

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Appellee, The State of Michigan, by and through the undersigned attorneys, submits the following designation of additional items to be included in the record on appeal in connection with Notice of Appeal filed by the Official Committee of Retirees [Dkt. #2057] from the Court's Opinion Regarding Eligibility [Dkt. #1945] and Order for Relief Under Chapter 9 of the Bankruptcy Code [Dkt. #1946].

Design- ation	Docket #	Filing Date	Description
1.	453	8/19/2013	Notice of Constitutional Challenge to Statute Pursuant to Rule 9005.1 of the Federal Rules of Bankruptcy Procedure filed by creditor Michigan Council 25 of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
2.	484	8/19/2013	Joinder of Local 324, International Union of Operating Engineers as interested party to Objections to Detroit's Eligibility for Relief Under Section 109(c) and 921(c) of the Bankruptcy Code
3.	486	8/19/2013	Joinder of Local 517M, Service Employees International Union as interested party to Objections to Detroit's Eligibility for Relief Under Sections 109(c) and 921(c) of the Bankruptcy Code
4.	495	8/19/2013	Objection to Eligibility to Chapter 9 Petition filed by creditor David Sole (Attachments: Index of Exhibits; Exhibit 1; Exhibit 2)
5.	504	8/19/2013	Objection to Eligibility to Chapter 9 Petition filed by creditors Michael

			Wells, Janet Whitson, Mary Washington, Bruce Goldman and Robbie Lee Flowers
6.	514	8/19/2013	Objection by Interested Party Center for Community Justice and Advocacy to the City of Detroit's Eligibility to Obtain Relief Under Chapter 9 of the Bankruptcy Code and to the City of Detroit's Memorandum in Support of Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (Attachments: Index of Exhibits; Exhibit Ingham County Circuit Court Order dated July 19, 2013; Exhibit States Authorizing Chapter 9 Bankruptcy Filing)
7.	517	8/19/2013	Objection to Eligibility to Chapter 9 Petition filed by creditor Michigan Auto Recovery Service, Inc.
8.	565	8/22/2013	Objection to Chapter 9 Bankruptcy filed by creditors Carl Williams, Hassan Aleem
9.	1156	10/11/2013	The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees Amended Objection to the City of Detroit's Eligibility to Obtain Relief Under

			Chapter 9 of the Bankruptcy Code
10.	1159	10/11/2013	Declaration of Michael Artz filed by creditor Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
11.	1222	10/17/2013	Krystal A. Crittendon's Objections to the Petition Filed by One Kevyn D. Orr Seeking to Commence a Case Under Chapter 9 of Title 11 of the United States Code on Behalf of the City of Detroit, Michigan
12.	1228	10/17/2013	Supplemental Declaration of Michael Artz filed by creditor Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
13.	1428	10/28/2013	Addendum to Objections filed by creditors Hassan Aleem, Carl Williams
14.	1458	10/30/2013	Supplemental Brief filed by creditor David Sole (Attachments: Index of Exhibits; Exhibit 1; Exhibit 2)
15.	1480	10/31/2013	Amendment to Objections filed by creditors Hassan Aleem, Carl Williams

Respectfully submitted,

/s/Matthew Schneider

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Dated: January 3, 2014

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
1.	453	8/19/2013	Notice of Constitutional Challenge to Statute Pursuant to Rule 9005.1 of the Federal Rules of Bankruptcy Procedure filed by creditor Michigan Council 25 of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

**NOTICE OF THE MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION
OF STATE, COUNTY & MUNICIPAL EMPLOYEES, AFL-CIO AND SUB-
CHAPTER 98, CITY OF DETROIT RETIREES OF CONSTITUTIONAL
CHALLENGE TO STATUTE PURSUANT TO RULE 9005.1 OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE**

TO PARTIES IN INTEREST:

Pursuant to Rule 5.1(a)(1) of the Federal Rules of Civil Procedure, applicable herein through Rule 9005.1 of the Federal Rules of Bankruptcy Procedure, the Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (the AFSCME retiree chapter for City of Detroit retirees) (collectively, "AFSCME") hereby gives notice of its challenge, on constitutional grounds, to federal and state statutes.

As more fully set forth in *AFSCME's Objection To The City Of Detroit's Eligibility To Obtain Relief Under Chapter 9 Of The Bankruptcy Code* (the "Objection") filed concurrently herewith, AFSCME challenges the constitutionality of the following:

1. Chapter 9 of title 11 of the United States Code because, among other things, it violates the United States Constitution by infringing on individual rights to federalism as a result of interfering with the sovereignty of individual states (and their political subdivisions) to control their own fiscal affairs.
2. Michigan's Public Act 436 (the "Act") due to its violation of the Michigan Constitution, including (i) Article IX, Section 24 because the Act does not explicitly prohibit the diminishment or impairment of vested pension rights in bankruptcy; (ii) Article VI, Section 29 because the Act delegates power to the



emergency manager in excess of that possessed by the legislature; and (iii) Article VII because the Act strips power from the electors of each city and village and violates the principles of local self-government firmly embedded in Michigan law.

The Objection, without accompanying declaration and exhibits, is attached hereto and incorporated herein by reference. AFSCME reserves the right to challenge the constitutionality of the above on the grounds set forth in the Objection, as well as on additional grounds.

Dated: August 19, 2013

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ATTACHMENT

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

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

**THE MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF STATE,
COUNTY & MUNICIPAL EMPLOYEES, AFL-CIO AND SUB-CHAPTER 98, CITY
OF DETROIT RETIREES’ OBJECTION TO THE CITY OF DETROIT’S
ELIGIBILITY TO OBTAIN RELIEF UNDER CHAPTER 9 OF
THE BANKRUPTCY CODE**

The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (the AFSCME retiree chapter for City of Detroit retirees) (collectively, “**AFSCME**”) -- the representative of the interests of between at least forty and fifty percent (40-50%) of the about 11,943 retired City of Detroit (the “**City**” or “**Debtor**”) non-uniformed employees (the “**Retired AFSCME Employees**”), and about 2,523 active City employees (the “**Active AFSCME Employees**”, or about seventy percent (70%) of the active non-uniformed union-represented employees, and together with the Retired AFSCME Employees, collectively, the “**AFSCME Detroit Employees**”) -- through its counsel submits this objection (the “**Objection**”) to the City’s eligibility for relief under chapter 9 of the Bankruptcy Code and opposition to the City’s (A) *Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code* [Docket No. 10] (the “**Statement of Eligibility**”); (B) *Memorandum in Support of Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code* [Docket No. 14] (the “**Eligibility Brief**”); and (C) declarations of Kevyn D. Orr [Docket No. 11] (the “**Orr Declaration**”, Gaurav Malhotra [Docket No. 12] and Charles M. Moore [Docket No. 13]. In

support of its Objection, AFSCME (a) submits the Declaration of Steven Kreisberg (the “**Kreisberg Declaration**”) and (b) respectfully states as follows:

PRELIMINARY STATEMENT

“The public can comment [on the City’s proposed financial restructuring plan], but it is under the statute, it is my plan and it’s within my discretion and obligation to do it. **This isn’t a plebiscite, we are not, like, negotiating the terms of the plan.** It’s what I’m obligated to do.” -- Kevyn D. Orr, May 12, 2013¹

1. The City’s petition for relief under chapter 9 of the Bankruptcy Code should be dismissed. First, chapter 9 of the Bankruptcy Code violates federalism under the United States Constitution through an unholy alliance permitting federal encroachment on the states’ governance rights over fiscal affairs in exchange for an unlawful extension of state power which denies Michigan citizens their constitutional right to make the rules for their own bankruptcy. Second, Michigan Public Act 436 of 2012, the Local Financial Stability and Choice Act, MCL § 141.1541, *et seq.* (“**PA 436**”) purportedly authorizing the Emergency Manager to file for chapter 9 protection runs afoul of the Michigan Constitution by not explicitly prohibiting the impairment of vested pension rights in bankruptcy, which rights are prescribed in the Michigan Constitution, and further offends the Constitutional rights of individual Detroit citizens to local self-governance. Third, the City fails to establish that it engaged in good faith negotiations with the City’s creditors or that these negotiations were impracticable under section 109(c) of the Bankruptcy Code, and indeed the entire chapter 9 petition was filed in bad faith. Fourth, the City does not qualify for chapter 9 relief because it failed to establish that it is insolvent. Further, the Bankruptcy Court lacks jurisdiction over matters related to the federal constitutionality of chapter 9 of the Bankruptcy Code.

¹ Kevyn D. Orr Interview to Detroit WWJ Newsradio 950/AP, *Detroit EM Releases Financial Plan; City Exceeding Budget By \$100M Annually*, May 12, 2013, available at <http://detroit.cbslocal.com/2013/05/12/kevin-orr-releases-financial-plan-for-city-of-detroit/>.

2. The City, led by its unelected, politically appointed Emergency Manager, Kevyn D. Orr (“**Orr**” or the “**EM**”), hastily commenced this unconstitutional, unlawfully authorized chapter 9 proceeding seeking the haven of bankruptcy to illegally attempt to slash pension and other post-employment benefit obligations and cram such reductions down the throats of current and former City employees such as the AFSCME Detroit Employees. These proceedings were commenced without **any** good faith negotiations with the City’s retirees or unions such as AFSCME, and the chapter 9 filing was a *fait accompli* long prior to the appointment of Orr as the City’s EM – in fact, at a time when Orr was still a partner at the City’s lead counsel’s law firm.

3. This is all against the backdrop of:

- the average non-uniformed employee pension currently at an average of slightly less than \$18,000 per year (according to a June 30, 2012 General Retirement System of the City of Detroit pension valuation report); and
- The AFSCME Retirees and AFSCME Active Employees look to their government pension and City-provided medical benefits for retiree benefits. Unlike private sector employees and retirees with defined benefit pension benefits, whose pension benefits are protected even in bankruptcy by government insurance through the Pension Benefit Guaranty Corporation, or those with multiemployer pension benefits, where even if one employer withdraws or goes bankrupt the vested pension benefits to the retirees continue unchanged by that withdrawal, the AFSCME Retirees and AFSCME Active Employees’ pensions are not backstopped. **Therefore, if this Court allows the chapter 9 proceeding to go forward with the ultimate result of the pension or other retiree benefits being lost, they are lost without a safety net.**

4. In light of recent Supreme Court precedent, chapter 9 of the Bankruptcy Code violates the United States Constitution and should be struck down by an Article III Court with authority to make this crucial Constitutional law determination. Under *Stern v. Marshall*, 131 S. Ct. 2594 (2011), such a decision is plainly outside the realm of authority properly delegated to an Article I tribunal like this Court.

5. However, to the extent this Court disagrees and determines that it has jurisdiction to uphold the Constitutionality of chapter 9 generally, this Court should find that the City is not eligible for relief under chapter 9 pursuant to sections 109(c) and 921(c) of the Bankruptcy Code for the following reasons.

6. *First*, under section 109(c)(2) of the Bankruptcy Code, **as already determined by at least one state court ruling** issued against the Governor prior to entry of the Stay Extension Order [Docket No 166], the purported authorization by the Governor permitting the chapter 9 filing by the EM was and remains an overt act by the Governor and others in violation of the Michigan Constitution, as the filing seeks to impair or diminish the AFSCME Detroit Employees' pension benefits. Additionally, the very law purporting to allow the EM to unconditionally file for chapter 9 protection, PA 436, violates several provisions of the Michigan Constitution, including (i) Article IX, Section 24 because PA 436 does not explicitly prohibit the diminishment or impairment of vested pension rights in bankruptcy; (ii) Article VI, Section 29 because PA 436 delegates power to the EM in excess of that possessed by the legislature; and (iii) Article VII because PA 436 strips power from the electors of each city and village and runs ramshackle over the principles of local self-government firmly embedded in Michigan law.

7. *Second*, despite factual arguments to the contrary in the City's Eligibility Brief, the City has failed to establish that it has negotiated in good faith or that such negotiations were impracticable as required under section 109(c)(5) of the Bankruptcy Code. In fact, AFSCME submits that based on facts AFSCME is aware of now (discussed herein and in the Kreisberg Declaration) and further facts AFSCME expects to develop through discovery, the evidence shows (and AFSCME expects will further show) that the City conducted **no good faith**

negotiations with significant unions such as AFSCME prior to the filing. Rather, the City commenced this proceeding in **bad faith** and in haste in violation of section 921(c) of the Bankruptcy Code, with the sole goal of preventing a “bad” state court ruling (i) upholding the Michigan Constitution and (ii) preventing the City from taking the very inappropriate and unconstitutional journey it now seeks to embark on.

8. If the Court ultimately were to find that the City satisfied the eligibility requirements, the EM will seek (i) to unconstitutionally and illegally abridge pension and other AFSCME Detroit Employee benefits; (ii) to proceed under section 365 of the Bankruptcy Code and illegally seek to reject vested pension and other retiree benefits; and/or ultimately (iii) to propose a chapter 9 plan of adjustment that reduces pension and other benefits but that cannot possibly be better for creditors like AFSCME Detroit Employees than the alternative of staying out of chapter 9 where pensions are guaranteed protection under the state constitution - a clear breach of the chapter 9 “best interests test.” Such an outcome should not be countenanced.

9. Finally, AFSCME reserves the right to argue, following additional discovery, that the City is solvent and does not qualify for chapter 9 relief pursuant to section 109(c)(3) of the Bankruptcy Code, particularly when certain un-monetized assets and other financial considerations which may be revealed through discovery are taken into account. The City’s assertions in the Eligibility Brief that it is insolvent must be highly and independently scrutinized and challenged, including through the efforts of the Retiree Committee, once appointed, and its retained professionals.

RELEVANT BACKGROUND

10. Orr currently serves as the EM of the City under PA 436.

11. The Governor appointed Orr as EM for the City on March 14, 2013, effective as of March 25, 2013. On March 28, 2013, upon the purported effectiveness of PA 436, Orr became, and continues to act as, EM for the City under PA 436.

12. On June 14, 2013, Orr issued a “Proposal for Creditors” which expressly stated that “there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons.” The same day, Orr publicly threatened, in an interview with the Detroit Free Press Editorial Board,² that vested pension benefits would not be protected in a chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state laws protecting vested pension benefits would “not . . . protect” retirees in bankruptcy court. The EM stated as follows in the interview:

Q You said in this report that you don't believe there is an obligation under our state constitution to pay pensions if the city can't afford it?

A. The reason we said it that way is to quantify the bankruptcy question. We think federal supremacy trumps state law. Which the Ninth Circuit agrees with for now.

A. It is what it is - so we said that in a soft way of saying, “Don't make us go into bankruptcy.” If you think your state-vested pension rights, either as an employee or a retiree - that's not going to protect you. If we don't reach an agreement one way or the other, we feel fairly confident that the state federal law, federalism, will trump state law or negotiate. The irony of the situation is we might reach a deal with creditors quicker because employees and retirees think there is some benefit and that might force our hand. That might force a bankruptcy.

² See *Q&A with Kevyn Orr: Detroit's Emergency Manager Talks About City's Future*, Detroit Free Press (June 16, 2013), available at <http://www.freep.com/article/20130616/OPINION05/306160052/kevyn-orr-detroit-emergency-manager-creditors-fiscal-crisis>.

The City has since filed with this Court its *Motion for the Entry of an Order Directing the Appointment of a Committee of Retired Employees* [Docket No. 20], the plain intent of which is to seek to negotiate a reduction or impairment of accrued pension benefits.

A. The Webster Litigation

13. On July 3, 2013, against the backdrop of the threatening statements made by Orr regarding Michigan state law and protected pension benefits, plaintiffs (the “**Webster Plaintiffs**”) Gracie Webster (a City retiree) and Veronica Thomas (a current employee of the City) commenced a lawsuit against the State of Michigan, the Governor and the State Treasurer seeking: (a) a declaratory judgment that PA 436 violated the Constitution of the State of Michigan to the extent that it purported to authorize chapter 9 cases within which vested pension benefits might be sought to be compromised; and (b) an injunction preventing the defendants from authorizing any chapter 9 case for the City within which vested pension benefits might be sought to be reduced. *See Webster v. State of Mich.*, No. 13-734-CZ (Ingham County Cir. Ct. July 3, 2013) (the “**Webster Litigation**”).³

14. In briefing submitted in support of a preliminary injunction and declaratory order against the Governor, the Webster Plaintiffs explained that Article IX, Section 24 of the Michigan Constitution provides that “[t]he accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby;” that there could not be a more clear and plain constitutional mandate; and that Article IX, Section 24 means what it says: accrued pension benefits shall not be reduced.

15. Further, as the Webster Plaintiffs noted, the Official Record of the 1963 Michigan Constitutional Convention makes clear that no governmental entity or its officials can

³ Two additional lawsuits were also filed raising similar issues in addition to the Webster Litigation.

do anything to diminish or impair vested pension benefits: “This is a new section that requires that accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions be a contractual obligation which cannot diminished or impaired by the action of its officials or governing body.” 2 Official Record, Constitutional Convention 1961, p. 3402.

16. The Webster Plaintiffs also noted that PA 436 explicitly recognizes that accrued pension benefits shall not be diminished or impaired outside the bankruptcy context. For example:

- Section 11 of PA 436 requires that an emergency manager develop a written financial and operating plan for the local government and that such plan “shall provide” for “the timely deposit of required payments to the pension fund for the local government.”
- Section 13 of PA 436 authorizes the emergency manager to eliminate the salary, wages or other compensation and benefits of the chief administrative officer and members of the governing body of the local government, but expressly provides that “[t]his section does not authorize the impairment of vested pension benefits.”
- Section 12(m) of PA 436 authorizes an emergency manager under certain circumstances to be appointed as the sole trustee of a local pension board and to replace the existing trustees, and requires that “the emergency manager shall fully comply with . . . Section 24 of Article IX of the state constitution . . .” when acting as the sole trustee.

17. But, in violation of Article IX, Section 24 of the Michigan Constitution, PA 436 fails to similarly forbid the Governor explicitly from authorizing a chapter 9 bankruptcy filing if accrued pension benefits may be sought to be diminished or impaired as a consequence of that filing. Section 18 of PA 436, which purportedly empowers the Governor to authorize a municipality to file for bankruptcy under chapter 9, nowhere prohibits the Governor from authorizing such a filing if accrued pension benefits may be sought to be diminished or impaired. Clearly, the Legislature understood and honored the Michigan constitutional mandate not to diminish or impair accrued pension benefits outside of bankruptcy. Just as clearly, the Legislature omitted any constitutional protection against the impairment or

diminishment of accrued pension benefits when the Governor purports to authorize a chapter 9 bankruptcy filing under Section 18 of PA 436.

18. In other words, if accrued pension benefits may be diminished or impaired, in violation of Article IX Section 24 of the Michigan Constitution, the section of PA 436 purporting to authorize this bankruptcy, Section 18, must be unconstitutional.

19. On July 18, 2013, the same date this chapter 9 case was commenced, the Ingham County Circuit Court for the State of Michigan (the “**State Court**”) entered a temporary restraining order (the “**TRO**”, attached to the Kreisberg Declaration, Exhibit A) enjoining the Governor, the State Treasurer and the other defendants in the Webster Litigation from authorizing a chapter 9 filing and taking any further action “with respect to any filing which has already occurred” including the authorizing of an “unconditional” chapter 9 filing (*i.e.* one in which the EM would represent himself as having authority to modify and/or terminate pension obligations without limit in derogation of the Michigan Constitution).

20. Despite the issuance of the TRO and the State Court’s clear directive to the Governor regarding not authorizing any further filings by the City, the Governor did not seek to prevent the City from filing all of its “first day pleadings.” Indeed, the Governor authorized and the EM directed the chapter 9 filing just minutes before the July 18, 2013 TRO hearing was set to begin (and during a brief delay in the TRO hearing requested by the Governor’s attorney) in order to potentially “cut off” any argument that the filing was not properly authorized (because the Governor knew and the EM expected that the State Court Judge was prepared to grant the TRO).

21. On July 19, 2013, the State Court held a further hearing on the Webster Litigation and entered an Order of Declaratory Judgment (the “**Declaratory Judgment**,”

attached to the Kreisberg Declaration as Exhibit B). The Declaratory Judgment (a) finds PA 436 unconstitutional and of no force and effect to the extent it permits the Governor to authorize the EM to proceed under chapter 9 in any manner that threatens to diminish or impair pension benefits and (b) rules that the Governor must direct the EM “to immediately withdraw the chapter 9 petition ... and ... not authorize any further chapter 9 filing which threatens to diminish or impair accrued pension benefits.” *See* Declaratory Judgment at 3.

22. To the extent there was any authorization for the chapter 9 filing, the State Court clearly ordered that the Governor revoke it to the extent it was intended to lead to the diminishment or impairment of accrued pension benefits. However, subsequent to the issuance of the Declaratory Judgment, on July 25, 2013, this Court granted the City’s motion to extend the automatic stay, which, *inter alia*, stayed pending appeals of the Declaratory Judgment (and other similar state court proceedings). *See* Docket No. 166.

B. The City’s Pre-petition Machinations And Subsequent Meetings (But Not Negotiations) With Creditors Such As AFSCME

(i) The City’s Bankruptcy Was Discussed Prior To The EM Was Even Hired

23. In emails that surfaced following the City’s chapter 9 filing going back to January 2013, long prior to any alleged good faith negotiations with creditors (more about this point below), secret discussions were being held between Detroit and officials in the Governor’s office and the City’s legal counsel suggesting that the best course for the City would be to send it through chapter 9 bankruptcy. These emails expose Orr’s and the City’s charade of pre-petition “negotiations” (in reality, one-sided meetings) in the month prior to the City’s chapter 9 filing. In fact, all along the clear goal was for the City to end up in chapter 9.

24. For example, Orr communicated as early as January 2013 regarding his proposed appointment as EM and discussed with his law firm at the time how to go about

leading the City into chapter 9. In an email (attached to the Kreisberg Declaration, Exhibit 1) dated January 31, 2013, Orr’s colleague at the firm stated in an email to Orr that the “ideal scenario would be that [Michigan Governor] Snyder and [Detroit Mayor] Bing both agree that the best option is simply to go through an orderly Chapter 9. This avoids an unnecessary political fight over the scope/authority of any appointed Emergency Manager appointed and, moreover, moves the ball forward on setting Detroit on the right track.” *Id.*⁴.

25. Orr’s colleague then stated his own reservations about whether an emergency manager would be useful outside of bankruptcy where his “ability to actually do anything is questionable given the looming political and legal fights” *Id.* In contrast, he observed in an earlier email, “[m]aking this a national issue . . . provides political cover for the state politicians” and gives them an “incentive to do this right” because “if it succeeds, there will be more than enough patronage to allow [them] to look for higher callings—whether Cabinet, Senate, or Corporate.” *See* Kreisberg Declaration, Exhibit 2.⁵

26. Others involved in the discussions prior to the chapter 9 filing included the Governor’s Transformation Manager, Richard Baird (“**Baird**”). In an email also dated January 31, 2013, Orr, in anticipated of a conversation he was to have with Baird “in a few minutes” about whether to accept the EM position, observed that PA 436 “is a clear end-around the prior initiative” to repeal the previous Emergency Manager statute, Public Act 4, “that was rejected

⁴See also Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

⁵ See also Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

by the voters in November.” See Kreisberg Declaration, Exhibit 3.⁶ According to Orr “although the new law provides the thin veneer of a revision it is essentially a redo of the prior rejected law and appears to merely adopt the conditions necessary for a chapter 9 filing.” *Id.*

27. In a further email dated January 31, 2013, Orr indicated that Baird wanted Orr to be hired as the EM and his firm to represent the City (regardless of whether Orr took the EM job), and that Orr indicated that he would be glad to work together with the City, even if not as EM, indicating that “I [Orr] and the firm are committed to working in lockstep with the [C]ity.” See Kreisberg Declaration, Exhibit 4.⁷

(ii) No Good Faith Negotiations Took Place Following The Appointment Of The EM With Parties Such As AFSCME Prior To The City’s Chapter 9 Filing

28. As indicated above, the die was cast for the City’s inevitable chapter 9 filing prior to the March appointment of Orr as EM. Following Orr’s appointment, the City and Orr maneuvered to establish the veneer of formal pre-petition creditor negotiations, when in reality, Orr and the Governor knew all along that the non-interactive meetings would be held on a *pro forma* basis so the City could attempt to establish alleged good faith negotiations.

29. The facts belie the notion of any pre-filing negotiations, whether in good faith or otherwise. Indeed, the City itself admitted both in letters and at the meetings held in the month or so prior to the filing that the City was only interested in one-way discussions, not negotiations.

⁶ See also Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

⁷ See also Kate Long, *Who is representing Detroit?* <http://blogs.reuters.com/muniland/2013/07/25/who-is-representing-detroit/> (last visited on August 19, 2013).

30. On June 14, 2013, the City held a meeting of representatives of the City's creditors (the "**June 14 Meeting**") to present the City's comprehensive restructuring plan/ "Proposal for Creditors" (the "**Restructuring Plan**", attached to the Kreisberg Declaration as Exhibit C). Even prior to these meetings, Orr confirmed that the City's discussions of its Restructuring Plan would not involve any negotiations, explaining that "it is under the [PA 436] statute, it is my plan and it's within my discretion and obligation to do it. **This isn't a plebiscite, we are not, like, negotiating the terms of the plan.** It's what I'm obligated to do." See Kevyn Orr Interview to Detroit WWJ Newsradio 950/AP, *Detroit EM Releases Financial Plan; City Exceeding Budget By \$100M Annually*, May 12, 2013, available at <http://detroit.cbslocal.com/2013/05/12/kevin-orr-releases-financial-plan-for-city-of-detroit/> (emphasis added).

31. On June 17, 2013, Steven Kreisberg, AFSCME's director of collective bargaining and health care policy, submitted a letter requesting from the EM various categories of information, assumptions, and data for AFSCME to honestly review all the information presented and begin good faith negotiations. See Kreisberg Declaration, Exhibit 5. AFSCME made this request prior to a scheduled June 20, 2013 meeting with unions (including AFSCME) representing the City's non-uniform employees regarding the City's pensions. At that meeting, the City represented that the meeting was "not a negotiation." See Kreisberg Declaration, ¶ 17. Furthermore, the letter inviting AFSCME to the June 20 meeting characterized the purpose of the meeting as being to "review" the Restructuring Plan (not negotiate it) and to have AFSCME "learn" about the Restructuring Plan. Kreisberg Declaration, Exhibit 6.

32. In a letter dated June 27, 2013 to an AFSCME local union, the City indicated that it was posting certain information to a data room and was looking forward to the unions'

“feedback” (again not negotiation) with respect to the EM’s retiree benefits restructuring proposal. *See* Kreisberg Declaration, Exhibit 7.

33. In a follow up letter to the City dated July 2, 2013, Mr. Kreisberg again reiterated his request for information and data, including the backup data supporting the City retiree benefits proposal (support for which previously consisted of only a one-page financial summary). AFSCME requested relevant information and the opportunity (in conjunction with a meeting scheduled with the City’s unions on July 10-11) to begin meaningfully engaging “in a good faith negotiation of these issues.” *See* Kreisberg Declaration, Exhibit 8.

34. In a response letter to Mr. Kreisberg on July 3, 2013, the City advised that it would not meet separately with AFSCME, and that the July 10, 2013 scheduled meeting with the unions would be a “discussion” (again not a negotiation). *See* Kreisberg Declaration, Exhibit 9. Similarly, in an email dated June 28, 2013, the City confirmed that it wanted to meet on July 10, 2013 to “discuss” its “developing pension restructuring proposal,” clearly implying that the proposal itself was not even complete yet. *See* Kreisberg Declaration, Exhibit 10.

35. At the July 10, 2013 meeting, the City announced at the inception that the meeting would be a discussion but not a negotiation. *See* Kreisberg Declaration, ¶ 18. At a similar meeting held with AFSME and certain and other unions held on July 11, 2013, again there was no negotiation.

(iii) The City’s Bad Faith Refusal To Negotiate With Unions Such As AFSCME Has Continued Following The City’s Bankruptcy Filing

36. The City’s pattern of bad faith refusal to negotiate any of its proposals regarding pensions or health insurance benefits changes has continued postpetition.

37. For example, on August 2, 2013, the City convened a meeting of local union representatives and discussed active health insurance. *See* Kreisberg Declaration, ¶ 19.

However, during that meeting, the City specifically advised those in attendance (including AFSCME representatives) that the meeting was not a negotiation. *Id* at ¶ 20. Mr. Kreisberg sent a follow up letter to the City on August 6, 2013 requesting good faith bargaining, and referenced cost savings estimates which AFSCME previously proposed in prior negotiations with the City before the development of the Emergency Manager’s initial financial restructuring plan in May. *See* Kreisberg Declaration, Exhibit 11. In an August 8, 2013 response, the City advised that it would not engage in collective bargaining with AFSCME, but rather simply “discuss any feedback they may have regarding its health care restructuring plans.” *See* Kreisberg Declaration, Exhibit 12.

38. On August 14, 2013, the City held a follow up meeting with AFSCME on the subject of active medical benefits but did not accept any counterproposals or suggestions, but simply responded by further explaining its current intention with respect to active medical benefits.

39. Given Orr’s repeated statements to the media about the City’s willingness to bargain with its unions, AFSCME has been surprised by the City’s unwillingness to negotiate, pre or postpetition. While AFSCME has repeatedly stated its desire to move forward with constructive negotiations with the City on behalf of all AFSCME Detroit Employees, AFSCME cannot negotiate with an employer that is unwilling to come to the table for arms-length talks.

ARGUMENT

I. THE CITY’S PETITION VIOLATES THE UNITED STATES CONSTITUTION

A. CHAPTER 9 VIOLATES THE FEDERAL STRUCTURE OF GOVERNMENT

40. Chapter 9 of the Bankruptcy Code is an unconstitutional violation of federalism because chapter 9 allows Congress to set rules controlling State fiscal self-management – an

area of exclusive state sovereignty – as part of an unholy alliance in which the State receives in exchange powers in excess of those it would otherwise possess under the law. The losers here are citizens, such as the AFSCME Employees, who, particularly as creditors of the State, benefit from the State and Congress acting within their constitutionally defined roles so that the State remains accountable during the trying process of a municipal debt adjustment.

41. The Supreme Court recognized this violation explicitly in 1936 when the Court declared the first federal municipal bankruptcy statute unconstitutional for the following two independent reasons: (1) the goal of a municipal bankruptcy is to enable state governments to unconstitutionally escape their debts, but states cannot accomplish the “end” of an unconstitutional act simply “by granting any permission necessary to enable Congress to do so”; and (2) municipal bankruptcy represents an incursion by Congress into the “sovereignty of the State” and its political subdivisions, which renders them “no longer free to manage their own affairs” independent of “interference” by Congress, yet the Constitution does not permit Congress to “pass laws inconsistent with the idea of sovereignty.” *Ashton v. Cameron County Water Improvement Dist. No. 1*, 298 U.S. 513, 530-32 (1936).

42. *Ashton* applies with equal force to chapter 9 as it did to the first federal bankruptcy statute. Chapter 9, like the municipal bankruptcy statute struck down in *Ashton*, is designed to empower municipalities – whose “fiscal affairs are those of the State, not subject to control or interference by the National Government,” *id.* at 528 –to “change, modify or impair the obligation of their contracts” in ways not permissible outside of bankruptcy. *Id.* at 530-31. As *Ashton* recognized, that municipalities may not, unlike states, be immune from suit under the 11th Amendment is entirely unrelated to the question of whether their essential role in the federal system of government has been unconstitutionally diminished by an act of Congress.

Ashton, 298 U.S. at 531. The Supreme Court recently reaffirmed this distinction in *Printz v. United States*: “[T]he distinction in our Eleventh Amendment jurisprudence between States and municipalities . . . is peculiar to the question of whether a governmental entity is entitled to Eleventh Amendment sovereign immunity, [and does not] apply [] to the question of whether a governmental entity is protected by the Constitution's guarantees of federalism, including the Tenth Amendment.” 521 U.S.898, 531 n. 15 (1997) (citations omitted).

43. To take just one extremely salient example, the City seeks to reduce its retiree health care obligations *permanently* in bankruptcy, which the Michigan Court of Appeals has held it could not do under state or federal law. *See AFT Michigan v. State*, 297 Mich. App. 595, 825 N.W.2d 595 (2012). This point is uncontroversial: the entire purpose of bankruptcy is to adjust debts which would otherwise be binding outside of bankruptcy. Under chapter 9, for the privilege of skirting the laws governing its debts outside of bankruptcy, the State submits to the rules enacted by Congress for a chapter 9 filing and thereby cedes sovereign control over some of its own fiscal affairs to the federal judiciary during the bankruptcy process.

44. Neither of the justifications provided by the Supreme Court less than two years after *Ashton* when it upheld Congress’s next, substantially similar, municipal bankruptcy statute in *United States v. Bekins*, 304 U.S. 27 (1938) – (1) that the contracts clause of the federal constitution makes the passage of a state law adjusting municipal debts impossible and thus the need for a federal law providing for municipal bankruptcy pressing, and (2) that a State has a right to consent to federal intrusion into its own fiscal affairs – remains valid. This is because intervening Supreme Court precedent holds that states can fashion their own municipal reorganization statutes but cannot consent to any derogation of their sovereign powers.

(i) A Federal Municipal Bankruptcy Statute Is No Longer Necessary To Accomplish An Adjustment Of Municipal Debts

45. As a threshold matter, the Supreme Court has held since *Bekins* that states *can* pass legislation to adjust municipal debts in a financial emergency. *See Faitoute Iron & Steel Co. v. City of Asbury Park*, 316 U.S. 502 (1942). In doing so, the Supreme Court scoffed at the presumption that the federal government could “completely absorb” from a State a power “so peculiarly local as the fiscal management of its own household.” *Asbury Park*, 316 U.S. at 508-09. *See also United States Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1 (1977) (recognizing that state legislation adjusting a state’s contractual obligations may not violate the contracts clause under certain circumstances). For this reason alone, *Bekins*, which relied heavily on the Supreme Court’s perception that some mechanism was needed to permit states to adjust their debts during the “[e]conomic disaster” of the Great Depression, 316 U.S. at 53-54, is no longer binding.

(ii) The Supreme Court’s Development Of Constitutional Federalism Doctrine Has Effectively Overruled *Bekins*

46. Over the past two decades the Supreme Court issued a series of opinions clarifying both the importance of the federal system of government to *individual* liberty and, concomitantly, the inability of a state to consent to an affront by Congress to that federal system. The fountainhead of these cases is *New York v. United States*, 505 U.S. 144 (1992). There, Justice O’Connor, writing for the majority, explained at length that any statute exercising federal control over a power which “is an attribute of state sovereignty” – as is the case here with respect to a state’s management of the fiscal affairs of its political subdivisions, *see Ashton, supra* – is “necessarily” an exercise of “a power the Constitution has not conferred on Congress” and therefore unconstitutional. 505 U.S. at 156. “The States ‘form distinct and

independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere.” *Alden v. Maine*, 527 U.S. 706, 714 (1999) (quoting *The Federalist* No. 39, p. 245 (C. Rossiter ed. 1961) (J. Madison)). Thus the Supreme Court’s duty, Justice O’Connor has explained, is to “invalidate[] measures deviating from” the federalist “form of government” set forth in the Constitution, however “formalistic” the result may appear in light of “the era’s perceived necessity.” *New York*, 505 U.S. at 187.

(a) **Chapter 9 Impinges On The AFSCME Employees’ Individual Rights To Federalism By Eviscerating The Accountability Of Michigan To Its Citizens And Creditors**

47. *New York* and its progeny represent a direct rebuff to *Bekins* and other Depression-era cases, which softened the requirements of federalism in moments of perceived peril, by setting forth since then a robust vision of federalism which “divides authority between federal and state governments for the protection of individuals.” *New York*, 505 U.S. at 181. That vision begins with the “incontestable” truth “that the Constitution established a system of ‘dual sovereignty,’” under which the sovereignty reserved to a State and its citizens is “‘inviolable.’” *Printz*, 521 U.S. at 918-20 (quoting *The Federalist* No. 39, at 245 (J. Madison)) (other citations omitted). “Residual state sovereignty was also implicit, of course, in the Constitution’s conferral upon Congress of not all governmental powers, but only discrete, enumerated ones, Art. I, § 8, which implication was rendered express by the Tenth Amendment’s assertion that ‘[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.’” *Printz*, 521 U.S. at 920.

48. The premise of the federal constitutional structure is that “Congress would exercise its legislative authority directly over individuals rather than over States.” *New York*, 505 U.S. at 166 (citing 1 Records of the Federal Convention of 1787, p. 313 (M. Farrand ed. 1911) (explaining the “rejection of the New Jersey Plan in favor of the Virginia Plan”)). As a corollary, individual citizens possess a vested right in the guarantee of a strongly demarcated separation of power between the state and federal government to ensure that each remains responsible to the citizens for the tasks with which it was charged:

The great innovation of this design was that “our citizens would have two political capacities, one state and one federal, each protected from incursion by the other”—“a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it.” [*Printz*, 521 U.S. at 920 (quoting *U. S. Term Limits, Inc. v. Thornton*, 514 U. S. 779, 838 (1995) (Kennedy, J., concurring)).]

49. This structural separation of powers protects individual liberty in myriad ways by creating a “double security as to the rights of the people.” *Printz*, 521 U.S. at 922 (quoting The Federalist No. 51, at 323 (J. Madison)). It ensures that neither branch will accumulate “excessive power,” thereby reducing “the risk of tyranny and abuse from either front.” *Printz*, 521 U.S. at 921 (quotation omitted). The separation of powers principle further “contemplates that a State’s government will represent and remain accountable to its own citizens.” *Printz*, 521 U.S. at 920 (citations omitted). For “[i]f, as Madison expected, the Federal and State Governments are to control each other, see The Federalist No. 51, and hold each other in check by competing for the affections of the people, see The Federalist No. 46, those citizens must have some means of knowing which of the two governments to hold accountable for the failure to perform a given function.” *United States v. Lopez*, 514 U.S. 549, 576-77 (1995) (Kennedy,

J., concurring). *See also United States v. Morrison*, 529 U.S. 598, 615-16 (2000) (citing the bulk of Justice Kennedy’s concurrence in *Lopez* and holding that Congress may not “use the Commerce Clause to completely obliterate the Constitution’s distinction between national and local authority”). Accordingly, “[t]he Framers thus ensured that powers which ‘in the ordinary course of affairs, concern the lives, liberties, and properties of the people’ were held by governments more local and more accountable than a distant federal bureaucracy.” *Nat. Fed’n of Indep. Business v. Sibelius*, 132 S. Ct. 2566, 2578 (2012) (Roberts, C.J.) (quoting *The Federalist* No. 45, at 293 (J. Madison)).

50. Chapter 9 does unconstitutional violence to the federal structure by obfuscating the system of direct accountability protected by federalism. By outsourcing to the federal judiciary the problem of a state reorganizing its obligations, chapter 9 provides states with unconstitutional – as well as unnecessary, given *Asbury Park* – cover from its citizens by confusing them as to whom to accord “blame” and “credit” for the results. *Printz*, 521 U.S. at 931; *New York*, 505 U.S. at 169. *See also Gregory v. Ashcroft*, 501 U.S. 452, 459 (“These twin powers will act as mutual restraints only if both are credible.”). “The resultant inability to hold either branch of the government answerable to the citizens is more dangerous even than devolving too much authority to the remote central power.” *Lopez*, 514 U.S. at 576-77 (Kennedy, J., concurring) (citations omitted).

51. In point of fact, on January 31, 2013, Orr’s colleague himself touted the deflection of accountability for state and city politicians as a benefit. “Making this a national idea is not a bad thing,” he wrote, because “[i]t provides political cover for the state politicians. Indeed, this gives them an even greater incentive to do this right because, if it succeeds, there will be more than enough patronage to allow either [Mayor] Bing or [Governor] Snyder to look

for higher callings—whether Cabinet, Senate or Corporate.” Kreisberg Declaration, Exhibit 2. In a subsequent reply to Orr later that day, Orr’s colleague provided a clear indication of his idea of the “right” way to do “this,” stating: “the ideal scenario would be that Snyder and Bing both agree that the best option is simply to go through an orderly chapter 9.” Kreisberg Declaration, Exhibit 1.

52. This veil over accountability is woven into the very structure of chapter 9. While the City must consent to a chapter 9 filing and retains some control over the chapter 9 process, even before the City proposes a plan the Bankruptcy Judge is able to commandeer the City’s operation in exchange for the protection of the Bankruptcy Code by using its equitable powers, as it already has in this case, to order the City to, *inter alia*, turn over documents and engage in mediation and negotiations which the State would not need to submit to outside of Bankruptcy. *See Mediation Order* [Docket No. 322] (“the Court concludes that it is necessary and appropriate to **order** the parties to engage in the facilitative mediation of any matters that the Court refers in this case,” moreover, the mediator is “authorized to enter any order necessary for the facilitation of mediation proceedings”, including regarding discovery issues).

53. Moreover, Bankruptcy Code section 926 provides that “[i]f the debtor refuses to pursue a cause of action under section 544, 545, 547, 548, 549(a) or 550 of this title, then on request of a creditor, the court may appoint a trustee to pursue such cause of action.” 11 U.S.C. § 926(b). In at least one reported case, *In re Alabama State Fair Authority*, 232 B.R. 252 (N.D. Ala. 1999), the bankruptcy court appointed a trustee to pursue preference actions. Thus, the bankruptcy court has discretion, despite a municipal debtor having made the policy choice to settle a pre-petition debt, to appoint a third-party trustee to ignore the municipality’s decision

and pursue avoidance of such a settlement. With regard to preference avoidance, this is a power an individual creditor could not independently assert under state law.

54. If the City wishes to obtain the true spoils of bankruptcy – a plan of adjustment – it must submit to a much greater degree of federal interference, thus further blurring the line between Congress and the State as to who is to blame for the contents of that plan. This is because, in order for a debtor’s plan to receive approval under chapter 9, it must incorporate priorities of distribution according to the Bankruptcy Code. The tension between chapter 9 and state law rights was highlighted in *In re County of Orange*, 191 B.R. 1005 (Bankr. C.D. Cal. 1996), where the court, on preemption grounds, invalidated California’s law providing for the establishment of a trust with respect to certain securities. Relying on the doctrine of preemption alone, the County of Orange court held that “The California legislature cannot rewrite the bankruptcy priorities.” *Id.* at 1017.

55. If the people of Michigan were to enact their own laws for adjusting municipal debts, those laws might have very different priorities than chapter 9. Chapter 9, for instance, allows administrative expenses under Bankruptcy Code section 503 and gives them priority under Bankruptcy Code section 507(a)(2), and adopts the definition of secured claims from Bankruptcy Code section 506, to name a few. 11 U.S.C. § 901(a). Importantly, in contrast, the people of Michigan might very well decide to treat issues such as claim priority quite differently. For instance, they might choose to place unsecured retiree health claims before administrative expenses, thus benefitting the AFSCME retirees. This is, after all, a state whose constitution explicitly protects pension rights. But once the state accesses chapter 9, the AFSCME employees are denied the right to petition their government to enact a municipal debt

adjustment law of this nature, and the state can shirk its responsibility to the voice of its citizens by blaming injustice on the claim priorities, rules, and procedures of the Bankruptcy Code.

56. That the City retains some autonomy over its affairs under chapter 9 is irrelevant, for the mere incursion into territory reserved to the states is sufficient to violate the Constitution. “[W]here, as here, it is the whole object of the law to direct the functioning of the state [government], and hence to compromise the structural framework of dual sovereignty . . . a ‘balancing’ analysis is inappropriate. It is the very principle of separate state sovereignty that such a law offends, and no comparative assessment of the various interests can overcome that fundamental defect.” *Printz*, 521 U.S. at 932.

57. Ultimately, the allocation of state resources as between competing creditors of the City should be determined “by the political process established by the citizens of the State, not by judicial decree mandated by the Federal Government.” *Alden*, 527 U.S. at 751. “When the Federal Government asserts authority over a State's most fundamental political processes, it strikes at the heart of the political accountability so essential to our liberty and republican form of government.” *Id.* While the road to adjusting the City’s debts may be longer if it must first involve “greater citizen involvement in democratic processes . . . in shaping the destiny of” the City’s reorganization process rather than that set forth in chapter 9 as a result of “the political processes that control a remote central power,” *Bond v. United States*, 131 S. Ct. 2355, 2364 (2011), “the Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day.” *New York*, 505 U.S. at 187.

58. The unconstitutionality of chapter 9 is further confirmed by its unsuccessful attempt to preserve some independence for state sovereigns within the constraint of the grant of power to Congress by Article I, Section 8 Clause 4 (the “Bankruptcy Clause”) to establish “uniform” bankruptcy laws. Although the bankruptcy code for private debtors may treat debtors differently in different states due to variations in state law and still pass muster as “uniform,” within a state there must be “geographical” uniformity for debtors. *Hanover Nat’l Bank v. Moyses*, 186 U.S. 181, 188 (1902). But by ceding to each state the ability to define its own qualifications for a municipality to declare bankruptcy, chapter 9 permits the promulgation of non-uniform bankruptcies within states – as in Michigan, where Act 436 has wildly divergent effects on different cities, whose authority to declare bankruptcy purports to rest on the discretion of a Governor who can attach whichever contingencies he wishes. *See* MCL 141.1558. It is no surprise that this attempt to elude the demands of federalism thereby fails for this additional reason, for municipal bankruptcy would have been an entirely foreign concept to the framers who modeled much of our federal Constitution on British law which did not then, and still does not today, even contemplate municipal bankruptcy. *See, e.g.*, Janie Anderson Castle, *The People’s Mayor for London?*, 5 J. Loc. Gov’t L. 29, 32 (2002); Annerose Tashiro, *Sovereign Insolvency*, 99 Eur. Law. 5 (2010) (“There is no such thing today anywhere in Europe as a sovereign insolvency regime.”) (advocating implementation of a bankruptcy regime mirroring that of chapter 9 in the EU).

59. It cannot be adequately emphasized that under *Asbury Park* the State has the authority to amend its own laws to allow for its municipalities to adjust their debts without resorting to a coercive federal statute which unconstitutionality obscures accountability and is not a uniform bankruptcy law. It can even, furthermore, seek federal financial assistance to

help meet those debts. *See, e.g., South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (Rehnquist, C.J.) (“[O]bjectives not thought to be within Article I’s enumerated legislative fields may nevertheless be attained through the use of the spending power and the conditional grant of federal funds.” (internal quotation omitted)). What the State cannot do – but what chapter 9 demands – is to submit to federal rules which would not merely incentivize the State’s use of lawful power, but engorge that power at the expense of its citizens’ inviolable right to control the operation of their sovereign by setting the rules by which it adjusts its own debts.

(b) Chapter 9’s Requirement Of State Consent Cannot Cure The Violation Of Individual Rights

60. The Supreme Court squarely held in *New York* that “[t]he constitutional authority of Congress cannot be expanded by the ‘consent’ of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States.” 505 U.S. at 182. Even when such consent is accomplished by statute. *See, e.g., Buckley v. Valeo*, 424 U.S. 1 (1976) (Congress infringed the President’s appointment power via a law signed by the President); *INS v. Chadha*, 462 U.S. 919 (1983) (legislative veto violated the constitutional requirement of presentment even where President signed law with legislative veto provision).

61. The decision in *Bekins* therefore erred in concluding that the then-operative municipal bankruptcy statute was not unconstitutional simply because the statute required the municipality’s petition and plan of composition to be authorized by state law. 304 U.S. at 52. To the contrary, the conclusion in *Bekins* that the only “obstacle” to the exercise of federal bankruptcy over state political subdivisions “lies in the right of the State to *oppose* federal interference,” 304 U.S. at 52-54, is squarely foreclosed by the Court’s subsequent decision in *New York*. Thus the prior rule from *Ashton* – “Neither consent nor submission by the States can enlarge the powers of Congress,” and therefore states cannot “accomplish” an unavailable

“end by granting any permission necessary to enable Congress to do so,” 298 U.S. at 531 – is the correct one.

62. The Court concluded in *New York* that State consent cannot cure an otherwise unconstitutional infringement of state sovereignty for the same reason that municipal bankruptcy violates constitutional federalism in the first place: the design of federalism is meant “for the protection of individuals,” not States. *New York*, 505 U.S. at 181 (“The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States.”). State government officers may even have “powerful incentives” to consent to a diminishment of state sovereignty to evade one of the core benefits federalism promises to individual citizens: direct accountability of political officials for actions taken in their clearly demarcated domains of authority. *Id.* at 182-83 (“[I]t is likely to be in the political interest of each individual official to avoid being held accountable to the voters.”). Therefore state consent cannot not be allowed to dismantle the delicate balance of powers protecting the accountability of each dual sovereign to its citizens.

B. AFSCME’S ACTIVE AND RETIRED MEMBERS HAVE INDIVIDUAL STANDING TO ASSERT THAT CHAPTER 9 VIOLATES THEIR INDIVIDUAL RIGHTS TO A FEDERAL SYSTEM OF GOVERNMENT

63. The Supreme Court has squarely held that individuals – and not just states – have standing to challenge that Congress has “exceeded its powers under the Constitution, thus intruding upon the sovereignty and authority of the States.” *Bond v. United States*, 131 S. Ct. 2355 (2011). As also analyzed *supra*, individuals have their “own constitutional interests” to “assert injury from governmental action taken in excess of the authority that federalism defines,” and their “rights in this regard do not belong to the State.” *Id.* at 2363-64.

64. Two aspects of the Court’s conclusion in *Bond* are of special relevance to the instant case. First, the Court emphasized that federalism protects not just “the integrity of the [state and federal] governments themselves,” but also, distinctly, “the people, from whom all governmental powers are derived.” *Id.* at 2464. Individual citizens’ interests in pressing federalism complaints include the “liberties that derive from the diffusion of sovereign power,” such as (1) “greater citizen involvement in democratic processes” and citizens’ consequent ability to use their voices “in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power”; and (2) the promise that “laws enacted in excess of delegated governmental power cannot direct or control their actions” and the consequent protection of citizens from the “arbitrary power” caused by giving any one government too much sway over “the concerns of public life.” The City’s chapter 9 petition threatens AFSCME’s members with both of these harms insofar as it (1) shields the City from a democratic process of resolving its fiscal crisis by rejecting the accountability of local politicians responsive to Detroit’s citizenry in favor of an unelected federal judiciary, and (2) allows the federal government to concoct rules for the resolution of disputes in an “area of traditional state concern.” *Lopez*, 514 U.S. at 580 (Kennedy, J., concurring).

65. Second, the *Bond* Court rejected the argument, pressed by the respondent, that a state’s waiver of any interference with its sovereignty should trump objections by individual citizens on Tenth Amendment grounds. *See* Brief for the Amicus Curiae Appointed to Defend the Judgment Below at 25, *Bond v. United States*, 131 S. Ct. 2355 (2011) (No. 09-1227) (“Particularly when the private party’s interests are not aligned with those of the State, as may well be true in this very case . . . private party suits have the potential to frustrate and undermine state policies and decisions.”). To the contrary, the Court held, a claim that “a law

was enacted in contravention of constitutional principles of federalism . . . need not depend on the vicarious assertion of a State’s constitutional interests, even if a State’s constitutional interests are also implicated.” *Bond*, 131 S. Ct. at 2365. Whether the State has invited the federal incursion upon State authority is irrelevant. Only whether the individual claimant’s injury so much as “*might* not have come about if the matter were left for the [State] to decide” on its own matters to the analysis. *Id.* at 2366.

66. No doubt exists that if the State of Michigan were left to devise its own scheme for adjusting municipal debts – as is squarely within its authority under *Asbury Park* – the State *might* devise a system different from the United States Bankruptcy Code. Under the microscope of “greater citizen involvement” at the local level, the City, fulfilling the promise of federalism to its citizens, would be more directly constrained to create a process responsive to their needs – including, perhaps, the same needs which prompted the passage of the state constitutional amendment protecting the very diminishment or impairment of vested pension rights which the City now seeks to accomplish under the cover of chapter 9. Regardless, because chapter 9 allows the City a process for adjusting its debts which is not identical to the process for doing so under state law – either as it currently exists or as it would exist if the state were to pass its own municipal composition law – AFSCME’s members, as debtors of the City, have standing to object to the City’s use of chapter 9 on federalism grounds.

C. THIS COURT LACKS JURISDICTION TO DECIDE WHETHER CHAPTER 9 VIOLATES THE UNITED STATES CONSTITUTION

67. This Court lacks jurisdiction to decide whether chapter 9 violates the Constitution. As the Supreme Court recently explained in *Stern v. Marshall*, Article III of the Constitution assigns the job of resolving questions of constitutional law to the “judicial power of the United States.” 131 S. Ct. at 2609. Because bankruptcy judges are appointed under

Article I—unlike judges appointed under Article III, who have life tenure and protection from removal or diminishment of salary – Congress may not grant to bankruptcy judges the right to exercise that power. *Id.*

68. No doubt exists either that the resolution of federal constitutional questions comes under the “judicial power” and is not subject to any exception thereto. *Stern*, building on the Court’s decisions in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), and *Granfinanciera, S.A. v. Nordberg*, 492 (U.S. 33) (1989), held that any narrow “public rights” exception permitting bankruptcy judges to issue certain final orders does not apply to any legal claim “independent of the federal bankruptcy law and not necessarily resolvable by a ruling on the creditor’s proof of claim in bankruptcy.” 131 S. Ct. at 2611. The federal constitutional claims of AFSCME’s members stem from the Constitution, not the Bankruptcy Code, and cannot be resolved by the very claims process whose legality is the subject of the constitutional challenge.

69. Moreover, the instant constitutional challenge to chapter 9 has nothing to do with a federal regulatory scheme. *Stern* is quite clear that the “public rights” exception is limited to claims asserting rights “integrally related to particular federal government action,” *i.e.*, claims challenging action undertaken pursuant to “a federal regulatory scheme” or whose resolution “by an expert government agency is deemed essential to a limited regulatory objective within the agency’s authority.” *Id.* at 2613. Where, as is the case with this purely constitutional argument, the determination of a legal question has nothing to do with the contours of federal regulations or expert agency fact-finding, the argument must be resolved by an Article III judge.

70. At its core, the “public rights” exception is designed to address situations where – unlike here – a party seeks to enforce rights which Congress has created by statute. *See Granfinanciera*, 492 U.S. at 51 (citations omitted). This constitutional challenge to chapter 9 invokes no such public right; “Congress has nothing to do with it.” *Stern*, 131 S. Ct. at 2613. Nor do bankruptcy judges possess any special expertise at resolving constitutional challenges to their own authority. “The experts in the federal system at resolving” constitutional questions such as this one “are the Article III courts, and it is with those courts that [this] claim must stay.” *Id.* at 2615. The words of the Supreme Court in *Stern* apply with equal force here:

What is plain here is that this case involves the most prototypical exercise of judicial power: the entry of a final, binding judgment by a court with broad substantive jurisdiction, on a [constitutional] cause of action, when the action neither derives from nor depends upon any agency regulatory regime. If such an exercise of judicial power may nonetheless be taken from the Article III Judiciary simply by deeming it part of some amorphous “public right,” then Article III would be transformed from the guardian of individual liberty and separation of powers we have long recognized into mere wishful thinking. [*Id.*]

71. Accordingly, and with respect, this Court should immediately refer this constitutional challenge to chapter 9 to the District Court for the Eastern District of Michigan.

II. THE CITY IS NOT ELIGIBLE TO FILE FOR CHAPTER 9 PROTECTION UNDER SECTION 109(C) OF THE BANKRUPTCY CODE

72. The City, as a purported municipal debtor, bears the burden of establishing it is eligible for relief under chapter 9. *See, e.g., In re City of Stockton*, 475 B.R. 720, 725-26 (Bankr. E.D. Cal. 2012) (citing cases); *In re Valley Health Sys.*, 383 B.R. 156, 161 (Bankr. C.D. Cal. 2008); *In re County of Orange*, 183 B.R. 594, 599 (Bankr. C.D. Cal. 1995); *In re Sullivan County Regional Refuse Disposal Dist.*, 165 B.R. 60, 72 (Bankr. D.N.H. 1994). “[A]ccess to Chapter 9 relief has been designed to be an intentionally difficult task.” *Sullivan County*, 165 B.R. at 82; *see also In re Cottonwood Water and Sanitation Dist.*, 138 B.R. 973,

979 (Bankr. D. Colo. 1992) (explaining that, although the Bankruptcy Code, as remedial legislation, is generally broadly construed, “municipal bankruptcies involve significant problems . . . not encountered in the private sector” and raise important constitutional issues, so that “Congress consciously sought to ‘limit accessibility to the bankruptcy court’ by municipalities.” (internal citation omitted)). As a result, “[t]he bankruptcy court’s jurisdiction should not be exercised lightly in chapter 9 cases.” *Sullivan County*, 165 B.R. at 82.

73. As demonstrated below, the City necessarily fails to carry its burden with respect to the following eligibility requirements: (i) valid authorization under Michigan state law (section 109(c)(2) of the Bankruptcy Code); and (ii) good faith negotiations or impracticability of such negotiations (section 109(c)(5) of the Bankruptcy Code). AFSCME also reserves the right to argue (following completion of discovery) that the City does not satisfy the insolvency requirement under section 109(c)(3) of the Bankruptcy Code.

74. Furthermore, the evidence reveals that the City’s bankruptcy petition was filed in bad faith and not motivated by a proper purpose under chapter 9 and should be dismissed pursuant to section 921(c) of the Bankruptcy Code. *See e.g., In re McCurtain Municipal Authority*, 2007 WL 4287604 at *3 (Bankr. E.D. Okla. Dec. 4, 2007) (holding that “the inability to pay debts as they become due depend[s] upon the inescapable quality of the obligation and the certainty that it cannot be met. Mere possibility or even speculative probability is not enough.”) (citations omitted).

A. The City Is Not Authorized By Michigan State Law To Be A Debtor Under Chapter 9

75. The City contends that it is authorized to be a debtor under state law because Section 18 of PA 436, M.C.L. 141.1558, provides that “[u]pon receipt of the written approval [of the Governor], the emergency manager is authorized to proceed under chapter 9,” and

further “empowers the emergency manager to act exclusively on the local government’s behalf in any such case under chapter 9.” *See* Eligibility Brief, p. 10. However, the Governor’s blanket grant of permission to file for bankruptcy under Section 18 of PA 436 violated the Michigan Constitution because it failed to explicitly prohibit the impairment or diminishment of vested pension rights. Moreover, the appointment of the Emergency Manager under PA 436 violates the “strong home rule” provisions of the Michigan Constitution. Where, as here, a state constitution bars the purported state law authorization, a chapter 9 petition must be dismissed. *See In re City of Harrisburg, PA*, 465 B.R. 744 (Bankr. M.D. Pa. 2011) (analyzing Pennsylvania Constitution to determine whether city was authorized to file under chapter 9).

(i) Governor Snyder’s Authorization Of The City’s Petition Under Section 18 Of PA 436 Violated Article IX, Section 24 Of The Michigan State Constitution

76. As a Michigan Circuit Court Judge has already held, Michigan State law forbids authorization of the City’s bankruptcy petition insofar as it seeks to reduce accrued pension benefits in violation of the State Constitution. Yet the Emergency Manager has been very clear that he intends to use this chapter 9 proceeding to do just that. Indeed, the Emergency Manager had made that intent known well prior to requesting the Governor’s permission to file under chapter 9. For instance, on June 14, 2013 he both (a) issued a “Proposal for Creditors” expressly stating that “there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons,” and (b) publicly threatened, in an interview with the Detroit Free Press Editorial Board, that vested pension benefits will not be protected in a chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state laws protecting vested pension benefits will “not . . . protect” retirees in bankruptcy court.

77. Article IX, Section 24 of the Michigan Constitution provides: “The accrued financial benefits of each pension plan and retirement system of the state and its political

subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.” It means what it says: “[U]nder Art. 9, § 24, a retirement benefit *cannot be reduced.*” *Seitz v. Probate Judges Retirement System*, 189 Mich. App. 445, 474 N.W. 2d 125, 128 (1991) (emphasis added); see *also id.* at 127 (“Article IX, § 24 protects those persons covered by a state or local pension or retirement plan from having their benefits reduced.” (citing *Detroit Police Officers Ass’n v. Detroit*, 391 Mich. 44, 69, 214 N.W.2d 803 (1974))).

78. Article IX, Section 24 completely protects the “receipt of pension benefits related to work already performed by” any City employees, whether active or retired – i.e., any pension benefits which have “accrued” and thus become “vested pension benefits” – from being diminished *at all*. *APTE v. Detroit*, 154 Mich. App. 440, 398 N.W.2d 436, 439-40 (1986); *Advisory Opinion re Constitutionality of 1972 PA 258*, 389 Mich. 659, 663 (1973) (holding that “the intention of the people in adopting” Article 9, Section 24 was that “the benefits of pension plans are in a sense deferred compensation for work performed . . . which should not be diminished by the employing unit after the service has been performed.” (quoting 1 Official Record, Constitutional Convention 1961, 770-71)). Vested pensions rights covered by Article IX, Section 24 differ in this important respect from contractual benefits protected solely by Article I, Section 10 of the Michigan Constitution (the State’s “Contracts Clause”), which in a narrow set of cases may not prohibit the State from effecting “a modest, temporary impairment” of those other types of “governmental contracts . . . as a matter of last resort to address a fiscal emergency.” *AFT Michigan v. State*, 297 Mich. App. 597, 602, 825 N.W.2d 595 (2012) (noting that “[a]ll parties agree that . . . accrued financial benefits under Const. 1963, art. 9, § 24 . . . may not be impaired,” but concluding that the retiree health benefits in question were not “accrued financial benefits” within the wholesale protection of Article IX,

Section 24 and thus proceeding to consider whether they could be impaired under the Contracts Clause); *BCBSM v. Governor*, 422 Mich. 1, 22-23, 367 N.W.2d 1 (1985) (“The federal balancing approach has been adopted by our Court for purposes of adjudicating state Contract Clause claims as well as federal Contract Clause claims.”).

79. Governor Snyder violated Article IX, Section 24 – and with it the requirement, set forth at 11 U.S.C. § 109(c)(2), that he be “empowered by State law to authorize” the City to become a debtor – when he failed to condition the City’s chapter 9 petition on the complete preservation of vested pension rights despite the clearly available public information that the Emergency Manager intended to use the Governor’s authorization to diminish constitutionally sacrosanct pension benefits.⁸ Section 18 allows the Governor to “place contingencies on a local government in order to proceed under Chapter 9,” but does not explicitly require that compliance with Article IX, Section 24 be one of those contingencies. In this case, the Governor explicitly chose “not to impose such contingencies.” *See* Docket No. 1 at p. 16.

80. Section 18 is unconstitutional as applied where, as here, the Governor has abused his discretion by purporting to authorize a bankruptcy which “would violate the constitution.” *Taxpayers of Michigan Against Casinos v. State*, 478 Mich. 99, 107-08 & n.3 (2007) (even “broad discretion” granted to Governor by statute to act unilaterally must be exercised “within the limits of the constitution”). Moreover, Governor Snyder’s authorization has itself unconstitutionally caused an “immediate, concrete injury” to Council 25’s members by creating a “contingent liability” that their inviolable rights will be disregarded, causing them to reorder their financial affairs. *See Clinton v. New York*, 524 U.S. 417 (1998) (plaintiffs had standing to challenge constitutionality of executive action which, if left unchecked, would leave

⁸ To the extent the unconstitutionality of the Governor’s authorization turns on the question of whether he was on notice of the Emergency Manager’s intent to unconstitutionally diminish vested pension rights, AFSCME will seek discovery regarding information possessed by the Governor, including any other applicable discovery.

undisturbed potential future harm posing, by virtue of its magnitude, immediate and direct financial consequences to plaintiffs).

81. The strings left unattached to the Governor’s sign-off speak volumes because PA 436 is not ignorant of Article IX, Section 24. To the contrary, other sections of the Act explicitly reiterate that accrued pension benefits shall not be diminished or impaired outside the bankruptcy context. *See, e.g.*, MCL 141.1551(1)(d) (requiring that the Emergency Manager’s financial and operating plan provide for “[t]he timely deposit of required payments to the pension fund for the local government”); MCL 141.1552(i)(m)(ii) (allowing the Emergency Manager in certain circumstances to serve as the sole trustee of a municipality’s pension fund, but requiring that he “fully comply with . . . section 24 of article IX of the state constitution”); MCL 141.1553 (eliminating the “the accrual of postemployment benefits” of local government officers but prohibiting “the impairment of vested pension benefits”). Thus the Governor’s contingency-free permission reads like an open invitation to the Emergency Manager to violate the State Constitution in bankruptcy, and therefore is unconstitutional.

82. In the alternative, this Court should hold that any authorization the Governor sought to provide under Section 18 carried with it the implicit contingency that all actions taken pursuant to it by the Emergency Manager, including the proposal of any plan of adjustment under 11 U.S.C. § 943, must comply with the State Constitution, including Article IX, Section 24. In his letter to the Emergency Manager giving unconditional permission to file under chapter 9, Governor Snyder observed that the Bankruptcy Code “contains the most important contingency – a requirement that the plan be legally executable” under 11 U.S.C. § 943(b)(4). Docket No. 1 at p. 16. Because a plan of adjustment which would reduce vested benefits would not be legally executable under the Michigan Constitution – and because, as Governor, Snyder

is forbidden from authorizing any violation of the state constitution – his letter to the EM should, in the alternative, be construed as requiring compliance with Article IX, Section 24.

83. AFSCME and its members must not be made to wait to raise a § 943(b)(4) argument until the moment a plan is proposed – though of course they reserve the right to do so – because of the harm being suffered by the AFSCME Detroit Employees *now* as a result of their credible fear that the Emergency Manager will force them to accept the unconstitutional impairment or diminishment of their vested pension rights - the threat of which he is attempting to use as leverage against them *now*. Thus, if this Court plans to find the City eligible to file for bankruptcy under chapter 9, it should hold on the record *now* that any plan proposed by the City will have to comply with Article IX, Section 24 because the Governor could not have given permission to file under chapter 9 without including the implicit contingency that the City’s plan of adjustment not reduce vested pension benefits. Otherwise creditors with vested pension rights will continue to suffer an unconstitutional injury throughout the course of this bankruptcy as a result of the threats of the Emergency Manager , and the Court will be virtually powerless to prevent that harm unless and until the City proposes its plan of adjustment. To prevent that harm *now*, the Court at the very least should clarify, as a preliminary condition of eligibility, that these bankruptcy proceedings cannot reduce vested pension benefits. *Cf. Seitz*, 189 Mich. App. at 456 (declining to “throw out” a pension-reform statute in its entirety where none of the plaintiff state court judges could show that they would receive reduced pension benefits under said statute, but clarifying that the state was required “to honor its obligations” not to enforce the statute wherever doing so would in fact result in a reduction to a retired judge’s vested pension rights). *See also Lansing School Educ. Ass’n v Lansing Bd. of Educ.*,

487 Mich. 349, 372 n.20; 792 N.W.2d. 686 (2010) (declaratory judgment appropriate under Michigan law to accomplish a “sharpening of the issues raised” (quotation omitted)).

84. Whatever its route – either by holding that the Governor violated Article IX, Section 24 by granting the City blanket permission to file under chapter 9 despite knowing full well that the Emergency Manager plans to use chapter 9 to cram down unconstitutional pension reductions, or that the Governor’s permission carried with it the implicit condition that Article IX, Section 24 not be violated in bankruptcy– this Court must, when applying state law, hold the Governor to the truism that he cannot take actions “that would violate the constitution” even where he is acting with “broad discretion” delegated to him by statute. *See Taxpayers of Michigan Against Casinos, supra*.

(ii) PA 436 Violates The Strong Home Rule Provisions Of The Michigan Constitution

85. “Michigan is strongly committed to the concept of home rule,” a structural state-local federalism under which “[t]he charter of a city stands as its ‘constitution,’” and “once adopted by a vote of the electors, a city’s charter may be amended only by a vote of the electors.” *Bivens v. Grand Rapids*, 443 Mich. 391, 400-01 (1993) (quotations omitted) (striking down local ordinance which conflicted with local charter because local government could not “effectively amend the charter without subjecting the amendment to the scrutiny and approval of the local electorate”). This “strong home rule” regime reflects a bedrock principle of state law, which has been true for each of Michigan’s three Constitutions beginning with the Constitution of 1850 and continuing through the current Constitution of 1963: all officers of cities are to “be elected by the electors *thereof*, or appointed by such authorities *thereof*,” not by the central State Government. *See Brouwer v. Bronkema*, 377 Mich. 616, 652, 141 N.W.2d 98 (1966) (quoting *People ex re. Le Roy v. Hurlbut*, 24 Mich. 44, 65 (1871) (Cooley Court)).

86. In blatant disregard of this constitutional mandate, PA 436 – pursuant to which the Emergency Manager contends he has authority to file under chapter 9 on behalf of the City – strips the local electorate of its constitutional right to select its own officials, as well as to “frame, adopt and amend its charter” under Article VII, Section 22; to approve, by a two-thirds majority, any local act of the state legislature under Article IV, Section 9; and to be subject to administrative authority only where that authority is guided by standards created by the legislature and subject to due process of law, see *BCBSM v. Governor*, 367 N.W. 2d 1, 51 (Mich. 1985). For each of these reasons, PA 436 offends the “strong home rule” of Detroit, and the Emergency Manager is not lawfully authorized to file for bankruptcy on behalf of the City or to act as its representative during chapter 9 proceedings

(a) PA 436 Violates The Right Of The People Of Detroit To Select Their Own Local Officers And To Structure Their Own Government Via Charter

87. In one of its first cases interpreting the meaning of Michigan’s current Constitution, the Michigan Supreme Court reaffirmed the hallmark holding of the legendary Cooley Court: city residents have the state constitutional right to select their own local representatives. *Brouwer*, 377 Mich. at 651-61. As Justice Cooley held in his seminal *Hurlbut* opinion – the wellspring of the so-called “Cooley Doctrine” of local government, see David J. Barron, *The Promise of Cooley’s City: Traces of Local Constitutionalism*, 147 Univ. Penn. L. Rev. 487 (1999) – the right “to choose in some form the persons who are to administer the local regulations” is a right of local electors so basic to the “traditions, practice and expectations” of Michigan that it undergirds the State’s Constitution even in the absence of express constitutional language to that effect. *Hurlbut*, 24 Mich. at 29-33.

88. Having lived under the Cooley doctrine for 90 years at the time of Michigan’s most recent constitutional convention, the framers of the 1963 Constitution would have

understood *Hurlbut* as an even more foundational constitutional norm than Cooley himself. Indeed, the framers sought, in adopting the strong home rule regime which as now set forth in Article VII, to continue the “trend . . . toward strengthening inherent local government powers” which Justice Cooley “led” when he set forth the “rule” of local self-government in *Hurlbut*. 1 Official Record, Constitutional Convention 1961, 1052-53. As a result, Article VII provides that “[t]he legislature *shall* provide by general laws for the incorporation of cities and villages,” Art. VII, § 21; that under those general laws, “the electors of each city and village *shall* have the power and authority to frame, adopt and amend its charter,” Art. VII, § 22; and that “[t]he provisions of this constitution and law concerning counties, townships, *cities* and villages *shall* be liberally construed *in their favor*,” Art. VII, § 34. (Emphases added.)

