pleasure, your Honor. I can keep
2 going, but I can also stop. I'm not going to -- I don't
3 have -- less than 30 minutes left, in fact, significantly
4 less than 30 minutes left.

5 THE COURT: Well, do you think you can finish in the
6 20 minutes that are left before five?

7 MR. BENNETT: I'll try.

8 THE COURT: All right. Then I would invite you to
9 try.

10 MR. BENNETT: Let me just get a little bit
11 reorganized. Okay. The next topic on my list is collateral
12 estoppel, and, your Honor, I think with respect to collateral
13 estoppel, a couple of points are worth focusing on. First of
14 all, our very, very first point on this -- and I think it's
15 dispositive -- is that when this case was filed, this Court
16 had the most exclusive jurisdiction it ever gets about
17 anything, absolutely exclusive interest -- exclusive
18 jurisdiction under 1334(a) to decide matters in the case, and
19 eligibility is a matter in the case. And the assertion by
20 the objectors is that the Webster court really didn't decide
21 eligibility. The Webster court was deciding some abstract
22 issues of state law. And, your Honor, two things. Number
23 one, the objectors can't even say that without mentioning the
24 eligibility determination, and here I'm looking at the
25 funds -- Mr. Gordon's brief at page 32. The Webster judgment

1 rules squarely on the constitutionality of PA 436 and the
2 governor's authorization of the emergency manager to proceed
3 under Chapter 9 in light of the pensions clause of the
4 Michigan Constitution. There was absolutely no confusion in
5 the judge's mind or anyone around that courtroom's mind that
6 what they were trying to do was to get an early determination
7 of eligibility. It might have succeeded, but this case was
8 actually filed first. And by the way, although the attorney
9 general will probably have more to say about this, there was
10 no adjournment sought for purposes of filing the Chapter 9
11 case, and the transcript shows no such thing. And they know
12 more about the circumstances than I do, and they can address
13 it tomorrow when it's their turn.

14 But there's an even more important point, which is
15 that the order that was entered by the judge purports to
16 enjoin the emergency manager directing him to have the case
17 dismissed and not file another one, so I just -- I can't
18 abide the assertion and the record does not support the
19 assertion that what happened in that court was not an effort
20 at an eligibility determination, so, number one, that was
21 within the exclusive jurisdiction of this Court. If it was
22 within the exclusive jurisdiction of this Court, it wasn't
23 within the jurisdiction of that Court to do anything about
24 it, and, therefore, any judgment that was entered after the
25 filing for that reason alone is void.

1 Now, second point we make is that the automatic stay
2 applied as well because the entire event, even though the
3 city was not a party, was an effort to gain control over the
4 city's assets and an effort to enhance collection of the
5 debt. Again, there can't be much dispute about that, open
6 paren, one, partly because of the way the whole proceeding
7 evolved and how everyone understood it, but more importantly,
8 here again we have the judge explicitly talking about the
9 Chapter 9 case and attempting to stop the Chapter 9 case
10 because of the perception that the Chapter 9 case might
11 impair pensions, and those kinds of acts are clearly within
12 the automatic stay. Again, I think that the --

13 THE COURT: Just to be clear, you're talking about
14 the automatic stay of Section 362 --

15 MR. BENNETT: Yes.

16 THE COURT: -- the Bankruptcy Code.

17 MR. BENNETT: Correct, the Bankruptcy Code's
18 automatic stay, or 942. The other half of it is in the -- is
19 in Chapter 9 as well.

20 Full and fair opportunity to litigate. Again, I
21 would ask the Court to look at the record in that case.
22 There had been -- it is certainly true that a whole bunch of
23 briefs that were filed -- I don't think the hearing where
24 this all occurred had previously been calendared and noticed
25 to anybody. The hearing was set on an emergency basis, and

1 someone got on the phone and called for the attorney
2 general's office because they thought it might be a good idea
3 to tell him about it about an hour before the hearing.
4 That's actually not the way things are fully and fairly
5 litigated in any courts I visit, and I don't think that when
6 your Honor ticks through the procedural elements of what
7 happened in that case in Lansing is going to be convinced
8 that there was a full and fair opportunity to litigate.

9 THE COURT: Let me ask you just a sort of
10 administrative question regarding this. Do we have in our
11 record here all of the pleadings and papers and dockets and
12 transcripts from that case?

13 MR. BENNETT: I don't know if they're there yet.

14 MS. NELSON: I believe I can answer that, your
15 Honor. Assistant Attorney General Margaret Nelson. It's my
16 understanding, no, those have not been submitted. I do have
17 all of the transcripts, which I was prepared to present to
18 the Court when I make my argument, which now appears to be
19 tomorrow. If the Court would like the submission of the
20 pleadings, we'll be happy to do that, although it's --

21 THE COURT: Well, my understanding is that some of
22 the pleadings have been attached to various briefs, but I'm
23 just not sure if it's everything.

24 MS. NELSON: There was only a -- there was --

25 THE COURT: Just to --

1 MR. BENNETT: We'll get it in.

2 THE COURT: Yeah, exactly. Just to be complete --

3 MS. NELSON: Yes.

4 THE COURT: -- let me make my request to you that
5 our record here include everything from that case, including
6 the docket.

7 MS. NELSON: There's three cases, your Honor.

8 THE COURT: Okay.

9 MS. NELSON: And so -- that were filed separately --

10 THE COURT: Well, but I think the --

11 MS. NELSON: -- so I will submit everything --

12 THE COURT: I think the one that's at issue here is
13 the one in which a judgment was entered.

14 MS. NELSON: Correct.

15 THE COURT: That's the one I need.

16 MS. NELSON: So you want everything in the case in
17 which the judgment was entered the next day, including the
18 docket entries.

19 THE COURT: Thank you.

20 MS. NELSON: Would you also like the Court of
21 Appeals materials --

22 THE COURT: Yes.

23 MS. NELSON: -- because the Court of Appeals
24 materials were --

25 THE COURT: Yes.

1 MS. NELSON: -- filed and a stay order entered
2 thereto?

3 THE COURT: Just for --

4 MS. NELSON: Webster?

5 THE COURT: For completeness, yeah. All right. I
6 have to -- I have to pause here. I've been advised that the
7 people in our overflow room couldn't hear this exchange, so I
8 will just restate it for the record. The attorney general's
9 representative has agreed to provide to the Court in this
10 case the complete record from the Webster litigation not only
11 at the trial court level but at the Court of Appeals level,
12 including all pleadings and papers, transcripts, and docket
13 entries, the docket itself. You may proceed, sir.

14 MR. BENNETT: Okay. Lastly, the last factor with
15 respect to collateral estoppel, your Honor, is the issue of
16 whether or not the judgment would be binding on the city in
17 any event. Of course, the city was not a party to those
18 proceedings. The assertion is made that the -- that there is
19 privity between the city and the state because they have a
20 common legal interest in some matters in connection with this
21 Chapter 9 case. Frankly, I don't think those are the same
22 standard, and I think we covered that in our papers, but I
23 will say one other thing is that to the extent that there --
24 that the plaintiffs in those cases believed that the city was
25 in privity with the state with respect to those cases is an

1 additional reason why the automatic stay applied from the
2 very beginning because if they thought that they were in a
3 case with the state really trying to bind the city, then it
4 is perfectly clear that they violated the automatic stay.

5 I don't think I have any other material topics that
6 I think we need to cover based upon the argument by others.
7 If I've missed something or if your Honor has any questions,
8 I'd be happy to take them. Otherwise I'll allow the attorney
9 general to take the floor tomorrow.

10 THE COURT: Um-hmm.

11 MR. BENNETT: We'll be done early.

12 THE COURT: Okay. Good. We'll be in recess now
13 until 10 a.m. tomorrow morning.

14 MS. NELSON: Your Honor, before you leave the bench,
15 may I just ask do you want those pleading -- do you want
16 everything submitted electronically?

17 THE COURT: Yes, yes, in the record of this case.
18 Thank you.

19 THE CLERK: All rise. Court is adjourned.

20 (Proceedings concluded at 4:51 p.m.)

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WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

October 20, 2013

Lois Garrett

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. . Detroit, Michigan
. . October 16, 2013
Debtor. . 10:00 a.m.
.

HEARING RE. OBJECTIONS TO ELIGIBILITY TO CHAPTER 9 PETITION
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day
By: BRUCE BENNETT
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2452
(213) 243-2382

For the State of Michigan: Michigan Department of Attorney General
By: MARGARET A. NELSON
P.O. Box 30758
Lansing, MI 48909
(517) 373-1124

For Detroit Retirement Systems- Clark Hill, PLC
General Retirement By: ROBERT GORDON
System of Detroit, 151 South Old Woodward, Suite 200
Police and Fire Birmingham, MI 48009
Retirement System (248) 988-5882
of the City of
Detroit:

For the Inter- Cohen, Weiss & Simon, LLP
national Union, By: BABETTE A. CECCOTTI
UAW: 330 West 42nd Street, 25th Floor
New York, NY 10036-6976
(212) 356-0227

APPEARANCES (continued):

For the United States: U.S. Department of Justice
Civil Division
By: MATTHEW J. TROY
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044
(202) 514-9038

Court Recorder: Letrice Calloway
United States Bankruptcy Court
211 West Fort Street
21st Floor
Detroit, MI 48226-3211
(313) 234-0068

Transcribed By: Lois Garrett
1290 West Barnes Road
Leslie, MI 49251
(517) 676-5092

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

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

3 THE COURT: Good morning, everybody.

4 ATTORNEYS: Good morning, your Honor.

5 THE COURT: Okay. Who's up?

6 MS. NELSON: Good morning, your Honor. Assistant
7 Attorney General Margaret Nelson on behalf of the State of
8 Michigan in response to the objections that are currently
9 pending legal issues before the Court. Before I begin, if I
10 may approach, I would like to present the Court with two
11 cases -- well, actually an order and a case decision that I
12 will be referring to later in my arguments --

13 THE COURT: Okay.

14 MS. NELSON: -- the state's rebuttal or response to
15 arguments that were raised yesterday. The state's focus with
16 respect to the legal objections raised to the City of
17 Detroit's eligibility focused principally on the
18 constitutionality of Public Act 436 and the lawfulness of the
19 governor's authorization thereunder to the city and the
20 emergency manager to proceed in bankruptcy under Chapter 9.
21 The objectors essentially identified four principal bases for
22 contending that Public Act 436 is unconstitutional. The
23 first is in the context of Section 18(1) when they allege
24 that it fails to protect public pensions from inclusion in
25 the bankruptcy proceedings initiated by the local government

1 as authorized by the state. Second, they allege that Public
2 Act 436 violates the home rule provisions of Michigan's
3 Constitution under Article VII. Third, they allege that 436
4 improperly delegates authority to the emergency manager and
5 thereby violates the separation of powers provisions within
6 Michigan's Constitution. And, fourth, they argue that Public
7 Act 436 lacks adequate standards to guide the emergency
8 manager's actions in bankruptcy, thereby creating, I'm
9 assuming, a due process violation, although they aren't
10 specifically clear with respect to that. Principally, the
11 arguments presented yesterday addressed Sections 18(1), and
12 that will essentially be the focus of my response this
13 morning, your Honor.

14 THE COURT: Excuse me for just one second. I meant
15 to say this at the beginning of our session here this
16 morning. Ms. Levine, due to time constraints, you did not
17 address your home rule argument yesterday. I hope you'll
18 give that a priority when you do get the microphone again.

19 MS. NELSON: Thank you, your Honor. In addressing
20 the constitutionality of this provision and, in fact, the
21 overall statute -- state statute itself, the Court must be
22 guided by specific principles of state law in addressing
23 constitutionality of statutes. First -- the first principle
24 that the Court must be guided by is that statutes are
25 presumed to be constitutional, and courts have a duty to

1 construe a statute as constitutional unless its
2 unconstitutionality is clearly apparent on its face, and for
3 that proposition, your Honor, I cite you to a case relied on
4 by principally all of the objectors, and it's also cited by
5 the City of Detroit, In re. Request for Advisory Opinion of
6 the Constitutionality of 2011 Public Act 238, and that's
7 found at 490 Mich. 295.

8 THE COURT: Of course, that's not exactly the
9 standard when the challenge is that the law was enacted in
10 some unconstitutional manner.

11 MS. NELSON: Correct, your Honor, and that's the
12 next principle.

13 THE COURT: Okay.

14 MS. NELSON: So when you're construing the statute
15 itself in a facial challenge to the statute which is
16 presented here initially, the unconstitutionality must first
17 be apparent on its face. And the reason the In re. Request
18 opinion is so significant is because it is a direct analysis
19 of the very constitutional provision that's at issue here,
20 and it directs the Court to the second principle of
21 construction that's applicable to this analysis, and that is
22 the principle of construction given to constitutional
23 provisions under Michigan law. The objective in reviewing a
24 constitutional provision is to effectuate the intent of the
25 ratifiers who adopted the constitution, not the drafters but

1 the ratifiers. And the lodestar principle, for purposes of
2 this review, is that of common understanding, so, in other
3 words, the Court must determine the common understanding of
4 the terms and give sense to the words used that would have
5 been most obvious to those who voted to adopt that particular
6 constitutional provision. That, again, is emphasized in the
7 In re. Advisory Opinion with respect to 2011 Public Act 38 at
8 page 308. And it's significant here, your Honor, for two
9 purposes, for the two reasons that are essential to the
10 analysis here. The Michigan Supreme Court has already done
11 this principle analysis in the context of Article IX, Section
12 24, with respect to the impairment of pensions and squarely
13 addresses the issue that the objectors have been arguing to
14 this Court is created or is significant here. In this
15 advisory opinion, the Michigan Supreme Court concluded that
16 Article IX, Section 24, does essentially four things. It was
17 the obvious intent of the provision to ensure public pensions
18 be treated as contractual obligations that once earned could
19 not be diminished. There's no question of that. Second, the
20 provision is designed to say that when an employee benefit
21 comes due, a pension -- when the employee's pension benefit
22 comes due, he or she has a contractual right to receive it.
23 Third, the accrued financial benefit of a pension is the
24 pension income itself, and, fourth, diminishing or impairing
25 the accrued financial benefit means the actual reduction of

1 pension income. In other words, the loss -- the actual loss
2 of pension income is the impairment. That's significant to
3 the issue raised by the objectors in the context of the
4 facial challenge to 436 and as this Court has addressed
5 questions on yesterday. Clearly 18(1) of 436 does not on its
6 face cause or commit an actual reduction of pension income,
7 and that is the definition, and that is the application of
8 impairment this Court must apply because that is the
9 determination of the Michigan Supreme Court's common
10 understanding of impairment or diminishment in the context of
11 Article IX, Section 24.

12 So what does that mean to this discussion? Going
13 back to the statutory interpretation principles, the Court
14 must look at the language of the statute and determine if
15 it's ambiguous or not, the clear meaning, and construe it in
16 a way that gives meaning to the legislature's intent. Here
17 the legislature clearly did not intend to impair public
18 pensions through the use of the bankruptcy process in terms
19 of its authorization. So 18(1), by authorizing the
20 bankruptcy filing or authorizing the government to -- or the
21 governor to authorize the bankruptcy filing and ultimately
22 making that filing does not commit an impairment because it
23 does not cause an actual diminishment in pension benefits as
24 defined by the Michigan Supreme Court. So on its face, 436
25 is constitutional and in accord with Article IX, Section 24.

1 Need there be any further discussion with respect to
2 that? Actually not. And there is additional case law, your
3 Honor, that's cited within that advisory opinion which
4 confirms that. The Court relies very heavily on the Studier
5 versus Michigan Public School Retirement Board case from a
6 few years prior to that, and I have the cite for the Court if
7 it cares for that because essentially the same analysis was
8 done in that case. Studier is found at 472 Mich. 642, and
9 the discussion of the interpretation of Article IX, Section
10 24, begins at page 6 -- let me make sure I have the right
11 page here -- 656, so it's consistent. And, in fact, that
12 court, the Studier court, criticizes Musselman and the
13 analysis made in the Musselman decisions as to what the
14 intent of the drafters and the ratifiers was in the context
15 of adopting Article IX, Section 24.

16 So with respect to that first issue on which the
17 constitutionality of 436 hinges in terms of the arguments
18 raised by the objector, the Michigan Supreme Court has
19 addressed that. This Court is obligated to apply the
20 definition of Article IX, Section 24, identified and applied
21 by the Michigan Supreme Court, and so in that context,
22 Section 18, Sub 1, does not impair -- actually impair and,
23 therefore, does not violate Article IX, Section 24, by
24 failing to carve out any protections for those pensions.

25 Similar analysis is required then of the

1 authorization provided by the governor. As we've argued, as
2 the Court has noted, essentially in the context of the
3 ripeness arguments that have been made and the questions that
4 it has been asked, the authorization clearly applying that
5 application made by the Michigan Supreme Court does not cause
6 an actual impairment of pension benefits. Doesn't matter
7 what the intent might be. Doesn't matter if the governor
8 chose not to impose contingencies. In order for the legal
9 process to operate in the context of the Bankruptcy Code, as
10 this Court noted, there is no actual impairment worked or
11 caused by the authorization; therefore, the authorization is
12 in total compliance with Article IX, Section 24, and allows
13 this matter to proceed through the appropriate legal
14 processes established under the Bankruptcy Code.

15 With respect to the home rules provisions analysis,
16 your Honor, Article VII, Section 22, of Michigan's
17 Constitution recognizes that there are obligations and
18 responsibilities imposed on local governments separate and
19 apart from the state; however, the constitutional provision
20 also recognizes that these duties, obligations,
21 responsibilities, and authorities of the local governments
22 are subject to the control and change by state law. Very
23 clearly, this constitutional limitation on the powers and
24 authorities of municipalities has been recognized in
25 legislation, specifically the Home Rule Act, which we cite in

1 our brief, at MCL 171.1 et seq. and particularly at Section
2 MCL 117.36, which is -- which essentially codifies the
3 limitations of Article VII, Section 22.

4 What the objectors' argument fails to recognize is,
5 first, local governments are not sovereign. Second, they are
6 creatures of the state. Third, the federal government and
7 the federal courts have long recognized those limitations on
8 local governments, and, fourth, they are subject to control
9 by the state legislature in that the state may change the
10 laws, authorities, powers of local governments at any given
11 time. And the federal courts have consistently recognized
12 that most recently in the Sailors decision that's cited in
13 our brief, which is exactly what has occurred here. Because
14 the local governments derive their power and authority from
15 the state and are, in fact, creatures of the state, the state
16 has the power to change that authority and to change the
17 course, the shape, and the force and authority of their
18 governments. This statute, Public Act 436, is just such a
19 law, and it has that purpose.

20 THE COURT: Well, but to what extent are the home
21 rule powers of a city derived from the Michigan Constitution
22 as opposed to statute?

23 MS. NELSON: The Michigan Constitution has limited
24 recognition of home rule authority, and in the language of
25 Article VII, Section 22, it recognizes that all resolutions

1 and ordinances of the local governments are subject to the
2 Constitution and laws of the state, so, in other words, case
3 law has recognized, as does the codification of these
4 limitations in the Constitution, that the legislature may
5 impact and affect any municipality's ordinances, any
6 municipality's laws, forms of government, funding, or any
7 other aspect of authority granted it directly from the state,
8 so to the extent that 436 has the purpose of addressing
9 emergency financial crises in local communities, that is
10 exactly the type and purpose of the law recognized under
11 Article VII, Section 22, an authority that is given to the
12 legislature over its local communities.

13 THE COURT: So is there any limitation in the
14 Michigan Constitution on the legislature's power and
15 authority to control the form of government for the City of
16 Detroit?

17 MS. NELSON: In the form of adopting their charter
18 provisions, yes. The city can in its charter, which is then
19 submitted to the voters for approval, identify its form of
20 government, how its officials will be elected, and allocate
21 the power and authority granted to those officials through
22 the Constitution and the laws of the State of Michigan, and
23 that's what has occurred. However, the legislature retains
24 authority through the Home Rule Act to even alter or amend
25 ordinances and charter provisions; in other words, the

1 legislature can pass a law that in its application and effect
2 would render a charter provision or a city ordinance
3 unconstitutional. For example, with respect to taxation, the
4 state can cap the amount of tax -- or the level of taxation
5 that a community might be able to impose, mills or things
6 like that. If a charter provision had been adopted that
7 established a higher level, it would be subordinate to the
8 state law, so in the same -- in that context, because the
9 legislature retains authority under Article II to promulgate
10 legislation and does not commit to any specific type or form
11 or purpose of legislation with respect to cities, that can
12 change. It recognizes the legislature's continuing authority
13 to change the law and the effect that those changes in law
14 will have on the operations of its local communities vis-a-
15 vis its ordinances and its charters. So the two, yes, work
16 in tandem. The communities do have the authority to identify
17 their forms of government, how their officials will be
18 elected, and how that will be implemented, but at the same
19 time, the legislature, for example, controls the election
20 laws, identifies how elections will be handled, taxation.

21 THE COURT: But the question the objection raises
22 here is doesn't the state's appointment and imposition of an
23 emergency manager on the City of Detroit change its form of
24 government by abrogating the powers of the City Council and
25 the mayor to the emergency manager?

1 MS. NELSON: Absolutely, it does, and the
2 legislature clearly, as we've identified in our brief, has
3 the authority to do that under both the Home Rule Cities Act
4 and under the various provisions of the Constitution that
5 control forms of government and the authority of the state
6 over its local communities. The local communities --

7 THE COURT: So is it too simplistic to say that the
8 city sets its own form of government through its charter
9 unless the state dictates otherwise through its legislation?

10 MS. NELSON: Absolutely, and that's the whole point
11 of the home rule --

12 THE COURT: It's not too simplistic --

13 MS. NELSON: It's not too simplistic.

14 THE COURT: -- to put it just that way.

15 MS. NELSON: It's just that way, and it's clear in
16 both the constitutional provision, and it's clear under the
17 Home Rules Cities Act, which implements those limitations
18 that are imposed on local governments vis-a-vis Article VII,
19 Section 22. The federal courts have recognized that as --
20 and, again, I cite the Court to the Sailors decision from the
21 United States Supreme Court, which recognizes the overarching
22 authority of the state. Because local governments are
23 creatures of the state, the state can determine what it's --
24 what authority it's going to give, what its local officials
25 will look like, what its forms of government will look like.

1 Second, I would also point out, your Honor, that
2 this is essentially a temporary situation, so this isn't the
3 state dictating that this is how the city is going to be
4 operating forever. There are limits on this, and there are
5 authorities in Public -- authority in Public Act 436 given to
6 the local officials to petition the state to remove the
7 emergency manager, so there is --

8 THE COURT: Right, but none of that is
9 constitutionally required. If I understand you correctly,
10 the legislation could say the governor picks the mayor of the
11 City of Detroit.

12 MS. NELSON: Well, potentially it could, yes, but it
13 doesn't. It doesn't have to. They chose not to.

14 THE COURT: So but bottom line, your position is
15 that in no sense is the city charter supreme or preemptive
16 over state legislation.

17 MS. NELSON: Absolutely not, or over the state's
18 Constitution. In fact, it's the reverse, and that's very
19 clearly the relationship established in Article VII, Section
20 22, and in the Home Rules Act statute itself that codifies
21 those provisions.

22 The next challenge -- and I might also point out, as
23 we did in our brief, your Honor, there is a parallel example
24 in the Home Rule Village Act itself which does essentially
25 the same thing, so we're not just talking about cities, but

1 we're talking about all local governments. The Home Rule
2 Cities Act, the Home Rule Village Act, all operate in the
3 same way. Now, the forms of government where there might be
4 some differences are principally townships and school
5 districts, although they, too, are creatures of the state.
6 While the Court -- or the -- I'm sorry -- while the
7 legislature gives them some different authorities, it still
8 gives them those authorities and those powers in the same way
9 that it does its cities and villages and other local forms of
10 government.

11 The objectors also challenge the constitutionality
12 of 436 with respect to Article VII, Section 21, and Section
13 34. Section 21 is a taxation essentially provision, and it
14 limits the authority of local governments to tax, borrow
15 money, and contract debts, so this is another example of the
16 authority that the state exercises over its local
17 communities. 436 recognizes and imposes these same
18 limitations on the emergency manager that the law imposes on
19 its public officials who are operating their local
20 governments, and it provides the state oversight and control
21 of these matters in the same way that it does its local
22 government officials, especially when they are under a
23 financial emergency. So, in effect, 436 treats the emergency
24 manager no differently than it does local officials in the
25 context of the local government's authority to tax, to borrow

1 money, or to contract debts, so there is no unconstitutional
2 actions at work here merely because the emergency manager is
3 now the one operating the city making those decisions as
4 opposed to the elected officials.

5 Similarly, Article VII, Section 34, merely
6 establishes the standard for interpreting the authority
7 granted by Constitution and state law, so, in other words, it
8 says the Michigan legislature retains authority to define and
9 modify the powers, duties, and obligations of its local
10 governments, which are derived from the state in the first
11 instance. It says that those powers given to the local
12 governments must be construed with deference to the local
13 government, but it still recognizes that those powers come
14 from the state, from the legislature, and can be changed in
15 any instance where the legislature believes that it's
16 appropriate to do so.

17 Finally, your Honor, as we've argued in our brief --
18 and there were no arguments presented to the Court
19 yesterday -- 436 is not an unconstitutional delegation of
20 authority under Article III, Section 2. It's not delegating
21 legislative power to the emergency manager. It allows the
22 emergency manager to simply execute the same executive powers
23 that the elected officials of the community would have within
24 the context of authority granted it under 436, principally in
25 Section 12(1), which identifies all of the various powers and

1 authorities. There are controls. There are restraints.
2 There are reviews required, approvals from the treasurer for
3 many of these at the state level or approval from the
4 governor for some of these actions that have to be done, and
5 there are also limitations on the emergency manager's
6 authority to make actions without the approval of the local
7 government, a significant difference between Public Act 4.
8 For example, with respect to the sale of assets or the
9 distribution of assets, the value of the assets will
10 determine the extent to which the local government must also
11 be involved in many of these decisions, so it is not -- and
12 to the extent that the objectors are arguing that there are
13 insufficient standards by which to guide the emergency
14 manager, I would submit the emergency manager is guided by
15 the same standards that would have applied to the local
16 officials when they were exercising that power, and there's
17 no argument from the objectors that those standards applied
18 to and by the local elected officials are inadequate for
19 their exercise of that authority, and those are the standards
20 that guide the emergency manager's actions as well. So not
21 only is this an appropriate delegation of authority by the
22 state under its constitutional and statutory authority and
23 its role in relation to its local governments, it is also
24 sufficient for purposes of guiding the emergency manager's
25 actions both as to -- under the law and in relation to the

1 oversight provided by the State of Michigan.

2 Yesterday, your Honor, there was an argument made by
3 Krystal Crittendon with respect to the Court's -- the
4 jurisdiction and the authority essentially of the emergency
5 manager to file this action. I have provided the Court a
6 copy of an order issued by the Michigan Court of Appeals on
7 November 16th, 2012 -- I brought a copy for Ms. Crittendon,
8 but she's not here today -- which squarely resolves that
9 issue. And if I'm understanding her -- following her
10 argument correctly, her argument is that because the
11 emergency manager was appointed under Public Act 72, that
12 that was an improper appointment because the repeal of Public
13 Act 4 did not revive Public Act 72 under the state's repealer
14 statute. That was --

15 THE COURT: That was part of her argument.

16 MS. NELSON: Right. That has been an issue, and
17 that's the part that I'm addressing with respect to this
18 order, your Honor. That particular issue has been raised in
19 at least four different cases challenging the appointment of
20 various emergency managers after the suspension of Public Act
21 4 under the referendum process and subsequently under its
22 rejection. And the order that I have provided to you is in
23 the case of Robert Davis versus Roy Roberts. It's Court of
24 Appeals Docket Number 313297, and it squarely rejects that
25 argument. Quite frankly, this was a quo warranto action, so

1 it directly attacked the authority of the emergency manager,
2 Roy Roberts, who is the emergency manager for the Detroit
3 Public School System, to hold that position because of his
4 appointment under Public Act 4 and then subsequently under
5 72. The Court of Appeals indicated the plain language of MCL
6 8.4, which is the repealer statute, includes no reference to
7 statutes that have been rejected by referendum. The
8 statutory language refers only to statutes subject to repeal,
9 and judicial construction is not permitted here because this
10 language is clearly unambiguous. Accordingly, under the
11 clear terms of the statute, MCL 8.4 does not apply to the
12 voters' rejection of referendum of Public Act 4. Even if the
13 rejection of Public Act 4 is deemed to operate as a repeal
14 subject to 8.4, the voters rejected Public Act 4 in its
15 entirety by way of the referendum, and this, in fact, revived
16 Public Act 72. So I think -- I believe that addresses Ms.
17 Crittendon's objection with respect to jurisdiction, and I
18 just wanted the Court to have that authority for when she
19 submits her supplemental brief.

20 Finally, your Honor, the other issue that I would
21 like to address relates to the Retired Detroit Police Member
22 Association's argument with respect to the referendum process
23 and the validity of 436 as a result of the referendum
24 process. I first take exception to the representation that
25 an appropriation of \$5,780,000 total is an insubstantial or

1 insignificant appropriation with respect to the state, but I
2 would point out to the Court the argument fails for two
3 principal purposes or reasons. First, Public Act 436 is
4 significantly different than Public Act 4, so Ms. Brimer's
5 argument that it's identical fails on that ground alone, and
6 the very example that she provides in terms of the
7 appropriation is one of the major differences. Public Act
8 436 imposes the requirement on the State of Michigan to pay
9 the salaries of the emergency managers. Neither Public Act 4
10 nor Public Act 72 had that requirement. So it, in fact,
11 required an appropriation in order to have -- so that the
12 state agency -- in this case, Treasury -- that's
13 administering that aspect of the statute would be able to
14 make that expenditure. Under state law a state agency must
15 have an appropriation in order to be able to make an
16 expenditure, and that's exactly what happened in this
17 instance. In addition, the \$5 million that was appropriated,
18 as was pointed out yesterday, is for the purpose of paying
19 for consultants, attorneys, and others that are going to be
20 assisting the local communities that are in a financial
21 emergency with their restructuring. That was not part of
22 Public Act 4 or Public Act 72 either, so on those two
23 grounds, that is a difference. There are many other
24 substantial and significant differences between these two
25 statutes, but even without any difference, your Honor, the

1 case that I have handed you, Reynolds versus the Bureau of
2 State Lottery, resolves this issue, and I would point the
3 Court to page 604 and 605 of that opinion. In this case --
4 although somewhat factually different, in this case a 1994
5 act that controlled fund-raising abilities of political
6 campaigns to use bingo and other types of gaming to raise
7 monies was being challenged by referendum. There was a
8 challenge to the signature process that went to the Court of
9 Appeals and then back down to the Board of Canvassers. The
10 Board of Canvassers split and didn't certify the statute, so
11 it went back up -- or the referendum -- excuse me -- back up
12 to the Court of Appeals. While that process was in play, the
13 legislature adopted a new act that was identical, word for
14 word identical to the challenged 1994 act, and the governor
15 signed it, and it went into effect. The 1994 act then was
16 ultimately certified on the ballot, went through the
17 referendum and was rejected by the voters. The parties that
18 had moved for that referendum then dismissed their appeal
19 case, applied for a bingo license to raise money, were
20 rejected under the new law, and then brought this challenge,
21 a declaratory challenge, arguing that the new statute was
22 invalid because it violated the referendum process. In
23 addressing that issue, the Court of Appeals analyzed and
24 interpreted the referendum provision, and that is the portion
25 of the opinion that I refer the Court to. It begins at page

1 604 and continues onto 605. And in there the Court very
2 clearly said the referendum provision and the purpose for the
3 referendum in terms of its definition and use of the term
4 "enacted law" means only the particular law supported by a
5 majority of legislators and signed by the governor and no
6 more. They went on to hold that when a law enacted by the
7 legislature is referred to the people, the reference to a
8 particular definite act and not by implication the general
9 principle or subject matter at issue. So, in other words, it
10 is the act itself, not the general purpose or the particular
11 purpose of the act, that is subject to the referendum. And
12 because it is the specific act that is the subject of the
13 referendum, the legislature is not precluded from
14 subsequently adopting a new law that is either identical to
15 or dealing with the same subject matter or purpose. The
16 Court continued, "nothing in the Michigan Constitution
17 suggests that the referendum had a broader effect than
18 nullification of the 1994 Public Act 118," the act at issue
19 in that case. We cannot read into our Constitution a general
20 preemption of the field that would prevent further
21 legislative action on the issues raised by the referendum.
22 The legislature remained in full possession of all its other
23 ordinary constitutional powers, including legislative power
24 over the subject matter addressed in 1994 Public Act 118.

25 THE COURT: Well, how do you or how does this case

1 deal with the argument that that kind of very strict
2 interpretation of the referendum power of the people makes a
3 mockery of it?

4 MS. NELSON: I disagree that it makes a mockery of
5 it, your Honor, because prior to this analysis, the Court of
6 Appeals went through the very same review and applied the
7 very same review standards in terms of the common
8 understanding of the provisions of the constitutional act or
9 provision that was in play as the Supreme Court did in the In
10 re. Advisory Opinion and in Studier and in all of those cases
11 dealing with the interpretation of the Constitution. And the
12 Court very clearly said that the common understanding of the
13 terms in that provision require this outcome, so any other
14 alternative would have been contrary to both the
15 constitutional standard of review that the Supreme Court
16 requires, and a different outcome would have been contrary to
17 the very meaning and common understanding of that provision,
18 so --

19 THE COURT: Well, but what --

20 MS. NELSON: I'm sorry. Go ahead.

21 THE COURT: What's the point of giving the people
22 the right of referendum to reject a statute if the same
23 Constitution is read to give the legislature the authority to
24 reenact word for word the same statute that the voters just
25 rejected? What's the point?

1 MS. NELSON: Well, the point is that that then
2 becomes a political issue in and of itself, and do the people
3 then want to continue to keep those legislators in office.
4 That makes it a different question than the referendum of the
5 actual law. That then makes it a political question and a
6 question of political will, which I think is a different
7 analysis than what is required here for purposes of our case.

8 THE COURT: Well, but why put the people to that?

9 MS. NELSON: Well --

10 THE COURT: The people spoke.

11 MS. NELSON: The people spoke in the context of
12 Public Act 4. I will agree, and --

13 THE COURT: Okay. But the position you're arguing
14 for is a much broader one, which is even if law number two is
15 word for word the same as law number one, law two prevails --

16 MS. NELSON: That's what the case --

17 THE COURT: -- or it remains in effect.

18 MS. NELSON: That's correct. That's what the case
19 law says, but I'm also pointing out that in this instance law
20 number two --

21 THE COURT: Doesn't the --

22 MS. NELSON: -- is not word for word the same --

23 THE COURT: Okay.

24 MS. NELSON: -- and addresses --

25 THE COURT: Hold that argument for just a moment

1 because --

2 MS. NELSON: Sure.

3 THE COURT: -- I am interested in that, but where is
4 the substance of the right of referendum that the
5 Constitution gives the people if the legislature has the
6 authority to thumb its nose at it like that?

7 MS. NELSON: Well, the right of referendum remains
8 because the people could initiate a referendum with respect
9 to the next bill. I know that's not --

10 THE COURT: To which the question remains why put
11 the people to that?

12 MS. NELSON: It certainly does beg the question,
13 your Honor, and that's why my response to you and the only
14 response I think that's applicable is that it becomes a
15 matter of political will, and there are other ways for the
16 people to address that issue, and that is elect --

17 THE COURT: Well, they've already expressed their
18 political will. Why do they have to do it twice, three
19 times, an infinite number of times?

20 MS. NELSON: Well, that's -- because that's how the
21 Court has interpreted that particular referendum.

22 THE COURT: This is the Court of Appeals, not the --

23 MS. NELSON: This is --

24 THE COURT: -- Michigan Supreme Court.

25 MS. NELSON: Yes, but leave to appeal was denied by

1 the Supreme Court. Now --

2 THE COURT: Means nothing.

3 MS. NELSON: It means nothing other than it wasn't
4 interested in taking this particular issue at that particular
5 time, so I'm referring the Court, yes, to a Court of Appeals
6 decision, which is the last court decision on this particular
7 issue. I'm not saying that I agree with that or that many --
8 that everybody agrees with it. I'm just simply saying that
9 is the law, the most current law applicable on this
10 particular issue. This is how the Court of Appeals has
11 interpreted, and the Supreme Court allowed that
12 interpretation to stand, and so this is the interpretation
13 that has to be applied in the context of the argument raised
14 by the Retired Detroit Police Members Association.

15 THE COURT: Am I bound by this decision?

16 MS. NELSON: I'm sorry. What?

17 THE COURT: Am I bound by this decision?

18 MS. NELSON: I believe that you are because it's the
19 last highest court decision on this particular issue, and
20 leave to appeal was denied by the Supreme Court.

21 THE COURT: What are the three or five most
22 significant differences then between PA 4 and PA 436?

23 MS. NELSON: The first one is one that we've already
24 discussed in terms of the transfer of authority to fund this
25 proposition. The second one is -- the second most critical

1 one is the options that are made available to the local
2 governments that didn't exist under 4 or 72. Public Act 436
3 creates four choices for the local governments once a
4 determination of a financial emergency has been identified.
5 They can choose either the appointment of an emergency
6 manager, the negotiation of a consent decree. They can
7 submit to neutral mediation, which, if unsuccessful, then
8 they must proceed in Chapter 9, or they can opt to go right
9 into Chapter 9, of course, with the approval of the governor.
10 There are several options -- or changes within the context of
11 the authority that's set out in Section 12(1) for the
12 emergency manager, particularly with respect to the assets of
13 the city and who has to be involved in the process in terms
14 of if there's going to be a lease or sale of assets of over a
15 certain value. I believe it's 50,000. The local officials
16 have to be involved in that process as well. A third
17 significant difference that didn't exist under either prior
18 laws is the ability of the local government to present
19 alternative plans, and an example is what's going on with
20 Belle Isle. Under 436 the local government can object to or
21 reject a proposal made by the emergency manager, and they
22 have the opportunity to present an alternative plan. I
23 believe it's to the emergency financial loan board. It's
24 either to the emergency manager financial loan board or the
25 treasurer -- an alternative proposal that could achieve the

1 same amount of savings, so they have the authority and the
2 ability to object and present their own proposal for
3 clarification.

4 Another significant change is the limitation on the
5 term of the emergency manager. Under Public Act 436, the
6 term is limited to 18 months. Additionally, another change
7 is the fact that the local government may petition for
8 removal of the emergency manager anytime before the
9 expiration of that 18 months. So those are some of the more
10 significant differences.

11 Another major -- excuse me. Another major
12 difference is the creation of the transition advisory board
13 that will participate with the local community or the local
14 government once the emergency manager is -- emergency is
15 deemed resolved and the emergency manager steps down, and
16 that, for example, is a process that's taking place in
17 Pontiac at the moment. The emergency manager there has
18 stepped down, and so there are certain relationships that
19 have been established to assist the local government with
20 transition back into control of its financial operations and
21 obligations. And one of the reasons for that was to address
22 the criticisms that the emergency managers have never proved
23 successful. Many of these communities, once the emergency
24 manager steps down, find themselves within a year or two
25 struggling again and back into the same circle, same process,

1 and so that's a very significant and substantial change as
2 well.

3 Those are the some of the major highlights. There
4 are a number of other ones in the process of how you initiate
5 the financial review, the factors that are to be considered
6 by the financial review team as they evaluate the cities.
7 There are also some differences in terms of the authority of
8 the emergency manager with respect to removing officials from
9 office or appointing officials to take their place. That's
10 been an issue in Detroit as well with respect to certain of
11 the city council members. So there are some major -- but
12 those are the major ones that come to my mind right off the
13 top of my head.

14 THE COURT: If the Court rejects your arguments and
15 holds that to the extent that PA 436 authorizes the
16 appointment of an emergency manager that is unconstitutional,
17 is there enough left of PA 436 for this bankruptcy to
18 continue or not?

19 MS. NELSON: At this point, I don't believe there
20 would be, your Honor, because the mechanisms or the way that
21 the statute is designed right now, the emergency manager is
22 acting on behalf of the city, and he is the one who made the
23 recommendation, and he is the one that's specifically been
24 approved. If you conclude --

25 THE COURT: Approved?

1 MS. NELSON: I'm sorry.

2 THE COURT: Approved for what?

3 MS. NELSON: Approved to file. The authorization
4 was given to him to file, and he was doing it in the place
5 and stead of the elected officials. So if the determination
6 is that 436 is unconstitutional and his appointment,
7 therefore, is void --

8 THE COURT: That was not exactly my hypo.

9 MS. NELSON: Okay.

10 THE COURT: My hypo was that holding that his
11 appointment was unconstitutional or that so much of PA 436
12 that allowed the governor to appoint him was
13 unconstitutional.

14 MS. NELSON: Well, first of all --

15 THE COURT: I mean I guess it's partially a
16 severability question.

17 MS. NELSON: That's correct. There's a severability
18 provision within 436 itself, and there's also a general
19 severability question. And the first issue or the first
20 question that would have to be decided is whatever you
21 conclude -- whatever provisions you conclude to be
22 unconstitutional, when they are severed, does that leave a
23 substantial or significant amount of the Act in place so that
24 it can be reasonably carried out. I would submit that if you
25 conclude the appointment of the emergency manager is

1 unconstitutional, that goes right to the heart of the
2 authority to proceed or the authorization to proceed in
3 bankruptcy because he was acting on behalf of the city. If
4 the appointment is deemed unconstitutional, then that would
5 restore the local elected officials, the mayor and the
6 council, as the representatives of the city, and they would
7 have to then take the action to continue this bankruptcy.

8 THE COURT: I think your colleague represented the
9 last time she was here in court -- and forgive me for not
10 remembering her name. Who was it?

11 MS. NELSON: In what context? Michelle Brya?

12 THE COURT: A couple weeks back.

13 MS. NELSON: Is that who you might be thinking of?

14 THE COURT: Anyway, she --

15 MS. NELSON: Nicole Grimm.

16 THE COURT: -- referred to the statute, and there's
17 a provision that authorizes the emergency manager to conduct
18 the case.

19 MS. NELSON: Correct. That's Subsection 2. That's
20 18 -- Section 18, Subsection 2, which specifically
21 authorizes -- once he receives the authorization from the
22 governor, it specifically authorizes the emergency -- we're
23 using "authorization" a lot or I am anyway --

24 THE COURT: Right.

25 MS. NELSON: -- but it specifically authorizes the

1 emergency manager to file the bankruptcy petition, so that's
2 Subsection 2, so -- Section 18, Sub 2.

3 THE COURT: But it wasn't just file. It was file
4 and conduct the case.

5 MS. NELSON: And conduct it. That's correct. And
6 so if, in fact, he is removed from office by virtue of a
7 ruling that his appointment was unconstitutional, that would
8 necessarily terminate the case because it would revert back
9 to the local officials, and they would then have to either
10 reinitiate the process or somehow decide to continue the case
11 without having -- if they could without reinitiating.

12 THE COURT: There's nothing else besides PA 436 that
13 provides the necessary basis for authorization or consent for
14 a municipality to be in bankruptcy?

15 MS. NELSON: Correct. Does the Court have any other
16 questions?

17 THE COURT: No.

18 MS. NELSON: Thank you.

19 THE COURT: Thank you. Who's up next?

20 MR. BENNETT: I think our side. We relinquish our
21 remaining time.

22 THE COURT: I did have a few questions for Mr. Troy.
23 Stand by one second.

24 MR. TROY: Good morning, your Honor. Matthew Troy,
25 Department of Justice, Civil Division, on behalf of the

1 United States. Your Honor, I want to clarify that we're on
2 the same page with respect to the question that you had
3 yesterday, which was, I think, how does the government
4 respond to the objectors' reply regarding the ripeness issue.
5 I went back last night and looked at what was filed on Friday
6 by the various objectors. I think I found it, but I want to
7 make sure we're talking about the same thing. I saw it in
8 AFSCME's amended objection filed Friday wherein they talk
9 about the harm that their members are suffering right now.

10 THE COURT: Right now, precisely.

11 MR. TROY: Okay. From the potential --

12 THE COURT: Ms. Ceccotti mentioned that in her
13 argument yesterday as well.

14 MR. TROY: Okay. And, in fact, I mean I guess if I
15 could read what I understood that Governor Snyder's
16 authorization has itself unconstitutionally caused an
17 immediate concrete injury to Council 25's members by creating
18 a contingent liability that their inviolable rights will be
19 disregarded causing them to reorder their financial affairs.
20 It's articulated in different ways elsewhere in the brief,
21 but I think that kind of encapsulates it.

22 THE COURT: Yes.

23 MR. TROY: I'll answer your Honor's question, but I
24 do want to clarify one point before doing so. That
25 contention, your Honor, is made in the context or in response

1 to the debtor's reply regarding the argument of whether or
2 not there was proper authorization under 109(c)(2). That's
3 not an argument made in the context of their constitutional
4 challenge to Chapter 9, but I can see where it also falls
5 over into that analysis.

6 THE COURT: Okay.

7 MR. TROY: But I want to make clear that on the
8 109(c)(2) issue the United States government is not taking a
9 position on that issue.

10 THE COURT: Right.

11 MR. TROY: Okay. And that's where that argument
12 arose, but I can see where your Honor thinks that has
13 applicability to the constitutional challenge as well, and
14 that's why I'll address that.

15 THE COURT: Well, I think we have to consider it and
16 deal with it.

17 MR. TROY: Right. Your Honor, that articulation or
18 that argument goes to whether or not they have standing. Is
19 there a concrete actual injury? And when I read that
20 description of the harm, the injury that they're suffering,
21 to me, as a bankruptcy lawyer, that strikes me as a dynamic
22 that occurs, frankly, every day in bankruptcy. A small
23 business owner is faced with a debtor who wishes to assume
24 and assign its lease or executory contract and says, "Consent
25 or I'll reject it," or a nondebtor party that is faced with

1 the threat of a turnover action by a debtor in possession or
2 trustee, and the nondebtor party says, "No, it's not property
3 of the estate. It's held in a validly state law created
4 trust or escrow account." Going back to my prior
5 hypothetical, I left out that point as well saying the
6 nondebtor party, small business owner, to the executory
7 contract or lease says, "Wait a minute. I've got state law
8 nonassignability rights. You can't do that." And the debtor
9 says, "Yes, I can. Bankruptcy Code says I can."
10 Preferential actions, your Honor, where seemingly innocent
11 defendants are faced with a trustee or debtor in possession
12 saying, "Pay or else I'm filing the action," particularly
13 perhaps pointing at our seemingly innocent investors in what
14 turns out to be a Ponzi scheme facing clawback suits. Some
15 are less sympathetic than others, but there are some that are
16 very sympathetic. They face the same dynamic that AFSCME
17 poses here, and, unfortunately, that's just a dynamic that
18 exists in bankruptcy.

19 THE COURT: Well, but to carry those hypos to the
20 next step that may make it analogous here, couldn't any of
21 those parties who you have identified file something in court
22 asking for a court ruling sustaining their position, whatever
23 it is, there was no preference, there was no fraudulent
24 transfer, whatever their position is on the executory
25 contract?

1 MR. TROY: That is true, your Honor, but that's
2 an -- that's either an affirmative defense or an argument
3 that the debtor or trustee has failed to satisfy one of the
4 elements of even bringing the claim. That's not what's being
5 posed here. What's being posed here is that the whole
6 statute is unconstitutional, and for a party to come in and
7 say that and to assert that, they have to meet a high hurdle,
8 and that hurdle is in part -- some of the hurdles they have
9 to meet -- and the two that are relevant here are standing
10 and ripeness. And that hurdle, I would submit, is not met
11 here with the argument that they have posed as being their
12 injury in fact. It's a commonplace dynamic in bankruptcy.
13 It's unfortunate -- and I'll take the objectors at their
14 word, and it might very well have tragic consequences, but
15 that's, unfortunately, what can happen in bankruptcy given
16 the powers afforded a debtor.

17 THE COURT: Well, but I can hear the response now.
18 The response is we retirees don't know what to do about our
19 financial futures because of the uncertainty that this
20 bankruptcy has created for us about the security of our
21 retirement pensions. That uncertainty will be resolved or
22 would be resolved if the Court were to take head on right now
23 in the eligibility context the issue of whether this
24 bankruptcy can impair pensions.

25 MR. TROY: And my response, your Honor, is that that

1 asserted injury in fact is not sufficient to vest them with
2 standing to ask you to make that reach at this stage of the
3 case.

4 THE COURT: Okay. So why not?

5 MR. TROY: Because it is -- what they're asking for
6 is a significant remedy, which is the invalidation of the
7 entire statute, at this stage of the case.

8 THE COURT: Right.

9 MR. TROY: To do that, they have to meet a much
10 higher standard for their injury in fact.

11 THE COURT: So what's the -- what's, in your view,
12 the most pertinent Supreme Court case that says that this
13 kind of contingent concern, just to put a legal label on it,
14 is insufficient?

15 MR. TROY: I don't have one to say that it is
16 insufficient. I can explain to you why I think the one that
17 they cite as evidencing it is inapplicable here.

18 THE COURT: Okay.

19 MR. TROY: I think they're principally relying on
20 Clinton v. United States to say that this contingent
21 liability is sufficient to constitute an injury in fact
22 imbuing them with standing. My response, your Honor, is that
23 that case is significantly different and distinguishable from
24 this. In that case, your Honor, HHS went to the State of New
25 York and its various municipalities, I guess, subsidiaries,

1 that administered Medicaid and said, "Look, you receive
2 federal subsidies from us. You have to pay some of those
3 back if you tax the healthcare providers providing those
4 healthcare services." And so HHS issued a notice and demand
5 to New York and said, "Pay. You've been imposing these taxes
6 in the past. Those have to be reimbursed to us as basically
7 a recoupment of the federal subsidies you've been receiving."
8 They issued a demand saying pay.

9 THE COURT: Um-hmm.

10 MR. TROY: Well, some members in Congress,
11 presumably from -- representing New York, said, "We don't
12 like that so much, so we're going to put a section in the
13 federal -- in the Balanced Budget Act of 1997 that says that
14 liability is zapped out of existence." So New York and
15 others then went and filed suit and said, "No, they can't do
16 that." Ultimately the Court said, "No, you don't have
17 standing. It hasn't happened yet." Then President Clinton
18 actually exercised his line item veto power and excised that
19 provision that said that liability is now zapped out of
20 existence. The only reason it was contingent is because
21 after the State of New York got the notice saying pay, they
22 exercised apparently a valid right to request HHS to waive
23 it, and HHS hadn't acted on it yet, but there was an explicit
24 demand to pay from the federal government to the State of New
25 York. It's not quite as contingent as what we're dealing

1 with here, your Honor, is my basic submission. There was an
2 explicit demand to pay, and the ripeness -- or the standing,
3 rather, was cured when President Clinton excised that
4 specific section that had eliminated the liability. The
5 liability rearose, and it was very real. The only thing that
6 the City of New York, I guess, as the appellee in that case,
7 had left was, well, we have a waiver request pending with HHS
8 that hasn't been acted on, but HHS had already made the clear
9 demand and said pay. That's why I think it's a different
10 case than this, your Honor.

11 THE COURT: All right. One final question for you,
12 and it goes to the issue of the constitutionality of Chapter
13 9, and it addresses some language in one of the commandeering
14 cases, the New York case. There's some broad language in
15 here that I think we have to deal with somehow, and so I'm
16 asking for your help in how you think it should be dealt
17 with. In that case, the Supreme Court said -- and I want to
18 quote it to you. It's at 182. "The constitutional authority
19 of Congress cannot be expanded by the 'consent' of the
20 governmental unit whose domain is thereby narrowed, whether
21 that unit is the Executive Branch or the States." How do we
22 reconcile that language with the constitutionality of Chapter
23 9?

24 MR. TROY: Because I don't -- I would submit that,
25 as set forth in our brief, I think, that Chapter 9 does not

1 so narrowly proscribe the powers of the state, if I am
2 recalling the quote correctly, your Honor. Chapter 9 --

3 THE COURT: Constitutional authority of Congress
4 cannot be expanded by the consent of the governmental unit
5 whose domain is thereby narrowed.

6 MR. TROY: I would submit, your Honor, that Chapter
7 9 does not -- it gives the states the consent to decide
8 whether or not its municipalities can file Chapter 9 and
9 under what terms and conditions, but I would submit also
10 that, having done so -- having given states that right to
11 consent, Chapter 9 does not then narrow impermissibly and
12 unconstitutionally the state's sovereign powers to control
13 and regulate its municipalities.

14 THE COURT: Well, but the objectors argue that it
15 does because it imposes federal priorities on creditors that
16 may be different from the priorities the state has.

17 MR. TROY: Right. And this all goes back, your
18 Honor --

19 THE COURT: So its sovereign powers says we want
20 priority scheme A, and, you know, the federal government has
21 got its priority scheme B, so by filing bankruptcy, there's
22 this narrowing of the state's sovereignty and this expansion
23 of the federal government's sovereignty.

24 MR. TROY: Right. And, your Honor, I think this all
25 goes back to the --

1 THE COURT: And New York says that can't be done by
2 consent.

3 MR. TROY: Right. And I think all that is hinged
4 upon and was subject to a lengthy colloquy between you and
5 Mr. Bennett about Bekins or Bekins, take your pick, and
6 Asbury Park. It's all -- that whole hypothetical that you're
7 posing, your Honor, is -- again, it's dependent upon what did
8 Asbury Park do and what did it imbue the states with.

9 THE COURT: Well, but what do I do with this
10 language?

11 MR. TROY: Well, again, your Honor, that language --
12 I think when you then take that language and say, "Well, what
13 about this hypothetical?" that hypothetical to me that you
14 just posed raises the issue of why can't states then just
15 impose their own municipal debt adjustment schemes because
16 Asbury Park says we can, and --

17 THE COURT: Is the answer nothing more than if the
18 state doesn't want to use the federal priority scheme, it
19 just doesn't authorize bankruptcies?

20 MR. TROY: I think that might be --

21 THE COURT: Is that the answer to this?

22 MR. TROY: I think that might be the answer, yes,
23 and that's the ultimate control that the state has. And that
24 goes back to the language that Mr. Bennett was quoting from,
25 I believe, Bekins and somewhat in a parallel sense in the

1 dissent from Ashton. It's the state's decision. It's the
2 state's control. And as your Honor has pointed out in
3 subsequent more recent cases involving Chapter 9, that's how
4 the courts have viewed the issue. Once in, you're in.

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

6 MR. TROY: If I may, your Honor, if I just address
7 one point --

8 THE COURT: Yes.

9 MR. TROY: There's standing, and there's ripeness.
10 They're distinct, and they're different. Admittedly, if you
11 look at the requirements for each, they arguably bleed into
12 one another, but there is an element of ripeness here, your
13 Honor, that I think is important for you to consider in
14 determining whether or not to take up the objectors on their
15 challenge to the constitutionality of Chapter 9, and it's
16 principally judicial discretion, your Honor. Do you really
17 have to do this now? Should you make this reach in declaring
18 the statute that effectively has been upheld for 75 years and
19 say it's unconstitutional right now at this stage of the
20 proceeding? As articulated in our brief, we don't think you
21 have to.

22 THE COURT: Well, since you raise standing, it was
23 pointed out by one of the attorneys that under the Bankruptcy
24 Code, creditors have standing to raise any issue that affects
25 them in the bankruptcy. Does that provision in the

1 Bankruptcy Code answer the standing question? If not, why
2 not?

3 MR. TROY: Because it's different than
4 constitutional standing, which is what we're talking about
5 here. We're talking about a constitutional standing to
6 invalidate an entire statute.

7 THE COURT: Are the considerations on constitutional
8 standing any different than the constitutional considerations
9 on ripeness in any substantial way or significant way? Can
10 you have one without the other?

11 MR. TROY: Can you have standing without --

12 THE COURT: Do they walk hand in hand down the same
13 path?

14 MR. TROY: I'm sorry, your Honor. Are you referring
15 to standing and ripeness?

16 THE COURT: That's what I meant, standing and
17 ripeness.

18 MR. TROY: As I understand the doctrines, your
19 Honor -- again, principally I'm a bankruptcy lawyer, not a
20 constitutional lawyer, but as I understand the doctrines,
21 your Honor, I would submit you could have one without the
22 other. They are -- while similar, they are distinct. You
23 could have standing but not have ripeness.

24 THE COURT: You argue neither here.

25 MR. TROY: Correct.

1 THE COURT: All right. I sense a certain eagerness
2 on Mr. Bennett's part, so let's yield the lectern to him.

3 MR. TROY: Thank you, your Honor.

4 MR. BENNETT: Your Honor, I want to return to your
5 question about whether or not the constitutional authority of
6 Congress is being expanded here at all. From the very, very
7 beginning of my argument we talked about why the Chapter 9 or
8 the Chapter 9 -- whoops -- or the Chapter 9 equivalent from
9 back in the '30s, what did not run afoul of the Tenth
10 Amendment. And remember there was -- the first part of it
11 was because there are -- uniform laws on the subject of
12 bankruptcies are the domain of Congress, and the Supreme
13 Court has told us that uniform laws on the subject of
14 bankruptcies, as they apply to -- does apply to municipal
15 credits.

16 THE COURT: Yeah. I get all that, and in the New
17 York case the Congress was legislating within its commerce
18 powers; right?

19 MR. BENNETT: But the problem with New York was it
20 chose means; i.e., the only part that it didn't like was
21 directing the states to buy or to take possession of nuclear
22 waste. That was it. It was that part. It was the state's
23 direction.

24 THE COURT: Well, okay. So do we read this language
25 simply to say that the state cannot consent to a

1 Congressional enactment that goes beyond its commerce powers?

2 MR. BENNETT: I think --

3 THE COURT: If that's what they mean, that's sort --

4 MR. BENNETT: I think that the --

5 THE COURT: -- of like, "Well, duh."

6 MR. BENNETT: Well, that they can't consent to
7 the -- also to the commandeering aspect of it. They can't
8 consent to the direction to the states to do something the
9 states can't be directed to do.

10 THE COURT: Okay. Pause there. If that
11 commandeering in the statute were directed to a private
12 party, would that have been within Congress' commerce power?

13 MR. BENNETT: It actually would have been because
14 they talk about --

15 THE COURT: Okay.

16 MR. BENNETT: -- nuclear waste. And I also want to
17 come back to the point, though, that --

18 THE COURT: But, okay, if that's true -- I have to
19 pin this down with you.

20 MR. BENNETT: That's okay.

21 THE COURT: If that's true, what is the Court
22 talking about in this language in New York when it says the
23 constitutional authority of Congress cannot be expanded?

24 MR. BENNETT: That New York, by having participated
25 in negotiations and been part of the group that pulled

1 together the statute at issue, can't have consented -- can't
2 consent to the part that requires the state to buy nuclear
3 waste, the part that was unconstitutional in the New York
4 case.

5 THE COURT: Okay. But what authority -- what
6 constitutional authority of Congress is being expanded by
7 that?

8 MR. BENNETT: The Congress doesn't have the
9 authority to direct the states to do things that it -- to buy
10 things. It doesn't have that authority. That's the part
11 that was the problem.

12 THE COURT: That's the Tenth Amendment --

13 MR. BENNETT: Correct.

14 THE COURT: -- limitation on the commerce power.

15 MR. BENNETT: Correct. But here I want to come back
16 and say in the bankruptcy realm, because the Congress has the
17 power to pass uniform laws on the subject of bankruptcies,
18 because the subject of bankruptcies include municipal debt
19 adjustment, of all the things that are clearly within
20 Congress' power and is not an expansion, it's priorities when
21 there's not enough to go around.

22 THE COURT: So your argument is that in order for
23 this comment by the Supreme Court in New York to impact this
24 case, the Court would have to find that the bankruptcy power
25 of Congress does not include the power to include municipal

1 bankruptcies?

2 MR. BENNETT: Yes, your Honor.

3 THE COURT: Okay.

4 MR. BENNETT: Or that the subject of municipal --
5 the subject of bankruptcies does not include priorities.

6 THE COURT: Okay.

7 MR. BENNETT: And I would -- just to round out the
8 answer to the rest of the points, there was also a
9 recognition that Chapter 9 might creep up to the edges.
10 That's where we have the 903 and 904 focus on governmental
11 and political powers, and there there was a recognition that
12 consent might not be enough. That's why we have 903 and 904
13 that people aren't requiring consent to too much.

14 MS. NELSON: Your Honor, may I just quickly make a
15 brief statement to the Court?

16 THE COURT: Sure.

17 MS. NELSON: Margaret Nelson again on behalf of the
18 state. I just wanted to let the Court know you requested
19 yesterday that we file all of the Webster documents, and I
20 just wanted to let you know that that likely will happen this
21 afternoon or tomorrow morning --

22 THE COURT: Okay.

23 MS. NELSON: -- including all of the transcripts. I
24 know I didn't discuss it during my oral, and I just wanted to
25 ask the Court if it had any questions specific to the

1 collateral estoppel argument for the state.

2 THE COURT: No.

3 MS. NELSON: All right. Thank you.

4 THE COURT: All right. Mr. Gordon, may I have your
5 attention, please? I had promised you and your colleagues on
6 the objecting side here an opportunity before your rebuttal
7 to organize. Would you like that opportunity now, or are you
8 and your group prepared to proceed?

9 MR. GORDON: Your Honor, in that regard, a couple of
10 things. One, in discussing these matters last night with the
11 group on the objectors' side, it is the sort of universal
12 view that there were issues that were raised and arguments
13 that were made by Mr. Bennett yesterday that, frankly,
14 weren't in the city's papers prior to yesterday. And in
15 light of the importance of these issues, we would
16 respectfully ask that there be perhaps an adjournment of the
17 rebuttal argument and an opportunity to brief this with the
18 idea that we would strive to coordinate so as to minimize the
19 burden on the Court in terms of the amount of paper that gets
20 filed and so forth, but it is our request in the first
21 instance, your Honor, that there be essentially an
22 adjournment of the rebuttal.

23 Also, as you can imagine, just trying to coordinate
24 who would address what in rebuttal is something that was
25 difficult to do at the end of a very long day yesterday, and

1 so there are some logistical issues, but, again, from a
2 substantive standpoint, we were desirous of asking the Court
3 if we could have two weeks to submit briefs on these issues
4 and have rebuttal argument in the course of the --

5 THE COURT: Okay.

6 MR. GORDON: -- the Court's conducting of the
7 evidentiary hearing at some point.

8 THE COURT: I fully intended to offer you the
9 opportunity to file supplemental briefs, and that was just a
10 question of how much time you needed, so for me that's not an
11 issue. Much more problematic is the issue of adjourning the
12 rebuttal arguments. Mr. Bennett, do you have a position on
13 this?

14 MR. GORDON: And by the way, just for the record, I
15 did at least reach out to Mr. Bennett last --

16 THE COURT: Um-hmm. Okay.

17 MR. GORDON: -- night about this, and he has his
18 opinions, of course.

19 THE COURT: That was very civil and courteous of
20 you.

21 MR. GORDON: Thank you. I try.

22 THE COURT: Yes, you do.

23 MR. BENNETT: Yes. That's true. I did receive
24 this -- the notice of the possibility that this request would
25 be made. First of all, we did not cite any new cases. We

1 certainly read cases that they had cited perhaps more closely
2 than they did, and that was all within the fair game of the
3 party who speaks not having filed the last set of papers.
4 The last set of papers were, of course, filed by the
5 objectors, so there's been no impropriety, nothing unfair,
6 nothing unusual. And the fact that they had overnight to
7 prepare is a courtesy that, quite frankly, I don't always get
8 when I have to deal with an oral argument after full sets of
9 papers.

10 Adjourning the hearing will create another time
11 burden and expense. We're getting enough complaints in the
12 press about how much this case is costing. I'm prepared and
13 the city has invested in that preparation, and we're ready to
14 go. If we put this off, we're going to get to do that all
15 over again. The request for two weeks, quite frankly, may
16 well be okay depending upon the length of the trial, but we
17 would need an opportunity to respond, and that would push the
18 response beyond the trial. And we have business we need to
19 conduct. We have a DIP financing that we're going to need to
20 get approved, and that won't fund until there's a
21 determination on eligibility. So there's all kinds of
22 calendar difficulties if your Honor chooses to adjourn, and,
23 frankly, there's calendar difficulties if we have to do
24 another set of briefs. The ultimate objective is to give
25 your Honor the help you need to decide, and so with the

1 understanding that there will be incremental additional
2 expense if there's an adjournment -- and we're ready to go
3 today -- I believe there's nothing unfair about that -- it's
4 ultimately what works for you, and we'll accommodate whatever
5 your Honor decides. I have no problem with a short break if
6 people want to get organized. That's perfectly okay
7 obviously.

8 THE COURT: All right. Stand by one moment, please.
9 All right. Mr. Gordon, may I have your attention again,
10 please? In the circumstances, I can't justify putting off
11 rebuttal for any substantial period of time. I can offer you
12 the choice of proceeding after lunch at one o'clock today or
13 proceeding this Friday. We do have another motion hearing on
14 an unrelated matter at ten, and we could go in this matter at
15 11 on Friday.

16 MR. BENNETT: Your Honor, I'm not available. I'm
17 not available on Friday. It's mid-semester break for one of
18 my sons, and I'm planning to be away this weekend, including
19 Friday.

20 THE COURT: Well, hold on one more second.

21 MR. GORDON: Your Honor, I can perhaps short-circuit
22 the issue. I think, from what I'm hearing, we're comfortable
23 then under the circumstances with coming back at one o'clock
24 today and presenting our rebuttal.

25 THE COURT: Your other choice would be to do this on

1 Monday either before or after or as part of the pretrial
2 conference that's scheduled for that date. Do you have any
3 objection to that?

4 MR. BENNETT: I'll have to take a red-eye unless it
5 starts really late like at about -- I can make a 3:30, I
6 think.

7 THE COURT: I can't do that myself.

8 MR. BENNETT: Look, I'll take a red-eye.

9 THE COURT: I have to be done by three.

10 MR. BENNETT: I'll take a red-eye, and someone will
11 nudge me if I fall asleep. As long as it's in the afternoon,
12 it's okay.

13 THE COURT: Well, hopefully their arguments will not
14 have that impact on you.

15 MR. BENNETT: Okay. If it's in the afternoon, it'll
16 work. It'll be okay.

17 THE COURT: Okay. If I understand our time
18 constraints correctly, there's an hour on each side left,
19 right, for rebuttals? So if we start at one, then I can
20 leave by three, which is what I need to do. Does that help
21 you?

22 MR. BENNETT: I'll make it work.

23 THE COURT: So you were not going to be at the
24 pretrial conference at ten.

25 MR. BENNETT: That's correct.

1 THE COURT: Somebody else was covering that for you.
2 That's fine with me, one o'clock Monday for the rebuttal
3 arguments. Did you want to say something? Go ahead.

4 MS. CECCOTTI: Yes. One o'clock is fine actually.
5 That's helpful to me. I wonder, though, in terms of the
6 pretrial, I was actually going to ask as a housekeeping
7 matter, again, just due to flights and so forth, it may not
8 be one of my team, but if we had some -- a UAW designee,
9 would that be sufficient, a lawyer for our side here?
10 Otherwise --

11 THE COURT: That's up to you.

12 MS. CECCOTTI: Okay. You don't --

13 THE COURT: No.

14 MS. CECCOTTI: I just wondered if the Court had
15 any --

16 THE COURT: I mean generally speaking, we want at
17 the final pretrial conference whoever is going to conduct the
18 trial.

19 MS. CECCOTTI: Yeah.

20 THE COURT: Is that -- is there that disconnect for
21 you?

22 MS. CECCOTTI: There is. There are four lawyers on
23 my side and all handling different aspects --

24 THE COURT: Um-hmm.

25 MS. CECCOTTI: -- so -- and they're all busy.

1 THE COURT: Well, all right. So long as the person
2 is familiar enough, you know, to conduct the sort of
3 administrative stuff we do at a final pretrial conference,
4 including dealing with exhibits, that's fine.

5 MS. CECCOTTI: I see. Okay. All right. That's
6 helpful, your Honor. We'll be --

7 THE COURT: All right.

8 MS. CECCOTTI: -- guided accordingly.

9 THE COURT: All right. So -- all right. I guess
10 the point is we're adjourning for today to reconvene in this
11 matter at one o'clock on Monday for the final two hours.

12 MR. TROY: Apologies, your Honor. Matthew Troy
13 again. I'm not sure if my presence here was helpful or not,
14 but I will not be here on Monday --

15 THE COURT: That's fine.

16 MR. TROY: -- unless you request it or ask of it,
17 and then --

18 THE COURT: But please accept my assurance that your
19 appearance here today and your argument was helpful.

20 MR. TROY: Thank you, your Honor. If your Honor
21 wants me here for that hearing, I can start making inquiries.

22 THE COURT: You know, if that arises, we do have the
23 option of a telephonic appearance as well.

24 MR. TROY: Okay.

25 THE COURT: In fact, you have that option regardless

1 to listen in, so, you know, in terms of whether you, on
2 behalf of your client, feel the need to make any further oral
3 argument, I leave that to your discretion. And if you want
4 to, we'll do it by telephone.

5 MR. TROY: Thank you, your Honor.

6 THE COURT: Just let us know in advance.

7 MR. TROY: Yes, sir.

8 THE COURT: All right. Anything further for today,
9 anyone? No. All right. That's it then.

10 THE CLERK: All rise. Court is adjourned.

11 (Proceedings concluded at 4:21 p.m.)

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WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

October 20, 2013

Lois Garrett

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. October 21, 2013
Debtor. . 1:00 p.m.
.

HEARING RE. OBJECTIONS TO ELIGIBILITY TO CHAPTER 9
PETITION (CONTINUED)
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day
By: BRUCE BENNETT
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2452
(213) 243-2382

Jones Day
By: GEOFFREY S. IRWIN
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3768

Pepper Hamilton, LLP
By: ROBERT S. HERTZBERG
4000 Town Center, Suite 1800
Southfield, MI 48075-1505
(248) 359-7333

For the State of Michigan: State of Michigan
Michigan Department of Attorney General
By: MATTHEW SCHNEIDER
P.O. Box 30754
Lansing, MI 48909
(517) 241-8403

APPEARANCES (continued):

For AFSCME, Lowenstein Sandler, LLP
 AFL-CIO, and Sub- By: SHARON L. LEVINE
 Chapter 98, City 65 Livingston Avenue
 of Detroit Roseland, NJ 07068
 Retirees: (973) 597-2374

For Detroit Clark Hill, PLC
 Retirement Systems- By: ROBERT D. GORDON
 General Retirement 151 South Old Woodward, Suite 200
 System of Detroit, Birmingham, MI 48009
 Police and Fire (248) 988-5882
 Retirement System
 of the City of
 Detroit:

For the Detroit Erman, Teicher, Miller, Zucker &
 Fire Fighters Freedman, P.C.
 Association, the By: BARBARA A. PATEK
 Detroit Police 400 Galleria Officentre, Suite 444
 Officers Associa- Southfield, MI 48034
 tion and the (248) 827-4100
 Detroit Police
 Lieutenants &
 Sergeants
 Association:

For the Inter- Cohen, Weiss & Simon, LLP
 national Union, By: BABETTE A. CECCOTTI
 UAW: PETER D. DECHIARA
 330 West 42nd Street, 25th Floor
 New York, NY 10036-6976
 (212) 356-0227

For Detroit Silverman & Morris, PLLC
 Retired City By: THOMAS R. MORRIS
 Employees 30500 Northwestern Highway, Suite 200
 Association, Farmington Hills, MI 48334
 Retired Detroit (248) 539-1330
 Police and Fire
 Fighters Associa- Lippitt O'Keefe, PLLC
 tion, Shirley V. By: RYAN C. PLECHA
 Lightsey, and 370 East Maple Road, Fl. 3
 Donald Taylor: Birmingham, MI 48009
 (248) 646-8292

APPEARANCES (continued):

For the Official Committee of Retirees: Dentons
 By: CLAUDE D. MONTGOMERY
 ANTHONY B. ULLMAN
 1121 Avenue of the Americas
 New York, NY 10020-1089
 (212) 632-8390

Brooks, Wilkins, Sharkey & Turco, PLLC
 By: MATTHEW E. WILKINS
 401 South Old Woodward, Suite 400
 Birmingham, MI 48009
 (248) 971-1711

For Retired Detroit Police Members Association: Strobl & Sharp, PC
 By: LYNN M. BRIMER
 300 East Long Lake Road, Suite 200
 Bloomfield Hills, MI 48304-2376
 (248) 540-2300

For the Flowers Plaintiffs: Law Offices of William A. Wertheimer
 By: WILLIAM WERTHEIMER
 30515 Timberbrook Lane
 Bingham Farms, MI 48025
 (248) 644-9200

For Ambac Assurance Corp.: Schafer and Weiner, PLLC
 By: DANIEL J. WEINER
 40950 Woodward Avenue, Suite 100
 Bloomfield Hills, MI 48304
 (248) 540-3340

Court Recorder: Letrice Calloway
 United States Bankruptcy Court
 211 West Fort Street
 21st Floor
 Detroit, MI 48226-3211
 (313) 234-0068

Transcribed By: Lois Garrett
 1290 West Barnes Road
 Leslie, MI 49251
 (517) 676-5092

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

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

4 THE COURT: And you may proceed.

5 MR. GORDON: Thank you, your Honor. Good afternoon.
6 For the record, Robert Gordon of Clark Hill on behalf of the
7 Detroit Retirement Systems. Your Honor, we did not submit a
8 proposed line-up to the Court as we did for the October 15th
9 hearing; however, the objectors have all conferred with one
10 another over the weekend and have come up with an informal
11 line-up, if you will, and have discussed amongst themselves
12 sort of loosely how much time each party would need. And so
13 rather than inform the Court of the time slots, we'll just
14 sort of try to self-police ourselves and inform the Court if
15 that's okay.

16 THE COURT: Okay.

17 MR. GORDON: Again, as with the October 15th
18 hearing, each party will try its best to identify before it
19 starts its rebuttal argument -- apprise the Court of what
20 issues it plans to touch upon. Unlike the October 15th
21 hearing, of course, because time is short, various parties
22 will be trying to touch upon discrete issues and not overlap
23 with one another, so while each party may support the
24 arguments that are being made, for the record, I just need to
25 state that each party obviously reserves its right to make

1 similar arguments or diverge from those arguments in its
2 supplemental briefing. Thank you.

3 With that, your Honor, just so the Court has an
4 understanding of the order in which we are proposing the
5 objectors rise, first would be Ms. Levine on behalf of
6 AFSCME, then Ms. Brimer on behalf of the Retired Detroit
7 Police Members Association, then myself on behalf of the
8 Retirement Systems, then Mr. Morris on behalf of the Retiree
9 Associations, then Ms. Patek on behalf of the Public Safety
10 Unions, then Ms. Crittendon as an interested party, and then
11 Mr. Montgomery on behalf of the Retiree Committee.

12 THE COURT: All right.

13 MR. GORDON: Oh, my goodness. I'm sorry. After --
14 I'm sorry. After Mr. Morris, Ms. Ceccotti would be next on
15 behalf of the UAW.

16 THE COURT: Thank you. It's fine with me not to
17 keep track of your time individually if that's your request,
18 but I do have to cut off all rebuttal argument in one hour.

19 MR. GORDON: Very well, your Honor. Thank you.

20 THE COURT: And one more thing. You will notice
21 that on your tables we now have three microphones instead of
22 one. I have been asked to advise you that this makes it much
23 more likely that our record will pick up your private
24 conversations, and you should be concerned about that because
25 we do post the audio unedited on our website every night.

1 And I should say if there is a private conversation that you
2 want to have at any point today or during the trial and
3 you're concerned about it getting on the microphone, just
4 request a brief pause from the recording. We'll turn the
5 recording off. You can have your conversation, and we'll
6 continue.

7 MS. LEVINE: Good afternoon, your Honor. Sharon
8 Levine, Lowenstein Sandler, for AFSCME. Your Honor, I've
9 been given ten or twelve minutes and will address, per the
10 Court's suggestion, home rule and then perhaps if there's
11 time a sentence on Chapter 9 again.

12 THE COURT: Okay.

13 MS. LEVINE: Thank you, your Honor. Your Honor,
14 similar to the arguments or the statements in the
15 conversation we had with the Court with regard to Chapter 9
16 and the interplay between the federal Constitution and the
17 state municipal governments under the Tenth Amendment, we
18 would respectfully submit that under the Cooley Doctrine and
19 the cases that have been decided here in Michigan that the
20 Michigan Constitution in Chapter 7 also reflects a very
21 strong view towards home rule, and what we mean by home rule,
22 your Honor, is that the local governments -- in this case,
23 Detroit -- are given a lot of respect by the state government
24 in order to manage and run their own local governments. And
25 we would respectfully submit that the way that either 439 is

1 written or as applied in this case, that the grant of power
2 given the emergency manager here in Detroit violates the
3 state Constitution.

4 So, first, your Honor, we would note that the
5 emergency manager has been appointed by the state. He was
6 not elected by the local electorate. He was not elected the
7 way, for example, the mayor and the City Council were
8 elected. He has supplanted them, and he was -- and he didn't
9 supplant them by a vote of the citizens, and he didn't even
10 supplant them with the consent of the locally elected
11 officials. So first point is that we believe that the
12 emergency manager and 436 is inappropriate here because he's
13 not an elected official.

14 Two, your Honor, we would note that the breadth of
15 the powers granted the emergency manager even if the
16 appointment of the emergency manager were appropriate is
17 inappropriate here both as a matter of constitutional law and
18 as applied in this particular case because the governor
19 failed to appoint the emergency manager with any appropriate
20 contingencies in the letter of appointment, and that's
21 because of the scope of the power that the emergency manager
22 wields is well in excess of that which the Constitution --
23 the Michigan Constitution would permit. So, for example,
24 even if the scope of the powers were not subject to -- sorry.
25 Let me say it differently. Even if the Michigan Constitution

1 does allow, for example, taxation or even debt adjustment, it
2 doesn't allow the wholesale taking over of the local
3 government by the emergency manager. So, for example, not
4 allowing there to be replacements to the City Council, day-
5 to-day negotiation of vendor contracts, labor contracts,
6 grievances, de minimis asset sales, these are the types of
7 things that are not necessarily --

8 THE COURT: Well, but let me ask you to -- let me
9 ask you to pause there with this question. Is the
10 constitution -- or would the constitutionality of PA 436, as
11 it pertains to those kinds of issues, be before this Court?
12 Are they necessary to decide in the context of eligibility?

13 MS. LEVINE: They are, your Honor, because the way
14 this appointment has taken place, all of those individual
15 acts that the emergency manager has been allowed to engage in
16 ahead of a plan of adjustment which might deal with just the
17 debt makes the very decision that the emergency manager made
18 with regard to filing the Chapter 9 petition itself
19 unconstitutional or unconstitutional as applied to the facts
20 of this case because there was no limitation on what the
21 scope of his authority was just dealing with that one issue.
22 And that scope -- the unfettered scope, your Honor, is not
23 just related to the day-to-day business operations, and we've
24 seen that play out in the deposition of Mayor Bing and in
25 others who talk about the fact that they're bottlenecked with

1 regard to decision-making and that ordinary types of
2 decision-making is now deferred to the emergency manager or
3 his counsel, but we've seen that, your Honor, in the
4 unfettered scope that provides for no judicial review of
5 those decisions as well. So, for example, if, in fact,
6 there's a dispute under a Chapter 11 or a Chapter 7 where you
7 have a debtor in possession or a trustee, a debtor in
8 possession, for example, a corporate debtor, has fiduciary
9 obligations under the direct language of the Bankruptcy Code
10 and has fiduciary obligations under state law. A Chapter 7
11 or a Chapter 11 trustee similarly has fiduciary obligations,
12 and they are not allowed to take actions either outside the
13 ordinary course of business or under the course of a Chapter
14 7 without coming to this Court for approval, sales,
15 settlements, ultimate plans of reorganization. Under Chapter
16 9, because we're dealing with the fact -- and we believe it's
17 the unconstitutional fact -- that there's a tension between
18 what the state can do and what the federal government can do,
19 we don't have that same access to judicial review, so under
20 904, 362, and even Stern's there are a lot of decisions that
21 get made on the day-to-day basis. And I'm not dealing with
22 the global jurisdictional issues, just the day-to-day basis
23 of tort claims, of contract disputes, of settlements with
24 individual creditors that don't ever see the light of day in
25 this court, and to the extent that there was a grievance or a

1 dispute about that under 362 in this Court's stay extension
2 orders, there's no other court where those disputes can be
3 taken.

4 So we have an unelected emergency manager who's in
5 place now because he's a contractor with the state
6 government, and we have unfettered rights where basically our
7 view is it's tantamount to all of the rights that were
8 granted to the city under Chapter -- under Article VII of the
9 Constitution are now within the power of the EM in this
10 particular case. And we'd respectfully submit that that is
11 just not what the Cooley Doctrine or the state Constitution
12 envisioned even if it did envision in appropriate
13 circumstances debt restructuring.

14 Nine minutes. With that, your Honor, I would just
15 close briefly on Chapter 9. We would respectfully submit
16 that similar -- well, I'll --

17 THE COURT: I'm not sure you've quite addressed the
18 central home rule question that at least I see. The city and
19 the state argue that to whatever extent home rule powers
20 apply to the City of Detroit under the Michigan statutes,
21 they are effectively modified by PA 436 and that that
22 modification is not inconsistent with whatever the Michigan
23 Constitution says about home rule. How do you deal with
24 that?

25 MS. LEVINE: Your Honor, we understand the statement

1 has been made along those lines. We don't see those
2 modifications in PA 436. In other words, either in the
3 statute itself or in the authorization as granted under the
4 statute here, there is no limitation that we can see, and, in
5 fact, we've seen the opposite through the emergency manager's
6 orders and the emergency manager's right to run unfettered
7 the City of Detroit. And in addition to that, one of the
8 issues that they talk about in terms of limiting his ability
9 is that his term is only 18 months, but that also is not
10 supported if you take a look at the statute and you take a
11 look at the statute in practice without any limitation in the
12 authorization because at the end of 18 months, the state has
13 the absolute right to continue the term. The City Council
14 can only stop that by a two-thirds vote, but since the EM has
15 effectively taken over the City Council, we don't even have
16 the checks and balances that appear facially on the statute,
17 so we're saying two things. We're saying they can say that
18 it's a limitation, but as far as we can tell, PA 436
19 virtually gives away to the emergency manager everything that
20 was referred to the states under Chapter 7 of the
21 Constitution, and not only that, there is no redress for
22 addressing violations of that unfettered right or stopping
23 the time line pursuant to which the EM can stay in office.
24 Thank you.

25 MS. BRIMER: Good afternoon, your Honor. Lynn M.

1 Brimer appearing on behalf of the Retired Detroit Police
2 Members Association. Your Honor, to begin with, I have
3 approximately ten to twelve minutes of the allotted time for
4 the objectors. I am going to discuss, your Honor, the narrow
5 issue of whether or not PA 436 is constitutional under the
6 referendum provision of the Michigan Constitution. As your
7 Honor will recall, Article II, Section 9, of the Michigan
8 Constitution specifically reserves to the people of Michigan
9 the right of referendum with respect to any law other than
10 those that contain a spending or appropriation provision.

11 When we were here on Tuesday, your Honor, last week,
12 I advised the Court that at that time the city and the state
13 neither had responded to the arguments that had been raised
14 by the RDPMA in its opening objection and, moreover, that at
15 that point in time we had not been able to find a case that
16 was factually similar to this case. Today, we do have the
17 oral arguments that were presented by Ms. Nelson in response
18 to this argument during the state's opening arguments. The
19 city has still not responded to this discussion, and we
20 still, your Honor, do not have a case that is even closely
21 factually similar to this case.

22 As the Court may recall, Ms. Nelson cited the case
23 of Reynolds v. Martin for the proposition that the governor
24 and the state legislature can completely disregard the will
25 of the people and thwart the people's constitutional right to

1 a referendum by placing an insignificant spending provision
2 at the tail end of an act that had previously been defeated
3 on referendum, pass such act during a lame duck session, and
4 consider it to be constitutional. Reynolds v. Martin is so
5 factually distinguishable, your Honor, as to be of little or
6 no actual application to this case, and ultimately we would
7 conclude that its holding, in fact, supports the argument of
8 the RDPMA. And I think it's very important to very briefly
9 discuss that case. In Reynolds in 1994 the legislature
10 passed an act amending the state's Bingo Act. That act was
11 referred for referendum. However, before it was placed on
12 the 1994 ballot, certain of its signatures were questioned.
13 Therefore, it did not make the 1994 ballot. The general
14 election was held in November of '94. A new legislation --
15 legislators were elected. They were seated in 1995. In 1995
16 with the new legislation in -- legislative body in place, a
17 new act was passed. Subsequently, in 1996 the 1994 act was
18 certified for the referendum, and it was, in fact, voted down
19 in the referendum.

20 A party challenged the denial of a license under the
21 1995 act on the grounds that it could not have been passed in
22 contravention of the referral of the 1994 act to the
23 referendum process under Article II, Section 9. However,
24 your Honor -- and ultimately the 1995 act was upheld as
25 constitutional.

1 The state would argue that that case is factually
2 applicable and the holding consistent with their position
3 that PA 436 is constitutional. However, there are two
4 significant distinctions between the holding and the facts in
5 Reynolds and the matter before this Court with respect to
6 436. One, there was a general election after the matter had
7 been referred to referendum. A new legislative body was in
8 place, and it was the new legislative body that had been, in
9 fact -- that passed the new act. But more significantly,
10 your Honor, the 1995 act did not contain a spending
11 provision, and it was not, therefore, removed from the
12 referendum provisions of the Michigan Constitution. In fact,
13 in Reynolds the appellate court relied on the Michigan
14 Supreme Court holding in Michigan Farm Bureau versus
15 Secretary of State at 379 Mich. 387, 1997, and noted that
16 should the legislators not be responsive to the will of the
17 people expressed at the referendum vote, the second
18 legislation itself is subject to the same right of referendum
19 as the original act. That is simply not what we have with
20 respect to 436.

21 The question, your Honor, is why wasn't 436 subject
22 to the referendum vote? It was not subject to the referendum
23 vote because the governor, the Michigan Department of
24 Treasury, and their consultants devised a scheme in the event
25 that PA 4 was defeated on referendum, that would remove a new

1 law from the referendum. And how do we know that there was a
2 scheme that was devised? We have communications that have
3 been produced during discovery that confirm that the spending
4 provisions in Section 34 and 35 were included in order to
5 avoid the referendum vote. For example, as early as March
6 2nd, 2012, in communications between Mr. Ellman at Jones Day
7 and Ms. Ball at Jones Day, Mr. Ellman was discussing the
8 possibility that PA 4 would be defeated on referendum and
9 what the options would be in the event it was rejected by the
10 people. He states in discussing the options, your Honor,
11 "The cleanest way to do all of this probably is new
12 legislation that establishes the board and its powers and" --
13 with the "and" in capital letters, your Honor -- "includes an
14 appropriation for the state institution. If an appropriation
15 is attached to, parenthetical, included in the statute to
16 fund a state institution, parenthetical, which is broadly
17 defined, then the statute is not subject to repeal by the
18 referendum process."

19 In fact, Mr. Orr himself has acknowledged this
20 concern with respect to PA 436. On January 31st, 2013, he e-
21 mailed Ms. Ball stating the following: "Michigan's new EM
22 law is a clear end-around the prior initiative that was
23 rejected by the voters in November." He then discusses some
24 of the provisions of PA 436 and concludes with the following
25 statement: "So although the new law provides the thin veneer

1 of a revision, it is essentially a redo of the prior rejected
2 law." Your Honor --

3 THE COURT: What was the date of that?

4 MS. BRIMER: That, your Honor, was January 31st,
5 2013. So, your Honor, despite Ms. Nelson's contention that
6 the spending provisions were not added in an effort to avoid
7 the referendum vote, we would suggest that the evidence and
8 the discovery proves otherwise.

9 Ms. Nelson also argued that the \$5,780,000 spending
10 provisions were meaning provisions not designed to avoid the
11 referendum. First, I would suggest quite to the contrary,
12 your Honor. A review of the state's financial statements for
13 the fiscal year ending 9-30, 2012, suggests that \$5,780,000
14 represents approximately .011 percent of the state's
15 expenditures for the prior fiscal year. With respect to the
16 pensioners that are before this Court making an average of
17 \$18,000 in their pension, that would represent \$1.98. I
18 would suggest that's hardly a meaningful spending provision.

19 But second and more significant is that we have the
20 words of the debtor's attorney in the e-mails that I read to
21 you that the spending provisions were added with the intent
22 of avoiding the referendum. We also have testimony from the
23 state's 30(b)(6) witness, Howard Ryan, the legislative
24 liaison for the Department of Treasury during the period for
25 the drafting of 436, in which he testified in his deposition

1 on October 14th that the spending provisions were added to
2 avoid the referendum.

3 "Question: Based on your conversations with the
4 people at the time, was it your understanding that
5 one or more of the reasons to put the appropriation
6 language in there was to make sure it could not --
7 that the new act could not be defeated by
8 referendum?

9 Answer: Yes.

10 Question: Where did you get that knowledge
11 from?

12 Answer: Well, having watched the entire process
13 unfold over the past two years.

14 Question: The governor's office knew that that
15 was the point of it?

16 Answer: Yes."

17 Your Honor, we would suggest that those spending
18 provisions were, one, de minimis, and, two, added solely for
19 the purpose of removing this act from the constitutional
20 right of the people to a referendum vote.

21 I'm uncomfortable with the amount of time I have
22 left here, your Honor. Two more points. Ms. Nelson argued
23 that PA 436 has substantially changed PA 4. We prepared a
24 comparative analysis, your Honor, of the relevant provisions,
25 those with respect to the appointment of an emergency manager

1 and those with respect to the authorization for the filing of
2 a Chapter 9. Those provisions are virtually identical. Our
3 comparative analysis has been attached and submitted to the
4 Court as Exhibit B to our pretrial brief. Those provisions
5 were, in fact, your Honor, subject to the provision in the
6 Constitution which provides that no law as to which the power
7 of referendum properly has been invoked shall be effective
8 thereafter unless approved by a majority of the electors
9 voting thereon in the next general election.

10 Your Honor, the Michigan Supreme Court, which should
11 be our controlling court here, has, in fact, suggested that
12 the right of referendum is so important to this state and so
13 important to our constitutional rights that in Kuhn -- I'm
14 trying so hard to get through my time -- that in the matter
15 of Kuhn v. Department of Treasury the Court said that this is
16 a reserved right to the people which must be liberally
17 construed. This Court must liberally construe the right of
18 the people to the referendum, find that the Michigan Supreme
19 Court would, in fact, determine that PA 436 violates Article
20 II, Section 9, of the Michigan Constitution, and, therefore,
21 cannot have been a proper basis for authorization of the
22 filing of this Chapter 9 under Section 109(c) of the
23 Bankruptcy Code.

24 THE COURT: Thank you.

25 MR. GORDON: Again, for the record, Robert Gordon of

1 Clark Hill. Your Honor, I want to touch upon, if I may, an
2 issue that was raised on the 15th regarding who is
3 essentially the impairer of contracts in a Chapter 9 process
4 and then touch upon one other small matter that came up in
5 colloquy on that day.

6 Your Honor, during the oral argument, city's counsel
7 argued that in a Chapter 9 case, the law views the federal
8 government as the sole relevant actor impairing contracts of
9 the debtor municipality and that, therefore, the prohibition
10 in the pensions clause against the state and its subdivisions
11 impairing accrued pension benefits is of no moment in this
12 matter because it will be the federal government and not the
13 state or the city that is doing the impairing.

14 In making the argument, the city's counsel relies on
15 the language of a dissenting opinion of Justice Cardozo in
16 the Ashton case and then suggests that the viewpoint
17 expressed therein is adopted by the Bekins court, which
18 overruled Ashton. We submit that the analysis is incorrect.
19 First, it is not entirely clear that the expansive
20 interpretation of Justice Cardozo's opinion suggested by the
21 city comports with his intended meaning. However, even if
22 that interpretation is accurate, there is no indication that
23 his views were adopted in Bekins, a decision in which Justice
24 Cardozo did not even participate.

25 Contrary to the city's argument, as we've pointed

1 out in our papers, it is the municipality alone that can file
2 a plan and propose the impairment of claims, and it is the
3 municipality alone that can solicit votes and ask the Court
4 to approve such a plan. Indeed, your Honor, the reality of
5 the active role played by the debtor is reflected clearly in
6 Section 109 itself. 109(c)(5) provides, and I quote, "(a) An
7 entity may" -- excuse me. It provides under 109(c), I quote,
8 "An entity may be a debtor under Chapter 9 of this title if
9 and only if such entity," and then under (5)(A) it says, "has
10 obtained the agreement of creditors holding at least a
11 majority in amount of the claims of each class that such
12 entity intends to impair under a plan in a case under such
13 chapter," and there's similar language under 109(c)(5)(B).
14 Both of those provisions talk about the municipal debtor
15 being the one who intends to impair under the plan. It
16 doesn't say that the municipal entity intends to ask the
17 Court to impair. So 109(c)(5) reflects the reality that we
18 just discussed.

19 Moreover, contrary to the city's argument, your
20 Honor, Chapter 9 jurisdiction turns on the basic concept that
21 the state can consent to subjecting a political subdivision
22 to federal bankruptcy law. Having thus consented, federal
23 law will then apply, but it is still the state and its local
24 governmental unit that is actively availing itself of the
25 Bankruptcy Code in the Bankruptcy Court. The city has not

1 and we submit cannot cite to any case law that describes a
2 Chapter 9 debtor as standing mute and passive in the
3 Bankruptcy Court during the plan process and simply accepting
4 whatever impairment of contracts the Court may mete out.
5 It's an unsupportable and unsupported proposition, we submit.

6 Since the state and its political subdivision is
7 clearly the impairer of contracts in the Chapter 9, then
8 absent the relief that's been requested by the Retirement
9 Systems and other objectors, the state or the city in this
10 case would be directly breaching the pensions clause, which
11 it cannot do. To the extent it is asking the federal court
12 to assist, it cannot do so since the state government and its
13 subdivisions are bound by the pensions clause and cannot
14 delegate to another entity authority that they do not have to
15 abrogate Michigan's Constitution. And we've cited several
16 cases in our reply brief at page 15 for the axiom that the
17 state and its various branches cannot do indirectly what they
18 cannot do directly.

19 Since the state and the city cannot violate the
20 Michigan Constitution and specifically the pensions clause
21 outside of the Chapter 9 process, they can no more do so in
22 Chapter 9, and the requirement that the Retirement Systems
23 and other objectors have advocated for -- i.e., an explicit
24 conditioning of the bankruptcy upon the protection of the
25 pensions clause -- is absolutely proper and mandated by

1 Section 109(c)(2)'s respect for state law. Any other
2 conclusion we submit eviscerates 109(c)(2) and its
3 requirement to uphold the Tenth Amendment and the sovereignty
4 of state law. Moreover, your Honor, there was --

5 THE COURT: So is the end result of that argument
6 that no municipality in Michigan can file a Chapter 9?

7 MR. GORDON: The end result would be that they
8 cannot file a Chapter 9 without the explicit understanding
9 that they will not impair accrued pension benefits in
10 violation of the pension clause.

11 THE COURT: Well, but that violates the Bankruptcy
12 Code.

13 MR. GORDON: How so, your Honor?

14 THE COURT: Well, it gives a priority to one
15 unsecured creditor over all the others, or one group of
16 unsecured creditor over all the others.

17 MR. GORDON: We disagree, but the priority issue I'm
18 going to defer to Mr. Morris on. He was going to speak about
19 that issue, but we disagree that it can be characterized as a
20 priority issue, your Honor. I just don't want to steal his
21 portion.

22 THE COURT: Okay.

23 MR. GORDON: But it is not a priority --

24 THE COURT: No pressure, Mr. Morris.

25 MR. GORDON: It is not a priority issue, your Honor.

1 Moreover, your Honor, the city's counsel had suggested, I
2 believe, on October 15th that Section 943(b) may not contain
3 any bar to adjusting debts but only technical restrictions on
4 how debt adjustment may be implemented. If he is correct --
5 and we think not -- then all the more reason why the
6 protection of pension benefits under the pensions clause must
7 be addressed at the eligibility stage.

8 The only other thing, your Honor, I wanted to touch
9 upon was at, I think, page 103 of the written transcript of
10 the hearing on the 15th we had a discussion in which I
11 likened the accrued pension benefits to a nondischargeable
12 debt, and the Court questioned whether that concept was truly
13 applicable in a Chapter 9. I wish to simply note to the
14 Court that while Section 523 of the Bankruptcy Code was not
15 incorporated into Chapter 9, Section 944(c) provides that the
16 debtor is not discharged under Subsection (b) of this section
17 from any debt excepted from discharge by the plan or order
18 confirming the plan. So, indeed, concepts of
19 nondischargeable debt do exist under Chapter 9 of the
20 Bankruptcy Code, and because it is not governed by Section
21 523 of the Bankruptcy Code, it must be assumed -- because
22 there's no other basis identified in the Bankruptcy Code
23 itself, it must assumed that the bases for
24 nondischargeability would arise under state law such as the
25 absolute and impermeable protection of accrued pension

1 benefits under the state's Constitution.

2 THE COURT: Why isn't it safer to assume that that
3 provision is in there to facilitate parties' negotiations
4 regarding how to treat debts?

5 MR. GORDON: I don't know that it's mutually
6 exclusive. It could be nondischargeability. It could be as
7 a matter of law --

8 THE COURT: Okay.

9 MR. GORDON: -- or by negotiation, your Honor.

10 THE COURT: Okay.

11 MR. GORDON: We would simply submit that with
12 respect to a state constitutional protection, it can't be the
13 subject of negotiation. Thank you, your Honor.

14 THE COURT: Okay.

15 MR. MORRIS: Good afternoon, your Honor. Thomas
16 Morris on behalf of the Retiree Association parties. There
17 was discussion last week and, in fact, this morning, today,
18 this afternoon, regarding the manner in which the pensions
19 clause operates. Specifically, there were comments by Mr.
20 Bennett which characterize the pensions clause as
21 establishing a payment priority. Mr. Bennett would have the
22 Court view the pensions clause as the equivalent of a state
23 law which designates a public pension obligation as a
24 priority claim in bankruptcy. This is an incorrect
25 characterization of the pensions clause.

1 The pensions clause is a state law which controls
2 the city in the exercise of its political or governmental
3 power. The pensions clause establishes a constitutional and,
4 therefore, fundamental rule addressing the authority of a
5 municipality to reduce or impair its pension obligations. It
6 is an essential definition of the state -- of the duties of
7 the state and its subdivisions. The pensions clause simply
8 doesn't provide for a priority payment. The usual way for a
9 state to provide for a priority is to specify that the debt
10 is entitled to priority. An example is found in the Worker's
11 Compensation Disability Act, MCL 418.821, which provides that
12 liability of an employer for Worker's Compensation claims or
13 Worker's Compensation payments shall be paramount to other
14 claims except for wages and taxes. Another way to ensure a
15 priority is to provide for a statutory lien, so we've got
16 lien -- a lien under Section 211.40 of the Michigan Compiled
17 Laws for property taxes that are secured by a first lien,
18 prior, superior, and paramount. And MCL 324.3115 provides
19 that certain fines for environmental liabilities constitute a
20 lien on all property of any kind or nature owned by the
21 defendant. And a construction lien is entitled to priority
22 under state law.

23 In Orange County -- in the case if Orange County
24 found at 151 B.R., there's a quote on page 1017. In Orange
25 County there was a statute at issue, a California statute

1 that was found by the Orange County court to be preempted by
2 the Bankruptcy Code. Now, that statute provided that --
3 provided for certain funds to be treated as trust funds, and
4 that statute, as interpreted by the Court, apparently or was
5 argued to provide for there to be no tracing requirement, so
6 the Court in that case found that statute to effectively
7 establish a priority in bankruptcy and found it to be
8 preempted. That case is distinguishable. The Michigan
9 pensions clause provides for no priority of payment. It
10 simply provides an ongoing indestructible duty of the
11 municipality or the state to not impair and not reduce
12 pensions.

13 Now, the priorities provided for in Section 507 are
14 applicable in Chapter 7 cases, for example, because Chapter 7
15 is a process of liquidation, liquidation of assets and the
16 distribution of those assets, so you need to determine who's
17 going to get the assets. Who gets paid first? That's the
18 priority. Those priorities are also applicable in Chapter 11
19 because in every Chapter 11 case, liquidation is an
20 alternative. Liquidation is the implied alternative, and
21 it's a standard by which a plan of reorganization in a
22 Chapter 11 case is measured. Liquidation is not provided for
23 in Chapter 9. Therefore, priorities are not provided for in
24 Chapter 9 with one exception. That one exception is
25 507(a)(2), which provides for administrative expense

1 priorities. That's a --

2 THE COURT: But doesn't the best interest test of
3 943(b)(7) implicate the priorities of the Bankruptcy Code?

4 MR. MORRIS: It doesn't. It doesn't implicate the
5 priorities of a liquidation as an alternative unlike in
6 Chapter 11. That's what's done -- in a Chapter 11 you look
7 at the unsecured creditors. What would they get in
8 liquidation?

9 THE COURT: Your position is that there's nothing in
10 a municipal bankruptcy case that would prohibit one group of
11 unsecured creditors from insisting on payment before or in
12 full while other unsecured creditors are paid later or not in
13 full.

14 MR. MORRIS: Well, in confirmation of a case where
15 the pensions are unimpaired, you have a possible
16 discrimination claim by other creditors. The bondholders
17 might claim that it's unfair discrimination, and I think the
18 response would be any bondholders who purchased their bonds
19 prior to 1963 when the Michigan Constitution was adopted,
20 you've got a different argument, but those bondholders who
21 purchased their bonds after 1963, which is all of them, don't
22 have an argument. They're aware of the political climate.
23 They're aware of the Constitution. They're aware that the
24 municipality cannot --

25 THE COURT: Right, but the city's response to that

1 is the people who lobbied for and got the pensions clause in
2 the Constitution were aware of the Chapter 9 possibility.
3 How do I deal with that, or how do you deal with that?

4 MR. MORRIS: Mr. Gordon dealt with that.

5 THE COURT: Okay. I will look at what he said.

6 MR. MORRIS: But I don't want to -- I don't want to
7 repeat it, but the city is not permitted to restrict or
8 impair the pensions. They are an inviolate obligation that
9 the city will live with even if it reorganizes under Chapter
10 9. That's just a fact. If the City of Detroit were to cease
11 to exist, if there were to be some horrendous natural
12 catastrophe that wiped the city off the state -- wiped the
13 city off the map, then we believe the city would still owe
14 that obligation, and it might cause a constitutional crisis.
15 Maybe the state would have to -- let's say the city remained
16 with only one resident, and that one resident couldn't
17 possibly pay the taxes to pay this. It would cause a
18 constitutional crisis. There'd have to be a resolution.
19 Maybe the state would step in. I don't know. That's beyond
20 conjecture.

21 THE COURT: The city says we're there now. I'm
22 sensing from Ms. Ceccotti having risen that your time may be
23 up.

24 MR. MORRIS: Yes, it is. Thank you.

25 MS. CECCOTTI: Your Honor, I actually rose because I

1 was planning to address the question that you just asked --

2 THE COURT: Okay.

3 MS. CECCOTTI: -- about -- and I was going to
4 actually spend less time on it, but I think I'll just
5 dispense with -- I was going to -- first of all, for the
6 record, Babette Ceccotti, Cohen, Weiss & Simon, LLP, for the
7 UAW, and good afternoon again.

8 I was going to spend some time on talking about the
9 pension clause, the language of the pension clause, and how
10 the courts in Michigan address constitutional provisions when
11 called upon to review them and the principles that they
12 apply, but I'm going to move actually right to your Honor's
13 question because I do think that a lot of -- some of the
14 questions that your Honor has asked, particularly this
15 afternoon, really do go to what I think is going to be the
16 crux of this.

17 First of all, on the city's point that the pension
18 clause doesn't seem to make any -- doesn't, in fact, make any
19 reference to the possibility of municipal bankruptcy, I think
20 we have to go and ask ourselves a couple of questions.
21 First, what did municipal bankruptcy mean at the time, and
22 what did pension rights mean at the time? And so we have to,
23 you know, sort of bring ourselves back in the legal regime --
24 in two legal regimes to 1963. First, the city's brief cites
25 to a law that was on the books in Michigan, PA 72, dating

1 from 1939, and the law refers to the 1898 Bankruptcy Act and
2 basically says that any taxing agency or instrumentality as
3 defined in the bankruptcy law may proceed to do something
4 called secure a composition of its debts, and the law then
5 goes on to describe rules about who can file the petition and
6 who can agree to the plan of composition and what kinds of
7 things can be in the plan of composition and also provides
8 that the composition is binding on the instrumentality.

9 In 1963 -- okay. So that's the law that's on the
10 books. In 1963 as well the municipal bankruptcy law that is
11 being referenced looks a lot more like the '37 law than it
12 does the law that we have today. On the sort of time line of
13 Chapter 9 changes starting with the law that was declared
14 constitutional by the Supreme Court in '37, while there are
15 some changes that take effect in 1946, you really don't get a
16 major overhaul until 1976 and the events surrounding the New
17 York City fiscal crisis, so from that point forward -- from
18 that amendment forward, Chapter 9 looks a lot closer to the
19 Chapter 9 that we're dealing with today, but in 1963 it
20 really didn't look like that. And, frankly, the notion
21 that -- and this is where we get to the pension regime part
22 of my answer. The notion that the pension clause coming in
23 as it did to take a situation where employees working for the
24 state had, in effect, no vested right to deferred
25 compensation they had earned with services that they provided

1 to the state, that was -- that's the gratuity and the gift --
2 that changes with the pension clause, which then provides the
3 protection for accrued financial benefits. This is a new
4 thing under the state Constitution. So it's not -- to me
5 it's not surprising at all that you wouldn't find a reference
6 to the plan of composition or municipal bankruptcy because we
7 have really these arcane terms that it is very unlikely
8 anyone would have applied to vested pension rights. It's not
9 until 11 years later that ERISA is enacted in the federal
10 regime. ERISA, of course, has language -- sets forth a
11 comprehensive scheme to protect pensions and uses words like
12 "nonforfeitable benefits" and "vested pensions" and "accrued
13 pensions" and the like. And as we talked about last week,
14 that regime includes the pension termination system, and you
15 get then developing in the private sector bankruptcy world,
16 the Chapter 11 world, the Chapter 7 world, where the
17 priorities do function, what is the status of a pension
18 contribution given the fact that it is based on services that
19 were rendered to the debtor pre-petition? All of that law
20 comes up after 1963. There just simply wouldn't be a way to
21 think about a pension benefit in the context of a debt
22 composition, or at least that is -- that seems very likely to
23 me because you just don't get this law -- all of this law
24 coming up until you get to ERISA and the concept of plan
25 termination and the priorities that apply in Chapter 11 and

1 Chapter 7 years and years later. And now, you know, to my
2 way of thinking about it, unfortunately, we have seen a lot
3 of pension terminations, and so there's a lot of law on that
4 subject now, but it didn't exist in 1963, and it couldn't
5 possibly have been fairly contemplated. So I think that
6 we're then left with a section, which is the pension clause,
7 Article -- of the pension clause of the Michigan Constitution
8 that is very much standing on its own without reference to
9 any exception, and we can see why, I think, no -- in
10 particular no reference to the concept of municipal
11 bankruptcy working very much, in effect, each word being
12 given effect by the courts of Michigan who have construed it
13 a number of times to protect accrued pensions. And it's
14 standing on its own effectively against impairment or
15 diminishment by, as we spoke about last week, the state, the
16 state officials, or governance -- government and political
17 subdivisions to which it applies, so I think the --

18 THE COURT: I have to interrupt you and ask this
19 question about bankruptcy. Is there anywhere else in the
20 Bankruptcy Code where a party's nonbankruptcy law right to
21 payment is given an absolute status in the bankruptcy?

22 MS. CECCOTTI: Well, your Honor, I think that there
23 are a number of places in the Bankruptcy Code where state law
24 is referenced, and we had a reference to the effect given to
25 certain types of liens, which are given effect, but I think

1 the --

2 THE COURT: Well, but even there there are many
3 circumstances in which security interests are not given
4 absolute effect in bankruptcy.

5 MS. CECCOTTI: Your Honor, here's --

6 THE COURT: Cramdown, of course, is a perfect
7 example of that.

8 MS. CECCOTTI: Here's where I think the crux of this
9 is. We have a regime in Chapter 9 that must operate by
10 maintaining the state's sovereign control over the political
11 and governmental affairs, including the expenditures
12 therewith under 903. Chapter 9 is not Chapter 11, and so,
13 therefore, the question to start with is what is the -- what
14 limited things can be done in Chapter 9, not necessarily
15 let's look at the whole of the Bankruptcy Code and try to
16 sort of plug in examples that are going to cross between a
17 Chapter 9 debtor and a Chapter 11 debtor.

18 THE COURT: I understand that argument, but isn't
19 the end result of that argument that a state like Michigan
20 that has this clause, if it is to be given absolute impact,
21 cannot authorize its municipalities to file bankruptcy?

22 MS. CECCOTTI: Cannot authorize its municipalities
23 to file for bankruptcy if a purpose is to diminish or impair
24 accrued pensions. That's correct, and that is --

25 THE COURT: But what you're not saying there is that

1 if there is the intent not to diminish pensions, they can
2 file municipal bankruptcy?

3 MS. CECCOTTI: In this case, your Honor, the intent
4 was made abundantly clear going in. If they had hidden the
5 intent, we might --

6 THE COURT: No. I understand that. I'm trying
7 to --

8 MS. CECCOTTI: -- we might not be standing here
9 today.

10 THE COURT: I'm trying to figure out where your
11 argument goes because there are two possible outcomes here.
12 One is when a municipality is subject to the state
13 constitutional provision, it can file bankruptcy and still
14 impair, or it can file bankruptcy without the intent to
15 impair, or I suppose there's a third alternative, which is
16 the one I'm asking about, which is they can't file bankruptcy
17 because bankruptcy doesn't permit that kind of
18 discrimination.

19 MS. CECCOTTI: I think -- your Honor, I think it's a
20 false choice, frankly. I really do. And we've seen some --
21 we've seen enough instances, I guess, of the more modern use
22 of Chapter 9, particularly the cases out in California,
23 where -- and this is -- and CalPERS has been just on the
24 forefront of this, as I'm sure you know -- where they're not
25 touched. I just -- I don't see what is so accepted or that

1 it's a black and white choice between filing for bankruptcy
2 and not filing for bankruptcy simply based on the pension
3 question. I mean this is a -- this is a very -- this is a
4 large, large municipality to be seeking Chapter 9 relief.
5 There is a lot going on. This very much reminds me, Judge,
6 of going from the very small Chapter 11's at the beginning of
7 the '78 Code and then all of a sudden finding companies like
8 LTV Steel filing for bankruptcy and suddenly declaring that
9 retiree health was a general unsecured claim, someone no one
10 had thought of before. This very much feels to me like that
11 type of a moment where the size of this city and the
12 magnitude of what it's trying to accomplish simply cannot be
13 easily fit within the rules that might otherwise apply in a
14 smaller -- in a smaller context or with less going on or with
15 less money available for fewer options. It's very much a
16 moment, I think, where -- it's one of those moments that I
17 think we will look back on and say this is where Chapter 9
18 changed. And we are very much hoping it does not change in
19 the direction of violating what we believe are legitimate --
20 a legitimate basis for a municipality to say, "I need to
21 adjust my debt, but I am going to adhere to a state law, a
22 state constitutional provision like the pension clause, and I
23 can accomplish both." I very much think that those things
24 are possible, and if we don't have a bankruptcy system that
25 allows for that duality -- the dual sovereignty to have play

1 like that, then we are simply wiping aside centuries of
2 constitutional law. And I'm really -- my colleagues are
3 going to be very upset with me.

4 THE COURT: Eleven minutes left.

5 MS. CECCOTTI: I'm sorry.

6 MS. PATEK: Your Honor, given the time
7 limitations -- again, Barbara Patek on behalf of the Detroit
8 Public Safety Unions -- I want to address for the moment the
9 Court's question about whether there's anywhere else in the
10 Code, and I don't -- I believe the answer to that question is
11 no, but I think also the Tenth Amendment answers that
12 question. And I think even if you assume for the sake of
13 argument that there are -- that what the -- what is being
14 said here, that this is just a priority issue, that this
15 constitutional promise that was made to these public servants
16 is to be treated like general unsecured debt as if it were
17 credit card debt, I think a careful look at the Code answers
18 that question to the contrary, and I think you can start with
19 the Orange County versus Merrill Lynch case, which talks
20 about 507 and the reason for the exclusion of (a)(1) and
21 (a)(3) through (9) from the Code. And in a footnote it talks
22 about what were then (a)(3) and (a)(4) being excluded because
23 they had to do with employment rights and collective
24 bargaining agreement rights potentially of employees which
25 could affect the ability of the municipality to continue its

1 operation. I suggest it's no accident that those two
2 sections were excluded. I suggest that it's no accident --
3 we heard a lot about electoral will or political will last
4 week -- that this provision is tucked away in the Michigan
5 Constitution so it's difficult to change. This is a promise
6 that's made to people as part of the sovereignty of the State
7 of Michigan to the people who are necessary in this case,
8 talking about my clients, the Public -- the members of the
9 Public Safety Unions, and I would suggest that it would be a
10 violation of the Tenth Amendment to read the Code otherwise.
11 Thank you, your Honor.

12 MR. MONTGOMERY: Your Honor, Claude Montgomery for
13 the Retiree Committee. I had four things that I was going to
14 try to address today in my seven minutes. One was ripeness.
15 One was whether or not there is an issue, despite the Cardozo
16 dissent, and, three, I'd like to answer the question of
17 whether or not intent matters for the governor and the
18 emergency manager, a question raised by the state, and,
19 finally, if I have any time left, that Studier does not
20 undercut Seitz v. Probate Judges System.

21 But I'd also like to take the opportunity to answer
22 the last question or at least offer a thought -- whether or
23 not it's considered useful or not, I will, of course, leave
24 to the Court -- and that Bekins itself tells us what the best
25 interest question was, and it wasn't relative treatment of

1 creditors. It was whether or not bondholders could get tax
2 people to actually levy on property that was either worthless
3 among the municipalities or couldn't be sold for the amount
4 or tax levy marshals and whatnot were running away from
5 creditors. So the best interest of creditors that Bekins saw
6 being made possible by the plan of adjustment was better than
7 zero, not a relative priority vis-a-vis other creditors but
8 an ability to get paid where the state was actively, through
9 its minor officials, resisting paying anything. And so I
10 think that is the best interest of creditors that 943(7) is
11 looking to, and I have further statutory construction for
12 that. At least I offer it. One is that neither 1129(a)(7)
13 nor 1129(a)(11) are actually adopted by Chapter 9, and so
14 the -- what is the best interest of creditors as in feasible
15 is not necessarily identical to those statutory -- those two
16 statutory provisions to which no reference is made.

17 So now I'd like, if you will, turn my attention to
18 the Cardozo dissent, which I must say I thought Mr. Bennett
19 made a very interesting offer to the Court as a foundation
20 for Bekins, but I would like to suggest and only suggest,
21 your Honor, that there is a key -- two key parts to the
22 Cardozo consent that the Court may wish to pay attention to.
23 One is that the Court action on which Mr. Bennett relies was
24 the discharge of the debt. It wasn't what happened inside
25 the plan process. It was the actual discharge, which

1 couldn't be accomplished without court intervention. The
2 second thing that was critical to Justice Cardozo's thinking
3 and, according to Mr. Bennett, ultimately adopted by the
4 Bekins court, which was this concept of consent. Well,
5 Justice Cardozo characterized it as a waiver of a privilege,
6 right, but here what controls how the state exercises the
7 waiver of the privilege? Well, obviously that has to be a
8 question of state law. It can't be transformed into a
9 question of federal law. And what is the state law that
10 controls the exercise of the waiver of the privilege? Well,
11 it's this Michigan state Constitution. So if the Michigan
12 state Constitution is the bedrock on which the waiver takes
13 place and the Michigan Constitution says, according to the
14 Seitz case and according to the Musselman case, no act can be
15 taken that results in a diminishment of pensions, not affects
16 the value of those pensions but actually diminishes the
17 amount of those pensions, then the state actors cannot do
18 anything in that regard. And I would further answer the
19 question your Honor asked earlier, was if the Michigan
20 Constitution is a proscription on the behavior designed to
21 undercut the Constitution, does that mean that no city can
22 file a Chapter 9? Well, obviously ones that don't have
23 pension issues don't even have to ask the question, so 436
24 and the Michigan Constitution are clearly not a bar where
25 there's no desire to impair pensions because they don't have

1 pensions, but if they do have pensions --

2 THE COURT: Well, I'm not sure that's so.

3 MR. MONTGOMERY: Well, as your Honor -- forgive me.

4 THE COURT: I mean my question would be in that
5 case -- I mean you can construct a hypothetical in which the
6 city proposes to impair bonds and the bondholders are saying,
7 "Wait a minute. There's this other asset over here, the
8 pension assets, you know. We have to impair everybody, not
9 just us."

10 MR. MONTGOMERY: I presume your Honor meant pension
11 obligations.

12 THE COURT: Pension, yeah. Thank you.

13 MR. MONTGOMERY: The one difference between the
14 state constitutional provision on impairment of contracts and
15 Article IX, Section 24, is that Article I, Section 8, of the
16 Michigan Constitution speaks of legislation whereas Article
17 IX, Section 24 --

18 THE COURT: And I don't mean to frame this in terms
19 of a constitutional protection for bonds because that's not
20 the point of it. The point of it is that the bondholders
21 could argue that under the Bankruptcy Code, pension holders
22 do have to be impaired, even if the municipality doesn't want
23 to, to achieve fairness in treatment.

24 MR. MONTGOMERY: Well, first, they would have to, of
25 course, start on a class basis because obviously --

1 THE COURT: Right.

2 MR. MONTGOMERY: -- the unfair discrimination starts
3 there, but, secondly, the key issue here for whether or not
4 there is an unfair discrimination is whether or not there are
5 differences in the protections afforded each claim. It is
6 well-established that you can make distinctions between
7 creditors based on the nature of the obligation and that you
8 can make differences in treatment based on the nature of the
9 obligation, so the only question is whether or not it's
10 unfair, and how could it be unfair to let the pension rights
11 of the City of Detroit retirees pass through a Chapter 9 case
12 if the Michigan Constitution says it's unconstitutional to
13 try to impair them?

14 THE COURT: The bondholders say protected by
15 Constitution or not, in bankruptcy they are unsecured claims.

16 MR. MONTGOMERY: Right. And so if, your Honor, the
17 only possibility of dealing with a pension obligation is that
18 it has to be done in a Chapter 9 and it is unconstitutional
19 for the actor, the state actors to ask for Chapter 9, I think
20 you're blocked. You can't ask for the Chapter 9 position.
21 And we find nothing inconsistent with that roadblock because
22 the people of Michigan retain the right and the ability to
23 change the law if they wish to give their municipalities
24 greater access to Chapter 9. If, in fact, Article IX,
25 Section 24, is a roadblock -- and we assert it is a

1 roadblock -- the people of Michigan, not the federal
2 government, but the people of Michigan retain the right to
3 make that change.

4 THE COURT: One more minute.

5 MR. MONTGOMERY: Yes, sir.

6 THE COURT: Ripeness. I would simply commend your
7 attention to U.S. Postal Service v. National Association of
8 Letter Carriers, which your Honor no doubt has read and which
9 ripeness focuses on the timing of the action rather than the
10 party that brings the action, and the key question there for
11 the Court was whether or not there was a reasonable threat of
12 liability if compliance with the arbitration order violated
13 the CSRA, which was the relevant statute, and we say the
14 analogy to that is whether or not there's a reasonable threat
15 of harm to the pensioners as a result of the city's action.

16 THE COURT: Um-hmm.

17 MR. MONTGOMERY: And I think that's -- at least we
18 would offer to your Court that is a difficult thing to
19 dispute. And I think that exhausts my ten minutes, your
20 Honor.

21 THE COURT: Thank you.

22 MR. SCHNEIDER: Your Honor, Matthew Schneider, chief
23 legal counsel, Michigan Department of Attorney General, on
24 behalf of the state. Your Honor, I'd only like to discuss
25 two topics here. One is home rule and then, secondly, the

1 referendum issues regarding PA 436.

2 So if we start with the home rule argument, if we
3 look at Article VII, Section 22, just setting aside the text,
4 we have to look at the text and ask what does this do. What
5 does this provision of the Constitution do? It gives local
6 citizens the power to adopt their own governing structure and
7 ordinances. And what it allows citizens to do is gives them
8 a City Council. The City Council can adopt ordinances and
9 resolutions. And the citizens have a right to that power.

10 In this case, what did the citizens do with that
11 power? Look at Detroit City Charter, Section 1-102. They
12 enacted as part of that charter a provision that reads,
13 quote, "The City has the comprehensive home rule power
14 conferred upon it by the Michigan Constitution, subject only
15 to the limitations on the exercise of that power contained in
16 the Constitution or this Charter or imposed by statute." So
17 the charter itself states that the home rule power is limited
18 to what is imposed by statute.

19 But even if it didn't say that, if the charter
20 didn't say that, we know that when the citizens of Detroit go
21 to the ballot box and they elect their City Council members,
22 those same members, those same citizens, have an opportunity
23 to vote for their state senator and their state
24 representative and their governor, and those representatives
25 in Lansing, who the city has an ability to vote for, pass

1 laws that govern those city residents as well. Those
2 representatives passed PA 436.

3 This cannot possibly violate the home rule concept.
4 Let's look at what those representatives did. They passed
5 the Home Rule City's Act, MCL 117.36. Quote, "No provision
6 of any city charter shall conflict with or contravene the
7 provisions of any general law of the state," unquote.

8 And we have to look at this through another third
9 and final prism. In 1963 the residents of this city had an
10 opportunity to vote another time, and they voted to ratify
11 the state Constitution. Article VII, Section 22, contains a
12 very important line that now binds those city residents. A
13 city, quote, "shall have the power to adopt resolutions and
14 ordinances related to its municipal concerns, property and
15 government, subject to the Constitution and law," unquote.
16 The law is passed by the legislature. In other words, you
17 can only pass local laws that are subject to the Constitution
18 and the laws passed by the legislature, and this is all about
19 representative government. This is how it works in our
20 constitutional republic. The city residents still govern
21 themselves. They voted for the people enacting the city
22 charter. The city residents voted for a legislature that
23 enacted PA 436, and the city residents had a hand in the
24 Michigan Constitution as well.

25 If you look at the legal priority here, we know, as

1 I've stated, that the acts of the legislature can take
2 priority over local acts. The Michigan Supreme Court in Mack
3 v. City of Detroit, 467 Mich. 186, a 2002 case, explained
4 this. There was a Detroit city charter provision that
5 created a private cause of action for discrimination. A city
6 police officer brought a discrimination suit under the
7 charter, but in this case the legislature had already passed
8 a governmental immunity statute that prevented these actions
9 against the city. And the Michigan Supreme Court held that
10 the charter provision conflicted with the law as passed by
11 the legislature, and so the legislation took priority over
12 the charter.

13 PA 436 is not a local act. It can be applied to any
14 other city, and we can see in the newspapers today about the
15 issue of PA 436 being raised in other cities or
16 municipalities. So there's a much larger point here, your
17 Honor. The objectors, I think, are incorrect in the overall
18 approach to the home rule argument. They're arguing that PA
19 436 trumps home rule and ignores the will of the voters and
20 that the legislature somehow just wanted to overrule the
21 citizens of Detroit, but we have to look at PA 436 and know
22 that there were incredibly compelling reasons for PA 436.
23 The point of that, as spelled out in the Act, was to help
24 distressed cities and school districts. The evidence showed
25 that this was a problem that was not going away. It was true

1 before PA 4, after PA 4, before PA 436, and after it. And
2 the language of PA 436 shows that the legislature wanted to
3 fix it, but it also responded to the voters' rejection of PA
4 436. If we look at the governor's testimony in his
5 deposition, he indicates as such.

6 THE COURT: Well, but the fact that there may have
7 been compelling reasons for 436 wouldn't justify it if it's
8 otherwise unconstitutional, would it?

9 MR. SCHNEIDER: No, but there's no -- it's not
10 unconstitutional. That's my point.

11 THE COURT: I'm just wondering why you're arguing
12 that it was compelling. What's the point?

13 MR. SCHNEIDER: It's a point because -- just to say,
14 your Honor, there's a much larger point here, and the point
15 is is this wasn't done arbitrarily. This was done for a very
16 specific purpose.

17 Secondly, your Honor, I want to respond to the issue
18 regarding the right to referendum. I believe Assistant
19 Attorney General Margaret Nelson explained this quite
20 adequately yesterday, but I do want to address the fact that,
21 you know, there's been argument raised here that there were
22 documents produced in discovery that lawyers at Jones Day
23 discussed how PA 436 would be, you know, going around the
24 referendum power. Well, neither of these people were members
25 of the legislature. If we look at the governor's position

1 itself, the state has produced discovery in this case
2 explaining the governor's position, and it was not to go
3 around the legislature. The governor had directed -- I
4 believe it was Dick Posthumus, the former lieutenant
5 governor, and his legislative director, how are we going to
6 craft -- how would PA 436 be crafted? It would be crafted
7 not to ignore the will of the voters. It would be crafted in
8 order to make sure that different changes were made to make
9 it better. And, you know, as to --

10 THE COURT: But how does anyone know whether the
11 changes that 436 incorporated over the rejected law, PA 4,
12 responded to the will of the voters or not? How does anyone
13 know that?

14 MR. SCHNEIDER: Well --

15 THE COURT: I mean all we know is PA 436 was
16 repeal -- PA 4 was repealed.

17 MR. SCHNEIDER: Folks aren't blind, I think, to the
18 media coverage as well. When an act is --

19 THE COURT: Rely on media coverage?

20 MR. SCHNEIDER: Well, they have constituents. Laws
21 are passed only through the regular process of legislators
22 responding to their constituents, and that is the will of the
23 voters. And when the governor wants a new structure, PA 436,
24 or the members of the legislature want that, their
25 constituents will go to the media as well or will speak

1 directly to them, so it was in direct response to fixing the
2 problems that the will of the voters pointed out.

3 If you have any other questions on these topics, I'd
4 be happy to answer them or I could defer to Mr. Bennett on
5 the other issues.

6 THE COURT: Thank you, sir.

7 MR. SCHNEIDER: Thank you.

8 MR. BENNETT: Good afternoon, your Honor. Bruce
9 Bennett of Jones Day on behalf of the city. I got a little
10 bit of an organizational challenge here. One comment with
11 respect to the last point concerning the right of referendum,
12 if the defect in 436 is that there was a right -- there
13 should have been a right to referendum anyway,
14 notwithstanding what the statute says, well, I suppose the
15 remedy is for someone to try to mount a referendum, not to
16 wait till you come to a Bankruptcy Court and ask the
17 Bankruptcy Court to decide there should have been a
18 referendum. If there had been a referendum, it would have
19 been rejected, and, therefore, we're going to hold it
20 unconstitutional. It seems that there's a whole -- there's a
21 few steps that are being skipped in the relief that's been
22 requested of you here.

23 There's a number of topics, and I can only refer to
24 the other Mr. Bennett to cover all the different questions,
25 so I'm going to try to organize it, but if it falls apart a

1 little bit, I apologize.

2 First, there was an appeal to the other California
3 cases, which has to refer to Vallejo, where, of course,
4 pension claims were not impaired, debt claims were impaired,
5 in what was a largely consensual plan. I think I said in
6 another appearance before this Court that today Vallejo may
7 well be in trouble again and perhaps because it did not get
8 enough relief from its debt generally, but that's not the
9 reason I refer to it this time because I think you can't
10 refer to Vallejo without referring to Central Falls in Rhode
11 Island. And in Central Falls in Rhode Island, what happened
12 was was that the pension claims, pension and benefit claims,
13 took haircuts and the debt did not, again, a consensual
14 outcome.

15 If the economics were a little different, perhaps we
16 could have a consensual outcome one way or another in
17 Detroit's case, but I'm pretty sure that the bondholders, who
18 I think are listening on the phone and not here today, would
19 say that they are not in a position and would not consent to
20 allowing pension claims in this case to be unimpaired, and
21 I've certainly heard the various representatives of those
22 holding pension and other retiree benefit claims here and
23 indicating that they're not in a position or willing to let
24 bondholders leave unimpaired. And it may well be that this
25 is the first case where irrespective of consent from one side

1 or another, we could not achieve that result, so I think
2 the -- that a consensual outcome could come out differently
3 and could come out with only part of a capital structure
4 being impaired unfortunately says nothing about the
5 controversy we have today.

6 The second point I want to cover is the point about
7 the discharge language in Bankruptcy Code Section 944. It's,
8 of course, important whenever reading a provision in a
9 statute to figure out where it is in the statute, and the
10 provision relating to discharge is in the effect of a
11 confirmation order. And the line is that the discharge
12 applies -- excuse me -- the debtor is not discharged --
13 there's a broader discharge provision that comes ahead --
14 from any debt exempted from discharge by the plan or order
15 confirming the plan. This is not a claim that has some
16 inherent nondischargeability. This is a reference to a plan
17 exempting from the provision before it, and I suppose that
18 what this is intended to do is to say that obligations as
19 modified will continue if the plan or the order confirming
20 the plan says so. Otherwise, if you go up and look at the
21 discharge, it covers all claims, period, and so I think this
22 is a provision that makes a plan that partially and does not
23 fully discharge claims work, and I think that's all it is.
24 It's not a recognition --

25 THE COURT: Well, but what Mr. Gordon argues, if I

1 understand it correctly, is that this provision of the Code
2 allows a municipal debtor to waive the discharge of the
3 claims of a class, and, therefore, this city can pursue a
4 Chapter 9 case that addresses all of the debt other than the
5 pension debt which can't be pursued or at least impaired
6 because of the Michigan Constitution.

7 MR. BENNETT: Well, once again, this provision is
8 one section in a Bankruptcy Code that contains lots of other
9 sections, and a couple of them were touched upon by your
10 Honor and other people addressing you just a few minutes ago.

11 First, there was a discussion about whether it
12 creates a priority or not. I don't think that's terribly
13 relevant. The issue that the Bankruptcy Code sets up is that
14 it has a distribution scheme imbedded in it. The
15 distribution scheme in some places is given effect through a
16 combination of a declaration that a particular claim has
17 priority and then a treatment requirement that you would find
18 in 1129. In others there's no explicit priority, but there's
19 a treatment -- there's a treatment requirement in 1129, and
20 that treatment requirement works two ways, and I think this
21 came out in the discussion. One, there's the ranking, which
22 is basically what 1129(b) does between secured claims,
23 unsecured claims, subordinated claims, and not in Chapter 9
24 equity. But it also has the nondiscrimination provisions,
25 and I actually think that counsel for the retiree committee

1 slightly misspoke when he said, well, nondiscrimination,
2 that's an issue between classes, and it is, but within
3 classes there's actually a stronger nondiscrimination
4 provision. The treatment within a class has to be the same.
5 Between classes the rule is unreasonable discrimination. And
6 so the discharge -- the provision in 944, the ability to have
7 an exception in the confirmation order from discharging all
8 claims that existed on the petition date and leaving some
9 around to some extent, I don't think is a license to confirm
10 a plan that doesn't meet with the requirements of 1129, both
11 the priority -- what I called priority, but the
12 distributional entitlement requirements and the creditor
13 justice requirements, whether they are unlawful
14 discrimination or same treatment within a class. And so you
15 get to the point where your Honor was, I think, which is that
16 these claims are --

17 THE COURT: Well, but Mr. Morris pointed out
18 astutely that Chapter 9 itself prohibits -- or I should say
19 requires that a plan be fair and equitable. Yes?

20 MR. BENNETT: It has a different meaning than the
21 provision in the Chapter 11 --

22 THE COURT: Right.

23 MR. BENNETT: -- for -- yes.

24 THE COURT: Right.

25 MR. BENNETT: But he referred to best interest, but,

1 yes, it has a fair and equitable provision.

2 THE COURT: So he argues how can a provision that
3 impairs pensions be fair and equitable in the face of the
4 constitutional protection of them?

5 MR. BENNETT: I think you go back to the -- again,
6 what came up when we were last here, which is that you can
7 say as a constitutional matter these cannot be impaired for
8 one -- by the municipality, but the reality is at the end of
9 the day there isn't enough money. And when the reality is
10 there isn't enough money to pay them, then if you went
11 through all and exhausted all of the nonbankruptcy procedures
12 for enforcing a debt, where would you be? That is the --
13 that is essentially the best interest benchmark. And we've
14 got a lot of law on this. Bekins, which was referenced, is
15 one of them. The fact pattern that you see in cases
16 involving very distressed municipalities in the cases, which
17 a lot of them are from the depression era, of course, is
18 situations where the municipality, notwithstanding an
19 obligation to raise taxes, just can't collect any more money
20 no matter what it does. Sadly, that fact situation, albeit
21 with more modern features, presents itself in Detroit. And I
22 think it would be what the city will have to prove, open
23 paren, one, in the event it does not achieve a consensual
24 plan, which it still hopes to and that the -- that it is
25 object -- the plan is objected to by relevant constituents

1 representing retirees, the city will ultimately have to prove
2 that the distributions on account of underfunding claims
3 offered by the plan are better than the contributions that
4 could be achieved if there wasn't a Chapter 9 case and if the
5 creditors were free to pursue their remedies, all creditors
6 were free to pursue their remedies, and if the residents
7 reacted as we can predict residents would react because they
8 have been doing so for the past several decades. And if the
9 city -- if the retiree -- committees represented by the
10 retiree groups are able to prove that the environment for
11 them outside of Chapter 9 is better than the results we are
12 able to achieve in this Chapter 9 case, they may get a chance
13 to prove to themselves whether they were right or wrong
14 because that's where we'll be. We'll be in a dismissed case.
15 There will be lots of unsatisfied bond debt. There will be
16 lots of unsatisfied pension debt. There will be lots of
17 unsatisfied OPEB debt, and we'll see how it turns out. I
18 think that will not be a good outcome.

19 So this kind of brings me back to how the system
20 works, and I think, frankly, why don't I start with really
21 Justice Cardozo's reasoning? And first I wanted to spend a
22 minute to take away some of the mystery that seems to be
23 surrounding who was where in 1936 and 1938. It was mentioned
24 that Judge Cardozo for some reason didn't participate in the
25 decision in Bekins. Unfortunately, that's because Justice

1 Cardozo had a heart attack at the end of 1937, a stroke at
2 the beginning of 1938, and he died in early July 1938, about
3 ten weeks after the decision in Bekins. The reality was is
4 Justice Cardozo was too sick to participate. His opinion was
5 joined by, quote, the chief justice, Justices Brandeis and
6 Justice Stone -- excuse me -- Justices Brandeis and Stone. I
7 actually didn't know when we were here last for certain that
8 the chief justice at the time of the dissent was the same
9 Chief Justice Hughes who wrote the opinion in Bekins. It
10 turns out he was. I was able to verify that during the
11 break. And I think I offer what Justice Cardozo had to say
12 because its logic is irrefutable. By the way, its reasoning
13 wasn't assailed by any of the retiree representatives. It's
14 joined by a very distinguished group of justices, and all of
15 them except for Cardozo participated in the ultimate reversal
16 of Ashton in Bekins. The opinion, of course, was written by
17 Hughes, who joined the dissent, and I think, therefore, it's
18 an excellent aid to interpretation.

19 I admitted last time that Bekins is a little hard to
20 interpret because it's dealing actually with three specific
21 constitutional challenges. It spends most of its column
22 inches on the Article X problem. It spends exactly one
23 column inch on the Fifth Amendment problem and really only
24 talks about the commerce clause problem because the
25 legislative history that it quotes for the changes made

1 between Ashton and Bekins touches on the commerce clause
2 issue, and the Court basically is agreeing with the treatment
3 that accompanied it -- accompanied the statute in the
4 legislative history.

5 It turns out that Cardozo didn't write on a clean
6 slate. He cited a case, Imperial Irrigation District, 10
7 Fed. Supp. 832, which is probably where he borrowed the
8 concept, and I quote from that case, "The impairment of
9 contracts is brought about by the national law, and not by
10 the state measure, and local consent similar in effect to
11 that sanctioned by the California statute." The judge in
12 that case -- so it's obviously a district judge -- it's not
13 even an appellate judge -- is dealing with the same problem
14 that you would have if you tried to ground the
15 constitutionality of the Bankruptcy Court -- Bankruptcy Code
16 as against the contracts clause on anything other than the
17 reality that it is the federal power that is impairing
18 contracts. You wind up with a situation that you have
19 basically destroyed Chapter 9 and maybe parts of Chapter 11
20 as an avenue for impairing contracts in many circumstances,
21 not just pensions.

22 In short, you've proven too much. You've proven
23 that contracts clauses in every state -- and I said last time
24 I think there's a contracts clause in every state
25 Constitution, but I could be off by one or two -- that would

1 prevent the impairment of bonds. That would prevent the
2 impairment of trade claims. In fact, you would have
3 effectively preempted all impairments, and Chapter 9 would be
4 completely a dead letter. And so we have to look for other
5 interpretations or we should be looking very hard for other
6 interpretations, and we don't have to look very far. And as
7 I said before, I think while Bekins says -- crunches it into
8 a couple of sentences, Justice Cardozo's reasoning joined by
9 Hughes, Stone, and Brandeis explains to us why,
10 notwithstanding the federal contracts clause, notwithstanding
11 state contracts -- state Constitution contracts clauses, and
12 notwithstanding the pension clause, we still have an
13 effective bankruptcy power to implement debt restructurings
14 and debt impairments in cases where there are necessary --
15 where they are necessary. Nothing about eligibility is
16 dealing with the question that your Honor sensibly asked,
17 which is, "Don't you have to show that a plan is in the best
18 interest of creditors?" Clearly we do. Is there anybody
19 going to use Chapter 9 as a method for impairing contracts if
20 they're not in financial extremis? No, they should not, and,
21 no, they will not. It is in those circumstances where the
22 federal government comes to the aid of states and
23 municipalities that can't on their own restructure their
24 financial affairs.

25 And by the way, a nice corollary of looking at it

1 this way is that it dovetails precisely with one of your
2 Honor's observations, which is the last word -- I think it's
3 the last word of the relevant sentence of the pensions
4 clause, the words "thereby," which relate back to the state,
5 relate back to the municipality, but don't say that they
6 can't be impaired by anybody, just says the pension --
7 accrued pension benefits cannot be diminished or impaired
8 thereby, "thereby" being the state and the municipality. So
9 adopting the language and approach in the California case
10 just cited, in the Cardozo dissent joined by the other
11 justices, and in Bekins itself, albeit not quite as
12 precisely, you wind up with federal law that happens to fit
13 nicely with the actual language of the state law with a
14 bankruptcy system that does still work and has not been
15 crippled and made unable to deal with every financial --
16 every municipality in financial distress and a Bankruptcy
17 Code that is constitutional, as Bekins said it was.

18 I don't think I have many more points. First, I
19 wanted to make clear -- someone mentioned that the city had
20 not in oral argument taken positions on certain points
21 relating to PA 436. We've been relying and join in the
22 arguments of the attorney general. I think I dealt with
23 that. Oh, there was an assertion that the 1963 bankruptcy
24 law was somehow different than the fact that throughout --
25 beginning in the '30s but all the way through '61, '63, all

1 the way up until the Bankruptcy Code made specific
2 authorization unnecessary for awhile, Michigan authorized all
3 of its municipalities to resort to the composition law. This
4 1963 law still had impairment of contracts as one of its
5 central elements. In fact, if you look at Bekins, which
6 stands, of course, for many things, Bekins is a case where
7 it's a 60-percent -- it's a 60-cent distribution on account
8 of debt, and it was a mercifully simple case. There was one
9 class, so we didn't have to deal with discrimination and all
10 those other things. But Bekins is a debt impairment case.
11 It turned out to be that 86 percent of the creditors by
12 amount approved it, and it's the 14 percent who are
13 complaining. And so it really isn't fair to say that the
14 bankruptcy laws as they apply to municipalities were vastly
15 different than the laws that -- the laws that are here now.
16 They're probably a little bit more advanced in certain
17 respects, informed by the New York experience, but the idea
18 that contracts between a municipality or obligations of a
19 municipality because very often they're not just in the form
20 of contracts, they're in the form of ordinances, and its
21 creditors can be -- could be -- could have been in 1963 and
22 in 1961 impaired as a matter of federal bankruptcy law. It's
23 the absence of any mention at all of this issue or problem
24 anywhere in -- specifically in the pensions clause itself,
25 but also in the convention history leads to the conclusion

1 that people weren't thinking or it's hard to find any
2 evidence that anyone was thinking that anything that happened
3 in the structuring of the pensions clause was intended to
4 take Chapter 9 relief away from a municipality, period, in
5 any circumstances. And we think, again, that even if it did
6 or tried to -- and I think this is important -- even if it
7 did or tried to, the Justice Cardozo, Hughes, Stone, and
8 Brandeis reasoning would say it doesn't matter, that at the
9 end of the day, the -- unless there's an explicit direction
10 not to file Chapter 9, the state can only protect pension
11 claims so much. They can't protect them ultimately from
12 federal power.

13 I think those are all the points I need to cover.
14 If your Honor has any questions that I could answer --

15 THE COURT: No. Thank you.

16 MR. BENNETT: Thank you.

17 THE COURT: All right. Ladies and gentlemen, I
18 promised you one deliverable at the conclusion of these
19 arguments, which was a decision on whether or not there are
20 any genuine issues of material fact that should be addressed
21 at the upcoming trial relating to these issues which I had
22 preliminarily determined were strictly legal issues. I'm
23 going to take ten more minutes to just think about that. I
24 think there might actually be one. So we'll reconvene at
25 2:45. In the meantime, I want to remind you, please, that

1 when you are in the hallway, you must remain absolutely
2 silent, no talking in the halls. If you want to talk, you
3 can talk in here or down on the first floor.

4 One other housekeeping matter, which, again, I want
5 to bring up just in case I forget later. It was requested of
6 the Court permission to have in the courtroom a transcriber
7 to provide -- I guess it's called realtime transcripts, and
8 that's fine with the Court so long as we all understand that
9 that transcript is not the official transcript of the court
10 and may not be used in lieu of what would otherwise be
11 required to be used, the official transcript. So 2:45 we'll
12 reconvene.

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

14 (Recess at 2:34 p.m., until 2:46 p.m.)

15 THE CLERK: Court is in session. Please be seated.
16 Recalling Case Number 13-53846, City of Detroit, Michigan.

17 THE COURT: Counsel are present. I want to
18 emphasize again what I think I stated the other day, that the
19 Court certainly will take into account in deciding these
20 issues which I have preliminarily determined are legal issues
21 any facts that come out in the trial that bear upon them.
22 Having said that, though, there is one issue of fact that
23 needs to be identified because the parties do disagree about
24 it, and it might have a bearing on one of these legal issues,
25 and that specific factual issue is what was the purpose of

1 adding the spending provision to PA 436.

2 Anything further for today? All right. We will
3 begin our trial at nine o'clock Wednesday morning in this
4 room. Oh, I urge you to get here early because the security
5 lines are longer at that hour in the morning than they are at
6 the times we've been starting.

7 THE CLERK: All rise. Court is adjourned.

8 (Proceedings concluded at 2:48 p.m.)

INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

October 23, 2013

Lois Garrett

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. October 23, 2013
Debtor. . 9:00 a.m.
.

HEARING RE. ELIGIBILITY TRIAL
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day
By: BRUCE BENNETT
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2452
(213) 243-2382

Jones Day
By: GEOFFREY S. IRWIN
GEOFFREY S. STEWART
MIGUEL F. EATON
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3768

Pepper Hamilton, LLP
By: ROBERT S. HERTZBERG
4000 Town Center, Suite 1800
Southfield, MI 48075-1505
(248) 359-7333

For the State of Michigan: State of Michigan
Michigan Department of Attorney General
By: MATTHEW SCHNEIDER
P.O. Box 30754
Lansing, MI 48909
(517) 241-8403

Dickinson Wright, PLLC
By: STEVEN G. HOWELL
500 Woodward Avenue, Suite 4000
Detroit, MI 48226-3425
(313) 223-3033

APPEARANCES (continued):

For AFSCME,
AFL-CIO, and Sub-
Chapter 98, City
of Detroit
Retirees:

Lowenstein Sandler, LLP
By: SHARON L. LEVINE
JOHN K. SHERWOOD
65 Livingston Avenue
Roseland, NJ 07068
(973) 597-2374

For Detroit
Retirement Systems-
General Retirement
System of Detroit,
Police and Fire
Retirement System
of the City of
Detroit:

Clark Hill, PLC
By: ROBERT D. GORDON
JENNIFER K. GREEN
151 South Old Woodward, Suite 200
Birmingham, MI 48009
(248) 988-5882

Clark Hill, PLC
By: RONALD A. KING
212 East Grand River Avenue
Lansing, MI 48096
(517) 318-3015

For the Detroit
Fire Fighters
Association, the
Detroit Police
Officers Associa-
tion and the
Detroit Police
Lieutenants &
Sergeants
Association:

Erman, Teicher, Miller, Zucker &
Freedman, P.C.
By: BARBARA A. PATEK
JULIE BETH TEICHER
DAVID EISENBERG
400 Galleria Officentre, Suite 444
Southfield, MI 48034
(248) 827-4100

For the Inter-
national Union,
UAW:

Cohen, Weiss & Simon, LLP
By: BABETTE A. CECCOTTI
PETER D. DECHIARA
THOMAS N. CIANTRA
330 West 42nd Street, 25th Floor
New York, NY 10036-6976
(212) 356-0227

APPEARANCES (continued):

For Detroit Silverman & Morris, PLLC
Retired City By: THOMAS R. MORRIS
Employees 30500 Northwestern Highway, Suite 200
Association, Farmington Hills, MI 48334
Retired Detroit (248) 539-1330
Police and Fire

Fighters Associa- Lippitt O'Keefe, PLLC
tion, Shirley V. By: RYAN C. PLECHA
Lightsey, and 370 East Maple Road, Fl. 3
Donald Taylor: Birmingham, MI 48009
(248) 646-8292

For the Official Dentons
Committee of By: CLAUDE D. MONTGOMERY
Retirees: ANTHONY B. ULLMAN
ARTHUR H. RUEGGER
1121 Avenue of the Americas
New York, NY 10020-1089
(212) 632-8390

Brooks, Wilkins, Sharkey & Turco, PLLC
By: MATTHEW E. WILKINS
401 South Old Woodward, Suite 400
Birmingham, MI 48009
(248) 971-1711

For Retired Strobl & Sharp, PC
Detroit Police By: LYNN M. BRIMER
Members MEREDITH E. TAUNT
Association: MALLORY A. FIELD
300 East Long Lake Road, Suite 200
Bloomfield Hills, MI 48304-2376
(248) 540-2300

For the Flowers Law Offices of William A. Wertheimer
Plaintiffs: By: WILLIAM WERTHEIMER
30515 Timberbrook Lane
Bingham Farms, MI 48025
(248) 644-9200

For Ambac Schafer and Weiner, PLLC
Assurance Corp.: By: DANIEL J. WEINER
40950 Woodward Avenue, Suite 100
Bloomfield Hills, MI 48304
(248) 540-3340

Court Recorder: Letrice Calloway
United States Bankruptcy Court
211 West Fort Street
21st Floor
Detroit, MI 48226-3211
(313) 234-0068

Transcribed By: Lois Garrett
1290 West Barnes Road
Leslie, MI 49251
(517) 676-5092

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

1 THE CLERK: Court is in session. Please be seated.
2 Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: Good morning. Excuse me. We have an
4 attorney to admit to the Bar of the Court, Miguel Eaton.

5 MR. EATON: Good morning, your Honor.

6 THE COURT: Are you Mr. Eaton?

7 MR. EATON: Yes, sir.

8 THE COURT: Okay. Are you prepared to take the oath
9 of admission to the Bar of the Court?

10 MR. EATON: Yes, your Honor.

11 THE COURT: Please raise your right hand. Do you
12 affirm that you will conduct yourself as an attorney and
13 counselor of the Court with integrity and respect for the
14 law; that you have read and will abide by the civility
15 principles approved by the Court; and that you will support
16 and defend the Constitution and laws of the United States?

17 MR. EATON: I will.

18 THE COURT: Welcome, sir.

19 MR. EATON: Thank you, your Honor.

20 THE COURT: We will take care of your paperwork for
21 you. And we should go ahead and have appearances entered,
22 please.

23 MR. IRWIN: Good morning, your Honor. Geoff Irwin
24 from Jones Day on behalf of the city.

25 MR. STEWART: Geoffrey Stewart, Jones Day, also on

1 behalf of the city, your Honor.

2 MS. LEVINE: Good morning, your Honor. Sharon
3 Levine, and if I could introduce to the Court my partner,
4 Jack Sherwood, Lowenstein Sandler, for AFSCME. Thank you.

5 THE COURT: Welcome, sir.

6 MR. MONTGOMERY: Good morning, your Honor. Claude
7 Montgomery, Dentons US, for the retiree committee, and with
8 me in the courtroom today with possible speaking roles are
9 Anthony Ullman, partner in Dentons, and Arthur Ruegger back
10 there. Thank you, your Honor.

11 MR. SCHNEIDER: Good morning, your Honor. Matthew
12 Schneider, chief legal counsel, Michigan Department of
13 Attorney General, on behalf of the State of Michigan, and
14 with me is Steven Howell, special assistant attorney general.

15 MS. CECCOTTI: Good morning, your Honor. Babette
16 Ceccotti, Cohen, Weiss & Simon, LLP, for the UAW. I would
17 also like to introduce my partners, Tom Ciantra sitting here
18 at counsel table, Peter DeChiara over in the corner, both of
19 whom you will see predominantly at the trial.

20 THE COURT: Thank you.

21 MR. WERTHEIMER: William Wertheimer, your Honor, on
22 behalf of the Flowers plaintiffs.

23 MS. GREEN: Good morning. Jennifer Green on behalf
24 of the General and Police and Fire Retirement Systems, and I
25 have with me my colleagues Ron King and Bob Gordon.

1 THE COURT: I'm sorry.

2 MS. GREEN: Ronald King and Bob Gordon.

3 THE COURT: Mr. King. Okay.

4 MR. MORRIS: Good morning, your Honor. Thomas
5 Morris of Silverman & Morris on behalf of the Retiree
6 Association parties. Also here representing those parties is
7 Ryan Plecha of Lippitt O'Keefe.

8 MS. PATEK: Good morning, your Honor. Barbara Patek
9 of Erman, Teicher, Miller, Zucker & Friedman on behalf of the
10 Detroit Public Safety Unions, and with me this morning are
11 Julie Teicher and David Eisenberg.

12 MS. BRIMER: Good morning, your Honor. Lynn M.
13 Brimer appearing on behalf of the Retired Detroit Police
14 Officers Association. Also with me this morning as trial
15 counsel are Meredith Taunt and Mallory Field from the firm
16 Strobl & Sharp, PC.

17 THE COURT: Thank you.

18 MR. BENNETT: Bruce Bennett of Jones Day on behalf
19 of the city, your Honor.

20 THE COURT: Okay. Then in terms of our order of
21 proceeding this morning, I'd first like to deal with the
22 motion in limine and then the three remaining discovery
23 motions, then the joint final pretrial order, and then we'll
24 begin the trial. Is that order of proceeding okay with
25 everyone? Okay.

1 Actually, first, dealing with the motion in limine,
2 I'm going to waive further oral argument on that and rely on
3 your papers and conclude, as I suggested I might the other
4 day, the Court must conclude that it is challenging, if not
5 difficult, if not impossible, to resolve this motion before
6 trial and before Mr. Moore is actually testifying. Before
7 the Court can determine the admissibility of his proffered
8 testimony, the Court must have before it the questions that
9 the proponent of the witness asks of him, so in the
10 circumstances, I will deny the motion but without prejudice,
11 of course, to the right of any party to object to any of Mr.
12 Moore's testimony on any appropriate ground.

13 So let's turn our attention then to the three
14 discovery motions. Who will argue those?

15 MR. CIANTRA: I will start off, your Honor. Thomas
16 Ciantra, Cohen, Weiss & Simon, for the UAW.

17 THE COURT: Go ahead, sir.

18 MR. CIANTRA: Your Honor, first I want to thank the
19 Court for its indulgence. Obviously we have been under a lot
20 of strain and effort to complete discovery in this matter so
21 that the trial can take place on an expedited basis, and we
22 appreciate the Court's hearing these issues on an expedited
23 basis. I'm not going to go over the papers extensively. The
24 Court has seen the issues and I'm sure has read the papers,
25 but I will make a presentation, and it's going to be divided

1 basically chronologically.

2 The first part I want to discuss are the documents
3 and testimony concerning matters which antedate the retention
4 of Jones Day or the emergency manager's retention, and then
5 the second part of the argument deals with matters that come
6 after that point in time and that are really taken up with
7 our request that the Court revisit the issues that it ruled
8 upon back in September.

9 So let me begin then with the first part, the
10 matters that antedate Jones Day's retention, and the issue
11 has been crystallized by the position that counsel for the
12 city took in the October 15th e-mail that is attached as
13 Exhibit 6(d) to the UAW's motion papers with respect to the
14 city. And what it involves are a series of memoranda that
15 Jones Day prepared in 2012, approximately at least a year
16 before the firm was retained to represent the city in this
17 matter, and these e-mails -- these memoranda are referenced
18 in an e-mail that discusses a meeting between partner Jones
19 Day that had been scheduled with Governor Snyder for June
20 5th, I believe, of 2012, and they're very specific e-mails,
21 your Honor. They are identified there, and they go to
22 obviously issues that are at the heart of UAW and other
23 objectors' issues that they would raise here, the
24 constitutional protection of the retirees' pensions being the
25 most salient. And obviously we are seeking production of

1 those documents as well as anything else that may be being
2 withheld that antedates the retention of Jones Day.

3 Now, the city has sort of taken a selective approach
4 with respect to these types of materials. Obviously Jones
5 Day spent a lot of time and a lot of effort to get itself in
6 a position to impress the state and get hired to represent
7 the city in connection with this case. There's a very
8 detailed pitch book that we have marked as an exhibit that
9 will be discussed throughout this proceeding. They have
10 produced that. They have withheld these e-mails -- these
11 memoranda that are attached to the e-mail. And the principal
12 basis for that decision at this point is the work product
13 doctrine. They have withdrawn attorney-client privilege.
14 They weren't retained by the state at any point. And now
15 they are focusing on work product.

16 And, of course, going back to first principles, the
17 work product doctrine, as it developed, intended to preserve
18 a party's lawyer's work on developing the theories and facts
19 of a case. I mean this is Hickman v. Taylor, the classic
20 example of an attorney who was interviewing witnesses to an
21 accident to assist his client's defense of that case. That's
22 not what's involved here, of course. Jones Day wasn't
23 retained by the state at any point, and they weren't retained
24 by the city in 2012.

25 THE COURT: What do you contend was the relevance or

1 would be the relevance of these memoranda in this eligibility
2 trial?

3 MR. CIANTRA: I think, your Honor, it gets to the
4 central question of what were the motivations and intent of
5 the decision-makers here. We know from discovery -- and it's
6 going to be crystal clear -- that the governor and the state
7 were well-aware of the constitutional protections that apply
8 to retiree pensions. They knew that. They were well-aware
9 of what the position was with respect to the creditor
10 proposal that the emergency manager made in June. The filing
11 was authorized without any conditions. We all know that.
12 These memos we believe will get beyond that, get into the
13 question of the specifics of knowledge, the specifics of the
14 intent of the parties to do that, and that's why we're
15 looking to get them.

16 THE COURT: Okay. Doesn't that statement of
17 relevance prove more conclusively perhaps than the city could
18 even on its own that these memoranda are prepared in
19 anticipation of litigation?

20 MR. CIANTRA: They weren't, your Honor. They were
21 prepared more than a year in advance of any litigation and by
22 a firm that was not representing anyone. These were like the
23 pitch book. They were prepared to market, to develop
24 theories and to market services. All right. There's no case
25 law that they cite that would support the assertion of work

1 product privilege for documents that are prepared in this
2 context. They have selectively produced the pitch book.
3 It's the same type of material. So for them at this point to
4 demand work product protection with respect to this we think
5 is just baseless. I mean this is not a case where maybe a
6 memo is prepared, the client comes in to meet with the
7 attorney and reveals confidences, and those are protected.
8 We all know that. That's basic attorney-client privilege
9 law, but this is not that situation. This is their marketing
10 effort to the state to be retained, and we think it is not
11 entitled to --

12 THE COURT: To be retained for what?

13 MR. CIANTRA: To apparently be retained at some
14 point. Who knows? At that point there was no emergency
15 manager. There obviously was no Chapter 9 case. This is
16 devoid of a litigation context where you could claim work
17 product. They're not representing a party at this point.
18 They're pitching.

19 THE COURT: Well, I'm just struggling with what the
20 relevance of the fact that Jones Day was pitching the
21 governor a year before would be to this eligibility trial if
22 that's all you assert it was.

23 MR. CIANTRA: Well, we know that. We know that they
24 were pitching that. That's clear. They've admitted that.
25 What's relevant is --

1 THE COURT: My question is relevance.

2 MR. CIANTRA: Well, what's relevant is potentially
3 the content of the documents, which, of course, we haven't
4 seen. That we think --

5 THE COURT: To prove what, though?

6 MR. CIANTRA: To prove what these people knew and
7 what they were intending to do.

8 THE COURT: Regarding what, though?

9 MR. CIANTRA: We think it would be relevant to
10 assess the conduct that we know occurred in 2013.

11 THE COURT: Which was to file this Chapter 9 case?

12 MR. CIANTRA: Which was to authorize the filing in
13 the face of the constitutional protections for the pension
14 benefits.

15 THE COURT: Okay. But doesn't that establish that
16 these memoranda were in anticipation of litigation?

17 MR. CIANTRA: It can't, your Honor, because of the
18 simple distance in time. They have not provided any
19 indication that the memoranda were demanded by the state;
20 that there was any retention that existed at that point in
21 time. It's an effort like the pitch book, which is a very
22 detailed document, to get work. They spent a thousand hours
23 to get work. That's what law firms do, and that's what's
24 involved here.

25 Now, obviously we haven't been able -- we don't have

1 the memos. I have the titles of the memos that are revealed
2 in the e-mail. We don't have them. I can't argue the
3 specific relevance of the content. I would suggest at this
4 point --

5 THE COURT: Do you have any case law that
6 specifically says that pre-retention work by a lawyer cannot
7 be the subject of the work product privilege?

8 MR. CIANTRA: Well, your Honor, to be honest with
9 you, I have -- we have done the research. I haven't been
10 able to find a case that has recognized work product in this
11 instance. The text of the rule talks about --

12 THE COURT: But you haven't found any that
13 specifically denies it either, huh?

14 MR. CIANTRA: No, but the --

15 THE COURT: Okay.

16 MR. CIANTRA: But the purpose of work product and
17 the wording of Rule 26 contemplates a representation. It
18 contemplates that the lawyer is working for a client
19 developing facts, developing theories. It does not
20 contemplate a relationship between parties who never
21 consummated an attorney-client relationship. Remember, of
22 course, Jones Day is not working for the State of Michigan
23 here. That's who these discussions were with. It wasn't
24 with the City of Detroit. It was with the State of Michigan.
25 But as I said, your Honor, you know, we haven't had access to

1 the memos. I would suggest --

2 THE COURT: We know, don't we, that as a matter of
3 law the attorney-client privilege can extend to pre-retention
4 discussions; isn't that right?

5 MR. CIANTRA: Well, of course. It can extend if the
6 client -- if the prospective client reveals confidences, but
7 that's not what's involved here. They're not claiming to
8 shield the confidences of the State of Michigan.

9 THE COURT: No. My question went to the next
10 question. If the attorney-client privilege can extend pre-
11 retention, why not the work product doctrine, too, if it
12 would -- if it's otherwise in anticipation of litigation?

13 MR. CIANTRA: Well, I think if there were notes of a
14 meeting that took place where client confidences would be
15 revealed, that would be -- that would be privileged, but I
16 don't believe --

17 THE COURT: That's not what we're talking about.

18 MR. CIANTRA: That's not what we're talking about,
19 at least -- I mean I haven't seen the memos, so I --

20 THE COURT: Let's boil it down to a simple hypo.
21 Okay. Client calls up attorney and says, "I'm thinking of
22 retaining you to pursue this claim I have against a potential
23 defendant. When I interview you, I want to know what your
24 strategy will be." They have a further conversation about
25 the facts. The attorney prepares a memo. They have their

1 meeting. Client decides to retain that attorney.

2 MR. CIANTRA: Right.

3 THE COURT: Is that memo protected by work product
4 or not?

5 MR. CIANTRA: I don't believe it's protected by work
6 product. I believe parts of it would be protected by
7 attorney-client in terms of the --

8 THE COURT: Okay. But I'm talking about work
9 product. You're talking about work product here.

10 MR. CIANTRA: I am talking about work --

11 THE COURT: Not protected by work product. So the
12 defendant in that case could subpoena that memorandum from
13 that attorney?

14 MR. CIANTRA: Subject to the client confidences that
15 were revealed in it cannot be -- would be attorney-client.
16 We're not challenging --

17 THE COURT: Okay. But otherwise it's disclosable.

18 MR. CIANTRA: Otherwise I think it is.

19 THE COURT: Discoverable.

20 MR. CIANTRA: Yeah. Otherwise I think it is until
21 there's a retention, especially if there's never been a
22 retention, which is the case here. This is something that
23 happened a year before between parties that never had an
24 attorney-client relationship.

25 THE COURT: Um-hmm. Um-hmm.

1 MR. CIANTRA: As I said, your Honor, we haven't
2 looked at the memos. I don't know what's in them. I would
3 suggest and we would request that the Court consider in
4 camera review of the documents and then make a ruling.

5 THE COURT: Is it just these -- I think you said six
6 memoranda that are the subject of this dispute?

7 MR. CIANTRA: At this point, that's what it's boiled
8 down to, your Honor, but we feel that we're entitled to a
9 decision with respect to this that if there's anything else
10 out there that we're not aware of -- and, frankly, your
11 Honor, there's been a lot of documents that have been
12 produced in a very exigent period of time -- we would like
13 the city to produce those.

14 THE COURT: All right. Well, we'll inquire -- we'll
15 inquire about that.

16 MR. CIANTRA: Okay. Now, let me turn to the
17 second -- let me turn to the second point, and this concerns
18 the issue that was litigated back in September, September
19 19th, on the joint --

20 THE COURT: Well, on that one I need you to begin
21 with a response to the city's assertion that this motion is
22 late --

23 MR. CIANTRA: It is --

24 THE COURT: -- untimely.

25 MR. CIANTRA: It is late, your Honor. It is late.

1 THE COURT: So why should it be considered?

2 MR. CIANTRA: Well, I think it should be considered
3 because of the particular facts and circumstances that are
4 involved here. Back in September as this issue was framed
5 and as the Court ruled, it was rather narrowly focused with
6 respect to the question of authorization. That was the
7 hypothetical that the Court developed to support its
8 reasoning.

9 THE COURT: Right. I recall that.

10 MR. CIANTRA: And what has happened since then --
11 and this, I think, is most clearly brought out in the
12 excerpts from Governor Snyder's deposition that are attached
13 to both of the motions that UAW filed -- is that that common
14 interest has moved and morphed well beyond the issue of
15 authorization that was presented in September to basically
16 every element of -- every material element with respect to
17 the case, the development of the creditors' proposal, the
18 discussion of Article IX, Section 24, and its protections
19 here, consideration to be provided to creditors under the
20 proposed plan, consideration to be provided to the pensioners
21 under the proposed plan. It has just morphed into
22 essentially a cloak with respect to -- and excuse me; it's
23 very dry -- with respect to all of the deliberations
24 involving the emergency manager and the state, and while, you
25 know, we concede the city is correct, there is an attorney-

1 client privilege that they have, the -- it should be
2 construed narrowly in light of the public interest that's
3 involved here. The emergency manager by law is the governing
4 body of the City of Detroit. He has executive and
5 legislative authority rolled into one. His actions obviously
6 affect the 700,000 residents of the city, and people have a
7 right, we submit, to know what his deliberations are, how
8 policy is being formulated, and it shouldn't be cloaked under
9 a very broad and we would submit legally unsupported
10 construction of the attorney-client privilege. Discovery has
11 been curtailed, and it has put us in a position where now we
12 are facing trial, and we have not been able to -- because of
13 the extensive theory of privilege that the state and the city
14 have adhered to, to develop facts fully in deposition and
15 otherwise.

16 We would submit that the assertion of the privilege
17 that the governor has made, as revealed in the deposition
18 transcripts that has been taken throughout the discovery, is
19 extensive beyond what was considered in the Court's September
20 19th ruling, and we would ask the Court to -- respectfully to
21 reconsider it because otherwise we have secrecy. We have
22 public actors here, your Honor. The public has to be able to
23 hold political representatives accountable for their actions.
24 They have to know what policy decisions are being made, and
25 right now this privilege ruling has cloaked that in secrecy.

1 I don't have anything else, your Honor, to state.

2 THE COURT: Thank you.

3 MR. CIANTRA: I don't know if Mr. Wertheimer, who
4 has joined the motions for the Flowers plaintiffs, has
5 anything he would like to add.

6 THE COURT: Okay.

7 MR. CIANTRA: Thank you for your consideration.

8 MR. WERTHEIMER: William Wertheimer, your Honor.
9 First, I would like to join in the UAW's motion vis-v-vis the
10 city. I did formally join on the papers the motion vis-a-vis
11 the state.

12 I just have two points in addition to what Mr.
13 Ciantra just argued. One relates to the Snyder deposition,
14 which I participated in, and kind of what it revealed about
15 the scope of the privilege arguments now being made and how
16 far we are from the day in court where you made it a point of
17 indicating to the state that transparency was necessary here.
18 At the governor's deposition essentially privilege was
19 invoked as to the entire content of weekly meetings that the
20 governor had with the emergency manager for months as to the
21 entire scope of those meetings making it virtually impossible
22 to examine the governor as to any of that. That's point
23 number one.

24 And just one other point, and that is that in the
25 normal case -- well, let me back up. Per the agreement the

1 parties made and given the position of the governor, we
2 agreed to limit our discovery deposition to three hours. In
3 the normal case where privileges are alleged on privilege
4 logs like what we have here, you have an opportunity to go
5 beyond the privilege log and the cursory explanation for why
6 the privilege is being invoked by at deposition asking
7 witnesses questions, detailed questions about the particular
8 meeting at which they're claiming a privilege, you know, what
9 the other subjects were, how long the meeting took, did the
10 lawyer do anything at the meeting, et cetera, as to key
11 documents. We have not had that opportunity here just given
12 the time, and I'm not -- no one is at fault for that. It's
13 going too fast. We had three hours with the governor. We
14 did appropriate examinations. But I think in this
15 circumstance that it would make sense for this Court to
16 examine certain of the documents in camera in order to assure
17 that the Court's desire and everybody's desire for
18 transparency is met. I think this is a special case. I
19 don't think --

20 THE COURT: Are you referring to documents other
21 than these six memoranda attached to the e-mail?

22 MR. WERTHEIMER: I am, your Honor. I'm referring
23 specifically to documents that are in dispute that are in the
24 state's possession.

25 THE COURT: Can you identify them any more

1 particularly for me or the record?

2 MR. WERTHEIMER: We've attempted to identify them to
3 the state by indicating in logs documents that covered a
4 particular -- what we believe to be a key time period was.
5 We've also attempted to limit the request in terms of those
6 in which Mr. Orr and Mr. Snyder were directly involved, but I
7 must admit to the Court it still involves, at least at this
8 point, in terms of our back and forth, a fairly large number
9 of documents that I would respectfully suggest that the best
10 way to proceed -- given the fact that the governor is going
11 to be testifying on Monday at trial, the best way to proceed
12 may be for the Court to get involved in terms of in camera
13 review.

14 THE COURT: And these are documents which you claim
15 were improperly withheld pursuant to the common interest
16 exception?

17 MR. WERTHEIMER: Not just common interest, your
18 Honor, also just documents where they claimed attorney-
19 client. And we're not claiming -- we don't know whether
20 they're improperly withheld I guess is what I'm trying to
21 say. We're claiming that they may be --

22 THE COURT: You're concerned. Okay.

23 MR. WERTHEIMER: -- and that we should not have to
24 rely upon the cursory description of counsel given --

25 THE COURT: Well, but in order for me to accede to

1 your request to look at documents, we have to have identified
2 what documents you want me to look at and what documents you
3 want the city or the governor or the state -- excuse me -- to
4 produce to me.

5 MR. WERTHEIMER: What I'm -- I agree, your Honor,
6 and what I'm suggesting is we did make such an effort on a
7 preliminary basis with the state in trying to resolve it, but
8 I'm acknowledging that that effort would still -- if we stop
9 there, would still leave your Honor with a large number of
10 documents. We could continue that effort. I agree that that
11 would be necessary, but I still think that it calls for in
12 camera review of relevant documents or potentially relevant
13 documents. And we're happy to work with the state to try and
14 limit what that -- what the documents would be.

15 THE COURT: Well, when are you going to do that
16 given that we're in trial all day today, tomorrow, and
17 Friday?

18 MR. WERTHEIMER: Well, if we can't, we can't, and
19 then I would suggest to the Court that the limitation which
20 we did communicate to the state should be the one the state
21 should use -- or that we should use. And as I recall, there
22 were at least two attempts to limit the documents. One
23 related to time; that is, we said we think that the judge
24 should be able to take an in camera look at documents between
25 key players from date A to date B, and I don't have in front

1 of me exactly what those dates were. And, second, we
2 indicated that the documents directly between the governor
3 and the emergency manager over a broader period of time
4 should be subject to in camera review. If there's no time to
5 do anything else, our position would be that the Court should
6 examine those documents in camera.

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

8 MR. WERTHEIMER: Yes, your Honor.

9 THE COURT: While you're sitting down, I would
10 suggest you try to figure out what those dates are. That
11 would be helpful.

12 MR. SCHNEIDER: Your Honor, Matthew Schneider on
13 behalf of the state. Mr. Wertheimer has raised some issues
14 that relate to this and also to the other motion, so in
15 expediency here I can kind of respond to both.

16 THE COURT: Please.

17 MR. SCHNEIDER: The first issue here that Mr.
18 Wertheimer's -- or the UAW and Flowers objectors raised
19 relates to a March 12 e-mail, and the objection was that it
20 should have been produced without redactions. Now, the state
21 disagrees, but we want to resolve this dispute, and we have
22 produced that anyway, so we're not waiving the attorney-
23 client privilege or altering the common interest agreement or
24 anything by doing that, but I wanted to let you know at least
25 one issue has been resolved. Secondly --

1 THE COURT: When you say "has been resolved," you
2 say you have or are willing to turn over the memos?

3 MR. SCHNEIDER: We have. This is related to the
4 March 12 e-mail.

5 THE COURT: March 12 --

6 MR. SCHNEIDER: It's an e-mail from Richard Baird to
7 Kevyn Orr, and this was at issue.

8 THE COURT: -- 2012?

9 MR. SCHNEIDER: 2013.

10 THE COURT: Okay.

11 MR. SCHNEIDER: Okay. Secondly, there's another
12 argument that the state hasn't been specific on its privilege
13 log, and I think that's why this is kind of bleeding
14 together. Again, the state disagrees. We think the logs are
15 sufficient, but we've revised these anyway, and we've -- you
16 know, we're giving them to Mr. Wertheimer. So, again, we're
17 not waiving anything, but we want to let the Court know that
18 we are working with them and are happy to do so. But,
19 finally, third --

20 THE COURT: It was a little frustrating that your
21 log didn't provide any identifying information regarding the
22 people involved other than their names.

23 MR. SCHNEIDER: Well, we've corrected that.

24 THE COURT: Where? How?

25 MR. SCHNEIDER: Well, Mr. Wertheimer asked for

1 additional information that's more specific on the privilege
2 log, and I believe we've done that, and --

3 THE COURT: In the log itself because we looked at
4 the revised log -- at least I did, and all I saw were names?
5 Now, it's possible that I missed a page where the names were
6 identified, whether they're attorneys or officers of the
7 state or associated with the emergency manager. I couldn't
8 tell who was who.

9 MR. SCHNEIDER: My understanding is there's more
10 description about what actually is in there, but I will --
11 you know, I will continue to work with Mr. Wertheimer on this
12 so as to not -- not to delay.

13 The third issue here is relating to the common
14 interest agreement, and I think that's where the Flowers and
15 the UAW objectors are really going here. The state's
16 position ultimately at the end of the day -- the state's
17 position is is that your order, your Honor, that you entered
18 on September 19 was correct, and we believe that it was
19 correct then and it's correct today. And the new position
20 that the objectors are raising is essentially that there's no
21 common interest privilege before the filing. This is -- as
22 the Court is aware, this has been brought to your attention
23 literally -- literally -- on the eve of trial. There was a
24 deposition in which the Court invited the parties to contact
25 the Court in case there were concerns. They never did that.

1 They never raised a written objection after the deposition.
2 It's beyond the 14-day rule, and there's no defect or no
3 error shown, so I think there's a waiver here, and,
4 therefore, it should be denied on that ground.

5 In addition, the common interest agreement here as
6 to the argument that the objectors are trying to find
7 information that antedate the appointment of the emergency
8 manager, if you look at the common interest agreement itself,
9 it states that this isn't just about the appointment of the
10 emergency manager. It states that the parties have a common
11 interest in relation to the city's financial emergency and
12 the bankruptcy case and the emergency manager, so this goes
13 to a lot more than just the Chapter 9 filing. It goes to the
14 financial emergency and things in connection with the policy
15 issues and the legal discussions related to that. Thank you.

16 THE COURT: Thank you.

17 MR. IRWIN: Thank you, your Honor. I will address
18 the motion to compel the Jones Day materials first and then
19 the motion for reconsideration. The request that has been
20 made as it relates to core Jones Day internal research
21 memoranda it seems to us is antithetical to the work product
22 privilege, and we think the Court's analogy is exactly right.
23 If a client prepares a legal -- if a lawyer prepares a legal
24 memoranda to assist him or her or a team of lawyers in order
25 to deliver legal advice to a potential client -- a client or

1 a potential client, even before there is an attorney-client
2 relationship, that is wholly protected by work product if it
3 reflects the attorney's mental impressions and it puts him or
4 her in a position where they can deliver appropriate legal
5 advice. And it shouldn't matter if that attorney-client
6 relationship is ultimately consummated or not. It is an
7 inviolable attorney work product that is -- belongs to the
8 lawyer who prepared it and puts them in a position where they
9 can effectually do their jobs and deliver legal advice.

10 Now, what happened in this particular situation,
11 just to put a finer point on it, is I think not the subject
12 of any real debate. Everyone knew that Detroit was in
13 trouble in late 2011 and that there were people working this
14 problem, and that included people from the state. It
15 included people from the city. It included numerous advisors
16 and consultants. It involved numerous law firms, and there
17 were lots of people who wanted to get involved. And Jones
18 Day had the opportunity to do just that, and we --

19 THE COURT: So why doesn't it matter that the work
20 product was for the state, for the governor or state
21 officials, and the ultimate client wound up being none of
22 those but the city?

23 MR. IRWIN: Well, I think it was all part of the
24 same problem. I think that the entity that had the problem
25 here was the city, and I think the law firms like Jones

1 Day -- and I think that the papers that we submit support
2 that -- were hoping and expecting to be retained and engaged
3 by the city. And it's not -- it shouldn't surprise anyone
4 that Jones Day would have been doing legal research in order
5 to put itself in a position to assist the city in that
6 regard, and so it really didn't matter which of the entities
7 was -- not engaging in the sense of an attorney-client
8 representation, but was discussing these matters with Jones
9 Day. Jones Day had to put itself in a position where it was
10 able to represent the city effectively, and in order to do
11 that, it had to investigate this entire situation. There was
12 a legal analysis that you would expect to have been done on a
13 number of levels, and we have, you know, memoranda that came
14 about as a result. And if the Court would be --

15 THE COURT: Well, okay, but what's the foundational
16 basis for the work product privilege that shields otherwise
17 relevant facts from discovery and suggests that that basis
18 should apply to memoranda such as you claim privilege for
19 here?

20 MR. IRWIN: Well, it's if they're prepared in
21 anticipation of litigation, and as we've indicated in the
22 papers, that's a broad standard. You don't have to
23 anticipate a specific piece of litigation. You can
24 anticipate litigation broadly. You can anticipate that this
25 is a city in financial crisis and that they are going to need

1 assistance moving forward. It might take the path of a
2 Chapter 9. It might not. It might take the form of numerous
3 private lawsuits against individual stakeholders in all of
4 this. And a law firm has to be able to explore those various
5 options to put itself in a position where it can ably
6 represent the ultimate client here, which turned out to be
7 the city.

8 We also -- your Honor, the -- we're having a hard
9 time understanding the relevance here of the memoranda as
10 well. We are happy to provide them to the Court in camera.
11 If the Court would like to see the memoranda, we have the
12 memoranda. We can easily provide them, and the Court could
13 determine for itself if, in fact, it finds these memoranda
14 either surprising or relevant in some way. And what we have
15 done here, your Honor, is we've proposed a structure or a
16 framework that I would submit is reasonably conservative
17 under the circumstances in terms of the number of privileges
18 and the nature of privileges that we could assert. What we
19 have done here is we have, in fact, already released the --
20 many of the e-mails that reflect the conversations between
21 Jones Day lawyers and the folks in 2012 who were working on
22 this problem. This, again, is before there's any attorney-
23 client relationship with anyone. We've released those, and
24 we're not claiming those back. We are seeking an order from
25 the Court is to protect our wholly internal memoranda or

1 internal deliberations, which conversations are not --

2 THE COURT: Now, when you say "wholly internal" --

3 MR. IRWIN: Yes.

4 THE COURT: -- do you mean that these memoranda were
5 not shared even with the state officials?

6 MR. IRWIN: We will make that determination, but we
7 believe there are memoranda at issue here that were not
8 shared with anyone from the state, so our -- we are asking to
9 be able to withhold our internal research memoranda even
10 though work product would protect that. The work product,
11 because there's no waiver of work product, unlike attorney-
12 client, as long as you share it with someone who is in a
13 nonadversarial -- you share it in a nonadversarial way. It's
14 not like attorney work -- it's not like attorney-client in
15 that regard. We believe that we would still have work
16 product protection over those materials, and so we are asking
17 for the Jones Day research materials and the Jones Day
18 internal conversations about how to proceed here and how to
19 deliver advice should be protected.

20 Now, there comes a point in time later in 2012 when
21 a specific client opportunity presents itself in the form of
22 being hired by the city, in the form of this RFP process, and
23 the public document that is the pitch material that is in the
24 record already and that we not seeking to disclose, but
25 insofar as documents relating --

1 THE COURT: You mean not seeking not to disclose?

2 MR. IRWIN: I'm sorry, your Honor. Yes. It's in
3 the record right now. We are not seeking to clawback or
4 anything like that. That's not an issue here. But we are --
5 we do believe that -- as the Court referenced, because pre-
6 engagement conversations between a lawyer and a potential
7 client are still protected by the attorney-client privilege,
8 we are seeking -- we are seeking protection for those
9 communications, communications -- outbound communications
10 from Jones Day in the retention period where we are receiving
11 confidential information and acting upon it. We do think at
12 that period of time, attorney-client protection would attach
13 as well as attorney work product. But in the 2012 time
14 period, which is what the UAW's motion is directed towards,
15 we are simply asserting work product for the Jones Day legal
16 research that was conducted to put ourselves in a position to
17 ultimately be hired in to assist the city.

18 THE COURT: So are you telling the Court that you
19 don't have any objection to disclosing and don't claim work
20 product privilege as to any memoranda that was shared with
21 one or more state officials?

22 MR. IRWIN: That's right.

23 THE COURT: And have you already turned over all
24 such memoranda and communications that were given to state
25 officials?

1 MR. IRWIN: No. The answer is no, but we are
2 prepared to do that. We are not standing on that.

3 THE COURT: Okay. Thank you, sir.

4 MR. IRWIN: Yeah. Does the Court wish to hear on
5 the motion for reconsideration?

6 THE COURT: Yes. Yes, I do.

7 MR. IRWIN: Yes.

8 THE COURT: If you'd like to address that, I'd like
9 to hear from you, of course.

10 MR. IRWIN: I would, your Honor. As we indicated,
11 we think this is late. This is -- there is no -- there's
12 nothing in the papers that have been submitted that indicate
13 a good reason for reopening this. There is no palpable
14 defect in the ruling, and there is nothing new. There's no
15 new evidence. There's no -- despite the fact that they occur
16 in the same motion, there's no linking of these two issues,
17 and so there's, therefore, no good reason -- and I haven't
18 heard one offered -- as to why this matter should be
19 reopened. And the parties have, in fact, been relying on
20 this ruling in connection with all of the discovery
21 proceedings that have taken place since then. We think the
22 ruling was sound. The objectors have not indicated why there
23 is any reason to disturb the Court's analogy of a board of
24 directors and corporation counsel and the fact that they
25 should be permitted and need to talk to each other in order

1 to reach a sound conclusion as to whether to do something
2 like file for bankruptcy. We think that's analogous here.
3 The governor and his legal team and the emergency manager and
4 his legal team need to be able to talk. They need to be able
5 to talk in confidence with regard to the common interest,
6 which, again, this is counsel to what -- contrary to what we
7 heard, broader than simply a Chapter 9 filing. The common
8 interest related to the city's financial -- the city's
9 financial crisis more broadly and the right legal path
10 forward. And insofar as the communications related to a
11 legal path forward, that privilege was properly invoked. And
12 I do recall that the Court -- I read -- I was not here, but I
13 understand that the Court made itself available to the
14 parties if, in fact, there were specific questions because
15 it's very difficult to know exactly what form these questions
16 will take in making a ruling, and I believe the Court offered
17 its services to the parties if, in fact, there was any
18 impasse at the depositions, and I don't believe any objectors
19 took advantage of that, and so we believe that under the
20 circumstances, given that the ruling was fundamentally
21 correct, that there was no attempt at the time to seek
22 further court intervention and that we've been relying on
23 these rulings going forward, that there is no reason to
24 overturn them at this time.

25 THE COURT: Thank you, sir.

1 MR. IRWIN: Yeah.

2 THE COURT: Brief rebuttal.

3 MR. CIANTRA: Just very briefly, your Honor. I just
4 want to draw the Court's attention to a couple of matters.
5 First, with respect to the Jones Day memos, to the extent the
6 Court determines to review the memoranda in camera, we'd
7 request that the Court also review the cover e-mail that
8 enclosed the memoranda. And I'm not --

9 THE COURT: This was an e-mail from who to whom?

10 MR. CIANTRA: This was an e-mail from Heather Lennox
11 of Jones Day to certain of her partners at Jones Day that
12 references the meeting with the governor, and I'm not going
13 to read the e-mail because they've claimed in the October
14 15th correspondence to myself that it's privileged, but it
15 goes to the -- I think goes to the issue that the Court was
16 addressing with respect to --

17 THE COURT: So these memoranda are internal in the
18 sense that they were not shared with any officials of the
19 state or the city?

20 MR. CIANTRA: It is unclear to me that that can be
21 said with any degree of assurance, and it seems entirely --

22 THE COURT: Well, but Mr. Irwin states it here on
23 the record. Do we doubt it?

24 MR. CIANTRA: I did not hear that. I did not hear
25 him say definitively that those memos were not shared with

1 anyone at the state, and from the --

2 THE COURT: Well, let's just ask to be sure. Mr.
3 Irwin.

4 MR. IRWIN: We will -- I will absolutely
5 investigate. That's part of what we're saying. We will
6 investigate that, and we'll have a clear answer.

7 THE COURT: Oh, all right.

8 MR. CIANTRA: So we don't have --

9 THE COURT: So there you go.

10 MR. CIANTRA: So we don't have a clear answer, but I
11 would suggest that if you -- if the Court reviews the e-mail
12 that they are claiming privilege with respect to, the
13 conclusion can be drawn that the substance of those memos was
14 surely shared in that meeting, and it would seem, at a
15 minimum, that would arguably constitute a waiver along with
16 the production of the pitch materials, which go into
17 considerable detail with respect to the legal theories that
18 were involved here.

19 THE COURT: All right.

20 MR. CIANTRA: The second issue I just wanted to just
21 very -- just brief clarification with respect to the
22 privilege logs. We filed -- we requested that the state
23 supplement the privilege logs, and that is in the
24 correspondence that is attached to the motion that we filed
25 with respect to the state because there was no specification

1 in certain cases of who was involved in the communications,
2 who authored them, who received them, or the subject matter
3 of many of the -- of all of the communications, so we had no
4 way to assess the assertion of privilege based on the logs.
5 In response to that correspondence, they revised the logs, so
6 this is what the Court referred to, but we only received
7 those within the past day or two --

8 THE COURT: Right. I know.

9 MR. CIANTRA: -- so we haven't had the opportunity
10 to, you know, line that --

11 THE COURT: Right.

12 MR. CIANTRA: -- up, but I just wanted the record to
13 be clear with respect to that.

14 THE COURT: No. I appreciate that very much.

15 MR. CIANTRA: Yeah, yeah. Obviously with respect to
16 the -- having not filed this within 14 days, your Honor,
17 obviously the discovery here was unfolding well past the
18 deadline for the production, and we have not -- we've done
19 the best we could. This was not an intentional delay on our
20 part. As these issues developed, it became clear to us that
21 the scope of what was being withheld we felt was inconsistent
22 with what the Court had permitted.

23 THE COURT: All right. I'm going to take this under
24 advisement until ten o'clock, and I'll give you a decision
25 then.

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

2 (Recess at 9:49 a.m., until 10:00 a.m.)

3 THE CLERK: All rise. Court is in session. Please
4 be seated. Recalling Case Number 13-53846, City of Detroit,
5 Michigan.

6 THE COURT: All counsel are present. Ma'am.

7 MS. GREEN: Good morning, your Honor. I apologize.
8 I think our motion got lost in the shuffle. The Retirement
9 Systems filed a similar motion to the UAW's. I just have a
10 few --

11 THE COURT: I was actually going to hear it after,
12 but if you'd like to be heard now, that's fine.

13 MR. GREEN: Oh, you know, I just -- it dovetailed
14 with what they were arguing, so I just had a few points --

15 THE COURT: Okay. Go ahead.

16 MS. GREEN: -- to raise. The first thing I wanted
17 to add is that at the time we drafted our motion, we thought
18 that the June 5th, 2012, e-mail was being reasserted as
19 privileged. Mr. Irwin in his argument this morning has said
20 that they are not waiving privilege -- or they are now
21 waiving privilege to that. It is back in the record. So to
22 clarify, the e-mail does say that the memos were shared with
23 the treasurer. It says they were memos that we did for Andy.
24 I presume that means they were shared with him. I don't know
25 if that's actually true or not, but the memo does seem to

1 indicate that they were shared with a third party.

2 As far as the work product analysis, in our brief we
3 went through the relevant standard in the Sixth Circuit, your
4 Honor, and I don't believe that we talked about that yet
5 today. There's a two-part test. The first part of that test
6 is whether the document was prepared, quote, "because of the
7 party's subjective anticipation of litigation, as contrasted
8 with ordinary business purpose, and (2) whether that
9 subjective anticipation was objectively reasonable." And,
10 furthermore, the driving force behind the preparation of the
11 document is what is key, and we assert that the "because of"
12 part fails. They did it because of the fact that they were
13 trying to prepare themselves for the prospect of being hired,
14 not because of the fact that there was actually anticipated
15 litigation. And, moreover, it's very attenuated that in 2011
16 they had some kind of crystal ball that they knew two years
17 from now they were going to be in this courtroom arguing
18 about eligibility under Chapter 9. And we did cite case law
19 in our brief. You had asked counsel this morning if there
20 was any case law regarding some kind of temporal factor, and
21 we cited two cases. One states, "the mere fact that
22 litigation does eventually ensue does not, by itself, cloak
23 materials with work product immunity," so between that and
24 the next case that we cited, "The abstract possibility that
25 an event might be the subject of future litigation will not

1 support the claim of privilege," I think those are
2 dispositive. This was two years before any of this even
3 arose.

4 Furthermore, I think that goes to whether or not the
5 anticipation of litigation could be objectively reasonable.
6 I don't know how two years prior to the litigation it could
7 be objectively reasonable that, number one, PA 4 still had to
8 get past the referendum. Number two, it was ten months
9 before the EM was hired even if you assume that these were
10 prepared in June of 2012 when the memo -- memos were shared
11 with the governor or with Andy Dillon. They may have been
12 prepared prior to that. We don't know. Moreover, the EM had
13 to be appointed. PA 436 had to become effective. All of
14 these things had to happen before we could be here today, and
15 Jones Day had to be retained. So there are like at least
16 five or six major contingencies that had to occur before the
17 actual litigation would ensue.

18 Furthermore, even if they can establish the work
19 product, which we don't think they can, they still have to
20 overcome the waiver issue, and I don't -- I think that today
21 is a further example that they have selectively waived. They
22 waived the memo itself but not the attachments. Today the
23 state stood up and said, you know, "We have an e-mail from
24 March 3rd, 2013, between Kevyn Orr. There are two attorneys
25 on it from the State of Michigan. But to be cooperative, we

1 will give you that e-mail." Well, if they're saying it's
2 privileged but they're giving it to us, to me, again, that's
3 a selective waiver. They just give us what they want when
4 they want it, but they keep what they want as well, and I
5 don't see how they get past that.

6 In addition, my last point would be it's still not
7 clear who the client is that Jones Day is claiming they've
8 been representing. No city official, to my knowledge,
9 through any of my review of these documents or the e-mails --
10 there is not a single city official that is ever cc'd, bcc'd,
11 you know, sent the memos. It's purely between Jones Day
12 attorneys, Miller Buckfire, Huron Consulting, all of these
13 advisors that, again, when I think it comes to waiver,
14 clearly these are third parties and not the potential client.

15 The last point I will make because I want to be
16 brief -- I know you are ready to rule, I think -- is that I
17 think the wrong standard was stated earlier by the city. He
18 said that there's a different standard for waiver of the
19 attorney-client privilege versus work product, and that is
20 not true in the Sixth Circuit. We cited two cases in our
21 brief. The first one is New Phoenix Sunrise, and it says,
22 "Both the attorney-client privilege and work product
23 protection are waived by voluntary disclosure of private
24 communications to third parties." We also cited the In re.
25 Columbia case also --

1 THE COURT: I'm sorry. Are waived by what? I just
2 didn't hear what you said.

3 MS. GREEN: Disclosure of private communications to
4 third parties. And he had said that some sort of different
5 standard applied when it was work product versus attorney-
6 client, and we also cited the In re. Columbia case that said
7 the same thing. There's no compelling reason for
8 differentiating waiver of work product from waiver of the
9 attorney-client privilege, so to me it's a distinction
10 without a difference to say, "Well, we gave it to," and I
11 think the quote he said a minute ago was, "numerous
12 consultants and advisors as well as the state." And to me
13 that is disclosing it to third parties; therefore, it was
14 waived when it was created a year or two ago, not to mention
15 the fact that as part of this litigation, they have
16 selectively waived certain e-mails that somewhat have to do
17 with this subject matter in that they relate to, for
18 instance, reviewing the consent agreement or reviewing and
19 commenting on PA 4 and the analysis related to PA 4. And we
20 cited case law in our brief stating that if you waive the
21 privilege on selected pieces, you, therefore, waive it as to
22 the entire subject matter, and, therefore, you can't
23 selectively say, "Well, you can have the e-mail, but you
24 can't have the attachments," or, "You can have this e-mail,
25 but you can't have this e-mail." So we would say that the

1 entire privilege has been waived by selectively waiving it as
2 to a few e-mails here and there. Those are my comments.

3 THE COURT: Thank you.

4 MS. GREEN: Thank you.

5 MR. IRWIN: I'll simply respond to those few points
6 that counsel made. The first, in connection with whether the
7 timing of all of this should make a difference, I would
8 submit that that is arbitrary. There are lots of things that
9 could have happened in the middle of 2012 that would have
10 been litigation events. Maybe they didn't, but that doesn't
11 mean that at the time that all of this was being considered,
12 when legal advice -- or when Jones Day was considering some
13 of these issues, they weren't anticipating litigation. It is
14 fortuitous that this happened two years later, actually, a
15 year and a half later or one year later, but that doesn't
16 mean that either potential clients or Jones Day were not
17 working in anticipation of litigation, which, as we indicated
18 in our brief, does not need to be a specific litigation
19 event. You can anticipate litigation broadly. You never
20 know what form it will take. You know there are going to be
21 fights. You know there will be disputes. You don't know if
22 it'll be a private -- private lawsuits. You don't know if
23 it'll be a Chapter 9 filing, but you can anticipate the need
24 for legal advice in an adversarial proceeding in some form
25 and meet the standard.

1 In terms of select -- whether there's been selective
2 waiver or subject matter waiver, as counsel suggests, this is
3 I think fundamentally incorrect. The standard for subject
4 matter waiver is whether documents have been disclosed. It's
5 the shield and sword problem. It's if documents have been
6 disclosed and counsel intends to rely on them affirmatively
7 and yet withholds the balance of the documents that, in
8 fairness, should be considered, and I think this is codified
9 pretty clearly in the advisory committee notes to Federal
10 Rule 502 where they say, "Thus, subject matter waiver is
11 limited to situations in which a party intentionally puts
12 protected information into the litigation in a selective,
13 misleading and unfair manner. Under both Rules, a party that
14 makes a selective, misleading presentation that is unfair to
15 the adversary opens itself to a more complete and accurate
16 presentation." We are not -- we, the city, are not using any
17 of these materials affirmatively. They are not on our
18 exhibit lists. We are not introducing them through
19 witnesses. We are not using them to our advantage that
20 should open us to some sort of claim of subject matter waiver
21 or selective disclosure under the rules.

22 And then lastly, I think fundamentally there is --
23 and I believe this is black letter law -- there are different
24 standards for whether there is waiver by disclosure under
25 attorney work product as opposed to attorney client. If you

1 disclose attorney-client communications to a third party, you
2 are much more likely to be deemed to have waived that
3 privilege, but with attorney work product, you can make
4 disclosures. And as long as they are disclosures to parties
5 who are nonadversarial, then you can still enjoy that
6 protection. And that is a fundamental difference between the
7 two privileges. It is not something where they are -- where
8 disclosures to folks who are within the potential group of
9 clients or advisors who are working these problems operates
10 to waive the privilege. And I think we've demonstrated that,
11 your Honor.

12 THE COURT: I want to -- I want to be sure the
13 record accurately reflects your position regarding what's to
14 be disclosed and what isn't. Is it correct that to the
15 extent any of these memoranda that were attached to this June
16 2012 e-mail from Ms. Lennox were disclosed to state
17 officials, you are willing to make them available to counsel
18 here?

19 MR. IRWIN: Yes, your Honor, but the e-mail itself
20 suggests -- if memoranda was prepared to prepare a Jones Day
21 lawyer for a meeting with counsel, that would not be. It's
22 not my understanding of what we're talking about.

23 THE COURT: Okay. But you don't know which of the
24 several memoranda were shared and which weren't?

25 MR. IRWIN: We'll do that.

1 THE COURT: How will you determine that or --

2 MR. IRWIN: Because we have the -- the Jones Day
3 lawyers are accessible, and we can figure that out.

4 THE COURT: All right. Thank you.

5 MS. GREEN: I have a brief rebuttal.

6 THE COURT: Yes, of course.

7 MS. GREEN: I think the hypo that you stated earlier
8 compared to what he just said -- you know, these were memos
9 preparing a Jones Day lawyer to go seek work -- is different
10 than the hypo that you stated earlier, which was you meet
11 with a client who wants to meet with you for the purpose of
12 retaining you, and you may make notes. That's different to
13 me than, "I did memos to prepare myself to go pitch a
14 client." To me those are two different scenarios, and
15 there's a distinction, I think, between did the state ask for
16 this work, or was Jones Day just doing it internally, again,
17 to prepare. I think those are two distinct scenarios.

18 One other thing that occurred yesterday, you made a
19 note on the record about PA 4 and that perhaps the intent
20 behind the appropriation -- the inclusion of the
21 appropriation was a factual issue for this trial, and I think
22 that some of the e-mail correspondence may go to that issue,
23 quite frankly, because the PA 4 appropriation was extensively
24 discussed in all these e-mails, and for that reason I think
25 there is a possibility that it would become relevant to a

1 separate issue than what Mr. Ciantra stated this morning,
2 which was the good faith and the bad faith issues and things
3 like that.

4 The last thing I would offer is our Exhibits 31
5 through 65 have a lot of the e-mail correspondence that has
6 been produced by the city, and there is a lot of, I guess,
7 internal -- what they would consider their internal work
8 product in those e-mails. I don't concede it's work product,
9 but according to what they are defining as work product, it's
10 in those e-mails, and it's already been produced, and it's
11 been waived. So if you'd like to look at those e-mails to
12 sort of familiarize yourself with what we're talking about,
13 I've produced a copy of our binder for your clerk this
14 morning if you'd like to look at those. Thank you, your
15 Honor.

16 THE COURT: All right.

17 MS. BRIMER: Your Honor, I'll be very brief.

18 THE COURT: Why should I hear you? You're not a
19 party to these motions.

20 MS. BRIMER: I understand that, your Honor. I want
21 to clarify one matter on the record that Ms. Green made,
22 and --

23 THE COURT: I will let you clarify a statement on
24 the record, but I can't let you argue on one side or the
25 other of these motions.

1 MS. BRIMER: That's fine, your Honor. And Ms. Green
2 raised the issue of your ruling on Monday with respect to the
3 intent of the appropriation in PA 4, and I want to be sure
4 the record is very clear that it's the appropriation in PA
5 436 that your Honor ruled may be a factual issue that prior
6 to that was not considered a factual issue. I want to be
7 sure the record is very clear on that, which law we are
8 addressing, your Honor. It may have an impact on the memos.
9 Thank you.

10 THE COURT: Thank you, I guess. All right. On the
11 issue -- on the first issue, which is the motion for
12 reconsideration of the Court's previous ruling on the common
13 interest doctrine, the Court concludes that the record does
14 not establish cause to consider that motion out of time, and,
15 accordingly, for that reason alone, the motion is denied.

16 But having said that, I want the record to be clear
17 and the parties to understand that to the extent a question
18 is asked of a witness and either a witness or counsel on the
19 witness' behalf claims attorney-client privilege and asserts
20 the common interest doctrine or any other privilege, for that
21 matter, the Court will take a fresh look at that and consider
22 counsel's arguments relating to that.

23 On the motions to compel, the Court appreciates the
24 city's willingness to disclose to counsel for the objecting
25 parties whatever memoranda it shared -- the city's counsel,

1 Jones Day, shared with state officials and would request that
2 that disclosure be accomplished as promptly as possible.

3 To the extent, however, that the moving parties seek
4 a ruling from the Court that the mere fact that memoranda or
5 other documents that would otherwise be protected by the work
6 product doctrine were prepared pre-retention means that they
7 are not protected by that doctrine, the Court must reject and
8 overrule that position.

9 Accordingly, to the extent that the city is
10 maintaining this privilege as to any of these memoranda that
11 were attached to Ms. Lennox's e-mail or any other memoranda,
12 for that matter, the Court will look at them in camera and
13 ask the city to produce them for that purpose, again, as
14 promptly as possible.

15 As to the documents that Mr. Wertheimer suggests
16 were improperly withheld in discovery, this presents a more
17 challenging request if only because the documents that are
18 the subject of Mr. Wertheimer's request are not identified,
19 and so, Mr. Wertheimer, all I can do in that regard is ask
20 you to identify, again, as promptly as possible, what
21 documents or range of documents you seek the city to be
22 compelled to disclose, review that with the city, and to the
23 extent you can't work it out, we will take a break from our
24 trial whenever you are ready and work our way through it.

25 MR. WERTHEIMER: Yes, your Honor. I believe you

1 meant the state.

2 THE COURT: The state. I did.

3 MR. WERTHEIMER: Yes.

4 THE COURT: Thank you.

5 MR. WERTHEIMER: Thank you, your Honor.

6 THE COURT: All right. So are there any other
7 issues still open before we begin our opening statements?

8 MR. SCHNEIDER: Your Honor, there is one, and that
9 is because there has been discussion about the trial
10 subpoenas that were issued to the governor, the treasurer,
11 Mr. Baird, and Mr. Ryan. The last time I appeared before
12 you, I argued -- I opposed that. I want the Court to know I
13 am not going to file a motion to quash. The governor, in the
14 spirit of cooperation and because he wants to move this
15 proceeding along, is willing to testify, and we have made --
16 we will make all of those state witnesses available. And we
17 believe that Monday between 1 p.m. and 3 p.m. the governor
18 would be available, and we think the other witnesses -- well,
19 the other witnesses will be available on Monday or Tuesday.

20 THE COURT: Thank you.

21 MR. DECHIARA: Good morning, your Honor. Peter
22 DeChiara from the law firm of Cohen, Weiss & Simon for the
23 UAW. The UAW and the Flowers plaintiffs appreciate the
24 state's decision to change its position and to produce the
25 state witnesses. We just want to be careful to note for the

1 record that there's been no agreement that there should be
2 any set time for the testimony of the state witnesses,
3 including the governor. While we realize the governor has a
4 busy schedule, it is also our view that the governor, perhaps
5 with the exception of Mr. Orr, is maybe the most important
6 witness in this case, and given the significance of his
7 testimony and given the significance of the fact that there
8 may be documents we may have to examine him on which we have
9 not yet seen, we would just want to note for the record that
10 there's been no agreement that his testimony would be limited
11 to two hours. Thank you.

12 THE COURT: Thank you. Mr. Schneider.

13 MR. SCHNEIDER: As of this point, your Honor, I fail
14 to see the reason for the objector's argument that the
15 governor would require to testify for a lengthy period of
16 time. This Court is well aware of the governor's situation
17 and who he is in the state. He is willing to do this, but I
18 think we will have to work with the objectors as to timing.

19 THE COURT: Well, I would certainly encourage that,
20 but it's not for a witness who appears in any court to
21 condition his appearance on a specific time limit.

22 MR. SCHNEIDER: He's certainly not doing that.
23 That's certainly not the case.

24 THE COURT: The UAW certainly interpreted it that
25 way, and, frankly, I did, too.

1 MR. SCHNEIDER: Well, I'm sorry about that, your
2 Honor, but I can tell you, as I indicated before, the
3 governor wants to be cooperative --

4 THE COURT: All right.

5 MR. SCHNEIDER: -- as possible.

6 THE COURT: Good. Thank you. All right. We do
7 have to get to the issue of the amended joint final pretrial
8 order. If I read it correctly, one or more of the objecting
9 parties decided after our final pretrial conference to object
10 to a certain small number of exhibits, and the state was --
11 or excuse me -- the city was not willing to allow for a
12 statement of such a late asserted objection. Is that what
13 this is about?

14 MR. ULLMAN: Not really, your Honor.

15 THE COURT: Not really?

16 MR. ULLMAN: Not really, not in our view.

17 THE COURT: Oh, so you're withdrawing your
18 objections?

19 MR. ULLMAN: No. Should I -- may I speak?

20 THE COURT: Please.

21 MR. ULLMAN: No. The issue is not that we're trying
22 to add new objections. This whole --

23 THE COURT: So you're not trying to add new
24 objections --

25 MR. ULLMAN: We are maintaining the same --

1 THE COURT: -- so to the extent there are new
2 objections, we can strike them.

3 MR. ULLMAN: No, your Honor. Let me try to explain.
4 We had always told the state -- the city that for this subset
5 of documents -- I believe there are six of them -- that we
6 were not opposing admissibility in general, but we believe
7 that they were admissible for limited purposes only to show
8 that these documents were said, that they were, you know,
9 created, that they were given to people. We weren't
10 contesting that they're authentic documents, but we spoke
11 with Mr. Irwin and told him but at the same time -- that's
12 why we're not contesting admissibility in general -- we do
13 not agree that they're admissible for the truth of what they
14 say. Some of these documents have forward-looking
15 projections that we don't think there's been an adequate
16 foundation for, and in our discussions with Mr. Irwin, he
17 said, "Yeah, we understand that. We're not asking you to
18 concede to the truth of what's in there." And we said,
19 "Fine. On that basis" --

20 THE COURT: Well, but hang on. The admission of a
21 document into evidence or the agreement of the admission of a
22 document into evidence is not a stipulation to the truth or
23 credibility of the document. It just means that it meets the
24 criteria for admissibility under the rules.

25 MR. ULLMAN: And that may be all that's going on

1 here. The reason this came up is because I had heard -- I
2 was not here at the legal argument yesterday, but I had been
3 told that your Honor had indicated that if a document did not
4 have a note on it saying there was some sort of objection, it
5 would be admitted for any and all purposes, at which point I
6 said to Mr. Irwin, "Wait a minute. There's a couple of
7 documents here that we know from our discussions" -- you
8 know, they're limited for -- we agree they're admissible for
9 limited purposes only, and we have the right --

10 THE COURT: Well, but what -- for what purpose do
11 you assert these six documents are not admissible for?

12 MR. ULLMAN: Just for the truth of what's in them,
13 the hearsay, expert opinion, and then lack of foundation.
14 Some of these have forward-looking numbers or values in them
15 as to the amount of the unfunded pension liability, and for
16 those we're saying we don't disagree that you gave these
17 documents out, but we're not agreeing that the numbers that
18 are in there are necessarily true numbers. That's all we're
19 saying. That was understood from day one with discussions
20 with Mr. Irwin, and we just wanted to make sure that your
21 Honor -- that if the document came in, that your Honor would
22 not assume that everything that was in it on these -- on
23 these six documents was true. That's all that we cared
24 about. We don't deny that they were either created, that
25 they were given to people, and for that purpose we have no

1 problem with admission. And it may have been that we
2 misinterpreted what your Honor said.

3 THE COURT: I'm having a hard time comprehending
4 what you're saying, frankly. If a piece of evidence has
5 hearsay within hearsay --

6 MR. ULLMAN: Um-hmm.

7 THE COURT: -- which I think is what you're talking
8 about here; right? The document itself is hearsay.

9 MR. ULLMAN: Okay.

10 THE COURT: And it contains hearsay statements.

11 MR. ULLMAN: Yes.

12 THE COURT: Okay. If the document is admitted,
13 opposing parties waive -- if they agree to the admission,
14 they waive both hearsay objections. That does not mean that
15 that party is stipulating to the truth of any of that
16 hearsay. It just doesn't mean that. All it means is it's
17 evidence.

18 MR. ULLMAN: Okay. And if, you know, I had been
19 given a misinterpretation or a misapplication of what your
20 Honor indicated the other day, then you're right. This is a
21 moot issue, and there is no problem based on what your Honor
22 said. I think that's true.

23 THE COURT: Okay. All right. Then in that event,
24 the Court will enter the amended final pretrial order, and
25 based on the list of documents that are shown as having no

1 objections, the Court will prepare an order admitting all of
2 those documents into evidence. Okay. Opening statements.

3 MR. BENNETT: One second, your Honor. Good morning,
4 your Honor. I'm assuming that you want to hear from us
5 first, notwithstanding that the order was different in the
6 other -- in the legal issues proceedings, but, in any
7 event --

8 THE COURT: Well, you have the burden of proof;
9 right?

10 MR. BENNETT: Correct.

11 OPENING STATEMENT

12 MR. BENNETT: First of all, I want to make crystal
13 clear -- many people have in different environments -- that
14 I'm not going to speak about any arguments that came up in
15 the context of the legal argument part of the proceedings.

16 THE COURT: Thank you.

17 MR. BENNETT: I appreciate that part, too. And I'm
18 going to confine myself to the issues -- or the parts of the
19 eligibility standard and the part of 521(c) that have some
20 factual disputes that have been identified in connection with
21 them. And toward the end I do want to spend a minute on the
22 materiality of facts relating to legislators' or governors'
23 intent relating to statutes because I think it was not
24 something that we did cover when we were here before.

25 So, first of all, I'm going to start with the issue

1 of insolvency, and what I'm going to say about that because I
2 could stand here for hours describing the evidence that is
3 going to come in on that subject, but I'm not going to do
4 that -- I'm going to say simply that the witnesses that we
5 will present on the subject are going to present a mountain
6 of evidence showing insolvency of the city. Sadly, that
7 evidence will show that the city is insolvent on every
8 relevant standard. And, your Honor, there's been at least
9 intimated in a lot of the papers about the significance that
10 no expert report has been submitted. Quite frankly, that is
11 because no expert report is required. This is one of those
12 cases where the data speaks very clearly and persuasively on
13 its own -- it needs no gloss -- and that only AFSCME is
14 objecting on the insolvency point, at least as I read the
15 papers, itself speaks volumes.

16 I want to say that from the near term perspective,
17 the city did not run out of cash because -- only because
18 actions were taken to prevent that from happening. The
19 evidence will show that if the city just kept on paying debts
20 as and when they were becoming due, cash would have run out.
21 The fact that the city stopped doing that is the only reason
22 why there are positive cash balances. As I said before,
23 there's no question that if the actions were not taken, cash
24 would have run out.

25 I will also say that the steps that the city took

1 during past years to pay many of its debts as they become due
2 didn't turn out particularly well. One of the consequences
3 you'll see in the evidence and, in fact, a good document to
4 keep around at all times is the proposal for creditors dated
5 June 14th. There's a section there that deals with this. It
6 shows that there were numerous secured borrowings made to
7 create liquidity in the city in past years when there were
8 similar cash flow problems. Each and every one of those
9 borrowings were done on a secured basis, and so the
10 consequence that we face today is that those borrowings
11 consume a very significant amount of cash otherwise available
12 for creditors generally, so that was -- so avoiding a
13 liquidity problem in the prior periods didn't exactly work
14 out well from the perspective of many other creditors.

15 Also, as will come into evidence, pension
16 contributions were deferred during at least the past two
17 fiscal years with the effect that the underfunding under
18 anyone's measure -- we don't have to worry about the fight
19 between the different measures of pension underfunding. It's
20 greater than it might otherwise have been.

21 Finally, on the insolvency point, you are going to
22 hear from several witnesses, but most importantly perhaps
23 Chief Craig, about the fact that the city is failing to
24 provide basic services to its residents. We don't think
25 about that as another one of the creditor claims or

1 obligations, but the reality is it's as important as anything
2 else. As we've indicated before and as the witnesses will
3 indicate, without solving that problem, there may not be a
4 city to reorganize.

5 Now, AFSCME makes a few points that are worth
6 discussing how the evidence will deal with them. First, much
7 is made over the dispute about the underfunding amount, and
8 it is asserted that because there's a dispute of the
9 underfunding amount, the city can't demonstrate it's
10 insolvent. Well, as your Honor knows, the insolvency test
11 focuses on cash flow. It focuses on near term and longer
12 term cash flow type measures, and in that connection, there
13 are cash flows that will be put into evidence. There's also
14 a convenient place to find them in the proposal for
15 creditors. There's different versions with different levels
16 of updates and different assumptions that are baked into
17 them, but the line items that talk about pension
18 contributions your Honor is going to learn don't change very
19 much whether you use the city's assumptions as to
20 underfunding amount or the city's calculation of underfunding
21 amount or the Gabriel, Roeder calculation of underfunding
22 amount, Gabriel, Roeder, of course, being the actuaries
23 retained by the pension funds, the pension fund management
24 themselves, to give them advice. And so your Honor will be
25 taken through the numbers, and you will find that the

1 contribution amounts, which are the relevant numbers in the
2 insolvency calculation, don't move around very much
3 notwithstanding the very different calculations of
4 underfunding amounts, and the reason for that will be
5 explained. Mr. Moore of Conway MacKenzie will be the witness
6 that will cover that area.

7 There's also a little bit of numerical confusion
8 concerning the percentage of the city's contribution to the
9 GRS Pension Fund that is attributable to DWSD employees. You
10 will see in the papers a number bandied around, 62 percent.
11 Well, actually, the number is the reverse of that. It's 38
12 to 39 percent. Mr. Orr got that wrong in his deposition. He
13 corrected it at the end, but, of course, the correction
14 wasn't cited in the papers. There will be evidence on the
15 point so there won't be confusion on the point as we go
16 forward with the numbers.

17 Then AFSCME says that the city deferred sales of
18 assets, and they talk about two examples. We will
19 demonstrate, of course, that that is not true. First of all,
20 the Belle Isle deal, Belle Isle leased to the state in
21 exchange for the state taking over the maintenance and CAPX
22 requirements with respect to Belle Isle, never involved the
23 generation of incremental spendable cash. It did and always
24 has involved a reduction of the cost on the city to maintain
25 Belle Isle. And what the evidence will show is that those

1 anticipated savings were included in the projections that
2 were the basis for insolvency calculations, and they are in
3 the projections. They're the basis for the proposal for
4 creditors or at least the lead-up to the proposal for
5 creditors in the June 14th presentation.

6 It's also very hard for us to understand how anyone
7 can say that art sales were deferred. It is common
8 knowledge -- and I suspect we'll figure out a way to get this
9 into evidence as well -- that there's an attorney general
10 opinion out there that basically says that the art can't be
11 sold for creditors. We, unfortunately -- in the absence of
12 some form of an agreement, there are no sales possible
13 without a significant change in current management of the
14 museum or litigation and -- maybe and/or litigation relating
15 to some of the points made in the attorney general's opinion.
16 There were no pre-filing opportunities to liquidate art.

17 Next, AFSCME talks about the swap deal, which, of
18 course, your Honor is familiar with because it's before you
19 in still another adversary setting in this case. The swap
20 deal itself, you will hear, does not provide adequate cash
21 relief, but the transaction hasn't been approved yet. And
22 there is, unfortunately, no assurance as we stand here today
23 and certainly as we stood here several months ago, that it
24 will be done. It turns out that some of the objectors in
25 this proceeding are also objectors in that one, and so I'm

1 not sure how we're supposed to even count the anticipated
2 cash flow relief attributable to the swap transaction as
3 something that could have even affected the city's insolvency
4 calculations.

5 And lastly, there is the assertion -- and I'm
6 anxious to hear what the evidence will be to support this
7 one -- that the appointment of the emergency manager
8 prevented the city from taking actions designed to raise
9 revenue and avoid insolvency. Of course, in the briefs that
10 have been filed, there is no suggestion about exactly what
11 steps those are that the City Council or the mayor or whoever
12 else has been displaced in the view of AFSCME have been
13 planning and anxious to implement that would solve the city's
14 financial problem. No such actions have ever been specified.
15 We have no idea where that evidence is coming from. It will
16 be quite a surprise if there is any.

17 It was for these reasons, the insolvency and the
18 fact that there really weren't anything left, that the city
19 or the state could think of to do to address the problems
20 that the June 14th presentation was put together, and it
21 proposes a plan that includes significant reductions in the
22 city's obligations, including bonds, including other post-
23 employment benefits, including other unsecured claims, and
24 including pension underfunding claims. Whatever the law
25 turns out to be concerning protections to be afforded to

1 various claims, there is no law prohibiting the city from
2 trying to commence negotiations to resolve its financial
3 problems, and that's what we were trying to do.

4 Now, while we're near this subject, there is an
5 issue that ripples through actually several of the standards,
6 which is whether or not the proposal that's included in the
7 proposal to creditors -- and I'm referring to the materials
8 that are, I think, between pages 101 and 109 or thereabouts
9 of that document -- whether that proposal was a -- was close
10 enough to a confirmable plan of adjustment to qualify for the
11 purposes of, open paren, one, demonstrating that the city
12 desires to implement a plan; open paren, two, that the city
13 was in good faith as part of the good faith negotiations
14 because they had to be talking about a certain kind of plan
15 that is asserted; and, three, whether the city was acting in
16 good faith generally. And I think the proposal for
17 creditors, that June 14th document, has been admitted into
18 evidence, again, for all purposes, but very clearly for the
19 purpose of showing this is what the proposal was that the
20 city presented as its initial presentation to creditors, and
21 so it speaks for itself. We can look at it. We don't need
22 testimony. It's reasonably detailed. In fact, I would
23 argue your Honor sees disclosure statements, summaries of
24 plans all the time, and you will see this measures up quite
25 nicely to the standard that's applicable even in disclosure

1 statements to what a plan should look like. It is -- it has
2 a classification scheme. It defines treatment for all
3 classes. It includes a very extensive term sheet for notes
4 that are proposed to be distributed to creditors, and it is a
5 plan, your Honor, that for that reason is a plan that could
6 be confirmable.

7 Now, there is clearly disputes over what law should
8 be applied by this Court in determining whether or not it
9 would confirm that plan if it was fleshed out, put into plan
10 form, and presented to your Honor. I told your Honor in
11 prior hearings that I doubt that's the way this case is going
12 to come out, but that's the relevant standard for today.

13 And the reality is is that on the city's very
14 reasonable view of the law, there is no question that it
15 could be confirmed. I understand that with respect to the
16 retiree constituents' views of the law, they say it can't be,
17 but that doesn't render the proposal inappropriate for
18 purposes of a Chapter 9 case. We are dealing with issues
19 that your Honor has heard argument about, is going to
20 ultimately decide, but the plan hangs together as an
21 appropriate expression of the kind of debt relief the city
22 should be able to get based upon one very reasonable view of
23 the law. We think it's absolutely the right view.

24 The other assertion as to why the plan isn't an
25 appropriate plan is that it doesn't adequately liquidate

1 claims, and here again they're talking about the pension
2 underfunding amount. But I think we know both from the
3 structure of the Bankruptcy Code itself and from many, many,
4 many other cases that the liquidation of claims is not a
5 prerequisite to confirmation of a plan. Plans are confirmed
6 all the time with the treatment specified as the treatment is
7 specified in the plan in the proposal for creditors that is
8 not claim size dependent. It's by plan. It makes
9 distributions based upon pro rata interests in the overall
10 claims pool. It was designed that way because there is, in
11 fact, uncertainty concerning the aggregate amount of certain
12 claims. Frankly, the city believes there's more questions
13 relating to the size of the OPEB, or other post-employment
14 benefit, claim pool than there is with respect to the pension
15 claim pool, but there's uncertainty on these issues. It is
16 acknowledged there is uncertainty of issues. Those are not
17 confirmation problems. At least they're not confirmation
18 problems with some plan structures, and they're certainly not
19 confirmation problems with the plan structure that was
20 offered by the city.

21 So for these reasons, that is a plan that is
22 sufficiently detailed, more detailed than it has been in many
23 other of the other reported Chapter 9 cases, and it is
24 appropriate for all purposes as a starting point for good
25 faith negotiations, demonstration of the city's intent to

1 implement a plan in Chapter 9, and demonstration of the
2 city's overall good faith in commencing its Chapter 9 case.
3 And so I think we've dispensed of that component of the
4 different standards.

5 We now turn to impracticability. Can I have a
6 second for a glass of water? Thank you, your Honor. Moving
7 to impracticability, the record shows in numerous places that
8 the city has many, many issues of bonds outstanding, and
9 another reason to keep the proposal for creditors nearby is
10 that toward the back of it -- and I think it's between pages
11 like 115 and 130, thereabouts -- there is an extensive list
12 in a type size not so good for people who wear bifocals. I
13 think you will hear in the evidence, if it's not already
14 clear from the record, that most of the individual bond
15 issues do not have indenture trustees as we think of them in
16 the commercial context or any other equivalent holder
17 representative. In fact, holders reserve more rights in most
18 muni structures or assign them to their insurers, to bond
19 insurers if insurers are involved. And so what you have here
20 is that in order to compromise principal or interest as well
21 as many other terms of debt that have to be addressed in
22 connection with resolving the city's financial problems
23 either under the proposed plan that was in the proposal for
24 creditors or in any other plan, there is going to have to be
25 extensive solicitation, efforts to find relevant bondholders

1 to get the right consents. The bankruptcy process is going
2 to make it a little bit easier because, of course, it will be
3 majorities of those who vote, and the solicitation rules are
4 clearer. Outside of a proceeding you might have to get
5 everybody in order to implement changes. In fact, you do
6 have to get everybody with respect to most of the issues.
7 There are a couple where there might be an exception if the
8 insurer exercises certain extensive levels of control. The
9 bottom line is it is an awful mess. There is many, many,
10 many, many issues, many, many, many holders, and this, of
11 course, is the definition of impracticability in a lot of
12 ways in the Bankruptcy Code because the whole reason we have
13 impracticability was because of New York's case back in the
14 '70s. New York back then -- the numbers were different;
15 times have changed -- didn't have materially more and may
16 have had less bond issues and bondholders than Detroit has
17 today. And the purpose of the impracticability standard was
18 to recognize the fact that with that kind of a debt
19 structure, having good faith negotiations with creditors in
20 advance of a proceeding in an effort to have an out-of-court
21 workout were, frankly, pointless or would have been
22 pointless.

23 And, frankly, for the most part, the objectors don't
24 disagree with anything I've just said. It's hard to. What
25 they say instead is that whether -- however negotiations

1 might have been practicable with bondholders, negotiations
2 were practicable with them, with the -- in some senses, self-
3 appointed or appointed representatives of particular labor
4 groups or retirees, and we're going to talk about that in
5 detail in a second, but we have a point first, which is if
6 you have a situation where it's admitted or almost
7 admitted -- and the Court may have to decide -- that
8 negotiations are impracticable with a huge universe of
9 creditors but they might be practicable with respect to
10 another universe of creditors, what do you do? And the
11 Retiree Committee actually is good about admitting there's
12 law on this in one of their footnotes, and the law is that if
13 you've got an impracticability problem, you have an
14 impracticability problem; that negotiating with the groups
15 you can groups with are kind of pointless. I think that if
16 we think about it a little bit, that has to be right because,
17 of course, if -- let's take a hypothetical that you've got,
18 you know, a group over here not organized, and then you've
19 got one bank debt piece, which is clearly organized and you
20 can clearly negotiate it. Well, you try to do everything you
21 can with the bank, but at some point the bank is going to say
22 what's going to happen with them, all those people that you
23 can negotiate with, because no one ever makes a deal in a
24 vacuum. And even if you could get all the way to conclusion
25 with a bank and you still have to file a Chapter 9 case,

1 doesn't that make you start -- effectively start all over
2 again with the one that was easy to negotiate with? And even
3 if it doesn't, even if it's possible to negotiate a deal with
4 both the bank and the city decides this is it, we're going to
5 make this deal no matter what happens in the Chapter 9 case
6 that you need for everybody else, you still have to go
7 through the Chapter 9 case. And waiting to file a Chapter 9
8 case while you work with the bank and finally reach the deal
9 that you're going to have with the bank that's going to be
10 permanent, you've wasted a lot of time because you have to
11 start a Chapter 11 case and go through that process anyway.
12 So I submit that the couple of cases that have focused on
13 this that we cite in our papers and that the Retiree
14 Committee cites in a footnote have got it exactly right. If
15 you have an impracticability with respect to a material part
16 of your capital structure, you have an impracticability
17 problem, period, so I think by looking at this -- and by the
18 way, before we go off, I want to say there's one paragraph of
19 the AFSCME brief that I think is just terribly important on
20 this. They argue this point a lot, but then they have
21 paragraph 102 at page 46, and it's only two sentences, so I'm
22 going to -- three sentences, so I'm going to read the whole
23 thing. "AFSCME is not suggesting that pre-petition
24 negotiations could have bound everyone" -- hold that
25 thought -- "or must have involved all of the city's thousands

1 of creditors." I don't under -- I think that sentence means
2 we're done because if the pre-petition negotiations couldn't
3 have bound everyone, how would you get a plan done? And if
4 it didn't involve all the city's thousands of creditors, how
5 would you get a plan done? So I think they're conceding that
6 our situation has to be regarded as impracticable, but they
7 go on. They say, "Some level of negotiation with principal
8 creditors could have led the city to a nonbankruptcy
9 solution." I think that's a non sequitur. If you're not
10 talking to everyone, you can't possibly have a solution. But
11 then they go on further, "By way of analogy, Section
12 109(c)(5)(B) of the Bankruptcy Code contemplates pre-
13 bankruptcy negotiations with creditors that the
14 municipality" -- there's a "the" missing -- "intends to
15 impair, not all creditors." Well, one of the complaints of
16 AFSCME is that the city intends to impair substantially all
17 of its material creditors. It has no other choice. So I
18 suppose there's a circumstance if the city was arguing that
19 we have a huge group of creditors as to which negotiations
20 are impracticable, but we're not going to impair them, and we
21 have another group of creditors that we really can talk to,
22 and we're going to impair them, if the city said no
23 discussions, that would be a rather extreme and silly
24 position. It's just not our case. We need impairment pretty
25 much across the board. We have proposed impairment pretty

1 much across the board. And in that circumstance, the fact
2 that huge chunks of the relevant constituencies are not
3 organized, can't be organized, can't be found, that is to me
4 the end of the impracticability discussion.

5 But maybe we should go on. Maybe we should try to
6 figure out whether it was really impracticable to negotiate
7 with the unions themselves. And, your Honor, I think the
8 answer to whether or not it was impracticable to negotiate
9 with the unions themselves -- and I include here the unions
10 and the other retiree groups -- is, frankly, what happened
11 when we asked the unions whether or not they could represent
12 retirees and the other groups or they could represent
13 retirees, and we have a demonstrative that we'll come back to
14 and put into evidence later on, but I think it's useful to
15 pause on, and I think it can go up on -- oh, you have a --
16 oh, okay. Okay. We have a big one there, and I have a few
17 that I can hand out to people, so with the Court's
18 permission --

19 THE COURT: Yes, sir.

20 MR. BENNETT: I think it's also in the -- I think
21 it's also in the binders. Now, there's a lot of information
22 on this chart, and I'm not going to try to take us all the
23 way through it, but I want to zero in on the fourth line of
24 data, which is the -- which is -- well, first of all, the
25 third line of data, which says, "Was a letter sent to a

1 creditor?" What that is is a letter that basically asked,
2 "Are you in a position to represent retirees and which ones?"
3 You'll see it. It'll be in evidence. And then the next line
4 is, "Respondent is able to represent retirees," and I'll give
5 you the key. "X" means they said no, the green check means
6 they said yes, and the question mark is there was no response
7 or it's not clear, and your Honor is going to hear some
8 evidence on that. And so look across the line. I have a
9 number of your most vigorous objectors who said, "No, we
10 can't represent retirees," so I'm going to come back to this
11 in the context of good faith, but let's -- we can start
12 thinking about it now. What is -- what do you expect of the
13 city having made a proposal heavily supported, certainly,
14 again, as standards go in this -- in similar circumstances,
15 had lots of meetings to explain, answered every question,
16 every question that was asked at the meetings -- there will
17 be evidence on that, too -- and your negotiating partner says
18 to you, in many instances in writing, "We actually can't
19 represent the people who are impaired by your proposal"? To
20 say that anything that happened afterwards is not in good
21 faith, you've got to have a good answer as to what do you do.
22 What's the next sentence in the dialogue? You're getting
23 feedback from someone who doesn't have authority to give
24 feedback if they give you any feedback. By the way, the
25 bottom line is feedback. "X" means no. There's no other

1 term we need to define. If they say -- if they said --
2 responded otherwise constructively, which was either "No, but
3 I might do this," or "Yes, if you make the following
4 changes," that's okay, but that just came from somebody who
5 said they don't represent the person who's going to be
6 affected. What is the next step in a negotiation where the
7 person who said they're here to negotiate says to you, "We
8 really don't represent the person who's affected by the plan
9 we're discussing"? None of the objectors say how that
10 question is supposed to be answered.

11 The reality is is the city said, "Tell us your
12 suggestions anyway." And if we got suggestions, feedback, we
13 would have had to then figure out what to do with it in that
14 very unusual circumstance that I, frankly, haven't confronted
15 very often in my career, but we weren't even put to that hard
16 question because what the other part says is is that -- and
17 this is more toward the good faith negotiation part than this
18 one, but as long as I've got the chart up, as the bottom line
19 indicates, the evidence will show that from this creditor
20 constituency, not from others -- I'll get to that in a
21 second -- we received no concrete proposal or comprehensive
22 feedback. We got a lot of "no," but I'll come to that later.

23 With respect to this part, again, impracticability,
24 AFSCME cites results of past collective bargaining as an
25 example of negotiations with unions that have succeeded.

1 That doesn't surprise me in the slightest, but there's also
2 no evidence and I don't think there will be any that those
3 past discussions began with unions disclaiming power to
4 bargain on behalf of the relevant constituency. As the
5 evidence will demonstrate, that's how these discussions did.

6 So the bottom line, again, with respect to this
7 part, is even if -- and it's not -- the standard for
8 impracticability of negotiations is impracticability with
9 every major constituency, I think the fourth line of this
10 chart demonstrates that negotiations were impracticable with
11 the retiree side, and they were impracticable with the
12 bondholder side.

13 Good faith negotiations. Again, this is a question
14 I don't think we have to reach because I think we've
15 demonstrated that those kinds of negotiations were
16 impracticable, but we tried really hard anyway. The evidence
17 will show that we presented the June 14th plan. Mr. Buckfire
18 of Miller Buckfire, who was integral to all the negotiations,
19 but others, Mr. Moore, Mr. Malhotra, people

20 you will hear from, they also extensively participated
21 and will testify about what happened in the rooms. The city
22 told the creditors essentially the following. The city would
23 have discussions with all parties willing to speak for the
24 city for about a month after the June 14th presentation so
25 that the city could listen to people and figure out if there

1 was an out-of-court solution possible for this enormously
2 complex and dire circumstance. The city representatives
3 asked for feedback, including proposals that the creditors
4 would accept if they weren't going to accept the city's
5 proposal. And the city said in writing and separate -- and
6 verbally that it would evaluate what it heard during the
7 following month, during the week beginning July 15th, 2013,
8 and decide what came next. It's conceivable -- I think
9 people would say they doubted it would happen -- that one of
10 the things that would have come next were consensual
11 negotiations on the effort to build some kind of plan. That
12 could have commenced.

13 THE COURT: You said July. Did you mean June?

14 MR. BENNETT: No. July 15th was the evaluation
15 week.

16 THE COURT: Oh, okay.

17 MR. BENNETT: The June 14th proposal and July 15th
18 evaluation week, meetings in the middle. I'll have a
19 timeline at some point, and you'll see how this fits
20 together.

21 THE COURT: Okay.

22 MR. BENNETT: So one of the things that might have
23 happened next would have been negotiations on a consensual
24 plan, but if the -- after the month of discussions and after
25 the evaluation week the city could not see a path to an out-

1 of-court restructuring that could be implemented outside of
2 court, a Chapter 9 case was absolutely a possibility. No one
3 was shy about that. And, frankly, it should not be
4 surprising to anyone that the evidence shows that work on
5 both contingencies was proceeding throughout this entire
6 period. Much is made of the fact that there's contingency
7 planning going on for a Chapter 9 case. Absolutely there
8 was. It would have been irresponsible not to. By the way,
9 nothing in the Jones Day pitch is inconsistent with this way
10 of organizing a case. And there's a lot of complaints about,
11 well, people thought they had to keep a record, make a
12 record. Absolutely they have to keep a record and make a
13 record. Making a record of out-of-court steps taken in a
14 Chapter 9 negotiating process is just sensible when everybody
15 knows, based upon the play book executed in the last six or
16 seven major cases have involved vigorous objections to
17 eligibility by bondholders and labor unions, depending upon
18 the case which, sometimes both, and in every single one of
19 those cases, the judge has to go through pages and pages and
20 pages about what happened during the out-of-court phase to
21 determine whether people were in good faith. So courts
22 through their opinions have sent a message to people who are
23 serious about Chapter 9 restructurings. Keep records, and we
24 did.

25 There is a lot of criticism in the papers that there

1 were instances where the city said these are not negotiations
2 or particular meetings were not negotiations. I confess that
3 this implicates an area of law that I'm not tremendously
4 familiar with. It has to do with collective bargaining. As
5 the evidence will show, the collective bargaining was
6 suspended as a result of a statute passed, and there was a
7 clear concern by the city that they were not going to waive
8 the -- or reverse the suspension of collective bargaining and
9 all of the baggage that came with that. However, we don't
10 really have to deter ourselves much over that incident
11 because it's admitted by the objectors that the city sought
12 feedback. The evidence will show that. It's admitted that
13 there were, quote, discussions, close quote, and by the way,
14 the leading case that people cite as the -- I think it's
15 Endicott Schools case that is cited for the proposition of,
16 you know, what is a nonnegotiated process or absence of
17 negotiations. That case talks about absence of discussions.
18 That's the actual quote if you go back to the case itself.

19 So, in any event, there is no dispute that dialogue
20 was something that was encouraged and not discouraged.
21 Nobody said we don't care what you think. Never happens;
22 evidence will show never happens.

23 Now, again, assuming for a second that what the city
24 did in the negotiations has any relevance at all given the
25 clear impracticability in this case, what is required of the

1 city in good faith negotiations -- and I intimated that when
2 we started talking about the chart -- is informed what
3 creditors -- by what creditors said and did. Okay. Mr.
4 Buckfire will testify about some of that being especially
5 careful not to talk about proposals that other people made
6 because they were made with an intent that they be kept
7 confidential, but we got permission at least in one instance
8 to talk about the fact that a proposal was made. And what
9 Mr. Buckfire is going to tell the Court is that the proposals
10 that the city got back were proposals that basically said,
11 "Our position is better than everybody else. We should do
12 better than everybody else," and they were, frankly,
13 completely insensitive to the overall problems that the city
14 faced. Again, the fact that we did get proposals from people
15 other than the labor negotiators is going to be --
16 Mr. Buckfire will testify to it, but there's a letter in
17 evidence, and I don't have the number. I forgot to put it on
18 this morning. There's a letter in evidence -- a cover letter
19 to a proposal that came from three major insurers in the pre-
20 filing period. And, your Honor, that demonstrates that a
21 party that's represented by qualified professionals, as a
22 number of the labor/retiree constituents were, knew exactly
23 what you're supposed to do when you receive a proposal and
24 you don't like it. The way you -- the way you respond to a
25 proposal and you don't like it is you send back something

1 that you do like, and that's how a negotiation gets started.
2 Whether it would have worked or not is a different question.
3 The point is is that it wasn't a mystery to anybody how to
4 start a negotiation if someone really wanted to start one.

5 What did labor do besides respond maybe we're not
6 the right person to talk to, which is a problem in and of
7 itself? Well, here the UAW's papers are particularly
8 instructive, and in many places in their papers, particularly
9 their supplemental objection -- I think it's also in the
10 pretrial brief; I'm just not remembering that as clearly
11 today -- the UAW says, "Well, of course we weren't going to
12 say yes to any modifications of retiree benefits or pension
13 benefits in the pre-filing scenario because we had a
14 constitutional guarantee. Any proposal that doesn't pay
15 these in full and does not impair retiree benefits is a
16 proposal we cannot accept," or, "we will not accept." I
17 think it says both those things in different places.

18 So, again, I think we have to ask the most crucial
19 question in evaluating the city's good faith. When you get
20 back a response that says, "We're never going to agree to
21 anything but nonimpairment," what exactly is the city
22 supposed to do next? What's the next step in that
23 negotiations? "Gee, we were just kidding. We found the
24 money in a mattress. We'll do that"? I don't think that's
25 the right response. I don't think there is a right response.

1 I think at that point you can determine that negotiations
2 have failed and they're not going to succeed.

3 The Retiree Committee goes even further in their
4 papers, their pretrial brief. They say that negotiations
5 were not in good faith because they included an impairment,
6 meaning the city wasn't in good faith because we didn't agree
7 with them from day one. Okay. Again, I ask the question,
8 what exactly -- if anyone is going to contend that the city
9 was in bad faith negotiations and got that response, what
10 exactly were they supposed to do next in the negotiations
11 that would have helped matters?

12 And as I said before, many retiree groups said,
13 "We'd love to talk to you, but we don't represent the
14 relevant people."

15 Clearly, your Honor, we received many requests for
16 additional information. You will see some interesting charts
17 that show what was in the data room, at least in terms of
18 volumes, how the data room is populated. The evidence will
19 show that the city did its best to comply with information
20 requests. I'm absolutely certain that no one was completely
21 satisfied with what the city gave them. In some instances,
22 that's because the city doesn't always have everything that
23 people want. In some instances, I suspect it's -- we will
24 find that -- to the end of this case we will not find -- we
25 will find certain people who will never agree that they've

1 gotten everything that they want or they're satisfied with
2 the information they received. It's a hard problem, but the
3 evidence will show that the city created a database, worked
4 really hard to populate it, populated it with enormous
5 amounts of information, and did not withhold information as a
6 basis to obtain a negotiating advantage.

7 Final point with respect to this section. In almost
8 all the papers -- and I want to -- it could be all -- there
9 is a statement quoted by Kevyn Orr concerning the financial
10 and operating plan at a meeting to discuss the financial and
11 operating plan, which is not the proposal for creditors. The
12 financial and operating plan is a document required by
13 statute to be filed 40 days -- 45 days after his appointment.
14 It's about facts, and he's reporting facts. And someone
15 asked him about negotiating the financial and operating plan,
16 and he said, "This is not something to negotiate. This isn't
17 a plebiscite. This is a report. I'm supposed to file it."
18 So that quote, which I think the objectors would have you
19 think applied to the restructuring plan, and it does not, did
20 not, and it applies to something completely different, and I
21 think the evidence will show that.

22 For the foregoing reasons, I think the city did act
23 in good faith in all of the negotiations that it conducted.
24 Those negotiations were unsuccessful and, thus, that
25 prerequisite for filing a Chapter 9 case and being eligible

1 for relief has been met.

2 I'm now going to turn to good faith generally, spend
3 a little time on it, 921(c). Here again, I want to borrow
4 AFSCME's papers because they're just very instructive and
5 really help us with this. Paragraph 109 on page 48, "The
6 relevant considerations regarding good faith under Chapter 9
7 include," and they point to five points out of the Stockton
8 case. I'll accept them. Number one, whether the city's
9 financial problems are of a nature contemplated by Chapter 9.
10 The evidence will show that if Detroit's financial problems
11 are not the financial problems of the nature contemplated by
12 Chapter 9, I don't know what city's is, so we think we will
13 satisfy that one very easily. Number two, whether the
14 reasons for filing are consistent with Chapter 9. I think
15 the form and substance of the plan that was proposed and,
16 frankly, everything that the city has been saying about it
17 are indicative that the city is trying very hard to use the
18 powers subject to the limitations included in Chapter 9 to
19 effectuate a financial restructuring for the city. I don't
20 think we'll have any difficulty demonstrating that with the
21 evidence. Number three, the extent of the city's pre-
22 petition efforts to address the issues. Here I want to pause
23 and put on a timeline, and there's -- it's really long, so
24 there's two pieces, but for this purpose it's the first piece
25 that's the most relevant.

1 THE COURT: Let me ask you to pause for just a
2 second. We should have the record reflect what exhibit
3 number that chart is.

4 UNIDENTIFIED SPEAKER: It's Exhibit Number 36.

5 MR. BENNETT: I have better. They'll try and put it
6 up, but I also have some copies of it. Here's what I'm going
7 to do. I'm going to distribute the first piece now, with the
8 Court's permission, and the second piece in a minute, so --
9 after I get through this, so here's the first piece. Again,
10 I think everyone has seen this already. If you don't have
11 it, it's okay. Everyone else is going to have it in a
12 second. Obviously in a bunch of ways this chart summarizes
13 lots and lots of evidence that is going to go into the
14 record, but what is going to be seen in the record was that
15 it wasn't a bunch of people up at night on June 13th working
16 on a presentation of a plan for June 14th. The efforts to
17 address the -- the pre-petition efforts to address the issues
18 stretch probably before December 21, '11, but I think at
19 least, as I understand the history and as the evidence will
20 certainly show, no later -- excuse me -- no later than
21 December 21, 2011, December 2011, a number of people within
22 state government and city government started focusing on the
23 fact that the Detroit financial situation was very serious
24 and had to be addressed. And there were a number of efforts
25 that were attempted all through 2012 to try to grapple this

1 problem -- with this problem short of requiring concessions
2 from creditors, short of Chapter 9. Kind of everything else
3 you might think of doing was done by a large number of really
4 devoted and qualified people. Regrettably, it all failed,
5 and -- but the part about -- you know, this first chart,
6 which covers almost a year and a half on one page -- it was a
7 lot of time and a lot of effort in a search for alternative
8 solutions. So forgetting the near-in -- what happened in the
9 June and July time frame, which we'll get to in a second,
10 the -- it is clear that there was a tremendous amount of time
11 and effort considering the issues.

12 Next is the fourth item in the AFSCME list, the
13 Stockton list, the extent that alternatives to Chapter 9 were
14 considered. I think alternatives broadly construed include
15 all of this, but then we'll turn to the time frame -- and all
16 of a sudden -- we just got this one up -- the time frame of
17 June and July, which we've blown up because so much happened,
18 onto its own separate chart, so let me pass this one out.

19 THE COURT: So, ma'am, what's the number of that one
20 that you're just now taking down?

21 UNIDENTIFIED SPEAKER: They're both Exhibit 104.

22 THE COURT: Oh, both 104. Okay.

23 MR. BENNETT: And because so much more happened, at
24 least in terms of dates and places, in the June and July time
25 frame, we've blown that one up so that the last two months

1 are their separate page. And June was devoted to heavily
2 trying to figure out whether the last round of possible
3 alternatives, any conceivable kinds of out-of-court
4 restructuring, could work, and what the evidence will show is
5 that on this page, which shows all kinds of meetings and all
6 kinds of different interactions with creditors, a concerted
7 decision was made to exclude meetings with individual
8 creditors or individual creditor representatives because it
9 wouldn't be readable anymore, so this is just organized
10 meetings with different groups for different specific
11 purposes. The other key to interpretation is when it says
12 "nonunion," it means the bonds, so the union -- for
13 purposes --

14 THE COURT: Means what, sir? Pardon? It means
15 what?

16 MR. BENNETT: The bonds. "Nonunion" means --

17 THE COURT: Bonds.

18 MR. BENNETT: -- the bonds and other borrowed money
19 because there is a collection of notes involved in that side
20 of the case as well. Where it says "union," it's really the
21 retiree representatives, which at the time were predominantly
22 union. And so what this demonstrates -- again, it may be
23 part of the good faith piece, too, but for purposes of the
24 fourth prong of the Stockton test, I would say both of these
25 are relevant, both the long-term assessment of alternatives

1 that were short of debt restructuring, then the close-in
2 effort to figure out whether there was any conceivable way to
3 get something accomplished out of court. It is perfectly
4 clear that there was an extensive effort to evaluate every
5 conceivable alternative that anyone could think of.

6 And then the last factor, factor five, whether the
7 city residents would be prejudiced by Chapter 9 relief. As
8 we said in argument last week -- and the Court will hear
9 through extensive evidence -- and it's a really important
10 part of the case both for purposes of eligibility and for
11 everything that will follow -- the residents are dramatically
12 prejudiced by denying Chapter 9 relief. Many of the problems
13 the city confronts in providing services to its residents is
14 because so many of its tax dollars are devoted to dealing
15 with bonds and other legacy liabilities. That's the problem.
16 The taxpayer in Detroit puts up a dollar and gets back --
17 right now the number is something -- right now the number is
18 something like 58 cents, and the projections show it could be
19 some day 35 cents. That's an unstable situation. It's not
20 working now, it's not going to work in the future, and it has
21 to be changed.

22 The other side of the coin. Very often the first
23 reaction in cases like this is raise taxes. The evidence
24 will show -- it's summarized, by the way, in the June 14th
25 proposal -- that the taxes in Detroit are already the highest

1 in any municipality in Michigan; that we're already having
2 enforcement problems. The city is already having enforcement
3 problems with respect to property taxes; that the property
4 tax assessments may be too high, not too low, indicating that
5 that revenue source is stressed as well. There's nothing
6 left to do here. There is no revenue solution. So we have
7 come to a case, which is not necessarily like other Chapter 9
8 cases, where we have a very finite revenue pool, and it just
9 isn't enough to provide services and to pay debt, and, thus,
10 Chapter 9 is more needed here than in any other scenario you
11 can possibly think of. The evidence will show that.

12 Last topic, and this gets a lot more technical, but
13 this is responsive to your Honor's suggestion that we had to
14 deal with a disputed issue of fact, and that was the
15 motivation for the inclusion of appropriations provisions in
16 PA 436. Your Honor, I think the following is intended to
17 really indicate that that question isn't material, but I
18 think it's also -- when we did the research, we found that
19 it's also not a legitimate question for judicial review, so
20 I'm going to give you some citations, and I'm going to read a
21 very few quotes, and your Honor is clearly going to find more
22 when you look at this question.

23 In the State of Michigan, frankly, I think in other
24 places, et al. -- other places as well, the judiciary is not
25 supposed to engage in guessing about the legislature's

1 intent. The leading case about this turns out to be a
2 referendum case in Michigan. It's called Michigan United
3 Conservation Clubs versus Secretary of State. It's found at
4 630 N.W. 2d 297. Michigan United involved a review of a
5 Court of Appeals decision -- I think it's called the Court of
6 Appeals here -- a Court of Appeals decision that held, in
7 fact, that the -- that an appropriations provision in gun
8 control legislation was not going to prevent that legislation
9 from being subject to a referendum, and the Supreme Court
10 reverses and says that that -- that the inclusion of that
11 provision is going to insulate that statute from the
12 referendum process. And along the way, the Court was not
13 fractured in result but was fractured a little bit in
14 reasoning. There's a collection of -- I think it's three
15 concurring opinions. There's one judge who writes a
16 dissenting opinion. I think it's just one, but I'm not a
17 hundred percent positive about that. And so the lead -- the
18 first concurring opinion has this to say. "This court has
19 repeatedly held that courts must not be concerned with the
20 alleged motives of a legislative body in enacting a law, but
21 only with the end result - the actual language of the
22 legislation." And then there's a whole series of cases that
23 are cited to support that proposition that I won't read the
24 citations in the record unless your Honor wants them.

25 The next concurring opinion, Judge Corrigan's,

1 quotes from Justice Cooley's constitutional law thesis or
2 textbook. It looks like it may be a textbook. And the
3 quote, I think, is also instructive. It's a little bit
4 longer. It says the following: "to make legislation depend
5 upon motives would render all statute law uncertain, and the
6 rule which should allow it could not logically stop short of
7 permitting a similar inquiry into the motives of those who
8 passed judgment. Therefore, the courts do not permit a
9 question of improper legislative motives to be raised, but
10 they will in every instance assume that the motives were
11 public and benefitting (sic) the station. They will also
12 assume that the legislature had before it any evidence
13 necessary to enable it to take the action it did take."

14 Then, your Honor, the next case you would find if
15 you looked at this is Houston versus Governor, which is a
16 2012 case. There's a longer -- 491 Michigan 876, 810 N.W. 2d
17 255. And right near the front of the opinion there's a
18 paragraph. I'm only going to read two parts of the paragraph
19 to save time. "There is nothing that is relevant in this
20 regard" -- that's in terms of interpreting a statute -- "that
21 can be drawn from the political or partisan motivations of
22 the parties." I'm going to skip a sentence. "Moreover, this
23 court possesses no special capacity and there are no legal
24 standards by which to assess the political propriety of
25 actions undertaken by the legislative branch."

1 Now, of course, much of this makes sense because one
2 of the problems we scratched our heads about when we got back
3 to think about how we would address your Honor's question is
4 there are a whole bunch of legislators in two Houses that
5 conceivably had all kinds of different reasons for supporting
6 the appropriations. It could well be that most of them put
7 the appropriations there because they really thought they
8 needed the money even if some thought they were putting it
9 there because it was a problem relating to the referendum
10 process. I will tell you a very, very persuasive example of
11 the hazards of trying to figure out the intent of statutes
12 was impressed upon me by a law school, an example I learned
13 in law school, which was about the age 55 -- or the 55-mile-
14 per-hour speed limit, and it -- research turns out to show
15 that the purpose of that speed limit was to save fuel, and
16 the reason that it wasn't increased for a long time is
17 because it saved lives. And so also the purpose of
18 legislation actually can change over time or the reason why
19 it stays there, so I think it's a hazardous inquiry. I don't
20 think we know where to start. I don't think we can drag all
21 the legislators in here and ask them all, and I think the
22 only other evidence you're going to see about this is,
23 frankly, inadmissible hearsay.

24 Maybe more importantly than this, I think I
25 indicated to your Honor in argument last week that I didn't

1 think there was any consequence to a determination by this
2 Court that the appropriation provisions might prevent a
3 referendum. I said that the statute wouldn't be
4 unconstitutional. It just would be subject to referendum.
5 Well, it turns out in the Michigan United case, one of the
6 concurrences goes back and gives everybody the history of
7 what happened in that case, and so how did that case wind up
8 in court to begin with? And it wound up in court because the
9 persons, the group that wanted to have a referendum went out
10 and got the required number of signatures, went to the
11 appropriate office where the election is going to be held,
12 and the first response was no referendum because of the
13 provisions, and then they went to court to test it. So I
14 think we're in a situation where, frankly, the only
15 circumstance where this issue of whether or not the
16 appropriate -- whether or not the appropriation provisions
17 are in there for an appropriate purpose would conceivably
18 come up is when a person or organization desiring a
19 referendum within the time specified by the statute -- and it
20 could conceivably have run; I couldn't figure that out --
21 actually collects the signatures, goes down to the
22 appropriate place and tries. That never happened.

23 It also appears that even if a group or person
24 doesn't do that, there is an initiative process, which is
25 different from a referendum process, which they could have

1 triggered, and that process is not dependent in any way on
2 whether or not there's an appropriation provision in the
3 relevant statute.

4 And, finally, I think it was pointed out when we
5 were together last that the PA 436 contains a severability
6 clause, so what's left to have happen at this point is if
7 that provision is somehow inappropriate and has to be
8 stricken for some legally cognizable reason, the rest of the
9 statute is still there. So I would say, again, summarizing
10 from where I started, there's two points here. One is is
11 that I think your Honor has asked for an inquiry that is not
12 only impractical, it's not one for courts, but, in any event,
13 it's not material to anything because it doesn't lead us
14 anywhere that would change the result that we have PA 436 or
15 at least every single one of its provisions with or without
16 the appropriation provision to apply, and it's not upset by
17 reason of the possibility that a referendum could have been
18 attempted in some circumstances where one never apparently
19 has been attempted.

20 With that, if you have no more questions, I think
21 I'm done.

22 THE COURT: Thank you.

23 MR. BENNETT: Thank you. I've been asked to offer
24 104 for demonstrable purposes only because it would not be on
25 the relevant lists.

1 THE COURT: Is there any objection to 104 for
2 demonstrative purposes only? All right. The Court will
3 admit it for that purpose.

4 (Debtor's Exhibit 104 received at 11:25 a.m.)

5 MS. LEVINE: Good morning, your Honor. Sharon
6 Levine, Lowenstein Sandler.

7 THE COURT: Let's just have the record clearly state
8 this. Does the State of Michigan wish to make an opening
9 statement on the issue of the city's eligibility?

10 MR. SCHNEIDER: No, your Honor. However, we may
11 wish to make a closing statement.

12 THE COURT: Thank you. You may proceed.

13 MS. LEVINE: Thank you, your Honor. Sharon Levine,
14 Lowenstein Sandler, for AFSCME. I'm actually here in the
15 role of emcee. As with the oral arguments, we have agreed to
16 work together to try and not duplicate efforts and to make a
17 cohesive presentation, so just to give your Honor a little
18 bit of an understanding, the Retirement System is going to,
19 in essence, go first, spend about 20 minutes going through
20 the timeline as we see it. Following that, the Retired
21 Detroit Police Members Association will react to the city's
22 final portion of their statement and also to their particular
23 issues as reflected in the timeline and apply it to the
24 facts. The UAW, the Public Safety Unions, the Retired
25 Association Parties, and AFSCME will each spend just a few

1 minutes indicating how we see any additional facts or how the
2 facts apply to our particular situations, and then the
3 Retiree Committee probably for 20 or 30 minutes will give a
4 global overview of applying the facts that came out in the
5 timeline to the law. Thank you.

6 THE COURT: Okay. Well, do you think it's okay with
7 your group if at a convenient break around noon we take our
8 lunch break?

9 MS. LEVINE: That would be great.

10 THE COURT: Okay.

11 MS. GREEN: Your Honor, can I move the -- oh, I'm
12 sorry.

13 THE COURT: Yes. Can we arrange to move that easel,
14 please? You can try.

15 MS. GREEN: Your Honor, Jennifer Green on behalf of
16 the Retirement Systems.

17 THE COURT: Be sure you speak right into the
18 microphone even though you've angled the lectern there.

19 OPENING STATEMENT

20 MS. GREEN: As Sharon mentioned, we have put
21 together a slideshow presentation of the timeline. We
22 believe that these facts will later be used to support
23 certain legal arguments that we will be raising throughout
24 trial regarding the fact that Chapter 9 was a foregone
25 conclusion well before any creditor negotiations occurred;

1 that Chapter 9 was filed in bad faith to circumvent the
2 pension clause, and we submit, respectfully, we disagree with
3 the city's assertion a moment ago that Chapter 9 was a mere
4 contingency, and our assertion is that it really was a
5 foregone conclusion before any of the creditor negotiations
6 ever occurred, and with that I will begin.

7 You may ask why we're going back this far to 2011,
8 but at his deposition, your Honor, Governor Snyder testified
9 that this has been a highly structured process for close to
10 three years, so we begin in January 2011 when Richard Snyder
11 takes office as the governor of the State of Michigan.

12 Shortly thereafter, just three months later, the
13 governor signs into law what we now refer to as PA 4. The
14 legislation makes its way through both Houses within just 34
15 days. February 2012, Stand Up for Democracy files with the
16 Secretary of State a petition to invoke a referendum on PA 4.
17 Just days later, within -- actually, within three days of
18 Stand Up for Democracy's petition, discussions begin
19 regarding ways to insulate PA 436 -- or what will become PA
20 436 eventually from referendum. There are notations that
21 discussions were had with Andy Dillon, the treasurer of the
22 State of Michigan's office, and there are notes about Miller
23 Buckfire are going to follow up with Andy directly about the
24 process for getting this to the governor and a notation that
25 the cleanest way to do all of this is new legislation that

1 establishes a board and includes an appropriation for a state
2 institution. If an appropriation is attached, it concludes,
3 then the statute is not subject to repeal by the referendum
4 process.

5 In April of 2012, the city enters into the consent
6 agreement with the State of Michigan. Shortly thereafter,
7 Heather Lennox of Jones Day and Ken Buckfire of Miller
8 Buckfire purportedly meet with Governor Snyder on June 6th,
9 2012, to discuss the Detroit -- the City of Detroit's
10 financial crisis and issues related to potential 9 Chapter --
11 or Chapter 9 bankruptcy.

12 Prior to the meeting, in the e-mail that we
13 discussed earlier and that I quoted for you earlier during
14 oral arguments, there is a notation that Mr. Buckfire
15 suggested that all the memos be put together, the ones that
16 were done for Andy. A list of those memos were compiled, and
17 three of those we think are pertinent to some of the issues
18 at trial in this case. One of the memos was regarding a
19 summary and comparison of PA 4 and Chapter 9. One was a
20 memoranda on constitutional protections for pension and OPEB
21 liabilities, and a third memo was analysis of filing
22 requirements of Section 109(c)(5) of the Bankruptcy Code, in
23 particular, negotiation being impracticable and negotiating
24 in good faith.

25 Two weeks after the meeting with Governor Snyder,

1 Miller Buckfire is engaged by the State of Michigan to
2 perform an analysis and review of the city's financial
3 condition. Shortly thereafter, Ken Buckfire testified that
4 after he got this engagement, he started receiving phone
5 calls from law firms seeing if he would be interested in
6 helping them get inserted in --

7 THE COURT: I need to interrupt you for a second.

8 MS. GREEN: Am I going too fast?

9 THE COURT: Yes.

10 MS. GREEN: I was trying to get done by noon. I was
11 trying to get done by noon because you said you wanted to
12 break at noon.

13 THE COURT: I really want to follow what you say,
14 so --

15 MS. GREEN: I will slow down.

16 THE COURT: -- I need you to slow down.

17 MS. GREEN: I knew I only had 30 minutes, so I was
18 trying hard.

19 THE COURT: Well, we don't have to stop right at
20 noon.

21 MS. GREEN: Okay. I will slow down.

22 THE COURT: But slow down for me by about 50
23 percent.

24 MS. GREEN: Wonderful. I get this a lot, so I know
25 I'm a fast talker. The discussion continues. Mr. Buckfire

1 testified that Corrine Ball had wanted him to meet one of her
2 partners, who was successful in a Chapter 9 case. This is in
3 2012. In October of 2012, PA -- before PA 4 is even rejected
4 by the voters, the Treasury Department and the Governor's
5 Office begin discussing creation of a new emergency manager
6 statute just in case the referendum is passed. Howard Ryan,
7 who is the 30(b)(6) witness for the State of Michigan, will
8 testify to that. Shortly thereafter, November 6th of 2012,
9 the Michigan electorate rejected PA 4.

10 In December Senate Bill 865, which would eventually
11 become PA 436, was introduced in the Michigan legislature.
12 The final version is adopted by both Houses just 14 days
13 later on December 15th, and around that same time the
14 treasurer commences a preliminary review of the city's
15 finances under PA 72 and determines that a serious financial
16 problem exists in the City of Detroit.

17 At the end of December, the governor of Michigan
18 signs PA 436 into law, submits it to the Secretary of State.
19 The entire process for PA 436 took only 26 days, and it is
20 insulated from public referendum because it contains what the
21 objecting parties submit is a minor appropriation of \$5.8
22 million, which is less than .009 of the state budget, and
23 below we have the citation from the exhibit that sets forth
24 the amount of the state budget.

25 In connection with the PA 436 appropriation, the

1 state 30(b)(6) witness testified at his deposition that he
2 was aware that the appropriation was included for the purpose
3 of insulating it from referendum. He was asked the question,

4 "Do you recall when that provision of the
5 legislation was added to the draft bill?"

6 Pretty early on, I believe. It was quite early,
7 maybe from the inception."

8 He was then asked, "Based on your conversations
9 with the people at the time, was it your understanding that
10 one or more of the reasons to put the appropriation language
11 in there was to make sure it could not -- the new act could
12 not be defended by a referendum?" He answered, "Yes."

13 "Where did you get that knowledge from?"

14 Well, having watched the entire process unfold
15 over the two -- past two years.

16 The governor's office knew that was the point of
17 it?

18 Yes.

19 That your department" -- his is the treasury --
20 "knew that was the point of it?"

21 Yes."

22 In January of 2013, Miller Buckfire was reengaged,
23 this time by the City of Detroit, to continue its evaluation
24 of the city's financial condition. Mr. Buckfire was then
25 asked by Treasurer Dillon to make arrangements for the city

1 and state officials to meet and interview Jones Day and seven
2 other law firms that were interested in serving as
3 restructuring counsel.

4 The day before the pitch presentation with the City
5 of Detroit, Kevyn Orr, who attends the pitch, receives an e-
6 mail recounting conversations with Mr. Buckfire -- Mr.
7 Buckfire will be testifying live during this trial -- and
8 listed are the questions that will be asked the following day
9 at the pitch. They all relate to Chapter 9. "Given the
10 issues that Detroit faces, how can they address them outside
11 of Chapter 9?" is the first, but all the rest are, "Under
12 what circumstances should Chapter 9 be used?" "How would one
13 execute a low-cost fast Chapter 9?" "Given Chapter 9
14 experience, what went wrong with JeffCo and Orange County?"
15 And at the bottom, "If Miller Buckfire finds a way to
16 monetize assets and create liquidity, how would that impact
17 eligibility?"

18 The next day on January 29th, Jones Day presents its
19 restructuring strategy to the city and state officials, and
20 it explains that while out-of-court solutions are preferred,
21 they conclude they are extremely difficult to achieve in
22 practice. They note that Chapter 9 can create negotiating
23 leverage negotiating with the backdrop of bankruptcy, which
24 we submit is not good faith.

25 They further conclude in their strategy that an out-

1 of-court plan should contemplate the possibility of Chapter 9
2 because it creates leverage, you can negotiate in the shadow
3 of Chapter 9, and it helps bolster your eligibility and your
4 success in a Chapter 9 by establishing a record of seeking
5 creditor consensus.

6 There are notes on the slide that state, "A good
7 faith effort to pursue an out-of-court restructuring plan
8 will establish that clear record and will deflect any
9 eligibility complaints based on alleged failure to negotiate
10 or bad faith. If needed, though, Chapter 9 could be used as
11 a means to further cut back or compromise, quote, 'accrued
12 financial benefits otherwise protected under the Michigan
13 Constitution.'"

14 The next day Richard Baird, who's Governor Snyder's
15 consultant, reaches out to Jones Day to inquire about hiring
16 Kevyn Orr as the emergency manager. The following day,
17 Mr. Orr calls PA 436 a clear end-run around the prior
18 initiative that was rejected by the voters in November and
19 also comments, "So although the new law, PA 436, provides the
20 thin veneer of a revision, it is essentially a redo of the
21 prior rejected law and appears to merely adopt the conditions
22 necessary for a Chapter 9 filing."

23 THE COURT: What do those statements appear in?

24 MS. GREEN: It's Orr Exhibit 4, JDRD0000295. It's
25 an e-mail.

1 THE COURT: Right, but what is that?

2 MS. GREEN: An exhibit. It's an e-mail.

3 THE COURT: An e-mail. Thank you.

4 MS. GREEN: E-mail. I'm sorry. In February of
5 2013, Mayor Bing was approached by Mr. Baird regarding Kevyn
6 Orr as the candidate for the emergency manager position, and
7 Mayor Bing recalls that the only salient qualifications he
8 was offered about Mr. Orr was his bankruptcy experience. Mr.
9 Baird told him about Kevyn Orr's experience in part of the
10 Chrysler bankruptcy team, and Mr. Orr -- Mayor Bing was
11 asked, "Did you ask Mr. Baird anything else about Mr. Orr's
12 qualifications to serve as emergency financial manager?" And
13 then he answers, "He -- yes, I did, and he felt that not only
14 was he a lawyer that dealt with bankruptcy for over 30 years,
15 but he also had some qualification as it related to
16 restructuring." "And did Mr. Baird indicate that Orr had
17 qualifications concerning restructuring outside the context
18 of bankruptcy?" "That would be no" was his response.

19 In March the governor declared that a local
20 government financial emergency existed in the City of
21 Detroit. At the end of March, Kevyn Orr was appointed
22 emergency manager of the City of Detroit. On March 28th PA
23 436 becomes effective, and in April of 2013 Jones Day is
24 engaged as legal counsel for the City of Detroit.

25 After being appointed emergency manager, Kevyn Orr

1 is quoted on May 12th, 2013 -- we've all heard this quote,
2 but I'll say it again -- that the public can comment on the
3 city's financial and operating plan, but we are not, like,
4 negotiating the terms of the plan.

5 The day before presenting its proposal to the
6 creditors, Mr. Orr gives an interview with the Detroit Free
7 Press and expresses his intent to evade the pensions clause
8 through a federal Chapter 9 bankruptcy proceeding, and we
9 have quoted for you the portion of that interview and
10 highlighted it in yellow. He states, "If you think your
11 state-vested pension rights, either as an employee or
12 retiree -- that's not going to protect you. If we don't
13 reach an agreement one way or the other, we feel fairly
14 confident that the state federal law, federalism, will trump
15 state law."

16 On June 14th, the emergency manager held a meeting
17 at the Detroit Metropolitan Airport and presented the city's
18 proposal for the creditors. The evidence will show that the
19 city proposed to fully -- fully intended to impair or
20 diminish accrued financial benefits. This is an excerpt from
21 the proposal for creditors, and it clearly states that with
22 respect to unfunded pension liabilities, quote, "such
23 contributions will not be made under the plan." And it
24 further states there must be, quote, "significant cuts in
25 accrued vested pension amounts for both active and currently

1 retired persons."

2 On June 20th, the emergency manager undertook a
3 presentation regarding the city's finances and plan
4 restructuring to both uniform and nonuniformed retirees.
5 Numerous witnesses who attended this meeting, several of
6 which will be testifying at trial, will testify that they did
7 not observe or participate in any negotiations regarding the
8 city's financials and that these meetings were purely
9 informational.

10 On June 27th following this presentation that I just
11 spoke of, the city sends a letter to the UAW thanking them
12 for their time in participating in the meeting, and in that
13 letter even the city acknowledged that the unions would need
14 more information moving forward. The letter here is quoted,
15 "The city recognizes that representatives of active and
16 retired employees will need access to additional information
17 to analyze the restructuring proposals outlined in the June
18 20 meetings. Information relevant to these proposals will be
19 made available in the on line data room," but at this time on
20 June 27th, that information, as they were saying, was not yet
21 available.

22 Five days later on July 23rd Gracie Webster and
23 Veronica Thomas commenced lawsuits against the State of
24 Michigan, the governor, and the treasurer seeking a
25 declaratory judgment that PA 436 violated the pensions

1 clause, and they also sought an injunction.

2 In July when several of the creditor meetings took
3 place, the evidence will show that the city had no intention
4 of actually negotiating with its creditors. By July 8th you
5 will see an e-mail with an attachment of a timeline and a
6 communications roll-out demonstrating that the city had
7 already determined that its Chapter 9 petition was going to
8 be filed on July 19th. There's a timeline crafted by the
9 State of Michigan that identifies July 19th as a filing date
10 despite the fact that the creditor meetings had not yet
11 occurred. Therefore, the objecting parties submit that
12 Chapter 9 was already a foregone conclusion before the city
13 met with its creditors on July 10th and 11th. In fact, here
14 is a copy of that Chapter 9 roll-out, communications roll-out
15 that I spoke of. In an e-mail from Kevyn Orr's press
16 secretary, Bill Nowling, to certain state officials, he lays
17 out the communications plan. And if you go down to the
18 yellow portion, it starts with, "We negotiated in good faith
19 with all of Detroit's creditors." Mind you, several of the
20 meetings had not yet even occurred. "We presented a
21 comprehensive restructuring plan to creditors in June. At
22 this point, it would be impractical to continue discussions
23 out of court because it is clear that we will be able to
24 reach agreement with some creditors only through a court-
25 supervised process, and the State of Michigan has authorized

1 the emergency manager to take this step." This is on July
2 8th.

3 The timeline attached to that communications roll-
4 out on Thursday, July 18th, states that, "Last minute
5 revisions will be made to all the key documents," and on
6 Friday, July 19th, which is in bold and capital letters
7 called "The Filing Day," at nine o'clock the Governor's
8 Office is supposed to transmit the authorization letter to
9 the emergency manager, and at ten o'clock on the 19th the
10 necessary paperwork is supposed to be filed with the court
11 system, and then a series of press conferences are to be
12 held.

13 The following day, on July 9th, an e-mail from
14 Treasurer Dillon to the governor of the State of Michigan
15 states that, "We are still in the informational mode." This
16 e-mail is interesting for several reasons. First, it states
17 that Kevyn will meet the Detroit pensions the following day,
18 on July 10th. It says there will be no exchange of documents
19 and that he will not translate that -- the information that
20 he gives into an impact on retiree or employees' vested
21 rights. Treasurer Dillon continues and says that there are a
22 lot of creative options that we can explore to address how
23 they will be treated in restructuring with respect to the
24 pensions, but at his deposition when he was -- when he was
25 asked whether these creative options were ever explored

1 directly with the Retirement Systems, Dillon said no. And
2 it's not up there, but he also was asked if they were ever --
3 these creative options were put into written reports or
4 formal proposals, and he also said, no, they were not.

5 Further in the e-mail he says to the governor,
6 "Tomorrow's meeting could lead to questions directed to you
7 about your view on this topic. In my view, it's too early in
8 the process to respond to hypothetical questions. We remain
9 in many ways in the -- at the informational stage." This was
10 just one week before the filing. And Mr. Dillon admitted at
11 his deposition that nothing changed between July 9th and the
12 filing date of July 18th that would take them out of this
13 informational stage, as he called it.

14 On July 10th and 11th, there were a series of
15 creditor negotiations -- alleged creditor negotiations that
16 took place. The emergency manager himself did not even
17 attend, but witnesses who did attend the meeting will testify
18 that they did not observe or participate in any negotiations
19 regarding the city's finances and that, again, these meetings
20 were purely informational. And this is consistent with the
21 state treasurer's report to the governor that as of July 8th,
22 we are still in the informational mode. It's also consistent
23 with Mr. Orr's admission at his deposition when he was
24 questioned, "There were no actual negotiations at the June
25 14th meeting, were they?" And he answers, "No, not as it's

1 generally understood."

2 Lastly, the fact that there were no negotiations on
3 July 10th and 11th is consistent with the city's and the
4 state's communications roll-out, which already adopted the
5 excuse that negotiations were going to be impractical.

6 On July 12th, following those meetings, the Detroit
7 Fire Fighters Association sends a letter to the emergency
8 manager asking for more information and stating, "It would be
9 productive if the city could provide us with its specific
10 proposals on pension benefit restructuring as soon as
11 possible. We have two meetings with the city where pension
12 benefits were addressed and still have only the city's
13 general observation that pension benefits must be reduced."
14 At trial Mark Diaz, the president of the Detroit Police
15 Officers Association, and Dan McNamara, president of the
16 Detroit Fire Fighters Association, will testify that no
17 specific proposals were ever given by the city after this
18 letter, and instead the city filed bankruptcy just six days
19 later.

20 On July 15th the Webster defendants filed a response
21 brief and a motion for summary disposition. In that court
22 paper, the state asserted that a bankruptcy filing by the
23 City of Detroit is, quote, "only a possibility that
24 plaintiff's claims were, quote, 'unripe, premature, and based
25 on a speculative threat of future injury.'" And mind you,

1 this position is taken in open court, which conflicts with
2 the timeline that had already been circulated within the
3 Governor's Office that slated the filing date as just four
4 days later.

5 On July 16th Mr. Orr submitted the bankruptcy
6 recommendation letter to Governor Snyder and Treasurer
7 Dillon. In that letter he stated that dramatic but necessary
8 benefit modifications must be made. The governor
9 acknowledged that he read that letter before authorizing the
10 filing and that he knew that the city's request for
11 authorization that dramatic cuts be given would be part of
12 any Chapter 9 process. He also testified that he knew,
13 quote, "based on the facts going into it, there was a
14 likelihood accrued pension benefits would be reduced in the
15 Chapter 9 case."

16 The next day, the Detroit Public Safety Unions
17 received correspondence from the city thanking them on behalf
18 of the emergency manager for their, quote, "strong
19 cooperation regarding the City of Detroit pension
20 restructuring." Later that same day, the Retirement Systems
21 filed their lawsuit against the governor and the emergency
22 manager in Ingham County Circuit Court seeking declaratory
23 relief. That same night at 6:23 p.m. the governor's press
24 secretary, Sara Wurfel, circulates an updated timeline that
25 still shows the bankruptcy filing date of Friday, July 19th.

1 This is July 17th at 6:23 p.m. The following day, the
2 Retirement Systems filed a motion for a TRO seeking an
3 injunction. At 3:05 p.m. that afternoon, Margaret Nelson of
4 the Attorney General's Office received a telephone call
5 informing her that Retirement Systems were in court seeking a
6 TRO. At 3:47 the governor e-mailed his authorization letter
7 to Orr and to Treasurer Dillon, and at 4:06 Orr changes the
8 date on the filing papers from July 18th, crosses out the 19
9 because it was supposed to be filed the 19th, handwrites in
10 an 18 and files the petition one hour and one minute after
11 finding out that the Retirement Systems were in court seeking
12 a TRO, which is inconsistent with the timeline sent at 6:30
13 the night before saying it was going to be on Friday.

14 And at 4:10 p.m. the attorney general appears for
15 the TRO hearing in Ingham County. This is reflected in the
16 papers filed by the state, the docket history and the hearing
17 transcripts. Orr later admitted that he was being counseled
18 that it would be, quote, irresponsible not to file the
19 petition sooner rather than later given all the lawsuits that
20 were popping up.

21 On July 19th, the following day, the declaratory
22 judgment was entered against the governor, the treasurer, and
23 the State of Michigan and that declaratory judgment states PA
24 436 is unconstitutional and in violation of Article IX,
25 Section 24, of the Michigan Constitution, and it further

1 states the governor is prohibited from authorizing an
2 emergency manager to proceed under Chapter 9, yet the city
3 filed its Chapter 9 petition despite the fact that each of
4 its advisors uniformly testified at their depositions that
5 the city's financial information was still incomplete as of
6 the filing, and, in fact, today it is still incomplete.

7 Charles Moore, senior managing director at Conway
8 MacKenzie, testified that quote, when he was asked, "Has
9 there been a specification of those level of cuts that the
10 city contends must occur?" He says, "I mean have you put a
11 dollar amount on it?" He answers, "No. Our analysis of this
12 continues. Right now we still don't know what assets could
13 be available to put toward the pensions. We still have not
14 had the type of dialogue that we would like to have related
15 to the calculation of the unfunded amount, so because of
16 those two uncertainties, among others, we don't know what
17 cuts, if any, there may need to be."

18 The state treasurer also agreed that as of July 8th,
19 just a week before the filing, "I thought that the situation
20 was not understood enough for the governor to go on record
21 yet because I couldn't even tell him with any degree of
22 confidence what level of funding the pension funds had, so
23 why should he get in the middle of a debate about this?"

24 In addition, as of the petition date -- and I
25 believe the city's witnesses will testify consistent with

1 their depositions -- that to date the city still -- the city
2 still does not know the value of two of its primary assets,
3 including the Water and Sewage Department and the city-owned
4 artwork at the Detroit Institute of Arts. Because the city
5 still does not know what assets are available to satisfy
6 liabilities, does not know the scope of the liabilities, it
7 is the objecting parties' position that the Chapter 9 filing
8 was premature and not made in good faith. Thank you. I
9 believe Mr. Ullman may be following me.

10 THE COURT: Okay.

11 MS. GREEN: I apologize. It's Lynn Brimer.

12 THE COURT: Okay. Perhaps we should move that
13 lectern back to center, huh?

14 MS. BRIMER: I can do that.

15 THE COURT: Okay. Thank you.

16 MS. BRIMER: Is this good, your Honor?

17 THE COURT: That's great. Let me just ask will
18 there be other uses of the projector during openings?

19 ATTORNEY: Yes, your Honor.

20 THE COURT: Okay.

21 OPENING STATEMENT

22 MS. BRIMER: Good morning, your Honor. And, your
23 Honor, I thank Mr. Bennett for raising the legal issues with
24 respect to the spending provision because it at least makes
25 me more comfortable as to why I thought it's so important we

1 clarify the record on the discovery matters with respect to
2 which law had a spending provision added onto it.

3 THE COURT: Okay.

4 MS. BRIMER: So rather than address my opening issue
5 to begin with, would the Court like me to address the legal
6 issues raised by Mr. Bennett, or would you like the legal
7 issue -- I am prepared to briefly discuss those. I don't
8 have a written preparation, but I do think it's important for
9 the Court to understand I did look at the case that
10 Mr. Bennett cited. I didn't disregard any case law when
11 coming to this Court and believing that there was a factual
12 issue.

13 With respect to the Michigan United case, I think
14 it's factually distinguishable again. That case did not
15 involve an original law that did not have a spending
16 provision that was overturned on referendum and then a new
17 law presented. In that case, your Honor, the issue was
18 whether or not the spending provision itself added in the
19 original law such that it was not subject to referendum was,
20 in fact, an appropriate provision taking it out of the
21 referendum provision. You know, under -- your Honor, that is
22 not the facts that we have before us today.

23 In addition, your Honor, I have reviewed Justice
24 Corrigan's opinion, which, by the way, was a concurring
25 opinion, not the Court's majority opinion, but she addressed

1 the issue of intent and that, generally speaking, we do not
2 look to the motive or intent of the legislature --
3 legislative body when passing a law, but she said this is
4 because -- and she notes this in a footnote -- this is
5 because, generally speaking, we do not have any testimonial
6 record regarding motive or intent. That would be, your
7 Honor, in her concurring opinion. There is no testimonial
8 record in the -- in this original action regarding the motive
9 or intent. Well, your Honor, that is simply not the case in
10 this matter. As Ms. Green read to you and as I quoted from
11 the state's own 30(b)(6) witness, we have evidence regarding
12 the motive of the inclusion of the spending provisions on an
13 act that had previously been rejected on referendum. We
14 believe that factual issue is important to this Court in
15 determining that whether or not some or all of PA 436 should
16 have been subject to the second provision that everyone seems
17 to gloss over in Article II, Section 9, of the Constitution,
18 which states specifically that no law that has properly been
19 submitted to referendum can then -- and rejected can then be
20 passed without a referral back to the general electorate.

21 Your Honor, the cases cited by the state, Ms.
22 Nelson, of Reynolds v. Martin and the case cited this morning
23 just simply are not factually similar enough to PA 436 to be
24 controlling, and we do -- and, you know, my closing -- my
25 opening can be as simple as, your Honor, the evidence will

1 show that the motive of including the spending provisions was
2 to, in fact, take an act that had previously been overturned
3 on referendum and disregard the will of the people, and it's
4 very clear. The state's attorney argued yesterday that we
5 knew what the people's will was because we have the media.
6 Well, we know what the people's will was. The people's will
7 was that we not have an emergency manager who would supplant
8 the democratically elected officials in the City of Detroit,
9 and that was very clear, and yet we now have PA 436, which
10 disregarded that, which added a spending provision to it, and
11 the facts will demonstrate that we can establish what the
12 motive was in adding those spending provisions. And,
13 moreover, we can establish that the emergency manager,
14 Mr. Orr, was fully aware of that at the time he accepted his
15 appointment as the emergency manager. I'll conclude --

16 THE COURT: Well, how do you -- how do you deal with
17 Mr. Bennett's argument that if the issue is ever appropriate
18 for court review, it is not appropriate until petition
19 signatures are collected on the bill that has the spending
20 provision in it and the petitions are rejected because it's
21 not the kind of a law that can be subject to a referendum?

22 MS. BRIMER: Well, certainly I don't think there's
23 any case law that would suggest that the people be required
24 to take an act which on its face would be rejected. I'm not
25 sure I'm aware of any case law that would suggest that the

1 people had to refer that case -- the law to a referendum and
2 have it denied because of the failure -- or the inclusion of
3 the spending provision. At issue here, your Honor, is
4 whether or not the act is sufficiently similar enough, not
5 that it had to go back to referendum, but whether it's
6 sufficiently similar enough that the second provision would
7 require that it be deemed to be unconstitutional because it
8 was not presented to the people again.

9 THE COURT: Okay. All right. Let's take our lunch
10 break now. Before we do, I want to remind everyone that we
11 are guests here in this building, and we need to maintain
12 decorum and silence while we are in the hallways. Please
13 don't linger in the halls. You can have your conversations
14 here in the courtroom over lunch if you'd like to do that, or
15 in the elevator or on the 1st floor, but please maintain
16 silence in the hall. Let's see. It's noon. We'll reconvene
17 at 1:30, please, and that's it.

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

19 (Recess at 11:59 a.m., until 1:30 p.m.)

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

21 THE COURT: Counsel are present. We have a couple
22 of housekeeping matters that we need to address before we
23 continue with our opening statements, please. The first is
24 that in the amended final pretrial order that was submitted
25 through our order processing program, on Attachment G, which

1 is the attachment from the Retirement Systems, the exhibit
2 numbers were omitted. I'm sure that was inadvertent, so
3 please fix that and resubmit it as soon as possible so that
4 we can get it entered. Okay?

5 ATTORNEY: Of course, your Honor.

6 THE COURT: And then a second brief housekeeping
7 matter is -- is Ms. Green still here?

8 ATTORNEY: She's not here yet, your Honor.

9 THE COURT: Okay. Mr. Gordon, just to keep the
10 record a hundred percent clean, we need to put an exhibit
11 number on a paper version of the slide presentation so that
12 for the record that is identified, whatever exhibit number
13 you want to put on it.

14 MR. GORDON: All right. Very well, your Honor.

15 THE COURT: Okay.

16 MR. IRWIN: Your Honor, will counsel be provided a
17 copy of that when it's done in that way?

18 THE COURT: Can you do that?

19 MR. GORDON: Yes, absolutely.

20 THE COURT: Okay. All right. We are ready to
21 proceed.

22 OPENING STATEMENT

23 MR. WERTHEIMER: William Wertheimer, your Honor, on
24 behalf of the Flowers plaintiffs. I'll be very brief, and I
25 just want to add a couple of points relevant to the timeline

1 that Ms. Green was showing you. I do not have a clicker, but
2 I'll just state them.

3 THE COURT: Okay.

4 MR. WERTHEIMER: That is, first, on July 3rd the
5 Flowers lawsuit was actually filed before the Webster
6 lawsuit. They were both filed on July 3rd, so they were both
7 filed that day. Second, on the same day, both Flowers and
8 Webster cases, Judge Aquilina signed orders to show cause
9 setting a hearing for the preliminary injunction that we were
10 seeking for July 22nd so that -- and those were served on the
11 governor and the treasurer on July 3rd so that at the point
12 in time on the timeline a few days later when they're setting
13 the putative bankruptcy for July 19th, Friday, they know that
14 the state court preliminary injunction hearing is being
15 scheduled for July 22nd, the following Monday. That's it.
16 Thank you.

17 THE COURT: Okay.

18 OPENING STATEMENT

19 MS. CECCOTTI: Good afternoon, your Honor. Babette
20 Ceccotti, Cohen, Weiss & Simon, LLP, for the UAW. Ms.
21 Green's timeline was very complete and detailed. I do want
22 to just -- because I don't think this particular slide was up
23 there, so I would like to mention the pitch book again. Ms.
24 Green had a slide from the Jones Day pitch book from January
25 20, 2013, and one thing that -- when your Honor goes through

1 the pitch book you'll notice that there are, you know, a
2 few -- quite a few, I would say, or certainly more than one
3 or two references to the use of Chapter 9 either itself or
4 the shadow of Chapter 9 as leverage vis-a-vis creditors, vis-
5 a-vis specific proposals and claims related to labor costs,
6 and I think Ms. Green showed the slide with the quote on
7 there about using Chapter 9 to reduce accrued financial
8 benefits.

9 The other thing that I'd like to mention about the
10 pitch book, which really does become something of a
11 blueprint, I think, for what follows, is at page 57 there's a
12 slide that reads, "Any Chapter 9 process should be
13 comprehensive," and it starts with the bullet, "plans of
14 adjustment address narrow range of economic compromises."
15 And then it talks -- and then there are other bullets that
16 follow, "other fundamental changes must occur outside the
17 plan context," "any Chapter 9 process should pursue as many
18 revitalization initiatives as possible," "negotiating in
19 Chapter 9 or its shadow is a powerful tool for
20 revitalization," and, finally, "the city should take
21 advantage of its opportunity for long-term comprehensive
22 solutions."

23 So that's actually a good segue to June 14th
24 proposal because, as we've talked about before in the other
25 arguments that we've had, this is really a massive

1 comprehensive revitalization proposal that really has
2 elements of more or less what that slide that I just read you
3 is talking about. It's got -- the plans include a \$1.25
4 billion spending program going out over ten years. There are
5 many detailed wide-ranging initiatives that have to do with
6 improvement of services, upgrades, reinvestment, and the
7 like, and there is also a restructuring proposal. There's a
8 section called "restructuring proposal." I don't have to
9 take you through that because we've been through it a number
10 of times. You know what the pension proposal -- what the
11 pension proposal is, but the point being that the -- just the
12 four corners of the proposal itself, what that reflects in
13 terms of what it is that the city is trying to pursue through
14 Chapter 9.

15 In terms of the events following the launch of that
16 proposal on June 14th, I think that we see a number of
17 things, and the evidence will show this. As we saw actually
18 from Mr. Bennett's slide, the number of meetings that
19 actually occur on this proposal -- regarding this proposal
20 are relatively few. It's a limited number of sessions.
21 Regardless of how we're characterizing them, there's at least
22 one document that refers to one of the meetings as
23 informational, in fact.

24 We have the data room issue. Ms. Green read the
25 letter or showed the letter to the UAW regarding the fact

1 that the data room wasn't quite up and running yet, but what
2 is also true about the data room, as your Honor knows from
3 the early days of this case, is that in order to access the
4 data room, one had to sign a confidentiality agreement and an
5 additional release to get the Milliman pension materials, and
6 my client, at least, took issue with that prior to the
7 bankruptcy, and others may -- other groups may have as well,
8 so you had this quite massive proposal, a series of really a
9 handful of meetings being held with the data that the city
10 was loading into the data room about the proposal not readily
11 available.

12 In addition, as I mentioned, these were not -- there
13 were just a few of these meetings, and I think the evidence
14 will show that they wouldn't really constitute labor
15 negotiations. The unions, you know, have various ways that
16 they talk about that in the evidence. They are fairly
17 well -- I guess I'll just use the word "highly organized" or
18 the phrase "high organized" by the city, including one
19 meeting where -- at least one meeting where if there were
20 questions about the proposal, those in attendance were
21 required to submit them on cards, and the cards would be read
22 as opposed to any sort of free flowing give and take that one
23 might associate with a meeting with stakeholders that we
24 might think about in terms of going over a restructuring
25 proposal or even a labor proposal.

1 So now I'd like to get to Mr. Bennett's comments
2 about the UAW because I think this really does -- that this
3 is really a very important point. Yes, it is true that, as
4 we know, the proposal included the cessation of funding to
5 the Retirement System and the statement about -- the
6 statement that significant cuts to accrued vested pension
7 benefits would be necessary, so, yes, on its -- the UAW's
8 position is, yes, on its face, looking at that on page 109,
9 if that's the right page, that is a proposal that violates
10 the Michigan state Constitution, and the immediate questions
11 that arises on its face just looking at it like that is how
12 could it be accepted. How could it be accepted by a labor
13 union? How could it be accepted by anyone purporting to
14 speak for or represent actives or retirees? So, yes, on its
15 face the proposal was not acceptable, and we believe that
16 that has legal consequences as distinct from fact
17 consequences, so I do want to make that point about the --
18 about our objection -- our amended objection in that regard.
19 We very much believe that that has legal consequences.

20 As a factual matter, however, and notwithstanding
21 the fact that the proposal on its face could not be accepted,
22 you couldn't simply hand it to the union with a signature
23 line and say, "Here, sign," the UAW, through its general
24 counsel, contacted Jones Day on July 9th, and we'll have a
25 witness to this effect, and we have an exhibit on it as well,

1 to raise a couple of points, one regarding the data room and
2 the confidentiality issue that I mentioned already. Then in
3 response to the letter that Mr. Bennett's chart showed trying
4 to ask the labor organizations and the retiree groups if they
5 would be representing their retirees, the e-mail to Jones Day
6 reads as follows: "Further to its reservation of rights, the
7 UAW continues to seek an answer from Mr. Orr and your firm as
8 to the following: Please cite the basis for any claim that
9 the UAW has the authority to compromise the vested benefits
10 of active and/or retired UAW or former UAW members employed
11 or formerly employed by the City of Detroit and its
12 affiliates. As I presume you know, Article IX, Section 24,
13 of the Michigan Constitution provides in pertinent part that,
14 quote, 'the accrued financial benefits of each pension plan
15 and Retirement System of the state and its political
16 subdivisions shall be a contractual obligation thereof which
17 shall not be diminished or impaired thereby,' unquote.
18 Please tell me what authority your firm and/or Mr. Orr
19 believe gives the UAW the right to compromise vested pension
20 benefits despite the contrary provisions of Article IX,
21 Section 24. Please tell us -- please also tell us whether
22 Mr. Orr and/or your firm take the position that Article IX,
23 Section 24, of the Michigan Constitution is not or may not be
24 binding on the City of Detroit, the State of Michigan,
25 Governor Snyder, Mr. Orr, or the UAW and state, if that is

1 the case, under what circumstances you believe that Article
2 IX, Section 24, would not bind some or all of these persons
3 or entities. We also seek the answer to the same question
4 with regard to vested post-retirement insurance benefits,"
5 and then there's a reference to the Supreme Court's decision
6 in the Pittsburgh Plate Glass case. And the letter makes it
7 clear that, again, from the UAW's perspective, "We do not
8 understand the July 10 and 11 multiple stakeholder meetings
9 to which we have been invited to be a forum for negotiations
10 of your proposed pension and retiree healthcare changes but
11 are willing to attend and obtain for our union whatever
12 information may be provided at those meetings," and then --
13 and, finally, "Your full answers to the questions posed in
14 the foregoing paragraphs of this message will help the UAW
15 determine the scope of any such negotiations and the UAW's
16 decisions regarding its representative capacity in them about
17 which your firm has inquired." So we very much have a
18 factual case as well as a legal case regarding the
19 implications of the proposal, and I did want to make that
20 clear for the record, the point being that what is in this e-
21 mail represents some fairly fundamental questions about the
22 ground rules upon which discussions or negotiations with the
23 city regarding its proposal can proceed.

24 I should note that -- and we'll have testimony to
25 this effect -- that no answer was forthcoming from the city

1 and, as far as I know, has not been forthcoming regarding the
2 questions posed other than obviously when we got into
3 bankruptcy, your Honor solved the problem of the data room.