89. PA 436 offends Article VII in myriad ways. First, it effectively adopts a new charter for Detroit which substitutes the *unelected* Emergency Manager for the Mayor and City Council collectively – including by granting the EM the power to, *inter alia*, issue orders directing the mayor and city council; set the local government budget unilaterally; enter into, and break, contractual agreements for the City, including CBAs, loans, and property transfers; seize control of the pension fund from its trustees; and, most relevant here, act “exclusively on the local government’s behalf in . . . chapter 9.” See MCL 141.1549(2) (“Upon appointment, an emergency manager shall act for and in the place and stead of the governing body and the office of chief administrative officer of the local government.”); MCL 141.1550(1) (“An emergency manager shall issue to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government the orders the emergency manager considers necessary[.]”); MCL 141.1552 (EM may amend local government budget; make

contracts; terminate CBAs; enter loan agreements; transfer property); MCL 141.1558 (EM directs bankruptcy).

90. It is a direct violation of *Hurlbut* and *Brouwer* that the EM serves in the role of mayor and city council without being selected by Detroit.

91. Moreover, despite the existence of detailed procedures in the Detroit Charter concerning the method of passing local laws and the interplay of authority between the local legislative and executive officers, the EM may even exercise, according to PA 436, all authority of the mayor and city council *simultaneously* “concerning the adoption, amendment, and enforcement of ordinances or resolutions of the local government” and “[t]ake any other action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government.” MCL 141.1552(1)(dd-ee).

92. To the drafters of the current Michigan Constitution, PA 436 would appear to parody Article VII. The provisions of Article VII directing the legislature to provide for the incorporation of cities to be governed by charters written by the cities’ voters is “mandatory,” and even before the 1963 Constitution – which *increased* the home rule powers of cities – it was well-established that, in executing that mandate, ““under the Constitution the legislature [does] not have the power to change the law as embodied in the charter [of a local government] without a ratifying vote of the village electors.” *Utica State Sav. Bank v. Village of Oak Park*, 279 Mich. 568, 273 N.W. 271, 274 (1937) (state statute retroactively ratifying all contracts for purchase of lands by local governments could not ratify land contract which was unlawful under local charter). This is because “the power vested in the [local] electors by the Constitution” to amend their own charter necessarily requires that “the Legislature does not

have the power to alter or amend a [local] charter without the approval of the [local] electors.” *Id.* at 577. Nor does the Legislature have the power to enter into contracts on behalf of the local government. *Id.* at 578. Yet PA 436 purports to empower Emergency Manager to assume all the powers of the local charter – including the ability to bind a city by contract for generations to come – without the core structural accountability for those powers baked into the charter in the form of local elections and separation of powers.

93. While it cannot be denied that the state possesses a robust role in demarcating the limits within which a municipality may structure the form of its government via charter, PA 436 swallows whole the rights reserved to local electors in Article VII to execute, within limits, their own vision of local government. For instance, typically “municipal officers can bind a municipality only if they are empowered to do so by the city charter.” *Manning v. City of Hazel Park*, 202 Mich. App 685, 691; 509 N.W. 2d 874 (1993). The Emergency Manager, however, possesses no such constraint under the terms of PA 436, which grants him his extreme powers “notwithstanding any charter provision to the contrary.” MCL 141.1552(1). Under PA 436, therefore, the Emergency Manager not only violates the charter by purporting to act with all of the power of the entire municipal government simultaneously as a matter of procedure, but also by doing so in direct violation of any substantive limitation that charter places on the local government. In effect, each time the Emergency Manager takes an act which contravenes the City Charter – a charter which, to be clear, has not formally been repealed – he decrees an amendment to that charter. But, as discussed *supra*, Detroit’s citizens have a constitutional right to be the ones to amend their own charters. Here too PA 436 egregiously violates Article VII.

94. Article VII does not permit such a scorched earth approach to local democracy. The Emergency Manager's purported statutory authority to act for the City is antithetical to Article VII, and therefore the Emergency Manager was never authorized by state law to file the City's chapter 9 petition. As fundamentally, the "City" has therefore not *voluntarily* filed a petition under Section 301 as incorporated by Section 901(a) of the Bankruptcy Code.

**(b) PA 436 Purports To Delegate Authority To The
Emergency Manager In Excess Of That Possessed By
The Legislature**

95. Section VII is not the exclusive mechanism protecting the "home rule" rights of local electors in the Michigan Constitution. Municipalities are further protected by Article IV, Section 29, which forbids the legislature from passing a local act both (a) "in any case where a general act can be made applicable, and (b) "until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected." "The requirement of a 2/3 vote of both houses and a majority vote in the area affected protects localities against arbitrary action." *Advisory Opinion on Constitutionality of 1975 PA 301*, 400 Mich. 270, 287, 254 N.W. 2d 528 (1977) (quoting 2 Official Record, Constitutional Convention 1961, p 2415).

96. PA 436 allows the Emergency Manager to adopt local ordinances and take purely local legal acts which would otherwise be assigned to the local government. *See* MCL 141.1552. Before the EM takes a local act of this nature, however, neither he nor the legislature makes any determination whether a general act could accomplish the same purpose; seeks the approval of two-thirds of the legislature; or submits the proposed act to the local electors for ratification. PA 436 therefore delegates to the EM power that the legislature simply does not possess. For even assuming *arguendo* that PA 436 is a general as opposed to local law, it contemplates the future passage of limitless local ordinances without the prophylactic

mechanisms built into Article IV, Section 29 to preserve “the settled purpose of the framers of the [Constitution] and of the people who adopted it to forever insure to the people the right to control their affairs purely local.” *Attorney General v. Lacy*, 180 Mich. 329, 337, 146 N.W. 871 (1914) (striking down local law passed by legislature).

97. The legislature cannot delegate power beyond that which it possesses. “That the Michigan Legislature may legislate absent constitutional limitations does not mean that it may wield legislative power in a manner other than that carefully prescribed by the Michigan Constitution.” *Blank v. Dep’t of Corrections*, 462 Mich. 103, 119, 611 N.W.2d 530 (2000). Yet PA 436 does just that, subjecting Detroit’s citizens to purely local acts – including the instant chapter 9 petition – taken by a central authority without the protection of Article IV, Section 29. In this case that local legislation includes not only this illegal bankruptcy, but all of the legislative acts undertaken by the Emergency Manager leading up to and in support of the chapter 9 petition, the extent and content of which will be further developed in discovery and at trial.

(c) PA 436 Unconstitutionally Delegates Legislative Authority To The Emergency Manager Because It Lacks Adequate Standards To Guide The Emergency Manager’s Actions In Bankruptcy, Which Are Not Subject To Judicial Review

98. Even assuming *arguendo* that the legislature had the authority to delegate its illegally asserted control over local self-governance, that delegation must still have included (1) “sufficient standards and safeguards” to “direct[] and check[] the exercise of delegated power,” as well as (2) “due process requirements” ensuring judicial review of the delegated action. *BCBSM v. Governor*, 367 NW 2d 1, 51-52 (Mich. 1985). PA 436 lacks both with respect to the Emergency Manager’s control of the City during bankruptcy.

99. First, PA 436 provides no standards whatsoever to the Emergency Manager – other than any “contingencies” which the Governor, and not the legislature, may have, but did not in this case, designate – for how to exercise the City’s affairs under chapter 9. MCL 141.1558. Thus the Emergency Manager is unfettered, for example, to enter into settlements resolving claims by creditors – settlements which, under Section 7-5-203 of the Detroit City Charter, are legislative acts of the City which must be approved by the City Council – without following any guidelines provided by the State. While the Bankruptcy Court may apply its own *federal law* constraints in the course of approving, or not, such settlements – though the authority of a bankruptcy judge to do so is questionable in light of federalism principles, *see infra* – there is simply no *state law* standard to refer to evaluate whether the Emergency Manager, in entering the settlements, is effectively legislating in bankruptcy within the intent of the legislature. “This complete lack of standards is constitutionally impermissible.” *BCBS*, 367 N.W. 2d at 55, and therefore the Emergency Manager is not authorized under state law to carry out the Legislature’s attempted delegation of authority under chapter 9.

100. Second, and relatedly, even assuming *arguendo* that PA 436 does contain standards constraining the absolute power of the Emergency Manager to act for the City under chapter 9, those standards are not subject to the requisite judicial review. As a result of the automatic stay, the Emergency Manager’s actions during chapter 9 can only be litigated to the bankruptcy court, which itself lacks authority to decide freestanding state-law claims. *See* 11 U.S.C. §§ 902(a), 362 (automatic stay); *Stern v. Marshall*, *supra* (Article I judge prohibited from deciding independent state law claims unhinged from bankruptcy). But the City can arguably enter into settlements with creditors under chapter 9 *without* receiving approval from the Bankruptcy Judge, even if a competing creditor requests judicial review. *See In re City of*

Stockton, California, Case No. 12-32118-C-9 (Bankr. E.D. Cal. Feb. 5, 2012) (“11 U.S.C. § 904 gives a chapter 9 debtor freedom to decide whether to ignore or to follow Rule 9019 compromise-approval procedure[.]”). The Emergency Manager thus acts in a legal vacuum, accountable neither in state court nor federal court for exercising the legislative power delegated to him by the State. The Michigan Constitution does not permit such insulation.

B. The City Failed To Participate In Any Good Faith Negotiations With Creditors Prior To Filing For Bankruptcy As Required For Eligibility Under Chapter 9

101. The City cannot meet its burden under section 109(c)(5) of the Bankruptcy Code of proving that it conducted good faith negotiations with its creditors or that such negotiations were impracticable.

102. Congress enacted the “negotiation” requirement of section 109(c) to prevent capricious filings of chapter 9 petitions, and Courts do not “view lightly the negotiation requirements of 11 U.S.C. § 109(c)(5).” *See In re Villages at Castle Rock Metro. Dist. No. 4*, 145 B.R. 76, 85 (Bankr. D. Colo. 1990); *In re Town of Westlake, Tex.*, 211 B.R. 860, 867-68 (Bankr. N.D. Tex. 1997) (suggesting that section 109(c)(5) requires that a municipality have an intent to negotiate with creditors it intends to impair). “The ‘creditor protection’ provided by section 109(c)(5). . . insures that the creditors have an opportunity to negotiate concerning a plan on a level playing filed with the debtor before their rights are further impaired by the provisions of section 362 of the Code.” *Sullivan County*, 165 B.R. at 78-79).

103. In *Cottonwood Water*, the Court explained the good faith negotiation requirement under section 109(c)(5) of the Bankruptcy Code as follows:

Congress consciously sought to limit accessibility to the bankruptcy court by municipalities [by requiring] . . . the municipal entity, before rushing to . . . Court, to first seek to negotiate in good faith concerning the treatment the creditors may be expected to receive under a plan to be filed under section

941 of the [Bankruptcy] Code. . . . The ‘creditor protection’ provided by section 109(c)(5) . . . insures that the creditors have an opportunity to negotiate concerning a plan on a level playing field with the debtor before their rights are further impaired by the provisions of section 362 of the [Bankruptcy] Code.

138 B.R. at 979.

104. Accordingly, the burden is on the City to demonstrate (i) that it engaged in good faith negotiations with its creditors concerning the possible terms of a plan or (ii) why it was unable to engage in such negotiations. ASFSCME respectfully submits that the City cannot demonstrate any negotiations with creditors such as AFSCME, let alone “good faith” negotiations, and further given that the City conducted no pre-petition negotiations with significant creditors such as AFSCME, the City should not be heard to argue that negotiations were impracticable.

(i) The City Failed To Negotiate With Creditors Such As AFSCME

105. The City claims it satisfies the section 109(c)(5)(B) requirement for negotiating with its creditors prior to the bankruptcy filing by negotiating with creditors, including unions such as AFSCME, via several meetings held with its unions where the City discussed its restructuring proposals and took certain questions. *See* Eligibility Brief, pp. 53-61(citing, *inter alia*, Orr Declaration, ¶¶ 90-96). What the City fails to mention is that, as discussed extensively above and as indicated by Orr himself prior to the scheduling of these meetings, it was made clear throughout these series of 3 or 4 relatively short meetings that the meetings were “discussions” and the City was not willing to conduct **any** negotiations. The City has argued that the EM “openly invited the City’s creditors to contact the City and its advisors to begin negotiations.” Eligibility Brief, p. 55. In fact, the City rebuffed negotiations, which require concessions from both sides and collaboration between the debtor and its significant

creditors. The City (acting through Orr) simply was not interested in negotiations (and as Orr indicated regarding the Restructuring Plan, “[t]his isn’t a plebiscite, we are not, like, negotiating the terms of the plan”).

106. *In re Ellicott School Building Authority* is directly on point. There, the debtor held three public meetings with large creditors regarding its proposed restructuring, although creditors were advised that the economic provisions of the proposed plan were not negotiable. 150 B.R. 261, 266 (Bankr. D. Colo. 1992). The court held that even though the debtor conducted three public meetings explaining its proposed plan of restructuring to bondholders, it did not negotiate in good faith because it indicated that the economic terms of its proposed plan were non-negotiable. *Id.* (debtor must be open to negotiating the substantive terms of a proposed plan); *cf. Int’l Ass’n of Firefighters, Local 1186 v. City of Vallejo (In re City of Vallejo)*, 408 B.R. 280, 289 (9th Cir. B.A.P. 2009) (finding that the city did not satisfy section 109(c)(5)(B) because it “never negotiated with Unions or any of its creditors over the possible terms of a plan of adjustment.”); *Sullivan County*, 165 B.R. at 78-79 (“The ‘creditor protection’ provided by section 109(c)(5) . . . insures that the creditors have an opportunity to negotiate concerning a plan on a level playing field with the debtor before their rights are further impaired” (citation omitted)).

107. The City’s a “take it or leave it” Restructuring Plan proposal that was not really open to any negotiations (good faith or otherwise) should be rejected as the court did in *Ellicott School*. The City failed to engage in any negotiations with its significant creditors such as AFSCME regarding the Restructuring Plan. Flatly refusing to conduct any negotiations (despite repeated requests by AFSCME both prior to and subsequent to the City’s bankruptcy filing) falls far short of the standard required under section 109(c)(5) of the Bankruptcy Code.

108. The City has publicly proclaimed its willingness to negotiate, yet it and its representatives' (i) statements that the meetings held to discuss the Restructuring Proposal were not negotiations and (ii) continued bad faith refusal postpetition to hold negotiations (despite requests from AFSCME to jump start negotiations) makes it more than clear that the City has conducted no good faith negotiations with AFSCME and similarly situated creditors.

(a) Even Assuming That The City Engaged In Negotiations, Such Negotiations Did Not Relate To A Plan That Is In The Best Interests Of Creditors As Required By Section 109(c)(5)(B)

109. While AFSCME submits that the City did not engage in any good faith negotiations with creditors such as AFSCME prior to the City's chapter 9 filing, even assuming this Court were to find otherwise, the City also has not satisfied section 109(c)(5)(B) of the Bankruptcy Code because the plan or terms of a plan being negotiated must be a plan that can be effectuated in chapter 9. *See Sullivan County*, 165 B.R. at 78 (debtor failed to meet burden of showing that it negotiated in good faith because the plan that was proposed was not a plan that could be effectuated in chapter 9); *Cottonwood Water.*, 138 B.R. at 979 (finding that "in order for this Debtor to be entitled to the entry of an order for relief, it must be prepared to show that it engaged in good faith negotiations with its creditors concerning the possible terms of a plan to be effected pursuant to section 941 of the Bankruptcy Code.").

110. Here, the proposed Restructuring Plan is patently unconfirmable because the plan seeks to unconstitutionally wipe out guaranteed vested pension benefits pursuant to a plan that would presumably be crammed down on creditors, including those City retirees and employees that participate in the various pension and other retirement benefit plans. Given that creditors owed pension obligations have absolute rights to such obligations under Michigan law as set forth extensively above, and one of the main goals of this proceeding is to modify vested

pension and other retiree benefits, the City has no ability to confirm any plan of adjustment modifying such rights. *See* 11 U.S.C. §943(b)(4) (stating that the Court shall confirm a chapter 9 plan only if “the debtor is not prohibited by law from taking any action necessary to carry out the plan.”).

111. Additionally, the Restructuring Plan is not in the “best interests of creditors” and thus could not be confirmed pursuant to section 943(b)(7) of the Bankruptcy Code. The “best interests of creditors” test in the context of a chapter 9 case does not compare treatment under a plan of liquidation, but rather to other alternatives to creditors to the plan. *See, e.g., In re Sanitary & Improvement Dist., #7*, 98 B.R. 970, 974 (Bankr. D. Neb. 1989); (“Section 943(b)(7) [with respect to the best interest of creditor’s provision] ... simply requires the court to make a determination of whether or not the plan as proposed is better than the alternatives.”); *In re Mount Carbon Metropolitan Dist.*, 242 B.R. 18, 34 n.50 (Bankr. D. Colo. 1999) (“The ‘best interest’ requirement of § 943(b)(7) is generally regarded as requiring that a proposed plan provide a better alternative for creditors than what they already have.”) (citing 4 Collier on Bankruptcy, 943.03[7] (Lawrence P. King, ed., 15th ed.1999)).

112. Had there been no chapter 9 filing by the City, pension creditors could not be impaired under the Michigan Constitution, and thus any impairment of such rights under a plan would violate Michigan law and be patently non-confirmable. Accordingly, because the Restructuring Proposal proposes to unconstitutionally wipe out guaranteed vested pension benefits, the proposal cannot satisfy the requirements of good faith negotiations over a plan that could be effectuated in chapter 9.

113. Orr failed to consider before filing for bankruptcy protection or since the filing, an equitable argument for the pension fund beneficiaries that creditors extending debt after

funding concerns surfaced should be subject to equitable subordination/fraudulent conveyance under Bankruptcy Code sections 510(c) and 544(b)/548(a).

114. Further, under Bankruptcy Code section 928(b), Orr should be exploring whether certain other creditors should bear the burden of some of the City's operating expenses during bankruptcy process, before benefit cuts are implemented.

(ii) Negotiations With Certain Categories Of Creditors Such As AFSCME Were Not Impracticable

115. The City alleges that it alternatively qualifies for eligibility under section 109(c)(5)(C) of the Bankruptcy Code because negotiations were impracticable.

116. As with the other eligibility requirements, the burden of proving impracticability rests with the City. *See In re Pierce County Housing Authority*, 414 B.R. 702, 713 (Bankr. W.D. Wash. 2009); *Vallejo*, 408 B.R. at 289 (citing *Valley Health*, 383 B.R. at 161). Courts considering section 109(c)(5)(C) define the ordinary meaning of "impracticable" as "not practicable; incapable of being performed or accomplished by the means employed or at command; infeasible." *See, e.g., Vallejo*, 408 B.R. at 298 (citing *Valley Health*, 383 B.R. at 163). Whether negotiations were impracticable is fact specific and depends upon the circumstances of the case. *See Vallejo*, 408 B.R. at 298.

117. The City alleges that negotiations were impracticable because, in part, the City had (i) numerous series of bonds and indebtedness held by multiple holders and (ii) approximately 20,000 retirees not represented by any formal agent or committee and other potential involuntary creditors. Furthermore, the City claims that the refusal of certain creditor constituencies to engage in good faith negotiations rendered negotiations impracticable.

118. In fact, AFSCME believes that the exact opposite is true here. The City predetermined that its pre-bankruptcy negotiations (which, as discussed above, were not

negotiations) would fail. As discussed extensively above, the Governor and his staff plotted for several months prior to the hiring of Orr as EM to bring in Orr, as an experienced bankruptcy counsel, to lead the City on a clear path towards a chapter 9 filing, and any negotiations were a façade – the City went through the motions of pre-petition meetings but, as is evident from its pre-petition conduct *vis a vis* AFSCME, never had any intention of negotiating outside of bankruptcy.

119. While the City alleges that it has over 100,000 creditors, it is clear that the main creditors the City had to negotiate with were the unions, its retirees, and the bond trustees.

120. The City itself has in the past negotiated for retiree health benefits and pension benefits outside of a chapter 9 proceeding. It is a red herring to say that negotiating medical benefits or pensions is impractical *per se*.

121. While courts have made clear that impracticability can be demonstrated by the volume of creditors to negotiate with, in no case AFSCME is aware of did a court find that negotiations were impracticable where the Debtor did not even attempt to negotiate pre-petition with its largest creditors such as AFSCME (and after repeated requests to do so). In *Ellicott School*, the court determined that the debtor holding “public meetings to which all bondholders were invited” showed that negotiations were practicable.

122. AFSCME is not suggesting that pre-petition negotiations could have bound everyone or must have involved all of the City’s thousands of creditors. Rather, some level of negotiation with principal creditors could have led the City to a non-bankruptcy solution. By

way of analogy, section 109(c)(5)(B) of the Bankruptcy Code contemplates pre-bankruptcy negotiations with creditors that municipality intends to impair, not all creditors.⁹

123. Given the City’s lack of negotiations with creditors such as AFSCME and similar union representatives that could have negotiated regarding the largest portion of the City’s unsecured debt, the City’s arguments that negotiations were impracticable should be rejected.

C. The City’s Petition Should Be Dismissed Under Section 921(c) As Filed In Bad Faith

124. The City’s bankruptcy petition is subject to dismissal pursuant to section 921(c) of the Bankruptcy Code because the filing was in bad faith. Section 921(c) of the Bankruptcy Code provides that “[a]fter any objection to the petition, the court, after notice and a hearing, may dismiss the petition if the debtor did not file the petition in good faith or if the petition does not meet the requirements of this title.”

125. “Good faith is not defined in the Bankruptcy Code.” *In re McCurtain Mun. Auth.*, No. 07-80363, 2007 WL 4287604, at *4 (Bankr. E.D. Okla. Dec. 4, 2007). Courts have determined, however, that the primary function of the good faith requirement in chapter 9 is to “ensure the integrity of the reorganization process by limiting access to its protection to those situations for which it was intended.” *Sullivan County*, 165 B.R. at 80 (citation omitted); *see also In re City of Stockton, California*, 493 B.R. 772, 794 (Bankr. E.D. Cal. 2013) (“Section 921(c) “good faith” serves a policy objective of assuring that the chapter 9 process is being used in a manner consistent with the reorganization purposes of the Bankruptcy Code”); *Villages at Castle Rock*, 145 B.R. at 81 (describing good faith as requirement that “prevents

⁹ Importantly, the City describes in the Orr Declaration that of the City has nearly \$12 billion in unsecured debt, but 75% of that (approximately \$9.2 billion) relates to accounting liabilities for post-employment benefit or underfunded pension liabilities.

abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefiting them in any way or to achieve reprehensible purposes”) (internal quotation marks and citation omitted).

126. While good faith in the chapter 9 context is not defined in the Bankruptcy Code, courts have looked to discussions of good faith in the chapter 11 context to determine whether a chapter 9 petition has been filed in good faith. *McCurtain Mun. Auth.*, 2007 WL 4287604, at *4 (referencing chapter 11 good faith standards to determine whether chapter 9 petition was filed in good faith) (quoting *Villages at Castle Rock*, 145 B.R. at 81); *County of Orange*, 183 B.R. at 608 (observing that “courts have ... applied to chapter 9 cases the judicial reasoning that developed in chapter 11 cases” regarding good faith); *Sullivan County*, 165 B.R. at 82 (examining and applying chapter 11 good faith requirements to chapter 9 petition)).

127. In the chapter 11 context, courts have explained that the requirement of good faith

prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefitting them in any way or to achieve reprehensible purposes. Moreover, a good faith standard protects the jurisdictional integrity of the bankruptcy courts by rendering their powerful equitable weapons . . . available only to those debtors and creditors with ‘clean hands.’

In re Little Creek Dev. Co., 779 F.2d 1068 (5th Cir. 1986).

128. Relevant considerations regarding good faith under chapter 9 include “whether the City’s financial problems are of a nature contemplated by chapter 9, whether the reasons for filing are consistent with chapter 9, the extent of the City’s pre-petition efforts to address the issues, the extent that alternatives to chapter 9 were considered, and whether the City’s residents would be prejudiced by denying chapter 9 relief.” *Stockton*, 493 B.R. at 794.

129. Here, a review of the various relevant factors considered by courts when analyzing good faith under section 921(c) lead to the inescapable conclusion that the City's chapter 9 case was filed in bad faith and with unclean hands.

130. First, the City's filing came several minutes prior to a Michigan State Court issuing a TRO enjoining the Governor from authorizing the filing. The State lawyers at the hearing on the TRO asked for a short delay when they realized that an adverse ruling was forthcoming with respect to the City's ability to authorize any chapter 9 authorization which did not proscribe the reduction of pension benefits violated the Michigan constitution. During that recess, the City filed for chapter 9 protection. Thus, the City commenced this proceeding "in the dark of night" to avoid a ruling it viewed as not in its favor. Such a filing is the antithesis of the careful, deliberative decision to file required under chapter 9, as "[t]he legislative history indicates that the strict hurdles to filing Chapter 9 were implemented to ensure that it was considered by a municipality only as a last resort." *Pierce County*, 414 B.R. at 714 (citation omitted) (noting debtor decided to file a chapter 9 petition only after several years of failed negotiations and attempts at mediation); *cf. Valleo*, 408 B.R. at 295 ("The evidence needs to show that the 'purpose of the filing of the chapter 9 petition not simply be to buy time or evade creditors.'"). The City simply filed to evade what it viewed as an imminent negative state court ruling. The City simply does not have "clean hands".

131. Additionally, as discussed extensively above, the City did not reasonably consider any alternatives to chapter 9, was preparing for a chapter 9 filing months before any creditor meetings to discuss restructuring options even started, and refused to negotiate with major creditors such as AFSCME as required. Simply put, the predetermined filing was done in bad faith and should be dismissed.

D. AFSCME Reserves The Right To Argue, Following Discovery, That The City Is Solvent

132. The Bankruptcy Code does not offer relief to a city simply because it is suffering economic difficulties. *See, e.g., In re City of Bridgeport*, 129 B.R. 332, 339 (Bankr. D. Conn. 1991) (although City projected \$16 million budget deficit, it was not insolvent, and “financial difficulties short of insolvency are not a basis for chapter 9 relief”); *In re Hamilton Creek Metro. Dist.*, 143 F.3d 1381, 1386 (10th Cir. 1998) (debtor not eligible for relief simply because it was severely economically distressed).

133. In order to carry its burden on insolvency, the City must prove either that it is “(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or (ii) unable to pay its debts as they become due.” 11 U.S.C. § 101(32)(C). The test under the first prong requires current non-payment of obligations, but the test under the second prong is prospective, looking to the debtor’s future inability to pay. *Bridgeport*, 129 B.R. at 336-37. Solvency is measured as of the petition date. *See, e.g., In re Town of Westlake, Texas*, 211 B.R. 860, 866 (Bankr. N.D. Tex. 1997) (citing cases).

134. The purposeful refusal to make a few payments comprising a relatively small part of the City’s budget does not satisfy the definition of “insolvent” under 11 U.S.C. § 101(32)(C)(i). *See, e.g., Uecker & Assocs. v. Tenet Healthsystem Hosps., Inc. (In re West Contra Costa Healthcare Dist.)*, No. 06-41774 T, 2010 Bankr. LEXIS 994, at *8 (Bankr. N.D. Cal. Mar. 26, 2010) (failure to pay \$1.3 million out of \$10-\$11 million total operating expenses did not mean the debtor was “generally not paying its debts”)

135. While the City alleges that it was forced to suspend certain payments to “conserve its dwindling cash”, such allegations are highly factual and need to be further probed through proper discovery.

136. Furthermore, the City has not demonstrated it was unable to pay its debts as they came due as of the petition date under 11 U.S.C. § 101(32)(C)(ii) for several reasons.

137. First, the City “deliberately budget[ed and] spen[t] itself into insolvency (so as to qualify under § 101(32)(C)(ii)), when other realistic avenues and scenarios [were] possible.” *Town of Westlake*, 211 B.R. at 867. Second, “[t]he mere fact that a municipality has adopted a budget that reflects a cash flow shortfall is not independently sufficient to meet the requirement of the ‘unable to pay’ test.” COLLIER ON BANKRUPTCY ¶ 900.02[2][c][i] (16th ed. 2011). Such a budget “must be evaluated in light of past and current practices, the practices of similar municipalities, and the extant facts and circumstances.” *Id.*

138. Here, the City’s past and current practices, as well as current facts and circumstances, not only show that the City has many available (but unexplored) options to enable it to pay its debts as they become due, but also that the City simply may have less than a reliable handle on its finances. Thus, the information provided in the City’s current budget may (upon completing of proper discovery) be “insufficient credible proof” of insolvency. *Town of Westlake*, 211 B.R. at 867; *see also Bridgeport*, 129 B.R. at 338 (requiring concrete proof “that [the city] will be unable to pay its debts as they become due in its current fiscal year or, based on an adopted budget, in its next fiscal year” and noting that “[o]bviously, it is necessary for cities to make informed financial projections”).

139. The City’s current financial difficulties currently are actually less severe than in some prior years, and AFSCME preliminarily believes (subject to discovery) that there may be numerous other available means to solve the City’s current financial difficulties and generate sufficient funds to pay its debts coming due in the coming fiscal year. These include enhancing revenues by aggressively collecting obligations owed, aggressively pursuing repayment of

millions of dollars in loans owed to the general fund (including through the hiring of more employees in the City's collections area), and taking further steps to reduce costs. AFSCME recognizes that all parties (including current and former employees) will be required to sacrifice, but reasonable concessions from all significant creditors would easily bring the City closer to stability.

140. Given the highly fact intensive inquiry related to insolvency and the lack of any discovery available on these issues to AFSCME, AFSCME reserves the right to make additional arguments about the City's insolvency (or lack thereof) pending the completion of discovery.

CONCLUSION

For the reasons set forth herein, AFSCME respectfully requests that this Court issue an order dismissing the City's chapter 9 petition and granting such other and further relief as is just and proper under the circumstances.

Dated: August 19, 2013

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May 12, 2013, *available at* <http://detroit.cbslocal.com/2013/05/12/kevin-orr-releases-financial-plan-for-city-of-detroit/> 2, 13

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
2.	484	8/19/2013	Joinder of Local 324, International Union of Operating Engineers as interested party to Objections to Detroit's Eligibility for Relief Under Section 109(c) and 921(c) of the Bankruptcy Code

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

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

**JOINDER OF LOCAL 324, INTERNATIONAL UNION OF OPERATING ENGINEERS
AS INTERESTED PARTY TO OBJECTIONS TO DETROIT’S ELIGIBILITY FOR
RELIEF UNDER SECTIONS 109(c) AND 921(c) OF THE BANKRUPTCY CODE**

Local 324, International Union of Operating Engineers (“Local 324”) hereby joins and objects to the City of Detroit’s eligibility for an order or relief under chapter 9 of the U.S. Bankruptcy Code and adopts by reference hereto the arguments contained in, and documents appended to, the Objections To the City of Detroit’s Eligibility for an Order for Relief Under Sections 109(c) and 921(c) of the Bankruptcy Code filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“UAW”) and the Objection filed by Counsel 25, American Federation of State, City, and Municipal Employees (“AFSCME”). In support of this joinder, Local 324 states the following:

1. Local 324 is a labor organization headquartered in Bloomfield Township, Michigan and represents approximately one-hundred and four (104) City of Detroit employees in various departments including the Water and Sewerage Department, Parks and Recreation Department, and employees in various positions throughout the City.

2. Over the past year, Local 324 has joined with other labor organizations representing the City of Detroit employees to press for solutions that reflect fair and democratic



participation by the City's stakeholders. During the prepetition period, the City consistently and continuously refused to engage in any bargaining with representatives of Local 324, and presented its proposals only on "take it or leave it" basis.

3. As an interested party, Local 324 reserves the right to be heard during any argument or status conference concerning the City's eligibility for bankruptcy relief and all other related matters.

WHEREFORE, for the foregoing reasons, Local 324 joins in UAW's and AFSCME's Objections and requests that the City of Detroit's Chapter 9 Petition be dismissed.

Respectfully submitted,

SACHS WALDMAN, P.C.

/s/ Andrew Nickelhoff

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mkato@sachswaldman.com

Dated: August 19, 2013

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

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

CERTIFICATE OF SERVICE

I, Mami Kato, being first duly sworn, hereby certify that on August 19, 2013, I electronically filed **Joinder of Local 324, International Union of Operating Engineers as Interested Party to Objections to Detroit’s Eligibility for Relief Under Sections 109(c) and 921(c) of the Bankruptcy Code** and this **Certificate of Service** with the Clerk of the Court through the Court’s CM/ECF system which will provide notice and service of such documents upon the parties through counsel of record.

SACHS WALDMAN, P.C.

/s/ Mami Kato

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Date: August 19, 2013

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
3.	486	8/19/2013	Joinder of Local 517M, Service Employees International Union as interested party to Objections to Detroit's Eligibility for Relief Under Sections 109(c) and 921(c) of the Bankruptcy Code

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

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

JOINDER OF LOCAL 517M, SERVICE EMPLOYEES INTERNATIONAL UNION AS INTERESTED PARTY TO OBJECTIONS TO DETROIT’S ELIGIBILITY FOR RELIEF UNDER SECTIONS 109(c) AND 921(c) OF THE BANKRUPTCY CODE

Local 517M, Service Employees International Union (“Local 517M”) hereby joins and objects to the City of Detroit’s eligibility for an order or relief under chapter 9 of the U.S. Bankruptcy Code and adopts by reference hereto the arguments contained in, and documents appended to, the Objections To the City of Detroit’s Eligibility for an Order for Relief Under Sections 109(c) and 921(c) of the Bankruptcy Code filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“UAW”) and the Objection filed by Counsel 25, American Federation of State, City, and Municipal Employees (“AFSCME”). In support of this joinder, Local 517M states the following:

1. Local 517M is a labor organization headquartered in Lansing, Michigan and represents approximately thirty-nine (39) City of Detroit employees in various departments and positions.

2. Over the past year, Local 517M has joined with other labor organizations representing the City of Detroit employees to press for solutions that reflect fair and democratic participation by the City’s stakeholders. During the prepetition period, the City consistently and



continuously refused to engage in any bargaining with representatives of Local 517M, and presented its proposals only on “take it or leave it” basis.

3. As an interested party, Local 517M reserves the right to be heard during any argument or status conference concerning the City’s eligibility for bankruptcy relief and all other related matters.

WHEREFORE, for the foregoing reasons, Local 517M joins in UAW’s and AFSCME’s Objections and requests that the City of Detroit’s Chapter 9 Petition be dismissed.

Respectfully submitted,

SACHS WALDMAN, P.C.

/s/ Andrew Nickelhoff

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Dated: August 19, 2013

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

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

CERTIFICATE OF SERVICE

I, Mami Kato, being first duly sworn, hereby certify that on August 19, 2013, I electronically filed **Joinder of Local 517M, Service Employees International Union as Interested Party to Objections to Detroit’s Eligibility for Relief Under Sections 109(c) and 921(c) of the Bankruptcy Code** and this **Certificate of Service** with the Clerk of the Court through the Court’s CM/ECF system which will provide notice and service of such documents upon the parties through counsel of record.

SACHS WALDMAN, P.C.

/s/ Mami Kato

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Date: August 19, 2013

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
4.	495	8/19/2013	Objection to Eligibility to Chapter 9 Petition filed by creditor David Sole (Attachments: Index of Exhibits; Exhibit 1; Exhibit 2)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Chapter 9

Case No. 13-53846

City of Detroit, Michigan,

Debtor.

**OBJECTION BY INTERESTED PARTY DAVID SOLE TO THE CITY OF DETROIT'S
ELIGIBILITY TO OBTAIN RELIEF UNDER CHAPTER 9 OF THE BANKRUPTCY
CODE [DOCKET 10] AND TO THE CITY OF DETROIT'S MEMORANDUM IN
SUPPORT OF STATEMENT OF QUALIFICATIONS PURSUANT TO SECTION 109(C)
OF THE BANKRUPTCY CODE [DOCKET 14]**

1. The cited authority for the Emergency Manager to file this Chapter 9 bankruptcy on "behalf" of the City of Detroit derives from MCL 141.1541 et. seq, the Michigan Local Financial Stability and Choice Act of 2012.

2. This Act outlaws specifies powers delegated to the Emergency Manager by Michigan State law.

3. For example, MCLS § 141.1551 provides the Emergency Manager with the following powers:

(c) to carry out the modification, rejection, termination, and renegotiation of contracts pursuant to section 12;

(d)The timely deposit of required payments to the pension fund for the local government or in which the local government participates; . . .

(f) Any other actions considered necessary by the emergency manager in the emergency manager's discretion to achieve the objectives of the financial and operating plan, alleviate the financial emergency, and remove the local government from receivership.

4. MCL 141. 1552 provides for other statutory powers handed to an Emergency Manager. It states:



Sec. 12. (1) An emergency manager may take 1 or more of the following additional actions with respect to a local government that is in receivership, notwithstanding any charter provision to the contrary:

(j) Reject, modify, or terminate 1 or more terms and conditions of an existing contract.

(k) Subject to section 19, after meeting and conferring with the appropriate bargaining representative and, if in the emergency manager's sole discretion and judgment, a prompt and satisfactory resolution is unlikely to be obtained, reject, modify, or terminate 1 or more terms and conditions of an existing collective bargaining agreement. The rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement under this subdivision is a legitimate exercise of the state's sovereign powers if the emergency manager and state treasurer determine that all of the following conditions are satisfied.

6. MCL 141.1553 outlines the powers and limitations of an Emergency Manager relative to municipal pension funds. It states:

(m) If a municipal government's pension fund is not actuarially funded at a level of 80% or more, according to the most recent governmental accounting standards board's applicable standards, at the time the most recent comprehensive annual financial report for the municipal government or its pension fund was due, the emergency manager may remove 1 or more of the serving trustees of the local pension board or, if the state treasurer appoints the emergency manager as the sole trustee of the local pension board, replace all the serving trustees of the local pension board. For the purpose of determining the pension fund level under this subdivision, the valuation shall exclude the net value of pension bonds or evidence of indebtedness. The annual actuarial valuation for the municipal government's pension fund shall use the actuarial accrued liabilities and the actuarial value of assets. If a pension fund uses the aggregate actuarial cost method or a method involving a frozen accrued liability, the retirement system actuary shall use the entry age normal actuarial cost method. If the emergency manager serves as sole trustee of the local pension board, all of the following apply:

(i) The emergency manager shall assume and exercise the authority and fiduciary responsibilities of the local pension board including, to the extent applicable, setting and approval of all actuarial assumptions for pension obligations of a municipal government to the local pension fund.

(ii) **The emergency manager shall fully comply with the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140m, and section 24 of article IX of the state constitution of 1963, and any actions**

taken shall be consistent with the pension fund's qualified plan status under the federal internal revenue code. (emphasis added)

7. Thus an Emergency Manager's powers with regard to municipal pensions are specifically limited by Article IX Section 24 of the Michigan Constitution which guarantees the payment of accrued pension benefits. Article IX Section 24 states:

§ 24. Public pension plans and retirement systems, obligation.
Sec. 24. The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

8. MCL 141.1558 is the section of the Local Financial Stability and Choice Act of 2012 that provides the authority for the Emergency Manager and the Governor to file a Chapter 9 Bankruptcy. It states:

Sec. 18. (1) If, in the judgment of the emergency manager, no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the emergency manager may recommend to the governor and the state treasurer that the local government be authorized to proceed under chapter 9. If the governor approves of the recommendation, the governor shall inform the state treasurer and the emergency manager in writing of the decision, with a copy to the superintendent of public instruction if the local government is a school district. The governor may place contingencies on a local government in order to proceed under chapter 9. Upon receipt of the written approval, the emergency manager is authorized to proceed under chapter 9. This section empowers the local government for which an emergency manager has been appointed to become a debtor under title 11 of the United States Code, 11 USC 101 to 1532, as required by section 109 of title 11 of the United States Code, 11 USC 109, and empowers the emergency manager to act exclusively on the local government's behalf in any such case under chapter 9.

9. 11 USCS 109(2) states that a local municipality must be specifically authorized by state law to file a Chapter 9 bankruptcy. It states:

(c) An entity may be a debtor under chapter 9 of this [title \[11 USCS §§ 901 et seq.\]](#) if and only if such entity--
(1) is a municipality;
(2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter [\[11 USCS §§ 901 et seq.\]](#) by State law, or by a

governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter [[11 USCS §§ 901](#) et seq.].

10. In *United States v Bekins*, 304 U.S. 27, 49 (1938), the United States Supreme Court held that the phrase “authorized by law” with regard to a municipal bankruptcy “manifestly refers to the law of the state.”

11. In *In RE: City of Harrisburg, PA*, 465 B.R. 744, 754 (Middle Dist of PA 2011), the court noted that pursuant to the most recent Chapter 9 enactments, “states act gatekeepers to their municipalities access to relief under the Bankruptcy Code. Therefore, when the authority to file under state law is questioned, bankruptcy courts exercise jurisdiction carefully in light of the interplay between Congress’s bankruptcy power and the limitations on federal power under the Tenth Amendment. (internal citations omitted).”

12. Michigan law applies the principles of strict statutory construction to interpreting the law. For example, in *Pohutski v City of Allen Park*, 465 Mich 675, 683-684 (2002), the Michigan Supreme Court held:

When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature's intent as expressed [***9] in the words of the statute. *DiBenedetto v West Shore Hosp*, 461 Mich. 394, 402; 605 N.W.2d 300 (2000); *Massey v Mandell*, 462 Mich. 375, 379-380; 614 N.W.2d 70 (2000). We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous. *Turner v Auto Club Ins Ass'n*, 448 Mich. 22, 27, 528 N.W.2d 681 (1995). Where the language is unambiguous, "we presume that the Legislature intended the meaning clearly expressed---no further judicial construction is required or permitted, and the statute must be enforced as written." *DiBenedetto*, 461 Mich. at 402. Similarly, courts may not speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the Legislature. See *Lansing v Lansing Twp*, 356 Mich. 641, 649-650; 97 N.W.2d 804 (1959). [*684]

When parsing a statute, we presume every word is used for a purpose. As far as possible, we give effect to every clause and sentence. "HN6The Court may not assume that the Legislature inadvertently made use of one word or [*10] phrase instead of another." *Robinson v Detroit*, 462 Mich. 439, 459; 613 N.W.2d 307 (2000). Similarly, we should take care to avoid a**

construction that renders any part of the statute surplusage or nugatory. In re MCI, 460 Mich. at 414. (emphasis added)

13. In *Smitter v. Thornapple Twp.*, 494 Mich. 121 (Mich. 2013), the Michigan Supreme Court restated the application of the doctrine of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another) to Michigan law on statutory construction.

14. The Emergency Manager, in numerous pronouncements as well as in his Chapter 9 bankruptcy filing, noted his intention to reduce accrued pensions in violation of the law. In fact, the top “unsecured creditors” were the Detroit General Retirement Services Board and the Detroit Police and Firefighters Retirement Services Board.

15. Interested Party Sole contends that in so far as the Emergency Manager’s Chapter 9 Bankruptcy filing intends to diminish or impair accrued pensions it violates MCL 141.1541 et. seq, the Michigan Local Financial Stability and Choice Act of 2012, as well as the Michigan State Constitution.

16. The only State Court to be heard on this issue, the Circuit Court for the County of Ingham, specifically held that “PA 436 is unconstitutional and in violation of Article IX Section 24 of the Michigan Constitution to the extent that it permits the Governor to authorize an emergency manager to proceed under Chapter 9 in any manner which threatens to diminish or impair accrued pension benefits.” **Exhibit 1, attached.**

17. Ingham County Circuit Court Judge Rosemarie Aquilina further ordered: “In order to rectify his unauthorized and unconstitutional actions described above, the Governor must (1) direct the Emergency Manager to immediately withdraw the Chapter 9 petition filed on July 18., and (2) not authorize any further Chapter filing which threatens to diminish or impair accrued pension benefits.” **Id.**

WHEREFORE: Interested Party Sole respectfully requests that this honorable Court deny the City of Detroit's (through the Emergency Manager) eligibility for filing this Chapter 9 bankruptcy because the petition violates the state authorization statute which mandates that any Chapter 9 filing under MCL 141.1541 must be subject to the Michigan constitutional limitation on not diminishing or impairing accrued pensions, or in the alternative, that this honorable Court specifically exclude any diminishing or impairing of accrued pension benefits as part of the debtor's restructuring of debt pursuant to its Chapter 9 bankruptcy.

LAW AND ANALYSIS

I. THE MICHIGAN STATUTE AUTHORIZING THIS CHAPTER 9 BANKRUPTCY FILING INCORPORATES THE MICHIGAN CONSTITUTIONAL PROHIBITION AGAINST DIMINISHING OR IMPAIRNG PENSIONS AS A CONTINGENCY ON THE FILING.

As outlined above, 11 USC 109 states that a local municipality must be “specifically authorized by state law to file a Chapter 9 bankruptcy.” The phrase “authorized by law” refers to the law of the state. *U.S. v Bekins*, 304 U.S. at 27.” “States act as gatekeepers to their municipalities to access to relief under the Bankruptcy Code.” *In Re: City of Harrisburg*, 465 BR at 744.

The Michigan state law that is the basis for the City of Detroit's (through the Emergency Manager) Chapter 9 bankruptcy filing is MCL 141.1541 et. seq., the Local Financial and Stability and Choice Act of 2012. For the purposes of this Objection, Interested Party Sole calls the attention of the Court to several relevant sections of the statute.

Section 1551(c) provides the Emergency Manager with the power to “carry out the modification, rejection, termination and renegotiation of contracts pursuant to Section 12.”

Section 1552 (Section 12) (j) provides the Emergency Manager with the power to reject, modify or terminate 1 or more terms of an existing contract. Section (k) gives the Emergency

Manager the power to reject, modify or terminate an existing collective bargaining contract (subject to meeting several conditions).

Section 1553 outlines the power and limitations of the Emergency Manager relative to municipal pensions. Significantly, this section specifically mandates that Emergency Manager must **fully comply** with Article IX Section 24 of the Michigan constitution, which is the constitutional prohibition on diminishing or impairing accrued pensions.

Section 1558 of the Local Financial Stability and Choice Act provides the authority for the Emergency Manager and the Governor to file a Chapter 9 bankruptcy. Significantly, Section 1558 states: “The governor may place contingencies on a local government in order to proceed under Chapter 9.”

Under Chapter 9 of the Bankruptcy code and cases interpreting Chapter 9, Michigan law is determinative on how the state authorizing statute for this Chapter 9 bankruptcy is to be interpreted. Michigan law applies principles of strict statutory construction. In *Pohutski*, 465 Mich at 683, 684, the Michigan Supreme enunciated the following:

When parsing a statute, we presume every word is used for a purpose. As far as possible, we give effect to every clause and sentence. "HN6The Court may not assume that the Legislature inadvertently made use of one word or [*10] phrase instead of another." Robinson v Detroit, 462 Mich. 439, 459; 613 N.W.2d 307 (2000). Similarly, we should take care to avoid a construction that renders any part of the statute surplusage or nugatory. In re MCI, 460 Mich. at 414. (emphasis added)**

In addition, Michigan courts follow the doctrine of expression unius exclusion alterius (the expression of one thing is the exclusion of another). *Smitter* 494 Mich at 121.

In construing the sections of the Local Financial Stability and Choice Act as a whole, and so as not to render any part of the statute surplusage or nugatory, the statute must be construed in the following manner: “The Emergency Manager is authorized to proceed under Chapter 9

subject to the following contingency – The Chapter 9 bankruptcy shall not in any way undertake to diminish or impair the payment of accrued pension benefits.”

II. UNDER SIXTH CIRCUIT PRECEDENT, EXCLUDING PENSION BENEFITS FROM THE CHAPTER 9 BANKRUPTCY IS NOT PREEMPTED BY FEDERAL LAW

The City of Detroit may argue once the Chapter 9 filing is authorized, any state limitations on the scope of the relief available by the filing are preempted by federal law. That seems to be basis for the holding in *In re City of Vallejo*, 403 BR 72 (2009).

However, Interested Party Sole contends that pursuant to the 2012 Sixth Circuit decision in *Richardson v Schafer*, 689 F3d 601 (2012), a narrow state limitation on the scope of the relief available in a Chapter 9 bankruptcy is not preempted by federal law.

Schafer, supra, dealt with the legitimacy a homestead exemption the debtor asserted pursuant to MCL 600.5451 which was broader than the exemption allowed under 11 USC 522(b) or Michigan’s general homestead exemption. The Court noted that the interpretation to the phrase “uniform laws” by both the Supreme Court and this Court permits states to act in the arena of bankruptcy exemptions even if they do so by making certain exemptions available only to debtors in bankruptcy, and that such exemptions schemes are not invalidated by the Supremacy clause.” *Id.* at 603.

The Sixth Circuit cited to its own holding in *Rhodes v Stewart*, 705 F2d 159 (6th Cir 1983) for the proposition that states have concurrent authority to promulgate laws governing exemptions applicable in bankruptcy cases. The Court further noted that “this understanding that the federal power was exclusive eventually gave way to an acceptance that states could, in the absence of federal legislation, pass laws on bankruptcy.” *Id.* at 606. The Court stated: “In other words, the general rule of law laid down by the Supreme Court in *Moyses* was that the

uniformity requirement is geographical and that variations resulting from differences in state law are not unconstitutional.” *Id.* at 610. “Congress does not exceed its constitutional powers in enacting a bankruptcy law that permits variations based on state law or to solve geographically isolated problems.” *Id.* at 611. The Sixth Circuit held the proper determination of whether a state law conflicted with federal law in the bankruptcy exemption context was conflict preemption, whether “the laws in question conflict such that it is impossible for a party to comply with both laws simultaneously, or where the enforcement of the state law would hinder or frustrate the full purposes and objectives of the federal law.”

Based on Sixth Circuit precedent, Interested Party Sole contends that the only allowable interpretation of the Michigan authorizing statute, the Local Financial Stability and Choice Act, under Michigan rules of statutory construction, is that a Chapter 9 Filing cannot have the intent or effect of diminishing or impairing accrued pensions, and such a provision does not conflict with and is not preempted by federal law. Such a limitation on a Chapter 9 Bankruptcy filing would not hinder or frustrate the full purposes and objectives of the federal Bankruptcy code. It would still allow for restructuring most of the debts of the municipality. It would exclude the one class of benefits, public pensions, which the state chose to constitutionally protect and whose protection was incorporated into the authorizing statute.

In addition, there is a strong policy purpose for protecting pension benefits and excluding them from being diminished or impaired bankruptcy. Pensions are in fact deferred wages. They were earned and secured by the workers by their labor before the bankruptcy petition was filed. In essence, they are simply unpaid wages which the retirees elected to defer so they can have an income for their last years of life.

III. CHAPTER 9 BANKRUPTCY IS ALREADY SUBJECT TO STATE LIMITATIONS

In *In RE: City of Harrisburg, PA*, 465 B.R at 753, the Court discussed how Chapter 9 bankruptcy particularly implicates federalism concerns. The Court stated:

Although Congress has the sole power to establish “uniform Laws on the subject of Bankruptcies throughout the United States (US Const art I, Section 8), where federal bankruptcy law intersects with the rights of states to regulate the activities of political subdivisions created by the state, principles of dual sovereignty as defined by the Tenth Amendment must be considered.

Municipalities cannot automatically file for Chapter 9 bankruptcy. They must be specifically authorized to file by state law. 11 USC 109. According to a study by a Sacramento television station (near where Stockton, CA is located), twenty two (22) states do not even provide access to Chapter 9 bankruptcy, and 16 states set conditions for municipal bankruptcy. <http://www.news10.net/news/pdf/State-Policies-on-Chapter-9-bankruptcy.pdf> (**Exhibit 2, attached**)

11 USC 904 provides limitations on the jurisdiction and powers of the court during Chapter 9 bankruptcy. The court may not interfere with any of the political or governmental powers of the debtor, any of the property or revenues of the debtor, or the debtor’s use or enjoyment of any income-producing property.

The special interplay of state and federal law in the context of Chapter 9 bankruptcy, lends special applicability in the Chapter 9 context to the holding in *Schafer*, supra, that the proper determination of whether a state law conflicts with federal law in the bankruptcy exemption context is conflict preemption.

The limitation on pensions not being diminished or impaired in the bankruptcy process, which is included in Michigan’s Chapter 9 authorizing statute, is not in conflict with federal law and must be enforced.

IV. TO THE EXTENT THAT THE COURT WAS TO HOLD THAT REDUCING PENSIONS CAN NOT BE EXCLUDED FROM CONSIDERATION IN A CHAPTER 9 BANKRUPTCY, THEN MICHIGAN LAW DOES NOT AUTHORIZE THE FILING AND THIS CASE MUST BE DISMISSED

In the alternative, if this honorable court was to rule that excluding pensions from the Chapter 9 case would violate federal law, then there is no way to read the Michigan law as authorizing the Chapter 9 filing at all and it must be dismissed. As noted earlier, the Local Financial Stability and Choice Act of 2012 must be construed so as to incorporate the Michigan constitutional guarantee against diminishing or impairing pensions. The section of the law authorizing the Chapter 9 bankruptcy filing implicitly incorporates this clause in that it provides that the governor could place contingencies on a local government that chooses to file for Chapter 9. The ban on impairing pensions would by necessity be one of those contingencies.

If a Chapter 9 filing under the statute was to allow for attacking pension benefits, it would negate the specific ban on doing so written into the statute and implicitly included as a contingency in the governor's specific authorization of a Chapter 9 bankruptcy. Without this contingency for excluding diminishing pension benefits from the Chapter 9 consideration, there could be no authorization for a Chapter 9 bankruptcy under Michigan law. Therefore, lacking the specific authorization to file the Chapter 9 bankruptcy, the City of Detroit's petition for bankruptcy would have to be dismissed.

WHEREFORE: Interested Party Sole respectfully requests that this honorable Court deny the City of Detroit's (through the Emergency Manager) eligibility for filing this Chapter 9 bankruptcy because the petition violates the state authorization statute which mandates that any Chapter 9 filing under MCL 141.1541 must be subject to the Michigan constitutional limitation on not diminishing or impairing accrued pensions, or in the alternative, that this honorable Court

specifically exclude any diminishing or impairing of accrued pension benefits as part of the City of Detroit's restructuring of debt pursuant to this Chapter 9 bankruptcy.

Respectfully submitted,

JEROME D. GOLDBERG, PLLC

By: /s/ Jerome D. Goldberg

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DATED: August 19, 2013

INDEX OF EXHIBITS

1. Lansing Circuit Court Order
2. List of states authorizing Chapter 9 filing

EXHIBIT 1

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

GRACIE WEBSTER and
VERONICA THOMAS,

Plaintiffs,

vs

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

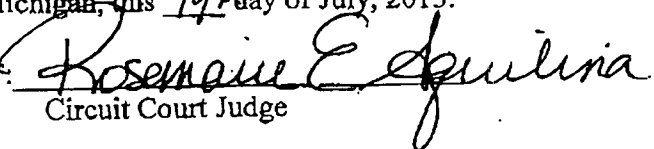
THE STATE OF MICHIGAN;
RICHARD SNYDER, as Governor
of the State of Michigan; and
ANDY DILLON, as Treasurer of
the State of Michigan,

Defendants.

ORDER OF DECLARATORY JUDGMENT

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

PRESENT:


Circuit Court Judge

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

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

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

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

IT IS HEREBY ORDERED:

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

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

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

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

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

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

It is so Ordered.

Rosemarie E. Aquilina
Circuit Court Judge *P37670*

EXHIBIT 2

22 States do not provide access to Chapter 9 Bankruptcy	16 States set conditions for Municipal Bankruptcy	12 States provide Blanket Authorization
<p>-Georgia explicitly denies access to municipal bankruptcy. (GA Code 36—80-5)</p> <p>States with No Statutes:</p> <p>Alaska Delaware Hawaii Indiana Kansas Maine Maryland Massachusetts Mississippi New Hampshire New Mexico North Dakota Rhode Island South Dakota Tennessee Utah Vermont Virginia West Virginia Wisconsin Wyoming</p>	<p>Connecticut Idaho Illinois Iowa Kentucky Louisiana Michigan Montana Nevada New Jersey New York North Carolina Ohio Oregon Pennsylvania Washington</p>	<p>Alabama Arizona Arkansas California Colorado Florida Minnesota Missouri Nebraska Oklahoma South Carolina Texas</p>

States with Blanket Authorization

1. Alabama (AL Code §11-81-3)
2. Arizona (AZ Code §35-603)
3. Arkansas (AK Code §14-74-103)
4. California (CA Code §53760)
5. Colorado (32-1-1403)
6. Florida (FL Stat §218.01)
7. Minnesota (§471.831)
8. Missouri (MO §427.100)
9. Nebraska (NE §13-402)
10. Oklahoma (OK Code §62-283)
11. South Carolina (SC Code §6-1-10)
12. Texas (TX Code §140.001)

States with conditions for Municipal Bankruptcy

1. Connecticut: A municipality must receive express written consent from the Governor to file for chapter 9 bankruptcy. If the Governor approves a bankruptcy he/she must submit a report to the Treasurer and the joint standing committee of the General Assembly explaining the reasons for consent. (CT Gen Stat. §7-566)
2. Idaho: A taxing district in the state is authorized to file petition for chapter 9 bankruptcy provided that the taxing district adopts a resolution to authorize the filing.
3. Illinois: Illinois law provides for the establishment of a financial planning and supervision commission to oversee the finances of an entity that has been declared to be in a fiscal emergency by the Governor. The Governor may establish a commission when the city is 180 days in default of debt; it has not made payment on 20% of its payroll, or the insolvency of the unit of local government. The unit of local government that has been declared to have a fiscal emergency is required to file a financial plan with the commission and the commission's financial advisor. The commission is authorized to make a written recommendation that the unit of local government file for chapter 9 bankruptcy code (§50 ILCA 320/1-14)

4. Iowa: A city, county, or other political subdivisions is authorized to file for chapter 9 bankruptcy if they are insolvent and the debt is involuntarily incurred. The statute specifically states that a valid and binding collective bargaining agreement or previously authorized bond issues are not eligible debts. (IA §76.16, IA §76.16A)
5. Kentucky: Taxing agencies in Kentucky are authorized to utilize the Federal Bankruptcy Act. However, Counties must have their plan approved by the state local debt officer and the state local finance officer in order to file for bankruptcy. (KY §66.400)
6. Louisiana: The Governor and the Attorney General must provide consent, approval, and authority in order for a taxing entity to file a plan of readjustment of its debts in a United States court. (LA §13:4741)
7. Michigan: The governor may appoint a "review team" to make an assessment and, if needed, negotiate a consent agreement with local government concerning long-range plans for financial recovery. (§141.1213)
8. Montana: The local entity must adopt an ordinance or resolution declaring that it meets the requirements for chapter 9 bankruptcy. The state or any department or agency holding securities for the local entity must consent to the plan of adjustment. (MT §7-7-132, §7-7-133, §7-7-134)
9. Nevada: Nevada has no specific provisions authorizing municipal bankruptcy. They do however have provisions that allow for the Nevada Tax Commission to provide Technical Financial Assistance. The authorities of the Nevada Tax Commission include taking control over the local government or possible dissolution of local government in certain circumstances. (354.675, 354.685, 354.686, 354.695, 354.701, 354.705, 354.715, 354.721, 354.723, 354.7235, 354.725)

10. New Jersey: The Municipal Finance Commission must approve both the filing of the bankruptcy petition as well as any plan of adjustment. Once the Municipality has been in financial default to bondholders or noteholders for more than 60 days, the commission may intervene to manage the financial affairs of the municipality.

NJ Gen Stat (§52:27-40)

11. New York: New York authorizes a municipality, emergency financial control board to file for adjustment of municipal indebtedness (NY CLS Loc. Fin §85.80 & 85.80). New York City must get authorization from the New York State Financial Control Board to file for bankruptcy.

12. North Carolina: Requires pre-approval by the Local Government Commission (State Treasurer, State Auditor, Secretary of State, Secretary of Revenue, and five appointees).

(NC Gen Stat §23-48)

13. Ohio: A taxing authority must file a petition with the tax commissioner stating that they are insolvent and unable to meet their debts and that they would like to file a plan for readjustment of debts. The tax commissioner must approve the request to file for bankruptcy. (OH Code §133.36) Ohio Code also has statutes requiring fiscal integrity of municipal corporations and establishes a system of fiscal watch for financially distressed municipalities. (OH Code §118.02, §118.021, §118.022, §118.023)

14. Oregon: Oregon law allows irrigation or drainage districts to file for bankruptcy. There is no specific authorization for other public entities to file for chapter 9 bankruptcy.

15. Pennsylvania: An authority that has outstanding *bond debt* is not eligible to file for relief under Federal Bankruptcy law. Additionally, cities of the first class are required to get written authorization from the Governor in order to file for chapter 9 bankruptcy. (53 PA Stat.

§12720.211) Pennsylvania has also established the Pennsylvania Intergovernmental Cooperation Authority to provide financial oversight to the city of Philadelphia. (53 PA Stat 12720.101)

16. Washington: A taxing district in the state is authorized to file petition for chapter 9 bankruptcy provided that the taxing district adopts a resolution to authorize the filing. (39.64.040 & 39.64.050).

22 States do not allow access to Chapter 9 bankruptcy

-Georgia explicitly denies access to municipal bankruptcy. (GA Code 36—80-5)

States with No Statutes:

Alaska
Delaware
Hawaii
Indiana
Maine
Maryland
Mississippi
Nevada
New Hampshire
New Mexico
North Dakota
Rhode Island
South Dakota
Tennessee
Utah
Vermont
Virginia
West Virginia
Wisconsin
Wyoming

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
5.	504	8/19/2013	Objection to Eligibility to Chapter 9 Petition filed by creditors Michael Wells, Janet Whitson, Mary Washington, Bruce Goldman and Robbie Lee Flowers

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT**

In re:

CITY OF DETROIT, MICHIGAN,

Debtor.

Chapter 9

Case No. 13-53846
Honorable Steven W. Rhodes

**OBJECTION OF ROBBIE FLOWERS, MICHAEL WELLS,
JANET WHITSON, MARY WASHINGTON AND BRUCE
GOLDMAN TO THE PUTATIVE DEBTOR'S
ELIGIBILITY TO BE A DEBTOR**

Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington and Bruce Goldman (the "*Flowers* plaintiffs"), citizens of the State of Michigan, state:

Preliminary Statement

1. The *Flowers* plaintiffs will first provide this Court with what they believe is appropriate background information. The *Flowers* plaintiffs will then adopt by reference the facts and arguments the UAW is making in its objection being filed today, and include a summary of their understanding of the UAW's argument that the filing is unconstitutional under the Michigan Constitution. The *Flowers* plaintiffs will then make additional discrete points. Finally, the *Flowers* plaintiffs will address their need for discovery.

Background

2. The *Flowers* plaintiffs are three City of Detroit retirees currently receiving pension benefits and two City of Detroit employees with vested pension benefits.



3. The *Flowers* plaintiffs as citizens of the State of Michigan have rights under Article 9, Section 24 of the Michigan Constitution. It provides: “The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation whereof which shall not be diminished or impaired thereby.”

4. The *Flowers* plaintiffs are plaintiffs in a Michigan civil action that sought and obtained injunctive relief precluding Governor Snyder from authorizing Detroit’s Emergency Manager to proceed under Chapter 9 of the federal Bankruptcy Code because to do so threatened to abrogate their rights under Article 9, Section 24. *Flowers, et al. v. Snyder, et al.*, No. 13-729-CZ, Ingham County Circuit Court (complaint 3 July 2013; preliminary injunction 18 July 2013; amended preliminary injunction 19 July 2013).

5. This Court has stayed (at docket 166) that action.

6. This Court at oral argument on the stay extension motion made clear with a rhetorical question that its ruling was procedural only: “Well, but why isn’t the extended stay that the city seeks here simply a procedural mechanism to funnel such challenges to the Bankruptcy Court and, therefore, does not have the effect of denying citizens or other creditors of their rights to have their constitutional claims heard.” Transcript of 24 July 2013 hearing at page 22.

7. This Court at this oral argument suggested that the Article 9, Section 24 constitutional issue would be decided in the context of eligibility: “I asked you how your clients would be prejudiced by dealing with this issue on the constitutionality of this filing later in the context of eligibility” Transcript of 24 July 2013 hearing at page 36.

8. Finally, this Court in its bench ruling stated: “The Court is making no ruling on whether the state constitution prohibited the emergency manager’s appointment or prohibited the emergency – excuse me – prohibited the governor from authorizing this Chapter 9 filing without excepting from it the constitutionally protected pension rights of its citizens.” Transcript of 24 July 2013 hearing at page 84.

Adoption of UAW Objection

9. The *Flowers* plaintiffs join in the facts alleged and eligibility arguments the International Union, UAW makes in its filing of today.

10. The *Flowers* plaintiffs’ understanding of the UAW’s argument that the filing is unconstitutional under the Michigan Constitution can be summarized as follows: By authorizing the Chapter 9 filing, Governor Snyder has intentionally diminished and impaired the accrued financial benefits of Michigan citizens, including the *Flowers* plaintiffs, by voluntarily invoking a federal law that conflicts with its constitution. Congress drafted Chapter 9 in deference to the Tenth Amendment in order to avoid constitutional issues; this is at the heart of the requirement under Section 109(c)(2) of the Bankruptcy Code, 11 U.S.C. § 109(c)(2), that a Chapter 9 bankruptcy filing be specifically authorized. This provision is meaningless if a filing can be “specifically authorized” in violation of a state constitution.

Additional Points

11. This Court has recognized the need for sensitivity to the sovereignty of the state in a Chapter 9 proceeding. *In re Addison Community Hosp. Authority*, 175 B.R. 646, 649 (Bankr. E.D. Mich. 1994): “The primary distinction between chapter 11 and chapter 9 proceedings is that in the latter, the law must be sensitive to the issue of the sovereignty of the states.”

12. Where the interpretation of a state’s grant of authority and assent to the filing of bankruptcy necessitates consideration of the meaning of a state statute [or constitution], its meaning is governed by that state’s case and statutory law. *State of Louisiana ex rel Francis v. Resweber*, 329 U.S. 459, 461-62 (1947).

13. While this Court may only be bound by decisions of Michigan’s highest court, it can and should review and consider decisions from lower state courts and other traditional sources, such as constitutional history. *In re McMurdie*, 448 B.R. 826, 829 (Bankr. D. Idaho 2010).

14. In addition to the case law the UAW cites, the debates concerning what is now Article 9, Section 24 make clear that municipal retirees are entitled to have the entire assets of their employer at their disposal in order to realize their vested benefits: “MR. VAN DUSEN: An employee who continued in the service of the public employer in reliance upon the benefits which the plan says he would receive would have the contractual right to receive those benefits, and would have the entire assets of the employer at his disposal from which to realize those benefits.” 1 Official Record, Constitutional Convention 1961, p. 774.

15. Additionally, the address to the people accompanying the 1963 Constitution states:

This is a new section [Article 9, Section 24] that requires that accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions be a contractual obligation which cannot be diminished or impaired by the action of its officials or governing body.

2 Official Record, Constitutional Convention 1961, p. 3402.

16. Additionally, Michigan’s Attorney General has clearly and unequivocally stated in the context of this bankruptcy filing that: “Michigan’s Constitution is crystal clear in stating that pension obligations may not be ‘diminished or impaired’ . . .”. The 27 July 2013 press release in which this quote appears goes on to state that: “Schuette will be informing the federal bankruptcy court that Michigan residents live under a constitution that protects hard-earned pensions.” Available online at www.michigan.gov/ag under press releases for July 2013. This Court can and should take cognizance of the opinion of the state attorney general. *In re Barnwell County Hospital*, 471 B.R. 849, 863 (Bankr. D. S.C. 2012). And an earlier Michigan Attorney General had opined consistent with our current one that Article 9, Section 24 means what it says. See OAG No. 6294 dated 13 May 1985.

17. Finally, on 19 July 2013 the Circuit Court for Ingham County entered an order of declaratory judgment, a copy of which is attached as Exhibit 6.4 to the stay extension motion (docket 56). *Webster, et al. v. Snyder, et al.*, No. 13-734-CZ. In it the Court determined, among other things, that the Governor’s authorization of the commencement of this Chapter 9 case was violative of the State Constitution and was therefore given without power or authority.

18. There is no Michigan law that contradicts or in any way qualifies the authority cited by the UAW and above at ¶¶ 14-17. The debtor has no Michigan authority that would support what it will in effect be asking this Court to do -- add a proviso to the words of Article 9, Section 24: “The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation whereof which shall not be diminished or impaired thereby” – “unless the governor decides to allow a municipality to file for bankruptcy in order to void such benefits in which case all bets are off.”

Discovery

19. Based on information and belief, Governor Snyder and his staff designed a legal strategy and assembled a Jones Day legal team to circumvent Article 9, Section 24. See the evidence cited at footnote 2 of the UAW objection.

20. The *Flowers* plaintiffs will need to take discovery to further disclose the communications between the Governor, Jones Day and the Detroit Emergency Manager, a former partner at Jones Day.

21. The *Flowers* plaintiffs believe that such discovery will prove that the dealings between these parties violated Article 9, Section 24 of the Michigan Constitution, and invalidate these proceedings.

Respectfully submitted,

/s/William A. Wertheimer
William A. Wertheimer (P26275)
Attorney for *Flowers* plaintiffs
30515 Timberbrook Lane
Bingham Farms, MI 48025
248-644-9200

Dated: 19 August 2013

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed and served via the Court's electronic case filing and noticing system to all parties registered to receive electronic notices in this matter this 19th day of August 2013.

By: /s/William A. Wertheimer
William A. Wertheimer P26275)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re CITY OF DETROIT, MICHIGAN, Debtor.	No. 13-53846 Chapter 9 HON. STEVEN W. RHODES
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ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
6.	514	8/19/2013	Objection by Interested Party Center for Community Justice and Advocacy to the City of Detroit's Eligibility to Obtain Relief Under Chapter 9 of the Bankruptcy Code and to the City of Detroit's Memorandum in Support of Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (Attachments: Index of Exhibits; Exhibit Ingham County Circuit Court Order dated July 19, 2013; Exhibit States Authorizing Chapter 9 Bankruptcy Filing)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Chapter 9

Case No. 13-53846

City of Detroit, Michigan,

Debtor.

**OBJECTION BY INTERESTED PARTY CENTER FOR COMMUNITY JUSTICE
AND ADVOCACY (“CCJA”) TO THE CITY OF DETROIT’S ELIGIBILITY TO
OBTAIN RELIEF UNDER CHAPTER 9 OF THE BANKRUPTCY CODE [DOCKET 10]
AND TO THE CITY OF DETROIT’S MEMORANDUM IN SUPPORT OF
STATEMENT OF QUALIFICATIONS PURSUANT TO SECTION 109(C) OF THE
BANKRUPTCY CODE [DOCKET 14]**

1. The cited authority for the Emergency Manager to file this Chapter 9 bankruptcy on “behalf” of the City of Detroit derives from MCL 141.1541, et. seq, the Michigan Local Financial Stability and Choice Act of 2012.

2. This Act outlines specific powers delegated to the Emergency Manager by Michigan State law.

3. For example, MCLS §141.1551 provides the Emergency Manager with the following powers:

- (c) to carry out the modification, rejection, termination, and renegotiation of contracts pursuant to section 12;
- (d) The timely deposit of required payments to the pension fund for the local government or in which the local government participates; . . .
- (f) Any other actions considered necessary by the emergency manager in the emergency manager's discretion to achieve the objectives of the financial and operating plan, alleviate the financial emergency, and remove the local government from receivership.

4. MCL 141.1552 provides for other statutory powers handed to an Emergency Manager. It states:



Sec. 12. **(1)** An emergency manager may take 1 or more of the following additional actions with respect to a local government that is in receivership, notwithstanding any charter provision to the contrary:

(j) Reject, modify, or terminate 1 or more terms and conditions of an existing contract.

(k) Subject to section 19, after meeting and conferring with the appropriate bargaining representative and, if in the emergency manager's sole discretion and judgment, a prompt and satisfactory resolution is unlikely to be obtained, reject, modify, or terminate 1 or more terms and conditions of an existing collective bargaining agreement. The rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement under this subdivision is a legitimate exercise of the state's sovereign powers if the emergency manager and state treasurer determine that all of the following conditions are satisfied.

5. MCL 141.1553 outlines the powers and limitations of an Emergency Manager relative to municipal pension funds. It states:

(m) If a municipal government's pension fund is not actuarially funded at a level of 80% or more, according to the most recent governmental accounting standards board's applicable standards, at the time the most recent comprehensive annual financial report for the municipal government or its pension fund was due, the emergency manager may remove 1 or more of the serving trustees of the local pension board or, if the state treasurer appoints the emergency manager as the sole trustee of the local pension board, replace all the serving trustees of the local pension board. For the purpose of determining the pension fund level under this subdivision, the valuation shall exclude the net value of pension bonds or evidence of indebtedness. The annual actuarial valuation for the municipal government's pension fund shall use the actuarial accrued liabilities and the actuarial value of assets. If a pension fund uses the aggregate actuarial cost method or a method involving a frozen accrued liability, the retirement system actuary shall use the entry age normal actuarial cost method. If the emergency manager serves as sole trustee of the local pension board, all of the following apply:

(i) The emergency manager shall assume and exercise the authority and fiduciary responsibilities of the local pension

board including, to the extent applicable, setting and approval of all actuarial assumptions for pension obligations of a municipal government to the local pension fund.

(ii) **The emergency manager shall fully comply with the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140m, and section 24 of article IX of the state constitution of 1963**, and any actions taken shall be consistent with the pension fund's qualified plan status under the federal internal revenue code. (emphasis added)

6. Thus, an Emergency Manager's powers with regard to municipal pensions are specifically limited by Article IX Section 24 of the Michigan Constitution, which guarantees the payment of accrued pension benefits. Article IX Section 24 states:

§24. Public pension plans and retirement systems, obligation.

Sec. 24. The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

7. MCL 141.1558 is the section of the Local Financial Stability and Choice Act of 2012 that provides the authority for the Emergency Manager and the Governor to file a Chapter 9 Bankruptcy. It states:

Sec. 18. (1) If, in the judgment of the emergency manager, no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the emergency manager may recommend to the governor and the state treasurer that the local government be authorized to proceed under chapter 9. If the governor approves of the recommendation, the governor shall inform the state treasurer and the emergency manager in writing of the decision, with a copy to the superintendent of public instruction if the local government is a school district. The governor may place contingencies on a local government in order to proceed under chapter 9. Upon receipt of the written approval, the emergency manager is authorized to proceed under chapter 9. This section empowers the local government for which an emergency manager has been appointed to become a debtor under title 11 of the United States Code, 11 USC 101 to 1532, as required by section 109 of title 11 of the United States Code, 11 USC 109, and empowers the emergency manager to act exclusively on the local government's behalf in any such case under chapter 9.

8. 11 USCS 109(2) states that a local municipality must be specifically authorized by state law to file a Chapter 9 bankruptcy. It states:

- (c) An entity may be a debtor under chapter 9 of this title [11 USCS §§ 901 et seq.] if and only if such entity—
 - (1) is a municipality;
 - (2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter [11 USCS §§ 901 et seq.] by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter [11 USCS §§ 901 et seq.].

9. In *United States v Bekins*, 304 U.S. 27, 49 (1938), the United States Supreme Court held that the phrase “authorized by law” with regard to a municipal bankruptcy “manifestly refers to the law of the state.”

10. In *In RE: City of Harrisburg, PA*, 465 B.R. 744, 754 (Middle Dist of PA 2011), the court noted that pursuant to the most recent Chapter 9 enactments, “states act as gatekeepers to their municipalities access to relief under the Bankruptcy Code. Therefore, when the authority to file under state law is questioned, bankruptcy courts exercise jurisdiction carefully in light of the interplay between Congress’s bankruptcy power and the limitations on federal power under the Tenth Amendment. (internal citations omitted).”

11. Michigan law applies the principles of strict statutory construction to interpreting the law. For example, in *Pohutski v City of Allen Park*, 465 Mich 675, 683-684 (2002), the Michigan Supreme Court held:

When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature's intent as expressed in the words of the statute. *DiBenedetto v West Shore Hosp*, 461 Mich. 394, 402; 605 N.W.2d 300 (2000); *Massey v Mandell*, 462 Mich. 375, 379-380; 614 N.W.2d 70 (2000). We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous. *Turner v Auto Club Ins Ass'n*, 448 Mich. 22, 27, 528 N.W.2d 681 (1995). Where the language is unambiguous, "we presume that the Legislature intended the meaning

clearly expressed---no further judicial construction is required or permitted, and the statute must be enforced as written." *DiBenedetto*, 461 Mich. at 402. Similarly, courts may not speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the Legislature. See *Lansing v Lansing Twp*, 356 Mich. 641, 649-650; 97 N.W.2d 804 (1959).

When parsing a statute, we presume every word is used for a purpose. As far as possible, we give effect to every clause and sentence. "The Court may not assume that the Legislature inadvertently made use of one word or phrase instead of another." *Robinson v Detroit*, 462 Mich. 439, 459; 613 N.W.2d 307 (2000). Similarly, we should take care to avoid a construction that renders any part of the statute surplusage or nugatory. *In re MCI*, 460 Mich. at 414. (emphasis added)

12. In *Smitter v. Thornapple Twp.*, 494 Mich. 121 (Mich. 2013), the Michigan Supreme Court restated the application of the doctrine of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another) to Michigan law on statutory construction.

13. The Emergency Manager, in numerous pronouncements, as well as in his Chapter 9 bankruptcy filing, noted his intention to reduce accrued pensions in violation of the law. In fact, the top "unsecured creditors" were the Detroit General Retirement Services Board and the Detroit Police and Firefighters Retirement Services Board.

14. Interested Party Center for Community Justice and Advocacy contends that in so far as the Emergency Manager's Chapter 9 Bankruptcy filing intends to diminish or impair accrued pensions, it violates MCL 141.1541 et. seq, the Michigan Local Financial Stability and Choice Act of 2012, as well as the Michigan State Constitution.

15. The only state court to be heard on this issue, the Circuit Court for the County of Ingham, specifically held that "PA 436 is unconstitutional and in violation of Article IX Section 24 of the Michigan Constitution to the extent that it permits the Governor to authorize an emergency manager to proceed under Chapter 9 in any manner which threatens to diminish or

impair accrued pension benefits.” (**Exhibit 1**, Ingham County Circuit Court Order dated July 19, 2013)

16. Ingham County Circuit Court Judge Rosemarie Aquilina further ordered: “In order to rectify his unauthorized and unconstitutional actions described above, the Governor must (1) direct the Emergency Manager to immediately withdraw the Chapter 9 petition filed on July 18, and (2) not authorize any further Chapter filing which threatens to diminish or impair accrued pension benefits.” *Id.*

17. MCL 141.1556 specifically provides,

Sec. 16. An emergency manager shall, on his or her own or upon the advice of the local inspector if a local inspector has been retained, make a determination as to whether possible criminal conduct contributed to the financial situation resulting in the local government's receivership status. If the emergency manager determines that there is reason to believe that criminal conduct has occurred, the manager shall refer the matter to the attorney general and the local prosecuting attorney for investigation.
MCLS § 141.1556

18. The Emergency Manager has not conducted any meaningful investigation or inspection of financial records to determine whether impropriety and criminal conduct occurred in the origination and later servicing of any or all of the subject financial instruments including municipal bonds and credit default swaps that may have involved criminal conduct by bondholders including but not limited to UBS and Bank of America.

19. The Emergency Manager has not conducted any investigation into financial creditors who may have contributed through criminal conduct to the foreclosure crisis in Detroit through illegal subprime mortgages and subsequent illegal foreclosures and evictions, diminishing the financial stability of Detroit and destabilizing its communities.

WHEREFORE, Interested Party Center for Community for Justice and Advocacy respectfully requests that this Honorable Court deny the City of Detroit’s (through the

Emergency Manager) eligibility for filing this Chapter 9 bankruptcy because the petition violates the state authorization statute, which mandates that any Chapter 9 filing under MCL 141.1541 must be subject to the Michigan constitutional limitation on not diminishing or impairing accrued pensions, or in the alternative, that this Honorable Court specifically exclude any diminishing or impairing of accrued pension benefits as part of the debtor's restructuring of debt, pursuant to its Chapter 9 bankruptcy.

LAW AND ANALYSIS

I. THE MICHIGAN STATUTE AUTHORIZING THIS CHAPTER 9 BANKRUPTCY FILING INCORPORATES THE MICHIGAN CONSTITUTIONAL PROHIBITION AGAINST DIMINISHING OR IMPAIRNG PENSIONS AS A CONTINGENCY ON THE FILING.

As outlined above, 11 USC 109 states that a local municipality must be “specifically authorized by state law to file a Chapter 9 bankruptcy.” The phrase “authorized by law” refers to the law of the state. *U.S. v Bekins*, 304 U.S. at 27. “States act as gatekeepers to their municipalities to access to relief under the Bankruptcy Code.” *In Re: City of Harrisburg*, 465 BR at 744.

The Michigan state law that is the basis for the City of Detroit's (through the Emergency Manager) Chapter 9 bankruptcy filing is MCL 141.1541 et. seq., the Local Financial and Stability and Choice Act of 2012. For the purposes of this Objection, Interested Party Center for Community Justice and Advocacy calls this Honorable Court's attention to several relevant sections of the statute.

Section 1551(c) provides the Emergency Manager with the power to “carry out the modification, rejection, termination and renegotiation of contracts pursuant to Section 12.”

Section 1552 (Section 12) (j) provides the Emergency Manager with the power to reject, modify or terminate 1 or more terms of an existing contract. Section (k) gives the Emergency Manager the power to reject, modify or terminate an existing collective bargaining contract (subject to meeting several conditions).

Section 1553 outlines the power and limitations of the Emergency Manager relative to municipal pensions. Significantly, this section specifically mandates that an Emergency Manager must **fully comply** with Article IX Section 24 of the Michigan constitution, which is the constitutional prohibition on diminishing or impairing accrued pensions.

Section 1558 of the Local Financial Stability and Choice Act provides the authority for the Emergency Manager and the Governor to file a Chapter 9 bankruptcy. Significantly, Section 1558 states: “The governor may place contingencies on a local government in order to proceed under Chapter 9.”

Under Chapter 9 of the Bankruptcy code and cases interpreting Chapter 9, Michigan law is determinative on how the state-authorizing statute for this Chapter 9 bankruptcy is to be interpreted. Michigan law applies principles of strict statutory construction. In *Pohutski*, 465 Mich at 683, 684, the Michigan Supreme enunciated the following:

When parsing a statute, we presume every word is used for a purpose. As far as possible, we give effect to every clause and sentence. "The Court may not assume that the Legislature inadvertently made use of one word or phrase instead of another." Robinson v Detroit, 462 Mich. 439, 459; 613 N.W.2d 307 (2000). Similarly, we should take care to avoid a construction that renders any part of the statute surplusage or nugatory. In re MCI, 460 Mich. at 414. (emphasis added)

In addition, Michigan courts follow the doctrine of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another). *Smitter* 494 Mich at 121.

In construing the sections of the Local Financial Stability and Choice Act of 2012 as a whole, and so as not to render any part of the statute surplusage or nugatory, the statute must be construed in the following manner: “The Emergency Manager is authorized to proceed under Chapter 9 subject to the following contingency – The Chapter 9 bankruptcy shall not in any way undertake to diminish or impair the payment of accrued pension benefits.”

II. UNDER U.S. SIXTH CIRCUIT PRECEDENT, EXCLUDING PENSION BENEFITS FROM THE CHAPTER 9 BANKRUPTCY IS NOT PREEMPTED BY FEDERAL LAW.

The City of Detroit may argue that once the Chapter 9 filing is authorized, any state limitations on the scope of the relief available by the filing are preempted by federal law. That seems to be the basis for the holding in *In re City of Vallejo*, 403 BR 72 (2009).

However, Interested Party Center for Community Justice and Advocacy contends that pursuant to the 2012 U.S. Sixth Circuit decision in *Richardson v Schafer*, 689 F3d 601 (2012), a narrow state limitation on the scope of the relief available in a Chapter 9 bankruptcy is not preempted by federal law.

Schafer, supra, dealt with the legitimacy of a homestead exemption the debtor asserted pursuant to MCL 600.5451, which was broader than the exemption allowed under 11 USC 522(b) or Michigan’s general homestead exemption. The *Schafer* court noted that the interpretation to the phrase “uniform laws” by both the Supreme Court and this Honorable Court permits states to act in the arena of bankruptcy exemptions even if they do so by making certain exemptions available only to debtors in bankruptcy, and that such exemption schemes are not invalidated by the Supremacy clause.” *Id.* at 603.

The U.S. Sixth Circuit cited to its own holding in *Rhodes v Stewart*, 705 F2d 159 (6th Cir 1983) for the proposition that states have concurrent authority to promulgate laws governing

exemptions applicable in bankruptcy cases. The court further noted that “this understanding that the federal power was exclusive eventually gave way to an acceptance that states could, in the absence of federal legislation, pass laws on bankruptcy.” *Id.* at 606. The court stated: “In other words, the general rule of law laid down by the Supreme Court in *Moyses* was that the uniformity requirement is geographical and that variations resulting from differences in state law are not unconstitutional.” *Id.* at 610. “Congress does not exceed its constitutional powers in enacting a bankruptcy law that permits variations based on state law or to solve geographically isolated problems.” *Id.* at 611. The Sixth Circuit held the proper determination of whether a state law conflicted with federal law in the bankruptcy exemption context was conflict preemption, whether “the laws in question conflict such that it is impossible for a party to comply with both laws simultaneously, or where the enforcement of the state law would hinder or frustrate the full purposes and objectives of the federal law.”

Based on Sixth Circuit precedent, Interested Party Community Center for Justice and Advocacy contends that the only allowable interpretation of the Michigan authorizing statute, the Local Financial Stability and Choice Act of 2012, under Michigan rules of statutory construction, is that a Chapter 9 Filing cannot have the intent or effect of diminishing or impairing accrued pensions, and such a provision does not conflict with and is not preempted by federal law. Such a limitation on a Chapter 9 bankruptcy filing would not hinder or frustrate the full purposes and objectives of the federal bankruptcy code. It would still allow for restructuring most of the debts of the municipality. It would exclude the one class of benefits, public pensions, which the state chose to **constitutionally protect** and whose protection was incorporated into the authorizing statute.

In addition, there is a strong policy purpose for protecting pension benefits and excluding them from being diminished or impaired bankruptcy. Pensions are in fact deferred wages. They were earned and secured by the workers by their labor before the bankruptcy petition was filed. In essence, they are simply unpaid wages which the retirees elected to defer so they can have an income for their last years of life.

III. CHAPTER 9 BANKRUPTCY IS ALREADY SUBJECT TO STATE LIMITATIONS.

In *In RE: City of Harrisburg, PA*, 465 B.R at 753, the Court discussed how Chapter 9 bankruptcy particularly implicates federalism concerns. The Court stated:

Although Congress has the sole power to establish “uniform Laws on the subject of Bankruptcies throughout the United States (US Const art I, Section 8), where federal bankruptcy law intersects with the rights of states to regulate the activities of political subdivisions created by the state, principles of dual sovereignty as defined by the Tenth Amendment must be considered.

Municipalities cannot automatically file for Chapter 9 bankruptcy. They must be specifically authorized to file by state law. 11 USC 109. According to a study by a Sacramento television station (near Stockton, California), twenty two (22) states do not even provide access to Chapter 9 bankruptcy, and 16 states set conditions for municipal bankruptcy. <http://www.news10.net/news/pdf/State-Policies-on-Chapter-9-bankruptcy.pdf> (**Exhibit 2**, States Authorizing Chapter 9 Bankruptcy Filing)

11 USC 904 provides limitations on the jurisdiction and powers of the court during Chapter 9 bankruptcy. The court may not interfere with any of the political or governmental powers of the debtor, any of the property or revenues of the debtor, or the debtor’s use or enjoyment of any income-producing property.

The special interplay of state and federal law in the context of Chapter 9 bankruptcy, lends special applicability in the Chapter 9 context to the holding in *Schafer, supra*, that the proper determination of whether a state law conflicts with federal law in the bankruptcy exemption context is conflict preemption.

The limitation on pensions not being diminished or impaired in the bankruptcy process, which is included in Michigan's Chapter 9 authorizing statute, **is not in conflict with federal law and must be enforced.**

IV. TO THE EXTENT THAT THE COURT HOLDS THAT REDUCING PENSIONS CAN NOT BE EXCLUDED FROM CONSIDERATION IN A CHAPTER 9 BANKRUPTCY, THEN MICHIGAN LAW DOES NOT AUTHORIZE THE FILING AND THIS CASE MUST BE DISMISSED.

In the alternative, if this Honorable Court was to rule that excluding pensions from the Chapter 9 case would violate federal law, then there is no way to read the Michigan law as authorizing the Chapter 9 filing at all, and it must be dismissed. As noted earlier, the Local Financial Stability and Choice Act of 2012 must be construed so as to incorporate the Michigan constitutional guarantee against diminishing or impairing pensions. The section of the law authorizing the Chapter 9 bankruptcy filing implicitly incorporates this clause in that it provides that the governor could place contingencies on a local government that chooses to file for Chapter 9. The ban on impairing pensions would by necessity be one of those contingencies.

If a Chapter 9 filing under the statute was to allow for attacking pension benefits, it would negate the specific ban on doing so written into the statute and implicitly included as a contingency in the governor's specific authorization of a Chapter 9 bankruptcy. Without this contingency for excluding diminishment or impairment of pension benefits from the Chapter 9 consideration, there could be no authorization for a Chapter 9 bankruptcy under Michigan law.

Therefore, lacking the specific authorization to file the Chapter 9 bankruptcy, the City of Detroit's petition for bankruptcy would have to be dismissed.

WHEREFORE, Interested Party Center for Community Justice and Advocacy respectfully requests that this Honorable Court deny the City of Detroit's (through the Emergency Manager) eligibility for filing this Chapter 9 bankruptcy because the petition violates the state authorization statute which mandates that any Chapter 9 filing under MCL 141.1541 must be subject to the Michigan constitutional limitation on not diminishing or impairing accrued pensions, or in the alternative, that this Honorable Court specifically exclude any diminishing or impairing of accrued pension benefits as part of the City of Detroit's restructuring of debt, pursuant to this Chapter 9 bankruptcy.

Respectfully submitted,

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DATED: August 19, 2013

INDEX OF EXHIBITS

Exhibit 1, Ingham County Circuit Court Order dated July 19, 2013

Exhibit 2, States Authorizing Chapter 9 Bankruptcy Filing

EXHIBIT 1

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

GRACIE WEBSTER and
VERONICA THOMAS,

Plaintiffs,

vs

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

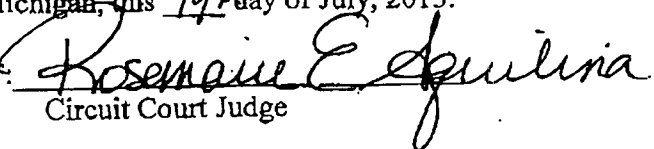
THE STATE OF MICHIGAN;
RICHARD SNYDER, as Governor
of the State of Michigan; and
ANDY DILLON, as Treasurer of
the State of Michigan,

Defendants.

ORDER OF DECLARATORY JUDGMENT

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

PRESENT:


Circuit Court Judge

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

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

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

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

IT IS HEREBY ORDERED:

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

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

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

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

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

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

It is so Ordered.

Rosemarie E. Aquilina
Circuit Court Judge *P37670*

EXHIBIT 2

22 States do not provide access to Chapter 9 Bankruptcy	16 States set conditions for Municipal Bankruptcy	12 States provide Blanket Authorization
<p>-Georgia explicitly denies access to municipal bankruptcy. (GA Code 36—80-5)</p> <p>States with No Statutes:</p> <p>Alaska Delaware Hawaii Indiana Kansas Maine Maryland Massachusetts Mississippi New Hampshire New Mexico North Dakota Rhode Island South Dakota Tennessee Utah Vermont Virginia West Virginia Wisconsin Wyoming</p>	<p>Connecticut Idaho Illinois Iowa Kentucky Louisiana Michigan Montana Nevada New Jersey New York North Carolina Ohio Oregon Pennsylvania Washington</p>	<p>Alabama Arizona Arkansas California Colorado Florida Minnesota Missouri Nebraska Oklahoma South Carolina Texas</p>

States with Blanket Authorization

1. Alabama (AL Code §11-81-3)
2. Arizona (AZ Code §35-603)
3. Arkansas (AK Code §14-74-103)
4. California (CA Code §53760)
5. Colorado (32-1-1403)
6. Florida (FL Stat §218.01)
7. Minnesota (§471.831)
8. Missouri (MO §427.100)
9. Nebraska (NE §13-402)
10. Oklahoma (OK Code §62-283)
11. South Carolina (SC Code §6-1-10)
12. Texas (TX Code §140.001)

States with conditions for Municipal Bankruptcy

1. Connecticut: A municipality must receive express written consent from the Governor to file for chapter 9 bankruptcy. If the Governor approves a bankruptcy he/she must submit a report to the Treasurer and the joint standing committee of the General Assembly explaining the reasons for consent. (CT Gen Stat. §7-566)
2. Idaho: A taxing district in the state is authorized to file petition for chapter 9 bankruptcy provided that the taxing district adopts a resolution to authorize the filing.
3. Illinois: Illinois law provides for the establishment of a financial planning and supervision commission to oversee the finances of an entity that has been declared to be in a fiscal emergency by the Governor. The Governor may establish a commission when the city is 180 days in default of debt; it has not made payment on 20% of its payroll, or the insolvency of the unit of local government. The unit of local government that has been declared to have a fiscal emergency is required to file a financial plan with the commission and the commission's financial advisor. The commission is authorized to make a written recommendation that the unit of local government file for chapter 9 bankruptcy code (§50 ILCA 320/1-14)

4. Iowa: A city, county, or other political subdivisions is authorized to file for chapter 9 bankruptcy if they are insolvent and the debt is involuntarily incurred. The statute specifically states that a valid and binding collective bargaining agreement or previously authorized bond issues are not eligible debts. (IA §76.16, IA §76.16A)
5. Kentucky: Taxing agencies in Kentucky are authorized to utilize the Federal Bankruptcy Act. However, Counties must have their plan approved by the state local debt officer and the state local finance officer in order to file for bankruptcy. (KY §66.400)
6. Louisiana: The Governor and the Attorney General must provide consent, approval, and authority in order for a taxing entity to file a plan of readjustment of its debts in a United States court. (LA §13:4741)
7. Michigan: The governor may appoint a "review team" to make an assessment and, if needed, negotiate a consent agreement with local government concerning long-range plans for financial recovery. (§141.1213)
8. Montana: The local entity must adopt an ordinance or resolution declaring that it meets the requirements for chapter 9 bankruptcy. The state or any department or agency holding securities for the local entity must consent to the plan of adjustment. (MT §7-7-132, §7-7-133, §7-7-134)
9. Nevada: Nevada has no specific provisions authorizing municipal bankruptcy. They do however have provisions that allow for the Nevada Tax Commission to provide Technical Financial Assistance. The authorities of the Nevada Tax Commission include taking control over the local government or possible dissolution of local government in certain circumstances. (354.675, 354.685, 354.686, 354.695, 354.701, 354.705, 354.715, 354.721, 354.723, 354.7235, 354.725)

10. New Jersey: The Municipal Finance Commission must approve both the filing of the bankruptcy petition as well as any plan of adjustment. Once the Municipality has been in financial default to bondholders or noteholders for more than 60 days, the commission may intervene to manage the financial affairs of the municipality.

NJ Gen Stat (§52:27-40)

11. New York: New York authorizes a municipality, emergency financial control board to file for adjustment of municipal indebtedness (NY CLS Loc. Fin §85.80 & 85.80). New York City must get authorization from the New York State Financial Control Board to file for bankruptcy.

12. North Carolina: Requires pre-approval by the Local Government Commission (State Treasurer, State Auditor, Secretary of State, Secretary of Revenue, and five appointees).

(NC Gen Stat §23-48)

13. Ohio: A taxing authority must file a petition with the tax commissioner stating that they are insolvent and unable to meet their debts and that they would like to file a plan for readjustment of debts. The tax commissioner must approve the request to file for bankruptcy. (OH Code §133.36) Ohio Code also has statutes requiring fiscal integrity of municipal corporations and establishes a system of fiscal watch for financially distressed municipalities. (OH Code §118.02, §118.021, §118.022, §118.023)

14. Oregon: Oregon law allows irrigation or drainage districts to file for bankruptcy. There is no specific authorization for other public entities to file for chapter 9 bankruptcy.

15. Pennsylvania: An authority that has outstanding *bond debt* is not eligible to file for relief under Federal Bankruptcy law. Additionally, cities of the first class are required to get written authorization from the Governor in order to file for chapter 9 bankruptcy. (53 PA Stat.

§12720.211) Pennsylvania has also established the Pennsylvania Intergovernmental Cooperation Authority to provide financial oversight to the city of Philadelphia. (53 PA Stat 12720.101)

16. Washington: A taxing district in the state is authorized to file petition for chapter 9 bankruptcy provided that the taxing district adopts a resolution to authorize the filing. (39.64.040 & 39.64.050).

22 States do not allow access to Chapter 9 bankruptcy

-Georgia explicitly denies access to municipal bankruptcy. (GA Code 36—80-5)

States with No Statutes:

Alaska
Delaware
Hawaii
Indiana
Maine
Maryland
Mississippi
Nevada
New Hampshire
New Mexico
North Dakota
Rhode Island
South Dakota
Tennessee
Utah
Vermont
Virginia
West Virginia
Wisconsin
Wyoming

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
7.	517	8/19/2013	Objection to Eligibility to Chapter 9 Petition filed by creditor Michigan Auto Recovery Service, Inc.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN

In re:

CITY OF DETROIT, MICHIGAN

Case No. 13-53846

Chapter 9

Hon. STEVEN W. RHODES

Debtor ___ /

OBJECTION TO ELIGIBILITY OF CITY OF DETROIT FOR CHAPTER 9
FILED BY MICHIGAN AUTO RECOVERY, INC.

Michigan Auto Recovery, Inc. comes by its Counsel, KURT THORNBLADH P25858, and for its Objection to Eligibility of the City of Detroit for Chapter 9 says as follows:

1. The City of Detroit filed a petition for relief under Chapter 9 of the U.S. Bankruptcy Court on July 18, 2013.
2. Michigan Auto Recovery Service, Inc. is a creditor of the City of Detroit, Michigan and has a claim for over \$300,000 for towing services performed for the City.
3. Michigan Auto Recovery, Inc. was not given a fair opportunity to negotiate its claim prior to the filing of Chapter 9 by the City of Detroit.
4. Michigan Auto Recovery Service, Inc. challenges the eligibility of the City of Detroit for Chapter 9 pursuant to 11 USC § 108(c)(5)(B).
5. There are 27 contract towers for the City of Detroit, and on information and belief, the City of Detroit has failed to negotiate in good faith with the towers prior to filing this case.

Wherefore Michigan Auto Recovery Service, Inc prays the Court will dismiss the Bankruptcy of The City of Detroit, Michigan.

FOR MICHIGAN AUTO RECOVERY SERVICE,
Inc.

By: ___/s/ kurt thornbladh_____

KURT THORNBLADH P25858

Thornbladh Legal Group PLLC

7301 Schaefer

Dearborn, MI 48126

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kthornbladh@gmail.com

Dated: August 19, 2013



UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN

In re:

CITY OF DETROIT, MICHIGAN

Case No. 13-53846

Chapter 9

Hon. STEVEN W. RHODES

Debtor ___ /

CERTIFICATE OF SERVICE

Kurt Thornbladh certifies and says that on August 19, 2013 he served copies of Objection to Eligibility of the City of Detroit, Michigan to file Chapter 9 as follows:

1. The following were served by electronic notification:

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2. And the parties to the attached matrix provided by the Clerk of the U.S. Bankruptcy Court were served by First Class U.S. Mail.

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Dated: August 19, 2013

Label Matrix for local noticing 0645-2 Case 13-53846-swr Eastern District of Michigan Detroit Mon Aug 19 23:30:01 EDT 2013	Amalgamated Transit Union Local 26 716 Lothrop Ave. Detroit, MI 48202-2715	Bishop Real Estate, L.L.C. c/o Stephen M. Gross, Esq. 39533 Woodward Ave. Suite 318 Bloomfield Hills, MI 48304-5106
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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Ambac Assurance Corporation

(u)Assured Guaranty Municipal Corp.

(u)BlackRock Financial Management, Inc.

(u)Blue Cross Blue Shield of Michigan and Blu

(u)Center for Community Justice and Advocacy

(u)Courtesy Notice

(u)Detroit Fire Fighters Association, I.A.F.F

(u)Detroit Institute of Arts

(u)Detroit Police Command Officers Associatio

(u)Detroit Police Lieutenants and Sergeants A

(u)Detroit Police Officers Association

(u)Deutsche Bank Securities Inc.

(u)Dexia Credit Local	(u)Dexia Holdings, Inc.	(u)Downtown Development Authority
(u)Enjoi Transportation, LLC	(u)General Motors LLC	(u)General Retirement System of the City of D
(u)Genuine Parts Company	(u)HRT Enterprises	(u)Health Alliance Plan of Michigan
(u)Hercules & Hercules, Inc. 19055 W. Davidson Detroit	(u)IBM Credit LLC	(u)International Business Machines Credit LLC
(u)International Union of Operating Engineers	(u)Maddin Hauser Wartell Roth & Heller, PC	(u)Merrill Lynch Capital Services, Inc.
(u)Michigan Bell Telephone Company d/b/a AT&T	(u)Michigan Council 25 Of The American Federa	(du)Michigan Council 25 of the American Feder
(u)Michigan Property Tax Relief, LLC	(u)National Public Finance Guarantee Corporat	(u)Nuveen Asset Management
(u)P.P.T.A., Inc., or Harold Hoyt	(u)Schneiderman and Sherman, P.C.	(u)Service Employees International Union, Loc
(u)Syncora Capital Assurance Inc.	(u)Syncora Guarantee Inc.	(u)Syncora Holdings Ltd.
(u)T&T Management, Inc. , FL	(u)U.S. Bank N.A.	(u)U.S. Bank National Association

(u)UBS AG	(u)US Health & Life Insurance Company	(u)United States Nuclear Regulatory Commissio
(u)United States of America	(u)Wade Trim Associates, Inc.	(u)Xerox Corporation
(u)Brown Rehabilitation Management, Inc. 29688 Telegraph Suite 100 Southfield48034	(d)Chase Paymentech, LLC Attn: Lazonia Clark, Business Analyst 14221 Dallas Pkwy, Bldg II Dallas, TX 75254-2942	(d)Eaton Vance Management William Delahunty 2 International Place Boston, MA 02110-4101
(d)Iron Mountain Information Management, LLC 745 Atlantic Avenue Boston, MA 02111-2735	(d)Michigan Auto Recovery Service, Inc. 8850 Southfield Detroit MI 48228-1976	(u)Michigan Community Action Agency Associati
(du)Michigan Council 25 of the American Feder	(u)Daniel M. McDermott	(u)Donald Glass
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(u)Sylvester Davis

End of Label Matrix
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Bypassed recipients 75
Total 238

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
8.	565	8/22/2013	Objection to Chapter 9 Bankruptcy filed by creditors Carl Williams, Hassan Aleem

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

Hassan Aleem and Carl Williams
Creditors

vs
|

Case No. 13-53846

Hon. Steven W. Rhodes

CITY OF DETROIT, MICHIGN
AND EMERGENCY MANAGER
KEVYN D. ORR

Debtors

_____ /

U.S. BANKRUPTCY COURT
E.D. MICHIGAN-DETROIT

2013 AUG 22 P 1:32

FILED

OBJECTION TO CHAPTER 9 BANKRUPTCY

Now Comes the creditor in pro se Hassan Aleem a retired builder
inspector for city of Detroit and Carl Williams an interest party and both
taxpayers in the city of Detroit and the state of Michigan.

The creditor and interest party object to the Bankruptcy for the
following:

- 1) The Public Act 436 that the Bankruptcy is relying on did not receive
the constitutional three-four vote as required to challenge the referendum of



the people in accordance to Article II section 9 of the Michigan constitution.

2) The Emergency Manager Kevyn Orr violated the Administrative Procedure Act 24.201 by not publishing his orders for sixty 60 days and hearing before it can become effective. The Supreme Court would sua sponte vacate order of state tax commission in equalization case for failure of the commission to proceed in accordance with the Administrative Procedures Act *Saginaw County v. State Tax Commission* (1974) 224 N.W.2d 283, 393 Mich 779, affirmed 244 N.W. 2d 909, 397 Mich. 550

3) We never received notice and hearing, which is a denial of due process of law. In the present context these principles require that a person have timely and adequate notice detailing the reasons for the notice and an effective opportunity to defend. *Armstrong v. Manzo*, 380 U. S. 545, 552 (1965).

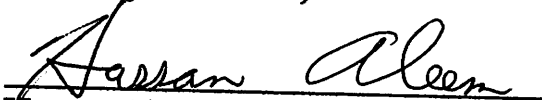
4) The Local emergency financial assistance loan board mean the local emergency financial assistance loan board created under section 2 of the emergency municipal loan act 1980 PA 243, 243 MCL 141.932. The financial loan board responsibility is to loan money and not to appoint the emergency manager.

5) The emergency manager failed to comply with P.A. 436 by not providing a written mandatory financial and operating plan for the local government within 45 days after the emergency manager appointment, thus due process of law violation Article 1 section 2 of Michigan State Constitution and the 5th and 14th Amendment of the Constitutions of the United States

The Financial manager, Kevyn Orr have not shown any plan to reduce the so call financial trouble the local city have before or after the 45 days.

Wherefore and the above reason we pray that this court grant relief declaring the bankruptcy invalid and null and void.

Sincerely submitted,



Hassan Aleem
2440 Taylor
Detroit, Michigan 48205



Carl Williams
10112 Somerset
Detroit, Michigan 48224

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Hassan Aleem and Carl Williams
Creditors

VS
|

Case No. 13-53846

Hon. Steven W. Rhodes

CITY OF DETROIT, MICHIGN
AND EMERGENCY MANAGER
KEVYN D. ORR
Debtors

2013 AUG 22 P 1:32
U.S. BANKRUPTCY COURT
E.D. MICHIGAN-DETROIT

FILED

**AFFIDAVIT IN SUPPORT OF OBJECTION
TO CHAPTER 9 BANKRUPTCY**

STATE OF MICHIGAN)
) SS
COUNT Y OF WAYNE)

We Carl Williams Hassan Aleem

being first duly sworn, deposes and Say:

That we make this affidavit of personal knowledge; That we are a creditor

and interest party in this bankruptcy action and resident of Detroit, Taxpayers of the State of Michigan, and Citizens of the United States.

We never received notice and hearing, which is a denial of due process of law. In the present context these principles require that a person have timely and adequate notice detailing the reasons for the notice and an effective opportunity to defend. *Armstrong v. Manzo*, 380 U. S. 545, 552 (1965).

That the law and facts herein this in this affidavit in support of the objection of the bankruptcy. We have read and understand the facts to be true.

That we the affiants, if sworn as a witness, can testify competently to the facts stated in the objection and is true and correct to the best of our knowledge and belief.

Signed Carl Williams Hassan Ameer

Subscribed and sworn to before me,

This 20th Day of August 2013

Gloria Ann Surles
Notary Public

GLORIA ANN SURLES
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Sep 15, 2017
ACTING IN COUNTY OF Wayne

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Hassan Aleem and Carl Williams
Creditors

vs

Case No. 13-53846

Hon. Steven W. Rhodes

CITY OF DETROIT, MICHIGN
AND EMERGENCY MANAGER
KEVYN D. ORR

Debtors

U.S. BANKRUPTCY COURT
E.D. MICHIGAN-DETROIT

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STATE OF MICHIGAN)

) SS

COUNT Y OF WAYNE)

PROOF OF SERVICE

Carl Williams, being first duly sworn, deposes
and Say: that on August 21 2013. I sent a copies of Objection to Chapter 9
Bankruptcy upon the concern parties by certified mail, at the following
address:

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Corporation Council
First National Building
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Detroit, Michigan 48226

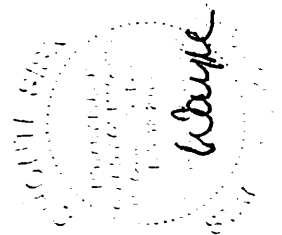
Emergency Manager
Kevyn Orr
Coleman A. Young Municipal Center
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Sign Carl Williams

Subscribed to and sworn to before me

This 21 day of August 2013,

Charlotte Auel
Notary



UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF MICHIGAN
 SOUTHERN DIVISION

In re CITY OF DETROIT, MICHIGAN, Debtor.	No. 13-53846 Chapter 9 HON. STEVEN W. RHODES
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ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
9.	1156	10/11/2013	The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees Amended Objection to the City of Detroit's Eligibility to Obtain Relief Under Chapter 9 of the Bankruptcy Code

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

**THE MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF STATE,
COUNTY & MUNICIPAL EMPLOYEES, AFL-CIO AND SUB-CHAPTER 98, CITY
OF DETROIT RETIREES' AMENDED OBJECTION TO THE CITY OF
DETROIT'S ELIGIBILITY TO OBTAIN RELIEF UNDER CHAPTER 9 OF
THE BANKRUPTCY CODE**



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The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (the AFSCME retiree chapter for City of Detroit retirees) (collectively, “**AFSCME**”) -- the representative of the interests of between at least forty and fifty percent (40-50%) of the about 11,943 retired City of Detroit (the “**City**” or “**Debtor**”) non-uniformed employees (the “**Retired AFSCME Employees**”), and about 2,523 active City employees (the “**Active AFSCME Employees**”, or about seventy percent (70%) of the active non-uniformed union-represented employees, and together with the Retired AFSCME Employees, collectively, the “**AFSCME Detroit Employees**”) -- through its counsel and in accordance with the Court’s *First Amended Order Regarding Eligibility Objections Notices of Hearings and Certifications Pursuant to 28 U.S.C. § 2403(a) & (b)* [Docket No. 821] (the “**Scheduling Order**”) submits this **amended**¹ objection (the “**Objection**”) to the City’s eligibility for relief under chapter 9 of the Bankruptcy Code and opposition to the City’s (A) *Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code* [Docket No. 10] (the “**Statement of Eligibility**”); (B) *Memorandum in Support of Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code* [Docket No. 14] (the “**Eligibility Brief**”); (C) declarations of Kevyn D. Orr [Docket No. 11] (the “**Orr Declaration**”), Gaurav Malhotra [Docket No. 12] (the “**Malhotra Declaration**”) and Charles M. Moore [Docket No. 13] (the “**Moore Declaration**”); (D) *City of Detroit’s*

¹ Pursuant to Section VII. of the Scheduling Order, “[b]ased on evidence obtained during discovery, any objecting party may file an amended objection by October 11, 2013. Any such amended objection shall supersede the party’s original objection.” Given that this objection supersedes AFSCME’s original eligibility brief (*The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub Chapter 98, City of Detroit Retirees’ Objection to the City Of Detroit’s Eligibility to Obtain Relief Under Chapter 9 of the Bankruptcy Code* [Docket No. 505] (the “**Original AFSCME Objection**”), AFSCME has included all legal and factual arguments asserted in the Original AFSCME Objection in this Objection, and further has supplemented and added additional arguments based, *inter alia*, on developments in the discovery process. Given that discovery remains ongoing, and AFSCME continues to learn new facts and information daily, AFSCME reserves the right to assert additional factual and legal arguments at trial.

Consolidated Reply to Objections to the Entry of an Order for Relief (the “**Debtor’s Reply**”) [Docket No. 765]; and (E) *The State of Michigan’s Response to Eligibility Objections Raising Only Legal Issues* [Docket No. 756] (the “**State’s Response**”). In support of its Objection, AFSCME (a) relies on the previously submitted *Declaration of Steven Kreisberg* [Docket No. 509] (the “**Kreisberg Declaration**”); (b) submits the (i) *Supplemental Declaration of Steven Kreisberg* (the “**Supp. Kreisberg Declaration**”), and (ii) *Declaration of Michael Artz* (the “**Artz Declaration**”); and (c) respectfully states as follows:

PRELIMINARY STATEMENT

“The public can comment [on the City’s proposed financial restructuring plan], but it is under the statute, it is my plan and it’s within my discretion and obligation to do it. **This isn’t a plebiscite, we are not, like, negotiating the terms of the plan.** It’s what I’m obligated to do.” --Kevyn D. Orr, May 12, 2013²

1. The City’s petition for relief under chapter 9 of the Bankruptcy Code should be dismissed. First, chapter 9 of the Bankruptcy Code violates federalism under the United States Constitution through an unholy alliance permitting federal encroachment on the states’ governance rights over fiscal affairs in exchange for an unlawful extension of state powers in excess of those the state would otherwise possess under the law and which denies Michigan citizens their constitutional right to make the rules for their own bankruptcy. Second, Michigan Public Act 436 of 2012, the Local Financial Stability and Choice Act, MCL § 141.1541, *et seq.* (“**PA 436**”), purportedly authorizing the Emergency Manager to file for chapter 9 protection runs afoul of the Michigan Constitution as applied in this chapter 9 case by not explicitly prohibiting the diminishment or impairment of vested pension rights in bankruptcy, which rights are prescribed in the Michigan Constitution, and further offends the Constitutional rights

² Kevyn D. Orr Interview to Detroit WWJ Newsradio 950/AP, *Detroit EM Releases Financial Plan; City Exceeding Budget By \$100M Annually*, May 12, 2013, available at <http://detroit.cbslocal.com/2013/05/12/kevin-orr-releases-financial-plan-for-city-of-detroit/>.

of individual Detroit citizens to local self-governance. Third, the City fails to establish that it engaged in good faith negotiations with the City's creditors or that these negotiations were impracticable under section 109(c) of the Bankruptcy Code, and indeed the entire chapter 9 petition was filed in bad faith. Fourth, the City does not qualify for chapter 9 relief because it failed to establish that it is insolvent. Further, the Bankruptcy Court lacks authority or jurisdiction over matters related to the federal constitutionality of chapter 9 of the Bankruptcy Code or the state constitutionality of PA 436.

2. The City, led by its unelected, politically appointed Emergency Manager, Kevyn D. Orr ("**Orr**" or the "**EM**"), hastily commenced this unconstitutional, unlawfully authorized chapter 9 proceeding seeking the haven of bankruptcy to illegally attempt to slash pension and other post-employment benefit obligations and cram such reductions down the throats of current and former City employees such as the AFSCME Detroit Employees. These proceedings were commenced without any good faith negotiations with the City's retirees or unions such as AFSCME, and the chapter 9 filing was a *fait accompli* long prior to the appointment of Orr as the City's EM – in fact, at a time when Orr was still a partner at the City's lead counsel's law firm.

3. While AFSCME expects that the City's witnesses will testify that chapter 9 bankruptcy was always the last option and the City preferred an out-of-court settlement, those are nothing more than talking points. In reality, the City's strategy of holding "check the box" meetings with creditors pre-petition at which the City purposefully refused to bargain in good faith was for the sole purpose of "making its record". Indeed, the City's eventual strategy (under the leadership of Orr) was first suggested by the City's lead bankruptcy counsel (the "**Law Firm**") beginning with a "pitch" presentation made by the Law Firm to the City on

January 29, 2013 (the “**Pitch Presentation**”, a copy of which is attached to the Supp. Kreisberg Declaration, Exhibit B) in the presence of State of Michigan (the “**State**” or “**Michigan**”) officials who wanted to steer the City towards chapter 9. As part its presentation, the Law Firm provided a roadmap to chapter 9. The Pitch Presentation provided in part:

- an out-of-court restructuring was “[e]xtremely difficult to achieve in practice” (Pitch Presentation, p. 13);
- “Ultimately, the Emergency Manager could be used as political cover for difficult restructuring decisions.” (Pitch Presentation, p. 16);
- “Bolster Eligibility for – and Success in – Chapter 9 By Establishing Good-Faith Record of Seeking Creditor Consensus” (Pitch Presentation, p. 17);
- “[a] good-faith effort to pursue an out of court restructuring plan will establish a clear record of seeking creditor consensus before seeking chapter 9 relief. This will deflect any eligibility complaints based on alleged failure to negotiate or bad faith.” (Pitch Presentation, p. 18);
- “Include All Constituents in Planning and Negotiations” (Pitch Presentation, p. 22);
- “Establish a Strong Record of Inclusiveness and Consideration of All Options” (Pitch Presentation, p. 22);
- “Input should be obtained from all sources, documented and treated seriously, even if proposals appear unrealistic. Good listening skills are helpful.” (Pitch Presentation, p. 23);
- “Establish a strong record (i.e., for future litigation) of (i) inclusiveness with respect to all constituencies and (ii) consideration of all options and proposals received.” (Pitch Presentation, p. 23);
- “A record should be established that all avenues have been explored . . . to support the City’s case for debt reduction if a Chapter 9 ultimately is commenced.” (Pitch Presentation, p. 28);
- “unique and creative structures for asset monetization can and should be explored. . . Regional initiatives also could be explored (joint redevelopment, sharing of services, joint purchasing arrangements). Note: Asset monetization outside of bankruptcy may implicate eligibility requirement that City be insolvent (e.g., measured by short-term cash).” (Pitch Presentation, p. 17); and

- “OPEB [retiree health benefits] has less legal protections under state law than pensions, providing a greater ability to cut and equitably restructure” and “[i]f needed, chapter 9 could be used as a means to further cut back or compromise ‘accrued financial benefits’ [*i.e.* accrued pension obligations] otherwise protected under the Michigan Constitution.” (Pitch Presentation, pp. 39; 41).

4. Apparently, as discussed further below, the State officials at the January 29, 2013 pitch (including the Governor’s Transformation Manager, Richard Baird (“**Baird**”)) liked what they heard and decided that the Law Firm would be their firm of choice, with Orr and his extensive bankruptcy experience being utilized as the EM to complement the Law Firm’s legal ability to move the City swiftly into chapter 9. Thus, the day after the Pitch Presentation was given, on January 30, 2013, Baird reached out to The Law Firm about the potential of hiring Orr as the EM, and this led to discussions between the Governor, Baird, Orr, other State officials and the Law Firm, and the ultimate hiring of both Orr and the Law Firm to guide the City into chapter 9.

5. This is all against the backdrop of:

- The average non-uniformed employee pension currently averages slightly less than \$18,000 per year (according to a June 30, 2012 General Retirement System of the City of Detroit pension valuation report); and
- The AFSCME Retirees and AFSCME Active Employees look to their government pension and City-provided medical benefits for retiree benefits. Unlike private sector employees and retirees with defined benefit pension benefits, whose pension benefits are protected even in bankruptcy by government insurance through the Pension Benefit Guaranty Corporation, or those with multiemployer pension benefits, where even if one employer withdraws or goes bankrupt the vested pension benefits to the retirees continue unchanged by that withdrawal, the AFSCME Retirees and AFSCME Active Employees’ pensions are not backstopped. **Therefore, if this Court allows the chapter 9 proceeding to go forward with the ultimate result of the pension or other retiree benefits being lost, they are lost without a safety net.**

6. In light of recent Supreme Court precedent, chapter 9 of the Bankruptcy Code violates the United States Constitution and should be struck down by an Article III Court with authority and jurisdiction to make this crucial Constitutional law determination. Under *Stern v.*

Marshall, 131 S. Ct. 2594 (2011), such a decision is plainly outside the realm of authority properly delegated to an Article I tribunal like this Court.

7. However, to the extent this Court disagrees and determines that it has jurisdiction to uphold the Constitutionality of chapter 9 generally, this Court should find that the City is not eligible for relief under chapter 9 pursuant to sections 109(c) and 921(c) of the Bankruptcy Code for the following reasons.

8. *First*, under section 109(c)(2) of the Bankruptcy Code, **as already determined by at least one state court ruling** issued against Michigan Governor Richard D. Snyder (the “**Governor**”) prior to entry of the Stay Extension Order [Docket No 166], the purported authorization by the Governor permitting the chapter 9 filing by the EM was and remains an overt act by the Governor and others in violation of the Michigan Constitution, as the filing seeks to impair or diminish the AFSCME Detroit Employees’ pension benefits. Indeed, the very law purporting to allow the EM to unconditionally file for chapter 9 protection, PA 436, violates several provisions of the Michigan Constitution as applied in this chapter 9 case, including (i) Article IX, Section 24 because PA 436 does not explicitly prohibit the diminishment or impairment of vested pension rights in bankruptcy, which is the goal sought in this chapter 9 proceeding; (ii) Article VI, Section 29 because PA 436 delegates power to the EM in excess of that possessed by the legislature; and (iii) Article VII because PA 436 strips power from the electors of each city and village and runs ramshackle over the principles of local self-government firmly embedded in Michigan law.

9. *Second*, despite factual arguments to the contrary in the City’s Eligibility Brief and Debtor’s Reply, the City has failed to establish that it has negotiated in good faith or that such negotiations were impracticable as required under section 109(c)(5) of the Bankruptcy

Code. In fact, AFSCME submits (and AFSCME expects to show further at trial) that the City conducted **no good faith negotiations** with significant unions such as AFSCME prior to the filing. Rather, the City commenced this proceeding in **bad faith** and in haste in violation of section 921(c) of the Bankruptcy Code, with the sole goal of preventing a “bad” state court ruling (i) upholding the Michigan Constitution and (ii) preventing the City from taking the very inappropriate and unconstitutional journey it now seeks to embark on.

10. If the Court ultimately were to find that the City satisfied the eligibility requirements, the EM will seek (i) to unconstitutionally and illegally abridge vested pension and other AFSCME Detroit Employee benefits; (ii) to proceed under section 365 of the Bankruptcy Code and illegally seek to reject vested pension and other retiree benefits; and/or ultimately (iii) to propose a chapter 9 plan of adjustment that reduces vested pension and other benefits but that cannot possibly be better for creditors like AFSCME Detroit Employees than the alternative of staying out of chapter 9 where pensions are guaranteed protection under the state constitution - a clear breach of the chapter 9 “best interests test.” Such an outcome should not be countenanced.

11. Finally, AFSCME submits that the City has failed to satisfy its high burden of proving – through expert evidence or otherwise – insolvency pursuant to section 109(c)(3) of the Bankruptcy Code. In reality, the evidence reveals (and AFSCME expects to further demonstrate at trial) that the City may well be solvent, particularly when (i) discounting the City’s unproven assertions regarding the unfunded amount of the City’s pension and other retiree benefits actuarial underfunding; (ii) taking into account un-monetized assets that the City purposefully ignored (as suggested in the Pitch Presentation given by the City’s lead counsel) to make the City appear insolvent; (iii) considering the possibility of funding sources

not included in the City's financial projections, which projections lack any expert evidence as to their reliability and indeed do not have any reliable evidentiary basis; and (iv) considering the significant swap deal reached and finalized by the City immediately prior to the chapter 9 filing which itself helped significantly with cash flow issues. The City filed for chapter 9 protection on July 18, 2013 not because of any true budgetary insolvency or inability to pay its debts as they came due, rather because the City (i) disliked the direction in which the various pre-petition state court litigations (including the Webster Litigation, as defined below) were proceeding and (ii) worried that failure to file when it did – despite having failed to negotiate in good faith – would potentially limit or forestall the City's clear goal, as guided by the Law Firm, the EM, and other high ranking State officials, of attacking the City's pension obligations in chapter 9. It is telling (and should be shocking to all citizens of Detroit and Michigan) that despite spending millions of dollars of taxpayer funds on the City's chapter 9 cases to hire a multitude of bankruptcy and restructuring professionals, the City fails to offer even one person to stand up as an *expert* and testify to the City's insolvency.

12. In addition the City, by proceeding on its current course, has ignored some of the advice provided by its own counsel that that the “City should characterize its residents as ‘customers,’ a class of constituents that ordinarily is accorded significant benefits in business reorganizations” and that “[a] viable restructuring for a strong and vibrant Detroit must treat its citizens with respect, just as a successful business in the private sector treats its customers.” Pitch Presentation, p. 27. Based on all of the reasons set forth herein, this Court (to the extent it finds that it has authority and/or jurisdiction) should deny the Debtor's requested eligibility for chapter 9. By doing so, the ordinary residents and citizens of Detroit (including the many

dedicated AFSCME Detroit Employees) will regain their voices in government and be protected from the mistaken path of the EM.

RELEVANT BACKGROUND

13. Orr currently serves as the EM of the City under PA 436.

14. The Governor appointed Orr as EM for the City on March 14, 2013, effective as of March 25, 2013. On March 28, 2013, upon the purported effectiveness of PA 436, Orr became, and continues to act as, EM for the City under PA 436.

15. On June 14, 2013, Orr issued a “Proposal for Creditors” which expressly stated that “there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons.” The same day, Orr publicly threatened, in an interview with the Detroit Free Press Editorial Board,³ that vested pension benefits would not be protected in a chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state laws protecting vested pension benefits would “not . . . protect” retirees in bankruptcy court. The EM stated as follows in the interview:

Q You said in this report that you don't believe there is an obligation under our state constitution to pay pensions if the city can't afford it?

A. The reason we said it that way is to quantify the bankruptcy question. We think federal supremacy trumps state law. Which the Ninth Circuit agrees with for now.

A. It is what it is - so we said that in a soft way of saying, “Don't make us go into bankruptcy.” If you think your state-vested pension rights, either as an employee or a retiree - that's not going to protect you. If we don't reach an agreement one way or the other, we feel fairly confident that the state federal law, federalism,

³ See *Q&A with Kevyn Orr: Detroit's Emergency Manager Talks About City's Future*, Detroit Free Press (June 16, 2013), available at <http://www.freep.com/article/20130616/OPINION05/306160052/kevyn-orr-detroit-emergency-manager-creditors-fiscal-crisis>.

will trump state law or negotiate. The irony of the situation is we might reach a deal with creditors quicker because employees and retirees think there is some benefit and that might force our hand. That might force a bankruptcy.

16. As discussed below, the Governor (and other State officials) and the EM were well aware both prior to and subsequent to the issuance of the letter on July 18, 2013 from the Governor to the EM authorizing the EM to have the City commence its chapter 9 case without any conditions or limits (the “**Governor’s Authorization Letter**”) of the City’s intentions to modify and/or terminate vested pension obligations in chapter 9 without limit in derogation of the Michigan Constitution.

A. The Webster Litigation And The Governor’s Unconditional Authorization

17. On July 3, 2013, against the backdrop of the threatening statements made by Orr regarding Michigan state law and protected pension benefits, plaintiffs (the “**Webster Plaintiffs**”) Gracie Webster (a City retiree) and Veronica Thomas (a current employee of the City vested in her pension) commenced a lawsuit against the State of Michigan, the Governor and the State Treasurer seeking: (a) a declaratory judgment that PA 436 violated the Constitution of the State of Michigan to the extent that it purported to authorize chapter 9 cases within which vested pension benefits might be sought to be compromised; and (b) an injunction preventing the defendants from authorizing any chapter 9 case for the City within which vested pension benefits might be sought to be reduced. *See Webster v. State of Mich.*, No. 13-734-CZ (Ingham County Cir. Ct. July 3, 2013) (the “**Webster Litigation**”).⁴

18. In briefing submitted in support of a preliminary injunction and declaratory order against the Governor, the Webster Plaintiffs explained that Article IX, Section 24 of the Michigan Constitution provides that “[t]he accrued financial benefits of each pension plan and

⁴ Two additional lawsuits were also filed raising similar issues in addition to the Webster Litigation.

retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby;” that there could not be a more clear and plain constitutional mandate; and that Article IX, Section 24 means what it says: accrued pension benefits shall not be reduced.

19. Further, as the Webster Plaintiffs noted, the Official Record of the 1963 Michigan Constitutional Convention makes clear that no governmental entity or its officials can do anything to diminish or impair vested pension benefits: “This is a new section that requires that accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions be a contractual obligation which cannot diminished or impaired by the action of its officials or governing body.” 2 Official Record, Constitutional Convention 1961, p. 3402.

20. The Webster Plaintiffs also noted that PA 436 explicitly recognizes that accrued pension benefits shall not be diminished or impaired outside the bankruptcy context. For example:

- Section 11 of PA 436 requires that an emergency manager develop a written financial and operating plan for the local government and that such plan “shall provide” for “the timely deposit of required payments to the pension fund for the local government.”
- Section 13 of PA 436 authorizes the emergency manager to eliminate the salary, wages or other compensation and benefits of the chief administrative officer and members of the governing body of the local government, but expressly provides that “[t]his section does not authorize the impairment of vested pension benefits.”
- Section 12(m) of PA 436 authorizes an emergency manager under certain circumstances to be appointed as the sole trustee of a local pension board and to replace the existing trustees, and requires that “the emergency manager shall fully comply with . . . Section 24 of Article IX of the state constitution . . .” when acting as the sole trustee.

21. But, in violation of Article IX, Section 24 of the Michigan Constitution, PA 436 fails to similarly forbid the Governor explicitly from authorizing a chapter 9 bankruptcy filing if accrued pension benefits may be sought to be diminished or impaired as a consequence of that filing. Section 18 of PA 436, which purportedly empowers the Governor to authorize a municipality to file for bankruptcy under chapter 9, nowhere prohibits the Governor from authorizing such a filing if accrued pension benefits may be sought to be diminished or impaired. Clearly, the Legislature understood and honored the Michigan constitutional mandate not to diminish or impair accrued pension benefits outside of bankruptcy. Just as clearly, the Legislature omitted any constitutional protection against the impairment or diminishment of accrued pension benefits when the Governor purports to authorize a chapter 9 bankruptcy filing under Section 18 of PA 436.

22. In other words, if accrued pension benefits may be diminished or impaired, in violation of Article IX Section 24 of the Michigan Constitution, the section of PA 436 purporting to authorize this bankruptcy, Section 18, must be unconstitutional as applied.

23. On July 18, 2013, the same date this chapter 9 case was commenced, the Ingham County Circuit Court for the State of Michigan (the “**State Court**”) entered a temporary restraining order (the “**TRO**”, attached to the Kreisberg Declaration, Exhibit A) enjoining the Governor, the State Treasurer and the other defendants in the Webster Litigation from authorizing a chapter 9 filing and taking any further action “with respect to any filing which has already occurred” including the authorizing of an “unconditional” chapter 9 filing (*i.e.* one in which the EM would represent himself as having authority to modify and/or terminate pension obligations without limit in derogation of the Michigan Constitution).

24. Despite the issuance of the TRO and the State Court’s clear directive to the Governor regarding not authorizing any further filings by the City, the Governor did not seek to prevent the City from filing all of its “first day pleadings.” Indeed, the Governor authorized and the EM directed the chapter 9 filing just minutes before the July 18, 2013 TRO hearing was set to begin (and during a brief delay in the TRO hearing requested by the Governor’s attorney) in order to potentially “cut off” any argument that the filing was not properly authorized (because the Governor knew and the EM expected that the State Court Judge was prepared to grant the TRO).

25. On July 19, 2013, the State Court held a further hearing on the Webster Litigation and entered an Order of Declaratory Judgment (the “**Declaratory Judgment**,” attached to the Kreisberg Declaration as Exhibit B). The Declaratory Judgment (a) finds PA 436 unconstitutional and of no force and effect to the extent it permits the Governor to authorize the EM to proceed under chapter 9 in any manner that threatens to diminish or impair pension benefits and (b) rules that the Governor must direct the EM “to immediately withdraw the chapter 9 petition ... and ... not authorize any further chapter 9 filing which threatens to diminish or impair accrued pension benefits.” *See* Declaratory Judgment at 3.

26. To the extent there was any authorization for the chapter 9 filing, the State Court clearly ordered that the Governor revoke it to the extent it was intended to lead to the diminishment or impairment of accrued pension benefits. However, subsequent to the issuance of the Declaratory Judgment, on July 25, 2013, this Court granted the City’s motion to extend the automatic stay, which, *inter alia*, stayed pending appeals of the Declaratory Judgment (and other similar state court proceedings). *See* Docket No. 166.

(i) The Governor (And Other State Officials) And City Intended Through The Chapter 9 Filing To Impair And/Or Terminate

**Pension Obligations, And The Governor Was Aware Of This
Prior To His Authorizing The Chapter 9 Filing**

27. The evidence obtained to date (as will be further demonstrated at trial) reveals that the Governor (and other State officials) and the EM were well aware both prior to and subsequent to the issuance of the Governor's Authorization Letter of the City's intentions to modify and/or terminate vested pension obligations in chapter 9 without limit in derogation of the Michigan Constitution.

28. First, the June 14 Restructuring Plan (defined below) expressly provided that "there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons", and the Governor has admitted in deposition testimony to (i) having viewed drafts of the June 14 Restructuring Plan; (ii) being specifically aware that the Restructuring Plan provided for significant cuts to accrued, vested pensions for active and retired employees; and (iii) being specifically aware when he signed the July 18 letter authorizing the City's chapter 9 filing that Orr's position was "that there had to be significant cuts in accrued pension benefits." See Governor Snyder October 9, 2013 Transcript (the "**Governor 10/9 Transcript**", a copy of which is attached to the Artz Declaration, Exhibit A),⁵ at 46:3-23; 63:9-64:18. Furthermore, in a letter dated July 16, 2013 from Orr to the Governor (and Treasurer Andy Dillon) recommending that the City be authorized to immediately commence a chapter 9 bankruptcy case, Orr noted that the City met with all of the City's unions and four retiree associations to "solicit the unions and retirees' view on their preferred way to address the **dramatic, but necessary, benefit modifications.**" See Orr Declaration, Exhibit J, p. 8

⁵ Throughout this Objection, AFSCME has cited deposition testimony provided by various witnesses in connection with the City's chapter 9 eligibility litigation. AFSCME relies on the relevant portions of these various depositions as evidence, and will be attaching copies of the full deposition transcripts to the Artz Declaration filed contemporaneously with this Objection.

(emphasis added). The Governor admitted to reading this letter. *See* Governor 10/9 Transcript, at 52:13-15.

29. Additionally, the City has unequivocally admitted that it intends to impair or diminish pension benefits of City active and retired employees through this chapter 9 proceeding. *See, e.g., City of Detroit, Michigan's Objections and Responses to Detroit Retirement Systems' First Requests for Admission Directed to the City of Detroit Michigan* [Docket No. 849], at p. 12 (admitting that "City intends to seek to diminish or impair the Accrued Financial Benefits of the participants in the Retirement Systems through this Chapter 9 Case."); *see also* Kevyn Orr September 16, 2013 Transcript (the "**Orr 9/16 Transcript**", a copy of which is attached to the Artz Declaration, Exhibit B), at 252:25-253:16; 288:2-9 (admitting that City intended to diminish or impair accrued pension benefits of Detroit pensioners, preferably through a consensual plan but preserving all rights to do so possibly through the use of the cramdown provisions of the bankruptcy code).

B. The City's Pre-petition Machinations And Subsequent Meetings (But Not Negotiations) With Creditors Such As AFSCME

(i) The City's Bankruptcy Was Orchestrated Based On The Advice Of The City's Lead Bankruptcy Counsel And Discussed Before The EM Was Even Hired

30. In emails, documents and deposition testimony that surfaced following the City's chapter 9 filing going back to late January 2013, long prior to any alleged good faith negotiations with creditors (more about this point below), secret discussions were being held between Detroit and officials in the Governor's office and the City's legal counsel suggesting that the best course for the City would be to send it through chapter 9 bankruptcy. These facts collectively expose Orr's and the City's charade of pre-petition "negotiations" (in reality, one-

sided meetings) in the month prior to the City's chapter 9 filing. In fact, all along, the clear goal was for the City to end up in chapter 9.

31. For example, the Law Firm was among a number of firms to provide a "pitch" presentation made to the City on January 29, 2013 in the presence of State officials. *See* Pitch Presentation (dated January 29, 2013); *see also* Orr 9/16 Transcript, at 18:12-21:20 (discussing how Orr came with the Law Firm in late January to pitch for the City's restructuring work before a "restructuring team [of] advisors"). During that pitch, Orr (among other lawyers that would be working on the proposed engagement) was presented primarily as a "bankruptcy and restructuring attorney." Orr 9/16 Transcript, at 21:3-6. As part of the Pitch Presentation, as discussed extensively *supra*, ¶ 3, the City's lead bankruptcy counsel presented, in part, the following playbook for the City's road to chapter 9: (i) the difficulty of achieving an out of court settlement and steps to bolster the City's ability to qualify for chapter 9 by establishing a good faith record of negotiations (Pitch Presentation, pp. 13; 16-18; 22-23; 28); (ii) the EM could be used as political cover for difficult decisions such as an ultimate chapter 9 filing (Pitch Presentation, p. 16); (iii) warning that pre-chapter 9 asset monetization could implicate the chapter 9 eligibility requirement regarding insolvency, thus effectively advising the City *against* raising money in order to will itself into insolvency (Pitch Presentation, p. 17); and (iv) describing protections under state law for retiree benefits and accrued pension obligations and how chapter 9 could be used as means to further cut back or compromise accrued pension obligations otherwise protected by the Michigan constitution ((Pitch Presentation, pp. 39; 41).

32. Following the Law Firm's pitch in late January 2013, State officials (including Baird) informed attorneys at the Law Firm and Orr that they were interested in bringing Orr on board as EM, and Orr began to consider the offer. *See* Orr 9/16 Transcript, at 24:24-25:31:5).

Orr commented regarding his proposed consideration for appointment as EM and discussed with his law firm at the time how to go about leading the City into chapter 9. In an email (attached to the Kreisberg Declaration, Exhibit 1) dated January 31, 2013, Orr's colleague at the firm stated in an email to Orr that the "ideal scenario would be that [Michigan Governor] Snyder and [Detroit Mayor] Bing both agree that the best option is simply to go through an orderly Chapter 9. This avoids an unnecessary political fight over the scope/authority of any appointed Emergency Manager appointed and, moreover, moves the ball forward on setting Detroit on the right track." *Id.*⁶ Indeed, this was the exact suggestion by the City's current lead bankruptcy counsel in its pitch presentation. *See* Pitch Presentation, p. 16 ("Ultimately, the Emergency Manager could be used as political cover for difficult restructuring decisions.").

33. Orr's colleague then stated his own reservations about whether an emergency manager would be useful outside of bankruptcy where his "ability to actually do anything is questionable given the looming political and legal fights" *Id.* In contrast, he observed in an earlier email, "[m]aking this a national issue . . . provides political cover for the state politicians" and gives them an "incentive to do this right" because "if it succeeds, there will be more than enough patronage to allow [them] to look for higher callings—whether Cabinet, Senate, or Corporate." *See* Kreisberg Declaration, Exhibit 2.⁷

34. As noted above, others involved in the discussions prior to the chapter 9 filing included Baird, the Governor's Transformation Manager. In an email also dated January 31, 2013, Orr, in anticipation of a conversation he was to meet with Baird "in a few minutes" about

⁶See also Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

⁷See also Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

whether to accept the EM position, observed that PA 436 “is a clear end-around the prior initiative” to repeal the previous Emergency Manager statute, Public Act 4, “that was rejected by the voters in November.” *See* Kreisberg Declaration, Exhibit 3.⁸ According to Orr “although the new law provides the thin veneer of a revision it is essentially a redo of the prior rejected law and appears to merely adopt the conditions necessary for a chapter 9 filing.” *Id.*

35. In a further email dated January 31, 2013, Orr indicated that Baird wanted Orr to be hired as the EM and his firm to represent the City (regardless of whether Orr took the EM job), and that Orr indicated that he would be glad to work together with the City, even if not as EM, indicating that “I [Orr] and the firm are committed to working in lockstep with the [C]ity.” *See* Kreisberg Declaration, Exhibit 4.⁹

(ii) No Good Faith Negotiations Took Place Following The Appointment Of The EM With Parties Such As AFSCME Prior To The City’s Chapter 9 Filing

36. As indicated above, the die was cast for the City’s inevitable chapter 9 filing prior to the March appointment of Orr as EM. Following Orr’s appointment, the City and Orr maneuvered to establish the veneer of formal pre-petition creditor negotiations, when in reality, Orr and the Governor knew all along that the non-interactive meetings would be held on a *pro forma* basis so the City could attempt to establish alleged good faith negotiations.

37. The facts belie the notion of any pre-filing negotiations, whether in good faith or otherwise. Indeed, the City itself admitted both in letters and at the meetings held in the month or so prior to the filing that the City was only interested in one-way discussions, not

⁸ *See also* Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

⁹ *See also* Kate Long, *Who is representing Detroit?* <http://blogs.reuters.com/muniland/2013/07/25/who-is-representing-detroit/> (last visited on August 19, 2013).

negotiations. As discussed below, evidence obtained in discovery reveals that while these meetings were ongoing – indeed, before ever meeting face-to-face with union representative alone – the City had already made a determination as early as the beginning of July 2013 that it would be filing for chapter 9 protection on or about July 19, 2013.

38. On June 14, 2013, the City held a meeting of representatives of the City’s creditors (the “**June 14 Meeting**”) to present the City’s comprehensive restructuring plan/ “Proposal for Creditors” (the “**Restructuring Plan**”, attached to the Kreisberg Declaration as Exhibit C). Even prior to these meetings, Orr confirmed that the City’s discussions of a predecessor to its ultimate Restructuring Plan, the EM’s May 12, 2013 “Financial and Operating Plan”, would not involve any negotiations, explaining that “it is under the [PA 436] statute, it is my plan and it’s within my discretion and obligation to do it. **This isn’t a plebiscite, we are not, like, negotiating the terms of the plan.** It’s what I’m obligated to do.” See Kevyn Orr Interview to Detroit WWJ Newsradio 950/AP, *Detroit EM Releases Financial Plan; City Exceeding Budget By \$100M Annually*, May 12, 2013, available at <http://detroit.cbslocal.com/2013/05/12/kevin-orr-releases-financial-plan-for-city-of-detroit/> (emphasis added).