4 Time frame. Putting aside the lawsuits and all of
5 the activity surrounding all of that, it does appear that the
6 city set out a timeline for itself that only had about a 30-
7 day period for this launch notwithstanding everything that's
8 in that proposal and everything that was expected apparently
9 to be accomplished by it. I think I heard Mr. Bennett refer
10 to something like evaluation week, which was supposed to
11 occur on or which probably did occur -- I gather it did occur
12 on July 15th. That's really a month later. So one -- now,
13 Mr. Bennett's timeline, of course, goes way back -- I think
14 it was to 2011 and the various initiatives to deal with
15 Detroit's problems, and we are certainly not denying any of
16 those or -- and I'm sure everyone is fully cognizant of --
17 particularly those who live here are fully cognizant of all
18 of those efforts, but we think, as a legal matter, that those
19 efforts really don't legally count. They obviously count to
20 the citizens of Detroit, but for purposes of eligibility, the
21 relevant time frame, from our perspective, is the proposal is
22 launched on June 14th and then apparently evaluated -- the
23 response or reaction apparently evaluated merely -- a mere
24 four weeks later.

25 So during this time, again, the evidence, we

1 believe, will show that during the same sort of compressed
2 time period, we know that the governor and the emergency
3 manager are meeting on a fairly regular basis. We know that
4 the governor had seen the June 14th proposal. He had a draft
5 of it before it was launched. He knew about the pension
6 proposal. He knew that there was an issue -- a legal issue
7 with respect to Article IX, Section 24, of the Michigan
8 Constitution and the effect, if any, of the Bankruptcy Code
9 and federal law on the continued enforcement of that section.
10 He knew it was a serious issue.

11 We know, again, since we've discussed it most
12 recently last week at the argument that we then march through
13 the timeline to get to Mr. Orr's July 16th request and the
14 governor's July 18th response. We know that the governor
15 obviously from the dates signed it only two days later
16 apparently with a review of all of the material that was
17 contained in Mr. Orr's letter, I think could probably best be
18 characterized as limited. It does not appear that there was
19 an independent evaluation that the governor conducted
20 regarding many of the sort of predicate items that Mr. Orr
21 laid out in his letter. The governor was also aware, as we
22 know from the slides that Ms. Green showed, that the pension
23 numbers were very much still up in the air and in question.
24 Nevertheless, both the July 16th and the July 8th -- the July
25 16th letter from Mr. Orr and the July 18th approval letter

1 from the governor lay out the -- what I will characterize as
2 the shift in spending priorities. This is the part of the
3 proposal that relates to revitalization, and we know that the
4 governor in his letter approves of the manner in which
5 Mr. Orr has proposed to proceed in that regard, and so he
6 signs the letter, and, of course, the bankruptcy petition is
7 filed on the 18th.

8 So what all of this adds up to we think at the end
9 of the day in terms of the legal cases -- in terms of our
10 legal objections is a fairly deliberate plan to use Chapter
11 9. We think that really knitting -- connecting all of the
12 dots here, that the plan was to use Chapter 9. We've saved
13 for another day all of the legal issues associated with that,
14 the state's authorization. There's really -- well, we won't
15 get into those because we'll have closing, and we've had --
16 and we'll have other briefs on all of that, but the sort of
17 deliberate plan, which starts whenever you'd like to start it
18 on the timeline but certainly from the governor's appointment
19 of Mr. Orr leaving his -- leaving the Jones Day firm, the
20 Jones Day retention by the city, this really several month
21 timeline leading from the end of March to the middle of July,
22 we believe the evidence establishes this as a deliberate plan
23 to use Chapter 9 to, in effect, find a way to undermine the
24 Michigan state Constitution through the use of bankruptcy.
25 We believe that that is evidence of a lack of bad faith under

1 921(c), a lack of bad faith in connection with --

2 THE COURT: You mean a lack of good faith?

3 MS. CECCOTTI: I'm sorry. A lack of -- yes.

4 Apologies, your Honor. Not enough sleep, once again, I'm
5 afraid.

6 THE COURT: Okay.

7 MS. CECCOTTI: Now I'm afraid to open my mouth. No
8 good faith --

9 THE COURT: I'll help you.

10 MS. CECCOTTI: Yes. All right.

11 THE COURT: I'll help you.

12 MS. CECCOTTI: No good faith, a lack of good faith
13 negotiations under 109(c)(5), and not a valid plan of
14 adjustment for Chapter 9 purposes. Thank you.

15 OPENING STATEMENT

16 MS. PATEK: Good afternoon, your Honor. Barbara
17 Patek again on behalf of the Detroit Fire Fighters
18 Association, the Detroit Police Officers Association, the
19 Detroit Police Lieutenants & Sergeants Association, and the
20 Detroit Police Command Officers Association, who have been
21 collectively referred to in these proceedings as the Detroit
22 Public Safety Unions or the Public Safety Unions.

23 As the evidence in this case will show, the public
24 safety unions are the recognized collective bargaining
25 representatives of the nearly 3,200 men and women employed by

1 the Detroit Fire Department and the Detroit Police
2 Department. I'm sure we'll hear from Chief Craig either
3 today, tomorrow, or sometime this week about the very
4 daunting and difficult conditions in which they work to
5 provide -- excuse me -- police and fire services to -- that
6 are so essential to the survival and the revival of the City
7 of Detroit.

8 The public safety unions piece of this in terms of
9 the evidence is a small but important part of the timeline
10 that was gone over this morning by Ms. Green and also by
11 Mr. Bennett. First, I think I want to say at the outset that
12 the public safety unions have never in these proceedings
13 disputed that the city was in severe financial distress
14 beginning in the time period where I believe both Mr. Bennett
15 and Ms. Green's timelines began. The public safety unions do
16 not, however, believe that the city can meet its burden of
17 showing that it is eligible for these Chapter 9 proceedings
18 because of the issue of the good faith negotiations, what we
19 believe was a -- as Ms. Ceccotti referred to, a deliberate
20 effort to sort of create a record of impracticality where
21 they set themselves up for failure, and we also believe that
22 the evidence will show, based upon the same set of facts,
23 that the petition was not filed in good faith as required by
24 Section 921(c).

25 While we acknowledge the legal nature of the

1 constitutional questions that this Court must wrestle with,
2 we also believe that the evidence that this Court will hear
3 in this eligibility trial may help inform those decisions by
4 providing the Court with a practical and very real platform
5 in which those questions can be applied.

6 Because the public safety unions will rely on and
7 adopt certain proofs submitted by the other objectors, I'm
8 going to try to avoid repeating what was said this morning,
9 but I do want to briefly address where our proofs will fit in
10 the chronology the Retirement Systems put up this morning.
11 And for ease of the Court's reference -- and I apologize in
12 advance. This will also have to be marked, and we'll get a
13 paper copy, and I believe --

14 THE COURT: Okay.

15 MS. PATEK: -- it'll be Exhibit 720. Our facts --

16 THE COURT: And I'll have to ask you to understand
17 that I'm going to be looking at what's there on this little
18 screen here just because it's easier for me. It's not that
19 I'm not paying attention to you. I'm looking at it here.

20 MS. PATEK: That's okay. That's okay. The public
21 safety unions' piece of it are in red, and the portions in
22 black are portions from Ms. Green's timeline, and we did that
23 so the Court could see where they fit in. And we start in
24 December of 2011 and January of 2012, but before we start
25 talking about that time period, I do want to take a moment

1 because I think it's important to this negotiations issue,
2 and I think it's also important to some of the state labor
3 law issues that inform how we ended up in Chapter 9 to take
4 the Court back about 44 years ago. In the fall of 1969,
5 again, not long after the city had been through some very,
6 very trying times, then Governor Milliken, a Republican
7 governor, signed into law an act found beginning at MCL
8 423.231 that has become -- come to be known as Act 312. Act
9 312 is, as the Court may be aware, the platform on which
10 public safety unions negotiate their labor agreements under
11 the auspices of the Michigan Employment Relations Commission.
12 Before the emergency manager, terms and conditions of
13 employment were negotiated pursuant to this process. That
14 process, which will be described by one of our witnesses, the
15 Detroit Police Command Officers' labor attorney, Mary Ellen
16 Gurewitz, is designed to provide for a period of mediation
17 followed by, if the mediation fails, compulsory arbitration,
18 including the opportunity to send the parties back to
19 mediation, and it's designed to be expeditious and to keep
20 labor peace and, if might say, might be a tool that if it
21 could be applied to everybody in this proceedings, some of
22 the mediators working so hard to try to resolve our
23 differences might find useful. Ms. Gurewitz will explain
24 much better than I can the mechanics of the Act 312 process
25 and also her experience in negotiating with the city and the

1 DPCOA in the relevant time period.

2 We start with 2011 and two thousand -- December 2011
3 and January of 2012, and I believe that was also on
4 Mr. Bennett's initial timeline. Interestingly, at that time,
5 there were negotiations between the city, recognizing the
6 financial difficulties that were present, and each of the
7 Detroit public safety unions of concessionary agreements or
8 tentative agreements. These agreements were never adopted,
9 but our purpose in offering them is to show that where
10 there's a will, it could be done. Our intention is not to
11 suggest in this setting that such negotiations would be easy,
12 and that's precisely taking up on Ms. Ceccotti's point why
13 that 30-day period that the city gave itself was doomed to
14 fail.

15 During the same time period as the various acts were
16 being repealed and reenacted and shortly after the governor
17 signed PA 436 into effect, Mark Diaz, the president of the
18 Detroit Police Officers Association, will tell the Court that
19 pursuant to Act 312 proceeding, there was an award that
20 became the contract for the Police Officers Association
21 through June of 2014. This is important because, as I'm
22 going to talk about continuing along this timeline to the
23 period after the appointment of the emergency manager, which
24 takes us to our second slide, there were acts that the city
25 took to specifically remove this tool from the tool kit of

1 the city and its labor unions, and I'm not suggesting that
2 that removal was not perhaps authorized, although the unions
3 dispute that as a matter of labor law under Public Act 436,
4 but I think that it's important to suggest that in light of
5 the concept that there was a plan and design going back a
6 long way, it was no accident that, you know, the city filed
7 an emergency motion on April 18th of 2013, and on June 14th,
8 2013, the very same day it rolled out its proposal, it
9 obtained an opinion from MERC blocking the Police Lieutenants
10 & Sergeants Association, the Police Command Officers
11 Association, and the fire fighters from resorting to Act 312
12 arbitration finding that Public Act 436 had divested MERC of
13 jurisdiction to address those disputes. And that becomes
14 important because if you consider that there's a plan on June
15 30th, 2013, the collective bargaining agreements between the
16 city, the DFFA, and the DPLSA all expired just two and a half
17 weeks before the Chapter 9 petition was filed.

18 The president of the Fire Fighters Association, Dan
19 McNamara, the president of the Lieutenants & Sergeants, Mark
20 Young, and the president of the DPOA, Mr. Diaz, as previously
21 referred to, will each tell the Court that very quickly after
22 the emergency manager's appointment on March 28th, they were
23 each informed by the city that it was exercising its right
24 under Public Act 436 not to bargain. I know we've heard
25 through some of the testimony that that was done to somehow

1 not waive their rights not to bargain, but the Court will
2 have to consider whether it accepts that as a credible
3 explanation for what happened next.

4 Following the June 14th presentation, again, as
5 Ms. Ceccotti referred to, things moved very quickly. There
6 was a presentation by the city the week of July 10th, and on
7 July 12th -- and it was up on the screen earlier today in Ms.
8 Green's presentation, and I believe it is in the record as
9 Exhibit -- give you the right number here -- I'm not seeing
10 it, but it's a letter from each of the presidents of each of
11 the Detroit public safety unions addressed to Jones Day
12 indicating in response that they were, in fact, interested in
13 making a counter-proposal. They were seeking more
14 information and a concrete proposal from the city in that
15 regard. Four days later, on June -- or July 16th, the
16 governor -- or I'm sorry -- Mr. Orr sent his letter to the
17 governor seeking authorization. The following day Jones Day
18 sent correspondence back to the four public safety unions
19 thanking them on behalf of the emergency manager for their
20 strong cooperation in the City of Detroit's pension
21 restructuring efforts. The next day the petition was filed.

22 Your Honor, we believe that when the Court has heard
23 all the evidence, that it will be difficult for the Court not
24 to conclude that in this case that there was, in fact, a
25 calculated effort by the city going back over an extended

1 period of time to use Chapter 9 to both, in Mr. Orr's words,
2 trump that constitutional provision but also, as suggested in
3 some of the arguments last week, to obtain the political
4 cover that would be provided by this Court to do so. That's
5 all I have to say.

6 THE COURT: Thank you.

7 MS. PATEK: Thank you very much.

8 OPENING STATEMENT

9 MR. MORRIS: Good afternoon, your Honor. Thomas
10 Morris of Silverman & Morris on behalf of the Retiree
11 Association parties. Your Honor, the Court heard a
12 comprehensive opening statement from the Retirement Systems
13 and opening statements from other opponents of the city's
14 eligibility. Those statements chronicle the voluminous
15 evidence weighing against eligibility. In our pretrial
16 brief, we focused on the evidence which we will offer through
17 Shirley Lightsey, president of the DRCEA -- that's the
18 Detroit Retired City Employees Association -- and Donald
19 Taylor, the president of the RDPFFA. That's the Retired
20 Detroit Police & Fire Fighters Association. My opening
21 statement will, likewise, address that evidence.

22 Mr. Taylor and Ms. Lightsey will testify that their
23 associations have a long and active history. They're not
24 organizations which came into being just to respond to the
25 present situation, but they are and were prepared to deal

1 with it. The police and fire fighters have had a retiree
2 association since 1946. The DRCEA was formed in 1960. The
3 elected leadership of these associations includes persons
4 who, had they been working for the city, would be the ones
5 responsible for helping resolve the city's problems. Members
6 and management of the associations include a past chief of
7 police, a deputy chief, city budget director, personnel
8 managers, a Retirement Systems trustee, and city financial
9 and legal staff. These are people who were leaders during
10 their active service for the city, and they continue to be
11 leaders for the retirees.

12 More than 12,000 retired nonuniform city employees
13 are members of the DRCEA, and more than 8,000 retired Detroit
14 police officers and fire fighters are members of their
15 organization. Both of these organizations serve city
16 retirees in a number of ways, but they have particular
17 expertise in the pension and benefits areas. Although the
18 associations do not have the power of a governmental body to
19 enter into agreements that bind their members, the elected
20 leadership is responsible to the membership and responsive to
21 the membership. They communicate with the retirees. The
22 associations go beyond service to their members. Together
23 they represent the class of retired Detroit employees, all
24 Detroit retirees, not just the members who send in their
25 dues. The associations have appeared before City Council.

1 They have lobbied the state legislature. They have been
2 party to the lawsuits involving pension and benefit issues.
3 The evidence will show that the associations are the natural
4 representatives of the retirees capable of negotiating on
5 their behalf.

6 Upon the emergency manager's appointment, each of
7 the associations contacted the emergency manager in writing,
8 sent him a letter. Mr. Orr did not respond to the letters,
9 but he did invite the association -- associations to
10 informational sessions which they conducted, the city
11 conducted, in April, June, and July. Both Ms. Lightsey and
12 Mr. Taylor attended those meetings.

13 The evidence will show that the city in its meetings
14 never got beyond the first step of presenting information.
15 The city never offered to meet with the retirees to discuss
16 the city's proposal or to negotiate. The retiree
17 representatives were relegated to being members of the large
18 audience. The associations had their attorney contact the
19 city's attorneys, Jones Day, to request the opportunity to
20 specifically address retiree issues, but nothing came of
21 that. Instead, on July 18, in a tactical rush, the city
22 filed its petition.

23 The evidence will show that negotiations with the
24 retirees was possible. The membership of the associations is
25 more than a majority of the retirees. Overall it's

1 considerably more than two-thirds. By working with the
2 membership, the city had the opportunity to make an agreement
3 with a majority of the retirees and thereby satisfy Section
4 109(c) (5) (A) either by not impairing the class or by reaching
5 an agreement.

6 The evidence will show that negotiation was not
7 impracticable, certainly not with the retirees who, prior to
8 the appointment of the emergency manager, had already elected
9 their leaders. The retirees had built and maintained through
10 the work of generations of dedicated volunteers organizations
11 which were prepared to work on behalf of the retirees for the
12 best outcome of Detroit -- for Detroit. The evidence will
13 show that the emergency manager and his advisors rejected the
14 opportunity to attempt to resolve matters as to the retirees.
15 The city, therefore, does not satisfy the eligibility
16 requirements of Section 109(c) (5). Thank you.

17 THE COURT: Thank you.

18 OPENING STATEMENT

19 MS. LEVINE: Good afternoon, your Honor. Sharon
20 Levine, Lowenstein Sandler, for AFSCME. Very briefly and not
21 to be repetitive, with regard to solvency, the city addressed
22 AFSCME's brief with regard to our request that there should
23 actually be expert testimony in order to meet the burden of
24 proof with regard to this issue, and the city's response is
25 basically what we've seen in some smaller debtor cases, which

1 is the debtor can testify to its own numbers. And we're not
2 necessarily disputing that line of cases. What we're saying
3 here, Judge, is that this is not the debtor that's testifying
4 to its own numbers. We don't have anybody from the budget
5 department. We don't have any of the elected officials.
6 What we have are hired experts who are being offered as fact
7 witnesses, so we're bringing in experts like Ernst & Young,
8 Conway MacKenzie, Miller Buckfire, being paid millions of
9 dollars, who routinely appear as expert witnesses and, for
10 reasons that we submit are not appropriate here, are just
11 simply being offered without having to give their expert
12 testimony with regard to solvency.

13 With regard to impracticality and the issue of good
14 faith, we would respectfully submit that the argument that
15 there are simply too many classes of bondholders doesn't make
16 a lot of sense. The June 14 date that the proposal was
17 presented and the filing date of July 18th was only one month
18 and three days. Even if we went by the city's own originally
19 projected timeline, the filing date was projected to be July
20 19th. That's only one month and four days. It takes more
21 months than that to negotiate out-of-court workouts in simple
22 small single level of debt Chapter 11 cases. We respectfully
23 submit that the timeline that the city set for itself was a
24 timeline that was designed not to allow an out-of-court
25 negotiation to fully take place.

1 The city also looks to the fact that there are too
2 many bondholders and, therefore, it was impractical to
3 negotiate with bondholders, and they cited to a New York
4 case. The only New York case we were able to find that
5 addressed the issue was the Off-Track Betting case, which
6 dealt with a six-month period before that case, which wasn't
7 even an entire city, said that there wasn't enough -- there
8 wasn't an ability to get it done out of court, and they had
9 run out of time.

10 The other issue there is too many bondholders means
11 that you've met the impracticality standard means that what
12 you're doing is you're writing the need to respond to labor
13 out of the Code. If you have too many bondholders, it's
14 impractical, and, therefore, you don't even have to go
15 further. We would respectfully submit that that would be a
16 sad day for Detroit if we're actually writing the need to
17 negotiate with labor out of the Code.

18 The June 14 meeting is the meeting where the
19 proposal was presented. We've heard the city say that at
20 that meeting, they invited questions. Okay. So we have a
21 meeting that lasts a couple of hours. We have a proposal
22 that's in excess of 110 pages. The amount of time it takes
23 to even read the slides takes up the lion's share of that
24 meeting, and in addition to that, the questions which were
25 permitted were in a very controlled environment and under the

1 guise that the city was, quote, unquote, begging for
2 feedback. All right. The city announced at that meeting
3 that these are not negotiations. Now, whether that
4 announcement was made to preserve a technical reservation of
5 rights under PA 436, they invited a room full of labor
6 negotiators, and they held a meeting that was basically a
7 classroom type instruction meeting, and then they announced
8 after a brief Q&A period these are not negotiations. And
9 somehow or other this room full of labor negotiators was
10 supposed to understand that, well, while they're not
11 technically legally negotiations per PA 436, we really are
12 asking for negotiations to meet the good faith requirement
13 under the Bankruptcy Code. That's not a -- that's not a
14 realistic or fair interpretation of the facts here coupled
15 with the fact that we have sophisticated bankruptcy counsel
16 and all of these sophisticated outside consultants who
17 apparently, when receiving a letter from these same labor
18 negotiators that assert in response to the June 14 proposal,
19 well, we have factual and legal reasons why we think we can't
20 negotiate with you, that causes them to immediately think
21 negotiations are impossible. That's not an -- that's not a
22 fair reaction either. I've never walked into a labor
23 negotiation where the company said to the union, "Here's your
24 1113 proposal. What do you think?" and the union has said,
25 "Oh, good idea." It takes a little bit more than that, your

1 Honor. In addition to that --

2 THE COURT: Well, you raise an interesting point
3 here that has been on my mind, and that is the extent to
4 which the standard of good faith negotiation in 1113 is
5 related to or overlaps with the standard of good faith
6 negotiation in Section 109 or even, for that matter, the
7 extent to which it overlaps with whatever the law of good
8 faith negotiation is in labor law outside of bankruptcy. I
9 think it would help me if anyone would be interested in
10 briefing that subject. I'm not surprised. And there are
11 really two distinct questions there. The one is is there
12 this overlap, should there be this overlap, and, second, how
13 might the law in those other circumstances, 1113 and labor
14 law more generally, help to resolve the issue here of whether
15 there was good faith negotiation.

16 MS. CECCOTTI: Your Honor, may we join with that
17 effort as well?

18 THE COURT: Yes. The invitation is an open
19 invitation.

20 MS. LEVINE: Thank you, your Honor. We accept the
21 invitation, and if your Honor sets a deadline by which you'd
22 like that brief, we will --

23 THE COURT: Oh, a deadline. I don't know. What's
24 convenient for you all?

25 MS. CECCOTTI: After the 30th.

1 MS. LEVINE: Busy this week.

2 THE COURT: Got that.

3 MS. LEVINE: Two weeks? Is that sufficient, or is
4 that too long?

5 THE COURT: Two weeks is fine with me.

6 MS. LEVINE: Thank you, your Honor.

7 THE COURT: All right. Two weeks from today then.
8 I'll enter an order just so the record has it there.

9 MS. LEVINE: Your Honor, but moving past that, okay,
10 so we have the -- we have the city saying that these are not
11 negotiations and labor negotiators are supposed to glean that
12 they are negotiations, and then we have labor negotiators
13 taking a hard line at the initial proposal and the city
14 accepting that then there can't be any negotiation and
15 somehow or other this proves that the city acted in good
16 faith or that the negotiations were impractical. We
17 respectfully submit that's false. And not only is it false,
18 but for the reasons that you've heard from some of the other
19 folks already, we, too, sent requests to the city for
20 additional information to understand what the ask was, what
21 the savings -- what the proposed savings were, and for better
22 information to understand, while it was a long slideshow, a
23 little bit more about what the assumptions behind the
24 proposal or the alleged proposal were so that we could, in
25 fact, like in an 1113 context, truly engage in a meaningful

1 negotiation. And AFSCME itself, your Honor, just a mere 18
2 months prior to the bankruptcy filing, on behalf of itself
3 and with a coalition of 30 unions, did agree to a tentative
4 agreement which resulted in substantial savings for active
5 and retirees' benefits, and those were ratified by all of
6 those respective unions but not implemented by the city. So
7 I'd respectfully submit that not only was there an ability to
8 negotiate in good faith over a period of just a couple of
9 months, but there's a proven track record that on this side
10 of the table, we have been able to actually do those
11 negotiations and accomplish results, so if --

12 THE COURT: Why not implemented?

13 MS. LEVINE: You'd have to ask the city and the
14 state, your Honor.

15 THE COURT: Okay.

16 MS. LEVINE: It does remain a mystery to us because
17 it also included, for example, changes to the pension
18 benefits on a go-forward basis, and to the extent that there
19 are other or different issues that they needed to address
20 now, those, too, should have been addressed through
21 negotiations. What we seem to be hearing and what is also a
22 very important point for the City of Detroit and for Chapter
23 9 on a go-forward basis is that if you have legacy
24 liabilities and you have to deal with retiree benefits, then
25 you automatically get to say it's impractical, and I don't

1 have to show good faith at all. And we would respectfully
2 submit that that would be a very sad place for the City of
3 Detroit to take Chapter 9 and all cases on a go-forward
4 basis.

5 We respectfully submit, your Honor, that the city
6 can't meet its burden of proof and that it's not eligible in
7 this case at this time to be a Chapter 9 debtor. Thank you.

8 THE COURT: Thank you.

9 OPENING STATEMENT

10 MR. ULLMAN: Good afternoon, your Honor. Anthony
11 Ullman from Dentons. I'll be speaking for the Retiree
12 Committee. But first Ms. Patek asked me to tell you that
13 Exhibit 704 was the number of the joint public union --
14 safety union's letter that she couldn't find previously --

15 THE COURT: Okay.

16 MR. ULLMAN: -- so I've done that. Your Honor, of
17 course, we're here today on what the Court has identified as
18 factual issues which arise in the context of eligibility,
19 which the city has the burden of proof on. And you've heard
20 an overview of a lot of the evidence that the objectors
21 expect to bring to the hearing, much of it in chronological
22 order. And what I'm going to try to do is put that in the
23 framework of the legal issues that relate to eligibility and
24 try to explain how the evidence that we expect to come out at
25 the hearing fits in with those legal issues. I'm going to be

1 focusing, of course, on the issues that the Retiree Committee
2 is advancing, which I think are common to most, if not all,
3 of the objectors.

4 Now, it's the committee -- it's the committee's
5 contention and the contention of the objectors in general
6 that the city has failed to meet its burden of proof on a
7 number of specific elements that it has to meet to be
8 eligible for Chapter 9 and that it also has failed to meet
9 its burden of showing that its filing has been made in good
10 faith, and so what I'd like to do is kind of go through those
11 elements serially and put into context our view of how the
12 evidence falls into that and how the evidence should shape
13 your view of the law and application of the law, and
14 basically our points are as follows.

15 The committee itself, of course, doesn't contest
16 that Detroit is a municipality, and the committee is not
17 contesting insolvency, although AFSCME, of course, is, but we
18 do contest that other necessary elements have been met. I
19 mean specifically it's our contention that the city can't
20 show that the emergency manager, first of all, was
21 specifically authorized to make this Chapter 9 filing. We
22 also contend that the city has failed to meet the eligibility
23 criteria that are set out in 109(c)(5), and there are, of
24 course, two prongs of that. We say the city has not shown
25 that it negotiated in good faith, which was required under

1 Subprong (c) (5) (B). And we say the city can't show that the
2 good faith negotiations were impracticable, which is a prong
3 under Sub (c) (5) (C), and, finally, the committee says that
4 the city cannot show that it filed its petition in good
5 faith, which is required under 921(c).

6 So taking that from the top, this is, first of all,
7 what Section 109(c) (2) requires, and it requires specifically
8 that the city be specifically authorized or the person acting
9 for the city be specifically authorized to be a debtor under
10 state law, and we don't think the city can show this as a
11 factual matter because in filing the Chapter 9 petition, the
12 emergency manager did so with the specific intent of taking
13 actions and achieving results that are prohibited by the
14 Michigan state Constitution, namely the pension clause,
15 Article IX, Section 24. And we believe that that renders the
16 filing ultra vires, ineffective, and void, and this point
17 also obviously ties in with the view that in filing the
18 Chapter 9 petition, the emergency manager didn't act in good
19 faith under Section 921(c), so what I'm going to do is review
20 the evidence on the intent in filing, particularly relative
21 to the pension clause, for both purposes of the specific
22 authorization and good faith under 921(c) together.

23 Now, as the Court may recall, there's also another
24 aspect that we've raised with respect to Section 921(c) and
25 good faith, and that is what we contend are the misleading

1 statements and omissions that were made in connection with
2 the Chapter 9 filing, and I'll deal with those later in the
3 presentation.

4 So turning now to the emergency manager's intentions
5 as regards the pension clause, we think that the evidence is
6 very clear, and I'll summarize some of the key points. First
7 of all, we know that Mr. Orr was made the emergency manager
8 under PA 436, and that, of course, as you've heard, was the
9 replacement law for PA 4, the prior emergency manager law
10 which had given the emergency manager very broad powers and
11 then was repealed by voter referendum, and PA 436 was passed
12 in its place. And as we know, it was passed with a minor
13 appropriation provision, and we believe that the evidence
14 will show that that was intended to immunize the law from
15 Michigan voter review and, in fact, was a strategy that had
16 been devised and suggested by the Jones Day law firm itself.

17 Now, PA 436 was enacted in November 2002 with an
18 effective date of March 2013, and it was against this
19 background that the emergency manager, Mr. Orr, was selected
20 for his post. Now, Kevyn Orr we know is a bankruptcy lawyer
21 by trade. That, of course, in and of itself, doesn't prove
22 anything, but the evidence will show that before becoming the
23 emergency manager, he was a bankruptcy lawyer at Jones Day,
24 and, as I believe the Court has heard, he participated in the
25 pitch that Jones Day made to the city and to the state to get

1 its current assignment as restructuring counsel.

2 Now, we've already seen from Ms. Green's
3 presentation that prior to the pitch that Jones Day made,
4 which was in late January 2013, Mr. Orr was specifically
5 asked about the availability and use of Chapter 9
6 specifically relative to the City of Detroit, and the
7 evidence will show that in connection with that pitch, the
8 Jones Day team was not only focused on Chapter 9 but was also
9 specifically aware of the Michigan state pension clause and
10 had already thought of using Chapter 9 as a means to try to
11 get around it.

12 Now, this is the cover of the Jones Day pitch book,
13 and here's a slide from it which we're blowing up, and what
14 it says specifically is that if needed, Chapter 9 could be
15 used as a means to further cut back or compromise, quote,
16 "accrued financial benefits," close quote, otherwise
17 protected under the Michigan Constitution. And that
18 quotation, "accrued financial benefits," I believe, are words
19 that are lifted right out of the pension clause itself. So
20 this is from the pitch book that Jones Day prepared, and, as
21 we've said, Mr. Orr himself was a major player and part of
22 the pitch book -- the Jones Day pitch team.

23 And the evidence further is that from his own review
24 of the circumstances of PA 436 and PA 4, Mr. Orr concluded
25 that the new law, PA 436, in reality, was nothing more than a

1 thin veneer -- those are Mr. Orr's words -- a thin veneer of
2 a revision that's essentially a redo of the prior PA 4 that
3 the voters had rejected and an end-run around the voter
4 rejection. This is from an e-mail that Mr. Orr wrote, and I
5 believe -- it's a little hard to read because we didn't blow
6 that top part up, but I believe it's January 31 of 2013. And
7 this is from one of the exhibits that was gone over with
8 Mr. Orr in his deposition.

9 Now, central to the issue of bad faith and
10 authorization is the Michigan Constitution's pension clause.
11 I'll just put a copy of that up on the screen. And as we
12 see, the same word, the financial -- accrued financial
13 benefits, the same words that appeared in the Jones Day pitch
14 book, are right there in the Constitution.

15 Now, the evidence will show that Mr. Orr was
16 personally aware of the pension clause, and the evidence will
17 also show that when he became the emergency manager, Mr. Orr
18 took an oath requiring him to uphold the pension clause --
19 the state Constitution, of which the pension clause is part.
20 And this is from Mr. Orr's testimony where he acknowledged
21 that, yes, he took the oath of office, and he solemnly swore
22 to support the Constitution of the United States and the
23 Constitution of this state; that is, of the State of
24 Michigan. But the evidence will show that instead of
25 adhering to the strictures of the pension clause, Mr. Orr

1 decided, contrary to his sworn oath, to engage in a course of
2 action that was deliberately designed to thwart it through
3 the vehicle of a Chapter 9 filing, and what I'm going to go
4 through now are some highlights of what I think the evidence
5 will show, some of which you've seen before, some of which
6 you may not have.

7 Now, the evidence will show that as early as May
8 2013, which was less than two months after he became the
9 emergency manager, Mr. Orr made the decision to cut pension
10 benefits that were owed to -- excuse me -- to retirees, and
11 it will show that he understood that he was unable to
12 identify any viable way to achieve that end just under state
13 law. And the evidence will show that the emergency manager,
14 therefore, decided to try to accomplish that end through the
15 means of a Chapter 9 filing. And even more specifically, the
16 evidence will show that the emergency manager decided to try
17 to use Chapter 9, the Chapter 9 filing, as a vehicle
18 specifically to, quote, "trump" the pension clause of the
19 Michigan Constitution.

20 Now, this all came together in the proposal to
21 creditors that the emergency manager made on June 14th of
22 2013, and in his proposal the emergency manager made no
23 pretense that he was intending to protect accrued financial
24 benefits as is required and provided for in the Michigan
25 Constitution. For example, here's an excerpt from page 109

1 where he specifically says that under this proposal, there
2 must be significant cuts in accrued vested pension amounts
3 for both active and currently retired persons.

4 And under this June 14th proposal, the emergency
5 manager, in fact, said that the city would not make any
6 further pension contributions on account of retirees. For
7 retirees the defined pension benefits were to be cut entirely
8 from the forecast of the city's expenses going forward as
9 were the retiree healthcare benefits. And for active
10 employees, they were being shown as switched from a defined
11 benefit plan to a defined contribution plan with the level of
12 the city's funding of the contributions slashed dramatically
13 from the present levels. Now, for the actives, this is a new
14 plan, and the contributions are being made only on a going-
15 forward basis, so for the active employees' vested pensions
16 under this proposal, no further contributions would be made
17 for those either.

18 Now, the June 14 proposal, although it was very
19 lengthy, well over a hundred pages, didn't mention anywhere
20 in it the prospect or even the potentiality of a Chapter 9
21 filing, but the evidence will show very clearly that the
22 emergency manager understood that his proposal could not be
23 implemented outside of the context of Chapter 9 specifically
24 because of the pension clause and that he, therefore,
25 intended to use Chapter 9 as a vehicle to, again, in his

1 words, trump that very clause, the Constitution's pension
2 clause. And he's freely admitted that it's the state
3 Constitution -- the pension clause and no other provision of
4 the Michigan Constitution that the emergency manager was
5 trying to trump. This is an excerpt from his deposition. I
6 think you may have seen parts of this before, but he says --
7 he goes on to say that -- he answers, "We don't believe
8 there's an obligation under the state Constitution to pay
9 pensions." He says, "Yes, that's right." He says, "No.
10 I've made that statement many times." And then we go on to
11 ask him, "And the state law that you were referring to as
12 being trumped was Article IX, Section 24; isn't that right?"
13 He says, "Yes. That's right." We asked, "Is there any other
14 state law that you viewed as relevant to the pension -- to
15 the pension issue that you were trying to trump?" He says,
16 "No," there's no other state law that he's trying to trump.
17 It's specific, the pension clause. This Chapter 9 filing was
18 done specifically to try to get around the pension clause of
19 the Constitution, and there's no other way to read the
20 evidence on that. And these admissions also confirm the
21 city's recognition that the pension clause, in fact, applies
22 directly to what the city is trying to do through this
23 Chapter 9 proceeding and that the pension clause is in direct
24 conflict with what the emergency manager is trying to do here
25 as regards pensions. There's no question about it. They are

1 trying to do something that they acknowledge is in conflict
2 with the pension clause. If that weren't the case, there'd
3 be no context in which the federal law could trump anything.
4 There would be nothing to trump. There's a direct --

5 THE COURT: I don't mean to cut you off, but haven't
6 we been through this?

7 MR. ULLMAN: To some extent, your Honor, and I'm
8 trying not to repeat exactly --

9 THE COURT: Any extent to which we haven't?

10 MR. ULLMAN: Yes, I believe there is, your Honor.
11 I'm trying to -- I'm trying to bring additional evidence to
12 make the -- largely the same points but in a more summary
13 fashion and then move on to the eligibility issues.

14 Now, the emergency manager did all this in
15 circumstances where he himself has admitted that he was not
16 aware of any court decision that allowed the use of a federal
17 bankruptcy proceeding to trump a provision of the state law
18 Constitution. And the emergency manager did this in
19 circumstances where the Jones Day law firm itself had
20 previously advised that the emergency manager's ability to
21 cut pensions through Chapter 9 was, at best, uncertain. That
22 comes from the Jones Day pitch book itself. They said it was
23 uncertain. And he did this in circumstances where the
24 emergency manager had been advised by the state attorney
25 general that the pensions were protected under Michigan state

1 law and that what the emergency manager was doing in terms of
2 trying to cut them was contrary to the Michigan Constitution.

3 And, finally, on this point, we think that the
4 timing of the filing itself is very significant. You've seen
5 already that there were -- there was state court litigation
6 that was pending, and you've heard that there was a TRO
7 hearing that was scheduled and that the hearing on the TRO
8 was scheduled to take place on the 18th. And what the
9 evidence shows -- I'm sorry. Yeah. It was on the 18th, and
10 the evidence shows, as you've seen already, that the
11 bankruptcy filing had been originally scheduled for the 19th
12 and then had been moved up to go -- to coincide on the 18th
13 immediately prior to when the TRO hearing was supposed to
14 take place, and the evidence on that is as follows, and I'll
15 just skip to this particular slide.

16 Mr. Orr was asked specifically about the timing of
17 the filing of the bankruptcy petition and, in particular,
18 about the timing relative to the TRO proceeding, he was
19 asked, "Is there a particular reason why the filing was made
20 when it was, at the time it was, other than to try to get a
21 jump on the state court decision?" And the emergency manager
22 answered that, to the best of his knowledge, there was no
23 such reason.

24 So to sum up on all this, we think that it boils
25 down to the simple proposition that a state actor who takes

1 actions that are intentionally designed to achieve results
2 that are in plain violation and in direct odds with the state
3 Constitution is not acting within the scope of his authority
4 and is not acting in good faith, and we believe the evidence
5 will show that that's the situation here.

6 I'm going to turn now to the issues of eligibility,
7 and there are -- as we've said, there are two prongs here.
8 The city can prove by -- the good faith negotiation or the
9 impracticability issue either by showing that it engaged in
10 good faith negotiations or by showing that those were
11 impracticable.

12 Now, on the good faith negotiation prong, we believe
13 the evidence is going to show two things. First of all, the
14 emergency manager has argued that the presentations and
15 discussions that followed his June 14th proposal to creditors
16 constituted attempts at good faith negotiations. However,
17 the evidence will show that at the time of the presentations
18 and meetings, the emergency manager did not have what he
19 believed was a plan of adjustment and specifically that the
20 emergency manager himself viewed the June 14th proposal only
21 as a proposal and not as a plan of adjustment. Now, we've
22 heard this morning from Mr. Bennett that the city is
23 apparently trying to backtrack on this now, but when Mr. Orr
24 was questioned at his deposition, he not only acknowledged
25 but was adamant that what he presented on June 14th, which

1 was the subject of the following discussions and meetings,
2 was not a plan but merely a proposal that he had put out to
3 seek the general creditor feedback. He said this very
4 specifically. "We never called this a plan. We never called
5 it a deal. We always called it a proposal." So it was never
6 considered -- whatever the city is saying now, at the time
7 that the proposal was made, which, of course, was well before
8 we filed our pretrial brief, which is at the same period when
9 Mr. Orr testified prior to the filing of our pre-trial brief,
10 Mr. Orr was quite clear that what they put on the table on
11 June 14th was not a plan of adjustment, was not intended as a
12 plan of adjustment. It was just intended as a proposal,
13 something to be discussed. And we believe this is important
14 because under the clear -- what we believe is the clear
15 weight of the law, in order for the negotiations that are
16 referred to in Subpart (c) (5) (B) --

17 THE COURT: One second. I have been asked to ask
18 you to move back from the mike just a bit.

19 MR. ULLMAN: Okay. Is that better?

20 THE COURT: Maybe a little bit more.

21 MR. ULLMAN: Little bit more?

22 THE COURT: There you go.

23 MR. ULLMAN: Okay. The reason this is important is
24 because under Subpart 109(c) (5) (B), the negotiations that are
25 referred to in that subpart have to be negotiations over what

1 is a plan of adjustment as that term is used in the
2 Bankruptcy Code. The legal analysis on that, the authorities
3 we cite are all in our brief, and I'm not going to repeat
4 that here, but the point is that for the good faith
5 negotiation prong to be met, the negotiations that have to
6 be -- at issue have to take place over a plan of adjustment,
7 and the evidence shows that per the emergency manager's own
8 testimony in this case, no plan of adjustment was ever
9 presented to the creditors, and so a fortiori the
10 negotiations required under Subprong (c) (5) (B) never took
11 place.

12 And so there's no confusion on this, I want to be
13 clear that the question of whether the city presented the
14 creditors with a plan of adjustment is a very different
15 question from whether the city intended to impair or diminish
16 protected pension payments. On the one hand, as I've gone
17 through, the evidence will show that the city never presented
18 creditors with anything that they considered a plan of
19 adjustment, and on the other hand, as I've gone through and
20 Ms. Green has summarized, the evidence will show that the
21 emergency manager did intend to impair the protected pension
22 benefits. In fact, this latter point is not even subject to
23 question. The city has actually admitted in an RFA in this
24 proceeding that's binding on it that it, in fact, intends to
25 impair the pension rights as part of this proceeding, and

1 that's from the city's answer to the RFA that was served on
2 it, Number 12, where they admit that the city intends to seek
3 to diminish or impair accrued financial benefits. That,
4 again, is the term that's used in the pension clause of the
5 Constitution. So that's what the evidence will show on the
6 existence of a plan of adjustment.

7 Now, we also believe and you've heard before that
8 even if there were a plan of adjustment, even if there had
9 been one presented, there were no good faith negotiations.
10 For example, there was no way to know from the evidence --
11 or, rather, from the information that was provided at the
12 June 14 meeting how in actual monetary terms the individuals
13 that the city sought to affect under the June 14 proposal
14 would be impacted, and specifically in terms of both the
15 proposed pension cuts and the OPEB where the city was saying
16 that the retirees would instead get some share of notes,
17 there was no way for the retirees to know what the cash value
18 was of what the city was proposing. And, in fact, the
19 evidence will show that for -- at least for retirees at the
20 time of the discussions over the June 14 proposal, the time
21 those discussions were proceeding, the city itself did not
22 even know what the real size of the unfunded pension
23 liability was. In other words, there was no way to know what
24 the parties were even negotiating over. And here's some of
25 the evidence quickly on the negotiations. First of all, the

1 emergency manager has admitted -- this is a question asked as
2 regards to the June 14 meeting. We asked him, "Were there
3 negotiations there?" His answer, "No. There were not
4 negotiations. I'm going to be careful how I use the word,
5 but no. As we generally use the word, there were none."

6 There were other meetings that then took place. The
7 next meeting, as I recall, took place on June 20, and this is
8 from a letter that Jones Day wrote, and it called them
9 informational meetings and acknowledged that actives and
10 retired employees will need access to additional information
11 to analyze the proposals that are being -- that are proposed
12 in the June 14th document. And here's another letter from
13 Jones Day. This is dated, I believe, July 17th, and what it
14 says is, "We think it first makes sense to try to reach
15 common ground with the unions and associations on actuarial
16 assumptions and methods and the amount of the underfunding."
17 First we got to figure out what the amount of the
18 underfunding is and then tackle the contributions and
19 attendant benefit changes. You have to know what the size of
20 the underfunding is before discussions can even take place,
21 so, again, there wasn't even anything concrete to negotiate
22 over.

23 And, finally, on this point, we believe the evidence
24 will show the city never really intended to engage in good
25 faith negotiations. I'm going to put this document up

1 briefly. I think we've gone through this before. This is a
2 document from Bill Nowling of the emergency manager's office,
3 and what he's basically saying -- this is as of July 8th --
4 that they've already concluded what their key filing messages
5 would be. July 8th they're saying it's impracticable. This
6 is before the meetings that took -- that were scheduled for
7 July 10th and 11 even took place. So what we can see is that
8 even as the city was telling the world that it wanted to have
9 more meetings, it had already internally and secretly decided
10 that it would claim impracticability. So the meetings that
11 were followed were really nothing more than an effort to
12 create a record that would allow the city to claim good faith
13 negotiations when, in truth, there were no real negotiations
14 and the city wasn't negotiating, we believe, in good faith.

15 With respect to the impracticability prong, we
16 believe the situation is similar. At the outset, as we've
17 explained in our pretrial brief, the committee believes that
18 the requirement that there be a plan of adjustment applies
19 equally to the impracticability test, and this only makes
20 sense because without an actual plan identifying who the city
21 intends to impair and how, there's no way to assess whether
22 negotiations would be practicable. And specifically, as
23 we've said, the only document that was on the table was the
24 June 14 proposal, and that was a proposal, not a plan.

25 And further, as we've set out, we believe and the

1 law is that to show impracticability, the city has to show
2 impracticability with respect to each class of creditors. It
3 has to try to negotiate with those with whom negotiations are
4 possible, and, as you've heard, the evidence will show that
5 we believe there were certainly a number of classes of
6 creditors with whom that was possible. And as we saw from
7 the last slide, the evidence indicates that the city really
8 never intended to try to negotiate but really just tried to
9 use impracticability as a tool to get out of it. So from a
10 factual viewpoint, we believe the impracticability prong will
11 not be met either.

12 Now, finally, I want to talk briefly about Section
13 921(c), which is the good faith requirement. I've already
14 addressed one aspect of the good faith, the emergency
15 manager's pursuit of a course of action that's contrary to
16 the pension clause of the Constitution, but there's also
17 another aspect to it, and that is this, that we believe that
18 in connection with his filing of the petition, the emergency
19 manager made a number of misrepresentation -- or of
20 representations that we believe the evidence will show were
21 at minimum misleading and incomplete, and I'll give you some
22 examples.

23 First of all, in his declaration -- this is the
24 declaration that the emergency manager filed with the
25 petition -- he stated that the city has over 18 billion in

1 accrued liabilities and including specifically over 6.4
2 billion in bonds that are backed by enterprise revenues or
3 otherwise secured. Now, that, of course, sounds like a huge
4 liability for the struggling City of Detroit to bear, but the
5 evidence will show that what's not stated in this is that the
6 vast majority of these bonds that we see referred to here,
7 the 6.4 billion, are bonds that are issued by the Detroit
8 Water and Sewerage Department, which is operated as a
9 separate authority and is fully responsible for the payment
10 of those bonds. And the evidence will show that the
11 Department of Water and Sewers itself has the financial
12 wherewithal to make those payments. We put this question to
13 the emergency manager in his deposition. He said, yes, the
14 Department of Water and Sewers, it generates its own
15 revenues, and it pays its debts as they come due. So right
16 off the bat, the total liabilities that, according to the
17 emergency manager, he has to struggle to meet are effectively
18 reduced by at least a third.

19 Now, also in his declaration the emergency manager
20 stated that in terms of the unfunded pension liability, that
21 the unfunded pension liability is \$3.5 billion, and this is
22 stated here as a fact, not subject to qualification, and as
23 we all know, the unfunded pension liability -- how big it is
24 and what, if anything, will be done about it, those are
25 central issues that will have to be addressed if this action

1 proceeds, but for present purposes, the evidence will show
2 that this \$3.5 billion number that Mr. Orr stated in his
3 declaration is not a fact. We think the evidence will show
4 that the fact is that at the time the petition was filed, the
5 city did not know the actual size of the unfunded pension
6 liability as its analysis on that was ongoing and hadn't been
7 completed and, indeed, still hasn't been completed today.
8 And this, for example, is from the deposition testimony of
9 Charles Moore, who is the city's -- from Conway MacKenzie,
10 which is the city's operational restructuring advisor. Mr.
11 Moore also put in a declaration addressing unfunded pension
12 liabilities, and at his deposition Mr. Moore candidly
13 admitted that, in fact, the city didn't know what the actual
14 amount of the unfunded liability was and that work was going
15 on to try to make that determination. He says specifically,
16 most importantly, the city's actuary has not completed its
17 analysis on the unfunded position, and until that work is
18 done, no one really knows what the unfunded liability is.
19 And, indeed, we believe the evidence will show that the last
20 full actuarial evaluation of the unfunded liability was done
21 around June of 2011, and the unfunded amount that was shown
22 in that evaluation was about 643, 644 million. And the
23 evidence is also going to show that of that total amount, the
24 644 or so, only about 250 million is allocable to the general
25 fund, which is the fund that the city is most concerned

1 about, which it pays most of its bills. That is not a charge
2 on the general fund. The evidence will show that a very
3 large chunk of that is, in fact, allocable to other
4 departments such as the Department of Water and Sewerage,
5 which, again, is responsible for that and pays its own bills.

6 Now, during the -- Mr. Bennett's arguments, he
7 suggested that we had somehow misstated what Mr. Orr said at
8 his deposition, failed to cite all the appropriate parts.
9 That's not accurate. At his deposition Mr. Orr was put
10 through the numbers, and there was an initial error. He then
11 corrected that arithmetic error. At the end of the
12 deposition, Mr. Orr said that it appeared to his knowledge at
13 that time the portion of the unfunded pension liability that
14 was allocable to the Department of Water and Sewerage was
15 about 68 percent. Mr. Bennett is suggesting that maybe 68
16 percent isn't the right number, and the right number should
17 be 38 percent. Be that as it may, 38 percent is still in
18 this context a huge chunk of the unfunded pension liability,
19 which is something that's borne by Department of Water and
20 Sewerage and payable from those funds without any strain on
21 the general fund. And the evidence will show that the
22 emergency manager has acknowledged that even if the unfunded
23 pension liability were ultimately found to be greater than
24 the \$644 million number, even if it were found to be --
25 excuse me -- as high as the \$3.5 billion number that you've

1 heard, that same principle would hold true, that there's a
2 significant portion of it that is not allocable to the
3 general fund but is borne entirely and payable by and fully
4 funded by the Department of Water and Sewers. And as I said,
5 the evidence will show that that department is solvent and
6 capable of meeting its obligations, and, indeed, the Water
7 and Sewerage pension payments even have priority over secured
8 claims in that they're included in net operating expenses.

9 So we believe the evidence will show that the amount
10 of the underfunding on the pension liability is not nearly as
11 severe as -- still substantial -- we're not denying that, but
12 not nearly as severe as was portrayed in the emergency
13 manager's declaration.

14 And finally, related to all this, the evidence will
15 show that the city does, we believe, have substantial assets
16 that can be monetized. Chiefly but not alone among them is
17 the art that's owned by the city that's maintained at the
18 Detroit Institute of Arts, and we're talking about art that's
19 owned outright by the city, not art that's subject to any
20 charitable trust. And the evidence will show that there's
21 that asset, and also the Department of Waters and Sewers is a
22 valuable asset that could be monetized. The city may well be
23 in a position to obtain substantial cash inflows from these
24 assets and we understand is actively pursuing these
25 opportunities. Those assets, those cash flows could

1 obviously be used to fund other obligations as well, yet none
2 of that was factored in any way into the Orr declaration even
3 though that could dramatically change the mix of what happens
4 in terms of paying not only pension obligations but other
5 obligations as well.

6 So that, your Honor, is what we believe the evidence
7 will show. Based on that, we believe the city cannot meet
8 its burdens of proving eligibility or good faith, and we look
9 forward to proceeding. Thank you, your Honor.

10 THE COURT: Thank you.

11 MR. ULLMAN: Oh, and I do -- we will have a bound
12 copy of the slides that I used for you marked. Thank you.

13 THE COURT: All right. Thank you.

14 MS. LEVINE: Your Honor, I apologize, but I got a
15 flurry of e-mails after I stepped away from the podium saying
16 two weeks, what are you, crazy?

17 THE COURT: What was your answer to that question?

18 MS. LEVINE: I have to ask the judge if I'm crazy or
19 not. I guess --

20 THE COURT: I take it you're asking for more time.

21 MS. LEVINE: If we could have another week, your
22 Honor, that would be --

23 THE COURT: Sure. Three weeks. Absolutely. Okay.
24 So does that conclude your opening statements? All right.
25 We'll take a recess now until ten after three, and we'll

1 begin with the evidence at that time.

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

3 (Recess at 2:51 p.m. until 3:10 p.m.)

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

5 THE COURT: Okay. It appears everyone is here. You
6 may proceed.

7 MR. STEWART: Thank you, your Honor. Geoffrey
8 Stewart, Jones Day, for the city. Our first witness will be
9 Gaurav Malhotra, but before we call him, I wanted to put on
10 the record a stipulation that the parties have reached with
11 regard to the sequestration of witnesses. We've agreed that
12 witnesses should be sequestered with the exception of those
13 who, by definition, are representatives of a party.

14 THE COURT: That's fine. I ask counsel, please, to
15 supervise this sequestration because you know who your
16 witnesses are.

17 ATTORNEY: Thank you, your Honor. We will.

18 THE COURT: Okay.

19 MR. STEWART: May we call Mr. Malhotra to the stand?

20 THE COURT: Yes, yes, of course. Step forward,
21 please, sir. Before you sit down, please raise your right
22 hand.

23 GAURAV MALHOTRA, DEBTOR'S WITNESS, SWORN

24 THE COURT: Please sit down. You may proceed, sir.

25 DIRECT EXAMINATION

1 BY MR. STEWART:

2 Q Good afternoon. Mr. Malhotra, could you please, for the
3 record, give us your full name and your home address?

4 A Gaurav Malhotra, and I live in Chicago, Illinois.

5 Q And are you presently employed?

6 A Yes.

7 Q Who are you employed by?

8 A Ernst & Young.

9 Q And what is Ernst & Young?

10 A Ernst & Young is a Big Four accounting firm.

11 Q And how long have you worked for Ernst & Young?

12 A For close to four years since I recently joined.

13 Q In what part of Ernst & Young's practice do you work?

14 A Restructuring specifically.

15 Q And just for the record, tell us what that means when you
16 say "restructuring"?

17 A Our practice predominantly represents corporations and
18 public sector clients in order to assist with business plan
19 assessments, liquidity analyses, as well as developing
20 restructuring proposals.

21 Q Tell us, if you could, about your college education and
22 any post-graduate education that you had.

23 A I went to college in New Delhi, India, and I did my MBA
24 in Finance and Business Policy from Case Western, and I'm
25 also a CFA.

1 Q Certified financial analyst?

2 A That is correct.

3 Q After you left Case Western, what was the first job that
4 you had?

5 A I joined Ernst & Young.

6 Q And how long were you at EY at that point?

7 A At EY, I joined in May of 2000, and EY's restructuring
8 practice was, I believe, in 2004, sold to Giuliani Capital
9 Advisors. I transitioned with that team. That team was
10 subsequently sold to Macquarie, an Australian investment
11 bank, and I transitioned with that team and came full circle
12 back to EY about four years ago.

13 Q And what is your title at EY now?

14 A I'm a principal.

15 Q And what does that mean?

16 A It's a non-CPA partner of the firm.

17 Q So you're an equity partner of EY?

18 A I am an equity partner of EY.

19 Q Could you tell us some of the clients you have worked for
20 as part of your work in restructuring?

21 A I worked for Delta Airlines. I did work for Detroit
22 Public Schools, doing work for Liberty Medical right now,
23 worked at Collins & Aikman, and those are some of the clients
24 that I've worked with in addition to others.

25 Q Did there come a time when EY was retained by the City of

1 Detroit to perform work for the city?

2 A Yes. We started our work in about the May, June of 2011
3 time frame.

4 Q So over two years ago?

5 A That's right.

6 Q At the time the city approached you or at any time since,
7 was EI -- EY -- sorry -- retained to serve as an expert for
8 the city in any litigation, including Chapter 9 litigation?

9 A No. In fact, it's very clear in our letter that we will
10 not serve as an expert.

11 Q What were you hired to do in May of 2011?

12 A Generally, it was to get a handle on the city's liquidity
13 position and try and get our arms around in terms of the
14 city's short-term liquidity forecast over the next 12 months
15 or so.

16 Q And this was back in 2011. That was what you were asked
17 to do?

18 A That is correct.

19 Q Did there come a time earlier this year when the scope of
20 work the city asked of EY was expanded?

21 A Yes. In the front end of this calendar year, our role
22 was expanded to look at a ten-year forecast for the city,
23 predominantly on the general fund, and to ascertain what the
24 deficit as well as cash projections would be over a longer
25 time frame versus a shorter time frame.

1 Q Now, you just used the term "general fund."

2 A Yes.

3 Q What is the general fund?

4 A The general fund is basically where the day-to-day
5 activities for a municipality are recorded. i.e., collection
6 of taxes, payment of operating expenses and administrative
7 expenses as well as debt service that is not related to an
8 enterprise fund.

9 Q Why is the general fund a logical place to look when
10 you're analyzing the city's financial position?

11 A Because that's where the tax revenues or the fees are
12 recorded, so the enterprise funds specifically charge their
13 own fees for that specific service, but the general fund is
14 where the core operating deficit of a city is recorded in
15 municipal accounting across the country.

16 Q Now, you've used the term a couple of times "enterprise
17 funds." For the record, what are the enterprise funds? What
18 are examples of the enterprise funds?

19 A Enterprise funds generally are -- have a specific fees
20 that is charged for the services that are provided by that
21 fund. It's generally break-even. For example, the Water and
22 Sewer department is an enterprise fund of the city. The
23 Detroit Department of Transportation is an enterprise fund of
24 the city, although the Department of Transportation requires
25 a subsidy from general fund, so it's not break-even.

1 Q Now, in your analysis of the city's financial position
2 and of the general fund, did you take into account the
3 enterprise funds?

4 A We looked at some of the cash activity of the enterprise
5 funds back in 2011 but focused majority of our efforts on the
6 general fund and those enterprise funds that require a
7 subsidy from the general fund like DDOT, which is the
8 Department of Transportation.

9 Q Now, in the course of your work, what materials or
10 information from the city did you rely upon?

11 A We looked at a CAFR.

12 Q I'm going to stop you right there.

13 MR. STEWART: Can we put up Exhibit 6? And I
14 believe, your Honor, the CAFR, which is Exhibit 6, has been
15 stipulated into evidence.

16 BY MR. STEWART:

17 Q Is this the CAFR?

18 A Yes. That's the CAFR for 2012. It's the Comprehensive
19 Annual Financial Report, which is the city's audited
20 financial statements.

21 Q Those were audited?

22 A Yes.

23 Q By Ernst & Young?

24 A No.

25 Q And what does the CAFR tell you?

1 A It gives you a detailed snapshot of revenues and expenses
2 as well as the deficit position of the general fund as well
3 as some activity of the enterprise funds.

4 Q Is this a public document?

5 A Yes, it is.

6 Q What else did you look at in the course of your work to
7 learn about the details of the finances of the city?

8 A We looked at the city's budgets. We looked at internal
9 financial reports that we had access to from the city.

10 Q What kind of financial reports?

11 A They were generally department-specific revenues and
12 expenses as we had available. We also looked at receipts and
13 disbursements activity for different bank accounts to try and
14 get our arms around the financial position of the city.

15 Q Now, were these materials you looked at records -- the
16 financial records that the city had kept in the ordinary
17 course of its business?

18 A Yes.

19 Q And in your experience, is it in the ordinary course of
20 an enterprise or city's business to keep records such as the
21 ones you were looking at?

22 A Yes.

23 Q And did the records appear to you to be accurate?

24 A Generally, yes. I mean there were always questions about
25 assumptions like specifically on budgets, but we did not find

1 any material discrepancies at least in the information that
2 we were trying to get our arms around specifically like the
3 CAFR.

4 Q Well, what did you do to check the reliability of the
5 information the city gave you?

6 A What we did is we looked at the information that was made
7 available. We spoke to various members of the city's
8 management team, the finance department at the city, various
9 department heads. We looked at the receipts and
10 disbursements activity as generally cash was a telling
11 barometer in terms of the quality of information we were
12 receiving, so we went through and tried to scrub the data to
13 the best of our ability.

14 Q You just used the term "we." I should have asked you
15 earlier how many people from EY worked with you on this
16 project?

17 A On the front end of this engagement, we had a team of
18 about four or five, and that team is larger now.

19 Q What deliverables were expected of E&Y as a result of its
20 work?

21 A It was generally cash flow updates, whether they be short
22 term or medium term, generally going out on a monthly basis,
23 variance reports in terms of how the city was performing in
24 context of those cash flows. As time progressed, our work
25 expanded to helping develop the long-term projections in

1 conjunction with other members of the city, so we also helped
2 in terms of updating the financial advisory board on a
3 monthly basis in terms of where some of the cash position of
4 the city was.

5 Q And in terms of organizing and presenting your data, what
6 methods did you use?

7 A It was generally Excel spreadsheets or PowerPoint
8 presentations.

9 Q Okay. And an Excel spreadsheet is what?

10 A It's a software that allows you to compile, organize, or
11 make calculations in terms of the data that we have
12 available.

13 Q And the calculations are arithmetical calculations?

14 A Yes.

15 Q Now, let me ask you this. Did there come a time when you
16 learned that an emergency manager had been appointed for the
17 City of Detroit?

18 A Yes.

19 Q And do you remember when you learned of it?

20 A Right around March.

21 Q And when did you meet Kevyn Orr for the first time?

22 A The first time I met Kevyn Orr was during the interview
23 process of various law firms where Jones Day was one of the
24 firms that was presenting its credentials to represent the
25 city.

1 Q And after Mr. Orr was appointed as emergency manager, how
2 often did you meet with him?

3 A Generally weekly.

4 Q And has that continued to this day?

5 A Yes, either meetings or phone conversations.

6 Q Okay. Are you aware of something called a 45-day report?

7 A Yes.

8 Q What is a 45-day report?

9 A It's a report that an emergency manager has to present 45
10 days after his or her appointment to provide a snapshot of
11 the financial and operating condition of the city.

12 Q Now, we put up on the monitor before you Exhibit -- I
13 think it's 75 for identification. Is that the 45-day report?

14 A Yes, it is.

15 Q And you've seen this before?

16 A I have.

17 Q And do you understand why it was Mr. Orr was required to
18 submit a 45-day report?

19 A I believe it's per statute under PA 436.

20 Q Did you yourself contribute any part of the content of
21 the 45-day report?

22 A We did. We helped work on the financial section of the
23 document as well as some short-term liquidity projections
24 that were available as of that point in time.

25 Q Let me ask if we could go to page 40 of the --

1 MR. STEWART: And if we blow it up for the monitor,
2 please, Lauren, so we can see it better --

3 BY MR. STEWART:

4 Q Mr. Malhotra, do you have that before you, page 40 of the
5 report?

6 A Yes, I do.

7 Q And what is that?

8 A That is a snapshot of the monthly receipts and
9 disbursements activity of the general fund and the cash
10 balance available for the general fund along with any
11 deferrals that we were able to identify as of that --

12 Q And is this a spreadsheet that you or someone at E&Y
13 working at your direction prepared?

14 A Yes.

15 Q Without going --

16 MR. SHERWOOD: Your Honor, I'd just like to
17 interpose an objection at this time.

18 THE COURT: Would you identify yourself, sir?

19 MR. SHERWOOD: I'm sorry, your Honor. I was
20 introduced this morning. I'm Jack Sherwood from Lowenstein,
21 counsel for AFSCME. I'm Ms. Levine's partner.

22 THE COURT: Okay. Go ahead, sir.

23 MR. SHERWOOD: I believe that this testimony in
24 terms of forecasts of future performance by the city is
25 improper lay opinion testimony and should be disallowed. We

1 submit that this testimony is in the nature of financial
2 projections, requires special expertise, training, and so
3 forth and under Federal Rule of Evidence 701(c) should be
4 excluded. Thank you.

5 MR. STEWART: Well, your Honor, two responses.

6 THE COURT: Excuse me one second.

7 MR. STEWART: Yes. I'm sorry.

8 THE COURT: Is it the exhibit you object to or the
9 testimony about it?

10 MR. SHERWOOD: Both, your Honor.

11 THE COURT: The exhibit is already in evidence;
12 right?

13 MR. SHERWOOD: Well, then the testimony about it. I
14 think it has been stipulated into evidence. I think this
15 document is in evidence, but I do believe that any testimony
16 about these projections is expert testimony and should be
17 disregarded.

18 THE COURT: Sir.

19 MR. STEWART: Well, first of all, I don't believe
20 the witness is going to be asked any opinion about this, and
21 he has testified earlier he has not been hired as an expert.
22 More fundamentally, I think the rule is clear that to the
23 extent a witness, even one who has expertise, is simply
24 performing arithmetic or similar calculations on voluminous
25 data, it is not expert testimony, and I think the leading

1 Sixth Circuit case on that, your Honor, is -- I think it's
2 the Madison case, 226 Federal Appendix 535, which is a 2007
3 case, and it cites at length an Eleventh Circuit case that
4 says that in greater detail and on the different facts, and
5 so that is why I asked the questions I asked a few minutes
6 ago about the source of the data, were they business records,
7 what did he do with them. They went into a spreadsheet.
8 What does a spreadsheet do? And at this stage I'm still
9 trying to explain how he went about compiling his
10 spreadsheets, but counsel is correct. I'm going to ask him
11 at some point what were the results or the calculations. I'm
12 not going to ask him his opinion on what anything ought to
13 be. It is simply going to be, "After you compiled the
14 information, as you testified, what did the number turn out
15 to be?"

16 MR. SHERWOOD: Just briefly, your Honor. Anything
17 that projects future revenues or forecasts is opinion. It's
18 not fact. It's not adding numbers that exist. I understand
19 that a fact witness can testify what our expenses and
20 payments were on a given month or even that are due this
21 month, but this is forecasting into the future in terms of
22 not only expenses but also receipts, things like property
23 taxes, utility taxes, various types of revenues going out
24 through the end of this year, and I think that by definition
25 that requires some type of expertise, specialized training,

1 certainly not something that anyone can do, is properly the
2 subject of expert testimony and shouldn't be allowed.

3 MR. STEWART: And I think what the Sixth Circuit
4 wrote, your Honor, was that there are many things that
5 require expertise. For example, it requires expertise to
6 read the records and know what part of the city's records are
7 important. But where the calculations themselves do not
8 require expertise beyond simple mathematics, it's not expert
9 testimony. They distinguish being an expert and expert
10 testimony.

11 THE COURT: What was the specific last question that
12 you asked?

13 MR. STEWART: I believe it was how he went about
14 preparing -- or his staff went about preparing the
15 spreadsheet we see before us on the screen.

16 THE COURT: I'll permit that question.

17 BY MR. STEWART:

18 Q You may answer.

19 A The way we helped pull this spreadsheet together or any
20 of the spreadsheets on the cash flows were we looked at the
21 information that was available in the different budgets. We
22 were able to look at the different receipts and disbursements
23 on an actual basis in terms of what was actually coming into
24 the city and break that down into the different categories
25 and then, based on the assumptions that we had collectively

1 in conjunction with the city, forecast what the monthly
2 receipts and disbursements could be over this forecast
3 period.

4 Q And you populated the spreadsheet with those numbers?

5 A That is correct.

6 Q And you performed addition and subtraction on them to
7 reach the conclusions that are shown here; is that correct?

8 A Yes.

9 Q And now may I ask you just as to this, what did you
10 conclude the short-term cash flow forecast would yield to in
11 terms of the city's available cash as of the end of calendar
12 year 2013?

13 MR. SHERWOOD: I'd renew the same objection, your
14 Honor.

15 THE COURT: That objection is sustained.

16 MR. STEWART: Okay.

17 BY MR. STEWART:

18 Q Mr. Malhotra, let me also ask you to look at -- actually,
19 I'll come back to that in just one minute. Okay. Did there
20 come a time, Mr. Malhotra, that you learned that the
21 emergency manager had scheduled a meeting with creditors of
22 the city for June 14 of this year?

23 A Yes.

24 Q And when did you learn of the meeting?

25 A It was right around, I think, in that June time frame.

1 Q And did you attend the meeting?

2 A I did.

3 Q Where was it held?

4 A At the Westin at the airport.

5 Q And how many people attended?

6 A I would say about a couple of hundred.

7 Q How long did it last?

8 A Four, five hours.

9 Q Did you speak or present anything at the meeting?

10 A I did.

11 Q Let me -- and were materials passed out at the June 14
12 meeting?

13 A Yes.

14 Q Let me first put up on the screen Exhibit 43. You see
15 Exhibit 43?

16 A I do.

17 Q Is that a document entitled "Proposal for Creditors" that
18 was distributed on June 14?

19 A It was.

20 Q And let's put up Exhibit 44. Is that an executive
21 summary of the proposal that was also distributed that day?

22 A That is correct.

23 Q Now, at that meeting -- this is entitled "Proposal for
24 Creditors."

25 A Yes.

1 Q That's the title of it. What's being proposed?

2 A What the city was proposing was a framework for
3 restructuring of its long-term liabilities showing that the
4 city was going to be unable to meet its obligations as they
5 came due.

6 Q Now, I think you testified that you prepared certain
7 parts of this document?

8 A That is correct.

9 Q Okay. And let me direct your attention, if I could, to
10 page 8 of the document.

11 MR. STEWART: Can that be blown up, Lauren?

12 BY MR. STEWART:

13 Q Is this a spreadsheet that you or others at E&Y prepared?

14 A Yes, it was.

15 Q And what does it purport to show?

16 A The first column on that spreadsheet --

17 Q Well, first of all, what's the title of the spreadsheet?

18 A It says "Fiscal Year 2013 Forecasted Cash Flow to Year-
19 End."

20 Q Now, it uses the term "fiscal year '13." What is the
21 fiscal year of the City of Detroit?

22 A July 1 to June 30th.

23 Q So at the time of this meeting, the fiscal year '13 had
24 about 16 days to go?

25 A Yes. June -- the month of June 2013 was still a

1 forecast.

2 Q So let's -- before we go further, let's look at our
3 spreadsheet here. How many months of this spreadsheet are
4 actual numbers?

5 A The first column has 12 months of fiscal year 2012, and
6 subsequent to that 11 of the 12 months are actuals, and
7 there's a month of forecast.

8 Q And that information you obtained from where?

9 A It was compiled from the information that was given to us
10 by the city.

11 Q Okay. And what I'd like to do because we're going to be
12 dealing with some of these issues later is to go over some of
13 the elements of operating receipts and operating
14 disbursements that we see here on the spreadsheet.

15 MR. STEWART: And I don't know if that can be blown
16 up to be even larger or not, Lauren. I don't know if
17 everyone can see them. Let's just blow up operating receipts
18 if we could. There.

19 BY MR. STEWART:

20 Q I've asked the technical assistant here to blow these up
21 so we can all see them better, and let me ask you about some
22 of the operating receipts. Property taxes and income and
23 utility taxes are just what they say they are?

24 A That's right. That's what they contain.

25 Q And gaming taxes, what are gaming taxes?

1 A Those are the taxes the city receives from the three
2 casinos.

3 Q Next is municipal service fee to casinos.

4 A Those are generally additional fees that the city
5 collects from the casinos for additional services that are
6 provided.

7 Q And then our next line is state revenue sharing?

8 A That's state aid that the city receives every other
9 month.

10 Q And below that we have other receipts. Could you tell us
11 what the other receipts are?

12 A Sure. Those are a combination of fees from the different
13 departments. It has grant revenue in there as well as any
14 other one-time items that are also captured in there.

15 Q And the final item is called refinancing proceeds?

16 A Yes. Those generally reflect the monies that the city
17 was borrowing from the escrow account that was set up with
18 the state, so it was essentially additional debt borrowings.

19 Q Okay.

20 MR. STEWART: Let's go back if we could, Lauren, to
21 the -- if you could just then expand for us the part of our
22 chart that says "Operating Receipts." "Operating Receipts."
23 That would still be the top part, I think. Now, "Operating
24 Receipts," that would be the rows there entitled "Operating
25 Receipts." Okay?

1 BY MR. STEWART:

2 Q Now, your spreadsheet purported to tabulate what the
3 operating receipts were. I think the first column is actual
4 for fiscal year '12. What did you determine the city's
5 operating receipts had been for that fiscal year?

6 A For the general fund predominantly the operating -- total
7 operating receipts were 1.765 billion of which 50 million was
8 related to so-called proceeds from debt issuance or
9 borrowings from the escrow fund.

10 Q And then for fiscal year 2013, you had 11 months actual
11 and 1 month forecast; is that right?

12 A That is correct.

13 Q Okay. And can you tell me what your forecast was with
14 those 11 actual and 1 forecasted month for --

15 MR. SHERWOOD: Object. I'm sorry.

16 BY MR. STEWART:

17 Q -- the operating receipts for fiscal year '13?

18 MR. SHERWOOD: Your Honor, I object to testimony
19 based on forecasts.

20 MR. STEWART: Your Honor, what we have -- he spoke
21 not only about the actual -- the city's actual receipts. He
22 also spoke about the city's budgets not as a forecast he made
23 but as a budget the city had, which was itself a factual
24 document. To the extent he's talking about what the city has
25 budgeted, especially when he tests it against actual

1 experience for reliability, I believe he can talk about what
2 the forecast result is to look like. I would add that this
3 is one where 11/12ths of the data is actuals that had, in
4 fact, already come to pass.

5 THE COURT: Sir, is the number for the column
6 forecast June 13 of 125 your number or the city's number?

7 THE WITNESS: It was generally a collaborative
8 effort in which we used the numbers that were, your Honor,
9 developed by the city originally. We scrubbed them along
10 with the city.

11 THE COURT: What does "scrub" mean?

12 THE WITNESS: So we looked at, your Honor, the
13 historical actuals in terms of how the amount of collections
14 that were received in that particular month in conjunction
15 and comparison with the overall tax row, so it was -- you
16 know, actually, you are looking through the historical
17 information that we had available as well as the best
18 forecast information we had available to demonstrate what the
19 one month of forecast would have looked like.

20 THE COURT: Well, all right. I'll permit the
21 testimony as to the full year for actual and forecast but
22 subject to credible admissible evidence regarding June '13.

23 MR. STEWART: Your Honor, we will provide that.

24 BY MR. STEWART:

25 Q And then, Mr. Malhotra, as to the full year operating

1 receipts for 2012, what did you calculate?

2 A For the full year of fiscal year 2013, the total
3 operating receipts were -- with 11 months of actual and 1
4 month of forecast were 1.582 billion, which included roughly
5 \$30 million of borrowings from the escrow account as shown in
6 the line item up above.

7 Q Okay. And so the line you're referring to is the line
8 that says "refinancing proceeds"?

9 A That is correct.

10 Q And you better tell us what the escrow account is.

11 A It's an account -- escrow account that's set up that's
12 subject to an escrow agreement between the city and the state
13 where there are roughly about \$70 million of cash that is
14 sitting in that escrow account today. It was projected that
15 \$20 million of that 70 would have been collected, your Honor,
16 in June of 2013, but that has not happened. We are
17 anticipating to collect that \$20 million from the escrow
18 account in the subsequent months going forward, but it is
19 subject to -- the amount in there is subject to an escrow
20 agreement between the city and the state.

21 Q Okay. Thank you. Lets, if we could, now --

22 THE COURT: Excuse me one second. So the 20 billion
23 you're talking about is the 20 that's shown in forecast June
24 '13?

25 THE WITNESS: Yes, your Honor. That's the 20

1 million.

2 THE COURT: That didn't happen.

3 THE WITNESS: That did not happen. That is correct,
4 your Honor.

5 BY MR. STEWART:

6 Q At the time you wrote it, you expected that it would
7 happen?

8 A That is correct.

9 MR. STEWART: Could we now expand the segment of the
10 chart that talks about operating disbursements, just the
11 title so we can see them all? No. That's fine.

12 BY MR. STEWART:

13 Q Now, we've now expanded on the screen, Mr. Malhotra, the
14 segment of the spreadsheet that speaks of operating
15 disbursements. Let me ask you if we could go through this.
16 The first line is payroll taxes and deductions, and I assume
17 that's self-explanatory. That's what it says.

18 A Yes.

19 Q Next is benefits. What are benefits?

20 A Those are generally health benefits.

21 Q Okay. Below that is something called pension
22 contributions?

23 A That is correct.

24 Q And those are pension contributions to who?

25 A To either the police Retirement System or the General

1 Retirement System.

2 Q And those are both defined benefit plans?

3 A Those are defined benefit plans, yes.

4 Q Now, I understand that some portion of the benefits from
5 the General Retirement System goes to city employees who work
6 for the Department of Water and Sewer?

7 A That is correct.

8 Q And how do you account for that in this spreadsheet?

9 A Those are not accounted for here because this shows the
10 activity predominantly of the general fund. The
11 contributions that the Water and Sewer Department makes for
12 pension go directly to the Retirement System and --

13 THE COURT: Excuse me, sir. You need to lean back
14 away from the microphone a little bit because when you get
15 too close, it cuts out.

16 THE WITNESS: All right.

17 THE COURT: And while we have a break here, I think
18 your tech person needs to redo that chart because her effort
19 to line up the headings isn't working very well separately.

20 MR. STEWART: Okay. Thank you.

21 THE COURT: That's better.

22 MR. STEWART: That's better. A little to the left,
23 yes.

24 THE COURT: Thank you.

25 BY MR. STEWART:

1 Q We were talking, I guess, about pension contributions.
2 Next we have -- and for actual year 2012, those had amounted
3 to how much?

4 A For actual fiscal year '12, there were pension
5 contributions of 103.9 million made by the general fund.

6 Q And for fiscal year 2013, what is the number?

7 A That reflects 11 months of actuals and 1 month of
8 forecast, but about \$30.8 million of pension contributions
9 that were made.

10 Q Why is that so much lower than the pension contributions
11 that had been made in 2012?

12 A Because the city was trying its best to preserve
13 liquidity during this time frame where liquidity was
14 extremely tight and was deferring pension contributions.

15 Q Now, let's -- let me ask you about this. When you say
16 "deferring pension contributions," what do you mean?

17 A It's essentially not making the scheduled payments as
18 they came due and as were laid out by the city's other
19 systems actuaries, so I would say it was more or less
20 borrowing money from the pension system to fund ongoing
21 operations.

22 Q So just to be clear, the money was owed to the pension
23 systems; correct?

24 A That is correct.

25 Q But the city did not pay the pension systems the money it

1 owed them?

2 A That is correct.

3 Q And that is called deferral?

4 A Yes. That's what we are calling deferral.

5 Q And do you know looking at this what the amount of
6 deferrals were for fiscal year 2013?

7 A For fiscal year 2013, I would say compared to the
8 beginning of fiscal year 2012 there was probably another 70-
9 odd million dollars that was deferred compared to the
10 beginning of fiscal year 2012, an additional 70 million.

11 Q Okay.

12 THE COURT: And may I interrupt for one moment?
13 Just so the record is clear and everyone understands, would
14 you describe in more plain English what you mean by the
15 concept of "liquidity was tight"?

16 THE WITNESS: Sure, your Honor. The city was during
17 this time frame paying very close attention to its cash
18 position, and in order to ensure that the city did not have a
19 payless payday or run out of complete cash in its bank
20 account, the amount of cash available for the city's general
21 fund to continue to operate was dwindling. And in order to
22 make sure that the cash position did not get to an
23 unsustainable level where the core operations of the city
24 were put at peril, that's what, your Honor, I meant by
25 liquidity being extremely tight. It's the cash that was

1 available to run the operations of the general fund.

2 MR. STEWART: If we can go back to the full chart
3 for just a minute, please.

4 BY MR. STEWART:

5 Q And before we go further, just on this same point, this
6 chart is a projection of cash flow for the city for the past
7 year and for fiscal year 2013; correct?

8 A It's actuals for --

9 Q Actuals and then -- okay. Now, you just talked about
10 deferrals as something the city did to preserve cash. Is
11 there something called pooled funds?

12 THE COURT: I'm sorry. Something called what?

13 MR. STEWART: Pooled funds. And I'm going to ask
14 him what they are.

15 BY MR. STEWART:

16 Q Can you tell us what pooled funds are?

17 A The pooled funds are cash that has been available in
18 other accounts for specific purposes such as the solid waste
19 fund or the street fund or the risk management fund that has
20 been pooled with the general fund cash so that the general
21 fund cash is higher because of the result of the pooling of
22 cash from these other accounts.

23 Q Now, these other accounts are not -- well, first of all,
24 you better tell us what these other accounts are.

25 A As highlighted in the city's CAFR, the city had roughly

1 \$92 million of pooled cash from the solid waste fund, the
2 street fund, and the risk management fund, cash that was
3 combined with the general fund, that is currently reflected
4 in the cash balances reported for the general fund.

5 Q And so that I understand, so because of the liquidity
6 problems the city faced, it took the \$90 million out of the
7 street fund, the solid waste fund, and the public safety or
8 emergency fund and commingled it with money in the general
9 fund?

10 A I don't know when it was done, but that would generally
11 be yes. The commingling has probably happened some time ago,
12 but the answer would be yes. It would be to further
13 supplement the cash available for the general fund.

14 Q And if the city had not done that, what would have been
15 the effect on its liquidity position?

16 A Well, at the end of fiscal year '12 where the cash net of
17 distributions was shown as 1.9 million, if the city had to go
18 ahead and segregate or unpool almost \$92 million, that cash
19 net of distributions or cash available to the general fund
20 would have been significantly lower dollar for dollar.

21 Q It would have been \$92 million lower?

22 A Yes. That is my understanding.

23 Q Let's go back now to our operating disbursements that we
24 were talking about. All right. The next item there is
25 something called subsidy payments. What are subsidy

1 payments?

2 A Subsidy payments are the cash payments that the general
3 fund fund makes to DDOT, which is the Department of
4 Transportation, because the Department of Transportation
5 requires an annual subsidy every year from the general fund.

6 Q And below that we have distributions, and there are three
7 different lines. There's distributions, tax authorities,
8 then distributions, UTGO, and then distributions, DDA.
9 Please tell us what those items are.

10 A Those are distributions to other taxing authorities. In
11 the first line when we saw property tax collections, the city
12 collects property taxes not only for itself but also on
13 behalf of other taxing authorities like Detroit Public
14 Schools, Wayne County, and what the city does then is once
15 the gross property taxes are collected, it distributes to
16 these other entities on behalf of whom the cash has come in.

17 Q So, in other words, it's cash the city has but that it
18 has to turn over to someone else?

19 A Yes. That is correct.

20 Q And below that we have income tax refunds, account
21 payables, and other disbursements and professional fees.

22 MR. STEWART: Now let's go back to the full chart if
23 we could, and for purposes of simplicity, why don't we simply
24 expand actual fiscal year '12 along with the descriptions of
25 items that would help us walk through them? All the way to

1 the bottom. Thank you. Okay.

2 BY MR. STEWART:

3 Q Now, our next line has total disbursements. Do you see
4 that?

5 A Yes.

6 Q And that's just the sum of all the operating
7 disbursements?

8 A That is correct.

9 Q And below that there's something called net cash flow.
10 What is net cash flow?

11 A That's the total operating receipts less the total
12 disbursements.

13 Q And what was it for fiscal year 2012?

14 A It was negative \$65.5 million after including \$50 of
15 proceeds from the escrow fund.

16 Q And why were those excluded?

17 A Those were already a part of the negative 65.5. Had they
18 been excluded, the net cash flow would have been negative
19 115.5.

20 Q I see. And then the next line is beginning cash balance,
21 and what is that?

22 A That would be reflective of the cash balance the city's
23 general fund had in its account including the pooled cash.

24 Q And you subtract from that the net cash flow that we just
25 talked about; correct?

1 A Yes.

2 Q And we end up with cash before required distributions of
3 \$29.8 million?

4 A That is correct.

5 Q And then there's something subtracted from that, and what
6 is subtracted?

7 A Those are the accumulated property tax distributions, so
8 when the city collects its property taxes, makes the
9 distributions to the different taxing authorities -- excuse
10 me -- there still is a holdback in terms of amounts that are
11 being reconciled where the city and the different taxing
12 authorities are going back and forth in terms of what the
13 final amount is that is due to those authorities. That is
14 the estimate that the city has available at that point of
15 time in terms of additional monies that were due to these
16 other taxing authorities but had not been paid yet, so we
17 reserved for that cash that it will eventually be paid out.

18 Q Okay. What's an example of one of these other
19 authorities that is owed to which the money has to be paid
20 out by the city?

21 A It would include the Detroit Public Schools. It would
22 include Wayne County. It would include the library. Those
23 would be some of those examples.

24 Q And so our last line here says cash net of distributions,
25 and that's \$1.9 million?

1 A That is correct.

2 Q And what does that represent?

3 A That would be the net cash available for the general
4 fund, including pooled cash, that was available for the
5 general fund's operations at that point of time.

6 Q At the end of --

7 A Fiscal year 2012.

8 Q -- 2012, which would be June 30th, 2012; correct?

9 A Yes.

10 Q And below you have something that says "memo," and the
11 first line is accumulated deferrals?

12 A Yes.

13 Q Is that what you told us about earlier which were pension
14 contributions the city owed but had not paid?

15 A That is correct, about 64.4 million.

16 Q And below that refunding bond proceeds in escrow, what
17 are those?

18 A Those are the escrow account's amounts that were still in
19 escrow and had not been drawn upon that were still subject to
20 this escrow agreement with the state.

21 Q From the refunding financing that you told us about
22 earlier?

23 A Yes.

24 Q And finally reimbursements owed to other funds, what is
25 that?

1 A That is where we've highlighted the amounts -- or we
2 haven't put an amount in off the funds that would subject --
3 be subject to the unpooling of the cash that is shown in the
4 general fund, but the city did not have a specific view in
5 terms of when and how the unpooling of some of that cash
6 would take place.

7 MR. STEWART: Now, if we could now highlight the far
8 right column, which is the fiscal year 2013, it says 11(a)
9 plus 1(f), and let's look at that. And then, Lauren, if you
10 could put the categories next to it so he could --

11 BY MR. STEWART:

12 Q I'm going to ask you the same questions, but I'm going to
13 be quicker when it comes to the fiscal year 2013. You
14 already told us, I think, that the operating receipts were
15 thought to be 1.52 -- 582.2 billion. What were the total
16 disbursements expected to be?

17 A 1.5 --

18 MR. SHERWOOD: Objection.

19 MR. STEWART: This is the same point I think we
20 argued earlier.

21 THE COURT: What is the objection, please?

22 MR. SHERWOOD: The objection --

23 THE COURT: Excuse me one second. And I've been
24 asked to ask you to pull that microphone closer to you when
25 you speak. Closer, closer, closer.

1 MR. SHERWOOD: I object --

2 THE COURT: Closer yet, please, sir. There you go.

3 MR. SHERWOOD: Okay. I object based on the fact
4 that the disbursements include projections for June of 2013,
5 and that requires expert testimony. That's improper lay
6 opinion testimony.

7 THE COURT: All right. Subject to the same
8 condition I indicated earlier, the Court will permit this.
9 Go ahead.

10 BY MR. STEWART:

11 Q And to repeat the question then, the total disbursements
12 for fiscal year 2013 are shown to be what here?

13 A 1.578.2 billion.

14 Q And so the net cash flow for the city in fiscal 2013 was
15 how much?

16 A \$4 million positive.

17 Q And then we had cash before required distributions of how
18 much?

19 A Before required distributions, \$33.8 million.

20 Q And then cash net of those distributions for fiscal year
21 2013 came to what?

22 A \$14.1 million.

23 Q And by then, what was the accumulated -- was the amount
24 of accumulated deferrals, and what was owed to the pension
25 funds?

1 A By then the amount of accumulated deferrals predominantly
2 due to the pension funds had increased from roughly \$65
3 million at the end of fiscal year 2012 all the way to \$118.7
4 million at the end of fiscal year 2013.

5 Q And where did the number come from in terms of what was
6 owed to the pension funds?

7 A The amount of funding that would have been scheduled for
8 the General Retirement System and the Police and Fire
9 Retirement System would have come from the payments that the
10 actuaries of the systems had suggested to be made but had not
11 been made over the course of this time frame. That was
12 predominantly what -- where those numbers came from.

13 Q So the numbers came from the pension plans themselves or
14 their actuaries.

15 A The schedule came --

16 MR. SHERWOOD: Objection. Hearsay. Move to strike.

17 MR. STEWART: He can know this.

18 THE COURT: The objection is overruled. It was,
19 however, a leading question.

20 MR. STEWART: It was, your Honor. I was trying to
21 clarify, but let me ask it again.

22 BY MR. STEWART:

23 Q Where, if anywhere, did these numbers come from?

24 A The accumulated deferral number, which predominantly is
25 made up of the pension deferrals, would have been a sum of

1 the pension payments that were not made during the course of
2 fiscal year 2013 and it would have been in the amount of the
3 scheduled payments the systems actuaries had suggested that
4 should have been made on a monthly basis but were not.

5 Q So who is it who tells the city how much the pension
6 payments ought to be?

7 A It's the system's actuaries.

8 Q The system being the General Retirement System and the
9 Police and Fire Retirement System; correct?

10 A That is correct.

11 Q Did there come a time when you spoke with Mr. Orr about
12 what you had found in the course of this analysis?

13 A We showed Kevyn Orr in terms of what the actual activity
14 was and the magnitude of the deferrals that were taking place
15 to sustain the city's cash position on a monthly basis.

16 Q Do you remember what you said to him and what he said to
17 you?

18 A Not specifically, but it was generally showing as to what
19 the magnitude of the -- what the magnitude of the dire
20 liquidity position of the city.

21 THE COURT: I'm sorry. What? The magnitude what?

22 THE WITNESS: How dire the --

23 THE COURT: I didn't hear what you said. What did
24 you say?

25 THE WITNESS: Your Honor, I said the dire liquidity

1 situation of the city.

2 BY MR. STEWART:

3 Q Let me -- let's now go to page 9 of this same exhibit,
4 and the control number on this, if that makes it easier, ends
5 with 7289. And could you just tell us what this is?

6 A This is the fiscal year 2014 forecasted cash flow to
7 year-end on a monthly basis.

8 Q And is this a document you or others at Ernst & Young
9 prepared?

10 A Yes, it is.

11 Q Did you show it to Mr. Orr?

12 A Yes, we did.

13 Q Did you discuss it with Mr. Orr?

14 A Yes. We discussed the receipts and disbursements
15 activity, yes.

16 Q As shown in this document?

17 A That is correct.

18 Q And do you remember what you said to him and he said to
19 you?

20 MR. SHERWOOD: Your Honor, object to the extent that
21 the question calls for testimony about these forecasts. This
22 document -- this particular page relates to 2014, which is
23 all projections.

24 MR. STEWART: And that's why I'm asking the
25 questions I'm asking, only was this shown to Mr. Orr and did

1 he discuss it with him, and I won't go any deeper into it
2 right now.

3 MR. SHERWOOD: I didn't object to those questions.

4 THE COURT: No. I believe the witness can testify
5 as to what he said to Mr. Orr about these documents. It goes
6 to what Mr. Orr knew or at least what he was advised of at
7 the time, so just tell us what you said to him about these
8 documents or this document.

9 THE WITNESS: Your Honor, my recollection what I
10 would have said on this particular document would have been
11 that the fiscal year two thousand --

12 THE COURT: Well, hold on. Are you reconstructing
13 what you would have said, or are you remembering what you did
14 say?

15 THE WITNESS: Your Honor, I am trying to recall what
16 I would have said. I do not remember specifically what I
17 would have said.

18 THE COURT: All right. If you don't know the answer
19 to a question, just say that. Don't guess or try to
20 reconstruct.

21 THE WITNESS: Yes, your Honor.

22 THE COURT: Okay.

23 BY MR. STEWART:

24 Q Did you provide this document to Mr. Orr?

25 A I did.

1 Q Did there come a time that he raised it with you?

2 THE COURT: I'm sorry. Was there what?

3 BY MR. STEWART:

4 Q Did there come a time when Mr. Orr raised this document
5 with you? Did he call you up or ask to have a conversation
6 with you about it that you can remember?

7 A We had several discussions about this particular document
8 and the overall contents of the numbers, yes.

9 Q And my only question to you is going to be, if you
10 remember, what did you say to him, and what did he say to
11 you, just that?

12 A What I would have said on this particular document --

13 Q Not would have said, what you did say if you remember,
14 and if you don't remember, just tell me you don't remember.

15 THE COURT: If you don't remember, just say that.

16 THE WITNESS: I don't remember specifically what I
17 would have said to Mr. Orr on this particular page in a
18 specific conversation around that, but --

19 BY MR. STEWART:

20 Q Then let me ask the question a different way. In the
21 time frame around June 14, did you have discussions with
22 Kevyn Orr about the liquidity situation of the city?

23 A I did.

24 Q And do you remember what you said to him about the
25 liquidity situation of the city?

1 A I do.

2 Q And will you tell us what you told him?

3 A The point -- what I said is that the fiscal year '14 cash
4 receipts could fall short of cash disbursements to the tune
5 of \$185 million.

6 Q What did he say to you?

7 A I do not remember specifically about what he said to me
8 directly.

9 Q Let's go, if we could, now to another page of this, page
10 47, which has control number 227327. Could you just tell us
11 the -- what this document is? What's the title of this
12 document?

13 A "Ten Year Projections for the General Fund Only on the
14 Steady State."

15 Q And what is a steady state?

16 A The steady state would have reflected no restructuring of
17 the city's long-term obligations or legacy liabilities.

18 Q I'm not going to ask you about the content of this, but
19 I'm going to ask you to tell us how you prepared it.

20 A The way we prepared this is through different line items
21 in terms of the revenue assumptions. We looked into
22 specifically the overall State of Michigan forecast. We
23 looked at the historical information with respect to the City
24 of Detroit. We also went ahead and looked at analyses in
25 terms of what the property taxes recently were for the city

1 and what the -- where the City of Detroit was faring in
2 conjunction with the State of Michigan to come up with a
3 forecast in terms of what the assumptions were for the
4 revenue and property tax and income tax assumptions over the
5 next ten years. We did it in conjunction with the management
6 team of the city. We went through income taxes in a great
7 level of detail between residents and nonresidents,
8 corporations, to build up assumptions from the standpoint of
9 what the revenues would look like over the next ten years.
10 We looked at the casino taxes with respect to all three
11 casinos, what their growth had been historically, where they
12 were projected to be in the future, state aid. We got those
13 numbers directly from the budget department of the State of
14 Michigan in terms of where they saw the overall sales taxes
15 that were due to the city were projected to be over the next
16 ten years. That's generally how we came up with the revenue
17 forecast, and I can highlight how we went through the
18 expenses as well.

19 Q Well, yes, if you could, the expense and, finally, the
20 legacy cost without getting into what the numbers actually
21 are, just what your methodology was.

22 A With respect to the salaries, wages, and overtime, we
23 started with what the current wage levels and the headcount
24 was. It was built up by department to try and ascertain what
25 the exact headcount was by department. From there on we had

1 fairly simplistic assumptions with respect to wage level
2 increases of two percent on a year-over-year basis over the
3 forecast period. For the health benefits for the active
4 employees, we used assumptions that the city's health
5 actuaries have developed on a per head basis, which is what
6 we used based on a per headcount basis to extrapolate over
7 the next ten years. On the other operating expenses, it was
8 developed by individual department to look at every single
9 department, their budgets, to help ascertain what were the
10 ongoing operating expenses of each one of those departments
11 on a ongoing basis.

12 MR. DECHIARA: Objection, your Honor. Peter
13 DeChiara of Cohen, Weiss & Simon for the UAW. We object to
14 this.

15 THE COURT: Are you pulling your microphone nice and
16 close for me, please?

17 MR. DECHIARA: Objection based on relevance. The
18 only relevance it would have to how this witness performed
19 these numbers would be if the numbers were coming in for the
20 truth of the matter. Otherwise it has no relevance.

21 THE COURT: I'm concerned about that, Mr. Stewart.
22 First of all, just so the record is clear, what exhibit
23 number is this page 47 of?

24 MR. STEWART: It is Exhibit 44.

25 THE COURT: All right. So the --

1 MR. STEWART: 44 is in evidence.

2 THE COURT: Right. So the question is what weight
3 is page 47 of this exhibit entitled to --

4 MR. STEWART: Correct. It goes to weight.

5 THE COURT: -- if the witness has not been qualified
6 as an expert?

7 MR. STEWART: Well, Judge, what I was going to do
8 was lay a greater foundation for how it was put together, and
9 then I was going to simply ask the witness this question,
10 which I will ask him now.

11 BY MR. STEWART:

12 Q Where in here, Mr. Malhotra, did you insert your own
13 personal assumptions?

14 A All of the assumptions were done in collaboration with
15 the city.

16 Q Well, where did the numbers come from?

17 A The numbers came from either the actuaries that we were
18 working with with the city or the city's debt documents with
19 respect to the long-term liabilities of the city or, in terms
20 of the revenues, it was assumptions that we worked on in
21 conjunction with the city.

22 MR. DECHIARA: Your Honor --

23 MR. STEWART: And so, your Honor, my point on this
24 is the following. The fact something is a future projection
25 does not make it an opinion in the sense of being an expert

1 opinion. If one is relying on numbers from another source --
2 in this case, all the sources Mr. Malhotra told us about --
3 it is their numbers, not his numbers but their numbers, and
4 what he is doing is tabulating them and calculating them.

5 THE COURT: I heard him say that at least some
6 portion of this, which he didn't specify, was done in
7 collaboration.

8 MR. STEWART: Well, let me -- but that's why I asked
9 him this other question about which of these --
10 collaboration, and I will ask him this --

11 MR. DECHIARA: Your Honor, may I be heard?

12 THE COURT: One second.

13 MR. STEWART: It sounded from his testimony he met
14 with him and worked with him to learn the numbers. When I
15 asked him which assumptions were his assumptions, not the
16 assumptions of the people who gave him the numbers, the
17 answer were they're not his assumptions.

18 THE COURT: His answer was, "We collaborated."

19 MR. STEWART: Well, I thought -- maybe I heard
20 him -- I must have heard him differently than your Honor
21 heard him. I thought the answer -- well, should we ask him
22 again?

23 BY MR. STEWART:

24 Q Mr. Malhotra, of these numbers, which ones are your
25 assumptions?

1 A EY has made no assumptions that these are EY's numbers.
2 I want to make that -- that's what I'm making clear.

3 Q So these numbers came to you from who?

4 A The numbers with respect to -- there are a lot of numbers
5 on this page. The numbers with respect to all of the debt
6 service would have been picked up from the city's CAFR. The
7 numbers on the health benefits or pension retiree
8 contributions would have come from the city's actuaries. The
9 numbers for the actual headcount for all of the departments
10 and the associated costs would have come from the city and
11 its departments. The numbers with respect to the health
12 costs for the active employees on a per head basis would have
13 come from the city's actuaries. The numbers with respect to
14 state revenue sharing would have come from the state
15 directly. The numbers for property taxes, income taxes, and
16 wagering taxes, those numbers, in terms of the assumptions,
17 were validated, collaborated, between our team and the city
18 in terms of the assumptions behind the revenue assumptions.

19 Q When you say "assumptions," you mean --

20 THE COURT: One second.

21 BY MR. STEWART:

22 Q -- the number that's there?

23 THE COURT: I need to hear from counsel at this
24 point.

25 MR. STEWART: Okay. Go ahead.

1 MR. DECHIARA: Your Honor, to the extent the
2 information in this exhibit comes from actuaries who are not
3 on the witness stand, those numbers are hearsay and should
4 not come in.

5 THE COURT: Well, but the document is already in
6 evidence.

7 MR. DECHIARA: Your Honor, and also I would say,
8 too, the witness is testifying about a process that took a
9 high degree of expertise. I don't think I or most of the
10 people in this room, let alone the man on the street, would
11 be able to take these raw data and convert them into ten-year
12 projections. It took the sophisticated work of an Ernst &
13 Young team to put it together. This is in the nature -- this
14 is the very essence of expert testimony.

15 THE COURT: I agree. I do.

16 MR. STEWART: All right. Your Honor, what we may
17 ask leave to do is to submit perhaps a memoranda raising this
18 with your Honor later on so we can move on now.

19 THE COURT: You may, of course.

20 MR. STEWART: Yeah. Okay. Your Honor, since --

21 UNIDENTIFIED SPEAKER: May I ask you --

22 MR. STEWART: Yes. Your Honor, one other thing.
23 Since it's in evidence, I assume I am allowed to at least ask
24 the witness what it says, and objections go to weight.

25 THE COURT: Well, it's duplicative to do that, but I

1 suppose to make a point you could ask briefly for the witness
2 to review what it says.

3 MR. STEWART: Well, I'm going to just ask him to
4 look at the far right column, and then I'm going to -- pardon
5 me, your Honor. I'll move on to my next question.

6 MR. RUEGGER: Excuse me. Objection. Arthur Ruegger
7 from Dentons on behalf --

8 THE COURT: I need you to move that microphone
9 closer, sir.

10 MR. RUEGGER: I'll try, Judge. Is this better?

11 THE COURT: Hold the base closer.

12 MR. RUEGGER: Don't spill the water.

13 THE COURT: There you go. Much better. Much
14 better. Thank you.

15 MR. RUEGGER: Your Honor, we submit the document
16 speaks for itself. Any further narrative from this witness
17 is in the nature of asking for his expertise on that.

18 THE COURT: Well, it doesn't take an expert to read
19 it, so I'll permit it.

20 MR. RUEGGER: Very well, your Honor.

21 MR. STEWART: Could we simply blow up the far right
22 column?

23 BY MR. STEWART:

24 Q As a result of your calculations, Mr. Malhotra, what did
25 your spreadsheet conclude was the ten-year adjusted deficit

1 the city was facing?

2 A The spreadsheet would have said that revenues would be
3 10.4 billion, operating expenditures would be 7.4 billion,
4 and legacy expenditures would be 7 billion over this ten-year
5 time frame for a surplus/deficit of almost \$4 billion, a
6 negative \$3.93 billion.

7 Q All right. So did there come a time when you sat down
8 with the emergency manager to talk about these projections?

9 A Yes.

10 Q Now, in preparing the projections, what did you do to
11 make them as accurate as you knew how to make them accurate?

12 MR. SHERWOOD: Objection. Calls for analysis of
13 projections that have been --

14 THE COURT: I'm sorry, sir. I can't hear you.

15 MR. SHERWOOD: Objection. Calls for improper
16 opinion testimony. These are -- he's being asked to testify
17 about projections that are properly the subject of expert
18 testimony.

19 MR. STEWART: I think I asked him what he did to try
20 to be accurate.

21 THE COURT: No. The objection is sustained.

22 MR. STEWART: Okay.

23 BY MR. STEWART:

24 Q In your conversations with Mr. Orr, what did you say to
25 him about your ten-year projections?

1 MR. SHERWOOD: Same objection.

2 THE COURT: That objection is overruled. Please
3 answer.

4 THE WITNESS: What we said is that if you look at
5 simply the operating --

6 THE COURT: You said --

7 THE WITNESS: I said.

8 THE COURT: You said, "we said."

9 THE WITNESS: What I said is if you look at the
10 total operating revenues and the total operating
11 expenditures, the city still has a surplus of roughly \$3
12 billion. However, when you layer in the legacy costs of
13 roughly \$7 billion over the next ten years, the city has a
14 deficit of almost \$4 billion over that ten-year time frame.

15 BY MR. STEWART:

16 Q And what did he say to you?

17 A I don't remember specifically about what he said back to
18 me.

19 Q Now, June 14 was the date of a meeting we've been -- I've
20 been asking you about, I believe. This document was a
21 document passed out that day; correct?

22 A Yes.

23 Q Before moving on from the meeting, let me ask you this.
24 Were questions asked by anyone at that meeting on June 14?

25 A Yes. There were questions asked.

1 Q Do you remember any of the questions that were asked or
2 who asked them?

3 A I don't know who asked them, but there were questions
4 about the assumptions and the liquidity position of the city.

5 Q And am I correct in understanding that when you addressed
6 the people attending that meeting that day, you were speaking
7 about the spreadsheets I've asked you about this afternoon?

8 A That is correct.

9 Q And were questions asked of you then about those
10 spreadsheets?

11 A There were -- yes, there were questions about it.

12 Q Okay. Let me move to another subject. You're aware of a
13 security called the certificates of participation --

14 A Yes.

15 Q -- or sometimes called pension obligation certificates?

16 A Yes, I am aware.

17 Q For the record, can you tell us what those are?

18 A Those are -- certificates of pension are the funds that
19 the city borrowed back in about 2005 to help fund the
20 underfunding on the two pension systems.

21 Q And did the city have obligations to service the interest
22 or principal of those securities?

23 A Yes.

24 Q And do you know what the city's obligation was?

25 A As of June of 2013, the city had a \$40 million payment

1 that was due to those -- on behalf of those POC's.

2 Q And what did the city do with respect to that payment?

3 A The city did not make that payment.

4 Q The city defaulted on it?

5 A Yes. That is correct.

6 Q What effect did that default have upon the city's cash
7 position?

8 A It improved the cash position by \$40 million at the end
9 of -- June 30, 2012.

10 Q What conversations, if any, did you have with the
11 emergency manager or his advisors on the subject of the
12 decision to default on the COPs?

13 A I do not recall of a specific discussion with Kevyn Orr
14 on defaulting on the swaps.

15 Q Let's move on to another set of meetings. Did you attend
16 meetings held on June 20th, 2013, with representatives of the
17 pension plans?

18 A I do.

19 Q And am I correct in remembering there were two meetings
20 that day?

21 A That is correct.

22 Q The morning meeting was with the nonuniformed pension
23 plan, the GRS?

24 A Yes.

25 Q And the afternoon meeting was with who?

1 A With police and fire.

2 Q Okay. And we have put up the first exhibit -- I believe
3 this is in evidence -- Exhibit 48. Can you tell me what
4 Exhibit 48 is?

5 A It's the presentation that was used for the meeting with
6 the nonuniform retirees on June 20th.

7 Q And let's go back. Just ask you a question. Towards the
8 back of this, are there projections that were included in
9 here that you or Ernst & Young had prepared? Let's look at
10 page 4 and page 5. Are these projections you prepared?

11 A Page 4 was a summary of the legacy expenditures,
12 historical, actual, and forecast. That would have been
13 information on the pension and health benefits we received
14 from the city's actuaries.

15 Q Okay. And the next page?

16 A Page 5 was the ten-year projections for the general fund
17 only under a restructuring scenario that highlighted claims
18 or amounts that were available to service unsecured claims.

19 Q Now let's go back to the meeting itself. How long did
20 the morning meeting last?

21 A Probably about three hours.

22 Q And who was there?

23 A It was the city's advisors along with the members from
24 the -- some retirees and some of the members from the
25 Retirement System.

1 Q Were questions asked?

2 A There were some questions asked.

3 Q Do you remember the questions?

4 A They were questions about the cash position of the city.
5 They were questions about the city's ability to make any
6 changes to specific legacy liabilities.

7 Q Do you remember any questions being directed to you?

8 A They were -- yes. I remember questions that came up with
9 respect to the cash flows of the city.

10 Q And do you recall who in particular asked you those
11 questions --

12 A No, I don't.

13 Q -- or what you said in response to them?

14 A No, I don't.

15 Q Was Mr. Orr there that day?

16 A He was not.

17 Q Let's go to the next exhibit, if we could, which is
18 Exhibit 49. Is this the handout that was given in the
19 afternoon meeting?

20 A Yes, it was.

21 Q And tell me about the afternoon meeting. First of all, I
22 should have asked where these meetings were held.

23 A These meetings were held at City Hall.

24 Q And how long did the afternoon meeting last?

25 A About two or three hours.

1 Q Who attended?

2 A It was the city's advisors along with some
3 representatives from the Retirement Systems as well as I
4 thought some active employees.

5 Q And, once again, if you look towards the back, are there
6 portions of this document that was prepared by you or someone
7 else at E&Y?

8 A Yes. We helped pull together pages 4 and 5 for this
9 particular presentation.

10 Q Okay. Now, page 4, which we have, has legacy
11 liabilities, some for fiscal years that have already ended --

12 A That is correct.

13 Q -- and others that are projected?

14 A Yes.

15 Q And where did your numbers come from for these?

16 A The debt service numbers, the scheduled debt service, as
17 the amortization tables exist today, the POC principal and
18 interest payments were, again, based on the current
19 amortization schedules. The POC swaps payments were based on
20 the existing swap schedule. The pension contributions and
21 the health benefits for retirees would have come based on the
22 assumptions that were provided to us by the city's actuaries.

23 Q Now, let me ask you about the substance of the meeting.
24 Did you make any part of the presentation that afternoon?

25 A I did.

1 Q What parts of the presentation did you make?

2 A I would have focused on pages 4 and 5 in terms of laying
3 out what the financial position of the city was.

4 Q Were questions asked of you that day, that afternoon?

5 A I don't remember specific questions that afternoon.

6 Q Where were matters left at the end of the morning
7 meeting?

8 A They were generally left to have an open dialogue and
9 communication flow between the city's advisors and the
10 participants in the meeting.

11 Q And at the end of the afternoon meeting?

12 A It was the same.

13 Q Let's look at the next exhibit, Exhibit 51. Can you tell
14 us what Exhibit 51 is?

15 A Exhibit 51 is the ten-year plan in terms of the forecast
16 that was available at that point of time as of June 21st.

17 Q Did you attend a meeting on June 25th with
18 representatives of the bondholders?

19 A I did.

20 Q And where was that meeting held?

21 A That meeting was held in New York.

22 Q Who attended?

23 A It was bondholders and bond insurers and their financial
24 advisors.

25 Q Was Exhibit 51 a document given to them that day?

1 A Yes. That was the document that we went through on that
2 particular day.

3 Q Do you remember which bond insurers you met with or
4 bondholders you met with on the 25th?

5 A Yes. Ambac was there. I think Assured was there.
6 National, advisors from FGIC, advisors from Syncora. Those
7 are actually some of the ones that I remember specifically.
8 It was a pretty big meeting.

9 Q And I apologize if I asked you this. How long did you
10 meet with them?

11 A We met with them for at least four to five hours.

12 Q What was the purpose of that meeting?

13 A The purpose of the meeting was to have a subsequent
14 discussion and Q&A on the assumptions behind the information
15 that was shared as of June 20th.

16 Q Do you remember any questions you were asked?

17 A There were a lot of questions with respect to the
18 assumptions underlying the ten-year projections and the
19 details in terms of how those numbers were built up.

20 Q And once again, where were matters left at the end of the
21 June 25th meeting?

22 A They were left to have follow-up meetings on an
23 individual basis with certain bondholders or the insurers to
24 have more specific discussions around the business plan.

25 Q Let me direct your attention to July 9. Were there

1 meetings that day with bondholders or insurers for
2 bondholders?

3 A Yes.

4 Q And where were those meetings?

5 A Those meetings were held in Detroit.

6 Q And did you attend them?

7 A Yes.

8 Q How long did they last?

9 A The morning meeting lasted about four or five hours.

10 Q And then I assume there was an afternoon meeting as well?

11 A Yeah. There was an afternoon meeting. My recollection
12 is with the pension systems, I believe. There were a lot of
13 meetings during this time frame.

14 Q How long was your meeting with the pension systems?

15 A I think we had a meeting for about two or three hours.

16 Q What was the purpose of the morning meeting?

17 A The morning meeting was generally to have additional
18 dialogue and discussions around the assumptions of the
19 business plan.

20 Q Do you remember who you met with in particular that
21 morning?

22 A I remember it was the financial advisors for National.
23 It was the financial advisors for FGIC, Assured were the some
24 of the names that at least come to mind.

25 Q In this period, did the city, to your knowledge, make any

1 proposals to the bondholders to resolve their claims?

2 A The city made a proposal or a framework for a proposal in
3 its June 14th presentation.

4 Q Did the bondholders at any point or any subgroup of
5 bondholders make a proposal to the city at some point?

6 A My understanding is yes. I have not reviewed a proposal
7 from the bondholders in detail.

8 Q Do you remember when that proposal was made?

9 A My recollection is it was prior to the city filing.

10 Q Okay. Now, in the afternoon meeting, what was the reason
11 for meeting with the two pensions on the afternoon of July 9?

12 A It was to have additional discussions around the
13 assumptions that the city's actuaries were using with respect
14 to not only the size of the claim but also to ascertain the
15 contribution levels required over the next ten years for the
16 pension systems.

17 Q And I apologize if I've asked you this before. At the
18 end of that afternoon meeting with the pensions, what was
19 supposed to happen next, if anything?

20 A There was supposed to be a process to try and understand
21 the assumptions, the actuarial assumptions, and thereby
22 derive -- have an understanding of the amount of the claim
23 and then have subsequent discussions around the amount of
24 funding that the city may or may not be able to afford over the
25 long term.

1 Q Okay. Now, let's now go to July 18.

2 THE COURT: Excuse me, Mr. Stewart.

3 MR. STEWART: Yes.

4 THE COURT: I'm sorry to be such a nuisance about
5 this, but please try not to wander so far from the
6 microphone.

7 MR. STEWART: Oh, sorry, Judge.

8 THE COURT: Part of our issue here is that we have
9 overflow courtrooms where people are trying to hear what we
10 say, so it's not just a question of the recording, which is
11 important, but other people are listening in as well.

12 MR. STEWART: I'll do better, your Honor. Sorry.

13 BY MR. STEWART:

14 Q Let me direct your attention, if I could, now to July 18.
15 Were you asked on or about July 18 to execute a declaration
16 in connection with Detroit's bankruptcy filing?

17 A Yes, I was.

18 Q How many days before July 18 did you start working on
19 your declaration?

20 A I don't recall the specific number of days. It was
21 sometime in June. Late June is I think where we started it.

22 Q And do you -- how much of your declaration did you write,
23 and how much of it was written by others for you?

24 A A majority of it -- of the declaration was written by me
25 in conjunction with counsel.

1 Q Now, your declaration has a number of attachments to it,
2 and I'm going to put them up before I question you about
3 them. And let's start with Exhibit -- Attachment A, which is
4 Exhibit 9. And is that one of the exhibits to your
5 declaration?

6 A It is.

7 Q And is this a document you or someone else at E&Y
8 prepared?

9 A Yes.

10 Q And what is it?

11 MR. RUEGGER: Your Honor, objection. We objected to
12 this document. It is forecasts, which we think would require
13 expert testimony. We believe any testimony related to it
14 should be excluded on that grounds.

15 THE COURT: The document is in evidence?

16 MR. RUEGGER: No, your Honor.

17 THE COURT: It's not?

18 MR. STEWART: It's not, Judge. I'm going to ask him
19 now about his dealings with Mr. Orr on the document; however,
20 we also designated this document and the next two as
21 summaries under Federal Rule of Evidence 1006 since they
22 accumulate voluminous evidence which we made available to the
23 objectors.

24 THE COURT: What does this document purport to do or
25 to be without telling me what its contents are?

1 THE WITNESS: It was meant to be to show the two
2 years of actual cash activity for the general fund and what
3 the city's cash position was at the end of fiscal year 2013
4 and fiscal year 2012, the magnitude of the deferrals over
5 that time frame, your Honor, and then the two-year forecast
6 beyond that time frame.

7 THE COURT: And so how was the document compiled?

8 THE WITNESS: Your Honor, the actuals for the first
9 two years were compiled based on the receipts and
10 disbursements activity that we were able to ascertain for the
11 bank accounts. Your Honor, for the next two years, with
12 respect to the different line items, I can walk through the
13 assumptions, but --

14 THE COURT: By "the next two years," you mean fiscal
15 year '14 and '15?

16 THE WITNESS: That is right, your Honor.

17 THE COURT: No need. I'll admit the document as to
18 actual and preliminary for 2012 and 2013, but the objection
19 is sustained as to the forecasts.

20 MR. STEWART: Thank you, your Honor.

21 (Debtor's Exhibit 9 received at 4:33 p.m.)

22 BY MR. STEWART:

23 Q Is this a document you discussed with the emergency
24 manager or his advisors, Mr. Malhotra, on or before the date
25 you executed your declaration?

1 A Yes.

2 Q And why did you discuss it with them?

3 A Because it showed the status of the city's liquidity
4 position right around that time frame and in the subsequent
5 few months.

6 Q And what did you say to the emergency manager or his
7 advisors about the city's liquidity position at that time or
8 in the coming periods?

9 A What I said is that the city's liquidity position at the
10 end of fiscal year 2013 had improved by roughly \$40 million
11 because the city did not make the POC payment that was due in
12 June -- on June 15, 2013. And what I said is that over the
13 next two years the city was going to have a significant cash
14 burn for each particular year based on the disbursements
15 significantly exceeding receipts.

16 Q What did you tell Mr. Orr --

17 THE COURT: Excuse me one second. Again, we have to
18 clarify your language. You used the phrase P-O-C. What does
19 that mean?

20 THE WITNESS: Your Honor, I was referring to the
21 pension obligation certificate --

22 THE COURT: Okay.

23 THE WITNESS: -- and the payment that was due on
24 June 15th.

25 THE COURT: And then you used the phrase "cash

1 burn." What does that refer to?

2 THE WITNESS: Your Honor, that refers to the city's
3 operating disbursements exceeding its receipts or its --
4 city's total disbursements exceeding its receipts thereby
5 reducing the cash over a specified time frame.

6 BY MR. STEWART:

7 Q And so you've told us what you said to Mr. Orr. Did you
8 tell him what the cash position was going to be at this rate
9 in the coming years?

10 A Yes, I did.

11 Q And what did you tell him?

12 A I would have -- what I said is that the city's cash
13 position net of deferrals could be approximately \$143 million
14 negative at the end of fiscal year 2014 not making -- while
15 not repaying any of the deferrals that had already been made
16 as of that point of time or without unpooling any of the cash
17 that the city had -- has currently pooled.

18 Q And if the city had unpooled the cash or paid up the
19 deferrals, what did you tell him the cash position was going
20 to be?

21 A What I said is that the city's cash position for -- would
22 have been almost \$150 million worse off if the pension
23 contributions that had been deferred till that time frame
24 were made as well as if the deferred POC payment had been
25 made. If the pooled cash had to be unpooled, that amount

1 would be roughly an additional \$90 million based on what was
2 in the CAFR.

3 Q For a total cash shortfall of how much?

4 A Before the --

5 MR. DECHIARA: Objection.

6 THE WITNESS: -- unpooling of cash, it would --

7 MR. DECHIARA: Objection. Your Honor, I just am
8 objecting to the extent that this -- what the witness is
9 recounting he's saying to Mr. Orr, I just want to make clear
10 that that's not coming into the record as the truth of the
11 matter -- of the statements he's making to Mr. Orr. If
12 that's clear, I have no objection, but the line is getting
13 pretty blurred, and I think it's getting pretty close to the
14 line.

15 THE COURT: I'm concerned about that. I share your
16 concern. You used a phrase again that needs clarification,
17 "unpool."

18 MR. STEWART: We were talking about the pooled
19 funds, your Honor. Those were the --

20 THE COURT: I'm asking the witness.

21 MR. STEWART: Thanks.

22 THE COURT: What does "unpool the cash" mean?

23 THE WITNESS: Your Honor, what I was -- what I meant
24 to say is if the pooled cash had to be restricted or
25 segregated out of the general fund, that's what I was

1 referring to the unpooling of cash.

2 THE COURT: Okay.

3 BY MR. STEWART:

4 Q What did Mr. Orr say to you?

5 A On this particular document, the discussions with Mr. Orr
6 or specifically also the other advisors was the magnitude --

7 MR. RUEGGER: Your Honor, I'm sorry to interrupt the
8 witness, but I thought the question was what did Mr. -- what
9 was the conversation with Mr. Orr.

10 MR. STEWART: Or his advisors.

11 MR. RUEGGER: And I thought the witness was just
12 describing a conversation that might not have been with
13 Mr. Orr but might have been with the advisors. If I
14 misheard, then I apologize.

15 MR. STEWART: I thought I said Mr. Orr or his
16 advisors, but if not I'll reask the question.

17 MR. RUEGGER: Thank you.

18 THE COURT: Okay.

19 BY MR. STEWART:

20 Q What did Mr. Orr or his advisors say to you?

21 A The specific discussions on this particular page were
22 around the magnitude of the city's cash disbursements
23 exceeding its cash receipts in terms of how dire the
24 situation was with respect to the general fund's cash
25 position.

1 Q Page 2 of our exhibit is -- let's put it up there, and
2 let me ask you just what this is.

3 MR. RUEGGER: Your Honor, objection. It's a
4 forecast. I'd rather not have any testimony on this.

5 THE COURT: I'm sorry. Did you say you'd rather not
6 have any testimony about it?

7 MR. RUEGGER: And I'll rephrase my objection with
8 all due respect, your Honor. Objection. It's a forecast,
9 your Honor.

10 MR. STEWART: My question is what is this document?

11 THE COURT: Yeah. I think we can get at least that
12 much in.

13 MR. STEWART: Yeah.

14 BY MR. STEWART:

15 Q What is this document?

16 A It's the monthly cash flow forecast for fiscal year 2014
17 under base case.

18 THE COURT: I'm sorry. Under what?

19 THE WITNESS: Under base case.

20 THE COURT: Base case, which means --

21 THE WITNESS: So, your Honor, on this it means the
22 city continuing to make its payments for both all unsecured
23 claims per schedule and no restructuring initiatives such as
24 any benefits from the bankruptcy protection may avail. It
25 was the city paying its payments as they came due based on

1 the information that we had, including information from the
2 actuaries.

3 THE COURT: Like steady state before?

4 THE WITNESS: That is correct, your Honor.

5 BY MR. STEWART:

6 Q And did you discuss your conclusions with Mr. Orr or his
7 advisors?

8 A Yes.

9 Q Let's put up the next exhibit, 10, for identification.
10 Mr. Malhotra, I think we have Exhibit 10 for identification,
11 which is Exhibit B to your declaration. Is this a ten-year
12 financial projection?

13 A Yes, it is.

14 Q Did you discuss this with Mr. Orr or his advisors?

15 A Yes, I did.

16 Q And what did you say to him, and what did he say to you
17 or his advisors say to you about the ten-year projections?

18 A What the --

19 MR. RUEGGER: Objection. Your Honor, this is the
20 same issue that Mr. DeChiara raised. A discussion of
21 forecasts is essentially I think a back door around your
22 ruling, so we'd object to the question and the answer.

23 THE COURT: Well, I'll permit the witness to answer
24 this question with the understanding that the document is not
25 in evidence and the witness' testimony about what the

1 document says is only for the purpose of the truth of what he
2 told Mr. Orr, not for the truth of the statements themselves.

3 MR. RUEGGER: Thank you, your Honor.

4 BY MR. STEWART:

5 Q And what did you say to Mr. Orr about the conclusions you
6 had reached in the document?

7 A What I said is that the city's revenues over the ten
8 years, approximately \$10-1/2 billion, and the city's
9 operating expenditures over these next ten years,
10 approximately \$7-1/2 billion, for roughly a \$3 billion
11 operating surplus. What I said specifically around the
12 legacy liabilities was based on the current amortization
13 schedule and the information that we have received from the
14 actuaries, the legacy costs could be in excess \$7 billion
15 over the ten years, which would result in a potential
16 operating -- a potential deficit to the tune of \$4 billion
17 over the next ten years.

18 MR. STEWART: Let's put up Exhibit 11 if we could.

19 BY MR. STEWART:

20 Q Can you tell us what Exhibit 11 is?

21 A Exhibit 11 is the five years of actual legacy
22 expenditures and five years of a forecast on the scheduled
23 debt service as it exists today or the pension and health --
24 retiree healthcare information we received from the
25 actuaries.

1 MR. STEWART: Let's blow up, if we could, the part
2 that deals with the fiscal years ended between 2008 and 2012.

3 BY MR. STEWART:

4 Q Are those numbers numbers relating to years that had
5 already -- where the books had already been closed?

6 A That is correct.

7 Q Where did your numbers come from?

8 A The numbers would have come from -- for the debt service,
9 the POC's, would have come from the city. The pension
10 contributions and the health benefits, the retirees -- for
11 the retirees would have also come from the city in
12 conjunction with the city's actuaries on the allocation of
13 what was for public safety versus nonpublic safety or DDOT.

14 MR. STEWART: Your Honor, I would move this portion
15 of the document into evidence since it reflects only
16 historical data.

17 THE COURT: Any objections? All right. The Court
18 will admit this document. What was the exhibit number again
19 just so we're clear?

20 MR. STEWART: 11, I believe, Judge.

21 THE COURT: All right. Admitted Exhibit 11, 2008
22 through '12 only.

23 (Debtor's Exhibit 11 received at 4:45 p.m.)

24 BY MR. STEWART:

25 Q And then go back to the full document if you could, and

1 as to the overall document, Mr. Malhotra, did you have
2 discussions with the emergency manager or his advisors about
3 it?

4 A Yes, I did.

5 Q And why did you discuss it with them?

6 A We discussed it in the context of the legacy expenditures
7 continuing to have an increasing percentage of the overall
8 general fund revenues compared to where the city was five
9 years ago, compared to where the city was headed by 2017,
10 that the weight of the legacy expenditures was almost going
11 to close to double based on the projections that we had been
12 given.

13 Q And what did the -- Mr. Orr or his advisors say to you in
14 response to the points that you made?

15 A Specifically, they were surprised in terms of the
16 magnitude of the increase in pension and retiree healthcare
17 costs over the next five years.

18 MR. DECHIARA: Objection. Lack of foundation.
19 Testifying to the state of mind of the --

20 THE COURT: It actually wasn't the question. The
21 question was what did they say.

22 THE WITNESS: They basically said that the costs
23 going up from where they were five years ago to where they
24 were ten years ago -- I specifically remember that it was
25 almost going to double -- was the response that I got back on

1 this particular page.

2 THE COURT: Okay. Can you try to specify for us
3 when these conversations were that Mr. Stewart has been
4 asking you about?

5 THE WITNESS: Sure. On this particular document we
6 would have had -- which was also as a part of the June 14th
7 proposal, your Honor, so we would have had meetings with
8 Mr. Orr and the other advisors all through the June time
9 frame and even in some of the May time frame, so there were a
10 series of meetings that we had.

11 THE COURT: At which these documents were discussed?

12 THE WITNESS: Yes. The June 14th proposal, your
13 Honor, was pulled together over a period of time, so there
14 were specific documents that were discussed in those
15 meetings.

16 MR. STEWART: Your Honor, I have a demonstrative
17 exhibit I would like to use, but before putting it up on the
18 screen, since there have been objections, it's Exhibit 38.
19 Why don't we put it up on the screen? Judge, this is a
20 graphic representation of what the witness already has
21 testified to that he told Mr. Orr was the city's cash
22 position as the witness had seen it, and what I would like to
23 ask the witness is does this represent what you told Mr. Orr
24 or his advisors about what you believe the city's cash
25 position was going to look like in the coming year?

1 MR. RUEGGER: Objection. Leading, and it's also a
2 forecast.

3 MR. STEWART: I can ask it in a nonleading way,
4 Judge, but --

5 MR. RUEGGER: Then just forecast.

6 THE COURT: Yeah. You can fix the question. No.
7 The objection is sustained.

8 MR. STEWART: Okay. Now, your Honor, as to these
9 last three exhibits and actually also this chart, I'd like to
10 move them into evidence on another ground. And as I
11 mentioned, we identified these to the objectors as documents
12 that qualified as summaries over Federal -- under Federal
13 Rule of Evidence 1006. In other words, they compiled and
14 pulled together voluminous records that could not
15 conveniently or easily otherwise be made into proofs. That
16 was done with proper notice. As the rule requires, we
17 notified the objectors of this. We told them we have the
18 underlying records available for your examination. If you
19 wish to see them, please come and do so. One person did call
20 to say they'd like to see them but never, in fact, came. I
21 would submit that we have actually satisfied the requirements
22 of Rule 1006 by doing this and that as simple summaries of
23 voluminous information they qualify for admission.

24 MR. RUEGGER: Your Honor, I think Mr. Stewart
25 misunderstands our objection. It's not that there's a lot of

1 data underlying any of these documents. That might very well
2 be, but they are forecasts, which require, in our view,
3 expert testimony, which is not in the courtroom, so we're not
4 objecting due to the volume of the underlying data. It's
5 because they are forecasts.

6 THE COURT: I do agree with that. The motion is
7 denied.

8 MR. STEWART: Well, your Honor, could I be heard
9 just one more --

10 THE COURT: All right.

11 MR. STEWART: -- one more moment on this? The fact
12 they are forecasts doesn't, per se, change anything. They
13 would have to be opinions before they're excludable. It's
14 been testified he --

15 THE COURT: But why isn't the forecast an opinion
16 about what's being forecast?

17 MR. STEWART: Well, it's possible to have forecasts
18 that are factual, that are extrapolations, that are not
19 really opinions, and there are forecasts rendered many times
20 that don't involve experts. In fact, the two decisions I
21 cited earlier involved financial analysts much like
22 Mr. Malhotra who pulled together documents from which then
23 conclusions could be reached about the probability of
24 something happening or not happening. The fact --

25 THE COURT: They involve forecasts?

1 MR. STEWART: These did not.

2 THE COURT: Financial forecasts?

3 MR. STEWART: These involved complicated personal
4 financial records, but they did involve an ultimate issue
5 such as could this person have possibly afforded this item
6 based on his or her income or --

7 THE COURT: In the past.

8 MR. STEWART: Well, it's past, but if a forecast is
9 based on information that is either historical or is made
10 available as information about a forecast --

11 THE COURT: I have to say I'm not persuaded, but if
12 you can find me a case which says that a forecast does not
13 involve expertise, I'll certainly consider it.

14 MR. STEWART: Okay, your Honor. We will do that.

15 THE COURT: We'll leave it open to that extent.

16 MR. STEWART: Thank you. That's all I have of this
17 witness, your Honor.

18 THE COURT: All right. Well, we won't press on with
19 cross-examination now. We will break for the day and
20 reconvene at nine o'clock tomorrow morning. Before we go --
21 ah, Ms. Patek has something, and then I have something.

22 MS. PATEK: Your Honor, this is just a brief
23 housekeeping matter about a matter of a summary exhibit that
24 came in at the beginning of the day, and this was something
25 Mr. Irwin and I had talked about, and there was an error on

1 it. It was to be corrected, and it didn't get corrected, but
2 it's going to be corrected on the --

3 THE COURT: All right. Let me ask the two of you to
4 consult about that and get back to me first thing in the
5 morning. I have been asked to remind you that although this
6 courtroom will be locked overnight, there may and probably
7 will be people in here doing what they regularly do, the IT
8 staff, court staff, cleaning staff, so you are free to leave
9 your equipment and property here with that understanding or,
10 of course, you can take it with you. And I remind you once
11 again please be quiet, perfectly quiet in the hallways. And
12 we'll reconvene at nine o'clock tomorrow morning.

13 THE CLERK: All rise. Court is adjourned.

14 (Proceedings concluded at 4:53 p.m.)

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I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

October 27, 2013

Lois Garrett

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN THE MATTER OF, Case No. 13-53846
Detroit, Michigan
CITY OF DETROIT, MI October 24, 2013
_____/ 9:05 a.m.

IN RE: ELIGIBILITY TRIAL
BEFORE THE HONORABLE STEVEN W. RHODES
TRANSCRIPT ORDERED BY: ROBIN WYSOCKI

APPEARANCES:

For the City of Detroit, MI: GEOFFREY IRWIN, ESQ.
GEOFFREY STEWART, ESQ.
THOMAS CULLEN, JR., ESQ.
Jones, Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
202-879-3939

BRUCE BENNETT, ESQ.
Jones, Day
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2452
213-243-2382

ROBERT HERTZBERG, ESQ. (P30261)
Pepper, Hamilton
4000 Town Center
Suite 1800
Southfield, MI 48075-1505
248-359-7333

For State of Michigan: MATTHEW SCHNEIDER, ESQ.
(P62190)
Chief Legal Counsel
Attorney for State of Michigan
Michigan Department of
Attorney General
P.O. Box 30754
Lansing, MI 48909
517-373-0126

1 STEVEN HOWELL, ESQ. (P28982)
 2 Special Assistant Attorney
 3 General
 Dickinson, Wright
 4 500 Woodward Avenue
 Suite 4000
 5 Detroit, MI 48226-3425
 313-223-3033

6 For Michigan Council 25 of SHARON L. LEVINE, ESQ.
 7 the American Federation of JOHN SHERWOOD, ESQ.
 State, County and Municipal Lowenstein, Sandler, LLP
 8 Employees (AFSCME), AFL-CIO 65 Livingston Avenue
 and Sub-Chapter 98, City of Roseland, NJ 07068
 Detroit Retirees: 973-597-2500

9 For Detroit Retirement ROBERT D. GORDON, ESQ. (P48627)
 Systems - General Retirement JENNIFER GREEN, ESQ.
 10 System of Detroit, Police and Clark, Hill, PLC
 Fire Retirement System of 151 S. Old Woodward Avenue
 11 the City of Detroit: Suite 200
 Birmingham, MI 48009
 248-988-5882

12 RONALD KING, ESQ. (P45088)
 13 Clark, Hill
 14 212 East Grand River Avenue
 Lansing, MI 48906
 15 517-318-3015

16 For the Detroit Fire Fighters BARBARA PATEK, ESQ. (P34666)
 Association, the Detroit JULIE BETH TEICHER, ESQ.
 17 Police Officers Association (P34300)
 and the Detroit Police DAVID EISENBERG, ESQ. (P68678)
 18 Lieutenants and Sergeants Erman, Teicher, Miller, Zucker
 Association: & Freedman
 19 400 Galleria Officentre
 Suite 444
 20 Southfield, MI 48034

21 For International Union, UAW: BABETTE A. CECCOTTI, ESQ.
 PETER D. DECHIARA, ESQ.
 22 THOMAS CIANTRA, ESQ.
 Cohen, Weiss, and Simon, LLP
 23 330 West 42nd Street
 New York, NY 10036-6976
 24 212-356-0227

1 For the Detroit Retired
City Employees Association,
2 Retired Detroit Police and
Fire Fighters Association,
3 Shirley V. Lightsey, and
Donald Taylor (Retiree
4 Association Parties):

THOMAS MORRIS, ESQ. (P39141)
Silverman & Morris
30500 Northwestern Highway
Suite 200
Farmington Hills, MI 48334
248-539-1330

5 RYAN PLECHA, ESQ. (P71957)
Lippitt, O'Keefe
370 East Maple Road
6 3rd Floor
Birmingham, MI 48009
7 248-646-8292

8 For the Official Committee of
Retirees:

MATTHEW E. WILKINS, ESQ.
(P56697)
Brooks, Wilkins, Sharkey &
Turco, PLLC
10 401 S. Old Woodward Avenue
Suite 400
11 Birmingham, MI 48009
248-971-1711

12 CLAUDE D. MONTGOMERY, ESQ.
13 ANTHONY ULLMAN, ESQ.
ARTHUR RUEGGER, ESQ.
14 Dentons
1221 Avenue of the Americas
15 New York, NY 10020-1089
212-768-6700

16 For the Retired Detroit
17 Police Members Association:

LYNN M. BRIMER, ESQ. (P43291)
MEREDITH TAUNT, ESQ. (P69698)
MALLORY FIELD, ESQ. (P75289)
18 Strobl & Sharp, P.C.
300 East Long Lake Road
19 Suite 200
Bloomfield Hills, MI 48304-2376
20 248-540-2300

21 For the Flowers Plaintiffs -
Robert Flowers, Michael Wells,
22 Janet Whitson, Mary Washington
and Bruce Goldman:

WILLIAM A. WERTHEIMER, ESQ.
(P26275)
30515 Timberbrook Lane
23 Bingham Farms, MI 48025
248-644-9200

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21
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23
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25

For Ambac Assurance Corporation:

DANIEL WEINER, ESQ. (P32010)
Schafer & Weiner
40950 Woodward Avenue
Suite 100
Bloomfield Hills, MI 48304
248-540-3340

Court Recorder:

Letrice Calloway

Transcriber:

Deborah L. Kremlick

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1 (Court in Session)

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

4 THE COURT: Is anybody not here? All right. Well,
5 then let's assume everyone's here and we don't have to repeat
6 appearances.

7 A couple of housekeeping matters. Mr. Stewart, I
8 received and actually read the memorandum that was filed a few
9 minutes ago on this issue of allowing the witness to testify
10 about projections. Thank you to whoever on your staff stayed
11 up all night doing that.

12 MR. STEWART: Unfortunately Mr. DiPompeo did, Your
13 Honor.

14 THE COURT: Well, thanks to him. As a matter of
15 process, however, before we have any further argument on it,
16 it is appropriate to -- to take some time not only for us, but
17 for the objecting parties to study it and look at the cases
18 that have been cited and prepare.

19 So I think we'll proceed with his cross examination. And
20 perhaps reconsider the issue after lunch.

21 The second housekeeping item is in regard to the
22 Governor's testimony. Is Mr. Schneider here? Mr. Howell is
23 here. Is it -- is it --

24 MR. HOWELL: Dickinson, Wright. Special Assistant

1 THE COURT: Thank you, sir. Is it the parties'
2 agreement and the Governor's intention to appear at 1:00 on
3 Monday?

4 MR. HOWELL: I don't know if that -- I believe
5 that's the plan without the limitations suggested.

6 THE COURT: Okay. I --

7 MR. DECHIARA: I'm sorry, Your Honor, I was
8 distracted for a moment.

9 MR. HOWELL: If I may, Your Honor, I -- I believe
10 the -- there is ongoing discussions between Matthew. He's
11 meeting today with the Governor to work those details out.
12 But I thought the offer was 1:00 on Monday.

13 MR. DECHIARA: Yes. The state offered to produce
14 the Governor at 1:00 on Monday and there's no agreement as to
15 any limitation on the time of his testimony.

16 MR. HOWELL: Okay. That is correct, Your Honor.

17 THE COURT: Okay. Then in -- in that circumstance,
18 the Court will change its plans and we will run Court until
19 5:00 instead of our previously scheduled time of 3:00 because
20 I don't want to have to require the Governor to come back a
21 second day on account of my schedule. So we'll plan on going
22 until at least 5:00 on Monday to try to get all of his
23 testimony in in one -- one day.

24 MR. DECHIARA: Thank you, Your Honor. We appreciate
25 it.

1 MR. HOWELL: Thank you, Your Honor. We appreciate
2 the accommodation.

3 THE COURT: Okay.

4 MR. HOWELL: Thank you very much.

5 THE COURT: All right. Let's proceed with the
6 testimony then.

7 MR. RUEGGER: Your Honor, excuse me. Art Ruegger
8 for Dentons on behalf of the Retiree Committee.

9 We respectfully request a little more time to read the
10 memo from Jones, Day and -- and respond.

11 THE COURT: Do what you can over lunch and then
12 we'll see if we need any more time.

13 MR. RUEGGER: Very well, Your Honor.

14 THE COURT: Sir, would you resume the witness stand?
15 And you're still under oath so you may just have a seat and
16 we'll continue with the examination.

17 (WITNESS GAURAV MALHOTRA WAS PREVIOUSLY SWORN)

18 MR. SHERWOOD: Good morning, Your Honor. Jack
19 Sherwood, Lowenstein, Sandler for the record for AFSCME.

20 CROSS EXAMINATION

21 BY MR. SHERWOOD:

22 Q Mr. Malhotra, good morning.

23 A Good morning.

24 Q You were engaged by the City of Detroit in May of 2011,
25 isn't that right?

1 A That's correct.

2 Q So as of now you've been on the job for the city for over
3 two years, is that fair to say?

4 A That is correct.

5 Q And when you were initially engaged in May of 2011
6 through the appointment of Mr. Orr as the emergency manager,
7 you reported to officials, city officials, is that right?

8 A That is correct.

9 Q And some of those city officials include Kirk Lewis,
10 correct?

11 A Yes.

12 Q And who is Kirk Lewis?

13 A Kirk Lewis was the former Chief of Staff for Mayor Bing.

14 Q And Chris Brown, do you know that name?

15 A I do.

16 Q And who was Chris Brown?

17 A He was the former Chief Operating Officer for the city.

18 Q And when you say -- when you say former or -- or Mr.
19 Lewis and/or Mr. Brown, are they still employed by the City of
20 Detroit?

21 A No, they are not.

22 Q And -- and when were they -- when were they terminated by
23 the city?

24 A I don't know if they were terminated and I don't know the
25 exact date they left.

1 Q Okay. But you know that as of now they're -- they're not
2 -- they're not working for the city, correct?

3 A That's what I said earlier, yes.

4 Q And -- and -- and you're not -- you're not reporting to
5 them any -- you're not reporting to any city officials at this
6 point in time, is that fair to say?

7 A We report to Kevyn Orr. We have been reporting to Gary
8 Brown. We have been reporting to Jim Bonsall, was a former
9 Chief Financial Officer. And those were the folks we were at
10 least reporting our day to day activities on.

11 Q I just want to get this straight in terms of time, okay?
12 The -- I'm talking about since March of this year, are you
13 reporting to the Mayor or the Mayor's office since March of
14 this year when Mr. Orr was appointed?

15 A No. Our general updates are with Mr. Orr.

16 Q And since March of this year, you're not reporting to the
17 city council of the City of Detroit, isn't that right, since
18 March of this year when Mr. Orr was appointed?

19 A Not -- not specifically, no.

20 Q Now Mr. Orr was -- was appointed in -- in March of this
21 year so at the time of his appointment you have been on the
22 job with Ernst and Young for about a year and ten months,
23 correct?

24 A Sounds about right.

25 Q And in -- in -- yesterday you testified on direct about
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1 various conversations, things that you told Mr. Orr and the
2 other professionals for the city, correct? Do you remember
3 that testimony from yesterday?

4 A Yes.

5 Q So I assume that when you were updating Mr. Orr and the
6 rest of the city's professionals, you drew on your year and
7 ten months worth of experience that you had working for the
8 city up to that point?

9 A For certain aspects of those updates, yes.

10 Q Do you recall in the course of your services for the
11 city, before the appointment of the emergency manager in March
12 2013, providing services in connection with the response of
13 the city to the report of the financial review team?

14 A You -- can you shorten the question so -- and which
15 financial relating --

16 Q Do -- do you recall in -- in late 2012, early 2013,
17 working with people from the city concerning the financial
18 review team's report?

19 A We were working during that time frame on the specific
20 improving -- mechanisms for improving the cash flows of the
21 city, yes.

22 Q Okay. And -- and as you just testified one of the -- one
23 of the topics that you were working on during that period was
24 improving cash flows, correct?

25 A That's right. We were looking at different alternatives
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1 how the city could improve its cash flow position.

2 Q And -- and you were doing that work for the city and its
3 officials, correct? Before Mr. Orr got involved.

4 A That is correct.

5 Q Did you attend meetings in December of 2012 where the
6 issue of the city's cash flows was discussed?

7 A Meetings with who?

8 Q Members of the city's -- members of the city council,
9 members of the Mayor's staff?

10 A Yes.

11 Q All right. I'd like to refer you to a document it's
12 AFSCME 551, document 551.

13 MR. SHERWOOD: And, Your Honor, I believe there
14 are --

15 Q Are you okay with the -- with the screen or -- because I
16 think there might be some hard copies there too.

17 A I'm okay.

18 Q Okay.

19 A Thank you.

20 Q Now this letter is -- is dated February 22nd, 2013,
21 correct?

22 A That is correct.

23 Q And I'd like you to scroll down to the bottom of the
24 letter, the -- the paragraph marked cash crisis. Do you see
25 that?

1 A Yes.

2 Q And there is a reference to Ernst and Young in that
3 paragraph. And the administration, council President Pugh,
4 council President Brown, council member Cockrel, fiscal staff,
5 Ernst and Young consultant, along with Miller, Canfield met
6 over the December holiday break to come up with a cash plan
7 with counter measures to get the city through June 30th, 2013.
8 Do you recall participating in those meetings?

9 A Yes, I do.

10 Q And you see that in this letter the -- the authors
11 conclude on the first sentence that a satisfactory plan exists
12 to resolve the city's cash crisis. Do you see that?

13 A I see it. I didn't write this, but I see it.

14 Q You do see it? And but that -- this was written after
15 your -- your lengthy meetings over the holiday break, correct?

16 A I -- this was written on February 22nd. We met during the
17 December time frame to come up with different ideas how the
18 city could preserve cash which included a significant amount
19 of deferrals, yes.

20 Q Okay. But -- and as -- as a result of those meetings --

21 THE COURT: One second, counsel. Have you seen this
22 letter before?

23 A Your Honor, this letter was handed to me --

24 THE COURT: That would be a yes or a no.

25 A No.

1 THE COURT: You've never seen this letter before?

2 A It -- I have seen it, I have not read it is my answer. I
3 was given it during my deposition.

4 THE COURT: Is this letter in evidence?

5 MR. SHERWOOD: I believe it is not, Your Honor. I
6 was just asking him -- using it to refresh his recollection in
7 terms of things that happened.

8 THE COURT: Well, it's proper to refresh a witness'
9 recollection when he says he doesn't have a recollection. I
10 haven't heard that yet.

11 MR. SHERWOOD: Okay.

12 Q Did you believe in February of -- February 22nd, 2013,
13 that a satisfactory plan existed to address the city's cash
14 crisis?

15 A What a satisfactory plan means is -- is subjective. What
16 I can say is, during the December time frame we had a lot of
17 meetings with the city officials to see how the city could
18 preserve cash to -- to increase the cash position over the
19 next few months.

20 And that predominantly resulted in the city coming up
21 with a plan that said most of these would have to come through
22 deferrals because what the city could actually impact in terms
23 of permanent cost reductions, those options were very limited.
24 So the -- the majority of any savings that would come or any

25 cash increase would come, would come through the deferral of
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1 either pension related costs or additional health care related
2 costs. That -- that's at least the -- what -- what I view as
3 what the plan was at that point in time.

4 Q Did you ever criticize the city or the council with
5 respect to their plans to address cash flow issues during the
6 February 2013 time period?

7 A Criticize -- indirectly criticize in terms of what the
8 satisfactory plan was?

9 Q Did you ever go to the city council or -- or the city
10 professionals and say, I disagree with your cash management,
11 cash flow plan, do something else?

12 A During this time frame I made very clear that the --
13 based on the experience that I had over the past 18 months
14 working with the city, that the options that the city was
15 undertaking to preserve cash were predominantly based on
16 deferrals and not actual structural cost savings. That's what
17 I -- I clearly highlighted.

18 Q Let me ask you about additional revenue collection during
19 the period of early 2013. Do you recall whether the city was
20 concerned about revenue collection from the 36th District Court
21 citations which the city -- where the city's share would be
22 \$199,000,000?

23 A No, I do not.

24 Q You don't recall -- do you recall that that was an issue?

25 A No, I do not.

1 Q Do you recall being asked to look into the level of
2 collections from the 36th District Court in the amount of
3 \$199,000,000?

4 A No, I do not.

5 Q Do you know what -- do you know whether the 36th District
6 Court is a source of revenue for the City of Detroit?

7 A I think there are some collections, yes, that come
8 through the 36th District Court. I am not exactly sure of the
9 amount off the 36th District Court collections.

10 Q You don't -- you can't even estimate what the amount of
11 the collections are from the 36th District Court for 2013?

12 A No, I cannot off the top of my head.

13 Q So Ernst and Young didn't look into those collections or
14 whether they were slower than they should be, is that fair to
15 say?

16 A That is fair. Ernst and Young did not go into any
17 specific analysis on 36th District Court on their collections.

18 Q Now you discussed a little bit yesterday about the -- the
19 general fund and the -- is all of the city's debt attributable
20 to the general fund?

21 A No.

22 Q Is -- does -- does the -- the total amount of debt that
23 the city has, does the number 14.9 billion, does that sound in
24 -- in the ballpark?

25 A The amount of debt of 14,000,000,000 sounds a little high
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1 because in my mind I remember the \$18,000,000,000 of long term
2 liabilities as a total number of which. And so that sounds a
3 little high to me. If you could break it down for me, it will
4 -- it will refresh my recollection.

5 Q Let me -- let me -- can we put the letter up again and
6 turn to Page 3? Under long term liabilities there --

7 MR. STEWART: Your Honor, I object. We've been over
8 this. He's not testifying to a lack of recollection. He
9 hasn't seen the letter. Unless there's a better --

10 THE COURT: Well, no. The -- the witness did
11 indicate some uncertainty about this question, so if this
12 refreshes his recollection, I'll permit it. Does this refresh
13 your recollection about the debt of the city?

14 A Yes, Your Honor, it's the long term liabilities of the
15 city which as noted here it's 14.9 billion dollars. So, yes.

16 THE COURT: Well, but the question for you is not
17 what this letter says because the letter is not in evidence.
18 The question is what do you remember after having seen this
19 letter?

20 A Your Honor, I can at least frame up what was being asked
21 of me in terms of the total indebtedness. Because when I look
22 at debt I consider this pure debt versus other long term
23 liabilities. Yes, it does at least give me a frame of
24 reference to what the question was.

1 Q And does this document -- do you agree with the statement
2 in this document that only 15% or 7.36 billion is attributable
3 to the general fund? Does that -- does that sound right to
4 you?

5 A That -- that could be an approximation based on the
6 existing assumptions with respect to unfunded liabilities from
7 a pension and -- and OPEB standpoint.

8 Q And -- and the -- the city has other business type
9 activity funds, Department of Water and Sewage, Department of
10 Transportation and Municipal Parking. And those funds are --
11 are not part of the general fund, correct?

12 A That is correct. They're -- they're enterprise funds.

13 Q And do you know whether -- whether the -- the total
14 pension -- pension obligation of the city, is that all
15 attributable to the general fund, or is some of that
16 attributable to the enterprise funds?

17 A The -- the pension liability is due to the two systems,
18 the general retirement system and the police and fire system.
19 The general retirement system is comprised of the general fund
20 employees, as well as water and sewer employees, as well as
21 Department of Transportation employees.

22 Q So is it fair to say that some of the pension obligation
23 is -- is the responsibility of -- of water and sewer?

24 A The -- yes, that would be -- that would be -- that would
25 be a fair assumption in terms of what they have been doing.

1 Q Now in -- in again early 2013, are you aware that the
2 City of Detroit was in the process and had been in the process
3 of trying to achieve certain cost saving initiatives?

4 A I don't recall of specific initiatives in of early 2013.
5 But the city has been in a constant effort to reduce costs and
6 looking for cost savings initiatives.

7 Q And would you agree that by March of 2013, \$150,000,000
8 of cost saving initiatives have been achieved by the City of
9 Detroit?

10 A Compared to what time frame?

11 Q Simply do you agree that \$150,000,000 of cost savings
12 have been achieved prior to March 2013?

13 A It's -- it's difficult for me to answer a question on
14 cost savings achieved by a particular date unless you can
15 frame for me over what course of time your question is related
16 to.

17 MR. SHERWOOD: Can you -- can you put up Exhibit
18 419, please? Your Honor, I think this is in evidence.

19 THE COURT: Thank you.

20 MR. STEWART: It is.

21 Q Have you seen this report dated March of 2013, Mr.
22 Malhotra?

23 A I -- I think so. I -- I would have to see the contents,
24 Your Honor, to make sure that I understand what's in the
25 report or what the contents were.

1 THE COURT: Is it on the table over there? Is it on
2 the table over there?

3 MR. SHERWOOD: Yes, it's 419. May I approach and
4 help him, or -- or --

5 THE COURT: He can do it.

6 MR. SHERWOOD: Okay.

7 THE COURT: And while he's doing that, Mr. Stewart,
8 I have to ask you as I did the objecting attorneys yesterday,
9 to pull the microphone closer to you so that when you do speak
10 or object, the -- the microphone will pick it up.

11 MR. STEWART: Thank you, Your Honor. Will do.

12 A I'm sorry, did you say 419?

13 MR. SHERWOOD: 419, yeah.

14 A I don't see a 419.

15 THE COURT: Which binder is that in? Are they
16 labeled?

17 MR. SHERWOOD: I -- I think that would be in the
18 Retiree Committee's binder.

19 THE COURT: So you couldn't find it, sir?

20 A Your Honor, I could not see it in this particular binder
21 or these three binders. There is no number 419.

22 THE COURT: Okay. Can someone produce a copy for
23 the witness, please?

24 MR. SHERWOOD: Your Honor, I'm sure we have it in

1 number.

2 THE COURT: Okay. All right.

3 Q Can you try 522, Mr. Malhotra? It's in the -- I think
4 it's one of the black ones, probably to your right there.

5 THE COURT: It's not there -- not there either?

6 A No.

7 MR. SHERWOOD: Can I hand the witness a copy, Your
8 Honor?

9 THE COURT: Yes, please.

10 MR. SHERWOOD: May I approach?

11 THE COURT: Yes.

12 Q Have you -- you don't have to read the whole thing, but
13 are you generally familiar with -- with this document?

14 A Very briefly. I don't think we had any major part of
15 putting this document together.

16 Q And this is called the -- the City of Detroit
17 restructuring plan. It's -- it's dated March of 2013. And by
18 this time Ernst and Young had, you know, been on the job for a
19 year and ten months. Are you saying you had no input into the
20 Mayor's restructuring plan?

21 A We had a lot of things put into the Mayor's restructuring
22 plan. What you're referring to is this particular report on
23 March 2013. And what I'm saying is we did not have a
24 significant amount of input that was put into this particular
25 report.

1 Q Okay. Can you turn to Page 5 of the report? Getting
2 back to the cost saving initiatives. And if you look at the
3 -- the title of that page and -- and the first part there, it
4 says many revenue and cost saving initiatives have been
5 implemented and others have been identified to address the
6 \$150,000,000 annual structural deficit.

7 And then if you look at sub paragraph (b) below that, it
8 says achieved cost saving initiatives approximately
9 \$150,000,000. Do you see that?

10 A That's what's written on this page, yes.

11 Q Okay. And do you have any reason to -- to agree with --
12 with that conclusion -- or disagree with -- with that
13 conclusion in this document?

14 A Your Honor, it's tough for me to make a -- I -- I cannot
15 make an agreement or disagreement until I understand the
16 context of the time frame where a statement is being referred
17 to. Achieve cost savings of 150,000,000, but it's over three
18 years, two years, one year, it's -- it's -- I can't put any
19 sort of reference to it.

20 Q Okay. Let me try it this way. You started in May 2011,
21 right?

22 A That is correct.

23 Q And this document was done around March of 2013. During
24 that period, did you see achieved cost savings of

25 \$150,000,000?

1 A We -- we saw a lot of cost savings. I do not know if
2 they aggregated to 150,000,000 or not. I -- I would have to
3 go back and check.

4 Q Okay. Now what about -- what about reduction in debt
5 obligations of the general fund? Would you agree that the
6 debt obligations of the general fund in March of 2013 were
7 \$400,000,000 lower than five years prior to that?

8 A You're referring to the outstanding debt obligations, I
9 assume. I do not know what the outstanding debt balance was
10 five years ago to be able to draw inference to a five -- or a
11 \$400,000,000 number.

12 Q And I think we've -- we've covered this already. But --
13 but if you look at -- would you agree that as of -- of March
14 2013, approximately \$6,000,000,000 of city debt was owed by
15 the Water and Sewer Department and does not have an impact on
16 the general fund?

17 A I -- I agree with the first part of that statement that
18 there's roughly about \$6,000,000,000 of revenue bonds
19 outstanding for the Water and Sewer Department, yes.

20 Q Now, again in March 2013, you had no idea that the
21 emergency manager was -- was going to be appointed, isn't that
22 right?

23 A That is correct.

24 Q Okay. And certainly in March 2013, the -- the recovery
25 plan for the City of Detroit was not finished, correct?

1 A Sorry, what recovery plan are you referring to?

2 Q Well, were there other -- were there other cost saving
3 initiatives that the city and its advisors including yourself,
4 had planned?

5 A Going back to December of 2012.

6 Q Not --

7 A I'll just finish the answer.

8 Q Go ahead, I'm sorry, I'm sorry.

9 A And I'll answer your question. As I testified earlier,
10 in December of 2012, the city with -- along with us and some
11 of the other advisors, went through a detailed process to
12 figure out how to improve the city's cash position as I
13 testified earlier. Majority of those were related to
14 predominantly deferrals off bills that the city had due, not
15 paying them on time.

16 MR. SHERWOOD: Your Honor, I'm sorry to interrupt.
17 I -- I asked a specific question. The specific question was,
18 in March of 2013, were there future initiatives that the city
19 had planned.

20 I -- and with -- with due respect, I -- I thought the
21 answer was non-responsive. I think he was going back to 2012.
22 So I -- I'd you just to answer that question.

23 A I do not recall of specific initiatives. As of March
24 2013 from a cost savings standpoint, that were either not in
25 progress, or had not been achieved that were of significance

1 -- that were of significance in my mind that stand out, that
2 were of significance as of March of 2013.

3 Q Okay. Thank you. As of March 2013, and again this is
4 before the appointment of Mr. Orr, the city had not only
5 retained you, but it also had retained the Miller, Buckfire
6 firm and it had retained Conway, MacKenzie, isn't that right?

7 A Yes, that's correct.

8 Q So they were on the scene in March 2013 before the
9 emergency manager was appointed, correct?

10 A Yes.

11 Q And it was -- it was yourself and Mr. Moore and Mr.
12 Buckfire, it's basically the same team of professionals were
13 advising the city in their restructuring effort before Mr. Orr
14 was appointed, and those same restructuring advisors are
15 advising Mr. Orr now, true?

16 A We were all collectively advising the city from a
17 restructuring standpoint, yes.

18 Q Okay. So those advisors and yourself had been retained.
19 And if you look at -- at the document, Page 5 again going down
20 to Paragraph C.

21 Again we talked about future cost saving initiatives.

22 You said you didn't recall anything specific, but scrolling
23 through those items in C, would you agree that those had been
24 identified by the city and its professionals as potential

25 future cost saving initiatives that were in process?

1 A Yes.

2 Q Now the last one there is asset monetization strategies.

3 Do you see that?

4 A I do.

5 Q Who was the person that was involved from the
6 professional side in the asset monetization strategy?

7 A It would have been Miller, Buckfire.

8 Q And what is your -- asset monetization strategies, that
9 means taking city's assets and either financing them, or
10 selling them to raise cash to pay liabilities. Would you --
11 can we agree with that? Agree on that?

12 A Or any other -- I would say any other monetization
13 strategy to create cash for the city. That's the way I would
14 frame it.

15 Q And to the extent that assets were monetized in -- in
16 2013, those -- those monetized assets would -- would enhance
17 the cash profile, the actual cash collections during that
18 period for the general fund, let me just add that.

19 A If you sell something you would intuitively have more
20 cash. However, to answer the second part of your question,
21 which is to improve the cash profile, my personal experience
22 is, selling assets to improve cash versus -- and not
23 addressing the operational structural imbalance that exists.
24 I don't know if that improves -- improves the cash profile as
25 you put it, but if you sell assets that -- that generate cash,

1 you will have more cash, yes.

2 Q And you can use that cash to satisfy your liabilities,
3 correct?

4 A Cash is cash. So if you have more cash, you have more
5 cash.

6 Q Now, let's stay in the period of time before the
7 appointment of Mr. Orr. Were there discussions among the
8 professionals and the -- the city concerning asset
9 monetization strategies?

10 A Not that I was specifically a part of, so I do not know.

11 Q And do you recall any conversations with Miller, Buckfire
12 concerning asset monetization strategies?

13 A Yes.

14 Q Was Miller, Buckfire concerned that asset monetization in
15 March 2013 or thereabouts, would have a negative impact on the
16 City of Detroit's ability to prove that it was eligible for
17 Chapter 9 bankruptcy?

18 A That's a long question. It's -- and you asked if Miller,
19 Buckfire was concerned?

20 Q Right.

21 A I can't answer the question if Miller, Buckfire was
22 concerned or not. You would have to ask Miller, Buckfire.

23 Q Did Miller, Buckfire say anything to you? And I'm -- you
24 know, Mr. Buckfire or any of his colleagues, did he say

25 anything to you or in your presence where he or they suggested
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1 that they were concerned that if the City of Detroit monetized
2 assets in 2013, early 2013, March, February, January, that
3 that would have a negative impact on the City of Detroit's
4 ability to prove that it was eligible for Chapter 9
5 bankruptcy?

6 A I do not recall of a conversation like that.

7 Q Did Miller, Buckfire express any opposition in your
8 presence to strategies that would call for short term
9 monetization of assets in early 2013?

10 A I do not recall.

11 Q You were at the Jones, Day meeting at the airport on
12 January 29th -- I'm sorry, not the Jones, Day meeting, that's
13 not fair.

14 The -- the council interview meeting on January 29th, 2013
15 at the airport, yes?

16 A Yes. I was at that meeting.

17 Q And -- and were you there when Jones, Day gave the
18 presentation?

19 A I was.

20 Q And is it safe to assume that when Jones, Day or any
21 other attorneys that were giving their presentation, were
22 presenting, you were particularly interested in statements
23 that they had to make about liquidity, and cash flow, and
24 such, yes?

25 A Yes, absolutely.

1 Q Can -- can you put up 418, please? This is a pretty
2 lengthy document.

3 If -- if you need a hard copy we can get it for you, but
4 let's -- let's try it without because the -- the statements
5 are -- I'm not going to go through the whole thing.

6 MR. SHERWOOD: Is that okay, Your Honor? It is in
7 evidence.

8 THE COURT: Sure, try it.

9 Q Was -- was this presentation handed out during the -- the
10 meeting at the airport?

11 A Yes.

12 Q And just to be clear, this presentation was given not
13 only by Jones, Day, but Mr. Orr was also giving this
14 presentation to the group?

15 A He was part of the team that presented, yes.

16 Q Can we turn to -- let's start with Page 30 of the
17 presentation.

18 THE COURT: Excuse me, sir. Has the Court been
19 given copies of these exhibits?

20 MR. SHERWOOD: Yes, Your Honor. I -- I think we
21 gave two to the law clerks and --

22 THE COURT: Are there up here somewhere?

23 MR. SHERWOOD: I believe so. This is marked in the
24 -- in the -- the Retiree Committee's exhibits as Exhibit 418.

25 It might also be an AFSCME exhibit. I think everybody offered
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1 this one.

2 THE COURT: Okay. So the tabs in the binder don't
3 correspond to the numbers of the exhibits.

4 MR. SHERWOOD: I think, Your Honor, that's because
5 we didn't decide on the prefix. I think --

6 THE COURT: Okay. And we're -- and we're looking at
7 what exhibit number now?

8 MR. SHERWOOD: It's 418, Your Honor.

9 THE COURT: I have it. We're all set. Thank you.

10 MR. SHERWOOD: You're welcome. A lot of documents.

11 Q Turning to Page 30, Mr. Malhotra, and if you look at the
12 third line down it says asset sales pose challenges to
13 generating substantial revenue. Do you see that?

14 A I see that line, yes.

15 Q And do you recall whether this slide was presented at the
16 meeting?

17 A I don't recall.

18 Q You don't recall?

19 A No, I do not.

20 Q Do you recall any discussion about the next line, sale of
21 assets to pay creditors may not promote revitalization. Do
22 you recall that being presented by Mr. Orr or anyone else at
23 Jones, Day?

24 A Not specifically.

25 Q Okay. Now if you turn to the next page, Page 31. And
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1 these are -- these are the speaker notes for the slide. And
2 if you go right to the middle, there's a thing called --
3 there's a line called note. And it says asset monetization
4 outside of bankruptcy may implicate eligibility requirement
5 that the city be insolvent, e.g. measured by short term cash.

6 During the presentation, did anyone from Jones, Day
7 suggest to the group that it was not a good idea to engage in
8 asset monetization outside of bankruptcy because it could hurt
9 the city's case on insolvency?

10 A I do not recall that. We had five presentations as for
11 every presenting group.

12 Q Let's look at Page 62 and 63 of this presentation. I
13 know it's a long presentation, but Mr. Malhotra, did you
14 recall any discussion by Mr. Orr or the rest of the team at
15 Jones, Day about evaluating the impact of any asset sale on
16 Chapter 9 eligibility? Do you recall -- recall anything about
17 that -- that day? Does this -- this slide refresh your
18 recollection at all?

19 A It does not. No, I do not recall.

20 Q And let me -- let me just -- let me just ask one more
21 question about -- on this topic. If you turn to the next
22 page. Maybe this will help you.

23 If you look at the speaker notes at the top under asset
24 sales, again we talk -- it says concerns regarding eligibility
25 for Chapter 9 may be implicated. Any transactions should be

1 reviewed and restructured to address any eligibility issues,
2 e.g. earmarking of funds.

3 Do you recall any discussions by Jones, Day during this
4 presentation where they suggested that funds that come from
5 asset monetization be earmarked so that they don't end up in
6 the general fund and thereby jeopardize the Chapter 9
7 eligibility?

8 A No. I do not recall.

9 Q Do you recall any discussions during that or with -- with
10 Mr. Buckfire where the idea was to the extent that we monetize
11 any assets, let's make sure they don't -- that the proceeds
12 don't end up in the general fund. Anything like that?

13 A I do not remember of any specific conversation of
14 earmarking or -- or highlighting assets like this. I mean
15 during our general discussions were always -- asset sales were
16 one time sources and -- but we needed to continue to work to
17 fix the ongoing operating deficit debt and the cash deficit
18 that's been existing at the city for a long time.

19 Q Let me ask you one more question about that meeting. And
20 do you recall any suggestions by Mr. Orr or Jones, Day during
21 that presentation that the city's policy should be to defend
22 against approaches that focus on monetization of assets to pay
23 creditors?

24 A No.

1 recollection? Fourth bullet point down, defend against calls
2 for expenses and monetizing assets to pay creditors?

3 A No, I do not recall of a specific conversation like that.

4 Q Now just -- just to -- just so I understand your
5 testimony from yesterday when you talked about the revenues
6 that you knew about through May of 2013. To the extent that
7 there was any type of asset monetization before May of 2013,
8 the proceeds of asset monetization would -- could have
9 enhanced the general fund, is that fair to say?

10 A Yes. If you sell assets that generate cash you have --
11 you get more cash.

12 Q All right. I'd like -- let me switch topics real quick.
13 And can we -- 408.

14 MR. SHERWOOD: Your Honor, 408 and Mr. Malhotra, is
15 the proposal for creditors.

16 Q I think you talked about this yesterday on direct and
17 again we'll give you a copy if you need it, but we'll try to
18 make do with -- with the screen.

19 A Okay.

20 Q Okay. If you look at Pages 54 and 55 of 408. I'm
21 looking for 54 and -- well, hold on. Let's try 83 and 84.

22 MR. SHERWOOD: I'm -- I'm sorry, Your Honor.
23 There's kind of two sets of numbers on this one. Let's do 83
24 and 84. There we go. That's 83. Eighty-three or 135
25 depending on which number you're looking at, or 134.

1 Q You testified that -- that we talked about realization
2 value of asset -- assets and I'm not going to spend a lot of
3 time on this, but -- but some of the -- there's a reference to
4 the Detroit Water and Sewer Department. And if you scroll
5 down a few -- in the following pages, there's a Coleman Young
6 Airport, Detroit Windsor Tunnel, Belle Isle Park, Detroit
7 Institute of Arts, city owned land, parking operations, Joe
8 Louis Arena.

9 And I guess the question is, were -- when -- at this
10 presentation, were these assets that are described on these
11 pages, assets that -- that could be monetized in order to help
12 the city's cash flow situation?

13 A I think these were generally all the assets that were
14 listed. This is -- Miller, Buckfire is the investment bank
15 for the city in connection with asset monetization. And so I
16 can't answer questions specifically on asset monetizations
17 because it includes eight or ten different assets, all of
18 which may have different reactions to each one.

19 Q Let's talk -- let's talk about taxes for a minute. And
20 -- and if we could stay with the same exhibit, I think there
21 is a discussion about taxes.

22 Do you know what the outstanding tax obligations of the
23 City of Detroit were in in or about say June of this year?

24 A I do not recall, no.

1 87. Let me make sure I'm using the right numbers here.

2 That's not 87. Page -- Page 79, please. Actually Page 80,
3 I'm sorry.

4 Do you recognize this page of the presentation? It talks
5 about taxes.

6 A It does talk about taxes.

7 Q And if you look at about the fourth bullet point down, it
8 says Compuware has identified historical non-filers with
9 outstanding tax obligations totaling approximately
10 \$250,000,000, correct?

11 A That's what the sentence says.

12 Q And have you -- have you heard numbers substantially in
13 excess of 250,000,000 in terms of the outstanding obligations
14 of taxpayers to the City of Detroit?

15 A I have heard numbers like this and I've been hearing
16 numbers like this for the last two years despite which the
17 city's property taxes and income taxes keep going down every
18 year.

19 Q But there are a lot of outstanding taxes and they're in
20 the hundreds of millions of dollars, fair?

21 A I cannot -- I cannot say that.

22 Q Okay. And you can't say that because you didn't look
23 into the issue of -- of outstanding taxes in -- in your two
24 years plus, is that --

25 A That is correct. We were not going out looking for
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1 delinquent taxes especially of numbers that were highlighted
2 of this magnitude, that's correct.

3 Q Do you know who from the city or on behalf of -- well,
4 let's start with the city. Who from the city was in charge of
5 improving tax collection efforts?

6 A Yeah. It was Cheryl Johnson who is the city's Treasurer
7 was working, I believe, with Compuware to try and get their
8 arms around what taxes were outstanding. I believe that
9 project has been going on for a long time. That's -- that's
10 what I know about it.

11 Q And you'd agree that if -- if the -- the tax collection
12 efforts of the city in late -- in fiscal year 2013 which ends
13 June of 2013, correct? If -- if those tax collection efforts
14 were better, that would have enhanced the general fund, is
15 that fair to say?

16 A And the city has already implemented if -- if not two, at
17 least one amnesty program for sure. And I think that yielded
18 probably single digit millions of dollars in the 3,000,000,
19 \$5,000,000 range in terms of its amnesty program.

20 So the city has repeatedly done a efforts in order to
21 maximize the collections on taxes that they could at least
22 identified from their records.

23 Q And who -- who from the city is involved in that -- in
24 that effort?

25 A Specifically on the amnesty it was, I'm sure the -- the
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1 tax department that has been involved, I think with respect to
2 any past due of these outstanding obligations. I would say
3 that you would have to talk to Cheryl Johnson who is the
4 Treasurer in the context of this Compuware discussion.

5 Q But -- but you -- you were not charged at Ernst and Young
6 in doing an analysis of the effectiveness of the city's
7 efforts prior to May, June of 2013 to collect taxes from
8 taxpayers, is that fair to say?

9 A Yes, that is.

10 Q What about abatements? Do you know anything about
11 abatements?

12 A No, I do not.

13 Q Do you know that the city has a program for industrial
14 tax abatements?

15 A I do not.

16 Q Do you know anything about renaissance zone abatements
17 here in the city in terms of property taxes?

18 A Not specifically. I know it is a component of the
19 property tax for tax build up, but not specifically on
20 renaissance zone and the abatements.

21 Q Do you know if -- if the city has taken any effort to
22 review the existing tax abatements that are enjoyed by certain
23 of the property owners here in the City of Detroit to make
24 sure that they are fair and up to speed and -- and current?

25 A I do not know of a specific effort on reviewing the
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1 abatements.

2 Q Do you know -- do you know who the -- who -- who the tax
3 assessor is for the City of Detroit?

4 A It used to be Linda Bade. She has recently retired. I'm
5 blacking out on the name of the new assessor. I think it's
6 Alvin.

7 Q I'm sorry. Do you know has -- has Ernst and Young been
8 charged with trying to figure out how the assessment, the tax
9 assessment process works here in the -- in the City of
10 Detroit?

11 A No, Ernst and Young has not been. But what I do know is
12 that there are several reviews that are happening to assess --
13 ascertain better the assessed values are too high. Currently
14 a lot in terms of the city's property taxes.

15 Q What about too low?

16 A From what I understand the general view is that the
17 assessments are too high.

18 Q But are there -- so there's not a single property in the
19 City of Detroit that where -- where the assessment is -- is
20 too low?

21 A I cannot answer that question. I do not know.

22 Q And you haven't been asked to audit that or anything like
23 that?

24 A That is correct.

25 Q Let me turn -- I just have one or two more topics. But
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1 let me turn to negotiations before the filing. I think you
2 said yesterday that you were at the -- the meeting -- I'm
3 sorry, was it June 13th? I'm trying to remember off the top --

4 A June 14th.

5 Q June 14th, thank you. You were at that meeting?

6 A Yes, I was.

7 Q That June -- June 14th meeting. And I think you said you
8 were at meetings between June 14th and July 11th as well,
9 correct?

10 A That is correct.

11 Q And how many -- there was a June 14th meeting, a June 20th
12 meeting, July 10th, July 11th. Have I got them all?

13 A I don't know. There were -- there were several meetings
14 we had during those weeks and those are the ones I can
15 remember. So there were several meetings that we had during
16 that time frame with -- with all of the creditors in some
17 fashion or the other.

18 Q But June 14th was the first. And -- and during that June
19 14th meeting, this -- the proposal was handed out and
20 presented, right?

21 A That is correct.

22 Q During all the meetings from June 14th to July 11th,
23 whatever. After all of those meetings, are you aware of a
24 single change to the June 14th proposal by the city?

25 A Not specific -- not specifically that I recall whether we
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1 were making changes or not to the June 14th proposal.

2 Q You can't cite to a single specific change to the
3 proposal that was made on -- on June 14th, correct?

4 A Not that I can recall off the top of my head, yes.

5 Q Now, were any of those meetings with union
6 representatives or retiree representatives?

7 A I think both were present on June 14th.

8 Q And you were at that meeting?

9 A I was.

10 Q And let me ask you this. In terms of dealing with the
11 employee issues, when Mr. Orr was appointed, did you tell him
12 about your personal experience with dealing with the city's
13 unions?

14 A Yes.

15 Q And you -- and you had been involved on behalf of the
16 city before the arrival of Mr. Orr in some pretty substantial
17 negotiations between the city and many many of its unions,
18 true?

19 A I -- I was -- but I was involved in those meetings from
20 the standpoint of helping ascertain the financial
21 implications, yes.

22 Q Okay. And in February of 2012, and I know this -- we're
23 going -- we're going way back now. So if you started May --
24 May 2011, you're only on the job about seven months at this

1 of unions. And those negotiations were successful, correct?

2 A I don't understand the meaning of successful or not.

3 There were negotiations that -- that were held.

4 Q And they -- but they led to an agreement between the city
5 and the unions, correct?

6 A They led to tentative agreements.

7 Q Okay. Let's -- let's look at Exhibit 505, please, 505.

8 Actually before I ask any questions about this. You said they
9 led -- well, let me ask you about 505. Is this a copy of the
10 -- the tentative agreement between the city and the coalition
11 of unions of the City of Detroit?

12 A Yes.

13 Q And if you -- if we turn to the --

14 MR. STEWART: Well, Your Honor, may I interpose a
15 foundation objection. This has been objected to. If counsel
16 is laying a foundation for admissibility, I have no objection
17 if that's all you're doing. But if he's going to question the
18 witness about it, I would have an objection.

19 MR. SHERWOOD: I'm going to try to lay a foundation,
20 Your Honor, with this and maybe other witnesses.

21 THE COURT: Okay. Go ahead.

22 MR. SHERWOOD: But I'd like to get his understanding
23 of this document, and some testimony -- what he knows about
24 this document on the record so that when we move it into
25 evidence later, you have the benefit of that.

1 THE COURT: I'll permit that subject to its ultimate
2 admission.

3 Q Page 17, please of -- of the agreement. City of Detroit,
4 do you recognize that as Chris Brown's signature by any
5 chance?

6 A I do think that is Chris Brown's signature.

7 Q And that's dated February 1st, 2012. CO -- and he was the
8 chief -- Chief Operating Officer for the City of Detroit,
9 correct?

10 A That is correct.

11 Q And just if you can take -- take that down. Let's look
12 at the signatures on the right. Now I don't -- I don't -- I'm
13 not going to ask you identify those signatures.

14 But the -- the parties to the right, you know, you see
15 IOU, SAA, are -- are these -- do you understand this to be
16 like various union representatives that signed on to this
17 agreement?

18 A Yes.

19 Q And it was the union coalition, right?

20 A That is correct.

21 Q Now did you -- did you participate with any of the
22 members of the union during the negotiation of this tentative
23 agreement?

24 A I was present in those negotiations from -- to ascertain
25 the financial impact as I said earlier.

1 Q And -- and you were working for the city at that point,
2 correct?

3 A That is correct.

4 Q And -- and Chris Brown from the city signed this
5 agreement and agreed to it, correct?

6 A Yes.

7 Q During those negotiations, did you -- did you talk about
8 any wage concessions by the employees of the city?

9 A I think there were discussions around wage concessions,
10 yes.

11 Q And in fact there were wage concessions. Do you recall
12 that?

13 A Are you referring specifically to this tentative
14 agreement, or are you referring to --

15 Q Yes.

16 A -- broadly?

17 Q This tentative agreement in February of 2012.

18 A I would have to go back and look because whether it was
19 new wage concessions or it was a continuance of the wage
20 concessions that had already been provided in the past.

21 Q Was -- was there a discussion about giving back some of
22 the wage concessions to the extent that the -- there was --
23 there was net surplus for 2012, 2013, and 2014?

24 A Yes, there were discussions around how to give back wage
25 concessions that the active employees were giving. If the --

1 the city can get back on its footing from a financial
2 standpoint, yes.

3 Q And in -- in the -- and you were involved in that part of
4 the discussion, correct?

5 A I was involved in at least trying to ascertain how to
6 insure either asset sales or refinancings were not considered
7 as an operational fix. So not one time --

8 Q Well, I just asked -- I just asked if you were involved
9 in that part of the discussions.

10 A And I was giving you a context of how I was involved,
11 yes.

12 Q And -- and -- but during those -- during those
13 discussions, weren't you saying to the union members that
14 based on the work of you and other people in the city that the
15 city was going to get back into the black in -- in 2013 and
16 2014? Was that -- was that part of your pitch with respect to
17 this?

18 A The -- the discussions that the city was having with its
19 unions was to try and come up with cash to try and deal with
20 the cash shortfall issues that were forthcoming, especially
21 after fiscal year '12 where the city continued to borrow and
22 defer.

23 And the city was -- and after discussions with its active
24 employees, how to try and address some of the oncoming fiscal
25 year '13 cash issues, yes.

1 Q No, the -- the question was obviously you've got labor
2 representatives sitting on the other side of the table. And
3 one of -- one of the terms was these -- these give backs,
4 right? Give backs of -- of wage concessions, right?

5 Certainly the -- the labor people that were talking to
6 you wanted to know what's the likelihood of my people getting
7 these give backs, right?

8 MR. STEWART: Objection.

9 Q Did that happen?

10 MR. STEWART: Sorry, I object. He's asking for
11 speculation unless the last part of his sentence was asking
12 what they said to him. I think his question --

13 THE COURT: I agree, rephrase the question, please.

14 Q During those -- the negotiations, was it your perception
15 based on things said to you by the labor representatives that
16 they were -- they were concerned about -- or they wanted to
17 know what the likelihood was that they would get their give
18 backs in terms of salary -- wage concessions.

19 A Sorry, can you rephrase that question? It's too long a
20 question.

21 Q During the negotiations concerning the tentative
22 agreement, did anyone on the labor side ask you to tell them
23 if the wage concessions would happen? Or -- or the give backs
24 on the wage concessions would happen, yes or no?

25 A I don't recall specifically.

1 Q Let me ask you this about those discussions. There were
2 -- there were negotiations that surrounded health care,
3 correct?

4 A Yes.

5 Q And one of the objectives in the health care part of the
6 negotiation was to attain \$60,000,000 in health care savings,
7 is that right?

8 A That sounds right.

9 Q Okay. And those health care savings were going to come
10 from not only the existing employees of the City of Detroit,
11 but also the retired employees, isn't that right?

12 A I'm not sure about that. I think the majority of those
13 savings were coming from the active employees. I don't recall
14 of a specific amount from the retirees.

15 Q Well, you said the majority. So some of the savings were
16 coming from the retired employees, isn't that right?

17 A I do not recall that.

18 MR. SHERWOOD: Your Honor, I'd like to mark a -- a
19 document that has not been marked before to try to refresh the
20 witness' recollection.

21 MR. STEWART: Your Honor, in view of the fact this
22 wasn't identified to us, wasn't subject to the objection
23 process, before he uses it, I'd like to frame very carefully
24 exactly what the failure of recollection this is intended to
25 address.

1 MR. SHERWOOD: Yes. This is a document that talks
2 about cost savings in fiscal year 2012. And there is a line
3 that talks about --

4 THE COURT: Well, let's not say what the document
5 says because it's not in evidence. But the document can be
6 used to refresh the witness' recollection if it -- if it has
7 that effect.

8 MR. STEWART: May I also ask the parties where it
9 comes from. Because I mean I understand it for pure purpose
10 of refreshing recollection, Your Honor, what -- what is
11 allowed. On the other hand is this part of a larger document.
12 What is this?

13 MR. SHERWOOD: I believe it was part of a
14 presentation that was made during the course of the
15 negotiations in 2012 with respect to the tentative agreement.

16 MR. STEWART: Okay. We have an objection to its use
17 generally, but --

18 THE COURT: All right. To the extent there's an
19 objection to the use of the document to refresh the witness'
20 recollection, it is overruled. You may present it to the
21 witness.

22 MR. STEWART: Once again could we -- what frame
23 exactly which failure of recollection this is intended --

24 THE COURT: I think the record is clear enough on
25 that point. Let's proceed.

1 MR. SHERWOOD: May I approach the witness and hand
2 him the document, Your Honor?

3 THE COURT: Please.

4 MR. SHERWOOD: And for the record can I -- can we
5 mark this as 505A?

6 THE COURT: Sure. Whatever is convenient for you is
7 fine.

8 MR. SHERWOOD: Your Honor, may I hand a copy to the
9 Court?

10 THE COURT: Not if it's use is for refreshing
11 recollection.

12 MR. SHERWOOD: Fair -- okay.

13 Q So Mr. Malhotra, I've showed you what I will mark as
14 505A. And -- and if you would look at the box to the left
15 relating -- that's -- that's called retirees. And then the
16 data to the right of that. Does that reflect your -- you
17 testified that the majority of the savings related to current
18 employees and you didn't know about whether -- whether any of
19 these savings also impacted retirees. Do you remember that
20 testimony?

21 A I testified that the tentative agreements as reached, if
22 they had any impact on retiree medical or not. That's what I
23 testified to, yes.

24 Q Okay. And having reviewed this document, does this

25 refresh your recollection that in fact there were certain
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1 savings projected to be achieved from retirees for fiscal year
2 2012 and 2013?

3 THE COURT: All right. Now here I want to caution
4 you, this does not ask you what that document says. In fact
5 turn it over. Do you have a recollection now having reviewed
6 that document of what the answer to counsel's question is?

7 A Okay. Your Honor, my answer is the same as it was
8 earlier.

9 Q Do you recognize 505A? Have you ever seen it before?

10 MR. SHERWOOD: Can he look at it for that purpose?

11 THE COURT: Yes, yes.

12 A Yes, I recall seeing this in that 2012 time frame, yes.

13 Q And can you describe what it is?

14 A It is trying to describe the projected or ask of the --
15 the targeted savings the city was looking to get for fiscal
16 year '13.

17 Q So this was prepared by the city and -- and these were
18 part of the requests by the city to the labor representatives
19 in -- in 2012, correct?

20 A This could have framed some of those discussions, yes.

21 Q And were you present when this document was discussed
22 with representatives of the unions in -- in 2012?

23 A I do not recall the specific meeting, but I would have
24 generally been having some of the discussions in terms of the
25 qualification of some of these numbers.

1 Q Let's go back to 505. Now this agreement, this tentative
2 agreement, although it was -- was executed by the city and --
3 and various union representatives, was it implemented for the
4 City of Detroit?

5 A I do not think this exact tentative agreement was
6 implemented.

7 Q Do you know why this tentative agreement was not
8 implemented for the City of Detroit?

9 A I think the city employment terms were implemented
10 instead.

11 Q Isn't it true that the state refused to authorize the
12 city to implement this agreement?

13 A I was not a part of those discussions with the state.

14 Q And this agreement -- well, scratch that. Let me just
15 ask a few more -- more random questions and then I'll be done.

16 This is the first Chapter 9 bankruptcy case that you've
17 ever worked on, correct?

18 A That is correct.

19 Q And neither you nor Ernst and Young have ever prepared a
20 balance sheet for the City of Detroit, correct?

21 A That is correct.

22 Q You began to prepare the schedules for the filing of this
23 bankruptcy case in May of 2013, isn't that right?

24 A It was May, June time frame. I do not remember the
25 specific date.

1 Q But it could have been May -- May 2013? May, June time
2 frame?

3 A Like I said, May, June time frame, yes, that is right.

4 Q Okay. Now, in early July, your opinion was not solicited
5 by anyone before the bankruptcy filing about the decision to
6 file bankruptcy, isn't that right?

7 A That is correct.

8 Q So you and Ernst and Young, you didn't have any input
9 whatsoever on whether or not Chapter 9 was the only
10 alternative for the City of Detroit, isn't that right?

11 A That is correct.

12 MR. SHERWOOD: Your Honor, can I have a two minute
13 -- a 30 second break just to consult with a colleague a
14 minute?

15 THE COURT: Yes. We'll sit here while you do that.

16 MR. SHERWOOD: Your Honor, I'd like to mark another
17 document to -- which addresses the issue of impact on retiree
18 benefits. And just see if the witness recognizes -- not to
19 refresh recollection, just to see if he recognize it and can
20 authenticate it.

21 MR. STEWART: This is a new exhibit?

22 MR. SHERWOOD: I believe it is.

23 MR. STEWART: We would object to it, Your Honor, for
24 any use other than refreshing recollection. It was not
25 identified.

1 THE COURT: Well, let's -- let's get it marked and
2 when it's offered into evidence I'll hear your objection.
3 What number would you propose?

4 MR. SHERWOOD: 505B.

5 THE COURT: Are we out of numbers?

6 MR. SHERWOOD: I just think we're in the five's and
7 I don't know what we're up to.

8 THE COURT: Okay. Well, let me see if I can help
9 you.

10 MR. SHERWOOD: 505B, I think.

11 THE COURT: Hold -- hold on one second. Ah, we have
12 used every number from 500 to 599. All right, fine, 505B it
13 is.

14 MR. SHERWOOD: May I approach, Your Honor?

15 THE COURT: Yes. Are you asking the witness if he
16 recognizes this?

17 MR. SHERWOOD: Yes.

18 THE COURT: Do you recognize that document, sir?

19 A Yes, Your Honor, I do.

20 Q And can you describe it for us?

21 A It's a discussion document dated July 16th, 2012.

22 Q And did you -- were you involved in the preparation of
23 this document?

24 A Yes, we were.

25 Q And was this document presented to -- who was this

1 document presented to?

2 A I don't recall.

3 Q For what purpose was this document prepared?

4 A It would have been to -- for -- trying to ascertain the
5 tentative agreements and the savings that would have come from
6 some of the tentative agreements.

7 Q And does this document refresh your recollection as to
8 the savings that could be achieved from retiree health care?

9 A I would have to go to that specific section.

10 Q Yes, please do.

11 THE COURT: Well, hold on. It's not proper to ask
12 the witness a question about the contents of the document
13 until it's admitted into evidence.

14 MR. SHERWOOD: Well, I move it into evidence, Your
15 Honor.

16 MR. STEWART: We object, Your Honor. For the --
17 well, first of all, I'm not sure what its relevance is, but
18 more to the point it wasn't identified as part of the
19 pre-trial process we engaged in to identify, have timely
20 objections, and have an opportunity to review documents.

21 MR. SHERWOOD: I -- I agree that it wasn't
22 identified pre-trial, Your Honor. We did identify the -- the
23 tentative agreement, however. We have maintained in this case
24 that on the impracticability issue, that indeed it was and is

1 city and to negotiate with respect to the rights of retirees
2 in the context of those negotiations.

3 Our -- I was at the deposition of -- of one of our
4 clients in Washington where this issue was raised and -- and
5 probed. We were -- we believed that this witness having been
6 involved in those negotiations would testify that indeed some
7 of the give backs in this tentative agreement impacted
8 retirees.

9 And he hasn't clearly done that. So I'm using this to
10 refresh recollection. Your Honor, there are a lot of
11 documents in this case. This is a fast track case with a lot
12 of document review and production that has been done. This is
13 a City of Detroit document that certainly this witness, and I
14 assume the other professionals, are -- are intimately familiar
15 with.

16 And I do not think that the failure to put it on our
17 exhibit list in this case and on this track should prevent the
18 admission into evidence. It's otherwise relevant for the
19 reasons that I've set forth. And I don't see any prejudice
20 whatsoever to the city.

21 MR. STEWART: Your Honor, I think it is prejudicial.
22 We see this for the first time while the witness is on the
23 stand. In fact so fresh is it we don't even know how to
24 number it as an exhibit.

1 witness he wanted. If he fails in trying to refresh
2 recollection, the answer is for him to call his own witness,
3 not to bring in documents outside of the normal structure that
4 we had all agreed upon.

5 THE COURT: I agree that this record does not
6 establish cause to add an exhibit to the established witness
7 list. Accordingly, the objection is sustained. The document
8 may be used to refresh recollection.

9 MR. SHERWOOD: Excuse me one second, Your Honor.

10 Q I'm going to try to use this to refresh your
11 recollection. Can you turn to Page 7, please? Now again
12 we're on the topic of whether this negotiation involved
13 savings on benefits that impacted retirees. If you look at
14 the -- the second block down on the left, have you read that
15 block?

16 A Yes.

17 Q And have you -- and does that block and the -- the
18 numbers to the right of it, refresh your recollection as to
19 whether or not in the context of these negotiations, the city
20 was -- or -- or the union reps were negotiating with respect
21 to rights of retirees?

22 A No. In fact on my --

23 THE COURT: The only question is, does that document
24 refresh your recollection on that question.

25 A Sorry, Your Honor. No.

1 Q And it -- and just -- just to be clear on this point,
2 it's your -- you don't recall during these negotiations
3 whether the city and the representatives of the union
4 negotiated and reached an agreement that impacted the rights
5 of the city's retirees, is that your testimony?

6 A That is my testimony, yes.

7 Q But you don't recall?

8 A That's what I just said.

9 MR. SHERWOOD: Okay. Thank you, Your Honor. Thank
10 you, Mr. Malhotra. I have nothing further.

11 THE COURT: All right. At this time we'll take our
12 morning 15 minute recess.

13 (WITNESS GAURAV MALHOTRA WAS TEMPORARILY EXCUSED AT 10:37
14 A.M.)

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

16 (Court in Recess at 10:37 a.m.; Resume at 10:59 a.m.)

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

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

21 (WITNESS GAURAV MALHOTRA RESUMED THE STAND AT 10:59 A.M.)

22 CROSS EXAMINATION

23 BY MR. DECHIARA:

24 Q Good morning, Mr. Malhotra.

25 A Good morning.

1 Q One preliminary question, Mr. Malhotra. Between the time
2 that you completed your direct testimony at the end of the day
3 yesterday and when you began your cross examination today, did
4 you consult with counsel about the subject of your testimony?

5 A No, I did not.

6 Q You're not and never have been an officer of the City of
7 Detroit, correct?

8 A That is correct.

9 Q Okay. And you've never -- and you don't currently and
10 you never have held any elected or appointed position with the
11 city, correct?

12 A That is right.

13 Q And you don't -- you're not involved in the direct
14 running of the city, the direct operation of the city,
15 correct?

16 A Yes.

17 Q Yes, I'm correct?

18 A Yes, you're correct.

19 Q Let me ask you about the June 14th, 2013 meeting at which
20 the emergency manager made his presentation of the creditor
21 proposal. Do you remember your testimony about that meeting
22 yesterday?

23 A Yes.

24 Q And I believe you testified on direct that there were

1 at that meeting, correct?

2 A Yes.

3 Q Okay. Am I correct that the procedure at that meeting
4 was that if an attendee wanted to ask a question or make a
5 comment, they had to write it down on a card which would then
6 be passed up to the front and then it would be read out by
7 someone in the front of the room? Wasn't that the procedure?

8 A As I recall I think, yes.

9 Q And let me now draw your attention to the June 20th
10 meeting. Do you recall your testimony about the June 20th
11 meeting?

12 A Yes.

13 Q And the emergency manager was not present, correct?

14 A That is correct.

15 Q And the people who were presenting at the meeting were
16 city advisors, including yourself, correct?

17 A Yes.

18 Q Did anyone from the city tell you that you had authority
19 to negotiate for the city at that meeting?

20 A I was presenting at that meeting.

21 Q Is the answer to my question no?

22 A That is correct.

23 Q Okay. And it was not your understanding, was it, that
24 you had authority to negotiate on -- for the city at that
25 meeting, am I correct?

1 A I was not negotiating for the city at that meeting, that
2 is correct.

3 Q Okay. And is it -- do you have any knowledge that any of
4 the other advisors who were attending that meeting on behalf
5 of the city had authority to negotiate for the city?

6 A I can't say what the authority was of the other advisors,
7 you would have to ask them.

8 Q So you have no knowledge -- you have no affirmative
9 knowledge that the -- any of the other advisors were
10 authorized to negotiate on behalf of the city, is that
11 correct?

12 A I have no knowledge one way or the other, that is
13 correct.

14 Q Okay. Were there any other meetings besides the June 14th
15 and June 20th meeting that you -- that you attended where there
16 were presentations made to labor or retiree groups?

17 A I don't recall specifically.

18 Q As you sit here today you don't recall any others?

19 A I do not recall any others, no.

20 Q Okay. You testified I believe on direct about a July 9th
21 meeting. Do you recall that testimony?

22 A Yes.

23 Q And who -- who were the -- what category of attendees
24 attended the July 9th meeting?

25 A My recollection is that it was the city's advisors and
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1 members of the retirement systems or advisors for the
2 retirement systems and other retirees.

3 Q So the -- the -- so I'm going to distinguish between the
4 presenters and the attendees. The attendees were advisors to
5 the retirees and the retirees?

6 A That's my recollection, yes.

7 Q Okay. And were there -- were there negotiations -- did
8 you engage in negotiations on behalf of the city at that
9 meeting?

10 A We had discussions about the city's financial profile as
11 well as discussions around pensions as I recall.

12 Q And I believe your direct testimony was that the purpose
13 of that meeting was to discuss actuarial assumptions, is that
14 correct?

15 A No. What I said on my testimony is that at the end of
16 the meeting there was a discussion or dialogue about trying to
17 get the retirement system and the city's advisors on the same
18 page with respect to the actuarial assumptions.

19 Q And -- and the reason -- and you were involved in that
20 effort, is that correct?

21 A Not really. I -- I was not directly involved with the
22 actuarial assumptions at all.

23 Q Okay. Did you have an understanding about what -- did --
24 did the city advisors want to achieve an understanding with
25 the retiree system advisors as to actuarial assumptions?

1 A Yes.

2 Q And did -- did you have an understanding about why the
3 city advisors wanted to obtain that understanding?

4 A I do. It was generally to try and ascertain the amount
5 of the under funding in the -- in the two pension systems,
6 yes.

7 Q Okay. Would it be fair to say that as a predicate for
8 meaningful negotiations, it's often helpful to have shared
9 assumptions between the -- the parties?

10 A Yes.

11 Q Did anyone tell you that -- from the city -- did -- did
12 anyone from the city tell you that you were -- you were
13 authorized at the July 19th -- I'm sorry, the July 9th meeting
14 to negotiate on behalf of the city?

15 A No.

16 Q You testified about certain meetings you had with the
17 emergency manager Mr. Orr at which you orally presented to him
18 certain findings or analysis that you had prepared. Do you
19 recall that testimony on direct?

20 A Yes.

21 Q Okay. And how many of those meetings were there?

22 A I cannot count the number of meetings or conference calls
23 that we had, there were numerous.

24 Q Okay. So there were numerous face to face meetings and
25 also numerous conference calls?

1 A Can you clarify what time frame is your question related
2 to?

3 Q Well, you tell me. I'm just asking about the -- the
4 meetings that you had -- well, okay. I -- I can do this.
5 From the time the emergency manager became the emergency
6 manager until the bankruptcy filing, let's say that's the time
7 frame. How many face to face meetings did you have with the
8 emergency manager at which you presented conclusions, or
9 findings, or analysis?

10 A I can't recall the specific number, but there were
11 several.

12 Q Okay. And were these one on one meetings that you had
13 with the emergency manager?

14 A We may have had -- yes, there were a couple of one on one
15 meetings I thought and as I recall and there were meetings
16 with -- in a broader group setting with the city's other
17 advisors.

18 Q Okay. And the ones that took place in a broader group
19 setting with the city's other advisors, those were
20 pre-scheduled meetings?

21 A Generally yes.

22 Q Okay. And who -- who were the other city advisors who
23 attended those meetings?

24 A It would have been representatives from Jones, Day, from
25 Miller, Buckfire, Conway, MacKenzie, our team. But there were

1 several meetings and there wasn't a set schedule that
2 everybody was at a particular meeting.

3 Q Okay. But --

4 A Is my recollection.

5 Q Okay. But some of the meetings where there were other
6 advisors were present, were you presented conclusions, or
7 findings, or analysis to the emergency manager were meetings
8 where Jones, Day attorneys were present, correct?

9 A Yes.

10 MR. DECHIARA: Okay. Your Honor, I -- I don't have
11 anything further on that line of questioning. I would note
12 for the record that the city has on the direct of Mr.
13 Malhotra, had Mr. Malhotra testified on direct about meetings
14 he had with Mr. Orr in the presence of counsel.

15 Q You -- you testified about a meeting that you attended in
16 New York, I believe with the bond holders and the insurers of
17 the bond holders, is that correct?

18 A Yes.

19 Q Okay. And when was that meeting?

20 A I think it was June 25th maybe is my recollection.

21 Q I'd like now to direct your attention to the proposal to
22 creditors which is Exhibit 43. Do you have the exhibit book
23 or could somebody call up Exhibit 43, please?

24 A I'm happy to get it if you just tell me what folder it is
25 though.

1 Q Okay. Yeah, you can get it. Excuse me?

2 A What folder, 43?

3 Q I don't know what folder it is, but it's -- oh, I'm
4 sorry. I -- no -- no, I'm correct. It's -- it's City Exhibit
5 43.

6 THE COURT: Can you help the witness find it,
7 please?

8 MR. DECHIARA: Absolutely.

9 Q Do you have it?

10 A I got it. Thank you.

11 Q Okay. Mr. Malhotra, if I could ask you to turn to Page
12 114 of Exhibit 43. Are you on Page 114?

13 A Yes.

14 Q Okay. Let me direct your attention to the last column on
15 the right. It says insurer. Do you see that?

16 A I do.

17 Q And do you see there's a list of insurers there?

18 A Yes.

19 Q And those are the insurers for the bond holders?

20 A Yes.

21 Q And were representatives of those insurers present at the
22 June 25th meeting?

23 A I can't recall if all of them were there, but there were
24 representatives from the bond insurers at that meeting, yes.

25 Q Okay. Do you remember specifically which ones were there
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1 and which ones were not?

2 A No, I do not.

3 Q Can you testify whether they were all there, or they were
4 not all there?

5 A No, I cannot.

6 Q Okay. So they -- they may all have been there, is that
7 correct?

8 A It could be, yes.

9 Q Okay. Let me turn your attention to Page 120. It's
10 Appendix E. There's a similar column, the right column it
11 says insurers and let me ask -- just ask you the same
12 question.

13 Were representatives from those insurers at that -- at
14 the June 25th meeting?

15 A I cannot recall specifically if all of them were there.
16 On my -- I think most of them were there, or their advisors.
17 But I do not recall specifically if each and every one of
18 these were there or not.

19 Q Okay. Do you have a understanding of what percentage of
20 the bond holders of the city -- of the unsecured bond holders
21 of the City of Detroit are -- were insured by the -- by the
22 insurers that were listed in Appendix A through E of Exhibit
23 43?

24 A No, I do not.

25 Q It's the majority, isn't it?

1 A I would assume, but I'm not sure. I haven't done the
2 percentage of all of the unsecured notes what percentage are
3 insured versus not. I haven't done that calculation.

4 Q Okay. Am I correct if -- if we wanted to, or someone
5 wanted to determine that, one could add up the -- the numbers
6 on the appendices under the balance column and -- and
7 determine the percentage that are insured?

8 A Presumably if the -- if they're still in short at that
9 particular time frame or not. Presumably yes.

10 Q Okay. Thank you. And just so I understand correctly,
11 when a bond holder is insured that means that if -- if the
12 municipality defaults on the bond, the bond holder has
13 recourse against the insurer?

14 A That is my understanding, yes.

15 MR. DECHIARA: No further questions.

16 THE COURT: Anyone else have any cross examination
17 questions for the witness?

18 MR. RUEGGER: Yes, Your Honor.

19 MR. DECHIARA: Your Honor, I would just ask to
20 reserve the right to -- to ask additional cross examination
21 question if the Court decides to reverse its prior ruling.

22 THE COURT: Yes, yes. That -- that right is
23 reserved for everyone.

24 On that point, and just so I don't forget later, I have
25 reconsidered my suggestion that we revisit this after lunch

1 and to give both you all and us time to review the memorandum
2 and the issue, we'll take it up again tomorrow morning.

3 MR. RUEGGER: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 MR. RUEGGER: May I -- may I proceed?

6 THE COURT: Yes.

7 MR. RUEGGER: Thank you.

8 CROSS EXAMINATION

9 BY MR. RUEGGER:

10 Q Good morning, Mr. Malhotra. My name is Arthur Ruegger
11 from the Dentons firm. We haven't met before. I represent
12 the retirees committee here.

13 And I don't have a lot to ask you. But I -- I do want to
14 talk to you a little bit about a document that Mr. Stewart
15 raised yesterday. It was City Exhibit 44. It's -- it's, I
16 believe, the executive version of the June 14th proposal. Is
17 it on your screen?

18 A It is, yes.

19 Q Okay. And specifically if we could look at Page 8. And
20 I'm going to ask you some questions about the fiscal year 2012
21 figures that are on that page. So if Kathy, you could expand
22 that, it would probably make it easier for us to see. Great.

23 First, Mr. Malhotra, when were the -- these figures, and
24 specifically the fiscal year 2012 figure, when were they
25 finalized?

1 A This is cash activity so it's -- it would have been right
2 around the end of fiscal year 2012. So July 2012. This is
3 cash activity.

4 Q And how large was the E & Y team at that time?

5 A At what time?

6 Q When these figures were finalized.

7 A Probably four or five.

8 Q And did they have specialized roles?

9 A Yes. Our team was -- was focused, very focused on
10 looking at all of the cash activity, yes.

11 Q Okay. So can you tell us what the individuals roles were
12 on your team?

13 A They were to ascertain what receipts were timing versus
14 permanent, any variances. Looking at all of the property
15 taxes, looking at the income taxes.

16 The city generally receives a lot of its collections in
17 certain lock boxes. We had to try and ascertain what part of
18 those collections were related to property taxes versus not.
19 It was to track the monthly gaming taxes. It was to look at
20 the activity and the other receipts. It was to highlight any
21 sort of one time bond related or escrow related proceeds that
22 were coming in that were further augmenting the general fund's
23 cash.

24 Q And did you assign any of your team members any of those
25 particular matters to be their responsibility?

1 A No, they were generally a team effort.

2 Q Can you tell us beyond what you've just answered, in
3 general what was the process of compiling those figures?

4 A Our team tracks the pretty much daily cash activity of
5 the city to ascertain what receipts are coming in, what
6 disbursements are going out to at least help be able to
7 quantify where that activity is going on a day in day out
8 basis. And because we had wanted to try our best to insure
9 that the city did not run out of cash.

10 And that's the reason we had our team working
11 specifically on the receipts and disbursements activity,
12 looking at the bank accounts, looking at bank statements to
13 insure that we -- we could forecast where the movement was so
14 that the city would not run out of cash as it had to rely on
15 refinancing proceeds to keep going.

16 Q Did you do any of that tracking personally, or was that
17 your team's responsibility?

18 A It was a combination. I was intimately involved.

19 Q Okay. Tell me what part you were intimately involved and
20 what part your team did.

21 A I don't think there's -- there's a specific delineation
22 of what part I did versus what my team did. It was a team
23 effort and I was intimately involved with the team.

24 Q All right. If you could look at that part of Exhibit 44.

25 I think you testified yesterday that your team, or someone
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1 from your team, contacted the city individual responsible for
2 the property taxes is that -- is that correct?

3 A I don't recall that specific part of my testimony.

4 Q Okay. All right. Forgive me. I don't mean to misstate
5 your testimony.

6 How -- did your team attempt to verify for example the
7 property tax figure that's on -- on that document for fiscal
8 year 2012?

9 A This would have represented to verify, I don't know if
10 you mean audits. I just want to make sure --

11 Q Don't mean audit.

12 A We, in terms of all the cash that comes in, in gross tax
13 collections, our team is to try our best ability to segregate
14 what collections were for property taxes, and what taxes were
15 due to the city, and versus what property taxes were related
16 to distributions that the city had to make to other taxing
17 authorities.

18 Q All right. With all respect, sir, I'm not sure that was
19 responsive. I'm trying to determine to what extent anyone on
20 your team verified the figures and specifically the property
21 tax figure there.

22 A This would have been the number that we had for the -- to
23 the best of our ability.

24 Q And you had it from what source, sir?

25 A It would have been from a -- for fiscal year 2012 from a
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1 combination of the bank accounts, or the city's internal
2 reports.

3 Q The -- I'm sorry, I didn't hear you. The city's what
4 reports?

5 A Internal reports.

6 Q Internal reports.

7 A Yes.

8 Q Did you consider the -- the CAFR for this analysis at
9 all?

10 A This is fiscal year 2012 cash activity. The CAFR, the
11 CAFR doesn't come out for months after that.

12 Q I thought yesterday you testified, and correct me if I'm
13 wrong, that someone from your team contacted the city to -- to
14 check the property tax figures, is that not correct?

15 A You can go back to my testimony. I don't remember that
16 specific piece. We looked at the cash activity of city in --
17 in a considerable amount of detail.

18 Q Dropping down to the next item, income -- income and
19 utility taxes. How were -- how was that figure derived?

20 A That figure was derived from the information we had from
21 the bank accounts as well as the city's internal reports.

22 Q And when you say city's internal reports, what kind of
23 reports were those?

24 A They are various internal reports that the city tries its
25 best ability to track this cash activity.

1 Q Did -- did anyone on your team ever try to get behind any
2 of those figures?

3 A In order to --

4 Q To check their accuracy.

5 A Cash is generally cash. If you are trying to ask the
6 classification of those receipts, there is -- there is always
7 classification issues, but cash is generally cash. I don't
8 know what verification you do of cash. This is not audited
9 statements.

10 Q Your team didn't have the cash, right?

11 A We tracked cash.

12 Q Your team was not counting the cash? It was looking at
13 reports from the city, correct?

14 A That is accurate. We were not counting dollar bills if
15 that is your question.

16 Q No, that was true for both the bank reports and the
17 internal city reports?

18 A We were tracking cash to the best of our ability.

19 Q Based on the city's reports?

20 A Based on our review of the city's reports and our review
21 of the bank statements.

22 Q Sure. And I don't mean to belabor the issue, but you
23 didn't check the city's reports, did you? You reviewed them
24 and accepted them.

25 A We subtract cash compared to the bank activity. So we
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1 used to check them. We used to review them. We used to ask
2 questions. But generally tracking cash was not going to
3 approves or anything that. It was -- it was tracking cash.

4 Q All right. So back to my question about the income and
5 utility taxes. How did you derive that figure?

6 A This will be a combination as I already testified based
7 on the city's internal reports and their bank accounts. And
8 even out of discussions we may have had with the city
9 personnel.

10 Q Did you have any personal conversations with city
11 personnel related to that item?

12 A I may have, I don't recall specifically. This is going
13 back to fiscal year 2012.

14 Q Do you recall having any personal conversations with
15 anyone at the city related to the property tax item?

16 A I don't remember a specific conversation. We used to
17 track these daily, or actually on the fiscal year 2012 at
18 least weekly to -- to get our arms around the cash activity.

19 Q You and your team?

20 A That is correct.

21 Q What about the gaming taxes? Do you recall where that
22 figure came from?

23 A I think it comes from the city's bank activity.

24 Q The city's bank activity?

25 A Its bank statements.

1 Q Bank statements. And how often did you receive the
2 city's bank statements?

3 A It has varied from time to time, but we are receiving
4 statements right now on a weekly basis if not on a daily
5 basis --

6 Q And in back --

7 A That's --

8 Q I'm sorry. I didn't mean to speak over you. And back in
9 2012, do you recall how often you were receiving those
10 statements?

11 A I do not recall, but we -- we started getting the bank
12 statements on a regular basis as soon as we -- we got engaged
13 because that was the best proxy to track cash.

14 Q And that would have been 2011, correct?

15 A Calendar year 2011, that's right.

16 Q Okay. But I'm asking now about 2012. Do you recall how
17 often you got statements related to gaming taxes?

18 A Talking about fiscal year 2012. I just want to make
19 clear that includes a part of 2011. We would have received
20 activity on a regular basis that's what I would say.

21 Q And you can't recall now whether that was weekly, or
22 twice a month, or monthly?

23 A That is correct, I can't recall.

24 Q How about the municipal service fee to casinos?

25 A Consistent with how we received the gaming taxes

1 information.

2 Q Reports from the city?

3 A Reports, bank activity, discussions with -- with -- with
4 -- from the city's management team.

5 Q I'm sorry? Reports -- discussions with who at the city?

6 A The city's management team.

7 Q Okay. Do you recall having any personal conversations
8 with the city's management team related to that line item?

9 A No, I do not.

10 Q So any -- any conversations would have been between your
11 team and -- and the people at the city?

12 A No, that's not right.

13 Q Okay. What would -- who would be -- who was part of
14 those conversations to your knowledge?

15 A Like I said earlier, I was intimately involved with the
16 tracking of cash activity of the city given how precarious the
17 cash position was. I had several discussions with members of
18 the city's management team with respect to cash.

19 Your question was if I had a specific conversation on
20 this particular line item, I do not recall. I had specific
21 conversations on the cash activity with various members of the
22 city's management team.

23 Q Over what period of time?

24 A Since the time we got engaged.

25 Q And how frequently?

1 A I cannot recall, it was very frequent.

2 Q Just so we're clear, you don't recall having any
3 conversations specifically related to the municipal service
4 fee to casinos, is that correct?

5 A I do not recall of a specific conversation, you're
6 correct.

7 Q How about the state revenue sharing? I think you talked
8 about that yesterday. Did you have any personal involvement
9 in any conversations with the state relating to the revenue
10 sharing figure that's reflected in this exhibit?

11 A It's -- no, it's -- the cash that's received every second
12 month pretty regular.

13 Q I thought you testified yesterday, and I don't want to
14 put words in your mouth, that -- that there was a conversation
15 with the state related to what -- the revenues that came from
16 the state to the city. Is that wrong?

17 A No, you're correct. But my testimony was related to the
18 forecast specifically and I'm happy to talk about it, and also
19 the ten year forecast in terms of the assumptions behind it.

20 Q I understand you might be happy about that. But let's
21 talk -- let's talk to these figures now.

22 A I was just clarifying your -- your question and my
23 testimony. This is for fiscal year 2012.

24 Q Correct.

25 A I did not have specific discussions with the state. We
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1 subtract this cash activity through a combination of the
2 city's reports, the bank activity, and discussions with the
3 management team on a regular basis.

4 Q How about the last item there? It's a fairly large one,
5 other receipts. What -- what goes into that?

6 A That includes grant receipts, it includes any sort of
7 fines that are collected, it includes any sort of fees that
8 are charged by the different departments. It also includes
9 some of the utility charges that come through. So it's --
10 it's a variety of items that makes up that line item.

11 Q And did your team -- what was the source for your team's
12 collection of that data?

13 A It was the same as I highlighted before.

14 Q Reports from the city?

15 A Bank statements, reports from the city, and discussions
16 with the management team.

17 Q Do the bank statements that come in, do they break out
18 these line items as set forth in Exhibit 44 on this page?

19 A Some of those items are -- are broken out, I believe.
20 But that -- that was part of the process in which we used to
21 look at that activity and try and ascertain where those
22 dollars belong so that we could be updating our forecast based
23 on the run rates more accurately based on the information we
24 received.

25 Q For 2012, the figure on the -- on this exhibit is -- is
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1 that \$1,765,000,000, is that correct?

2 A That is correct, including 50,000,000 of refinancing.

3 Q Any -- and is it correct that that's simply cash, that's
4 not something that -- that it could be the subject of -- of
5 discussion or adjustment?

6 A That's correct, it's -- it's cash.

7 Q Did you have any conversations or did your team to your
8 knowledge have any conversations with anybody from Conway,
9 MacKenzie relating to the fiscal year 2012 figures?

10 A We had discussions around the fiscal year 2012 figures
11 with all of the advisors in terms of what the cash activity
12 for fiscal year 2012 was.

13 Q So in essence your team or you just relayed to Conway,
14 MacKenzie what the cash figures were?

15 A We related to the cash activity of fiscal year 2012 as
16 shown on this page was discussed with Conway, MacKenzie and
17 all of the other advisors.

18 Q Now these -- this is the general fund figure, is that
19 correct?

20 A Predominantly, yes. It does not include the activity for
21 Water and Sewer Department, all the receipts for DDOT.

22 Q Or receipts for --

23 A I'm sorry. The Department of Transportation.

24 Q It -- it -- it does not, or it does include Department of
25 Transportation?

1 A It does not include the receipts of the Department of
2 Transportation. The subsidy that's given to the Department of
3 Transportation from the general fund is shown on other
4 disbursement section.

5 Q And -- and tell -- tell us why those enterprise funds
6 receipts are not included in -- in these figures.

7 A The -- the Department of Transportation receipts are not
8 included because it's the net subsidy that the general fund
9 sends to the Department of Transportation after they go
10 through their own receipts and disbursements activity. The
11 net subsidy that the general fund sends to the Department of
12 Transportation are included here. With respect to the Water
13 and Sewer Department, they are receipts saying disbursements
14 activity are not included in here.

15 Q And you said, I think earlier, that the department of --
16 Departments of Water and Sewer are self sustaining or break
17 even, correct?

18 A That's generally correct.

19 Q So that they can generally handle their own debts and
20 take care of their own business?

21 A Yes.

22 Q I would like to ask the help to put up Exhibit 6 which is
23 also in evidence. And on this instance I believe it's the
24 CAFR for 2012.

1 If you could highlight, please, just the 2012 total receipts.
2 And -- and compare it with, if you could, Exhibit 44 which we
3 were just looking at.

4 Okay. I believe on the top we have an -- an excerpt from
5 Exhibit 6 which is the 2012 CAFR. You're familiar with that
6 document, Mr. Malhotra?

7 A Yes, I am.

8 Q And at the bottom is the year -- well, we were actually
9 looking on the left hand column, but that's the figure from
10 Exhibit 44, am I correct?

11 A That is correct.

12 Q You will note there is a discrepancy between the -- the
13 total operating receipts figure which we were talking about in
14 the bottom and total revenues figure that's recorded in the
15 top. Can you explain for us, please, what the differences are
16 between those two figures?

17 A Sure. I'll focus on your top table which is for
18 governmental activities of total revenues of 1,537,000,000
19 compared to the total operating receipts of 1,765,000,000.

20 Q Right.

21 A The 1,765,000,000 includes cash receipts that the city
22 collects in its property taxes line for distribution to other
23 taxing authorities. If you go back to the cash flows you will
24 see there's a DDOT off a significant amount of disbursements

1 come.

2 So again, I just want to clarify, you're tracking cash.
3 The city receives the gross tax collections then distributes
4 the taxes it has collected on behalf of other entities for a
5 net tax number. Generally that net tax number is what's
6 reported in the coffer as property tax revenue.

7 Q So the one five figure reflects a net figure for the
8 taxes that you just described, is that correct?

9 A That is correct.

10 Q Okay. And -- and that's reflected below the revenue
11 line, or it should be above -- oh, forgive me. It's -- it's
12 reflected in the tax figure itself.

13 A You are correct.

14 Q And if you could drop the Exhibit 44 and just stay with
15 -- yes, that page. Just so I'm sure I understand it. The --
16 the figures on the top, again this is from CAFR not your
17 document, show that the -- the governmental activities column,
18 the 1.5 is really just a -- it's far short of the -- no, you
19 don't need to do that. The total operational receipts for the
20 City of Detroit, correct?

21 A For the reasons that I described, yes.

22 Q That's the business type activities, those are -- that's
23 water, sewer, transportation?

24 A I believe so. I -- I have not focused on the business
25 type activity, I believe so. I'm not sure.

1 Q Isn't it true that when you -- your engagement began in
2 2011, the business type activities were part of the financial
3 review that your team undertook, correct?

4 A We were looking at the -- the receipts and disbursements
5 activity of some of the enterprise funds, that is correct.

6 MR. RUEGGER: No further questions, Your Honor.

7 THE COURT: Thank you, sir.

8 MR. RUEGGER: Thank you, Mr. Malhotra.

9 THE COURT: Any other questions for the witness?

10 CROSS EXAMINATION

11 BY MS. PATEK:

12 Q Good morning, Mr. Malhotra, Barbara Patek. I represent
13 the Detroit Fire Fighters, the Detroit Police Officers
14 Association, and the Detroit Police Command Officers
15 Association, and the Detroit Police Lieutenant and Sergeants
16 Association. I have just a few questions for you this
17 morning.

18 Mr. Stewart asked you some questions about negotiations
19 with various city unions in late 2011 and 2012. Were you
20 involved in similar negotiations with the Detroit Fire
21 Fighters Association during that same time period?

22 A Yes. Me or my team members were involved, yes.

23 Q Okay. And was Chris Brown a member of that team?

24 A Chris Brown was representing the city.

25 Q And do you recall whether or not, let's start with the
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1 Detroit Fire Fighters. Whether or not you were able to --
2 your team negotiate an agreement with the fire fighters that
3 resulted in some cost savings?

4 A Yes. We did not negotiate it. We helped ascertain the
5 financial impact, but I believe there was a tentative
6 agreement that was reached with Detroit Fire Fighters
7 Association and the city.

8 Q Can I have 714, please? Mr. Malhotra, can -- do you
9 recognize Exhibit 714?

10 A It's the tentative agreement to --

11 Q And -- and can you tell the Court going down to the first
12 -- the first full paragraph in the -- the agreement with whom
13 that appears to be?

14 MR. STEWART: Your Honor, we've objected to this.
15 It is not in evidence. If she's laying a foundation, no
16 objection. But if she's going to question the witness about
17 the substance, we do object.

18 MS. PATEK: I am just laying a foundation, Your
19 Honor.

20 THE COURT: Well, the question you asked was not
21 exactly a question to establish foundation.

22 MS. PATEK: Let me --

23 Q Can you tell us what Exhibit 714 is?

24 A It's the tentative -- tentative agreement entered the 23rd
25 of March between the City of Detroit and the Detroit Fire

1 Fighters Association.

2 Q And can we flip to Page 6 of that agreement, please? Oh,
3 I'm sorry, 7. Do you recognize in the upper left hand corner
4 of that the -- the signature that appears?

5 A I think that is the signature of Chris Brown.

6 Q And Chris Brown was at that time the Chief Operating
7 Officer of the City of Detroit?

8 A That is correct.

9 Q Can we bring up 717? Did you have similar discussions
10 with the Detroit Police Command Officers Association during
11 the same time period, 2011 and 2012?

12 A We have ascertained some of the financial impact of those
13 discussions.

14 Q And you participated and were there in those
15 negotiations?

16 A I was participating from a financial standpoint, yes.

17 Q Do you recall whether or not the agreement negotiated
18 with the Detroit Police Command -- well, strike that. If we
19 can jump ahead to the signature page which I believe on this
20 one is Page 5.

21 And same question here. If you look on the left hand
22 side of the page about a little better than halfway down on
23 Exhibit 717. Do you recognize that signature?

24 A I think that is the signature of Chris Brown.

25 Q And again he was the Chief Operating Officer of the City
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1 of Detroit at that time?

2 A Yes.

3 Q Do you recall whether or not as a result of the
4 negotiation of the tentative agreement, the agreement that
5 resulted provided for some cost savings to the City of
6 Detroit?

7 A It was a combination of cost savings and deferrals, yes.

8 MS. PATEK: I have nothing further at this time.

9 THE COURT: Any other questions for the witness?

10 Any redirect?

11 MR. STEWART: Not very much, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. STEWART:

14 Q Mr. Malhotra, and when you were questioned you mentioned
15 something called structural cash flow problems?

16 A Yes.

17 Q What are structural cash flow problems?

18 A As shown on the city's cash flow activity for fiscal year
19 '12 and 2013, the disbursements continue to exceed receipts
20 for both of those years which in my mind are structural cash
21 flow issues especially given the fact that the city had
22 already made -- or had gotten a lot of concessions from some
23 of the active employees that -- but yet other than borrowing
24 new cash, or pooling new -- pooling accounts, or deferrals,
25 the core structural problems were -- or cash flow problems

1 where that the disbursements continued to exceed the receipts.

2 Q Now when you used that term, it was in connection with
3 the questions you were asked about the monetization of city
4 assets. What effect if any would the monetization of city
5 assets have upon the city's structural cash flow problems?

6 A None.

7 Q Why not?

8 A Because in -- in my view those are one time proceeds from
9 asset sales that do not address the issues with respect to the
10 ongoing operating disbursements and the legacy cost
11 disbursements, the combination of which continue to exceed the
12 receipts that the city generates from its operations.

13 Q Now you also were asked at various times about cost
14 savings that had been negotiated or realized or what have you
15 in previous years. To the extent cost savings had been
16 achieved by the city, what if anything did you do in your
17 financial analyses with respect to those savings?

18 A Those savings were clearly reflected in the cash activity
19 on a monthly basis all through fiscal year 2013. So the
20 fiscal year 2013 would already reflect those cash savings that
21 had occurred during that time frame.

22 We also adjusted for additional cost savings from a
23 forecast basis over the forecast time frame which were already
24 incorporated in the cash flow assumptions.

1 questions.

2 THE COURT: All right. Sir, you may step down.
3 Thank you very much. I will ask you to be here again tomorrow
4 morning in case we have more questions for you.

5 A Yes, Your Honor.

6 (WITNESS GAURAV MALHOTRA WAS EXCUSED AT 11:43 A.M.)

7 THE COURT: All right. Your next witness, sir.

8 MR. STEWART: Charles Moore. Your Honor, before Mr.
9 Moore comes into the courtroom, as a foreseeable evidentiary
10 point, I think it might be best just to raise outside of the
11 presence of the witness.

12 THE COURT: Okay.

13 MR. STEWART: And here is what it is. Yesterday in
14 the opening, I believe it was Mr. Oldman and if I'm wrong, I
15 apologize to Mr. Oldman who in the course of his opening about
16 the alleged bad faith of the emergency manager said, and we
17 have the imperfect transcript here with us, that Mr. Orr did
18 not have a factual basis to state in his declaration that the
19 pension claims were about 3.5 million dollars.

20 Because he opened on it, that is squarely now an issue in
21 our case. And I intend to ask Mr. Moore about that. And in
22 particular where that number came from. I'm going to ask him
23 did he give that number to Mr. -- Mr. Orr and where did he get
24 it from and what made him believe that was a reliable number.

1 given to him by the pension plans actuaries. And he has those
2 reports with him. There have been -- they're exhibits here in
3 our case. So I intend to ask him about that.

4 I'm not certain there will be an objection to it, but if
5 there is, I thought it would be more orderly to deal with it
6 now instead of while he was testifying.

7 THE COURT: Any objections?

8 MR. RUEGGER: On behalf of the committee yes, Your
9 Honor. I believe that that's just an effort to introduce
10 opinion testimony, expert testimony through a witness who is
11 supposed to be a lay witness. And I don't believe Mr.
12 Oldman's opening relating to that figure opened any doors to
13 allow that kind of expert testimony. I would take it on a
14 question by -- I'm sorry, Your Honor.

15 MR. MONTGOMERY: I didn't mean to interrupt you.

16 THE COURT: I actually meant for him to remain quiet
17 so you could finish. All right.

18 MR. RUEGGER: I'm sorry, Your Honor. I wasn't sure
19 who was where.

20 MR. MONTGOMERY: We would simply object, Your Honor,
21 for the -- for the reasons that I think we've -- we've raised
22 with you in the past.

23 THE COURT: Okay. And please recall to speak right
24 into the microphone. Any other objections before I get back

25 to Mr. Stewart? Sir?

1 MR. SHERWOOD: Yeah, on behalf of AFSCME, Jack
2 Sherwood. We would join in the objection. We would submit
3 that any testimony by Mr. Moore about pension under funding is
4 clearly, I don't think there's any dispute that that type of
5 testimony involves extremely specialized knowledge, training,
6 and is way beyond the understanding of the average person.

7 It is without a doubt the subject of what should be
8 expert testimony. And for the city to try to use that
9 testimony in this proceeding by a witness who has not been
10 qualified as an expert, who has not rendered an expert report,
11 is improper.

12 And only experts can rely on -- on hearsay. And that is
13 what this witness would be doing. So on behalf of AFSCME, we
14 would also oppose any testimony by ths witness concerning the
15 -- the value of the -- the pension under funding. Thank you,
16 Your Honor.

17 MR. CIANTRA: Thomas Ciantra for the UAW, Your
18 Honor. We would join in those objections and note that Mr.
19 Moore is not an actuary and has not been proffered, we
20 understand, as a -- as an expert qualified to provide
21 actuarial testimony.

22 THE COURT: All right. Thank you. The -- go ahead,
23 I didn't mean to cut you off.

24 MR. STEWART: I think there may be some confusion.

1 good faith basis of Mr. Orr who has been accused of bad faith.
2 So that -- that is the nature of the proffer and there is a
3 hearsay exception for that.

4 THE COURT: Yes. The Court will admit the evidence
5 but for the limited purpose of addressing the challenge to Mr.
6 Orr's credibility and good faith.

7 MR. STEWART: Mr. Moore is being brought to the
8 courtroom from the hall because of the sequestration --

9 THE COURT: Yes.

10 MR. STEWART: -- agreement, Your Honor.

11 THE COURT: Step forward please, sir. And before
12 you sit down, please raise your right hand.

13 (WITNESS CHARLES MOORE WAS SWORN)

14 THE COURT: All right. Please sit down.

15 DIRECT EXAMINATION

16 BY MR. STEWART:

17 Q Good morning, Mr. Moore.

18 A Good morning.

19 Q Could you please give the Court your full name and your
20 home address?

21 A Charles Moore, M-o-o-r-e. And I am out of Birmingham,
22 Michigan.

23 Q And are you employed, Mr. Moore?

24 A Yes, sir.

25 Q And where do you work?

1 A Conway, MacKenzie, Inc.

2 Q And tell us if you could what Conway, MacKenzie, Inc. is.

3 A We are primarily a turnaround and restructuring firm.

4 Q How long have you worked for Conway, MacKenzie?

5 A For approximately 12 years.

6 Q Tell us if you could about your education, college and
7 after college if you have post graduate work.

8 A I have a Bachelor's Degree in Accounting from Michigan
9 State University. I have a Master's of Business
10 Administration from Michigan State University in Professional
11 Accounting. And I have various certifications as well.

12 Q Well, first of all, if you could give me the dates of
13 your degrees from Michigan State.

14 A Sure. I completed both degrees in 1994. It was a
15 combined degree program and both degrees are granted at the
16 same time.

17 Q And then you mentioned your professional certifications.
18 Could you tell us what those are?

19 A Yes, sir. I am a Certified Public Accountant, a
20 Certified Turnaround Professional, and I'm certified in
21 Financial Forensics.

22 Q And who does the certifications for those qualifications?

23 A The American Institute of Certified Public Accountants is
24 the CPA body. The Turnaround Management Association is the
25 body for the Certified Turnaround Professional designation.

1 And then the AICPA, the American Institute of Certified Public
2 Accountants, also does the financial forensics certification.

3 Q Tell us if you could about your employment since your
4 graduation from Michigan State.

5 A My first job was with Deloitte and Touche. I was
6 employed there for approximately five and a half years. After
7 that I was at a company by the name of Horizon Technology
8 where I was Chief Financial Officer and then I joined Conway,
9 MacKenzie.

10 Q And you told us you've been there 12 years.

11 A Yes, sir.

12 Q Where is Conway, MacKenzie headquartered?

13 A We are headquartered in Birmingham, Michigan.

14 Q And what Conway, MacKenzie office do you work out of?

15 A I work out of the Birmingham, Michigan office.

16 Q What title do you hold at Conway, MacKenzie?

17 A I'm Senior Managing Director and shareholder.

18 Q Okay. And tell us if you could what kind of practice you
19 have at the firm.

20 A My work primarily involves turnaround and restructuring
21 services. I also perform services in other areas of our firm
22 such as investment banking and litigation support.

23 Q Could you -- to the extent they're probably discloseable,
24 could you tell us some of the clients you have worked for

25 while at Conway, MacKenzie?

1 A Certainly. As you mentioned, there are client
2 confidentiality restrictions, but publicly known clients
3 recently would include the City of Detroit, Detroit Public
4 Schools, the Commonwealth of Puerto Rico, Jefferson County,
5 Alabama, Greektown Casino and Hotel.

6 Q Have your clients included unions?

7 A Yes, sir.

8 Q Which unions?

9 A I have done work on behalf of AFSCME and UAW.

10 Q And what project was that on if you can tell us?

11 A Yes. I was engaged jointly by AFSCME and the UAW related
12 to the Commonwealth of Puerto Rico.

13 Q Now in 2007, did you sit on a commission appointed by the
14 Michigan government?

15 A Yes, sir.

16 Q Please tell us what that work involved.

17 A The commission was the legislative commission on
18 government efficiency. It was a nine person panel appointed
19 by legislators from the State of Michigan.

20 Q And how long did you work with that commission?

21 A It was approximately a two year assignment.

22 Q And what did you do in those two years?

23 A The primary objective of the commission was to find
24 operational efficiencies for the state government.

25 Q Did there come a time in 2012 you began working for the
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1 City of Detroit?

2 A Yes.

3 Q And tell us about that work.

4 A In late 2012, Conway, MacKenzie did some pro bono work
5 for the City of Detroit.

6 Q And what was -- what work -- what work -- sorry, what
7 work did you do?

8 A Conway, MacKenzie was asked to perform analysis on
9 certain areas related to cashiering operations for the city.

10 Q And you'd better tell us what a cashiering operation is.

11 A Cashiering generally means areas where cash is coming
12 into the city.

13 Q Okay. And then what areas did you look into?

14 A There were, as I mentioned, about five areas. Some were
15 more of a focus than others. Municipal parking was a primary
16 area of focus. We also looked at fire operations including
17 the fire marshal where fees are generated. We also looked at
18 aspects of building safety and engineering.

19 Q Did there come a time earlier this year when Conway,
20 MacKenzie was hired by the City of Detroit to -- on a non-pro
21 bono basis to do work for the city?

22 A Yes, sir.

23 Q And how did that come about?

24 A The City of Detroit issued an RFP, a request for proposal
25 in November of 2012 for restructuring services. Conway,

1 MacKenzie was one of the firms that responded to that RFP and
2 was eventually engaged in January of 2013.

3 Q And by restructuring services, what are you referring to?

4 A Restructuring services is not really a defined term, but
5 because of the financial distress that the city was
6 experiencing, there was a desire to bring in outside expertise
7 to help the city deal with that financial distress.

8 Q And so Conway, MacKenzie became a operational
9 restructuring advisor to the city?

10 A Yes, sir.

11 Q What areas did you look at?

12 A We've looked at pretty much every area of the city's
13 operations.

14 Q Okay. Let me ask about some in particular. What if
15 anything were you asked to do in terms of looking at the
16 city's operations in the area of public safety?

17 A Public safety involves multiple areas. It includes
18 police, fire, EMS, and Department of Homeland Security. We
19 spent quite a bit of time understanding how those departments
20 function currently, what are the major impediments to
21 improving their performance, and working with individuals in
22 those departments to develop a plan for improving performance.

23 Q Tell me if you could how did you go about doing this
24 work?

25 A The city has had multiple consultants performing work
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1 over the last several years. And so one of the items that
2 Conway, MacKenzie did was to first understand work that has
3 been done in the past by outsider organizations so that we
4 could leverage that work.

5 In addition to that we worked very closely with the
6 people within the departments as well as outside organizations
7 to not only gather facts in terms of how the department is
8 performing currently, but also to benchmark as to how the
9 department stacks up compared to other areas that would be
10 relevant.

11 Q Did there come a time when you made recommendations to
12 the city relating to public safety?

13 A Yes, sir.

14 Q And what did you recommend?

15 A In the June time period of this year there was a document
16 that was put together. A creditor proposal which incorporated
17 our work and specifically had initiatives related to public
18 safety in both restructuring expenses as well as capital
19 expenditures.

20 Q And if we could, let's put up exhibit -- if we could,
21 let's put up Exhibit 43. Mr. Moore, is this the creditor
22 proposal that you -- you referred to a few minutes ago?

23 A This appears to be the title so, yes.

24 Q And could you direct us to the portion of this that

1 just a few minutes ago?

2 A If I recall correctly, this document is about 130 pages.
3 There are multiple areas where recommendations related to
4 public safety would exist. If -- if we're able to scroll
5 through it, I could get you those pages.

6 I can tell you at the very end of the document that has a
7 summary listing of capital expenditures which you would be
8 able to look at from the standpoint of public safety.

9 Q We will -- and we will do that once we've covered all
10 these areas. And then what did you do if anything with regard
11 to the Water and Sewer Department?

12 A Conway, MacKenzie was asked to prepare a long term, long
13 term being defined as ten year business plan for both the
14 water and sewer funds.

15 Q And what do you mean when you say business plan?

16 A A business plan essentially involves how the department
17 will operate over a period of time. Anticipated revenues,
18 expenses, as well as other cash needs such as capital
19 improvements.

20 Q And did there come a time when you made a recommendation
21 to the city or to the emergency manager based on the work that
22 you had done?

23 A Yes.

24 Q And when did you make that recommendation?

25 A At the end of September of 2013 we delivered that ten
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1 year business plan for the water and sewer funds.

2 Q Now have you also been asked to look into the
3 monetization of the Water and Sewer Department?

4 A Yes, sir.

5 Q When did you begin your work looking into the
6 monetization of that department?

7 A The business plan which our work began in July of 2013,
8 the development of the business plan for the water and sewer
9 funds was to be used as a basis for evaluating strategic
10 alternatives for the water and sewer funds. And among those
11 strategic alternatives was the potential creation of a
12 regional water authority. And that was one area that this
13 business plan is currently being used.

14 Q And how, if you can disclose to us, how would the
15 creation of a regional water and sewer authority lead to its
16 monetization?

17 A What is currently being discussed, and -- and this is a
18 publicly available aspect. And I -- and I have to be careful
19 because the negotiations are ongoing and they are
20 confidential.

21 But what has been publicly discussed is the formation of
22 a regional authority would potentially involve the City of
23 Detroit leasing the water and sewer assets to a regional
24 authority and then receiving a payment in return.

25 Q So the monetization would take the form of lease
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1 payments?

2 A Yes, sir.

3 Q And did I hear you correctly this is under discussion as
4 we speak?

5 A Yes, sir.

6 Q Let me direct your attention to the Detroit -- Detroit
7 Department of Transportation. What if anything was Conway,
8 MacKenzie asked to do with regard to DDOT?

9 A DDOT as you mentioned, the Department of Transportation
10 is another department that we looked at and there are both
11 short term as well as longer term items that we evaluated
12 there.

13 In the short term, we looked at ways of potentially
14 improving the operation perhaps through as an example fare
15 increases to try to get more revenue into the department.
16 Identify ways that the -- that the department could operate
17 more efficiently.

18 As an example getting more buses on the road, maintenance
19 tends to be an issue in that department. And also the
20 management of the department. The longer term is still a
21 question and that could involve eventually merging into more a
22 regional transportation authority.

23 Q And that merger would be done for what reason?

24 A If the authority, if a regional authority could provide
25 better service to residents and it could also save the city

1 money, then that certainly is something that we would look at.

2 Q Were you also asked to look at the Detroit Lighting
3 Authority?

4 A Yes.

5 Q What if anything did you do with regard to the Detroit
6 Lighting Authority?

7 A Mr. Stewart, I'll just clarify. You're referring to the
8 Public Lighting Authority.

9 Q Public Lighting.

10 A Yes.

11 Q I'm sorry. Thank you.

12 A The -- the Public Lighting Authority was an authority
13 established within the past year and the primary purpose of
14 that lighting authority is to improve the lighting within the
15 city. That needs to be funded. And then the efforts to
16 replace lights will occur.

17 And so we worked with the city and the state as it
18 relates to the initial financing for the Public Lighting
19 Authority which is ongoing right now. As well as we were
20 involved with a request for proposal related to the management
21 of the Public Lighting Department.

22 Q What were you asked to do if anything with regard to tax
23 and revenue collection operations for the city?

24 A The city takes in a variety of taxes. The primary items
25 for taxes are property taxes, income taxes, and utility taxes

1 among others.

2 And we looked at those operations as to how they could be
3 made more efficient as well as potentially increase the amount
4 of revenue that was coming in.

5 Q What did you find in the course of your investigation
6 into the operations of the city's tax and revenue functions?

7 A As it relates to property taxes, there have been efforts
8 that were underway for the last few years where the city had
9 been using some outside assistance to try to improve that
10 area.

11 The city, its ability to operate in the property tax
12 area, was very broken. Simple things such as getting bills
13 out on time and to the right addresses, as well as having the
14 right number of resources available to accept payment were
15 both significant deficiencies.

16 Q Were -- were measures implemented to correct those
17 deficiencies?

18 A Yes, sir.

19 Q Tell us if you could what those measures were or are?

20 A There are a number of things as it relates to property
21 tax collections that are underway. First of all, the property
22 tax billing process has been improved significantly and so the
23 bills have gone out on time.

24 In addition to that, a number of additional resources

25 were brought in in July and August of this year in order to be
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1 able to process the receipts, the -- the payments that
2 residents and others would make.

3 We also changed some of the bank information so that
4 payments would be received quicker as well as larger amounts
5 for property tax payments could actually be received.

6 Q And do I understand correctly you're continuing to work
7 in the area?

8 A Yes, sir.

9 Q What did you do with regard to investigating the problem
10 of housing blight here in the City of Detroit?

11 A Blight which is the term that most people use for
12 structures as well as non-structural areas that are -- could
13 be abandoned, burned out buildings, overgrowth of brush,
14 certainly was an area that we kept running into in a number of
15 the departments that would drive department activity.

16 As an example within the fire department, approximately
17 60% of the fire department's runs relate to abandoned
18 buildings. We also noticed on the property tax side that
19 areas where there was significant amounts of blight, both
20 structural and non-structural, that property taxes -- or
21 property tax values would deteriorate very quickly.

22 And so there was an initiative identified as part of the
23 plan that was put together to eliminate the residential blight
24 within the City of Detroit.

1 non-structural blight?

2 A Yes, Your Honor.

3 THE COURT: What is that?

4 A If you think of a lot, a residential lot, some of these
5 lots don't have a structure on them anymore, however, there is
6 tremendous overgrowth. And so it hides what activity may be
7 going on in that lot. And that also can be a -- an area that
8 breeds crime.

9 Q Now, have you heard the terms restructuring and
10 reinvestment as used with respect to the work of the emergency
11 manager?

12 A Yes, sir.

13 Q In fact was that not something also discussed in the June
14 14 presentation?

15 A Yes, sir.

16 Q Could you tell us please, what is meant by those terms?
17 And let's start with restructuring.

18 A Restructuring refers to how the departments operate. And
19 when Conway, MacKenzie first began its efforts with the
20 departments, very often we find that there are areas where
21 costs can be reduced and so that is a big focus in the
22 turnaround industry in general is reducing expenses.

23 What we found within the departments is that a number of
24 the -- the departments were severely broken. The -- as a

25 result of a number of cost cuts that have happened over the
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1 years, many departments couldn't perform the most basic
2 functions I referred to earlier, just the inability to get
3 property tax bills out.

4 And so when we use the word restructuring we're talking
5 about changing how the department operates. And in many
6 instances what that actually revolved around was adding
7 expenses so that departments could function and services could
8 be performed.

9 Q Were you able to determine whether the benefit from
10 adding these employees would outweigh the expense of hiring
11 them?

12 A In addition to the expenses that we identified, we also
13 identified a number of revenue initiatives as well.

14 Q If you could, just explain to us what the revenue
15 initiatives were? Actually I should first ask what were the
16 amount of the expenses?

17 A The amount of expenses, added expenses over the ten year
18 period which is the period that we developed for the
19 restructuring and reinvestment plan, was approximately
20 \$250,000,000.

21 Q And what did you calculate the benefits would be
22 financially from the restructuring?

23 A We had other revenue initiatives where revenue
24 initiatives would revolve around areas where the city could
25 receive additional cash in flows revenue of approximately

1 \$280,000,000. There were some offsets to that as well as we
2 looked at changing some departments it would result in some
3 lower revenue as well. And so as a result there was net
4 revenue improvements of about \$250,000,000 as well.

5 Q Now then the term was used reinvestment.

6 A Yes, sir.

7 Q Tell me -- or tell the Court what you mean -- or meant
8 when you used the term reinvestment.

9 A Reinvestment is referred to as the category of planned
10 expenditures that would relate to the infrastructure of the
11 city. As an example whether that is facility improvements,
12 vehicle fleet, information technology, or even in the case of
13 blight, spending on blight elimination.

14 Q And why is reinvestment -- this was something you
15 recommended?

16 A Yes, sir.

17 Q Why did you recommend it?

18 A What became very clear is that over the years as the
19 city's finances suffered and deteriorated that there was not
20 the necessary reinvestment made in the structural assets. As
21 an example, there are parking garages where large portions of
22 the parking garages are actually blocked off because the
23 structures themselves are in disrepair. And that's a source
24 of revenue for the city.

1 continued issues with just performing functions. And so what
2 became very clear to Conway, MacKenzie and formed the basis of
3 our recommendations, is that without spending money on the
4 infrastructure, the ability to perform services and actually
5 have hard assets where those services are performed, would
6 continue to be challenged.

7 Q Now is the removal of blighted structures part of
8 reinvestment?

9 A Yes, sir.

10 Q Okay. And why as a matter of economics, is removal of
11 blighted properties -- well, you did recommend removal of
12 blighted properties, correct?

13 A Blighted residential properties, yes.

14 Q Why is that economically sensible to do?

15 A As I mentioned before, blight seems to touch on a number
16 of the areas that we've looked at whether it is public safety,
17 property taxes, or even appearance. And so by spending money
18 on eliminating that, you change the dynamics of where people's
19 time gets spent as well as the basis for how the city receives
20 revenue.

21 Q Did you have an estimate of what it would cost to remove
22 the blighted residential properties?

23 A Yes, sir.

24 Q And what was your estimate?

25 A Five hundred million dollars during this time period.

1 Q And the time period for removal was how many years?

2 A We forecasted \$500,000,000 over six years.

3 Q And where did the number 500,000,000 come from?

4 A This was an estimate based on discussions with people
5 that have been involved with blight removal in the past within
6 the city. The city has been undertaking blight removal
7 efforts for some time as well as outside parties that have
8 been involved with blight removal as well.

9 Q Now --

10 MR. RUEGGER: I'm sorry, Mr. Stewart.

11 MR. STEWART: Sure.

12 MR. RUEGGER: I would object to the last testimony
13 as -- as hearsay, Your Honor.

14 THE COURT: Would you speak into the microphone,
15 please?

16 MR. RUEGGER: Objection to the last question and
17 answer as it called for hearsay and his answer was hearsay. I
18 also want to object. I believe this is bordering into expert
19 testimony and the witness is supposed to be a lay witness.

20 MR. STEWART: Your Honor, he made recommendations
21 that resulted in a number for restructuring the reinvestment
22 during the openings yesterday. That number too is challenged.
23 In particular I remember one of the openings saying how could
24 the city in good faith budget for this when it is not going to
25 be able to pay others.

1 So as a matter of dealing with the good faith issue and
2 the reliability of the data, I wanted to adduce testimony of
3 where these numbers came from.

4 THE COURT: Is that the sole purpose that you're
5 offering this for?

6 MR. STEWART: At this point, yes.

7 THE COURT: All right. With that limited purpose,
8 the Court will overrule the objection.

9 Q I have one further question in this area which is
10 including the \$500,000,000 for blight removal, what was the
11 total number you developed for reinvestment and restructuring
12 for the city?

13 A It was approximately \$1,000,000,000.

14 Q Over ten years?

15 A Over ten years, yes. Excuse me, Mr. Stewart. In your
16 question, did you ask restructuring and reinvestment?

17 Q I did.

18 A Okay. The total with both of those would be
19 approximately 1.25 billion dollars. A billion on the
20 reinvestment.

21 Q Let me move to another area. As part of your work for
22 the city or the emergency manager, were you asked to do
23 something called tax benchmarking?

24 A Yes, sir.

25 Q Could you tell us what tax benchmarking is?

1 A As part of the -- our initial efforts when we were
2 looking at potential sources of cash, we looked at the current
3 level of taxation for residents and businesses within the City
4 of Detroit to understand whether that -- whether those could
5 be increased as a potential source of cash. And so we looked
6 at the City of Detroit's taxation and we compared that to a
7 few of the surrounding communities.

8 Q And what did you conclude?

9 A That the City of Detroit residents were taxed far more
10 than surrounding communities. And in fact had the highest
11 taxation within the State of Michigan.

12 MR. STEWART: Your Honor, this is a good breaking
13 point for me, but I'm prepared to continue if the Court --

14 THE COURT: No. No, let's -- let's stop now for
15 lunch and reconvene at 1:45, please.

16 (WITNESS CHARLES MOORE WAS TEMPORARILY EXCUSED AT 12:15
17 P.M.)

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

19 (Court in Recess at 12:15 p.m.; Resume at 1:45 p.m.)

20 THE CLERK: Court is in session. Please be seated.
21 Recalling case number 13-53846, City of Detroit, Michigan.

22 MR. IRWIN: Good afternoon, Your Honor. Geoff Irwin
23 from Jones, Day. Might we return to a brief housekeeping
24 matter from yesterday morning just to update the Court?

25 THE COURT: Sure, go ahead.

1 MR. IRWIN: In regard to the -- the UAW motion to
2 compel, and I've -- I've conferred with Mr. Ciantra on this.
3 That you may recall that there were some Jones, Day research
4 memoranda that were the subject of the motion to compel.

5 And I indicated that we would do our very best to
6 investigate whether these memoranda were in fact shared with
7 the state. And that if they were we would in fact disclose
8 them to -- to objectors here.

9 We have done our very best and it is proving too
10 difficult to know. People just don't recall as they look at
11 individual memoranda whether they did or didn't.

12 So I -- I have conferred with Mr. Ciantra. I am
13 perfectly prepared to share them with the Court. I think the
14 Court invited for us to submit them in camera for the Court to
15 consider before deciding what -- what to do and I'm prepared
16 to do that.

17 THE COURT: Okay. I will accept that and give you a
18 decision tomorrow morning.

19 MR. CIANTRA: Thank you, Your Honor. In -- in
20 connection with that, I would just ask that the Court focus
21 with respect to the cover email that was -- that described --

22 THE COURT: Is that there too, or is that in
23 evidence?

24 MR. CIANTRA: I believe -- I believe it is -- is it
25 there?

1 MR. IRWIN: It's not in -- it's not in here.

2 MR. CIANTRA: But it was -- it was read into the
3 record yesterday by Ms. Green.

4 THE COURT: Okay. So I think I have -- so it's in
5 here? Objecting parties opening statement, RSC867?

6 MR. CIANTRA: I don't -- Your Honor, I don't believe
7 -- I don't believe it is in there. I believe Ms. Green read
8 -- read it into the record in connection with her argument on
9 -- on the retirement systems motion.

10 THE COURT: Oh, oh, okay, all right. So we'll have
11 to get it from -- from the transcript.

12 MR. CIANTRA: If -- I don't have it right --

13 THE COURT: Ms. Green, can you help us?

14 MS. GREEN: The date of the email is listed in the
15 PowerPoint presentation. And it's June 5th, 2012. The whole
16 email I don't believe is in it. I think it's maybe a piece of
17 it perhaps, but --

18 THE COURT: Well, let me just ask. Does anyone have
19 the email?

20 MS. GREEN: I do. It is in our exhibit binders that
21 we gave to the Court.

22 THE COURT: Can you -- can you give me a number?

23 MS. GREEN: I will give you the number in one
24 second. I will look it up. I have my binder back here.

25 MR. CIANTRA: Thank you for the Court's patience
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1 with this, Your Honor.

2 THE COURT: Well, Ms. Green, why don't you take your
3 time and look for that, or do you have it right at hand there?

4 MS. GREEN: I have it, yeah.

5 THE COURT: Oh, all right.

6 MS. GREEN: I believe it is 844 -- it's 844 in the
7 retirement systems binder.

8 THE COURT: Okay. We are all set. Thank you. And
9 we got the envelope so we're all set. May we proceed? You
10 may proceed, sir.

11 MR. STEWART: Thank you, Your Honor.

12 (WITNESS CHARLES MOORE RESUMED THE STAND AT 1:49 P.M.)

13 BY MR. STEWART:

14 Q Mr. Moore, let me direct your attention to June 14, 2013.
15 Did -- did you have occasion that day to attend a meeting
16 given by the emergency manager?

17 A Yes, sir.

18 Q What was the purpose of that meeting?

19 A The purpose of that meeting was to present what is
20 referred to as the proposal to creditors, to various creditors
21 of the City of Detroit.

22 Q Can we put up Exhibit 43, please? And do you see on the
23 monitor in front of you, Mr. Moore, a document Exhibit 43?

24 A Yes.

25 Q What is that?

1 A This appears to be the title of that presentation.

2 Q And that was a presentation made that day?

3 A Yes, sir.

4 Q What role if any did you have in making the presentation?

5 A I spoke to a couple of parts in that presentation.

6 Q How long was your part of the meeting?

7 A I would estimate about 15 minutes or so.

8 Q And what was the general reason for the meeting if you
9 know?

10 A The general reason for the meeting as I indicated was to
11 present the current situation that the city found itself in.
12 And the plan that the city wanted to pursue regarding
13 restructuring and reinvestment. As well as to lay out a
14 proposal as to how various classes of creditors would be
15 treated.

16 Q Were particular questions asked of you that day?

17 A Not that I recall.

18 Q Let me ask you if you could, to go to -- and let's also
19 ask the -- Ms. Lori, to go to Page 98 of the document which
20 you can see on your monitor. And is this -- actually let's go
21 one page earlier, just so the witness has his attention
22 focused on it.

23 Just one -- one -- one page before. Do you see the page
24 that's before you?

25 A Yes.

1 Q Then go -- then go back to the page we just had. And
2 this page as well?

3 A Yes.

4 Q Do you understand what these pages depict?

5 A Yes.

6 Q And what do they depict?

7 A This is a ten year financial forecast indicating the
8 approximate amount of cash that was anticipated to be
9 available for unsecured claims.

10 Q And that was --

11 MR. SHERWOOD: Your Honor, I -- I object to this
12 testimony.

13 THE COURT: All right. First of all, pull the mike
14 closer. Second of all, please talk louder.

15 MR. SHERWOOD: I object on the grounds that this is
16 improper opinion testimony from a non-expert.

17 THE COURT: Well, the last question certainly didn't
18 ask him an opinion, so to that extent it's overruled. When
19 you think there is an opinion being given I invite your
20 objection at that time.

21 MR. SHERWOOD: Thank you, Your Honor.

22 Q And now, Lori, could be blow up the box? There. Do you
23 see the part of that page which has now been expanded to fill
24 the monitor screen?

25 A Yes.

1 Q What -- what is this?

2 A This is a listing of the estimated unsecured claims as of
3 June 14th, 2013.

4 Q And when you use the phrase unsecured claims, what are
5 you referring to?

6 A This is based on claims for which there did not appear to
7 be a specific security interest.

8 Q Claims by who?

9 A Creditors of the City of Detroit.

10 Q And claims against who?

11 A Against the City of Detroit.

12 Q Let me ask you to direct your attention to the line that
13 says unsecured pension and OPOB. Do you see that?

14 A Yes.

15 Q And then do you see the area that has now just been
16 highlighted for you?

17 A Yes.

18 Q And what is that?

19 A These are the estimated unfunded amounts related to the
20 two pension systems of the City of Detroit.

21 Q Unfunded in what sense?

22 A The liability for the pension system in excess of the
23 plan assets of the pension system.

24 Q And those two numbers add up to about 3.474 billion
25 dollars?

1 A Yes, sir.

2 Q Do you know where that number came from?

3 A Yes.

4 Q Where did it come from?

5 A From me.

6 Q And why did -- who did you give it to?

7 A I gave it to Mr. Malhotra.

8 Q And anyone else?

9 A I gave it to the other restructuring advisors that would
10 have put it into the document.

11 Q And did you also share it with Mr. Orr?

12 A Yes, sir.

13 Q And where did you get it from?

14 A I got it from Milliman.

15 Q And for the record who is Milliman?

16 A Milliman is the actuary engaged by the City of Detroit.

17 Q Do you know how Milliman derived those numbers?

18 A Yes.

19 Q And could you tell us briefly how they did it and then
20 I'm going to show you some -- some exhibits.

21 MR. RUEGGER: With respect, Mr. Stewart, objection.

22 I believe --

23 THE COURT: And into the microphone, please.

24 MR. RUEGGER: This is getting into expert opinion

25 testimony, Your Honor.

1 THE COURT: The objection is overruled.

2 A Would you please restate the question?

3 Q Could you tell us how you -- how Milliman to your
4 knowledge came up with these numbers?

5 A Yes. The restructuring team has a task force
6 specifically --

7 THE COURT: Excuse me one second. How do you know
8 how Milliman came up with these numbers?

9 A Your Honor, I lead a task force for the City of Detroit
10 on pensions and I specifically received this information from
11 Milliman.

12 THE COURT: Okay. You may answer the question.

13 A The task force that I indicated that is specifically
14 focused on pensions asked Milliman to run a variety of
15 scenarios.

16 Q Now let me -- and do you understand how Milliman in these
17 scenarios came up with its numbers?

18 A Yes, sir.

19 Q And how did they come up with their numbers?

20 A Milliman used the Gabrielle Roeder actuarial evaluation.

21 Q Stop you there. Who is Gabrielle Roeder?

22 A Gabrielle Roeder is the actuary that is used by each
23 pension system.

24 Q Okay. Sorry to have interrupted your answer.

1 hearsay objection to this. I think this is just -- he is
2 testifying to out of Court statements by -- presumably by
3 actuaries at Milliman as to how they derived numbers. It's --
4 it's rank hearsay.

5 THE COURT: And who was Milliman retained by?

6 MR. SHERWOOD: Milliman was retained by the City of
7 Detroit.

8 MR. STEWART: No, I think it was retained by the
9 pension --

10 THE COURT: Who was Milliman retained by?

11 A The City of Detroit.

12 MR. STEWART: And, Your Honor --

13 THE COURT: And you --

14 MR. STEWART: Yes. It's being offered for state of
15 mind. As we -- as I -- before he took the stand I raised this
16 saying, we're not offering these for the truth, we're offering
17 these numbers to rebut the argument that has been made that
18 Mr. Orr did not have a good faith basis in this document and
19 other documents for representing that the pension claims would
20 be 3.5 million dollars.

21 THE COURT: Did you tell Milliman -- I'm sorry, did
22 you tell Mr. Orr how Milliman came up with these numbers?

23 A Yes, sir.

24 THE COURT: All right. Tell us what you told Mr.

25 Orr.

1 A I told Mr. Orr that Milliman had taken the Gabrielle
2 Roeder actuarial evaluation and modified a couple of
3 assumptions based on that actuarial valuation.

4 THE COURT: All right. The Court will receive that
5 testimony again only for purposes of -- of demonstrating what
6 Mr. Orr was told, not for the truth of it.

7 Q And did you have reason to believe that Milliman's
8 conclusions were reliable?

9 MR. CIANTRA: I would object. I'm going to again
10 object to this. He's not an actuary. He's not being
11 proffered for actuarial expertise. I don't know what the
12 basis of him offering that opinion would be.

13 MR. STEWART: Foundational question, Your Honor, but
14 also once again, since what we're talking about is good faith
15 reliance an element of reliance is reliance --

16 THE COURT: All right. Well, here's a better
17 question. Did you express to Mr. Orr any doubt about the
18 reliability of the information that you had given him?

19 A No, Your Honor.

20 Q Let me put up, let's put up Page 1 of Exhibit 69, please.
21 Can you tell me what Exhibit 69 is?

22 A This is the draft actuarial evaluation report from
23 Gabrielle Roeder for the general retirement system of the City
24 of Detroit as of June 30th, 2012.

1 Q And the general retirement system is the system
2 representing non-uniformed employees of the City of Detroit?

3 A Yes, sir.

4 Q Do you know what percentage of those non-uniformed
5 employees work for the Department of Water and Sewer?

6 A Approximately 40% of the contributions that typically are
7 made relate to water and sewer employees.

8 Q Now let me ask if we could please put up Page 3 of this
9 document.

10 THE COURT: Is this in evidence?

11 MR. STEWART: It is in evidence. Yes, Your Honor.
12 It has not been objected to.

13 Q And in particular could I ask the Court technician to
14 expand the box at the bottom? First of all, have you seen
15 this document before, Mr. Moore?

16 A Yes.

17 Q And tell us what it is.

18 A This is the actuarial evaluation as of June 30th of 2012
19 in draft. And this indicates what the estimated unfunded
20 actuarial accrued liability is as of that date and the
21 previous year.

22 Q And how does one get from the information you see here
23 for the -- for the GRS, in other words the general retirement
24 system, to the amount of the unsecured claim the GRS would
25 have?

1 A Focusing on the column on the left which is as of June
2 30th of 2012, the eight hundred, approximately \$830,000,000 --
3 Q Go back, the same box we need to keep that up. There we
4 go.

5 THE COURT: Okay.

6 A The approximately \$830,000,000 in the column on the left
7 is the UAAL, unfunded actuarial accrued liabilities.

8 Q And may I stop you there and ask you to explain to us
9 what a UAAL is?

10 A A UAAL is based on an actuarial calculation for
11 liabilities and assets. So the first item in terms of the
12 unsecured claim amount was to look at the market value of the
13 assets rather than the actuarial value of the assets.

14 The actuarial value of the assets at that date was
15 approximately 2.8 million dollars. The actual market value so
16 the -- the value of the assets at that point in time was
17 actually approximately \$650,000,000 lower than what was showed
18 for actuarial purposes.

19 In addition to that, the top line, the actuarial accrued
20 liabilities is based on a discount rate and the discount rate
21 that is used here is 7.9% and in the claim, unsecured claim
22 calculation, a discount rate of 7% was used.

23 Q And so how using those numbers do you come up with the
24 amount of the claim, the unsecured claim of this pension plan
25 against the city?

1 A Yes, sir.

2 Q So tell me how you then take those numbers and turn it
3 into a figure.

4 A The accrued asset number, 2.8 million.

5 MR. RUEGGER: Your Honor, I apologize for the
6 tardiness on this, but I believe Mr. Stewart was misinformed.
7 Sixty-nine was objected to on hearsay and expert opinion and
8 foundation grounds.

9 MR. STEWART: I stand corrected. I had been told it
10 had not been objected to.

11 MR. RUEGGER: We would press those objections, Your
12 Honor.

13 MR. STEWART: That's confirmed, it was indeed
14 objected to. Your Honor, I believe the witness has laid a
15 foundation for it as a document he has seen, has worked with.
16 Let me ask two more questions, then I'm going to move it into
17 evidence so then it can be --

18 MR. RUEGGER: Well, I object to the testimony. Is
19 it foundation testimony?

20 THE COURT: I'll let the witness testify or be asked
21 about foundational questions to see if it's admissible and
22 then we'll move on from there.

23 Q So let's put up the cover page of the document again.
24 This is a document you've seen before, Mr. Moore?

25 A Yes, sir.

1 Q How did it come to you?

2 A I received this as part of my role on the pension task
3 force.

4 Q And you received it from who?

5 A We received these -- this report from the retirement
6 system itself.

7 Q And Gabrielle Roeder is employed by the retirement
8 system?

9 A Yes, sir.

10 Q And what use did you make of the document?

11 A I reviewed this document for actuarial information
12 related to the general retirement system.

13 MR. STEWART: I'd move it into evidence, Your Honor,
14 on the grounds it is, if nothing else, an admission of a party
15 opponent since the GRS is an objector here and this is an
16 agent of an objector.

17 MR. RUEGGER: It's hearsay and it's expert opinion
18 and it's coming in through a lay witness, Your Honor. We
19 press the objection.

20 THE COURT: The objection is overruled. The
21 document 69 is admitted in evidence.

22 (City's Exhibit 69 was admitted)

23 Q Now let's please go back to Page 3. So Mr. Moore, let's
24 go back to our calculation. We have at the bottom unfunded

25 actuarial accrued liabilities and then two numbers above it.

1 From the numbers you have described -- described to us --

2 THE COURT: I want to be -- I want to be sure what
3 we're doing here again.

4 MR. STEWART: Yes.

5 THE COURT: This evidence is solely in relation to
6 the representation that Mr. Orr made to the Court regarding
7 the unfunded pension liability.

8 MR. STEWART: Yes.

9 THE COURT: Well, in that regard again, I'm much
10 more interested in what the witness told Mr. Orr than how he
11 did his calculations or really anything else. Because
12 otherwise it sounds too much like him testifying as an expert.

13 MR. STEWART: Let's take the document down. I think
14 Your Honor already asked that question of the witness, but --

15 THE COURT: Well, let's just be sure.

16 MR. STEWART: Yes.

17 THE COURT: Did you tell Mr. Orr anything about how
18 you made the adjustments that you made?

19 A Yes, sir.

20 THE COURT: What did you tell him?

21 A I told Mr. Orr that two variables were adjusted based on
22 the Gabrielle Roeder actuarial evaluation. And that included
23 the -- using the market value of the assets as well as using a
24 different discount rate.

1 more specific about those two adjustments than just that much?

2 A No, sir.

3 THE COURT: All right. That's it.

4 MR. STEWART: Let me then wrap up very quickly with
5 this witness, Your Honor.

6 Q Did you attend other meetings with -- held on behalf of
7 the emergency manager with creditors of the city?

8 A During what time period?

9 Q After June 14th?

10 A Yes, sir.

11 Q Okay. And let me direct your attention in particular to
12 a meeting held on June 20th. Do you remember two meetings held
13 that day?

14 A Yes, sir.

15 Q One in the morning and one in the afternoon?

16 A Yes.

17 Q Let me ask you about the afternoon meeting. Was that a
18 meeting with representatives of the non-uniformed employees of
19 the city?

20 A I can't recall. I -- I think that the non-uniform was
21 the first meeting and then uniform was the second meeting.

22 Q And what was the purpose of those meetings?

23 A The purpose of those meetings was to lay out information
24 more information from the June 14th presentation regarding the
25 financial situation that the city was in. And then specific

1 information related to health care and pension obligations.

2 Q Do you remember any questions being asked at either of
3 those two meetings?

4 A Yes.

5 Q And what do you remember?

6 A I recall one question from an attorney representing the
7 UAW questioning how we -- we being the City of Detroit would
8 be able to accomplish some of what was in the proposal outside
9 of bankruptcy.

10 Q And do you remember what answer was given to that person?

11 A I believe that the answer that was given by counsel to
12 the city was we want to move forward with these discussions
13 and determine whether or not something could actually occur
14 with all the parties outside of Court.

15 Q Thank you. Could we put Exhibit 70 on the screen,
16 please? Mr. Moore, Exhibit 70 has been -- for identification
17 has been placed on the screen before you. Have you seen this
18 document before?

19 A Yes, sir.

20 Q What is it?

21 A This is the actuarial evaluation report as of June 30th of
22 2012 for the police and fire retirement system.

23 (City's Exhibit 70 was identified)

24 Q And who was it prepared by?

25 A By Gabrielle Roeder.

1 Q How did it come to you?

2 A Through my role on the task force, pension task force.

3 Q And what use did you make of the document?

4 A I used this document to obtain actuarial and other
5 information on the pension system.

6 MR. STEWART: Your Honor, I would move Exhibit 70
7 into evidence on the same grounds as recited in moving Exhibit
8 69 into evidence.

9 MR. RUEGGER: Your Honor, I object based on the
10 statements Your Honor just explained on the limited use of
11 this -- these documents and this testimony. I don't see how
12 this document moves it along.

13 It's -- it's hearsay and expert opinion just as 69 is.
14 But as Your Honor said, if -- if the issue is really what Mr.
15 Moore said to Mr. Orr, I'm not sure how this document adds to
16 the -- the evidence. So we object on that ground.

17 THE COURT: All right. The objection is overruled.
18 Exhibit 70 is admitted into evidence for all purposes.

19 (City's Exhibit 70 was admitted)

20 MR. STEWART: Thank you. No further questions, Your
21 Honor.

22 MR. CIANTRA: The first thing I want to do is make
23 sure that this microphone is positioned correctly.

24 THE COURT: It sounds good, yes.

25 MR. CIANTRA: Before I even say my name for the
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1 record, I want to make sure.

2 THE COURT: I appreciate that very much, sir.

3 CROSS EXAMINATION

4 BY MR. CIANTRA:

5 Q Good afternoon, Mr. Moore. I'm Thomas Ciantra as you
6 know. I'm the lawyer for the UAW.

7 A Yes, sir.

8 Q Now you had mentioned in your direct examination that you
9 formed part of a pension task force, is that correct?

10 A Yes, sir.

11 Q And that task force was created when?

12 A In February or March of this year.

13 Q So around the time the emergency manager was -- was
14 appointed, would that be correct?

15 A Prior to the emergency manager being appointed.

16 Q All right. Let's focus on from the time the emergency
17 manager was appointed. You remained on the task force
18 obviously?

19 A Yes, sir.

20 Q There were also individuals from the Milliman actuarial
21 consulting firm who were on the task force?

22 A Yes, sir.

23 Q And there were lawyers from the Jones, Day law firm that
24 were on the task force?

25 A Yes.

1 Q All right. And that task force met on a regular basis?

2 A Met or had calls, yes.

3 Q Okay. And on -- on some of those occasions was Mr. Orr
4 included in -- in those task force meetings?

5 A Not that I recall.

6 Q Now you testified that there was a meeting with Mr. Orr
7 where you reviewed with him the approximately 3 -- 3.5 billion
8 dollar number with respect to the pension plan under funding,
9 is that correct?

10 A Yes, sir.

11 Q There was -- there was one meeting, or was that multiple
12 meetings?

13 A There were multiple meetings where we discussed this
14 number in combination with other numbers.

15 Q Okay. And at the meeting where you discussed how the --
16 how the number -- how the known -- let me step back. The
17 number was actually -- you didn't actually do those
18 calculations, the Milliman Actuarial Firm did those
19 calculations, correct?

20 A Correct.

21 Q So you were relaying to Mr. Orr what the results of the
22 work of the Milliman firm had been?

23 A Yes.

24 Q And you did that at a -- an in person meeting?

25 A There were both in person meetings and calls with Mr.

1 Orr.

2 Q Okay. Let's focus on the in person meetings. Were the
3 other members of the task force present at that in person
4 meeting?

5 A Well, there were multiple in person meetings. I can't
6 recall if anyone else from the task force was in the in person
7 meetings or not.

8 Q Okay. Were -- were lawyers from Jones, Day in those
9 meetings with Mr. Orr?

10 A Yes.

11 MR. CIANTRA: I'm going to move, Your Honor, that --
12 that his testimony with respect to those meetings be struck
13 because it -- it is in effect a selective waiver of
14 attorney/client privilege that they are engaging in here. We
15 have had multiple deposition questions cut off on the grounds
16 of attorney/client privilege with respect to the workings of
17 this task force in other areas and they are obviously now
18 making selective use of this to get in those figures.

19 He has just testified that counsel for Jones, Day was
20 present in the meeting. He testified about it in direct. We
21 would request that it be struck.

22 THE COURT: Can you give me an example of such an
23 assertion?

24 MR. CIANTRA: From prior testimony?

1 had been asserted in relation to that meeting. I'm asking you
2 for an example.

3 MR. CIANTRA: Well, in relation to the workings of
4 the pension task force, that had --

5 THE COURT: That's circled.

6 MR. CIANTRA: I -- I questioned Mr. Moore in his
7 deposition with respect to deliberations of that pension task
8 force concerning the provisions of the Michigan Constitution
9 that protect pension obligations and the inquiry was stopped
10 on the grounds of attorney/client privilege.

11 THE COURT: Have you got it? Can you show me?

12 MR. CIANTRA: If this had an index it would be
13 easier. If you could give me a moment, Your Honor.

14 THE COURT: Sure. Well, let me ask you to pause
15 from that and ask you a slightly different question, or a very
16 question, sir.

17 Why wouldn't the remedy here be based on the testimony
18 that was given that privilege is waived as of now? And that
19 -- and that -- and that therefore you can ask any questions
20 without fear of privilege being asserted, or at least a
21 privilege claim sustained.

22 MR. CIANTRA: Well, Your Honor, the -- the problem
23 with that is that there's been weeks of discovery and
24 deposition testimony that's been taken where we have had

1 I can't do a redo of that at this point.

2 THE COURT: He's right here. Redo all you like.

3 MR. CIANTRA: Well, though not -- with respect to
4 this question I can, but not with respect to questions or
5 documents that weren't produced during the course of this
6 litigation, I can't.

7 THE COURT: Can you identify a document that wasn't
8 produced that related to this pension task force?

9 MR. CIANTRA: There are multiple documents that --

10 THE COURT: Can you identify one?

11 MR. CIANTRA: Well, I can find the -- the log of
12 their production. There are multiple documents that were
13 withheld. I don't have it right with me.

14 THE COURT: It doesn't sound to me like you're quite
15 ready to deal with the questions relating to your request
16 here, so let's move on and I will consider your request to
17 strike the testimony when you are ready to argue it.

18 MR. CIANTRA: Thank you, Your Honor.

19 Q I want to ask you some questions, Mr. Moore, with respect
20 to the city proposal for its creditors, the June 14th proposal.
21 Now with -- with respect to that proposal, I understand an
22 important component of it is reinvestment in the
23 infrastructure and operations of the City of Detroit.

24 A Yes, sir.

25 Q And we're projecting approximately a \$1,000,000,000 price
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1 tag for that -- for that program over the next ten years?

2 A One billion on the reinvestment, if you will, the capital
3 expenditures, yes.

4 Q And then there's an additional quarter of a billion
5 dollars with respect to other restructuring initiatives?

6 A There are -- there is -- yes, that's correct, about a
7 quarter of a billion dollars for expenses. There are also
8 about a quarter of a billion in revenue initiatives.

9 Q Okay. And you also indicated that the emergency manager
10 is of the view that there is no possibility for material
11 increases in the -- the tax revenues that are coming into the
12 city, is that correct?

13 A I testified that we looked into that and that was our
14 conclusion, yes.

15 Q You -- you can't raise taxes to -- to pay for that?

16 A Yes.

17 Q And it's also correct, isn't it, that -- well, over the
18 past ten years there's been a substantial reduction in the
19 amount of revenue sharing that's come to the City of Detroit
20 from the State of Michigan?

21 A That's correct. The revenue sharing has decreased, yes.

22 Q And that is discussed in the proposal for creditors,
23 correct?

24 A Yes.

25 Q And let's just for the record do you have it? It's
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1 Exhibit 43, City Exhibit 43. Do you have it there?

2 A Nothing is up yet.

3 THE COURT: Is it on the table there?

4 A Yes, sir, I have it.

5 Q If we turn to Page 4 of the document, the bullet point at
6 the top of that page is state revenue sharing. Do you see
7 that?

8 A Yes.

9 Q And so that quantifies that you've seen approximately a
10 48% reduction in -- the city has seen approximately 48%
11 reduction in the amount of revenue sharing it's received from
12 the State of Michigan since fiscal year 2002?

13 A Yes.

14 Q And you're off -- they're approximately 30.6% since 2008?

15 A There's been a reduction of 30.6% since 2008, yes, that's
16 correct.

17 Q And would you agree those amounts are material?

18 A They certainly have been -- had a significant impact on
19 the city's revenue, yes.

20 Q And part of the projection that is included in the
21 proposal for creditors to the exhibit, Exhibit 43, are
22 projections with respect to the amount of the revenue sharing
23 going forward, is that -- is that correct?

24 A Yes.

25 Q And that is -- if you would turn to Page 90 of that
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1 document.

2 A Yes, sir.

3 Q Towards the top of the page you list the preliminary
4 forecast revenues. And the revenue sharing is the -- I guess
5 the second item there, correct?

6 A Yes.

7 Q So would I be correct that -- that year over year you're
8 projecting an increase in that of it looks like a little over
9 1%?

10 A That's about right, yes.

11 Q Is that a number that you calculated as a part of your
12 contribution to this report?

13 A No, sir, I did not calculate that.

14 Q But that's -- that was the assumption that the -- the
15 increase in the revenue sharing would be approximately 1% year
16 over year?

17 A I can't speak to the assumption, but the number looks
18 like about 1% per year.

19 Q Yeah, it's the arithmetic.

20 A Yes.

21 Q And the revenues of the city are -- other revenues of the
22 city are also projected there, correct?

23 A Yes, sir.

24 Q And you have there on the first line the municipal income
25 tax?

1 A Yes.

2 Q Right. And the income tax in the City of Detroit now is
3 the highest in the State of Michigan?

4 A Yes, for individuals the income tax rate for residents is
5 the highest in the State of Michigan.

6 Q Okay. So you're seeing -- I'm looking there at increases
7 in the order of a couple of percent per year?

8 A Yes, sir.

9 Q So that's -- those two items are staying -- well, one
10 would agree that probably not exceeding the rate of inflation,
11 correct?

12 A I'm not sure because I did not put together an assumption
13 regarding inflation.

14 Q Okay. But 1 or 2% increases year over year?

15 A That's what appears to be the math, yes.

16 Q So sort of putting it together, it would be correct,
17 isn't it, that the -- the source of the funding for the -- the
18 reinvestment and restructuring that the city would like to
19 undertake here, is -- is basically going to come from a
20 reduction in the legacy costs, the bond debt and the -- the
21 accrued pension and other post retirement benefits?

22 A I don't think that's the case.

23 Q Where is the money coming from if the revenues are
24 staying the same and you're coming up with an extra billion

25 dollars, where is the revenue -- where is the money coming
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1 from other than from cutting in those areas?

2 A The -- the projections show approximately \$250,000,000 in
3 additional revenue that I indicated as well as \$350,000,000 in
4 also other categories of additional revenue which total about
5 \$600,000,000 in new revenue during this ten year period.

6 Q Okay. So you got 600,000,000 new, and you've got the
7 rest of that 1.25. And that's coming from reductions in the
8 legacy costs?

9 A Could you define legacy costs?

10 Q Sure. The -- the -- the pensions that are owed to the
11 people I represent, their post retirement benefits, and the
12 bond holders, the debt on the existing bonds.

13 A Yes. Those three categories that is what the proposal
14 indicates is an adjustment to those categories.

15 Q Now let me go back to Exhibit 43 just for a moment and
16 ask you to turn to Page 109 of that document. And there's a
17 bullet point on that page, a little more than halfway down
18 claims for unfunded pension liabilities.

19 A Yes, sir.

20 Q And in the first bullet point it indicates that because
21 of the preliminary analysis with respect to the under funding,
22 that the city will not be making future contributions to the
23 retirement plans for its employees, is that correct?

24 A Yes, sir.

25 Q And that on account of that, in the third bullet point it
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1 says there must be significant cuts in accrued vested pension
2 amounts for both active and currently retired persons. Do you
3 see that?

4 A Yes.

5 Q And you were at the -- the June 14th meeting where this
6 was presented to -- well, among others, labor unions and other
7 organizations representing retirees, correct?

8 A Yes.

9 Q And I am correct that there was no number that was put on
10 the level of cuts that were -- that the -- the city believed
11 were necessary under this plan, correct?

12 A Correct.

13 Q And in fact as you sit here today, there has been no
14 number that has been put on that, correct?

15 A Correct.

16 MR. CIANTRA: I have no further questions. Thank
17 you.

18 THE COURT: Thank you, sir.

19 MR. CIANTRA: Your Honor, if I could just address
20 that privilege issue. And this is at Mr. Moore's deposition
21 that was taken on the 18th of September. And I can read from
22 the transcript if Your Honor would --

23 THE COURT: Go ahead.

24 MR. STEWART: What page, please?

25 MR. CIANTRA: Oh, certainly. This begins -- I'm
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1 looking at the manuscript of the transcript, Page 154,
2 beginning the bottom of -- of the page.

3 THE COURT: Is there a line number?

4 MR. CIANTRA: Yeah, I'm looking just let me see
5 where to start here.

6 THE COURT: Ah, here we have it on the screen.

7 MR. CIANTRA: We're beginning on Page 153. We'll
8 see at page -- Line 14. Actually I'm asking the questions.

9 You indicated earlier that you were part of a pension
10 task force that has been considering pension issues since I
11 guess the spring of this year. My question is, during those
12 -- during the discussion, the meetings of that task force have
13 you -- has that provision of the Michigan State Constitution,
14 and that obviously is Article 9, Section 24, been a subject of
15 discussion? The witness answers, yes.

16 And he goes on and then continuing on to Page 155 at the
17 top, Line 1. And was there more than one such discussion or
18 did that come up on just one occasion? It probably came up
19 more than -- I seem to recall more than one occasion where a
20 discussion about whether the city would have to file for
21 Chapter 9 took place and the pension element was discussed.

22 And what was the -- was the consensus that was developed
23 with respect to that issue? And Mr. Miller, counsel for the
24 city responds. I'm going to object and ask the witness before

1 discussion that might have led to a consensus, that discussion
2 included lawyers and counsel.

3 Mr. Ciantra, I'm not asking him -- and counsel that was
4 provided by those lawyers. I'm not asking about discussion
5 with counsel, I'm asking whether this task force that was
6 looking at the pension issues reached a consensus. And it
7 continues.

8 But the task force included counsel, he's testified to
9 that. And then he goes -- then I interject, I'm interested in
10 whether there was a discussion not necessarily what your
11 counsel might have advised. But to the extent that the
12 consensus was reached and that consensus was based on legal
13 advice, that consensus would be in my judgment privileged.

14 So that's why I asked him. And he goes on and then at
15 the end, and so I would instruct you, Mr. Moore, not to
16 expound.

17 So our inquiry with respect to the consensus that was
18 developed by this pension task force was cut off by
19 attorney/client privilege assertions. If the witness has
20 testified with respect to conversations in the -- in the
21 presence of lawyers for the city with respect to where these
22 -- these actuarial numbers came from, it -- it seems to be
23 just a -- a selective use of the privilege, depending on
24 circumstance, and it's put -- it's put us in a difficult

1 I can't turn back the time -- the hands of time and, you know,
2 re-take Mr. Moore's deposition. Go back and look at the, you
3 know, re -- review the tens of thousands of documents that
4 have been produced to deal with it.

5 THE COURT: All right. Thank you.

6 MR. CIANTRA: It just seems unfair.

7 THE COURT: Mr. Stewart.

8 MR. STEWART: Perhaps, Your Honor, I'm -- I'm just
9 confused. But -- and let's put that transcript back up on the
10 screen.

11 Mr. Ciantra paraphrased parts of it, but the fact of the
12 matter is, there was no instruction and his question got
13 answered. And if we could blow up the bottom quadrant of our
14 document there.

15 And there's this colloquy between Mr. Miller and Mr.
16 Ciantra. And Mr. Miller makes an objection. Are you asking
17 -- and Mr. Ciantra, I am not asking him that. And if so, I
18 would ask you not to expound.

19 So let me ask the question again. Let's make the record
20 straight. Question, did the task force you were a part of
21 reach a consensus on the question of what effect the provision
22 of the Michigan State Constitution that protects accrued
23 pension benefits would have on a Chapter 9 filing? He
24 answered it, no.

1 And if we went to the following page with a follow up
2 question, there is none of those instructions either.

3 THE COURT: Let's do that. Can we go to the next
4 page, please?

5 MR. STEWART: And you'll have to blow those up so we
6 can all see them, please.

7 THE COURT: Yeah.

8 MR. STEWART: So are we on the same page?

9 THE COURT: Is this -- is this the next page that we
10 have now?

11 MR. STEWART: Okay. So I can keep reading, Judge,
12 but as I go down this, I don't see an instruction not to
13 answer the question. I don't see what was withheld.

14 And then I could go further. I have other reasons too,
15 but this to me seems to be the most important one. And
16 perhaps I just misunderstood it, and we're on the wrong page.
17 And why don't I sit down and Mr. Ciantra can -- can stand up
18 and guide us to where maybe I should have looked.

19 THE COURT: Mr. Ciantra, this is -- this is an
20 important motion that you have made to strike.

21 MR. CIANTRA: Yes.

22 THE COURT: So I don't want to press you for a
23 response to my question. So let's take our time and -- and
24 you can research this properly and -- and -- and present your

1 of situations in which you assert that the privilege claim was
2 selectively advanced. So there's no need to rush through
3 this.

4 MR. CIANTRA: Thank you, Your Honor. I appreciate
5 it.

6 THE COURT: All right.

7 MR. CIANTRA: I will -- I will review the transcript
8 and I will respond.

9 THE COURT: Okay. All right. Does anyone else have
10 any questions for Mr. Moore? Yes, sir.

11 MR. SHERWOOD: Your Honor, just -- on the last
12 point. Before -- before I -- this privilege was also asserted
13 at the deposition of Mr. Bowen from Milliman.

14 THE COURT: Okay. Well, let's -- let's add that one
15 to the -- the group that you'll put together together and
16 we'll -- we'll deal with it in -- in due course.

17 CROSS EXAMINATION

18 BY MR. SHERWOOD:

19 Q Good afternoon, Mr. Moore. Jack Sherwood on behalf of
20 AFSCME.

21 A Good afternoon, Mr. Sherwood.

22 Q Let me ask you about some of your conversations with Mr.
23 Orr about the under funding of the position of -- of the
24 pensions. Do you recall that testimony?

25 A Yes, sir.

1 Q Okay. And during those conversations between you and Mr.
2 Orr, did you advise him that the analysis of the unfunded
3 position had not yet been completed?

4 A Could you be more clear on which conversations?

5 Q In any of -- any conversations that you had with Mr. Orr
6 before the bankruptcy was filed, did you advise him that the
7 city's analysis with respect to the unfunded position on the
8 pension had not been completed?

9 A I spoke with Mr. Orr regularly as to the status of all
10 analyses and what the sources of where numbers were coming
11 from.

12 Q Okay. But I'm just asking specifically if you remember
13 telling Mr. Orr that the city's analysis of -- and its
14 actuaries' analysis of the unfunded position had not been
15 completed. Do you recall that?

16 A I recall specifically telling him the source that we were
17 using for numbers as well as additional activities that the
18 pension task force would undertake or other analyses.

19 Q So that means that additional analysis was in process, is
20 that fair to say?

21 A Yes. And to this day additional analysis is in process.

22 Q Do you recall telling Mr. Orr that the city was trying to
23 undertake a process to develop a more concrete valuation model
24 to analyze the amount of the unfunded position?

25 A I did tell Mr. Orr that the analyses that we were giving
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1 him were based on Gabrielle Roeder's valuation and that
2 Milliman would be developing its own valuation model as well.

3 Q And did you also tell Mr. Orr that -- that because the
4 analysis of the unfunded position was still in process, that
5 it was hard to negotiate with respect to that number because
6 there wasn't a common assumption with respect to what the
7 number should be?

8 A No, I never told Mr. Orr that it was hard to negotiate.

9 Q Did you tell him that it was difficult to negotiate with
10 respect to a pension under funding amount when that amount was
11 still in process of being developed?

12 A No, I never told him that.

13 Q Was that your belief in September of this year?

14 A My belief in September of this year certainly was not
15 that it was difficult to have a discussion or a negotiation
16 over these numbers.

17 Q Did you say it was premature -- would you say it was
18 premature to negotiate over the pension under funding if the
19 -- if the number was not known?

20 A No.

21 Q So it's your view that you -- you can negotiate --
22 negotiate with respect to a pension under funding amount even
23 though you don't know exactly what that amount is?

24 A Any pension under funding amount is an estimate. And we
25 have an estimate. There are other estimates out there and

1 certainly you can engage in discussions around those
2 estimates.

3 Q You testified earlier that the City of Detroit's
4 individual taxes are -- are the highest in Michigan, right?

5 A Yes, sir.

6 Q What about taxes on -- on people or entities other than
7 individuals?

8 A There is a corporate tax rate as well, corporate income
9 tax rate.

10 Q Are they the highest in the -- in the State of Michigan?

11 A I believe that's the case, yes.

12 Q Have -- have you investigated the operations of the tax
13 people in Michigan -- or the tax department?

14 A Could you define tax people?

15 Q The tax department.

16 A The tax department of the State of Michigan?

17 Q No, of the City of Detroit.

18 A Which tax are you referring to?

19 Q Any.

20 A Yes, sir.

21 Q And have you analyzed -- have you -- have you looked into
22 rebates, tax rebates for corporations in the State of
23 Michigan? I'm sorry, in the City of Detroit?

24 A Corporate taxes are only approximately \$6,000,000 per

25 year, so we have not spent a whole lot of time on corporate
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1 income taxes.

2 Q And what about tax rebates? Have you spent a lot of time
3 on that?

4 A No, sir.

5 Q At the -- at the meeting on June 14th, you were present,
6 correct?

7 A Yes, sir.

8 Q And then you testified about a meeting on June 20th also,
9 correct?

10 A Yes.

11 Q Were you present at -- were you present at that meeting?

12 A There were two meetings on the 20th and yes, I was present
13 for both.

14 Q Was Mr. Orr at either of those meetings?

15 A No.

16 Q And at either of those meetings did you have authority to
17 negotiate with the parties at that meeting -- at those
18 meetings? Did you have authority to negotiate with the
19 parties at those meetings on behalf of the city?

20 A Could you define what you mean by authority?

21 Q Just the general understanding of authority that you --
22 you would have. You don't understand what authority means?

23 A Mr. Sherwood, I certainly was authorized to go to those
24 meetings, to present information, and to receive information

25 back. So yes, I was authorized.

1 Q You were authorized to go to the meeting, to present
2 information, and to receive information back, correct?

3 A Yes, sir.

4 Q And -- and is it your testimony that that constitutes
5 grounds to negotiate?

6 A If you're talking --

7 Q A party to negotiate, I'm sorry.

8 A Yes, sir. My understanding not in the context of the
9 collective bargaining agreements, but in the context of
10 negotiations where there's give and take, yes.

11 Q Were you consulted by Mr. Orr in connection with the
12 decision of the city to file Chapter 9?

13 A No, I was not.

14 MR. SHERWOOD: I have nothing further. Thank you.

15 THE COURT: Any other questions? Sir.

16 MR. KING: Good afternoon, Your Honor. Ron King
17 with Clark, Hill. I'm a colleague of Ms. Green and Mr.
18 Gordon's. Pleasure to be in front of you today.

19 CROSS EXAMINATION

20 BY MR. KING:

21 Q Mr. Moore, I just have a handful of questions and I'll
22 try -- I'm going to jump around a little bit just because I
23 don't want to be cumulative.

24 A Okay, Mr. King.

25 Q As we sit here today, is it true that the city and its
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1 actuaries have not completed their analysis on the unfunded
2 pension liabilities?

3 A The city has completed its analysis from the standpoint
4 of coming up with the 3.5 billion. The city desires to
5 undertake additional analysis.

6 Q So it's not completed the -- the analysis yet?

7 A The city would like to continue to refine that avenue.

8 Q So there's additional work that needs to be done before
9 they'll complete their analysis?

10 A Not that needs to be done, but that we would like to do.

11 Q And so I understand your earlier testimony, to date the
12 city hasn't proposed any specific restructuring of the pension
13 plans or a cut in pension benefits to any retiree, is that
14 correct?

15 A The city has proposed a process, a couple of times with
16 which to undertake, but there have not been specifics as to
17 any cuts if you will in a pension.

18 Q Now let me refer you back to Exhibit 43 if we could have
19 that put back on the screen, please. And specifically Page
20 101, please. And this is -- yeah, can we go -- next page,
21 please. Now I'm -- I'm looking for the page relating to the
22 pension plan. 109, I'm sorry. Thank you.

23 And referring you to a provision that you testified on
24 previously related to the claims for the unfunded pension
25 liabilities. Do you see that section?

1 A Yes, sir.

2 Q Outside of this presentation, have there been any other
3 presentations or proposals presented to any of the objectors
4 with respect to the treatment of the unfunded pension
5 liabilities?

6 A Yes, sir.

7 Q And which ones are those?

8 A The two meetings on June 20th. There were documents that
9 were handed out that had specifics as it relates to pension in
10 those documents.

11 Q What specifically?

12 A There were some specific thoughts as to ideas for
13 modifying benefits of the pensions.

14 Q But again no specific numbers in terms of no specific
15 numbers that reflect a cut to a pension benefit?

16 A There were a lot of numbers in the June 20th document
17 regarding the pensions, yes.

18 Q But my question is pretty simple. There wasn't any
19 specific proposal that would say that the pension benefit of a
20 particular retiree is going to be cut by X percent?

21 A Correct.

22 Q And was there ever an effort undertaken by you or the
23 city to develop a plan or a proposal that didn't contemplate
24 an impairment or of accrued pension benefits?

25 A Yes.

1 Q And was that plan presented to any of the objectors?

2 A Similar to what I indicated before. I don't believe that
3 there is anything specifically that has been presented in
4 terms of pension benefits.

5 Q So you're saying -- and I should be clear. Pre-petition,
6 so prior to July 18th, was there ever a plan presented to any
7 of the objectors that contemplated not impairing or
8 diminishing pension benefits?

9 A Yes, sir. The June 14th presentation, the financial
10 projections, the base line show what we anticipate the
11 contributions would be without any cuts to pension plans.

12 Q But that same June 14 proposal specifically states that
13 there will be significant cuts in accrued vested pension
14 amounts, correct?