39. On June 17, 2013, Steven Kreisberg, AFSCME’s director of collective bargaining and health care policy, submitted a letter requesting from the EM various categories of information, assumptions, and data for AFSCME to honestly review all the information presented and begin good faith negotiations. See Kreisberg Declaration, Exhibit 5. AFSCME made this request prior to a scheduled June 20, 2013 meeting with unions (including AFSCME) representing the City’s non-uniform employees regarding the City’s pensions. At that meeting,

the City represented that the meeting was “not a negotiation.” *See* Kreisberg Declaration, ¶ 17. Furthermore, the letter inviting AFSCME to the June 20 meeting characterized the purpose of the meeting as being to “review” the Restructuring Plan (not negotiate it) and to have AFSCME “learn” about the Restructuring Plan. Kreisberg Declaration, Exhibit 6.

40. In a letter dated June 27, 2013 to an AFSCME local union, the City indicated that it was posting certain information to a data room and was looking forward to the unions’ “feedback” (again not negotiation) with respect to the EM’s retiree benefits restructuring proposal. *See* Kreisberg Declaration, Exhibit 7.

41. In a follow up letter to the City dated July 2, 2013, Mr. Kreisberg again reiterated his request for information and data, including the backup data supporting the City retiree benefits proposal (support for which previously consisted of only a one-page financial summary). AFSCME requested relevant information and the opportunity (in conjunction with a meeting scheduled with the City’s unions on July 10-11) to begin meaningfully engaging “in a good faith negotiation of these issues.” *See* Kreisberg Declaration, Exhibit 8.

42. In a response letter to Mr. Kreisberg on July 3, 2013, the City advised that it would not meet separately with AFSCME, and that the July 10, 2013 scheduled meeting with the unions would be a “discussion” (again not a negotiation). *See* Kreisberg Declaration, Exhibit 9. Similarly, in an email dated June 28, 2013, the City confirmed that it wanted to meet on July 10, 2013 to “discuss” its “developing pension restructuring proposal,” clearly implying that the proposal itself was not even complete yet. *See* Kreisberg Declaration, Exhibit 10. Additionally, and tellingly, at that July 10, 2013 meeting, counsel for the City attempted to invoke Rule 408 confidentiality provisions stating that doing so was a tool used in every bankruptcy, so it should be invoked that day. *See* Supp. Kreisberg Declaration, ¶ 7. This

statement made more than a week before bankruptcy was authorized or filed further demonstrating that the City intended to file for bankruptcy in any event.

43. At the July 10, 2013 meeting, the City announced at the inception that the meeting would be a discussion but not a negotiation. *See* Kreisberg Declaration, ¶ 18. At a similar meeting with AFSCME and certain and other unions held on July 11, 2013, again there was no negotiation.

44. Despite this evidence, it appears that the City now seeks to characterize its limited requests to creditors for feedback – but admitted refusal to bargain with them – on the Restructuring Plan at the four meetings held regarding that plan as satisfying chapter 9’s good faith negotiation requirement. Yet, in the City’s reply brief regarding eligibility and recent deposition testimony by Orr, the City and Orr have explicitly denied that the City’s discussions with creditors were negotiations. *See* Debtor’s Reply, at p. 55 n.49; Orr 9/16 Transcript, at 137:25-138:8 (“Q. And was there any bargaining that took place at those sessions [on June 20th, July 10th, and July 11th] where the City said it would be willing to agree to something that was different from what was in June 14? A. Here again, I’m going to stay away from bargaining as a legal conclusion, duty to bargain is suspended. I will say there was a back and forth and my understanding discussions and invitations for further information.”).

45. Furthermore, and critically, Orr recently testified that media reports prior to the City’s chapter 9 filing that the City was planning on filing on July 19, 2013 were inaccurate. Orr 9/16 Transcript, at 301:19-302:8 (indicating that there was no plan for the City to file on July 19, 2013 and that Orr’s plan was “to have the permission, the authority, to file them and make that call at some point after I transmitted my letter of July 16 [requesting authorization from the Governor to file for chapter 9].”). Yet, evidence produced in discovery includes an

Excel/spreadsheet document attached to e-mails circulated (i) to and from Bill Nowling (who works in the EM's office) sent to individuals in the Governor's office, entitled "Chapter 9 Communications Rollout" which makes clear that during the same time period that the City was purporting to conduct ongoing "good faith negotiations" with creditors regarding the Restructuring Plan, **in fact the City was, as early as July 1, 2013 planning on filing for chapter 9 on Friday, July 19, 2013.** See Supp. Kreisberg Declaration, Exhibit C (spreadsheet document dated July 4, 2013 attached to e-mail from EM's office to State officials entitled "Chapter 9 Communications Rollout" indicated that Friday, July 19, 2013 was "FILING DAY").

(iii) The City's Bad Faith Refusal To Negotiate With Unions Such As AFSCME Has Continued Following The City's Bankruptcy Filing

46. The City's pattern of bad faith refusal to negotiate any of its proposals regarding pensions or health insurance benefits changes has continued post-petition.

47. For example, on August 2, 2013, the City convened a meeting of local union representatives and discussed active health insurance. See Kreisberg Declaration, ¶ 19. However, during that meeting, the City specifically advised those in attendance (including AFSCME representatives) that the meeting was not a negotiation. *Id* at ¶ 20. Mr. Kreisberg sent a follow up letter to the City on August 6, 2013 requesting good faith bargaining, and referenced cost savings estimates which AFSCME previously proposed in prior negotiations with the City before the development of the Emergency Manager's initial financial restructuring plan in May. See Kreisberg Declaration, Exhibit 11. In an August 8, 2013 response, the City advised that it would not engage in collective bargaining with AFSCME, but rather simply "discuss any feedback they may have regarding its health care restructuring plans." See Kreisberg Declaration, Exhibit 12.

48. On August 14, 2013, the City held a follow up meeting with AFSCME on the subject of active medical benefits but did not accept any counterproposals or suggestions, but simply responded by further explaining its current intention with respect to active medical benefits.

49. Given Orr's repeated statements to the media about the City's willingness to bargain with its unions, AFSCME has been surprised by the City's unwillingness to negotiate, pre or post-petition. While AFSCME has repeatedly stated its desire to move forward with constructive negotiations with the City on behalf of all AFSCME Detroit Employees, AFSCME cannot negotiate with an employer that is unwilling to come to the table for arms-length talks.

(iv) The City Has Previously Negotiated Labor Concessions With Unions That Modified Both Active And Retiree Benefits

50. The City argues, in part, that negotiations with its retirees were impractical or impossible as the City could not bind the disparate group of retirees in any agreement. However, the City should be well aware (and indeed its advisors have admitted) that in February 2012, City labor negotiators reached a tentative agreement (the "**Tentative Agreement**") with a "Coalition of City of Detroit Unions", including several AFSCME local bargaining units. See Supp. Kreisberg Declaration, ¶ 4, Exhibit A (attaching copy of the Tentative Agreement). Pursuant to deposition testimony given by Gaurav Malhotra of Ernst & Young ("**E&Y**") on September 20, 2013 (one of the City's restructuring advisors), E&Y was actively involved "in assisting quantify some of the savings in conjunction and collaboration with the City as the City negotiated with the – its unions [regarding the Tentative Agreement]." See Gaurav Malhotra September 20, 2013 Transcript (the "**Malhotra 9/20 Transcript**", a copy of which is attached to the Artz Declaration, Exhibit C), at 86:20-23.

51. While the Tentative Agreement was never implemented, changes with respect to benefits in the proposed Tentative Agreement would have directly impacted retiree benefits, and indeed, based on projections at the time, AFSCME understands that the Tentative Agreement could have saved the City approximately \$50 million annually, a number which included retiree health benefit changes. *See* Supp. Kreisberg Declaration, ¶¶ 5-6.

52. Despite this evidence, Orr has now testified that he was unaware of the Tentative Agreement (and, thus implicitly, unaware of the City’s prior success at bargaining in good faith with the City’s unions, which led to changes to both active and retired employees’ benefits):

- 15 Q. Are you aware of a coalition among certain of the
16 City's unions put together in order to try and deal
17 with some of the restructuring issues with regard to
18 labor that you've been focused on?
19 A. A coalition? Can you please explain? Informal
20 coalition or the retiree committee or --
21 Q. Not the retire committee. A coalition of unions with
22 regard to trying to deal with some of the labor issues
23 that you --
24 A. Under the AFSCME umbrella?
25 Q. No, no, no.

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- 1 A. Or separate union? I'm trying to -- I'm trying to
2 understand.
3 Q. Well, I think your answer indicates to me that perhaps
4 the answer is no.
5 A. Yeah. Okay.

Orr 9/16 Transcript, at 237:15-237:5. Given that Orr himself was unaware of the City’s ability to negotiate deals affecting both active employees and retirees outside of bankruptcy, the City’s assertion that negotiations regarding changes to retiree and pension benefits were “impracticable (if not impossible)” is misguided. Orr could not possibly have attempted to

negotiate in good faith if he had not done even the most preliminary investigation as to whether Detroit's several unions had ever negotiated with the city collectively in the past, indeed the very recent past.

C. The City Has Failed to Establish It Is Insolvent, And The City's Chapter 9 Case Was Not Commenced Due to Any Imminent Financial Emergency, Rather To Avoid The Webster Litigation (And Other State Court Proceedings)

53. The City at first glance seems to provide thick volumes which it calls evidence regarding its alleged insolvency. *See, e.g.*, Orr Declaration, ¶¶ 52-57; Malhotra Declaration, ¶¶ 10-26; Moore Declaration, ¶¶ 9-20. However, what becomes apparent from reviewing these declarations (which serve as the basis for the City's insolvency arguments) is that (i) each often cross-relies (as purported evidence as to the truth of particular statements) on other (non-expert) testimony, other documents prepared by the City, or other assumptions/evidence convenient to the City but without any real foundation. *See, e.g.*, Orr Declaration, ¶¶ 52-57 (citing, in part, the June 14 Restructuring Plan and Malhotra Declaration as evidence); Moore Declaration, ¶¶ 13-14 (estimating pension underfunding using what the "City" believes are more realistic assumption)); Malhotra Declaration, ¶¶ 11; 15; 21-22 (discussing manner in which City's financial forecasts and projections were prepared based on certain complex assumptions, calculations and input from other City officials). Furthermore, the City offers no expert witness to testify regarding the City's asserted insolvency despite the City having spent millions of dollars and having gone out and hired a multitude of legal, financial, actuarial and restructuring advisors. Ultimately, the fact remains that **despite the pile of "evidence" submitted by the City, the City does not have a single witness who can stand up as an expert and testify as to the City's insolvency.**

54. Furthermore, the City misleadingly cited its insolvency as what drove its chapter 9 filing, not the imminent state court rulings in the Webster Litigation and other state court proceeding, further casting doubt on the reality of its conclusion that it is insolvent. *See, e.g., Debtor's Reply*, at pp. 65-66. Yet, in reality (and as will be further demonstrated at trial), the discovery process has revealed several interesting facts that cut against insolvency as the true basis for the filing (*see Debtor's Reply*, at p. 65-66), and indeed Orr's recent testimony indicates that insolvency was not the driving factor behind the filing on July 18, 2013, rather the filing at that time was driven by the state court litigations. Orr testified:

19 When did you decide that the timing of the
20 Chapter 9 filing should be July 18th or July 19th?
21 A. Well, I didn't. I decided to make the request and my
22 intent was to have the ability to file available and
23 possibly executed as soon as I got it. It was without
24 talking or waiving privileges from my counsel or
25 counsel and investment bankers, the concerns about us

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1 losing control or being put in a situation because of
2 the ongoing litigation where I would not be able to
3 discharge my duties in an orderly fashion, in a
4 comprehensive matter to put the city on a sustainable
5 footing because of the litigation grew . . .
6 and it was made clear to me that **my desire to try to**
7 **continue to engage in discussions was running the risk**
8 **of putting my obligations under the statute in peril**
9 **and I think I was even counseled that I was being**
10 **irresponsible.**

Orr 9/16 Transcript, at 220:19-221:6-10.

55. In addition, the City's evidence regarding insolvency is built upon unproven assertions regarding, *inter alia*, the alleged unfunded amount of the City's pension and other retiree benefits. Indeed, in the June 14 Restructuring Plan discussing the actuarial accounting underfunding on the City's pension plans, the City suggested that such underfunding using

more “realistic assumptions” would be approximately \$3.5 billion, up from the \$644 million from the City’s 2011 reported underfunding. Restructuring Plan, pp. 23, 109 (noting that “preliminary analysis indicates that the underfunding in the GRS and the PFRS is approximately \$3.5 billion); *see also* Orr Letter Dated July 16, 2013 to Governor Snyder and Treasurer Dillon (copy attached as Exhibit J to Eligibility Brief (recommending chapter 9 filing and discussing \$3.5 billion in underfunding of pension liabilities)).

56. However, these allegedly “realistic assumptions” were directly dictated by the City to their actuarial advisor, Milliman, Inc. For example, Charles Moore of Conway MacKenzie admitted in his deposition that the City really had no idea what the underfunded portion of the pension obligations might be (as of September 18, 2013) because “until the City completes its analysis [which is had not yet done] and completes its own actuarial valuation, neither the City nor its actuary [Milliman] nor I would be able to say what all the assumptions are that could be used to either overstate or understate the funded position [of the pensions].” *See* Charles Moore September 18, 2013 Transcript (the “**Moore 9/18 Transcript**”, a copy of which is attached to the Artz Declaration, Exhibit D), at 62:2-7; *see also* Moore 9/18 Transcript, at 63:10-12 (indicating that 7 percent rate of return figure used by Milliman in running certain calculations regarding pension underfunding “was used for illustrative purposes” only and was not recommended by any specific actuary). Furthermore, in an e-mail dated July 9, 2013 from Treasurer Dillon to the Governor and others regarding a meeting Orr would be having with the Detroit retirement systems on July 10, 2013, Treasurer Dillon indicated that “[b]ecause pensions have such a long life there are a lot of creative options we can explore to address how they [the pensions] will be treated in a restructuring.” *See* Supp. Kreisberg Declaration, Exhibit D. In fact, experts that reviewed the actuarial assumptions of

Detroit's pension systems conclude that the current assumptions generally fall within industry standards. *See, e.g., Detroit's Current Pension Assumptions Fall Within Standards: Morningstar*, available at <http://www.mandatepipeline.com/news/detroits-current-pension-assumptions-fall-within-standards-morningstar-242817-1.html> (last visited October 8, 2013).

57. Furthermore, as discussed above, the Law Firm highlighted at the January 29, 2013 pitch that "Asset monetization outside of bankruptcy may implicate eligibility requirement that City be insolvent (e.g., measured by short-term cash)" (Pitch Presentation, p. 17), and the City accordingly chose not to monetize certain assets prior to the filing to limit the appearance of short-term cash on the books. This is evidenced, in part, by the (i) recent announcement by the EM of the deal to lease Belle Isle to the Governor and (ii) Orr's strong hints that he is considering monetizing artwork at the Detroit Institute of Arts.¹⁰

58. Additionally, the City's financial projections which serve, in part, as the City's basis for establishing insolvency (which themselves were built on various assumptions not established by any **expert** testimony) fail to consider the possibility of possible funding sources outside those included in the City's financial projections. For example, Malhotra testified that the City's financial projections assume that the City will have no other funds beyond the City's general fund and that the water and sewer fund was not incorporated into the City's projections. *See* Malhotra 9/20 Transcript, at 44:21-45:17. Yet, Orr testified that with respect to the pension underfunding (which is cited throughout the City's Eligibility Brief and included as one of the major factors in the City's insolvency in numerous documents and pleadings), of the estimated \$644 million in underfunding (based on the pensions funds' 2012 calculations), the majority of

¹⁰ *See State Signs Deal To Lease Belle Isle*, available at <http://detroit.cbslocal.com/2013/10/01/reports-state-signs-deal-to-lease-belle-isle/> (last visited October 8, 2013); *Orr tells DIA to earn money from its treasures; long-term leases of artworks next?*, available at <http://www.freep.com/article/20131003/NEWS01/310030115/Kevyn-Orr-Economic-Club-Detroit> (last visited October 8, 2013).

that underfunding is attributable to the water and sewer fund which generates its own revenue and which “does have some capacity” to raise rates to generate more funds. *See* Kevyn Orr October 4, 2013 Transcript (the “**Orr 10/4 Transcript**”, a copy of which is attached to the Artz Declaration, Exhibit E), at 377:1-380:13.

59. Finally, it bears noting that on July 16, 2013, the City reached a deal with its swap counterparties, which provided for such parties to (i) forbear from pursuing remedies and (ii) allowed the City to redeem the swaps until October 31, 2013 which would result in the City saving between \$70 and \$85 million. *See* Supp. Kreisberg Declaration, Exhibit E (e-mail from Ken Buckfire dated July 17, 2013). Given these immediate savings and other possible avenues (noted above) for the City avoiding bankruptcy, it is clear that the City’s filing had very little to do with any purported insolvency and everything to do with the City’s plan to impair or modify its pension obligations.

ARGUMENT

I. THE CITY’S PETITION VIOLATES THE UNITED STATES CONSTITUTION

A. Chapter 9 Violates The Federal Structure Of Government

60. Chapter 9 of the Bankruptcy Code is an unconstitutional violation of federalism because chapter 9 allows Congress to set rules controlling State fiscal self-management – an area of exclusive state sovereignty – as part of an unholy alliance in which the State receives in exchange powers in excess of those it would otherwise possess under the law. The losers here are citizens, such as the AFSCME Employees, who, particularly as creditors of the State, benefit from the State and Congress acting within their constitutionally defined roles so that the State remains accountable during the trying process of a municipal debt adjustment.

61. The Supreme Court recognized this violation explicitly in 1936 when the Court declared the first federal municipal bankruptcy statute unconstitutional for the following two

independent reasons: (1) the goal of a municipal bankruptcy is to enable state governments to unconstitutionally escape their debts, but states cannot accomplish the “end” of an unconstitutional act simply “by granting any permission necessary to enable Congress to do so”; and (2) municipal bankruptcy represents an incursion by Congress into the “sovereignty of the State” and its political subdivisions, which renders them “no longer free to manage their own affairs” independent of “interference” by Congress, yet the Constitution does not permit Congress to “pass laws inconsistent with the idea of sovereignty.” *Ashton v. Cameron County Water Improvement Dist. No. 1*, 298 U.S. 513, 530-32 (1936).

62. *Ashton* applies with even greater force to chapter 9 than it did to the first federal bankruptcy statute. Chapter 9, like the municipal bankruptcy statute struck down in *Ashton*, is designed to empower municipalities – whose “fiscal affairs are those of the State, not subject to control or interference by the National Government,” *id.* at 528 –to “change, modify or impair the obligation of their contracts” in ways not permissible outside of bankruptcy. *Id.* at 530-31. Under chapter 9 but not under the prior federal municipal bankruptcy statute at issue in *Ashton*, states are explicitly barred from designing their own process for municipal debt adjustment, further infringing on the constitutionally defined role of the states to manage their own financial affairs. See 11 U.S.C. § 903.

63. As *Ashton* recognized, that municipalities may not, unlike states, be immune from suit under the 11th Amendment is entirely unrelated to the question of whether their essential role in the federal system of government has been unconstitutionally diminished by an act of Congress. *Ashton*, 298 U.S. at 531. The Supreme Court recently reaffirmed this distinction in *Printz v. United States*: “[T]he distinction in our Eleventh Amendment jurisprudence between States and municipalities . . . is peculiar to the question of whether a

governmental entity is entitled to Eleventh Amendment sovereign immunity, [and does not] apply [] to the question of whether a governmental entity is protected by the Constitution's guarantees of federalism, including the Tenth Amendment.” 521 U.S.898, 531 n. 15 (1997) (citations omitted).

64. To take just one extremely salient example, the City seeks to reduce its retiree health care obligations *permanently* in bankruptcy, which the Michigan Court of Appeals has held it could not do under state or federal law. *See AFT Michigan v. State*, 297 Mich. App. 595, 825 N.W.2d 595 (2012). Thus, under chapter 9 the City seeks to skirt the laws governing its debts outside of bankruptcy in exchange for submitting to the rules enacted by Congress for a chapter 9 filing, thereby ceding sovereign control over some of its own fiscal affairs to the federal judiciary during the bankruptcy process.

65. Neither of the justifications provided by the Supreme Court less than two years after *Ashton* when it upheld Congress’s next, substantially similar, municipal bankruptcy statute in *United States v. Bekins*, 304 U.S. 27 (1938) – (1) that the contracts clause of the federal constitution makes the passage of a state law adjusting municipal debts impossible and thus the need for a federal law providing for municipal bankruptcy pressing, and (2) that a State has a right to consent to federal intrusion into its own fiscal affairs – remains valid. This is because intervening Supreme Court precedent holds that states can fashion their own municipal reorganization statutes but cannot consent to any derogation of their sovereign powers.

(i) A Federal Municipal Bankruptcy Statute Is No Longer Necessary To Accomplish An Adjustment Of Municipal Debts

66. As a threshold matter, the Supreme Court has held since *Bekins* that states *can* pass legislation to adjust municipal debts in a financial emergency. *See Faitoute Iron & Steel Co. v. City of Asbury Park*, 316 U.S. 502 (1942). In doing so, the Supreme Court scoffed at the

presumption that the federal government could “completely absorb” from a State a power “so peculiarly local as the fiscal management of its own household.” *Asbury Park*, 316 U.S. at 508-09. See also *United States Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1 (1977) (recognizing that state legislation repealing a contractual obligation of a state may not violate the contracts clause under certain circumstances). For this reason alone, *Bekins*, which relied heavily on the Supreme Court’s perception that some mechanism was needed to permit states to adjust their debts during the “[e]conomic disaster” of the Great Depression, 316 U.S. at 53-54, is no longer binding.

(ii) The Supreme Court’s Development Of Constitutional Federalism Doctrine Has Effectively Overruled *Bekins*

67. Over the past two decades the Supreme Court issued a series of opinions clarifying both the importance of the federal system of government to *individual* liberty and, concomitantly, the inability of a state to consent to an affront by Congress to that federal system. The fountainhead of these cases is *New York v. United States*, 505 U.S. 144 (1992). There, Justice O’Connor, writing for the majority, explained at length that any statute exercising federal control over a power which “is an attribute of state sovereignty” – as is the case here with respect to a state’s management of the fiscal affairs of its political subdivisions, see *Ashton, supra* – is “necessarily” an exercise of “a power the Constitution has not conferred on Congress” and therefore unconstitutional. 505 U.S. at 156. “The States ‘form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere.’” *Alden v. Maine*, 527 U.S. 706, 714 (1999) (quoting *The Federalist* No. 39, p. 245 (C. Rossiter ed. 1961) (J. Madison)). Thus the Supreme Court’s duty, Justice O’Connor has explained, is to “invalidate[] measures deviating from” the federalist “form of government” set forth in the

Constitution, however “formalistic” the result may appear in light of “the era’s perceived necessity.” *New York*, 505 U.S. at 187.

(a) **Chapter 9 Impinges On The AFSCME Employees’ Individual Rights To Federalism By Eviscerating The Accountability Of Michigan To Its Citizens And Creditors**

68. *New York* and its progeny represent a direct rebuff to *Bekins* and other Depression-era cases, which softened the requirements of federalism in moments of perceived peril, by setting forth since then a robust vision of federalism which “divides authority between federal and state governments for the protection of individuals.” *New York*, 505 U.S. at 181. That vision begins with the “incontestable” truth “that the Constitution established a system of ‘dual sovereignty,’” under which the sovereignty reserved to a State and its citizens is “‘inviolable.’” *Printz*, 521 U.S. at 918-20 (quoting *The Federalist* No. 39, at 245 (J. Madison)) (other citations omitted). “Residual state sovereignty was also implicit, of course, in the Constitution’s conferral upon Congress of not all governmental powers, but only discrete, enumerated ones, Art. I, § 8, which implication was rendered express by the Tenth Amendment’s assertion that ‘[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.’” *Printz*, 521 U.S. at 920.

69. The premise of the federal constitutional structure is that “Congress would exercise its legislative authority directly over individuals rather than over States.” *New York*, 505 U.S. at 166 (citing 1 Records of the Federal Convention of 1787, p. 313 (M. Farrand ed. 1911) (explaining the “rejection of the New Jersey Plan in favor of the Virginia Plan”)). As a corollary, individual citizens possess a vested right in the guarantee of a strongly demarcated

separation of power between the state and federal government to ensure that each remains responsible to the citizens for the tasks with which it was charged:

The great innovation of this design was that “our citizens would have two political capacities, one state and one federal, each protected from incursion by the other”—“a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it.” [*Printz*, 521 U.S. at 920 (quoting *U. S. Term Limits, Inc. v. Thornton*, 514 U. S. 779, 838 (1995) (Kennedy, J., concurring)).]

70. This structural separation of powers protects individual liberty in myriad ways by creating a “double security as to the rights of the people.” *Printz*, 521 U.S. at 922 (quoting *The Federalist* No. 51, at 323 (J. Madison)). It ensures that neither branch will accumulate “excessive power,” thereby reducing “the risk of tyranny and abuse from either front.” *Printz*, 521 U.S. at 921 (quotation omitted). The separation of powers principle further “contemplates that a State’s government will represent and remain accountable to its own citizens.” *Printz*, 521 U.S. at 920 (citations omitted). For “[i]f, as Madison expected, the Federal and State Governments are to control each other, see *The Federalist* No. 51, and hold each other in check by competing for the affections of the people, see *The Federalist* No. 46, those citizens must have some means of knowing which of the two governments to hold accountable for the failure to perform a given function.” *United States v. Lopez*, 514 U.S. 549, 576-77 (1995) (Kennedy, J., concurring). See also *United States v. Morrison*, 529 U.S. 598, 615-16 (2000) (citing the bulk of Justice Kennedy’s concurrence in *Lopez* and holding that Congress may not “use the Commerce Clause to completely obliterate the Constitution’s distinction between national and local authority”). Accordingly, “[t]he Framers thus ensured that powers which ‘in the ordinary course of affairs, concern the lives, liberties, and properties of the people’ were held by governments more local and more accountable than a distant federal bureaucracy.” *Nat. Fed’n*

of Indep. Business v. Sibelius, 132 S. Ct. 2566, 2578 (2012) (Roberts, C.J.) (quoting The Federalist No. 45, at 293 (J. Madison)).

71. Chapter 9 does unconstitutional violence to the federal structure by obfuscating the system of direct accountability protected by federalism. By outsourcing to the federal judiciary the problem of a state reorganizing its obligations, chapter 9 provides states with unconstitutional – as well as unnecessary, given *Asbury Park* – cover from its citizens by confusing them as to whom to accord “blame” and “credit” for the results. *Printz*, 521 U.S. at 931; *New York*, 505 U.S. at 169. *See also Gregory v. Ashcroft*, 501 U.S. 452, 459 (“These twin powers will act as mutual restraints only if both are credible.”). “The resultant inability to hold either branch of the government answerable to the citizens is more dangerous even than devolving too much authority to the remote central power.” *Lopez*, 514 U.S. at 576-77 (Kennedy, J., concurring) (citations omitted).

72. In point of fact, on January 31, 2013, Orr’s colleague himself touted the deflection of accountability for state and city politicians as a benefit. “Making this a national idea is not a bad thing,” he wrote, because “[i]t provides political cover for the state politicians. Indeed, this gives them an even greater incentive to do this right because, if it succeeds, there will be more than enough patronage to allow either [Mayor] Bing or [Governor] Snyder to look for higher callings—whether Cabinet, Senate or Corporate.” Kreisberg Declaration, Exhibit 2. In a subsequent reply to Orr later that day, Orr’s colleague provided a clear indication of his idea of the “right” way to do “this,” stating: “the ideal scenario would be that Snyder and Bing both agree that the best option is simply to go through an orderly chapter 9.” Kreisberg Declaration, Exhibit 1.

73. This veil over accountability is woven into the very structure of chapter 9. While the City must consent to a chapter 9 filing and retains some control over the chapter 9 process, even before the City proposes a plan the Bankruptcy Judge is able to commandeer the City's operation in exchange for the protection of the Bankruptcy Code by using its equitable powers, as it already has in this case, to order the City to, *inter alia*, turn over documents and engage in mediation and negotiations which the City would not need to submit to outside of Bankruptcy. See *Mediation Order* [Docket No. 322] (“the Court concludes that it is necessary and appropriate to **order** the parties to engage in the facilitative mediation of any matters that the Court refers in this case,” moreover, the mediator is “authorized to enter any order necessary for the facilitation of mediation proceedings”, including regarding discovery issues).

74. Moreover, Bankruptcy Code section 926 provides that “[i]f the debtor refuses to pursue a cause of action under section 544, 545, 547, 548, 549(a) or 550 of this title, then on request of a creditor, the court may appoint a trustee to pursue such cause of action.” 11 U.S.C. § 926(b). In at least one reported case, *In re Alabama State Fair Authority*, 232 B.R. 252 (N.D. Ala. 1999), the bankruptcy court appointed a trustee to pursue preference actions. Thus, the bankruptcy court has discretion, despite a municipal debtor having made the policy choice to settle a pre-petition debt, to appoint a third-party trustee to ignore the municipality's decision and pursue avoidance of such a settlement. With regard to preference avoidance, this is a power an individual creditor could not independently assert under state law. This power also exerts a strong effect on the City throughout bankruptcy as to what actions it can and cannot take, long before ever proposing a plan, without being rebuked by the bankruptcy judge.

75. If the City wishes to obtain the true spoils of bankruptcy – a plan of adjustment – it must submit to a much greater degree of federal interference, thus further blurring the line

between Congress and the State as to who is to blame for the contents of that plan. This is because, in order for a debtor's plan to receive approval under chapter 9, it must incorporate priorities of distribution according to the Bankruptcy Code. The tension between chapter 9 and state law rights was highlighted in *In re County of Orange*, 191 B.R. 1005 (Bankr. C.D. Cal. 1996), where the court, on preemption grounds, invalidated California's law providing for the establishment of a trust with respect to certain securities. Relying on the doctrine of preemption alone, the County of Orange court held that "The California legislature cannot rewrite the bankruptcy priorities." *Id.* at 1017.

76. If the people of Michigan were to enact their own laws for adjusting municipal debts – as is their constitutional right, but which they have been unconstitutionally prevented from doing by chapter 9 as amended since *Asbury Park* – those laws might have very different priorities than chapter 9. Chapter 9, for instance, allows administrative expenses under Bankruptcy Code section 503 and gives them priority under Bankruptcy Code section 507(a)(2), and adopts the definition of secured claims from Bankruptcy Code section 506, to name a few. 11 U.S.C. § 901(a). Importantly, in contrast, the people of Michigan might very well decide to treat issues such as claim priority quite differently. For instance, they might choose to place unsecured retiree health claims before administrative expenses, thus benefitting the AFSCME retirees. This is, after all, a state whose constitution explicitly protects pension rights. But chapter 9 prevents the AFSCME employees from exercising their right to petition their state government to enact a municipal debt adjustment law of this nature, in turn allowing the state to shirk its responsibility to the voice of its citizens by blaming any unjust result in bankruptcy on the claim priorities, rules, and procedures of the Bankruptcy Code. Until

chapter 9 is struck down as unconstitutional, state officials can tell their constituents that they had no other choice besides chapter 9 to adjust municipal debts

77. That the City retains some autonomy over its affairs under chapter 9 is irrelevant, for the mere incursion into territory reserved to the states is sufficient to violate the Constitution. “[W]here, as here, it is the whole object of the law to direct the functioning of the state [government], and hence to compromise the structural framework of dual sovereignty . . . a ‘balancing’ analysis is inappropriate. It is the very principle of separate state sovereignty that such a law offends, and no comparative assessment of the various interests can overcome that fundamental defect.” *Printz*, 521 U.S. at 932.

78. Ultimately, the allocation of state resources as between competing creditors of the City should be determined “by the political process established by the citizens of the State, not by judicial decree mandated by the Federal Government.” *Alden*, 527 U.S. at 751. “When the Federal Government asserts authority over a State's most fundamental political processes, it strikes at the heart of the political accountability so essential to our liberty and republican form of government.” *Id.* While the road to adjusting the City’s debts may be longer if it must first involve “greater citizen involvement in democratic processes . . . in shaping the destiny of” the City’s reorganization process via state law, rather than accessing the process set forth in chapter 9, as a result of “the political processes that control a remote central power,” *Bond v. United States*, 131 S. Ct. 2355, 2364 (2011), “the Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day.” *New York*, 505 U.S. at 187.

79. The unconstitutionality of chapter 9 is further confirmed by its unsuccessful attempt to preserve some independence for state sovereigns within the constraint of the grant of power to Congress by Article I, Section 8 Clause 4 (the “Bankruptcy Clause”) to establish “uniform” bankruptcy laws. Although the bankruptcy code for private debtors may treat debtors differently in different states due to variations in state law and still pass muster as “uniform,” within a state there must be “geographical” uniformity for debtors. *Hanover Nat’l Bank v. Moyses*, 186 U.S. 181, 188 (1902). But by ceding to each state the ability to define its own qualifications for a municipality to declare bankruptcy, chapter 9 permits the promulgation of non-uniform bankruptcies within states – as in Michigan, where Act 436 has wildly divergent effects on different cities, whose authority to declare bankruptcy purports to rest on the discretion of a Governor who can attach whichever contingencies he wishes. *See* MCL 141.1558. As a result, nationwide the basic eligibility for an entire class of debtors – municipalities – has no uniform federal law. This is not a question of which state substantive law applies to a class of debtors which is universally eligible for chapter 9, rather it is a foundational problem of who among the class of debtors is even covered by the federal statute in the first place.

80. It is no surprise that this attempt to elude the demands of federalism thereby fails for this additional reason of non-uniformity, for municipal bankruptcy would have been an entirely foreign concept to the framers who modeled much of our federal Constitution on British law which did not then, and still does not today, even contemplate municipal bankruptcy. *See, e.g.*, Janie Anderson Castle, *The People’s Mayor for London?*, 5 J. Loc. Gov’t L. 29, 32 (2002); Annerose Tashiro, *Sovereign Insolvency*, 99 Eur. Law. 5 (2010)

(“There is no such thing today anywhere in Europe as a sovereign insolvency regime.”) (advocating implementation of a bankruptcy regime mirroring that of chapter 9 in the EU).

81. It cannot be adequately emphasized that under *Asbury Park* the State has the authority to amend its own laws to allow for its municipalities to adjust their debts without resorting to a coercive federal statute which unconstitutionality denies the state that right, obscures accountability and is not a uniform bankruptcy law. The State could even, furthermore, seek federal financial assistance to help meet those debts – as indeed it already has. *See, e.g., South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (Rehnquist, C.J.) (“[O]bjectives not thought to be within Article I’s enumerated legislative fields may nevertheless be attained through the use of the spending power and the conditional grant of federal funds.” (internal quotation omitted)). What the State cannot do – but what chapter 9 demands – is to submit to federal rules which would not merely incentivize the State’s use of lawful power, but engorge that power at the expense of its citizens’ inviolable right to control the operation of their sovereign by setting the rules by which it adjusts its own debts.

(b) Chapter 9’s Requirement Of State Consent Cannot Cure The Violation Of Individual Rights

82. The Supreme Court squarely held in *New York* that “[t]he constitutional authority of Congress cannot be expanded by the ‘consent’ of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States.” 505 U.S. at 182. Even when such consent is accomplished by statute. *See, e.g., Buckley v. Valeo*, 424 U.S. 1 (1976) (Congress infringed the President’s appointment power via a law signed by the President); *INS v. Chadha*, 462 U.S. 919 (1983) (legislative veto violated the constitutional requirement of presentment even where President signed law with legislative veto provision).

83. The decision in *Bekins* therefore erred in concluding that the then-operative municipal bankruptcy statute was not unconstitutional simply because the statute required the municipality’s petition and plan of composition to be authorized by state law. 304 U.S. at 52. To the contrary, the conclusion in *Bekins* that the only “obstacle” to the exercise of federal bankruptcy over state political subdivisions “lies in the right of the State to *oppose* federal interference,” 304 U.S. at 52-54, is squarely foreclosed by the Court’s subsequent decision in *New York*. Thus the prior rule from *Ashton* – “Neither consent nor submission by the States can enlarge the powers of Congress,” and therefore states cannot “accomplish” an unavailable “end by granting any permission necessary to enable Congress to do so,” 298 U.S. at 531 – remains the correct one.

84. The Court concluded in *New York* that State consent cannot cure an otherwise unconstitutional infringement of state sovereignty for the same reason that municipal bankruptcy violates constitutional federalism in the first place: the design of federalism is meant “for the protection of individuals,” not States. *New York*, 505 U.S. at 181 (“The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States.”). State government officers may even have “powerful incentives” to consent to a diminishment of state sovereignty to evade one of the core benefits federalism promises to individual citizens: direct accountability of political officials for actions taken in their clearly demarcated domains of authority. *Id.* at 182-83 (“[I]t is likely to be in the political interest of each individual official to avoid being held accountable to the voters.”). Therefore state consent cannot not be allowed to dismantle the delicate balance of powers protecting the accountability of each dual sovereign to its citizens.

(iii) AFSCME Does Not Seek To Relitigate *Bekins* And The City's Reply Brief Arguments Regarding The Constitutionality Of Chapter 9 Ignore And Misapply The Relevant Authority Discussed Above

85. While the City argues (*see* Debtor's Reply, at p. 10) that AFSCME (among other objectors) seeks to "relitigate" *Bekins*, this is simply not the case. As a threshold matter, when the Supreme Court decided *Bekins*, it reasoned that a federal municipal bankruptcy statute was constitutional in large part because "[t]he natural and reasonable remedy through composition of the debts of the district was not available under state law by reason of the restriction imposed by the Federal Constitution upon the impairment of contracts by state legislation." 304 U.S. 27 at 54. Four years later, the Supreme Court reversed course and held that states can pass state statutes for composition of municipal debts, an area of law it now deemed to be "peculiarly local" because it involved "the fiscal management of its own household." *Asbury Park*, 316 U.S. at 309. Had *Asbury Park* been decided at the time of *Bekins*, certainly the litigation of the issues would have taken a very different form.

86. Nor have the "relevant statutory provisions remained substantially unchanged" since *Bekins*. Debtor's Reply, at p. 9. To the contrary, the federal municipal bankruptcy statute has been amended numerous times, most notably four years after *Asbury Park* to undo the victory for states' rights won by the city of Asbury Park in that case. Since then, the federal municipal bankruptcy has prohibited state composition procedures such as those upheld in *Asbury Park*. *See* 6-903 Collier on Bankruptcy P 903.LH[2]; 11 U.S.C. § 903(1) ("[A] State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition."). The harm, emphasized by AFSCME above and below, is that chapter 9 after *Asbury Park* represents "an unholy alliance in which the State receives in exchange [for its consent] powers in excess of those it would otherwise

possess under the law.” *See supra*, ¶ 60. *See also infra*, ¶¶ 100-103 (“[B]ecause chapter 9 allows the City a process for adjusting its debts which is not identical to the process for doing so under state law – either as it currently exists or if the state were to pass its own municipal composition law” – AFSCME’s members rights to the protection of dual sovereign governments have been violated). This harm is enhanced by the provision of chapter 9 forbidding the states from adopting their own municipal debt adjustment laws, which coerces states into accessing chapter 9 just to receive a constitutional right it already possesses under *Asbury Park*.

87. With respect to the continued constitutionality of chapter 9, the City’s core contentions are that (1) the Court’s ruling in *Asbury Park* provides no meaningful opportunity for debt adjustment to municipalities, (2) chapter 9 is essential to states because they need it to sidestep the otherwise-applicable constitutional limit that “they are *not* at liberty under the Contracts Clause to impair their own contracts”; and (3) chapter 9 cannot violate federalism principles because it does not compel state or local governments to take any action. Debtor’s Reply at 13-15. The first two of these arguments only further confirms the unconstitutionality of chapter 9, and the third is off-target.

88. First, the City is technically correct that a chapter 9 bankruptcy is currently the “one viable option” for a “financially prostrate municipal government” wishing to “resolve debts in a non-consensual manner,” (Debtor’s Reply. at pp. 13-14 (citation omitted)), but that is only because chapter 9 itself unconstitutionally bars – as a matter of statute – the type of state statute approved by the Supreme Court in *Asbury Park* which would allow adjustment of municipal debts over the objections of creditors under state law. The municipal debt

adjustment legislation in *Asbury Park*, for example, required that any plan of adjustment only be “approved by 85 percent in amount of the creditors” of the municipality. 316 U.S. at 505.

89. It is for this reason – and *not*, as the City misleadingly contends, for any reason of constitutional law stemming from the *United States Trust* line of cases – that it “comes as no surprise” that *Asbury Park* is the only case sustaining the alteration of a municipal bond contract outside a bankruptcy case. See Debtor’s Reply at 13-14. *United States Trust* did not consider the constitutionality of a state municipal reorganization statute enacted “for the purpose of benefiting” creditors by adjusting their debts – the issue in *Asbury Park* – but rather the statutory “repeal” of a discrete contractual promise made by state obligors to bondholders, with no state-law process for the bondholders to adjust their debts. *United States Trust Co. of NY v. New Jersey*, 431 U.S. 1, 28 (1977).

90. The City is thus wrong to argue that AFSCME’s argument “would actually impede, rather than protect, States’ sovereignty.” Debtor’s Reply, at p. 16. Rather, it is Bankruptcy Code section 903 that impedes state sovereignty. Prior to the addition of section 903 to chapter 9 of the federal municipal bankruptcy statute, the Supreme Court held in *Asbury Park* that that statute could not preempt New Jersey’s state municipal reorganization law because New Jersey was not “powerless in [the] field” of “the autonomous regulation of problems so peculiarly local as the fiscal management of its own household[.]” 316 U.S. at 509. The “explicit limitation” on state municipal reorganization statutes now found at Section 903 “was added to overturn the holding in *Asbury Park*.” See Michael W. McConnell & Randal C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. Chi. L. Rev. 425, 462 (1993). As such, it represents “congressional overreaching in violation of the Tenth Amendment.” 6-903 Collier on Bankruptcy P 903.03[2]. In the wake of

Asbury Park and its subsequent Congressional overruling, the states' sovereign power to control municipal reorganization are not aided by chapter 9, they are unconstitutionally limited.

91. Second – after misleading the Court to believe that *Asbury Park* represents a jurisprudential “outlier” whose rule has been ineffective rather than a watershed decision which Congress rushed to nullify by statute only four years later in “one of the more interesting turnabouts in the history of bankruptcy legislation,” 6-903 Collier on Bankruptcy P 903.LH[2] – the City pivots to argue that because the state municipal adjustment statute sanctioned in *Asbury Park* must still satisfy the Contracts Clause of the United State Constitution, U.S. Const., Article I, § 10 (the “**Contracts Clause**”), states need chapter 9 “to impair their own contracts” in violation of the Contracts Clause. Debtor’s Reply, at p. 15. AFSCME, in contrast, maintains that the Contracts Clause continues to constrain all municipal bankruptcies.

92. Having thus conceded, in a surprising display of candor, that the purpose of the City’s bankruptcy filing is not merely to accomplish what it cannot accomplish under a state municipal composition law as a matter of preemption by Section 903, but what it is expressly prohibited from accomplishing as a matter of unconstitutionality by the Contracts Clause, the City’s papers effectively also concede that chapter 9 and/or PA 436 are unconstitutional. The reason: the State of Michigan cannot “impair contracts” beyond what the Contracts Clause allows, and Congress lacks the power under Article I to consent to Michigan doing so.

93. Neither *Bekins* nor *Asbury Park* directly addressed this question: whether Congress exceeded its Article I powers by passing a municipal bankruptcy law purporting to empower states to violate the Contracts Clause. *Bekins*, instead, considered “whether the exercise of the federal bankruptcy power in dealing with a composition of the debts of [a municipality] . . . must be deemed to be an unconstitutional interference with the essential

independence of the State,” *i.e.*, the federalism question raised in *Ashton* and at issue in *Bekins*. 304 U.S. at 49; *see also* *When Cities Go Broke*, *supra*, at 451-52 (noting that “a plausible argument against the Act might have been based on the rights of the creditors” to complain “that Congress could not extend its own Contracts Clause immunity to a state or local government,” but that argument was not raised in *Ashton*). *Asbury Park*, meanwhile, unequivocally held that the Contracts Clause applied to state municipal reorganization legislation, and also gave every indication that a state’s authority to pass municipal reorganization laws was coextensive with Congress’s. 316 U.S. at 507-08. The only time a member of the Supreme Court has ever identified a potential Contracts Clause problem with the federal municipal bankruptcy statute is found in Justice Cardozo’s dissent in *Ashton* but the Court in *Bekins* declined to follow Justice Cardozo’s lead. *See* 298 U.S. at 541-42 (rejecting argument that federal municipal bankruptcy law violated Contracts Clause). This leaves the majority opinion in *Ashton* – which effectively rejected Justice Cardozo’s argument, and which was not explicitly overruled by *Bekins* – as the only evidence consideration by a majority of the Court.

94. The Constitution does not simply disappear once a bankruptcy petition is filed, even for holders of unsecured claims. *See, e.g., City of New York v. New York, N. H. & H. R. Co.*, 344 U.S. 293 (1953) (unsecured creditors possess right to notice and hearing under Fifth Amendment before debts can be discharged). So too with the Contracts Clause found at Article I, Section 10 of the U.S. Constitution. Article I, Section 10 contains three clauses, the last two of which permit Congress to consent to a number of otherwise-unconstitutional state acts, for example the right to “enter into any Agreement or Compact with another State,” an example of which was the contract at issue in *United States Trust*. The Contracts Clause, however, is

found in the first clause of Section 10, which grants Congress no right to consent to a violation thereof. Thus, assuming *arguendo* that the City is correct that the intent of chapter 9 and PA 436 are both to skirt the constraints of the Contracts Clause by means of Congressional consent, Congress lacks the authority under Article I to grant that consent, and the Contracts Clause further prevents the State from passing a law like PA 436 intending to end-run the Contracts Clause. The result would be equally unconstitutional, and absurd, if Congress were to pass a statute, under its Section 8 power to coin money, which set up Article I courts to approve applications from individual states to coin their own money despite the blanket prohibition in Article I, Section 10 against states doing so.

95. Third, no state, as argued *supra*, can “consent” to “enlarge the powers of Congress; none can exist except those which are granted.” *Ashton*, 298 U.S. at 531. The City’s attempt to distinguish the Court’s line of federalism cases since *New York v. United States* completely misses this point by insisting that chapter 9 does not violate the federalism principles articulated in those cases merely because “chapter 9 is ‘administered’ by the federal bankruptcy court, not the States.” Debtor’s Reply, at p. 16. But these cases cannot be oversimplified and read in a vacuum as the City suggests. The Court’s new federalism stands not for the narrow proposition that Congress cannot force states to administer federal regulatory programs, but for a broader constitutional rule: “if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress,” and “the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress’ instructions” even with “the ‘consent’ of the governmental unit whose domain is thereby narrowed.” *New York*, 505 U.S. at 156, 162, 182.

96. As described *supra*, chapter 9 does exactly that – if a state consents, a federal bankruptcy judge enforces a set of instructions from the Code, most notably the requirements for plan confirmation, and takes over municipal decision-making during the bankruptcy by controlling the municipality’s right not to engage in discovery or mediation and by wielding the power to appoint a trustee to recover preferential transfers over the municipality’s objection. These elements of chapter 9 – which the City entirely ignores in its brief – violate the Supreme Court’s clear direction that “[t]he Constitution’s division of power among the three branches is violated where one branch invades the territory of another, whether or not the encroached-upon branch approves the encroachment.” *Id.* at 182. The City points to general language in Section 903 prohibiting interference with “political or governmental powers,” (Debtor’s Reply, at p. 18), but that language is belied by other provisions of the Code explicitly permitting interference by the bankruptcy judge.

97. The City’s related argument that “chapter 9 operates much like federal programs that extend the benefits of federal money to States that voluntarily submit to federal requirements,” (Debtor’s Reply, at pp. 16-17) is inapposite because the state does not obtain money in exchange for taking some action clearly within its power but desired by the federal government, rather the state *reacquires* its inherent power under *Asbury Park* to access a process for adjusting its debts. In exchange for a power it already would possess in the absence of chapter 9, the state is forced to give the federal government control over state sovereign functions not available to Congress under the Constitution.

98. This aspect of chapter 9 – its nullification of all state laws for municipal debt adjustment in favor of an exclusive federal remedy which subjects state and local officials to federal rules – highlights the accountability problem of allowing state and local officials to

represent to their constituents that the only way to escape financial catastrophe is to access chapter 9 and accept the rules therein, such as claim priorities in the Code, which voters in the state might wish to alter. For if a state declines Congress's offer of access to chapter 9, it has no recourse to adjust municipal debts *en masse* as a result of Section 903. Yet if a municipality is as financially distressed as the City contends it is, it faces the problem which motivated the Court in *Asbury Park* to find that states can design their own debt adjustment statutes consistent with the Contracts Clause: the City has no reasonable alternative.¹¹ Under such circumstances, state and local government officials face an unconstitutional conundrum: accept federal interference with their sovereign fiscal self-management, or default on municipal debt in violation of the Contracts Clause. If the former is chosen, the City accepts rules and instructions from a federal judge, which state and local officials can refer to when attempting to shift blame for the hard decisions of municipal reorganization instead of confronting a local debate over legislation at the state level about how to adjust municipal debt.

99. Finally, the City is incorrect that chapter 9 is a uniform bankruptcy law. As noted *supra* – but ignored in the City's reply – a municipal bankruptcy law would have been inconceivable to the framers. But even had they imagined the unimaginable, they surely would have recognized that chapter 9 is a non-uniform law because it fails to “apply uniformly to a defined class of debtors.” *Railway Labor Executives Ass'n v. Gibbons*, 455 U.S. 457, 473 (1982). Surely, as the City notes, the Code can give way to state substantive law, such as the exemptions at issue in *Hanover National Bank*, which apply generally within a state as to all

¹¹ In *Asbury Park*, the Court observed that “the practical value of an unsecured claim against the city is inseparable from reliance upon the effectiveness of the city's taxing power.” 316 U.S. at 509-10. Where, as in *Asbury Park*, financial crisis has rendered “the effective taxing power of the municipality prostrate without state intervention to revive the famished finances of the city,” *id.* at 516, the Court recognized that “what is needed is a temporary scheme of public receivership over a subdivision of the State” allowing for the “discharge[.]” of municipal debt obligations, *id.* at 510-11. The City, like the municipality in *Asbury Park*, has contended that its need for bankruptcy protection stems from it having exhausted its ability to raise revenue through taxation. See Eligibility Brief, pp. 28-30.

debtors in the same class. But by outsourcing to the states the decision of *who* is eligible for chapter 9 protection, Congress has enacted a bankruptcy law that, rather than “define classes of debtors and . . . structure relief accordingly,” *Gibbons*, 455 U.S. at 473, fails to define a class of debtors under federal law. This yields statutes like PA 436, which is not uniform within Michigan because it does not grant the right to file for bankruptcy to all municipalities who meet defined criteria, but rather leaves the eligibility question to the unchecked discretion of the Governor. *See* MCL § 141.1558 (placing no standards on gubernatorial decision whether or not to grant permission to file). Whether on its face because it allows such a result, or as applied here in the context of PA 436, chapter 9 therefore violates the limitation that Congress only pass bankruptcy laws which are uniform.

B. AFSCME’s Active And Retired Members Have Individual Standing To Assert That Chapter 9 Violates Their Individual Rights To A Federal System Of Government

100. The Supreme Court has squarely held that individuals – and not just states – have standing to challenge that Congress has “exceeded its powers under the Constitution, thus intruding upon the sovereignty and authority of the States.” *Bond v. United States*, 131 S. Ct. 2355 (2011). As also analyzed *supra*, individuals have their “own constitutional interests” to “assert injury from governmental action taken in excess of the authority that federalism defines,” and their “rights in this regard do not belong to the State.” *Id.* at 2363-64.

101. Two aspects of the Court’s conclusion in *Bond* are of special relevance to the instant case. First, the Court emphasized that federalism protects not just “the integrity of the [state and federal] governments themselves,” but also, distinctly, “the people, from whom all governmental powers are derived.” *Id.* at 2464. Individual citizens’ interests in pressing federalism complaints include the “liberties that derive from the diffusion of sovereign power,” such as (1) “greater citizen involvement in democratic processes” and citizens’ consequent

ability to use their voices “in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power”; and (2) the promise that “laws enacted in excess of delegated governmental power cannot direct or control their actions” and the consequent protection of citizens from the “arbitrary power” caused by giving any one government too much sway over “the concerns of public life.” The City’s chapter 9 petition threatens AFSCME’s members with both of these harms insofar as it (1) shields the City from a democratic process of resolving its fiscal crisis by rejecting the accountability of local politicians responsive to Detroit’s citizenry in favor of an unelected federal judiciary, and (2) allows the federal government to concoct rules for the resolution of disputes in an “area of traditional state concern.” *Lopez*, 514 U.S. at 580 (Kennedy, J., concurring).

102. Second, the *Bond* Court rejected the argument, pressed by the respondent, that a state’s waiver of any interference with its sovereignty should trump objections by individual citizens on Tenth Amendment grounds. See Brief for the Amicus Curiae Appointed to Defend the Judgment Below at 25, *Bond v. United States*, 131 S. Ct. 2355 (2011) (No. 09-1227) (“Particularly when the private party’s interests are not aligned with those of the State, as may well be true in this very case . . . private party suits have the potential to frustrate and undermine state policies and decisions.”). To the contrary, the Court held, a claim that “a law was enacted in contravention of constitutional principles of federalism . . . need not depend on the vicarious assertion of a State’s constitutional interests, even if a State’s constitutional interests are also implicated.” *Bond*, 131 S. Ct. at 2365. Whether the State has invited the federal incursion upon State authority is irrelevant. Only whether the individual claimant’s injury so much as “*might* not have come about if the matter were left for the [State] to decide” on its own matters to the analysis. *Id.* at 2366.

103. No doubt exists that if the State of Michigan were left to devise its own scheme for adjusting municipal debts – as is squarely within its authority under *Asbury Park* – the State *might* devise a system different from the United States Bankruptcy Code. Under the microscope of “greater citizen involvement” at the local level, the City, fulfilling the promise of federalism to its citizens, would be more directly constrained to create a process responsive to their needs – including, perhaps, the same needs which prompted the passage of the state constitutional amendment protecting the very diminishment or impairment of vested pension rights which the City now seeks to accomplish under the cover of chapter 9. Regardless, because chapter 9 creates for the City an exclusive process for adjusting its debts which is not identical to the process for doing so under state law – either as it currently exists or as it would exist if the state were to pass its own municipal composition law – AFSCME’s members, as creditors of the City, have standing to object to the City’s use of chapter 9 on federalism grounds.

C. This Court Lacks The Authority Or Jurisdiction To Decide Whether Chapter 9 Violates The United States Constitution Or Whether Pa 436 Violates The Michigan Constitution

104. This Court lacks jurisdiction to decide whether chapter 9 violates the U.S. Constitution (or for that matter whether PA 436 and the authorization for the City’s chapter 9 filing violates the Michigan constitution). As the Supreme Court recently explained in *Stern v. Marshall*, Article III of the Constitution assigns the job of resolving questions of constitutional law to the “judicial power of the United States.” 131 S. Ct. at 2609. Because bankruptcy judges are appointed under Article I—unlike judges appointed under Article III, who have life tenure and protection from removal or diminishment of salary – Congress may not grant to bankruptcy judges the right to exercise that power. *Id.*

105. No doubt exists either that the resolution of federal constitutional questions comes under the “judicial power” and is not subject to any exception thereto. *Stern*, building on the Court’s decisions in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), and *Granfinanciera, S.A. v. Nordberg*, 492 (U.S. 33) (1989), held that any narrow “public rights” exception permitting bankruptcy judges to issue certain final orders does not apply to any legal claim “independent of the federal bankruptcy law and not necessarily resolvable by a ruling on the creditor’s proof of claim in bankruptcy.” 131 S. Ct. at 2611. The federal constitutional claims of AFSCME’s members stem from the Constitution, not the Bankruptcy Code, and cannot be resolved by the very claims process whose legality is the subject of the constitutional challenge. Though technically an objection to eligibility, AFSCME’s state and federal constitutional claims in fact sound as affirmative allegations that their constitutional rights have been violated by the City’s filings, such as would be brought under Section 1983 (and were brought in the Webster Litigation) but for the automatic stay and its extension by this Court pursuant to Section 105 of the Code

106. Moreover, the instant constitutional challenges have nothing to do with a federal regulatory scheme. *Stern* is quite clear that the “public rights” exception is limited to claims asserting rights “integrally related to particular federal government action,” *i.e.*, claims challenging action undertaken pursuant to “a federal regulatory scheme” or whose resolution “by an expert government agency is deemed essential to a limited regulatory objective within the agency’s authority.” *Id.* at 2613. Where, as is the case with this purely constitutional argument, the determination of a legal question has nothing to do with the contours of federal regulations or expert agency fact-finding, the argument must be resolved by an Article III judge.

107. At its core, the “public rights” exception is designed to address situations where – unlike here – a party seeks to enforce rights which Congress has created by statute. *See Granfinanciera*, 492 U.S. at 51 (citations omitted). The constitutional challenges raised herein invoke no such public right; “Congress has nothing to do with it.” *Stern*, 131 S. Ct. at 2613. Nor do bankruptcy judges possess any special expertise at resolving constitutional challenges to their own authority or jurisdiction. “The experts in the federal system at resolving” constitutional questions such as this one “are the Article III courts, and it is with those courts that [this] claim must stay.” *Id.* at 2615. The words of the Supreme Court in *Stern* apply with equal force here:

What is plain here is that this case involves the most prototypical exercise of judicial power: the entry of a final, binding judgment by a court with broad substantive jurisdiction, on a [constitutional] cause of action, when the action neither derives from nor depends upon any agency regulatory regime. If such an exercise of judicial power may nonetheless be taken from the Article III Judiciary simply by deeming it part of some amorphous “public right,” then Article III would be transformed from the guardian of individual liberty and separation of powers we have long recognized into mere wishful thinking. [*Id.*]

108. While the City argues (*See Debtor’s Reply*, at pp. 5-8) that AFSCME seeks to radically expand *Stern* and that no private rights are at issue in this Court’s determination regarding the federal constitutional issues raised above and the state constitutional issues raised extensively below, in fact, critical private rights (including rights of City pension plan participants) are ultimately at issue here, including rights specifically raised prior to the City’s filing of its chapter 9 petition by parties in, *inter alia*, the Webster Litigation (and other state court proceedings).

109. The arguments against this Court’s authority or jurisdiction to render any decision regarding the constitutionality of chapter 9 or, for that matter, the constitutionality of

PA 436 have (since the filing of the Original AFSCME Objection) been extensively briefed in the Official Committee of Retiree's (the "**Retiree Committee**") (i) *Motion to Withdraw the Reference* [Docket No. 806] (the "**Withdrawal Motion**") and (ii) *Reply Memorandum of Law* in support of the Withdrawal Motion (Case No. 13-cv-13873, Docket No. 12] (the "**Reply Withdrawal Motion**"). The Withdrawal Motion is now pending before the United States District Court for the Eastern District of Michigan and rather than duplicate efforts, AFSCME hereby adopts **as if fully set forth herein** all of the arguments raised by the Retiree Committee in both the Withdrawal Motion and Reply Withdrawal Motion in support of why this Court lacks the authority or jurisdiction to render any decision regarding the federal constitutional questions raised above or the state constitutional issues raised below.

110. Accordingly, and with respect, this Court should immediately refer this constitutional challenge to chapter 9 along with the state constitutional challenges (raised below) to the United States District Court for the Eastern District of Michigan for adjudication.

II. THE CITY IS NOT ELIGIBLE TO FILE FOR CHAPTER 9 PROTECTION UNDER SECTION 109(C) OF THE BANKRUPTCY CODE

111. The City, as a purported municipal debtor, bears the burden of establishing it is eligible for relief under chapter 9. *See, e.g., In re City of Stockton*, 475 B.R. 720, 725-26 (Bankr. E.D. Cal. 2012) (citing cases); *In re Valley Health Sys.*, 383 B.R. 156, 161 (Bankr. C.D. Cal. 2008); *In re County of Orange*, 183 B.R. 594, 599 (Bankr. C.D. Cal. 1995); *In re Sullivan County Regional Refuse Disposal Dist.*, 165 B.R. 60, 72 (Bankr. D.N.H. 1994). "[A]ccess to Chapter 9 relief has been designed to be an intentionally difficult task." *Sullivan County*, 165 B.R. at 82; *see also In re Cottonwood Water and Sanitation Dist.*, 138 B.R. 973, 979 (Bankr. D. Colo. 1992) (explaining that, although the Bankruptcy Code, as remedial legislation, is generally broadly construed, "municipal bankruptcies involve significant

problems . . . not encountered in the private sector” and raise important constitutional issues, so that “Congress consciously sought to ‘limit accessibility to the bankruptcy court’ by municipalities.” (internal citation omitted)). As a result, “[t]he bankruptcy court’s jurisdiction should not be exercised lightly in chapter 9 cases.” *Sullivan County*, 165 B.R. at 82.

112. As demonstrated below and as will be further demonstrated at trial, the City necessarily fails to carry its burden with respect to the following eligibility requirements: (i) valid authorization under Michigan state law (section 109(c)(2) of the Bankruptcy Code); and (ii) good faith negotiations or impracticability of such negotiations (section 109(c)(5) of the Bankruptcy Code). Further, as has become apparent through discovery and as shown below (and AFSCME expects will be further shown at trial), the City’s evidence regarding insolvency is woefully inadequate, supported by no expert testimony or other reliable evidence, and accordingly the City fails to satisfy the insolvency requirement under section 109(c)(3) of the Bankruptcy Code.

113. Finally, the evidence reveals that the City’s bankruptcy petition was filed in bad faith and not motivated by a proper purpose under chapter 9 and should be dismissed pursuant to section 921(c) of the Bankruptcy Code. *See e.g., In re McCurtain Municipal Authority*, 2007 WL 4287604 at *3 (Bankr. E.D. Okla. Dec. 4, 2007) (holding that “the inability to pay debts as they become due depend[s] upon the inescapable quality of the obligation and the certainty that it cannot be met. Mere possibility or even speculative probability is not enough.”) (citations omitted).

114. Before proceeding to address the merits of each of these arguments regarding (i) valid authorization, (ii) good faith negotiations/impracticability of such negotiations, and (iii) bad faith filing, it bears noting that during Orr’s original deposition on September 16, 2013

(and subsequent October 4, 2013 deposition), Orr continued to hide behind the common interest privilege to essentially cover up any discussions or communications Orr had with State government officials under an alleged common interest privilege.

115. While this Court determined the common interest privilege may apply to such communications, AFSCME believes that the discussions and deliberations between City and State officials leading up to the City's filing for chapter 9 in the period prior to July 18, 2013 – discussions which the City and State have clearly worked hard to keep secret – relate to the crux of AFSCME's (and other objectors') arguments set forth below that the City filed its chapter 9 petition in bad faith, without real negotiations with significant creditors, and that the authorization was tailored by City and State officials to circumvent the Michigan constitution's Pensions Clause. Given the presumption that government is supposed to be transparent (*e.g.*, FOIA statutes), and the fact that significant e-mails between the State, City and the Law Firm (including between the State and Orr) were already produced in this and other litigations, to the extent that the common interest ever applied, such privilege has been waived and AFSCME **asserts its continued objection to the City and State refusing to give deposition testimony or provide documents** (some of which may have been waived by prior documents produced and deposition testimony given by the State and City in this and other proceedings) subject to an asserted common interest privilege.

116. AFSCME believes that it already has sufficient evidence to rebut the City's case regarding authorization, good faith negotiations, general bad faith filing, and insolvency, but notes that the City and State's continued reliance on a purported common interest should be

reconsidered and AFSCME provided further testimony and documents prior to trial so AFSCME can have proper due process.¹²

A. The City Is Not Authorized By Michigan State Law To Be A Debtor Under Chapter 9

117. The City contends that it is authorized to be a debtor under state law because Section 18 of PA 436, M.C.L. 141.1558, provides that “[u]pon receipt of the written approval [of the Governor], the emergency manager is authorized to proceed under chapter 9,” and further “empowers the emergency manager to act exclusively on the local government’s behalf in any such case under chapter 9.” See Eligibility Brief, p. 10. However, the Governor’s blanket grant of permission to file for bankruptcy under Section 18 of PA 436 violated the Michigan Constitution because it failed to explicitly prohibit the impairment or diminishment of vested pension rights, which the Governor was fully aware was the intention of the instant chapter 9 petition. Moreover, the appointment of the Emergency Manager under PA 436 violates the “strong home rule” provisions of the Michigan Constitution. Where, as here, a state constitution bars the purported state law authorization, a chapter 9 petition must be dismissed. See *In re City of Harrisburg, PA*, 465 B.R. 744 (Bankr. M.D. Pa. 2011) (analyzing Pennsylvania Constitution to determine whether city was authorized to file under chapter 9).

(i) Governor Snyder’s Authorization Of The City’s Petition Under Section 18 Of PA 436 Violated Article IX, Section 24 Of The Michigan State Constitution

118. As a Michigan Circuit Court Judge has already held, Michigan State law forbids authorization of the City’s bankruptcy petition insofar as it seeks to reduce accrued pension

¹² AFSCME did not appeal the Court’s common interest ruling which was interlocutory, but reserves the right to argue on appeal that the City and State’s failure to testify and produce documents on relevant subject matters, including regarding the EM and State’s plans for the EM commencing the City’s chapter 9 case, prevent AFSCME from a full and fair opportunity to litigate its objections to the City’s eligibility. Accordingly, AFSCME reserves all rights in this regard, including all appellate rights upon entry of a final appealable order regarding the City’s eligibility.

benefits in violation of the State Constitution. Yet the Emergency Manager has been very clear that he intends to use this chapter 9 proceeding to do just that. Indeed, the Emergency Manager had made that intent known well prior to requesting the Governor's permission to file under chapter 9. For instance, on June 14, 2013 he both (a) issued a "Proposal for Creditors" expressly stating that "there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons," and (b) publicly threatened, in an interview with the Detroit Free Press Editorial Board, that vested pension benefits will not be protected in a chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state laws protecting vested pension benefits will "not . . . protect" retirees in bankruptcy court.

119. Article IX, Section 24 of the Michigan Constitution (the "**Pensions Clause**") provides: "The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby." It means what it says: "[U]nder Art. 9, § 24, a retirement benefit *cannot be reduced*." *Seitz v. Probate Judges Retirement System*, 189 Mich. App. 445, 474 N.W. 2d 125, 128 (1991) (emphasis added); see *also id.* at 127 ("Article IX, § 24 protects those persons covered by a state or local pension or retirement plan from having their benefits reduced." (citing *Detroit Police Officers Ass'n v. Detroit*, 391 Mich. 44, 69, 214 N.W.2d 803 (1974))).

120. Article IX, Section 24 completely protects the "receipt of pension benefits related to work already performed by" any City employees, whether active or retired – i.e., any pension benefits which have "accrued" and thus become "vested pension benefits" – from being diminished *at all*. *APTE v. Detroit*, 154 Mich. App. 440, 398 N.W.2d 436, 439-40 (1986); *Advisory Opinion re Constitutionality of 1972 PA 258*, 389 Mich. 659, 663 (1973)

(holding that “the intention of the people in adopting” Article 9, Section 24 was that “the benefits of pension plans are in a sense deferred compensation for work performed . . . which should not be diminished by the employing unit after the service has been performed.” (quoting 1 Official Record, Constitutional Convention 1961, 770-71)). Vested pensions rights covered by Article IX, Section 24 differ in this important respect from contractual benefits protected solely by Article I, Section 10 of the Michigan Constitution (the State’s “Contracts Clause”), which in a narrow set of cases may not prohibit the State from effecting “a modest, temporary impairment” of those other types of “governmental contracts . . . as a matter of last resort to address a fiscal emergency.” *AFT Michigan v. State*, 297 Mich. App. 597, 602, 825 N.W.2d 595 (2012) (noting that “[a]ll parties agree that . . . accrued financial benefits under Const. 1963, art. 9, § 24 . . . may not be impaired,” but concluding that the retiree health benefits in question were not “accrued financial benefits” within the wholesale protection of Article IX, Section 24 and thus proceeding to consider whether they could be impaired under the Contracts Clause); *BCBSM v. Governor*, 422 Mich. 1, 22-23, 367 N.W.2d 1 (1985) (“The federal balancing approach has been adopted by our Court for purposes of adjudicating state Contract Clause claims as well as federal Contract Clause claims.”).

121. Governor Snyder violated Article IX, Section 24 – and with it the requirement, set forth at 11 U.S.C. § 109(c)(2), that he be “empowered by State law to authorize” the City to become a debtor – when he failed to condition the City’s chapter 9 petition on the complete preservation of vested pension rights despite the Governor’s clear knowledge (admitted to by the Governor in deposition testimony provided on October 9, 2013, *see supra*, ¶128) that the Emergency Manager intended to use the Governor’s authorization to diminish constitutionally sacrosanct pension benefits. Section 18 allows the Governor to “place contingencies on a local

government in order to proceed under Chapter 9,” but does not explicitly require that compliance with Article IX, Section 24 be one of those contingencies. In this case, the Governor explicitly chose “not to impose such contingencies.” *See* Docket No. 1 at p. 16.

122. Section 18 is unconstitutional as applied where, as here, the Governor has abused his discretion by purporting to authorize a bankruptcy which “would violate the constitution.” *Taxpayers of Michigan Against Casinos v. State*, 478 Mich. 99, 107-08 & n.3 (2007) (even “broad discretion” granted to Governor by statute to act unilaterally must be exercised “within the limits of the constitution”). Moreover, Governor Snyder’s authorization has itself unconstitutionally caused an “immediate, concrete injury” to Council 25’s members by creating a “contingent liability” that their inviolable rights will be disregarded, causing them to reorder their financial affairs. *See Clinton v. New York*, 524 U.S. 417 (1998) (plaintiffs had standing to challenge constitutionality of executive action which, if left unchecked, would leave undisturbed potential future harm posing, by virtue of its magnitude, immediate and direct financial consequences to plaintiffs).

123. The strings left unattached to the Governor’s sign-off speak volumes because PA 436 is not ignorant of Article IX, Section 24. To the contrary, other sections of the Act explicitly reiterate that accrued pension benefits shall not be diminished or impaired outside the bankruptcy context. *See, e.g.*, MCL 141.1551(1)(d) (requiring that the Emergency Manager’s financial and operating plan provide for “[t]he timely deposit of required payments to the pension fund for the local government”); MCL 141.1552(i)(m)(ii) (allowing the Emergency Manager in certain circumstances to serve as the sole trustee of a municipality’s pension fund, but requiring that he “fully comply with . . . section 24 of article IX of the state constitution”); MCL 141.1553 (eliminating the “the accrual of postemployment benefits” of local government

officers but prohibiting “the impairment of vested pension benefits”). Thus the Governor’s contingency-free permission reads like an open invitation to the Emergency Manager to violate the State Constitution in bankruptcy, and therefore is unconstitutional.

124. In the alternative, this Court should hold that any authorization the Governor sought to provide under Section 18 carried with it the implicit contingency that all actions taken pursuant to it by the Emergency Manager, including the proposal of any plan of adjustment under 11 U.S.C. § 943, must comply with the State Constitution, including Article IX, Section 24. In his letter to the Emergency Manager giving unconditional permission to file under chapter 9, Governor Snyder observed that the Bankruptcy Code “contains the most important contingency – a requirement that the plan be legally executable” under 11 U.S.C. § 943(b)(4). Docket No. 1 at p. 16. Because a plan of adjustment which would reduce vested benefits would not be legally executable under the Michigan Constitution – and because, as Governor, Snyder is forbidden from authorizing any violation of the state constitution – his letter to the EM should, in the alternative, be construed as requiring compliance with Article IX, Section 24.

125. AFSCME and its members must not be made to wait to raise a § 943(b)(4) argument until the moment a plan is proposed – though of course they reserve the right to do so – because of the harm being suffered by the AFSCME Detroit Employees *now* as a result of their credible fear that the Emergency Manager will force them to accept the unconstitutional impairment or diminishment of their vested pension rights - the threat of which he is attempting to use as leverage against them *now*. Thus, if this Court plans to find the City eligible to file for bankruptcy under chapter 9, it should hold on the record *now* that any plan proposed by the City will have to comply with Article IX, Section 24 because the Governor could not have given permission to file under chapter 9 without including the implicit contingency that the

City's plan of adjustment not reduce vested pension benefits. Otherwise creditors with vested pension rights will continue to suffer an unconstitutional injury throughout the course of this bankruptcy as a result of the threats of the Emergency Manager , and the Court will be virtually powerless to prevent that harm unless and until the City proposes its plan of adjustment. To prevent that harm *now*, the Court at the very least should clarify, as a preliminary condition of eligibility, that these bankruptcy proceedings cannot reduce vested pension benefits. *Cf. Seitz*, 189 Mich. App. at 456 (declining to “throw out” a pension-reform statute in its entirety where none of the plaintiff state court judges could show that they would receive reduced pension benefits under said statute, but clarifying that the state was required “to honor its obligations” not to enforce the statute wherever doing so would in fact result in a reduction to a retired judge’s vested pension rights). *See also Lansing School Educ. Ass’n v Lansing Bd. of Educ.*, 487 Mich. 349, 372 n.20; 792 N.W.2d. 686 (2010) (declaratory judgment appropriate under Michigan law to accomplish a “sharpening of the issues raised” (quotation omitted)).

126. Whatever its route – either by holding that the Governor violated Article IX, Section 24 by granting the City blanket permission to file under chapter 9 despite knowing full well that the Emergency Manager plans to use chapter 9 to cram down unconstitutional pension reductions, or that the Governor’s permission carried with it the implicit condition that Article IX, Section 24 not be violated in bankruptcy– this Court must, when applying state law, hold the Governor to the truism that he cannot take actions “that would violate the constitution” even where he is acting with “broad discretion” delegated to him by statute. *See Taxpayers of Michigan Against Casinos, supra*.

(a) Despite the City’s Arguments to the Contrary, Parties Have Already Been Unconstitutionally Harmed By The Governor’s Authorization

127. Addressing the above arguments, the City in the Debtor’s Reply does not contest that (1) “the Emergency Manager has been very clear that he intends to use this chapter 9 proceeding to” “reduce accrued pension benefits” and “had made that intent known well prior to requesting the Governor’s permission to file under chapter 9,” *supra* at ¶ 118; (2) Governor Snyder’s grant of permission to file under chapter 9 has caused an “‘immediate, concrete injury’ to Council 25’s members by creating a ‘contingent liability’ that” they will have to “reorder their financial affairs” to address possible diminution to their pensions, *supra* at ¶ 122; (3) the EM is using this harm, which is being suffered by the AFSCME Detroit Employees now, as leverage against them in this bankruptcy, *supra* at ¶ 125; and (4) the Governor “cannot take actions that would violate the constitution even where he is acting with broad discretion delegated to him by statute,” *supra* at ¶ 126. Moreover, since the City filed its reply brief, the Governor has testified to the fact that he was entirely aware that his purported authorization of this bankruptcy was intended to enable the reduction of vested pension benefits which would not be possible outside of bankruptcy court due to Article IX, Section 24 of the Michigan Constitution.

128. These four uncontested points, taken together with the Governor’s testimony, are dispositive in answering the City’s chief counterargument – made multiple times in only slightly varied terms (*see, e.g.*, Debtor’s Reply, at pp. 21-22; 28-31) – that the Governor cannot have violated the state constitution’s “Pensions Clause” by granting the City permission for bankruptcy, and the EM could not have done so by filing the chapter 9 petition, because, the City contends, neither act in and of itself impaired or diminished any vested pension rights.

129. Boiled down, the City’s claim is that no retiree has yet suffered any injury as a result of the Governor’s action. *See, e.g.*, Debtor’s Reply, at p. 22 (emphasizing that “the City’s pension obligations have remained unimpaired”). Not so. Contrary to the City’s argument – and left entirely unaddressed in its briefing – is the fact that the threat of diminishment posed by the Governor’s grant of permission is presently causing real economic harm to vested pensioners, diminishing the value of their vested pensions right now due to the uncertainty surrounding continued vitality of those pensions in bankruptcy.

130. An imminent threat of future harm provides standing to assert a constitutional injury, even where that injury stems from the contingent effects caused by a plan of reorganization in bankruptcy. *In re Global Indus. Technologies, Inc.*, 645 F.3d 201, 213 (3d Cir. 2011) (en banc) (“[A]n injury’s having a contingent aspect does not necessarily make that injury incognizable.”). Thus, in *Clinton v. New York*, the Supreme Court made crystal clear that where an executive branch officer takes an action which could cost a private party money, but where that cost remains contingent on the actions of another branch of government, the private party has already experienced real, justiciable harm to its “borrowing power, financial strength, and fiscal planning.” *Clinton*, 524 U.S. at 430-31. The Court in *Clinton* analogized this injury to the injury stemming from a pending trial in a “multibillion dollar” case, *id.*, which is not unlike the harm here. Indeed, the testimony of many individual objectors before this Court on September 19 confirmed the real harm being caused right now to the pension rights of retirees. *See generally* September 19 Hearing Transcript.

131. For an act of a state to impair a contract, that act need not change the contract terms itself; it is enough that the state act makes impairment possible in the future. Just as “the First Amendment is implicated whenever free speech is *either threatened or impaired*,” so too

is “the Contract Clause []implicated whenever the *passage* of a law impairs the ability to negotiate and enter into contracts” even if no term of a contract currently in effect has yet been altered pursuant to the challenged law. *Donohue v. Mangano*, 886 F. Supp. 2d 126, 151 (E.D.N.Y. 2012). In *Donahue*, the County passed a law which, much like PA 436, permitted the cancellation of CBAs upon the order of a county executive. *Id.* at 134. Although no such executive order had yet been issued, the court found that the underlying law had caused an irreparable harm warranting a preliminary injunction because the specter of future contract cancellation had effectively impaired a number of existing contracts.

132. In reaching its conclusion, the *Donahue* court made two crucial observations about the harm caused by the law at issue there, despite the law itself not yet having caused the formal cancellation of any actual contracts. First, “[i]f a public employer can gain through legislation what it gave up during good faith negotiations . . . the negotiations that bore [that] agreement become meaningless.” *Id.* at 153. Second, “even if” no further action is taken to cancel or alter a particular contract, “this law arguably places a knife to the throat of the unions to coerce them into making certain concessions, under the threat of the [government] taking more egregious actions” in the future pursuant to the passed law. *Id.* The same, of course, is true as a result of the Governor’s grant of permission and the filing of the City’s bankruptcy petition: regardless of what happens to vested pension rights in bankruptcy, the mere availability of bankruptcy to the City “places a knife to the throat of the unions” and retirees “to coerce them into making certain concessions” of their vested pension benefits. The retirees experience this harm whether or not their pensions are cut in bankruptcy pursuant to a voluntary settlement or a cram-down. As such, it violates the Pensions Clause under any reasonable analysis.

133. In any case, this Court can only confirm a plan if “the debtor is not prohibited by law from taking any action necessary to carry out the plan.” 11 U.S.C. § 943(b). In *In re Sanitary & Improvement District, No. 7*, 98 B.R. 970 (Bankr. D. Neb. 1989), the court held that a plan could not be confirmed where that plan required less than full payment to bondholders, because although such a plan is generally permissible under chapter 9, Nebraska law required full payment to bondholders. *Id.* at 974-75. The important insight of *Sanitary & Improvement District* is that implementation of a plan of adjustment ultimately requires “action” *attributable to the debtor*, which must honor the requirements of state law. Accordingly, any reduction to pension benefits ordered by this Court would ultimately require acts attributable to the City, and thus would violate the Pensions Clause and be unconfirmable under section 943 of the Bankruptcy Code. This is especially true with respect to pension benefits because the state and its instrumentalities are forbidden by the language of the Pensions Clause from reducing vested pensions by any means whatsoever (“shall not be diminished or impaired *thereby*”). With respect to other contractual rights, the plain language of the contracts clauses of the federal and state constitutions require only that no “law” impairing such rights “be enacted.”

134. No doubt aware that any plan reducing vested pension benefits could be effectively challenged under section 943 of the Bankruptcy Code, the City argues that such a determination must wait until the City proposes a plan, so that the City in the meantime can wield the uncertainty of the outcome of such a challenge as leverage over the retirees to force them to agree to a plan which unconstitutionally reduces their pensions. This is precisely the type of injury which the *Donohue* court found to constitute an impairment warranting an injunction, and therefore this issue should be addressed *now*.

135. *In re City of Stockton*, 493 B.R. 772 (Bankr. E.D. Cal. 2013) – which the City contends stands for the proposition that “the ‘main event’ of pension impairment is not properly addressed until well after the eligibility stage,” (Debtor’s Reply, at p. 22) – is easily distinguishable. In *Stockton*, no creditor challenged that the city’s petition was not authorized by state law as it related to pensions. The actual statement which the City relies on is mere *dicta* in *Stockton* referring to the fact that there, unlike here, the pension system (CalPERS) was “bellowing and pawing the sidelines during the eligibility phase” rather than challenging eligibility. 493 B.R. at 797. Thus, the *Stockton* eligibility opinion is completely inapposite. AFSCME, meanwhile, has identified no other bankruptcy court which has held that a state constitutional protection for pensions is not relevant at the eligibility stage. This Court thus writes on a clean slate.

136. Relatedly, the City completely misunderstands AFSCME’s argument as to why the Governor’s failure to attach conditions to his grant of permission to the EM to file under chapter 9 has harmed the Detroit AFSCME Employees’ rights to their vested pensions. Contrary to the City’s mischaracterization, AFSCME’s argument is *precisely* that the State must “*refrain* from [diminishing or] impairing pensions,” Debtor’s Reply at 29 – it is just that once the Governor was aware of the unconstitutional threat to pension rights posed by the EM’s plan to file under chapter 9, the Governor *failed to refrain* from injuring retirees by purporting to authorize the petition *without* exercising his discretion to avoid an unconstitutional result by attaching contingencies thereto. As noted above, the City has not contested that the Governor’s exercise of his discretion is no excuse for taking actions which violate the state constitution. *See* ¶ 126, *supra*.

137. The City’s fallback argument that any such conditions would have been pre-empted by the Bankruptcy Code ignores the requirement in section 903 of the Bankruptcy Code that a State may “control . . . a municipality of or in such State” with respect to chapter 9. Section 903, of course, is the provision on which the City excessively relies in its attempt to ward off AFSCME’s federalism challenge to chapter 9 writ large. But the City cannot have it both ways. Especially if section 903 of the Bankruptcy code is anywhere close to as forceful as the City contends elsewhere in its papers (*see, e.g.*, Debtor’s Reply, at pp. 17-18), the correct rule from *Sanitary & Improvement District* is as follows: because Section 943(b) ultimately requires that any confirmable plan not cause the debtor to violate state law, state law does definitively constrain a chapter 9 debtor. 98 B.R. at 974-75. Any other rule leads inexorably to an unconfirmable plan, or else redoubles the inherent federalism problems of chapter 9, regardless of pre-emption issues.

(b) Michigan’s Pensions Clause Absolutely Protects Vested Pension Rights

138. The City’s second core counterargument in the Debtor’s Reply – that Michigan’s Pensions Clause does not absolutely protect vested pension rights (Debtor’s Reply, at pp. 22-31) – contradicts both the plain language of the clause and state court decisions based thereon. For starters, the text of the Pensions Clause differs significantly from both the federal and state contracts clauses (together, the “Contracts Clauses”). While the contracts clauses, each found in Article I of its respective constitution, only prohibit any “law *impairing* the obligation of contract,” the Pensions Clause, found in Article IX of the Michigan Constitution, states that pension benefits “shall be a contractual obligation thereof *which shall not be diminished or impaired* thereby.”

139. As the Attorney General has noted, “[t]he Constitution and the language of § 24 is understood according to its plain meaning,” by virtue of which it “is an impermeable imperative.” See Attorney General Bill Schuette’s Statement Regarding the Michigan Constitution and the Bankruptcy of the City of Detroit [Docket No. 481], at pp. 14-15. Importantly, Section 24 prohibits not only the impairment of pensions – arguably a prohibition coextensive with the contracts clauses, which also speak in terms of impairment – but *also* their diminishment. Because the drafters of the amendment used the disjunctive word “or” to separate the word “diminished” from the word “impaired” in Section 24, “[c]anons of construction” require that each mean something different. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979). As emphasized by AFSCME – but entirely ignored by the City – that difference is reflected in the Michigan Court of Appeals’ holding that “under Art. 9, § 24, a retirement benefit *cannot be reduced.*” *Seitz*, 474 N.W. 2d at 18.

140. The City’s “strained construction,” in contrast, “would have us ignore the disjunctive ‘or’ and rob the term” *diminished* “of its independent and ordinary significance[.]” *Reiter*, 442 U.S. at 338-39. Had the framers of the Pensions Clause wished it to mirror the Contracts Clause, they could easily have ended the Pensions Clause with the phrase “shall be a contractual obligation.” Or they could have limited the clause to read “shall be a contractual obligation thereof which shall not be impaired thereby.” But they did not.

141. Instead, the framers drafted, and the People of Michigan ratified, broader language, which they placed in an entirely different section of the Constitution – one which expressly controls, in minute detail, the financial decision-making of state and local governments. For example, and further indicating how strongly the people of Michigan sought to protect their pensions through constitutional amendment, Article IX, § 24 also includes an

affirmative requirement that all pension benefits “arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.” The Pensions Clause must be read in the context of the entirety of Art. IX, § 24, and its comprehensive dual protection of vested pension rights both from diminishment and from underfinancing.

142. Thus properly read, Art. IX, § 24 belies the City’s contention that the limited intent of the Pensions Clause is to make pension benefits akin to any other contract. To the contrary, as explained by one of its chief drafters, § 24 was designed to acknowledge that pension benefits constitute “deferred compensation for work performed . . . *which should not be diminished by the employing unit after the service has been performed.*” 1 Official Record of the State of Michigan Constitutional Convention of 1961, 770–71. As such – and as argued *supra* in ¶ 120, but, yet again, entirely unanswered by the City – Michigan courts have held that vested pensions are different from other types of “government contracts,” which may be subject to “a modest, temporary impairment . . . as a matter of last resort to address a fiscal emergency.” *AFT Michigan*, 297 Mich. App. at 602. Ironically, the sole precedential Michigan opinion that the City cites in support of its argument that § 24 merely grants “contractual status” to pension benefits – *Kosa v. State Treasurer*, 292 N.W. 2d 452 (Mich. 1980) – uses that phrase offhandedly in prefatory language, *see id.* at 455, and then goes on to emphasize in its substantive discussion “the firmly established right of public employees to receive pension payments as those payments become due.” *Id.* at 460.

143. Against this overwhelming evidence that the people of Michigan ratified Article IX, Section 24 in order to render public pension benefits inviolable, the City contends that because the amendment fails to mention municipal bankruptcy, it must not have been intended

to be able to forestall a filing under chapter 9. Debtor's Reply at 25-26. In support of this argument, the City cites to an advisory opinion of the Michigan Supreme Court holding that the Pensions Clause does not create a right to receive pensions tax-free. *Id.* (citing *In re Constitutionality of 2011 PA 38*, 806 N.W.2d at 697, n.24). This argument confuses the right with the remedy. The issue in *In re Constitutionality of 2011 PA 38* was the scope of the right protected by the Pensions Clause, not the ability of that constitutional right to trump a particular state statute. As with other constitutional rights, the absolute right to vested pension benefits constrains all state statutes when they come into conflict with the right, as here. With respect to an *as applied* challenge like AFSCME's, concluding otherwise would be akin to saying that the Governor could grant an emergency manager permission to file under chapter 9 knowing full well that the EM proposed to seek approval from the bankruptcy judge for a plan loaning Detroit's credit to private investors in violation of Art. VII, § 26 – a right only protected by the state constitution.

144. Therefore, even assuming *arguendo* that the City is correct that the contracts clause in the U.S. Constitution “does not pose any obstacle to chapter 9,” (*see* Debtor's Reply, at p. 24), these important differences between the contracts clauses and the Pensions Clause would avoid what the City characterizes as the “absurd result” that no Michigan municipality “could ever enter chapter 9, where the impairment of contracts is always on the table.” Debtor's Reply, at pp. 27-28. For as the City admits, Michigan courts interpret Michigan's contracts clause and the federal contracts clause “as having the same effect.” Debtor's Reply, at p. 23 n.25 (citing *Fun 'N Sun RV, Inc. v. Michigan (In re Certified Question)*, 527 N.W. 2d 468, 473-74 (Mich. 1994)). This would also presumably be true in most other states, because contracts clauses in state constitutions have largely been interpreted as “mirroring provision[s]”

subject to the same Supreme Court jurisprudence as the federal contracts clause, a result “consistent with the notion that a substantively identical state constitutional protection against impairment could not supplement the federal protection.” See Darryl B. Simko, *Emerging Issue in State Constitutional Law: Of Public Pensions, State Constitutional Contract Protection, and Fiscal Constraint*, 69 Temple L. Rev. 1059, 1077-78 (1996).

145. When dealing with state law other than a state constitutional provision which only reiterates its federal counterpart, state law constraints on bankruptcy should govern unless expressly rejected by the Code. See *In re Sanitary & Improvement Dist., No.7*, 98 B.R. 970 (Bankr. D. Neb. 1989). Chapter 9 explicitly recognizes this fact by requiring in Section 109(c)(2) that petitions be “specifically authorized . . . by State law” at the outset, and in Section 943(b)(4) that a plan not be confirmed in the end unless “the debtor is not prohibited by law from taking any action necessary to carry out the plan.” After all, even though federalism concerns are less of a concern for bankruptcies filed under other chapters of the Code, in those proceedings too incorporation of substantive state law constraints is common. See, e.g., *Butner v. United States*, 440 U.S. 48, 56 (1979) (“[T]he federal bankruptcy court should take whatever steps are necessary to ensure that the mortgagee is afforded in federal bankruptcy court the same protection he would have under state law if no bankruptcy had ensued.”).

146. The recent reported *Stockton* and *Vallejo* decisions cited by the City, see Debtor’s Reply at 26-27, are not to the contrary. In the *Stockton* case, as noted *supra*, no party contended that a constitutional protection for pensions rendered the state ineligible for chapter 9 for want of state-law authorization under Section 109(c)(2). In fact, the opposite was true at the eligibility stage: prior to bankruptcy, the municipal debtor did *not* propose “to impair its pension obligation to the California Public Employees’ Retirement System (“CalPERS”),” and

other creditors therefore complained that the debtor had failed to negotiate in good faith because the debtor should have been “more aggressively attacking its pensioners by way of CalPERS.” 493 B.R. at 782, 786. Nor was a § 109(c)(2) challenge brought in *Vallejo*. See *In re City of Vallejo*, 408 B.R. 280, 285 (B.A.P. 9th Cir. 2009) (addressing eligibility problems solely under §§ 109(c)(4) and 109(c)(5)).

147. Finally, the City is flat wrong that *Prichard* approved reductions to vested pension benefits despite “[s]imilar constitutional protection for pensions” in Alabama. Debtor’s Reply, at p. 27. In support of the purported similarity between Michigan and Alabama law, the City cites to *Bd. of Trs. v. Cary*, 373 So. 2d 841 (Ala. 1979), which held that vested pension benefits could not be altered by state legislation by virtue of Art. 1, § 22 of the Alabama Constitution of 1901. 373 So. 2d at 842 (per curiam). But Art. 1, § 22 of the Alabama Constitution is merely Alabama’s catch-all contracts clause, which, like Art. 1, § 10 of the Michigan Constitution, just “reaffirms . . . the inhibitions of the Federal Constitution (art. 1, § 10) against ex post facto laws, or laws impairing the obligations of contracts.” *Dunn Const. Co. v. State Board of Adjustment*, 234 Ala. 372, 386 (1937). See also *Opinion of the Justices*, 598 So.2d 1362, 1365 (Ala. 1992) (interpreting Art. I, Section 10 of the United States Constitution and Article I, Section 22 of the Alabama Constitution in tandem); *Sweet v. Wilkinson*, 252 Ala. 343, 348 (1949) (applying Supreme Court precedent about the federal contracts clause to interpret Article I, Section 22 of Alabama Constitution). Alabama thus has no explicit protection for pensions in its state constitution distinct from the federal contracts clause. Moreover, the City cites no evidence to suggest that pensioners objected either to (a) Prichard’s eligibility to file for chapter 9 due to lack of state-law authorization under § 109(c)(2), or (b) Prichard’s plan of reorganization due to violation of state law under § 943(b).

Accordingly, the City's reliance on *Prichard* is simply incorrect, and the City's arguments in this regard should be rejected.

(ii) PA 436 Violates The Strong Home Rule Provisions Of The Michigan Constitution

148. "Michigan is strongly committed to the concept of home rule," a structural state-local federalism under which "[t]he charter of a city stands as its 'constitution,'" and "once adopted by a vote of the electors, a city's charter may be amended only by a vote of the electors." *Bivens v. Grand Rapids*, 443 Mich. 391, 400-01 (1993) (quotations omitted) (striking down local ordinance which conflicted with local charter because local government could not "effectively amend the charter without subjecting the amendment to the scrutiny and approval of the local electorate"). This "strong home rule" regime reflects a bedrock principle of state law, which has been true for each of Michigan's three Constitutions beginning with the Constitution of 1850 and continuing through the current Constitution of 1963: all officers of cities are to "be elected by the electors *thereof*, or appointed by such authorities *thereof*," not by the central State Government. See *Brouwer v. Bronkema*, 377 Mich. 616, 652, 141 N.W.2d 98 (1966) (quoting *People ex re. Le Roy v. Hurlbut*, 24 Mich. 44, 65 (1871) (Cooley Court)).

149. In blatant disregard of this constitutional mandate, PA 436 – pursuant to which the Emergency Manager contends he has authority to file under chapter 9 on behalf of the City – strips the local electorate of its constitutional right to select its own officials, as well as to "frame, adopt and amend its charter" under Article VII, Section 22; to approve, by a two-thirds majority, any local act of the state legislature under Article IV, Section 9; and to be subject to administrative authority only where that authority is guided by standards created by the legislature and subject to due process of law, see *BCBSM v. Governor*, 367 N.W. 2d 1, 51 (Mich. 1985). For each of these reasons, PA 436 offends the "strong home rule" of Detroit,

and the Emergency Manager is not lawfully authorized to file for bankruptcy on behalf of the City or to act as its representative during chapter 9 proceedings

(a) PA 436 Violates The Right Of The People Of Detroit To Select Their Own Local Officers And To Structure Their Own Government Via Charter

150. In one of its first cases interpreting the meaning of Michigan’s current Constitution, the Michigan Supreme Court reaffirmed the hallmark holding of the legendary Cooley Court: city residents have the state constitutional right to select their own local representatives. *Brouwer*, 377 Mich. at 651-61. As Justice Cooley held in his seminal *Hurlbut* opinion – the wellspring of the so-called “Cooley Doctrine” of local government, *see* David J. Barron, *The Promise of Cooley’s City: Traces of Local Constitutionalism*, 147 Univ. Penn. L. Rev. 487 (1999) – the right “to choose in some form the persons who are to administer the local regulations” is a right of local electors so basic to the “traditions, practice and expectations” of Michigan that it undergirds the State’s Constitution even in the absence of express constitutional language to that effect. *Hurlbut*, 24 Mich. at 29-33.

151. Having lived under the Cooley doctrine for 90 years at the time of Michigan’s most recent constitutional convention, the framers of the 1963 Constitution would have understood *Hurlbut* as an even more foundational constitutional norm than Cooley himself. Indeed, the framers sought, in adopting the strong home rule regime which as now set forth in Article VII, to continue the “trend . . . toward strengthening inherent local government powers” which Justice Cooley “led” when he set forth the “rule” of local self-government in *Hurlbut*. 1 Official Record, Constitutional Convention 1961, 1052-53. As a result, Article VII provides that “[t]he legislature *shall* provide by general laws for the incorporation of cities and villages,” Art. VII, § 21; that under those general laws, “the electors of each city and village *shall* have the power and authority to frame, adopt and amend its charter,” Art. VII, § 22; and that “[t]he

provisions of this constitution and law concerning counties, townships, *cities* and villages *shall* be liberally construed *in their favor*,” Art. VII, § 34. (Emphases added.)

152. PA 436 offends Article VII in myriad ways. First, it effectively adopts a new charter for Detroit which substitutes the *unelected* Emergency Manager for the Mayor *and* City Council collectively – including by granting the EM the power to, *inter alia*, issue orders directing the mayor and city council; set the local government budget unilaterally; enter into, and break, contractual agreements for the City, including CBAs, loans, and property transfers; seize control of the pension fund from its trustees; and, most relevant here, act “exclusively on the local government’s behalf in . . . chapter 9.” See MCL 141.1549(2) (“Upon appointment, an emergency manager shall act for and in the place and stead of the governing body and the office of chief administrative officer of the local government.”); MCL 141.1550(1) (“An emergency manager shall issue to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government the orders the emergency manager considers necessary[.]”); MCL 141.1552 (EM may amend local government budget; make contracts; terminate CBAs; enter loan agreements; transfer property); MCL 141.1558 (EM directs bankruptcy).

153. It is a direct violation of *Hurlbut* and *Brouwer* that the EM serves in the role of mayor and city council without being selected by Detroit.

154. Moreover, despite the existence of detailed procedures in the Detroit Charter concerning the method of passing local laws and the interplay of authority between the local legislative and executive officers, the EM may even exercise, according to PA 436, all authority of the mayor and city council *simultaneously* “concerning the adoption, amendment, and enforcement of ordinances or resolutions of the local government” and “[t]ake any other

action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government.” MCL 141.1552(1)(dd-ee).

155. To the drafters of the current Michigan Constitution, PA 436 would appear to parody Article VII. The provisions of Article VII directing the legislature to provide for the incorporation of cities to be governed by charters written by the cities’ voters is “mandatory,” and even before the 1963 Constitution – which *increased* the home rule powers of cities – it was well-established that, in executing that mandate, ““under the Constitution the legislature [does] not have the power to change the law as embodied in the charter [of a local government] without a ratifying vote of the village electors.” *Utica State Sav. Bank v. Village of Oak Park*, 279 Mich. 568, 273 N.W. 271, 274 (1937) (state statute retroactively ratifying all contracts for purchase of lands by local governments could not ratify land contract which was unlawful under local charter). This is because “the power vested in the [local] electors by the Constitution” to amend their own charter necessarily requires that “the Legislature does not have the power to alter or amend a [local] charter without the approval of the [local] electors.” *Id.* at 577. Nor does the Legislature have the power to enter into contracts on behalf of the local government. *Id.* at 578. Yet PA 436 purports to empower Emergency Manager to assume all the powers of the local charter – including the ability to bind a city by contract for generations to come – without the core structural accountability for those powers baked into the charter in the form of local elections and separation of powers.

156. While it cannot be denied that the state possesses a robust role in demarcating the limits within which a municipality may structure the form of its government via charter, PA 436 swallows whole the rights reserved to local electors in Article VII to execute, within limits,

their own vision of local government. For instance, typically “municipal officers can bind a municipality only if they are empowered to do so by the city charter.” *Manning v. City of Hazel Park*, 202 Mich. App 685, 691; 509 N.W. 2d 874 (1993). The Emergency Manager, however, possesses no such constraint under the terms of PA 436, which grants him his extreme powers “notwithstanding any charter provision to the contrary.” MCL 141.1552(1). Under PA 436, therefore, the Emergency Manager not only violates the charter by purporting to act with all of the power of the entire municipal government simultaneously as a matter of procedure, but also by doing so in direct violation of any substantive limitation that charter places on the local government. In effect, each time the Emergency Manager takes an act which contravenes the City Charter – a charter which, to be clear, has not formally been repealed – he decrees an amendment to that charter. But, as discussed *supra*, Detroit’s citizens have a constitutional right to be the ones to amend their own charters. Here too PA 436 egregiously violates Article VII.

157. Article VII does not permit such a scorched earth approach to local democracy. The Emergency Manager’s purported statutory authority to act for the City is antithetical to Article VII, and therefore the Emergency Manager was never authorized by state law to file the City’s chapter 9 petition. As fundamentally, the “City” has therefore not *voluntarily* filed a petition under Section 301 as incorporated by Section 901(a) of the Bankruptcy Code.

(iii) Neither The City Nor State Pleadings Answer How Detroit’s Voters Could Have Constitutionally Lost Their Right To Local Self-Government Entirely, And The Loss Of That Right Invalidates Actions By The Emergency Manager Inextricably Intertwined With The Chapter 9 Petition And The Case Itself

158. Contrary to the City’s assertion in the City’s reply brief (*see* Debtor’s Reply, at p. 39), the EM’s power to set budgets, pass ordinances, and approve contracts under PA 436 is

inextricably intertwined with the lawfulness of the City's chapter 9 petition. The EM wielded these core local government powers as he allegedly endeavored (unsuccessfully, in AFSCME's view) to satisfy the requirements for a chapter 9 filing: negotiations with creditors, work on the City's budget as related to solvency, and so forth. The bankruptcy filing resulted from a process directed by the EM using the virtually absolute powers accorded him by PA 436, despite his having not been elected. The exercise of those powers under PA 436 is not severable from the EM's power to file for bankruptcy under Section 18. Because he lacked the power to take those predicate acts, and for the independent reason that he was not selected by Detroit's voters, the culminating chapter 9 filing was unlawful. For the same reason, the City did not voluntarily file its petition.

159. The pre-filing orders of the EM, which are part of the public record, demonstrate the breadth of the EM's exercise of purely local powers, ranging from his explicit suspension of the City Charter, to discrete financial decisions about City expenditures, to control over potential attempts by the City to raise revenue. For example, the Order No. 10, issued by the EM on July 8, 2013, suspends the Detroit Charter's requirement for filling vacancies on City Council. See <http://www.detroitmi.gov/Portals/0/docs/EM/Order%2010.pdf> (last accessed Oct. 7, 2013). Order No. 6, issued by the EM on May 2, 2013, directs the precise amount of deposits from the City to the Public Lighting Authority. See <http://www.detroitmi.gov/Portals/0/docs/EM/Order%206.pdf> (last accessed Oct. 7, 2013). Order No. 5, issued by the EM April 11, 2013, requires that the EM approve in writing of any transfers of the City's real property. <http://www.detroitmi.gov/Portals/0/docs/EM/Order%205.pdf> (last accessed Oct. 7, 2013).

160. While the State correctly asserts that Article VII, § 21 of the Michigan Constitution subjects municipalities to general laws related to taxation and debt (*see* State’s Response, at p. 14), the State Constitution contains no like limitation for run-of-the-mill real estate contracts, public service expenditures, and other purely local acts related to the City’s budget and fiscal self-management. Yet, as the State also admits, PA 436 “transfers authority to perform these duties and responsibilities to the Emergency Manager” (*see* State’s Response, at p. 14), thus diverting municipal self-governance at the purely local level from the City’s elected officials to an unelected “contractor to the State of Michigan” as the EM has described himself. *See* Orr 10/4 Transcript, at 454:10-14. This is not a case in which a particular local ordinance collides with a statewide regulatory scheme, as in *City of Taylor v. Detroit Edison Co.*, 475 Mich. 109 (2006). It is, instead, a comprehensive seizure of the City’s right to self-governance in all areas, no matter how local the question at hand.

161. Similarly, while the City may be right that, at a broad level, the Detroit Charter, Home Rule Cities Act, and case law recognize limitations on the “exercise of [City] power” stemming from general state laws, Detroit Charter, § 1-102, such general state laws do not determine *who* exercises the powers granted by the State to the City or inherent to the City’s purely local affairs. Even assuming such limitations make it lawful for the legislature to pass a general statute granting certain powers to city councils rather than mayors, *see, e.g., Detroit City Council v. Detroit Mayor*, 238 Mich. App. 442 (2009), it is another thing entirely for the state legislature to designate *who* those city council members are, how they are selected, or who is to manage quintessentially local affairs on a day-to-day basis. These are questions “of purely local character” assigned by Article VII to the will of the Detroit voters regardless of whether PA 436 is a general law. *See id.* at 175 (As against the City Charter, a general state “statute

controls in all matters *which are not of purely local character.*” (emphasis added)). The EM has nevertheless wielded his power under PA 436 in purely local matters, even suspending the City Charter requirements for the selection of City Council members.

162. On such basic questions of self-determination, the rule remains that the local electors must select their own local government officials, whatever the powers of those officials may be, and retain control over purely local matters. *See Brouwer*, 377 Mich. at 652. As the State concedes, the powers of the legislature to amend City Charters are limited “to matters of general concern,” and “the power to amend a charter is vested in the local electors in purely local matters.” *See State’s Response*, at p. 12. Who is to govern them is one such “purely local matter,” firmly established by the Cooley Doctrine as ratified by Article VII.

163. The City’s two attempts to shield PA 436 from the Cooley Doctrine both fail. Its first response – that the State may destroy a municipality entirely (*see Debtor’s Reply*, at p. 40) – is inapposite, because, of course, the State has done no such thing here, and Detroit retains the rights granted to it by the State Constitution as a municipality.

164. The City’s second response – that the legislature has authority to temporarily replace local officials (*see Debtor’s Reply*, at p. 40) – mischaracterizes the *Hurlbut* opinion. In *Hurlbut*, Justice Cooley stated in dicta that during the “inauguration and modification of local government” forms – *i.e.*, when creating entirely new formats for permanent local government – the State may make “provisional appointments to put the new system in operation.” 1871 WL 3042, at *35. PA 436, in contrast, makes no provision for any new or modified permanent form of municipal government in Detroit. Instead, it simply seizes the existing reins of power from elected officials and transfers them to an unelected individual.

165. Moreover, while the appointment of the EM *may* prove to be temporary – if, for instance, the financial emergency ends or the City Council removes the EM by a 2/3 vote after he completes 18 months of service (*see* MCL § 141.1549) – it may also prove to be indefinite if the financial crisis is not deemed to have ended and the local government cannot muster the 2/3 of City Council votes and the mayoral approval which are both required for removal. Where, as here, the EM has asserted the power to suspend the charter as it pertains to the makeup of City Council, the ability of the EM to perpetuate his tenure is all the more real. Moreover, the Governor might simply try to reappoint the EM, as he successfully did the Emergency Manager of the Detroit Public Schools. *See Davis v. Emergency Manager for Detroit Public Schools*, 491 Mich. 899, 903 (Young, C.J., concurring) (“Neither MCL 141.1501 et seq. nor the statutes applicable to emergency managers preclude reappointment of a person to the office of emergency manager if that person previously held the position.”).

166. As to the State’s Response, it is curious – and telling – that the State’s otherwise comprehensive and strongly worded reply to AFSCME’s home rule objections neglects to cite either the *Hurlbut* case or the Cooley Doctrine at all. The State does appeal to federal case law holding that local governments are not sovereign entities subject to the “one person, one vote” rule of the federal Equal Protection Clause and are subordinates of the State for federal constitutional purposes. State’s Response, at pp. 15-16. However, the case on which the State relies, *Sailors v. Board of Education of Kent County*, considered *only* whether federal constitutional law created a *federal* right to elect “state or local officers of the *nonlegislative character*.” *See* 387 U.S. 105, 108 (1967) (emphasis added). The Cooley Doctrine, in contrast, is a rule of *state* constitutional law, and *Sailors* certainly does not cast doubt on the right to elect local officials if state law so provides, as in the case of the Michigan Constitution.

167. Furthermore, because the City Council and Mayor whose duties the EM has captured possess “general government powers over an entire geographic area,” they could in fact be subject to the “one person, one vote” rule. *Avery v. Midland County, Texas*, 390 U.S. 474, 485-86 (1970) (distinguishing *Sailors*). If anything, subjecting the people of Detroit to governance by an Emergency Manager who has been appointed by the Governor – over whose election Detroit electors have only a fractional influence – violates the “one person, one vote” rule when compared to other cities in Michigan who still possess the right to elect their own local government.

**(b) PA 436 Purports To Delegate Authority To The
Emergency Manager In Excess Of That Possessed By
The Legislature**

168. Section VII is not the exclusive mechanism protecting the “home rule” rights of local electors in the Michigan Constitution. Municipalities are further protected by Article IV, Section 29, which forbids the legislature from passing a local act both (a) “in any case where a general act can be made applicable, and (b) “until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected.” “The requirement of a 2/3 vote of both houses and a majority vote in the area affected protects localities against arbitrary action.” *Advisory Opinion on Constitutionality of 1975 PA 301*, 400 Mich. 270, 287, 254 N.W. 2d 528 (1977) (quoting 2 Official Record, Constitutional Convention 1961, p 2415).

169. PA 436 allows the Emergency Manager to adopt local ordinances and take purely local legal acts which would otherwise be assigned to the local government. *See* MCL 141.1552. Before the EM takes a local act of this nature, however, neither he nor the legislature makes any determination whether a general act could accomplish the same purpose; seeks the approval of two-thirds of the legislature; or submits the proposed act to the local

electors for ratification. PA 436 therefore delegates to the EM power that the legislature simply does not possess. For even assuming *arguendo* that PA 436 is a general as opposed to local law, it contemplates the future passage of limitless local ordinances without the prophylactic mechanisms built into Article IV, Section 29 to preserve “the settled purpose of the framers of the [Constitution] and of the people who adopted it to forever insure to the people the right to control their affairs purely local.” *Attorney General v. Lacy*, 180 Mich. 329, 337, 146 N.W. 871 (1914) (striking down local law passed by legislature).

170. The legislature cannot delegate power beyond that which it possesses. “That the Michigan Legislature may legislate absent constitutional limitations does not mean that it may wield legislative power in a manner other than that carefully prescribed by the Michigan Constitution.” *Blank v. Dep’t of Corrections*, 462 Mich. 103, 119, 611 N.W.2d 530 (2000). Yet PA 436 does just that, subjecting Detroit’s citizens to purely local acts – including the instant chapter 9 petition – taken by a central authority without the protection of Article IV, Section 29. In this case that local legislation includes not only this illegal bankruptcy, but all of the legislative acts undertaken by the EM leading up to and in support of the chapter 9 petition.

(iv) Despite Arguments To The Contrary By The State And City, The EM Is Not A State Agent And Therefore His Use of Unlimited Power To Pass Local Acts Which Led To This Bankruptcy Violated The State Constitution

171. The City’s reply brief attempts to insulate its chapter 9 petition from these impermissibly local acts of the Emergency Manager (*see* Debtor’s Reply, at p. 41), in the process again ignoring the crucial fact that the petition was the culmination of the EM’s exercise of total control over the City’s local affairs during the course of four crucial months. *See* ¶¶ 158 - 159, *supra*. As demonstrated, the EM pursued a chapter 9 filing for the City as a foregone conclusion. Had the City’s voters, rather than the State, remained in control of

Detroit's own local affairs – as required by Article IV, Section 29 of the State Constitution – the City's elected officials could have used that power in ways which might have taken the City off the path to bankruptcy designed by the EM. But the EM explicitly took that power away by Order No. 5, a local act removing from City Council and the Mayor any ability to raise revenue using City property. By delegating the power to legislate locally entirely to the EM, the State effectively robbed the City of its local lawmaking ability and instead transferred that power – a power the State legislature cannot exercise under the State Constitution without approval of the local electors – to the EM.

172. The City concedes that the State legislature may not pass local acts under Article IV, Section 29, but nevertheless contends that there is no violation of that provision when the EM exercises that power because *municipalities* are free to do so. *See* Debtor's Reply, at pp. 41-42. The State makes essentially the same argument. *See* State's Response, at pp. 17-18 (“This is no different from the authority generally granted by law to local elected officials but exercised locally.”). Both are wrong, however, that the EM exercises the “local government's powers, not the State legislature's.” Debtor's Reply, at p. 42; *see also* State's Response, at p. 18-19.

173. PA 436 gives every indication that the EM exercises power as an officer of the State, not the City. He is appointed by the Governor. MCL § 141.1549(1). The EM serves “at the pleasure of the governor,” making him accountable to the State, not the City. MCL § 141.1549(3)(d). The State pays his salary. MCL § 141.1549(3)(e). The EM is “subject to” the Michigan “Conflict of Interest” statute – which applies to “members of the legislature *and state officers*,” 1968 PA 318 – “as if he or she were a state officer.” MCL 141.1549(9)(c). That PA 436 elsewhere states that the EM exercises his powers “for and on behalf of the local

government,” MCL § 141.1552(1)(d), does not alter the reality of whose authority he exercises. The EM’s powers derive not from the people of Detroit, but from the State Legislature which passed PA 436 to enable the transfer of those powers from Detroit voters to the EM as a state officer – or “contractor to the State of Michigan” as the EM has described himself. *See* Orr 10/4 Transcript, at 454:10-14.

174. The core issue here is not whether PA 436 itself is a general law, as the State insists (*see* State’s Response, at pp. 13-14), but instead whether that general law includes within it an additional delegation of power permitting limitless local acts to be undertaken in the future with absolutely no limitation as to scope. The limitation placed on the legislature’s power to pass local legislation by Article IV, Section 29 would be entirely meaningless if the legislature could simply delegate the power to legislate locally, without any limitation, to a State appointee. Yet that is exactly what PA 436 does, and therefore the authority exercised by the EM under PA 436 is unconstitutional and the bankruptcy petition filed as part of the exercise of that authority by the EM in violation of state law.

(c) PA 436 Unconstitutionally Delegates Legislative Authority To The Emergency Manager Because It Lacks Adequate Standards To Guide The Emergency Manager’s Actions In Bankruptcy, Which Are Not Subject To Judicial Review

175. Even assuming *arguendo* that the legislature had the authority to delegate its illegally asserted control over local self-governance, that delegation must include (1) “sufficient standards and safeguards” to “direct[] and check[] the exercise of delegated power,” as well as (2) “due process requirements” ensuring judicial review of the delegated action. *BCBSM v. Governor*, 367 NW 2d 1, 51-52 (Mich. 1985). PA 436 lacks both with respect to an Emergency Manager’s control of the City during bankruptcy.

176. First, PA 436 provides no standards whatsoever to the Emergency Manager – other than any “contingencies” which the Governor, and not the legislature, may (but did not in this case) designate – for how to exercise the City’s affairs under chapter 9. MCL 141.1558. Thus the Emergency Manager is unfettered, for example, to enter into settlements resolving claims by creditors – settlements which, under Section 7-5-203 of the Detroit City Charter, are legislative acts of the City which must be approved by the City Council – without following any guidelines provided by the State. While the Bankruptcy Court may apply its own *federal law* constraints in the course of approving, or not, such settlements – though the authority of a bankruptcy judge to do so is questionable in light of federalism principles, *see infra* – there is simply no *state law* standard to refer to evaluate whether the Emergency Manager, in entering the settlements, is effectively legislating in bankruptcy within the intent of the legislature. “This complete lack of standards is constitutionally impermissible.” *BCBS*, 367 N.W. 2d at 55, and therefore the Emergency Manager is not authorized under state law to carry out the Legislature’s attempted delegation of authority under chapter 9.

177. Second, and relatedly, even assuming *arguendo* that PA 436 does contain standards constraining the absolute power of the Emergency Manager to act for the City under chapter 9, those standards are not subject to the requisite judicial review. As a result of the automatic stay, the Emergency Manager’s actions during chapter 9 can only be litigated to the bankruptcy court, which itself lacks authority to decide freestanding state-law claims. *See* 11 U.S.C. §§ 902(a), 362 (automatic stay); *Stern v. Marshall*, *supra* (Article I judge prohibited from deciding independent state law claims unhinged from bankruptcy). But the City can arguably enter into settlements with creditors under chapter 9 *without* receiving approval from the Bankruptcy Judge, even if a competing creditor requests judicial review. *See In re City of*

Stockton, California, Case No. 12-32118-C-9 (Bankr. E.D. Cal. Feb. 5, 2012) (“11 U.S.C. § 904 gives a chapter 9 debtor freedom to decide whether to ignore or to follow Rule 9019 compromise-approval procedure[.]”). The Emergency Manager thus acts in a legal vacuum, accountable neither in state court nor federal court for exercising the legislative power delegated to him by the State. The Michigan Constitution does not permit such insulation.

(v) The City And State Cannot Evade The Non-Delegation Doctrine Because The EM Acts With The State Legislature's Authority In Bankruptcy Without Any Standards Or Judicial Review

178. Here, again, the City and State in their respective reply briefs seek refuge in the assertion that the EM exercises the powers of the City in chapter 9, not the powers of the State Legislature. And here too, for the same reasons explained *supra*, the City and State arguments fail. The EM may have been tasked by the State with governing the City, but he does so with the authority of the State as delegated by statute, not the authority of Detroit’s voters. Neither the City nor State cites any case in which a Michigan Court has held that the non-delegation doctrine did not apply because the delegated powers were of either an “executive” or “local” character. *See, e.g.*, State’s Response, at p. 19. The simple fact is that whatever powers the EM exercises, he does so by virtue of the State legislature’s delegation of its own authority.

179. The alternative contention by the City and State that PA 436 does provide “reasonably precise” standards to the EM for use in chapter 9 fails because it relies on standards applicable to the EM only outside of bankruptcy. *See* Debtor’s Reply, at p. 43; State’s Response, at pp. 19-20. The City and State each cite to MCL § 141.1558, but that provision only provides a standard for use by the EM in exercising his discretion to recommend chapter 9 to the Governor. Once the EM makes that recommendation and the Governor approves it, the EM is granted power “to act exclusively on the local government’s behalf in

any such case under chapter 9” with no state-law standards whatsoever to guide him, including in the ultimate determination of whether to file for bankruptcy or not after receiving permission. *See* MCL § 141.1558(1). Nor does MCL § 141.1549(2), which the City and State also rely on, provide the EM any governing standards in bankruptcy. The City only partially quotes MCL § 141.1549(2) (*see* Debtor’s Reply, at p. 43), but the full relevant quote from MCL § 141.1549(2) grants the EM virtually limitless powers rather than constraining him to any meaningful standards. MCL § 141.1549(2) states: “The emergency manager *shall have broad powers* in receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and local government’s capacity to provide or cause to be provided necessary government services essential to the public health, safety, and welfare.” Put otherwise: the EM is to do whatever he needs to run the City as he sees fit. This is a grant of absolute power, not a limiting standard.

180. In any case, the City does not explain how either of the standards it asserts as governing the EM’s actions in chapter 9 is enforceable by judicial review during the bankruptcy. The City claims that “this Court will review actions of the Emergency Manager,” (Debtor’s Reply, at p. 44), but does not explain how or whether this Court’s review includes application of any standards contained in PA 436. Instead, the City admits that the only authority this Court has over the City consists of “*implementing provisions of the Bankruptcy Code* that may involve determination of state law issues.” Debtor’s Reply, at p. 44 n.38. The City cites to no provision of the Code which would require this Court to assess whether the EM has followed the alleged state-law standards in PA 436 for his actions during chapter 9 which have been identified by the City.

181. The State, meanwhile, alone asserts that judicial review is possible because AFSCME can move for relief from the automatic stay to sue the City in state court if the EM violates the standards set forth in PA 436. This argument fails for two reasons. First, the ability to *request* that the Bankruptcy Judge grant relief from the automatic stay provides no *right* of judicial review of the EM’s actions during the course of the bankruptcy, as this Court could readily deny the stay and thus foreclose any hearing on the merits of a claim that the EM has violated PA 436. Indeed, this Court has already extended the automatic stay to cover the State precisely to *prevent* creditors from obtaining judicial review of actions taken by the EM under PA 436. Second, and just as important, PA 436 itself “provides no administrative or judicial review to challenge” the EM’s decisions, either inside or outside of bankruptcy. *See BCBSM*, 367 N.W.2d at 53. Thus, even if relief from the stay were to be granted, there is no sure route to judicial review of actions undertaken by the EM pursuant to PA 436.

B. The City Failed To Participate In Any Good Faith Negotiations With Creditors Prior To Filing For Bankruptcy As Required For Eligibility Under Chapter 9

182. The City cannot meet its burden under section 109(c)(5) of the Bankruptcy Code of proving that it conducted good faith negotiations with its creditors or that such negotiations were impracticable.

183. Congress enacted the “negotiation” requirement of section 109(c) to prevent capricious filings of chapter 9 petitions, and Courts do not “view lightly the negotiation requirements of 11 U.S.C. § 109(c)(5).” *See In re Villages at Castle Rock Metro. Dist. No. 4*, 145 B.R. 76, 85 (Bankr. D. Colo. 1990); *In re Town of Westlake, Tex.*, 211 B.R. 860, 867-68 (Bankr. N.D. Tex. 1997) (suggesting that section 109(c)(5) requires that a municipality have an intent to negotiate with creditors it intends to impair). “The ‘creditor protection’ provided by section 109(c)(5). . . insures that the creditors have an opportunity to negotiate concerning a

plan on a level playing filed with the debtor before their rights are further impaired by the provisions of section 362 of the Code.” *Sullivan County*, 165 B.R. at 78-79).

184. In *Cottonwood Water*, the Court explained the good faith negotiation requirement under section 109(c)(5) of the Bankruptcy Code as follows:

Congress consciously sought to limit accessibility to the bankruptcy court by municipalities [by requiring] . . . the municipal entity, before rushing to . . . Court, to first seek to negotiate in good faith concerning the treatment the creditors may be expected to receive under a plan to be filed under section 941 of the [Bankruptcy] Code. . . . The ‘creditor protection’ provided by section 109(c)(5) . . . insures that the creditors have an opportunity to negotiate concerning a plan on a level playing field with the debtor before their rights are further impaired by the provisions of section 362 of the [Bankruptcy] Code.

138 B.R. at 979.

185. Accordingly, the burden is on the City to demonstrate (i) that it engaged in good faith negotiations with its creditors concerning the possible terms of a plan or (ii) why it was unable to engage in such negotiations. ASFSCME respectfully submits that the City cannot demonstrate any negotiations with creditors such as AFSCME, let alone “good faith” negotiations, and further given that the City conducted no pre-petition negotiations with significant creditors such as AFSCME, the City should not be heard to argue that negotiations were impracticable.

(i) The City Failed To Negotiate With Creditors Such As AFSCME

186. The City claims it satisfies the section 109(c)(5)(B) requirement for negotiating with its creditors prior to the bankruptcy filing by negotiating with creditors, including unions such as AFSCME, in a few meetings held with its unions where the City discussed its restructuring proposals and took certain questions. *See* Eligibility Brief, pp. 53-61 (citing, *inter alia*, Orr Declaration, ¶¶ 90-96). What the City fails to mention is that, as discussed

extensively above and as indicated by Orr himself prior to the scheduling of these meetings, it was made clear throughout these series of 3 or 4 relatively short meetings that the meetings were “discussions” and the City was not willing to conduct any negotiations. The City argued that the EM “openly invited the City’s creditors to contact the City and its advisors to begin negotiations.” Eligibility Brief, p. 55. In fact, the City rebuffed negotiations, which require concessions from both sides and collaboration between the debtor and its significant creditors. The City (acting through Orr) simply was not interested in negotiations (and as Orr indicated regarding the predecessor to the ultimate Restructuring Plan, the EM’s May 12, 2013 “Financial and Operating Plan”, “[t]his isn’t a plebiscite, we are not, like, negotiating the terms of the plan”).

187. *In re Ellicott School Building Authority* is directly on point. There, the debtor held three public meetings with large creditors regarding its proposed restructuring, although creditors were advised that the economic provisions of the proposed plan were not negotiable. 150 B.R. 261, 266 (Bankr. D. Colo. 1992). The court held that even though the debtor conducted three public meetings explaining its proposed plan of restructuring to bondholders, it did not negotiate in good faith because it indicated that the economic terms of its proposed plan were non-negotiable. *Id.* (debtor must be open to negotiating the substantive terms of a proposed plan); *cf. Int’l Ass’n of Firefighters, Local 1186 v. City of Vallejo (In re City of Vallejo)*, 408 B.R. 280, 289 (9th Cir. B.A.P. 2009) (finding that the city did not satisfy section 109(c)(5)(B) because it “never negotiated with Unions or any of its creditors over the possible terms of a plan of adjustment.”); *Sullivan County*, 165 B.R. at 78-79 (“The ‘creditor protection’ provided by section 109(c)(5) . . . insures that the creditors have an opportunity to negotiate

concerning a plan on a level playing field with the debtor before their rights are further impaired” (citation omitted)).

188. The City’s a “take it or leave it” Restructuring Plan proposal that was not really open to any negotiations (good faith or otherwise) should be rejected as the court did in *Ellicott School*. The City failed to engage in any negotiations with its significant creditors such as AFSCME regarding the Restructuring Plan. Flatly refusing to conduct any negotiations (despite repeated requests by AFSCME both prior to and subsequent to the City’s bankruptcy filing) falls far short of the standard required under section 109(c)(5) of the Bankruptcy Code.

189. The City has publicly proclaimed its willingness to negotiate, yet it and its representatives’ (i) statements that the meetings held to discuss the Restructuring Plan were not negotiations and (ii) continued bad faith refusal for a period of time post-petition (until required mediation began) to hold negotiations (despite requests from AFSCME to jump start negotiations) makes it more than clear that the City has conducted no good faith negotiations with AFSCME and similarly situated creditors.

190. Moreover, as described extensively *supra* (¶¶ 3, 36, 45), to the extent that the City held a series of pre-petition meetings with creditors to discuss its Restructuring Plan, such meetings were simply scheduled as part of the EM and City’s plan to bolster the City’s “record (i.e. for future litigation)” as suggested by the City’s lead bankruptcy counsel in the Pitch Presentation back in January 2013. In addition, the evidence further reveals that the City had planned on filing for chapter 9 as of early July 2013 by the specific date of Friday, July 19, 2013 – even as alleged creditor “negotiations” were ongoing – regardless of how the discussions were progressing. *See* Supp. Kreisberg Declaration, Exhibit C (spreadsheet document dated July 4, 2013 attached to e-mail from EM’s office to State officials entitled

“Chapter 9 Communications Rollout” indicated that Friday, July 19, 2013 was “FILING DAY”). This evidence further establishes that the City was not really interested in any serious negotiations.

(a) Despite The City’s Creative Arguments To The Contrary, The City Cannot Escape The Fact That It Refused To Negotiate In Good Faith

191. In the City’s reply brief and in recent deposition testimony provided by Orr on October 4, 2013, the City and Orr have now taken the position that while the City may have made statements that its pre-petition meetings with the unions regarding its Restructuring Plan were not a “negotiation”, such characterizations were simply to avoid any argument that the City triggered obligations to collectively bargain, which obligations may be suspended by PA 436. *See* Debtor’s Reply, at p. 55 n.49; *supra*, ¶ 44. The City now argues that it was flexible in its negotiations and willing to consider other proposals, but received no counter-proposals from creditors, despite requests for same. The City’s statements in that regard, however, do not establish the good faith negotiations required by the Bankruptcy Code. Requesting “feedback” or “invitations for further information” simply does not satisfy the City’s burden of proof.

192. AFSCME (and other objectors) offered on more than one occasion to engage in good faith bargaining and negotiations which were continually rebuffed by the City, and indeed as of late June/early July 2013, the City did not even have any complete proposal with respect to the restructuring of pension and other retiree benefits. Rather, the City’s proposal to its creditors was no more than an ultimatum, with the City showing no real intention of negotiating economic or substantive terms. As noted, the City was interested in and spent months mapping out its path to chapter 9, and never had any real intention of bargaining in good faith.

(ii) Even Assuming That The City Engaged In Negotiations, Such Negotiations Did Not Relate To A Plan That Is In The Best Interests Of Creditors As Required By Section 109(c)(5)(B)

193. While AFSCME submits that the City did not engage in any good faith negotiations with creditors such as AFSCME prior to the City's chapter 9 filing, even assuming this Court were to find otherwise, the City also has not satisfied section 109(c)(5)(B) of the Bankruptcy Code because the plan or terms of a plan being negotiated must be a plan that can be effectuated in chapter 9. *See Sullivan County*, 165 B.R. at 78 (debtor failed to meet burden of showing that it negotiated in good faith because the plan that was proposed was not a plan that could be effectuated in chapter 9); *Cottonwood Water.*, 138 B.R. at 979 (finding that "in order for this Debtor to be entitled to the entry of an order for relief, it must be prepared to show that it engaged in good faith negotiations with its creditors concerning the possible terms of a plan to be effected pursuant to section 941 of the Bankruptcy Code.").

194. Here, the proposed Restructuring Plan is patently unconfirmable because it unconstitutionally looks to reduce or eliminate guaranteed vested pension benefits pursuant to a plan that would presumably be crammed down on creditors, including those City retirees and employees that participate in the various pension and other retirement benefit plans, without their consent. Given that creditors owed pension obligations have absolute rights to those vested pension benefits under Michigan law as set forth extensively above, and one of the main goals of this proceeding is to modify vested pension and other retiree benefits, the City has no ability to confirm any plan of adjustment modifying such rights. *See* 11 U.S.C. §943(b)(4) (stating that the Court shall confirm a chapter 9 plan only if "the debtor is not prohibited by law from taking any action necessary to carry out the plan.").

195. Additionally, the Restructuring Plan is not in the "best interests of creditors" and thus could not be confirmed pursuant to section 943(b)(7) of the Bankruptcy Code. The "best

interests of creditors” test in the context of a chapter 9 case does not compare treatment under a plan of liquidation, but rather to other alternatives to creditors to the plan. *See, e.g., In re Sanitary & Improvement Dist., #7*, 98 B.R. 970, 974 (Bankr. D. Neb. 1989); (“Section 943(b)(7) [with respect to the best interest of creditor’s provision] ... simply requires the court to make a determination of whether or not the plan as proposed is better than the alternatives.”); *In re Mount Carbon Metropolitan Dist.*, 242 B.R. 18, 34 n.50 (Bankr. D. Colo. 1999) (“The ‘best interest’ requirement of § 943(b)(7) is generally regarded as requiring that a proposed plan provide a better alternative for creditors than what they already have.”) (citing 4 Collier on Bankruptcy, 943.03[7] (Lawrence P. King, ed., 15th ed.1999)).

196. Had there been no chapter 9 filing by the City, pension creditors could not be impaired under the Michigan Constitution, and any impairment of those rights under a plan of adjustment would violate Michigan law and be patently non-confirmable. Accordingly, because the Restructuring Plan proposes to unconstitutionally wipe out guaranteed vested pension benefits, the proposal cannot satisfy the requirements of good faith negotiations over a plan that could be effectuated in chapter 9.

197. Orr failed to consider before filing for bankruptcy protection or since the filing, an equitable argument for the pension fund beneficiaries that other creditors extending debt after funding concerns surfaced publically should be subject to equitable subordination/fraudulent conveyance under Bankruptcy Code sections 510(c) and 544(b)/548(a) and pension benefits should take priority over those claims.

198. Further, under Bankruptcy Code section 928(b), Orr should be exploring whether certain other creditors should bear the burden of some of the City’s operating expenses during bankruptcy process, before benefit cuts are implemented.

199. The City in its reply brief (*see* Debtor’s Reply, at p. 58 n.50) argues that AFSCME is incorrect that to satisfy the good faith negotiation requirement of section 109(c)(5)(B), negotiations must be conducted regarding the terms of a confirmable plan. The City cites no authority for rejecting AFSCME’s arguments in this regard, and the weakness of the City’s argument is belied by its relegation to a footnote. There can be no doubt that the reference to good faith negotiations of the terms of a plan in section 109(c)(5)(B) of the Bankruptcy Code is to negotiations of the terms of a plan that can be effectuated in chapter 9, *i.e.*, a confirmable plan, as argued above. It is illogical for the statute to reference negotiations regarding an unconfirmable plan. Were that the case, then the whole point of good-faith negotiations would be meaningless and rendered moot, or simply, be deemed bad faith. As one recent court has explained in the chapter 9 context:

The structure of the sentence [*i.e.* section 109(c)(5)(B)] strongly implies that in the negotiations, municipalities are seeking the creditors’ agreement *to a bankruptcy plan*. **What other agreements can they be seeking?**

In re Mendocino Coast Recreation and Park District, No. 12-cv-02591-JST, 2013 U.S. Dist. LEXIS 139697, at *19 (N.D. Cal. Sept. 27, 2013) (*emphasis* in original; **emphasis** added).

200. The City attempts to rebut AFSCME’s reliance on *Sullivan County* and *Cottonwood*, *supra*, with respect to the meaning of a plan in section 109(c)(5)(B) of the Bankruptcy Code. Debtor’s Reply, at p. 58 n.50. Although *Sullivan* does acknowledge that a *formal* plan is not required, that court states that, to be in good faith, negotiations must “revolve around the negotiating of the terms of a plan that could be effectuated if resort is required to chapter 9 of the Bankruptcy Code.” *Sullivan*, at 78. For a plan to be effectuated under chapter 9, it clearly must satisfy the parameters of and be confirmable under section 943(b) of the Bankruptcy Code and be in the best interests of creditors. The *Sullivan* court’s statement

that the plan need not be a “formal plan”, *id.*, at 78, is underscored by the language that follows (and conveniently omitted by the City):

While the statutory requirement does not require a formal plan as such, some sort of comprehensive plan is required as one of the ‘screening factors’ to avoid a too early and rapid resort to the bankruptcy courts by municipalities.

Sullivan, 165 B.R. at 78 (emphasis added). This language is telling and clearly negates the City’s position with respect to the nature of the “plan.” Both the *Sullivan, supra*, and *Cottonwood, supra*, courts concluded that, even where the parties engaged in good-faith pre-petition negotiations, the municipality failed to satisfy section 109(c)(5)(B) because the negotiations did not include the terms of a plan under chapter 9 of the Bankruptcy Code. The City would further have this Court ignore the finding in *Ellicott*, adopting the well-reasoned analysis of *Cottonwood*, that a municipality must establish that “‘it engaged in good faith negotiations with creditors concerning the possible terms of a plan to be effected under section 941 of the Bankruptcy Code.’” *Ellicott*, 150 B.R.at 266 (citing *Cottonwood*, 138 B.R. at 138) (emphasis added). The City failed to negotiate in good faith as any purported negotiations were not related to a plan that could be effectuated under section 941 and 943(b) of the Bankruptcy Code. The City, therefore, does not satisfy section 109(c)(5)(B) of the Bankruptcy Code.

(iii) Negotiations With Certain Categories Of Creditors Such As AFSCME Were Not Impracticable

201. The City alleges that it alternatively qualifies for eligibility under section 109(c)(5)(C) of the Bankruptcy Code because negotiations were impracticable.

202. As with the other eligibility requirements, the burden of proving impracticability rests with the City. *See In re Pierce County Housing Authority*, 414 B.R. 702, 713 (Bankr. W.D. Wash. 2009); *Vallejo*, 408 B.R. at 289 (citing *Valley Health*, 383 B.R. at 161). Courts

considering section 109(c)(5)(C) define the ordinary meaning of “impracticable” as “not practicable; incapable of being performed or accomplished by the means employed or at command; infeasible.” See, e.g., *Vallejo*, 408 B.R. at 298 (citing *Valley Health*, 383 B.R. at 163). Whether negotiations were impracticable is fact specific and depends upon the circumstances of the case. See *Vallejo*, 408 B.R. at 298.

203. The City alleges that negotiations were impracticable because, in part, the City had (i) numerous series of bonds and indebtedness held by multiple holders and (ii) approximately 20,000 retirees not represented by any formal agent or committee and other potential involuntary creditors. Furthermore, the City claims that the refusal of certain creditor constituencies to engage in good faith negotiations rendered negotiations impracticable.

204. In fact, AFSCME believes that the exact opposite is true here. The City predetermined that its pre-bankruptcy negotiations (which, as discussed above, were not negotiations) would fail. As discussed extensively above, the Governor and his staff orchestrated for several months prior to the hiring of Orr as EM to bring in Orr, as an experienced bankruptcy attorney, to lead the City on a clear path towards a chapter 9 filing, and any negotiations were a façade – the City went through the motions of pre-petition meetings but, as is evident from its pre-petition conduct *vis a vis* AFSCME, never had any intention of negotiating outside of bankruptcy.

205. While the City alleges that it has over 100,000 creditors, it is clear that the main creditors the City had to negotiate with were the unions, its retirees, and the bond trustees.

206. Moreover, as discussed extensively *supra* (¶¶ 50-51), The City itself has in the past negotiated with its unions with respect to concessionary agreements which changes impacted retiree benefits outside of a chapter 9 proceeding (even where such unions were not

explicitly representing their retirees). Thus, it is a red herring to say that negotiating medical benefits or pensions is impractical *per se*.

207. While courts have made clear that impracticability can be demonstrated by the volume of creditors to negotiate with, in no case AFSCME is aware of did a court find that negotiations were impracticable where the Debtor did not even attempt to negotiate pre-petition with its largest creditors such as AFSCME (and after repeated requests to do so). In *Ellicott School*, the court determined that the debtor holding “public meetings to which all bondholders were invited” showed that negotiations were practicable.

208. AFSCME is not suggesting that pre-petition negotiations could have bound everyone or must have involved all of the City’s thousands of creditors. Rather, some level of negotiation with principal creditors could have led the City to a non-bankruptcy solution. By way of analogy, section 109(c)(5)(B) of the Bankruptcy Code contemplates pre-bankruptcy negotiations with creditors that municipality intends to impair, not all creditors.¹³

209. Given the City’s lack of negotiations with creditors such as AFSCME and similar union representatives that could have negotiated regarding the largest portion of the City’s unsecured debt, the City’s arguments that negotiations were impracticable should be rejected.

210. In the City’s reply brief, the City cites only one case (and no cases to support its rejection of AFSCME’s arguments *supra*) to support its position that negotiations were impracticable, and mainly relies on, in part, various facts, including (i) the large number of unrepresented entities holding substantial amounts of bond debt which required unanimous

¹³ Importantly, the City describes in the Orr Declaration that of the City has nearly \$12 billion in unsecured debt, but 75% of that (approximately \$9.2 billion) relates to accounting liabilities for post-employment benefit or underfunded pension liabilities.

consent to restructure; and (ii) the apparent refusal of certain parties, including AFSCME, to negotiate on behalf of retirees. *See* Debtor’s Reply, at pp. 45-46; 50-52.

211. However, the City ignores that serious bargaining and negotiations with bond trustees (even where bondholders could not have been bound 100%) and the City’s unions could have yielded the major deals necessary to prevent the crash landing in chapter 9 that occurred. Additionally, while local unions may have refused to represent the interests of retirees, AFSCME never refused to bargain or negotiate in connection with the City’s Restructuring Plan;¹⁴ to the extent that the City had other organizations actively representing retirees, the City could have negotiated in good faith with such parties. In reality, the City was not truly interested in negotiating in good faith (whether or not such negotiations were impractical) because the City strongly desired a swift landing in chapter 9.

C. The City’s Petition Should Be Dismissed Under Section 921(c) As Filed In Bad Faith

212. The City’s bankruptcy petition is subject to dismissal pursuant to section 921(c) of the Bankruptcy Code because the filing was in bad faith. Section 921(c) of the Bankruptcy Code provides that “[a]fter any objection to the petition, the court, after notice and a hearing, may dismiss the petition if the debtor did not file the petition in good faith or if the petition does not meet the requirements of this title.”

¹⁴ The City (Debtor’s Reply, at p. 50 n.43) cites a May 24, 2013 letter sent by Ed McNeil on AFSCME Council 25’s behalf **several weeks** prior to any good faith negotiations of the actual Restructuring Plan began as evidence of AFSCME’s refusal to negotiate. Mr. McNeil indicated that at that time, AFSCME had “no authority in which to renegotiate the Pension or Medical Benefits that members” of AFSCME currently receive, but would be willing to meet with the City anyway. The letter then went on to indicate that “we stand ready to meet and negotiate in an effort to save the City.” Furthermore, the fact that AFSCME as of early July 2013 was not formally representing retirees did not mean that AFSCME could not negotiate an agreement on behalf of actives or retirees. Other parties were explicitly representing retirees, and AFSCME had previously (in 2012 via the Tentative Agreement and in earlier agreements) negotiated agreements which effectuated changes that affected both active and retired employees. Subsequently, AFSCME attended all of the public meetings offered it by the City and attempted to engage the City. Thus, the City clearly had parties to negotiate with if it truly desired to reach a negotiated non-bankruptcy solution.

213. “Good faith is not defined in the Bankruptcy Code.” *In re McCurtain Mun. Auth.*, No. 07-80363, 2007 WL 4287604, at *4 (Bankr. E.D. Okla. Dec. 4, 2007). Courts have determined, however, that the primary function of the good faith requirement in chapter 9 is to “ensure the integrity of the reorganization process by limiting access to its protection to those situations for which it was intended.” *Sullivan County*, 165 B.R. at 80 (citation omitted); *see also In re City of Stockton, California*, 493 B.R. 772, 794 (Bankr. E.D. Cal. 2013) (“Section 921(c) “good faith” serves a policy objective of assuring that the chapter 9 process is being used in a manner consistent with the reorganization purposes of the Bankruptcy Code”); *Villages at Castle Rock*, 145 B.R. at 81 (describing good faith as requirement that “prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefiting them in any way or to achieve reprehensible purposes”) (internal quotation marks and citation omitted).