15 A It indicates that, yes.

16 MR. KING: I don't have any further questions.

17 THE COURT: Thank you, sir. Other questions for the
18 witness?

19 MR. RUEGGER: I do, Your Honor.

20 CROSS EXAMINATION

21 BY MR. RUEGGER:

22 Q Good afternoon, Mr. Moore.

23 A Good afternoon.

24 Q We met -- we met a month ago.

25 A Yes, sir.

1 Q I just have a couple of questions. The first relates to
2 the June 20 meeting. You testified about that on direct, do
3 you remember?

4 A Yes, sir.

5 Q At that meeting did you have authority to accept any
6 counter proposals from any of the participants?

7 A Except from the standpoint I'd receive and then bring it
8 back to city officials? Yes.

9 Q Okay. So you could have -- you could have informed Mr.
10 Orr and the other city officials, but you couldn't have agreed
11 to anything at that meeting that had been countered, is that
12 correct?

13 A I think it would be highly unlikely that anything like
14 that would happen at that meeting.

15 Q Okay. Just answer my question though. You couldn't have
16 agreed to anything that might have been proposed by any of the
17 participants, correct?

18 A No, sir.

19 Q Only a couple of questions. Switching subjects. On your
20 conversations with Mr. Orr relating to the alleged under
21 funding figure, did any of those occur prior to the June 14th
22 proposal that was just mentioned?

23 A Yes, sir.

24 Q Approximately how many?

25 A This is a guess, but perhaps five to seven meetings or
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1 conversations.

2 Q On that -- on that issue before that meeting?

3 A Yes, sir.

4 Q Okay. And approximately how many conversations with Mr.
5 Orr on that figure occurred between the June 14th proposal and
6 the July 18th petition filing?

7 A I would guess maybe two.

8 Q Did your information relating to that figure change at
9 all between the June 14th proposal and the July 18th filing?

10 A No, sir.

11 MR. RUEGGER: Thank you. No further questions.
12 Thank you, Your Honor.

13 THE COURT: Thank you. Any redirect?

14 MR. STEWART: No, Your Honor.

15 THE COURT: You may step down. Thank you very much
16 for coming today.

17 A Thank you, Your Honor.

18 THE COURT: I will have to really maintain your
19 status as a witness here until we resolve the earlier issue
20 that was raised about the privilege. So your sequestration
21 still applies. Okay, sir?

22 A Understood. Thank you, Your Honor.

23 THE COURT: All right.

24 (WITNESS CHARLES MOORE WAS EXCUSED AT 2:48 P.M.)

1 Thomas Cullen of Jones, Day and I'm going to be presenting the
2 next witness, Ken Buckfire.

3 THE COURT: All right. What is your last name, sir?

4 MR. CULLEN: Cullen, C-u-l-l-e-n. We're going into
5 the hall to get him. Sorry, Your Honor. He's in the men's
6 room.

7 THE COURT: While we're waiting, Ms. Patek, may I
8 have your attention, please? Do you have one or two extra
9 copies of your exhibits or your exhibit book that we can have
10 for my law clerk or law clerks.

11 We'll start with your offer of one. If we can have yet
12 one more at a -- at a later time, that would be great. Okay?
13 Can you get through there? Thank you so much.

14 Raise your right hand, please.

15 (WITNESS KENNETH BUCKFIRE WAS SWORN)

16 THE COURT: Please sit down.

17 DIRECT EXAMINATION

18 BY MR. CULLEN:

19 Q Good afternoon, Mr. Buckfire. Could you state your full
20 name and address for the record, please?

21 A Kenneth Buckfire. I reside at 1175 Park Avenue, New
22 York, New York.

23 Q And where are you from originally?

24 A Detroit, Michigan.

25 Q Born and raised?

1 A Born and raised in Detroit and its suburbs. Then went to
2 the University of Michigan where I graduated in 1980. And
3 then I went to New York.

4 Q Can you tell me something -- you're employed now?

5 A I am.

6 Q And where are you employed?

7 A I am the co-founder and co-President of Miller, Buckfire
8 and Company. An investment banking firm based in New York
9 City.

10 Q And prior to that, what was your employment experience?

11 A Prior to that I began my career as a restructuring banker
12 in 1987 with Dillon, Reed and Company. After several years
13 with that firm, I joined Lehman Brothers where I was a senior
14 restructuring banker. In 1996, I joined Wasserstein, Perella
15 to help them found their financial restructuring practice
16 which my partner Henry Miller and I then bought in 2002 to
17 form Miller, Buckfire.

18 Q And what does it mean -- what -- explain exactly what
19 Miller, Buckfire does.

20 A Miller, Buckfire is an investment bank specializing in
21 restructuring advisory services to governments and companies.
22 Our mission is to work with those entities when they have
23 financial difficulties either paying their debts when due, or
24 need specific skills in negotiating with their creditors and
25 other stakeholders.

1 Q Unpack that for me a little bit if you would, Mr.
2 Buckfire. Restructuring advisory services. What does -- what
3 does that mean?

4 A Our typical engagement is with a company or government
5 which is experiencing financial difficulty and does not quite
6 know what to do about it. So our first mission would be to
7 help them with a diagnosis, to identify the causes of their
8 financial pressures, to identify what can be done about those
9 in terms of the diagnostic, and then to make recommendations
10 on how to solve the problem which normally means for a company
11 making sure they have adequate liquidity to operate in the
12 ordinary course and maximize the value for their stakeholders.

13 In the case of the government, making sure they have
14 adequate access to capital markets and the ability to provide
15 an adequate level of public services.

16 Q And in these engagements, what is your personal role?

17 A My personal role is to manage our team of bankers in
18 working with our clients to do our diagnosis. And then once
19 instructed by the client as to what they wish us to do, help
20 them formulate strategy and the next -- whatever transactions
21 are required, to implement that strategy. My job is general
22 financial strategy and oversight.

23 Q And could you give the Court some idea of specific
24 engagements you've worked on which are public?

25 A Well, over the years we've worked on many well known and
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1 complex restructurings. Some of the more notable ones would
2 include Niagara Mohawk Power Company, Calpine Corporation,
3 General Growth Properties, K-Mart Corporation, Lehr, Dana.

4 We've also been involved in several well known municipal
5 restructurings including Stockton, California. And we are
6 currently advising a -- a large sovereign country with its
7 financial issues.

8 Q How did you first become familiar with Detroit's
9 financial and operational issues?

10 A Well, being from here, I have always paid close attention
11 to what's been going on in Detroit. Certainly in 2009 in
12 financial crisis when it became well known that Detroit had
13 lost access to the capital markets due to its downgrade, I
14 started paying more attention to the problems here trying to
15 figure out if there's some way that my firm could be helpful.
16 And obviously given my personal connection to the area, it was
17 of personal interest to me to try to find a way to contribute
18 to the revitalization of the city.

19 Q And so what did you do?

20 A We paid close attention to it. We tried to figure out
21 where there was a way to form some relationships locally that
22 might eventually introduce us to Mayor Bing and to other
23 people in the administration who might find our particular
24 expertise of help. And that just began a general program of
25 building those relationships.

1 Q How did you first become engaged by the city?

2 A We had done a very brief financial review of the city on
3 behalf of the state in March or April of 2012. It was a 60
4 day process of just looking at the public information and
5 trying to identify what the financial --

6 Q If you could just slow down and speak up, just a little.

7 A All right. We first were engaged by the state in March
8 or April of 2012 for a 60 day review.

9 They wanted us to review the public information of the
10 city to try to ascertain what their financial challenges were
11 and to put that in a format that could be useful for decision
12 makers to understand the situation more accurately.

13 That put us in contact with members of the Mayor's
14 administration, Jack Martin and Chris Andrews in particular.
15 So I began a relationship with them.

16 Q Did there come a time in the fall of 2012 when the city
17 issued a request for proposal for certain financial services?

18 A Yes.

19 Q Could you describe that for me, please?

20 A Well, the city had entered into a consent decree with the
21 state in March of 2012 pursuant to which the state promised to
22 provide financing to the city and support their restructuring
23 efforts as long as the city was meeting certain milestones
24 that were incorporated in that agreement.

1 then in the fall Jack Martin called me and said, you know,
2 we're probably going to have to put out a request for a
3 financial advisor because we're about to enter into a new
4 agreement with the state and they're going to require us to
5 hire advisors to help implement the restructuring program that
6 we first had described in the March 2012 consent agreement.
7 So we were invited to submit our qualifications to the city at
8 that time.

9 Q Now, did you become familiar in the course of your work
10 with the consent agreement?

11 A Yes, I did.

12 Q And does the term milestone agreement mean anything to
13 you?

14 A Yes.

15 Q Let me show you Exhibit 23. In the book beside you,
16 there's a book Exhibit 6 through 50. And we'll throw it up on
17 the screen as well. And it will be on the screen in front of
18 you. Do you see it, sir?

19 A I do.

20 Q Is that the consent agreement to which you referred?

21 A Yes.

22 Q What understanding did you derive of the concept and
23 purpose of this consent agreement?

24 A Well, the consent agreement as I reviewed it, describes a
25 transaction really between the state and the city in which the
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1 state agreed to help the city raise funding to support its
2 liquidity while it began a reform program which was very
3 clearly delineated in -- in Section 2.4 and more fully
4 described in Annex B of this agreement.

5 Q Could I direct your attention to I believe it's section
6 -- well, let's look at 2.4 and 2.5. Do you see that, sir?

7 A I do.

8 Q Is that the reform program and the quid pro quo if you
9 will for the -- by the treasury?

10 A Yes.

11 Q And why did the state want the reform agreement in your
12 understanding?

13 A Well, the city as I understood it had asked for financial
14 assistance from the state. The city was under liquidity
15 stress. They didn't have sufficient cash. They needed to
16 find cash somewhere and the state agreed to facilitate the
17 city's sale of -- of bonds, a portion of which would be given
18 to the city and any consideration for that assistance, my
19 understanding is, the city agreed to implement the reform
20 program.

21 THE COURT: Excuse me one second. It turns out you
22 are now too close to the microphone and as a result our
23 overflow rooms are getting static. So move it just a bit
24 further away.

1 THE COURT: Yes.

2 MR. CULLEN: Okay. Thank you. You should have a
3 training program, Your Honor.

4 THE COURT: No.

5 MR. CULLEN: Or -- or a ruler, either way.

6 THE COURT: Yeah. Or a better audio system.

7 Q In terms of the division of responsibility between the
8 state and the city reflected in this agreement, did you have
9 an understanding of that?

10 A I did.

11 Q Could you tell me what that understanding was?

12 A Well, my understanding was that the responsibility for
13 designing and the implementing the reform program was really
14 entirely the city's. The state agreed to provide the funding
15 the city required to sustain its operations while doing the
16 formulation of the plan and executing it. And that the state
17 also asked for a reasonable amount of oversight to make sure
18 the city in fact did what they said they were going to do.

19 Q Was the state -- would it be fair to say therefore that
20 the state aid was conditional on progress on that reform
21 program?

22 A Yes.

23 Q If I could direct your attention to Exhibit B of Exhibit
24 23 -- Annex B, I'm sorry. What's this, sir?

25 A Well, this was the reform program goals and subjects that
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1 had been agreed to by the city with the state.

2 Q Just looking up at the top there, first is something
3 prioritization and timing to be mutually agreed upon by Mayor
4 and council and approved by financial advisory board as
5 provided in the agreement. What was your understanding of
6 what the financial advisory board was and what its role was?

7 A Well, the financial advisory board my understanding was
8 created to make sure that the city had appropriate level of
9 oversight in terms of developing accurate financial
10 information, reporting it to the stakeholders, and then making
11 sure that the -- once the operation of the program had been
12 designed, that it would be approved by the financial advisory
13 board as consistent with the goals of the agreement.

14 Q Did this strike you as a fairly comprehensive set of
15 reform initiatives?

16 A Yes.

17 Q If I could direct your attention to Exhibit 7. Is this
18 the agreement we've referred to as the milestone agreement?

19 A Yes.

20 Q What was your understanding of the concept and purpose of
21 this agreement?

22 A Well, my understanding was that by November of last year,
23 the city had not been able to achieve many -- many of the
24 milestones or requirements of the original consent agreement.

25 And this was entered into between the state and city as a
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1 condition of further disbursements of funds from the escrow
2 account that had been established by the state on behalf of
3 the city in March of 2012.

4 Q And if you look at the bottom of the first page, and
5 going on to the top of the next. Where it says joint
6 restructuring expenses and restructuring assistance. And
7 because I'm closer, I'll read it.

8 The city will as expeditiously as possible, select and
9 retain a restructuring firm or teams to advise the city's
10 program management office upon and implement the city's reform
11 program, including but not limited to -- the next page as
12 well. Could you blow that up, the top of that?

13 And was -- was it your under -- let me ask it in an open
14 ended way. What impact did this milestone agreement have on
15 your hiring?

16 A Well, this is what led to our retention. We had stayed
17 in touch with Chris Andrews who was the corporate managing
18 director and Jack Martin, the CFO all during this period even
19 though we had no role. And they had called me in November
20 after this was signed and said, we decided we really need
21 expert outside help to implement our reform program and look
22 forward to getting an RFP.

23 Q Now, was there any borrowing in connection with the
24 milestone agreement?

25 A Well, the original consent agreement had contemplated a
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1 financing, I believe it was \$130,000,000 of which I believe it
2 was 50,000,000 or 60,000,000 was released to the city upon
3 that funding and the rest was retained in an escrow account
4 which was still in effect as of the date of this agreement.

5 Q And so was there some relation between progress on the
6 agreement and draws from the escrow account?

7 A Yes. The state was requiring the city to execute its
8 milestones in order for further cash to be released to it
9 pursuant to this agreement.

10 Q At -- at what point were you actually hired by the city
11 in '12?

12 A Well, as I recall, we submitted to the RFP process in --
13 it might have been late November. We were told we had won in
14 December and we signed our agreement with the city, I believe,
15 on January the 5th of 2013.

16 Q When you first came into your responsibilities as the
17 restructuring firm for the city, did you undertake an
18 assessment of the city's finances and operations?

19 A Yes, we did. And we already were familiar with that
20 because of the review we had done seven months before for the
21 state.

22 Q Now in terms of the -- this consent agreement and the
23 milestone agreement, did you come to an understanding of the
24 degree to which those agreements had been a success in

1 reforms?

2 A Yes.

3 Q What was that view?

4 A That it had been a very mixed outcome. The city had been
5 successful in delivering really for the first time good
6 financial information on a monthly basis to the FAB which had
7 been a responsibility required of it as part of the original
8 consent agreement.

9 But they had had very limited success in implementing any
10 other objectives of that March agreement. And that's why this
11 milestone agreement goes into such specificity about what is
12 now required of the city to do in order for the state to
13 continue to release money from the escrow account.

14 Q But -- but let's -- let me be clear. Or let me allow you
15 to be clear. Did the division of responsibility or authority
16 for these reforms remain the same under the milestone
17 agreement, or was it changed?

18 A No, it was still with the city.

19 Q And ultimately as of the date that the emergency
20 financial manager was named, had the city made substantial
21 progress on this reform program?

22 A No.

23 Q And why do you say that?

24 A Because they hadn't. I mean they -- they simply had

1 March of 2012, in particular on blight removal, restoration of
2 public safety. There had been no initiatives made, no money
3 spent. Simply nothing had happened.

4 Q Let me direct your attention to Exhibit 7 at II VIII C.
5 It says, any future draws to be negotiated between the
6 administration of the estate are contingent on the following
7 provided that the escrow account will maintain a minimum
8 balance of \$50,000,000 at all times. First, what was the
9 escrow account?

10 A Well, the escrow account had been created with some of
11 the proceeds from the \$130,000,000 bond offering that had been
12 done in the late -- early spring of 2012.

13 Q Speak up again, please.

14 A I'm sorry. Of the \$130,000,000 bond offering that had
15 been done a year prior, that was the money that had been put
16 into escrow by the state on behalf of the city.

17 Q And what was the significance -- did you attain an
18 understanding of the significance of the minimum balance of
19 \$50,000,000 and its importance?

20 A Well, the city has in aggregate \$1,000,000,000 plus
21 budget. It has nearly 10,000 employees and \$50,000,000
22 represents approximately three weeks of expenditure on the
23 part of the city.

24 And that's relevant because the city's revenues come in
25 in a fairly lumpy way from a variety of different sources.

1 So to make sure they have adequate liquidity to meet their
2 obligations, particularly payroll, the state felt it
3 appropriate to make sure there was always \$50,000,000 in
4 reserve if it turned out that the city had misestimated its
5 cash reserves, the state could step in and help.

6 Q Pardon me, but what was --

7 A The state could step in and release this money in an
8 emergency.

9 Q You say that revenues came in in a lumpy way. What does
10 that mean?

11 A Well, the city -- well, the city relies on four primary
12 streams of revenue. Gaming tax revenue, state revenue share,
13 property tax, and income tax.

14 Property tax income in particular comes in on a round
15 about quarterly basis because that's when assessments are
16 made. Income taxes come in likewise in a fairly irregular
17 fashion. The only revenue that is predictable and coherent is
18 gaming revenue. Because it is being collected by the casinos
19 on behalf of the city and remitted to the city pursuant to a
20 fairly complex set of accounts on a monthly basis.

21 Q And so there will be times when the city is more flush
22 than others?

23 A Correct.

24 Q Or more importantly less flush?

1 that's a leading question that is necessary.

2 THE COURT: The objection is sustained.

3 Q What were the terms of your engagement for the city at
4 that time? What were you asked to do, what did you set out to
5 do?

6 A We agreed to provide general financial advisory services.
7 There were no transactions contemplated or built into our
8 engagement. We were providing corporate financial advice only
9 for \$150,000 a month.

10 Q When you say that -- when you distinguish between general
11 financial service and no transactional fees built in, what
12 difference does that make to an engagement for a firm such as
13 yours?

14 A Well, when we begin an engagement for a government or a
15 company and we don't know what we might have to do, we
16 normally agree to provide general financial advice, just
17 diagnosis, a set of recommendations with no presumption that
18 we are going be hired to do any transactions as a result of
19 that because not only does it protect the client from knowing
20 that our advice is in any way biased, it protects our firm.
21 Because we don't want to agree to provide a transaction
22 service unless we really believe A, we can execute it, and B,
23 it's actually needed.

24 Q So upon your appointment, what did you first do to get
25 your arms around the problem?

1 A Well, the first thing we did was refresh our
2 understanding of the city's financial condition and having
3 worked with Jack and Chris nine months earlier, we had a very
4 strong understanding of their condition. We wanted to revisit
5 that which we did.

6 We then sat down with the other advisors to the city at
7 that time, Ernst and Young and Conway, MacKenzie, and reviewed
8 together the city's reform program and quickly agreed on a
9 number of different projects that had to be done collectively
10 so we could form a coherent understanding of the city's short
11 term and long term financial condition.

12 Q From that point forward, what was the working
13 relationship between you and the other advisors, Ernst and
14 Young and Conway, MacKenzie?

15 A Very collaborative and close. We were on the phone with
16 them probably on a daily basis, either myself or my team.
17 Because it's a very integrated advisory challenge.

18 We as the financial strategists can't do our job unless
19 we have good information from the city which has to focus on
20 two primary areas. One, the short term liquidity position of
21 the city. We have to make sure that at all times the city can
22 operate in the ordinary course because it is pointless to try
23 to address the long term issues unless you have the cash to
24 give you the time to do so. That was a primary responsibility
25 of Ernst and Young.

1 Secondly, and also related again to the March 2012
2 agreement, we needed to understand exactly the costs and
3 timing of implementing the reform program. There had been no
4 budget created by the city during that period of time to
5 address any of the issues in Annex B.

6 And therefore in order to form a long term financial
7 strategy for the city, we needed to know how much capital we
8 would need to raise from whatever source for the city to
9 implement that program. And that was Conway, MacKenzie's
10 primary responsibility.

11 Q Were you the -- were you personally the leader of this
12 integrated team of restructuring professionals?

13 A Yes.

14 Q And you said before that this is a complex task and you
15 need specialized help. Did you come to a conclusion in their
16 respective fields as to whether you had the right help, in
17 E & Y, and Conway, MacKenzie?

18 A From a financial perspective, I thought we had an
19 excellent team that could adequately address all the financial
20 and operational issues of the city.

21 Q And as you went forward to make judgments and to give
22 strategic advice to the city, were you relying on the advice
23 and the work of Conway, MacKenzie and E & Y?

24 A Yes.

25 Q In terms of analyzing the finances of the city at that
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1 time, what preliminary conclusions did you draw?

2 A Well, we were very concerned about the city's ability to
3 operate in the ordinary course for a number of reasons. The
4 first one which I was aware of because of my earlier work for
5 the city, was the default to the swap counter parties.

6 The city in 2009 had entered into a agreement with the
7 swap providers that were giving interest rate swap protection
8 to the certificate of participation bonds that had gone
9 against the city. That is the present value of those swap
10 contracts was a significant cost to the city, not a benefit.

11 In 2009, because of a default at that time, the city
12 settled that default by granting a collateral interest in the
13 gaming revenues to UBS and Bank of America, and Merrill Lynch.
14 However, because of another credit downgrade in March of 2012,
15 the city was again in default to those banks. I was very --

16 MS. GREEN: To the extent that he is testifying to
17 the legal conclusion of what was a benefit --

18 THE COURT: Speak into the mike.

19 MS. GREEN: I object to -- to the extent that he's
20 testifying to a legal conclusion of what constitutes an event
21 of default under the swap contracts.

22 THE COURT: Okay. I don't understand him to be
23 testifying to that, so the objection is overruled.

24 MS. GREEN: Thank you, Your Honor.

25 THE COURT: You may continue, sir.

1 A Thank you. I was very concerned about this uncured
2 default and the threat that at any moment the swap counter
3 parties could exercise their remedies and block the city's
4 access to its gaming revenues which was and still is the
5 highest quality source of revenue the city has. Approximately
6 \$180,000,000 a year which represents close to 20% of its
7 annual budget.

8 And that was an immediate issue that we addressed and we
9 had to deal with in order to preserve the city's ability to
10 operate while we were trying to figure out what the long term
11 strategy should be.

12 Q Now, did you go about -- did you do anything to evaluate
13 the assets of the city?

14 A We did. Together with the city and again we had a lot of
15 familiarity with the city because of our earlier work.

16 Q I'm just talking about this -- in this initial phase.

17 A Oh, yeah.

18 Q When you were first getting yourself oriented.

19 A We had begun to do what we always do is to address the
20 city's assets and liabilities to understand what value did we
21 have to work with to settle with the city's creditors and
22 perhaps monetized to create incremental liquidity for the city
23 to operate.

24 So we began to examine all of the city's assets to

1 essential for city operations, and could be available for
2 sale. And if they were available for sale, how much could be
3 realized.

4 Q Okay. Did you at that point evaluate the time necessary
5 to effectuate a sale and turn an asset into cash?

6 A Yes.

7 Q Now at the time you came into your responsibilities as
8 head of this restructuring effort for the City of Detroit, was
9 there talk about the possibility of Chapter 9?

10 A Yes.

11 Q Could you describe that for me?

12 A Well, when a company or government is in default the
13 threat of bankruptcy is always real. The lack of cash is
14 normally what would push a company into a Chapter 11. In the
15 case of a government it's more complex.

16 But clearly we had to be concerned about that being a --
17 a necessary way of protecting the city given this uncured
18 default of the swap banks. And in January of this year that
19 was our primary concern.

20 Q What was your primary concern?

21 A That the swap banks could take unilateral action to
22 deprive of us of access to the gaming revenues and that would
23 cause the city incredible damage because it would immediately
24 have to make massive cut backs to services. And we weren't
25 sure what we would do about it. So we had to consider Chapter

1 9 as an alternative to protect the city.

2 Q As a result of your initial review of the city's
3 position, what was your first set of advice to the city about
4 what more they should do or what more you should do?

5 A Well, in addition to accelerating our analysis of the
6 city's financial condition, which we obviously had undertaken
7 to do, we recommended that the city consider bringing in a law
8 firm with the multi-disciplinary skills and experience to help
9 the city with contingency planning for whatever might occur.

10 Q And did you give specific instructions to either E & Y or
11 Conway, MacKenzie in terms of what they should try to
12 accomplish in the short term?

13 A I did.

14 Q Let's start with E & Y.

15 A With E & Y, I suggested to them even though their RFP had
16 only required them to do a five year forecast, that really we
17 should extend that to ten years. For a city or a government
18 to look at a long term financial picture, the longer you can
19 look out the safer you are in terms of understanding what you
20 need to do. Five years is simply too short a period for any
21 realistic appraisal of its performance.

22 And they agreed to extend out their analysis to ten years
23 even though that did impose a significantly higher burden on
24 them. And we also recommended to both Conway and E & Y that

25 we collectively try to form our conclusions about the
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1 financial condition of the city as soon as possible given its
2 continued financial stress and the uncured nature of this
3 default. We needed to move as fast as we could to figure out
4 what the true picture of Detroit's condition was.

5 Q And to get a ten year picture of Detroit's condition,
6 what options were available to you at that time in terms of
7 resources in addition to or besides E & Y?

8 A Well, we had access to the city of course and they were
9 very cooperative in giving us information about their cost
10 structure in particular. But there really were no good
11 projections of revenues.

12 We had to go and do the best we could with information
13 that was available to us. In particular and it turned out
14 fortuitously Ernst and Young has a group in Washington which
15 is probably the country's leading experts in revenue, policy,
16 and tax analysis for municipalities and states.

17 So we were able to avail ourselves of that resource as
18 well in terms of developing a revenue forecast for the city,
19 particularly with respect to property and income tax
20 collections.

21 Q And did you feel that you had a competent team in E & Y
22 to do this?

23 A Yes.

24 Q Did you tell them what you were going to use it for?

25 A Yes.

1 Q Did you intend to rely on it?

2 A I did.

3 Q And did you rely on it?

4 A I did.

5 Q And do you, as you sit here now, feel justified in your
6 reliance upon it?

7 A Yes.

8 Q Did there come a time when Detroit turned its attention
9 to hiring legal counsel?

10 A Yes.

11 Q What was your involvement in that process?

12 A Well, about a week after we had been officially retained,
13 I met with the city and we concluded that at a minimum the
14 city needed to focus on strategies, particularly legal
15 strategies to protect itself from the swap banks in terms of
16 any actions they might take to take the gaming revenues away.

17 It was their conclusion that bringing in another law
18 firm, at least considering bringing another law firm in to
19 supplement other attorneys already working for the city was a
20 sensible thing to consider. They asked me to recommend firms
21 that might meet the qualifications required.

22 So we basically gave them a list of law firms that we
23 felt had all the qualifications to provide the full range of
24 services the city might require under any scenario.

25 Q And how many law firms were there?

1 A Well, I think we ended up with about 14 or 15 law firms.
2 Many of them were well known to the city having done work for
3 them before. The rest were so-called national law firms that
4 had had very little exposure to the city but did have the
5 experience in complex reorganizations, has had some experience
6 with Chapter 9's, had a lot of experience with out of Court
7 restructurings.

8 In addition to that had sufficient familiarity with
9 health care regulation and pension reform to deal with those
10 issues as well.

11 Q Was there a meeting at which these law firms presented
12 themselves?

13 A Yes.

14 Q Were you at that meeting?

15 A I was.

16 Q Who else was at that meeting?

17 A Well, we had a large group from both the state and the
18 city represented there for the purpose of interviewing the law
19 firms they did not know.

20 As I testified earlier, the city already knew quite a few
21 law firms, especially in Detroit that it was quite comfortable
22 with. They did not feel they needed to interview those firms
23 again. So they interviewed the firms they did not know.

24 And I was present at that meeting with Andrew Dillon,

1 Deputy Treasurer, Braum Stibitz, which is S-t-i-b-i-t-z who
2 was a Senior Advisor to the Treasurer. And Richard Baird who
3 my understanding at the time was he was the Governor's aid for
4 Human Resources and things like that.

5 And from the city we had Chris Andrews, Program Managing
6 Director, Jack Martin, CFO, and I believe we had somebody from
7 the legal department, but I can't recall their name. Oh, I
8 apologize, we had two members also from the financial advisory
9 board, Sandy Pierce and Ken Whipple.

10 Q In your understanding, who was to make the decision?

11 A The city.

12 Q And what was your input into this decision?

13 A After the interviews were over, the city asked us to put
14 together a comparison sheet laying out the qualifications of
15 all the law firms that have interviewed, and giving them for
16 lack of a better word, a qualitative assessment of their
17 relatives strengths and weaknesses which we did provide.

18 Q And was there another meeting after that at which the
19 actual selection was made?

20 A The initial presentations were on a Friday. I believe it
21 was January 29th. And then the selection meeting was the
22 following Friday.

23 Q Were you at that meeting?

24 A No. My plane was stuck on the ground at LaGuardia and
25 even though I had been invited, I didn't attend.

1 Q And do you know who -- do you know who was at that
2 meeting?

3 A I believe it was largely the same group that had done the
4 interviews.

5 Q And were you informed of the result?

6 A I was told that the city had selected Jones, Day.

7 Q Did you have any role in selecting or suggesting the
8 emergency manager?

9 A No.

10 THE COURT: All right, sir. Let's pause now for our
11 afternoon recess. It's 3:30, we'll resume at 3:45 please.

12 (WITNESS KENNETH BUCKFIRE WAS TEMPORARILY EXCUSED AT 3:28
13 P.M.)

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

15 (Court in Recess at 3:29 p.m.; Resume at 3:45 p.m.)

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

17 MR. CULLEN: Mr. Buckfire.

18 THE COURT: One second, please.

19 MR. CULLEN: I'm sorry.

20 THE COURT: It appears everyone's present. You may
21 proceed.

22 MR. CULLEN: Thank you.

23 (WITNESS KENNETH BUCKFIRE RESUMED THE STAND AT 3:45 P.M.)

24 BY MR. CULLEN:

25 Q Mr. Buckfire, as Ernst and Young worked on these cash
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1 projections, did they keep you informed of their progress?

2 A Yes, they did.

3 Q Was there any particular one of these projections that
4 stands out in your mind as having significance to this matter?

5 A Yes. In early May of this year they showed me a draft 12
6 month cash flow forecast.

7 Q And what did that cash flow forecast indicate to you?

8 A Well, it indicated to me that the city's cash position
9 was far worse than I had ever feared. That the city would
10 effectively be operating with no cash by the end of that
11 period of time even on the current projections which
12 incorporated certain deferrals of expenses that in the
13 ordinary course they should not be making.

14 And I was very alarmed about this because I was acutely
15 aware of the fact we still had no solution to the default
16 under the swap agreements. And that at any moment the city's
17 ability to provide services could be eliminated.

18 Q How -- how would you describe the city's cash situation
19 at that time as presented in those projections?

20 A The city had minimal cash. They had a few tens of
21 millions of dollars. It was erratic. They had no real
22 ability to project because as I testified earlier cash would
23 come in in a somewhat lumpy and unpredictable manner. And so
24 at any given time the city could find itself with no cash.

25 Q Were those cash flow projections memorialized in a -- any
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1 of the documents in this case?

2 A Yes.

3 Q If I could show you Exhibit 75 at Page 40. If you could
4 blow up the numbers there, please. And you could put the
5 thing below too. Are these the numbers that you just
6 testified to?

7 A Yes, they are.

8 Q Could you tell us what your understanding was at the time
9 based upon these numbers?

10 MR. SHERWOOD: Your Honor, I -- I object to this
11 witness' testifying about forecasted receipts for the period
12 set forth there. That is the -- the proper subject for expert
13 testimony and this is a lay witness.

14 MR. CULLEN: May I lay some foundational questions,
15 Your Honor?

16 THE COURT: Okay.

17 Q In your work as a restructuring analyst, do you normally
18 commission cash flow forecasts?

19 A Routinely.

20 Q Is it one of the ordinary tools of your trade?

21 A Yes.

22 Q Do you make decisions based on those cash flow forecasts?

23 A I make recommendations based on these forecasts, yes.

24 Q And when you make those forecasts, what kind of people do
25 you use to do them?

1 A We use -- well, we rely upon outside professionals such
2 as Ernst and Young and Conway, MacKenzie as well as the
3 finance staff of our client.

4 Q In this situation, did you think that a cash flow
5 forecast of this type was necessary for the city to have?

6 A Yes.

7 Q Was it necessary for you to make informed
8 recommendations?

9 A Yes.

10 Q And based upon these forecasts, did you indeed make
11 recommendations to the city about its strategy in the
12 restructuring?

13 A I did.

14 Q And did you have any other -- any better options
15 available to you at that time to make this kind of a cash flow
16 forecast which you said was necessary to your job on behalf of
17 the city?

18 A No.

19 MR. CULLEN: I'd -- I'd move the admission of this
20 cash flow forecast, Your Honor.

21 THE COURT: What's the exhibit number?

22 MR. CULLEN: The exhibit number is 75, Page 40.

23 It's the financial operating plan, Page 40 of -- of same.

24 (City's Exhibit 75 was identified)

1 specifically designed so that when a party offers testimony
2 requiring expertise, knowledge, tools of the trade, the trade
3 of this witness is not a simple trade. It requires expertise,
4 experience and so forth.

5 And just because he relied on these and he does, it does
6 not take this outside of the scope of -- of Rule 702 and --
7 and frankly I just think this is sort of an end run around the
8 Court's decision to deny the -- the testimony or not give
9 weight to the testimony with respect to the projections of
10 Ernst and Young.

11 MR. MONTGOMERY: Your Honor, could I join for a
12 moment if I might? May I join in the objection?

13 THE COURT: Of course you may. I'm not sure why you
14 think you need to do that, but okay.

15 MR. MONTGOMERY: I just wanted to point out one --
16 one foundation that was --

17 THE COURT: Oh, there's an additional argument you
18 want to make, okay.

19 MR. MONTGOMERY: -- missing, Your Honor. Very
20 simply that to the extent that the city was going to try to
21 rely on an officer, director, or owner type exception,
22 obviously this witness does not fall within that category.

23 THE COURT: Yeah, I don't -- I don't hear that quite
24 at issue here, but thank you. And just so the record is clear

1 A That's correct.

2 MR. CULLEN: Your Honor, if -- if I might.

3 THE COURT: And it's not otherwise in evidence at
4 this point?

5 MR. CULLEN: It is otherwise in evidence. The
6 Exhibit 75 as a whole is in evidence subject to the fight
7 about these parts of the exhibit and what they're in for and
8 what they're not in for.

9 THE COURT: All right. I -- I will admit the
10 document but for the limited purpose of establishing what this
11 witness relied upon for his work and not for purposes of
12 establishing the truth of anything in it.

13 (City's Exhibit 75 was admitted)

14 MR. CULLEN: I -- I take it, Your Honor, just to be
15 -- to be clear, that when we close up this matter depending on
16 how you rule on the motions tomorrow, that it is some
17 evidence, weight or not, of the state of the city that Mr.
18 Buckfire will testify that he believed this was the state of
19 the city. Mr. Orr will testify that he believed this was the
20 state of the city. And that they had a reasonable basis so to
21 believe. The reasonableness of their reliance on these
22 numbers is a separate issue from their -- their --

23 THE COURT: Well, it might -- it might go to good
24 faith, but on the substance of the issue for example of these
25 projections, it's not evidence of that.

1 MR. CULLEN: All right, Your Honor.

2 THE COURT: I don't know how more clear to be.

3 Q What -- what conclusions did you --

4 THE COURT: I will comment I have refrained from
5 making this comment till now, but I will make it now that
6 you've asked the question. It's actually hard for me to
7 comprehend why you didn't offer the Ernst and Young witnesses
8 who prepared these projections as experts. You may proceed.

9 MR. CULLEN: Thank you, Your Honor.

10 Q What impact did these numbers have upon your forward
11 planning and advise with respect to the Detroit restructuring?

12 A Well, we were extremely alarmed by these numbers.
13 Remember, we received these numbers in early May. We knew how
14 unpredictable the city's ability to collect property income
15 taxes were.

16 We immediately realized that in June of 2013, which was
17 only a month away from this forecast date, that the city was
18 operating on a razor's edge. If it were to make the
19 \$40,000,000 bond payment on June 15th to the TOC bond holders,
20 that would only make sense if it indeed collected all of its
21 anticipated tax revenues on schedule in the amounts stipulated
22 here.

23 A \$7,000,000 cushion on a budget of this magnitude is
24 almost effectively nothing. That also alarmed me because I

25 knew we still had a continuing problem with the swap banks,
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1 Bank of America and UBS.

2 We knew we would have to negotiate some kind of agreement
3 with them to retain our access to the gaming revenues which
4 you'll see here for this short period of time is \$105,000,000.
5 You'll notice how regularly it's projected to come in. And
6 that is a matter of historical record and is quite accurate.

7 The city has always been able to rely on those revenues
8 in the absence of anything else because they're collected by
9 the gaming casinos themselves. We realized that if it turned
10 out that our recommendation to the city in order to reserve --
11 to preserve cash was to not make the \$40,000,000 bond payment,
12 that would be another default to the swap counter parties.

13 At that point we already had two defaults to them. The
14 original ratings downgrade of March of 2012 which had not been
15 cured, and indeed the appointment of Kevyn Orr as emergency
16 manager also in and of itself constituted an event of default.

17 The swap banks which were continuing to get paid, had not
18 shown any indication that they might change their minds.
19 Nonetheless it was a significant risk to the city. So we
20 immediately turned our attention in early May to deciding what
21 should we do about this in order to make sure the city
22 continued to have adequate cash to operate and provide
23 services.

24 Q Was there a -- were there any payments in the near future
25 that you had to decide whether to make or not?

1 A Yes. If you look at the schedule you'll notice under
2 June of '13 column -- second column to the left, there's a
3 line in the middle of the page called POC and debt related
4 payments. There's approximately a \$40,000,000 payment due by
5 the city on June 15th.

6 Q And was there a decision to be made with respect to that
7 payment?

8 A There was. Given how tight the city's cash position was,
9 they only had even on the projections, 70,000,000 of cash if
10 they made that payment. We had to consider the necessity of
11 not making it in order to preserve liquidity.

12 Q Were there any other ways that you haven't discussed to
13 preserve or enhance the city's cash position in May of 2013?

14 A Well, as I testified earlier, we had looked at all of the
15 city's assets to find out if any of them could be marshaled to
16 create significant cash for the city. And that began in
17 January.

18 We revisited that in early May. We unfortunately came to
19 the same conclusion we came to in January that really there
20 was nothing that was readily convertible into cash. The city
21 effectively had mortgaged all of its real assets years before.

22 The city did have potentially \$60,000,000 left in the
23 escrow account established with the state in 2012. I called
24 Senior Deputy Treasurer Saxton to ask whether that might be

25 available to the state if we really found ourselves in an
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1 emergency. And he said that it would really depend on our
2 overall recommendation in dealing with the city's long term
3 financial problems.

4 Q Did you and the advisors ever come to a conclusion, a
5 consensus at any point as to whether or not the city was
6 insolvent?

7 A Yes.

8 MR. SHERWOOD: Objection. I -- I object to any
9 testimony about insolvency. This is not an expert witness and
10 it calls for a legal conclusion.

11 Q In the course of your work do you -- are you always or
12 often called upon to address that question and advise on that
13 issue?

14 A Yes.

15 Q What is your understanding of insolvency?

16 MR. SHERWOOD: Your Honor, I -- I renew the
17 objection. I assume that when this witness is called upon to
18 testify in other matters concerning insolvency, he's qualified
19 as an expert witness.

20 THE COURT: Hold on one second.

21 MR. CULLEN: Pardon me?

22 THE COURT: Hold on one second for me, please.

23 MR. CULLEN: Sure.

24 THE COURT: I do think it is appropriate to ask the

25 witness about the -- the facts that constitute insolvency

1 under 10132(c) of the Bankruptcy Code.

2 Q Did you come to the conclusion that the city was unable
3 to pay its debts as they came due?

4 A Yes.

5 Q What was the basis for that conclusion?

6 A Well, there were two sets of facts that we relied upon.
7 One was this schedule which was very short term in nature and
8 therefore we felt had to be relied upon because it wasn't very
9 long dated. And it clearly showed that the city was operating
10 on a razor's edge of liquidity.

11 Secondly, we knew because we were in constant
12 communication with the city's finance staff, that they were
13 routinely stretching out payables in an attempt to conserve
14 cash. They were not paying their trade creditors when due,
15 even at the date of the May 13 report.

16 Q In your view as of -- as of May of 19, '13, was the city
17 able to pay its debts as they came due?

18 A No. In fact they were continuing to stretch out and
19 defer payments wherever possible to conserve cash.

20 Q Was there any probability in your view of the city's
21 operations and cash flow of its remedying either of those
22 situations without aid in the foreseeable future?

23 A We didn't see a possibility of that. The city had
24 lost --

1 I object, calls for a lay opinion. Again, talking about that
2 what --

3 THE COURT: The objection is overruled. Go ahead,
4 sir.

5 A Well, as a banker the first thing we always evaluate is
6 whether a company or a government can borrow to cover a short
7 term financing requirement. And in the case of Detroit, its
8 access to the capital markets had been cut off long before.
9 The most recent downgrade made it impossible for the city to
10 borrow in the ordinary course on the markets.

11 And it in fact had nothing left to pledge to gain access
12 to capital markets. So that source of financing was closed.
13 And that's why indeed the prior year the state had to step in
14 and assist the city in raising even the 130,000,000 it did
15 raise because without that it would never have been able to do
16 it.

17 We then looked again at all of the so-called non-core
18 assets of the city and determined again whether any of those
19 could be readily converted to cash. We again came to the
20 conclusion that there was nothing of any significance that
21 could be converted to cash in the time frame required to avert
22 a cash crisis in June or July to this year.

23 Q Turning your attention now to the June 14th proposal to
24 creditors, did you have input into the strategy and concept of
25 that document?

1 A I did.

2 Q Could you tell me what your understanding of what that
3 proposal was meant to achieve was?

4 A Well, going back to the --

5 Q If it's an understandable sentence.

6 THE COURT: It's close enough.

7 A Well, going back to the consent decree of 2012 between
8 the city and the state, Annex B clearly -- the state expected
9 the city and the city agreed to review comprehensively all of
10 its operations and its long term financial stability in order
11 to come up with a strategy that would if implemented, result
12 in the rebirth and rejuvenation of the city as well as paying
13 its creditors what they were owed.

14 We were specifically tasked with working on that list of
15 activities, especially with regard to the long term
16 obligations. And when we got re-hired by the city in January
17 this year to assist with that project, we explained to the
18 city that the only way in which we could establish a proper
19 foundation to negotiate with our stakeholders, whenever that
20 deemed necessary to take advantage of, would require us to
21 give our stakeholders as much information about the city's
22 financial condition as we could.

23 And until they had as much information as we could
24 reasonably develop about the short term forecast as well as

25 the long term condition of the city, they could not be in a
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1 position to properly evaluate whatever restructuring proposal
2 we ultimately made to them in consideration of their claims.

3 So in January when we first sat down with Ernst and Young
4 and Conway, MacKenzie, we all agreed that that would be the
5 goal toward which we would work. Would be to develop a set of
6 information that all policy makers and our stakeholders could
7 rely upon to evaluate whatever we deemed our strategy to be.
8 And that was our goal and that was our objective from January
9 until May of this year.

10 Q In terms of putting out all of the proposal and informing
11 the stakeholders of the state of the city, can you tell me
12 what your input was into the structure of the offer itself,
13 the structure of the plan?

14 A Well, the structure of the -- the restructuring proposal
15 being made in the June 14th document that was publicly made
16 available on that date, really relied upon the ten year
17 forecast that Ernst and Young had put together to show what a
18 realistic view of the city's revenues would be and that would
19 be assuming the impact of the reinvestment plan of over
20 \$1,000,000,000 over the next ten years would allow the city to
21 stop its decline and set a foundation for renewal.

22 Based on the financial implications of that program, we
23 then were able to calculate what was available to give to our
24 stakeholders in consideration of their claims which in and of

25 itself was a very complicated analytical challenge because

1 until Ernst and Conway had really examined the off balance
2 sheet liabilities of the city, we really didn't know what the
3 real liabilities of the city were.

4 In our original review of 2012 we relied on publicly
5 available information which was accurate insofar as the funded
6 debt went, but we really did not know whether the projections
7 and liabilities associated with other liabilities, particular
8 health care and pension were accurate or could be relied upon.

9 And that was a very important focus of our analytical
10 work this year until the release of the June 14th plan. So our
11 role was after we received the information was to then review
12 with counsel the appropriate way to construct a offer to all
13 of our stakeholders which recognized what the city's true debt
14 capacity was and then decide what would be an appropriate way
15 of allocating that across our stakeholders.

16 Q Now, you talked about a level of services consistent with
17 sustaining the population and the tax flow revenues of the
18 city, did you not?

19 A I did.

20 Q How did you go about identifying that level of services?

21 A Well, again, going back to March of 2012, the city itself
22 had identified a long list of areas in which it felt it needed
23 to restore or invest services. Blight removal, police, fire,
24 lighting, there's a whole list of things.

1 what it would cost, nor did we know how long it would take to
2 implement any of those potential program areas.

3 And that was the primary focus of Conway, MacKenzie's
4 work together with the city's own staff was to identify
5 precisely how much it might cost to implement all of those
6 objectives.

7 Q And in terms of your previous discussions of time and
8 cash, how do they play into this June 14th proposal?

9 A Well, we had discussed with the city back in January of
10 this year what we would do once we came to a conclusion about
11 what the city really could afford in terms of its obligations
12 while reinvesting in rehabilitation. Then we explained to the
13 city that as long as we had cash, as long as we had liquidity,
14 we would be able to construct an out of Court negotiating
15 strategy that would with enough time, allow us to negotiate
16 with all of our creditors and not have to result in
17 immediately a Chapter 9 filing, although that would always
18 have to be considered if for no other reason that when
19 negotiating with creditors, if you don't let them know that
20 that's a possibility, it's hard to get them to take you
21 seriously in a negotiation to keep a country, or a city, or a
22 company out of Bankruptcy Court.

23 Q So could you make that concrete for me? How much cash
24 equals how much time?

25 A Well, normally you'd want to have enough cash to operate
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1 without interruption from the negotiations for at least six
2 months to a year.

3 Q All right. And how much money would that be in this
4 case?

5 A Several hundred million dollars.

6 Q Did the city have that?

7 A No.

8 Q If I could direct your attention to Page 41 of the --

9 A May I correct one thing? I apologize. The city did not
10 have the money, and the only way it could get the cash would
11 be not paying its unsecured obligations such as the POC bonds.

12 But that would have created another level of defaults
13 which would have brought us right back to the problem I had
14 with the swap counter parties which is they had the right
15 through their remedies to block our access to gaming revenues,
16 so if we did try to solve our liquidity problem by not paying
17 our unsecured creditors, we might immediately lose it because
18 we'd lose the gaming revenues.

19 Q Forty-one of this exhibit, Exhibit 43, Page 41.

20 A Sorry, I've lost you. What tab -- what exhibit are you
21 on?

22 Q I haven't -- I haven't asked a question yet.

23 A Oh.

24 Q All right.

1 Q It's on your screen.

2 A Oh, yes.

3 Q Does this accurately reflect what it purports to reflect,
4 the key objectives for the financial rehabilitation and
5 restructuring?

6 A Yes. These are the objectives set out to us by the city.

7 Q Were these objectives new in this report?

8 A No. These were all reflected in the consent agreement of
9 March of 2012.

10 Q Had substantial progress been made on any of these?

11 A No.

12 Q In terms of the discussions internally within the -- the
13 brain trust of the city, as I might call it that. The Mayor
14 and his advisors. What was the -- was there an intention to
15 make this proposal a take it or leave it proposition?

16 A No.

17 Q What was the intention?

18 A Well, the intention was to provide our stakeholders with
19 the best possible information about the city's true condition
20 that we could develop and we'd been working around the clock
21 on this for months.

22 We also wanted to make sure that when we did begin
23 discussing with stakeholders they would see what we thought
24 made sense for all of our stakeholders at the same time so

25 there would be no doubt the city was approaching this in the
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1 most even handed and fair way possible.

2 Q And when you say even handed and fair, what aspect of the
3 proposal can you point to that reflects that determination or
4 that principle?

5 A Well, just to pick out one example. We felt it important
6 to start out by delineating our creditors into whether they
7 were secured or unsecured. And we proposed that our secured
8 creditors would receive 100 cent recoveries, our unsecured
9 creditors would share pro rata in what we believed was the
10 value available to them pursuant to our restructuring plan
11 which is \$2,000,000,000 in notes.

12 THE COURT: Which was what?

13 A Two billion dollars of notes. That was all we calculated
14 the city could afford post this restructuring in terms of debt
15 capacity.

16 Q And have -- have you used the words in the past, *pari*
17 *passu* to explain that?

18 A Yes.

19 Q Model as well. Now, there's been a lot of discussion in
20 the case about asset sales. And you've discussed it some
21 today. But I would like to direct your attention to Pages 83
22 to 89 of Exhibit 43.

23 And take you through this list of assets so that you can
24 talk about, and I apologize for the nature of this question,

25 but I think it will move things along. So you can talk about
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1 the nature of the consideration and effort given to each
2 asset, the values available, and the -- and the hurdles to be
3 overcome or -- or to be avoided in getting -- turning the
4 asset into money.

5 MR. CULLEN: If I can proceed that way, Your Honor,
6 with respect to each of the assets.

7 THE COURT: Yes, go ahead.

8 Q Detroit water and sewage.

9 A Well, Detroit -- the Detroit Water and Sewer Department
10 is a very complicated situation, had been operating under
11 Federal Court order for a very long time.

12 At the time of our engagement in January, it was still
13 operating under the supervision of the so-called Root Cause
14 Committee which was really effectively the governance body,
15 although the assets were owned by the city and are still owned
16 by the city. The city has never received any cash flow from
17 it's ownership stake.

18 The department has operated on the basis of zero profit.
19 It is allowed to recover its operating, maintenance, and debt
20 service costs from rate payers and that's all. So it's never
21 been a source of cash flow to the city.

22 And furthermore, in addition to that, we had no ability
23 to raise rates to generate cash. That would not be allowed
24 under the utilities laws of the State of Michigan.

1 overnight because as I mentioned before it was under a Court
2 order until March of this year. So we began to evaluate after
3 that Court order was, I guess, dismissed is the correct
4 phrase, whether or not we could in fact realize cash from the
5 system, but because of its public nature we recognized it
6 would be extremely complicated to do.

7 And that the only ways to do it really would be to either
8 sell it to its customers in exchange for a lease payment or a
9 pilot payment, or consider some version of a privatization.
10 We've been contacted by a number of private equity firms which
11 have expressed an interest in buying it if they could, but
12 only if they could charge higher rates to recover their own
13 costs as capital.

14 So we recognize even though this would be potentially a
15 source of great value to the city, it would be a long and
16 complex process with a low probability of success.

17 Q The Coleman Young Airport, next page. Keep going.

18 Coleman Young Airport.

19 A The airport is currently not being used for commercial
20 services. It's being used for so-called general aviation
21 only. It's a very small airport. Its runways are too -- too
22 short to allow regular commercial service by major carriers.

23 The airport itself is dilapidated and would require
24 reinvestment to bring it up to commercial standard. It's

25 effectively worth nothing. And likely not be worth anything

1 unless these reinvestments are made.

2 And we did explore it actively with one of my partners
3 who is an airlines expert. We came to the conclusion that,
4 you know, we'd have to pay someone to take it.

5 Q Move on to the Belle Isle Park if you would, please. Oh,
6 I'm sorry, Detroit Windsor Tunnel.

7 A Well, the city owns half the tunnel, Windsor owns the
8 other half. Under a prior administration, Detroit leased its
9 portion of the tunnel in exchange for a rent to equal 20% of
10 the annual revenues.

11 Last year, I believe, it collected \$750,000. The city
12 has no ability to vacate the lease which runs through 2020.
13 There is no ready buyer for it. Given the lease which
14 encumbers the asset, there was no value to be realized there.
15 Indeed we recommended instead that the city audit the
16 operations of the operator to find out whether we'd be getting
17 a fair allocation of revenue. And that audit is still
18 ongoing.

19 Q Belle Isle Park.

20 A Belle Isle Park is a major park of the city. And we did
21 not believe that it would have any material value as any other
22 -- in any other application.

23 First of all, it would require re-zoning. Re-zonings
24 typically are long and complex undertakings. It is an
25 important social asset of the city.

1 Converting it into any kind of private use would again be
2 a long and contentious process. We did not believe it could
3 be converted into any form of cash at any time soon.

4 Q Next page, please. The Detroit Institute of the Arts.
5 The number of words understates the interest in the problem.
6 Could you tell us what investigations and efforts have been
7 done with respect to the Detroit Institute of Arts?

8 A Well, back in January when we first began our engagement,
9 we discovered, we had not known this before, that the City of
10 Detroit actually does own the building and the art collection
11 of the Detroit Institute of Arts which is operated on the
12 city's behalf by the DIA Corp. which is the founder society as
13 a contractor to the city.

14 We obviously were concerned about this and had to decide
15 whether or not this might be a source of value for the city.
16 I did meet with trustees and managers of the DIA in May and
17 explained to them that they should be concerned about the fact
18 that in the worst scenario the collection and the art might
19 need to be dealt with as part of a restructuring. And it
20 would be in their interest as trustees of the operator to try
21 to secure funding from whatever source they could to give to
22 the city in exchange for a protective covenant.

23 I thought that would be a clever way of realizing short
24 term cash for the city which would not necessarily require the

1 fire sale basis.

2 Q And what was the response?

3 A They told me that would be impossible, that no money was
4 available from anybody that they knew, and that it was not
5 something they would consider.

6 Q And subsequently did any office of the state weigh in on
7 this issue?

8 A Yes. The Attorney General issued an opinion that the art
9 was in a public trust and could not be used for any other
10 purpose despite the fact that a significant part of the
11 collection had been paid for by tax revenues of the City of
12 Detroit.

13 Q Has that progressed any further?

14 A Somewhat.

15 Q Has there been an attempt to value it?

16 A In our recommendation to the emergency manager,
17 Christie's, which is an internationally known auction house
18 with expertise in these matters, has been engaged in a
19 appraisal of that portion of the collection paid for by the
20 city. I expect to get a preliminary estimate from them in a
21 matter of weeks.

22 Q City owned land.

23 A Well, we originally hoped that this land could be quite
24 valuable. It's not everyday that 22 square miles within a

1 thought that should be of interest to some set of developers.

2 But again the land is in disparate parcels. It's held in
3 disparate hands. There are at last count five different
4 government entities that control different parts of the
5 property represented by this 22 square miles.

6 There is no coherent strategy for disposal, marshaling,
7 or re-development of this property. In addition, much of the
8 land is still encumbered with blight. It would require
9 significant investment to remove that blight.

10 And lastly, a lot of the land is subject to liens which
11 has not has been cleared. And the cost of clearing those
12 liens, it would not be insubstantial here. Again even though
13 individual parcels might be available for cash, there is no
14 substantial value to be realized from this today.

15 Q Parking operations.

16 A Again the city owns nine garages, many of which are being
17 operated by others. We actually are in the process of putting
18 together an auction to sell the rights to use those parking
19 garages to others.

20 I would note that many of the garages are in such a
21 dilapidated condition they are unsafe. Ironically enough the
22 garage supporting the DIA has been condemned. It has not been
23 used for any commercial purpose for a number of years because
24 it's in such bad condition. I'm not sure that anyone would

25 pay us for that.

1 Q Next one. The Joe Louis Arena.

2 A Again, you know, it's an old facility, currently
3 obsolete. We're entertaining alternatives for it, but we
4 haven't received any.

5 Q And with respect to all of these assets sale
6 possibilities, or asset monetization possibilities, had they
7 all to your knowledge been the subject of discussion before
8 they appeared in this report?

9 A Well, prior to our involvement, I can't testify to that.
10 But as we were engaged we immediately began to systemically
11 look at all these assets to find out whether any of them could
12 be turned into cash. And it was the subject of intensive
13 analysis by my firm beginning in January of this year.

14 Q All right. And --

15 MR. CULLEN: Pardon me, Your Honor.

16 Q In the -- in the proposal itself, was there any
17 discussion of what would happen to further unsecured payments
18 of debt going forward?

19 A Well, on June 14th we told the creditors, we had over 100
20 people show up at that meeting, that we had taken the decision
21 because of the city's dire cash position to not make the
22 \$40,000,000 bond payment due on June 15th and that we would be
23 suspending all other unsecured debt payments for the
24 foreseeable future in order to conserve cash.

25 Q And did you view that as necessary in light of the
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1 circumstances of the city?

2 A We did, but we also felt we could take that step because
3 we were able to negotiate an agreement in principal just prior
4 to that date with the swap banks which we felt would allow us
5 to continue to have access to our gaming revenues which is an
6 essential condition to allowing the city sufficient time to
7 negotiate with the stakeholders.

8 Q So again what was the relationship between the settlement
9 with the swap banks and the ability to negotiate?

10 A Well, the swap banks already had one uncured default, the
11 ratings downgrade, the appointment of Kevyn Orr was in and of
12 itself a default. And we knew that once we took the decision
13 to not make the bond payment, that would be another default.

14 At some point especially after the swap banks saw the
15 financial condition of the city, they might feel they had no
16 option but to be defensive in protecting their own position,
17 even if they didn't want to and block our access to gaming
18 revenues. So having an agreement with them in place prior to
19 taking a decision to not make that bond payment was crucial.

20 Q After the June 14th proposal in the public meeting at
21 which it was presented, did you make further efforts -- did
22 you make any efforts to generate counter proposals,
23 discussions, other -- other -- other interests?

24 A Yes.

25 Q What were -- could you describe generally those efforts?
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1 First, let me put up a -- on the screen Exhibit 44, the full
2 version of the creditor's proposal. Well, Pages 61 and 62.
3 Yeah, 61 and 62.

4 And is this the calendar that you set forth for your
5 efforts in the proposal?

6 A Yes.

7 Q Now what -- what did you personally do to try to talk to
8 contact various stakeholders?

9 A Well, we were fortunate in one respect. We had had a
10 very robust response to our invitation to the meeting on June
11 14. We had been able to identify all of the bond trustees and
12 all of the bond insurers that insured much of the city's debt.

13 They effectively could be relied upon to speak for if not
14 actually vote the interests of their underlying bond holders.
15 And so we were very happy that they all agreed to come and
16 hear our proposal because we knew we could begin our
17 discussions with them. They already were organized.

18 We also knew who could speak for the pension trusts and
19 they were invited. And we also invited union representatives
20 who we hoped could speak for both the active and retired
21 employees of the city. So they were all present on the 14th of
22 June.

23 Q And was it -- was it your desire to promote discussions
24 and counter proposals?

25 A That was the whole intent of the meeting. We had spent
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1 months developing the financial information. We felt our
2 stakeholders deserved to be able to evaluate not only their
3 current conditions relative to the city, but evaluate the
4 proposal that we made to them at that meeting.

5 We wanted them to have exactly the same information that
6 we did. We wanted to make sure they could rely upon it to be
7 accurate. We wanted them to also understand that despite all
8 the promises had been made to both bond holders and others,
9 the city did not have the resources and likely would never
10 have the resources to honor those promises.

11 We felt they had to have information in order to
12 understand what we were asking them to do in terms of
13 compromising their claims to allow fair treatment for
14 everybody.

15 Q In the discussions you had with any of the stakeholders,
16 did you encounter any resistance to the idea of compromising
17 their claims at less than 100%?

18 A Nobody was willing to consider any proposal in which they
19 compromised their claims.

20 Q And you're saying nobody, who do you mean?

21 A Well, I was primary responsible for discussions with the
22 bond holders and other funded debt holders of the city. And I
23 would further break that down between the Detroit water and
24 sewer revenue bond holders and the general obligation and comp
25 the bond holders of the city.

1 Given our expertise as investment bankers and the fact we
2 had relationships with most of these people, that made sense.
3 So I took primary responsibility for those discussions.

4 The discussions with our other claim holders, primarily
5 the pension funds, and retirees, and active employees were led
6 by Conway, MacKenzie and Jones, Day as well as some of my
7 partners at Miller, Buckfire.

8 Q And what kind of a response did you get in those
9 discussions?

10 A Well, in speaking with the bond holders, and again I'm
11 using that between both the secured bond holders and the
12 unsecured bond holders, nobody was willing to consider any
13 compromise of their claims whatsoever.

14 In fact even the secured bond holders, that is those bond
15 holders who held debt of the Water and Sewer Department were
16 very unhappy because our plan contemplated that if we were to
17 create a new authority controlled by the customers of it, that
18 we would want to take advantage of the fact that that
19 authority could borrow at a much higher credit rating than
20 Detroit could, and even though we were going to give them 100
21 cent recovery, it would not be in the form of new bonds that
22 would have the same old interest rates.

23 In other words they wanted to have the benefit of a
24 strong investment grade rating, but retain bonds that were

1 like the proposal. I was not surprised by that, but I hoped
2 that they would at least counter with something else which
3 they did not do.

4 THE COURT: What -- what does the phrase double B
5 cost mean?

6 A It refers, Your Honor, to a credit rating. Cities as do
7 companies, borrow in the markets at a spread over the
8 so-called risk free rate, although some could argue to say,
9 I'm not sure what that is, but let's assume for the moment
10 that that's the treasury yield curve.

11 The double B cost would be perhaps a spread of 400 or 500
12 basis points over the treasury cost, whereas a single A cost
13 to borrowing might be only 100 basis points over. So the
14 difference would be obviously reflecting the risk of a lower
15 rate of credit.

16 Q Did -- did you receive any indications in your
17 discussions with any of these bond holders, that some of the
18 considerations in their negotiations or non-negotiations with
19 you, had to do with considerations that extended beyond the
20 City of Detroit?

21 A Yes. In discussions with the bond insurers who insured
22 the water and sewer debt, about five and a half billion
23 dollars of that, several of them also insured GO debt, general
24 obligation bonds of the city.

1 willing to consider any impairment of the GO bonds because
2 they believed that the GO pledge was so much more valuable in
3 every other jurisdiction of which they insured bonds, that
4 creating a precedent of impairment here would damage their
5 businesses elsewhere.

6 Q And when you say GO bonds, explain to the Court what you
7 mean.

8 A The city up until recent times, had been able to issue
9 unsecured debt that is not secured by a specific revenue
10 pledge, but secured instead by the full faith and credit
11 obligation to raise taxes sufficient to pay that debt when
12 due.

13 And there are two different kinds. Unlimited tax and
14 limited tax general obligation bonds, both of which have been
15 considered for many years to be of higher credit and less risk
16 than revenue bonds because a revenue bond is specifically
17 secured only by the revenues of a project or an authority or a
18 utility. Whereas bonds secured by taxing authority are
19 considered to be much safer because the city is required to
20 raise taxes in the ordinary course until that bond can be
21 repaid.

22 Now in the case of Detroit, of course, that's -- they've
23 come to the end of the road because on the property tax side
24 for a moment, we know that the property tax mileage that the

1 the city would have no ability to raise taxes or tax rates to
2 pay this debt.

3 That was anathema to the bond insurers because they had
4 operated, as does the municipal bond market, on the theory
5 that general obligation debts are higher -- higher credit and
6 less risky than revenue bonds.

7 We, on the other hand, when we did the math, recognized
8 the city could never begin to satisfy its unsecured
9 obligations which would include the general obligation bonds
10 and we had classified those bonds pari passu with the other
11 unsecured obligations of the city, in this case are under
12 funded pension claims and health care claims.

13 Q If I could have you take a look at Exhibit 37. Could you
14 blow that up a little bit, please? This is a set of meetings
15 that I won't go through completely. But if you'll just look
16 down the -- the left hand side and -- and across the top.

17 Can you tell me did you or representatives of Miller,
18 Buckfire participate in virtually all of these meetings?

19 A Yes.

20 Q Did the city ever receive a proposal from anybody?

21 A We did.

22 Q How many?

23 A We received I would say one and a half. One that was
24 actually written out and then to be responsive, the second was
25 really just a letter saying they'd like to come talk to us

1 again about something, but only if we would stipulate they'd
2 get 100 cent recovery.

3 Q And was that the one or the one and a half proposal that
4 was attractive enough to follow up on?

5 A No. Because they were linking any willingness to
6 negotiate on water and sewer debt to our treatment of the GO
7 bonds that they also insured.

8 Q What in your view is the alternative for the city if the
9 plan set forth in the June 14th proposal is not achieved?

10 A Well, first, the city will not be able to execute is
11 reinvestment program. It would simply not have the money.
12 That would mean the city would continue to be liquidated for
13 the benefit of its stakeholders. Revenues are likely to
14 continue to decline. Services will continue to deteriorate.
15 That would be the condition of the city in -- in the absence
16 of this plan.

17 Q Is that a long term sustainable future for Detroit?

18 A From a financial perspective, no. Because I don't
19 believe if you want to measure sustainable future as having
20 access to the capital markets, that under that scenario
21 Detroit would ever have access to capital markets. They would
22 have no credit.

23 MR. CULLEN: That's all I have, Your Honor.

24 MR. MONTGOMERY: If I may at this point. I would

1 testimony given by the witness for the last several questions
2 starting with how the capital markets are reacting, not
3 through conversations with the witness, but in general.

4 And I think this witness has given classic, wonderfully
5 prepared, rather wonderfully delivered, expert witness
6 testimony relying on hearsay, relying on specialized
7 knowledge, relying on years of accumulated talent and
8 education that this gentleman clearly has, but none of which
9 was offered prior to the pre-trial, or offered to Your Honor
10 as expert witness testimony. I believe it should be stricken.

11 MR. CIANTRA: UAW would join in that motion.

12 THE COURT: I wish you had objected at the time.

13 MR. CULLEN: Your Honor, part of our job here is to
14 set forth before the Court the story of the decisions that
15 were made and the reasons that they were made on behalf of the
16 City of Detroit.

17 This witness has done that. He was an operative figure
18 in real time. He has testified candidly as to the bases on
19 which his decisions were made, the things he looked at, the
20 advice he gave to the city as it faced these difficult
21 decisions.

22 The story cannot be -- this is a factual story. It may
23 need a man of rare experience to tell it, but it is
24 nonetheless a factual story about things that were done in

1 independent person to look at and -- a set of assumptions from
2 which to draw opinions.

3 This is the actor. This is the actor at the heart of the
4 story and he is telling his story. And as such, it has to be
5 admissible, if that as nothing else.

6 He is the man who made the recommendations. He is the
7 man who presided over the analyses. He has told that story
8 and told of the basis for making these. Because it's -- it's
9 somewhat upside down, a -- an expert witness is qualified by
10 his expertise and nothing else. That's why we let expert
11 witnesses testify only rarely and under certain circumstances,
12 but we let percipient witnesses testify all the time, all the
13 time to their experience, to what they saw and did, decided.

14 This man tells the story. And that story is a factual
15 story by a percipient witness of rare gifts, but a percipient
16 witness.

17 THE COURT: What -- what you say is good as far as
18 it goes, but it doesn't really meet the objection. Because
19 the objection is that beyond explaining what the witness did
20 and why he did it, is the question of whether that constitutes
21 proof of the truth of the facts on which he relied to -- to
22 make the decisions that he made.

23 MR. CULLEN: And -- and I would submit, Your Honor,
24 that the judgment of a sophisticated person in real time is

1 that happens in -- in virtually every -- every case.

2 THE COURT: Well, it strikes me that --

3 MR. CULLEN: Some level.

4 THE COURT: That this issue overlaps largely, if not
5 entirely, with the issue that you and your firm briefed here
6 this morning and that we're going to argue tomorrow morning.
7 So I would suggest that we hold the resolution of this until
8 then. Do you have any further questions of the witness?

9 MR. CULLEN: I -- I do not, Your Honor, at this
10 point.

11 THE COURT: All right. Counsel, do you want to
12 press ahead with cross examination at this time, or would you
13 prefer to break now and -- and resume in the morning?

14 MR. MONTGOMERY: Your Honor, my colleagues had
15 suggested that we should break until tomorrow.

16 MR. RUEGGER: Shocker.

17 THE COURT: Yeah. Apparently -- apparently there
18 was no vote for you in that, was there?

19 A I didn't want to suggest that.

20 THE COURT: Okay. Well, we will -- we will break
21 for now. It's fine. We're close enough to 5:00 and so we'll
22 reconvene at 9:00 tomorrow morning.

23 Regarding our argument tomorrow morning on the issues
24 raised here just now and by the -- the memorandum that was

1 your time to file a brief. If you want to, obviously I can't
2 prevent it. The sooner you file it, the more likely it is
3 we'll be able to read it and actually comprehend it.

4 So I would ask that if you do file something you do not
5 file it at ten minutes till 9:00 tomorrow morning, please.
6 But if there are authorities you want me to consider, feel
7 free to just bring them to Court tomorrow and we will deal as
8 best we can given the expedited nature of this.

9 MR. STEWART: Thank you, Your Honor.

10 THE COURT: All right. So we'll be in recess.

11 MR. SHERWOOD: Thank you, Your Honor.

12 MR. CULLEN: Thank you, Your Honor.

13 THE CLERK: All rise. Court is adjourned.

14 (Court Adjourned at 4:42 p.m.)
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We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Deborah L. Kremlick, CER-4872
Letrice Calloway

Dated: 11-1-13

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. October 25, 2013
Debtor. . 9:00 a.m.
.

HEARING RE. ELIGIBILITY TRIAL (CONTINUED)
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day
By: BRUCE BENNETT
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2452
(213) 243-2382

Jones Day
By: GEOFFREY S. IRWIN
GEOFFREY S. STEWART
GREGORY SHUMAKER
THOMAS CULLEN, JR.
MIGUEL F. EATON
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3768

Pepper Hamilton, LLP
By: ROBERT S. HERTZBERG
4000 Town Center, Suite 1800
Southfield, MI 48075-1505
(248) 359-7333

For the State of Michigan: State of Michigan
Michigan Department of Attorney General
By: MATTHEW SCHNEIDER
P.O. Box 30754
Lansing, MI 48909
(517) 241-8403

Dickinson Wright, PLLC
By: STEVEN G. HOWELL
500 Woodward Avenue, Suite 4000
Detroit, MI 48226-3425
(313) 223-3033

APPEARANCES (continued):

<p>For AFSCME, AFL-CIO, and Sub- Chapter 98, City of Detroit Retirees:</p>	<p>Lowenstein Sandler, LLP By: SHARON L. LEVINE JOHN K. SHERWOOD 65 Livingston Avenue Roseland, NJ 07068 (973) 597-2374</p>
<p>For Detroit Retirement Systems- General Retirement System of Detroit, Police and Fire Retirement System of the City of Detroit:</p>	<p>Clark Hill, PLC By: ROBERT D. GORDON JENNIFER K. GREEN 151 South Old Woodward, Suite 200 Birmingham, MI 48009 (248) 988-5882</p> <p>Clark Hill, PLC By: RONALD A. KING 212 East Grand River Avenue Lansing, MI 48096 (517) 318-3015</p>
<p>For the Detroit Fire Fighters Association, the Detroit Police Officers Associa- tion and the Detroit Police Lieutenants & Sergeants Association:</p>	<p>Erman, Teicher, Miller, Zucker & Freedman, P.C. By: BARBARA A. PATEK JULIE BETH TEICHER DAVID EISENBERG 400 Galleria Officentre, Suite 444 Southfield, MI 48034 (248) 827-4100</p>
<p>For the Inter- national Union, UAW:</p>	<p>Cohen, Weiss & Simon, LLP By: BABETTE A. CECCOTTI PETER D. DECHIARA THOMAS N. CIANTRA 330 West 42nd Street, 25th Floor New York, NY 10036-6976 (212) 356-0227</p>

APPEARANCES (continued):

For Detroit Silverman & Morris, PLLC
 Retired City By: THOMAS R. MORRIS
 Employees 30500 Northwestern Highway, Suite 200
 Association, Farmington Hills, MI 48334
 Retired Detroit (248) 539-1330
 Police and Fire

Fighters Associa- Lippitt O'Keefe, PLLC
 tion, Shirley V. By: RYAN C. PLECHA
 Lightsey, and 370 East Maple Road, Fl. 3
 Donald Taylor: Birmingham, MI 48009
 (248) 646-8292

For the Official Dentons
 Committee of By: CLAUDE D. MONTGOMERY
 Retirees: ANTHONY B. ULLMAN
 ARTHUR H. RUEGGER
 1121 Avenue of the Americas
 New York, NY 10020-1089
 (212) 632-8390

Brooks, Wilkins, Sharkey & Turco, PLLC
 By: MATTHEW E. WILKINS
 401 South Old Woodward, Suite 400
 Birmingham, MI 48009
 (248) 971-1711

For Retired Strobl & Sharp, PC
 Detroit Police By: LYNN M. BRIMER
 Members MEREDITH E. TAUNT
 Association: MALLORY A. FIELD
 300 East Long Lake Road, Suite 200
 Bloomfield Hills, MI 48304-2376
 (248) 540-2300

For the Flowers Law Offices of William A. Wertheimer
 Plaintiffs: By: WILLIAM WERTHEIMER
 30515 Timberbrook Lane
 Bingham Farms, MI 48025
 (248) 644-9200

For Ambac Schafer and Weiner, PLLC
 Assurance Corp.: By: DANIEL J. WEINER
 40950 Woodward Avenue, Suite 100
 Bloomfield Hills, MI 48304
 (248) 540-3340

Court Recorder: Letrice Calloway
United States Bankruptcy Court
211 West Fort Street
21st Floor
Detroit, MI 48226-3211
(313) 234-0068

Transcribed By: Lois Garrett
1290 West Barnes Road
Leslie, MI 49251
(517) 676-5092

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

3 THE COURT: Good morning, everybody.

4 ATTORNEYS: Good morning, your Honor.

5 THE COURT: I understand that the security lines
6 were long. Does anyone know of anyone we need to wait for
7 here this morning, or can we get underway?

8 MS. BRIMER: Your Honor, Ms. Patek is not here this
9 morning. I don't know if anyone --

10 THE COURT: Okay. She probably is intending to be
11 here. Let's see. She's not directly involved in this
12 evidentiary issue we were going to start with here this
13 morning, so maybe we can proceed with that. Okay. So let's
14 do that.

15 The first thing I want to place on the record is
16 that the Court did review, as necessary, the Jones Day
17 memoranda that were submitted to it in camera. The Court's
18 review of that material establishes really quite conclusively
19 that the material is attorney work product and that,
20 therefore, is not required to be disclosed by the city or its
21 counsel, and so the Court will so order.

22 In this regard, the Court will state for the record
23 that its review of that material was only cursory. That was
24 really all that was necessary, and certainly the Court will
25 not take into account anything it saw in those memoranda in

1 deciding the issue of eligibility. So, for the record, we
2 are going to return those materials to you, Mr. Stewart,
3 right now. Will you come forward and accept them from us?

4 MR. STEWART: Thank you.

5 THE COURT: Thank you. So the next order of
6 business will be for the Court to hear from counsel for the
7 objecting parties on the issue of lay versus expert testimony
8 here. And, once again, before I forget, I want to again
9 request, counsel, that -- to remind counsel really that the
10 so-called rough transcript that you all have arranged for is
11 not the official transcript. It is under no circumstances to
12 be cited in any pleading before the Court. You may cite the
13 official transcript when and if it's produced, but the rough
14 transcript is for your purposes only and is not to be cited.
15 And as a result, I'm going to ask each of you to file amended
16 memoranda that strike your references to the rough
17 transcript.

18 MR. PLECHA: Good morning, your Honor. Ryan Plecha
19 on behalf of the Retiree Association parties from Lippitt
20 O'Keefe. I just wanted to make clear on the record that
21 those objecting parties that are not making live objections
22 on the record or filing papers are relying on the evidentiary
23 objections made by those parties making those live
24 objections, and I just wanted to clarify that on the record.

25 THE COURT: Absolutely.

1 MR. PLECHA: Thank you, your Honor.

2 THE COURT: And for the record, Ms. Patek has
3 arrived, so we can proceed. Who would like to proceed?

4 MR. MONTGOMERY: Good morning. Claude Montgomery
5 for the Retiree Committee. I am rising first, your Honor,
6 because I believe today's motions -- two part. The city has
7 asked to reconsider your Honor's ruling with respect to the
8 exclusion of forecast testimony with respect to Mr. Malhotra,
9 and we have moved to strike the testimony of Mr. Buckfire as
10 having been unqualified expert testimony. And so if I may,
11 first, I would like to point out to the Court I think you
12 will -- you may remember that the -- Mr. Malhotra testified
13 that he both examined and relied on a team of people to
14 examine both bank records and relied upon departments of the
15 city within which he was not employed in order to determine
16 what cash levels were. Two, your Honor may recall that he
17 testified that he was not an officer or director,
18 shareholder, or owner of the city. Of course, he couldn't a
19 shareholder. Second -- third, your Honor may recall that
20 Mr. Buckfire, I believe, testified yesterday that they had
21 recourse to expert revenue and tax policy individuals that
22 were part of the forecasting team and that they -- I think
23 Mr. Buckfire testified yesterday that he was fortunate to
24 have had access to such people and that those individuals
25 participated in the generating of the forecasts. Fourth,

1 your Honor, I think intuitively, at least intuitively for me,
2 the mere notion that using an Excel spreadsheet somehow
3 transforms the compilation of thousands of lines and
4 different kinds of formulas from being simple arithmetic into
5 something that a layperson can do by looking at their own
6 checkbook or bank accounts, quite the contrary. I am not an
7 expert in using Excel. It took me some training to be able
8 to do it, and I know from multiple efforts with my
9 secretaries that it is not something that the ordinary
10 layperson can do with a high school education. And I, by the
11 way, think my secretaries are quite good. And so, your
12 Honor, I think this falls squarely within the Sixth Circuit's
13 JGR Industries decision and which the debtor, the city,
14 acknowledges holds against them, excludes testimony, and does
15 so because there was no basis absent the -- in effect, the
16 owner being a part of the business exception and absent
17 individual effort at verification and absent simple
18 mathematics to allow the testimony to go forward. And
19 perhaps, most importantly of all, there are cases where
20 historical records are allowed to be testified about. I
21 believe the Sixth Circuit has a decision along those same
22 lines, your Honor, but this is a forecast. This is
23 projecting into the future. This is using assumptions,
24 assumptions that had to be created and referenced to some
25 specialized knowledge or understanding of not only how the

1 cash got into the city but how it will get into the city in
2 the future and what would be a reasonable basis to make an
3 assumption for a going-forward prospect, so we think under
4 those circumstances the cases, in particular, that the city
5 seems to rely on just don't help it, and I think both Sixth
6 Circuit cases are either squarely against it -- that is, the
7 JGR case -- or clearly distinguishable on the ownership
8 basis, which is the Lativafter Liquidating Trust, and that we
9 suggest to you is the controlling authority.

10 We would note that the recitation by the city of
11 United States versus Madison, another Sixth Circuit case,
12 again, did not offer or involve a future forecast. The
13 analysis that was allowed in that case was retrospective
14 only. And, secondly, it was -- there were no complex
15 formulas and no assumptions, no assumptions applied in using
16 the work. It was purely, if you will, large scale
17 ministerial effort, and I think the Court allowed it in. And
18 interestingly I find and perhaps your Honor might that that
19 particular case also cites the DIJO versus Hilton Hotels case
20 and JGR as authority to support its holding where in the DIJO
21 case it was complex formulas that -- appraising economic
22 values of a lost contract that were excluded, so the Sixth
23 Circuit in the Madison case cites the boundaries of what
24 should be excluded, finds that it's retrospective only, it's
25 ministerial in its efforts and, therefore, says it's not an

1 abuse of discretion. It's permitted in. And I think here,
2 your Honor, this is clearly being addressed to your
3 discretion. It is well within the bounds and even the
4 directions under 701 to exclude such testimony, and,
5 therefore, we would ask you to adhere to your Honor's earlier
6 ruling and not permit the forecast testimony of Mr. Malhotra.

7 Now, if I may turn to Mr. Buckfire, yesterday at the
8 conclusion or near the conclusion --

9 THE COURT: One second.

10 MR. STEWART: Your Honor, I don't wish to interrupt
11 Mr. Montgomery; however, this motion on Mr. Buckfire is brand
12 new. It came to us this morning. I got it at 6:52 this
13 morning. I would suggest, no, that was not part of the
14 original motion. The original motion was made only by AFSCME
15 with respect to Mr. Malhotra. The Buckfire motion is new.
16 We would ask leave to just put in a paper on it lest we be
17 pulled into something we've not had time to prepare on.

18 THE COURT: There was a motion to strike at the
19 conclusion of the proceedings yesterday, and I --

20 MR. STEWART: A motion was --

21 THE COURT: -- and I deliberately deferred it to
22 this morning.

23 MR. STEWART: Right. I withdraw my --

24 THE COURT: All right.

25 MR. STEWART: Then I'll sit down.

1 THE COURT: Go ahead, sir.

2 MR. MONTGOMERY: Successfully thrown off my --

3 MR. STEWART: I'm sorry. I apologize. I apologize.

4 MR. MONTGOMERY: -- my game, your Honor.

5 THE COURT: I'm sure that was not the intent, but
6 you were about to talk about Mr. Buckfire.

7 MR. MONTGOMERY: I was. Now, although we do not
8 have a transcript on which we can rely, I would ask your
9 Honor to look at the -- your Honor's memory of the questions
10 beginning with an explanation of the GO bonds, the general
11 obligation bonds. You may recall that Mr. Buckfire then
12 launched into a fairly intriguing explanation of GO bonds and
13 matters that he tied to the marketplace and the nature of
14 risk and the nature of interest rate costs associated with
15 risk and the differences between interest rates for taxing
16 authorities and nontaxing authorities and how that all played
17 a role. And he concluded at the end of his testimony, if I
18 remember correctly, that -- with an opinion on long-term
19 sustainability for the future of New York, again, pure expert
20 testimony regarding access to capital markets, a subject in
21 which he was clearly an expert, clearly had gained knowledge
22 over time, and it was -- it is something that is quite often
23 the subject of admissible expert testimony. I think we
24 pointed out, your Honor, orally yesterday that this
25 individual was not identified as an expert in the pretrial.

1 In fact -- and I think the city made a quite conscious choice
2 that they weren't going to use experts at all in this case
3 and Mr. Buckfire just being the last and final manifestation
4 of that strategic or tactical decision, and we think that in
5 the case of Mr. Buckfire, while he put in a lot of factual
6 and historical information, those last questions that were
7 asked and answered beginning with the discussion of the GO
8 bonds are pure opinion, rely entirely on expert
9 understanding, rely entirely on information gathered that
10 would have been or is hearsay insofar as this Court is
11 concerned, and under 702, since he was not a qualified
12 expert, was not identified as an expert to be -- to testify,
13 that his testimony should be stricken.

14 THE COURT: Thank you.

15 MR. DECHIARA: Good morning, your Honor. Peter
16 DeChiara from the law firm of Cohen, Weiss & Simon, LLP, for
17 the UAW International Union. I'll begin with the Malhotra
18 piece of this issue. We agree entirely with the city's
19 reliance on the key case of JGR, a Sixth Circuit 2004 case.
20 And that case, we agree with the city, is squarely on point,
21 and it's squarely on point in our favor. The holding of that
22 case was remarkably similar to the facts here. In that case,
23 the Court held that the admission of lay opinion by an
24 accountant about the company's lost profits was not
25 admissible, not admissible, when two things: the accountant

1 was not the owner, officer, or director of the business, and,
2 two, relied for information principally on the business
3 itself. Here what do we have? We have Mr. Malhotra, who, as
4 I asked him at the very outset of my cross-examination
5 yesterday, I asked him whether he was an officer or whether
6 he had any elected or appointed position with the city, and
7 he indicated he was not, but then I went further, your Honor,
8 and I asked him was he directly involved in running the
9 business of the city, and Mr. Malhotra clearly indicated that
10 he was not directly involved in running the business of the
11 city.

12 Then the question becomes where did he get the
13 information he relied on. Well, let's look at Mr. Malhotra's
14 declaration. It's Exhibit 8 in the record, paragraph 14.
15 I'm going to start reading from the second sentence. His
16 declaration says, quote, "EY used the city's publicly
17 available historical financial data," and then I'll skip over
18 the piece of it that just refers to the 2012 CFR, and then
19 the sentence continues, "and other information provided by
20 the city and its other advisors. EY did not audit the city's
21 historical financial data. Rather, EY relied upon the raw
22 data provided by the city, including the underlying data that
23 the city used to prepare 2012 CAFR and previous financial
24 reports." So this case, the case of Malhotra, on this issue
25 is squarely on point with the binding decision and the

1 holding of the Sixth Circuit in the JGR case, and we think,
2 your Honor, that that is dispositive on the issue that
3 Mr. Malhotra's forecasts are inadmissible lay testimony.

4 There were a couple other points. I think they were
5 sort of tangential points that the city made in its brief,
6 and I'd just like to address those. In paragraph 7 of the
7 city's brief, it says that -- the city's brief says, "In any
8 event, even if the Court does not permit Mr. Malhotra to
9 provide lay testimony on the cash flow forecast he prepared
10 for the city, the economic projections offered in
11 Mr. Malhotra's testimony will still be probative of the
12 city's financial condition." Well, that's -- what the city
13 is arguing there is that his -- Mr. Malhotra's forecasts
14 should come in for the truth of the matter as to what the
15 city's financial condition is. That's exactly what it should
16 not be allowed to come in for. And I think your Honor made
17 that clear in your prior rulings, and we think that should be
18 upheld.

19 And then one last point on Mr. Malhotra. In
20 paragraph 8 of its brief the city argues that Mr. Malhotra's
21 forecasts were not prepared in anticipation of litigation.
22 Well, whether that's true or not is irrelevant. The guiding
23 Sixth Circuit precedent, the JGR case, doesn't incorporate
24 that as an issue or a deciding factor, but -- and I think
25 this is interesting, your Honor. It was interesting that in

1 arguing that Jones Day's memos were work product, the city
2 argued that going back months and months and months before
3 the bankruptcy filing that Jones Day was preparing these
4 memos because they knew something was going to happen. The
5 financial condition of Detroit meant there was going to be
6 some legal proceedings or lawsuits. So why is it consistent
7 for the city to argue that what Jones Day was doing was
8 somehow in anticipation of something related to litigation,
9 but Mr. Malhotra's forecasts, which were prepared in this
10 exact same time frame, why are those not in anticipation of
11 some legal proceedings? But be that as it may, whether or
12 not it's prepared for litigation is irrelevant. The key
13 points are he was -- it was inadmissible lay testimony by
14 someone who was not an officer or owner of the entity and who
15 relied on information obtained from the entity itself.

16 Let me now move to Mr. Buckfire. Mr. Buckfire was
17 asked questions such as -- and I'm relying on my notes. He
18 was asked during his direct whether it was economically
19 sensible, economically sensible, for the city to remove
20 blight. He was asked what, in his view, was the alternative
21 for the city if the June 14th creditors' proposal was not
22 accepted, what was the long-term sustainable -- whether the
23 city's current finances were sustainable in the long term.
24 Now, your Honor, those are all expert questions, and the
25 thing is it seemed natural to all of us when we were

1 listening to Mr. Buckfire answer those questions -- it seemed
2 natural to hear his opinion because the truth of the matter
3 is -- the real fact is he is an expert. He's an expert
4 investment banker who has a lot of experience in this area,
5 but for some unfathomable reason, the city has made a
6 decision not to use him and not to qualify him as an expert,
7 so for purposes of this proceeding, Mr. Buckfire's testimony
8 in response to those questions was no more deemed worthy of
9 credit than if we had taken a random person off the street.
10 If instead of putting on Mr. Buckfire the city had put on the
11 taxi driver who drove Mr. Buckfire here from the airport and
12 asked the taxi driver what is the -- is the city's finances
13 sustainable in the long term, does it make economic sense
14 to -- the Court would not have allowed the taxi driver to
15 answer those questions. For purposes of this proceeding,
16 because the city made that strategic decision, Mr. Buckfire
17 is no more qualified to answer those questions than the taxi
18 driver. Thank you.

19 MS. LEVINE: Good morning, your Honor. Sharon
20 Levine, Lowenstein Sandler, for AFSCME. Trying not to
21 duplicate but making similar arguments, with regard to both
22 E&Y and Miller Buckfire, these are expert witnesses. They're
23 relying on financial assumptions. They're scrubbing numbers.
24 They're getting in hearsay evidence that would not otherwise
25 be admissible before this Court in the form of publicly

1 available financial information prepared by the city to
2 audited financial statements prepared by other experts not
3 called upon to testify before your Honor. We would
4 respectfully suggest that it would be telling just to go back
5 to the statute itself. If you take a look at Rule 401, if a
6 witness is not testifying as an expert, testimony in the form
7 of an opinion is limited to one that is rationally based on
8 the witness' perception, helpful to clearly understand the
9 witness' testimony or determining facts in issue, and not
10 based on scientific, technical, or other specialized
11 knowledge within the scope of Rule 2002.

12 So then we turn to Rule 2002. A witness who is
13 qualified as an expert by knowledge, skill, experience,
14 training, education may testify to opinion. That's exactly
15 what we have here, your Honor. If you take a look at the
16 paragraph --

17 THE COURT: I think you're referring to Rules 701
18 and --

19 MS. LEVINE: 702.

20 THE COURT: -- 702.

21 MS. LEVINE: Right. To further assist in projecting
22 future economic trends -- and this is paragraph 16 of the E&Y
23 declaration; it's Docket Number 12 -- E&Y sought the advice
24 and input of its own internal team members with experience in
25 economic forecasts impacting the likely future property and

1 income tax revenues. The testimony on the stand, your Honor,
2 similarly relies on input from Milliman, input from audited
3 financial statements. In addition to that and with regard to
4 Ken Buckfire, same -- and I won't go through the examples.
5 Your Honor already has them. But it is not simply putting
6 somebody on the stand with a factual understanding of the
7 city's financial issues and giving testimony that any other
8 layperson could give. And more than that, your Honor,
9 neither of these are elected officials or city employees,
10 which means not only is it not a business owner exception,
11 but it's not a hearsay exception. In other words, there's
12 nobody who looks at these. Neither E&Y nor Miller Buckfire
13 review the City of Detroit's books and records in the
14 ordinary course of business. The way they come into every
15 single situation where they're an expert witness -- they're
16 brought in as an expert witness for that very purposes.
17 They're allowed to rely on the books and records of their
18 client, but this is not a business record exception. It's
19 not a business owner exception. It's not a hearsay
20 exception. What it is, your Honor, is disguised expert
21 testimony. If it's truly simple math, why do we have to hire
22 E&Y, Conway MacKenzie, and Miller Buckfire to do it for us?
23 Thank you.

24 THE COURT: Anyone else?

25 MR. STEWART: Thank you, your Honor. It's going to

1 take me a minute to get organized. So I submit that actually
2 this is a fairly easy question, not easy to resolve but easy
3 to analyze, and let me do so this way. We're talking about
4 what does Rule 701 mean and how is it to be applied. We
5 don't need to guess because the people that wrote it told us,
6 so let's put up the advisory committee -- while that's being
7 put up, I just want to deal with one issue in passing as to
8 Mr. Buckfire and also Mr. Malhotra. The suggestion was made
9 that because they have all this expertise, they could only
10 testify as expert witnesses. The paragraph -- keep that up,
11 if you'd like, Lauren. The advisory committee actually
12 answered that, too. This is not what's up on the screen.
13 It's the advisory committee comments to the 2000 amendments,
14 and I know these books come out every year, but mine is on
15 page 460. And the committee wrote, "The amendment does not
16 distinguish between expert and lay witnesses but, rather,
17 expert and lay testimony. Certainly it is possible for the
18 same witness to provide both lay and expert testimony in a
19 single case." And I said I'm just really dealing with that
20 in passing because I want to put to one side the proposition
21 that the fact that these witnesses have expertise means that
22 they were precluded from giving lay testimony, but the reason
23 now I put this up is this is what the advisory committee that
24 wrote the rule said. Although many cases have interpreted
25 it, what is useful about this is they told us what they

1 meant, and it says, "For example, most courts have permitted
2 the owner or officer of a business to testify to the value or
3 projected profits of the business, without the necessity of
4 qualifying the witness as an accountant, appraiser, or other
5 similar expert," and they cite a case called Lightning Lube,
6 Inc., which was from the Third Circuit. So what I think we
7 ought to do is go to Lightning Lube since the authors of this
8 looked at that case and obviously were -- thought it was what
9 they wished to implement here. Now, Lightning Lube -- and I
10 think I have copies of all -- of many of these, Judge, and if
11 you'd like I may pass them up. I have a copy also for
12 counsel. However --

13 THE COURT: It's not necessary, sir.

14 MR. STEWART: Okay. Thank you, your Honor.

15 THE COURT: If others would like them, that's fine,
16 but it's not necessary for me.

17 MR. STEWART: So what happened in Lightning Lube?
18 Lightning Lube involved a man named Venuto, and he was
19 starting a chain of -- I don't know what you call them --
20 centers like a Jiffy Lube. And he had a deal with one of the
21 lubricant oil companies, and the deal fell apart, and it
22 ended up in a large business failure case. And one of the
23 interesting facts about the Third Circuit opinion is just
24 the -- all the lawyers that appeared in it, but the Court
25 said Mr. Venuto could testify about the projected profits

1 from his business. It didn't say no forecast. It didn't say
2 you can't have projections. It said he was allowed to. And
3 by the way, not only was he allowed to testify about the
4 projected profits from his business, the Court also said it
5 was not a problem in affirming the admissibility of this
6 evidence that he had relied on -- in part on a report that
7 came from a third party, so it's not required that it be only
8 his knowledge. And, similarly, let me dispense with another
9 point. The advisory committee made a distinction in this
10 rule and carved out what other courts have sometimes called
11 the owner-officer exception to the rule, and so there's a
12 sub-body of a case law on this. There are other cases
13 involving criminal law and so on, but there's a line of cases
14 on owner-officers. Few things are clearer than the fact that
15 is a label, not a requirement, and any number of the cases
16 allow people who are not owners or officers to testify as lay
17 experts under Rule -- I mean lay -- give lay opinion under
18 Rule 701. The Sixth Circuit not long ago in a case I have
19 trouble pronouncing, but it seems to be something like
20 Lativafter, allowed an outside investor to do so, so I don't
21 think we should be confused by the name of the exception
22 since we know what it means.

23 So let's go back to Mr. Venuto, and Mr. Venuto --
24 this is -- I'm going to paraphrase or I could read from what
25 the Third Circuit said in Lightning Lube. It says Mr. Venuto

1 calculated future profits, so we're not talking about
2 historical; we're talking about future profits -- in two
3 ways. First, he calculated the profits he would have earned
4 on the 117 franchise contracts that he actually sold. Venuto
5 predicted that after four years in business, each center
6 would have been generating \$28,000 in royalty fees. Given
7 this calculation plus the money the franchisees would have
8 earned in the first four years, Venuto predicted that he
9 would have earned \$27,729,000 in future profits from the 117
10 existing contracts through 1996.

11 Next, Venuto calculated the lost profits on
12 franchises he expected to have sold based on projections he
13 developed with an accounting firm when he planned to take the
14 company public. Venuto predicted that he would have sold 370
15 more franchises over the ten-year period; that all of them
16 would have opened, parens, 37 each year, close parens, and
17 that he would have earned \$43,821,000 from these franchises
18 using the formula discussed above.

19 Now, if this were simply one of the various cases
20 that go back and forth on the subject, we'd say, well, that's
21 an interesting case, let's look at the others, and we will
22 look at others, but to make the obvious point, this is the
23 case the advisory committee cited, and it is the only case
24 the advisory committee cited.

25 So now let's go to the cases that have been cited by

1 the objectors, and let's start with the one that they began
2 with, JGR, a Sixth Circuit opinion from 2004. In JGR there
3 was a lay witness who was put on the stand. His name was, I
4 think, Gornik. And his lay testimony was going to be about
5 the value of the business. He was excluded. The reason he
6 was excluded was not that a lay witness can't talk about
7 future events at a company. He was excluded because he
8 didn't know about it from firsthand knowledge. He didn't
9 happen to be an officer or employee of the company, but more
10 to the point, his information was cobbled together at the
11 last minute, and he failed the leg of this that he had to
12 prove, that he had particularized knowledge of it. And as is
13 so often the case, the footnotes tell us a lot about this,
14 and this is what the Court wrote in footnote three. It said,
15 "The district court's apparent assumption that Gornik was a
16 'factual witness'" -- that was in quotes -- "who, quote,
17 'does JGR's books,' unquote, is false. In fact, Gornik was
18 never an accountant for JGR and never did its books. His
19 first experience with JGR was in March 1999 when he was
20 contacted by JGR's trial counsel for the purpose of, quote,
21 'putting down on paper what the financial statements of
22 Gerald's Furniture would have looked like had Thomasville
23 support to the business continued and had the owners been
24 able to carry through on how they planned to operate the
25 business.'" So JGR does not stand for any broader principle

1 than this, and I would suggest, your Honor, that there are
2 two steps to our analysis. Step number one, does the witness
3 have personal particularized knowledge of the facts in
4 question? Two, is he using that personal particularized
5 knowledge to give his testimony?

6 Now, I'm going to come back to that, but I also want
7 to deal with the DIJO case -- D-I-J-O, and I'm pronouncing it
8 as DIJO, and I think various lawyers mentioned it. DIJO was
9 a hotel case of some sort, and there was -- this is a Fifth
10 Circuit case, but it's cited in the other cases. And there
11 there were two witnesses. There was a man named Skinner, and
12 Skinner didn't really work for the company, didn't know very
13 much. They were offering him, once again, to testify about
14 projections, and they said he doesn't have the particularized
15 knowledge that's necessary, so they didn't let him testify.
16 Stuck in the back of the opinion, though, is something else.
17 It turns out in DIJO there were two witnesses. There was a
18 man named Turner. Quoting from the Fifth Circuit opinion,
19 "The Defendants also contend that the District Court erred
20 when it permitted Turner to testify about DIJO's lost
21 profits. Turner testified that the proposed hotel would have
22 generated a net income of \$633,000 a year. Based on that
23 projection, he offered his opinion that the business would
24 have been worth 5.45 million if sold in its fifth year.
25 Turner was one of DIJO's two principals, and his estimates

1 were based on his own involvement in developing the Project.
2 In light of the foregoing discussion of the boundaries of
3 Rule 701, we cannot conclude that the district court abused
4 its discretion in admitting Turner's lost profit testimony."

5 So these cases do not stand for a hard-and-fast rule
6 about ownership. They stand instead for the two steps that I
7 mentioned earlier.

8 Now, as to step one, did Mr. Malhotra have personal
9 and particularized knowledge of the city's finances and the
10 numbers that came out of the city's books and records? I
11 think his testimony establishes that. I had actually
12 excerpted all of it, but I did so from the transcript we are
13 not using, so I'm not going to go further in terms of
14 citations, but I think it was quite clear what his knowledge
15 was. He was hired in May of 2011, about 30 months ago if my
16 counting is right. He wasn't hired because of lawsuits nor
17 of impending bankruptcy. His retention preceded, I think,
18 even the financial stability board. It appears he was hired
19 because the city had laid off so many of its workers it
20 couldn't do this job itself, and so for the past two and a
21 half years Mr. Malhotra has accumulated information, he has
22 analyzed it, and that's where his work comes from. I think
23 it's apparent -- and I don't think anyone is challenging
24 seriously that he has the level of personal and
25 particularized knowledge that's required by Rule 701.

1 So then the question becomes the second leg of it,
2 and that is is he using that particularized knowledge in
3 giving his opinion. There was a case, for example, in the
4 Bankruptcy Court in New York, and it's cited, I believe, in
5 the objector's brief, called MarketXT. Like all these cases,
6 they all -- since they're fact-based, are all illuminating no
7 matter where they come out. And in MarketXT, there was a
8 witness -- and I don't remember his name, but I have the case
9 here, but it's not important -- who is a principal of -- I
10 guess it must have been the debtor. And he was there to
11 testify about the things we talked -- projections, future
12 profits, current value, all of the things that we see in this
13 line of cases. What they did, though, with this expert --
14 and I actually should dig it out because it's such an
15 interesting case -- they said, "You can't testify about that.
16 This model you've got has discounted cash flow values. It's
17 got all kinds of theoretical economic elements to it. And
18 that's not who you are, Mr. Witness, you are just the fellow
19 who worked for the company. So they said, "We're not going
20 to let you talk about it," but then the Court gratuitously
21 said, "You know, if they'd offered him as a 701 witness, we
22 would have received his testimony," because then he would
23 have been talking about what he knew and he could have used
24 the standard types of approaches that the other 701 cases
25 have talked about.

1 So when you look at where these cases fall out --
2 and I think in the end it becomes something like a question
3 of fact -- what you find, I think, is this. There's no hard-
4 and-fast rule that you have to be an owner or officer. There
5 are cases where that's not the case. There's no prohibition
6 on relying from information that comes from other people, and
7 there are any number of cases that certainly permit that to
8 be done. LTV is one. This case, Lativafter is one.
9 Lightning Lube itself was one. There's no prohibition on a
10 lay witness having specialized technical information provided
11 that's not what he's using or that's not what he's talking
12 about. He's not giving an expert opinion in that sense.
13 Instead, it is how does it relate to what he knows? And in
14 cases like the one I just mentioned, MarketXT -- there's
15 another one, I think, called Lifewise where a 701 witness was
16 asked to testify about a complicated econometric model, and
17 the Court didn't accept it for that reason. Where that's the
18 case, although the witness meets leg one, he or she doesn't
19 meet leg two. However, one thing is quite clear. Where the
20 witness is working from and has the particularized personal
21 knowledge and is using that to provide projections,
22 forecasts, and similar, the courts do allow it.

23 Now, I think one of the main objections we run into
24 here is, yes, that's true, but this is just a heck of a lot
25 of information, and it is a lot of information. I think when

1 we're dealing with an enterprise the size of Detroit, there's
2 no getting around that. The courts, though, never say this
3 rule only applies in narrow circumstances and when you're
4 dealing with a narrow data set. The rule is instead do you
5 have the knowledge, and is that what you're using. The fact
6 assumptions are used makes no difference. Every single one
7 of the cases I recited and the rest, the witness uses
8 assumptions. He or she has to. They're forecasting future
9 profits, and every one of these cases is a case about future
10 profits or future value or future this or future that, so
11 that is not a disability.

12 What it comes down to then is how then did he use
13 his particularized knowledge to prepare his analysis, so
14 let's start with what the particularized knowledge was. What
15 his particularized knowledge was -- hang on; I wrote it down
16 for myself so I wouldn't forget it -- the historical data
17 about the city, which he said in his declaration came from
18 the CAFR and many other publicly available sources; the
19 city's bank records; internal reports that he got from the
20 city; factual matters. And by the way, this is not hearsay.
21 I established a business record exception for that when I
22 asked him at the beginning of his testimony, "Were these
23 materials that the city prepared in the ordinary course of
24 its business? In your experience, do cities and other
25 enterprises prepare materials like these in the ordinary

1 course of their business?" And he said, "Yes," and that was
2 never challenged, and so he's not being used to get in
3 hearsay on that basis. These are business records, and I
4 don't think anyone ever contended otherwise.

5 What else did he add? He added known changes coming
6 in the future, the city's budgets, which are predictions;
7 cost of living clauses in contracts; information he did
8 receive from actuaries about changes in pensions. However,
9 the actuary in question was their actuary, Gabriel, Roeder.
10 Information about state revenue sharing, changes in tax
11 rates. What about assumptions given to him by others or that
12 he made, rate of growth or rate of decay in tax -- property
13 tax receipts, rate of growth or rate of decay in income tax
14 receipts, assumed rates of inflation, changes in population
15 of the city. Now, those are assumptions, but they are no
16 different qualitatively than what Mr. Venuto did when he
17 predicted how many franchises he thought he would be selling
18 in the next four years and how those franchises would do in
19 the next ten years. And the Court not only thought that it
20 was fine, so, too, did the advisory committee. What about
21 other things that went in? And let's, if we could, put up
22 Exhibit 9 I think it is, page 2. This is one of the
23 exhibits, your Honor, obviously we spent a lot of time on,
24 but it's illustrative. That tells you what is his
25 particularized knowledge, and there is a list of it on the

1 left-hand side, and we spent a lot of time going over what is
2 each of these things, but he has knowledge about things like
3 lumpiness of revenue receipts. They don't come in a smooth
4 way. Remember the testimony is you get a bunch and then
5 nothing happens for awhile. When is it that the city
6 receives -- it's every other month -- its revenue sharing so
7 he could put in the spreadsheet when that arrives? What is
8 the expected availability of the escrowed funds that came
9 from the state-sponsored financing that the city floated?
10 And perhaps also which of the numbers he gets from the city
11 are the most reliable? Maybe it's a personal judgment which
12 ones he finds most materially useful to him. So these are
13 all things that he gets as a result of his work.

14 Now, I think it was Mr. Montgomery raised the point
15 about using an Excel spreadsheet, so let me spend a minute on
16 that. I think if you're above a certain age, maybe it's
17 not -- I think you're younger than me -- it may be more of a
18 challenge. It comes preinstalled on every computer in this
19 courtroom. It is the way business is now run. It is the
20 standard method used not by experts but by everybody to
21 organize financial information. There's nothing suspect
22 about taking the city's information and putting it into a
23 spreadsheet.

24 Now, what does a spreadsheet do and the real
25 question, does using a spreadsheet convert Mr. Malhotra's

1 approach into one that used scientific or other technical or
2 specialized knowledge, which was the test under 702, and 702
3 gets imported into 701 by dint of 701(c), which is the very
4 thing -- added in 2000, which is the very thing the advisory
5 committee was talking about in the text we had on the screen.
6 So what does he bring into it? He brings in labels, which
7 tells us what information he's talking about. He brings in
8 dates, what period he is forecasting. He puts in the numbers
9 that he has, and they repeat either verbatim or they repeat
10 based on knowledge he has such as when does the revenue
11 sharing money come in, or they repeat because he's using some
12 kind of a metric to increase or decrease them over time.

13 Now, what he's doing here is addition and
14 subtraction, maybe division, probably multiplication. There
15 was no evidence and no one asked him this, that behind this
16 stood some kind of complicated econometric model of the sort
17 that other courts have rejected. He was there to be
18 examined. No one asked him that. In fact, I asked him how
19 he calculated, and he said it was arithmetic.

20 Now, there is in the tone of the papers -- and I'm
21 not criticizing counsel at all -- the suggestion that this
22 was some sort of stealth means of springing a surprise on the
23 objectors. The fact of the matter is that document was in
24 Mr. Malhotra's declaration, which the objectors have read
25 from this morning and has been in the public domain since

1 July 18. Ernst & Young, who we don't control, wrote a letter
2 to the objectors saying, "If you wish our back-up papers,
3 you'll have to subpoena them, but serve a subpoena on us, and
4 we will produce them." No subpoena was ever served. We
5 identified this document as a back-up for hearsay purposes as
6 a compilation under Federal Rule of Evidence 1006, and we
7 sent a letter to the objectors saying, "If you want to see
8 the back-up materials, they're available for examination.
9 Please call Ernst & Young." One objector called. No one
10 ever came.

11 Mr. Malhotra was deposed not once but twice. I was
12 there both times. The first time especially he was examined
13 at no small length about his spreadsheets. It went on for a
14 long time. He answered every single question put of him. If
15 after that first deposition there had been uncertainty, there
16 was a second deposition coming and an opportunity in the
17 meantime to go get any documents they might need if they
18 wanted to dig deeper with Mr. Malhotra. That did not happen.
19 So this is not a case where there was surprise. It's not a
20 case where this was concealment. It is, instead, I think, a
21 fairly classic case of everything was available.

22 Is this complex? Yes, it is. I don't deny it.
23 Does that mean that it can only be addressed by an expert
24 witness under Rule 702? The cases do not say that. Now, the
25 advisory committee rule and the cases that speak about it are

1 quite clear. A lay witness who has personal particularized
2 knowledge about facts may offer his opinion -- his opinion --
3 the rule says "opinion." He can offer his opinion about
4 future profits, forecasted value, and those other things that
5 go off into the future, and it is admissible. The issue
6 here, I think, is one only of magnitude when it comes to
7 Mr. Malhotra, but that was something we've all known from day
8 one. It was disclosed on day one. He's been deposed two
9 times. There's been opportunity for other discovery, and he
10 was here and cross-examined. I thank you, your Honor, for
11 your patience.

12 THE COURT: You want to turn your attention to the
13 Buckfire issue?

14 MR. STEWART: I will, your Honor. I think a lot of
15 that is the -- it's the same basic analysis, so I -- with the
16 rule, and so I won't repeat any of that. Mr. Buckfire
17 testified -- by the way, one other minor point here. Cases
18 also say just because someone has scientific, technical, or
19 other specialized knowledge and that makes it easier -- we
20 can keep that up if you'd like because I was going to point
21 to that in a moment -- and that makes it easier for them to
22 do things like pull all this together, it doesn't convert
23 them into a 702 witness. And they spoke at one -- it was one
24 of the cases, and I'm not sure I know it off the top of my
25 head, which spoke about a witness' computer knowledge making

1 it easier for that witness to put his or her projections
2 together, and there were others as well. So the fact
3 somebody has a lot of expertise doesn't disqualify them or
4 change things.

5 Now, with Mr. Buckfire, one thing was apparent.
6 He's a highly skilled, very experienced, highly intelligent
7 investment banker who's been in the business a long time and
8 has done restructurings a long time and knows an immense
9 amount about it. No question about that. And he -- that
10 came out in his background and otherwise. It's also clear
11 that when he was hired by the city, he began working very
12 hard to learn everything he could about the city, and he
13 relied, among other things, on Mr. Malhotra's work.

14 His subsequent testimony was about what that -- what
15 those -- how those projections fit into his other work and
16 what it was he did or felt he had to do based on the state of
17 the facts that he found when he came to this job. And as I
18 understand the particular objections that we're facing to his
19 testimony, one had to do with his statement about GO bonds
20 and the accessibility of the credit market to the city. I
21 think that somebody with his level of knowledge of the city
22 can say, "I'm looking at what their numbers are, and these
23 numbers will not allow you to borrow money on the bond market
24 because the numbers are negative." And there were other
25 parts of the testimony as well, your Honor, but I think, as

1 Mr. Cullen said, at the end of Mr. Buckfire's testimony, much
2 of what he was talking about and asked about and testified
3 was about his own conduct and that his conduct and
4 conclusions were in and of themselves operative facts in the
5 lead-up to the city's decision to file for bankruptcy, and
6 they were certainly probative of good faith, but I assume
7 that's not what we're here to talk about. And as a result,
8 Buckfire's testimony on the subject is also qualified lay
9 testimony because he was taking the facts that he had, which
10 were particularized and personal, and he was -- pardon me --
11 applying those looking forward as a projection as how this
12 affected the city's ability to borrow money, which is no
13 different than projecting an enterprise's ability to earn a
14 profit, and the city's ability to do other things.

15 One last point that troubled us on this -- and
16 actually on both, but I'll focus on Mr. Buckfire -- that
17 objection also came in a little late at the very end of his
18 testimony, and had it been made in a timely way, perhaps the
19 questioning could have taken a different course to avoid
20 this. I'm not trying to impugn motives of anyone, but, as a
21 practical matter, it did change how the examination of
22 Mr. Buckfire went and I think may have led to some of the
23 very issues that they now raise, and it would have been
24 easier for us all perhaps had the objection been made at the
25 time. And if the Court has no questions --

1 THE COURT: No. Thank you. Excuse me. Any brief
2 rebuttals, please?

3 MR. DECHIARA: Your Honor, I find it interesting
4 that the city begins its legal analysis by reliance on the
5 advisory committee notes to the rule as if the advisory
6 committee notes to the rule were somehow in opposition to the
7 JGR case, the governing Sixth Circuit case. Well, JGR quotes
8 from and discusses the advisory committee notes before it
9 reaches the holding that it does, so there's nothing
10 inconsistent between the advisory committee notes and the
11 Sixth Circuit's holding in the JGR case. It's the JGR case
12 which is -- which governs here.

13 It's also curious counsel cited in his oral argument
14 just now the JGR case, and I think he said it's something
15 that we cited, we, the objectors, but that is the lead case
16 in the city's papers. It's block quoted in paragraph 2 and
17 then cited throughout, so there's -- I don't think there's
18 any dispute between the parties here that JGR is the case
19 that's relevant here and that governs. We're not -- there
20 was lengthy discussion by counsel about a Third Circuit case,
21 and if this courtroom were in New Jersey or Pennsylvania,
22 that would probably be more interesting, but this is a
23 courtroom in Michigan in the Sixth Circuit, and we're bound
24 by Sixth Circuit law, the JGR case.

25 Then, having cited it as its lead case, the city now

1 tries to run away and distinguish the case, and how does it
2 try to distinguish the case? By citing facts in the
3 footnotes. Well, there's a reason a court puts facts in the
4 footnotes, and it's because they're marginal. The key facts,
5 the holding, is in the body of the decision, and let me just
6 read it. It says very simply -- and this is 370 F.3d 256,
7 quote, "Gornik has never been an owner, officer or director
8 of JGR. Additionally, the information upon which he relied
9 in making his calculations of lost profits and lost business
10 value came primarily from Yasowitz," who was someone -- a
11 principal of the company, "and Gornik admitted he did not
12 independently verify much of that information. Therefore --
13 therefore, Gornik has no basis upon which to offer lay
14 opinion testimony about JGR's lost profits or lost business
15 value, and the district court abused its discretion in
16 admitting that testimony." That's the holding of the case.
17 Counsel for the city comes up with his own formulation based
18 on his reading of a lot of case law, and he calors his own
19 standard. We don't need to do that here. We have the Sixth
20 Circuit telling us what the standard is and what the holding
21 is. It's the JGR case, and it's squarely on point.

22 MS. LEVINE: Your Honor, counsel spent some time
23 discussing the MarketX Holdings Corp. case. Respectfully,
24 that case specifically cites to Rule 701 as -- and to the
25 advisory committee note with regard to 701 and specifically

1 points out that Rule 701 allows the admission of nonexpert
2 opinion testimony from a witness within limitations designed
3 to prevent the simple expedient of proffering an expert in
4 lay witness clothing and then goes on from there to conclude
5 an analysis based on specialized knowledge is excludable
6 where the witness has not been qualified as an expert and
7 then goes on to cite the exception when somebody is actually
8 a business owner, won't rehash that, but specifically
9 provides that even if a person is a business owner, if you
10 still go outside what that business owner's area of expertise
11 could be, then you exclude that as well. Thank you.

12 MR. MONTGOMERY: Your Honor, just a couple of final
13 points, not on the law because I think there's no possibility
14 in my mind that your Honor has any doubt as to the law and
15 the scope of this Court's discretion, so instead I'd like to
16 simply remind -- ask the Court to remember that Mr. Buckfire
17 testified that the forecasts were prepared by a team of
18 experts in revenue and tax policy. Those are the same
19 forecasts that Mr. Malhotra said "we" many times. I remember
20 the Court even asked Mr. Malhotra to say please speak in the
21 personal, not in the collective, but Mr. Malhotra repeatedly
22 discussed collective, and I think the reason is
23 straightforward. We learned from Mr. Buckfire that, in fact,
24 a team was involved. The second -- the notion raised by
25 counsel that Mr. Malhotra could testify on the -- or use

1 reasonable assumptions on city population growth when he
2 wasn't an economist, he was not a population forecaster, he
3 had no -- didn't say anything about having skills in that
4 particular environment, sort of cuts back from the notion
5 that all he's doing is math, taking specific numbers, putting
6 them in cells on a spreadsheet and simply putting auto sum
7 for each column of the numbers.

8 And last but not least, in his own detailed work, he
9 repeatedly said he both looked at bank accounts and he looked
10 at documents prepared by others, which were the city
11 department budgets, in trying to assess whether identified
12 cash belonged in one column or another. Your Honor, that is
13 not ordinary math. It's not lay testimony. Thank you.

14 THE COURT: Thank you all. The Court will take this
15 under advisement until 10:15 and return with a decision at
16 that time.

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

18 (Recess at 10:00 a.m. until 10:15 a.m.)

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

20 THE COURT: The matter is before the Court on the
21 city's request for reconsideration of the Court's previous
22 exclusion of so much of its exhibits and its witnesses'
23 testimony, especially from Mr. Malhotra, that dealt with the
24 cash flow projections which have been excluded from evidence
25 and also the motion to strike so much of Mr. Buckfire's

1 testimony as appeared to present opinion testimony based on
2 his expertise.

3 The Court concludes that the motion for
4 reconsideration should be granted and that the motion to
5 strike Mr. Buckfire's testimony should be denied. These
6 decisions are controlled, as the parties suggest, by Rule 701
7 of the Federal Rules of Evidence, which provides that a lay
8 witness -- that is, one who is not testifying as an expert --
9 may only testify to, quote, "opinions or inferences which are
10 (a) rationally based on the perception of the witness; (b)
11 helpful to a clear understanding of the witness' testimony or
12 the determination of a fact in issue; and (c) not based on
13 scientific, technical, or other specialized knowledge within
14 the scope of Rule 7002 (sic)," close quote.

15 As has been noted here, Subsection (c) of Rule 701
16 was added to the rule in the year 2000 to eliminate the risk
17 that the reliability requirement set forth in Rule 702 would
18 be evaded through the simple expedient of proffering an
19 expert in lay witness clothing. The advisory committee note
20 suggests a second reason as well, which was to prevent
21 litigants from evading the mandatory pre-discovery disclosure
22 requirements for expert testimony as set out in Rule 26 of
23 the Federal Rules of Civil Procedure.

24 However, most significantly, the advisory committee
25 note for the 2000 amendment does further explain, quote,

1 "Most courts have permitted the owner or officer of a
2 business to testify to the value or projected profits of the
3 business, without the necessity of qualifying the witness as
4 an accountant, appraiser, or similar expert." And here the
5 note cites Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153,
6 Third Circuit, 1993, and the Court notes parenthetically that
7 that case held that there was no abuse of discretion in
8 permitting the plaintiff's owner to give lay opinion
9 testimony as to damages as it was based on his knowledge and
10 participation in the day-to-day affairs of the business. The
11 advisory committee note goes on to state, quote, "Such
12 opinion testimony is admitted not because of the experience,
13 training, or specialized knowledge within the realm of an
14 expert, but because of the particularized knowledge that the
15 witness has by virtue of his or her position in the business.
16 The amendment does not purport to change this analysis,"
17 close quote.

18 There are obviously a wide range of circumstances in
19 which the issue of whether lay opinion testimony will be
20 admitted arises, and it is certainly an appropriate
21 observation that ultimately the Court's decision on whether
22 to permit such testimony is highly fact-specific. The
23 parties here largely have argued this issue in the context of
24 lay opinion testimony on lost profits or projected profits,
25 and the Court agrees that those are the most pertinent cases.

1 Accordingly, the Court will review some of those.

2 Perhaps the most controlling case is that which the
3 parties have argued here, JGR, Inc. v. Thomasville Furniture
4 Industries, Inc., 370 F.3d 519, Sixth Circuit, 2004. In that
5 case, the Court stated, quote, "The primary issue in this
6 case concerns the admissibility of testimony by JGR witness
7 James Gornik, a certified public accountant and lawyer who
8 testified about the amount of lost profits and lost business
9 value that JGR allegedly suffered as a result of
10 Thomasville's breach of contract."

11 In the course -- close quote. In the course of the
12 opinion, the Sixth Circuit relied heavily on a prior decision
13 by the Fifth Circuit in DIJO, Inc. v. Hilton Hotels Corp.,
14 351 F.3d 679, Fifth Circuit, 2003. The JGR court held that
15 was a strikingly similar case to the one before it, and the
16 Sixth Circuit stated in regard to DIJO, quote, "In DIJO, the
17 Fifth Circuit held that the district court abused its
18 discretion in permitting a, quote, 'financial consultant,'
19 close quote, to testify as a lay witness regarding the
20 company's lost profits. Although the witness was the
21 plaintiff's primary contact at a commercial lending facility
22 with which the plaintiff had a business relationship, he had
23 not served as an owner or officer of the plaintiff company.
24 Additionally, the witness's opinion was based primarily" --
25 excuse me -- preliminary -- "was based on preliminary income

1 figures and other information that he had received from the
2 plaintiff's founder, and his appraisal was not based upon his
3 own independent knowledge or observations."

4 And the Court further quoted from DIJO, "It is
5 telling that DIJO responds, not with evidence of the
6 witness's involvement with the plaintiff or the Project, but
7 only emphasizing his substantial business experience. Such
8 generic industry experience does not pass Rule 701 scrutiny.
9 The plaintiff never attempted to qualify the witness as an
10 expert, and a lay witness who was never employed by or
11 directly involved in a business is unlikely to have the type
12 of first-hand knowledge necessary to provide reliable
13 forecasts of future profits. The further removed a layman is
14 from a company's day-to-day operations, the less likely it is
15 that his opinion testimony will be admissible under Rule
16 701." And that's the Sixth Circuit's quote from DIJO, 351
17 F.3d at 686.

18 So the Sixth Circuit noted that in light of the
19 witness' lack of the requisite firsthand personal knowledge
20 of the company about which he testified, the Fifth Circuit
21 held that the District Court abused its discretion in
22 permitting the witness to give lay witness -- lay opinion
23 testimony under Rule 701.

24 In the JGR case, the Court of Appeals noted that the
25 District Court's apparent assumption that Gornik was a

1 factual witness who does JGR's books was false. The Court
2 noted that, in fact, Gornik was never an accountant of JGR
3 and never did its books. His first experience with JGR was
4 in March of 1999 when he was contacted by JGR's trial counsel
5 for the purpose of putting down on paper what the financial
6 statements of Gerald's Furniture would have looked like had
7 Thomasville -- had the Thomasville support to the business
8 continued and had the owners been able to carry through on
9 how they planned to operate the business.

10 Now, it is true, as has been pointed out here, that
11 this observation by the Court of Appeals is in a footnote.
12 Nevertheless, the Court cannot conclude that it is,
13 therefore, a marginal fact. It plainly formed a substantial
14 basis for the Court's ultimate disposition in the case.

15 And since the Sixth Circuit in JGR relied so heavily
16 on DIGO (sic) from the Fifth Circuit, the Court concludes
17 that it's appropriate to look further into what the Fifth
18 Circuit said in that case, so, for example, at 351 F.3d at
19 686 the Fifth Circuit stated -- the Fifth Circuit discussed
20 two other cases, these two from the Third Circuit, In re.
21 Merritt Logan, Inc., 901 F.2d 349, Third Circuit, 1990, as
22 well as Teen-Ed, Inc., v. Kimball International, Inc., 620
23 F.2d 399, F.3d, 1980. And so in regard to these two cases,
24 the Fifth Circuit stated, quote, "In In re. Merritt Logan,
25 Inc. the plaintiff's company -- the plaintiff company's

1 principal shareholder, Logan, was permitted to testify about
2 the company's lost profits. The facts recited in that
3 opinion demonstrate that Logan was not a passive outside
4 shareholder. He was intimately involved with the investments
5 and management of the business. Thus, the Third Circuit
6 correctly concluded that Logan could provide lay opinion
7 testimony given his personal knowledge of the enterprise.
8 Likewise, in Teen-Ed, Inc. v. Kimball International, the
9 Third Circuit decided that the appellant, Teen-Ed's, licensed
10 public accountant, Zeitz or Zeitz, could provide lost profits
11 opinion testimony. Zeitz's testimony was based on the
12 personal knowledge of Teen-Ed's balance sheets, which Zeitz
13 had acquired firsthand as Teen-Ed's accountant and
14 bookkeeper. Thus, the Court concluded -- this, the Court
15 concluded, qualified Zeitz as a witness eligible under Rule
16 701 to testify to his opinion of how lost profits could be
17 calculated and to inferences he could draw from his
18 perception of Teen-Ed's books.

19 Further supporting the Court's decisions on these
20 two matters is the Sixth Circuit's decision in Lativafter
21 Liquidating Trust v. Clear Channel Communications, Inc., 345
22 Federal Appendix 46, Sixth Circuit, 2009. In that case, the
23 Court stated, quote, "Grady Vanderhoofven is a venture
24 capitalist, the Executive Vice-President of Southern
25 Appalachian Fund, which invested in Eon, and was a member of

1 Eon's board. Vanderhoofven testified that Eon's value would
2 have been \$57 million with the Clear Channel contract,
3 instead of the \$17 million it sold for in 2006. As an
4 investor in Eon, Vanderhoofven in 2005 investigated Eon's
5 financials, retaining a market research firm to verify Eon's
6 market potential. When he became a member of Eon's board in
7 March 2005, he received Eon's monthly financial reports,
8 including income statements, balance sheets, and cash flow
9 statements. Vanderhoofven testified that between June 2004
10 and June 2005, the number of stations Eon was streaming
11 increased by over 500 percent. After June 2005, however, the
12 revenue from Clear Channel began to dwindle, and
13 Vanderhoofven determined that Clear Channel was moving its
14 streaming business to another company. Vanderhoofven based
15 his \$57 million valuation on the revenue Clear Channel had
16 been generating for Eon prior to the discontinuation of their
17 business, and the projection for the 12-month period prior to
18 Eon's sale. As an investor who researched Eon's financial
19 condition, and later as a member of Eon's board,
20 Vanderhoofven had personal, particularized knowledge of Eon's
21 value. The district court did not abuse its discretion in
22 permitting him to testify about Eon's projected value if it
23 had retained Clear Channel's business. Moreover, contrary to
24 Clear Channel's assertions, Vanderhoofven's testimony rested
25 on a sufficient foundation - his personal research into Eon's

1 financial reports."

2 The Court's decision today is also consistent with
3 and supported by a Third Circuit decision in Donlin v.
4 Philips Lighting North American Corp., 581 F.3d 73, Third
5 Circuit, 2009. In that case, the Court stated that Rule 7001
6 (sic), quote, "does not mean that an expert is always
7 necessary whenever the testimony is of a specialized or
8 technical nature. When a lay witness has particularized
9 knowledge by virtue of her experience, she may testify - even
10 if the subject matter is specialized or technical - because
11 the testimony is based on the layperson's personal knowledge
12 rather than on specialized knowledge within the scope of Rule
13 702. At the same time, we have consistently required that
14 lay testimony requiring future projections of business or
15 operation come from someone who has intimate and thorough
16 knowledge of the business gathered from either a lengthy
17 tenure or a position of authority," close quote.

18 Most tellingly, the Court in Donlin stated, quote,
19 "A trial judge must rigorously examine the reliability of a
20 layperson's opinion by ensuring that the witness possesses
21 sufficient specialized knowledge or experience which is
22 germane to the opinion offered," close quote.

23 And, finally, just to cite some other opinions or
24 decisions that support this, Van der Ruhr v. Immtech
25 International, 570 F.3d 858, Seventh Circuit, 2009;

1 Securitron Magnalock Corp. versus Schnabolk, 65 F.3d 256,
2 Second Circuit, 1995; United States versus Valencia, 600 F.3d
3 389, Fifth Circuit, 2010; and MCI Telecommunications Corp. v.
4 Wanzer, 897 F.2d 703, Fourth Circuit, 1990.

5 Ultimately, it is for the Court to determine whether
6 the proffered testimony carries with it sufficient indicia of
7 reliability arising from the witness' personal relationship
8 with the proponent of the evidence. Accordingly, it is
9 certainly true that, as argued here, a taxicab driver would
10 not be permitted to testify to these matters, but that does
11 not mean that neither Mr. Malhotra nor Mr. Buckfire can
12 testify -- can't testify to the matters that they testified
13 to because of their personal knowledge of the city's
14 financial affairs, and in this regard, the Court will find
15 that both Mr. Malhotra and Mr. Buckfire had extensive
16 personal knowledge of the city's affairs that they acquired
17 during their -- the course of their consulting work with the
18 city and that formed the basis of their opinions and
19 conclusions.

20 Perhaps more fundamentally than any of this is this
21 key consideration in the Court's ultimate resolution of these
22 matters. What both Mr. Malhotra did and what Mr. Buckfire
23 did are a substantial part of the facts and circumstances
24 that led to the filing of this case and that are, therefore,
25 highly relevant to the issues of eligibility that are before

1 the Court at this time. Accordingly, not only what they did
2 but why they did what they did, as explained through the
3 documents and in the testimony that they have proffered, is,
4 in the Court's view, entirely admissible. Accordingly, the
5 motion to reconsider is granted. The documents that the
6 Court had previously admitted on a limited basis are now
7 admitted for all purposes, and the motion to strike is
8 denied.

9 We were about to begin the cross-examination of
10 Mr. Buckfire, I believe, so let's do that.

11 MR. STEWART: Yes.

12 THE COURT: Step forward, please, sir, and resume
13 the witness stand. And, sir, you understand you are still
14 under oath.

15 MR. BUCKFIRE: I do.

16 THE COURT: You may proceed.

17 KENNETH A. BUCKFIRE, DEBTOR'S WITNESS, PREVIOUSLY SWORN
18 CROSS-EXAMINATION

19 BY MR. MONTGOMERY:

20 Q Good morning, Mr. Buckfire.

21 A Good morning.

22 Q My name is Claude Montgomery. I believe we've met before
23 in connection with your deposition in this matter --

24 A Yes.

25 Q -- is that correct?

1 A That's right.

2 Q Good morning. Now, Mr. Buckfire, if for any reason I
3 speak too quickly or you do not understand my question, I
4 would ask that you let me know.

5 A Thank you.

6 Q Now, do you recall the date of your deposition that I
7 took of you in connection with this matter?

8 A Not specifically, no.

9 Q It was September 20 of this year, was it not?

10 A Okay.

11 Q Okay. Do you recall where the deposition took place?

12 A New York City.

13 Q Okay. Do you recall what time it started?

14 A I believe it was in the morning.

15 Q Would 8:30 be right?

16 THE COURT: You believe it was what, sir?

17 THE WITNESS: In the morning.

18 BY MR. MONTGOMERY:

19 Q Now, I believe you testified to the Court yesterday that
20 you're from this area or a native I think is the word you
21 used.

22 A Yes.

23 Q Okay. And what did you mean by "native," sir?

24 A I was born in Detroit. My family lived here until 1965.
25 They moved to Southfield, Michigan. Then I attended

1 Southfield-Lathrup Senior High School. My family still lives
2 in the area as does my wife's. Attended the University of
3 Michigan, and I come back here frequently.

4 Q You're quite connected to the Detroit area; is that
5 correct?

6 A Yes, I am.

7 Q Okay. Do you know Andy Dillon personally?

8 A Not personally, no.

9 Q Have you ever met him?

10 A Yes.

11 Q And when did you first meet him?

12 A I met him for the first time in January or February of
13 2010.

14 Q And in what connection?

15 A I had been introduced to him by a gentleman from the
16 Business Leaders for Michigan. I'd asked him to introduce me
17 to Treasurer Dillon in the ordinary course of my duties
18 trying to make sure he knew about our firm and that that
19 might be helpful sometime with respect to Detroit.

20 Q I believe you told the Court yesterday that starting in
21 about 2009 you engaged in an effort to make sure that your
22 firm's resources were known to potential players in the City
23 of Detroit drama; is that correct?

24 A No. We simply started paying attention to Detroit after
25 it was downgraded.

1 Q Okay. And was your introduction to Mr. Dillon part of
2 that paying attention to the City of Detroit after it was
3 downgraded?

4 A Yes.

5 Q Okay. Now, by any chance do you know the current
6 governor, Rick Snyder?

7 A I met him a few times.

8 Q Okay. And in what connection, sir?

9 A During the course of our discussions with the state and
10 the financial advisory board in 2012, I met with him once or
11 twice to present really on an educational basis, you know, a
12 description of what restructuring was and how it might be
13 employed in a corporate and governmental setting.

14 Q Okay. And do you recall when that was, sir?

15 A It might have been in the spring.

16 Q Of which year?

17 A April 2012.

18 Q And can you be more specific in what information you gave
19 to Governor Snyder at that time?

20 A We had put together a very brief presentation really
21 describing the techniques of restructuring, how we go about
22 analyzing the problems of a company or a government, and
23 describing the various techniques that could be employed to
24 deal with those issues in the course of creating a
25 comprehensive long-term financial strategy.

1 Q And among the information that you gave to the governor
2 at that time, did it specifically relate to municipal
3 restructurings as well as corporate restructuring?

4 A Yes.

5 Q Okay. And did it include in any -- a discussion of
6 Chapter 9 as a vehicle for a municipal restructuring?

7 A Only as one of many alternative techniques.

8 Q And what other alternative techniques did you tell the
9 governor existed in the spring of 2012?

10 A I told him the same thing I tell all of my clients, that
11 bankruptcy is to be avoided at all costs, but it's always
12 required to be studied as a last resort.

13 Q Okay. You are the city's financial strategist, are you
14 not?

15 A Yes.

16 Q Okay. Are you its chief financial strategist?

17 A I don't understand that question.

18 Q Okay. But you are its financial strategist?

19 A Miller Buckfire is the city's investment bank, and part
20 of our responsibilities is to formulate and develop and
21 execute financial strategy.

22 Q All right. And for Miller Buckfire, you are managing
23 this engagement?

24 A I am.

25 Q Okay. Now, is the June 14 proposal a public

1 manifestation of the city's financial strategies developed by
2 you, sir?

3 A Yes, it is.

4 Q Okay. Now, is the June 14 proposal something you were --
5 in which you had input into the strategy and concept of that
6 document?

7 A Yes.

8 Q I believe you told that to Mr. Cullen in response to a
9 question yesterday; is that correct?

10 A Yes.

11 Q Okay. In fact, the Court should expect you to have input
12 in strategy if you are the chief strategist; is that correct?

13 A Yes.

14 Q Okay. Why did you tell me you had no involvement in the
15 production of the June 14 proposal when I asked you that
16 question at the deposition?

17 A You asked me whether we had worked on or drafted or
18 formulated any part of that document, and I told you we had
19 not except for the portion that related specifically to the
20 restructuring plan and the development of the limited
21 recourse participation notes, so we did not develop that as a
22 work product of Miller Buckfire. It was a manifestation of
23 the overall strategy that we had formulated in conjunction
24 with the city's other advisors beginning in January of this
25 year.

1 Q But am I not correct, sir, that with respect to the June
2 14th proposal itself you told me that you did not participate
3 in its preparation?

4 A I just answered that question.

5 MR. STEWART: Objection, your Honor. If he wants to
6 read a question and answer, that would be the appropriate way
7 to proceed.

8 THE COURT: The objection is sustained.

9 BY MR. MONTGOMERY:

10 Q Mr. Buckfire, I'm going to ask you if on the 20th of
11 September of this year during your deposition I asked you a
12 question which began at page 37, line 22, "Mr. Buckfire,
13 I've handed you what has been marked as Buckfire Exhibit
14 Number 2. Have you seen this before?" Do you recall me
15 asking you that question?

16 A No.

17 Q Okay. Do you recall that at line 25 you said, "Yes"?

18 A No.

19 Q All right. That Mr. Buckfire said -- "Question: What is
20 it, sir?" Your answer at line 3 was, "It is the June 14
21 report and proposal to creditors." My question to you at
22 line 5 was, "Did you participate in its preparation?" And
23 your answer at line 7 was, "No." Do you remember giving that
24 answer, sir?

25 A No.

1 Q Is it true that you had no involvement in the
2 preparation?

3 A Neither myself or my firm drafted this presentation. The
4 entire effort to restructure Detroit has been since January a
5 multi-disciplinary, multi-firm effort. The financial
6 strategy incorporated in the June 14th plan was one that we
7 had helped to formulate. We didn't draft the June 14th
8 document except to participate in the drafting of the
9 description of the plan for the creditors and the description
10 of the limited recourse participation notes.

11 Q So your input into the June 14 proposal is the limited
12 participation notes?

13 A I didn't say that.

14 Q Okay. Tell me again, sir.

15 A It's a very lengthy document reflecting the work of five
16 months by many firms. It does, of course, rely upon and is
17 meant to address the financial strategy that we helped the
18 city formulate beginning in January from an informational
19 perspective. My firm did participate, as I testified
20 earlier, in the creation of the restructuring plan itself;
21 that is, the portion of the document reflecting proposed
22 treatment for the claims of the creditors of the City of
23 Detroit, and, in particular, the formulation of the terms of
24 the \$2 billion of notes that we have identified as being
25 available for resolution of those claims.

1 Q So it's your testimony today that the treatment of
2 creditors was essentially your idea?

3 A As I said, it was a collaborative effort by multiple
4 firms. We participated actively in that portion of the plan.

5 THE COURT: Excuse me one second. Again, we're
6 having a slight difficulty with our audio, so pull your
7 microphone two inches closer but no more.

8 THE WITNESS: Yesterday it was too far.

9 THE COURT: Go ahead. Pull it closer. There.

10 THE WITNESS: Thank you, your Honor.

11 THE COURT: Try that.

12 BY MR. MONTGOMERY:

13 Q So, Mr. Buckfire, I take it you share all of the
14 recommendations that appear in the June 14 proposal.

15 A I don't understand that question.

16 Q I think you just told me it was a collaborative effort,
17 not necessarily your idea.

18 A That's correct.

19 Q Okay. And so I'm asking you, as you are sitting here
20 today advising the Court, do you share all of the
21 recommendations that -- in the treatment of creditors that
22 appears in the June 14 proposal?

23 A You're referring specifically to the proposed treatment
24 of creditors?

25 Q Yes, sir.

1 A Yes, I do.

2 Q Okay. Now, does that include the recommendation that
3 retiree pension and healthcare benefits must be significantly
4 reduced?

5 A I do.

6 Q Okay. And did you ever personally make that
7 recommendation to the emergency manager?

8 A No.

9 Q Since this was a collaborative effort, who made that
10 recommendation to the emergency manager?

11 A Well, it was a function of the city's insolvency and lack
12 of cash. There was no way for the city to satisfy its
13 unsecured creditors to the extent that their claims indicated
14 because the claims of the pension fund and healthcare
15 retirees are unsecured claims, therefore, pari passu with
16 those of the general obligation and COP bondholders, clearly
17 there wasn't enough value to satisfy them all, and they would
18 have to be reduced.

19 Q Mr. Buckfire, I believe the question I asked required
20 identification of a person. Who made the recommendation
21 since you didn't make it?

22 A Well, it was a function of the mathematics. I'm not sure
23 that there was any particular recommendation made. The math
24 and the financial condition of the city simply didn't support
25 continued satisfaction of all of its unsecured obligations as

1 previously promised.

2 Q Are you suggesting it was so self-evident no one had to
3 say it?

4 A Yes.

5 Q So, in fact, you didn't say it?

6 A I didn't have to. The mathematics indicates that was the
7 unfortunate result.

8 Q Did Conway MacKenzie say it?

9 A I don't know.

10 Q Did Ernst say it?

11 A I don't know.

12 Q Did Jones Day say it?

13 A I don't know.

14 Q So let's turn to the topic of how this no one had to say
15 it aspect of the proposal came to be pursued. When, sir, is
16 the first time you recall you and Mr. Orr discussing the
17 reduction of pension benefits and healthcare benefits if
18 ever?

19 A I don't recall.

20 Q Okay. It never happened?

21 A I said I don't recall.

22 Q Did it ever happen?

23 A I don't recall.

24 Q Okay. Change the topic. You were involved in the
25 negotiations -- strike that. What role, if any, did you have

1 in discussions or presentations to creditors following the
2 June 14 proposal?

3 A I was delegated by Mr. Orr with the responsibility of
4 negotiating and discussing with the funded debt creditors of
5 the city the June 14th proposal.

6 Q Did you, sir, personally have any involvement with any
7 current or former employee groupings of creditors?

8 A I was present at at least one or two meetings here in
9 Detroit with representatives of retirees, but I was not
10 taking a lead role in those discussions.

11 Q When you say "present," were you talking about the June
12 14th meeting itself?

13 A No, afterwards.

14 Q Afterwards. Are you talking about the June 20th meeting
15 that may have occurred?

16 A It may have been that week, but I know I was present at
17 at least one or two.

18 Q Okay. Are there any others other than that one that may
19 have occurred on June 20?

20 A Well, it was a very, very busy time for me. I was trying
21 to get the forbearance agreement done with the swap
22 counterparties, so after that initial set of meetings I
23 didn't directly participate. Other members of my firm, I
24 believe, did.

25 Q So you were not involved in a June 25 meeting; correct?

1 A I may have been. I just don't recall the dates.

2 Q Okay. And you were not involved in a July 10 meeting; is
3 that correct?

4 A I just don't recall.

5 Q And, again, same question with respect to July 11?

6 A I don't recall.

7 Q And July 12?

8 A I don't recall.

9 Q Okay. But do you recall participating in meetings with
10 funded debt creditors?

11 A Yes, I do.

12 Q Okay. And which days do you remember for that?

13 A I can't put specific dates to it. After the June 14th
14 presentation in which I participated, we gave all of the
15 city's creditors a week to study the plan and supporting
16 information, which obviously made sense because it was a
17 bombshell for them, and we immediately began discussions with
18 as many creditors as was willing to meet with us the week
19 after that, so that would be, I guess, the 20th or 21st. And
20 we began meeting with groups of the creditors primarily in
21 New York City all that week, and that extended into the week
22 following. At the same time, I was meeting or having
23 discussions almost every day with the swap counterparties.

24 Q Should I understand that you had a determination,
25 Mr. Buckfire, that it was more important for you to meet with

1 the funded debt creditors than with the retiree and employee
2 creditors?

3 A No. It was just a division of labor. The bondholders
4 and the bond insurers were organized. They told us that they
5 could rely upon them to represent the interests of the
6 underlying creditors, so because of the fact that we're an
7 investment bank and have long experience in managing creditor
8 relationships of that kind, it was determined that we should
9 take the lead in those discussions while the lead in
10 discussions with the retirees and other claim holders would
11 be taken by others.

12 Q And you participated in making that decision as the chief
13 financial strategist for the city; is that correct?

14 A Well, you keep saying I'm the chief financial strategist.
15 I am a financial strategist, and the city asked my opinion,
16 and that was my recommendation.

17 Q Okay. Thank you. Now, do you recall yesterday in
18 response to a question by Mr. Cullen indicating that you
19 regarded the June 14 proposal as even-handed and fair?

20 A Yes.

21 Q Okay. And as you sit here today, do you still think it
22 is even-handed and fair?

23 A Yes.

24 Q Now, I'm correct, am I not, that the June 14 proposal
25 provides for no cash payments to the Retirement Systems on

1 account of the city's promised pensions; is that correct?

2 A I'm not sure I understand what you're saying.

3 Q Are -- it's a simple question. Retiree creditors for
4 pensions, are there any cash payments at confirmation or
5 shortly thereafter that the June 14 proposal plans to be made
6 to the Retirement Systems?

7 A Yes.

8 Q Okay. And what are those, sir?

9 A They would receive their share on a pro rata basis with
10 the other unsecured creditors of the proposed \$2 billion of
11 notes that would be provided upon exit from bankruptcy.

12 Q All right. But those are notes in which there is no
13 mandatory payment of principal required; is that correct?

14 A There's a mandatory payment of interest, and there's an
15 optional payment of principal if the city can afford it.

16 Q But my question was no mandatory requirement.

17 A That's correct.

18 Q Okay. And with respect to interest, it's one and a half
19 percent; is that correct?

20 A That's all the city can afford. That's correct.

21 Q But that's what it proposes, one and half percent?

22 A That's correct.

23 Q Okay. So no cash at confirmation, one and a half percent
24 interest over time, and no mandatory principal repayments; is
25 that correct?

1 A That's correct.

2 Q Now, the same is true for the healthcare creditors; is
3 that correct?

4 A No. The plan did propose a continued payment of
5 healthcare benefits to actives and retirees. I don't have
6 the plan in front of me, but I think you'll see a line item
7 in the financials that do assume continued payment of
8 healthcare premiums.

9 Q That's for actives, is it not?

10 A I don't recall exactly the distinction, but it's in the
11 plan.

12 Q In fact, the plan proposes for active employees defined
13 contribution payments for future pension accruals; is that
14 correct?

15 A Are you talking about healthcare or pension now?

16 Q Right now I switched back to pension because you
17 mentioned both.

18 A Okay.

19 Q It is correct that insofar as past pension entitlements
20 are concerned, the only recovery proposed under the plan is a
21 share of a note; is that correct?

22 A Yes.

23 Q Okay. And but for what the city may or may not be doing
24 right now, the only proposal for retiree -- existing retiree
25 healthcare is whatever funding is provided by the note; is

1 that correct?

2 A Well, the healthcare benefits for retirees would be
3 provided to an insurance exchange, and some of that would be
4 supplemented by payments made by the city.

5 Q The insurance -- okay. Insurance exchanges is not the
6 city, though, is it?

7 A No.

8 Q Okay. And there is no vehicle proposed in the plan for
9 delivering cash to retirees to participate in the exchange,
10 is there?

11 A Not to my knowledge, no.

12 Q All right. Now, are you familiar with the term "Dutch
13 auction"?

14 A Yes.

15 Q Would you tell the Court what a Dutch auction is?

16 A A Dutch auction is a technique used in the financial
17 markets to ensure that a company or a government when issuing
18 securities will always get the most favorable price for
19 itself. In other words, you don't want to have a situation
20 where you sell a bond or a note or a share of stock and it
21 turns out that after you've done so, the price has doubled
22 because you mispriced the security because you misjudged the
23 demand for that security, so a Dutch auction is intended to
24 allow interested buyers of securities to, in effect, make an
25 offer to sell into the tender securities at whatever price

1 they deem fair, and then the city or the government in that
2 case would look at the total tally of bids or offers and
3 decide what is the lowest price that will clear the entire
4 market. So anybody who made the mistake of offering to sell
5 a security for too high a price would not have its offer
6 accepted.

7 Q So, sir, it's basically creditors fight to see who can
8 make the lowest bid in order to get the greatest amount of
9 whatever distribution or security is being offered; is that
10 correct?

11 A Yes.

12 Q Okay. So in this particular context, your plan proposes
13 that pension creditors and healthcare creditors should
14 compete for the lowest possible price in order to be entitled
15 to a distribution under your notes; is that correct?

16 A It's an option. They don't have to take it if they don't
17 want to.

18 Q But if they don't take it, if any creditor offers to sell
19 their note for a distribution, that creditor will get it, and
20 the retiree creditors will get nothing; is that correct?

21 A It sets up a very interesting situation. If a creditor
22 offers to sell his note back to the city at too low a price,
23 then a rational other buyer -- for example, a well-advised
24 pension fund in this case -- would probably decide not to
25 sell. They would retain their notes. And as the pool of

1 other noteholders shrinks, having sold at too low a price,
2 they would benefit by a higher price later.

3 Q But in the context of this plan, if you needed cash
4 sooner rather than later, you'd have to bid rather than wait;
5 is that correct?

6 A No. You would have the option of selling your note into
7 the open market to presumably people who understand this
8 mechanic, who understand the city's credit, and they would be
9 offering you what they would deem is a fair market determined
10 price.

11 Q But the bottom line, sir, is basically creditors under
12 your proposal have to compete for the lowest price --

13 A No. They don't have to --

14 Q -- offered to the city?

15 A They don't have to sell. They can keep it and sell into
16 the market as an alternative to selling into a sinking fund
17 process run by the city. No mandatory requirement to do so
18 and no coercion.

19 Q But you can't get cash without participating in the bid?

20 A Or selling in the open market.

21 Q Can't get cash from the city, sir, without participating
22 in the bid?

23 A That's true.

24 Q And that's even-handed and fair insofar as retirees are
25 concerned?

1 A They are being treated no worse or no better than any
2 other unsecured creditor of the city.

3 Q Now, the note is -- that the June 14 proposal puts
4 forward is a \$2 billion nominal value note; is that correct?

5 A Correct.

6 Q Okay. And it is proposed to be distributed among
7 unsecured creditors on a pro rata basis; is that correct?

8 A Yes.

9 Q So that if a creditor had a billion dollar note and there
10 were \$11 billion of unsecured claims, that billion dollar
11 note would be 1/11th; is that correct?

12 A That's right.

13 Q Okay. Now --

14 MR. STEWART: Your Honor, if I may, I think we are
15 straying a little bit into plan as opposed to eligibility
16 issues.

17 THE COURT: I think the objection is relevance.

18 MR. MONTGOMERY: Your Honor, in order for the
19 debtor's proposal to have been made in good faith, it must be
20 one that manifests both subjective and objective standards
21 with respect to good faith, and how creditors are proposed to
22 be treated I think is quite relevant to whether or not, "A,"
23 a plan has been proposed, and, "B," whether or not it's in
24 good faith.

25 THE COURT: I agree. The objection is overruled.

1 BY MR. MONTGOMERY:

2 Q If a creditor -- if the city -- strike that. Under the
3 note proposal, asset sales by the city play a role in the
4 funding of that note; is that correct?

5 A Yes.

6 Q And it's on a formula basis; is that correct?

7 A Yes.

8 Q And with respect to asset dispositions, it's 75 percent
9 goes into the note pool, and 25 percent goes to the city?

10 A Yes.

11 Q But it's capped at an aggregate distribution of \$2
12 billion; is that correct?

13 A That's correct.

14 Q So that if the city were to sell \$2-1/2 billion worth of
15 assets, you would completely defease the \$2 billion note and
16 the city would get a half a billion dollars; is that correct?

17 A That's correct.

18 Q If the city were to sell \$5 billion of assets, the
19 creditors would get \$2 billion and the city would get 3; is
20 that correct?

21 A After the bankruptcy, that's correct.

22 Q Is that fair and even-handed, sir?

23 A It was an opening offer. There are obvious things we
24 expected our creditors to come back and object to or ask to
25 negotiate.

1 Q Okay.

2 A But to answer your question, it was fair because it
3 treated our unsecured creditors exactly the same.

4 Q And for you that's the key indicia in fairness?

5 A Starting out a process like this, it's complicated, and
6 one must be very sensitive to the competing interests of all
7 of our creditors. Other cites that have tried to do
8 consensual out-of-court restructurings have tended to favor
9 one group of creditors over the other. That has not proven
10 to be a very successful strategy. We elected to treat
11 everyone exactly the same, and we obviously expected there to
12 be vigorous negotiation among all of our unsecured creditors
13 because clearly everybody wanted to be treated more specially
14 than everybody else. We decided because we didn't know where
15 this would go that the city should be viewed as being
16 impartial in how it would treat it's unsecured creditors.

17 Q And treating -- in your mind, sir, treating the pension
18 obligations of the city for accrued financial benefits or --
19 strike that -- for pension benefits, in your mind, it's fair
20 to treat those exactly the same as general unsecured
21 creditors, trade creditors?

22 A They're unsecured claims.

23 Q Okay. Isn't the city actually paying trade creditors
24 now, sir?

25 A They are.

1 Q The June 14 proposal that you made, there's some missing
2 information from it, is there not, if -- strike that. Let me
3 rephrase the question. Assume I'm a creditor, a hypothetical
4 creditor, and I want to make a decision on whether or not to
5 vote for your plan or not. If I was just looking at the June
6 14 proposal, there would be some missing information;
7 correct?

8 A I don't know what you're referring to.

9 Q Are there any asset values listed in the June 14
10 proposal?

11 A No.

12 Q There's absolutely no balance sheet information of any
13 kind anywhere in that document; is that correct?

14 A That's correct.

15 Q Is there any information regarding major disputes that
16 the city has that might yield future cash or assets?

17 A I don't understand your question.

18 Q Is there any information regarding disputes over
19 collection of past due contract debts?

20 A I believe we did make some references to that.

21 Q And do you recall what those references were?

22 A Well, the city has historically had a very difficult time
23 collecting delinquent property tax revenues. I believe the
24 past due on that particular line item is several hundred
25 million dollars. The city, from an administrative

1 perspective, has never been very good at collecting taxes,
2 and that's a potentially significant asset, but, again, the
3 ability of the city to collect on that has always been very,
4 very doubtful.

5 Q But the June 14 proposal doesn't actually say anything
6 like several hundred million dollars, does it?

7 A No. I think there's a reference to it -- I don't have it
8 in front of me -- to the past due income taxes the city has
9 not been able to collect, but I'd have to have it in front of
10 me to find the reference to it.

11 Q Understood. Now, as part of your information provision
12 strategies for creditors, you created a data room; is that
13 correct?

14 A My firm did organize one, yes.

15 Q Okay. And basically all creditor information is supposed
16 to show up there?

17 A Yes.

18 Q Okay. Is there any information in that data room
19 regarding the value of art?

20 A Not that I'm aware of.

21 Q Is there any information in that data room regarding the
22 value of the Department of Water and Sewer?

23 A Not that I'm aware of.

24 Q Okay. And there's no information on the value of either
25 of those two in the actual June 14 proposal, is there?

1 A It was not available at the time.

2 Q Okay. Is it available today?

3 A Well, they're both ongoing asset evaluations that the
4 city is managing. I've already testified that the city did
5 retain Christie's to do an evaluation of city-owned art, and
6 the results of that hopefully will be available soon.

7 Q Could you pause there for a second, sir? Have there been
8 any preliminary reports by Christie's?

9 A No.

10 Q Nothing of any kind?

11 A No.

12 Q Are you in the information trail between Christie and the
13 city, sir, meaning are -- strike that. What role, if any,
14 did you have in the selection of Christie's?

15 A I recommended that the city interview them for the role
16 of appraising the city-owned art.

17 Q And when did you make that recommendation?

18 A I believe it was in late May, early June of this year.

19 Q Would it have been before or after May 7?

20 A Oh, after.

21 Q Going back to information that's in the data room or in
22 the June 14 proposal itself, I asked you if there was any
23 information regarding the Department of Water and Sewer
24 there, and you said no.

25 A No. I didn't say -- I said I don't know.

1 Q Oh, you don't know?

2 A I don't have a record of every scrap of information
3 that's in the data room in my head.

4 Q Okay.

5 A I apologize.

6 Q But is there any in the June 14 proposal itself?

7 A We made reference to it as we've already testified to the
8 fact that we were working on it as potential source of value
9 to the city, but as is well-known, it is operated on a
10 nonprofit basis. The city has never received any cash from
11 the Water and Sewer Department through which it provides
12 services to the customers all through southeastern Michigan,
13 and there has been no business plan up until the time we
14 commissioned one on that department in order to determine
15 what the value could be.

16 Q Two follow-up questions perhaps. One, it's true, isn't
17 it, that the Department of Water and Sewer makes
18 contributions to the Retirement System -- the General
19 Retirement System on behalf of its employees and retirees; is
20 that correct?

21 A Yes.

22 Q And that's actually a substantial number, isn't it?

23 A I believe so.

24 Q Now, it's also true that the Department of Water and
25 Sewer pays retiree healthcare benefits for its former

1 employees; is that correct?

2 A With respect to its former employees?

3 Q Well, retirees.

4 A I don't know.

5 Q And those payments -- strike. Let me rephrase that.
6 You're familiar with the bonds that are secured by the
7 revenues of the Department of Water and Sewer, are you not?

8 A I am.

9 Q All right. That's actually part of your firm's special
10 charge here is to understand those values; is that correct?

11 A Yes.

12 Q Okay. And you understand that -- are you familiar with
13 the concept of a waterfall?

14 A Lower case or upper case? Yes.

15 Q Okay. In the context of a secured creditor's entitlement
16 to money, could you tell the Court what a waterfall is?

17 A In our technical vocabulary, a waterfall describes the
18 application of cash flows in terms of priority of creditor
19 claims, so if a creditor has a lien against revenues, that
20 lien is supposed to be satisfied before any money may be paid
21 to any other creditor who has an interest subordinate to that
22 lien.

23 Q So in the waterfall for the bonds secured by the
24 Department -- the assets belonging to the Department of Water
25 and Sewer, net operating expenses are paid first before the

1 bonds, are they not? Is that not correct?

2 A You know, it's a good question. The way the rate
3 agreement works in that context, it's not clear that it's a
4 strict waterfall in the context used in creditor documents.
5 It is -- we are allowed to seek reimbursement for operating,
6 maintenance, and debt service costs from our rate payers, but
7 I don't know whether it specifically says those costs are
8 senior to the payments made to the secured creditors.

9 Q Sir, isn't it true that the bondholders are entitled to
10 the revenues after payment of net operating expenses?

11 A Again, I'd have to read the agreement.

12 Q Sir, you understand this asset perhaps better than
13 anybody in this room. Are you telling me you don't know the
14 answer to the question?

15 A I'm saying I'd have to read specific language to give you
16 an accurate answer.

17 Q But as you're sitting here today, you don't know the
18 answer?

19 A I'd have to read the language to give you an accurate
20 answer.

21 Q Does that mean as you're sitting here today, you do not
22 know the answer without reading the document?

23 A It's a very technical provision, and I would want to make
24 completely sure I gave you an accurate answer by rereading
25 that language.

1 Q Okay. Are you familiar with the size of the operating
2 revenues that either the sewer fund or the water fund
3 receive?

4 A Yes.

5 Q Okay. And, sir, is it -- am I correct that the sewage
6 disposal fund had revenues in excess of \$430 million a year?

7 A In fiscal 2012, that seems correct.

8 Q Okay. And same question with respect to the water fund,
9 in excess of \$350 million a year?

10 A That sounds right.

11 Q Would you regard those numbers as being material?

12 A Yes.

13 Q Okay. But they are not mentioned in the June 14
14 proposal?

15 A No.

16 Q When thinking about asset values for purposes of being a
17 hypothetical creditor, is an understanding of the future
18 value of -- strike that. Is the understanding of a fair
19 market value of that asset something that a creditor would
20 like to know?

21 A Yes.

22 Q Is there any fair market value information anywhere in
23 the June 14 proposal?

24 A No.

25 Q Okay. Another way of understanding value for a creditor

1 is to understand historical costs; is that true?

2 A Yes.

3 Q Is there any historical cost information in the June 14
4 proposal?

5 A No.

6 Q And, lastly, another way is third-party appraisals. As
7 of June 14th, are there any third-party appraisals in the --
8 mentioned or described in the June 14 proposal?

9 A No.

10 Q As the city's financial strategist, has the city
11 commissioned any appraisals other than Christie's?

12 A Well, let's see. I testified yesterday we have requested
13 an audit be done of the Detroit-Windsor Tunnel.

14 Q I think I said appraisals, sir.

15 A No.

16 Q We'll get to audits. Appraisals.

17 A No.

18 Q No. Okay. So let's turn to audits. Is there any
19 information in the June 14 proposal with respect to audits of
20 any of the assets?

21 A Not as of that time.

22 Q And if I could for the purpose of this question consider
23 valuations, appraisals, and historical cost being asset value
24 information -- can I just use that as asset value
25 information?

1 A If you wish.

2 Q Okay. So there's no asset value information regarding
3 the City Airport in the June 14 proposal, is there?

4 A No outside appraisal? No.

5 Q No. The three buckets, appraisals, valuation, or
6 historical cost. I'm calling it asset value information.

7 A No.

8 Q Okay. Is there any on noncore real estate?

9 A No.

10 Q Is there any on the municipal parking system?

11 A No.

12 Q And I think you already testified there was nothing on
13 the Detroit-Windsor Tunnel; correct?

14 A Correct.

15 Q And you've also told me that there was no information on
16 potentially past due tax receivables; correct?

17 A Well, we identified, I believe, how large a number it
18 was. That's a matter of accounting entry.

19 Q But nothing else?

20 A That's right.

21 Q Okay. Has a business plan been developed by you or
22 somebody working with you for the Department of Water and
23 Sewer?

24 A Yes.

25 Q Okay. And what role, if any, did Miller Buckfire play in

1 the development of that business plan?

2 A None.

3 Q You did not give any assumptions or make any
4 recommendations with respect to how that business plan should
5 be developed?

6 A No.

7 Q Okay. So it's entirely the work of Conway MacKenzie?

8 A And other consultants who were brought in to review the
9 Water and Sewer Department's capital improvement plan.

10 Q Okay. And who were those consultants, sir?

11 A There was five or six firms involved. I don't have all
12 their names.

13 Q Are you speaking of engineering firms?

14 A Yes.

15 Q Oh, okay. Now, have you read the business plan?

16 A Yes.

17 Q Have you made it part of a proposal that you have made to
18 anyone?

19 A I don't understand.

20 Q Have you made any proposals since the presentation to you
21 of the Conway MacKenzie business plan for the Department of
22 Water and Sewer to any third parties?

23 A No.

24 Q Have you made a -- have you made a proposal to the
25 emergency manager?

1 A I don't understand what you mean by "proposal."

2 Q Let's try again. Have you been involved in any
3 negotiations regarding Department of Water and Sewer with
4 anybody not employed by the city or the emergency manager
5 since the Conway MacKenzie business plan was produced?

6 A Yes.

7 Q Okay. And can you tell me what you have done in that
8 regard?

9 MR. STEWART: I beg your pardon. Could I hear the
10 question again?

11 BY MR. MONTGOMERY:

12 Q The question was what have you done in that regard? Do
13 you understand the question, sir?

14 A Well --

15 Q Obviously not. Your eyes are wrinkling, and you can't
16 understand, so let me -- may I rephrase?

17 A Of course.

18 Q Thank you. You were in charge of monetization of the
19 Department of Water and Sewer as an asset of the city, were
20 you not?

21 A Yes.

22 Q Okay. And you've actually taken steps since the
23 production of the business plan to achieve that goal; is that
24 correct?

25 A Yes.

1 Q Okay. And that has involved formulating a proposal to
2 third parties; is that correct?

3 A Well, it's a very --

4 Q Is that a "yes" or a "no" you're about to give me and
5 then answer?

6 A Can you rephrase -- can you repeat the question?

7 Q Sure. I asked you if you had made a proposal to third
8 parties.

9 THE COURT: And I would only ask you to specify,
10 counsel, a time period.

11 MR. MONTGOMERY: Since the production of the Conway
12 MacKenzie business plan.

13 THE COURT: To today?

14 MR. MONTGOMERY: To today.

15 THE WITNESS: No.

16 BY MR. MONTGOMERY:

17 Q You've had no meetings with the regional water customers
18 of the city making a proposal to them?

19 A I have not made a proposal on behalf of the city yet.

20 Q Okay. Did you have a meeting with the regional water
21 customers for the Department of Water and Sewer after
22 production of the Conway MacKenzie business plan?

23 A We had a presentation of that plan after we met with our
24 creditors and presented the same information.

25 Q Okay. So you presented --

1 THE COURT: I have to ask for a pause here. I'm
2 concerned about the relevance of any of this information as
3 it may apply to work the witness has done since the case was
4 filed.

5 MR. MONTGOMERY: Your Honor, if I may, this is a
6 line of inquiry that's actually designed to show that there
7 was potentially disclosable value in the June 14 proposal
8 that simply was not.

9 THE COURT: Okay. You can certainly ask about that,
10 but I don't think it's appropriate to ask the witness about
11 specific activities that he has undertaken to monetize
12 property since the case was filed. The issue is was the --

13 MR. MONTGOMERY: I understand, your Honor.

14 THE COURT: -- city eligible on the date it filed.

15 MR. MONTGOMERY: Okay. Thank you, your Honor.

16 BY MR. MONTGOMERY:

17 Q Mr. Buckfire, a central part of the June 14 proposal is
18 to free the Department of Water and Sewer from the legacy
19 pension and healthcare costs. Is that not correct?

20 A No.

21 Q It's not correct, so --

22 A It's not correct.

23 Q Under the June 14 proposal, the city contemplates the
24 Department of Water and Sewer continuing to pay past pension
25 and healthcare obligations?

1 A That wasn't what you asked me. You asked me if we
2 contemplated freeing the department from legacy pension
3 liabilities. That was not contemplated. What was
4 contemplated was attempting to create a transaction that
5 might create value for the city but only if there was a buyer
6 on the other side willing to pay value for it.

7 Q So two questions. Does the June 14 proposal contemplate
8 that the retirees of the Department of Water and Sewer will
9 continue to have payments made by the city for either
10 pensions or healthcare?

11 A Well, there are two scenarios. In one case, the city
12 would continue to own the Department of Water and Sewer,
13 which is currently the most likely situation the city has,
14 and in that case the retirees would be treated exactly as we
15 identified in the plan with respect to their unsecured
16 claims --

17 Q No.

18 A -- in that scenario. In the scenario in which we are
19 successful in selling Water and Sewer to its customers, which
20 would only be done if it created value back to the city, then
21 the use of that value would be up to the plan.

22 Q When you say the use would be up to the plan, you mean
23 would be resolved as part of the plan of adjustment?

24 A It would be a very fortunate outcome if we, in fact, are
25 able to get our customers to pay something for the use of

1 these assets. What we do with that stream of value would
2 obviously be the subject of negotiation with our creditors
3 for whom benefit this is being done.

4 Q Okay. And am I not correct that the Conway MacKenzie
5 business plan identifies fairly significant streams of value
6 that are capable of being discussed?

7 A In theory, yes.

8 MR. STEWART: Objection, your Honor. The plan was
9 provided and its detail was provided in the -- under the
10 confidentiality order in connection with the mediation
11 ordered by the Court. I would object to any questioning
12 based upon that plan.

13 THE COURT: Was that the question?

14 MR. MONTGOMERY: No. That was not actually the
15 question, but --

16 THE COURT: All right. Let's rephrase the question,
17 and we'll see if there's still an objection.

18 BY MR. MONTGOMERY:

19 Q I think I asked you whether or not the Conway MacKenzie
20 business plan identified material streams of value.

21 MR. STEWART: Same objection, your Honor.

22 THE COURT: Was this Conway MacKenzie business plan
23 proffered to creditors or attorneys for creditors as part of
24 the mediation process?

25 MR. MONTGOMERY: I believe we and others received

1 it. That's why I was asking the question earlier whether or
2 not the witness had met with third parties.

3 THE COURT: It was proffered as -- and you've seen
4 it as part of the mediation process?

5 MR. MONTGOMERY: I have not asked -- yes.

6 THE COURT: Is that right?

7 MR. MONTGOMERY: Yes.

8 THE COURT: Then the objection is sustained.

9 MR. MONTGOMERY: Thank you.

10 BY MR. MONTGOMERY:

11 Q Change of topic, sir. You've been engaged twice in
12 connection with the City of Detroit; is that correct?

13 A Yes.

14 Q Okay. And the first time was in 2012?

15 A Yes.

16 Q I believe you told Mr. Cullen yesterday that your first
17 engagement started around March; is that correct?

18 A That's my recollection.

19 Q That's March of 2012. Do you recall telling me that your
20 first engagement was in July of 2012?

21 A Yes. I think I was wrong.

22 Q So the July -- what you referred to in your deposition
23 transcript as July you now mean as March?

24 A That's right.

25 Q Thank you. Were you involved with matters relating to

1 the city prior to March of 2012?

2 A Only in a very limited sense. We had tried to build a
3 relationship with the city and with the state obviously, as I
4 testified earlier, for about a year. In the context of that,
5 at some point in early 2012 -- I can't recall when -- I was
6 contacted by Treasurer Dillon, who asked me if there was any
7 relevant experience that he could look at that might guide
8 him in constructing a agreement with the city to provide
9 future funding, so we did a little research, and I sent him
10 some documents related to the creation of the New York City
11 Financial Control Board and Municipal Assistance Corporation,
12 both of which were done in the 1970s, and answered a few of
13 his questions about that.

14 Q Did you transmit to him any form of consent agreement?

15 A No.

16 Q Did you discuss these matters with Jones Day?

17 A I recall asking someone at Jones Day what they thought
18 about this example as a structure that could be used by the
19 State of Michigan and the City of Detroit.

20 Q And was that before or around March of 2012?

21 A It was sometime in early 2012. I can't recall the date.

22 Q Okay. Do you recall creating a model for use by
23 Treasurer Dillon?

24 A A financial model?

25 Q A model for a consent agreement?

1 A I might have given him a model in the strict sense of an
2 outline, but that's all.

3 Q Okay. And did you share that outline with anybody else?

4 A I don't recall.

5 Q Did you share it with Jones Day?

6 A I might have.

7 Q Specifically Corrine Ball?

8 A I might have.

9 Q You communicate a lot with Corrine Ball, do you not?

10 A I communicate with many attorneys.

11 Q Did you not tell me in your deposition that you have had
12 almost daily contact with her as a result of a totally
13 different case?

14 A That's true.

15 Q Okay. And were you having extensive contact with her in
16 March of 2012?

17 A On another matter, that's correct.

18 Q Okay. But you also did talk with her or communicate with
19 her regarding this matter, did you not?

20 A I did.

21 Q Okay. Do you recall communicating with Treasurer Dillon
22 about the possibility of repeal of PA 4?

23 A No.

24 Q No. Do you recall communicating with Jones Day about the
25 possibility that the voters in the State of Michigan might

1 repeal PA 4?

2 A No.

3 Q Sir, do you remember telling me that -- in 2013 that the
4 city's information was not reliable?

5 A That's correct.

6 Q Do you recall participating in a meeting with E&Y and the
7 emergency manager on or about May 7?

8 A Yes.

9 Q Okay. Do you recall telling me that that is the moment
10 in time in which you concluded the city was not solvent?

11 MR. STEWART: Your Honor, if I may, if he could
12 answer the question -- ask the question directly, and then if
13 he doesn't recall, he can refresh his recollection or impeach
14 him with the deposition. Asking whether he recalls the
15 deposition without the deposition in front of him is just an
16 improper way to proceed.

17 THE COURT: The objection is sustained. Just ask
18 the question.

19 BY MR. MONTGOMERY:

20 Q When did you decide that the city was insolvent?

21 A I didn't decide the city was insolvent.

22 Q When did you conclude in your own mind that the city was
23 insolvent?

24 A Well, if you use the definition of insolvency as the
25 inability to continue to pay debts when due, which I think is

1 relevant here, that's when it became, I think, factually
2 pretty evident to me that that would be a serious problem for
3 the city. The city could not, therefore, make the
4 representation that it could pay its debts when due in the
5 short term, and, therefore, if you want to call that
6 insolvency, I would agree with you.

7 THE COURT: The question was when did you come to
8 that conclusion?

9 THE WITNESS: Around May 7th when I first saw the
10 projection from Ernst & Young.

11 BY MR. MONTGOMERY:

12 Q That was the projection from Ernst & Young that --

13 A The short-term cash flow forecast, yes.

14 Q Okay. Sir, I'm going to change topics, if you don't
15 mind. I'd like to draw you back to a meeting that took place
16 at the City Airport, the law firm retention meetings, which I
17 believe you were in attendance at; is that correct?

18 A I think you mean Metropolitan Airport.

19 Q Metropolitan. Did I say City Airport?

20 A You did. No one would have a meeting there if they could
21 avoid it.

22 Q My apologies. My apologies. Even I know the difference
23 between the City Airport and the Metro Airport. At the Metro
24 Airport?

25 A Yes.

1 Q Okay. And were you in the room when Jones Day made its
2 presentation?

3 A I was in the room for all the presentations, including
4 Jones Day's.

5 Q Okay. Do you recall anyone at Jones Day during that
6 presentation making a statement to the effect that asset
7 monetization outside of a bankruptcy may implicate
8 eligibility requirement that city be insolvent?

9 A No.

10 Q Sir, do you recall anybody at Jones Day making a
11 statement that statutes, codes, case law may require that
12 funds received from disposition be allocated?

13 A No.

14 Q Do you recall anyone at Jones Day making a statement that
15 any transaction should be reviewed and structured to address
16 any eligibility issues by earmarking of funds?

17 A No.

18 Q Was there any conversation during that meeting regarding
19 asset dispositions?

20 A As I recall, the topic was addressed by all the law firms
21 that made presentations. I can't recall what specifically
22 any one law firm said about it.

23 Q In your experience as a financial strategist, leading up
24 to a Chapter 9, is asset monetization an issue that needs to
25 be watched closely for eligibility purposes?

1 A I think you're asking me for a legal conclusion. My
2 focus is purely and simply on cash, and we looked at all the
3 assets of the city with the objective of determining whether
4 any of the assets of the city could be converted into cash on
5 a fast basis because we needed the cash. I really wasn't
6 worried about eligibility implications of that.

7 Q Do you recall having any conversations with Emergency
8 Manager Moore (sic) regarding the timing of asset
9 monetizations prior to June 14, 2014 (sic)?

10 A Yes.

11 Q And when did that conversation -- first, was it one
12 conversation or more than one conversation?

13 A That was multiple conversation over many months.

14 Q Okay. And so when was the first time you discussed the
15 impact of asset monetization?

16 A Well, after he was appointed emergency manager -- I
17 believe it was close to the end of March. We had already
18 been engaged for several months before that. We briefed him
19 on our preliminary assessment of the situation, including
20 whether or not any assets were available for rapid conversion
21 to cash. I believe it was that time we went through our list
22 of what I would call non-core assets and helped him
23 understand what any of them might be worth in a sale
24 transaction.

25 Q But your conclusion was that nothing could be done in the

1 short term?

2 A Correct.

3 Q Okay. And did the emergency manager charge you to begin
4 the long-term effort as a result of those conversations?

5 A We continued to evaluate all of the city's assets after
6 that conversation as we have continued to do so to try to
7 maximize value for the city.

8 Q So did the emergency manager change your work plan with
9 respect to asset monetization in any way?

10 A No.

11 MR. MONTGOMERY: Your Honor, subject to conferring
12 with my colleagues, I believe I'm done with this witness.

13 THE COURT: All right. I'll give you a moment to do
14 that.

15 MR. MONTGOMERY: Your Honor, the Retiree Committee
16 has finished with Mr. Buckfire. Thank you.

17 THE COURT: All right. Thank you.

18 MR. MONTGOMERY: It'll take a moment to move my
19 papers from underneath the podium.

20 CROSS-EXAMINATION

21 BY MR. CIANTRA:

22 Q Good afternoon, Mr. Buckfire. Thomas Ciantra, Cohen,
23 Weiss & Simon. We're counsel for the UAW. I don't have a
24 lot, but I do want do -- did want to ask you about one of the
25 topics that you testified about in your direct examination,

1 and that was, as I understand it, you were tasked to
2 negotiate with the city's bondholders and specifically the
3 bond insurers. Is that correct?

4 A That we took the lead role in those negotiations, yes.

5 Q Okay. And just by way of -- just by way of background,
6 would it be correct that some of the city's debt, both the
7 secured debt and the unsecured debt, is insured by municipal
8 bond insurers?

9 A Substantially all of it is.

10 Q Substantially all of it, so can you put a percentage on
11 that?

12 A Well, there is approximately \$6 billion of water and
13 sewer debt, and of that total about 5-1/2 billion, I believe,
14 is insured.

15 Q Okay.

16 A And of the city's general obligation debt, which includes
17 the certificate of pension payment debt, substantially all of
18 that is insured as well.

19 Q Okay. So how the insurance works -- would it be correct
20 that the insurers for the cost of the premium take on an
21 obligation to pay both interest payments when due and
22 repayment of principal in the event of a default?

23 A Yes.

24 Q So the bondholder, by purchasing the insurance,
25 essentially is reducing the credit risk of the underlying

1 bond?

2 A That's the theory, yes.

3 Q Right. And the theory would be the way the market would
4 function is the issuer then is able to charge a lower
5 interest rate for the underlying bond obligation because of
6 the insurance?

7 A The issuer, if it's done correctly, is supposed to be
8 able to borrow at a lower cost.

9 Q Got it. So in the proposal for creditors, there are
10 appendices that specify the various bond issues that are
11 outstanding?

12 A Yes.

13 Q And they identify the -- with respect to each bond issue,
14 the identity of the relevant insurer?

15 A I believe that information is in the document, yes.

16 Q Okay. And would I be correct that there are -- it looks
17 to me as though there are six bond insurers that are
18 identified?

19 A Yes.

20 Q MBIA, Assured Guaranty, FGIC -- looks like Berkshire
21 Hathaway might be involved with some of the FGIC issues --
22 Syncora and something called Ambac?

23 A That's correct.

24 Q Did I miss any?

25 A No.

1 Q So in terms of the city's negotiation with respect to the
2 bond debt, those negotiations could really effectively be
3 done by those six bond insurers?

4 A Well, it's not clear what would have ultimately happened
5 and what will happen in this case. Certainly we began with
6 them, but we did not expect to end with them.

7 Q Okay. But it would be correct that from your perspective
8 in terms of handling the negotiation, the bond debt was --
9 debt holders were organized through the insurers; correct?

10 A We could start there, yes.

11 Q Right. And the insurers could be effectively relied upon
12 to speak for the bondholders?

13 A Well, again, we were opening what we expected to be a
14 long series of negotiations. The bond insurers represented
15 themselves as holding the economic risk of these bonds
16 because of their insurance. Therefore, we began our
17 discussions with them.

18 Q Okay. And as we said, that's six entities --

19 A Correct.

20 Q -- that cover the substantial majority of the city's
21 outstanding secured and unsecured debt; correct?

22 A That's right.

23 Q Do you know whether the city's unsecured pension
24 liabilities are insured?

25 A I don't know.

1 Q Okay. So if I'm a bondholder -- let's say I'm a little
2 old lady in Pasadena who's relying on insured municipal bonds
3 from the City of Detroit for my retirement income. I would
4 have recourse with respect to that income to the bond
5 insurer; correct?

6 A Only if the bond insurer itself is solvent.

7 Q Okay. Assuming that they're solvent, is that --

8 A Can't make that assumption here because some of them
9 aren't.

10 Q I understand that some of them are having financial
11 difficulties, but at least it's possible. It was possible
12 for the bondholder to purchase an insured product; correct?

13 A In theory.

14 MR. CIANTRA: No further questions.

15 THE COURT: You may proceed, sir.

16 MR. SHERWOOD: Hello, your Honor.

17 CROSS-EXAMINATION

18 BY MR. SHERWOOD:

19 Q Mr. Buckfire, Jack Sherwood, Lowenstein Sandler. I'd
20 like to ask the technician to put up City Exhibit 7, which I
21 think you discussed yesterday on your direct. Do you
22 remember discussing this agreement yesterday, Mr. Buckfire?

23 A I do.

24 Q And this agreement was executed before you were retained.
25 Is that fair to say?

1 A Yes.

2 Q And one of the parties to this agreement is the
3 Department of Treasury of the State of Michigan; correct?

4 A Yes.

5 Q And the other is the City of Detroit. And I'd like to
6 ask you to clarify some of your testimony yesterday for me
7 about this agreement. I thought I heard you say that it was
8 pursuant to this agreement that -- or that there was
9 something about this agreement that led to your engagement.
10 Is that accurate?

11 A Yes, paragraph 1.

12 Q Paragraph 1. Is that the paragraph that talks about
13 restructuring assistance; correct?

14 A Correct.

15 Q And would you call yourself part of that restructuring
16 assistance that was agreed to for the city pursuant to this
17 agreement?

18 A Well, my firm was selected pursuant to this paragraph 1
19 requirement.

20 Q Okay. And is it your understanding that, in addition to
21 your firm, Ernst & Young and Conway were also selected
22 pursuant to this paragraph 1 to provide restructuring
23 assistance?

24 A No. Ernst & Young had already been working for the city
25 pursuant to the March 2012 consent agreement. I believe

1 paragraph 2 of this memorandum is the entry point for Conway
2 MacKenzie being awarded the contract to provide operational
3 assistance.

4 Q Okay. So you were engaged pursuant to paragraph 1,
5 Conway MacKenzie pursuant to paragraph 2, and Ernst & Young
6 was already on the scene; correct?

7 A Correct.

8 Q And did you -- so when was the exact date that you
9 actually got selected pursuant to this agreement? It was
10 January of 2013; right?

11 A Well, we signed our contract with the city on January the
12 5th, but we had been told we had won the award, as it were,
13 in December.

14 Q Okay. So you started work in earnest pursuant to this
15 agreement in January of 2013; is that right?

16 A Yes.

17 Q And same for Conway?

18 A I don't know when they began, but it was -- certainly the
19 first time I met with them was in January.

20 Q Okay. And do you know whether Conway began their
21 services in January? Maybe you just answered the question.
22 I'm sorry for asking it again. Just to be clear, you don't
23 know whether Conway actually began their work in January of
24 2013?

25 A I don't. That's just when I first met them.

1 Q Okay. But you met them in the context of you're both
2 working on your engagement for the City of Detroit; isn't
3 that right?

4 A Yes, because we both reported to the same city officers.

5 Q Now, if you turn to paragraph 8 of this agreement -- I
6 think it's on page 5. Can you -- it talks about milestones
7 for draws, and I think you testified a little bit yesterday
8 about -- and there has been some testimony over this money
9 that was loaned by the state and held in escrow. Do you
10 recall that testimony? Is that accurate?

11 A No, it's not accurate. I testified that the city had
12 been assisted by the state in raising \$130 million on the
13 capital markets. I think it was in March or April of 2012.

14 Q Okay. And you understood that to be the case when you
15 came on board in January of 2013?

16 A Yes. I knew there was still some money in escrow from
17 that bond financing.

18 Q Okay. And do you know what the amount in escrow was
19 in -- I just heard yesterday numbers like 30 million, 80
20 million, 50 million. Do you know how -- let's see if we can
21 go date by date. Do you know how much was in escrow in
22 November of 2012, the date of this agreement?

23 A Well, paragraph 8 says there was \$80 million, so I assume
24 it --

25 Q Okay.

1 A -- was \$80 million.

2 Q And do you know how much was in escrow on the date that
3 the bankruptcy petition was filed?

4 A I believe it was around 60 million.

5 Q Okay. And do you know -- so at least 20 million was
6 distributed from that escrow between the period of November
7 2012 and July 2013; right?

8 A Yes.

9 Q And is this -- was it sort of like an advance and then a
10 repayment, or do you know how that worked?

11 A Well, it was meant to be a release from the escrow. I
12 don't really recall what the mechanism was. I don't recall
13 there being any requirement for the city to put it back
14 because the city would not have the ability to do that once
15 the money was spent.

16 Q Okay. So you don't know whether it was 80 and then it
17 was below 60 and then -- you don't know whether the city ever
18 paid any of that money back?

19 A I don't.

20 Q Okay. Do you know whether the city pays interest on that
21 money?

22 A I don't.

23 Q And is it true that that escrow money is releasable to
24 the city in the discretion of the state treasurer?

25 A That's my understanding.

1 Q So if the state treasurer wanted to release that money to
2 the City of Detroit, it could in the exercise of its
3 discretion?

4 A I assume so.

5 Q Now, the release of this -- would you agree that your
6 engagement and the engagement of Conway pursuant to this
7 agreement was sort of a condition of the city having access
8 to this escrow money?

9 A Well, that was part of the paragraph 1 and 2 requirements
10 of this agreement.

11 Q Right. So if the city didn't retain -- and I'm not
12 saying you personally, but a financial advisor and a business
13 advisor, then they couldn't get access to this money. Is
14 that your understanding?

15 A Yes.

16 Q Now, when this -- the date of this agreement was November
17 2012. That was the same time that PA 4 was repealed by the
18 voters of the State of Michigan; isn't that right?

19 A I don't know.

20 Q And in your conversations with the state concerning this
21 agreement, do you know whether there was any connection
22 between this agreement and the referendum with respect to PA
23 4?

24 A No.

25 Q Now, after you were engaged in January of this year along

1 with Miller Buckfire, your understanding is you were working
2 for the City of Detroit; isn't that right?

3 A That's who our contract is with. That's correct.

4 Q Okay. But you reported to a board which include
5 representatives from the state, for the State of Michigan?

6 A No. We reported to Kriss Andrews and Jack Martin.

7 Q Just the city?

8 A That's correct.

9 Q Okay. And I assume you tried to fulfill your duties as a
10 professional, and I'm sure, based on your observations, the
11 folks at Conway MacKenzie were doing what they could to
12 provide financial advice and restructuring advice and to
13 implement initiatives for the City of Detroit from January
14 2013 through the appointment of the emergency manager;
15 correct?

16 A As directed by the city. That's correct.

17 Q Let me just jump to your discussion earlier about your
18 communications with Jones Day. You talked about March 2012
19 being your engagement date. You made a mistake at your
20 deposition, so it was March 2012. So your initial engagement
21 by the city ended, because I think it was a 60-day
22 engagement, so did it end in May of 2012?

23 A I can't remember. It was only 60 days, and it was a very
24 limited scope, so it was around that time.

25 Q So just running the math -- and we don't have to be exact

1 here, but, generally speaking, you were really not -- you
2 were kind of on the sidelines during the period from, say,
3 May of 2012 through the end of the year when you were engaged
4 pursuant to this new deal; right?

5 A That's right. We had developed a relationship with the
6 city which we maintained during that period.

7 Q Now, during that period of time, you continued to
8 maintain contact with Jones Day and continued to exchange
9 information with Jones Day about the City of Detroit and
10 their financial issues; isn't that right?

11 A And other law firms. That's correct.

12 Q Let me stay on this topic because I want to try to do
13 this in some type of logical order. Let me jump now to the
14 meeting of the law firms at the airport on January 29th.
15 Isn't it true that you had a telephone conversation with the
16 Jones Day law firm on the day before that meeting?

17 A I did, along with all the other law firms.

18 Q You had a telephone conversation with all of the 14 or 15
19 law firms on the day before that meeting?

20 A Many of them called looking for last-minute advice and
21 guidance on how to conduct themselves in the presentation.

22 Q Okay. Do you recall in your conversation with Jones Day
23 in particular advising Jones Day to address the issue if
24 Miller Buckfire finds a way to monetize assets, how will that
25 affect eligibility?

1 A No.

2 Q You don't recall that, any discussions with Jones Day
3 about that particular topic?

4 A No.

5 Q Do you recall what you said to Jones Day in advance of
6 the meeting to help them prepare to give their pitch?

7 A I recall telling them the same thing I told all the other
8 law firms. In general, make sure that they presented as
9 thoughtful a range of alternatives to the city and the state
10 as they could; to emphasize, to the extent they could, their
11 deep connections to the City of Detroit and the State of
12 Michigan; if they could speak to it, their midwestern roots
13 and any other things that would indicate that they cared
14 about this assignment.

15 Q And just to be clear for the record, your testimony is
16 that you don't recall any discussions with Jones Day on
17 January 28th, 2013, asking them to address asset monetization
18 and the impact of that on eligibility under Chapter 9? Is
19 that your testimony here today?

20 A We might have talked about how we would handle an asset
21 monetization, but I don't recall any other implications of
22 that. Asset monetizations always have to be considered in
23 any restructuring process as a source of cash and recovery
24 for creditors.

25 Q Do you know discussing with them the impact of asset

1 monetization on eligibility for Chapter 9?

2 A No.

3 MR. SHERWOOD: Can I have one second, your Honor?

4 THE COURT: Yes, sir.

5 MR. SHERWOOD: Can we have Exhibit 860, please?

6 Your Honor, I don't think that this exhibit is in evidence.

7 I'm trying to use it to refresh the witness' recollection.

8 THE COURT: Well, if that's so, I would ask you to
9 take it off the screen and just hand him a paper copy.

10 MR. SHERWOOD: I'm sorry, your Honor. I don't have
11 a paper copy.

12 MS. GREEN: It's in the binder.

13 THE COURT: Did you say 860?

14 MR. SHERWOOD: Yes, sir.

15 THE COURT: My order says that it is admitted into
16 evidence.

17 MR. SHERWOOD: Then we can put it on the screen,
18 your Honor.

19 MR. STEWART: No. I think the -- don't we have the
20 objection on attorney privilege and on attorney work product
21 on that?

22 ATTORNEY: We had one, yes.

23 MR. STEWART: Did we recede from it?

24 ATTORNEY: Yes, we did.

25 MR. STEWART: Okay. I'm sorry. We receded from our

1 objection.

2 MR. SHERWOOD: All right. So can I put it back up,
3 your Honor?

4 THE COURT: Okay.

5 MR. SHERWOOD: I'm sorry. Now, if you can -- can I
6 ask that we go down to the text and sort of the line that
7 starts "Miller Buckfire" and blow that part up, please?

8 BY MR. SHERWOOD:

9 Q Bottom sentence in the block that says, "If MB finds a
10 way to monetize assets to create liquidity, how would that
11 impact eligibility?" And just for the -- just so we're
12 clear, Mr. Buckfire, you're not on this e-mail. This is an
13 e-mail in evidence, and it -- and take your time reading the
14 whole thing, but basically it describes, I think, a
15 conversation at Jones Day describing their conversation with
16 you, and, you know, the last question is, "If MB" -- I assume
17 that means Miller Buckfire -- "finds a way to monetize
18 assets, how would that impact eligibility?" Does that
19 refresh your recollection as to the content of your
20 conversation with Jones Day that day?

21 A This is not an e-mail that I'm part of.

22 Q Fair.

23 A May I read the whole thing? You're showing me one little
24 paragraph.

25 Q Yeah.

1 A This is an internal e-mail from Jones Day?

2 Q Yes, it is, sir.

3 A Yeah. I'm sorry. It's -- okay. Can you blow this up?
4 I can't even read it. Thank you.

5 Q Is that better?

6 A Thank you. Okay.

7 Q Does that refresh your recollection as to whether -- when
8 you had your conversation with Ms. Ball from Jones Day on the
9 28th, whether you told her to address the issue at the
10 meeting the next day if Miller Buckfire finds a way to
11 monetize assets, how would that impact eligibility?

12 A I simply pointed out to her, as I did to everybody else,
13 that we were looking at ways of creating value, and we needed
14 to consider whether that could be done inside or outside of a
15 bankruptcy. Obviously in the course of a normal bankruptcy,
16 Chapter 11 in particular, selling an asset prior to a
17 bankruptcy proceeding may often be challenged in hindsight by
18 creditors. If we did find a source of value, we'd want to
19 make sure it didn't happen that way.

20 Q So are you saying now that you recall the -- you
21 specifically --

22 A No.

23 Q -- recall the conversation, or are you just speculating
24 as to what you might have --

25 A I'm speculating as to what this means and what she

1 thought she was writing about.

2 Q All right. We can take that down now.

3 MR. STEWART: I'd move to strike the testimony, your
4 Honor.

5 THE COURT: I'm sorry. On what grounds, sir?

6 MR. STEWART: Speculation.

7 MR. SHERWOOD: I don't mind.

8 THE COURT: All right. It is so ordered.

9 BY MR. SHERWOOD:

10 Q Now, in your previous cross -- I don't want to take too
11 much time with this because you've been up there a long time
12 and everybody is (inaudible) to lunch, but -- and just so the
13 record is clear, you were asked about whether Jones Day at --
14 whether you recall at the meeting on the 28th whether Jones
15 Day actually made part of their pitch with Mr. Orr a
16 statement about the impacts of asset monetization and
17 eligibility, and just so we're clear, you don't recall any
18 such statements being made by Jones Day during the course of
19 their presentation, or do you?

20 A I don't.

21 Q Let me try to pick up on the whole even-handed and fair
22 discussion. I think you testified -- I'm sorry. Is it your
23 understanding that at \$12 billion of total liabilities the
24 projected recovery for unsecured claims under the proposal
25 was 16 cents on the dollar?

1 A That's correct.

2 Q And in concluding that the plan, as presented, is even-
3 handed and fair, did you consider the argument that the
4 vested pension claims are protected by the Constitution of
5 the State of Michigan?

6 A I am aware of that argument.

7 Q Did you incorporate that argument into the proposal?

8 A No.

9 Q And do you consider that argument -- you don't give that
10 argument much value, do you, when you conclude that the
11 proposal made on June 14th is even-handed and fair; isn't
12 that right?

13 A We didn't give any weight to the obligation -- the
14 statement of the general obligation bondholders that their
15 tax pledge was important either. We regarded them both as
16 covenants that the city could not honor.

17 Q I'm sorry. I just asked you about the vested pension
18 benefits and their mention in the Constitution.

19 A They don't have --

20 Q I asked you -- I asked you whether you give the
21 constitutional protection any value in either the proposal --

22 A Um-hmm.

23 Q -- or your statement that the proposal was even-handed
24 and fair.

25 A They don't have a security interest, and, therefore, we

1 did give it weight, but we did not regard it as relevant to
2 our claims classification.

3 Q They didn't have a security interest, but -- so, in your
4 view, a security interest is more valuable than
5 constitutional protection?

6 A If a creditor has a security interest in an asset or
7 revenue stream, that gives them a claim on that revenue
8 stream or asset. What is a covenant?

9 Q Let me -- staying with the proposal, do you remember
10 looking at a page of the proposal that had a -- sort of a
11 timeline? Would you like to see that again?

12 A Yes, to make sure I understand which page --

13 Q Yeah. Can we pull up --

14 A Which exhibit is that?

15 Q It's 408, among others. We're going to pull it up.

16 A Are you referring to Exhibit 43?

17 Q Yeah. That's your number, yeah. The city's number is
18 403. That works.

19 A Okay.

20 Q Now, if you turn to page 113 of that -- and I believe
21 that is the page 113 that was on the original document. Yes.
22 That's it. Now, when this proposal -- I think you testified
23 yesterday that this was not a take it or leave it proposal;
24 correct?

25 A Correct.

1 Q And you and counsel referred to this calendar of contacts
2 and this page. Was this calendar and contacts information --
3 was that highlighted at the end of the meeting on June 14th?

4 A Yes, it was.

5 Q Okay. So there was a period for requests for additional
6 information June 17th to June 24th, and then initial round of
7 discussions. The initial round of discussions ends on July
8 2nd; correct?

9 ATTORNEY: July 12th?

10 THE WITNESS: July 2nd?

11 MR. SHERWOOD: July 12th. Thank you.

12 THE WITNESS: That was the plan, yes.

13 BY MR. SHERWOOD:

14 Q Right. And that was just to be the initial round of
15 discussions; correct?

16 A We had to start someplace.

17 Q Correct. And then there's an evaluation period July 15th
18 through July 19th. Do you see that?

19 A I do.

20 Q And the city filed bankruptcy on July 18th; isn't that
21 right?

22 A I believe that's right.

23 Q On this calendar and contacts, it doesn't say anything
24 like if we don't reach an agreement we're going to file on
25 July 18th, 2013; isn't that right?

1 A It doesn't say that.

2 Q And that wasn't said at the meeting, July 18th we're
3 going to file. Nobody said that?

4 A We hoped we didn't have to.

5 Q One of the big concerns from your perspective in the --
6 in regard to the swaps counterparties -- we can put that down
7 there. I think it was your testimony that you were really
8 concerned about these negotiations with the swaps. You were
9 involved in that.

10 A That's right.

11 Q And your big concern was that absent a deal with these
12 guys, the city could lose the casino revenue, and that's a
13 big part of the city's revenue; right?

14 A And then it got worse. That's correct.

15 Q Okay. Isn't it true that -- though, that on July 17th a
16 forbearance agreement was executed with the swap
17 counterparties?

18 A That's true.

19 MR. SHERWOOD: Can we put up Exhibit 558, please?
20 It's AFSCME 558. I'll move on to something else and see if I
21 can get back to that, your Honor.

22 THE COURT: I'm feeling like this is a good time to
23 break for lunch.

24 MR. SHERWOOD: Your Honor, I was hoping to get done
25 before lunch, which is -- I'm sorry about that, but --

1 THE COURT: I'd like to actually conduct a
2 referendum among counsel here. One hour, one hour and 15
3 minutes, or one hour and 30 minutes for lunch? How many vote
4 for one hour? Nobody. How many vote for an hour and 15
5 minutes? A couple people. How many an hour and 30?
6 Everybody else. All right. Fine. An hour and 30 it is.
7 We'll reconvene at 1:45.

8 MR. SHERWOOD: Your Honor, just --

9 THE COURT: Sir.

10 MR. SHERWOOD: -- for everybody's benefit, I'm 15
11 minutes from --

12 THE COURT: Okay.

13 MR. SHERWOOD: Just so everybody can plan.

14 THE COURT: We'll pick it up then.

15 MR. STEWART: Another question now?

16 THE COURT: Sir.

17 MR. STEWART: I would like to ask the Court's
18 guidance. We have Mr. Malhotra here, and I assume that for
19 fairness sake, since those exhibits are now in for the truth,
20 that there will be additional cross-examination of
21 Mr. Malhotra and probably brief additional direct.

22 THE COURT: Well, let's take this up at 1:45.

23 MR. STEWART: Okay.

24 THE COURT: Counsel, I want you to think about the
25 question whether you need further examination of Mr. Malhotra

1 or whether he can be excused as a witness.

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

3 (Recess at 12:15 p.m. until 1:45 p.m.)

4 THE CLERK: Court is back in session. Please be
5 seated. Recalling Case Number 13-53846, City of Detroit,
6 Michigan.

7 THE COURT: Looks like everyone is here. You may
8 proceed, sir.

9 BY MR. SHERWOOD:

10 Q Mr. Buckfire, before lunch I was trying to get ahold of
11 this exhibit that we've marked as 588. Can you see it on the
12 screen, or would you like a hard copy?

13 A If you could blow up the one I have here, that would be
14 helpful. Yes, I see it. There's only half the document. Do
15 you have a hard copy just if you don't mind?

16 MR. SHERWOOD: May I approach, your Honor?

17 THE COURT: Yes.

18 MR. SHERWOOD: Would the Court like a hard copy,
19 too?

20 THE COURT: No. That's all right.

21 THE WITNESS: Thank you.

22 THE COURT: Do you have a question for the witness?

23 MR. SHERWOOD: Oh, I'm sorry.

24 BY MR. SHERWOOD:

25 Q Have you reviewed the document? Do you recognize it?

1 A I do.

2 Q And did you write this e-mail to the governor, Treasurer
3 Dillon, and others on July 17th, 2013?

4 A I did.

5 Q And does it accurately describe the state of affairs with
6 respect to negotiations -- the negotiation of a forbearance
7 agreement with the swap counterparties?

8 A Yes.

9 Q Okay.

10 MR. SHERWOOD: Your Honor, I would move this
11 evidence into evidence. I don't think it's been stipulated
12 in. I think we've laid a proper foundation.

13 MR. STEWART: No objection, your Honor.

14 THE COURT: All right. The exhibit was 588, did you
15 say?

16 MR. SHERWOOD: Yes, sir.

17 THE COURT: Exhibit 588 is admitted.

18 (Exhibit 588 received at 1:47 p.m.)

19 BY MR. SHERWOOD:

20 Q Mr. Buckfire, just before lunch, just to follow up on
21 something I asked you, you indicated that one of the people
22 at the city that you reported to before the appointment of
23 the EM was a person by the name Jack Martin. Do you remember
24 that?

25 A Yes.

1 Q And isn't it true that Mr. Martin was hired pursuant to a
2 consent decree and appointed by Governor Snyder?

3 A Well, I know he was hired as chief financial officer
4 after the consent agreement was signed in March of 2012,
5 chief financial officer of the City of Detroit. I don't
6 recall him being appointed by the governor.

7 Q Isn't it true that he's now the EM for the Detroit Public
8 Schools?

9 A Yes.

10 Q And in that post, was he appointed by the governor? Do
11 you know?

12 A I don't know.

13 Q Let me ask you just about the artwork and the Christie's
14 appraisal. I think you said that you engaged them in either
15 May or June. Do you remember that?

16 A May.

17 Q Was it May?

18 A May 15th or so.

19 Q May 15th. Okay. So they've had all of June, July,
20 August, and September, and I mean it's been like five months
21 since their engagement.

22 A No. I didn't say that. I said I met with the DIA May
23 15th --

24 Q When were they --

25 A -- and I recommended to the emergency manager that an

1 appraisal be conducted sometime in June, and I contacted
2 Christie's on behalf of the city to find out if they had an
3 interest in taking on this assignment. As I recall, the
4 emergency manager did not sign their agreement until sometime
5 in August.

6 Q August. Okay. So they've only had August, September,
7 October to do their appraisal work. Is that what you're
8 saying?

9 A I believe they actually started in early September.

10 Q Okay. And in that time they haven't even produced a
11 preliminary report on valuation?

12 A No.

13 Q You testified yesterday about -- in connection with the
14 Coleman Young Airport. I think you said something about
15 consulting with one of your colleagues at Miller Buckfire who
16 had expertise in matters concerning to airports and financing
17 and so forth. Do you recall that?

18 A I do.

19 Q And what was the name of that individual?

20 A John McKenna. He's a managing director at Miller
21 Buckfire, a lot of experience with airlines. Among other
22 things, he had been a director of U.S. Airways at one point.

23 THE COURT: The question simply was who was that.

24 THE WITNESS: John McKenna.

25 BY MR. SHERWOOD:

1 Q And at Miller Buckfire, you guys have over 30
2 professionals. Do the professionals within your firm -- do
3 they specialize in specific industries?

4 A They don't set out to do so, but after you've worked with
5 one company and one industry, you tend to do others, so they
6 do acquire industry expertise.

7 Q And what other types of industry expertise would you say
8 that Miller Buckfire has as a strong part of their practice?

9 A Sovereign restructuring. We have one large country,
10 which has been a client of ours now for several years. We've
11 done other work for other municipalities in the United
12 States. In terms of private sector work, airlines, electric
13 utilities, merchant power companies, retailers, steel
14 companies, telecommunications companies, yeah. I could go
15 on, but those are the primary ones.

16 Q And in connection with your firm's work, do you testify
17 in court on behalf of your clients?

18 A Yes.

19 Q And in your experience testifying in court, have you been
20 qualified as an expert before?

21 A Yes.

22 Q Was it your decision to be a nonexpert witness in this
23 case?

24 A No.

25 Q Do you know whose it was?

1 A No.

2 MR. SHERWOOD: Thank you, Mr. Buckfire. Thank you,
3 your Honor. I have no further questions.

4 THE COURT: Anyone else have questions for the
5 witness?

6 THE WITNESS: You want this exhibit?

7 THE COURT: I guess just set it down there.

8 CROSS-EXAMINATION

9 BY MS. GREEN:

10 Q Good afternoon, Mr. Buckfire. My name is Jennifer Green.
11 I represent the General and Police and Fire Retirement
12 Systems for the City of Detroit. We've actually met before.
13 I was at your deposition. I just wanted to get the timeline
14 straight that you just testified about. You were initially
15 engaged by the State of Michigan in 2012; correct?

16 A Correct.

17 Q And at that time, your engagement was limited to the time
18 frame of March to April?

19 A It was 60 days.

20 Q And at that time, it was your job to identify assets of
21 the City of Detroit; correct?

22 A No. I didn't testify to that. I testified we were asked
23 to do a general financial review of the city's financial
24 condition based on public information.

25 Q Okay. And then in 2013 when you were reengaged, you

1 discovered that the artwork could be a potential asset?

2 A Among other things, yes.

3 Q And you did not know that during your engagement in 2012;
4 correct?

5 A No.

6 Q You met with Christie's in May of 2013?

7 A I first called them late May, and I believe I met with
8 them either late May or early June to ascertain whether they
9 might have an interest in appraising the art at the DIA.

10 Q And were you told by Christie's at that time how long it
11 would take to perform the valuation?

12 A They told me it would take several months.

13 Q You knew even if you started in May that it would not be
14 done until the end of summer; correct?

15 A Correct.

16 Q The meeting with the DIA, what date in May was that?

17 A May 15th.

18 Q Was that the only meeting you had with the DIA?

19 A No. It was the first meeting I had with the DIA.

20 Q What other meetings did you have with the DIA?

21 A Well, I met with representatives of the DIA and the
22 chairman of the trustees several times after that meeting to
23 again reiterate the city's position that the city owned the
24 art and the building and that it would be useful to everybody
25 to arrive at a consensual resolution that would create value

1 for the city. Those discussions did not prove fruitful.

2 Q And who is the chairman that you just mentioned?

3 A Gene Gargaro.

4 Q And who is Richard Manoogian? Is he also involved with
5 the DIA?

6 A I don't know. I assume he -- I've heard the name, but I
7 never met him.

8 Q And David Meador, how is he involved with the DIA?

9 A He's a trustee.

10 Q And did you meet with him as well in May or June?

11 A I did. I met him when DTE was working with the city on
12 the formation of the public lighting authority.

13 Q And when you met with Mr. Meador, did you discuss the
14 potential of a Chapter 9 filing on behalf of the City of
15 Detroit?

16 A I told him that it was certainly a risk given the city's
17 financial position.

18 Q Did you identify a particular date that the city may file
19 Chapter 9?

20 A No.

21 Q Did you share with any of the other trustees of the DIA
22 that there was a particular date or month that a Chapter 9
23 might be filed on behalf of the city?

24 A No.

25 Q Mr. Buckfire, do you remember receiving an e-mail from

1 David Meador, the Mr. Meador that we just spoke about, on
2 July 11th of 2013?

3 A I recall getting numerous e-mails from him. That sounds
4 like I might have gotten one on that date.

5 Q We'll pull up a copy of it for you to look at. Do you
6 recognize this as being the e-mail that you received from Mr.
7 Meador in July of 2013?

8 A Yes.

9 Q I'd like to direct your attention to the top of the e-
10 mail where it says "Ken, here's the outline that I provided
11 Gene." Is that Gene Gargaro, who we just spoke of?

12 A Yes.

13 Q "As a pre-read to our call, I don't think any action is
14 needed on your part. I just wanted you to be aware of what I
15 had shared with him."

16 A I see that.

17 Q Okay. The e-mail below has a date of, if you look down,
18 June 22nd. And if you scroll to the last page of the e-mail,
19 there's a bullet point list of topics that were discussed.

20 Bullet point number --

21 MR. CULLEN: Before we get into the topics, unless
22 we're going to refresh his recollection, I would like to have
23 a proper foundation for the rest of the e-mail or for his
24 ability to discuss the substance of this.

25 MS. GREEN: Your Honor, it's actually going to be

1 impeachment because he just said that he didn't tell them
2 something, and that's all I'm using it for.

3 THE COURT: Well, let's just get the record
4 straight. Is this e-mail an exhibit?

5 MS. GREEN: It is not yet an exhibit, your Honor.

6 THE COURT: Okay. Well, for identification
7 purposes, let's just put a number on it, and you'll tell me
8 what that number is.

9 MS. GREEN: It would be Exhibit 868.

10 THE COURT: 868. Okay. We'll put that number on
11 it.

12 (Exhibit 868 marked at 1:57 p.m.)

13 THE COURT: Is this an e-mail that the witness
14 received in the ordinary course?

15 MS. GREEN: I believe he just testified that he
16 generally recalls receiving an e-mail from Mr. Meador
17 following their meeting.

18 THE COURT: Did you receive this e-mail?

19 THE WITNESS: I did.

20 THE COURT: All right. You may proceed.

21 BY MS. GREEN:

22 Q Bullet point number five states the EFM has to have a
23 plan in place by mid-July.

24 A Um-hmm.

25 Q The second line states, "A bankruptcy filing will likely

1 be in July. The team would like to include a conceptual
2 framework for the DIA assets in that filing. A formal plan
3 will be submitted in the fall, November or earlier, and a
4 hearing next May." And as you recall, an e-mail that you
5 received stated, "I just wanted you to be aware of what I had
6 shared with him." Had you shared this information with a
7 board member of the DIA?

8 A Well, this is his e-mail to Gene Gargaro. It's not from
9 me to him.

10 Q I understand that. I'm asking if it's -- if it is your
11 testimony that you did not share at your meeting that a
12 bankruptcy filing will likely be in July.

13 A I never shared with anybody at DIA that a bankruptcy
14 filing was likely in mid-July, but at this point -- and this
15 is dated -- when was this dated again? When was it sent?

16 Q June 22nd.

17 A Okay. We had already had our meeting with creditors on
18 June 14th. All right. We were already in the middle of
19 discussions with them. He had called me to find out where
20 this left DIA, and I explained to him that, you know, given
21 where we were with the cash position of the city -- and this
22 is an important point -- we still didn't have a forbearance
23 agreement in place -- that that raised the risks of a
24 bankruptcy to a high level, and, therefore, it would be nice
25 to have something in place as soon as possible.

1 Q Did you respond to his e-mail and deny that you ever told
2 him a bankruptcy filing would be coming in July?

3 A I never said it was coming in July.

4 Q His e-mail --

5 A This is his e-mail.

6 Q I understand that. His e-mail says that a bankruptcy
7 filing will likely be in July, and you had just met with him.
8 And the e-mail to you said, "I wanted you to be aware of what
9 I had shared with him." Did you respond and say, "I didn't
10 share any information of this nature with you"?

11 A I'm confused. This is what he wrote to his colleagues
12 about what he believed would be the state of play.

13 Q Can we go back to the initial e-mail to Mr. Buckfire,
14 please?

15 A Can you hand me a hard copy because it's actually hard to
16 follow this from the screen?

17 Q Mine has writing, so --

18 A What?

19 Q Mine has writing.

20 MR. CULLEN: Don't you have a --

21 THE COURT: Do you have a clean copy?

22 MR. CULLEN: You don't have a clean copy?

23 MS. GREEN: Don't have a clean copy.

24 MR. CULLEN: Well, it's more important that he have
25 it than I do, your Honor.

1 THE COURT: Okay. Thank you, sir.

2 BY MS. GREEN:

3 Q I just wanted to direct your attention again to the
4 sentence that says -- it's an e-mail from Mr. Meador to you
5 saying, "I wanted you to be aware of what I had shared with
6 him."

7 A Um-hmm.

8 Q Had you shared that information?

9 A Well, he's referring to what he had shared with Gene, not
10 what I had shared with him. That's what it says.

11 Q My question to you was are you denying that you were the
12 one that told them that a bankruptcy filing would be coming
13 in July?

14 A I never told him that. I did, however, tell them that
15 the city was at great risk of action because we didn't have a
16 forbearance agreement. We just had our meeting with
17 creditors. I didn't know what was going to happen, and,
18 therefore, they should be concerned about doing something
19 about DIA as soon as possible.

20 Q Did the emergency manager himself have a meeting with Mr.
21 Meador or Gene Gargaro?

22 A Not to my knowledge.

23 Q Who all was in the meeting in May of 2013 with you and
24 Mr. Meador?

25 A Let's see. It was Mr. Gargaro, Richard Levin from

1 Cravath, Alan Schwartz from Honigman Miller, Bruce Bennett
2 from Jones Day, and myself.

3 Q Do you think it's possible that one of the other people
4 at that meeting shared with the representatives from the DIA
5 that a bankruptcy filing would be coming in July?

6 A Well, all the people at that meeting were from the DIA
7 except for Mr. Bennett and myself.

8 Q That's what I'm asking you. Did someone else at the
9 meeting, perhaps Mr. Bennett, share with the DIA
10 representatives that the emergency -- or I'm sorry -- that a
11 bankruptcy filing would be coming in July?

12 A I have no idea.

13 Q Do you recall any discussion about a formal plan that
14 would be submitted in November as the e-mail states? Do you
15 recall any discussions of that nature in your meeting?

16 A Yes. I explained to Mr. Meador that in the ordinary
17 course, if we were successful in crafting a plan with our
18 creditors, we would move this along as rapidly as we could,
19 and the earliest we could potentially file a plan would be
20 end of this year with a goal of having an exit from
21 bankruptcy, if necessary, by the end of next year.

22 Q And the portions regarding having a plan in place by July
23 or bankruptcy filing in July never came up?

24 A No. We were referring to having a plan with our
25 creditors.

1 Q And you never corrected this what you now say is an
2 inaccurate recollection or an inaccurate summary of your
3 meeting?

4 A This is not my meeting, and it's not my e-mail, so I
5 don't know what you're talking about.

6 Q You didn't correct his understanding that there was not
7 to be a bankruptcy filing in July?

8 A I didn't feel it necessary to respond to every e-mail I
9 receive because he's not an employee or officer --

10 THE COURT: "Yes" or "no," sir?

11 THE WITNESS: No.

12 BY MS. GREEN:

13 Q Thank you. I believe you testified earlier when Mr.
14 Montgomery was questioning you whether you had any
15 communications with Jones Day regarding the possibility of a
16 repeal of PA 4, and you answered, "No."

17 A Okay.

18 Q Do you consider e-mails a form of communication?

19 A Yes.

20 Q I'd like to direct your attention to Exhibit 842. Do you
21 recognize this document?

22 A No.

23 Q Do you recognize your e-mail address at the top of it?

24 A I do. It was sent to me. That's correct.

25 Q Correct. So you -- do you recall receiving it generally?

1 A No.

2 Q When it says at the top, "FYI ahead of your meeting,"
3 what meeting is that relating to in June of 2012?

4 A I can't recall which meeting that might be referring to.

5 Q Did you meet with the governor of the State of Michigan
6 in June of 2012?

7 A I may have, yes.

8 Q Who all was at the meeting with the governor in June of
9 2012?

10 A It was a meeting where we briefed him about restructuring
11 alternatives in general. I believe it was attended by
12 Treasurer Dillon, one of his aides, Brom Stibitz. Dennis
13 Muchmore, chief of staff, was there.

14 Q What was the substance of the conversations during this
15 meeting on June -- I think it would be June 6th? If it's the
16 following day, it would be June 6th.

17 A Yeah. Well, as I testified, they were interested in the
18 application of restructuring technique to the problems of the
19 City of Detroit, how these issues could be resolved, and they
20 asked me to come up and brief them about those things, which
21 I did.

22 Q Were any representatives of Jones Day at the meeting on
23 June 6th?

24 A I don't recall.

25 Q I'd like to draw your attention to another exhibit. It

1 is an e-mail dated June 5th, 2012. I believe it's 845, 844.

2 A This is dated March 24th?

3 Q Yeah. I think it's off one. It should be 844. Okay.

4 The next page of that e-mail -- I'll direct your attention to
5 the top line, and it says, "Guys, I'm going with Ken Buckfire
6 to talk to the governor in Michigan tomorrow," and it's an e-
7 mail from Heather Lennox. Does that refresh your
8 recollection at all about whether someone from Jones Day
9 joined you at the meeting?

10 A Yes.

11 Q Was Heather Lennox, indeed, there?

12 A She was.

13 Q Were there any other representatives of Jones Day at the
14 meeting?

15 A Not that I recall.

16 Q Do you recall if there were any discussions relating to a
17 Chapter 9 filing at that meeting?

18 A I'm sure we talked about it. It's something you have to
19 consider when you have a high level of insolvency.

20 Q Did you discuss Chapter 9 filing specifically in
21 connection with any particular sorts of liabilities such as
22 the pension liabilities of the City of Detroit?

23 A I don't recall that either.

24 Q Do you remember if there were any memos or reports
25 relating to constitutional protections of the pension

1 liabilities discussed at this meeting?

2 A No.

3 Q Do you recall if any -- do you recall being given at any
4 time memos from Jones Day relating to Chapter 9 filing issues
5 vis-a-vis the City of Detroit?

6 A In general, yes, but not specifically with respect to
7 Detroit.

8 Q I couldn't -- I didn't hear the last --

9 A Not specifically with respect to Detroit but in general,
10 yes.

11 Q Do you remember any discussion at the meeting with the
12 governor relating to the bankruptcy filing requirements under
13 109(c) (5) and negotiations and the good faith requirements --

14 A No.

15 Q -- listed thereunder? No? Do you remember any
16 memorandums being shared with the governor on that topic?

17 A No.

18 Q Do you remember, as stated in the e-mail, suggesting that
19 Jones Day put together all the memos that they had done for
20 Andy?

21 A I don't recall any of those memos.

22 Q No. Do you recall suggesting to them that they compile
23 the memos in advance of the meeting?

24 A Yes.

25 Q And what prompted you to do that?

1 A I thought that the state would find it helpful to see
2 their research.

3 Q And when it says "the memos we did for Andy," is that for
4 Andy Dillon?

5 A Yes.

6 Q And do you remember specifically what types of memos had
7 been requested by Mr. Dillon prior to this meeting?

8 A He didn't request any specific memo. He just wanted to
9 get an education on the issues.

10 Q So they prepared the memos on their own volition?

11 A Yes.

12 Q I'd like to go back to what I believe is Exhibit 843. We
13 talked a little while ago about your denial of any
14 communications relating to the repeal of PA 4. Do you
15 recognize this e-mail?

16 A No.

17 Q Do you see your name at the top as a recipient?

18 A I see my name as a recipient, but I don't recall reading
19 it.

20 Q So you just ignored the e-mail or you just --

21 A I guess.

22 Q -- generally don't recall getting it?

23 A I get a lot of e-mails. I don't recall reading this one
24 at the time.

25 Q Okay. Well, let's look at the context, and maybe that

1 will remind you whether or not you read it. The first bullet
2 point talks about the appeals court should soon rule on the
3 repeal efforts related to Public Act 4. Does that ring a
4 bell to you?

5 A Yes.

6 Q And the second paragraph talks about a separate challenge
7 to the state unrelated to the efforts to repeal PA 4.

8 A Yes.

9 Q Do you now remember getting the e-mail and having
10 communications about the repeal of PA 4?

11 A No.

12 Q What about Exhibit Number 846? Oh, these are all off
13 one. You know, it must be 8 -- I think it's 845.

14 MR. CULLEN: Is it copied on 846, counsel?

15 MS. GREEN: No. It's 845. They're all off by one
16 for some strange reason. There we go.

17 BY MS. GREEN:

18 Q Do you see this e-mail, and do you recognize it?

19 A I see the e-mail. I don't recall it, but I'm sure I
20 received it.

21 Q And you see your name at the top of the e-mail?

22 A I do.

23 Q And you see a discussion in paragraph 1 about the state
24 and city were concerned that PA 4 may not survive the
25 petition challenge?

1 A I do.

2 Q I direct your attention to the second page of this e-mail
3 where it states, "The state was likely looking at declaring
4 at emergency and appointing and EFM with a likely subsequent
5 step of a Chapter 9."

6 A Sorry. You lost me. Where are you reading from? Oh,
7 okay. Okay.

8 Q And then the following paragraph where it talks about if
9 PA 4 is pulled back at the end of April, is this another
10 example of communications relating to the repeal of PA 4?

11 A It seems to be.

12 Q I have several more, but I would -- I don't need to go
13 over them. Do you have a reason why you said before you had
14 no communications relating to the PA 4 repeal?

15 A I didn't send this e-mail.

16 Q You didn't what?

17 A I didn't send this e-mail.

18 Q But you received it.

19 A I don't remember it.

20 Q As part of your position with the team of E&Y, Conway
21 MacKenzie, and Miller Buckfire Advisors, were you privy to
22 any timelines or communication rollout plans prepared by
23 Kevyn Orr's staff?

24 A Are you referring to a public communication strategy?

25 Q I'm referring to any kind of timeline or communications

1 rollout plan that would have been shared with you in your
2 role as the lead advisor for the financial team.

3 A I might have received a document from his communications
4 director at some point this year laying out a proposed time
5 schedule for public communications, but I can't recall
6 specifically.

7 Q Do you recall when that would have been?

8 A No.

9 Q And his press secretary is Mr. Nowling?

10 A Yes.

11 Q Do you recall the substance of that timeline and what the
12 date was for the bankruptcy filing?

13 A No.

14 Q Did you not review the e-mail from Mr. Nowling for its
15 substance?

16 A I just don't remember it.

17 Q You were the lead advisor of the financial team, and you
18 don't remember an e-mail with the date for the bankruptcy
19 filing?

20 A No.

21 Q Do you think that would have been an important thing for
22 you to know as the lead negotiator on the swap transaction
23 and negotiating with the creditors?

24 A I had advised Mr. Orr that if he were to decide to seek
25 protection, he shouldn't do it until we had a forbearance

1 agreement executed.

2 Q And at the time leading up to the negotiation of the
3 forbearance agreement, you and Mr. Orr were in daily contact;
4 correct?

5 A Yes, up until the time we got the forbearance agreement
6 executed.

7 Q And that was executed on July 15th; correct?

8 A I think it was the 16th.

9 Q July 16th?

10 A July 16th. That's right.

11 Q Is it your testimony that as of July 16th, you didn't
12 know what the filing date, if any, would be for the City of
13 Detroit?

14 A That's correct.

15 Q How far in advance did you know that the bankruptcy was
16 going to be filed?

17 A Well, I knew after the forbearance agreement was executed
18 that the decision to seek a filing was being discussed
19 between Mr. Orr and the state. I was not part of any of
20 those discussions.

21 Q So as of the date of the forbearance agreement, you had
22 no idea that the bankruptcy petition would be filed two days
23 later?

24 A No.

25 Q Were you shared any -- I'm sorry. Were any timelines or

1 communications rollouts shared with you that were prepared by
2 the governor's staff?

3 A Not that I recall.

4 Q Was the one that was shared with you by Mr. Nowling by
5 any chance dated July 8th of 2013?

6 A I don't know.

7 Q Why don't we pull it up, and we'll see if you recognize
8 it? It would be Exhibit 831. And if you scroll to the next
9 page, there's a communications rollout plan. Can you tell me
10 if it looks like the one that you think you saw? There's a
11 document checklist, and the next --

12 A It looks familiar.

13 MR. CULLEN: Do you have a hard copy for the
14 witness, counsel?

15 MS. GREEN: There's a binder up there if you want me
16 to --

17 MR. CULLEN: Allow me.

18 MS. GREEN: I can give him the binder.

19 MR. CULLEN: May I, your Honor?

20 THE COURT: What are you doing?

21 MR. CULLEN: Giving him the exhibit, the hard copy
22 of the exhibit.

23 THE COURT: Okay.

24 BY MS. GREEN:

25 Q Have you reviewed it? Does that look like the one that

1 was shared with you?

2 A Yes. This was the contingency planning documents I knew
3 they were working on.

4 Q I think you have to speak into the microphone.

5 A I'm sorry. This is the contingency planning document
6 that they'd been working on. That's correct.

7 Q Okay. And on the next page, if you scroll through to the
8 timeline itself, the end, all the way to the end -- there we
9 go. There are various dates and there are various milestones
10 that are listed there.

11 A Okay.

12 Q And as of on the Friday, July 19th, date -- is that what
13 you're looking at?

14 A I'm sorry. You're at July 19th?

15 Q Yes.

16 A Yes, yes.

17 Q Okay. And do you see where it says "filing day" in big
18 capital letters?

19 A Yes.

20 Q And this is the document that you think you saw on July
21 8th?

22 A Yes. It's a contingency plan.

23 Q On the 18th, it talks about document preparation.

24 MS. GREEN: Your Honor, I'd ask to strike that last
25 part. I had no question pending when he offered that last --

1 THE COURT: The motion is granted.

2 BY MS. GREEN:

3 Q And it says, "make last-minute revisions to all key
4 documents." I don't see the words "contingency." Do you see
5 the words "contingency"?

6 A The whole thing is a contingency plan.

7 Q And the date -- the following date on the 19th says
8 "filing date, July 19th." Does it say "contingency"?

9 A No, but this document is dated July the 8th.

10 Q Are the words "contingency" anywhere on the document?

11 A No, but it says "draft document."

12 Q As of July 8th?

13 A Right.

14 Q Do you recall seeing an updated timeline shared with you
15 after that?

16 A No.

17 Q Were you ever told that the filing date of July 19th was
18 going to be changed?

19 A No.

20 Q When the filing came on the 18th, did it surprise you?

21 A Yes.

22 Q Do you know if the members of the Conway MacKenzie team
23 were also shared the timeline?

24 A I don't know.

25 Q What about the members of the Ernst & Young team?

1 A I don't know.

2 Q Do you know? I believe you testified at your deposition
3 that in May of 2013 you received a Milliman report?

4 A No. It was in April.

5 Q April. And at that time, you discovered that according
6 to Milliman, at least, the underfunding level was \$3.5
7 billion?

8 A That's right.

9 Q And I believe you testified that you did not investigate
10 the Milliman report for accuracy or ask anyone else to verify
11 those numbers; correct?

12 A Correct.

13 Q And you testified that you just assumed they were true
14 based on Milliman's expertise.

15 A That was their job. I relied on their work.

16 Q What about all the caveats listed on the face of the
17 Milliman report? Did you read those?

18 A I believe I did.

19 Q Do you recall being cautioned that a more robust
20 projection model could vary the results?

21 A Yes.

22 Q You testified at your deposition that you thought before
23 the Milliman report came out that the underfunding might be
24 at a modest enough level where we could deal with it in a
25 different way. What other different options did you have in

1 mind prior to the Milliman report?

2 A Well, we thought if we had sufficient time to monetize
3 some of the city's assets, in particular, the Water and Sewer
4 Department, maybe we could use that as a funding source to
5 fully fund the pension underfunding.

6 Q Were any of these different options explored with the
7 Retirement Systems or any of the unions or retirees?

8 A At that time?

9 Q At any time.

10 A Well, they were well-aware of the fact that we were
11 exploring monetization of Water and Sewer as of the June 14th
12 report, but we hadn't been able to make any progress on it at
13 that point.

14 Q That wasn't my question. I asked you if you shared with
15 them your different options.

16 A Not on June 14th, no.

17 Q The data room that you put together, I believe you said
18 that you had been developing it for about five months prior
19 to its launch in June?

20 A I didn't say that.

21 Q How many months did it take you to put the data together?

22 A Well, the data began to be assembled by Ernst & Young,
23 Conway, and ourselves probably in early February because that
24 was part of our engagement. I can't recall exactly when we
25 set up the data room specifically, but I do know all the data

1 that went into it had been created by either our respective
2 firms or by the city itself.

3 Q My question was how long did it take?

4 A To do what?

5 Q To put the data together for the data room.

6 A Months.

7 Q Months. Can you give me a rough estimate of how many
8 months?

9 A Well, we began working in January. It took until June.

10 Q So six months?

11 A That's correct.

12 Q A little longer?

13 A Yes.

14 Q Because it was up on June 20th; correct?

15 A That sounds right.

16 Q And when it was initially launched, it was not fully
17 populated with all of the data; correct?

18 A I don't recall what was not in there at the time. I know
19 our intent was to put everything in there we could.

20 Q And the proposal for creditors was laid out on June 14th.

21 A Correct.

22 Q And then in June you were tasked with assisting in the
23 negotiation process; correct?

24 A That's right.

25 Q And you did not attempt to form a subgroup of any

1 retirees that you could negotiate with directly at that time,
2 did you?

3 A Well, no. We did meet with all of the representatives
4 that we could find, including the unions, pension trustees,
5 and the bond and note trustees and bond insurers.

6 Q My question was you did not attempt to form a subgroup of
7 retirees that you could negotiate with directly; correct?

8 A No.

9 Q And do you recall testifying that it was discussed but it
10 was reported back to you that it was impractical to do so?

11 A Yes.

12 Q And who was it that reported back to you that it would be
13 impractical to attempt to directly negotiate with smaller
14 groups of people?

15 A Jones Day.

16 Q So after being told that it would be impractical to
17 divide the constituencies into smaller subgroups, you did not
18 attempt do so; correct?

19 A I personally did not, no.

20 Q During these negotiations, you didn't even have authority
21 to actually bind the city; correct?

22 A Well, as the lead negotiator for the city, my
23 responsibility was to negotiate with our creditors. I don't
24 have any decision-making authority. I'm not an executive of
25 the city. I would take back whatever came to the city and

1 make a recommendation.

2 Q So your answer is, yes, you did not have authority to
3 bind the city?

4 A I wasn't given that authority, but I was authorized to
5 negotiate on behalf of the city.

6 THE COURT: All right. One second. Mr. Buckfire,
7 with all due respect, probably less than half the questions
8 that have been asked of you have you given a straight answer
9 that doesn't volunteer all kinds of information that wasn't
10 asked. In order for us to get through this, I'm going to ask
11 you from now on just to answer the questions and not
12 volunteer any information. Okay?

13 THE WITNESS: Thank you, your Honor.

14 MS. GREEN: I was actually done, but I appreciate --

15 THE COURT: Well, okay, but --

16 MS. GREEN: I appreciate the --

17 THE COURT: That's great, but are there going to be
18 any more?

19 MS. GREEN: Yes.

20 THE COURT: Who else? Three more? Three more? Can
21 I give you ten minutes each?

22 MR. WERTHEIMER: Fine.

23 THE COURT: Ten minutes. Start the clock.

24 MR. WERTHEIMER: Okay.

25 CROSS-EXAMINATION

1 BY MR. WERTHEIMER:

2 Q Mr. Buckfire, my name is Bill Wertheimer. I represent
3 what's been called the Flowers plaintiffs. Those are five
4 retirees or employees who filed a lawsuit against the state
5 before the bankruptcy was filed, and I've got a few
6 questions. You had mentioned, I believe, that in June of
7 2012 you were involved in some discussions with state
8 officials having to do with the possibility of restructuring
9 the city or the city's finances; is that correct?

10 A Yes.

11 Q Did the governor participate in those discussions?

12 A Yes.

13 Q You indicated that in at least one of those discussions
14 you thought the possibility of a Chapter 9 filing came up; is
15 that correct?

16 A Yes.

17 Q Do you recall the governor being present at that
18 discussion?

19 A Yes.

20 Q And what, if anything, did he say about that?

21 A I don't recall him saying anything.

22 Q Do you recall who brought it up?

23 A I believe it was Treasurer Dillon.

24 Q I'm sorry.

25 A I believe it was Treasurer Dillon.

1 Q And what do you remember him saying, as best you recall?

2 A What does Chapter 9 mean?

3 Q Simple as that?

4 A Yes.

5 Q And someone explained what Chapter 9 meant?

6 A That's correct.

7 Q Okay. Was it -- that was about it?

8 A Yes.

9 Q Okay. You indicated that you had seen a document which
10 showed a rollout which was going to -- at least at one point
11 in the rollout there was going to be a bankruptcy filing
12 scheduled for the 19th. Do you recall?

13 A Yes.

14 Q And then we know, in fact, that the bankruptcy was filed
15 on the 18th; correct?

16 A Yes.

17 Q And you indicated in your testimony that you were
18 surprised by that change.

19 A Yes.

20 Q Would I be correct in understanding that the reason for
21 your surprise was that normally when you have a rollout as
22 detailed as this, you stick with it, particularly such a key
23 event as the filing itself?

24 A Yes.

25 Q Would that be fair?

1 A That's fair.

2 Q And did you talk to anyone after the filing to learn --
3 to try to learn why it was that the date had been changed
4 from the 19th to the 18th?

5 A No.

6 Q So you were surprised on the 18th; correct?

7 A Yes.

8 Q You never talked to Mr. Orr about why it was switched?

9 A No.

10 Q Never talked to anybody?

11 A I did later, but it just wasn't very important.

12 Q All right. Well, to you. Who did you talk to later?

13 A Counsel at Jones Day and my own colleagues.

14 Q And what did you learn?

15 MR. CULLEN: Objection, your Honor, to the extent it
16 calls for legal work of Jones Day.

17 MR. WERTHEIMER: Your Honor, that's hardly legal
18 advice after the fact if he's learning why something was
19 done. I don't think the privilege covers that.

20 THE COURT: Well, first, who did you speak to about
21 this question?

22 THE WITNESS: Mr. Heiman.

23 THE COURT: Anyone else?

24 THE WITNESS: Ms. Ball and Ms. Lennox.

25 THE COURT: Anyone who's not an attorney with Jones

1 Day?

2 THE WITNESS: I spoke with Mr. Orr at some point a
3 week later about this.

4 THE COURT: What did Mr. Orr tell you about that?

5 THE WITNESS: All he told me was that the decision
6 had been made to expedite the filing because they were
7 concerned about losing control of the process, and that's
8 what he told me.

9 THE COURT: In the circumstances, I will hold that
10 the witness' conversations with attorneys from Jones Day on
11 the subject are protected conversations.

12 BY MR. WERTHEIMER:

13 Q The conversation you had with Mr. Orr when he talked
14 about losing -- the possibility of losing control of the
15 process, did he identify part of the reason for that
16 possibility of losing control being the fact that there were
17 lawsuits out there in state court dealing with the bankruptcy
18 issue?

19 A Yes.

20 Q Did he identify them as the lawsuits in front of Judge
21 Aquilina in Lansing or in any way pinpoint the lawsuits he
22 was talking about?

23 A If that judge is in Ingham County, then the answer is
24 yes.

25 Q She is in Ingham County.

1 A Then that's correct.

2 Q Okay. So Orr told you that one of the reasons for moving
3 up the filing was because of the litigation that was pending
4 in Ingham County?

5 A Yes.

6 Q Did he indicate that that litigation was in part an
7 effort to assure that if, in fact, the city filed bankruptcy,
8 that it would be done in a way that would protect the pension
9 rights under the state Constitution even generally? In other
10 words, I understand he wouldn't have necessarily used those
11 words.

12 MR. CULLEN: I'll object to the form of the
13 question.

14 THE COURT: Please rephrase.

15 MR. WERTHEIMER: Okay.

16 BY MR. WERTHEIMER:

17 Q When you talked to Mr. -- well, just tell us. What
18 did -- how did Mr. Orr characterize those Ingham County
19 lawsuits?

20 A I don't recall he did. He simply said there were
21 lawsuits pending that might have made it very difficult for
22 us to move forward, and they had to expedite the filing.

23 Q In Ingham County? In other words, he at least gave you
24 that?

25 A Well, I knew they were in Ingham County, but that's --

1 Q Okay.

2 A But it was only because of the impact on the timetable.

3 Q What did you know about those lawsuits?

4 A Very little.

5 Q Did you know at least generally that they were efforts to
6 in some way protect the pensions of city employees based on
7 state law?

8 A I knew they had something to do with it, yes.

9 Q Okay. I believe you indicated it was on July 8 that you
10 saw the rollout or maybe that's the date of the rollout
11 document.

12 A Yes.

13 Q Okay. And the rollout anticipated a bankruptcy filing on
14 the 19th; correct?

15 A That's right.

16 Q Which was a Friday; correct?

17 A That's right.

18 Q I'll state to you that these Ingham County lawsuits were
19 filed on July 3rd. Do you recall on July 8 knowing about the
20 existence of those lawsuits at that time?

21 A No.

22 Q Do you recall knowing on July 8 that the Ingham County
23 judge had hearings already scheduled for July 22nd -- that
24 is, the Monday after the 19th -- in order to determine
25 whether she should issue injunctive relief?

1 A No.

2 Q Did you know anything about that as of July 8?

3 A No.

4 MR. WERTHEIMER: That's all I have, Mr. Buckfire.
5 Thank you.

6 THE COURT: Mr. Wertheimer, will you yield the
7 balance of your time to Ms. Brimer, who seems to think she
8 needs more than ten minutes?

9 MR. WERTHEIMER: I will.

10 THE COURT: All right.

11 CROSS-EXAMINATION

12 BY MS. PATEK:

13 Q Good afternoon, Mr. Buckfire. Barbara Patek. I
14 represent the Detroit Police Officers Association, the
15 Detroit Police Lieutenants & Sergeants Association, the
16 Detroit Police Command Officers Association, and the Detroit
17 Fire Fighters Association. You and I have not met before; is
18 that right?

19 A That's correct.

20 Q You told us in your testimony that becoming involved in
21 this case was somewhat personal for you; isn't that right?

22 A Yes.

23 Q And that was because you're from here, being Detroit, and
24 you care about the city?

25 A That's right.

1 Q And you have, in the course of your successful
2 professional career, been an expert in many bankruptcy
3 situations; is that right?

4 A Yes.

5 Q Most of those were probably Chapter 11 proceedings?

6 A Yes.

7 Q And some of them were Chapter 9; correct?

8 A Never in Chapter 9.

9 Q Never in Chapter 9. Have you -- you served as a
10 consultant in Stockton in Chapter -- in that Chapter 9
11 proceeding?

12 A Yes.

13 Q And as a restructuring expert, you certainly understand
14 that there are different rules that govern Chapter 9 and
15 Chapter 11 proceedings; isn't that right?

16 A Yes.

17 Q And one of the differences, you would agree with me,
18 between Chapter 11 and Chapter 9 is that there can't be a
19 liquidation in a Chapter 9; that is, that the City of Detroit
20 in these proceedings must continue to provide its core and
21 essential services; isn't that right?

22 A Yes.

23 Q You also told us -- and I'm going to condense, so you can
24 tell me if anything about my statement is inaccurate -- that
25 what drove the city's July 18th, 2013, filing was the need --

1 or the concern that it would run out of cash it needed to pay
2 for its core and essential services. Is that an accurate
3 summary?

4 A Yes.

5 Q And among those core and essential services you would
6 agree with me are police and fire protection?

7 A Yes.

8 Q And you would agree with me that the work of providing
9 police and fire protection in the City of Detroit is a
10 difficult and dangerous job?

11 A Yes, I would.

12 Q And, in fact, probably much more difficult and dangerous
13 than what you do or what I do for a living?

14 A Certainly.

15 Q And you told us -- well, strike that. In terms of the
16 June 14th proposal, that proposal lumped together in terms of
17 how it was going to treat the accrued vested constitutionally
18 protected pension benefits of Detroit workers and retirees;
19 isn't that right?

20 A Yes.

21 Q And that would include those active police and fire
22 fighters?

23 A That's correct.

24 Q And it's your testimony here today that it is fair to
25 treat the city's unsecured obligation, including the accrued

1 vested pension benefits of those active police and fire
2 fighters, the same as it is the other unsecured creditors,
3 including the bondholders?

4 A Yes.

5 MS. PATEK: That's all I have, your Honor.

6 THE COURT: Nineteen.

7 MS. PATEK: Thank you, your Honor. I will be as
8 quick as I can.

9 CROSS-EXAMINATION

10 BY MS. BRIMER:

11 Q Good afternoon, Mr. Buckfire. My name is Lynn Brimer. I
12 represent the Retired Detroit Police Members Association.
13 You and I have never met before; is that correct?

14 A That's correct.

15 Q And I did not attend either of your depositions; is that
16 correct?

17 A That's correct.

18 Q So with my limited time, I would like to step back a bit
19 and go back to some of the history of your relationship with
20 the City of Detroit and the State of Michigan in connection
21 with the City of Detroit. Now, sometime in -- you testified
22 earlier that sometime in the spring of 2012 you had some
23 discussions with the treasurer, Dillon, regarding the
24 financial condition of the City of Detroit; is that correct?

25 A Yes.

1 Q Okay. Was that before or after your engagement by the
2 city to perform a financial review?

3 A It was around the same time.

4 Q So your engagement in connection with the financial
5 review that you performed, was that pursuant to an RFP that
6 was issued by the state?

7 A Yes, it was.

8 Q Okay. And was it by a particular department of the
9 state? Was it Treasury or the Governor's Office, if you
10 recall?

11 A I believe it was Treasury.

12 Q Okay. And you testified that the scope of your work in
13 connection with the financial -- 60-day financial review was
14 limited. Can you identify or describe what the scope of your
15 work was?

16 A We had been asked actually together with another firm,
17 Huron Consulting, which was part of the same RFP, to review
18 the city's financial results and come up with a coherent
19 evaluation of the balance sheet and the city's ability to
20 sustain its obligations, which we did, based on public
21 information.

22 Q So in connection with that, you reviewed historical
23 public information of the city's financial records; correct?

24 A Correct.

25 Q Was there a particular time frame of records that you

1 reviewed?

2 A We went back and looked at the last five years as well as
3 the city's current budget, which was made available to us by
4 the city.

5 Q So you reviewed the records from approximately 2007
6 through 20 --

7 A '11.

8 Q -- 11?

9 A And then the current fiscal year budget.

10 Q Okay. And did you issue a written report in connection
11 with that review?

12 A We did.

13 Q Did you draw any conclusions in that report?

14 A Well, I'd have to go back and read it again. I think we
15 pointed out that the city continued to spend more than it was
16 taking in from revenues; that it had limited ability to raise
17 capital in the capital markets; and that without a long-term
18 financial forecast it would be hard to understand that the
19 city had the ability to continue to pay its obligations.

20 Q So at that point in time, you had already concluded that
21 the city could not pay its obligations on an ongoing basis;
22 is that correct?

23 A No, no. I didn't say that.

24 Q What was your conclusion?

25 A It was concluded that we didn't have enough information

1 to make that evaluation, but certainly it was a risk.

2 Q What additional information would you have needed in
3 order to reach that conclusion?

4 A Well, we would have needed a five- or ten-year financial
5 forecast that would accurately reflect the city's potential
6 revenues, and we'd also have to have an accurate
7 understanding of the city's long-term claims and requirements
8 to pay on those claims.

9 Q So at that point in time, you did not have an
10 understanding of the city's long-term obligations?

11 A We had an understanding of those obligations as publicly
12 reported.

13 Q Okay. And you performed that review with the -- with
14 Huron Consulting?

15 A Correct.

16 Q Were there any other consultants or advisors that were
17 engaged in connection with that review?

18 A No.

19 Q At any time was the scope of your engagement expanded?

20 A No.

21 Q Was your engagement ever expanded to include a review of
22 the consent agreement with the City of Detroit?

23 A No.

24 Q Did you have any role in connection with the drafting of
25 the consent agreement that was entered into with the City of

1 Detroit?

2 A I was asked for some comments on it, yes.

3 Q Who asked for comments?

4 A Brom Stibitz.

5 Q And who's that?

6 A A senior advisor to Treasurer Dillon.

7 Q Now, during the time frame that you were drafting the
8 financial report, do you know whether or not Jones Day had
9 been retained by the State of Michigan in any -- in
10 connection with any of the City of Detroit's financial
11 issues?

12 A They had not been retained, to my knowledge.

13 Q So did you work with anyone at Jones Day in connection
14 with the drafting of the consent agreement that was executed
15 by the City of Detroit?

16 A No.

17 MS. BRIMER: Your Honor, I'd like to show the
18 witness an exhibit that has not been entered into evidence.
19 If he has our binder, I could identify -- direct him to where
20 it is in the binder or, given the time frame, I could hand
21 him a copy.

22 THE COURT: Yeah. Why don't you just hand it to
23 him? What exhibit is it?

24 MS. BRIMER: I believe it's 202, your Honor.

25 THE COURT: Okay.

1 BY MS. BRIMER:

2 Q Do you see on that exhibit, Mr. Buckfire, your e-mail as
3 a carbon copy recipient of the e-mail? Do you see that?

4 A I do.

5 Q And have you had an opportunity to review the e-mail?

6 A Just now, yes.

7 Q Does it refresh your recollection with respect to whether
8 or not you had any involvement with the Jones Day law firm in
9 the drafting of the consent agreement that was provided to
10 the City of Detroit?

11 A They'd asked me for some comments. I knew they were
12 talking to the state and trying to find a role for
13 themselves. I apologize for going on about this, but, you
14 know, they had given them some comments, and I'd reviewed
15 them.

16 Q So that would be a "yes." You were --

17 A That's a "yes."

18 Q You had provided some comments to Jones Day in connection
19 with the consent agreement that was provided to the City of
20 Detroit?

21 A Yes.

22 Q And then you were aware that that consent agreement was
23 then provided to Treasurer Dillon for presentation to the
24 City of Detroit; correct?

25 A No.

1 Q Do you recall receiving this e-mail?

2 A Not specifically.

3 Q Have you reviewed the consent agreement that was
4 ultimately executed by the City of Detroit?

5 A Yes.

6 Q Is it the consent agreement that you had commented on
7 with the Jones Day law firm?

8 A No.

9 Q How is it different from the --

10 A I recall the one that I was shown by Jones Day as being
11 materially different from the one the state ultimately signed
12 with the city.

13 Q Can you identify some of the terms that were materially
14 different?

15 A I'd have to go back and look at it. I don't recall, but
16 I know it wasn't the same one.

17 Q But sitting here today, you can identify that it wasn't
18 the agreement you had worked with Jones Day on, and yet you
19 can't recall any of the specifics on why it was not the same
20 agreement?

21 A It wasn't the same agreement.

22 Q Okay. Just yes. You are sitting here today. You know
23 it was not, but you cannot recall any of the specifics?

24 A That's correct.

25 Q Okay. Now, you've also indicated that at some point in

1 time you became aware that the State of Michigan and Jones
2 Day -- and maybe -- I don't want to put words in your mouth,
3 but at some point in time you became aware that the State of
4 Michigan and the City of Detroit -- Jones Day had addressed
5 issues in connection with the filing of a Chapter 9 by the
6 City of Detroit; is that correct?

7 A I'm sorry. I don't understand the question.

8 Q Okay. So when did you first learn that the State of
9 Michigan was considering a Chapter 9 bankruptcy filing for
10 the City of Detroit?

11 A Well, it was on the table at all times really after June
12 14th. I don't know when specifically they began to discuss
13 it. It was always an option.

14 Q Was it on the table in 2012?

15 A Not that I recall.

16 MS. BRIMER: Your Honor, I think this exhibit is in
17 evidence. I believe it's 845.

18 BY MS. BRIMER:

19 Q Do you recall discussing this exhibit with Ms. Green just
20 a few minutes ago?

21 A Yes.

22 Q I'd like to direct your attention to the second page
23 perhaps midway down, the paragraph that begins, "The state
24 believes." And you were a recipient of this e-mail; correct?

25 A Yes.

1 Q And that paragraph reads, "The state believes it needs PA
2 4 or worst case PA 72 to file a Chapter 9 case based on law.
3 As such, state legal counsel and Jones Day provided guidance
4 on whether a Chapter 9 filing in April could be upheld if PA
5 4 is pulled back at the end of April." Is that what that
6 says?

7 A Yes, it does.

8 Q You were a recipient of this e-mail; correct?

9 A I am.

10 Q So is it fair to say that at least as early as March of
11 2012, the state and Jones Day were discussing a Chapter 9
12 filing for the City of Detroit?

13 A Yes.

14 THE COURT: What exhibit number did you say that
15 was?

16 MS. BRIMER: 846, your Honor.

17 ATTORNEYS: 845.

18 MS. BRIMER: Oh, 845.

19 BY MS. BRIMER:

20 Q So, now, later in 2012, in November of 2012 an RFP was
21 issued by the City of Detroit in connection with the consent
22 agreement; is that correct?

23 A Yes.

24 Q And you completed that RFP?

25 A We did.

1 Q And then you were ultimately engaged by the city in
2 December; correct?

3 A January of 2013.

4 Q But in December you were aware that you would --

5 A We'd been chosen, yes.

6 Q -- receive the contract?

7 A Right.

8 Q Do you recall the questions that were asked on that
9 request for production -- request for an offer?

10 A No.

11 Q Do you recall whether or not specifically you disclosed
12 to either Mayor Bing or the City Council that you were aware
13 that at least as early as March of 2012 the state and Jones
14 Day had been contemplating a bankruptcy filing on behalf of
15 the city?

16 A I don't understand that question.

17 Q Well, we just went over -- you were aware that at least
18 as early as March of 2012 --

19 A Um-hmm.

20 Q -- the State of Michigan and the law firm, Jones Day, had
21 been discussing a Chapter 9 filing on behalf of the city;
22 correct? We just went over that. Your answer was, "Yes."

23 A Yes.

24 Q So I'm asking you at the time you completed your RFP or
25 prior to executing a contract, did you ever disclose to the

1 City Council or Mayor Bing that you were aware that at least
2 as early as March 2012 the State of Michigan along with Jones
3 Day had discussed and were contemplating a Chapter 9 filing
4 on behalf of the city? It's a "yes" or "no" question.

5 A No.

6 Q Now, you were also involved in the interview process
7 sometime in January for the law firms that were selected by
8 the city; correct?

9 A Yes.

10 Q And it was the City Council and the mayor at that point
11 in time that were in place; is that correct?

12 A That's correct.

13 Q So Mr. Orr had not yet been selected at that point in
14 time; correct?

15 A Correct.

16 Q And one of those law firms was Jones Day; is that
17 correct?

18 A Correct.

19 Q At any point in time during the interview process for the
20 law firms, did you disclose to the mayor or the City Council
21 that you were aware that at least one of the law firms they
22 were interviewing had been discussing with the state and
23 providing guidance on the filing of a Chapter 9 by the City
24 of Detroit?

25 A No.

1 Q So now I want to go over a few issues in connection with
2 the fair and even-handed treatment of the bondholders vis-a-
3 vis the pension beneficiaries. And it's been your testimony
4 all along, if I understand correctly, that you think it is
5 fair and even-handed treatment to treat the bondholders, who
6 have insurance, in the same class or category as the pension
7 beneficiaries on the grounds that they're all unsecured
8 creditors; is that correct?

9 A Yes.

10 Q So isn't it true that when bondholders determine that
11 they will issue a bond or extend credit to the City of
12 Detroit, when they made that determination they had the
13 opportunity to review the financial data of the city and
14 evaluate the risk? Is that accurate?

15 A I hope so.

16 Q To the best of your knowledge, if you have any, do you
17 believe any of the pension beneficiaries have had an
18 opportunity prior to accepting employment to review the
19 financial data of the City of Detroit and evaluate the risk
20 of whether or not their pensions would be honored?

21 A Is that calling for a "yes" or "no"?

22 THE COURT: Yes.

23 THE WITNESS: No, I don't know.

24 BY MS. BRIMER:

25 Q Do you believe they would have been provided that

1 opportunity?

2 A I don't know.

3 Q Now, I believe you testified earlier that in connection
4 with the June 14th proposal the obligations owed to
5 pensioners that were employees of the Department of Water and
6 Sewage, their obligations were included in the \$3.5 billion
7 underfunding and that their -- they were included in the
8 restructuring proposal for the underfunded pensions; is that
9 correct?

10 A Yes.

11 Q You also testified, though, that the revenue stream
12 generated by Department of Water and Sewage was not included
13 in the revenue that was reflected in the July -- the June 14
14 proposal; is that correct?

15 A It's a nomenclature issue. The Water and Sewer
16 Department collects revenues, but there is no net cash flow
17 to the city from those revenues.

18 Q But isn't it true that those revenues represent
19 contributions on behalf of their employees into the pension
20 fund? They use their own revenues. The Department of Water
21 and Sewage pays -- makes contributions to the pension fund on
22 behalf of its employees; correct?

23 A Yes.

24 Q And it uses the revenues it generates to make those
25 contributions; correct?

1 A Yes.

2 Q Now, you also talked about, I believe --

3 THE COURT: Your time is up. You're looking at me
4 like you want more time.

5 MS. BRIMER: Perhaps just a few questions, your
6 Honor. I have two brief areas I want to ask, and I'll be
7 brief.

8 THE COURT: Does that mean two questions? It's just
9 a question.

10 MS. BRIMER: Just a handful, your Honor. It may
11 depend on how he answers.

12 THE COURT: Five questions. Go ahead.

13 MS. BRIMER: Okay. All right. Let me think then.

14 BY MS. BRIMER:

15 Q So you testified yesterday that -- in connection with
16 reviewing Water and Sewage again, that one avenue of
17 generating additional revenue could not be increasing water
18 rates because -- well, let me stop there. Is that correct?
19 Do you recall? You testified that the city could not
20 increase water and sewage rates because of utility laws, that
21 it's a regulated industry, and so it just could not
22 arbitrarily increase rates; correct?

23 A Correct.

24 Q Okay. So at the time the June 14th proposal was put
25 together, did you take into consideration the fact that the

1 city did not have any authority under the Michigan
2 Constitution to impair the pension benefits?

3 A I don't understand the question.

4 Q So on the one hand, you certainly took into consideration
5 the legal -- the authority of the city to raise the utility
6 rates in connection with Water and Sewage; correct?

7 A Correct, not a source of cash.

8 Q But you did not take into consideration any constraints
9 on the city's ability to impair the pension rights?

10 A That's correct.

11 Q One other brief area. You also discussed that you did
12 not consider it a viable option, for example, to look at
13 avenues for increasing collection on the taxes as generating
14 a significant amount of -- or any amount of additional
15 revenue; is that correct?

16 A That's not what I testified to.

17 Q So what did you testify to in connection with the unpaid
18 tax obligation?

19 A That the city had been very ineffective in collecting its
20 unpaid taxes, and we didn't believe they would change anytime
21 soon and collect those taxes.

22 Q Was that in connection with both income taxes as well as
23 property taxes?

24 A Primarily property taxes.

25 Q Do you know or have -- can you estimate what the unpaid

1 income taxes are that are due to the city?

2 A No.

3 MS. BRIMER: I have nothing further, your Honor.

4 THE COURT: All right. We'll take our afternoon
5 break at this time. Well, let me just ask first will there
6 be any redirect?

7 MR. CULLEN: Three or four questions.

8 THE COURT: All right.

9 MR. CULLEN: Do you want to do it now, or do you
10 want to --

11 THE COURT: No. We'll take our recess now and
12 reconvene at 3:15.

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

14 (Recess at 3:01 p.m. until 3:16 p.m.)

15 THE CLERK: All rise. Court is in session. Please
16 be seated.

17 THE COURT: It appears that everyone is here. You
18 may proceed, sir.

19 MR. CULLEN: Good afternoon, your Honor.

20 REDIRECT EXAMINATION

21 BY MR. CULLEN:

22 Q Very briefly, Mr. Buckfire, you talked about beginning
23 with the bond insurers, and you mentioned it was the
24 beginning and not the end. What would the end be?

25 A The end would have been an active negotiation with all

1 the bondholders and all the other unsecured creditors of the
2 city.

3 Q And what would have been the steps between the beginning
4 and the end?

5 A Well I would have expected after making our initial offer
6 we would have received responses that would have formed
7 effectively the counter-bid.

8 Q And when you said you'd have to go to all of the
9 individual bondholders, what does that mean?

10 A We would have to frame an offer supported by the bond
11 insurers that they would hopefully recommend to the bond
12 insurers and get their support for.

13 Q The bondholders, you mean?

14 A The bondholders themselves, yes.

15 Q Did the bond insurers have authority to either bind
16 the -- did the bond insurers have the authority to either
17 bind the bondholders or to change the terms of the bond?

18 A No.

19 MR. CULLEN: That's all I have, your Honor.

20 THE COURT: All right, sir. You may step down.

21 THE WITNESS: Thank you.

22 THE COURT: Thank you.

23 (Witness excused at 3:17 p.m.)

24 THE COURT: Sir.

25 MR. SCHNEIDER: Your Honor, Matthew Schneider on

1 behalf of the State of Michigan. When we earlier discussed
2 this in the last few days, we had planned on the governor
3 coming at 1 p.m. on Monday, and because of the pace of the
4 proceedings here, I want to just confirm with the Court that
5 that is still the case no matter what stage we're at.

6 THE COURT: A good question. Anyone object if the
7 governor appears at one o'clock on Monday regardless of where
8 we are otherwise in the case?

9 MR. WERTHEIMER: No, your Honor.

10 THE COURT: Hearing no objection, you may count on
11 it.

12 MR. SCHNEIDER: Thank you.

13 THE COURT: Sir.

14 MR. STEWART: Your Honor, Geoffrey Stewart, Jones
15 Day, for the city. Two matters. One is we would at this
16 stage ordinarily call Mr. Malhotra back in connection with
17 the matters that were resolved by your ruling; however, I was
18 only going to call him for the purpose of getting four
19 documents into evidence. Counsel for the objectors and I
20 have agreed that they'll stipulate to the admissibility of
21 those while retaining any objections they may have to your
22 ruling, but rather than me put words in their mouth, let me
23 have them put that on the record themselves.

24 THE COURT: What are the numbers of those four?

25 MR. STEWART: Number 9, 10, 11, and 38.

1 THE COURT: All right. Sir.

2 MR. RUEGGER: Arthur Ruegger from Dentons on behalf
3 of the Retiree Committee. Yes, your Honor, that is correct.
4 We've consulted with the other counsel for the objectors, and
5 we believe that those four exhibits fall within your Honor's
6 ruling. We want to preserve for the sake of the record our
7 objection and rights related to that ruling, but we --

8 THE COURT: Yes.

9 MR. RUEGGER: -- feel that is a fair interpretation,
10 and on that basis we have no objection to that admission.

11 THE COURT: All right. Thank you. The admission of
12 those four into evidence is granted.

13 (Debtor's Exhibits 9, 10, 11, and 38 received at 3:19
14 p.m.)

15 MR. STEWART: That being the case, your Honor,
16 unless there are questions the Court has or anyone else has,
17 I would suggest we excuse Mr. Malhotra as a witness.

18 THE COURT: Anyone have any questions for the
19 witness, or may we excuse him?

20 ATTORNEY: No questions for the witness, your Honor.

21 THE COURT: All right. He is excused.

22 (Mr. Malhotra excused at 3:19 p.m.)

23 MR. STEWART: A second housekeeping matter is Mr.
24 Ciantra had mentioned the other day that he would have a
25 motion to strike or similar vis-a-vis Mr. Moore. That motion

1 has not yet been made. Mr. Moore then has been kept on the
2 status of an active witness. We have been physically
3 sequestering witnesses --

4 THE COURT: Yes.

5 MR. STEWART: -- while they're on the stand. I
6 spoke earlier with counsel. He said he's still studying his
7 motion. I don't mean to put words in his mouth, but he has
8 no objection to us unsequestering Mr. Moore. However, we
9 will instruct Mr. Moore to not discuss his testimony with
10 anyone pending the filing and adjudication of Mr. Ciantra's
11 motion.

12 MR. CIANTRA: Yes, your Honor. I would intend to
13 bring that issue to the Court Monday morning --

14 THE COURT: Okay.

15 MR. CIANTRA: -- if that's acceptable.

16 THE COURT: Absolutely.

17 MR. CIANTRA: And I would have no objection to
18 releasing --

19 THE COURT: All right.

20 MR. CIANTRA: -- Mr. Moore.

21 MR. STEWART: Thank you, your Honor.

22 THE COURT: We'll unlock the doors to Mr. Moore's
23 confinement. I have one more housekeeping matter. Hold on
24 there. Based on some confusion that has been stated here on
25 the record about exhibits and exhibit numbers, I am concerned

1 about whether everyone's versions of the exhibit books
2 correspond with the exhibits and exhibit numbers in the
3 attachments to the joint final pretrial order, so I would
4 like to task someone with the responsibility of checking all
5 of the exhibit books and all of the lists and numbers of
6 exhibits that are attached to the joint final pretrial order.
7 Any volunteers?

8 MR. MONTGOMERY: Dentons will do so for the Retiree
9 Committee for the objectors, your Honor.

10 THE COURT: For all the objectors?

11 MR. MONTGOMERY: For all the objectors.

12 MR. IRWIN: Geoff Irwin, your Honor. We have the --
13 the city had the pleasure of putting together the 130- or 40-
14 page pretrial order, and we worked with the Dentons firm. I
15 would be happy to do that personally.

16 THE COURT: All right. So I'd like a report from
17 you Monday that this has been accomplished, please.

18 MR. MONTGOMERY: Yes, sir.

19 MR. IRWIN: Yes, your Honor.

20 THE COURT: And this task includes checking our
21 exhibits book up -- exhibit books up here as well, please.

22 MR. IRWIN: Of course.

23 MS. PATEK: While we're on housekeeping, Barbara
24 Patek for the Public Safety Unions. The Court asked and we
25 did provide the additional books, and in those additional

1 books is a marked version of the display, the demonstrative.
2 I've given copies to Jones Day, and we'll --

3 THE COURT: Good.

4 MS. PATEK: -- send them, so I just wanted to make
5 that clear for the record.

6 THE COURT: Thank you. Okay. Next witness.

7 MR. HERTZBERG: Yes, your Honor. Robert Hertzberg,
8 Pepper Hamilton. I'm going to call Chief Craig to the stand.

9 THE COURT: Okay.

10 MR. HERTZBERG: May I turn the podium a little bit?

11 THE COURT: If you'd like.

12 MR. HERTZBERG: Thank you.

13 THE COURT: Step forward, please, sir.

14 MR. CRAIG: Thank you.

15 THE COURT: And before you sit down, would you
16 please raise your right hand?

17 JAMES CRAIG, DEBTOR'S WITNESS, SWORN

18 THE COURT: Please sit down. And you may proceed.

19 DIRECT EXAMINATION

20 BY MR. HERTZBERG:

21 Q Could you state your name for the record, please?

22 A James Craig. Last name is spelled C-r-a-i-g.

23 Q And where do you reside currently?

24 A City of Detroit.

25 Q And are you employed by the City of Detroit?

1 A I am.

2 Q In what position are you employed?

3 A Police chief for the Detroit Police Department.

4 Q And when did you first commence your position as police
5 chief?

6 A July 1st, 2013.

7 THE COURT: Excuse me one second. Could you do me a
8 favor? If you're going to sit back like that, that's fine.
9 Just pull the microphone a little bit closer.

10 THE WITNESS: Okay.

11 THE COURT: That's good right there.

12 THE WITNESS: Okay.

13 THE COURT: Not too close, but that's good right
14 there. That's good.

15 BY MR. HERTZBERG:

16 Q Chief Craig, did you grow up in Detroit?

17 A I did.

18 Q Were you born in the city?

19 A I was.

20 Q And how long did you stay in the city?

21 A Twenty-four years.

22 Q Did you go to school at Cass Tech High School?

23 A I did.

24 Q Do you have any parents or siblings that live in the
25 city?

1 A I do.

2 Q And how many?

3 A Five siblings and both parents still alive.

4 Q Okay. Let's spend a minute and go over your educational
5 background. Where did you go to college?

6 A West Coast University in Los Angeles, but prior to that
7 Lawrence Institute of Technology here in -- I think it's
8 Dearborn. Also attended University -- well, Mercy College,
9 which is now U of D Mercy, while employed as a Detroit -- as
10 a Detroit police officer. Then later, after attending West
11 Coast University in Los Angeles, I attended the University of
12 Phoenix.

13 Q Before we get to that, when did you graduate from West
14 Coast University?

15 A I'm not absolutely certain on the date. I'd have to --

16 Q Approximately the year.

17 A Probably in the late '90s.

18 Q And did you receive a degree?

19 A I did.

20 Q And what type of degree?

21 A Business management.

22 Q And did you go to the FBI National Academy at Quantico?

23 A I did.

24 Q And when did you do that?

25 A At the rank of lieutenant, once again, probably late

1 '90s, early 2000s.

2 Q And you graduated from there?

3 A I did.

4 Q Have you ever received a master's degree?

5 A I did.

6 Q From where?

7 A University of Phoenix.

8 Q And when did you receive that degree?

9 A Possibly -- oh, 2010.

10 Q Have you ever studied for a doctoral degree?

11 A I did.

12 Q And what's the status of that?

13 A It's on hold right now. When I accepted the job with the
14 Detroit Police Department, that is when I placed the work on
15 hold.

16 Q How far along were you?

17 A I immediately entered after my -- obtaining my master's,
18 so a couple years, three years.

19 Q Was your first job as a police officer with the City of
20 Detroit?

21 A It was not my first job.

22 Q What was your first job?

23 A Delivering papers in high school.

24 Q No, but as a police officer, was that your first --

25 A Oh, my first police job was, yes, 1977 in the City of

1 Detroit.

2 Q And how long did you work for the City of Detroit?

3 A Roughly two and a half years until I was laid off in
4 1980.

5 Q And what position did you hold with the City of Detroit?

6 A Police officer.

7 Q After you were laid off by the City of Detroit, where did
8 you next seek employment?

9 A City of Los Angeles.

10 Q And were you employed there?

11 A Yes, as a police officer.

12 Q For what period of time did you work as a police officer
13 in Los Angeles?

14 A For 28 years starting in 1981 until the date I retired in
15 2009 after being selected as a police chief for Portland,
16 Maine.

17 Q I assume you held numerous positions while you were with
18 the police department in Los Angeles?

19 A I did.

20 Q Could you describe some of those positions that you held?

21 A Ranged from both administration, field. I, as a police
22 officer, worked in community relations, worked in a gang
23 unit, promoted to sergeant, worked as an internal affairs
24 investigator, also as an advocate, a grievance investigator
25 and advocate for the police chief, promoted to lieutenant,

1 ran a defense rep unit with the unit -- with the union. From
2 that I became an adjutant to the chief of police and after
3 that promoted into captain. I worked several positions as a
4 command level officer from juvenile division, specialized
5 division, then the Wilshire area, also southwest area twice
6 as a captain, later as the area commanding officer, and then
7 at that time I retired. Well, for one month prior to
8 retirement I was a commanding officer of West Los Angeles
9 area.

10 Q And you said you retired from Los Angeles when?

11 A In 2009.

12 Q And did you take a job after that?

13 A I did.

14 Q And where did you take a job?

15 A Portland, Maine, as the police chief.

16 Q And what were your duties as police chief of Portland,
17 Maine?

18 A Overall management, leadership of the police department.

19 Q And how big of a staff was that?

20 A Sworn and civilian staff of about 215.

21 Q And how long did you act as police chief of Portland,
22 Maine?

23 A Roughly two years.

24 Q And after that, did you take another job?

25 A I did.

1 Q And where was that?

2 A Cincinnati, Ohio, police chief.

3 Q And what was your start date, approximately, for that
4 job?

5 A 2010, August, I think. Stayed there two years.

6 Q August of 2010?

7 A Right, if my memory serves me correct.

8 Q And what was the general description of your duties as
9 police chief of Cincinnati?

10 A Basically the same, overall management, leadership of the
11 Cincinnati Police Department.

12 Q How big of a police force was Cincinnati?

13 A Sworn and civilian, roughly 1,700 employees.

14 Q What was the residential size, the people in City of
15 Cincinnati?

16 A The actual residential population was about 300,000, but
17 what makes unique -- a unique characteristic of Cincinnati is
18 it had a metropolitan statistical area of 2.2 million, which
19 is the largest in the State of Ohio.

20 Q When you talk about the metropolitan statistical area, do
21 you consider that part of your jurisdiction as the police
22 chief of Cincinnati?

23 A Yes, because of the people that will work, attend school
24 that live in the city represent that population.

25 Q How did you become the police chief of the City of

1 Detroit?

2 A A recruiter contacted me.

3 Q And when was that?

4 A Probably February, March, roughly, early part of the
5 year, of this year.

6 Q 2013?

7 A Yes.

8 Q And what did you do once you were contacted by the
9 recruiter? Did you meet with anyone at the City of Detroit?

10 A I did.

11 Q And who did you meet with?

12 A I met with a number of people through a series of
13 interviews. I met with the recruiter, of course, initially,
14 and from that I met with city officials, the mayor, the
15 emergency manager.

16 Q Being Kevyn Orr?

17 A Kevyn Orr.

18 Q Met with the monitor, federal monitor, at some point
19 during the process, Mr. Baird out -- who works for the
20 Governor's Office, State of Michigan, and that was it.

21 A At some point you were offered a job as the police chief
22 of Detroit?

23 Q I was.

24 Q And when was that?

25 A Started in July, possibly June.

1 Q And when did you actually -- when was your first day of
2 work?

3 A June -- I mean July 1st.

4 Q Why were you interested in taking the job as police chief
5 of Detroit when you were already police chief in Cincinnati?

6 A It was a great opportunity. I knew that the city was
7 facing a myriad of challenges. This was home, certainly the
8 place I started my policing career, so certainly when I look
9 across at -- this now is my third job as a police chief -- to
10 come back here was very significant to my career.

11 Q When you started as the new police chief of the City of
12 Detroit, what steps did you take to familiarize yourself with
13 the police department?

14 A As I do in the past in other departments that I held the
15 chief's position, I certainly tried to meet as many people as
16 I could, both internal and external to the police department.
17 As it relates to inside, certainly I met with a cross-section
18 of rank and file prior to starting, had a chance to attend a
19 union meeting, so I got to meet the union president from the
20 DPOA, met some of the members at that meeting. From that,
21 after I actually started, I continued to meet with the union
22 president, and I began to make my rounds, if you will, and
23 talking to a cross-section of people inside the department.

24 Q And what was that -- what did the cross-section consist
25 of, the people you met with inside of the department?

1 A I met with the executive management team. I met with
2 rank and file. I physically visited some of the stations,
3 some of the work locations where the specialized units were
4 housed.

5 Q When you said you met with the executive management team,
6 who consists or who was part of the executive management team
7 at the time you took the job?

8 A The deputy chiefs, assistant chiefs, commanders, then
9 inspectors. I've also met with the civilian counterparts,
10 the civilian deputy chiefs that held several positions in the
11 police department.

12 Q How many meetings do you figure you had when you first
13 took the job as police chief?

14 A Virtually met every day, still meet every day, many
15 meetings. I would be making a guess at how many meetings,
16 but depends on what time period.

17 Q Did you --

18 A From the beginning until now -- that's a difficult one --
19 in excess of 50 meetings.

20 Q Okay. Did you meet with any city officials after you
21 took the position as police chief?

22 A I have.

23 Q And who did you meet with?

24 A I have had a meeting or two with the mayor, certainly --

25 Q Mayor Bing?

1 A Mayor Bing. Certainly met and have been continuing to
2 meet with the emergency manager, Kevyn Orr, on a number of
3 occasions. I've met with several on the council, in
4 particular, the council president, Saunteel Jenkins. I have
5 met with the now president and former president of the police
6 commission.

7 Q Did you meet with any community business leaders before
8 or after you took the position as police chief?

9 A I did.

10 Q And what did you do to meet with the community business
11 leaders?

12 A There were several meet-and-greets, met business leaders.
13 There was a meet-and-greet at Comerica Park early during my
14 arrival, maybe within the first month, so I had a chance to
15 meet a variety of business leaders as well as community
16 stakeholders, Wayne County prosecutor, which I left out, had
17 a chance to meet with her. And then there's been several
18 other smaller meet-and-greets, one at Detroit Athletic Club
19 where, once again, I met with local business leaders.

20 Q Who's the Bratton Group?

21 A The Bratton Group is a consultant firm. Bratton is a
22 former police chief of Los Angeles, also former commissioner
23 of New York, Boston, and Boston Transit.

24 Q Were they providing -- when you started as police chief,
25 were they providing consulting services to the Detroit Police

1 Department?

2 A Yes, they were.

3 Q And what kind of services did you understand that they
4 were providing?

5 A Looking at the organizational structure, for the most
6 part, there were actually several consulting firms working
7 with the Detroit Police Department, but I actually had a
8 conversation with Bill Bratton prior to being selected.

9 Q Is he the CEO of the Bratton Group?

10 MS. LEVINE: Your Honor, objection. We don't have a
11 certification or a declaration from the police chief. I was
12 just wondering if we could get some understanding as to how
13 this is relevant to eligibility.

14 MR. HERTZBERG: Sure, your Honor. First, your
15 Honor, I'm laying a foundation for the witness, but, second,
16 one of the aspects, as cited in the brief that the city
17 filed, is one of the tests is service delivery insolvency.
18 And the chief is here to testify as to the public safety and
19 whether the services are being provided to the community,
20 being the --

21 THE COURT: Is this foundation for that?

22 MR. HERTZBERG: Yes. This is foundation.

23 THE COURT: All right. I'll permit it. Go ahead.

24 MR. HERTZBERG: Thank you.

25 BY MR. HERTZBERG:

1 Q So you met with the Bratton Group; correct?

2 A I did.

3 Q And what did they tell you about the state of the Detroit
4 Police Department?

5 A That -- if I just might summarize it in a very short way,
6 that everything is broken, deplorable conditions, crime is
7 extremely high, morale is low, the absence of leadership.

8 Q And after you took the job as police chief, did you meet
9 with anyone from Conway MacKenzie?

10 A I did.

11 Q And who did you meet with?

12 A Chris Gannon, one of the consultants.

13 Q What did you talk to -- or what subject did you cover
14 with him?

15 A Essentially the same as I did with the Bratton Group, the
16 staff, low morale, working conditions.

17 Q Did you review any reports that have been prepared or any
18 information when you joined the force as police chief?

19 A I had reviewed different reports, some in more detail
20 than others. I don't recall which. There was a lot written,
21 but there were no real reports from the consultants as it
22 related to the state of the department.

23 Q After you became police chief, did you -- you said you
24 went and saw some of the police stations. Did you go out at
25 crime scenes? Did you go out and meet officers in the field,

1 anything of that nature?

2 A I have, and I did.

3 Q Can you describe that please?

4 A I've had a chance to go by all of the precincts, and
5 certainly in most, if not all, the conditions of the stations
6 were in some instances deplorable. One comes to mind.
7 During a visit I had with one of our leased facilities where
8 our crime lab technicians work out of, a location where I'm
9 told by the staff the heat sometimes works, it's dirty,
10 deplorable working conditions, not a lot of space. Certainly
11 as I made my rounds, that was consistent. In fact, even as
12 recently as yesterday at a community meeting, community
13 members brought up the deplorable state of the police
14 stations and asked what I plan to do about that.

15 Q Let's talk about crime in the City of Detroit at the time
16 you took over as police chief and what we call clearance
17 rates. What is clearance rates on crime?

18 A Solving the crime basically. I knew coming in that the
19 homicide clearance rate for Detroit was roughly 11 percent.

20 Q Before we go there, let me ask you a few additional
21 questions. Do police departments ordinarily maintain
22 statistics on crime?

23 A Yes.

24 Q And where are those reported to?

25 A Reported to the FBI.

1 Q And does Detroit maintain these type of reports and
2 statistics?

3 A They do now.

4 Q When you started as police chief, did you consider
5 Detroit -- after you met with your commanders, met with
6 people, citizens, and moved around and looked at the
7 different police stations, met with people on your staff, did
8 you consider Detroit a violent city?

9 A I did.

10 Q How violent?

11 A Extremely violent. In comparison to cities I've worked,
12 primarily Los Angeles and Cincinnati, it was the most violent
13 city I've ever worked, so I knew that I would be facing a
14 significant challenge in focusing on reducing crime, violent
15 crime in particular.

16 Q You started to talk about the homicides in Detroit. How
17 many homicides were there in the city from the beginning of
18 the year until the time you took your job in June?

19 A I'm not certain what the exact number was at that time.

20 Q Were you aware of what it was in 2012?

21 A I was aware that it was, I think, 384. It was ranked,
22 according to a recent report by the FBI, as the second most
23 violent city in America only exceeded by Flint, so I was
24 aware of the homicide rate.

25 Q You started to talk about clearance rate, solving of

1 crimes. What was the clearance rate on the homicides in
2 Detroit?

3 A The information that I received was around 11 percent.

4 Q Is that a good clearance rate?

5 A It's deplorable.

6 Q What did you see as the clearance rate when you were
7 working in Los Angeles?

8 A Sixty-five to seventy percent. Cincinnati, 70 percent.

9 Q Seventy-percent clearance rate on homicides?

10 A Kind of fluctuates between 60 and 70.

11 Q Was the clearance rate similar on other violent crimes in
12 the City of Detroit?

13 A As low or lower. In fact, if my memory serves me, I
14 think like for using the crime of robbery, I think the crime
15 of robbery, the clearance rate was about eight percent.

16 Q Is that low?

17 A Extremely low.

18 Q What was the clearance rate, approximately, in Los
19 Angeles when were you employed there?

20 A As I recall, just looking at the one station, it would go
21 between 25-, 35-percent clearance rate.

22 Q In Cincinnati when you were chief?

23 A About the same. Robbery clearances tend not to be as
24 high. There are more reported crimes, but roughly about the
25 same, 25 to 35 percent.

1 Q You said -- you testified earlier that the police
2 department was having extreme problems. Was there problems
3 of accountability with police officers?

4 A Accountability was for the most part, in my judgment,
5 absent. The one thing that I acknowledge the department did
6 well in terms of -- and when I talk about accountability, I'm
7 talking about at the executive and management levels. I'm
8 not referring to the rank and file police officer. There was
9 an absence of accountability, but the department certainly
10 could be lauded for its success just recently two years ago
11 where the consent judgment -- they were at about 24-percent
12 compliant, and they rose to about 91, 92 percent over a two-
13 year period. But when you look at the other areas of the
14 department, it didn't seem to be that certainly the executive
15 and managers were being held accountable.

16 Q Was there an urgency, in your mind, to drive down violent
17 crime?

18 A Both violent crime and raise morale of the police
19 officers.

20 Q What was the morale like for the everyday police officer
21 in the City of Detroit when you took over as chief?

22 A In my judgment, it was the lowest I have seen of any
23 police department I've ever worked, including when I worked
24 here in the '70s.

25 Q Do you have any idea what caused that?

1 A A number of factors. Certainly the fact that they had
2 lost ten percent pay; that they were forced into a 12-hour
3 work schedule. They had no real voice in the department, no
4 real decision-making, and as I met with officers through my
5 visits to different operational entities, the thing I heard
6 most was they just wanted to be police officers again, and
7 they felt that they didn't have leadership that would allow
8 them to do that.

9 Q Were police officers, in your mind, when you took over as
10 police chief being deployed in the correct way?

11 A They were not.

12 Q Can you explain that, please?

13 A It appeared and later found out that Detroit police
14 management had taken what I call a cookie cutter approach to
15 staffing or deployment, and there was no real science behind
16 how police officers were deployed. And specifically what I'm
17 talking about is looking at issues of calls for service,
18 crime, and population. And so it was after my staff started
19 to take a good look at -- we made some adjustments in
20 staffing because one indicator was the fact that not only was
21 the response time a big issue, but when officers came to
22 start their 12-hour work schedule, there were anywhere
23 between 40 and 60 calls being held to be answered.

24 Q Let's talk about response time. What is the average
25 response time on a call to a police station right at the time

1 you took over as police chief, approximately?

2 A What was reported out to me was roughly 50 minutes to an
3 emergency call.

4 Q And when you were in L.A. as a captain, what was the
5 normal response time you saw there?

6 A It was an average response time of seven minutes.

7 Q How about when you were chief in Portland, Maine?

8 A Three to four minutes.

9 Q And when you were chief in Cincinnati?

10 A Five to six minutes.

11 Q Do you think this 50-minute response time put residents
12 at risk of their safety?

13 A I did.

14 Q Why is that?

15 A Because if a community member is calling for police
16 services in an emergency situation, certainly the expectation
17 that police will get there as soon as possible, so what I
18 heard coming in from community members, what I heard before I
19 got here, is the fact that there were times when Detroit
20 police officers were called, and no one would ever show up.
21 In fact, we have two dispatchers now facing criminal charges
22 based on the allegation of not sending police officers to a
23 call for service, one where the allegations involving a woman
24 who died as a result of a domestic situation, and the other
25 one I think was a stabbing.

1 Q And the dispatchers never dispatched police officers to
2 the --

3 A It's a pending matter, but that's the allegation, yes.

4 Q Okay. Let's talk about where police officers were
5 working when you took over as police chief. Were some of
6 them working in non -- or jobs that were not on the street
7 policing crimes and stuff?

8 A It was very odd to me when I came in. First, I took a
9 look at my office, and, for example, one officer -- a full
10 duty officer was -- sole assignment was to gas and wash my
11 car.

12 Q And this was a police officer?

13 A A police officer. Then there were several other police
14 officers in my office that were performing clerical duties,
15 and so those individuals -- I took action to move them out,
16 and then we started to look at the rest of the department.

17 Q Well, before you go there, when you say "move them out,"
18 do you mean place them on the street patrolling?

19 A In a more -- in an operational assignment, which doesn't
20 necessarily mean they went back to a uniform patrol, but in
21 another operational, something where a police officer would
22 be assigned.

23 Q Let's talk about the mayor's personal protection force.
24 When you took over as the police chief in the City of
25 Detroit, was protection provided by the Detroit Police

1 Department to Mayor Bing?

2 A Yes, it was.

3 Q And how many police officers were used for that
4 protection?

5 A Twenty-three.

6 MS. LEVINE: Your Honor, objection, again, with
7 regard to relevance. I'm just not sure where this fits into
8 109.

9 MR. HERTZBERG: It's, as I said, service insolvency.
10 We're going to show that there were police officers not being
11 used correctly on the street, which jeopardized the safety of
12 the residents, and when he took over as chief the residents
13 were at risk because of this, and we were showing service
14 insolvency.

15 THE COURT: The relevance is arguable, so I'll
16 permit it.

17 MR. HERTZBERG: Thank you.

18 MS. LEVINE: Your Honor, just for the record --

19 THE COURT: Yes.

20 MS. LEVINE: -- our understanding is that solvency
21 we've determined here is whether or not the city can pay its
22 debts as they come due, and that's a financial mathematical
23 problem. So while this is sympathetic testimony, we would
24 respectfully submit it doesn't go to the issue of whether or
25 not this debtor is eligible.

1 MR. HERTZBERG: As I indicated to the Court, and
2 I'll just repeat --

3 THE COURT: You may proceed, Mr. Hertzberg.

4 MR. HERTZBERG: Okay. Thank you, your Honor.

5 BY MR. HERTZBERG:

6 Q You were telling us about the personal protection staff
7 on Mayor Bing. How many officers was it?

8 A Twenty-three officers.

9 Q And how many now are being used?

10 A Six.

11 Q And are you the one who reduced the staff?

12 A I was.

13 Q And where are those officers deployed now?

14 A They went back to operational assignments. Six remain
15 working for the mayor in executive protection, one was de-
16 appointed, and the remaining were sent out to a variety of
17 assignments.

18 Q How many police officers were there when you took over as
19 police chief?

20 A Roughly 2,400.

21 Q In order for the city, in your mind, to be safe, how many
22 police officers do you need?

23 A In my estimation, if we had 3,000 police officers today,
24 that would help tremendously, but before I could put a hard
25 number to it, I need to make an evaluation on how we are

1 deploying current officers, and so when you talk about moving
2 staff from the mayor's executive protection detail, there's
3 also a move to civilianize some of the positions now held by
4 police officers, and one key example is our dispatch.
5 Dispatchers in the Detroit Police Department are sworn police
6 officers, and so I wanted to make sure that we were
7 effectively deploying sworn officers the best that we could
8 so I would have an idea of how many officers we actually
9 need.

10 Q Okay. Let's turn to the equipment. Do the officers get
11 as part of their -- or as police officers, are they given
12 bullet-proof vests?

13 A They are.

14 Q And what's the state of the bullet-proof vests when you
15 took over as police chief?

16 A Deplorable. There were roughly 350-plus vests, and I
17 think it's up now to roughly 400 -- it might even be higher;
18 I think it's 500 when we include our narcotics unit -- that
19 are expired. Even the police chief does not have a vest
20 except the one I brought with me from Cincinnati.

21 Q When you say "expired," bullet-proof vests have
22 expiration dates on them?

23 A Yes. Five years.

24 Q And after that they're not safe to wear?

25 A That's correct.

1 Q Let's talk about the vehicle, police vehicles. What
2 condition were the police vehicles in when you took over?

3 A I saw vehicles with obvious damage. I saw vehicles that
4 appeared to be unsafe. In fact, when I stopped one officer,
5 there was one vehicle that had -- the right front brake
6 wasn't working properly, so I directed him to turn the
7 vehicle in. Paint peeling off the vehicle. In fact, in the
8 field on one call where it was an officer needs help, a back-
9 up car that I responded to in the eastern district where they
10 were looking for a wanted suspect, which we ultimately
11 identified and arrested, as the officers were preparing to
12 leave, one of the police vehicles would not start up. The
13 officer proceeded to climb underneath the vehicle and jump-
14 started the vehicle to get it running. When I asked the
15 question, "Is this the norm?" several of the officers said
16 for the most case it is the norm, and either they jump it
17 that way or they push the car to get it started, not all
18 vehicles but some.

19 Q And what was the mileage on the vehicles? Was it normal
20 mileage for the year of the vehicle?

21 A I'm not certain on the mileage, but I am told that 66-
22 percent of our fleet has excessive wear, is well beyond the
23 normal -- I guess it's three years that police cars are
24 deployed.

25 Q The condition of the police cars, does this put citizens

1 at risk?

2 A It does.

3 Q Does it put visitors to the city at risk?

4 A It does.

5 Q And does it put the safety of people who work in the city
6 at risk?

7 A It does, including the police officers.

8 Q You received some new police cruisers once you took over
9 as police chief; is that correct?

10 A That's correct.

11 Q And where did you receive those from?

12 A Penske Corporation and a group of other local businesses
13 that were part of this effort to bring a hundred new police
14 cruisers.

15 Q So you received -- have you taken possession of the
16 hundred new police cruisers?

17 A We have.

18 Q Are all of them operating on the street right now?

19 A No, they're not.

20 Q How many are actually operating on the street?

21 A Roughly 20 or so. I'm not actually certain. I check
22 weekly. Some of them are still being outfitted by the
23 outfitter, and they're being pushed out, but we do have
24 possession of the 100 police vehicles.

25 Q Let's spend a minute and talk about the fire department

1 and EMS. You don't oversee those departments, do you?

2 A I do not.

3 Q Have you had an opportunity to observe as police chief
4 those departments and how they're operating?

5 A I have.

6 Q And what have you seen?

7 A The thing I've seen -- two things that would have been
8 most notable is the fact that Detroit police officers on a
9 routine basis I'm told transport injured victims to the
10 hospital and in all cases children.

11 Q Is this a normal function for the police department?

12 A Not anyplace I've worked.

13 Q And why is the police department in Detroit doing that?

14 A I'm told because EMS did not have vehicles or staff that
15 could respond in a timely manner, and so the decision was to
16 transport. And when I asked how long this has been going on,
17 it's certainly been more acute in the last five years, but
18 one of my staff as recent as this morning said that they've
19 been doing it since the '80s. Now, to what degree I am not
20 certain, but it is routine that Detroit police officers
21 transport injured youth victims of crimes or that have been
22 injured.

23 Q And do you work closely with the fire department?

24 A Work in the same building. We have communication. We
25 talk about a variety of issues.

1 Q Have you seen any issues that have caught your attention
2 with the fire department?

3 A Yes, one notable issue.

4 Q And what's that?

5 A The fact that there have been since I've been here two
6 occasions but this year four occasions where fire fighters
7 have responded to a fire and put out the fire, left the
8 location, and a deceased person was found in the location
9 later.

10 Q By the police department?

11 A By the police -- well, someone would call us and say
12 there was a dead body in the location. Police department
13 would respond out and start its investigation only to find
14 out that the fire department had been at the location and put
15 out the fire.

16 Q One more area I want to cover with you, blight. What is
17 blight in the city?

18 A Abandoned homes, streetlights out, traffic signals not
19 working, overgrown shrubbery.

20 Q Is that a safety issue?

21 A It is.

22 Q In which way?

23 A It affords someone who wants to engage in criminal
24 behavior to do it under the cloak of darkness. Certainly
25 abandoned homes are a key location where violent crimes take

1 place. And using the broken windows concept, certainly when
2 an area is deplorable or broken, it tends to attract criminal
3 behavior. So if an area is clean, it's well-lit, people take
4 pride in the neighborhood, crime seems to be lower.

5 Q Did you -- when you took over as police chief, did you
6 notice blight in the City of Detroit?

7 A I have.

8 Q And how bad was it, in your mind?

9 A Significant.

10 Q When you say "significant," could you describe it?

11 A Well, just blocks where it may be only one home, home
12 could be partially burned, certainly streetlights that were
13 not working, which certainly contribute to a safety issue
14 both for pedestrians and certainly a place where crime takes
15 place, traffic signals not working, which certainly puts
16 motorists at harm as they travel through the City of Detroit.

17 Q When you arrived as police chief and took over, do you
18 think that the residents, visitors, people who worked in the
19 city were at risk of violent crime?

20 A I did and do.

21 MR. HERTZBERG: I have no further questions, your
22 Honor.

23 THE COURT: Any questions for the witness?

24 CROSS-EXAMINATION

25 BY MS. PATEK:

1 Q Good afternoon, Chief Craig. Welcome back to Detroit --

2 A Thank you so much.

3 Q -- right in the eye of the storm. In spite of all the
4 challenges you've described, we can agree for those of us who
5 grew up here and have families here that this is a place with
6 some rich history and some wonderful things to offer; isn't
7 that right?

8 A Absolutely. I agree with that.

9 Q I want to start with your comments about the DFFA. I
10 take it you have no firsthand knowledge as to whether or not
11 the DFFA faces some of the same undermanning or morale
12 problems that are present in the Detroit Police Department?

13 A Only what I've heard from police officers and -- but I
14 have not firsthand, not like I have in the police department.

15 Q Is it your understanding that they're in a similar
16 situation as the Detroit Police --

17 A Yes.

18 Q -- Department? And in that respect, I heard you say, I
19 think, that the Detroit Police Department is currently
20 undermanned; correct?

21 A I would say so, yes.

22 Q And the individual officers are in many cases underpaid?

23 A Yes.

24 Q And the working conditions, as you described them,
25 were -- are deplorable?

1 A Yes.

2 Q And they -- as a consequence, when you came here in July,
3 you found a department in very low morale?

4 A Yes.

5 Q And I don't know how much research or how much you were
6 paying attention, but is it your understanding that there was
7 a series of chiefs before you that stepped down in a variety
8 of less than -- let's say less than auspicious circumstances?

9 A Yes. I'm aware.

10 Q And is it your understanding that that was, in large
11 part, what left the department leaderless?

12 A Yes. That certainly was a significant contributing
13 factor.

14 Q And as I understand it, since you've been here, you've
15 brought on new deputy and assistant chiefs?

16 A A new executive and management team with maybe one or two
17 exceptions.

18 Q Okay. And some of that executive management team has
19 been pulled directly from the command staff; that is, people
20 who are members of the Detroit Police Command Officers
21 Association?

22 A That's correct.

23 Q Because when you came here, in spite of the difficulty of
24 the situation, you found that there were dedicated
25 professional men and women there who you wanted to elevate to

1 be part of your new leadership team?

2 A Yes.

3 Q And with respect to the lieutenants and sergeants, some
4 of those who had actually been acting as inspectors have now
5 been formally appointed as inspectors?

6 A Yes, now called captains, yes.

7 Q And you also mentioned meeting with on a number of
8 occasions the president of the Detroit Police Officers
9 Association, Mark Diaz?

10 A Yes.

11 Q And in your meetings -- and I don't know if he's still
12 here. He was here earlier in the courtroom today. In your
13 meetings with Mr. Diaz, have you found him to be interested
14 in the restructuring and revitalization of the Detroit Police
15 Department?

16 A I have, yes.

17 Q And willing to be flexible with you in terms of trying to
18 try new things to better deployment, better strategy in terms
19 of getting more officers out on the street?

20 A Yes, in every instance.

21 Q And obviously I think it goes without saying from what
22 you described the work these officers do every day out on the
23 street is very dangerous work?

24 A Yes, it is.

25 Q And they're literally putting their lives at risk?

1 A Yes, they are.

2 Q And would it be fair to say that that would go for
3 probably the police and the fire fighters as well?

4 A Yes, it would.

5 Q And do you -- and if you don't know, it's a fair answer.
6 Do you know anything about the restructuring proposal that
7 has been made by the City of Detroit with respect to what is
8 to occur with the accrued vested pension benefits of the
9 active and retired Detroit police and fire fighters?