214. While good faith in the chapter 9 context is not defined in the Bankruptcy Code, courts have looked to discussions of good faith in the chapter 11 context to determine whether a chapter 9 petition has been filed in good faith. *McCurtain Mun. Auth.*, 2007 WL 4287604, at *4 (referencing chapter 11 good faith standards to determine whether chapter 9 petition was filed in good faith) (quoting *Villages at Castle Rock*, 145 B.R. at 81); *County of Orange*, 183 B.R. at 608 (observing that “courts have ... applied to chapter 9 cases the judicial reasoning that developed in chapter 11 cases” regarding good faith); *Sullivan County*, 165 B.R. at 82 (examining and applying chapter 11 good faith requirements to chapter 9 petition)).

215. In the chapter 11 context, courts explain that the requirement of good faith

prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefitting them in any way or to achieve reprehensible purposes. Moreover, a good faith standard protects the jurisdictional integrity of the bankruptcy

courts by rendering their powerful equitable weapons . . . available only to those debtors and creditors with ‘clean hands.’

In re Little Creek Dev. Co., 779 F.2d 1068 (5th Cir. 1986).

216. Relevant considerations regarding good faith under chapter 9 include “whether the City’s financial problems are of a nature contemplated by chapter 9, whether the reasons for filing are consistent with chapter 9, the extent of the City’s pre-petition efforts to address the issues, the extent that alternatives to chapter 9 were considered, and whether the City’s residents would be prejudiced by denying chapter 9 relief.” *Stockton*, 493 B.R. at 794.

217. Here, a review of the various relevant factors considered by courts when analyzing good faith under section 921(c) lead to the inescapable conclusion that the City’s chapter 9 case was filed in bad faith and with unclean hands.

218. First, the City’s filing came several minutes prior to a Michigan State Court issuing a TRO enjoining the Governor from authorizing the filing. The State lawyers at the hearing on the TRO asked for a short delay when they realized that an adverse ruling was forthcoming with respect to the City’s ability to authorize any chapter 9 authorization which did not proscribe the reduction of pension benefits violated the Michigan constitution. During that recess, the City filed for chapter 9 protection. Thus, the City commenced this proceeding “in the dark of night” to avoid a ruling it viewed as not in its favor. Such a filing is the antithesis of the careful, deliberative decision to file required under chapter 9, as “[t]he legislative history indicates that the strict hurdles to filing Chapter 9 were implemented to ensure that it was considered by a municipality only as a last resort.” *Pierce County*, 414 B.R. at 714 (citation omitted) (noting debtor decided to file a chapter 9 petition only after several years of failed negotiations and attempts at mediation); *cf. Valleo*, 408 B.R. at 295 (“The evidence needs to show that the ‘purpose of the filing of the chapter 9 petition not simply be to

buy time or evade creditors.’’). The City filed chapter 9 to evade what it viewed as an imminent negative state court ruling – enjoining this very filing.

219. Moreover, as discussed above, while the City was purporting to negotiate with its creditors in good faith by holding several meetings, such meetings were employed as a mere strategy to bolster the record and never truly given the chance to succeed. The City simply does not have “clean hands”.

220. Additionally, as discussed extensively above, the City did not reasonably consider any alternatives to chapter 9, did not give negotiations any real chance to succeed, and was preparing for a chapter 9 filing months before any creditor meetings to discuss restructuring options even started (and indeed had finalized a decision to file as of early July 2013 well before significant creditor meetings were scheduled to take place), and refused to negotiate with major creditors such as AFSCME as required. Simply put, the predetermined filing was done in bad faith and should be dismissed.

221. The City argues in its reply brief that the reason for filing the chapter 9 petition was not the imminent entry of the State Court TRO, but rather “to adjust its debts and resolve its liquidity crises [consistent] with the rehabilitative purposes of Chapter 9.” Debtor’s Reply, at p. 65. The City states further that it was no secret that Chapter 9 was an option if negotiations with creditors proved impracticable (which, of course, AFSCME disputes as set forth *supra*). *Id.* at 65-66. However, the City has not and cannot establish that negotiations with its creditors were impracticable under Section 109(c)(5)(C). Thus, any reliance by the City on the impracticability of negotiations with creditors to establish good faith is misplaced.

222. Moreover, the City’s attempts to lay blame on the movants in the state court TRO proceeding by suggesting that it was the City’s preparation for bankruptcy that prompted

the request for the TRO (*see* City Reply, at 66, n. 56), rather than the opposite (*i.e.* that the imminent entry of the TRO prompted the chapter 9 filing) is incorrect. Indeed, as discussed above, Orr admitted that the filing was being driven by the state court litigations and that he was being “irresponsible” by not authorizing the filings when he did.

223. The City relies on the *McCurtain Municipal Authority*, decision to support its position regarding the timing of its filing and the state court TRO hearing. In *McMurtain*, a creditor filed an application for the appointment of a receiver the day before the trustees of the municipal authority met to discuss a chapter 9 filing. Notice of the trustees’ meeting was provided before the filing of the application for the receiver. The municipal authority argued that the potential appointment of a receiver may have been a concern, but it was not the only reason for the authority to ultimately file its petition. *McCurtain* at *5 (identifying other concerns considered by the authority trustees that precipitated the chapter 9 filing).

224. Here, in contrast, the evidence show that the City very much sought to avoid the effects of the State Court litigation and a ruling that the Governor could not authorize a filing that did not place contingencies on the EM from changing pension benefits in a chapter 9. The City likely would have considered giving creditors more time to negotiate (as was required for any significant bargaining to take place), and there was no cash crisis and the City had actually as of July 17, 2013 inked a deal with its swap counterparties which helped the City’s anticipated liquidity. The City has simply not proceeded in good faith.

D. The City Has Failed To Meet Its Burden Of Proving Its Insolvency, And Only Does So Based On Assumptions Used By The City To Show Its Insolvency

225. The Bankruptcy Code does not offer relief to a city simply because it is suffering economic difficulties. *See, e.g., In re City of Bridgeport*, 129 B.R. 332, 339 (Bankr. D. Conn. 1991) (although City projected \$16 million budget deficit, it was not insolvent, and

“financial difficulties short of insolvency are not a basis for chapter 9 relief”); *In re Hamilton Creek Metro. Dist.*, 143 F.3d 1381, 1386 (10th Cir. 1998) (debtor not eligible for relief simply because it was severely economically distressed).

226. In order to carry its burden on insolvency, the City must prove either that it is “(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or (ii) unable to pay its debts as they become due.” 11 U.S.C. § 101(32)(C). The test under the first prong requires current non-payment of obligations, but the test under the second prong is prospective, looking to the debtor’s future inability to pay. *Bridgeport*, 129 B.R. at 336-37. Solvency is measured as of the petition date. *See, e.g., In re Town of Westlake, Texas*, 211 B.R. 860, 866 (Bankr. N.D. Tex. 1997) (citing cases).

227. The purposeful refusal to make a few payments comprising a relatively small part of the City’s budget does not satisfy the definition of “insolvent” under 11 U.S.C. § 101(32)(C)(i). *See, e.g., Uecker & Assocs. v. Tenet Healthsystem Hosps., Inc. (In re West Contra Costa Healthcare Dist.)*, No. 06-41774 T, 2010 Bankr. LEXIS 994, at *8 (Bankr. N.D. Cal. Mar. 26, 2010) (failure to pay \$1.3 million out of \$10-\$11 million total operating expenses did not mean the debtor was “generally not paying its debts”)

228. First, the City “deliberately budget[ed and] spen[t] itself into insolvency (so as to qualify under § 101(32)(C)(ii)), when other realistic avenues and scenarios [were] possible.” *Town of Westlake*, 211 B.R. at 867. Second, “[t]he mere fact that a municipality has adopted a budget that reflects a cash flow shortfall is not independently sufficient to meet the requirement of the ‘unable to pay’ test.” COLLIER ON BANKRUPTCY ¶ 900.02[2][c][i] (16th ed. 2011). A municipal budget “must be evaluated in light of past and current practices, the practices of similar municipalities, and the extant facts and circumstances.” *Id.*

229. The City puts forward three declarations from Orr, Malhotra and Moore which appear to provide a voluminous amount of data to “establish” the City’s insolvency, including on the basis of budget and service delivery insolvency, negative cash flows and inability to increase revenues or reduce expenses.

230. However, as discussed above, when one digs into all of the “facts” cited by these three declarants, it becomes apparent that the City failed to provide this Court or the citizens of Detroit evidence to establish insolvency.

231. It is telling (and should be shocking to all citizens of Detroit and Michigan) that despite spending millions of dollars of taxpayer funds on the City’s chapter 9 cases to hire a multitude of bankruptcy and restructuring professionals, the City fails to offer even one person to stand up as an *expert* and testify to the City’s insolvency. Courts in the non-chapter 9 context note that “[i]t is generally accepted that whenever possible, a determination of insolvency should be based on . . . expert testimony . . .” *Brandt v. Samuel, Son & Co., Ltd. (In re Longview Aluminum, L.L.C.)*, Case No. 03B12184, 2005 Bankr. LEXIS 1312, at *18-*19 (Bankr. N.D. Ill. July 14, 2005); *see also Lawson v. Ford Motor Co. (In re Roblin Indus.)*, 78 F.3d 30, 38 (2d Cir. 1996); *Klein v. Tabatchnick*, 610 F.2d 1043, 1048 (2d Cir. 1979) (stating that “a finding on the issue of insolvency often depends upon the factual inferences and conclusions of expert witnesses”).

232. Here, the insolvency “evidence” offered by the City focuses on the non-expert testimony of Orr, Malhotra, and Moore. This testimony relies on unaudited and unfounded assumptions, unsupported statements and a complete lack of expert opinion. For example, as purported evidence for the City’s insolvency, Orr (*see* Orr Declaration, ¶¶ 52-57) cites to the June 14 Restructuring Plan prepared by the City and to conclusory statements by Malhotra, one

of the City’s restructuring advisors (who of course all had one goal in mind: demonstrating insolvency).

233. While the City alleges that it was forced to suspend certain payments to “conserve its dwindling cash”, the main portion of the payments not made revolve around the City’s pension obligations, and those obligations are subject to dispute as to the ultimate amount required to be paid, and indeed evidence (discussed *supra*, ¶ 53-59) shows that (i) the City may have funds (or be able to raise funds from other sources such as revenues generated from the water and sewer fund) not calculated as part of its financial projections to cover such shortfalls and (ii) the City apparently chose to not actually calculate through an expert report the correct underfunding liability with respect to the pension obligations (despite presenting “definitive” numbers of such underfunding in the Restructuring Plan and other documents produced by the EM and his staff). Thus, the City “deliberately budget[ed and] spen[t] itself into insolvency (so as to qualify under § 101(32)(C)(ii)), when other realistic avenues and scenarios [were] possible.” *Town of Westlake*, 211 B.R. at 867.

234. Second, “[t]he mere fact that a municipality [adopts] a budget that reflects a cash flow shortfall is not independently sufficient to meet the requirement of the ‘unable to pay’ test.” COLLIER ON BANKRUPTCY ¶ 900.02[2][c][i] (16th ed. 2011). The City’s budget “must be evaluated in light of past and current practices, the practices of similar municipalities, and the extant facts and circumstances.” *Id.*

235. Here, the City’s past and current practices, as well as current facts and circumstances, not only show that the City has many available (but unexplored) options to enable it to pay its debts as they become due, but also that the City chose to deliberately not monetize certain assets (or explore the value of such assets) prior to the filing to limit the

appearance of cash or revenue on its books. It is telling that the City's prized artwork collection and potential deal to lease Bell Isle are only now on the table – if these assets and other possible increased tax revenue collection could have collectively solved all of the City's short term cash issues. But, as indicated above, the City did not want such assets monetized because the City's goal and clear path was to end up in chapter 9, which the City believed provided the only means to attack its vested pension obligations.

236. Thus, in light of all of the above, the information provided in the City's current budget provides at most only "insufficient credible proof" of insolvency. *Town of Westlake*, 211 B.R. at 867; *see also Bridgeport*, 129 B.R. at 338 (requiring concrete proof "that [the city] will be unable to pay its debts as they become due in its current fiscal year or, based on an adopted budget, in its next fiscal year" and noting that "[o]bviously, it is necessary for cities to make informed financial projections").

237. The City's current financial difficulties currently are actually less severe than in some prior years, the City entered into a deal prior to the chapter 9 filing with its swap counterparties which potentially freed up significant cash and did not make the filing imminent, and AFSCME believes (and as will be further demonstrated at trial) that there are numerous means already show to be available to solve the City's current financial difficulties and generate sufficient funds to pay its debts coming due in the coming fiscal year. AFSCME recognizes that all parties (including current and former employees) will be required to sacrifice, but reasonable concessions outside of bankruptcy – which is not necessary and which the City does not and cannot qualify for based on all the reasons discussed above – from all significant creditors would easily bring the City back to financial stability.

CONCLUSION

For the reasons set forth herein, AFSCME respectfully requests that this Court issue an order dismissing the City's chapter 9 petition and granting such other and further relief as is just and proper under the circumstances.

Dated: October 11, 2013

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-111-

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

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

CERTIFICATE OF SERVICE

The undersigned certifies that on October 11, 2013, *The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees' Amended Objection to the City of Detroit's Eligibility to Obtain Relief Under Chapter 9 of the Bankruptcy Code* was filed with the Clerk of the Court using the CM/ECF system, which provides electronic notification of such filing to all counsel of record.

Dated: October 11, 2013

/s/ Lisa M. Bonito
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
10.	1159	10/11/2013	Declaration of Michael Artz filed by creditor Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees

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

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

DECLARATION OF MICHAEL ARTZ

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

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

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

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



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

Executed on this 11th day of October, 2013

/s/ Michael Artz
 Michael Artz, Esq.

EXHIBIT A

In Re: City of Detroit, Debtor

*Governor Richard D. Snyder
October 9, 2013*

*Moretti Group
471 W. South Street
Suite 41B
Kalamazoo, MI 49007
800-536-0804*



Original File 100913RS.TXT

Min-U-Script® with Word Index

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1 UNITED STATES BANKRUPTCY COURT
2 FOR THE EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION - DETROIT
4 -----
5 In re: Chapter 9
6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846
7 Debtor, Hon. Steven W. Rhodes
8 -----
9 V I D E O T A P E D D E P O S I T I O N O F
10 WITNESS: GOVERNOR RICHARD D. SNYDER
11 LOCATION: The Romney Building
12 111 S. Capitol Avenue
13 Lansing, Michigan
14 DATE: Wednesday, October 9, 2013
15 8:38 a.m.
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Lansing, Michigan
October 9, 2013
8:38 a.m.

- - -

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

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

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

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

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

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

Page 10

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

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

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

Page 13

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

Page 14

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

Page 15

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

Page 16

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

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

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

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

Page 20

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

Page 21

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

Page 22

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

Page 23

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

Page 24

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

Page 25

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

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

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

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

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

Page 30

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

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

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

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1 that year.

2 When it was clear the consent agreement

3 wasn't working, there was a subsequent review

4 started in December of late 2012. The review team

5 came up with a determination that there's a

6 financial emergency without a sufficient plan. I

7 agreed with that conclusion. There was then a

8 hearing and a review process of that. That was

9 appropriately done.

10 I reaffirmed my review after receiving a

11 report that concluded the same measure, that there

12 was a financial emergency without a sufficient plan.

13 And given that circumstance, then we had a need for

14 an emergency manager.

15 Q. Okay. So the last step in that process, was that

16 the point at which you were interviewing candidates

17 that resulted in the selection of Kevyn Orr?

18 A. We started some -- the interview process prior to

19 that to be prepared as a contingency in case that

20 was the outcome of the review and the hearing

21 process.

22 Q. Were you involved personally in that selection

23 process?

24 A. Yes.

25 Q. Who else was involved with you?

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1 A. Rich Baird and several other people from the staff.

2 The Mayor of Detroit was involved in the process.

3 Q. Mayor Bing was involved?

4 A. Yes.

5 Q. Was Mr. Dillon involved?

6 A. Yes.

7 Q. Was your chief of staff involved?

8 A. Yes.

9 Q. Did you rely on any outside consultants, bankruptcy

10 attorneys, financial advisors in making this

11 decision also?

12 A. I didn't personally during that process.

13 Q. Did you establish a list of criteria or

14 qualifications that you were looking for that you'd

15 think favorably upon in making the selection as to

16 who should be the emergency manager for Detroit?

17 A. There was criteria we discussed to go through this

18 process.

19 Q. Did that criteria include familiarity with

20 bankruptcy?

21 A. It wasn't necessarily required. It could be viewed

22 as a positive and not in the context of bankruptcy

23 but bankruptcy and restructuring experience.

24 Q. Did you view as a positive ties to Detroit?

25 A. Yes.

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1 Q. Were you looking at residency?

2 A. Not necessarily residency but familiarity with

3 Detroit.

4 Q. Did you take into account political affiliations?

5 A. No.

6 Q. Race?

7 A. Again, that would be a factor that could be of some

8 consideration.

9 Q. Did you take into account any history of political

10 party ties, political involvement or political

11 appointments?

12 A. What I would say, those would be viewed as

13 negatives.

14 Q. Did you take into account any municipal

15 redevelopment background?

16 A. In terms of restructuring or having municipal

17 experience, that would be a positive.

18 Q. Would that also include municipal budgeting or

19 financial planning?

20 A. It could.

21 Q. Did you take into account any land use or zoning

22 experience?

23 A. We didn't get to that degree of specificity, as I

24 recall.

25 Q. Were there in-person interviews in connection with

Page 36

1 the selection process that resulted in the selection

2 of Kevyn Orr?

3 A. Yes.

4 Q. Who ran that process for you?

5 A. Rich Baird.

6 Q. And were you personally involved in the in-person

7 interviews?

8 A. Some.

9 Q. Did you personally interview Kevyn Orr?

10 A. Yes.

11 Q. Where did that interview take place?

12 A. I met with him more than once. I believe -- I don't

13 recall specifically which location.

14 Q. Was there a list or a slate of candidates that you

15 personally interviewed for the emergency manager

16 position?

17 A. I interviewed more than one candidate in person.

18 Q. How many candidates did you interview in person?

19 A. I recall two for sure.

20 Q. Were there more than two?

21 A. Not that I recall.

22 Q. Was Kevyn Orr a candidate before Jones Day was

23 interviewed as counsel for Detroit?

24 A. I don't believe so.

25 Q. Was he asked to be -- to consider the emergency

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 characterization.

2 Q. Let me rephrase the question then or ask another

3 question.

4 A. Yes.

5 Q. Do you recall any conversations you had with Mr. Orr

6 with or without attorneys present between the time

7 that he became emergency manager and the Chapter 9

8 filing relating to the pension issue that he might

9 have construed in such a way that he would answer

10 affirmatively a question about getting out of the

11 pension obligations that the City owed?

12 MS. NELSON: Objection; form, foundation,

13 calls for speculation. He can't testify about how

14 Mr. Orr might have thought or formed or understood a

15 question.

16 MR. WERTHEIMER: Go ahead, you can answer,

17 Governor.

18 MS. NELSON: Go ahead.

19 THE WITNESS: I just want to make sure I

20 understand it. You're saying whether it was

21 potentially covered by privilege or not.

22 BY MR. WERTHEIMER:

23 Q. Yes, whether it's covered by privilege or not.

24 A. Yes. Was there a discussion on pension liabilities?

25 Q. Well, yes, or any other kind of discussion where

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1 somebody of Mr. Orr's sophistication might have as a

2 result of that conversation answered a question

3 affirmatively about getting out of pension

4 obligations.

5 MS. NELSON: Same objection. Go ahead.

6 THE WITNESS: Yes.

7 BY MR. WERTHEIMER:

8 Q. Okay. And what do you remember you said and what

9 did he say relative to that, as best you remember?

10 MS. NELSON: If you --

11 THE WITNESS: Okay.

12 MS. NELSON: You can answer that.

13 THE WITNESS: I'm just checking. I'm

14 sorry.

15 BY MR. WERTHEIMER:

16 Q. No, no. That's okay.

17 A. You guys have been objecting enough, I'm trying to

18 figure out --

19 Q. For what it's worth, after she makes an objection

20 unless she instructs you not to answer --

21 A. Yeah.

22 Q. -- she's making an objection for the record.

23 A. No, I was just double-checking.

24 Q. I understand, yeah. No, that's fine.

25 A. Could you run it by me one more time then, and I

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1 won't look at her this time.

2 Q. Feel free to look at her.

3 I'd like to know what you can tell me you

4 said and Mr. Orr said in the conversation you did

5 have, the one or more conversations you had, between

6 the time he became emergency manager and the

7 Chapter 9 filing relative to the pension obligations

8 that the City owed?

9 A. Yeah, I would say there would be two or three pieces

10 to that. One is a concern about who is representing

11 the retirees.

12 Q. Who's saying what -- to the extent you can,

13 Governor, and I understand you're not going to

14 remember exact words, but to the extent you can I'd

15 like you to break down what you're saying and what

16 Mr. Orr is saying so that we can identify who is

17 saying what to the extent you remember.

18 A. Okay.

19 Q. Go ahead.

20 A. Sure. Well, let me start at the terms of the

21 discussion. One is there is clearly a concern

22 for the retirees. These are people that worked for

23 the City for many years. And I shared this thought

24 that I am concerned about the retirees.

25 The second piece ties into what was the

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1 situation about representing the retirees. Mr. Orr

2 brought that to my attention because he was having

3 difficulty finding people to represent the retirees.

4 The way it was described to me is there are a number

5 of unions that were not willing to potentially

6 represent the retirees versus their active members;

7 that all the retirees were not going to have

8 representation in some capacity during the

9 negotiation process with creditors. And that was a

10 concern because there are many parties to this.

11 This is very complex. We're talking potentially

12 20,000 retirees.

13 In terms of that, again, I'm kind of --

14 time frame, we had a general discussion about that

15 being a problem. When it ultimately came down to

16 looking at the bankruptcy -- possibility of a

17 bankruptcy filing, one of the things that he brought

18 forward and I really pushed was the issue about

19 asking very quickly that there be representation for

20 the retirees as part of the bankruptcy process

21 because I believe it's important.

22 And I've been public with that in addition

23 to those private discussions that it's very

24 important that they have a seat at the table so

25 their voice can be heard during this process and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 produce a witness -- one or more witnesses on
 2 various issues. And on a couple of them the State
 3 has indicated that they -- without designating you
 4 as a 30(b)(6) witness and requiring you to do the
 5 kind of preparation that would be involved with that
 6 otherwise, that you would be the best person to ask
 7 these questions.

8 A. Okay.

9 Q. So I'd like to ask the question exactly as it's
 10 framed in the deposition notice and have you answer
 11 that question as best you can.

12 A. Okay.

13 Q. Okay? The question is or the matter for examination
 14 is "The reason or reasons the Governor decided not
 15 to place contingencies on this bankruptcy filing, as
 16 expressly permitted by Section 18(1) of 2012 Public
 17 Act 436; particularly why no contingency related to
 18 Article 9 Section 24 of the Michigan Constitution
 19 was placed on the filing.

20 Can you answer that?

21 A. Yes. I had -- I placed no contingencies because I
 22 had a concern that it would add complexity,
 23 confusion or delay to the bankruptcy process given
 24 that this is an emergency situation.

25 It's about taking care of the best

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1 interests of the citizens of Detroit. And the
 2 reason I felt confident and comfortable in doing
 3 that act is why we reviewed -- I reviewed with my
 4 legal counsel and added that statement to say any
 5 plan that has to come out of this process of the
 6 bankruptcy has to be legally executable.

7 Q. That's going to be the next question, but okay.

8 Let me just ask a followup.

9 A. Sorry I was giving you --

10 Q. That's okay. We're on the same wavelength.

11 At the time you authorized the filing, you
 12 knew, did you not, that if you placed the
 13 contingency relating to Article 9 Section 24 on the
 14 filing it would make it more difficult for the
 15 Detroit emergency manager to deal with the pension
 16 issue; did you not?

17 A. I did not know that. That would be a legal
 18 conclusion.

19 Q. But didn't you generally understand that?

20 I understand it technically may be a legal
 21 conclusion, but didn't you understand that if you
 22 had done a contingency that said as to this 3.5
 23 billion in unfunded liabilities, the Michigan
 24 Constitution says you're going to have to -- you're
 25 not going to be able to get any relief from that?

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1 A. No, I didn't believe that. Again, you asked my
 2 question. I answered it.

3 Q. I'm just not sure I got an answer to that. Could
 4 you -- and I apologize if I'm asking the same
 5 question, but --

6 A. No, I didn't believe -- again, I believed -- I
 7 didn't -- state your question again so we can make
 8 sure we get this.

9 Q. Didn't you understand at the time you authorized the
 10 filing that if you had placed a contingency on the
 11 filing telling the Detroit emergency manager that in
 12 bankruptcy, for example, consistent with Schuette's
 13 opinion, that any plan he proposed would have to
 14 recognize the applicability of Article 9 Section 24?

15 Didn't you understand that if you did
 16 something like that it would make Emergency Manager
 17 Orr's job more difficult?

18 A. I did not consider that.

19 Q. Okay. What did you consider relative to not
 20 including Article 9 Section 24 as a contingency?

21 A. I viewed it as is that's something that the legal
 22 questions were being appropriately framed by
 23 lawsuits, by parties, by various people being
 24 represented in this process, and that as Governor of
 25 the State of Michigan I take my responsibility

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1 seriously. It's to execute the laws of the State of
 2 Michigan.

3 That these were multiple legal questions
 4 that were being framed through multiple lawsuits
 5 that were going to continue in the bankruptcy
 6 process, and I thought the best answer is the
 7 judicial branch should be resolving these questions
 8 to give me clarity as to best how to follow through
 9 in implementing what comes out of this process.

10 Q. You did not check with Attorney General Schuette at
 11 the time you filed to determine what his view was as
 12 to whether any contingency related to Article 9
 13 Section 24 should put -- should be put on your
 14 authorization, did you?

15 A. I did not.

16 Q. The -- back to the 30(b)(6) Notice.

17 A. Uh-huh.

18 Q. And you partially answered this, but again, I think
 19 it would be helpful if I just read the question and
 20 you answer it in full. And don't assume that you've
 21 already answered part of it even though you have.

22 A. Okay.

23 Q. The reason or reasons the Governor included the
 24 following statement in his 18 July 2013
 25 authorization to commence Chapter 9 bankruptcy

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

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

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

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

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

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

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

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

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1 the camera.

2 MR. WERTHEIMER: It would be helpful if you

3 could identify it for us. Right now all we have on

4 the record is 7:47 p.m.

5 MS. GREEN: I will say on the record that

6 that email was given to me by Jones Day in response

7 to the request made by Retirement Systems that the

8 City produce the email that transmitted the

9 authorization letter to Kevyn Orr.

10 That was the only email that was

11 specifically produced.

12 MS. NELSON: Well, it might not have been

13 an email. It could have been a fax earlier in the

14 afternoon. So I guess we'll produce the document

15 that we have but obviously it was transmitted before

16 the filing and the filing was at 4:06 p.m.

17 So we'll find it. If you want us to search

18 for it, we will look amongst and get it to you.

19 MR. WERTHEIMER: Why?

20 MS. NELSON: Well, it could have been by

21 other than an email.

22 MR. WERTHEIMER: Margaret, no offense.

23 MS. NELSON: No, I'm saying --

24 MR. WERTHEIMER: We want you to look for

25 it. We now have on the record that the Governor

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1 said it was in an email and we have the email being

2 7:47 so I would suggest --

3 MS. NELSON: He just corrected that. He

4 indicated it could have been by some other means and

5 that it was earlier than this time frame, so we'll

6 get it to you.

7 MS. LEVINE: Let's talk for a second. We

8 have a lot of attorneys testifying. I think they

9 should stop it.

10 MS. NELSON: Correct.

11 MS. LEVINE: To the extent that there's a

12 transmittal other than this one that exists, we'll

13 ask the State to produce it to us. In response to

14 the direct request, we've got the production from

15 Jones Day with regard to the transmittal.

16 MR. GADOLA: I'm confident we can do that.

17 MR. SCHNEIDER: That's fine.

18 MR. WERTHEIMER: Thank you.

19 MS. NELSON: Absolutely.

20 MR. WERTHEIMER: Thank you, Governor.

21 THE WITNESS: All done?

22 MR. WERTHEIMER: All done.

23 THE WITNESS: Okay. Thank you.

24 VIDEO TECHNICIAN: Deposition's concluded

25 at 12:04 p.m.

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1 MS. GREEN: The Retirement Systems join the

2 prior objection and reservation of rights placed on

3 the record earlier. We also received documents late

4 last night from the City, and those documents relate

5 to both City and State officials.

6 To the extent our rights have been

7 prejudiced and those documents reveal a need for

8 further deposition testimony, we hereby join the

9 prior objection placed on the record by counsel.

10 (Deposition concluded at 12:05 p.m.)

11 - - -

12

13 (Deposition Exhibit 11 was marked post deposition)

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1 CERTIFICATE

2 STATE OF MICHIGAN)

3 COUNTY OF OAKLAND) SS:

4

5 I, LAUREL A. JACOBY, Certified Shorthand

6 reporter, a Notary Public, hereby certify that I recorded

7 in shorthand the examination of GOVERNOR RICHARD D.

8 SNYDER, the deponent in the foregoing deposition; and that

9 prior to the taking of said deposition the deponent was

10 first duly sworn, and that the foregoing is a true,

11 correct and complete transcript of the testimony of said

12 deponent.

13 I further certify that no request was made for

14 submission of the transcript to the deponent for reading

15 and signature and that no such submission was made.

16 I also certify that I am not a relative or

17 employee of a party or an attorney for a party; or

18 financially interested in the action.

19

20

21 LAUREL A. JACOBY, CSR-5059, RPR

22

23 Notary Public, Oakland County, Michigan

24 My commission expires: 9/1/18

25 Dated: This 11th day of October, 2013.

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EXHIBIT B

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<p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 EASTERN DISTRICT OF MICHIGAN 3 SOUTHERN DIVISION 4 5 In re Chapter 9 6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846 7 Debtor. Hon. Steven W. Rhodes 8 _____/ 9 VIDEOTAPED DEPOSITION 10 11 DEPONENT: KEVYN ORR 12 DATE: Monday, September 16, 2013 13 TIME: 10:08 a.m. 14 LOCATION: MILLER CANFIELD PADDOCK & STONE PLC 15 150 West Jefferson, Suite 2500 16 Detroit, Michigan 17 REPORTER: Jeanette M. Fallon, CRR/RMR/CSR-3267 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES (continued): 2 3 LOWENSTEIN SANDLER LLP 4 By: Sharon L. Levine 5 65 Livingston Avenue 6 Roseland, NJ 07068 7 973.597.2374 8 -and- 9 AFSCME 10 By: Michael L. Artz 11 Tiffany Ricci 12 1101 17th Street, NW 13 Suite 900 14 Washington, D.C. 20036 15 202.775.5900 16 Appearing on behalf of AFSCME 17 18 CLARK HILL PLC 19 By: Jennifer K. Green 20 500 Woodward Avenue, Suite 3500 21 Detroit, MI 48226 22 313.965.8274 23 Appearing on behalf of Retirement Systems 24 25</p>
Page 2	Page 4
<p>1 APPEARANCES: 2 3 JONES DAY 4 By: Gregory M. Shumaker 5 Dan T. Moss 6 51 Louisiana Avenue, NW 7 Washington, D.C. 20001.2113 8 202.879.3939 9 Appearing on behalf of the Debtor 10 11 DENTONS 12 By: Anthony B. Ullman 13 620 Fifth Avenue 14 New York, NY 10020.2457 15 212.632.8342 16 Appearing on behalf of Retirees Committee 17 18 COHEN WEISS AND SIMON LLP 19 By: Peter D. DeChiara 20 330 West 42nd Street 21 New York, NY 10036.6979 22 212.356.0216 23 Appearing on behalf of UAW 24 25</p>	<p>1 APPEARANCES (continued): 2 3 WILLIAMS WILLIAMS RATTNER & PLUNKETT PC 4 By: Ernest J. Essad, Jr. 5 380 N Old Woodward Ave Ste 300 6 Birmingham, MI 48009 7 248.642.0333 8 Appearing on behalf of FGIC 9 10 SIDLEY AUSTIN LLP 11 By: Guy S. Neal (appearing via LiveNote Streaming) 12 1501 K St., NW 13 Washington, D.C. 14 202.736.8000 15 Appearing on behalf of National Public Finance 16 Guarantee Corp. 17 18 WINSTON & STRAWN LLP 19 By: Bianca M. Forde (appearing via LiveNote Streaming) 20 200 Park Avenue 21 New York, NY 10166.4193 22 212.294.4733 23 Appearing on behalf of Assured Guaranty Municipal 24 Corp. 25 ALSO PRESENT: Mark Meyers, videographer</p>



<p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 KEVYN ORR</p> <p>5 Examination by Mr. Ullman 7</p> <p>6 Examination by Ms. Levine 192</p> <p>7 Examination by Mr. DeChiara 237</p> <p>8 Reexamination by Mr. Ullman 277</p> <p>9 Examination by Ms. Green 279</p> <p>10</p> <p>11 E X H I B I T S</p> <p>12 NUMBER IDENTIFICATION PAGE</p> <p>13 Exhibit 1 JD-RD-0000113 24</p> <p>14 Exhibit 2 JD-RD-0000303 26</p> <p>15 Exhibit 3 JD-RD-0000300 through 302 32</p> <p>16 Exhibit 4 JD-RD-0000295 through 296 43</p> <p>17 Exhibit 5 Text from Article 9, Section 24 52</p> <p>18 Exhibit 6 JD-RD-0000216 through 218 57</p> <p>19 Exhibit 7 JD-RD-0000459-464 64</p> <p>20 Exhibit 8 Financial and Operating Plan May 12, 2013 94</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 Detroit, Michigan</p> <p>2 Monday, September 16, 2013</p> <p>3 * * *</p> <p>4 THE VIDEOGRAPHER: This is tape number one</p> <p>5 to the videotaped depositions of Kevyn Orr being heard</p> <p>6 before the U.S. Bankruptcy Court, Eastern District of</p> <p>7 Michigan, Case Number 0227543.0001. This deposition</p> <p>8 is being held at 150 West Jefferson, Detroit, Michigan</p> <p>9 on September 16, 2013 at 10:08 a.m.</p> <p>10 My name is Mark Meyers, I am the</p> <p>11 videographer, the court reporter is Jeanette Fallon.</p> <p>12 And will the court reporter please swear in the</p> <p>13 witness.</p> <p>14 KEVYN ORR</p> <p>15 was thereupon called as a witness herein, and after having</p> <p>16 first been duly sworn to tell the truth, the whole truth,</p> <p>17 and nothing but the truth, was examined and testified as</p> <p>18 follows:</p> <p>19 EXAMINATION</p> <p>20 BY MR. ULLMAN:</p> <p>21 Q. Good morning, Mr. Orr.</p> <p>22 A. Good morning.</p> <p>23 Q. My name is Anthony Ullman, I represent the Retirees</p> <p>24 Committee. I'm going to be asking you some questions</p> <p>25 this morning, as will some others.</p>
<p style="text-align: right;">Page 6</p> <p>1 E X H I B I T S</p> <p>2 NUMBER IDENTIFICATION PAGE</p> <p>3 Exhibit 9 Proposal For Creditors</p> <p>4 June 14, 2013 102</p> <p>5 Exhibit 10 July 16, 2013 Letter from Orr</p> <p>6 to Snyder and Dillon 115</p> <p>7 Exhibit 11 July 18, 2013 Letter from Snyder</p> <p>8 to Orr and Dillon 115</p> <p>9 Exhibit 12 July 12, 2013 Letter from DFFA 134</p> <p>10 Exhibit 13 July 17, 2013 Letter from Jones Day 138</p> <p>11 Exhibit 14 Retiree Legacy Cost Restructuring</p> <p>12 September 11, 2013 153</p> <p>13 Exhibit 15 Declaration of Mr. Orr 157</p> <p>14 Exhibit 16 Detroit News Article, 7/16/2013 200</p> <p>15 Exhibit 17 City of Detroit, Michigan's Objections and</p> <p>16 Responses to Detroit Retirement Systems'</p> <p>17 First Requests for Admission Directed to</p> <p>18 the City of Detroit, Michigan 251</p> <p>19 Exhibit 18 June 27, 2013 Letter from Jones Day 266</p> <p>20 Exhibit 19 City of Detroit, Michigan's Objections and</p> <p>21 Responses to Detroit Retirement Systems'</p> <p>22 First Set of Interrogatories Directed to</p> <p>23 the City of Detroit, Michigan 300</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 7</p> <p>1 A. Okay.</p> <p>2 MR. ULLMAN: Before we begin I would just</p> <p>3 like to note for the record that we received the</p> <p>4 document production that the City made on Friday and</p> <p>5 it was in image file, essentially TIF images, over a</p> <p>6 hundred thousand pages which were essentially, as the</p> <p>7 City knows, very difficult to work with. We obviously</p> <p>8 have not been able to get through them all in time for</p> <p>9 this morning's deposition. We're going to continue to</p> <p>10 review the documents and we're reserving our rights to</p> <p>11 recall Mr. Orr for further deposition if after review</p> <p>12 of the documents we feel it's appropriate to do so.</p> <p>13 MR. SHUMAKER: We'd just note for the</p> <p>14 record that we're abiding by the schedule set by the</p> <p>15 Court and that the documents that were produced were</p> <p>16 responsive to the more than hundred document requests</p> <p>17 that the City received in connection with this motion</p> <p>18 and so we reserve all rights and I'm sure we'll oppose</p> <p>19 any effort to continue the deposition.</p> <p>20 MR. ULLMAN: Duly noted.</p> <p>21 Q. Mr. Orr?</p> <p>22 A. Yes.</p> <p>23 Q. You've been deposed before; correct?</p> <p>24 A. Yes.</p> <p>25 Q. So you know I will ask questions and I would</p>
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1 appreciate if you wait until I finish before you
2 answer; and likewise, I'll wait until you finish
3 answering before starting the next question.
4 A. Yes.
5 Q. And if there's any question of mine you don't
6 understand, please let me know and I'll rephrase it.
7 A. Okay.
8 Q. You were appointed Emergency Manager on March 14th,
9 2013; is that right?
10 A. No.
11 Q. Okay, technically you were appointed Emergency
12 Financial Manager on March 14th; is that right?
13 A. No.
14 Q. Okay. When were you appointed the Emergency Financial
15 Manager?
16 A. I think the final papers were signed on March 25th or
17 the 26th. The announcement or rollout was on the 13th
18 and 14th.
19 Q. Okay. So it was announced on the 13th or 14th that
20 you were going to be the Emergency Manager?
21 A. Yes, effective March 25th.
22 Q. And then when -- you're familiar with PA 436?
23 A. Yes.
24 Q. So your original appointment was as the Emergency
25 Financial Manager; is that right?

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

Page 11

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

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



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

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

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

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



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1 Q. Yeah.

2 A. As I said, I think I was a receiver in another case in

3 Florida and perhaps a special master in another matter

4 in Florida.

5 Q. But just as a regular, working for a company?

6 A. No, I've been an attorney all my professional career.

7 Q. Do you have any particular expertise in finance?

8 A. Other than being a bankruptcy attorney, no, my degrees

9 are in political science and law.

10 Q. And you indicated that you served as a trustee or

11 receiver once in Florida and what was the nature of

12 the company that you acted as receiver for?

13 A. I don't recall. I would be speculating. It was

14 affiliated with real estate in some fashion.

15 Q. Okay. And do you have an accounting degree?

16 A. No.

17 Q. Are you an actuary?

18 A. No.

19 Q. Is it fair to say that as of the time of your

20 appointment as Emergency Manager, your sole expertise

21 was in law and particularly in bankruptcy law?

22 A. No. I think that while my principal expertise was in

23 law and bankruptcy law that in that capacity we

24 obviously as bankruptcy professionals deal with

25 financial issues and requirements that require us to

Page 18

1 make judgment calls. I would not say that that

2 typically would include the level of expertise as an

3 actuary.

4 Q. Okay. And your sole -- your involvement in financial

5 issues as you indicated was gained in your capacity as

6 a bankruptcy lawyer; is that right?

7 A. Well, gained in my capacity as I said through the arc

8 of my career having to do with first trial attorney,

9 business law, banking and finance at the FDIC, then

10 the RTC, then the Department of Justice and

11 bankruptcy.

12 Q. Now, you had discussions with the governor of Michigan

13 or people working with or for him prior to becoming

14 Emergency Manager; is that right?

15 A. Yes.

16 Q. Can you tell me about those?

17 A. Yeah, I believe when you say people either working

18 with or for him, the initial discussion was at the end

19 of January, could have been early February, but I

20 think it was the end of January when we came in to

21 pitch for the restructuring work for the City of

22 Detroit before a restructuring team of advisors, which

23 excluded -- the governor was not involved in that

24 presentation.

25 Q. And when was it first discussed -- when was the

Page 19

1 possibility of your acting as Emergency Manager first

2 raised?

3 A. I believe it was raised within a few days of us coming

4 back from that presentation.

5 Q. And how did that come about? What was said?

6 A. Someone called my managing partner, as I understand

7 it, I wasn't on that call, and asked if I might be

8 interested in serving as Emergency Manager and my then

9 managing partner relayed that conversation to me.

10 Q. And that -- is that the first time that you became

11 aware that you were being considered for the Emergency

12 Manager position?

13 A. Yes, I believe that was in February.

14 Q. Now, you had attended the presentation or the pitch

15 for Jones Day that you just referred to before the

16 restructuring committee of advisors?

17 A. Yes, Jones Day was one of I believe 21 law firms that

18 made presentations to that group about representing

19 the City.

20 Q. And what were the qualifications of Jones Day that

21 were presented at that presentation?

22 A. We had prepared a book of the qualifications of the

23 various attorney and the law firm and other

24 representations both in court and out of court

25 restructuring, having to do with healthcare, employee

Page 20

1 benefits, labor issues, having to do with

2 environmental, bankruptcy, litigation, analyses,

3 negotiations, mediation, the full panoply of work that

4 the firm did.

5 Q. And did you make any personal presentation at that

6 meeting, did you pitch anything?

7 A. We all spoke.

8 Q. Okay, and what did you speak about as regards what you

9 would bring to the table?

10 A. No, there were no presentations made so much with

11 regard to what I personally might bring to the table.

12 Q. Okay.

13 A. Although we did discuss the experience of the team.

14 There was no presentation for why any of us, for

15 instance, should be Emergency Manager. There was

16 discussion about what we perceived to be the difficult

17 status of the City and how our law firm could provide

18 representation to the City.

19 Q. And was anything said to the committee at the meeting

20 either through the book or orally as to your

21 particular credentials and expertise?

22 A. My credentials were included in the book, as were the

23 other attorneys at the presentation.

24 Q. Okay. And your --

25 A. Please.



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

Page 22

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

Page 23

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

Page 24

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



Page 25

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

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

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

Page 28

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



Page 29

1 used the word nationalized?

2 A. No, I don't know if she meant raises the profile of

3 the issues to help Detroit, I don't know.

4 Q. And you never asked her what she meant?

5 A. I don't recall asking her what she meant.

6 Q. In the top email in this exhibit you say that you had

7 a good conversation with Rich Baird this morning.

8 This is the 31st of January?

9 A. Yes.

10 Q. So obviously either you called him or you called him

11 as of the 31st of January?

12 A. Yes, yes.

13 Q. It says in this email that you told him you were

14 interested in the job but there were some things that

15 made it impractical. Is that a fair summary of

16 your --

17 A. Yes.

18 Q. -- your conversation with Baird?

19 A. Yes.

20 Q. And then he suggested you give it additional

21 consideration and you said you could say that there's

22 a glimmer of hope you would take it?

23 A. Right.

24 Q. And then you agreed to get back in touch next week?

25 A. Right.

Page 30

1 Q. He said -- you go on to say that he tells you, he

2 Baird, that he likes your presentation, he's pulling

3 for us to represent the City.

4 A. Yes.

5 Q. Is that what he told you?

6 A. Yes.

7 Q. Do you remember anything else about that conversation

8 with Mr. Baird?

9 A. No, I remember we had a conversation. I said I was

10 flattered, but I really wasn't interested in the job,

11 I was very comfortable at Jones Day, didn't want to

12 leave my family, I had young children, but I would

13 give it some consideration and I think we ended it by

14 saying, you know, I probably don't want to take the

15 job but I am committed to working and I did say

16 working in lockstep with the City and would be willing

17 to take any role in this respect.

18 Q. And was there any discussion during this conversation

19 as to what you would do if you ultimately did take the

20 job of EM?

21 A. No. As I recall in this conversation based upon this,

22 the discussion was very high level and I think

23 Mr. Baird asked me to at least give it some reflection

24 and consideration and not turn it down outright.

25 Q. And you accommodated that request; right?

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1 A. I started considering it, yes.

2 Q. Now, when he says we're pulling for us to represent

3 the City, that's as a restructuring counsel as you

4 talked about before?

5 A. Yes.

6 Q. And there was a program, wasn't there, that had been

7 designed to solicit counsel to act as restructuring

8 counsel for Detroit?

9 A. I don't know if it was a program. I know that there

10 was a process that we and 20 other firms participated

11 in. I believe it was one day, maybe two, where we

12 flew out to the airport and presented our credentials

13 over 45 minutes.

14 Q. And was there a particular firm that had designed or

15 that oversaw that process?

16 A. I don't know.

17 Q. Were you aware that Buckfire -- are you familiar with

18 Buckfire?

19 A. I know Miller Buckfire. They were at the

20 presentation. I don't know if they designed it.

21 Q. Were you aware they were playing a role in the --

22 A. Selection process?

23 Q. -- in the selection process?

24 A. Yes.

25 Q. And are you aware that they were in fact effectively

Page 32

1 assigning points to the various firms that

2 participated and doing some sort of tally to help a

3 decision be made?

4 A. Yes.

5 MR. SHUMAKER: Objection, foundation.

6 Q. And is it correct that Miller Buckfire was a banker

7 for Chrysler in the Chrysler bankruptcy?

8 A. No.

9 Q. They weren't?

10 A. No. I'm trying to think. Did Miller Buckfire play a

11 role in Chrysler? I -- let's put it this way, I had

12 not met anyone from Miller Buckfire in the Chrysler

13 representation.

14 Q. Okay. Let me show you the next document, which we'll

15 mark as, what are we up to, 3?

16 (Marked Exhibit No. 3.)

17 Q. What we've marked as Exhibit 3 is a chain of emails,

18 the first page ends in Bates number 300. Have you

19 seen these before, Mr. Orr?

20 A. Yes.

21 Q. Let's first look at the first three emails in this

22 chain.

23 A. Uh-huh.

24 MR. SHUMAKER: The last chronologically or

25 the first ones?



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

Page 34

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

Page 35

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

Page 36

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



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1 be given acknowledgment for the success. Further, it
 2 might give me the ability to come back to the firm and
 3 make up for the time that I'd lose if I did this job.
 4 Q. The job being the Emergency Manager job?
 5 A. Yes.
 6 Q. Okay. Now, in the next email that's going up the
 7 chain that is on the first page you say you wouldn't
 8 do it.
 9 A. Yes.
 10 Q. And when you say you wouldn't do it, again, do you
 11 have -- what is the it that's being referred to? So
 12 far no one's ever really identified what nationalizing
 13 meant.
 14 A. I'm telling you what I can think, what I meant by this
 15 writing.
 16 Q. Okay.
 17 A. What I meant was I wouldn't necessarily make it a
 18 national issue and I think I say it would just bring
 19 in the Demo/Republican polarization on a national
 20 scale and make Detroit a fall for the agendas of both
 21 sides, meaning that people would try to use it as an
 22 allegory for whatever their particular perception was.
 23 I go on to say that the president would have to
 24 criticize the trampling of democracy, and that's been
 25 done here, not by the president I might add, and the

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1 filing?
 2 A. Yes.
 3 Q. And was this something that you discussed specifically
 4 with Mr. Moss?
 5 A. We probably did.
 6 Q. Okay. And did you discuss the possibility -- so at
 7 this point it was understood that one possibility, one
 8 potential route of action, would be to file a Chapter
 9 9 for Detroit if you took the Emergency Manager job;
 10 is that right?
 11 A. Yeah, I think that since we have been reviewing
 12 background information on Detroit and the possibility
 13 of a Chapter 9 filing had been mentioned in 2005,
 14 2006, 2009, 2011, 2012, up until this point, in fact I
 15 think it was, as I said, I testified earlier this
 16 morning, the possibility of Chapter 9s in other cities
 17 have been discussed, that the issue of a potential
 18 Chapter 9 filing for the City of Detroit was not a
 19 particularly surprising discussion. That had been
 20 discussed on many levels in the national press, in the
 21 local press, it had been recommended by a prior -- in
 22 2005 I think it was recommended by a prior employee --
 23 senior employee of the City, so I think that
 24 discussion was the typical type of discussion that
 25 you'd have with your colleagues.

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1 Republicans would rail against any further federal
 2 bailouts and that's been said, plus if the feds did
 3 anything for Detroit, a number of other municipals
 4 would have their hands out at a time when no one's in
 5 the mood to dole out federal largess. I think I go on
 6 to say this is a morass of problems.
 7 So my thought was there, to be clear, that
 8 I did not think it, meaning to try to give the issues
 9 of Detroit national prominence, was particularly
 10 productive.
 11 Q. Now, in the top email you write -- or I'm sorry,
 12 Mr. Moss writes back to you and in the second
 13 paragraph he goes on to say, it seems the ideal
 14 scenario would be that Snyder and Bing both agree that
 15 the best option is simply to go through an orderly
 16 Chapter 9. And then he goes on to say that that
 17 avoids a political fight over the scope of any
 18 appointed Emergency Manager, moves the ball forward.
 19 And then he goes on to say, appointing Emergency
 20 Manager whose ability to actually do anything is
 21 questionable, would only serve to kick the can down
 22 the wrong path.
 23 A. Yes.
 24 Q. And can you tell me -- obviously this is -- Mr. Moss
 25 here is referring to the possibility of a Chapter 9

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1 Q. And were you in fact at this time having those types
 2 of discussions with your colleagues at Jones Day as to
 3 the possibilities of a Chapter 9 filing if you took
 4 the Emergency Manager job and how that would be
 5 implemented?
 6 A. Yes, but I don't want to give you the wrong impression
 7 because I think based upon what I've seen from some of
 8 the briefing and some of the interrogatories the
 9 impression is that that was predetermined and that's
 10 not true. The reality is there was much discussion
 11 about what the alternatives would be and the need to
 12 bring something that would bring order and efficiency
 13 to the process given the number of interests that were
 14 involved.
 15 Q. But it was certainly one of the possibilities that was
 16 on the table as a course that might need to be
 17 followed; is that right?
 18 A. Oh, sure, it had been discussed for the better part of
 19 the prior decade.
 20 Q. And in fact, Mr. Moss is recommending the simplest
 21 thing, the best option would be to have the -- Snyder
 22 and Bing, the mayor and the governor, both agree to go
 23 through an orderly Chapter 9?
 24 MR. SHUMAKER: Object to form, calls for
 25 speculation.



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

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

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

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



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1 A. Yes, I believe so.

2 Q. And by the end run you're talking about the voter --

3 the fact that PA 436 was enacted in response to the

4 fact that the voters had rejected the prior law, PA 4;

5 is that right?

6 A. Yes.

7 Q. And PA 436 was able to avoid another referendum by

8 including tacking onto it a relatively minor

9 appropriation provision; is that right?

10 MR. SHUMAKER: Objection, calls for

11 speculation.

12 A. I don't know if that's the sum total of the difference

13 between 436 and the prior law, but that was one of the

14 components, yes.

15 Q. And when you wrote this question, Michigan's new EM

16 law is a clear end-around the prior initiative, it was

17 rejected by the voters in November, were you writing

18 truthfully?

19 A. I think I was writing my opinion at that time, yes.

20 Q. And then you go on and you say, the -- and that was

21 based on the analysis that you had done as of that

22 date?

23 A. Yeah, I think you would recognize that between the

24 30th when this first came up and the 31st, I think

25 this is later that afternoon, I spent some time just

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1 going through the other laws on a very cursory basis

2 to try to get a better understanding of what was being

3 asked.

4 Q. And the conclusion you reach is what you set out in

5 the email here; correct?

6 A. At that time.

7 Q. You go on to say, the new EM law gives local

8 governments four choices and you go on to list them?

9 A. Yes.

10 Q. And that is the list of the four choices you have,

11 that comes from the statute PA 436; doesn't it?

12 A. I believe so. I don't have it in front of me, I have

13 it here, but I believe so without looking at it.

14 Q. And so at that point in time you obviously were

15 familiarizing yourself with 436 and had read it;

16 correct?

17 A. Yes, I think what happened during this day is that I

18 initially thought of rejecting the concept of being an

19 EM, I then went back and said let me start informing

20 myself on what's required EM in looking under the law,

21 and then I was providing musings and streams of

22 consciousness about what my initial conclusions were.

23 Q. And you mention that in your writing here that one

24 option is a Chapter 9 bankruptcy with the governor's

25 approval; correct?

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1 A. Yes.

2 Q. And you also make note that another option is

3 Emergency Manager; is that right? State appointed EM

4 is what you say?

5 A. Yes.

6 Q. And under PA 436 the Emergency Manager also had the

7 authority with the governor's approval to file for

8 Chapter 9; is that right?

9 MR. SHUMAKER: Objection, calls for legal

10 conclusion.

11 A. Yeah, the statute speaks for itself, but yes.

12 Q. And you were aware of that at the time you wrote this

13 email; correct?

14 A. I don't know if I read through the entire statute at

15 this time. As I said, I have trying to get some

16 familiarity. I think it's fair to say that I at some

17 point pretty close -- if I wasn't aware of it at that

18 time, I pretty closely became aware of it.

19 Q. Because you would certainly want to know what powers

20 the Emergency Manager would have if you decided to

21 take the job; correct?

22 A. I began to inform myself about the powers that the

23 Emergency Manager would have. But please understand

24 here again at this time I was trying to avoid taking

25 the job.

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1 Q. And you go on then in the -- and you were -- I guess

2 -- were you aware that for either the case of the

3 Chapter 9 being filed with the governor's approval

4 without the Emergency Manager being involved or the

5 Chapter 9 filing with the Emergency Manager, that in

6 either case PA 436 did not require the governor to

7 impose any contingencies on the bankruptcy filing?

8 MR. SHUMAKER: Objection, calls for legal

9 conclusion.

10 A. I don't recall if I had done a deep dive in that

11 question at this time. Please understand, counselor,

12 at this time I was doing a preliminary review of the

13 statute based upon I believe some published reports

14 and a look at it online. I may have gotten to that

15 point, I just don't recall if at this time during that

16 day I had.

17 Q. Okay.

18 A. But I did at some point.

19 Q. But you certainly knew that ultimately?

20 A. At some point I did, sure.

21 Q. Obviously. And then you go on in the next sentence in

22 this email to say, "So although the new law provides

23 the thin veneer of a revision, it is essentially a

24 redo of the prior rejected law and appears to merely

25 adopt the conditions necessary for Chapter 9 filing."



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1 A. Yes, I said that.

2 Q. And were you writing truthfully when you said that?

3 A. Yeah, and I think the balance of the paragraph, the

4 news reports state that opponents of the prior law are

5 already lining up to challenge this law. So as I just

6 testified, this was my preliminary analysis based upon

7 a number of sources, some of them were the news

8 reports.

9 Q. And you were aware in fact that as you just indicated

10 that there were either challenges already made or that

11 were going to be made to the law?

12 A. I was not aware that there were challenges already

13 made. I was aware the news report states that

14 opponents of the prior law were already lining up to

15 challenge the law.

16 Q. And did you have any understanding at this time as to

17 what those grounds of challenge were or may be?

18 A. No. As I said, this was, you know, within the span of

19 a day when this was going back and forth about what it

20 may require, I was beginning to familiarize myself to

21 some degree with the statute.

22 Q. Your email goes on to say you're going to speak with

23 Baird in a few minutes and see what his thinking is.

24 A. Yes.

25 Q. Did you speak with Mr. Baird that day?

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1 A. I don't recall, but I probably did.

2 Q. And do you recall any discussions with Mr. Baird that

3 day on the subject of the possibility of a Chapter 9

4 filing by the City?

5 A. No. I don't recall any discussions with Rich Baird

6 about the possibility of a Chapter 9 filing at this

7 point, no.

8 Q. Okay. But clearly at this point in time one of the

9 things you were focused on was the possibility of a

10 Chapter 9 filing and the legal issues that might

11 pertain to that as reflected in this email; correct?

12 A. As I have said before, the issue of a Chapter 9 filing

13 had been discussed many, many times with regard to

14 Detroit for the better part of the prior decade, so in

15 doing my sort of due diligence of what the statute

16 required, part of what I was doing was reading some of

17 those very articles that I mentioned earlier today

18 where some of the prior City employees were

19 recommending that there was a filing in 2005 in

20 connection with the cops, 2006 with the cops, 2009

21 with the SWAPs, so yes, Chapter 9 had been discussed

22 many, many times in the papers I was reading.

23 Q. And from all the discussions that you had to date with

24 various people including those at Jones Day, were you

25 aware that one of the issues with PA 436, one

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1 potential ground for challenge, was that it allowed

2 the governor to authorize a bankruptcy filing without

3 imposing a condition that would prevent pension

4 obligations from being impaired?

5 A. I don't know if I was aware of that issue at this

6 time, no.

7 Q. Well, were you aware -- you became aware of it if not

8 then at some point shortly thereafter; correct?

9 A. Yeah, let me say this. There was no broad based

10 concern at this point about with what the authority

11 was with regards to pensions so any sort of

12 insinuation that that was the focus at this point is

13 just inaccurate. That wasn't true. This as I said

14 before was a very cursory and initial sort of review

15 of what I was being asked to do so when I had a

16 discussion with Mr. Baird later I would have some

17 information and that's what I gleaned based upon a few

18 hours since apparently I got the call -- I was

19 informed that day, that morning or the day before to

20 the time I was going to have a call that afternoon.

21 Q. But I take it at some point in time you became aware

22 that Article 9, Section 24 of the Michigan

23 Constitution protects pension benefits from being

24 diminished or impaired?

25 A. I believe at some point in time I became aware that

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1 Article 9, Section 24 purports to protect pensions and

2 benefits in certain circumstances, yes.

3 MR. ULLMAN: Let's mark Exhibit 5.

4 (Marked Exhibit No. 5.)

5 Q. Exhibit 5 is just a printout of Article 9, Section 24

6 of the Michigan Constitution. Do you recognize it as

7 such?

8 A. I mean, the document speaks for itself, but that

9 appears to be what it is, yes.

10 Q. Okay, and I think your last answer you said that in

11 your view Section 24, Article 9 purports to protect

12 pensions and benefits in certain circumstances.

13 A. Yes.

14 Q. And are you contending that the words of Article 9,

15 Section 24 means something other than what they say?

16 MR. SHUMAKER: Objection, calls for legal

17 conclusion.

18 A. Yeah, I -- here again, I think the document speaks for

19 itself. I think that my response to that issue is

20 throughout the arc of my career, whether in federal

21 government or in private practice at the Chrysler

22 case, there have been many state laws, some of them

23 quite sacrosanct, that have been abrogated by federal

24 law, not just bankruptcy law. At the RTC we preempted

25 state, New York state, rent control litigation, law;



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

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

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

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



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

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

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

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



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1 meeting between me and the mayor's personal assistant.

2 Q. He says, we'll broker a meeting via note between you

3 and the mayor's personal assistant who is not FOIAble?

4 A. Yeah, as I read this email -- I never met with the

5 mayor's personal assistant so let's get that out of

6 the way. As I read this email, we were talking about

7 a meeting between me and the mayor.

8 Q. Right, and isn't he -- fair enough. And isn't Baird

9 saying that he wants to set up a meeting via going

10 through the mayor's personal assistant who is not

11 FOIAble?

12 A. I think that's a fair reading.

13 Q. And do you know why he wanted to go through the route

14 of setting up this meeting through someone who is not

15 FOIAble?

16 A. No.

17 Q. Did you subsequently have a meeting with the mayor?

18 A. Yes.

19 Q. And what was said at that meeting?

20 A. I think the first meeting was -- my impression of the

21 first meeting was just a meet and greet. I think the

22 mayor wanted to get an assessment of who I was as

23 potentially coming into the City as a potential

24 Emergency Manager and to sort of get to know me, start

25 to get to know me.

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1 Q. How many meetings were there with the mayor before you

2 became the EM?

3 A. At least two.

4 Q. Do you recall when they took place?

5 A. I do not.

6 Q. Okay.

7 A. Somewhere around this time frame.

8 Q. And was the subject of Chapter 11 filing discussed at

9 either of those meetings?

10 A. No.

11 Q. Was the subject of a potential Chapter 11 filing

12 discussed at either of those meetings? I'm sorry.

13 Let me rephrase my question.

14 A. I can answer your question. No, neither Chapter 9 nor

15 Chapter 11.

16 Q. So you didn't discuss even the potentiality of a

17 Chapter 9 filing at either of those meetings with the

18 mayor; is that your testimony?

19 A. Yes. I don't recall -- let me. We may have -- I was

20 a bankruptcy attorney, we may have discussed it, but I

21 don't recall discussing specific issues regarding

22 Chapter 9 or to the extent people are suggesting that

23 that was predetermined. I don't recall those kinds of

24 discussions.

25 Q. Do you recall any discussion with the mayor as to the

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1 issues that the City faced as a result of the pension

2 obligations?

3 A. No. Frankly, our first meeting was more me telling

4 him how happy I was to meet him, I was a basketball

5 fan, particular fan of his for many years, getting his

6 understanding of the City --

7 Q. I'm sorry, Mr. Orr, I don't mean to interrupt you, but

8 that really wasn't responsive. My question was really

9 a yes or no question. I didn't ask tell me everything

10 you said. I asked a specific question.

11 MR. ULLMAN: Why don't you read it back?

12 THE WITNESS: What was your question again?

13 (Record read back as requested.)

14 A. No, I don't recall that discussion.

15 Q. And the same question for both meetings, so I'm not

16 sure if that question was limited to the first

17 meeting.

18 A. I don't recall having those discussions in either

19 meeting.

20 Q. Do you recall any discussion in either meeting with

21 the mayor about the issues the City was facing with

22 its obligations for healthcare benefits for retirees?

23 A. No, I don't recall either meeting having those

24 discussions.

25 Q. Show you the next document, which we'll mark as

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1 Exhibit 7.

2 (Marked Exhibit No. 7.)

3 Q. And I would like you to in particular if you would to

4 focus on the email at the top of -- let me identify

5 this first. This is an email chain beginning at Bates

6 page 459 and what I would like you to do, Mr. Orr, is

7 focus on Bates page 461, the email at the top of that

8 page.

9 A. 461?

10 Q. Please.

11 A. Yes.

12 Q. You see at the top there's an email from you to

13 Mr. Baird?

14 A. Yes.

15 Q. Eight o'clock, 8:17 at night?

16 A. Yes.

17 Q. And you talk among other things about what would be

18 expected on day one. Do you see that at the bottom?

19 A. Yes.

20 Q. So is it fair to say that by this time you had already

21 known that you were going to take the EM job?

22 A. No.

23 Q. So why were you then asking about what you can expect

24 on day one?

25 A. Because at this point I was still considering whether



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

Page 66

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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1 healthcare benefits, right, and then the top headings?

2 A. Yes.

3 Q. And for pensions, just using 2014 as an example, we

4 see the number is 199.5 million?

5 A. Yes.

6 Q. And for the health benefits for 2014 it's

7 140.7 million?

8 A. Yes.

9 Q. And obviously if you look over the next several years,

10 it goes up?

11 A. Yes.

12 Q. Okay. And then so that I understand this, if you look

13 at pages 97 to 98, this is the same spreadsheet but

14 now showing what the figures would look like if this

15 proposal for restructuring were to go through; is that

16 right?

17 A. Yes.

18 Q. And so if we look again comparably for 2014, let's

19 see, and let's start with -- I guess we can start with

20 the pensions. On page 97, for 2014, we now see an

21 item DC pension contribution.

22 A. Uh-huh.

23 Q. And that's -- that DC stands for what?

24 A. You mean the DC?

25 Q. Yeah, what do the words stand for?

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1 A. Defined contribution.

2 Q. Defined contribution?

3 A. Uh-huh.

4 Q. Now, the existing -- the pension plan that exists

5 under the steady state projections, is that defined

6 contribution plan?

7 A. That would be switched over. No, no, defined -- the

8 steady state scenario?

9 Q. That's a defined benefit?

10 A. That's a defined benefit plan.

11 Q. So what you're projecting here is a switch over to a

12 defined contribution program and for 2014 we see the

13 number for the city's contributions is now

14 25.4 million; is that right?

15 A. Yes, that's -- yes.

16 Q. And that compares with the -- what was the figure?

17 199.5 million that we saw under the as is?

18 A. Yes, projections.

19 Q. Yes. So the diminution it looks just on the rough

20 math that the City's pension contributions under the

21 restructuring are being cut by about 80 percent; is

22 that right?

23 A. Under 75 million, 80 percent, sure, roughly.

24 Q. And for health, the health benefits, which we saw that

25 were, what, under the current scenario something like

Page 107

1 147 million?

2 A. Retiree health, yes.

3 Q. For retiree health?

4 A. Uh-huh.

5 Q. Under this proposal, the restructuring proposal, I

6 don't see any line entry for the retiree health

7 benefits.

8 A. Yes.

9 Q. So they're essentially being cut; correct?

10 A. Well, the obligation is being provided with a

11 different program, but yes, the City would not have an

12 obligation going forward of that magnitude.

13 Q. And going back to the pension contributions, you know,

14 we had talked about a diminution on the order of 80

15 percent from the 199.5 figure, and I think it's the

16 City's contention that the 199.5 figure is really

17 understated, right, because the obligations are really

18 a lot higher?

19 A. I think we think the liabilities -- this is the steady

20 state projection on 91. I think we think the

21 liabilities are higher because what we represented on

22 the second page of 98 is the estimated undersecured

23 claims for out years as opposed to a ten-year

24 projection.

25 Q. Right. And if the liabilities were really greater

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1 than the diminution from the steady state to the

2 restructuring scenario would be greater than 80

3 percent; wouldn't it?

4 A. It might be. I mean, we've said 80 percent. I mean,

5 199.5 less 25, you know, you just roughly cut those in

6 half, that's a 12 and 1/2 percent, but you know, 88

7 percent, somewhere in that neighborhood.

8 Q. Now, the people who are -- the retirees who are

9 getting impacted from these -- by these cuts in the

10 proposed restructuring, these are who? These are men

11 and women who previously served the City and are now

12 retired?

13 A. Yeah, they're two pension plans: one for General

14 services and the other for Police and Fire.

15 Q. And these individuals that serve the City in both

16 public safety and nonpublic safety capacities?

17 A. Uniform and nonuniform, yes.

18 Q. And were these -- I guess the issue comes because the

19 pension liabilities and the healthcare benefits that

20 may be due are not -- there's not sufficient funding

21 that was put into them; correct?

22 A. Well, the healthcare benefit has no funding, the

23 \$5.7 billion. And the pension underfunding has our

24 estimate of the level of underfunding, the unfunded

25 portion of the pensions, in them. There are assets



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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1 after June 14th.

2 Q. So we're clear, no additional proposals that provided

3 for the pension cuts or the health benefit cuts in a

4 way that was different from what was in substance set

5 out on June 14?

6 A. Well, you say what was different.

7 Q. You haven't changed what was set out in the June 14th

8 proposal; have you?

9 A. You're not letting me respond. Can I respond?

10 Q. Let me withdraw the question.

11 A. Okay.

12 Q. Had there been any modifications to the June 14

13 proposal as of July 12, 2003 -- '13?

14 MR. SHUMAKER: Object to the form.

15 A. There could have been discussions that could qualify

16 as modifications, but generally speaking, the broad

17 outline of the proposal we submitted on June 14th was

18 still the proposal that we were talking about.

19 Q. Okay, and what were the discussions that you were

20 referring to that you said could qualify as

21 modifications?

22 A. Discussions we had with all members at the due

23 diligence follow-up sessions where we requested their

24 input.

25 Q. And was there any bargaining that took place at those

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1 sessions where the City said it would be willing to

2 agree to something that was different from what was in

3 June 14?

4 A. Here again, I'm going to stay away from bargaining as

5 a legal conclusion, duty to bargain is suspended. I

6 will say there was a back and forth and my

7 understanding discussions and invitations for further

8 information.

9 Q. Thank you.

10 I'm going to show you the next document,

11 which is a response to the one that we have as Exhibit

12 12, which we'll mark as Exhibit 13.

13 (Marked Exhibit No. 13.)

14 Q. Exhibit 13 a letter from Jones Day in response to what

15 we have marked as Exhibit 12; do you see that?

16 A. Yes, I believe so.

17 Q. And you see this is -- the letter starts out by

18 thanking the authors for their letter of July 12th?

19 A. Yes.

20 Q. And then in the second paragraph Jones Day goes on to

21 say, consistent with the position Dave Heiman and I

22 expressed at the meeting, we still think it makes

23 sense to first try to reach common ground with key

24 unions and association leaders on actuarial

25 assumptions and methods and the amount of PFRS

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1 underfunding and then tackle contributions and

2 attendant benefit changes. Do you see that?

3 A. Yes, it speaks for itself.

4 Q. And was that the position of the City as of July 17,

5 2013?

6 A. Yes, we said that before.

7 Q. As of July 17th now, 2013, had the City presented any

8 proposals that were different from the proposals set

9 out in the June 14th document?

10 A. As I said previously, subject to that testimony about

11 discussions that were had at these meetings, I think

12 this letter speaks for itself. We were requesting

13 input from the various interested parties as far as

14 our June 14th proposal.

15 Q. And the discussions were the same ones that you

16 answered about in the very last question --

17 A. Yes.

18 Q. -- when I asked you what the discussions were?

19 A. Yes.

20 Q. And as of June 17th -- I'm sorry, July 17th, had the

21 City actually sat down with any union or retiree

22 association to attempt to reach an agreement on a

23 restructuring plan that had terms that were different

24 from the terms in the June 14th proposal?

25 A. July 17th?

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1 Q. I'm sorry, yes.

2 A. Yes.

3 Q. If I misspoke, I'm asking as of July 17th.

4 A. Yes, we may have.

5 Q. You say you may have. Did you?

6 A. I was aware that there were ongoing confidential

7 negotiations with at least one union --

8 Q. Okay.

9 A. -- about a proposal.

10 Q. Okay. Were you present during those negotiations --

11 those discussions?

12 A. I have -- I have not -- I have met with members'

13 representatives of those unions. I'm not sure I was

14 in on all negotiations.

15 Q. Are these discussions that the City has stated are

16 subject to privilege under Federal Rule of Evidence

17 408?

18 A. Yes.

19 Q. Okay. And other -- so will you tell me what was said

20 at those sessions?

21 MR. SHUMAKER: Objection to the extent it

22 calls you to reveal privileged communications.