10 A I've heard. I don't have intimate understanding of it.

11 Q And would it be -- do you believe sitting there and even
12 understanding the financial challenges that it would be fair,
13 given what these officers face every day, to impair those
14 accrued vested and previously earned pension benefits?

15 A I do support the public service workers having their
16 pension, but I also understand the necessity to take some
17 very bold action as it relates to addressing this fiscal
18 crisis in the City of Detroit. I'm certainly not the expert
19 on what should happen or what the balancing would be to that,
20 but I am certainly concerned about pensions. I have the good
21 fortune of having served 28 years with the Los Angeles Police
22 Department, and I have my pension, so that certainly does
23 concern me.

24 Q And when you went to work for the Los Angeles Police
25 Department and you did the very hard work that you did for 28

1 years, you understood that you were earning that pension?

2 A That's correct.

3 Q And you had an expectation that at the end of the day it
4 would be paid to you?

5 A That's correct.

6 MR. HERTZBERG: Objection, your Honor. This is --

7 MS. PATEK: I have nothing further.

8 MR. HERTZBERG: Okay. I'll withdraw the objection
9 then. Let her testify.

10 CROSS-EXAMINATION

11 BY MS. LEVINE:

12 Q Good afternoon.

13 A Good afternoon.

14 Q Sharon Levine, Lowenstein Sandler, for AFSCME.

15 A Yes.

16 Q You mentioned there was a morale issue with regard to
17 lost pay, increased schedule, and a lack of leadership, I
18 believe; correct?

19 A All kind of combined in one.

20 Q Combined?

21 A All played varying roles in morale.

22 Q Isn't it true that reducing pensions and reducing health
23 benefits would also contribute to further morale loss?

24 A I am certain.

25 Q The city actually produced a lot of documents for us in

1 discovery in connection with this case. I don't recall --
2 and I may have just missed it -- a proposed budget with
3 regard to fixing the Detroit Police Department. Have you
4 provided that kind of a budget to the city?

5 A I have not.

6 Q Would you be -- would you be supportive of using existing
7 vested pension benefits to fund that kind of a budget?

8 MR. HERTZBERG: Objection, your Honor. Way beyond
9 the scope of direct examination.

10 THE COURT: Overruled. Please answer the question,
11 sir.

12 THE WITNESS: I would have to take a look at the
13 full picture. I mean there have been some steps I've taken
14 to reduce the fiscal liability. One such action I took was
15 dramatically reducing the command and executive team, thereby
16 resulting in a \$1 million annual savings in salaries, so we
17 are in budget discussions talk right now, so I'm not prepared
18 to answer the question to the level of detail you're asking.

19 BY MS. LEVINE:

20 Q You mentioned using civilians for certain job functions,
21 including, for example, dispatchers. Just so I understand,
22 is that outsourcing those jobs? Is that what you're talking
23 about?

24 A Not outsource -- not outsourcing but redeploying sworn
25 officers that hold those jobs back into traditional policing

1 functions. Most police agencies across America use civilians
2 as dispatchers, and Detroit has used sworn dispatchers from
3 the time I was here now over 36 years ago, and so this was an
4 effort to more equitably deploy police officers back into the
5 field.

6 Q So it would either be hiring the citizens of Detroit at
7 probably a lower pay scale and/or outsourcing those jobs? Is
8 that -- do I --

9 A That's probably a strategy that could be used, but it
10 would definitely be hiring people from the city.

11 Q And from your time with the Los Angeles Police
12 Department, in addition to a pension, do you enjoy health
13 benefits?

14 MR. HERTZBERG: Objection, your Honor. It's
15 irrelevant.

16 THE COURT: No. I'll permit it. Go ahead, sir.

17 THE WITNESS: I do.

18 MS. LEVINE: Thank you.

19 THE COURT: Other questions for the witness?

20 MR. KING: Please, your Honor. Ron King on behalf
21 of the Pension Systems. I just didn't want to displace Ms.
22 Green. Sorry.

23 CROSS-EXAMINATION

24 BY MR. KING:

25 Q Thank you for your service.

1 A Thank you.

2 Q Chief Craig, are you aware that there are approximately
3 400 active duty officers that have less than ten years of
4 service in the department?

5 A I didn't know it was that few.

6 Q Are you concerned at all that if their pension benefits
7 are not vested, that you will have a difficult time retaining
8 those people?

9 A I am concerned about retention and hiring.

10 Q Do you think that impairing or diminishing pension
11 benefits will have an impact on your ability to recruit and
12 retain police officers?

13 A It could.

14 MR. KING: I don't have anything further.

15 THE COURT: Thank you.

16 CROSS-EXAMINATION

17 BY MS. BRIMER:

18 Q Good afternoon. My name is Lynn Brimer. I represent the
19 Retired Detroit Police Members Association. It's an
20 association of approximately 350 retired Detroit police
21 personnel, officers through chiefs. Now, I'm going to try
22 not to repeat anything that's already been put in the record,
23 but you did indicate you do receive a pension, and you do
24 receive healthcare benefits; is that correct?

25 A I do.

1 Q And when you accepted your position as a police officer
2 in Los Angeles, you considered those benefits, both the
3 pension and your healthcare benefits, to be part of your
4 compensation package; is that correct?

5 A That's correct.

6 Q Now, you indicated that there were a number of what
7 appear to be management problems with the police department
8 when you took over. For example, you indicated that the
9 mayor's personal protection at the time you took over
10 consisted of 23 officers; is that correct?

11 A That's correct.

12 Q And you've reduced that to six?

13 A Yes.

14 THE COURT: All right. Ms. Brimer, I am going to
15 ask you not --

16 MS. BRIMER: Okay.

17 THE COURT: -- to ask any more duplicative
18 questions.

19 MS. BRIMER: Okay.

20 BY MS. BRIMER:

21 Q Do you know --

22 THE COURT: Any question that begins with "you
23 testified that" --

24 MS. BRIMER: Okay.

25 THE COURT: -- is going to be a duplicative

1 question.

2 BY MS. BRIMER:

3 Q Do you know whether or not the decision to put -- well,
4 let me think of how I want to ask this. So the decision to
5 put 23 officers on the mayor's protection order was a
6 management decision, not a financial decision. Would you
7 agree with that? It was driven by management rather than the
8 amount of resources available to the department?

9 A It's both.

10 Q Okay. Why is it a financial decision?

11 A Police officers cost money. It's a financial resource.
12 So if you decide to put 23 officers on an executive
13 protection detail, that's the equivalent to a shift in a
14 Detroit police station, the precinct. So it's like me saying
15 I'm going to close the Tenth Precinct on the midnights.
16 That's why it's important.

17 Q So now you've freed up 18 to go back to shifts at a
18 precinct; correct?

19 A Not all went back to a precinct. Some did.

20 Q Okay.

21 MS. BRIMER: And I think, your Honor, I -- I will
22 say that everything else I was going to ask has been asked.
23 Thank you.

24 CROSS-EXAMINATION

25 BY MR. MONTGOMERY:

1 Q I'm Claude Montgomery from the law firm of Dentons. We
2 are representing the Official Committee of Retirees in this
3 case, so I have just a couple of quick questions. I think I
4 heard you say that you believe that bold action is required
5 on many levels?

6 A I may have said that, and I do agree that bold action has
7 to happen.

8 Q And you have a huge job in front of you to try to protect
9 700,000 people from what you found to be an incredibly
10 violent situation; is that correct?

11 A Absolutely.

12 Q All right. Do you think the governor should be playing a
13 role in that, in helping you tackle that job?

14 A I think that I don't see a problem or an issue with that.

15 Q Okay. Do you think that there should be any assets that
16 the City of Detroit has that should be blocked off from your
17 access to help the citizens of the City of Detroit?

18 A I'm not understanding your question.

19 Q Do you think there are any -- if the City of Detroit has
20 an asset that can be sold to help you, do you think it should
21 be sold to help you?

22 A It depends on the asset.

23 Q So there are some assets you think are less available to
24 you than others?

25 MR. HERTZBERG: Your Honor, I'm going to object.

1 This is beyond the scope of direct examination and far
2 afield. Asking the chief of --

3 THE COURT: It is that, but in the Court's
4 discretion, the Court will permit it, nonetheless. Go ahead,
5 sir.

6 THE WITNESS: Again, as I indicated, possibly some
7 assets could be sold to support, say, public safety.

8 BY MR. MONTGOMERY:

9 Q Thank you. And anything in that regard from your vantage
10 point has to be directed towards helping you keep people
11 alive inside the City of Detroit?

12 A Public safety is critical.

13 Q Okay. And, again, I think you said earlier that having a
14 police force of men and women that are dedicated and have
15 high morale is part of that?

16 A Absolutely.

17 Q Okay. And part of that is how their promise -- the
18 promises made to them are kept; is that correct?

19 A Promises are important, but also how they're treated is
20 important.

21 Q It's got to be fair?

22 A Fairness is important. Transparency is important.

23 MR. MONTGOMERY: No further questions.

24 THE COURT: Any others?

25 CROSS-EXAMINATION

1 BY MR. PLECHA:

2 Q Good afternoon, Chief Craig. I represent the Retiree
3 Association parties, which includes the Retired Detroit
4 Police and Fire Fighters Association.

5 THE COURT: Could you back off of the mike a bit,
6 please?

7 MR. PLECHA: Oh, I'm sorry.

8 BY MR. PLECHA:

9 Q I will be very brief. Would you support any plan or
10 initiative that could potentially increase blight?

11 A An initiative to increase blight? I wouldn't support an
12 initiative to increase blight. Did you say decrease blight?

13 Q No. I said increase blight.

14 A No. I wouldn't be supportive of it. I can't -- I don't
15 understand an initiative that would do that.

16 Q So if retirees were financially forced to leave their
17 home, vacating those homes, increasing blight, you would not
18 be in favor of that?

19 A I would not like to see retirees leave their homes. I
20 don't -- it's not my call, but I don't like the question.

21 Q Well, I appreciate that, but thank you. Would you agree
22 that the retiree community is a stable part of the Detroit
23 community?

24 A I would say that there are many retirees that offer
25 stability to the Detroit community. My dad is one.

1 MR. PLECHA: Thank you very much. No further
2 questions.

3 THE COURT: All right. Anything further for the
4 chief? Redirect?

5 MR. HERTZBERG: None, your Honor.

6 THE COURT: All right. Thank you very much for
7 coming today, sir, and also thank you for your service.

8 THE WITNESS: Thank you very much.

9 (Witness excused at 4:18 p.m.)

10 MR. IRWIN: Move this, your Honor?

11 THE COURT: Yes, sir.

12 MR. IRWIN: Your Honor, our next witness is Mr. Orr.
13 He is in the building. We would need to locate him, but
14 given the hour, we just didn't know how the Court wished to
15 proceed. We can --

16 THE COURT: I wish to proceed.

17 MR. IRWIN: That's fine. We will get him.

18 THE COURT: We'll wait here for him.

19 MR. IRWIN: He'll be here as soon as we can get him.

20 THE COURT: All right. Would everyone take their
21 seats as promptly as possible, please? One second, please.
22 Everyone sit down, please. Mr. Orr, would you raise your
23 right hand?

24 KEVYN ORR, DEBTOR'S WITNESS, SWORN

25 THE COURT: Please sit down.

1 THE WITNESS: Thank you.

2 MR. SHUMAKER: Good afternoon, your Honor. Greg
3 Shumaker of Jones Day for the City of Detroit.

4 DIRECT EXAMINATION

5 BY MR. SHUMAKER:

6 Q Good afternoon.

7 A Good afternoon, Mr. Shumaker.

8 Q Would you state your full name for the record?

9 A Kevyn Duane Orr.

10 Q Mr. Orr, what is your current occupation?

11 A My current occupation is the emergency manager for the
12 City of Detroit.

13 Q Where did you go to college, sir?

14 A The University of Michigan, Ann Arbor.

15 Q When did you graduate from there?

16 A December 1979.

17 Q And after college, did you proceed to employment or to
18 another post-graduate school?

19 A I took a little time off and went out west to do some
20 skiing but eventually went to graduate school.

21 Q And where did you go to graduate school?

22 A The University of Michigan Law School, Ann Arbor.

23 Q And when did you graduate from there?

24 A I graduated from law school in May 1983.

25 Q And for the Court, where did you grow up?

1 A I was born and grew upon Fort Lauderdale, Florida,
2 Broward County.

3 Q Your parents are from Florida?

4 A Yes.

5 Q Have any -- do they have any involvement with the State
6 of Michigan?

7 A My mother went to the University of Michigan graduate
8 school in education.

9 Q Could you give us a brief summary of your professional
10 background?

11 A Sure. After graduation from law school, I went back to
12 Florida in private practice with the law firm of Arky Fried,
13 which eventually became Stearns, Weaver, Miller, Weissler,
14 Alhadeff & Sitterson, where I specialized in litigation,
15 eventually became a bankruptcy trial practitioner with who is
16 now Chief Judge Robert Mark at that law firm. After five
17 years, I was voted into the partnership of that law firm in
18 1988.

19 I eventually took what I thought was going to be a
20 two-year leave of absence from that law firm in 1991 to go
21 into federal government first in the FDIC, Federal Deposit
22 Insurance Corporation, then into the Resolution Trust
23 Corporation in 1992. While at the RTC, I had a specialty
24 first as a line attorney, as a counsel, then a senior
25 counsel, in litigation and bankruptcy-related matters. I was

1 eventually promoted to assistant general counsel of complex
2 litigation and bankruptcy under then Deputy General Counsel
3 Jerry Patchan. I stayed there from '92 to '95.

4 Q Can I just stop you one second? You said you started at
5 the FDIC; is that correct?

6 A Yes.

7 Q What was your position there at the FDIC?

8 A At the FDIC I was counsel in the legal division.

9 Q Okay. And then you went to the Resolution Trust
10 Corporation?

11 A Yes. The Resolution Trust Corporation was originally
12 staffed by attorneys at FDIC, and then it got its own
13 independent hiring authority, and we were assigned there
14 permanently.

15 Q Did you have any particular responsibilities at the RTC?

16 A Yes.

17 Q What were they?

18 A While at the RTC, I not only had line responsibilities
19 for litigation and litigation-related matters, I also had
20 responsibilities as a liaison from the legal division with
21 the agencies, Office of Minority and Women Owned Business and
22 Women Owned Law Firms called MWOLF's and MWOB's. I was also,
23 during the course of that, assigned as the chief
24 restructuring officer of a bank holding company in New
25 Orleans for a period of time and eventually became

1 responsible for the agency's supervision and management of
2 all cases implicating federal preemption and the primacy of
3 the Financial Institutions Reform, Recovery and Enforcement
4 Act of 1989 over various state laws.

5 Q I'm sorry. You went on from the RTC to where?

6 A After the RTC, I was going to return to private practice
7 to my old firm in Miami. The supervisor that I had at the
8 RTC had moved on to become director of the Executive Office
9 for United States Trustees at the Department of Justice, a
10 retired bankruptcy judge by the name of Jerry Patchan. He
11 asked me to come over for what was then going to be a year or
12 two as his deputy, and I ended up staying there for
13 approximately six years.

14 Q And what did you do, if you could tell us, at the United
15 States Trustee program?

16 A I was initially the deputy director of the U.S. Trustee's
17 program where I was responsible as the -- more or less the
18 chief operating officer for the agency at the direction of
19 the -- at the direction of the director. The EOUST and the
20 U.S. Trustee's program is one of 36 ranking components within
21 the United States Department of Justice. It is responsible
22 for the administration and oversight regarding the integrity
23 of the bankruptcy practice in all 50 states with the
24 exception of North Carolina and Alabama.

25 Q Were there any specific duties that you had in that

1 position that you think translates into your role as the
2 emergency manager of the City of Detroit?

3 A Yes. I mean we had over 1,100 employees throughout the
4 United States, 93 offices throughout the United States. I
5 think our budget at that time was somewhere in the
6 neighborhood of over a hundred million dollars, which we
7 administered. In that capacity, we also had reporting
8 requirements for the -- to the Department of Justice through
9 the associate attorney general to the then Attorney General
10 Reno for most of the time that we were there. We also had
11 supervisory, administrative, and operational responsibility
12 for the 21 United States Trustees Offices. I was also
13 responsible for both preparing and giving oversight testimony
14 to the various oversight committees in Congress both on the
15 House side and the Senate side and coordinating budget
16 reviews on a regular basis during the regular budget season
17 but oftentimes one-offs as well with House Majority, House
18 Minority, and the U.S. House, Senate Majority, Senate
19 Minority, budgeting with the White House as well as budgeting
20 issues with respect to the Department of Justice's overall
21 annual budget.

22 Q During your time in the federal government from your
23 position at the FDIC, the RTC, and the United States Trustee
24 program, did you have any restructuring experiences?

25 A Yes.

1 Q And what were those?

2 A Well, because I'd had some experience as a bankruptcy
3 practitioner in South Florida, then in the Southern District
4 of Florida, principally in front of Judge Cristol but others,
5 I was initially selected to participate as the chief legal
6 officer with the Savings & Loan because a subsidiary down in
7 Atlanta was -- down in New Orleans was a -- had a large
8 holding company called the Landmark Land Company. At that
9 time, the Landmark Land Company held a series of golf courses
10 and country clubs, five of which were some of the most well-
11 regarded country clubs, highly rated ones in the nation at
12 the time, such as Kiowa, Mission Hills, PGA West, Oak Tree --
13 trying to think of the other ones -- Palm Beach Polo and
14 Country Club, places I typically couldn't have gone to, but
15 very significant clubs at that time, high-end properties, and
16 I initially became responsible for supervision of the
17 restructuring of the holding company, but I also ended up
18 becoming responsible for asset disposition during that
19 process.

20 Q After you left the federal government, where did you go?

21 A In 2000 I was selected by the Attorney General to
22 become -- go from being the deputy director to becoming the
23 director, and that went from being a career position to a
24 political appointee after White House vetting and approval
25 during President Clinton's administration. As a political

1 appointee -- most of the agency heads are -- it is typical
2 for the President of the United States, upon a new
3 election -- that was Bush v. Gore first election -- to put in
4 his own people, and I think the President gets, on average,
5 somewhere in the neighborhood of 60,000 appointments, U.S.
6 Attorneys, others, ambassadors, so on and so forth. So it
7 became clear that I was at the end of my tenure as a
8 political appointment in an agency, and I was going back to
9 my old law firm in Miami. I was approached by Jones, Day,
10 Reavis & Pogue to consider an overture to join them, and I
11 pursued that overture, and, much to my surprise, I ended up
12 staying with Jones Day in Washington, D.C., office.

13 Q Why did you select Jones Day?

14 A Jones Day had been an opponent when I was at the
15 Trustee's Office on the other side. We had met with a number
16 of different law firms in that capacity, as you might
17 imagine. In federal government you handle a number of
18 different matters, a number of law firms. We had always been
19 pretty strong adversaries but never enemies. They conducted
20 themselves in a very professional and honorable manner. I
21 could not have said the same for some of the firms that we
22 interfaced with. I felt that even though we had been
23 adversaries, we had a very professional relationship, and I
24 admired the way they conducted business. I felt that I could
25 do business with them on a handshake in any particular

1 litigation. They would keep their word. And, frankly, I was
2 somewhat surprised by the approach because I'd already hired
3 movers to go back to Miami, but after spending some time with
4 them, my initial impressions of the firm were borne out after
5 meeting with some of their leadership.

6 Q And you joined Jones Day in what year?

7 A I joined Jones Day May 2001.

8 Q And you said you had your bags packed for Miami, but you
9 didn't get to Miami?

10 A No, no. I had already gone back to my old firm and had
11 hired movers, and I was ready to go, but I changed my plans
12 and joined the firm, joined Jones Day.

13 Q Okay. And which office were you in?

14 A I was in the Washington, D.C., office.

15 Q And what practice area?

16 A I initially joined in the litigation practice of the firm
17 and within a year or two was assigned to the restructuring
18 practice.

19 Q And what kind of restructuring practice does Jones Day
20 have or did it have when you joined?

21 A Jones Day had and still has principally a fairly well-
22 regarded restructuring practice. The firm has usually been
23 rated in the top tier, if not the top, one, two, three, or
24 four of restructuring practices as well as the firm overall
25 consistently. Its practice focused largely on large

1 corporate matters, oftentimes precedent-setting, and
2 typically debtor side representations as opposed to creditor
3 representations.

4 Q Could you share with the Court some of the more
5 significant representations that you worked on?

6 A Sure. At the firm, the Laidlaw bankruptcy at that time
7 concerned one of the largest transportation companies, both
8 ambulances, busses. I think they owned both Trailways and
9 Greyhound. The Dana case. Renaissance Cruise Lines
10 concerned a series of seven cruise ships in Tahiti concerning
11 a cash security agreement which was negotiated in Paris,
12 France, as an economic development process with the EU, and
13 we had to negotiate the almost \$7 billion in debt for that
14 one. I've handled very obviously the Chrysler case, which I
15 think everybody is fairly familiar with. I was the team
16 leader on the dealer team having to reject dealer franchise
17 state agreements as well as dealing with throughput and
18 rationalizing the dealer network and a number of other fairly
19 large cases.

20 Q You talked a little bit about the dealer network. What
21 did you do with regard to the dealer network in Chrysler?

22 A The company had been considering rationalizing -- that
23 is, downsizing its dealer network -- for the better part of a
24 decade. And with the advent of the financial crisis come to
25 bear full-borne in 2008, the company had to begin -- had

1 begun considering how it was going to rationalize the dealer
2 network so it could increase what was then called throughput;
3 that is, the ability to sell more vehicles through its dealer
4 network and increase profitability while at the same time
5 downsizing its dealer network so that it did not create
6 inefficiencies because of a very wide footprint, which is
7 very hard to maintain. The company took that project, and we
8 originally were in the company September 2008 discussing
9 alternative solutions, both out-of-court and in-court
10 solutions, with the company, including how we would
11 rationalize the dealer network in a very analytical and
12 scientific process. As you might recall, two of the auto
13 companies, GM and Chrysler, were both considering this
14 process. GM had a little bit more of a blanket process. I
15 think they established a certain line of profitability, and
16 all dealers below that line were cut. Chrysler examined a
17 fairly complex formula, almost a logarithm, to make that
18 determination as to which dealers would be candidates for
19 rejection.

20 Q Did you have to review financial records, statements, in
21 connection with that role on the Chrysler team?

22 A Yes. The Chrysler analysis was quite complex. They had
23 a spreadsheet, dealer spreadsheet, which was over three dozen
24 factors, a dealer location footprint; whether the dealer was
25 dueling, which is with other dealers; multi-dealer with other

1 brands and makes; the dealers' seasonal, annual, daily sales;
2 the dealers' longevity; notes a number of a different
3 factors. They knew their network quite well. And also for
4 each of those dealers, they had the financial information
5 both in regard to retail financing, wholesale financing,
6 operational costs, parts and servicing requirements, warranty
7 service under the dealer, everything you would think that
8 would go into a dealer, fleet sales, the percentage of sales
9 compared to their other dealers within their region,
10 everything that you would think would go into a fairly
11 complex and sophisticated analysis of a business vis-a-vis
12 its ability to put more vehicles out into the public and
13 increase profitability both for the dealer but as well as for
14 the manufacturer, which was the company.

15 Q At Jones Day, did you have any nonlegal, say,
16 administrative roles?

17 A Yes.

18 Q And what were they?

19 A I initially came into the firm not knowing anyone from
20 Adam's off ox but was eventually admitted to the partnership,
21 I believe, within two and a half, three years later. I was
22 asked to become initially the administrative partner for the
23 Washington, D.C., office, which is sort of chief operational
24 function for the entire office, which at that time had 200 --
25 approximately 220, 230 attorneys and 500 or so support

1 personnel. I then went on and was asked to become the
2 firmwide diversity partner for all of the firms. I think
3 there are 2,500 attorneys in 37 offices, and I performed that
4 firm -- that function for a number of years, and eventually I
5 was elected to be the firmwide hiring and diversity partner
6 responsible for all recruiting, hiring for the firm
7 throughout the firm's system both here and internationally.

8 Q And I'd like to ask you a few questions about how you
9 became the emergency manager of Detroit.

10 A Yes.

11 Q What indication did you have that you were being
12 considered as the emergency manager?

13 A We originally came out to pitch the restructuring --
14 legal restructuring work for the city in late January. I
15 believe it was January the 29th. And I think either later
16 that day or the next day I was informed by the firm's
17 managing partner, Steve Brogan, that he had received a call
18 from one of the review team members at the pitch who wanted
19 to talk to me about potentially pursuing the position of
20 emergency manager.

21 Q And what was your reaction to Mr. Brogan's call?

22 A I was surprised, flattered, but was very firmly resistant
23 and against taking the position.

24 Q Why was that?

25 A I was involved in several significant matters with the

1 firm, in the midst, as a matter of fact, of a very large case
2 that we were mediating with one of the largest private
3 investment banks in the world at the time. It appeared that
4 we were going to resolve that case quite successfully for the
5 firm. I was also very concerned about walking away from
6 other clients. I had been selected earlier that year to be
7 the new partner in charge -- to be the partner in charge of
8 the firm's new Miami, Florida, office, which was an
9 opportunity to go home, and we were in the midst of lease
10 negotiations and operation negotiations with several
11 landlords in Miami. There were also some fairly significant
12 personal hardships. My wife is a professional. She's a
13 surgeon, perinatology, high-risk obstetrics, at Johns
14 Hopkins. She has a very active practice and takes call at
15 night. We have two young children, seven and six, who are
16 the apples of my eye. I very much enjoy spending time with
17 my family, and the thought of being away from them for
18 extended periods of time was not attractive to me. And,
19 frankly, I was at a very good place both personally and with
20 my career, and I'd done secondments, if you will, or long-
21 term assignments away. They're quite trying, and they would
22 take me away from both family and my existing position for a
23 long period of time, which wasn't something I was either
24 asking for or expecting.

25 Q What made you change your mind?

1 A There was an initial overture that I -- when Steve
2 brought me into his office, said Mr. Baird has called, Rich
3 Baird, who had been one of the team members. There were six
4 of us during the pitch. There was me, Steve Brogan -- we
5 were the only firm to bring our managing partner -- Corrine
6 Ball, who is a fairly well-known bankruptcy practitioner.
7 Heather Lennox was in that group; Aaron Agenbroad, partner in
8 charge of the San Francisco office; and Bruce Bennett. And
9 we had given a fairly robust presentation of what we thought
10 were our credentials for the firm, and Steve called me in the
11 office and said, "We think we did a nice presentation, but
12 they want to talk to you about being the EM -- EFM" at that
13 time, emergency financial manager. And I said, "Steve, as
14 you know, I'm very excited about what we're doing in Miami,"
15 and, you know, I was also -- had just come back from Sao
16 Paulo. We were opening the Sao Paulo office, and we'd gone
17 to Rio. We had also -- I was also a member of the Jones Day
18 Foundation. It's a charitable foundation that does good
19 works throughout the world, and we had come back from Haiti,
20 both Cite du Soleil and Port-au-Prince. In Cite du Soleil,
21 which is one of the most poverty ridden areas certainly on
22 the face of the world if not the western hemisphere, the firm
23 was sponsoring two schools and a hospital, health facility
24 there, and I wanted to see that through. And so I told Steve
25 I'm not interested in becoming -- leaving the firm, becoming

1 emergency financial manager. I will talk to Rich and try to
2 explain to him that I'm very flattered, but I'm very dug in
3 here, would certainly be more than willing to work side by
4 side with anyone they wanted selected as the firm's -- as the
5 city's attorneys, but that I would respectfully decline.

6 Q So is Rich -- you may have identified him, but --

7 A Yes.

8 Q -- who is Rich?

9 A Rich Baird was the governor's -- I think his title was
10 transformation manager, and he was one of the members on the
11 review team on the 29th at the Detroit Westin Hotel at the
12 airport that was reviewing -- I think there were 12 to almost
13 20 law firms presenting their credentials that day.

14 Q And so you said that you would help Detroit find a
15 emergency financial manager?

16 A No, not so much help them find it, but that I would work
17 with whoever they -- I assumed they had a number of different
18 candidates they were looking at, and I would work with
19 whoever that person would -- in a legal capacity, but because
20 I had these other issues, family, professionally,
21 administratively, and commitments I had made, I was quite
22 happy in my position and had expected a different course for
23 this year.

24 Q So it sounds like you still haven't changed your mind.
25 What made you change your mind?

1 A After the initial entry, Mr. Baird said he understood.
2 Rich said, "Look, you know, we looked at your credentials,
3 your background and what you've done. Would you at least
4 talk to us? We have other candidates that we're looking at,
5 but we'd like to have the ability to speak with you." And I
6 said, "Well, let me give it some thought. I have to go talk
7 to my boss lady, my wife, and sort of get some feedback
8 there, and let me talk with my partners, and maybe we'll talk
9 again." I think I said in a day or two.

10 Q And I take it you did --

11 A Yes.

12 Q -- talk to Detroit?

13 A Yes. As part of this process, we've been through some e-
14 mails that show me having conversations I think on the 30th
15 and in early February about that process and that I was going
16 to take it under consideration.

17 Q And so you took it under consideration. What time frame
18 is that?

19 A That's January 30th into early February.

20 Q Okay. So what did you do next in the progression to
21 becoming the emergency financial manager?

22 A I went on and talked to my wife and said, "Hey, honey,
23 I've been approached about this crazy idea about me working
24 full-time, leaving the firm and working full-time in
25 Detroit," and I thought she would shut it down fairly

1 quickly.

2 Q She did not?

3 A She did not.

4 Q What did she say to you?

5 A Well, somewhat to my surprise, she said, "Honey, we
6 were" -- our first year of marriage she was doing a
7 fellowship in New Haven, and I was in D.C., so we spent our
8 first year of marriage actually apart. And she said, "Look,
9 this is a career opportunity for you. If you want to do
10 it -- you've done public service before." I left my law firm
11 in Miami for what I thought was going to be two years, and
12 that turned into ten years. And she said, "You know, you sit
13 around here Sunday morning like I suspect a lot of husbands
14 browsing about the Sunday morning talk shows and why doesn't
15 somebody do something about things," and she said this was a
16 call to action; that I had to look inside my own soul and
17 make a decision as far as if you're called to do something
18 and you turn it down, how are you going to feel later. And
19 she said we would be able to work it out, and she would find
20 a way to make the family obligations get met no matter what I
21 did.

22 Q So what was your next step then?

23 A I then came back and talked to Steve, Steve Brogan, the
24 managing partner, and said, "You know, I talked to my wife,
25 and, you know, she more or less has given me the green light

1 for me to make a decision."

2 Q And did you get back in touch with Mr. Baird?

3 A Yes. After talking to Steve, who essentially said
4 something very similar, that, "Kevyn, this is a call to
5 action. Yes, you'll have to step out of, you know, what
6 we're doing in the firm, but, you know, sometimes you have to
7 ask yourself and the question you have to answer is not how
8 you feel right now but in a year, five, ten years from now
9 when you're asked again what's going to be your response,
10 that you didn't step up," and that whatever happened he would
11 support me in whatever decision I decided to do, decided to
12 make, so I called Mr. Baird back.

13 Q And what did Mr. Baird ask you to do?

14 A You know, just generally summarizing, Mr. Baird said
15 great, why don't we have further talks. I think in -- he
16 started sending me some information. I started doing some
17 research on the emergency manager process and the history
18 behind the crisis that was going on in Detroit. I'd
19 obviously been aware of it, some of the criminal
20 investigations and what not, as well as the city's slide for
21 a period of time. I have a great deal of affinity having
22 gone -- gotten both degrees here, and I think I've come back
23 to the state or the city every year since I graduated in 1983
24 either recruiting for my law firm, a visit while I was in
25 federal government, or recruiting for my new law firm at

1 Jones Day, so I'd been coming to the city for the better part
2 of 33 years. And I told him, "Well, let's start talking
3 about what the job entails."

4 Q And did you do that over the phone? Did you visit
5 Detroit? What steps did you take?

6 A We initially had an e-mail exchange, and then he said,
7 "Well, I think the next step is for you to come and visit
8 with some of the executive members of the state, including
9 Andy Dillon; Brom Stibitz; Tom Saxton, who's deputy
10 treasurer; as well as the governor and Rich Baird and the
11 governor's chief of staff and his deputy chief of staff.

12 Q And did you do that?

13 A Yes, we did that in mid-February.

14 Q In those meetings, did you talk about Chapter 9?

15 A No.

16 Q At what point in time did you decide "I would be okay
17 with being a candidate"?

18 A I think at some point either just before or after those
19 meetings, I decided that I'd throw my hat into the ring, and
20 I think I sent out an e-mail to the firm and the rest of the
21 team recusing myself from the firm's consideration process as
22 a law -- I think I sent out two e-mails. I sent out an e-
23 mail to the immediate core team that was doing the pitch and
24 working on the analysis of the city, and then an associate
25 inadvertently sent me some more information, and I sent an e-

1 mail back to him just saying, "You may not have heard, but
2 I've recused myself from any involvement in the firm's pitch
3 and potential retention by the city because I'm being
4 considered for emergency financial manager."

5 Q Okay. And when was that about?

6 A Mid-February.

7 Q When did you learn that you were a finalist?

8 A I think there was a series of e-mail exchange with Rich,
9 and after the meeting with the governor I think the governor
10 would send me attaboy e-mails, "Hey, glad to meet you. Hope
11 you take this seriously. We're still looking at some other
12 candidates, but it seems like you're the odds-on favorite."
13 I think that was towards the end of February, maybe early
14 March.

15 Q When were you, in fact, appointed emergency manager or
16 emergency financial manager?

17 A I was appointed emergency financial manager effective
18 March 25th, 2013.

19 Q Was there any connection between your being considered as
20 emergency financial manager and Jones Day being retained as
21 Detroit's restructuring counsel?

22 A No.

23 ATTORNEY: Your Honor -- sorry. I was going to
24 object. That calls for speculation. Lack of foundation.

25 THE COURT: You understand that this question asks

1 you of your own knowledge and not speculation.

2 THE WITNESS: Yes, your Honor.

3 THE COURT: So to your own knowledge, was there any
4 such connection as counsel described?

5 THE WITNESS: No, your Honor. In fact, I think I
6 made it fairly clear. I think even in e-mails I said now
7 that I'm a candidate, I don't want this -- my candidacy to
8 either hurt or help the firm. In fact, if it would -- if it
9 would have hurt the firm, then I probably wouldn't consider,
10 but the firm will stand on its own.

11 BY MR. SHUMAKER:

12 Q Who did you tell that to?

13 A I think I told that to Mr. Dillon. I think I told that
14 to Rich Baird. I may have said that in my meeting with the
15 governor.

16 Q Did you accept the appointment of emergency financial
17 manager for the money?

18 A No. It's a -- no, no.

19 Q Was there ever any understanding between you and the
20 governor or any member of his staff that you met or anyone
21 that you ever came across that you would file for Chapter 9
22 on the city's behalf if you were named emergency manager?

23 A Not at all.

24 Q What was the first thing you did upon being appointed
25 emergency financial manager?

1 A Well, there were several things. One of the first things
2 I did -- the week before I was appointed, there was what
3 people called a rollout, which was a series of press events
4 and stakeholder meetings throughout that week. I think the
5 week prior to me actually taking office on the 25th I engaged
6 in somewhere in excess of five dozen meetings and pressers,
7 as I've come to know them, but immediately upon coming into
8 the office on the 25th, I went to City Hall, and I started
9 asking the various consultants and experts who had been hired
10 before I got there -- a number of them had been hired as a
11 result of a consent agreement that was entered into in March
12 2012 and then a memorandum of understanding that was entered
13 into with the city in November 2012, so they were already on
14 the ground. In fact, I think Ernst & Young had been on the
15 ground for a year prior to that. And so I began meeting with
16 them to try to get a sense of the city's financial condition
17 and operational --

18 Q Did you -- I'm sorry. Did you meet with anyone other
19 than the advisors, Ernst & Young and --

20 A Oh, yeah. Prior to taking office, I had met with Mayor
21 Bing a couple of times in D.C., and I met with stakeholders
22 throughout the city and with members of -- I believe I met
23 with members of Treasury during that first week, too.

24 Q Did you meet with any union members?

25 A Yes. I set up a series of stakeholder meetings in that

1 first week. I met with each councilperson individually. I
2 met with members of the various uniform unions, some
3 nonuniform, while I was there. And I think the first thing I
4 did was to issue an order under the statute 72, which was due
5 to be overtaken by statute 436, Public Act 436 -- the
6 compensation and benefits of the City Council and the mayor
7 were going to be extinguished, so I think the first order I
8 did was restore their compensation and benefits by EM Order
9 1.

10 Q Did you meet with any of the city's pension boards?

11 A I think -- not that first week, but I think I met with
12 both pension boards at some point later that month.

13 Q Did you meet with any citizens?

14 A Oh, God -- oh, yes. Oh, good, yes, met with lots of
15 citizens, numerous stakeholders, civic leaders, faith
16 community ministers, business leaders, CEO's, many of the
17 pedagogical institutes, the presidents of some of the
18 universities, a lot of stakeholder meetings.

19 Q Now, you mentioned that you reviewed a couple of
20 agreements. Did you -- were there generally financial
21 records that you took a look at?

22 A There were financial and restructuring agreements. After
23 my initial approach in January, I went and reviewed several
24 press reports that had made various statements about the
25 upcoming law, but then after I decided to throw my hat in the

1 ring and become a serious candidate, I started pulling down
2 the actual public documents, and there are a lot of them.
3 The city had been in some form of financial review or
4 financial crisis from at least 2009. It had taken out \$250
5 million in addition to the 1.4 billion in 2005 and 2006. In
6 2009 it had taken out another -- 2010 it had taken out
7 another 250 million. In 2011 there was a Detroit review team
8 that was commissioned in December that issued a report the
9 following -- I believe the following January. The governor
10 issued another report, a lot of correspondence with Treasury.
11 I believe they entered into an escrow agreement in March of
12 2012, and then in -- later in April of 2012 they entered into
13 the financial stability agreement, also called the consent
14 agreement. There was a lot of correspondence going back and
15 forth since then. Subsequently, in November 2012, there was
16 a memorandum of understanding regarding the Detroit Reform
17 Program that was contained in the consent agreement. After
18 that in December 2012 another Detroit review team was
19 commissioned. They issued their report in 2013, I believe
20 February, and the governor issued his findings of fact in
21 March declaring a financial emergency. I hadn't looked at
22 all those -- the March document prior to taking the job, but
23 I looked at it -- I think maybe immediately prior to taking
24 the job, but my due diligence regarding the other documents
25 occurred between the January through early March time frame.

1 Q It sounds like you looked at a lot.

2 A I looked at a lot of documents. I found in each of those
3 documents there were two -- at least two review teams, and
4 each of them concluded that the review team process was a
5 precursor to the appointment of an emergency manager.

6 Q I'd like to ask you a few questions about those documents
7 in a little bit, but --

8 A Sure.

9 Q -- first I wanted to ask you, did you -- when you took
10 over the position, did you go out and visit the city when you
11 got here?

12 A Oh, yeah. I still do. I mean we -- there is quite a
13 robust outreach effort under the state's aegis and the MEDC
14 or others, Cadillac. Harvey Hollins in Urban Affairs helps
15 run that, and I would have meetings, sometimes two or three a
16 week, with various community groups and stakeholders.

17 Q And you went out and saw parts of the city?

18 A Yeah. Usually after work I'd ask to be driven around the
19 city. I sort of -- when I studied, the city had over 184
20 neighborhoods, in some of my briefing materials, and some of
21 the neighborhoods are very notable, Boston-Edison, East
22 Indian Village, Marina District, Milwaukee Junction. But the
23 city has a spoke system that goes out, Michigan, Grand River,
24 Woodward, Gratiot, and others, and I would sort of -- I've
25 done this when I've gone to other cities. I would sort of

1 methodically try to go through each neighborhood to get a
2 sense for the difference of the various neighborhoods and
3 their relationship to the city overall.

4 Q Based on those visits and the records that you were
5 looking at and your due diligence generally, what did you
6 come to learn about the services that the city was providing
7 to its residents?

8 A I had read that the services were substandard. As part
9 of my due diligence, if you'll call it, I had -- having been
10 an ex-federal government official, I went immediately to the
11 federal government resources, Bureau of Justice Statistics,
12 Department of Labor Statistics, Department of Commerce, the
13 census stats, some of which -- Michigan CRC or the State
14 Research Council, and it sort of compiled in my mind
15 academically a composite of the city and statistics about the
16 quality of service in addition to meeting with various
17 members, and the services reflected quite broadly in looking
18 at them what I had heard. They were substandard. Lights
19 were off in the city. I since came to know that almost half,
20 38,000 of 78,000 or so are off. Twenty percent of the city's
21 housing stock is in some form of blight, 78,000 dwellings out
22 of 390 roughly; that between the year 2000 and 2010 the city
23 lost 238,000 residents. That's the equivalent of a city the
24 size of Romulus, Allen Park, or Wyandotte leaving the city
25 every year. That was driving down tax revenue. That the

1 infrastructure not only appeared broken, but actually I'd
2 gone back and looked at some of the -- some of the press
3 reports about how the lights would go out, some during the
4 election in 2005, but other things along those lines.

5 Q I'm sorry. I didn't mean to interrupt, Mr. Orr, but what
6 did you -- what did you learn about the police department?

7 A Well, I'd known that the police department, like many,
8 New Orleans, L.A., and others, was under a consent decree --
9 actually, two, I think -- with the Department of Justice that
10 had spanned 12 years by the time I got here. I knew that
11 their fleet, roughly 1,300 vehicles, the majority of which
12 were quite old -- I had looked at BJ -- Bureau of Justice
13 Statistics stats, and typically a service vehicle runs three
14 years, 90,000 miles. Typically most police forces -- not
15 most but some lease those vehicles. Our fleet in some cases
16 had over 200,000 miles on them. Bumpers were literally
17 falling off. Paint was delaminating. They didn't have the
18 high tech that modern vehicles have. Our call rates -- our
19 response rates were low for a city that had been rated by
20 BJS, Bureau of Justice Statistics, as well as such sites like
21 Quizzle, which is an Internet neighborhood site, as being a
22 highly dangerous city subject to carjacking, violent crime in
23 the city and a highly armed populous. Basically everything
24 that I had read was substantiated in very stark relief once
25 you get out into the city. The call rates -- our officers

1 were on 12-hour shifts. When I met with the officers, DPLSA,
2 DPOA union, they explained to me how, you know, if you want
3 people to have court time to get at some of the perpetrators
4 and you keep them on a 12-hour shift, 24-hour day, they
5 barely have time to get home, take a shower, go to court, see
6 their families, and they're back on shift and that, as a
7 consequence, sometimes they miss shifts and that the
8 perpetrators, in addition to laughing at them as they drive
9 down the street, know that more than likely they're not going
10 to get the testimony they need and they're going to get off,
11 and they'll end up actually suing the city for false arrest
12 and recovering because the city settles many of its claims.
13 We don't have a very robust defense process in the city.

14 Q And how about the -- how about the fire department? Can
15 you give us some examples of what you learned there?

16 A Sure. I knew academically that the fire department had
17 an old fleet, but I've learned at 88 departments the
18 foundations were very poor. Our firemen were oftentimes
19 flowing the fires with inadequate equipment, equipment that
20 was broken, pumps on pumper trucks that didn't work, leaky
21 tanks in pumper trucks. Our ladders hadn't been certified
22 for a number of years because we didn't have the money to do
23 it. Since I was here, the mayor managed to get -- I think it
24 was State Farm to give us a donation to get our ladders
25 certified because otherwise you can't go to high-rise fires.

1 Many of our firemen had not been trained on the equipment, so
2 they were injuring themselves, such as standing on the ladder
3 as it went up and you cut your foot. Many of our firemen
4 were very frustrated both by lack of equipment and inadequate
5 training. In addition, they, too, were quite fatigued
6 because of the number of fire calls. I think it was 18,000
7 or so. Sixty percent are unnecessary. They're either to
8 abandon structures or blight or arson, so our firemen -- the
9 majority of our calls for our fire department are actually
10 false calls, but they're real because the buildings are
11 either on fire either through abandoned structure or through
12 intentional arson.

13 Q How about the --

14 THE COURT: Mr. Shumaker, we do have to stop now.
15 We're going to take a recess in a minute. I'm going to ask
16 everyone to remain seated while Mr. Orr leaves the courtroom,
17 so let's just sit here while he takes his leave, and we'll
18 see you Monday morning, sir. Stand by another moment,
19 please.

20 All right. So I'm going to take my leave now. Good
21 weekend, everyone. We'll see you Monday morning, 9 a.m.
22 until 5. I'm going to ask you to stay until our CSO's do
23 excuse you. I'm going to let you all go first, and my staff
24 and I will remain in chambers while you take your leave.

25 THE CLERK: All rise.

1 MR. SHUMAKER: Thank you, your Honor.

2 THE CLERK: Court is adjourned.

3 (Proceedings concluded at 5:03 p.m.)

4 * * *

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I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

November 2, 2013

Lois Garrett

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. October 28, 2013
Debtor. . 9:00 a.m.
.

HEARING RE. ELIGIBILITY TRIAL (CONTINUED)
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day
By: BRUCE BENNETT
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2452
(213) 243-2382

Jones Day
By: GEOFFREY S. IRWIN
GEOFFREY S. STEWART
GREGORY SHUMAKER
THOMAS CULLEN, JR.
MIGUEL F. EATON
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3768

Pepper Hamilton, LLP
By: ROBERT S. HERTZBERG
4000 Town Center, Suite 1800
Southfield, MI 48075-1505
(248) 359-7333

For the State of Michigan: State of Michigan
Michigan Department of Attorney General
By: MATTHEW SCHNEIDER
P.O. Box 30754
Lansing, MI 48909
(517) 241-8403

Dickinson Wright, PLLC
By: STEVEN G. HOWELL
500 Woodward Avenue, Suite 4000
Detroit, MI 48226-3425
(313) 223-3033

APPEARANCES (continued):

For AFSCME, Lowenstein Sandler, LLP
 AFL-CIO, and Sub- By: SHARON L. LEVINE
 Chapter 98, City JOHN K. SHERWOOD
 of Detroit 65 Livingston Avenue
 Retirees: Roseland, NJ 07068
 (973) 597-2374

For Detroit Clark Hill, PLC
 Retirement Systems- By: ROBERT D. GORDON
 General Retirement JENNIFER K. GREEN
 System of Detroit, 151 South Old Woodward, Suite 200
 Police and Fire Birmingham, MI 48009
 Retirement System (248) 988-5882
 of the City of
 Detroit:

Clark Hill, PLC
 By: RONALD A. KING
 212 East Grand River Avenue
 Lansing, MI 48096
 (517) 318-3015

For the Detroit Erman, Teicher, Miller, Zucker &
 Fire Fighters Freedman, P.C.
 Association, the By: BARBARA A. PATEK
 Detroit Police JULIE BETH TEICHER
 Officers Associa- DAVID EISENBERG
 tion and the 400 Galleria Officentre, Suite 444
 Detroit Police Southfield, MI 48034
 Lieutenants & (248) 827-4100
 Sergeants
 Association:

For the Inter- Cohen, Weiss & Simon, LLP
 national Union, By: BABETTE A. CECCOTTI
 UAW: PETER D. DECHIARA
 THOMAS N. CIANTRA
 330 West 42nd Street, 25th Floor
 New York, NY 10036-6976
 (212) 356-0227

APPEARANCES (continued):

For Detroit Silverman & Morris, PLLC
Retired City By: THOMAS R. MORRIS
Employees 30500 Northwestern Highway, Suite 200
Association, Farmington Hills, MI 48334
Retired Detroit (248) 539-1330
Police and Fire

Fighters Associa- Lippitt O'Keefe, PLLC
tion, Shirley V. By: RYAN C. PLECHA
Lightsey, and 370 East Maple Road, Fl. 3
Donald Taylor: Birmingham, MI 48009
(248) 646-8292

For the Official Dentons
Committee of By: CLAUDE D. MONTGOMERY
Retirees: ANTHONY B. ULLMAN
ARTHUR H. RUEGGER
1121 Avenue of the Americas
New York, NY 10020-1089
(212) 632-8390

Brooks, Wilkins, Sharkey & Turco, PLLC
By: MATTHEW E. WILKINS
401 South Old Woodward, Suite 400
Birmingham, MI 48009
(248) 971-1711

For Retired Strobl & Sharp, PC
Detroit Police By: LYNN M. BRIMER
Members MEREDITH E. TAUNT
Association: MALLORY A. FIELD
300 East Long Lake Road, Suite 200
Bloomfield Hills, MI 48304-2376
(248) 540-2300

For the Flowers Law Offices of William A. Wertheimer
Plaintiffs: By: WILLIAM WERTHEIMER
30515 Timberbrook Lane
Bingham Farms, MI 48025
(248) 644-9200

For Ambac Schafer and Weiner, PLLC
Assurance Corp.: By: DANIEL J. WEINER
40950 Woodward Avenue, Suite 100
Bloomfield Hills, MI 48304
(248) 540-3340

Court Recorder: Letrice Calloway
United States Bankruptcy Court
211 West Fort Street
21st Floor
Detroit, MI 48226-3211
(313) 234-0068

Transcribed By: Lois Garrett
1290 West Barnes Road
Leslie, MI 49251
(517) 676-5092

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transcript produced by transcription service.

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

3 THE COURT: Looks like everybody is here. Sir.

4 MR. CIANTRA: Good morning, your Honor. Thomas
5 Ciantra, Cohen, Weiss & Simon, LLP, for the UAW. Before
6 bringing the evidentiary motion that I would like to present,
7 I just have one or two housekeeping matters. We will be
8 providing the Court with binders with the separate UAW
9 exhibits tomorrow morning, with the Court's indulgence. We
10 haven't been able to get that pulled together as of yet.

11 THE COURT: Okay.

12 MR. CIANTRA: And I would also indicate that I guess
13 there are one or two additional exhibits that will be
14 included, short documents, in the binder from what the Court
15 has presently in the stack. So with the Court's indulgence
16 then, I would like to discuss the motion that I presented
17 during Mr. Moore's testimony and provide some additional
18 argument and record citation with respect to that.

19 THE COURT: I wonder if, in light of our schedule
20 today, it would be okay with you if we considered this
21 tomorrow morning.

22 MR. CIANTRA: That would be fine, your Honor.

23 THE COURT: Thank you very much. I just need an
24 assurance from someone that the work that I requested
25 regarding the exhibits has all been taken care of and we're

1 all -- we all have the same exhibit books with reconciled
2 exhibits and exhibit numbers.

3 MR. IRWIN: Good morning, your Honor. Ms. Ramirez
4 and I were in the courtroom yesterday, and we did our best to
5 reconcile exhibits with the materials we had, and my
6 understanding is that other objectors have brought new books
7 this morning. I won't speak for them, but as of yesterday I
8 thought that we had moved this along as best we could.

9 THE COURT: Okay. Sir.

10 MR. ULLMAN: Yes, your Honor. For the Retiree
11 Committee, our understanding is that everything has been
12 done. Either we did it on behalf of other objectors or some
13 of them have come in themselves and done it with the
14 exception of the UAW, which Mr. Ciantra explained.

15 THE COURT: Okay. Good. Okay. You may proceed
16 with the direct examination of Mr. Orr.

17 MR. ORR: Good morning, your Honor.

18 THE COURT: Good morning.

19 MR. SHUMAKER: Good morning, your Honor. Greg
20 Shumaker of Jones Day for the City of Detroit.

21 KEVYN ORR, DEBTOR'S WITNESS, PREVIOUSLY SWORN

22 DIRECT EXAMINATION (CONTINUING)

23 BY MR. SHUMAKER:

24 Q Good morning, Mr. Orr.

25 A Good morning, Mr. Shumaker.

1 Q Mr. Orr, on Friday afternoon when we last were here, I
2 believe you were sharing with the Court what you had
3 experienced regarding the city's provision of services upon
4 your arrival as the emergency manager. Do you recall that?

5 A Yes.

6 Q I believe I interrupted you, and you were sharing what
7 you had experienced in the area of emergency medical
8 services.

9 A Yes. I believe I was talking about an event at City Hall
10 where the president of one of the unions was late to a
11 meeting because since all of our ambulances were out
12 typically by 7:30, a citizen woman had a seizure in the 1st
13 floor, and he was the only one available to administer her.
14 That's anecdotal, but, more importantly, I think it's been
15 fairly well-reported that the EMS services have substandard
16 equipment. They are typically on a significant number of
17 calls every day. The policy of the unit is that if they're
18 called to an event, they are to transport the patient to a
19 medical facility. Oftentimes patients will call for things
20 such as, "I fell asleep, and my wrist is" -- "I feel asleep
21 on the couch, and my wrist is asleep," or, "I slipped, and I
22 hurt my ankle," to more serious injuries that are fairly
23 widely reported such as shootings and stabbings.

24 Q Thank you. What was the -- what did you learn about the
25 city's streetlight situation?

1 A Here again, as has been widely reported, as in our June
2 14th presentation, roughly 40 percent plus of our lights are
3 out, 38,000 over some 78,000 roughly. Large sloughs of the
4 city are unlighted. More importantly, it's not just that the
5 lights are out. The city infrastructure is somewhat
6 destroying it, I've been informed. There are lights that are
7 either above ground -- there are switches that are below
8 ground. To replace the switches sometimes below ground
9 requires excavation and a plan. It is significant. A lot of
10 our deferred maintenance has caused us to be, shall we say,
11 very much behind the technology curve in terms of the quality
12 of our lightings, whether they're still 1970s vintage
13 gaslights as opposed to LED, which provide more lights and
14 last for up to 15 years, for instance, therefore, reduce your
15 replacement cost. Our grid and our lighting is so old that
16 typically PLD is very -- Public Lighting Department is very
17 overworked, and, in fact, many private contractors' insurance
18 companies and policies won't allow them to work in our
19 lighting grid.

20 Q And how does that compare to other municipalities?

21 A We've done some analysis to other municipalities. I
22 don't think there's any other municipality considered a large
23 city, generally over 500,000 or so, that has as -- is as
24 unlit as we are citywide.

25 Q What were your observations about blight in the city?

1 A Blight is endemic. It's apparent. If you drive in on
2 94, take out the Lodge or go to any street in the city, it's
3 very clear, commercial and residential. We have 78,000
4 buildings. That's roughly 20 percent. 390,000 I think is
5 our total housing stock. That's roughly 20 percent of our
6 housing stock. No other city has that footprint. Our lots
7 are about 66,000, which are quite significant, and it's not
8 just the fact that there's blight. It's that the blight has
9 been here -- working its way here for 60 years but more
10 acutely in the past 15 to 20 years. There are trees growing
11 out, growing on top of roofs, growing out of roofs. They are
12 an attractive nuisance in the old language. Crime, rapes,
13 dead bodies, and not to mention the impact it has on our
14 residents and particularly our children. The Skillman
15 Foundation did a study of our schoolchildren and asked them
16 how they felt. Fifty percent responded they were afraid.
17 And when it asked them what they're afraid of, they said
18 everything. When they asked them how they coped with it,
19 they said they usually picked up a stick or a rod on their
20 way to school and on the way back because that's the way they
21 could protect themselves given what they had to walk through
22 to public school busses to get to school.

23 MR. DECHIARA: Objection. Hearsay.

24 THE COURT: Overruled. Go ahead, sir.

25 THE WITNESS: That's what they had to walk through

1 to get to the bus stop for school. It's been widely
2 reported.

3 BY MR. SHUMAKER:

4 Q Your impression of any of the other city services that
5 made an impact on you?

6 A Well, virtually all city services are generally
7 considered not where they should be. Our city workers work
8 very hard for the most part to try to work through the
9 substandard level of services, whether it's in tax
10 collection, assessments, blight remediation, lighting. Our
11 power grid -- we have a power grid that costs the city about
12 \$30 million a year. There are 115 customers on that grid.
13 Only five of those customers are residential, so we subsidize
14 power for about a hundred commercial and institutional uses.
15 Our grid -- in fact, the grid in City Hall is so old that
16 most providers, such as DTE, will not allow their workers --
17 because of various pernicious effluent that's down there,
18 asbestos and the like, will not allow them to go down into
19 the grid because it's too dangerous. We have 38 stations and
20 one power factory, Mistersky, which is obsolete. Our
21 stations are sorely in need of repair. Our grid is a
22 patchwork of repairs that we tried even earlier this year --
23 the grid went out for a period of time, which was not
24 necessarily the grid. It was that we were running a test,
25 and the test tripped the grid because it is so sensitive that

1 it turned off the lights for two and a half days.

2 Q During this time, as you were becoming familiar with the
3 city's services, did anyone ever come up to you and say that
4 the services were adequate?

5 A No one has ever said that the services are adequate for
6 the City of Detroit.

7 Q Have you done anything to address the problems you've
8 described?

9 A Yes.

10 Q What are they? What are they?

11 A When we came in, we did an assessment in the first 30
12 days to try to get to the real meaning of things. I sat
13 down, as I said before, with a number of stakeholders,
14 including all the City Council people. I tried to restore a
15 sense of normalcy in the city by restoring compensation to
16 the mayor and the City Council and then delegating authority
17 to them to do most of the business of the city in the
18 ordinary course, and then we began our assessment of the city
19 operations. Many of the contractors -- in fact, all of them
20 with the exception of Jones Day, the principal restructuring
21 contractors -- Milliman, Ernst & Young, Conway MacKenzie, and
22 Miller Buckfire were hired before 2013 to start assessing the
23 city's needs and restructuring, and they were already well
24 along their way of preparing reports. I started reviewing
25 those reports and discussions, and I found out that much of

1 the city's structure needed to be reinvented, so we started
2 out looking at lighting. We have since authorized the Public
3 Lighting Authority. We found some money after the June 14th
4 default on the COPs payment. We have created a \$12 million
5 fund to get the Lighting Authority stood up with cash. We
6 also found \$1.8 million for them to have an operational
7 budget so they could run -- they are due to have two
8 demonstration projects up and running in terms of relighting
9 the city by the end of this year. We are going through the
10 process of a bond issuance to get them additional tranches of
11 money to provide a lighting plan for the entire city. We
12 stood up a Detroit Land Bank Authority and in conjunction
13 with MSHDA, the Michigan State Housing & Development
14 Authority, created a fast-track authority so that we could
15 deal with blight. One of the things we found was that on the
16 City Code for the better part of 30 years there was the
17 ability to declare a blight emergency in addition to the
18 powers that I have under 436, so under that existing
19 authority we put those two together, and we abolished for a
20 time, being through the rest of this year, the requirement
21 for Class B licenses -- that is, the demolition of structures
22 35 feet or lower -- so that we could get at residential
23 blight in an expedited basis, expedited process, and allow
24 other contractors who are licensed by the state, although not
25 licensed by the city, to come into the city to help us with

1 blight remediation as quickly as possible.

2 We also began looking at the same process for Class
3 A licenses -- that is usually commercial or higher
4 structures, 35 feet or higher -- so that we could fast-track
5 the blight. And most recently we appointed a chief land
6 officer in conjunction with the federal government to try to
7 use some of the hardest hit funds, which are funds designated
8 directly for blight, to get to blight.

9 We began looking at city services, and particularly
10 the revenue drivers, for tax collection. For instance,
11 cities like Albion, Michigan, have a memorandum of
12 understanding with the Department of Treasury whereby they
13 will assist the city to collect some of its taxes. That's
14 been in existence since 1997. One of the things in the
15 financial stability agreement and the MOU that the city
16 agreed to was that they would look at that. We've assigned a
17 taskforce to find ways to enter a similar situation so that
18 we can have enhanced tax collection.

19 We hired a new police chief, went through a fairly
20 long and competitive process to get him here. He has opened
21 up -- he may have testified -- I'm not sure, but I suspect he
22 testified that he's opened up eight precincts that were
23 closed. We had these virtual precincts where citizens after
24 dark would have to go to a blue phone in order to get
25 service. If there was an incident on the east side, for

1 instance, they may have to go as far as ten miles to file a
2 report in the dead of night, oftentimes a victim being chased
3 by a perpetrator or alleged perpetrator. We've opened up
4 those. We flowed new money to the police force in addition
5 to the hundred cars that the philanthropic and civic
6 community donated on March 25th, the day I started. We have
7 since purchased another 50 cars and have another 50 on order
8 for a total of a hundred, so we get new vehicles going to the
9 street. We recently restructured the police department so
10 that you have more line authority pushed down as opposed to a
11 third of the department being involved in clerical work.
12 We're getting more officers on the street.

13 We've looked at a number of remediation plans also
14 for city-owned property, city-owned land, parking lots. We
15 also issued a number of orders focused on dealing with
16 efficiency within the city and have a number of different
17 things in the works as we speak.

18 Q What level of services are you trying to get to with
19 these efforts?

20 A We're under no illusion that given the long term that
21 it's taken the city to get here and the fact that the
22 specifics of what's required by the city have been discussed
23 in detail since 2010, that we're going to get to an A+ or
24 honors level of services. We're trying to get to an average
25 level of services, one that's acceptable, a C, C+.

1 Q Okay. On Friday you shared with the Court your efforts
2 to get on top of the financial condition of the city and --

3 A Yes.

4 Q -- review of certain financial records. I want to ask
5 you is it fair to say that part of your job responsibilities
6 as the emergency manager is to understand the city's
7 financial condition?

8 A Yes.

9 Q And have you become familiar with the city's records --

10 A Yes.

11 Q -- financial records?

12 A Yes.

13 Q You understand how they operate?

14 A Yes.

15 Q You're in charge of implementing them?

16 A Yes.

17 Q One of the agreements that you referred to was something
18 called the consent agreement. Do you recall that?

19 A Yes.

20 Q I'd like to show you what is the consent agreement, which
21 is Exhibit 23, and it has been admitted into evidence. It
22 should appear on your screen there.

23 A Yeah. It's quite small.

24 Q Allow you to get your glasses on. Is that what you're
25 trying --

1 A Yeah. Okay.

2 Q And is that -- that document is entitled the "Financial
3 Stability Agreement"; correct?

4 A Yes.

5 Q And is that the agreement you understand as the consent
6 agreement that you've testified about?

7 A I'm assuming this is the May 4th, 2012, financial
8 stability agreement.

9 Q We can get you a copy.

10 A No. If that's the document, yes.

11 Q You recognize it?

12 A Yes, I do.

13 Q What was your understanding of the consent agreement?

14 A The city, starting with the 2009 collateral pledge
15 agreement, June 15th, 2009, had experienced a number of
16 financial upheavals, if you will, consistently throughout
17 2009 and 2010. The city again borrowed almost a quarter of a
18 billion dollars to try to stem those upheavals in addition to
19 the \$1.4 billion that was borrowed in 2005 and 2006 and the
20 \$250 million that was borrowed in 2006 in addition to the
21 1.4. And this document was a result of a financial review
22 team examination of the city that was begun in December 2011
23 and I believe in January or February 2012 found that the city
24 was in financial distress. That finding by the financial
25 review team also found that -- I think that finding or the

1 governor's recommendation in 2011 found that that finding was
2 a precursor to the appointment of an emergency manager. This
3 document grew out of the requirement that the city, as a
4 result of the finding by the financial review team, engage in
5 certain specified things to correct the endemic and
6 widespread problems -- financial problems of the city --
7 would be required to agree to certain metrics to correct
8 those on a very short time frame as embodied in this
9 document, and I think it has five appendices as well.

10 Q Let me ask you about that, but who signed this agreement?

11 A This agreement was signed by four parties. It was signed
12 by Deputy Mayor Kirk Lewis; the mayor, Dave Bing. It was
13 signed by the governor and the treasurer.

14 Q And do you have -- and when was this? When was that
15 signed?

16 A This was April 2012, April 5th, 2012, I believe. I think
17 it's on the document somewhere.

18 Q And what did you understand the state's obligations to be
19 under the consent agreement?

20 A In one of the appendices, it spells out -- I think the
21 last one maybe, the fifth one, DRE -- it spells out certain
22 specified obligations that the state is going to do in
23 consideration for the city meeting certain metrics, fairly
24 widespread, regarding both finances, revenue projections,
25 estimation and metrics, operations, and long-term

1 liabilities.

2 Q And what were the city's obligations under that
3 agreement?

4 A The city, in a series of appendices to the document,
5 undertook about 40 obligations. Oftentimes when this
6 document is referred to, people refer to the 21 obligations
7 in Appendix B, but that's incomplete. The city, in Appendix
8 C and D as well, I believe, undertook certain specified
9 obligations in detail. In Appendix B, for instance, for the
10 operational reforms, there were 21 specific requirements,
11 some having to do with payroll, having to do with collective
12 bargaining agreements, having to do with revenue estimation,
13 having to do with the Water Department, and then in the other
14 appendices there were obligations having to do with finance
15 and metrics and so on and so forth.

16 Q What was your understanding of whether the city complied
17 with those obligations specified in the appendices you
18 referred to?

19 A When I got here, the city had undertaken one of them. I
20 believe in November 2012 they entered into a four-year, \$32
21 million, ADP contract. And I think there were one or two
22 more in Appendix B that were ongoing.

23 Q And those are the only ones that were complied with?

24 A Essentially, those were the only ones in any demonstrable
25 form that were ongoing, yes.

1 MR. SHUMAKER: Can you put up -- Laurie, can you put
2 up Annex B at the back of that exhibit?

3 BY MR. SHUMAKER:

4 Q Are these the obligations of the city that you were
5 referring to, Mr. Orr?

6 A Yes, they are.

7 Q And you indicated that the city had made progress on one
8 or two of these?

9 A Yes. I believe there were demonstrable ones. There was
10 a demolition effort. There was health and wellness
11 department changes. I believe a privatization effort was
12 ongoing. There was -- I believe I also said payroll was
13 involved. Those were the ones that were ongoing at the time.

14 Q Now, you -- and then you also were referred to Annex D.
15 Can you put that up?

16 A Yes. I would also say on Annex B there was an effort to
17 procure technical assistance from the federal Department of
18 Housing & Urban Development regarding grants management.

19 Q Here's Annex D.

20 A Yes.

21 Q These are some of the additional obligations of the city?

22 A Yes. Those are the ones I referred to about collective
23 bargaining agreements.

24 Q Now, you also testified on Friday about another
25 agreement. I believe you referred to it as the milestone

1 agreement.

2 A Yeah. That agreement is called the milestone agreement
3 or the memorandum of understanding regarding the Detroit
4 Reform Program.

5 Q And how did the milestone agreement and the consent
6 agreement relate?

7 A The consent agreement, which was entered into in April
8 2012, also had two phases for Detroit Reform and certain
9 specified metrics that the city was to undertake. Phase one
10 of Detroit Reform was specified in some of the appendices to
11 that agreement. Throughout that year apparently -- I wasn't
12 here, but as I understood through reading through the
13 documents and talking to people, the city had failed to meet
14 some of those requirements within six or seven months of
15 entering into the consent agreement, so the memorandum of
16 understanding was negotiated and designed as a consideration
17 for the city to get access to another \$137 million in
18 financial stabilization bonds later that year, and that's
19 commonly referred -- I believe that was in November 2012, and
20 that's commonly referred to as the memorandum of
21 understanding.

22 Q I'd like to show you another document that's in evidence,
23 which is Exhibit 7, and ask you if you recognize -- that's
24 the cover page.

25 A Yes.

1 Q Do you recognize that document?

2 A Yeah. November 13th, 2012.

3 Q Is that the milestone agreement you referred to?

4 A Memorandum of understanding or milestone agreement.

5 Q And who signed the milestone agreement?

6 A Well, the milestone agreement had the signatures of the
7 treasurer, Andy Dillon; and then the finance director for the
8 city, Cheryl Johnson; the program director at that time for
9 Detroit Reform, Kriss Andrews; and the chief financial
10 officer, Jack Martin.

11 Q Did the Detroit City Council have anything to do with
12 this document?

13 A Yes. The Detroit City Council approved aspects of this
14 agreement in two resolutions, one by a vote of 6-0, and one
15 says by a vote of 9-0, but I noticed that there's no check --
16 I thought there was no check for the president pro tem.

17 Q And what was your understanding as to whether the city
18 had met its obligations under the milestone agreement?

19 A When I came on board on March 25th it had not. The city,
20 however -- all the understandings -- as a component for this
21 agreement, my understanding that is from 2010, 2011, and then
22 in stark relief starting in December 2011, it became apparent
23 that the city was in severe financial distress. This
24 agreement, I believe, was a result of the city failing to
25 comply with some of its obligations in the appendices to the

1 MOU. At this time, the city needed additional cash for
2 operations, so the state used some of its authority to
3 support the city in a bond issuance for 137 million. I
4 believe from time to time it's referred to as a net of 129
5 million or so less fees and costs. In order for the city to
6 have access to that cash, that cash was supposed to both fund
7 operations but also assist the city in going forward with
8 some of the reform that was specified in the MOU -- not MOU,
9 in the consent agreement. This agreement also had certain
10 specified obligations of the city to change some of its
11 procurement obligations but also to retain financial
12 professionals to assist the city and to use the proceeds of
13 that bond issuance in part, after the retention of those
14 professionals, as a condition to using the money.

15 Q And the city was unable to comply with the conditions of
16 this agreement?

17 A The city was able to comply with the conditions of the
18 agreement for the retention of an actuary, Milliman; for
19 Ernst & Young, who had already been doing work as a city --
20 as its accountant but also for a restructuring effort; for
21 Conway MacKenzie for operational restructuring; and, although
22 not specified by name, I believe by December of this year the
23 return of the Miller Buckfire firm. And it also retained
24 local counsel in the guise of Miller Canfield to assist with
25 the restructuring.

1 Q How about with regard to the rest of the agreement? How
2 is the city's compliance?

3 A The city had not complied with more or less the
4 balance -- as I understood it from reading the documents, the
5 balance of the rest of the agreement.

6 Q Did this lead to any consequences for the city?

7 A Yes. Less than approximately a month later, another
8 Detroit review team two was commissioned after finding the
9 city was in financial -- I think it went from financial
10 distress to severe financial crisis. That review team spent
11 the holiday season, I believe, December and January,
12 reviewing the city's restructuring efforts, and in February
13 2013 I think it issued a report to the governor finding that
14 the city was in a financial emergency.

15 Q And is it that financial emergency that led to your
16 appointment as emergency manager?

17 A Well, that February 2013 Detroit review team report,
18 again, as in the prior Detroit review team, report number
19 one, in 2012, specifies that the finding of that emergency is
20 a precursor to the appointment of an emergency manager.

21 Q Is that financial emergency still in effect?

22 A Yes.

23 Q I want to ask you about a couple of other things about
24 the city's finances aside from the consent agreement and the
25 milestone agreement. upon your arrival as emergency manager.

1 What did you learn about the city's cash situation when you
2 got here? When did you arrive? Let's start there.

3 A As I said, I took office March 25th under Public Act 72
4 as the emergency financial manager, and then effective March
5 28th I became the emergency manager under Public Act 436.

6 Q And on March 25th, March 28th, that time period, what did
7 you learn about the city's cash situation?

8 A The cash situation was dire. The city was on a billion
9 dollar budget roughly. The city was by, I believe, the
10 middle of June -- it gets a little bump in the year from cash
11 collections that it holds onto, but by the middle of June,
12 the city was going to have on hand somewhere in the
13 neighborhood of only \$7 million.

14 Q How about the revenue situation upon your arrival?

15 A Revenue situation was, likewise, trying. The city's
16 revenues had seen a period of decline in the past ten years.
17 That's well-documented. I think it's in my June 14th report.
18 And, likewise, the revenue collections were still
19 challenging, and so there was no hope that the revenues were
20 going to in some fashion make up for the shortfall in terms
21 of the cash flow.

22 Q How about the city's liabilities at that time?

23 A The city's liabilities were significant. I had read as
24 part of my due diligence before taking the job that the
25 various statements of liability began in 2011 as all-in

1 liability, meaning both legacy costs and bond debt. At 12
2 billion in 2012, that grew to 14 billion. Between my
3 appointment and within a few weeks after that, it became that
4 the liability was approximately \$4 billion larger than that,
5 about \$18.5 billion total. That's the long-term capital
6 liabilities, but also the city's operational liabilities were
7 quite significant, and we were not taking in enough cash to
8 meet operational obligations.

9 Q Do you recall your general reaction upon learning all
10 this about the cash and the liabilities and the revenue?

11 A Yeah. I knew things were bad. It was somewhat shocking
12 just how dire it was. In fact, I think within a few weeks of
13 coming on board or just prior to the June 14th presentation,
14 I was informed that several of our employees had their checks
15 bounce. They negotiated them later that day, but our cash
16 flow on any given day was so tight that it was unclear we'd
17 have sufficient cash on hand to meet payroll; that some of
18 our obligations with regard to our contractors as well as our
19 other suppliers were routinely pushed out beyond what should
20 be an average 30-day or 45-day net period between the
21 invoicing to the payment, oftentimes 180 days or greater;
22 that there was no plan in place to remediate the situation
23 and that the city was bumping along in the ordinary course in
24 a very dire set of circumstances.

25 Q During this initial time frame, did the emergency manager

1 statute require anything of you?

2 A Yes. The emergency manager statute imposes upon me
3 certain obligations with regard to reporting. I think the
4 first report I had due was the 45-day report, and then I was
5 obligated to have a public meeting within 30 days of issuing
6 that report.

7 Q Let me show you an exhibit, which is Exhibit 75. It's in
8 evidence.

9 A Yes.

10 Q And you see that document, sir?

11 A Yes.

12 Q And is that the 45-day plan that you just referred to?

13 A Here again, assuming -- without reviewing the entire
14 document, yes, that's the May 12, 2013, financial and
15 operating plan.

16 Q Okay. Did you have anyone help you in putting together
17 that plan?

18 A Yes, absolutely.

19 Q And who was that?

20 A My entire team, restructuring team, as well as members of
21 the city staff working with them, so that would be the
22 accountants, the operational consultants, the investment
23 bankers, the attorneys, as well as people in the finance
24 department and operational departments of the city.

25 Q And this is a public document; correct?

1 A Yes, it is.

2 Q And obviously the document speaks for itself, but could
3 you summarize generally what you concluded in this initial
4 45-day plan?

5 A Generally, we gave a snapshot of what we thought was the
6 city's true financial condition. We both spoke to it in
7 terms of spreadsheets but also a series of charts as far as
8 demographic changes, crime rate, financial collections,
9 expenditures, a number of debt issuances over and above the
10 operational revenue collection in the document, and some of
11 the key operational issues such as public health, safety, and
12 welfare dealing with police, fire, EMS, and city operations.

13 Q And do you recall this plan containing cash flow
14 projections?

15 A Yes.

16 Q Who put those together for you?

17 A Those would have been put together by a combination of
18 the finance team and restructuring team, Ernst & Young,
19 probably Miller Buckfire to a degree, attorneys probably
20 lesser.

21 Q Okay. And were those put together at your direction?

22 A Yes.

23 Q Okay. I'd like to show you page 40 of this exhibit.

24 MR. SHUMAKER: If you could blow up the chart,
25 Laurie.

1 THE WITNESS: Thank you.

2 BY MR. SHUMAKER:

3 Q Mr. Orr, could you tell the Court what this is?

4 A Yes. This is a document that shows monthly cash flow as
5 a forecast -- that is, not actual numbers -- based upon
6 anticipated revenue collections and projections, property
7 tax, income tax, gaming revenue, municipal service fees from
8 casinos, state revenue share, other receipts and refinancing
9 proceeds. It also shows disbursements, which include
10 payroll, benefit costs, other distributions, summarizes total
11 disbursements. It shows what our net cash flow -- that is,
12 disbursements over revenue -- and then it shows what our cash
13 balances are going forward.

14 Q And that line near the bottom, cash net of distributions,
15 what is that?

16 A That line shows what cash we would have after all the
17 distributions were made. And as a forecast issue, it shows
18 what cash we would have at the end of the year, December
19 2013.

20 Q And your reaction upon receiving these cash flow
21 projections?

22 A A high degree of concern. Essentially, this document in
23 our analysis showed that we would have \$900,000 at the end of
24 the year, which is below a margin of error for a billion
25 dollar budget, so it essentially showed that we either would

1 have no money or would be negative in terms of cash flow.

2 Q And this plan, again, was issued on May 12th; is that
3 right?

4 A On May 12th. It's my financial and operating plan on May
5 12th.

6 Q I'd ask you to turn -- I want to show you page 2 of that
7 plan. There's a paragraph right at the bottom that carries
8 over to page 3.

9 A Yes.

10 MR. SHUMAKER: And I'd ask if you'd put that up,
11 too, Laurie. If you could blow up that paragraph, please.

12 THE WITNESS: Thank you.

13 BY MR. SHUMAKER:

14 Q Mr. Orr, I'd like you to read that --

15 A Yes.

16 Q -- for the Court. This was your conclusion, correct, one
17 of --

18 A Yes.

19 Q -- your observations?

20 A Yes. As of --

21 Q What was that?

22 A Well, it says as of April 20 -- would you like me to
23 summarize it or --

24 Q Please do.

25 A -- actually read it?

1 Q You can read it.

2 A Okay. Okay. As of April 26, 2013, the city had actual
3 cash on hand of 64 million but had current obligations of 226
4 million to other funds and entities in the form of loans,
5 property tax distributions, and deferred pension
6 contributions and other payments. Therefore, the city's net
7 cash position was a negative \$162 million as of April 26,
8 2013. The city has been deferring and will need to continue
9 to defer payments of its current obligations in order to
10 avoid running out of cash.

11 Q Is that an accurate summary of the city's cash flow
12 situation at that time?

13 A Yes.

14 MR. SHUMAKER: Let me ask you, Laurie, to put up
15 page 26, and that paragraph, if you could blow it up for
16 Mr. Orr, please.

17 BY MR. SHUMAKER:

18 Q Mr. Orr, do you recall this entry into the -- in the
19 plan?

20 A Yes.

21 Q Would you read that for the Court?

22 A The City of Detroit continues to incur expenditures in
23 excess of revenue despite cost reductions and proceeds from
24 long-term debt issuances. In other words, Detroit spends
25 more than it takes in. It is clearly insolvent on a cash

1 flow basis.

2 Q Was this your view as of May 12th of the city's cash
3 situation?

4 A Yes, it was.

5 Q And you indicated that this document was publicly
6 released. Did anyone after you released it come up to you in
7 any forum at any time and dispute whether the city was
8 insolvent?

9 A No one on a serious basis has ever disputed to me that
10 the city was insolvent.

11 Q Mr. Orr, do you recall giving an interview at or about
12 the time that this plan was released?

13 A I gave several interviews.

14 Q There was an interview by WWJ News Radio. Do you recall
15 talking to them?

16 A Yes.

17 Q I'm going to read you a quote that -- you were asked a
18 question, and you were quoted as saying, quote, "The public
19 can comment, but it is under the statute. It is my plan and
20 it is within my discretion and obligation to do it. This
21 isn't a plebiscite. We are not, like, negotiating the terms
22 of the plan. It's what I'm obligated to do," unquote. Do
23 you recall giving that quote?

24 A On May 12th?

25 Q On May 12th.

1 A Yes.

2 Q What plan were you referring to when you were saying that
3 it was a plebiscite?

4 A There's only been one plan. It's the financial and
5 operating plan.

6 Q The plan you issued on May 12th?

7 A Yes, the May 12th financial and operating plan. That's
8 the only document I've referred to as a plan.

9 Q And what did you mean when you said that?

10 A That it was my statutory obligation to issue the
11 financial and operating plan and that this wasn't a document
12 to be negotiated. It was supposed to be a true summary and
13 public disclosure of the city's true state of affairs.

14 Q You indicated that after releasing the 45-day plan that
15 the emergency manager statute obligated you to have a public
16 informational meeting; is that correct?

17 A Yes.

18 Q And how soon after the plan came out were you supposed to
19 do that?

20 A I was obligated to have that meeting within 30 days of
21 the publication of the financial and operating plan.

22 Q Did you conduct such a meeting?

23 A Yes.

24 Q When did you have that meeting?

25 A June 10th, 2013.

1 Q Where was it held?

2 A Wayne State University auditorium.

3 Q Who was in -- I'm sorry.

4 A The exact name of the auditorium escapes me, but it was a
5 large auditorium at Wayne State.

6 Q Who was invited?

7 A The public was invited.

8 Q And how many people attended?

9 A I believe it was perhaps 200. I know there was an
10 overflow crowd, and some people couldn't get in, but the
11 auditorium was full.

12 Q What was the thrust of your message at that meeting?

13 A The thrust of my message -- I think I took some of the
14 slides from the May 12th financial and operating plan and
15 used them as a slide deck in a presentation of the meeting to
16 take the community through the financial and operating plan
17 on a graphic basis as opposed to having to slough through the
18 narrative and the spreadsheets. But it was basically a
19 graphic depiction of the information we had contained in the
20 financial summary of the information we had contained in the
21 financial and operating plan. I also said that we would have
22 to be making some very difficult decisions within the next 30
23 to 60 days. I think I mentioned that there were some
24 powerful tools at my disposal, both the Public Act 436 as
25 well as Chapter 9, but I would prefer not to use Chapter 9;

1 that I was certainly making an overture -- I think I even
2 said an open hand -- for proposals from interested parties,
3 but that time was moving quite quickly, and I was going to
4 have to make some decisions because the city had been going
5 through this process in one form or another for the prior
6 almost two years.

7 Q You mentioned you showed some slides at that meeting; is
8 that correct?

9 A Yes.

10 Q Okay. I'd like to show you a document that is not in
11 evidence yet, so I don't want it to be shown on the screen,
12 but I would refer you to the book of the city's exhibits,
13 Exhibit 41.

14 A One marked "City"?

15 Q Yes, sir.

16 A Okay.

17 Q Again, that's 41.

18 A Okay. Yes, sir.

19 Q You have it?

20 A Yes, I do.

21 Q If you'd take a look at it, are you familiar with that
22 document?

23 A Yes.

24 Q Did you prepare it?

25 A Yes, with my team, yes.

1 Q Is that the one you showed at the meeting?

2 A Yes.

3 MR. SHUMAKER: Your Honor, we would move to
4 introduce Exhibit 41 into evidence.

5 THE COURT: Any objections?

6 MR. ULLMAN: Your Honor, to the extent that it
7 contains the projections, we have the same objections as
8 previously. I don't believe they were prepared by Mr. Orr
9 personally.

10 THE COURT: Right. I wonder, counsel, if you would
11 have any objection to me giving the objecting parties a
12 continuing objection on that issue so that they don't have to
13 rise and restate that every time.

14 MR. SHUMAKER: Certainly.

15 THE COURT: Is that all right with you, sir?

16 MR. ULLMAN: Thank you, your Honor.

17 THE COURT: All right. That objection is overruled.
18 This document is admitted into evidence.

19 (Debtor's Exhibit 41 received at 9:40 a.m.)

20 THE COURT: You may proceed.

21 MR. SHUMAKER: Thank you. Laurie, if you could put
22 41 up -- you've done that. Thank you.

23 BY MR. SHUMAKER:

24 Q Mr. Orr, what is the -- are there any differences between
25 this slide presentation and the 45-day plan that you were

1 just discussing?

2 A No. These graphs were generally contained in the 45-day
3 financial and operating plan with the exception of the graph
4 contained at page 8, which is a graphic depiction of the cash
5 flow projections we went over in the financial and operating
6 plan.

7 MR. SHUMAKER: Laurie, could you put up page 8,
8 please?

9 BY MR. SHUMAKER:

10 Q And could you tell the Court what this is, Mr. Orr?

11 A Yes. This is a graphic depiction of the short-term cash
12 flow projections from January 13 through December 13.

13 Actually, by the time this document was prepared, the ones
14 through approximately April, May, were actual numbers, and
15 the projections went forward as they did on the spreadsheet
16 on the financial and operating plan. The dark blue line
17 shows the cash balance with deferrals -- that is, the
18 payments we weren't making for either long-term liabilities
19 or pension contributions -- and the light blue line shows
20 what it would have been like -- the city's financial
21 condition would have been like if we had not made those
22 deferrals.

23 Q Okay. And when you say "deferrals," what do you mean?

24 A We weren't paying the money. When we say "deferral,"
25 it's just another way of saying we weren't making the

1 payments.

2 Q And what weren't you paying?

3 A We weren't paying a hundred million dollars of pension
4 payments that year. I think there were some deferrals with
5 regard to some reimbursable accounts that we weren't paying.
6 There are a number of different things that we weren't paying
7 at that time.

8 MR. SHUMAKER: Laurie, could you put up page 1,
9 please?

10 BY MR. SHUMAKER:

11 Q Mr. Orr, could I ask you to take a look at -- this is
12 page 1.

13 A Yes, um-hmm.

14 Q Could you read that slide for the Court?

15 A Yes. Detroit spends more than it takes in. It is
16 insolvent. It has borrowed hundreds of millions of dollars
17 and has deferred just as much in obligations in order to
18 support city operations. This path is not sustainable.

19 Q Do you believe that statement was true and accurate when
20 made?

21 A Yeah. I think actually this was one of the slides that I
22 personally worked on, yes.

23 Q Okay.

24 MR. SHUMAKER: Can we go to page 13 of that, Laurie?

25 BY MR. SHUMAKER:

1 Q Do you recognize this page, Mr. Orr?

2 A Yes.

3 Q Could you tell us what that is --

4 A Well --

5 Q -- what you were intending to convey with that?

6 A What we were -- we were trying to say that we are
7 currently evaluating options to adjust -- in other words, to
8 either not pay or adjust our funded debt obligations to
9 better fit our cash flow projections, which include a number
10 of arrangements, such as rescheduling principal amortization
11 without reduction in principal; that is, how you would pay
12 the obligations that you owe without actually reducing the
13 total amount, permanently reducing the principal amount of
14 debt outstanding. That means giving someone a haircut.
15 We're not going to pay. If we owe you a dollar, we're not
16 paying a dollar. Reducing interest rates. If we owe you a
17 dollar at credit card interest rates of 23 percent, we're not
18 going to pay that to achieve cost savings or compensate for
19 loss, extended principal, and issuing debt to provide for
20 certain cash recoveries to other creditors; that is,
21 refinancing high-cost debt with lower-cost debt to reduce our
22 obligations.

23 Q And you presented each of these slides at the meeting?

24 A Yes, yes.

25 Q Was there an opportunity at the end of that meeting on

1 June 10th for the audience members to ask questions?

2 A Yes.

3 Q Did you answer them?

4 A Yes.

5 Q Did anyone at that time or any subsequent time come up to
6 you after the meeting or at the meeting and say that the city
7 wasn't insolvent?

8 A No. Most of the people who came up to me after the
9 meeting expressed a level of shock. They hadn't -- some of
10 them hadn't seen this before, and some actually expressed
11 some gratitude for finally disclosing the true state of
12 affairs. I think some of those comments I saw on video feeds
13 either in newspapers or on You Tube.

14 Q You had another meeting a few days later; correct?

15 A Yes.

16 Q June 14th?

17 A Friday, June -- yes. This meeting was Monday, June 10th,
18 and then we had the June 14th meeting for creditors.

19 Q Okay. I'd like to refer you to two documents in
20 evidence. One is Exhibit 43, and if you could refer to that
21 in your binder.

22 A Yes.

23 Q And then also 44, so one is entitled "City of Detroit
24 Proposal for Creditors," and the other one is entitled "City
25 of Detroit Proposal for Creditors Executive Summary."

1 A Yes.

2 Q Could you share with the Court what the difference is
3 between those documents?

4 A The substance of the documents is essentially the same.
5 44, the executive summary, is basically a shortened or
6 truncated version of Exhibit 43. We'd refer to them as the
7 small slide deck and the large slide deck, but they're both
8 the proposal for creditors that was presented to creditors on
9 Friday, June 14th. I believe we gave the executive summary
10 out either at or during the meeting and then gave the larger
11 deck out at the conclusion of the meeting.

12 Q Okay. And so during the meeting, the executive summary
13 slides is what was shown to the audience?

14 A Yes, I believe so.

15 Q Okay.

16 A Yes. I'm trying to think. Did we show the slides? I
17 think so.

18 Q Okay. What were the differences between the 45-day
19 report issued in May and the June 14th proposal to creditors?

20 A Yeah. What we were trying to do with the 45-day report
21 was to give a true report on the condition of the city
22 without any cant or any gloss. What we were trying to do
23 with the June 14th report, which is essentially a month
24 later, was to try to say, well, based upon this document, the
25 true state of the city, this is what we can offer you in the

1 nature of a proposal. This was not a plan. It's what we
2 were saying to creditors we would propose to deal with all
3 these obligations that we reported in the May 12th report.

4 Q Was there any update on cash flows?

5 A I believe so, yes.

6 Q Okay. Who was invited to the June 14th meeting?

7 A We tried to invite all record debt holders of the city,
8 according to their documents. We tried to invite all of the
9 labor partners for the city or representatives of the labor
10 partners. Occasionally there were parties who would call in
11 who also wanted to be invited or wanted their
12 representatives, either attorneys or financial advisors, to
13 attend the meeting, and we tried to accommodate them as well.

14 Q Okay. Do you know how they were invited?

15 A We invited them through a number of ways. We followed
16 the notice provisions of the actual debt instruments and
17 documents. I think we did e-mails. I think we did mail as
18 well, as well as phone calls.

19 Q I'm sorry. How many showed up?

20 A Oh, there were several hundred in the room.

21 Q Did this represent the entire universe of the city's
22 creditors?

23 A No.

24 Q Why do you say that?

25 A Well, there are individual bondholders in terms of the

1 city creditors as well as trade creditors as well as labor
2 unions as well as individual employees, both current active
3 employees and retirees. The potential creditor core of the
4 city probably numbers into the thousands, if not tens of
5 thousands.

6 Q Who presented at the meeting?

7 A Me and my team. There was a panel on a DS. I believe it
8 was David Heiman, who was a lead attorney, bankruptcy
9 attorney, at Jones Day; Ken Buckfire, our investment banker
10 at Miller Buckfire; Gaurav Malhotra at Ernst & Young. I
11 believe Chuck Moore for Conway MacKenzie was there, and I
12 also believe Bruce Bennett from the Jones Day law firm was
13 there.

14 Q And they all contributed to the presentation?

15 A Yes.

16 Q What were the highlights of the presentation to the
17 audience, as you recall?

18 A Well, generally, the presentation was designed to sort of
19 take all the parties through a summary of the city's
20 financial and operational condition, operational both health,
21 safety, and welfare, police, fire, EMS, operations,
22 obligations. Then we went through an analysis of more or
23 less the city's various buckets of assets, the bridge, the
24 tunnel, city-owned parking, city-owned land, DWSD, DIA,
25 whatever. I think there were approximately 12 to 15 buckets

1 of assets that we discussed. And then we went through an
2 explanation of how we were going to classify the various
3 creditor cores. Generally the way you do in any
4 restructuring is secured parties are treated in a different
5 way than unsecured parties are. That's just like your -- the
6 mortgage on your house has a different value to a lender as
7 opposed to your credit card as a secured party. And then we
8 concluded by both putting forward a proposal in exchange for
9 downsizing or not paying the unsecured portion of the debt
10 that we would create a note that all the parties in that pool
11 of unsecured, whether it was a creditor or labor or a GO
12 bond, whatever it was, would share in the note. And I think
13 on the last page of the document we set out a timetable for
14 both negotiations, evaluations, and decision-making.

15 Q Did you indicate anything about the city's payment plans
16 with regard to various creditors?

17 A Yes.

18 Q What were they?

19 A Well, we announced that going forward that we would
20 continue to pay our secured debt, the \$6 billion or so, at
21 DWSD, but that we were not going to be paying our unsecured
22 debt, and some of the deferrals that had already been made on
23 the year, we would continue with those. And, in fact, that
24 day we were defaulting on our certificate of participation
25 payment.

1 Q And why were you doing that?

2 A We needed the money.

3 Q Now, the title of this document is a proposal for
4 creditors. Why did you call it a proposal?

5 A As we said at the meeting, and we tried to be quite clear
6 both on June 10th and June 14th, we had some difficult
7 decisions that we were going to have to make in a very short
8 time frame; that we wanted to see responses from creditors
9 quickly; that as we spelled out at the back of the document,
10 we were going to be making some decisions based upon those
11 responses. I think I said on June 10th and again on June
12 14th that if we saw proposals coming forward in the nature of
13 term sheets or agreements in principle or something
14 substantive and the like, we might extend our evaluation time
15 frame a little longer beyond the July 15th, July 19th time
16 frame, but if we did not, we were going to be making some
17 very difficult decisions.

18 Q Did you tell the audience that the proposal was not
19 negotiable?

20 A No.

21 Q Now, did you say anything about a reinvestment plan in
22 this document?

23 A Yes. We mentioned the fact that one of the reasons we
24 needed to go through this process quickly was to prepare for
25 a reinvestments plan into the city to deal with the critical

1 issues we had discussed in the proposal, blight remediation,
2 lighting, public safety, health and welfare, so on and so
3 forth, along those lines.

4 Q How much was that reinvestment plan going to cost the
5 city?

6 A Over the ten-year projection -- and the reason we indexed
7 at the ten years is under 436 I'm obligated upon exit to
8 provide a two-year budget and then a ten-year projection, so
9 we indexed it to that period of time. And all-in on average
10 over the ten years, it's \$1.25 billion.

11 Q And how much of that was going to be spent on remediating
12 blight?

13 A Almost \$500 million in the first five and a half years.
14 I think 50, 2014; 50, 2015; and then a hundred million
15 dollars or so for the next four years.

16 Q How did you, as emergency manager, come to decide on what
17 reinvestments were needed for the city?

18 A Well, it's been apparent for a long period of time, and
19 it's been memorialized in the consent agreement that all
20 parties on behalf of the city and the state agree to and the
21 memorandum of understanding that these priorities were key
22 priorities for the city. It's just that the city had not
23 gotten at them in a meaningful way during that time, but we
24 tracked what had already been agreed to by the city and the
25 state.

1 Q Did any of your advisors focus on that area?

2 A On blight?

3 Q No. On the reinvestments for the city.

4 A Oh, sure. Oh, yeah, absolutely, yeah.

5 Q And who was that?

6 A Oh, all of our advisors in some capacity. I mean Conway
7 MacKenzie had been hired at the end of 2012 to examine the
8 city's operations. They had been doing that before I came on
9 board. Ernst & Young I think had been on board prior in
10 2012. Milliman was doing its analysis based upon information
11 obtained from the pension fund's regular actuary, Gabriel,
12 Roeder, so they were examining obligations in that regard,
13 and Miller Buckfire, which I believe was retained in 2012,
14 began work almost -- I think they had been working informally
15 prior, but they began work in earnest around that time, so
16 all of them participated in some fashion on what we needed to
17 do.

18 Q Do you recall what Conway MacKenzie did with regard to
19 investigating reinvestment needs?

20 A Yes. There's another component in the financial
21 stability agreement is that the financial stability agreement
22 created what's called the FAB, Financial Advisory Board, and
23 they were supervising Conway's insertion of itself in all
24 operations of the city to examine ways to increase the
25 efficiency of the city, which they had been doing.

1 Q Why do you believe this reinvestment is necessary?

2 A Well, I think some of it is apparent. As I said before,
3 if you drive around the city -- this is not the way any major
4 city or any city in America, for that matter, should operate
5 or should look. The blight, while it has been tolerated for
6 a long time, is unacceptable. Our police response rates by
7 any objective measure, whether it's Bureau of Labor
8 Statistics, Department of Justice, BJS, Bureau of Justice
9 Statistics, or whether it's Quizzle on the Internet, show a
10 low level of services. Our violence is apparent. I don't
11 think any serious person -- I've heard no one say that this
12 is the way the city should operate or that the city is not in
13 need in some form of remediation.

14 Q Was the audience allowed to ask questions at this
15 meeting?

16 A Yes.

17 Q Did they?

18 A Yes.

19 Q Did you answer their questions?

20 A Yes.

21 Q All of them?

22 A Yes.

23 Q When you made that quote about the plan being a
24 plebiscite, were you talking about this one, the June 14th
25 proposal?

1 A Absolutely not. Anybody who says that is taking the
2 quote out of context.

3 Q Did you tell the audience that you would not negotiate
4 the proposal?

5 A Absolutely not. We said it was a proposal. We were
6 looking forward to having a series of meetings the next week.
7 We were looking forward to counterproposals or suggestions.
8 Quite frankly, given the fact that the city had been working
9 through two Detroit review teams, three findings of financial
10 distress, financial crisis, until March 1st, 2013, a full-
11 blown financial emergency, all interested parties certainly
12 had opportunity to all of those documents for over two years,
13 to all of the metrics and timetables contained in both the
14 MOU and the consent decree, and what was required in all
15 aspects, both debt and labor. We anticipated that certainly
16 very sophisticated and interested parties that were in that
17 room had already had over two years to consider the condition
18 of the city and would be coming forward to us with proposals.

19 MR. SHUMAKER: Laurie, could you put up page 61 of
20 the summary? Could you blow that up, please?

21 BY MR. SHUMAKER:

22 Q Mr. Orr, do you recognize this slide?

23 A Yes.

24 Q What is it?

25 A This is the page 61, Section 9, of the proposal, whether

1 it's the full deck or the executive summary, and it sets out
2 a timetable, as I said before, for how we're going to handle
3 requests for additional information; that we wanted to have
4 discussions with stakeholders throughout this time,
5 essentially a month; and that we were going to evaluate those
6 discussions following mid-July or so.

7 Q How much time did you say you had?

8 A I said I didn't have any time; that I felt at that point
9 that I was running out of time both under Public Act 436;
10 that my term and the powers that come with the emergency
11 manager expire in September 2014; that some of the work we
12 needed to get at, given that it had been discussed in detail
13 on a number of different documents with specificity -- and I
14 can only guess that it had been published throughout that
15 time quite apparently throughout the city; that anyone paying
16 attention knew that we had been working our way here
17 certainly throughout 2012 and 2011 and that the time had come
18 to make some very difficult decisions, to not delay, and that
19 the regular order of things, whether it was delay, whether it
20 was collective bargaining, whatever it was, that the regular
21 order of things was suspended, and we were in a financial
22 emergency and were going to have to move very quickly.

23 Q At this time, on June 14th, 2013, did you think that the
24 city had to file for Chapter 9?

25 A No.

1 Q Why not?

2 A No. I thought that given the state of affairs in the
3 city, given the amount of publicity surrounding the Financial
4 Advisory Board, the agreements we discussed, the apparent
5 condition of the city -- you know, if you live in a city
6 where the bumpers on your police cars are falling off and
7 every neighborhood, even the good ones, have some level of
8 blight, you cannot possibly reasonably think that something
9 doesn't need to be done, so I thought parties were going to
10 be coming in with a discussion. In addition, we were already
11 in discussions with other parties and had reached an
12 agreement in principle on the swap agreement with Bank of
13 America, Merrill Lynch.

14 Q I want to return to this time frame, but around this
15 time, which is mid-June, you were involved in the city's
16 budgeting process; is that correct?

17 A Yes. The budget is due June 30th. Yes.

18 Q Okay. And this is for the fiscal year budget; correct?

19 A Yes. July 1 through June 30 of each fiscal year.

20 Q Okay. Could you describe for the Court what the process
21 was in coming up with the city's budget?

22 A Sure. There's a budget estimation process. There's a
23 review of all the costs done by -- the city has 44
24 departments. Cost is done by departments, what the revenue
25 is. The budget director and finance director get to go --

1 get together and discuss it, look at possible collections.
2 The City Council then undertakes the mayor's budget. As he
3 puts that together, that's sent to the council. The council
4 makes recommendations and adjustment. The mayor gets to
5 review it. And ultimately under 436 I have to approve or
6 disapprove the budget.

7 Q Okay. So PA 436 requires you to look at the budget after
8 the City Council passes it; is that correct?

9 A Yeah. I don't think -- I don't know if I have to look at
10 it afterwards. I mean I could take it up, but I had
11 delegated to the mayor and the council the authority to
12 operate generally the city in the ordinary course, and that
13 was part of the process.

14 Q Okay. I'd like to show you an exhibit that's in
15 evidence. It's Exhibit 74. Take a look at that first page.
16 And that's your signature, Mr. Orr?

17 A Yes, it is.

18 Q Okay. And what is this document?

19 A This document is the quarterly report that's necessary
20 under 436 to the Treasury.

21 Q And does it include the city's fiscal year 2014 budget?

22 A I believe so, yes, a summary of it, not the entire budget
23 but a summary --

24 Q Right.

25 A -- of the budget, yes.

1 Q Right. I'd like to show you Appendix D of this report.

2 MR. SHUMAKER: Laurie, if you could blow up the
3 first three sentences maybe up at the top?

4 BY MR. SHUMAKER:

5 Q And is this what you were describing, Mr. Orr, about the
6 process?

7 A Yes, more or less. I mean we summarized it here, but I
8 have an obligation to approve the budget. The budget is
9 apprised -- comprised of input from the City Council as well
10 as their review of the mayor's cut and that to reconcile
11 those figures with new ten-year projections under our
12 projections and that this is the budget we're going to adopt.

13 Q Okay. If I could direct your attention to the middle of
14 that page with the revenues. Obviously we know what the
15 revenues are, but what were the total revenues at that point
16 in time?

17 A Well, the total revenues, if you look at the general fund
18 amount, are 988 million. If you include other funds, the
19 total goes down in the bottom right-hand corner about 2.4
20 billion.

21 Q How about below that, the expenditures? Could you
22 summarize that for us?

23 A Yes, yeah. Under the general fund it shows there are
24 expenditures of about \$380 million above revenues in the
25 general fund.

1 Q Below there on the line under -- well, it says "total
2 expenditures before concessions."

3 A Yes.

4 Q What -- and then concessions below that of 379; is that
5 correct?

6 A Yes.

7 Q What are concessions?

8 A Well, concessions can mean both agreed to or unilaterally
9 imposed adjustments to obligations, things you're supposed to
10 pay.

11 Q And when you made the reference to concessions, what did
12 that -- what did that mean?

13 A That meant both payments perhaps to -- for deferred
14 obligations -- we knew we weren't paying a hundred million
15 that year to the pension funds -- payments to creditors that
16 we may not make, generally concessions we needed in that
17 amount in order to balance the budget, the 988 over and above
18 the 1.367.

19 Q Those are the payments that the city wouldn't be able to
20 make in fiscal year 2014?

21 A Those are payments that the city would not be able to
22 make as well as borrowings that the city was not going to
23 engage in again.

24 Q Are you aware of any payments that the city has not been
25 able to make in fiscal year 2014?

1 A Yes.

2 Q What are those?

3 A Oh, they're payments to trade creditors. We are still
4 behind on our payments, for instance, to parts supplies that
5 we have not made in several millions of dollars. There are
6 creditors that we have not paid in connection with supply
7 contracts, some of them in connection with the new police
8 station, for instance. There are a number of different
9 payments we have not made this year.

10 Q Let me return to --

11 MR. SHUMAKER: You can take that down, Laurie.

12 BY MR. SHUMAKER:

13 Q Let me return to the time frame after -- immediately
14 after the June 14th creditors' meeting, if you will.

15 A Yes.

16 Q At that meeting, I believe you indicated that one of the
17 topics discussed was the city's cash situation; correct?

18 A Yes.

19 Q Is one of the sources of the city's revenues or cash
20 referred to as the casino revenues?

21 A Yes. Casino and developer fees, casino revenue and
22 developer fees.

23 Q Now, what are the casino revenues as you understand them
24 to be?

25 A There are three casinos in the city, and in consideration

1 for some time ago passing legislation for the casinos, they
2 remit to us a portion of a tax that comes into the city in
3 the sum of approximately \$180 million a year total. A
4 portion of that is used to pay certain creditors, and then a
5 portion of that comes back to the city.

6 Q Is that an important revenue source for the city?

7 A That is probably -- yes, and it's probably the most
8 stable source of revenue for the city.

9 Q Now, are those casino revenues freely available to the
10 city? Are there any restrictions on the casino revenues?

11 A In 2009 the city entered into a collateral pledge because
12 it was in default under the swap agreement. That collateral
13 pledge gave a security interest to the swap counterparties.
14 Under that collateral pledge, those counterparties, upon an
15 event of default, had the option to execute on the totality
16 of those payments, so they were not freely available to the
17 city until we entered into the Bank of America, Merrill Lynch
18 forbearance and optional termination agreement, which I
19 believe we announced in principle on June 14th.

20 Q Okay. Let me ask you, you referred to swap
21 counterparties.

22 A Yes.

23 Q Who were the swap counterparties?

24 A Bank of America, Merrill Lynch, and then U.S. Bank as
25 trustee generally.

1 Q So there was some restriction in the ability of the city
2 to get those revenues directly from the casinos?

3 A Yes. There was a mechanism by which the revenue was
4 paid. I think the revenue is paid on a daily basis, about
5 \$500 million, into a holdback account. Then there's another
6 distribution account when it reaches a certain level that
7 that money is then -- about 4.2 million a month is then taken
8 away and put into another account for the counterparties, and
9 then every quarter that money, roughly a million or so, is
10 then paid over to the counterparties.

11 Q I think you said 500 million a day.

12 A 500,000 a day, roughly --

13 Q Okay.

14 A -- somewhere in that --

15 Q I wish it would be 500 million.

16 A I wish it were 500 million a day.

17 Q So -- and this arrangement, does it have a name, a
18 commonly referred to name?

19 A You mean the holdback account --

20 Q Yeah, the holdback account.

21 A -- or the swap? It's generally called a swap.

22 Q Have you heard of the phrase "lockbox arrangement"?

23 A Sure, yeah. That's a common term in financing, holdback
24 account, lockbox, and the like.

25 Q After the June 14th meeting, did anything happen with

1 regard to the casino revenues?

2 A Yes.

3 Q What was that?

4 A On the following Monday, one of the parties that was a
5 monoline insurer -- that is, insurer for some of these
6 obligations -- called Syncora claimed that they had an
7 interest in the swap agreement, which we very strongly
8 disputed, and sent a letter to counterparties alleging that
9 their interest prohibited them from performing on the
10 agreement in principle that we had announced on Friday, the
11 14th.

12 Q So they sent a letter to UBS and Bank of America, Merrill
13 Lynch?

14 A I think it was U.S. Bank --

15 Q Okay.

16 A -- and Bank of America, Merrill Lynch.

17 Q Okay. U.S. Bank, was U.S. Bank a swap counterparty, or
18 were they something else?

19 A They were like a trustee.

20 Q A trustee. Okay.

21 A Yeah. They were a trustee for the counterparties.

22 Q So you had the swap counterparties, which are UBS and --

23 A And Merrill Lynch.

24 Q -- Merrill Lynch?

25 A Then you have U.S. Bank, which is a trustee.

1 Q Okay.

2 A Um-hmm.

3 Q And why would they send a letter to U.S. Bank?

4 A Well, we didn't know. We interpreted them -- our
5 understanding was they had made a payment based upon our
6 default under the certificate of participation as an insurer
7 for the COPs, which is a separate structure. Under the
8 swaps, which they did not have an agreement in the collateral
9 pledge agreement, it appeared to us that they were trying to
10 assert some interest under the swaps to bolster their
11 position under the COPs. We thought that was inappropriate
12 and unfounded.

13 Q What did U.S. Bank do in response to the letter it
14 received from Syncora?

15 A Understandably, as a trustee, U.S. Bank more or less
16 froze, and they froze the account.

17 Q What did that freezing of the account mean for the city?

18 A Well, it actually meant the city was in worse condition
19 than it was on June 14th because not only were we getting
20 that -- not getting that portion of the revenue,
21 approximately \$132 million that should come to us in the
22 course of a year, but we weren't getting the benefits of the
23 swap agreement that we had reached with them just that
24 Friday.

25 Q Had you been counting on the money, the casino revenues?

1 A Yes, absolutely.

2 Q What did you do in response to Syncora's actions?

3 A I think I instructed our legal team to reach out to them.
4 There was a letter. I think I wrote -- there was a series of
5 letter exchanges over the next couple of weeks. I think I
6 wrote back saying your position is unfounded to a -- to one
7 of the principals, I think a Mr. LeBlanc at Syncora. I think
8 he then wrote back to me, and this went on for about two
9 weeks, and then I wrote another letter or two back to him,
10 but there were a series of what we used to call nastygrams
11 going back and forth about the parties' respective interest
12 and how we felt they were unfounded and how they felt that
13 they had a right to assert them.

14 Q Were you asking Syncora to change its position?

15 A Yes. We were very -- we were telling Syncora they did
16 not have a position, that they were causing damage to the
17 city, and they needed to cease and desist immediately.

18 Q Did your letters or meetings with Syncora work?

19 A No.

20 Q What was the next step that you took --

21 A Well --

22 Q -- with regard to the casino revenues?

23 A Well, we were relying on the casino revenue strongly to
24 relieve the cash flow pressures that we were under from March
25 to June because we -- mid-June we were going flow pretty

1 skinny cash flow negative. They refused apparently to reach
2 some sort of accommodation. We told them if they didn't, we
3 would have to pursue our legal remedies, and I think in this
4 time frame we were also going through the discussion with the
5 counterparties, certainly in the next week -- we spent that
6 following week, the 17th through the 22nd -- 17th, 18th,
7 19th, 20th, 21st, 22nd -- yeah -- 17th through the 22nd
8 having plenary meetings with a number of interested parties.
9 We were writing these letters to Syncora. After several
10 weeks of this, we eventually decided that we were going to
11 have to sue them to stop, get a preliminary injunction -- or
12 TRO, temporary restraining order.

13 Q Was what Syncora was doing affecting your negotiations
14 with the swap counterparties --

15 A Yes.

16 Q -- the agreement you were talking about?

17 A Yes. It interfered with those negotiations quite
18 severely.

19 Q So you decided to pursue legal action?

20 A Yes.

21 Q And when you say "legal action," what do you -- what do
22 you mean?

23 A Well, after discussion with our team, we decided to sue
24 Syncora.

25 Q Okay. And how did you go about doing that?

1 A We filed a complaint for a temporary restraining order in
2 early July, July 5th, I believe.

3 Q Were you successful in obtaining the TRO?

4 A Yes, we were.

5 Q And what did that mean for the city?

6 A Well, that mean that Syncora had to cease and desist from
7 interfering with the settlement agreement we had reached with
8 Bank of America and Merrill Lynch and UBS; that the casino
9 revenue begin to flow again so we had some relief from the
10 financial pressures that we were feeling in terms of cash
11 flow and that we could refocus quite clearly with that relief
12 on trying to reach some agreements with other parties.

13 Q If the city hadn't gotten that TRO, what would it have
14 meant to the city?

15 A It would have been pretty catastrophic. Without the
16 casino revenue, even our projections for cash flow would not
17 have flowed. We would have been short, in addition to the
18 money we saw -- we lost on that blue graph that we discussed
19 on the June 10th presentation, we have lost another \$132
20 million a year, which would have put the city in dire
21 straits. You could not cut enough city services to make up
22 for that difference. We couldn't go back to the financial
23 markets because we had exposed the true state of the city
24 affairs, and any lending at that time perceivably without
25 this revenue stream would have been very high. It would have

1 been very dire.

2 Q And you got this TRO on July 5th, you said?

3 A I believe it was July 5th.

4 Q Do you know how long a TRO typically lasts?

5 A In federal court it can last for a period of time, but I
6 think this was in state court, and it had a 14-day life, I
7 believe.

8 Q Mr. Orr, while you were dealing with the Syncora
9 situation after the June 14th meeting, were there subsequent
10 meetings between representatives of the city and its
11 creditors?

12 A Yes, throughout that week, the following week.

13 Q I'd like to show you Exhibit 104, which has been admitted
14 for demonstrative purposes. Do you see that, Mr. Orr?

15 A Yes.

16 Q And you see June 14th over on the left side of that
17 document?

18 A Yes.

19 Q Could you walk us through any meetings that you
20 participated in during this time period?

21 A Yes. I was at the June 10th meeting on the bottom, June
22 14th meeting, June 20th meeting. I believe -- I think at one
23 other meeting or one other one-off meeting at some point the
24 week after that, which would have been July 25th or so,
25 thereabouts.

1 Q Or June 25th?

2 A Yeah. June. I'm sorry. June 25th.

3 Q Now, at these meetings, Mr. Orr, what did you tell those
4 who came to them?

5 A I think at the June 20th meeting it was the afternoon
6 session that I attended. I told them that we were -- same
7 thing I said at June 14th essentially. We were working hard
8 to try to get some concessions; that we were fighting very
9 hard from a concession that we had obtained from Bank of
10 America, Merrill Lynch; that we were looking -- we thought
11 that that settlement as well as our willingness to default on
12 the COPs payment would have told all interested parties that
13 we were serious about trying to get some negotiations done
14 fairly quickly; that we were working on a very tight time
15 frame; and that we meant what we said in our June 14th
16 proposal for creditors; that that was the time frame we were
17 going to stick to.

18 Q Let me focus your attention on the meeting on June 20th
19 with the nonuniformed union and retiree representatives.

20 A Um-hmm.

21 Q At that meeting, did you tell them that you would not
22 negotiate with them?

23 A No. What I said was that we would not waive our rights
24 under 436; that collective bargaining was suspended for five
25 years under the statute, but that as long as everybody

1 understood we weren't engaging in collective bargaining, we'd
2 be willing to have discussions and other negotiations short
3 of calling it collective bargaining.

4 Q Did you tell the meeting participants in the afternoon
5 session with the uniformed union and retiree representatives
6 the same thing?

7 A Yes.

8 Q How about the meeting on June 25th with the nonunion
9 creditors and representatives from the Retirement System?

10 A You know, I don't -- I'm trying to see if I meant at that
11 meeting or if I had a separate one-off, but I think either
12 way I was trying to tell everyone that we were meeting with
13 the same message. We want to have discussions. We want to
14 have proposals. We want to have negotiations, but we are not
15 waiving our rights under the statute.

16 Q Did you tell the meeting participants that you -- the
17 city would not accept proposals or counterproposals to what
18 you had exhibited at the June 14th meeting?

19 A No. If anything, we kept telling people that we would
20 accept counterproposals and we were looking for them.

21 Q Now, you didn't go to all the meetings; correct?

22 A No, I did not.

23 Q How did you stay informed as to what was happening at
24 those meetings?

25 A My team kept me regularly informed. Typically either

1 during or after -- immediately after those meetings, they
2 would stop by my office. We would have daily telephone
3 calls. We have a number of standing calls called work in
4 progress calls beginning of the week. At the end of the week
5 we have team calls. During the middle of the week we have
6 various operational calls and other calls with all the
7 consultants. We have regular meetings and calls on a daily
8 basis. In addition, lead counsel, David Heiman, as well as
9 our investment banker, Ken Buckfire, speak to me essentially
10 almost daily, maybe Ken not as much daily, but David
11 certainly does on a regular basis. And any particular
12 taskforce like the pension taskforce with Evan Miller, Jones
13 Day, or Conway MacKenzie through Chuck Moore or Ernst & Young
14 or any of their other partners would meet with me daily.

15 Q Do you think that any important developments at those
16 meetings would have been reported to you?

17 A Without a doubt.

18 Q What was -- who was your team of -- who was the team that
19 you had that went to the meetings you did not attend?

20 A Well, we had various teams for different obligations.
21 For instance, on labor, we had a team headed up by Jones Day
22 attorneys on pension and benefits. We had a team with Jones
23 Day's attorneys, Conway MacKenzie, Ernst & Young on debt. We
24 had a team with various attorneys as well as our investment
25 bankers. Each sort of group between debt, labor, benefits,

1 employees would have members assigned to it who would attend
2 those meetings, have follow-up calls, exchange e-mails, come
3 back and forth with proposals. There were a number of
4 letters that were exchanged which would routinely be shared
5 with me.

6 Q Did you tell any of the members of your team not to
7 negotiate with those who came to the meetings?

8 A Absolutely not. What I said is if there any serious
9 proposals, I'm a phone call away. Typically what would
10 happen, they would relay those proposals to me, and we'd make
11 a consensual decision about how to respond or whether or not
12 they were proposals that we thought were moving us forward,
13 but, no, I was involved at every stage of that process.

14 Q Did you participate in these meetings in good faith?

15 A Yes, absolutely.

16 Q Do you believe your team did?

17 A Yes, I do.

18 Q Aside from the meetings that are set forth on Exhibit
19 104, were there other contacts with the city's creditors --

20 A Yes.

21 Q -- that you had?

22 A Yes.

23 Q What kinds of contacts?

24 A Various parties would routinely stop by my office, ask
25 for meetings, either drop by when they were in other meetings

1 or we'd have set-up meetings. To this day, I routinely meet
2 with various interested groups on behalf of the city. I
3 don't think there's a point at which I have turned down a
4 request for a meeting. Maybe if I'm busy, not immediately at
5 that moment, but I generally will try to make myself
6 available for any reasonable request for a meeting.

7 Q You believe you were available during this time?

8 A Yes.

9 Q Did any creditors submit proposals or counterproposals to
10 you after the June 14th meeting and before July 18th?

11 A Yes.

12 Q Who did?

13 A I think a group of creditors led by Ambac, I believe,
14 submitted a proposal, and then there was another sort of
15 proposal, a single-page letter that was admitted --
16 submitted.

17 Q Let me show you Exhibit 102 and ask you, if you could, to
18 identify it for the Court.

19 A I believe this was a letter that was submitted by Ambac
20 and NPF, National Public Finance Guarantee Corporation.

21 Q And it was a proposal made to you after the June 14th
22 meeting?

23 A Yes. I believe it was made roughly on the day that's
24 referenced, July 15th, Monday, July 15th.

25 Q Okay. Aside from this proposal and the other one that

1 you referenced, did you receive any proposals between June
2 14th and July 18th from the unions?

3 A Nothing I would call a proposal. I think there was
4 reference to -- may have been reference to a letter that
5 requested collective bargaining but not a proposal.

6 Q How about the bondholders?

7 A No.

8 Q The retirees?

9 A No.

10 Q Pension funds?

11 A No.

12 Q Any other stakeholders?

13 A No.

14 Q At some point after the June 14th meeting, did you
15 authorize your team to start preparing for a Chapter 9
16 filing?

17 A Yes.

18 Q When did you do that?

19 (Phone interruption at 10:24 a.m.)

20 THE COURT: I guess we have to pause our proceedings
21 for a second to address this. Okay. Hold on one second.
22 Letrice -- we're going to just pause in place here for a
23 moment while we get the phone working again.

24 MR. SHUMAKER: Your Honor, this is somewhat of a
25 breaking point if you would like to, or --

1 THE COURT: Ah, let's talk about that. Okay. Just
2 let me know when you're ready again, Letrice. Okay. On the
3 issue of a break, because of our commitment to hear the
4 governor's testimony beginning at one, it was my intent to
5 call for lunch at 11:30 since the vote was to have an hour-
6 and-a-half lunch, so in light of that, it was my intent to
7 just plow ahead until 11:30.

8 MR. SHUMAKER: Fine. That's wonderful.

9 THE COURT: Okay. And you may proceed.

10 MR. SHUMAKER: Thank you, your Honor.

11 BY MR. SHUMAKER:

12 Q Mr. Orr, I forget the question.

13 A Okay.

14 Q You indicated that at some point after the June 14th
15 meeting you authorized your team to start preparing a
16 potential Chapter 9 filing. I believe I'd asked you when you
17 thought that occurred.

18 A I think approximately late June, early July.

19 Q Okay.

20 A Maybe -- yeah, yeah.

21 Q Well, why did you need to start planning for a Chapter 9
22 filing at that point at the same time you were negotiating?

23 A It's basically contingency plan filing. I mean, you
24 know, pray for peace, prepare for war. Any prudent person
25 always prepares for the contingency that what you hope for

1 doesn't occur. To do so -- not do so would be irresponsible.

2 Q Do you believe these preparations for a possible Chapter
3 9 filing affected your ability to negotiate in good faith?

4 A Absolutely not.

5 Q How about your team?

6 A Absolutely not. We were willing to accept any agreement
7 that came over the transom.

8 Q About this time -- I'm talking now July -- July 5th was
9 the TRO.

10 A Yes.

11 Q And the negotiations that were on Exhibit 104 were -- the
12 meetings that were taking place were going on. Did you
13 become aware of any lawsuits filed around that time regarding
14 the emergency manager statute?

15 A Yeah. There had been filed prior to this whole time
16 frame lawsuits seeking to invalidate the statute. We were in
17 a running gun battle with Syncora with the exchange of
18 correspondence. We were trying to negotiate with a number of
19 parties, I think 48 or so, 49 bargaining units, 44 or so bond
20 issuers, 9 bond insurers. And also I believe that week, the
21 first week of July, just before the July 4th holiday -- I
22 think it was July 3rd -- two lawsuits -- two or three were
23 filed against us, not against me personally at that time. I
24 think they were filed against the state, the governor, and
25 the treasurer, the Flowers and Webster's lawsuits, and then

1 we went to court. July 4th, I think, was a Thursday, and
2 then we went to court to enjoin Syncora on the 5th, which I
3 believe was a Friday.

4 Q Okay. So you believe that the Flowers and the Webster
5 lawsuits were filed on July 3rd?

6 A Yes, I believe so.

7 Q Okay. What was your understanding of what these suits
8 were alleging?

9 A There had been a lot of discussion prior to filing the
10 suits as to whether or not the constitutional requirements of
11 the Michigan state Constitution prohibited the adjustment of
12 vested pension rights, and I thought these lawsuits were
13 seeking to prohibit a Chapter 9 filing if it would include
14 adjusting vested pension rights.

15 Q How did the filing of these lawsuits affect you in your
16 role as emergency manager?

17 A They initially didn't really concern me. I assumed that
18 parties were pursuing their legal rights. We were trying to
19 negotiate. Frankly, I ignored them when they were initially
20 filed and continued to try to reach some sort of negotiated
21 solution with our interested parties and labor partners.

22 Q Did they tell you anything about the negotiations?

23 A Well, they suggested to me that parties were pursuing a
24 litigation role or option as opposed to a sincere good faith
25 negotiation option when we had already said that time was

1 running out. We were coming to the end of our 30 days; that
2 they thought for whatever reason it was in their best
3 interest to pursue litigation as opposed to coming --
4 proposing some sort of agreement.

5 Q Did this concern you?

6 A Yes. It wasn't -- it certainly wasn't showing of a
7 willingness to enter into some sort of concessions or
8 agreements. It said they wanted to sue.

9 Q Now, there was another lawsuit filed after the Flowers
10 and Webster lawsuits; correct?

11 A Yes.

12 Q And when was that?

13 A I think that was the following week.

14 Q How did these lawsuits affect your negotiating posture?

15 A Well, from our perspective, we continued to say that we
16 would negotiate even in the sort of litigious -- what I mean,
17 we had been in a situation of opposition and some level of
18 conflict from the beginning. We expected that, and that
19 wasn't going to change our willingness to try to reach some
20 sort of agreement. In fact, even in the face of litigation
21 and some very contentious negotiations and statements, we
22 continued to try to move forward.

23 Q Now, you indicated that in the Flowers and Webster
24 lawsuits the governor and the treasurer were named as
25 defendants.

1 A Yes.

2 Q In the pension fund lawsuit that you referenced --

3 A Yes.

4 Q -- on July 15th --

5 A Yes.

6 Q -- were those the same defendants?

7 A No. In the pension lawsuit, GRS, I believe, sued me
8 along with some other parties, and they named me and the
9 governor, I believe.

10 Q Did you continue to meet with the pension funds after
11 they sued you?

12 A Yeah. We continue to meet with them now. We'll continue
13 to meet with them, yes.

14 Q Did these lawsuits affect your decision to seek the
15 governor's authorization to file for Chapter 9 bankruptcy?

16 A Yes, to some degree. It appeared --

17 Q How so?

18 A Well, between the Syncora litigation, that injunction was
19 only going to last for two weeks, I believe, through the 19th
20 or so, Friday, the 19th, I think it was -- the Webster and
21 Flowers litigation suggested to me that an agreement was not
22 going to be forthcoming. There was a lot of publicity
23 regarding those lawsuits and what I viewed to be chest
24 thumping, people saying what they were going to do and they
25 weren't going to make any movement until we agreed as a

1 condition -- it appeared to be as a condition to going
2 forward that we had to observe these sort of philosophical
3 differences, these sort of philosophical positions that you
4 couldn't touch vested pension rights. There was a lot of
5 discussion in the general obligation bond community that
6 unless we agreed to observe the implied full faith and credit
7 of the city beyond our GO bond debt, that they weren't going
8 to make any concessions. We had tried to tell them we could
9 not comply with the \$12 billion of unfunded -- unsecured
10 liability, and the situation seemed to be growing more and
11 more precarious and somewhat out of control.

12 Q Let me show you Exhibit 28, which is in evidence.

13 Mr. Orr, do you recognize this document?

14 A Yes, I do.

15 Q And what is it?

16 A This is my recommendation to the governor, copying the
17 treasurer, that I be given authority to file Chapter 9.

18 Q And it's dated as of July 16th; is that correct?

19 A Yes, it is. I believe that was a Tuesday.

20 Q Why did you send the governor this letter on that date?

21 A Well, as I said, I believe at that time there was a
22 mounting level of conflict. There were a number of pieces of
23 litigation going on. There were a number of what appeared to
24 be conditions all parties were setting before we'd have
25 discussions that we'd have to agree to. I was running out of

1 time. I meant what I said on June 14th that we were going to
2 have to go through an evaluation period, and that was coming
3 to a close. We hadn't received any real counterproposals
4 from any parties. The only one actually we received in
5 writing was from Ambac Assured and National Public Finance.
6 We hadn't received any from the other parties, and time was
7 running out that we said we'd have to do an evaluation, and I
8 wanted to get the authority in hand to file Chapter 9 if we
9 weren't receiving any proposals.

10 Q And is that what you told the governor in this letter?

11 A Yes. I told him about the condition of the city, the
12 budget deficits, the growing liabilities, the ongoing
13 financial emergency that he had declared now back in March, I
14 believe March 1, 2013. We discussed our meeting with
15 creditors and why there were certain barriers to reaching
16 agreement and that it was time to make a decision.

17 Q Why did you recommend Chapter 9 bankruptcy for the city
18 at this time?

19 A Well, it seemed to me that after going through a series
20 of negotiations in the time frame that we said we would,
21 after standing by and suffering a number of different
22 lawsuits aimed at denuding us of the authority to make
23 decisions under 436, after parties taking strong
24 philosophical positions about what they would or wouldn't do
25 based upon our position; that I had made a pledge of the time

1 I was going to keep open; that nobody was coming forward --
2 and I said it was approximate within that time frame -- and
3 that I was running out of time. We had said for some of the
4 things that we needed to accomplish we had to make some
5 decisions, and, furthermore, given the amount of litigation,
6 it was clear to me that there was going to be no other way to
7 pursue a comprehensive and orderly resolution of the city's
8 problems in an expeditious way.

9 Q On July 16th when you sent this letter, were you aware of
10 any hearings in the Flowers or Webster or pension fund
11 lawsuits that were upcoming?

12 A There were hearings that were scheduled at that time for
13 the 22nd, I believe, the following week.

14 Q Were you aware of any other hearings on July 16th?

15 A Not on July 16th.

16 Q How long between concluding that bankruptcy was
17 appropriate and sending this letter to Governor Snyder?

18 A Well, I think I reached the final conclusion the prior
19 week, so drafts of the letter were probably prepared over the
20 weekend and that Monday, and when I sent it, I was prepared
21 to file.

22 Q Prior to sending this letter to the governor, did you
23 have any agreement with the governor regarding what his
24 response might be?

25 A No.

1 Q Did the governor respond to this letter?

2 A Yes.

3 Q I show you Exhibit 29, please. Do you recognize this
4 document, Mr. Orr?

5 A Yes, I do.

6 Q It's in evidence. Could you give an overview of what the
7 governor told you in this letter?

8 A The governor said that he had reviewed my recommendation;
9 that he looked at the obligation of the city first and
10 foremost to provide basic needs, basic obligations to its
11 citizens, which were not being met; that it could not meet
12 its basic obligations to creditors; that its failure to meet
13 these obligations prohibited it from providing basic needs to
14 the citizens and to its creditors; and that the only
15 reasonable path to resolving this would be the filing of a
16 bankruptcy.

17 Q And did he authorize you to file for a Chapter 9 --

18 A Yes.

19 Q -- bankruptcy?

20 A Yes, he did.

21 Q When on July 18th -- that's the date you received this
22 letter; correct?

23 A Yes, it is.

24 Q When on July 18th did you receive this letter?

25 A I believe I received this letter late morning, maybe

1 early afternoon.

2 Q How did you receive it?

3 A I think someone on my staff brought it to me at first.

4 Q Hard copy?

5 A Yeah. I think it was either e-mail or fax, yeah.

6 Q What did you do upon receiving this letter?

7 A I called the attorneys and instructed them to prepare to
8 file the bankruptcy case.

9 Q Why do you believe this Chapter 9 filing was in the best
10 interest of the citizens of Detroit?

11 A I believe that the city had been dealing with the issues,
12 as I said before, both on the creditors' side and some of its
13 city operations and work rules for a long time. I believe
14 that they had been agreed -- the city and the state and then
15 the city officers and the state had agreed over a long period
16 of time to resolve some of these issues. They had spelled
17 them out in detail; that for whatever reason they were not
18 being addressed in a timely fashion; that there are a number
19 of efforts and safeguards that the parties had agreed to to
20 redouble those efforts in specificity in the financial
21 stability agreement, Detroit Reform 1 and Detroit Reform 2;
22 that they failed to meet those obligations, so they started
23 to put milestones in place to try to achieve those
24 obligations. Those were not met; that the city had gone
25 through between 2012 and 2013 essentially three different

1 reviews that had all gone from financial distress to
2 financial crisis to financial emergency; that upon my
3 appointment we were trying to look at some of those very same
4 issues. We had specified to people that given this length of
5 time that those issues had been discussed, that after our
6 June 14th presentation we were going to take a certain period
7 of time to do evaluation for counterproposals, which we
8 thought were forthcoming; that they were not forthcoming;
9 that we were running out of time both in terms of what was
10 required in the statute and any reasonable period of time to
11 get through a bankruptcy filing; that I had to make a
12 difficult decision to try to resolve these issues once and
13 for all in a comprehensive and orderly way under the guise of
14 federal law so that they could be all resolved finally and
15 the city could move forward to deal with some of the
16 amazingly necessary reforms that have been agreed to by
17 everyone in the city for two years.

18 Q Do you still believe that this bankruptcy filing is in
19 the best interest of the citizens of Detroit?

20 A Yes.

21 Q If the city isn't eligible for Chapter 9, what's next?

22 A If the city isn't eligible for Chapter 9, there's either
23 free-fall crisis -- I mean this city -- and I'm certainly --
24 the people that live here have seen this. This city for ten
25 years, from 2000 to 2010, lost a city the size of Romulus or

1 Wyandotte every year, 24,000 people on average. That is
2 free-fall flight out of the city. The services have degraded
3 to a point that they are severely substandard, and they are
4 apparent. To put the city either back in the status quo,
5 which is clearly unacceptable -- and nobody of any serious
6 note disagrees with that. No one says that we should go back
7 to the way it is. No one says that our ability to meet our
8 creditors should continue to be deferred or we should borrow
9 more debt upon debt that for ten years averaged over a
10 hundred million dollars deficit; that we have \$1.4 billion
11 that was supposed to resolve our pension obligations in 2005
12 and 2006. No one says that's an adequate way to proceed. If
13 we do not go through Chapter 9, this city --

14 MR. DECHIARA: Objection, your Honor.

15 THE WITNESS: -- will continue to fail.

16 MR. DECHIARA: I would just object.

17 THE COURT: What is your objection, sir?

18 MR. DECHIARA: Speculation. He's speculating about
19 events that are counterfactual and about the future.

20 THE COURT: The objection is overruled.

21 MR. SHUMAKER: Thank you, Mr. Orr. That's all I
22 have.

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. Cross-examination. Okay.

25 MR. ULLMAN: Your Honor, may I tilt the lectern so

1 I'm more facing the witness?

2 CROSS-EXAMINATION

3 BY MR. ULLMAN:

4 Q Good morning, Mr. Orr.

5 A Good morning, Mr. Ullman.

6 Q Now, we've met before, haven't we?

7 A Yes. Yes, we have, several times.

8 Q Twice, I think. I'm going to -- just preliminarily let
9 me ask you a few questions. Now, apart from a college
10 degree, do you have any degree other than a law degree?

11 A No.

12 Q You're not a CPA?

13 A No.

14 Q You're not an actuary?

15 A No.

16 Q Okay. I believe you testified that you've been with
17 Jones Day since 2001; is that right?

18 A 2001 until March 15th, 2013.

19 Q Okay. So you were --

20 THE COURT: Excuse me. Would you point the
21 microphone more towards you?

22 MR. ULLMAN: Is this better?

23 THE COURT: Yes.

24 MR. ULLMAN: Sorry.

25 THE COURT: Thank you, sir.

1 MR. ULLMAN: Okay.

2 BY MR. ULLMAN:

3 Q So you were a practicing attorney at Jones Day for about
4 12 years prior to becoming the emergency manager; is that
5 right?

6 A Yes.

7 Q And I think you indicated you were primarily in the
8 bankruptcy and restructuring group?

9 A Yes, litigation at first and then bankruptcy and
10 restructuring.

11 Q Right. Now, you also mentioned that you'd been at the
12 U.S. Trustee's Office; is that right?

13 A Yes.

14 Q And that was from around 1995 through 2001, if I recall?

15 A Yes.

16 Q Okay. And while you were there, did you ever serve as an
17 actual trustee in a bankruptcy case?

18 A No.

19 Q And prior to the U.S. Trustee's Office, I believe you
20 indicated you were at the RTC?

21 A Yes.

22 Q Okay. And that would have been from about '92 to '95 if
23 I got the dateline right?

24 A Yeah. We originally came in as attorneys at FDIC. We
25 were then assigned to RTC. RTC then got authority to hire

1 its own attorneys, and I became an attorney at the RTC
2 proper.

3 Q Okay. So that's the general time frame, '92 to '95, that
4 you were there?

5 A Yes. '91 through '95.

6 Q Okay. And I believe you mentioned that while you were at
7 the RTC you served as the chief legal officer for a savings
8 and loan company that had a sub-subsubsidiary or holding company
9 called Landmark Land?

10 A Yes.

11 Q And you indicated that you ended up being responsible for
12 the disposition of the assets of that company?

13 A Yes.

14 Q Okay. And those, I think you said, were golf courses and
15 country clubs?

16 A There were a number -- golf courses, country clubs,
17 vacant land, financial assets, yes, number of assets.

18 Q Okay. And the golf courses and country clubs, of course,
19 are relatively high-value assets or --

20 A Yeah. They were at the time.

21 Q And that was all around 18 years ago; is that right?

22 A Whatever the math works out to, Mr. Ullman.

23 Q Okay. I think that's it.

24 A Um-hmm.

25 Q And is it correct that prior to becoming the emergency

1 manager, you never ran a city?

2 A No. Most governors haven't --

3 Q Okay.

4 A -- nor mayors.

5 Q Okay. And prior to becoming emergency manager, you never
6 had responsibility for budgeting all of the various
7 departments that are involved in running a city or a state;
8 is that right?

9 A That is correct.

10 Q And you've never been employed by a corporation, have
11 you, putting aside governmental like the RTC, in a private
12 company?

13 A Well, there were times in college jobs that I was
14 employed by corporations, but do you mean --

15 Q Well, after.

16 A -- during my professional career?

17 Q Yeah, in your professional career.

18 A I've been an attorney, then in government, and then an
19 attorney again, yes.

20 Q Okay. And is it fair to say that other than being a
21 bankruptcy and restructuring attorney, you have no particular
22 expertise in finance?

23 A Well, I've been either a litigator or a regulator, a
24 banking regulator, at FDIC, RTC, or an investigator when I
25 handled the Whitewater investigation on behalf of the RTC for

1 six years. Whatever that amounts to is what it amounts to.

2 Q Okay.

3 A But are you saying do I have any particularized degrees
4 or certifications?

5 Q I'm asking if you could answer my question, Mr. Orr,
6 because --

7 A Sure.

8 Q -- I really don't believe you did, and it was -- the
9 question was simply whether it's fair to say that other than
10 being a bankruptcy and restructuring attorney, you have no
11 particular expertise in finance?

12 A That's a broad question, but I'll grant you this. That's
13 what I've been throughout the balance of my career.

14 THE COURT: Excuse me one second. I need you to
15 move back from the microphone just a bit.

16 MR. ULLMAN: Okay.

17 THE COURT: Maybe not that much.

18 MR. ULLMAN: Okay.

19 THE COURT: Go ahead.

20 BY MR. ULLMAN:

21 Q Okay. So is the simple answer to my question "yes," that
22 what I said is true? That would be a fair statement?

23 A If that's your characterization -- and I don't mean to
24 joust with you, Mr. Ullman, but I think that accomplishes a
25 number of things, but to move forward, I'll say your question

1 a fair representation.

2 Q Thank you. Let's go back to your time at Jones Day.

3 Now, you indicated you were there as of 2012. Yes?

4 A Yes.

5 Q Okay. And Jones Day, of course, is the restructuring and
6 bankruptcy counsel to the city, of course; right?

7 A Yes.

8 Q And we know that Jones Day got that work following a
9 pitch that it made to various representatives of the city and
10 the State of Michigan in January 2013; is that right?

11 A That is correct.

12 Q And you were part of the Jones Day pitch team at that
13 time?

14 A Yes, I was.

15 Q And is it correct that one of the things that Jones Day
16 was pitching at that meeting, at that presentation was its
17 expertise and experience in municipal bankruptcy work?

18 A I think that's a fair statement.

19 Q And Jones Day prepared a pitch book, did it not?

20 A Yes, we did.

21 MR. ULLMAN: Can we put Exhibit 418 on the screen,
22 which is the common exhibit 418?

23 BY MR. ULLMAN:

24 Q And what we have here is the cover of that pitch book;
25 correct?

1 A I believe so.

2 Q And you were engaged in -- or you participated and took
3 part in the preparation of this pitch book; right?

4 A Yes, to some degree.

5 Q And among other things, this pitch book laid out Jones
6 Day's thoughts and insights on subjects, including municipal
7 bankruptcy; is that right?

8 A Yes, I believe so.

9 Q Okay. And it also addressed issues relating to the
10 appointment of an emergency manager; is that true?

11 A Yes, I believe it did.

12 Q Okay. And is it correct that the thoughts and insights
13 prepared by the Jones Day pitch team and addressed in this
14 pitch book included the possibility of a Chapter 9 bankruptcy
15 filing made by the emergency manager?

16 A Yes, I believe it did.

17 Q Okay. And is it also the case that the Jones Day
18 thoughts and insights specifically included using the
19 backdrop of a bankruptcy filing, a Chapter 9 filing, as a
20 tool for gaining leverage with creditors?

21 A I think it certainly contained -- if you're talking about
22 the presentation, it certainly contained the potential pros
23 and cons of Chapter 9, yes.

24 Q Okay.

25 MR. ULLMAN: And could we put up page 15?

1 BY MR. ULLMAN:

2 Q Okay. And so there's no question that it talked about
3 that specifically. This is page 15. The heading you see is
4 "Impact of Possible Emergency Manager Appointment." Do you
5 see that?

6 A Yes. Thank you for putting up the page. If that's what
7 you're talking about, that's what it says.

8 Q And the third bullet talks about the ability to commence
9 a Chapter 9 filing quickly if warranted?

10 A If warranted, yes.

11 Q And the next bullet point talks about how that can create
12 negotiating leverage, as they phrased it here, negotiating
13 with the backdrop of bankruptcy; is that right?

14 A Yes.

15 Q Okay. And that's one of the points that the Jones Day
16 team was making to the city and the state at this January
17 presentation; correct?

18 A Yes. That's a point I echoed during my June 10th
19 presentation.

20 Q Okay. And the Jones Day team also referred to this as,
21 quote, "negotiating in the shadow of Chapter 9." Is that
22 another phrase that you recall being used?

23 A It may have been used. This says "negotiating with the
24 backdrop of bankruptcy," but "shadow," "backdrop,"
25 essentially the same.

1 Q Okay. And if we turn to page 17 of this presentation, we
2 see right down there in the arrows that are following the
3 third bullet, "negotiating in the shadow of Chapter 9";
4 right?

5 A Yes. It's essentially the same.

6 Q That's spelled out expressly, isn't it?

7 A Yes. Shadow, backdrop.

8 Q And is it fair to say that Jones Day was recommending the
9 use of Chapter 9 as a threat in dealing with creditors?

10 A Your question implicates a threat. We will stand by --
11 or, rather, we were trying to say here that this was an
12 alternative, as I said at June 10th.

13 Q Okay. So you'd rather stand by what's said in the pitch
14 book; is that right?

15 A Sure.

16 Q Okay. Well, let's go to page 18 of the pitch book.

17 Okay. And I'd like you to focus on the third paragraph, if
18 we can highlight, and it says, "Creditors understand that a
19 troubled municipality has greater leverage in a Chapter 9
20 case. Accordingly, developing an out-of-court restructuring
21 plan that can later be implemented in Chapter 9, if
22 necessary, can create leverage in favor of a negotiated
23 deal." It goes on and then says, "This is particularly the
24 case if an emergency manager is appointed because the threat
25 of a Chapter 9 filing -- threat of a Chapter 9 filing,

1 including potential moratorium on payments, will be more
2 tangible and possibly even more imminent." Did I read that
3 correctly?

4 A Yes, you did.

5 Q Okay. And didn't Jones Day, in fact, say that having a
6 viable threat of Chapter 9 was critical to Detroit's being
7 able to restructure its debt?

8 A If that's in the document, yes, that's what we said.

9 Q Okay. And just so we can confirm whether it is or not,
10 let's look at page 46. And if we look at the first bullet
11 point right on the top, that's exactly what it says, isn't
12 it?

13 A Yes.

14 Q So there's no question this is what Jones Day was telling
15 the city and state in January of 2013?

16 A Yes. It's in the document.

17 Q And is it correct that Jones Day was also specifically
18 recommending Chapter 9 as a way for Detroit to avoid payment
19 of vested pension benefits?

20 A I believe we were recommending possibly filing a Chapter
21 9 as a way to avoid a number of things, included pension
22 rights.

23 Q Okay. And isn't it correct that the Jones Day team
24 specifically told the city that, in their view, Chapter 9
25 could, in fact, be potentially used to get out of accrued

1 financial benefits that were otherwise protected under the
2 Michigan Constitution?

3 A You mean in the document?

4 Q The document.

5 A Yeah, I believe so.

6 Q And just so we can see whether that's right or not, can
7 we look at page 41? And, in fact, that language appears
8 there in what I've just highlighted; isn't that right?

9 A Yes. I said so.

10 Q Okay. Now, is it correct that the reference that we've
11 just seen here that's still on the screen where it says
12 cutting back or compromising the phrase "accrued financial
13 benefits otherwise protected under the Michigan
14 Constitution," that that's referring to accrued financial
15 benefits that are protected under what's known as the pension
16 clause of the Michigan Constitution?

17 A I believe so.

18 Q Okay. And were you aware of the -- and just for clarity,
19 the pension clause is Article IX, Section 24, of the Michigan
20 Constitution?

21 A I believe that's the appropriate section.

22 Q Okay. And were you aware of the pension clause prior to
23 becoming the emergency manager?

24 A Yes.

25 Q Okay. And on becoming emergency manager, you took an

1 oath, didn't you?

2 A Yes, I did.

3 Q Okay. And I'm going to read you something. I'd like you
4 to tell me whether it's correct that this is the oath you
5 gave. Quote, "I do solemnly swear that I will support the
6 Constitution of the United States and the Constitution of
7 this state and that I will faithfully discharge the duties of
8 the Office of Emergency Financial Manager, City of Detroit,
9 according to the best of my ability."

10 A I believe that's the oath I took, yes.

11 Q And were you speaking truthfully when you gave that oath?

12 A Yes.

13 Q And I believe you've previously indicated that you
14 understood that that same oath applied to your conduct as
15 emergency manager as well; is that right?

16 A I believe so.

17 Q And I believe you've testified that upon becoming the
18 emergency manager, you set about formulating a restructuring
19 plan -- let me withdraw that. I guess on becoming emergency
20 manager, you first put together a plan that showed the
21 financial situation of Detroit and also made some
22 observations or recommendations as to what you believe needed
23 to be done; is that right?

24 A Yes.

25 Q Okay. And that's the May 12th document that we looked at

1 earlier.

2 A The May 12th financial and operating plan.

3 Q Right.

4 MR. ULLMAN: And let's put the first page of that on
5 the screen.

6 BY MR. ULLMAN:

7 Q Okay. I'm just going to ask you a few questions about
8 this. If we can go to page 21 -- and just to give the
9 context, I think you've already testified this morning that a
10 lot of this document was spent detailing what you perceived
11 to be the financial situation of Detroit as it stood after
12 you assumed your post as emergency manager; right?

13 A Yes. I believe that's correct.

14 Q Okay. And is it correct that as part of the initial
15 review that you did, which was -- which culminated in the
16 document that we have on the screen, which is Exhibit 407,
17 that you made a determination that, in your view, accrued
18 rights to pensions -- to pension benefits had to be cut?

19 A I think it's fair to say that we came to that conclusion,
20 yes.

21 Q Okay. And you had come to that as of May 12th, 2013, the
22 date of this operating plan and proposal; is that right?

23 A I think as of May 12th we made a representation that all
24 stakeholders would have to be adjusted, yes.

25 Q Okay. So that we're clear, that at this point in time

1 you had made the determination that, in your view, vested
2 pension benefits of Detroit's retirees had to be cut back; is
3 that right?

4 A I think that's a fair characterization of what we're
5 saying.

6 Q Okay. And at the time that you made that determination,
7 you said you were aware of the pension clause in the Michigan
8 Constitution?

9 A I think I said -- yes.

10 Q Okay. So you were aware at the same time that you made
11 that determination that the pension clause specifically
12 provided against the diminution or impairment of accrued
13 financial benefits?

14 A Well, that's a conclusion. I think you'll remember, Mr.
15 Ullman, during my deposition I said that, you know, we might
16 either have concessions or we might have to go Chapter 9, but
17 I think your characterization is fair one way or the other.

18 Q Let's turn now to the proposal that you made to
19 creditors. That's the June 14 proposal.

20 MR. ULLMAN: Let's put the first page on the screen.

21 BY MR. ULLMAN:

22 Q And this is -- what we have here is common Exhibit 408.
23 It's just a different -- I think you were shown this earlier
24 today. I think the city used its exhibit number. We have
25 the same document, just a different exhibit number --

1 Q Yeah.

2 A -- but it's the same.

3 A If you tell me it's the same thing, that's fine.

4 Q It's the same. Okay. Now, this, of course, is the
5 proposal that you made to creditors in June -- on June 14,
6 2013.

7 A Yes.

8 Q And I believe it states expressly in here that, in your
9 view, there have to be significant cuts to vested pensions;
10 is that right?

11 A I believe so.

12 Q Okay. And just so we can see that, if we look at page
13 109 -- right -- we see the phrase that there must be
14 significant cuts in accrued vested pension amounts for both
15 active and currently retired persons; correct?

16 A Yes.

17 Q Okay. And is it correct that under this proposal, it
18 shows current employees being switched to a defined
19 contribution plan?

20 A That was our suggestion, yes.

21 Q Okay. And that would be a totally new plan from the one
22 that had been in effect up to this point in time; is that
23 right?

24 A We would be going from a defined benefit plan to a new
25 defined contribution plan, yes.

1 Q And is it correct that under the June 14 proposal there
2 would be some ongoing pension contributions for active
3 employees under the new defined contribution plan but no
4 pension contributions for active employees on account of
5 pension benefits that were already vested?

6 A I think so. In other words, you're talking about closing
7 the plan --

8 Q Yeah.

9 A -- the current plan? Yes.

10 Q Okay. So for the vested pension benefits, the
11 contributions for those would be cut entirely for actives; is
12 that right?

13 A I think the plan would be closed. I don't know if they'd
14 be cut in the entirety, but what you mean -- there would be
15 benefits under the existing plan that would continue to be
16 paid out in some portion.

17 Q Well, what I meant is that under this proposal, it shows
18 the city not making any more pension contributions for active
19 employees for vested pension rights; is that true?

20 A Yeah. I think we switched to a different plan and would
21 make contributions for a defined contribution plan as opposed
22 to defined benefit plan.

23 Q All right. And under the defined benefit plan, the
24 vested benefits, no more contributions being made by the
25 city?

1 A It would be a different plan. That is correct.

2 Q And is it correct that under the June 14 proposal the
3 pension contributions for retirees would be cut in their
4 entirety?

5 A You know, Mr. Ullman, you keep saying "cut in their
6 entirety." I don't want to give the wrong impression that
7 somehow there'd be no pensions under the prior plan. When
8 you say "cut in the entirety" --

9 Q Let me --

10 A -- if you mean -- let me finish my thought -- if you say
11 "cut in their entirety," you mean that that plan would no
12 longer continue, then your statement is accurate.

13 Q Well, I think what I was asking about was the pension
14 contributions which are made by the city. The city would
15 stop making pension contributions for retirees; correct?

16 A For retirees?

17 Q For retirees.

18 A Yes.

19 Q I've turned -- I'm asking about retirees now.

20 A Yes.

21 Q So what I said is true, that the pension contributions
22 that had previously been made by the city on account of
23 retirees are shown under this proposal as being cut in their
24 entirety; right?

25 A The city would no longer make contributions. Here again,

1 for purposes of public concession, I don't want to say there
2 are not going to be pensions for retirees. That's the only
3 difference.

4 Q Okay. So we're clear, I am not saying that there would
5 not be some ongoing pension amounts paid because of funds
6 that were already there. I'm talking about contributions for
7 vested pensions being made by the city. Under this proposal,
8 those are over; right?

9 A With that clarification, yes.

10 Q Okay. And is it also correct that this proposal is
11 showing health benefits for retirees being cut entirely; in
12 other words, under the financials that are shown in this
13 proposal, there's no more line item showing that the city is
14 going to be paying out health benefits for retirees?

15 A Well, it shows that the current benefit plan will be cut.
16 There will be payments made to some retirees with a stipend,
17 either 120 or \$125 a month, but that plan will be cut, yes.

18 Q Okay. I was asking specifically about this document. Is
19 there anything in this document that shows anything other
20 than the health benefit payments to retirees being cut?

21 A No, but I want to be clear on the record and also clear
22 for the public. The fact that it's not in this document
23 doesn't mean that that hasn't evolved, so let's not give a
24 bad impression.

25 Q Mr. Orr --

1 A The reality -- let me finish my thought. The reality is
2 your statement is correct under this plan, but that has
3 evolved, and you know that.

4 Q Mr. Orr, I would request that you confine your answer to
5 asking -- your answer to responding directly to my
6 question --

7 A Um-hmm.

8 Q -- as opposed to volunteering information or providing
9 extraneous information.

10 MR. ULLMAN: Your Honor, if you could ask the
11 witness simply to respond, things would go more quickly.

12 THE COURT: Please just respond to the question.

13 THE WITNESS: Yes, your Honor.

14 MR. ULLMAN: Thank you, your Honor.

15 BY MR. ULLMAN:

16 Q So my question was that what's shown in this June 14
17 proposal shows healthcare payments that otherwise or in the
18 past had been made by the city to retirees being cut
19 completely; true?

20 A Yes. We would close a defined plan and change to a
21 different plan, yes.

22 Q We're talking about healthcare.

23 A Yeah, I understand.

24 Q Okay.

25 A I'm just saying -- I'm using those terms, yes.

1 Q And so we're really clear, does this -- this specific
2 document, this June 14 proposal, actually show the city in
3 the future making any payments to retirees on account of
4 healthcare?

5 A I don't believe it's contained in this document.

6 Q Thank you. And is it correct that under this proposal,
7 the June 14 proposal, that all the retirees would get is some
8 share of the notes that the -- the \$2 billion or so in notes
9 that the City of Detroit would be issuing?

10 A Yes. That was the proposal.

11 Q And is it correct that under the June 14 proposal,
12 there's no way to tell how much in cash value any retiree
13 would actually get if this proposal were accepted or
14 otherwise went through?

15 A No. The proposal was a proposal, and we asked for
16 responses, so, no --

17 Q Again --

18 A -- in the proposal there's no way to tell.

19 Q Yeah. If you could just answer the question, Mr. Orr,
20 I'd appreciate it.

21 A I was doing that. Under the proposal the answer is yes.

22 Q Okay. "Yes" in the sense that there is no way that
23 anyone would know -- there's no way to tell how much the
24 retirees would get in cash value; is that correct?

25 A I think that's fair.

1 Q Okay. Now, this is June of 2013 that we're talking,
2 right, this proposal?

3 A Yes, June 14th, 2013.

4 Q And at this point in time, did you have any ability as
5 the emergency manager to actually impose the cuts on pension
6 benefits that we've shown are reflected in this proposal if
7 the retirees did not agree to it?

8 A Unilaterally?

9 Q Yes.

10 A I want to be responsive. I think it's fair to say --

11 THE COURT: If you can't answer the question "yes"
12 or "no," just say that.

13 THE WITNESS: Okay. Please repeat your question.

14 BY MR. ULLMAN:

15 Q As of this point in time -- and we're talking June 14,
16 June 2013 -- did you have any ability as the emergency
17 manager to actually impose the cuts on pension benefits that
18 are reflected in this proposal that we've discussed if the
19 retirees did not agree to it?

20 THE WITNESS: Your Honor, that may call for a legal
21 conclusion, and I don't want to be evasive.

22 MR. ULLMAN: I'm not --

23 THE WITNESS: Pardon me.

24 MR. ULLMAN: I'm not asking for his legal
25 conclusion. I asked him what he believed, what he understood

1 his authority to be as emergency manager.

2 THE WITNESS: Let me say this, Mr. Ullman. I
3 believe that my authority under 436 by itself would not give
4 me that authority.

5 BY MR. ULLMAN:

6 Q Is the answer to my question then "no"? It's not that
7 tough.

8 A No, it's not, but it implicates other things, but I'll
9 give a "no" --

10 THE COURT: Well, I would say it's an extremely
11 tough question.

12 THE WITNESS: Yeah. I mean it --

13 MR. ULLMAN: I never argue with the Court, your
14 Honor.

15 THE COURT: I've got mountains of briefs to prove
16 it.

17 THE WITNESS: Yeah.

18 BY MR. ULLMAN:

19 Q But, again, Mr. Orr, we're just talking as of June 2013.

20 A I understand the time frame we're talking, Mr. Ullman,
21 but the reason I'm -- I'm not trying to joust with you here.
22 The reason I'm trying to not follow your question with a
23 simple "yes" or "no" answer is because that's a large debate
24 as to what's required under 436, whether or not the
25 provisions of 436 somehow can be trumped or implicated by the

1 Constitution, and whether or not there's a federal law
2 overlay, so I want to be very careful. I understand what
3 you're trying to ask me --

4 Q Let me --

5 A -- but -- let me finish my thought, please. I understand
6 what you're trying to ask me, but I'm trying to relay to you
7 that it's a much more complex question.

8 Q Okay. And I'm specifically asking as of the June 2013
9 time frame because at this point in time the Chapter 9
10 petition had not been filed.

11 A Yes.

12 Q Okay. So at this point in time, when the Chapter 9
13 petition had not yet been filed, did you have the ability, as
14 you understood it, as emergency manager, to actually impose
15 the cuts on the pension benefits that are reflected in this
16 proposal if the retirees did not agree to it?

17 A I don't know.

18 MR. SHUMAKER: I'm going to object. Calls for a
19 legal conclusion.

20 THE COURT: That objection is overruled.

21 THE WITNESS: Yeah. I don't know.

22 BY MR. ULLMAN:

23 Q And did you address that question? Did you analyze it?

24 A Yes.

25 Q Okay. And did you take into account in your analysis the

1 pension clause?

2 A Yes.

3 Q Okay. And isn't it correct that you understood that as
4 of June '13, again, prior to the Chapter 9 filing, that you,
5 as emergency manager, during that time frame, did not have
6 the ability to actually impose the cuts on pension benefits
7 if the retirees didn't agree?

8 A I don't know.

9 Q Okay. Did you obtain legal advice on that from Jones
10 Day?

11 A Yes, from a number of different sources, yes.

12 Q Okay. And what did Jones Day tell you?

13 MR. SHUMAKER: Objection, your Honor. Calls for
14 attorney-client communications.

15 MR. ULLMAN: Fair enough.

16 THE COURT: All right. The objection is sustained.

17 BY MR. ULLMAN:

18 Q Isn't it correct, Mr. Orr, that absent a consensual
19 resolution, the only way that the proposal set out in the
20 June 14 document could be implemented, if at all, was in the
21 context of a Chapter 9 filing?

22 A No. I don't know if that's correct.

23 Q Okay. And what other avenues did you think were
24 available to you, if any, again, putting aside a consensual
25 resolution or a Chapter 9 filing?

1 A A court might conclude that under 436 I would have the
2 authority to achieve those results.

3 Q Okay. So was it your contention that under PA 436 you
4 were authorized without a Chapter 9 filing to take actions
5 that were in contravention of the pension clause of the
6 Michigan state Constitution?

7 A Mr. Ullman, you're trying to get at this a different way.
8 Here again, there are a number of different potential legal
9 outcomes, and I want to be very careful. Let me help you, if
10 I can, to try to move along. Okay. A bland reading of the
11 statute might get to your conclusion, but that ignores a
12 number of different factors that have to be analyzed and
13 concluded possibly by a court.

14 Q I'm just asking your position, Mr. Orr. Was it your
15 position, again, in the June 2013 time frame, that you had
16 some -- that the authorization that you had, the powers you
17 had under PA 436 enabled you to take actions that were in
18 contravention of the pension clause of the Michigan state
19 Constitution?

20 A It's my position that 436 might have given me that
21 authority.

22 Q Okay. And is it -- was it your position that the state
23 legislature could amend the state Constitution simply by
24 enacting legislature -- or legislation that authorized state
25 actors to do things in contravention of the pension clause?

1 A I don't know the answer to that question, Mr. Ullman.
2 That's a legal issue.

3 Q Okay. Now, nothing in -- but it was, nonetheless, your
4 position that you thought you could do things that were
5 specifically prohibited by the pension clause of the Michigan
6 Constitution; is that right?

7 A That's a conclusion that you're making. What I'm trying
8 to say to you is those were a number of legal issues that
9 were being analyzed, and sitting here today, I don't know
10 what the exact answer is.

11 Q Okay. Now, nothing in this document, this June 14
12 proposal, acknowledges -- well, let me ask you this question.
13 In the course of your analysis on that issue, did you
14 identify any case law that indicated to you that the
15 emergency manager had powers under PA 436 to take actions
16 that were prohibited by the Michigan Constitution?

17 A Mr. Ullman, I'm not acting as an attorney in this job,
18 so, no, I did not identify any case law.

19 Q Okay. Is there any other authority that you can identify
20 that you recall having looked at?

21 A Without getting into the content of the discussions,
22 there are discussions that I had with attorneys, but I would
23 not have done that research.

24 Q Okay. So I take it then at this point in time, the
25 implications and the restrictions of the pension clause in

1 the Michigan Constitution were something that you were
2 specifically focused on; is that right?

3 A I was aware of it, yes.

4 Q And you were aware that that was something that,
5 depending on how things ultimately turned out, could be
6 interpreted to prohibit your taking action that diminished or
7 impaired accrued financial benefits that were due to
8 retirees?

9 A Yes. I think that's a fair statement.

10 Q Now, there's nothing -- going back to the June 14
11 proposal, is there -- we've talked about the effect that the
12 restructuring that's shown in here would have on the
13 pensions. Is there anything in this June 14 proposal that
14 acknowledges that accrued pension benefits are protected
15 under the Michigan state Constitution?

16 A I don't think so.

17 Q Okay. Now, I think you made some reference in your
18 testimony to how potentially there could be, you know,
19 thousands of individual retirees that might be affected by
20 this?

21 A I think there are thousands of individual retirees.

22 Q And you said that in theory -- at least in theory they
23 could come and make proposals or talk to you about this June
24 14 proposal; is that right?

25 A Well, what we said was any party could come and make a

1 proposal, but we asked the unions early on would they
2 represent retirees. They declined to do so, and so we said
3 we needed a Retiree Committee.

4 Q Mr. Orr, you're really going well beyond what I asked
5 you, so I would just appreciate if you'd focus on my question
6 and answer it. If you think my question is confusing, let me
7 know, and I'll be glad to rephrase it.

8 A No. I'm just trying to give you a complete answer.

9 Q Okay. And I just -- I would appreciate if you'd give me
10 an answer to the direct question.

11 A I will.

12 Q So, now, with respect to the retirees, you understood
13 that this was a document the retirees themselves,
14 individuals, might well have access to and look at?

15 A We put it on the website, yes.

16 Q Okay. And you understand that retirees -- individual
17 retirees are not necessarily fully aware of all of the legal
18 provisions that exist in the State of Michigan?

19 A Some may be; some may not be.

20 Q Okay. And given that you envisioned that this document
21 might be read by individual retirees, you still didn't see
22 fit anywhere in here to mention that one of the things this
23 proposal was doing, if it went through, is taking away
24 pension rights that were protected under the Michigan
25 Constitution?

1 A I think we made a proposal and were offering solutions.
2 The proposal is what it is.

3 Q Um-hmm.

4 A I think the issue of retiree benefits had been fairly
5 widely discussed in a number of different forums.

6 Q Um-hmm.

7 A I think anybody could have come in with a
8 counterproposal.

9 Q Okay. And so in the interest of complete disclosure and
10 putting all the things on the table, you still didn't feel it
11 either necessary or appropriate to mention anywhere in
12 this -- is it a hundred-some-odd-page document that one of
13 the things that the proposal was proposing to take away were
14 pension rights that were specifically protected under the
15 Michigan Constitution?

16 A I think we said that in the highlighted portion.

17 Q That the pension rights were protected under the Michigan
18 Constitution?

19 A No. I think there must be significant cuts in accrued
20 vested pension rights.

21 Q That wasn't my question.

22 A If you're trying to get to the point as whether or not we
23 should have -- we should have said Michigan Constitution, I
24 think that was discussed quite broadly throughout this time
25 period.

1 Q You're really still not answering my question, Mr. Orr.
2 Given the fact that in this document, this some -- hundred-
3 some-odd-page document that you said could be, you know, seen
4 and reviewed by retirees, and given that this document -- the
5 proposal, if it went through, would be taking away protected
6 pension benefits, you didn't see fit anywhere in here to
7 mention at all, even in passing, that the pension rights that
8 this proposal shows as being cut in their entirety were
9 specifically protected under the Michigan Constitution?

10 A The protections of the Michigan Constitution are not
11 contained in this document.

12 Q And you didn't think that's something that ought to be
13 mentioned, did you?

14 A I think everybody knew that, Mr. Ullman.

15 Q Okay. So you didn't believe that that was something you
16 thought you needed or felt appropriate to mention in this
17 document; correct?

18 A Mr. Ullman, it was quite public at that time that the
19 attorney general had taken a position on that point. I think
20 everybody was aware of it.

21 Q Okay. And in light of that, is that the only reason you
22 didn't see fit to mention it?

23 A No. I think we mentioned what our proposal was, and
24 whether or not the intent to include the Constitution was a
25 decision that we made.

1 Q Now, Chapter 9 isn't mentioned anywhere in this June 14
2 proposal either, is it?

3 A I don't believe so.

4 Q And isn't it correct that this proposal was made against
5 the context that if an agreement on the proposal wasn't
6 reached, the city would, in fact, be filing for Chapter 9?

7 A I think I said on June 10th that I had a powerful
8 statute; that we have another powerful tool called Chapter 9,
9 but I don't want to use it, but we're going to have to make
10 some difficult decisions.

11 Q So to go back to my question, is it correct that this
12 proposal was made against the context that if agreement on
13 the proposal wasn't reached, the city would file for Chapter
14 9?

15 A No.

16 Q Okay.

17 A What we said was that the proposal was a proposal, and we
18 were looking for counteroffers and that we were going to have
19 to make some evaluations within the next 30 days; if we had
20 received agreements in principle and the like, we perhaps
21 might extend that, but the proposal does not say that if we
22 don't receive those agreements, we're going to file Chapter
23 9.

24 Q Well, hadn't you publicly stated around this time that
25 the June 14 proposal -- around the time the June 14 proposal

1 was made that you intended to try to use Chapter 9 to try to
2 trump the state Constitution?

3 A I think what I said at that time was that we had powerful
4 tools, as I said before on June 10th. Chapter 9 was one of
5 them, but I didn't want to use it.

6 Q Okay. And didn't you state that one of the -- that the
7 state Constitution provision that you were trying to trump
8 was the pension clause?

9 A I think I may have said at some point, either that time
10 or before, that I felt federal law would trump state law.

11 Q Yeah. Do you remember at your deposition I asked you
12 some questions about an interview you gave on June 14?

13 A Yes, I believe you did.

14 Q Okay.

15 A I don't remember exact -- if you want to refresh my
16 recollection.

17 Q Were you testifying truthfully when you gave your
18 testimony?

19 A Yes.

20 Q Okay. And do you recall giving the following testimony
21 when I deposed you about one of the -- some of the things you
22 said on June 14?

23 MR. ULLMAN: Do we have the clip? It's around lines
24 113.

25 (Videotape of deposition at 11:19 a.m. as follows:)

1 BY MR. ULLMAN:

2 "You gave an interview that I'm sure you're
3 familiar with with the Detroit Free Press on or
4 around June 14th. Do you remember? I'll just tell
5 you what I believe you said, and you can tell me --
6 I'm sure you remember this one, and you can tell
7 me -- if not, I have the quote.

8 Yeah. You can give me the quote. There's so
9 many interviews, but I'll trust your quote.

10 Okay. This is the quotation.

11 'Question: You said in this report, referring
12 to the June 14th proposal, that you don't believe
13 there is an obligation under our state Constitution
14 to pay pensions if the city can't afford it.

15 Answer: The reason we said it that way is to
16 quantify the bankruptcy question. We think federal
17 supremacy trumps state law.'

18 Yes.

19 Okay. You don't deny making that statement?

20 No. I think I've said that several times.

21 Okay. And the state law you were referring to
22 that you referred to as being trumped was Article
23 IX, Section 24, of the state Constitution; is that
24 right?

25 I believe so."

1 (Videotape concluded at 11:20 a.m.)

2 Q Do you recall that testimony, Mr. Orr?

3 A Yes, I do.

4 Q Now, we're talking here -- this is June 14, the date of
5 your proposal. Now, can you tell me -- refresh my
6 recollection. I think you mentioned, but when exactly was it
7 that you had given your oath to uphold the Michigan
8 Constitution?

9 A I think it was March 25th.

10 Q Okay. So that was within 90 days of June 14th; is that
11 right?

12 A Yes.

13 Q Now, prior to the June 14 proposal, did you make any
14 inquiries as to the size of the unfunded pension liability?

15 A Yeah, I believe we did.

16 Q Okay. And who did you ask?

17 A I believe I asked our consultants, principally Conway,
18 Ernst & Young, the entire crowd.

19 Q Okay. And who from Conway?

20 A There are a number of people from Conway. That team is
21 led by Chuck Moore, but I may have talked with Chris Gannon
22 and others. We had regular conversations.

23 Q Okay. And the amount of the -- the size of the unfunded
24 pension liability isn't something that you have any personal
25 knowledge of, is it?

1 A No. Those calculations are made both by Gabriel, Roeder
2 and Milliman's review of Gabriel, Roeder's information, and
3 since Milliman has made an independent calculation.

4 Q Okay. Mr. Orr -- and I believe my question really called
5 for a "yes" or "no." I simply asked whether the unfunded
6 pension liability was something you had personal knowledge
7 of.

8 A Okay.

9 MR. SHUMAKER: Again, your Honor, if he --

10 THE WITNESS: Well --

11 MR. SHUMAKER: -- could just say "yes" or "no" where
12 appropriate.

13 THE WITNESS: But to the extent I've read the
14 reports, I have personal knowledge.

15 THE COURT: Hold on. I've been --

16 THE WITNESS: Oh, I'm sorry.

17 THE COURT: I've been asked to do something here.
18 The question is ambiguous, and I'm going to ask you to
19 rephrase it.

20 MR. ULLMAN: Okay.

21 BY MR. ULLMAN:

22 Q Did you have personal knowledge, based on work that you
23 yourself had done, analysis you yourself had done, as to the
24 size of the unfunded pension liability?

25 A No.

1 Q And, now, you indicated that you made inquiries as to the
2 size of the unfunded pension liability prior to making the
3 June 14 proposal; right?

4 A Yes, I believe so.

5 Q Okay. And was there any further work on the actuarial
6 analysis that you recall being brought to your attention
7 between June 14th and the date of the Chapter 9 filing?

8 A Yes.

9 Q And what was the subsequent work that you recall being
10 done?

11 A I don't remember the exact dates, but the basic
12 chronology was that Gabriel, Roeder, as part of the 2012
13 report, had done an analysis; that Milliman had done an
14 analysis of Gabriel, Roeder's work, and that Milliman either
15 was in the process of doing its own independent analysis or
16 had completed that.

17 Q Okay. Do you recall -- do you recall hearing a figure
18 for the unfunded pension liability of 3.5 billion at any
19 point in time?

20 A Yes.

21 Q When do you recall first hearing that?

22 A I don't recall the exact date that I first heard that,
23 but I remember we had discussions in May, I believe.

24 Q I'm sorry.

25 A In May.

1 Q In May. Okay. And was that prior to the filing of the
2 May 12th report that we looked at previously?

3 A Yes, I believe so.

4 Q Okay. And as of May then -- that May report, based on
5 what you were told, did you believe that the 3.5 billion was
6 an accurate figure for the unfunded pension liability?

7 A Yes.

8 Q And did anything change on that between May and June 14?

9 A No, I don't think so.

10 Q Okay. And did you -- did what you wrote in the May 12th
11 report accurately reflect the state of your knowledge as of
12 that date regarding the size of the unfunded pension
13 liability?

14 A Yes.

15 Q Okay. So if we can turn back to Exhibit 407 -- okay.
16 Now, do you recall at the time that this proposal -- or this
17 report was written, do you recall whether this 3.5 billion
18 figure was being reported to you as something that was
19 preliminary in nature and not yet final or something that was
20 hard-fast and accurate?

21 A I think we felt at this time that that was an accurate
22 analysis of the amount of the unfunded pension liability, but
23 we certainly had said throughout that time that there were
24 factors that went into that calculation that would be subject
25 to discussion.

1 Q Um-hmm. So at this point in time, was it your
2 understanding that as a fact the liability -- the unfunded
3 liability was \$3.5 billion and has been determined to be that
4 figure by the Milliman actuarial firm?

5 A Yes. Based upon reasonable calculations, yes.

6 Q Okay. So if we look at page 3 of this document -- okay.
7 In the first full paragraph I'd like you to focus on the last
8 sentence.

9 A Yes.

10 Q Okay. It goes on. It says, "In addition, the city's
11 pensions are underfunded by at least 0.6 billion and perhaps
12 significantly more once appropriate actuarial assumptions and
13 current data are considered."

14 A Yes.

15 Q Was that an accurate reflection of the state of how you
16 understood things to be regarding the unfunded pension
17 liability as of the date this document was written?

18 A Yes. I think at that time we thought it was at least 600
19 million but probably more once you consider certain factors.

20 Q Okay. And, in fact, this one says "perhaps significantly
21 more"; correct?

22 A Yes. As I said, I don't remember the exact dates that we
23 were getting the calculations in, but we were looking over
24 the reports that had been made by Gabriel, Roeder and doing
25 our own analysis.

1 Q Um-hmm. And if we look at page 37 -- okay. And if we
2 look at the top paragraph, there's a sentence that begins,
3 "As of June 30." Do you see that? We can pull that out,
4 just the "As of June 30" sentence.

5 A Yes.

6 Q All right. And what that says is, "As of June, 30, 2011,
7 the most recent actuarial reports provided to the city by the
8 pension funds showed the pension UAAL" -- that's unfunded
9 actuarially accrued liabilities; right?

10 A Yes. And to be accurate, I think you have to read the
11 sentence right after that as well.

12 Q I haven't -- I'm planning to.

13 A Good.

14 Q I just wanted to clarify what UAAL meant.

15 A Yes. That's what it means.

16 Q Okay. So it says the -- it showed the pension UAAL at
17 646 million. Then it continues -- and please highlight the
18 next sentence as well -- "Using more current data and/or more
19 conservative assumptions could cause that deficiency to rise
20 into the billions of dollars." You see that?

21 A Yes.

22 Q And does that also accurately reflect the state of your
23 knowledge as of the date that Exhibit 407 was prepared, which
24 is May 2003 (sic)?

25 A Yes. As I said before, I don't understand -- I don't

1 remember the specific dates that we were receiving data from
2 Milliman based upon Gabriel, Roeder or Milliman by itself,
3 but I think this is a fair characterization because that work
4 was ongoing.

5 Q Okay. And did -- what is --

6 MR. ULLMAN: By the way, I would like to move to
7 strike everything in his last answer after the word "yes,"
8 your Honor, because I think --

9 THE COURT: Any objections?

10 MR. SHUMAKER: Your Honor, I think he was clarifying
11 his answer.

12 THE COURT: The motion is granted. If you are
13 unable, Mr. Orr, to answer a question "yes" or "no," please
14 say that.

15 THE WITNESS: Okay.

16 THE COURT: Otherwise, if it's a yes/no question,
17 just answer "yes" or "no" or "I don't know."

18 THE WITNESS: Yes, your Honor.

19 THE COURT: All right. We're going to take our
20 break now for lunch, but before we do, please, I have to ask
21 you a question about your line of questioning of the witness
22 regarding the Michigan Constitution. Is it your position
23 that the Michigan Constitution prohibits a city from even
24 asking its retirees to negotiate its retirement benefits in
25 such a way that might work an impairment?

1 MR. ULLMAN: Subject to what my co-counsel says, no.
2 I don't --

3 THE COURT: The answer to that question is no?

4 MR. ULLMAN: No. If they can ask?

5 THE COURT: All right.

6 MR. ULLMAN: No.

7 THE COURT: We will break for lunch now. We are
8 going to remain in place for a few moments so that Mr. Orr
9 can make his exit, and then we'll all go, so we'll be in
10 recess now, and you may go, sir.

11 THE WITNESS: Thank you, your Honor.

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

13 (Recess at 11:30 a.m. until 1:00 p.m.)

14 THE CLERK: All rise. Court is in session. Please
15 be seated. Case Number 13-53846, City of Detroit, Michigan.

16 THE COURT: All right. It appears that everyone is
17 here. Sir, would you please stand and raise your right hand?

18 GOVERNOR RICK SNYDER, WITNESS, SWORN

19 THE COURT: Please sit down. And just so the record
20 is clear, we are interrupting the city's case to allow the
21 objecting parties to call this witness.

22 MR. WERTHEIMER: Yes, your Honor.

23 THE COURT: And you may proceed, sir.

24 MR. WERTHEIMER: Thank you. William Wertheimer,
25 your Honor, appearing on behalf of the Flowers plaintiffs.

1 Your Honor, before I begin questioning the governor, I would
2 request permission of the Court to examine him under Federal
3 Rule of Evidence 611(c)(2) -- that is, to ask leading
4 questions -- as I believe he is clearly a party -- a
5 witness -- excuse me -- a witness identified with an adverse
6 party.

7 THE COURT: Any objections?

8 MR. SCHNEIDER: No objections.

9 MR. SHUMAKER: No objections, your Honor.

10 THE COURT: All right. Your motion is granted, sir.

11 DIRECT EXAMINATION

12 BY MR. WERTHEIMER:

13 Q Good afternoon, Governor.

14 A Good afternoon.

15 Q Thank you for appearing here this afternoon. You are
16 appearing here pursuant to a subpoena that was issued by the
17 UAW, are you not?

18 A I believe so.

19 Q When were you elected governor?

20 A January 1st, 2011.

21 Q And when were you sworn in as governor?

22 A Oh, I'm sorry. I was sworn in January 1st, 2011.

23 Q Okay.

24 A I was actually elected in November of 2010.

25 Q Okay. And I've got in front of me the oath that I think

1 you swore. I'm going to read it to you and ask you if you
2 recall swearing to that oath. "I do solemnly swear that I
3 will support the constitution of the United States and the
4 constitution of this state, and that I will faithfully
5 discharge the duties of the office of governor according to
6 the best of my ability." Do you recall that as being the
7 oath you swore to?

8 A Yes.

9 Q Did you know anything about Article IX, Section 24, of
10 the Constitution, the one that we've now all heard so much
11 about, relating to pension benefits of municipal employees at
12 the time you were sworn in as governor?

13 A Yes.

14 Q Do you have an understanding, Governor, as to how a
15 constitutional provision like that could be amended just
16 generally? It's not a civics lesson, but -- and I'm --

17 A Yes.

18 Q Just generally. Would you tell us?

19 A Yeah. It could go to a vote of the people. It could be
20 an item that would be proposed as an amendment to the
21 Constitution and changed that way. It could be put on the
22 ballot either by petition or by vote of the legislature.

23 Q But you would agree with me that you do not have the
24 power to amend the state Constitution?

25 A That's correct.

1 Q Would it be fair to say, Governor, that at your
2 deposition and actually for some time before then, you have
3 taken the position publicly and at your deposition that while
4 you've been supportive of -- you've been supportive of
5 improved services for the citizens of the City of Detroit,
6 you have not been supportive of the notion of the repayment
7 of debts of the city, including any debt created by the
8 pension; is that correct?

9 A Yes.

10 Q And have you taken that position throughout your time as
11 governor?

12 A Yes.

13 Q And you've done so publicly?

14 A Yes.

15 Q Have you told Mr. Orr that that's your position in one
16 way, shape, or form? In other words, does he know that
17 that's your position?

18 A I couldn't speak to him -- I couldn't speak to his
19 presumption, but I had publicly made those statements.

20 Q Did you ever make them in the presence of Mr. Orr?

21 A I don't recall.

22 Q How many times have you met with Mr. Orr since he became
23 emergency manager either one on one or in groups?

24 A I would have to speculate. It would be a reasonably
25 significant number.

1 Q Well, let's try it this way. How often -- from the time
2 he became emergency manager, how often would you regularly
3 see him? Every week or two, every month? Can you
4 characterize it like that?

5 A Yeah. Typically weekly.

6 Q Weekly.

7 A In terms of not necessarily in person but on the phone or
8 in person.

9 Q Either on the phone or in person weekly?

10 A Yes.

11 Q Okay. In any of those conversations, did the subject
12 come up of your position being that you did not want the
13 state to be obligated to pay any of the pension benefits at
14 issue in this case?

15 A That would be a different question than my other
16 statements in the sense that I view that as a legal matter in
17 terms of if the court was deciding that we had a
18 constitutional obligation, then we would pay it.

19 Q My question, Governor, was whether you had ever
20 communicated that to Mr. Orr in any of these meetings that
21 you've had with him weekly since he became emergency manager.

22 A Those meetings would have had our legal counsel present,
23 where I was asking for their advice on topics such as that.

24 Q So do I take that to mean that you're asserting the
25 attorney-client privilege as to that question?

1 MR. SCHNEIDER: And I'm objecting on the grounds
2 that this question might implicate the attorney-client
3 privilege.

4 MR. SHUMAKER: The city joins the objection.

5 THE COURT: Well, no. I think the witness can
6 testify to what he told Mr. Orr on this question. Did you
7 ever tell Mr. Orr what your position was on whether the State
8 of Michigan has an obligation to pay the city's pension
9 obligations?

10 THE WITNESS: What I told him was is I viewed that
11 as a legal question that I thought best left to the courts to
12 decide because anything else on my part would have been
13 speculative in the fact if I had an opinion, it would get
14 reviewed anyway, and I would rather have the most competent
15 people make that decision to start with.

16 BY MR. WERTHEIMER:

17 Q Fair enough. While we're on the issue of your
18 conversations with Mr. Orr during the period that he was
19 emergency manager, these weekly or so conversations, at your
20 deposition you refused to answer any questions related to
21 whether you discussed the specifics of Article IX, Section
22 24, of the Constitution in those meetings. Does that remain
23 your position?

24 A I think I made mention that it was an attorney-client
25 issue.

1 Q Again, Governor -- I'm getting confused, Judge,
2 Governor -- I just need to know whether you can -- I don't
3 want to go through all those questions if that remains your
4 position.

5 A It does, so the answer, yes.

6 Q All right. I believe you also asserted the attorney-
7 client privilege or your attorneys did at your deposition as
8 to those weekly meetings as it related to any discussions
9 between you and Mr. Orr relating to the potential filing of a
10 Chapter 9 proceeding; is that correct?

11 A Yes.

12 Q And that remains your position; that is, that because
13 attorneys were present either on the phone or in the room at
14 each of those meetings, as you recall, you are asserting the
15 attorney-client privilege?

16 A Yes.

17 Q Thank you. I'd like to ask you a couple of questions
18 about other -- well, let me start with your involvement. I
19 think we all know you have been involved since you became
20 governor with the financial problems that relate to the City
21 of Detroit. You inherited that as an issue. Would that be
22 fair?

23 A Yes.

24 Q And it was a big issue?

25 A I'd describe it as the largest issue in our country.

1 Q From day -- well, leaving aside the largest in our
2 country, it's been a big issue for you from day one.

3 A This has been a large issue for 60 years.

4 Q Okay. When did -- and I think we all know that then
5 Treasurer Dillon has been involved in assisting you on that
6 issue; is that correct?

7 A Yes.

8 Q When did his involvement begin --

9 A It would have --

10 Q -- approximately?

11 A It would have began when he became treasurer.

12 Q Which was?

13 A It would have been about the same time I took office or
14 shortly thereafter.

15 Q Early 2011?

16 A Yes.

17 Q Would that be fair? Okay. We also heard some testimony
18 here that a Mr. Buckfire, an investment person, has been
19 involved in this issue on your behalf; is that -- or on the
20 state's behalf; is that correct?

21 A I don't -- I wouldn't characterize it as on the state's
22 behalf. Mr. Buckfire came several times and presented
23 information, and in some of those cases I didn't ask for him
24 to come, and I'm not sure of all the grounds, whether it was
25 with the treasurer or not, that they made the decision to

1 come.

2 Q Who was he being compensated for for the work he was
3 doing at this early point, as far as you understood?

4 A My understanding is he wasn't necessarily getting
5 compensated.

6 Q He was just doing it?

7 A There were a number of parties that during the course of
8 this -- that first year, in particular, that offered
9 unsolicited advice on Detroit.

10 Q Okay. Without going further with that, would it be fair
11 to say that Mr. Buckfire and the people who work for his
12 company were offering advice to the state?

13 A They were presenting information to the state, yes.

14 Q Not to the city. As far as you knew, they were trying to
15 get your ear and Treasurer Dillon's ear. Would that be fair?

16 A I couldn't speak to that. I also know -- I also believe
17 they were potentially talking to the city also.

18 Q Well, but didn't you understand that they were talking to
19 the city as part of their efforts to help you out for the
20 state as opposed to being an independent actor for the city?

21 A The way I would perceive it at that point in time, I
22 perceived it as they were more presenting information to
23 potentially get themselves hired for an engagement most
24 likely --

25 Q Well, that's what I was getting to.

1 A -- but not necessarily by the state or by the city. I'm
2 not going to speculate on who.

3 Q Okay. Fair enough. The Jones Day law firm, when did
4 they first get involved in assisting the state in dealing
5 with the problems relating to Detroit?

6 A Again, you're making the statement in the same fashion
7 you did before. I believe they were presenting information
8 to the state. I don't believe -- they were not hired by the
9 state --

10 Q Well --

11 A -- to my knowledge.

12 Q So you would assume that they were looking for business
13 also?

14 A Yes.

15 Q Okay. And don't you think, as sophisticated as they
16 were, that they recognized, given all that was going on, that
17 it would be you or people at your end who would be calling
18 the shots relative to how the city's financial restructuring
19 ultimately took place?

20 MR. SCHNEIDER: Objection. Calls for speculation.

21 MR. WERTHEIMER: I don't think it does. It seems --

22 THE COURT: If you can answer that question from
23 your personal knowledge, I'll permit it.

24 THE WITNESS: I didn't believe that to be the case
25 because, in fact, the city ended up hiring Jones Day without

1 me making a statement.

2 BY MR. WERTHEIMER:

3 Q You met with Jones Day and with Ken Buckfire in June of
4 2002 (sic), did you not?

5 A I don't recall the specific meeting.

6 MR. WERTHEIMER: Could you put up -- it's Retirement
7 Systems' Exhibit 844, the second page.

8 BY MR. WERTHEIMER:

9 Q You should see this on your screen if it works, you know.
10 That's a letter that's in evidence in this case from Heather
11 Lennox at Jones Day to someone at her end where she's saying
12 that she's going with Ken Buckfire to talk to the governor in
13 Michigan tomorrow, and it's an e-mail dated June 5, 2012. Do
14 you recall meeting with Heather Lennox and Ken Buckfire in
15 June of 2012?

16 A I recall meeting with Mr. Buckfire. I apologize to Ms.
17 Lennox, but I literally do thousands of meetings, so I don't
18 recall the specific meeting.

19 Q Okay. I won't get into identifications. It's not that
20 kind of case. Do you recall there being one or more Jones
21 Day lawyers there with Mr. Buckfire?

22 A Yes.

23 Q And they were together talking to you about ways that the
24 state could deal with the problem that you, as the governor,
25 faced vis-a-vis the City of Detroit. Would that be fair?

1 A Yes.

2 Q If you look at that same document on the bottom where it
3 lists the attachments, there's an attachment -- a listing of
4 an attachment. I'll skip the numbers, but it says, "City of
5 Detroit - Memo on Michigan Constitutional Pension Plan
6 Protections.DOC." Do you see that?

7 A Yes.

8 Q Do you recall the Jones Day people or Buckfire at that
9 meeting talking to you about that issue?

10 A No.

11 Q That is, the constitutional pension plan protection?

12 A No.

13 Q You're not saying it didn't happen. You're saying you
14 don't recall one way or the other whether it did?

15 A Yeah. I believe that's how you stated your question.

16 Q It is. It is. It is. Do you recall whether or not the
17 Jones Day attorneys provided you or any of your -- let me
18 back up. Do you recall who was at this meeting?

19 A I don't recall all the participants. Generally the
20 treasurer, I believe --

21 Q Okay.

22 A -- and Ken Buckfire.

23 Q Okay. So Treasurer Dillon. Would any of -- either of
24 your aides have attended in the normal course?

25 A It would have been likely.

1 Q Likely. Okay. Do you recall whether the Jones Day
2 lawyers -- excuse me -- provided either you or any of your
3 people there with any legal documents? Did they share any
4 legal documents with you?

5 A I don't recall legal documents. I recall a PowerPoint
6 kind of presentation.

7 Q Made by Jones Day?

8 A No. More Ken Buckfire.

9 Q Okay. Do you recall whether in the PowerPoint
10 presentation Mr. Buckfire referenced the constitutional --
11 the state constitutional provision relating to pensions in
12 any way, shape, or form?

13 A Don't recall.

14 Q Okay. Again, you don't recall one way or the other?

15 A That's correct.

16 Q Sometimes my questions aren't as clean as they should be,
17 and I'm just trying to make sure that --

18 A Okay.

19 Q You were involved in the selection of Mr. Orr as
20 emergency manager, were you not?

21 A Yes.

22 Q Can you approximate when the process began that ended up
23 with the hiring of Mr. Orr?

24 A The process generally would have started late '12, early
25 '13 in terms of looking for potential emergency manager

1 candidates as a contingency plan.

2 Q Did you interview Mr. Orr?

3 A Yes.

4 Q Did you interview him more than once?

5 A I believe so.

6 Q How many times?

7 A I recall a couple.

8 Q Okay. Did you interview anybody else?

9 A Yes.

10 Q How many people?

11 A At least one.

12 Q Okay. During the interview process with Mr. Orr -- when
13 I mean process, I mean not just the interviews but any
14 communications you had with him up to the point he became
15 emergency manager -- did you discuss whether vested pension
16 benefits could be reduced or modified in a Chapter 9
17 proceeding?

18 A I don't --

19 Q Did you discuss that issue?

20 A I don't recall.

21 Q Do you recall discussing -- or do you recall discussing
22 with Mr. Orr in any of these preliminary discussions before
23 he became emergency manager anything regarding vested pension
24 benefits?

25 A No.

1 Q No, or "I don't recall"?

2 A Again, I thought you --

3 Q Well, again, I'm trying to fine-tune my question, and now
4 I confused you. I'm sorry.

5 A Well, I thought you started, as I recall --

6 Q You don't recall any such conversations?

7 A I was trying to get better and just do "yes" or "no" --

8 Q Me, too.

9 A -- to show I was a good listener.

10 Q No. You were. Me, too, but we missed each other, you
11 know.

12 A Okay.

13 Q I switched, and you switched to say --

14 A "I don't recall" would be the summary answer.

15 Q Okay. Thank you. As part of the hiring of Mr. Orr, it's
16 true, is it not, that parts of his expenses are being
17 reimbursed by the NERD Fund, N-E-R-D Fund?

18 A Yes.

19 Q And what parts of his expenses?

20 MR. SCHNEIDER: Objection as to relevance.

21 THE COURT: What is the relevance?

22 MR. WERTHEIMER: I think it goes to the potential
23 conflict issue; that is, I think that Mr. Orr is in a
24 position where he has the state paying expenses for him and
25 at the same time he has to make decisions relative to the

1 position he should take as to whether or not the state should
2 be obligated to do something relative to the city's pension
3 problems under Article IX, Section 24, of the Constitution.

4 THE COURT: Is this fund a state fund?

5 THE WITNESS: No. It's a separate nonprofit that
6 was organized to help offset the cost of government.

7 THE COURT: The objection is sustained.

8 BY MR. WERTHEIMER:

9 Q I'm going to direct your attention now, Governor, to June
10 of 2013, the point in time when Mr. Orr was -- specifically
11 June 14th when he made a proposal. You're familiar with the
12 June 14th proposal?

13 A Yes.

14 Q And I know you were asked about it at your deposition, so
15 you know what I'm talking about.

16 A Yes.

17 Q Okay. Did you participate in the development of that
18 proposal?

19 A I reviewed drafts of it.

20 Q And suggested -- either you or one of your people
21 suggested changes in it, I would assume?

22 A I don't recall.

23 Q Okay. But you do recall reviewing drafts of it?

24 A At least one draft.

25 Q And do you recall that that proposal included -- I'll

1 read from it -- apologize, Governor -- "Because the amounts
2 realized on the unfunding claims will be substantially less
3 than the underfunding amount, there must be significant cuts
4 in accrued vested pension amounts for both active and current
5 retired persons"? Do you recall that as being part of his
6 June 14th proposal?

7 A Yes.

8 Q And in your review, did you suggest any changes in that?

9 A No, because it was to be a mutual negotiation. It was a
10 preliminary proposal.

11 MR. WERTHEIMER: Your Honor, I would ask the witness
12 to simply respond to the question.

13 THE COURT: You may.

14 MR. WERTHEIMER: I didn't ask why. I don't mean to
15 make a big deal, but I think it would go smoother.

16 THE COURT: You may ask the witness that.

17 MR. WERTHEIMER: Thank you.

18 BY MR. WERTHEIMER:

19 Q Do you understand -- did you understand, Governor, that
20 at the time this proposal was being made, that the
21 retirees -- the proposal was that the retirees would get
22 treated as the other unsecured creditors in the language --
23 in the legal language would, including bondholders? They'd
24 be treated the same way. Would that be fair?

25 A Yes.

1 Q Did you understand at the time you looked at -- or
2 reviewed this proposal that the guarantees of pension
3 benefits that there are in this country relate to private
4 employees only under the Pension Benefit Guarantee
5 Corporation? Did you understand that at the time?

6 A Yes.

7 Q In other words, you knew these people weren't being
8 protected by any federal program --

9 A Yes.

10 Q -- "these people" being the retirees and those with
11 vested benefits?

12 A Yes.

13 Q Did you also understand that the bondholders at least had
14 insurance, at least many of them did? They were insured
15 bonds?

16 A I was not clear on who had insurance and who did not.

17 Q Well, you were clear on the fact that the individual
18 retirees didn't have insurance, weren't you?

19 A Yes.

20 Q Did you have any sense as to the impact these cuts might
21 have on individual retirees at the time you reviewed the
22 proposal?

23 MR. SCHNEIDER: Objection. Calls for speculation.
24 It's also not relevant.

25 MR. WERTHEIMER: I'm just asking if he did or not,

1 your Honor.

2 THE COURT: Again, if you can speak from personal
3 knowledge, I will accept your answer.

4 THE WITNESS: I viewed that as speculation at that
5 point in time, in particular, that my understanding is the
6 funded part of the pension plan would not be involved, but
7 the unfunded was the part at issue.

8 BY MR. WERTHEIMER:

9 Q Okay.

10 A And that was a matter still to be determined.

11 Q Did you understand what the range of the pensions were of
12 City of Detroit retirees; that is, how much money they would
13 receive if they were getting a full pension?

14 A Not specifically.

15 Q How did you understand it? How generally, if you could
16 just identify it in any way that is consistent with what you
17 understood?

18 A Well, they would get a monthly payment of so much per
19 month.

20 Q Did you have a sense as to whether there were many of
21 them who were getting monthly payments of \$10,000 or anything
22 like that amount?

23 A That would be at the very high end.

24 Q Okay. Fair enough. I'll drop it. Did you know at
25 around this time -- I think it was before it, but I don't

1 have the time line in front of me. You recall Mr. Orr making
2 a statement to the Detroit Free Press that got publicized
3 pretty widely that federal law would trump Article IX,
4 Section 24, of the Constitution. Do you recall that being in
5 the papers?

6 A I recall that from the questions that you and your
7 colleagues asked me from the deposition.

8 Q Do you recall knowing that Orr had made a statement like
9 that at the point you were reviewing his -- what became his
10 June 14th proposal?

11 A I accepted the fact you were making a truthful assertion
12 when you told me that.

13 Q No, but did you know at the time?

14 A I don't recall.

15 Q You know, as you sit here, I suspect, that the Attorney
16 General has weighed in on this issue of the relationship
17 between the state constitutional provision and the bankruptcy
18 proceedings?

19 A Yes.

20 Q And you know that he has taken the position that in
21 bankruptcy Mr. Orr is obligated to honor Article IX, Section
22 24, in proposing a plan of adjustment, do you not?

23 A Yes.

24 Q And you know that Mr. Orr in no way, shape, or form has
25 indicated that he would be proposing any such plan of

1 adjustment, do you not?

2 A Well, no plan of adjustment has been presented, so that
3 would be just speculative.

4 Q Has Mr. Orr ever said anything either in your
5 conversations with him or that you've heard about secondhand
6 that would indicate that he has any intent to honor the state
7 constitutional provision when he proposes a plan?

8 MR. SCHNEIDER: I would object to the extent that
9 this calls for secondhand conversation. The governor would
10 not have firsthand knowledge of that.

11 THE COURT: The objection is overruled. What is
12 your answer, sir?

13 THE WITNESS: Could we repeat the question?

14 MR. WERTHEIMER: Can you repeat the question,
15 whoever is --

16 THE COURT: We don't have that ability.

17 MR. WERTHEIMER: Oh, I'm sorry. I'll ask it another
18 way.

19 BY MR. WERTHEIMER:

20 Q Has Mr. Orr ever communicated anything to you either
21 directly or indirectly that would indicate to you that at the
22 point he is going to propose a plan, that he is going to
23 propose a plan which would not adversely impact the retirees?

24 A I have not discussed a specific plan with Mr. Orr in any
25 regard.

1 Q Let me ask it another way. Has Mr. Orr ever said
2 anything to you inconsistent with what he said to the Detroit
3 Free Press to the effect that he was going to use the federal
4 bankruptcy law to trump Article IX, Section 24, of the state
5 Constitution?

6 A The question is those discussions would have been with
7 counsel present.

8 Q So you're asserting the attorney-client privilege?

9 A The way you stated that, yes.

10 Q Okay.

11 MR. SCHNEIDER: I'm objecting on privilege grounds
12 as well.

13 MR. SHUMAKER: The city joins the objection.

14 BY MR. WERTHEIMER:

15 Q When did you first learn that the attorney general was
16 going to take the position that he did?

17 A On a phone call a couple days --

18 Q And what --

19 A -- a day or so ahead.

20 Q A day or so ahead of his --

21 A Filing.

22 Q -- filing? Okay. And by "filing," to make sure we're
23 talking about the same thing, the filing he made in federal
24 court relative to his position at least on this issue?

25 A Yes.

1 Q Did you consult with the attorney general on this issue
2 of the interrelationship of Article IX, Section 24, of the
3 Constitution and bankruptcy anytime before this phone call?

4 A I did not personally.

5 Q Did you ask anybody on your behalf to do that?

6 A No.

7 Q Would it be fair to say that the call that he made to you
8 a day or two before was a courtesy call?

9 A Yes.

10 Q He was letting you know one politician to another that
11 I'm taking this position that may be adverse to you?

12 A I wouldn't describe it as one politician to the other. I
13 would describe it as the chief --

14 Q I knew you wouldn't, and I apologize for framing it that
15 way.

16 THE COURT: All right. So restate your question,
17 sir.

18 BY MR. WERTHEIMER:

19 Q Why don't just tell us what was said between you and
20 Attorney General Schuette --

21 A Yeah. The chief legal officer of the state called the
22 chief executive of the state to --

23 Q Okay.

24 A -- let me know he was --

25 Q I accept your amendment.

1 A -- he was going to file a brief or a position on this
2 issue, and I appreciated that, that he had his constitutional
3 responsibilities, as did I, and we respect other and are good
4 working colleagues.

5 Q I'd like to move you now to a different subject, and that
6 is the Flowers and Webster lawsuits. Do you recall being
7 asked about that at your deposition?

8 A Yes.

9 Q I'm going to ask you hopefully fewer questions than at
10 your deposition about that.

11 A Thank you.

12 Q You're welcome. You learned of those lawsuits within a
13 day or so after they would -- let me back up. I'll state for
14 the record that they were filed on July 3rd. You learned
15 about their filings within a day or two, did you not?

16 A I would assume so. I know it was relative -- yes.

17 Q Okay. And you also learned at the same time or shortly
18 thereafter that the court had scheduled a hearing on
19 preliminary injunction requests in both of those two cases
20 for Monday, July 22nd, did you not?

21 A I didn't recognize it as simply about preliminary
22 injunctions. I believed it was simply a hearing on the
23 lawsuits, which could include preliminary injunctions.

24 Q Let me read to you a question and answer from your
25 deposition and see if it's accurate, and I'm at page 125,

1 line 21. "You did know" -- and I'm asking the question.
2 "You did know, did you not, shortly after those suits were
3 filed -- it was all over the papers -- that Judge Aquilina
4 was going to hold a hearing on whether to issue an injunction
5 Monday, July 22nd, did you not?" Your answer was, "Yes."

6 A No. I was simply stating I believed it included that. I
7 wasn't sure what else might have been in that hearing.

8 Q Okay. Fair enough. And I believe your counsel -- do you
9 recall at your deposition we asked for the transmission --
10 the e-mail transmission of your authorization to Mr. Orr, and
11 there were a bunch of questions because the only transmission
12 that we had at the time was late in the evening or like seven
13 something p.m.? Do you recall that?

14 A Yes.

15 Q And then later your counsel found the correct e-mail and
16 provided it to us. Do you recall that --

17 A I actually found it.

18 Q -- learning that? Oh, I'm sorry. You found it?

19 A Yes.

20 Q Okay. And at the end of the deposition, you said you
21 would, correct, that you would find it?

22 A Yes.

23 Q And you did?

24 A Took me about 30 seconds once I got on my computer.

25 Q Okay. And your counsel sent them to us or you instructed

1 your counsel, I assume, to do that?

2 A Yes.

3 Q And do you recall that that transmission occurred at 3:47
4 p.m.?

5 A Yes.

6 Q So it was not until 3:47 p.m. that Mr. Orr got written
7 authorization from you to file the bankruptcy; correct?

8 A Yes.

9 Q Okay. When did you first learn that Mr. Orr was
10 seriously considering filing Chapter 9? When I say
11 "seriously," I mean to the point of preparing papers as
12 opposed to just generally having it out there as a
13 possibility.

14 A It probably would have been about a week, in the time
15 frame of two or three to seven days or so before he sent his
16 letter to me.

17 Q And he sent his letter to you on the 16th, so sometime
18 maybe between July 6 and the 16th, somewhere in there?

19 A I couldn't speak to what specific day, but it was --

20 Q I understand.

21 A -- generally that time frame.

22 Q Okay. To your knowledge, did the state play any role in
23 drafting the request that Mr. Orr made?

24 A Not to my knowledge.

25 Q Do you know one way or another whether Mr. Orr sent a

1 draft of his request to somebody on your team to take a look
2 at and for input?

3 A That would have been at meetings that would have had
4 counsel present.

5 Q So you're asserting attorney-client privilege?

6 A Yes.

7 MR. SCHNEIDER: Objection based on attorney-client
8 privilege.

9 MR. SHUMAKER: The city joins the objection.

10 MR. WERTHEIMER: Your Honor, for the record, I
11 believe the privilege has been waived as to that based on a
12 document that the state voluntarily produced and waived the
13 privilege as to, but it is not a document to or from the
14 governor, so I'll delay examination relative to it.

15 THE COURT: Okay.

16 MR. SCHNEIDER: Of course, we object that there's
17 been no waiver.

18 MR. WERTHEIMER: Understood.

19 BY MR. WERTHEIMER:

20 Q And I think we know from your deposition that as late as
21 July 7th -- and let me back up. I apologize. If we're in
22 this week that ends up the 19th, let's say earlier that week,
23 if I can put you back there -- 15th is Monday, if I'm doing
24 it right. You know that Judge Aquilina is going to hold a
25 hearing on an injunction request the following Monday, the

1 22nd; correct?

2 A Yes.

3 Q And you know -- without getting into all the legalese,
4 you know that the requests to Judge Aquilina are that she in
5 one way or another make sure that if you authorize a
6 bankruptcy, it will only be with a contingency that Article
7 IX, Section 24, be honored. Would that be fair as to your
8 knowledge?

9 A No, because I wouldn't speculate on what a judge is going
10 to do in doing the order or not doing the order or what they
11 might say in the order.

12 Q Well, you had been -- you were served on July 3rd with
13 the complaint, the motion for preliminary injunction, the
14 brief in support, and the order to show cause, were you not?

15 A I didn't personally receive all those documents.

16 Q Fair enough, but your office was served on that day. You
17 don't dispute that.

18 A Again, I can't confirm nor dispute. You have better
19 information on that than I do.

20 Q Okay. I mean for the record, we have documents showing
21 that that's the day, and we didn't serve you personally. It
22 was served at --

23 A My office.

24 Q -- the Romney Building at your office where you kindly
25 always accept service. Let me ask you this. Did you at

1 least look at the complaint or talk to somebody about the
2 contents of these complaints generally to get an idea what
3 they were about?

4 A That would have been subject to attorney-client
5 privilege.

6 Q Okay. Back to the beginning of the week. We're at
7 Monday, the 15th. If we move to Wednesday, the 17th, there's
8 a communications rollout document that we showed you at your
9 deposition. Do you recall that?

10 A Yes.

11 Q Three- or four-page document showing a rollout of the
12 bankruptcy filing that went into a lot of events that would
13 occur before the filing; correct?

14 A Yes.

15 Q A bunch of events that would occur after it; correct?

16 A Correct.

17 Q Down to, you know, who you were interviewing with the
18 following Monday and stuff like that. Am I -- is that
19 correct?

20 A Yes.

21 Q Okay. And that document that we showed you that was
22 dated -- was dated the 17th, do you recall that?

23 A Yes.

24 Q So that's Wednesday, and on Wednesday the rollout listed
25 that the filing would occur on the 19th; is that correct?

1 A Yes.

2 Q And it didn't occur on the 19th, did it?

3 A No.

4 Q And we know, do we not, that the filing -- the actual
5 physical paper filing the bankruptcy had a typed in nine that
6 Mr. Orr at his deposition indicated he switched to an eight.

7 A That's what you explained to me in the deposition.

8 Q And you have no reason to dispute it, but you don't know
9 it of your own knowledge?

10 A Yes.

11 Q Would it be fair to say that the fact that you, Mr. Orr,
12 and others knew that a state court judge would be considering
13 whether she should be imposing conditions on you authorizing
14 a bankruptcy played a role in when you transmitted your okay
15 to Mr. Orr at 3:47 on the 18th?

16 A I believe I explained this in my deposition that it was
17 more the filing of the lawsuits and the fact that bankruptcy
18 is a very last resort and that these actions showed that
19 there wasn't a meeting of the minds; that there was not going
20 to be a mutual understanding here to resolve this short of
21 bankruptcy. And that was part of my decision-making process
22 to say when I was comfortable to sign a letter authorizing
23 bankruptcy, which was a tremendously difficult decision to
24 make but the right one given the circumstances.

25 Q Fair enough. Just one other question, I think, related

1 to that. When you said "lawsuits" in that answer, would you
2 have been referring to the Flowers lawsuit, the Webster
3 lawsuit, and by that time the third lawsuit filed by the
4 Retirement System?

5 A Yes, and an expectation that there could be many other
6 lawsuits from debt holders and many other parties.

7 Q Okay. Fair enough. But no other specific lawsuits other
8 than the three I identified?

9 A Correct.

10 Q I'm going to have you identify some documents, and then
11 I've got some questions as to one, and then we're done,
12 Governor.

13 MR. WERTHEIMER: Could you put UAW 616 up?

14 BY MR. WERTHEIMER:

15 Q Governor, can you confirm that this is an e-mail that you
16 received from Andy Dillon?

17 A Yes.

18 Q And that you read it on or around July 8?

19 A Yes.

20 Q And that it's part of the communications that went on
21 between you and your people relative to this issue of the
22 bankruptcy filing?

23 A I'm not sure. That last question, me and my people --

24 Q Well, I'm sorry. I apologize. It's an e-mail that
25 involves Mr. Dillon's role in helping you with the Detroit

1 problem.

2 A Yes.

3 MR. WERTHEIMER: Move for its admission. I believe
4 that was not admitted.

5 MR. SHUMAKER: Your Honor, the city objects on
6 hearsay grounds.

7 MR. WERTHEIMER: It goes to the state of mind of the
8 state officers, the back and forth. It's not being offered
9 for its truth as to any of the statements. It's being
10 offered as to their state of mind. Good faith is an issue.

11 MR. SHUMAKER: Your Honor, state of mind is not at
12 issue. This is for hearsay purposes.

13 THE COURT: Well, technically what's it --

14 MR. WERTHEIMER: I have one other point, your Honor,
15 and that is it's an admission. We have a common interest
16 privilege asserted when they want to keep documents from us,
17 but they are not agents of each other for purposes of the
18 hearsay rule, so it's -- not only is it offered as state of
19 mind, not for its truth, but even were it offered for its
20 truth, it should come in as an admission.

21 THE COURT: Well, what's at issue here in the
22 eligibility trial is the good faith of the city in filing the
23 case, so I would question how the good faith of the governor
24 is an issue at all.

25 MR. WERTHEIMER: Your Honor, we will present

1 through --

2 THE COURT: Could you do me a favor and pull that
3 microphone back closer to you? I think it got knocked
4 somewhere in the meantime.

5 MR. WERTHEIMER: Yeah. I'm sorry. We'll be
6 providing evidence indicating -- establishing that the state
7 helped Mr. Orr draft the July 16th request, so the idea that
8 we're going to in any way separate out state of minds here I
9 think just is counterfactual.

10 THE COURT: Well, but how does this memo bear upon
11 the city's good faith at all? That's the question.

12 MR. WERTHEIMER: Well, I think that the city, with
13 all due respect to Mr. Orr, was acting at the behest of the
14 state. I think that there is all kinds of evidence of that,
15 and there will be further evidence of it. And given that, we
16 think that if -- pulling the strings may be a little strong,
17 but if the state is involved in that decision-making, the
18 state of mind of the two principal state actors, by the
19 way -- we're not offering, you know, someone at Department of
20 Treasury whose name we've got to look up. This is Dillon to
21 Snyder.

22 THE COURT: All right. This is arguable. I'll
23 permit it.

24 MR. WERTHEIMER: Thank you.

25 MR. SCHNEIDER: Your Honor, I have an objection,

1 however. If this is to go to state of mind, this can't
2 possibly go to the governor's state of mind because this is
3 not a message sent from the governor. This is sent from the
4 treasurer. Not only that, but no one from the city is --

5 THE COURT: Well, but who received it?

6 MR. SCHNEIDER: The governor. He received --

7 THE COURT: Yeah. That objection is overruled.

8 MR. WERTHEIMER: Thank you.

9 THE COURT: The document is admitted. What's the
10 number again? 616?

11 MR. WERTHEIMER: 616, UAW 616.

12 THE COURT: 616 is admitted.

13 (Exhibit 616 received at 1:46 p.m.)

14 MR. WERTHEIMER: Would you now show 615?

15 MR. SCHNEIDER: Same objection, your Honor, on
16 hearsay grounds.

17 THE COURT: You're objecting to 615?

18 MR. SCHNEIDER: 615.

19 THE COURT: Okay. Hold that until it's actually
20 offered.

21 MR. SCHNEIDER: I'm sorry, your Honor.

22 MR. WERTHEIMER: Can you blow up that a little bit
23 at the top? Yeah, just there. That's great. Thank you.

24 BY MR. WERTHEIMER:

25 Q Is that on your screen now, governor, the July 9 e-mail?

1 A Yes.

2 Q Okay. And this is Andy Dillon to you, a response to
3 the -- or a follow-up to the e-mail of the day before?

4 A Yes.

5 MR. WERTHEIMER: Move for its admission again for
6 the same reason, your Honor.

7 MR. SHUMAKER: Objection, your Honor. Hearsay. I'd
8 also like to ask if counsel is going to attempt to introduce
9 documents not in evidence already that they not be displayed
10 to you prior to you making a ruling as to their introduction.

11 THE COURT: Well, that's interesting because
12 sometimes I actually need to see the document to see if it's
13 relevant, so I will not ask him to make that request. And
14 you have your same objection, counsel?

15 MR. SCHNEIDER: Yes, your Honor.

16 THE COURT: All right. Both objections are
17 overruled, and this document -- 615, did you say --

18 MR. WERTHEIMER: Yes, your Honor.

19 THE COURT: -- is admitted.

20 MR. WERTHEIMER: Thanks.

21 (Exhibit 615 received at 1:47 p.m.)

22 BY MR. WERTHEIMER:

23 Q I have just one other document to ask you about, and it's
24 not in evidence yet, so I'm going to -- we're going to do it
25 the old way. I'm going to show you a hard copy, and then

1 I'll come back here and ask you some questions about it. Do
2 you have that document in front of you, Governor?

3 A Yes, 625.

4 Q And who's Dennis Muchmore?

5 A He's my chief of staff.

6 Q And was he your chief of staff in July?

7 A Yes.

8 Q Okay. And who is Mike Gadola?

9 A He's the legal counsel to the governor.

10 Q And who is John Roberts?

11 A Deputy chief of staff.

12 Q And Greg Tedder?

13 A He's the state liaison to Kevyn Orr.

14 Q And do I read this document right that this is an e-mail
15 that Mr. Gadola sent to Mr. Muchmore and Roberts and that
16 Muchmore then sent on to you?

17 A Yes.

18 Q And you received it on July 12th?

19 A Yes.

20 Q And you read it?

21 A Yes.

22 Q Both Mr. Muchmore's message and the underlying message
23 from Mr. Gadola?

24 A Yes.

25 Q And it does relate to your decision-making relative to

1 the decision to authorize?

2 A I'm not sure I understand your question.

3 Q Well, I'll stop at this point.

4 MR. WERTHEIMER: I'd move for its admission at this
5 point, your Honor.

6 MR. SHUMAKER: Objection. Hearsay, your Honor.

7 THE COURT: And that's number what?

8 MR. WERTHEIMER: 625. And, again, I think we've got
9 the same arguments we had before, identical; that is --

10 MR. SCHNEIDER: Same objection.

11 MR. WERTHEIMER: Well, I won't repeat them, your
12 Honor, and I'd like to -- I mean obviously I'll be examining
13 the governor as to their content, but I thought it made sense
14 to move for their admission first. I'm happy to answer --
15 ask any follow-up questions the Court thinks it needs. And I
16 would also indicate for the record, your Honor, that --

17 THE COURT: One second.

18 MR. WERTHEIMER: I'm sorry.

19 THE COURT: So, Governor, have you seen this e-mail
20 before?

21 THE WITNESS: I've seen it before. I'd like time to
22 read it again --

23 THE COURT: Go ahead.

24 THE WITNESS: -- if possible.

25 THE COURT: Sure. Go ahead.

1 THE WITNESS: Thank you.

2 MR. WERTHEIMER: Your Honor, while he's doing that,
3 if I could inform the Court this was a document that was
4 withheld based on attorney-client privilege. It was
5 privilege log Number 6 of the state's log. It was produced
6 as part of the agreement that the state and I ended up making
7 relative to those privilege logs that we argued in front of
8 this Court a couple days ago, and in producing it, they
9 specifically waived in writing the attorney-client privilege.

10 THE COURT: Thank you, sir.

11 MR. WERTHEIMER: Yes.

12 THE COURT: Did you receive this e-mail?

13 THE WITNESS: Yes.

14 THE COURT: All right. The objections are
15 overruled, and Exhibit 625 is admitted into evidence.

16 (Exhibit 625 received at 1:52 p.m.)

17 THE COURT: Can we get a couple more copies of this,
18 please? Do you have --

19 MR. WERTHEIMER: Yes.

20 THE COURT: -- extras to provide?

21 MR. WERTHEIMER: Yes, you can. I've got a couple
22 here that are not marked 625.

23 THE COURT: All right. We'll take care of the
24 marking. Don't worry about that.

25 MR. DECHIARA: Your Honor, we're going to -- UAW is

1 going to submit binders tomorrow that will have multiple
2 copies of that exhibit.

3 THE COURT: Okay. That'll work, too. Thank you,
4 sir.

5 BY MR. WERTHEIMER:

6 Q All right, Governor. My last round of questions is I'd
7 like to go through the contents of this e-mail, specifically
8 that part of it from Mr. Gadola ultimately to you, but
9 indirectly to you.

10 A Um-hmm.

11 Q Okay. On the third line he indicates, Mr. Gadola does,
12 that he spoke to Rich this morning. In context, would I be
13 right in suspecting that that would be Rich Baird?

14 A I would assume so.

15 Q Okay. And Andy would be Andy Dillon?

16 A Yes.

17 Q And LG would be the lieutenant governor?

18 A Yes.

19 Q And who is the lieutenant governor, for the record?

20 A Brian Calley.

21 Q And one of the things that Mr. Gadola is communicating to
22 you is that Baird is now in favor of a more deliberative
23 approach at your end; correct?

24 A He's stating what Rich Baird's view is.

25 Q Yes.

1 A Yes.

2 Q Fair enough. By the way, would it be correct -- if I
3 could move you off the document for just a minute, would I be
4 correct in recalling from your deposition that the only
5 investigation you did of the -- Orr's request on the 16th
6 related to assessing the lawsuits and taking his word for
7 some of the content of that letter; is that right?

8 MR. SCHNEIDER: Objection, your Honor. That's not a
9 correct statement, I believe, of what was taken at the
10 deposition.

11 MR. WERTHEIMER: Well, it may not be, your Honor.
12 If I can go back, I'll get the correct statement. I don't
13 want to -- I have no intention of misrepresenting.

14 BY MR. WERTHEIMER:

15 Q I think I'm going to have to read a couple of questions
16 and answers to get this in context, if you'll bear with me,
17 because I want to make sure I'm accurate. There was a
18 question, and this is on page 77, line 20. "And did you
19 undertake any independent investigation or cause to be
20 undertaken any independent investigation to determine
21 whether, in fact, Mr. Orr's representation to you that there
22 had been" --

23 MR. SCHNEIDER: Your Honor, I object. There's no
24 foundation for this. If he wants to ask the governor a
25 question, that's fine, but that's not what's going on here.

1 THE COURT: The objection is sustained. Just ask
2 the governor a question.

3 MR. WERTHEIMER: All right.

4 BY MR. WERTHEIMER:

5 Q Tell me what investigation you took between July 16th
6 when you received the Orr request and July 18 when you sent
7 the authorization back?

8 A I actually asked and built in additional time to think
9 about it because of the consequence of this in terms of
10 decision-making process, so I had them expand the calendar
11 originally through that process to give me an extra night or
12 so to sleep on something like this and to go through my
13 process. And I went back -- and I know you didn't care for
14 this last time, but literally I went back to since the time I
15 became governor walking through the entire process with Mayor
16 Bing about the prior review cycle at the end of 2011, 2012,
17 about the consent agreement. I reviewed the other financial
18 review team reports. I reviewed his 45-day report. I
19 reviewed his proposal to creditors. So I didn't go out and
20 find independent parties to do this, but I reviewed the file
21 and went back through the decision-making process to
22 recognize this was two and a half years of effort, and
23 basically then I made a decision.

24 Q Fair enough. And in fairness to you, I think I broadened
25 in my question what you were asked.

1 A Yeah.

2 Q And let me go down to the next question and answer, and I
3 think that --

4 A Um-hmm.

5 Q -- where we're only talking about -- or the question only
6 relates to the good faith negotiations, and I apologize for
7 being broader than I should have been. At page 78, line 14,
8 this is --

9 MR. SCHNEIDER: Same objection, your Honor. He's
10 just reading the transcript.

11 THE COURT: If you're trying to impeach the witness,
12 that's fine, but otherwise just ask a question.

13 MR. WERTHEIMER: Okay. Fair enough.

14 BY MR. WERTHEIMER:

15 Q Would it be true, Governor, that the only thing you did
16 to check out the assertion that there had been -- there had
17 been good faith negotiations was to take a look at the
18 lawsuits or that issue and accept what Mr. Orr had in his
19 July 16th letter? Did you do anything else relative to the
20 assertion that there had been good faith negotiations?

21 A Well, I'd gone through multiple meetings where attorneys
22 were present where I would get updates on how meetings had
23 gone, and it wasn't just Mr. Orr. Mr. Dillon was present and
24 those -- and other people that were monitoring this process.

25 MR. WERTHEIMER: Well, your Honor, then I would

1 offer two questions and answers to impeach, and this is page
2 78, line 14, through 78, line 21.

3 BY MR. WERTHEIMER:

4 Q "Question: So just so I understand your answer, your
5 acceptance of the truth of the assertion that there had been
6 good faith negotiations were based on what you read in the
7 July 16th letter" -- "Uh-huh" -- that was the answer --

8 "Question: -- and also the fact that certain lawsuits had
9 been filed?" "Answer: Yes." "Question: Was there anything
10 else that you relied on to conclude that there had been good
11 faith negotiations?" "Answer: No." Were those answers
12 truthful?

13 A Well, I don't see the difference because in the letter --

14 Q I'm not suggesting there is.

15 A Okay.

16 Q I'm just asking the question whether those answers were
17 truthful, Governor.

18 A Yeah, in the context of he cited meeting dates that were
19 during the process where we had other meetings going on, and
20 I got updates.

21 Q Fair enough. Let's go back to 625. The next sentence,
22 "Am I right in understanding that it's not just Baird, but
23 it's now Dillon and the lieutenant governor who are on board
24 with a more deliberative approach?"

25 A That's what this e-mail says.

1 Q And then what they suggest is you writing a letter back
2 to Mr. Orr and then the process continuing from there; is
3 that correct?

4 A That's, again, what this e-mail says.

5 Q Let's go to the next paragraph of the letter -- or I'm
6 sorry -- of the e-mail. Mr. Gadola then says, "I favor this
7 approach for a number of reasons, but primarily because I
8 think we should exercise the governor's ability under PA 436
9 to include conditions upon his authorization for a bankruptcy
10 filing." Do you recall receiving that opinion from your
11 attorney, Mr. Gadola, through this e-mail?

12 A I saw it through this e-mail, and I had other
13 confirmation of that.

14 Q In fact, it was your office that was instrumental in
15 getting the contingency language put into 436; isn't that
16 true? That is, the Governor's Office. I'm jumping around,
17 and I apologize. We took a -- we took a deposition of the
18 state official from Treasury, who was authorized to speak for
19 the state about the issue of who was doing what relative to
20 the passage of 436.

21 THE COURT: Counsel, it's not appropriate to advise
22 one witness of what another witness has said --

23 MR. WERTHEIMER: I'm just trying --

24 THE COURT: -- when they are sequestered.

25 MR. WERTHEIMER: I understand, your Honor. I'll

1 drop it.

2 BY MR. WERTHEIMER:

3 Q Mr. Gadola specifically mentions vested pension benefits,
4 does he not?

5 A Yes.

6 Q And it's in the context of talking or recommending to you
7 that you put contingencies on a bankruptcy filing; correct?

8 A I'm not sure what sentence you're looking at. The one
9 I'm looking at said "could also include."

10 Q Yes.

11 A So it doesn't imply he's saying it has to but could
12 include.

13 Q That's right, could include, but what -- the overall --

14 A And it talks --

15 Q -- subject of this paragraph is the contingency issue;
16 isn't that right?

17 A It talks about vested pension benefits, GO debt,
18 disposition of assets, and assets greater than a certain
19 amount.

20 Q Fair enough. I didn't ask about those, but it does say
21 other things; correct?

22 A Yes.

23 Q Okay.

24 MR. WERTHEIMER: I have nothing further subject to
25 checking with my co-counsel. I have no further questions,

1 Governor. Again, thank you for your time.

2 MR. DECHIARA: Good afternoon, your Honor. Peter
3 DeChiara from the law firm of Cohen, Weiss & Simon, LLP, for
4 the UAW International Union.

5 DIRECT EXAMINATION

6 BY MR. DECHIARA:

7 Q Good afternoon, Governor.

8 A Good afternoon.

9 Q Governor, did Mr. Orr send a draft of his July 16th
10 letter to you before he sent the actual letter on July 16th?

11 A I don't recall that.

12 Q Do you know whether he sent a draft of the letter to your
13 staff?

14 A I don't recall.

15 Q Do you know whether he sent a draft of the letter to Mr.
16 Dillon?

17 A I don't recall.

18 Q Do you know if he sent a draft of the letter to Mr.
19 Dillon's staff?

20 A I don't recall.

21 Q Okay. Now, it's true that you were sent a draft of the
22 June 14th proposal to creditors; correct?

23 A Yes.

24 Q And you reviewed it?

25 A Yes.

1 Q And you gave feedback on it; correct?

2 A I don't recall much feedback on it.

3 Q Well, do you recall giving feedback?

4 A No. I don't recall specific feedback.

5 Q I'm not asking you whether you recall specific feedback.

6 Do you recall giving any feedback?

7 A I recall letting him know I read through it.

8 Q But no feedback?

9 A No.

10 Q Do you recall giving a deposition on October 9th, 2013,
11 in this proceeding?

12 A Yes.

13 Q And did you testify truthfully at that deposition?

14 A Yes.

15 Q I'd like to refer you to page 61 of the deposition, line
16 1.

17 "Question: Okay. Did you comment on the draft?

18 Answer: I generally reviewed it and just gave
19 general feedback."

20 Does that refresh your recollection about whether
21 you gave feedback on the draft?

22 A Yeah.

23 Q Did you give feedback on the draft?

24 A Well, again, just general comments, thanks for sending me
25 the draft.

1 Q And you saw in the proposal, did you not, that there was
2 language that said that there must be significant cuts to
3 accrued pension liabilities?

4 A Yes.

5 Q Okay. Did you raise any -- did you comment on that
6 language?

7 A No.

8 Q Okay. So by that answer, I assume you did not say to
9 Mr. Orr or to his staff that you opposed that position;
10 correct?

11 A In their presentation in the draft in the way they
12 described it to me, this was just the opening to describe the
13 factual situation to start a dialogue with creditors.

14 Q That's not my question. Let me ask this question. Did
15 you say to Mr. Orr or his staff that you opposed the position
16 that was laid out in the proposal that said that there must
17 be significant cuts to accrued pension liabilities?

18 MR. SCHNEIDER: I object to any question that might
19 be leading us into the area of attorney-client privilege,
20 which I believe this may be.

21 MR. DECHIARA: Your Honor, there's been absolutely
22 no testimony that there are any lawyers involved, and even if
23 there were, the governor commenting on the proposal --
24 there's already been testimony on it. And in any event, it's
25 not -- doesn't go to attorney-client privilege.

1 THE COURT: The objection is overruled, but having
2 said that, counsel, I would ask you and caution you not to
3 ask the very same questions that Mr. Wertheimer asked.

4 MR. DECHIARA: Your Honor, I'll try my best. I
5 really will.

6 THE COURT: I must insist on it.

7 MR. DECHIARA: I will try my best. Let me ask the
8 same question.

9 THE COURT: Okay. I'm going to assume you didn't
10 mean that.

11 MR. DECHIARA: Oh, your Honor, I don't believe there
12 was any -- this was asked on the prior examination, and I
13 think this is -- I don't recall --

14 THE COURT: Okay. I'll give you --

15 MR. DECHIARA: -- this being asked on the prior
16 examination.

17 THE COURT: I'll give you one more shot. Go ahead.

18 MR. DECHIARA: Okay. Thank you.

19 BY MR. DECHIARA:

20 Q Governor, did you say anything to Mr. Orr after you
21 reviewed the June 14th creditors' proposal that you objected
22 to the position that was set out there, namely that there
23 must be significant cuts to accrued pension liabilities?

24 A Again, there would have been attorneys present, but I'm
25 confused enough now where --

1 THE COURT: Well, if you are claiming the privilege,
2 we will deal with that. Is that your claim, sir?

3 MR. DECHIARA: Your Honor, I believe you overruled
4 counsel's attorney-client objection, so is -- are you
5 sustaining the governor's objection?

6 MR. SCHNEIDER: Renewing my objection, your Honor.

7 MR. DECHIARA: You're withdrawing it?

8 THE COURT: Okay.

9 MR. SCHNEIDER: I'll renew it.

10 THE COURT: Hang on. Hang on. All right. So I
11 already permitted testimony on this, and, if so, why are we
12 asking the question again?

13 MR. DECHIARA: The question has not been answered.
14 My recollection of the sequence of events was I asked the
15 question, counsel objected, you overruled the objection. I
16 asked the question again. The witness objected. So I think
17 that's where we are.

18 THE COURT: No, but when Mr. Wertheimer was
19 questioning, wasn't this exact question asked? In fact,
20 after the attorney-client privilege was overruled, I asked
21 the question. Let's move on here.

22 MR. DECHIARA: Should I not ask the question, your
23 Honor?

24 THE COURT: Let's move on.

25 MR. DECHIARA: Okay.

1 BY MR. DECHIARA:

2 Q Governor, do you support -- at the time you read that
3 language in the proposal, did you support -- do you agree
4 with that position that there must be significant cuts in
5 accrued pension liabilities?

6 A No.

7 Q You do not agree with that position?

8 A Again, I think it's speculation at this point in time.

9 Q I'm asking you at the time that you read the proposal,
10 did you agree with what was set out in the document?

11 A It used the word "must," and it was to go through a
12 negotiation process, so good faith parties could come up with
13 any arrangement they wanted to. Again, the numbers could be
14 difficult to get there, but to say it's impossible, I
15 couldn't say that.

16 Q Let me try to simplify it. Do you agree with the
17 position that there must be -- as you sit here today, do you
18 agree with the position that there must be significant cuts
19 to accrued pension liabilities?

20 A Again, that's one of the issues in Chapter 9. I view
21 this as not a matter of speculation. It depends on the plan
22 and the judge's approval.

23 Q I'm not asking for any speculation. I'm asking if you
24 agree with that position.

25 A Well, again, there's no plan been submitted yet.

1 Q I'm asking if you agree with that position, Governor.

2 A I don't necessarily know there have to be, and, again,
3 it's not my decision to make that call.

4 Q Did you believe -- when you received the July 16th
5 request by Mr. Orr for permission to file for bankruptcy,
6 there was reference to the June 14th creditors' proposal in
7 it, was there not?

8 A Yes.

9 Q Okay. And you approved the request to file for
10 bankruptcy; correct?

11 A Yes.

12 Q Okay. Did you undertake any investigation before you
13 approved the filing for bankruptcy of what impact that
14 proposal would have on the retirees of the City of Detroit?

15 A Yes.

16 Q What investigation did you undertake?

17 A Well, not investigation, but understanding from the
18 creditors' proposal it would have a dramatic impact, but also
19 the points in Mr. Orr's letter -- he pointed out why the
20 creditors' proposal didn't appear to be feasible.

21 Q Did you know the -- when you approved the bankruptcy
22 filing, did you know the extent of the cuts to pension
23 liabilities that were being proposed by Mr. Orr?

24 A Again, they were contingent, so it could have been any
25 amount of numbers, and it was subject to negotiation.

1 Q So you didn't know how much Mr. Orr -- when Mr. Orr said
2 there must be significant cuts, you didn't know what he had
3 in mind in terms of the extent of the cuts, if he had
4 anything in mind. Is that a fair statement?

5 A Yes.

6 Q Did you ask Mr. Orr before you approved the bankruptcy
7 filing how much he intended to cut people's -- retirees'
8 pensions?

9 A Those would have been in meetings subject to attorney-
10 client privilege.

11 Q So are you refusing to answer the question on attorney-
12 client privilege?

13 MR. SCHNEIDER: Objection based on attorney-client
14 privilege.

15 MR. DECHIARA: Your Honor, are you sustaining the
16 objection?

17 THE COURT: Would you like to be heard on whether
18 it's an appropriate claim of privilege?

19 MR. DECHIARA: Yes. I don't think just the fact
20 that there were attorneys present makes the communication
21 between the governor and the emergency manager privileged.
22 It doesn't deal with a legal issue. It's just a question
23 about whether he inquired of Mr. Orr. It goes directly to
24 the question of authorization.

25 THE COURT: Well, I assume it's relevant, but that

1 doesn't make it any less protected by the attorney-client
2 privilege. If there were attorneys there, I will sustain the
3 claim of privilege.

4 BY MR. DECHIARA:

5 Q Before you approved the bankruptcy filing, apart from
6 the --

7 THE COURT: By the way, as a matter of procedure,
8 counsel, when the witness claims privilege, there's no need
9 to object on the grounds of privilege. If counsel wishes the
10 witness to be compelled to answer in the face of the claim of
11 privilege, he will make such a motion, and then you'll be
12 heard.

13 MR. SCHNEIDER: That's fine, your Honor. Thank you.

14 BY MR. DECHIARA:

15 Q Did you understand that the proposal provided that in
16 exchange for the cuts in accrued pension liabilities the
17 retirees would get certain notes?

18 A Yes.

19 Q Okay. And did you know what the value of those notes
20 would be that the retirees would get?

21 A I knew the principal amount of the notes.

22 Q But did you know how much the value of the notes would be
23 that the retirees would get?

24 A Not to a specific number.

25 Q Okay. Did you have any idea?

1 A It would be a significant discount for the unfunded part
2 of the obligation.

3 Q Was it your understanding that the notes would be
4 interest only; in other words, that the retirees would not
5 have an entitlement to receive principal on the notes?

6 A I don't recall.

7 Q You didn't know that?

8 A That's different than "I don't recall."

9 Q Okay. So let me clarify the question. Did you know at
10 the time that you approved the bankruptcy filing whether or
11 not the notes would be interest only?

12 A Again, that's where I don't recall.

13 Q You don't recall whether you knew or not? Is that your
14 answer?

15 A I don't recall what the notes said specifically in terms
16 of their terms other than understanding there was a
17 contingent note.

18 Q Did you, before you approve the bankruptcy filing,
19 undertake -- apart from anything you said to Mr. Orr,
20 undertake any investigation or have any investigation
21 undertaken for you to assess how much the cuts in pension
22 liabilities would impact the retirees?

23 THE COURT: Asked and answered, your Honor, and I
24 believe Mr. Wertheimer also went into this area.

25 MR. DECHIARA: I'll strike that question.

1 BY MR. DECHIARA:

2 Q Did you investigate how much an average retiree of the
3 City of Detroit receives annually in retirement benefits?

4 MR. SCHNEIDER: Again, your Honor, asked and
5 answered. We're covering the same ground.

6 MR. DECHIARA: I don't believe it was, your Honor.

7 THE COURT: I'll permit this one. Go ahead, sir.
8 Please answer. Did you do such an investigation?

9 THE WITNESS: I had seen accounts in the press of
10 what pension benefits were for a number of the retirees.

11 BY MR. DECHIARA:

12 Q And did you rely on those accounts in the press?

13 A Some of them, yes.

14 Q Okay. Did you undertake any investigation -- given the
15 powers of your office and the resources at your disposal, did
16 you undertake or have an investigation undertaken to
17 determine the annual average pension benefits received by
18 retirees?

19 A No.

20 Q You just -- whatever -- you just read about it in the
21 newspaper. Is that your testimony?

22 A Again, there would have been meetings subject to
23 attorney-client privilege.

24 Q I'm not asking anything about meetings or attorney-client
25 privilege. I'm asking you did you rely on what you read in

1 the newspaper?

2 A I had other information that would have been in meetings
3 provided to me where attorneys were present.

4 Q And what was your understanding of the average annual
5 pension benefit received by a retiree?

6 A Again, it would have been in the thousand to \$2,000-a-
7 month range.

8 Q Okay. So about 12,000 to 24,000 annually; is that -- am
9 I doing the math right?

10 A Sounds like it.

11 Q Okay. Did you do any investigation or cause any
12 investigation to be undertaken whether a retiree whose
13 pension is between 12 and \$24,000 a year, if significant
14 amounts of that income was cut, whether the retirees would be
15 able to pay their mortgages or pay their rent necessary to
16 stay in their homes?

17 MR. SCHNEIDER: Objection. Relevance.

18 MR. DECHIARA: Your Honor, the governor approved the
19 bankruptcy filing based on -- he said he read the proposal --
20 based on the proposal. I'm trying to inquire into the state
21 of the governor's knowledge when he approved the bankruptcy
22 filing. I think to say -- let me just say this. To say
23 that -- these questions all go to the impact that these cuts
24 that Mr. Orr has proposed and that the governor knew about
25 and that the governor approved -- to say that the impact of

1 these cuts are going to have on the retirees and whether
2 they're going to be able to put food on the table and pay
3 their rent --

4 MR. SCHNEIDER: Objection, your Honor, to --

5 MR. DECHIARA: To say that's irrelevant to this
6 proceeding --

7 MR. SCHNEIDER: -- not only --

8 THE COURT: I need to hear the response to your
9 objection, sir.

10 MR. SCHNEIDER: I believe he's testified --

11 MR. DECHIARA: To say that's irrelevant to this
12 proceeding I think is incorrect.

13 THE COURT: Well, but your objection to eligibility
14 is that this bankruptcy will impair the pensions regardless
15 of their impact; right?

16 MR. DECHIARA: I'm sorry, your Honor.

17 THE COURT: Your objection to eligibility here is
18 that pensions will be impaired regardless of their impact.
19 Yes? Yes?

20 MR. DECHIARA: We object to any impairment of
21 accrued pension liabilities. That's correct.

22 THE COURT: All right. So it's not on the grounds
23 of impact. Its on the grounds of the Constitution. Yes?

24 MR. DECHIARA: Correct, but that's not our only --

25 THE COURT: All right. So the objection is

1 sustained.

2 BY MR. DECHIARA:

3 Q You testified earlier that since Mr. Orr has been
4 emergency manager, you've had regular meetings with him;
5 correct?

6 A Yes.

7 Q And those are both meetings in formal settings without
8 other advisors present, other staff and advisors present, and
9 also one-on-one meetings; correct?

10 A Yes.

11 Q In Mr. Orr's July 16th letter to you requesting
12 permission to file bankruptcy, he asserted, did he not, that
13 there were \$3.5 billion in accrued pension liabilities that
14 the city had?

15 A Yes.

16 Q Okay. And you accepted that number as true?

17 A I --

18 Q It's a "yes" or "no" question.

19 A I took that as a number that he was presenting in his
20 letter. There's a variety of numbers out there.

21 Q My question is did you take that number that he presented
22 as true?

23 A I believed he was presenting a number he believed was a
24 true estimate.

25 Q And did you agree that it was true?

1 A I believe that there could be some reasonable range on
2 that, but it was within the reasonable range.

3 Q And when you received the July 16th letter, you knew that
4 the emergency manager had not completed an analysis of what
5 assets of the city could monetized; correct?

6 A Correct.

7 Q And when you approved the bankruptcy filing, you were
8 aware or were -- let me ask you. When you approved the
9 bankruptcy filing in your July 18th letter, were you aware
10 that a significant portion of the underfunded pension
11 liability of the City of Detroit was allocable to the Water
12 and Sewer Department?

13 A I didn't know what percentage, but there would be some
14 portion --

15 Q Did you know --

16 A -- to Water and Sewer.

17 Q Did you know that there was some percentage that was
18 allocatable?

19 A Yes.

20 Q Okay. Let me refer you back to your deposition. I'm
21 referring to page 59, line 2.

22 "Question: Do you know whether a significant
23 portion of Detroit's unfunded pension liability is
24 allocable to the city's Water and Sewer Department?

25 Answer: I'm not aware of that relationship."

1 Was that true at your deposition when you said you
2 were not aware of that relationship?

3 A At that time.

4 Q At the time of the deposition?

5 A Yeah.

6 Q And so since you -- so since then you've learned. Okay.
7 My question was not that. My question was at the time -- on
8 July 18th before your deposition, going back to July 18th --

9 A I'm sorry. I missed --

10 Q Okay. Okay.

11 A That would be correct.

12 Q We're not on the same page.

13 A Yes.

14 Q I think we are now. At the time of the July 18th letter
15 that you issued approving the bankruptcy filing, were you
16 aware then that a significant portion of the city's pension
17 liability was allocable to the Water and Sewer Department?

18 A Not at that time.

19 Q You were aware, were you not, that under law you could
20 have, had you chosen, put a contingency on your approval and
21 made the bankruptcy filing contingent on Mr. Orr not seeking
22 to impair accrued pension liabilities? Are you aware that
23 you had that power?

24 A Yes.

25 Q Okay. And you chose not to exercise it?

1 A Yes.

2 Q Did you speak to Mr. Orr at any time about using Chapter
3 9 to get -- to eliminate pension liabilities of the city?

4 A Those discussions would have been with attorneys.

5 Q Okay. So are you refusing to answer the question?

6 A Yes.

7 Q Okay. Did you speak to Mr. Orr at any time about the
8 timing of the bankruptcy filing?

9 A Those discussions would have been with attorneys present.

10 Q And you're refusing to answer that question?

11 A Yes.

12 MR. DECHIARA: Your Honor, I'm sorry if I'm taking
13 some time. I'm trying to eliminate so --

14 THE COURT: Okay.

15 MR. DECHIARA: -- I don't duplicate.

16 THE COURT: Take your time. Actually, while you're
17 doing that, I'm going to consult with my court security
18 officer here, so give me just a minute, please. You may
19 proceed whenever you are ready, sir.

20 MR. DECHIARA: Thank you, your Honor.

21 BY MR. DECHIARA:

22 Q Are you aware, Governor, that revenue sharing by the
23 state with the city -- in other words, monies given by the
24 state to the city -- have been reduced substantially over --
25 in recent years?

1 MR. SCHNEIDER: Objection to relevance.

2 THE COURT: No. That objection is overruled.
3 Please answer the question.

4 THE WITNESS: Yes.

5 BY MR. DECHIARA:

6 Q And is -- that's true, that it has been reduced
7 substantially over recent years?

8 A It has been reduced, yes.

9 Q Okay. Is it true, in your view, that if that state
10 revenue sharing had not been reduced, there might have been
11 monies to maintain the pensions of the Detroit retirees?

12 A That would be speculative.

13 Q Well, if the city had more money from the state, wouldn't
14 that -- wouldn't it not have more money available to pay for
15 pensions?

16 A Again, that's speculative because there are approximately
17 somewhere between 15 and \$18 billion worth of debt and needs
18 in the services for better services -- excuse me -- the
19 citizens having better services within the city.

20 Q Did Mr. Orr at some point ask you whether his decision
21 whether or not to become emergency manager would impact the
22 decision on whether or not Jones Day would be hired as
23 restructuring counsel for the city?

24 A Would you repeat that again?

25 Q Sure. It was a little complicated. Did you -- excuse

1 me. Did Mr. Orr at any point when he was a candidate for
2 emergency manager -- did he ever have a conversation with you
3 where he said something to the effect of, "I don't want my
4 decision as to whether or not I accept the job to impact
5 Jones Day's chances of being hired as restructuring counsel
6 for the city"? Did Mr. Orr ever say anything to you --

7 A I don't recall.

8 Q -- along those lines?

9 A I don't recall that.

10 Q Did Mr. Orr ever come to you at any point since he's been
11 emergency manager asking whether or not the state would share
12 in the financial burden of some or all of Detroit's pension
13 liabilities?

14 A That would have been in meetings with attorneys present.

15 Q I'm just asking whether that conversation occurred.

16 A That particular question I don't recall being ever
17 brought up.

18 Q You don't recall whether it was ever brought up, but if
19 it did, it was -- it happened before attorneys? Is that your
20 testimony?

21 A Well, again, we had discussions on pensions, but
22 attorneys were present in those meetings.

23 Q Right, but this is a specific question. Did Mr. Orr ever
24 have discussions with you about the state sharing in the
25 financial burden in whole or in part of Detroit's financial

1 liabilities?

2 A I don't recall.

3 MR. DECHIARA: Nothing further, your Honor.

4 THE COURT: All right. Hang on. We're going to
5 take our afternoon break at this time for 15 minutes. Well,
6 actually until 2:45. I will, however, ask everyone to remain
7 seated until the governor can make his exit, and so give us a
8 couple minutes for that, and then we'll reconvene at 2:45. I
9 think the court security officer or one of them will show you
10 to the judges' conference room down the hall.

11 THE WITNESS: Okay. Just trying to show the right
12 etiquette, Judge.

13 THE COURT: I'm sorry, sir.

14 THE WITNESS: That you were leaving first.

15 THE COURT: No, no, no. I'm going to sit here with
16 everyone else, and then when you're all settled, we will go.
17 Okay. All right. We're going to be in recess.

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

19 (Recess at 2:27 p.m. until 2:45 p.m.)

20 THE COURT: You may proceed.

21 MS. LEVINE: Good afternoon, your Honor. Sharon
22 Levine, Lowenstein Sandler, for AFSCME. Just to clarify the
23 record, AFSCME also served a trial subpoena and appreciated
24 the acceptance of service by the state. Thank you.

25 DIRECT EXAMINATION

1 BY MS. LEVINE:

2 Q Good afternoon, Governor.

3 A Good afternoon.

4 Q Briefly, do you recall a coalition of unions negotiating
5 a tentative agreement with the City of Detroit back in -- in
6 or around February of 2012?

7 A I don't recall.

8 Q If I could try just to refresh your recollection for a
9 moment, there were about 30 unions that negotiated a
10 tentative agreement that was a concessionary agreement that
11 resulted in savings for the city. The unions ratified that
12 agreement and then were advised by the city that the state
13 asked them not to implement it. Are you familiar with that?

14 A I recall the general topic but no specifics.

15 Q Do you know why the state asked the city not to implement
16 the terms of the concessionary agreement, which would have
17 provided for savings to the city?

18 MR. SCHNEIDER: Objection to relevance.

19 THE COURT: Overruled. Please answer.

20 THE WITNESS: I don't recall.

21 BY MS. LEVINE:

22 Q Governor, it's true, is it not, that in a nonmunicipal
23 bankruptcy case, the Pension Benefit Guarantee Corp. or the
24 PBGC provides insurance coverage for retirees if their
25 pensions are terminated; correct?

1 A For private entities, I believe that's true.

2 Q For private entities with, for example, single employer
3 defined benefit plans; correct?

4 A Yes.

5 Q And the current level of protection provided by the PBGC
6 is \$57,500; is that correct?

7 A I wouldn't be aware of that number.

8 Q Well, isn't it true that -- our understanding is that the
9 average pension in Detroit is approximately \$18,000 a year,
10 but even using your figure of between one or \$2,000 a month,
11 which is slightly higher, isn't it true that all of the
12 retirees in Detroit would fall within the limits of the PBGC
13 protections?

14 A Again, I'm relying on your statements.

15 Q So it's true, though, that all of the retirees would fall
16 within the limits of about \$57,000, in fact, substantially
17 under \$57,000 a year?

18 A Again, I don't know to a fact that every retiree is under
19 that number.

20 Q Okay. We'll try this a different way. You reviewed the
21 June 14th proposal prior to the time of the June 14
22 presentation; correct?

23 A Yes.

24 Q Were you present at the June 14 presentation?

25 A No.

1 Q Kevyn Orr was present at the June 14 presentation? Yes?

2 A Yes.

3 Q But he had discussions with you prior to that time?

4 A Yes.

5 Q And you reviewed the presentation before it was made;
6 correct?

7 A Yes.

8 Q And on page 109 of the presentation, which was Exhibit
9 43, and on page 59 of the executive summary of the
10 presentation, which is Exhibit 44, there is a comment with
11 regard to underfunded pension, and I'm just going to read it
12 so we don't have to find the document right now. "Because
13 the amounts realized on the underfunding claims will be
14 substantially less than the underfunding amount, there must
15 be significant cuts in accrued vested pension amounts for
16 both active and currently retired persons." Do you recall
17 that?

18 A Yes.

19 Q Did you read that before June 14?

20 A Yes.

21 Q Now, with regard to the amount of the underfunding, I
22 believe you previously testified today that you don't know
23 what it is, is that correct, as we sit here today?

24 A Yes.

25 Q And it would be speculative to guess what it would be as

1 you sit here today; correct?

2 A Yes. There could be a wide range on that.

3 Q So there is nothing in this so-called proposal to
4 creditors, for example, that would say to a retiree that if
5 they earn currently \$18,000 a year, that after the proposal
6 was implemented, if it's implemented, their annual benefit
7 will drop to nine, five, four, or zero; correct?

8 A Well, that was a proposal subject to mutual negotiations,
9 so it didn't --

10 Q No, no, but under the proposal, regardless of what the
11 mutual negotiation is, if I'm a retiree -- Sharon Levine is
12 86 years old. I live in Detroit. I look at this proposal,
13 and I say to myself, okay, I currently get \$18,000 a year.
14 After the proposal, my vested accrued pension benefit payment
15 will now drop to nine, five, seven, whatever the number is.
16 You can't tell that from this proposal; correct?

17 A I believe that would be difficult.

18 Q And in addition to that, it talks about a \$2 billion note
19 for all of the unsecured creditors to share; correct?

20 A Yes.

21 Q And we don't know what the total universe of all
22 unsecured claims are, do we?

23 A I believe -- well, there's an estimate in the proposal to
24 creditors.

25 Q Right, but as we sit here today, exactly what that number

1 is going to be, we don't know what it is, do we?

2 A Correct.

3 Q And so any individual creditor doesn't really know, as we
4 sit here today, what their share of the \$2 billion note will
5 be over the term of that note; correct?

6 A Well, you said "will be." You're assuming that will be
7 the case. That's past tense now that --

8 Q Let's go back.

9 A -- we're in bankruptcy.

10 Q Let's go back to June 14 again. I'll try it again.
11 Okay. On June 14 the city made a proposal that you read
12 before it was made.

13 A Yes.

14 Q Okay. And a retiree reading that proposal doesn't know
15 what their post-proposal, if it's implemented, retiree annual
16 benefit is going to be post-proposal. We just had that
17 conversation. We don't know if 18 is dropping to 9 or 4 or 7
18 or whatever the number is going to be; correct?

19 A I'm not trying to be difficult, but you're speaking in
20 the future tense.

21 Q No. I'm speaking in the past. In other words, one of
22 the things we're looking at --

23 A You said what it will be --

24 Q Okay. I'll rephrase it.

25 A -- or what it would have been.

1 Q I'll rephrase.

2 A Yeah.

3 Q I'll rephrase.

4 A I'm sorry. I'm just trying to make sure I'm answering --

5 Q I'll rephrase. Going back to June 14, we're making a
6 proposal; right? We have a proposal. It's the so-called
7 proposal to creditors. A retiree is a creditor; correct?

8 A Yes.

9 Q Okay. An individual retiree picks up the proposal or
10 takes it off the website or comes to one of the public
11 meetings. They currently get \$18,000 a year. They take a
12 look at this proposal. There is nowhere in that proposal
13 that tells them what they're going to get if the proposal is
14 implemented on that -- what they now know to be their \$18,000
15 a year; correct?

16 A Yes.

17 Q Okay. And in addition to that, whatever that
18 underfunding is would -- if I understood your testimony
19 correctly, would be part of what gets paid under the \$2
20 billion note; correct?

21 A Yes.

22 Q Okay. Now, there's nothing in that proposal, though,
23 that would tell an individual creditor or an individual
24 retiree exactly what their proportionate share of the \$2
25 billion note would be; correct?

1 A I thought you already asked that, but yes.

2 Q Well, but we were -- okay. So that's good. So we don't
3 know what we're getting on our annual pension benefit
4 anymore, and we don't know what our claim is going to be
5 worth as we read the June 14 proposal for creditors; correct?

6 A Yes.

7 Q Okay. In addition to that, as we sit here today, is it
8 your understanding that the individual retiree asserts a
9 claim for the underfunding portion, or is it, as the city
10 contends, only the Retirement System that asserts that claim?

11 A That would be a legal question that I'd leave to the --

12 Q So a retired person who is coming to the June 14 meeting
13 doesn't know what their annual pension benefit is going to be
14 reduced to, doesn't know what their pro rata share of this \$2
15 billion note is going to be, and doesn't even know if they're
16 going to be allowed to assert a claim to share in the \$2
17 billion note; is that correct?

18 A If you're speaking in the present tense, I believe one of
19 the first things that was requested by the city during the
20 bankruptcy process was to have someone represent the
21 creditors so they would have a voice at the table, so I view
22 that as one of the constructive issues that I looked at that
23 retirees weren't having the kind of representation I thought
24 they deserved until we got into this process.

25 Q Okay. But I'm going to ask my question again. On June

1 14, if you're a retiree and you're reading this proposal --
2 okay -- you cannot tell -- it's correct that you can't tell
3 what your -- and I'm using a hypothetical -- \$18,000 a year
4 is going to be reduced to, you can't tell what your pro rata
5 share of the \$2 billion note is going to be in real
6 quantifiable dollars, and you don't know even if you're going
7 to be allowed to assert that claim or whether that claim only
8 gets asserted by the pensions themselves; isn't that correct?

9 A The first two statements I would say yes. The third one
10 is a legal question that I don't know the answer to.

11 Q But, Governor, if you don't understand it, how does the
12 86-year-old retiree understand it?

13 A Again, that's --

14 MR. SCHNEIDER: Objection. Speculation.

15 THE COURT: Overruled. Can you answer the question?

16 THE WITNESS: That would have been the part of the
17 negotiate process because I believe Mr. Orr was trying to
18 have meetings with various union and other representatives to
19 potentially represent the retirees. My understanding is in
20 many cases they would not take up that interest in
21 representing the retirees.

22 BY MS. LEVINE:

23 Q Governor, are you aware that AFSCME wrote several letters
24 to Jones Day and Miller Buckfire requesting meetings prior to
25 the filing of the bankruptcy case on July 17 requesting

1 meetings with regard to negotiations?

2 A No.

3 Q Were you aware that those requests were declined?

4 A No.

5 Q In response to earlier questioning, you said if the Court
6 ordered you -- sorry. In response to prior questioning with
7 regard to not diminishing or impairing vested pension
8 benefits, I believe you testified, and I quote, here today,
9 if the court ordered you had to pay them, you would pay them.
10 Is that a true statement?

11 A I will follow a lawful order of a court every time.

12 Q So if this Court finds --

13 A That's my goals as governor.

14 Q So if this Court finds that it's unconstitutional or
15 unconstitutional as applied to impair or diminish vested
16 pension benefits, are you, as the governor of the State of
17 Michigan, saying that the state will pay those pension
18 benefits?

19 A I think you're asking a broader question in that context
20 because the case is with the City of Detroit, not the State
21 of Michigan.

22 Q Your comment was if the court ordered you had to pay
23 them, you would pay them.

24 A If the court through this process -- if I have a valid
25 judicial order that's been reviewed and gone through the

1 judicial system ordering me to take an action, I'm going to
2 follow the action of the court.

3 Q As we sit here today, have you or has anyone on behalf of
4 the state offered to Detroit or Kevyn Orr state funding to
5 avoid impairing or diminishing pension benefits?

6 A Those discussions would have been with attorneys present.

7 Q I'm not asking you what the discussions were. I'm not
8 asking what you said or what they said. I'm asking as we sit
9 here today, have you or has anyone on your behalf or on
10 behalf of the state offered Detroit or Kevyn Orr state
11 funding to avoid impairing or diminishing vested pension
12 benefits?

13 THE COURT: I'm going to ask you to answer that
14 question but with one further limitation, which is I don't
15 want you to disclose any conversations that you have had or
16 that you are aware has been had in the context of the
17 District Court's mediation here.

18 MS. LEVINE: And we weren't looking for that, your
19 Honor.

20 THE COURT: So with that limitation, would you
21 answer the question?

22 THE WITNESS: Could you walk through that one more
23 time for me? Sorry.

24 BY MS. LEVINE:

25 Q As we sit here today --

1 THE COURT: That's all right. That's all right.

2 BY MS. LEVINE:

3 Q -- have you or has anyone on your behalf or on behalf of
4 the state offered Detroit or Kevyn Orr state funding to avoid
5 impairing or diminishing vested pension benefits?

6 A No.

7 MS. LEVINE: No further questions, your Honor.

8 DIRECT EXAMINATION

9 BY MR. KING:

10 Q Good afternoon, Governor.

11 A Good afternoon.

12 Q My name is Ron King, and I represent the two Detroit
13 Retirement Systems. If I understood your testimony
14 correctly, leading up to the June 18th authorization, you'd
15 indicated that this was a two-and-a-half-year-in-the-making
16 process. Is that accurate?

17 A I had been involved with serious discussions on Detroit's
18 financial condition over the last two and a half years, yes.

19 Q And as part of those discussions, is it safe to assume
20 that there was substantial review of financial information,
21 compilation of multiple reports, in-depth analysis of cash
22 flow, and other factors that would go into evaluating the
23 financial condition of the city?

24 A Yes.

25 Q And, additionally, even dating back to 2012, the city had

1 professionals on board, consultants on board, that were
2 engaged in the process of conducting and compiling this
3 information and performing those types of reviews, to your
4 knowledge; correct?

5 A Yes.

6 Q So this has been a very lengthy ongoing process leading
7 up to your authorization on July 18th. Is that accurate?

8 A Yes.

9 Q And you indicated that you were familiar with the June
10 14th proposal to creditors; correct?

11 A Yes.

12 Q And I believe you agreed that that June 14 proposal
13 actually used the language that there would be significant
14 cuts to pension benefits. Is that accurate?

15 A Yes.

16 Q And I think you also stated just a moment ago -- and I
17 know you also did in your deposition -- that one of your
18 concerns understandably was that retirees would have a voice
19 in this process. Is that accurate?

20 A Yes.

21 Q If the city were to put forth a proposal that didn't
22 contemplate an impairment or diminishment of pension
23 benefits, then there wouldn't be a need for the retirees to
24 have a voice, would there be?

25 MR. SCHNEIDER: Objection. Calls for speculation.

1 THE COURT: Sustained.

2 BY MR. KING:

3 Q Do you know if the city has set forth any other proposals
4 to creditors other than the June 14 proposal?

5 A I wasn't present for the follow-up negotiations, the
6 meetings that would have taken place in terms of I wasn't
7 present in those meetings with all those various creditors.

8 Q And do you know whether or not the city contemplated a
9 proposal that would not impair or diminish pension benefits?

10 A I don't recall.

11 Q Have you and Mr. Orr had any discussions that would
12 contemplate a proposal that would not include the impairment
13 or diminishment of pension benefits, and that's subject to
14 Judge Rhodes' caveat that obviously you can't include
15 anything that was done in the context of the mediation?

16 A I'm trying to recall.

17 Q And I can -- let me -- you want me to repeat the question
18 for you? Have you or Mr. Orr had any discussions prior to
19 your June 18 -- your July 18th authorization about putting
20 forth a proposal to creditors that does not contemplate the
21 diminishment or impairment of pension benefits?

22 MR. SCHNEIDER: Objection if the question is calling
23 for attorney-client privileged information.

24 MR. SHUMAKER: Same objection.

25 THE COURT: You can answer that question if it does

1 not involve communication with counsel.

2 THE WITNESS: It did involve counsel.

3 THE COURT: All right.

4 BY MR. KING:

5 Q Thank you, Governor.

6 MR. KING: Can we see Exhibit 615, please?

7 BY MR. KING:

8 Q And, Governor Snyder, if I could just focus your
9 attention to the last sentence of the first paragraph, and
10 this is the e-mail from then Treasurer Dillon to you, and
11 that sentence says, "Because pensions have such a long life,
12 there are a lot of creative options we can explore." Have
13 you explored any of these creative options that Treasurer
14 Dillon set forth in this e-mail to you?

15 A In terms of this particular e-mail, what would have
16 happened is -- what happened is I believe there was a phone
17 conversation that he called me that evening and had a general
18 discussion on that. I listened to what he had to say. I
19 appreciated what he had to say. And then I passed it on to
20 discussions with Kevyn Orr and the city in meetings that
21 attorneys were present at and giving advice on.

22 Q Did any of these creative options contemplate a scenario
23 where pension benefits were not diminished or impaired?

24 A I don't recall that specifically.

25 Q And let me -- if we could put up -- oh, one more question

1 on this.

2 MR. KING: Could we go back to the full text of the
3 e-mail, please?

4 BY MR. KING:

5 Q In this e-mail, there's also a reference to at least
6 Governor -- or excuse me -- Treasurer Dillon's statement that
7 it's early in the process, and this is still in the
8 informational stage. As of July 9th of 2013, did you believe
9 that statement to be true?

10 A Which part? I'm sorry.

11 Q The part that's now --

12 THE COURT: Would you just rephrase the question?

13 MR. KING: Sure.

14 BY MR. KING:

15 Q In this e-mail Treasurer Dillon says, "In my view, it's
16 too early in the process to respond to hypothetical
17 questions. We remain in many ways at the information stage,"
18 and my question was as of July 9th, do you agree with that
19 statement?

20 A That's what he shared with me, so I took that as
21 accurate.

22 Q Do you agree that that's the case even today, as we sit
23 here today?

24 A There's more work that's been done on the subject matter,
25 and I believe people are still analyzing data on this

1 question.

2 Q Thank you.

3 MR. KING: Can you put up UAW 625, please? And can
4 you scroll down to the second full paragraph where it starts
5 "I favor"? Thank you.

6 BY MR. KING:

7 Q Now, this was an e-mail from your counsel to you, and --

8 A Actually, it was not to me. This e-mail wasn't -- you're
9 quoting the part from Mike Gadola to a number of people that
10 Mike Gadola -- that Dennis Muchmore then forwarded to me.

11 Q Fair enough. Did you see this statement here?

12 A Yes.

13 Q And did Mr. Gadola ever share with you his opinion that
14 you should exercise your ability under PA 436 to put
15 contingencies on the bankruptcy filing?

16 A Yeah. I don't want to be difficult here. I just need
17 some help --

18 Q Sure.

19 A -- in the sense that it's in this document that's now an
20 exhibit, but Mike Gadola is my counsel, so he shared
21 information on this topic, but that's where I just need help
22 to know is that subject to privilege or because it's here
23 it's not anymore?

24 MR. KING: Your Honor, I'm not familiar with the
25 agreement that Mr. Wertheimer entered into with the city, but

1 it's my understanding that there was a waiver of privilege at
2 least with respect to this document.

3 MR. SCHNEIDER: Your Honor, the waiver is only as to
4 this document, nothing else.

5 MR. WERTHEIMER: The waiver is as to this and other
6 documents but nothing beyond the documents.

7 MR. KING: Let me move on, your Honor.

8 THE COURT: All right.

9 BY MR. KING:

10 Q At some point, you elected not to include any
11 contingencies with the authorization that you sent to Mr. Orr
12 on July 18th; correct?

13 A Correct.

14 Q And at the time that you sent that authorization to
15 Mr. Orr, you were aware of his public position and, of
16 course, the position set forth in the June 14 proposal that
17 he believed pension benefits needed to be significantly
18 reduced; is that correct?

19 A Again, I didn't take the June 14th proposal as
20 conclusive. Again, that was part of the mutual negotiation
21 process to avoid the bankruptcy. Now that we're in
22 bankruptcy, it's really contingent on waiting for a plan on
23 bankruptcy to be presented to the judge.

24 Q But at your deposition you indicated that you were aware
25 at the time that you executed the July 18th letter that it

1 was Mr. Orr's position that there had to be significant cuts
2 in accrued pension benefits?

3 A It was what he presented in the proposal to creditors.

4 Q And why is it that you chose not to put a contingency in
5 the July 18th authorization related to accrued pension
6 benefits?

7 A I made a decision not to put a contingency with respect
8 to any conditions because my concern was is this is an
9 extremely difficult process; that we're in a crisis mode; and
10 that we have serious issues here. And I felt it could be an
11 issue causing more delays, concern, complexity to a very
12 complex case to begin with; that I have confidence in the
13 judicial process, and that's why I actually asked that
14 additional statement to be added in that paragraph that any
15 plan that comes out of this has to be a legal plan. I
16 thought it was a good opportunity to get people that are the
17 appropriate people to make decisions that then I can help
18 support the city in the implementation.

19 Q But ultimately you decided that the July 18th
20 authorization should not have any contingencies?

21 A Yes. I made that decision.

22 Q And I'm going to finish up, I think, where you started,
23 which was -- I think you testified very, very early on that
24 you believe that the issue affecting the Detroit bankruptcy
25 is one of I think national importance.

1 A Not national importance. It could be viewed that way.
2 My concern is with the citizens of Michigan and the City of
3 Detroit, including the retirees. To the degree it affects
4 things nationally, that's a national issue. What I was
5 putting in is if you look at difficult problems around our
6 country, this is a problem that's been accumulating for 60
7 years and had not been solved before, and there are not many
8 problems of this magnitude in our country.

9 Q So you certainly would agree that the situation in
10 Detroit impacts the citizens of the State of Michigan?

11 A Yes.

12 Q And do you agree with me that until such time that the
13 people of the State of Michigan, through a lawful amendment
14 to the Constitution, choose to modify Article IX, Section 24,
15 that the state should otherwise honor that obligation?

16 A I believe I'm following Michigan's Constitution and the
17 Constitution of the United States, and the article says
18 accrued financial benefits shall be treated as a contractual
19 obligation.

20 MR. KING: Thank you, Governor. Appreciate your
21 time.

22 DIRECT EXAMINATION

23 BY MS. PATEK:

24 Q Good afternoon, Governor. Barbara Patek. I represent
25 the four public safety unions that represent the police and

1 fire fighters of the City of Detroit, and I have just a
2 handful of questions for you. I want to start with Public
3 Act 436. Obviously you're the chief executive of our state,
4 and you're not a legislature, but Public Act 436 was an act
5 that you favored; is that right?

6 A Yes.

7 Q And you favored it because it provided a number of tools
8 that could be used in circumstances like that facing the City
9 of Detroit; correct?

10 A That was very general. I'd be happy to give you more
11 specific reasons.

12 Q And I'm going to ask you about --

13 A Okay.

14 Q -- some of the -- I mean I'm not suggesting that there
15 aren't reasons --

16 A Okay.

17 Q -- but I'm going to ask you about some of those reasons.
18 Among those tools, it did allow, upon a finding of a
19 financial emergency, for the appointment of an emergency
20 manager like Mr. Orr; right?

21 A Public Act 436 actually gives options to communities
22 about one of four courses to follow, which --

23 Q Correct.

24 A -- was an improvement on Public Act 4.

25 Q I think you and I are talking about the same thing, but

1 I'm just asking about specific --

2 A Okay.

3 Q -- aspects of that. So among those options is, under the
4 appropriate circumstances, an emergency manager like Mr. Orr
5 can be appointed.

6 A A city may select that.

7 Q And that occurred in this particular case; correct?

8 A What happened in this particular case is Kevyn Orr
9 came -- originally this process was under Public Act 72; that
10 then he transitioned to Public Act 436.

11 Q But at the time Kevyn Orr became first the emergency
12 financial manager under Public Act 72 or former Public Act
13 72, everyone knew that a few days hence that he would become
14 the emergency manager under Public Act 436; isn't that right?

15 A He became -- it was under Public Act 72 that he would be
16 transitioning to 436, yes.

17 Q And when that happened, you knew and the others involved
18 with the City of Detroit knew that within a few days after
19 that appointment because Public Act 436 would become
20 effective on March 28th of this year, that he would then --
21 Kevyn Orr would then become the emergency manager under
22 Public Act 436.

23 A He would transition from one act to the other.

24 Q And one of the -- one of the things that Public Act 436
25 also does is it allows an emergency manager to seek your

1 authorization to file for Chapter 9; correct?

2 A Correct.

3 Q And as we know, that, indeed, occurred in this case?

4 A Correct.

5 Q And we've talked a lot about -- well, strike that.

6 Another thing that Public Act 436 does is it is designed to
7 in a financial emergency situation reduce or eliminate under
8 certain circumstances the collective bargaining rights of
9 public employees.

10 A It allows contracts to be changed in some fashion, yes.

11 Q Including collective bargaining agreements, and it has --

12 A There is a process, though, that has to be followed.

13 It's not simply a decision of the manager.

14 Q And if that process is followed, those -- the right to
15 bargain collectively can be suspended?

16 A Yes.

17 Q And we talked about the June 14th proposal, and as I'm
18 hearing your testimony sitting here this afternoon, one of
19 the things that I hear you saying is it was the expectation
20 that there would be some kind of more robust give-and-take
21 negotiating process once that proposal was made that would
22 potentially result in a solution to one or more of the
23 problems facing the City of Detroit?

24 A I'm not sure I follow you. Could you --

25 Q The June 14th proposal, I think you've indicated a number

1 of times you expect -- you expected that proposal to trigger
2 negotiations between the various interested parties.

3 A Yes.

4 Q And was it your expectation that that negotiating process
5 would take some time?

6 A Given that it's an environment of crisis, it would -- it
7 could take some time, but hopefully it would be done promptly
8 and thoughtfully given the urgency.

9 Q And one of the difficulties, as Ms. Levine went over with
10 you a few moments ago, with respect to the impairment of the
11 accrued vested pension benefits was the fact that there were
12 a lot of numbers missing from the equation; that is, exactly
13 what that impairment meant wasn't quite clear as of the time
14 of the June 14th proposal. You would agree with that?

15 A In the proposal itself there were open issues, but that
16 was the point of it being a proposal that needed further
17 negotiation.

18 Q And I think you also told us when you made the decision
19 in response to Mr. Orr's July 16th letter to authorize the
20 Chapter 9 filing, you really went back over your term as
21 governor and reviewed for yourself the process of -- you
22 know, everything sort of that the City of Detroit had gone
23 through and the milestones that perhaps had not been met
24 and -- before you granted the authorization.

25 A Yes.

1 Q You are familiar, as the governor of the state, with Act
2 312?

3 A Yes.

4 Q And you know that that provides a mechanism that includes
5 mediation and arbitration of disputes between public safety
6 employees like police and fire with their various
7 municipalities?

8 MR. SCHNEIDER: Objection as to the relevance.

9 THE COURT: Overruled. Go ahead.

10 THE WITNESS: Yes.

11 MS. PATEK: Can we have 720? Hopefully this will
12 work. You can go to the second page, please.

13 BY MS. PATEK:

14 Q Were you monitoring or following closely the activities
15 in terms of what was going on with the financial emergency in
16 the City of Detroit after Mr. Orr's appointment on March
17 28th?

18 A Well, I'm not sure how you define "following closely." I
19 followed it.

20 Q Were you aware that there were a number of collective
21 bargaining agreements among the public safety unions that
22 were due to expire as of June 30th of 2013?

23 A I believe there were some.

24 Q And would you agree with me -- well, strike that. Are
25 you aware or did you play any role in the city's decision to

1 block the Act 312 proceedings associated with those efforts
2 to negotiate and extend those collective bargaining
3 agreements?

4 A No.

5 Q Would you agree with me that if the city were, in fact,
6 looking to negotiate and address the problem of the accrued
7 vested pension benefits, that, first of all, as a general
8 matter, there was at least some question as to whether
9 outside of bankruptcy those benefits could be impaired
10 because of the state Constitution? Would you agree with
11 that?

12 A I don't think I have enough knowledge to answer that
13 question.

14 Q Would you agree that in the context of a negotiation and
15 perhaps as a quid pro quo for an extension of the term of the
16 contract, that that might be a place for the city to begin to
17 address on a relatively expeditious basis the accrued vested
18 benefits, at least of the active public safety employees
19 involved in those negotiations?

20 MR. SCHNEIDER: Objection. Calls for speculation.

21 THE COURT: Overruled. Excuse me. Overruled.

22 Please answer.

23 THE WITNESS: Again, I don't have enough knowledge
24 of the specifics of the situation that I would just be
25 speculating.

1 THE COURT: Okay.

2 BY MS. PATEK:

3 Q Do you know whether or not pursuant to Public Act 436 in
4 this case the collective bargaining rights of the public
5 safety employees were at least in some cases suspended by the
6 emergency manager?

7 A I believe they had been suspended for some time under the
8 prior emergency manager laws.

9 Q And that allowed the state to impose terms?

10 A Again, it's not the state. It would be the City of
11 Detroit.

12 Q I'm sorry. That allowed the city to impose terms.

13 A Yes.

14 Q Well, by the time the emergency manager took his role
15 under Public Act 436, if we focus on March 28th, 2013,
16 whether -- without getting into the specifics, would it be
17 fair to say that the legacy costs facing the City of Detroit
18 were in issue?

19 A They had been an issue for some time.

20 Q And having the opportunity to have a negotiation with the
21 public safety unions could provide a venue in which that
22 issue could be addressed?

23 A That would be possible.

24 Q Now, in terms of the proposed significant impairments to
25 pension benefits that we've been talking about, do you

1 understand that included in those accrued vested pension
2 benefits are the benefits belonging to the active public
3 safety -- that is, police and fire fighters -- who are
4 working today for the City of Detroit?

5 A Yes.

6 Q And do you understand that in addition to -- well, strike
7 that. Are you aware that the police and fire fighters in the
8 City of Detroit do not have the benefit of Social Security?

9 A Yes.

10 Q And am I correct that in order for the City of Detroit to
11 be exempted from paying Social Security on behalf of those
12 fire fighters and police officers, it has to have a Section
13 218 agreement with the federal agreement?

14 A I'm not aware of that.

15 Q Are you aware that there has to be some sort of agreement
16 with the federal government under which the federal
17 government has to be satisfied that there is a qualified
18 pension plan to provide pension and disability benefits to
19 the affected employees?

20 A No. I'm not familiar with those federal statutes.

21 Q And if I were to ask you whether or not you were aware of
22 the requirement that such a pension plan provide any minimum
23 level of benefits, I take it you're unaware of that?

24 A With regard to federal law.

25 Q And would it be fair to say that you were unaware of that

1 at the time you authorized the bankruptcy filing on July
2 18th, 2013?

3 A Yes.

4 MS. PATEK: I think that's all I have.

5 THE COURT: Any other questions for the witnesses?

6 MS. BRIMER: Good afternoon, your Honor. Lynn M.
7 Brimer.

8 DIRECT EXAMINATION

9 BY MS. BRIMER:

10 Q Good afternoon, Governor. My name is Lynn Brimer. We've
11 not met. I represent an association, the Retired Detroit
12 Police Members Association, in this matter. Your Honor,
13 my -- Governor, my line of questioning will probably be a bit
14 different, and if you don't mind to indulge me, I'd like to
15 ask just a few questions to get a little bit of the lay of
16 the land. Treasurer Dillon is an appointee that you
17 appointed; correct?

18 A Yes.

19 Q And Treasurer Dillon and his staff ultimately would be
20 responsible for reporting to you in connection with their
21 activities on behalf of the State of Michigan. Is that a
22 fair assumption?

23 A Yes.

24 Q Now, Richard Baird, do you mind explaining to me who
25 Richard Baird is?

1 A Yeah. He works as part of the executive office in terms
2 of his title is transformation manager with his primary
3 responsibilities involving human relations, HR functions, in
4 terms of sourcing people, finding people, counseling people.

5 Q And does he report directly to you, or does he report to
6 some other representative in the executive office?

7 A No. He reports to me.

8 Q Now, at some point in 2011, Public Act 4 was referred --
9 a petition was circulated, and the matter was referred for
10 being placed on the 2011 ballot for a referendum; is that
11 correct?

12 A I believe it was the 2012 ballot.

13 Q You know, your Honor -- Judge -- Governor, yes, you are
14 right. It was in early 2012.

15 A It was suspended and then went on the ballot in November
16 of two thousand --

17 Q Do you recall when PA 4 was suspended?

18 A I don't recall the specific date, but it would have been
19 in the earlier part of 2012.

20 Q And do you have an understanding of what the implications
21 were of PA 4 being suspended?

22 A It meant that PA 72 came back, and that somewhat changed
23 the rules. PA 72 has been around since 1990. It provided
24 for emergency managers.

25 Q So once it was suspended, you were no longer authorized

1 to appoint an emergency manager under PA 4; is that correct?

2 A That's correct.

3 Q And when PA 4 was placed on the ballot for referendum, it
4 became a concern to the state that it may be rejected; is
5 that correct?

6 A It became a concern that I think it had some value. I
7 wouldn't say to the state necessarily. People had different
8 opinions of it.

9 Q Did it become a concern to you personally that PA 4 may
10 ultimately be rejected?

11 A Yes.

12 Q So at some point in time, the state began drafting a new
13 law to replace PA 4. Do you recall when that took place?

14 A It was after PA 4 was eliminated.

15 Q Are you aware of any discussions prior to the repeal of
16 PA 4 regarding the drafting of a law to replace PA 4 in the
17 event it was rejected?

18 A There were many discussions about alternatives and issues
19 relating to PA 4's potential replacement because there were
20 actually issues with PA 4 in terms of approval, so as soon
21 as PA 4 was passed, through that entire process, there was
22 issues talking about how PA 4 could be improved, and they
23 were talking about different options and ideas should PA 4 be
24 eliminated.

25 Q Now, some --

1 A But the actual process, the main process didn't take
2 place until after it was eliminated, as I recall.

3 Q Sometime in approximately March of 2012, Miller Buckfire
4 was retained by the State of Michigan to perform a financial
5 review of the City of Detroit. Are you familiar with that
6 engagement?

7 A No. I don't recall them being hired by the state.

8 Q You are familiar that during the early months of 2012,
9 Miller Buckfire was, in fact, involved with a review of the
10 City of Detroit?

11 A They could have been. That could have been hired by the
12 city or -- again, they were doing work on the project
13 relating to the city.

14 Q Are you aware of the law firm of Jones Day being retained
15 by the State of Michigan at any point in time in connection
16 with the City of Detroit?

17 A No.

18 Q Are you aware that representatives of Miller Buckfire and
19 Jones Day were involved with the Department of Treasury and
20 Mr. Dillon specifically in connection with negotiating the
21 consent agreement that was -- or drafting the consent
22 agreement, rather, that was presented to the City of Detroit?

23 A Yeah. I don't recall that.

24 Q So if those activities were taking place, Miller Buckfire
25 was hired by the State of Michigan to perform a financial

1 review and Miller Buckfire and Jones Day were engaged in
2 drafting or working with Andy Dillon in connection with
3 drafting a consent agreement, you were not apprised of that?

4 A Again, I would have been working with the treasurer on
5 the consent agreement. They have lots of consultants that
6 they work with on a multitude of projects.

7 Q So were you involved in the drafting of the law that was
8 ultimately passed and became PA 436?

9 A Yeah. Switching subject -- yes.

10 Q And what was your involvement?

11 A Well, as governor of the state, I am involved in the
12 legislative process, so I was involved in helping define some
13 of the key parts of Public Act 436 that I viewed as
14 improvements over Public Act 4 listening to what our citizens
15 said, and then ultimately I signed the bill into law.

16 Q So one of those key provisions would have been, I think
17 you testified a few moments ago, that cities have the
18 opportunity to request that an emergency manager be
19 appointed; is that correct?

20 A That would have been one of the improvements.

21 Q In the case of the appointment of Mr. Orr, he had
22 actually, though, been appointed under PA 72; correct?

23 A Correct.

24 Q And he automatically became the emergency manager when PA
25 436 was effective; is that correct?

1 A Correct.

2 Q So the City of Detroit did not have the opportunity to
3 exercise any of the options that were presented in PA 436; is
4 that correct?

5 A Yes. PA 436 didn't apply. They had opportunities to
6 speak and comment under --

7 Q But, yes --

8 A -- the PA 72 process.

9 Q Governor, I just -- that was a "yes" or "no" question.
10 The City of Detroit did not have the opportunity to exercise
11 any of the options that were presented in PA 436, and you --

12 A Correct.

13 Q Correct. Okay. So PA 436 contains a spending provision.
14 Are you familiar with that?

15 A Yes.

16 Q Are you familiar with Article II, Section 9, of the
17 Michigan Constitution?

18 A Yes.

19 Q And is it true that Article II, Section 9, of the
20 Constitution reserves to the people the right of referendum;
21 is that correct?

22 A Yes.

23 Q Other than those provisions, Governor, that contain a
24 spending provision; is that correct?

25 A Correct.

1 Q Are you familiar with the provision of Article II,
2 Section 9, which provides that -- and I'll read it to you.
3 "No law as to which the power of referendum properly has been
4 evoked shall be effective thereafter unless approved by a
5 majority of the electors thereon at the next general
6 election." Are you familiar with that provision?

7 A Yes.

8 Q And did you discuss that provision -- I'm just asking if
9 you discussed, not the content -- that provision with your
10 counsel prior to passing PA 436?

11 A PA 436 was a different act.

12 Q I just asked -- Governor --

13 A Yes.

14 Q -- "yes" or "no"? Did you discuss this provision with
15 your counsel prior to passing PA 436, this provision?

16 A This provision?

17 Q Yeah.

18 A Yes.

19 Q Now, PA 4 was rejected on appeal on November 6, 2012;
20 correct?

21 A I believe that's the date.

22 Q Do you know the date that the law that was ultimately
23 signed as PA 436 was presented to Congress, the State of
24 Michigan's legislators, and ultimately passed by both Houses?

25 A I believe it would have been in December.

1 Q Do you know what date in December?

2 A No, not without looking.

3 Q You ultimately signed it on December 26th; is that
4 correct?

5 A I believe so.

6 Q Okay. So less than 60 days a new law was drafted,
7 presented. I believe there was even a bill that was the
8 combined bill of the two Houses, made its way through both
9 Houses, and you signed it; is that correct?

10 A We work much more efficiently than Congress.

11 Q Now, the spending provisions, those are Sections 34 and
12 35 of the bill. Section 34 provides for \$780,000 to cover
13 the salaries of the emergency managers and their staff. Do
14 you know whether or not anyone -- let me step back. Did you
15 analyze whether or not \$780,000 was a sufficient
16 appropriation for the then appointed emergency managers or
17 those emergency managers that you anticipated appointing
18 under PA 436?

19 A I relied on the Treasury Department to make those
20 calculations.

21 Q Are you aware of whether or not Treasury made those
22 calculations?

23 A I believe so.

24 Q Did you review those calculations?

25 A No.

1 Q There were, though -- there were at the time a number of
2 emergency managers in place in the State of Michigan; is that
3 correct?

4 A I believe it was approximately seven or eight in both
5 cities and school districts.

6 Q And the \$780,000 was to cover their salaries. Do you
7 know what the salary for the emergency manager that was
8 appointed to the Detroit Public School system was?

9 A I would just be speculating.

10 Q Then there's a second provision for \$5 million for the
11 financial consultants.

12 A Yes.

13 Q Okay. Do you know whether or not any financial analysis
14 had been performed, I assume, then again, by Treasury, in
15 order to determine whether or not that was a sufficient
16 spending provision?

17 A Treasury did make some analysis of that.

18 Q Did you review that analysis?

19 A No.

20 Q Was the analysis presented to you?

21 A No.

22 Q Did you ever discuss the analysis with the treasurer?

23 A I don't recall.

24 Q Would it be common for you to review the analysis of a
25 spending provision in a law that you are signing?

1 A Quite often I do.

2 Q In which instances do you determine that it's not
3 necessary for you -- I understand your background -- for you
4 to review the financial analysis of a spending provision?

5 A The State of Michigan's budget is approximately \$40
6 billion, so it's quite significant. So in terms of going
7 through every line item, that's the point of having a
8 treasurer and a budget office that are very good at what they
9 do, so in many respects I count on the work of Treasury.
10 Quite often they're checked by DTMB, the Department of
11 Technology, Management & Budget.

12 Q So in light of an approximate \$40 billion budget,
13 \$5,780,000 as a spending provision is not significant, is it,
14 Governor?

15 A It is significant. Every taxpayer dollar is significant.
16 In terms of the numbers, the \$5 million, we had quite a bit
17 of experience, having been through emergency managers going
18 back to my predecessor, in understanding the cost from 2011
19 and 2012. The number -- the 700,000-and-some thousand
20 dollars for emergency managers, you may wonder why it's that
21 number. If you look at -- it's probably a half-year number
22 because -- or less than a full-year number because it's
23 during the middle of a year, and for us to follow through to
24 implement the legislation, we needed legislative
25 authorization to have the dollars to pay them, which was one

1 of the improvements of 436 over 4.

2 Q So the prior laws didn't require a spending provision,
3 did they?

4 A The prior laws -- we were expending money on consultants
5 and resources to help cities because we really do care about
6 these cities and their citizens, so we thought it appropriate
7 to provide additional resources so we could carry some of
8 those opportunities and burdens through state resources.
9 With the emergency manager, that was specifically done in
10 response to concerns that were raised through the ballot
11 initiative on PA 4. Previously emergency managers were paid
12 by the city. In looking at it in retrospect, that wasn't
13 appropriate, so we thought we should pay for them through the
14 state.

15 Q Okay. You were aware, though, that by adding a spending
16 provision, PA 436 would not be subject to the referendum;
17 isn't that true?

18 A Yes. That would be one of the consequences with my
19 reasoning being we needed the dollars to pay the consulting
20 and the --

21 Q I just asked. You were fully aware that by adding a
22 spending provision, PA 436, which is replacing a law that had
23 just within weeks been repealed or rejected by the citizens
24 of the State of Michigan, would not be subject to referendum?

25 A Yes.

1 Q Are you aware of any discussions between Mr. Dillon and
2 the Jones Day attorneys in early 2012 with respect to the
3 inclusion of a spending provision on a revised law in the
4 event PA 4 was rejected?

5 A No.

6 Q So if he had such discussions, he kept -- he did not
7 share them with you?

8 A Not that I recall.

9 Q Now, I'd just like to -- if I could look at 44,
10 Retirement Systems 44, you looked at this exhibit with
11 Mr. Wertheimer in connection with the second page. Do you
12 recall that? And he pointed out a memo in connection with
13 the constitutionality of the pension provisions.

14 A Yes.

15 Q Okay. But if you'll see on the very top line of the
16 attachments, "Memo Re. Public Act 4 and Chapter 9" -- do you
17 see that?

18 A Yes.

19 Q So if Mr. Dillon received a copy of a memo regarding
20 Public Act 4 from the Jones Day attorneys, he did not share
21 that with you?

22 A I don't recall.

23 Q And this e-mail, if you can go up just a bit in the
24 paragraph, it's dated June 5th, 2012. Do you see that?

25 A Yes.

1 Q So is it fair to conclude that Mr. Dillon, at a minimum,
2 on behalf of the state, is addressing issues with respect to
3 the repeal of PA 4 at least in June of 2012?

4 MR. SCHNEIDER: Objection, your Honor. Calls for
5 speculation.

6 THE COURT: Any response?

7 MS. PATEK: I'll withdraw the question.

8 THE COURT: Okay.

9 BY MS. PATEK:

10 Q Do you have regular meetings with Mr. Dillon?

11 A Yes.

12 Q And during 2012, did you have regular meetings with Mr.
13 Dillon?

14 A Yes.

15 Q In your experience, does Mr. Dillon conduct business on
16 behalf of the State of Michigan without informing you as his
17 executive, chief executive?

18 A He has to make decisions as to what he thinks is most
19 important to bring to my attention.

20 Q Now, Mr. Orr sits at your pleasure; correct? You could
21 terminate him with or without cause?

22 A Yes.

23 Q Now, Mr. Baird -- you testified a few moments ago he
24 reports directly to you. Are you aware of that? That was
25 your testimony; correct?

1 A Yes.

2 Q Are you aware that in early January 2013 that Mr. Baird
3 was conducting a review of the law firms that were
4 presenting -- making presentations to the City of Detroit?

5 A I believe the city had asked him to help them in that
6 process.

7 Q Are you aware that one of his concerns was the bankruptcy
8 background of those law firms?

9 A I don't recall.

10 Q When do you recall the state first discussing the filing
11 of a Chapter 9 by the City of Detroit?

12 A There was a lot of people that brought information to us
13 about Chapter 9. In terms of discussions, in terms of the
14 serious part, we had that discussion earlier. It literally
15 was the week before because we were working through it as a
16 last resort to the fact that the negotiations were not being
17 successful. There were contingency plans put in place going
18 back some time to say in the event things don't work, you
19 needed to be thoughtful about it, but the serious discussion
20 of getting the recommendation was really in that week before.

21 Q So if Mr. Dillon was having discussions with the
22 attorneys at Jones Day regarding a filing of a Chapter 9 on
23 behalf of the city in April of 2012, you were not a party or
24 aware of those discussions?

25 A Again, I don't recall.

1 Q Were you at all involved or did you have any discussions
2 with Mayor Bing regarding his selection of Miller Buckfire as
3 financial consultants to the City of Detroit?

4 A I don't recall any specific discussions.

5 Q Did you have general discussions with the mayor regarding
6 the selection of a financial consultant in late December of
7 2012 or early January?

8 A Again, I don't recall.

9 Q Did you have any discussions with the mayor regarding the
10 selection of counsel, specifically ultimately Jones Day, and
11 the selection process? Did you have --

12 A I don't recall. Those were city decisions.

13 Q Did you ever advise the mayor that the State of Michigan
14 had retained Miller Buckfire to perform a 60-day financial
15 review of the City of Detroit in March of 2012?

16 A I did not.

17 Q Did you ever advise the mayor or the City Council that
18 Jones Day had been discussing the repeal of PA 4 with the
19 Department of Treasury and its implication?

20 A I did not.

21 Q Did you ever discuss with the mayor or the City Council
22 the fact that the Jones Day attorneys had been discussing
23 with the treasurer the potential of filing a Chapter 9 on
24 behalf of the city as early as April of 2012?

25 A No.

1 MS. BRIMER: May I have one moment, your Honor?

2 THE COURT: Yes.

3 MS. BRIMER: Thank you, your Honor. Thank you,
4 Governor.

5 THE COURT: Any other questions for the governor?

6 MR. MONTGOMERY: None from the Retiree Committee,
7 your Honor.

8 MR. WERTHEIMER: Your Honor, I know I'm out of turn,
9 but I have one follow-up to Ms. Brimer's question. I
10 promise, two minutes.

11 THE COURT: Well, let me see if there's any
12 examination of the governor by either the state or the city,
13 and then we'll get back to redirect.

14 MR. SCHNEIDER: Yes, your Honor. Could we have just
15 one moment?

16 THE COURT: Yes.

17 CROSS-EXAMINATION

18 BY MR. SCHNEIDER:

19 Q Good afternoon, Governor. Governor, what did you do
20 prior to becoming governor?

21 A I was a venture capitalist and entrepreneur. Prior to
22 that, I was an executive at a computer company running that,
23 and prior to that, I was in public accounting as a CPA.

24 Q So is it safe to say that your background involves the
25 review of financial statements, financial documents; is that

1 correct?

2 A I have extensive experience in those matters.

3 Q And do you have extensive experience in reading and
4 understanding balance sheets as well?

5 A Yes.

6 Q How long in your career have you been working in issues
7 of finance of accounting?

8 A Since 1982.

9 Q Does your educational background also involve finance and
10 accounting?

11 A It does. I have an MBA from the University of Michigan
12 and basically a number of accounting classes in my
13 undergraduate plus a law degree.

14 Q You're also a CPA; is that correct?

15 A That's correct. That's where the nerd thing came from.

16 Q Your Honor -- or, Governor -- a reoccurring problem in
17 this courtroom apparently. After you --

18 THE COURT: I'm wondering if there's some interest
19 in a judicial position that you haven't disclosed to us.

20 THE WITNESS: I'm not that qualified, your Honor.

21 BY MR. SCHNEIDER:

22 Q Your Honor, you -- Governor, you testified -- you
23 testified regarding your review of financial reports after
24 you became governor related to the City of Detroit. Do you
25 remember that testimony?

1 A Yes.

2 Q Did you review reports regarding cash flow for the city?

3 A Yes.

4 Q And through this process, were you able to determine
5 whether or not there was a cash flow problem with the City of
6 Detroit?

7 A There's a serious cash flow problem.

8 Q And is it safe to say that the longer you stayed in
9 office as governor, the cash flow problems worsened; is that
10 correct?

11 A Yes. The most nonaccounting description I would use is
12 the word hemorrhaging.

13 Q Okay. In fact, you received some reports from the
14 financial review teams calling it a cash crisis; is that
15 correct?