23 A. Yeah, those discussions are ongoing and so I'm -- I

24 have to be a little circumspect. Suffice it to say

25 there were discussions along the line of this exchange



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

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1 THE VIDEOGRAPHER: Going off the record at
2 1:53 p.m.
3 (A brief recess was taken.)
4 THE VIDEOGRAPHER: We're back on the record
5 at 1:57 p.m.
6 BY MR. ULLMAN:
7 Q. Okay, will you answer my question, Mr. Orr?
8 A. No, I think this is -- concerns commercially sensitive
9 potentially confidential settlement negotiations and
10 implicates the attorney-client privilege so I cannot
11 answer your question.
12 Q. Okay, so apart from the discussions that you won't
13 tell me about, would the City actually sit down with
14 any union or retiree association in an attempt to
15 reach an agreement on a structuring plan on terms that
16 are different than the terms set out in the June 14th
17 proposal as of July 17th?
18 A. As I said before, subject to the meetings we've had,
19 we've exchanged information which may constitute the
20 type of sit down you're talking about. Other than the
21 ones that have been recounted and phone calls and
22 meetings I may not be aware of, this is what I know in
23 my declaration.
24 Q. And as of June 17th then, I take it you had not
25 received any actual proposal -- I'm sorry, I keep

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

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



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

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

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

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



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

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

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

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



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1 recall.

2 Q. Okay. Let me show you another document.

3 A. There may -- none that I recall with specificity.

4 Q. Okay. And you were aware that they represented other

5 nonuniformed retirees?

6 A. Yes.

7 Q. But you can't recall anything --

8 A. None I recall with specificity.

9 MR. ULLMAN: Okay. Let's mark the next

10 document, which is, what, 15?

11 THE COURT REPORTER: Fourteen.

12 MR. ULLMAN: Fourteen.

13 (Marked Exhibit No. 14.)

14 Q. Okay, 14 is a document entitled retiree legacy cost

15 restructuring, September 11, 2013.

16 A. Yes.

17 Q. Are you familiar with this document?

18 A. Yes.

19 Q. And does this represent the City's current position as

20 to what it's going to do, what it's going to provide

21 for retirees?

22 A. This represents the slide deck that we proposed last

23 week at the initial meeting with the retiree

24 committee.

25 Q. Okay, and does it represent the position for the City

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1 currently as to what it's --

2 A. Yes, this is the current --

3 Q. -- planning to propose or planning to put through?

4 A. Yes, this is the City's current thinking.

5 Q. And as I understand this roughly, on the health side

6 what the City was saying it will do is essentially the

7 retirees who are Medicare qualified can sign up for

8 some various Medicare plans and the City will help

9 them with the payment of the premium for that?

10 A. Yes.

11 MR. SHUMAKER: Objection, document speaks

12 for itself.

13 A. But yeah, on page 4 it starts that discussion, yes.

14 Q. Okay. And essentially for nonMedicare retirees in

15 terms of getting healthcare, they're on their own and

16 the City says it will give them \$125 stipend; is that

17 right?

18 MR. SHUMAKER: Objection to form.

19 A. Yeah, you say they're on their own, but I think

20 there's a proposal here that they be able to go onto

21 the exchanges provided by the Affordable Care Act and

22 the City would give them a stipend.

23 Q. Right, and that's if to the extent they can do it, but

24 it's up to them to do something like that; right?

25 A. Yeah, like Harris Teeter did last week, yes.

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1 Q. And on the pension side of things has there been any

2 change from what was set out in the June 14th

3 proposal? As I understand this, it's still a defined

4 contribution plan for current employees and no

5 contributions being made by the City for retired --

6 for retirees; is that right?

7 MR. SHUMAKER: Object to the form.

8 A. Yeah, the general consensus is that you would close

9 the plan and there would be contributions for

10 currents, yes.

11 Q. And so again, just to be clear, that means for

12 retirees no ongoing contributions provided by the

13 City?

14 A. None other than their participation in the note that's

15 proposed in the June 14th proposal.

16 Q. And with no new funding for their pensions the

17 payments will stop -- to the retirees would stop being

18 made when the retirement funds run out; is that right?

19 A. That's a loaded question. I mean, the -- and the

20 reason I say it's a loaded question, some of the

21 retirement funds have said their payments won't run

22 out so that's why we want to have a dialogue. We

23 think they're at risk. They've told us they're not.

24 Q. And by the City's estimation the pension funding will

25 run out when? If no new funds are put in?

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1 A. Well, as you can see from our proposal, we have -- not

2 so much from the proposal but June 14th as well, we

3 made certain assumptions as to when the funds might

4 run out if nothing is adjusted one way or the other.

5 We've been told that we're wrong so --

6 Q. I'm asking. I'm asking the City's point of view.

7 A. The City's point of view is that we've made an

8 accurate and fair assumption that the funds will run

9 out at some point within the next two decades.

10 Q. And that's if no new money is contributed?

11 A. If -- well, and I'm being very careful. It's not just

12 if there's no new money, it depends upon actuarial

13 rates, it depends upon rate of return. Pensions could

14 invest in the Microsoft of their day and have more

15 than enough funds for the foreseeable future. But

16 assuming certainly reasonable assumptions that is the

17 conclusion of the City.

18 Q. And just to be clear, and that assumption as to when

19 it would run out assumes no further contributions by

20 the City; correct?

21 A. Yes, it assumes we close the plan. Other than the

22 note.

23 Q. And do you have any more specific recollection as to

24 when the funds would run out other than within the

25 next two decades?



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

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

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

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



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

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

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

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



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1 Q. But that's never been subject to an audit; has it?

2 A. To the best of my knowledge I don't know when they

3 have or when they haven't.

4 Q. Okay. And I think you indicated that in coming up

5 with these figures various people were consulted in

6 various fields and a number of assumptions were made;

7 is that right?

8 A. I believe so.

9 Q. And I think you also indicated in your structuring

10 proposal from June 14th that the numbers are subject

11 to various assumptions which could or could not prove

12 right; correct?

13 A. Well, I think in June 14th we've said that it's a

14 proposal and there may be various issues that may or

15 may not be correct.

16 Q. Yeah. Okay, and obviously if any of the assumptions

17 that went into the underlying numbers that appear in

18 your declaration are wrong, then the numbers

19 themselves would also be subject to inaccuracy; true?

20 A. Let me say this about that. Both in June 14th

21 presentation and in this declaration, we've tried to

22 present an accurate picture of the City's books and

23 records and status to the best extent possible that we

24 have. Where there were questions we have tried to err

25 on the side of reasonable assumptions as opposed to

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1 unreasonable assumptions either way. But your general

2 question as to whether or not if the information going

3 in was inaccurate, revealed an inaccurate result, I

4 think it's true as a matter of just common sense and

5 logic.

6 Q. And the same thing as to assumptions. If the

7 assumption made was wrong, then the output would be

8 wrong also?

9 A. I think that's why we asked several times to have a

10 discussion about the assumptions that are necessary

11 for pension benefits.

12 Q. Now, the cash flows that are being reported in your

13 declaration, those do not include any assumptions as

14 to the monetization of various assets that the City

15 continues to hold; is that right?

16 MR. SHUMAKER: This is paragraph 56 that

17 you're referring to, counsel?

18 MR. ULLMAN: Yeah, I'm looking in general.

19 MR. SHUMAKER: In cash flow?

20 MR. ULLMAN: Yeah, cash flow.

21 A. You're talking about generally do the cash flows

22 include any monetization of any City assets?

23 Q. Yeah.

24 A. No, they do not.

25 Q. And obviously if assets currently held by the City

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1 were monetized, that would provide additional cash to

2 pay obligations including retirement and health

3 obligations; correct?

4 A. Well, additional cash from onetime asset sales may not

5 necessarily equal cash flows. As I understand the

6 analysis we've tried to present is cash flows based

7 upon a recurring basis as opposed to onetime assets

8 but it would yield additional cash.

9 Q. Yes. If you sold an asset and had money, you would

10 have the money available to pay something?

11 A. Yeah, you might have a onetime -- I'm not an

12 accountant, but you might have a onetime cash charge,

13 yes.

14 Q. And if the cash, the amount you got was large, it

15 could last for a long period of time; correct?

16 A. Well, it depends upon what --

17 MR. SHUMAKER: Objection, form.

18 A. Depends upon what it was used for. I mean, what are

19 you talking about? When you say could last for a long

20 period of time, it could be a one -- you could sell

21 one asset for \$5 million and that wouldn't last a

22 month.

23 Q. Yes, and depending on the amount of assets that were

24 sold, if you got a substantial amount of money, that

25 could enable the City of Detroit to pay ongoing bills

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1 for some period of time; true?

2 MR. SHUMAKER: Objection to form.

3 A. Here again, depending upon the size of the asset, but

4 anything is possible.

5 Q. Okay. Now, the City of Detroit owns certain pieces of

6 art that are stored at the Detroit Institute of Art;

7 is that right?

8 A. Yes.

9 Q. And how many is that?

10 A. I think the City owns approximately 66,000 pieces of

11 art.

12 Q. Now, those --

13 A. No, strike that. Let me be clear so we can move on.

14 Q. Yeah.

15 A. I think there are 66,000 pieces of art over at Detroit

16 Institute of Art. I'm not sure the City owns all

17 66,000 pieces. I've been informed that it owns 35,000

18 of those pieces in an undisputed capacity.

19 Q. Okay, that's what I was getting at. And that's

20 distinct from art that is subject to a public -- or is

21 or may be subject to a public trust or something like

22 that. This is 35,000 pieces that the City owns, as

23 you said, in an undisputed capacity?

24 A. Outright, yes.

25 Q. Outright. Now, is it correct that the City has



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

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

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

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



<p style="text-align: right;">Page 173</p> <p>1 procurement, accounting and managerial 2 responsibilities, but as it's stated in that opinion, 3 it remains an asset in the department of the City. 4 Q. And is it correct that the water and sewer department 5 has issued secured bonds? 6 A. Yes, they're in my June 14th proposal. 7 Q. Okay, and I don't recall. What was the value of the 8 bonds that were issued? 9 A. The secured portion of the bonds all in, but this also 10 includes some parking -- parking was 95 million, some 11 dedicated state revenue bonds was a couple hundred 12 million, but generally speaking about 5.7 billion. 13 Q. And those bonds -- the 5.7 billion is secured by the 14 assets of the department? 15 A. Yes, yes. 16 Q. And as you understand it, does the value of the assets 17 of the department of water and sewers exceed the 18 values of the secured bonds? 19 A. I don't know if there's been a formal appraisal, but I 20 certainly would hope so. 21 Q. Do you have an understanding of the value of the water 22 and sewer assets? 23 A. Not sitting here today. 24 Q. Do you have a general understanding, a general 25 recollection?</p>	<p style="text-align: right;">Page 175</p> <p>1 department's operations, not the assets, from the City 2 and perhaps increase additional value as a byproduct 3 of that process. 4 Q. And this is what is referred to in the June 14th 5 proposal or this transaction with this new authority? 6 A. Yes. 7 Q. And that would involve some sort of payment by the 8 authority to the City? 9 A. Yes, some sort of lease payment or like kind payment. 10 Q. Do you have any understanding -- can you give me any 11 idea as to the value that would be achieved by that, 12 the amount of cash that the City would be achieving, 13 realizing, if that went through? 14 A. Judge Cox's opinion, and I'm referencing the opinion 15 to state what's already in the record, references I 16 believe a \$62 million payment, which he called wildly 17 speculative. But there may be payments in that 18 regard, somewhere between 40 or lower to maybe up to 19 100. It's unclear. 20 Q. Right now who has control over the revenues that are 21 taken in by the department of water and sewers? 22 A. City does. 23 Q. Now, the department of water and sewers also had 24 retirement obligations for its -- 25 A. Well, they have employees that are members of the</p>
<p style="text-align: right;">Page 174</p> <p>1 A. When you talk about asset values, you're talking about 2 switches, pipes, valves, things along that nature. I 3 don't think I've ever seen an appraisal of the value 4 of the assets of the water and sewer department. 5 Q. Do you have a general understanding of what the value 6 of the assets -- 7 A. No. 8 Q. -- is worth? 9 A. No. 10 Q. Have you taken any steps to monetize the value of the 11 assets owned by the water and sewer department? 12 A. When you say monetize, I'm going to respond to the 13 question on the basis that monetize is in the broad 14 sense -- 15 Q. Uh-huh. 16 A. -- not whether it's a lease, whether it's a sale, 17 getting authority. 18 Q. Just get money for it. 19 A. Get money for it, get some dough, okay, just want to 20 be clear. Discussions are ongoing in that regard. 21 Q. What are those discussions in a nutshell? 22 A. Those are commercially sensitive so I don't want to 23 interfere. Suffice it to say, the -- Judge Cox's 24 opinion spoke to the possibility of creating an 25 authority that would remove the water and sewer</p>	<p style="text-align: right;">Page 176</p> <p>1 General retirement fund. 2 Q. Right. And how were payments to the retirement fund 3 for those employees to be made? In other words, were 4 they to be made directly by the department of water 5 and sewer, to the Retirement Systems or were they made 6 by the department of water and sewer to the City, 7 which then was to remit them to the Retirement 8 Systems? 9 A. You're talking about the transaction or steady state 10 now? 11 Q. The steady state. 12 A. Steady state now. My understanding is that's part of 13 the City's obligation. 14 Q. So the DWS, department of water and sewers, is to give 15 the money for the retirement to the City, the City 16 was -- 17 A. City makes it. 18 Q. -- was then supposed to make the payment to the 19 Retirement Systems? 20 A. Uh-huh. 21 Q. And are you aware of any funds that were transmitted 22 by the department of water and city (sic) to the City 23 for the purpose of funding pensions that were then 24 used by the City for other purposes? 25 A. I don't know if you can identify specific water and</p>

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

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

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

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



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1 department?

2 A. Let me say it this way. We have examined a number of

3 options and alternatives related to DWSD including

4 those that might be implicated by your question.

5 Q. So is the answer to my question yes, you have

6 considered that?

7 A. We have considered all operations at DWSD including

8 those that might be implicated by your question. I

9 said before I'm going to be very careful so I don't

10 interfere with the commercial aspects with what's

11 going on now.

12 Q. And can you tell me how much you believe or understand

13 the City can take from the capital fund from DWSD in

14 order to satisfy its ongoing obligations if it chose

15 to do that?

16 A. I didn't say --

17 MR. SHUMAKER: Objection to form.

18 A. I didn't say that we would take any capital, I said

19 we'd consider it.

20 Q. I didn't -- I'm asking can you tell me how much would

21 you understand is available to take if the City

22 decides to go down that route?

23 A. No, I can't tell you that.

24 Q. Have you done any analysis of that?

25 A. Analysis is a strong word. Have we looked at the

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1 options and related to the transaction all

2 potentialities, but I can't tell you what that number

3 would be.

4 Q. Who within the City would be most knowledgeable about

5 the capital funds that are available at the DWSD?

6 A. At the City?

7 Q. Yeah.

8 A. Probably the operations at DWSD.

9 Q. You also made reference in the June 14th proposal to

10 the parking systems that the City owns.

11 A. Yes.

12 Q. And as I understand it there are nine garages?

13 A. Yes.

14 Q. Two lots with over 1,200 spaces?

15 A. Yes.

16 Q. And over 3,400 meters?

17 A. Yes.

18 Q. Do you have an understanding as to the value of those

19 assets?

20 A. No, we're currently doing our analysis as to the value

21 of those assets now.

22 Q. And you have no preliminary view as to what they're

23 worth? Nothing's been reported back to you on at

24 least a tentative basis?

25 A. No, nothing has been reported back to me on -- because

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1 when you talk about values, there's a range of values

2 from asset disposition and outright sale and

3 privatization to creating an operation or an authority

4 where someone has brought in, as has been done in

5 Washington, D.C., to actually operate the garages and

6 meters. So we're looking at a range of alternatives

7 to determine what those values could be.

8 Q. What's the range of values you're looking at so far?

9 A. We don't have that yet.

10 Q. How concrete have you -- let me withdraw that.

11 What specific steps have been taken so far?

12 A. Our investment advisors and consultants are beginning

13 discussions with various parties that undertake these

14 types of operations within a range of alternatives to

15 try to assess values.

16 Q. And the investment advisors, would that be Buckfire?

17 A. Yeah, it would be our investment banker, Ken Buckfire,

18 Miller Buckfire.

19 Q. Okay. In the June 14th proposal you also make

20 reference to about 22 square miles of land that the

21 City owns?

22 A. City-owned land, yes.

23 Q. Do you have an understanding as to the value of that

24 land?

25 A. I've been informed that some of the value is at best

Page 184

1 nominal, but no, sitting here today, I do not have a

2 number as to the value of the land.

3 Q. Have any steps been taken to try to monetize that

4 value, to get dough as you put it?

5 A. Yeah. Well, here again, you're -- to get income

6 realization perhaps I should say more articulately,

7 but here again, we're at the preliminary steps of

8 examining potential alternatives regarding land.

9 Q. So you don't know yet?

10 A. No.

11 Q. The Belle Isle Park, that's also referenced in the

12 June 14th proposal?

13 A. Yes.

14 Q. It's indicated that there's a prospective lease to the

15 state?

16 A. Yes.

17 Q. Okay. And do you expect that to go through?

18 A. I'm going to ask for it. It was proposed and was not

19 accepted in time so the state withdrew it, but I do

20 believe we're going to intend to ask that that lease

21 be renewed.

22 Q. And what's the annual rent the City would get under

23 that lease?

24 A. The City has a \$6 million maintenance obligation and

25 that would be taken up by the state so that wouldn't



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

Page 186

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

Page 187

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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1 never mind.

2 Was it your -- is it your understanding

3 that as of the time of this press coverage, Governor

4 Snyder was not yet recommending a Chapter 9 filing for

5 Michigan --

6 MR. SHUMAKER: Objection, foundation.

7 Q. -- for Detroit?

8 MR. SHUMAKER: Sorry. Objection,

9 foundation, form.

10 A. I don't think -- I think I was the one recommending

11 and Governor Snyder was either going to approve or

12 disapprove of my request. This is 11:00 p.m. I

13 haven't seen this and it appears to be 11:00 p.m. It

14 says -- so give me your question again.

15 Q. What was your understanding at this point in time of

16 Governor Snyder's view with regard to whether or not

17 he would recommend -- he would accept your

18 recommendation that Detroit file a Chapter 9 petition?

19 A. It was unclear. I had gotten to the point at least on

20 the 16th of thinking it was time for me to make the

21 recommendation. It was unclear what the response was

22 going to be.

23 Q. Did you discuss the Webster litigation with the

24 governor?

25 A. I don't think so.

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1 Q. Did you discuss the Webster litigation with anybody in

2 the governor's office?

3 A. Was the Webster litigation the first lawsuit filed

4 against the governor and the treasurer on the 3rd?

5 And then the next week AFSCME joined that litigation?

6 Was that by the UAW the first litigation and AFSCME

7 joined that litigation the next week?

8 Q. One was Flowers and one was Webster.

9 A. Right. So I want to make sure we're talking about the

10 right one. So you're talking about Webster?

11 Q. Did you discuss either the Flowers or the Webster

12 litigation with the governor?

13 A. No, I didn't discuss it with the governor.

14 Q. Did you discuss either the Webster or the Flowers

15 litigation with anybody at the state?

16 A. You mean on the 16th?

17 Q. No, at any point in time.

18 A. At any time. Let me -- let me -- let me then clarify

19 my answer. I think -- my recollection is that there

20 were lawsuits being filed that we did not discuss at

21 the beginning of July. I think there was a piece of

22 litigation that had been filed the morning of the 16th

23 -- in direct response to your question did I discuss

24 the litigation with the governor? At some point, yes.

25 Q. Do you recall whether you had that discussion with the

Page 203

1 governor before July 18th?

2 A. Yes, I believe I did.

3 Q. And was it before July 18th?

4 A. Yeah, I believe it was.

5 Q. What did you discuss?

6 A. Well, was it? I think generally, and here I'm going

7 to be very careful, there were discussions I had --

8 I'm not sure I had any discussions with the governor

9 without either my counsel being on the line or counsel

10 on behalf of the state and the governor being on the

11 line so I don't know if that implicates

12 attorney-client.

13 MR. SHUMAKER: It certainly could.

14 THE WITNESS: Okay.

15 A. Without disclosing what was discussed, we had

16 discussions.

17 Q. Okay, so it's your position -- well, let's go back.

18 So on July 3rd, for example, who was your

19 counsel?

20 A. Well, my restructuring counsel was Jones Day, but --

21 Q. And who was the governor's counsel?

22 A. The governor's counsel would be -- I believe in the

23 governor's office generally heading up that group

24 would be Mike Gadola and Valerie Brader and I think

25 this corrects the discussion I had earlier this

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1 morning. I may clarify a discussion I had earlier

2 this morning but I -- well, direct response to your

3 question, those are the people in the governor's

4 office.

5 Q. Okay, so if you and the governor were on the phone --

6 A. Right.

7 Q. -- then those conversations -- I'm not asking you

8 about conversations that you had just you and

9 Jones Day, I'm asking you what conversations you had

10 with representatives -- with either the governor or

11 representatives of the state prior to July 18th after

12 the Webster and Flowers litigations were filed on July

13 3.

14 A. Okay. I think we did have conversations. I'm not

15 sure they're not protected by attorney-client

16 because --

17 MR. SHUMAKER: If you believe lawyers were

18 on those phone calls.

19 THE WITNESS: I know lawyers were on the

20 phone, I just don't -- I'm not acting as an attorney

21 so I don't know -- I know there were lawyers on the

22 phone. I know my lawyers were on the phone so I

23 don't --

24 MR. ULLMAN: The fact that there were

25 lawyers on the phone doesn't make it a privileged



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1 conversation.

2 MS. LEVINE: Well, let him get the

3 statement out and then we'll --

4 THE WITNESS: I believe there was a common

5 interest. Can I consult my attorneys?

6 MR. SHUMAKER: Certainly. You want to take

7 a quick break?

8 THE VIDEOGRAPHER: Going off the record at

9 3:24 p.m.

10 (Discussion held off the record.)

11 THE VIDEOGRAPHER: We're back on the record

12 at 3:31 p.m.

13 BY MS. LEVINE:

14 Q. Did you reach a --

15 MS. LEVINE: Can you read back my last

16 question?

17 Actually I'll rephrase it.

18 Q. Prior to July 17th did you have conversations with the

19 governor or anybody in the governor's office?

20 A. Prior to July 17th?

21 Q. But since July 3.

22 MR. SHUMAKER: About?

23 Q. About Flowers and Webster.

24 A. Oh.

25 MR. SHUMAKER: Yes or no?

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1 A. Yes.

2 Q. Prior to July 17th but after July 3, did you have any

3 discussions with the governor or anybody in the

4 governor's office about filing a -- filing for Chapter

5 9 for Detroit?

6 A. Between the 3rd and 17th?

7 Q. Yes.

8 A. Yes.

9 Q. With whom did you have the discussions about the

10 Flowers litigation, the Flowers/Webster litigations?

11 A. Attorneys in the governor's office.

12 Q. Which ones?

13 A. I believe Valerie Brader and Mike Gadola.

14 Q. Anybody else?

15 A. I'm trying to recall if in one of my discussions with

16 the governor we discussed that specific litigation or

17 just that there were cases being filed and I don't --

18 I don't recall any specific discussion about that

19 particular piece of litigation, just that there were

20 lawsuits being filed.

21 Q. So you discussed with Valerie Brader and Mike Gadola

22 the Flowers and the Webster litigation, you discussed

23 with the governor just the fact that there was the --

24 the litigations were pending now? And we're still

25 within the July 3 through July 17 time frame.

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1 A. I don't know if I ever discussed both cases. I think

2 I discussed one with Brader and/or Gadola.

3 Q. Okay, and what did you discuss about the litigation

4 with Brader or Gadola?

5 MR. SHUMAKER: Objection. I'm going to --

6 the question calls for the witness to reveal

7 privileged attorney-client communications as part of a

8 common interest agreement with the state and therefore

9 I'm going to instruct him not to answer.

10 MS. LEVINE: Okay, we'll reserve our

11 rights.

12 MR. SHUMAKER: Understood.

13 Q. With regard to the conversations that you had with the

14 governor with regard to July 3 through July 17, with

15 regard to the potential for filing for Chapter 9, do

16 you recall specifically on what days you had those

17 conversations?

18 A. No.

19 MR. SHUMAKER: Objection to form.

20 THE WITNESS: Oh, okay.

21 MR. SHUMAKER: Counsel, you're saying just

22 between him and the governor? No one else?

23 Q. Did you have conversations that involved the governor

24 between July 3 and July 17 with regard to the

25 potential for filing a Chapter 9 for Detroit?

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1 MR. SHUMAKER: Where counsel was not a part

2 of the conversation?

3 MS. LEVINE: No, no, I'm just asking if he

4 had conversations. I haven't asked him yet who's

5 participating and it's not privileged even with a

6 joint defense agreement, which we're reserving our

7 rights about, for him to tell me that conversations

8 took place, then we will get into who participated and

9 which conversations and then we'll decide whether or

10 not he can talk to me about them.

11 MR. SHUMAKER: Okay, I'm just making sure

12 the witness doesn't reveal anything.

13 THE WITNESS: Okay, and waive anything.

14 MR. SHUMAKER: And waive anything.

15 THE WITNESS: For the record there is no

16 effort to waive anything. But I'm trying to be

17 accurate.

18 Q. Let me try to ask it more succinctly so that we can

19 parse it, because I'm going to ask you questions with

20 regard to conversations where you and the governor

21 participated and there were other people present.

22 A. Right.

23 Q. I'm going to ask you questions with regard to you and

24 other people --

25 A. Right.



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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1 said before, I think my family and I were out that
 2 preceding Friday, Saturday and Sunday and we actually
 3 ran into the governor's family coming onto the island
 4 I believe that Sunday so I don't think we had that
 5 meeting that week so it may have actually been the
 6 following week.
 7 Q. Meaning sometime during the week of July 15th?
 8 A. No, or the end of --
 9 Q. So it was during --
 10 A. -- the week of the 8th. The 8th. But I did not have
 11 a meeting with the governor that week.
 12 Q. Well --
 13 A. Now that I look at the calendar.
 14 Q. Okay.
 15 A. Okay.
 16 Q. So just to clarify, it appears more likely than not
 17 that you did not have a meeting between you and the
 18 governor the week of July 8th but your understanding
 19 is that during the week of July 8th, probably the
 20 latter part of that week, somebody on behalf of the
 21 Emergency Manager let the governor or the state know
 22 that you were drafting or starting to draft the July
 23 16th request and that you had concerns about the
 24 Flower s/Webster litigations?
 25 A. Yeah, and here again, I don't know if so much concerns

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1 -- it wasn't like we were focused on Flowers/Webster,
 2 we were saying in the universe of the world that
 3 litigation, whatever name, and the Syncora struggle,
 4 were creating a situation that was untenable and
 5 threatening what we had wanted to do.
 6 Q. Lamont Satchel.
 7 A. Yes.
 8 Q. He's your -- what's his title?
 9 A. He is the, I believe, labor negotiator for the City.
 10 Q. And what's his scope of authority?
 11 A. His scope of authority initially as labor negotiator
 12 was to oversee, monitor and lead labor relationships
 13 with the City and its labor partners.
 14 Q. And to whom -- and who is his direct report?
 15 A. At this point Lamont's direct report -- well, it is --
 16 the org chart is being revised, but his direct report
 17 would have been to the chief operating officer.
 18 Q. And who was that?
 19 A. At that time it would have been Gary Brown.
 20 Q. And who is it today?
 21 A. It still goes through Gary Brown, but I am intimately
 22 involved with the process.
 23 Q. And do you know whether or not during the month of
 24 June prior and up through -- starting with June 1
 25 through July 18th --

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1 A. Yes, July 18th.
 2 Q. -- did Lamont Satchel have any meetings with the labor
 3 organizations?
 4 A. Do I know? I know that during this time the CBAs,
 5 some of the City's Collective Bargaining Agreements
 6 were expiring and I believe that Lamont did have
 7 meetings during that time not just related with that
 8 but with other issues as well.
 9 Q. During your prior testimony -- and I apologize for
 10 skipping around, but I don't want to duplicate what's
 11 already been done.
 12 A. That's okay.
 13 Q. You spoke about Jones Day doing a presentation or
 14 interview to the state back in January, the end of
 15 February.
 16 A. Yeah, the documents I was shown this morning would
 17 make it January.
 18 Q. And with whom did Jones Day meet at that time, who
 19 physically was in the room?
 20 A. Treasurer Dillon, then CFO Jack Martin, Rich Baird,
 21 Kriss Andrews, Ken Buckfire and one of his colleagues.
 22 Q. Any other outside consultants besides Miller Buckfire?
 23 A. Well, Rich Baird is on contract to the state, but I
 24 don't -- I think -- I don't recall if Ernst & Young
 25 was there. There was a member of the financial

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1 advisory board.
 2 Q. Do you recall who that was?
 3 A. As soon as you said that, it went out of my head.
 4 Very, very sharp, as -- Ken -- Ken Whipple was there.
 5 I'm just going through the room. Andy, Ken Whipple,
 6 Jack Martin, Kriss Andrews, Rich Baird. That's all
 7 that I recall off the top of my head and Miller
 8 Buckfire and one of his colleagues.
 9 Q. And who was there from Jones Day?
 10 A. Aaron Agenbroad -- they were all partners. Aaron
 11 Agenbroad, Bruce Bennett, Heather Lennox, myself,
 12 Corinne Ball, Steve Brogan, and I think that was -- I
 13 think that was our team.
 14 Q. What was Aaron's last name again?
 15 A. Agenbroad, A-G-E-N-B-R-O-A-D.
 16 Q. What department is he in?
 17 A. Aaron Agenbroad is a partner in charge of the
 18 San Francisco office. He is in the labor.
 19 Q. He's in the labor group?
 20 A. Uh-huh.
 21 Q. Corinne, all the rest of the attorneys on the team
 22 were bankruptcy?
 23 A. No. Bruce Bennett is in the bankruptcy group.
 24 Corinne Ball was in the bankruptcy group. Heather
 25 Lennox is in the structured finance and bankruptcy.



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

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

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

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



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

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

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

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



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

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

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

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



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1 think we discussed pensions.

2 Q. Do you recall what you did discuss?

3 A. Just generally the state of the City, the difficulties

4 that he had encountered, they were more getting to

5 know each other meetings. There wasn't any plan being

6 worked out or any detailed discussions.

7 Q. Other than the pitch book that you testified about

8 earlier, prior to Jones Day being retained by the

9 City, do you know whether Jones Day provided or shared

10 with the City any analysis, memos, reports or any

11 documents of that sort with the City concerning the

12 issue of Detroit's pension liabilities?

13 A. Other than the pitch book?

14 Q. Yes.

15 A. None that I'm aware of.

16 Q. Do you know -- before Jones Day was retained by the

17 City, do you know whether Jones Day spoke to anyone at

18 the state including the governor and his senior staff

19 about what could or should be done about Detroit's

20 pension liabilities?

21 A. Prior to their retention?

22 Q. Yes.

23 A. I think I need to explain my answer. Between the

24 pitch which occurred I believe now on the end of

25 January until sometime in -- at some point in

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1 February, I recused myself from the retention, the

2 pitch process, so during the time that I was involved

3 for the few weeks, I don't know of anything; I

4 wouldn't know nothing after I recused myself.

5 Q. Okay, when was Jones Day retained by the City? Do you

6 know what date?

7 A. I think they were ultimately selected prior to the

8 time I got there. I remember the -- I think it was

9 the first couple of weeks it went through city

10 council, I stepped out of that process as Emergency

11 Manager, it then went to the mayor, I think or vice

12 versa, he approved and went to council, council

13 approved it, there were press reports of that time

14 frame, I believe it was approximately March -- mid

15 March.

16 Q. Okay.

17 A. Or was it -- no, no, no. They had been selected in

18 March, but I don't think city council approved it

19 until later. So I think I had been selected and

20 retained, but it had to go to the city council

21 certification and approval process for some period of

22 time after that.

23 Q. Okay. And since I had earlier asked you whether you

24 were aware of communications by Jones Day to the state

25 concerning what could or should be done about

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1 Detroit's pension liabilities --

2 A. Right.

3 Q. -- is the answer to your (sic) question you're not

4 aware of any?

5 A. Other than the pitch book?

6 Q. Yes.

7 A. I'm not aware of any.

8 Q. Okay. Are you aware of any reports or presentations

9 or memos or analysis presented by Jones Day to the

10 state concerning what could or should be done about

11 Detroit's pension liabilities that occurred before you

12 became EM?

13 A. No, I don't recall any.

14 Q. Are you aware of any that have occurred since you've

15 become EM?

16 A. Oh, I think, yes. I mean, I think there have been

17 presentations to the state about the City's pension

18 obligations, yes.

19 Q. Made by Jones Day?

20 A. Made by Jones Day and Miller Buckfire and others, yes,

21 yes.

22 Q. Okay. And what are they? Can you tell me what those

23 are?

24 A. Um --

25 MR. SHUMAKER: Objection, we're going to

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1 get into the same area that's covered by the common

2 interest agreement so if you're going to -- and ask

3 him about what he knows from a general level, but if

4 it's what was the specific content of the

5 communication, we're going to assert the privilege and

6 I'm going to instruct him not to answer. So subject

7 to that admonition you can answer.

8 Q. Okay, so without getting into the substance of any

9 documents, can you answer the question?

10 A. Yes. Without waiving any privilege, generally there

11 were discussions about -- and this may have included

12 attorneys and investment advisors as well as attorneys

13 and representatives of the state. Without discussing

14 what was said, generally the pension obligation and

15 healthcare obligation and the City's lack of funding

16 to meet them as discussed, you know, I'll just

17 reference the June 14th presentation as that type of

18 discussion.

19 Q. Were these discussions that occurred prior to the

20 issuance of the -- prior to June 14th?

21 A. Yes, I believe they may have been, yes.

22 Q. Did the state participate in the formulation of the

23 proposal that is the June 14th proposal?

24 A. When you say participate, I want to be careful. You

25 know, it generally may have been discussed at a high



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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1 Q. Are you saying --

2 A. The following week, yes.

3 Q. When you say one of those meetings, are you sure you

4 attended June 14th?

5 A. No, no, no, when I say one, I mean one of the

6 subsequent. I'm sure I attended June 14th. June 10th

7 was Monday, June 14th was Friday, my public meeting

8 was Monday, June 14th was the all creditors meeting.

9 There was subsequent due diligence meetings the

10 following week and I recall attending at least one of

11 those that week. That was the those I was referring

12 to.

13 Q. I'm a little confused. Are you sure you attended June

14 14th?

15 A. Yes.

16 Q. Okay. So do you recall whether you attended June

17 20th?

18 A. I think I did, but I don't recall.

19 Q. Okay. What about July 11th?

20 A. I don't recall.

21 Q. Okay. So I already asked you about whether at the

22 June 14th meeting you said anything to the effect of

23 that this was not a negotiation. Let me ask you the

24 same question for the June 20th and July 11th. Do you

25 recall at that -- at those meetings saying anything to

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1 A. Yes, I believe so.

2 Q. Okay. And some of those individuals spoke?

3 A. Yes.

4 Q. Okay. Do you recall whether at any of those meetings

5 that you attended whether any of the other individuals

6 who were there on behalf of the City said words to the

7 effect of this is not a negotiation?

8 A. Do I recall? No.

9 Q. At the June 20th meeting, is it true that the

10 attendees, and by the attendees I mean the people who

11 were not there on behalf of the City but the other

12 people, that in order to be heard they needed to fill

13 out a card and submit the card to someone who was

14 running the meeting? Is that how things worked?

15 A. Where was the June 20th meeting?

16 Q. I don't know.

17 A. I -- I know at my June 10th meeting that we had

18 speakers. I don't recall. I don't recall June 20.

19 Q. Let me clarify. Let's talk about the June 14th

20 meeting, the one you're sure you attended.

21 A. Right.

22 Q. Was there a system in place at that meeting where for

23 an attendee to be heard he or she had to write -- fill

24 out a card and submit it?

25 A. Yes, I believe so.

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1 the effect of this is not a negotiation?

2 A. I may have. As I've said several times today, you

3 know, bargaining negotiations is suspended for five

4 years so I may have said that, but I don't recall.

5 Q. And again, if there were witnesses who testified they

6 heard you say that at one or more of these meetings,

7 would you be in a position to deny that?

8 A. I don't know if I would deny it or if I would confirm

9 it. I mean, their recollection of what was said could

10 be different than mine or what they heard.

11 Q. Did you attend a meeting on July 10th with creditors?

12 A. I may have.

13 Q. Same question for July 10th. Do you recall saying

14 anything to the effect that that meeting was not a

15 negotiation?

16 A. I think I generally, when I would go to these

17 meetings, say we're having discussions and exchange,

18 but I would try -- if I said this is not a

19 negotiation, I would try to make sure that I did not

20 waive the suspension of bargaining under 436, so I may

21 have said that, yes.

22 Q. You may have said what?

23 A. This is not a negotiation, yeah, I may have said that.

24 Q. Okay. Apart from you there were others who attended

25 those meetings on behalf of the City; correct?

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1 Q. Okay, and describe how -- how did that -- what was

2 that process, how did that work?

3 A. That process was arranged by my staff. My

4 understanding is that if people wanted to speak, they

5 could fill out a card and a question would be asked

6 and members who were on the DS on the panel would

7 answer the question.

8 Q. Who would read out the card?

9 A. Initially it was the -- someone I believe on my staff

10 or some of my consultant's staff, but toward the end

11 of the meeting people just started asking questions

12 outright.

13 Q. Did -- that same process of attendees having to fill

14 out a card, did that occur at any of the other

15 meetings? And by the other meetings I mean either

16 June 20th, July 10th or July 11th?

17 A. I don't recall.

18 Q. It may have?

19 A. It may have, but I don't recall.

20 Q. Okay. Have you ever in your career as an attorney

21 attended a negotiation session of any kind?

22 A. Yes.

23 Q. Have you ever been at a negotiation session where one

24 side or the other has to fill out a card and have it

25 read by someone else to be heard?



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1 A. You're using the phrase negotiation session, and I
2 want to be clear that what we were saying is make sure
3 that we did not waive any rights under 436. I have
4 been at meetings where for purposes of to engage in
5 oral discussion, yes, you've had to fill out cards to
6 be heard, yes. I have been at auctions. Yes, I have
7 been at meetings like that.

8 Q. At auctions?

9 A. Yeah, I've been at auctions, been at meetings, been at
10 negotiations, yes, many different types of meetings.

11 Q. What kind of negotiations where those where
12 participants had to fill out a card to be heard?

13 A. They could have been negotiations for finance, they
14 could have been negotiations for procedures, they
15 could have been negotiations for a number of different
16 subjects, but it's happened on more than one occasion.

17 Q. Have you ever attended a collective bargaining
18 negotiation?

19 A. Yeah, I think I have.

20 Q. Okay. Did you ever see that type of system used in a
21 collective bargaining negotiation?

22 A. I don't think I saw it at the one I attended, but
23 collective bargaining is suspended.

24 Q. Did you -- before any of these meetings -- and by
25 these meetings, I mean the June 14th, June 20th, July

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1 10th or July 11th meetings -- did you consult with the
2 governor or any other state official about how the
3 meetings would be conducted?

4 A. No, not to the best of my knowledge.

5 Q. Did you consult with anyone, the governor or anyone,
6 any state official, regarding what the purpose or
7 nature of the meetings would be?

8 A. When you say consult, you know, I've testified earlier
9 today that we had regular communications with the
10 governor's office, but my understanding was that how
11 we ran meetings was substantially left up to me and my
12 team. So no, we didn't consult in that regard on how
13 the meetings were run.

14 Q. Okay, just to clarify what I mean by consult. I mean
15 did you talk?

16 A. Not at that level of detail how we're going to run, no
17 we didn't talk, no.

18 MR. DeCHIARA: Let me mark a document,
19 which I'll mark as -- ask the court reporter to mark
20 as Exhibit 18.
21 (Marked Exhibit No. 18.)

22 Q. Have you -- have you ever seen this document before?

23 A. Yes.

24 Q. And let me just identify it for the record. It's a
25 letter from Jones Day to Larry Stewart dated June 27,

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1 2013.

2 A. I'm --

3 MR. SHUMAKER: We have a different letter I
4 think.

5 A. I have John Cunningham.

6 MR. SHUMAKER: We have John Cunningham.
7 MR. DeCHIARA: I'm sorry, let's use that
8 one.

9 THE WITNESS: Okay.
10 MR. DeCHIARA: Thank you.

11 Q. Orr Exhibit 18 will be a Jones Day letter to John
12 Cunningham dated June 27, 2013. Let me ask you, have
13 you seen this Orr Exhibit 18 before?

14 A. Yes.

15 Q. And the first sentence of the letter says, thank you
16 for participating in the June 20th, 2013 informational
17 meetings pertaining to the City of Detroit's, and then
18 it continues --

19 A. Uh-huh.

20 Q. -- and you can read the rest --

21 A. Yes.

22 Q. -- but I won't read it aloud.
23 Do you concur with the description in the
24 sentence that I read of the June 20th meeting as an
25 informational meeting?

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1 A. Yes.

2 Q. Let me refer you back to your June 14th, 2013
3 proposal.

4 A. Yes.

5 Q. And to page -- the original page 109. And the third
6 to the last bullet point which we read earlier and
7 again I'm going to focus on the bottom line of that
8 bullet point that says, "There must be significant
9 cuts in accrued vested pension amounts for both active
10 and currently retired persons."
11 At the time of the meetings that I've been
12 referring to, the June 14th, June 20th, July 10th and
13 July 11th meetings, were -- would you have been
14 willing had there been negotiations that took place to
15 compromise and accept -- accept an outcome of the
16 restructuring effort that resulted in there not being
17 cuts in accrued vested pension amounts for both active
18 and currently retired persons?

19 A. Well, that's a hypothetical question that could depend
20 upon a number of things. I don't know. I would have
21 to see the proposal. We were willing to listen to any
22 proposal or counter that came in.

23 Q. Okay, and I'm not trying to phrase it as a
24 hypothetical, I want to focus on what was in your mind
25 at the time of these meetings. So let me ask you.



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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1 DEPOSITION ERRATA SHEET

2

3 Our Assignment No. 471048/NYC 337176

4 Case Caption: In re City of Detroit, Michigan

5

6 DECLARATION UNDER PENALTY OF PERJURY

7

8 I declare under penalty of perjury that I have read

9 the entire transcript of my Deposition taken in the

10 captioned matter or the same has been read to me, and the

11 same is true and accurate, save and except for changes

12 and/or corrections, if any, as indicated by me on the

13 DEPOSITION ERRATA SHEET hereof, with the understanding that

14 I offer these changes as if still under oath.

15 Signed on the ____ day of _____, 20__.

16 _____

17 KEVYN ORR

18

19

20

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1 DEPOSITION ERRATA SHEET

2

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5 Reason for change: _____

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20 Reason for change: _____

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22 _____

23 Reason for change: _____

24 SIGNATURE: _____ DATE: _____

25 KEVYN ORR

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1 DEPOSITION ERRATA SHEET

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22 _____

23 Reason for change: _____

24 SIGNATURE: _____ DATE: _____

25 KEVYN ORR



EXHIBIT C

Page 1

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

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

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

Page 3

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Page 2

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MR. WAYNE S. FLICK,
wayne.s.flick@lw.com,
appeared telephonically on behalf of
Ernst & Young;

DENTONS,
(233 South Wacker Drive, Suite 7800,
Chicago, Illinois 60606-6306,
312-876-2572), by:
MS. LEAH R. BRUNO,
leah.bruno@dentons.com;
MS. MELISSA A. ECONOMY,
melissa.economy@dentons.com,
appeared on behalf of Retirees Committee;

COHEN WEISS AND SIMON LLP,
(330 West 42nd Street,
New York, NY 10036-6979,
212-356-0216), by:
MR. PETER D. DeCHIARA,
pdechiara@cwsny.com,
appeared telephonically on behalf of the
International Union, UAW;

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APPEARANCES: (Continued)

STROBL & SHARP, P.C.,
(300 East Long Lake Road, Suite 200,
Bloomfield Hills, Michigan 48304-2376,
248-540-2300), by:
MS. MEREDITH E. TAUNT,
mtaunt@stroblpc.com,
appeared telephonically on behalf of the
Retired Detroit Police Members
Association.

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

Page 24

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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1 excuse me, "were limited to the City's general fund,"

2 is that correct?

3 A. That is correct.

4 Q. In other words, the projections assume

5 that there are no other funds available to the City

6 beyond the general fund, is that correct?

7 A. It -- it assumes that the general fund

8 will not have additional funds from other funds, yeah,

9 that's generally correct.

10 Q. What about the City having available --

11 other available funds outside of the general fund?

12 A. The City has multiple funds outside the

13 general fund. The main one is the water and sewer,

14 which we did not perform a ten-year projection on the

15 water and sewer funds. My understanding is that those

16 funds are not necessarily available to the general

17 fund.

18 Q. To the general fund that may be correct,

19 but it would be available to the City, would it not?

20 MR. STEWART: Objection.

21 BY THE WITNESS:

22 A. It would be available to the City for the

23 purposes those funds were raised for, which is

24 generally maintenance and capital improvements on the

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1 water and sewer side.

2 BY MS. BRUNO:

3 Q. Let's backtrack a little bit. I think

4 we've gone in a different direction than I'm trying to

5 focus on.

6 My question to you is: The forecasts that

7 you provided in this declaration are limited solely to

8 the general fund, is that correct?

9 A. They are generally limited to the general

10 fund, other than if they were other enterprise funds

11 the City was subsidizing, like the Department of

12 Transportation, those would have been included in the

13 general fund as it is a -- a fund that the City

14 subsidizes and has historically subsidized.

15 Q. So you would agree, though, that subject

16 to your exception there that the assumptions and

17 forecasts provided in this declaration do not take

18 into account other funds available to the City?

19 MR. STEWART: Objection.

20 BY THE WITNESS:

21 A. You have to rephrase your question.

22 BY MS. BRUNO:

23 Q. The forecasts and cash flows, the

24 projections, the information that is discussed in your

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1 declaration here are solely limited with the caveat

2 that you provided to the general fund, is that

3 correct?

4 MR. STEWART: Objection.

5 BY THE WITNESS:

6 A. The cash flow forecasts and the ten-year

7 projections with respect to the receipts and

8 disbursements and the revenues and expenses are

9 generally reflective of the general fund and the

10 Department of Transportation. That's the way I would

11 characterize it.

12 BY MS. BRUNO:

13 Q. You would agree that the City does have

14 access to other funds, correct?

15 MR. STEWART: Objection.

16 BY THE WITNESS:

17 A. I don't understand when you say the City

18 has access to.

19 BY MS. BRUNO:

20 Q. There is other enterprise funds available

21 to the City, correct?

22 MR. STEWART: Objection.

23 BY THE WITNESS:

24 A. Available to the City for what?

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1 BY MS. BRUNO:

2 Q. Well, if you are talking about the cash

3 available to the City, certainly there is other

4 sources of cash available to the City outside of the

5 general fund, you would agree with that?

6 MR. STEWART: Objection.

7 BY THE WITNESS:

8 A. No. It depends on what purpose you are

9 asking the question, the context of.

10 BY MS. BRUNO:

11 Q. You would agree with me that the general

12 fund is not the only source of available cash to the

13 city, would you not?

14 MR. STEWART: Objection.

15 BY THE WITNESS:

16 A. The general fund -- the cash that is

17 available to the general fund is generally the only

18 cash that is available to the City for its core

19 operations that are not related to any other

20 enterprise funds. So, my answer would be, that the

21 cash flows that are reflective in here and are

22 generally available for the general fund is the City's

23 operating cash in general.

24 BY MS. BRUNO:



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1 Q. How do you have that understanding?

2 A. That is my general understanding. So,

3 my -- my understanding is that the monies that are

4 available or are attributable to the bank accounts of

5 the enterprise funds have specific reasons for what

6 that cash can be spent. So we have made the

7 assumption that that cash is not available for the

8 general fund. But I would think that would be a

9 further legal determination. It is our understanding

10 that that cash is not available to fund the operations

11 of the general fund.

12 Q. And how did you obtain that understanding?

13 That's what I'm trying to get to.

14 A. I don't recall. That's our general

15 understanding that there are revenue bonds that have

16 been issued at the Water and Sewer Department, and

17 those revenue bonds are associated with specific

18 maintenance and capital improvements for the Water and

19 Sewer Department, and that those funds are generally

20 not available to fund the operations of the general

21 fund.

22 Q. Do you recall having a conversation with

23 anyone at the City to that effect?

24 A. Yes. I'm -- I think all of the

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1 discussions from the very front end of our engagement

2 would have been in the context that, you know, whether

3 any other cash is available, so the answer would be

4 yes.

5 Q. Who at the City do you recall having that

6 conversation with?

7 A. I don't recall of a specific conversation,

8 but I'm sure that the discussions would have been with

9 Chris Brown and with Kirk Lewis and any of the other

10 folks that we have reported to during the City, but I

11 do not recall of a specific conversation in terms of

12 the funds available to the Water and Sewer Department.

13 Q. If I turn your attention to Exhibit 8,

14 which is the Amendment 7 to the SOW, on page 2 there

15 are a number of specific references to work and

16 analysis of the City's general fund. And it's in many

17 places defined General Fund with a capital G and a

18 capital F.

19 Do you see what I'm referring to?

20 A. Yes. I'm trying to find the capital G and

21 the capital F, but I generally -- I'm on page 2, that

22 the context is for the general fund.

23 Q. Sure. Just if you look at the second bold

24 bullet point, "Preparation of 10-Year tax revenue

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1 estimates for the General Fund."

2 A. Okay.

3 Q. That's one example that I can see.

4 Are there similar -- my question is -- I'm

5 trying to get to the original SOW. I'm using the

6 Amendment 7 to discuss the original SOW.

7 Did the original SOW limit the work to the

8 general fund in the same way that Amendment No. 7

9 does?

10 A. I don't recall specifically. But I can

11 say that earlier on in our engagement, I would say in

12 the 2011 timeframe, we were looking at the cash flows

13 of the water and sewer fund and the other enterprise

14 funds as well. But that process stopped, I would say,

15 in the first four or five or six months of the

16 engagement because there was sort of water and sewer

17 funds were tracking their cash on their own, and so

18 were some of the other enterprise funds, that our

19 focus really was on the general fund.

20 But just for clarity, the work that would

21 have been done in the front end was to look at the

22 funds that water and sewer had and the receipts and

23 disbursements associated with that versus any

24 transfers that were coming back to the general fund.

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1 So they were looking at those forecasts in isolation.

2 But that work sort of stopped I think right around in

3 the first four or five months of the engagement.

4 Q. And why did that work stop?

5 A. It was because the focus continued to be

6 on the general fund and these were self-sustaining

7 funds with respect to at least the Water and Sewer

8 Department. And so they were monitoring their -- and

9 dealing with their cash activity, although connected

10 to the City, but we weren't helping forecast receipts

11 and disbursements because they were not impacting the

12 general fund.

13 Q. You previously testified in your prior

14 deposition that Ernst & Young was not asked to look at

15 possible disposition of City assets, is that correct?

16 A. That's correct.

17 Q. Why -- did you have a discussion with the

18 City regarding whether that would be valuable work for

19 Ernst & Young to provide?

20 MR. STEWART: Objection.

21 BY THE WITNESS:

22 A. I -- I'm not sure I follow the question.

23 BY MS. BRUNO:

24 Q. How did it come about that Ernst & Young



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

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

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

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



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1 would improve the overall profile is my assumption.
 2 BY MS. BRUNO:
 3 Q. I have heard estimates that a more
 4 accurate estimate of outstanding tax debt is
 5 significantly higher than \$250 million.
 6 Are you familiar with these higher
 7 estimates that are being discussed?
 8 MR. STEWART: Objection.
 9 BY MS. BRUNO:
 10 Q. Have been discussed?
 11 MR. STEWART: Objection.
 12 BY THE WITNESS:
 13 A. No.
 14 BY MS. BRUNO:
 15 Q. You have not heard that the outstanding
 16 tax debt available to the City could be as much as
 17 \$700 million?
 18 A. I have not heard that, that I recall.
 19 Q. To be clear, your forecasts don't account
 20 for the collection, any type of truly significant to
 21 this degree of outstanding debt, is that correct?
 22 MR. STEWART: Objection.
 23 BY THE WITNESS:
 24 A. That's correct.

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

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1 forecasts and analysis was based upon the
 2 comprehensive annual finance report of the City, the
 3 C-A-F-R, CAFR.
 4 Do you see where you discuss that in this
 5 paragraph?
 6 MR. STEWART: Objection.
 7 BY THE WITNESS:
 8 A. It was one of the documents that -- that
 9 we used in terms of helping pull together the
 10 forecast.
 11 BY MS. BRUNO:
 12 Q. Was -- it was the primary document,
 13 correct, primary document, wasn't it?
 14 MR. STEWART: Objection.
 15 BY THE WITNESS:
 16 A. No.
 17 BY MS. BRUNO:
 18 Q. What would you consider to be the primary
 19 document then?
 20 A. There was not one single primary document.
 21 It was a compilation of all of the different sources
 22 of data that we got that included the CAFR, that
 23 included the raw files that we got from the City, that
 24 included some of the information we saw in terms of

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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1 fiscal year 2013?

2 A. So you are stretching back to fiscal year

3 2013.

4 Q. Well, to be fair, the next question will

5 be what about calendar year 2013. If you want to

6 address it all at once, go ahead.

7 A. I don't know about the calendar year 2013.

8 In terms of view with respect to running out of cash,

9 I don't remember whether this would or would not have

10 been enough, but from a fiscal year 2013 standpoint,

11 depending on the assumptions that you use. That being

12 said, that, you know, these revenue enhancement

13 initiatives and some of these cost savings may, you

14 know, have -- some of these have been already

15 incorporated, i.e., these achieved cost savings of

16 \$150 million says it's achieved, so my assumption is

17 they would have already been incorporated in whatever

18 assumptions we had.

19 Q. I'm going to jump ahead a little bit.

20 Are you aware whether the Emergency

21 Manager met with stakeholders regarding the Proposal

22 For Creditors, which is Exhibit 4?

23 A. Yes, there was -- the Emergency Manager

24 was present at the June 14 proposal in which the

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1 majority of creditors, if not all -- a significant

2 number of creditors were present.

3 Q. And were you present for that meeting?

4 A. Yes, I was.

5 Q. Where was that meeting?

6 A. That was at the Westin Hotel by the

7 airport.

8 Q. In Detroit?

9 A. That is correct.

10 Q. Were there other meetings that you are

11 aware of between the Emergency Manager and individual

12 stakeholders regarding the Proposal For Creditors?

13 A. You would have to ask the Emergency

14 Manager that. I do not know of his specific calendar.

15 Q. No. I'm asking if you are aware of any

16 meetings?

17 A. I'm not aware of whether he did or did not

18 have meetings. I do not maintain his calendar.

19 Q. And you were not present at any

20 meetings -- any such meetings, correct?

21 A. Any what such meetings?

22 Q. Between the Emergency Manager or his

23 representatives and individual stakeholders regarding

24 the Proposal For Creditors outside of the June 14th

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1 meeting at the Westin Hotel?

2 A. So, when you say individual stakeholders,

3 can you explain what you are referring to?

4 Q. Let's take a step back.

5 So the June 14th meeting at the Westin

6 Hotel, that was with many creditors, right?

7 A. That's right.

8 Q. Was it open to the public, anybody who

9 wanted to come and listen to come or was it more

10 discrete than that?

11 A. I don't recall specifically how the

12 logistics of it were handled. I do not think it was

13 open to all of the general public, but I'm not sure.

14 I do not believe it was.

15 Q. But there were different -- there were

16 several different creditors in -- in attendance, as

17 far as you know, correct?

18 A. That is correct, yes.

19 Q. So there would have been financial

20 creditors like bondholders present, do you know?

21 A. That's my assumption, yes.

22 Q. And were employee representatives, such as

23 unions, like AFSCME, my client, do you know if those

24 kinds of creditors were also present?

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1 A. I think they were.

2 Q. So, after that meeting, are you aware --

3 did you attend any meetings with the Emergency Manager

4 and any individual creditor group regarding this

5 Proposal For Creditors?

6 A. We've had meetings subsequent to the June

7 14th proposal. I do not recall if the Emergency

8 Manager was present in person or not, but along with

9 the other advisers that have been helping the City,

10 there have been meetings with other stakeholders to

11 discuss things like healthcare plans, both on the

12 active and retiree side, but if -- I do not recall if

13 there was a specific meeting where Kevyn was or was

14 not involved.

15 Q. Okay. And do you recall who you met with

16 in terms of the stakeholder group?

17 A. I think in general at the meetings for

18 the -- on the healthcare side were with some of the

19 union representatives and that there were similar

20 meetings on the retiree side. However, at that point

21 in time, there was not an official retiree committee

22 that was appointed, at least as of June 20th from what

23 I recall.

24 Q. Do you remember approximately when the



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

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

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

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



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

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

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

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



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

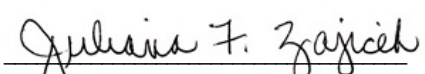
Page 110

1 MS. TAUNT: Meredith Taunt on behalf of the
2 Retired Detroit Police Members Association. We do not
3 have any questions.
4 MS. BRUNO: Anyone else on the phone?
5 MS. KAUFMAN: This is Dana Kaufman for Financial
6 Guaranty Insurance Company. We do not have any
7 questions.
8 MR. STEWART: This is Jeff Stewart, I have just
9 a few questions of Mr. Malhotra, from Jones Day. I
10 represent the witness and also the City, just a few
11 questions.
12 EXAMINATION
13 BY MR. STEWART:
14 Q. Mr. Malhotra, you were asked in your
15 deposition about a document called the Comprehensive
16 Annual Financial Report of the City of Detroit.
17 Do you remember being asked about that?
18 A. Yes.
19 Q. That's sometimes called a CAFR, C-A-F-R?
20 A. Yes.
21 Q. Did E&Y audit the CAFR?
22 A. No.
23 Q. Or audit the accounts that led to the
24 creation of the CAFR?

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1 A. No.
2 Q. Was the CAFR audited?
3 A. Yes.
4 Q. Audited by who?
5 A. KPMG.
6 Q. And tell us who or what is KPMG?
7 A. KPMG is the City's auditor and it is
8 another Big 4 accounting firm.
9 Q. Is it one of the international accounting
10 firms that is known in the United States and
11 elsewhere?
12 A. Yes.
13 Q. Comparable to E&Y in terms of what it
14 does?
15 A. Generally, yes.
16 MR. STEWART: Okay. That's all I have.
17 Thank you.
18 MR. TEELE: I have no questions.
19 MR. STEWART: So is the record closed?
20 MS. BRUNO: It is at this time.
21 MR. STEWART: Okay.
22 (Time Noted: 12:32 p.m.)
23 FURTHER DEPONENT SAITH NOT.
24

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1 REPORTER'S CERTIFICATE
2 I, JULIANA F. ZAJICEK, C.S.R. No. 84-2604,
3 a Certified Shorthand Reporter, do hereby certify:
4 That previous to the commencement of the
5 examination of the witness herein, the witness was
6 duly sworn to testify the whole truth concerning the
7 matters herein;
8 That the foregoing deposition transcript
9 was reported stenographically by me, was thereafter
10 reduced to typewriting under my personal direction and
11 constitutes a true record of the testimony given and
12 the proceedings had;
13 That the said deposition was taken before
14 me at the time and place specified;
15 That I am not a relative or employee or
16 attorney or counsel, nor a relative or employee of
17 such attorney or counsel for any of the parties
18 hereto, nor interested directly or indirectly in the
19 outcome of this action.
20 IN WITNESS WHEREOF, I do hereunto set my
21 hand on this 21st day of September, 2013.
22
23 
24 JULIANA F. ZAJICEK, Certified Reporter



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I N D E X

1

2 WITNESS: PAGE:

3 GAURAV MALHOTRA

4 EXAM BY MS. BRUNO..... 7

5 EXAM BY MR. TEELE..... 81

6 EXAM BY MR. STEWART..... 110

7

8 *****

9

E X H I B I T S

10 MALHOTRA EXHIBIT MARKED FOR ID

11

12

13 No. 8 Amendment No. 7 to Statement of 18
Work; DTF0TA0000001 - 008.....

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

15

16

17

18

19 No. 10 Document titled: Detroit City 94
Council Rational for Appeal;
DTM100117210 - 215.....

20

21 No. 11 37-page document titled: City of 95
Detroit - Restructuring Plan,
Mayor's Implementation Progress
Report, March 2013.....

22

23

24 REQUEST FOR DOCUMENTS
Page 16

Page 115

DEPOSITION ERRATA SHEET

1

2 Page No. _____ Line No. _____ Change to: _____

3 _____

4 Reason for change: _____

5 Page No. _____ Line No. _____ Change to: _____

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19 Reason for change: _____

20 Page No. _____ Line No. _____ Change to: _____

21 _____

22 Reason for change: _____

23 SIGNATURE: _____ DATE: _____

24 GAURAV MALHOTRA

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DEPOSITION ERRATA SHEET

1

2

3 Assignment No. 472371

4 Case Caption: In Re: City of Detroit, Michigan

5

6 DECLARATION UNDER PENALTY OF PERJURY

7

8 I hereby certify that I have read the

9 foregoing transcript of my deposition given at the

10 time and place aforesaid, consisting of Pages 1 to

11 111, inclusive, and I do again subscribe and make

12 oath that the same is a true, correct and complete

13 transcript of my deposition so given as aforesaid,

14 and includes changes, if any, so made by me.

15

16 GAURAV MALHOTRA

17

18 SUBSCRIBED AND SWORN TO

19 before me this day

20 of , A.D. 200 .

21

22 Notary Public

23

24

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DEPOSITION ERRATA SHEET

1

2 Page No. _____ Line No. _____ Change to: _____

3 _____

4 Reason for change: _____

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24 GAURAV MALHOTRA



EXHIBIT D

Page 1	1 IN THE UNITED STATES BANKRUPTCY COURT 2 EASTERN DISTRICT OF MICHIGAN 3 SOUTHERN DIVISION 4 5 In re Chapter 9 6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846 7 Debtor. Hon. Steven W. Rhodes 8 _____/ 9 10 DEPONENT: CHARLES M. MOORE 11 DATE: Wednesday, September 18, 2013 12 TIME: 10:02 a.m. 13 LOCATION: MILLER CANFIELD PADDOCK & STONE PLC 14 150 West Jefferson, Suite 2500 15 Detroit, Michigan 16 REPORTER: Jeanette M. Fallon, CRR/RMR/CSR-3267 17 18 19 20 21 22 23 24 25	Page 3
Page 2	1 APPEARANCES: 2 3 JONES DAY 4 By: Evan Miller 5 51 Louisiana Avenue, NW 6 Washington, D.C. 20001.2113 7 202.879.3939 8 -and- 9 MILLER CANFIELD PADDOCK AND STONE PLC 10 By: Jonathan S. Green 11 150 West Jefferson, Suite 2500 12 Detroit, MI 48226.4415 13 313.496.7997 14 Appearing on behalf of the Debtor 15 16 DENTONS US LLP 17 By: Arthur H. Ruegger 18 1221 Avenue of the Americas 19 New York, NY 10020.1089 20 212.768.6881 21 Appearing on behalf of Retirees Committee 22 23 24 25	Page 4
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<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 SILVERMAN & MORRIS PLLC</p> <p>4 By: Thomas Morris (appearing telephonically)</p> <p>5 30500 Northwestern Hwy Ste 200</p> <p>6 Farmington Hills, MI 48334</p> <p>7 248.539.1330</p> <p>8 Appearing on behalf of Detroit Retired City Employees</p> <p>9 Association and Retired Detroit Police and</p> <p>10 Firefighters Association</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 7</p> <p style="text-align: center;">E X H I B I T S</p> <p>1</p> <p>2 NUMBER IDENTIFICATION PAGE</p> <p>3 Exhibit 11 DTMI00078909 through 78969 90</p> <p>4 Exhibit 12 DTMI00103661 through 103663 112</p> <p>5 Exhibit 13 FAB Discussion Document, 3/1/2013 115</p> <p>6 Exhibit 14 Restructuring Recommendations,</p> <p>7 4/5/2013 116</p> <p>8 Exhibit 15 FAB Discussion Document, 4/8/2013 117</p> <p>9 Exhibit 16 DTMI00066196 through 66200 132</p> <p>10 Exhibit 17 DTMI00066201 through 66210 135</p> <p>11 Exhibit 18 DTMI00066218 through 66223 141</p> <p>12 Exhibit 19 DTMI00066224 through 66230 147</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 6</p> <p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 CHARLES M. MOORE</p> <p>5 Examination by Mr. Ruegger 10</p> <p>6 Examination by Ms. Levine 69</p> <p>7 Examination by Mr. Ciantra 127</p> <p>8 Examination by Mr. Ruegger (continued) 163</p> <p>9</p> <p style="text-align: center;">E X H I B I T S</p> <p>10</p> <p>11 NUMBER IDENTIFICATION PAGE</p> <p>12 Exhibit 1 Declaration of Charles M. Moore 11</p> <p>13 Exhibit 2 Memorandum in Support 39</p> <p>14 Exhibit 3 Proposal for Creditors, 6/14/2013 50</p> <p>15 Exhibit 4 DTMI00106352 through 6353 70</p> <p>16 Exhibit 5 DTMI00106348 through 6349 72</p> <p>17 Exhibit 6 DTMI00078512 through 8514 73</p> <p>18 Exhibit 7 DTMI00106319 through 106320 81</p> <p>19 Exhibit 8 DTMI00079527 82</p> <p>20 Exhibit 9 DTMI00079526 83</p> <p>21 Exhibit 10 DTMI00079528 through 79530 88</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 Detroit, Michigan</p> <p>2 Wednesday, September 18, 2013</p> <p>3 * * *</p> <p>4 CHARLES M. MOORE</p> <p>5 was thereupon called as a witness herein, and after having</p> <p>6 first been duly sworn to tell the truth, the whole truth,</p> <p>7 and nothing but the truth, was examined and testified as</p> <p>8 follows:</p> <p>9 MR. RUEGGER: Good morning, everyone. My</p> <p>10 name is Arthur Ruegger from the Dentons firm, we</p> <p>11 represent the Retirees Committee. I guess I'll be the</p> <p>12 first one to ask the questions today, but there should</p> <p>13 be others later on.</p> <p>14 Good morning, Mr. Moore.</p> <p>15 THE WITNESS: Good morning.</p> <p>16 MR. RUEGGER: A couple of preliminaries.</p> <p>17 But I guess even before that, let's do a roll call.</p> <p>18 We'll go around the table first and then ask for</p> <p>19 people on the phone to identify themselves. Why don't</p> <p>20 we start with you, Sharon.</p> <p>21 MS. LEVINE: Sharon Levine, Lowenstein</p> <p>22 Sandler, for AFSCME.</p> <p>23 MR. CIANTRA: I'm Thomas Ciantra, I'm with</p> <p>24 Cohen Weiss and Simon, LLP, for the UAW.</p> <p>25 MR. MAST: Drew Mast, Clark Hill, for the</p>



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

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

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

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



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1 administration from Michigan State?

2 A. Yes, sir.

3 Q. When did you get your bachelor's degree?

4 A. In 1994.

5 Q. And when did you get your master's degree?

6 A. The same year. I was enrolled in a five-year program

7 which essentially granted both degrees at the same

8 time.

9 Q. Did you have any specialty or concentration with

10 regard to your bachelor of arts degree?

11 A. Yes, accounting.

12 Q. And what about your MBA?

13 A. Yes, the track was professional accounting.

14 Q. What was your first job after you received your

15 degrees in 1994?

16 A. I was employed by Deloitte and Touche.

17 Q. And what was your position at Deloitte and Touche?

18 A. I believe the title may have been associate.

19 Q. And how long were you with Deloitte and Touche?

20 A. Approximately five-and-a-half years.

21 Q. And what areas did you concentrate in at Deloitte and

22 Touche?

23 A. I spent the majority of my time in the middle market

24 consulting group doing performance improvement and

25 other consulting services for middle market companies.

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1 Q. And when you left Deloitte and Touche, what was your

2 next employer?

3 A. I became the chief financial officer for Horizon

4 Technology.

5 Q. Can you spell that? Horizon, H-O-R --

6 A. Yes, sir. H-O-R-I-Z-O-N.

7 Q. And what was the business of Horizon Technology?

8 A. Horizon had a variety of businesses. The bulk of the

9 operations were automotive supply operations. We

10 produced various metal formed parts, but it was a

11 privately owned business and it had a variety of other

12 interests as well including real estate and retail

13 along with a few other very minor businesses.

14 Q. Just so we get a sense for the size of business, what

15 were the annual revenues in general terms of Horizon

16 Technology?

17 A. Approximately \$60 million per year.

18 Q. Thank you. And how long were you with Horizon

19 Technology?

20 A. Just under two years.

21 Q. So if you were with Deloitte and Touche for

22 five-and-a-half years, you left Deloitte in Touche in

23 or around 1999 or year 2000; is that correct?

24 A. Very beginning of year 2000, yes, sir.

25 Q. And you were with Horizon Technology until when?

Page 15

1 A. Until October of 2001.

2 MR. RUEGGER: Okay, did someone just join

3 the deposition?

4 MR. ARTZ: Yes, this is Michael Artz from

5 AFSCME on the phone.

6 MR. RUEGGER: Thank you, Michael.

7 MS. LEVINE: Hi, Michael.

8 MR. ARTZ: Good morning.

9 Q. So now we're October 2001. Where did you go then?

10 A. That is when I joined Conway MacKenzie.

11 Q. And have you undertaken any area of special

12 concentration at Conway MacKenzie?

13 A. There are a number of industries that I tend to focus

14 a lot of my time on as well as certain services that

15 the firm provides.

16 Q. And what are the industries that you focus on?

17 A. Automotive, gaming and hospitality, governmental,

18 construction and real estate, financial services and

19 there are a few others as well but those are the major

20 ones.

21 Q. And does that list include the services that you also

22 concentrate in at Conway MacKenzie?

23 A. The service lines that I participate in are separate

24 from industries. The service lines tend to be in the

25 area of turnaround consulting, performance

Page 16

1 improvement, restructuring, crisis management,

2 litigation support and investment banking.

3 Q. Before your work for the City of Detroit did you have

4 any experience working with governmental clients?

5 A. Yes, sir.

6 Q. Approximately how many?

7 A. Approximately five.

8 Q. Can you identify them?

9 A. Yes, sir. Detroit Public Schools, Jefferson County

10 Alabama, Wayne County Circuit Court, others are

11 slipping my mind right now -- oh, the Commonwealth of

12 Puerto Rico and I'm -- those are the ones that I can

13 recall at this point.

14 Q. And that's fine. If you remember any others in the

15 course of today's proceeding, I would ask that you

16 identify them then.