16 A Yes, including statements by the mayor going back to, I
17 believe, 2011 talking about the city even at that point
18 potentially running out of cash.

19 Q Okay. So the dialogue of -- and the discussion of
20 running out of cash had been continual; correct?

21 A Yes.

22 Q And things were getting worse and not better. Is that
23 accurate?

24 MR. DECHIARA: Objection.

25 THE WITNESS: Yes.

1 MR. DECHIARA: That was leading.

2 THE COURT: Yes. Please don't ask leading
3 questions. The objection is sustained.

4 BY MR. SCHNEIDER:

5 Q Ultimately, however, Mr. Orr was appointed as emergency
6 manager; correct?

7 A Yes.

8 THE COURT: Yes, that was another leading question.

9 MR. SCHNEIDER: I'm sorry, your Honor.

10 BY MR. SCHNEIDER:

11 Q Governor, there's been a lot of talk here about Chapter 9
12 filing, and I want to ask you during this process about cash
13 flow discussions and your review of the reports, where was
14 Chapter 9 in your mind?

15 A It was a last resort. When you looked at the entire
16 process, I tried to be very diligent about this in a very
17 difficult situation. If you go back to the time I took
18 office, first it involved working with the mayor. I actually
19 attended the State of the City address to show support for
20 the mayor in a public fashion to help work in a collaborative
21 fashion through that process. Then it became clear -- he
22 made the statement, for example, that they were going to run
23 out of cash, and there were other issues, so we started
24 the -- the Treasury began a preliminary review of the city's
25 finances, I believe, in late 2011. That's an objective

1 process. That's not a subjective process. They came out
2 with their findings that then led to a financial review team
3 that did an objective process again under Public Act 4
4 finding there's severe financial distress. There was a
5 series of options given to me at that point in time that
6 include there's no distress, there's a consent agreement, or
7 there's a need for an emergency manager. We worked very hard
8 and very diligently to do a consent agreement, and we finally
9 got a consent agreement done that included an appendix that
10 had 20-some items, I believe 23 different items to follow
11 through on, again, to avoid more serious consequences, so
12 there was a lot of work done through the summer on the
13 consent agreement. Unfortunately, by fall it appeared that
14 most of the items in that consent agreement were not being
15 implemented. Again, people worked hard on doing those
16 things, but they didn't happen. So another review took place
17 along with continuing cash crises, so another review cycle
18 was begun under Public Act 72 because this is a crisis. It
19 still is a crisis today. And so we went through that
20 exercise, and then they found that the consent agreement was
21 not going to end up in a satisfactory plan that led to the
22 emergency manager situation, and so, again, we went through a
23 hearing process there. I appointed an emergency manager.
24 The emergency manager went through a process of negotiation
25 proposing something to creditors to work out. He came to me

1 then and said that was not successful. I authorized
2 bankruptcy, and now that's where we're at. One of the things
3 that doesn't come across very often is an overriding concern
4 for the citizens of Detroit. That is, while all this is
5 taking place, all we've seen is more blight, more lights
6 going out, challenges on the police force. These things have
7 to get resolved. It's an unacceptable situation.

8 Q So is it correct to say that you -- when you were
9 reviewing these reports, you did not do so with the intention
10 to authorize or seek a filing?

11 A I worked very diligently to avoid this process in good
12 faith and to go through this process to say what are all the
13 other steps possible and, again, avoid subjectivity and do it
14 as objectively understanding that the subjective piece is
15 people are suffering, the 700,000 citizens of Detroit.

16 Q Let me ask you some questions regarding PA 436. You
17 testified that it gives options to communities. Can you
18 explain just a little bit about what you meant by that?

19 A Yeah. One of the issues with Public Act 4 is it really
20 had those three choices that I mentioned. What now happens
21 is there's an opportunity for four different choices that the
22 community has. They can do a consent agreement. There's an
23 option for an emergency manager. There's an option for
24 looking at a negotiated settlement to try to go to creditors
25 to work things out, and then there's potentially bankruptcy.

1 Q Let me ask you more specifically about PA 436. You were
2 asked regarding the appropriations provisions. For you what
3 was the point of those appropriations, the purpose?

4 A Yeah. We were in the course of the middle of a fiscal
5 year, and under Michigan's Constitution, I can't -- we cannot
6 expend funds without an appropriation. Part of Public Act
7 436 is saying we were going to relieve the cities of the
8 burden of paying for the emergency manager because that is a
9 burden on them, so we needed an appropriation to do that, and
10 it was the simplest best way to do it, in my view, along with
11 the fact significant dollars were being spent on consultants
12 in some capacity, whether it be the city or the state, and
13 for us to continue to do consulting work to help cities out
14 across our state is by having that additional appropriation
15 we'd have those resources available. That was done to get us
16 through that budget year with a view that I would include
17 similar numbers for the following budget year, which was
18 proposed in February, and that took effect this October 1.

19 Q Well, you signed the bill, so was your purpose to make it
20 referendum-proof?

21 A No. It was to deal with this issue of paying for
22 emergency managers and having financial resources in a crisis
23 available.

24 Q Can the state make an expenditure without an
25 appropriation?

1 A No.

2 Q So in order to pay for these salaries, an appropriation
3 was required; is that correct?

4 A Yes.

5 Q And was the most efficient or best way to do this by
6 putting the appropriation in the bill?

7 MR. WERTHEIMER: Object. I think we're back to the
8 leading.

9 THE COURT: Yes. That was a leading question.

10 MR. SCHNEIDER: Okay.

11 THE COURT: The objection is sustained.

12 BY MR. SCHNEIDER:

13 Q Did either PA 4 or PA 72 require the state to pay for
14 emergency managers' salaries?

15 A No.

16 Q So after the bill took effect, after PA 436 takes effect,
17 was there ever a later appropriation in a budget bill to
18 handle this type of issue?

19 A For ongoing expenses, I proposed it in the February
20 budget message that I put forward. That would have been
21 included in the budget adopted in the June time frame that
22 began this October 1.

23 Q What was the purpose of that?

24 A Again, for ongoing, to help pay for the ongoing costs of
25 emergency managers and consultants.

1 MR. SCHNEIDER: Thank you, your Honor.

2 THE COURT: Questions from the city?

3 MR. SHUMAKER: Your Honor, the city has no questions
4 for the governor.

5 THE COURT: All right. Mr. Wertheimer, do you have
6 questions?

7 MR. WERTHEIMER: Yes, I do.

8 MS. LEVINE: Your Honor, a point of process, so that
9 there's time for all the objectors who want to redirect, can
10 we talk about perhaps time limits?

11 MR. WERTHEIMER: I'll be two, three minutes.

12 THE COURT: Well, of course, your redirect of the
13 governor should be limited to what was covered on his cross-
14 examination, which wasn't much.

15 MS. LEVINE: Yeah. No, no. I'm going to be brief,
16 your Honor, but I --

17 THE COURT: I don't mean to minimize his testimony,
18 but it didn't take very long.

19 MS. LEVINE: Plan to be brief, your Honor, but I am
20 third in the queue, so I just want to make sure third doesn't
21 show up at five.

22 THE COURT: All right. Let me just see a show of
23 hands. How many of you propose to ask redirect examination
24 at this point? Just the three of you? All right. I think
25 we'll be all right then.

1 REDIRECT EXAMINATION

2 BY MR. WERTHEIMER:

3 Q Governor, would you agree with me that the fact that
4 these problems that Detroit has that we all recognize, that
5 they have to be resolved and have to be resolved
6 expeditiously, does not mean that they have to be resolved on
7 the backs of retirees making one or \$2,000 a month?

8 MR. SCHNEIDER: Objection. Relevance.

9 MR. WERTHEIMER: Your Honor, the governor made a
10 long statement in response to a question that implied that
11 all he was doing was dealing with the problem expeditiously,
12 and I'm simply attempting to make the point that I'm
13 attempting to make that seems obvious to me.

14 THE COURT: I'll permit it. Go ahead, sir. Can you
15 answer the question?

16 THE WITNESS: Again, I have concerns about the
17 retirees also. I'm concerned about the 700,000 citizens of
18 Detroit, the citizens of Michigan, which include these
19 retirees.

20 BY MR. WERTHEIMER:

21 Q Governor, I did not ask you whether you had concerns.
22 Again, I'll ask you the same question again, and try to just
23 answer that, please. Would you agree with me that the fact
24 that the problems that you've identified that have to be
25 resolved and have to be resolved quickly, that that does not

1 mean that they have to be resolved on the backs of the city
2 retirees?

3 A I think you're asking me to speculate because we're still
4 in this process where there isn't even a plan on the table to
5 say how to resolve this issue.

6 Q All right. I'll let it go. Ms. Brimer asked you a
7 question about you having the ability to fire Mr. Orr. Do
8 you recall that?

9 A Yes.

10 Q You were also the person who recommended that he be
11 hired, were you not?

12 A Yes.

13 MR. WERTHEIMER: That's all I have. Thank you.

14 REDIRECT EXAMINATION

15 BY MS. LEVINE:

16 Q Good afternoon again, Governor. Sharon Levine,
17 Lowenstein Sandler, for AFSCME. In response to your
18 counsel's questions, you went through your education, your
19 CPA, your law degree, and some other financial experience
20 that you've had; correct?

21 A Yes.

22 Q And that you also discussed the fact that going back to
23 even 2011 you were having discussions with the mayor of
24 Detroit about the fact that the mayor of Detroit was running
25 out of cash; correct?

1 A It was a public statement. I was quoting a public
2 statement the mayor made back, I believe, in November of 2011
3 where he publicly came out and said there was a concern about
4 running out of cash.

5 Q So you were aware -- you were watching Detroit and its
6 cash position going back as far as 2011; correct?

7 A Yes.

8 Q Okay. Does that refresh your recollection with regard to
9 why the state stopped the implementation of the tentative
10 agreement in February of 2012, which was ratified by a
11 coalition of 30 unions and provided for substantial cash
12 savings for the City of Detroit?

13 A No.

14 Q You also testified that Chapter 9 was a last resort and
15 that you were looking to try to resolve it some other way in
16 good faith; is that correct?

17 A Yes.

18 Q So then I'm going to go back to the June 14 proposal to
19 creditors, and with your CPA and all of your financial
20 background, if you didn't understand exactly what was being
21 offered in dollars and cents to the retirees, how is it good
22 faith if the retirees couldn't understand that either?

23 A What I would say is is if you looked at that package, it
24 was described as preliminary, that there are many pieces
25 needed to be fleshed out, including there's a section in

1 there about there had been no real evaluation of the assets
2 of the city, so it was an open question as to where it would
3 go. And the way I viewed it is in a situation like this, you
4 had to start the discussion at some starting point, and this
5 was something to get out on the table to say now people can
6 have informed discussions, have dialogue, have questions,
7 have answers, and then hopefully move towards a conclusion.
8 In the case of retirees, in particular, though, in
9 retrospect, I think there was a real challenge to say who was
10 going to step up to represent them. And I felt that was one
11 of the problems in that whole process that I thought could
12 get resolved by authorizing the bankruptcy; that then
13 somebody could be appointed to represent them.

14 Q So this is not a proposal for creditors or an offer for
15 creditors. All it is is an invitation to start a process?

16 A No. I hope -- I believe it was a good faith negotiation,
17 put something on the table based on the facts that were
18 available. Again, you know, I --

19 Q I'm just trying to clarify. Is it a -- is it an
20 invitation to negotiate, or is it an actual proposal to
21 creditors?

22 A I believe it was a proposal, but then you start a
23 dialogue because, again, it needed to be mutually agreed to.

24 Q Okay. So as a proposal --

25 A I don't think those two comments are mutually exclusive.

1 Q As a proposal to creditors, is it your testimony that it
2 actually clarified how those creditors were going to be
3 treated, including specifically how the retirees were going
4 to be treated?

5 A I think it helped clearly clarify the financial situation
6 of Detroit saying here are the resources available, here's
7 where dollars need to go, and have a discussion as to what's
8 possible.

9 MS. LEVINE: Thank you, Governor.

10 REDIRECT EXAMINATION

11 BY MS. BRIMER:

12 Q Just a very brief follow-up, Governor.

13 MS. BRIMER: And I'd like to ask him if he's ever
14 seen this e-mail. It's Retirement Systems Number 46. No. I
15 want to ask if he's ever seen it first. If he's not seen it,
16 then I have no questions on it. I'd like to ask the governor
17 if he's seen an e-mail that has been presented as an exhibit.
18 He's not a part of it, but I may have questions if he's seen
19 it. May I approach?

20 THE COURT: You may. What exhibit is it?

21 MS. BRIMER: It is the Retirement Systems Number
22 846.

23 THE COURT: You may ask the witness if he has seen
24 it.

25 BY MS. BRIMER:

1 Q Have you --

2 MR. SCHNEIDER: Your Honor, before we go any
3 further, I object because this is outside the scope of my
4 examination.

5 MR. SHUMAKER: The city joins the objection.

6 MS. BRIMER: I believe -- I believe I will be able
7 to tie it to his examination, your Honor.

8 THE COURT: All right. Have you seen this before,
9 sir?

10 THE WITNESS: I don't recall.

11 MS. BRIMER: And if he's not recall -- does not
12 recall seeing it, your Honor, I'll take it back from him, ask
13 him a few questions --

14 THE COURT: Okay.

15 MS. BRIMER: -- not on it, but --

16 BY MS. BRIMER:

17 Q Governor, do you recall who suggested that the
18 appropriation provisions in PA 436 should be included in the
19 act?

20 A I don't recall.

21 Q Were you the one who suggested if -- that they should be
22 included?

23 A Again, I said I don't recall --

24 Q Okay.

25 A -- because, again, that's an interactive process on

1 legislation, and clearly I do several hundred bills a year.

2 MS. BRIMER: I have nothing else, your Honor.

3 THE COURT: All right.

4 MR. KING: Your Honor, I just have a few questions.

5 REDIRECT EXAMINATION

6 BY MR. KING:

7 Q Governor, you indicated that you had reviewed a host of
8 financial information and other documentation in the course
9 of your review of Detroit's financial situation. I think
10 that was what you just testified to with Mr. Schneider. Did
11 you ever have an opportunity to review any information
12 regarding funding levels of other Retirement Systems in the
13 state relative to the two pension systems in Detroit?

14 A No.

15 Q So you wouldn't know one way or the other whether or not
16 the Detroit systems, for example, are significantly better
17 funded than either the Michigan State Employees Retirement
18 System or the Michigan Public School Employees Retirement
19 System? You wouldn't know one way or the other whether the
20 Detroit systems are better funded than either -- better
21 funded than either of those two state systems?

22 A Correct.

23 MR. KING: Thank you.

24 THE COURT: All right. We have concluded the
25 witness' testimony. Sir, you are excused. Thank you very

1 much for coming today. Appreciate it.

2 (Witness excused at 4:08 p.m.)

3 THE COURT: We will remain in place while the
4 governor takes his leave. Mr. Ciantra, I had indicated we
5 would take up your issue tomorrow morning, but since we have
6 time yet today, is it okay with you if we take up your issue
7 today? All right.

8 MR. SHUMAKER: Your Honor, the attorneys that have
9 been dealing with that issue are not present for the city.

10 THE COURT: Oh.

11 MR. SHUMAKER: I'm sorry about that.

12 THE COURT: Okay. Well, that's a problem. Remind
13 me who that -- remind me who that was.

14 MR. SHUMAKER: It was Mr. Stewart.

15 THE COURT: Of course; of course. All right. Well,
16 we'll deal with it first thing tomorrow morning then. Is
17 there anything else we can do today? All right. We'll be in
18 recess till tomorrow morning.

19 MR. SHUMAKER: Thank you, your Honor.

20 THE CLERK: All rise. Court is adjourned.

21 (Proceedings concluded at 4:09 p.m.)

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I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

November 3, 2013

Lois Garrett

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

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

5
6 IN RE: ELIGIBILITY TRIAL
7 BEFORE THE HONORABLE STEVEN W. RHODES
8 TRANSCRIPT ORDERED BY: PAUL HAGE, ESQ.

9 APPEARANCES:

10 For the City of Detroit, MI: GEOFFREY IRWIN, ESQ.
11 GEOFFREY STEWART, ESQ.
12 GREGORY SHUMAKER, ESQ.
13 THOMAS CULLEN, JR., ESQ.
14 MIGUEL EATON, ESQ.
15 Jones, Day
16 51 Louisiana Avenue, N.W.
17 Washington, D.C. 20001-2113
18 202-879-3939

19 BRUCE BENNETT, ESQ.
20 Jones, Day
21 555 South Flower Street
22 Fiftieth Floor
23 Los Angeles, CA 90071-2452
24 213-243-2382

25 ROBERT HERTZBERG, ESQ. (P30261)
Pepper, Hamilton
4000 Town Center
Suite 1800
Southfield, MI 48075-1505
248-359-7333

For State of Michigan: MATTHEW SCHNEIDER, ESQ.
(P62190)
Chief Legal Counsel
Attorney for State of Michigan
Michigan Department of
Attorney General
P.O. Box 30754
Lansing, MI 48909
517-373-0126

1		STEVEN HOWELL, ESQ. (P28982)
2		Special Assistant Attorney General
3		Dickinson, Wright
4		500 Woodward Avenue Suite 4000
5		Detroit, MI 48226-3425 313-223-3033
6	For Michigan Council 25 of	SHARON L. LEVINE, ESQ.
7	the American Federation of	JOHN SHERWOOD, ESQ.
8	State, County and Municipal	Lowenstein, Sandler, LLP
9	Employees (AFSCME), AFL-CIO	65 Livingston Avenue
10	and Sub-Chapter 98, City of	Roseland, NJ 07068
11	Detroit Retirees:	973-597-2500
12		
13	For Detroit Retirement	ROBERT D. GORDON, ESQ. (P48627)
14	Systems - General Retirement	JENNIFER GREEN, ESQ.
15	System of Detroit, Police and	Clark, Hill, PLC
16	Fire Retirement System of	151 S. Old Woodward Avenue
17	the City of Detroit:	Suite 200
18		Birmingham, MI 48009
19		248-988-5882
20		
21		RONALD KING, ESQ. (P45088)
22		Clark, Hill
23		212 East Grand River Avenue
24		Lansing, MI 48906
25		517-318-3015
16	For the Detroit Fire Fighters	BARBARA PATEK, ESQ. (P34666)
17	Association, the Detroit	JULIE BETH TEICHER, ESQ.
18	Police Officers Association	(P34300)
19	and the Detroit Police	DAVID EISENBERG, ESQ. (P68678)
20	Lieutenants and Sergeants	Erman, Teicher, Miller, Zucker
21	Association:	& Freedman
22		400 Galleria Officentre
23		Suite 444
24		Southfield, MI 48034
25		
21	For International Union, UAW:	BABETTE A. CECCOTTI, ESQ.
22		PETER D. DECHIARA, ESQ.
23		THOMAS CIANTRA, ESQ.
24		Cohen, Weiss, and Simon, LLP
25		330 West 42 nd Street
		New York, NY 10036-6976
		212-356-0227

1 For the Detroit Retired THOMAS MORRIS, ESQ. (P39141)
City Employees Association, Silverman & Morris
2 Retired Detroit Police and 30500 Northwestern Highway
Fire Fighters Association, Suite 200
3 Shirley V. Lightsey, and Farmington Hills, MI 48334
Donald Taylor (Retiree 248-539-1330
4 Association Parties):

RYAN PLECHA, ESQ. (P71957)
5 Lippitt, O'Keefe
370 East Maple Road
6 3rd Floor
Birmingham, MI 48009
7 248-646-8292

8 For the Official Committee of MATTHEW E. WILKINS, ESQ.
Retirees: (P56697)

9 Brooks, Wilkins, Sharkey &
Turco, PLLC
10 401 S. Old Woodward Avenue
Suite 400
11 Birmingham, MI 48009
248-971-1711

12 CLAUDE D. MONTGOMERY, ESQ.
13 ANTHONY ULLMAN, ESQ.
ARTHUR RUEGGER, ESQ.
14 Dentons
1221 Avenue of the Americas
15 New York, NY 10020-1089
212-768-6700

16 For the Retired Detroit
17 Police Members Association:

LYNN M. BRIMER, ESQ. (P43291)
MEREDITH TAUNT, ESQ. (P69698)
MALLORY FIELD, ESQ. (P75289)
18 Strobl & Sharp, P.C.
300 East Long Lake Road
19 Suite 200
Bloomfield Hills, MI 48304-2376
20 248-540-2300

21 For the Flowers Plaintiffs -
Robert Flowers, Michael Wells,
22 Janet Whitson, Mary Washington
and Bruce Goldman:
23

WILLIAM A. WERTHEIMER, ESQ.
(P26275)
30515 Timberbrook Lane
Bingham Farms, MI 48025
24 248-644-9200

1 For Ambac Assurance
Corporation:

DANIEL WEINER, ESQ. (P32010)
Schafer & Weiner
40950 Woodward Avenue
Suite 100
Bloomfield Hills, MI 48304
248-540-3340

4 Court Recorder:

Letrice Calloway

5 Transcriber:

Deborah L. Kremlick

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(Court in Session)

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

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

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

THE COURT: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 retiree committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 THE COURT: Right.

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

21 THE COURT: He adjusted the discount rate.

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

25 THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 MR. CIANTRA: I have clean --

15 THE COURT: Do you have them?

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

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

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

22 THE COURT: Please.

23 MR. CIANTRA: Thank you.

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

1 privileges are asserted?

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

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

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

8 THE COURT: Okay.

9 MR. CIANTRA: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

1 MR. CIANTRA: Thank you, Your Honor.

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

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

7 THE WITNESS: Yes, Your Honor.

8 (WITNESS KEVYN ORR WAS PREVIOUSLY SWORN)

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

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

12 CROSS EXAMINATION

13 BY MR. ULLMAN:

14 Q Good morning, Mr. Orr.

15 A Good morning, Mr. Ullman.

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

21 A Yes, I do.

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

1 A Yes. It was mentioned in the June 14th presentation.

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

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

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

16 A Yes.

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

19 A Yes, I believe so.

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

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

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

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

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

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

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

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

13 THE COURT: Motion denied.

14 MR. ULLMAN: Okay. Thank you.

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

20 A No.

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

24 A Yes

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

3 A Yes. Other employee benefits.

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

7 A Yes. I believe that's correct.

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

10 A Yes, I believe so.

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

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

20 Q That's the question, sir.

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

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

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

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

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

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

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

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

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

21 Q Yes.

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

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

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

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

4 Q Yes.

5 A Yes, I believe so.

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

9 A Yes.

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

12 A Yes.

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

15 A Not quite as familiar. Yes.

16 Q Are you aware of it?

17 A I'm aware of it.

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

19 A Yes.

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

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

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

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

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

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

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

17 A Yes.

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

22 A What day is this dated?

23 Q I'm sorry?

24 A Is this dated the 31st?

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

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

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

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

7 Q And then if we skip two paragraphs down, there is --
8 right. In the last paragraph we see the -- the phrase you
9 wrote. It says, so although the new law provides the thin
10 veneer of a revision, it is essentially a redo of the prior
11 rejected law and appears to merely adopt the conditions
12 necessary for a Chapter 9 filing. Do you see that?

13 A Yes, I see it.

14 Q Okay. And that's what you wrote and concluded when you
15 created this email in January of 2013?

16 A Yes.

17 Q And subsequent to then, to that time, have you done any
18 further investigation as to how PA436 came about and the --
19 the origin of the appropriations measure? It's really a yes
20 or no question.

21 A Well, no, I want to be complete in my answer so it's not
22 misinterpreted either by people in the courtroom or the
23 public. But have I done further investigation --

24 Q I'm sorry, Mr. Orr, but the question is simply whether
25 you did investigation, sir.

1 THE COURT: And as I've indicated to you before, if
2 you can't answer a question with a yes or a no answer, just
3 say that.

4 A Okay. I can't answer that question with a yes or no
5 answer.

6 Q You cannot tell me yes or no whether you did any further
7 investigation subsequent to January of 2013?

8 A It would be misleading for you to give just -- for me to
9 give you just a yes or no answer.

10 Q Okay. Did you ask any of your colleagues at Jones, Day
11 whether they had any information about the circumstances
12 surrounding the repeal of PA4 or the creation and enactment of
13 PA436?

14 A I don't think I asked anyone at Jones, Day. I think I
15 did my own analysis.

16 Q Well, were you aware that Jones, Day was in discussions
17 with the State of Michigan in March of 2012 concerning the
18 challenge to PA4?

19 A No.

20 Q Okay. Well, let's put 845 on the screen. This is
21 Exhibit 845. This is a March 24th, 2012 email. Do you -- do
22 you need -- I think we have a hard copy in the binders there
23 if it's easier for you to look --

24 A No, that's okay with my reading glasses, I can -- I can
25 keep up.

1 Q Okay. And why don't you take a moment to read it because
2 I don't want to just, you know, spring the paragraph on you.

3 A All I have on the screen is the two's.

4 Q Okay. Can you just put the -- the document on the screen
5 so Mr. Orr can read it?

6 A Well, I can't read that. You want me to read the whole
7 email or just --

8 Q You can look at the second page too and then I'll ask you
9 a few questions.

10 A Okay.

11 Q And then we'll move on. Have you had a chance to look
12 through that, Mr. Orr?

13 A I haven't read it all, but I -- I get the gist of the
14 email.

15 Q Okay. And this is as I said it's a May -- it's a March
16 24, 2012 email. You are not on it. I'm not suggest that you
17 are.

18 A No.

19 Q It's talking about a meeting that took place with Braum
20 Stibitz. That's a person from the -- of the Treasury
21 Department of the state, is that right?

22 A Yes.

23 Q And if you look at the paragraph numbered 1 with the
24 Arabic number 1, giving the context it says the state and the
25 city were concerned that PA4 may not survive the petition

1 challenge. Do you see that?

2 A Yeah, that's what it -- that's what it says, yes.

3 Q Yeah, okay. And then if you go on to the next page, you
4 go through some more discussion. It goes to the next page and
5 there is a -- a paragraph that says based on that conclusion,
6 it said the state quickly began evaluating the alternatives.
7 And go through one, could a consent agreement be achieved to
8 an artful solution such as the DEP was intended.

9 And then it goes to number three, thus, the state was
10 looking at declaring an emergency and appointing an EFM with a
11 likely subsequent step of a Chapter 9. Do you see that?

12 A Yes, I see that.

13 Q Then in the next paragraph it goes on to say, the state
14 believes it needs PA4 or worse case PA72 to file a Chapter 9
15 case based on law. And as such state legal counsel and Jones,
16 Day provided guidance on whether a Chapter 9 filing in April
17 could be upheld if PA 4 is pulled back at the end of April.
18 And does that refresh your recollection, Mr. Orr, as to
19 whether Jones, Day was involved in discussions in -- in -- or
20 in the spring of 2012 with the state concerning PA4 and
21 potential challenges to it?

22 A No. I have no -- I have -- did not have then and I just
23 learned now that Jones, Day had involvement in March 2012.

24 Q Okay. Well, were you aware, or are you aware I should

25 say, that Jones, Day itself was involved in suggesting the
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1 addition of an appropriation measure to PA436?

2 MR. STEWART: Objection, Your Honor, foundation.

3 THE COURT: I'll permit it. Go ahead, sir.

4 A No.

5 Q You've never heard that? You don't recall ever hearing
6 that from anyone at Jones, Day?

7 A I just heard it from you.

8 Q That wasn't my question. You don't recall ever hearing
9 that from anyone at --

10 A I never heard it from anyone at Jones, Day, no.

11 Q Okay. I'm going to show you a document and see if this
12 refreshes your recollection. The document I'm going to show
13 the witness is not in evidence, so I will not put it on the
14 screen. With permission, I'll just direct --

15 THE COURT: Well, the -- the witness did not
16 indicate a lack of recollection. He said -- the answer was
17 no. He was not aware of that.

18 MR. ULLMAN: Well, he said he -- I thought I asked
19 him whether he recalled ever hearing it and he said no.

20 THE COURT: That he wasn't aware of it. Is that
21 right, sir?

22 A Yes, Your Honor.

23 MR. ULLMAN: Well, Your Honor, if -- if he saw
24 something that refreshed his recollection that he had heard
25 of, then he would have been aware. It's a little --

1 THE COURT: But that's a question of impeachment,
2 not refreshing recollection.

3 MR. ULLMAN: Okay, Your Honor.

4 Q Mr. Orr, prior to the Chapter 9 filing, were you aware of
5 any legal precedent specifically allowing a city or an
6 emergency manager to use Chapter 9 as a means to trump a
7 provision of the State Constitution that protects vested
8 pension rights?

9 A I cannot answer that in a yes or no fashion. I'll give
10 you an explanation.

11 I -- as I had said before in my background, I handle
12 cases for federal preemption over state law in a number of
13 different roles. And so I generally was aware and -- and as
14 you've said before with my oath, that federal law takes over
15 state law.

16 Was I aware of any specific cases regarding an emergency
17 manager authorizing a Chapter 9 to trump state filings. I
18 don't think there were any specific cases of State
19 Constitution regarding vested pension rights. I don't think
20 there were any specific cases that I was aware of in that
21 regard, but I was aware of federal preemption, yes.

22 Q Okay. And were you at the time that you filed, were you
23 aware of any legal precedent allowing a city or an emergency
24 manager to use Chapter 9 as a means to trump a state

1 vested pension rights?

2 A Here again broadly, federal supremacy takes over state
3 constitutional law. I don't recall any specific cases in that
4 regard.

5 Q Okay. No specific cases regarding federal law trumping
6 the State Constitution, is that correct?

7 A No. I think I am aware of specific cases of federal law
8 trumping state constitutional law. What I was saying to you,
9 I was not aware of specific cases of federal law trumping
10 state constitutional law regarding vested pension rights.

11 Q Okay. Do you recall being deposed before right around
12 September 16th?

13 A Yes, I was deposed.

14 Q And I think you indicated that you were testifying
15 truthfully when you --

16 A I was testifying truthfully.

17 Q Okay. Let's show the -- the clip beginning at Page 192,
18 Line 2. I'd like to know, Mr. Orr, whether this was testimony
19 that you gave during that deposition?

20 MR. STEWART: Objection, Your Honor. I don't think
21 that this is a proper use of -- of deposition testimony. And
22 I would -- if Mr. Ullman has a question.

23 THE COURT: What -- what do you assert is improper
24 about it?

1 inconsistent with the deposition.

2 THE COURT: Well, then the impeachment will be
3 ineffective. But I'll permit counsel to -- to try.

4 Q Okay. The question is, do you recall giving this
5 testimony that we're about to play and you can answer yes or
6 no once you get --

7 A Yes, I recall September 16 deposition.

8 Q Okay. Why don't I just play the testimony?

9 (Video Being Playing at 9:56 a.m.; Concluded at 9:56
10 a.m.)

11 Q Now, Mr. Orr, is it correct that you've been told by the
12 State Attorney General that in his view the Michigan
13 Constitution protects the pensions that you're seeking to cut?

14 A Yes.

15 Q Is it correct that prior to the Chapter 9 filing there
16 were State Court proceedings that had been filed alleging
17 among other things that PA436 was unconstitutional inasmuch as
18 it purported to allow you to file for Chapter 9 without
19 insuring that the vested pension payments were protected?

20 A Yes.

21 Q Okay. And those were pending as of July 2013, correct?

22 A I believe they began July 3rd and there was another one
23 the following week and then one on July 15th, but yes.

24 Q Okay. And that litigation was pending in Ingham County
25 before Judge Aquiline?

1 A Yes. There was one case prior to the July cases
2 challenging the constitutionality of 436. But the cases
3 you're talking about Flowers, Webster, and GRS, I think were
4 all pending in Ingham County.

5 Q Yeah, in Ingham County. And is it correct that at -- at
6 least at some point in July the date for the bankruptcy filing
7 had been planned for July 19?

8 A No. I think I said before that I wanted to file as soon
9 as I got the authority. There wasn't a planning date. But I
10 was going to file as soon as I asked for the authority to do
11 so.

12 Q Okay. Isn't it correct that there was a plan that had
13 been -- a written plan that had been put in place and that had
14 been created at least that showed the filing date of July 19?

15 A I don't know if there was, I'm trying to recall. I don't
16 know if there was a plan. I think we had had discussions
17 about timing, yes.

18 Q Okay. And why don't we put on the screen Exhibit 831,
19 please. Or, yeah, I'm sorry, or we can use 452, I think
20 that's easier.

21 Okay. And what I'm putting before you is an email with
22 various attachments that comes from a Bill Nowling dated July
23 8th, 2013.

24 A Yes.

25 Q And it indicates at the bottom that Mr. Nowling works for
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1 the office of the emergency manager, you?

2 A Yes, he's my communications director.

3 Q Okay. And this is a document that was created by Mr.

4 Nowling, is that right?

5 A I assume it was. I haven't seen this document before.

6 Q Okay.

7 A But I assume it was.

8 Q Okay. And as you look at the attachments, it says

9 Chapter 9, COMS, which I assume is communications document,

10 Chapter 9 messages, Chapter 9 communications roll out from

11 July 4, 2013. Do you see that?

12 A Yes, that's what it says.

13 Q Okay. And Mr. Nowling in his ordinary course of duties

14 communicates with other people as to the state of things and

15 what the current schedule looks like, is that right?

16 A Yes. Mr. Nowling is the communications director and he

17 does a number of different things.

18 Q Okay. And if we turn to Page 7 of this document. Okay.

19 This is what we see, it looks like the roll out schedule which

20 was referred to in the attachment.

21 And if we look at the first entry, under the middle

22 column, event. It says Friday, July 19th, 2013 FILING DAY in

23 capital letters. Do you see that?

24 A Yes.

25 Q And then if you look at the second box below there is an

1 item for 10:00 a.m., file necessary paperwork with Court
2 system?

3 A Yes, that's what it says.

4 Q Okay. And this is all referring to the Chapter 9 filing,
5 isn't it?

6 A I believe so.

7 Q Okay. Now do you recall, and I think you indicated
8 previously that in -- in early to mid-July you were aware that
9 there was -- there had been a hearing in the State Court
10 litigation for a TRO that had been scheduled for July 22nd, is
11 that right?

12 A Yes.

13 Q Okay. And is it correct that the TRO hearing was then
14 moved up to July 18 in the late afternoon?

15 A I believe so.

16 Q Okay. And is it correct that the bankruptcy filing was
17 in fact done on July 18, not on the 19th?

18 A Yes.

19 Q And is it correct that it was around 4:06 in the
20 afternoon of the 18th that it was filed shortly before the
21 State Court TRO hearing was scheduled to start?

22 A If -- if that's the time it shows on the documents then
23 yeah, that's correct.

24 Q Okay. Now why don't we put up the -- do we have the
25 petition here? And this is just from the Court files. This

1 is a copy from the petition.

2 And if we look at the bottom, we see the filing date and
3 we see the filing time which is 4:06 in the afternoon. And if
4 you look at the date, there was a date that was handwritten to
5 July 18th. And I believe you've indicated previously that you
6 hand wrote the date to change it from July 19 to July 18, is
7 that right?

8 A Yes, I did that.

9 Q Okay. Now, you of course know Kenneth Buckfire, is that
10 right?

11 A Yes, I know Ken Buckfire.

12 Q Okay. And do you recall telling Mr. Buckfire that one of
13 the reasons that the bankruptcy filing was moved from the 19th
14 to the 18th, was to avoid the impact of a decision in the State
15 Court litigation that might have prevented you from filing the
16 bankruptcy petition?

17 A I don't recall specifically saying that, but I may have
18 said it.

19 Q Okay. So if Mr. Buckfire testified to that, would you
20 have any reason to challenge that testimony?

21 A Like I said, I don't specifically recall it, but I have
22 no reason -- I have no reason to say I did not say it.

23 Q Okay. And are you aware of any particular reason why the
24 Chapter 9 filing was filed when it was other than to get a
25 jump on a decision by the State Court?

1 A Yeah. I think I said before that once I sent the letter
2 to the Governor, I was prepared to file the case immediately.
3 I had said before that we were going to give it a month to try
4 to reach some sort of consensual resolution through the
5 process that we had outlined on June 14th and that wasn't
6 forthcoming.

7 I had said before that things were beginning to spiral
8 out of control. We had sat by for the better part of three
9 weeks being sued on a regular basis. We had the Syncora
10 litigation. And the -- TRO, temporary restraining order that
11 was due to expire at the end of that week. There were a
12 number of reasons besides the implication of your question
13 which was to try to get a jump. That we were concerned about
14 filing as soon as we could.

15 Q Okay. Mr. Orr, again, you remember testifying on
16 September --

17 A Yes.

18 Q Of September?

19 A Uh-huh.

20 Q I'm sorry, September of -- of this year.

21 A Yeah.

22 Q And again you indicated you were testifying truthfully?

23 A Yes, I was testifying truthfully.

24 Q Okay. And can you tell me did you give the following
25 testimony that we're about to play?

1 A Sure.

2 (Video Being Played at 10:03 a.m.; Concluded at 10:04
3 a.m.)

4 Q Okay. That was your testimony, Mr. Orr?

5 A Yes.

6 Q Okay. Now isn't it the case that subsequently the State
7 Court ruled that PA436 was unconstitutional to the extent that
8 it allowed a filing for Chapter 9 without protecting vested
9 pensions?

10 A I'm aware that there was a State Court ruling. I'm not
11 aware of the details. But I think I -- I think I have heard
12 that. I didn't -- I may have read the ruling, but I don't --
13 I think that's the gist of the ruling, yes.

14 Q You're aware of that in substance?

15 A I'm aware of that in substance.

16 Q Okay. And you didn't withdraw the bankruptcy petition in
17 response to the State Court ruling, did you?

18 A No. You asked me that on September 16th. No.

19 Q Now in connection with the bankruptcy filing, you filed
20 -- you yourself submitted a declaration, is that right?

21 A Yes.

22 Q Okay. And in it among other things you gave figures as
23 to the city's liability in cash flow?

24 A Yes.

25 Q Okay. And on the liability side, I believe you said that
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1 the total liabilities are over \$18,000,000,000, is that right?

2 A Yes.

3 Q Okay. And I think you also broke that \$18,000,000,000
4 figure down in a couple of ways. And we can -- I can show
5 you. Okay. So why don't we put -- let's put Exhibit 414 on
6 the screen. This is your declaration that you filed, isn't
7 it?

8 A Yes.

9 Q Okay. And if we can go to Paragraph 9 which is on --
10 starts on Page 5 and then continues. So okay, I guess we have
11 it all pieced together here. So we see here that you wrote in
12 Paragraph 9 that the city has over 18,000,000,000 in accrued
13 obligations, right?

14 A Yes.

15 Q And then you go on further to say, that there is over
16 6,000,000,000 -- a little further down, over 6,000,000,000 in
17 obligations backed by enterprise revenue -- enterprise
18 revenues or that are otherwise secured?

19 A Yes.

20 Q Okay. And then you elaborate that a little more in
21 Footnote 4. Will you put Footnote 4 on the screen? Okay.
22 And there is a phrase in there exactly where you say -- you're
23 elaborating on what that 6.4 billion dollar figure is. And
24 among other things you say that that consists of 5.85 billion
25 in enterprise fund debt. Do you see that?

1 A Yes.

2 Q Okay. And is it correct that that is basically referring
3 to bonds that are issued by the Detroit Water and Sewer
4 Department and state loans that are also made to the
5 Department of Water and Sewer?

6 A Yes. That's generally -- yeah, 6,000,000,000 of it
7 belongs to DWSD, yes.

8 Q And the DWSD, that's department of -- that's the Detroit
9 Water and Sewer Department?

10 A Detroit Water and Sewer Department.

11 Q Okay.

12 A We call it DWSD.

13 Q And the DWSD is operated as a separate authority in
14 Detroit, is that right?

15 A It's a department of the City of Detroit, but it is
16 operated as a -- not as -- necessarily as an authority. It's
17 operated with some autonomy, both operationally and as a
18 result of Judge Cox's ruling in the Clean Water Act case.

19 Q Okay. And it keeps its own books and records?

20 A Yes.

21 Q And the DWSD is responsible for the payment of these
22 bonds, isn't it?

23 A Yeah. There's a mechanism but generally, yes.

24 Q Okay. So the payment of these bonds, this about

1 fund, is it?

2 A Six billion.

3 Q Six billion. Did I say million?

4 A Yeah, you did.

5 Q Thank you.

6 A Okay. Six billion.

7 Q And that's -- the payment -- the responsibility for the
8 6,000,000,000 in the DWSD related bonds and -- and loans is
9 not allocable to the general fund, is it?

10 A No. No, it's not part of the general fund debt, but it
11 is an obligation of the city.

12 Q Okay. And the DWSD has the financial wherewithal to make
13 the payments on its bonds as they come due, doesn't it?

14 A Yes. And it is doing so.

15 Q Okay. Now if we look a little further in your
16 declaration, staying with Paragraph 9. You talk about where
17 is the 11. -- no, it's the top part. 11.9 billion in
18 unsecured obligations to lenders and retirees.

19 A Yes.

20 Q And we go back down this time to Footnote 3. And we see
21 in -- in little letter (a), we see the 5.7 billion -- billion
22 dollar figure in the OPEB liabilities, right?

23 A Yes.

24 Q And then in little (b) we see that number again, 3.5
25 billion in under funding pension liabilities, correct?

1 A Yes.

2 Q Okay. And that's a reference to the state of things as
3 you believe them to exist or saying they existed as of June
4 14, 2013, correct?

5 A Well, I -- I think my affidavit also includes a state of
6 play that we believe them to exist at the time of filing.

7 Q Well, I'm looking right now at Footnote 3 which says on
8 June 14, it says we met and these were the obligations. And
9 it says see proposal for creditors as of June 14, correct?

10 A Yeah. I'm not taking issue with what is said in there,
11 I'm just saying that I didn't see any change in those numbers,
12 yes.

13 Q Okay.

14 A But the answer to your question is yes.

15 Q Okay. Now is it correct that as of June 14 -- and you
16 had not been aware of any -- was there any substantial
17 revision to the work that had been done regarding the size of
18 the unfunded pension liability as you recall between June 14
19 and the time of the bankruptcy filing?

20 A There -- there -- there is ongoing work on these issues
21 through from June 14th until the bankruptcy filing. But there
22 were no, to the best of my knowledge, there were no
23 substantial changes in the amount of the debt represented by
24 these figures.

25 Q Okay. And is it correct then that as of June 14, the
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1 work that had been done by Milliman was in fact preliminary
2 work?

3 A I don't remember the exact date, but I believe June 14th
4 is correct and that Milliman's first work was done off of
5 Gabrielle Roeder, yes.

6 Q Okay. So the June 14 preliminary.

7 A Yeah.

8 Q Was it still preliminary as you understood it as of the
9 date of the bankruptcy filing, July 18?

10 A I don't know if it's -- if it's -- it's preliminary until
11 we reach agreement as to what the numbers are. So the work is
12 consistently estimates. When you say preliminary, I assume
13 you mean that we haven't reached a final conclusion as to the
14 amount. But this represents our best analysis of what those
15 numbers are.

16 Q Yes. Preliminary in the sense that the Milliman firm had
17 not reached a final conclusion as to what the right number was
18 for the pension liability.

19 A I -- I think that's fair.

20 Q Okay. And I think you testified earlier that during this
21 time frame, Milliman was doing an analysis of the Gabrielle
22 Roeder work, correct?

23 A The --

24 Q Well, I'm not saying that's all, I'm just taking this
25 piecemeal.

1 A Yeah. Well, so I don't -- without -- without looking at
2 the actual documents, I want to be sure I'm not misleading.
3 Milliman -- the sequence was Milliman was doing analysis of
4 Gabrielle Roeder. Milliman then began doing its own analysis.
5 I don't remember the exact dates, so I don't want to say June
6 14th and it turns out it was June 15th. But generally that's
7 the sequence and that's the approximate time.

8 Q Okay. So there are two aspects to what -- so we're
9 clear, what Milliman was doing one, was doing an analysis
10 based on the Gabrielle Roeder work, right?

11 A Yes.

12 Q And so we're clear Gabrielle Roeder is the actuary
13 retained by the retirement systems, correct?

14 A Yes.

15 Q Okay. And it was also, I think you had said earlier, in
16 the process of creating its own valuation?

17 A Yes.

18 Q Okay. And is it correct that as late as September 18,
19 2013, Milliman had not in fact yet completed its work and the
20 city was not in a position to know the actual size of the
21 pension under funding?

22 A I think it's correct that as of the 18th, Milliman may
23 have not -- here again I'm trying not to be specific with
24 dates if they're different and are proven to be different,

25 that's fine. But that's approximately the time. I don't know
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1 if it's fair to say that the actual valuations hadn't been
2 concluded. Our valuations have been fairly consistent based
3 upon the assumptions used.

4 Q Okay. And you know Charles Moore, correct?

5 A Yes.

6 Q Okay. And he is on the pension task force?

7 A Yes.

8 Q Okay. And he was tied in with the Milliman work and the
9 status of it at various points in time?

10 A Yes.

11 Q Okay. Why don't we put on the screen some deposition
12 transcript excerpts. Do you know what I'm -- okay.

13 This is from the deposition of Mr. Moore on September 18th
14 of this year.

15 MR. STEWART: Objection, Your Honor.

16 MR. ULLMAN: I'm not sure what the objection is,
17 Your Honor. I want to ask him some questions about some
18 specific things, made -- statements made by Mr. Moore. This
19 document has not been objected to, or rather this -- this
20 deposition testimony has not been objected to.

21 THE COURT: It's really not appropriate to ask one
22 witness about the testimony of another witness, or to confront
23 one witness with the testimony of another witness. The
24 objection is sustained.

25 Q Okay. Is it correct, Mr. Orr, that so far as you were
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1 aware that as late as September 18th, 2013, the city and its
2 actuary Milliman, had not completed the analysis on the
3 unfunded pension liability?

4 A As I said, I think that's the approximate date. I don't
5 recall independent the exact date. But I think it's around
6 that time.

7 Q What are you saying, it's around that time that they
8 complete -- I'm not sure when you say -- what's around that
9 time?

10 A No, at some point Milliman completed its analysis. I
11 don't remember the exact date that that was done.

12 Q Okay. But at -- you would agree that at least as of
13 September 18th, 2013, that Milliman had not completed its
14 analysis, correct?

15 A I'll agree that it was around that date. I don't want to
16 say yes and then it turns out that they had and I was wrong
17 because I just don't recall the date.

18 Q Okay. So that your best knowledge is around that date,
19 around September 18th.

20 A Sometime in September.

21 Q Okay. And is it correct that as recently as September
22 18, Milliman and the city were still in the process of trying
23 to create their own valuation model?

24 A That -- here again, it may be around that time. I mean
25 we continually do work on -- on valuations and analysis, but

1 that may have been the approximate time.

2 Q Okay. And to the extent that they were still working on
3 it as of around the July -- I'm sorry, the September 18 time
4 frame, do you have any personal knowledge as to when if ever
5 the Milliman valuation work was completed?

6 A Do I have personal knowledge of -- of when? I believe it
7 was completed. I don't know the exact time it was.

8 Q In any event it -- to the extent it was, it would have
9 been sometime on or after September 18th, is that true?

10 A Yeah, if your supposition is correct, that September 18th
11 it was still a work in progress, then it would have flowed
12 that it would follow sometime after that.

13 Q Now I think you also made reference in your June 14
14 proposal to the investment rate of return that had been used
15 by the retirement systems actuary, do you recall that? A 7.9
16 figure?

17 A Yes.

18 Q Okay. And do you want me to show that to you, or do you
19 agree that you made some reference to that as being what you
20 considered an inappropriate assumption?

21 A To move along, I will agree that we made a reference to
22 in our anticipated rate of return. And if you say it was 7.9,
23 I have no reason to -- to disagree with you.

24 Q Okay. And as it correct that as -- as late as September

1 whether the investment rate of return that was used by the
2 retirement systems actuary was inconsistent with actuarial
3 standards of practice?

4 A Here again I'm -- I'm going to defer to the documents and
5 -- and the actual timing of when those reports were produced.
6 But I think there was one report that had a range of
7 assumptions as far as what was reasonably anticipated to be
8 the expected rate of return.

9 Q My question is a little -- is really quite specific. Are
10 you aware -- they called actuarial standards of practice?

11 A Yes.

12 Q Okay. And is it correct that at least as late as
13 September 24, 2013, the Milliman firm had not opined, had not
14 given an opinion --

15 A Right.

16 Q -- that the investment rate of return used by the
17 retirement systems actuaries was inconsistent with actuarial
18 standards of practice?

19 A Yeah, without seeing the report, I don't recall if
20 Milliman ever opined. They may have, I just don't recall it.
21 If you say that there was some time after September 24th is
22 what you said, without getting caught up in the dates because
23 I don't have the document, and that document speaks for
24 itself, I have no reason to disagree with it.

25 Q Okay.

1 THE COURT: What's the relevance of all of this to
2 whether the city was eligible to file two months earlier?

3 MR. ULLMAN: This has to go to what the city knew
4 and what it's the city, not Mr. Orr necessarily personally,
5 but the city and its state of mind in making the
6 representation that the number for the unfunded pension
7 liability was indeed 3.5 billion when we believe the evidence
8 will show and shows that no one had come to that conclusion
9 yet and in fact work was still ongoing.

10 THE COURT: All right. I'll permit some brief
11 further inquiry into this and then ask you to move on.

12 MR. ULLMAN: Thank you, Your Honor.

13 Q Is it correct that as of September -- at least September
14 24, 2003 (sic), the work done by Milliman, the city's actuary,
15 had not in fact progressed to the point where it was even able
16 to replicate the valuation model that had been used by the
17 retirement systems actuaries?

18 A Mr. Ullman here again, I don't know what your dates are.
19 And I don't recall at what point --

20 THE COURT: All right. Mr. Orr --

21 A I don't know.

22 THE COURT: If you don't know, just say --

23 A I don't know.

24 THE COURT: -- I don't know.

25 A I don't know. I'm sorry, Your Honor. I don't know.
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1 Q Is it correct, Mr. Orr, that the last actuarial valuation
2 for the pension liability as a whole was done as of June 2011,
3 that's for both systems, the GRS and the police and fire?

4 A I don't know if that's the date.

5 Q Okay. Well, you recall that there was an actuarial
6 evaluation for June 2011 that showed a total unfunded
7 liability of about 643.8 million dollars?

8 A I don't recall if that was the date. I recall during a
9 deposition us discussing that number. I think that number was
10 based off the Gabrielle Roeder report as part of their annual
11 valuation.

12 Q Yeah. And that number, the 643.8 million is referenced
13 in the June 14 proposal, isn't it?

14 A I think it is, yeah.

15 Q Okay. And that would be for June 11, 2000 -- I'm sorry,
16 June 2011, right?

17 A I -- I -- I think that's when the report dates back to.

18 Q Okay.

19 A The end of the calendar -- I mean fiscal year.

20 Q Now for that -- didn't mean to interrupt you. Now,
21 taking that number, the total liability number for the
22 unfunded pension liability of the reported figure of 643.8
23 million, not all of that is allocable to the general fund, is
24 it?

25 A No. I think we discussed this on September 16th. There's
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1 a mechanism for some allocation to DWSD, but Gabrielle Roeder
2 doesn't break that out between general fund and DWSD.

3 Q Okay. And the fact is that a substantial portion of the
4 unfunded pension liability, the reported one, the 643.8
5 million, was allocable to DWSD, correct?

6 A Well, I think you and I discussed on September 16th that
7 the math, and I thought I said let's be careful. The math
8 works out to about 38%. I -- I think that figure does not --
9 I think that figure focuses on what was actually paid as
10 focusing on what was obligated. That 38% might go down if you
11 include the deferrals that we made. But generally somewhere
12 between a third to 40% is DWSD.

13 Q Of the unfunded pension liability --

14 A Of the unfunded --

15 Q -- is allocable -- I'm sorry, I didn't mean to --

16 A I didn't mean to interrupt you, I'm sorry.

17 Q Okay. To be clear though about you said 38 to 40% of the
18 unfunded pension liability is allocable to DWSD.

19 A What I -- what I said was, depending upon if you're
20 looking at just what was paid for that year, or what was paid
21 and deferred that that percentage probably ranges, because
22 Gabrielle Roeder doesn't break out the difference between the
23 general fund and DWSD obligations. Probably ranges between 30
24 to 38%. I think that 38% is what we discussed during my

25 September 16th deposition.

1 Q Okay. Just so I'm clear, the 38% that we discussed was
2 -- was allocable to the -- that we're talking about the
3 unfunded pension liability. And you're getting a little
4 confused is your answer?

5 A Yeah. Let me -- yeah. I'm going to try to clarify as
6 best I can because I want to be responsive.

7 If you calculated in the total amount the city had due
8 for instance in 2013 of about \$130,000,000, then DWSD's
9 responsibility would be about 30% of that number. If you
10 calculated in just the amount that was actually paid and other
11 deferrals in other years, then the DWSD component would
12 probably be about 38% of that number because it's -- it's a
13 larger component of what was actually paid as opposed to what
14 was obligated but a portion of which was deferred.

15 Q Okay.

16 A So the range depending upon whether it's -- it's all that
17 should be paid but was deferred, or whether it's just what was
18 actually paid, is somewhere between 30 to 38%.

19 Q Isn't it correct that the unfunded pension, just the
20 unfunded amount allocable to DWSD is about 39 to 40%, that
21 range?

22 A That's the figure we discussed on September 16th. And --
23 and that -- that is correct for the amount that's actually
24 paid. That percentage goes down if you include the deferral
25 amount. But yes, that's correct.

1 Q Okay. Just so we're real clear, can we put up the City's
2 Exhibit 68? Look at Page 1 first. Okay. This is the
3 Gabrielle Roeder. It's a -- a report from July 2012. Do you
4 see that?

5 A Yes.

6 Q And if we go to Page B3. Okay. If we can blow that up.
7 Do you see here Gabrielle Roeder actually breaks down the --
8 the actuarial accrued liability as of June 30, 2011?

9 A Yes.

10 Q And at the very bottom there's unfunded actuarial accrued
11 liabilities?

12 A Yes.

13 Q Okay. You see there's a -- a total column at the far
14 right?

15 A Yes.

16 Q Okay. And in the middle it's Department of Water and
17 Sewage -- or Sewage?

18 A Yes, the middle column.

19 Q The two forty-seven --

20 A Yes.

21 Q And I believe if you do the math, if you divide the two
22 forty-seven six two four figure into the total unfunded
23 accrued liabilities, it comes out to just about 38.6%. Do you
24 see that?

25 A Yeah, that's the discussion we had on September 16th.

1 Q Okay. And this is -- so this is talking about the
2 unfunded liabilities only, correct?

3 A Yes.

4 Q Okay. And in the -- going back now to our discussion
5 September 16th, do you remember that there was some -- there
6 was some confusion over how to do the math to get the right
7 number?

8 A Yes, I do.

9 Q And remember we first did it the wrong way and we ended
10 up with 38%. And then we went back and tried it again and you
11 ended up saying yes, the right number is 61 -- it was
12 something like 61%.

13 A Well, I said if you -- I think what I said was, and I'm
14 sorry because we were both going back and forth on the math.
15 I think what I said is, the math is the math, but be very
16 careful with the numbers because you'd actually have to do
17 down. So just -- just to clarify that whole discussion --

18 Q I -- I agree.

19 A We're -- we're talking about 38%.

20 Q Right. And at the deposition I think we ended up with
21 61, but we see now that the right number is more at -- at
22 38.6?

23 A Yes, that's right. Attorneys doing math.

24 Q Thank you. Okay. And now with respect to the unfunded
25 pension liability that is allocable to DWSD, that is -- DWSD

1 bears financial responsibility for that, doesn't it?

2 A Yes.

3 Q Okay. And so again that's not allocable to the general
4 fund, is it?

5 A No. It's accounted for in DWSD, but the general fund
6 makes the payment. So whether or not, I don't want to get
7 confused with a legal conclusion as to whether or not there's
8 an obligation by the city to fund that, but DWSD makes a
9 contribution for that amount.

10 Q So ultimately it's borne that the unfund -- the pension
11 amounts including the unfunded would ultimately be borne by
12 DWSD, correct?

13 A Ultimately the -- the portion of that obligation due for
14 employees at DWSD is borne by DWSD, but is still a city
15 obligation because they're a department of the city.

16 Q Okay. But ultimately not an obligation that's payable at
17 the end out of the general fund?

18 A It's not taken out of the general fund.

19 Q Okay. Now, is it correct -- what we've been talking
20 about now is the 643,000,000 or so liability as of June 2011.
21 And then we saw that there's an amount about 38 -- it was 38
22 to 39% that's allocable to DWSD. Is it correct that with
23 respect to the unfunded pension liability, that if it were
24 concluded subsequently that the correct amount of the unfunded

1 as 3.5 billion, that a substantial portion of that would still
2 remain allocable to DWSD?

3 A I -- I think I cautioned on September 16th with being
4 careful about doing a straight line analysis. And I think I
5 said then that you'd have to go back and do analysis of
6 deferrals and payments and so on and so forth. So I'm going
7 to say that again today. But if you're relying on the math, a
8 portion of that obligation is due from DWSD.

9 Q And I was not suggesting that it was necessarily a
10 straight line relationship, but simply that there would be a
11 substantial portion of the unfunded liability that would
12 remain allocable to DWSD, correct?

13 A Yeah. I'm just going to -- I'm going to caution a little
14 bit about substantial. There will be a portion substantial if
15 we go back and do an analysis that of the deferrals, different
16 proportion than other things. Let's just be a little careful.
17 But generally speaking, there are obligations due from DWSD.

18 Q Yeah. And as you sit here now you don't know what that
19 portion that's allocable to DWSD would be, do you?

20 A No. We'd have to do an analysis.

21 Q Is it correct that the City of Detroit owns certain
22 pieces of art that are maintained at the Detroit Institute of
23 Arts?

24 A Yes.

25 Q Okay. And this is art that the -- we're talking about
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1 art that the city owns itself, right, not art that's subject
2 to any kind of public trust?

3 A Yes.

4 Q Okay. And that art is very valuable, is it not?

5 A We're currently going through a valuation, but I believe
6 it's very valuable, yes.

7 Q Okay. And Christie's has been retained, correct?

8 A Christie's has been retained, correct.

9 Q And they were retained in August, is that right?

10 A I believe -- well, let's -- let's get by the sequence. I
11 believe they were initially requested to come out. I told
12 them go away. We were taken actually --

13 THE COURT: Mr. Orr, please, just answer the
14 question. Were they retained in August?

15 A I don't recall a specific date. I think it was August.

16 Q Okay. So you were appointed the emergency manager at the
17 end of March and Christie's was not retained until August.

18 Was that in the beginning or the end of August, do you recall?

19 A I don't know.

20 Q Okay. Now the art is a potential source of cash for the
21 city, is it not?

22 A I don't know.

23 Q Okay. Well, isn't it potentially a very large source of
24 cash for the city?

25 A It is valuable. I don't know if it's a large source of
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1 cash for the city.

2 Q Okay. Have you received any estimates or preliminary
3 views of its total value from Christie's?

4 A No.

5 Q You're aware of course of reports in the press that the
6 art that's own by the city could be worth billions?

7 A Yes, I'm aware of press reports, yes.

8 Q Okay. And billions in cash flow would certainly help the
9 city's financial position, would it not?

10 A I think it would.

11 Q And in fact an influx of cash of that magnitude would
12 provide funds to at least pay pension contributions for the
13 next several years, isn't that right?

14 A It might.

15 Q And is there -- there -- let me ask it this way. There's
16 nothing in the June 14 proposal that recognizes the potential
17 cash influx from the sale of art as a means to pay vested
18 pensions, is there?

19 A June 14th proposal speaks to DIA, but we did not speak to
20 any sale of art.

21 Q Okay. We've also talked about the Department of Water
22 and Sewer. That's another potential cash source for the city,
23 isn't it?

24 A Yes.

25 Q Okay. And I think you've indicated previously that
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1 you've been looking at ways to monetize that?

2 A Well, yes.

3 Q And at this point do you have any understanding as to
4 the, at least a preliminary valuation of what the -- the
5 amount of cash the Department of Water and Sewer might be able
6 to generate for the city?

7 A No.

8 Q And I take it nothing in the June 14 proposal shows any
9 funds generated by DW -- excuse me, DWSD being used to pay
10 retirees pension benefits, does it?

11 A Well, to the extent the June 14th report speaks to trying
12 to monetize some value out of DWSD and that monetization would
13 go into in some form the \$2,000,000,000 note, to the extent
14 pensions are unsecured, they would receive a benefit from that
15 process.

16 Q Okay. So the answer to my question is, I was correct,
17 wasn't I, that nothing in the June 14 proposal shows any funds
18 that might be received through DWSD is going to pay vested
19 pension benefits?

20 A No, I don't think that's correct. I think the June 14th
21 proposal speaks about a -- a process by which we would provide
22 benefits through the monetization of certain city assets to
23 the unsecured creditor class, so consequently they would
24 benefit.

25 Q You're saying that if -- that under the June 14 proposal,
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1 the pension holders would be treated as any other unsecured
2 creditor and the value of their bonds might go up a little,
3 correct?

4 A Yes.

5 Q But there's nothing in the June 14 proposal that says if
6 we're able to get cash out DWSD, we'll use that cash to
7 preserve pension benefits and not have to cut them or not have
8 to cut them so significantly, is there?

9 A There is nothing that treats pension benefits differently
10 than any other unsecured creditor.

11 Q Okay. Going back now -- just a few more questions.

12 A Okay.

13 Q To the June 14 meeting. Do you recall being there?

14 A Yes.

15 Q Okay. There were no negotiations that took place at the
16 June 14 meeting, were there?

17 A No. I wouldn't call those negotiations.

18 Q Okay. Now subsequent to the June 14 proposal and the
19 meeting on June 14, there -- there were series of
20 presentations and discussions concerning the terms of the
21 proposal with respect to various persons and entities that
22 would be affected under it, correct?

23 A Yes.

24 Q Okay. And is it correct that you yourself did not attend

25 all of the presentations and discussions that took place

1 concerning that subsequent to June 14?

2 A Yes, that's correct.

3 Q Okay. And you didn't attend the June 20 meetings, did
4 you?

5 A No. I think I did attend the June 20th meeting.

6 Q Okay. Well, I'd just like to, if we can pull up Exhibit
7 414. This is your declaration, Mr. Orr?

8 A Yes.

9 Q I just want to ask you if you can -- if we can turn to
10 Paragraphs 91 and 92. Well, I'll just do it. Do you see in
11 Paragraph 91 and 92 it's both talking about the June 20
12 meeting?

13 A Yes.

14 Q Okay. And we can also show you the preceding paragraph
15 where it's talking about advisors.

16 A Right.

17 Q But if we focus on 91 and 92, it says on June 20, 2013,
18 certain of these advisors met in Detroit with representatives
19 of the city's unions and retiree associations. And then in
20 Paragraph 92, it again in the first sentence talks about the
21 city's advisors answering as many questions as were asked. Do
22 you see that?

23 A Uh-huh.

24 Q Okay. And there's no reference to you personally being
25 there at the June 20 meetings, is there?

1 A No, but I remember attending because I bought lunch.

2 Q Okay.

3 A Out of my pocket.

4 Q Okay. So if Mr. Malhotra testified that you were not
5 present at either of the June 20 meetings, would you have any
6 particular basis to disagree with him?

7 A No. But Mr. -- the way the meetings were designed, I
8 think there was a session in the morning, there was a session
9 in the afternoon. And I may have been at one session that he
10 was not at. But I remember being at the meeting.

11 Q Okay. And there were also meetings on July 10th and 11th,
12 correct?

13 A I believe so.

14 Q Okay. And you -- I think you indicated previously that
15 you have no recollection of being present at those meetings,
16 is that correct?

17 A No, I wasn't at those meetings.

18 Q Okay. Now on July 16th, you sent a letter to the
19 Governor, is that right?

20 A Yes.

21 Q Okay. And why don't we put the July 16th letter, that's
22 Exhibit 409 on the screen? Okay. And this is a letter on
23 which you asked authorization to file the Chapter 9 filing, is
24 that right?

25 A Yes.

1 Q Okay. And in this letter you went through a variety of
2 things reviewing what you represented to be the facts for the
3 Governor in which the Governor was to base his decision, is
4 that right?

5 A Yes.

6 Q And among other things you discussed the substance of
7 what happened at the various creditor meetings that took place
8 after June 14th, is that right?

9 A Yes.

10 Q Okay. And if we look at page -- look at Pages 8 to 9 of
11 this document, we see there is a heading entitled individual
12 follow up meetings?

13 A Yes.

14 Q And that goes on to the next page?

15 A Yes.

16 Q Okay. So just going through this briefly, the first one
17 talks about June 20. And it says again, the city's advisors
18 conducted meetings with unions and retiree associations. Do
19 you see that?

20 A Uh-huh, yes.

21 Q Okay. On the 25th it says the advisors met with various
22 persons and among them is the GRS and PFRS? Do you see that?

23 A Yes, that's what the document says.

24 Q And that that's -- the GRS and PFRS, that's the
25 retirement systems, right?

1 A General retirement system, police and fire retirement
2 system, yes.

3 Q Okay. Then the next bullet on the next page talks about
4 July 9th and 10th and it talks about due diligence with persons
5 including GRS, PFRS. Do you see that?

6 A Yes.

7 Q Okay. And then on July 10th, it talks about follow up
8 diligence sessions again GRS and PFRS were mentioned and the
9 unions?

10 A Yes, I see what it says.

11 Q Okay. And then on July 11th, it again talks about
12 sessions with business people and advisors for the unions,
13 right?

14 A Yes.

15 Q And then finally on the last bullet it talks about
16 negotiations with counter parties to the pension related swap
17 contracts?

18 A Yes.

19 Q Okay. And on the -- the counter parties to the swap
20 contracts though, they don't have anything to do, they're not
21 the unions or retiree association or the retirement system,
22 are they?

23 A No.

24 Q Okay. Now in this final bullet paragraph, you say the
25 city's negotiations. Do you see that? You refer to the

1 city's negotiations?

2 A Yes.

3 Q Okay. In any of the preceding bullet paragraphs that we
4 have talked about, did you use the word negotiations in
5 describing what took place?

6 A The document speaks for itself, but I -- I don't see the
7 word negotiations, no.

8 MR. ULLMAN: I have nothing further.

9 THE COURT: All right. We'll take out break now and
10 resume at 10:55, please.

11 (WITNESS KEVYN ORR WAS TEMPORARILY EXCUSED AT 10:38 A.M.)

12 THE CLERK: All rise. Court is in recess.

13 (Court in Recess at 10:38 a.m.; Resume at 10:55 a.m.)

14 THE CLERK: Court is in session. Please be seated.

15 MR. DECHIARA: Good morning, Your Honor. Peter
16 Dechiara from the law firm of Cohen, Weiss, and Simon, LLP for
17 the UAW International Union.

18 CROSS EXAMINATION

19 BY MR. DECHIARA:

20 Q Good morning, Mr. Orr.

21 A Good morning, Mr. Dechiara.

22 THE COURT: You may proceed, but please no redundant
23 questioning.

24 MR. DECHIARA: I will try my best, Your Honor, to
25 avoid redundant questions.

1 Q Mr. Orr, you testified at the beginning of your direct
2 fairly extensively about your background. I just want to ask
3 you a few questions about that.

4 A Sure.

5 Q You testified you were born and raised in the State of
6 Florida, is that correct?

7 A Yes.

8 Q Okay. Prior to --

9 THE COURT: Excuse me, the first question you asked
10 was a redundant question.

11 MR. DECHIARA: I was just saying the framework for
12 my next question, Your Honor. I apologize. I'll try my best
13 to keep it focused.

14 Q Before you became emergency manager, had you ever lived
15 in the City of Detroit?

16 A No.

17 Q Do you currently maintain a permanent residence in the
18 Washington, D.C. area?

19 A Yes.

20 Q And I believe you -- and does your wife -- do your wife
21 and kids live in the Washington, D.C. area?

22 MR. STEWART: Objection, relevance, Your Honor.

23 MR. DECHIARA: Your Honor --

24 THE COURT: The objection is sustained.

25 Q Okay. Since becoming emergency manager, do you commute
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1 back and forth between Detroit and Washington, D.C.?

2 A Yes.

3 Q And you don't maintain a permanent residence in Detroit,
4 is that correct?

5 A No.

6 Q And since you've been emergency manager you've been --

7 THE COURT: Fine. Counsel said, is that correct and
8 you said no. So you do or you don't maintain a permanent
9 residence here?

10 A I do not maintain a permanent residence here.

11 Q Since you've become emergency manager you -- while in
12 Detroit you've been living out of a hotel, is that correct?

13 A Yes.

14 Q You testified -- you were asked on -- on direct whether
15 you took the emergency manager job for the money. Do you
16 recall that question?

17 A Yes.

18 Q And your answer on direct was no, correct?

19 A I did not take the job for the money.

20 Q Okay. How much money do you earn as emergency manager?

21 A As stated by -- stated in my contract \$275,000 a year.

22 Q Okay. And do I take it from your answer that you didn't
23 take the job for the money to mean that when you were a
24 partner at Jones, Day you were earning much much more than
25 that?

1 A Yes.

2 Q And apart from your \$275,000 a year salary, do you
3 receive any other compensation for your services as emergency
4 manager?

5 A I do not receive directly any other compensation. If
6 you're -- if you're trying to talk about the expenses of the
7 hotel, I've since understood that those are paid from a fund.

8 Q What fund?

9 A I believe it was the NERD fund.

10 Q Okay. And do you know who contributes to that fund?

11 A I know nothing about that fund. I know nothing about how
12 it's paid. I've never seen my lease.

13 Q Do you know that -- that fund, the NERD fund is the
14 Governor's fund?

15 A I know that. I know it's related to the Governor. I
16 don't know what you mean by the Governor's fund, but yes, I
17 know that.

18 Q Okay. You know Richard Baird, do you not?

19 A Yes, I do.

20 Q Okay. And he is a consultant to the Governor?

21 A He is now a state employee.

22 Q As of the time that -- as of January and February of
23 2013, was he a consultant to the Governor?

24 A Yes.

25 Q And in that period of time he worked closely with the
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1 Governor?

2 A I don't know about his -- I assume he did. He -- I think
3 his title was transformation manager to the Governor.

4 Q Okay. To the best of your knowledge based on your
5 dealings with him, was it your understanding that he worked
6 closely with the Governor?

7 A To the best of my knowledge based on my dealings with
8 him, yes.

9 Q The meeting, and there's been a lot of testimony about
10 this, the meeting at which Jones, Day made a pitch to become
11 restructuring counsel for the City of Detroit was on January
12 29th, 2013, correct?

13 A Yes.

14 Q Okay. And the very next day Mr. Baird called up the
15 managing partner of Jones, Day, Steven Brogan to inquire about
16 whether he could speak to you about becoming a candidate for
17 emergency manager, is that correct?

18 A I believe that's correct.

19 Q And then the very next day after that you spoke to Mr.
20 Baird, correct?

21 A I may have spoken to him that day, or the day after that,
22 but it was closely after that, yes.

23 Q Okay. So it was either January 30th or January 31st that
24 you spoke to Mr. Baird?

25 A I believe so.

1 Q Okay. Just to make the record clear, if I could ask you
2 to turn your attention to Exhibit 401. Can -- can you blow
3 that up a bit? Do you have that on your screen, Mr. Orr?

4 A Yes, I do.

5 Q Okay. And is that an email from -- from you to others
6 dated January 31st, 2013?

7 A Yes.

8 Q And it says in the first sentence, I had a good
9 conversation with -- with Rich Baird this morning? Do you see
10 that?

11 A Yes, I do.

12 Q Does that refresh your recollection about whether it was
13 on the 30th or the 31st that you spoke to Mr. Baird?

14 A I -- I may have spoken with him both on the afternoon of
15 the 30th and again on the 31st. But this says I clearly spoke
16 with him on the 31st, so I certainly spoke with him on the 31st.

17 Q You interviewed with the Governor to become emergency
18 manager, correct?

19 A Yes.

20 Q And you interviewed with Mr. Dillon?

21 A Yes.

22 Q And you interviewed with Mr. Baird?

23 A Mr. Baird was at the meeting that I had with the
24 Governor.

25 Q Okay. Now I believe you testified on direct that you
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1 didn't want your decision about whether or not to become --
2 whether or not you wanted to become emergency manager to have
3 any impact on whether or not Jones, Day would be chosen as
4 restructuring counsel for the city, is that -- am I getting
5 that right?

6 A Yes. I think I testified that whether or not I was
7 interested in becoming the emergency manager, I did not want
8 it to either help or hurt Jones, Day.

9 Q Okay. And in fact on direct you testified that you told
10 the Governor, and the Treasurer, and Mr. Baird that you did
11 not want your decision about whether to become emergency
12 manager to have any impact on whether or not Jones, Day was
13 chosen as restructuring counsel for the city. Am I -- am I
14 correct that that's what you testified on direct?

15 A Yes. I think I told both the Governor, and Mr. Baird,
16 and Treasurer Dillon as well.

17 Q Okay. And the reason you told the Governor that, and the
18 reason you told Mr. Dillon that, was because you understood
19 that they would be in a position to have influence or impact
20 on whether or not Jones, Day was chosen for -- as
21 restructuring counsel, correct?

22 A I told Mr. Dillon and Mr. Baird that because they were on
23 the review team that we pitched to. I think I told the
24 Governor that just to reinforce what I told Mr. Baird and Mr.
25 Dillon.

1 I assumed that Mr. Baird and Mr. Dillon would have some
2 influence on the selection process since they were on the
3 team. I don't think I said that just because I assumed the
4 Governor would have that influence.

5 Q Did the Governor say anything to you in response when you
6 said that to him?

7 A I think the Governor agreed that it went one way or the
8 other.

9 Q Okay. I'd like to show you a document that's UAW 619.
10 It's --

11 MR. DECHIARA: Your Honor, it's not yet admitted
12 into evidence. I would just ask the witness to -- it's in the
13 UAW binders which were provided to the Court and the witness
14 and -- and city counsel this morning.

15 Q Mr. Baird, if I could ask you to turn to -- behind Tab
16 619.

17 A Mr. Orr?

18 Q I'm sorry, whatever I said, excuse me. Mr. Orr. Are you
19 at -- do you see this exhibit?

20 A Yes.

21 Q Okay. Am I correct that this is -- these -- this
22 exhibit, and I'm just referring to the first page, the first
23 page of this exhibit is a chain of emails. The first one --
24 or the middle one is from Mr. Baird to you dated February 20th,
25 2013?

1 A Yes.

2 (UAW Exhibit 619 was identified)

3 Q Okay. Did you receive that email?

4 A Yes.

5 Q And do you recall what the -- let me just read it. It
6 says, FYI --

7 THE COURT: Not in evidence yet.

8 MR. DECHIARA: Okay. Your Honor, I -- I would move
9 this document at this point into evidence.

10 MR. STEWART: The objection is relevance, Your
11 Honor.

12 MR. DECHIARA: Your Honor, a major theme of -- of
13 our case, and I believe some of the other objectors' cases, is
14 that the state was working hand and glove with the firm of
15 Jones, Day to implement this effort, this scheme, this
16 strategy to end run the Michigan Constitution in order to cut
17 the pensions of Detroit retirees.

18 And this is one data point, if I -- if I could, that
19 shows the intimate relationship between the state and Jones,
20 Day. This is an email from the Governor's right hand man, Mr.
21 Baird before Mr. Orr was emergency manager, but while he was a
22 partner at Jones, Day saying what it says in this email which
23 if I may refer to it --

24 THE COURT: No, that's all right I'm satisfied that
25 the document is relevant and that objection is overruled.

1 What -- what number was it again, sir?

2 MR. DECHIARA: Six nineteen.

3 THE COURT: Okay.

4 (UAW Exhibit 619 was admitted)

5 Q Could you blow up the -- okay. Do you recall Mr. Orr,
6 what this email was about? What the general subject matter of
7 this exchange was?

8 A Yes.

9 Q What was it?

10 A This was discussion of a proposed partnership agreement
11 between the Mayor and myself if I were to become emergency
12 manager.

13 Q Okay. I'd like to refer you to second sentence. It's --
14 Mr. Baird writes, told him that there were certain things I
15 would not think we could agree to without your review,
16 assessment, and determination. And then the sentence goes on
17 and you can read it, but I'll stop reading out loud there. Do
18 you know who -- I know you didn't write the sentence, but did
19 you have an understanding of who the we was, that last word on
20 the -- on the second line on the -- on the right?

21 A Yes. I think he was talking about the Mayor.

22 MR. WERTHEIMER: Pardon me. I can't hear him and I
23 apologize.

24 THE COURT: Would you repeat your answer, please?

25 A Yes, Your Honor. Yes, I think he was talking about the
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1 Mayor.

2 Q Okay. Mr. Baird was talking about himself and the Mayor?

3 A You know, I don't -- I don't know.

4 Q Okay. I don't want you to guess if you don't know.

5 A I don't know.

6 Q Okay. All right. But nonetheless, Mr. Baird was saying
7 to you that he did not think that we, whoever we were, could
8 agree to something without your review, assessment, and
9 determination.

10 A Mr. Dechiara, let me clarify my answer. I think this
11 email is Mr. Baird talking about an outline that he gave the
12 Mayor. And I think the we is referring to me and Mr. Baird.

13 Q Okay. Did Mr. Baird ever explain to you apart from
14 what's written in this email, why your agreement -- your
15 review assessment and determination were necessary at this
16 point in time?

17 A You know, as I read this email, Mr. Dechiara, let me
18 further clarify.

19 THE COURT: I think I just need you to answer that
20 question, please.

21 A Oh, I'm sorry, Your Honor. Please --

22 Q Did -- did Mr. Baird apart from what's written in this
23 email, ever explain to you why in his view your review,
24 assessment, and determination were necessary?

25 A I don't recall.

1 Q Okay. But just to be clear, you were a partner at Jones,
2 Day at the time of this email, correct?

3 A Yes.

4 THE COURT: Excuse me one second. Now, witness, you
5 say there's some testimony you'd like to clarify?

6 A Yes, Your Honor.

7 THE COURT: You can do that.

8 A I think the we that's circled here at the end of the
9 second line is referring to both the -- the -- to Mr. Baird,
10 to myself, and the Mayor, the royal we if you will.

11 Q And did Mr. Baird ever explain to you apart from what's
12 written here what -- what the we was, or are you just --

13 A I don't recall. I'm just reading the context of the
14 email.

15 Q Okay, okay. Let me refer you now to UAW Exhibit 620.
16 It's the next tab in the book. And do you have it in front of
17 you, Mr. Orr?

18 A Yes, I do.

19 Q Okay. Let me refer you to the -- the middle email, the
20 one that is from Richard -- which appears to be from Richard
21 Baird to you dated February 22nd, 2013. Do you see that?

22 A Yes, I do.

23 Q And is that in fact an email that Richard Baird sent to
24 you on February 22nd, 2013?

25 A Yes, I believe so.

1 (UAW Exhibit 620 was identified)

2 MR. DECHIARA: Move the admission of UAW 620, Your
3 Honor.

4 MR. STEWART: Same objection, Your Honor.

5 MR. DECHIARA: Same argument, Your Honor. It's --
6 it's just part of the same -- and it's not like I have a lot
7 of these. This is the only other one on this line.

8 THE COURT: All right. It is admitted. The
9 objection on relevance grounds is overruled.

10 (UAW Exhibit 620 was admitted)

11 Q Let me if -- thank you. Let me refer to the email from
12 Richard Baird it says, Kevyn, about to be in a car for several
13 hours so thought I would send this to you prior to hearing
14 back from the G a final time. Did -- did you have an
15 understanding of who the G was? That was the Governor, wasn't
16 it?

17 A I -- I think it's referring to the Governor, yes.

18 Q And then the -- and then the email goes on, if you agree
19 with what I have done to the doc, based on everyone's input
20 and agree that you should be the one to provide it to the
21 Mayor as fully endorsed by the Governor, and the Treasurer,
22 and you, then I think that clearly established that you are
23 already behaving as an agent of the state committed to getting
24 Detroit back on track.

1 you agree to the things that he refers to in that sentence
2 that you were already behaving as an agent of the state?

3 A No.

4 Q Did you disabuse Mr. Baird of that notion and -- and --
5 and tell him that he was wrong about that?

6 A I don't recall.

7 Q You did respond to the email, didn't you in the -- in the
8 email that is at the top of the exhibit?

9 A Yes.

10 Q If -- if you could blow that up. And am I correct that
11 nowhere in that response do you say anything to Mr. Baird that
12 his statement in his email was incorrect, am I reading that
13 email accurately?

14 A I think the email speaks for itself, yes.

15 Q Okay. Thank you. Is it your understanding that you
16 serve at the pleasure of the Governor?

17 A Yes, provided I'm acting under 436. I think the Governor
18 has certain authority to remove me as well as the city council
19 and the Mayor at the end of 18 months.

20 Q Are you aware of any limits on -- are you -- can the
21 Governor remove you at will?

22 A I think that may be a legal conclusion under the statute.

23 Q I'm not asking for your legal conclusion. I'm asking for
24 your understanding.

25 A I don't know.

1 Q Okay. Since you've become emergency manager, you've met
2 frequently -- frequently with the Governor, have you not?

3 A Yes.

4 Q Both in formal group settings with staff and -- and
5 advisors present as well as one on one?

6 A I meet with the Governor --

7 Q It's a yes or no question.

8 A No.

9 Q You have not met with the Governor both in formal
10 settings with others present as well as one on one since
11 you've become emergency manager?

12 A Yes. I have met with the Governor in formal settings and
13 with one on one. The difference in my answer was your use of
14 frequently. I meet with the Governor less frequently in the
15 one on one sessions.

16 Q Okay. But the totality of your meetings with the
17 Governor, are frequent, correct?

18 A Yes.

19 Q Okay. And in your meetings with the Governor, have you
20 discussed the -- prior to the bankruptcy filing, did you
21 discuss plans for the filing of Detroit's bankruptcy petition?

22 A Outside of implicating any privilege discussions?

23 Q I'm just asking you the question.

24 MR. STEWART: I would state an objection to the

1 attorney/client information.

2 A We had discussions.

3 Q And what were your -- what was discussed? But let me --
4 let me -- let me -- let me ask you, on how many occasions did
5 you have those discussions?

6 A The Governor and I and the Detroit --

7 Q But do you have a number?

8 A Weekly.

9 THE COURT: That's not a number, but okay.

10 A I don't -- I don't know the number, Your Honor.

11 Q Okay. Just so I understand -- understand your testimony,
12 testimony, Mr. Orr, you discussed with the Governor on a
13 weekly basis plans for the filing of the -- the bankruptcy
14 petition?

15 A No.

16 Q Okay. So my question is, how often did you meet with the
17 Governor or speak to the Governor if it was by phone, about
18 plans for Detroit's bankruptcy filing?

19 A Somewhere between two and four or five, maybe.

20 Q And do you have a recollection of what was said in those
21 discussions between you and the Governor?

22 MR. STEWART: Same objection, Your Honor, to the
23 extent it's calling for the witness to reveal privileged
24 attorney/client communications. I would ask that he not

1 present.

2 MR. DECHIARA: I think the objection is premature,
3 Your Honor. I simply asked whether he recalls what was said.
4 I didn't ask I didn't yet ask him to reveal it.

5 Q Do you recall what was said in those meetings?

6 A I recall some of what was said, yes.

7 Q Okay. Now I would ask you to -- to testify as to what
8 was said.

9 MR. STEWART: Same objection.

10 A Those meetings were held with attorneys acting as
11 attorneys, Your Honor, and I'm remembering the admonition from
12 the Court about my follow on deposition. So I -- I'd like to
13 say that the Governor has a J.D., and I believe the Treasurer
14 has a J.D., so I'm not talking about them. I'm talking about
15 attorneys acting as attorneys.

16 THE COURT: So is it your testimony to the Court
17 that none of the meetings at which the filing of this case was
18 discussed, was held outside of the presence of lawyers?

19 A To the best of my recollection, none were held outside
20 the presence of lawyers acting as lawyers.

21 Q What lawyers?

22 A I believe it was -- there were -- there were a lot of
23 meetings with lawyers. The Governor's staff lawyers --

24 THE COURT: Fine, Mr. Orr. The question was, what

1 was discussed.

2 A Yes, Your Honor.

3 THE COURT: The two to five that you said. Was it
4 five?

5 MR. DECHIARA: He said -- I think he said two to
6 four or five.

7 A Two to four or five.

8 THE COURT: Two to four or five.

9 A Two to four or five.

10 THE COURT: Those meetings. What lawyers?

11 A There were lawyers on the Governor's staff, Valerie
12 Brader and Mike Gadola. There were lawyers from Jones, Day at
13 some of those meetings sometimes on the phone. There would be
14 lawyers perhaps on the city's staff. From Jones, Day it could
15 include David Heiman, could include Heather Lennox. I'm
16 trying to think of other lawyers. But generally lawyers both
17 on the Governor's staff and lawyers at the city's counsel,
18 Jones, Day.

19 MR. DECHIARA: Your Honor, it's the UAW's position
20 that the -- the attorney/client privilege should not apply
21 here. That these attorneys either for the state or Jones, Day
22 were being -- were working for the city or the state, public
23 entities of this -- of this state, paid for by the city or the
24 state. And their presence at these meetings should not shield
25 from disclosure what was said at these critical meetings.

1 THE COURT: Well, how do I reconcile that with your
2 relevance offer just a little while ago where you talked about
3 the common, I think the word you used was scheme.

4 MR. DECHIARA: I don't see any tension between the
5 two, Your Honor.

6 THE COURT: All right. Response, please.

7 MR. STEWART: Your Honor, there's no -- the
8 attorney/client privilege maintained applies to government --
9 government officials just like it will apply to private
10 parties and because of the fact that the lawyers were there in
11 connection with the rendition of legal advice and in
12 conjunction with the common interest agreement, we would
13 submit that they're privileged.

14 THE COURT: Is there any reason for a different
15 ruling on the common interest issue here than there was
16 earlier?

17 MR. DECHIARA: Your Honor, it's -- the UA -- UAW
18 took issue with Your Honor's ruling on that. We moved for
19 reconsideration. Your Honor, we're obviously not going to --
20 we're obviously going to comply with whatever ruling you make
21 on this issue. I've stated our argument.

22 THE COURT: And I appreciate that. I appreciate
23 that, but my -- my question to you was in this specific
24 context, is there -- is there a reason to have a different
25 ruling --

1 MR. DECHIARA: No, I think -- I think this specific
2 context --

3 THE COURT: Is there a distinction to be made here?

4 MR. DECHIARA: Yeah, this specific context is not
5 unique, it's part of a larger effort by the city and the state
6 to cloak under the attorney/client privilege these critical
7 discussions that bear -- that have such importance to the
8 people of this city and state.

9 THE COURT: All right. The Court will sustain the
10 claim of privilege and to the extent there was a motion to
11 compel, the Court will deny that. But I do want to clarify
12 there was no one on one conversation between you and the
13 Governor with no one else present where the filing of this
14 case by the city was discussed, is that your testimony to this
15 Court?

16 A Not that I recall, Your Honor. The Governor and I have
17 one on ones. Okay.

18 MR. DECHIARA: Your Honor, if I may. Your Honor --

19 THE COURT: One second. You need to be near a
20 microphone, sir.

21 MR. DECHIARA: Your Honor, I don't want to burden
22 the record or take the Court's time necessarily. I did -- I
23 was planning on asking the witness a series of questions about
24 what discussions he may have had with the Governor on issues
25 central to this case, including the timing of the bankruptcy

1 filing, the reasons for the bankruptcy filing.

2 If the Court's ruling is going to be if there were state
3 and city attorneys present, that the attorney/client privilege
4 applies, I would just like to note for the record that the UAW
5 would take exception to that ruling and preserve our position
6 for any possible subsequent proceedings.

7 THE COURT: Well, I -- I appreciate your interest in
8 -- in saving time, but let's just clarify that the subjects
9 you were going to ask the witness about included matters
10 relating to the filing of the case, yes?

11 MR. DECHIARA: Yes.

12 THE COURT: Okay. And your testimony, Mr. Orr, is
13 that every time you discuss matters relating to the filing of
14 the case with the Governor there were counsel -- counsel and
15 attorneys present.

16 A Yes, Your Honor.

17 THE COURT: All right. You may have that objection.

18 MR. DECHIARA: Thank you, Your Honor. I will yield
19 to Mr. Wertheimer. I believe he had something to say.

20 MS. LEVINE: Your Honor, can all of the objectors
21 join in that reservation of rights so we don't have to do it
22 again?

23 THE COURT: Yes, absolutely.

24 MS. LEVINE: Thanks.

25 THE COURT: Absolutely.

1 MR. WERTHEIMER: William Wertheimer, Your Honor, on
2 behalf of the Flowers plaintiffs. I just wanted to do a
3 couple of things. First, join in that objection so that I
4 didn't have --

5 THE COURT: Okay. I appreciate that.

6 MR. WERTHEIMER: -- to do it. But second, Your
7 Honor, I would also add to the point made by counsel for the
8 UAW, that my objection is also based on the fact that the
9 Court consistent with its rulings yesterday relative to the
10 Governor, has acknowledged the attorney/client privilege and
11 says that it should apply with no more evidence than that an
12 attorney was present at a discussion.

13 And I just want the record to reflect that it's -- our
14 argument -- or the Flowers plaintiffs' argument is not just
15 that these are government attorneys, but that more of a
16 showing needs to be made for the privilege to apply, than that
17 an attorney was present.

18 THE COURT: Well, since you've challenged that, sir,
19 I will state for the record that my ruling is based on more
20 than the fact that -- more than merely the fact that an
21 attorney was present. When you're talking about as we are
22 here, the filing of a bankruptcy case, those conversations
23 relating to the filing of a bankruptcy case are in relation to
24 a legal matter and not what would otherwise be an unprivileged
25 matter.

1 MR. WERTHEIMER: I did not mean to imply that the
2 Court was not making that ruling in that context.

3 THE COURT: All right.

4 MR. WERTHEIMER: I would add just one other point.
5 And that is I think consistent with your rulings yesterday
6 that the privilege would also be asserted were any questions
7 to be asked relative to communications between the Governor
8 and Mr. Orr relating to Section 924 of the State Constitution,
9 the constitutional pension provision, and what its impact
10 could be on the bankruptcy. I would assume the privilege
11 would be asserted as to that and that the Court's ruling would
12 be the same.

13 Again for purposes of the record, I think that was the
14 position taken by the Governor yesterday. I think it's
15 consistent with the Court's ruling yesterday. But I want to
16 make sure that it's included as to this testimony also.

17 THE COURT: All I can say as to that is, it sounds
18 like it would, but if in the context of a specific area of
19 inquiry you think that this ruling should be different because
20 of particular facts or circumstances, I certainly invite you
21 to draw my attention to any distinction that you think should
22 require a different result.

23 MR. WERTHEIMER: I -- I understand that, Your Honor.
24 I -- my last point was just to make clear that it's my

1 to conversations between --

2 THE COURT: All right. I think we've gone as far as
3 we can with this. So I'm going to ask that we resume with our
4 cross examination at this time.

5 MR. WERTHEIMER: Thank you, Your Honor.

6 Q Mr. Orr, did you send a draft of your June 14th proposal
7 to creditors, to the Governor to review? And when I say you,
8 I mean you or your staff?

9 A I'm -- I'm trying to -- I don't recall.

10 Q Do you recall whether you received feedback from the
11 Governor or comments of any sort on a draft of the June 14th
12 proposal to creditors? And when I say you, I mean you or
13 people in your office. And when I say the Governor, I mean
14 the Governor or his staff.

15 A I don't think we received feedback.

16 Q Did you receive any comments from the Governor or his
17 office on the proposal before it was made public?

18 A No, I'm not aware of any comments.

19 Q If the Governor had made comments or been given feedback,
20 is that something you would have been made aware of?

21 A I might have been. It might have been done at a
22 different level, at the drafting level.

23 Q But if the Governor of the state had comments about the
24 June 14th proposal of the -- the key document in this case,

25 it's your testimony that you would not have been aware of his
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1 comments?

2 A One of the key documents. And it's my testimony that
3 those comments could have been communicated through attorneys
4 or through a staff level that would not have gotten to me
5 during the drafting stage.

6 Q Would they have gotten to you at some point before the
7 document was made public?

8 THE COURT: Okay. So counsel on this question, when
9 you say Governor, you don't mean the Governor or his staff,
10 you mean the Governor personally?

11 MR. DECHIARA: No, I mean the Governor and his
12 staff. Well, let me break it down to be clear. Thank you,
13 Your Honor. I appreciate the clarification.

14 Q So let me start with the Governor. Is it your testimony
15 that the Governor and the state had comments on the June 14th
16 creditors' proposal, you before the document became public,
17 would not have known about those comments?

18 A It is my testimony that I don't recall the Governor
19 providing any comments and that if he had, they may not have
20 made their way to me.

21 Q You -- you are aware, are you not, that part of your June
22 14th proposal, where that stated that there must be significant
23 cuts to accrued pension liabilities?

24 A Yes. I think we said that in the June 14th proposal.

25 Q And was the June 14th proposal negotiable? Were you
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1 prepared to negotiate on it?

2 A Yes. That's why we called it a proposal.

3 Q And were you prepared to negotiate on every -- every
4 element of it?

5 A Yes. I think we said that.

6 Q And were you prepared to negotiate a -- an agreement that
7 would not have had any cuts to accrued pension liabilities?

8 A I'm not sure that's accurate. I think the amount of
9 unaccrued pension liabilities was so significant that we may
10 not --

11 THE COURT: All right. Mr. Orr, again, I have to
12 ask you please, just answer the question. We're going to be
13 here a really long time if you insist on going on and on.

14 A And -- and I don't want that, Your Honor. I'll try to
15 answer just the question. Please, Mr. Dechiara.

16 Q I'll -- I'll repeat the question.

17 A Uh-huh.

18 Q Were you prepared in response to your proposal, your June
19 14th proposal, to accept any counter proposal that had as part
20 of the counter proposal, an element that would have spared,
21 that would have not had -- would not have impaired at all
22 accrued pension liabilities?

23 A We were prepared to accept any counter proposal.

24 Q Including a counter proposal that would have had no cuts

25 at all in accrued pension liabilities, is that your testimony?
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1 A Yes.

2 Q Okay. And are you prepared to do that today?

3 A If there's a counter proposal, yes. When you say accept,
4 Mr. Dechaira, we'll accept counter proposals, that's not
5 agreed to.

6 Q Okay. Thank you for that clarification. That's what I'm
7 getting at. Okay. So let me -- let me try it again because I
8 think that's an important point. At the time you made the
9 June --

10 THE COURT: While we're clarifying here, I'm going
11 to strike the last question and answer about what he's willing
12 to do today.

13 MR. DECHIARA: Thank you, Your Honor. I -- I -- I
14 will not go there.

15 Q At the time you made the June 14th proposal, until the
16 time you filed for bankruptcy, were you prepared to agree to
17 an agreement with the stakeholders that would have spared the
18 pension -- accrued pension liabilities from any cuts?

19 A Probably not.

20 Q Is it -- am I correct that the procedure at the June 14th
21 meeting was that for an attendee, in other words someone who
22 was invited to attend, for an attendee to make a comment or
23 ask -- ask a question, they had to fill out a card and have
24 that card brought up to the front of the room and read -- read
25 by someone else?

1 A Yes, I believe so.

2 Q You -- is your testimony here today on direct -- I mean,
3 not on direct, but on cross by -- by the retiree committee
4 that you did attend the June 20th meeting?

5 A Yes.

6 Q Okay. Do you recall giving a deposition in this
7 proceeding on September 16th?

8 A Yes.

9 Q Okay. And did you testify truthfully in that deposition?

10 A Yes.

11 Q I'd like to read for you, from Page 261 of your
12 deposition. I'm at Line 16.

13 Question, okay. So do you recall whether you attended
14 June 20th? Answer, I think I did, but I don't recall.

15 A Yes.

16 Q Is it true that as of June 16th you could not recall with
17 certainty whether you had attended the June 20th meeting?

18 A As of September 16th?

19 THE COURT: You mean September 16th?

20 MR. DECHIARA: Yes, I'm sorry.

21 A Okay.

22 Q Thank you. As of September 16th?

23 A I -- I think my answer was, I think I did, but I didn't
24 recall with specificity. I now recall that I did.

25 Q Was there something that happened between September 16th
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1 and today that caused your recollection to improve on that
2 point?

3 A Yes.

4 Q What happened?

5 A I went over my old American Express bills.

6 Q Fair enough. Was the same procedure that you -- that you
7 -- I asked you about -- about using the cards, did that apply
8 to the June 20th meeting as well?

9 A I don't recall.

10 Q I'd like to show you what's been admitted into evidence,
11 it's in your UAW binder as Exhibit 623. Do you -- do you
12 recognize this -- is this -- it's a two page document. If you
13 can look at both pages. Putting aside this particular
14 document, is this the form of the question cards that were
15 used at these meetings?

16 A I don't recall.

17 Q Okay. Do you recall this particular document?

18 A I do not.

19 Q Do you agree that the June 20th meeting was an
20 informational meeting?

21 A Yes. I would agree in part it was informational.

22 Q Are you familiar with the term OPEB, other post
23 employment benefits?

24 A Yes.

25 Q Okay. Did anyone at Jones, Day ever communicate to you
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1 that the UAW was interested in setting up a process for
2 negotiating over OPEB benefits?

3 A I don't recall.

4 Q Let me now refer you to your July 16th letter requesting
5 permission from -- requesting authorization to file for
6 bankruptcy. Do you recall that letter?

7 A Yes, I do.

8 Q Did you or your staff show a draft of that letter to the
9 Governor or his staff at any time before July 16th?

10 A No, I don't think so.

11 Q Did you or your staff show a draft of the July 16th letter
12 to the Treasurer or his staff at any time before July 16th?

13 A No, I don't think so.

14 Q I'd like to show you -- well, first, I'd like to call
15 your attention to the July 16th letter which is Exhibit 409.
16 Could you please call up Exhibit 409? Mr. Orr, could you
17 please turn to Exhibit 626 in the UAW binder?

18 A Yes, I have it.

19 Q And this appears to be a July 10th email from Andy Dillon
20 to certain individuals, none of whom appear to be you? Do you
21 see that?

22 A Yes.

23 Q Okay. Did you -- have you ever seen this document
24 before?

25 A I have not.

1 Q Okay. Let me refer you, and I'm not going to read it
2 because it's not in evidence. But let me just refer you to
3 the -- do you see the numbered paragraphs on the bottom of
4 page -- the first page?

5 A Yes.

6 Q Okay. Let me refer you to the first one. If you could
7 just read that to yourself.

8 A Yes.

9 Q Okay.

10 THE COURT: What's the purpose of this, counsel?

11 MR. DECHIARA: Your Honor, the purpose of this is to
12 show, to clearly show, we believe, that the Treasurer, not
13 only was shown a draft of the July 16th letter in contradiction
14 to the witness' testimony, but that the -- the Treasurer's
15 comments on the draft were incorporated into the final letter.

16 THE COURT: Is the document in evidence?

17 MR. DECHIARA: No, it's not, Your Honor, but --

18 THE COURT: Okay. So, you can't confront him with
19 it until it is.

20 MR. DECHIARA: I'm trying to refresh -- Your Honor,
21 we -- we do intend to put it into -- into evidence, but I'm
22 trying to establish to essentially impeach this witness'
23 testimony that a draft was not provided to the Treasurer by
24 pointing out to him what I just said.

25 THE COURT: Well, why don't you just point it out to
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1 me after the document is in evidence.

2 MR. DECHIARA: I will, Your Honor.

3 Q Let me ask if Exhibit 44 can be called to the screen.

4 And while that's being done, Mr. Orr, let me ask you, when did
5 you begin to -- you didn't write the July 16th letter on July
6 16th, correct? The preparation for that letter became -- began
7 earlier?

8 A Yes. There were drafts of that letter being made earlier
9 than July 16th.

10 Q Okay. Can we turn to Page 61 of Exhibit 44? And if you
11 could blow that up, please. And by the way, Mr. Orr, Exhibit
12 44 is the executive summary of the June 14th proposal, correct?

13 A Yes.

14 Q Okay. And that was presented at the June 14th meeting?

15 A Yes.

16 Q And on Page 61, third bullet point, it says that there
17 would be -- it says as part of the calendar, there would be an
18 evaluation period from July 15th to July 19th, 2013. Do you see
19 that?

20 A Yes.

21 Q Okay. And you told the attendees at the June 14th
22 meeting, and I think I'm quoting you accurately from your
23 direct, but tell me if I'm not, "that that was a schedule that
24 you were sticking to".

25 A Yes.

1 Q Did you say that?

2 A Yes.

3 Q Okay. And in fact you did not stick to that schedule,
4 isn't that a fact?

5 A We substantially stuck to it, yes, but no, not exactly on
6 the 19th.

7 Q Well, in fact you filed for bankruptcy on the 18th,
8 correct?

9 A Yes.

10 Q And in fact before July 15th, you were already writing
11 your July -- what became your July 16th letter, correct?

12 A I or members --

13 Q Just answer the question.

14 A I wasn't writing it.

15 Q It was -- the letter was being prepared, is that correct?

16 A Yes.

17 Q Did you tell -- did you contact the stakeholders or the
18 creditors who were at the June 14th meeting and tell them that
19 you were not going to be sticking to the schedule the way you
20 had told them you would? Did you do that?

21 A No.

22 Q You testified, I believe on direct, that as a result of
23 the Flowers, Webster and -- lawsuits and the lawsuit by the
24 pension funds, that the situation, and I think I'm quoting you
25 correctly on direct, but -- but tell me if I'm not. Was

1 becoming out of control? Was -- was that your direct
2 testimony?

3 A I think that's -- yes. I think that's substantially my
4 testimony.

5 Q Okay. Is it fair to say that the plaintiffs in the -- in
6 those three lawsuits were exercising their lawful right to go
7 to the state judiciary to obtain a determination on a
8 important issue of law?

9 A I think the plaintiffs were doing whatever they thought
10 was in their best interest.

11 Q That may be, but that doesn't answer my question.

12 A But your question were they exercising their judicial
13 rights. I -- I don't know what they were doing. I know that
14 they were not keeping with the schedule and not coming forward
15 with counter proposals, that's what I know.

16 Q Well, they were filing lawsuits with the state judiciary,
17 correct?

18 A Yes.

19 Q And you consider that to be behavior that was out of
20 control?

21 A No. I consider that to be behavior that was calculated
22 to undermine my ability to discharge my obligations under the
23 statute.

24 Q It was calculated to prevent you from filing for
25 bankruptcy, wasn't that what it was about?

1 A No. I -- I didn't say that.

2 Q Could it -- could you not have waited a few days to see
3 how the Courts would have -- the State Courts would have
4 resolved important issues involving the statute and the
5 Constitution?

6 A Mr. Dechaira, we'd waited almost a month.

7 Q Okay. Have you ever spoken to the Governor about having
8 the state assume some or all of the city's pension
9 liabilities?

10 A I don't recall.

11 Q You don't recall ever having done that?

12 A No, I don't.

13 Q Okay. So you -- you may have done it, and you just don't
14 recall?

15 A Yes.

16 Q Did you ever undertake or cause to --

17 THE COURT: One second. I want to make sure I
18 understand that answer.

19 A Yes.

20 THE COURT: You do not remember asking the Governor
21 to write a check for 3.5 billion dollars?

22 A This is the problem with a yes or no. The number may not
23 have been 3.5 billion. The -- the question may have come in
24 in terms of some assistance. But I don't recall asking it in
25 that context, Your Honor. There are things I can testify to,

1 it's just that question I don't recall.

2 Q Just so the record is clear, let me ask it again. Do you
3 recall ever making a request to the Governor in any context
4 seeking assistance, financial assistance from the state for
5 some or all, any -- any amount of the state's pension
6 liabilities -- of the city's pension liabilities?

7 A I don't recall asking for assistance in that form.

8 Q Do you recall asking in any form?

9 A I recall having discussions about whether the state would
10 be in a position to make any assistance to the city to deal
11 with its problems and I think I said this publicly before.
12 And that it was made clear that the city's obligated to
13 resolve its own problems.

14 Q When -- when did you make that request?

15 A I don't recall.

16 Q Was it before you filed for bankruptcy?

17 A Probably.

18 Q You don't remember when?

19 A I do not remember when.

20 Q Was it a request in writing?

21 A I don't think so.

22 Q Was it -- was it a request face to face with the
23 Governor?

24 A Yes.

25 Q Was -- do you recall where the meeting took place?

1 A No, our meetings either take place in Lansing or here in
2 -- in -- in Cadillac Place, but I don't recall which -- which
3 location.

4 Q Do you recall who was present other than you and the
5 Governor?

6 A There were -- it was -- it would have been in the Detroit
7 team meeting.

8 Q What does that mean? Who -- who would have been present
9 at the meeting?

10 A In -- in those meetings, sometimes it's me and the
11 Governor, Treasurer Dillon, Tom Saxon on behalf of the state,
12 Braum Stibitz occasionally, Rich Baird, Valerie Brader, Mike
13 Gadola. There may be attorneys on the line, my state liaison
14 Greg Tedder. There may be other attendees at those meetings.

15 Q What to the best of your recollection was said at that
16 meeting on the subject that I've just asked you about?

17 MR. SCHNEIDER: Objection, Your Honor, on behalf of
18 the state. I object to any conversation--

19 THE COURT: Go ahead and approach the podium and --
20 and -- and speak, sir.

21 MR. SCHNEIDER: Objection to the -- on behalf of the
22 state to any content of this that might implicate the
23 attorney/client privilege.

24 THE COURT: How is the state providing help to the

1 protected by attorney/client privilege?

2 MR. SCHNEIDER: The reason why I'm stating this is
3 because I believe the witness --

4 THE COURT: I just need an answer to my question.

5 MR. SCHNEIDER: Could you state it again, please?

6 THE COURT: How is a conversation between Mr. Orr
7 and the Governor about whether the state can or is willing to
8 help the city with its fiscal problems, protected by
9 attorney/client privilege?

10 MR. SCHNEIDER: Well, to the extent that attorneys
11 were present and attorney discussion was relevant -- relevant
12 to that, and that these conversations did take place if that
13 is what happened with attorneys advising and being there for
14 the purpose of that, I believe that that would be
15 attorney/client privilege information.

16 THE COURT: Well, but how is -- how is it a
17 discussion about a legal matter?

18 MR. SCHNEIDER: I don't know what the witness is
19 going to testify to. The reason why I objected is because the
20 statement was made that attorneys were present. And that's --
21 that's the --

22 THE COURT: Well, but you certainly agree with the
23 proposition that just because attorneys were present doesn't
24 make every conversation protected by the attorney/client
25 privilege, don't you?

1 MR. SCHNEIDER: I believe in this situation --

2 THE COURT: Don't you, sir?

3 MR. SCHNEIDER: I think when the attorneys are
4 present, Your Honor, my position is, is that they are there
5 for the purposes of providing legal advice.

6 THE COURT: So there's like a presumption. Any law
7 in support of that?

8 MR. SCHNEIDER: Well, Your Honor, I'm willing to
9 yield back to the city. I just wanted my objection noted to
10 the extent that attorney/client privilege is --

11 THE COURT: Well, counsel, we don't make objections
12 for the sake of making objections for the record. We make
13 objections because you don't want the testimony to come in and
14 you have to be prepared to argue that.

15 MR. SCHNEIDER: That's true. And I don't know what
16 the testimony is and that's why I was objecting.

17 THE COURT: All right. I'm going to hold that --
18 that this question does not relate to a legal matter and
19 therefore is not protected by the attorney/client privilege
20 even though there may have been attorneys who were either
21 listening in to the conversation, or participating in it. So,
22 please answer the question.

23 Q Okay. What was said at that meeting on the subject I
24 asked you about?

25 A I don't recall the specifics, but the subject was
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1 generally discussed that there was no ability for the state to
2 provide direct financial assistance to the city and that we
3 had to find a way to resolve our problems based upon what we
4 could work with.

5 Q The words that you just said, were you saying those
6 words, or was -- was the Governor saying those words?

7 A It -- it was an exchange. I don't recall verbatim what
8 was said during the exchange.

9 Q Did the Governor in any forum deny the request that you
10 were making?

11 A I guess you could call that -- I don't know one, if it
12 was a request, or one if you call it denial. I know there was
13 a dialogue and it became clear that there would be no
14 assistance coming from the state.

15 Q Were you in that meeting seeking assistance from the
16 state?

17 A I don't know if we were just seeking assistance for the
18 state, Mr. Dechaira. As I said, it was part of a dialogue and
19 -- over a number of different things.

20 Q Well, Mr. Orr, I wasn't at the meeting. I'm asking you,
21 do you -- do you know what you were doing in that meeting on
22 this subject?

23 A As I've said, we have weekly meetings. We discussed a
24 number of things. In those meetings there was an exchange in

1 city.

2 It became clear as a part of that discussion that the
3 state would not be forthcoming with any assistance from the
4 city. The exact exchange and the exact dialogue, I do not
5 recall, but that is the gist of the discussion.

6 Q Okay. And I'm not going to ask you to recollect
7 verbatim, I wouldn't expect that what was said. But I want to
8 just get some basic information.

9 A Uh-huh.

10 Q Were you in what you said seeking in one form or another,
11 aid from the state for this -- to pay for -- to help pay for
12 the city's pension liabilities?

13 A I don't recall.

14 Q Okay. And do you recall whether the Governor responded
15 in any way to what was said on that subject, other than what
16 you've already said?

17 A I don't recall.

18 Q Have you ever undertaken or caused to be undertaken any
19 analysis of whether it would be possible to craft a legal
20 claim by the city against the state to try to hold the state
21 responsible for some or all of the city's pension liabilities?
22 Have you ever caused any analysis to be undertaken on that
23 point?

24 A No, not that I'm aware of.

25 Q Have you ever looked into the issue of whether or not
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1 there might be a conflict of interest between the existence of
2 such a claim and your position being paid by the state and
3 being housed by the Governor's NERD fund? Have you ever
4 looked -- done any analysis to look into whether or not there
5 might be a conflict of interest?

6 A No.

7 Q Are you familiar with the concept of deferred
8 compensation?

9 A Yes, I'm familiar with it.

10 Q And is it your understanding that when an employee works
11 in exchange for his or her labor, the employee receives
12 current wages but also in certain circumstances part of that
13 compensation for the worker's labor is deferred until
14 retirement. Is that your understanding of what deferred
15 compensation is?

16 A It can mean that, yes.

17 Q Okay. And in that context if you have deferred
18 compensation such as a pension, is it your understanding that
19 that pension even though it's collected in retirement, has
20 already been earned through years of labor by the employee?

21 A Mr. Dechiara, I believe that implicates a legal
22 conclusion. It might be true.

23 Q Well, I'm not asking a legal conclusion, unless you have
24 one. But I'm -- I'm looking for your understanding apart from
25 any legal conclusion.

1 A My understanding of your concept that pensions are a form
2 of deferred compensation, I'm aware of that. My understanding
3 in this situation as to whether or not the pension fund is
4 adequately protected, that responsibility is a different
5 understanding.

6 Q My question is, has the pension already been earned
7 through the employee's years of labor for the City of Detroit?
8 That's my question. Do you have an understanding of that --
9 that, one way or another?

10 A Yes.

11 Q And what's your understanding?

12 A My understanding is that the concept you're trying to
13 discuss is one where the employee's pension is earned through
14 the labor.

15 Q Okay. Is -- would you agree with me in your position as
16 emergency manager that to revitalize the City of Detroit
17 requires capable and committed employees working for the city?

18 A Yes.

19 Q Have you done any analysis as to whether proposing -- or
20 strike that. Have you done any analysis as to whether cutting
21 accrued retiree benefits for active employees would negatively
22 impact their morale?

23 A No.

24 Q Have you done any analysis such as speaking to a labor
25 economist as to whether or not cutting accrued retiree

1 benefits for active employees of the city would diminish the
2 city's ability to attract and retain committed and capable
3 employees? Have you ever undertaken any analysis on that
4 point?

5 A I'm thinking it through because we recently held a job
6 fair and we received over 1,700 applications, so it doesn't
7 appear that the current situation is impairing our ability to
8 attract workers.

9 Q That was not my question, Mr. Orr.

10 A That's -- have I done analysis? Yes.

11 Q I'm sorry?

12 A Yes.

13 Q You have done analysis?

14 A In my mind that's an analysis.

15 Q You -- so you have done your own analysis, is that what
16 you're testifying?

17 A Yes. Unless you want to define some other term, yes.

18 Q So, tell me what your analysis is?

19 A My analysis is that during the course of the job fair,
20 we've seen another employees come in. My analysis is that
21 we've spoken with several uniform unions who have said that
22 their morale is increasing even under the current
23 circumstances.

24 My analysis is, that I've spoken with city employees that
25 say despite the current circumstances, they continue to work

1 hard at their jobs and they're committed to assist this city
2 going forward.

3 Q You testified on direct, I believe, that your June 14th
4 proposal was in the best interests of the citizens of Detroit.
5 Do you recall that?

6 A Yes.

7 Q And -- and when you say the best interests of the
8 citizens of Detroit, are you including the retirees of the
9 City of Detroit?

10 A Not all the retirees are citizens of Detroit, Mr.
11 Dechiara.

12 Q The ones that are, are you including among the citizens
13 of Detroit for whom you think your proposal would be in the
14 best interest?

15 A I'm including the -- I'm sorry.

16 Q Are you including retirees?

17 A I'm including all of the 700,000 residents of the citizen
18 of Detroit and if that includes retirees, yes, I'm including
19 them.

20 Q Do you have any doubt that some of the retirees of the
21 City of Detroit live in the City of Detroit?

22 A No, I do not.

23 Q Okay. Have you done any analysis in coming to the
24 conclusion that your proposal is in the best interests of the
25 city -- of the citizens of the City of Detroit including the

1 retirees? Have you done any analysis of the amount that
2 Detroit retirees receive on average annually in pension?

3 A Have I done?

4 Q Yes.

5 A No.

6 Q Have you taken any steps to inform yourself as to that
7 question, what's the average annual pension of a Detroit
8 retiree?

9 A Yes.

10 Q Have you? Okay. And did you come -- did you learn the
11 answer?

12 A I've seen ranges, but yes.

13 Q Okay. And what's the range?

14 A The ranges have gone from 19,000, approximately 24,000,
15 to 35,000 or more.

16 Q And do you know whether there's any federal or other
17 insurance that would cover retirees to which -- strike that.
18 Are you aware of whether there's any federal or other
19 insurance that would provide benefits to retirees in the event
20 that their accrued pension liabilities were impaired?

21 A Yes.

22 Q What -- there -- is it your belief there is insurance?

23 A No, you asked me if I were aware.

24 Q Okay. And is there such insurance?

25 A No.

1 Q Okay. Have you done any analysis to determine whether if
2 retirees, whether they're earning \$18,000 a year in
3 retirement, or \$24,000 a year, have you done any analysis
4 whether under your proposal to significantly cut their
5 pensions, have you done any analysis to determine whether
6 those retirees would be able to make ends meet in terms of
7 paying their mortgage, paying their rent, putting food on the
8 table, buying their medications, et cetera? Have you done any
9 analysis?

10 MR. STEWART: Objection. Objection, Your Honor,
11 relevance.

12 MR. DECHIARA: We think it --

13 THE COURT: Objection is -- the objection is
14 sustained.

15 MR. DECHIARA: I have nothing further, Your Honor.

16 CROSS EXAMINATION

17 BY MS. LEVINE:

18 Q For two more minutes. Good morning, Mr. Orr.

19 A Good morning, Ms. Levine.

20 MS. LEVINE: Your Honor, Sharon Levine, Lowenstein,
21 Sandler for AFSCME.

22 Q Mr. Orr, do you receive -- do you recall receiving a
23 request from Ed McNeil on behalf of AFSCME's Council 25 on --
24 actually let me go back. You were -- your -- you first day of
25 work if you will as the emergency manager, was March 25?

1 A Yes.

2 Q Do you recall receiving a request from Ed McNeil on
3 behalf of AFSCME Council 25 on March 25 to meet with you on
4 behalf of not only himself, but -- but a coalition of 30 city
5 unions who had previously worked together with regard to
6 concessionary bargaining and wanted to work together with you?

7 A Are you talking about proposed two year collective
8 bargaining agreement that was presented to me on the --

9 Q No, no. I guess I've already -- a question. Did you get
10 a request?

11 A That was presented to me on the 26th.

12 Q Did you get a request? Do you recall getting a request
13 from Ed McNeil on March -- on your first day of work, on March
14 25th asking you and inviting you to meet with him and the
15 coalition of unions to work together with regard to the -- to
16 solving Detroit's problems?

17 A Are you talking about the request of Mr. McNeil said he
18 taped to the door?

19 Q That's the one.

20 A The one. I recall that that was sent to someone on my
21 staff. I recall the next day I also got another request.

22 Q And did you respond by offering to set up a meeting?

23 A I think I said I was willing to meet with anyone going
24 forward.

25 Q No, no. But they specifically asked you to schedule a
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1 meeting with them and it's -- actually let me rephrase it.

2 Isn't it true that you actually never met with the coalition
3 of unions separate -- separate and apart from the meetings
4 that we've been -- or the presentations that we've previously
5 been discussing that occurred on the 4th, the big 4th, what
6 we'll call the big 4th?

7 A Me personally?

8 Q Yes.

9 A Yeah, I believe that's true.

10 Q All right. Is it your position that you directed
11 somebody on your behalf to meet with the coalition separate
12 and apart from the June 14, June 20, July 10, and July 11
13 meetings with the coalition of unions?

14 A Are we still talking about the request?

15 Q The -- the question is, did you direct somebody on your
16 behalf to meet with the coalition of unions separate and apart
17 from the June 14, June 20, July 10, and July 11 presentations
18 prior to the filing of the bankruptcy petition on July 18th?

19 A There were meetings with other CDA's. I don't know
20 specifically the coalition. The request that you're talking
21 about was a request to enter into collective bargaining which
22 has been suspended by 436.

23 Q I'm going to try again.

24 THE COURT: No. We're going to take our lunch break

1 having the witness answer questions. So I'm going to instruct
2 you to counsel with your client over this lunch break about
3 the absolute criticality of just answering the question. Will
4 you do that, please?

5 MR. SHUMAKER: I will do that, Your Honor.

6 A I apologize, Your Honor.

7 THE COURT: Mr. Orr, I will accept your apology, if
8 you accept my advice and your attorney's advice.

9 A Yes, Your Honor.

10 THE COURT: All right. 1:30.

11 (WITNESS KEVYN ORR WAS TEMPORARILY EXCUSED AT 12:00 P.M.)

12 THE CLERK: All rise. Court is in recess.

13 (Court in Recess at 12:00 p.m.; Resume at 1:30 p.m.)

14 THE CLERK: All rise. Court is in session. Please
15 be seated. Recalling case number 13-53846, the City of
16 Detroit, Michigan.

17 THE COURT: It appears everyone's here. You may
18 proceed.

19 BY MS. LEVINE:

20 Q Good afternoon, Your Honor. Mr. Orr.

21 A Good afternoon, Ms. Levine.

22 Q Going back to where we were right before we broke for
23 lunch. So on March 25, 2013, you received a request from Ed
24 McNeil from AFSCME Michigan Council 25 to meet, correct?

25 A Yes.

1 Q And that request was on behalf of not only himself, but a
2 coalition of approximately 30 unions, correct?

3 A I believe so.

4 Q And in that request he indicated that the coalition of
5 unions had met previously including with Ernst and Young and
6 were -- had agreed to concessions that hadn't been imposed,
7 but they -- they wanted to continue that dialogue with you,
8 correct?

9 A I don't recall the specifics of the request.

10 Q Well, you received a copy of a letter which I believe you
11 described as being taped to your door?

12 A Yes.

13 Q And you gave that letter to somebody who worked for you
14 in order to respond, is that correct?

15 A Yes. I or a member of my staff.

16 Q Okay. And do you recall who you gave the letter to?

17 A I do not.

18 Q Did you meet with that coalition of unions?

19 A Not to the best of my knowledge.

20 Q Did anybody -- did you direct anybody to meet with that
21 coalition of unions prior to the time that you filed the
22 bankruptcy?

23 A I don't recall.

24 Q Well, isn't it true that there was no meeting between

1 of unions prior to the filing of the bankruptcy case?

2 A I don't know.

3 Q If you personally attended a meeting with the coalition
4 of unions, is that something you believe you would recall?

5 A I might.

6 Q Okay. Besides the June 14 proposal, presentation,
7 between March 25 and June 18 -- I'm sorry, and June 13, you
8 were never personally in a room with anybody from AFSCME where
9 the topic of concessions, labor, pension, or health benefits
10 was discussed, correct?

11 A I don't think so.

12 Q And between March 25 and June 13th you had no telephone
13 calls with anybody from AFSCME where the topic of concessions,
14 labor, pension, or health benefits was discussed, correct?

15 A I don't recall.

16 Q Do you recall having those types of conversations by
17 telephone?

18 A I don't recall.

19 Q Between June 14 and July 18, other than attending the
20 presentation on June -- on June 14, you were never in the same
21 room with anybody from AFSCME where the proposal for creditors
22 was discussed, correct?

23 A I don't recall.

24 Q Between June 14 and July 18th, you did not participate in
25 any telephone calls with anybody from AFSCME where the

1 proposal for creditors was discussed, correct?

2 A Not to the best of my recollection.

3 Q At the June 14 presentation of the so-called proposal to
4 creditors, your team perhaps through counsel announced that
5 these were not negotiations, correct?

6 A I believe so.

7 Q Is it true that -- that your team also announced that
8 these were not negotiations at the June 20, July 9, and July
9 10 presentations?

10 A I don't know.

11 Q Okay. So going back to when you were still at Jones, Day
12 and even before your -- your practice was primarily
13 bankruptcy, is that correct?

14 A Yes, I think that's fair.

15 Q So you're generally -- generally familiar with the
16 process for achieving labor concessions under 1113 of the
17 Bankruptcy Code?

18 A Generally, yes.

19 Q And it's your understanding that under 1113 there are
20 certain protections that are afforded unions that don't exist
21 for example, under Bankruptcy Code Section 365, is that
22 correct?

23 A Generally, yes.

24 Q And are you generally familiar with the process for
25 achieving concessions to retiree health benefits under

1 Bankruptcy Code Section 1114?

2 A I'm -- I'm familiar with Section 1113 generally, yes.

3 THE COURT: The last question was about Section
4 1114.

5 A 1114, yes, I am.

6 Q And are you generally familiar with the process for
7 seeking a distressed termination of a single employer defined
8 benefit pension plan in the corporate context under Chapter
9 11?

10 A Generally, yes.

11 Q So generally under Bankruptcy Code, Section 1113 and
12 1114, in order to modify or get concessions with regard to
13 CVA's or retiree health, there are certain elements that the
14 case law deciphering 1113 has come up with, correct?

15 A I believe so.

16 Q And that would include presenting a proposal explaining
17 the concessions that are being requested, correct?

18 A I believe there's a process under 1113. I don't know if
19 it's that specific but generally, yes.

20 Q And does that process also include having the proposal be
21 based on complete reliable information?

22 MR. STEWART: Objection, Your Honor, it calls for a
23 legal conclusion.

24 Q Is it your understanding that under 1113 and 1114 the
25 process for seeking concessions under -- under collective

1 bargaining agreements and retiree health requires that the
2 proposal be based on complete and reliable information?

3 A I think the statute speaks for itself.

4 Q I'm asking your understanding, Mr. Orr.

5 A I don't know.

6 Q Is it your understanding that under 1113 and 1114 the
7 proposal needs to be fair and equitable?

8 A Yes.

9 Q And is it your understanding that under 1114 and 1113
10 there have to be good faith negotiations?

11 A Yes.

12 Q Are you aware that AFSCME made information requests both
13 through Ed McMahon (sic) and Steve Kreisberg requesting
14 additional information following the June 14 proposal?

15 A No.

16 Q Do you know whether or not all of the information
17 requests made from various constituencies were responded to in
18 the ordinary course between June 14, but prior to the filing
19 of the bankruptcy case?

20 A No.

21 Q Okay. During the time that you were at Jones, Day,
22 Jones, Day was debtor's counsel in Chrysler, correct?

23 A Yes.

24 Q And isn't it true in Chrysler that vested pension
25 benefits survived even though creditors were adjusted?

1 A Yes.

2 Q And isn't it true that Jones, Day represent -- was
3 conflicts counsel in AbitiBowater and vested -- vested pension
4 benefits survived even though creditor claims were -- were
5 compromised?

6 A I don't know.

7 Q And isn't it true that in AES Eastern Energy, Jones, Day
8 represented a committee of certificate holders where the
9 pension, vested pension benefits survived, but the claims of
10 creditors were adjusted?

11 A I don't know.

12 Q And isn't it true that Jones, Day represented the debtor
13 in Dana where the pension, vested pension benefits survived
14 and the claims of creditors were adjusted?

15 MR. STEWART: Objection, relevance.

16 MS. LEVINE: Your Honor, it goes to good faith
17 negotiations with regard to whether or not we can actually
18 have a situation where vested pension benefits survive and you
19 can adjust the claims of creditors to successfully go through
20 a bankruptcy process.

21 THE COURT: Well, the problem is that not only is
22 every case different, but of course Chapter 11 is different
23 from Chapter 9. So the objection is sustained.

24 Q Well, Mr. Orr, unlike Chapter 11, in all of those cases

25 where if the pensions had been terminated the retirees would
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1 have had the benefit of a PBGC. Isn't it true that under
2 Chapter 9 there is no similar insurance protection?

3 A It is true that under Chapter 9 there's no protection by
4 PBGC.

5 Q And isn't it true that the current protection provided by
6 the PBGC now is over \$57,000 a year?

7 A I don't know.

8 Q Well, assuming for the moment that it is over \$57,000 a
9 year. Isn't it true that all of the retirees who received
10 pension benefits in -- from Detroit would fall within the PBGC
11 protections if that protection existed in municipal
12 situations?

13 MR. STEWART: Objection, calls for speculation.

14 THE COURT: That objection is overruled. Please
15 answer if you can.

16 A I don't know.

17 Q Mr. Orr, is it your understanding that to the extent
18 pension benefits are cut, the individual retirees will become
19 unsecured creditors?

20 A Yes.

21 Q So then is it your understanding that to the extent
22 retiree pension benefits are cut, the individual retirees
23 would share in the \$2,000,000,000 note that's -- that exists
24 under the currently existing proposal for creditors?

25 A Yes.

1 Q So is it your understanding then that the individual
2 retirees would have to file proofs of claim in order to assert
3 their claims in this bankruptcy case?

4 A I don't know.

5 Q Well, how would they -- how would you know the dollar
6 amount of the claims of the individual retirees in order to
7 determine what their pro rata share is under the
8 \$2,000,000,000 note?

9 A I don't know how to answer your question.

10 Q Prior to the time that Detroit filed for bankruptcy, did
11 the retirement system discontinue paying pension benefits?

12 A Prior to the time?

13 Q Uh-huh.

14 A No, I don't think so.

15 Q And in fact as we sit here today, they continue to make
16 the pension benefits payments, correct?

17 A Yes.

18 Q Anywhere in the proposal for creditors, Exhibit 43 or
19 Exhibit 44, is there a chart or explanation that an individual
20 retiree can look at to know exactly what their benefit would
21 be if in fact the proposal for creditors were implemented?

22 A No, I don't think so.

23 Q Mr. Orr, there was some press coverage that seemed to
24 imply that you were considering or would consider a

1 freezing pension benefits. Is that under consideration by
2 you?

3 THE COURT: Excuse me, are you talking about now?

4 MS. LEVINE: I'm talking about now.

5 MR. STEWART: Objection, relevance, Your Honor.

6 MS. LEVINE: Well, then I'm going to ask the next
7 question.

8 THE COURT: I'm sorry then what?

9 MS. LEVINE: Then I'm going to ask him whether he
10 considered it before July 19th, Your Honor.

11 THE COURT: You may ask that question.

12 Q Are -- are you considering it now?

13 THE COURT: Well, I'm sorry, my ruling was you can
14 ask about his intent as of July, but --

15 MS. LEVINE: Your Honor --

16 THE COURT: But what's the relevance of that now?

17 MS. LEVINE: Your Honor, it goes in part to the --
18 to the discussion that we've been having or the arguments that
19 we've been making with regard to good faith. We had a month
20 and three days in order to negotiate prior to the bankruptcy.
21 If all we had were no real negotiations just presentations,
22 and no opportunity to have a dialogue with regard to some of
23 these issues and they are in fact being considered now, then
24 why weren't they considered then.

1 Q Mr. Orr, did you consider freezing the pensions prior to
2 July 19th?

3 A Yes.

4 Q And in connection with that consideration, did you talk
5 at all to the -- with the Governor about the state providing
6 support to the extent it was necessary in order to fund any
7 shortfall to effectuate a freezing?

8 A I don't recall.

9 Q In the Governor's testimony before this Court, with
10 regard to being questioned on vested pension benefits, he
11 responded, if the Court ordered you had to pay them, you would
12 pay them.

13 So in other words it appeared that the Governor was
14 saying that if in fact the Court directed that he pay whatever
15 was necessary in order to keep the vested pension benefits
16 from being impaired or diminished he would pay that. Have you
17 had conversations with the Governor prior to July 19th in that
18 regard?

19 A No.

20 Q From January 2012, but prior to being retained by the
21 city, did your firm -- did your prior firm provide services to
22 the Governor?

23 A I don't know.

24 Q Did they provide services to the state?

25 A I don't know.

1 Q Did they provide services to anybody affiliated with the
2 Governor or the state?

3 A I don't know.

4 Q Did you run a conflict search before you took the
5 position as emergency manager?

6 A No, I resigned from my firm.

7 Q And do you know whether or not your firm ran a conflict
8 search before being retained as counsel to the city in these
9 proceedings?

10 A I recused myself from the retention process, I don't
11 know.

12 Q Prior to July 19, did you or did anybody on your behalf
13 if you didn't do it personally, or on behalf of the City of
14 Detroit, ask the Governor or anybody associated with the
15 Governor, for funding to avoid impairing or diminishing vested
16 pension benefits?

17 MR. STEWART: Objection, foundation.

18 THE COURT: What foundation is missing?

19 MR. STEWART: Well, she asked for whether Mr. Orr,
20 any of his staff, or anyone else asked the Governor. This
21 witness can only testify as to what he knew.

22 MS. LEVINE: I'll -- I'll rephrase, Your Honor.
23 There was a on his behalf in there, but it may have gotten
24 lost for the record.

25 Q As we sit here today, have you or has anybody on your
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1 behalf, or anybody on behalf of the City of Detroit who -- who
2 responds to you, ask the Governor, or anybody affiliated with
3 the state, for funding to avoid impairing or diminishing
4 vested pension benefits, outside of any request that may have
5 been made through mediation?

6 A I don't know.

7 Q Well, we've heard the Governor testify and we've seen in
8 the press that the Governor's view seems to be that Detroit
9 has to handle Detroit's own problems. Are you familiar with
10 that press?

11 A Yes.

12 Q Is that consistent with your conversations with the
13 Governor?

14 A Yes.

15 Q And we've heard both you and the Governor speak about the
16 fact that you serve at the pleasure of the Governor, correct?

17 A Yes.

18 Q At any time between July 15th and -- or July 14th and July
19 18th, did you ever feel that your job was in jeopardy?

20 A Not at all.

21 MS. LEVINE: No further questions. Thank you.

22 A Thank you.

23 THE COURT: Who is next?

24 CROSS EXAMINATION

1 Q Good afternoon, Mr. Orr. Jennifer Green on behalf of the
2 retirement systems for the City of Detroit.

3 A Good afternoon, Ms. Green.

4 Q We've met on a few occasions at your prior deposition.

5 A Yes, we have.

6 Q I want to follow up on a question, something you stated a
7 second ago. Why did you tell Christie's to go away in May of
8 2013?

9 A We were immediately trying to assess a number of
10 different things and I felt that that wasn't as high a
11 priority as getting a real view of the financial condition of
12 the city. And I didn't think it was ready to be assessed yet.

13 Q And you changed your mind as of August 5th when I believe
14 they were retained, correct?

15 A Approximately around that time.

16 Q I'd like to draw your attention to Exhibit 865 if I may.
17 Do you have the appropriate witness binder or would you like
18 to see it on the screen?

19 A I'll find it.

20 MR. STEWART: State exhibit, retirees? The exhibit
21 retiree committee.

22 Q If you're okay with the screen, we can do the screen as
23 you have been. I just wanted to verify.

24 A I'll do the screen.

25 Q Okay. Do you recognize that email, Mr. Orr?

1 A Yes.

2 Q And it's dated February 11th, 2013?

3 A Yes.

4 Q And you were still a Jones, Day partner at this time?

5 A Yes.

6 Q When exactly did you resign from Jones, Day?

7 A I resigned effective Friday, March 15th.

8 Q If I may draw your attention to the first paragraph. It
9 -- it talks about preparation -- well, I assume that's what
10 the abbreviation prep stands for, correct?

11 A Uh-huh.

12 Q Prep for EM appointment is important. Ideally we would
13 like to plan for orderly transition to EM, whoever it is, not
14 a splash landing. Does that -- do you remember getting this
15 email?

16 A Yes.

17 Q And the second paragraph talks about I am not sure the
18 state, Dillon, Baird, Governor, are really thinking on an
19 operational and practical level. Do you see that part?

20 A Yes.

21 Q Further down there's a paragraph that states, it would be
22 a better process if the firm is on the ground working,
23 preparing and coming up with a well thought out game plan
24 before EM is appointed. Do you see that portion?

25 A Yes.

1 Q At this time you were not yet appointed emergency
2 manager, correct?

3 A Correct.

4 Q At the bottom of the page, there is discussion about J.B.
5 should be there to make sure EM and process works. Question,
6 maybe how does state get city and us six to eight weeks before
7 appointment if possible. So my question for you is, was
8 Jones, Day already working on this case before your official
9 appointment six weeks later?

10 A Not to the best of my knowledge.

11 Q As of your appointment in March your public contract
12 states that your salary is \$275,000, correct?

13 A Yes.

14 Q Are there any supplements or bonus payments associated
15 with that contract?

16 A No.

17 Q I'd like to direct your attention to Exhibit 807. Do you
18 recognize this email, Mr. Orr?

19 A Yes.

20 Q Bullet point 2 talks about your contract period not to
21 exceed 18 months with incentives if job is completed sooner
22 based on mutually agreed milestones. The next bullet point
23 talks about an intent to raise private funding for performance
24 measure outcome bonus. And this is before -- this is a month
25 before you were appointed?

1 A Yes.

2 Q Was there ever an incentive bonus included in your
3 compensation package?

4 A No.

5 Q After you were appointed, was there any change to your
6 contract?

7 A No.

8 Q Was there ever a request made from a state fund to have a
9 performance bonus included with your contract?

10 A No. This is the only time it was mentioned, I let it
11 drop.

12 Q You were never sent a letter in April of 2013 relating to
13 a -- a performance bonus?

14 A I don't recall.

15 Q You are familiar with the NERD fund, I think we've talked
16 about it a few times?

17 A I have heard what I read in the paper.

18 Q This is not in our witness binder. I will give you a
19 copy.

20 THE COURT: Not in the exhibit binder.

21 MS. GREEN: It is not in the exhibit binder, Your
22 Honor. We received it on Friday afternoon with the latest
23 production from the city and the state. So I apologize it's
24 not in our binder.

25 THE COURT: Yes, is there an exhibit number on it?

1 MS. GREEN: It will be 869.

2 THE COURT: Okay.

3 Q Do you recognize the letter dated April 12th, 2013?

4 A No.

5 Q You were never sent a letter discussing an early out
6 provision incentive payment in addition to your regular
7 compensation?

8 A No.

9 Q And there has been no discussion or contract -- contract
10 executed where you would get an early payment bonus if you
11 completed your emergency manager goals before the 18 months is
12 completed?

13 A No.

14 Q I'd like to draw your attention now to Exhibit 853. For
15 starters Mr. Orr, do you -- do you recognize this email dated
16 January 28th, 2013?

17 A I don't recall specifically but I see that I was one of
18 the addressees.

19 Q For starters, what is Detroit News?

20 A I think that's a -- I don't know.

21 Q Have you ever heard the phrase project Detroit used
22 internally at Jones, Day?

23 A Yes.

24 Q Is it -- is it perhaps a play on the French pronunciation
25 of Detroit?

1 A It might well be, I don't know for sure.

2 Q So this email is relating to the City of Detroit. At the
3 bottom I'd like to draw your attention to Paragraph 4. June
4 -- I'm sorry, January 28th was the day before you pitched your
5 services to the State of Michigan and the City of Detroit,
6 correct?

7 A Yes.

8 Q At the bottom there, the discussion about avoiding
9 pitfalls of alienating the state, e.g. if something happens to
10 city's pension, state will probably step up to deal with, but
11 thus far has failed to concede this point at all. Do you
12 recall any discussion about trying to side step this issue in
13 your pitch to the state and city officials?

14 A No.

15 Q In your pitch to the state and to the city, was this
16 issue of seeking contributions from the State of Michigan ever
17 raised?

18 A Not that I recall.

19 Q And when was the first time that after you became
20 emergency manager the issue of potentially seeking
21 contributions from the State of Michigan was -- was raised?

22 A I don't recall.

23 Q Yesterday you were asked to answer whether under PA436
24 you believed you had the authority to impair pensions. Do you
25 recall that question?

1 A Yes.

2 Q I believe your response was, that you felt it called for
3 a legal conclusion?

4 A Yes.

5 Q Do you recall being asked the same question following
6 your June 14th meeting where you laid out the proposal for
7 creditors?

8 A Generally, yes.

9 Q Do you recall what your response was?

10 A No, I don't.

11 Q Can you pull up the part number 1? I'm going to ask you
12 if you've -- if this refreshes your recollection.

13 A Uh-huh.

14 Q To what your response was at the time.

15 (Video Being Played at 1:57 p.m.; Concluded at 1:58 p.m.)

16 Q Do you recall answering the question in that manner on
17 June 14th?

18 A That was a press event after the meeting. I might well
19 have said that, I don't recall specifically.

20 Q Assuming that's what you said --

21 A Uh-huh.

22 Q By legislative relief, did you mean a constitutional
23 amendment?

24 A I don't recall.

25 Q Did you mean legislative relief in the form of

1 contributions from the State of Michigan?

2 A No, I don't recall.

3 Q You don't recall one way or the other what you meant?

4 A I -- I don't recall one way or the other.

5 Q You would agree with me though that this response is
6 different than the response you gave yesterday?

7 A No.

8 Q How so?

9 A Well, I think this response I was saying that you can
10 negotiate which is what I think I said yesterday. Read it
11 back. I think this one said legislation. I think yesterday I
12 also said that discussion was in the context of federal
13 supremacy. And I'll stand by those statements.

14 Q Was there any discussion following this statement as to
15 whether you should continue to make such statements regarding
16 the need for legislative relief in the face of the pensions
17 clause?

18 A No.

19 Q Were you ever advised that you should not state in the
20 future that legislative relief would be necessary if there was
21 not a consensual agreement?

22 A No.

23 Q Mr. Orr, did you have any involvement in the creation of
24 the pension task force?

25 A Yes.

1 Q How so?

2 A Everything that's done under the aegis of 436 and the
3 efforts that we're making in the city is done under my
4 authority, so I suppose I had some involvement.

5 Q And am I understanding it correctly that the pension task
6 force consists of attorneys from Miller, Canfield, attorneys
7 from Jones, Day, and then certain other financial advisors,
8 correct?

9 A Financial and operational advisors, yes.

10 Q Okay. And when was it created?

11 A I don't know.

12 Q Was it in place before you became emergency manager?

13 A Not to the best of my knowledge.

14 Q Okay. And -- and who created it specifically? Was it
15 you under PA436?

16 A I don't recall.

17 Q Who else, if I may ask, would have the authority to
18 create a pension task force if it wasn't you?

19 A As part of the financial stability agreement and the
20 memorandum of understanding, both of which were entered into
21 in 2012, there were certain tasks that were to be undertaken
22 at that point. The task force itself as you're referencing
23 may have begun at that process.

24 Since Jones, Day got involved further in 2013, there may

25 have been other attorneys added to that task force, but the
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1 MOU of November 2012 speaks to certain tasks that Milliman,
2 Miller -- Miller, Canfield, Conway, MacKenzie, E & Y, are
3 supposed to undertake.

4 Q And what was the purpose of the pension task force?

5 A I don't know.

6 Q Well, who does it report to?

7 A Well, it now reports to me.

8 Q But you don't know the purpose of it?

9 A Well, the purpose as spelled out in the MOU was to
10 examine certain pension issues. But you asked me what was the
11 purpose of the task force as far as I understand it. It's
12 what it does for me now.

13 Q Okay. So what does it do for you now?

14 A It -- it analyzes and reports to me different issues
15 regarding the city's pension obligations.

16 Q Have there been any findings, written reports,
17 memorandums, anything like that --

18 A Yes.

19 Q -- created by the pension task force?

20 A The task force or members of the task force.

21 Q Have those documents been produced in this litigation?

22 A I don't know.

23 Q And no one from either of the two retirement systems was
24 asked to participate in the pension task force, correct?

25 A I don't know.

1 Q Well, did you personally ask anyone from any of the
2 retirement systems to participate in the task force?

3 A No.

4 Q And no one from any of the retiree associations or active
5 employee associations were asked to join this pension task
6 force, correct?

7 A I don't know.

8 Q And no one from the unions were asked to join the pension
9 task force?

10 A I don't know.

11 Q But you don't know, or you did not do it?

12 A I did not ask them.

13 Q Okay. Would anyone else have authority to be asking
14 people to join the pension task force?

15 A Yes.

16 Q Who would that be?

17 A The people that were tasked, I think, under the MOU in
18 2012 and members of my staff whether they joined it or asked
19 them to participate would be authorized to solicit information
20 from other parties.

21 Q But to your knowledge none of those people reached out to
22 any of the people I just listed, the retirement systems active
23 employees, retirees, or unions to join the pension task force,
24 correct?

25 A I don't know.

1 Q And this task force was not -- the existence of the task
2 force was not made public until the bankruptcy filing,
3 correct?

4 A I don't know if that's true.

5 Q Did the pension task force ever approach the retirement
6 systems to discuss any creative options relating to the design
7 of the pension plans or any cash flow changes that could be
8 made to resolve under funding problems?

9 A I don't know.

10 Q Yesterday I believe you stated that with respect to your
11 -- or I'm going to call them commercial creditors. You said
12 that you followed all the notice provisions in the loan
13 documents and you sent notices of the June 14th meeting,
14 correct?

15 A Yeah. I said that we followed -- followed notice
16 provisions, sent notices to all record holders or their
17 agents, and also received telephone calls and other requests.

18 Q Did you do the same thing with any active employees or
19 retirees?

20 A I believe we reached out to -- I -- I don't know for
21 sure.

22 Q Okay. Let's talk about what attempts if any you made to
23 mobilize the actives or the retirees.

24 A Uh-huh.

25 Q Did you or anyone on your team make phone calls to each
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1 individual?

2 A To each individual active employee?

3 Q Or retiree.

4 A No, not that I know of.

5 Q Did you reach out by mail, write letters, things of that
6 nature?

7 A To the actives I believe we reached out. There certainly
8 -- there are actives on my staff so they would have been
9 aware. There are actives that are working with the
10 consultants, so they would have been aware. To the retirees,
11 we asked certain bargaining units, unions to represent them
12 and they declined.

13 Q My question was, did you reach out directly to any of the
14 retirees before the June 10th or June 14th meetings?

15 A I don't know. I don't recall.

16 Q Did you post any public notices in newspapers or
17 advertise on television that there were these meetings coming
18 up?

19 A I don't recall.

20 Q Did you set up a web site where you could communicate
21 directly with any of the retirees or actives?

22 A We have a web site in the city. Whether or not that's of
23 the type you're talking about to communicate directly, you
24 have to examine the web site.

25 Q I have.

1 A Okay.

2 Q I did not see anything. It's your web site. Do you have
3 anything on that web site that you believe enabled you to
4 directly communicate with actives or retirees?

5 A Yes, I think I do, yeah.

6 Q Okay. Did you use anything on your web site before the
7 June 14th and June 10th meetings to reach out directly to any of
8 the actives or retirees?

9 A Not that I recall.

10 Q Okay. Did you mail a copy of your proposal for creditors
11 to all of the -- or any of the actives or the retirees?

12 A I don't know.

13 Q You -- you do have a list of all those names though,
14 don't you?

15 A We believe we have a list of all active employees. I
16 would think that we would have a list of all retirees. I know
17 we asked for some help in compiling that list, but they're our
18 list.

19 Q And if you needed those identities there were places you
20 could look and people you could ask for that information,
21 correct?

22 A We did ask.

23 Q And you -- you never attempted to develop sub groups of
24 these retirees so that you could negotiate with them directly,
25 correct before the bankruptcy?

1 A I don't know.

2 Q Are you familiar with anyone else on your staff being
3 tasked with breaking up the group of retirees into smaller
4 groups to be able to negotiate with smaller groups directly?

5 A Yes.

6 Q Okay. Who on your staff was responsible for that?

7 A There are members both on the legal team and on the
8 actuarial as well as the -- well, principally that would have
9 been -- probably members on the legal team.

10 Q And who would those individuals be that were tasked with
11 breaking the retiree groups into smaller sub sections?

12 A That would have been led by the -- probably Evan Miller
13 at Jones, Day.

14 Q And when did these smaller sub group negotiations, or
15 alleged negotiations take place?

16 A I don't know.

17 Q Are there any documents that actually reflect that
18 smaller sub groups were created for the purpose of
19 negotiating?

20 A I -- I don't know.

21 Q Have any documents been -- been produced in this case
22 that show that actual sub groups had been developed?

23 A A lot of documents have been produced. There may well
24 have been. I don't know for sure.

25 Q Are you familiar with any such documents?

1 A I wasn't involved in the document production, no.

2 Q Are you familiar with testimony on Friday that there was
3 no attempt made to create smaller sub groups of retirees?

4 A No, I'm not familiar with that testimony.

5 Q If it was from Mr. Buckfire who was your lead negotiator
6 for your financial advisory team, would it surprise you to
7 hear him saying that there had been no group, smaller sub
8 group developed?

9 A No. Mr. Buckfire may have not have been involved in all
10 aspects of it.

11 Q Okay. So it's your testimony the Jones, Day lawyer was
12 tasked with breaking out smaller sub sections and negotiating
13 directly?

14 A It's my testimony that they could have been. I don't
15 recall specifically the timing or the sub groups as you're
16 characterizing it.

17 Q Okay. So if we ask the retirees that are testifying next
18 week if anyone contacted them for the purpose of breaking into
19 smaller sections so that they could be negotiated with
20 directly, we're going to expect to hear that yes, Evan Miller
21 contacted me to negotiate?

22 MR. STEWART: Objection, Your Honor, calls for
23 speculation.

24 THE COURT: Sustained.

25 Q What specific strategies other than this apparent sub
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1 group that you've formulated, did you come up with to overcome
2 what was the perceived impractical nature of directly dealing
3 with large groups of people?

4 A Can you impact that question a little bit?

5 Q What specific strategies did you come up with to try to
6 overcome any perceived difficulty with negotiating with large
7 numbers of people, list them?

8 A Related to retirees?

9 Q Yes.

10 A Okay. Because your question said, as you did, we asked
11 for a retiree committee in bankruptcy. You're talking about
12 before?

13 Q Before bankruptcy.

14 A Before bankruptcy. We had made requests from certain of
15 the bargaining units to represent retirees. I have certainly
16 met with I believe the Police and Fire Retiree Association.

17 Q Okay. Would that be the sum total of what you did?

18 A It may not be. Many of my consultants meet with
19 different groups all the time. And sometimes I'm not aware of
20 all meetings.

21 Q We talked a little bit about the pension task force. Was
22 there a negotiations task force that was put together by your
23 team?

24 A By my team?

25 Q Yes.

1 A I would think the entire effort was a negotiations task
2 force.

3 Q But there was no specific committee on your team dealing
4 with how to tackle the problem of the retirees that needed to
5 be negotiated with, correct?

6 A My team and consultants worked together collaboratively.
7 Whether or not that's called a task force as a proper noun, is
8 a different question.

9 Q Well you had names for your teams. I'm asking was there
10 an official team dedicated to negotiating with retirees? Yes
11 or no?

12 A Not -- I don't know. Not that I'm aware of.

13 Q The June 10th, June 14th, and June 20th presentations, I
14 believe we're all in agreement now were purely informational.
15 I believe that's what you've said between yesterday and today,
16 correct?

17 A Generally, yes.

18 Q In the June 10th time frame, you held the -- the public
19 meeting at Wayne State, correct?

20 A Yes.

21 Q And that was as I believe you testified kind of the
22 ground work and you were laying the foundation for the
23 negotiations that you expected to occur in the following
24 weeks?

25 A No. I think what I testified to was that the June 10th
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1 meeting was required as a public meeting within 30 days of my
2 May 12th report.

3 Q You may have said that. At some point you agree with me
4 that that was your first public meeting and you were trying to
5 set the foundation for what was to occur? Maybe I'm
6 mischaracterizing slightly, but it's the gist of what I got
7 from what you said yesterday.

8 A Well, I -- I can't be responsible for the gist of what
9 you got. What I said was, the June 10th meeting was required
10 by 436 within 30 days of the May 12th report. There were many
11 things that were done at that meeting, but what I was trying
12 to relay yesterday was I was meeting my statutory obligations
13 under 436.

14 Q Okay. Do you remember at that June 10th meeting that it
15 was video taped?

16 A Yes.

17 Q And in fact you've posted these videos on your emergency
18 manager web site, correct?

19 A Yes.

20 Q Do you recall being asked a question by a retiree at the
21 June 10th meeting about what to expect to happen to their
22 pension funds?

23 A I don't recall a specific question, but you're welcome to
24 show it to me.

25 Q I will do that.

1 (Video Being Played at 2:12 p.m.; Concluded at 2:14 p.m.)

2 Q So on June 10th when asked by a retiree what was to happen
3 to their pension benefits, you said they were sacrosanct and
4 they could not be touched, correct?

5 A I think there was more to that clip.

6 Q I'm only asking about that part. I -- we can keep
7 playing it. You say except OPEB's are different. Is that --
8 did that refresh your recollection of what you followed
9 that --

10 A No. I mean the entire clip. I think there were multiple
11 questions, but that clip speaks for itself, yes.

12 Q Okay. So on June 10th you told retirees at the June 10th
13 meeting that their pensions were sacrosanct and they couldn't
14 be touched. And four days later you held the proposal for
15 creditors meeting.

16 And at that time you produced a 135 page proposal and I
17 believe we've shown it up on the screen a few times Page 109
18 where you say significant cuts will have to be taken. Did you
19 invite all the same retirees to the second meeting and then
20 explain to them that what they may have heard at the June 10th
21 meeting was now being changed?

22 A I don't know.

23 Q Well, did you correct any misunderstanding out there
24 where retirees thought their pension obligations were indeed
25 sacrosanct and safe?

1 A I may well have.

2 Q So you told them no cuts. Four days later you said cuts.
3 And that was on June 14th. And the time line that you laid out
4 on your proposal for creditors slated June 17th through July
5 12th as the initial discussion round, correct?

6 A It is whatever it is in the document, yes.

7 Q We've looked at it a few times. I won't bother pulling
8 it up again. So on the 14th you -- you did state there had to
9 be cuts. And three days later the negotiations were to
10 commence, correct?

11 A Yes, generally.

12 Q Okay. And the data room wasn't live until June 20th,
13 right?

14 A I don't know.

15 Q If other people have testified June 20th, does that sound
16 about correct?

17 A That -- that would not surprise me. I don't know the
18 exact date.

19 Q And as of the 20th the data room was not fully populated
20 with the -- with the data, right?

21 A I don't know. I wasn't populating the data room.

22 Q And if other people testified that it was not fully
23 populated would that --

24 A That would not surprise me.

25 Q Okay. So three days into the initial round of
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1 discussions with all the stakeholders, the documents were
2 still not up? You gave a proposal for creditors that changed
3 information that you had said at the public meeting on the
4 10th. And you did not give a copy of this proposal for
5 creditors to all of the retirees, correct?

6 A Not necessarily, Ms. Green.

7 Q Okay. When was the first time that you realized Chapter
8 9 was going to be necessary to cut the pension benefits?

9 A I don't know if I realized Chapter 9 was going to be
10 necessary just to cut the pension benefits.

11 Q Did you know it before you said on the 10th that pension
12 benefits could not be touched?

13 A I think you're taking that quote out of context, but let
14 me respond this way. The 10th and 14th, we were negotiating
15 with Bammel. We thought that was going to spur other
16 settlements and other negotiations. I had made no conclusion
17 regarding Chapter 9 at that point.

18 Q Well, isn't it true you were being advised by your
19 financial advisors that Chapter 9 was necessary?

20 A Chapter 9 had been discussed since 2005, Ms. Green.

21 Q Can we look at Exhibit 870, please? You were in contact
22 with your financial advisors continuously throughout this
23 period, correct, Mr. Orr?

24 A Yes.

25 Q And Chuck Moore is one of your financial advisors?

1 A Yes.

2 Q And he's on the pension task force?

3 A Yes.

4 MR. STEWART: Counsel, could I get a copy of that
5 document? I don't think we have it.

6 MS. GREEN: Oh, this was just -- I'm sorry, Your
7 Honor. This was produced on Friday as well. And we do have
8 extra copies for the Court today.

9 Q Do you recognize this email?

10 A Is it in here?

11 Q It should be on the screen.

12 A Okay. Okay. Thank you.

13 Q Do you recognize this email dated June 7th, 2013?

14 THE COURT: Do you have a number for this?

15 MS. GREEN: It's 870, Your Honor.

16 THE COURT: Thank you.

17 A Yes.

18 Q And at the bottom of that email it's -- it's a whole
19 string and there's an email from Chuck Moore at Conway,
20 MacKenzie dated 6-5-2013?

21 A Yes.

22 Q And it's an email to you, correct?

23 A Yes.

24 Q Discussing a lengthy call with Milliman this afternoon?

25 A Yes.

1 Q And you received this -- this email, right?

2 A Yes, I believe so.

3 Q On the second page there are numbered paragraphs. I'd
4 like to call your attention to Paragraph 3. Just above it
5 it's talking about under funding liability.

6 And it states, we anticipate a significant reduction and
7 already accrued benefits will be required in order to get
8 required contributions to the level of available cash to
9 service the UAAL. It appears this may only be possible in a
10 Chapter 9 proceeding.

11 A Yes.

12 Q Do you -- do you recall receiving that portion of the
13 email?

14 A Yes.

15 Q And this was on June 5th?

16 A It's dated June 5th, so I assume I received it around
17 then, yes.

18 Q But on the meeting of June 10th you responded to questions
19 regarding the pension benefits and you stated that they could
20 not be touched?

21 A In the clip that you showed, yes.

22 Q So did you knowingly give misinformation to the retirees
23 that were asking questions on the 10th?

24 A No.

25 Q I believe that you testified earlier that Ernst and
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1 Young, Miller, Buckfire, and Conway, MacKenzie had all been
2 engaged by the city prior to your arrival, correct?

3 A Yes.

4 Q And they were working since 2012 putting all the
5 financial data together, correct?

6 A I believe Ernst and Young was engaged in 2012. The
7 others may have begun work either at the end of December 2012,
8 or the beginning of 2013.

9 Q And all of their work culminated with this proposal for
10 creditors that you laid out in the middle of June?

11 A Yes.

12 Q So that took your team of three financial advisor firms,
13 yourself, and whomever else you had working on it, several
14 months, five, six months all together, maybe longer?

15 A I believe they met in 2013 and began to come up with
16 concepts and it culminated in this document. But if that's
17 your supposition, yes.

18 Q Okay. And yet the time frame that you laid out for the
19 initial rounds of discussions with the relevant stakeholders
20 lasted from June 17th to July 12th, right, just a three week
21 period?

22 A July 19th, but yes.

23 Q And the evaluation period that you set forth in your
24 proposal for creditors was July 15th through the 19th, right?

25 A Yes.

1 Q I think you stated earlier that the pre-petition lawsuits
2 helped force the bankruptcy filing, correct?

3 A I think I said either on September 16th, or yesterday, or
4 the day before, that we were getting ready to lose control,
5 that those lawsuits were creating concerns, yes.

6 Q Okay. And I believe you said that at first you ignored
7 the -- the lawsuits that were filed?

8 A Yes.

9 Q How long did you ignore them for?

10 A Almost three weeks.

11 Q Okay. You were asked yesterday if you were aware of any
12 hearings that were scheduled in State Court lawsuits as of the
13 time that you sent your letter on the 16th?

14 A Yes.

15 Q And you stated that at time you were unaware of any
16 hearings in the State Court litigation? The 16th.

17 A I don't -- yeah. I don't know if as of the 16th. I don't
18 -- I don't recall when I became aware. There were hearings
19 scheduled for the following week. I may not have known as of
20 the 16th.

21 Q What about the 18th when you filed the petition?

22 A I think by the 18th, I knew there were hearings scheduled
23 for the following week.

24 Q You said earlier that you were concerned that one of

25 these lawsuits could impact your ability or would undermine
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1 your authority under PA436 to get your job done, something to
2 that effect. Do you recall that from this morning?

3 A Yes.

4 Q What authority under PA -- PA436 did you think was going
5 to be undermined?

6 A All of my authority.

7 Q And in fact you expected these lawsuits, didn't you?
8 Let's call up Exhibit 403. Do you recognize this email from
9 January of 2013?

10 A Yes.

11 Q And isn't it true that at that time you were observing
12 that there were already reports that "opponents of the prior
13 law are already lining up to challenge this law"?

14 A Yes.

15 Q So as of January before you even were appointed emergency
16 manager, you expected a legal battle forthcoming, correct?

17 A Not of the nature you're talking about, but yes, I
18 expected that there were challenges because that's what I
19 read.

20 Q Well, and to be clear the State Court lawsuits were
21 challenges to PA436 and your authority thereunder, correct?

22 A Yes. But I don't want to mislead you. This is talking
23 about lawsuits to PA436. I wasn't expecting injunctions, I
24 was expecting more lawsuits in the nature of declaratory
25 judgments and the like.

1 So the specifics of the lawsuit, I wasn't talking about
2 in here. But I was expecting challenges because that's what
3 was being talked about in the news reports.

4 Q Well, and there were in fact declaratory judgments sought
5 in those pre-petition lawsuits, weren't there?

6 A I believe so.

7 Q Okay. And the retirement systems didn't file their
8 lawsuit until July 16th, correct?

9 A Yes. I believe GRS filed July 15th.

10 Q Well, either way it was -- it was after the week, after
11 in your own time line, it was after the period where you had
12 set aside for discussions to take place with your
13 stakeholders?

14 A Yes.

15 Q Okay. So there were no -- there wasn't a lawsuit
16 vis-a-vis the retirement systems during the week that you were
17 meeting with the retirement systems, correct?

18 A I don't think so.

19 Q And I believe you said yesterday the TRO from the Syncora
20 litigation was set to expire within 14 days?

21 A Yes.

22 Q And that would take you to July 19th?

23 A I believe so.

24 Q But the July 19th date was set forth on your proposal for
25 creditors as the end date unrelated to the Syncora litigation,

1 correct?

2 A I think it was set forth related to everything.

3 Q Yesterday you talked a lot about the swap transactions
4 and that negotiation. At your deposition you testified that
5 they were extraordinarily complex. I presume that your
6 testimony would be the same today?

7 A The swap transactions.

8 Q Yes.

9 A Yes.

10 Q And those negotiations started in earnest on June 4th,
11 right?

12 A I don't recall the exact date, but that sounds about
13 right.

14 Q Okay. And the general terms of that negotiation were
15 agreed upon around June 11th?

16 A Generally, yes. Generally about those days, yeah.

17 Q And then between June 11th, and July 15th through the 17th,
18 the paperwork was drafted and the forbearance agreement was
19 executed, correct?

20 A Yes, forbearance and optional termination agreement, yes.

21 Q Okay. So even though the transactions were extremely
22 complex, and I believe you testified that the negotiations
23 were -- there was a lot of back and forth?

24 A Uh-huh, yes.

25 Q Even with all of that, the whole thing was wrapped up in
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1 about four weeks, right?

2 A Yes, I believe so.

3 Q And that freed up the casino revenue?

4 A Yes.

5 Q That you thought was critical to the city's liquidity?

6 A Yes.

7 Q And yet having successfully negotiated that complex deal,
8 you didn't continue down the path of negotiating. Two days
9 after you executed the forbearance agreement you actually
10 filed your bankruptcy petition, correct?

11 A That's correct. Forbearance agreement is dated July 15th
12 and we filed on July 18th.

13 Q In three days?

14 A Whatever that is, yeah.

15 Q Okay. We talked a lot about negotiations. Isn't it true
16 though that if negotiations do not -- if there's -- I'm sorry,
17 let me restate that. It was a terribly started question.

18 A I understand.

19 Q We talked about negotiations, but isn't it true that if a
20 consensual deal is not worked out, the city will use the cram
21 down provisions of the Bankruptcy Code to force a resolution?

22 A The city would propose a resolution, but the cram down
23 provisions are available in Bankruptcy Code.

24 Q So the answer is yes?

25 A We hope to reach a negotiated solution even now.

1 Q But if you don't, the answer is yes, correct?

2 A If I don't we will address that situation then, but
3 certainly cram down is an opportunity available to us.

4 Q And the \$2,000,000,000 note that was proposed, there's no
5 recourse if the city fails to pay that note back, correct?

6 A It is a non-recourse note.

7 Q And in fact as of June 14th the proposal for creditors
8 does not actually identify anywhere in that document the
9 amount that an individual -- an individual's benefits would be
10 impacted, correct?

11 MR. STEWART: Objection, asked and answered before,
12 Your Honor.

13 THE COURT: Sustained.

14 Q If an individual retiree was looking to find how much
15 their individual pension benefits would be impacted prior to
16 the bankruptcy filing, where would they look?

17 MR. STEWART: Same objection, Your Honor.

18 MS. GREEN: A different question.

19 THE COURT: Well, it's slightly different. What's
20 the answer, please?

21 A I don't know, Your Honor.

22 Q Mr. Orr, earlier we looked at Exhibit 831. If we could
23 see that again, please. This is the time line from July 8th.
24 Bill Nowling or Nowling is your press secretary?

25 A He's my communications director, yes.

1 Q Okay. I would draw your attention to about three pages
2 in. There is a list of bullet points relating to a
3 communications plan. There we have it. And as of July 8th
4 your communications plan was that you believe the Court
5 supervised restructuring is the best and most efficient way to
6 secure a viable strong future for Detroit, correct?

7 A Yes.

8 Q And further down on the page, there is a bullet point
9 that states, we negotiated in good faith with all of Detroit's
10 creditors and we will continue to work cooperatively with them
11 in the Federal Bankruptcy Court process, correct?

12 A Yes.

13 Q And it states that at this point it would be impractical
14 to continue discussions out of Court, correct?

15 A Yes, it says that.

16 Q And it states that the State of Michigan has authorized
17 the emergency manager to take this step?

18 A Yes.

19 Q As of July 8th, you had not yet even conducted several of
20 the meetings with the relevant stakeholders, correct?

21 A July 8th?

22 Q Right.

23 A I think we had meetings beginning on June 17th, so we had
24 conducted a number of meetings.

25 Q What about the ones on the 10th and the 11th? Those had
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1 not even taken place, correct?

2 A Of July.

3 Q Right.

4 A Yes. No, they hadn't taken place.

5 Q And I think we established earlier that all the
6 presentations on the 10th, 14th, and 20th were merely
7 informational and presentational, correct?

8 A Of July?

9 Q Of June.

10 A Of June, yes.

11 Q Okay. And this same document has the filing date of the
12 19th, right?

13 A Yes.

14 Q Okay. Was there another document that set forth some
15 sort of contingency plan if negotiations actually were
16 fruitful?

17 A It looks like this is one of them.

18 Q Where on here does it say what your steps are if the
19 negotiations, the meetings that took place July 10th and 11th
20 where --

21 A Did you say that they were fruitful, or unfruitful?

22 Q If they were fruitful.

23 A Oh, they were fruitful.

24 Q Where is your plan for if the negotiations on the 10th and
25 11th worked out?

1 A Rephrase your question because I'm not sure I'm
2 understanding it.

3 Q This document lays out a time line as of July 8th.

4 A Contingency plan, yes.

5 Q Okay. Where on the document does this say it's a
6 contingency plan?

7 A No. I'm just saying that you do contingency planning.
8 It doesn't have to be called a contingency plan. You plan for
9 contingencies before the last minute, Ms. Green, I'm sure
10 you're aware of that.

11 Q Okay. So where is the contingency plan for if
12 negotiations were fruitful?

13 A I don't know.

14 Q In the 200,000 pages of documents the city has produced,
15 is there a single contingency plan relating to negotiations
16 with creditors?

17 MR. STEWART: Objection, Your Honor, foundation.

18 THE COURT: Overruled. Answer the question if you
19 know.

20 A I don't know.

21 MS. GREEN: Your Honor, I'm sorry. I'm just going
22 through my notes. I want to make sure I got everything.

23 Q I have one more question. At the June 10th proposal, or
24 I'm sorry, public meeting.

25 A Uh-huh.

1 Q Do you recall talking about your authority under PA436?

2 A Yes.

3 Q Do you recall making a statement about how powerful your
4 authority was under PA436?

5 A Yes, I do remember that.

6 Q Do you remember saying, and I don't want to misquote you,
7 so I'm going to have to play the clip, but do remember saying
8 that the statute itself was powerful, but you had a much more
9 powerful Chapter 9?

10 A Yes. I remember saying that I have a very powerful
11 statute, 436 is even a more powerful statute, Chapter 9, but I
12 don't want to use it.

13 Q And didn't you end with but -- let's just play the clip
14 from what you actually said before --

15 MR. STEWART: Your Honor, objection. The -- the
16 witness has stated his memory. There's no reason to -- to
17 show a -- a clip.

18 THE COURT: I'll permit it, go ahead. Go ahead.

19 MS. GREEN: The clip says something different.

20 THE COURT: Go ahead.

21 (Video Being Played at 2:35 p.m.; Concluded at 2:35 p.m.)

22 Q Do you also recall just prior to that June 10th meeting
23 the -- the email we looked at earlier from Chuck Moore stating
24 that Chapter 9 would be necessary to deal with the pension
25 obligations?

1 A I recall receiving that email.

2 Q When you were discussing to the public this issue with
3 respect to Chapter 9, were you aware of the fact that your
4 financial advisors had already set on a course for Chapter 9
5 proceedings?

6 A I'm not sure we'd set on a course for Chapter 9
7 proceedings. We were trying very hard to get some consensual
8 resolutions and had one in hand.

9 Q Last question. Do you remember being asked by a precinct
10 delegate for the Democratic party after you made that
11 statement about Chapter 9. Do you remember a woman standing
12 up and asking you -- stating that she felt as though she was
13 threatened by your Chapter 9 comments?

14 A No, I don't remember. Somebody may have said that, I
15 don't remember.

16 Q Do you believe that when you stated that you had a very
17 powerful Chapter 9, that you were trying to set the tone for
18 the negotiations that were to take place over the following
19 weeks?

20 A No, not necessarily. I was just speaking.

21 MS. GREEN: I have nothing further, Your Honor.

22 CROSS EXAMINATION

23 BY MR. WERTHEIMER:

24 Q Good afternoon, Mr. Orr. My name is Bill Wertheimer and

25 I represent the Flowers plaintiffs, the plaintiffs in that
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1 lawsuit --

2 A Good afternoon, Mr. Wertheimer.

3 Q We have not met, have we?

4 A No, we have not.

5 Q I'd like to clear up, if I can, the timing related to
6 these hearings in the State Court. You testified that the
7 suits were filed on July 3rd, correct? The Flowers and the
8 Webster suits were filed on July 3rd, correct?

9 A Yes, I believe so.

10 THE COURT: Counsel, I have to caution you not to
11 ask any redundant questions.

12 MR. WERTHEIMER: That was -- I will not further.

13 Q Did you also learn at the same time you learned about the
14 lawsuits that along with the lawsuits the same day the
15 lawsuits were filed, the Judge in that case entered an order
16 to show cause scheduling a hearing for preliminary injunctions
17 on the Websters and Flowers case for July 22nd?

18 A No.

19 Q When in time did you learn that hearings were scheduled
20 for July 22nd in front of Judge Aquiline?

21 A I'm not aware if I ever knew in front of which Judge. I
22 think I learned that a few days or weeks later.

23 Q Okay. Have you ever in your meetings or communications
24 with the Governor, or any of his staff people in any way

25 communicated to him that it was your intention as the

1 representative of the people of the City of Detroit to make a
2 legal claim against the state, that the state would be
3 obligated to pay any pension monies that the city could not
4 pay because of Article 9, Section 24 of the Constitution?

5 A No, I don't think so.

6 Q In any of your conversations with the Governor, beginning
7 at the time you became emergency manager in March, did you
8 ever communicate to the Governor what you communicated to that
9 retiree at a public meeting, that is that because of the state
10 law in Michigan pensions are sacrosanct?

11 A I don't recall.

12 Q You don't recall? Are you testifying under an oath you
13 -- oath you don't recall one way or another whether you used
14 the term sacrosanct in your discussions with the Governor
15 relative to this issue?

16 MR. STEWART: Objection, asked and answered.

17 THE COURT: The objection is sustained.

18 Q In your -- these conversations with the Governor, any of
19 them from the time you became emergency manager, have you had
20 discussions with the Governor about your claim that federal
21 law trumps state law on this pension issue?

22 MR. STEWART: Objection, Your Honor. To the extent
23 that the question calls for the witness to reveal privileged
24 attorney/client communications. If there were lawyers in the

1 advice, I would object.

2 MR. WERTHEIMER: Can I follow up a question?

3 THE COURT: Uh-huh, sure.

4 Q First of all, have you had any discussions with the
5 Governor where the issue of the impact of the filing of a
6 federal bankruptcy would have on this state constitutional
7 right outside the presence of attorneys?

8 A No.

9 Q How many meetings have you had with the Governor either
10 personally or over the telephone since you became emergency
11 manager approximately?

12 MR. STEWART: Objection, asked and answered.

13 THE COURT: Sustained.

14 Q It was two to four or five, right?

15 A No, I have weekly meetings but two to four or five with
16 the Governor.

17 Q Okay. Thank you.

18 A Uh-huh.

19 Q And in your meetings were there ever occasions where
20 attorneys were present and in your view of things you were not
21 seeking legal advice, they just happened to be either on the
22 line or in the meeting?

23 A With the Governor?

24 Q Yes.

25 A Yes.

1 Q In those meetings, were there occasions where you and the
2 Governor discussed the issue of federal law trumping or in
3 some way allowing you to adversely impact pension benefits?

4 MR. STEWART: Renew my earlier objection, Your
5 Honor.

6 THE COURT: Which objection, sir?

7 MR. STEWART: The -- the -- to the extent that the
8 -- the question asks for the witness to reveal attorney/client
9 communications, we'd object.

10 MR. WERTHEIMER: I'm only now asking about meetings
11 where he's acknowledged the attorneys were not there giving
12 legal advice. He says there were such meetings.

13 MR. STEWART: The question of -- I'm sorry. The
14 question of whether federal law trumps, or trumps the Michigan
15 Constitution is clearly a request for legal advice.

16 MR. WERTHEIMER: He's now testifying. That's not
17 what Mr. Orr said. Mr. Orr said --

18 THE COURT: The problem is your question was
19 misleading, sir. Because you asked --

20 MR. WERTHEIMER: With all due respect, Your Honor, I
21 don't believe it was.

22 THE COURT: Excuse me, you -- you asked were there
23 such meetings and there may have been. But that doesn't mean
24 that every subject that was covered in such meeting was --

25 were subjects that did not involve legal advice.

1 MR. WERTHEIMER: Well, then may I ask the question?

2 Q At these -- these one or more meetings where there were
3 attorneys present, either on the telephone or in person, but
4 where you're not talking about legal advice or seeking legal
5 advice from those attorneys, in any of those contexts, did you
6 and the Governor talk about what the impact of your filing a
7 Chapter 9 proceeding might be on the pension rights of
8 citizens of the State of Michigan?

9 MR. STEWART: Same objection, Your Honor. That
10 issue is by definition one of a legal character.

11 THE COURT: It seems to me, but I'll permit the
12 witness to answer.

13 A No.

14 MR. WERTHEIMER: Thank you.

15 THE COURT: Any other questions for the witness?
16 Any redirect? Oh, this I assume had all been worked out. I'm
17 sorry.

18 MS. BRIMER: I'm standing, Your Honor. I'll --

19 THE COURT: How many more?

20 MS. BRIMER: Good afternoon, Your Honor. Lynn M.
21 Brimer appearing on behalf of the Retired Detroit Police
22 Officers Association.

23 CROSS EXAMINATION

24 BY MS. BRIMER:

25 Q Mr. Orr, my name is Lynn Brimer.

1 A Good afternoon, Ms. Brimer.

2 Q We have never met before?

3 A No, we have not.

4 Q Mr. Orr, I'd like to go back to some discussion prior to
5 your appointment as the -- as the emergency manager. Do you
6 recall when you first learned that Jones, Day would be
7 involved in preparing or presenting a pitch to the City of
8 Detroit for engagement?

9 A Yes.

10 Q And when was that?

11 A Two weeks or so prior to the pitch.

12 Q So about --

13 A Mid-January.

14 Q About mid-January?

15 A Yes.

16 Q And at that point in time did the topic of a Chapter 9
17 filing come up in your discussions?

18 A No, not initially, no.

19 Q Could we have Exhibit 866, please? Do you -- do you see
20 that Exhibit 866?

21 A Yes.

22 Q All right. Now that's an email from Ms. Ball and you're
23 listed on there at the end of the carbon copies, is that
24 correct?

25 A Yes.

1 Q What is Ms. Ball's role in connection with the City of
2 Detroit project at Jones, Day?

3 A Ms. Ball is one of the attorneys at Jones, Day in the
4 restructuring practice that was at the pitch -- pitch
5 presentation.

6 Q Okay. So if you'd go down midway through the page you'll
7 see there is a paragraph that says Kevyn.

8 A Uh-huh.

9 Q I assume that's you, Mr. Orr?

10 A Uh-huh.

11 Q There are diversity related issues. You have to be the
12 star on this stuff and be able to discuss what we can provide.
13 (We do submit reports to the Bar Association). Also, can you
14 check with Dan Moss where he is on updating our Chapter 9
15 paper with new decisions like the ones in California, PA, and
16 Alabama among others.

17 A Yes.

18 Q All right. Who is Mr. Moss?

19 A Mr. Dan Moss is an attorney at Jones, Day seated at
20 counsel's table.

21 Q And he was involved in the project to pitch to the City
22 of Detroit, correct?

23 A Yes.

24 Q All right. Now already at least as early as January 15,

1 Jones, Day attorneys, is that correct?

2 A Yes, it appears to be so.

3 Q So now you spent the -- the pitch was actually made on
4 January 29th, is that correct?

5 A Yes.

6 Q And who attended that pitch?

7 MR. STEWART: Objection, Your Honor, asked and
8 answered.

9 THE COURT: Sustained.

10 Q There were attorneys from various offices of Jones, Day
11 at that pitch, is that correct?

12 A Yes.

13 Q And in that two week period were there discussions among
14 the attorneys of the role each would play in the pitch with
15 the city?

16 A Yes.

17 Q And during any of those discussions, did Ms. Ball ever
18 discuss any prior involvement with the State of Michigan?

19 A Not with me.

20 Q Was Ms. Lennox also involved in the pitch?

21 A Yes.

22 Q And did Ms. Lennox ever discuss in any of the meetings or
23 conversations preparing for the pitch, her role or Jones,
24 Day's role in connection with prior advice rendered to the
25 State of Michigan?

1 A Not that I recall.

2 Q Now shortly after the pitch you were approached in
3 connection with becoming the emergency manager?

4 A Yes.

5 Q And there were discussions internally with respect to
6 what Jones, Day may be able to do to generate funding for the
7 project and to nationalize the project, is that correct?

8 A I think there was an email, yes.

9 MS. BRIMER: Could we have 605? It's 805, I
10 apologize. And, Your Honor, I'm using exhibits that have been
11 admitted.

12 THE COURT: Thank you.

13 Q This is an email chain between you and Mr. Moore -- Moss,
14 is that correct?

15 A Yes.

16 Q Do you see that? Okay. Now if you go down to the second
17 page, it begins with an email to you from Ms. Ball, the last
18 sentence -- well, actually we'll go all the way down to the
19 first food for thought. For your conversation with Baird and
20 us, I understand Bloomberg Foundation has a keen interest in
21 this area. Do you know what area she is referring to?

22 A I do not.

23 Q Well, and the subject is D. Do you know what that D is
24 referring to?

25 A I think it's referring to Detroit.

1 Q Okay. I was thinking about whether we should talk to
2 Baird about financial support for this project and in
3 particular the EM. So the issue is discussions with respect
4 to whether or not you can generate additional funding for it,
5 is that correct?

6 A I believe so.

7 Q The last sentence is, I can ask Harry, I believe that's
8 Harry Wilson from the auto task force, for contact
9 information. This kind of support and weighs -- nationalizes
10 the issue and the project. What project is that she's
11 referring to, do you know?

12 A I assume she's referring to something related to Detroit.

13 Q So she related to the -- does the project relate to the
14 representation of the City of Detroit by the Jones, Day
15 attorneys?

16 A I don't know.

17 Q All right. So then if you go up from that, there is an
18 email from Mr. Moss to you that begins, making this a national
19 issue is not a bad idea. It provides political cover for the
20 state politicians. Indeed this gives them an even greater
21 incentive to do this right because if it succeeds, there will
22 be more than enough patronage to allow either Bing or Snyder
23 to look for higher callings whether cabinet, Senate, or
24 corporate. Further, this would give you, I assume you means
25 you, Mr. Orr.

1 A Uh-huh.

2 Q Would give you cover and options on the back end, I
3 assume that's when you're finished with your appointment as
4 the EM, to make up for lost time here.

5 A Yeah.

6 Q Is the perception at Jones, Day that your appointment as
7 the emergency manager for the City of Detroit is lost time?

8 A No.

9 Q Then why would Mr. Moss have included that sentence in an
10 email, if you know?

11 A I don't know.

12 Q Was it important to move forward with this project in a
13 fashion that provided political cover for those who are
14 involved?

15 A No. I think I say that in one of the following emails.

16 Q Now when did you first learn that the Mayor -- I mean
17 that the Governor would be supporting your candidacy as the
18 emergency manager?

19 A Sometime after we met in mid-February.

20 Q Could we have 807? So 807 is an email chain between
21 yourself and Mr. Baird, is that correct?

22 A Yes.

23 Q The Re line is tribute to my dad, Reverend Dr. Allen E.

24 Orr.

25 A Senior.

1 Q If we could go to the email midway down from Mr. Baird to
2 you dated February 12, 2013. Do you recall receiving this
3 email?

4 A Yes.

5 Q And I think we've discussed part of this email with Ms.
6 Green. But the paragraph that begins a little further down,
7 Kevyn, I know you have work -- you have to work logistics on
8 your end, but I do want you to know our folks are already
9 behaving if you have -- as if you accepted the job. I guess
10 that's human nature since the chemistry envisioned was so
11 aligned with our own.

12 The last sentence in that paragraph reads, anyway, I need
13 to clue -- I need you to clue me in. Are you feeling
14 differently because the boss and his team are already
15 arranging for the church and pastor and I need to talk them
16 off the ledge if you tell me we are misreading the
17 relationship.

18 So already by February 12th you understood that the
19 Governor was seriously supporting your candidacy, is that
20 correct?

21 A Yes.

22 Q Did you at that point in time do anything to advise the
23 Governor that you would not be taking the position?

24 A No. I think I still was taking it under consideration.

25 Q Let's see here. All right. I'd like to -- I do have an
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1 exhibit here --

2 THE COURT: Actually, Ms. Brimer, I'm -- I'm going
3 to conclude Court now. We do have some housekeeping matters
4 that I need to review with everyone. How much longer will
5 your cross examination be?

6 MS. BRIMER: Probably only about 15 minutes, Your
7 Honor.

8 THE COURT: And the other cross examination, sir?

9 MR. WILKINS: About 10 to 15 minutes.

10 THE COURT: Ms. Patek?

11 MS. PATEK: It will be less than that, Your Honor.

12 THE COURT: All right. So we'll reconvene next
13 Monday morning at 9:00 a.m.

14 Now I have been advised regarding exhibits and your other
15 property that your choices are a little more constrained at
16 this point. You can either leave them in the jury room where
17 they will be locked, or you can take them with you. But we
18 can't leave them in place between now and Monday. I think
19 Judge Cook will be using this courtroom for other purposes.
20 Who else is the city intending to call, please?

21 MR. STEWART: This is our last witness, Your Honor.

22 THE COURT: All right. Monday morning when we meet,
23 I would like some good faith estimate from the objecting
24 parties as to how long your case will take. We need that

25 because if it's going to go beyond Thursday of that week, we
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1 need to arrange for -- for courtrooms after that.

2 All right. Any other further housekeeping matters? Yes,
3 Ma'am.

4 MS. LEVINE: Your Honor, just a question. Assuming
5 the witnesses conclude maybe even Monday or Tuesday, can
6 closings be after we submit our briefs on 11-13 on Wednesday,
7 or are you going to want closings to be --

8 THE COURT: No, I want closings immediately after
9 the conclusion of the proofs.

10 MS. LEVINE: Thank you.

11 MR. DECHIARA: One question in that regard, Your
12 Honor. Is it your expectation that if we are not finished for
13 whatever reason Tuesday afternoon that we will go Wednesday
14 despite the current mediation order that's in place?

15 THE COURT: I had not taken that into account. Is
16 this something you need to know now, or can I get back to you
17 on Monday on that?

18 MR. DECHIARA: No, you can get back to us on Monday,
19 Your Honor.

20 THE COURT: All right. If -- if -- if I don't,
21 please remind me of this question. Anything further, anyone?
22 All right. We'll stand in place while Mr. Orr takes his exit.
23 And my apologies to you for blasting out of here at lunch
24 without giving you that opportunity, sir.

25 A Thank you. Thank you.

1 THE COURT: But go ahead and we'll just wait here.

2 (WITNESS KEVYN ORR WAS EXCUSED AT 2:59 P.M.)

3 THE COURT: Jim, you'll let us know when we can go.

4 Ready?

5 THE CLERK: All rise.

6 THE COURT: All right.

7 THE CLERK: Court is adjourned.

8 (Court Adjourned at 2:59 p.m.)

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We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Deborah L. Kremlick, CER-4872
Letrice Calloway

Dated: 11-4-13

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. November 4, 2013
Debtor. . 9:01 a.m.
.

HEARING RE. ELIGIBILITY TRIAL (CONTINUED)
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day
By: BRUCE BENNETT
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2452
(213) 243-2382

Jones Day
By: GEOFFREY S. IRWIN
GEOFFREY S. STEWART
GREGORY SHUMAKER
THOMAS CULLEN, JR.
MIGUEL F. EATON
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3768

Pepper Hamilton, LLP
By: ROBERT S. HERTZBERG
4000 Town Center, Suite 1800
Southfield, MI 48075-1505
(248) 359-7333

For the State of Michigan: State of Michigan
Michigan Department of Attorney General
By: MATTHEW SCHNEIDER
P.O. Box 30754
Lansing, MI 48909
(517) 241-8403

Dickinson Wright, PLLC
By: STEVEN G. HOWELL
500 Woodward Avenue, Suite 4000
Detroit, MI 48226-3425
(313) 223-3033

APPEARANCES (continued):

<p>For AFSCME, AFL-CIO, and Sub- Chapter 98, City of Detroit Retirees:</p>	<p>Lowenstein Sandler, LLP By: SHARON L. LEVINE JOHN K. SHERWOOD 65 Livingston Avenue Roseland, NJ 07068 (973) 597-2374</p>
<p>For Detroit Retirement Systems- General Retirement System of Detroit, Police and Fire Retirement System of the City of Detroit:</p>	<p>Clark Hill, PLC By: ROBERT D. GORDON JENNIFER K. GREEN 151 South Old Woodward, Suite 200 Birmingham, MI 48009 (248) 988-5882</p> <p>Clark Hill, PLC By: RONALD A. KING 212 East Grand River Avenue Lansing, MI 48096 (517) 318-3015</p>
<p>For the Detroit Fire Fighters Association, the Detroit Police Officers Associa- tion and the Detroit Police Lieutenants & Sergeants Association:</p>	<p>Erman, Teicher, Miller, Zucker & Freedman, P.C. By: BARBARA A. PATEK JULIE BETH TEICHER DAVID EISENBERG 400 Galleria Officentre, Suite 444 Southfield, MI 48034 (248) 827-4100</p>
<p>For the Inter- national Union, UAW:</p>	<p>Cohen, Weiss & Simon, LLP By: BABETTE A. CECCOTTI PETER D. DECHIARA THOMAS N. CIANTRA 330 West 42nd Street, 25th Floor New York, NY 10036-6976 (212) 356-0227</p>

APPEARANCES (continued):

For Detroit
Retired City
Employees
Association,
Retired Detroit
Police and Fire
Fighters Associa-
tion, Shirley V.
Lightsey, and
Donald Taylor:

Silverman & Morris, PLLC
By: THOMAS R. MORRIS
30500 Northwestern Highway, Suite 200
Farmington Hills, MI 48334
(248) 539-1330

Lippitt O'Keefe, PLLC
By: RYAN C. PLECHA
370 East Maple Road, Fl. 3
Birmingham, MI 48009
(248) 646-8292

For the Official
Committee of
Retirees:

Dentons
By: CLAUDE D. MONTGOMERY
ANTHONY B. ULLMAN
ARTHUR H. RUEGGER
1121 Avenue of the Americas
New York, NY 10020-1089
(212) 632-8390

Brooks, Wilkins, Sharkey & Turco, PLLC
By: MATTHEW E. WILKINS
401 South Old Woodward, Suite 400
Birmingham, MI 48009
(248) 971-1711

For Retired
Detroit Police
Members
Association:

Strobl & Sharp, PC
By: LYNN M. BRIMER
MEREDITH E. TAUNT
MALLORY A. FIELD
300 East Long Lake Road, Suite 200
Bloomfield Hills, MI 48304-2376
(248) 540-2300

For the Flowers
Plaintiffs:

Law Offices of William A. Wertheimer
By: WILLIAM WERTHEIMER
30515 Timberbrook Lane
Bingham Farms, MI 48025
(248) 644-9200

For Ambac
Assurance Corp.:

Schafer and Weiner, PLLC
By: DANIEL J. WEINER
40950 Woodward Avenue, Suite 100
Bloomfield Hills, MI 48304
(248) 540-3340

Court Recorder: Letrice Calloway
United States Bankruptcy Court
211 West Fort Street
21st Floor
Detroit, MI 48226-3211
(313) 234-0068

Transcribed By: Lois Garrett
1290 West Barnes Road
Leslie, MI 49251
(517) 676-5092

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 THE CLERK: All rise. Court is in session. Please
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: Good morning.

4 MR. MONTGOMERY: Good morning.

5 THE COURT: It appears that everyone is here.
6 Before we continue with the trial, Mr. Montgomery, may I have
7 your attention for a moment, please?

8 MR. MONTGOMERY: Yes, sir.

9 THE COURT: As you know, the city has filed a motion
10 to adjourn the preliminary injunction hearing that we had
11 tentatively set for Friday. Is it okay with you if we have a
12 hearing on that motion to adjourn tomorrow morning before the
13 trial?

14 MR. MONTGOMERY: I think that would be fine, your
15 Honor. I think the debtor had proposed that we file
16 objection papers today, and so I believe that is our
17 intention to file --

18 THE COURT: If you feel the need to do that, that's
19 fine. Otherwise we can just have a conversation about it
20 tomorrow morning.

21 MR. MONTGOMERY: In any case, we will be here
22 tomorrow morning, your Honor.

23 THE COURT: All right.

24 MR. MONTGOMERY: Thank you.

25 THE COURT: We'll notice that for hearing then. All

1 right. We will continue with Mr. Orr's testimony.

2 MS. BRIMER: Good morning, your Honor. Lynn M.
3 Brimer appearing on behalf of the Retired Detroit Police
4 Members Association.

5 KEVYN ORR, DEBTOR'S WITNESS, PREVIOUSLY SWORN

6 CROSS-EXAMINATION

7 BY MS. BRIMER:

8 Q Good morning, Mr. Orr.

9 A Good morning, Ms. Brimer.

10 Q Mr. Orr, I'd like to just go back over without
11 duplicating any of the testimony a couple of items just to be
12 sure I have everything clear. When you were present at the
13 January 29 presentation by the Jones Day attorneys, were
14 you -- did you leave the room at any time during the Jones
15 Day presentation?

16 A No.

17 Q During the presentation, did you hear any of the members
18 of the Jones Day team advise the city, the mayor, or the City
19 Council that they had been involved with Treasurer Dillon and
20 other members of the state in connection with the drafting of
21 the consent agreement?

22 A The mayor and the City Council weren't there, no.

23 Q Did they advise anyone on behalf of the city that they
24 had been involved in drafting the consent agreement?

25 A Not that I recall.

1 Q To your knowledge, did they advise anyone on behalf of
2 the city that they had been involved in the redrafting or the
3 drafting of Public Act 436?

4 MR. SHUMAKER: Objection, your Honor. It states --
5 misstates facts not in evidence.

6 THE COURT: Overruled. Please answer the question.

7 THE WITNESS: Not that I recall.

8 BY MS. BRIMER:

9 Q When did you first learn that members of Jones Day had,
10 in fact, been involved with the drafting of the consent
11 agreement, if at all?

12 A I don't know that.

13 Q Okay. You are aware that members of the Jones Day team
14 gave advice to Treasurer Dillon in connection with drafting a
15 law to replace PA 4 in the event PA 4 was repealed; correct?

16 A No.

17 Q I'd like to direct your attention to Exhibit 866. In
18 January of 2013, you were with the bankruptcy department at
19 Jones Day; correct?

20 A Yes.

21 Q And you were in the Washington office?

22 A Yes.

23 Q What office was Mr. Moss in in January of 2013?

24 A Washington.

25 Q We've already talked about this exhibit, and that is you,

1 Kevyn, that is referred to a few paragraphs into the e-mail;
2 correct?

3 A Yes.

4 Q And I believe this e-mail is in evidence. I did not ask
5 you -- it refers to, "Check with Mr. Moss regarding updating
6 our Chapter 9 paper." What Chapter 9 paper, if you know, is
7 Ms. Ball referring to in that paragraph?

8 A I don't recall.

9 Q Are you familiar with a paper that was drafted by members
10 of Jones Day in connection with Chapter 9 and the treatment
11 of pensions?

12 A At this time?

13 Q At any time.

14 A Yes.

15 Q Do you recall the name of that article?

16 A No.

17 MS. BRIMER: Your Honor, may I, just to refresh his
18 memory?

19 THE COURT: Yes. So the question is whether what
20 Ms. Brimer just handed you refreshes your recollection on the
21 name of that article.

22 THE WITNESS: No.

23 BY MS. BRIMER:

24 Q Have you ever seen the article before, Mr. Orr?

25 A I don't think so.

1 Q What office was Mr. Ellman in in January of 2013?

2 A Atlanta.

3 Q Was Mr. Ellman a member of the bankruptcy department at
4 Jones Day?

5 A Business restructuring and reorganization group.

6 Q Is that different than the bankruptcy department, or is
7 that the department you were in as well?

8 A It's the same one I was in. It just has a broader
9 connotation.

10 Q All right. Now, I'd like to refer your attention to
11 Exhibit 860. This is an e-mail from Ms. Ball, and as you'll
12 see, you'll note that you're one of the -- you are a
13 recipient of this. Do you see that?

14 A Yes.

15 Q It's dated 1-28. That's the day before the presentation
16 by Jones Day; is that correct?

17 A Yes, I believe so.

18 Q And do you recall reviewing this e-mail?

19 A I suspect I did.

20 Q You have no reason to believe you didn't review it at the
21 time?

22 A That's correct.

23 Q You'll notice the first sentence, "Just heard from
24 Buckfire." Do you believe that is Ken Buckfire from Miller
25 Buckfire?

1 A Yes. Well, strike that. I'm not sure.

2 Q But it would be a representative of Miller Buckfire?

3 A It could be, yes.

4 Q Could it be anyone else?

5 A I think it would be somebody affiliated with Miller
6 Buckfire.

7 Q And you'll see a little bit further down "questions that
8 Miller Buckfire has drafted for interview." See that?

9 A Yes.

10 Q So the Jones Day team had the interview questions prior
11 to the interview. Is that what we can interpret from this?

12 A I don't know that. You could interpret that.

13 Q Okay. And then you'll see much further down how can the
14 costs, especially legal costs, be controlled, strong advice,
15 not to mention a thousand hours except to say we don't have
16 major learning curve. Do you know what that thousand hours
17 is referring to?

18 A No.

19 Q Is that thousand hours referring perhaps to the thousand
20 hours that members of the Jones Day team already has in this
21 project?

22 A I don't know.

23 Q Did you ever discuss with any of the members of Jones Day
24 what they had done in order to prepare for the presentation?

25 A Yes.

1 Q And what were you advised by the other members of the
2 presentation team regarding the Jones Day preparation for the
3 project?

4 A I get the gist of your question. Nothing regarding
5 anything related to prior orders -- hours. Anything we
6 discussed concerned putting on the presentation.

7 Q Were any other members of the team that made the
8 presentation also in the Washington, D.C., office of Jones
9 Day?

10 A Yes.

11 Q And who was that?

12 A Steve Brogan.

13 Q That's the managing partner?

14 A Yes.

15 Q So your managing partner never discussed with you any of
16 the prior involvement that Jones Day had with the State of
17 Michigan relative to the City of Detroit's finances?

18 A No, not that I recall.

19 Q You indicated you had recused yourself from the Jones Day
20 RFP. Do you recall when you did that?

21 A I believe it was sometime in February.

22 Q Was it early February, late February?

23 A I don't recall a specific date.

24 Q Was it before you submitted your application -- at some
25 point you submitted an application on line for the EM

1 position; is that correct?

2 A Oh, yes. It was before that.

3 Q So do you recall when you submitted that application?

4 A That would have been late February or March.

5 Q Could it have been as early as February 15th?

6 A It might.

7 MS. BRIMER: I'd like to show him something else,
8 your Honor, to refresh his recollection. The date is
9 important to my cross-examination.

10 THE COURT: Refresh his recollection regarding the
11 date?

12 MS. BRIMER: Regarding the date.

13 THE COURT: Yes, you may.

14 BY MS. BRIMER:

15 Q I don't believe that this is in evidence. I'd just like
16 you to take a look at the paragraph in the middle of that
17 first page. Does that refresh your recollection with respect
18 to the date that you submitted your application?

19 A Yes.

20 Q And so what date was that?

21 A That says February --

22 THE COURT: Well, the question is not what the
23 document says. The question is what do you remember after
24 having reviewed the document.

25 THE WITNESS: I thought it was later than this. The

1 document has a date up here, but I'm not sure it's affiliated
2 with this e-mail. It might well be.

3 BY MS. BRIMER:

4 Q So was it about mid-February that you submitted your
5 application on line?

6 A This appears to say so.

7 Q I'd like to direct your attention to Exhibit 865, and
8 this exhibit is in evidence as well. This is an e-mail from
9 Ms. Ball directly to you. Do you see that?

10 A Yes.

11 Q It's dated February 11th --

12 A Yes.

13 Q -- correct?

14 A Yes.

15 Q Do you recall reviewing this e-mail?

16 A I have no independent recollection, but I have no reason
17 to believe that I did not review it.

18 Q So if we could move down -- the third paragraph from the
19 bottom, do you see that paragraph? "Given an alternative, I
20 am not sure that an immediate Chapter 9 is superior. If we
21 can get time, it would be better. The city is not ready for
22 a Chapter 9, hyphen, at least not the one we would like. It
23 would be better to negotiate with creditors and assess city
24 management, et cetera." Do you know who Ms. Ball is
25 referring to when she says "not the one we would like"?

1 A No.

2 Q If you look back up at the parties that this e-mail has
3 been addressed to, is there anyone other than Jones Day --

4 A No.

5 Q -- attorneys on that?

6 A No.

7 Q So other than Jones Day attorneys, you believe that the
8 "we" could have been referring to anyone other than the Jones
9 Day personnel?

10 A It could have been; it could not have been.

11 Q So at least as early as February 11th, the Jones Day
12 attorneys were contemplating and believed a Chapter 9 was
13 appropriate for the City of Detroit; is that correct?

14 A No.

15 Q What do you interpret from this paragraph that Ms. Ball
16 has sent out to the Jones Day attorneys?

17 A It says it might be appropriate, it might be appropriate
18 to negotiate with creditors and assess city management.

19 Q So other than the fact that an immediate -- "I'm not sure
20 an immediate Chapter 9 is superior, at a minimum, not the one
21 we would like," must be referring to Jones Day personnel, is
22 it -- does it not, because there's no one else on the e-mail?

23 MR. SHUMAKER: Objection. Asked and answered.

24 MS. BRIMER: I'll withdraw it.

25 THE COURT: All right. The question is withdrawn.

1 BY MS. BRIMER:

2 Q And we can also interpret this that at least in January
3 11th you're still involved with the Jones Day process;
4 correct? I mean February 11th you're still involved with the
5 Jones Day application for appointment as counsel for the
6 city; correct?

7 A I might have been. I don't recall independently.

8 Q Well, it is directed -- we'll go back up to who this is
9 directed to. It's only directed to you, and the other
10 parties on it are carbon copies, not direct recipients;
11 correct?

12 A Yes.

13 Q So I'd like to direct your attention to Exhibit 8 -- 808.
14 This is a series of e-mails between yourself and the governor
15 and Mr. Baird; correct?

16 A The one in the middle?

17 Q Well, it starts -- if you go to page 2, it starts with an
18 e-mail from --

19 THE COURT: Would you like the paper copy, sir?

20 THE WITNESS: It would be helpful if counselor would
21 like me to read the whole e-mail.

22 MS. BRIMER: I can hand him a paper copy, your
23 Honor.

24 BY MS. BRIMER:

25 Q So it begins with an e-mail from Governor Snyder to you;

1 correct?

2 A Yes.

3 Q And then it continues with some other e-mails between
4 yourself and other representatives of the state, correct,
5 Richard Baird?

6 A Yes. There's e-mails copied to Mr. Baird.

7 Q And the date of the -- then the final e-mail is dated
8 February 15.

9 A Yes.

10 Q It's an e-mail from you to Ms. Ball and other members of
11 the Jones Day team; correct?

12 A Yes.

13 Q So on February 15 at about the time you were applying --
14 submitting your application, you're still keeping the Jones
15 Day team -- in fact, it says, "They're pretty good at keeping
16 me in the loop," so you're still keeping your Jones Day team
17 in the loop on what's going on between yourself and the
18 representatives of the state; is that correct?

19 A Yes. That's what this e-mail says.

20 Q This e-mail was three days after -- if you will recall,
21 three days after the governor had indicated that you were the
22 candidate he intended on supporting; is that correct?

23 A I don't recall that.

24 Q All right. Well, then we can go back to an e-mail we
25 discussed, which is 807. We discussed this e-mail, and I'm

1 trying not to duplicate testimony we've already had, but at a
2 minimum, on February 12th, if you'll scroll down, you'll see
3 that Mr. Baird has indicated to you -- and we discussed this
4 on Friday -- that you were the candidate that the governor
5 intended on supporting. In fact, they were arranging for the
6 church and pastor is the language that Mr. Baird used,
7 correct, on the -- if you --

8 MS. BRIMER: And I'll hand him a hard copy, your
9 Honor.

10 THE COURT: Okay.

11 THE WITNESS: Okay. Thank you. Okay.

12 BY MS. BRIMER:

13 Q So at what point would you have thought it appropriate to
14 withdraw yourself from the Jones Day team that was
15 negotiating and dealing with the city and the state for its
16 engagement after you were already aware that the governor was
17 supporting your application for the appointment as --

18 A I recused --

19 Q -- emergency manager? Okay. Go ahead.

20 A I recused myself at some point during the process. I
21 believe there are two e-mails speaking to that recusal. If
22 you have them to refresh my recollection, that would be
23 helpful. I don't recall the specific date.

24 Q So at what point did you become aware that the Jones Day
25 personnel were interested in filing a Chapter 9 for the City

1 of Detroit?

2 A The documents speak to it and the presentation, but the
3 implication is that they were interested in filing it, and I
4 don't know if that's true. The document you showed me said
5 that we should first negotiate.

6 Q How about if we take a look at Exhibit 853? This is an
7 e-mail the day prior to the Jones Day presentation dated 1-
8 28, 2013. Do you see that?

9 A Yes.

10 Q And it is from Mr. Ellman to various members of the Jones
11 Day team. You're included in that.

12 A Yes.

13 Q You recall reviewing this e-mail, Mr. Orr?

14 A I have no independent recollection, but there's no reason
15 for me to believe I would not have reviewed it.

16 Q So the first paragraph from Mr. Ellman, "The RFP process
17 will inevitably lead to some internal issues about the
18 various certifications and commitments that the city may
19 require and that Jones Day may not want to give," do you know
20 what certifications and commitments Mr. Ellman is referring
21 to?

22 A No.

23 Q Did you ever inquire with Mr. Ellman of the
24 certifications and commitments that he was referring to?

25 A Not that I recall.

1 Q You didn't think it was important prior to giving a
2 presentation for this engagement to understand what
3 commitments and commitments -- what certifications and
4 commitments may cause a problem for Jones Day?

5 A Not prior to the presentation, no.

6 Q Then if you'll look a little further down, there's an e-
7 mail from an Amy Ferber also at Jones Day. It's to various
8 members of Jones Day, including yourself. Do you see that?

9 A Yes.

10 Q I believe Debtwa News we've established is the Detroit
11 bankruptcy -- the Detroit engagement; correct?

12 A I believe so.

13 Q So just in paragraph 1, the last sentence, this is
14 discussing the other -- some of the other firms that would be
15 interviewing, one of them being Foley & Lardner, and they
16 would be taking Ken Klee with them. Mr. Klee this indicates
17 is involved in the Jefferson County bankruptcy, and you'll
18 see the last paragraph. "It should also prove interesting
19 that MB" -- MB must be Miller Buckfire -- "has said that no
20 one wants this bankruptcy to go the way of Jeff County,"
21 Jefferson County, which, of course, Ken is running, so no one
22 wants this bankruptcy. It's already predetermined from this
23 e-mail, isn't it, Mr. Orr, that there will be a bankruptcy
24 for the City of Detroit?

25 A No.

1 Q Then I'll direct your attention down to paragraph 4. "We
2 are to be as detailed as possible in our discussions of
3 specific issues facing the city, OPEB, but avoid pitfalls of
4 alienating the state. If something happens to the city's
5 pensions, state will probably step up to deal with this but
6 thus far has failed to concede this point," so at least as
7 early as January 28th, you were aware and the Jones Day team
8 was aware that covering the unpaid pensions was a possibility
9 from the state; correct?

10 A Was a possibility?

11 Q Yes.

12 A Anything is possible, yes.

13 Q Have you requested that the state cover any shortfall for
14 the pensions as of today?

15 A Not directly, no.

16 Q So based on this e-mail, it's a foregone conclusion as of
17 January 28th that Detroit will be filing a bankruptcy, isn't
18 it?

19 A No.

20 MS. BRIMER: Your Honor, I'd like to move for the
21 admission of this exhibit. It was not one of the stipulated
22 exhibits.

23 THE COURT: What number is that?

24 MS. BRIMER: 853, your Honor.

25 THE COURT: Any objections to 853?

1 MR. SHUMAKER: I believe it's already in evidence,
2 your Honor.

3 THE COURT: Ah, let's just check. It wasn't on the
4 original list. Kelli, do we show it in the meantime? All
5 right. Well, if it hasn't been admitted, we'll admit it now.

6 (Exhibit 853 received at 9:29 a.m.)

7 MS. BRIMER: Thank you, your Honor.

8 BY MS. BRIMER:

9 Q Were you at all involved in the preparation of the RFP by
10 Jones Day?

11 A Yes.

12 Q And what was your involvement?

13 A Generally speaking, reviewing drafts, perhaps preparing
14 comments, things along those lines.

15 Q Do you know when that process took place?

16 A I believe it took place sometime in mid to late January.
17 That was my involvement.

18 Q 809. Well, again, this isn't the e-mail that I had
19 marked as 809.

20 MS. BRIMER: Your Honor, if I may approach the
21 witness. I don't even need this in. I was going to refresh
22 his memory.

23 THE COURT: Okay.

24 BY MS. BRIMER:

25 Q So from that e-mail it's clear that the RFP was not even

1 issued to the firms until February 27th; is that correct?

2 A This e-mail?

3 Q Well, see, that's an e-mail to you.

4 A I think we are talking about different documents.

5 Q A different RFP?

6 MR. SHUMAKER: Objection, your Honor. The issue is
7 whether it refreshed the witness' recollection, I believe.

8 THE WITNESS: Yeah. I have no knowledge of --

9 THE COURT: Don't testify about the content of the
10 document. The only issue is what you remember after having
11 read it.

12 THE WITNESS: Nothing related to this document, your
13 Honor.

14 BY MS. BRIMER:

15 Q Were you involved with the Jones Day RFP that was
16 submitted in early March?

17 A No.

18 Q So to this day you're still unaware that the members of
19 the Jones Day team have been involved with the City of
20 Detroit since March of -- at least March of 2012?

21 A No. I became aware of it as part of this process.

22 Q And when was that?

23 A At some point last week or week before.

24 Q Do you know when Jones Day's engagement agreement with
25 the city was executed?

1 A No.

2 Q Do you know if it was after you were appointed as the
3 emergency manager?

4 A It might have been.

5 MS. BRIMER: I have nothing further, your Honor.

6 MR. PLECHA: Good morning, your Honor. Ryan Plecha
7 on behalf of the Retiree Association parties.

8 CROSS-EXAMINATION

9 BY MR. PLECHA:

10 Q Good morning, Mr. Orr.

11 A Good morning, Mr. Plecha.

12 Q I just have a couple of quick questions for you. Prior
13 to the June 14th proposal for creditors, had you at that
14 point advised retirees that the city intended to cut accrued
15 vested pension rights?

16 A I don't think so.

17 THE COURT: Excuse me, sir. Could you point that
18 microphone more at you? Just turn it. There you go. Thank
19 you.

20 MR. PLECHA: Thank you.

21 BY MR. PLECHA:

22 Q Then isn't it also correct that the retirees would not
23 have had two years to prepare for those cuts?

24 A No.

25 Q It's not true?

1 A No.

2 Q How would the retirees have known that cuts were coming?

3 A Issues regarding pensions and potential reductions were
4 discussed in this city for a number of years prior to my
5 appointment.

6 Q Okay. When do you know or when was the first time you
7 were aware of that?

8 A When I was doing --

9 THE COURT: Excuse me. Is the question when did he
10 become aware of it, or when does he understand they were --
11 that these issues were first discussed?

12 MR. PLECHA: When does he believe they were first
13 discussed? Thank you, your Honor.

14 THE WITNESS: I don't know a specific date, but I
15 know that in doing some research for the position, I recall
16 discussions in late 2011 and 2012 regarding OPEB and
17 pensions.

18 BY MR. PLECHA:

19 Q And did that involve cutting vested pension rights?

20 A I don't recall.

21 Q Okay. You or someone on your staff has requested answers
22 from the union on whether they would represent retirees;
23 correct?

24 A Yes.

25 Q Did anyone on your staff contact the Detroit Retired City

1 Employees Association to ask if they would represent
2 retirees?

3 A I don't know.

4 Q Did you ask anyone on the DRCEA?

5 A Not personally, no.

6 Q Okay. Did you ask the Retired Detroit Police and Fire
7 Fighters Association if they would represent retirees?

8 A Personally?

9 Q Correct.

10 A I don't think so.

11 Q Did anyone on your staff?

12 A I don't know.

13 Q Upon taking office, did you have conversations with City
14 Council members?

15 A Yes.

16 Q Did you ask them if there were any retiree
17 representatives you should speak with?

18 A I don't recall.

19 Q Isn't it true that retiree representatives are entitled
20 under the city charter to attend budget hearings and
21 legislative proceedings of the city?

22 A I believe citizens -- yeah. I believe citizens are
23 entitled to attend those meetings, yes.

24 Q Isn't it true that the DRCEA has been formally invited
25 and participated in budget hearings before City Council?

1 A They may well have.

2 Q Isn't it true that the RDPFFA has been formally invited
3 and participated in budget hearings before the council?

4 A They, too, may well have.

5 Q But you're not aware?

6 A Not with specificity, counsel.

7 Q To your knowledge, is the RDPFFA a plaintiff or co-
8 plaintiff in any of the July 2013 litigation?

9 A I don't recall.

10 Q Do you know if the DRCEA was a plaintiff or co-plaintiff
11 in any of the July 2013 litigation?

12 A I don't recall.

13 Q Did you ask either of those groups if they were going to
14 file a lawsuit?

15 A Not that I recall.

16 Q Then isn't it true that the RDPFFA and the DRCEA were not
17 being litigious?

18 A If they weren't filing suits?

19 Q "Yes" or "no" is okay.

20 A I don't know.

21 Q So how would they be litigious if they weren't filing
22 lawsuits?

23 A They may have been. Sitting here today, I don't know if
24 they joined suits or were involved or if they were working
25 together behind the scenes. I don't know.

1 Q Did you ever ask them?

2 A No, I don't think I have.

3 Q Did anyone on your staff ask them?

4 A I don't know.

5 Q Mr. Orr, you testified that you never turned down a
6 request for a meeting; is that correct?

7 A Me or my staff, yes.

8 Q Okay. Do you recall receiving a letter from Ms. Shirley
9 Lightsey on May 4th requesting a meeting?

10 A No.

11 MR. PLECHA: If we could please show Exhibit 309,
12 which has been admitted into evidence.

13 BY MR. PLECHA:

14 Q Do you recall receiving this letter?

15 A No.

16 Q Do you see that it clearly requests a meeting?

17 A Yes.

18 Q And that meeting never happened?

19 A Not that I recall with me.

20 Q Did you or anyone on your staff schedule a meeting
21 specifically with the DRCEA?

22 A I don't recall.

23 Q And do you see that it says that the DRCEA has been the
24 eyes and ears of the GRS system retirees, now nearly 12,000,
25 since 1960?

1 A I see what it says on the document.

2 Q At any of the meetings you attended relating to
3 restructuring, you testified that you answered all questions;
4 correct?

5 A Yes.

6 Q Did you ask the individuals asking those questions if
7 you, in fact, answered their questions?

8 A I don't recall.

9 Q So it's possible that you responded without actually
10 answering the heart of the question?

11 A I don't know.

12 Q Is it possible?

13 A Anything is possible.

14 Q But you didn't ask them if their answer -- if their
15 questions were answered; correct?

16 A I just said I don't --

17 Q Did you ask them --

18 A I just said I don't recall.

19 Q Okay. Okay. Do you have any agreement with Jones Day to
20 rejoin the firm after your EM term expires?

21 A No.

22 Q Did you have any discussions with Jones Day about
23 rejoining the firm?

24 A No.

25 MR. PLECHA: No further questions.

1 MS. PATEK: Good morning, your Honor. Barbara Patek
2 on behalf of the Detroit public safety unions.

3 CROSS-EXAMINATION

4 BY MS. PATEK:

5 Q Good morning, Mr. Orr.

6 A Good morning, Ms. Patek.

7 Q Mr. Orr, I want to start with the idea of metrics and
8 milestones, which you talked about in your testimony last
9 week. When you became the emergency manager, did you seek
10 out or ask the state, the treasurer, the governor, any
11 representative of the state about establishing milestones or
12 metrics with regard to your going forward as the emergency
13 manager?

14 A In what respect?

15 Q In terms of -- well, you told us last week that, for
16 example, there were certain milestones or metrics that were
17 set forth in past consent agreements with the city that the
18 city did not meet.

19 A Yes.

20 Q Did you make any effort when you became the emergency
21 manager to attempt to negotiate with the state additional
22 milestones and metrics that might have facilitated your
23 performance?

24 A Not that I recall.

25 Q And you were asked by Ms. Brimer with regard to whether

1 you had sought any additional support from the state since
2 becoming appointed emergency manager, and you said not
3 directly. Have you indirectly sought such support from the
4 state? And I want to focus my question on from the time
5 period that you were appointed the emergency manager until
6 the date of the filing of the bankruptcy petition.

7 A Yes.

8 Q And can you tell us what support you've sought and how?

9 A The Belle Isle lease relieves the city of tens if not
10 hundreds of millions of dollars in liability over 30 years.
11 MMSA assisting the city with rolling out the benefit plan
12 relieves the city of several million dollars of obligation.
13 For instance, also having the state assist us with tax
14 collection provides the city with enhanced revenue collection
15 and milestones, things of those nature -- things of that
16 nature, which are operational.

17 Q Have you indirectly or otherwise asked the state for any
18 assistance with the anticipated unfunded pension liability?

19 A You mean cash assistance?

20 Q Yes.

21 A Not directly.

22 Q And what about indirectly?

23 A Not that I recall.

24 Q At the time you took the job as emergency manager for the
25 City of Detroit, you were a very experienced bankruptcy and

1 restructuring professional. Is that fair?

2 A I had practiced in the area of bankruptcy and
3 restructuring for a long period of time, yes.

4 Q And you had extensive experience in Chapter 11 with
5 corporate or business reorganizations?

6 A Yes.

7 Q Did you also have experience with municipal
8 reorganizations either inside or outside of court?

9 A Municipal reorganizations?

10 Q Yes. Municipal restructuring.

11 A Not in the sense that you mean, no.

12 Q You had not before participated as counsel in a Chapter
13 9?

14 A That is correct.

15 Q And you had not, I take it from your testimony,
16 participated in -- on behalf of a municipality in a
17 restructuring or reorganization in an effort to address
18 municipal debt?

19 A I think in my days in Florida I did land use and other
20 types of practices, but I don't think it's the nature of what
21 you're inquiring about.

22 Q And had you ever been involved in a restructuring or
23 insolvency proceeding where public safety was an issue in the
24 case? And so I'm clear, I'm talking about municipal
25 provision of public safety.

1 A Do you mean like police, fire, and EMS --

2 Q Yes.

3 A -- as opposed to public safety at large?

4 Q Yes.

5 A I get the gist of your question. There are cases I'm
6 involved with that certainly had public safety implications,
7 but the nature of your question is of this character, and I
8 think it's fair to say not in the sense that you mean.

9 Q And you have an impressive resume, but I take it you,
10 before your appointment as an emergency manager, never worked
11 as a police officer or a fire fighter?

12 A I never worked as a police officer or fire fighter.

13 Q And I take it upon undertaking your responsibilities as
14 emergency manager, you undertook to educate yourself about
15 the jobs that the police and fire do in the City of Detroit?

16 A Yeah. I'd like to think I had done some of that before
17 becoming emergency manager, but, yes, specifically with
18 regard to police and fire in the City of Detroit.

19 Q And you would agree with me that the ability of the City
20 of Detroit to provide effective public safety services is at
21 the core of what's essential to Detroit's survival?

22 A Yes.

23 Q And would you agree with me that at the time you assumed
24 the role of emergency manager, that the working conditions
25 for fire and police in the City of Detroit were, in fact,

1 deplorable?

2 A The working conditions were substandard.

3 Q Would you agree that at the time you assumed the position
4 of emergency manager, that the police department was, in
5 terms of its ability to provide effective public safety,
6 undermanned?

7 A The reason I'm hesitating, I've seen studies that address
8 deployment, so on and so forth, and whether it's a manpower
9 issue and the number of people that are doing clerical jobs
10 as opposed to the 30 percent that should be on the street, so
11 I don't know how to answer your question. I don't know.

12 Q You don't know the answer to that?

13 A I don't know the answer, no.

14 Q With respect to its ability to provide adequate fire
15 protection for the citizens, businesses, and visitors to the
16 City of Detroit, would you agree that the Detroit Fire
17 Department was, at the time you assumed the position of
18 emergency manager, undermanned?

19 A I would agree that it was substandard, yes.

20 Q And would you agree that one of your most important
21 obligations in the course of this city's restructuring is to
22 ensure that at the end of the day that the City of Detroit
23 has enough qualified, committed, well-trained, and well-
24 equipped police and fire fighters to provide effective public
25 safety for its residents, businesses, and visitors?

1 A Yes.

2 Q At the time you were involved in the Jones Day pitch
3 proposal to the City of Detroit in late January and perhaps
4 into early February of this year, did you have any
5 understanding with regard to whether or not, as a general
6 matter, public safety officers -- that is, police and fire --
7 were participants in the federal Social Security program?

8 A As of the pitch?

9 Q Yes.

10 A I don't recall.

11 Q At the time you assumed the position of emergency manager
12 in March of 2013, did you have an understanding as to whether
13 or not police and fire in the City of Detroit were
14 participants in the federal Social Security program?

15 A I don't recall.

16 Q Do you know whether or not by the time you issued your
17 financial operating plan for the City of Detroit in May of
18 2013 whether you were aware at that time that police and fire
19 fighters for the City of Detroit were not participants in
20 Social Security?

21 A Yes.

22 Q And I take it then certainly at the time of the June 14th
23 proposal you were also aware that they were not participants
24 in Social Security?

25 A Yes.

1 Q And did you also have an understanding that for police or
2 fire fighters hired before March 31st of 1986 those
3 individuals also were not participants or did not have
4 access, at least through their employment with the City of
5 Detroit, to the Medicare program?

6 A No.

7 Q Do you understand that sitting here today?

8 A Yes.

9 Q At the time you took the position of the emergency
10 manager, you indicated that you went back and you looked back
11 at the relationship between the various unions, including
12 public safety unions, and the City of Detroit. Is that fair?

13 A I think I did some of that prior to me becoming emergency
14 manager, but I think your statement is fair.

15 Q So you had reviewed at least what would have been the
16 existing collective bargaining agreements at the time you
17 became the emergency manager?

18 A I don't recall.

19 Q Was it your impression that the city, as of the time that
20 you became the emergency manager, had made great strides
21 under the consent agreement in reducing costs imposed by the
22 active and expired collective bargaining agreements that
23 affected the city's relationship with the various unions?

24 A No.

25 Q Was it your impression that some of the cost savings that

1 the city had achieved prior to your assuming the role of
2 emergency manager had actually been achieved through interest
3 arbitration awards under Act 312?

4 A I think it's fair to say there were cost savings achieved
5 associated with police and fire, but there were also
6 arbitration awards that restored some of those savings.

7 Q You would agree that some of the cost savings, however,
8 that had been achieved had been achieved through the --
9 through Act 312 interest arbitration awards?

10 A Yes, some.

11 Q At the time -- well, strike that. Did you ever review
12 any of the concessionary agreements that had been negotiated
13 between the city and some of the public safety unions prior
14 to your assuming the role of emergency manager?

15 A I don't recall.

16 Q Are you aware sitting here today that such agreements, in
17 fact, existed?

18 A Yes.

19 Q And is it your understanding that those agreements were
20 never, in fact, implemented by the City of Detroit?

21 A To be fair, there are aspects that may have been
22 implemented through CET's and through give-backs of costs,
23 but the agreements in toto I'm unaware of.

24 Q So stated another way, there were, in fact, negotiated
25 agreements that included cost savings that were not made

1 effective or were not implemented in toto; correct?

2 A Yes.

3 Q And instead what happened was the city implemented the
4 aspects of those agreement that the city liked and imposed
5 them on the various unions?

6 A I don't know the city liked or not. I know that the city
7 implemented certain aspects of those agreements.

8 Q And would it be fair to say that those -- they would --
9 well, strike that. You were appointed -- or you assumed the
10 role of emergency financial manager on March 25th, 2013;
11 correct?

12 A Yes.

13 Q And that was three days before Public Act 436 became
14 effective?

15 A Yes.

16 Q And is it true that by virtue of your appointment on
17 March 25th, the city -- well, strike that. Let me withdraw
18 that. Were you or did you become aware of an Act 312 award
19 issued on or about March 25th, 2013, that involved the city
20 and the Detroit Police Officers Association?

21 A Talking about the arbitrator, Mr. Roumell, DPOA award?

22 Q Yes, I am.

23 A Yes. I think I became aware of that on or about the
24 25th.

25 Q And did you review that award?

1 A I don't recall, but I think I did.

2 Q And do you recall -- did you play any role as the
3 emergency manager in any decision to appeal any portion of
4 the -- I'm going to call it the Roumell arbitration award?

5 A I believe I was consulted and advised as to the reasons
6 why, so to that extent, yes.

7 Q Okay. And was it your understanding that the only
8 portion of the Roumell award that was appealed by the City of
9 Detroit was the portion of the award that would have given
10 back to the DPOA's members part of the ten-percent pay cut
11 that had been imposed on them?

12 A Yeah. If you're talking about the five-percent give-
13 back, that's -- there may have been other provisions, but I
14 recall that.

15 Q And is it your understanding that the terms of that Act
16 312 award form now the basis of the contractual relationship
17 between the city and the Detroit Police Officers Association?

18 A Without straying into a legal conclusion, I'm aware that
19 there's an Act 312 award. I'm aware that there's an appeal
20 of the award. I'm aware that it gave back five percent.

21 Q And are you -- do you have an understanding here today as
22 to whether or not that Act 312 award, leaving aside the
23 appeal of the five-percent give-back, governs the
24 relationship between the City of Detroit and the Detroit
25 Police Officers Association and its members as we sit here

1 today?

2 MR. SHUMAKER: Objection, your Honor. Relevance.

3 MS. PATEK: Your Honor, I think it's absolutely
4 relevant. I think the -- I think to date the city has not
5 directly acknowledged that there is a contract between the
6 Detroit Police Officers Association and the city, and it's
7 our position that there is.

8 THE COURT: How is that relevant to eligibility?

9 MS. PATEK: I think it's relevant to eligibility
10 from the standpoint of the city's obligations with respect to
11 negotiating. It's a city's ability to impose terms in that
12 regard.

13 THE COURT: All right. It's arguable. I'll permit
14 it.

15 THE WITNESS: I don't know if it forms a contractual
16 relationship.

17 MS. PATEK: Can I have City's Exhibit 75? And I'm
18 looking at page 13.

19 BY MS. PATEK:

20 Q Mr. Orr, I'm going to ask you to take a look at City
21 Exhibit 75 and look at the first few lines of -- under
22 "Bargaining Unit Overview." And I'm going to ask you if
23 the -- reading that -- well, strike that. This is a document
24 that you authored; correct?

25 A Can we just verify which document you're talking about?

1 This is the report?

2 Q Yes. This is City Exhibit 75 --

3 A The May 12th report.

4 Q -- the financial May -- yes.

5 A Okay. That's the financial and operating plan. Okay.

6 Q And you authored this document?

7 A I and my team authored this document. I didn't write it
8 out longhand.

9 Q And this is the document that you told us was not a
10 plebescite. This is just the fact of the way it is for the
11 City of Detroit as of May 12th, 2013.

12 A Yes. This is the document caught up in that interview
13 and all that statement.

14 Q And --

15 A Can we go back?

16 Q Looking at the first sentence under "Labor Initiatives,
17 Bargaining Unit Overview, and Collective Bargaining Agreement
18 Consolidation," does that refresh your recollection as to
19 whether, in fact, the city had made great strides under the
20 consent agreement in reducing costs imposed by its numerous
21 active and expired collective bargaining agreements?

22 A Yes, for all 48 CBA's.

23 Q And some of those cost savings, as we've already
24 established, included the cost savings received by -- through
25 interest arbitration awards?

1 A Yes. I think we just talked about that.

2 MS. PATEK: Can I have 720? And if we can go to the
3 second page --

4 BY MS. PATEK:

5 Q One of the things that Public Act 436 did was to allow
6 you, at your option, to suspend collective bargaining with
7 the various unions who had collective bargaining
8 relationships with the city; is that right?

9 A Well, here again, without straying into legal
10 conclusions, I think the act does that by itself, but, yes,
11 it suspends collective bargaining for five years.

12 Q You were not -- you could have at your option chose to
13 bargain collectively with the various unions. Is that fair?

14 A I'm not sure.

15 Q Well, and, in fact, you did choose to do so with respect
16 to some of the transportation unions; isn't that right?

17 A No.

18 Q You did not continue to bargain collectively with the --
19 any of the transportation unions?

20 A No. I think I've instructed my team to make it very
21 clear that any discussions or negotiations we are engaged in
22 are not collective bargaining or waiving that provision under
23 the statute.

24 MS. PATEK: I'm going to ask you to flip back to 75
25 for a moment, and I'd like page 14.

1 BY MS. PATEK:

2 Q And if you look at the first sentence, Mr. Orr, when you
3 issued your March 12, 2013, report, was it accurate that the
4 city was currently bargaining with transportation employees
5 covered under Section 13(c) of the Federal Mass Transit Act?

6 A Yes, but they have an exemption from other provisions,
7 which I think we validated at some point prior to this.

8 Q So, in fact, the city was bargaining with the
9 transportation employees?

10 A Transportation is separate under 13(c) of the Federal
11 Transportation Act. They have an exemption which supersedes
12 the state provision of 436.

13 Q Was it your understanding that you could not, even if you
14 wanted or chose to do so, bargain collectively with any of
15 the public safety unions after March 28th, 2013?

16 A I'm not sure. That may draw for -- call for a legal
17 conclusion.

18 Q You don't know one way or the other?

19 A Yeah. I think that's correct. I'd consult counsel.

20 MS. PATEK: We can go back to page 2 of the
21 timeline.

22 BY MS. PATEK:

23 Q Did you at some point in time shortly after your
24 appointment as emergency manager authorize city
25 representatives to file a motion in an effort to block Act

1 312 proceedings that had been filed by, among others, the
2 Detroit Police Command Officers Association and Detroit
3 Police Lieutenants and Sergeants Association?

4 MR. SHUMAKER: Objection, your Honor. Relevance.

5 MS. PATEK: Again, your Honor, this goes to
6 negotiating in good faith. I mean if --

7 THE COURT: I'll permit it. Go ahead.

8 THE WITNESS: Yes, I believe so.

9 BY MS. PATEK:

10 Q And do you know if you were aware at the time you
11 authorized the filing of that motion that the Detroit Police
12 Command Officers Association did not have a collective
13 bargaining agreement with the city?

14 A DPCOA?

15 Q Yes.

16 A I don't recall.

17 Q Were you aware that there were a number of collective
18 bargaining agreements, including the Detroit Police
19 Lieutenants and Sergeants Association's, which was scheduled
20 to expire on June 30th of 2013 at the time you authorized
21 that motion?

22 A I believe a number of CBA's were due to expire on the
23 30th. I don't recall with specificity if DPLSA's was one of
24 them. I have no reason to believe that it was not.

25 Q And are you aware that ultimately there was an order that

1 came out of the Michigan Employee Relations Commission, in
2 fact, on June 14th which blocked those Act 312 proceedings
3 from going forward?

4 A I don't recall the date, but I remember an order.

5 Q You knew before you assumed the role of emergency manager
6 that one of the issues you would have to find a way to
7 address was -- were the pension issues and the legacy costs
8 that faced the City of Detroit?

9 A Yes, I believe so.

10 Q And you certainly knew that that might entail having to
11 address the accrued vested pension rights of Detroit public
12 safety employees?

13 A Yes, I believe so.

14 Q And in terms of your ability to address those issues, you
15 had the benefit of multiple advisors, including Ernst &
16 Young, Conway MacKenzie, Miller Buckfire, Jones Day, Miller
17 Canfield, and the city legal department to help you get your
18 arms around what needed to be done to address those issues?

19 A Yes.

20 Q And all of those various advisors, I take it, assisted
21 you in preparing the first financial operating report that
22 was issued on -- or operating plan that was issued on May 12,
23 2013?

24 A Yes.

25 Q And Public Act 436, in fact, I think you testified

1 earlier, gave you 45 days to put together that financial
2 operating plan; correct?

3 A Yes.

4 Q And with the assistance of those advisors, you needed
5 every bit of those 45 days to do so?

6 A We used 45 days, but there are analyses that were already
7 in the works.

8 Q And we can agree that the financial operating plan was
9 not rolled out early, but it was rolled out in a timely
10 fashion?

11 A Yes. It was rolled out on time.

12 Q And then you had -- I think we've talked about earlier on
13 June 10th you had your first public meeting at Wayne State
14 University to discuss that financial and operating plan?

15 A Yes.

16 Q And your first proposal with respect to what would happen
17 with the accrued vested pension benefits was rolled out four
18 days later on June 14th of 2013, about 75 days or two and a
19 half months after you took office?

20 MR. SHUMAKER: Objection, your Honor. Asked and
21 answered.

22 THE COURT: Sustained.

23 BY MS. PATEK:

24 Q And I don't want to go back over the time line of the
25 various meetings. I want to jump ahead. You know, we've

1 talked about the June 14th meetings, and I believe you
2 testified to some meetings June 20th, July 10th and 11th held
3 with the various unions, including the public safety unions.

4 MS. PATEK: I'd like to bring up -- I think it's
5 704, and this is in evidence.

6 BY MS. PATEK:

7 Q Mr. Orr, have you seen this letter before? It's a letter
8 on Detroit Fire Fighters Association letterhead dated July
9 12th, 2013.

10 A I believe so.

11 Q And wasn't one of your goals in terms of when you rolled
12 out the proposal on June 14th to -- in addition to addressing
13 the legacy costs, to establish some uniformity among the
14 contracts between the city and its various unions?

15 A I think that's fair, yes.

16 Q And this June 12th letter went to Mr. Miller and Mr.
17 Heiman, who were two of the contact people to whom people
18 were directed at the June 14th meeting and at the later
19 benefits meeting?

20 A Yes.

21 Q And if we scroll down to the bottom, this letter came
22 from the presidents of each of the four public safety unions;
23 that is, the fire fighters, the Detroit Police Command
24 Officers Association, the Detroit Police Lieutenants and
25 Sergeants Association, and the Detroit Police Officers

1 Association?

2 A Yes. I see their initials behind their signatures, but I
3 assume there was authority for them to sign it, so the answer
4 is yes.

5 Q And would you agree with me that at this point in time
6 that it may have been beneficial for the city in terms of its
7 effort to get uniform contracts to be able to negotiate with
8 these four public safety unions as a coalition?

9 A It may or may not have been either as a coalition or
10 either individually.

11 Q You don't have an opinion one way or the other?

12 A No.

13 Q Do you know whether or not historically these unions had
14 negotiated individually as opposed to as a coalition with the
15 City of Detroit?

16 A I don't recall.

17 Q And during this letter, the individuals who sent the
18 letter were requesting specific restructuring proposals from
19 the city. Do you see that in the third full paragraph?

20 A Yes. I see what it says.

21 Q And we've covered this earlier. You can agree that while
22 there was a statement that accrued vested pension benefits
23 would have to be significantly impaired, there was no
24 specific proposal as to by how much?

25 A On June 14?

1 Q Yes.

2 A Yes.

3 Q And I take it that would also have been true as of the
4 date of this letter as of July 12th?

5 A I don't recall.

6 Q Do you have any information sitting here today that there
7 was a more specific proposal provided to any of the Detroit
8 Fire Fighters Association, the Detroit Police Command
9 Officers Association, the Detroit Police Lieutenants and
10 Sergeants Association, or the Detroit Police Officers
11 Association as of July 12th, 2013?

12 A Do I have any specific information that more detailed
13 information was provided? Is that your question?

14 Q That specific proposal --

15 A Oh, okay.

16 Q -- a more specific proposal was provided.

17 A I don't recall.

18 Q Do you know whether or not you received a copy of this
19 letter from anyone at or around July 12th, 2013?

20 A I received it at some point. I don't recall if it was at
21 or around the 13th, but somewhere in that time frame.

22 Q Do you know whether or not you, as the emergency manager,
23 played any role in directing the city's response to this
24 communication from the four public safety unions?

25 A There were a lot of discussions about reaching out to the

1 public safety unions, and that may have included this time or
2 later more information, so I don't recall with specificity if
3 it was at or around this time.

4 Q And I want to skip down to the next paragraph in that
5 letter and actually the next two paragraphs. The letter
6 states that the four public safety unions were reviewing and
7 will provide the city with specific proposals, but it would
8 be productive if the city could provide us with its specific
9 proposals on pension benefit restructuring as soon as
10 possible. Do you see that?

11 A Yes.

12 Q This was six days before the city filed its bankruptcy
13 petition; correct?

14 A I believe so.

15 Q Do you know whether or not anybody either from Jones Day
16 or from your office made any effort to contact any of these
17 four individuals with regard to providing them with
18 counterproposals?

19 A I know there were a lot of discussions with certain
20 groups here. I don't know if they were provided with
21 specific proposals.

22 Q I want to jump ahead to Exhibit 705. And we know in
23 terms of our timeline that on July 16th you had already
24 written the governor to ask for authorization to file for
25 Chapter 9 protection; correct?

1 A Yes.

2 Q And have you seen this letter before, that being Exhibit
3 705, which is a July 17th, 2013, letter on Jones Day
4 stationery?

5 A Yes.

6 Q And the letter is addressed to the four presidents of the
7 four Detroit public safety unions, is it not?

8 A Yes.

9 Q And the letter itself does not indicate whether it was
10 transmitted by e-mail, regular mail, or some other means?

11 A That's correct. I don't see it.

12 Q The letter starts out, "Thank you for your letter of July
13 12th, and thank you for further continuing to discuss in good
14 faith the difficult issue of pension restructuring. The
15 office of the emergency manager appreciates your strong
16 cooperation." Do you know if you directly authorized the
17 sending of this letter?

18 A I instructed my team to continue cooperating and reaching
19 out to the various stakeholders. I don't recall if I
20 directly authorized this particular letter.

21 Q Was it your impression and understanding that as of July
22 17th, 2003 (sic), that the four public safety unions were
23 cooperating and, in fact, providing strong cooperation in
24 terms of being willing to discuss and negotiate and address
25 the difficult legacy cost issues that were facing the city?

1 A It was my understanding that there were ongoing
2 discussions without characterizing the level of cooperation.

3 Q You certainly would not have authorized the lawyers at
4 Jones Day to put something that was not true in a letter
5 going out to the public safety officers?

6 A I certainly would hope not.

7 Q Is it your position prior to the filing of the
8 bankruptcy -- well, strike that. As a bankruptcy
9 practitioner, you've been involved in, I take it, many
10 difficult negotiations.

11 A Yes. I think that's fair.

12 Q And we can all agree that -- even those of us who are
13 litigators, that a consensual solution is generally
14 preferable to a litigated solution?

15 A Yes. We can agree with that.

16 Q Because it gives both parties input into and control --
17 at least some control over the outcome?

18 A There are a number of reasons, but those are part of
19 them, yes.

20 Q And it also gives the participating parties some
21 ownership of whatever that decision turns out to be?

22 A There are a number of reasons. Among them may be those
23 reasons as well.

24 Q You are certainly aware of the give and take that's
25 necessary in such negotiations for them to be successful?

1 A Yes.

2 Q And you're also aware that sometimes, especially when the
3 issues are complicated and long-standing, that they can take
4 an extended period of time?

5 A Sometimes they can; sometimes they can't.

6 Q Did you ever consider upon assuming the role of emergency
7 manager at any time prior to the filing of the bankruptcy
8 petition using the opportunity to potentially extend the
9 contracts of the four Detroit public safety unions as a
10 bargaining tool to address the difficult legacy and pension
11 issues facing the city? And that's a "yes" or --

12 A I may have. I don't recall with specificity.

13 Q You elected not to do so, however?

14 A We may have with regard to some of the bargaining units.
15 I just don't recall.

16 Q Did you consider, based upon your prior experience as a
17 bankruptcy practitioner, whether it might chill your ability
18 to negotiate these difficult pension restructuring issues
19 with the public safety employees to tell the unions that you
20 were exercising your right not to bargain collectively with
21 them?

22 A No.

23 Q With respect to -- well, strike that. The June 14th
24 proposal that was put out at the airport, did that proposal
25 contain terms that could be accepted or rejected within the

1 time frame between June 14th and July 18th?

2 A It might have.

3 Q You can't say one way or the other?

4 A No. I'm saying people may have been willing to accept
5 terms in the proposal. It might have.

6 Q Well, there was no -- I think we've already established
7 there was no specific proposal with respect to how the
8 accrued vested pension benefits were going to be impaired by
9 that proposal.

10 A I think that's correct.

11 Q And so even if the public safety unions or one of the
12 other unions had been willing to accept, there really was not
13 a proposal with enough -- let's call it meat on it for them
14 to accept at that time?

15 A I don't know what they would have required to accept, so
16 there might have been.

17 Q Was it your -- well, in terms of the active employees,
18 you certainly understood by the time of the June 14th
19 proposal that for the police and -- active police and fire
20 employees that if their pension benefits were significantly
21 impaired by the restructuring, that they would not have
22 through their employment at the City of Detroit the benefit
23 of falling back on Social Security?

24 A I think that's fair.

25 Q And you also understood -- strike that. Did you have an

1 understanding in terms of the pension restructuring as to how
2 that restructuring would affect their ability to receive duty
3 disability; that is, for police and fire fighters who were
4 disabled as a result of on-the-job injuries, whether and how
5 they would be impacted by the restructuring proposal?

6 A Did I have an understanding when?

7 Q As of June 14th when you made -- when you put the
8 restructuring proposal out at the airport --

9 A Right.

10 Q -- did you have an understanding as to how significant
11 impairments of accrued vested pension benefits would affect
12 disabled police and fire fighters?

13 A I think sometime around this time, I had a general
14 understanding, including disability and physical therapy. I
15 don't recall if it was with the level of specificity you seem
16 to be implying.

17 Q Can you tell me generally what your understanding was?

18 A Well, my understanding was that there would have been
19 impacts to some of their coverage, and we were discussing
20 perhaps ways of addressing that.

21 Q As rolled out, the June 14th proposal did not address
22 those issues, though; correct?

23 A I don't think the proposal itself did.

24 MS. PATEK: I think that's all I have, Mr. Orr.

25 THE WITNESS: Thank you.

1 THE COURT: Any other questions for the witness?

2 All right, sir. You are excused.

3 MR. SHUMAKER: Your Honor, I do have a few redirect
4 if I could.

5 THE COURT: Oh, you do?

6 MR. SHUMAKER: Yes, if I may.

7 THE COURT: I didn't hear you reply.

8 MR. SHUMAKER: I'm sorry. I thought you were asking
9 the objectors.

10 THE COURT: Go for it.

11 MR. SHUMAKER: Sorry about that, your Honor. For
12 the record, Gregory Shumaker of Jones Day for the city.

13 REDIRECT EXAMINATION

14 BY MR. SHUMAKER:

15 Q Good morning, Mr. Orr.

16 A Good morning, Mr. Shumaker.

17 Q I'm going to jump around here a little bit, but I'd like
18 to ask you a few questions about some of the questions you've
19 been asked over the last three days of cross-examination.

20 I'd like to show you Exhibit 418, and I believe Mr. Ullman,
21 if you can recall back that far, asked you a few questions
22 about this document, and this is the Jones Day pitch book;
23 correct?

24 A Yes.

25 Q Mr. Ullman showed you a page where Jones Day discussed

1 filing a Chapter 9 case if one was warranted. Do you recall
2 that?

3 A Yes.

4 Q I want to show you a page that Mr. Ullman did not show
5 you.

6 MR. SHUMAKER: Go to page 13. Thank you. And could
7 you blow up the top there, Laurie?

8 BY MR. SHUMAKER:

9 Q Mr. Orr, you just testified in response to some of Ms.
10 Patek's questions that out-of-court solutions are preferred.
11 Was this -- first of all, was this slide shown to the
12 participants of the January 29th --

13 A Yes.

14 Q -- meeting? And did you agree with this slide when it
15 was shown?

16 A Yes.

17 Q Why would out-of-court solutions be preferred?

18 A For a number of reasons listed here but also because, as
19 I think I testified during my cross with Mr. Ullman, the
20 issues that are being discussed in this deck had been
21 examined by the city over a number of years.

22 Q And the benefits listed are the ones that you're
23 referring to down below?

24 A Yes.

25 Q When you became emergency manager, did you agree that an

1 out-of-court solution was preferable?

2 A Yes.

3 Q Is that what you were aiming for in the months from March
4 25th through July 18th?

5 A Yes.

6 MR. MONTGOMERY: Objection. Leading, your Honor.

7 THE COURT: No. That question is not leading. I'll
8 permit it. Go ahead.

9 THE WITNESS: Yes, your Honor.

10 BY MR. SHUMAKER:

11 Q Mr. Orr, at the bottom of that slide, there's a point
12 that says "extremely difficult to achieve in practice." Do
13 you see that?

14 A Yes.

15 Q Do you have any understanding as to why Jones Day would
16 share that message with the city?

17 A Yes.

18 Q And why is that?

19 A Typically out-of-court solutions require parties to agree
20 to significant concessions in some cases to deal with legacy
21 issues that have been under discussion and under review for a
22 long period of time. Oftentime parties are unwilling for a
23 number of reasons to do that.

24 Q Is there anything in your subsequent experience as
25 emergency manager that has made you believe in any way that

1 Jones Day was wrong in that assessment?

2 A No.

3 Q Mr. DeChiara showed you Exhibit 44.

4 MR. SHUMAKER: If we could put that up, please.

5 BY MR. SHUMAKER:

6 Q And he showed you page 61 of that document.

7 MR. SHUMAKER: If you could blow that up, please.

8 BY MR. SHUMAKER:

9 Q Mr. DeChiara asked you a number of questions and
10 suggested that you had not stuck to the schedule because you
11 had filed on July 18th instead of July 19th. Do you recall
12 that?

13 A Yes.

14 Q He also indicated that someone had started drafting your
15 letter requesting authorization to file a Chapter 9 filing
16 earlier that week or later in the prior week. Do you recall
17 that testimony?

18 A Yes.

19 Q Did you believe that having someone start drafting up
20 your request for authorization was inconsistent with what you
21 had told the June 14 meeting participants?

22 A No, not at all.

23 Q Why was that?

24 A We had said at the meeting that we had to make some very
25 difficult decisions. If we were getting proposals in in the

1 nature of term sheets or agreement in principles, we might
2 extend it for another 30 days, but if we were not within that
3 time frame, that we were going to have to make a hard call.
4 I think I said the same thing at the June 10th meeting for --
5 public meeting and that, in fact, we were not getting
6 progress along those lines within this time frame.

7 Q So you mentioned the fact of possibly having to file a
8 Chapter 9 at both the June 10th and the June 14th meetings?

9 A Yes.

10 Q Were you keeping that fact, that there might have to be a
11 Chapter 9 filing, from those meeting attendees?

12 A No.

13 Q Mr. DeChiara also showed you another document. It was
14 Exhibit 620.

15 MR. SHUMAKER: If you could put that up, please.

16 BY MR. SHUMAKER:

17 Q I'm looking -- he was asking you about the second e-mail
18 down. It starts out "Kevyn."

19 MR. SHUMAKER: Yes. Thank you.

20 BY MR. SHUMAKER:

21 Q And Mr. DeChiara focused your attention on, I believe,
22 the last sentence there. Do you see that? It starts with
23 "if you agree."

24 A Yes.

25 Q Okay. My question is -- and he referred you, if you

1 recall, to the last clause of that sentence that talked
2 about, "Then I think that clearly establishes that you are
3 already behaving as an agent of the state committed to
4 getting Detroit back on track." Do you recall that?

5 A Yes.

6 Q And this e-mail was dated February 22nd, 2013; correct?

7 A Yes. That's what it says.

8 Q On that date, did you believe you were acting as an agent
9 of the state?

10 A No. I believe Mr. Baird was just salesmanship and
11 puffing, no legal conclusion.

12 Q Had you been offered the job of emergency manager at that
13 time?

14 A I don't think so.

15 Q Had you accepted the job of emergency manager at that
16 time?

17 A No.

18 Q Ms. Levine asked you a number of questions. If you
19 recall, she asked you about a note that Ed McNeil had taped
20 to your door. Do you recall that?

21 A Yes.

22 Q And she asked you a series of questions about whether you
23 had any meetings or phone calls with anybody from AFSCME
24 between March 25th and June 13th. Do you recall that?

25 A Yes.

1 Q She even asked you if you'd ever been in the same room
2 with AFSCME officials?

3 A Yes.

4 Q And you couldn't recall; correct?

5 A What are the dates?

6 Q March 25th through June 13th.

7 A Yes.

8 Q You couldn't recall?

9 A I couldn't recall.

10 Q And Ms. Patek just asked you some questions about --
11 related questions about this, but was there anyone on your
12 team responsible for contacting the unions?

13 A Yes.

14 Q Including AFSCME?

15 A Yes.

16 Q Who were those team members?

17 A We had a number. Brian Easley of Jones Day would be
18 involved with the unions as well as Evan Miller. Lamont
19 Satchel had contacts with the unions. In fact, in the second
20 day, I believe AFSCME submitted a new two-year CBA, I think,
21 on the 27th, on the eve of the 28th. There would have been
22 other members of the legal team involved whose names escape
23 me right now.

24 Q I'm sorry. Did you say Mr. Miller?

25 A Yeah, Evan Miller, Brian Easley. Another is Lamont

1 Satchel, who is the city's labor negotiator, and others.

2 Q Do you know whether they ever made any contact with the
3 unions --

4 A I believe so.

5 Q -- during this time frame from March 25th through June
6 13th?

7 A Yes.

8 Q How about with AFSCME?

9 A I believe so.

10 Q Do you know whether they ever met with those officials?

11 A I believe they did, but I don't know with which
12 officials.

13 Q Do you know whether they sent them letters?

14 A Yes.

15 Q Did you instruct the team to contact the unions?

16 A Yes.

17 Q Including AFSCME?

18 A Yes.

19 Q Are you aware of communications between this team that
20 you just described and the unions?

21 A Yes.

22 Q I'd like to refer you to a document that is not in
23 evidence.

24 MR. SHUMAKER: I do not know -- this document is
25 Exhibit 32, your Honor. It's a composite exhibit, and it's a

1 lengthy one. It's about 148 pages. It is the -- provides
2 the underpinnings of Exhibit 32, which has been admitted into
3 evidence. 32 is the big chart.

4 THE COURT: You mentioned 32 twice now.

5 MR. SHUMAKER: Oh, I'm sorry. Did I? 36. I think
6 it's 36.

7 THE COURT: 36 is the one you're talking about?

8 MR. SHUMAKER: Yes, your Honor. Can you put up 36
9 now, please?

10 THE COURT: 36 is admitted.

11 MR. SHUMAKER: Yes, your Honor. And the question --
12 this document is not in evidence now. We'd like to move into
13 evidence. This is not 36. I'm referring to --

14 THE COURT: Which is the one you're moving now?

15 MR. SHUMAKER: Exhibit 32.

16 THE COURT: All right. So you're making that motion
17 now?

18 MR. SHUMAKER: Yes, your Honor.

19 THE COURT: Is there any objection to the admission
20 into evidence of Exhibit 32? All right. It is admitted.

21 (Debtor's Exhibit 32 received at 10:33 a.m.)

22 MR. SHUMAKER: Okay. If you could put up City
23 Exhibit 32.

24 BY MR. SHUMAKER:

25 Q Mr. Orr, do you have the -- could I refer you to the

1 binder of the exhibits that should be right in front of you?

2 A Yes.

3 Q There's a number of pages there, I know. I'd like to
4 direct your attention first, if you will, to the following
5 Bates number. For the record, it's DTM100084885. And for
6 convenience, Mr. Orr, if I could, I'll just refer to the last
7 three numbers of the Bates number from now on if that's okay
8 with you.

9 A Yes. That's fine.

10 Q Mr. Orr, do you see on the next page that you're cc'd on
11 this letter?

12 A Yes.

13 Q Will you take a look at that letter? Do you recognize
14 this letter?

15 A Yes.

16 Q And was it sent at your direction?

17 A Yes. I instructed my team generally to correspond and
18 reach out to all interested parties.

19 Q And who was this letter sent to?

20 A Mr. Garrett, who's president of AFSCME Council 25.

21 Q Now, I'd like you to take a look --

22 MR. SHUMAKER: If you could blow that up, Laurie,
23 just the -- no, just the address.

24 BY MR. SHUMAKER:

25 Q I'm sorry. When you say president of a local, what do

1 you mean by that?

2 A I think he's president of the council for the state,
3 AFSCME's Council 25, which includes the local here in
4 Detroit.

5 Q So this letter was sent to AFSCME on May 20th, 2013?

6 A Yes. That's what it says.

7 Q I ask you to take a look at the next several pages behind
8 this one, specifically to pages 889 through 924. And I know
9 that's a number of pages, but if you could take a look at
10 that, and if you will, I'd like to direct your particular
11 attention to the addressees of those letters.

12 A Yes.

13 Q First of all, could you count the number of letters that
14 I've referred you to, including the one to Mr. Garrett?

15 A One, two, three, four, five, six, seven, eight, nine,
16 ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen,
17 seventeen, eighteen, twenty -- I believe it comes in at
18 twenty.

19 Q And the addressees of those letters, who are they to?

20 A I believe the one to Mr. Garrett, as I said, is the
21 president of the council, and I believe the others are to the
22 presidents of the locals in various units.

23 Q So is it fair to say that your team that was dealing with
24 the unions sent out 20 letters to the presidents of AFSCME
25 locals?

1 A Yes. Well, 19 to the locals and 1 to the council
2 president.

3 Q Now, I'd like to -- do you know whether the unions ever
4 responded to these letters?

5 A I never received a response. I don't know if they
6 responded to someone else.

7 Q Did any of your team members ever share with you that
8 some of those letters had been responded to?

9 A No.

10 Q I'm going to refer you to page 811 through 812.

11 A Yes.

12 Q Are you there, Mr. Orr? Okay. And what's the date of
13 this letter?

14 A May 24th.

15 Q I'd ask you who signed this letter.

16 A Mr. Edward McNeil.

17 Q Is Mr. McNeil the person who taped the message on your
18 door?

19 A Yes, at least to the best of my knowledge. I didn't see
20 him do it.

21 Q I'd like to direct your attention to the first paragraph,
22 if you will. Would you take a look at the second sentence of
23 that paragraph, please, sir?

24 A Yes.

25 Q It says, "Please be advised that in accordance with

1 Michigan law we have no authority in which to renegotiate the
2 pension or medical benefits that members of our union
3 currently receive." Do you see that?

4 A Yes.

5 Q Is this -- was this sentiment shared by Mr. Easley and
6 others on your team that was dealing with the unions to you
7 during this time frame?

8 A Yes. I'd asked them to reach out and see if they would
9 represent retirees as well, and it came back to me that they
10 declined to do so.

11 Q Do you know whether other unions responded in this
12 fashion?

13 A As far as I knew, that was the general response, that no
14 one wanted to represent the retirees at this time.

15 Q Let me direct you to page 790, if you would.

16 A Yes.

17 Q And what is that, Mr. Orr?

18 A This appears to be a May 22nd, 2013, letter to Mr. Brian
19 Easley from John Cunningham, the international representative
20 of UAW Region Number 1.

21 MR. SHUMAKER: I'd ask if you could blow up the
22 first paragraph, please, Laurie.

23 BY MR. SHUMAKER:

24 Q Mr. Orr, could you read the third sentence there?

25 A "These locals do not, however, represent current retirees

1 and have no authority to negotiate on their behalf."

2 Q Is this consistent with the feedback you were receiving
3 from your team dealing with the unions regarding other unions
4 as well?

5 A Yes.

6 Q Your team kept you apprised of its dealings with the
7 unions during this time; is that correct?

8 A Yes, they did.

9 Q Did that include between June 14th and July 18th?

10 A Yes.

11 Q Was the position that's set forth in the UAW letter
12 consistent with what you were hearing from that team during
13 that time?

14 A Yes. I was informed that no one wanted to represent the
15 retirees.

16 Q Did the positions of the unions ever change during that
17 time?

18 A Not that I'm aware of.

19 Q Mr. Orr, Ms. Green asked you a few questions, and she
20 asked you a number of questions regarding your efforts to
21 negotiate with the swap counterparties. Do you recall that?

22 A Yes.

23 Q She referred to the swap transactions as extraordinarily
24 complex. Do you recall that testimony?

25 A Yes, I believe so.

1 Q That was Ms. Green's words.

2 A Yes, I remember.

3 Q My question is why during this time frame -- and I'm
4 focusing now on the June, July time frame -- why were you
5 able to negotiate with the swap counterparties?

6 A Well, I think we were able to negotiate with the swap
7 counterparties because we had laid out sort of the broad
8 sketch of what we needed and the urgency with which we needed
9 it and that the concessions were essential for the city to
10 receive the cash flow that it needed to operate, and also the
11 city was in somewhat of a crisis because starting in mid-June
12 the city would have, at best, on a billion dollar budget
13 about four to \$7 million of free cash and was at some risk of
14 going below the line.

15 Q You were able to reach an agreement with the swap
16 counterparties; correct?

17 A Yes.

18 Q How long did it take you to reach an agreement regarding
19 this extraordinarily complex transaction?

20 A I think it took from the end of May until it was
21 announced on June 14th. I believe we actually reached an
22 agreement in principle on June 12th or 13th.

23 Q Based upon what you were hearing from the team dealing
24 with the unions, did you think you were able to achieve
25 similar results in negotiations with them?

1 A Yes. I thought their issues had been talked about both
2 in the 2012 MOU and the 2012 consent agreement.

3 Q And you negotiated with those unions in the same way that
4 you negotiated with the swap counterparties?

5 A Yes. I thought the issues that we were going to be
6 discussing had been discussed for many years.

7 Q I just have a couple more questions, Mr. Orr.

8 A Um-hmm.

9 Q One is Ms. Green showed you a couple of video clips from
10 the June 10th, 2013, meeting. Do you recall those?

11 A Yes.

12 Q And one of those clips you were quoted as saying
13 something about vested pension rights being sacrosanct, that
14 they couldn't be touched.

15 A Yes.

16 Q Do you recall that?

17 A Yes, I do.

18 Q When you made that statement to the June 10th meeting,
19 what were you attempting to convey with your words?

20 A Despite the implication, I wasn't attempting to mislead
21 anyone. I was simply trying to say we understood that there
22 were these issues regarding pensions. I believe at that time
23 they had been discussed before, but they were going to have
24 to be addressed, and we were going to address them coming on
25 in the following part of the week.

1 Q Were you attempting to mislead that gentleman who asked
2 the question?

3 A No, not at all.

4 Q Were you trying to give him misinformation?

5 A No.

6 Q Ms. Green showed you another video snippet.

7 THE COURT: Excuse me one second. What would you
8 say to that retiree now?

9 THE WITNESS: About what, your Honor?

10 THE COURT: Okay. What would you say to him --

11 THE WITNESS: You know, I mean what I said then
12 or --

13 THE COURT: What would you say to that retiree now
14 about his rights?

15 THE WITNESS: I would say that his rights are in
16 bankruptcy now. I would say that his rights are subject to
17 the supremacy clause of the U.S. Constitution.

18 THE COURT: That's a bit different than sacrosanct,
19 isn't it?

20 THE WITNESS: No. What I was trying to convey, your
21 Honor, without being misleading, is to say that I understood
22 there were these issues, but I also think I said during that
23 meeting that they would have to be resolved by a federal
24 court. I believe I also said at June 14th -- June 14th and
25 June 10th that I had been involved in other cases. I think I

1 said it June 14th, as a matter of fact, and June 10th that I
2 had been involved in other cases where the supremacy clause
3 had been employed in other contexts.

4 BY MR. SHUMAKER:

5 Q Ms. Green showed you another snippet from the June 10th
6 meeting. Do you recall that?

7 A Yes.

8 Q And the one that I'd like to refer you to is that you --
9 she showed the part where you were talking about there being
10 a caveat regarding PA 436 and Chapter 9 being powerful
11 statutes. Do you recall? You said that there was a caveat,
12 and 436 and Chapter 9 were powerful statutes? Do you recall
13 that?

14 A Yeah. I think I said we have a powerful tool in 436,
15 even more powerful one in Chapter 9.

16 Q What I want to show you is what she didn't show you was
17 the lead-up to that statement, if I could --

18 A Um-hmm.

19 Q -- show you that quickly.

20 (Videotape played at 10:46 a.m. as follows:)

21 "MR. ORR: But I need your help because the way I'm
22 trying to do this collaboratively, cooperatively is the way I
23 think is appropriate because, quite frankly, I think the city
24 has suffered through enough errors of strife and pain and
25 anguish and finger pointing and vitriol and bile. To what

1 end? Where's it got us? What have we achieved? What's the
2 end result? More of the same. Now, I'll say that with this
3 caveat."

4 (Videotape concluded at 10:47 a.m.)

5 BY MR. SHUMAKER:

6 Q Was that an important part of the message you were giving
7 to the meeting on June 10th, Mr. Orr?

8 A Yes. I was trying to say it's time for us to put beyond
9 conflict and continued strife and let's try to reach a
10 consensual resolution.

11 MR. SHUMAKER: That's all I have, your Honor. Thank
12 you, Mr. Orr.

13 THE COURT: Any other questions for the witness?

14 MS. LEVINE: Short redirect, your Honor.

15 RECROSS-EXAMINATION

16 BY MS. LEVINE:

17 Q Good morning, Mr. Orr. Sharon Levine, Lowenstein
18 Sandler, for AFSCME.

19 A Good morning, Ms. Levine.

20 Q Very briefly, so Ed McNeil on behalf of the coalition of
21 unions requests a meeting of you on the day you're appointed,
22 which is March 25; correct?

23 A As far as I know, yes.

24 Q And you wait until May 20 to send a response basically
25 asking for meetings which were the exact meetings that Mr.

1 McNeil asked you for on March 25; is that correct?

2 A I don't know if that's correct, Ms. Levine.

3 Q And then on March 24, your counsel just pointed out to
4 you a letter that said that the unions were taking the
5 position that they couldn't negotiate retiree benefits; is
6 that correct?

7 A Yes.

8 Q And you're saying that based upon that letter, you
9 assumed that there was no ability to negotiate with the
10 unions over retiree benefits; is that correct?

11 A No. I don't think it was just on the basis of that
12 letter.

13 Q Well, after that letter, you invited AFSCME along with
14 the other unions to the June 14, June 20, July 10, and July
15 11 meetings; correct?

16 A Yes. I think there were representatives at the June 10th
17 meeting, yes.

18 Q I'm asking if you invited them.

19 A I know we did at the 14th, and I know we did at the other
20 ones. I'm not as sure about the June 10th meeting, but I
21 believe we did.

22 Q Well, you invited them -- would it refresh your
23 recollection as to whether or not you invited them to know
24 that they actually came to those meetings?

25 A Yeah. The only reason -- Ms. Levine, I get your measure,

1 but the only reason I say the June 10th, because it was a
2 public meeting, and we -- it may not have been as formal as
3 the 14th and the other --

4 Q Did you invite them to the June 11 meeting?

5 A Well, I'm finishing. It was a public meeting, and it may
6 not have been as formal as the other ones, but they were
7 generally invited.

8 Q Did you invite them to the June 11 meeting -- sorry --
9 the July 11 meeting?

10 A Okay. I believe so. I don't recall with --

11 Q And that meeting was specifically to discuss pension
12 issues; correct?

13 A I believe so.

14 Q And they attended all four of those meetings; correct?

15 A To the best of my knowledge.

16 Q And they made information requests with regard to the
17 cost savings you were requesting, the benefit changes you
18 were requesting, and the pension changes you were requesting;
19 correct?

20 A I think the information requests were going both ways,
21 but I think information requests were made.

22 Q I'm just asking what AFSCME requested of you, and they
23 requested information of you either through Jones Day or
24 through Miller Buckfire or to you directly with regard to
25 cost savings, benefits, and pensions; correct?

1 A I don't recall if they made any to me directly. I do
2 think they made them to my representatives.

3 Q And they also signed the confidentiality agreement you
4 requested; correct?

5 A The nondisclosure agreement, yes.

6 Q And they were in the data room; correct?

7 A I believe they were in the data room.

8 Q And you provided some information in response to those
9 information requests that were populated into the data room;
10 correct?

11 A Yes, I believe we did.

12 Q But not all of the information that was requested was
13 provided prior to July 18, 2013; correct?

14 A I don't know that.

15 Q I believe you testified that the team to talk to AFSCME
16 were two lawyers from Jones Day and Lamont Satchel; correct?

17 A No. I believe that I recall with specificity Brian
18 Easley, Evan Miller, and Lamont Satchel, and there might have
19 been others.

20 Q Did any of those three or others at any time meet with
21 anybody from AFSCME --

22 A I don't recall.

23 Q -- between March 25 and June 13?

24 A I don't recall.

25 Q Do you recall running into -- do you recall you

1 personally running into Ed McNeil at events in the city at
2 any time between March 25 and July 18?

3 A You asked me about a meeting. Now you're just asking
4 about run-ins?

5 Q You can -- we can do it both ways. First I'm asking if
6 you ran into him at other events, and, second of all, I'll
7 ask you if you ran into him -- if you actually had a meeting
8 with him.

9 A I believe I've run into him in other events from time to
10 time.

11 Q And isn't it true that every time he's seen you during
12 that period of time he asked you to schedule a meeting with
13 AFSCME to discuss these issues?

14 A No. I don't think that's true.

15 Q Did you -- you were starting to talk about the fact that
16 you had a meeting with Ed McNeil. Did you meet one on one
17 with Ed McNeil at any point in time between March 25 and July
18 18?

19 A I don't think so.

20 Q Did you have a meeting with him with others between March
21 25 and July 18th?

22 A I may have, but I don't recall.

23 Q Do you recall whether or not you discussed with him
24 specifically the proposal other than just the presentations
25 made at the four meetings that were public presentation

1 meetings?

2 A I don't think I personally discussed it with him, no.

3 MS. LEVINE: No further questions, your Honor.

4 MR. MONTGOMERY: Your Honor -- excuse me.

5 RECROSS-EXAMINATION

6 BY MR. MONTGOMERY:

7 Q Mr. Orr, Mr. Ullman is not here today, so I have the
8 honor of talking to you. One quick clarification. I believe
9 you just testified in response to a question by Mr. Shumaker
10 that your negotiations with the swap counterparties started
11 in May of 2013; is that correct?

12 A They may have started towards the end of May 2013 or
13 June. I believe I said it could have been May through June,
14 but it was in that time frame.

15 Q Now, isn't it true, sir, that those negotiations began in
16 2012?

17 A Not to my knowledge.

18 Q Isn't that what you told the governor in your letter of
19 recommendation, sir?

20 A Those specific negotiations regarding the swap deal, to
21 my knowledge, the specific ones we're talking about, began in
22 May and June.

23 MR. MONTGOMERY: Could I have Exhibit 409 shown on
24 the screen, specifically page 8? Could you go to the fourth
25 bullet and amplify that for the witness, please?

1 BY MR. MONTGOMERY:

2 Q Now, sir, isn't it true that you told the governor that
3 negotiation with the pension-related swap contracts had been
4 going on since 2012?

5 A Yes, Mr. Montgomery. This document speaks for itself,
6 but the question I was asked was the specific ones regarding
7 the counterparty agreement that's since been reached.

8 Q Now, your Honor -- sir, negotiations had been going on
9 since 2012, not May of 2013; is that not correct?

10 A As I said, the specific ones regarding the deal we
11 eventually reached began sometime in late May and went on
12 until June 12th or 13th. This letter speaks about ongoing
13 negotiations which may have occurred. I was speaking about
14 the specific ones that yielded the agreement we now have.

15 Q And the negotiations which yielded the agreement which
16 you now have, your words, actually commenced in 2012; is that
17 not correct?

18 MR. SHUMAKER: Objection, your Honor. Asked and
19 answered.

20 MR. MONTGOMERY: He did not, in fact, answer the
21 question.

22 THE COURT: No. Overruled. Please answer the
23 question.

24 THE WITNESS: To the best of my knowledge, the
25 negotiations regarding the swap, as this statement has said,

1 have been ongoing since 2012, but --

2 MR. MONTGOMERY: Thank you.

3 THE WITNESS: -- the specific ones related to the
4 agreement were in May to June just like labor negotiations.

5 MR. MONTGOMERY: No further questions, your Honor.

6 MR. PLECHA: Ryan Plecha for the Retiree Association
7 parties.

8 RE-CROSS-EXAMINATION

9 BY MR. PLECHA:

10 Q Mr. Orr, did Mr. Easley or Mr. Miller send letters to the
11 DRCEA or the RDPFFA to request whether they would represent
12 retirees?

13 A I don't recall with specificity. If you have a document
14 to refresh my recollection, I'm happy to look at it.

15 Q All right. The answer is fine. Did you instruct Mr.
16 Miller or Mr. Easley to contact anyone that was not a union
17 to see if they would represent retirees?

18 A Generally we instructed them to reach out to anyone who
19 was willing to represent unions who appeared to have the
20 authority to do so.

21 Q And in your answer I believe I heard you use the word
22 "union." Anyone besides unions?

23 A You got to reach out to all parties, interested parties,
24 is what I said --

25 Q Okay.

1 A -- not just in my testimony, but that's what I said then.

2 Q Okay. Is it not true that the DRCEA informed the city
3 that it was willing to represent general retirees?

4 A I don't recall.

5 MR. PLECHA: Could I have Exhibit 309, please? Just
6 blow up the middle paragraph, please.

7 BY MR. PLECHA:

8 Q Did you receive this letter, Mr. Orr?

9 A I believe so.

10 Q And did you instruct Mr. Easley or Mr. Miller to send a
11 letter to the DRCEA to see if they would represent retirees?

12 A I don't recall.

13 Q Isn't it true that you received -- or that the city was
14 informed that the RDPFFA informed the city that it was
15 willing to represent uniformed retirees?

16 A I don't recall that.

17 Q Isn't it true that neither of the retiree association
18 denied the request to represent retirees?

19 A I don't know. I don't recall receiving a letter. If you
20 have something to refresh my recollection, I'd be happy to
21 see it.

22 Q In all of those letters that Mr. Shumaker had you review
23 the addressees on, did any of those letters come from either
24 retiree association party saying that they did not want to
25 represent retirees?

1 A None of the ones I reviewed today.

2 Q And to your knowledge, are those all of the letters?

3 A I don't know. There are a lot of letters.

4 MR. PLECHA: No further questions.

5 RECROSS-EXAMINATION

6 BY MR. WERTHEIMER:

7 Q Good morning, Mr. Orr.

8 A Good morning.

9 Q I just have a follow-up on a question that Lynn Brimer
10 asked you.

11 MR. WERTHEIMER: Could you put 866 up, please?

12 MR. SHUMAKER: Your Honor, I'm going to object to
13 the extent that this is outside the scope of the redirect.

14 MR. WERTHEIMER: It is, your Honor, and I'd request
15 permission. There was a -- seemed to me an obvious follow-up
16 to a question Ms. Brimer asked.

17 THE COURT: All right. One question I'll permit.

18 MR. WERTHEIMER: Thanks. Could you highlight the
19 paragraph that begins "Kevyn"?

20 BY MR. WERTHEIMER:

21 Q Mr. Orr, did you check in with Dan Moss regarding the
22 Chapter 9 paper that Jones Day was putting together as
23 Corrine Ball suggested you should?

24 A I don't recall, but I have no reason to believe that I
25 did not.

1 Q Is that another way of saying you probably did?

2 A I just don't recall.

3 MR. WERTHEIMER: Okay. Fair enough. Thank you.

4 RECROSS-EXAMINATION

5 BY MS. PATEK:

6 Q Two quick things, Mr. Orr. Barbara Patek again on behalf
7 of the Detroit public safety unions. I believe you told Mr.
8 Shumaker that you negotiated with the unions in the same way
9 that you negotiated with the swap counterparts on his
10 redirect. Is that your testimony?

11 A Generally, that's the gist of it, yes.

12 Q But, in fact, that's not accurate, is it?

13 A Why not?

14 Q Well, in fact, didn't you rely under Public Act 436 on
15 the -- what you talked about as the suspension of your duty
16 to bargain to not engage in the kind of robust hard give-and-
17 take negotiations that presumably occurred with the swap
18 counterparties?

19 A No. I wouldn't agree with that as a characterization of
20 what I said.

21 Q You would not agree with that, that that's -- well,
22 strike that. Are you testifying now that you did engage in
23 give-and-take hard negotiations with the public safety
24 unions?

25 A Ms. Patek, you're using your characterization. When I

1 said that I engaged with the unions in the same way we did
2 with the creditors, it was to mean that we reached out to
3 them. We expected responses, and we would have responded in
4 kind.

5 Q But it was not to suggest that you were engaging in the
6 kind of hard give-and-take negotiations with the unions that
7 you engaged in with the swap counterparts?

8 A I don't know how to answer your characterization.

9 Q I want to talk just for a minute about the supremacy
10 clause because I think you told us that that's -- you told
11 the Court that that was what made -- you know, took
12 sacrosanct sort of out of play once we got into bankruptcy.

13 THE COURT: I think we've had enough testimony
14 regarding the supremacy clause, and besides it's not really
15 within the scope of this trial.

16 MS. PATEK: Okay. Thank you, your Honor.

17 THE COURT: Any other questions? You are excused
18 this time, sir.

19 THE WITNESS: Thank you, your Honor. The young
20 woman --

21 MS. BRIMER: I'll take the compliment.

22 THE WITNESS: Thank you, your Honor.

23 (Witness excused at 11:02 a.m.)

24 THE COURT: And we will take a recess until 11:20,
25 please.

1 THE CLERK: All rise. Court is in recess.

2 (Recess at 11:02 a.m. until 11:20 a.m.)

3 THE CLERK: Court is in session. Please be seated.

4 THE COURT: It appears that everyone is here. Sir.

5 MR. IRWIN: Good morning, your Honor. Geoff Irwin,
6 Jones Day, on behalf of the city. I wanted to advise the
7 Court that that concludes the city's case in chief. We don't
8 intend to call additional witnesses as part of our case in
9 chief. We do reserve the right, of course, to introduce new
10 evidence and call witnesses as part of our rebuttal case, but
11 we'll have that determination after we see the objectors'
12 proofs.

13 I also wanted to advise the Court and come back to
14 something that we had talked about in connection with or at
15 the pretrial conference. The only other exception to the
16 city's case in chief relates to deposition designations. We
17 have been working with objectors pretty cooperatively on
18 this, and we're trying to put something together that would
19 be the easiest for the Court to deal with in that regard. We
20 are designating and counter-designating and talking about a
21 system whereby we would have a single transcript if the Court
22 would like, and it would be color-coded with objections and
23 keyed with testimony from each side. There are also some
24 videotape depositions that I think the objectors would like
25 the Court to consider, and we are, again, working with them

1 to submit those all together. I think we would be in a
2 position to do that shortly, but I just wanted to advise the
3 Court that we are continuing to work on that, and that is
4 part of the city's affirmative case.

5 THE COURT: Thank you. The city rests. Who'd like
6 to call a witness?

7 MR. IRWIN: I'm sorry. I thought Mr. Ruegger was
8 going to address that as well. I have one other --

9 THE COURT: Oh, I'm sorry.

10 MR. IRWIN: -- administrative issue to --

11 MR. RUEGGER: Good morning, your Honor. Arthur
12 Ruegger from Dentons on behalf of the Retiree Committee.
13 Yes. I'd just like to agree with Mr. Irwin's comments. We
14 do have some videotape depositions that we'd like your Honor
15 to review. We can present them in two different formats,
16 though. One is a PowerPoint, which your Honor could review
17 on a computer. Another would be a DVD that obviously you
18 could read on a DVD player. The latter format would take us
19 some hours to prepare, but whatever your Honor --

20 THE COURT: Whatever is easiest for you is fine with
21 me.

22 MR. RUEGGER: Very well, your Honor. We should have
23 the videotapes and the hard copies at least for the
24 depositions that I've discussed with Mr. Irwin ready no later
25 than tomorrow for your Honor.

1 THE COURT: All right.

2 MR. RUEGGER: Thank you.

3 MR. IRWIN: Just one other administrative matter,
4 your Honor. We have been coordinating with objectors in
5 terms of trying to get a preview of their witness lists and
6 estimates, nonbinding, but estimates on their direct
7 examinations and trying to budget accordingly. We are all, I
8 think, looking forward and looking ahead to closing
9 arguments. We don't know entirely when that will happen, but
10 we're all starting to prepare for those. The city -- and
11 we've reached out to objectors yesterday. We were wondering
12 if the Court had direction to the parties in terms of any
13 time limits or allocations of time between and among the
14 parties along the lines of what the Court did at the legal
15 argument stage of the eligibility proceeding, and we would
16 obviously take our direction from the Court in that regard.

17 THE COURT: Frankly, I had decided, in light of the
18 importance of these issues, not to set any specific time
19 limits. Having said that, I will assume counsel will be
20 responsible about this latitude that I am allowing to them,
21 and so that's my conclusion on it. Is it your -- are you
22 trying to tell me that you think there should be time limits?
23 I didn't quite hear that.

24 MR. IRWIN: I'm not -- I am not suggesting that
25 there need be time limits. I'm looking -- we were wondering

1 if the Court was expecting something from us either
2 because --

3 THE COURT: No.

4 MR. IRWIN: -- we should work something out between
5 us or the Court had some expectation that we needed to know
6 about.

7 THE COURT: No, no.

8 MR. IRWIN: All right. Thank you, your Honor.

9 THE COURT: All right. Are we ready to begin the
10 objectors' case now?

11 MR. PLECHA: Good morning, your Honor. Ryan Plecha
12 on behalf of the Retiree Association parties. I would like
13 to call Shirley Lightsey.

14 SHIRLEY LIGHTSEY, OBJECTOR'S WITNESS, SWORN

15 THE COURT: Please sit down.

16 DIRECT EXAMINATION

17 BY MR. PLECHA:

18 Q Good morning, Ms. Lightsey.

19 A Good morning.

20 Q Could you please state your full name for the record?

21 A Shirley Virginia Lightsey.

22 Q And are you retired from employment with the City of
23 Detroit?

24 A Yes.

25 Q Do you currently receive a pension from the City of

1 Detroit?

2 A Yes.

3 Q Do you currently receive healthcare benefits from the
4 City of Detroit?

5 A Yes.

6 Q Would you be negatively impacted if pension benefits were
7 reduced?

8 A Yes.

9 Q Would you be negatively impacted if healthcare benefits
10 were reduced?

11 A Yes.

12 Q Have you already taken financial planning measures to
13 prepare for potential cuts to pension and benefits?

14 A Yes.

15 Q Before you began your work with the city, could you
16 please explain your education after high school?

17 A I went to Wayne State University and eventually graduated
18 from Wayne State University.

19 Q And did you obtain a degree?

20 A Pardon?

21 Q Did you obtain a degree?

22 A Yes.

23 Q And what was that?

24 A Bachelor of Arts in Sociology.

25 Q What was your final position with the City of Detroit?

1 A Was personnel manager, which would now be equated to
2 human resources manager two.

3 THE COURT: Excuse me one second. Would you just
4 push the microphone a bit away from you or sit back a bit
5 from it? That's better. Thank you.

6 BY MR. PLECHA:

7 Q Ms. Lightsey, how long did you work for the city?

8 A Thirty years.

9 Q And what were your job duties as the personnel manager?

10 A I was responsible for the budget of that department,
11 which included several support functions, which would be
12 safety, labor relations, security, payroll, personnel
13 activities, training, and I also had an administrative
14 section that took care of EEOC and Workers' Comp cases.

15 Q And could you briefly describe that budget for me for the
16 Water and Sewerage Department?

17 A Question again?

18 Q What size, approximately, was the budget for the Water
19 and Sewerage Department?

20 A I'm not sure of the total budget for the Water and
21 Sewerage Department. I know we had 3,000 employees, but my
22 budget was a little over three million.

23 Q Okay. While you worked with the city, did you have any
24 positions with any labor organizations?

25 A Yes.

1 Q Okay. What position was that?

2 A I was a steward.

3 Q Okay. Are you familiar with an organization known as the
4 DRCEA?

5 A Yes.

6 Q What does the DRCEA stand for?

7 A Detroit Retired Employees -- DR -- Detroit Retired City
8 Employees Association.

9 Q Okay. Thank you. What is the DRCEA?

10 A It's an organization established in 1960 to -- in my
11 words, we are the eyes and ears of the general systems
12 retirees.

13 Q Okay. And are you a member of the DRCEA?

14 A Yes.

15 Q How long have you been a member?

16 A Approximately 27 years.

17 Q And do you hold a position with the DRCEA?

18 A Yes.

19 Q What position is that?

20 A President.

21 Q How did you obtain that position?

22 A I was elected into the position.

23 Q And how long have you held that position?

24 A Fourteen out of sixteen years.

25 Q Okay. Can you please summarize briefly for the Court

1 your duties as president of the DRCEA?

2 A I'm sorry. I didn't hear the question.

3 Q Could you please summarize your duties as DRCEA
4 president?

5 A I conduct the meetings. I appoint committees every year.
6 I recommend our nominating committee to the full board. I
7 keep the board and the members informed of anything that they
8 may be involved -- that may involve retirees, and I'm sure
9 there's some other duties I just can't remember right now.

10 Q Okay. Ms. Lightsey, is the DRCEA incorporated?

11 A Yes.

12 MR. PLECHA: If I could please have Exhibit 305
13 displayed. This has been admitted into evidence.

14 BY MR. PLECHA:

15 Q Are you familiar with this document, Ms. Lightsey?

16 A Yes.

17 MR. PLECHA: And I believe there is a hard copy of
18 exhibits, if we could also provide that to Ms. Lightsey so
19 she doesn't have to read it off the screen.

20 THE COURT: You can do that, counsel.

21 MR. PLECHA: Thank you.

22 BY MR. PLECHA:

23 Q Ms. Lightsey, could you please read Article 2 for me,
24 please?

25 A I'm sorry. The exhibit number?

1 Q Oh, it's Exhibit 305. I'm sorry.

2 A Yes.

3 Q Could you please read Article 2 for me, please?

4 A "To take appropriate action to promote the pension rights
5 of the retired employees of the City of Detroit and generally
6 to engage in such lawful activities as are determined by the
7 board of directors to promote the best interest of the
8 retired employees of the City of Detroit."

9 Q And is that statement consistent with the DRCEA's current
10 purpose?

11 A Yes.

12 Q Has the association been in continuous existence since
13 its formation?

14 A Pardon?

15 Q Has the DRCEA been in continuous existence since its
16 formation?

17 A Yes.

18 Q Does the DRCEA have by-laws?

19 A Yes.

20 MR. PLECHA: If I could please have Exhibit 303.

21 BY MR. PLECHA:

22 Q Do you recognize this document, Ms. Lightsey?

23 A Yes.

24 Q Are these the current by-laws for the DRCEA?

25 A Yes.

1 MR. PLECHA: If I could please display page 2.

2 THE WITNESS: Page 3?

3 MR. PLECHA: Two.

4 THE WITNESS: Two?

5 BY MR. PLECHA:

6 Q Could you read Article 2 for me, please?

7 A "The Detroit Retired City Employees Association is a
8 service organization existing for the purpose of representing
9 and protecting the interests of the civilian City of Detroit
10 retirees, the spouses or deceased retirees and other
11 beneficiaries of deceased retirees."

12 Q Does this currently state the -- does this accurately
13 state the purpose of the association?

14 A Yes.

15 Q Okay. Is the DRCEA governed by a board of directors?

16 A Yes.

17 Q How often are board meetings conducted?

18 A Once a month.

19 Q How many individuals serve on the board of directors?

20 A Five officers, seventeen board members, and one pension
21 representative.

22 Q Okay. And does the DRCEA board have committees?

23 A Yes.

24 Q Do any of those committees deal with pension or other
25 retiree benefits?

1 A Yes.

2 Q What committee would that be?

3 A For retiree benefits we have the pension. Then we have
4 the medical benefits board -- committee. I'm sorry.

5 Q Okay. And are you aware of any board of directors
6 individuals who have professional experience with the
7 finances of the City of Detroit?

8 A Yes.

9 Q Who would that be?

10 A Gerald Fischer, Tom Sheehan, Pam Scales -- Pamela Scales.
11 I think that's all.

12 Q And could you just very briefly give me a description of
13 what those individuals did for the city?

14 A Well, Gerald Fischer had many positions. He was an
15 appointee. I know he was the assistant director of the
16 Water -- Detroit Water and Sewerage Department. He was also
17 an appointee to the finance or budget departments, and that's
18 about all I can really state. I don't know what his
19 positions or titles were.

20 Q What about Mr. Sheehan?

21 A Mr. Sheehan worked for the finance department and --
22 total of years, but I don't really remember what his title
23 was.

24 Q Okay. What about Ms. Scales?

25 A Ms. Scales worked until the last year or two, and she was

1 the budget director.

2 Q Is that the budget director for the entire city?

3 A Yes.

4 Q Is there any member on the board of directors that has
5 professional experience with the city as it relates to labor
6 relations?

7 A Yes.

8 Q Who would that be?

9 A Barbara Wise Johnson.

10 Q What did Ms. Johnson do?

11 A She was director of labor relations, which included
12 benefits.

13 Q Is there any member on the board of directors who has
14 professional experience with the city as it relates to
15 pensions?

16 A Yes.

17 Q Who would that be?

18 A That would be Tom Sheehan. He was a trustee as an active
19 employee, and he is now a trustee of the retirees.

20 Q Okay. Is there any member on the board of directors who
21 has professional experience with the city as it relates to
22 legal matters?

23 A Yes.

24 Q Who would that be?

25 A Kay Schloff, who was an attorney, and Marian Harper, who

1 was an attorney.

2 Q What did Ms. Schloff do at the city?

3 A She codified the charter.

4 Q Can you please tell me what the DRCEA does for general
5 city retirees?

6 A I don't understand the question.

7 Q Okay. Can you please tell me what the association does
8 for its general city retiree members?

9 A We maintain a watch over benefits and pension issues.

10 Q Do you provide information to general retirees?

11 A Yes.

12 Q Do you advocate for general city retirees?

13 A Yes.

14 Q Do you organize general city retirees?

15 A Organize?

16 Q Hold meetings with them --

17 A Yes.

18 Q -- luncheons?

19 A Yes.

20 Q Do you communicate with general city retirees?

21 A Yes.

22 Q Do you represent general city retirees?

23 A Yes.

24 Q Does the association provide all services to members and
25 nonmember general city retirees?

1 A Yes.

2 Q Okay. Has the DRCEA ever had the occasion to appear
3 before the City Council in budget-related matters?

4 A Yes.

5 MR. PLECHA: If I could, your Honor, I would like to
6 have the Court judicially notice Section 9-601 of the city
7 charter that's entitled "Retirees Representation," which
8 states, "Retired general city employees are entitled to be
9 represented in the city legislative and budgetary proceedings
10 on issues affecting their interest by persons elected by
11 them."

12 THE COURT: Thank you. Any objections?

13 MR. IRWIN: I have no notice of this. If it's being
14 read accurately, I have no objection, your Honor.

15 THE COURT: All right. Well, have a look at it, and
16 at some point when you're ready let me know if you have any
17 objection to this.

18 MR. IRWIN: Thank you, your Honor.

19 BY MR. PLECHA:

20 Q Ms. Lightsey, has the DRCEA been formally invited to
21 those budgetary meetings?

22 A Yes.

23 Q Did the DRCEA, in fact, participate in those meetings?

24 A Yes.

25 Q To your knowledge, did any other group appear at those

1 meetings on behalf of general city retirees?

2 A No.

3 Q At any time, did the DRCEA have an open invitation to
4 appear before City Council?

5 A Yes.

6 Q Did the DRCEA serve on the charter revision commission
7 for the City of Detroit?

8 A Yes.

9 Q Has the DRCEA ever filed a lawsuit against the City of
10 Detroit?

11 A No.

12 Q What about any that it joined with the City Council?

13 A Yes. We did join back in the '90s when council was
14 challenged on their legal rights to do what they were doing.

15 Q Did you file any lawsuits in July 2013?

16 A No.

17 Q Approximately how many members does the DRCEA currently
18 have?

19 A Members? Approximately 70 -- between 76 and 7,800. I
20 don't have the exact number.

21 Q And that's out of approximately how many general --

22 A 12,000.

23 Q Okay. And do your members pay dues?

24 A Yes.

25 Q Is it a voluntary association?

1 A Yes.

2 Q Do the officers and board members serve as volunteers?

3 A Yes.

4 Q Has the DRCEA ever had pamphlets that it would provide to
5 your members and nonmembers to provide information about the
6 DRCEA?

7 A Yes.

8 MR. PLECHA: If I could please have Exhibit 315
9 displayed.

10 BY MR. PLECHA:

11 Q Do you recognize this document, Ms. Lightsey?

12 A Yes.

13 Q If I could have you page -- turn to page 7 -- I'm
14 sorry -- page 5. Could you read the bottom paragraph in the
15 lower right-hand corner? It's on the screen if that's easier
16 for you, Ms. Lightsey.

17 A Pardon?

18 Q It's on the screen if that's easier for you.

19 A "The watchdog for city retirees. DRCEA maintains a year-
20 round watch on the city administration, mayor, City Council,
21 and the General Retirement System board of trustees
22 continually monitoring actions that may affect your pension
23 or retirement benefits."

24 Q Is that statement accurate today for the DRCEA?

25 A Yes.

1 Q Does the DRCEA conduct regular membership meetings?

2 A Yes.

3 Q How often are those meetings held?

4 A We have one annual meeting and schedule any others when
5 needed.

6 Q Does the DRCEA hold special meetings?

7 A Yes.

8 Q Who's invited to those special meetings?

9 A All general retirees.

10 Q And are there regular communications to general retirees?

11 A Yes.

12 Q What type of communications?

13 A We have a newsletter that goes out every three, sometimes
14 four times a year. We have a website. We have e-mails for
15 some of our members.

16 Q What type of information is posted on your website,
17 Ms. Lightsey?

18 A News articles. Every now and then I write a letter to
19 them, coming events, and anything we deem informational for
20 our retirees.

21 Q Is the contact information listed on the website?

22 A Yes.

23 Q Are there benefit resources on the website?

24 A Yes.

25 Q Pension resources?

1 A Pension resources, I'm not sure.

2 Q Links to places that --

3 A Links. We have links, right, to -- yeah.

4 Q Has the DRCEA ever sent out correspondence to all general
5 retirees that requested a return mailing --

6 A Yes.

7 Q -- or a response?

8 A Um-hmm.

9 Q Okay. Could you tell me about that?

10 A Well, recently, the most recent one, we sent out the
11 consent form. We had recommended eight of our members for
12 the -- to the trustees -- to the Justice Department trustees
13 for the Retiree Committee.

14 Q Okay. And did you receive feedback from those
15 communications? Did you receive responses back?

16 A Yes.

17 Q Do you know approximately how many?

18 A There were thousands. I don't know because I wasn't -- I
19 haven't been brought up to date on that.

20 Q Okay. And do you know approximately how long it took to
21 get these thousands of responses back?

22 A I would say the first couple of thousand came in within
23 seven days. After that, I'm -- they came in in batches.

24 Q Okay. How did the general retirees generally communicate
25 to the DRCEA?

1 A I'm sorry. Repeat that.

2 Q How did the general retirees generally communicate to the
3 DRCEA?

4 A By notes, by comments on the cards that we send for
5 renewals, by e-mail, by voicemail, and socially anywhere they
6 can find a DRCEA member to ask questions.

7 Q So they recognize you and stop you in public?

8 A Pardon?

9 Q They recognize you and stop you in public to ask you
10 questions?

11 A I didn't understand that question.

12 Q Do members recognize you and ask you questions as it
13 relates to retiree matters in public?

14 A Our members, yes.

15 Q Does anyone on behalf of the association read those
16 letters that are sent in?

17 A Yes.

18 Q Does the board generally respond to those letters?

19 A We respond to some. Others are just information that
20 they're giving us or comments that they're making that don't
21 require a response.

22 Q Have you received expressions of concern from general
23 retirees regarding their pensions and benefits?

24 A Recently, yes.

25 Q Have any of your members told you that they've already

1 made financial planning changes based on the potential cuts
2 to their pensions?

3 A Yes.

4 MR. IRWIN: Your Honor, I object to the relevance of
5 this line of questioning. I also find the questions fairly
6 leading.

7 MR. PLECHA: I believe they're relevant as ripeness
8 has been contested in this matter, and it goes to the present
9 impact of the proposed cuts that they're already taking
10 measures directly related to those proposed cuts.

11 THE COURT: This is arguable. I'll permit it. Go
12 ahead, sir.

13 BY MR. PLECHA:

14 Q Ms. Lightsey, has any of the members let you know that
15 they've made financial planning changes based on the proposed
16 cuts to pensions?

17 A Yes.

18 Q Okay. I'm going to switch topics a little bit. Did you
19 become aware that Mr. Orr was appointed as the emergency
20 manager for the city?

21 A Yes.

22 Q Have you ever met Mr. Orr?

23 A Yes.

24 Q When did you first meet Mr. Orr?

25 A I attend pension board meetings throughout the year, and

1 Mr. Orr was at a meet-and-greet pension board meeting the end
2 of April. I think it was the last Wednesday in April. I'm
3 not sure. I think that's when it was.

4 Q Do you recall how you were introduced to Mr. Orr?

5 A I was introduced to Mr. Orr as the president of the GRS
6 retirees.

7 Q After meeting Mr. Orr, did you ever contact him?

8 A Only by letter.

9 MR. PLECHA: If I could have Exhibit 309 displayed,
10 please.

11 BY MR. PLECHA:

12 Q Do you recognize this document?

13 A Yes.

14 Q Is this the letter you, in fact, sent to Mr. Orr?

15 A Yes.

16 Q And why did you send this letter to Mr. Orr?

17 A To have a meeting to understand what it was that the
18 retirees were expected to discuss or --

19 Q Did you ever receive a response to this letter?

20 A No.

21 Q Did you ever receive a meeting response for this letter?

22 A No.

23 Q Did you ever receive a letter from the city or its
24 professionals requesting information about who the DRCEA
25 represents?

1 A Yes.

2 Q Did you respond to that letter?

3 A Yes.

4 Q Did you inform them that you were willing to represent
5 retirees?

6 A If that was what was on the letter. I don't remember the
7 questions, but I'd have to see my response. I responded to
8 whatever the questions were.

9 MR. IRWIN: I have a best evidence objection to the
10 witness testifying as to the contents of a letter that is not
11 in evidence and that I'm not aware of.

12 THE COURT: The objection is sustained.

13 BY MR. PLECHA:

14 Q Did you happen to attend a meeting on June 14, 2013?

15 A No.

16 Q Why not?

17 A I wasn't invited.

18 Q Did you ever learn that other retiree associations
19 attended this meeting?

20 A Yes.

21 Q When did you learn this?

22 A I really don't remember. I just remember that I didn't
23 receive an invitation --

24 Q How did you learn this?

25 A -- for the DRCEA. Pardon?

1 Q How did you learn this?

2 A How did I what?

3 Q How did you learn that other associations attended?

4 A Through conversation, and I really don't remember. It
5 wasn't anything official. It was probably through a member
6 or it may have been the news. I don't know. I don't
7 remember.

8 Q Did you attend a meeting on June 20th, 2013?

9 A Yes, I did.

10 Q Was your invitation limited in any way?

11 A It was limited to two people.

12 Q And who attended on behalf of the DRCEA?

13 A Myself and Marian Harper.

14 Q And was this meeting only for retirees?

15 A I'm not sure.

16 Q Was there any attendees on behalf of AFSCME?

17 A Yes.

18 Q The UAW?

19 A Yes.

20 Q The public safety unions?

21 A Not that I recall.

22 Q Who was there on behalf of the city?

23 A Ms. Lennox, Mr. Heiman. I can't think of the other
24 gentleman's name, but there were about five or six that were
25 there that day.

1 Q Was Mr. Orr there?

2 A No.

3 Q Did anyone ask you to present the DRCEA's position at
4 this meeting?

5 A No.

6 Q Were you permitted to submit questions at this meeting?

7 A Yes.

8 Q Did you ask any questions?

9 A No.

10 Q Why not?

11 A Others had asked questions. I didn't see any need to
12 repeat the same questions.

13 Q Were you comfortable with asking retiree-specific
14 questions in this meeting setting?

15 A I'm sorry. I don't understand that.

16 Q Were you comfortable asking retiree-specific questions in
17 this meeting setting?

18 A Not really.

19 Q Was there an opportunity at this meeting to break out in
20 smaller groups to discuss retiree-specific issues?

21 A No.

22 Q Following the June 20th meeting, did you take any actions
23 or communicate with the city?

24 A Yes.

25 Q And who did you communicate with?

1 A Pardon?

2 Q Who did you communicate with?

3 A Mr. Easley.

4 Q Do you recall why you sent a letter to Mr. Easley?

5 A In response to what was, I guess, discussed at the
6 meeting.

7 Q Did you ask him how the DRCEA should proceed?

8 A Yes.

9 Q Did anyone from the city ever respond to your letter?

10 A No.

11 Q Anyone from Jones Day?

12 A No.

13 Q Okay. Did you attend a meeting on July 10th?

14 A Yes.

15 Q Were you invited to this meeting?

16 A Yes.

17 Q Was your invitation limited in any way?

18 A Two people.

19 Q Did anyone ask you to present the DRCEA's position at
20 this meeting?

21 A No.

22 Q Was there an opportunity for you to break out and discuss
23 retiree-specific issues?

24 A No.

25 Q Did you attend a meeting on July 11th?

1 A Yes.

2 Q Were you invited to that meeting?

3 A Yes.

4 Q Was your invitation limited?

5 A Two people.

6 Q Did you ask any questions at this meeting?

7 A Yes.

8 Q What questions did you ask?

9 A I asked if the city proposed to offer vision and dental
10 to retirees in 2014.

11 Q And was your question answered?

12 A Yes.

13 Q Did that answer cause you to do anything following the
14 meeting?

15 A Yes.

16 Q What did it cause you to do?

17 A Inform our board and immediately start to look for vision
18 and eye care possibilities for our members.

19 Q So you started to look for alternatives?

20 A Yes.

21 Q Did you have enough time between July 11th and July 18th
22 to prepare counterproposals as it relates to dental and eye
23 care?

24 A No.

25 Q During the July 11th meeting, did you have the

1 opportunity to break out into smaller groups to discuss
2 retiree-specific issues?

3 A No.

4 Q Following the June 20th meeting, did you take any action
5 as it relates to communicating with Jones Day?

6 A 20th. That was -- yes.

7 Q What did you do?

8 A Four days later on the 24th, I think it was, I sent a
9 request for information.

10 Q Was that ever responded to?

11 A No.

12 Q Did you ever request your attorney send a letter to Jones
13 Day to request a meeting with the DRCEA?

14 A Yes.

15 Q Did the city ever respond?

16 A No.

17 Q In any of your meetings with the city, were there
18 breakout sessions for retirees?

19 A No.

20 Q Did anyone at these meetings ever tell you that they were
21 going to have breakout sessions specific for retirees?

22 A No.

23 Q Did anyone tell you that they intended to create breakout
24 meetings for retirees?

25 A No.

1 Q Prior to July 18, 2013, did the city provide you with a
2 copy of the June 14th proposal to creditors?

3 A No.

4 Q Prior to filing the bankruptcy by the city, did you ever
5 consider general retirees as creditors of the city?

6 A What was the date that you said?

7 Q July 18th before they filed for bankruptcy.

8 A I had heard it enough that we were now looked at as
9 creditors, so that would have been prior to July 18th through
10 the media and other areas.

11 Q Did anyone on behalf of the city at any of these meetings
12 specifically request counterproposals from the DRCEA?

13 A I didn't receive it that way, no.

14 Q Did anyone on behalf of the city say that if
15 counterproposals were not received by July 19th, a Chapter 9
16 case would be filed?

17 A I don't remember hearing that.

18 Q Prior to July 18th, did you have enough information to
19 make counterproposals?

20 A No.

21 Q Has the DRCEA ever advocated for benefit enhancements to
22 retirees that was applied to all general city retirees?

23 A Yes.

24 Q How did the DRCEA do that?

25 A Through the budget process.

1 Q Is that with City Council?

2 A That would be through the mayor first and then the City
3 Council, yes.

4 Q That applied to all general retirees regardless of
5 membership?

6 A Yes.

7 Q In this current bankruptcy case, has the DRCEA ever
8 claimed to be able to legally bind its members?

9 A No.

10 Q Is the DRCEA a collective bargaining unit?

11 A No.

12 Q Following each of the meetings you had with the city, did
13 you discuss those meetings with your board of directors?

14 A Yes.

15 Q Did the city ever provide you with a proposal to take
16 back to the board of the DRCEA as it relates to retiree
17 issues?

18 A No.

19 Q Would the board have been able to accept and consider a
20 proposal?

21 A Yes.

22 Q Could the board have then communicated that information
23 to the general city retirees?

24 A Yes.

25 Q Was negotiation with the DRCEA as it relates to retiree

1 issues possible?

2 A Yes.

3 MR. PLECHA: No further questions.

4 THE COURT: Any cross-examination?

5 MR. IRWIN: Yes, your Honor.

6 CROSS-EXAMINATION

7 BY MR. IRWIN:

8 Q Good morning, Ms. Lightsey.

9 A Good morning.

10 Q I believe I heard you testify that your organization has
11 been around for more than 50 years; is that right?

12 A Yes.

13 Q And you consider yourself and the organization to be
14 advocates of retirees; is that right?

15 A Yes.

16 Q And I think we heard some examples in that regard. I
17 think you talked about how you advocated for enhancements
18 before the City Council. Do you recall that?

19 A Yes.

20 Q And I heard you testify in connection with the articles
21 of incorporation of your organization that your mission is to
22 promote rights of retirees; is that right?

23 A Correct.

24 Q And you've also described the mission of the organization
25 to be a conduit for information. You have the ability to

1 pass along information to your members; is that right?

2 A Yes.

3 Q And you have, in fact, lobbied on behalf of your
4 organization; is that right?

5 A Yes.

6 Q And you've been granted legal standing in courts on
7 behalf of your organization; is that right?

8 A Repeat that again.

9 Q You've been granted legal -- you've been involved in
10 lawsuits, is that right, the organization?

11 A Yes.

12 Q Okay. One of the things that I don't believe you've
13 mentioned yet is whether your organization -- or you haven't
14 mentioned an instance in which the DRCEA has with binding
15 effect negotiated health or pension reductions on behalf of
16 your membership; is that right?

17 A We cannot do binding.

18 Q That's right. The organization doesn't have the
19 authority or the power to enter into any binding agreements
20 with regard to health or pension benefits on behalf of its
21 members; is that right?

22 A Correct.

23 Q Okay. And that was true at all points in time leading up
24 through the bankruptcy filing in this case on July 18th; is
25 that right?

1 A Well, that depends on how far you go back as all time.

2 Q Are you --

3 A Are you going back to 1960, or are you going back to last
4 year?

5 Q I'll go back to information that's within your personal
6 knowledge, so as long as you've been involved with the
7 organization, the organization has not entered into binding
8 agreements to reduce pension or health benefits on behalf of
9 the membership?

10 A No. I can't make that statement because I've been on the
11 board for 27 years, but I can't make that statement. I was
12 not always the president, so I don't remember.

13 Q But you're not -- is it fair to say that you're not aware
14 of a situation in which the organization has entered into a
15 binding agreement to reduce pension or healthcare benefits
16 for its membership?

17 A I'm not aware.

18 Q All right. Let's turn -- Ms. Lightsey, do you recall a
19 point in time in this proceeding when the DRCEA was in
20 receipt of written questions or interrogatories, and it was
21 incumbent upon the organization to respond to those?

22 A I don't remember.

23 Q Okay. Maybe I'll -- we can take a look at them, and it
24 may refresh your recollection.

25 MR. IRWIN: Can we put up Exhibit -- can we put up

1 Exhibit -- city 83, please?

2 BY MR. IRWIN:

3 Q Ms. Lightsey, there's an exhibit on your screen in front
4 of you. Do you see that?

5 A Yes, yes.

6 Q Does this exhibit refresh your recollection at all in
7 terms of questions that were put to the organization that
8 needed to be answered?

9 A Yes.

10 Q Okay. And you personally participated in this exercise;
11 is that right?

12 A I turned this document over to my attorneys.

13 Q Yes, but you also provided and verified the responses
14 that were given to the city; isn't that right?

15 A I would have to see the responses.

16 Q Okay.

17 MR. IRWIN: Well, let's turn to the -- I think it's
18 page 16 of the document, please, and if we could blow up the
19 signature block in the lower right corner.

20 BY MR. IRWIN:

21 Q Ms. Lightsey, is that, in fact, your signature on this
22 document?

23 A Yes, it is.

24 Q Okay. Does that refresh your recollection that you
25 participated in the responses that were delivered in

1 connection with these questions?

2 A Yes. Now I understand your question.

3 Q Okay. And did you review these answers before you signed
4 your name to the end of this document?

5 A I reviewed -- I'm pretty sure I reviewed most of them,
6 yes.

7 Q And that's a fair point. There are questions that relate
8 to a different organization, and there are questions that
9 relate to the DRCEA. It's a combined set of questions and
10 answers; is that right?

11 A Right.

12 Q And you responded on behalf of the DRCEA; is that right?

13 A I would imagine so. I'm not sure. I'd have to look at
14 them again, but I'm pretty sure I did.

15 Q Okay. Well, let's look at some of the specific questions
16 if we could. If you could please turn to --

17 A I'm not reading this well on this screen, so --

18 Q And we're going to -- we're going to publish the pages
19 for you so that you can --

20 A Okay.

21 Q -- follow along. We're going to look at page 8 of the
22 document, which is Interrogatory Number 6. Do you see that,
23 Ms. Lightsey?

24 A Yes.

25 Q We're going to -- we're going to read it, so you can --

1 we can read along together, but the interrogatory to the
2 DRCEA reads as follows, "Identify any person or persons who
3 have knowledge of any agreement entered into by the DRCEA and
4 the City of Detroit in which the DRCEA agreed to reduce,
5 limit, or abridge the health benefits provided by the City of
6 Detroit to existing DRCEA member retirees." Did I read that
7 right?

8 A Yes. Is that --

9 Q This is Number 6, ma'am.

10 A Oh, Number 6. Yes.

11 Q And did you understand -- and this is one of the
12 interrogatories that's directed to the DRCEA, so am I correct
13 in assuming that this was a question and response that you
14 participated in drafting the answer to?

15 A Yes.

16 Q Okay. And the question asks for -- the question asks for
17 the DRCEA to identify anyone who has knowledge of a prior
18 agreement between the DRCEA and the city where health
19 benefits were reduced. You understood that?

20 A Yes.

21 Q Okay. And let's look at the response. The answer
22 below -- there are some objections that are posed in the
23 first couple lines, but if you look about halfway down, the
24 answer reads, "However, without waiving said objections and
25 in the spirit of cooperation, the DRCEA states that it is not

1 aware of any individual with knowledge responsive to this
2 interrogatory." Do you see that?

3 A Yes, I see it.

4 Q All right. And it continues, and it says, "By way of
5 further statement, the purpose of the DRCEA has always been
6 and remains to protect and preserve benefits of retirees, not
7 to reduce such benefits." Do you see that?

8 A Yes.

9 Q And so am I correct in interpreting this response that
10 there has never been, to the best of your knowledge, any
11 agreement between the DRCEA and the city where the DRCEA has
12 agreed to reduce health benefits?

13 A I would imagine not.

14 Q And that has --

15 A Not that I can recall, no.

16 Q And that has never happened?

17 A I can't say that it's never happened. I don't know.

18 Q Best of your knowledge, it has never happened?

19 MR. PLECHA: Objection. Asked and answered.

20 THE COURT: Objection sustained.

21 BY MR. IRWIN:

22 Q And, Ms. Lightsey, let's look at the very next question
23 because it's a little bit different. Do you see Number 7?

24 A Yes.

25 Q Okay. I'm going to read Number 7. "Identify any person

1 or persons who have knowledge of any attempt prior to July
2 19th, 2013, by the DRCEA to obtain any form of legal
3 authority from its members to appoint DRCEA their
4 representative in connection with negotiations" --

5 MR. PLECHA: Objection, your Honor. I think this
6 exceeds the scope of direct.

7 THE COURT: The objection is overruled. Go ahead,
8 sir.

9 BY MR. IRWIN:

10 Q Any form of legal authority from its members to appoint
11 DRCEA their representative in connection with negotiations to
12 reduce, limit, or abridge health benefits provided by the
13 City of Detroit to retirees. Do you see that?

14 A Yes, I see it.

15 Q So it's a similar question, but it's asking if there's
16 ever even been an attempt to get authority from the
17 membership to negotiate to reduce health benefits; is that
18 right?

19 A Right.

20 Q Yes. And let's look at the answer, which is on the next
21 page.

22 MR. IRWIN: I'd like to pull the answer up, please.

23 BY MR. IRWIN:

24 Q And the answer -- I'm skipping to the middle paragraph
25 again, but it's the same answer. However, without waiving

1 said objections and in the spirit of cooperation, the DRCEA
2 states that it is not aware of any individual with knowledge
3 responsive to this interrogatory. Do you see that?

4 A Yes.

5 Q It further states that the purpose of the DRCEA has
6 always been and remains to protect and preserve benefits of
7 retirees, not to reduce such benefits. Do you see that?

8 A Yes.

9 Q So, to your knowledge, never in the history of the DRCEA
10 has it ever sought approval from its membership to reach an
11 agreement to reduce health benefits; is that right?

12 A In the history of the DRCEA?

13 Q Yes, according to this response.

14 A I didn't construe it as meaning the full history of the
15 DRCEA back --

16 Q Well, how about to the history of the --

17 A -- to 1960.

18 Q How about to the history of the DRCEA to your knowledge?

19 A DRCEA, to my knowledge, I could -- I could agree, I
20 guess, on that.

21 Q All right. Now, let's look at one more, which is the
22 next interrogatory. It's Number 8. It's the very next one.
23 Now, we're shifting gears a little bit because this question
24 relates to pension benefits. The two that we were talking
25 about before were health benefits.

1 A Um-hmm.

2 Q So here's Number 8. "Identify any person or persons who
3 have knowledge of any attempt prior to July 19th, 2013, by
4 the DRCEA to obtain any form of legal authority from its
5 members to appoint DRCEA as their representative in
6 connection with DRCEA negotiations to reduce, limit, or
7 abridge pension benefits on a prospective basis only provided
8 by the GRS." Do you see that?

9 MS. LEVINE: Your Honor, objection. Isn't the
10 purpose of the interrogatory to refresh recollection after
11 the witness answers? There hasn't been any --

12 THE COURT: It's not limited to that purpose. The
13 objection, if there was one, is overruled.

14 THE WITNESS: Now, question again.

15 BY MR. IRWIN:

16 Q Did I read that correctly?

17 A You're reading it correctly.

18 Q Okay. And did you understand it to -- did you understand
19 the question to be asking for if, to your knowledge, the
20 organization had ever sought authority from its membership to
21 negotiate to reduce pension benefits?

22 A Not to my knowledge.

23 Q I understand that. You understood -- you understand
24 that's what the question is asking for.

25 A Right.

1 Q Right. Okay. Let's look at the answer. Again, about
2 halfway through the answer -- and this is an answer -- this
3 is a document which you have affixed your signature -- the
4 DRCEA states that it is not aware of any individual with
5 knowledge responsive to this interrogatory. Do you see that?

6 A Yes.

7 Q And so it is your understanding and your testimony that
8 the DRCEA has never even attempted to get authority from its
9 members to reduce pension benefits?

10 A Not that I can recall.

11 Q Right. And, in fact, there's a new -- there's a new
12 sentence here at the end of this response which I would like
13 to direct your attention to, and it says the DRCEA would not
14 take any action to obtain or solicit authority from its
15 members to do something prohibited by the Michigan
16 Constitution. Do you see that?

17 A Yes, I see that.

18 Q Okay. You understand that your attorneys have filed
19 papers in this case, and you understand the position that
20 you've taken in this case is that pension benefits are
21 protected by the Michigan Constitution, do you not?

22 A Yes.

23 Q Okay. And is this sentence in this interrogatory
24 response when it says "something prohibited by the Michigan
25 Constitution," you are referring to the pension protection in

1 the Constitution; right?

2 A Yes.

3 Q Okay. And so what you're saying here is that the DRCEA
4 would not take any action to solicit authority from its
5 membership to reduce pension benefits because they're
6 protected by the Michigan Constitution; is that right?

7 A Yes.

8 Q Okay. And did you make that plain to anyone from the
9 city in connection with any of the meetings you attended?

10 A No.

11 Q You did attend meetings; right?

12 A Yes.

13 Q Yes. I think we heard about some of those on direct.
14 And you did not make any counterproposals to the city either
15 at or after any of the meetings you attended; is that right?

16 A No.

17 Q And that is because you did not have the authority from
18 your membership to make those counterproposals; is that
19 right?

20 A No.

21 Q No, you did not have that authority; right?

22 A No. That's not true.

23 Q Okay. Did you have authority from your members to make a
24 counterproposal to the city at or after any of these meetings
25 to reduce healthcare or pension benefits?

1 A I never understood any of those meetings as being
2 meetings that they were presenting proposals for me to even
3 do what you just asked.

4 Q Okay. But I'm asking a slightly different question. I'm
5 asking whether you had authority from your membership to make
6 a binding counterproposal to either reduce healthcare or
7 pension benefits at the meetings?

8 A I've never had the authority to make a binding, and I've
9 never asked for that from the membership.

10 MR. IRWIN: Okay. Thank you. That's all I have,
11 your Honor.

12 THE COURT: Any more questions for the witness?

13 MR. PLECHA: I have some redirect, your Honor.

14 THE COURT: Yes, sir.

15 REDIRECT EXAMINATION

16 BY MR. PLECHA:

17 Q Ms. Lightsey, has the City of Detroit ever filed Chapter
18 9 bankruptcy before?

19 A No, not that I --

20 THE COURT: Seriously?

21 MR. PLECHA: I think that goes directly to --

22 THE COURT: Ask your next question.

23 MR. PLECHA: Okay.

24 BY MR. PLECHA:

25 Q To your knowledge, Ms. Lightsey, has the city ever

1 requested a reduction in benefits from the DRCEA?

2 A I'm not sure. I can't answer that "yes" or "no."

3 Q So you don't recall if they ever asked the DRCEA to
4 negotiate reductions?

5 A Not that I can recall.

6 Q In all of the meetings you attended before City Council,
7 were you advocating for enhancements to benefits?

8 A Yes.

9 Q So there would be no need to seek authority to reduce
10 benefits in that situation?

11 A No.

12 Q And Mr. Shumaker asked you some questions from the
13 requests for interrogatories, one of which related to the
14 answer addressing the Michigan Constitution or the
15 protections of pensions; correct?

16 A Correct.

17 Q And that was asking for any attempt prior to July 19th;
18 correct?

19 A Correct.

20 Q And that was prior to the filing of the bankruptcy?

21 A Correct.

22 MR. PLECHA: No further questions.

23 THE COURT: Any more questions for the witness? You
24 are excused, ma'am. Thank you very much for your testimony
25 today.

1 THE WITNESS: All right.

2 (Witness excused at 12:16 p.m.)

3 THE COURT: Let's take our lunch break now and
4 reconvene at 1:45, please.

5 THE CLERK: All rise. Court is in recess.

6 (Recess at 12:16 p.m. until 1:45 p.m.)

7 THE CLERK: All rise. Court is in session. Please
8 be seated. Recalling Case Number 13-53846, City of Detroit,
9 Michigan.

10 THE COURT: Sir.

11 MR. MORRIS: Good afternoon, your Honor. Thomas
12 Morris on behalf of the Retiree Association parties. I
13 believe it's our turn to call the next witness, and the
14 Retiree Association parties call Donald Taylor.

15 DONALD TAYLOR, OBJECTOR'S WITNESS, SWORN

16 THE COURT: All right. You may sit down.

17 DIRECT EXAMINATION

18 BY MR. MORRIS:

19 Q Good afternoon, Mr. Taylor. Would you please state your
20 full name for the record?

21 A Donald Taylor.

22 Q Mr. Taylor, you're a retired Detroit police officer; is
23 that correct?

24 A Yes.

25 Q And do you receive a pension from the city?

1 A Yes, I do.

2 Q And post-employment benefits as well; is that correct?

3 A Yes.

4 Q How long did you work for the city?

5 A Twenty-six years.

6 Q And during your employment with the city, did you ever
7 hold a position with any labor organization?

8 A Yes, I did.

9 Q And what position was that?

10 A It was a union steward, chief steward, and executive
11 board member with the Detroit Police Officers Association.

12 Q Are you familiar with an organization known as the
13 RDPFFA?

14 A Yes.

15 Q And what do those initials stand for?

16 A Retired Detroit Police and Fire Fighters Association.

17 Q And what position do you hold with that organization?

18 A President.

19 Q And how long have you been president?

20 A Seven years.

21 Q Were you elected to that position?

22 A Yes.

23 Q And how long have you been a member of the RDPFFA?

24 A Fifteen years.

25 Q Did you hold any prior elected position prior to being

1 president?

2 A Vice president.

3 Q Do you hold any positions with any other organizations at
4 this time?

5 A By virtue of my position as president of the Retired
6 Detroit Police and Fire Fighters Association, I'm also a
7 member of the board of trustees of the C.O.P.S. Trust.
8 That's Coalition of Public Safety. It's an organization that
9 provides healthcare benefits to public safety officers.

10 Q Is that a statewide organization?

11 A Yes.

12 Q Would you please summarize for the Court your duties as
13 president of the association?

14 A Day-to-day operation. We have a full-time office open
15 five days a week, and I manage the day-to-day operations,
16 also conduct the meetings, chair the meetings at our board
17 meetings, general membership meetings. I'm also the
18 representative for the association in hearings with the state
19 or city level and whatever else is necessary in signing,
20 counter-signing checks, things of that nature.

21 Q Is the association governed by a board of directors?

22 A Yes, it is.

23 Q How often are board meetings conducted?

24 A Once a month.

25 Q And how many persons serve on the board?

1 A Right now there's ten.

2 Q Can you tell me, please, when the association was formed?

3 A It was originally formed, I believe, back in the 1950s.
4 At that time, it was an organization of just retired police
5 officers, and in the '70s it merged with fire and became
6 known as the name that it operates under now.

7 Q Would you please take a look at the document that's been
8 labeled as Exhibit 304? I'm sorry. Is there an exhibit book
9 up there for you?

10 A No.

11 THE COURT: On the table there to your right.

12 THE WITNESS: That could be it.

13 MR. MORRIS: Yes, please. Can you display 304,
14 please?

15 THE WITNESS: Okay.

16 BY MR. MORRIS:

17 Q Can you tell me, please, if you can identify this
18 document?

19 A It's the restated by-laws for the association.

20 Q And would you take a look, please, at page 6, page 6 by
21 paper? It's the numbered page 1.

22 A Okay.

23 Q And look at Article II, Section 1, and can you tell me,
24 please -- tell the Court what that states?

25 A It's to provide the members with information concerning

1 the status of pensions, hospitalization, and insurances and
2 to keep the members informed on all matters relative to the
3 best interest of the association and its members.

4 Q And is this stated in the by-laws as the purpose of the
5 organization?

6 A Yes, sir.

7 Q And is that an accurate statement of the association's
8 objectives and purpose, as far as you understand it?

9 A Yes.

10 Q And does the association, in fact, provide its members
11 with information concerning the status of pensions,
12 hospitalization, and insurances?

13 A Yes, it does.

14 Q How does it provide that information?

15 A A number of different ways. Like I mentioned earlier, we
16 have a full-time office where the members have access to the
17 office. We have a website which the information is posted on
18 our website. We regularly send out e-mails. We have 3,000
19 of our members on e-mail. We have regular general monthly
20 membership meetings, and we inform the members at those
21 meetings also.

22 Q Does the association also provide information to
23 nonmember retirees?

24 A Yes.

25 Q And how does it do that?

1 A It's available on our website. Our website is not
2 password protected, and all of our information is displayed
3 on that website. Also, on an annual basis we send out a copy
4 of our monthly Unity magazine to all members, nonmembers and
5 the like, and whenever it's necessary when very important
6 issues come up, we notify by mail all retired police officers
7 and fire fighters, and we've done that on a number of
8 occasions.

9 Q Do you have the capacity to communicate by e-mail as
10 well?

11 A Yes. Like I said, we have about 3,000 members on e-mail.

12 Q And are regular membership meetings conducted?

13 A Yes, once a month.

14 Q Is there information on the website relating to the
15 bankruptcy case?

16 A Yes, there is.

17 Q Do police and fire retirees communicate with the
18 association?

19 A Yes.

20 Q And how do they communicate with the association?

21 A By phone, by e-mail, at the general membership meeting,
22 by letters.

23 Q Have you noticed an increase in the number of letters
24 since the bankruptcy has been filed?

25 A Yes. I think we received around 900 letters in the last

1 couple months from the members.

2 Q And how many members does the association have?

3 A Right around 6,500.

4 Q How many total police and fire retirees are there?

5 A I believe it's right around 8,000.

6 Q Do the members pay dues?

7 A Yes.

8 Q Is membership in the association automatic when you
9 retire from police or fire service?

10 A No. It used to be automatic for the fire fighters
11 because the Fireman's Fund used to provide the first year's
12 membership, but they don't do that. They quit this year.

13 Q Has the association in the past been a party to any
14 lawsuit regarding benefit for police and fire -- benefits for
15 police and fire retirees?

16 A A number of lawsuits.

17 Q Has the association ever been a party to any compromise
18 regarding healthcare benefits?

19 A Yes, they have.

20 Q And can you please tell me about that?

21 A Yeah. The latest would be referred to as the Weiler
22 settlement agreement. I think that was reached in 2009; had
23 to do with reductions in healthcare benefits to retired
24 police officers and fire fighters.

25 Q And did the association participate in that settlement --

1 A Yes, they did.

2 Q -- or that reduction, I should say?

3 A Yes, they did.

4 Q How did that occur?

5 A Once the benefits were changed, we initiated a lawsuit
6 against the City of Detroit, and during the hearings on that,
7 there were some negotiations started to take place with our
8 attorneys and with Judge Torres, and we were able to come up
9 with what we felt was a compromise. And we addressed that to
10 our memberships in advance, and we told the -- advised our
11 attorney to go ahead with the settlement agreement.

12 Q And was that settlement, in fact, implemented?

13 A Yes, it was.

14 Q Has the association ever lobbied the state legislature on
15 behalf of police and fire retirees?

16 A Yeah, on a number of occasions.

17 Q Can you tell me about one of those occasions --

18 A Well, we --

19 Q -- for example?

20 A We had three different pieces of legislation that we
21 assisted in drafting, had to do with the composition of the
22 police and fire pension board in the City of Detroit.

23 Q As president of the association, have you ever been
24 consulted by elected officials to discuss proposed
25 legislation at the state level?

1 A At the state, yes, I have.

2 Q Can you give me an example of that?

3 A Andy Dillon has contacted me as the president of the
4 association to discuss legislation up there, and also the
5 mayor of the City of Detroit contacted me to discuss
6 legislation on the city.

7 Q Have you ever served on a committee regarding benefits
8 legislation?

9 A Yes, I have. When Andy Dillon -- when he was the Speaker
10 of the House -- I think it was about four years ago -- he
11 proposed legislation that would establish a statewide
12 healthcare program for public employees within a committee
13 that he chaired, and there was a breakout committee for
14 retirees, and I was asked to serve on that breakout committee
15 representing retirees.

16 Q Mr. Taylor, are you registered as a lobbying agent?

17 A As a lobbying agent for the retired Detroit Police and
18 Fire Fighters Association.

19 Q Has the association ever expressed a position before the
20 City Council on behalf of retirees?

21 A A number of occasions.

22 Q Was the association involved with the Detroit City
23 Charter Revision Committee --

24 A Yes, it was.

25 Q -- or Commission, I should say?

1 A Commission.

2 Q Was it the Detroit --

3 A Yeah, to revise.

4 Q -- City Charter Revision Commission?

5 A Revise the charter, yes.

6 Q And when was the Charter Revision Commission active?

7 A I believe the election was in 2011, so 2010, 2011.

8 Q What was the purpose of your association participating in
9 the commission?

10 A As the president of the association, I was invited to
11 participate in the portion of the charter revision that
12 referred to the pensions, and I was -- took part in the
13 board, questions from the public and from the board.

14 Q Have you met with state officials on behalf of the
15 association?

16 A Yes, a number of them.

17 Q Did you meet this spring with State Treasurer Dillon?

18 A Yes, I did.

19 Q And did you request that meeting?

20 A Yes, I did.

21 Q Why did you want to meet with Mr. Dillon?

22 A It was shortly after the new emergency manager
23 legislation had been passed, and I notified him that I wanted
24 to meet with him to discuss any possible effect that it could
25 have on retired police officers and fire fighters.

1 Q Did you advise Mr. Dillon of any concern for payment of
2 pensions and benefits?

3 A At that meeting?

4 Q Yes.

5 A Yes. We discussed a number of issues at the meeting.

6 Q Did you ask Mr. Dillon about the effect the legislation
7 might have on police and fire retirees?

8 A Yes. During the discussion, I brought up what proposals
9 or what possible changes that he could see on a number of
10 issues. One of those included the composition of the police
11 and fire retirement board, and he indicated that there may be
12 some changes on that board, but it would not affect retirees'
13 positions. I then asked him if there was anything that he
14 would see as possible changes on the pensions or anything of
15 that nature, and he informed me that there would be no
16 changes because the current retirees' pensions were
17 guaranteed by the state Constitution, but they were looking
18 at possible changes for future retirees on the way in which
19 their pensions may be calculated in the future. And I also
20 asked him about our healthcare settlement, the Weiler
21 settlement agreement, if he's seen any possibility that that
22 would be affected during these hearings, and --

23 Q Did you receive a response to that question?

24 A Yes. He informed me it was the State of Michigan's
25 intention to attempt to set aside that agreement or overturn

1 that agreement.

2 MR. IRWIN: Your Honor, I have an objection to the
3 testimony as hearsay.

4 THE COURT: This was -- these were statements that
5 Mr. Dillon made to you?

6 THE WITNESS: Directly to me, yes, sir.

7 THE COURT: The objection is overruled. You may
8 proceed.

9 BY MR. MORRIS:

10 Q Mr. Taylor, did you become aware this spring of the
11 appointment of Mr. Orr as emergency manager for the City of
12 Detroit?

13 A Yes, I did.

14 Q And following his appointment, did you contact Mr. Orr?

15 A Yes. I sent a letter and requested a meeting.

16 Q Did you receive any response?

17 A Yes, I did. His office contacted me by phone and set up
18 a date for a meeting.

19 Q And did you eventually meet with Mr. Orr?

20 A Yes, I did.

21 Q And do you recall when that meeting occurred?

22 A It was towards the end of April. I think it was April
23 18th.

24 Q And who was at that meeting?

25 A It was the secretary treasurer of our association, Allan

1 Grant; the vice president of our association, Greg Trozack;
2 Mr. Orr; and myself.

3 Q And what was discussed at the meeting?

4 A There was a number of issues. We had a 45-minute
5 meeting, and, first of all, I introduced who we were and what
6 our organization does, and I asked him some of the same
7 questions I had spoke with with Mr. Dillon. I asked him if
8 he seen changes in the composition of the pension board, and
9 he said he hadn't made any decisions on that yet. I asked
10 him if he was -- about the pensions of retirees. He said
11 that he was fully aware that the pensions were protected by
12 the state Constitution, and he had no intention of trying to
13 modify or set aside it or change the state Constitution, and
14 I went on. I asked him if he was familiar with the Weiler
15 settlement agreement. He indicated that he was, and he
16 indicated to me that he was -- assured me that under the
17 Emergency Manager Act, he had no authority to set aside that
18 agreement or modify that agreement. After he made that
19 statement, I told him that I'd had a meeting with Andy
20 Dillon, and Andy Dillon had indicated that the state's
21 intention was to attempt to overturn that settlement
22 agreement. He indicated that he doesn't speak for the state,
23 but that was not his intention, and he had no intention of
24 trying to set aside that agreement.

25 Q Was there any discussion at that meeting about the

1 possibility of having future meetings with Mr. Orr?

2 A Yeah. Following the meeting, Mr. Orr indicated to me as
3 he was just starting to proceed and there was more
4 information that he was gathering, and as the process moved
5 along, he would contact our association for further meetings.

6 Q After this meeting, did you communicate the results to
7 the board of directors of the association?

8 A Yes, I did, and also to the membership. I sent out an e-
9 mail regarding our meeting.

10 Q Was an e-mail sent to the membership?

11 A Yes.

12 Q To the e-mail list?

13 A Yes.

14 Q After your meeting with Mr. Orr, did you receive a
15 communication from the city asking who the association
16 represents?

17 A Yes, I did.

18 Q And did you respond to that?

19 A Yes, I did, that we represent all police and fire
20 retirees.

21 Q After meeting with Mr. Orr, did you hear again from Mr.
22 Dillon's office?

23 A Yes. I received an e-mail from Mr. Dillon's office -- I
24 think it would be towards the end of May, maybe the first
25 part of June -- advising me that I should contact

1 Mr. Buckfire's -- Ken Buckfire and one other member of his
2 team regarding things that may affect police and fire in the
3 bankruptcy proceedings.

4 Q Did you contact Mr. Buckfire?

5 A Yeah. I sent e-mails to Mr. Buckfire, and I don't recall
6 the other representative's name. And I also called
7 Mr. Buckfire by phone and left a message with his secretary.

8 Q Did you receive --

9 A I assume it was his secretary.

10 Q Did you receive a response?

11 A Yes, I did, in both occasions, by e-mail and by phone.

12 Q And what was the response?

13 A Mr. Buckfire indicated to me by phone that they would be
14 in touch and they would be setting up meetings and would get
15 back with me at a later time, and that was pretty much --
16 both e-mails came back from both representatives saying
17 basically the same thing, that they would be in touch and
18 meetings would be set up in the future.

19 Q And were further meetings set up?

20 A Not with our organization.

21 Q But did you attend a meeting on June 14th at the Metro
22 Airport?

23 A Yes, I did.

24 Q And were you invited to attend that meeting?

25 A Yes, I was.

1 Q Who invited the association to attend the meeting?

2 A It was done by e-mail. It was from representatives from
3 Jones Day. I don't recall the name.

4 Q Who attended on behalf of the association?

5 A We were limited to two, and it was the secretary-
6 treasurer, Allan Grant, and myself.

7 Q Do you recall how many persons were in the audience at
8 that meeting?

9 A It was maybe at least a couple hundred.

10 Q Do you know what groups were represented at that meeting?

11 A There was -- pretty much every group was represented
12 there, the active associations, the pension board, the
13 bondholders, every --

14 Q Was the proposal for creditors document that's been
15 referred to circulated at that meeting?

16 A Yes, it was.

17 Q Did you receive a copy?

18 A Yes.

19 Q Did you furnish a copy to the association's attorneys?

20 A Yes, I did.

21 Q At that meeting, were you or other representatives of the
22 association given an opportunity to discuss your position?

23 A No, not to discuss the position.

24 Q Was there an opportunity to submit questions?

25 A You could submit written questions.

1 Q Did you submit a question?

2 A No.

3 Q And was there a reason why you didn't submit a question?

4 A At that point, I had met with the state treasurer and
5 Mr. Orr, and I was under the impression that the members of
6 the Retired Police Officers and Fire Fighters benefits were
7 not at that great a risk at that point, and I was informed
8 that Mr. Orr would notify me and would set up future meetings
9 with our association if it became necessary.

10 Q And following that meeting, did you report back to the
11 board of directors?

12 A Yes.

13 Q Did you attend another meeting on June 20?

14 A Yes.

15 Q And do you recall where that meeting occurred, where that
16 was held?

17 A I think that was the one in the auditorium at City County
18 Building.

19 Q And was there someone that invited you to attend?

20 A Yes, same way, by e-mail.

21 Q And who attended on behalf of the association?

22 A Once again, it was restricted to -- I was -- myself and
23 our attorney, Brian O'Keefe.

24 Q And this -- you said it was restricted. What do you mean
25 by --

1 A We had two positions, yes.

2 Q You were allowed to have two people attend?

3 A Yeah.

4 Q Do you recall how many persons were in the audience?

5 A I'm going to guess 50, 60.

6 Q And what groups were represented?

7 A All the active labor organizations were there, and I
8 think there was probably representatives from the pension
9 board and some that I'm not familiar with who they were, but
10 there was a number of people there.

11 Q Did the city at this meeting tell you what it intended to
12 do with police and fire pensions?

13 A No, they didn't.

14 Q Were you asked your position?

15 A No.

16 Q Did you submit any questions at this meeting?

17 A No.

18 Q And why not?

19 A Once again, I had no reason to submit. I was still under
20 the impression -- I wasn't sure what they were referring to
21 and --

22 Q How many different retiree groups were represented at
23 that meeting?

24 A One.

25 Q Basically two people there on behalf of your association?

1 A Yeah. I was the only retiree and an attorney, as far as
2 I know. There may have been some individual retirees with
3 him, but there was no retiree association.

4 Q Now, did you attend another meeting with the city?

5 A Yes.

6 Q In July?

7 A Yeah.

8 Q Do you recall the date of that meeting?

9 A There was two in a row. I think they were the 10th and
10 11th.

11 Q And were you invited to attend that meeting?

12 A Not initially, no.

13 Q Did you hear about it somewhere?

14 A Yeah. One of our board members is -- he also is a member
15 of the Police Officers Association of Michigan, and he was
16 invited as a representative for the EMS. And once he was
17 invited, he sent me a copy of his e-mail, and once I received
18 his e-mail that these meetings were set up, I contacted the
19 phone number at the bottom of his and asked if we would be
20 allowed to attend to represent the interest of retirees, and
21 I don't recall the name of the person, but they was from
22 Jones Day, and they indicated that they would run it up the
23 chain and get back with me.

24 Q And did you receive a response? Did you receive a --

25 A No. I also forwarded that e-mail to our attorney, and he

1 indicated he also called and requested a meeting, and a few
2 hours later that day he notified me that they were going to
3 give us one position.

4 Q Now, are EMS part of the police and fire?

5 A No.

6 Q Was there also a limit on the number of persons permitted
7 to attend this meeting on behalf of the --

8 A Yeah. Initially it was just going to be one, and then
9 the attorney indicated to me that he called them back, and
10 they were allowed -- I was allowed to bring an attorney.

11 THE COURT: Allowed to bring what, sir?

12 THE WITNESS: The attorney.

13 BY MR. MORRIS:

14 Q And who was in attendance at this meeting? Who was in
15 the audience?

16 A Once again, it was all the public safety unions and
17 different labor organizations and I think probably the
18 pension board and pension trustees, the actuaries, and
19 depends on what you --

20 Q Did the city make a proposal at that meeting with respect
21 to police and fire retirees?

22 A No. Well, which meeting are you referring to?

23 Q July --

24 A I assume the pension meeting was first, right, the
25 pension -- that was the 10th?

1 Q July 10 I'm referring --

2 A Yeah.

3 Q -- to, the first of the two meetings.

4 A Yeah.

5 Q Was there a discussion at this meeting regarding active
6 employees?

7 A Yes. There was a lot of discussion because it was pretty
8 much all active members there with the exception of myself,
9 and there was some discussion over modifications on how their
10 pensions were going to be altered or administered in the
11 future, so most of the meeting geared around the active
12 members.

13 Q Are those issues that concern your association?

14 A No.

15 Q Was there discussion regarding retiree issues?

16 A Not that I recall.

17 Q At this meeting, were you asked your position on any
18 issues?

19 A No.

20 Q Did you have any questions at this meeting?

21 A No.

22 Q Did the city at this meeting state that it intended to
23 reduce or impair police and fire pensions for current
24 retirees?

25 A Not for current retirees.

1 Q Now, you also said there was another meeting --

2 A The next day.

3 Q -- the next day?

4 A Yes.

5 Q And was that -- did that meeting regard --

6 A Healthcare.

7 Q -- healthcare?

8 A Yeah.

9 Q And were you invited to this meeting?

10 A In the same method as the previous one. It was done at
11 the same time.

12 Q Two meetings go together.

13 A Yeah. They were published at the same -- together as
14 joint meetings.

15 Q And was the audience similar to the July 10 meeting?

16 A Yes. There may have been a little -- I'm not sure at the
17 second meeting if the actuaries from the pension board was
18 there or not.

19 Q Did the city at this meeting make a proposal regarding
20 police and fire retirement benefits?

21 A They passed out a -- I guess you could call it a
22 proposal. It was a four-line -- just one paragraph that had
23 four options for healthcare benefits for retirees.

24 Q Like the names of healthcare plans?

25 A There was two options from Blue Cross and two options

1 from HAP.

2 Q Did you ask any questions at this meeting?

3 A Yes. I asked one question regarding whether their
4 intention was to modify or to include those that were covered
5 by the Weiler settlement agreement in this healthcare
6 proposal.

7 Q Did you receive an answer to your question?

8 A Not a direct -- at that point, once I asked that
9 question, the attorney who represented us in the -- Mr.
10 Legghio, Mr. Chris Legghio, was present, and he kind of took
11 over once I brought up the question, and then there was an
12 exchange of legal back and forward between that attorney and
13 the Jones Day attorneys. And they indicated that there was
14 some legal questions regarding whether they would be able to
15 enforce that, and that was still being looked into by the
16 attorneys.

17 Q The attorney you referred to, Mr. Legghio, had he been
18 involved in the Weiler litigation?

19 A Yeah. He was the -- he was the attorney that handled the
20 class action.

21 Q Following this meeting, did you have the opportunity to
22 ask for a separate meeting with the emergency manager's
23 representatives?

24 A Yeah. I don't recall the exact procedure. It was either
25 after that meeting or the previous one. As I was leaving the

1 meeting with our attorney, Brian O'Keefe ran into one of the
2 Jones Day senior attorneys. Once again, I'm not good with
3 names, you know, but we -- they had a brief discussion in the
4 hallway. At that time, I indicated to him that we would like
5 to have a meeting on our own, a breakout meeting just
6 affecting retired Detroit police and fire fighters.

7 Q Did that meeting ever occur?

8 A No. He indicated to our attorney that -- asked that the
9 attorney, you know, put that in writing, forward it to him,
10 and forward the request to him.

11 Q Following this meeting or these meetings on July 10 and
12 July 11, did you meet with any of the other persons in the
13 audience to discuss issues?

14 A Following the meeting? After the second meeting, the
15 active unions, we all met out in the hallway for a short
16 time, you know, right outside the meeting, and then we
17 decided to all go over to the office of the Detroit Police
18 Officers Association and discuss what had just transpired.

19 Q And did you attend that meeting at the --

20 A Yes, I did --

21 Q -- DPOA headquarters?

22 A -- along with our attorney. We all went to the offices
23 of the Detroit Police Officers Association.

24 Q Did you hear testimony previously regarding a letter sent
25 by the public safety unions to the city manager?

1 A Yes.

2 Q Do you recall that letter that was being discussed?

3 A Not at that particular -- what we discussed at that
4 meeting when we all got in, we decided that as a group we
5 would select like a lead organization to represent us as a
6 group and request further meetings, and at that meeting we
7 decided that the lead would be the Detroit Police Officer --
8 the president of the Detroit Police Officers Association, and
9 he asked that we all submit questions to him so that he could
10 forward this information or request on to the city's
11 representatives.

12 Q So is it fair to state that you participated in
13 discussions that led up to a letter being sent?

14 A Yeah. I was involved in a meeting with the Detroit
15 Police Officers Association.

16 Q Did the association -- after the bankruptcy was filed,
17 did the association send out a mailing to police and fire
18 retirees?

19 A Yeah. That's what we considered -- referred to as a
20 consent agreement where we sent letters out to all the
21 retired police officers and fire fighters asking if they
22 wanted to -- us to represent them in the bankruptcy
23 proceedings.

24 Q Was this sent immediately after the bankruptcy was filed?

25 A Yes.

1 Q And who was this sent to?

2 A All retired police officers and fire fighters.

3 Q And what responses were received?

4 A We got back at this point I think a little over 5,300.

5 Q Did you receive any responses from nonmembers?

6 A Yes.

7 Q Did you receive any responses that indicate that the
8 association should not represent the retirees?

9 A Yes, we did.

10 Q How many of those did you receive?

11 A One.

12 Q Did you receive any responses that indicated that the
13 retirees wanted the association to represent the retirees?

14 A Yes, as I said, 5,300, over 5,300.

15 Q Did you receive feedback from police and fire retirees
16 regarding the city's bankruptcy petition?

17 A You're going to have to repeat that.

18 Q Did you receive feedback? Did the association receive
19 feedback from police and fire retirees regarding the city's
20 bankruptcy petition?

21 A Oh, yeah. As I said, we have a full-time office, and the
22 phones have -- basically, like I say, ringing off the hook.
23 We were constantly receiving phone calls, e-mails, and
24 letters asking what's going to happen, are they going to --
25 many times before the first of the month we got calls to ask

1 if they're going to get their pension check, is our pension
2 check still coming, what's going to happen on January 1st.
3 We -- it's hundreds of inquiries.

4 Q Was the board of directors of the association in a
5 position to receive a proposal from the city regarding police
6 and fire retirees?

7 A Yes.

8 Q Was it in a position to consider such a proposal?

9 A Yes.

10 Q Was the board in a position to transmit any such proposal
11 or other information to the membership?

12 A Yes.

13 Q Was the board in a position to transmit that information
14 to the retirees, the police and fire retirees who were not
15 members?

16 A Yes.

17 MR. IRWIN: Objection. This is very leading, your
18 Honor.

19 THE COURT: No. I'll permit this. Go ahead, sir.

20 BY MR. MORRIS:

21 Q Did the city ever make a proposal specifically to police
22 and fire retirees?

23 A No, not that I'm aware of, not to our organization.

24 Q Did you ever inform Mr. Orr that the RDPFFA did not want
25 to represent police and fire retirees?

1 A No.

2 Q Did negotiations occur with the RDPFFA?

3 A No.

4 Q Was it possible for the city to negotiate with the
5 RDPFFA?

6 A Yes.

7 Q Has the uncertainty regarding future pensions -- pension
8 and benefit payments affected your members?

9 A Yes.

10 Q Has it affected you personally?

11 A Yes. Everything affects everybody. You're not sure
12 what's going to happen, whether on January 1st -- my personal
13 thing, my daughter has asked me to loan her money for a down-
14 payment on a house, and I told her we're going to have to
15 wait a few months, see what happens. My car currently has
16 250,000 miles on it. It's still running, but it's got 250,
17 so I'm holding off any big expenditures until I get a better
18 picture of what's going to -- the future is going to hold.

19 MR. MORRIS: Thank you, Mr. Taylor. I have no
20 further questions.

21 CROSS-EXAMINATION

22 BY MR. IRWIN:

23 Q Good afternoon, Mr. Taylor.

24 A Good afternoon.

25 Q I just want to revisit briefly something that you

1 described in connection with your background and the
2 background of the organization, the --

3 A Okay.

4 Q -- RDPFFA. We saw earlier in connection with the by-laws
5 of the organization that there are actually two missions, if
6 you will, for the organization. One was to provide
7 information. Do you recall that?

8 A Yes.

9 Q And the other was to promote goodwill among the
10 membership; is that right?

11 A Yes.

12 Q And did the organization start or did it have roots as a
13 social organization of some sort?

14 A Oh, yes. Yes.

15 Q And it was formed over 50 years ago?

16 A Yes.

17 Q And you consider the organization to be advocates for the
18 membership; is that right?

19 A Yeah, advocates for all retired police officers and fire
20 fighters.

21 Q Correct. And I believe that you have indicated that the
22 organization has been involved in lawsuits before; is that
23 right?

24 A Yes.

25 Q And is it a true statement that the only time that the

1 organization has been able to bind the members in connection
2 with a reduction in benefits has been by court order or by
3 consent of all the retirees; is that right?

4 A Yeah. It was either by court order or consent. There
5 was a time when we used consent on the 13th check agreement.

6 Q And in connection with the settlement agreement that you
7 were talking about, that was done with the consent of the
8 members; is that right?

9 A Yes.

10 Q And -- well, I'll return to that in just a moment. The
11 Weiler settlement agreement that you were talking about
12 previously, do you recall that --

13 A Yes.

14 Q -- testimony? And that was a topic that had actually
15 come up at a number of the meetings that you had with the
16 city; is that right?

17 A Yes, with the city and the state.

18 Q And I think you mentioned that at your first meeting with
19 Mr. Orr -- I think you said that was late April; is that
20 right?

21 A Yes. April 18th I think was the date.

22 Q And you said that that was -- that particular consent
23 decree was important enough to you that you wanted to make
24 sure that there was some discussion about that at the
25 meeting; is that right?

1 A Yes.

2 Q Okay. Did you at that meeting indicate to Mr. Orr that
3 you had any authority from the membership of the organization
4 to renegotiate the Weiler consent decree?

5 A No. I wouldn't seek that in advance. Why would I seek
6 that in advance?

7 Q Did you ever -- did you ever in the -- did you ever,
8 prior to the time that the bankruptcy was filed, seek
9 authority from the membership of your organization to reduce
10 the benefits that were memorialized in the Weiler consent
11 decree?

12 A No. I don't see that as part of the negotiating process.
13 I was a member of the Detroit Police Officers Association
14 from 20 years as an executive there, and we never sought in
15 advance permission from the members to reduce benefits then
16 either. That's not something -- I don't see that as part of
17 the bargaining process.

18 Q Is that a "no"? Is it a fair statement to say that you
19 did not, in fact, get authorization from the membership at
20 any time prior to the bankruptcy filing to renegotiate the
21 Weiler consent decree?

22 A I didn't feel it was necessary at that point.

23 Q Okay. And did you ever indicate -- I assume then you
24 never indicated to Mr. Orr or any city officials at your
25 meetings that you were prepared to renegotiate the Weiler

1 consent decree?

2 A No. Mr. Orr --

3 MR. MORRIS: Objection. Asked and answered.

4 THE COURT: It's a slightly different question. You
5 may answer it, sir.

6 THE WITNESS: Mr. Orr never indicated to me at our
7 meeting -- I think I said that -- that he intended to reduce
8 our benefits, so I wasn't going to suggest that he reduce our
9 benefits.

10 BY MR. IRWIN:

11 Q Did you ever indicate -- or the discussion that you
12 described at one of the meetings -- I think it was the -- one
13 of the July meetings, and you said there was an attorney
14 there for the class in the Weiler consent decree. He was
15 present at the meeting.

16 A Yeah. Chris Legghio.

17 Q And do you recall observing the communications or the
18 dialogue back and forth between Mr. Legghio and the Jones Day
19 attorneys?

20 A Yes.

21 Q Okay. Did you observe -- in what you saw and heard, did
22 you observe Mr. Legghio at any time make an offer to
23 renegotiate the terms of Weiler?

24 A No.

25 Q And did anyone at that meeting indicate to anyone at the

1 city that they had authority from the members of your
2 organization to renegotiate Weiler?

3 A Once again, I think you're putting things ahead of time.
4 Why would we negotiate something before anything is offered?

5 THE COURT: Is the answer "no"?

6 THE WITNESS: No. The answer is "no."

7 BY MR. IRWIN:

8 Q Did you believe that the city had the right to
9 renegotiate the terms of Weiler at that meeting?

10 A Through consent, yes.

11 Q And have you at any point in time, even after the
12 bankruptcy filing, approached your membership and asked for
13 consent or authorization to renegotiate Weiler?

14 A Once again, I repeat the same thing. I don't have -- it
15 would be premature.

16 Q Is that a "no"?

17 A That's a "no."

18 Q Okay. And is it also true, Mr. Taylor, that your
19 organization, the RDPFFA, has not negotiated in a binding way
20 a reduction in healthcare costs -- or sorry -- healthcare
21 benefits for its membership?

22 A No, that's not true. We did do -- we did negotiate a
23 reduction in healthcare benefits.

24 Q Are you talking about the Weiler --

25 A Yes.

1 Q -- consent decree? Setting Weiler aside, which was a
2 class action lawsuit --

3 A Yeah.

4 Q -- has there ever been any other instance where the
5 organization has had the authority and has negotiated with
6 binding effect to reduce healthcare benefits to the members?

7 A No. It was never necessary.

8 Q Okay. And has there ever been any other attempt by the
9 organization to get authority from its members to reduce
10 healthcare benefits in a binding way?

11 A No. It was never necessary.

12 Q So the way the process would need to work then, if I
13 understand it, is that the organization would, if invited,
14 participate in negotiations with the city; is that right?

15 A Yes.

16 Q Okay. And then what would happen -- if the city were to
17 make a proposal to the RDPFFA, that is a proposal that the
18 RDPFFA (sic) could consider; is that right?

19 A That's right.

20 Q And it could negotiate -- it could pass along that
21 information to the members; is that right?

22 A Yes.

23 Q And it could even perhaps recommend that the membership
24 accept that proposal; is that right?

25 A That's what we've done in the past, yes.

1 Q But ultimately is it not true that it would be up to the
2 individual members of the association to decide if they would
3 accept or reject that offer?

4 A Yes.

5 Q Okay. And so it could be the case certainly that the
6 city could negotiate with your organization and make a
7 proposal and, in fact, reach an agreement in principle only
8 to find that the vast majority if not all of the members
9 rejected it?

10 A And that would be true with the actives the same. They
11 vote on their contracts.

12 Q And in that case, the city would have to negotiate with
13 the individual members themselves if they wanted to reach an
14 agreement to reduce benefits?

15 A No. I believe we could follow the same procedure that we
16 followed with the Weiler. We'd bring in the assistance of
17 attorneys and a court.

18 Q But in terms of a straightforward negotiation, though,
19 the city would have to negotiate with members individually in
20 that case; is that right?

21 A Not necessarily. I just said we did it with the Weiler
22 through a class action. I believe they could follow the same
23 proceeding.

24 Q Outside of a class action setting where the members are
25 suing the city, if we're just talking about a negotiation

1 where the city is attempting to reduce healthcare benefits,
2 if the city made a proposal, it would ultimately have to
3 negotiate with the individual members; is that right?

4 A Yeah. I believe they could put it out --

5 MR. MORRIS: Objection, your Honor.

6 THE WITNESS: -- for a vote, and the members --

7 MR. MORRIS: Calls -- I'm sorry.

8 THE COURT: What is your objection, sir?

9 MR. MORRIS: Calls for a legal conclusion.

10 THE COURT: Well, the witness can give us his
11 understanding if he feels comfortable doing that.

12 THE WITNESS: Yes, sir. I'll give an answer. I
13 believe that the city could propose that to the retired
14 police officers and fire fighters, and they could vote on the
15 proposal.

16 BY MR. IRWIN:

17 Q They would decide for themselves if they wanted to accept
18 the proposal; is that right?

19 A Yes, they would.

20 Q All right. We've been talking about healthcare benefits;
21 right? We've been talking about the Weiler settlement and --

22 A Yes.

23 Q -- healthcare benefits. Let's talk about pension issues
24 for a moment, if we could.

25 A Okay.

1 Q It is your position, is it not, Mr. Taylor, that the
2 organization -- your organization is not empowered to enter
3 into binding agreements with the city in order to reduce
4 pension benefits? Is that a true statement?

5 A Not on our own, and it would have to be done in the same
6 method, and it would have to -- obviously that one would have
7 to be a consent, and that is a more legal question than I
8 could answer.

9 MR. IRWIN: Well, let's put -- why don't we put
10 up -- let's put up Exhibit 302, if we could.

11 BY MR. IRWIN:

12 Q Do you see Exhibit 302 in front of you, Mr. Taylor?

13 A Yes, I do.

14 Q Do you recall -- do you recall providing a declaration in
15 connection with the legal proceedings in this case?

16 A Yes.

17 Q And is this a true and accurate copy, to the best you can
18 tell, of that declaration?

19 A Yes.

20 Q And did you sign it on or around August 19th of this
21 year?

22 A If that's the date, yeah. It would be around then.

23 Q We can confirm it.

24 A Yeah.

25 Q It's on the last page of the document.

1 A Okay. Yeah.

2 Q Is that your signature on the last page?

3 A Yes, sir.

4 Q Okay. If I could direct your attention, please, to
5 paragraph 6 of that document -- it's on the second page at
6 the bottom.

7 A Okay.

8 Q Have you had a chance just to read that paragraph?

9 A Yes.

10 Q I'd like to direct your attention to the second line
11 where you state, "The RDPFFA is not empowered to enter into a
12 binding agreement with the city regarding pension benefits."

13 A Yes.

14 Q Do you see that?

15 A I stated that, not without outside assistance.

16 Q Not without outside assistance. You mean the consent of
17 the members?

18 A Yes, or through the legal process through a court.

19 Q Right. So the organization does not have the authority
20 absent the consent --

21 A Consent, yes.

22 Q -- of the members who you would purport to bind --

23 A Right.

24 Q -- in order to reduce pension benefits?

25 A Right, yeah.

1 Q Which means that if the city were to wish to negotiate a
2 reduction in pension benefits, ultimately it would need to
3 negotiate with the individual members; correct?

4 A Not the individual members. They could put a proposal
5 and present it for their vote, yes.

6 MR. IRWIN: And if we could -- while we're on the
7 subject of pension benefits, if we could also put up --
8 Laurie, if you could put up Exhibit 83.

9 BY MR. IRWIN:

10 Q Do you see Exhibit 83 in front of you, Mr. Taylor?

11 A Yes.

12 Q Do you recall participating in responding to written
13 questions that were posed to your organization in connection
14 with this proceeding?

15 A Yes.

16 MR. IRWIN: And could we go to the last page of
17 document, Laurie, the signature page? If you could blow up
18 that bottom left section --

19 THE WITNESS: Yeah. I can see it.

20 BY MR. IRWIN:

21 Q Can you see it okay?

22 A Yeah.

23 Q Okay. Is that your signature, Mr. Taylor?

24 A Yes.

25 Q Does that indicate that you personally participated in

1 the preparation of the responses to these questions?

2 A Yes. I reviewed them, yeah.

3 Q To the extent they applied to your organization.

4 A Yeah.

5 Q This was a composite set of questions and answers, some
6 of which applied to your organization and some to another; is
7 that right?

8 A That's right.

9 Q And to the extent that there are questions and answers
10 that relate to your organization, may I presume that you were
11 the person who provided the substantive responses and
12 verified them; is that right?

13 A Yes.

14 Q Okay. And you signed this believing that these answers
15 were truthful and accurate?

16 A Yes.

17 Q Okay.

18 MR. IRWIN: Could we then turn to -- let's look at
19 response Number 3 -- sorry -- response Number 5 is the one I
20 wanted to focus on, the question and answer Number 5. I
21 think it's one more page. There we go. Could you blow that
22 up?

23 BY MR. IRWIN:

24 Q All right. This is a question, and I'll read it -- and
25 I'd like you to make sure I've read it right -- where we

1 ask -- the city asks to identify any person or persons who
2 have knowledge of any attempt prior to July 19th, 2013, by
3 the RDPFFA to obtain any form of legal authority from its
4 members to appoint RDPFFA as their representative in
5 connection with negotiations to reduce, limit, or abridge
6 pension rights or benefits on a prospective basis only
7 provided by the PFRS. Do you see that?

8 A Yes.

9 Q And did you understand the question at the time you were
10 responding to it?

11 A Yes.

12 Q And is it a fair summary to say that the question is
13 asking for individuals with knowledge of any prior attempt to
14 get authority to negotiate a reduction in pension benefits on
15 behalf of the membership?

16 A Yes.

17 Q Okay.

18 A Like I said, it would be premature.

19 Q Yes. But you answered this question, did you not?

20 A Yes, I did.

21 Q Okay. And let's look at your answer. It actually
22 extends onto the next page of the document. There are
23 several lines where there are some objections that are
24 stated, and then there's a response that begins on the next
25 page. Do you see that?

1 A Yes.

2 Q Okay. And the answer provides -- there's a sentence that
3 begins, "However," and it says, "without waiving said
4 objections and in the spirit of cooperation, the RDPFFA
5 states that it is not aware of any individual with knowledge
6 responsive to this interrogatory." Do you see that?

7 A Yes.

8 Q And may I interpret that to mean that there is no --

9 THE COURT: Excuse me. What answer were you reading
10 from?

11 MR. IRWIN: The response to Number 5. Maybe we
12 didn't have it pulled up the right away.

13 THE COURT: Yeah. Let's get this --

14 MR. IRWIN: Yeah.

15 THE COURT: -- set up properly here.

16 MR. IRWIN: Yeah. I think it was just a problem
17 with the screen. I was reading from Number 5, and I'll do it
18 again.

19 THE COURT: Here we go, yes. It was the second page
20 on the screen that wasn't the correct second page, so --

21 MR. IRWIN: Yeah.

22 THE COURT: -- let's just hold on.

23 MR. IRWIN: We'll blow it up.

24 THE COURT: Hold on.

25 MR. IRWIN: Yeah.

1 THE COURT: Yeah. Hold on one second.

2 MR. IRWIN: Right.

3 THE COURT: Okay. Now you may proceed.

4 BY MR. IRWIN:

5 Q I apologize, Mr. Taylor. I think we've got this right
6 now.

7 A All right. I was confused anyway.

8 Q Sorry? We have it. Okay. I think we've got it right
9 now.

10 A Okay.

11 Q Okay. And I'll read it. I'll read from the answer.

12 A Yeah.

13 Q It says, "However, without waiving said objections and in
14 the spirit of cooperation, the RDPFFA states that it is not
15 aware of any individual with knowledge responsive to this
16 interrogatory." Do you see that?

17 A Yes.

18 Q And do I correctly interpret that to mean that you are
19 not aware of any prior instance where the organization has
20 asked for authority from the membership to negotiate a
21 reduction in pension benefits?

22 A In advance, no, we haven't.

23 Q We have not. And it is true that you did not ask for
24 permission in advance in this case here to negotiate with --

25 A No.

1 Q -- the city.

2 A No.

3 Q "No," that's correct?

4 A Yes, that's correct.

5 Q Okay. Then I want to skip down to the end of the answer.

6 There's a sentence here that reads, "The RDPFFA would not

7 take any action to obtain or solicit authority from its

8 members to do something prohibited by the Michigan

9 Constitution." Do you see that?

10 A Yes.

11 Q And you're aware that your organization has advanced a

12 claim in this case that pension benefits are protected by the

13 Michigan Constitution?

14 A Yes.

15 Q And is that the reference that you're making in this

16 answer?

17 A Yes.

18 Q Yes. And the answer states that the organization would,

19 in fact, not ever seek authority from its members to reduce

20 those pension benefits because they're protected by the

21 Constitution?

22 A Yes.

23 Q Am I reading that right?

24 A Yes, not without their consent.

25 Q And did you make that plain to officials from the city at

1 any of the meetings that you attended?

2 A No.

3 Q Okay. But it was your belief at the time that you would
4 not seek authority to negotiate a reduction in pension
5 benefits?

6 A At the meetings I was at, it wasn't only my belief, it
7 was that of Mr. Orr and Mr. Dillon, so, once again, I'm not
8 sure why I would make such a statement.

9 Q And at no point prior to the filing of the bankruptcy did
10 you make it plain to anyone at the city that you would not be
11 willing to negotiate pension benefits?

12 A No. What --

13 MR. MORRIS: Objection. Asked and answered.

14 THE COURT: Well, I'll permit it. I'll permit it
15 one more time. Go ahead.

16 THE WITNESS: Rephrase it again.

17 BY MR. IRWIN:

18 Q Sure. At any point in time prior to the filing of the
19 bankruptcy, did you come to understand that pension benefits
20 might, in fact, need to be renegotiated?

21 A No, not the filing, not as it related to police and fire
22 pensions.

23 Q And so, therefore, you did not indicate that you were
24 unwilling to negotiate reductions in pension benefits to
25 anyone at the city?

1 A No, because I was told all along this process that the
2 pensions for police and fire were protected by the state
3 Constitution by Mr. Orr and by Mr. Dillon.

4 Q And in connection with the meetings that you did attend,
5 you were provided -- you received either presentation
6 materials or you saw things that were presented to you; is
7 that right?

8 A Yes.

9 Q And did you at any point in time -- did you at any point
10 in time seek guidance from any advisors outside of counsel in
11 terms of how to interpret those presentations?

12 A No, because I was -- at that point, I was still waiting
13 for a call back from Mr. Orr, and he had notified me when I
14 met with him if it came to the point where we were affected,
15 he would notify me, and we would be invited back to meet with
16 him, and that, I assumed, would be the time we would discuss
17 things that affected police and fire retirees.

18 Q And if Mr. Orr at one such meeting had indicated to you
19 that he, in fact, did intend to impair pension benefits, it
20 was your belief at the time that that could not be done under
21 the Constitution?

22 A He didn't indicate that to me.

23 Q I understand that.

24 A Yeah.

25 Q But it was your belief that that could not be done?

1 A Yes.

2 Q Okay.

3 MR. IRWIN: That's all I have, your Honor.

4 MR. MORRIS: Could I have -- I'm sorry. Go ahead.

5 MS. PATEK: Good afternoon, Mr. Taylor. Barbara
6 Patek, your Honor, again, on behalf of the Detroit public
7 safety unions.

8 CROSS-EXAMINATION

9 BY MS. PATEK:

10 Q In your testimony talking about the July 11th meeting,
11 you mentioned an attorney by the name of Chris Legghio, who
12 represented you in the Weiler litigation.

13 A Yes, ma'am.

14 Q To your knowledge, do you know whether or not Mr. Legghio
15 also represents the Detroit Fire Fighters from time to time
16 in their labor relations with the City of Detroit?

17 A Yeah. I believe that's why he was at that meeting as
18 their representative.

19 Q And you also mentioned going over to the Detroit Police
20 Officers Association offices after that meeting on the 11th?

21 A Yes.

22 Q And there was some discussion that the president of the
23 DPOA would be sort of taking the lead on moving this process
24 forward?

25 A Yes.

1 Q Can you tell us who that individual was?

2 A Mark Diaz.

3 MS. PATEK: That's all I have.

4 THE COURT: Redirect.

5 MR. MORRIS: Could I have Exhibit 302 on the screen,
6 please, specifically paragraph 6 we were looking at before?

7 REDIRECT EXAMINATION

8 BY MR. MORRIS:

9 Q Mr. Taylor, do you have that there? I'm looking at
10 paragraph 6 of Exhibit 302.

11 A Page 2?

12 Q Yes, it is, page 2.

13 A Yes.

14 Q Page 2 to page 3, yes. Mr. Taylor, would you please read
15 that paragraph? Now, on cross-examination you were asked to
16 read a part of this. Would you please read the complete
17 paragraph 6 for the Court?

18 A Although like a committee of retirees to like the --
19 although like a committee of retirees to -- appointed by the
20 United States Trustee in this case, the RDPFFA is not
21 empowered to enter into binding agreement with the city
22 regarding pension benefits. The RDPFA (sic) is a
23 representative of the interest of its members and other
24 police and fire retirees and was at all times relevant to
25 this matter in a position to negotiate on their behalf, to

1 communicate and comment upon proposals made by the city and
2 to recommend to its members and to all police and fire
3 retirees an acceptable proposal. The RDPFFA retained counsel
4 to assist in the discussions with the city.

5 Q Thank you. Mr. Taylor, is that an accurate statement?

6 A Yes.

7 MR. MORRIS: No further questions.

8 THE COURT: All right, sir. You may step down.
9 Thank you very much for your testimony today. You're
10 excused.

11 (Witness excused at 2:37 p.m.)

12 MS. LEVINE: Your Honor, we just have to find
13 Mr. Kreisberg. He's been sequestered.

14 THE COURT: Okay. Thank you.

15 STEVEN KREISBERG, OBJECTOR'S WITNESS, SWORN

16 THE COURT: Please sit down.

17 DIRECT EXAMINATION

18 BY MS. LEVINE:

19 Q Good afternoon, Mr. Kreisberg.

20 A Good afternoon.

21 Q Can you state your name and spell your last name for the
22 record, please?

23 A My name is Steven with the "V." Last name is
24 K-r-e-i-s-b-e-r-g.

25 Q And by whom are you employed?

1 A The American Federation of State, County and Municipal
2 Employees, AFSCME.

3 Q Is that the International?

4 A Yes, it is.

5 Q And what's your title?

6 A I'm the director of collective bargaining and healthcare
7 policy.

8 Q And how long have you held that position?

9 A In different titles about 17 years.

10 Q In your role as director of collective bargaining and
11 healthcare policy, do you provide assistance to AFSCME locals
12 such as AFSCME Michigan Council 25 in their collective
13 bargaining efforts?

14 A I do.

15 Q Do you or does your department in the ordinary course
16 retain copies of the various collective bargaining agreements
17 negotiated and ratified by the various AFSCME locals?

18 A Yes.

19 THE COURT: Ms. Levine, could you slow down a little
20 bit for me, please?

21 MS. LEVINE: This is slow.

22 THE COURT: Slow? Well --

23 MS. LEVINE: Yes, your Honor.

24 THE COURT: -- okay. Slow down a little bit more
25 then.

1 BY MS. LEVINE:

2 Q About how many collective bargaining agreements do you
3 have access to in your capacity as the AFSCME director of
4 collective bargaining and healthcare policy?

5 A Approximately 8,000.

6 Q Does the AFSCME constitution require that the AFSCME
7 locals share a copy of all of their negotiated agreements
8 with the AFSCME International?

9 A Yes.

10 Q As part of the -- as part of the CBA negotiation process,
11 does AFSCME and its locals negotiate CBA's that provide
12 health plan and pension benefits?

13 A Yes.

14 Q As part of the CBA negotiation process, does AFSCME and
15 its locals negotiate CBA provisions requiring employee
16 contributions to health plan and pension benefits?

17 A Employee and employer contributions.

18 Q Prior to July 18 -- and I'm not suggesting anything
19 changed after July 18. It just happens to be the date that
20 the city filed its bankruptcy petition. Prior to July 18th,
21 in Detroit before the consent decree and before the CET's,
22 the city employment terms, on retirement, did a retired
23 AFSCME employee continue to receive health plan and pension
24 benefits on the terms that were in effect under their
25 collective bargaining agreement on their retirement?

1 A Yes.

2 Q And prior to July 18, in Detroit after the consent decree
3 and after the CET's, on retirement, did a retired AFSCME
4 employee continue to receive health and pension benefits on
5 the same terms as those in effect under the CET's on their
6 retirement?

7 A Yes.

8 MS. LEVINE: Can we have AFSCME Exhibit 505, please?

9 BY MS. LEVINE:

10 Q Mr. Kreisberg, I'm going to show you what's been marked
11 as Exhibit 505. It's a -- it's what we've been referring to
12 as the February 1, 2012, tentative agreement. Do you see
13 that document?

14 A Yes, I do.

15 Q Is this one of the 8,000 CBA documents you have access to
16 in your role as the director of collective bargaining and
17 healthcare policy for AFSCME?

18 A Yes.

19 Q Can you identify this tentative agreement from your own
20 personal knowledge or from your review of the records kept in
21 AFSCME's ordinary course of business?

22 A Yes.

23 MS. LEVINE: Your Honor, we'd like to move this
24 document into evidence, please.

25 THE COURT: Any objections?

1 MR. STEWART: Yes, your Honor. What's the relevance
2 of it?

3 THE COURT: The Court overrules the relevance
4 objection. The document is admitted into evidence.

5 (Exhibit 505 received at 2:42 p.m.)

6 MS. LEVINE: Thank you, your Honor.

7 BY MS. LEVINE:

8 Q Did this agreement cover certain AFSCME locals here in
9 Detroit?

10 A It did.

11 Q Did the agreement also cover certain other local unions
12 representing various other Detroit city employees?

13 A Yes.

14 Q Was this agreement negotiated by a coalition of local
15 Detroit unions working together?

16 A Yes.

17 Q Is this a concessionary agreement?

18 A Yes.

19 Q And by "concessionary agreement," does that mean that
20 this agreement reflects reductions in the terms and
21 conditions of employment that were previously in effect?

22 A Yes, specifically compensation levels.

23 Q Was this agreement ratified or approved by the unions who
24 were parties to this agreement?

25 A It was.

1 Q Does that mean that the city represented employees
2 actually voted "yes"?

3 A Yes, it does.

4 Q Was this agreement ever put in effect?

5 A No, it was not.

6 Q What's your understanding as to why it wasn't put in
7 effect?

8 A The City Council had never voted to approve the agreement
9 based on instructions it had received from state officials.

10 Q Under this agreement, would retiree benefits have been
11 affected?

12 A Yes.

13 Q And it was a concessionary agreement, so there would have
14 been -- there would have been concessions to those retiree
15 benefits; correct?

16 A That is correct.

17 Q And would that have affected active as well as retired
18 employees?

19 A Yes.

20 Q Okay. Turning now to --

21 THE COURT: Excuse me one second, please. What
22 state officials did you understand directed the City Council
23 not to approve Exhibit 505?

24 THE WITNESS: My understanding that it was Treasurer
25 Dillon and perhaps Mr. Baird.

1 MS. LEVINE: That was for tomorrow, your Honor.

2 THE COURT: Oh, I jumped the gun. My apologies.

3 MS. LEVINE: No. That's fine. I just -- I wasn't
4 sure he had personal knowledge.

5 BY MS. LEVINE:

6 Q Turning now to the good faith negotiations or the lack of
7 good faith negotiations, did you attend the June 14
8 presentation with the city with regard to the so-called
9 proposal to creditors?

10 A Yes.

11 Q About how long did the presentation last?

12 A The entire meeting lasted a little less than two hours.

13 Q Did the city present certain slides at that meeting?

14 A They did.

15 Q What was the title?

16 A "Proposal to Creditors, City of Detroit."

17 Q Do you recall about how many slides were presented?

18 A The slide presentation was approximately 50 slides out of
19 a fuller deck that was made available to us at the end of the
20 meeting.

21 Q The fuller deck was the full -- there was an executive
22 summary that was presented at the meeting. Is that your
23 understanding?

24 A Yeah, a shortened version of the full proposal.

25 Q Were questions permitted during the slide presentation?

1 A No.

2 Q Were questions permitted after the slide presentation?

3 A Yes, in written form.

4 Q Were you told one way or the other at that meeting
5 whether or not it was a negotiation?

6 A We were told it was not a negotiation.

7 Q Who made that comment?

8 A The leaders of the meeting.

9 Q Was that --

10 A City officials and their attorneys.

11 Q Was Mr. Orr present at that meeting?

12 A He was.

13 Q As the director of collective bargaining and healthcare
14 policy for AFSCME, have you participated with AFSCME locals
15 in collective bargaining sessions?

16 A Yes.

17 Q About how many CBA negotiations have you attended?

18 A Hundreds, thousand, I mean if you're talking about
19 individual discrete sessions.

20 Q In your experience, was the June 14 presentation a
21 negotiation?

22 A No.

23 Q Did you attend the June 20 presentation with the city?

24 A Yes.

25 Q And did you also attend the July 10 and the July 11

1 presentations?

2 A I did, yes.

3 Q To try and shortcut them, I'm going to sort of ask these
4 questions together. Did the city make presentations at all
5 three of those meetings as well?

6 A Yes, they did.

7 Q Was Mr. Orr present at any of those meetings?

8 A No, he was not.

9 Q Did they permit questioning during the presentations?

10 A Not during the June 20th meeting. Again, it was written
11 questions at the end of the presentation.

12 Q And what about during the July 10 and July 11 meeting?

13 A July 10 and 11 meetings, questions were permitted in a
14 less formal and structured manner.

15 Q How long did the June 20 meeting last?

16 A Approximately two hours, maybe a bit less.

17 Q And what about the July 10 presentation?

18 A The same.

19 Q And what about the July 11 presentation?

20 A The same as well.

21 Q What was the topic of the June 20 presentation?

22 A Legacy costs.

23 Q And what about the July 10?

24 A July 10th meeting pertained to pensions.

25 Q And what about the July 11 meeting?

1 A Retiree healthcare.

2 Q Were you told whether or not any of these meetings were
3 negotiations?

4 A We were expressly told they were not negotiations.

5 Q At each meeting that announcement was made?

6 A Yes.

7 Q In your mind, were these negotiations?

8 A No, they were not.

9 Q Was Mayor Bing at any of these meetings?

10 A No, he was not.

11 Q Between June 14 and July 18, were you or AFSCME invited
12 to any other presentations by the city?

13 A No.

14 Q Between June 14 and July 18th, was AFSCME invited to any
15 meeting you would consider a negotiation or where there was a
16 discussion, a give-and-take about the June 14 proposal?

17 A Other than the ones we described, no.

18 Q Did you request any financial or other information from
19 the city between June 14 and July 18 to better understand the
20 information provided at those meetings?

21 A Yes, we did.

22 Q Did you request information about the city's financial
23 condition?

24 A Yes.

25 Q Did you request information to better understand the

1 health benefits?

2 A Not directly. Understand the retiree healthcare?

3 Q All right. Did you request information to better
4 understand retiree health benefits?

5 MR. STEWART: Objection, your Honor. We've had a
6 series of leading questions. Could we perhaps not have so
7 many leading questions?

8 THE COURT: No. The Court does not consider these
9 leading, so you may continue.

10 MS. LEVINE: Thank you, your Honor.

11 BY MS. LEVINE:

12 Q Did you request information to better understand the
13 pension portion of the June 14 proposal and the discussions
14 that were had on June 20, July 10, and July 11?

15 A Yes. I requested information regarding the funding
16 levels of the pension.

17 Q Did you personally sign a NDA or confidentiality
18 agreement to access the city's data room?

19 A I did.

20 Q Did you access the city's data room?

21 A Yes, I did.

22 Q Was certain information in response to your request
23 posted to the data room?

24 A Yes, it was.

25 Q Was all of the information you requested posted to the

1 data room?

2 A No.

3 Q Did you consider any of the information you requested
4 inconsistent with the type of information you would normally
5 request in the context of a CBA negotiation?

6 A No, I did not.

7 Q Prior to the July -- prior to July 18, did the city ever
8 ask you to agree to or to sign a document waiving the right
9 to assert that the city had waived any of its rights under PA
10 436 to facilitate discussions or a give-and-take with regard
11 to the city's proposal?

12 A The city never sought such a waiver from me.

13 Q Prior to July 18th, was the June 14th proposal ever
14 modified or revised with regard to the retiree health or
15 pension benefits?

16 A No.

17 Q The average AFSCME retiree has what level -- collects
18 what level of pension benefit?

19 A In the City of Detroit, it's approximately 18 to \$19,000
20 a year.

21 Q In your position as director of collective bargaining and
22 healthcare policy, do you have an opportunity to review from
23 time to time what the poverty level is?

24 A I do.

25 Q What is the poverty level for a family of three?

1 A Family of three, approximately \$19,500 annually.

2 Q And what's the poverty level for an individual?

3 A Approximately \$11,500.

4 Q Based upon the proposal to creditors provided here, can
5 you tell whether or not AFSCME retirees will be reduced below
6 the poverty level as a result of this proposal as it
7 currently sits?

8 A It's hard to say. The proposal was not to pay into the
9 pensions, and it was -- the representatives of the city
10 declared that there would be no funding of the pensions in
11 terms of the unfunded obligations. It has been not described
12 to this date that I'm aware of what impact would be and what
13 the effect would be on particular benefits, and, of course,
14 the benefits for individuals vary based on their years of
15 service and their salary levels at the time of retirement.

16 Q There was a letter that was written by Ed McNeil in May
17 where he indicates that he's not negotiating on -- or is not
18 going to negotiate pensions or retiree benefits. Are you
19 familiar with that letter?

20 A I am.

21 Q And so the questioning seems to indicate that the city is
22 concluding that as a result of that letter, AFSCME was either
23 refusing to negotiate on behalf of its retirees or couldn't
24 negotiate on behalf of its retirees.

25 MR. STEWART: Objection, your Honor.

1 Characterization of another witness' testimony and also
2 hearsay since she's speaking about the substance of a
3 document that's not before the witness or in front of us but
4 I should add asking the witness to speculate about the
5 contents of that document.

6 THE COURT: I need you to just ask a question.

7 BY MS. LEVINE:

8 Q Is it your understanding that AFSCME has from time to
9 time taken the position that it can't negotiate retiree
10 health or pension benefits?

11 A Yes, we have.

12 Q But in the February tentative agreement that we were
13 discussing earlier, February 2012, did that agreement affect
14 retiree health benefits?

15 A It did affect retiree health benefits.

16 Q And are there other recent examples where AFSCME has
17 worked around the issue of both protecting its members' right
18 to retiree health and pension benefits but also come up with
19 a work-around to effectively negotiate a businesslike
20 solution to an economic problem like this one?

21 MR. STEWART: Objection to form.

22 THE COURT: Overruled. Please answer, sir.

23 THE WITNESS: Well, across the nation, you know --
24 it's a diverse country, as we all know, and we've -- we enter
25 into all sorts of agreements.

1 THE COURT: Well, let me interrupt you.

2 MS. LEVINE: Well, let me -- actually, let me try --

3 THE COURT: You're talking about --

4 MS. LEVINE: Let me do -- let me go narrower, your
5 Honor.

6 THE COURT: -- here in the city?

7 MS. LEVINE: Actually, I have a specific --

8 BY MS. LEVINE:

9 Q What are you guys doing right now in Illinois?

10 A Okay.

11 THE COURT: By "you guys," you mean AFSCME?

12 MS. LEVINE: AFSCME.

13 THE WITNESS: Yeah, the union. The State of
14 Illinois passed legislation in the recent past which would
15 impair our retiree healthcare benefits. Traditionally, state
16 employees, upon retirement, would enjoy health benefits
17 without being assessed any premium charge for the healthcare.
18 The state enacted a statute requiring that retirees now pay
19 for some cost of their retiree healthcare but did not specify
20 a rate, and instead the legislation required that the state
21 negotiate the rate that would be charged to the retirees with
22 the active employees' union, which is an AFSCME affiliate,
23 Council 31, so at the collective bargaining table over their
24 most recent state agreement, those negotiations took place.
25 However, our position -- the union's position is that that

1 particular statute is unconstitutional under Illinois'
2 Constitution, which also has a nonimpairment very similar to
3 the one here in Michigan. And based on that, the
4 understanding we've reached with the state was we are not
5 waiving our rights to challenge the statute and the
6 requirement for payment, so by entering into that agreement,
7 it was very clear that we were not prejudicing our rights.
8 We were not waiving our rights to eventually -- and we are
9 right now in court challenging the legality of imposing the
10 premium payments on the retirees.

11 BY MS. LEVINE:

12 Q So you both negotiated a good faith solution on the
13 assumption that you would -- you might lose in court, and you
14 continued to preserve your rights with regard to your -- what
15 you believe to be your constitutional rights in court;
16 correct?

17 A Correct. We thought that was -- yeah.

18 MS. LEVINE: Your Honor, I have no further questions
19 for Mr. Kreisberg.

20 THE COURT: I do need to stop at three. Do you want
21 to start now, or do you want to just pick it up in the
22 morning?

23 MR. STEWART: May be better in the morning. I'll
24 have to break it up otherwise, your Honor.

25 THE COURT: All right. In the meantime, is someone

1 willing to volunteer me from the -- volunteer for me on the
2 objectors' side how long the case might take for our planning
3 purposes?

4 MR. MONTGOMERY: Your Honor, we have shared with the
5 city estimated times for witnesses. I would say it's fair
6 that the sum of direct and cross for the two witnesses have
7 started -- has gone beyond the time estimates. I would say
8 on current projections we would finish sometime Thursday
9 morning, so in theory Thursday afternoon is available for the
10 start of closing. Again, if all changes are simply additive
11 and not plowed earth.

12 THE COURT: Right. Okay. So our closings would
13 then be on Thursday, perhaps into Friday.

14 MR. MONTGOMERY: Yes, sir.

15 THE COURT: All right. And I've been asked to
16 remind you that we are back in this room tomorrow. We are
17 not going to Room 100. We're back in this room. And I think
18 that's it for today, so we'll be in recess.

19 THE CLERK: All rise. Court is adjourned.

20 (Proceedings concluded at 2:56 p.m.)

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I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

November 8, 2012

Lois Garrett

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

3 IN THE MATTER OF, Case No. 13-53846
4 CITY OF DETROIT, MI Detroit, Michigan
November 5, 2013
9:17 a.m.

5
6 IN RE: ELIGIBILITY TRIAL
7 BEFORE THE HONORABLE STEVEN W. RHODES
8 TRANSCRIPT ORDERED BY: PAUL HAGE, ESQ.

9 APPEARANCES:

10 For the City of Detroit, MI: GEOFFREY IRWIN, ESQ.
11 GEOFFREY STEWART, ESQ.
12 GREGORY SHUMAKER, ESQ.
13 THOMAS CULLEN, JR., ESQ.
14 MIGUEL EATON, ESQ.
15 Jones, Day
16 51 Louisiana Avenue, N.W.
17 Washington, D.C. 20001-2113
18 202-879-3939

19 BRUCE BENNETT, ESQ.
20 Jones, Day
21 555 South Flower Street
22 Fiftieth Floor
23 Los Angeles, CA 90071-2452
24 213-243-2382

25 ROBERT HERTZBERG, ESQ. (P30261)
DEBORAH KOVSKY-APAP, ESQ.
(P68258)
Pepper, Hamilton
4000 Town Center
Suite 1800
Southfield, MI 48075-1505
248-359-7333

1	For State of Michigan:	MATTHEW SCHNEIDER, ESQ. (P62190) Chief Legal Counsel Attorney for State of Michigan Michigan Department of Attorney General P.O. Box 30754 Lansing, MI 48909 517-373-0126
2		
3		
4		
5		
6		MARGARET NELSON, ESQ. (P30342) Assistant Attorney General Michigan Department of Attorney General 525 W. Ottawa Street Floor 7 P.O. Box 30212 Lansing, MI 48933 517-373-1124
7		
8		
9		
10		
11		STEVEN HOWELL, ESQ. (P28982) Special Assistant Attorney General Dickinson, Wright 500 Woodward Avenue Suite 4000 Detroit, MI 48226-3425 313-223-3033
12		
13		
14		
15		
16	For Michigan Council 25 of the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and Sub-Chapter 98, City of Detroit Retirees:	SHARON L. LEVINE, ESQ. JOHN SHERWOOD, ESQ. Lowenstein, Sandler, LLP 65 Livingston Avenue Roseland, NJ 07068 973-597-2500
17		
18		
19	For Detroit Retirement Systems - General Retirement System of Detroit, Police and Fire Retirement System of the City of Detroit:	ROBERT D. GORDON, ESQ. (P48627) JENNIFER GREEN, ESQ. Clark, Hill, PLC 151 S. Old Woodward Avenue Suite 200 Birmingham, MI 48009 248-988-5882
20		
21		
22		
23		RONALD KING, ESQ. (P45088) Clark, Hill 212 East Grand River Avenue Lansing, MI 48906 517-318-3015
24		
25		

1 For the Detroit Fire Fighters Association, the Detroit
2 Police Officers Association and the Detroit Police
3 Lieutenants and Sergeants Association:
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BARBARA PATEK, ESQ. (P34666)
JULIE BETH TEICHER, ESQ.
(P34300)
DAVID EISENBERG, ESQ. (P68678)
Erman, Teicher, Miller, Zucker
& Freedman
400 Galleria Officentre
Suite 444
Southfield, MI 48034
248-827-4100

For International Union, UAW:
BABETTE A. CECCOTTI, ESQ.
PETER D. DECHIARA, ESQ.
THOMAS CIANTRA, ESQ.
Cohen, Weiss, and Simon, LLP
330 West 42nd Street
New York, NY 10036-6976
212-356-0227

For the Detroit Retired City Employees Association, Retired Detroit Police and Fire Fighters Association, Shirley V. Lightsey, and Donald Taylor (Retiree Association Parties):
THOMAS MORRIS, ESQ. (P39141)
Silverman & Morris
30500 Northwestern Highway
Suite 200
Farmington Hills, MI 48334
248-539-1330

RYAN PLECHA, ESQ. (P71957)
Lippitt, O'Keefe
370 East Maple Road
3rd Floor
Birmingham, MI 48009
248-646-8292

For the Official Committee of Retirees:
MATTHEW E. WILKINS, ESQ.
(P56697)
Brooks, Wilkins, Sharkey & Turco, PLLC
401 S. Old Woodward Avenue
Suite 400
Birmingham, MI 48009
248-971-1711

CLAUDE D. MONTGOMERY, ESQ.
ANTHONY ULLMAN, ESQ.
ARTHUR RUEGGER, ESQ.
Dentons
1221 Avenue of the Americas
New York, NY 10020-1089
212-768-6700

1 SAM ALBERTS, ESQ.
2 DAN BARNOWSKI, ESQ.
3 Dentons US LLP
4 1301 K Street, N.W.
5 Suite 600 East Tower
6 Washington, D.C. 20005-3364
7 202-408-7004

8 For the Retired Detroit Police Members Association: LYNN M. BRIMER, ESQ. (P43291)
9 MEREDITH TAUNT, ESQ. (P69698)
10 MALLORY FIELD, ESQ. (P75289)
11 Strobl & Sharp, P.C.
12 300 East Long Lake Road
13 Suite 200
14 Bloomfield Hills, MI 48304-2376
15 248-540-2300

16 For the Flowers Plaintiffs - WILLIAM A. WERTHEIMER, ESQ.
17 Robert Flowers, Michael Wells, (P26275)
18 Janet Whitson, Mary Washington 30515 Timberbrook Lane
19 and Bruce Goldman: Bingham Farms, MI 48025
20 248-644-9200

21 For Ambac Assurance Corporation: DANIEL WEINER, ESQ. (P32010)
22 Schafer & Weiner
23 40950 Woodward Avenue
24 Suite 100
25 Bloomfield Hills, MI 48304
26 248-540-3340

27 Court Recorder: Letrice Calloway

28 Transcriber: Deborah L. Kremlick

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32 Proceedings recorded by electronic sound recording, transcript
33 produced by transcription service.

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1 (Court in Session)

2 THE CLERK: Case number 13-53846, City of Detroit,
3 Michigan.

4 MR. ALBERTS: Your Honor, may we be excused?

5 THE COURT: Yes.

6 MR. ALBERTS: Thank you.

7 MR. SCHNEIDER: Your Honor, Matthew Schneider on
8 behalf of the State of Michigan. Before we begin, because
9 we're discussing witnesses here and the order of witnesses,
10 Ms. Brimer and I have been talking about one of the witnesses
11 that the objectors wish to have, Howard Ryan.

12 And Ms. Brimer and I are in agreement that instead of
13 having to have him called, that his 30(b)(6) deposition tape
14 could be a part of the record instead. And Ms. Brimer and I
15 wanted to make sure that you were okay with that.

16 THE COURT: Uh-huh, absolutely. If that works for
17 you, it works for me.

18 MR. SCHNEIDER: We also wanted to make sure that
19 nobody else objects to that.

20 THE COURT: Any other objections to using the video
21 tape?

22 MR. SHUMAKER: The city is in agreement with that,
23 Your Honor.

24 MS. BRIMER: Thank you, Your Honor.

25 MR. SCHNEIDER: Thank you, Your Honor.

1 THE COURT: Are you ready, sir?

2 CROSS EXAMINATION

3 BY MR. STEWART:

4 Q Geoffrey Stewart for Jones, Day. Good morning, Mr.
5 Kreisberg. I don't think we've met.

6 A No.

7 Q My name is Geoffrey Stewart. I'm a lawyer for Jones, Day
8 representing the city. Let me collect my papers for a minute.

9 You, I think, testified that you attended the June 14
10 meeting?

11 A Yes.

12 Q Okay. Can we put up Exhibit 43, Page 109? While that's
13 being done, Mr. Kreisberg, that was the big meeting if you --
14 are you looking for your glasses as I look for mine all the
15 time?

16 A Yeah, well -- I wasn't sure.

17 Q I have a spare pair if you need them.

18 A I'll be able to see. If I have trouble, I'll --

19 Q Okay. I do -- I actually do have a spare pair.

20 A Thank you.

21 Q Okay. And you remember that day attending a meeting for
22 I think you said that lasted a little less than two and a half
23 hours?

24 A Yes, yes.

25 Q And various slides were shown at the meeting, I think you
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1 testified?

2 A That's correct.

3 Q Do you remember this slide and we're on Page 109 of
4 Exhibit 43. Do you remember this slide being shown -- shown
5 that day?

6 A It's -- it's possible the content was shown. I don't
7 think it would have been slide 109 because the slide deck that
8 was shown had less slides than 100 slides.

9 Q Okay. I think we may have had slide deck inflation here.
10 Let me just put it this way. Do you remember the subject
11 coming up at the meeting about what the city's intentions were
12 when it came to claims for unfunded OPEB liabilities?

13 A Yes.

14 Q And just for the record OPEB is short for other post
15 employment benefits?

16 A That's right.

17 Q And usually that's retiree benefits for health or
18 something else?

19 A Correct.

20 Q Okay. I'm going to use OPEB unless that is going to be
21 confusing for you if I do.

22 A It's fine with me.

23 Q Okay. Do you remember what the city said on June 14
24 about its intentions with respect to OPEB benefits?

25 A I do.

1 Q And what do you remember the city telling you?

2 A Essentially that they would cease providing the current
3 benefit offerings and in lieu therefore they would provide
4 distinct benefits for pre-Medicare retirees and post-Medicare
5 retirees that would cost in -- in a pay range of approximately
6 100.00 to \$130.00 per month for each of those categories with
7 a -- a separate category for retirees who may not be eligible
8 for Medicare.

9 Q How extensive did you consider that proposal in a way of
10 changes to what the retirees currently enjoyed?

11 A Well, the proposal lacked detail. But the structure that
12 was described was very extensive.

13 Q Okay. And then the next bullet point on this slide has
14 to do with claims for unfunded pension liabilities. Now, I
15 understand you may not remember this slide. So if it helps
16 you, fine, but if not, you don't need to look at it.

17 Do you remember what it was the city said that day about
18 its intentions when it came to unfunded pension liabilities?

19 A The city essentially said it would -- it would not be
20 paying into the fund for those unfunded liabilities other than
21 some of the contingency note that they talked about which
22 frankly at the time I didn't quite fully understand.

23 Q Did you consider -- let's put it this way. How extensive
24 or major did you consider the city's planned changes to its
25 pension liabilities?

1 A Again the -- the city's proposal lacked any detail. But
2 the structural changes described were very extensive.

3 Q Okay. Now is it not the case that your union AFSCME,
4 represents about half of all the city employees?

5 A That's correct.

6 Q Okay. And is it also not the case that your union lacked
7 the authority to negotiate with respect to either pension
8 liabilities or OPEB with respect to retirees?

9 A That's not the case.

10 Q Okay. Well, let me go to your deposition then. Can we
11 put up Page 29, starting with Line 17. And while we're doing
12 that, you remember giving a deposition in this case, do you
13 not, Mr. Kreisberg?

14 A I do, I remember.

15 Q That was just a few weeks ago. And you were examined for
16 a couple of hours?

17 A It seems like more than a couple of hours.

18 Q Okay. Let me start, I'm just going to read a part to
19 you. And I'm going to read these questions and answers. And
20 again I'm going to ask you whether this is -- these are the
21 questions you were asked and these were the answers you gave.

22 Question, by Mr. Miller, let me ask a clarifying
23 question. Is it your understanding that under Michigan law
24 unions would be able to waive the rights of existing retirees
25 to their existing health benefits? And then Mr. Sherman

1 interposes an objection. And I'm jumping down to your answer.
2 The witness, again, that is a matter of law that I haven't
3 fully researched.

4 Question, so you would have no opinion about that? Then
5 Mr. Sherwood interposes an objection. And Mr. Miller says,
6 you can answer. And you say, I may have opinions, but I have
7 no legal conclusion.

8 Question, what is your personal opinion? My opinion
9 would be that the union can engage in such bargaining and
10 could possibly extensively or not extensively, you know, make
11 reasonable adjustments to retiree health care benefits.

12 Question, without the retirees' approval? Answer,
13 without the retirees' approval.

14 Question, what about extensive changes to retirees health
15 benefits? Could they make that without the retirees'
16 approval? There's an objection. You answer, I do not think
17 so.

18 Question, so the ability of the union to make changes to
19 the retirees benefits without the retirees' approval hinges on
20 the nature of the change? Answer, yes.

21 And the more extensive the change at some point the union
22 does not have the ability to bind the retirees? Answer, that
23 would be my opinion.

24 Were you asked those questions and did you give those
25 answers in your deposition?

1 A Yes, sir.

2 Q And were your answers truthful?

3 A Yes.

4 Q Now you were asked yesterday -- take that down and put up
5 Exhibit 505. You were asked yesterday about the tentative
6 agreement. Do you remember questions you were asked and this
7 Exhibit 505 was put up on the screen for you back then?

8 A Yes.

9 Q Okay. It was the case, was it not -- first of all, that
10 was negotiated by a coalition of city unions, correct?

11 A Correct.

12 Q That did not include the uniform unions, right?

13 A That is correct.

14 Q It also did not include the water and sewer employees?

15 A Again correct.

16 Q Now is it also not the case that in those negotiations
17 the coalition did not represent retirees?

18 A That's correct.

19 Q Instead what the coalition did was agree that if the city
20 after this happened cut retiree benefits, the unions would not
21 help those retired employees in any grievance they might file
22 against the city?

23 A I disagree with that characterization.

24 Q Let's go to the last page of the exhibit then. I think

25 that's -- there it is. There's one more. Should be another
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1 page back there. And you want to go to Page 21 or what would
2 be 21 if it were numbered. There. Do you have that page
3 before you?

4 A I do.

5 Q And can you tell us what it is?

6 A If you make that piece larger like we did the others.

7 Q Go ahead, can you make the text larger for the witness,
8 please?

9 MS. LEVINE: Reading glasses, is that what you're
10 using?

11 MR. STEWART: You can have mine. I actually do have
12 a second pair. May -- may I approach the witness, Judge?

13 THE COURT: Do you want to borrow some reading
14 glasses, sir?

15 A I think we're going to be fine.

16 THE COURT: Okay. All right. He's going to be
17 fine.

18 MR. STEWART: I buy them by the box literally at
19 this age. I have very -- very poor eyesight.

20 A Where do you get them? I could use them.

21 MR. STEWART: Actually I get them on line and I will
22 after the break I will give you the web address.

23 THE COURT: All right. Let's proceed.

24 MR. STEWART: I'm sorry, Your Honor. Anyhow --

25 THE COURT: Okay.

1 Q Do you have this before you?

2 A I do, yes. Thank you.

3 Q Okay. And it says -- and first of all, who signed all of
4 this just in general?

5 A These are the coalition union representatives.

6 Q Okay. Is your signature here by the way?

7 A No, it is not.

8 Q Okay. And it says it is hereby agreed between the
9 parties that the coalition of unions waive their rights to
10 grieve and arbitrate, participate as a party, or sponsor legal
11 action brought by retirees concerning the changes in their
12 health care which may arise in 2012. Is that -- did I read
13 that correctly?

14 A Yes.

15 Q And that was the coalition agreeing that if a retiree was
16 aggrieved by changes to health care benefits, the unions would
17 not support that grievance, right?

18 A That's correct.

19 Q Okay. Now -- you can take that down. There were a
20 series of meetings that counsel asked you about and I'll go
21 through them very quickly.

22 We talked about the one on the 14th already. Then there
23 are meetings on June 20th, correct?

24 A Correct.

25 Q And you attended those?

1 A Yes.

2 Q And July 10?

3 A I attended that meeting.

4 Q And July 11th?

5 A I attended that meeting.

6 Q And there was a data room which was available to you and
7 you or people working with you accessed the data room?

8 A Yes.

9 Q Okay. And during that period of time am I correct that
10 the city said to you that they were willing to talk with you
11 and share information with you and wanted to have discussions
12 with you?

13 A The city had indicated it would share data.

14 Q Uh-huh. And they did?

15 A Through the data room.

16 Q Okay. Well, they -- they also gave you data, did they
17 not, during various meetings that you attended with them?

18 A The data consisted of the proposal for creditors which
19 was provided both in the shortened version and made available
20 in the longer version at the conclusion of the meeting on June
21 14th.

22 Q Uh-huh.

23 A And then approximately 20 or 25 page slide deck.

24 Q Right.

25 A On legacy costs on June 20th.

1 Q Uh-huh.

2 A And then a single page describing the bare outlines of
3 the OPEB proposal on July 11th.

4 Q Uh-huh.

5 A Most of those I would not characterize as data other than
6 the June 14th. I would consider that a presentation which
7 included some data. But it was not completely responsive to
8 all the data.

9 Q I see.

10 A That we would need.

11 Q That all having been said, did the city not ask your
12 union more than once to make a counter proposal to them?

13 A That was not a term that was used.

14 Q And what term did you use?

15 A They -- they were fond of the term feedback.

16 Q I see. But did the day come when your union actually did
17 prepare a counter proposal?

18 A We never provided a counter proposal to the city.

19 Q That wasn't my question. My question was whether you
20 prepared one.

21 A I did not prepare a proposal.

22 Q Did your union prepare a proposal?

23 A If I could -- could I ask a clarifying question of you?
24 Is that permitted?

25 Q I'm sorry?

1 A Is it permitted for me to ask a clarifying question?

2 Q You can ask me whatever you want.

3 A On what subject?

4 Q Health care benefit, retiree health.

5 A No.

6 Q Did you prepare a counter proposal on anything?

7 A We had on a post-petition -- post-petition we prepared a
8 counter proposal on active employee health care.

9 Q Uh-huh. Let's go to your deposition Page 82, Line 16.

10 MS. LEVINE: Your Honor, I apologize. Before we ask
11 a question, I just want to caution the witness to stay before
12 July 18th and not to discuss anything going on in the
13 mediations.

14 THE COURT: That's good advice, sir.

15 Q Page 82, Line 16. And once again, Mr. Kreisberg, I'm
16 going to read the questions and answers and at the end I'm
17 going to ask you whether this was your testimony. All right?

18 Question, did AFSCME make any formal counter proposal
19 subsequent to the June 20th meeting respecting retiree health?
20 Answer, we had proposed that we negotiate and suggested a date
21 for negotiations.

22 Question, but a labeled proposal to negotiate is not
23 itself a counter proposal, correct? Answer, the counter
24 proposal would have been provided at the negotiating session.

25 Question, so you were prepared at a negotiating session
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1 in July to provide a counter proposal? Answer, we had
2 suggested having a meeting on July 10 to do such.

3 Question, but you just testified that you were prepared
4 if there were to be a negotiating session in July to make a
5 counter proposal, correct? Answer, yes.

6 Question, okay. Did you make any counter proposals at
7 the meetings in July 10 or July 11? Answer, no.

8 Question, did you have at that time the counter proposal
9 to make? Answer, can I consult with counsel? Question, no,
10 it's a pending question. I would like you to answer it first.
11 Mr. Sherwood says, I would just -- if it involves privileged
12 communications. Witness, that is the point. I discussed such
13 a proposal with counsel. Question, I'm sorry, it involved
14 discussions with counsel. And you go on.

15 And now let's go to Page 84, 19.

16 A Excuse me?

17 Q Were you asked those questions and did you give those
18 answers?

19 A Yes.

20 Q Okay. Now go to Page 84, Line 19. Question, did you
21 have a counter proposal to make? Answer, yes.

22 Question, but you did not make the counter proposal,
23 correct? Answer, correct.

24 Were you asked those questions and did you give those
25 answers?

1 A Yes.

2 Q Now, let me -- you can take that down. I believe you
3 were asked by counsel about the provisions of the Michigan
4 Constitution which at sometimes has been called the pension
5 clause. Do you -- do you know of something called a pension
6 clause?

7 A Yes.

8 Q Okay. And it's -- I think it's Article -- Article 9,
9 Section 24 if I recall correctly. Is it the position of
10 AFSCME that the accrued pensions, investment pensions of city
11 retirees can never be cut back?

12 MS. LEVINE: Objection, Your Honor. Calls for a
13 legal conclusion.

14 THE COURT: Overruled. Please answer.

15 Q Is that the union's position?

16 A I'm not a lawyer but that's our position, yes.

17 Q Okay. And that's something you believed back in June?

18 A It is.

19 Q And in July?

20 A Yes.

21 Q And today?

22 A Yes.

23 Q Have you advised any of your employees to waive their
24 constitutional rights?

25 A I have not.

1 Q Is the union prepared to advise people to waive -- waive
2 their constitutional rights?

3 THE COURT: Don't answer that question.

4 MR. STEWART: I'm sorry? Okay. You said not to
5 answer the question.

6 THE COURT: Yeah, I -- I don't want the witness to
7 answer that question. You can ask him that question as it
8 pertained to pre-petition.

9 MR. STEWART: Yes.

10 THE COURT: But not Monday.

11 Q Limiting us to all days before and -- and including July
12 18 of this year, was -- excuse me, was your union prepared to
13 advise its members to waive their constitutional rights?

14 A No.

15 MR. STEWART: Thank you. That's all I have.

16 MS. LEVINE: Your Honor, brief redirect.

17 THE COURT: Uh-huh.

18 REDIRECT EXAMINATION

19 BY MS. LEVINE:

20 Q Just a couple of questions, Mr. Kreisberg. With regard
21 to the deposition testimony that you were just read with
22 regard to retiree health. It -- it sounded like you actually
23 had a written proposal sitting in your desk drawer that you
24 just didn't give to anybody. Did you have thoughts about a
25 proposal, or did you actually have a physical written fully

1 blown proposal?

2 A I had thoughts about a proposal that I discussed with
3 counsel.

4 Q And did you want to have those discussions with the city
5 to see whether or not some of your thoughts would make sense
6 in a counter proposal?

7 A Yes.

8 Q Same question with regard to the pension issues. Did you
9 have some thoughts about the pension proposal that was made by
10 the city that you wanted to discuss with the city to see if it
11 made sense?

12 A Yes.

13 Q And in addition to that did you also require additional
14 information to make those thoughts more formal into what might
15 be deemed to be an actual written formal counter proposal?

16 A Yes.

17 Q You were asked by counsel if -- if AFSCME was willing to
18 advise its members to waive its constitutional rights. Do you
19 recall that testimony?

20 A I do.

21 Q Under the -- under the February 12th collective bargaining
22 agreement on a go forward basis, were there changes to pension
23 benefits?

24 A Yes. The TA reduced post effectively the pension
25 accruals of active employees.

1 Q And did it also permit for certain pensions for new hires
2 to get a defined contribution plan?

3 A It gave the -- the city the authority to establish a
4 defined contribution plan.

5 Q And did you think that making those changes violated the
6 pension clause?

7 A I did not.

8 Q In addition to that, in -- in the example we were
9 discussing yesterday in Illinois, where the -- there was a
10 concern that the proposed changes violated a constitutional
11 right. Do you recall that discussion?

12 A I do.

13 Q Did you along with the AFSCME locals involved there
14 negotiate revisions to retiree benefits consistent with the
15 current form of the statute?

16 A Yes.

17 Q And were those changes implemented?

18 A Yes.

19 Q And -- and was there also a reservation of right that
20 allowed the local there to continue to preserve its
21 constitutional rights? Continue to litigate over the issue of
22 whether or not their constitutional rights were abridged?

23 A Yes. The agreement was without prejudice to a right to
24 continue the litigation challenging the constitutionality of
25 the law.

1 Q You were showed a page in the tentative agreement where
2 the unions agreed not to support the retirees in connection
3 with any grievance or other claims. Do you recall that?

4 A I do.

5 Q In Illinois, isn't it true that the named plaintiff there
6 is an individual retiree?

7 A I believe so, yes.

8 Q And who is paying for the cost of that litigation?

9 A The union is, the AFSCME and as well as other unions are
10 challenging it as well.

11 Q One more follow up question. How long did the
12 negotiations take for the tentative agreement, recognizing
13 that it was Thanksgiving and Christmas and we weren't in a
14 pre-bankruptcy filing regime. But actual days of negotiation,
15 about how long did it take to negotiate that coalition
16 agreement?

17 A Yeah, I really don't know the number of days the parties
18 met. But it -- it occurred over a period of a few months, the
19 negotiations. But there's -- in those negotiations like many
20 others there's a period of intense activity which is probably
21 about 60 to 90 days.

22 MS. LEVINE: Thank you. No further questions, Your
23 Honor.

24 MR. STEWART: If I might, Judge, just a few raised
25 by the questions.

1 THE COURT: Yes, sir.

2 RE CROSS EXAMINATION

3 BY MR. STEWART:

4 Q How long did the negotiations in Illinois take?

5 A The negotiations in Illinois over the retiree health
6 care?

7 Q What you just talked about.

8 A They were part of a master agreement involving many many
9 issues.

10 Q And how long did they take?

11 A I believe they lasted over a year.

12 Q Okay. And you were asked about the tentative agreement.
13 Were vested pension rights reduced under the tentative
14 agreement?

15 A Not at all.

16 Q Were vested pension rights reduced under the tentative
17 agreement?

18 A Maybe I didn't understand the last question. Did you
19 just repeat the question twice?

20 Q And maybe I just repeated myself. Were any vested rights
21 to be reduced under the tentative agreement?

22 A Not that I'm aware of, no.

23 Q And is that why in your opinion there is no violation of
24 the pension clause?

25 A Yes.

1 MR. STEWART: Thanks. That's all I have.

2 THE COURT: In one of your answers, or maybe more
3 than one, you used the phrase TA. Is that tentative
4 agreement?

5 A Yes, sir.

6 THE COURT: All right. Any more questions for the
7 witness? You may step down, sir, and you are excused.

8 A Thank you.

9 (WITNESS STEVEN KREISBERG WAS EXCUSED AT 9:40 A.M.)

10 THE COURT: Thank you for your testimony.

11 MR. DECHIARA: Good morning, Your Honor. Peter
12 Dechiara from the law firm of Cohen, Weiss, and Simon, LLP for
13 the United Auto Workers International Union. The UAW for its
14 first witness calls Michael Nicholson who is out in the hall
15 and I will go get him.

16 THE COURT: Thank you.

17 THE WITNESS: Good morning, Your Honor.

18 THE COURT: Step forward, please. Raise your right
19 hand.

20 (WITNESS MICHAEL NICHOLSON WAS SWORN)

21 THE COURT: Please sit down.

22 MR. DECHIARA: Your Honor, before we begin, I'm
23 going to be referring with the witness to a couple of exhibits
24 in the UAW exhibit book. If I could ask the witness to please
25 locate the UAW exhibit book that's on the table there. And if

1 I may, I'll --

2 THE COURT: Yes, please.

3 DIRECT EXAMINATION

4 BY MR. DECHIARA:

5 Q Good morning.

6 A Good morning.

7 Q Would you please state your full name for the record?

8 A Michael Brendan Nicholson.

9 Q By whom are you employed?

10 A International Union, UAW.

11 Q And in what position?

12 A General counsel.

13 Q Does the UAW have any members who may be affected by this
14 proceeding?

15 A Yes. We have members who are not employees of the City
16 of Detroit, but are employees and retirees of the Detroit
17 Public Library which is a separate municipal corporation but
18 whose employees and retirees participate in the Detroit
19 general retirement system.

20 In addition, we have employees and retiree -- employee --
21 employee and retiree members who work for the City of Detroit
22 Law Department as lawyers, some Detroit Water and Sewer
23 Department employees, some civilian police investigators, some
24 paralegals, and I may be missing something, but I think that's
25 about the -- the size of the list.

1 Q So about?

2 A You know, less than 200 employees. Less than 200
3 retirees. I don't have an exact count, but to give you an
4 idea of the magnitude, Your Honor.

5 THE COURT: Okay. Can you point that microphone
6 more right at you? You can adjust the --

7 A Like this?

8 THE COURT: Yes. That's better.

9 A Okay.

10 THE COURT: Don't -- don't speak too close to it,
11 but it needs to be pointed right at you.

12 A All right. I'll look for your reaction to see if I'm
13 talking too loud.

14 THE COURT: Okay.

15 Q Where and when did you go to law school?

16 A I attended the University of Michigan Law School and I
17 graduated with an honors J.D. degree in 1977.

18 Q And can you recount for us briefly your professional
19 career since law school?

20 A Having left law school, I -- my first job was with the
21 appellate court branch of the National Labor Relations Board
22 at their headquarters in Washington, D.C. I argued cases in
23 the various United States Courts of Appeals around the
24 country.

25 I also, while I was there, took up an interest in
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1 bankruptcy law. They were looking for people in a branch
2 called the -- the special litigation branch to help on
3 bankruptcy matters. And so I did that. That was actually my
4 first involvement with bankruptcy as a lawyer for the labor
5 board. I worked for the labor board until March 1980.

6 Q And what did you do next?

7 A I was hired as a lawyer by International Union, UAW. I
8 had clerked there during law school.

9 Q And how long did you stay at the UAW?

10 A That time I stayed from 1980 until 2000, I believe. 2000
11 or 2001. And --

12 Q And during that period what -- what kind of work did you
13 do at the UAW?

14 A The first -- continuing my theme of -- I did a lot of
15 different kinds of work, but one of the first things I
16 remember when I went there was I got in on the tail end of the
17 Chrysler, I won't call it a bankruptcy because it wasn't in
18 Bankruptcy Court, but it was a restructuring through Congress.

19 Learned about retiree insurance issues there for the
20 first time before there was an OPEB, before that term existed.
21 I worked on that. We went into a severe financial crisis in
22 the auto industry almost with my starting.

23 The UAW when I hired in had a million and a half members
24 and that started a decline, mostly in the parts industry, but

25 also otherwise in a lot of business failures, a lot of
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1 bankruptcies. And I dealt with those issues and the impacts
2 on employees and retirees.

3 Q Were you involved in any legislative activities while you
4 were at the UAW in that period?

5 A I was. I was basically -- because I was the lead
6 bankruptcy lawyer in the eighties for the UAW, I was involved
7 in a number of high profile cases, one of which was LTV. Your
8 Honor may remember that. It wasn't in this Court, it was in
9 the Southern District of New York.

10 And the case began by the debtor which was a conglomerate
11 and had steel mills where the steel workers were the union,
12 but also had an aerospace division in Texas where we were the
13 union. The debtor stopped paying retiree health care
14 immediately upon filing and there was immediate reaction in
15 Congress. An emergency piece of legislation was passed
16 reversing that decision essentially.

17 And then longer term legislation was considered and
18 enacted. I was at work directly with Senator Metzenbaum's
19 staff who was the sponsor of the bill that included among
20 other things Section 1114 of the Act and I actually drafted
21 significant portions of 1114 as well as the Senate report that
22 accompanied it.

23 Q What did you do after 2000?

24 A I retired from the UAW. I went to work for the office of
25 the election administrator of -- for the International

1 Brotherhood of Teamsters. That takes a little bit of
2 explanation, but not much.

3 So the Justice Department had sued the Teamsters under
4 the Racketeering and Corrupt Organizations Act back in the
5 late eighties I think. And to -- in an effort to remove the
6 influence of organized crime in the Teamsters union.

7 And that was settled with a consent decree that was
8 administered and still is administered. It's still alive
9 today by the Justice Department. And one of the pieces of the
10 consent decree was that Justice Department and Court approved
11 monitors would monitor the International officer elections of
12 the Teamsters and issue decisions.

13 So I ran with Mr. Wertheimer who was the election
14 administrator appointed directly by Justice. I was the
15 general counsel of that. I ran a team of lawyers and
16 investigators around the country dealing with issues from as
17 mundane as, you know, whether an election was run properly, a
18 local union delegate election to issues of alleged -- alleged
19 corruption. And I investigated, I deposed, and I ran a team
20 of about 30 or 40 people all around the U.S. Who were mostly
21 lawyers, but some Justice -- or some labor department
22 investigator types as well.

23 Q And how long did that job last?

24 A About -- I did that until -- I think I must have started
25 there, I must have started there in 2001, so it was about

1 three years. So I ended that in 2004. The election was held,
2 we certified the results, finished our forensic accounting and
3 all -- all the work that went with this, a lot of work. And
4 the UAW asked me to come back and I did. I returned to the
5 UAW.

6 Q And how long did you remain at the UAW?

7 A Not long. I was there about 19 months as I recall and
8 then I was offered a tenured professorship at Indiana
9 University which I accepted.

10 Q And while you were at -- while you were at Indiana
11 University did you also perform legal work?

12 A I was allowed to do some work on the side under my
13 contract and I started out in a full time position. I worked
14 also part time for a while when I got involved in some very
15 interesting legal work and they allowed me to work part time
16 in addition to teaching the courses that I taught.

17 Q What is the -- the legal work that you did?

18 A The legal work I did was pretty much the same kinds of
19 things that I had specialized in. So I -- I was there until
20 2010. So it's about a six year period part full time, part
21 part time. And I worked on retiree insurance litigation. I
22 worked on the Dana Chapter 11 which worked on with people at
23 Jones, Day. I know a couple of the people sitting in the
24 courtroom from that. And we had a successful resolution of
25 that Chapter 11.

1 We recovered -- we recovered \$723,000,000 that went into
2 a VEBA fund for retiree health care. And that VEBA actually
3 was in some ways, if you looked at it at that point in time at
4 the onset, better funded than the VEBA's that were eventually
5 -- came out of the General Motors, and Chrysler, and Ford
6 situations. I was very proud of that.

7 Q And then when did you return to the UAW again?

8 A I returned to the UAW in 2010. I finished up my -- my
9 courses and I was offered a job by the newly elected President
10 of the UAW, Bob King to come and be his general counsel.

11 One of the -- I had gotten to know Bob from working on
12 the Rouge Steel bankruptcy which is local. But it was filed
13 in Bloomington, Delaware and also a successful, very
14 successful result. That steel mill is still operating and the
15 retirees are still getting their retiree insurance.

16 And Bob got to know me through working on that and asked
17 me to come back and be his general counsel and I accepted.
18 Gave up my tenure and left Indiana University.

19 Q Over the years that you've been at the UAW, have you
20 engaged in any types of negotiations?

21 A Yes.

22 Q Can you tell us what types of negotiations you've been
23 involved in?

24 A Many kinds. First of all, collective bargaining

1 bargaining agreements which typically run in cycles. They
2 could be three years, they could be four, they could be five.
3 The law doesn't set a -- a fixed term.

4 So that's the most typical kind of collective bargaining.
5 A person in my position did not do collective bargaining of
6 that type except for major companies. And my predominant
7 assignment for that kind of collective bargaining over the
8 years, really over the 20 year span I was there was for Ford
9 Motor Company. I worked with the UAW's lawyer at the Ford
10 Motor Company negotiations.

11 Q Were you involved in any other types of negotiations in
12 your years at the UAW?

13 A Many. We had plant closing negotiations which are a type
14 of collective bargaining under the National Labor Relations
15 Act dealing with plants that are closing or relocating. There
16 may be benefits issues. There's all kinds of issues that have
17 come up, transfer rights. I did that kind of negotiations.

18 Also there's a whole another branch of negotiations that
19 aren't collective bargaining negotiations per say but are
20 negotiations in relationship to litigation. I did much of
21 that. Much -- I'd say more of that than collective bargaining
22 negotiations.

23 And then bankruptcy itself is a sort of a sub -- a subset
24 of that. Bankruptcy is a kind of litigation in a way. And

1 lead up to regular litigation. There's differences too, but
2 bankruptcy insolvent -- let's -- let's use the term insolvency
3 negotiations. I did a lot of insolvency negotiations over the
4 years. That was my predominant area of expertise over the
5 years.

6 Q Have you been involved on behalf of the UAW in
7 negotiations regarding employee benefits?

8 A Yes, I have.

9 Q Can you give us any examples?

10 A I -- two come to mind. One reminds in -- me in some ways
11 of this case. It was one of my first ones. That was the
12 first case in which I was a co-chair of a creditors'
13 committee. I'd served on -- served on a number of creditors'
14 committees over the years.

15 I was co-chair of the -- the UAW was co-chair, I was the
16 person sitting. It was an institutional appointment on that
17 committee. And it was a -- a heavy -- heavy earth moving
18 equipment division of General Motors. It was spun off.

19 And a few years after it was spun off, with the
20 management in place that was there under General Motors went
21 bankrupt, filed -- filed for bankruptcy. And the UAW and the
22 other creditors, none of them labor, we were the only labor --
23 labor creditor, determined through our experts and our lawyers
24 and our own knowledge of the business, that the business was

25 under capitalized by General Motors. That the current

1 management had a conflict of interest and they were reluctant
2 or would refuse to sue -- the debtor, would refuse to sue
3 General Motors.

4 And so the creditors' committee authorized and our
5 lawyers filed a lawsuit, an equitable subordination lawsuit
6 attacking the -- the setting up of this company as an under
7 capitalized company. We -- that resulted in a recovery, a
8 settlement, and a recovery that funded a plan that treated
9 creditors very well.

10 And we -- had we not acted, because the debtor refused to
11 act against somebody who was jointly responsible, the debtors
12 would have -- or the creditors would have received virtually
13 nothing.

14 And the other case is -- and also bears some similarities
15 to this. It's important. It's actually -- I'm very proud of
16 this too. This is the first VEBA that I know of that was ever
17 set up.

18 Allis Chalmers. Allis Chalmers was a company that at one
19 point had tens of thousands of workers and minimal number of
20 retirees. And over time the balance shifted, the company
21 shrank, they sold off one product line after another.

22 And at the time I got involved they had 12,000 retirees
23 and less than 1,000 workers, the bulk of which on the hourly
24 side were UAW. They hired Joe Califano who was LBJ's

1 so a friend of ours.

2 And told us -- they told us they couldn't afford retiree
3 health care on a cash flow basis, it was going to kill them.
4 And we talked about it and it was my advice that we asked them
5 to pay for an investment banker. We at that point, really had
6 no dealings with investment bankers because I had thought that
7 the best deal for our members active and retired, would be if
8 the company was sold as a going concern.

9 What was left was a viable company. And that the
10 proceeds would be used at that point to fund retiree health
11 care, pay out the creditors a premium as well. And we
12 accomplished that and funded a VEBA for those retirees. Most
13 of them have died off now, but there's still some left and the
14 VEBA is still alive and paying retiree health care. That was
15 in -- around 1985, '86 that that started.

16 So that -- that is a case that in the Chapter 11 side, is
17 -- is instructive and in fact was a paradigm in many ways for
18 subsequent events. Many VEBA's have been negotiated. OPEB
19 still wasn't a term of art at that time.

20 It became a term of art when the Financial Accounting
21 Standards Board passed FAS 106 which required companies to
22 book unfunded retiree health care liability and then the flood
23 gates were open in terms of this becoming a live issue in the
24 private sector side, not on the public side.

25 We don't have a lot of public members, we have some.

1 Obviously Detroit and State of Michigan and some others around
2 the country. But that in -- in many ways that case was a -- a
3 paradigm for what was to come in the following decades.

4 Q Has the UAW to your knowledge ever been involved in
5 settling retiree benefit disputes outside of bankruptcy?

6 A Yes, we have.

7 Q And can you explain how that works?

8 A Yes. So we often, very often in ongoing bargaining
9 relationships with companies, are met with bargaining demands
10 to -- in collective bargaining negotiations, to reduce retiree
11 health care benefits for retirees who are already retired.

12 And we have -- our union has historically taken the
13 position based on a very to us, where this shows how much
14 inside base of all this is, I guess, but a very significant
15 and important footnote in, whose number I remember Footnote
16 20, in Allied Chemical Workers v Pittsburgh Plate Glass. I
17 think it's in Volume 414 of the U.S. Report.

18 And that footnote says that it's about whether retiree
19 benefits for those already retired or what are called
20 mandatory bargaining subjects under the National Labor
21 Relations Act. And it says they are not.

22 And in this Footnote 20 even more significant in some
23 ways to us, is a statement that with respect to already vested
24 benefits as a matter of law, federal labor law, retirees have
25 to individually consent to have their vested benefits reduced.

1 Unions or anybody else, their neighbor, the retiree
2 association, nobody has the right to do it for them unless
3 they give them that right. They have to agree themselves.

4 So we have taken the position historically when employers
5 address us, come to us with this, at the onset especially in
6 collective bargaining negotiations, that those are things that
7 we can't bargain about. The Supreme Court says they're
8 protected.

9 However, we live in a real world. And if we are -- if we
10 are convinced, and I know this from countless cases that I've
11 been involved in, if we are convinced that there are risks
12 inherent in the situation, and that those risks require a
13 consideration of making a deal, some sort of compromise that
14 would put our retirees in a better position long run -- in the
15 long run, then we are open to negotiations. But always with
16 the caveat that the results because of Pittsburgh Plate Glass
17 have to be accomplished through a class action approval
18 process always.

19 And all the settlements that we've reached in -- in that
20 kind of litigation, and even sometimes pre-litigation talks
21 are -- are couched in that -- with that condition, very
22 important condition to us. You'll note as an analog, Judge,
23 1114 has a provision in it, I remember at the table being the
24 scribe of this sentence that says in 1114 unions are the

1 quote, but can -- they can negotiation the reductions.

2 It was our idea to put that in there so that 1114 as a
3 process, Chapter 11 as a process could, you know, it's kind of
4 a quick moving -- can be quick moving process, especially 1113
5 and 1114. And they're comparative to each other in some ways.

6 And we wanted to -- we -- we thought it should be clear
7 and we convinced our friends on capitol hill and I think the
8 lobbyists for the other side as well that that was a good
9 idea.

10 But outside of Chapter 11, you have to have this class
11 action process. And what we do is, so you can understand our
12 thinking, we look at the types of risks that are involved.
13 And there are two basic kinds of risks.

14 There's insolvency risk and there's litigation risk.
15 Litigation risk is the risk that the employer either has sued
16 or will sue and sue the retirees, sue the union, and ask for a
17 reduction in benefits because the benefits aren't vested. Ask
18 the Court to say the benefits aren't vested. That's a
19 litigation risk.

20 Insolvency risk is a risk of collection. That's what we
21 were facing in Allis Chalmers by the way. It was insolvency
22 risk. They never even -- they admitted they owed them
23 lifetime retiree health care benefits that they couldn't
24 change.

1 could deal them now or face a company that was going to, we
2 thought, increasingly shrink in terms of its asset value. And
3 at the end of the day the cash would run out and we wouldn't
4 be able to pay.

5 So we -- we were the ones who initiated that process. We
6 suggested Chapter 11 to them and they ultimately agreed. And
7 -- and so those are the kinds of -- that's the kind of
8 thinking that -- and I'm sorry about running on, but that's --
9 it's a complex area. That's the kind of thinking we engage in
10 in deciding whether to negotiate about retiree health care.

11 But you got to understand what negotiation means. It --
12 it -- the caveat about class action approval is critical and
13 it's driven in our view by the requirement of Footnote 20 in
14 Pittsburgh Plate Glass.

15 No one has ever really quarreled with us on the -- in the
16 settlement fund on that. That's how when we settle we always
17 do it on a class action basis.

18 Q You've testified about various negotiations regarding
19 insolvency that the UAW has been engaged in. Do you know
20 whether the Jones, Day law firm has ever been on the other
21 side of those negotiations?

22 A Yes, yes. They weren't, you know, a lot of -- there's a
23 lot of law firms that do this. Jones, Day does it. And with
24 us there were two cases that I can think of, Dana first of
25 all.

1 They were the lead counsel, Corrine Ball was the -- the
2 lead counsel of the lead counsel firm, Jones, Day. Andy
3 Cramer was the sort of co-lead counsel. He's a person we at
4 the UAW greatly respect. He's unfortunately passed away a
5 little bit ago. He's a deal maker par excellence and we miss
6 him.

7 And the other -- and that resulted as I said in a -- in a
8 very well funded VEBA. Also all the plants really kept open.
9 We have a good collective bargaining relationship with this
10 company, Dana. It's a -- it's a real positive. So that's
11 one.

12 And then on the tail end of the General Motors, I was
13 gone -- I was not at the UAW for the GM and Chrysler 11's.
14 But there has been some spillover on litigation in -- from
15 General Motors that some of it in the Bankruptcy Court, some
16 of it is now pending in this Court. And although Jones, Day
17 was not the lead counsel, was not counsel according to the
18 appearance sheet that I looked at in the out of Court VEBA
19 -- sorry I'm confusing two things.

20 Let me start over. There -- General Motors filed Chapter
21 11 as everyone in this city knows. A deal was reached. The
22 company survived under new ownership.

23 Following on from that, there was a dispute between the
24 UAW and General Motors about whether 450,000,000 additional
25 dollars was owed to the GM VEBA. Litigation was had,

1 commenced in both the Bankruptcy Court here in the Eastern
2 District of Michigan. The Bankruptcy Court ruled that the
3 litigation should proceed here, it's pending in front of Judge
4 Cohn. To this day we're waiting -- pending on dispositive
5 motions.

6 And Jones, Day was involved, but our primary -- my
7 primary dealing with Jones, Day on that was -- was trying to
8 see if a settlement could be negotiated and talk to the other
9 side, and talk to Mr. Cramer and we determined we were too far
10 apart. And so -- and we haven't really pursued that.

11 So Dana and General Motors but not really the -- the
12 heart of the bankruptcy, but a follow -- follow on piece of
13 litigation. That's -- that's my knowledge about Jones, Day.

14 There are other Jones, Day matters that I have been
15 personally involved in. Continental Tire and some other ones
16 I'm probably missing, but that is -- we do have some dealings
17 with Jones, Day, yes.

18 And we were -- and I'll say this. When -- when the --
19 because of our positive relationship with Mr. Cramer,
20 particularly we didn't know for sure when this process started
21 at Detroit before the filing, the sort of lead up to the
22 process until the filing. We -- we wondered whether that, you
23 know, positive relationship would -- would continue or not.

24 Q Did you attend the June 14th, 2013 meeting where Mr. Orr
25 presented his document called proposal to creditors?

1 A I did.

2 Q What's your recollection of that meeting?

3 A Well, there was a book that was passed. My guess is,
4 it's in evidence. And they walked through the book and
5 described the various pages and the explanation passed back
6 and forth between various people.

7 Up on a dais, it was held in a room out at the airport.
8 There was a dais and -- and a number of representatives from
9 Jones, Day and some of the other professional firms that are
10 in the case today, where they were talking and they made a
11 presentation. People listened. And then at the end of the
12 listening they -- there were cards that were passed out if
13 people wanted to ask questions and people filled in cards.

14 Q Were --

15 A And they were read out, not by the questioners, but by
16 the people on the dais and -- and answered.

17 Q Were the people who were invited to attend the meeting
18 allowed to speak freely during the meeting?

19 A They weren't allowed to speak at all.

20 Q In any of your prior experiences in negotiations, had you
21 ever attended or participated in negotiations where one side
22 wasn't allowed to speak freely?

23 A With respect to all the various kinds of negotiations, I
24 have testified to just now, and if there's any others I've

1 in negotiations where only one side speaks.

2 Q At the June 14th meeting, was Mr. Orr asked about Article
3 9, Section 24, of the Michigan Constitution?

4 A He was.

5 Q Do you recall whether he gave a response and if so what
6 it was?

7 A It -- it was something to the effect that -- that, you
8 know, the question was something like does that -- how does
9 that affect what you want to do. Because the book they passed
10 out said they wanted to cut pension benefits.

11 And he said well, it might take legislative action or
12 agreement. And that was the extent of it, it was a very short
13 answer.

14 Q After the June 14th meeting, did you report back to the
15 UAW leadership about Mr. Orr's proposal?

16 A I did.

17 Q And what was -- can you describe that interaction that
18 you had with the UAW leadership?

19 A Yes. I talked to our President Bob King directly one on
20 one. I reported what happened. He asked me to be --
21 personally lead our effort despite the small number of
22 retirees we had because we care deeply about what happens to
23 the City of Detroit, and its citizens, and its retirees, and
24 its employees. And it's our home. And he said, let's do

1 play a constructive role in trying to bring a resolution of
2 this.

3 Q Did you attend a June 20th meeting regarding the proposal
4 that the emergency manager had made?

5 A I did.

6 Q And was the same procedure that you testified about
7 concerning the June 14th meeting in place at the June 20th
8 meeting, i.e. that attendees were not allowed to speak freely,
9 but had to submit cards? Was that same procedure in place?

10 A It was. The dynamics of the meeting were just a little
11 different. I just thought of this sitting here now. In the
12 airport meeting the -- the city professionals were up -- up on
13 the dais overlooking us. And this meeting happened to be in
14 an amphitheater in the 13th floor of the city county building
15 and everybody was looking down on them like an operating room
16 where the surgeons all look -- the surgeon students look down
17 at the operating table. So it was a little different.

18 But the card thing was exactly the same. If you had a
19 question -- Mr. Orr wasn't there. So it was led by Heather
20 Lennox and some other Jones, Day and other professional
21 people. But the same process was there, they passed out
22 cards.

23 Q And did you submit any question cards at that meeting on
24 June 20th?

25 A I -- I submitted two question cards.

1 Q Okay. I'd like to draw your attention to Exhibit 623.
2 It's -- it should be in the book behind you. And if we can
3 have it on the screen as well.

4 A This.

5 Q The image on the screen is in black and white and it's
6 hard to read.

7 A That's kind of blacked out in the corner, so --

8 Q Right. But the book, the hard copy book has it in color.

9 MR. DECHIARA: And, Your Honor, I -- the -- the
10 Court has been submitted copies in color that are legible.

11 A Are you ready, Your Honor? You've got it?

12 Q Since -- Mr. Nicholson, since legibility of the -- of the
13 image on the screen is -- is limited and since -- since it's
14 in handwriting, I would just ask you to -- to read into the
15 record the -- the question that you submitted and Exhibit 23
16 is a two page document.

17 So let me first ask you to read the -- the first one.
18 It's -- it's stamped at the bottom UAW 0302. Can you read
19 what your question was on that page?

20 A That's actually two questions on that one card. And the
21 first -- and as you can see, there's a little cut off at the
22 bottom, but I can help piece that together.

23 So question one is, how does the emergency manager
24 propose to compromise the rights to pension payments which are
25 protected by the Michigan Constitution?

1 Question number two was, how could Governor Snyder
2 authorize a Chapter 9 filing by the city without violating
3 Article 9, Section 24 of the Michigan Constitution given the
4 announced intention and then I believe the words are of the EM
5 to impair and diminish pension benefits.

6 You can see the ish and the D in front of -- in front of
7 pension. That's diminish and you can see the R and the
8 capital I and so on on impair before the -- it's not a
9 preposition, whatever the word is sorry, but -- but that --
10 that's basically what it says.

11 Q Do you recall whether you received a response to those
12 questions that you posed at that meeting?

13 A Heather Lennox responded to that.

14 Q Do you recall what she said?

15 A Yeah. I -- I will tell you. And I'm going to take it
16 one question at a time here.

17 Basically the response on the first one was kind of a
18 non-response. I didn't really understand --

19 THE COURT: Just tell us what she said, sir.

20 A Okay, I will. I will. Let me think.

21 Q Well, let me ask you, do you have a verbatim recollection
22 of what she said?

23 A I don't have a verbatim recollection.

24 Q What's your best recollection of what she said?

25 A My best recollection is she said something like, well,
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1 we're just -- that's something we're just going to have to
2 deal with. Something like that. And that is not verbatim.

3 And then on the second question, I had a more specific
4 recollection about Governor's Snyder's authorization. And
5 with respect to that, Ms. Lennox said, it's a two -- and again
6 this is not verbatim, but it's very close.

7 It's really a two part process. The Governor authorized
8 this bankruptcy and then what happens to the pensions just --
9 is just something that happens in the Chapter 9 proceeding.
10 So they don't happen together, it's a two part process. I
11 remember that phrase. And I -- I heard that.

12 Q Let me now turn you to the second question card, the one
13 that's stamped at the bottom UAW 0303. Can you read into the
14 record what the questions are on that card?

15 A Yes. This is a -- sorry about the complexity of this,
16 but there is a -- three questions with a sub part in the first
17 one. So we'll take it in terms of reading one sentence at a
18 time.

19 The first sentence is, does the emergency manager law
20 under which Mr. Orr was appointed, grant my union, and it's
21 the UAW, the authority to A, negotiate over, and B, compromise
22 either X, OPEB for present retirees or Y, pension benefits
23 already accrued by present and/or future retirees.

24 The second sentence says, please explain and cite me to
25 the basis for any such authority.

1 And the third sentence says, if the answer to either of
2 the above is no, who does Mr. Orr propose to negotiate with.

3 Q And do you recall whether there was a response given to
4 those questions?

5 A The response was, in -- in so many words, that they
6 didn't have any doubt about the -- the ability of the -- Mr.
7 Orr to negotiate. It was up to the other side to figure out
8 what to do. It was our problem in other words.

9 And that's not what I was asking. I wasn't asking
10 whether it was our problem. I was asking legally what --

11 THE COURT: You've answered the question, sir.

12 A Okay. Thank you.

13 MR. DECHIARA: Your Honor, Exhibit 623 is already in
14 evidence, I won't move it into evidence.

15 Q Mr. Nicholson, was the UAW willing to negotiate with the
16 emergency manager over reduction in accrued pension benefits
17 for its members?

18 A No.

19 Q Why not?

20 A At the meeting that we just -- the June 20th meeting, I
21 spoke after -- and I said -- I said our position on this. So
22 you didn't ask me that, but I'll tell the Court.

23 THE COURT: No, the simple question was, why not?
24 Please answer that question.

25 A Okay, I will. The Michigan Constitution, Article 9,
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1 Section 24 which we believe is binding on the UAW and binding
2 on all citizens of Michigan including the Governor, precludes
3 impairment or diminishment of pension benefits.

4 And in our view it would be a violation of law for us to
5 do that. And I also believe that only the citizens of the
6 State of Michigan through the amendment process with respect
7 to their Constitution, have the authority to change that legal
8 fact. And that has not happened. And the Governor can't
9 amend the Constitution, nor can Mr. Orr. They're not
10 authorized to do so under our law, our basic law in this
11 state.

12 Q You testified earlier about OPEB, other post employment
13 benefits. Do you recall using that phrase?

14 A Yes.

15 Q Was the UAW willing to participate in the resolution of
16 OPEB issues with the emergency manager?

17 A Yes.

18 Q What was the UAW prepared to do?

19 A While the pre-bankruptcy -- let's talk about the
20 pre-bankruptcy period. I think -- and -- and limit it to
21 that. And if you want --

22 Q Right. That's all I'm asking about, pre -- pre-July 18.

23 A Right. I previously told you, Your Honor, about this
24 process that we go through in figuring out whether we have an
25 employer who is --

1 THE COURT: The question was, what are you -- what
2 were you willing to do?

3 A Okay. Well, we went through this process that I
4 described and evaluated the city. And we -- and we looked at
5 the -- the -- we didn't have access to the data room. And I
6 think you'll remember that.

7 THE COURT: Again sir, you're going beyond the
8 question.

9 A Okay. We --

10 THE COURT: What were you willing to do?

11 A Based on our analysis of the situation, I told lawyers
12 for Jones, Day at a meeting on July 11th that the UAW was
13 willing to engage in a class action process to deal with and
14 try to resolve the OPEB issue and take leadership in that role
15 since we, more than any other union in the country, have dealt
16 -- had to -- had to deal with that issue. And I asked Mr.
17 Miller, Evan Miller, I -- I said you know, there's a process
18 Evan, to deal with this --

19 Q Who is Evan Miller?

20 THE COURT: And again -- again you're going beyond
21 the question.

22 A All right. I'll let my counsel fill in. Trying to move
23 -- move this along, Your Honor.

24 MR. DECHIARA: Your Honor, I'm going to refer the

1 evidence. I've spoken to counsel for the city. I understand
2 they have no objection, so I would now move Exhibit 624 into
3 evidence.

4 THE COURT: Any objections?

5 MR. STEWART: Hold on a minute. Oh, no, no
6 objection.

7 THE COURT: It is admitted.

8 (UAW Exhibit 624 was admitted)

9 Q Mr. Nicholson, can you either look on the screen or turn
10 in your book to Exhibit 624? And I would first ask you, it's
11 a three -- it's a three page document. Can you identify what
12 each of the pages are?

13 A It's actually a four page document.

14 Q Thank you.

15 A And it's -- it's an affidavit that I swore to on July
16 18th, 2013 with two exhibits that are identified in the text of
17 the affidavit.

18 (UAW Exhibit 624 was identified)

19 Q Okay. Can you identify the third page? The page that
20 says Exhibit A on it.

21 A Yes. That's an email from David Birnbaum of Jones, Day
22 to me dated June 28th, 2013.

23 Q Okay. And now I'd like you to turn the page to the last
24 page of the exhibit and ask you to identify what that document
25 is. The one that says Exhibit B on it.

1 A That's an email I sent to Mr. Merrett and Mr. Birnbaum at
2 Jones, Day on July 9, 2013 in advance of the meetings that
3 were scheduled and that we were planning to attend with
4 representatives of the city on July 10 and 11, 2013.

5 Q Okay. I'd like to direct your attention to the first
6 paragraph of that email that's marked as Exhibit B. It
7 states, UAW has requested access to the City of Detroit data
8 room maintained by your firm. You have responded by
9 proffering a proposed non-disclosure agreement and release and
10 have made UAW's execution of such documents a condition of our
11 access to the data room. Do you see that language that I just
12 read, Mr. Nicholson?

13 A I do.

14 Q And what was the UAW's position in regard to the
15 requested non-disclosure agreement?

16 A Well, we had -- to that point not agreed to sign it. Our
17 counsel, Cohen, Weiss, and Simon, had thought we should. But
18 I said no, this is a public -- said to them, no, this is a
19 public proceeding involving a public entity and it should be
20 transparent and open and there should not be some secret data
21 room. I can accept that in a Chapter 11 proceeding with a
22 private entity, but not with a public entity.

23 So but the second paragraph asked them -- you asked our
24 position at this time, but we asked them to explain the basis
25 for that condition of signing confidentiality.

1 Q Right. And let me --

2 A We asked them to explain.

3 Q Let me just direct your attention to the last sentence of
4 the second paragraph. It says, "I would like to understand
5 the basis for withholding data room information with respect
6 to the City of Detroit based on claims of confidentiality".
7 Do you see -- do you see that sentence there, I just read, Mr.
8 Nicholson?

9 A I do.

10 Q Did you get a response to that statement?

11 A Never.

12 Q Was the UAW allowed access to the data room prior to the
13 bankruptcy filing?

14 A Unless we refused -- unless we agree to sign the
15 confidentiality agreement and release, we were not allowed
16 access and we did not sign the confidentiality agreement and
17 release. And this Court, as Your Honor knows, subsequently --
18 it was subsequently removed as a condition for access.

19 Q Okay. And just to be clear on your answer, before the
20 bankruptcy filing, did the UAW -- was the UAW given access to
21 the data room?

22 A No.

23 Q In your experience, how important is it in negotiations
24 over retiree benefits to have access to relevant information?

25 A It is absolutely essential.

1 Q Let me now refer --

2 A Good faith negotiations cannot occur without access to
3 information. As a matter of fact, under the National Labor
4 Relations Act that's a basic tenant of the national labor law.
5 And -- and especially when an employer is claiming inability
6 to pay. That's a condition precedent to any good faith
7 negotiations. And we were denied access here.

8 THE COURT: Okay. I think you've answered the
9 question, sir.

10 A Thank you, Your Honor.

11 Q Let me now refer you to Paragraph 4 of Exhibit 624. If I
12 -- if I could have that exhibit on the screen. It's the big
13 paragraph in the middle.

14 A Yes.

15 Q Do you see that paragraph, Mr. Nicholson?

16 A I do.

17 Q Okay. I'm going to refer you to the sixth line that on
18 the right side of the line there's a sentence that begins,
19 please tell me what. Do you see that?

20 A Are you going to highlight it? I see it. Give me a
21 second.

22 Q Sure.

23 A It actually helps a lot if you highlight it because it's
24 kind of squeezed.

25 Q Okay, yeah. If the -- the rest of the paragraph could be
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1 highlighted.

2 A Well, you want to ask me about the first sentence that
3 you've highlighted?

4 Q Yes.

5 A Please tell me what authority your firm and/or Mr. Orr
6 gives the UAW the right to compromise vested benefits --
7 benefits, sorry, despite the contrary provisions of Article 9,
8 Section 24. It's very similar to the question I asked at the
9 June 20 meeting.

10 Q And I'm not going to read them out loud into the record.
11 It's in print, and it's highlighted on the screen. And -- and
12 Mr. Nicholson you could read those questions yourself.

13 And my -- my question is, did you ever receive a response
14 from Jones, Day or the emergency manager to the questions that
15 are set forth in that paragraph?

16 A Never.

17 Q Let me now refer to the last paragraph of the -- the
18 exhibit and the last sentence of the last paragraph. It says,
19 your full answers to the questions posed in the foregoing
20 paragraphs of this message will help the UAW determine the
21 scope of any such negotiations and the UAW's decision
22 regarding it's representative capacity in them about which
23 your firm has inquired. Do you see that sentence?

24 A I see it.

25 Q What did you mean when you wrote that?

1 A I wrote it and I meant that. We were trying to
2 understand their point of view with respect to the ability to
3 conduct negotiations and our ability to compromise.

4 And we were trying to make decisions, we were -- I -- I
5 was the lead person here for the UAW. And I personally was
6 trying to make decisions about whether we had a bargaining
7 partner here or not.

8 And this was part of my inquiry and thought process which
9 continued -- which I intended to continue put it that way. At
10 that point at the July 10th and 11th meetings, key to
11 understanding the -- my motivation in asking that question and
12 saying what you've got highlighted there, your full questions,
13 et cetera, that sentence, is the fact that this was the day
14 before the July 10th and the 11th meetings. We were going to
15 talk about pensions on the 10th and OPEB on the 11th.

16 So I sought that inquiry. I -- I posed that inquiry but
17 never really got a response. Never got a response at all to
18 anything in this email. It went unresponded to. My sworn
19 affidavit that was filed in the State of Michigan, Circuit
20 Court for the County of Ingham was un -- un -- unopposed.
21 Nobody said it was untrue. It is true. So, the next thing
22 that happened was, we showed up for the meeting on July 10th.

23 Q Okay. You anticipated my next question. You attended
24 the July 10th meeting?

25 A I went to the city -- I went to the City of Detroit city
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1 county building to attend it and was in the room for a brief
2 period of time, also talked to Mr. Miller for a short period
3 of time out in the hall before.

4 Q Who is Mr. Miller?

5 A Mr. Miller is a partner at Jones, Day who is an ERISA
6 partner.

7 Q And what happened at the July 10th meeting during the time
8 you were there.

9 A Well, out in the hall -- out in the hall before the
10 meeting, this will not take long because I basically had to
11 leave the meeting. Out in the hall before the meeting Mr.
12 Miller asked me if I -- if he could engage in an off the
13 record discussion with me and I said, Evan, I don't think this
14 is the time for that.

15 We have to do what we have to do here. And so I don't
16 think this is the time, but I appreciate that. Then we walked
17 into the meeting.

18 I saw Ed Hammond, a partner at Clark, Hill. They're, I
19 presume, representing the retirement systems. Ed and I know
20 each other. We were -- worked together very closely to
21 resolve the Rouge Steel bankruptcy. And especially on pension
22 issues and retiree health care issues.

23 And I exchanged pleasantries with Ed and he said to me,
24 you know, Mike, you should check out the legislative history

25 of ERISA which I know a fair amount -- amount about. And --
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1 but I wasn't aware of this piece.

2 And he said, Congress made clear in that legislative
3 history that the reason it didn't extend the pension guarantee
4 system to state and city employees was because it believed
5 that states and cities would stand behind their pension
6 promises. And I said thank -- thank you for that. I
7 appreciate that. Then we sat down.

8 THE COURT: Excuse me one second. Is there
9 something you want to say, sir?

10 MR. STEWART: Your Honor, I think -- I think maybe a
11 question and answer approach might work better here. So I
12 would actually move to strike Mr. Nicholson's last testimony
13 and maybe we can move things along more quickly if we did it
14 that way.

15 A I'll try to stick with question and answer, Your Honor.

16 THE COURT: A good idea. The Court will strike the
17 last answer, it was hearsay.

18 MR. DECHIARA: Well, Your Honor, the witness was
19 just recounting what the conversation was he had with this
20 individual. I don't believe that -- we're not submitting it
21 for the truth of what the other individual --

22 THE COURT: What's the relevance of it then? The
23 evidence is stricken.

24 MR. DECHIARA: It's --

25 THE COURT: Please proceed in question and answer

1 format.

2 Q What else do you recollect from that meeting?

3 A The meeting began -- the meeting was conducted by well,
4 such as it was. I was there for a short period of time.

5 David Heiman, a partner at Jones, Day began the meeting by
6 saying, if you're -- and this is not verbatim, but this is --
7 this is the nub of it.

8 If you want to attend this meeting you have to agree that
9 this is a Rule 408 meeting, protected by Rule 408 of the
10 Federal Rules of Evidence.

11 Q And what was your understanding of what that meant?

12 A He meant that what happened in the meeting could not go
13 here, or perhaps elsewhere in terms of evidence or perhaps
14 other things, I don't know. I responded and told him that the
15 UAW was not willing to accept that condition as a condition of
16 participation in the meeting because we believed again that
17 this should be an open process. We're dealing with public
18 employees and we have to be able to tell our members what
19 we're doing. We don't want to have secret meetings.

20 And we want -- and we also thought it was relevant for
21 what might happen down the road. So I -- it was all very
22 polite, but I said I'm sorry, I can't accept those conditions
23 and I left.

24 Q Did you attend the July 11th meeting the next day?

25 A I did.

1 Q Do you recall what the subject of that meeting was?

2 A It was announced to be a meeting about retiree health
3 care OPEB.

4 Q Okay. Was Mr. Orr present at the July 11th meeting?

5 A He was not present at the July 10 or 11 meetings when I
6 was in the room. And I was in the room for all of the July 11
7 meeting.

8 Q Do you recall a presentation by the Jones, Day attorneys
9 at the July 11th meeting?

10 A Yes.

11 Q And what's your recollection of the substance of that
12 presentation?

13 A Evan Miller walked through their proposal on OPEB
14 benefits. On -- and on health care benefits.

15 Q Did you speak at the meeting?

16 A I did.

17 Q And do you recall what you said?

18 A I spoke several times. I asked some questions. But at
19 the beginning before we got into the substance of OPEB in
20 response to Mr. -- Mr. Heiman said we're not going to impose a
21 408 condition on participation in the meeting. And I said
22 that's good because I thought of a -- another reason why it
23 would be inappropriate because if this was evidence -- if --
24 it would be evidence -- it would important to look at what
25 happened because of Bildisco. I said that.

1 Q But --

2 A And then I spoke later in the meeting as well.

3 Q What -- what are you referring to, by the word Bildisco?

4 A Bildisco is a Supreme Court decision about rejection of
5 agreements pre 1113 of the Bankruptcy Code and it talks about
6 how a Court should look at what happened in dealings between
7 the parties in negotiations so to speak.

8 Q I'm sorry, I interrupted you. You were -- you were
9 recounting what you said at the July 11th meeting.

10 A I spoke again after we were well into the discussion of
11 retiree health care benefits and health benefits in general.

12 Q And --

13 A Do you want me to say what I said or --

14 Q Yes, recount what you said.

15 A I'm trying to stick to the Q and A, so -- I -- several
16 questions. And my first question as I recall was to Mr.
17 Miller because he was really the presenter. Was could the
18 city having if this -- if this were to be, this program that
19 they were proposing were imposed in any way by agreement or
20 otherwise, would the city be free in the city's eyes to
21 eliminate the reduced benefits at any time and he said yes, it
22 would. That was -- and then I spoke again shortly thereafter.

23 Q What did you say then?

24 A Okay. I said, what recovery would there be for lost
25 benefits. In other words the difference between a reduced

1 benefit level and the benefits that were in place at the time
2 the chapter -- at the time -- we weren't in Chapter 9. We
3 were trying to avoid Chapter 9.

4 But under a deal what would -- what would happen to that
5 differential between the benefits as they were and the
6 benefits at the reduced level. Would there be a recovery for
7 workers. And Mr. Miller said, no.

8 Q Do you recall having any other interchanges --

9 A I said, and I responded, that's very unusual. That's
10 certainly not the way it works in 1114 which I know a little
11 bit about.

12 Q Did you have any other interchanges with Jones, Day
13 attorneys on July 11th?

14 A Yes.

15 Q Can you tell us what those were?

16 A At the -- near the conclusion of the meeting, I spoke up.
17 I started to talk about this earlier, but near the conclusion
18 of the meeting, I having thought about this issue going into
19 the meeting, looked at Mr. Miller and said, Evan, I want you
20 to go back and tell Mr. Orr that the UAW -- well, let me stop.

21 I -- I said Evan, there's a way to deal with this despite
22 the fact that we have this issue of being able to bargain or
23 not bargain for retirees. You know what it is. And he said
24 yes, class action.

25 And I said, that's right. And I said, you should go back
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1 and tell Mr. Orr that the UAW which has a lot of experience in
2 doing that, is willing to engage and lead in that process with
3 you in order to avoid a bankruptcy proceeding. And please go
4 back and present that to Mr. Orr and get back to me because we
5 are serious about that.

6 Q And between July 11 when you made that statement to Mr.
7 Miller, and July 18th when the bankruptcy was filed, did you
8 receive any response from the emergency manager or from Jones,
9 Day regarding the UAW's proposal to have a class action
10 process put in place?

11 A Never.

12 Q To what extent were there what you would consider, given
13 your experience, to -- to what extent were there what you
14 would consider negotiations over pension benefits at the June
15 14th, the June 20th, and the July 11th meetings?

16 A There were two significant deficits that precluded
17 negotiations but each of which could have been taken out of
18 the way. The first was access to information unimpeded by
19 secrecy. That was not taken away.

20 The second was a process because --

21 THE COURT: I think your lawyer wants to say
22 something to you.

23 MR. DECHIARA: Thank you, Your Honor.

24 A I'm sorry, I apologize.

1 extent do you believe there were negotiations over accrued
2 pension benefits?

3 A Did I -- if I misunderstood you about pension, I'm sorry.
4 I -- I must not have heard --

5 Q That's fine. But now that I've clarified the question,
6 can you answer it?

7 A The question is, were there discussions about pension
8 benefits.

9 THE COURT: No, that's not the question.

10 Q The question is, to what extent in your experience, given
11 your experience --

12 A Yes.

13 Q Were there what you would consider to have been
14 negotiations over accrued pension benefits at the meetings
15 that you attended?

16 A As far as the UAW was concerned, no. And in our view
17 there could not have been because it would have been contrary
18 to Michigan's basic law, the Constitution.

19 Q And now let me ask you the same question, but instead of
20 limiting it or instead of referring to accrued pension
21 benefits, let me ask you to what extent do you believe there
22 were negotiations over OPEB?

23 A And this is what I started to answer before and I
24 apologize to the Court for mishearing the question. We tried
25 to start negotiations. There could have been -- there were

1 impediments.

2 THE COURT: That's not the question.

3 A Were there negotiations?

4 THE COURT: To what extent were there negotiations.

5 A We asked to be involved in negotiations. We invited the
6 city to --

7 THE COURT: And this is not a question about your
8 attitude or your intent.

9 A But it's about --

10 THE COURT: The question is to what extent were
11 there negotiations?

12 A The first step in negotiations --

13 THE COURT: I want to tell you, sir --

14 A Okay.

15 THE COURT: This question and the last question are
16 probably the most important questions you are asked here this
17 morning.

18 A I understand.

19 THE COURT: To what extent were there negotiations.

20 A There were. And in our view the first step --

21 THE COURT: Were what?

22 A There were negotiations that we tried to initiate with
23 the city over OPEB. We invited them to negotiate through a
24 class action process. The first step in negotiations is to

1 will lead to a resolution.

2 We asked. We asked that be taken back to Mr. Orr and Mr.
3 Orr never responded to us, nor did his lawyers ever. That's
4 my answer.

5 Q And given the lack of response by Mr. Orr, was what
6 occurred -- what actually occurred, were those negotiations?

7 A In my view the first step in negotiations is to ask, but
8 following --

9 THE COURT: Again you're not answering -- you're not
10 answering the questions.

11 A Okay. All right.

12 THE COURT: Given your --

13 A They never took us up on it, put it that way.

14 THE COURT: Given your perception of what actually
15 happened, and your understanding of what negotiation means,
16 that phrase, that term means, to what extent was what happened
17 negotiation in your opinion?

18 A I have to explain what I mean by negotiations to answer
19 that, Your Honor.

20 THE COURT: No, you don't. You just have to tell me
21 the extent to which it was negotiation.

22 A The first step in negotiations --

23 THE COURT: Okay. This -- this answer you've
24 already given me. If that's your answer, we'll move on.

25 Q Mr. Nicholson, are you familiar with the Flowers
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1 litigation?

2 A One second.

3 THE COURT: What's the matter, sir, do you need a
4 minute?

5 A I do.

6 THE COURT: All right. We'll take a recess until
7 10:55.

8 (WITNESS MICHAEL NICHOLSON WAS TEMPORARILY EXCUSED AT
9 10:55 A.M.)

10 THE CLERK: All rise. Court is in recess.

11 (Court in Recess at 10:39 a.m.; Resume at 10:56 a.m.)

12 THE CLERK: All rise. Court is in session. Please
13 be seated.

14 (WITNESS MICHAEL NICHOLSON RESUMED THE STAND AT 10:56
15 A.M.)

16 THE WITNESS: Your Honor --

17 THE COURT: One second. It looks like everyone is
18 here. Sir.

19 THE WITNESS: There's two things I need to tell you
20 about my testimony if you'll give me permission.

21 THE COURT: Any objection?

22 MR. STEWART: No. No objection, Your Honor.

23 THE WITNESS: First of all, Your Honor, I just -- I
24 want to make the Court aware that my -- I'm trying to stay

25 focused on this, but I just learned this morning -- this
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1 morning that my brother is in the hospital with end stage
2 liver cancer. And I want to be with him. So I'm trying to
3 stay on task here, okay?

4 THE COURT: Okay.

5 THE WITNESS: And -- but I think you should know
6 that because you have to judge my credibility and my frame of
7 mind.

8 THE COURT: Right.

9 THE WITNESS: The -- the second thing I want you to
10 know if there's something -- an additional thing I remembered
11 about I should have responded to it about the July 11th
12 meeting. And with your permission, I'll tell you so you have
13 a complete story, but it's up to you.

14 THE COURT: Go ahead.

15 THE WITNESS: So, after I asked Mr. Miller to go
16 back to Mr. Orr and tell him the UAW was willing to engage in
17 a class action type process, something would culminate that to
18 resolve retiree health care out of bankruptcy.

19 Mr. Heiman -- Heiman, I'm sorry, said there isn't time
20 for that. And I said, there is time, we got this resolved
21 very quickly in a number of cases including Ford, and GM, and
22 Chrysler.

23 That was the last discussion we had. So the negotiations
24 such as they were, there was nothing beyond that point. There
25 was an ask, an invitation, but no acceptance.

1 BY MR. DECHIARA:

2 Q The last topic, Mr. Nicholson. I'm going to ask you
3 about July 18th. But let me first ask you some questions to
4 set the stage. Are you familiar with the Flowers litigation?

5 A Yes.

6 Q And what was -- what was or is the UAW's role in the
7 Flowers litigation?

8 A First of all, I conceived of the idea of the basic
9 premise and theory behind the litigation. That's the first
10 part of the role.

11 Second, the UAW funds the attorney for the Flowers
12 plaintiffs.

13 Third, the UAW cooperates and lends assistance to those
14 attorneys. However, those attorneys make their own mind up
15 with respect to representing their clients. So that's the
16 answer.

17 Q And do you know Bill Wertheimer, counsel to the Flowers
18 plaintiffs?

19 A I've known Bill for decades.

20 Q Okay. Are you aware that the Flower plaintiffs moved for
21 a preliminary injunction?

22 A Yes, I am aware of that.

23 Q And are you aware of the date that the preliminary
24 injunction was scheduled to be held?

25 A Yes. It was scheduled by the Ingham County Circuit Court
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1 to be heard on July 22nd.

2 Q Okay. And do you recall working with Mr. Wertheimer on
3 reply papers for that preliminary injunction motion?

4 A Yes. Bill came to my office at UAW solidarity house on
5 July 18th and we worked on finalizing a reply brief and I also
6 signed the affidavit which is -- which was notarized and is in
7 the record as Exhibit 624 that day.

8 Q Now on that day, did you become aware that the retiree
9 system in its -- its lawsuit had filed papers for an ex parte
10 TRO?

11 A We received a call. Bill and I were in my office along
12 with our law clerk, great law clerk at the time, Kristin
13 White, working busily away on the reply brief which had to be
14 filed that day, July 18th. So that was why we were there,
15 because it had to be driven up to Lansing as I understand it.

16 And we had a call during that day to that effect, that
17 they were going to Court and seek an ex parte restraining
18 order restraining the city from filing a Chapter 9 petition
19 because they had heard --

20 THE COURT: All right. Sir, you've answered the
21 question.

22 A I'm sorry.

23 Q Did you and Mr. Wertheimer that afternoon have a
24 discussion about the retiree systems seeking a ex parte TRO?

25 A Yes.

1 Q And can you recount the conversation that you and Mr.
2 Wertheimer had on that subject?

3 A Yes.

4 MR. STEWART: I just -- it's a proper question,
5 however, there's going to be a waiver here.

6 MR. DECHIARA: Your Honor, first of all, Mr.
7 Wertheimer is counsel for the Flowers plaintiffs, Mr.
8 Nicholson is counsel for the UAW. But I'm not asking for any
9 -- any discussion of any legal issues, just a discussion of
10 this event in a -- in a separate lawsuit. And -- and it's
11 foundational, Your Honor. It's -- it's -- it's --

12 THE COURT: Then proceed.

13 MR. DECHIARA: Thank you.

14 A The question, can you repeat it?

15 Q Can you recount your conversation with Mr. Wertheimer on
16 the subject of the retiree systems seeking the ex parte TRO
17 that you had been informed of?

18 A We were told they were going to Court that afternoon in
19 front of Judge Aquiline. Bill and I decided that since we had
20 to go to Lansing anyway and since that Court hearing was
21 probably going to be pretty important, that we ought to finish
22 the reply brief in the car and drive it up -- drive up there
23 right now so we got there in time for the hearing and that's
24 what we did.

25 Q And did you have any discussion with Mr. Wertheimer about
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1 whether the state should be notified of the ex parte TRO?

2 A Yes.

3 Q What -- can you recount that discussion?

4 A We finished the brief on the -- I was sitting in the back
5 seat typing away on my laptop. We finished the brief.

6 Q This is in the car to Lansing?

7 A The car on the way to Lansing. And Bill asked me Mike,
8 do you think we should notify the state. And I took it as an
9 ethical question, a practical -- what I would call in my
10 terms, practical ethics. What's the right thing to do.

11 And I said yeah, Bill, I think we have to, it's not in
12 our interest, but I think we have to do that, that's the right
13 thing to do and he agreed. And he proceeded to call the state
14 Attorney General's office and tell them that we were going to
15 be there even though it wasn't our motion and that there was
16 an ex parte motion being brought.

17 We didn't know ahead of time what was going to happen in
18 Court. Bill ended up asking for relief because we had just
19 filed the reply brief and it was now a fully briefed
20 preliminary injunction motion.

21 Q How do you know -- how do you know Mr. Wertheimer called
22 the state attorneys?

23 A I heard him talking to them while I was in the car. And
24 then -- and he actually had two calls with them and we

25 discussed it in the interim. I also know because I talked to
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1 the state Attorney General, the lawyer for the state, not Mr.
2 Schuette, but the lawyer for the state Attorney General, Mr.
3 Canzano. And he told me Bill called and I told him and he
4 told me how much he appreciated Bill's ethical behavior.

5 And I said well, I was part of that and I was part of
6 that decision too. And he said well, I appreciate you doing
7 that as well.

8 Q Do you know what time on July 18th Mr. Wertheimer called
9 the state to notify them of the TRO hearing?

10 A I can put it within about a ten minute window because I
11 know --

12 Q What time?

13 A Around 3:35.

14 Q P.M.?

15 A Yes.

16 Q And how can you put it in such a tight window?

17 A Because I remember a sequence of events, one of which is
18 -- is an email I sent that nails down the time. It was
19 between the first and the second conversation Mr. Wertheimer
20 had with the Attorney General's office.

21 I've also seen Mr. Wertheimer's cell phone records that
22 confirm that. But that -- but I have my own memory of it as
23 well. And I also know from talking to Mr. Canzano because he
24 is of the same view as to the time.

1 A I talked to Mr. Canzano about that this morning.

2 MR. DECHIARA: No further questions on direct.

3 CROSS EXAMINATION

4 BY MR. STEWART:

5 Q Good morning, Mr. Nicholson.

6 A Good morning.

7 Q Could we first put up Exhibit 105? Mr. Nicholson, are
8 these notes that you took at the July 11 meeting?

9 A They're notes I typed, yes.

10 (City Exhibit 105 was identified)

11 Q You typed them at the time?

12 A During the meeting.

13 Q And why did you prepare them?

14 A I prepared them because I was -- it turns out -- I
15 thought I wasn't -- didn't take notes at that meeting. When I
16 found this document, I recalled that I did. And I prepared
17 them to record some of what happened. It's very much
18 shorthand about what happened.

19 MR. STEWART: I'd move -- I move the admission of
20 Exhibit 105.

21 THE COURT: Any objections?

22 MR. DECHIARA: No objection.

23 THE COURT: 105 is admitted.

24 (City Exhibit 105 was admitted)

25 Q Mr. Nicholson, just a couple of things. First of all,
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1 just the chronology so that I understand it. You attended the
2 June 14 meeting, correct?

3 A Yes.

4 Q And the June 20th meeting, correct?

5 A Yes.

6 Q Your union funded and you said you were a participant in
7 the thinking about the Flowers litigation?

8 A Yes.

9 Q That was brought July 3rd?

10 A I believe that's right.

11 Q And you began thinking of that before July 3rd, correct?

12 A Yes.

13 Q Probably about a week before July 3rd?

14 A I -- what led me to start thinking about it --

15 Q Well, just when -- when did you --

16 THE COURT: The question was when did you start
17 thinking it?

18 A I -- when I -- I can't think of the exact date, but I
19 know the event.

20 THE COURT: Approximately.

21 A I'll have it just a minute, I'm just lining up a
22 sequence.

23 THE COURT: While he's thinking, can we have a copy
24 of Exhibit 105 which was just admitted?

25 MR. STEWART: Yes, Your Honor.

1 THE COURT: If not at this moment, then at some
2 point, please.

3 MR. STEWART: I believe we have extras, Your Honor.
4 Let me get it from our -- may I approach, Your Honor?

5 THE COURT: Yes. Do you have an answer, sir?

6 A Yes. Within a few days after the June 14th meeting is
7 about the best I can put it -- put it to, Your Honor.

8 Q Okay. So let me go back. You were at the June 14
9 meeting.

10 A Yes.

11 Q Within a few days you began thinking of a lawsuit,
12 correct?

13 A Yes.

14 Q You went to the June 20th meeting?

15 A Yes.

16 Q Lawsuit was filed July 3rd?

17 A I think that's the date it was filed, yes.

18 Q You were involved in the thinking behind and the work of
19 the lawsuit?

20 A Yes.

21 Q The UAW paid the lawyers for the lawsuit?

22 A Yes.

23 Q Mr. Flowers was a UAW member?

24 A A proud UAW member.

25 Q And didn't -- you did not at any point tell the city its
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1 lawyers that the UAW was behind this lawsuit, did you, until
2 your deposition when I asked you that question?

3 A I don't think I was asked, but no, I think that's right.
4 The first time I told them was when you asked me the question
5 in the deposition, I said yes.

6 Q And then on -- on July 10 there were two meetings. One
7 in the morning, one in the afternoon.

8 A I was not invited to a meeting in the afternoon. I heard
9 there was one for police and fire workers.

10 Q And at the beginning of the July 10 meeting Mr. Heiman of
11 Jones, Day invoked Rule 408 of the Federal Rules of Evidence,
12 correct?

13 A Uh-huh.

14 Q And you understand that that rule is a rule designed to
15 insure the privilege that attend to settlement negotiations,
16 correct?

17 A Yes.

18 Q You would not agree to that, so you did not attend the
19 meeting, right?

20 A I would not agree to accepting that as a condition of
21 attending and therefore I excused myself because they were
22 free to impose whatever conditions they want, I suppose.

23 Q So you decided to not accept the conditions and not
24 attend the meeting?

25 A That's right.

1 Q Okay. And by the way you mentioned the data room. There
2 was a non-disclosure agreement that had to be executed before
3 the filing of the petition in this case, before one could
4 access the data room. Do you remember your testimony about
5 that?

6 A Yes.

7 Q And you decided not to sign that non-disclosure
8 agreement, correct?

9 A That's right.

10 Q And as a result you did not have access to the data room,
11 correct?

12 A Correct.

13 Q Other unions did sign the non-disclosure agreement.

14 A I don't know that for a fact.

15 Q You don't know --

16 A I would not be surprised if they did, but I don't know
17 that for a fact.

18 Q Don't speculate. If you don't know, just tell me.

19 A I don't know that for a fact, I know what we did.

20 Q On the -- on the morning of July 10 did other unions
21 proceed to attend that meeting?

22 A When I left the room, there was Mr. Kreisberg for AFSCME.
23 He may have had somebody with him. And at that point I wasn't
24 sure who on the police and, you know, July 10th. I was in that

1 parties other than the debtor's representatives that I --
2 sorry, the city's representatives that I remember being there
3 were Clark, Hill people and Mr. Kreisberg. I'm sure -- I know
4 there were others in the room, but I -- I didn't know a lot of
5 these people at that point in time.

6 Q Okay. All right. And then you mentioned a meeting on
7 July 11, correct?

8 A That's correct.

9 Q You attended and those are your notes, right?

10 A That's correct.

11 Q Okay. Now so our chronology from the time of that first
12 meeting from June 14th to July 11th is what, four weeks?

13 A Whatever the calendar says. It's about 28 days maybe.

14 Q Uh-huh. Now you mentioned various discussions you had
15 with lawyers for the city and in particular lawyers from
16 Jones, Day. Do you remember your testimony on that?

17 A I think I remember what I testified to this morning, yes.

18 Q Okay. That was Mr. Heiman?

19 A I remember saying what Mr. Heiman said at the July 11th
20 meeting. I think I just said that part of it when I just --
21 we just came back from break and -- and a little bit before
22 about David saying at the beginning of the meeting that he
23 wasn't imposing a Rule 408 condition for attendance.

24 Q Well, you also -- and Mr. Miller. You testified you
25 talked to Mr. Miller?

1 A Well --

2 Q Yes, sir, yes or no, did you --

3 A On the 11th?

4 Q At any time before the filing -- between the 14th and the
5 filing of the petition, did you or did you not talk to Mr.
6 Miller?

7 A Yes.

8 Q Okay. And he -- did at any time did Mr. Miller tell you
9 he was not willing to talk with you some more?

10 A He didn't utter those words.

11 Q Did Mr. Heiman utter those words?

12 A No.

13 Q Now you testified about -- put up 38, please. You
14 testified about something called a VEBA?

15 A That is correct.

16 Q That is a Voluntary Employee Beneficiary Association?

17 A That's what the acronym stands for.

18 Q And those are -- that's the class action mechanism that
19 you proposed?

20 A A VEBA is --

21 Q Sir, yes or no?

22 A No, it is not per say limited to class actions, it's
23 often the result of a class action retiree insurance
24 settlement.

25 Q Okay. And when you --

1 A It can also result from a bankruptcy resolution through
2 1114.

3 Q Uh-huh.

4 A In Chapter 11's.

5 Q Uh-huh. And at the time you'd had these discussions, was
6 the city in bankruptcy?

7 A The city filed bankruptcy --

8 Q Sir, yes or no. At the time of your discussions before
9 July 18, was the city in bankruptcy, or was the city not in
10 bankruptcy?

11 A The city was not in bankruptcy until --

12 Q Thank you.

13 A -- 4:06 p.m. on July -- on July 18th, 2013.

14 Q Now, these class action resolutions that you told us
15 about. You mentioned the one in Dana.

16 A That's right. That was not a class action resolution,
17 that was a Chapter 11 resolution reached through 1114.

18 Q And how long --

19 A Dana was a Chapter 11. Your firm worked on it with us.

20 Q Uh-huh. And it took about a year?

21 THE COURT: Excuse me one second. Again, Mr.
22 Nicholson, I have to ask you please just answer the question.

23 A Well, he said Dana was a -- a class action and it's not
24 right. So I want to make sure you understand what the facts

25 are, Your Honor. That's why I'm answering the way I am.

1 THE COURT: I appreciate that very much, but your
2 job is just to answer the question.

3 A All right.

4 MR. DECHIARA: Your Honor, I think what the witness
5 is trying to say is, the question assumed a fact that was
6 contrary to fact. So he was trying to explain.

7 THE COURT: And I -- and I appreciate that. But his
8 job is just to answer the question. If he can't answer the
9 question, he should say that. All right. So let's try to
10 proceed on that basis.

11 A I know it's not my job to object to the form of the
12 question, Your Honor. But -- and I hear what you're saying
13 and I will comply.

14 THE COURT: Go ahead, sir.

15 Q Dana took about one year to resolve?

16 A It depends on when you start counting.

17 Q Uh-huh. From the time negotiations began until the time
18 you were done in Dana was about one year, isn't that true?

19 A That is not my recollection sitting here today, but I
20 don't -- I did not refresh myself on that particular question.

21 Q Now you mentioned the VEBA that was done in General
22 Motors? That took over one year, did it not?

23 A There were three VEBA settlements in General Motors, Your
24 Honor, which one?

25 THE COURT: Please answer the question.

1 A I -- you have to tell me which VEBA settlement you mean.

2 Q The one that this Court approved on March 2006. That was
3 after a one year negotiation process, wasn't it?

4 A This Court never approved a VEBA settlement in 2006.

5 Q The Eastern District of Michigan did not?

6 A This is a -- the Bankruptcy Court, not the District
7 Court.

8 Q All right.

9 THE COURT: Apart from that distinction --

10 A Yes.

11 THE COURT: Perfectly valid. Did it take a year, or
12 over a year?

13 A I was not involved in that case.

14 THE COURT: You don't know? Just say I don't know.

15 A No, I don't know.

16 Q And you're aware of the VEBA in Goodyear. Do you know
17 about that?

18 A I heard -- read about it in the newspapers, that's all.

19 Q Do you know that took 22 months?

20 A I don't know.

21 Q So I have up on the screen Exhibit 38. And that I'd
22 represent to you is a chart showing the cash forecast the city
23 had through the end of its 2014 fiscal year. Starting in July
24 of 2013, what is the city's cash -- cash -- cash position
25 after one year?

1 MR. DECHIARA: Objection, Your Honor, it's beyond
2 the scope of direct. There's no foundation that this witness
3 can testify about the city's cash flow position.

4 THE COURT: The objection is sustained. You can
5 represent to the witness what the exhibit says if you want to.

6 MR. STEWART: Well, I think I made my point. I'm
7 going to sit down. Thank you, Mr. Nicholson. That's all I
8 have.

9 THE COURT: Any more questions for the witness?

10 MR. DECHIARA: No redirect.

11 THE COURT: All right. Sir, you're excused. Thank
12 you very much for your testimony.

13 A Thank you.

14 (WITNESS MICHAEL NICHOLSON WAS EXCUSED AT 11:16 A.M.)

15 MR. WERTHEIMER: Your Honor, I have to go get our
16 next witness. It will take me just a few minutes.

17 THE COURT: Okay. Please raise your right hand.

18 (WITNESS JANET WHITSON WAS SWORN)

19 THE COURT: Please sit down.

20 DIRECT EXAMINATION

21 BY MR. WERTHEIMER:

22 Q Would you state your name and address, please?

23 A Janet Whitson, 25260 East Deborah, Redford, Michigan.

24 Q You are one of the plaintiffs in what we've been calling
25 the Flowers litigation?

1 A I am.

2 Q How old are you, Ms. Whitson?

3 A Sixty-six.

4 Q And are you retired?

5 A Yes.

6 Q Where are you retired from?

7 A The Detroit Public Library.

8 Q And when did you retire?

9 A 2002.

10 Q How old are you now?

11 A Sixty-six.

12 Q Could you briefly tell the Court how you came to be a
13 plaintiff in the Flowers litigation?

14 A On the Local 2200 list serve there was a query, asking if
15 someone would be interested in volunteering to be on the part
16 of the lawsuit and I volunteered.

17 Q And Local 2200 is the UAW local that represents the
18 active librarians?

19 A Yes.

20 Q When did you begin working at the public library?

21 A May of 1969.

22 Q At that point what education did you have beyond high
23 school?

24 A I had a Bachelor's Degree in history from the University
25 of Detroit.

1 Q And when did you obtain that Bachelor's Degree?

2 A May 3rd of 1969.

3 Q So you started right in at the library right out of
4 college?

5 A Yes.

6 Q What did you hire in as?

7 A A pre-professional librarian.

8 Q When you hired in as a pre-professional librarian, did
9 you make any kind of commitment to the library as to education
10 you would have to undergo?

11 A Yes.

12 Q And what was that commitment?

13 A That I would complete my library degree in six years.

14 Q And did you do that?

15 A Yes, I did.

16 Q What degree did you obtain?

17 A A Master's in library science.

18 Q And where did you obtain it from?

19 A At the University of Michigan.

20 Q And when did you obtain your Master's?

21 A In 1972.

22 Q And you're working all this time at the library?

23 A Yes, I was.

24 Q Did you receive any other education beyond that during
25 your years at the library? That is beyond the Master's?

1 A Yes, I did.

2 Q Briefly tell us what that is.

3 A I have a post-Master's specialist in archival
4 administration from Wayne State University.

5 Q And when did you obtain that?

6 A In 1987, I believe.

7 Q Now I'd like to ask you just a couple of questions about
8 your work at the library. When you first started work in
9 1969, did you work in one or -- one of the branches?

10 A Yes, I did.

11 Q And for how long a period did you work in the branches?

12 A Initially from 1969 to 1980.

13 Q And how many different branches did you work in in that
14 11 year period? Just approximately.

15 A Five.

16 Q What did you do at that point? Or where did you work
17 from that point forward, from 1980?

18 A I was at the main library.

19 Q And what were you doing -- let -- let me back up. Just
20 generally tell us what you did at the branches, what kind of
21 library work?

22 A I initially was a young adult librarian. I specialized
23 and worked with teenagers, but I did reference work and book
24 selection. And really that's it, book selection, reference

1 type of work.

2 Q Okay. When you went down to the main library in 1980,
3 and that's the library on Woodward?

4 A Yes.

5 Q How long did you remain at the main library the first
6 time you were working there?

7 A Five years.

8 Q And just briefly tell us what you did there.

9 A I again was -- there I was an adult librarian. Worked in
10 with -- those were special collections. So working with the
11 subject matter and those collections. General information was
12 sports, cooking, gardening, and biography. And the Burton
13 historical collection was local history and genealogy.

14 Q What was your position relative to the Burton historical
15 collection?

16 A At that point I was a librarian too in that department.

17 Q Did you then go back out into the branches for a few
18 years?

19 A Yes. I was promoted and went out to the branches. I
20 went out to Franklin branch.

21 Q And how long did you stay out in Franklin or in another
22 branch?

23 A Three years.

24 Q Did you then come back to the main library?

25 A I was promoted to manager of the rare books collection.

1 Q Would you tell the Court what that -- what that means or
2 what that entails?

3 A Well, I had received that special collections training,
4 so I went to the Burton historical collection -- I went to the
5 rare books collection as manager and that was really the
6 greatest job in the State of Michigan. And I had --

7 Q For a librarian?

8 A For a librarian. I handled rare materials. George
9 Washington's diary incunabula. Books from the first 50 years
10 of printing, illuminated manuscripts, papyrus fragments,
11 Babylonian clay tablets.

12 Q Okay.

13 A It was extraordinary. It was great, great materials to
14 handle.

15 Q And then you retired in 2002?

16 A Yes.

17 Q About how old were you at the time you retired?

18 A Fifty-five.

19 Q Did you have any physical problems that led to your
20 retirement?

21 A I went out on a medical disability.

22 Q And just briefly tell us what that physical problem was.

23 A Two failed back surgeries.

24 Q You have, I take it, remained retired since -- since '02?

25 A Disabled since '02.

1 Q Do you receive a pension from the library?

2 A Yes.

3 Q Approximately how much do you receive a month?

4 A Twenty-five hundred dollars.

5 Q Do you also receive Social Security?

6 A Yes, I do.

7 Q Approximately how much do you receive Social Security?

8 A Just about 2,000.

9 Q Do you have any other sources of income?

10 A No, I don't.

11 Q Do you have an IRA?

12 A No.

13 Q Do you have any substantial monies in the bank?

14 A No.

15 Q Do you have any equity in your home? Let me ask you, do
16 you own your home?

17 A Yes. It has a mortgage, but --

18 Q Do you have any equity in your home such that you could
19 do a reverse mortgage or get money out of it?

20 A No.

21 Q What is your marital status?

22 A I'm divorced.

23 Q Do you have children?

24 A Two sons.

25 Q Are they grown?

1 A Yes.

2 Q Do they have their own families?

3 A Yes.

4 Q Do they provide you with any financial support?

5 A No, they don't.

6 Q Are you able to go back out into the work force now?

7 A No.

8 Q Why not?

9 A I have a difficult time walking and standing.

10 Q Do you have health insurance now?

11 A Yes.

12 Q Do you have Medicare?

13 A Yes.

14 Q Do you pay for Part B of Medicare?

15 A Yes.

16 Q Okay. And that's about \$100.00 a month?

17 A Yes.

18 Q Do you currently have health care through the city?

19 A Yes.

20 Q And are there co-pays for that? That is do you pay

21 something for that?

22 A Yes.

23 Q Approximately how much do you pay?

24 A Right now it's \$85.00 a month out of my check.

1 relevance of this line of questioning. It doesn't seem to
2 have anything to do with the city's eligibility.

3 MR. WERTHEIMER: Your Honor, I'm done with this line
4 of questioning. The -- the relevance is, I think that we are
5 entitled to put a face on the retirees who were litigious thus
6 forcing the emergency manager to file bankruptcy.

7 THE COURT: I'll permit it to stand. Go ahead.

8 MR. WERTHEIMER: Thank you.

9 Q During the time you worked at the library, did you hold
10 any office with the -- the local union?

11 A Yes.

12 Q What offices did you hold and approximately when?

13 A In the early eighties, I was unit secretary for the --
14 what we refer to as the POOL unit, but is the professional
15 organization of librarians. And I was Vice President of the
16 amalgamated Local 2200 and then I was President for nine
17 years.

18 Q What were the approximate nine years that you were
19 President?

20 A 1993 to 2002.

21 Q And finally I asked you how you came to be a plaintiff in
22 the Flowers litigation. Why did you agree to become a
23 plaintiff in the Flowers litigation?

24 A Well, I had always understood that my pension was

1 state law. And suddenly it seemed to be in jeopardy when I
2 was reading the paper over the summer. So I felt I better get
3 involved.

4 Q Are you a litigious person?

5 A No, not really.

6 Q Have you ever sued anyone?

7 A I had to in my divorce.

8 MS. KOVSKY-APAP: Objection, relevance.

9 THE COURT: The objection is sustained.

10 MR. WERTHEIMER: I have nothing further. Thank you,
11 Your Honor. Thank you, Ms. Whitson.

12 A Uh-huh.

13 CROSS EXAMINATION

14 BY MS. KOVSKY-APAP:

15 Q Ms. Whitson, my name is Deb Kovsky-Apap. I'm one of the
16 lawyers for the city.

17 THE COURT: I'm sorry, would you repeat your name,
18 please?

19 MS. KOVSKY-APAP: Sorry, Deborah Kovsky-Apap.

20 Q Ms. Whitson, you testified that you were a librarian with
21 the Detroit Public Library for approximately 32 years, is that
22 correct?

23 A Yes.

24 Q And it's your understanding that the Detroit Public

1 that right?

2 A Yes.

3 Q But employees of the Detroit Public Library are eligible
4 for pensions under the city's general retirement system,
5 correct?

6 A Yes.

7 Q And you said that when you were actively employed you
8 were a member of UAW Local number 2200?

9 A Yes.

10 Q And that's a collective bargaining unit?

11 A Yes.

12 THE COURT: Could you speak more into the mike for
13 me? There you go.

14 Q Can you tell me who does Local 2200 represent?

15 A Right now?

16 Q Or at the time that you were a member?

17 A The time that I was a member, it -- it changes. It's an
18 amalgamated local. But at the time that I was a member, it
19 had the librarians 1, 2, and 3 in a unit that was called the
20 Professional Organization of Librarians. It had the librarian
21 managers and coordinators in a unit that was called the
22 Association of Professional Librarians. It had the skilled
23 trades at the -- at the Detroit Public Library. It had a
24 health and safety unit sometimes that was called SEMCOSH. And
25 it represented some of the doctors from the City of Detroit.

1 Q Local 2200 represented only active employees, correct?

2 A Correct.

3 Q To your understanding, as a former President of Local
4 2200, was the union authorized to enter into agreements to
5 bind retirees without their consent?

6 A I didn't hear all of your question.

7 Q To your understanding, was Local 2200 authorized to enter
8 into agreements to bind retirees without their consent?

9 A No.

10 MR. WERTHEIMER: Your Honor, I think this is asking
11 her for a legal opinion, or at a minimum an -- an opinion that
12 may be outside any area she dealt with at the local. There's
13 no evidence that she ever had to deal with this issue during
14 the time that she was --

15 THE COURT: Well, she -- she was President.

16 MR. WERTHEIMER: Yes.

17 THE COURT: If she doesn't know, she can say so.

18 MR. WERTHEIMER: That's fine.

19 THE COURT: Please answer the question.

20 A I don't know.

21 Q You mentioned that when you were at the Detroit Public
22 Library you served as the manager of the rare books
23 collection. Do you recall that?

24 A Yes.

25 Q And that's part of the Burton historical collection?

1 A Yes.

2 Q That's an important resource for scholars and
3 researchers, isn't it?

4 A It is.

5 Q And since your retirement, you continue to be involved in
6 organizations related to books and libraries, correct?

7 A Yes.

8 Q You're the immediate past President and librarian of the
9 Irish Genealogical Society of Michigan?

10 A That's true.

11 Q And that's an organization that focuses on research,
12 genealogical research?

13 A Yes.

14 Q And the Detroit Public Library is one of the resources
15 that may be used by organizations such the Irish Genealogical
16 Society?

17 A Yes.

18 Q You were also the Vice President of the Book Club of
19 Detroit, is that correct?

20 A Yes.

21 Q And is it fair to say that the Book Club of Detroit is a
22 non-profit association of Detroit area biblio files who
23 assembly periodically for the purpose of stimulating a mutual
24 interest in books, manuscripts, and prints?

25 A Yes.

1 Q And the book club frequently co-sponsors events with
2 libraries and collections such as the Burton historical
3 collection, is that right?

4 A Yes.

5 Q And you said that's part of the Detroit Public Library,
6 correct?

7 A Wait a minute. Go back and ask me that question again.

8 Q Sure. The book club frequently co-sponsors events with
9 libraries and collections such as the Burton historical
10 collection?

11 A Yes, it does.

12 Q And you said that the Burton historical collection is
13 part of the Detroit Public Library, correct?

14 A Yes.

15 Q So it's fair to say that you are currently a user of
16 Detroit Public Library services, is that right?

17 A Yes.

18 Q And you believe in the importance of libraries to a
19 community, correct?

20 A I do.

21 Q As a librarian in Detroit, were you aware that for some
22 Detroiters the public library is their only source of books
23 and internet access?

24 A Yes.

25 Q As a former employee and current user of the Detroit
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1 Public Library, are you aware that -- of how the Detroit
2 Public Library is funded?

3 A How it's currently funded?

4 Q Or how it has been funded in the past.

5 A I'm generally aware of how it's been funded in the past.

6 Q Are you aware that the Detroit -- is it -- is it your
7 understanding that the Detroit Public Library has been funded
8 through property taxes?

9 A That's one of its sources of funding, yes.

10 Q Are you -- I'm sorry, I didn't mean to cut you off.

11 A I'm aware that property taxes are one of its sources of
12 funding.

13 Q Are you aware that the property taxes funding the library
14 have decreased significantly in recent years?

15 A I think that's possible. I'm not aware of to what extent
16 that's true.

17 Q Did you become aware around March 2011 that the Detroit
18 Public Library laid off approximately 20% of its staff?

19 A I'm not aware on the figure of 20%.

20 Q Were you aware of any lay offs around that time period?

21 A Only what I might have heard from fellow retirees. I
22 have been retired since 2002.

23 Q As a current user of Detroit Public Library services, did
24 you become aware in late 2011 that four branches of the

25 Detroit Public Library were closed due to a budget shortfall?

1 A No.

2 Q As a user of Detroit Public Library services are you
3 aware that certain branches of the Detroit Public -- Public
4 Library are currently operating on reduced hours?

5 A Not aware of the extent of the reduced hours at four
6 particular branches, no.

7 Q Is it your understanding that the City of Detroit's
8 financial problems have affected its ability to deliver
9 library services to the residents of Detroit and other users
10 of the Detroit Public Library?

11 A The library runs on a mileage. And I'm not sure how much
12 the -- the city's finances have influenced the library so no,
13 I'm not aware of that.

14 Q No one has yet made a proposal to you regarding a
15 specific amount by which any retiree pension or other benefits
16 would be reduced, have they?

17 A No.

18 MS. KOVSKY-APAP: Thank you. I have no further
19 questions.

20 MR. WERTHEIMER: Nothing further, Your Honor.

21 THE COURT: You are excused, Ma'am. Thank you very
22 much for your testimony.

23 A Thank you.

24 (WITNESS JANET WHITSON WAS EXCUSED AT 11:38 A.M.)

25 THE COURT: Who is your next witness, sir?

1 MR. WERTHEIMER: I call Andy Dillon.

2 THE COURT: Please raise your right hand, sir.

3 (WITNESS ANDY DILLON WAS SWORN)

4 THE COURT: Please sit down behind you.

5 MR. WERTHEIMER: Your Honor, William Wertheimer on
6 behalf of the Flowers plaintiffs and also the UAW as to
7 examining this witness.

8 Before I begin, I would request permission from the Court
9 to examine Mr. Dillon pursuant to Federal Rule of Evidence
10 611(c)(2).

11 THE COURT: Any objections?

12 MS. NELSON: No objections, Your Honor.

13 THE COURT: For the city?

14 MR. SHUMAKER: We have no objection, Your Honor.

15 THE COURT: All right. Your motion is granted.

16 MR. WERTHEIMER: Thank you.

17 DIRECT EXAMINATION

18 BY MR. WERTHEIMER:

19 Q Good morning, Mr. Dillon.

20 A Good morning.

21 Q You are appearing here pursuant to subpoena, are you not?

22 A Yes.

23 Q And you have been the state Treasurer of the State of
24 Michigan for a period of time?

25 A Yes.

1 Q When did you become state Treasurer?

2 A I believe January 1 of 2011.

3 Q And what was your last day as state Treasurer?

4 A October 31 of '13.

5 Q So just last week?

6 A Right.

7 Q Okay. Would it be fair to say that you have been -- that
8 as state Treasurer, you were involved in the problems of the
9 state dealing with the city's financial situation from your --
10 the beginning of your -- of being state Treasurer?

11 A Yes.

12 Q Okay. Could you generally characterize for us what that
13 involvement has been from the beginning?

14 A The city was in emergency. We inherited some that were
15 in emergency, our school district. We worked closely with the
16 manager in those instances. For those that were finding
17 themselves getting in financial trouble, we tried to work with
18 them to keep them out of financial trouble. So it would vary
19 depending on the condition that you found in the various
20 school district or city.

21 Q All right. Did you stay involved in -- in issues
22 relating to the City of Detroit from the beginning of your
23 tenure as state Treasurer until your end last week?

24 A Yes.

25 Q Okay. I want to direct your attention to a few discreet
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1 periods of time and ask you some questions about that. And
2 the first period is around March of 2012. Do you recall
3 generally what was going on at that point in time?

4 A I believe we had completed a review and were working on
5 negotiating a consent agreement with the City of Detroit.

6 Q Okay. And what were the results of those negotiations?

7 A We ultimately reached agreement on something called a
8 financial stability agreement.

9 Q When was that?

10 A I believe the final day was around April 4 of 2012.

11 Q So the negotiations would have been ongoing in March of
12 2012?

13 A I believe so, yes.

14 Q And your part of the negotiating team for the state,
15 negotiating with the city?

16 A Correct.

17 Q And it was an arm's length negotiations that is
18 adversarial not in the bad sense of the word? They had their
19 position, you had yours?

20 A That's right.

21 Q Would that be fair?

22 A Yeah.

23 Q Okay. And you were using the Jones, Day law firm to
24 represent the state at that point in time, were you not?

25 A I actually don't think so, although they were involved.

1 We had a relationship with Miller, Buckfire. And I believe
2 that Miller, Buckfire reached out to Jones, Day for legal
3 advice. So there was a role, but they were not, to my memory
4 -- I -- I don't recall a contractual relationship between the
5 state and Jones, Day.

6 Q When you say you don't recall a contractual relationship,
7 is that another way of saying you weren't paying them?

8 A I believe that's correct.

9 Q Okay. But they were providing work for you on a pro bono
10 or some other kind of basis, were they not?

11 A I believe that to be true.

12 Q They were putting together drafts of the consent
13 agreement, were they not? That is Jones, Day.

14 A Yeah. But we did have counsel, Michigan based counsel
15 that was in the room negotiating the document. But we were
16 getting input and advice from Jones, Day, yes.

17 Q Did that advice include actual drafts of the consent
18 agreement from Jones, Day as opposed to your in house people
19 in March of 2012?

20 A I believe so.

21 Q And you indicated Buckfire. They were also assisting the
22 state in those negotiations with the city, correct?

23 A Correct.

24 Q Did you ever talk or did you have any understanding as to
25 why Jones, Day was doing what they were doing? That is

1 providing legal services for you and not billing you whatever
2 their hourly rate was at the time?

3 A We were working with Ken Buckfire at the time to make a
4 consent agreement that would work and function for the city.
5 And he had a relationship with Jones, Day and -- and would
6 seek their advice.

7 Q Didn't you understand that let's start with Mr. Buckfire.
8 That Mr. Buckfire, was he being paid by the state?

9 A I think there's a brief window of time where he had a --
10 a short term contract.

11 Q Did you assume that Mr. Buckfire and his -- on behalf of
12 his firm when he was helping you out in March of 2012, was
13 looking for more work in the future relative to the City of
14 Detroit?

15 A I think he was very interested in having a role with
16 Detroit going forward, yes.

17 Q And didn't you assume the same with Jones, Day?

18 A Yes.

19 Q Did you have discussions in March of 2012 about the
20 possibility of a Chapter 9 filing at that time?

21 A I don't recall and -- I don't recall.

22 Q Can you put up 852? And can you go to the second --
23 well, let's start.

24 MR. SHUMAKER: Objection, Your Honor. We have a
25 hearsay objection.

1 THE COURT: We don't have -- we don't quite have a
2 question yet, so let's get a question and then I'll take your
3 objection.

4 Q Let me -- let me do it a different way based on the
5 objection and -- and what I'm saying here. I'm going to show
6 you -- forget what's on the screen, Mr. Dillon, if you would.
7 I'm going to show you what's been marked for identification
8 purposes --

9 THE COURT: I need you to be by the microphone.

10 MR. WERTHEIMER: I'm sorry.

11 Q I'm going to show you what's been marked for
12 identification purposes as Exhibit 852. And ask you to take a
13 look at the second page of it in the middle. And -- and read
14 it to yourself. And my question is going to be whether that
15 refreshes your memory as to whether there might not have been
16 discussions involving Jones, Day people and others about the
17 possibility of filing Chapter 9 in March of 2012?

18 MS. NELSON: May I see it, please before it's handed
19 to the witness?

20 THE COURT: You can see it after it's handed to the
21 witness.

22 Q Take a look at whatever you need to put it in context.

23 THE COURT: Mr. Wertheimer, I have to insist that
24 anything you say to the witness be from the lectern so that
25 it's on the record.

1 MR. WERTHEIMER: Sorry.

2 Q I was just telling you, Mr. Dillon, take a look at any of
3 it that you need to put it in context. But the part I'm
4 asking you to take a look at to see if it refreshes your
5 recollection as to what was going on then is in the middle of
6 the second page of the document.

7 THE COURT: And did you represent that that is
8 exhibit what, I'm sorry?

9 MR. WERTHEIMER: 852.

10 THE COURT: Do you have that exhibit, Ma'am?

11 MS. NELSON: Oh, yes, I do, Your Honor. I didn't
12 realize that's what he was referring to.

13 THE COURT: All right, then we're all set.

14 A This refreshes my memory. I didn't read Page 2. Do you
15 want me to?

16 Q Yeah. Yeah, go ahead and read Page 2.

17 A Okay.

18 Q Mr. Dillon, does having read the proposed Exhibit 852
19 refresh your memory on the issue that I was asking about?

20 A It does.

21 Q Okay. And what is your memory now as to Chapter 9 filing
22 -- a Chapter 9 filing being discussed by you, other people for
23 the state, and lawyers from Jones, Day in March of 2012?

24 A I mean it was a topic of conversation, but the -- you
25 know, even the thought at that time was that we did want to

1 get to a consent agreement. We didn't want to declare an
2 emergency. And Chapter 9 was always out there as an issue but
3 it wasn't front and center.

4 Q And Jones, Day was involved in those discussions?

5 A I don't recall if they were physically present, but I
6 believe that yes, in the background they were looking at
7 versions of agreements that were being drafted and obviously
8 from reading that they were looking at the options for a
9 Chapter 9.

10 Q Okay. Let me -- can you put up 851, please? And I
11 believe it has been admitted. Mr. Dillon, this is a -- the
12 first page is an email from Corrine Ball to L. Marcero at
13 Huron Consulting. Can you tell us, first of all, who Corrine
14 Ball is?

15 A She's an attorney at Jones, Day.

16 Q And who is L. Marcero?

17 A She works for Huron Consulting. She's a -- she lives in
18 the Detroit area and was advising us on working through these
19 issues with the City of Detroit.

20 Q And -- and Huron Consulting is a separate entity from
21 Miller, Buckfire?

22 A Yes.

23 Q Any relationship between the two as far as you know?

24 A Not as far as I know.

25 Q Okay. If you could put up the second page of 851. If
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1 you look at the top, Mr. Dillon, this is a email from Corrine
2 Ball at Jones, Day to L. Marcero. Am I pronouncing it right?

3 A I think it's Laura Marcero.

4 Q Laura Marcero. And in the email Laura is saying to
5 Corrine, if at all possible, can you call me. I need to link
6 you into a Chapter 9 conversation with Andy very quickly. Do
7 you recall ever being linked in to such a conversation?

8 A I don't have a specific memory of that.

9 Q Do you have a general memory of it?

10 A No. I mean to me I think from reading that memo and
11 refreshing my memory a little bit, it was about whether or not
12 the city would be eligible if in fact a Chapter 9 became
13 something that had to happen in the view of -- of the folks at
14 the table.

15 Q Okay.

16 A But it wasn't our priority, it was always a last resort
17 option for us.

18 Q I want to direct your attention now to December 2012 and
19 January 2013. In other words nine months later or so. Were
20 you involved in the hiring of Kevyn Orr as emergency manager?

21 A Yes.

22 Q And Kevyn Orr up to then had been a partner at Jones,
23 Day, had he not?

24 A To my knowledge.

25 Q And would you tell the Court generally what your

1 involvement was?

2 A The first time I believe I ever met Kevyn Orr was around
3 the January 29th date where we interviewed, I believe, five or
4 six different law firms as potential restructuring firms for
5 the City of Detroit. He was one of the members on the team
6 from Jones, Day.

7 We did all of those interviews in one day, so I think
8 give or take each interview with each firm lasted around an
9 hour, it could have been a little more for each firm. That
10 was the first time I met him.

11 Q Okay. Did you recommend that he be hired?

12 A I got a phone call from Richard Baird who asked me what I
13 thought about Kevyn. I thought he was impressive in the
14 meeting and should be someone that we considered.

15 Q Were you concerned at the time that he was with Jones,
16 Day and that Jones, Day had been advising the state for up to
17 a year on this issue of how the state was going to deal with
18 the Detroit financial situation?

19 MS. NELSON: Objection, assumes facts not in
20 evidence. There's no indication that Jones, Day had been
21 providing advice to the state for up to a year.

22 THE COURT: Well, the objection is overruled.
23 Please answer the question if you can.

24 A Not terribly. There was a -- a review team that was

25 involved in interviewing all the firms. It wasn't just my
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1 decision to make, so I thought they would have to stand on
2 their own as the -- as the law firm of choice.

3 Q Well, does -- does the beginning of your answer being not
4 terribly mean that there was some concern?

5 A It could have an appearance of impropriety which I
6 recognized and -- and gave consideration to. And in fact
7 because when ultimately they were hired, I believe there were
8 six to eight people on the panel. I actually held my vote
9 back to let the group move on their own because I was one of
10 two people that even knew that they were being considered.

11 Q Okay.

12 A Or that Kevyn was being considered.

13 Q What -- did you recognize the same or even more extreme
14 propriety issues when in March or April of 2013 with Kevyn Orr
15 in place, there was a consideration as to hiring the Jones,
16 Day law firm now as counsel for the city through the emergency
17 manager as opposed to being counsel for the state as it had
18 been in the past?

19 A I thought the sequence was that Jones, Day was hired
20 before Kevyn was announced in my memory.

21 Q Whatever the sequence was, did you have the same concerns
22 with propriety relative to the hiring of Jones, Day as you did
23 as to the potential hiring of Kevyn Orr?

24 A No. Because there was -- there was quite a few people

25 that were on the hiring team. And -- and I didn't cast -- it
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1 was unanimous vote for Jones, Day and I withheld my vote and I
2 was careful not to kind of push any particular firm that day
3 because I knew that Kevyn was a possible EM candidate. And I
4 -- I was also informed that Kevyn withdrew from pushing Jones,
5 Day to get the contract in Detroit.

6 Q So that it was -- it was done without the help of Kevyn
7 Orr as far as you knew?

8 A I was advised that the firm was hired that -- or was
9 advised by Rich Baird that the hiring of Kevyn Orr would
10 neither help or hinder their efforts to become the
11 restructuring counsel for the City of Detroit.

12 Q Who is Braum Stibitz?

13 A He works for me in treasury.

14 Q Or past tense?

15 A Yes.

16 Q Worked. Sorry. What was his position in April of 2013?

17 A And I forget the exact title, but he was my right hand
18 guy. He didn't have the title of Chief of Staff, but he
19 functioned that way.

20 Q Okay. And what about Terry Stanton?

21 A Terry is a public information officer for the Department
22 of Treasury.

23 Q Were you aware that in April of 2013, Terry Stanton
24 authored an email to Braum Stibitz that took issue with Jones,
25 Day being hired as the attorneys for the city?

1 A I don't recall that.

2 Q Let me put --

3 THE COURT: Excuse me, Mr. Wertheimer. How much
4 longer will you be on your direct examination of the witness?

5 MR. WERTHEIMER: Half hour.

6 THE COURT: All right. In that event, we'll take
7 our lunch break now and reconvene at 1:30. Everyone please
8 stand by for me for one second while I consult.

9 All right. Everyone please stand by while Mr. Dillon
10 makes his exit.

11 (WITNESS ANDY DILLON WAS TEMPORARILY EXCUSED AT 12:02
12 P.M.)

13 THE COURT: And we'll be in recess until 1:30.

14 THE CLERK: All rise. Court is in recess.

15 (Court in Recess at 12:02 p.m.; Resume at 1:30 p.m.)

16 THE CLERK: All rise. Court is in session. Please
17 be seated. Recalling case number 13-53846, City of Detroit,
18 Michigan.

19 THE COURT: It appears that everyone is here. Sir,
20 you may proceed.

21 MR. WERTHEIMER: Thank you, Your Honor.

22 (WITNESS ANDY DILLON RESUMED THE STAND AT 1:30 P.M.)

23 BY MR. WERTHEIMER:

24 Q Can you put 835 on the screen? Mr. Dillon, as I recall

25 it when we left I was asking you some questions about who
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1 Braum Stibitz was and Terry Stanton. And you had answered
2 those questions. Do you recall that?

3 A Yes.

4 Q Would you take a look at what's on your screen and on the
5 big screen? It's an email from Braum Stibitz who I think you
6 identified -- or I'm sorry, to him from Terry Stanton from
7 April of 2013.

8 MR. STEWART: Objection, Your Honor, hearsay.

9 MS. NELSON: Same objection, Your Honor.

10 THE COURT: Again let's -- let's wait until we have
11 an actual question and then I'll take your objection.

12 Q Have you seen that document before, Mr. Dillon?

13 A I don't believe I have.

14 Q Do you recall -- would you -- well, let me ask it this
15 way. Do you recall Terry Stanton or anyone else at treasury
16 raising the issue of the appearance of impropriety in the city
17 hiring Jones, Day to be its lawyer at around this time, March
18 or April of 2013?

19 A I don't recall that.

20 Q You don't recall any internal discussions relative to it?

21 A No.

22 Q Mr. --

23 THE COURT: Can we take this document down, please?

24 MR. WERTHEIMER: Yes, we can take it down.

25 Q Mr. Stibitz never raised it with you?

1 A I don't recall that.

2 Q Again, I want to make sure we're on the same wave length.
3 Leaving aside the email, do you recall ever Mr. Stibitz
4 raising with you generally the issue of the appearances of
5 Jones, Day being hired as the city's attorney in the spring of
6 2013?

7 A I don't specifically recall that, no.

8 Q Do you generally recall it?

9 A No.

10 Q Do you recall being concerned about that issue yourself
11 at that point in time?

12 A It was an issue that I gave some consideration to, yes.

13 Q And did -- I was unclear on your testimony from -- from
14 this morning, did -- was that the reason that you abstained
15 from a particular vote?

16 A I just held my vote back and it ended up being a
17 unanimous vote. But yeah, I intentionally tried not to lead
18 the outcome of that vote, so I held my opinion back.

19 Q And this was a vote on Jones, Day being selected as the
20 city's attorneys?

21 A Right.

22 Q It would have occurred sometime in the spring of 2013?

23 A Right.

24 Q Did you have any discussions with your staff before you
25 decided to do that about that issue? That is the issue of

1 abstaining or in some way not voting as a -- for -- for the
2 reason you stated?

3 A I did not. I kept that to myself.

4 Q Okay. Would you put 858 up, please? Mr. Dillon, this is
5 an email that you sent to the Governor, July 8, 2013. Do you
6 recall you were questioned about this at your deposition?

7 A Yes.

8 Q And I'm not going to go over the entire email, but I just
9 have a question or two on it. Would I be correct in recalling
10 that you testified that the recent suits against you and me in
11 that last sentence in the first paragraph would have been a
12 reference to the Flowers and Webster lawsuits?

13 A It was logical to conclude that based on reading it and
14 putting it in the time frame, yes.

15 Q All right. And part of the logic being you did know
16 about those lawsuits at that time, correct?

17 A I believe so.

18 Q And you also knew that a hearing was scheduled for a
19 preliminary injunction in those cases, did you not?

20 A At that time I can't say that I did.

21 Q All right. By a couple of days thereafter you did?

22 A I don't have specific memory of that. But I knew at some
23 point there was a hearing scheduled.

24 Q Okay. Before the date of the hearing?

25 A Yes.

1 Q In other words you knew that there was a hearing
2 scheduled in the future?

3 A Right.

4 Q In the Flowers and Webster cases, correct?

5 A Correct.

6 Q If you'd take a look -- now if you would put up 834,
7 please. Let me -- I -- I apologize, Mr. Dillon. Let me just
8 go back a second.

9 Would it also be correct that by July 15th you knew that
10 there was a schedule in place and per that schedule the
11 bankruptcy would be filed on July 19th, is that correct?

12 A I don't have a specific memory of the date of the filing,
13 but I do remember prior to that filing date that was in the
14 schedule that we were presented with, a pretty detailed
15 schedule about what a Chapter 9 would look like and all the
16 events that would have to transpire.

17 Q All right. And do you recall that whatever the details
18 of that schedule that you don't recall, do you recall that in
19 fact the bankruptcy was filed a day before the dates in that
20 document?

21 A I believe that to be true, yes.

22 Q Okay. Now if you'll take a look. This is an email that
23 you sent the next day, that is after the July 8 email to the
24 Governor, is it not?

25 A I believe so, yes.

1 Q And by the way just for the record, that the email from
2 the 8th is an email from you to the Governor?

3 A Correct.

4 Q Okay. In this email on the 9th, you indicate -- I'm --
5 I'm looking at the last paragraph. The second of the three
6 sentences. You say to the Governor on July 9, we remain in
7 many ways at the informational stage. That was a true
8 statement when you made it, was it not?

9 A I believe so, yes.

10 Q Did anything happen that you knew of between July 9th and
11 July 18th to take it out of the informational stage?

12 A We were getting more information and the numbers kept
13 getting worse for the funding level of the pension fund. As
14 we learned new facts, the -- the health of the pension funds
15 seemed to be getting worse.

16 Q Are you suggesting that you learned these facts after
17 July 9?

18 A I don't have specific memories, but in reading these
19 emails they refresh my memory that information was flowing in
20 as I was sending them to him.

21 Q Well, how about you didn't get that information in the
22 next day, did you, by the 10th?

23 A I -- I'd want to go back and read the one from the 8th. I
24 think you're --

25 Q I'm sorry, go ahead. Will you put up that one which is
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1 -- I'm sorry, 858. Go ahead. You say you wanted to read that
2 one?

3 A The day I sent this I believed I was going to learn more
4 information. I don't recall now if it actually happened on
5 that date or not.

6 Q Okay. Do you recall communicating to the Governor's
7 office just before July 12th that a more deliberative approach
8 should be taken at the Governor's end relative to authorizing
9 a bankruptcy?

10 A I don't have a specific memory of that, no.

11 Q Would you put up 625, please? Mr. Dillon, I'm going to
12 -- this has been introduced as Exhibit 625. I'm going to
13 direct your attention to the -- the second email there, not
14 the top one, but the second one that goes on for three
15 paragraphs.

16 To the first paragraph about halfway down. And by the
17 way, this is July 12. And this is from Mike Gadola. And he's
18 saying, I spoke to Rich this morning and he informed me that
19 last night he had a discussion with Andy and the LG about the
20 exchange of letters. Rich now favors as I do, a more
21 deliberative approach at the Governor's end. He indicates
22 Andy and the LG are on board with that approach. Does that
23 refresh your memory on that issue?

24 A I have a vague recollection of this email.

25 Q All right.

1 A Or that --

2 Q But my question is as to the broader issue. Do you
3 recall communicating in one way, shape, or form, whether
4 through Baird much more directly with Snyder -- excuse me,
5 with Governor Snyder, do you recall communicating to the
6 Governor's office at around this time your view as the state
7 Treasurer that a more deliberative approach at the Governor's
8 end was in order as of July 12?

9 A From reading this, it's -- I don't have a clear
10 recollection of this conversation, but I have no reason to
11 believe that this is not an accurate description of a call I
12 had with Rich Baird and the LG.

13 Q Okay. Fair enough. If you look down in the next
14 paragraph, and again this is from Mike Gadola to Mr. Muchmore
15 and John Roberts.

16 He supplies some additional reasons for this approach
17 including, I'm about halfway down, the conditions could also
18 include such items as pre-approval for anything having to do
19 with vested pension benefits. Do you recall Mr. Gadola taking
20 that position at around this time?

21 A I believe I had conversations with Mike Gadola in this
22 time frame that I believe is subject to the lawyer client
23 privilege, attorney/client.

24 Q Well, I -- I will indicate to you, Mr. Dillon, that this

1 privilege has been waived as to this document.

2 A I don't know if I was copied on it.

3 MS. NELSON: If I may respond. If I may respond,
4 Your Honor. This is not a communication from the attorney to
5 Mr. Dillon. This was to Mr. Muchmore and then to Baird. So,
6 Mr. Dillon is testifying about separate conversations in
7 response to Mr. Wertheimer's question that were separately
8 attorney/client privilege.

9 MR. WERTHEIMER: I think that's correct actually.

10 THE COURT: Okay.

11 Q Do you recall having discussions with -- may I back up?

12 MR. WERTHEIMER: For the record, I would take an
13 exception based on the arguments we've previously made as to
14 the applicability of the attorney/client privilege to
15 communications involving public officials, et cetera.

16 Q Do you recall having discussions at around this time with
17 the Jones, Day law firm relative to contingencies being placed
18 on the bankruptcy?

19 A Yes.

20 MS. NELSON: Same objection, Your Honor,
21 attorney/client privilege as to their content.

22 MR. SHUMAKER: The city joins in the objection.

23 MR. WERTHEIMER: I'm not going to go any further
24 than -- than his yes response.

25 THE COURT: All right.

1 Q I'm going to show you a document, Mr. Dillon that has
2 been marked for identification purposes as UAW 626. And ask
3 you if you can identify it as an email that you sent to Braum
4 Stibitz who you've already identified and others on July 10,
5 2013?

6 A Yes, I recall this.

7 (UAW Exhibit 626 was identified)

8 MR. WERTHEIMER: Move for its admission.

9 THE COURT: What was the number again, sir?

10 MR. WERTHEIMER: 626.

11 THE COURT: Any objections?

12 MS. NELSON: No objections.

13 MR. SHUMAKER: No objection, Your Honor.

14 THE COURT: It is admitted.

15 (UAW Exhibit 626 was admitted)

16 Q Put it up. I want to direct your attention -- I'm -- I'm
17 going to go through it to some extent with you, Mr. Dillon.
18 It begins -- or you begin by saying, I would like to get a
19 response to the proposed Orr letter out tomorrow about noon.
20 Would I be correct in understanding that the proposed Orr
21 letter is his letter seeking authorization to file bankruptcy
22 to you and the Governor?

23 A Yes.

24 Q And this is dated July 10, correct?

25 A Yes.

1 Q Do you recall when you received the draft of the proposed
2 Orr letter that you would have been working from when you
3 created 626?

4 A Not specifically, no.

5 Q That day, a day before? I mean was it a tight --

6 A Yes.

7 Q Fairly tight time frame?

8 A Yes.

9 Q How did you come to receive it?

10 A I believe it came in via email.

11 Q From whom?

12 A I don't recall.

13 Q From someone at the emergency manager's end, or was it
14 already being distributed at the state if you recall?

15 A I don't recall.

16 Q Do you recall the context at all of how you received it?

17 A No. I -- I had been briefed on the schedule. I was
18 aware things were going to be in motion.

19 Q To your knowledge, were other people at the state end
20 being provided with a copy of the draft authorization?

21 A Not to my knowledge.

22 Q As far as you knew it was only you?

23 A Well, treasury.

24 Q Did you think there was anything untoward with Orr asking
25 for your input into his request to you for something that you

1 and the Governor would need to act on?

2 A No. I thought it was a courtesy.

3 Q You thought it was a courtesy, is that right?

4 A Yes.

5 Q You felt free, did you not, to suggest changes both
6 typographical if you will, and substantive, did you not?

7 A Apparently, yes.

8 Q Okay. Fair enough. And in fact Mr. Orr if you -- I
9 don't know if we can get two on the screen at once, but if we
10 take a look at Mr. Orr's authorization of July 16 which is
11 Exhibit 28 for example. Your point number one back to 626 is
12 that you think initiatives should be initiatives. That is that
13 it was just a mistake in the word choice, correct?

14 A Yes.

15 Q And if you look at Exhibit 28, he agreed and changed the
16 word to initiatives near the end of the second full paragraph
17 on Page 2, did he --

18 MS. NELSON: Your Honor, I'm going to object. First
19 of all, it calls for hearsay. There's no foundation that this
20 was even communicated to Mr. Orr ultimately or even back to
21 anyone who prepared Exhibit 28 for what Mr. Orr accepted or
22 didn't accept.

23 THE COURT: The objection is overruled. You may
24 proceed.

25 MR. WERTHEIMER: Thank you.

1 Q Let me ask you, however, you did communicate your changes
2 to Stibitz. We know who he is, correct?

3 A Correct.

4 Q Who is Saxton, Tom Saxton?

5 A He works for treasury as well.

6 Q And what does he do there?

7 A He's the Deputy Treasurer.

8 Q And Mr. Headen? Who is Mr. Headen?

9 A He's the lawyer that works within Treasury Department.

10 Q Okay. Did you in one way or another assume that your
11 people would have got your input back to Mr. Orr? In other
12 words you weren't doing some academic exercise, were you?

13 A At this point I thought that this would be transformed
14 into a letter written by Fred Headen which never transpired.

15 Q Okay. And so you thought at this point Headen was going
16 to write a letter back to Orr?

17 A I thought we would send a letter back to whoever sent
18 this to us.

19 Q And which you would point out the things that you thought
20 should be changed?

21 A I shared with them my views and expected that they might
22 have some of their own thoughts as well.

23 Q Okay. What did happen to the changes that you were
24 suggesting? Did -- tell -- tell us what your knowledge is as

25 to how if at all these suggestions were communicated back to
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1 Mr. Orr?

2 A There was a phone call, but not to Mr. Orr. Excuse me.

3 Q Who -- who called who?

4 A There was a conference call with a few people from my
5 staff as well as the Jones, Day lawyers.

6 Q So you get on to a conference call with you, your staff
7 people, and Jones, Day lawyers and during that conference
8 call, you communicate the contents of this email which is now
9 626 back to Orr through the Jones, Day lawyers, do I
10 understand that correctly?

11 MS. NELSON: Objection, attorney/client privilege.

12 MR. SHUMAKER: Same objection, Your Honor.

13 MR. WERTHEIMER: Your Honor, the privilege has been
14 waged -- waived as to this document.

15 THE COURT: The question merely summarized what the
16 witness previously said, so I'll permit it. Please answer the
17 question, sir.

18 A I spoke to some lawyers over the phone with Jones, Day.
19 What they communicated to Kevyn, I don't know.

20 Q Fair enough. But what you -- you had -- I assume you had
21 in front of you the contents of your email?

22 A I believe I did.

23 Q And you communicated those contents to the Jones, Day
24 lawyers?

25 A I did.

1 Q And you communicated them for the purpose of getting back
2 to Orr your comments relative to his request for an
3 authorization?

4 A I don't know that I made that leap but, sure. They were
5 obviously involved in this issue for Mr. Orr.

6 Q All right.

7 A And how they communicated with him, I have no personal
8 knowledge.

9 Q All right. They're competent counsel and you assumed
10 that they would have communicated back to the client what the
11 treasury secretary was suggesting. Would that be fair?

12 A That would be fair.

13 Q Okay. Thank you. And if you look at 626, your third
14 point is no mention of GRS. And then your question is why.

15 Am I reading that right?

16 A Yes.

17 Q What is GRS?

18 A General employee retirement system.

19 Q Okay and that got put into the authorization request, did
20 it not?

21 A I believe it did.

22 Q And it's just to be clear for the record, if you -- if we
23 look at the authorization letter, Page 4, the third full
24 paragraph, there's now a paragraph relating to GRS and other
25 things, correct?

1 A I didn't read it right now, but that's my memory.

2 Q Okay. And that was not in your memory, I would -- is
3 your memory that that was not in the draft that you were
4 looking at?

5 A Yes. That's my memory.

6 Q Okay. Now I won't match up all the other things, but --
7 but let me just ask kind of a summary question that I think
8 will -- we can then figure it out from the record.

9 Would it be fair to say that all the suggestions you made
10 in your July 10 -- or that are recorded in your July 10 email,
11 are things that were not in the version that you were looking
12 at? In other words you're suggesting additions or changes to
13 what was in the Orr draft at the time you were looking at it,
14 would that be fair?

15 A I think it's an overly broad description. I read a
16 document, here's my thoughts.

17 Q Okay.

18 A Sometimes it was an omission, sometimes it was a failure
19 to hit on a theme.

20 Q All right, fair enough. I want to direct your attention
21 now to the second page of your Exhibit 626, number 10. You
22 say here I, Andy Dillon, don't think we are making the case
23 why we are giving up so soon to reach an out of Court
24 settlement. That was a true statement of yours at the time
25 you made it, was it not?

1 A That's what I believed at the time.

2 Q And you then said, looks premeditated, did you not?

3 A Yes.

4 Q Period, a two word sentence. You believed that to be
5 true when you wrote it -- when you typed it down on to your
6 computer on the 10th, did you not?

7 A Yes.

8 Q Then you go on to say, I think we need to say facts got
9 worse as we dug into the numbers. And I believe there is a
10 State Court option to get retirees into a class (we don't
11 acknowledge that) and why is that impractical? That was a
12 correct statement of your thinking at the time, was it not?

13 A Yes.

14 Q You believed that there was a State Court option to get
15 retirees into a class and that it was not impractical?

16 A That's what I believed at the time. I was never apprised
17 to know if that was ultimately the case.

18 Q All right. Then you say, we don't even say they rejected
19 the city's proposal. That was true as far as you knew it at
20 the time. That is that was not being said in Orr's
21 authorization request, correct?

22 A Correct.

23 Q Then you say, I think we may want to take it or -- I'm
24 sorry. I think we may want a take it or leave it demand

1 Chapter 9 filing?

2 A Yes.

3 Q And did you mean by take it or leave it demand that the
4 -- that Orr or somebody on his behalf should make such a
5 demand before the Chapter 9 was filed?

6 A I thought that might have been beneficial.

7 Q Then you say, I agree with the recommendation. Are you
8 referring now to the recommendation to proceed to bankruptcy?

9 A Yes.

10 Q But I don't think we make the case. Was that true on
11 July 10? You did not think that Orr had made the case?

12 A In the document that I read.

13 Q Now and I -- would I be correct in assuming that the
14 information that's included here under your number 10 on Page
15 2 of 626, that you communicated that in this conference call
16 you had with Jones, Day shortly either on July 10, or shortly
17 thereafter?

18 A I believe that's true.

19 Q You didn't leave any of it out?

20 A I don't know if I went into as much detail here, but I
21 think I would have made the point.

22 Q Then finally down at the bottom, you say after this
23 letter is revised, let's work on Governor's response. By
24 Governor's response you meant the response that the Governor

1 to Mr. Orr's letter, did you not?

2 A That's what I meant, yes.

3 Q So you were of the view at that point -- let me -- sorry.

4 And you then indicated at end just for completion, that these
5 were just your initial thoughts, correct?

6 A Correct.

7 Q Did you have any further input into the Orr authorization
8 request beyond what's on this document between July 10 and
9 July 16 when he submitted it to the Governor?

10 A I don't believe so.

11 Q Now back to the Governor's response. You're saying we're
12 going to revise this letter and then we're going to work on a
13 response to it, correct?

14 A Correct.

15 Q And as I understand it based on what you say you talked
16 to Mr. Gadola about, the response -- well, you tell me. What
17 was the response going to be at that point?

18 A I wanted to finish this before we got to that.

19 Q One step at a time?

20 A That's right.

21 Q All right. But one step at a time. But you're on both
22 sides of each of the steps, would that be fair?

23 A Actually not.

24 Q Well, you're helping to create the authorization request,
25 correct?

1 A I shared comments about it.

2 Q And you're -- oh, okay. You're hoping to be involved in
3 what the Governor's response will be, correct?

4 A I don't know if I agree with the word hoping or thought.
5 It may fall on to my duty list.

6 Q Fair enough. All right. But do I take your answer to
7 mean, or can I conclude from it that in fact you were not
8 involved in what became the Governor's response, the July 18
9 document?

10 A That's correct, I was not.

11 Q Is that correct? You were not? You were out of the loop
12 on that?

13 A Yes.

14 MR. WERTHEIMER: Okay. Can I have just one minute,
15 Your Honor?

16 THE COURT: Yes, sir.

17 Q Back with just one clean up question, Mr. Dillon. Back
18 to questions and your answers relative to your not
19 participating in the vote where Jones, Day was hired. Do you
20 recall that?

21 A Yes.

22 Q Did you -- first of all, what board was this that was
23 deciding that ostensibly at least deciding that issue?

24 A I don't remember all the attendees, but there were people
25 from the City of Detroit there, there was people from treasury

1 there. There might have even been some members of the
2 financial advisory board there.

3 Q Was that what it was? Was that the body voting,
4 financial advisory board?

5 A It was not a formal entity. It was --

6 Q Oh, okay. It was just an informal group of people?

7 A Right.

8 Q At the point that you decided not to vote, did you
9 communicate to the other people who were voting that Jones,
10 Day had been actively involved in providing legal assistance
11 to the state in March of 2012 or any other time? In other
12 words that they had previously done work on this case for a
13 client different than the City of Detroit and a rather big
14 client?

15 A Well, this case I don't understand that. Can you explain
16 that?

17 Q I'm sorry. I kind of loaded it up. I apologize. Did
18 you communicate to the other members of the board at the time
19 that you were deciding not to vote, based at least in part on
20 your concern about the appearance of things, did you
21 communicate to the other members of -- of the people voting,
22 that Jones, Day had been actively representing the state in
23 March of 2012?

24 MS. NELSON: I'm going to object again, Your Honor.

1 Treasurer's testimony.

2 MR. WERTHEIMER: It certainly was and it's all over
3 the --

4 THE COURT: Objection is overruled.

5 MR. WERTHEIMER: Sorry.

6 A I didn't reference that they played a role in the
7 negotiation of the consent agreement.

8 Q You just abstained? Silently, you didn't --

9 A Yeah.

10 MR. WERTHEIMER: Yeah, okay. That's all I have, Mr.
11 Dillon. Thank you very much.

12 DIRECT EXAMINATION

13 BY MS. LEVINE:

14 Q Good afternoon, Mr. Dillon. Sharon Levine, Lowenstein,
15 Sandler for AFSCME. Just a couple of questions.

16 During the period of time that you were Treasurer, did
17 you report to the Governor?

18 A Yes.

19 Q And did there come a point in time, actually either
20 before or after you became Treasurer that you began to think
21 that Detroit was insolvent or to avoid the need for a legal
22 conclusion financially distressed?

23 A Yes.

24 Q And when was that?

25 A Well, pretty much from day one, but it continued to get
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1 worse over the two year window.

2 Q And what were some of the indicators that caused you to
3 think that Detroit was financially in distress? Did it
4 include the blight?

5 A Sure.

6 Q Conditions with regard to the police and fire services?

7 A Yes.

8 Q Did you -- did you review any financial documentation in
9 that regard?

10 A In what regard?

11 Q Numbers relating to Detroit's cash flow?

12 A Yes.

13 Q What did you review?

14 A Cash flow forecast that we requested to be developed.

15 Q By whom?

16 A By the city.

17 Q By whom for the city?

18 A Well, we had invited Ernst and Young to participate and
19 help the city develop its cash flow forecast.

20 Q When did you retain -- when was Ernst and Young retained?

21 A I don't recall specifically.

22 Q Were they retained by the city, or by the state, or by
23 somebody else?

24 A I'd have to guess, but I believe the city.

25 Q Did there come a point in time also when Miller, Buckfire
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1 was retained?

2 A By the city?

3 Q Well, by anybody in connection with the Detroit
4 situation.

5 A Yes.

6 Q And when was that?

7 A There was a short period of time, I don't know when it
8 began, but in the early part of 2012 they were hired for a
9 specific project. And then --

10 Q By the -- by the state?

11 A I believe by the state, yes.

12 Q And at the conclusion of that project, were they then
13 retained at some point in time by the city?

14 A About a year after.

15 Q But in 2012, E & Y, or Ernst and Young was just retained
16 by the state and continued to be retained by the -- I'm sorry,
17 just retained by the city and continued to be retained by the
18 city, correct?

19 A I believe that's right.

20 Q Did there come a point in time when Conway, MacKenzie was
21 retained?

22 A Yes.

23 Q And when was that?

24 A I don't recall the specific date. It would have been
25 early 2013, I believe.

1 Q And by whom were they retained?

2 A The city.

3 Q Did any of these professionals, E & Y, Miller, Buckfire
4 or Conway, MacKenzie during 2012, and I guess it wouldn't be
5 Conway, MacKenzie because they hadn't been retained yet, do
6 what's known as a bottom's up analysis?

7 A I don't recall that term of art.

8 Q Do you have an understanding of what a bottom's up
9 analysis is as opposed to a top down analysis?

10 A Why don't you describe it to me, that would be safer.

11 Q Did any of these professionals actually instead of
12 relying on numbers provided to them by city officials or
13 others, actually go in and stress test the numbers?

14 A I believe so.

15 Q And who was that?

16 A I think it would have been a combination of E & Y and
17 Conway.

18 Q And when did Ernst and Young prepare this bottom's up
19 analysis?

20 A We didn't use that term, so their engagement grew over
21 time as the situation got worse and -- and as they were there
22 longer they started to get better -- better numbers and
23 understand the environment better. And then let's say from
24 January of '13, you know, through May or June, there was a lot
25 of effort to put together a ten year forecast for the city

1 that was based on a lot of effort to dig under and understand
2 the numbers.

3 Q And that took place starting in January of 2013, but not
4 earlier?

5 A I believe earlier. I think as E & Y was there, the
6 longer they were there, the better comfort they got. So we --
7 we always relied and looked at the cash flow forecast and some
8 understanding of the city's profit and loss statement. So I
9 mean it was -- started from day one really. But the numbers
10 got more refined as we learned more.

11 Q Did anybody look behind -- did anybody look behind the
12 numbers in terms of finding other sources of revenue for the
13 city? For example we've heard a lot of talk about uncollected
14 taxes. Did E & Y or any of the professionals actually go in
15 and dig into those numbers directly?

16 A Conway -- I mean everyone in treasury did. And we had --
17 we were working on a partnership with the city where the state
18 would help them collect their taxes. We did go look at their
19 outstanding receivables to see if there's monies that could be
20 collected there.

21 That probably was 2011, maybe 2012 when that happened.

22 Conway, MacKenzie did a study of all the cash collection

23 operations. I don't recall when that project happened. And

24 then E & I was -- E & Y was on the ground for pretty much the

25 entire time. And I wasn't on the ground with them, so I don't

1 know all the areas that they paid attention to.

2 Q But you were concerned about the revenue stream from the
3 City of Detroit going back all the way to the time you took
4 office in 2011?

5 A Yes.

6 Q State shared revenue. For every year that you were in
7 office, did the state share revenue provided to Detroit
8 diminish?

9 A I believe it actually grew.

10 Q The state shared revenue?

11 A Maybe the first year. The first year might have been a
12 cut and then after that I think it grew every year from that.

13 Q Do you recall what the number was the first year?

14 A I do not.

15 Q Do you recall what the number was that -- the second or
16 third year?

17 A No.

18 Q What makes you think it grew?

19 A I just remember the state's economy began turning around
20 and -- and the initial cuts from the first year the Snyder
21 administration was kind of the bottom. And the revenues with
22 the state started to increase from that point forward.

23 Q But isn't the state shared revenue also tied to the city
24 population and wasn't Detroit losing population?

25 A I'm not totally familiar with the state shared statutory
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1 formulation. But I do believe it's tied to revenue. And when
2 Detroit fell below a million, that was a relevant number for
3 the city. I don't know in that sense this number took place
4 and when the new numbers were relied upon.

5 Q So would it be fair to say then that you're not really
6 sure whether or not the state shared revenue to Detroit grew,
7 or shrank, or stayed the same?

8 A I would rather see the numbers, yes.

9 Q Were you involved in the selection of E & Y on behalf of
10 the city back in 2012?

11 A Well, I think they were brought in before '12.

12 Q Were you involved in the selection of Miller, Buckfire on
13 behalf of the state in 2012?

14 A Yes.

15 Q And were you involved in the selection of Miller,
16 Buckfire on behalf of the city about a year later?

17 A Yes.

18 Q And were you involved in the selection of Conway,
19 MacKenzie for the city in 2013?

20 A Yes.

21 Q How long did the interview process last with Miller,
22 Buckfire before they were actually retained by the city?

23 A I don't recall.

24 Q Do you recall how long the interview process took with

1 city?

2 A Not specifically, but it was hours.

3 Q You met them and hired them on the spot?

4 A No, no. It was hours and it took several meetings.

5 Q Over what time frame, do you know?

6 A The process -- I don't recall specifically, but it was
7 not a matter of days. It was several -- it was a competitive
8 process and there was a lot of meetings. And a lot of time
9 was spent on that.

10 Q Same thing with choosing Miller, Buckfire, several
11 meetings, competitive process, a lot of days?

12 A Not quite the same with Miller, Buckfire.

13 Q How many -- how many investment bankers were interviewed
14 during the process that resulted in Miller, Buckfire being
15 retained by the city?

16 A I don't recall.

17 Q More than two?

18 A I don't recall a formal interview process like we had
19 with the law firms, or the accounting firms, or the
20 restructuring firms.

21 Q So it's possible it was just Miller, Buckfire that was
22 considered and ultimately retained?

23 A I don't recall if no one else was considered, but it's
24 possible.

25 Q Now were you involved in the selection of Jones, Day?

1 A Yes.

2 Q And there were several law firms that were considered
3 along with Jones, Day?

4 A Correct.

5 Q And the interview took place on January 29?

6 MS. NELSON: Your Honor, asked and answered.

7 THE COURT: Many times.

8 MS. LEVINE: I'll move on.

9 Q When did you personally become first aware of Jones,
10 Day's interest in serving as counsel for the city?

11 A For what purpose?

12 Q For any purpose.

13 A Well, they had some role during the efforts to negotiate
14 a consent agreement. So that suggested to me that they had an
15 interest in this case.

16 Q Back in 2012?

17 A Right.

18 Q Was it earlier than 2012?

19 A Could have been December even, but I don't recall
20 specifically when it started.

21 Q Now I don't want to go through again the entire interview
22 process with -- with Kevyn Orr, but Kevyn Orr first became
23 considered on 1-29-13, is that correct?

24 A By me it would have been later. It would have been after

1 candidate.

2 Q But the state was considering him effective as of the
3 interview date with Jones, Day, correct?

4 A After the -- that date. I don't recall the day I got a
5 phone call.

6 Q And he was formally retained on March 25?

7 A That sounds right.

8 Q And there was an interview process and negotiation back
9 and forth between January 29 and March 25, correct?

10 A Correct.

11 Q There was some discussion earlier with regard to Jones,
12 Day working on the consent decree and some other Miller,
13 Buckfire working perhaps for the state and then for the city.
14 Did the state or any entity affiliated with the state or any
15 of its officers fund any of the professionals currently
16 involved in this case, Jones, Day, Conway, MacKenzie, Miller,
17 Buckfire, or E & Y?

18 A Could you restate the question?

19 Q Did the state or any entity affiliated with the state, or
20 its officers, at any time fund any of the professionals
21 retained by the city in this case, Jones, Day, Conway,
22 MacKenzie, Miller, Buckfire, E & Y?

23 A Yes. For those units we contributed to the city's cost
24 of retaining them.

25 Q So the state itself?

1 A Yes.

2 Q Anybody on behalf of the state or affiliated with the
3 state or any of its officers?

4 A I don't know if I understand the question, but treasury
5 was -- appropriated some money from the legislature for me to
6 assist local units of government retain professionals that can
7 help them navigate financial difficulties.

8 Q Well, there -- there was some testimony earlier that the
9 NERD fund for example, contributed to defray some of Kevyn
10 Orr's expenses. Were there any other entities affiliated with
11 the state or any officer of the state that helped defray the
12 costs of the professionals retained by the city in this case?

13 A I'm not aware of any other funds.

14 Q Okay. Are you familiar with the June 14 proposal to
15 creditors made by the EM in this -- the emergency manager in
16 this case?

17 A Yes.

18 Q Did you -- and by EM I mean emergency manager as we have
19 a shorthand. Did you review that proposal for creditors
20 before it was made on June 14?

21 A I don't believe so.

22 Q When was the first time that you saw it?

23 A I believe when I attended it.

24 Q When you attended the June 14 meeting?

25 A Right.

1 Q Did you see that there was a time line at the back of
2 that proposal that concluded on July 19?

3 A I don't recall that.

4 Q Does a -- does a time line running from the June 14
5 meeting through July 19 ring a bell?

6 A I believe I recall a time line that was scheduled for the
7 process and that sounds about right.

8 Q And was it your understanding that there were to be
9 negotiations with various stakeholders between June 14 and
10 July 19 as a precursor to the Chapter 9 filing?

11 A Yes.

12 Q And what's your understanding of the total debt in
13 Detroit?

14 A About 18,000,000,000.

15 Q Did you think it was reasonable to schedule negotiations
16 with the various stakeholders of \$18,000,000,000 of debt for
17 one month and three or four days?

18 A I don't think I passed judgment on that. I knew it was
19 an aggressive schedule.

20 Q Okay. You've previously testified that you were
21 concerned about Detroit's finances virtually from the time you
22 took office back in 2011, correct?

23 A Correct.

24 Q And that there were various restructuring professionals

25 in and around the Detroit situation. Some dating back to even
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1 as far as December 2011, but coming through straightforward
2 till the filing of the bankruptcy in -- in July of 2013,
3 correct?

4 A Correct.

5 Q And in response to some questions by Mr. Wertheimer, you
6 testified to the fact that Chapter 9, while not necessarily
7 being considered, was in the background at least since April
8 of 2012, correct?

9 A I believe I testified to that, sure.

10 Q So knowing what one of the precursors to a Chapter 9 is
11 to try and negotiate with your various stakeholders prior to a
12 filing, why didn't negotiations start with these various
13 stakeholders back in April of 2012?

14 A Of '12?

15 Q Uh-huh.

16 A Our hope was to avoid emergency and to get to a consent
17 agreement back in '12.

18 Q Were you negotiating with municipal bond holders and
19 others with regard to -- the consent decree didn't solve the
20 debt problem?

21 A No.

22 Q Were you negotiating with the stakeholders back in 2012?

23 A No. We were negotiating with the city to see if we could
24 reach an agreement that would give them a chance to
25 restructure the city.

1 Q Did you encourage the city during the period of time that
2 you were negotiating with the city to be also negotiating with
3 their stakeholders?

4 A I don't have a specific memory about that.

5 Q There were negotiations in late 2011, early 2012 with a
6 coalition of unions for Detroit with regard to a concessionary
7 agreement. Are you familiar with that?

8 A Yes.

9 Q And there were about 30 unions that participated in those
10 concessionary negotiations, is that your understanding?

11 A I'm aware that the city was negotiating something that I
12 think were described as TSA's. Who was involved, I don't
13 remember each name of each union.

14 Q But it was a coalition of unions?

15 A Yes.

16 Q It wasn't just one union. And on the other side of the
17 table was city, correct?

18 A Correct.

19 Q And involved in that on behalf of the city was E & Y,
20 correct?

21 A Yes, they were there.

22 Q Do you recall who the person was at E & Y who was
23 involved in that?

24 A I believe Gaurav Malhotra.

25 Q And as a result of those negotiations, there was a
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1 consensual agreement that was actually reached, isn't that
2 correct?

3 A Between the city and the unions, yes.

4 Q And the unions ratified the agreement so approximately
5 4,000 plus city employees voted in favor of the agreement, is
6 that correct?

7 A I don't believe every union ratified.

8 Q To your knowledge did most of the unions ratify?

9 A I don't recall.

10 Q Would you be surprised if I told you that the unions
11 actually ratified?

12 A Yeah, because my memory was that not all of them
13 ratified.

14 Q Was the -- was the agreement brought before the city
15 council for ratification?

16 A I don't remember.

17 Q Well, did you tell the city, you personally tell the city
18 not to ratify this agreement and not to agree to the terms and
19 conditions of this collective bargaining agreement?

20 A I didn't think that those agreements would work for the
21 city, so I was not supportive of them.

22 Q Why is that?

23 A Because I didn't think -- well, I sought expert advice on
24 and had them reviewed. And there was several issues that

1 won't work for the city.

2 Q And was one of the pieces of that advice that it would be
3 bad for the city to enter into a three year collective
4 bargaining agreement if it wanted to file Chapter 9 to
5 jettison the pensions?

6 A No. I mean --

7 Q Who did you seek advice from?

8 A Huron was involved looking at them. I believe they had
9 some --

10 Q But so Huron, a financial consulting firm, took a look at
11 these and said they were bad while E & Y, a consulting firm
12 that you were also involved with took a look at these and said
13 that they were good, is that what was happening?

14 A I can't tell you what E & Y's professional opinion was on
15 those agreements. The mere fact that he was there with the
16 city doesn't mean that E & Y was putting their seal of
17 approval on those TSA's.

18 Q What were they advising the city in the room, if not how
19 to get to a consensual agreement that made sense for the city?

20 A I -- I don't -- I wasn't a part of the relationship
21 between the Mayor, and the COO, and E & Y. Maybe they were
22 there just to provide numbers, or -- I wasn't there, I can't
23 tell you.

24 Q When did it first come to your attention -- or when did
25 you first -- well, let me ask the question a different way.

1 Are you of the belief right now that the pensions are under
2 funded?

3 A I believe they are.

4 Q And do you believe that's part of the reason why you
5 would view Detroit as insolvent?

6 A It's a contributing factor.

7 Q And when did you first reach the conclusions that the
8 pensions were under funded and that was a contributing factor?

9 A It would have been the spring probably of '13.

10 Q At no time prior to the spring of '13 did you have a
11 concern about the vested pension benefits and the cost of
12 maintaining the vested pension benefits?

13 A I don't recall when that first became an issue for me.
14 From day one, it was the unfunded health care liability that
15 to me was really the big challenge for the city.

16 Q And --

17 A And the level of the pensions, the numbers seemed to move
18 quite a bit, but the funds themselves were advertising
19 themselves at over 90 and over 80% funded. If that was true,
20 that would not have been alarming to me. It's not perfect,
21 but not bad. There's a lot of pension funds worse funded than
22 that.

23 Q When did you first reach the conclusion that the health
24 benefits were under funded?

25 A Early on. We knew it was a big number from --

1 Q 2011?

2 A -- the first day I started, yeah.

3 Q Did you start talking to the city about negotiating with
4 the unions or others with regard to solving that problem back
5 in 2011?

6 A We had discussions dating from the very beginning about
7 that issue, yes.

8 Q Did you have discussions with anybody besides the city?
9 In other words with the actual stakeholders with regard to
10 that issue?

11 A With lawyers and some of the consultants working with the
12 city, we had those discussions. But that's --

13 Q Did you talk to the unions? Did you talk to any
14 retirees? Did you talk to anybody who was actually receiving
15 health benefits with regard to those issues?

16 A I did. I met with various union officials throughout
17 this two and a half year window.

18 Q Did you participate in the negotiations that led to the
19 concessionary agreement in February of 2012?

20 A No.

21 Q Why not?

22 A I don't recall being invited.

23 Q If the issue was health care, did you pick up the phone
24 and call anybody about that and suggest that maybe you should
25 be involved in that?

1 A I didn't ask to be at the table.

2 Q After the proposal for creditors disseminated, there was
3 a time frame from June 13th, 14th, to July 19th to negotiate
4 with all of these stakeholders. Do you recall that?

5 A I do.

6 Q Do you believe it was practical to believe that there
7 could be resolutions reached with all of these stakeholders
8 during that short period of time?

9 A Can you rephrase it? Or just repeat it. Just --

10 Q Do you believe it was possible to reach an agreement with
11 all of the city's stakeholders between June 14th, and July 19th?

12 A Possible, yes.

13 Q Okay. As you -- as the deadline approached and there was
14 a lot of testimony that you gave earlier with regard to back
15 and forth over the authorization letter to Kevyn Orr to file
16 Chapter 9 and it looked more likely that a Chapter 9 was going
17 to be filed. Was there any thought given to the city funding
18 a period of time for Detroit to engage in more meaningful,
19 more productive negotiations for another 60, 30, 90 days in
20 order to allow the stakeholders a real opportunity to engage
21 in a back and forth negotiation to try and solve these
22 problems before rushing into Chapter 9?

23 A I'll tell you the thing that troubled me the most was
24 when they put together the ten year plan that talked about

1 eventually. That the recovery for the unsecured creditors was
2 so low I didn't know how anyone practically could cut a deal
3 and walk out of the settlement room accepting something based
4 on those numbers. I became very skeptical that an out of
5 Court solution could happen.

6 Q Did you ever suggest that perhaps there should be some
7 funding to provide a limited further longer period of time to
8 better develop a proposal that could actually form the basis
9 of a successful out of Court plan of adjustment?

10 A I was not optimistic that you could reach it out of Court
11 after the numbers kept getting worse and when you saw the
12 potential recovery, I just don't know practically how the
13 unsecured creditors could accept that practically. And that's
14 probably the biggest influence on me.

15 Q So then at no point from 2011 through the filing of the
16 Chapter 9 did you actually sit down and participate in and
17 engage in negotiations with the stakeholders of the City of
18 Detroit, personally?

19 A It's overly broad. I mean I had various meetings with
20 some union -- union representatives during those windows of
21 time where we discussed various matters. I think I'd need a
22 little more definition to the question.

23 Q Well, there was a proposal for creditors that came out on
24 June 14th. What you're saying was a proposal that nobody could
25 possibly agree to, so you viewed it as impractical. But

1 Detroit's financial condition had been deteriorating for the
2 whole time that you'd been in office if I'm understanding your
3 testimony correctly. So at any point in time did you suggest
4 to anybody now is the time for us to get in front of this
5 situation, make a proposal, and start negotiating?

6 A I don't believe so.

7 MS. LEVINE: Thank you. No further questions.

8 THE COURT: Other questions for Mr. Dillon?

9 DIRECT EXAMINATION

10 BY MS. GREEN:

11 Q Good afternoon, Mr. Dillon. Jennifer Green on behalf of
12 the general and the police and fire retirement systems.

13 I'd like to follow up on some questions that Ms. Levine
14 just asked. Can we pull up UAW Exhibit 626? The second page.
15 Paragraph 10 -- no, 11, Paragraph 11. At the bottom these are
16 your comments, correct, to the authorization letter -- or I'm
17 sorry, the recommendation letter by Kevyn Orr?

18 A Yes.

19 Q And you note here you think it should say there's a
20 fundamental reality that after fully estimating the city's
21 liabilities, the pennies on the dollar outcome for unsecured
22 creditors make it practically impossible for them to accept
23 KO's offer. Is that the sentiment that you were referring to
24 just a moment ago when you said that you thought that

1 for anyone to accept it?

2 A Yes.

3 Q Do you know if anyone else in -- in the state or city
4 shared your view that a pennies on the dollar offer was really
5 a non-starter?

6 A I don't have a specific memory on that.

7 Q The paragraph just prior to this, Paragraph 10, you had
8 made a statement, I believe there's a State Court option to
9 get retirees into a class. We don't acknowledge that and why
10 is that impractical?

11 I believe your testimony was that you were never
12 ultimately briefed on why that was the case. But did you ever
13 ask about this particular option on the conference call that
14 you had just later on July 10th?

15 A I don't recall.

16 Q So you never got an explanation to your question as to
17 why that State Court class action option was impractical?

18 A I don't recall having that conversation in that call.

19 Q Do you know if anyone else shared your view with the
20 State Court option that no one had fully explained why that
21 was not a practical option? Anyone at the state or city?

22 A I don't recall any discussions on it.

23 Q At the bottom of the letter, it says after this letter is
24 revised, let's work on the Governor's response. And you knew

1 9 filing was going to be filed on July 19th, correct?

2 A I don't think I acknowledged that the exact date, but I
3 remember seeing a time schedule that that date was likely in
4 that schedule.

5 Q And the time line that you're referring to, do you -- do
6 you recall who you got that from?

7 A Who was that? Whenever our weekly Monday meetings, I
8 believe, with the Governor and Kevyn and miscellaneous people
9 from the Governor's office and treasury. And possibly some of
10 the consultants.

11 Q Do you recall if the time line was given to you from
12 someone by the city, or someone from the state?

13 A From the city.

14 Q Do you recall if it was a time line prepared by Bill
15 Nowling? Does that name ring a bell?

16 A It does. I don't believe it came from him.

17 Q I'm sorry, what?

18 A I don't recall it coming from Bill.

19 Q Do you know if it came from Sarah Wurfel, the Governor's
20 press secretary?

21 A It -- I don't recall that it came from her.

22 Q Okay. If I showed you a copy of the time line would you
23 recognize the time line or --

24 A Yeah, I mean there's some press and media coverage tied
25 to this -- the time line. But the relevant time line to me

1 was the actual if there's going to be a filing, a filing and
2 all the steps that follow a filing. I do recall the
3 conversations about doing media issues, but that wasn't
4 relevant to me.

5 Q You stated though after this, after let's get to work on
6 the Governor's response, that you were then left out of the
7 loop. Why was that?

8 A I never had a discussion, but I think the Governor
9 decided he was going to do it himself.

10 Q Was there ever a version of Kevyn Orr's recommendation
11 letter with a contingency placed in it?

12 A I don't know. I don't recall it in the version that I
13 read.

14 Q In -- in any subsequent version?

15 A I'm sorry?

16 Q Was there a subsequent version that may have contained
17 the contingency?

18 A I don't recall that.

19 Q Do you ever recall seeing a version of the Governor's
20 letter that had a contingency placed in it?

21 A No.

22 Q In the July 8th email to the Governor, you mentioned that
23 there was financial information forthcoming from certain
24 financial consultants regarding the pension under funding.

25 Who were the consultants that you were referring to?

1 A Milliman and probably Conway, MacKenzie.

2 Q And that would be Chuck Moore from Conway, MacKenzie?

3 A Right.

4 Q Were you at all involved in the pension task force with
5 Chuck Moore?

6 A No.

7 Q Were you aware of that group?

8 A I don't recall.

9 Q Do you know if anyone from the state had anything to do
10 with the formation of the pension task force?

11 A I don't recall.

12 Q Did they -- did that task force in any way report to
13 anyone at the State of Michigan?

14 A I don't believe so.

15 Q When was the first time that you recall a financial
16 advisor telling you that the pensions would have to be cut
17 significantly?

18 A I don't recall specifically.

19 Q Do you recall who that would have been?

20 A I believe it would have been in the spring and we would
21 have Friday meetings before Kevyn was on board with Chris
22 Andrews and Jack Martin and the various consultants. It was
23 probably the first time it came up that the pension fund
24 numbers were not what they thought they were.

25 Q Can you put a finer point at all? Would it have been
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1 May, April?

2 A I'd be guessing.

3 Q Do you know if it was before Kevyn Orr came on board as
4 emergency manager?

5 A I don't recall.

6 Q Do you remember in June of 2013 receiving advice that the
7 pensions would have to be reduced and that the only way to do
8 that would be in a Chapter 9 proceeding?

9 A I received advice on that date?

10 Q Do you recall receiving advice in June of 2013 that the
11 pensions would have to be cut significantly and that a way to
12 do that would be a Chapter 9 filing?

13 A I'm sorry, I don't mean to be difficult, but did I
14 receive advice or information --

15 Q Do you recall receiving that advice?

16 A No, not specifically.

17 Q Can we pull up Exhibit 870, please? I'd like to draw
18 your attention to the middle of the page. There's an email
19 that says from Kevyn Orr to Andy Dillon on June 7th, 2013. Do
20 you recollect getting this email?

21 (Retirement Systems' Exhibit 870 was identified)

22 A It might be helpful if I could read more of it.

23 Q Yup, no problem. The next page contains the substance of
24 the email.

25 A Can I see a hard copy? It might be easier.

1 MS. GREEN: Your Honor, can I approach?

2 THE COURT: Yes.

3 A Okay. Can we restate the question?

4 Q Do you recall getting an email on June 7th from Kevyn Orr?

5 A I don't have specific memory of this email.

6 Q On the second page of the email there is a bullet point 3
7 under GRS. And it says based on this, we anticipate a -- a
8 significant reduction in already accrued benefits will be
9 required in order to get required contributions to the level
10 of available cash to service the UAAL. It appears that this
11 may only be possible in a Chapter 9 proceeding.

12 Do you recall receiving at least this portion of the
13 email in June of 2013?

14 A I don't recall seeing this language, no. And it's
15 possible I did, I just don't have a specific memory of it.

16 Q But suffice it to say that by July you were -- you had
17 advised the Governor that you -- some financial consultant had
18 told you that there would have to be significant cuts to the
19 pensions, correct?

20 A The numbers for the pension funds were very volatile. I
21 remember just not having a lot of confidence in -- in really
22 what was the number. And so I was worried about them, but I
23 never felt like we had a number that we could rely upon.

24 MS. GREEN: And, Your Honor, just a matter of

1 been formally moved for admission, so I'd seek to move for its
2 admission.

3 THE COURT: Any objections to 870?

4 MS. LEVINE: Well, Your Honor, I don't believe an
5 appropriate foundation has been laid through this witness. He
6 doesn't recall this email at all. And I don't believe it
7 would be appropriate to admit it through his testimony.

8 MS. GREEN: Can I respond? He did say he recalled
9 receiving it. I don't -- he didn't recall the exact sentence
10 that was -- that I drew his attention to. And Kevyn Orr
11 testified that he recalled receiving it and we had established
12 foundation through that way.

13 THE COURT: Do you recall receiving this email, sir?

14 A Well, I see my name on here. I don't have a specific
15 memory of this document.

16 THE COURT: Is there some doubt about it's
17 authenticity, Ma'am?

18 MS. LEVINE: I have nothing -- no, Your Honor, at
19 this point.

20 MR. SHUMAKER: It is hearsay, Your Honor.

21 MS. GREEN: Your Honor, if I may respond to that.

22 At least a portion of the email, it is an email directly from
23 Kevyn Orr and we've already established through other emails
24 that that is a party admission, so I'm not exactly sure what
25 the hearsay argument is based on.

1 THE COURT: May I see it, please? I don't want the
2 one with all your markings on it. Is there a -- is there a
3 clean one?

4 MS. GREEN: There is a clean one.

5 THE COURT: What number is it again?

6 MS. LEVINE: Take Mr. Dillon's.

7 THE COURT: Oh, yes, let me just have Mr. Dillon's,
8 that will work.

9 MS. GREEN: And, Your Honor, if I may add one more
10 thing. We've argued in other situations including the city
11 that statements by the financial advisors are being considered
12 party admissions and this is an email from Chuck Moore of
13 Conway, MacKenzie, clearly a party admission.

14 THE COURT: The Court will admit 870 into evidence.
15 Hold on one second, please. Can we keep this one? We don't
16 appear to have it. Okay. Can you put the number on there so
17 it will have a number? Okay.

18 (Retirement Systems' Exhibit 870 was admitted)

19 Q And if we may pull up Exhibit 834. You were already
20 questioned a little bit about this email. I believe that you
21 testified at your deposition the reason you were telling the
22 Governor that you were still in the informational stage was
23 because as you explained the building block is what the funded
24 status was and that issue was fluid, correct?

1 to reach a settlement with your creditors, it's important to
2 understand what's the funding level. From there you can start
3 to figure out how do you solve the equation going forward. Do
4 you recall that?

5 A Yes.

6 Q And yet you admit that at this time in July 9th there was
7 no clear understanding of what that level of under funding
8 was, correct?

9 A For me personally.

10 Q Do you know anyone else that had a clear understanding at
11 the city or state?

12 A Well, I believe Chuck Moore was working closely with
13 Milliman and I think he had a pretty clear understanding of
14 where he thought the funding was. I think he and Kevyn
15 were --

16 Q But you personally were not convinced?

17 A I hadn't seen what I thought were final numbers that gave
18 me a good sense of really what was the funding status of the
19 pension plans.

20 Q And at this time on the email it says that the -- the
21 actual number was not going to be shared as far as the amount
22 and how that would impact the creditors, is that right? I'm
23 not reading it verbatim. It doesn't say that, I'm
24 summarizing.

25 A My understanding that if Kevyn were to meet with them is
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1 really just get to what was the funded level. What's --
2 what's the status. And from there you can start to translate
3 what may or may not need to happen to get the pension fund to
4 be solvent going forward.

5 Q But you're -- what you were saying in this email was he
6 was not going to be translating that into an impact on
7 retirees or employees vested rights, correct?

8 A I thought it best that they come to an agreement.
9 There's a lot of different ways to measure the funding status,
10 the number of years that you're smooth, and what's your
11 amortization rate, and I thought it best to at least see if
12 there's common ground on what the funding level is based on
13 some agreed upon criteria. But from there then you -- the
14 math kind of falls in place.

15 Q But at this time there was no number agreed upon as to
16 what the impact would be on the individual retirees, correct?

17 A Not that I was aware.

18 Q And that number was thus not going to be shared with
19 anyone at the meeting the following day, correct?

20 A That was my understanding.

21 Q You also note at the bottom of the -- the last sentence
22 of the first paragraph. Because pensions have such a long
23 life, there are lots of creative options we can explore to
24 address how they will be treated on restructuring. Did you

1 systems?

2 A No.

3 Q Did you ever explore any of these creative options with
4 any of the unions or the retirees?

5 A No.

6 Q Did you ever prepare a proposal with any of these
7 creative options and then share that proposal with the
8 retirement systems or the unions?

9 A No.

10 Q Now this email also says that you expect to get better
11 financials on Thursday which I believe is the middle
12 paragraph. Who were you expecting to receive better
13 financials from on Thursday?

14 A I don't specifically recall from the city.

15 Q You were also asked just a moment ago about whether or
16 not you thought anything changed between the date of this
17 email on July 9th and the filing on the 18th. Because in this
18 email you stated you thought were in the informational stage.
19 Do you recall that testimony?

20 A Let's rephrase the question if we can.

21 Q You were asked by Mister, I think it was Mr. Wertheimer
22 asked you what changed between July 9th and July 18th to take
23 you out of the informational stage. Do you recall that
24 question?

25 A I do.

1 Q And -- and I believe you said something different today
2 than you said in your deposition. Today you -- do you recall
3 what you said exactly?

4 A I think it had something to do with that the pensions to
5 me weren't the major driver in the decision whether or not to
6 file. That, you know, out of 18,000,000,000 this was
7 somewhere, depending on what the union's position was versus
8 the city's, that number was relevant but not a driving factor
9 for whether or not 9 was necessary.

10 Q So it sounds like your answer has less to do with what my
11 question was. My question was, do you admit that nothing
12 changed between July 9th and the 18th to take out -- take you
13 out of what you were referring to as the informational stage.

14 A As it related to the pension?

15 Q Yes.

16 A Yes, nothing -- I don't recall having new numbers that
17 came in that made me want to call the Governor and say hey,
18 things are better or things are worse.

19 Q So nothing changed and you were still in the
20 informational stage the following week, right?

21 A I believe so.

22 Q You've testified before that you believed there was a
23 "general understanding" that there was a constitutional
24 protection of pensions that was understood by folks from day

1 correct?

2 A Correct.

3 Q And you also testified that the Governor and Kevyn Orr
4 both understood that this constitutional protection existed,
5 correct?

6 A Yes.

7 Q And I think you even explained that this presumption was
8 discussed early on and it was understood by people that there
9 was this provision that you had to grapple with, correct?

10 A The conversation that I had dealt with that the state
11 wasn't liable for pension liabilities of a particular city.
12 That was discussed. There was also the general understanding
13 that this provision existed in the Constitution.

14 Q Okay. I'll get to both. The first question is, when was
15 the first time that you recall learning of this constitutional
16 protection?

17 A I don't recall.

18 Q Do you know if it was during your time as Treasurer, or
19 would it have been something that you knew from your
20 background when you were in the legislature?

21 A I think it predated my time at the treasury.

22 Q Okay. And in fact do you recall citing this
23 constitutional protection to any of the unions or retirees
24 that you met with prior to the bankruptcy filing?

25 A I don't recall that.

1 Q And then you also just said that there was a component of
2 your discussions related to whether the state had to provide
3 funding, correct?

4 A That was a concern early on and because we have other
5 cities and units that are beyond just Detroit. So it was a
6 concern did the state have any credit exposure to failed
7 pensions at the local level.

8 Q And in any of these meetings or conversations, do you
9 recall Kevyn Orr ever asking the state to contribute money
10 toward the pension under funding for the City of Detroit?

11 A I don't recall that.

12 Q Do you recall if anyone else from his team asked the
13 state if it would contribute funding for the City of Detroit's
14 pension under funding?

15 A I believe the question was asked.

16 Q And who asked the question?

17 A I don't recall.

18 Q Do you recall what the answer was?

19 A I think -- well, I recall saying that I don't think A,
20 the state can't lend credit to local units of government. So
21 constitutionally we're prohibited from doing that. And then
22 my comment was, I don't ever see the situation where the state
23 legislature would appropriate money to shore up liabilities of
24 the city.

25 Q So you're constitutionally prohibited from what?

1 A Lending credit from the state to local units.

2 Q And that was a constitutional prohibition that you
3 thought was appropriate to enforce even in the case of the
4 Chapter 9 proceeding?

5 A I was responding to a question from someone that said
6 will the state contribute money. And I gave them two reasons
7 why I didn't think that would ever happen.

8 Q Did you think that the state's constitutional prohibition
9 against lending credit was more important than the state
10 constitutional prohibition against impairing or diminishing
11 pension benefits?

12 A I don't think it's appropriate to compare them in terms
13 of importance. I think the Courts will ultimately decide what
14 they want as it relates to pensions meanings and what their
15 rights are. But I was pretty clear as Treasurer that I
16 couldn't lend credit to local units of government, that I was
17 prohibited from doing that.

18 Q But the Courts could have decided if you did lend credit
19 perhaps the Court could also decide that issue, correct?

20 A I swear an oath to uphold the Michigan Constitution when
21 I took this position and I intend to follow that rule, or I
22 did.

23 Q So if there was a prohibition in the Michigan
24 Constitution that you think directly constrained your actions,
25 you would find that to be a violation of your oath of office?

1 A If I lend -- as Treasurer lend credit to local government
2 when the Michigan Constitution says that I can't do that, then
3 I would feel that yes, I violated my constitutional
4 obligations.

5 Q But you don't feel the same way about Article 9, Section
6 24 of the Michigan Constitution?

7 MS. LEVINE: Objection, Your Honor, argumentative
8 and vague.

9 THE COURT: I'll permit it. What's your answer,
10 sir?

11 A I don't know that that provision influenced any way
12 whether the Governor was -- I don't think it blocks him or
13 prevent him from authorizing a Chapter 9. We had it in
14 Article 72. We had it in Public Act 4. We had it in Public
15 Act 436. That's always been out there.

16 Q You mean the power to permit a Chapter 9?

17 A Yes.

18 Q And there's also the power to place a contingency on a
19 Chapter 9, correct?

20 A I believe that's in 436.

21 Q And we looked at an email earlier where it was discussed
22 whether or not such a condition should be placed on this
23 filing, correct?

24 A I believe that.

25 Q It was an email dated July 12th. Do you know ultimately
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1 why no contingencies were placed on the Chapter 9 filing?

2 A Just from what I read in the Governor's letter.

3 Q You were never briefed afterward?

4 A No.

5 Q As for the bankruptcy timing, the July 19th date that was
6 picked, it was your understanding that that date was picked
7 because in part the Governor had a desire that if you're going
8 to do a Chapter 9, he wanted it to be fast and efficient,
9 correct?

10 A Uh-huh.

11 Q So was that the primary driver of the July 19th date and
12 why it was ultimately decided upon?

13 A Well, I -- I can't speak to why that specific date was
14 picked. I -- I was aware that it was being considered, the
15 filing was being considered. And I do know that there was a
16 sequence of events, dates that followed months after the
17 actual filing. And there was a briefing to the Governor if --
18 you know, all these events have to transpire the filing and
19 how that landed on that particular date, I don't -- I was
20 never briefed specifically on why that date.

21 Q But your understanding was in general it was supposed to
22 be fast and efficient?

23 A That's what the Governor wanted.

24 Q Was that in part driven by trying to get it done within
25 the 18 months of the emergency manager's appointment?

1 A You'd have to ask the Governor that, but it would make
2 sense to me.

3 Q Were you ever privy to any conversations where that time
4 line was discussed for that reason?

5 A I don't recall that.

6 Q The time line that we've discussed, you said that you had
7 meetings and you were briefed on the time line?

8 A Yes.

9 Q Was there ever a back up time line that you saw a copy
10 of?

11 A There was a understanding that these dates could slip or
12 move.

13 Q And it did, right?

14 A But I didn't see an alternative schedule. This was the
15 one that was mapped out.

16 Q Okay. But it did move by one day? The bankruptcy filing
17 was delayed by one day.

18 A I don't dispute that. I don't have specific memory of
19 the date that it was supposed to be filed and the original
20 time line. But I have a vague memory that -- that might have
21 been pulled up.

22 Q Okay. Did you attend a meeting in June of 2012 with the
23 Governor and Ken Buckfire of Miller, Buckfire and any
24 attorneys from Jones, Day?

25 A In June of '13?

1 Q 2012.

2 A '12. June of 2012, Miller, Buckfire, Jones, Day, the
3 Governor and I?

4 Q Yes.

5 A I don't recall.

6 THE COURT: All right. We have to stop now. How
7 much longer will you be?

8 MS. GREEN: I actually had just like one more
9 question. If you want, I can finish it or I can go --

10 THE COURT: Okay. One more question.

11 Q With respect to the meeting that we just discussed, do
12 you recall receiving memos from Jones, Day relating to the
13 pension obligations back in 2012?

14 A I don't have a specific memory of it.

15 Q Do you recall --

16 A And actually let's be clear. What pension obligation
17 certificates, or what?

18 Q The constitutional protections of pension obligations in
19 Michigan.

20 A I don't recall.

21 Q Do you recall receiving any memos relating to Chapter 9
22 filings for the City of Detroit? Memos on that topic?

23 A Not specifically.

24 THE COURT: All right. We have to stop now. We do
25 not have Court tomorrow. We'll reconvene Thursday morning at

1 9:00. At that time if I could get a representation from the
2 objectors group as to how long you think your closing
3 arguments will be, that will help me a lot. We are still
4 researching the issue of courtrooms for next week, so I hope
5 to have some further information for you about that. And
6 we'll be in recess.

7 (WITNESS ANDY DILLON WAS EXCUSED AT 3:00 P.M.)

8 THE CLERK: All rise. Court is adjourned.

9 (Court Adjourned at 3:00 p.m.)

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7 We certify that the foregoing is a correct transcript from the
8 electronic sound recording of the proceedings in the
9 above-entitled matter.

10

11 /s/Deborah L. Kremlick, CER-4872
Letrice Calloway

Dated: 11-8-13

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. November 7, 2013
Debtor. . 9:02 a.m.
.

HEARING RE. ELIGIBILITY TRIAL (CONTINUED)
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day
By: BRUCE BENNETT
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2452
(213) 243-2382

Jones Day
By: GEOFFREY S. IRWIN
GEOFFREY S. STEWART
GREGORY SHUMAKER
THOMAS CULLEN, JR.
MIGUEL F. EATON
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3768

Pepper Hamilton, LLP
By: ROBERT S. HERTZBERG
DEBORAH KOVSKY-APAP
4000 Town Center, Suite 1800
Southfield, MI 48075-1505
(248) 359-7333

For the State of Michigan: State of Michigan
Michigan Department of Attorney General
By: MATTHEW SCHNEIDER
MARGARET NELSON
P.O. Box 30754
Lansing, MI 48909
(517) 241-8403

APPEARANCES (continued):

Dickinson Wright, PLLC
 By: STEVEN G. HOWELL
 500 Woodward Avenue, Suite 4000
 Detroit, MI 48226-3425
 (313) 223-3033

Dickinson Wright, PLLC
 By: PETER H. ELLSWORTH
 215 South Washington Square, Suite 200
 Lansing, MI 48933-1816
 (517) 371-1730

For AFSCME,
 AFL-CIO, and Sub-
 Chapter 98, City
 of Detroit
 Retirees:

Lowenstein Sandler, LLP
 By: SHARON L. LEVINE
 JOHN K. SHERWOOD
 65 Livingston Avenue
 Roseland, NJ 07068
 (973) 597-2374

For Detroit
 Retirement Systems-
 General Retirement
 System of Detroit,
 Police and Fire
 Retirement System
 of the City of
 Detroit:

Clark Hill, PLC
 By: ROBERT D. GORDON
 JENNIFER K. GREEN
 151 South Old Woodward, Suite 200
 Birmingham, MI 48009
 (248) 988-5882

Clark Hill, PLC
 By: RONALD A. KING
 212 East Grand River Avenue
 Lansing, MI 48096
 (517) 318-3015

For the Detroit
 Fire Fighters
 Association, the
 Detroit Police
 Officers Associa-
 tion and the
 Detroit Police
 Lieutenants &
 Sergeants
 Association:

Erman, Teicher, Miller, Zucker &
 Freedman, P.C.
 By: BARBARA A. PATEK
 JULIE BETH TEICHER
 DAVID EISENBERG
 400 Galleria Officentre, Suite 444
 Southfield, MI 48034
 (248) 827-4100

APPEARANCES (continued):

For the Inter- national Union, UAW:	Cohen, Weiss & Simon, LLP By: BABETTE A. CECCOTTI PETER D. DECHIARA THOMAS N. CIANTRA 330 West 42nd Street, 25th Floor New York, NY 10036-6976 (212) 356-0227
For Detroit Retired City Employees Association, Retired Detroit Police and Fire Fighters Associa- tion, Shirley V. Lightsey, and Donald Taylor:	Silverman & Morris, PLLC By: THOMAS R. MORRIS 30500 Northwestern Highway, Suite 200 Farmington Hills, MI 48334 (248) 539-1330 Lippitt O'Keefe, PLLC By: RYAN C. PLECHA 370 East Maple Road, Fl. 3 Birmingham, MI 48009 (248) 646-8292
For the Official Committee of Retirees:	Dentons By: CLAUDE D. MONTGOMERY ANTHONY B. ULLMAN ARTHUR H. RUEGGER 1121 Avenue of the Americas New York, NY 10020-1089 (212) 632-8390 Dentons US, LLP By: SAM J. ALBERTS DAN BARNOWSKI 1301 K Street, NW Suite 600 East Tower Washington, DC 20005-3364 (202) 408-7004 Brooks, Wilkins, Sharkey & Turco, PLLC By: MATTHEW E. WILKINS 401 South Old Woodward, Suite 400 Birmingham, MI 48009 (248) 971-1711
For Retired Detroit Police Members Association:	Strobl & Sharp, PC By: LYNN M. BRIMER MEREDITH E. TAUNT MALLORY A. FIELD 300 East Long Lake Road, Suite 200 Bloomfield Hills, MI 48304-2376 (248) 540-2300

APPEARANCES (continued):

For the Flowers Law Offices of William A. Wertheimer
Plaintiffs: By: WILLIAM WERTHEIMER
 30515 Timberbrook Lane
 Bingham Farms, MI 48025
 (248) 644-9200

For Ambac Schafer and Weiner, PLLC
Assurance Corp.: By: DANIEL J. WEINER
 40950 Woodward Avenue, Suite 100
 Bloomfield Hills, MI 48304
 (248) 540-3340

Court Recorder: Letrice Calloway
 United States Bankruptcy Court
 211 West Fort Street
 21st Floor
 Detroit, MI 48226-3211
 (313) 234-0068

Transcribed By: Lois Garrett
 1290 West Barnes Road
 Leslie, MI 49251
 (517) 676-5092

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1 THE CLERK: All rise. Court is in session. Please
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: Is everyone here? Well, first, good
4 morning.

5 ATTORNEYS: Good morning (collectively).

6 THE COURT: Is everyone here, or are there people we
7 need to wait for? All right. No response, so I'll assume we
8 are all here. Ms. Green.

9 ANDY DILLON, WITNESS, SWORN

10 DIRECT EXAMINATION (CONTINUING)

11 BY MS. GREEN:

12 Q Good morning, Mr. Dillon.

13 A Good morning.

14 Q Jennifer Green on behalf of the Retirement Systems for
15 the City of Detroit. I just have a few more small lines of
16 questioning.

17 A Who is Brom Stibitz, and what is his position within the
18 Treasury Department?

19 MS. NELSON: Asked and answered, your Honor.

20 MS. GREEN: Maybe it's foundational. I just really
21 don't recall what his position was.

22 THE COURT: I'll ask it. I'll permit it. Go ahead.

23 THE WITNESS: He works for the Department of
24 Treasury. He serves without the same title but basically as
25 my chief of staff.

1 BY MS. GREEN:

2 Q And Tom Saxton?

3 A Tom is a chief deputy.

4 Q And Terry Stanton?

5 A Terry Stanton is the public information officer.

6 Q Okay. And so they all reported directly to you?

7 A Yes.

8 Q Do you recall questions in late June of 2013 from
9 reporters in the media regarding how general obligation bonds
10 would be handled with the City of Detroit?

11 A With the Bond Buyer?

12 Q Yes.

13 A From the last deposition, I think I saw a story on that
14 interview --

15 Q Okay.

16 A -- if that's the one we're referring to.

17 Q It is. Who is R.W. Baird, and how is that company
18 involved with the Detroit matter?

19 A R.W. Baird is a financial consultant. They advise the
20 state. They may have been involved with helping Detroit
21 issue some debt as well.

22 Q And is Wayne Workman a financial advisor at R.W. Baird?

23 A He was at the time.

24 Q Okay. And did he report to you in any way?

25 A He worked directly with Tom Saxton.

1 Q Okay. And did you communicate with Mr. Workman about the
2 City of Detroit's financial condition?

3 A When?

4 Q In that time period, June of 2013.

5 A I don't recall that.

6 Q Do you recall when you would have communicated with him
7 about the situation?

8 A We worked with him during my entire tenure on various
9 bond matters. I don't recall having a specific discussion
10 with him about Detroit. We did a bond deal in 2012 for the
11 city. They may or may not have been engaged. I suspect they
12 might have been.

13 Q So would he have been privy to any of the timelines or
14 any of the dates that were planned for the bankruptcy filing?

15 A I doubt it.

16 Q Pardon me?

17 A I doubt that he would have been.

18 Q If there was e-mail correspondence between Brom Stibitz,
19 Tom Saxton, and Wayne Workman, would you have been aware of
20 those communications?

21 A Not necessarily.

22 Q Do you recall at any point Brom Stibitz, Mr. Stanton, or
23 Mr. Saxton asking you about the inquiry from Bond Buyer
24 magazine regarding the general obligation bonds?

25 A I remember an incident. I don't know if it was the one

1 you're referring to.

2 MS. GREEN: Can we bring up Exhibit 848, please?

3 BY MS. GREEN:

4 Q Does this document look familiar to you? Is this the
5 incident that you were referring to?

6 A I don't recall seeing this specific e-mail.

7 Q Do you recall questions within the Treasury Department
8 about how to handle this issue?

9 THE COURT: Excuse me one second, please. Who's
10 ever in charge of getting this monitor going, I need help
11 because it's not running. Feel free to come right on up here
12 and work your magic. Excellent. Thank you, sir.

13 MS. NELSON: Your Honor, I don't believe this e-mail
14 is in evidence, and I think it's inappropriate to display it
15 until it is.

16 MS. GREEN: I was ask -- he mentioned an incident
17 with this exact situation. I thought that he would be able
18 to testify or I was asking if he could testify is this the
19 incident that he was referring to a moment ago. If you would
20 prefer, I can refresh his recollection with it instead if --

21 THE COURT: I didn't quite hear the witness say that
22 there was something he didn't recall.

23 MS. GREEN: He said there was an incident with Bond
24 Buyer magazine. I believe this is the incident he was
25 referring to, so I had asked him if he recognized the

1 document, if this was the incident.

2 THE COURT: Well, you can certainly ask the witness
3 if he has seen the e-mail before. Otherwise, it's not
4 appropriate to show it to him.

5 MS. GREEN: That was the -- I believe my question to
6 him was, "Do you recognize the document? Is this the
7 incident you referred to?"

8 MS. NELSON: And his answer was he did not recall
9 seeing it, so it's been asked and answered.

10 THE COURT: Is that right, sir? You don't recall
11 that specific e-mail?

12 THE WITNESS: I do not.

13 THE COURT: All right. The objection is sustained.

14 BY MS. GREEN:

15 Q Do you know why Mr. Workman would have been privy to
16 discussions relating to the court option with respect to the
17 City of Detroit?

18 A The court option?

19 Q Court option versus out-of-court option.

20 A He was a consultant to Treasury. He handles a lot of our
21 debt issuances. I'm certain Mr. Saxton relies on his advice
22 regularly.

23 Q Do you know if Mr. Saxton would have shared with him some
24 of the planning that was going on with respect to the City of
25 Detroit bankruptcy?

1 A I can't answer that.

2 Q Do you know if Mr. Stibitz or Mr. Saxton or Mr. Stanton
3 would have been involved with R.W. Baird relating to the
4 timing of the City of Detroit bankruptcy filing?

5 A Can you rephrase that or restate it?

6 Q Would any three of the individuals that worked at
7 Treasury that we just spoke of, Terry Stanton, Thomas Saxton,
8 or Brom Stibitz, have been in contact with R.W. Baird and Mr.
9 Workman relating to the City of Detroit bankruptcy filing?

10 A I would highly doubt that Stibitz or Stanton would. I
11 can't speak to what Mr. Saxton spoke to him about.

12 Q If Mr. Workman was of the understanding that court seemed
13 like a foregone conclusion, would you have any reason to
14 believe that it was based on conversations with people from
15 the Treasury Department?

16 MS. NELSON: Objection, your Honor. Inappropriate
17 hypothetical. Assumes facts not in evidence. Lacks
18 foundation.

19 THE COURT: The objection is sustained.

20 BY MS. GREEN:

21 Q In March of 2013, do you recall planning for the
22 emergency manager's appointment and the topics that you
23 wanted him to handle when he was appointed?

24 A I don't recall. We had a lunch. We met with him. Tom
25 Saxton, Brom Stibitz, and I met for lunch with Kevyn and just

1 gave him our experience of working with emergency managers
2 and what the experience would be like. It was a lunch. It
3 was fairly informal. I don't recall much more than that.

4 Q And do you recall compiling a list of key items that you
5 wanted him to focus on as soon as he was appointed?

6 A We may have done that. I don't have a specific memory of
7 it.

8 MS. GREEN: Can we pull up Exhibit 836, please?

9 MR. SHUMAKER: Your Honor, this exhibit is not in
10 evidence either. I don't think it's appropriate to display.

11 MS. GREEN: Your Honor, I can ask him if he
12 recognizes it and then move for its admission if he does.

13 THE COURT: You can do that. You can put it back on
14 the screen for that purpose.

15 BY MS. GREEN:

16 Q Mr. Dillon, do you recognize this e-mail? Do you
17 recognize your name in the "To" --

18 A Yes.

19 Q -- column? Do you recall receiving this e-mail in March
20 of 2013?

21 A Can I read it?

22 Q Sure.

23 UNIDENTIFIED SPEAKER: I'm sorry. Could you tell us
24 what number this is, please?

25 MS. GREEN: 836.

1 UNIDENTIFIED SPEAKER: 836.

2 THE WITNESS: I'm sure I saw it at the time. I
3 don't have a specific memory today of it.

4 BY MS. GREEN:

5 Q In the middle -- well, almost to the end paragraph, it
6 begins with March 28th. It states, "There may be a narrow
7 window for taking action before lawsuits are filed." What
8 type of lawsuits were you expecting?

9 A We get sued all the time, and in our experience with
10 working with other cities where there were emergency
11 managers, there's all kinds of litigation that follows.

12 Q So would it be safe to assume that you were relating
13 to -- or you were referring to PA 436 lawsuits?

14 A Most likely, yes.

15 Q Okay. Do you recall if there were topics relating to --
16 or I'm sorry -- discussions relating to lawsuits relating to
17 Article IX, Section 24, of the Michigan Constitution?

18 A I'm sorry. Could you restate that?

19 Q Would there have been discussions relating to lawsuits
20 involving Article IX, Section 24, of the Michigan
21 Constitution?

22 A I don't have any memory of that.

23 Q So would this be limited to the PA 436 lawsuits you were
24 expecting?

25 A We got sued on open meetings acts. All kinds of theories

1 were surfacing, and I literally believe there's over a
2 hundred lawsuits. I mean there's a substantial number, so
3 every theory I don't recall.

4 Q So they were certainly expected and somewhat planned for?

5 A Apparently.

6 Q The next paragraph just below that says "status and
7 timing of the ongoing 312 arbitration." Do you recall what
8 that's referring to?

9 A I know there was an arbitration between the city and
10 maybe DPD. There might have been some other uniform
11 arbitrations that were ongoing, and I believe, yes, there was
12 an ongoing arbitration at the time.

13 Q And so when you say "timing of the ongoing arbitration,"
14 what specifically were you referring to?

15 MS. NELSON: Well, I'm going to object, your Honor.
16 That mischaracterizes. This is an e-mail to Mr. Dillon.
17 This is not Mr. Dillon's e-mail.

18 MS. GREEN: He said they had a meeting where they
19 were discussing the topics. I'll rephrase the question to
20 make it more clear.

21 BY MS. GREEN:

22 Q Was this one of the topics that you discussed at your
23 meeting when you said that you were talking about the items
24 that you wanted Kevyn Orr to focus on when he took over as
25 emergency manager?

1 A I described the meeting as a lunch where we just shared
2 with him generally what an experience of being an EM is.
3 That topic I highly doubt came up at that lunch.

4 Q Okay. Did this topic come up at any other time in your
5 discussions relating to the emergency manager?

6 A Me personally? I don't recall it.

7 MS. GREEN: Your Honor, I'd move for the admission
8 of Exhibit 836.

9 THE COURT: Any objections?

10 MS. NELSON: No objection.

11 MR. SHUMAKER: Hearsay, your Honor.

12 MS. GREEN: Your Honor, it's an e-mail to him. He's
13 the recipient of it. It's a business record under 803(6),
14 and he spoke about the communications and was able to respond
15 to the substance of what was referred to in the e-mail.

16 THE COURT: Well, do you remember receiving this e-
17 mail or not?

18 THE WITNESS: I don't have a specific memory of it,
19 no.

20 THE COURT: All right. The objection is sustained.

21 MS. GREEN: Your Honor, if I may, there have been
22 several e-mails that were -- where people did not have a
23 specific recollection of that we have all permitted to be --

24 THE COURT: If there's an objection as opposed to by
25 stipulation, I have to deal with it. If the witness can't

1 authenticate it, then it's not admissible.

2 BY MS. GREEN:

3 Q When we last spoke, Mr. Dillon, you referred to a section
4 of the Michigan Constitution that you thought prohibited the
5 state from reimbursing the City of Detroit for the pension
6 underfunding. Do you recall that?

7 A I don't recall the topic, but I think you've
8 mischaracterized my testimony.

9 Q Do you recall saying that you thought that you were
10 prohibited from lending credit --

11 A Yes.

12 Q -- to the City of Detroit? What provision of the
13 Constitution were you referring to?

14 A I don't know. It's just the general understanding I had
15 serving in the role as treasurer.

16 Q Were you referring to a prohibition against the state
17 guaranteeing obligations of the city?

18 A It's my understanding that the interpretation of that
19 lending of credit is fairly broadly construed, so my
20 understanding would be a guarantee would be contrary to
21 what's permissible under the Constitution.

22 Q But if there was legislation enacted that gave an
23 appropriation to a particular municipality, that would not be
24 prohibited; correct?

25 A That's my understanding, yes.

1 MS. GREEN: I have nothing further, your Honor.

2 THE COURT: Any further questions for the witness?

3 MS. BRIMER: Good morning, your Honor. Lynn M.
4 Brimer appearing on behalf of the Retired Detroit Police
5 Members Association.

6 DIRECT EXAMINATION

7 BY MS. BRIMER:

8 Q Good morning, Mr. Dillon. My name is Lynn Brimer.

9 A Good morning.

10 Q I represent an association of retired police personnel.
11 We've not met before, have we?

12 A I don't believe so.

13 Q One thing that no one has asked you yet is regarding your
14 background. You hold a law degree, do you not?

15 A I do.

16 Q And when did you obtain your law degree?

17 A 1988.

18 Q All right. And you are admitted to practice law?

19 A I am.

20 Q And is that in the State of Michigan?

21 A Yes.

22 Q And when were you admitted to practice?

23 A I believe '89.

24 Q All right. And you have continuously been admitted to
25 the Michigan State Bar since 1989, approximately?

1 A Yes.

2 Q All right. Now, I'm going to go back to early 2012, and
3 without hopefully duplicating any of the answers you've
4 already given or questions you've already asked, I'd like to
5 go over some of the early dealings between the state and the
6 consultants, so in early 2012 Miller Buckfire and Huron
7 Consulting were hired to perform a 60-day review of the City
8 of Detroit; is that correct?

9 A I believe so.

10 Q And were you involved in the retention of either Huron
11 Consulting or Miller Buckfire?

12 MS. NELSON: Objection --

13 THE WITNESS: Yes.

14 MS. NELSON: -- your Honor. This line has already
15 been asked and answered.

16 THE COURT: It has.

17 MS. BRIMER: Your Honor, I believe I will ask some
18 questions that have not been asked of Mr. Dillon, and I will
19 try very hard not to be duplicative. I understand the Court
20 and counsel's concern.

21 BY MS. BRIMER:

22 Q So at the end of that 60-day review, was a report
23 produced by Miller Buckfire or Huron Consulting?

24 A I don't specifically recall.

25 Q All right. So you don't specifically recall reviewing a

1 report then either?

2 A I assume we got some financial data from Miller Buckfire.
3 I know we got some information on other matters from Huron,
4 but specifically I don't have a memory of reading a binder or
5 document that was put together that summarized everything.

6 Q Now, at some point you testified that Miller Buckfire
7 brought in Jones Day in connection with the consent
8 agreement. Do you recall when that happened?

9 A Not specifically.

10 Q Are you aware that in 2011 Jones Day had submitted a
11 response to an RFP in connection with the appointment of
12 emergency managers by the State of Michigan?

13 A I didn't recall that recently. That happens under my
14 department. I don't -- I'm not involved in the specifics of
15 those, so I wasn't part of the decision group to put them on
16 the list, but I knew we did an RFP to assist with troubled
17 units.

18 Q So you were aware that at least as early as March 2nd of
19 2011, multiple attorneys from Jones Day were working with
20 Miller Buckfire and Huron Consulting on the consent agreement
21 with Department of Treasury; correct?

22 A Yes.

23 Q Were you aware of the number of attorneys from Jones Day
24 that were working with Miller Buckfire?

25 A No.

1 MS. BRIMER: Exhibit 202, please.

2 UNIDENTIFIED SPEAKER: I don't have 202.

3 MS. BRIMER: Oh, I'll give you --

4 MS. NELSON: Oh, wait. There it is.

5 MS. BRIMER: Oh, there you go.

6 BY MS. BRIMER:

7 Q That's an e-mail dated March 3rd, 2012; is that correct?

8 MS. NELSON: Your Honor, I don't believe this has --
9 objection. This hasn't been admitted, and it would be
10 inappropriate to ask questions on the substance. If she's
11 laying foundation, I don't have an objection, but to question
12 on the substance of the e-mail would be inappropriate at this
13 point.

14 MS. BRIMER: Well, preliminarily, your Honor, last
15 evening the city and the RDPMA agreed to the admission of
16 this exhibit.

17 THE COURT: Any objections to its admission?

18 MR. SHUMAKER: No, your Honor.

19 THE COURT: All right. So that's 202, did you say?

20 MS. BRIMER: Yes. For the record, your Honor, we've
21 also stipulated to the admission of Exhibit 201.

22 THE COURT: Is that right?

23 MR. SHUMAKER: That's correct, your Honor.

24 THE COURT: All right. Exhibits 201 and 202 are
25 admitted.

1 (Exhibits 201 and 202 received at 9:25 a.m.)

2 THE COURT: You may proceed.

3 MS. BRIMER: Thank you, your Honor.

4 BY MS. BRIMER:

5 Q So that's an e-mail dated March 3rd, 2012, from Ms.
6 Lennox; correct?

7 A Correct.

8 Q And it's addressed to you; correct?

9 A Correct.

10 Q Do you recall reviewing that e-mail?

11 A I recall during my deposition having my memory refreshed
12 about it.

13 Q So as you'll note -- I'd actually like to go back up to
14 the caption -- it's from Ms. Lennox, who's an attorney at
15 Jones Day, and in the carbon copy there's Ms. Ball, Jeffrey
16 Ellman, David Kates and Thomas Wilson, so we have five
17 attorneys from Jones Day involved in the Detroit consent
18 agreement; correct?

19 MS. NELSON: I'm going to object. I don't believe
20 there's a foundation for those attorneys' specific
21 involvement with the consent decree.

22 THE COURT: It's a question, so the objection is
23 overruled. If you can answer, sir.

24 THE WITNESS: What's the question again?

25 BY MS. BRIMER:

1 Q Well, there's five attorneys from Jones Day that are
2 being copied in connection with the involvement of Jones Day
3 on the drafting of the consent agreement for the City of
4 Detroit; correct?

5 A I only know what this document shows me.

6 Q And it shows us five attorneys involved or at least
7 copied on this e-mail; correct?

8 A Yes.

9 Q And then there's a number of consultants both from Huron
10 Consulting and Miller Buckfire; correct?

11 A Yes.

12 Q All right. Now, if we go down to the body of the e-mail,
13 it's an e-mail addressed directly to you from Ms. Lennox;
14 correct?

15 A Yes.

16 Q So you were dealing directly with Ms. Lennox in drafting
17 the consent agreement for the city; correct?

18 A A very limited basis.

19 Q And it indicates that, "Attached for your consideration
20 is a consent agreement reviewed by Miller Buckfire and
21 Huron," meaning Huron Consulting; correct?

22 A Correct.

23 Q All right. So you're aware that these three consulting
24 firms, which at this point in time you've testified were not
25 hired by the city in connection with the consent agreement,

1 were working on the consent agreement; correct?

2 A They were providing advice, but we had -- the state had
3 its own counsel in negotiations of the consent agreement.

4 Q And who was that?

5 A There's probably an AG and Steve Liedel from Dykema
6 Gossett.

7 Q So was Dykema Gossett aware that Jones Day was working
8 with you on drafting a consent agreement?

9 A They were providing input that I'm certain certain items
10 were shared with them. They may have reviewed the documents.
11 I don't recall.

12 Q Would they have reviewed the documents directly from
13 Jones Day, or would they have been provided to Dykema from
14 someone at Treasury?

15 A I can't answer that.

16 Q And at this time, none of these consulting or lawyers are
17 charging Department of Treasury for the services they're
18 providing in connection with the consent agreement; correct?

19 A Not correct. I think we testified that we did retain
20 Miller Buckfire for a brief period of time.

21 Q In connection with the 60-day review -- financial review
22 of the city?

23 A That's right.

24 Q And were their duties expanded to include the consent
25 agreement?

1 A We engaged them as we were going through the review and
2 in preparation of the consent agreement. We were working
3 closely with Huron Consulting as well as Miller Buckfire.

4 Q Okay.

5 A Those firms reached out to lawyers and provided advice we
6 didn't -- generally we asked for, but they, I think, were
7 supplementing their efforts to help us out.

8 Q And the drafting of the consent agreement took a fairly
9 lengthy period of time, at least 30 days; correct?

10 A Yes.

11 Q And Jones Day, Miller Buckfire, and Huron Consulting were
12 involved during that entire 30-day process; correct?

13 A There's a negotiation. We met probably five or more
14 times with the City of Detroit and their lawyers. It was an
15 arm's length bargain negotiated aggressively, and I don't
16 recall any of them being in the room during those
17 negotiations.

18 Q But they did continue to review the consent agreement and
19 its multiple revisions; correct?

20 A I don't specifically recall when their input ended or
21 necessarily even began, but --

22 MS. BRIMER: Can we see Exhibit 841, please?

23 BY MS. BRIMER:

24 Q You'll notice about midway down there is an e-mail that
25 is addressed to you; correct?

1 A Can we grow the font size here? Okay. I'm sorry. Could
2 you restate the question?

3 Q So that's an e-mail to you. That's from someone at
4 Miller Canfield, also a law firm the city works with;
5 correct?

6 A Correct.

7 Q And it's regarding the --

8 MS. NELSON: Objection, your Honor. This has not
9 been admitted into evidence. It would be inappropriate to
10 ask substantive questions regarding this e-mail.

11 BY MS. BRIMER:

12 Q So the e-mail is addressed to you; correct?

13 A I see my name there, yes.

14 Q Do you recall reviewing this e-mail?

15 A I bet we turned that document six to ten times, so I
16 remember these incidents where we would get versions from the
17 city, and they would get them from us, so generally I
18 remember these types of e-mails.

19 Q Do you have any reason to believe that you did not review
20 this e-mail from Mr. McGee dated March 29th addressed to you?

21 A No. I would think I seen it, yeah.

22 MS. BRIMER: Your Honor, I'd move for the admission
23 of this Exhibit 841.

24 THE COURT: I'm sorry. Was your answer you have
25 seen this or --

1 THE WITNESS: I believe I saw it at the time, yes.

2 THE COURT: You do. All right. Any objections?

3 MR. SHUMAKER: Yes, your Honor. It's hearsay.

4 THE COURT: Hold on one second. Well, are you
5 offering the -- I'm sorry --

6 MS. BRIMER: Thanks.

7 THE COURT: -- offering the entire document or just
8 the e-mail that Mr. Dillon received?

9 MS. BRIMER: Well, I'd actually like to offer the
10 entire document, your Honor, because I think it establishes
11 what Treasury has done with it.

12 THE COURT: The issue isn't relevance. The issue is
13 hearsay.

14 MS. BRIMER: But it is forwarded, your Honor, by a
15 member of the State of Michigan who works -- and Mr. Dillon
16 indicated that Mr. Stibitz works directly for him, so that
17 would become an exception as a party --

18 THE COURT: May I see the paper copy of this,
19 please?

20 MS. BRIMER: If I may, your Honor, it has only
21 highlighting similar --

22 THE COURT: Okay. All right. I will return this to
23 you. The Court will admit so much of the document as begins
24 from McGee, comma, Michael P., but not the part above it.

25 (Exhibit 841 excerpt received at 9:34 a.m.)

1 MS. BRIMER: Thank you, your Honor.

2 THE COURT: And that was Exhibit -- what number
3 again?

4 MS. BRIMER: 841, your Honor.

5 BY MS. BRIMER:

6 Q So, Mr. Dillon, do you know when the consent agreement
7 was executed by the city?

8 A I think on or around April 4. That might have been the
9 date City Council voted on it. I'm not sure.

10 Q So is it in the ordinary course for the Department of
11 Treasury to receive that type of consulting from outside law
12 firms that have not yet been retained by the Department of
13 Treasury or any other agency for the state?

14 A I can't say that it hasn't happened in another unit of
15 government. On occasion some will provide some pro bono
16 services if we have an urgent need. I know that happened
17 with DPS and a little bit with Flint, a little bit with
18 Highland Park, so it's not unusual.

19 Q Were Jones Day providing any other consulting services in
20 connection with any other matters before the Department of
21 Treasury?

22 A Not to my memory.

23 Q So at some point in time Jones Day became involved with
24 the -- with Public Act 4 and a concern with respect to
25 whether or not that might be repealed; is that -- or rejected

1 on the referendum; is that correct?

2 MS. NELSON: Objection. Lacks foundation and is
3 vague.

4 THE COURT: Overruled. You may answer the question.

5 THE WITNESS: Could you restate that?

6 BY MS. BRIMER:

7 Q At some point Jones Day also became involved with the
8 Department of Treasury and concerns regarding the rejection
9 of PA 4 on referendum; correct?

10 A I wouldn't characterize it that way. What we were
11 working on was a consent agreement that we wanted to survive
12 even if PA 4 was repealed, so there's other provisions of
13 state law that would allow for the consent agreement to have
14 legal standing and substance, so I believe they looked at
15 those other provisions of the law to make certain the
16 agreement we worked so hard to develop would survive a repeal
17 of PA 4.

18 Q Did anyone at Jones Day give either you or anyone at the
19 Department of Treasury any advice in connection with how to
20 react or an approach to take in the event PA 4 was, in fact,
21 repealed?

22 A Only what would be in that document, but it wasn't -- you
23 know, Steve Liedel is an expert on this at Dykema. Actually,
24 I think we relied on him more than Jones Day on that issue.

25 MS. BRIMER: So I'd like Exhibit 201, please. No.

1 I think that's 202. 201.

2 THE COURT: It says 201.

3 MS. BRIMER: Oh, it's possible this is the second
4 page. Is there a first page? Okay. It's also marked as an
5 Exhibit 8 -- 846, so 846 would be, your Honor, admitted since
6 it's the same document as 8 -- as 201, which the city has
7 stipulated to.

8 THE COURT: Is that all right?

9 MR. SHUMAKER: That's correct, your Honor.

10 THE COURT: All right. Thank you.

11 BY MS. BRIMER:

12 Q So this is an e-mail dated March 2nd, 2013. Do you see
13 that?

14 A Yes.

15 Q And it's just addressed from Mr. Ellman to other
16 attorneys at Jones Day.

17 MS. NELSON: I would just like to correct the
18 record. I think Ms. Brimer indicated this was dated March 2,
19 2013, and it's 2012.

20 MS. BRIMER: Oh, '12, 2012.

21 MS. NELSON: Thank you.

22 THE COURT: Thank you.

23 BY MS. BRIMER:

24 Q You're not copied on that e-mail; correct?

25 A I don't see my name.

1 Q Have you ever seen this e-mail before?

2 A I believe in preparation for deposition and this
3 testimony, I may have seen it.

4 Q All right. So it indicates in the first paragraph that,
5 "We spoke to a person from Andy's office." That Andy, that
6 would be you?

7 A I suspect that.

8 Q So when you prepared for your deposition, did you read
9 this e-mail all the way through?

10 A I glanced through it.

11 Q Okay. It further indicates, "I thought MB was also going
12 to try to follow up with Andy directly about the process for
13 getting this to the governor." Do you recall anyone from
14 Miller Buckfire discussing with you, if you've read this, the
15 content of this e-mail?

16 A I'd like to read the whole document before I answer. I
17 don't --

18 Q Take your time.

19 A Okay. Could you restate the question?

20 Q Do you recall at about this time someone from Miller
21 Buckfire discussing the content of this e-mail with you
22 directly?

23 A We were having daily conversations at this time. I'm
24 certain we discussed items in this e-mail.

25 Q So you'll see about midway down if PA 4 is repealed or

1 suspended, there may be an argument that some or all of this
2 does not work, so there was a concern by Treasury, Miller
3 Buckfire, Jones Day that what was being put in place in
4 connection with the consent agreement might be in jeopardy in
5 the event PA 4 was repealed; correct?

6 A That's what it says, yes.

7 Q Then if you go a little further down, "The cleanest way
8 to do all of this is probably new legislation that
9 establishes the board" -- I assume that's the Financial
10 Review Board -- "and its powers and" -- and the "and" is in
11 capital letters -- "includes an appropriation for a state
12 institution. If an appropriation is attached to and included
13 in the statute to fund a state institution, which is broadly
14 defined, then the statute is not subject to repeal by the
15 referendum process." Do you see that?

16 A I do.

17 Q So is it -- it's correct that by March of 2012 the
18 consultants that were working with Treasury and Treasury are
19 already contemplating new legislation that would include a
20 spending provision in order to avoid a referendum in the
21 event PA 4 was rejected?

22 A I think you're overstating the case here.

23 Q Okay.

24 A Even if PA 4 stayed in law, the advice and recommendation
25 we were getting was to have something like -- the model we

1 were following is the MAC that was put into existence in the
2 late '70s in New York City. The advice we were getting is
3 that the state should have some statute that defines what the
4 role -- in this case it became the FAB, the Financial
5 Advisory Board -- what its powers and duties may be, so this
6 is, I guess, related in some way to PA 4 or PA 72, but their
7 advice was and remains today that the state should have some
8 statutory construction around what is the role of a Financial
9 Advisory Board.

10 Q And so at least as early as March of 2012, that advice is
11 coming to Department of Treasury from the Jones Day
12 attorneys; correct?

13 A The person lobbying me or recommending and pushing me to
14 do this even before this date was Miller Buckfire.

15 Q And it was Miller Buckfire that brought in Jones Day?

16 A Yes.

17 Q So the concern was just how much control the state would
18 have over a city that was subject to the appointment of a
19 financial emergency manager; correct?

20 A Can you restate that question?

21 Q The concern that you just indicated that was being raised
22 was the level of control that the state would have over a
23 city in the event an emergency manager was appointed?

24 A There's other provisions in state law that give us the
25 ability to negotiate a consent agreement, so we examined what

1 those other ones were in case PA 4 was resolved. And you go
2 through all this effort of creating the consent agreement,
3 and if PA 4 was repealed and it didn't rely on those other
4 provisions of state law, then there would have been an issue,
5 and a lot of that work and effort to have a viable working
6 consent agreement would have been lost.

7 MS. BRIMER: So if we could see Exhibit 840.

8 BY MS. BRIMER:

9 Q You'll see about a third of the way down an e-mail from
10 Laura Marcero -- Marcero -- and it's addressed to you;
11 correct?

12 A Correct.

13 Q It's dated March 25th, 2012; correct?

14 A Correct.

15 Q Do you recall seeing this e-mail?

16 A Yeah. I have a memory of this.

17 Q You have a memory of this?

18 MS. BRIMER: Just to be clear, your Honor, I'd like
19 to move for the admission of the e-mail -- the portion of
20 this exhibit that is an e-mail addressed to Mr. Dillon.

21 THE COURT: And what number again is that?

22 MS. BRIMER: 840, your Honor.

23 THE COURT: Any objections?

24 MR. SHUMAKER: Yes, your Honor. It's hearsay.

25 THE COURT: All right. That objection is overruled.

1 MS. BRIMER: Thank you, your Honor.

2 THE COURT: The document is admitted or this much of
3 the document is admitted.

4 (Exhibit 840 excerpt received at 9:48 a.m.)

5 BY MS. BRIMER:

6 Q And if you'll go down to paragraph 4, the first sentence,
7 this e-mail is regarding concerns, you would agree, over a
8 draft of the consent agreement that the city had sent back to
9 Treasury; correct?

10 A I'm sorry. I was reading it when you were asking -- let
11 me -- can I read it --

12 Q Go right ahead.

13 A -- over again? Okay.

14 Q So the content of the e-mail regards a revised draft of
15 the consent agreement that had been forwarded to Treasury
16 from the city; correct?

17 A Correct.

18 Q Okay. And you'll see paragraph 4, the first sentence,
19 "The ability to call defaults on projects and diminish the
20 mayor's authority seems to have limitations now," so the
21 concern was drafting an agreement that would allow the state
22 to take control and authority from the mayor; correct?

23 A I believe that this was in conjunction with the financing
24 we did, and money was in escrow. And there were certain
25 milestones the city had to meet to achieve a consent

1 agreement, which we wanted to achieve as well. We didn't
2 want to go to emergency status, so when we negotiate a
3 consent agreement, whether it be with Detroit or any other
4 unit, there's certain expectations that we have, and these
5 units have to hit certain milestones or benchmarks to stay in
6 a consent agreement relationship where they have their
7 authority, so, yeah, there's certain requirements that we
8 had, and with Detroit being such a significant operation, we
9 had expectations that they would meet during the consent
10 agreement so that they could stay in it.

11 Q So was the milestone agreement executed before the
12 consent agreement?

13 A It became part of it.

14 Q Was it executed before, though, or after?

15 A Actually, the milestones were pretty much universally
16 agreed between the city and the state. By that I mean there
17 wasn't a lot of dispute about what should be in there.

18 Q So even after the consent agreement was drafted, Miller
19 Buckfire, Huron Consulting, and Jones Day continued to advise
20 Treasury and you yourself individually in connection with the
21 situation in the City of Detroit; correct?

22 A I don't believe so.

23 MS. BRIMER: Your Honor, I'd like to show an exhibit
24 that I believe has not yet been admitted. 842 has not been
25 admitted, has it? I'll show Ms. Nelson. If I may approach,

1 your Honor --

2 THE COURT: I'm sorry. I can't permit you to have a
3 private conversation with the witness. If there's something
4 you'd like to say to him, you can feel free to say it at --

5 MS. BRIMER: I directed him to look, your Honor --

6 THE COURT: I'm sorry. You can feel free to say it
7 at the microphone so that it is on the record.

8 MS. BRIMER: For the record, your Honor, I directed
9 him to the paragraph that I identified for Ms. Nelson that I
10 believe may refresh his recollection.

11 THE WITNESS: Okay. Could you restate the question?

12 BY MS. BRIMER:

13 Q Does that refresh your recollection with respect to the
14 continued advice and consulting that Treasury and you
15 individually were receiving from Jones Day, Miller Buckfire,
16 and Huron Consulting even after the consent agreement was
17 finalized?

18 A Yeah. After the -- before the consent agreement was
19 finalized, there was very, very frequent, if not daily,
20 conversations with Hugh Sawyer and Laura and Miller Buckfire
21 to maybe a lesser extent, very little dialogue with us and
22 Jones Day other than for a few of these e-mails and some of
23 their comments on the drafts. After the consent agreement
24 was in place, we stayed in touch but on a much less frequent
25 basis.

1 Q And after the consent agreement, what matters did you
2 remain in touch with the -- Jones Day and other -- Miller
3 Buckfire and Huron Consulting individuals in connection with?

4 A I don't recall any contacts with Jones Day after it until
5 2013 let's say, and then -- I mean throughout -- there could
6 be various issues that came up, and we may pick up the phone
7 and ask for advice from Hugh or Laura, and I think there was
8 similar infrequent contact with Miller Buckfire.

9 Q So I believe Ms. Green asked you whether or not you were
10 aware of a meeting in June between Ms. Lennox, Mr. Buckfire,
11 and the governor, and I don't recall your answer to that.

12 A I think I said I didn't remember.

13 Q So it's possible that the governor's office continued to
14 remain in contact with the Jones Day attorneys without your
15 being aware of that?

16 MS. NELSON: I'm going to object. Inappropriate
17 hypothetical and lacks foundation.

18 THE COURT: The objection is sustained.

19 BY MS. BRIMER:

20 Q Now, at some point Public Act 4 was, in fact, repealed;
21 correct?

22 A Correct.

23 Q And a new law was enacted, what we've referred to as
24 Public Act 436; correct?

25 A Correct.

1 Q Who was responsible for drafting PA 436?

2 A Right after the election, there was -- I probably
3 attended two or three meetings with the governor and Brom
4 Stibitz from my staff and maybe a few folks from the
5 Governor's Office to discuss, you know, what about PA 4 could
6 be improved. There were some items that we just learned by
7 working with PA 4 that we wanted in a new law, and then some
8 of the criticisms of PA 4 we genuinely sought to address,
9 giving locals more control, different options than just going
10 into emergency, so I attended -- I don't know -- two to four
11 maybe meetings during mid- to late November through early
12 December. The governor drew up -- kind of put a little chart
13 together that showed what the new law could look like. From
14 that point forward, it was folks on my staff and the
15 Governor's Office that moved the legislation through the
16 legislature.

17 Q Now, to be clear, the appointment of Kevyn Orr was under
18 PA 72; correct?

19 A I believe so, for three days.

20 Q And he automatically became the emergency manager under
21 PA 436; correct?

22 A That's my understanding, yes.

23 Q So the city did not have any of the other options that
24 were added into PA 436 to avoid the appointment of an
25 emergency manager; correct?

1 A Correct.

2 Q Okay. Now, one of the things PA 436 included were some
3 spending provisions. Do you recall those?

4 A Yes.

5 Q Who drafted those provisions? Do you know?

6 A I don't.

7 Q Have you reviewed those spending provisions?

8 A Yeah. I know that my office did the calculation of how
9 much money -- one of the new requirements of 436 was that
10 Treasury would have to pay emergency managers. That was one
11 of the criticisms of PA 4, that you put someone in place and
12 then you make them pay for them, so I know my office did the
13 calculations to identify how much we would need to pay the
14 salaries of the EM's that were in place throughout the state,
15 and I believe that number was about 780,000.

16 Q So when you performed your calculation, did you only
17 address those emergency managers that were in place at the
18 time, or did you address the potential emergency managers
19 that the state was aware it intended on or hoped to put in
20 place?

21 A Someone on my staff did that calculation. I can't speak
22 to what the components of it were.

23 Q Did you ever review the financial analysis that was
24 performed by your staff?

25 A No. I think they just shared the number with me, that

1 that's what we would need to get through the fiscal year.

2 Q And there was then a second spending provision; correct?

3 A Yes.

4 Q And that provided for funds to cover consultants;
5 correct?

6 A Correct.

7 Q And that was approximately \$5 million?

8 A Right.

9 Q Do you believe those spending provisions were adequate to
10 cover both the salaries for the emergency managers and the
11 professionals that emergency managers may retain?

12 A I'm pretty certain they were -- the emergency manager
13 number was probably quite close because it was very
14 predictable. The consultant costs, you know, those
15 consultants, you never can trust them. They get really
16 expensive.

17 Q Well, let's just talk about the consultants for a moment.
18 As time went on, was that, in fact, sufficient to cover the
19 fees of the consultants in connection, for example, with the
20 City of Detroit?

21 A Well, so far we haven't had to go back to the legislature
22 to ask for additional money, so I -- so far it's been
23 adequate.

24 Q So the \$5 million has covered the Jones Day attorneys'
25 fees, the Miller Buckfire, the Conway MacKenzie, and the

1 Ernst & Young fees in connection with the City of Detroit
2 from -- I believe it would have just been from the effective
3 date, March 28th, through September?

4 A You'd have to ask -- I go to Brom Stibitz when I want to
5 know how we're doing on resources to hire consultants, and he
6 just tells me we're fine or we're not fine. I can't speak to
7 the specifics.

8 Q Well, at some point you did become concerned, did you
9 not?

10 A I worry about a lot of things.

11 MS. BRIMER: Your Honor, I'd like to show the
12 witness an exhibit, an e-mail that is, in fact, from him. I
13 shared it with Ms. Nelson.

14 THE COURT: What are you showing him? Is it an
15 exhibit number?

16 MS. BRIMER: Well, we can mark it as Exhibit 206,
17 your Honor.

18 THE COURT: Okay.

19 (Exhibit 206 marked at 10:02 a.m.)

20 MR. SHUMAKER: Your Honor, we would state an
21 objection. This is not -- this document was not a mystery
22 and wasn't placed on their exhibit list at the beginning of
23 trial.

24 THE COURT: Well, let's see if it's offered into
25 evidence, and then I'll hear your objection. Are you asking

1 the witness to have a look at it?

2 BY MS. BRIMER:

3 Q Have you had a chance to review that?

4 A Yes.

5 Q That's an e-mail from you --

6 A Yes.

7 Q -- dated June 11, 2013?

8 A Yes.

9 Q Do you recall sending this e-mail?

10 A Very much so.

11 MS. BRIMER: Your Honor, it was not offered at the
12 time the pretrial was prepared. I believe this runs directly
13 to the issue of whether or not the spending provision was, in
14 fact, ever properly evaluated.

15 THE COURT: Isn't relevance. It's why wasn't it on
16 the original exhibit list.

17 MS. BRIMER: I think I can explain, your Honor.
18 Your Honor only on the day -- the day before the pretrial was
19 finalized suggested that your Honor would take evidence
20 regarding the intent on the referendum, and this exhibit,
21 your Honor, was produced by the city. It was used in Mr.
22 Dillon's deposition. It is certainly not a shock and
23 surprise to the parties.

24 THE COURT: It certainly would not have surprised
25 you that I would be willing to take evidence on that point

1 since you advocated that. You didn't think you were going to
2 lose, did you?

3 MS. BRIMER: No, your Honor, but your Honor had
4 suggested that it was a legal issue. I think I can ask the
5 witness a few questions then if -- I believe it's relevant.
6 I believe it should be admitted.

7 THE COURT: The issue is not relevance.

8 MS. BRIMER: I understand that, your Honor.

9 THE COURT: In light of the failure to list it and
10 the lack of cause for that, the Court sustains the objection.

11 BY MS. BRIMER:

12 Q So isn't it true, Mr. Dillon, that by June 11 of 2013,
13 the state was already running out of money in connection with
14 the fees of the consultants?

15 A What I was referring to here was a forecast of what --

16 THE COURT: Mr. Dillon, the document has not been
17 admitted into evidence, so don't tell us what's in it. Just
18 answer the question.

19 THE WITNESS: All right. Going forward, sure, the
20 money would not have been adequate.

21 BY MS. BRIMER:

22 Q Now, you testified to Ms. Levine -- when she asked you
23 why Jones Day was involved with the state in March of 2012,
24 you indicated that you knew that they were always interested
25 in this case, so you knew as early as March of 2012 that

1 Jones Day was interested in a Chapter 9 for the City of
2 Detroit; correct?

3 MR. SHUMAKER: Objection. Asked and answered.

4 MS. NELSON: Same objection, your Honor.

5 THE COURT: Sustained.

6 BY MS. BRIMER:

7 Q So then you were involved in the March -- excuse me --
8 the interview process for the preliminary interview in
9 January of 20 -- January 29th, 2013, for the attorneys;
10 correct?

11 A Correct.

12 MS. NELSON: Objection. Asked and answered.

13 BY MS. BRIMER:

14 Q And that initial interview on January 29th was merely to
15 narrow down the firms that would then be invited to submit a
16 response to the RFP that would later be issued; correct?

17 MS. NELSON: Objection, your Honor. This whole line
18 has been asked and answered on Tuesday.

19 MS. BRIMER: I have two or three questions that have
20 not been asked. That question was not asked.

21 THE COURT: I don't think that specific one was, so
22 you may answer that, sir.

23 THE WITNESS: There's very specific procurement
24 rules, so I hesitate to say "yes," but I did participate in a
25 day of meetings at the airport where several law firms were

1 interviewed. Now, legally, what follows from that to
2 actually make them eligible to be hired, I won't -- I'm not
3 an expert on the procurement practices of the city or the
4 state.

5 BY MS. BRIMER:

6 Q Were you aware that Miller Buckfire had provided the
7 interview questions to the Jones Day attorneys prior to the
8 interview?

9 A I don't think I ever saw the questions myself, so I don't
10 know that, no.

11 Q Okay. So after the interview process, who drafted the
12 RFP? Do you know?

13 A I do not.

14 Q Could it have been Miller Buckfire?

15 A Is it possible that they did? I mean is that the
16 question?

17 Q Yes.

18 MS. NELSON: I'm going to object. Calls for
19 speculation. He's already indicated he doesn't know.

20 BY MS. BRIMER:

21 Q Was it someone on the staff of Treasury that drafted the
22 RFP?

23 MS. NELSON: Same objection, your Honor. That's
24 been asked and answered. He indicated he doesn't know. This
25 would call for speculation.

1 THE COURT: Do you know the answer to that question?

2 THE WITNESS: I don't know who drafted it.

3 BY MS. BRIMER:

4 Q Do you recall asking Brom Stibitz to put together a
5 stable of bankruptcy attorneys for future Chapter 9's?

6 A It doesn't sound unlikely. I knew that we would probably
7 need some in case these things --

8 THE COURT: The question is do you remember doing
9 that?

10 THE WITNESS: Generally, yes.

11 BY MS. BRIMER:

12 Q And did Mr. Stibitz provide you with a list of potential
13 bankruptcy attorneys?

14 A I think we did an RFP. We've done two RFP's, I believe,
15 at Treasury to get people on a list that we can tap if we
16 need.

17 Q And was Jones Day one of the firms that responded to
18 either of those RFP's?

19 A I don't have a memory, but apparently they did because I
20 think I've seen something during this process where their
21 name is on the state list as well.

22 Q Okay. Did you ever disclose to anyone with the City of
23 Detroit that Miller Buckfire had performed a 60-day review
24 for the city -- for the state of the city's finances in early
25 2012?

1 A I think they were very familiar that they were doing
2 that, yes, because they worked with the city. They were
3 present in City Hall.

4 Q Did you advise the city that -- prior to the engagement
5 of Jones Day that Jones Day had been working with the state
6 on the consent agreement?

7 A I don't believe I did.

8 Q Did Jones Day have any involvement in the drafting of PA
9 436?

10 A Not to my knowledge.

11 Q Do you know whether or not anyone on your staff provided
12 Jones Day with copies of drafts of PA 436?

13 A I don't recall that.

14 Q Have you ever heard of the hundred day plan?

15 A Yes.

16 Q And what was that?

17 A It can be a term of art, but generally when you come in,
18 you -- if you're in a turnaround situation, you have a goal
19 to accomplish certain things within a hundred days.

20 Q And in the event those goals aren't accomplished, a
21 bankruptcy would then be filed? Is that --

22 A Not necessarily, no.

23 Q Did the state institute a 100-day plan in connection with
24 the City of Detroit?

25 A I believe we had one during the -- for the consent

1 agreement, and then I believe -- under 436 there's certain
2 reports that have to come in with a certain number of days,
3 and I don't think any of those reports line up to a hundred
4 days. I think there's 45 days and six months, what's in the
5 law.

6 Q And isn't it true that at least as early as March of 2012
7 Treasury personnel who worked directly for you were
8 discussing a Chapter 9 on behalf of the city with the Jones
9 Day attorneys?

10 A I don't know what you mean by "discussing." Chapter 9
11 was always an option, but it was the last resort. We
12 obviously were fighting to get to a consent agreement with
13 the city and wanted to avoid even emergency, so if we were
14 thinking of Chapter 9, then we would not have gone consent
15 agreement because you couldn't get into 9 that way.

16 Q But under the then existing law, the consent agreement
17 was the way to proceed; correct?

18 A No. Under a consent agreement, you can't enter Chapter
19 9.

20 Q Okay.

21 MS. BRIMER: I have nothing else, your Honor.

22 THE COURT: Thank you. Any other questions for the
23 witness?

24 MS. PATEK: Your Honor, Barbara Patek on behalf of
25 the Detroit public safety unions.

DIRECT EXAMINATION

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BY MS. PATEK:

Q Mr. Dillon, I represent the Detroit public safety unions. Good morning. I have a handful of questions for you. At or about the time of Mr. Orr's appointment -- well, strike that. Going back to your involvement with the situation in the City of Detroit even from the time you became state treasurer, were you aware that the police and fire fighters for the City of Detroit were not eligible through their employment at the City of Detroit for Social Security?

A It was a -- we were aware that that was very likely the case. I never saw a report that said who was and who wasn't, but we knew that was a real issue.

Q And was that an important issue to you?

A Yes.

Q And at any time before Mr. Orr's appointment, did you take it upon yourself to confirm whether or not, in fact, the City of Detroit fire fighters and police were eligible for Social Security?

A We asked quite often -- my memory is that there may be some that were eligible at some point, but I couldn't tell you what percentage are eligible versus not.

Q Do you know whether or not police officers and fire fighters hired before March 31st, 1986, are eligible for Medicare?

1 MS. NELSON: I'm going to object to this line of
2 questioning, your Honor, as irrelevant. I don't know how
3 this has any relevance to the eligibility issues or Mr.
4 Dillon's testimony.

5 THE COURT: No. I see the relevance. I'll permit
6 it. Go ahead.

7 THE WITNESS: I was aware of the issue. It was
8 important to me, but the specific dates and numbers I
9 didn't -- I wasn't familiar with.

10 BY MS. PATEK:

11 Q Did you ever determine whether or not for those officers
12 not covered by Social Security they had to, as a matter of
13 federal law, be provided a certain minimum level of
14 retirement benefits by the state?

15 A I'm not familiar with that.

16 Q And you're not aware of that sitting here today?

17 A No.

18 Q You would agree with me in these Chapter 9 proceedings
19 that one of the things that cannot happen is that the City of
20 Detroit cannot be liquidated?

21 A I don't know if it's a legal impossibility, but it's not
22 something that we ever envisioned. I think the City of
23 Detroit will need to carry on and move forward.

24 Q And among the City of Detroit's obligations in carrying
25 on and moving forward is providing effective police and fire

1 services. Would you agree with that?

2 A Very much so.

3 Q And that would be absolutely essential to any
4 restructuring?

5 A Yes.

6 Q Do you believe that -- well, strike that. I want to -- I
7 want to go back to an issue that came up earlier with Ms.
8 Green. You were asked some questions about an Act 312
9 arbitration. Do you know what Act 312 is?

10 A I do.

11 Q And that's a procedure or a statute that provides for a
12 mechanism, including mediation and arbitration, by which the
13 public safety unions resolve their employment disputes with
14 the particular municipality; is that right?

15 A That's right.

16 Q And isn't it true that at or near the time Mr. Orr was
17 about to be appointed as the emergency manager of the City of
18 Detroit, that there was a pending Act 312 arbitration
19 proceeding involving the Detroit Police Officers Association
20 and the City of Detroit?

21 A Yes.

22 Q Was there a concern on the part of Treasury that if --
23 well, strike that. Do you understand that when an Act 312
24 award is issued following the conclusion of those
25 proceedings, that the results of that award become part of

1 the collective bargaining agreement between the union and the
2 municipality?

3 A That's my general understanding.

4 Q And did you have an understanding that if, in fact, an
5 Act 312 award were to issue in connection with the ongoing
6 proceedings between the city and the Detroit Police Officers
7 Association, that that would potentially extend the length of
8 the collective bargaining agreement between the Detroit
9 Police Officers Association and the City of Detroit?

10 A I assume it could do a lot of things.

11 Q And would that be one of them, to extend the length of
12 the agreement?

13 A I'm not an expert on 312. I can't say that it was not
14 one of the things that could have happened, but I do recall
15 that he had -- I don't recall extending the CBA is an item,
16 but it very may well have been.

17 Q Were you concerned about the Act 312 award providing
18 certain terms to the Detroit police officers that would be
19 contrary to what the state was thinking would be an
20 appropriate restructuring plan?

21 A I had concerns about an award that could -- that the city
22 couldn't afford, that it was a possibility.

23 Q Were you looking for a mechanism to prevent those Act 312
24 proceedings involving the city and the Detroit Police
25 Officers Association from coming to a conclusion?

1 A Mechanisms to prevent? I can tell you I was concerned
2 about whipsawing the police and fire and having something
3 come out that wasn't sustainable and may have to be adjusted
4 in an emergency status, so I had concerns, yes.

5 Q You didn't want them, for example, to get some wage cuts
6 reinstated only to have those reimposed again by an emergency
7 manager?

8 A It was a concern of mine.

9 Q Do you believe -- or did you believe as state treasurer
10 that the morale of the Detroit public safety unions,
11 including the Detroit Police Officers Association, was
12 important to their ability to provide the public safety
13 services required by the City of Detroit?

14 A Yes. And I also believe that they, unfortunately, are
15 underpaid. If you look at them compared to comparable
16 cities, they're not overpaid, and it's just unfortunate the
17 city didn't have the resources to pay more.

18 Q And would you also agree that as a general matter, based
19 upon your knowledge as state treasurer at the time, that they
20 were undermanned; this is, that there were not enough of them
21 out there to really provide effective public safety?

22 A That's a tougher question because a lot of the
23 information we had is that two-thirds of the police, for
24 example, worked behind desks rather than on the street, so I
25 don't know if it was a lack of personnel or just they could

1 be better utilized. As it relates to the fire, I don't have
2 that similar information.

3 Q And with respect to the police, let me reframe the
4 question. With respect to police officers on the street, was
5 your understanding that there was an inadequate number of
6 those?

7 A I believe there may have been.

8 Q Was there -- well, strike that. Was it part of the
9 restructuring plan, at least as it was envisioned by the
10 state, to have all of the collective bargaining agreements
11 for the public safety unions expire sometime in the summer of
12 2013?

13 A I don't know if I understand the question.

14 Q Was there -- was part of the goal of the restructuring to
15 put the -- either the state, through an emergency manager, or
16 the city in a position to impose terms without having to
17 bargain or negotiate with its public safety employees?

18 A In what time frame?

19 Q In the time frame leading up to and after the appointment
20 of Mr. Orr as the emergency manager.

21 A In 2013, I think that was less of a consideration because
22 the emergency manager has that power if he needs to do it.

23 Q Are you aware whether or not the Act 312 -- an Act 312
24 award ever issued in the arbitration between the City of
25 Detroit and the Detroit Police Officers Association?

1 A My memory is that one did.

2 Q And is it your understanding in that regard that that
3 agreement then became part or that award then became part of
4 the collective bargaining agreement between the city and the
5 Detroit Police Officers Association?

6 A That's my memory.

7 Q You told me earlier that the issue of whether or not
8 police and fire received Social Security benefits was an
9 important issue to you, and let me step back from that as a
10 moment -- your understanding is if they don't -- if the city
11 doesn't contribute and they don't participate in Social
12 Security, they are also not eligible through their city
13 employment for Social Security Disability benefits; is that
14 right?

15 A I don't think my understanding related to disability.

16 Q You didn't have any understanding one way or the other as
17 to whether or not these fire fighters and police officers
18 would be eligible for Social Security Disability whether or
19 not the city participated in the Social Security program?

20 A Yeah. I don't recall the aspect of Social Security as it
21 relates to disability being discussed in any of the meetings
22 I attended.

23 Q Do you think disability is a significant issue for police
24 and fire fighters?

25 A I understand it may well be.

1 Q Do you think it would be an important part of the
2 equation in terms of the city's ability to provide the
3 essential services of public safety?

4 A Yes.

5 Q And is that why the Social Security issue was, in part,
6 important to you?

7 A I'm not -- I viewed it more in terms of retirement. I'm
8 not certain -- and I'm not a benefits experts -- about if
9 you're an active employee and you are injured on the job
10 site, is it your employment insurance or Social Security
11 Disability? I'm not an expert to have an opinion on that.

12 Q Would it trouble you to know that police officers
13 currently who do not have from some other source access to
14 Social Security are not entitled to Social Security
15 Disability given what has been proposed by the emergency
16 manager in terms of impairing their pension benefits?

17 MS. NELSON: Objection. Relevance.

18 THE COURT: Sustained.

19 BY MS. PATEK:

20 Q You told us, based upon your experience as treasurer,
21 that you did not see any scenario where the Michigan
22 legislature would be willing to help the City of Detroit with
23 its pension funding problem; is that correct?

24 A I was asked the question about would the funds come from
25 the state, and I answered it with, I think, I thought it

1 might be difficult to get the Michigan legislature to
2 appropriate funds for that.

3 Q Would it be fair to say that it's your impression that
4 the Michigan legislature lacks the political will to provide
5 such assistance?

6 MS. NELSON: Objection. Relevance and speculation.

7 MS. PATEK: Your Honor, I think this is entirely
8 relevant to the issue of bad faith and eligibility in terms
9 of the purpose for which these Chapter 9 proceedings are
10 being used.

11 MS. NELSON: If I may address that, your Honor,
12 she's clearly asking a political question, which is outside
13 the scope of not only the Court's jurisdiction but the
14 eligibility factors that are to be considered for purposes of
15 this case.

16 MS. PATEK: If I may respond, your Honor, I would
17 think that if these Chapter 9 proceedings were, in fact,
18 being used for a political purpose, which I think is not
19 unfathomable given the record --

20 THE COURT: My only problem with the question is the
21 phrase "political will." I'm not sure what that means. You
22 can ask him why he has this belief, but --

23 MS. PATEK: I think --

24 THE COURT: -- I think a more direct question there
25 would be appropriate.

1 BY MS. PATEK:

2 Q I'll take the Court's question, Mr. Dillon. Why do you
3 have the belief that there would be no set of circumstances
4 that you can envision in which the Michigan legislature would
5 provide support to the City of Detroit for its pension
6 problem?

7 A I don't know if I described the situation that way, but
8 having served in the legislature for six years and
9 understanding a lot of the mentality of people that don't
10 come from the Detroit area, I think it would be very
11 difficult to get them to subsidize or fund or support Detroit
12 with an appropriation.

13 THE COURT: Excuse me one second. Would you just
14 slide back a little bit from the microphone? Thank you.

15 BY MS. PATEK:

16 Q You're saying it would be difficult to get the Michigan
17 legislature to support Detroit with an appropriation for any
18 purpose?

19 A I didn't say that, but I think if it was funding
20 something about a historical liability, I think that would be
21 much more difficult.

22 Q In terms of revitalizing the city, providing blight
23 relief, is that something that you believe they might fund?

24 A I think it would have a much better chance.

25 Q You were asked a couple questions about -- or by Ms.

1 Green and then later Ms. Brimer about the timing of the
2 appointment of Mr. Orr as the emergency manager, and it's
3 true, is it not, that by appointing Mr. Orr on March 25th
4 three days before the effective date of Public Act 436, that
5 that removed from the City of Detroit the right to choose
6 some of the new options available under Public Act 436?

7 MS. NELSON: Asked and answered, your Honor.

8 MS. PATEK: This is foundational, and I can go to
9 my --

10 THE COURT: Please.

11 BY MS. PATEK:

12 Q One of those options was a negotiated -- or a period of
13 negotiations to attempt to do an out-of-court workout; is
14 that right?

15 A Can you start from the beginning?

16 Q Yeah, yeah. Are you generally familiar with Public Act
17 436 and those four options it gave to a municipality?

18 A Yes.

19 Q And among those options were a consent agreement, which
20 the City of Detroit had already done; correct?

21 A Yes.

22 Q And the consent agreement itself, did that provide if the
23 City of Detroit didn't make its metrics that an emergency
24 manager would be put into place?

25 A You can have a default of a consent agreement that then

1 leads to a different option.

2 Q I'm asking you, though, in this particular case, the
3 April 4th, 2012, consent agreement, that did not have as a
4 default option the appointment of an emergency manager, did
5 it?

6 A I'd have to review the document.

7 Q With respect to Public Act 436 --

8 MS. PATEK: Can you put up -- I think it's 721.
9 This is just actually the act itself, and I want Section 25.

10 MR. SHUMAKER: Your Honor, 721 is not on the exhibit
11 list.

12 MS. PATEK: And I'm just going to ask the -- I'm
13 just putting up the text of Public Act 436 --

14 THE COURT: I'll permit that.

15 MS. PATEK: -- which is --

16 BY MS. PATEK:

17 Q Mr. Dillon, you see the text of Section 25 of Public Act
18 436 in front of you there?

19 A Yes.

20 Q And one of the options given to a community or a
21 municipality under Public Act 436 was a neutral evaluation
22 process; isn't that right?

23 A Right.

24 Q And that neutral evaluation process provided by Public
25 Act 436 is not unlike the mediation process now ongoing in

1 these Chapter 9 proceedings; isn't that right?

2 MS. NELSON: Objection. Calls for a legal
3 conclusion and speculation. He's not participating in that
4 process.

5 MS. PATEK: Well, I believe the state has been
6 ordered into the process.

7 THE COURT: You can ask the witness his
8 understanding.

9 BY MS. PATEK:

10 Q Are you aware that there is in these Chapter 9
11 proceedings confidential mediation proceedings supervised by
12 the Court?

13 A I'm aware that they're ongoing.

14 Q And is the neutral evaluation process provided by Public
15 Act 436 similar to the mediation process in these
16 proceedings, to your knowledge and understanding?

17 A We've never had one in Michigan, so -- and I'm not part
18 of these here, so I can't answer that.

19 Q We can agree, however, by appointing Mr. Orr three days
20 before the effective day of Public Act 436 this neutral
21 evaluation option was taken away from the City of Detroit?

22 A I don't recall what triggered the emergency, whether
23 if -- I don't recall the date the governor decided that he
24 was going to declare an emergency in Detroit.

25 Q So you can't answer -- you don't know the answer to that

1 question?

2 A I don't know if it's triggered by the date Kevyn Orr
3 started or by the governor's declaration of emergency. I
4 don't recall the -- what the statute says on that point, but
5 I would guess it's the date the governor declares the
6 emergency is what would answer your question, not the date
7 that the manager is hired.

8 Q Well, isn't it accurate that one of the things that
9 Public Act 436 did was to make sure that actions that had
10 been taken under former Public Act 4 or former Public Act 72
11 would be sustained and continue on?

12 A Right.

13 Q And that included an appointment, for example, of an
14 emergency manager under Public Act 72?

15 A Right.

16 MS. PATEK: That's all I have.

17 DIRECT EXAMINATION

18 BY MR. MONTGOMERY:

19 Q Good morning, Mr. Dillon.

20 A Good morning.

21 Q Claude Montgomery. Real simple line of inquiry regarding
22 one topic. You were very much involved in trying to
23 understand the pension questions for the state, were you not,
24 for the City of Detroit?

25 A I wouldn't say very much involved.

1 Q You would not say you were very much involved?

2 A Well, there was -- the consultants on the ground were
3 very focused on it, and a professional firm was hired to do
4 evaluation, so I was aware that those were going on, but I
5 was not in day-to-day work groups working through those
6 numbers.

7 Q But you were trying to follow the issue as best you could
8 as treasurer, were you not?

9 A Yes.

10 Q And from time to time you would inform the governor of
11 your views with respect to pension issues, did you not?

12 A I did, yeah.

13 Q And focusing on the time period on or about July 9, 2013,
14 do you remember having formed the conclusion that from your
15 perspective you were still in the informational stage with
16 respect to pensions?

17 A Yes.

18 Q And do you recall telling the governor that on or about
19 July 9?

20 A Yes.

21 Q And did you do so by e-mail?

22 A Yes.

23 MR. MONTGOMERY: Could you put on the screen,
24 please, common Exhibit 438? If you could expand the "to" and
25 "from" line, please, first.

1 BY MR. MONTGOMERY:

2 Q Did you, in fact, send this e-mail on or about July 9,
3 2013?

4 MS. NELSON: Your Honor, this has been asked and
5 answered and was admitted as an exhibit on Tuesday through
6 the treasurer's testimony, and he testified about this e-mail
7 and specifically the "to" and the "from."

8 MR. MONTGOMERY: Well, that's interesting because my
9 notes still had objected to hearsay, so I was going to move
10 its admission to make sure it was part of the record.

11 THE COURT: What number is it?

12 MR. MONTGOMERY: 438.

13 MR. SHUMAKER: The city does object because it's
14 hearsay, your Honor.

15 MR. MONTGOMERY: There we go.

16 THE COURT: Kelli, do we show it admitted? Can you
17 open up the exhibit for me to see the whole thing? Thank
18 you. And do you recognize this exhibit, sir?

19 MR. MONTGOMERY: Yes.

20 THE COURT: It's admitted.

21 (Exhibit 438 received at 10:35 a.m.)

22 MR. MONTGOMERY: Thank you.

23 BY MR. MONTGOMERY:

24 Q And so just to conclude, sir, on or about July 9, you
25 shared with the governor your opinion that you were still in

1 the informational stage with respect to pensions, did you
2 not?

3 A Yes.

4 Q Okay. And --

5 THE COURT: Sir, I'm advised that you need to be
6 closer to the microphone or have it pointed more at you
7 because the other room is having trouble hearing you.

8 MR. MONTGOMERY: Is that better, your Honor?
9 Better?

10 THE COURT: There you go.

11 MR. MONTGOMERY: Okay.

12 THE COURT: Try that.

13 BY MR. MONTGOMERY:

14 Q So, again, I believe my question was on or about July 9,
15 you informed the governor of your opinion that with respect
16 to pensions you were still very much in the informational
17 stage?

18 A Yes.

19 MR. MONTGOMERY: All right. Thank you. No further
20 questions, your Honor.

21 THE COURT: Any other questions from counsel on
22 this? Cross-examination.

23 MS. NELSON: No questions, your Honor.

24 MR. SHUMAKER: The city has no questions, your
25 Honor.

1 THE COURT: All right. Mr. Dillon, thank you very
2 much for your testimony. You're excused.

3 THE WITNESS: Thank you, Judge.

4 (Witness excused at 10:36 a.m.)

5 THE COURT: And let's take our morning break now and
6 reconvene in 15 minutes at 10:50, please.

7 THE CLERK: All rise. Court is in recess.

8 (Recess at 10:36 a.m. until 10:50 a.m.)

9 THE CLERK: All rise. Court is in session. Please
10 be seated.

11 MR. WERTHEIMER: William Wertheimer, your Honor, on
12 behalf of the Flowers plaintiffs and the UAW for this
13 witness, and we will call Richard Baird. I would indicate
14 that -- or request that the Court give permission to allow
15 the examination pursuant to Rule 611(c).

16 THE COURT: Thank you. Any objections to that?

17 MR. SHUMAKER: No objection, your Honor.

18 THE COURT: You may.

19 MR. ELLSWORTH: Your Honor, I'm Peter Ellsworth on
20 behalf of the state.

21 THE COURT: Welcome, sir. Step forward, please,
22 sir. Just step over here, and then I will administer the
23 oath to you.

24 RICHARD BAIRD, WITNESS, SWORN

25 THE COURT: Please sit down.

DIRECT EXAMINATION

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BY MR. WERTHEIMER:

Q Would you state your name for the record, please?

A Richard L. Baird.

Q Mr. Baird, you are appearing here pursuant to subpoena;
is that correct?

A Yes.

Q And are you currently a state employee?

A Yes.

Q When did you become a state employee?

A October 16th.

Q Of this year?

A Yes.

Q You were involved with working indirectly for the
governor from the time he took office, were you not?

A Yes.

Q I'd like to ask you just a couple of questions about what
your relationship was at that -- at the time from your
beginning with the governor up until you became a state
employee a couple of weeks ago. Okay?

A Sure.

Q Are you familiar with an organization called MI Partners,
LLC?

A Yes.

Q And what is it?

1 A It is a limited liability corporation incorporated in the
2 State of Michigan, and it does organization development and
3 consulting.

4 Q And are you an employee -- or were you an employee during
5 that time period -- that is, from 2011 up until a couple of
6 weeks ago -- of MI Partners, LLC?

7 A I was the founder and the only employee.

8 Q And you're the owner of it?

9 A Yes.

10 Q No other owners?

11 A No.

12 Q And what business does it -- is it in or was it in during
13 the time period we're talking?

14 A Predominantly organizational consulting, team
15 development, talent selection.

16 Q And how --

17 THE COURT: One second, please. Can you either pull
18 the microphone a few inches closer to you or sit closer to
19 it?

20 THE WITNESS: Is this better?

21 THE COURT: Yes, but not too close. Thank you, sir.

22 BY MR. WERTHEIMER:

23 Q During the period from the beginning of 2011 up until a
24 couple of weeks ago, how many clients did this entity have?

25 A One client.

1 Q And who was that client?

2 A It was the New Energy to Reinvent and Diversify Fund.

3 Q And tell us what that fund was.

4 A That fund was a 501(c)(4) that was formed to further good
5 government at nontaxpayer expense.

6 Q And has it sometimes in the public gone by an acronym
7 NERD?

8 A Yes.

9 Q Would you generally describe for the Court what role you
10 played vis-a-vis the state and particularly the governor from
11 the time the governor came in in January of 2011?

12 A I was involved in helping source and select members of
13 the governor's team and also critical positions for other
14 departments or for state oversight operations such as failing
15 school districts or municipalities.

16 Q Did you play any particular role relative to the issues
17 that were in place from when the governor first came in
18 relative to the financial problems of the City of Detroit?

19 A I'm sorry. Did I play a role relative to --

20 Q The work the Governor's Office was doing on that problem.

21 A Yes.

22 Q And what role did you play?

23 A My role was predominantly focused on assessing talent for
24 potential positions that may come as a result of a failing
25 school district or municipality.

1 Q Did you play a particular role relative to the ultimate
2 hiring of an emergency manager for the City of Detroit?

3 A I played a role in the identification, sourcing, and
4 recommendation to the governor, who then made recommendations
5 to the Emergency Loan Board, which made the selection of the
6 emergency manager.

7 Q Okay. Would it be fair to say that you worked intimately
8 with the governor on this issue?

9 A I worked intimately with the governor on the planning for
10 contingency, but my degree of interaction with him didn't
11 become what I would call intimate until I had live candidates
12 for his consideration.

13 Q All right. And were you the person who made the at least
14 tentative decision to move forward relative to Kevyn Orr
15 becoming emergency manager?

16 A I was the person that made a recommendation to both the
17 governor and the treasurer that Kevyn Orr had the
18 qualifications and capabilities that led me to believe he
19 should be a candidate for consideration should a
20 recommendation to the ELB be made.

21 Q And were you -- did you attend the pitch meeting in late
22 January of this year?

23 A Yes.

24 Q And was it the day after that meeting that you made an
25 initial outreach to the Jones Day law firm to talk to someone

1 there about the possibility of Kevyn Orr being considered for
2 that position?

3 A Yes.

4 Q And who is the person that you made that outreach to at
5 Jones Day?

6 A I called Steve Brogan, a managing partner.

7 Q By the way, at this point, did you have any knowledge
8 that Jones Day had been working for the state on the problems
9 it was having with the city, in fact, was helping it in the
10 negotiations over a consent agreement in March of 2012; that
11 is, about nine or ten months before the initial consideration
12 of Mr. Orr?

13 A I don't believe so.

14 Q And in your conversation with Mr. Brogan -- this initial
15 conversation would have been on January 30th?

16 A Yes. That's correct.

17 Q The pitch meeting having been on the 29th?

18 A You call it a pitch meeting.

19 Q I'm sorry. Go ahead.

20 A I did not view the 29th meeting as a pitch meeting. It
21 was bringing in several highly competent restructuring
22 oriented legal advisors to help the city in the preparation
23 for its RFP.

24 Q When you talked to Mr. Brogan on the 30th, did you make
25 it a point to tell him at that point in this initial contact

1 that Jones Day would be neither hurt nor helped if you went
2 further relative to recruiting Mr. Orr for the emergency
3 manager position?

4 A I'll tell you what I recall that I said in that
5 conversation.

6 Q Can you answer my question?

7 A Those exact words, no.

8 Q Go ahead. Tell me what you recall.

9 A I said -- I asked for the managing partner's permission
10 to speak with Kevyn Orr. I said if it was -- whether it was
11 granted or not and further discussions took place, that
12 should not help or hurt Jones Day in any potential bid for
13 work with the city or the state.

14 Q And you were speaking as a representative of the state to
15 the Jones Day managing partner at that time, were you not?

16 A No. I was never a representative of the state.

17 Q Who did you hold yourself out as in your discussions with
18 Mr. Brogan?

19 A An independent consultant to the governor and his team
20 involved in talent sourcing.

21 Q But you were working for the governor. He would have
22 understood that.

23 A Well, I was working with the governor.

24 Q You weren't working for the City of Detroit, were you?

25 A No.

1 Q If you were working for anybody, it would have been the
2 governor?

3 A I was working for the NERD Fund.

4 Q Okay. Which is the -- which is a fund that -- set up
5 either directly or indirectly by the government -- or the
6 governor. You understood that, did you not?

7 A No, I don't understand that.

8 Q Okay. Had you talked to anyone -- had you talked to
9 anyone with the state to get the approval for the
10 representation you made to Mr. Brogan; that is, that Jones
11 Day would neither be hurt nor helped if you went forward
12 relative to Orr?

13 A No, and I've testified in my deposition that upon
14 recollection of that, I did not have the right to make that
15 assertion.

16 Q You never withdrew that assertion from Mr. Brogan or
17 anyone else at Jones Day, did you not?

18 A Not that I recall.

19 Q And you always acted consistent with it, did you not?

20 A I believe I did.

21 Q In fact, you pushed for Jones Day to be hired by the
22 city, did you not?

23 A Define "push," sir.

24 Q You spoke in their favor, talked to people, suggested
25 that Jones Day would be a good choice, something like that?

1 A I said any of those five firms that presented that day
2 would be a good choice.

3 Q Did you tell Kevyn Orr on January 31st that you were --
4 at the time you were soliciting him, that you were also going
5 to be pulling for Jones Day?

6 A I believe I did.

7 Q And you told him that because, in fact, you were going to
8 be pulling for Jones Day; correct?

9 A I hoped that they would be successful, yes, sir.

10 Q What did you mean by the term "pulling" when you used it
11 in your conversations with Mr. Orr?

12 A That I hoped they would be successful.

13 Q It's like a wish?

14 A It's a hope.

15 Q "Pulling" implies a little bit more than a hope, does it
16 not?

17 A Not in my view, sir.

18 Q You're the governor's right-hand man at the time, are you
19 not?

20 A There's nothing in my job description or my contractual
21 agreement that puts that label on me, sir.

22 Q Is there anybody you know of who was closer to the
23 governor in terms of this operation relative to who's going
24 to be hired as emergency manager and who's going to do the
25 legal work than you?

1 A My job was to source talent.

2 Q Anybody that you knew from your involvement in the
3 process had any more in a role of it than you?

4 A I don't have a perspective to tell you. My job was to
5 source talent. There were a lot of people involved in the
6 City of Detroit issues.

7 Q But you were the one that was involved to source talent;
8 correct?

9 A Correct.

10 Q And part of sourcing talent was your determination that
11 Orr would be good talent for the emergency manager's job;
12 correct?

13 A My job was to assess his experience and qualifications
14 for that job, yes.

15 Q Okay. And part of your role in assessing talent would be
16 to assess that the Jones Day law firm would also be a good
17 choice for the City of Detroit, would it not?

18 A No, sir. That was not my role.

19 Q I thought you said your role was in talent
20 identification.

21 A Well, there's a difference between talent identification
22 for an emergency manager possibility and recommending a law
23 firm to a city that has to make its own decision.

24 Q What did Kevyn Orr say to you when you told him on
25 January 31st that you'd be pulling for Jones Day?

1 A I don't recall what he said at that time.

2 Q Do you recall a conversation a couple weeks later with
3 Kevyn Orr where you talked both about his retention and the
4 retention of Jones Day?

5 A I'm sorry. Ask the question again.

6 Q Do you recall having a conversation with Kevyn Orr around
7 the middle of February of this year in which you talked to
8 Mr. Orr both about the possibility of his being retained and
9 in that same conversation him bringing up the possibility of
10 Jones Day being retained?

11 A I don't recall explicitly, but I would have said probably
12 the same thing to Kevyn Orr that I said to Steve Brogan,
13 which is in my -- which I've already testified I probably had
14 no right to say, but my issue was I wanted permission to talk
15 to Kevyn Orr about the prospects for this opportunity, and I
16 did not want it to have a positive or a negative impact on
17 anything occurring between Kevyn Orr's firm and the City of
18 Detroit.

19 Q Mr. Baird, isn't pulling for Jones Day a little bit
20 stronger than not having it hurt Jones Day? Don't you
21 recognize a difference between those two phrases?

22 A No, sir, I don't. I know it's --

23 Q You've answered my question. Thank you.

24 MR. WERTHEIMER: Would you put 807 up, please?

25 BY MR. WERTHEIMER:

1 Q I'm going to ask you, Mr. Baird, if this refreshes your
2 memory as to the specifics between you and Mr. Orr around
3 February 13th. This is an e-mail he's sending to you
4 February 13th, and I'm directing your attention down to he's
5 saying to you, "In the interim" -- you with me --

6 A Yes.

7 Q -- "when you have time, I'd like to speak with you about
8 the timing and process for both the retention of the EM" --
9 i.e., him -- "and legal counsel" -- i.e., Jones Day. Do you
10 recall Mr. Orr e-mailing you asking you if you could have --
11 he could have that conversation with you?

12 A Well, I recall this e-mail, but I didn't specifically
13 recall this part about the request and process for timing of
14 the EM and legal counsel.

15 Q Do you recall it now?

16 A Well, I see it's here, so -- and I read the rest of the
17 e-mail, so I now agree that it's part of the same e-mail.

18 Q Okay. And you agree that Kevyn Orr wants to communicate
19 that information to you; correct?

20 A Well, I mean I agree that he says, "In the interim, when
21 you have time, I'd like to speak with you about the timing
22 and process for both the retention of the EM and legal
23 counsel." That's what this memo says.

24 Q And didn't you understand when you received it that what
25 Orr was doing was continuing the pitch, this time both for

1 himself and for Jones Day, to make sure that both things
2 would be accomplished?

3 A No, sir.

4 Q No? Do you recall talking to Mr. Orr after receiving
5 this e-mail about this per his request?

6 A I spoke with Mr. Orr several times over this period of
7 time, and I don't recall talking about this request.

8 MR. WERTHEIMER: That's all I have, Mr. Baird.
9 Thank you.

10 DIRECT EXAMINATION

11 BY MS. LEVINE:

12 Q Good morning, Mr. Baird.

13 A Good morning.

14 Q Sharon Levine, Lowenstein Sandler, for AFSCME. Just a
15 couple of questions if you would. You testified that when
16 you were with your consulting firm before you were retained
17 by the state, your client was the NERD Fund; correct?

18 A Correct.

19 Q And in that capacity, the NERD Fund paid you, but you
20 provided services benefitting the state; correct?

21 A Yes.

22 Q Do you know if the NERD Fund paid for any other
23 consultants that provided services benefitting the state or
24 the City of Detroit?

25 A I don't know.

1 Q Do you know if there are any other funds or affiliations
2 that paid for the services of consultants that provided
3 services to the city in connection with Detroit?

4 A No.

5 Q No, there aren't any, or, no, you don't know?

6 A I don't know.

7 Q I apologize. It was my -- it was my question that was
8 off. Okay. So when did you start providing services to the
9 governor, again?

10 A In January of 2011.

11 Q And at the point in time that you started providing those
12 services, was it your understanding that the governor's view
13 was that Detroit was already financially distressed?

14 A It was my understanding that the governor was concerned
15 about Detroit's financial condition, yes.

16 Q In addition to the assistance you provided the governor
17 in connection with the selection of Jones Day and the
18 emergency manager, did you have any involvement in the
19 selection or retention of Ernst & Young, Miller Buckfire, or
20 Conway MacKenzie?

21 A Not in the selection or retention, no.

22 Q During the course of the time that you provided services
23 for the governor, did you interact with Ernst & Young?

24 A Yes.

25 Q Did you interact with them in 2002?

1 A I'm sorry. Two thousand --

2 Q Two. I'm sorry. 2012. Sorry. I'm tired.

3 A I would have to check that.

4 THE COURT: Ms. Levine, could you pull the
5 microphone a little closer to you, please?

6 MS. LEVINE: Yes, your Honor. I'm sorry.

7 THE COURT: Thank you.

8 BY MS. LEVINE:

9 Q Were you involved at all with the -- providing services
10 to the governor -- actually, let me start a different way.
11 Are you aware that in late 2011, early 2012, there were
12 negotiations with a coalition of unions and the City of
13 Detroit with regard to some concessionary bargaining?

14 A I believe I was, yes.

15 Q And that Ernst & Young was involved in those or attended
16 those negotiations as a consultant for the city?

17 A I don't know that or at least I don't recall that.

18 Q How did you become aware of those negotiations?

19 A I believe through the newspapers.

20 Q Did you have any involvement or discussions about those
21 negotiations other than through learning about them through
22 the press?

23 A Not that I recall, no.

24 Q Did you have any discussions with the governor about
25 those negotiations?

1 A No.

2 Q Did you have any discussions with Mr. Dillon about those
3 negotiations?

4 A Not that I recall.

5 MS. LEVINE: I have no further questions. Thank
6 you.

7 DIRECT EXAMINATION

8 BY MS. GREEN:

9 Q Good morning, Mr. Baird. Jennifer Green on behalf of the
10 General Retirement System and the Police and Fire Retirement
11 Systems for the City of Detroit.

12 A Good morning.

13 Q Who is Dennis Muchmore?

14 A He's the governor's chief of staff.

15 Q And do you interface with him on a regular basis?

16 A Yes.

17 Q Do you recall discussing the issue of the governor's
18 authorization letter for the Chapter 9 filing in or about
19 July of 2013 with Mr. Muchmore?

20 A Not the authorization letter, no.

21 Q How about the request letter from Kevyn Orr?

22 A No.

23 Q Do you remember a meeting in or around July 12th relating
24 to the governor's authorization of the Chapter 9 filing?

25 A I'm sorry. A meeting -- say that again.

1 Q Do you recall a meeting in or around July -- on or around
2 July 12th relating to the governor's authorization for the
3 Chapter 9 filing?

4 A There were several meetings, and they were subject to
5 attorney-client privilege. And I was in some of them and not
6 in others, but I don't recall the specific one that you're
7 asking about.

8 Q When you say the "attorney-client privilege," which
9 attorney do you recall being at the meeting?

10 A Well, it wasn't always the same one, but it would be
11 usually Mike Gadola or someone in Mike Gadola's shop.

12 MS. GREEN: Your Honor, I believe that the privilege
13 has been waived with respect to that meeting. There's a
14 document that was admitted into evidence. It's UAW Exhibit
15 625, and I believe that all privilege assertions have been
16 waived with respect to that meeting. We discussed this
17 meeting yesterday.

18 THE COURT: Well, I suggest you ask your questions,
19 and we'll see what objections, if any, we get on this ground,
20 and we'll deal with it on a question-by-question basis.

21 MS. GREEN: I will certainly do so. I was trying to
22 head off an objection that I felt was coming, so --

23 BY MS. GREEN:

24 Q You do recall a meeting with Mike Gadola the week of July
25 12th?

1 A Counselor, we have a lot of meetings, and so I'd have to
2 go back and check that specific one and look for triggers to
3 help my recollection.

4 Q Sounds like an invitation for me.

5 MS. GREEN: Can we pull up Exhibit 625, please?

6 BY MS. GREEN:

7 Q The top part of that e-mail discusses a Monday meeting
8 the week of July 12th, which actually it would have placed
9 the meeting earlier in the week. Does that refresh your
10 recollection as to whether you had a meeting with certain
11 state officials relating to the governor's authorization?

12 A Well, I don't recall a specific meeting, but it says here
13 that Mr. Gadola spoke to me, Rich, this morning, and so I
14 would have no reason to think that's not accurate.

15 Q Do you recall discussing and taking the position that the
16 governor should take a more deliberative approach to his
17 authorization of the Chapter 9 filing?

18 MR. ELLSWORTH: Your Honor, I object. The privilege
19 has been waived with respect to the document but not the
20 discussions.

21 THE COURT: The objection is overruled. Please
22 answer the question.

23 THE WITNESS: Would you repeat the question?

24 BY MS. GREEN:

25 Q Can I repeat the question? I don't remember the exact

1 wording, but my question was do you recall discussing the
2 issue of the governor's authorization and whether or not a
3 more deliberative approach should be taken with respect to
4 that authorization?

5 A I don't recall "more deliberative" ever being part of a
6 conversation between Mike and I. I do recall perhaps what
7 he's referring to.

8 Q Okay. Can you explain what that would be?

9 A We had had conversations about whether it might be
10 advisable to have contingencies around this process, and I
11 had provided the opinion that I thought a contingency would
12 be appropriate, and that contingency would be in the form of
13 a control that the governor would have to approve certain
14 areas of concern.

15 Q And what were these certain areas of concern?

16 A I don't recall specifically, but it would have covered
17 any of the entire spectrum of liabilities or claims by
18 creditors.

19 Q Was one of those areas of concern the pension benefits?

20 A Well, certainly the pension liabilities were a
21 significant component.

22 Q So you agreed with other state officials that a more
23 deliberative approach should be taken due to this contingency
24 issue?

25 A I'm not sure I would have termed it as "a more

1 deliberative approach." What my particular opinion was --
2 and I come from a long time with a large public accounting
3 firm -- that I thought it would be advisable to have an
4 internal control or a check and balance relative to the
5 governor's approval of certain things that might go into a
6 plan of adjustment.

7 Q And others shared your view; correct?

8 A I didn't have conversations with anyone other than Mike
9 Gadola on this.

10 Q Did you have a discussion with Treasurer -- you did not
11 have a discussion with Treasurer Dillon then?

12 A I don't believe so.

13 Q Do you recall a discussion with Lieutenant Governor Brian
14 Calley on this issue?

15 A I don't recall talking to either of those individuals.
16 From this memorandum, it would appear that Mike Gadola did,
17 though.

18 Q Do you know ultimately why such a contingency was not
19 included with the authorization of the Chapter 9 filing?

20 A I would have to speculate. I mean I know that the
21 governor did not agree, but I'd have to speculate as to what
22 the reason might be.

23 Q Outside of Lieutenant Governor Calley, Attorney General
24 Mike Gadola, Treasurer Dillon, and yourself, were there
25 others that also shared the belief that a contingency was

1 appropriate?

2 A I don't know that.

3 Q Do you know if there were people within the city that
4 believed that a contingency was appropriate?

5 A I don't know that.

6 Q Do you recall communicating with Dennis Muchmore via e-
7 mail the week of July 12th relating to this issue separate
8 and apart from this e-mail?

9 A No, I don't. I don't believe I did, but I don't recall
10 if I did.

11 MS. GREEN: Your Honor, I have a new e-mail that was
12 produced by the state after the pretrial order was already
13 entered, so it is not on the pretrial list, but I believe
14 because it was produced on the 25th of October it is
15 appropriate to be able to use the document, and I have copies
16 for counsel.

17 THE COURT: Okay. One second. Do you have a number
18 for it?

19 MS. GREEN: It's 872.

20 THE COURT: 872.

21 MS. GREEN: May I approach?

22 THE COURT: Are you going to ask the witness to
23 identify it? Is that your plan? Okay. And I guess we'll
24 need copies, too, at some point. Thank you, sir.

25 BY MS. GREEN:

1 Q Do you recognize the document that I just handed to you,
2 sir?

3 A I'd like to read it, please.

4 Q Absolutely.

5 A Yes. I recall this.

6 Q Okay. And do you agree that the vast majority of the e-
7 mail is the same as Exhibit 625 that I just showed you with
8 the exception of a slight modification to the top of the
9 document, which is a new portion of an e-mail?

10 A I'm not sure I follow your question, but I believe that
11 it was -- that I was not copied on any of this e-mail until
12 Dennis Muchmore sent me what you've just provided me.

13 Q My question was just that the -- 75 percent of this e-
14 mail is the exact same e-mail chain that we just discussed.
15 That was Exhibit 625. Do you recognize that they are the
16 same document largely?

17 A I'm still confused.

18 Q We can move on. I was just asking if you recall that we
19 just discussed the same e-mail, which is a slightly
20 different --

21 A May I add to my testimony because this has jogged my
22 recollection?

23 Q Okay.

24 A I did not recall a specific meeting with lieutenant
25 governor and Treasurer Dillon, and the reason I didn't recall

1 it is because we had dinner together as part of a -- of
2 something another staff person who lectures at University of
3 Michigan had arranged for some of his students, and so we did
4 have a few moments before that dinner began, and I remember
5 we did talk about contingencies.

6 Q Okay.

7 A So I'd like to amend my testimony. I recall that.

8 Q Is there anything else that you recall relating to that
9 conversation regarding contingencies specifically?

10 A No.

11 Q Okay. The top of the e-mail to you, you wrote "left a
12 voicemail for you," and that is a voicemail to Dennis
13 Muchmore, correct, the chief of staff?

14 A Correct.

15 Q He wrote back to you --

16 MS. GREEN: And if we could pull up Exhibit 872.
17 It's a July 12th, 2013, e-mail.

18 BY MS. GREEN:

19 Q "Thanks. This La Costa" --

20 THE COURT: You have not offered this yet.

21 MS. GREEN: Oh, I'm sorry. I actually wanted to
22 make sure that he recognized the top part before I offered
23 it. I was going to ask him --

24 THE COURT: Well, you can just ask that question.

25 MS. GREEN: Okay.

1 THE COURT: Sure.

2 BY MS. GREEN:

3 Q Mr. Baird, do you recognize the top half of the e-mail?
4 That's the new portion.

5 A I now know what he's referring to, but I don't recognize
6 the e-mail. I'm not even sure I read it.

7 Q So you know what he's referring to, but you don't know if
8 you read the e-mail?

9 A Well, what I'm saying is he refers to this "La Costa is
10 not all it's cracked up to be," and I recall --

11 THE COURT: Don't tell us what's in it until we
12 admit it into evidence.

13 THE WITNESS: I'm sorry, your Honor.

14 THE COURT: The only question before you now is do
15 you recognize the top portion of the e-mail? Have you seen
16 it before?

17 THE WITNESS: I don't recall having seen this e-mail
18 before.

19 THE COURT: All right.

20 BY MS. GREEN:

21 Q Do you deny that you would have received the e-mail? You
22 just don't specifically remember it?

23 MR. SHUMAKER: Objection. Asked and answered.

24 MS. GREEN: Well, I think the -- I thought it was a
25 different question. I mean --

1 THE COURT: It is a different question, but it's not
2 a particularly relevant question.

3 MS. GREEN: Okay.

4 BY MS. GREEN:

5 Q What was the reference to -- that you remembered?

6 THE COURT: I'm sorry. What? Could you rephrase
7 that?

8 MS. GREEN: He said that he had -- it referred him
9 to something, and he remembered. I'm asking --

10 THE WITNESS: The Judge just admonished me. I don't
11 care to be admonished again.

12 MS. GREEN: Your Honor, I guess I'm asking can I
13 refresh his recollection with it? Is that okay? Can I
14 refresh his recollection as to what his reference was? I
15 believe even if it's not admitted I can refresh his
16 recollection as to what he was -- what this meant.

17 THE COURT: It sounds like you're asking him what's
18 in the document, and I can't permit that. If you have a
19 different question, we can try it.

20 MS. GREEN: Okay.

21 BY MS. GREEN:

22 Q Do you recall having conversations with Dennis Muchmore
23 the week of July 12th regarding the process related to
24 Chapter 9?

25 A No.

1 Q Do you recall communicating with Dennis Muchmore via e-
2 mail relating to the process of Chapter 9?

3 A I do not recall, no, while he was away.

4 Q If there is a -- was there a shared understanding that
5 the process was becoming long?

6 A I don't know that.

7 Q Would there have been some sort of shared sentiment that
8 the process was becoming worn or lengthy?

9 A I don't know that. I mean --

10 MS. GREEN: Your Honor, if I might try it this way,
11 I believe that this document is a party admission. We've
12 been admitting e-mails from state officials throughout the
13 proceeding as an admission of a party, and this is another e-
14 mail nearly identical to Exhibit 625 that was admitted as a
15 party admission.

16 THE COURT: Any objection?

17 MR. ELLSWORTH: Well, I object. He says that he
18 doesn't recognize the document. He can't identify it, so it
19 shouldn't be admitted.

20 THE COURT: It can only be a party admission if it's
21 authenticated, and the witness can't authenticate it.

22 MS. GREEN: I believe there's a difference between
23 not specifically remember reading an e-mail and being able to
24 authenticate it. Yes, this is to me. I recognize the date.
25 I recognize the people on it. I recognize this is an e-mail

1 that I would have received but for perhaps I don't
2 specifically recall reading e-mails from several months ago.
3 I think the authentication bar is much lower than being able
4 to substantively testify to it.

5 THE COURT: As low as it is, still the witness has
6 to be able to testify that he has seen it before, and he does
7 not remember seeing it before. Am I right about that, sir?

8 THE WITNESS: That's correct.

9 THE COURT: All right. So the objection is
10 sustained.

11 MS. GREEN: My last attempt is it was produced via
12 subpoena by the State of Michigan specifically by a request
13 from the parties on October 25th. I believe the
14 authentication bar is very low in the fact that they produced
15 it and that --

16 THE COURT: Did the state produce this e-mail, sir?

17 MR. ELLSWORTH: Yes.

18 THE COURT: Doesn't that establish its
19 authentication?

20 MR. ELLSWORTH: Well, I don't think that establishes
21 the authentication. You can't admit a --

22 THE COURT: Why wouldn't it? The state wouldn't --

23 MR. ELLSWORTH: Because this witness --

24 THE COURT: The state wouldn't produce an
25 inauthentic e-mail, would it?

1 MR. ELLSWORTH: No, your Honor, but this witness
2 doesn't recognize the document and doesn't recall receiving
3 it.

4 THE COURT: Right, but you just admitted the
5 document is authentic.

6 MR. ELLSWORTH: The state produced the document,
7 yes, your Honor.

8 THE COURT: All right. And what is the document
9 offered for? And we're talking about the top part of it,
10 right --

11 MS. GREEN: Yes. He had a --

12 THE COURT: -- because the rest of it was already
13 admitted?

14 MS. GREEN: It sparked his recollection about he
15 knew what this reference was to, and he -- when I showed him
16 the e-mail he remembered, and he said he had testimony he
17 knew what this meant, so the question is what is this
18 reference to and what does it mean to you and --

19 THE COURT: All right. The Court will reverse its
20 prior ruling and admit the document into evidence. What
21 number was it again?

22 MS. GREEN: Exhibit 872.

23 THE COURT: All right.

24 (Exhibit 872 received at 11:30 a.m.)

25 BY MS. GREEN:

1 Q Mr. Baird, you've read the e-mail now. At the top of the
2 e-mail you stated earlier that this sparked your recollection
3 of either a conversation or an incident or something of that
4 nature. Can you explain that, please?

5 A I recollect that members of the governor's team had
6 discussed contingencies as a recommendation to the governor
7 and that the chief of staff said it's time to take this to
8 the governor and get a decision.

9 Q What did you understand to be meant by the "kind of worn"
10 phrase?

11 A He's talking about the resort where that particular
12 conference was being held.

13 Q Oh, okay.

14 A That's what sparked my recollection.

15 Q Recollection of -- okay.

16 MS. GREEN: Your Honor, I don't have any further
17 questions. However, Exhibit 836 was also produced by the
18 state. I don't know if that would mean that the -- your
19 ruling that it's authentic because it was produced by the
20 state would also apply equally to that. It was an Andy
21 Dillon e-mail produced by the State of Michigan.

22 MR. SHUMAKER: Your Honor, that was a hearsay
23 objection. It was not an authentication objection.

24 THE COURT: Let's just pause for just a second. Can
25 you produce that for me again?

1 MS. GREEN: 836?

2 THE COURT: Please.

3 MS. GREEN: Yes.

4 THE COURT: I remember seeing it, but I need to see
5 it again. Okay. Ms. Green, we have it here, so we're all
6 set. Thank you, Kelli. So stand by one second, please.
7 Counsel, did the state produce Exhibit 836 in discovery?

8 MR. ELLSWORTH: Yes, your Honor.

9 THE COURT: All right. Then the Court will reverse
10 its earlier denial of the admission of this document and
11 admit it into evidence.

12 (Exhibit 836 received at 11:33 a.m.)

13 MS. GREEN: Thank you, your Honor. I have nothing
14 further for Mr. Baird.

15 MR. RUEGGER: Good morning, your Honor.

16 DIRECT EXAMINATION

17 BY MR. RUEGGER:

18 Q Good morning, Mr. Baird.

19 A Good morning.

20 Q You probably don't remember me. I appeared at your
21 deposition but didn't ask you any questions. My name is
22 Arthur Ruegger from the Dentons firm. We represent the
23 Retirees' Committee. I have a couple of issues I'd like to
24 talk to you about this morning. Shouldn't be too long,
25 though. The first is the date when Mr. Orr accepted your

1 invitation or the state's invitation to become emergency
2 manager. Do you remember the specific date he said yes?

3 A No.

4 Q You'll recall Mr. Wertheimer showed you an exhibit. It
5 was 807. I think it was an e-mail dated February 13th, and
6 that, if I read it correctly, seems to indicate he had not
7 yet made his mind up. Is that consistent with your
8 recollection?

9 A Yes.

10 Q I'm going to ask to show you a document that may refresh
11 your recollection about the timing of his acceptance. I have
12 a document marked for identification RC Exhibit 460.

13 MR. RUEGGER: With your Honor's permission, I'll
14 present it to the witness.

15 THE COURT: Yes, sir.

16 MR. RUEGGER: It's not on the list, gentlemen. It's
17 just marked for identification. I haven't offered it yet.

18 THE WITNESS: All right. I've completed my review.

19 BY MR. RUEGGER:

20 Q Does that refresh your recollection, sir, about the date
21 that Mr. Orr accepted the position as emergency manager?

22 A No, sir.

23 Q Do you recognize that document?

24 A I believe I have seen this document, yes.

25 Q Can you tell us what it is?

1 A It is a --

2 MR. SHUMAKER: Your Honor, we would object before
3 the witness gets into the exhibit that this exhibit was not
4 on the pretrial exhibit list.

5 MR. RUEGGER: It was only recently produced, and I
6 only found it within the last day or so, so I don't believe
7 it was produced before the date of the pretrial order.

8 MR. SHUMAKER: This is a document produced in the
9 Davis litigation.

10 MR. RUEGGER: I don't have any basis to question
11 your --

12 THE COURT: Counsel, I have to ask you to address
13 your comments to the Court, not to each other.

14 MR. RUEGGER: Sorry, your Honor.

15 THE COURT: So the question is when was this
16 document produced or how?

17 MR. SHUMAKER: Your Honor, again, this was not on
18 the pretrial exhibit list, and the indications are that it
19 was a document produced in the Robert Davis litigation, which
20 predated the deadline of the pretrial order.

21 THE COURT: And just so we're clear, what number
22 exhibit are we talking about?

23 MR. RUEGGER: It's Exhibit Number 460, your Honor.

24 THE COURT: Okay.

25 MR. RUEGGER: We've only marked it today. It's not

1 on the pretrial list. Mr. Shumaker is correct about that.
2 And I believe there's an objection to my question as to
3 whether the witness can identify the document.

4 MR. SHUMAKER: You were asking him questions about
5 the document's contents. That's why I objected.

6 MR. RUEGGER: Well, I believe my question was
7 whether he could identify the document.

8 THE COURT: No. He said he could recall it. Then
9 you asked him --

10 MR. SHUMAKER: What is it?

11 THE COURT: -- what is it?

12 MR. SHUMAKER: Another objection --

13 THE COURT: I'll allow it to be identified for the
14 record, but if you offer it in evidence, we're going to have
15 to deal with this issue of it not being on the list. Can you
16 just tell us generally what the document is without telling
17 us the contents?

18 THE WITNESS: The document is a -- is the forwarding
19 of a prospective timetable of communications and
20 announcements predicated upon Kevyn final decision, which at
21 the time of this document had not been made.

22 BY MR. RUEGGER:

23 Q So is it your testimony, sir, that as of the date of this
24 document, Mr. Orr had not made any final decision?

25 A Yes.

1 Q But I believe your testimony was that you were forwarding
2 to him a proposed timetable on the contingency that he would
3 make a final decision?

4 A I can't answer your question without the judge's
5 permission because there's a key part of this that I believe
6 you're ignoring.

7 Q Apart from the document, sir, did you forward to Mr. Orr
8 a proposed timetable related to his potential acceptance of
9 the emergency manager position and the events that would
10 follow from that acceptance?

11 A Pursuant to his decision, yes.

12 Q And which decision was that?

13 A The decision of whether he would accept this nomination
14 if recommended.

15 Q And you forwarded that timetable before he gave you his
16 decision?

17 A Yes.

18 Q Do you recall how far in advance of his decision you
19 forwarded that timetable?

20 A I don't remember his exact date.

21 Q So even before his decision, the state had a proposed
22 timetable for events that were to follow from receipt of his
23 decision?

24 A It was a -- it was a tentative plan, yes.

25 Q Okay. And can you tell us what dates or events were part

1 of that timetable?

2 A Well, that would be giving the content of the memorandum.

3 Q Without -- sorry, your Honor. Without basing your
4 testimony on the document in front of you, from your
5 recollection, can you recall those events?

6 A No, I cannot.

7 MR. RUEGGER: Okay. I would offer Exhibit 460 in
8 evidence.

9 MR. SHUMAKER: Same objection, your Honor, and
10 hearsay.

11 THE COURT: Well, what do you have to suggest that
12 you only recently got this document, for example, after the
13 final pretrial?

14 MR. RUEGGER: Your Honor, the Retirees' Committee
15 was not part of the Davis litigation. We did not serve a
16 subpoena on Jones Day in any litigation. We've learned about
17 some of these productions in the course of the depositions
18 leading up to this trial, but we were behind the eight ball,
19 if you will, in terms of learning about this. We tried to
20 follow up when we could. It was a hectic schedule. We only
21 got these documents in the last 48 hours, to the best of my
22 knowledge.

23 MR. SHUMAKER: Your Honor, the Retiree Committee has
24 multiple documents that are based -- are documents produced
25 in the Davis litigation, specifically Exhibits 400, 401, 402,

1 403, so clearly Retirees' Committee had time in advance of
2 the joint pretrial order to submit this document.

3 THE COURT: May I see a copy, please?

4 MR. SHUMAKER: May I approach?

5 MR. RUEGGER: Your Honor --

6 THE COURT: The Court concludes -- I'm sorry.

7 MR. RUEGGER: I'm sorry, your Honor. In response to
8 Mr. Shumaker's objection that we had documents from the Davis
9 litigation, we attended the Orr deposition. Someone
10 marked -- was it -- I don't know if it was ours -- some
11 documents from certain of these litigations, but, to the best
12 of my knowledge, we were behind the eight ball trying to get
13 these documents. I don't have a personal knowledge as to
14 exactly when we did get these.

15 THE COURT: The Court concludes that the record does
16 establish cause for the late addition of this document to the
17 exhibit list. The other objection is overruled. Exhibit 460
18 is admitted.

19 (Exhibit 460 received at 11:43 a.m.)

20 MR. RUEGGER: Thank you, your Honor. May I proceed?

21 THE COURT: Yes. Did we give you your document
22 back?

23 MR. RUEGGER: Do you want an extra copy? You're
24 okay.

25 THE COURT: Oh, yes. I need a copy. So that's our

1 copy that we have? Okay.

2 BY MR. RUEGGER:

3 Q Mr. Baird, can you tell us now what Exhibit 460 is?

4 A Exhibit 460 is my forwarding a tentative communications
5 timetable that was given to me by the governor's press
6 secretary to Kevyn Orr on February 21st, 2013.

7 Q And that timetable contemplates a date where the governor
8 would announce his recommendation of Mr. Orr as emergency
9 financial manager; correct?

10 THE WITNESS: May I read from the document, your
11 Honor?

12 THE COURT: Yes.

13 THE WITNESS: "A Thursday, March 14th, date for
14 governor to confirm the emergency post-hearing as required
15 legally and recommend ELB candidate and for the ELB to
16 confirm and make the emergency financial manager
17 appointment."

18 BY MR. RUEGGER:

19 Q And if you turn to the last page of that document, the
20 timetable also contemplated that Mr. Orr would start in his
21 official capacity as of March 25th; correct?

22 A That was the working timetable, yes, sir.

23 Q And would this timetable have slipped at all if Mr. Orr
24 had not accepted the position on or about the date you sent
25 this timetable?

1 A For Mr. Orr, yes.

2 Q So there were other candidates that the governor might
3 have recommended to comply with this timetable?

4 A I'm sorry. Say that again.

5 Q If I understood your testimony correctly, you said that
6 if Mr. Orr had not accepted promptly on or about the date you
7 sent the timetable, the timetable would have slipped for
8 Mr. Orr.

9 A Mr. Orr had not made his decision at the time of this,
10 and it was predicated on something needing to happen that had
11 not yet happened, and so this was all very tentative.

12 Q You state in the first paragraph on the first page that,
13 "We would like you here physically for announcement,
14 stakeholder meetings, and media on March 15 and as much of
15 the following week as you could manage before the start date
16 of March 25th."

17 THE COURT: What is your question?

18 BY MR. RUEGGER:

19 Q My question is did Mr. Orr say he could be physically
20 available on those dates?

21 A I don't recall him saying because it was contingent upon
22 something else happening.

23 Q Do you recall approximately -- or specifically when after
24 you sent this e-mail Mr. Orr accepted the position?

25 A Well, Mr. Orr never accepted the position. He only

1 accepted the nomination of the governor to the Emergency Loan
2 Board, so there was no acceptance of position until that
3 action had occurred.

4 Q I stand corrected. When did Mr. Orr indicate to you he
5 accepted whatever positions or contingencies you were
6 offering?

7 A I don't remember the exact date, but I know it was after
8 this memo.

9 Q Thank you, sir. I'd like to switch time and subject
10 slightly to July of this year. Do you recall whether you had
11 any role in the structuring of the city's advisors' fees in
12 the upcoming Chapter 9 proceeding?

13 A I'm sorry. Say that again, please.

14 Q In July of this year, as everyone in this courtroom
15 knows, there was a petition for Chapter 9 relief on behalf of
16 the city. Leading up to that petition, did you have any role
17 in the structuring of the fees for the city's various
18 advisors in that Chapter 9 proceeding?

19 A Not structuring of the fees, no, sir.

20 Q What role, if any, did you have?

21 A I was requested by the emergency manager to go back to
22 members of the restructuring team and discuss putting a finer
23 point on their fees, which the original estimates were higher
24 than what the emergency manager believed were affordable.

25 Q Do you recall compiling proposed fees for each of the

1 advisors to the city in that connection?

2 A Compiling fees?

3 Q Did you determine any approximate fees for those advisors
4 going forward?

5 A I had conversations with the principals of those entities
6 about reducing the estimates that they had previously
7 provided.

8 Q So if I understand you correctly, the advisors had given
9 estimates for their fees in the Chapter 9 proceeding, and you
10 were tasked with engaging with them about whether those fees
11 could be reduced?

12 A Yes.

13 Q Do you recall communications with Mr. Saxton and Mr.
14 Dillon at Treasury on this subject?

15 A Yes, I do.

16 Q What did you tell them?

17 A When?

18 Q On or about July 16th, 2013.

19 A I don't recall the exact -- can you tell me is that
20 before or after I had the conversations with the
21 restructuring team principals?

22 Q Well, I'm not allowed to tell you that, sir, but if I
23 can --

24 A Then I don't recall.

25 MR. RUEGGER: Can I approach the witness with an

1 exhibit that I believe will help refresh his recollection?

2 THE COURT: You may.

3 THE WITNESS: Yes. This is consistent with my prior
4 testimony and does help me recollect.

5 THE COURT: Excuse me, sir. The only question was
6 does that document refresh your recollection on this point.

7 THE WITNESS: Yes, it does.

8 BY MR. RUEGGER:

9 Q Thank you. Do you recall on or about that date giving
10 Mr. Saxton and Mr. Dillon estimated fees for the advisors to
11 the city in Chapter 9?

12 A Well, estimated reductions, which netted to estimated
13 fees, yes, sir.

14 Q Okay. Can you tell us without discussing the content
15 what the document that's been marked as 458 is?

16 A Well, yes. It's hard to -- the content is all numbers,
17 so -- but effectively it is -- as I said before, it is a
18 communication to Tom Saxton from -- to Tom Saxton and Andy
19 Dillon from me that deals with conversations that I had had
20 with Ernst & Young, Miller Buckfire, Jones Day, and Conway
21 MacKenzie dealing with a reduction in fee estimates.

22 MR. RUEGGER: Your Honor, we offer 458 in evidence.

23 MR. SHUMAKER: Objection, your Honor. It's another
24 brand new one. Also, it's hearsay.

25 MR. RUEGGER: Your Honor, it was produced by the

1 State of Michigan. Again, as with the earlier document, we
2 were behind the eight ball in terms of receipt of these
3 documents. We did not subpoena them ourselves. The other
4 parties did, but I only received this document in the last 24
5 hours.

6 THE COURT: All right. For the same reason, the
7 Court will overrule the objection and admit it into evidence.

8 (Exhibit 458 received at 11:52 a.m.)

9 MR. RUEGGER: Thank you, your Honor.

10 BY MR. RUEGGER:

11 Q So, Mr. Baird --

12 THE COURT: Before we proceed, however, I will ask
13 you over the lunch break, which we will take here shortly, to
14 advise counsel for the city and the state if there are any
15 other exhibits that you intend to offer into evidence on the
16 same grounds. All right? Will you do that?

17 MR. RUEGGER: I can certainly do it. I can state
18 now that are no such documents related to this witness, your
19 Honor, but I will ask my colleagues related to any other
20 witnesses.

21 THE COURT: And we need a copy of Exhibit 458. Can
22 you provide that for us, please? Thank you, sir.

23 BY MR. RUEGGER:

24 Q Mr. Baird, in the e-mail that's at the middle of the page
25 going to the bottom, which is, I believe, addressed from you

1 to Messrs. Saxton and Dillon, are those, as you testified
2 earlier, your determination of the fee reductions you believe
3 are achievable in the Chapter 9 case?

4 A I would testify that these are an accurate summary of my
5 conversations with each of those parties.

6 Q And you believe that the total fees from the four
7 advisory firms were approximately \$75.2 million; is that
8 correct?

9 A Well, that's the mathematical exercise, yes. That's what
10 the memo says.

11 Q So what's the -- can you explain the difference between
12 the breakout of the four sets of fees that's in the beginning
13 of that e-mail and then the four sets of fees that's at the
14 bottom of that e-mail?

15 THE COURT: Excuse me, sir. I'm going to interrupt
16 your answer to that question. What's the relevance of all of
17 this?

18 MR. RUEGGER: Your Honor, there's several pieces of
19 relevance, one of which is whether the advisors had an
20 incentive to rush to Chapter 9 vis-a-vis the cap that might
21 have been on their fees before the Chapter 9, and that's one.
22 Another is the reasonableness of the \$5 million advisory cap
23 that is stated in the appropriations part of PA 436. I'm not
24 going to spend a lot of time on this, Judge.

25 THE COURT: Yeah. I don't think any of those --

1 either of those is reasonably arguable, so I'm going to ask
2 you to move on.

3 MR. RUEGGER: Very well. I have no further
4 questions of this witness. Thank you. Thank you, Mr. Baird.

5 DIRECT EXAMINATION

6 BY MS. BRIMER:

7 Q Good morning, Mr. Baird. My name is Lynn Brimer. I
8 represent the Retired Detroit Police Members Association. I
9 only have a handful of questions for you. You indicated you
10 participated in the January 29 interview process for the law
11 firms. Were you aware that Miller Buckfire had shared the
12 interview questions with the Jones Day team?

13 A No.

14 Q Would you have considered it appropriate to have shared
15 the interview questions with the teams in advance of the
16 meeting?

17 A Well, you've characterized this as an interview. It was
18 not an interview.

19 Q So if it wasn't an interview, what was the meeting -- the
20 January 29 meeting intended to be?

21 A It was bringing together credentialed firms to address
22 various considerations to assist the city in creating a
23 request for proposal which would have had to go out
24 subsequent to that time.

25 Q You're aware that Jones Day put together what they

1 considered to be a pitch book for that meeting; correct?

2 A I'm aware that all of those firms invited would have
3 hoped to have been candidates for any future successful RFP.

4 Q Were you aware that Miller Buckfire had presented or
5 brought in Jones Day in the -- to Treasury in the process of
6 drafting the consent agreement?

7 A I don't believe so I was.

8 Q Okay. Were you aware that Miller Buckfire -- I mean that
9 Jones Day had provided advice in connection with revising
10 Public Act 4 to members of Treasury?

11 A No.

12 Q Do you know who drafted the RFP that was ultimately
13 issued in connection with the retention of counsel?

14 A I don't know who specifically drafted it.

15 Q Do you know whether or not Miller Buckfire participated
16 in the drafting of the RFP?

17 A I do not.

18 Q Now, you indicated you were not aware of when Mr. Orr
19 actually accepted his nomination by the governor. Do you
20 know when it was that the governor had finally -- or had
21 determined that Mr. Orr would be the candidate he nominated?

22 A I was asked about the exact date, and I did not recall
23 the exact date. And I would say that I don't recall the
24 exact date where the governor was involved in saying this is
25 my person either.

1 MS. BRIMER: Could we see Exhibit 807?

2 BY MS. BRIMER:

3 Q And I believe, Mr. Baird, this exhibit has already been
4 admitted into evidence. You'll see midway down there's an e-
5 mail from you to Mr. Orr. Do you see that?

6 A Yes.

7 Q That's dated February 12th; correct?

8 A February 12th, yes.

9 Q All right. And if you look at the second page or
10 perhaps -- yeah. We'll look at the second page. There's a
11 sentence in that very top paragraph, "Anyway, I need you to
12 clue me in" -- "to clue me in you are" -- if -- I believe
13 you're missing the word "if" -- "if you are feeling
14 differently because the boss" -- does the boss refer to the
15 governor --

16 A In this context, I think it did.

17 Q -- all right -- "and his team are already arranging for
18 the church and pastor, and I need to talk them off the ledge
19 if you tell me we are misreading the relationship." So was
20 it by at least -- was it by February 12th that the governor
21 had determined -- can you interpret from this that the
22 governor had determined that Mr. Orr would be the candidate
23 he nominated?

24 A I think the governor had determined by this point that
25 subject to further due diligence and research that he would

1 be very comfortable with this individual as his nomination.

2 Q Were you aware that after February 12 Mr. Orr continued
3 to share the e-mails that you and the governor had shared
4 with him with members of his team at Jones Day?

5 A Not at the time.

6 Q Have you since learned that?

7 A I believe I've seen some e-mails since then, yes.

8 Q Was Mr. Orr the only candidate that the governor
9 nominated in connection with this -- the EM position?

10 A Nominated to the ELB?

11 Q Yes.

12 A Yes.

13 MS. BRIMER: I have nothing further, your Honor.

14 THE COURT: Thank you. We'll stop for lunch now and
15 reconvene at 1:30, please.

16 THE CLERK: All rise. Court is in recess.

17 (Recess at 12:01 p.m. until 1:30 p.m.)

18 THE CLERK: All rise. Court is in session. Please
19 be seated. Recalling Case Number 13-53846, City of Detroit,
20 Michigan.

21 THE COURT: It appears everyone is here. You may
22 proceed.

23 MS. PATEK: Good afternoon, your Honor. Barbara
24 Patek on behalf of the Detroit public safety unions.

25 DIRECT EXAMINATION

1 BY MS. PATEK:

2 Q Good afternoon, Mr. Baird.

3 A Good afternoon.

4 Q Just a couple questions for you. You indicated in your
5 testimony this morning that you had advised the governor to
6 perhaps have some internal controls about what could go into
7 the plan. Can you tell me what those internal controls that
8 you advised were?

9 A There was really only one that was on my mind.

10 Q And what was that?

11 A That the governor reserved the right to approve decisions
12 taken of a particular magnitude before they were executed.

13 Q When you say "decisions of a particular magnitude," can
14 you explain what you mean by that?

15 A Proposed plan of adjustment kind of conditions of a
16 material nature.

17 Q Are you talking about diminishment or impairment of
18 certain obligations of the city?

19 A It could have been diminishment or impairment, but
20 specifically I didn't have monetary notion in mind. I had an
21 internal control of a secondary approval in mind. I can't
22 speak for the others relative to their notion of
23 contingencies.

24 Q So I take it those internal controls or contingencies
25 were not directly related to the pension issues in the case?

1 A Not in my mind, no.

2 Q Last series of questions. You indicated also that at
3 some point -- I think it was in June of 2003 (sic) -- the
4 emergency manager had raised some concerns about the fees of
5 the various professionals, and he consulted with you in that
6 regard.

7 A I don't recall if it was -- if it was the emergency
8 manager and the treasurer or just the emergency manager, but
9 I do recall the conversation with the emergency manager was
10 that he had not had an opportunity to talk with the members
11 of the restructuring team, the external lenders, the
12 professional firms, about their fee estimates, and that was
13 something that really needed to be done prior to any
14 potential filing.

15 Q And you said you put together some figures for him?

16 A I did. I put together some -- I put together an approach
17 that suggested here are two different approaches that we
18 might take in conversations with those individuals.

19 Q And who -- and for whom were you working at the time you
20 put those figures together?

21 A Well, I was doing this at the request of Emergency
22 Manager Kevyn Orr.

23 Q And did you see yourself as working at that point on
24 behalf of the state or on behalf of the city?

25 A I actually saw that I continued to work on behalf of my

1 own company, but I'd been asked to take on a task, and I
2 agreed to do that.

3 Q Okay. And did you see any conflict in that regard?

4 A No.

5 MS. PATEK: That's all I have. Thank you.

6 THE COURT: Anybody next? Questions from the state
7 or the city?

8 MR. ELLSWORTH: No, your Honor.

9 MR. SHUMAKER: The city has no questions, your
10 Honor.

11 THE COURT: Mr. Baird, you are excused. Thank you
12 very much for your testimony today.

13 THE WITNESS: Thank you, your Honor.

14 (Witness excused at 1:33 p.m.)

15 MR. KING: Good afternoon, your Honor. Ron King
16 with Clark Hill on behalf of the Retirement Systems. The
17 next witness we're going to call is Brad Robins.

18 THE COURT: Step forward, please, sir, and before
19 you sit down, please raise your right hand.

20 BRADLEY ROBINS, WITNESS, SWORN

21 THE COURT: Please sit down.

22 DIRECT EXAMINATION

23 BY MR. KING:

24 Q Good afternoon, Mr. Robins.

25 A Good afternoon.

1 Q For the record, will you please state your name and
2 business address, please?

3 A Yes. My name is Bradley A. Robins. I'm a managing
4 director at Greenhill & Company, 300 Park Avenue, New York,
5 New York.

6 Q And, Mr. Robins, could you briefly describe for the Court
7 your educational background?

8 A Sure. I have a BA in economics from Middlebury College
9 in Middlebury, Vermont. I have a law degree from the
10 University of Pennsylvania.

11 Q And where did you graduate from Middlebury College?

12 A 1986.

13 Q And when did you attend law school?

14 A University of Pennsylvania.

15 Q And when did you graduate from law school?

16 A 1990.

17 Q And for the benefit of the Court, we'd like to just go
18 through your professional background and experience. After
19 you graduated from law school, were you employed?

20 A Yes. My first job was as a law clerk to Judge Walter
21 Stapleton on the Court of Appeals for the Third Circuit, U.S.
22 Court of Appeals for the Third Circuit, and after --

23 Q And how long were you clerking?

24 A That was a one-year job. After that I was an attorney at
25 Wachtell, Lipton, Rosen & Katz in New York in the creditors'

1 rights department.

2 Q How long were you employed at Wachtell?

3 A I was employed there about six or so years, little more
4 than six years.

5 Q And what types of work did you do as an attorney at
6 Wachtell?

7 A As an attorney at Wachtell, I did restructurings,
8 bankruptcies, and financings along with leveraged buyouts.

9 Q When did you leave Wachtell?

10 A I left Wachtell in late 1998 or sometime in 1998,
11 thereabouts.

12 Q And did you take another position at that point?

13 A I did. I went to the investment banking firm of
14 Houlihan, Lokey, Howard & Zukin, and I joined the financial
15 restructuring group there.

16 Q And what type of work did you do at Houlihan Lokey?

17 A There again it was on the banking side rather than legal,
18 but I did restructurings, distressed M&A transactions,
19 assignments like that.

20 Q Can you give us some examples of the types of assignments
21 that you performed?

22 A We advised United Artists, the movie theater chain, when
23 they went through bankruptcy, worked with some oil and gas
24 companies doing out-of-court restructurings as well as
25 bankruptcies.

1 Q And what type of work were you specifically doing?

2 A Well, I was a vice president -- a senior vice president,
3 so I was kind of leading the execution team and overseeing
4 the associates and analysts on the assignments.

5 Q When you say "execution team," for my benefit, what does
6 that mean exactly?

7 A It means doing the day-to-day work on the assignments.

8 Q And how long were you at Houlihan Lokey?

9 A About two years, a little over two years.

10 Q And after you left Houlihan Lokey, where were you
11 employed?

12 A At Greenhill & Company.

13 Q And that is your present employer?

14 A Yes, it is.

15 Q And what year did you start with Greenhill?

16 A I began in late 2000 or the beginning of 2001.

17 Q And generally what types of work were you performing at
18 Greenhill?

19 A Very similar to Houlihan Lokey, so advising companies,
20 investors, stakeholders in companies that were distressed, in
21 and outside of court restructurings or companies looking to
22 invest in distressed companies.

23 Q And can you give us a little more specific understanding
24 of the types of work or the types of engagements that you're
25 undertaking?

1 A Sure. A lot of the clients are companies, so advising
2 companies who are recognizing or thinking about needing to
3 restructure. Those have included Loral, for example, AT&T
4 Canada, Refco, which was a commodities broker. We also
5 worked with creditors. And another significant client over
6 the years has been the Pension Benefit Guaranty Corporation,
7 which is the sort of quasi governmental entity that
8 guarantees -- insures private company pensions, and for them
9 I advise them in connection with a number of big
10 bankruptcies, American Airlines most recently, also --

11 Q Let me --

12 A Sorry.

13 Q Well, let me stop you there.

14 A Yep.

15 Q About how many engagements do you believe you've
16 undertaken for the PBGC?

17 A The PBGC, maybe six, six or so.

18 Q And for my benefit, can you explain exactly what the PBGC
19 does?

20 A Sure. I mean their role is to insure corporate pensions.
21 In bankruptcy cases, if a company terminates the pension
22 plan, the PBGC has to take on that -- take on the plan, so
23 the role for the PBGC in a bankruptcy is to really --
24 particularly in cases where companies are thinking about
25 terminating the plans, work to due diligence, negotiate

1 pushbacks so they keep the plans if possible and, if they
2 don't, figure out whether they can at least keep some, and
3 then negotiate the treatment they would receive in the
4 bankruptcy case if a plan is terminated.

5 Q Can you give us a specific example of where you were
6 performing those types of services?

7 A Yeah. I mean the most recent is American Airlines, and
8 American Airlines filed for bankruptcy a couple years ago,
9 you know. And when they did, they announced pretty quickly
10 they intended to terminate all the pension plans, so that was
11 a pretty good example of working with PBGC both as a member
12 of the creditors' committee but also to really diligence and
13 negotiate over that, the treatment of the pensions in the
14 plans.

15 Q Well, let me stop you there. Describe what you mean by
16 "diligence and negotiate" with respect to the pension
17 benefits.

18 A Okay. Well, you know, the question when American
19 Airlines -- American said they couldn't afford the pensions
20 anymore. They weren't affordable. One of the things that
21 happens early on in a restructuring discussion usually is a
22 company puts out a proposed business plan, so a big part of
23 the early work is reviewing that business plan, diligencing
24 that business plan, spending time with the leaders at the
25 airline who run the different parts of the business that

1 generate those revenues, understand it, really ask questions
2 and probe. Usually what ends up happening is changes are
3 made to a company's business plan during that process, so,
4 you know, that was the initial stage at American Airlines.
5 Also negotiating and talking to other creditors about what
6 the effect would be if the company did successfully terminate
7 the plans and together make the case that they couldn't
8 successfully do it if they tried and they --

9 Q I'm sorry. They could not successfully do it if they
10 tried?

11 A Yes.

12 Q And why was that?

13 A Because we were working to make the case and show that
14 they did have sufficient cash flows to afford the pension
15 plans in that case.

16 Q And what was the ultimate outcome in the American
17 Airlines matter?

18 A Ultimately, the plan that was confirmed keeps all the
19 pensions. It hasn't consummated yet because they're awaiting
20 the anti-trust trial with U.S. Airways, but the plan that's
21 been confirmed has all the pension plans still in place.

22 Q And what was your specific role in that engagement?

23 A I led the Greenhill team that advised PBGC. We, you
24 know, engaged in the negotiations on behalf of the business
25 folks at PBGC and deeply involved in the financial diligence

1 of American's business plan.

2 Q Is it possible for you to quantify the number of
3 restructurings that you'd been involved in in let's say the
4 last five years?

5 A Not specifically, but it would be dozens I would say.

6 Q It would be enough so that if I asked you if you could
7 define what your understanding of a proposal is that you
8 could do it; is that right?

9 A Yes.

10 Q And how would you define a proposal in the context of the
11 restructuring work that you performed?

12 A Well, a proposal would be a company or a debtor coming
13 forward with some pretty specific changes it wanted to make
14 to either debt or other obligations and laying out both the
15 specific changes it wants and the reasons for that.

16 Q Along those same lines, in your experience, how would you
17 define negotiations in the context of the restructuring work
18 you performed?

19 MR. CULLEN: Objection, your Honor. Is there a
20 point to having a lay witness define a common term?

21 MR. KING: This is his understanding of these terms,
22 your Honor, in the context of his experience and his work in
23 this industry.

24 THE COURT: I agree. I'll permit it.

25 THE WITNESS: Can you repeat the question?

1 BY MR. KING:

2 Q Sure. In your experience in the context of the
3 restructuring work you've done, what's your definition or how
4 would you define negotiations?

5 A Typically it would involve the initial proposal from the
6 party in a restructuring who wants to make changes to the
7 debt or other obligations it has, and then the creditors and
8 other stakeholders reviewing that proposal, coming back with
9 alternatives saying yes, no, or providing some other
10 alternative, and then there's a back and forth. It's based
11 on a combination of, you know, information that's available
12 and business leverage and negotiations.

13 Q In your professional experience, have you developed
14 proposals -- excuse me -- developed proposals addressing the
15 affordability of pension benefits?

16 A Yes.

17 Q And so that would be similar to the work that you did for
18 American, for example?

19 A Yes.

20 Q And in that same context, have you personally been
21 involved in negotiations regarding the treatment of pension
22 benefits?

23 A In a Chapter 11, yes.

24 Q So that's a good point. Have you ever had an engagement
25 involving a Chapter 9 proceeding?

1 A I have not.

2 Q Your experience is limited to Chapter 11?

3 A Yes.

4 Q Now, by virtue of the fact that you're sitting here
5 today, at some point you have been engaged in some capacity
6 to participate in the bankruptcy proceeding or the Detroit
7 restructuring matter?

8 A Correct.

9 Q Can you explain for the Court how you became involved in
10 this matter?

11 A Yes. I was contacted this spring by an attorney, Bob
12 Gordon, one of your partners, to ask if we'd be interested in
13 pitching for the role of financial advisor to the Retirement
14 Systems in contemplation of a potential restructuring of
15 Detroit.

16 Q And when you were initially contacted, what was your
17 understanding of the scope of that engagement?

18 A Well, my understanding -- it was certainly from the press
19 clear there were issues financially in Detroit. I was also
20 aware that they hadn't made some of the recent pension
21 payments that they were obligated to make, so, you know, it
22 was unclear exactly what the scope would be, but we expected
23 it would involve a fair amount of diligence on the city's
24 financial situation, and we expected there'd be negotiations
25 with the city over the treatment at least of the payments

1 that hadn't been made and maybe other items and also maybe
2 just advising the pensions' interest in the context of an
3 overall restructuring, including potentially a Chapter 9.

4 Q But initially it was really to assist in what -- if I
5 understand it correctly, was it to assist in what the
6 Retirement Systems believed would be a restructuring
7 negotiation on a going forward basis?

8 A Yes.

9 Q And you're aware that at least conceptually a Chapter 9
10 had been discussed either in the media or elsewhere?

11 A Yes.

12 Q Was it your understanding that you -- that Greenhill was
13 retained specifically to advise the Retirement Systems with
14 respect to a Chapter 9 filing?

15 A No.

16 Q And what is your understanding of the scope of the
17 testimony that you've been asked to provide today?

18 A My understanding is that I'm being asked to testify about
19 whether there were negotiations that took place between the
20 city and the Retirement Systems in advance of the Chapter 9
21 filing.

22 Q And in your judgment, had any negotiation -- did any
23 negotiations take place between the city and the Retirement
24 Systems prior to the Chapter 9 filing?

25 A No.

1 Q You're familiar with the June 14, 2013, proposal for
2 creditors?

3 A Yes.

4 Q And you're aware that there was a meeting that was
5 conducted at the Detroit airport with respect to that
6 proposal?

7 A Yes.

8 Q And did you attend that meeting?

9 A I did not.

10 Q Have you subsequently come to an understanding of what
11 occurred at that meeting?

12 A Yes.

13 Q And what's your understanding?

14 A My understanding is that Kevyn Orr and others took the
15 people who were there through a 120-page deck, and I'm not
16 sure exactly in what detail, but really starting to make the
17 case that the city was in serious financial issues and would
18 want to engage in restructuring discussions with the
19 creditors who were there.

20 Q And the deck you're referring to is the document that's
21 titled "Proposal for Creditors"?

22 A Correct.

23 Q And have you personally reviewed that document?

24 A I have.

25 Q And have members of your team reviewed that document?

1 A Yes.

2 Q Is it possible to characterize how many hours you or your
3 team may have spent analyzing the materials that were
4 presented in that deck, as you described it?

5 A I mean the deck itself I'm sure we've each spent at least
6 a few hours on it and then more diligence to the items behind
7 it.

8 MR. KING: Can we look at Exhibit 43, page 109,
9 please?

10 BY MR. KING:

11 Q And if I can turn your attention to the paragraph almost
12 at the bottom referring to claims for unfunded pension
13 liabilities.

14 A Yes.

15 Q See where I'm referring?

16 A Yes.

17 Q And you're familiar with that paragraph; correct?

18 A I am.

19 Q And would you consider this to be a proposal with respect
20 to the unfunded pension liabilities?

21 A It may be a proposal for the unfunded liabilities, but I
22 didn't consider it a proposal in terms of how to treat the
23 pension plans overall.

24 Q There's a note in there that discusses underfunding of
25 approximately \$3.5 billion.

1 A Yes.

2 Q Do you know what -- do you know what that is referring
3 to?

4 A Yes. That's referring to the city's estimate of the
5 underfunded actuarial accrued liability for -- combined for
6 the two pension funds.

7 Q And do you know how that number was derived?

8 A I believe it was derived by Milliman running the math
9 based on assumptions that representatives of the city gave
10 it.

11 Q And do you have an understanding of how the pension
12 liability is proposed to be treated as set forth in this
13 proposal or in this document?

14 A Yes.

15 Q And what's that understanding?

16 A The understanding is that in this document it proposes
17 that underfunding would be treated ratably with the other
18 unsecured creditors, although, again, I think that's what it
19 says. It's not entirely clear. The other groups on that
20 page you see there's a bullet treatment, and it says what the
21 treatment is. It doesn't say that here. But I think this is
22 probably what it's trying to do. And it would propose that
23 those groups share ratably in this note that is laid out in
24 the proposal here.

25 Q Let me refer you back to the reference to the treatment

1 under the other bullet points. Your testimony is that there
2 isn't, you know, a, quote, unquote, bullet point for
3 treatment under the unfunded pension liabilities; correct?

4 A Correct.

5 Q And I'm sorry. What did you -- you thought there might
6 be some significance with respect to that omission?

7 A No. I just note that although this may be a proposal for
8 how to treat the underfunding, you know, it's not a hundred
9 percent clear, and I'm just noting that, for example, it
10 identifies treatment for all the other classes. It doesn't
11 do so for the unfunded pension liabilities.

12 Q And your testimony was that the unfunded pension
13 liability would be treated ratably. Can you explain what
14 that means?

15 A Yeah. What it looks like, each line lists -- each
16 category on this page 109 lists out an aggregate estimated
17 claim amount for these different groups, and I believe this
18 proposal suggests that those claims would each get their pro
19 rata share of the new \$2 billion note that is proposed in
20 this deck.

21 Q And what's your understanding of the \$2 billion note?

22 A You know, I guess it's sort of the city's opening shot.
23 I mean I viewed it more as just a shot across the bow that
24 they're looking to negotiate, which is why there's a hundred
25 pages of information leading up to this. The note itself I

1 thought was not really a serious proposal but may be a
2 placeholder.

3 Q Why didn't you think it was serious?

4 A You know, essentially, although it says it's a \$2 billion
5 note, there's no maturity. It's really promising to pay \$30
6 million a year for 20 years, but they're calling it a \$2
7 billion note, and I just -- I didn't view that as a serious
8 proposal.

9 Q When you say there's no maturity, there's no obligation
10 for the city to pay?

11 A Correct.

12 Q And is there any income stream or security that would
13 guarantee payment of the note?

14 A No. It does provide for annual interest at one and a
15 half percent, and it has provisions for the note to collect
16 on extra revenue that gets collected from asset sales or fund
17 for blight removal, but there's no obligation for the city to
18 pursue any of that or, you know, any incentive for the city
19 to pursue any of that to pay the note.

20 Q Did you take that as a serious proposal for the
21 creditors?

22 A No. I took it as the city sending -- putting the
23 creditors on notice that it wanted to begin the process of
24 having a discussion about a restructuring.

25 Q And did you attend a June 20th, 2014 (sic), meeting with

1 the city and its financial advisors?

2 A I did.

3 Q And who -- I'm sorry. Where was that meeting?

4 A It was in the Coleman Young Building.

5 Q And who attended that meeting?

6 A There were two meetings that I attended that day, one in
7 the morning and one in the afternoon. One of the meetings
8 was -- and the city was the host of both. Representatives of
9 the city presented to the uniformed retirees in one and the
10 nonuniformed retirees in the other meeting, and it was meant
11 to, I believe, provide that group specifically more
12 information on the healthcare proposal that had been made and
13 to start to address, you know, their concerns the city had
14 about the pension funds as they currently existed.

15 Q Did you attend both meetings?

16 A I did.

17 Q And were there any materials handed out at that meeting?

18 A There were.

19 MR. KING: Can we look at Exhibit 49, please? And
20 we'll refer to page 21.

21 BY MR. KING:

22 Q Mr. Robins, do you recall seeing page 21 of the materials
23 that were passed out at the June 20th meeting?

24 A Yes.

25 Q And what's your understanding of what's set forth in this

1 page?

2 A What is set forth -- this page followed a number of pages
3 where the city kind of summarized some financial information
4 to explain -- start to really explain its view that it needed
5 to change the pension plans as they currently exist, and then
6 what it stated is it concluded -- or near concluded with this
7 saying that these are its objectives for restructuring in
8 this case of the PFRS pension fund.

9 Q Would you characterize these objectives as a proposal?

10 A No.

11 Q And did you ever provide any feedback to the city or any
12 of its professionals with respect to these objectives?

13 A The feedback really was, you know, when will the data
14 room be open so we can start to do the work and do the
15 information gathering we need to engage in a negotiation with
16 you.

17 Q At the June 20th meeting, were there any negotiations
18 between the Retirement Systems and the city or its
19 professionals?

20 A No.

21 Q And there's been some prior testimony with respect to the
22 data room, but can you explain to the Court your
23 understanding of the data room and its function in the
24 capacity of the Detroit restructuring?

25 A Sure. It's an electronic data room where the city has

1 loaded onto, you know, a virtual data room, as they call it,
2 financial legal information about the city, its assets, its
3 historical finances, you know, the business plan going
4 forward and the back-up and build-up to that business plan.

5 Q Is the use of a data room a fairly common practice in the
6 context of the restructuring engagements that you've been
7 involved in?

8 A Yes.

9 Q And what's the benefit or the value of populating a data
10 room with financial information?

11 A Well, it lets a debtor or in this case the city provide
12 information to all of its creditors or the creditors it wants
13 to -- needs to negotiate with in a pretty efficient manner
14 and makes sure all the creditors are getting the same
15 information at the same time.

16 Q Did you or anyone on your team -- let me back up. When
17 did the Greenhill term first obtain access to the data room?

18 A I believe it was June 21st. I think it was just after
19 these meetings.

20 Q And in the context of gaining access, Greenhill had to
21 execute certain nondisclosure agreements and confidentiality
22 agreements. Is that accurate?

23 A That is true.

24 Q And have you or members of your team accessed the
25 information that's contained in the data room?

1 A Yes.

2 Q And when you accessed that information, did you come to
3 an understanding of whether or not the information that was
4 in the data room as of June 21st was complete?

5 A Yes, I did.

6 Q And what was that understanding?

7 A It was not complete.

8 Q And what did you find to be lacking?

9 A Lots of information on values of assets, different
10 projections and build-ups, and it really is typical. A data
11 room is loaded. People start looking. They ask questions.
12 That leads to more requests for additional information, and
13 that's a typical -- it's an iterative process, which is
14 typical, and that's what's happened here and is ongoing.

15 Q In the data room, were there any proposals with respect
16 to pension benefits?

17 A No.

18 Q You described an iterative process that would involve
19 asking questions. Did you or anyone on your team at
20 Greenhill subsequently ask the city or its professionals for
21 additional information following your review of the
22 information in the data room?

23 A Yes.

24 Q And which professionals particularly have you had contact
25 with?

1 A At Greenhill or at --

2 Q At the city.

3 A At the city? The diligence questions mostly go through
4 Miller Buckfire, the formal questions. The request is that
5 formal lists be made and sent around. A lot of the
6 conversations, though, also take place with Conway MacKenzie
7 and, in addition, professionals from Ernst & Young.

8 Q Since June 21st, how often would you say that Greenhill
9 has requested information from the city or its professionals?

10 A I would say formerly -- formerly -- sorry -- formally in
11 writing maybe a half dozen times, but there's a lot of, you
12 know, conversation that goes on pretty regularly as we try to
13 work through that.

14 Q And by a conversation, I'm assuming that's your team
15 picks up the phone and contacts someone from, say, Miller
16 Buckfire, for example?

17 A Correct; correct.

18 Q And is that happening on a regular basis?

19 A Yes.

20 Q And for the most part, have the professionals of the city
21 been responsive to your requests?

22 A They've been responsive. I think they had struggled at
23 times to get information that we have asked them for, but
24 they have been responsive in acknowledging the receipts
25 and -- the receipt of our requests and trying to track it

1 down, I believe.

2 Q When you say that they've been frustrated, what do you
3 mean by that?

4 A I think some of the information that's been requested --
5 MR. CULLEN: Objection, your Honor. He's
6 characterizing somebody else's state of mind.

7 MR. KING: I'm just asking the witness whether --
8 what his understanding was of the discussions that he's
9 having with the professionals from the city, your Honor.

10 THE COURT: He can testify to what they said.

11 MR. KING: That's fair.

12 BY MR. KING:

13 Q What did they say, Mr. Robins?

14 A They have at times expressed -- I won't say frustration,
15 but that they are having difficulty getting the information
16 that we've asked them for.

17 Q Do you believe that prior to July 18th Greenhill was
18 furnished complete information to fully evaluate what was
19 laid out in the June 14 proposal to creditors?

20 A No.

21 Q Can you give a couple of examples of the type of
22 information that you requested but did not receive prior to
23 July 18th?

24 A I mean a major category is the value of assets. I mean,
25 you know, there's two main sources of recovery for creditors

1 here. One is from cash flows, and one is from assets. And
2 there's been very little information available on the value
3 of assets, for example.

4 Q And did you attend diligence meetings on July 9th?

5 A I did.

6 Q And what were the nature of those meetings?

7 A Those meetings were conducted primarily by Conway
8 MacKenzie and Ernst & Young, and it was to provide an
9 opportunity for creditors and creditors' advisors -- you
10 know, the audience was primarily the financial advisors for
11 some of the different creditor groups -- opportunity for them
12 to ask questions and engage in some discussion about how the
13 ten-year projections were constructed and put together.

14 Q Where was that meeting conducted?

15 A That was held -- I believe it's called Cadillac Plaza in
16 midtown here in Detroit.

17 Q And were there any proposals set forth at that meeting?

18 A No.

19 Q Were there any negotiations that occurred at that
20 meeting?

21 A No.

22 Q Did you attend a meeting on July 10th with the city and
23 its advisors?

24 A Yeah, several. The diligence meeting of July 9th carried
25 over to July 10th, so that -- I was there till about one

1 o'clock, and then in the afternoon certain city advisors met
2 with I guess the representatives of the retirees again, one
3 meeting with the uniform, one nonuniform, but a smaller
4 group.

5 Q And who was there on behalf of the city?

6 A At which meeting?

7 Q The smaller meetings that you're describing that occurred
8 on the afternoon of July 10th.

9 A It was David Heiman and Evan Miller from Jones Day, Chuck
10 Moore from Conway MacKenzie, and I think Gaurav Malhotra from
11 E&Y was there as well.

12 Q At any of the meetings that you attended on July 10th,
13 were there any proposals presented to you or your team?

14 A There were no proposals for treatment of the pensions.
15 There was discussion about setting up a structure really to
16 diligence -- I thought of it as to continue the diligence on
17 pension issues.

18 Q Were there any negotiations at any of those meetings?

19 A No.

20 Q Do you think that prior to July 18th that the city had
21 thought it presented a proposal to you to consider?

22 A No.

23 Q Why is that?

24 A There were at least two occasions, meetings I was at,
25 where there was discussion specifically of OPEB and the

1 treatment of healthcare, and financial advisors to other
2 creditors asked the city advisors, "Have you made a proposal
3 as to pensions?" and the answer was no.

4 Q Just a couple more questions. Prior to July 18th, did
5 the city or any of its professionals ever present to you or
6 your team any scenario which did not contemplate the
7 impairment or diminishment of pension benefits?

8 A No.

9 Q Could they have done so?

10 MR. CULLEN: Objection. Foundation, your Honor.

11 THE COURT: I'm not sure what the question means,
12 could they have done so.

13 BY MR. KING:

14 Q Was there sufficient data prior to July 18th to come up
15 with a proposal that didn't contemplate impairment or
16 diminishment of pension benefits, in your judgment?

17 A I hadn't seen it. I don't know if they had it or not.

18 Q In your experience, do you believe that the 35 days
19 between the June 14th meeting and the July 18th bankruptcy
20 filing was a reasonable period of time for your team to
21 evaluate data, perform the analysis that you deemed
22 appropriate, and come up with solutions or proposals for the
23 city's consideration?

24 A No.

25 Q And I assume the same answer is true for the 28-day

1 period that elapsed between the time Greenhill was provided
2 access to the data room on June 21st and the filing of the
3 bankruptcy on June 18th -- July 18th? Excuse me.

4 A That is correct.

5 Q So last question and important question. Throughout your
6 entire experience in the process of working with the city and
7 its advisors, were there ever any negotiations with respect
8 to pension benefits?

9 A Ever or pre-petition?

10 Q Pre-petition.

11 A Pre-petition, no.

12 MR. KING: Thank you.

13 THE COURT: Thank you. Other questions for the
14 witness?

15 MR. CULLEN: If I may, your Honor --

16 THE COURT: One second. We have Ms. Levine who
17 wants to ask some questions.

18 MR. CULLEN: Oh, I'm sorry.

19 DIRECT EXAMINATION

20 BY MS. LEVINE:

21 Q Sharon Levine, Lowenstein Sandler, for AFSCME. Good
22 afternoon.

23 A Hello.

24 Q You just testified that you didn't think the month and
25 three or four days was sufficient time to negotiate a

1 proposal and come up with a consensual resolution; correct?

2 A Correct.

3 Q Do you believe it was -- one of the things the city seems
4 to be contending is that it was impractical and it couldn't
5 have been done no matter how much time you had. Do you
6 believe, given a reasonable period of time, you could have
7 come up with a proposal or a solution or a consensual
8 arrangement with the city?

9 A Yes.

10 MS. LEVINE: Thank you.

11 MR. CULLEN: Good afternoon, your Honor.

12 CROSS-EXAMINATION

13 BY MR. CULLEN:

14 Q Good afternoon, Mr. Robins. I'm Thomas Cullen of Jones
15 Day representing the city.

16 A Good afternoon.

17 Q I believe we met briefly in one of those big rooms a
18 couple weeks ago.

19 A I believe that's right.

20 Q All right. A few questions for you.

21 MR. CULLEN: If I could have Exhibit 48, which is
22 one of the document -- which is the other document from the
23 June 20th meeting, the presentation with regard to the
24 nonuniform retirees.

25 BY MR. CULLEN:

1 Q Do you see that, sir? Do you see it in front of you?

2 A I do, yeah.

3 Q Remember this document?

4 A Yes, I do.

5 Q Okay. And I'm going to direct you to -- my basic
6 question is going to be with respect to this document, was
7 the city presenting ideas for the restructuring that it
8 wanted a response from you on in this document?

9 A Unclear. I mean this document clearly presents a
10 proposal on healthcare. When it comes to pensions, it talks
11 about objectives, and I think is this one possible ideas, so,
12 you know, again, I viewed this, I think I said before, as
13 part of the city wanting to kick off discussions, you know.
14 Our reaction was when is the data room open because we need
15 to start digging and understanding your position.

16 Q So let's flip through it just quickly.

17 A Sure.

18 Q Let's look at page 8. Eight. Here we go. That's what
19 you talked about in terms of objectives for retiree
20 healthcare restructuring; is that right?

21 A No.

22 Q That wasn't in the document?

23 A That's not what I was referring to.

24 Q Okay. But it is part of the document that was presented
25 to you on this date; right?

1 A It is, yes.

2 Q Okay. And it set forth some objectives for the city for
3 this process of restructuring, did it not?

4 A It does.

5 Q All right. And did you discuss those objectives?

6 A I did not.

7 Q Okay. And did you offer any ideas for different ways to
8 address those objectives?

9 A No.

10 Q Okay. Let's look at the next page, page 9, for Medicare
11 eligible retirees, proposed design solution. Do you see
12 that, sir?

13 A I do.

14 Q And was that discussed at this meeting?

15 A It was discussed at the meeting, yes.

16 Q And what was your part of that discussion? What did you
17 say?

18 A I listened.

19 Q You didn't say anything?

20 A I said nothing.

21 Q Okay. Did you understand the page?

22 A Yes.

23 Q Let's look at page 10 where it presents the rationale for
24 that structure. Did you discuss with the city the rationale
25 for that structure as presented in that meeting?

1 A I did not.

2 Q Okay. Let's look at page 11 where it says "proposed
3 design solution." Was that presented at the meeting?

4 A It was.

5 Q Okay. And what was your response -- did you discuss it?

6 A No.

7 Q You just listened?

8 A Yes, I did.

9 Q Okay. And on page 12 where we talk about the rationale,
10 did you discuss the rationale or take issue on the rationale?

11 A I did not.

12 Q Did you understand -- you understood what was being
13 presented in those --

14 A I did. I understood a healthcare restructuring proposal
15 was being made.

16 Q Okay. All right. So when we look at page 14 and --
17 well, it's 13 and 14 for both. You understood that there was
18 a proposed design solution being suggested for healthcare.

19 A Yes.

20 Q And you understood that in the course of this meeting as
21 a whole, the city was conveying to you the message that it
22 wanted to work cooperatively with the creditors on these
23 issues; correct?

24 A Yes.

25 Q All right. And by "work cooperatively on those issues,"

1 it wanted you to engage in discussion of these ideas so that
2 progress could be made; correct?

3 A I don't know. I'd be speculating.

4 Q Was that your understanding?

5 A Yes.

6 Q Okay. And as a matter of fact, on page 15 under the
7 heading "Key Message," that's exactly what the city was
8 telling you; correct?

9 A Correct.

10 Q Now, let's move on through the document to page 20, if we
11 could, please. Twenty. Once had a trial where in the middle
12 the whole system went down. The woman running it nearly had
13 a heart attack, and there was mad copying going on in the
14 halls. She nearly had to be sedated. You see this, plan
15 freeze contributions, GRS --

16 A I do.

17 Q -- right?

18 A Yes.

19 Q And this was proposal of an idea with respect to -- and
20 the impact of an idea or scenario on pension benefits;
21 correct?

22 A I'm not sure if it was a proposal of an idea or an
23 illustration of a scenario, but --

24 Q It was one or the other?

25 A I viewed it as an illustration of a scenario as they're

1 laying out their case.

2 Q And, again, this is something you just listened, you had
3 nothing to say about.

4 A Correct.

5 Q All right. And if you look on the next page where it
6 gets to possible GSR restructuring ideas -- no, no. Let's go
7 to 22. Possible GRS restructuring ideas. You see that?

8 A I do.

9 Q Is that right?

10 A Yep.

11 Q And these were ideas that the city was putting forward --

12 A That is right.

13 Q -- restructuring the plan?

14 A Correct.

15 Q And we can agree that they're ideas and they're
16 discussable ideas?

17 A Yes, we can.

18 Q And from your field, you understand these ideas and how
19 you could discuss them; correct?

20 A Correct.

21 Q Because you had already had some exposure to the data
22 here because you had full access to the systems actuary,
23 Gabriel, Roeder; correct?

24 A Correct.

25 Q And so in order to get information about how the system

1 was actually being run and the actual liabilities of the
2 system, you had firsthand knowledge of that; correct?

3 A Correct.

4 Q And there were no restrictions placed upon your access to
5 Gabriel, Roeder?

6 A No.

7 Q Now, but again with respect to -- going back to 21 now
8 for just a second, in terms of the objectives for the GRS
9 restructuring, was there any discussion of those objectives?

10 A I don't recall specifically. I mean we were in a very
11 large conference room. Questions were only accepted in
12 writing on note cards. So I think, you know, it was really a
13 presentation by the city, so it was not a small back-and-
14 forth discussion.

15 Q And, again, you just listened?

16 A I did.

17 Q And after the meeting, with respect to all of these
18 things that you just listened to --

19 A Yes.

20 Q -- at the meeting, with respect to the scenarios and the
21 ideas of the structures and the rationale --

22 A Yep.

23 Q -- presented at this meeting --

24 A Yep.

25 Q -- did you pick up the phone and say, "Explain this to me

1 better"?

2 A I did not say that. I said, "When will the data room be
3 open?" is what I said.

4 Q Okay. And even after the data room was open, as you
5 indicated, this would be an iterative process --

6 A Absolutely.

7 Q -- by which you mean that more production yields more
8 questions --

9 A Yes.

10 Q -- and so on and so on; correct?

11 A Yes.

12 Q All right. And, again, page 23 here, work cooperatively
13 to equitably restructure GRS pensions consistent with the
14 city's severe financial limitations, do you see that?

15 A Yes.

16 Q Did you understand again here consistent with your
17 understanding of what was being attempted by the city on June
18 14th that the city was trying to coax a response or ideas out
19 of you; correct?

20 A Not clear to me at all really since, again, the data room
21 wasn't even open. I viewed this as an opening salvo where we
22 don't want to work with you, but the first step of that is
23 getting the data room open, so --

24 Q Do you have your deposition there available? Do you have
25 your deposition available?

1 A No.

2 Q Please.

3 MR. CULLEN: May I approach, your Honor?

4 THE COURT: Yes.

5 BY MR. CULLEN:

6 Q And if you look at page 46, items -- lines 2 through 6,
7 where you were asked, "What did you understand the city's
8 request for cooperation to mean?" and the answer was, "Well,
9 I understood that they were looking to have negotiations at
10 some point over the OPEB and the pension obligations."

11 MR. KING: Your Honor, objection. To the extent --
12 to the best of my knowledge, all we have is a rough draft,
13 uncertified copy of the deposition transcript today. As long
14 as the witness doesn't mind answering or can answer the
15 questions, I don't have a problem with proceeding. I just
16 want to, you know, bring that to the Court's attention
17 because I know the Court is sensitive to having the official
18 record available.

19 THE COURT: Thank you, sir.

20 MR. CULLEN: Is it all right if I proceed, your
21 Honor?

22 THE COURT: Yes.

23 MR. CULLEN: All right.

24 BY MR. CULLEN:

25 Q Would you agree that the Jones Day's generally --

1 attorneys in this meeting generally took an approach that,
2 look, we think there is this problem, here's some possible
3 ideas that we thought of, but we're going to want to get you
4 to see or work cooperatively to equitably restructure these
5 pensions consistent with the city's severe financial
6 limitations? Do you agree with that, sir?

7 A I'm sorry. Were you just reading from the --

8 Q If you take a look at 46, 7 through 17.

9 A 46, 7 -- yeah. You're reading my answer there?

10 Q Yes.

11 A Yeah, I do agree with that.

12 Q Okay. All right. Now, as of this time and at no time in
13 terms of the ideas that the city was coming up with and
14 bouncing off you in this meeting, did you ever have any
15 substantive response to any of these ideas?

16 A No, other than we really need to dig in to do the work on
17 the diligence.

18 Q Okay. All right. Now, let's -- in terms of your
19 relationship with your client throughout this period, did you
20 ever have authority to negotiate any diminution or impairment
21 of vested pension rights?

22 A No. I mean there was no specific proposal that I took
23 back to them, so there's no reason they would have given me
24 that.

25 Q Did you take these ideas back to them, the ideas we've

1 talked about in the January 20th proposal?

2 A Yes. We told them about the meeting, and some of the
3 trustees were there, so they were aware of those ideas.

4 Q And did you ask for authority to discuss any of these
5 ideas?

6 A No.

7 Q Did they ever give you authority to discuss any of these
8 ideas?

9 A No.

10 Q These, I take it, are all ideas in which you have
11 competence, training, and the expertise to address and
12 discuss; correct?

13 A With sufficient information, yes.

14 Q Okay. And it's true, is it not, that with respect to
15 vested pension benefits, it was your understanding that there
16 would be no retreat or compromise beyond a hundred cents on
17 the dollar unless and until there was no alternative
18 whatsoever? Is that true, sir?

19 A I know it would be our starting point that the vested
20 benefits should be unaffected for sure.

21 Q Did you ever indicate any willingness to move beyond that
22 starting point?

23 A Probably not.

24 Q And did you, in fact, indicate affirmatively that you had
25 no authority nor any intention of moving beyond that starting

1 point?

2 A I don't believe so.

3 Q Okay. Did members of your client in meetings before the
4 date of filing indicate that position either to you or to
5 representatives of the city?

6 A I don't know.

7 Q If I'll take you forward to the meeting on -- the small
8 group meeting on July the 10th, I believe it was --

9 A Yes.

10 Q -- with representatives of Jones Day --

11 A Yes.

12 Q -- and I believe at that meeting the Jones Day lawyers
13 were trying to set up a process to deal with your diligence
14 problem, correct, among other things?

15 A Yes.

16 Q And they were trying to set up a four-step process;
17 correct?

18 A Yes.

19 Q Do you remember the four steps?

20 A I believe so.

21 Q Do you?

22 A I believe I do, yes.

23 Q Could you tell us?

24 A I will try.

25 Q Okay.

1 A The proposed four steps were to first have the actuaries
2 spend time together to see if they could agree on what the
3 underfunded liability is. The second step was to have the
4 financial advisors spend time working with each other to see
5 if they could agree on how much cash was available to fund
6 pension funds. The third step would be, in light of the
7 results of the diligence on those first two, to see if
8 parties could agree on whether or not any changes needed to
9 be made to the pensions. And the last step would be if
10 changes were required, what mechanisms could be put in place
11 to restore benefits if things turned out better later on. I
12 believe that is what they proposed.

13 Q And at that meeting, there was at least discussion in
14 which you participated of the merits of that four-step
15 process; correct?

16 A Correct.

17 Q And you took the viewpoint that deciding what was
18 available in terms of assets or funding should precede
19 looking at the amount of the underfunding; correct?

20 A Correct.

21 Q And you and representatives of the city argued the merits
22 of the two different positions; correct?

23 A Correct.

24 Q And you didn't come to a conclusion at that meeting?

25 A That is correct.

1 Q Okay. Was it in your view that whether step one came
2 first or step two came first, was that a deal breaker for you
3 or your client?

4 A No.

5 Q All right. But, nonetheless, you had to go back to your
6 client to get authority even for that; correct?

7 A Correct.

8 Q And the authority you were going to get from your client
9 was in a meeting some eight days later?

10 A About --

11 Q Was to be --

12 A Yes.

13 Q -- in a meeting some eight days later?

14 A Yes.

15 Q Okay. And sometime during that eight-day period, were
16 you feeling any sense of urgency about these negotiations at
17 this time?

18 A No.

19 Q Okay. And during this eight-day period, your client
20 decided to file a suit against the city, the state, the
21 governor, and the financial manager; correct?

22 A I believe that's right, but --

23 Q Yeah. When did you know that they were going to file a
24 suit with the stated objective in the suit filed July 17th
25 that neither the governor nor the emergency manager either

1 inside or outside bankruptcy had any authority to impair any
2 vested pension rights? That was the point of the suit, as
3 you recall it; right?

4 A I believe that's correct, yeah.

5 Q All right. When did you know that they were preparing
6 that suit?

7 A I don't know.

8 Q Was it before or after July the 10th?

9 A I believe it was after, but I'm not sure of that.

10 Q All right. Were you working out of the same offices as
11 Clark Hill at some times during this engagement?

12 A At some times, yes.

13 Q Yeah. Did you ever become aware that they were preparing
14 for this litigation while you were in their offices?

15 A No.

16 Q Did you ever discuss it with the lawyers for Clark Hill?

17 A After it was filed I think I did.

18 Q All right. So with respect to this lawsuit, was it your
19 understanding that by virtue of either negotiations or to the
20 law -- or through the lawsuit, that the -- that your client,
21 the Retirement Systems, would exhaust every legal remedy
22 before they would negotiate any diminution in vested pension
23 rights? Was that your understanding?

24 A No.

25 Q All right. Tell me what you have that's inconsistent

1 with that understanding. What authority did you have pre-
2 petition to address those issues, even to address ideas?

3 A Again, I don't know that I had any specific authorities.
4 I didn't request it. The advice to my client was we need a
5 lot more information before we're ready to engage on this.

6 Q Well, let's just take a for instance. This is a defined
7 benefit -- the current plan is a defined benefit plan, is it
8 not?

9 A It is.

10 Q And the city was proposing a defined contribution plan,
11 was it not?

12 A Correct.

13 Q Were you ever asked to your -- by your client or did you
14 suggest to your client that you could address a hybrid plan
15 which maintained elements of both? Does that make sense to
16 you as a concept, sir?

17 A It does, yes.

18 Q Okay. Within the range of your gifts and expertise to
19 put together such a plan; correct?

20 A With some help from the actuaries, yes.

21 Q All right. And it was also within the range of your
22 expertise to address the fourth point on the four-point
23 program, which would be how to get back some of the lost
24 pension funding that might have been lost in the early years
25 of the reinvestment; correct?

1 A Correct.

2 Q All right. And prior to the petition date, did you ever
3 address that in detail? Did you ever propose anything?

4 A Look, as I told you, where I wanted to start is
5 affordability. All right. So the primary issue for us was
6 getting together with the city, understanding the business
7 plan, and seeing whether we agreed with their view they could
8 afford it or not. We were nowhere on that, so the rest of
9 this you're just -- you're getting ahead of yourselves.

10 Q Okay. Ms. Levine asked you how long you thought a proper
11 negotiation process would take for this set of obligations
12 for the city. Do you remember that question?

13 A I don't think that's what she asked, but --

14 Q Well, I'll ask you. How long do you think it would take?

15 A It's really a function of a lot of things, including
16 information availability, so I don't know. I don't know.

17 Q Did you ever make a representation to the city that if I
18 get "X" information, that I can -- we can clear this up in
19 some finite amount of time?

20 A No.

21 Q So you at no point offered the city any finite
22 negotiation path; correct?

23 A That's correct.

24 Q All right.

25 MR. CULLEN: That's all I have, your Honor.

1 THE COURT: Any other questions for the witness?

2 MR. KING: Just a couple, your Honor.

3 THE COURT: Go ahead, sir.

4 REDIRECT EXAMINATION

5 BY MR. KING:

6 Q Mr. Robins, in your engagement with the Retirement
7 Systems, have you been asked to take a direct role in
8 evaluating healthcare benefits for retirees?

9 A No.

10 MR. CULLEN: I was just going to direct him to pre-
11 petition, so -- but if it's no, it's no.

12 THE WITNESS: No.

13 BY MR. KING:

14 Q You're not -- you haven't been asked to evaluate OPEB at
15 all with respect to retiree benefits?

16 A Correct.

17 THE COURT: The questions were focusing on pre-
18 petition, please.

19 MR. KING: Pre-petition.

20 THE WITNESS: Understand.

21 BY MR. KING:

22 Q And your testimony was that you believe Greenhill first
23 had access to the data room on June 21st?

24 A Correct.

25 Q And at any time prior to the filing of the petition, did

1 you feel you had sufficient information to make any
2 meaningful proposal to your client?

3 A No.

4 Q And on the July 10th meeting you just testified regarding
5 the four-step process, do you recall that testimony?

6 A Yes.

7 Q As of July 10th, did you believe that you had sufficient
8 data or information to meaningfully respond to that four-step
9 process?

10 A Well, I viewed the process -- and I think the question
11 from Jones Day characterized it this way, I agree -- as a
12 process really to address the diligence issues around -- the
13 diligence issues around pension issues.

14 Q At that July 10th meeting, did you have or gain an
15 understanding of what the city's position was relative to the
16 treatment of pension benefits going forward?

17 A Not specifically, no.

18 Q Did you understand their position to be that in all
19 circumstances there had to be an impairment or diminishment
20 of those pension benefits, at least as presented as of July
21 10th?

22 A Well, I think they made it clear that they needed some
23 sorts of changes, and, you know, consistent with the
24 materials from June 20th, they had some different ideas they
25 had in mind, but they didn't have a specific proposal.

1 Q Can you engage in meaningful negotiations in a
2 restructuring setting without an overall asset picture of the
3 restructuring entity, the City of Detroit in this case?

4 A Not very effectively, no.

5 Q At any time prior to the pension systems filing its
6 lawsuit on July 17th, did anyone from the pension systems
7 ever tell Greenhill to cease and desist discussions, phone
8 calls, e-mails, with the city or any of the city's
9 representatives?

10 A No.

11 MR. KING: Nothing further, your Honor.

12 THE COURT: Any further questions?

13 MR. CULLEN: No redirect, your Honor.

14 THE COURT: Thank you, sir. You may step down, and
15 you are excused.

16 THE WITNESS: Thank you.

17 MS. LEVINE: Your Honor, sorry.

18 THE COURT: I'm sorry.

19 MS. LEVINE: Just a couple.

20 THE COURT: Oh, I'm sorry. Yes. You're not
21 excused.

22 REDIRECT EXAMINATION

23 BY MS. LEVINE:

24 Q Just going back to the colloquy with regard to what was a
25 reasonable period of time --

1 A Yes.

2 Q -- in the American Airlines case, for example, that was a
3 complex pension issue; correct?

4 A Yes.

5 Q And at the time that the company filed, the debtor's
6 position was that the pensions were going to be terminated;
7 correct?

8 A Correct.

9 Q And within the time period -- it took, in fact, less than
10 the time period it took for that company to run through its
11 1113 process, you had -- the PBGC already negotiated and
12 resolved and entered into a settlement agreement to resolve
13 the pension issues; is that correct?

14 A I believe that is correct, yep.

15 Q Okay. Going back to United Airlines, Greenhill was also
16 a financial advisor in that case as well; correct?

17 A Correct.

18 Q And the pension issues were resolved also within a
19 relatively -- one-, two-, maybe three-month period of time;
20 correct?

21 A I honestly don't recall the timing on that, Sharon.

22 Sorry.

23 Q All right. Thank you.

24 A Okay.

25 THE COURT: All right, sir. You are excused. Thank

1 you.

2 THE WITNESS: Thank you.

3 (Witness excused at 2:34 p.m.)

4 MS. PATEK: Good afternoon, your Honor. Barbara
5 Patek on behalf of the public safety unions, and at this time
6 the public safety unions call Mary Ellen Gurewitz. And can I
7 just check to make sure our exhibit book is up here?

8 THE COURT: Yes.

9 MARY ELLEN GUREWITZ, WITNESS, SWORN

10 THE COURT: Please sit down over there.

11 MS. PATEK: Your Honor, if I might approach again,
12 it doesn't look like the book --

13 THE COURT: Yes.

14 DIRECT EXAMINATION

15 BY MS. PATEK:

16 Q Good afternoon. Can you state your name, please?

17 A Mary Ellen Gurewitz.

18 Q And can you briefly tell the Court what it is you do for
19 a living?

20 A I'm sorry. What?

21 Q What it is you do for a living.

22 A Oh, I'm an attorney with Sachs Waldman.

23 Q And what kind of law do you practice?

24 A Union side labor law and political and election law.

25 Q And how long have you been an attorney?

1 A Since 1974.

2 Q Can you give us a very brief overview of your education
3 and professional background?

4 A I graduated from the University of Michigan in 1965 and
5 from Wayne Law School in 1974. I then clerked for Judge
6 James Churchill in the Eastern District of Michigan, and then
7 from 1975 through 1979 I was an attorney with the National
8 Labor Relations Board. And then I joined the law firm that
9 I'm with now.

10 Q And in that capacity, do you represent the Detroit Police
11 Command Officers Association?

12 A Yes, I do.

13 Q And what is the Detroit Police Command Officers
14 Association?

15 A It's a bargaining unit consisting of the commanders and
16 captains in the Detroit Police Department.

17 Q And for how long have you represented the Detroit Police
18 Command Officers --

19 A My office has represented them since about 1995, and I
20 have been their principal attorney since, I believe, 2003.

21 Q And what kind of matters do you handle for the DPCOA?

22 A The whole gamut of representation of a labor union, and
23 that has included grievance arbitration, negotiation. I did
24 an Act 312 for the DPCOA, so whatever arises where they need
25 representation.

1 Q I want to talk for a moment about Act 312. What are Act
2 312 proceedings?

3 A Act 312 is the statute called compulsory arbitration for
4 police and fire disputes, compulsory labor arbitration, so it
5 is a supplement to the Public Employment Relations Act. And
6 when parties are unable to resolve their contract to reach
7 agreement on a collective bargaining agreement, they can
8 submit the dispute for compulsory arbitration. It is
9 available only to police and fire.

10 Q And to your understanding, is there a reason for that?

11 A Because of the importance of public safety and because
12 they have no right to strike, it is a way to resolve their
13 disputes.

14 Q And how are Act 312 proceedings triggered?

15 A They are triggered when either the employer or the union
16 files a request for Act 312 with the Michigan Employment
17 Relations Commission.

18 Q And is there a state agency that oversees Act 312
19 proceedings?

20 A Right. It is the Michigan Employment Relations
21 Commission. We call it MERC.

22 Q Ms. Gurewitz, I'd like you to take a look at in the
23 exhibit book that I handed you at the start of your testimony
24 Exhibit 718 and 719. We'll start with 718.

25 A All right.

1 Q Okay. Can you identify for the record what 718 is,
2 please?

3 A Yeah. 718 is a MERC decision which issued in June of
4 this year. Do you want to know the substance of it?

5 Q Not yet. Are MERC opinions such as Exhibit 718 public
6 records?

7 A Yes, they are.

8 Q And are they matters on which the Michigan Employment
9 Relations Commission has a legal duty to report?

10 A Yes.

11 Q And as far as you know, are they maintained as public
12 records by the State of Michigan and by the Michigan
13 Employment Relations Commission?

14 A Yes, they are.

15 Q And are they available to anyone who wants to access them
16 on the state website?

17 A Yes, they are.

18 MS. PATEK: Your Honor, at this time I would move
19 for the admission of Exhibit 718.

20 MS. KOVSKY-APAP: Your Honor, we object on the
21 grounds of relevance and hearsay.

22 THE COURT: The objections are overruled. The
23 document is admitted. What was the number again, please?

24 MS. PATEK: 718.

25 (Exhibit 718 received at 2:40 p.m.)

1 BY MS. PATEK:

2 Q And, Ms. Gurewitz, if you could take a look at Exhibit
3 719.

4 A Yes.

5 Q Is that also a MERC opinion?

6 A Yes, it is.

7 Q And if I were to ask you the same series of questions
8 about its status as a public record, would your answers be
9 the same?

10 A Yes.

11 MS. PATEK: Your Honor, at this time we'd move for
12 the admission of Exhibit 719.

13 MS. KOVSKY-APAP: Your Honor, the same objections.

14 THE COURT: All right. The objections are
15 overruled. Exhibit 719 is admitted.

16 (Exhibit 719 received at 2:41 p.m.)

17 BY MS. PATEK:

18 Q I want to ask you some general questions regarding your
19 knowledge and understanding with respect to issues related to
20 the DPCOA that they've had during the time you've been
21 representing them. First of all, have you represented the
22 DPCOA with regard to negotiations related to pension and
23 healthcare?

24 A Pension and healthcare are always subjects for collective
25 bargaining, so in negotiations we have certainly addressed

1 those issues.

2 Q And as a result of your representation of the DPCOA in
3 that capacity, do you know whether or not through their
4 employment with the city DPCOA members are entitled to Social
5 Security?

6 A They are not.

7 Q And do you know whether or not they are entitled to
8 Medicare?

9 A People became entitled to Medicare or it became mandatory
10 for contributions to be made for Medicare in 1986, so anyone
11 hired before 1986 is not Medicare eligible.

12 Q And what impact does that have on DPCOA members upon
13 their retirement?

14 A Well, they are -- assuming that they were hired before
15 1986, they are not eligible at the time they retire and they
16 will never be eligible for Medicare, and Social Security is
17 also unavailable to them, so their entire retirement income
18 comes from the pension system.

19 Q And in the event that a DPCOA member suffers a either
20 duty- or nonduty-related disability, can you tell the Court
21 whether or not such individuals are eligible for Social
22 Security Disability?

23 A They are not.

24 Q And do you have an understanding as to the basis on
25 which -- well, strike that. Do you know whether or not the

1 same rules with regard to Social Security and Medicare apply
2 to the other Detroit public safety unions; that is, the fire
3 fighters, the Police Officers Association, and the Police
4 Lieutenants and Sergeants Association?

5 A Yes. Exclusion from Social Security is for police and
6 fire employees.

7 Q Do you have an understanding as to the rationale for
8 excluding police and fire from Social Security?

9 A I think early on Social Security did not -- was not
10 available or did not cover employees of state and municipal
11 governments at all, and then gradually there were amendments
12 to the statute so that more people were brought under its
13 coverage. It is -- there are certainly statements in the
14 legislative history and in the legislation itself that says
15 that the exclusion from Social Security is based upon the
16 fact -- or occurs only -- can only occur when the employees
17 are covered by a public retirement system which meets certain
18 standards established by the IRS.

19 MS. KOVSKY-APAP: Your Honor, we object to this
20 testimony. The witness is giving legal opinions. She was
21 not called as an expert witness, and to the extent she's able
22 to give facts testimony, this isn't within her personal
23 knowledge. She's reciting the law.

24 THE COURT: No. The Court will permit it, but, Ms.
25 Kovsky, I caution you that if you object to testimony, it's

1 better to do it before.

2 BY MS. PATEK:

3 Q Moving on, Ms. Gurewitz, do you recall the last Act 312
4 proceeding in which you were involved on behalf of the DPCOA?

5 A Yes. We had hearings in 2009, and we got an Act 312
6 award in January 2010.

7 Q And can you tell the Court when the last collective
8 bargaining agreement with the City of Detroit applicable to
9 the DPCOA expired?

10 A It actually expired in June 2009 so that the Act 312
11 award that we got had already expired by the time that we got
12 it, so it was for a period from 2005 through 2009.

13 MS. PATEK: Your Honor, at this time, I'd like to
14 bring up Exhibit 717, which previously was identified by Mr.
15 Malhotra has an agreement that was negotiated between the
16 city and the DPCOA back in 2011, 2012. He identified the
17 city's signature on the agreement. And I'd like to move for
18 its admission.

19 MS. KOVSKY-APAP: Your Honor, we object on hearsay
20 and relevance.

21 THE COURT: One second, please. Oh, can you put it
22 back on the screen for me, sir? Thank you. The objection
23 is overruled. The document 717 is admitted.

24 (Exhibit 717 received at 2:46 p.m.)

25 BY MS. PATEK:

1 Q Ms. Gurewitz, are you familiar with Exhibit 717?

2 THE COURT: Give me one second before you proceed.
3 Ms. Gurewitz, could you do us a favor and sit back a couple
4 of inches from the microphone? There you go. Thank you.
5 Now you may proceed.

6 BY MS. PATEK:

7 Q Ms. Gurewitz, do you recognize Exhibit 717?

8 A Yes, I do.

9 Q And what is that?

10 A It is a tentative agreement that was reached between the
11 DPCOA and the City of Detroit in about -- well, it's signed
12 February 2012.

13 Q Do you know whether Exhibit 717 included -- was a
14 concessionary agreement?

15 A Yes, it was.

16 Q And do you know whether those concessions included
17 changes to pension?

18 A You know, quite frankly, I'm not sure.

19 Q Do you know whether Exhibit 717, while ratified by both
20 parties, was ever implemented?

21 A It was not.

22 Q And why is that?

23 A It was rejected, as I understood it, by the State of
24 Michigan.

25 Q And in that regard, between the negotiation of this

1 concessionary agreement and the appointment of the emergency
2 manager on March 25th, 2013, did the DPCOA make any further
3 effort to engage the city in collective bargaining?

4 A We did. After the rejection of the tentative agreement,
5 we periodically sought to further negotiate an agreement
6 because we had not had one for such a long time. In July
7 2012 the city imposed new terms and conditions of employment.
8 It was called the CET.

9 Q The city employment terms?

10 A Yes.

11 Q And as part of those city employment terms, was the
12 DPCOA -- was one of the things that was eliminated was their
13 right to just cause on termination?

14 A That's correct.

15 Q And that was under Public Act 4, is that correct, former
16 Public Act 4 that the CET --

17 A Public Act 4 was in effect, and the CET was imposed. The
18 city had no -- took the position that it had no obligation to
19 bargain and that it could impose terms without negotiation.

20 Q And did there come a time when Public Act 4 was
21 subsequently suspended?

22 A It was suspended in August of 2012.

23 Q And at the time of its suspension, did you or the DPCOA
24 make any further effort to engage the city in negotiations
25 with regard to terms and conditions of employment for the

1 DPCOA members?

2 A We did. The city, prior to the imposition of the CET,
3 had actually itself initiated 312 proceedings, so when PA 4
4 was suspended, we tried to resuscitate those proceedings.
5 The city withdrew its request, and we then filed our own
6 request for Act 312.

7 Q And did the process for Act 312 begin at that point in
8 time?

9 A It did, and MERC appointed an arbitrator.

10 Q And can you tell us just very briefly what happened in
11 those proceedings?

12 A We had a number of hearing days scheduled in March of
13 2013, and prior to those hearings, the city approached us to
14 negotiate. It was really the first time that they had
15 negotiated with us in several years. And we had some fairly
16 productive negotiations in March of 2013, and, in fact, we
17 did postpone the hearings that had been scheduled. We were
18 not able to reach an agreement, a complete agreement, and
19 then the emergency manager was appointed.

20 Q And what happened once the emergency manager was
21 appointed?

22 A Then our negotiations ceased.

23 Q And did the city take any action in regard to ensure that
24 there were no further negotiations?

25 A Yeah. The city filed a motion to dismiss the Act 312

1 proceedings that the DPOA had -- excuse me -- the DPCOA had
2 pending, and there were also -- there were motions that were
3 heard by MERC to dismiss both the DPCOA Act 312, an Act 312
4 that was pending for the Detroit Police Lieutenants and
5 Sergeants Association, and an Act 312 that was pending for
6 the Police Officers Association of Michigan, which
7 represented the emergency services.

8 Q And was the result of that motion by the city the opinion
9 that we previously identified as Exhibit 718?

10 A Yes, it is.

11 Q And that opinion was issued on June 14th, 2013?

12 A Yes, it did.

13 Q You were not involved in the meetings between the DPCOA
14 and the city that began with the meeting of creditors at the
15 airport on June 14th, 2013; is that correct?

16 A I was not.

17 Q And were you involved in any of the subsequent meetings
18 with the city that took place on -- the record has
19 established June 20th, July 11th, and July 10th of 2013?

20 A No, not prior to the bankruptcy.

21 Q Did you become involved at some point prior to the
22 bankruptcy in advising the DPCOA with regard to the issues
23 that were facing it as to the City of Detroit?

24 A Right. I recommended to the DCPOA and helped organize a
25 coalition of the Detroit public safety unions -- that would

1 be the lieutenant and sergeants and the commanders and the
2 DPOA and the fire fighters -- to retain bankruptcy counsel.

3 MS. PATEK: I don't have anything further, your
4 Honor.

5 THE COURT: Thank you.

6 MS. KOVSKY-APAP: Deborah Kovsky-Apap on behalf of
7 the city.

8 CROSS-EXAMINATION

9 BY MS. KOVSKY-APAP:

10 Q Ms. Gurewitz, it's nice to see you again. We met at your
11 deposition. The DPCOA does not represent current retirees;
12 is that correct?

13 A That's correct.

14 Q So the DPCOA would not be empowered to negotiate on
15 behalf of current retirees; correct?

16 A That is correct.

17 Q And the DPCOA would not be authorized to enter into
18 binding agreements on behalf of current retirees; correct?

19 A Correct.

20 MS. KOVSKY-APAP: Thank you. I have no further
21 questions.

22 THE COURT: Any further questions of the witness?

23 MS. PATEK: One question.

24 THE COURT: Yes.

25 REDIRECT EXAMINATION

1 BY MS. PATEK:

2 Q Why is it that the DPCOA cannot bargain on behalf of
3 current retirees?

4 A The statute provides that a union is authorized to
5 represent employees for purposes of negotiating over wages,
6 hours, and terms and conditions of employment, and retirees
7 are not employees.

8 MS. PATEK: Thank you.

9 THE COURT: All right. You may step down. You're
10 excused. Thank you very much.

11 (Witness excused at 2:53 p.m.)

12 MS. PATEK: Your Honor, at this time, the Detroit
13 public safety unions call Mark Diaz.

14 MARK DIAZ, WITNESS, SWORN

15 THE COURT: All right. Please sit down. Before we
16 proceed with questioning the witness, may I ask how many more
17 witnesses?

18 MS. PATEK: I think this is it, your Honor. I don't
19 want to speak out of turn, but I'm pretty --

20 THE COURT: Anyone else have any other witnesses?
21 Any rebuttals for the city that you foresee?

22 MR. SHUMAKER: No, your Honor.

23 THE COURT: Or the state for that matter? All
24 right.

25 DIRECT EXAMINATION

1 BY MS. PATEK:

2 Q Sir, can you state your name for the record?

3 A Mark Diaz.

4 Q By whom are you employed?

5 A The Detroit Police Department.

6 Q And are you employed by anybody else?

7 A Yes, I am.

8 Q And who is that?

9 A I am employed by the Detroit Police Officers Association
10 as well as the Township of Holly.

11 Q And with respect to the Township of Holly, what do you do
12 there?

13 A I'm a planning commissioner.

14 Q And with respect to -- well, first of all, what is the
15 Detroit Police Officers Association?

16 A It's the collective bargaining unit that represents the
17 police officers of the Detroit Police Department.

18 Q How long have you been employed by the DPOA?

19 A I've been employed by the DPOA since January 1st of 2013.

20 Q And how was it that you became employed by the DPOA on
21 January 1st of 2013?

22 A I was elected by the members of the Detroit Police
23 Officers Association.

24 Q To what office?

25 A To the position as president.

1 Q And how long have you been employed by the Detroit Police
2 Department?

3 A Just under 20 years, since March 21st of 1994.

4 Q Can you tell me a little bit just briefly about your work
5 historically with the Detroit Police Department?

6 A As a new police officer, I worked various positions,
7 including patrol. I worked undercover operations. I worked
8 in community relations. I worked in special operations,
9 which essentially is the booster crew going after -- my main
10 role was to investigate part one crimes and -- which is
11 essentially major felonies, as well as apprehending suspects
12 associated with those crimes. I've also been an instructor
13 at the Detroit Police Academy for -- since -- well, for seven
14 years.

15 Q And what do you teach, or what have you taught at the
16 Detroit Police Academy?

17 A As an instructor at the Academy, I have taught the state
18 computer systems. I was an administrator for that. I taught
19 first-aid, CPR, AED. I taught officers to operate and use
20 the department motorcycles as well as I taught cultural
21 diversity and advanced police ethics.

22 Q And tell us a little bit about your educational
23 background.

24 A Well, out of high school I began attending Schoolcraft
25 College until I was hired by the Detroit Police Department

1 shortly thereafter. Since then I've attended Oakland
2 Community College, Wayne County Community College, and I've
3 been enrolled studying accounting with the University of
4 Phoenix for the last two years.

5 Q And in addition to that course -- well, first, let me ask
6 you this. Do you have any affiliation besides the fact that
7 you're a beneficiary with the Police and Fire Retirement
8 System of the City of Detroit?

9 A Yes. I'm an elected trustee on the Police and Fire
10 Retirement System board.

11 Q And how long have you held that position?

12 A Since July 1st of 2011.

13 Q And have you taken any kind of continuing education in
14 that capacity?

15 A Yes, I have.

16 Q And can you tell us what that was?

17 A It ranges but specifically executive portfolio
18 management. I've taken that course at the Wharton University
19 twice.

20 Q And what is executive portfolio management?

21 A Essentially, it gives the -- it's a very rigorous course
22 that gives a trustee a basic foundation of the fundamentals
23 of running a pension system and the -- again, a basic
24 foundation for the various investments.

25 Q You are not a finance expert, are you?

1 A By no stretch, no, I'm not.

2 Q And you are also not an actuary?

3 A No, I'm not.

4 Q As a member of the Detroit -- well, as a member of the
5 Detroit Police Department, does the city contribute to Social
6 Security on your behalf?

7 A No.

8 Q If you become disabled, are you entitled to receive
9 Social Security Disability?

10 A No.

11 Q And is -- do you have an understanding as to whether or
12 not your members are entitled to receive Social Security
13 Disability?

14 A Not through the Detroit Police Department they are not.

15 Q And can you tell the Court how the issue of disability is
16 addressed for DPOA members?

17 A With respect to officers who are injured in the line of
18 duty?

19 Q Yes.

20 A Well, officers who are injured in the line of duty
21 ultimately are -- at this point in time, they are carried in
22 a disabled status and -- well, in essence, they receive a
23 portion of their base pay, and, again, at this time they are
24 also receiving medical benefits as well.

25 Q And how is that funded, to your knowledge and

1 understanding?

2 A Through the pension system.

3 Q I want to focus your attention on the time period
4 beginning in late 2012, early 2013, and ask you this
5 question. When was the election held that resulted in your
6 being elected the president of the DPOA?

7 A As I recall, that was in September. It was either
8 September or November of 2012.

9 Q And at the time of your election, were there ongoing Act
10 312 proceedings relative to the DPOA?

11 A Yes.

12 Q And were those -- you became the president on January
13 1st, 2013?

14 A That's correct.

15 Q Upon your election, did you do anything to familiarize
16 yourselves with the ongoing Act 312 proceedings?

17 A As president elect, I began attending the 312
18 proceedings.

19 Q And did you continue when you became the president in
20 January of 2013 to attend and participate in those
21 proceedings?

22 A Yes.

23 Q And what was the result of those proceedings?

24 A Ultimately the result was an arbitration award for the
25 Detroit Police Officers Association.

1 Q And do you recall approximately when that award was
2 issued?

3 A I believe it was March 25th or 26th of 2013.

4 Q Okay. I'm going to ask you -- there's a notebook of
5 exhibits there, and if you look at -- I believe it is 706,
6 707, and 708.

7 MS. PATEK: May I approach the witness for just a
8 moment?

9 THE COURT: Yes.

10 BY MS. PATEK:

11 Q We'll start with Exhibit 706, and I know that's a rather
12 voluminous exhibit, but if you can turn towards the back,
13 you'll see on the last several pages -- come to the signature
14 pages --

15 A Okay.

16 Q Okay. Can you identify -- well, strike that. First of
17 all, is Exhibit 706 part of the arbitration award that was
18 issued by the arbitrator in the DPOA's Act 312 proceedings?

19 A It appears to be, yes.

20 Q And with respect to the signature pages, do you recognize
21 the signatures on those pages?

22 A If I'm looking at the correct pages here, there are
23 several.

24 Q Okay.

25 A And the --

1 Q Is one of them the signature of the arbitrator, George
2 Roumell?

3 A Yes, it is.

4 Q And is one of them the signature of the city's
5 representative? I believe it was a Mr. Schafer.

6 A Craig Schwartz.

7 Q Schwartz? And is one of them the DPOA's representative?

8 A Yes.

9 Q And that would be Mr. Iorio, I-o-r-i-o?

10 A Yes.

11 Q And if you could move forward to 707 and 708, and I'd ask
12 you to take a look at those signature pages as well. And if
13 you don't mind doing them both together, we can try for a
14 twofer here.

15 A Okay. For 707 I see the same three signatures for Mr.
16 Roumell, Mr. Schwartz, as well as Mr. Iorio. However, on 708
17 I only see the signature for Mr. Roumell.

18 Q Okay.

19 MS. PATEK: Your Honor, at this time we would move
20 for the admission of 706 and 707, which are the arbitration
21 awards issued to the DPOA.

22 MR. STEWART: Your Honor, no objection other than
23 we -- I assume if we ask the witness he would establish
24 there's a public record foundation for these to deal with
25 hearsay objections as you did with the previous witness, or

1 if you can represent that to the Court, that'll be fine.

2 BY MS. PATEK:

3 Q Is this record, Mr. Diaz, publicly available on the DPOA
4 website?

5 MR. STEWART: Well, I think the actual issue is is
6 it issued by a government agency pursuant to its charter.

7 MS. PATEK: I'm not sure it's --

8 MR. STEWART: That's the exception in the rule of
9 evidence for it, not whether it's publicly available. Is it
10 issued by a public body?

11 THE COURT: Okay. Counsel, again, I have to ask you
12 to address the Court rather than each other.

13 MR. STEWART: All right.

14 MS. PATEK: Your Honor, this is signed by a private
15 arbitrator. It is overseen and administered by MERC, as Ms.
16 Gurewitz previously testified, and I believe it is a public
17 record available to anybody, but I will --

18 THE COURT: Well, but it wasn't issued by a public
19 body.

20 MS. PATEK: Well, it also, however, is part of a
21 proceeding in which the City of Detroit, in fact,
22 participated, had a representative sign off on and, as we
23 heard Mr. Dillon testify earlier today, to his understanding,
24 becomes part of the collective bargaining agreement between
25 the City of Detroit and the DPOA, and I think that's an

1 additional basis on which it ought to be admitted.

2 MR. STEWART: Perhaps, your Honor, we'd have no
3 dispute if we agree it's being introduced only for what it
4 purports to say as opposed for any internal hearsay that it
5 might contain.

6 MS. PATEK: I have no problem with that, your Honor.

7 MR. STEWART: In other words, its rulings --

8 THE COURT: All right.

9 MR. STEWART: -- holdings, or award. If that's
10 acceptable, then we would not object to it.

11 THE COURT: With that limitation, 706 and 707 are
12 admitted.

13 (Exhibits 706 and 707 received at 3:06 p.m.)

14 BY MS. PATEK:

15 Q To your knowledge, Mr. Diaz, did the city take any action
16 with regard to the Act 312 award that we've been talking
17 about?

18 A Yes.

19 Q Did it appeal a portion of the award?

20 A Yes.

21 Q And can you tell us about that?

22 A The city appealed a portion of the 312 award that spoke
23 to a five-percent restoration for DPOA members which was to
24 take effect January 1st of 2014.

25 Q And does that appeal remain pending?

1 A Yes.

2 Q And is it your understanding it's stayed by these
3 bankruptcy proceedings?

4 A Yes.

5 Q I want to focus on the time period now after Mr. Orr's
6 appointment as emergency manager. First of all, at or around
7 that time, did you become aware that the City of Detroit was
8 searching for a new police chief?

9 A Yes.

10 Q And can you tell the Court what, if anything, you did and
11 in what time frame on behalf of the DPOA with regard to that
12 search?

13 A In around March or April of 2013, I had learned of
14 several individuals who had applied or shown interest in
15 becoming the chief of police for the City of Detroit. One of
16 the individuals I was not familiar with, I learned that he
17 was the chief of police in Cincinnati. I then began, I
18 guess, sporadically or no real method to the madness but
19 contacting different police officers in Cincinnati and asking
20 them questions about their chief.

21 Q Was that Chief Craig?

22 A Yes.

23 Q And what did you find out as a result?

24 MR. STEWART: Objection. Asks for hearsay.

25 BY MS. PATEK:

1 Q Well, let me ask you this. Did there come a point in
2 time when you actually reached out to Chief Craig?

3 A Yes.

4 Q And did that happen prior to him assuming the job as
5 chief of the City of Detroit Police Department?

6 A Yes.

7 Q And since he has become the chief of the City of Detroit
8 Police Department, have you and your members reached out to
9 him?

10 A Yes.

11 Q And to your knowledge, have the members of the other
12 police unions done the same?

13 A Yes.

14 Q And in terms of -- I'm not talking about collective
15 bargaining issues, but I'm talking about issues related to
16 the management and restructuring of the Detroit Police
17 Department. Have you participated actively in those efforts?

18 A Yes.

19 Q And do you consider that there has been a give and take
20 and a sharing of ideas and exchanging of proposals in that
21 regard?

22 A Yes.

23 Q Do you think that you are making progress in that regard?

24 A I do.

25 Q With regard -- and the next series of questions I'm going

1 to ask you are going to be going only up through the date the
2 bankruptcy petition was filed on July 18th. With respect to
3 that time frame and since the Act 312 arbitration award was
4 issued by the city, has the city engaged the DPOA in any
5 further negotiations with regard to terms of employment,
6 healthcare benefits, anything of the like?

7 A You're referring to the time pre-petition?

8 Q Yes.

9 A No.

10 Q Did you -- we've heard a lot in this courtroom, and I
11 know you, as the DPOA's representative, have sat through this
12 part of -- part of the trial, but let me ask you this, first
13 of all. With regard to your membership, are you -- since
14 assuming the job of president -- and let's just take up
15 through the date of the filing of the bankruptcy petition,
16 have you been generally in touch with them on a day-to-day
17 basis?

18 A Yes.

19 Q Do you have regular communications?

20 A Yes.

21 Q Do you have a sense as to -- as their president as to
22 their morale?

23 A Yes.

24 Q Do you have a sense of the issues that are of concern to
25 them?

1 A Yes.

2 Q And is the issue of pension and disability an issue of
3 significant concern?

4 A Yes, it is.

5 Q Now, with regard to those issues, did you attend a
6 meeting at the airport on June 14th, 2013, regarding the
7 city's unveiling of a proposal for creditors?

8 A Yes, I did.

9 MS. PATEK: And if you could -- could I have Exhibit
10 43, page 109?

11 BY MS. PATEK:

12 Q First of all, Mr. Diaz, with regard to the June 14th
13 meeting for creditors, was there any statement by the city or
14 its representatives as to whether or not that meeting was a
15 negotiation?

16 A No.

17 Q And in terms of -- in terms of your particular interests,
18 looking at page 109, I take it of particular significance is
19 the claim for unfunded pension liabilities that we see on
20 109?

21 A Yes.

22 Q And when you were at that meeting, first of all, were
23 people allowed to ask questions verbally; that is, was there
24 any back-and-forth discussion?

25 A No, not that I recall.

1 Q Do you recall at that particular meeting submitting any
2 questions?

3 A I did not.

4 Q Did you review this document; that is, the proposal for
5 creditors, and, in particular, page 109?

6 A Yes, I did.

7 Q Did you view what you saw on page 109 as a proposal to
8 the DPOA?

9 A I did not.

10 Q And did you -- well, strike that. Did you attend
11 subsequent meetings on June 20th, July 10th, and July 11th on
12 behalf of the DPOA?

13 A I believe those were the dates, yes.

14 Q And were any of the -- at any of those meetings was there
15 any statement by the city with regard to whether or not
16 negotiations would take place at those meetings?

17 A I'm not entirely sure I can answer that question with a
18 "yes" or "no."

19 Q Okay. Why not?

20 A With respect to whether at any of those meetings --
21 excuse me -- it was portrayed to me as a union representative
22 that these meetings were negotiations, at one of the meetings
23 it was definitely portrayed to me that it was -- these were
24 not negotiations.

25 Q And tell me how you came to understand that.

1 A I asked a question if, in fact, these meeting -- this
2 meeting was a negotiation, and I was informed that it was
3 not.

4 Q Subsequent -- or, well, as these meetings were
5 proceeding, were you taking any action with regard to the
6 restructuring issues facing the City of Detroit as the
7 president of the DPOA?

8 A Yes.

9 Q Did there come a point in time when you began
10 communicating with members of the other public safety unions
11 and their executive boards?

12 A Yes.

13 Q And can you tell the Court approximately when that was?

14 A It was shortly after -- as memory serves, shortly after
15 the June 14th meeting.

16 Q And did there come a point in time when you and the
17 presidents of the other three public safety unions -- that
18 is, the Detroit Fire Fighters, the Police Lieutenants and
19 Sergeants Association, and the Detroit Police Command
20 Officers Association -- decided as a group to reach out to
21 the city?

22 A Yes.

23 MS. PATEK: And if I could have -- I believe it is
24 704, and this is in evidence.

25 BY MS. PATEK:

1 Q Mr. Diaz, do you recognize Exhibit 704?

2 A I do.

3 Q And before we talk about this, I wanted -- I'm sorry to
4 do this to you, but I want to step back to one point I just
5 forgot to cover. In approximately May of 2013 and before the
6 meeting of creditors, do you recall receiving correspondence
7 from an attorney at Jones Day regarding pension issues?

8 A As I recall, yes.

9 Q And did that -- was it an inquiry to ask if you would
10 represent the retirees who were former DPOA members?

11 A That's exactly what I remember, and I --

12 Q Did you respond promptly to that request?

13 A I did, yes.

14 Q And can you tell the Court what your response was?

15 A That I do not represent retirees. I represent active
16 DPOA members and their future retirement benefits.

17 Q And is there anything unique with regard to your active
18 employees with regard to some of them actually receiving, at
19 least in an escrow account, retirement benefits while they're
20 still active?

21 A Yes. There is a -- I don't want to use the word
22 "hybrid," but there is an element of active employees who
23 are, in fact, having a portion of their retirement set aside
24 in an escrow account, and for all intents and purposes, in
25 the view of the pension system, they are, in fact, receiving

1 a pension benefit under a form of a retirement status which
2 is referred to as the deferred retirement option plan.

3 Q And as I understand it, that means that once they elect
4 to DROP, D-R-O-P --

5 A Correct.

6 Q -- their retirement benefit is frozen at that level?

7 A That is correct.

8 Q And they cannot access it until they actually retire?

9 A Correct.

10 Q Going back to this letter on July 12th, this was sent to
11 Jones Day on behalf of the four public safety unions; is that
12 correct?

13 A Yes.

14 Q And you were indicating -- well, strike -- what was the
15 purpose of this letter?

16 A Well, as pointed out in the first paragraph, the purpose
17 was -- is a follow-up to the July 10th meeting with the city
18 to discuss pension restructuring proposals.

19 Q And were the four public safety union presidents willing
20 to attempt to engage the city in some kind of counterproposal
21 or proposal with regard to pension benefits?

22 A I'm sorry. You're asking if we were prepared to do so?

23 Q I'm asking not whether you were prepared to do so but
24 whether you were willing to do so at that time.

25 A Yes.

1 Q And you made a request to the city in that regard for
2 some additional information?

3 A Yes.

4 Q And do you recall receiving a response from the city?

5 A I have not, no.

6 MS. PATEK: If we could put up 705.

7 BY MS. PATEK:

8 Q Mr. Diaz, does this -- looking at 705, does that refresh
9 your recollection as to whether or not you ever received a
10 response?

11 A I do not personally recall receiving this response.

12 Q That response is, however, from Jones Day?

13 A Yes, it is.

14 Q Thanking you for your strong cooperation?

15 A Yes.

16 Q Dated the day before the bankruptcy petition was filed?

17 A That's correct.

18 Q During the time period from -- you sent your letter on
19 July 12th until July 18th, the date the bankruptcy petition
20 was filed, did anyone from either the emergency manager's
21 office or Jones Day reach out to you with regard to providing
22 further information or talking more about restructuring
23 proposals?

24 A For the sake of clarity, I personally did not send the
25 letter to Jones Day on July 12th, but to follow up with the

1 remainder of that question, the answer is no.

2 Q Mr. Diaz, do you consider the services your members
3 provide essential to the City of Detroit?

4 A They are.

5 Q Are you and your members committed to the City of
6 Detroit's restructuring?

7 A Yes, we are.

8 Q And do you want to be a positive force in that process?

9 A Yes.

10 Q With respect to the Act 312 arbitration award -- well,
11 strike that.

12 MS. PATEK: That's all I have.

13 THE COURT: All right. We'll take our afternoon
14 recess now until 3:40, please. Before we do that, can I get
15 an estimate on the length of closing arguments, please, on
16 each side?

17 MR. BENNETT: Your Honor, I'm planning my opening
18 statement to be about an hour and a half, and I don't know
19 how much I will need on the back end. It will depend partly
20 on how much time the objectors do so.

21 MR. SCHNEIDER: Probably 20 to 30 minutes for me.

22 THE COURT: Thank you, sir.

23 MR. MONTGOMERY: Your Honor, we've undertaken to
24 sort of collect the estimates, and I think we're running
25 about three hours for the objectors as a whole.

1 THE COURT: All right. In light of those estimates,
2 it would be my intent to conclude court after the balance of
3 the examination of this witness and start with our closing
4 arguments tomorrow morning. And what did I say? 3:40,
5 please.

6 MR. STEWART: Your Honor, my cross-examination is
7 going to be extremely brief with this witness if you wanted
8 me to just get it out of the way before the break and perhaps
9 dispense with the need for a break and then return as the
10 Court wishes.

11 THE COURT: Okay. Go for it.

12 CROSS-EXAMINATION

13 BY MR. STEWART:

14 Q Good afternoon, Mr. Diaz. I'm Geoffrey Stewart of Jones
15 Day.

16 A Good afternoon.

17 Q Just a few questions for you. You testified that with
18 the exception of those active employees who had the -- I
19 guess you called it the DROP or DROP's escrow arrangement for
20 their pensions, your union does not represent retirees?

21 A That's correct.

22 Q You don't negotiate on their behalf?

23 A No.

24 Q You cannot bind them either?

25 A No.

1 Q Okay. Then one other thing.

2 MR. STEWART: Can you put up Exhibit 60, please?

3 BY MR. STEWART:

4 Q You, I think, were asked about various meetings that you
5 attended. Do you remember a meeting that you attended on
6 July 11 on the subject of healthcare?

7 A To narrow that down, there were two meetings we had on
8 healthcare. There was one at the Coleman A. Young Municipal
9 Building. Well, actually, they were both there.

10 Q Right.

11 A One was in the auditorium. One was in a smaller room.
12 Could you narrow it down as to which room we're talking
13 about?

14 Q You know, I can't.

15 A Okay.

16 Q Do you remember attending a meeting on the 11th where
17 specific healthcare proposals were made to you?

18 A Yeah. With the specific date, I can't. I do not -- I
19 can't give you that answer.

20 Q Could you look at Exhibit 60 and tell me if you've seen
21 it before?

22 A I believe I have, yes.

23 Q Does it refresh your recollection as to the date of a
24 meeting and what happened at the meeting?

25 A This document in and of itself does not refresh my

1 recollection as to which meeting we're referring to.

2 Q Do you remember a meeting, though, at which these
3 healthcare options were presented to you as proposals by the
4 city?

5 A As I recall, yes.

6 MR. STEWART: Thank you very much. That's all I
7 have.

8 THE COURT: Any other questions for the witness?

9 MR. KING: I'm sorry, your Honor. This will take
10 two minutes.

11 CROSS-EXAMINATION

12 BY MR. KING:

13 Q Ron King on behalf of the Retirement Systems. Good
14 afternoon, Mr. Diaz.

15 A Good afternoon.

16 Q You testified that you also serve as a trustee of the
17 Police and Fire Retirement System?

18 A Correct.

19 Q And in your capacity as a trustee, are you familiar with
20 the operations generally of the Retirement Systems staff and
21 the systems themselves?

22 A Vaguely, yes.

23 Q And do you have interaction with the staff members at the
24 Retirement System?

25 A I do.

1 Q Are you aware of whether the Retirement System keeps a
2 database of all the retirees of the City of Detroit?

3 A Yes.

4 Q And does the Retirement System maintain a website?

5 A Yes.

6 Q Does the Retirement System have the capabilities of
7 reaching out to the Retirement Systems either through its
8 database or by way of its website?

9 A Very easily, yes, it does.

10 Q Are you aware of any effort on the part of the city to
11 ask the Retirement Systems to use its resources to contact
12 retirees in the context of restructuring proposals?

13 A Not at all.

14 MR. KING: Thank you. Nothing further.

15 MR. STEWART: Just one question unless -- other
16 questions?

17 RECROSS-EXAMINATION

18 BY MR. STEWART:

19 Q Did the city impede your ability to reach out to those
20 retirees?

21 A For the purpose of --

22 Q Anything at all.

23 A Not to my knowledge, no.

24 MR. STEWART: Thank you.

25 THE COURT: Is that it then? All right. Sir, you

1 may step down. You are excused. Thank you for your
2 testimony.

3 (Witness excused at 3:26 p.m.)

4 THE COURT: And we'll be in recess for the day, and
5 we'll reconvene for our closing arguments tomorrow morning at
6 nine o'clock.

7 THE CLERK: All rise. Court is adjourned.

8 (Proceedings concluded at 3:26 p.m.)

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I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

November 12, 2013

Lois Garrett

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

3 IN THE MATTER OF, Case No. 13-53846
4 CITY OF DETROIT, MI Detroit, Michigan
November 8, 2013
9:00 a.m.

5
6 IN RE: ELIGIBILITY TRIAL CLOSING ARGUMENTS
7 BEFORE THE HONORABLE STEVEN W. RHODES
8 TRANSCRIPT ORDERED BY: SHANNON DEEBY, ESQ.

9 APPEARANCES:

10 For the City of Detroit, MI: GEOFFREY IRWIN, ESQ.
11 GEOFFREY STEWART, ESQ.
12 GREGORY SHUMAKER, ESQ.
13 THOMAS CULLEN, JR., ESQ.
14 MIGUEL EATON, ESQ.
15 Jones, Day
16 51 Louisiana Avenue, N.W.
17 Washington, D.C. 20001-2113
18 202-879-3939

19 BRUCE BENNETT, ESQ.
20 Jones, Day
21 555 South Flower Street
22 Fiftieth Floor
23 Los Angeles, CA 90071-2452
24 213-243-2382

25 ROBERT HERTZBERG, ESQ. (P30261)
DEBORAH KOVSKY-APAP, ESQ.
(P68258)
Pepper, Hamilton
4000 Town Center
Suite 1800
Southfield, MI 48075-1505
248-359-7333

PETER ELLSWORTH, ESQ. (P23657)
Dickinson, Wright
215 S. Washington Square
Suite 200
Lansing, MI 48933-1816
517-371-1730

1 For State of Michigan: MATTHEW SCHNEIDER, ESQ.
(P62190)
2 Chief Legal Counsel
Attorney for State of Michigan
3 Michigan Department of
Attorney General
4 P.O. Box 30754
Lansing, MI 48909
5 517-373-0126

6 STEVEN HOWELL, ESQ. (P28982)
Special Assistant Attorney
7 General
Dickinson, Wright
8 500 Woodward Avenue
Suite 4000
9 Detroit, MI 48226-3425
313-223-3033

10 For Michigan Council 25 of SHARON L. LEVINE, ESQ.
11 the American Federation of JOHN SHERWOOD, ESQ.
State, County and Municipal Lowenstein, Sandler, LLP
12 Employees (AFSCME), AFL-CIO 65 Livingston Avenue
and Sub-Chapter 98, City of Roseland, NJ 07068
13 Detroit Retirees: 973-597-2500

14 For Detroit Retirement ROBERT D. GORDON, ESQ. (P48627)
Systems - General Retirement JENNIFER GREEN, ESQ.
15 System of Detroit, Police and Clark, Hill, PLC
Fire Retirement System of 151 S. Old Woodward Avenue
16 the City of Detroit: Suite 200
Birmingham, MI 48009
17 248-988-5882

18 RONALD KING, ESQ. (P45088)
Clark, Hill
19 212 East Grand River Avenue
Lansing, MI 48906
20 517-318-3015

1 For the Detroit Fire Fighters Association, the Detroit
2 Police Officers Association and the Detroit Police
3 Lieutenants and Sergeants Association:
4
5
6
7
8
9
10
11 For the Detroit Retired City Employees Association,
12 Retired Detroit Police and Fire Fighters Association,
13 Shirley V. Lightsey, and Donald Taylor (Retiree
14 Association Parties):
15
16
17
18 For the Official Committee of Retirees:
19
20
21
22
23
24
25

BARBARA PATEK, ESQ. (P34666)
JULIE BETH TEICHER, ESQ.
(P34300)
DAVID EISENBERG, ESQ. (P68678)
Erman, Teicher, Miller, Zucker
& Freedman
400 Galleria Officentre
Suite 444
Southfield, MI 48034
248-827-4100

BABETTE A. CECCOTTI, ESQ.
PETER D. DECHIARA, ESQ.
THOMAS CIANTRA, ESQ.
Cohen, Weiss, and Simon, LLP
330 West 42nd Street
New York, NY 10036-6976
212-356-0227

THOMAS MORRIS, ESQ. (P39141)
Silverman & Morris
30500 Northwestern Highway
Suite 200
Farmington Hills, MI 48334
248-539-1330

RYAN PLECHA, ESQ. (P71957)
Lippitt, O'Keefe
370 East Maple Road
3rd Floor
Birmingham, MI 48009
248-646-8292

MATTHEW E. WILKINS, ESQ.
(P56697)
Brooks, Wilkins, Sharkey &
Turco, PLLC
401 S. Old Woodward Avenue
Suite 400
Birmingham, MI 48009
248-971-1711

CLAUDE D. MONTGOMERY, ESQ.
ANTHONY ULLMAN, ESQ.
ARTHUR RUEGGER, ESQ.
Dentons
1221 Avenue of the Americas
New York, NY 10020-1089
212-768-6700

1 SAM ALBERTS, ESQ.
2 DAN BARNOWSKI, ESQ.
3 Dentons US LLP
4 1301 K Street, N.W.
5 Suite 600 East Tower
6 Washington, D.C. 20005-3364
7 202-408-7004

8 For the Retired Detroit Police Members Association:
9 LYNN M. BRIMER, ESQ. (P43291)
10 MEREDITH TAUNT, ESQ. (P69698)
11 MALLORY FIELD, ESQ. (P75289)
12 Strobl & Sharp, P.C.
13 300 East Long Lake Road
14 Suite 200
15 Bloomfield Hills, MI 48304-2376
16 248-540-2300

17 For the Flowers Plaintiffs - Robert Flowers, Michael Wells,
18 Janet Whitson, Mary Washington and Bruce Goldman:
19 WILLIAM A. WERTHEIMER, ESQ. (P26275)
20 30515 Timberbrook Lane
21 Bingham Farms, MI 48025
22 248-644-9200

23 For Ambac Assurance Corporation:
24 DANIEL WEINER, ESQ. (P32010)
25 Schafer & Weiner
40950 Woodward Avenue
Suite 100
Bloomfield Hills, MI 48304
248-540-3340

26 Court Recorder: Letrice Calloway

27 Transcriber: Deborah L. Kremlick

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1 (Court in Session)

2 THE CLERK: All rise. Court is in session. Please
3 be seated. Case number 13-53846, City of Detroit, Michigan.

4 MR. IRWIN: Good morning, Your Honor. For the
5 record, Geoff Irwin, Jones, Day on behalf of the city.

6 Just one housekeeping matter. I think we've -- we've
7 talked about this a couple of times. Both objectors and the
8 city have deposition designations that we wish to submit in
9 hard copy and I think in a few instances, by video as well.
10 So I have them here if you'd like me to hand them up.

11 THE COURT: Okay, please.

12 MR. IRWIN: And we will be submitting a revised
13 pre-trial order which will conform to dep designations in a
14 pre-trial order too while we are handing up.

15 THE COURT: Okay.

16 MR. RUEGGER: Your Honor, for the record Arthur
17 Ruegger from Dentons on behalf of the retirees committee. We
18 have four copies of the Moore deposition which is marked as
19 Exhibit 456 with everyone's designations, and cross
20 designations, and the Bowen deposition marked as 455 equally
21 with cross designations.

22 We also have, Your Honor, the video deposition of Mr. Orr
23 on September 16th and October 4th marked as Exhibit 446. And
24 the Bing deposition marked as 447. There are only two copies

1 we'll hand up two more later on.

2 THE COURT: Okay. Thank you.

3 MR. RUEGGER: One -- one final issue, Your Honor.

4 And we don't need a ruling on this yet.

5 The pre-trial order that Mr. Irwin submitted contains
6 only the exhibits that were a part of the original pre-trial
7 order. As everyone here knows, a number of exhibits have been
8 offered and some accepted since that list went in. We'd like
9 to help the Court as best we can with a list of those
10 supplemental exhibits which have been discussed, whether
11 they've been accepted or -- or rejected during the course of
12 the trial if that will help the Court. And we would -- could
13 submit that next week. But if Your Honor has any other
14 procedure we're happy to oblige.

15 THE COURT: We've maintained a list of the admitted
16 exhibits that were not admitted pre-trial that were admitted
17 during the course of the trial. And so at lunch time I would
18 propose to just give you that list and ask you if we have it
19 right.

20 Are there exhibits on the list that shouldn't be on the
21 list, or are there exhibits that aren't on the list that
22 should be. And ask you all to review that over the lunch
23 hour, compare it to your own notes regarding admitted
24 exhibits, and then we'll discuss that further this afternoon.

25 MR. RUEGGER: Very well.

1 THE COURT: That's -- that's the help I need. And
2 then of course what we'll do, is go through our copies of the
3 exhibit books that we have here and just remove the exhibits
4 that are in there that were not admitted into evidence and --
5 and not consider them.

6 MR. RUEGGER: Thank you, Your Honor.

7 THE COURT: Okay. Are we ready to proceed with the
8 closing arguments now? Okay, let's do that.

9 MR. SCHNEIDER: Good morning, Your Honor. Matthew
10 Schneider on behalf of the State of Michigan.

11 May it please the Court. Years ago the people of
12 Michigan and the citizens of this city started to learn that a
13 tremendous and terrible storm was headed toward the City of
14 Detroit. And this was no secret.

15 The people of Michigan, the citizens of Detroit, and the
16 city could see what was headed their way. And throughout this
17 trial we've heard the evidence that this storm was coming.

18 Exhibit 21, please. In the City of Detroit's preliminary
19 review findings, it indicates that since 2006, the city has
20 been experiencing significant financial problems caused by the
21 loss of residence, the financial challenges of the automobile
22 industry, the destructions in the financial markets, and the
23 overall economic issues faced by the country. You can take
24 that down.

1 takes office. And he begins to read these weather reports.

2 The weather reports in this case are cash flow reports. And
3 they are forecasting the storm.

4 And the Governor realizes as he testifies that there is a
5 serious cash flow problem. And the Treasury Department is
6 also reviewing these weather reports. And in December 2011
7 they conduct a preliminary review of the city's finances. And
8 the conclusion is, significant cash flow shortages, long term
9 debt liabilities, \$12,000,000,000 not including almost
10 5,000,000,000 in interest owed.

11 The long term bond rating, the city is in junk status.
12 And the city has no adequate plan to fix the deficit. There
13 is probable financial stress and there is need of a financial
14 review team.

15 Exhibit 21, second page. And the preliminary review
16 indicates that the inability of the city to avoid fund
17 deficits, recurrent accumulated deficit spending, severe
18 projected cash flow shortages resulting in an improper
19 reliance on inter fund and external borrowing, the lack of
20 funding of the city's other post-retirement benefits, and
21 increasing debt of the city calls for a financial review team.
22 You can take that down.

23 So in December 2011, the Governor appoints a financial
24 review team. And this review team produces another weather

1 the City of Detroit is in a condition of severe financial
2 distress.

3 The conclusions are that the general fund deficit is
4 increasing. Moody's is downgrading approximately two five --
5 2.5 billion of the city's debt. Some of it five to six levels
6 below investment grade. The city is facing a significant
7 depletion of its cash and the forecast is a negative cash
8 balance.

9 Exhibit 22. Because this conclusion is that the City of
10 Detroit is in a condition of severe financial stress, the next
11 step is that a consent agreement between the city and the
12 state is attempted. You can take it down.

13 The Governor testified that he worked very hard to get
14 this done but by the fall the city was not living up to -- to
15 its part of the obligations. And so, Your Honor, the
16 impending storm here is not getting better, it is getting
17 worse. And in February of 2013, another financial review is
18 done. And what does this weather report show us, Exhibit 25?
19 There is a cash crisis.

20 The city continues to experience a significant depletion
21 of its cash. Projections have estimated accumulative cash
22 deficit in excess of \$100,000,000 by June 30, 2013 absent
23 implementation of financial counter measures which aren't on
24 the horizon.

1 and the city has no workable plan. And what does the Governor
2 call this? He says that the city is hemorrhaging cash.

3 What else is going on with the city at this time? The
4 evidence in this case shows a lot else is going on. The
5 streetlights aren't working. Forty percent of them are out in
6 the first quarter of 2013.

7 Ambulances aren't responding in time. Detroiters are
8 waiting 58 minutes for police to respond to calls. There is
9 78,000 abandoned buildings. The evidence shows that the
10 health, safety, and the welfare of the citizens of Detroit are
11 at risk.

12 And this is what caused the appointment of the emergency
13 manager. Throughout this whole process, the state and the
14 city are working together. They are working together in a
15 partnership to survive this storm.

16 And also throughout this whole process, the state and
17 city are receiving financial advice. And some of this is
18 unsolicited. Miller, Buckfire is offering advice, Jones, Day,
19 Miller, Canfield, Dykema, Huron Consulting, Ernst and Young,
20 Conway, MacKenzie. Some of this is unsolicited advice, pro
21 bono, for free.

22 Mr. Dillon testified, this is not unusual. Ultimately
23 the storm arrives and the Governor says, this is the last
24 resort. Because people are suffering. The 700,000 citizens

1 citizens. And because of that, he authorized -- authorizes to
2 file for Chapter 9 protection.

3 So what is the objectors' theory of this case? Their
4 theory appears to be don't go speaking with weather experts
5 too early or consultants because that must mean you want the
6 storm to come. Their theory is apparently that the state or
7 the city shouldn't consider the last resort and don't be
8 prepared. Don't even ask whether you need a raincoat.

9 Because if you buy a raincoat, or you ask someone whether you
10 need a raincoat, then you want the storm to come.

11 This makes no logical sense. Doesn't it make sense that
12 when you have a storm of this magnitude coming toward you, you
13 want all the help you can get? So was the state working with
14 the city? Were consultants involved? Of course they were for
15 the benefit of the citizens of Detroit.

16 If you saw this storm coming toward you, isn't this what
17 you'd expect out of your government? You would expect
18 planning, you'd expect cooperation, you'd expect your
19 government leaders to prepare and plan and be ready for
20 anything. And that is just responsible government. Like any
21 good government, it would be foolish to go alone. It would be
22 irresponsible to fail to prepare.

23 The evidence in this case shows that the city and the
24 state prepared for the worst, but they hoped for the best.

1 war.

2 The objectors apparently want to punish the Governor or
3 the Treasurer for contingency planning, for doing their jobs
4 to protect the people of Detroit. But working together was
5 the right thing to do.

6 The evidence in this case shows that this was never about
7 pre-determining a Chapter 9 filing. This was only about
8 careful consideration.

9 So then it begs the question, what is this trial about?
10 It's about eligibility. It's about whether the City of
11 Detroit is eligible for bankruptcy, that's it. It is not
12 about when Jones, Day and Miller, Buckfire became involved to
13 give advice on how to weather this storm. It is not about
14 whether Kevyn Orr has a background as a bankruptcy lawyer. It
15 is not about whether a Judge in Ingham County had set a
16 hearing. It's not about whether the Governor decided to
17 authorize a filing a day before than his communications staff
18 had planned. And it's definitely not about all the other
19 confirmation arguments that the objectors have raised.

20 It is about eligibility and the facts and the evidence
21 show that the city is eligible for bankruptcy protection. So
22 let's look at the law.

23 To be eligible for bankruptcy, we have to look at Section
24 109(c)(2) of the Bankruptcy Code which states that an entity

1 be a debtor by a governmental officer empowered by state law
2 to authorize a filing. That process is governed by state law.

3 So determine -- to determine who is the governmental
4 officer empowered by state law, we have to look at the state
5 law PA436. And Section 18(1) describes this process. It
6 effectively states that the process is that the emergency
7 manager recommends a filing to the Governor and the Treasurer.

8 Second, if the Governor approves, he informs the
9 emergency manager and Treasurer in writing.

10 Third, the Governor may place contingencies on the filing
11 but he does not have to.

12 And fourth, upon receipt of the written approval, the
13 emergency manager may file.

14 Well, Your Honor, that's what happened in this case.
15 There is really no serious dispute that that happened.
16 Exhibit 28, which is Mr. Orr's letter and Exhibit 29, which is
17 the Governor's letter, comply with PA436.

18 The statutory process was followed in this case to the
19 letter. And the objectors cannot refute that. They can't
20 argue that the authorization process failed to follow that
21 statute. And they can't seriously refute that the city is out
22 of cash. So they have to refute everything else, even things
23 that have nothing to do with eligibility. And that is truly
24 the theory of their case.

1 arguments. And I'd like to go through five separate issues.

2 Number one, the objectors say that the purpose of the
3 appropriation provision in PA436 was to make it referendum
4 proof. And therefore that violates the referendum clause.

5 Well, first of all, as been -- as it has been argued in
6 this Court, it is improper to speculate on the motives of the
7 legislature. And the MUCC v Secretary of State case tells us
8 that.

9 Now Howard Ryan did indicate that one of the motives was
10 for proofing it. Okay. But who did the objectors really cite
11 to for the motive to make this referendum proof? They present
12 emails from March 2 and 3. They're talking about Jones, Day
13 lawyers talking about this.

14 Well, that's all very interesting, but those Jones, Day
15 lawyers are not legislators. And they are not the Governor.
16 The Governor signed the bill and he testified no, that was not
17 his purpose.

18 The Governor testified that the purpose was to pay the
19 emergency managers. And the Treasurer indicated as much as
20 well. To pay for emergency managers -- managers not just for
21 Detroit. Because there were seven or eight emergency
22 managers. This is a statewide problem, not just a situation
23 in this city. And it's to pay consultants to get through the
24 fiscal year.

1 the statute to find out exactly what those appropriation
2 provisions said. But the testimony from the Governor and the
3 Treasurer was that the purpose really was to respond to the
4 criticism from cities because you had put an EM in place and
5 then you would make the city pay for it. And the improvement
6 in this was, that's not appropriate. Let's have the state pay
7 for the EM so that we don't put that burden on the city, or
8 the school district.

9 But most significantly as the Governor testified, after
10 PA436 was done, he later signed another appropriations bill.
11 And in that appropriations bill, he funded emergency managers.
12 So the appropriation was put back in later.

13 So if the purpose of the appropriation was to proof it
14 from referendum, why would they put in an appropriation again
15 in a later bill? That's why this doesn't -- their theory
16 makes no logical sense.

17 The second point I'd like to make is that the objectors
18 argue that the Governor acted with bad faith effectively by
19 rushing this filing. But the facts and the evidence just
20 don't support that.

21 We look at the evidence, we look at what the Treasurer
22 said, and we look at what the Governor said. He testified
23 that he went back literally since the time he became Governor,
24 he reviewed the financial review team reports. He reviewed
25 the 45 day report. He reviewed other items. And he worked

1 diligently to go through this process in good faith and that
2 is what he said.

3 He said that he reviewed this file himself. The evidence
4 shows that the Governor took careful, and thoughtful, and
5 deliberate consideration about this.

6 Point number three, the objectors argue that the
7 Governor's failure to place a contingency in his authorization
8 excluding pensions was either sinister, or unconstitutional,
9 or both. Well, we know why the Governor did this. The
10 evidence is what he said.

11 He testified, we're in a crisis mode. We have serious
12 issues here. And contingencies could cause more delays, more
13 concern, more complexities to an already complex case. The
14 Governor said that he has confidence in the judicial process
15 and he himself asked that the statement be added that any plan
16 has to be a legal plan.

17 To get into the legal system so the appropriate people
18 can decide. And that is what he said. It doesn't matter
19 whether the Governor's legal counsel, Mr. Gadola, thought
20 contingency should be included because the statute provides
21 that the Governor makes that decision. The Governor, himself,
22 after careful thought, chose not to place contingencies. And
23 this was allowed and appropriate under the law.

24 Point number four. The objectors argue that the state

1 Constitution, the pension clause, in order to cut the pensions
2 of retirees.

3 Well, again, let's look at the facts. The facts are both
4 the Governor and the Treasurer explained, even if you take out
5 this 3.5 billion dollars in pension fund liability, the city
6 is still 14,000,000,000 or \$15,000,000,000 in debt. It is
7 inconceivable that the purpose of seeking a Chapter 9 filing
8 is to get the pensions.

9 Even Mr. Dillon testified that the problem that the
10 pensions was underfunded, the health care liability was in an
11 even bigger problem. So the pensions can't be the target.

12 Point number five. The objectors want this Court to
13 believe that there was some sort of alliance between the
14 consultants, and the state, and the city to drive the city
15 into Chapter 9.

16 And we've seen these emails from the consultants and the
17 lawyers talking about a Chapter 9 filing. You know, these
18 consultants and the lawyers, they can talk all they want and
19 if we had a nickel for every time a lawyer gave free advice,
20 we'd all be wealthy.

21 But ultimately it's not those consultants' decision to
22 authorize the filing, it is the Governor's decision. So the
23 best evidence is the Governor's testimony. He said that lots
24 of people were talking about Chapter 9. There were

1 have contingency plans? It's because it's a contingency.

2 It's not our goal.

3 The Governor said, you needed to be thoughtful about
4 this. And he said that the serious discussion of Chapter 9
5 was the week before the authorization. The Treasurer also
6 presented evidence why this argument is meritless.

7 In Ms. Brimer's last question, her last few questions of
8 Mr. Dillon really spelled this out. And this goes to the
9 heart of what the objectors' theory is. The question was,
10 about as early as March 2012 were people at the state and
11 consultants speaking about the filing for Chapter 9? Well,
12 let's remember what the Treasurer said. He said, it was
13 always a last resort.

14 If we were thinking of Chapter 9, we wouldn't have gone
15 into a consent agreement. Because you can't get into Chapter
16 9 through the consent agreement route. And that's what the
17 statute says.

18 So to agree with this conspiracy theory, then you must
19 conclude that the entire consent agreement process was just a
20 charade. The problem for the objectors is there is no
21 evidence of that. In fact the evidence proves otherwise.

22 The evidence proves that the state didn't want to rush
23 into Chapter 9. The state even wanted to avoid a declaration
24 of financial emergency because the state wanted the locals to
25 work it out. That's what the testimony in this case was.

1 That was the purpose of the consent agreement. And both the
2 Governor and the Treasurer explained that.

3 The objectors argue much more. And the city will address
4 those points and Mr. Bennett will be up here in just a moment
5 to do so.

6 So let me conclude by saying this, Your Honor. This
7 world is full of critics. The objectors can criticize the
8 Governor, and the state, and the Treasurer, and the emergency
9 manager because they don't like where they think this case is
10 heading.

11 But this eligibility case isn't about their critiques.
12 The witness testimony shows that it's about leadership. By
13 authorizing a Chapter 9 filing, the Governor took on an
14 enormous task. He saw that the problem was getting worse and
15 no one was solving it.

16 He showed leadership by making the hard decision to
17 authorize the filing. That's not a showing of bad faith,
18 that's good faith. It's good faith to step up and do what
19 needed to be done to protect the health and the safety of the
20 citizens of Detroit.

21 The evidence in this case shows that Chapter 9 was always
22 a last resort. Unfortunately the deplorable financial facts
23 of this case required that it come to that. This city is
24 eligible for bankruptcy.

1 MR. BENNETT: Good morning, Your Honor. I think --
2 while I will be using the screen, I will be talking a lot
3 about Exhibit 43, so if the -- if you want to get that handy,
4 it might --

5 THE COURT: Okay.

6 MR. BENNETT: It might make some sense.

7 THE COURT: One second, please.

8 MR. BENNETT: Okay.

9 THE COURT: Okay.

10 MR. BENNETT: All right. First of all, I'm going to
11 try really hard not to repeat any --

12 THE COURT: Would you point the mike right at you?

13 MR. BENNETT: I'm going to try really hard not to
14 repeat any of the things that we've just heard or cover any of
15 the same subjects. Frankly the city is in exactly the same
16 place as the state in those points.

17 I will add one comment which is that in the careful
18 exegesis of all of the emails about what was going on around
19 the Governor at various points in time, it's been pointed out
20 that there have been lots of different opinions expressed by
21 different actors. And I frankly take that as comforting.
22 Internal debate, free internal debate is a good thing.

23 I would be much more concerned and frankly with this
24 administration, surprised if everybody wouldn't say a thing

1 said okay. So, I think we have in the -- in all of the
2 internal debate where people are talking about suggestions
3 that may or may not have been adopted along the way, we're
4 seeing an additional sign of a healthy process and an
5 additional reflection of good faith.

6 I want to begin by finding our way through the math
7 because while the testimony has been quite wide ranging and
8 some of the points are a little bit open ended, there is a
9 certain amount of business that we have to do. And that
10 business is to work our way through 109(c) and determine
11 whether the City of Detroit is authorized to be a debtor under
12 Chapter 9. I think just to check the box, I don't think
13 there's any dispute with respect to (c)(1) that it is a
14 municipality. The city is a municipality.

15 Number two, second requirement, we've heard about
16 specific authorization from the state this morning. It was
17 also of course a subject touched on extensively during the
18 arguments concerning legal issues. I am not going to repeat
19 any of those arguments today. I don't think Your Honor wants
20 me to. Of course I'd be happy to answer any questions you may
21 have.

22 We then reach 109(c)(3) which is whether or not the city
23 was insolvent. I'm going to have some very brief comments on
24 that question. But I do want to point out that only one

1 They -- this was AFSCME.

2 They made certain promises about what they would prove in
3 the context of their trial brief and opening statement. And I
4 didn't see them prove anything. But it is our burden, we will
5 cover -- we will demonstrate that we have met our burden, but
6 it may be that we can do this in a relatively condensed way
7 because I'm not sure there's a dispute anymore. And -- and --
8 and perhaps we'll get some help about that when the AFSCME
9 representative reaches the podium.

10 The fourth issue is whether or not the city desires to
11 effect a plan to adjust its debts.

12 And then the fifth issue is the disjunctive tests
13 concerning practicability of negotiations and good faith.

14 Those are the specific things we need to do to move from
15 here to the next phase of the case. Now woven through some of
16 the objections was an argument that Section 921, good faith
17 was also an issue which of course opened up a few additional
18 doors for testimony.

19 I'm going to try to cover 921 good faith in the context
20 of the discussions relating to 109(c)(5)(B) because I think
21 the overlap is so great that to try to do it separately would
22 just take too much time.

23 So let's begin with the issue of whether or not Detroit
24 is insolvent. At the opening I promised that our witnesses

1 Detroit was insolvent and it wasn't pretty, but it turns out
2 that we did in fact do that. I will take through very -- take
3 us through a little bit of it in a minute.

4 As I said before, this evidence was not rebutted by any
5 evidence introduced by anybody else. So let's just cover a
6 few of the very very key points that are suggested by the
7 statute and we'll cover a little more later.

8 First of all, Mr. Buckfire testified that when he took a
9 hard look at -- at -- at liquidity in May, he found that the
10 city's position was on a razor's edge. And that was at a time
11 when vendors were not being paid on schedule. That there was
12 involuntary deferral of vendor payments.

13 Then Mr. Malhotra got a lot more technical but just to
14 get one glimpse of his testimony, Exhibit 38, please. I'm
15 sure everybody remembers this chart, the two different lines,
16 the light blue line which is if you were paying all of your
17 debts how much cash you would have left. And of course that's
18 below the break even line at every point on the chart.

19 And then there's the darker line which shows the cash
20 flow situation given the cash conservation steps that the city
21 took. And by those cash conservation steps, they weren't
22 saving money so that you had more money to pay creditors, it
23 was testified that the cash conservation steps were not paying
24 debts as they become due. And -- and most prominent of course

1 was due on the weekend, June 15th payment on the -- of
2 principal on the COPs.

3 But at the same point -- point in time, as not only Mr.
4 Buckfire, but I think Mr. Malhotra testified there was also
5 deferrals in the trade payment area. And there is now other
6 problems that may well occupy some time later in the case that
7 the city's cash position was -- was calculated based upon a
8 past commingling of certain other -- money from certain other
9 accounts. So there was roughly 103,000,000, the number sticks
10 in my head, could be off by a little bit of cash that was
11 really from other funds that could be called back at -- or
12 could conceivably be called back at any point in time.

13 But it's not technically right to say that that money
14 should be regarded as part of the city's cash balance. That's
15 another form of borrowing. And so to make it, to -- to
16 actually not hit the wall, the city was not paying its debts
17 as they become due.

18 Now, let's not be content with this horrifying snapshot.
19 Let's take a look at Mr. Orr's budget for fiscal '14 to see
20 what the situation looked going out from the vantage point of
21 June of this year.

22 This exhibit was displayed during Mr. Orr's testimony.
23 Again, in the interest of time, I'm just going to zero in on
24 the numbers at the bottom, but you can blow them off as fine.

1 That's the kind of general fund deficit, the \$379,000,000
2 number that the city was facing if nothing changed for the --
3 the 2014 fiscal year.

4 That's a big number. It's not -- you're not going to get
5 there by the way with contract changes that the unions may be
6 proud of that they negotiated pre-petition and weren't
7 implemented. The highest savings number, multi year savings
8 number, I ever heard attached to those was a little over
9 \$100,000,000. And that was over the entire term of the
10 contract.

11 So this is a number that -- that there was no non-debt
12 adjustment mechanism to address. And no evidence was adduced
13 concerning any conceivable non-debt adjustment approach to
14 creating some form of balance on a cash flow basis to the
15 city's financial affairs in '14.

16 But the sterile numbers only understate the problem. We
17 also proved what this means, what this -- what the reality is
18 faced by citizens because of the fact the city's budget is so
19 stressed. And some of that was covered in the state's
20 opening, not going to repeat it. I'm of course referring to
21 Chief Craig's testimony and I'm going to skip over the
22 different points and just say the cases actually look at the
23 things that -- that Chief Craig talked about as reflective of
24 something called service insolvency.

1 it's relevant? Well, that's kind of for the cases where the
2 -- the municipality is somehow managing to pay its debts and
3 maybe not having deferrals, but is not providing adequate
4 services. So it means that the money it should be spending
5 would render it insolvent.

6 In our case, it tells us that even the numbers that get
7 to the three seventy-nine negative are not generating an
8 adequate result for citizens. So the inference is, is that
9 the \$379,000,000 number actually understates the extent of the
10 problem.

11 Detroit is one of those situations where the insolvency
12 tests are made without regard to the fact that the services
13 being provided are not adequate by any measure. And when you
14 consider that making them adequate will cost more money, it
15 only means the situation is far worse.

16 My first reference to the proposal for creditors is a
17 chart -- is a chart on Page 34. This is the chart that
18 quantifies what Chief Craig is talking about, or says the same
19 thing from a different perspective. And I want to just zero
20 in on the bottom line.

21 And -- and one thing I'm going to say over and over
22 again, Your Honor's going to be tired of hearing it by the
23 time I'm done, but it's important for emphasis. This chart's
24 in evidence. No one said a word, no evidence was adduced that
25 there's anything inaccurate, incomplete, or misleading about

1 this chart.

2 And the bottom line shows the percentage of revenues in
3 the general fund that are devoted to paying legacy liabilities
4 in the general fund. And what it means in the 2013 fiscal
5 year just ended, is that when the city walks up to a taxpayer
6 and collects a dollar of taxes, there is only 57 1/2 cents
7 that's going to be spent on services for that resident. That
8 that residence is going to get today.

9 And I'm going to use Chapter 11 analogies a lot during
10 this case, but if we had a situation where -- where we had a
11 store that was in bankruptcy and the -- the reality was was
12 that -- that the dollar in that store was only going to give
13 the customer 57 1/2 cents worth of goods, and there's a store
14 down the street where the customer is going to get 84 or 85
15 cents, just turns out to be about what the average is for well
16 managed cities, out of the dollar they spend in the store, we
17 have a reorganization problem in our store that needs to be
18 fixed.

19 That's bad enough. But because of increases in pension
20 contributions that would be required if things aren't fixed,
21 and escalation of other numbers over time like OPEB's, this
22 problem gets worse, and worse, and worse, and worse in future
23 years. This has to be addressed. This cannot be ignored.

24 Finally, there's one more dimension to this -- to the

1 close in problems that the city was confronting in and around
2 June.

3 We already talked about the fact that the city had its
4 first payment default on borrowed money indebtedness by
5 foregoing the principal payment with respect to the COPs. The
6 full repercussions of that were not yet known, but they were
7 dealing with that and the clock was ticking on it.

8 It was known that that was an additional default that
9 might give additional rights to the swap counter parties. And
10 as Your Honor knows, there was testimony that there was a
11 series of negotiations started, actually a little before the
12 June 14th presentation. This is the 60 days of negotiations
13 that Mr. Orr was testifying about and other people criticized
14 him for not including prior negotiations that were actually
15 triggered by something different.

16 And a settlement was reached with the swap counter
17 parties right about the, you know, kind of in and around the
18 same time. But Syncora was initiating a campaign initially
19 letter writing, ultimately in litigation to seize the casino
20 revenues, notwithstanding the swap counter parties' agreement
21 to leave them available to the city.

22 And of course that -- Syncora's campaign wasn't actually
23 stopped until this Court decided that the automatic stay
24 applied. So that campaign actually lasted even into the

1 appeal.

2 So when we evaluate as we're going to have to in a few
3 minutes, the reasonableness of the city's position concerning
4 what a negotiation period should be and what we should try to
5 accomplish out of Court. There are three things that were
6 clearly on the city's mind and have to be on the mind of
7 anyone evaluating that.

8 One is, the 15th, June 15th was the first payment default
9 on public debt. Second is, that created additional covenant
10 defaults under the swap. Third is, that Syncora, at least,
11 even though a deal was getting done with respect to the swap
12 banks, Syncora was seeking to cut off the casino cash.

13 I'm going to stop here because again only AFSCME
14 contended that the city was not insolvent. And neither it nor
15 the others who have joined it on some questioning on this
16 question -- on this issues, has adduced any evidence that
17 counters anything that the city introduced.

18 And so if I have to review -- cover -- cover this topic
19 more, I'll cover it on reply. Suffice it to say we don't --
20 we don't think there is fair ground to dispute that the city
21 is insolvent within the meanings -- within the relevant
22 definition of the statute.

23 The next place, staying in order, is whether the city
24 desires to affect a plan to adjust its debts. Again, proposal
25 for creditors, Exhibit 43 is in evidence. At the opening I

1 said that the plan proposal speaks for itself. I said it was
2 reasonably detailed. I said it contained the classification
3 scheme. I said it included a term sheet for notes to be
4 distributed to creditors, and I said it defines treatment for
5 all classes.

6 And the objectors seem to disagree with that. They
7 contend that there isn't a specific proposal on reduction of
8 pension benefits. And sometimes this argument or this
9 statement is accompanied by just a citation of half of one
10 sentence that's in the document. But other times the -- even
11 looking at the entire paragraph that seems to be the
12 contention.

13 So let's do a little work ourselves and see if we can
14 figure out what the treatment that is proposed in the plan is.
15 Because I think we can do it with Exhibit 43 in a couple of
16 minutes. So if I could have Exhibit 43, Page 109, please.
17 And if you would do me a favor and leave it open for now. But
18 -- but later we're going to block just a part on pension,
19 unfunded pension liabilities.

20 One of the points Mr. Robbins made, and his testimony on
21 this was a little bit -- it moved around a little bit during
22 the testimony. Was he said well, other -- treatments of other
23 classes, there's a specific treatment provision, but there
24 isn't in the section of claims for unfunded pension
25 liabilities.

1 So let's try to figure out if we can figure out what he's
2 talking about. So going up to the top, claims under unsecured
3 general obligation bonds and notes, the treatment says and I
4 quote, "exchange for a pro rata (relative to all unsecured
5 claims) principal amount of new notes".

6 All right. Let's go to the next paragraph. Another
7 class of unsecured creditors. This is claims of service
8 corporations.

9 And by the way, note here that we don't say this is the
10 treatment of the COPs. Now why don't we do that? Well,
11 because the COPs are obligations of trusts. Trusts in turn
12 are beneficiaries of contracts between the city and service
13 corporations. So from the perspective of the city, these
14 technical details have a tendency to matter, from the
15 perspective of the city, the counter party is the service
16 corporations, the relevant -- relevant obligation is the
17 city's obligation to the service corporations.

18 So we focus on that and we say treatment. Exchange for a
19 pro rata (relative to all unsecured claims) principal amount
20 of new notes.

21 By the way the next paragraph says the same thing, we'll
22 skip it just for time purposes. Now could we blow up the
23 section, claims for unfunded pension liabilities? And
24 skipping to the middle paragraph it says, claims for the

1 familiar, for a pro rata relative to all unsecured claims
2 principal amount of new notes.

3 So first of all, if Mr. Robbins found the other
4 discussions sufficiently informative and in a specification --
5 specification of treatment, I am having a hard time
6 understanding how he did not find the specification of
7 treatment with respect to unfunded pension liabilities hard to
8 understand.

9 Well, let's stay here because I think we can learn a
10 little more if we read words and take a look at other parts of
11 the document. First of all, very much like the situation with
12 service corporations, when we reach unfunded pension
13 liabilities, we have to pause and think about what exactly is
14 the city's remaining liability with respect to pensions.
15 Because the pension funds are not funded at zero. There is
16 funding in both pension funds.

17 I thought there was going to be a big dispute over it,
18 how much the underfunding was. Of course that dispute didn't
19 show up in this courtroom.

20 So let's look at the first paragraph, or excuse me, the
21 first bullet point, it's not quite a paragraph. The first
22 sentence says as set forth above and is material earlier in
23 the presentation that we won't bother visiting, preliminary
24 analysis indicates that the underfunding in GRS and PFRS is

1 minute.

2 At this level of underfunding, the city would have to
3 contribute approximately 200,000,000 to 350,000,000 annually
4 to fully fund current accrued vested benefits. Again, more
5 information about how the city views its obligation relative
6 to pension. That's what we're focusing on, the city's
7 obligation.

8 And then the statement which was hard for everyone to
9 make but is driven by math, we'll come to that soon. Such
10 contributions will not be made under the plan. Okay. So the
11 city has obligations to make contributions. Note, that's what
12 we're talking about.

13 We're not talking about the individual pension benefits
14 yet because to the city that's not the problem. The city's
15 problem is, obligations to make contributions on account of
16 underfunding.

17 So next sentence. Claims for the underfunding will be
18 exchanged for a pro rata relative to all unsecured claims
19 principal amount of new notes.

20 Okay. First of all, this sentence talks about claims for
21 underfunding. Those familiar with the pension system, and Mr.
22 Robbins surely must be assumed to be familiar with the pension
23 system knows, this is part of the formula. There is existing
24 funding which is another part of the formula.

1 mysterious about what we're talking about when we say a pro
2 rata relative to all unsecured claims, principal amount of the
3 new notes. Well, we know that the principal amount of the new
4 notes is capped at 2,000,000,000. That's something that's
5 also in the exhibit.

6 But let's just take a quick look at Page 98. Because the
7 fact of the matter is, no one expected the creditors to guess
8 what we were talking about when we said pro rata portion of
9 unsecured claims. And there's a box at the lower left corner
10 of the page. And all in one place is the estimated claim
11 amounts for every single class of unsecured claims.

12 In a way some of these numbers have a little bit of a
13 false precision because with respect to OPEB liability as
14 disclosed in other parts, it's an estimate. With respect to
15 pension unfunded liability, it's an estimate. Under the
16 pension unfunded liability, it's an estimate.

17 But Mr. Robbins is a bankruptcy professional. And this
18 Court is a bankruptcy professional. And we've seen plans that
19 say we think claims in all of the different categories are
20 these. And creditors and the debtor are going to have to deal
21 with some uncertainty about what's in each of the categories.
22 But it's normal to spell out the different categories so
23 people have some visibility as to what's in a broad pool. And
24 then it's just as normal to specify here is what is going to
25 be distributed to that pool of creditors.

1 So what have we shown? We demonstrated that we've
2 specified what's going to be given to the pool of creditors.
3 They don't like it, we'll come to that in a second. And we
4 specified what the pool of creditors look like, its goal
5 there.

6 So to the extent that one of the objections is there was
7 no proposal, therefore that the county doesn't intend to
8 affect a plan of a judge -- a plan to adjust its debts, I
9 submit that the Exhibit 43 in fact contains a proposal and
10 it's quite precise with respect to the city's obligation to
11 provide funding in respect to pensions.

12 Now, let's return to Page 109 because we have one more
13 sentence we have to deal with. It's everyone's favorite
14 sentence, or half of it's everyone's favorite sentence. But
15 it turns out it's not the sentence about treatment.

16 This sentence is about consequences. This sentence says
17 again, it should be completely obvious to Mr. Robbins, it's
18 completely obvious to me, I think it's completely obvious to
19 the Court, but we weren't only talking to Mr. Robbins, we were
20 talking to other people that might have a lower degree of
21 sophistication.

22 And so we explained because the amounts realized on the
23 underfunding claims, part of the equation, not the whole
24 equation, will be substantially less than the underfunding

1 pension amounts for both active and currently retired persons.

2 So what are we saying there? We're saying a consequence
3 of the fact that the city's distribution on account of this
4 claim is going to be less than the amount that the pension
5 funds were expecting to receive by the city, something has to
6 give. And that is pension amounts.

7 We didn't say which and when. And there's two reasons
8 why one might expect that you wouldn't. One, it's
9 presumptuous. This is an issue as to which in a lot of ways
10 the city's indifferent. Legally indifferent, not necessarily
11 emotionally indifferent, but legally indifferent.

12 And there's all kinds of reasons why the pension
13 adjustments, and in fact it's kind of traditional, why the
14 pension adjustments wouldn't meet standards like uniform
15 treatment for all persons in a class. Because there might be
16 very legitimate social reasons for inflicting relatively less
17 impairment on older people and more impairment on younger
18 people. And in fact that pattern is -- persists all the time,
19 but it might or might not be legal.

20 Viewing the world this way, which is correct as a matter
21 of law, also creates flexibility for the parties to deal with
22 the consequences of the distribution on the claims asserted
23 against the city in ways that might make more sense than those
24 that could be required by law if you looked at it a different

1 as I'm concerned. And I actually think that the funding --
2 pension funds' counsel agrees with this analysis, but maybe
3 we'll hear.

4 Okay. So the summary with respect to this point, the
5 pension claims themselves will have to be adjusted, but the
6 city saw no reason to unilaterally decide that. The city's
7 issue is not about that. The city's issue is about much it
8 will have to pay and the distribution, proposed distribution
9 on account of the pension underfunding claim is very
10 specifically laid out.

11 Last couple of points on the issue of the city's desire
12 to adjust its debts or to effect a plan to adjust its debts.
13 There -- I think there is the assertion, it's covered in our
14 briefs very briefly here, that the -- that there's a -- a --
15 that the plan as proposed can't be confirmed, so it's a plan
16 that doesn't count.

17 And I think I covered this in oral argument, the plan
18 clearly, we believe, can be confirmed. We understand there
19 are legal disputes. We -- we understand that there is an
20 assertion that the pensions clause of the Michigan
21 Constitution precludes impairment. Your Honor knows our
22 position on that. The subject of bankruptcies includes
23 clearly priorities of claims, rights to distributions,
24 consequences -- bless you, consequences of when there's not
25 enough to go around and discharges.

1 This is at the core of things that are the subject of
2 bankruptcies. A declaration that a claim is not impaired is
3 inconsistent with that. That is a part of federal law that is
4 not limited by -- by powers reserved to the states.

5 It was also asserted in papers, again no testimony, that
6 because there was a dispute as to the amount of the pension
7 claim, pension underfunding claim, and if that wasn't settled,
8 the plan could not be confirmed. Of course that's not the
9 case. The Bankruptcy Code is specifically structured to allow
10 subsequent determination of claims even after a plan is
11 confirmed. But that was all premised on the idea that Your
12 Honor was going to hear some proof that the city's estimate
13 was wrong.

14 You heard no such proof. So for purposes of today, there
15 actually isn't a dispute of the amount of the underfunding
16 claim. And I think it's worth pointing out that when the city
17 says the underfunding claim is 3.5 billion dollars and it's
18 making a distribution based upon 3.5 billion dollars, it's
19 strange for the pension funds to be saying it's really less.
20 Because the consequences are that you would get a lower
21 distribution if the underfunding amount was less than the
22 estimate that the city believes is right.

23 But nevertheless we found ourselves clearly as a
24 historical matter in that strange place. I'm not sure based

1 anymore.

2 So with respect to this part, the city's demonstrated the
3 desires to effect the plan. The plan is a -- is an outline --
4 that's all that's required, but it's actually more fleshed out
5 than that. An outline of a plan that can be confirmed. We do
6 think it's confirmable. I've also said before, that it will
7 change, that's -- that's also clear.

8 And -- and I'm not going to come back to this point, but
9 there's a -- there's -- there's an argument actually supported
10 by the cases that when considering the requirements for good
11 faith negotiations under -- under Bankruptcy Code Section
12 109(c)(5), that you also have to demonstrate that the plan you
13 started with is a plan of adjustment that could conceivably be
14 confirmed under Chapter 9. I think I've dealt with that
15 issue, I'm not going to return to it in the interest of time.

16 But this brings us to an important aside. And -- and I'm
17 not again going to repeat, but I endorse the state's argument
18 that from the very beginning of this case, or from the very
19 beginning of the -- of the Governor's administration when they
20 focused on the situation in Detroit, that it was prudent as a
21 matter of common sense, sensible planning, and because
22 everyone else in the world was talking about it, to look at
23 Chapter 9 as -- as something that might some day, if
24 circumstances didn't get better, have to be considered for the
25 City of Detroit.

1 The aside is to -- to basically inform the Court that
2 actually the law that we just talked about, the law pressed by
3 the opposition that the plan, that the -- that the city has to
4 start with, is a plan that is a plan of adjustment, or an
5 outline of a plan of adjustment that could be confirmed.

6 That's actually a legal command that when you're confronting a
7 municipality that has financial difficulties you have to start
8 with Chapter 9.

9 Because if you don't understand what the rights, and
10 powers, and obligations of a municipality are under Chapter 9,
11 and what a plan adjustment would have to look like in the case
12 of a Chapter 9 case, you can't start. So in addition to all
13 of the, you know, very practical observations, and the fact
14 that it's very sensible to pay attention to the same law that
15 frankly your creditors are paying attention to when they're
16 thinking about what they might have to do in an out of Court
17 scenario, in this one circumstance the law actually commands
18 an early look at the statute. So I think that if the law
19 commands an early look at the statute, an early look at the
20 statute cannot constitute evidence of a lack of good faith by
21 anybody.

22 THE COURT: Before you go on, this question. So is
23 it the city's position that with regard to the pension
24 liability underfunding, the creditors -- the only creditors

25 were the two plans and not the retirees themselves?

1 MR. BENNETT: Your Honor, I think that's -- at the
2 end of the day, I think that's probably right. We expect it
3 to be disputed, we understand it will be disputed. I think
4 you will find that the -- the -- the -- I think you should ask
5 them when they reach the podium.

6 We think that's right. That by the way, is the reason
7 that the first people we asked about whether they could
8 represent retirees in discussions that would ultimately affect
9 their pensions was them. And they basically told us that we
10 can fight to preserve our claims, but we can't compromise
11 them.

12 THE COURT: Well, all right. I will -- I will look
13 forward to your discussion of how this impacts your argument
14 regarding impracticality.

15 MR. BENNETT: We'll get there. Okay. Well, we're
16 there. Impracticality.

17 You know, back to the -- coming back to the opening
18 argument, we started with, and we'd start with again, the
19 number of bond issues that the city has. The fact that bond
20 holders have the right, each individually, to consent to any
21 impairment of their principal amount or of their interest.

22 And the -- the -- the one -- one place where you can
23 find, I said this at opening also, a list of all the different
24 issues, and demonstrate how numerous they are, are in the

1 list.

2 There's also -- it also reveals that many are insured,
3 but some are not which is an additional complication. Mr.
4 Buckfire testified that although talking to the insurers was a
5 place to start, his -- his view was, because it's also the
6 law, that they could just make recommendations and there were
7 some issues as to which, according to this book, it's true,
8 there were no -- there -- there are no insurers.

9 And so ultimately if an insurer is going to recommend
10 something and you're going to send it out to a vote, you're
11 going to get some yes votes and that's great but there's
12 nothing you can do with respect to the no votes under
13 applicable non-bankruptcy law.

14 And so with respect to the bond holders, while there was
15 someone to talk to to get started, there was no way to get all
16 the way home. And no one has suggested that there was a way
17 to go all the way home.

18 So -- but the -- and the second part we said at opening,
19 and again I'm -- I'm not going to repeat it here, is that
20 frankly that's the end of the inquiry. Because
21 impracticability with any one class means that out of Court
22 negotiations are impracticable.

23 There are cases that say this, they're cited in our
24 papers. I also spent some time thinking with the Court about
25 the problem about, you know, how you would go about it if you

1 thought that you still had to conduct good faith negotiations
2 with a group you could negotiate with, but you have another
3 group that you couldn't negotiate with and where it leads you
4 is delay for no purpose.

5 Ultimately you wind up having to be in a Chapter 9 case
6 anyway. And whenever we talk about delay as -- as a -- as an
7 answer, let's go back to the undisputed fact that we had a
8 very severe insolvent situation that was also unstable. The
9 instability being the recent default, the Syncora activities,
10 and the other things that -- and the delayed trade payments.

11 So the -- so delay isn't an answer for anything. In the
12 context where there is actual near term prechter, there --
13 there is a serious problem that has to be addressed.

14 So the next step is were negotiations -- excuse me, there
15 should be no next step, but the next step in the event that
16 the Court decides, and I think this would be wrong, and
17 against the cases, that impracticability of one class is not
18 determinative. That it -- that it has to be impractical with
19 every class which would mean that you have to conduct good
20 faith negotiations with classes where it is practicable. We
21 then deal with the assertion by the -- the different retiree
22 groups that somehow negotiations in this case were practicable.

23 And I think there's -- there's a -- a -- three different
24 reasons why negotiations with the -- with the different

1 also apply to the retiree the -- excuse me, the two funds, is
2 the -- is the testimony of Mr. Taylor. I think best
3 represented by the testimony of Mr. Taylor, but represented by
4 the testimony of other witnesses.

5 He said a couple of things that are relevant to the
6 subject of impracticability, we'll cover more of them. But
7 right now I want to zero in on -- on what he said after he
8 acknowledged that he did not have the authority to bind any
9 retirees.

10 He said, he was nevertheless willing to conduct
11 negotiations. Let's put aside for a second what negotiations
12 really mean with someone who's not authorized to bind anyone.
13 But he's ready to conduct negotiations and if he actually got
14 to the point with the city that there was a proposal for
15 modification of benefits that he -- that he was okay with, he
16 would recommend it to retirees.

17 And -- and -- and I don't remember if he was asked or he
18 volunteered, that what would have -- have to happen next, he
19 said there'd be a vote. So what does a vote mean in this
20 context? Again, out of Court.

21 It means that those who vote yes, I suppose, supposed to
22 be some form of solicitation materials, would be bound. And
23 that would be a partial solution to the problem. That would
24 be progress. But everyone who voted no wouldn't be bound.

25 Well, what happens then?

1 THE COURT: Well, but -- but this assumes that your
2 negotiation is with the retirees because they're creditors.

3 MR. BENNETT: I -- I -- I understand.

4 THE COURT: A point you weren't willing to --

5 MR. BENNETT: I'm going to get to that.

6 THE COURT: -- a moment ago.

7 MR. BENNETT: Okay. I'm not going to forget the
8 issue. I'm talking about the people who stepped forward and
9 said, you should have talked to us. Okay.

10 And Your Honor, this is exactly the situation we faced
11 with the bond holders. That if -- if this is -- if -- if we
12 ultimately at the end of the day have to negotiate with
13 retirees and there is ultimately a retiree vote on some basis,
14 the fact that you could have a vote at some point out of Court
15 doesn't solve your problem. You need to get the centers as
16 well.

17 Let's get to the retiree funds. They said, they told us,
18 I think -- can we skip to the chart? And I need a blow up the
19 top so I can find them. Oh, there they are.

20 The police and fire retiree systems. They're all --
21 they're all the way --

22 THE COURT: I see it, sir.

23 MR. BENNETT: Okay. And --

24 THE COURT: And I see the other one too.

25 MR. BENNETT: Okay. All right.

1 THE COURT: The General Retirement Systems is the
2 other one you were looking for?

3 MR. BENNETT: Right.

4 THE COURT: Okay.

5 MR. BENNETT: Okay. I can't -- I'm -- the fire is
6 covered. They either didn't respond or said no. They
7 verbally responded. You can ask them what their response was,
8 that they don't have the power to bind retirees.

9 Okay. We'll talk about, by the way, what they did
10 because that may be important too. Okay. So with respect to
11 the first point, that every -- that even the people who -- who
12 stood up here and said, you should talk to me even though I
13 don't have authority. At the end of the day, they led to a
14 place that did not give you retiree votes.

15 Again, we could stop here. This is impracticability, the
16 same kind of impracticability as the bonds demonstrated also
17 with respect to the holders of retiree claims if we have to
18 talk to them. And -- and if our -- if the objectors say we
19 don't have to talk to them, we'll get to that in a second.

20 Second, I was going to talk about this chart, so we can
21 leave it up. The responses that -- that the city actually
22 received to the basic inquiry concerning whether the unions or
23 pension funds were actually in a position to represent
24 retirees, also demonstrates impracticability. That alone.

1 they didn't say if -- we can talk and recommend. That's not
2 actually what they said. What they actually said, and you
3 have a big exhibit of the letters is, not us, we don't
4 represent them. That's what they said to the city when they
5 were asked the question.

6 They didn't say to the city, we can't represent them as a
7 formal matter, but we have found ways to get around that which
8 I think was the testimony of some of the witnesses. What they
9 said was, no, we don't represent them. What you heard
10 testimony from -- from one of the -- the next to the last
11 witness yesterday, was that maybe as a matter of law they
12 couldn't have even represented retirees.

13 But I -- I submit that the actual letters which are in
14 evidence demonstrate that confronted with a broad statement,
15 we do not represent retirees or cannot represent retirees, is
16 another indication of impracticability, again, assuming for
17 the moment that retirees are even needed which they say they
18 are. But --

19 And then finally, the third reason why I think in this
20 case you can find impracticability by the unions are the
21 numerous statements kind of throughout the record, starting
22 with the -- the briefs filed by the UAW, which I pointed out
23 at opening argument. The briefs filed by the retiree
24 committee, the brief retiree committee proclaims that it's bad
25 faith even to ask for a impairment of the underfunding claims.

1 The UAW said in their briefs they would never agree to an
2 impairment of the underfunding claims because of the
3 non-impairment provision with respect to contracts. And then
4 others at the trial, Ms. Lightsey, Mr. Taylor, Mr. Nicholson,
5 these are persons who said they would have represented
6 retirees but would have never agreed to a plan that modified
7 vested pension benefits.

8 And, Your Honor, in some instances, they actually said
9 that from the witness stand. In other instances, it's found
10 in the interrogatory responses that they filed in discovery.
11 Some of them were projected here and this is a good time to
12 come -- to start coming back to the retiree funds because we
13 have their interrogatory responses that I think covers Your
14 Honor's question.

15 This is -- this is -- Exhibit 79. Okay. And I want to
16 go to Page 10. Is that the first page? Yes, Page 10 is the
17 first page. Okay. Paragraph 3, if you could blow it up.

18 Please describe any authority delegated to or otherwise
19 possessed by the trustees of GRS. And -- and, Your Honor,
20 I'll take you through the GRS section. There's an exactly
21 parallel set of questions for the uniformed pension fund the
22 PFRS. So I'll do it once as opposed to twice to save time.

23 To eliminate or reduce on a prospective basis only, the
24 benefits, rights, and features of the pensions provided to GRS
25 participants who were already retired or terminated from the

1 City of Detroit.

2 And their response. If you'd go -- I think we have to
3 read most of it. Because first of all, GRS doesn't think this
4 is a direct enough question and so they object. Because it's
5 incomprehensible. Because the phrase is they don't understand
6 what any authority delegated to, otherwise possessed,
7 eliminated or reduced. They don't know what any of those
8 words mean. That's the first response. So if we're going to
9 gauge constructive, you know, negotiations, this is part of
10 what we were dealing with.

11 Due to this imprecision, it is difficult to ascertain
12 what information is sought by the interrogatory. And the GRS
13 is effectively asked to speculate as to its meaning which may
14 or may not include requests for legal conclusions. The GRS
15 objects to this inquiry. Okay, skip the rest of this.

16 Now let's move over to when they finally say the answer
17 is on the top of Page 11. Well, let's go up to the last
18 objection to it, I'm sorry. The last objection to the
19 interrogatory, GRS also objects to this interrogatory because
20 it assumes the existence of authority to act in contravention
21 of Article 9, Section 24 of the Michigan Constitution of 1963,
22 the pension clause that prevents any impairment or
23 diminishment of accrued financial benefits which authority
24 does not exist.

1 -- I -- I hope Your Honor is keeping track. The -- the
2 interrogatory started on Page 10. And we got to the answer
3 kind of in the middle of Page 11.

4 Subject to and without waiving the foregoing objections,
5 GRS states at no time from 2004 to the present have the
6 trustees of GRS had or been delegated authority to eliminate
7 or reduce on a prospective basis, the basis the benefits,
8 rights, and features including but not limited to the elements
9 of the pension formula of the pensions provided to GRS
10 participants who are already retired or terminated from the
11 city because the pension clause prohibits the elimination or
12 reduction of approved financial benefits of GRS participants
13 who are already retired, terminated from employment with the
14 city.

15 So what we have from the retiree committee, Your Honor,
16 is an admission that they aren't going to do anything that
17 they interpret as impairing or modifying pensions. And so I
18 think frankly the third reason why Your Honor can find that
19 negotiations were impracticable as to retiree groups if that's
20 the question, and we don't even think you reach that question,
21 is that all of the different places you would think to go if
22 you think it's the funds, and frankly initially we did, you
23 would say to the funds, try to talk about something. I think
24 we know they won't talk.

1 have explained that number one, we got a whole bunch of
2 letters that said we're not the right persons to talk to you.
3 And secondly, we got a -- even those people who said
4 notwithstanding our lack of authority, we would still like to
5 talk to you, they have all said we are working to a
6 recommendation. The next step would be a vote. And that
7 still would not give the -- the city any means to deal with
8 persons who choose to vote no, or actually more importantly,
9 persons who don't vote at all.

10 Now there's one exception to this, I guess. And -- and
11 that is, it was asserted that there is a class action
12 mechanism that would conceivably have resolved the problems
13 with respect to the unions. I actually want to hear exactly
14 what that mechanism is that was proposed. And so while I am
15 prepared to discuss why a class action mechanism was not
16 practicable at all, particularly in light of the fact -- the
17 financial pressures that the city was confronting, I think
18 it's best if I hear exactly what the objectors had in mind
19 before responding.

20 Take a sip of water before turning to good faith. It's
21 warmer in here than it was yesterday. Okay.

22 THE COURT: Excuse me one second. Is that someone's
23 electronic device? Is it off now? Yes? Okay.

24 MR. BENNETT: Okay. As I said before, and I think
25 it's important, at least as far as eligibility is concerned,

1 perhaps not with respect to 921, Your Honor's opinion can stop
2 here because the -- as Your Honor knows, the requirements in
3 109(c)(5) are disjunctive if negotiations are impracticable,
4 whether or not negotiations proceeded or whether negotiations
5 were in good faith are just not issues for the Court to be
6 concerned with.

7 And of course the legislative history of -- of the
8 impracticability prong is that it was designed for big cities.
9 New York was actually the pragmatic example that everyone was
10 concerned about at the time. Where it was just understood
11 that when dealing with a situation as large as this one, as
12 large as New York which by the way was smaller than, at least
13 in nominal terms, than this is now, is a -- is a -- is enough
14 of a reason to recognize that in a lot of large city cases,
15 the negotiation prong is not going to be terribly relevant
16 because impracticability is the reality as it is here for all
17 the reasons we've described.

18 But nevertheless -- well, I should start with there's two
19 clauses actually to 109(c)(5)(B). The first is, it deals with
20 negotiations in good faith. And the second is, creditors
21 holding at least the majority in amount of the claims of each
22 class that such entity intends to impair under a plan in a
23 case under such chapter, well, I think it's stipulated that we
24 didn't get a majority in any class. And we certainly didn't

1 we met the second half, and -- and I think there's no dispute
2 about that.

3 The -- the -- now we have to talk about whether the city
4 has negotiated in good faith with creditors. And I think Your
5 Honor, the city's good faith in the negotiations and in this
6 whole process is demonstrated by what it did.

7 And I'm actually going to start with the process of
8 generating the proposal for creditors.

9 THE COURT: Again, I have to ask you to pause here.
10 It -- it strikes me as factually impossible for it to be
11 impracticable for that party to negotiate with other parties
12 in any circumstance, and to negotiate with them in good faith.

13 MR. BENNETT: You know, I -- I think the -- I -- I
14 disagree. I think that the -- the -- the -- the view of the
15 professionals, and can we put up for just a second, Exhibit
16 413, Page 13.

17 THE COURT: I'm sorry, page what?

18 MR. BENNETT: Exhibit 413 -- 418, Page 13. I'm --
19 I'm more using this to kind of organize the topic than -- than
20 for the evidentiary value which will come later. But I think
21 anyone who looked at the situation back at the beginning
22 thought this, that's on this chart.

23 They -- everyone understands that if you can have an out
24 of Court solution, it's a great thing for all the reasons

1 say to yourself or to anybody else given all of the potential
2 advantages of an out of Court solution of saying, it's
3 impossible.

4 So look at the next part. The -- you know, it's also a
5 recognition like -- I guess I want to say it this way. The
6 first part benefits of well planned out of Court restructuring
7 in that list, that's all the stuff you know in your heart.

8 The next section, consensus or near consensus is
9 necessary for a successful out of Court restructuring. And
10 then the thing in Italics is really an understatement. It's
11 extremely difficult to achieve and practice.

12 In your head you know it's nearly impossible. But you
13 hate to say it's impossible. And so even in circumstances
14 where this is how you evaluate the situation, and I believe
15 that -- that -- that -- that Page 13 of Exhibit 418 is how
16 every really qualified insolvency professional who knows
17 anything about Chapter 9 would look at this situation. You
18 get to the end and you say okay, I'm going to try anyway.

19 But you could -- you could have given the circumstances
20 of this city, you could easily have written this page that
21 said out of Court situations are preferred and unfortunately
22 it will not be possible here. And that would have been true
23 too.

24 So I think the -- the -- the -- what the city did was

1 going to try anyway. So I think you absolutely can believe in
2 your head that this is never going to work, but try anyway.
3 And that's what I think the situation is in this case.

4 So let's talk about what the city did. And let's see
5 whether it's reflective of a good faith attempt,
6 notwithstanding what may well have been insurmountable odds.

7 What you heard testimony about from multiple witnesses
8 from Mr. Moore, from Mr. Malhotra, from -- from -- from Mr.
9 Buckfire, and a little bit from the outside looking in from
10 Mr. Dillon, was that there was a lot of effort, probably
11 beginning a long time ago, but really intensifying at the
12 beginning of '13 by professionals as they were hired to study
13 the situation carefully and get up to speed.

14 And one of the things that you also heard several times
15 in testimony of several witnesses, that many of the people
16 involved at one point or another, were surprised at what they
17 found. And none of the surprises were positive. You heard
18 that with Mr. Buckfire when he got the liquidity numbers in
19 May, you heard Mr. Dillon talk about the numbers kept getting
20 worse. You talked about -- Mr. Malhotra said it in a number
21 of different ways.

22 And -- and that is a theme that I think Your Honor has to
23 also keep coming back to which is this situation, the economic
24 situation. Whatever people thought it was going to be it

25 ultimately looked worse than everyone's initial impressions.

1 So they determined what they thought the situation was,
2 and then they developed the June 14th proposal. Now, the June
3 14th proposal is really important because number one, it's in
4 evidence. And number two, when we go through not every page,
5 but I'm going to go through the sections and explain their
6 significance.

7 It's important to remember that with one exception that
8 I'll get to and discuss having to deal with the section on
9 assets, throughout all of the testimony of all of the
10 witnesses that came here, no one objected to any of the
11 findings, conclusions, and data that is contained in this
12 report. And as importantly, no one objected to the math.

13 And so I think this proposal stands frankly as a monument
14 to the city's good faith in this process. And I'm going to
15 show you why.

16 The book is divided into sections and frankly the
17 sections are a progression. The first 40 pages is about the
18 current financial condition of the city with some emphasis on
19 the services that are being provided to the residents. It
20 covers the economic service -- the economic circumstances, the
21 tax base, legacy liabilities, deficiencies of service
22 delivery.

23 As I said before, no one adduced any evidence that
24 anything contained in these pages is incorrect in any respect,

1 at it.

2 But now let's look at Page 41. Page 41 is a statement of
3 key objectives. It's what the city is trying to accomplish.
4 Nobody even mentioned it. But it's really important when
5 assessing the good faith of the city. Let's look at what it
6 says. If we can blow it up a little bit.

7 It starts with to the fullest extent possible under all
8 the circumstances. All the circumstances recognizing that
9 things aren't so good.

10 The first item, provide incentives and eliminate
11 disincentives for businesses and residents to locate and/or
12 remain in the city. The city cannot stabilize or pay
13 creditors meaningful recoveries if it continues to shrink.
14 Achieving this goal requires improvements in city services,
15 particularly the area of public policies. Public safety and
16 tax reform to reduce the cost of living in the city and to
17 more closely approximate costs of living in nearby areas.

18 No one took issue with this. That a fundamental problem
19 for the city is fixing delivery of services and -- and
20 actually reforming taxes. Neither one of these things are
21 good for creditors because both of them cost money.

22 And going back, I said I was going to use a Chapter 11
23 analog. We know that there are some cases that come to Court
24 and they advertise the business is just fine, we just have a

1 that's been true, but there are cases that are portrayed that
2 way.

3 This is not one of them. This is a case that requires a
4 rehabilitation and a debt restructuring at the same time. And
5 we're saying it right there and we're saying it's going to
6 cost money. No one walked into this Court and said that's
7 wrong.

8 Next point. Maximize recoveries for creditors. But
9 there's a recognition. Since the city will not generate
10 sufficient cash to pay all liabilities, alternatives have to
11 be considered. No one walked into this Court and said that
12 was wrong.

13 Go to the next section. We recognized that it's
14 important to provide affordable pension and health insurance
15 benefits, affordable, what the city can afford in restructured
16 governance of pension arrangements. It didn't come up here,
17 but it's in the book. There's been some problems there.

18 Next, eliminate blight to assist in stabilizing and
19 revitalizing neighborhoods and communities within the city.
20 No one objected. No one says this is wrong.

21 Next, reform city government operations to improve
22 efficiency and reduce costs. In many areas longer term
23 benefits will require immediate increases in capital
24 investments. No one said this is wrong.

1 imposed. We've heard complaints that there's insufficient
2 attention to this, but no one noted it's in the key objectives
3 that it is part of the plan.

4 And lastly, generate value from city assets where it's
5 appropriate to do so. And we're going to talk more about
6 that. We've been up front about that from day one.

7 So, with all of the contentions that the city is acting
8 in bad faith, there hasn't been and there can't be a
9 contention that the city understands what the objectives of
10 this exercise is, and has identified the correct ones because
11 there is no evidence to the contrary.

12 Pages 43 to 50, we're not going to look at them because
13 we've talked about the city, but it's a review of the city
14 budget for the past several years. Again, less important with
15 this -- this section, but there's no evidence in the record
16 that anything contained in these pages is wrong in any
17 respects.

18 But now let's do pause and take a look at Page 51.
19 Fifty-one is one of those pages that I'm sure, although I
20 don't know, the Governor's office looked at and was horrified.
21 What this page does is it looks at -- at five years of fiscal
22 actuals and we can blow it up for Your Honor if you don't have
23 it in front of you. But I wasn't planning to.

24 And then -- then forecast going forward for the next five
25 years based on nothing changing. No debt restructuring. Keep

1 things the way they are. And you have progressively building
2 budgets -- budget deficits in every single year. No one
3 introduced any evidence that there's anything inaccurate about
4 this page.

5 Pages 53 to 60 then go and say well, what has it already
6 done to address these problems? And there's a discussion
7 about the consent agreement, the appointment of the emergency
8 manager, and many things. There's another part to pages -- in
9 Pages 53 and 60 that are worth dwelling on because they're
10 partly relevant to what's going on here.

11 Which is there's a summary of things that emergency
12 managers have been trying to do in other jurisdictions that
13 were precipitated litigation, some of which have the effect of
14 imposing limitations on emergency managers' powers and
15 affecting their ability to accomplish things that would have
16 to be accomplished in the City of Detroit. Suggesting, of
17 course, that there were true limitations to what could be
18 accomplished out of Court as we've discussed in the context of
19 the impracticability section. No evidence introduced that
20 anything contained in that section is inaccurate in any way.

21 Pages 61 to 78 talk about what has to be done to address
22 the rehabilitation part of the program. And again in a
23 Chapter 11 example, everybody recognizes that you have to keep
24 the business going and keep the customers coming in the door
25 and to continue to keep your customers happy.

1 It's not any different in a city, particularly one that
2 has confronted declining population for as long as everyone
3 can remember. Pages 61 to 78 is a proposal for addressing
4 those things. And no evidence was adduced at this hearing
5 that anything contained in Pages 61 to 78 is incorrect,
6 unreasonable, imprudent, unnecessary, in any way.

7 Pages 79 to 82 only bear a short mention because this is
8 one area where there is no specific proposal. There is the
9 general recognition that taxes have to go down rather than up.
10 And of course the only thing -- there's -- there's no specific
11 proposal with respect to that. They will have to be some day,
12 but the point here is, is that in many cases it is asserted
13 that a debtor is not eligible because it can go solve its
14 problems by raising taxes.

15 And of course not a single witness has presented himself
16 or herself to Your Honor and suggested that that is a solution
17 to the problems of the City of Detroit for reasons described
18 elsewhere in the report, it is not.

19 And finally -- well, not finally, but we've now reached
20 the section where there's been some controversy which is the
21 -- which is realization of value of assets on Pages 83 to 89.
22 And first, I want to talk about complaints that weren't made.

23 There was no complaint that an asset is missing. The --
24 the -- the report covers the -- the assets that people at the

1 value might be extracted to help out with the creditor
2 situation. And no one testified that one was missing or
3 hidden.

4 There's also no testimony by anyone that the information
5 presented with respect to the various assets is inaccurate or
6 incomplete in any way. The specific complaint from Mr.
7 Robbins, and frankly it was -- we'll come to this in more
8 detail later, but Mr. Robbins had lots of complaints about
9 there wasn't enough information, or at least the -- the -- the
10 testimony was elicited from him that he needed more
11 information.

12 Then he qualified that by saying, well, we needed more
13 information because any time you look at information more
14 questions come up and we have to ask for more. And then he
15 was asked well, what additional information did you really
16 need. And the only specific category he could think of was
17 values of assets -- values of the assets.

18 So I want to cover this in two different ways. First of
19 all, it's worth asking would creditors have credited a city
20 value on any of those assets if they had offered one at that
21 stage in the case.

22 I have been doing this for a really long time. I am
23 waiting to see a case where a debtor puts a value on assets
24 and the creditors immediately respond, gee, those are great,

1 Honor hasn't seen that case yet either.

2 But in any event, the -- the -- Mr. Buckfire's testimony
3 demonstrated that there were really only two of the listed
4 assets that can contribute material value to resolving
5 creditor -- creditor problems in this case or the city's
6 problems in this case. And the reality is, is that both of
7 those involve publicly known circumstances is the best way I
8 can put it, the cloud value.

9 So even if you create theoretical valuations, or
10 appraisals, or -- or -- or try to, you know, kind of come to
11 values of assets that turn out to be very difficult to value
12 to begin with, there are what I'll call other issues.

13 First, with respect to DWSD as is explained in the
14 proposal for creditors, realizing value from DWSD for the
15 benefit of creditors involves a very complex transaction with
16 -- with surrounding governmental units. A topic by the way
17 that I think has been a subject of discussion for more than
18 five years. And it involves a lot of competing concerns of
19 the other municipalities and desires to pay less when the city
20 would want more.

21 And secondly, as we pointed out in oral argument, the
22 second category is the art, the Detroit Institute of Art and
23 the collection contained therein. And as I pointed out there,
24 we are currently operating under an Attorney General opinion
25 that says the city can't realize any value from it. And that

1 is probably not the only, but it's a significant issue with
2 respect to the asset, but it's probably not the only issue
3 that is relevant for consideration.

4 So the reality is with these assets as with so many more
5 in so many other cases that we've all been a part of, there
6 are tremendous uncertainties as to what the true value
7 realization potential is. It's in a really big range.

8 And it may well be and in fact we can -- we should in a
9 second, cross reference to another part of the presentation,
10 recognize that these things might not be resolved in -- during
11 the pendency of any Chapter 9 case, and there might have to be
12 an agreement that deals with allocations of values as if and
13 when realized on a sensible basis. Not exactly an unheard of
14 plan term.

15 In our own way, maybe not artfully enough, we signaled
16 that. And so if Your Honor goes to the book, and I didn't
17 prepare the pages to be presented, but I'll just give people
18 references so that they can go to the right place if they need
19 to. In a description of the note that is -- was intended to
20 be distributed pro rata to unsecured creditors, there are a
21 couple of terms that deal with these uncertainties.

22 In particular there are two kinds of participation
23 payments that are prescribed by the note. One deals with
24 revenues, and one deals with designated assets which weren't
25 defined, but that was something that people could talk about.

1 And the idea was that if as and when monies were
2 received, 70% would be devoted to creditor recoveries and 30%
3 would be retained by the city. Which also by the way answers
4 one of Mr. Robbins' complaints about there wasn't an incentive
5 for the city actually to realize value. Thirty percent was
6 part of that.

7 But another part of that, of course, is the possibility
8 that exists in many cases for post effective date supervision
9 by Courts. It will surprise some people, but believe it or
10 not, the Orange County Chapter 9 case was open for about a
11 decade after the plan was confirmed and it was reopened last
12 year because some loose end developed that had to be closed.

13 So in any event, we -- in its own way the proposal
14 anticipates the reality that many had to have recognized that
15 asset values at this point in time were really hard to
16 deliver, would not be precise, and in any event would not
17 necessarily represent a number that would effectively result
18 in a distribution. That that information might come much much
19 later.

20 THE COURT: What page was that on?

21 MR. BENNETT: It's asset distribution proceeds, Page
22 108, about one-third from the top.

23 THE COURT: Thank you.

24 MR. BENNETT: And the -- and the provision relating
25 to sharing of -- of improvement in gross revenues is -- is on

1 the prior page. It's 107 on the bottom.

2 Okay. So after the description of assets we come to the
3 ten year projections. And here again no evidence at all was
4 introduced that says anything about the assumptions on which
5 the projections were based, or the number crunching and the
6 math that actually generates the results are wrong in any way.
7 And -- and really in this section the assumptions are
8 summarized and then math takes over.

9 We should -- let's take a look at Page 98, just very very
10 briefly once again. Page 98 where there is the -- the box of
11 estimated claim amounts, is also the place where we show
12 available cash under the first ten years that is generated by
13 the model and the assumptions that are listed in that section.

14 And if you'll -- if you could blow -- blow up the box
15 above the box we saw last time. So the one that goes all the
16 way across the page. Okay.

17 So the first line is funds available for unsecured
18 creditors based upon city operations and city tax collections.
19 Further demonstrating that nobody was hiding the ball about
20 the importance of asset sales as -- or asset monetization as a
21 potential source of recovery in the case, there's a line that
22 shows that there -- there may or may not be something. TBD of
23 course means to be determined.

24 And then the bottom line, funds that we know are
25 available for unsecured claims. And then notice the last two

1 words, with opportunities, recognizing that it's hoped that
2 things will be better. That's why there's the revenue sharing
3 provision in the other sections.

4 But as I said before, at this point the math has taken
5 over. And it is these numbers, the numbers we know we're
6 going to have that drive the next section which is treatment.
7 We've already discussed the plan. I don't think there's any
8 more reason to discuss it. As I said before, it's driven by
9 the numbers, it is complete, covers all the contingencies
10 people are concerned about. It may not cover them the way
11 they want, and we'll come to that in a second, but no one is
12 hiding the ball. Every issue that anyone has ever talked
13 about in this Court that has to be dealt with in this case, is
14 highlighted here, a reflection of good faith, not bad faith.

15 On -- there's another section on post -- post plan
16 governance recognizing that that's another subject that has to
17 be addressed, it got no attention here. So the proposal
18 itself shows that the city's professionals did a lot of work.
19 It shows that the results were driven by math that no one
20 challenges, and at this point, and I can skip it now because
21 we went there already, I wanted to make the point that
22 everyone involved understood that the negotiations were likely
23 to fail because it was impracticable to expect that you could
24 achieve a negotiated solution in this case.

1 but of course the evidence doesn't show directly, that
2 everybody else also understood, which is as the numbers got
3 worse, everyone testified in varying ways that the numbers got
4 worse and the negative surprises. The chances that a deal
5 could be worked out out of Court actually decreased because
6 it's harder to get a deal done when there's low recoveries
7 than a deal done when there's relatively higher recoveries.

8 And I don't think at any time people thought the
9 recoveries could be great. But I think that when you look at
10 the recoveries that are -- are projected and the plan
11 provisions that are included in the June 14th proposal, what
12 you're seeing is the lowest situation, or the worst situation
13 anyone envisioned at any point in the process.

14 So to the extent that back on January 29th, there is
15 optimism in the Jones, Day report that, you know, all these
16 great things can happen if you can get something done out of
17 Court, and it's very difficult, because the numbers went down
18 from there, I think people felt even worse about the
19 prospects. But as I said before, they tried anyway and they
20 tried hard.

21 Okay. Well, notwithstanding the reservations that this
22 was going to be very hard if not impossible, a meeting was
23 scheduled, presentation was finalized, a meeting was
24 scheduled. Many many people were invited to that meeting. I
25 think the testimony is uniform on that.

1 Some people managed not to get an invitation. I frankly
2 think that the -- that the broad array of people who weren't
3 invited was a reflection of good faith as opposed to bad faith
4 and the fact that a few -- we missed a few, I don't think
5 reflects any -- any lack of good faith.

6 There was a big room at the first meeting, very clearly
7 no negotiations were intended there. And so all the testimony
8 about how there were no negotiations at the first meeting, I
9 stipulate to that.

10 I will point out that everyone testified that all
11 questions were answered. Some people testified they didn't
12 ask questions. Some people testified that there was a card
13 system used because of -- frankly because of the size of the
14 room, it was a pretty reasonable thing to do.

15 But the fact that some people were discouraged from
16 asking questions frankly is not evidence of the city's bad
17 faith. That certain professionals might have decided not to
18 ask questions for whatever reasons, certainly is not a
19 reflection of the city's bad faith, but that obviously could
20 have impeded progress to a degree.

21 At the end of the initial presentation the city discussed
22 what it was going to do next. And if we can have Exhibit 44,
23 Page 61. Your Honor's seen it before, I'm not going to read
24 it.

1 discussions with stakeholders. No one ever said we're going
2 to negotiate a plan in four weeks or else. But what is said
3 is, we're going to have an initial round of discussions with
4 stakeholders. And then we're going to evaluate where we are.

5 So now you've got a city that said, I've got a really bad
6 situation, the numbers clearly show that. No one denies that.
7 We're going to make a shot because in -- because in our hearts
8 we would love to have an out of Court deal even if in our
9 heads we think it's impossible.

10 So let's see what the initial reactions are to what we
11 are proposing. And we are proposing something by the way
12 backed with a huge amount of information and backed with a
13 progression that explains exactly how we got to the place
14 where we got.

15 I'm going to ignore for the time being and hold for
16 reply, the whole potential confusion over the subject of
17 whether there were negotiations or not at different stages.
18 But I think the testimony showed that everyone understood, or
19 that many, not everyone, many understood -- actually the most
20 important people understood that the city representatives were
21 looking for feedback. No one denies that.

22 And in fact a list of some of the witnesses. Nicholson
23 acknowledges this, Kreisberg acknowledged this. By the way,
24 they were actually the most professional negotiators involved

1 to in a second.

2 And -- and Kreisberg is a person who understood that a
3 counter proposal was kind of the right next step. Because
4 Kreisberg testified that he actually had worked out a counter
5 proposal of some sort, he just decided not to present it. I
6 don't know if he would have presented it, it would have
7 changed anything, but it would have been more information for
8 the evaluation that the city said was going to follow.

9 Robbins testified that the proposal itself with all of
10 the flaws that he asserted are in it, signaled that the city
11 wanted to negotiate and have discussions. He used both of
12 those words, although I don't have the official transcript, it
13 was just yesterday.

14 But he also volunteered that he didn't think the city's
15 proposal was serious. And he said -- and the reasons when he
16 asked about that he said well, there was no incentive to
17 actually realize monetization with respect to assets. Your
18 Honor can create your own judgment on that. And that there
19 was no requirement in the -- in the notes to pay on maturity
20 if asset sales and if the distributions didn't happen.

21 Well, again, that's a function of the math. There are
22 projections that shows how much cash is available. It's
23 already being used for interest on the note. There's a
24 separate provision saying some of it's going to be used for

1 money. But again, those were thoughts he kept to himself. He
2 didn't ask questions or discuss.

3 As I said before, at this evaluation period what was
4 going to happen. Well, a lot of things could have happened.
5 It might have been unlikely, but one thing could have happened
6 is, the germ of an idea, or the possibility of agreement might
7 have emerged and it would have been pursued.

8 The other thing that could have happened is, is that
9 there was no prospect of an agreement and the objective
10 judgment that things were -- were impracticable would be
11 confirmed. But one thing should not be surprising, is that
12 work on both contingencies proceeded at all times. Because
13 remember, the backdrop was an insolvent city with a number of
14 recent events that created instability. And no one could
15 ignore that.

16 And Mr. Nowling's schedule is part of normal
17 pre-bankruptcy planning, nothing more, nothing less. And
18 pre-bankruptcy planning is not a reflection of a lack of good
19 faith, it's a reflection of sensibly managing your affairs in
20 circumstances where you're under extreme financial pressure
21 and you know that the only proposal that you can afford isn't
22 so great.

23 There was testimony about other large group meetings.
24 There was testimony about in the hall meetings. There was a

1 meetings that were happening on the bond holder side. And
2 there too, there was big meetings and small meetings, and
3 individual meetings. There were lots and lots and lots of
4 meetings during the four week period of time.

5 Again, whether or not negotiations occurred, discussions
6 did occur. And multiple requests for feedback were made,
7 they're in the record.

8 Robbins actually says the same thing a little bit
9 differently. You know, he -- he -- he doesn't say that
10 feedback was attracted, I think I mentioned before he said it
11 was implicit in the proposal.

12 But what I think for these purposes, I want to go back to
13 that testimony that -- that these three experienced
14 negotiators at a minimum two on the labor side, one an
15 investment banker representing labor side, they knew that a
16 negotiation that the city was trying to start negotiation.
17 And they just didn't accept the invitation.

18 So I -- I think again we ask ourselves two questions.
19 One, how does a dialogue get started. And two, what is the --
20 the city supposed to do, what is a good faith city supposed to
21 do when the dialogue doesn't get started? Well, I think it's
22 incredibly obvious that the way a dialogue has to -- has to
23 get started, is that when -- when you get a proposal from
24 someone and you don't like it, but you want to or need to make
25 a deal with that person, you make a counter proposal.

1 I -- I -- very short digression, we're in Motor City. So
2 let's talk about how people go about buying cars which should
3 be familiar to everyone in this room except a couple of New
4 Yorkers who may never have owned one.

5 You go to a dealer. There's a sticker on the car. And
6 let's say you like the car. You don't want to pay the sticker
7 price ever. What do you have to do to find out what the real
8 price of the car is going to be and if you're going to be able
9 to buy it.

10 The dealer, the sales person, or the manager says, how
11 much are you willing to pay for the car. And you have to tell
12 them, you have to make an offer, otherwise you're not going to
13 buy the car. That's how a dialogue gets started.

14 No one ever answered the question which Robbins
15 understood was on the table, which Kreisberg understood was on
16 the table, which Nicholson understood was on the table, and
17 many other people may have understood on the table as well.
18 Which is okay, in light of all this data, the progression, the
19 argument, the presentation about what the problems are, which
20 is not contested at all in this hearing. It had five months
21 to decide that there was something wrong with this.

22 Propose something else that you like better that works.
23 That never happened. And actually what did happen, the
24 evidence shows, the interrogatory responses told, is that to

1 response is from the -- the -- the two funds, any one of the
2 retiree representatives who say we should have negotiated with
3 them, the response was, I'll pay zero because their statement
4 was, no impairment at all.

5 I don't think this is that hard. Other city creditors
6 knew how to respond. From Mr. Orr we have the testimony about
7 the negotiations with the swap banks and the 60 days, the
8 roughly 60 day period beginning from the time when everyone
9 started to understand there was going to be a default on the
10 COPs.

11 Buckfire testified, and it's in the record, that some of
12 the GO insurers actually did submit a written out offer, a
13 competing framework. It wasn't acceptable but they submitted
14 something.

15 He also testified that someone else had half a proposal.
16 I think he called it half a proposal. It was -- it was -- it
17 was verbal. But other professionals who Mr. Robbins would say
18 he is as qualified as, or in the same league with, knew what
19 to do if there was any hope at all of starting a dialogue.

20 So now we get to the next -- the next part of the
21 question. What is a good faith city supposed to do when
22 confronted with counter parties that said to the city, you
23 have miscalculated the pension underfunding claim, said it's
24 too high as opposed to too low. But no impairment will be

1 zero.

2 And some of them they say they don't -- they don't even
3 really represent the employees as reflected by the
4 interrogatory responses which are admissions. This is really
5 important. There is no answer to that question in the
6 evidence, none.

7 The answer that well, spend more time. There's two
8 responses to spend more time. One is the city didn't have
9 more time. There were other pressures. This wasn't just
10 about a negotiation however long it could be. It was a
11 constant tension between spending more time in negotiations
12 and incurring more financial instability risk.

13 But the second part is, what would more time have led to.
14 There was no evidence of any overt indication that the city
15 could have looked at and said, there's a path to a deal.

16 With respect to UAW, there's an additional complication
17 we now know, didn't know then, that the UAW was secretly
18 financing a lawsuit, the Flowers case. By the way, the UAW is
19 the one that in their brief, their trial brief for this
20 proceeding says, they were never going to make a deal because
21 they would never ever ever compromise on pension claims.

22 Three times in their trial briefs they say that. There is no
23 answer to the question as to what a good faith city is
24 supposed to do in response to that position. That works, that
25 makes things better.

1 And then we have Mr. Robbins and his client the funds.
2 Now remember how those discussions ended. Robbins has a
3 meeting with city representatives and they are talking about a
4 process for trying to reach agreement. What steps are we
5 going to take? What things are we going to try to talk about?
6 Really due diligence points. They actually weren't even
7 talking about an agreement.

8 I'm going to call those things the shape of the table.
9 So Mr. Robbins says -- is trying to talk about the shape of
10 the table. And he says back, I need eight days to discuss
11 with my client my authority and my recommendations concerning
12 the shape of the table.

13 Mr. Robbins knows the city has already defaulted on some
14 of its debt. Mr. Robbins may or may not know, or maybe didn't
15 ask about what was going on with Syncora. I don't know. But
16 Mr. Robbins knows that there's an emergency and Mr. Robbins
17 knows a valuation is starting soon. But he says, I'll get
18 back to you in eight days.

19 And what happens during those eight days? Well, with or
20 without Mr. Robbins' knowledge, don't know what was going on
21 inside the funds as to what they were really talking to each
22 other, his client initiates litigation against the city. I
23 don't understand why Mr. Robbins was surprised by the timing
24 of the filing. In fact I don't know how anyone could have
25 been under all the circumstances.

1 On some -- some other points that I'm going to do a
2 little anticipating now, but only a little. About the kinds
3 of objections that we expect to see to the good faith of the
4 city. But I don't think I have a vivid enough imagination to
5 figure out all of them.

6 One is, not enough information was provided. We talked
7 about that already in a number of places we've talked about
8 it. Robbins is so far as I can tell, the only specific
9 testimony about information that was missing. There is no
10 doubt that more can always be provided, more is always
11 provided, and another thing I've never had happen to me yet in
12 my professional career, is where an adverse party has said,
13 enough, I have enough information. Just never happened to me
14 yet. I don't expect it to happen for the rest of the case.

15 But the fact that there is more information that is
16 always available does not mean negotiations aren't supposed to
17 start. Enough information will never be available.

18 By the way, the only person who was really asked about
19 the operation of the data room was Mr. Robbins and he
20 testified that Miller, Buckfire had been responsive and he was
21 generally satisfied with the way it was working, although
22 admittedly he said, and it's true, the city was having
23 problems coming up with some of the information he was
24 requesting.

1 County -- it's one thing about the Ingham County forum that I
2 think everyone would have to stipulate to. There is nothing
3 about what was going on in the Ingham County forum that was
4 going to solve the city's problems. It was only going to make
5 the situation worse.

6 To me that's the -- an example of the beginning of
7 uncoordinated creditor action that bankruptcy laws are
8 designed to supplant. And bankruptcy laws do supplant. And
9 so by filing this case here, when the city was already facing
10 time pressure, already had been through the period of time it
11 told everyone it was going to have discussions based on which
12 it would conduct an evaluation, and where everything that it
13 heard confirmed the fears that -- that things were as
14 impractical as their heads told them, it was not only in good
15 faith, but it was sensible to engage a forum that not only had
16 exclusive jurisdiction to decide all the questions that
17 someone was trying to raise in Ingham County, but could
18 actually and did actually have the power to solve -- help
19 solve the city's problems. That can't possibly be in bad
20 faith.

21 I expect to hear that the city did not negotiate in good
22 faith because it took at face value the retiree
23 representatives' disclaimer of authority to negotiate.
24 Because what you've heard here, is that while they can't

1 sent which said we can't negotiate, don't have authority, have
2 never sought authority.

3 They appear to contend that the city should have figured
4 out that they didn't mean it. I think you've heard testimony
5 that we thought they did mean it. But let's assume that there
6 was a misunderstanding.

7 If there was a misunderstanding, it was a
8 misunderstanding created by the written letters which don't
9 admit an exception to the statements that were made, or don't
10 admit to the existence of a work around to the statements that
11 are made. I don't think it was a misunderstanding, but if
12 there was a misunderstanding, that does not reflect bad faith.

13 Another point that I -- I think we will hear was that the
14 proposal that was made was not acceptable. You've already
15 heard the retiree committee, any proposal that involves any
16 impairment to pension benefits was not going to be acceptable.

17 To Mr. Montgomery's cross examination of Mr. Buckfire and
18 he wasn't here of course at the very beginning, but drawing
19 inferences from his cross examination, it sounds like the
20 retiree representatives didn't like the interest rate. It
21 sounds like the retirement on the note. It sounds like the
22 retiree representatives didn't like that the principal amount
23 was 2,000,000,000 as opposed to a different number. It sounds
24 like the retiree representatives didn't like the Dutch auction
25 mechanism.

1 Those things are good to hear. They would have been
2 better to hear if there was any chance of -- of having a
3 consensual solution back at the time when the proposal was
4 made and a discussion -- period for discussion with creditors
5 was going on. There is no evidence that any creditor stood up
6 and made any of the points that Mr. Montgomery made in his --
7 or tried to make in his cross examination of -- of Mr.
8 Buckfire at any time during the negotiation period.

9 Again, perhaps they were under no obligation. Your
10 Honor, once observed to me that the good faith requirement
11 points to the city and it does. But the question is, in the
12 absence of the kind of feedback that I guess the retiree
13 committee is now effectively admitting, is the kind of things
14 people talk about when they receive a proposal, speaks volumes
15 to the question of what a good faith city is supposed to do
16 when it doesn't get that feedback.

17 City representatives at meetings were not "authorized to
18 negotiate". And -- and I think the testimony from the
19 witnesses was a little clear when that question was sprung --
20 unclear when the question was sprung at them. Some said, you
21 know, well, I work for Mr. Orr, he wasn't there. But the
22 reality is, is that the representatives of the city were there
23 to collect feedback and figure out what to do about it.

24 And they have the ability to make a recommendation to a
25 single person who yea or nay and sometimes with government

1 approval depending upon the amounts of money at stake, could
2 actually instantly or very promptly respond. That Mr. Orr was
3 not in the room is -- does not make a difference. He sent
4 people to collect feedback to figure out what the next step
5 should be. That should be sufficient.

6 No one proved, Your Honor, and -- and I'm going to be
7 slightly going over matters that the state covered, so I'll be
8 very brief. No one proved that the filing of the Chapter 9
9 case was preordained, or planned, or implemented without
10 considering approvals.

11 I said before the fact that state -- the state, the
12 professionals who ultimately represent the city looked at
13 Chapter 9, realized that the city might be headed there, and
14 thought about that, doesn't show a lack of good faith, it
15 shows two things. It shows a lack of prudent and practical
16 planning, and as I pointed out, it may also show due regard
17 for the law.

18 I think this is a -- I think -- while there will be, I'm
19 sure, other assertions of indicia of lack of good faith that
20 arose at different points in the process, I think I will save
21 that for reply, because I think I'm also a little bit
22 overstaying the time I reserved for myself.

23 For a very short summary. First of all, I want to harken
24 back to where I started. That there's a list of five things.

1 decisions on to demonstrate to find that the city is eligible.

2 I think the evidence overwhelmingly demonstrates that the
3 city is eligible, that there's been no effective rebutting of
4 the -- of the city's prima facie case on any of the points.

5 And this Court could clearly find in the alternative that it
6 was impracticable and the city tried anyway. And everything
7 they did in that process was in good faith and did not exhibit
8 any lack of good faith. And I think for the same reason,
9 there is no basis for dismissing the case under 921.

10 I think it is important in -- in listening to the
11 argument you're about to hear, whether any of the complaints
12 about the process are followed with, and if this particular
13 thing was done differently, the city's problems would be
14 solved as follows.

15 The second half has never been a part of the dialogue.
16 If you scour through all of the pre-trial briefs that were
17 filed, AFSCME recognizes that it's something they have to say,
18 or a topic they have to address. And then they address it by
19 saying well, there were lots of ways that the city could have
20 avoided bankruptcy if they just talked some more.

21 Well, lots of unspecified ways don't cut it anymore. If
22 there is a assertion that there was a fork at the road where
23 the city acted in any way lacking complete good faith, and
24 could have acted differently, they should specify what the

1 that act would have made this proceeding unnecessary and
2 redundant.

3 That question has never been answered. And that's the
4 most important question before you. I think the facts are
5 overwhelming, the city should -- the Court should determine
6 the city is eligible and the case should not be dismissed
7 under 921. I'm happy to answer any questions Your Honor might
8 have.

9 THE COURT: Thank you, sir. And who is going first
10 on the objectors side?

11 MS. LEVINE: We are, Your Honor.

12 THE COURT: So I'll ask you your preference. Would
13 you like to take an hour and a half now for what would be an
14 early lunch break, or do you want to plow ahead after a 20
15 minute recess?

16 MR. MONTGOMERY: Your Honor, if I may make an
17 inquiry of the Court. Which is initially when would you
18 otherwise plan to take the lunch break for today?

19 THE COURT: Probably after the first of the
20 arguments. That's why I was leaving it up to Ms. Levine.

21 MR. MONTGOMERY: Your Honor, whatever Ms. Levine
22 wants to do, we'll follow. If she wants to take a break now.

23 THE COURT: I agree, it's all on you.

24 MS. LEVINE: Okay. We'll start.

25 THE COURT: Okay. Well, I would like to take a 20
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1 minute break at this point. Is that okay?

2 MS. LEVINE: If we -- if we take lunch then does
3 that obviate the 20 minute break and maybe gets out a little a
4 bit earlier on Friday?

5 THE COURT: It would.

6 MS. LEVINE: Then we will eat lunch.

7 THE COURT: All right. It's 11:15. We'll reconvene
8 at 12:45, please.

9 MS. LEVINE: Thank you.

10 THE CLERK: All rise. Court is in recess.

11 (Court in Recess at 11:14 a.m.; Resume at 12:48 p.m.)

12 THE CLERK: All rise. Court is in session. Please
13 be seated. Recalling case number 13-53846, City of Detroit,
14 Michigan.

15 MS. LEVINE: Good afternoon, Your Honor. Sharon
16 Levine, Lowenstein, Sandler for AFSCME.

17 THE COURT: You may proceed.

18 MS. LEVINE: Thank you, Your Honor. Your Honor,
19 based on these facts, Detroit is not eligible to be a debtor
20 under Chapter 9 of the Bankruptcy Code.

21 Under the Bankruptcy Code, in Chapter 11, it works
22 because of transparency and because there's value creation for
23 all of the constituents. There's an exchange for the
24 automatic stay. There is a fish bowl.

1 how bankruptcy works. The bonds get equity or get
2 restructured debt, vendors get equity and they get to keep a
3 customer. And even if you're part of the cadre of -- of costs
4 that have to get kicked to the curb, like -- like the
5 pensioners or the retirees, there's safety nets in the private
6 sector that -- that protect against that.

7 There's the Pension Benefit Guaranty Corp which provides
8 federal insurance. The is multi employer pension plans.
9 There are VEBA's. There's COBRA. It's not as if you're --
10 you're left there with no pension and no Social Security.

11 Here, Your Honor, in Detroit, there is no such safety
12 net. And while we heard you ask Mr. Orr whether or not he had
13 asked the Governor for that help and we certainly heard the
14 Governor say that he doesn't have to provide that help because
15 the bankruptcy process will take care of it. As we sit here
16 today, there is no -- there is no visibility on that issue.

17 We'd respectfully submit that operating outside of a fish
18 bowl but under a cloak of secrecy, leaves folks with a limited
19 understanding of what's happening, why it's happening, and why
20 it's happening now. And particularly troubling here, Your
21 Honor, is -- and we've heard the testimony and then we just
22 heard the state and the city acknowledged in their closings,
23 when the Governor took office, when the Treasurer took office
24 in 2011, they were -- they already had their eye on Detroit,
25 they already believed it to be financially distressed.

1 There was a slow decline that the state believed was
2 occurring, that the Governor believed was occurring at that
3 time which didn't result in an emergency or a crisis on June
4 14 when the proposal for creditors was made and an emergency
5 that necessitated a July 19 or a July 18 filing. There was a
6 multi year decline where the Governor chose to do nothing and
7 Detroit suffered the consequences. That is not -- that's not
8 impractical and that's not good faith.

9 Turning first, Your Honor, to insolvency. You know,
10 there's a little bit of tongue in cheek when we talk about the
11 fact that the city needs to prove insolvency because we're not
12 -- you know, we're not immune to the fact that there clearly
13 is blight and no lights. And we'd like to see more from the
14 police and from the fire. And we'd like to help them be able
15 to do more to -- to make the -- to make this city safer.

16 But under Bankruptcy Code Section 109, only one type of
17 debtor has to prove insolvency at the beginning of the case
18 and that's a municipality. And we would respectfully submit
19 that that makes sense because of how unusual this is and how
20 scary this is for its citizens.

21 So for the city to say, sort of tongue in cheek that of
22 course we wouldn't expect them to offer evidence of value at
23 the start of the case, you need to negotiate those values and
24 do that at the end of the case. That works. We've done that,
25 that works in a Chapter 11.

1 But that doesn't work in the Chapter 9 context, Your
2 Honor. So if I owe a dollar and I choose not to pay it, even
3 if I have it, that doesn't make me insolvent. If I have an
4 asset and I choose not to pay that dollar because the Governor
5 through the Attorney General has told me not to sell or
6 dollarize that asset, that doesn't make me insolvent.

7 And if the police chief gets on the stand and despite the
8 fact that the testimony is compelling, and it is compelling,
9 how much he wants to improve the city. Or even frankly I
10 found particularly compelling, Your Honor, the retired
11 librarian who -- who loved the library and who -- and who was
12 very compelling in the sadness that she felt that some of the
13 libraries were being closed. That's not proof of insolvency,
14 that's anecdotal.

15 And what -- and what -- and if you listen to what Captain
16 Craig said on cross examination, he has not given the city a
17 budget. We don't know what the hole is. We don't know what
18 the path is to fix it and we don't know how much it's going to
19 cost.

20 We know they're going to take from the retirees. We know
21 they're going to take from the active employees. We know
22 they're going to take, but we don't know what -- whether or
23 not it's going to fix anything, and how it's going to be used,
24 and what that taking is going to mean.

1 fact that we can't collect taxes. And that therefore we -- we
2 don't know what our revenue stream.

3 My co-counsel Richard Macks lives in the city and he pays
4 his taxes. And we went through this thing, this 109 pages
5 together. We don't understand who is not paying, and why
6 they're not paying, and whether or not that's valid.

7 Now it may be, Your Honor, that, you know, we see the
8 blight and we see the problems. And we're not saying that
9 those aren't real issues. And we're not saying that -- that
10 Detroit doesn't have, you know, issues with tax collection.
11 But what we are saying is, a municipality for a very important
12 and compelling reason has the burden of proof and they haven't
13 proved it here.

14 We don't see valuations. We don't see appraisals. We
15 don't see actuarial reports. We don't see any expert reports
16 with regard to the shortfall -- alleged shortfall in the
17 vested pension benefits or otherwise. And we have heard that
18 that's for strategic reasons.

19 But let's assume -- but -- but even if that is, Your
20 Honor, we still have a Chapter 9 municipality and a Chapter 9
21 municipality to be eligible must -- must prove solvency. And
22 even if Your Honor disagrees with us that we need expert
23 testimony on that which we believe you do, then we need to
24 take a look at what factual evidence they've given us. Okay.

1 they say we haven't refuted them, but that's not true, Judge.
2 We absolutely have. They've -- they've offered the testimony
3 particularly of Ernst and Young, of E & Y. And those -- and
4 E & Y has been involved with the city according to Mr. Dillon
5 in 2012 and maybe even as early as 2011 because E & Y
6 participated in the concessionary bargaining negotiations with
7 labor. Okay.

8 So E & Y is the guy that everybody is telling us has
9 really gotten underneath the numbers. We didn't agree that
10 the terminology was a bottoms up terminology, but we did agree
11 that E & Y was the guy that got underneath the numbers.

12 So why when E & Y took the stand, are they relying on
13 audited financial statements from non-testifying CPA's? Or
14 even more confusing, if the theory is that we need an
15 emergency manager because the -- because the city is being
16 mismanaged by itself, why is E & Y relying on untestifying,
17 untested city employees to provide the information that
18 they're relying on.

19 Either -- either they're a fact witness and they're doing
20 their own fact checking, bottoms up, true digging in and
21 understanding the numbers, or they're an expert and they're
22 really offering expert testimony. We have neither. We have
23 neither, Your Honor. They haven't demonstrated insolvency.
24 Okay.

1 involved in this process for at least since the middle of
2 2012. And it's frankly baffling to the stakeholders that they
3 want to cut claims, that they want to cut jobs, that they want
4 to cut retiree health, that they want to cut pensions, but
5 they don't have an indication for us yet as to what is that
6 hole that they need to fill.

7 And frankly, Your Honor, unlike some cities that find
8 themselves distressed, Detroit is in a solvent state. So if
9 we have a Governor who is starving the city and then delaying
10 taking action with regard to the stakeholders, that is not, we
11 would respectfully submit, proof of insolvency.

12 We were -- we heard colloquy on the stand actually, Your
13 Honor, and I think Your Honor actually questioned Mr. Orr with
14 regard to why he didn't ask the Governor specifically for the
15 3.5 -- or why he didn't remember whether or not he asked the
16 Governor for the 3.6 billion to fill the pension hole. Your
17 Honor, I have kids, they know when not to ask.

18 Your Honor, with regard to good faith and with regard to
19 the negotiations. AFSCME and others sought to meet with the
20 emergency manager on the day, the very day he was appointed.
21 Ed McNeil went to his office and when he couldn't get into the
22 office, he posted a letter to the door requesting a meeting
23 with the coalition of unions that wanted to meet with him.

24 AFSCME and others, including Mr. Kreisberg went to all

1 others signed a confidentiality agreement to access the data
2 room to get access to information. AFSCME sent information
3 requests requesting reasonable financial, cost, health
4 benefit, retiree health, pension information.

5 Mr. Kreisberg testified that despite the fact that there
6 was some colloquy during his deposition that may have
7 indicated otherwise, he did want to meet and he was trying to
8 get information from the city with regard to what might
9 constitute the underpinnings of a successful proposal, or a
10 successful counter proposal. And that was not forthcoming.

11 There were no meetings. There were no responses to those
12 inquiries. And in addition to that, there was not sufficient
13 information in the data room as of the filing date to make a
14 reasonable counter proposal.

15 In fact we're not sure, Your Honor, and we would
16 respectfully submit that Your Honor find, that this proposal
17 isn't a proposal. We saw some of the pages that the city
18 pointed us to during their opening, but if you look at this
19 proposal, and you're a retiree counting on health benefits,
20 you don't know what your new benefits are going to be. You
21 don't know what benefits are going to be cut. And you don't
22 know how much the city is saving because they're making those
23 changes. So you can't really counter or offer something
24 different or potentially less devastating to you.

1 benefits. You don't know what's going to be cut, you don't
2 know what your pension benefit is going to be. And you don't
3 know what the savings are as a result of those cuts. In fact
4 with regard to the pensioners, you don't even know if you're
5 considered a creditor.

6 With regard to jobs, Your Honor, you don't know if you're
7 going to have one. And you don't know what they're going to
8 save by outsourcing your job or by eliminating it. How can
9 you make a counter proposal without these very basic simple
10 facts?

11 And equally telling, equally telling is that we've seen a
12 plethora of information and evidence with regard to the fact
13 that people were reviewing and looking at whether or not you
14 could terminate the pensions through the use of Chapter 9 way
15 back into 2012.

16 Not one shred of evidence, Your Honor, not one shred of
17 evidence on how you conduct the good faith negotiations you
18 need to conduct to be a Chapter 9 debtor consistently with
19 whatever rights you want to reserve under PA436. Not one
20 shred of evidence on how they could actually facilitate those
21 discussions.

22 We would respectfully submit that the arguments with
23 regard to impractical also go to bad faith and a -- and a lack
24 of -- and a lack of authority. They've admitted financial

1 2011, yet the state created a situation where there was only
2 one month and four days that we could do these negotiations.
3 They did not, the Governor did not before June 14th, encourage
4 negotiations with stakeholders.

5 We heard testimony from the bevy of consultants that
6 there were no discussions with the bonds before the -- before
7 the -- before the EM was appointed. There were no discussions
8 with vendors. There were no discussions on the pensions.
9 There were no discussions with the retirees.

10 And when there were discussions, with a coalition of
11 unions led by Ed McNeil and others that resulted in a
12 concessionary agreement where the city sat in the room and
13 worked hard for several months and frankly it could have been
14 done shorter, if it needed to be done shorter as a precursor
15 to Chapter 9 and where E & Y, the one -- the one consultant
16 that the -- the state has testified is the guy that knows the
17 numbers, sat in the room and participated in those
18 discussions. When that negotiation concluded, the state said
19 no.

20 And not only were there no negotiations with retirees,
21 Your Honor, but you heard testimony from at least two of the
22 -- two of the witnesses that you can do settlements with
23 retirees. You can do settlements through class actions, you
24 can do settlements as Mr. Kreisberg testified actually

1 the concessionary bargain, which by the way dealt with retiree
2 health and dealt with pensions. Also have the unions agree
3 not to fund retiree litigation.

4 There's no retiree with 18,000 or \$19,000 in pensions
5 undertaking a Supreme Court challenge to -- to litigation.
6 And for the city to say they're surprised to learn that in
7 like -- like with AFSCME in Illinois, or with the Flowers
8 litigation that that wasn't being funded by the retiree, is --
9 is just -- is frankly disingenuous. Not only -- not only do
10 they know it, Your Honor, they participated in the settlement
11 negotiations that resulted in how to stop it.

12 Your Honor, as you approach Chapter 9, one of the
13 criteria under Chapter 9 is that you enter into an agreement
14 that is approved by a majority of your creditors. That is
15 completely consistent with the concept of a pre-packaged
16 bankruptcy in a Chapter 11 context. And it's a good thing to
17 do because it vests people like the labor negotiation vested
18 people in the making better of the problem.

19 They're owning, they're owning the resurgence of Detroit
20 as opposed to being discarded by the Governor's view of what
21 that resurgence should look like. But instead of that, Your
22 Honor, we're doing things where we're kicking people off to
23 the side and disenfranchising them. And that's not the proper
24 way to be using Chapter 9.

1 consent because the indentures or the loan documents require
2 100% consent, then you get to one-half in number and
3 two-thirds in dollar amount. You don't even have to do that
4 in Chapter 9. In Chapter 9, you only need a majority.

5 If you say that the insurance carriers, that the bond
6 insurers aren't getting to consent, same thing, Your Honor.
7 You only need a majority. You don't even need the high bar
8 that you have in Chapter 11 for a pre-package. In a Chapter 9
9 it's only a majority of the creditors.

10 They didn't get to a majority of the creditors because
11 they didn't spend sufficient time with those creditors to do
12 those negotiations. And by sufficient time we don't mean two
13 years, we just mean more than a month and five days. They
14 took more time, Your Honor, the Governor took more time to
15 interview the consultants that were hired to help the city
16 with its restructuring than they took to negotiation the
17 restructuring itself. That's absurd.

18 Your Honor, you're being asked today here to set a very,
19 very dangerous precedent, not only for Detroit, but if the
20 Governor is allowed to create a self -- a slow decline with no
21 real emergency and just wait until we're at the precipice and
22 then say oh, we have to do something, and now with that self
23 created emergency, be able to use Chapter 9 to further what
24 might be because we're under this -- this cloak of -- of lack
25 of transparency, an agenda that is not truly a financial

1 agenda, but a political agenda, a bi-partisan agenda, a
2 socioeconomic agenda, a racial agenda, Your Honor, you're
3 going to be put in a situation where this will allow the
4 Governor to do this to any city in -- in Michigan and it will
5 be a road map for Governors across the country to use Chapter
6 9 by creating a self created emergency to deal with issues
7 that are unrelated to really truly solving the financial woes
8 of particular cities.

9 And the facts in Detroit are particularly egregious.
10 Because in addition to not doing anything, trying to negotiate
11 with the stakeholders all during 2012, they actually stopped
12 the one stakeholder that begged the city to negotiate with
13 them which was labor. We had concessionary agreements by 30
14 unions that were approved with the city with E & Y in the room
15 and the state said no. And then they went one step further.
16 They negotiated a consent decree.

17 And the only substantive right other than technical
18 assistance that they're giving to themselves in that consent
19 decree, is the right to veto labor agreements. And the only
20 reference to the Constitution in that consent decree, Your
21 Honor, is not to the pension clause, it's to the fact that the
22 Constitution limits funding. We can't help the city
23 financially, it's silent on the pension clause.

24 And what happens after the consent decree? The -- the --
25 the Governor enacts 436. What's the only thing that 436 does

1 here? Is it stops negotiations. So now we have the
2 consultants in a pretzel trying to figure out how they can
3 conduct good faith negotiations as required as a precursor to
4 Chapter 9 while simultaneously not waiving rights under PA436.

5 Now I would respectfully submit that had they spent one
6 scintilla of time working on the problem the way they did on
7 getting rid of the pensions, they could have come up with a
8 creative solution. But that road block was put there by the
9 state and blocks the ability of Detroit to reasonably be here.

10 We understand, Your Honor, that this is a hard situation.
11 We --

12 THE COURT: What -- what was the Governor's
13 motivation in your view?

14 MS. LEVINE: Your Honor, I don't -- I'm not -- I'm
15 speculating. I've heard -- I've heard from our constituents.

16 THE COURT: The evidence to suggest what his
17 motivation was other than to help the city, is there?

18 MS. LEVINE: Your Honor, the -- the -- actually we
19 think the evidence is to the contrary. We think that there's
20 accumulation of evidence that says that starting back in 2011
21 he was aware of this financial condition and has not done
22 anything other than create this emergency here. And what was
23 in his mind?

24 THE COURT: For what purpose though?

25 MS. LEVINE: I'd be speculating. But I -- but I'd
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1 be speculating also to say it was just out of altruism with
2 regard to the financial situation of Detroit.

3 And, Your Honor, I would also respectfully submit that
4 regardless of that motivation, if this really is all you have
5 to do to prove impractical -- to prove it's impractical, just
6 to wait for the time period to pass till you get to a
7 precipice, it couldn't possibly be surprising to all of these
8 financial consultants that we were reaching the point in time
9 when the bond holders were going to call a default, or where
10 the bond insurers were going to call a default. That just
11 makes no sense. Okay.

12 And while it might -- the EM might not have been
13 appointed until March, all these consultants were involved
14 since 2012. If what we're saying here, Your Honor, is that we
15 can use Chapter 9, potentially just to get rid of the pensions
16 and the retirees, who aren't like -- who are not going to
17 share in the upside, or potentially get rid of some of the
18 bond debt or other debt who aren't going to share in the
19 upside, that's an -- that's an improper use under this factual
20 setting.

21 It's unconstitutional to use -- to apply Chapter 9 in
22 this way, Your Honor. It's unconstitutional under the state
23 constitution to get rid of the pensions in this way. It's
24 unconstitutional to apply Chapter 9 as a work around for

1 We would respectfully submit it's an unconstitutional
2 application to use Chapter 9 to jettison legacy liabilities
3 without any safety net for those recipients. And we would
4 respectfully submit, Your Honor, it's a terrifying use of
5 Chapter 9. Thank you.

6 MR. GORDON: Good afternoon, Your Honor. Robert
7 Gordon of Clark, Hill on behalf of the Detroit Retirement
8 Systems.

9 Your Honor, similar to when we had oral argument back on
10 October 15th, if I may, I just want to give a little bit of a
11 road map if I may as to the sequencing of -- of closing
12 arguments following Ms. Levine at this point.

13 Consistent with the opening arguments, Your Honor, will
14 recall, Ms. Green from our office was sort of cast by all of
15 the objectors on behalf of all of the objectors because of her
16 singular facility with all of the volume of -- of evidence,
17 and facts, and documents, to construct and -- and present to
18 the Court a timeline of the evidence that was intended to be
19 introduced and that had been adduced in discovery.

20 Consistent with that, she has been essentially asked to
21 again provide to the Court an enhanced form of her timeline to
22 review with the Court succinctly to review what evidence has
23 indeed been introduced in this trial with highlighting, and
24 this is the enhanced part of it, highlighting the specific

1 trial that weren't in the original timeline.

2 So with that, Your Honor, the -- the suggestion is that
3 Ms. Green would provide the enhanced timeline on behalf of all
4 of the objectors. I would then provide some limited comments,
5 legal arguments on behalf of the retirement systems, and then
6 it would be followed by a -- a number of the other objectors
7 including in a particular order. If the Court wants to know,
8 I can give you that as well.

9 THE COURT: That's fine.

10 MR. GORDON: Okay. As I understand it --

11 THE COURT: On one condition.

12 MR. GORDON: Yes, Your Honor.

13 THE COURT: Ms. Green, succinct doesn't mean talk
14 fast.

15 MS. GREEN: I have the word slow written on the
16 cover.

17 THE COURT: Because I want to -- I want to
18 comprehend what you're saying.

19 MS. GREEN: I can't talk as fast as Ms. Levine
20 either, so I won't.

21 THE COURT: Okay, fair enough.

22 MR. GORDON: Duly noted for everyone. If I misstate
23 the -- the order of objectors, I will apologize. But for the
24 Court's assistance, my understanding is that after the

1 Association would be next, and then the UAW, then the Flowers
2 plaintiffs, then the public safety unions, then uniform and
3 non-uniform retiree associations, including Ms. Lightsey and
4 Mr. Taylor, and then the retiree committee. If I got that
5 correct. Thank you, Your Honor.

6 THE COURT: That's fine. Thank you. Thank you for
7 your work in organizing that.

8 MS. GREEN: Good afternoon, Your Honor. Jennifer
9 Green on behalf of the retirement systems.

10 The objecting parties began trial on the 23rd of October
11 by showing a similar timeline of what we believed the evidence
12 would show at trial. And we believed that evidence would show
13 that there was never an intent to actually negotiate prior to
14 the bankruptcy filing and that it was a foregone conclusion
15 before any of those negotiations or alleged negotiations took
16 place that the end game would be Chapter 9.

17 And we believe that timeline that now includes more
18 evidence that was adduced at trial, in addition to new
19 documents that were produced during trial, will indeed show
20 that. And I will look quickly through some portions that I'm
21 sure are undisputed by this point, but they are included for
22 your reference.

23 At trial the Governor testified that this process has
24 been a two and a half year effort which was consistent with

1 was signed into law. In February of 2012, as Ms. Levine just
2 stated, the coalition of 30 unions ratified a concessionary
3 agreement that was later blocked by the state. And in
4 February of 2012, Stand Up for Democracy filed a petition to
5 invoke a referendum on PA4. Within just days of that, Stand
6 Up for Democracy's petition, there were already discussions
7 about how to insulate PA -- what became PA436 later from
8 referendums.

9 At about the same time, Jones, Day and the State of
10 Michigan began to work together on issues relating to the
11 possible repeal of PA4 and the consent agreement. And we have
12 exhibit number 849 here that discusses that.

13 On March 23rd, Treasurer Dillon admitted at trial that a
14 possible Chapter 9 for the city was discussed as far back as
15 the spring of 2012. And at that time Huron Consulting,
16 Miller, Buckfire, and Jones, Day lawyers were also discussing
17 a potential Chapter 9.

18 THE COURT: Something you'd like to say, sir?

19 MR. IRWIN: Your Honor, I -- I am extremely
20 reluctant to interrupt during summation, but I don't believe
21 that Exhibit 852 is in evidence.

22 THE COURT: Oh.

23 MR. IRWIN: It is not on the Court's list of
24 documents provided to us during the break. We have tracked

1 the record. We believe it was discussed with a witness but
2 never offered. And we have an objection to it in the
3 pre-trial order.

4 MS. GREEN: I believe --

5 MR. MONTGOMERY: I believe, Your Honor, on our list
6 has 852 which is also Bowen deposition exhibit number 14 as
7 having been admitted --

8 MS. GREEN: Uh-huh.

9 MR. MONTGOMERY: -- in the trial. That's on our
10 master list.

11 MS. GREEN: I will say, Your Honor, when putting
12 this together we double checked every exhibit we included in
13 closing as having been admitted.

14 THE COURT: Do you have a date for the admission?

15 MR. MONTGOMERY: Yellow highlight means what?

16 MS. GREEN: Either day six or day seven.

17 THE COURT: Six or seven was the response? Well, I
18 think rather than take the time to try to dig into the record
19 to see if it was admitted or not, we'll let Ms. Green continue
20 with the understanding that any references to it will be
21 stricken if it was not admitted into evidence.

22 MR. IRWIN: Your Honor, if there are additional
23 documents with this issue, I -- I would feel the need to in
24 fact raise the same objection.

25 THE COURT: Absolutely you should, absolutely.

1 MS. GREEN: I believe this was admitted into
2 evidence during Treasurer Dillon's testimony.

3 THE COURT: Okay, that helps.

4 MS. GREEN: That date, I think is the right day.
5 Later that same day Huron Consulting emailed Jones, Day
6 discussing a Chapter 9, stating I need to link you into a
7 Chapter 9 conversation with Andy very quickly, referring to
8 Andy Dillon.

9 On April 4th, 2012, the city entered into the consent
10 agreement which Jones, Day had helped craft with the State of
11 Michigan.

12 In June of 2006 -- or 2012, Heather Lennox of Jones, Day
13 and Ken Buckfire met with Governor Snyder and they pulled
14 together some memos that they had prepared for Andy Dillon,
15 including some of the topics that are relevant to these
16 proceedings, including a comparison of PA4 in Chapter 9, a
17 memorandum on constitutional protections and pension, and an
18 analysis of filing requirements of Section 109(c)(5) of the
19 Bankruptcy Code regarding impracticability and negotiating in
20 good faith.

21 And we raise these, Your Honor, not to -- this isn't a
22 Jones, Day led conspiracy argument. The fact of the matter
23 is, that we think things like this relate to whether or not it
24 was good faith to wait until 34 days before filing when these

1 just argued as well.

2 In July of 2012, Miller, Buckfire was hired by the state
3 to perform a 60 day review of the city's financial condition.
4 And at that time Miller, Buckfire, Ken Buckfire from Miller,
5 Buckfire testified that he was approached by Jones, Day and
6 that one of the partners had wanted to meet -- or that she
7 wanted to introduce one of her partners who was the lead
8 bankruptcy partner for Orange County which was a successful
9 Chapter 9.

10 In October 2012, before PA4 was rejected by the voters,
11 the Treasury Department and the Governor's office began
12 discussing creation of a new emergency manager statute in case
13 the referendum passed. This testimony comes from the
14 deposition of Howard Ryan that has been submitted to Your
15 Honor. He did not testify live.

16 In 2012 December, PA436 was introduced in the Michigan
17 legislature and passed shortly thereafter. PA436 was
18 insulated from a public referendum because it had an
19 appropriation in the amount of 5,000,000 -- just over
20 \$5,000,000. And as you heard Treasurer Dillon testify, that
21 covered a small portion of the budget for only the City of
22 Detroit's consultants. This was not enough money to even
23 cover other emergency manager situations across the State of
24 Michigan.

1 candidly that the reason that the appropriation language was
2 put in there was so that it would not be defeated by a
3 referendum.

4 In January of 2013, Miller, Buckfire was re-engaged and
5 at this time Miller, Buckfire discovered that the DIA art
6 collection was a potential asset capable of monetization.
7 However, there were no actions taken on the DIA artwork until
8 August 5th. At the same time Miller, Buckfire was asked by
9 Treasurer Dillon to make arrangements for the city and state
10 officials to interview Jones, Day and seven other law firms
11 that were interested in serving as restructuring counsel.

12 At the end of the month an internal email at Jones, Day
13 shows as though they were acting like a Chapter 9 was already
14 the plan. There is an email from that date that states, it
15 should also prove interesting that Miller, Buckfire has said
16 no one wants this bankruptcy to go the way of JEFFCO. And
17 there's also a caution at the bottom, that when they do their
18 pitch to avoid alienating the state and not to mention that if
19 something were to happen with the city's pensions, that the
20 state would probably step up to deal with but thus far has
21 failed to concede this point.

22 At the pitch, and we've all seen the presentation, so I
23 will skip through these very quickly. The strategy was laid
24 out. Negotiating in the shadow of a Chapter 9 and attempting

1 proceeding by establishing a good faith record of seeking
2 creditor consensus, was one thing that was laid out.

3 And these are the speaker notes from the pitch
4 presentation and it states, this will deflect any eligibility
5 complaints based on alleged failure to negotiate or bad faith.
6 Further it blatantly says, if needed Chapter 9 could be used
7 as a means to further cut back or compromise accrued financial
8 benefits otherwise protected by the Michigan Constitution.

9 Shortly thereafter, Richard Baird reaches out to Jones,
10 Day to inquire about hiring Kevyn Orr as the emergency
11 manager. On January 31st, Orr calls PA436 a clear end run
12 around the prior initiative that was rejected by the voters.
13 And although the new law provides a thin veneer of a revision,
14 it is essentially a redo of the prior rejected law.

15 That same day Jones, Day opines that it seems the ideal
16 scenario would be that Snyder and Bing both agree that the
17 best option is simply to go through an orderly Chapter 9. In
18 February, Mayor Bing was -- Mayor Bing was approached by
19 Richard Baird regarding Kevyn Orr as a candidate for the EM
20 position. And Mayor Bing recalls that the only qualification
21 -- qualification he was offered about Orr was his bankruptcy
22 experience.

23 In March, the Governor declared a local emergency, a
24 local financial emergency. Kevyn Orr was appointed emergency

1 for the city.

2 On April 18th, Don Taylor has a face to face meeting with
3 Kevyn Orr and several other members of the Retired Detroit
4 Police Officers and Fire Fighters Association. And Kevyn Orr
5 told Mr. Taylor at that time that pension benefits are
6 protected under the Michigan Constitution.

7 Mr. Taylor testified at trial, I asked him about the
8 pensions of retirees. He said that he was fully aware that
9 the pensions were protected by the state constitution and he
10 had no intention of trying to modify, or set aside, or change
11 the state constitution.

12 A month later the emergency manager was quoted as saying,
13 the public can comment on the city's financial and operating
14 plan, but this isn't -- we all heard this in Court a thousand
15 times, but this isn't a plebocite, we are not like negotiating
16 the terms of the plan.

17 In May, the city met with Christie's, but Kevyn Orr
18 testified that he told them to go away. Buckfire met with
19 Christie's in May and again failed to retain them until after
20 the bankruptcy filing. He retained them on August 5th.

21 At trial Buckfire denied telling the DIA board members
22 about an imminent bankruptcy filing, although Buckfire was
23 later impeached on that point with an email recounting a
24 meeting between himself and board member David Meador.

1 stating that the pension underfunding is so large that Chapter
2 9 is the only way to deal with it. Thus, the city knew at
3 least as of June 5th that "a significant reduction was
4 necessary". And two days after this email, Kevyn Orr
5 forwarded that email to Treasurer Dillon alerting him of the
6 situation.

7 On June 10th, Kevyn Orr held his first public meeting
8 pursuant to his statutory duties under PA436. And when asked
9 a question from an audience member regarding pension benefits,
10 Orr told the public that the benefits are sacrosanct and
11 cannot be touched.

12 (Video Being Played at 1:24 p.m.; Concluded at 1:25 p.m.)

13 On June 10th, Orr's assertion that accrued benefits are
14 sacrosanct is consistent with what he told Don Taylor, the
15 President of the RDPFFA in their meeting in April. But it is
16 inconsistent with what Orr proposes at the proposal for
17 creditors meeting that occurs just four days later.

18 Orr admitted on the stand that he never corrected this
19 misinformation. So at best the city mistakenly gave
20 misinformation to the very class of creditors it was supposed
21 to be negotiating with, or at worse, the city outrightness led
22 the retirees into thinking that their pensions were safe.

23 Three days after telling the retirees at the public
24 meeting that their pensions could not be touched, Mr. Orr gave

1 intention to evade the pension clause through a federal
2 Chapter 9 bankruptcy proceeding.

3 The following day the emergency manager held the meeting
4 at the Detroit Metropolitan Airport and presented the proposal
5 for creditors. Attendees at this meeting all testified that
6 it was announced that this was not a negotiation. And I
7 believe Mr. Orr also admitted during trial that indeed the
8 meetings on the 10th, and the 14th, and the 20th were not
9 negotiations, they were merely presentational.

10 And this is when the city admitted for the first time
11 that it fully intended to impair and diminish accrued
12 financial benefits. However, this was buried 109 pages into
13 the proposal.

14 At the end of the proposal the city laid out a timeline.
15 It gave 34 days for the informational stage as well as the
16 negotiations to take place. It is the objecting parties'
17 position that a four week time frame was inadequate. Buckfire
18 testified they'd been working around the clock for months on
19 the proposal for creditors, but the state quotas were given
20 just three weeks to review the data and then negotiation
21 within that compressed time frame.

22 As Ms. Levine mentioned earlier, the city could have been
23 negotiating since 2012. Chapter 9 had been contemplated since
24 2012.

1 preparing for the storm and -- and buying a raincoat and
2 umbrella and all of that. But it's as though they knew the
3 storm was coming for two years, but then only gave 34 days for
4 people to get ready which we think was unfair because to argue
5 that it was impracticable when they knew all along that they
6 had this time, was not good faith.

7 In June 17th the initial rounds of stakeholder
8 negotiations were set to start. And somehow the pension
9 people that were involved were supposed to know that the city
10 was expecting them to negotiate even though Orr had told Don
11 Taylor of the RDPFFA that pensions would not be cut. And he
12 later asserted on June 10th again, that pensions would not be
13 touched.

14 The vast majority of the retirees were not even aware of
15 the creditor proposal because the city admitted, Mr. Orr
16 admitted, that it did not mail them each a copy of it. The
17 city had also informed people that attended the meeting on the
18 14th that it was not a negotiation and the city and state
19 witnesses all admitted that the proposal did not identify the
20 amount to which the pensions would be reduced. And in fact to
21 date the city has never put an exact dollar amount on the
22 level of intended cuts.

23 On June 20th, the data room was opened, but as witnesses
24 testified, it was not fully populated. Brad Robbins testified

1 city's assets. And he also testified that the first step in
2 any restructuring negotiation is investigating the
3 affordability issue and reviewing the relevant data.

4 He referenced the American Airlines case where the debtor
5 had claimed the pensions could not be afforded, but he and his
6 team were able to restructure the pensions and keep the
7 benefits intact. This morning I believe Mr. Bennett said that
8 was the only example, the asset information, but Mr. Robbins
9 did testify several times that financial data relating to
10 whether or not the pensions were indeed incapable of moving
11 forward, is the information he was looking for.

12 On June 27th the city sent a letter to the UAW thanking
13 them for their time. And in that letter even the city
14 acknowledged that the unions would need more information. Mr.
15 Bennett said this morning that no one except Mr. Robbins had
16 asked for more information and that is not true as the city
17 admits in this letter that the UAW had asked for more
18 information. And the date is interesting because it's June
19 27th which is already outside of the one week time period the
20 city had given for an informational swap.

21 In June of 2013, Orr testified that he had authorized his
22 team to start preparing a potential Chapter 9 filing, in late
23 June or early July. Malhotra admitted at trial that his
24 declaration was being drafted by late -- by late June. On

1 commenced their lawsuits.

2 And while Orr testified at trial that these lawsuits made
3 clear to him that the parties are not interested in
4 negotiating, this testimony is undermined by the fact that
5 several witness testified that the city was expecting lawsuits
6 and expecting challenges to PA436. Exhibit 403 noted that
7 opponents were lining up to challenge PA436. Dillon testified
8 that they not only expected these lawsuits, they had planned
9 for them in advance.

10 Further, Orr admitted that he ignored these lawsuits for
11 three weeks. In other words he ignored them during the time
12 period that the city had given for the alleged negotiations.
13 Therefore I don't know how these lawsuits could have impacted
14 the negotiations. Further, there were only a handful of
15 plaintiffs at issue and there were plenty of other parties the
16 city could still be negotiating with.

17 And lastly, the retirement systems lawsuit was filed
18 after the time period the city dedicated to negotiations, so
19 their lawsuit also could not have impacted any of the
20 so-called negotiations.

21 Therefore, we believe the evidence adduced at trial
22 showed that the city had no intention of ever negotiating with
23 creditors. You saw a timeline dated July 8, 2013, where the
24 city had already determined its Chapter 9 petition would be
25 filed on July 19th. The timeline created had a filing date

1 despite the fact that creditor meetings had not even yet
2 occurred. Therefore, we believe that shows that it was a
3 foregone conclusion before the creditor meetings ever took
4 place that the end game was a Chapter 9 filing on the 19th.

5 This is a copy of the communications roll out that was
6 admitted into evidence. And as of July 8, the city's position
7 is, that we negotiated in good faith, we presented a
8 comprehensive restructuring plan, but at this point it would
9 be impractical to continue discussions out of Court because it
10 is clear that we will be able to reach -- we'll be able to
11 reach agreement with some of our creditors only through a
12 Court supervised process. However, the creditor negotiations
13 had -- the meetings had not even taken place and this was
14 already their position. And further as of July 8th, July 19th
15 was clearly the date already set forth as the filing date.

16 THE COURT: Well, how do you deal with the city's
17 argument that this timeline was merely a contingency?

18 MS. GREEN: The slide.

19 THE COURT: Okay.

20 MS. GREEN: Orr and Buckfire both characterize this
21 timeline as a contingency, however, on cross exam they were
22 forced to admit that nowhere on the face of the timeline does
23 it say contingency plan. Further, there were no other
24 contingency plans produced or admitted that he knew of no

1 documents that were produced by the city.

2 And when asked about the timeline, Treasurer Dillon said,
3 I didn't see an alternative schedule. This was the one that
4 was mapped out.

5 On July 8th, as set forth in Exhibit 452, they had already
6 mapped out the communications message that it would be
7 impractical to continue discussions. But the only meetings
8 that had taken place at that time were the June 10th, 14th, and
9 20th meetings which Mr. Orr testified were merely informational
10 and presentational. That is direct evidence that there was no
11 intention of actually negotiating at the upcoming stakeholder
12 meetings being held on July 9th, 10th, and 11th because the
13 decision to file had been made regardless.

14 The key filing messages also took the position that
15 before any creditor meetings, the negotiations would be
16 impracticable. But this ignores these facts.

17 The city carries the burden of proof. It actually has to
18 prove that it was impracticable to negotiate which it cannot
19 do because the city did nothing to reach out to active or
20 retired employees. Orr admitted the city did not mail
21 letters, did not mail informational materials to retirees or
22 active employees.

23 He admitted the city did not create a special web site to
24 communicate with these stakeholders. He admitted they didn't

1 notices, they didn't use the media to communicate with these
2 stakeholders.

3 The city also did not break the retirees into smaller sub
4 groups that could be negotiated with directly. Mr. Orr
5 testified that he thought perhaps Ed Miller at his firm had
6 done so, however, none of the witnesses at trial confirmed
7 this. And Ken Buckfire testified that while this idea was
8 raised, he was told by David Heiman and Heather Lennox at
9 Jones, Day that this would be impracticable to do and so no
10 one bothered to try.

11 The city has repeatedly said that negotiations were
12 impracticable because no one would represent retirees. But
13 the city had several viable options that they could have taken
14 advantage of. Namely, the DRCEA, the RDPFFA, the retirement
15 systems, and the pension task force.

16 Shirley Lightsey testified on behalf of the DRCEA. She
17 told the Court that she introduced herself to Kevyn Orr as the
18 President of the DRCEA at a meet and greet in April. That
19 organization represents between 7,600 and 7,800 of the 12,000
20 retired general employees, roughly 63 to 65%.

21 She testified that her organization has the power to
22 appoint committees and call special meetings. It has a web
23 site, its members can be communicated with via telephone,
24 email, and in writing. She also testified that her

1 Thus the DRCEA could have been utilized to mobilize the
2 general retirees. And while the DRCEA could not itself bond
3 the members, its infrastructure could have been used to
4 communicate with those people and then the members themselves
5 could vote.

6 But the city never utilized the DRCEA. And in fact
7 Shirley Lightsey was not even invited to the June 14th proposal
8 for creditors meeting as she testified.

9 The RDFPPA, it should be RDPFFA, represents 6,500 out of
10 the 8,000 retired police and fire fighters which is over 80%
11 of the retired police and fire fighters. That organization
12 has a web site, holds monthly meetings, circulates a monthly
13 magazine, and has lines of communication to all of its
14 members.

15 Mr. Taylor, the President, testified that his group has
16 negotiated reductions in benefits in the past. And he
17 explained in detail a prior situation where his group came up
18 with a compromise, the members voted, and a settlement was
19 reached. But this organization was also not utilized by the
20 city and in fact its President was misinformed by both Andy
21 Dillon the state Treasurer, and the emergency manager that
22 their pensions would not be touched.

23 Mr. Taylor testified that he passed this information on
24 to his membership who were then lulled into inaction. You may

1 didn't ask questions at the meeting. And he said because I
2 was told that our pensions were not going to be touched.

3 The city also could have used the pension task force
4 which is currently comprised of representatives from Milliman,
5 the actuarial firm, Conway, MacKenzie, and Jones, Day. There
6 are no representatives from the retirement systems, Gabriel
7 Roeder, Greenhill, the unions, or any of the retiree groups
8 that I just mentioned. They were never asked to join the task
9 force. And if they were, if the city was serious about
10 restructuring efforts, or implementing new cash flow
11 strategies to avoid having to impair, these different groups
12 of people could have been reached out to as a way to
13 negotiate.

14 Treasurer Dillon himself admitted there are lots of
15 creative options given the long life of a pension fund. But
16 he also admitted that none of these creative options were ever
17 raised with the unions, the retirees, or with the retirement
18 systems themselves.

19 In addition Mark Diaz, a trustee of the retirement
20 systems testified yesterday that the systems themselves could
21 have been used as a partner to communicate to the retirees.
22 The systems have a data base of all the retirees, they have a
23 web site, and they can "very easily communicate with all of
24 the individual people". But when Mr. Diaz was asked if the

1 this manner he said no, not at all.

2 And lastly with respect to the bond holders, Mr. Buckfire
3 admitted that with respect to those negotiations, he knew all
4 of the bond trustees and their insurers, those parties were
5 "organized" and that they could be relied on to speak for, if
6 not actually vote the interest of the underlying bond holders.

7 Similar to what Ms. Levine just argued, the position is,
8 that the city should not be permitted to have created an
9 environment of impracticability and then use that
10 impracticability as its excuse for refusing to negotiate. And
11 the point is, if they knew back in 2012 that Chapter 9 was
12 being contemplated, then why did we wait till 34 days before
13 the filing to begin.

14 And if that is the way that 109(c)(5) works, then in
15 essence good faith negotiations and impracticability
16 provisions may as well be read out of the Code if all we have
17 to do is make a conclusory statement that negotiations are
18 impracticable without actually proving that those negotiations
19 were in fact an impracticability.

20 On July 9th, Treasurer Dillon wrote to the Governor of the
21 State of Michigan and as you know it's used a lot at trial.
22 But it highlights that as of July 9th, the Treasurer believed
23 that we were still in the informational mode, not in the
24 decision making mode. And yet when he was asked what changed

25 between July 9th and July 18th, he said that nothing changed to
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1 take them out of the mere informational stage. It obviously
2 -- key decisions were being made just a week later because the
3 filing was on July 18th.

4 On July 9th, as Mr. Dillon said, they were in the
5 informational mode. The level of underfunding in the pension
6 systems was still being debated and Mr. Dillon testified to
7 that. And how much the actual reduction would be for the
8 retirees was still unknown. Dillon and Orr both admitted that
9 it would be impossible to negotiate when these numbers were
10 not known.

11 Mr. Dillon admitted if you're going to reach a settlement
12 with your creditors, it's important to understand what's the
13 level, what's the funding level. He also admitted that they
14 did not know these numbers during the week of the alleged
15 creditor negotiations which took place on July 10th and 11th.
16 And to date they still don't know the exact numbers he
17 admitted.

18 On July 10th, the same day that the creditor negotiations
19 were allegedly taking place, the recommendation letter by
20 Kevyn Orr is already being authored by Treasurer Dillon and
21 others. Dillon admitted that the July 19th filing date had
22 already been decided as of this date on July 10th when they
23 were writing the recommendation letter. And he testified
24 about a detailed timeline and schedule that had been
25 circulated.

1 However, that same week Dillon was very skeptical about
2 whether the city had adequately made the case for a Chapter 9
3 and he raised his concerns with Kevyn Orr's team on a
4 conference call and he laid them out in an email. He stated,
5 I don't think we are making the case. Why are we giving --
6 why we are giving up so soon to reach an out of Court
7 settlement. Looks premeditated.

8 He also says, I believe there is a State Court option to
9 get retirees into a class. We don't acknowledge that and why
10 is that unpractical.

11 That I believe is the State Court class action option
12 that was testified to by Michael Nicholson of the UAW. And
13 Treasurer Dillon said that no one ever explained to him why
14 that option was not practical. He also states, I think we may
15 want a take it or leave it demand before we pull this trigger.
16 I agree with the recommendation, but I still don't think we
17 make the case.

18 And at the end he said, the pennies on the dollar outcome
19 for unsecured creditors make it practically impossible for
20 them to accept KO, Kevyn Orr's offer. And Treasurer Dillon
21 also testified that the recoveries were so low that it seemed
22 to be that negotiations were expected to be unfruitful.

23 On July 10th and 11th, the creditor meetings took place.
24 The retirement systems met with attorneys from Jones, Day

1 Robbins did attend and he testified yesterday that he did not
2 observe or participate in any negotiations regarding the
3 city's financing and that the meetings were purely
4 informational.

5 And this is consistent with Treasurer Dillon's report to
6 the Governor that as of this time frame, he considered
7 themselves to be still in the informational mode. It is also
8 consistent with the city and state's communications roll out
9 which had already adopted the excuse that negotiations were
10 going to be impractical.

11 On July 12th the Governor's legal counsel, Mike Gadola of
12 the Attorney General's office, Treasurer Dillon, Lieutenant
13 Governor Brian Calley, and Richard Baird were all urging that
14 a more deliberative approach be taken with respect to the
15 Chapter 9 filing. They specifically urged that a condition be
16 placed on the bankruptcy filing. And they even more
17 specifically urged that a condition be placed on the
18 bankruptcy filing with respect to the vested pension benefits.

19 On July 12th, the Detroit Firefighters Association sent a
20 letter to the emergency manager asking for more specific
21 information on pension benefit restructuring as soon as
22 possible. They noted that they have had two meetings with the
23 city where pension benefits were addressed and still have only
24 a general observation that pension benefits must be reduced.

1 ever given.

2 On July 15th, just a few days before the bankruptcy
3 petition was filed, the Webster defendants filed a response
4 brief in the State Court action. There was a hearing
5 scheduled for -- it should be July 22nd which was the following
6 Monday. The State Court -- or the state asserted in its
7 response that a bankruptcy filing was still only a
8 possibility, that the plaintiffs' claims were unripe, and
9 premature, and based on a speculative threat of future injury.
10 However, as we all know, there was already a recommendation
11 letter and an authorization letter being worked on and the
12 decision had actually been made to allow the filing.

13 On July 16th, Mr. Orr submitted the bankruptcy
14 recommendation letter to Governor Snyder and Treasurer Dillon.
15 And it stated in that letter that dramatic but necessary
16 benefit modifications would be needed.

17 Governor Snyder acknowledged when he testified that he
18 read the letter before authorizing the filing. And he
19 admitted that he knew that the city's request for an
20 authorization included that dramatic cuts to accrued benefits
21 would be part of any Chapter 9.

22 On July 17th, the day before the bankruptcy filing, the
23 DPSU received correspondence from the city thanking them on
24 behalf of the emergency manager for their strong cooperation

1 issue of pension restructuring.

2 On July 17th the retirement systems filed their lawsuit
3 against the Governor and the emergency manager. The complaint
4 was served on the Governor's office and the EM's office in
5 Detroit. And that night the exhibit that you saw was the
6 Sarah Wurfel timeline circulated throughout the state without
7 -- throughout the state officials. And at 6:23 on July 17th,
8 the plan was still to file on Friday, July 19th.

9 However, the following day, as you heard Mr. Nicholson
10 from the UAW testify, the retirement systems went to Ingham
11 County Court seeking a TRO. The AG's office received a phone
12 call stating that the retirement systems were in the State
13 Court seeking a TRO, 3:47 the Governor emailed the
14 authorization letter, and at 4:06, Orr changed the date on the
15 filing papers, hand wrote in an 18, and filed the petition.
16 And at 4:10 the Attorney General appeared at the TRO hearing.
17 Orr admitted that he had been counsel, it would be
18 irresponsible not to file sooner rather than later given all
19 of the lawsuits.

20 In authorizing the bankruptcy with no conditions. The
21 Governor ignored the advice of his own counsel at the AG's
22 office to further probe the conclusions in Orr's letter,
23 undertake due -- due diligence to confirm the eligibility
24 requirements had been met, and to place a condition on the

1 Exhibit 625 that we just looked at.

2 But the Governor testified he chose not to impose any of
3 these conditions because he did not want to create more
4 delays. As Treasurer Dillon testified, the reason the July
5 19th filing date was originally chosen was because the Governor
6 wanted the process to be "fast and efficient". However, due
7 to the desire for the Chapter 9 case to be fast and efficient,
8 adequate time was not given for the negotiation process to be
9 undertaken.

10 The Chapter 9 case was filed despite the fact that as
11 Chuck Moore testified, the actuarial numbers were still being
12 refined. Mr. Buckfire cautioned that the Milliman reports,
13 which the city relied upon to state the 3.5 billion dollar
14 underfunding number, cautioned on their face that a "more
15 robust projection model could vary the results". And
16 Treasurer Dillon stated that he also was not confident in the
17 pension underfunding numbers and that they were a moving
18 target.

19 In addition to the primary assets were still an unknown,
20 the Water and Sewage Department, and the city owned artwork at
21 the DIA which the objecting parties would submit is in large
22 part due to the fact that knowing the process was going to
23 take several months, the city waited until after the petition
24 date to even begin that process.

1 good faith, did not prove that the negotiations were in fact
2 impracticable, and instead filed this bankruptcy in bad faith
3 to evade the pensions clause, this case must be dismissed, or
4 the city must be forced to cure its bad faith by seeking new
5 authorization with a proper contingency under PA436 for the
6 pension benefits. Thank you.

7 THE COURT: I want to get back to that Exhibit 852
8 issue. Is it possible that that exhibit was the same document
9 as an exhibit with a different number that was admitted?

10 MS. GREEN: It could be 202, 2, 0 -- that is very
11 possible. We had several that were --

12 THE COURT: Can you check that out and let us know?

13 MS. GREEN: Yes, I will.

14 MR. IRWIN: Can I briefly be heard on that, Your
15 Honor? We -- we -- it's hard to do this on the fly, so I have
16 a little bit more information at this time.

17 It is true 852 was used by Mr. Wertheimer. It was used
18 during the Dillon examination. It was an attempt to refresh
19 his recollection.

20 THE COURT: Right.

21 MR. IRWIN: It was not refreshed, and it was not
22 offered, and it was not admitted. That is on November 5th and
23 the lines are Page 126, Line 25, to Page 129, Line 5. It was
24 not offered, it was not accepted.

1 another -- if it -- if the document itself is another exhibit
2 that was admitted and let us know. 202 is in, but the
3 question is, is it the same as 852.

4 Okay. And -- and before we go to the next argument, are
5 there any other exhibit discrepancies?

6 MR. IRWIN: There is one, Your Honor. Exhibit
7 number 452.

8 THE COURT: Yes.

9 MR. IRWIN: This was the email from Mr. Nowling that
10 attached the timeline. And -- and Ms. Green referred to it.
11 There was examination on that exhibit during the hearing,
12 however, again, and this was a -- a pattern to some degree,
13 was discussed, there was an objection to it in the pre-trial
14 order, and it was moved on before that objection -- before the
15 exhibit was offered, so that the objection could be ruled on.
16 And it is therefore not in the record. It is not on the
17 Court's for that reason, we believe, indication of the
18 exhibits that are in evidence.

19 THE COURT: Uh-huh. Was 452 one of the exhibits in
20 Ms. Green's --

21 MR. IRWIN: It was.

22 THE COURT: -- slide show?

23 MR. IRWIN: Those were the only two that I saw, Your
24 Honor, 852 and 452.

1 It's also the same as 831 which -- it's just hard because
2 other people have different numbers for the same exhibit.

3 THE COURT: Right.

4 MS. GREEN: But I believe it's the same as 831 which
5 is in evidence.

6 MR. IRWIN: 831, I have not in evidence, Your Honor,
7 according to your list for the same reasons.

8 THE COURT: And it's not in the pre-trial order?

9 MR. IRWIN: It is not. It is in the pre-trial order
10 with an objection.

11 THE COURT: Okay.

12 MR. WERTHEIMER: Your Honor, for the record --

13 THE COURT: In order for you to be on the record,
14 you need to be near a microphone.

15 MR. WERTHEIMER: For the record William Wertheimer
16 for the Flowers plaintiffs. Your Honor, my memory is
17 consistent in part with counsel's relative to 852.

18 THE COURT: Well, memory doesn't matter. What
19 matters is what's on the record. Have you checked --

20 MR. WERTHEIMER: I understand and it --

21 THE COURT: Have you checked the record?

22 MR. WERTHEIMER: I have not checked the record. But
23 I believe the representation that his memory was not refreshed
24 is incomplete. My memory is, he admitted the facts that Ms.

25 Green pointed to on the exhibit.

1 THE COURT: All right. Well, let me just ask, are
2 there any other exhibits that are not on the list that we had
3 passed around at lunch that anyone thinks was admitted into
4 evidence?

5 MR. RUEGGER: Good afternoon, Your Honor. Arthur
6 Ruegger from Dentons on behalf of the retiree committee.

7 I have been provided a list of several exhibits that the
8 notes of our team that they indicate that they were admitted.
9 I'd like to verify that before I bother the Court with it.
10 I'd also like to --

11 THE COURT: How will you verify it?

12 MR. RUEGGER: I'd like to check what transcript,
13 informal transcript references we have, Judge.

14 THE COURT: Okay, fair enough.

15 MR. RUEGGER: Thank you.

16 THE COURT: Any others? Okay. Are there any
17 exhibits on -- that were on our list that you don't think were
18 admitted into evidence anyone?

19 MR. IRWIN: Not from the city, Your Honor. The --
20 the Court's list virtually tracks ours verbatim.

21 MR. RUEGGER: We have no problem with the exhibits
22 on your list, Your Honor.

23 MR. IRWIN: All right.

24 THE COURT: All right. Who's next? Mr. Gordon,
25 yes, of course. Go ahead.

1 MR. GORDON: Thank you, Your Honor. Robert Gordon
2 on behalf of the Detroit Retirement Systems. I will do my
3 very best to not repeat any of what Ms. Green has provided.

4 THE COURT: Oh, before -- on that subject before you
5 actually launch here, we need to have a hard copy of that
6 slide presentation marked as an exhibit, not for purposes of
7 admission, but just for purposes of identification so that it
8 can be included in the record of the case for -- for
9 completeness purposes. So what -- do you have an exhibit
10 number that you would use for that?

11 MS. GREEN: I believe it would be 873.

12 THE COURT: Okay. Go ahead, sir.

13 MR. GORDON: Thank you, Your Honor. I know that
14 others will want to make a number of -- of comments about the
15 -- the evidence. I'm going to try to keep my comments fairly
16 limited as a result to allow others to express their -- their
17 points of view as well.

18 As a sort of I guess a housekeeping matter, if I may,
19 Your Honor, to begin with, I thought I had heard in the
20 presentation by counsel for the city, essentially a suggestion
21 that there has been no objection made to the asserted
22 underfunding liability in a particular document of -- prepared
23 at one time by Milliman.

24 I would like to make clear for the record that it is not
25 our impression that this is an evidentiary hearing about what

1 the underfunding level is, or was at the time of the petition,
2 or is or was today. That document was not introduced for that
3 purpose. There has been no expert testimony on that point and
4 we reserve all rights as to that.

5 Indeed, it is impossible we would submit to determine
6 what the underfunding level is unless you know what treatment
7 is going to be made of the pension systems, whether they're
8 going to be frozen and closed, or whether the defined benefit
9 plans are going to be continued, and that has yet to be
10 determined. So we reserve all rights on that, Your Honor.

11 In fact, the document that was submitted from Milliman,
12 had a caveat in it by Milliman that if they had more robust
13 data to work with their calculations may vary. So in -- in
14 itself it -- it indicates that it's not a very reliable
15 document. But again for all the other reasons I just stated,
16 we submit that there has not been any -- that there shouldn't
17 be any interpretation that -- that any of the parties here,
18 and particularly the retirement systems, agree to the
19 underfunding level asserted in that one document, Your Honor.

20 Your Honor, we don't dispute that prior to the city
21 filing its bankruptcy petition the city was experiencing
22 financial distress. And whether or not that financial
23 distress constitutes insolvency for purposes of Section
24 109(c)(3) of Bankruptcy Code, is -- is only one issue. And I

1 that issue, since we did not specifically raise the insolvency
2 issue.

3 But there is another issue here under 109(c)(5) which is
4 how did the state and the city proceed to address the
5 situation. And this is very important because the Bankruptcy
6 Code does require specifically that a municipality proceed in
7 a specific fashion before it takes the extraordinary step of
8 filing for bankruptcy. And these are important requirements,
9 they are not merely pro forma.

10 And this is where we submit that the city's argument
11 really breaks down. Because if you pull back from the -- the
12 -- the -- the huge amount of evidence that's been introduced
13 here, as Ms. Green has -- has shown through her slides, the
14 fact of the matter is, that the city and the state over many
15 many months analyzed the financial and operational situation
16 of the City of Detroit, a very complex undertaking when you're
17 talking about a city of 700,000 residents. It devoted
18 significant resources in analyzing those issues.

19 And then they made a proposal on June 14th and within 34
20 days it filed a bankruptcy. If you just pull back and look at
21 those simple facts, there simply was not time for good faith
22 negotiations.

23 Now, there was testimony by the retirement systems
24 through Mr. Robbins about the inability to have good faith

1 reference to that this morning by the city's counsel. And I
2 want to make sure that the characterization of the testimony
3 is accurate.

4 There was some suggestion that financial advisors are
5 never satisfied with the amount of information that they have
6 and things of that nature. Mr. Robbins did not testify that
7 he had adequate information but not optimal amounts of
8 information. Mr. Robbins testified clearly and unequivocally
9 that he did not have adequate information with which to begin
10 negotiations. And that the proposal such as it was on June
11 14th, and I say such as it was because it did not even include
12 a proposal for how the pension systems, the pension plans
13 would be treated on a go forward basis, was not really a -- a
14 serious proposal and that information was needed.

15 Now counsel for the city has also suggested that no one
16 disputed the facts in the proposal and no one asked any
17 questions. That simply isn't true. Now, maybe at the airport
18 on June 14th in a room of 200 people, when people were provided
19 for the first time with 120 page document, not a lot of
20 questions were asked.

21 But the evidence is clear, there were due diligence
22 sessions on June 25th, and on July 9th, and July 10th with
23 financial advisors. And I am sure lots of questions were
24 being asked. I was in those rooms as well. There were lots
25 of questions being asked about the financials.

1 Mr. Robbins testified among other things that there was
2 not information in the proposal or in the data room regarding
3 significant assets. One of those assets is the cash flows
4 from the Detroit Water and Sewage Department.

5 Counsel for the city indicates that seeking information
6 regarding the cash flows from a potential transaction from the
7 water authority is really not a fair ask because that's
8 something that's been discussed for many years and it may or
9 may not come to fruition. We want to be clear here. That's
10 not the information that was missing from the June 14th
11 forecasts.

12 What was missing from those forecasts were the actual
13 existing cash flows from the DWSD to the city that exist as of
14 today. Very substantial cash flows. They're not in the
15 projections. That was also testified to by Mr. Buckfire
16 himself. Mr. Buckfire also testified that there were no fair
17 market value analyses of any of the assets.

18 THE COURT: I thought the evidence was that the
19 DWSP provided -- or DWSD provided no net cash flow to the
20 city. Am I wrong about that?

21 MR. GORDON: That's not correct, Your Honor. It
22 depends on how you look at the cash flows. There -- there is,
23 if I understand it correctly, and I may get this number wrong,
24 but I think there's approximately \$80,000,000 that flows from

1 obligations. And there may be additional amounts that come to
2 the city but I'm not exactly sure how much that is. But there
3 definitely are cash flows from DWSD to the city and/or the
4 pension systems that are not in the cash flows at all.

5 THE COURT: So what you're referring to is what the
6 city paid -- excuse me, what the department pays to the city
7 for retirement funding.

8 MR. GORDON: That's correct, Your Honor. The
9 proposal does not propose those cash flows to continue --

10 THE COURT: I do recall that.

11 MR. GORDON: -- to the pension systems, nor do they
12 come to the general fund in the cash flow forecasts.

13 THE COURT: But I don't recall any evidence that the
14 water department provided funding to the city for any other
15 purpose. Have I missed something?

16 MR. GORDON: I'm not -- I'm not certain whether the
17 evidence did provide that, Your Honor.

18 THE COURT: All right.

19 MR. GORDON: I can't comment on that. But there --

20 THE COURT: All right.

21 MR. GORDON: As I said, there is a -- is a
22 substantial amount that comes to the pension systems that in
23 the proposal from June 14th there is no discussion of those
24 amounts coming to the pensions any further, nor do they come
25 into the -- the forecasts in any way, shape, or form.

1 Your Honor, if I may, I just want to comment on a couple
2 of other items that I think particularly pertain to the
3 retirement systems. Mr. Dillon, who as we know was the state
4 Treasurer at all times relevant to this matter, indicated in
5 an email dated July 9, 2013, I think it's marked as Exhibit
6 834, that and I quote, "because pensions have such a long
7 life, there are a lot of creative options we can explore to
8 address how they will be treated in a restructuring".

9 And in that same email he further indicates a desire to
10 explore ways to avoid negatively impacting pensions. In
11 counter point to Mr. Dillon's views, we have the pension task
12 force. And the pension task force as we understand it
13 consists of two personnel from the Milliman firm, Mr. Moore
14 from Conway, MacKenzie, and several other non-actuarial
15 professionals.

16 Now, there is a document Exhibit 870 that is in evidence
17 that reflects some of the activities of the pension task
18 force. And it indicates that scenarios were run by Milliman
19 based on assumptions provided to them by Conway, MacKenzie
20 and/or others on behalf of the city.

21 The exhibit shows that an assumption is being
22 unilaterally made by the pension task force that the General
23 Retirement System Plan ought to be frozen, which by the way,
24 would drive up the underfunding level of that plan

1 significant reduction in accrued pension benefits is required
2 and that I quote, "it appears this may only be possible in a
3 Chapter 9 proceeding".

4 THE COURT: And what are those two exhibits again?

5 MR. GORDON: That would be Exhibit 870, Your Honor.

6 THE COURT: That's the task force document?

7 MR. GORDON: That's correct. And the quote from Mr.
8 Dillon is Exhibit 834.

9 What is remarkable about this, Your Honor, I would
10 submit, is that the pension task force simply assumed that
11 accrued benefits must be impaired without ever asking the
12 people who would know. The retirement systems and their
13 actuaries Gabriel Roeder. They never asked the retirement
14 systems and Gabriel Roeder about this. They never came to the
15 retirement systems and Gabriel Roeder with a business plan and
16 said, here's our proposal, here are the needs of the city in
17 terms of diverting cash flows to reinvesting in the city and
18 so forth and is there a way that we can do this and perhaps
19 restructure or reschedule employer contributions in a way that
20 will not impair or diminish the -- the -- the pension
21 benefits, but will accommodate our business plan.

22 That discussion was never had. Nor was there any such
23 discussion in conjunction with Greenhill and Mr. Robbins whose
24 experience in preserving pensions in American Airlines and

1 here.

2 Counsel for the city suggests this morning that there's
3 no evidence in the record that having such discussions would
4 have led to a solution. And the problem is we'll never know.
5 They never tried. The suggestion is that impracticability is
6 a completely subjective determination to be made by the
7 municipality alone. We suggest that that's inappropriate.

8 Now based on the city's purely internal conclusion that
9 the city -- purely internal conclusion that -- that accrued
10 benefits must be impaired, the city further concludes that
11 negotiation with the retirement systems is impracticable
12 because the retirement systems are constrained by the pensions
13 clause of the state constitution to not negotiate any
14 impairment or diminishment of the accrued benefits.

15 As I just indicated, there were other discussions that
16 could have been had about how to perhaps modify employer
17 contribution schedules, or do something that didn't
18 necessarily involve impairing and diminishing the -- the
19 benefits over the long term, but there was no such discussion.

20 So the city uses an untested internally created premise
21 that benefits must be impaired to then make a further, I would
22 submit, infirm conclusion that negotiations with the
23 retirement systems are futile and impracticable. While this
24 exercise is convenient for the city, it does not stand up to

1 of Section 109(c)(5)(C) of the Bankruptcy Code.

2 Your Honor, what is also particularly remarkable in this
3 regard we would submit is that the evidence shows that the
4 state and the city were aware of the pensions clause, but
5 instead of trying to determine if they could accommodate the
6 pensions clause in their restructuring plan, they essentially
7 just assumed that they could not without speaking to the
8 retirement systems and their professionals and instead decided
9 to just take their chances on being able to run roughshod over
10 the pensions clause and the state constitution in this Chapter
11 9 case.

12 Now this argument ends up being rooted very much in the
13 arguments that we made on October 15 that in order to have
14 valid state authorization for the bankruptcy, that there must
15 be a condition that -- that respects and upholds the pensions
16 clause.

17 THE COURT: We need not repeat here which -- but I
18 do want to ask you this question. What inference do I draw
19 here in -- in the context of this trial from the fact that
20 your client submitted no evidence that there was a viable way
21 for the city to propose a restructuring of its retirement
22 program?

23 MR. GORDON: Well, Your Honor, I think that that's
24 -- if I may say so, sort of putting the shoe on the wrong

1 conversation we would have been happy to have that
2 conversation with them.

3 There never was an opportunity to. As we said, there was
4 34 days from the date that a proposal was put on the table at
5 the airport to the day that the bankruptcy was filed. In
6 fact, I -- I hesitate to mention this because this is an
7 evidentiary hearing, but I -- the general counsel for the
8 General Retirement Systems actually reached out to the
9 emergency manager earlier than that to try to have a meeting
10 and was rebuffed because it didn't fit the timeline that the
11 emergency manager was on or his schedule. So there really
12 wasn't an opportunity for us to -- to ever have that
13 discussion.

14 THE COURT: Well, but whether there was an
15 opportunity to have the discussion or not, my question wasn't
16 that so much as what do I do with the fact that there is no
17 evidence that there was a viable alternative plan?

18 I don't know whether there is or not. All I know is
19 what's here in the evidence. And you didn't submit any
20 evidence that there was a viable alternative plan. What
21 inference do I draw from that, that's the question.

22 MR. GORDON: Excuse me. I think what you -- what
23 the testimony was of Mr. Robbins was that -- and this -- and
24 this highlights the problem which is not a problem that we
25 have created. The problem is that we don't have enough

1 information.

2 And -- and I'm not casting aspersions on the city or its
3 professionals in that regard. It's a difficult process. It's
4 a complicated process. But the process needed to play out and
5 it didn't.

6 THE COURT: Uh-huh.

7 MR. GORDON: So there was never enough information
8 there. But what Mr. Robbins, I believe indicated, was that
9 based upon the information that he had and has, it is not
10 clear that there needs to be an impairment and diminishment of
11 the pension -- accrued pension benefits in order to
12 restructure here.

13 But beyond that, we can't go further than that yet
14 because we don't have all of the information, Your Honor. I
15 don't know if I'm answering the question.

16 THE COURT: No, but isn't -- isn't -- yeah. No,
17 that -- that's good. But isn't it -- isn't -- isn't the
18 underfunding, underfunded liability here according to the
19 retirement systems own experts at least a billion and
20 something?

21 MR. GORDON: That's a difficult question. You know,
22 it depends again on whether the pension systems, the defined
23 benefit plans are kept open or are frozen and closed. I think
24 it is --

25 THE COURT: Uh-huh.

1 MR. GORDON: I wouldn't want to -- I wouldn't want
2 to speculate on that. But let's assume that it's -- it's over
3 a \$1,000,000,000. Okay. It's a, as -- as Mr. Dillon himself
4 said, it's a long term issue.

5 THE COURT: Uh-huh.

6 MR. GORDON: The liabilities can rise and fall. The
7 performance of the investments can rise and fall. There are
8 -- and again, I think because it's a long term issue there can
9 be flexibility in the way it's approached. And it -- and a
10 \$1,000,000,000 sounds like a lot money, but it's --

11 THE COURT: All fair enough, but what -- what
12 prevented your client from making a proposal based on its view
13 of what the reasonable assumptions were as necessary to create
14 a proposal, given that there is some level of underfunding
15 that its own experts have found.

16 MR. GORDON: Right. But if you don't know what the
17 true cash flows are, and you don't know what the opportunities
18 for monetization of assets are --

19 THE COURT: Uh-huh.

20 MR. GORDON: -- to try to negotiate against yourself
21 as to how much you should be deferring, what you should be
22 getting paid, is really negotiating against yourself. It's
23 impossible to do. You need to have the full picture or at
24 least a reasonably full picture.

1 financial advisors never have enough information. This is not
2 that situation. The -- there were major pieces of information
3 that were missing here that made it impossible quite frankly,
4 to have that discussion at this stage.

5 THE COURT: All right.

6 MR. GORDON: Your Honor, I -- I don't want to -- and
7 I'm sure you don't want me to repeat arguments relative to
8 109(c)(2) that really are the same types of arguments that
9 support in our opinion a finding that the petition was filed
10 in bad faith under 921(c) because it seeks to impermissibly
11 abrogate the protections of the pensions clause. So with
12 that, Your Honor, I have no further comments.

13 THE COURT: All right.

14 MR. GORDON: Thank you.

15 THE COURT: Who is next?

16 MR. GORDON: Your Honor, if I may, I just wanted to
17 make one more comment.

18 THE COURT: Oh, okay.

19 MR. GORDON: Mr. King apprised me that I should make
20 this point and I agree. I just want to make the record clear
21 that prior to June 14th, before we saw that proposal, there was
22 no information or indication from the city or the state to the
23 retirement systems that there would be a -- a seeking of an
24 impairment or diminishment of the accrued pension benefits of
25 the pension plans. Thank you.

1 MS. BRIMER: Good afternoon, Your Honor. Lynn M.
2 Brimer appearing on behalf of the Retired Detroit Police
3 Members Association.

4 Your Honor, I'd like to address three points with the
5 Court this afternoon. The first, the spending provision that
6 was added to PA436, the evidence has established was in fact
7 meaningless and was adopted in order to disregard the will of
8 the electorate with the intent of avoiding the people's right
9 of referendum.

10 The second, even if the spending provision is deemed by
11 this Court to have been appropriate, PA436 nonetheless
12 violates Article 2, Section 9 of the Michigan Constitution as
13 a re-enactment of a law previously properly referred to the
14 referendum process and defeated by the -- on referendum that
15 was then not re-subjected to the people.

16 THE COURT: Okay. Ms. Brimer, you've already argued
17 that one, right?

18 MS. BRIMER: There is though one piece of evidence
19 that has not been -- that has not been objected to, that has
20 not been presented to the Court that I would like to review
21 with the Court very briefly, Your Honor.

22 THE COURT: Okay.

23 MS. BRIMER: Okay.

24 THE COURT: I'll let you argue the evidence, but I
25 don't want to re-argue the point of law.

1 MS. BRIMER: I -- I understand that, Your Honor.

2 THE COURT: Okay.

3 MS. BRIMER: And then finally, that the evidence
4 does in fact establish a lack of good faith and a
5 pre-determination by the EM's advisors that a Chapter 9 was in
6 fact inevitable.

7 Your Honor, this morning we heard from Mr. Schneider that
8 there was an impending storm heading for the City of Detroit.
9 And that a review of the weather reports indicated that the
10 city's cash flow was in despair. In fact I would probably
11 argue that those of us in the courtroom who live in and near
12 the City of Detroit would probably not disagree that the
13 weather reports for the City of Detroit sadly have in fact
14 deteriorated over the past few years.

15 However, an impending storm and poor weather reports are
16 simply not a basis for the state, the Governor, and the
17 Treasurer to disregard the constitutional rights of the
18 citizens of the State of Michigan.

19 Despite the fact that Mr. Schneider discussed some case
20 law, I will, Your Honor, disregard it, because we have, I
21 believe, all briefed and properly briefed all of those issues.

22 With respect to the spending provision, Your Honor, we do
23 have a few critical facts that are worth reviewing with the
24 Court. First we know that on February 29, 2012, PA4 was

1 has reviewed numerous times, so I will not bring up again,
2 that within three days of that referral, the attorneys at
3 Jones, Day were counseling Treasury and the State of Michigan
4 with respect to the passage of new legislation with a tacked
5 on spending provision in order to render the new law
6 referendum proof.

7 Eventually on November 6, 2012, PA4 was in fact rejected
8 by the people of the State of Michigan. Within 39 days, the
9 new bill was approved by the Senate and within 50 days of
10 rejection, the new law PA436 was signed by the Governor.

11 Now we've discussed that that new law contains two
12 spending provisions. One for \$5,000,000 to cover the
13 consultants and one for \$780,000 to cover the salaries of the
14 EM's.

15 We also know from Mr. Buckfire who testified that a
16 \$7,000,000 cushion was almost nothing for the City of
17 Detroit's budget. The Governor testified that the state's
18 budget is \$40,000,000 rendering this appropriation .014% of
19 the state's budget.

20 We also know that both the Governor and the Treasurer
21 testified that they did nothing to review any of the financial
22 analysis associated with these spending provisions. In fact
23 they were more interested, Your Honor, in pushing this piece
24 of legislation through than insuring that the appropriation
25 was sufficient to cover the spending provisions.

1 Mr. Schneider this morning in fact indicated and told us
2 that the state was in fact forced to seek additional
3 appropriations for the fiscal year 9-30-13 in connection with
4 PA436.

5 Mr. Dillon testified that by June 11, he was seeking
6 re-negotiation of the professionals' contract in connection
7 with the consultants and their \$5,000,000 appropriation.

8 And Mr. Baird testified in Exhibit 458 which has been
9 admitted into evidence, demonstrates that he determined that
10 the professionals would need approximately 75.2 million
11 dollars for this case. A far cry, Your Honor, from the
12 \$5,000,000 spending provision that was tacked on to PA436.

13 In fact, on cross examination by Mr. Ullman, Mr. Orr in
14 fact testified that he understood that the spending provisions
15 were added to PA436 to resolve the possibility of another
16 referendum.

17 Finally, Your Honor, Mr. Howard Ryan, the state's own
18 30(b)(6) witness, the witness they selected to appear at
19 deposition and testify on behalf of the state, testified at
20 Page 46 of his deposition which has in fact been admitted into
21 evidence, that the spending provision was added to PA436
22 specifically to avoid a new referendum.

23 There's no evidence and Mr. Dillon testified that even
24 the provision relative to the salaries of the EM's was only
25 for those EM's that were then appointed. No projections, no

1 analysis of whether or not it would cover the EM's and at that
2 point in time they knew they were going to be hiring certainly
3 an emergency manager for the City of Detroit.

4 This simply was a spending provision that in the short
5 period of time that the state had to get this law passed, that
6 they put into play in order to avoid a referendum.

7 THE COURT: One second, please. Does someone have
8 Mr. Ryan's deposition I can look at? Apparently ours has
9 already gone back to our office.

10 MS. BRIMER: I do, Your Honor, and I have pulled out
11 the relevant page. But I can put this back in and give the
12 Court my entire copy.

13 THE COURT: Okay. I'll give it right back to you.
14 I just want to see it.

15 MS. BRIMER: Would you just like Page 436, Your
16 Honor -- 46?

17 THE COURT: Page 46, yes, please.

18 MS. BRIMER: Yes, if I may.

19 THE COURT: Stand by. Thank you. I will return
20 this to you now.

21 MS. BRIMER: Your Honor, given the speed with which
22 the new law was passed, the lack of any financial analysis by
23 either the Governor or the Treasurer, it's clear that those
24 spending provisions were added on simply to insure that the

1 emergency manager who would have the authority to file this
2 Chapter 9.

3 Even assuming, Your Honor, that those spending provisions
4 are deemed by the Court to be appropriate, the law is
5 nonetheless unconstitutional under the second paragraph of
6 Article 2, Section 9 which provides that no law that has been
7 properly referred on the referendum can be then enacted
8 without being referred to the people.

9 And if I may refer the Court to Exhibit 205. There are
10 two reasons why, Your Honor, we believe that even if the
11 spending provisions are appropriate, it's still nonetheless --
12 if -- if we could go to Page 20.

13 MR. SCHNEIDER: Your Honor, if I could. I -- I -- I
14 don't recall that this was entered into evidence.

15 MS. BRIMER: This was not objected to, Your Honor,
16 at pre-trial and I understood the exhibits not objected to
17 were accepted into evidence.

18 MR. SCHNEIDER: I'm sorry, Mr. Irwin indicates that
19 it may be.

20 MS. BRIMER: Page --

21 MR. SCHNEIDER: Yeah.

22 THE COURT: Hold on. I'll check.

23 MR. IRWIN: There was no objection pre-trial, Your
24 Honor, to 205.

25 THE COURT: It has been admitted.

1 MS. BRIMER: Thank you, Your Honor.

2 THE COURT: So go ahead.

3 MS. BRIMER: Section 23, Page 19, I think it is. So
4 the relevant provision in this instance, Your Honor, are the
5 provisions relative to the filing of a bankruptcy and this is
6 a red line version of PA4 and a comparison with PA436. And it
7 may well just be -- we're taking that down.

8 And you'll notice, Your Honor, it's two sections. And
9 put the other page next to it. Well, no, just the next page.
10 There's only one change and it's a meaningless change in the
11 Chapter 9 filing provisions from PA4 to PA436. That's the
12 entire provision.

13 There's one change. And it provides that the Governor
14 may place contingencies on a local government in order to
15 proceed under Chapter 9. And the reason I would express to
16 the Court that I believe this is a meaningless addition and
17 does not do any more than reenact the prior law, because
18 there's no prohibition in PA4 from placing contingencies. So
19 this is just a redo with a minor change with an attempt to
20 remove this from the people's right of referendum or their
21 right to review a law that has been referred to referendum.

22 We did hear some testimony, Your Honor, from the Governor
23 that there were changes, new options in PA436 for the cities.
24 However, as applied in this case, Your Honor, the state took

1 available to the city and the citizens of Detroit.

2 PA436 became effective on March 29th. The state announced
3 the selection of Mr. Orr as the emergency manager who would be
4 appointed over the city. He entered a contract on March 25th,
5 a Friday. In order to insure that he was enacted as an
6 emergency manager under PA72 which did not afford these
7 options to the city, and would automatically become the
8 emergency manager with this broad authority to file a Chapter
9 9 under PA436 without affording the city any opportunity to
10 take advantage of the purported changes and options in the new
11 enacted law, a clear attempt, Your Honor, to disregard the
12 will of the people.

13 If all it takes, Your Honor, is the inclusion of a minor
14 change or the tacking on of a spending provision, then we have
15 simply read the second paragraph of Article 2, Section 9 out
16 of the Michigan Constitution.

17 Now with respect to the history of this filing, and the
18 fact that I would assert that there has been bad faith on the
19 part of the emergency manager's consultants, and a
20 pre-determination that a Chapter 9 would be filed, I think the
21 record is replete with that evidence.

22 We have numerous emails dating back at least until March
23 of 2012 where Jones, Day and Miller, Buckfire are gratuitously
24 offering their services to the state, advising the state on

1 a Chapter 9 would be -- that the city would be able to file a
2 Chapter 9 without any push back from the citizens. We know
3 that Jones, Day invested at least 1,000 hours on this project.

4 And we do have Mr. Dillon telling us that from time to
5 time other counsel and consultants may have provided pro bono
6 services and I can understand that. However, what we don't
7 have, Your Honor, despite the numerous emails from the Jones,
8 Day attorneys, the law firm that the emergency manager was a
9 partner at, the law firm that the emergency manager continued
10 to provide communications between Mr. Baird, the Governor, and
11 himself, with his partners even after he was aware that he was
12 the preferred candidate, we have no email in the record from
13 any other consultants recommending a Chapter 9.

14 Mr. Dillon advised us that at this very same period in
15 time he was working with Steve Liedel from Dykema. And we
16 also know that Miller, Canfield was advising the city. We
17 have no emails, no information to suggest that any other
18 consultants were recommending that the city drive -- that the
19 state drive the city into this Chapter 9.

20 We know from Mr. Dillon that Mr. Buckfire is the
21 individual or the party that brought Jones, Day to the state.
22 We know from the email communications that Mr. Buckfire
23 provided Jones, Day with the interview questions, drafted the
24 RFP that Jones, Day would be responding to, and was hired

25 prior to Jones, Day's involvement so he had some influence

1 over the process.

2 We can conclude, Your Honor, that from day one of the
3 involvement of the -- the consultants, they have been
4 advocating for the filing of a Chapter 9. It became a
5 foredrawn conclusion from the day they were retained as the
6 city's restructuring counsel and the Court should also take
7 into consideration that Mr. Buckfire and Mr. Dillon both
8 testified that at no point in time did anyone advise the city,
9 and it was the city who initially engaged Jones, Day, that
10 Jones, Day had been working with Miller, Buckfire and/or the
11 state in drafting the consent resolution.

12 So in conclusion, Your Honor, not only do we have an
13 authorization from the Governor based on an unconstitutional
14 law, we have no evidence that the emergency manager and his
15 consultants have met the burden of demonstrating that they
16 have been engaged in good faith negotiations intending -- and
17 that they were intending anything other than the filing of
18 this Chapter 9.

19 The Chapter 9, Your Honor, that the Jones, Day attorneys
20 communicated with the emergency manager was the Chapter 9 that
21 we, the Jones, Day personnel would like to see. Thank you.

22 THE COURT: Thank you. We'll take a recess now
23 until 2:55, please.

24 THE CLERK: All rise. Court is in recess.

1 THE CLERK: Court is in session. Please be seated.

2 THE COURT: One second, please. We have -- we have
3 determined that Exhibit 452 was not admitted into evidence
4 even under another number. So in the circumstances, I will
5 strike from the slide show which has been marked for
6 identification purposes as Exhibit 873, the one slide that
7 does refer to 452. Ms. Green, can you arrange for that,
8 please?

9 MS. GREEN: Yes, Your Honor.

10 THE COURT: All right. Now let me ask counsel for
11 the city, with that slide stricken, do you have any objection
12 to the Court using during its deliberations, Ms. Green's slide
13 show?

14 MR. IRWIN: No, Your Honor.

15 THE COURT: All right. Will you make that available
16 to the Court, please with that change.

17 MR. IRWIN: There was 852 as well. Would that --
18 would the same investigation be conducted with regard to that
19 exhibit?

20 THE COURT: We have determined that that was not
21 admitted either.

22 MR. IRWIN: Right. So with -- could -- both of
23 those two slides then the city has no objection.

24 THE COURT: That's right. There was a slide on that
25 one too.

1 MS. GREEN: If I may respond, Your Honor. 852 is a
2 duplicate of 845. We just pulled some of the transcripts.
3 There is a reference to Exhibit 845, Ms. Brimer used it, Your
4 Honor. I think this exhibit is in evidence. I believe it's
5 845. That was --

6 THE COURT: You think 845 was admitted?

7 MS. GREEN: I thought so. It says it was already in
8 evidence as of the date of her line of questioning. And
9 that's a duplicate --

10 THE COURT: Is that on -- is that on the Court's
11 list?

12 MR. IRWIN: It's not, Your Honor. Just because Ms.
13 Brimer says and represents that it's in evidence does not mean
14 it's in evidence. And 845 on our list again is consistent
15 with what counsel is saying, was in fact used, but it was
16 never offered and our objection was never heard.

17 MS. GREEN: If I could continue. The Judge -- or
18 Your Honor had asked that the retiree committee and the city
19 get together one weekend to come up with -- there were some
20 issues with all the different exhibits.

21 And my understanding was that there was a meeting over
22 the weekend in the courthouse and I was given a list of
23 exhibits marked at trial after that meeting. My understanding
24 was that this was the agreed upon list of exhibits.

1 that was not his understanding, however, many objecting
2 parties all believed that this was the list of exhibits marked
3 at trial. And I checked every slide against what I believed
4 to be was the agreed upon --

5 THE COURT: Well, but -- but the fact that there was
6 an agreement on what exhibits were marked with what numbers
7 doesn't mean that there was an agreement on their admission
8 into evidence.

9 MS. GREEN: My understanding was that this was the
10 list agreed upon as used at trial, admitted into evidence.
11 But Mr. Irwin said that that is not the case.

12 There were several of us that were of that understanding,
13 that that's what the agreed upon list was supposed to be. And
14 I also thought, and I have not looked yet through the record,
15 that the Bill Nowling timeline was used and admitted as a
16 party admission because it was Kevyn Orr's press secretary. I
17 have not yet looked through the transcript, I just received
18 some of the transcripts.

19 THE COURT: What exhibit is that?

20 MS. GREEN: Well, it's a duplicate. It's 452 and
21 there's also 831. And it may be others. It may be a UAW
22 exhibit as well because we all had a lot of the same exhibits.

23 THE COURT: Well, if you can show me that any of
24 those was admitted, we're all set. Otherwise we look for what
25 we look for. As to what your understanding was, unless it's

1 on the record as an agreement, I -- I can't really give it
2 much weight. So, I'll ask you to submit the slide show of
3 your closing argument without the two slides that address
4 these -- these two exhibits which were not admitted into
5 evidence.

6 MS. GREEN: Okay. Thank you, Your Honor.

7 MR. IRWIN: Your Honor, may I briefly be -- be heard
8 on that? We -- we were in fact in Court, or one of the
9 lawyers from the Dentons firm was here that weekend. And we
10 were stuffing exhibit binders, updating the Court's collection
11 of exhibits to make sure those binders were accurate.

12 We have never exchanged a list of exhibits where there
13 was some agreement in terms of what is in evidence or not.
14 And I am not impugning Ms. Green's intent. Whether she relied
15 on that document that objectors have been circulating is not
16 my issue. I am simply making the observation that it is not
17 in evidence.

18 THE COURT: All right.

19 MR. IRWIN: And may I make a -- a related point,
20 Your Honor? And I'm not asking the Court to -- to rule on
21 this. I just want to correct something.

22 I understood Ms. Brimer to make the point with respect to
23 the -- the Howard Ryan deposition testimony. I think she said
24 it's in evidence and that is right. It is one of the

1 between the state and Ms. Brimer to avoid the need for Mr.
2 Ryan to testify live.

3 We did make very limited objections to the testimony that
4 she has referred to and those have not been waived. Again I'm
5 not asking the Court to rule on them, I just don't want there
6 to be any mistake in terms of what has been stipulated into
7 the record or not.

8 THE COURT: Where do I find those objections?

9 MR. IRWIN: They were in the pre-trial order.

10 THE COURT: In the pre-trial order.

11 MR. IRWIN: Yes.

12 THE COURT: All right. Thank you, I'll consider
13 that. Okay, sir.

14 MR. CIANTRA: Thank you and good afternoon, Your
15 Honor. Thomas Ciantra, Cohen, Weiss, and Simon, LLP for the
16 International Union UAW.

17 Let me start, Your Honor, by thanking the Court for its
18 consideration and courtesy during the past few weeks of this
19 trial. It has been most appreciated.

20 Begin, Your Honor, by noting the interest and role of the
21 UAW in these proceedings as Mr. Nicholson, the union's general
22 counsel testified. The UAW represents a relatively small
23 number of employees of the City of Detroit. It has obviously
24 taken an outside interest in these proceedings.

1 directed that -- that the union's resources and its expertise
2 in the restructuring area in particular, be brought to bear to
3 assist in and provide a catalyst for hopefully a consensual
4 resolution of a number of the issues that have been raised in
5 these proceedings and have been the subject of discussion and
6 concern up -- up to and -- up to the date of the filing and to
7 the present day.

8 And there are a couple of reasons for that, Your Honor.
9 The first is of course the obvious reason that Detroit is home
10 for the UAW and it has an obvious interest in the
11 revitalization and rebirth of -- of -- of the city.

12 The second interest is -- is also, I think, obvious. And
13 that is in the protection of the rights of Detroit's active
14 and retired employees in their post-retirement benefits, in
15 their medical benefits that are obviously critical, and in
16 their pension benefits that are constitutionally protected
17 here in Michigan under Article 9, Section 24 of the
18 Constitution.

19 And it is those rights that the UAW is most vigorous in
20 seeking to have vindicated here. Because they are at threat.
21 And with respect to that, and in response to observations by
22 the city, the city's apparent surprise that the UAW is
23 supporting the Flowers litigation to assert and protect the
24 rights of those -- of those retirees, we do not shy from and

1 those retirees and employees in these -- in this extremely
2 critical area.

3 The record, we would submit of this trial, has
4 demonstrated that the approach of the present state
5 administration towards Detroit's fiscal crisis is based upon
6 it seems three elements. One, is taking the position that
7 there will be no financial support by the state for the city's
8 reorganization.

9 The second is of course the use of the extraordinary
10 powers provided by PA436 to displace local elected leadership.

11 And the third component is through the working of the
12 emergency manager selected by the Governor under that law to
13 use Chapter 9 to vitiate the constitutional protection of
14 pension benefits so that in effect the financially vulnerable
15 retirees and employees of the city may be made to finance a
16 rather extensive restructuring plan that the emergency manager
17 has promulgated. No one, I think, can deny that there is a
18 fiscal problem here. No one can deny that there is a need for
19 reinvestment. The question is, who is going to pay for that.

20 And as we have submitted, Your Honor, the option of
21 forcing the retirees to pay for that through a decision to
22 cease funding their pension benefits, is -- is a null set. It
23 is inconsistent with the protections provided by the state
24 constitution and as we have argued is a legal matter. The

25 Chapter 9 authorization is invalid for that reason alone.

1 The -- the trial evidence has made it clear obviously
2 that the Governor was well aware of the intent of the
3 emergency manager. In the filing he was provided with a copy
4 of the June 14 creditors' proposal and was familiar with its
5 terms beforehand.

6 In short, we submit that the Governor and the state
7 cannot use bankruptcy to take away the pension benefits. He
8 -- the state -- the state's executive leadership and its
9 legislature cannot change the Constitution. Only the people
10 of the State of Michigan can do that.

11 The strategy that the city has -- the city acting through
12 the emergency manager has taken in this respect, was
13 foreshadowed quite extensively in the January 29th -- what's
14 been referred to the pitch book that the Jones, Day law firm
15 made in support of its candidacy to be hired as restructuring
16 counsel.

17 And if I could have Exhibit 600 which is I guess the --
18 the UAW's admission of that. And if we could go to Page 57 of
19 that. And there we see that the -- a discussion of the -- the
20 Chapter 9 process and the intent here.

21 Counsel notes, plans of adjustment address narrow range
22 of economic compromises. That's what a plan of adjustment is.
23 It's an effort to compromise outstanding debt obligations.
24 And then it goes on to note that other fundamental changes
25 must occur outside of the plan context.

1 The -- the -- the -- the presentation goes on to note,
2 final bullet point, the city should take advantage of its
3 opportunity for long term comprehensive solutions. And it
4 should do so by using the force of Chapter 9 to negotiate with
5 creditors. It should use the tools of Chapter 9 to develop
6 and fund a large scale revitalization program.

7 THE COURT: What does the language negotiating in
8 Chapter 9 or its shadow mean?

9 MR. CIANTRA: It means that either you negotiate in
10 Chapter 9, or with the threat of it to try to extract
11 concessions from creditors that can -- that can fund something
12 that a large scale revitalization plan that goes beyond a
13 narrow adjustment of creditor relations. That's what the city
14 is looking at. That's what the city proposed --

15 THE COURT: So are you being critical of the city
16 for its plan, or critical of Jones, Day for suggesting to the
17 city a plan to threaten Chapter 9 to negotiate retirement
18 benefit concessions?

19 MR. CIANTRA: Yes, Your Honor. Because the -- the
20 -- the pension benefits are protected by the Constitution,
21 they cannot be reduced. That -- that should have been a third
22 rail in this -- in this process.

23 What they have done is used the Chapter 9 process, used
24 the threat of Chapter 9, to -- to put the pension benefits at

25 play --

1 THE COURT: So it would have been impracticable for
2 the city to negotiate with retirees regarding pension
3 benefits?

4 MR. CIANTRA: It -- it may have -- it may have been
5 difficult, Your Honor, and as -- as I -- I will go on to point
6 out, obviously with respect to the unions, the unions are not
7 in a position as a matter of law to negotiate for retirees.
8 That is clear. That was clear to Jones, Day at the outset of
9 that process.

10 THE COURT: Well, but apart from that, what I'm
11 hearing you say, is that it would not have been good faith for
12 the city to even attempt to negotiate with retirees directly
13 on -- on impairing their benefits.

14 MR. CIANTRA: Yes, Your Honor, from the outset.
15 That was bad faith. They should not have been looking to
16 reduce those accrued pension liabilities. They should not
17 have been looking to use Chapter 9 as leverage for that.

18 THE COURT: Or even the shadow of Chapter 9.

19 MR. CIANTRA: Yes. Or even the shadow of Chapter 9.
20 That's -- those were -- those are inviolate.

21 THE COURT: And that's true even -- and that's true
22 even though Chapter 9 requires as a condition of eligibility,
23 good faith negotiations or its impracticability --
24 impracticability.

1 the filing be specifically authorized. And we have maintained
2 as a matter of law --

3 THE COURT: Well, but that -- that -- that's not my
4 question.

5 MR. CIANTRA: That cannot happen --

6 THE COURT: My question was, in order to file they
7 have to -- they have to either negotiate in good faith, or
8 show that that would have been impracticable.

9 MR. CIANTRA: And what would have been --

10 THE COURT: You say they could do neither one in
11 regard to this specific obligation because of the Michigan
12 Constitution.

13 MR. CIANTRA: Correct, correct. They could have
14 negotiated about a lot of things and -- and so we'll go on, I
15 think there -- there were openings for negotiations about for
16 example other post-employment benefits that were not taken up.
17 But the pensions -- the pensions were the third rail.

18 THE COURT: So they could have negotiated regarding
19 health -- health benefits?

20 MR. CIANTRA: Yes. And -- and --

21 THE COURT: Okay.

22 MR. CIANTRA: Yes. So as -- as the process
23 developed obviously the emergency manager was selected by the
24 emergency loan -- the emergency loan board which is comprised
25 of an appointee of the Governor, the Treasurer, and two of his

1 deputies.

2 The emergency manager's vision and chemistry according to
3 Mr. Baird, and this is from Exhibit 807 were obviously seen as
4 aligned with those of the state administration. Obviously
5 during this process the Governor and Mr. Orr conferred very
6 frequently, both in formal meetings and in one on one
7 discussions. And they had obviously multiple discussions
8 ahead of time with respect to the Detroit bankruptcy filing.

9 Throughout this process, however, the city and the state
10 have pretty consistently sought to limit access, limit public
11 access to those deliberations and to relevant information.
12 The city sought to limit access to its data room on the
13 execution of a -- a non-disclosure agreement. The state
14 initially stated an aggressive position with respect to
15 executive privilege concerning its role in this process.
16 There is of course the common interest agreement that has been
17 the subject of litigation and repeated assertions of the
18 attorney/client privilege during these proceedings to shield
19 from -- from public scrutiny questions of the state support or
20 its willingness to support the restructuring as well as
21 discussions of the protection of the pension benefits.

22 The -- the -- as -- as I mentioned, the -- the -- the
23 Governor was well aware in advance of Mr. Orr's demand that
24 accrued pension benefits be cut in the proposal to creditors.

1 in fact as shown in Exhibit 814, Treasurer Dillon had played a
2 fairly extensive role with respect to editing and revising the
3 very request for authorization for the filing that Mr. Orr
4 subsequently made.

5 So, the -- the -- the creditors' plan that was submitted,
6 this extensive and -- proposal, a hundred and some odd page
7 proposal, was not as I said, focused on a narrow range of
8 economic compromises with -- with creditors. But it is
9 instead a -- a ten year comprehensive restructuring plan for
10 the city.

11 And it is as discussed on that -- in that pitch book.
12 And -- and -- and an effort to take advantage of the
13 opportunity for long term comprehensive solutions that is
14 presented by the finance -- by this financial crisis and by
15 this Chapter 9 filing.

16 Now the -- the -- the plan's details of course as we --
17 we heard, involved the spending of over one and a quarter
18 billion dollars over ten years in various reinvestment and
19 renewal projects. And where is the money coming from for
20 that? Well, that was -- came out pretty clearly in the
21 testimony of Mr. Moore.

22 The city has taken the position that it cannot
23 effectively raise taxes, that the share of revenue that is
24 received from the state is declining, and that as a

1 come from impairing the -- the city's existing debt, its bond
2 debt, and the -- its obligation to fund pension benefits and
3 other post-employment benefits.

4 The Governor has made clear and in fact I think that is
5 reflected in the -- the creditor proposal, that the city must
6 solve its own problems. And that -- that state aid would not
7 be forthcoming with respect to the city's legacy obligations.

8 THE COURT: And -- and what's the UAW's position on
9 where any pension underfunding liability should be paid from?

10 MR. CIANTRA: Well, it -- it -- it remains to be
11 seen, Your Honor, frankly whether the -- whether the city has
12 claims against the state with respect to those obligations.

13 THE COURT: Uh-huh.

14 MR. CIANTRA: I think that is something that has to
15 be pursued. It has to be investigated, it has to be
16 discussed.

17 So under the proposal, contributions to the retirement
18 plan would cease and as a result there would have to be cuts
19 unspecified in the proposal.

20 THE COURT: Of course there's nothing about a
21 finding of eligibility that would preclude the city from that
22 investigation and/or litigation if appropriate, is there?

23 MR. CIANTRA: That -- I suppose strictly speaking as
24 a matter of law, not. But under the circumstances of how the

1 THE COURT: Uh-huh.

2 MR. CIANTRA: I think there's -- there's a question
3 there.

4 THE COURT: Uh-huh.

5 MR. CIANTRA: A question of -- of interests of whose
6 interests are being served by that.

7 THE COURT: Conflict of interest?

8 MR. CIANTRA: Yeah. So what --

9 THE COURT: And any other source other than a claim
10 against the estate?

11 MR. CIANTRA: I'm sorry, Your Honor, did not hear
12 that.

13 THE COURT: Yeah, any other source for funding the
14 underfunded liability, pension liability, than a potential
15 claim against the State of Michigan?

16 MR. CIANTRA: Well, presumably as has been
17 discussed, there are various assets that the city has that
18 could be monetized that -- that could be used to pay its
19 obligations. But certainly a potential claim against the
20 state has to be something that has to be considered.

21 THE COURT: Okay, thank you.

22 MR. CIANTRA: Now with respect to the particular
23 proposal that was being made to creditors, the -- we would
24 submit that the position of retirees or employees with respect
25 to that is quite a bit different than the perspective or

1 position of bond holders or their insurers.

2 For the -- for the bond holders or the insurers, their
3 insurers, it's a cents on the dollar question. It's how much
4 -- how much of that note is going to be theirs and how much of
5 their debt is that note going to cover. That is what their
6 issue is, it is dollars and cents. It's a -- it's a bean
7 cutting exercise for them.

8 For the employees it's quite a bit different. For the
9 employees, it's a matter of unpacking a proposal that
10 discusses underfunding of the pensions, but does not in -- in
11 fact at the time could not translate into any meaningful
12 numbers in terms of what that would mean on a day to day basis
13 in terms of reduction of benefits.

14 It is as -- as -- as we submit, in effect a -- a -- a
15 plan to use in part the pension underfunding claims, to not
16 pay them, and to use those funds to -- to fund the
17 revitalization of the city under this plan. And so what --
18 what are these pensions that are at issue?

19 As the Governor testified, he estimated --

20 THE COURT: Let me -- let me ask you to pause there
21 and answer the city's assertion that its revitalization is
22 necessary for it to get back into a position where it doesn't
23 continue to underfund pension liabilities?

24 MR. CIANTRA: Well, as I said at the outset, Your

1 it's a bankruptcy that's -- it's like doughnut there's always
2 a hole, right. It has to be filled.

3 THE COURT: True.

4 MR. CIANTRA: Okay. The question is, where is it
5 going to be filled? Who is going to be paying for it and
6 where is it going to come from, all right.

7 And it's our position that the -- the pensions are a
8 third rail, that's -- that's a piggy bank that they cannot
9 touch. There are other sources that they have both with
10 respect to their existing creditors and elsewhere that they
11 can use.

12 THE COURT: For -- for revitalization --

13 MR. CIANTRA: Yes.

14 THE COURT: In addition to plugging this doughnut
15 hole?

16 MR. CIANTRA: Right.

17 THE COURT: Okay.

18 MR. CIANTRA: The -- the position and -- and there
19 was some testimony I think from -- from Mr. Buckfire with
20 respect to this. That the -- the pensioners find themselves
21 -- that the -- that the city is -- is -- is treating everyone
22 the same. We're treating all unsecured creditors the same.

23 It -- frankly it ignores social reality. Obviously the
24 bond -- bond holders are relatively sophisticated financial
25 investors. They are paid for taking on risk. And that I

1 think is pretty well reflected in the interest rates that
2 you'll see at the back of the creditor proposal with respect
3 to the bond rates. It's a market.

4 As the city's bond rating has fallen as Mr. Bennett
5 outlined in his -- in his opening, the rates that the city has
6 had to pay have -- have risen. And investors have taken on
7 that risk knowingly.

8 THE COURT: Well, but isn't this kind of equitable
9 argument, one that's more appropriately focused at plan
10 confirmation when and if cram down becomes necessary and the
11 issue is whether the plan is fair and equitable?

12 MR. CIANTRA: I -- it certainly -- it certainly is
13 relevant there, Your Honor. I also, however, think it's
14 relevant here in terms of the good faith of proposing a
15 proposal that treats these folks the same.

16 THE COURT: Okay.

17 MR. CIANTRA: Because as a practical matter, Ms.
18 Whitson who testified, or Mr. Taylor who testified, were not
19 in the same position as some bond holder who could diversify
20 these investments. They're stuck. And they don't have a
21 backstop.

22 This is not like a -- the airline case that Mr. Robbins
23 testified to where the Federal Government has provided an
24 insurance safety net for single employer defined benefit

1 And unlike -- unlike the bond holders. As Mr. Buckfire
2 testified, a substantial number of those bond issues are
3 insured. They are the -- they are the economic party that's
4 at risk. Those insurers. That's why he was negotiating with
5 them.

6 It's not a matter of having as a practical matter, to
7 negotiate with thousands of -- of little old ladies in
8 Pasadena, or thousands of mutual funds. It's a matter of
9 dealing with the insurers who are taking on the economic risk
10 of default.

11 Let me turn to the -- the question of good faith in the
12 negotiations. The city and the state we submit, created
13 conditions under which a consensual resolution became all but
14 impossible. And we think the evidence supports the conclusion
15 that the reason for that is that the emergency manager had
16 determined that he wanted to obtain the tools that were
17 provided by Chapter 9 to -- to -- to push through the -- the
18 -- the plan of restructuring that is set out in the creditor
19 proposal.

20 You can't simply create circumstances that make a
21 consensual resolution impossible and then complain that you
22 didn't have a consensual resolution. All right. As Mr.
23 Buckfire testified, the June 14th creditor proposal was a
24 bombshell. That's his word, not mine.

1 spoken in a public meeting here and stated in response to a
2 retiree's direct question, that pension benefits were
3 sacrosanct. Yet on the 14th obviously the proposal was quite a
4 bit different.

5 And there was a -- a -- an extensive, a -- a very
6 abbreviated rather, schedule for discussions that was set out
7 in that proposal. And it's been discussed by -- by many and
8 I'm not going to go -- go through the details. But the
9 obvious fact is that the -- the emergency manager set a
10 abbreviated period, a little over a month for discussions with
11 stakeholders to take place before an -- before his evaluation
12 period and then a -- an expected conclusion of this process on
13 the -- the 19th of July.

14 So despite the fact that obviously as the testimony was,
15 that months of work went into the production of the financial
16 reports and the creditor proposal, the discussion period was
17 very short indeed. And there were very few meetings that were
18 held to -- where that proposal could be discussed and
19 digested, much less actually negotiated.

20 That has been the subject of much discussion previously
21 in Ms. Green's timeline with respect to those meetings and the
22 conditions under which they were taken -- had taken place. I
23 think they are well known to the Court and I'm not going to --
24 to dwell on them here.

1 all the meetings and did not send anyone who could actually
2 negotiate an agreement is, I think, telling. Now the city
3 contends well, it wasn't any big deal, someone could have gone
4 back to the emergency manager and relayed whatever proposal
5 might have been made and -- and there could have been further
6 discussions and progress could have been made.

7 But the fact of the matter is that of course the city was
8 -- and the emergency manager were insisting on a highly
9 abbreviated time schedule. So if you want work to get done on
10 that type of a schedule, it's important to send people to
11 meetings who can actually get work done rather than just carry
12 information back to home base as it were.

13 There were -- the -- the -- the process of discussion
14 limited by information issues as was previously noted and as
15 seen on Exhibit 814, the city even acknowledged to my client,
16 the UAW, that it needed time and information to review the
17 proposal. That was on June 27th. That's already almost two
18 weeks into this process. As noted the city conditioned access
19 to the data room on -- on the execution of a non-disclosure
20 agreement which we believe it improper given the -- the public
21 nature of what's at issue here. And even the Treasurer, Mr.
22 Dillon, in his email of July 9th, that's Exhibit 834, noted
23 that in many ways we were still in the "informational" stage.

24 So there are a lot of obstacles that existed to getting a
25 consensual agreement done here. The time frame, and the

1 information issues being two notable -- two notable issues.

2 The city also in this connection did not address the
3 legitimate concerns that the unions raised with respect to
4 their ability to negotiate at least with respect to the
5 pension obligations. The basis of that concern really was
6 obvious as Mr. Nicholson and Ms. Gurewitz testified. Just as
7 a matter of pretty simply labor law, unions collective
8 bargaining responsibilities extend to units of active
9 employees. The city was well aware of that.

10 And -- and the UAW demanded that the city provide the
11 basis for its contention that the union could lawfully
12 negotiate over those benefits, especially given their
13 constitutional protection. That -- that's in Exhibit 624, the
14 affidavit that Mr. Nicholson presented in the Flowers case in
15 Exhibit B.

16 Yet the city provided no response. It provided no -- no
17 explanation of its contention that it could legitimately seek
18 to have the unions negotiate over those benefits. And of
19 course it -- it never modified its proposal. Indeed Mr. Orr
20 testified that he probably -- "probably would not have
21 accepted a counter proposal that left pension benefits intact
22 in any event".

23 When Mr. Dillon testified the other day, he noted that in
24 his view the OPEB liability was more of a concern. That it

1 Because it was not funded at all.

2 And if we recall the -- the chart that counsel for the
3 city showed of the outstanding unsecured claims, obviously
4 that OPEB number is -- is bigger even than the pension
5 underfunding number that the -- that the city had claimed. All
6 right.

7 Mr. Nicholson testified that on the 11th of July, the
8 meeting attended by city representatives, that he spoke with
9 Evan Miller of Jones, Day. Mr. Miller is one of the leading
10 bankruptcy practitioners in the United States, a benefits
11 practitioners in the United States. A person of substantial
12 knowledge in this area.

13 And as Mr. Nicholson testified, he told Mr. Miller,
14 there's a way, you know, that we can get at solving the OPEB
15 issue. And as Mr. Nicholson testified, Mr. Miller answered --
16 finished his sentence, yeah. He said the class action method.

17 As Mr. Nicholson testified, that was the way or has been
18 the -- the tool that has been used by UAW and another -- a
19 number of other unions to reach comprises over retiree health
20 obligations in different circumstances. And it provided
21 frankly a framework for negotiation of that issue that could
22 work to a conclusion, that could get you to a conclusion.

23 As Mr. Nicholson testified, the first step in any
24 negotiation is to invite the -- the other side to participate
25 in a process that can be expected to lead to a resolution.

1 That's what he was doing with Mr. Miller.

2 The city didn't take him up on that. And in fact the
3 Treasurer, Mr. Dillon, in Exhibit 626, just -- just a couple
4 days before Mr. Nicholson's meeting with Mr. Miller, he
5 acknowledges that that structure coming up with a class action
6 as a way to deal with retiree benefit obligations, is an -- an
7 option. And it appears at point ten, I think it's the next
8 page if you -- if you would of that exhibit.

9 All right. I knew that was too fancy for me, Your Honor.
10 Let me -- I can just talk about the exhibit the old fashioned
11 way. He acknowledged --

12 THE COURT: Mr. Wertheimer seems to have it for you,
13 sir.

14 MR. CIANTRA: Well, I -- no, I have the document.

15 MR. WERTHEIMER: Okay.

16 THE COURT: What does it say?

17 MR. CIANTRA: He says well, I'll just read it. It's
18 point -- it's point ten and he's talking about the -- the
19 draft letter to -- that Mr. Orr has circulated requesting
20 authorization.

21 THE COURT: Uh-huh.

22 MR. CIANTRA: He says, I don't think we are making
23 the case why we are giving up so soon to reach an out of Court
24 settlement. Looks premeditated.

1 dug into the numbers and I believe there is a State Court
2 option to get retirees into a class. We don't acknowledge
3 that. And why is that impractical? Then he goes on, we don't
4 say they even rejected the --

5 THE COURT: Uh-huh.

6 MR. CIANTRA: -- city's proposal, et cetera.

7 Mr. Dillon was aware of that option. Jones, Day lawyers
8 were certainly aware of that option. Mr. Miller finished Mr.
9 Nicholson's sentence. That was a structure that would have
10 provided a way to get to an agreement on that issue. And an
11 issue that obviously was a -- a \$5,000,000,000 issue, at least
12 as reflected in the -- the city's proposal.

13 As Mr. Nicholson said, you need to create as a first step
14 in a negotiation, an understanding, the other side, as to what
15 the process is that's going to be followed and an agreement
16 that that process is something that's going to lead to a
17 resolution.

18 Contrast this in fact with the process that the city
19 asked parties to undertake with respect to negotiation of the
20 pension issue, all right. The city through the cross
21 examination of Mr. Robbins just the other day, indicated
22 essentially that it was following that same approach. It
23 wanted to get Mr. Robbins to agree to a process for
24 discussion.

1 by getting the actuaries for both sides, for all these parties
2 to agree on what the underfunding number actually is. Then we
3 get financial advisors to agree on how much the city can pay
4 and then we go from there. We figure out what can we pay for,
5 what can be afforded, what cannot.

6 And there was discussion between Mr. Robbins and -- and
7 counsel for the city because Mr. Robbins thought gee, step two
8 should be what -- what we focus on first rather than getting
9 the actuaries involved. But the same idea. Here's a process,
10 here's how you begin to constructively deal with that issue.

11 But here with respect to the pension issue, all right,
12 the city was at no point in this process able to get to step
13 one because its actuaries had not finished the work. So there
14 -- there was no way to undertake that process here, all right.

15 You know, as Mr. Dillon said in -- in the email that I
16 quoted from before, Exhibit 434, we remain in many ways at the
17 informational stage with respect to the pensions. And as the
18 deposition excerpts from Mr. Moore, I think made quite clear,
19 this is at really page -- Pages 149 through 151. The city's
20 actuaries hadn't completed their work.

21 They didn't know what the underfunding number was. And
22 so again, how -- how even under the city's construct for --
23 for these negotiations to take place, could you have had it
24 meaningfully take place.

1 was no good faith negotiation here. It was impossible. The
2 city created the impossibility that it's complaining of.

3 Now were they impractical? Well, I don't -- I don't
4 believe so. The Detroit financial crisis was well known for a
5 period of years. There is no reason why these issues could
6 not have been addressed beforehand to have permitted the type
7 of -- these type of processes that Mr. Nicholson talked about
8 and that Mr. Robbins talked about to -- to take place.

9 And indeed here the -- the unions had -- had a history of
10 coalition bargaining over concessions. There was a lot of
11 testimony with respect to the 2011, late 2011 early 2012
12 concessionary agreement that was negotiated by a coalition of
13 30 -- 30 labor organizations including the UAW Locals. There
14 is the possibility as I mentioned of a potential class action
15 resolution with respect to the OPEB issues. And as we
16 discussed, obviously the -- the city could have -- could well
17 have undertaken negotiation with the bond holders who -- who
18 hold the fundamental economic interest here as -- as Mr.
19 Buckfire testified substantially all of the bond -- bond
20 holders were insured by -- by one of six insurance companies
21 that are identified in the -- in the June 14th proposal.

22 They obviously hold the economic interest. They
23 obviously were the parties, the discreet parties to negotiate
24 with.

1 manager intended to impair pensions as part of any Chapter 9
2 filing. And he also knew that under PA436 he could have
3 conditioned his approval of that on protection of those
4 constitutionally protected benefits. And in fact his counsel
5 advised him to place conditions on the filing. And
6 specifically identified potential conditions with respect to
7 anything having to do with vested pension benefits. That's in
8 Exhibit 625.

9 But the Governor rejected that advice and he in effect
10 turned that issue over to this Court. He did not consider the
11 requirements of state law in authorizing the filing. And he
12 left it to the Federal Bankruptcy Court to sort out whether
13 those accrued pension obligations could be reduced.

14 And we submit, Your Honor, that that is not appropriate
15 authorization under the statute. The Governor's statement in
16 his July 18th letter that the plan of adjustment must be
17 legally executable under Section 943(b)(4), was insufficient
18 because of course the Governor knew that the emergency manager
19 was pursuing the pension proposal as part of the -- of the
20 filing.

21 And 943(b)(4) which applies to confirmation of the plan
22 of adjustment does not provide the requisite gatekeeping
23 authorization that is required, we submit, under 109(c)(2).
24 Effectively an evasion of responsibility with respect to the
25 obligation to support the Michigan State Constitution.

1 Finally, Your Honor, I just want to reiterate where I
2 started. And that is that the UAW is committed to playing a
3 constructive role here, no matter what the result is in this
4 -- on this issue. And it is fully prepared to bring to bear
5 the restructuring expertise that it has developed in the
6 assistance of this Court and to hopefully serve as a catalyst
7 for consensual resolution. Thank you.

8 THE COURT: Thank you, sir. Before we continue,
9 let's do a -- a head count of how many more final closing
10 arguments we have. One, two, three, four. We're running over
11 time here, so I'm going to ask you to keep them as concise as
12 possible because we also have rebuttal arguments.

13 MR. WERTHEIMER: William Wertheimer, Your Honor, on
14 behalf of the Flowers plaintiffs and I will keep it brief.
15 And particularly not -- try not to repeat anything that
16 counsel for the UAW just said, either directly or indirectly.

17 But -- but one point I think does need to be made and
18 that is from the beginning the position of the Flowers
19 plaintiffs has been that the Governor and the Treasurer were
20 attempting to use Chapter 9 to avoid the requirements of
21 Article 9, Section 24.

22 And that that legally constituted a tort. And that that
23 made their -- that -- that impacted on the eligibility issue
24 under 109(c)(2). Simply put, and consistent with what counsel

1 by the Attorney General, the tort claim is that the Governor
2 has allowed his political position to influence his legal
3 position. And has done that from the beginning. And that
4 that constitutes a tort.

5 We're not saying that the Governor did anything evil,
6 we're not saying that the Governor conspired with Treasurer
7 Dillon. What we are saying is, that from the beginning, the
8 Governor has taken the position that his political position
9 has been no financial support from the state. And that has
10 driven everything that has happened here.

11 I'll just go over briefly the points that the state made
12 this morning relative to those -- that claim. The state made
13 five points. The first had to do with referendum and Ms.
14 Brimer dealt with that, I won't speak to it at all.

15 The second had to do with the allegation that there was a
16 bad faith rush to file. I won't repeat anything that's been
17 put up on the board. I think we all kind of know what
18 happened when. I would just add two things relative to that
19 rush to file.

20 One, not only is it clear that the move from the 19th to
21 the 18th was because we were in Court on the 18th, it's also
22 clear that scheduling the bankruptcy for the 19th was done
23 because we filed on the 3rd and had a hearing scheduled for the
24 following Monday. There is all kinds of evidence to support
25 that.

1 Second point, there is no --

2 THE COURT: Let me ask you to pause there.

3 MR. WERTHEIMER: Yes.

4 THE COURT: I think in my experience it's fair to
5 say that many many bankruptcy filings, maybe even most
6 bankruptcy filings are precipitated by creditor action. And
7 so even if this one was, why is that evidence of bad faith?

8 MR. WERTHEIMER: Because this is different, Your
9 Honor. I made that point before and I recognize it as being
10 true.

11 This is a Governor who is taking action when he's taking
12 action in order to avoid a State Court Judge coming out with a
13 decision which will require him to do something that he
14 doesn't want to do. We now know --

15 THE COURT: Well, why is that different than every
16 other bankruptcy? I mean people file Chapter 13 to --

17 MR. WERTHEIMER: Because the Governor took an
18 oath --

19 THE COURT: Because they don't want their --

20 MR. WERTHEIMER: I'm sorry.

21 THE COURT: -- homes foreclosed, or they don't want
22 their cars repossessed, or -- or they file Chapter 7 because
23 they're tired of the phone calls, all of which are perfectly
24 legal actions by those creditors to be taking regarding debts
25 that -- that debtors promised to repay.

1 MR. WERTHEIMER: We think it is different when it is
2 a Governor rushing to Court in order to avoid a State Court
3 decision that he believes will be politically damaging to him
4 and will make it more difficult for him to maintain his
5 political position that -- that there should be no financial
6 support from the state and that this bankruptcy should go
7 forward without condition.

8 THE COURT: Okay.

9 MR. WERTHEIMER: We think it's qualitatively
10 different.

11 Let me move on to the third point that the state made.
12 And that had to do with our claim that -- that the Governor at
13 a minimum had an obligation to put contingencies on. What do
14 we know now we didn't know at the start of this case relative
15 to that?

16 We know that all of the Governor's advisors agreed with
17 us. Because we now have the document that was being withheld
18 based on the attorney/client privilege.

19 The fourth point they made, or the AG made this morning,
20 was to characterize what we're claiming is -- is some kind of
21 a -- essentially they're saying, we're claiming that this is
22 some kind of scheme to end run 924 to save three and a half
23 billion dollars when there's \$18,000,000,000 at stake, that
24 doesn't make any sense. That's not what we're claiming.

1 process. We're not suggesting that the Governor is not in
2 good faith generally in attempting to deal with the Detroit
3 problem. We've never claimed that. That's just a false
4 issue.

5 All we have claimed is that as to 924 and that pension
6 obligation, the Governor -- Governor from day one has acted in
7 his own interests and not in the interests of the citizens of
8 the State of Michigan, pure and simple.

9 The fifth point they make is that they try to
10 characterize what we're claiming as some sort of crazy
11 conspiracy among Jones, Day, Miller, Buckfire, the state, the
12 city. No. It's very simple. And it goes back to what we
13 claim the Governor has been doing from the beginning.

14 And if we take a look just at a couple of documents which
15 haven't been referenced at different points in time, if you go
16 to June of 2012, document 844, you have Heather Lennox of
17 Jones, Day saying I'm going with Ken Buckfire, Miller,
18 Buckfire, to talk to the Governor Richard Snyder in Michigan
19 tomorrow.

20 And what's the attachment that she's bringing with her
21 per somebody's request? Among others, a memo on Michigan
22 constitutional pension plan protections. Everybody in this
23 courtroom knows what that memo said.

24 That's June of 2012, Jones, Day is providing pro bono,

1 pro bono work to the -- to the State of Michigan at this point
2 and that's what they're doing in June of 2012.

3 Now move forward to February of 2013, this year. Richard
4 Baird, Exhibit 810. He's communicating with Kevyn Orr. And
5 he says, that clearly establishes that you are already
6 behaving as an agent of the state.

7 That's not a slip of the tongue. That's part of the
8 whole game plan. Orr is from Jones, Day, Jones, Day has been
9 on board from the beginning. Even little pieces, and I'll
10 stop with this, Judge, in terms of these other exhibits. Even
11 little pieces, in the opening briefs I think both AFSCME and
12 the UAW talked about a Jones, Day partner's article that was
13 circulating in the bankruptcy world that I knew nothing about
14 at that point relative to how municipalities and states could
15 get out from under pension obligations.

16 And the claim was made by the UAW, by AFSCME, by others
17 ah, ha. Well, there's an exhibit in evidence in which Kevyn
18 Orr is provided with a copy of that as part of this whole
19 process. It all fits. It is what happened. This totally
20 innocent explanation is not consistent with reality.

21 And then finally let me bring you to just about two or
22 three weeks ago. We're all in Court and the Court asked Mr.
23 Bennett a question relative to -- and I don't want to
24 characterize it because I'm not sure exactly what it was, but

1 be making a claim against the state. Something similar to
2 what counsel for the UAW was talking about just a few minutes
3 ago.

4 If you will recall, Mr. Bennett did not answer the
5 Court's question as to his client, the city. He said, he gave
6 you Jones, Day's opinion. And guess what? Jones, Day's
7 opinion is, the state isn't liable. There's a serious
8 conflict related to that, an obvious conflict.

9 The AG concluded by saying that the Governor had
10 expressed leadership and made a hard decision. He has done
11 exactly the opposite.

12 He has made no decision. He hasn't even made a decision
13 under state law. He hasn't said -- at least the Attorney
14 General, Mr. Schuette or Attorney General Schuette has taken a
15 legal position -- taken a position, not Governor Snyder.

16 Why? Because it's not in his political interest to do
17 so. And therefore he says, I have no position, I defer to Mr.
18 Orr, and I know what he's going to do. He's going to take it
19 to Bankruptcy Court and it's going to be trumped and guess
20 what? You then can make the decision instead of the Governor
21 of the State of Michigan. That's not right. Thank you.

22 THE COURT: Thank you, sir.

23 MS. PATEK: Good afternoon, Your Honor. Barbara
24 Patek on behalf of the Detroit Public Safety Unions.

1 this issue that's come up about the exhibits. I'm not going
2 to put any exhibits up, but I do have my timeline and I have
3 in that I moved for the admission of both 714 and 717
4 yesterday based upon Mr. Malhotra's identification of the
5 city's. And I thought they were both admitted. They're not
6 on the -- on the list, only 717 is.

7 So I'm going to proceed as if it's only 717, the point if
8 there's one concessionary agreement. And the record will bear
9 out, you know, as to whether they're both in.

10 With that, may I ask if you can put up -- and we will
11 mark this as -- as 723 and provide the Court with a -- with a
12 hard copy as well.

13 THE COURT: Is this different from the timeline you
14 used in your opening?

15 MS. PATEK: It is very similar. We've just filled
16 in some of the --

17 THE COURT: Okay.

18 MS. PATEK: -- evidence. And there's a couple
19 additional facts. And -- and for the Court's convenience,
20 what's in blue is what's added. So that you can easily see
21 what's --

22 THE COURT: Oh, okay. Thank you. 723 you say?

23 MS. PATEK: Yes. As the Court is aware, you know,
24 at the time of the first day hearings, the Detroit Public

1 request for the benefit of the automatic and the extension of
2 the automatic stay. In fact attempting as they have tried to
3 be for the last several years, a willing partner in the city's
4 effort to restructure itself.

5 However, at that time we reserved our rights on
6 eligibility and -- and we're here today to address that issue.
7 And I want to start with the debtor that the Court raised with
8 -- I'm trying to remember who it was now, but you asked a
9 question about why would the Governor have done that, what
10 would have been his purpose in sort of delaying and let the
11 city continue to deteriorate.

12 And I'm going to try to propose an answer to that
13 question. And -- and --

14 THE COURT: I put Ms. Levine on -- Levine on the
15 spot.

16 MS. PATEK: -- so I don't know if this bails her out
17 or not, but I'm going to take -- take a stab at it. First of
18 all, it goes without saying that we're in Chapter 9 so
19 inherently people get here one way or the other through
20 politicians.

21 Second, I think that there is a -- a very human instinct
22 to try to control the process and whether it's Governor
23 Snyder, or Treasurer Dillon, or the emergency manager, or
24 Mayor Bing, when you are in a position of having public

1 so that it comes out consistent with your view of what the
2 public interest is.

3 Which brings me to my first point which is, first of all,
4 I think the constitutional issues hovering above us here
5 today, again it shows the -- the wisdom of the checks and
6 balances built into our federal system and the states' rights
7 and the -- and the Federal Government's rights.

8 But the second, it also shows the wisdom and perhaps the
9 constitutional necessity of Section 109 and in particular
10 109(c) which provides a number of transparent and consensual
11 ways for people to attempt to work out their -- the adjustment
12 issues outside of Chapter 9.

13 I -- I have a couple of points to make and I will try to
14 be quick and -- and go through my timeline here. And they are
15 as follows.

16 First, the active members of the Detroit Public Safety
17 Unions are both the providers as we've heard many times and
18 from many witnesses in this Court, of the indispensable
19 essential fire and police services that are necessary for the
20 city to continue on. And they are also holders of a
21 potentially significant portion of what the city claims is a
22 3.5 billion dollar underfunded pension liability.

23 We believe that the 35 day window that the city gave is
24 inadequate. I will also show based on our timeline, that it's

1 with this important stakeholder as its condition was
2 deteriorating, but it used every tool in its legal and
3 political tool kit to in fact prevent such negotiations.

4 Treasurer Dillon told us yesterday that there were a lot
5 of creative ways that these problems could be solved and I
6 will talk about those in a few moments. But I will say that
7 we believe that in order to solve this problem, and knowing
8 what it knew, and obviously doing the careful planning that it
9 was doing, that the city had an obligation to begin
10 negotiations much much sooner.

11 Why didn't they? I'm not certain. Part of it may be
12 that this -- that this is a political process. Part of it is
13 perhaps there was a perceived mistrust in the case of labor
14 with their negotiating partner.

15 But I'm going to suggest to the Court that they passed up
16 an opportunity to begin to solve a significant portion of the
17 -- this process in the very way that I suggested to the Court
18 when we came here on the first day of the trial, that made it
19 inevitable that they would be able to come before the Court
20 and tell it that it was impractical for -- for this problem to
21 be solved outside of bankruptcy.

22 When on June 14th the city at that first meeting of
23 creditors outside of bankruptcy dropped the claimed 3.5
24 billion dollar elephant on the active employees, the retirees,
25 and the pension systems, and -- and gave it 35 days to sort of

1 swallow it whole or else, I think they -- they set any
2 possible negotiations up for failure.

3 And with respect to the active public safety unions, I
4 want to go back on my timeline to the negotiation of the
5 concessionary agreements in December of 2011 and January of
6 2012 when by which time it was clear that there were serious
7 financial issues in the City of Detroit. Those exhibits were
8 negotiated. Mr. Malhotra indicates he was there when they
9 were negotiated. Ms. Gurewitz talked about the negotiation of
10 the agreements in advising her clients.

11 And the state elected not to have those agreements become
12 effective. And the -- and the reasons were several fold, but
13 I -- I believe one of the suggestions was that they wanted to
14 maintain flexibility. That is if they extended the length of
15 the -- the collective bargaining agreements it would somehow
16 restrict their ability to restructure.

17 I'm going to suggest to the Court given what Public Act 4
18 said, given what Public Act 436 says, and given Section 365
19 and the tools available in Chapter 9, if that became an
20 inevitability that that is a false construct. There were
21 tools that allowed them to modify and/or reject those
22 agreements and for them to suggest and leave savings on the
23 table so that they could proceed in a certain way, I -- I -- I
24 think is some early evidence of a potential lack of good faith
25 negotiations in this case.

1 I then want to fast forward into the time period before
2 the emergency manager took --

3 THE COURT: Before you change slides --

4 MS. PATEK: Yes.

5 THE COURT: If you were about to, our notes do show
6 that Exhibit 714 was not admitted.

7 MS. PATEK: Correct. That's the one I mentioned
8 when we first started as the housekeeping matter. So I --
9 I --

10 THE COURT: But I just want to --

11 MS. PATEK: -- it's perfectly possible that I
12 misspoke and my notes are incorrect and I'm -- I'm not going
13 to put it up.

14 THE COURT: I want to confirm that for you. So I
15 will have to ask you to change that slide before you submit it
16 to the Court.

17 MS. PATEK: We -- we will. With respect to March
18 25th, that's the date, and Mr. Diaz testified about this, Mr.
19 Dillon testified about his efforts to prevent any Act 312
20 awards from being issued. The award itself is in evidence
21 pursuant to the agreement reached with Jones, Day that we're
22 looking at the contractual terms, not any comments made by the
23 arbitrator unrelated to that.

24 That agreement was reached on March 25th. And that's also
25 the day that Kevyn Orr assumed the role of the emergency

1 financial manager under former Act -- Public Act 72.

2 As Mr. Dillon conceded when he was on the witness stand
3 yesterday, that timing eliminated the city's right to elect
4 the neutral evaluation process, or the negotiated solution
5 that is provided for under Public Act 436 by instead
6 triggering the provision that would make Mr. Orr automatically
7 the emergency manager of the City of Detroit when Public Act
8 436 became effective a few days later.

9 I would suggest given the careful planning that -- that
10 has been demonstrated through the evidence that the Court has
11 seen, that -- that that timing was not an accident.

12 I want to go now to the next slide. And the next date we
13 have is that effective date of Public Act 436, March 28th.
14 Both Mr. Diaz, the President of the Detroit Police Officers
15 Association, and Ms. Gurewitz told the Court that as of that
16 date all negotiations with the Public Safety Unions ceased.

17 And in fact Ms. Gurewitz testified that her clients, the
18 Command Officers Association in fact had Act 312 hearings
19 scheduled but put them off because the city was negotiating in
20 what she believed were productive negotiations. I will leave
21 it to the Court to decide whether or not that was again
22 perhaps some lack of good faith in terms of trying to get to a
23 certain time period where they could suspend their obligation
24 to negotiate.

1 half weeks later, the city filed its emergency motion seeking
2 to dismiss the pending Act 312 proceedings for two of the
3 public safety unions, the Command Officers Association, and
4 the Police Lieutenants and Sergeants Association. That the
5 opinion upholding that dismissal and the dissenting opinion
6 are Exhibit 718, which is in evidence. Ms. Gurewitz testified
7 about that. And that opinion came down on June 14th, the very
8 same day that the meeting of creditors took place at the
9 airport.

10 I don't want to go over what happened at the individual
11 creditor's meetings, but instead I want to focus on the Public
12 Safety Unions, so if we can go ahead to the next slide.

13 My June 25th date in fact by virtue of some agreements, we
14 don't have that evidence, but I think that June 30th covers it.
15 We had reached some stipulations with the city to shorten our
16 proofs. That the existing -- is collective bargaining
17 agreements between the city and the DFFA and the city and the
18 Lieutenants and Sergeants expired. As Ms. Gurewitz testified
19 the command officers have not had a collective bargaining
20 agreement since 2010 and were in fact essentially at will
21 employees at that time.

22 The very next day Chief Craig assumed his job as Detroit
23 Police Chief. And I think on the issue of whether or not the
24 Detroit Public Safety Unions, and we don't have specific

1 that the evidence on the police unions is -- is sufficient to
2 cover the waterfront here.

3 Every witness who was asked testified that the Detroit
4 Police Officers Association, the various bargaining units,
5 first of all, that -- that the membership were under paid.
6 That their working conditions were deplorable. And
7 nevertheless Chief Craig testified that the Detroit Police
8 Officers Association and the other bargaining units had in
9 fact reached out to him and that there were negotiations. And
10 there was a lot of flexibility demonstrated.

11 And in fact in terms of issues on the restructuring that
12 did not involve dollars going into the pockets of these
13 Detroit Public Safety Union members, they were working
14 diligently in the restructuring and as we heard from Mr. Diaz
15 yesterday, even before Chief Craig came on board, the Detroit
16 Police Officers Association was reaching out to him to try to
17 find out what they -- they could do.

18 So to suggest that the city did not have a willing
19 partner here, I think, and to suggest that it did not have an
20 opportunity, particularly with, and I believe it was Mr.
21 Buckfire who -- who I -- I questioned about this, where they
22 had these collective bargaining agreements that were expiring,
23 to try to obtain some concessions.

24 There are creative ways perhaps without impairing

1 this puzzle so that people wouldn't on June 14th be faced with
2 having to swallow the elephant whole. And in that regard as I
3 think the Court has heard, the active Detroit Public Safety
4 Unions have the folks who are out there working in the street
5 who have accruing, but not vested and therefore not
6 constitutionally protected pension benefits. They have
7 members who have vested and constitutionally protected accrued
8 pension benefits. And there are those who have dropped. That
9 is who are actually receiving what amounts to a pension
10 payment into a separate account that they'll -- they can't
11 touch until they get to retirement.

12 For -- for whatever reason the city elected not to engage
13 these folks, and if we can go now to the next slide. We have,
14 and I don't want to belabor this because I know this has been
15 up a number of times. But there was the letter that was sent
16 on July 12th and I think we can all agree by now that -- that
17 -- that July 12th was likely too late given what the rest of
18 the evidence shows.

19 But the four public safety unions got together and the
20 Court heard Ms. Gurewitz testify yesterday that she was part
21 of advising them in terms of obtaining bankruptcy counsel, in
22 terms of trying to form a coalition. And sent a letter
23 together to -- to the city asking and indicating a desire to
24 make a counter proposal, to -- asking for some more concrete
25 information.

1 And the response by the city was a letter dated July 17th,
2 after Mr. Orr had sought his authorization to file, and only a
3 day before the bankruptcy petition was filed, thanking them
4 for their strong cooperation in the city's restructuring
5 efforts.

6 I would suggest to the Court on the issues of -- of good
7 faith and impracticability that here the city for whatever
8 reason passed up an opportunity to begin to address this
9 problem in a constructive way, more than a year before the --
10 the June 14th meeting of creditors. Actively refused to engage
11 one of its most important partners in the restructuring. And
12 instead rather than treating them as I think somebody in my
13 office suggested, you know, we're like the landlord. They
14 really need us and -- and -- and should be engaging us.

15 They -- they were treated like general unsecured debt and
16 were repeatedly told, we don't have to negotiate with you and
17 we don't have to bargain with you. And I think that -- that
18 timeline and that series of events together with the other
19 legal questions that have to be resolved, should help inform
20 this Court's decision as to whether or not the city in fact
21 engaged in good faith negotiations or has successfully shown
22 impracticability when they had opportunity when it was clearly
23 not impractical to engage certainly one of -- certainly the
24 Public Safety Unions and probably the other unions based upon

1 to solve the -- the problem that we're now all facing in the
2 Court today. Thank you.

3 THE COURT: Thank you.

4 MR. IRWIN: Your Honor, briefly. The city would
5 simply request a copy of -- of the timeline with -- with the
6 removal of the reference to Exhibit 714. The city has no
7 objection.

8 There's one other correction that the city would request,
9 however, on the -- on the second page of the timeline there
10 was a reference to an Exhibit 869. I think it's just an
11 administrative problem. 869 is not in the record. It's an
12 email and I believe it was -- it was in reference to a -- a
13 Kevin Orr video clip that just needs to be fixed.

14 MS. PATEK: Okay.

15 MR. IRWIN: So it's just a question of fixing the
16 reference to 869.

17 THE COURT: I'll ask the two of you to work on that
18 and -- and then provide a copy to city's counsel and the
19 Court, please.

20 MR. IRWIN: Thank you, Your Honor.

21 THE COURT: Sir.

22 MR. PLECHA: Good afternoon, Your Honor. Ryan
23 Plecha on behalf of the retiree association parties.

24 Your Honor, with my time today, I would like to spend it

1 retirees. No one in this case has disputed the city's
2 pre-petition intent to impair the class of retirees under a
3 plan of adjustment.

4 Therefore under Section 109, it is clear that the city
5 must either obtain agreement from a majority of the retirees,
6 negotiate with the retirees in good faith, or prove that
7 negotiations with retirees was impracticable. The city cannot
8 prove or meet any of these burdens.

9 It is clear that the city in fact did not reach an
10 agreement with the majority of retirees. The city did not,
11 nor does it claim that it negotiated in good faith with
12 retirees. And finally, the city has failed to satisfy its
13 burden of proving that negotiations were in fact
14 impracticable.

15 Your Honor, the testimony presented throughout the trial
16 is clear that the city did not negotiate with retirees. Ms.
17 Lightsey and Mr. Taylor unequivocally testified that the city
18 did not negotiate with the DRCEA or the RDPFFA. The city did
19 not respond to the DRCEA's request for retiree specific
20 meetings. It did not even invite the DRCEA to the June 14th
21 meeting and in fact has never provided a copy of the June 14th
22 proposal to creditors directly to the DRCEA.

23 As others have said today, Mr. Taylor did request and in
24 fact had a meeting with Mr. Orr regarding retiree issues. In

1 RDPFFA, that the retirees on the police and fire side's
2 benefits and health care were not at risk. He essentially
3 told the police and fire retirees that they had protection
4 from the oncoming financial storm or had protection from the
5 upcoming war and need not worry.

6 After making this inaccurate statement to Mr. Taylor, the
7 city ignored multiple requests from the retirees belonging to
8 the RDPFFA for specific meetings.

9 THE COURT: Can you remind the Court when that
10 meeting was with Mr. Taylor?

11 MR. PLECHA: I believe it was April 18th.

12 THE COURT: Thank you, sir.

13 MR. PLECHA: You're welcome, Your Honor. Therefore
14 the only individual meeting that was held specifically with
15 retirees was based solely on this information. This in no way
16 can constitute negotiations, let alone good faith
17 negotiations.

18 Therefore, Your Honor, the city did not introduce any
19 evidence to support a claim that the city actually negotiated
20 with retirees or their representatives. Your Honor,
21 negotiations with the retirees was practicable through the
22 DRCEA and the RDPFFA. However, Your Honor, instead of
23 attempting to negotiate with retirees in good faith, the city
24 instead attempted to create a paper case of impracticability.

1 herring argument that because there was no negotiating partner
2 that could unilaterally -- unilaterally bind the retirees,
3 negotiations were impracticable. This is not the appropriate
4 legal standard for determining whether negotiations were
5 impracticable.

6 The city documented this alleged impracticability by
7 requesting various union representatives represent retirees,
8 all the while knowing they were not the appropriate parties to
9 do so. The city's purpose of this campaign was to add to the
10 paper record in case of impracticability.

11 The city has presented to Your Honor multiple times, a
12 chart alleging impracticability on these grounds representing
13 whether various groups would represent retirees with checks,
14 X's, and dashes. Further, the city beat the drum of
15 impracticability through repetitive testimony of Mr. Orr that
16 no unions would represent the retirees.

17 Well, Your Honor, the city was asking the wrong person.
18 It may be true that they knocked on many doors. Not only did
19 they not knock on the correct door, representatives from the
20 DRCEA and the RDPFFA in fact requested to be that party that
21 they were looking for to represent and negotiate on behalf of
22 the retirees.

23 Both Ms. Lightsey and Mr. Taylor testified that they
24 responded to the very same letters that the city sent to the

1 negotiations with the city. Both associations requests for
2 those meetings were denied or never followed through on.

3 THE COURT: Okay. But legally speaking, why are
4 those organizations in a better position to negotiate as
5 partners with the city than any other potential partner that
6 the city did seek out?

7 MR. PLECHA: Your Honor, these associations each
8 have been in existence for over 50 years. They have lines of
9 communication open to provide information to their members,
10 get information back from their members. They have a
11 mechanism in place to get the appropriate votes and
12 information necessary to provide that to the Court to show
13 that there is an agreement or there is not an agreement.

14 Under 109 the requirement is that a majority of a class
15 agrees to it. That's solely for the purpose of eligibility,
16 that's not for plan confirmation. We could have sent out
17 through the associations these requests for votes on a plan
18 that was negotiated by the associations, they could be sent
19 back to the Court or the associations to show whether there
20 was in fact an agreement possible.

21 The city's plan to create its own impracticability fails
22 because of the association's presence, history, and desire to
23 represent retirees. As been shown through the evidence and
24 testimony, and I just said, the retirees associations, the

1 served as the watchdogs and sole voice of general retirees.
2 They have obtained the benefit enhancements applicable to all
3 general city retirees through the city council budget
4 proceedings which it was formally invited to and participated
5 in.

6 That attendance was set forth in the city charter. The
7 DRCEA has over 7,600 members and represents all general city
8 retirees regardless of membership.

9 The evidence is very similar as it relates to the RDPFFA.
10 They as well have been in existence for over 50 years. They
11 have served as the united voice of police and fire retirees.

12 The RDPFFA in fact has engaged in concessionary
13 negotiations which were implemented and impacted all police
14 and fire retirees within a particular class. The RDPFFA has
15 also bound retirees in an agreement through consent of the
16 police and fire retirees.

17 They as well have the similar invitation to, and in fact
18 participated in city council proceedings. They also have
19 frequent communications with their retirees.

20 Despite all this, Mr. Orr and his team at the city chose
21 not to inform themselves of the associations or take any steps
22 to acknowledge the existence of any group that could foil its
23 impracticability scheme. This impracticability scheme was
24 coupled with an extraordinarily aggressive timetable that has
25 been discussed by other objectors which I will not get into.

1 Therefore, the city cannot now claim impracticability
2 based on its own self imposed timeline. It's also important
3 to note that Ms. Lightsey's letter to Mr. Orr still remains
4 unanswered as to the time of filing.

5 Each of the associations were capable of negotiations.
6 As testified to by Ms. Lightsey, the DRCEA's board includes a
7 former city budget director, a former city personnel manager,
8 a former director of labor relations who is also in charge of
9 benefits, and a former trustee of the pension funds. These
10 are the people that would be negotiating on behalf of the city
11 had there not been an emergency manager and had those
12 individuals not retired from the city.

13 The associations in fact are the eyes and ears of
14 retirees. The associations are trusted by their members who
15 have turned to them for decades to receive benefit assistance,
16 and information. The majority of all retirees of either the
17 DRCEA or the RDPFFA are members of the representative
18 associations. And two-thirds of all retirees are a member of
19 one association or the other.

20 As I said previously, Your Honor, 109 does not envision
21 unanimous consent. 109(c)(5)(A) would be satisfied with only
22 agreement of a majority of retirees. Given that the
23 associations together represent two-thirds of all retirees,
24 they were in fact in a position to solicit and obtain
25 agreement of a majority of the retirees.

1 That would have not been impracticable if the city had
2 negotiated in good faith. Therefore, Your Honor, the evidence
3 does show that negotiation with retirees through the
4 associations was practicable.

5 Your Honor, the requirements of 109(c)(5) cannot be met
6 by clearly just the city acknowledging that it was difficult
7 in deciding not to engage or attempt to engage in any
8 negotiations. 109 was intended by Congress to require that a
9 municipality seeking to reorganize under Chapter 9 exhaust the
10 possibility of a negotiated resolution with each class of
11 creditors.

12 As for retirees who merit recognition as a class due to
13 the constitutional protections of their pensions, the evidence
14 has showed that the timeline, the avoidance of the city, of
15 the retiree associations, was not in good faith and that
16 negotiations were practicable.

17 Further, Your Honor, the discovery responses cited to by
18 the city were in fact post-petition. Mr. Taylor testified
19 that he never provided his position to the city as did Ms.
20 Lightsey. So the city at the time of filing its petition had
21 no knowledge of these alleged positions. They may be true,
22 but the city did not know. The city did not ask. Quite
23 frankly the city did not care because it did not comply with
24 its plan. Thank you, Your Honor.

1 everyone's best interest to take a brief break, ten minutes
2 and we'll reconvene at 4:35 please.

3 THE CLERK: All rise. Court is in recess.

4 (Court in Recess at 4:34 p.m.; Resume at 4:35 p.m.)

5 THE CLERK: Court is in session. Please be seated.

6 THE COURT: It looks like there are some people who
7 aren't here. Should we wait, or should we plow on ahead?

8 MR. MONTGOMERY: Your Honor, I think it may be a
9 function of my simply being the last man standing.

10 THE COURT: All right. All right. You may proceed,
11 sir.

12 MR. MONTGOMERY: Thank you, Your Honor. I'm going
13 to try in my time this afternoon to try to tie the evidence
14 that came through in seven days of testimony to our specific
15 theories of the case, not in the -- necessarily in the -- in
16 the broadest sense, but with -- to the specific points we are
17 trying to make, mentioned first in our opening and then that
18 we think are important here.

19 Now we know of course that the backdrop for point one in
20 this whole discussion is the authorization question. Now the
21 legal question on whether or not --

22 THE COURT: Can I ask you not to repeat the
23 arguments of your --

24 MR. MONTGOMERY: Yes, exactly. We're not going
25 there, we're not going there.

1 THE COURT: Okay.

2 MR. MONTGOMERY: This is just nothing but context
3 and there's no dispute as to the existence of authorization
4 letters.

5 There is a dispute as to whether or not that
6 authorization violates that, that's argued legally, but we
7 also argue specifically that there was an -- an intent to
8 violate the pending clause, Your Honor. And so the question
9 is, is there proof of intent, all right.

10 Now, the first step --

11 THE COURT: The theory being that would go to good
12 faith?

13 MR. MONTGOMERY: Yes, Your Honor. And it would go
14 to whether or not -- if there was an -- an intention to
15 violate a state law, specifically the Constitution, does that
16 somehow affect or infect the actual grant of authorization
17 itself. Meaning that if there were no intent to violate a
18 law, it's a pure legal issue.

19 If there is an intent to violate -- violate the law, does
20 that render the act void ab initio. That's something we've
21 argued. We think you need to know the facts before you can
22 actually apply that issue.

23 THE COURT: So there's a different consequence if
24 there's intent versus no intent?

25 MR. MONTGOMERY: We believe there is, Your Honor.
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1 Because --

2 THE COURT: Okay.

3 MR. MONTGOMERY: -- the question. We do.

4 THE COURT: Go for it.

5 MR. MONTGOMERY: And so whether we're right or we're
6 wrong, we need to have the facts in front of you.

7 THE COURT: Uh-huh.

8 MR. MONTGOMERY: All right. Now where do we start?
9 Of course the city admitted to you in oral argument and it
10 admitted in its admissions that it intended to diminish or
11 impair accrued financial benefits of the participants and
12 the --

13 MR. GORDON: Retirement system objection, please.
14 If you're going to make that statement at least read it
15 correctly.

16 MR. MONTGOMERY: Fair enough, sir. The admission of
17 the city was that --

18 THE COURT: Hold on. Sir, is that your electronic
19 device?

20 A VOICE: Yes, I apologize, Your Honor.

21 THE COURT: Please turn it off. Is everyone's
22 electronic device off? All right. I'll assume from silence
23 that the answer is yes. You may proceed.

24 MR. MONTGOMERY: What did the city admit? Admit
25 that the city intends to seek to diminish or impair the

1 accrued financial benefits of the participants in the
2 retirement systems through this Chapter 9 case, response
3 admitted.

4 Now, that is the beginning of the process. The city
5 knows it's trying to do something that on its face appears to
6 violate the constitutional provision. Now we think intent can
7 be shown not just by the statement that they intend to do so
8 here, but that they had intended to do so for time. And it
9 was part of the planning process leading up to the Chapter 9.

10 Now we also have to show you various other topics which
11 we -- I will touch on. There's a rightness question that Your
12 Honor needed to hear from us on. We think the evidence on
13 rightness is in and we'll explain how.

14 Second, is we have an alternative explanation for the
15 specific timeline that has appeared. We think that the
16 financial information, and we will show you how, that is in
17 evidence shows that July or early August at the latest, was
18 the right time for the city to file a Chapter 9 if it was
19 going to. And we think the evidence will support the debtor
20 understand that. And it -- and it must have understood it
21 long ago.

22 The next thing we have to show you, and we think we do,
23 is that there is in fact no plan of adjustment. You may
24 recall that Mr. Bennett said he was going to prove that there
25 was a plan of adjustment in his opening. We said we were

1 going to prove there was no plan of adjustment in our opening.
2 We think the evidence supports our view of it. We're going to
3 try to show you how today.

4 We're also going to try to show you that related to that
5 question that there were insufficient disclosures. We're
6 going to show you that what -- some disclosures were
7 misleading. We're going to show you that there was a general
8 desire to avoid asset sales. That is both intentional and
9 accidental. We believe the evidence will support that.

10 We're going to show you that the proposal was not fair
11 and even handed. We think that is part of the good faith
12 standard.

13 We're going to show you that part of this whole drama is
14 that the person who was chosen to lead this march towards
15 Chapter 9 really could only do that. The qualifications of
16 this very talented individual, Mr. Orr, related to nothing
17 other than leading a march to Chapter 9.

18 We'll also try to show you some credibility challenges
19 which we think relates to the question of whether or not the
20 debtor has been exercising good faith, not just vis-a-vis the
21 creditors in general, but with respect to retirees
22 specifically. And then we will conclude.

23 Now, Mr. Orr again, a well educated, legal degree
24 individual, made a statement on June 10 in response to a

1 that vested pension rights are sacrosanct, they can't be
2 touched. Now why do I think that's of interest to the Court
3 with respect to the question of intent?

4 First, it is a statement of importance. The use of the
5 word sacrosanct suggests it cannot be touched. It's too
6 important or too respected. One might turn to a dictionary,
7 Webster's on line dictionary or something like that, and find
8 a definition like too important and respected to be changed or
9 criticized. That's from Webster's on line.

10 You will also see that he purports to have an
11 understanding of law, perfectly logical for a lawyer to have
12 an understanding of law. So he knows what the law is, he
13 knows what the Constitution is. And he knows that vested
14 pension rights are part of that constitutional protection and
15 he knows that it's so important that he uses the word
16 sacrosanct. And then he adds the practical statement that in
17 the environment he found himself in on June 10, they couldn't
18 be touched.

19 However, the proposal he made in fact on June 14th, has as
20 is demonstrated in Exhibit 408, Page 109 which is the June 14
21 proposal, with respect to pensions is the clause that has been
22 cited to Your Honor before, but it simply says of importance,
23 because the amounts realized on the underfunding claims will
24 be substantially less than the underfunding amount, there must

1 active and currently retired employees. The people that my
2 committee represents.

3 Now, this proposal, June 14 is four days after Mr. Orr
4 made the video tape statement. It's impossible for me, and I
5 suggest for the Court to infer, that Mr. Orr changed his mind
6 between June 10 and --

7 THE COURT: Just a question about the record. Is
8 the video tape of June 10th in the record or a transcript of
9 it?

10 MR. MONTGOMERY: I believe it is, Your Honor.

11 THE COURT: Do you have a number, or does anyone
12 have a number?

13 MR. MONTGOMERY: Hang on. The --

14 MS. GREEN: It is in the record a transcription and
15 a video. I believe it is 871. I have copies of the CD with
16 me today to update it in the binder so you have a video clip
17 and the transcription if you --

18 THE COURT: I'm sorry, the video clip is what?

19 MS. GREEN: 871.

20 THE COURT: It's part of 871?

21 MS. GREEN: The video clips are all on a CD with --

22 THE COURT: Or, they're on a CD.

23 MS. GREEN: Yes.

24 THE COURT: Is that one of the ones that was given

25 to me today, or where is -- where is the CD?

1 MS. GREEN: I have the CD's. The transcriptions
2 were already in the binder. But I have the CD's themselves
3 today.

4 THE COURT: Okay.

5 MS. GREEN: To update the binder.

6 THE COURT: So are we going to get those?

7 MS. GREEN: I have them with me today to give to the
8 Court.

9 THE COURT: Okay. Good, thank you. You may
10 proceed, sir.

11 MR. MONTGOMERY: Thank you.

12 THE COURT: Something you wanted to say, sir?

13 MR. IRWIN: Well, there were -- there were
14 completeness designations from the city as well. I believe
15 they were in the transcript, I just wanted to confirm that
16 they were on the video as well.

17 THE COURT: Is that right, Ms. Green?

18 MR. IRWIN: The city's completeness designations
19 that were on the transcript on the -- on the video too.

20 MS. GREEN: Yes. There was a counter designation by
21 the --

22 MR. IRWIN: Yeah, they're all there.

23 THE COURT: So they are on the CD or the DVD also?

24 MS. GREEN: Yes.

25 THE COURT: Okay.

1 MR. MONTGOMERY: Thank you, Your Honor. The
2 inference I was suggesting the Court might draw from the
3 timing of this statement and the timing of the June 14th
4 proposal, is that Mr. Orr already knew that the June 14th
5 proposal was going to have either language like this, or the
6 intention expressed by this document which is of course the
7 June 14th proposal.

8 Now, we further suggest that it was the June 10 statement
9 that meant little to Mr. Orr despite the fact that he was
10 talking about the Constitution as someone who had a legal
11 education, despite the fact that as the emergency manager he
12 had taken an oath to uphold that Constitution, and despite the
13 fact that he was trying to answer a question posed by an
14 ordinary human being. What are you doing to me? Pensions
15 aren't going to be touched is effectively what he said. A
16 lie, he knew better. I think that that's only one example of
17 the lack of good faith in the process of dealing with
18 creditors associated with the city of Michigan.

19 Now we also believe that in the process of the request
20 for authorization, you will find the key to the prior intent
21 to violate the state constitution with respect to pensions.
22 You will notice that the very first sentence on Page 6 of
23 Exhibit 28, and we use this two page because we'll come back
24 to it and there is no point in repeating it, it says as a

1 develop a financial and operating plan for the city, the
2 financial and operating plan, which placed the city's
3 challenges in context and defined a series of key
4 restructuring goals and initiatives. All right.

5 Now, this is Exhibit 28 at Page 6. Now the same document
6 may appear as Exhibit 407. Now, 407, Page 21 is the same as
7 the operating and financial plan.

8 This plan put forward on May 12, 2013, recognizes, and
9 here I've highlighted language of interest to me, although the
10 entire sentences are there, recognizes that legacy liabilities
11 must be evaluated as part of the city's comprehensive
12 restructuring. Significant and fundamental debt relief must
13 be obtained to allow the city's revitalization to continue and
14 succeed.

15 Okay. So what. Well, the -- first, this is the same
16 plan that was not a plebocite. This is the same plan that was
17 not negotiable. And we say to you that this is the same plan
18 that thinks that the pension number is only \$646,000,000.

19 A statement from Exhibit 407, Page 37 says, as of June
20 30, 2011, the most recent actuarial reports provided to the
21 city by the pension funds showed the pension UAAL, unfunded
22 actuarial accrued liability, at \$646,000,000. But the
23 emergency manager then speculated that with utilizing more
24 current assumptions -- excuse me, more current data and/or

1 into the billions of dollars.

2 So he's thinking about this at the time of the May 12th,
3 again before June 10, and certainly before June 14. And he's
4 thinking this problem is temporarily defined as a \$646,000,000
5 problem, but it could rise to \$1,000,000,000 or more problem.

6 And so he says to all of us, or to those who were given
7 access, annual payment on accounts of these legacy liabilities
8 are expected to increase in the future if no action is taken
9 to modify them. If no action is taken to modify them, he
10 thinks the problem gets worse.

11 Now, in his cross with Mr. Ullman on October 28 --

12 MR. BENNETT: Excuse me, Your Honor. If you're
13 reading, I don't need to object, but he misread this sentence
14 again. But if you're reading, I won't object.

15 THE COURT: I am it says mitigate. Go ahead.

16 MR. MONTGOMERY: Thank you, Your Honor. The -- the
17 testimony by Mr. Orr in response to cross examination, is that
18 pensions and pension benefits had to be cut back and that he
19 had made that conclusion on or before May 12. Why do I say
20 that?

21 So this is cross by Mr. Ullman. At trial we don't have
22 the formal, so we think this is what your transcript will show
23 when you get it, that on -- on October 28th. So he was asked
24 the following question by Mr. Ullman.

1 that's referring to May 12th, you had made the determination
2 that in your view vested pension benefits of Detroit's
3 retirees had to be cut back, is that right? Answer by Mr.
4 Orr, I think that's a fair characterization of what we --
5 we're saying -- we are saying.

6 Now, Your Honor, now we have Mr. Orr saying on June 14th
7 they must be cut. We having had concluded on May 12th that
8 they must be cut, but on June 10th he told somebody who was
9 relying on the state appointed official to tell him the truth
10 about what was happening in the world, they were sacrosanct,
11 couldn't be touched.

12 Now in addition to this particular -- let me just skip
13 right back. In addition to which we've already done this,
14 that all makes sense now from -- from May 12, June 14, Mr. Orr
15 had made the decision, his counsel admitted it for him in the
16 admissions. So that part of the -- the record is clear, they
17 intended to do something to the Constitution, violate it.

18 Now, the same information was sent to the Governor,
19 meaning Mr. Dillon said that he told the Governor on July 8th
20 by email that the view of the consultants is that current
21 pensions have to be cut significantly. I believe that the
22 only logical inference there is that he was talking about the
23 consultants for the City of Detroit.

24 So that the Governor understood that this is where the
25 city's advisors were going. That intention is reflected in

1 the June 14 proposal. And therefore when the Governor issues
2 his recommendation in response to -- issues his authorization
3 in response to the recommendation that references the May 12
4 plan, that there is no doubt that cutting pensions benefits is
5 part of the scenario.

6 Now, everybody understood this and in fact Mr. -- some of
7 the advisors for the Governor are suggesting they place
8 conditions because they know this is coming. Specifically
9 conditions could also include such items as preapproval for
10 anything having to do with vested pension benefits.

11 Well, the only reason to even contemplate doing that is
12 because it might be a politically sensitive issue, I suggest
13 to the Court, or it might be unconstitutional for the -- for
14 the Governor to support such an effort. And so his advisors
15 are saying, give yourself a way out, put conditions on it,
16 make sure the emergency manager doesn't do anything that
17 you're uncomfortable with.

18 But he doesn't do that. He gives an unconditional
19 authorization knowing that the emergency manager of the
20 biggest municipal bankruptcy in the history of the country and
21 certainly the largest in the State of Michigan, wanted to
22 violate the state's constitution and he said okay.

23 Now, this notion that the Governor understood and that it
24 -- from at least May 12 it was fixed, is merely reflective, we

1 thought process by those who are talking directly to, or
2 indirectly to the Governor. Of course I start my reference in
3 that regard with -- with respect to the Jones, Day pitch book.

4 Now, the significance of the pitch book is not that
5 Jones, Day had reached the conclusion as appears on Page 418
6 -- Page 41, Exhibit 418 if needed Chapter 9 could be used as a
7 means to further cut back, compromise accrued financial
8 benefits otherwise protected by the Michigan Constitution.
9 The fact that they reached that legal conclusion is not what I
10 say to you is important.

11 It's the fact that that view was shared with all of the
12 other actors in the drama. This was available and part of the
13 process at the interview. Mr. Orr himself was part of this
14 process. He knew this was the going in game plan.

15 We know from other -- other testimony and the timeline
16 that Miller, Buckfire was aware of this kind of information.
17 In fact Miller, Buckfire had even told them what kinds of
18 questions to answer if I recall the timeline correctly.

19 Now, so we have advisors saying that if you really want
20 to cut pension benefits you can only do that in Chapter 9
21 because of the Michigan Constitution. We've got an emergency
22 manager who understands that both legally, because he's a
23 lawyer, and practically because he says he needs to do it.

24 When are you going to take this on? What -- what makes a
25 logical time to do this? Well, let's look at the City of

1 Detroit as if it was an ordinary debtor. What do you do with
2 an ordinary debtor? You say well, gee, what -- what are its
3 cash flows, what are its assets, what might make a sense of
4 good timing.

5 Well, Mr. Buckfire on direct told us that the city relies
6 on four primary streams of revenue, gaming tax revenue, state
7 revenue share, property tax, and income tax. He then told us
8 property tax income in particular comes in on a quarterly
9 basis because that's when assessments are made and income
10 taxes come in likewise in a fairly irregular fashion.

11 So that to me says that a bankruptcy plan is going to try
12 to figure out well, when does cash peak and when does it
13 trough. When are liabilities high, when are they trough.
14 Well, we think, Your Honor, that the answer is, July and
15 August is when cash rises.

16 So all of a sudden it dawned on me as it probably did the
17 Jones, Day advisors when they were thinking about this whole
18 process, as I'm sure instinctively it's true for you as an
19 observer of the bankruptcy process, Your Honor, that June --
20 July or August was the logical time for a Chapter 9 filing to
21 occur. And that whoever was looking at the cash flows of the
22 city would know that.

23 And E & Y had been looking at the cash flows of the city
24 for over a year prior to the appointment of Mr. Orr as

1 before the appointment of the emergency manager. The
2 financial people all understood the cash flow timing question.
3 They may not have liked the curve, but they knew the bumps.
4 And so if you're going to file at the right time you do it
5 when cash is king.

6 So when is cash king? Well, according to Exhibit 75,
7 which was the short term cash flow associated with the May 12
8 report, you will see that July cash is \$142,000,000 of
9 operating receipts. And August there's \$254,000,000 of
10 operating receipts. And then it drops back down
11 significantly.

12 Well, what does that tell me? Well, that sometime
13 between July and August all things being equal, that's when
14 you want to file because that's when the greatest amount of
15 cash is going to come in.

16 So this notion that a July filing appeared out of thin
17 air in late June, early July of 2013 is wrong. Whoever was
18 looking at these issues knew that this was the only logical
19 time if you were going to do it in the 12 months of 2013 to do
20 it. And I suggest to Your Honor that's exactly what you will
21 see when you look at the evidence, the inference you will make
22 that July or August is the logical time. Come back to that in
23 a moment.

24 Let me just quickly get out of the way the rightness

1 and Ms. Whitson about their reliance -- or excuse me, their
2 participation in the pension systems, their receiving health
3 care benefits and that each of them has had some measurable or
4 demonstrable impact already.

5 Now, the other thing I want to suggest to you with
6 respect to rightness is that the city's testimony is
7 unequivocal that but for water and sewer, the city had made no
8 pension contribution since 2011. So it's already violating
9 the second clause of the pension constitution when Mr. Orr
10 takes office and that doesn't change.

11 Now, I want to skip that. I'm going to ignore that last
12 one. Here we go.

13 On the question of whether or not the Jones, Day and Andy
14 Dillon discussion is theoretical with respect to Chapter 9,
15 I'd point the Court's attention to Exhibit 851 which is a
16 March 23 email from Corrine Ball to Laura Marcero of Huron
17 Consulting. One of the people that was helping the Treasurer
18 in this time frame. And this is a full year before the
19 appointment of Mr. Orr, a full year.

20 In which they say in response to a question, "however, we
21 point out that you will need executives in place in the -- in
22 the Chapter 9 case. You need a practical as well as legal
23 response. We think having the CRO structure with CFO, COO in
24 place from the first day of a Chapter 9 would enhance the
25 position of continuing the case".

1 All right. So a year in advance of any possible filing
2 they're telling the consultants to make sure you have people
3 in place who can actually run a filing. Well, why would you
4 say that if it was in response to a purely theoretical
5 question. I submit that they're actually thinking about a
6 Detroit bankruptcy. It doesn't happen for well over another
7 year, but they're already thinking about it for real.

8 Now, Mr. Orr is clearly part of this process because
9 before -- let's roll forward nine months. His -- his people
10 are talking about Chapter 9 and talking about it perhaps
11 theoretically, perhaps practically. There is no in fact
12 filing happening.

13 But Mr. Orr is asked where is he up -- on updating our
14 Chapter 9 paper with new decisions. That tells us, we ask the
15 Court to infer, that one, Mr. Orr was personally familiar with
16 the Chapter 9 studies that Jones, Day was doing, and that in
17 fact he was part of the process because he was being asked by
18 one of his partners where are they on updating it. And how
19 could he possibly know that if he wasn't involved directly.

20 So now what's happening? So we know that Jones, Day is
21 -- and Mr. Orr are discussing Chapter 9 before their pitch.
22 We know it's going to -- we've seen the pitch book. It's been
23 referenced by other people, so I don't need to repeat that.

24 So then they go and tell again a consultant with respect
25 to 870, roll forward another six months, the same conclusion.

1 Based on this we anticipate a significant reduction and
2 already accrued benefits will be required in order to get
3 contributions to the level of available cash to service the
4 UAAL. It appears this may only be possible in a Chapter 9
5 proceeding.

6 Now this is June 5. This is again before the June 10
7 statement, it's before the June 14 proposal, but it's after
8 the May 12 financial and operating plan.

9 I'll turn back to the request for authorization, Your
10 Honor. The last bullet which was -- which appears there, it
11 says the city's negotiations with the counter parties to its
12 pension related swap contracts which have been ongoing since
13 2012, intensified in recent weeks and included, and then he
14 goes on to describe what actually happens.

15 But for our purposes, Your Honor, the importance is that
16 they are talking with serious creditors owed a lot of money by
17 the City of Detroit back in 2012 and the discussions are now
18 accelerating. They're accelerating because they want this
19 issue out of the way when they file. They know they're going
20 to file.

21 Now, you -- you may recall I just suggested that July or
22 August was the only logical time frame. That people had been
23 making the decisions on how to get there, managing the
24 process, and that when they put out the executive summary of

1 not here at the time, they're telling us that July 19 is the
2 deadline. They give themselves three weeks to honor requests
3 -- excuse me, seven days to honor requests for additional
4 information. They give themselves a month more or less to
5 engage in negotiations.

6 Again one of the parties they've been negotiating with
7 since 2012 by the time this was coming up. And they say
8 evaluate July 19. July 19 happens to correspond with
9 testimony that that was the roll out date. All right.

10 So the only thing that really happens to knock this plan
11 schedule off of a July or August filing, we submit that if
12 it's July, is the fact that the Flowers and retirement system
13 filed litigation. And what did that -- what impact did that
14 have? It moved it up by a day.

15 So all this great tamise about oh, the world came to an
16 end when we got sued, no. It had one 24 hour day's impact on
17 what the city had already been planning, the Chapter 9.

18 Now, switching topics. Is there a plan of adjustment?
19 We know that -- oh, sorry, Your Honor. Let me back up for
20 half a second. I forgot that the acceleration was due only to
21 the TRO litigation and that Mr. Orr conceded that in his
22 deposition which is part of the record and it says in response
23 to Mr. Ullman again asking questions.

24 Is there a particular reason that the bankruptcy filing

1 being heard in the State Court other than to get a jump on the
2 State Court ruling? Mr. Shumaker objected as to form. Mr.
3 Orr however answered, not to the best of my knowledge. And he
4 would know better than anyone else because he was the man in
5 charge.

6 Now Mr. Bennett told us that we had to look at, you know,
7 what boxes did we need to check off -- check off. And one of
8 them is, we believe, is there a plan of adjustment. And the
9 reason there needs to be a plan of adjustment is of course
10 109(c)(4) mentions it. But 109(c)(5)(A) says, impair under a
11 plan. We submit that's a plan of adjustment.

12 109(c)(5)(B) says, intends to impair under a plan. We
13 submit that's a plan of adjustment. And then impracticality
14 or fraudulent transfer. There's no issue with respect to
15 somebody gaining a fraudulent transfer. That's come up in the
16 evidence, but all the others have been disputed.

17 Now, Mr. Orr in his deposition testimony again designated
18 for the record says, and this is a summary but precise quote
19 from the deposition, "we never called this a plan. We never
20 called this a deal. We always called it a proposal because we
21 were open for discussion".

22 Well, that doesn't sound like a plan of adjustment, but
23 maybe we can turn it into one if we do enough of the other
24 things. The Governor, who authorized the filing, said on

1 think that is what the transcript is going to say. This is
2 our understanding of what it will show.

3 Well, no plan of adjustment has been presented so that
4 would be speculative. No plan of adjustment. So the most
5 important officer in the State of Michigan said there's not a
6 plan adjustment in connection with approving the filing of a
7 Chapter 9 proceeding by the City of Detroit.

8 Now, maybe that's a so what because with the right amount
9 of negotiations you can turn it into something. Well,
10 Treasurer Dillon testified on November 5 in response to
11 questions by Ms. Levine, again this is what we think the --
12 the final transcript will say. This -- I'll tell you the
13 thing that troubled me the most was when they put together the
14 ten year plan to talk about investing in the city which is
15 important for it to turn around eventually. That the recovery
16 for unsecured creditors was so low I didn't know how anyone
17 practically could cut a deal and walk out of the settlement
18 room accepting something based on those numbers. DOA is
19 another way of saying it.

20 It wasn't supposed to be acceptable. It couldn't be
21 acceptable. It -- in fact the Treasurer again, a man deeply
22 emeshed in financial issues for the State of Michigan,
23 absolutely understanding how to negotiate, financial number
24 says, he doesn't know how anybody could do it.

1 plan side of the question, it's irrelevant to the good faith
2 negotiation side. If you put something on the table that
3 nobody can accept, where is the good faith in the -- in the
4 offer? Where is the good faith in the proposal? Where is the
5 fair disclosures that make it possible or reasonable for the
6 person to accept it?

7 Now in order to sort of get into this posture they needed
8 to have numbers bigger than the \$15,000,000,000 that shows up
9 in the May 12 report. Well, what grew between May 12 and June
10 14? Well, the pension number grew between May 12 and June 14.

11 You may recall, I showed you slide earlier, there was
12 \$646,000,000 on May 12. It's three and a half billion dollars
13 by the time Mr. Orr files his declaration on July 18th.

14 This is Footnote 3 to Mr. Orr's declaration in which he
15 identifies his proposal and says that he has identified
16 obligations consisting of and he points out 3.5 billion in
17 underfunding pension liabilities. That's 3,000,000,000 higher
18 than appeared in the May 12 proposal. That's how he gets to
19 \$18,000,000,000.

20 Now is that a hard number? No, it's a preliminary
21 number. How do we know it's a preliminary number? Because
22 the June 14 proposal tells us it's a preliminary number.
23 Claims for unfunded pension liabilities appearing at 109, as
24 set forth above, preliminary analyses indicates that the

1 billion dollars.

2 The rest of the sentence everybody has quoted many times.
3 That is, at this level of underfunding, the city would have to
4 contribute approximately 200,000,000 to 350,000,000 annually
5 to fund currently accrued vested benefits. Such contributions
6 will not be made under this plan. Just in case there was any
7 doubt they -- they aren't doing anything to contribute to the
8 historically accrued vested pension benefits, nothing in the
9 plan other than a share of a note ends up dealing with that
10 issue.

11 Now, Mr. Moore confirmed in his deposition on September
12 18, again this is designated in the record, that the city, I'm
13 going to paraphrase before I quote, city's actuaries had not
14 completed their work.

15 He actually said, "the city and most importantly its
16 actuary has not completed its analysis on the unfunded pension
17 -- unfunded position". All right.

18 Now, so that's preliminary. So for some reason it was
19 important to make that number bigger on June 14th than it had
20 been on May 12, even though no completed analyses have doing.
21 Well, why? Because it's part of the process of making the
22 problem look as bad as it can. It may be that bad, Your
23 Honor. I don't know the answer to that question.

24 But why did they have to jump? The reason they had to
25 jump is they had to justify the position that they were going

1 to cut vested pension benefits.

2 Again Mr. Bowen from Milliman confirms that they hadn't
3 done their work. He says on 9-24 in response to a question
4 that was, has Milliman done yet a -- a plan valuation of the
5 assets and liabilities of the -- either the police and fire
6 fund or the general pension fund? He starts to answer, the
7 actual -- Mr. Miller objects to form. And the witness says
8 yeah, the actuary typically doesn't value the assets, we are
9 provided information from the system and we report the assets
10 in conjunction with liabilities. As I said, we are in process
11 of doing a replication of each of the two systems. You can't
12 reach a conclusion until you know what your starting point is
13 and the actuary hadn't finished his work on what the starting
14 point was.

15 Now, the -- there's a second question that sort of comes
16 up in the question of whether or not the information in the
17 June 14 proposal is misleading in any way with respect to
18 pensions. Now, Exhibit 419 which is the legacy proposal if I
19 am not mistaken, which is put out after the June 14 proposal
20 is put forward, if I've got my timing right. It says
21 approximately 650,000,000 of unfunded liability as of fiscal
22 year 2012 of which only 250,000,000 relates to the general
23 fund.

24 Well, what's the significance of that? Well, this is

1 \$250,000,000 divided by the \$650,000,000 is the 38.5% that
2 Your Honor may remember was bandied about with respect to Mr.
3 Moore's testimony -- Mr. Orr's testimony, I'm sorry.

4 Just in case Your Honor has a question as to where this
5 number might have come from, well, if you look at the
6 actuarial liabilities as of June 11 which is Exhibit 68
7 admitted by the city at Page B3, you'll see that unfunded
8 accrued -- actuarially accrued liabilities for the water and
9 sewage are \$247,000,624. And the total for the GRS of the
10 liabilities, unfunded actuarial accrued liabilities is
11 \$639,871,000. And it just so happens that if you do the math
12 you again end up with a 38 plus percent number.

13 So Mr. Bing in his document, the actuaries all sort of
14 agree that 38% is the right share on a smaller number. And
15 you may recall that Mr. Orr said it would slide. He -- there
16 was some confusion as to whether it was six fifty, or 60%.
17 But the bottom line was, it moves with the size of the number
18 and 38% is what both Mr. Bing thought as in his proposal, and
19 what the actuaries thought when they made their assessment in
20 2011. Those are consistent. So whether they're right or
21 they're wrong, they had a consistent world view.

22 It's misleading to suggest that DWSD contributions -- or
23 excuse me, that the GRS participants who worked for, or worked
24 now, or worked in the past for Detroit Water and Sewer

1 fund. They were in fact coming from the DWSD itself. And
2 DWSD itself was making money. So we say that is a misleading
3 observation.

4 Again, the suggestion here is that tax dollars are what's
5 servicing the legacy debt. The city has over 18,000,000,000
6 in accrued obligations. We've shown that the number rose from
7 fifteen to eighteen. They said over 6.4 billion in
8 obligations are backed by enterprise revenues, but that
9 doesn't count the legacy obligations, so again the implication
10 is that -- is that those obligations come to the city through
11 the general fund and that tax dollars are paying for it.

12 Now, one of the things that is missing throughout all of
13 this again, we say adversely affecting whether or not this is
14 a plan of adjustment, whether or not it's submitted in good
15 faith, is there was a hole that Mr. Buckfire confirmed during
16 his cross examination with respect to the absence of
17 appraisals, the absence of valuations, the absence of
18 historical cost information in the June 14 proposal, and that
19 it wasn't provided in the data room.

20 And so what does this mean? Because you know the book
21 had a listing of assets that were non-core, I believe was the
22 answer, but no valuations were given. So the Detroit Water
23 and Sewer Department, no values of potentially realizable
24 nature or otherwise are actually described in the June 14
25 proposal.

1 The Coleman A. Young airport, again no values associated
2 with that described. The same with the Detroit Windsor
3 tunnel. The same for Belle Isle park. Same for the Detroit
4 Institute of Arts. No numbers given with respect to what
5 might be -- might be the largest single asset owned by the
6 City of Detroit.

7 City owned land, again no values. Parking operations, no
8 values. The Joe Louis Arena, no values. And, you know, I
9 don't know all the assets of the city, so I said have -- is
10 there anything they might have missed. I don't know.

11 Well, no values. Not even the Detroit Zoo, again, I
12 don't even know what it's worth. I don't know if it's worth a
13 dime, or a lot. But there was no effort by the city to be
14 exhaustive with respect to assets that might form a basis of
15 recovery.

16 Now you may recall that Mr. Bennett said he was going to
17 show that a trust owned the art. There was no testimony that
18 came in reflecting a trust owning the art. In fact Mr. Orr on
19 cross said in response to the following question, is correct,
20 the word it is missing, is correct that the City of Detroit
21 owns certain pieces of art that are maintained at the Detroit
22 Institute of Arts? Mr. Orr's answer, yes.

23 Question, and this is art talking about the art that the
24 city owns itself, right? Not art that is subject to any kind

1 the things that Mr. Bennett said he was going to show simply
2 disappeared.

3 Now art again might be a huge issue. In response -- on
4 direct Mr. Buckfire says, that before his engagement in
5 January he had no knowledge despite his prior visits to the
6 City of Detroit about art.

7 He says well, back in January when we first began our
8 engagement, we discovered and we had not known this before,
9 that the City of Detroit actually does own the building and
10 the art collection of the Detroit Institute of Arts which is
11 operated on the city's behalf by the DIA corp which is the
12 founder society as a contractor to the city.

13 So two witnesses established that this is city owned art.
14 Efforts to appraise, value, get a handle on. Mr. Orr says in
15 response to questioning he says, yes, he ultimately retained,
16 I'm not reading now, he retained Christie's in August. So how
17 did he answer that question?

18 Question, and Christie's has been retained, correct?
19 Answer, Christie's has been retained, correct. And they were
20 retained in August, is that right? Answer, I believe -- well,
21 let's get the sequence. I believe they were initially
22 requested to come out and I told them to go away. We retained
23 them.

24 The Court, Mr. Orr, please just answer the question.

1 I think it was August.

2 So two things we think the Court should infer from this.

3 One, that August is in fact the date they were hired, and two,
4 Mr. Orr consciously told a potential appraiser of value to go
5 away. Why would you do that?

6 THE COURT: I have to interrupt you here and ask you
7 how much longer you'll be.

8 MR. MONTGOMERY: I have a few more minutes, Your
9 Honor.

10 THE COURT: A few, sure.

11 MR. MONTGOMERY: But actually, Your Honor, just tell
12 me how much time you want me to take and I will take that
13 amount of time.

14 THE COURT: Well, I want to be fair to Mr. Bennett's
15 rebuttal and --

16 MR. MONTGOMERY: Okay. So let me rocket through to
17 my last couple of slides.

18 THE COURT: All right.

19 MR. MONTGOMERY: All right. The reason for asking
20 the question about why would you delay is because again the
21 advisors had said that is Jones, Day, and Exhibit 418, Page 31
22 in their speaking notes, make sure that the listeners learn
23 that asset monetization outside of a bankruptcy may implicate
24 eligibility requirement that the city be insolvent, e.g.

25 measured by short term cash.

1 How could that be? Well, if you sell assets you have
2 cash. You can pay your debts when they come due, you're not
3 insolvent. I guess you don't want to sell valuable assets.

4 Again, with respect to the negotiating point. It's
5 important, highlighted by others, that the word negotiations
6 applies only to the swap counter parties, it doesn't apply to
7 GRS, PFRS and debt insurers. It doesn't apply to GRS, PFRS,
8 and unions. And it doesn't apply to business people and
9 unions in general on those three dates July 10, July -- three
10 sets of meetings on July 10 and July 11.

11 Seen that before. Again, the city has wanted to design
12 and restructure. They sometimes use different words for cuts.
13 They twice in the discussions talk about restructure and
14 redesign of benefits to a level the city can afford. Again,
15 what did that mean in the context of the June 14 proposal?
16 How do you deal with the underfunding?

17 Well, they said they had \$803,000,000 available. Total
18 estimated unsecured claims 11,000,000,000, so there's a
19 fraction there. You would multiply that fraction times the
20 pensions and come up with an assessment.

21 Well, what's the math on that? All right. Eight hundred
22 and three million divided by 11,000,000,000 is 7.2% -- 7.02%.
23 Divide -- times it -- times the unsecured creditor side of
24 that world that relates to pensions and OPEB, you come up with
25 \$645,000,000 total based on the -- the cash flows -- as rather

1 obligations.

2 What is the total for pensions against 7%, two hundred
3 and forty-three. Two hundred and forty-three is obviously
4 less than three and a half billion. Hard not to have an
5 impairment.

6 Okay. I'm going to skip the further math. I want to
7 just point out with respect to negotiations that with respect
8 to the bond holder question on the water and sewer side that
9 it was impractical to negotiate with them. There were four
10 insurers of the sewage disposal system. There were three
11 insurers of the water system. Combined they had five insurers
12 total for 6.4 billion dollars of debt. Doesn't sound like an
13 impossible group to have a conversation with.

14 The note we said was not fair. We identified on cross
15 and we'd point out to Your Honor here that how could it be
16 fair that percent and a half, there's no support for it as a
17 market rate. No obligation to pay any amounts other than
18 revenue participation payments, no obligation to go sell any
19 assets.

20 A division if as and -- if as and when there were
21 proceeds. And here's the one that bothers me the most about
22 the proposal worse than the interest rate, worse than the
23 note. This concept that the retirees should fight each other
24 for the cash which is what the Dutch auction means. It's a

1 in their debt in order to receive a pile of cash.

2 Well, a guy or the person who bids the lowest -- the
3 highest amount of debt for the lowest amount of cash, he gets
4 the cash without getting the retirees that are 80% of the
5 obligations to fight among themselves for cash proceeds. How
6 is that fair and even handed as a starting point?

7 Talked about Mr. Dillon. Now here's an important point.
8 And I suggested to you earlier that this was all about a
9 bankruptcy case from the beginning. Mr. Orr, a very talented
10 and well educated man, was supposed to fit in the requirements
11 of 436, Section 9. Shall have a minimum of five years
12 experience and demonstrable expertise in business, financial
13 from local or state budgetary matters.

14 This is his qualifications we say the evidence suggests
15 that he was litigation and a bankruptcy restructuring lawyer
16 practicing with Jones, Day. He never worked for a
17 corporation. He once oversaw the sale of a -- a country club.
18 Worked for the office of the U.S. Trustee.

19 With respect to financial matters, he's not a CPA, an
20 MBA, or an investment banker. And we suggest to you that
21 other than being a bankruptcy and restructuring lawyer, no
22 particular expertise in finance. And with respect to local or
23 state budgetary matters, never ran a city or had budgeting
24 responsibility for either state or city.

1 he knew how to take the case into bankruptcy with a very
2 skilled and excellent team to go with him. And he was from
3 the beginning committed to working with the Governor's office
4 in lock step, point to Exhibit 401.

5 On the 22nd, he acknowledged that he was being looked at,
6 he was being looked at, who knows what he thought, but he was
7 being looked at as an agent of the state. They weren't going
8 to do things without his consent, Exhibit 619 suggests that.
9 And by the way they wanted to hide it because they were going
10 to we'll broker a meeting via note between you and the Mayor's
11 personal assistant who was not foiable, F-o-i-a, ble, foiable
12 meaning not subject to discovery.

13 Same man thought it was an indirect -- the -- the prior
14 initiative was an end around of an initiative that was
15 rejected by the voters in November. That the new law was a
16 thin veneer. This is all going to what this man's
17 understandings are.

18 During his deposition he recalled telling the Governor
19 and his staff in general that one of the purposes, I'm not
20 saying the only purpose, one of the purposes or intentions of
21 Chapter 9 filing would be to allow you to cut back pension
22 benefits. We probably had that discussion. I don't recall
23 anything specific, he probably did. That appears.

24 And we know he said trump. This is one of the places

1 said, question, you said this -- in this report, referring to
2 the June 14 proposal that you don't believe there is an
3 obligation under our state constitution to pay pensions if the
4 city can't afford it.

5 That's not what he said on June 10. Answer, the reason
6 we said it that way is to quantify the bankruptcy question.
7 We think federal supremacy trumps state law. Answer, yes.
8 You don't deny making that statement? No. I think I've said
9 it several times.

10 THE COURT: All right. Let me ask you to wrap up,
11 please.

12 MR. MONTGOMERY: Okay. This is the same man, of
13 course, who said on June 10 that it couldn't be trumped. We
14 -- we think that -- that was an accident, that last one. The
15 -- we think that the conclusion that Your Honor -- we think
16 the logical inferences to be drawn by the Court are that the
17 players, in particular the emergency manager lacks the
18 requisite intent to be a good faith actor in this drama, and
19 that therefore you must find that the city is not eligible.
20 Thank you.

21 THE COURT: Rebuttal.

22 MR. SCHNEIDER: Your Honor, both the city and the
23 state have rebuttal.

24 MR. BENNETT: About how much time are you
25 contemplating, Your Honor?

1 THE COURT: As little as you think is necessary for
2 your rebuttal purposes.

3 MR. BENNETT: Well, I'm going to look around and
4 make an estimate. I think it's under an hour, but I'm sure
5 it's more than a half an hour. And I will say that that last
6 presentation was rather spectacular and I ordinarily wouldn't
7 spend much time on it, but inasmuch as it accuses the
8 Governor, the Treasurer, and Mr. Baird, and Mr. Orr even more
9 explicitly of lying in this courtroom, I think I should go
10 through it with some care.

11 So I think what I would propose at this point, unless you
12 really want to do it tonight, it's a close call for you, I'll
13 come back. But if you want me to go forward, I'll go forward.

14 THE COURT: Mr. Schneider, how long are you going to
15 be?

16 MR. SCHNEIDER: I would probably add 10 to 15
17 minutes on top of that.

18 THE COURT: What do the attorneys on the objecting
19 side prefer on this issue? Stay or come back on Tuesday?

20 MR. MONTGOMERY: Your Honor, the objectors have all
21 suggested that notwithstanding the fact that I will miss the
22 last flight back out of the city, we'd rather finish.

23 THE COURT: Okay. That -- that's my preference as
24 well. It's now 5:35, I want to give the two of you a hard
25 deadline arbitrarily of 6:30.

1 MR. BENNETT: Okay. I'll figure out the best way to
2 do this.

3 Your Honor, will forgive me if this is not quite as
4 organized as I was -- would ordinarily like to be. Let's
5 start with the last presentation first.

6 I want to start with the premise. I think the purpose
7 was it was said to prove that there was an intent to impair
8 pensions. And if there was an intent -- excuse me, intent to
9 seek to impair pensions. That's an important difference.

10 And if there was an intent to seek to impair pensions,
11 that that somehow was different than if a Chapter 9 case was
12 commenced and then it had to impair pensions. I'm not sure
13 that makes any sense at all. And I think the premise has to
14 be wrong.

15 In any event, I apologize that we are going back to the
16 constitutional argument, but it's necessary to do so. As Your
17 Honor will remember, it is the city's position and it is
18 correct that the pensions clause is the same in all functional
19 respects to the contracts clause. And so all contracts,
20 pension contracts and -- and other contracts are protected by
21 state constitutions and in fact by the federal constitution
22 from amendment and -- and from -- from impairment, excuse me,
23 by the state.

24 When an entity resorts to Chapter 9 following Justice

1 Deacons, and following the practice in Chapter 9 cases for as
2 long as there have been Chapter 9 cases, the Bankruptcy Court
3 acts to impair contracts. That's how it impairs bonds.

4 The ascending antecedent as I think Justice Cardozo put
5 it, or all of the prefatory steps are not relevant. When
6 you're in trouble you can ask for help. So if as we have
7 demonstrated, the numbers showed that the City of Detroit
8 could not pay its debts as they become due and going forward
9 could not pay its debts as it's become due on the pension and
10 OPEB side even if it didn't have any bond indebtedness it was
11 in a position where it needs help.

12 That the state authorizes Detroit to get help from the
13 Federal Government. So that the Federal Government can assist
14 with the problem or address the knot in the words of Cardozo.
15 Whether they intend to do it, or don't intend to do it,
16 doesn't matter.

17 The relevant actor if in fact pensions are to be impaired
18 in this case, if in fact the underfunded amount is not to be
19 paid in full in this Chapter 9 case, and we've said both are
20 very likely results and were within the contemplation of the
21 people who put together the June 14th presentation and the
22 filing, it makes no difference at all.

23 Neither Mr. Orr, Governor Snyder, nor I, nor David
24 Heiman, my partner, are going to be impairing pensions.

1 reviewing Courts that are going to come later.

2 So the entire -- the entire --

3 THE COURT: I have to stop you there. What do I do
4 about the representation that Mr. Orr made at the June 10th
5 meeting to the retiree in response to his question that
6 pensions are sacrosanct and not to be touched. And his
7 further representation that there was a 50/50 chance of filing
8 bankruptcy?

9 MR. BENNETT: Okay.

10 THE COURT: Were those statements misleading?

11 MR. BENNETT: Can you please put up the actual
12 statement that Mr. Orr made that was utilized in the
13 presentation just now? Your Honor, that statement -- no, I
14 want the quote, not the clip.

15 Your Honor, that statement may well have been
16 inappropriately timed. I don't have the words around it, it
17 would be one of the things I would do before Tuesday --
18 Tuesday morning.

19 Technically inelegant but also true. He says the state
20 constitution and state law, case law says that vested pension
21 rights are sacrosanct, they can't be touched. That is what
22 the state constitution and state case law says in a very
23 non-technical and actually slightly imprecise sense.

24 He doesn't talk about the Constitution. Now, would I --
25 so would I have liked him to say --

1 THE COURT: Well, but the -- but the retiree wanted
2 to know what was going to happen to his pension benefits,
3 right?

4 MR. BENNETT: Your Honor, I -- I am absolutely --
5 Mr. Orr, during the many many past months has probably been
6 one of the most carefully monitored actors in this entire
7 case. I am sure there are quotes of endless, endless, endless
8 things that he has said.

9 This may not be the moment where he used the best words.
10 I don't remember enough of the context on both ends. I know
11 that if there was a -- if Your Honor believes that this
12 statement without more was misleading, it was corrected three
13 days later by their own exhibits. And it was certainly
14 corrected four -- four days later when the proposal for
15 creditors dated on the 14th, the moment the meeting was over
16 was put on the worldwide web. So I -- I --

17 THE COURT: I'm sorry, what happened the moment the
18 meeting was closed?

19 MR. BENNETT: The entire proposal was put on the
20 web.

21 THE COURT: Not after this meeting, after the next
22 meeting.

23 MR. BENNETT: After -- on the 14th.

24 THE COURT: But not on the 10th.

25 MR. BENNETT: Not on the 10th. So there is a --
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1 there is a, at maximum, a three or four day period where there
2 was misinformation or frankly a accurate but potentially not
3 complete statement was in the -- was in the record.

4 And that meeting had 200 people in it. So it's bad but
5 there are 685,000 residents of the City of Detroit. There are
6 23,000 retirees. Mistakes happen, I can't do anything about
7 this one. I don't --

8 THE COURT: What about the comment that there was a
9 50/50 chance of filing bankruptcy?

10 MR. BENNETT: I think that -- I don't know if Mr.
11 Orr was questioned about that comment. I think that was a
12 very optimistic view of the situation, but he is absolutely
13 entitled to be optimistic.

14 THE COURT: Well, but doesn't it raise a question
15 about whether that's what he really thought?

16 MR. BENNETT: Does what raise a question as to
17 whether that's what he really --

18 THE COURT: That statement.

19 MR. BENNETT: He was -- he was hoping that the
20 negotiations would succeed.

21 THE COURT: Well, but the question is that on June
22 10th, did he really believe there was a 50% chance that they
23 would succeed?

24 MR. BENNETT: Your Honor, I'm the wrong person to
25 ask that question. You would have to ask him. This was --

1 THE COURT: You're his lawyer.

2 MR. BENNETT: At this point in time, it is -- it is
3 before --

4 THE COURT: You're his lawyer.

5 MR. BENNETT: Yeah, but this is -- but this is a
6 judgment everybody gets to make based upon really what they
7 think about the people that they know and don't know. And
8 this is before the presentation is made and before there's
9 been any feedback by anybody.

10 So I -- I -- and certainly it's inappropriate for me to
11 add to the record as to whether or not the 50/50 statement was
12 anything but his belief --

13 THE COURT: No, I understand that. And perhaps my
14 question is a little imprecise and inelegant. But the -- what
15 I'm really asking is, what evidence is there in the record
16 that that is what he genuinely believed as opposed to
17 knowingly misled --

18 MR. BENNETT: I -- I'm not aware that there's --

19 THE COURT: -- a crowd.

20 MR. BENNETT: I'm not aware that there's any
21 evidence either way about that.

22 THE COURT: All right.

23 MR. BENNETT: But given that the assertion is that
24 that was bad faith, I would think that's not our problem,

25 that's the objectors' problem, that there's no evidence in the
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1 record on that point.

2 THE COURT: Well, all right. Let me just ask the --
3 the next question. Which is, assuming that both of those
4 questions were misleading, what impact does that have, or
5 should that have on the Court's analysis of good faith here?
6 Because that's ultimately the point, the -- the element.

7 MR. BENNETT: Your Honor, it should have no impact
8 at all. The -- you have seen a mountain of evidence of a
9 careful deliberative process to pull together the very best
10 reorganization proposal for the City of Detroit that anyone
11 could put together. You saw it, it was presented to a wide
12 variety of -- of representatives of retirees. By the way,
13 acting in capacities with respect to the OPEB's and acting in
14 capacities with respect to the pensions.

15 And you have found that notwithstanding after there was
16 no confusion about what the plan was all about and
17 notwithstanding prior statements, you will have found that
18 everybody responded either, I cannot represent retirees, or I
19 cannot represent retirees, and I would never represent them to
20 impair pension benefits because they are -- they are not to be
21 impaired.

22 So, against that factual background, was there anything
23 that the city did in negotiations that means it did not
24 negotiate in good faith. Is there anything about a statement

1 to the subsequent negotiations?

2 How could it? Because any conceivable misunderstanding
3 was completely and totally vitiated either three days later or
4 four days later, depending upon which set of statements you
5 want to pick. And in all events, everything else happened
6 afterwards.

7 I just can't get there from here. I think that the --
8 that -- that number one, mistakes happen. They happened all
9 over the place. And more will.

10 But in this instance nothing that happened before the
11 negotiations even started can inform whether or not the city
12 conducted negotiations in good faith. And nothing about those
13 statements affected the course of the negotiations. And
14 there's no evidence at all that suggested that they did. It
15 was a good effort to try to -- to try to impeach or impair Mr.
16 Orr, but it was not -- did not address anything about the
17 negotiations that followed.

18 I think the other points with respect to the presentation
19 you just saw is that there is massive amounts of testimony in
20 the record that go directly contrary to all of the -- to all
21 of the inferences you were asked to accept. This is going to
22 be an incomplete list.

23 But as to the timing of the filing and the motivations
24 from the filing from a financial perspective you have the

1 supported to some extent by testimony of Dillon and testimony
2 of Orr.

3 With respect to the absence of -- of a scheme to march
4 toward a Chapter 9 filing with specific intent to impair
5 pensions from 2012, you have the testimony of the Governor,
6 the testimony of Dillon, the testimony of Baird, the testimony
7 of Orr, the testimony of Buckfire. And in addition, probably
8 the most compelling piece of -- piece of evidence because it
9 exists from way back when, and no one can change it, is the
10 entry into the consent agreement itself.

11 As was pointed out by Mr. Dillon in -- in his testimony,
12 but also appears from the face of the consent agreement if you
13 read it, under the consent agreement, there is no conceivable
14 way that the city could file a Chapter 9 case. The consent
15 agreement is -- and it represents directions or agreed
16 directions toward an alternative path.

17 As the testimony revealed there were a long list of
18 things the city had to accomplish which the authors of the
19 consent agreement thought would solve the city's financial
20 problems. Unfortunately nearly none and maybe none of those
21 things were actually accomplished.

22 But when the state entered into that agreement they were
23 clearly hoping that it were -- was. And if anything the entry
24 of a consent agreement was a huge delay of addressing a

1 said it was viewed as a reason for avoiding a Chapter 9.

2 Swap negotiations since 2002. I think there's testimony
3 in the record that the --

4 THE COURT: 2012?

5 MR. BENNETT: I'm sorry, 2012. That there was a
6 downgrade that triggered the early negotiations with the swap
7 counter parties at the beginning of 2012. Because the -- the
8 restructuring in twenty -- in 2009 included a default under
9 the swaps in the event that there was a downgrade in the
10 city's credit rating.

11 That downgrade happened in -- in 2012. I do not remember
12 the month. I don't know if it's in the record. So the
13 reference in the -- in the -- to negotiations since 2012, had
14 nothing to do with an anticipated filing and nothing to do
15 with the additional COPs payment default that was resulting in
16 another covenant default. It is not an advanced negotiation
17 with respect to a potential Chapter 9 case.

18 As was testified by Mr. Buckfire, actually both on cross
19 and on redirect, insurers do not control consent of the debt
20 instruments and if you look a little more closely at the
21 charts, not all debt issues are insured. The insurers are
22 sitting exactly in the same place as I will get to in the case
23 of the -- some of the other presentations, they're in exactly
24 the same place as the retiree associations. They're in a
25 position to communicate. They may be in a condition to make a

1 recommendation. They don't vote. They can't deliver votes.
2 They can't do anything about non-consenting voters.

3 Eligibility in asset sales. I actually thought that the
4 record fleshed out quite clearly where that whole thing came
5 about. It was a question by Miller, Buckfire I think to all
6 of the people presenting to address whether assets sales have
7 anything to do with eligibility.

8 I think Mr. Malhotra gave the best testimony on this. I
9 will tell you, Your Honor, what I -- my response would have
10 been which is only in a courtroom with a Judge who doesn't
11 understand economics. And so I wouldn't be worried about it
12 for a minute.

13 But we know that the question was a question that wanted
14 to be addressed. The -- the showing of speaker notes without
15 a witness ever having said that the speaker said the things
16 that were in the speaker notes, I think goes beyond the
17 record. The speaker notes were not passed out. The
18 presentation was passed out. There was no reference to this
19 issue at all.

20 I am told by my colleague Mr. Schneider that the Detroit
21 Zoo isn't in Detroit. The other point with respect to that
22 because it was kind of funny at the time, there was some
23 discussion -- I think in a newspaper or something someone
24 talked about the Detroit Zoo. I remember someone making a

1 was an asset didn't recognize that animals eat. And
2 accordingly it was a liability, not an asset which I suspect
3 is -- so if that's the asset that we -- that -- that we missed
4 on the list of assets, even if it is in Detroit, I'm pretty
5 sure it belongs on the liability side and not in the asset
6 side.

7 You know, whether it's a plan or not a plan, I think
8 there's been lots of comments that I think each and every one
9 was taken out of context about whether the plan was not a
10 plan. Again, if I had the time, I'd go find the context for
11 all those comments. I think -- I think frankly Your Honor is
12 perfectly well suited to figure out whether -- and by the way
13 the cases require an outline of a plan of adjustment that can
14 be confirmed.

15 They're actually pretty clear by that like -- in that
16 way. They don't require a fully fleshed out plan of
17 adjustment. That argument has been made before and rejected
18 before by every single Court that considered the question.

19 Your Honor, has seen enough plans. Your Honor has seen
20 enough plans and the summaries and disclosure statements.
21 Your Honor will be able to tell whether or not the proposal
22 that was made on June 14th is a sufficiently detailed outline
23 of a plan of -- of adjustment that is appropriate under
24 Chapter 9 and frankly I think that's an issue for you, not for
25 anybody else.

1 I'm going to move to some of the comments that were made
2 by Mr. Ciantra. And first of all, the -- there was a -- there
3 was a criticism that he made about the fact that in the
4 pre-filing negotiation environment a non-disclosure agreement
5 was required as condition to access for the data room.

6 Whether or not it was appropriate to continue to require
7 that after the filing of the Chapter 9 case as the proposal to
8 creditors appendix reveals, there were -- I want to do the
9 math, including water and sewer because I think it would be
10 appropriate to include it for these purposes, a little less
11 than \$10,000,000,000 of publicly traded debt securities out
12 there in the universe.

13 If you're going to -- to make a data room available to
14 anyone without publishing the whole thing on the internet, I
15 think it's appropriate to have confidentiality agreements in
16 place. Yes, it turns out some of the bonds are held by widows
17 and orphans too.

18 The social reality as a method of classification and
19 treatment. That was fascinating. You know, we're going to
20 have to read the bankruptcy -- bankruptcy law very carefully
21 for purposes of determining who is entitled to what as
22 distribution in this case.

23 And it's going to turn out that there are going to be
24 lots of arguments that -- that debts other than pension claims

1 not accord them.

2 While we were here today, I read an email report that a
3 declaratory judgment action has been filed on behalf of the
4 UTGO, the unsecured UTGO's that we classified as unsecured,
5 claiming since they almost have a security interest they
6 should be regarded as secured and their distributions should
7 come off the top. That will -- if that lawsuit succeeds, the
8 \$830,000,000 number that was misused in the distribution
9 example, I'll come back to that in a second, will be reduced
10 by a number that's roughly \$500,000,000.

11 And so there are going to be collisions everywhere over
12 this. I have not yet seen a basis for distinguishing
13 classification claims based on social reality. I mention that
14 as a reason why the city perhaps does not want to be in the
15 business of unilaterally dealing with the consequences of a
16 reduction of the -- excuse me, of the change in unfunded
17 amount based upon the distribution contemplated under the
18 plan. If I missed it in the Bankruptcy Code, someone should
19 give me the reference.

20 Dillon's remarks concerning that he was still in the
21 information gathering stage, on several occasions in Mr.
22 Dillon's testimony he recognized that that was a description
23 as to him. He fully understood others closer to the situation
24 knew more.

1 discussions from the -- from the United Auto Workers were very
2 interesting. Because Exhibit 32 includes the United Auto
3 Workers letter which states, and just let me grab it a second.
4 I have -- I have it here.

5 The union does, however, represent current retirees and
6 has no authority to negotiate on their behalf. Not bind, not
7 -- just we have no authority to negotiate on behalf.

8 So it's first of all, extraordinarily interesting that a
9 person who writes that letter with no qualification, it's part
10 of Exhibit 32, how they can complain about anything that
11 happened in negotiations. One of the things they complain
12 about many other people do, is the -- is the fact that the
13 so-called concessionary bargain back at the beginning of -- of
14 2012 was not put into effect.

15 For some reason the unions believe that that entire
16 episode represents a great success. I think we know in
17 retrospect that that entire episode was a great failure. Huge
18 amounts of time and effort was devoted in an attempt to have a
19 concessionary bargain with a wide variety of unions and at the
20 end of the day the economic results were a drop in the bucket,
21 certainly by comparison to the extent of Detroit's problems
22 however you choose to measure them.

23 That is not a success. That the -- that the Governor's
24 office had not analyzed it and that others analyzed it and

1 just doesn't work for the City of Detroit. It is not a bad
2 thing, it is probably a good thing.

3 The other assertion that was made that I have to spend
4 just a little bit of time on, is the class action device. The
5 class action device has been proposed as the perfect way to
6 resolve the problem with retirees.

7 Now by the way, again this is asserted as -- as a counter
8 to the argument on the issue of -- of impracticality and --
9 and Your Honor, actually missed additional points, the ones
10 that I said this morning were probably enough relating to your
11 question of you know, what are the consequences if it turns
12 out that the -- that the pension funds or the two people you
13 have to deal with in the pension context.

14 Well, first of all, no one stood up and said you were
15 right. Everyone still talked about themselves as being
16 relevant actors. And that's because that's consistent with
17 the pre-filing atmosphere.

18 But the second part is, is the retirees still become
19 relevant with respect to OPEB's and with respect to OPEB's
20 there is no intervening structure. And as we've revealed many
21 times before, and it's not our favorite fact, those are
22 essentially completely unfunded.

23 So -- so when they talk about a class action approval
24 also they're only talking about the -- the OPEB side of the

1 to ever be part of an out of Court deal that -- that impairs
2 pension claims. But maybe it applies to both.

3 The fact of the matter is, if you page through the cases
4 and we can give -- send you a list of citations if you want
5 them. If you don't, it's okay.

6 It turns out that these things take a year to 22 months
7 for the examples that we were able to find when we looked in
8 the cases and we were able to use the dates in the cases to
9 figure out how long it is -- it takes to get a class action
10 settlement approved in these contexts where it's a mandatory
11 non-opt out class.

12 I was given a list of the things that have to happen in
13 order to get from here to there, or from an agreement to
14 there. First of all, the union, in this case I guess, more
15 unions and the city negotiate to reach a tentative agreement.
16 We have no idea how long that would happen, no one has ever
17 put on any evidence to say that we were two or three weeks
18 away back then in -- in July.

19 I think the evidence seems to suggest we were at best
20 months away. And I say at best because I don't think we were
21 anywhere.

22 Second, you need an independent counsel for the retirees
23 because the people who actually negotiate the deal, their view
24 isn't enough. The retirees' independent counsel has to
25 investigate the settlement.

1 THE COURT: I think I have to cut you off here
2 because there was really no evidence on either side of any of
3 this.

4 MR. BENNETT: This is actually law. This is just
5 what the -- the -- the legal requirements in order to get a
6 settlement done. I don't -- I think that Your Honor, if I had
7 -- if I had -- if I was going to brief it, I'd just take it
8 right out of cases. I would not call a fact witness for any
9 of this. But if you want me to stop, I'll stop. This is --
10 this is not -- these are not -- this is just right out of
11 cases.

12 THE COURT: All right. I will accept it from you on
13 that premise.

14 MR. BENNETT: Okay.

15 THE COURT: But with the understanding that we have
16 no evidence on the specifics of what's required or how long it
17 would take.

18 MR. BENNETT: Okay.

19 THE COURT: Any of these steps.

20 MR. BENNETT: I'm happy to just -- just not go
21 further and -- and submit a list of cases with no commentary
22 if that would make you more comfortable.

23 THE COURT: I don't want any post-hearing briefing.
24 Because that will add a month to our process here.

1 down -- let me just run the list of the procedures that have
2 to be followed. These are just procedures that have to be
3 followed.

4 At -- at that point you can bring a non-opt out class
5 action lawsuit against the city in order to get this created.
6 This -- the -- that's the next thing you file in Court after
7 you've got independent counsel and you're at that stage.

8 Then you have a class certification proceeding. Then you
9 have preliminary approval of the agreement. Then you have a
10 notice process.

11 MR. CIANTRA: Your Honor, I'm going to object at
12 this point. You know, this is -- really should have been a
13 rebuttal case. If they wanted to put on someone that had --
14 had knowledge as to how these proceed -- proceeds, this should
15 have been done on rebuttal.

16 THE COURT: Well, I'm not sure I can sustain that
17 because none of this was put in evidence as part of the
18 objectors' case.

19 MR. CIANTRA: Mr. Nicholson testified that he
20 offered this opportunity, this structure, to Mr. Bennett's
21 partner, Mr. Miller. That it was discussed. It was a -- a
22 way that he testified they had settled these issues in the
23 past. If they wanted to make an argument that this was
24 impractical, they should have called rebuttal testimony.

1 except that Mr. Nicholson did not testify as to what the
2 various steps were and how they would work in this context.

3 MR. CIANTRA: They could have asked him.

4 THE COURT: Well, but so could you. It was -- it
5 was part of your defense to this case.

6 MR. CIANTRA: Well, I -- I made a -- we -- we
7 presented evidence that this proposal was presented to the
8 city, but they did not respond to it. They did not take us up
9 on that.

10 THE COURT: I'll permit this with the understanding
11 that we're just talking about how this would work legally.

12 MR. BENNETT: Okay. I think all the following by
13 the way is in the Federal Rule of Civil Procedure that governs
14 class actions. But one of my partners will give us the rule
15 citation and -- and I will demonstrate that I'm not testifying
16 from the lectern.

17 THE COURT: You mean Rule 23?

18 MR. BENNETT: No. Your Honor, I think that what I
19 will do is just say, peruse Rule 23 and then we'll move on.
20 All of -- all of these things are in there. All the rest of
21 them are. The others are from the cases.

22 Okay. I'm now going to turn to the -- to Mr. Gordon's
23 argument. I think that -- that may make the most sense.

24 Okay. First of all, again the -- the -- I think we

1 funds from their interrogatory responses said that they could
2 not negotiate impairment and would not negotiate impairment.

3 I think that Mr. Gordon misstated the position that I
4 think I very -- very clearly stated this morning. We fully
5 understand that there are many people who may object to the
6 3.5 billion dollar number. My point was, was there was no
7 evidence in the record suggesting any other number this
8 morning -- excuse me, during the trial. And that remains
9 true.

10 So for purposes of this hearing, the only number in
11 evidence is the 3.5 billion dollar number split in the two
12 ways as -- split in two as described in the June 14th
13 presentation. And that's the number we're working with.

14 We -- we also indicated it is in the record that the
15 retirees committee have a different and lower number as of the
16 end of the school year of 2012.

17 MR. MONTGOMERY: Objection, Your Honor. I'm sorry,
18 you are definitely -- we never offered a different number in
19 any evidence or any written submission to this Court. This
20 goes right to the thing you told me not to ask Mr. Buckfire
21 about.

22 MR. BENNETT: It was in the slides that he
23 projected.

24 THE COURT: All right. The record will reflect what
25 it does. Let's move on.

1 MR. BENNETT: Okay. And again the point with
2 respect to the -- to -- to the exhibit, Exhibit 43. Was that
3 if -- if there was anybody in the objectors' group who thought
4 that the premises of the proposal were false, misleading, or
5 wrong, the -- the -- the -- we expected evidence suggesting
6 the same. That of course didn't happen.

7 And finally, I don't remember if was on -- on this point,
8 I don't remember whether it was Mr. Gordon, but Your Honor
9 engaged one of the objectors on the whole subject of well, if
10 you didn't think that the city's premises that were behind its
11 plan were correct, why didn't you propose a plan, or I think
12 you actually said what inference am I to draw from the fact
13 that you didn't produce an alternative scenario.

14 And the answer, it's not a matter of inference, it's
15 decisive. The fact that they didn't means there isn't another
16 alternative that Your Honor can lawfully consider.

17 By the way, it should not be surprising that a way to --
18 to object to eligibility when you think that the city's plan
19 isn't a good plan, or isn't an accurate plan, is to actually
20 generate a different one. In the early ages of -- the early
21 stages of the Stockton proceedings, one of the objectors
22 actually did object to the Stockton business plan, or -- or
23 projections and they generated their own.

24 Valeo was all about alternative projections based upon,
25 you know, correcting erroneous business decisions, or

1 erroneous municipal decisions made two years in the past. So
2 if you go read the cases and -- and watch how other people
3 have successfully or unsuccessfully objected to eligibility,
4 if the reason you're objecting is because the premises were
5 wrong, you should bring different premises to the Court and
6 prove them.

7 As to Mr. Robbins, we were very careful. Mr. Robbins
8 certainly did say he didn't have enough information. But when
9 he was pressed on the point, he said only -- he identified
10 only one specific area where he didn't have adequate
11 information and that was asset sales.

12 All of the rest of the testimony was about generalized
13 complaints of lack of information. And frankly that testimony
14 was significantly blunted by Mr. Robbins' own admissions that
15 as if and when they asked for more data, Miller, Buckfire was
16 pretty receptive in getting it to them and that a lot of the
17 additional things that were requested were things that -- that
18 came about because as you read information, additional
19 questions are raised and there's nothing about that that is
20 unusual.

21 You know, the -- the -- the -- also the assertion by the
22 retiree committee that we didn't negotiate with them with
23 enough. Mr. Robbins was their agent. He --

24 MR. MONTGOMERY: Excuse me, Mr. Bennett. I think
25 you meant retirement system, not retiree committee.

1 MR. BENNETT: I'm sorry, I apologize. The
2 retirement systems. Mr. Robbins was their agent, okay. He
3 knows what the -- what the projections mean. He testified
4 that we -- that the city was pretty clearly starting to --
5 trying to start negotiations.

6 And his response was, I need eight days to figure out
7 what my authority is to negotiate what we're going to be
8 talking about. What I called the shape of the table. So at
9 this point in time given that we -- we have not only with
10 respect to the -- the two retirement funds, we have actual
11 evidence that number one, they weren't confused about whether
12 negotiations were sought. Number two, talks about certain
13 things actually started. Number three, at the end what had
14 happened was there was a discussion about what we're going to
15 talk about next and the actor says, I need eight days to find
16 out what my client is going to authorize me to do and in that
17 period there was a lawsuit.

18 So of all of the places to be standing up here and
19 saying, there were no negotiations, the city discovers
20 negotiations. The last that should be heard from is the
21 retiree -- is the retiree funds -- excuse me, the retirement
22 funds.

23 They had perhaps one of the most qualified advisors who
24 admitted that he understood exactly what's going on. We
25 understand exactly what he did. And then we come to the

1 question which I foreshadowed this morning should be answered
2 with evidence and isn't. Which is exactly what is it that a
3 good faith city has to do more than what it did in response to
4 the fact pattern it was presented with with the retirement
5 funds.

6 This is in the negotiations. This isn't before the
7 negotiations. This is at a time where everybody knows the
8 city's looking for feedback over a four week period and then
9 figuring out what it's going to do during a time the
10 undisputed evidence demonstrates the city was under financial
11 distress.

12 It was the retiree funds that said -- that you asked what
13 inference should be drawn. Okay. Given -- given the -- the
14 -- given that Mr. Robbins of all people was about the most
15 qualified actor from the financial side on -- on the retiree
16 side of the equation, that -- and that he's not only had the
17 negotiation period, but till now to decide whether or not
18 there was anything wrong with the -- with the June 14th
19 presentation and that the financial data should be looked at
20 differently. The fact that nothing was presented by him or
21 anybody else is decisive, not just the basis of an inference.

22 A couple more things. It was more than four hours, Your
23 Honor. I -- I -- I have to spend some time because you're
24 going to take them away with you, with -- with what is going

1 were shown on -- that were -- that were shown by -- by Ms.
2 Green. And if they're still available -- are those slides
3 still available? The slides that -- that you -- that Ms.
4 Green put up?

5 THE COURT: You mean -- you mean to be projected?

6 MR. BENNETT: Yeah, to be projected.

7 THE COURT: Are they available to be projected?

8 MS. GREEN: Yes.

9 THE COURT: Apparently so.

10 MR. BENNETT: Well, I'm just going to skip to a --
11 to -- to -- to a -- to a few. I'm going to skip the
12 evidentiary issue because that's been dealt with. Okay. I
13 would like to go to 13.

14 THE COURT: Slide number 13?

15 MR. BENNETT: Slide -- page number -- it has -- they
16 have page numbers at the bottom.

17 THE COURT: Page number 13?

18 MR. BENNETT: Slide number 13, at page number 13.
19 Why don't I start and I hope he catches up with me.

20 The slide number 13 is the -- is the testimony of Howard
21 Ryan which Your Honor asked about and -- and putting the
22 objections aside for the second -- for a second, this
23 testimony is completely irrelevant.

24 Because in the -- in the unlikely event that we actually

1 the intent of the legislature in adding the appropriation
2 provisions, the -- the -- the way you find out is asking the
3 legislators who voted for it. And so it's a huge evidentiary
4 problem but frankly it's the objectors' evidentiary problem.

5 And I can't imagine that you could make the decision as
6 to what the intent of the legislature was in adding the
7 appropriation provisions until you elicited testimony from at
8 least a majority of the majority of each house that voted for
9 it.

10 There may be an argument, you've got to talk to all of
11 them. But the bottom line is, is that the -- that someone
12 from outside the process, an advisor, I have no idea how he
13 knows, but it seems to me that it's the worst kind of hearsay
14 or speculation as to what -- why the legislature passed a law
15 with -- with certain provisions as opposed to didn't -- passed
16 it with others.

17 THE COURT: Well, but how do I deal with the fact
18 that this witness, Mr. Ryan --

19 MR. BENNETT: Yes.

20 THE COURT: -- was the state's 30(b)(6) witness? He
21 was the representative of the state to answer these questions.

22 MR. BENNETT: Your Honor, I think he's --

23 THE COURT: I mean he could have said, I don't know,
24 but he didn't.

1 30(b)(6) witness. I don't think and I -- and I think this is
2 something that Mr. Snyder should deal with. I don't think --

3 THE COURT: Oh, all right, that's fine.

4 MR. BENNETT: And -- and the executive of course
5 testified himself as to what -- that's -- that's the Governor.
6 But the law doesn't become law until the legislature passes it
7 both houses and the Governor signs it. So there's a lot of
8 empty boxes in terms of intent that we have no idea what their
9 intent was. And you're being asked to presume that the intent
10 was to do something unconstitutional which we pointed out it
11 isn't even really a constitutional question.

12 As to -- as opposed to do something absolutely legitimate
13 which is to allocate funds to the municipalities who are
14 subjected to it at the jurisdiction of an emergency manager
15 don't have to pay for it by themselves.

16 The next slide I'd like you go to is 15. That's 16.
17 That's still 16. The one that's -- that one.

18 This was the slide that -- that -- that Ms. Green said
19 demonstrated that it was part of the drive, the -- the -- the
20 preordained drive to Chapter 9. But she forgot to read the --
21 the -- the first three line highlighted block.

22 Questions that Miller, Buckfire has drafted for review.
23 First one, given the issues that Detroit faces, how can they
24 address them outside of Chapter 9? I don't think I have to
25 say more.

1 Slide 22, please. Moved a little quicker when Ms. Green
2 was asking. May 12, the May 12, we are not like negotiating
3 the terms of the plan. Once again, it was not anchored to the
4 place where the testimony has anchored it which is this is not
5 referring to the June 14th plan. The testimony is perfectly
6 clear and actually the statement in context was perfectly
7 clear. It was -- it was relating to the 45 day report under
8 the law.

9 Next page, Page 23, please. I'm not sure I'm pronouncing
10 his name right, David Meador. The record actually doesn't say
11 and the email certainly doesn't say where David Meador came up
12 with the idea that there might be a filing coming in July.

13 As I indicated to -- to -- to Your Honor before, there
14 was rampant speculation everywhere where this was headed.

15 THE COURT: This is 23, were you looking for 22?

16 MR. BENNETT: This is 23, this is the one I'm -- I'm
17 sorry, this is 21.

18 THE COURT: Twenty-three, okay.

19 MR. BENNETT: I'm sorry. This is the -- the email.
20 I'm sorry, this is the right one.

21 THE COURT: Okay.

22 MR. BENNETT: Okay. So there is -- the evidence
23 does not actually say that -- that Mr. Meador got this from
24 Mr. Buckfire. We actually don't know where he got it.

1 only point here is that whatever -- whatever
2 misrepresentations or inadequate disclosures Mr. Orr gave on
3 June 10th, it was corrected three or four days later.

4 Moving on to 29, please. This is about the last point
5 the city could have been negotiating since 2012 when it knew
6 there was a financial crisis. Your Honor, this is the Valeo
7 decision, or another version of the Valeo decision.

8 If Your Honor will recall, the objecting parties in Valeo
9 said that -- that if Valeo had done things differently two
10 years before their budgeting process they really wouldn't be
11 in trouble. And the Valeo Judge ultimately decides what I
12 think Your Honor knows, which is there not a bankruptcy case
13 in the world that doesn't start with some mistakes at some
14 period of time.

15 And they decide that no, you do not disqualify yourself
16 for Chapter 9 relief forever if you make a -- if you budget
17 too much or spend too much in a particular year. I think
18 frankly Judge Klein in Stockton is even stronger on this
19 point.

20 The idea that in 2012 the -- the state should have
21 commenced negotiations that had to be fashioned on a Chapter 9
22 plan because that's the law according to your objectors,
23 instead signed the consent agreement which gave the city the
24 ability to work out its problems away from a courthouse cannot

1 Chapter 9 when the consent agreement process failed. We've
2 got at least two cases that say that, there are probably more.

3 Page 30. I don't know how to -- how to reconcile items
4 1, and 2, and 3. One and 2 of this chart with the idea that
5 Your Honor's been presented that the right thing by the
6 objectors that the right thing for the city to do was talk to
7 the unions and talk to the retiree groups.

8 They -- the -- the -- I'm sorry, the introductory
9 language. The initial rounds of stakeholders negotiations are
10 set to start. Somehow the pensioners were supposed to know
11 the city was expecting them to negotiate over the pensions
12 even though, and then number two, the vast majority of
13 retirees were not aware of the proposal as the city admitted
14 it did not mail each of them a copy.

15 Well, they've got to decide which way it is. If the
16 reality is that the retirees themselves were the actual
17 players who had to be involved and had to be informed, then
18 they've admitted impracticability. And if it's not the
19 retirees who have to be involved and someone else, they have
20 to own up to their letters that said it's not us. We don't
21 have authority, we're not going to negotiate.

22 And this constant straddling between the two is another
23 demonstration that we are dealing with an impracticability
24 situation. In any event as I said earlier, the proposal went

1 was over.

2 THE COURT: Mr. Schneider is concerned that you're
3 eating now into his time.

4 MR. SCHNEIDER: I probably am.

5 MR. BENNETT: Would you give me five minutes?

6 THE COURT: He wants five minutes.

7 MR. BENNETT: Your Honor, I ask that you be
8 exceptionally careful in reading the -- these slides. Because
9 they themselves reveal more information if they're read
10 carefully and they -- and if you look at the record in many
11 cases, inferences drawn from them are misleading in light of
12 the overall record. If Your Honor has any questions, I'll be
13 happy to deal with, otherwise I'm not done, but I guess I've
14 got to be.

15 THE COURT: All right. Thank you.

16 MR. SCHNEIDER: Your Honor, most revealing about
17 what the objectors have said in their closing arguments, in
18 order to rebut their arguments I think is what they didn't
19 say. Because the objectors argued in their closing that the
20 pensions have been impaired.

21 So tell us which witness actually testified in this case
22 that his or her pension was actually impaired. None, because
23 that witness does not exist. Impairment means actual
24 impairment and not a single pension has been impaired.

1 saying that the good faith of the Governor, or the Treasurer,
2 or any state actor is even relevant. Good faith is about the
3 good faith of the debtor. And even if it is about the
4 Governor, there's plenty of evidence in the record to support
5 his good faith.

6 The objectors also didn't explain what Mr. Dillon really
7 said. Can we have 626 up on -- on the projector? In
8 Paragraph 10 of 626, this is -- go to the next page. Bring up
9 Paragraph 10.

10 First of all, this isn't a communication from Dillon to
11 Orr, okay. It's -- it's Mr. Dillon's suggestions basically
12 through his legal counsel. He says, looks premeditated. That
13 doesn't mean that it is. Looks premeditated. In fact the
14 evidence in this case shows that the opposite is true, it's
15 not premeditated. So don't make it look that way.

16 But look at this last sentence. I want to -- if you can
17 highlight that last sentence. This is the -- the sentence
18 that Ms. Green in her testimony didn't highlight. I agree
19 with the recommendation, but I don't think we make the case.

20 Translation, this case has been made. The city is
21 eligible, so say so. Okay. I agree. Now just -- would you
22 just say so because it's been made.

23 And this is also shown in Mr. Dillon's testimony. Mr.
24 Wertheimer asked Mr. Dillon, was it true on July 10 you didn't
25 think that Orr had made the case? And what is his response?

1 In the document that I read.

2 So Dillon is just -- Mr. Dillon is just saying yeah, in
3 this particular document, the case wasn't made. But that's
4 not to say that the case wasn't made.

5 Next, Mr. Bennett talked a little bit about the
6 appropriations provisions. If the objectors here are arguing
7 that it's a bad faith filing due to some alleged improper
8 motive, there is no evidence that these appropriations were
9 added to allow the Governor to authorize this particular
10 bankruptcy. So this particular filing couldn't have been done
11 in good faith.

12 Now as to Howard Ryan, well, he is the legislative
13 liaison for the Department of Treasury. And 30(b)(6) is
14 really a discovery tool. That's -- but this trial depends on
15 witnesses, not a 30(b)(6) discovery tool.

16 And you -- you can effectively override that testimony,
17 or basically you'd be using it to impeach him, with the
18 Governor's testimony. Now, Howard Ryan, legislative liaison,
19 never a member of the House, never a member of the Senate and
20 definitely didn't sign this bill. And the Governor did sign
21 the bill and he would know.

22 And he testifies, and his motives are clear, it was done
23 through the appropriation to pay for the emergency managers
24 because cities were upset that they were stuck with these

1 million dollar appropriation meaningless. What does the
2 Governor testify to? And that's what we have to look at in
3 this case. The testimony, the evidence.

4 He says, of course that appropriation provision is
5 significant. Every taxpayer dollar is significant. And what
6 Mr. Dillon and the Governor said, is we needed that money in
7 this -- we're halfway through the fiscal year, so we needed to
8 appropriate that money. Do you have any questions about that,
9 Your Honor?

10 THE COURT: Yes. How -- how do I reconcile just
11 from a credibility perspective, Mr. Ryan's testimony and the
12 Governor's testimony?

13 MR. SCHNEIDER: Well, the live witness here, the
14 Governor, was asked under oath, in front of you and explained
15 his provisions. They're his -- his viewpoint.

16 If you're trying to reconcile this who had -- who would
17 really know better. Who has the most experience in signing
18 the bill? Who made the appropriation happen? And also who
19 signed the later bill to have another appropriation so that we
20 could pay for these emergency managers? That was the
21 Governor. And he's the one who did that.

22 THE COURT: Well, but doesn't that later bill raise
23 or even amplify the question about why it was necessary to put
24 an appropriation in the first bill?

1 halfway through the fiscal year and they had to pay for these
2 emergency managers. That was the --

3 THE COURT: But why not have a separate
4 appropriations bill so that the people's right to a referendum
5 could be preserved? Why not do that?

6 MR. SCHNEIDER: Because the legislative process in
7 Lansing, it's not -- the Governor testified this is the most
8 efficient way to go on to this, to do it. And I can -- you
9 know, it's not in the record --

10 THE COURT: Efficiency trumping the people's right
11 to referendum, is that -- is that your answer?

12 MR. SCHNEIDER: No, Your Honor. It's not --

13 THE COURT: You just said --

14 MR. SCHNEIDER: What's the most efficient way to get
15 a bill made into law? Get the appropriation put in the bill
16 and pass it.

17 THE COURT: No, I understand the efficiency of it.
18 But -- but what I'm hearing you say, is that the efficiency of
19 it was more important than allowing the people their right to
20 referendum, especially considering that just a month before
21 they had expressed a will on this subject.

22 MR. SCHNEIDER: Well, and that's not what I'm
23 saying. They did express a will on that subject and that's
24 why there were different changes put into the bill to fix it.

1 were plenty of other fixes in that bill.

2 THE COURT: Granted, but -- but my question is a
3 different one. What -- why as a matter of law does the need
4 for efficiency, which is what you assert is the grounds for
5 including the appropriation in -- in PA436. What -- what
6 justifies that in trumping the people's right to a referendum,
7 especially given that they had just expressed a will on the
8 subject. There were differences, but they had just expressed
9 a will on the subject.

10 MR. SCHNEIDER: The basis of that question assumes
11 that if you don't have a separate bill, then that's a
12 trumping. But that's not the case. You -- you don't trump
13 the people's will --

14 THE COURT: Am I missing something? Doesn't the
15 Constitution say that there's the right of referendum unless
16 there's an appropriation in the bill?

17 MR. SCHNEIDER: Yes.

18 THE COURT: So putting an appropriation in the bill
19 has the effect of denying the right of what would otherwise be
20 a right of referendum, right?

21 MR. SCHNEIDER: But plenty of bills have
22 appropriations.

23 THE COURT: Do they?

24 MR. SCHNEIDER: Yes.

25 THE COURT: There's no evidence of that, is there?

1 MR. SCHNEIDER: Well, I think the Court can take
2 judicial notice of that.

3 THE COURT: Well, all right. Let's assume that's
4 true. Does that prove anything more than the legislature
5 often violates the right of referendum?

6 MR. SCHNEIDER: You do not violate the right of
7 referendum by putting an appropriation in a bill. MUCC v
8 Secretary of State indicates as such. It's -- if you put --
9 Your Honor, if you violated the Constitution every time you
10 put an appropriation in a bill, we'd never have any money to
11 run this government. Because then --

12 THE COURT: But you could have appropriations bills
13 which you actually did here.

14 MR. SCHNEIDER: That's true. And we could spend --
15 the legislature in Lansing could spend all its time passing
16 appropriations bills and not passing other bills. So let's
17 not put appropriations in here, we have to wait and put it in
18 a different appropriations bill.

19 This bill, the evidence is, was at the middle of the
20 fiscal year. So if they didn't put this appropriation --

21 THE COURT: Well, but so was the later one.

22 MR. SCHNEIDER: If they didn't put this
23 appropriation bill in this bill then --

24 THE COURT: Uh-huh.

1 out. They wouldn't have been able to get through to this.

2 THE COURT: But that assumes the wouldn't pass PA437
3 which had an appropriation for PA436.

4 MR. SCHNEIDER: What I'm saying is --

5 THE COURT: Why not do that given the will that the
6 people of this state had just expressed a month earlier? Why
7 not?

8 MR. SCHNEIDER: Because it's not unconstitutional or
9 improper to put -- let me explain. It's not improper to put
10 an appropriation in a bill.

11 THE COURT: Apart from misuse of propriety and
12 constitutionality, why not do that?

13 MR. SCHNEIDER: Why not do what, Your Honor? Put it
14 in a separate bill and --

15 THE COURT: Put it in PA437 and bump the -- the
16 other ones down the line one number.

17 MR. SCHNEIDER: Because I think the evidence is, is
18 by that time that would -- the legislature wouldn't have been
19 able to do that until the spring time. And whether the --

20 THE COURT: I didn't hear that.

21 MR. SCHNEIDER: Whether that's in the record or
22 not --

23 THE COURT: Can't the legislature pass an
24 appropriations bill mid term any time it likes? It did that.

25 MR. SCHNEIDER: Not when they're in recess.

1 THE COURT: Well, but -- but the next vote after it
2 took the vote on PA436 could be on PA437 appropriating money
3 for PA436. Why not?

4 MR. SCHNEIDER: I think you're --

5 THE COURT: The people had just spoken a month
6 before.

7 MR. SCHNEIDER: And yes, they had spoken. And
8 that's why there were changes put into this bill.

9 THE COURT: All right. I think we're going in
10 circles at this point. Anything further?

11 MR. SCHNEIDER: Yes, hold on. There was some
12 testimony about why the Treasurer stopped the tentative
13 agreement in February 2012. Mr. Dillon testified to that. He
14 explained that he received expert advice on the agreements.
15 There were several issues raised. He didn't think the
16 agreements would work for the city, so he wasn't supportive.
17 And it's really as simple as that.

18 Finally, this whole issue about as Mr. Dechiara explained
19 in his theory in his cross of Mr. Orr about kind of this --
20 this theory of the state conspiring with the city in bad faith
21 and kind of to drive in the city into Chapter 9.

22 I think, Judge Rhodes, you asked the correct question.
23 To what end? I mean why? What does the Governor or the
24 Treasurer gain by this? By kind of engineering a bankruptcy.

1 explained that. And this is my last point.

2 Mr. Wertheimer says, it's a political motive. What
3 political juice does the Governor get out of doing this? I
4 mean that makes no logical sense. He testified -- testified
5 about his motive.

6 THE COURT: And I really do have to ask for silence
7 from those who are watching these proceedings. Thank you.

8 MR. SCHNEIDER: I think that's an indication, Your
9 Honor, if somebody mentions -- or rumblings in the courtroom
10 that it's not a popular move. In other words, why would this
11 be like a politically popular thing to do? That's not why it
12 was done.

13 The Governor testified about his motive, to help the
14 citizens of Detroit. And that's the evidence in this record.
15 Now the political theories and arguments of the counsel,
16 they're not evidence. And no witness testified otherwise.

17 So although Mr. Montgomery urges you to make inferences
18 of what should be about bad faith. Mr. Wertheimer does the
19 same. I don't want you to do that, Your Honor. You don't
20 have to make those inferences, just look at the evidence and
21 the testimony and the Governor's testimony refutes that. I
22 think I've run out of time.

23 THE COURT: Yes. And -- and more. Okay. So we'll
24 be in recess. I'm going to take this matter under advisement.

1 me the documents that have been marked with numbers that are
2 the slide shows from this afternoon. When -- when can we
3 expect those?

4 MS. GREEN: You wanted an updated slide deck and I
5 presume the Court is closed on Monday?

6 THE COURT: We are -- we are closed on Monday.

7 MS. GREEN: Okay.

8 THE COURT: Okay. All right. Please try to get
9 them to me as promptly as possible.

10 MR. MONTGOMERY: Your Honor, does that include
11 non-commonly placed slides --

12 THE COURT: Yeah, I want all -- all of the ones
13 marked for identification purposes and submitted to me. But
14 to the extent they need to be corrected because of the
15 inaccuracies we've pointed out, or -- or to the extent they
16 mention exhibits not in evidence, they need to be corrected.

17 And just for the record, technically the matter isn't
18 under advisement until the time for you to submit the briefs
19 that I earlier allowed has expired which I think is Wednesday,
20 right?

21 MS. PATEK: Your Honor, Mr. Irwin and I have already
22 taken care of -- mine are corrected. I -- we will have a hard
23 copy here on Tuesday and we can also email them if that's
24 better.

1 this purpose, so a hard copy, please. Anything further from
2 anyone? We're in recess. Thank you all very much.

3 THE CLERK: All rise. Court is adjourned.

4 (Court Adjourned at 6:35 p.m.)
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We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Deborah L. Kremlick, CER-4872
Letrice Calloway

Dated: 11-14-13

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. December 3, 2013
Debtor. . 10:00 a.m.
.

HEARING RE. BENCH OPINION RE. ELIGIBILITY
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day
By: DAVID G. HEIMAN
North Point
901 Lakeside Avenue
Cleveland, OH 44144-1190
(216) 586-7175

Jones Day
By: BRUCE BENNETT
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2452
(213) 243-2382

Jones Day
By: HEATHER LENNOX
222 East 41st Street
New York, NY 10017
(212) 326-3837

Pepper Hamilton, LLP
By: ROBERT S. HERTZBERG
DEBORAH KOVSKY-APAP
4000 Town Center, Suite 1800
Southfield, MI 48075-1505
(248) 359-7333

For the State of Michigan: Dickinson Wright, PLLC
By: STEVEN G. HOWELL
500 Woodward Avenue, Suite 4000
Detroit, MI 48226-3425
(313) 223-3033

APPEARANCES (continued):

For the Official Committee of Retirees: Dentons
 By: CLAUDE MONTGOMERY
 CAROLE NEVILLE
 1221 Avenue of the Americas
 New York, NY 10020-1089
 (312) 632-8390

Dentons US, LLP
 By: SAM J. ALBERTS
 1301 K Street, NW
 Suite 600, East Tower
 Washington, DC 20005-3364
 (202) 408-7004

Brooks, Wilkins, Sharkey & Turco, PLLC
 By: MATTHEW E. WILKINS
 401 South Old Woodward, Suite 400
 Birmingham, MI 48009
 (248) 971-1711

For Detroit Retired City Employees Association, Retired Detroit Police and Fire Fighters Association, Shirley V. Lightsey, and Donald Taylor: Lippitt O'Keefe, PLLC
 By: RYAN C. PLECHA
 370 East Maple Road, 3rd Floor
 Birmingham, MI 48009
 (248) 723-6263

For AFSCME, AFL-CIO, and Sub-Chapter 98, City of Detroit Retirees: Lowenstein Sandler, LLP
 By: SHARON L. LEVINE
 65 Livingston Avenue
 Roseland, NJ 07068
 (973) 597-2374

For Detroit Retirement Systems-General Retirement System of Detroit, Police and Fire Retirement System of the City of Detroit: Clark Hill, PLC
 By: ROBERT GORDON
 151 South Old Woodward, Suite 200
 Birmingham, MI 48009
 (248) 988-5882

APPEARANCES (continued):

For the Detroit Fire Fighters Association, the Detroit Police Officers Association and the Detroit Police Lieutenants & Sergeants Association:

Erman, Teicher, Miller, Zucker & Freedman, P.C.
 By: BARBARA A. PATEK
 CRAIG E. ZUCKER
 EARLE I. ERMAN
 400 Galleria Officentre, Suite 444
 Southfield, MI 48034
 (248) 827-4100

For Retired Detroit Police Members Association:

Strobl & Sharp, PC
 By: LYNN M. BRIMER
 MEREDITH E. TAUNT
 MALLORY A. FIELD
 300 East Long Lake Road, Suite 200
 Bloomfield Hills, MI 48304-2376
 (248) 540-2300

Court Recorder: Letrice Calloway
 United States Bankruptcy Court
 211 West Fort Street
 21st Floor
 Detroit, MI 48226-3211
 (313) 234-0068

Transcribed By: Lois Garrett
 1290 West Barnes Road
 Leslie, MI 49251
 (517) 676-5092

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1 THE CLERK: All rise. Court is in session. Please
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: Counsel, would you like to put your
4 appearances on the record, please?

5 MR. HEIMAN: David Heiman, Jones Day, on behalf of
6 debtors, and with me today are Bruce Bennett and Heather
7 Lennox and Bob Hertzberg as well.

8 MR. HOWELL: Good morning, your Honor. Steven G.
9 Howell, Dickinson Wright, special assistant attorney general,
10 appearing on behalf of the State of Michigan.

11 MR. MONTGOMERY: Good morning, your Honor. Claude
12 Montgomery of Dentons, and with me are Carole Neville and Sam
13 Alberts from Dentons and Matt Wilkins as local counsel.

14 MR. PLECHA: Good morning, your Honor. Ryan Plecha
15 from Lippitt O'Keefe on behalf of the retiree association
16 parties.

17 MS. LEVINE: Good morning, your Honor. Sharon
18 Levine, Lowenstein Sandler, for AFSCME.

19 MR. GORDON: Good morning, your Honor. Robert
20 Gordon of Clark Hill on behalf of the Detroit Retirement
21 Systems.

22 MS. PATEK: Good morning, your Honor. Barbara Patek
23 of Erman, Teicher, Miller, Zucker & Freedman, and with me are
24 Craig Zucker and Earle Erman on behalf of Detroit public
25 safety unions.

1 MS. BRIMER: Good morning, your Honor. Lynn M.
2 Brimer appearing on behalf of the Retired Detroit Police
3 Members Association. With me this morning are Meredith Taunt
4 and Mallory Field.

5 THE COURT: The Court decided to provide this
6 summary of its written opinion, which it will issue shortly,
7 because it is important to give the people of the City of
8 Detroit the best opportunity to understand what the Court is
9 ruling and why. I would not call this a brief summary. It's
10 a bit extended, so settle in, please. The written opinion
11 will be over 140 pages, and it will address in more detail
12 and with more legal and factual support all of the arguments
13 that have been made regarding eligibility. I thought this
14 summary would be more accessible. It is critical to the
15 process, indeed, to any judicial process, that those who are
16 impacted by the Court's ruling have confidence that they were
17 heard and that their arguments and concerns were fully and
18 fairly considered.

19 The matter is before the Court on the parties'
20 objections to the eligibility of the city to be a debtor in
21 this Chapter 9 case under Section 109(c) of the Bankruptcy
22 Code. The City of Detroit was once a hard-working, diverse,
23 vital city, the home of the automobile industry, proud of its
24 nickname, The Motor City. It was rightfully known as the
25 birthplace of the American automobile industry. In 1952, at

1 the height of its prosperity and prestige, it had a
2 population of 1,850,000 residents. It was building half of
3 the world's cars.

4 The evidence establishes, however, that for decades
5 the City of Detroit has experienced dwindling population,
6 employment, and revenues. This has led to decaying
7 infrastructure, excessive borrowing, mounting crime rates,
8 spreading blight, and a deteriorating quality of life. The
9 city no longer has the resources to provide its residents
10 with basic police, fire, and emergency medical services that
11 its residents need for their basic health and safety. To
12 reverse this decline in basic services and to attract new
13 residents and businesses and to revitalize and reinvigorate
14 itself, the city needs help.

15 The city estimates that its debt is \$18 billion.
16 This consists of 11.9 billion in unsecured debt and 6.4
17 billion in secured debt. It has more than 100,000 creditors.
18 According to the city, this unsecured debt includes \$5.7
19 billion for other post-employment benefits through June of
20 2011, which is the most recent actuarial data available; 3.5
21 billion in unfunded pension obligations; \$650 million in
22 general bond obligations; \$1.43 billion for certificates of
23 participation related to the pensions; \$346.6 million for
24 swap contracts, liabilities related to the certificates of
25 participation; and \$300 million of other liabilities. Except

1 for the unfunded pension liability, the parties -- the
2 objecting parties do not seriously challenge the city's
3 estimates of this debt. The pension plans and others have
4 suggested a much lower pension underfunding amount, perhaps
5 even below \$1 billion. However, the Court concludes that it
6 is not necessary to resolve this issue at this time.
7 Otherwise, the Court is satisfied that the city's estimates
8 of its other liabilities are accurate enough for purposes of
9 determining eligibility, and the Court so finds.

10 For the five years ending with fiscal year 2012,
11 pension payments exceeded contributions and investment income
12 by approximately \$1.7 billion for the General Retirement
13 Systems and \$1.6 billion for the Police and Fire Retirement
14 Systems. This, of course, resulted in the liquidation of
15 pension trust principal.

16 Using current actuarial assumptions, the city's
17 required pension contributions as a percentage of eligible
18 payroll expenses are projected to grow from 25 percent for
19 the GRS and 30 percent for the PFRS in 2012 to 30 percent for
20 the GRS and 60 percent for the PFRS by 2017. Changes in
21 actuarial assumptions would further increase the city's
22 required pension contributions. During 2012, 39 percent of
23 the city's revenue was used to service legacy liabilities.
24 The forecasts for subsequent years, assuming no
25 restructuring, are 43 percent for 2013 going up to 65 percent

1 for 2017.

2 The Court will now address the transactions referred
3 to as the certificates of participation, often called the
4 COP's, and the swaps associated with them. These
5 transactions are complex and confusing, and so is the
6 resulting litigation. The Court will provide only the
7 briefest summary of them at this time.

8 In 2005 and 2006, the city decided to raise \$1.4
9 billion for its underfunded pension funds. A substantial
10 part of this funding was at an interest rate that would float
11 with the market. If the market interest rate went up, so did
12 the rate on the COP's and vice versa. As part of the
13 transaction, therefore, the city decided to try to protect
14 itself against interest rates going up, so it entered into a
15 wager. The more common name for this is a swap, but it's
16 nothing more than a common bet. If the rate went up, someone
17 would pay the city to help cover the increased interest
18 expense. If the rate went down, the city would have to pay.
19 In 2008 interest rates dropped dramatically. As a result,
20 the city lost on the swaps bet. Actually, it lost
21 catastrophically on the swaps bet. The city estimates that
22 the damage will be approximately \$45 million per year for the
23 next ten years. The result has been complex and expensive
24 litigation. In any event, the city estimates that as of June
25 30, 2013, it may owe \$480 million from the 2005 COP's and

1 \$949 million on the 2006 COP's. It also has a potential
2 liability in excess of \$300 million on the swaps, although
3 the city has serious and substantial challenges to those
4 amounts.

5 Debt service from the city's general fund related to
6 limited tax and unlimited general obligation debt and the
7 COP's was \$225 million for fiscal year 2012 and is projected
8 to exceed \$247 million in 2013. The city estimates that 38
9 percent of tax revenues go to debt service rather than city
10 services. It further estimates that without changes, this
11 will increase to 65 percent within five years. At the same
12 time, however, tax revenues are going down. State revenue
13 sharing is also going down. It has decreased by \$161
14 million, 48 percent, since 2002 and by \$67 million, 31
15 percent, since 2008.

16 The city has experienced large operating deficits
17 for each of the past seven years. Through 2013, it has an
18 accumulated general fund deficit of \$237 million. However,
19 this includes the effect of recent debt issuances. The city
20 borrowed \$75 million in 2008, \$250 million in 2010, and \$129
21 million in 2013. If the city had not borrowed these amounts,
22 the city's accumulated general fund deficit would have been
23 \$700 million through 2013. In 2012, the city had a negative
24 cash flow of \$115 million excluding the proceeds from
25 borrowings. In March of 2012, to avoid running out of cash,

1 the city borrowed \$80 million. In 2013, the city deferred
2 payments on certain of its obligations totaling \$120 million
3 for current and prior year pension contributions and other
4 payments.

5 Absent restructuring, the city projects it will have
6 negative cash flows of \$190 million for 2014 increasing to
7 \$346 million for 2017. The city further estimates that by
8 2017 its accumulated deficit will grow to approximately \$1.3
9 billion. The city is not making its pension contributions as
10 they become due. As of May 2013, the city had deferred
11 approximately \$54 million in pension contributions and
12 approximately \$50 million on June 30th, 2013, for current
13 year pension contributions.

14 Also, the city did not make the scheduled \$39.7
15 million payment on its COP's that were due on June 14, 2013.
16 If the city had not deferred these payments, it would have
17 run out of cash by June 30th, 2013. Let me repeat that. If
18 the city had not deferred these payments, it would have run
19 out of cash by June 30th, 2013. It filed for bankruptcy 18
20 days later.

21 The city will -- the Court will now review the
22 causes and consequences of this. These are discussed
23 together because it can be hard to tell which is a cause and
24 which is a consequence. Detroit's population declined to
25 684,800 in December of 2012. This is a 63-percent decline in

1 population from its peak in 1950. In June 2000, Detroit's
2 unemployment rate was 6.3 percent. In June 2010, it was 23.4
3 percent. In June 2012, it was 18.3 percent. The number of
4 employed Detroit residents fell from approximately 353,000 in
5 2000 to 280,000 in 2012.

6 The city's credit ratings are below investment
7 grade. In calendar year 2012, 136,00 crimes were reported in
8 the city. Of these, 15,200 were violent crimes. The city's
9 case clearance rate for violent crimes is 18.6 percent. The
10 clearance rate for all crimes is 8.7 percent. These rates
11 are substantially below those of comparable municipalities
12 nationally and surrounding local communities.

13 As of April 2013, about 40 percent of the city's
14 88,000 streetlights were not working. There are
15 approximately 78,000 abandoned and blighted structures in the
16 city. Of these, 38,000 are considered dangerous buildings.
17 The city experiences 11 to 12,000 fires each year for the
18 past decade. Approximately 60 percent of these were in
19 blighted or unoccupied buildings. In 2012 the average
20 priority one response time for the police department was 30
21 minutes. In 2013 it was 58 minutes. The national average is
22 11 minutes. The police department staffing has been reduced
23 by approximately 40 percent over the last ten years. It has
24 not invested in or maintained its facility infrastructure for
25 many years and has closed or consolidated many precincts. It

1 operates with a fleet of 1,291 vehicles, most of which have
2 reached the replacement age of three years and lack modern
3 information technology. The average age of the city's 35
4 fire stations is 80 years. The fire department's fleet has
5 many mechanical issues, contains no reserve vehicles, and
6 lacks equipment ordinarily considered standard. During the
7 first quarter of 2013, frequently only ten to fourteen of the
8 city's 36 ambulances were in service. The city's information
9 technology infrastructure and software is obsolete and is not
10 integrated between departments or even within departments.
11 The city has reduced the number of its employees by about
12 2,700 since 2011. As of May 31st, 2013, it has approximately
13 9,560 employees.

14 The city's union employees are represented by 47 or
15 48 discrete bargaining units. The collective bargaining
16 agreements covering all of these bargaining units expired
17 before the case was filed. The city has implemented revised
18 employment terms called City Employment Terms for
19 nonunionized employees and for unionized employees under
20 expired collective bargaining agreements.

21 It has also increased revenues and reduced expenses
22 in other ways. It estimates that these measures have
23 resulted in annual savings of \$200 million. The city cannot
24 legally increase its tax revenues nor can it reduce its
25 employee expenses without further endangering public health

1 and safety.

2 Before reviewing the events leading to the filing of
3 this case, a brief review of the winding history of the
4 Michigan statutes on point is necessary. In 1990 the
5 Michigan legislature enacted Public Act 72 of 1990, the Local
6 Government Fiscal Responsibility Act. This act empowered the
7 state to intervene with respect to municipalities that faced
8 financial crisis through the appointment of an emergency
9 financial manager, who would assume many of the powers
10 ordinarily held by local public officials. Effective March
11 16, 2011, PA 72 was repealed and replaced with Public Act 4
12 of 2011, the Local Government and School District Fiscal
13 Accountability Act. On November 5th, 2012, however, the
14 Michigan voters rejected PA 4 by referendum. In Davis v.
15 Roberts, the Michigan Court of Appeals held that this
16 rejection revived Public Act 72. Public Act 72 remained in
17 effect until March 28, 2013, when Public Act 436, the Local
18 Financial Stability and Choice Act, became effective. The
19 legislature had enacted that law on December 13, 2012, and
20 the governor had signed it on December 26, 2012.

21 On February 19, 2013, a financial review team
22 appointed by the governor submitted its report regarding the
23 city. That report concluded that a local government
24 financial emergency exists within the City of Detroit because
25 no satisfactory plan exists to resolve a serious financial

1 problem. On March 1st, 2013, after receiving that report,
2 the governor announced his determination that a financial
3 emergency existed within the city. On March 12, 2013,
4 Governor Snyder conducted a public hearing to consider the
5 City Council's appeal of his determination. On March 14,
6 2013, the governor confirmed his determination of a financial
7 emergency within the city and requested that the Local
8 Emergency Financial Assistance Loan Board appoint an
9 emergency financial manager under PA 72. On March 15, 2013,
10 the Loan Board appointed Kevyn Orr as the emergency financial
11 manager for the City of Detroit. On March 15, Mr. Orr took
12 office formally. On March 18, which was the effective date
13 of PA 436, PA 72 was repealed, and Mr. Orr became the
14 emergency manager of the city under PA 436.

15 Under law, the emergency manager acts for and in the
16 place and stead of the governing body and the office of the
17 chief administrator -- administrative officer of the local
18 government. He has broad powers in receivership to rectify
19 the financial emergency and to assure the fiscal
20 accountability of the local government and the local
21 government's capacity to provide or cause to be provided
22 necessary government services essential to the public health,
23 safety, and welfare.

24 On June 14, 2013, Mr. Orr organized a meeting with
25 approximately 150 representatives of the city's creditors.

1 Mr. Orr presented the June 14 creditor proposal, Exhibit 43,
2 and answered questions. At the conclusion of the meeting,
3 Mr. Orr invited creditor representatives to provide feedback
4 to the city regarding the proposal. This proposal described
5 the economic circumstances that resulted in Detroit's
6 financial condition. It also offered a restructuring of the
7 city's operations, financing, and capital structure. It also
8 offered recoveries for each creditor group.

9 Regarding creditor recoveries, the city proposed,
10 (a) treatment of secured debt adequate to the value of the
11 collateral; (b) the pro rata distribution of \$2 billion in
12 principal amount of interest only limited recourse
13 participation notes to holders of unsecured claims -- that
14 is, the unsecured bondholders, the COP's, the pension
15 systems, retirees, and other unsecured claims -- and (c) a
16 Dutch auction process for the city to purchase or pay the
17 notes.

18 Following the June 14, 2013, meeting at which the
19 proposal to creditors was presented, Mr. Orr and his staff
20 had several other meetings. On June 3, 2013, two lawsuits
21 were filed against the governor and the treasurer in state
22 court. These suits sought a declaratory judgment that PA 436
23 violated the Michigan Constitution to the extent that the law
24 purported to authorize bankruptcy proceedings in which vested
25 pension benefits might be impaired. The suits also sought an

1 injunction preventing the governor from authorizing a
2 bankruptcy proceeding for the City of Detroit in which
3 pension -- vested pension benefits might be impaired. The
4 two cases were Flowers v. Snyder and Webster v. Snyder. On
5 July 17, 2013, the GRS commenced a similar lawsuit, General
6 Retirement System of the City of Detroit v. Orr. On the day
7 before, July 16, 2013, Mr. Orr had recommended to the
8 governor and the treasurer that the city file for Chapter 9
9 relief. On July 18, Governor Snyder authorized the City of
10 Detroit to file a Chapter 9 bankruptcy case. At 4:06 p.m. on
11 July 18, 2013, the City of Detroit filed this Chapter 9
12 bankruptcy case.

13 Before turning to the filed objections in this case,
14 it is necessary to point out that the city bears the burden
15 to establish by a preponderance of the evidence each of the
16 elements of eligibility under Section 109(c). As the Court
17 commented at the conclusion of the hearing on September 19,
18 2013, the individuals' presentations on that day were moving,
19 passionate, thoughtful, compelling, and well-articulated.
20 These presentations demonstrated an extraordinary depth of
21 concern for the City of Detroit, for the adequate level of
22 services that their city government provides, and for the
23 personal hardships that that creates, and most clearly for
24 the pensions of the city retirees and employees. These
25 individuals expressed another deeply held concern and even

1 anger that became a major theme of the hearing, the concern
2 and anger that the state's appointment of an emergency
3 manager over the City of Detroit violated their fundamental
4 democratic right to self-governance.

5 The Court's role here is to evaluate how these
6 concerns might impact the city's eligibility for bankruptcy.
7 In making that evaluation, of course, the Court can only
8 consider the specific requirements of applicable law. The
9 popularity of the decision to appoint an emergency manager is
10 not a matter of eligibility under the federal bankruptcy
11 laws. The Court has carefully considered the concerns of the
12 individuals that filed eligibility objections, including
13 those that addressed the Court on September 19 of this year.
14 Those concerns are addressed throughout the Court's opinion
15 but are primarily addressed in the context of whether this
16 case was filed in good faith.

17 The Court will now begin its findings and
18 conclusions. The City of Detroit is a municipality as
19 defined in the Bankruptcy Code. The parties agree to that.
20 Several objecting parties challenge the constitutionality of
21 Chapter 9 of the Bankruptcy Code under the United States
22 Constitution. Citing the United States Supreme Court's
23 decision in Stern versus Marshall, these parties also assert
24 that this Court does not have the authority to determine the
25 constitutionality of Chapter 9. Several objecting parties

1 also challenge the constitutionality of Public Act 436 under
2 the Michigan Constitution. Some of these parties also assert
3 that this Court does not have the authority to determine the
4 constitutionality of PA 436.

5 The Official Committee of Retirees previously filed
6 a motion to withdraw the reference to the District Court on
7 the grounds that this Court does not have the authority to
8 determine the constitutionality of either Chapter 9 or PA
9 436. It also filed a motion for stay of the eligibility
10 proceedings pending the District Court's resolution of that
11 motion. In this Court's denial of the stay motion, it
12 concluded that the committee was unlikely to succeed on its
13 arguments regarding this Court's lack of authority under
14 Stern. For the reasons stated in that opinion, the Court
15 concludes that it has the authority to determine the
16 constitutionality of Chapter 9 and PA 436.

17 The objecting parties argue that Chapter 9 of the
18 Bankruptcy Code violates several provisions of the United
19 States Constitution both on its face and as applied in this
20 bankruptcy case. Article I, Section 8, of the United States
21 Constitution provides the Congress shall have the power to
22 establish uniform laws on the subject of bankruptcies
23 throughout the United States. The objecting parties assert
24 that Chapter 9 violates the uniformity requirement of the
25 United States Constitution because Chapter 9 cedes to each

1 state the ability to define its own qualifications for a
2 municipality to declare bankruptcy, and, therefore, Chapter 9
3 permits the promulgation of nonuniform bankruptcies within
4 the states. The Supreme Court has addressed the uniformity
5 requirement in several cases. Most notably, in Hanover
6 National Bank v. Moyses in 1902 the Supreme Court held that
7 the incorporation into the bankruptcy law of state laws that
8 relate to exemptions did not violate the uniformity
9 requirement of the Constitution. The Court stated, "The
10 general operation of the law is uniform although it may
11 result in certain peculiarities differently in different
12 States" -- I'm sorry -- "certain particulars differently in
13 different States."

14 The Court concludes that Chapter 9 does exactly what
15 the Supreme Court cases require to meet the uniformity
16 requirement. The defined class of debtors to which Chapter 9
17 applies is the class of entities that meet the eligibility
18 requirements. One such class qualification is that the
19 entity is specifically authorized to be a debtor under
20 Chapter 9 by state law. As Moyes held, it is of no
21 consequence in the uniformity analysis that this requirement
22 of state authorization to file a Chapter 9 case may lead to
23 different results in different states. Accordingly, the
24 Court concludes that Chapter 9 satisfies the uniformity
25 requirement of the bankruptcy clause of the United States

1 Constitution.

2 The contracts clause of the United States
3 Constitution provides, quote, "No State shall pass any law
4 impairing the Obligation of Contracts," close quote. It is
5 argued that Chapter 9 violates the contracts clause. This
6 argument is rejected. Chapter 9 is a federal law, not a
7 state law. Article I, Section 10, does not prohibit Congress
8 from enacting a law impairing the obligation of contracts.

9 The Tenth Amendment challenge to Chapter 9 is the
10 most strenuously argued here. That amendment provides,
11 quote, "The powers not delegated to the United States by the
12 Constitution, nor prohibited by it to the States are reserved
13 to the States respectively, or to the people," close quote.
14 The objecting parties argue that Chapter 9 of the Bankruptcy
15 Code violates the principles of federalism that are reflected
16 in this amendment. The argument is that through Chapter 9,
17 Congress has established rules that control state fiscal
18 self-management, which is an area of exclusive state
19 sovereignty. This argument is a facial challenge to the
20 constitutionality of Chapter 9. The as applied challenge is
21 that if the State of Michigan can properly authorize the City
22 of Detroit to file for Chapter 9 relief without the explicit
23 protection of pension rights for retired city employees, then
24 Chapter 9 is unconstitutional because that would violate
25 Michigan's sovereignty.

1 Before addressing the merits of these arguments,
2 however, the Court must first address two preliminary issues
3 that the United States raised, standing and ripeness. First,
4 the Court concludes that the objecting parties do have
5 standing. Section 1109(b) of the Bankruptcy Code provides,
6 quote, "A party in interest, including a creditor, may raise
7 and appear and be heard on any issue in a case under this
8 chapter," close quote. Section 901(a) makes this provision
9 applicable in a Chapter 9 case. Accordingly, the objecting
10 parties who are creditors with pension claims against the
11 city have standing to assert their constitutional challenges
12 as part of their objections to this bankruptcy case.

13 The United States further argues that the issue of
14 whether Chapter 9 is constitutional as applied in this case
15 is not ripe for determination at this time. The city joins
16 in this argument. Early on in this case, the Court expressed
17 its own doubts about this thinking that the issue of whether
18 pension rights can be impaired in bankruptcy applied more to
19 confirmation than to eligibility. The Court finds now that
20 these issues are ripe for decision. At the request of the
21 objecting parties, the Court, therefore -- excuse me --
22 reconsidered that position and now agrees that the issue is
23 ripe at this point.

24 The premise of the argument that the United States
25 makes is that the filing of the case did not result in the

1 impairment of any pensions, thus the United States argues
2 that this issue will be ripe only when the city proposes a
3 plan that would impair pensions if it were confirmed. Until
4 then, it argues their injury is speculative. Although the
5 argument of the United States has some appeal, as the Court
6 itself initially concluded, the Court must now reject it.

7 The ultimate issue before the Court at this time is
8 whether the city is eligible to be a debtor in Chapter 9.
9 This dispute arises in the concrete factual context of the
10 City of Detroit's filing this bankruptcy case under Chapter 9
11 of the Bankruptcy Code and the objecting parties challenging
12 the constitutionality of that very law. This dispute is not
13 an abstract disagreement that is ungrounded in the here and
14 now. It is here, and it is now. The Court further concludes
15 that as a matter of judicial prudence resolving this issue
16 now will likely expedite the resolution of this bankruptcy
17 case. The parties have fully briefed and argued the merits.
18 Further, if the Tenth Amendment challenge to Chapter 9 is
19 resolved now, the parties and the Court can then focus on
20 whether the Court -- whether the city's plan will meet the
21 confirmation requirements of the Bankruptcy Code.
22 Accordingly, the Court concludes that the objecting parties'
23 challenge to Chapter 9 of the Bankruptcy Code as applied in
24 this case is ripe for determination at this time.

25 The Court concludes that the United States Supreme

1 Court has already decided the question of whether a federal
2 municipal bankruptcy act can be administered consistent with
3 the principles of federalism reflected in the Tenth
4 Amendment. In United States versus Bekins, the Supreme Court
5 specifically upheld the Municipal Corporation Bankruptcy Act
6 of 1937 over the objections that the statute violated the
7 Tenth Amendment. It is well-settled that this Court is bound
8 by the decisions of the United States Supreme Court.

9 Nevertheless, the objecting parties assert that
10 Bekins is no longer good law because of amendments to the
11 municipal bankruptcy statute after Bekins was decided and
12 because of two more recent Supreme Court decisions regarding
13 the Tenth Amendment. However, the Court concludes first that
14 changes to the municipal bankruptcy law since 1937 have been
15 minor and do not undermine the continuing validity of Bekins.
16 Second, changes to the Supreme Court's Tenth Amendment law do
17 not undermine the continuing validity of Bekins. In its
18 recent cases deciding issues under the Tenth Amendment, New
19 York versus United States and Printz versus United States,
20 the Supreme Court has upheld laws that encourage states to
21 regulate according to federal policies so long as the states
22 consent. On the other hand, laws that compel or commandeer
23 state resources do violate the Tenth Amendment. The key is
24 state consent. Chapter 9 simply does not raise a consent
25 issue. As the Supreme Court emphasized in Bekins, Chapter 9

1 is limited to voluntary proceedings. The federal government
2 cannot and does not compel states to authorize municipalities
3 to file for Chapter 9 relief, and municipalities are not
4 permitted to seek Chapter 9 relief without specific state
5 authorization. There is simply no commandeering or
6 compulsion involved. Therefore, the Court concludes that
7 Chapter 9 is not facially unconstitutional under the Tenth
8 Amendment of the United States Constitution.

9 Several of the objecting parties also raise as
10 applied challenges to the constitutionality of Chapter 9
11 under the Tenth Amendment. The primary point of these
12 arguments is that if Chapter 9 permits the State of Michigan
13 to authorize a city to file a petition for Chapter 9 relief
14 without explicitly providing for protection of
15 constitutionally protected pension rights, then the Tenth
16 Amendment is violated. The State of Michigan itself cannot
17 legally provide for the adjustment of pension debts or any
18 debts of the City of Detroit. That is so because the United
19 States Constitution and the Michigan Constitution both
20 prohibit the State of Michigan from impairing contracts. It
21 is also because the Michigan Constitution prohibits the
22 impairing of the -- of accrued pension benefits. These
23 prohibitions, however, do not apply in the federal Bankruptcy
24 Court. As the Bankruptcy Court in the City of Stockton
25 Chapter 9 case said, the bankruptcy clause of the United

1 States Constitution necessarily authorizes Congress to make
2 laws that would impair contracts, so it has long been
3 understood that bankruptcy law entails impairment of
4 contracts. For purposes of the Tenth Amendment and state
5 sovereignty, nothing distinguishes pension debt in a
6 municipal bankruptcy case from any other debt. If the Tenth
7 Amendment prohibits the impairment of pension benefits in
8 this case, then it would also prohibit the adjustment of any
9 other debt in the case like bond debt. Bekins makes it
10 clear, however, that with state consent the adjustment of
11 municipal debts does not impermissibly intrude on state
12 sovereignty. This Court is bound to follow that Supreme
13 Court holding.

14 The plans and other objecting parties counter that
15 result by asserting that under the Michigan Constitution
16 pension debt has greater protection than ordinary contract
17 debt. The argument is premised on the slim read that in the
18 Michigan Constitution the pension clause provides that
19 pension rights may not be, quote, "impaired or diminished"
20 whereas the contracts clause in the Michigan Constitution
21 only prohibits impairing contract rights. There are several
22 reasons why the slight difference between the language that
23 protects contracts, no impairment, and the language that
24 protects pensions, no impairment or diminishment, does not
25 demonstrate that pensions are entitled to any extraordinary

1 protection. At common law, before the adoption of the
2 Michigan Constitution in 1963, public pensions in Michigan
3 were viewed as gratuitous allowances that could be revoked at
4 will because a retiree lacked any vested right in their
5 continuation. In 1963, this new provision enhancing the
6 protection for pensions was included, quote, "The accrued
7 financial benefits of each pension plan and retirement system
8 of the state and its political subdivisions shall be a
9 contractual obligation thereof which shall not be diminished
10 or impaired thereby," close quote. That's Article IX,
11 Section 24, of the Michigan Constitution of 1963.

12 So here are the reasons why pension rights are
13 contract rights under the Michigan Constitution. First, as
14 noted, the language of Article IX, Section 24, gives pension
15 benefits the status of a, quote, "contractual obligation,"
16 close quote. That's the language that it uses.

17 Second, if the Michigan Constitution were meant to
18 give the kind of higher or even absolute protection for which
19 the plans argue here, that language simply would not have
20 referred to pension benefits as a, quote, "contractual
21 obligation," close quote.

22 Third, linguistically there is no functional
23 difference in meaning between "impair" and "impair or
24 diminish." Now, there certainly is a preference, if not a
25 mandate, to give every -- to give meaning to every word in

1 written law. At the same time, however, we give undefined
2 statutory terms their plain and ordinary meanings. If this
3 Court gives these terms, "diminish" and "impair," their plain
4 and ordinary meanings, those meanings would not be
5 substantially different from each other. The terms are not
6 synonyms, but they cannot honestly be given meanings so
7 different as to compel the result that the plans now seek,
8 the protection of pension rights in bankruptcy. "Diminish"
9 adds nothing material to "impair." All diminishment is
10 impairment, and "impair" includes "diminish."

11 Fourth, the argument for a greater protection is
12 inconsistent with the Michigan Supreme Court's interpretation
13 of this constitutional language in two cases, Kosa versus
14 Treasury -- Treasurer of the State of Michigan and In re.
15 Constitutionality of 2011 PA 38. In Kosa in 1980 the
16 Michigan Supreme Court quoted the history from the
17 Constitutional Convention regarding Article IX, Section 24.
18 Several times that history refers to pension rights as
19 contractual rights. The Court in Kosa also itself used
20 contractual language when referring to pension rights. More
21 recently in In re. Constitutionality of 2011 PA 38 in 2011,
22 the Michigan Supreme Court stated, quote, "The obvious intent
23 of Section 24, however, was to ensure that public pensions be
24 treated as contractual obligations that, once earned, could
25 not be diminished," close quote.

1 Fifth, an even greater narrative must be considered
2 here focusing on 1963. At that time, Michigan law allowed
3 municipalities to file a bankruptcy, and Bekins had long
4 since held that that was constitutional, so when the new
5 Michigan Constitution was negotiated and proposed and
6 ratified in 1963, it explicitly gave accrued pension benefits
7 only the status of contractual obligations. That new
8 Constitution could have given pensions protection from
9 impairment in bankruptcy in several ways, but it did not. It
10 could have simply prohibited Michigan municipalities from
11 filing bankruptcy. It could have somehow created a property
12 interest that bankruptcy would be required to respect, or it
13 could have established some sort of a secured interest in the
14 municipality's property. It could have even required the
15 state to guarantee pension benefits, but it did none of
16 those. Instead, both the history from the Constitutional
17 Convention and the very language of the pension provision
18 itself, it is made clear municipal pension rights are
19 contract rights. Because under the Michigan Constitution
20 pension rights are contractual rights, they are subject to
21 impairment in a federal bankruptcy proceeding. Moreover,
22 where, as here, the state consents, that impairment does not
23 violate the Tenth Amendment. Therefore, as applied in this
24 case, Chapter 9 is Constitutional.

25 Nevertheless, the Court is compelled to comment. No

1 one should interpret this holding that pension rights are
2 contract rights and subject to impairment in this bankruptcy
3 case to mean that this Court necessarily will confirm any
4 plan of adjustment that impairs pensions. The Court
5 emphasizes that it will not lightly or casually exercise the
6 power under federal bankruptcy law to impair pensions.
7 Before the Court confirms any plan that the city submits, the
8 Court must find that the plan fully meets the requirements of
9 Section 943(b) of the Bankruptcy Code and the other
10 applicable provisions of the Bankruptcy Code. Together these
11 provisions of law demand this Court's judicious, legal, and
12 equitable consideration of the interests of the city and the
13 interests of all of its creditors, including retirees, as
14 well as the laws of the State of Michigan.

15 Section 109(c) (2) of the Bankruptcy Code requires
16 that a municipality be specifically authorized to be a debtor
17 under such chapter. The evidence establishes that the city
18 was authorized to file this case. The issue is whether that
19 authorization was proper under the Michigan Constitution.
20 Several objectors argue that the authorization is not valid
21 because Public Act 436, the statute establishing the
22 underlying procedure for a municipality to obtain
23 authorization, is unconstitutional. The validity of Public
24 Act 436 under the Michigan Constitution is a question of
25 state law. The Michigan Supreme Court has not ruled on the

1 validity of Public Act 436. As a result, this Court must
2 attempt to ascertain how that Court would rule if it were
3 faced with this issue.

4 As discussed earlier, on March 16th, 2011, the
5 governor signed Public Act 4 into law, but Public Act 4 was
6 repealed by Public Act 72. However, the voters rejected
7 Public Act 4 by referendum in the November 6, 2012, election.
8 Shortly after that election on December 26th, 2012, the
9 governor signed PA 436 into law, and it took effect on March
10 28th, 2013. It is argued here that Public Act 436 is
11 unconstitutional because it is essentially a reenactment of
12 the rejected Public Act 4 in violation of the people's
13 referendum rights. The city and the State of Michigan assert
14 that there are several differences between Public Act 436 and
15 Public Act 4 such that they are not the same law. In
16 Reynolds versus Bureau of State Lottery in 2000, the Michigan
17 Court of Appeals held that nothing in the Michigan
18 Constitution suggests that a referendum has any broader
19 effect than the nullification of the rejected act. This
20 Michigan Court of Appeals decision strongly suggests that the
21 referendum rejection of Public Act 4 did not prohibit the
22 Michigan legislature from enacting Public Act 436 even though
23 Public Act 436 addressed the same subject matter as Public
24 Act 4 and did contain very few changes. Accordingly, the
25 challenge on this ground must be rejected.

1 It is also contended that Public Act 436 is
2 unconstitutional because the Michigan legislature included
3 appropriations provisions in Public Act 436 for the sole
4 purpose of shielding the act from referendum. There
5 certainly was some credible evidence in support of the
6 assertion that the appropriations provision in Public Act 436
7 were intended to immunize it from referendum. For example,
8 Howard Ryan, the legislative assistant in the Michigan
9 Department of Treasury, so testified in his deposition. The
10 Court must conclude, however, that if faced with this issue,
11 the Michigan Supreme Court would not hold Public Act 436
12 unconstitutional on this grounds. In Michigan United
13 Conservation Clubs versus Secretary of State in 2001, the
14 Court concisely held that a public act with an appropriations
15 provision is not subject to referendum regardless of the
16 motive of the appropriation. To the same effect was Houston
17 v. Governor decided by the Michigan Supreme Court in 2012.
18 Accordingly, the Court concludes that PA 436 is not
19 unconstitutional on the grounds that the appropriations
20 provisions of it improperly shielded it from the people's
21 right of referendum.

22 Certain objectors also argue that Public Act 436
23 violates the home rule provision of the Michigan
24 Constitution, which recognizes the right of the electors to
25 adopt and amend the city charter and the city's right to

1 adopt ordinances. The argument is that the appointment of an
2 emergency manager for a municipality under PA 436 is
3 inconsistent with those rights. This argument fails for the
4 simple reason that this authority that the Michigan
5 Constitution grants to municipalities is subject to state
6 laws enacted by the legislature. The constitutional
7 provision specifically says so. It states, quote, "Each city
8 and village shall have the power to adopt resolutions and
9 ordinances relating to its municipal concerns, property and
10 government, subject to the constitution and law," close
11 quote. Indeed, Section 1-102 of the city -- excuse me -- of
12 the charter of the City of Detroit states, quote, "The City
13 has the comprehensive home rule power conferred upon it by
14 the Michigan Constitution, subject only to the limitations on
15 the exercise of that power contained in the Constitution or
16 this Charter or imposed by statute," close quote.
17 Accordingly, the Court finds that PA 436 does not violate the
18 home rule provisions of the Michigan Constitution.

19 Many objectors argue that the bankruptcy
20 authorization section of PA 436 itself does not comply with
21 the heightened requirements for protecting pensions in the
22 Michigan Constitution and, therefore, that PA 436 is
23 unconstitutional. Accordingly, the objectors argue that PA
24 436 cannot provide a valid basis for authorization to file a
25 bankruptcy. The Court has already explained that pension

1 benefits are a contractual obligation of the municipality and
2 not entitled to any heightened protection in bankruptcy. It
3 follows that if a state consents to a municipal bankruptcy,
4 no state law can protect pension rights that are merely
5 contractual rights from impairment in bankruptcy just as no
6 law could protect any other type of contract rights like
7 bonds. Accordingly, the failure of PA 436 to protect pension
8 rights in a municipal bankruptcy does not make that law
9 inconsistent with the pension clause of the Michigan
10 Constitution any more than the failure of PA 436 to protect,
11 for example, bond debt in bankruptcy is inconsistent with the
12 contracts clause of Michigan Constitution. For this purpose,
13 the parallel is perfect. For these reasons, the Court
14 concludes that PA 436 does not violate the pension clause of
15 the Michigan Constitution.

16 PA 436 permits the governor to place contingencies
17 on a local government in order to proceed under Chapter 9.
18 The governor chose not to impose a contingency requiring the
19 City of Detroit to protect pensions in bankruptcy. Several
20 objectors argue that the pension clause of the Michigan
21 Constitution obligated the governor to include such a
22 condition in his authorization. The Court concluded earlier
23 that any such condition in PA 436 itself would be ineffective
24 and potentially invalid under federal law. For the same
25 reason, any such contingency in the governor's authorization

1 letter would have been invalid and may have rendered the
2 authorization itself invalid under Section 109(c).
3 Accordingly, this objection is overruled. The Court
4 concludes that the governor's authorization to file this
5 bankruptcy case under PA 436 was valid under the Michigan
6 Constitution.

7 On July 3, 2013, Gracie Webster and Veronica Thomas
8 filed a complaint against the State of Michigan, Governor
9 Snyder, and Treasurer Dillon in the Ingham County Circuit
10 Court. They sought a declaratory judgment that PA 436 is
11 unconstitutional because it permits accrued pension benefits
12 to be diminished or impaired in violation of Article IX,
13 Section 24, of the Michigan Constitution. The complaint also
14 sought a preliminary and permanent injunction enjoining the
15 governor and the treasurer from authorizing the Detroit
16 emergency manager to commence proceedings under Chapter 9 of
17 the Bankruptcy Code.

18 On Thursday, July 18th, 2013, just minutes after the
19 city filed its bankruptcy petition, the state court held a
20 hearing. During that hearing, the state court confirmed that
21 the bankruptcy case had been filed. Nevertheless, the state
22 court granted the relief enjoining the governor and the
23 emergency manager -- excuse me -- enjoining the governor from
24 taking any further action in the bankruptcy proceeding.

25 A further hearing was held the next day on the

1 plaintiff's request to amend the order of the previous
2 afternoon. At the conclusion of that hearing, the judge then
3 stated her decision to grant the declaratory relief that the
4 plaintiffs had requested. Later that day on July 19th, 2013,
5 the court entered a declaratory -- an order of declaratory
6 relief. It states that PA 436 is unconstitutional and in
7 violation of Article IX, Section 24, of the Michigan
8 Constitution. It also states that PA 436 is to that extent
9 of no force and effect. In their objections in this case,
10 several of the objectors assert that this judgment precludes
11 or prevents the city from asserting that PA 436 is
12 constitutional or that the governor properly authorized this
13 bankruptcy filing.

14 There are, however, two main reasons why this Court
15 is not required to honor the Webster judgment in this
16 bankruptcy case. First, upon the city's bankruptcy filing,
17 federal law gave this Court exclusive jurisdiction to
18 determine all issues relating to the city's eligibility to be
19 a Chapter 9 debtor. At that moment, the state court no
20 longer had jurisdiction. Accordingly, the state court's
21 order of declaratory judgment on which the objectors rely is
22 void and of no effect. It does not preclude the city from
23 asserting its eligibility to file bankruptcy in this case.

24 Second, bankruptcy law provides that when a
25 bankruptcy petition is filed, it operates as a stay of any

1 act to exercise control over property of the estate. The
2 main objectives of the plaintiff's case in Webster v.
3 Michigan was to protect the plaintiff's pension rights by
4 prohibiting a bankruptcy case which might allow the city to
5 use its property in a way that might impair pensions. It
6 does not matter that neither the city nor its officers were
7 defendants. The suit was clearly an act to exercise control
8 over the city's property. Accordingly, it was stayed under
9 the bankruptcy law. The state court's order of declaratory
10 relief was entered in violation of the stay. For those two
11 reasons, the Court concludes that the judgment in Webster is
12 void, and this objection to the city's eligibility is
13 rejected.

14 To be eligible for relief under Chapter 9, the city
15 must establish that it is insolvent. A few objectors contest
16 this requirement of eligibility under Section 109(c)(3). For
17 a municipality, the Bankruptcy Code defines insolvent as,
18 quote, "a financial condition such that the municipality is:
19 (i) generally not paying its debts as they become due unless
20 such debts are the subject of a bona fide dispute; or (ii) is
21 unable to pay its debts as they become due." The Court finds
22 that the City of Detroit was and is insolvent under both
23 definitions. The Court has already detailed the enormous
24 financial distress that the city faced as of July 18th, 2013,
25 and will not repeat it here. The Court finds that the city

1 was generally not paying its debts as they became due.

2 In May 2013 the city deferred payments on \$54
3 million in pension contributions. On July 30th it deferred
4 an additional \$5 million fiscal year-end payment. The city
5 also did not make a scheduled \$39.7 million payment on its
6 COP's on June 14th. It was also spending more money than it
7 was receiving and only making up the difference through
8 expensive and even catastrophic borrowings. These facts
9 establish that the city was generally not paying its debts as
10 they became due as of the time of filing.

11 The evidence also overwhelmingly establishes that
12 the city is unable to pay its debts as they become due. The
13 evidence established that as a result of the city's financial
14 state, there are many, many services in the city which do not
15 function properly. The facts found earlier firmly support
16 this conclusion.

17 Most powerfully, however, the testimony of Chief
18 Craig established that the city is in a state of service
19 delivery insolvency as of July 18th and will continue to be
20 for the foreseeable future. He testified that the conditions
21 in the local precincts were deplorable. He said, quote, "if
22 I just might summarize it in a very short way, that
23 everything is broken, deplorable conditions, crime is high --
24 extremely high, morale is low, the absence of leadership,"
25 close quote. He described the city as, quote, "extremely

1 violent," close quote, based on the high rate of violent
2 crime and the low rate of clearance of violent crimes. He
3 stated that their facilities, equipment, and vehicles were in
4 various states of disrepair and obsolescence. Service
5 delivery insolvency focuses on the municipality's inability
6 to pay for all costs of providing services at the level and
7 quality that are required for the health, safety, and welfare
8 of the community.

9 The objecting parties assert that the city could
10 have and should have monetized a number of its assets in
11 order to make up for its severe cash flow insolvency. Most
12 directly, this objection targets the city's valuable art
13 collection. However, the city's witnesses credibly
14 established that sales of city assets would not address the
15 long-term operational structural financial imbalance facing
16 the city, and this makes sense. When the expenses of an
17 enterprise exceed its revenue, a one-time infusion of cash,
18 whether from an asset sale or from a borrowing, only delays
19 the inevitable financial failure unless, in the meantime, the
20 enterprise sufficiently reduces its expenses or enhances its
21 income. The City of Detroit itself has proven the reality of
22 this many, many times. In any event, when considering
23 selling an asset, the enterprise must take extreme care that
24 the asset is truly unnecessary in pursuing its mission and
25 unnecessary in enhancing its operational revenue. For these

1 reasons, the Court finds that the city has established that
2 it is insolvent.

3 The city must also establish that it desires to
4 effect a plan to adjust its debts under Section 109(c)(4).
5 In the City of Stockton case, the Bankruptcy Court explained
6 the cases equate desire with intent and make clear that this
7 element is highly subjective. At the first level, the
8 question is whether the Chapter 9 case was filed for some
9 ulterior motive such as to buy time or to evade creditors
10 rather than to restructure the city's finances. Several
11 objectors assert that the city does not desire to effect a
12 plan to adjust its debts. The Court concludes that the
13 evidence overwhelmingly establishes that the city does desire
14 to effect a plan in this case. Mr. Orr so testified. More
15 importantly, before filing this case, Mr. Orr did submit to
16 creditors a plan to adjust the city's debts. Plainly, that
17 plan was not acceptable to any of the city's creditors. It
18 may not have even been confirmable under the Bankruptcy Code,
19 although that is not necessary to resolve at this time.
20 Still, it was evidence of the city's desire and intent to
21 effectuate a plan. There is simply no evidence that the city
22 has an ulterior motive in pursuing Chapter 9 such as to buy
23 time or to evade creditors. Indeed, the objecting creditors
24 do not really contend that there was any such ulterior
25 motive. Rather, their argument is that the plan that the

1 emergency manager has stated he intends to propose in this
2 case is not a confirmable plan. It is not confirmable, they
3 argue, because it will impair pensions in violation of the
4 Michigan Constitution. Certainly the evidence does
5 establish -- certainly the evidence does establish that the
6 emergency manager intends to propose a plan that impairs
7 pensions. The Court has already so found. Nevertheless, the
8 objectors' argument must be rejected. As established
9 earlier, a Chapter 9 plan may impair pension rights. The
10 emergency manager's stated intent to propose a plan that
11 impairs pensions is, therefore, not inconsistent with a
12 desire to effect a plan. Accordingly, the Court finds that
13 the city does desire to effect a plan.

14 The fifth element for eligibility is found in
15 Section 109(c)(5). Under that section an entity may be a
16 debtor under Chapter 9 if such entity has either negotiated
17 in good faith with creditors or is unable to negotiate with
18 creditors because such negotiation is impracticable. In the
19 present case, the City of Detroit argues that the June 14,
20 2013, proposal to creditors along with its follow-up meetings
21 was a good faith effort to begin negotiations to which
22 creditors refused to respond. The Court concludes, however,
23 that the June 14 proposal to creditors and the follow-up
24 meetings were not sufficient to satisfy the requirements of
25 good faith negotiations under law. The proposal to creditors

1 did not provide creditors with sufficient information to make
2 meaningful counterproposals, especially in the very short
3 amount of time that the city allowed for the, quote,
4 "discussion," close quote, period. Charitably stated, the
5 proposal is very summary in nature. There was simply not
6 enough information for creditors to start meaningful
7 negotiations. For example, Brad Robins of Greenhill &
8 Company, the financial advisor for the Retirement Systems,
9 testified, quote, "The note itself I thought was not really a
10 serious proposal but may be a placeholder, no maturity, no
11 obligation for the city to pay," close quote. The city
12 asserts that it provided supporting data in an electronic
13 data room. However, several witnesses testified that the
14 data room did not contain the necessary data to make a
15 meaningful evaluation of the proposal to creditors.
16 Moreover, the city conditioned access to the data room on the
17 signing of a confidentiality and release agreement. This
18 created an unnecessary hurdle for creditors. The creditors
19 simply cannot be faulted for failing to offer
20 counterproposals when they did not have the necessary
21 information to evaluate the city's vague initial proposal.
22 The proposal for creditors provided a calendar. It allotted
23 one week, June 17 to 24, for requests for additional
24 information. The initial rounds of discussions were
25 scheduled for July 17 -- sorry -- June 17 to July 12, and the

1 evaluation period was scheduled to be July 15 to July 19.
2 This calendar was very tight and did not request
3 counterproposals or even provide a deadline for submitting
4 them. The total time available under this schedule for
5 creditor negotiations was approximately 30 days. Given the
6 extraordinary complexities of the case and the 100,000
7 creditors, that amount of time is simply far too short to
8 conclude that such a vague proposal to creditors rises to the
9 level required to shift the burden to objectors to make
10 counterproposals.

11 In addition, the city affirmatively stated that the
12 meetings were not negotiations. The city asserts that this
13 was to clarify that the city was not waiving the suspension
14 of collective bargaining under Public Act 436, but the city
15 cannot announce to creditors that the meetings were not
16 negotiations and then assert to this Court that those same
17 meetings amounted to good faith negotiations.

18 Finally, the format of the meetings were primarily
19 presentational, informational, to different groups of
20 creditors with different issues and gave little opportunity
21 for creditor input or substantive discussion.

22 Accordingly, the Court concludes that the city has
23 not established by a preponderance of the evidence that it
24 has satisfied the requirements for good faith negotiations.

25 Congress adopted Section 109(c) (5) (C) specifically

1 to cover situations in which a very large body of creditors
2 would render pre-filing negotiations impracticable. Several
3 cases suggest that the impracticability requirement must be
4 satisfied based -- or excuse me -- may be satisfied based on
5 the sheer number of creditors involved. The list of
6 creditors of the City of Detroit is over 3,500 pages. It
7 lists over 100,000 creditors. The city estimates over 20,000
8 individual retirees are owed pension funds. The Court is
9 satisfied that when Congress enacted the impracticability
10 section, it foresaw precisely a situation like that which
11 faces the City of Detroit. The sheer size of the debt and
12 the number of individual creditors made pre-bankruptcy
13 negotiation impracticable, impossible really.

14 There are, however, several other circumstances that
15 also support a finding of impracticability. First, although
16 several unions have now come forward that they are the
17 natural representatives of the retirees, these same unions
18 asserted in response to the city's pre-filing inquiries that
19 they could not and did not represent retirees. These
20 responses sent a clear message to the city that the unions
21 would not negotiate on behalf of retirees.

22 Several voluntary associations of retirees also
23 assert that they are the natural representatives of retirees.
24 However, none assert that they can bind individual retirees
25 absent some sort of cumbersome class action litigation. As

1 Donald Taylor testified, ultimately it would be up to the
2 individual members of the association to decide if they would
3 accept or reject an offer.

4 Further, several witnesses who testified on behalf
5 of the retiree associations made their positions clear that
6 they would not have negotiated a reduction in accrued pension
7 benefits because they consider them to be fully protected by
8 state law. It is impracticable to negotiate with a group
9 that asserts that their position is immutable. As the Court
10 stated in Stockton, "It is impracticable to negotiate with a
11 stone wall."

12 Finally, the city has demonstrated that time was
13 quickly running out on its liquidity. Accordingly, the Court
14 finds that pre-filing negotiations were impracticable.

15 The last requirement for eligibility is set forth in
16 Bankruptcy Code Section 921(c). That section provides,
17 quote, "After any objection to the petition, the court, after
18 notice and a hearing, may dismiss the petition if the debtor
19 did not file the petition in bad faith -- excuse me -- in
20 good faith," close quote. The city's alleged bad faith in
21 filing its Chapter 9 petition was a central issue in the
22 eligibility trial. Indeed, in one form or another all of the
23 objecting parties have taken the position that the city did
24 not file its Chapter 9 petition in good faith and that this
25 Court should exercise its discretion to dismiss this case.

1 As will be explained, the Court finds that the totality of
2 circumstances coupled with the presumption of good faith
3 which arises because the city has proven each of the elements
4 of eligibility under Section 109(c) establishes that the city
5 filed its petition in good faith under 921(c).

6 In a moment, the Court will review the factors upon
7 which it relies in finding that the city filed this case in
8 bad -- in good faith. First, however, the Court considers it
9 crucial to this process to give voice to what it understands
10 is the narrative supporting the objecting parties' argument
11 that the City of Detroit did not file this case in good
12 faith. The Court will then explain why there is some support
13 in the record for this narrative. After that, the Court will
14 then explain why it still finds that the city filed this
15 petition in good faith. It must be recognized that the
16 narrative that the Court describes here is a composite of the
17 objecting parties' presentation on this issue. No single
18 objecting party neatly laid out this precise version with all
19 of its features described here. Moreover, it includes the
20 perceptions of not only several of the objecting parties
21 whose objections were filed by attorneys, but also many of
22 the individual objecting parties. This description does not
23 contain the Court's findings. It is only the Court's
24 perception of a compositive narrative -- excuse me --
25 composite narrative that appears to ground the objectors'

1 various bad faith arguments.

2 According to this composite narrative of the lead-up
3 to the bankruptcy filing on July 18, 2013, the City of
4 Detroit's bankruptcy was the intended consequence of a long-
5 term strategic plan. The goal of this bankruptcy, according
6 to this narrative, was the impairment of pension rights
7 through a bankruptcy filing by the city. Its genesis, the
8 narrative goes, was hatched in a Law Review article that two
9 Jones Day attorneys wrote. This is significant because Jones
10 Day later became not only the city's attorneys in the case
11 but the law firm from which the city's emergency manager was
12 hired. The article laid out in detail the legal road map for
13 using bankruptcy to impair municipal pensions. The objectors
14 believe that the plan was executed by the top officials of
15 the State of Michigan and the state's legal and financial
16 consultants. The goals of the plan included also lining the
17 professionals' pockets while extending the power of the state
18 government at the expense of the people of the City of
19 Detroit. In this narrative, there may even be a racial
20 element to the plan. The plan participants foresaw the
21 rejection of PA 4, according to this narrative, coming in the
22 November 2012 election, and so work began on PA 436 even
23 before that. As a result, it only took 14 days to enact PA
24 436 after it was introduced in the legislature's post-
25 election lame duck session. PA 436 was also enacted contrary

1 to the will of the people of the State of Michigan, as just
2 expressed in their rejection of PA 4. The plan included
3 inserting into PA 436 two very minor appropriations
4 provisions so that the law would not be subject to the
5 people's right of referendum and would not risk the same fate
6 as PA 4 had just experienced. The plan also saw the value in
7 enticing a bankruptcy attorney to become the emergency
8 manager even though he did not have the qualifications
9 required by PA 436. Another important part of the plan,
10 according to this narrative, was for the state government to
11 starve the city of cash by reducing its revenue sharing, by
12 refusing to pay the city millions of promised dollars, and by
13 imposing on the city a heavy financial burden of expensive
14 professionals. It also included suppressing information
15 about the value of the city's assets. The narrative
16 continues that this plan also required active concealment and
17 even deception. One purpose was to deny creditors,
18 especially those whose retirement benefits would be at risk
19 from such a filing, from effectively acting to protect those
20 interests. This concealment and deception were accomplished,
21 the narrative goes, through a public relations campaign that
22 deliberately misstated the ultimate objective of PA 436,
23 downplayed the likelihood of bankruptcy, asserted an unfunded
24 pension liability amount that was based on misleading and
25 incomplete data and analysis, understated the city's ability

1 to meet that liability, and obscured the vulnerability of
2 pensions in bankruptcy. It also included imposing an
3 improper requirement to sign a confidentiality and release
4 agreement as a condition of accessing financial information
5 in the data room. As the bankruptcy filing approached, the
6 narrative states that a necessary part of the plan became to
7 engage with creditors only the minimum necessary so that the
8 Court could later assert in -- so that the city could later
9 assert in Bankruptcy Court that it attempted to negotiate in
10 good faith. The plan, however, was not to engage in
11 meaningful pre-petition negotiations with the creditors
12 because successful negotiation might thwart the plan to file
13 a bankruptcy. "Check a box" was the phrase that some
14 objecting parties used for this.

15 The penultimate moment that represented the
16 successful culmination of the plan was the bankruptcy filing
17 itself. In this narrative, this was accomplished in secrecy
18 and a day before the planned date in order to prevent the
19 retirees who were at that moment in state court pursuing
20 their available state law remedies to protect their
21 constitutional pension rights. "In the dark of the night"
22 was the phrase used to describe the actual timing of the
23 filing. The phrase refers to the secrecy surrounding the
24 filing and captures in shorthand the assertion that the
25 petition was filed to avoid an imminent adverse ruling in the

1 Webster case in state court.

2 The oft repeated phrase that was important to the
3 objectors' theory of the city's bad faith was "foregone
4 conclusion." This was used in the assertion that Detroit's
5 bankruptcy case was a foregone conclusion perhaps as early as
6 January 2013, perhaps even earlier.

7 Finally, post-petition the plan also necessitated
8 the assertion of the common interest privilege to protect it
9 and its participants from disclosure. The Court must
10 emphasize again now that what the Court just summarized is
11 what it believes is the viewpoint of the objecting parties.
12 Those were not the Court's findings.

13 The Court will now, however, turn to its evaluation
14 of this viewpoint of bad faith on the city's part in filing
15 this case. The Court acknowledges that many people in
16 Detroit hold to this narrative or at least to substantial
17 parts of it. The Court further recognizes, on the other
18 hand, that state and city officials vehemently deny any such
19 improper motives or tactics as this theory attributes to
20 them. They contend that this case was filed for the proper
21 desire and necessary purpose of restructuring the city's
22 debts, including its pension debt, through a plan of
23 adjustment. Indeed, the Court has already found that the
24 city does desire to effect a plan of adjustment. The Court
25 finds, however, that in some particulars the record does

1 support the objectors' view of the reality that led to this
2 bankruptcy filing. It is, however, not nearly supported
3 enough -- in enough particulars for this Court to find that
4 the filing was in bad faith. For example, Howard Ryan
5 testified that the appropriations provision of PA 436 was
6 added to evade a referendum. An e-mail from Kevyn Orr was to
7 the same effect. The Jones Day pitch book from January 2013
8 laid out the scenario for this bankruptcy case, and Mr. Orr
9 was, after all, a bankruptcy lawyer, and his associates at
10 Jones Day did write the legal road map for this back in 2011.
11 And at the June 10 public meeting, Mr. Orr did mislead the
12 public about the status of pensions in bankruptcy as well as
13 about the chances of filing bankruptcy. The issue that such
14 evidence presents, however, is how to evaluate it in the
15 context of the good faith issue. One important question
16 raised, for example, is during the lead-up, was the City of
17 Detroit's bankruptcy filing a foregone conclusion as the
18 objecting parties assert. The answer is, yes, of course it
19 was, for a long time. Even if it was a foregone conclusion,
20 experience with both individuals and businesses in financial
21 distress establish that they often wait longer to file a
22 bankruptcy than is in their interests. Detroit was no
23 exception. Its financial crisis had been worsening for
24 decades, and it could have and should have filed bankruptcy
25 long before it did, perhaps even years before. Certainly the

1 Court must conclude that the bankruptcy -- that the
2 bankruptcy filing by the City of Detroit was a foregone
3 conclusion during all of 2013, but waiting too long does not
4 suggest bad faith.

5 Perhaps it would have been more consistent with our
6 democratic ideals and with the economic and social needs of
7 the city if its officials and state officials had openly and
8 forthrightly recognized the need for filing bankruptcy when
9 that need first arose. It is, after all, not bad faith to
10 file bankruptcy when it is needed, and city officials could
11 also avoided the appearances of pretext negotiations and the
12 resulting mistrust by simply announcing honestly that the
13 city is insolvent, that it needs to file bankruptcy, and that
14 negotiations would not even be attempted because it would be
15 impracticable. The law clearly permits that and for good
16 reason. It avoids the very delay and worse the very
17 suspicion and bad feeling that resulted here. The Court must
18 acknowledge some truth in the factual basis of the objectors'
19 claim that this case was not filed in good faith.

20 Nevertheless, for strong reasons that the Court will state
21 next, it finds that this case was filed in good faith and
22 should not be dismissed.

23 Number one, the Court finds that the city's
24 financial problems are of a type contemplated for Chapter 9
25 relief. The Court's finding here is based on its finding

1 that the city is insolvent and that the city was unable to
2 negotiate with creditors because that negotiation was
3 impracticable.

4 Number two, the city's filings are consistent with
5 the remedial purpose of Chapter 9. The Court's analysis on
6 this factor is based on its finding that the city desires to
7 effect a plan to adjust its debts. To show bad faith on this
8 factor, the evidence must establish that the purpose of the
9 filing of the Chapter 9 was not simply to buy time or --
10 excuse me -- to show good faith on this factor, the evidence
11 must establish that the purpose of the filing was not simply
12 to buy time or evade creditors. Notably, this argument was
13 not raised by the objectors in any pleadings or at trial, and
14 there's no evidence. The objectors do assert that the city
15 filed this petition to avoid a bad state court ruling in the
16 Webster litigation. They argue this is indicative of bad
17 faith. This argument is also rejected. It is quite common
18 for creditor lawsuits to precipitate bankruptcy filings.
19 That the lawsuits were in vindication of an important right
20 under the state Constitution does not change this result.
21 They were still suits to enforce creditors' claims against a
22 debtor that could not pay those claims. The objectors also
23 argue that the city filed the petition so that its pension
24 obligations could be impaired, and this is inconsistent with
25 the remedial purpose of bankruptcy. Again, discharging debt

1 is what motivates every debtor that files bankruptcy, and
2 that motivation does not suggest bad faith.

3 Three, the city made efforts to improve the state of
4 its finances prior to filing to no avail. Although the Court
5 finds that the city did not engage in good faith negotiations
6 with its creditors, the Court does find that the city did
7 make some efforts to improve its financial condition before
8 filing its Chapter 9 petition, which resulted in some
9 savings, as stated earlier. No objecting parties have
10 suggested any other measure that the city could have taken to
11 relieve its financial stress other than selling assets, but,
12 as stated earlier, that would not have solved any long-term
13 financial problems. The fact that the city did not consider
14 any alternatives to Chapter 9 in the period leading up to the
15 filing does not indicate bad faith either. By that time, all
16 of the measures that the city had attempted had largely
17 failed to resolve the problem of the city's cash flow
18 insolvency.

19 Four, the residents of the City of Detroit will be
20 severely prejudiced if this case is dismissed. The Court
21 concludes that this factor is of paramount importance in this
22 case. The city's debt and cash flow insolvency is causing
23 its nearly 700,000 residents to suffer hardship. As already
24 discussed at length, the city is service delivery insolvent.
25 Without the protection of Chapter 9, the city will be forced

1 to continue on the path that it was on until it filed this
2 case. In order to free up cash for day-to-day operations,
3 the city would have to continue to borrow money, defer
4 capital investments, and shrink its workforce. This solution
5 has proven unworkable. It is also dangerous for its
6 residents. This factor weighs heavily in favor of finding
7 good faith.

8 Accordingly, the Court concludes that the city's
9 petition was filed in good faith and the petition is not
10 subject to dismissal under Section 921(c). The Court
11 accordingly concludes that under Section 109(c) the City of
12 Detroit may be a debtor under Chapter 9 of the Bankruptcy
13 Code. The Court will enter an order for relief forthwith as
14 required by Section 921(d). The Court reminds all interested
15 parties that this eligibility determination is merely a
16 preliminary matter in this bankruptcy case. The city's
17 ultimate objective is the confirmation of a plan of
18 adjustment. It has stated on the record its intent to
19 achieve that objective with all deliberate speed and to file
20 a plan shortly. Accordingly, the Court strongly encourages
21 the parties to begin to negotiate or, if they have already
22 begun, to continue to negotiate with a view toward a
23 consensual plan.

24 The Court recognizes and understands, to the extent
25 it can, the widespread anguish and distress that this

1 decision to permit the city's bankruptcy to proceed may cause
2 to the city's employees and retirees as well as their
3 families. The Court, therefore, implores with all urgency
4 those who administer our social safety net, our governor who
5 authorized this case, our state government leaders, our civic
6 and business leaders, our religious and charitable
7 organizations, to focus yet greater attention on the real
8 human needs that will arise because of the city's bankruptcy.

9 The message of this bankruptcy is that the city does
10 not have enough money to properly care for its residents let
11 alone to pay its debts, and, unfortunately, that economic
12 fact would be true even if pensions did have the legal
13 protection that the city's employees and retirees seek here,
14 and that's the very wisdom of the bankruptcy law. It
15 recognizes that people, businesses, and even municipalities
16 can't print money, and it tries to provide an equitable and
17 hopeful solution.

18 It is, indeed, a momentous day. We have here a
19 judicial finding that this once proud and prosperous city
20 can't pay its debts. It's insolvent. It's eligible for
21 bankruptcy. At the same time, it also has an opportunity for
22 a fresh start. I hope that everyone associated with the city
23 will embrace that opportunity.

24 Under Section 921(e) of the Bankruptcy Code, there
25 is no stay of this finding. The Court understands that one

1 or more parties may seek an appeal of this directly to the
2 Court of Appeals. The Court would ask that any such request
3 be made promptly by motion.

4 Is it still the city's intent to file a plan by
5 year-end?

6 MR. HEIMAN: Your Honor, we're not quite certain.
7 I'm sorry. David Heiman for the city. We're still working
8 on our timeline but obviously mindful of your prior request
9 that we file before March 1, so we hope to be well within
10 that request.

11 THE COURT: All right. Thank you, sir.

12 MR. HEIMAN: Thank you.

13 THE COURT: Is there anything else that anyone would
14 like to raise at this time? No. We'll be in recess.

15 THE CLERK: All rise. Court is in recess.

16 (Proceedings concluded at 11:33 a.m.)

INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

December 5, 2013

Lois Garrett