17 A. I will.

18 Q. When did you do the work with the Detroit Public

19 Schools?

20 A. In 2011.

21 Q. Is that work ongoing or is it completed?

22 A. No, sir, it's completed.

23 Q. And so how long did you do work for the Detroit Public

24 Schools?

25 A. Approximately three months.



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

Page 18

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

Page 19

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

Page 20

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



Page 21

1 A. Yes, sir.

2 Q. And just so I'm clear, I apologize, it was the
3 employment retirement system of the Government
4 Development Bank that you did this work for?

5 A. The Government Development Bank was the engaging
6 entity. The pension system for which our work related
7 was the employee retirement system.

8 Q. For what entity or group?

9 A. For the Commonwealth of Puerto Rico.

10 Q. Thank you.

11 A. It was a public pension plan. Mr. Ruegger, I'll just
12 clarify as well that my firm did work -- other work
13 related to the Commonwealth of Puerto Rico for a
14 different client prior to the assignment where we
15 worked for the government.

16 Q. All right. Can you identify what that other client
17 was?

18 A. Yes. We were engaged by both AFSCME and UAW.

19 Q. And what were you engaged to do for those unions?

20 A. Assist in analysis related to a plan that the governor
21 had prepared and analysis of the upcoming budget.

22 Q. Do you remember approximately when that work was done?

23 A. I believe that may have been in 2009.

24 Q. And how long did you work in the engagement for those
25 two unions?

Page 22

1 A. Approximately two months, if I recall correctly.

2 Q. It's set out in your declaration that -- and I believe
3 it's paragraph 6 --
4 (Discussion held off the record.)

5 Q. -- that you're a Certified Public Accountant. That's
6 accurate; correct?

7 A. Yes, sir.

8 Q. And you are also a certified turnaround professional?

9 A. Yes, sir.

10 Q. Do you have any other formal certificates?

11 A. I am also, as is listed here, certified in financial
12 forensics.

13 Q. Any others that you recall?

14 A. No, sir.

15 Q. Other than -- any other formal training that you've
16 had or certifications?

17 A. Can you define formal training?

18 Q. Sure. We'll try to break it down. How about any
19 other classroom training or work at an educational
20 institution?

21 A. Through the course of my certifications as well as
22 professional organizations to which I belong I
23 regularly attend educational sessions every year.

24 Q. So seminars, conferences, those kind of things you
25 attend on a regular basis?

Page 23

1 A. Yes, sir.

2 Q. Anything other than seminars and conferences and what
3 you've mentioned already?

4 A. Over the course of my career I've also spent time with
5 a few other certifications related to operational
6 items; as an example, I don't believe it's called this
7 anymore, but formerly the American Production
8 Inventory Control Society, APICS, A-P-I-C-S. And I
9 have been certified in certain operational information
10 system applications used by businesses.

11 Q. Can you identify any of the operational information
12 system applications that you just mentioned?

13 A. Yes, I have multiple certifications from QAD is the
14 name of the company related to its software enterprise
15 resource planning application known as MFG Pro.

16 Q. Any others you can recall right now?

17 A. No, I think that's it.

18 Q. We're going to come back to the declaration in a
19 second, but have you ever testified under oath before,
20 Mr. Moore?

21 A. Yes, sir.

22 Q. Approximately how many times?

23 A. If you count testifying in the same matter multiple
24 times as each individual instance, it would be perhaps
25 15 -- 10 to 15 I think would be a fair number.

Page 24

1 Q. And of the 10 to 15 how many were in court?

2 A. I've testified in court perhaps five to eight times.

3 Q. Any instances where you testified in an arbitration
4 proceeding?

5 A. Not that I can recall.

6 Q. And approximately how many of those instances were
7 deposition testimony?

8 A. I have been deposed approximately five times.

9 Q. Other than the court and the deposition instances,
10 have you testified under oath in any other context?

11 A. Not that I can recall.

12 Q. I'm going to ask you to identify for us the cases that
13 you've testified -- in which you've testified, so
14 let's start with the instances in court. When was the
15 first time you testified in court?

16 A. The matter would have been DCT, Inc., and I believe I
17 testified in 2002.

18 Q. Were you a fact or an expert witness?

19 A. I was a fact witness.

20 Q. And what issues did you testify to?

21 A. This goes back 11 years so I'm stretching my memory
22 here.

23 Q. Just do the best you can, sir.

24 A. But this was an involuntary bankruptcy filing where
25 Conway MacKenzie was engaged on behalf of the debtor



Page 25

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

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1 Q. And what court did Wohlert file for Chapter 11?
 2 A. The Western District of Michigan.
 3 Q. And what issues did you address in your testimony?
 4 A. I testified multiple times for different issues in the
 5 case. There was a motion to convert the case to
 6 Chapter 7 that was filed, I testified related to
 7 postpetition financing, I testified related to a sale
 8 transaction, I believe.
 9 Q. In each instance there was a separate incident of
 10 testimony in court?
 11 A. Yes, sir.
 12 Q. Any other cases where you testified in court other
 13 than the two you've mentioned?
 14 A. Yes, sir. The next matter was Hastings Manufacturing
 15 and that was a Chapter 11 in the Western District of
 16 Michigan.
 17 Q. And who was Conway MacKenzie's client there?
 18 A. Hastings Manufacturing.
 19 Q. And what issues did you address in your testimony?
 20 A. I believe that I testified -- I'm just skipping my
 21 mind on the specific testimony, but I think I
 22 testified related to a sale transaction that was
 23 occurring and this would have been in perhaps 2005 --
 24 2005 or 2006.
 25 Q. So you testified in support of a proposed sale

Page 27

1 transaction?
 2 A. Yes, sir.
 3 Q. Any other court cases you testified -- where you
 4 testified in court other than the three you've
 5 mentioned?
 6 A. Yes, sir. Greektown Casino and Hotel.
 7 Q. And who was Conway MacKenzie's client in that case?
 8 A. Greektown Casino.
 9 Q. And what issues did you address in your testimony?
 10 A. I testified multiple times during that Chapter 11 case
 11 related to postpetition financing, plans of
 12 reorganization, disclosure statements, and a variety
 13 of other issues. There were many instances of
 14 testimony in that case.
 15 Q. So when you say -- you said multiple or many, can you
 16 give me an approximate number of times you testified
 17 in court in that case?
 18 A. Perhaps five or six.
 19 Q. Thank you.
 20 Other than the four cases we've identified
 21 so far, have you testified in court in any other
 22 instance?
 23 A. Not that I can recall right now.
 24 Q. Fair enough.
 25 I believe you said you testified in

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1 deposition approximately five times?
 2 A. Yes, sir.
 3 Q. Were any of those depositions in the four court cases
 4 that you've identified so far?
 5 A. Yes, sir.
 6 Q. In which of the cases that you identified so far have
 7 you also testified in a deposition?
 8 A. Greektown Casino.
 9 Q. And approximately how many times were you deposed in
 10 Greektown Casino?
 11 A. At least two.
 12 Q. Related to the same issues that you had mentioned
 13 earlier that you testified to in court?
 14 A. Yes, sir.
 15 Q. Other than the depositions in the Greektown Casino
 16 case can you give us the names and subject matters of
 17 any -- of other cases where you were -- testified in a
 18 deposition?
 19 A. Yes, sir. Synergy Data, which was a Chapter 11 case
 20 in the district of Delaware, and I don't believe,
 21 Mr. Ruegger, that I testified in court in that
 22 instance; however, I was deposed. I can't recall
 23 exactly if I testified in court in that one or not.
 24 Q. Do you remember what issues you addressed when you
 25 testified in the Synergy Data case?



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

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

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

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



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

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

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

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

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1 second.

2 (A brief recess was taken.)

3 MR. RUEGGER: Back on the record.

4 Drew, you want to say something?

5 MR. MAST: Yes, before we continue, just

6 briefly, I would like to make a statement on behalf of

7 the Retirement Systems that as to any and all

8 questioning by others today regarding pension and

9 actuarial issues, including underfunding, calculations

10 and assumptions, Detroit -- the Retirement Systems are

11 not participating today and reserve all rights with

12 regard to those issues. That's all.

13 MR. RUEGGER: Very well.

14 BY MR. RUEGGER:

15 Q. We were talking about the commission that was

16 referenced in your declaration when we left.

17 A. Yes, sir.

18 Q. What was the subject matter of that commission as you

19 recall?

20 A. The commission was created as part of a budget

21 standoff that took place within the State of Michigan

22 prior to the start of its fiscal year 2008. The State

23 was not able to pass a balanced budget prior to the

24 start of the fiscal year on October 1st, 2007. As

25 part of the final compromise, there was the -- to be

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1 the creation of a commission called the Legislative

2 Commission on Government Efficiency which would

3 consist of nine members that would look for

4 efficiencies in the State of Michigan's operations.

5 Q. And did that commission issue a report or

6 recommendation?

7 A. Yes, sir.

8 Q. At the end of that two-year period?

9 A. Yes.

10 Q. Who was the speaker who appointed -- you mentioned the

11 speaker and the house majority leader both appointed

12 you to that commission?

13 A. Speaker of the house was Andy Dillon and the senate

14 majority leader was Mike Bishop.

15 Q. Last name, sir?

16 A. Bishop.

17 Q. Bishop?

18 A. Bishop, B-I-S-H-O-P.

19 Q. Prior to the Legislative Commission on Government

20 Efficiency, had you served on any commissions or other

21 organizations on behalf of the government?

22 A. The State government?

23 Q. Yes, sir.

24 A. Not that I can recall.

25 Q. Subsequent to your work on the Legislative Commission

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1 on Government Efficiency have you served on any State

2 commissions?

3 A. No, sir.

4 (Marked Exhibit No. 2.)

5 Q. I want to try to explore what you know about some

6 other references to various teams or panels that are

7 in the pleadings so -- because we're on the subject of

8 commissions now and I've asked the court reporter to

9 mark as Moore Exhibit 2 a copy of the Memorandum in

10 Support of Statement of Qualifications Pursuant to

11 Section 109(c) of the Bankruptcy Code, which was filed

12 July 18th, 2013.

13 MR. RUEGGER: And if anybody wants to look

14 at a copy.

15 Q. I'm not going to spend a lot of time on this, but if

16 you could, Mr. Moore, turn to page 1 of that document.

17 You can certainly review it to be familiar if you

18 want. You have that page, sir?

19 A. Yes, sir.

20 Q. You'll notice in the first line under the introduction

21 it says -- there's a reference to a State appointed

22 "financial review team." Do you know what that

23 reference is to?

24 A. Yes.

25 Q. What is the financial review team that's referenced

Page 40

1 there?

2 A. This refers to, I believe, without going through the

3 entire document, the review team that was appointed by

4 the State to conduct a review of the City of Detroit's

5 finances to determine if an emergency exists.

6 Q. Were you part of this financial review team that's

7 referenced here?

8 A. No.

9 Q. Do you know who was on that financial review team?

10 A. I seem to recall a couple of the members, but I don't

11 know all of the people that were on the review team.

12 Q. Fair enough. Can you just identify those that you do

13 remember?

14 A. Fred Headen and Darrell Burks.

15 Q. Did this State appointed financial review team issue a

16 report or recommendation in writing?

17 A. Yes, sir.

18 Q. And when was that issued?

19 A. I don't recall the exact date.

20 Q. Was it 2013?

21 A. Yes, sir.

22 Q. Mr. Orr testified in deposition two days ago and he

23 mentioned that as part of the engagement process his

24 firm at the time Jones Day appeared before what I

25 believe the reference -- his -- he called a



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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

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

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

8 Q. Very well.

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

14 A. Yes, sir.

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

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

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

25 Q. I understand Milliman has prepared a variety of

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

5 MR. MILLER: Object to form.

6 A. Yes.

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

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

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

17 MR. MILLER: Object to form.

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

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

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

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1 by actuaries related to pension projections; correct?

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

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

8 MR. MILLER: Object to form.

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

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

15 MR. MILLER: Object to form.

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

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

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

24 MR. MILLER: Object to form.

25 A. Well, I can tell you, Mr. Ruegger, later this year new



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

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

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

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



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

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

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

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



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1 Q. Were there conversations that involved you, anybody
2 from the -- somebody from the State and somebody from
3 the City in or about that same time frame with regard
4 to Conway MacKenzie's engagement by the City?
5 MR. MILLER: Object to form.
6 A. You're referring to at the same time?
7 Q. Yes.
8 A. Not that I can recall.
9 Q. Were you having separate conversations with Mayor Bing
10 or anybody else on behalf of the City with regard to
11 your engagement in or about the May/June time frame
12 2012?
13 MR. MILLER: Object to form.
14 A. In around May I don't think so. As I had indicated in
15 previous questioning, my partner, Van Conway, had
16 spoken to Mr. Bing -- or Mayor Bing, but that would
17 have been before the financial stability agreement and
18 my next interaction with the City would have been
19 after Kriss Andrews was identified as the program
20 management director, which wasn't until, if I recall
21 correctly, June of 2012.
22 (Marked Exhibit No. 6.)
23 Q. I'm going to show you what's been marked Moore 6 for
24 identification. Mr. Ciantra made a fair request. The
25 document number is DTMI00078512.

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1 Do you recognize this email?
2 A. No, I don't.
3 Q. Okay. There's a discussion in this email of two or
4 three firms providing financial restructuring services
5 to the City. In or about December of 2012 was
6 Conway MacKenzie being considered for a role with the
7 City?
8 MR. MILLER: Well -- are you finished with
9 your question? I'm sorry.
10 MS. LEVINE: There was -- that was the end
11 of the question.
12 MR. MILLER: Object to form.
13 A. Ms. Levine, if you can just give me a minute to review
14 the email.
15 Ms. Levine, can you repeat your question?
16 Q. Let me do it a different way.
17 There's a -- were you being considered for
18 the role of restructuring advisor to the City?
19 A. In December of 2012?
20 Q. Yes.
21 A. That's my understanding, yes.
22 Q. Were you also being considered for the role of
23 operational advisor?
24 A. If I recall correctly, the RFP that went out was just
25 for restructuring advisory services. There was not a

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

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1 Q. Generally what are the scope of services or what's
2 your understanding of the scope of services a firm
3 like Conway MacKenzie would perform as a restructuring
4 advisor?
5 MR. MILLER: Object to form.
6 A. Rather than speculate on what was in that RFP --
7 Q. No, I changed the question. What's your understanding
8 of what a firm like yours, what would be the scope of
9 services you would perform as a restructuring advisor?
10 A. You're asking me in general if a company or a
11 governmental entity is asking for restructuring
12 advisory services, what --
13 Q. Conway MacKenzie prefers a role as restructuring
14 advisor. I'm asking you what's your understanding of
15 the services a firm like Conway MacKenzie would
16 perform in the role of restructuring advisor?
17 A. Ms. Levine, you're asking a question that is somewhat
18 vague and so I'm just trying to clarify. My -- and
19 what I want to understand is are you asking about the
20 services --
21 Q. Let me ask it a different --
22 A. -- the services --
23 MR. MILLER: No, let him finish.
24 A. Are you asking about the services that we would
25 provide in this situation or in any situation?



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

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

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

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



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1 (Marked Exhibit No. 7.)

2 Q. I'm going to show you what's been marked as Moore 7.

3 This is an email dated December 19th, 2012

4 between you and Van Conway. Do you see that?

5 A. Yes, ma'am.

6 Q. There's an email chain, which has another email

7 attached. Is that correct?

8 A. Yes.

9 Q. Is this -- who is -- who's Van Conway?

10 A. Van Conway is a partner of mine and cofounder of the

11 firm, Conway MacKenzie.

12 Q. And who -- and what did you enclose in this email?

13 A. The email from Van to me?

14 Q. No, what did you enclose in -- sorry, it attaches an

15 email from you to Kriss Andrews; correct?

16 A. Yes.

17 Q. What did you enclose in the email?

18 A. Well, it says, here attached is a draft Exhibit A

19 containing the proposed scope of services for

20 Conway MacKenzie as part of its contract with the City

21 of Detroit, so I'm assuming that I attached a draft

22 Exhibit A.

23 Q. Do you recall what the scope of services you were

24 proposing as an attachment to this email?

25 A. I don't.

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1 Q. Did you understand what you meant by the word scope in

2 that email?

3 MR. MILLER: Object to form.

4 A. Can you please clarify your question?

5 Q. Well, were you responding to the RFP in the email or

6 is there a separate understanding of what you meant by

7 scope of services?

8 A. The RFP response that was submitted by our firm was

9 back in November and so this is a specific scope of

10 services related to our potential contract.

11 (Marked Exhibit No. 8.)

12 Q. I'm going to show you what's been marked Moore 8 for

13 identification.

14 MR. MILLER: Do you have another copy?

15 MS. LEVINE: Yes, it's right here. Sorry.

16 MR. MILLER: Thank you.

17 Q. DTMI00079527.

18 Do you recognize that email?

19 A. Looks like an email from me to Kriss Andrews.

20 Q. And what's enclosed and does it reference an

21 enclosure?

22 A. It references a draft Exhibit A containing the

23 proposed scope of services for Conway MacKenzie.

24 Q. Okay, do you recall what the scope of services were

25 that you included in that draft Exhibit A?

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1 A. No, I don't.

2 Q. Was it for restructuring advisors?

3 A. I don't recall.

4 (Marked Exhibit No. 9.)

5 Q. I'm going to show you what's been marked Moore 9 for

6 identification. DTMI00079526.

7 Do you recognize this email?

8 A. No, I don't.

9 Q. Okay, it appears to be an email from Kriss Andrews to

10 Mr. Baird attaching a scope of work from

11 Conway MacKenzie, also dated December 2012?

12 A. I -- I understand that, yes.

13 Q. Is that -- does that refresh your recollection as to

14 whether or not you saw the email?

15 A. No, Ms. Levine, I'm not on this email. I don't recall

16 receiving this email.

17 Q. Okay. The email references the need to get a contract

18 on the council agenda for the 8th. Is that for

19 January 8th?

20 A. I would assume so, since that is when council actually

21 took up our contract.

22 Q. Did you have any conversations with Mr. Baird with

23 regard to getting retained and in connection with --

24 in regard to getting retained in or about this time

25 frame?

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1 MR. MILLER: Object to form.

2 A. I believe I did, yes.

3 Q. And did you also have conversations with Kriss

4 Andrews?

5 A. Yes.

6 Q. Did you ever conversations with anybody else on behalf

7 of the State in or about this time frame with regard

8 to your engagement?

9 A. Yes.

10 Q. And did you have other conversations with anybody else

11 on behalf of the City with regard to your engagement?

12 A. I don't believe so. I think just Kriss Andrews.

13 Q. And prior to the time of the -- let me put it this

14 way. Is the agenda for the 8th, is that a city

15 council meeting?

16 A. Well, it says council agenda for the 8th and city

17 council took up our proposed contract on January 8th

18 so I'm assuming that that's what he's referring to,

19 but again, I did not write this email.

20 Q. Did you negotiate the proposed terms of your

21 engagement with anybody at the State level?

22 A. Could you be more specific on terms of the contract?

23 Q. No, I didn't -- that wasn't the question. Did you

24 negotiate your proposed terms of engagement with

25 anybody at the State level --



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1 MR. MILLER: Object --

2 Q. -- in or about December 2012?

3 A. If you can just be clear on when you say negotiate,

4 what are you referring to?

5 Q. Did you have any discussions with -- okay, we're -- I

6 forgot, negotiate's a big word in this case. Strike

7 that, I'll rephrase it.

8 Did you have any discussions with anybody

9 at the State with regard to the terms of your

10 engagement in or about December of 2012?

11 A. I seem to recall, yes.

12 Q. With whom did you have those discussions?

13 A. Rich Baird and probably Andy Dillon.

14 Q. Anybody else?

15 A. Not that I can recall.

16 Q. Did you have discussions with anybody at the City

17 level with regard to the terms of your engagement in

18 or about December of 2012?

19 MR. MILLER: Object to form.

20 A. As I indicated before, Kriss Andrews.

21 Q. Anybody else?

22 A. Not that I can recall.

23 MR. MILLER: Object to form.

24 Q. Were any of these discussions either with

25 representatives of the State or representatives of the

Page 86

1 City in person?

2 A. I believe so, yes.

3 Q. Who was present in the in person meetings?

4 MR. MILLER: Object to form.

5 MR. CIANTRA: Can you specify, Mr. Miller,

6 what your formal objection is to that question so we

7 can obviate any dispute in the future?

8 MR. MILLER: Yes, it doesn't parse as to

9 whether the in person meetings are with

10 representatives of the State or representatives of the

11 City.

12 MR. CIANTRA: Thank you.

13 Q. Did you have any meetings with either representatives

14 of the State or the City in or about December of 2012

15 with regard to the terms of your -- or the scope of

16 your engagement by the City?

17 A. In person?

18 Q. Yes.

19 A. Yes.

20 Q. How many meetings took place?

21 A. I don't recall.

22 Q. Were there any meetings that took place just with

23 representatives of the State?

24 A. Yes.

25 Q. Do you recall how many of those meetings took place?

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1 A. Perhaps two.

2 Q. Who was present?

3 A. At one meeting I met with Rich Baird and Darrell Burks

4 was present in his capacity as a member of the

5 financial advisory board and then in another meeting

6 that would have been with Andy Dillon.

7 Q. Was anybody else present at the meeting you were at

8 with Andy Dillon?

9 A. I recall Andy's assistant was in the room and I think

10 Tom Saxton was on the phone.

11 Q. Who's Tom Saxton?

12 A. Tom, as I understand it, works in Andy's area, the

13 treasury department for the State of Michigan.

14 Q. Were there any meetings in or about this same time

15 frame with just representatives of the City?

16 A. Yes.

17 Q. And how many of those meetings took place?

18 A. I don't recall.

19 Q. More than five?

20 A. Face-to-face meetings, I don't think so.

21 Q. How many -- were there more than five meetings

22 telephone and face-to-face?

23 A. Very possibly. This was -- the RFP -- our response to

24 the RFP went out early in November and this is

25 obviously mid to later December so that's a lot of

Page 88

1 time to have discussions.

2 Q. Were there any discussions that took place between you

3 in which both the State and City representatives

4 participated?

5 A. The initial meetings that all of the firms -- or at

6 least the firms that the State and the City invited in

7 as a result of the responses to the RFPs were both the

8 City and the State. There was at least one follow-up

9 interview with representatives of both the City and

10 the State, there may have been two follow-up

11 interviews, I can't recall.

12 Q. Were there any telephone conferences where

13 representatives of both the City and the State

14 participated in or about December of 2012?

15 A. I don't recall if there were telephone calls where

16 both the City and the State were on.

17 (Marked Exhibit No. 10.)

18 Q. I'm going to show you what's been marked Moore 11.

19 Document DTMI00079528.

20 MR. MILLER: There's no Moore 10 that's

21 been introduced.

22 MS. LEVINE: I'm sorry, this is Moore 10

23 and this one, I don't know, I must have gotten ahead

24 of myself.

25 Q. Okay, Exhibit A, scope of services, do you see that



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1 document?

2 A. Yes, ma'am.

3 Q. Is this --

4 MR. MILLER: Wait one moment because of the

5 confusion generated by the identification of this

6 document, let's specifically identify it as

7 DTMI00079528 through 530.

8 Q. Do you see that document in front of you? It's

9 Exhibit A, scope of services?

10 A. Yes, ma'am.

11 Q. Does this -- is this the Exhibit A that was attached

12 to the emails we were just discussing?

13 A. I have no idea.

14 MR. MILLER: Wait.

15 Q. Okay. Do you recall providing this document to the

16 State and the City in or about December of 2012?

17 A. I don't recall.

18 Q. I want to show you the first paragraph where it says,

19 the terms of this contract shall begin on January 9,

20 2013 and shall terminate on December 31, 2013.

21 Did you respond to an RFP for the City to

22 provide services during that time frame?

23 A. Yes, ma'am.

24 Q. Did you provide -- did you provide -- respond to an

25 RFP to provide services as the chief restructuring

Page 90

1 officer for the City of Detroit?

2 MR. MILLER: Object to form.

3 Q. During that time frame?

4 A. Chief restructuring officer?

5 Q. Sorry, chief restructuring advisor.

6 A. I don't recall if the RFP asked specifically for that.

7 Q. Well, the document that we're looking at says, the

8 services to be performed, the contractor will serve as

9 chief restructuring advisor to the City of Detroit.

10 In its capacity as CRA, contractor will be the lead

11 restructuring agent for the City of Detroit and will

12 coordinate activities of the various City of Detroit

13 advisors.

14 Does that refresh your recollection?

15 A. Ms. Levine, this is a document that could have been

16 drafted by Conway MacKenzie, it could have been

17 drafted by the City of Detroit, I'm not sure. What

18 does appear to me, though, is based on what you just

19 read this is not the scope of services that wound up

20 in the final contract.

21 (Marked Exhibit No. 11.)

22 Q. I'm going to show you what's been marked Moore 11.

23 Document number DTMI00078909. Do you recognize this

24 document?

25 A. This appears to be the final contract that was entered

Page 91

1 into between Conway MacKenzie and the City of Detroit.

2 Q. Did you participate in the negotiation of this final

3 contract?

4 A. Yes.

5 Q. Did you review this final contract before it was

6 executed?

7 A. Yes.

8 Q. Did you sign-off on the terms of this contract before

9 it was executed?

10 A. Yes.

11 Q. On the page marked DTMI00078925, it appears to be a

12 January 7, 2013 letter, which is part of -- is it your

13 understanding that this letter is part of the

14 contract?

15 MR. MILLER: Object to form.

16 A. Ms. Levine, I would just point out that that appears

17 to me to be a bit of a legal question as to whether

18 this is part of a contract and I don't know if I'm

19 able to answer that question.

20 Q. Okay. Is it your understanding that the City is

21 responsible for half of your fees and the State is

22 responsible for half of your fees?

23 A. That is my understanding, yes.

24 Q. How did you -- how did that agreement come into being

25 if you're -- and well, let me do it a different way.

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1 Are you engaged by the City?

2 A. Yes, ma'am.

3 Q. How did it come to pass that the State pays for half

4 of your fees?

5 A. I don't know if I actually can respond to that. When

6 the City decided to issue an RFP for restructuring

7 services, it had been indicated, at least I read

8 through public reports, that the State was going to

9 pay for half of that.

10 Q. Is it your understanding that the City is your client?

11 A. Yes, ma'am.

12 MR. MILLER: Wait, object to form.

13 MS. LEVINE: What's the objection to the

14 form?

15 MR. MILLER: Among other things it calls

16 for a legal conclusion.

17 MS. LEVINE: I'm asking him his

18 understanding.

19 Q. Is it your understanding that the City is your client?

20 MR. MILLER: Go ahead.

21 A. Yes.

22 Q. Who did you -- upon you -- upon becoming engaged

23 initially, to whom did you report on behalf of the

24 City?

25 A. I reported primarily to Kriss Andrews. I interacted



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

Page 94

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

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1 identified yesterday and the day before?
2 MR. MILLER: Objection, and I'm going to
3 instruct the witness not to respond.
4 MS. LEVINE: Lunchtime.
5 (Luncheon recess between
6 12:55 p.m. and 1:30 p.m.)
7 MS. LEVINE: Mr. Moore, before we go onto
8 another topic I just want to clarify. Your counsel
9 directed you not to answer just prior to the lunch
10 break. Are you asserting the attorney-client
11 privilege?
12 MR. MILLER: Yes, Mr. Moore has consented
13 to having Jones Day represent him in connection with
14 this deposition and if I recall, you, AFSCME, have
15 consented to have the City put Mr. Moore forward as a
16 representative of the City in connection with the
17 30(b)(6) deposition. So yes, we represent Mr. Moore
18 in connection with this deposition and I am
19 instructing him not to answer the question on the
20 grounds of attorney-client privilege.
21 MS. LEVINE: And just to clarify so you're
22 not representing Conway MacKenzie, you're representing
23 Mr. Moore in his capacity as the 30(b)(6) witness for
24 the City --
25 MR. MILLER: In --

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



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

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1 know --
2 Q. No, no. Sometimes when an expert takes the stand,
3 first you do voir dire and then he starts to testify
4 and in between asking about your background and CV and
5 starting the substantive testimony the judge will say
6 I qualify you as an expert or no I don't qualify you
7 as an expert. What I'm trying to understand is in
8 those two cases did the judge qualify you as an expert
9 and if so in what categories?
10 A. Yes, I understand that process exactly. As I
11 indicated before, the GM case settled before I had to
12 testify.
13 Q. Okay.
14 A. So I was deposed in that case.
15 Q. Okay, so you were deposed but you didn't have to take
16 the stand in court?
17 A. Yes, ma'am.
18 Q. Okay, good.
19 In regard to Greektown did you have to take
20 the stand in the courthouse?
21 A. Yes, ma'am.
22 Q. And did the judge in that case qualify you as an
23 expert?
24 A. Yes, ma'am.
25 Q. And this what area did the judge qualify you as an

Page 99

1 expert?
2 A. As it relates to the restructuring -- bankruptcy
3 restructuring of Greektown.
4 Q. And the -- were you qualified as an expert in relation
5 to pensions?
6 A. Pensions were not an issue with Greektown.
7 Q. Were you qualified as an expert with regard to
8 actuarial findings?
9 A. Actuarial findings were not an issue in Greektown.
10 Q. So for both of those questions then the answer is no?
11 A. Correct.
12 Q. Did you have any role in the hiring of Kevyn Orr as
13 the Emergency Manager or the Emergency Financial
14 Manager for the City of Detroit?
15 A. No, ma'am.
16 Q. Did Conway MacKenzie have any role in the hiring of
17 Kevyn Orr in either of those two capacities?
18 A. No, ma'am.
19 Q. Did you have any role in the financial review team?
20 A. No, ma'am.
21 Q. Did Conway MacKenzie have any role in the financial
22 review team?
23 A. No.
24 Q. From -- when was the first time you had a conversation
25 with anybody with the City with regard to Detroit

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1 filing for Chapter 9 protection?
2 A. Can you just clarify that just the -- whether that was
3 a possibility or --
4 Q. I want to know the first time the word Chapter 9 came
5 up in discussions with regard to the City of Detroit.
6 Possibility, options, alternatives, any context.
7 MR. MILLER: But the conversation is with
8 somebody in the City?
9 MS. LEVINE: Yes.
10 A. I don't recall specifically.
11 Q. Do you recall if it was before the end of 2012?
12 A. I don't recall.
13 Q. When was the first time you had a conversation with
14 anybody from the State or on behalf of the State with
15 regard to the potential for Detroit filing for Chapter
16 9 bankruptcy protection?
17 A. I don't recall.
18 Q. Did those conversations come up during the interview
19 process with the State and Conway MacKenzie?
20 MR. MILLER: Object to form.
21 A. I don't recall.
22 Q. So when you interviewed with the State for your role
23 with the City, you don't recall having discussions
24 with regard to Chapter 9 as an alternative?
25 MR. MILLER: Object to form.



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

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1 conversations with anybody at the City with regard to
 2 Detroit filing for Chapter 9 protection?
 3 A. Yes.
 4 Q. During that time period did you have any conversations
 5 with representatives of the City at which the State
 6 were present -- at which representatives of the State
 7 were present with regard to Detroit filing for Chapter
 8 9 bankruptcy protection?
 9 A. I don't recall.
 10 Q. Between June 14 and July 17, what was the first
 11 conversation that you had with anybody from the City
 12 with regard to filing for Chapter 9 bankruptcy
 13 protection on July 19?
 14 MR. MILLER: Mr. Moore, in connection with
 15 that question be careful to consider not revealing
 16 attorney-client communications to the extent that
 17 those conversations may have included attorneys.
 18 MS. LEVINE: Wait, let's clarify that for a
 19 second. How is it that if he's present there's an
 20 attorney-client privilege if he did not sign an
 21 engagement letter with Jones Day but signed it
 22 directly with the City and the State?
 23 MR. MILLER: He's the -- he and
 24 Conway MacKenzie are the City's professional advisors
 25 and Jones Day is taking the position that the

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

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



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1 A. Can you define filings?
2 Q. Pleadings that were filed on the docket in connection
3 with the Chapter 9 filing including, for example, your
4 declaration.
5 A. Only one and that is my declaration.
6 Q. And what was the -- what was the date of the first
7 meeting you had -- actually let me say this
8 differently.
9 What was the date of the first discussion
10 you had with regard to preparing that declaration?
11 A. I don't recall.
12 Q. Was it in June?
13 A. I don't believe so.
14 Q. Was it in July?
15 A. I would assume so, yes.
16 Q. Was it before the actual filing occurred?
17 A. Yes.
18 Q. Was it a week before the actual filing occurred?
19 A. It may have been, I don't recall.
20 Q. Was it more than ten days before the actual filing
21 occurred?
22 A. It may have been.
23 Q. Was it before or after the July 4th weekend?
24 MR. MILLER: If you recall.
25 A. I don't recall.

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1 MS. LEVINE: Let's not coach the witness.
2 Q. Did you receive -- after having the initial
3 conversation -- was that initial conversation with
4 Jones Day?
5 A. Yes, ma'am.
6 Q. Did you receive a draft of your declaration to review?
7 MR. MILLER: You can answer that question.
8 A. At some point I received a draft, but I recall having
9 an initial conversation first with an attorney from
10 Jones Day laying out a number of the key issues
11 relating to pensions.
12 Q. When was that conversation?
13 A. I don't recall.
14 Q. Who participated in it?
15 A. An attorney from Jones Day.
16 Q. Do you recall the name of the attorney?
17 A. I actually don't at this point.
18 Q. Was anybody else on the phone with you from Conway?
19 A. No, ma'am.
20 Q. Was anybody else on the phone with you from the City?
21 A. No.
22 Q. Was anybody else on the phone with you?
23 A. Just the attorney from Jones Day.
24 Q. Did that conversation take place after the July 4th
25 weekend?

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1 A. I don't recall.
2 Q. How long before you had this initial conversation were
3 you provided with a first draft of your declaration?
4 A. I don't recall how long.
5 Q. Was it more than a week?
6 A. I don't recall.
7 Q. Was it more than two weeks?
8 A. I don't recall.
9 Q. Did you read -- did you have your declaration -- did
10 you review your declaration over the July 4th weekend?
11 A. I don't recall.
12 Q. Did you have the declaration as of the July 4th
13 weekend?
14 A. I don't recall.
15 MR. MILLER: Wait. Objection. Object to
16 form. Asked and answered.
17 Q. When did you sign your declaration?
18 A. I can't recall if it was July 17th or 18th.
19 Q. And how many drafts did it go through before you
20 actually signed it?
21 A. I don't recall that.
22 Q. More than one?
23 A. Yes.
24 Q. More than three?
25 A. Could have been.

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



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1 A. Could you be more specific on Flowers litigation?

2 Q. Have you heard the term the Flowers litigation before?

3 A. Ms. Levine, I come across so much on a day-to-day

4 basis. I need something more to spur my memory to

5 know whether I've heard of it or not.

6 Q. Does the name Webster litigation mean anything to you?

7 A. Again, if you could please provide a little bit more

8 detail, I can tell you if I've heard of it or not.

9 Q. What's your understanding of the reason why Detroit

10 determined to file for Chapter 9 protection on July 18

11 as opposed to some other day?

12 A. I don't have an under --

13 MR. MILLER: Object to form.

14 A. I don't have an understanding. I was not involved in

15 that decision.

16 Q. So after you -- so when you first learned that you

17 were going to do a declaration, was it your

18 understanding that Detroit had already made the

19 decision to file in July?

20 A. No.

21 Q. When you first started working on your declaration,

22 was it in anticipation of a specific filing date?

23 A. No. Just add too I've had a number of clients where I

24 have prepared something -- a pleading for a potential

25 bankruptcy filing that has never happened.

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1 Q. Were you aware of any litigation pending just prior to

2 the Chapter 9 filing with regard to the question of

3 authorization for the City to actually file a Chapter

4 9 petition?

5 MR. MILLER: Object to form.

6 A. I am generally aware --

7 MS. LEVINE: Wait, what's the form

8 objection?

9 MR. MILLER: Vague and ambiguous with

10 respect to the question of authorization for the City

11 to actually file a Chapter 9 petition and foundation.

12 Q. Prior to the time of the bankruptcy filing were you

13 aware that there was litigation pending challenging

14 the authorization for the City to file for Chapter 9

15 protection?

16 A. I am generally aware of litigation filed in a state

17 court where I believe that that was one of the

18 elements of the litigation.

19 Q. When did you first become aware of that state court

20 litigation?

21 A. Sometime within the week before the actual filing

22 perhaps.

23 Q. Did you -- had you prepared your declaration before or

24 after you became aware of that state court litigation?

25 A. Because I can't recall specifically when I started

Page 111

1 working on my declaration, I don't know.

2 Q. Did you begin preparing your declaration at or about

3 the same time you became aware of the state court

4 litigation?

5 A. I don't know.

6 Q. Was it months before you became aware of the state

7 court litigation?

8 MR. MILLER: Object to form.

9 A. Ms. Levine, I think I've already answered that I don't

10 believe that there was anything done preparation wise

11 on my declaration in the month of June.

12 Q. Okay.

13 Were you involved in any restructuring

14 initiatives in or about February of 2013 with regard

15 to the removal of blighted homes in the City of

16 Detroit?

17 A. Was I specifically involved or was Conway MacKenzie

18 involved?

19 Q. Well, starting with you and then we're going to ask

20 about Conway MacKenzie.

21 A. Blight has been an area of focus that our firm has had

22 and I have been involved in some of those activities.

23 Q. Were you point on the issue with regard to the

24 blighted homes?

25 A. Generally speaking there was another individual on the

Page 112

1 team that I delegated some items to.

2 Q. And with -- and on the other side of that, who was the

3 point person for the State on that issue?

4 MR. MILLER: Objection to form, foundation.

5 Q. Did you contact -- were you in contact with the State

6 with regard to this issue?

7 A. There have been numerous people at the State with whom

8 blight has been discussed.

9 Q. Do you recall who was the point person for that

10 initiative?

11 A. From the State?

12 Q. Yes.

13 A. I don't know if the State actually has a point person

14 for blight. There is the Michigan -- Michigan State

15 Housing Development Agency or Authority, MSHDA, that

16 is involved with some of these activities. Treasury

17 department has had some involvement. The department

18 that Moore Corrigan heads up, which I can't recall the

19 name of it right now, has been involved.

20 (Marked Exhibit No. 12.)

21 Q. I'm going to show you what's been marked Moore 12 for

22 identification. It's an email chain but the second

23 email has three CCs with Michigan email addresses and

24 I was just wondering if you recognize those names and

25 could identify those people. Document number



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

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

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

Page 116

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



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1 meeting I believe that this was summarized.

2 Q. Prior to this report, which makes reference to

3 restructuring pensions and OPEB, had you previously

4 considered or made recommendations with regard to

5 restructuring pensions and OPEB?

6 MR. MILLER: Object to form.

7 A. Where are you referring to that this makes reference

8 to restructuring pension and OPEB?

9 Q. Well, let me ask the question a different way.

10 Does this report suggest restructuring

11 pension and OPEB?

12 A. Not that I recall.

13 Q. Okay. Did you discuss with the city council

14 restructuring recommendations that included pension

15 and OPEB?

16 MR. MILLER: Object to form.

17 Q. Prior to the Chapter 9 filing did you discuss with the

18 city council restructuring recommendations that

19 included pension and OPEB?

20 A. No.

21 Q. When was the first -- did you ever discuss with the

22 city council recommendations for pensions and OPEB?

23 A. No.

24 (Marked Exhibit No. 15.)

25 Q. I'm going to show you what's been marked Moore 15.

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1 MR. MILLER: Yes.

2 MS. LEVINE: Sorry, I gave you my copy too.

3 Q. Do you recall seeing that document before today?

4 A. Yes.

5 Q. What is it?

6 A. This appears to be the presentation document for the

7 financial advisory board meeting on April 8th.

8 Q. Okay, would you turn to page 12, please? I'm reading

9 from the bottom of the page CM -- which I'm assuming

10 is an abbreviation for Conway MacKenzie; is that

11 correct?

12 A. Yes, ma'am.

13 Q. -- is also working on various work streams that span

14 across the City or multiple departments including

15 pension and OPEB restructuring.

16 Do you see where I'm reading?

17 A. Yes, ma'am.

18 Q. Does that refresh your recollection with regard to

19 whether or not you were working on pension and OPEB

20 restructuring?

21 A. I don't believe you asked me that before.

22 Q. Were you during this time period working on pension

23 and OPEB restructuring?

24 A. Yes.

25 Q. When did you first raise with the City pension and

Page 119

1 OPEB restructuring?

2 MR. MILLER: Object to form.

3 A. When I came -- when I was first engaged, the City had

4 already started a process related to healthcare for

5 both active and retired employees at various cost

6 reduction efforts and the pension topics I believe

7 began maybe in the beginning of March or thereabouts.

8 Q. In connection with the work that you did with regard

9 to pension and OPEB, did you review the City's history

10 with regard to negotiations with the unions with

11 regard to the OPEB issues?

12 A. When you say history, are you referring to recent

13 history or what period of time?

14 Q. Prior to your engagement, what was the last time that

15 the City entered into concessionary agreements with

16 its unions or concessionary negotiation with its

17 unions just prior?

18 MR. MILLER: Objection to form, foundation.

19 A. Just to clarify, Ms. Levine, I am not the primary

20 point person on OPEB. I certainly have participated

21 in meetings where OPEB has been discussed. My

22 understanding is that the most recent time related to

23 changes in healthcare would have been the

24 implementation of the City Employment Terms during

25 2012.

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1 Q. Are you familiar with those employment terms?

2 A. Generally.

3 Q. Okay. Were there OPEB concessions made as part of

4 those terms?

5 A. I don't recall if the changes to the actives were

6 pushed through to retired employees or not.

7 Q. Did your role with regard to the pensions increase

8 over -- at any point in time in April?

9 A. I don't know about during the month of April. It may

10 have been in April, but essentially as pension issues

11 certainly became a focal point, there was the

12 establishment of a task force and I was asked by

13 Kriss Andrews to lead that task force.

14 Q. Did Milliman participate in that task force?

15 A. Yes, ma'am.

16 Q. Who else participated in that task force?

17 A. Attorneys from Jones Day and Miller Canfield.

18 Q. And what exactly was the role of the pension task

19 force?

20 A. I believe it states in my declaration, but essentially

21 we were to look at causes of the underfunding,

22 evaluate the underfunding amount and options that may

23 exist as it relates to the defined benefit pension

24 plans.

25 Q. Was there -- was any -- was anybody on behalf of the



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

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

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

Page 124

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



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

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

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

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1 A. Good afternoon.
2 Q. Let me go back just a little bit in terms of your
3 background. You had indicated that back in or around
4 2007, 2008 you were named to a commission to look at
5 governmental operations here in the State of Michigan?
6 A. Yes, sir.
7 Q. And as I understand it, that appointment was made by
8 the then speaker of the Michigan house of
9 representatives, Mr. Dillon, and the majority leader
10 of the Michigan senate; is that correct?
11 A. Yes, sir, Mike Bishop.
12 Q. Okay. Had you known Mr. Dillon before that
13 appointment?
14 A. No.
15 Q. Or Mr. Bishop?
16 A. No.
17 Q. And at that time had you actually done any work in
18 terms of restructuring of governmental operations?
19 A. Yes, sir, I had been involved in my engagement with
20 the Wayne County Circuit Court.
21 Q. Okay. And the Wayne County Circuit Court and you had
22 mentioned that you had done some work for the Detroit
23 Public School System?
24 A. Yes.
25 Q. Those are your -- that's your governmental



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1 restructuring responsibility?

2 A. No, I've had additional engagements that I mentioned

3 earlier as well.

4 Q. The Development Bank in Puerto Rico?

5 A. Yes, and then work on behalf of AFSCME and the UAW

6 related to Puerto Rico.

7 Q. To Puerto Rico, okay.

8 A. And Jefferson County Alabama.

9 Q. Right. There had been a number of -- or several

10 Michigan municipalities that have had either a

11 Financial Manager or an Emergency Manager appointed in

12 the past several years; is that correct?

13 A. I believe the number is somewhere between five and

14 seven.

15 Q. Okay, is Flint who's one of them?

16 A. Yes, sir.

17 Q. Benton Harbor?

18 A. Yes, sir.

19 Q. Has the county -- has your firm been involved in any

20 of those cases?

21 A. No.

22 Q. And you haven't?

23 A. Correct.

24 Q. Now, you indicated -- do you have your declaration

25 handy? I think it's been marked as Exhibit 1.

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1 A. Yes.

2 Q. And in paragraph 5 you mention your work analyzing the

3 City of Detroit's pension liabilities and you've

4 testified with respect to the task force that you were

5 a part of that looked at that?

6 A. Paragraph 5 --

7 Q. I'm sorry, paragraph 8. If you'll excuse me, I got up

8 at 4 o'clock this morning to get here so I'm going to

9 be a little slower than Ms. Levine. Okay.

10 A. Could you restate the question?

11 Q. Sure. Who tasked you to be involved in looking at the

12 City's pension liabilities?

13 A. Kriss Andrews.

14 Q. And that was you said in March or so of 2013?

15 A. I think that's right, yes.

16 Q. Now, there were a series of -- well, let me ask.

17 Was the Milliman firm working for the City

18 of Detroit at that time?

19 A. Yes, sir.

20 Q. Okay. Do you know when they were retained?

21 A. I don't.

22 Q. But they were in place at the time you were given this

23 assignment by Mr. Andrews?

24 A. Yes.

25 Q. There are a series of letters from the Milliman firm

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1 that are addressed to Mr. Miller, your counsel here

2 today. The first one that I have is from April 18th,

3 2013 and you're copied on those letters. Are you

4 familiar with them?

5 A. Generally, yes. There are, as you say, a number of

6 them. I would have to remember what specifically was

7 discussed in that one.

8 Q. Okay. There were -- as a general matter, they seem to

9 involve analyses of particular scenarios that were put

10 to them?

11 A. Yes, sir.

12 Q. Okay. Who -- were those scenarios developed by the

13 task force that you were part of?

14 A. Yes.

15 Q. And who would have had -- who would have been the

16 decider as it were with respect to what the Milliman

17 firm was tasked to do?

18 A. The task force would lay out scenarios and I would

19 communicate with Kriss Andrews updates as to what the

20 task force was looking to do and then as Mr. Andrews

21 transitioned out, the tasks given to Milliman were

22 covered with Mr. Orr and Sonya Mays.

23 Q. Okay. Let me start by --

24 MR. CIANTRA: I don't know, what's the next

25 number we're up to?

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1 MR. MILLER: Sixteen.

2 (Marked Exhibit No. 16.)

3 Q. Here's what I marked as 16.

4 Now, why don't you take a moment or two,

5 however long you wish, Mr. Moore, to look over that

6 letter, number 16, Moore Exhibit 16.

7 A. Yes, sir.

8 Q. Okay. I gather from the first paragraph that your

9 task force asked the Milliman firm to determine the

10 adjusted funded status under PA 436, Section 12(1)(M)

11 for the two pension systems reflecting the value of

12 the pension operating certificates?

13 A. Just to be --

14 MR. MILLER: I'll object to form.

15 MR. CIANTRA: What's the basis of the

16 objection?

17 MR. MILLER: No foundation.

18 Q. Well, did you ask -- did your task force ask the

19 Milliman firm to determine the adjusted funded status

20 under PA 436, Section 12(1)(M), for the two Retirement

21 Systems reflecting the value of the pension obligation

22 certificates?

23 A. The only clarification I was going to provide in my

24 answer is yes, we asked Milliman to calculate the

25 funded status pursuant to 12(1)(M) of PA 436. That



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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1 Q. How did you become aware of those provisions?

2 A. I have been aware of that provision or provisions for

3 multiple years. I don't recall how I originally

4 became aware of them, but I've been aware of them for

5 quite sometime.

6 Q. So you were aware of those provisions at least

7 generally when you undertook the assignment for the

8 City in this case?

9 A. Yes, sir.

10 Q. Have there been discussions of those provisions of the

11 State Constitution in the various discussions among

12 members of your pension task force?

13 A. Can you clarify?

14 Q. You indicated earlier that you were part of a pension

15 task force that's been considering pension issues

16 since I guess the spring of this year and my question

17 is during the discussions, the meetings of that task

18 force, have you -- has that provision of the Michigan

19 State Constitution been a subject of discussion?

20 A. Yes.

21 Q. In what context?

22 A. The existence of it.

23 Q. And how did it -- who brought that up?

24 A. I don't recall.

25 Q. What was discussed about it?

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1 A. The acknowledgment of the existence of it to make sure

2 that everyone on the task force was aware of it and we

3 also discussed an Attorney General opinion regarding

4 that provision back from the late 1970s, I believe,

5 and whether that provision constitutes -- you know,

6 how far those protections go.

7 Q. And who brought up that subject?

8 A. I don't recall who would have brought it up.

9 Q. Were those discussions before the City made its

10 Chapter 9 filing?

11 A. Yes.

12 Q. And were there discussions that you were party to with

13 respect to the Chapter 9 filings that involved the

14 question of the -- those provisions of the Michigan

15 State Constitution?

16 MR. MILLER: Object to form.

17 A. I believe that that would have come up, yes.

18 Q. It came up in discussions you were party to?

19 A. Yes.

20 Q. With whom?

21 A. When there were discussions about the potential for a

22 Chapter 9 filing, a variety of topics were discussed

23 and I seem to recall that element coming up.

24 Q. When were those discussions, Mr. Moore?

25 A. In the June/July time period.

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1 Q. And was there more than one such discussion or did it

2 just come up on one occasion?

3 A. It probably came up more than -- I seem to recall more

4 than one occasion where a discussion about whether the

5 City would have to file for Chapter 9 took place and

6 the pension element was discussed.

7 Q. And what was the -- was there consensus that was

8 developed with respect to that issue?

9 MR. MILLER: I'm going to object and ask

10 the witness before he answers that question whether in

11 connection with any discussion that might have led to

12 a consensus that discussion included lawyers and

13 counsel --

14 MR. CIANTRA: I'm not asking him --

15 MR. MILLER: -- and counsel that was

16 provided by those lawyers.

17 MR. CIANTRA: I'm not asking about

18 discussions with counsel, I'm asking him whether this

19 task force that was looking at the pension issues

20 reached a consensus as to the question of the effect

21 of this provision of the Michigan State Constitution

22 on a Chapter 9 filing.

23 MR. MILLER: But the task force included

24 counsel. He's testified to that.

25 MR. CIANTRA: Well, I'm not interested in

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1 the discussions, I'm interested was there a consensus

2 reached on this issue, not necessarily what your

3 counsel might have advised or said or any of that.

4 MR. MILLER: But -- but to the extent that

5 the -- a consensus was reached and that consensus was

6 based on legal advice, that consensus would be in my

7 judgment privileged. So that's why I asked him

8 whether in connection with discussions and discussions

9 that may have reached a consensus as to the question

10 of the effect of the provision of the State

11 Constitution on Chapter 9 filing, whether that

12 consensus was reached based on advice of counsel.

13 MR. CIANTRA: I'm not asking him that.

14 MR. MILLER: And if so, then I instruct

15 you, Mr. Moore, not to expound.

16 MR. CIANTRA: So let me ask the question

17 again. Let's make the record straight.

18 Q. Did the task force that you were a part of reach a

19 consensus on the question of what the effect of the

20 provision of the Michigan State Constitution that

21 protects accrued pension benefits would have on a

22 Chapter 9 filing?

23 A. No.

24 Q. There was no consensus?

25 A. No.



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1 Q. There were different views that were expressed?

2 A. There wasn't -- there wasn't a consensus that we tried

3 to come up with. As I indicated before, the existence

4 of the provision was acknowledged and it was

5 discussed, but the pension task force did not come to

6 an opinion as it relates to anything regarding that

7 provision in the Michigan Constitution.

8 Q. Was it something that you were concerned about?

9 A. Can you clarify in terms of concern?

10 Q. You were aware of this provision; right? You were

11 aware at least from the actuarial reports that the

12 plans were underfunded; correct?

13 A. Yes.

14 Q. And you were aware that in the proposal to creditors

15 that we just looked at the Emergency Manager states

16 that there must be significant cuts in accrued vested

17 pension amounts for both active and currently retired

18 persons. So my question is were you concerned about

19 that in light of your understanding of the Michigan

20 State Constitution?

21 A. To the extent that retirees would face some sort of

22 cut, certainly as a human being I would be concerned

23 about that.

24 Q. I'm not asking as a human being, I'm asking in light

25 of your understanding of the State's Constitution.

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1 MR. MILLER: Objection to form. Calls for

2 a legal conclusion.

3 Q. You can answer the question.

4 A. I'm not sure that I understand the question. You

5 asked if I was concerned and I sought clarification

6 for that and I'm not sure I understand what additional

7 you're asking about concern.

8 Q. Were you concerned that the -- let me ask

9 specifically.

10 Were you concerned that the position that

11 the Emergency Manager took with respect to accrued

12 pension benefits was inconsistent with your

13 understanding of what the State Constitution requires?

14 A. That to me is a legal opinion that I'm not equipped to

15 make.

16 Q. Did you have any discussions with anyone in the State

17 government with respect to this issue that -- the

18 interplay between the Michigan State Constitution

19 provisions and the Chapter 9 filing by the City?

20 A. Not that I can recall.

21 Q. So there may have been such discussions?

22 A. There may have been.

23 Q. And if there had been such discussions, who from the

24 State would likely have been involved in it?

25 A. My interactions have been essentially exclusively with

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1 the treasury department for the State of Michigan, so

2 if there were discussions, it would have been with the

3 treasury department.

4 Q. So that would have been Mr. Dillon or one of his

5 subordinates?

6 A. Yes.

7 Q. With --

8 MR. MILLER: Tom, excuse me, are you going

9 to shortly wrap up? Because otherwise, I need a

10 five-minute break.

11 MR. CIANTRA: Take your five-minute break.

12 I won't be that long, Evan, afterwards.

13 MR. MILLER: Yes, that's fine. Thanks.

14 (A brief recess was taken.)

15 MR. MILLER: Back on the record?

16 MR. CIANTRA: Yeah, whenever you're ready.

17 Sharon?

18 MS. LEVINE: No, I'm good. I'm just

19 stretching.

20 MR. CIANTRA: You're just stretching.

21 Okay, back on the record.

22 BY MR. CIANTRA:

23 Q. In connection with your work on the pension task

24 force, Mr. Moore, did you inquire as to the level of

25 benefits that pensioners were receiving from the two

Page 160

1 pension plans?

2 A. Just to clarify, are you referring to those in pay

3 status?

4 Q. Yeah, in pay status, right.

5 A. Yes, sir.

6 Q. And am I correct that with respect to the General

7 Retirement System the average annual benefit is a

8 little less than \$20,000 a year?

9 A. We never calculated the average across all people on

10 pay status. We looked at it in different increments

11 in terms of the number of people at various ages

12 receiving certain monthly amounts.

13 Q. Okay. What's the -- do you recall what's the median?

14 A. We never calculated the median.

15 Q. Okay, how about the mean?

16 A. We never calculated the mean.

17 Q. Did you do that with respect to the Police and Fire

18 plan?

19 A. Yes, sir.

20 Q. Okay, what was the average that was received under

21 that plan?

22 A. We did not calculate the average, similar -- we pulled

23 similar data to -- for both plans.

24 Q. You don't recall a presentation by Mr. Orr where

25 certain representations were made as to what the



Page 161

1 average pension benefit was under these two systems?

2 A. Not offhand.

3 Q. Let me ask. With respect to -- my understanding is at

4 least with respect to the police officers and firemen

5 in the City that they are not covered by the Social

6 Security system?

7 A. Participants in the Police and Fire Retirement System

8 do not participate in Social Security, that's correct.

9 Q. To this day; correct?

10 A. Yes, sir.

11 Q. So for their earnings, a police officer in the City of

12 Detroit would -- for their earnings from the City of

13 Detroit would have no Social Security; correct?

14 A. They don't pay in and then they don't receive,

15 correct.

16 Q. Okay. And is that the case for certain of the

17 retirees in the General Retirement System as well?

18 A. I don't believe so. The reason for two different

19 pension systems is specifically because one system is

20 for those that participate in Social Security and one

21 system is for those that do not.

22 Q. Okay, so your understanding is that none of the

23 participants in the General Retirement System are not

24 eligible for Social Security?

25 A. That could -- there could be people in GRS that don't

Page 162

1 participate in the Social Security based on their age

2 or when they worked for the City, that's a

3 possibility, I don't know for sure.

4 Q. Okay, so there may be some of the retirees who are

5 covered by that plan who have -- whose earnings were

6 not subject to Social Security?

7 A. It's possible.

8 Q. But you don't know?

9 A. I don't know for sure.

10 Q. And is that something that someone was tasked to find

11 out?

12 A. Not that I recall.

13 Q. Would you agree that that might be a relevant

14 consideration in evaluating what to do with that --

15 with those accrued -- the accrued pension benefits of

16 folks in that system?

17 A. It may be relevant, yes, depending on what gets looked

18 at.

19 MR. CIANTRA: I have no further questions.

20 Thank you.

21 MR. MILLER: Can we go off the record?

22 (Discussion held off the record.)

23 MR. MILLER: Back on the record.

24 MR. RUEGGER: Yes, this won't take too

25 long.

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1 BY MR. RUEGGER (continued):

2 Q. Do you have your declaration in front of you,

3 Mr. Moore?

4 A. Yes, sir.

5 Q. If you could open it up to page 10 where you start a

6 discussion of past practices?

7 A. Yes.

8 Q. I'd first like to talk about the annuity savings plan,

9 which you discuss in paragraph 18. Do you know what

10 years the annuity savings plan was in active mode or

11 being pursued?

12 A. Based on our investigation it appears that it has been

13 available since at least 1973 and we have reviewed

14 certain documentation that would suggest that some

15 form of annuity savings plan has been in existence all

16 the way back perhaps into the 1930s.

17 Q. I take it -- well, withdrawn.

18 Do you know whether the annuity savings

19 plan in any form is continuing at present?

20 A. Yes, it is.

21 Q. Is it continuing in the format described in your

22 declaration in paragraph 18?

23 A. Could you be more specific in terms of -- there are --

24 is a number or there's a lot of information in

25 paragraph 18.

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1 Q. Sure. You'll see the third sentence where you say,

2 under the terms of the GRS plan, active city employees

3 may elect to invest 3, 5 or 7 percent of their

4 paychecks into an annuity savings plan.

5 Does that aspect of the annuity savings

6 plan continue to this day?

7 A. Yes.

8 Q. And is that available to all GRS covered active

9 employees?

10 A. I believe so.

11 Q. And the next part of that sentence says that the

12 investment earns interest based on a rate of return

13 established at the discretion of the GRS Board of

14 Trustees.

15 Is that still accurate?

16 A. Yes; however, there was an ordinance passed in 2011

17 that provides parameters within which the board may

18 specify the interest.

19 Q. Do you know what interest rate is current -- has

20 currently been specified by the board?

21 A. As I understand it, it's 7.9 percent.

22 Q. And is it true -- okay, turning to the next page,

23 we're still on paragraph 18, you state in the sentence

24 that begins but in many years. Do you see that

25 sentence?



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1 A. Yes.

2 Q. The GRS trustees chose to credit these annuity savings

3 plan employee accounts with rates of return that were

4 far greater than the actual GRS rate of return earned

5 on the investments.

6 So I take it from your prior testimony that

7 that is still an accurate aspect of the annuity

8 savings plan; correct?

9 MR. MILLER: Object to form.

10 A. The ordinance passed in 2011 that I just referred to

11 addresses this issue.

12 Q. And what does it provide generally? I know you don't

13 have it in front of you but to your memory.

14 A. Yes, generally it provides that the interest rate

15 credited to the annuity savings fund accounts cannot

16 exceed the assumed rate of return on the plan assets.

17 Q. Only active employees were allowed to participate in

18 this plan; correct?

19 A. Yes, sir. From the standpoint of making new

20 contributions, when an employee retires, the employee

21 has the choice of taking a lump sum of their annuity

22 savings fund account or having it paid in an annuity,

23 so there could be retired employees that are still

24 getting payments from the annuity savings fund but

25 they would not be contributing to it.

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1 Q. In the last sentence of paragraph 18 you say that

2 hundreds of millions of dollars of plan assets

3 intended to support the City's traditional defined

4 benefit pension arrangements were converted by GRS

5 trustees to provide a windfall to the annuity savings

6 accounts of active employees outside of a defined

7 benefit pension plan.

8 Has Conway MacKenzie or any other firm to

9 your knowledge quantified the dollar amount of plan

10 assets that were converted to the annuity savings

11 accounts?

12 A. Yes.

13 Q. And what is that amount, if you remember?

14 A. One analysis that I've looked at was performed by

15 Joe Esuschanko, E-S-U-S-C-H-A-N-K-O.

16 Q. Okay.

17 A. And he analyzed the impact from both the annuity

18 savings fund as well as 13th checks between 1985 and

19 2008 and he quantified that to be, based on the

20 principal amount as well as the lost interest earnings

21 on those funds, to be approximately \$1.9 billion.

22 Q. Okay. I want to make sure I understand what you --

23 that last answer. That would be both the annuity

24 savings plan and the 13th check program that you

25 reference in paragraph 19?

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1 A. Yes. Amounts that were used to credit interest on the

2 annuity savings fund accounts and pay 13th checks.

3 Q. The 1.9 billion does not include any principal or the

4 3 or the 5 or the 7 percent of the paycheck that was

5 invested; correct?

6 A. That's correct.

7 Q. But the interest being calculated there, is that all

8 interest or just the amount of interest in excess of

9 the interest earned under the plan?

10 A. In excess. The interest in excess of what was earned

11 by plan assets.

12 Q. And of the 1.9 billion, did Mr. Esuschanko break it

13 down between the 13th check and the annuity savings

14 plan?

15 A. Yes.

16 Q. How much of the 1.9 was attributable to the annuity

17 savings plan?

18 A. I don't recall that breakdown.

19 Q. Do you know what documents or records might contain

20 that breakdown?

21 A. Yes, there was a memo that was prepared by the city

22 council fiscal analysis division in around November of

23 2011 in support of the ordinance that I just

24 previously mentioned that has attached to it

25 Mr. Esuschanko's report.

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1 Q. Thank you. And do you recall whether Mr. Esuschanko's

2 report breaks down the amounts on each year or was it

3 an accumulation of 2005 through 2008?

4 A. It shows by year.

5 Q. Turning to the 13th check subject, which is in

6 paragraph 19 of your declaration, do you have an

7 understanding as to what years the 19th check program

8 was pursued?

9 A. Just to clarify, you had indicated -- you just said

10 19th check, I think you're referring to the 13th

11 check.

12 Q. I'm sorry, my apologies. Strike that again. I'll

13 answer it again -- or I'll ask it again.

14 Do you recall in what years the 13th check

15 program was utilized?

16 A. Mr. Esuschanko's analysis I believe has 13th check

17 amounts in that same time period, 1985 through 2008.

18 I have seen information that would suggest that 13th

19 checks may have occurred before 1985 for the GRS

20 system.

21 Q. And if I understand your declaration correctly, this

22 13th check program was used for both the GRS and the

23 PFRS systems?

24 A. The 13th check, if we use that term as it relates to

25 the Police and Fire Retirement System, is also -- or



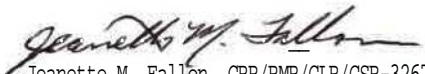
Page 169

1 has also been referred to as gain sharing.
 2 Q. So it's only referred to as gain sharing related to
 3 the PFRS system?
 4 A. I have seen references to both 13th checks and gain
 5 sharing for PFRS. The reason why there's a
 6 distinction is payouts that happen from PFRS went to
 7 both active and retired employees whereas on the GRS
 8 side those payments just went to retired employees.
 9 Q. Are you aware whether a portion of the 13th check
 10 program or payments pursuant to the 13th check program
 11 were made to the City itself?
 12 A. Well, the 13th check didn't go to the City, but
 13 typically the board would approve a total amount and
 14 allocate a portion to annuity savings fund interest,
 15 another portion to 13th checks and then a third
 16 portion to be used as a credit to the City.
 17 Q. And are you aware -- you may have already addressed
 18 this in your testimony, I apologize -- but are you
 19 aware of whether any payments among those allocated
 20 went to active employees other than the -- not in the
 21 annuity savings plan context but in the 13th check
 22 program?
 23 A. Speaking just about GRS, if we exclude the crediting
 24 of the annuity savings fund accounts, I'm not aware of
 25 13th checks going to active employees.

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1 MR. CIANTRA: I believe this has been the
 2 subject of discussion between people in your firm and
 3 my firm, but I just want to confirm with Mr. Moore
 4 what his understanding is as to the October 23rd
 5 hearing.
 6 Q. Do you have any understanding as to whether you are
 7 expected to testify at the October 23rd hearing?
 8 A. It has not been discussed.
 9 Q. So I take it that if you haven't discussed whether
 10 you're going to testify, you similarly have not
 11 discussed what you might testify to; is that correct?
 12 A. Correct.
 13 MR. RUEGGER: I don't have any other
 14 questions.
 15 MR. MILLER: Thank you. No questions.
 16 (Deposition concluded at 4:06 p.m.)
 17 * * *
 18
 19
 20
 21
 22
 23
 24
 25

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

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1 DEPOSITION ERRATA SHEET
 2
 3 Our Assignment No. 471793/NYC337236
 4 Case Caption: In re City of Detroit, Michigan
 5
 6 DECLARATION UNDER PENALTY OF PERJURY
 7
 8 I declare under penalty of perjury that I have read
 9 the entire transcript of my Deposition taken in the
 10 captioned matter or the same has been read to me, and the
 11 same is true and accurate, save and except for changes
 12 and/or corrections, if any, as indicated by me on the
 13 DEPOSITION ERRATA SHEET hereof, with the understanding that
 14 I offer these changes as if still under oath.
 15 Signed on the ____ day of _____, 20__.
 16 _____
 17 CHARLES M. MOORE
 18
 19
 20
 21
 22
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 25

Page 173

1 DEPOSITION ERRATA SHEET

2

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22 _____

23 Reason for change: _____

24 SIGNATURE: _____ DATE: _____

25 CHARLES M. MOORE

Page 174

1 DEPOSITION ERRATA SHEET

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23 Reason for change: _____

24 SIGNATURE: _____ DATE: _____

25 CHARLES M. MOORE



EXHIBIT E

Page 308

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4 -----X
5 IN RE) Chapter 9
6 CITY OF DETROIT, MICHIGAN,) Case No. 13-53846
7 Debtor.) Hon. Steven W. Rhodes
8 -----X
9
10
11 CONTINUED VIDEOTAPED DEPOSITION of
12 KEVYN D. ORR
13 Volume II
14 Washington, D.C.
15 Friday, October 4, 2013
16
17
18 Pages: 308 - 496
19 Reported by: Cindy L. Sebo, RMR, CSR, RPR, CRR,
20 CCR, CLR, RSA
21 Assignment Number: 14008
22 File Number: 105824

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20
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1 October 4, 2013
2 11:11 a.m.
3
4
5 Continued Videotaped Deposition of KEVYN D.
6 ORR held at the law offices of:
7
8 Jones Day
9 51 Louisiana Avenue, Northwest
10 Washington, D.C. 20001
11
12
13 Pursuant to notice, before Cindy L. Sebo,
14 Registered Merit Reporter, Certified Shorthand
15 Reporter, Registered Professional Reporter,
16 Certified Real-Time Reporter, Certified Court
17 Reporter, Certified LiveNote Reporter, Real-Time
18 Systems Administrator, a Notary Public in and for
19 the District of Columbia.
20
21
22

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<p style="text-align: right;">Page 312</p> <p>1 APPEARANCES (Continued):</p> <p>2</p> <p>3 WINSTON & STRAWN LLP</p> <p>4 For the Assured Municipal Guaranty Corporation:</p> <p>5 200 Park Avenue</p> <p>6 New York, New York 10166-4193</p> <p>7 212.294.3520</p> <p>8 BY: STACEY L. FOLTZ, ESQUIRE (via telephone)</p> <p>9 SFoltz@winston.com</p> <p>10 BY: BIANCA M. FORDE, ESQUIRE</p> <p>11 (via LiveNote Stream)</p> <p>12 bforde@winston.com</p> <p>13</p> <p>14 CLARK HILL PLC</p> <p>15 For the General Retirement System of the City</p> <p>16 of Detroit and the Police and Fire Retirement</p> <p>17 System of the City of Detroit:</p> <p>18 500 Woodward Ave, Suite 3500</p> <p>19 Detroit, Michigan 48009</p> <p>20 313.965.8274</p> <p>21 BY: JENNIFER K. GREEN, ESQUIRE</p> <p>22 (via telephone)</p>	<p style="text-align: right;">Page 314</p> <p style="text-align: center;">C O N T E N T S</p> <p>2 EXAMINATION OF KEVYN D. ORR: PAGE:</p> <p>3 By Ms. Levine 316</p> <p>4 By Mr. Ullman 358, 477</p> <p>5 By Mr. DeChiara 382, 489</p> <p>6 By Ms. Green 483</p> <p>7</p> <p style="text-align: center;">E X H I B I T S</p> <p>9 ORR DEPOSITION EXHIBITS: PAGE:</p> <p>10 20 E-mail string 352</p> <p>11</p> <p>12 21 Jones Day Presentation to the</p> <p>13 City of Detroit; Detroit,</p> <p>14 Michigan, January 29, 2013 359</p> <p>15</p> <p>16 22 City of Detroit - Restructuring</p> <p>17 Plan, Mayor's Implementation</p> <p>18 Progress Report, March 2013 369</p> <p>19</p> <p>20 23 E-mail string 457</p> <p>21</p> <p>22 24 Excerpt from report 462</p> <p>23</p> <p>24 25 E-mail string 464</p>
<p style="text-align: right;">Page 313</p> <p>1 APPEARANCES (Continued):</p> <p>2</p> <p>3 Weil, Gotshal & Manges LLP</p> <p>4 For the Financial Guaranty Insurance Company:</p> <p>5 767 Fifth Avenue</p> <p>6 New York, New York 10153-0119</p> <p>7 212.310.8257</p> <p>8 BY: DANA KAUFMAN, ESQUIRE</p> <p>9 dana.kaufman@weil.com</p> <p>10</p> <p>11</p> <p>12 ALSO PRESENT:</p> <p>13 NOONAH ETTEHAD, Videographer</p> <p>14 MICHAEL NICHOLSON, UAW</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 315</p> <p style="text-align: center;">EXHIBITS (Continued):</p> <p>2 ORR DEPOSITION EXHIBITS: PAGE</p> <p>3 26 Contract for Emergency</p> <p>4 Financial Manager Services 471</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 * (Exhibits Attached to Original Transcript.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>



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1 PROCEEDINGS

2

3 Washington, D.C.

4 Friday, October 4, 2013; 11:11 a.m.

5

6 - - -

7 KEVYN D. ORR

8 after having been previously duly sworn, was

9 examined and testified further as follows:

10 - - -

11 THE VIDEOGRAPHER: This is the

12 continuation of the deposition of Kevyn Orr on

13 Friday, October the 4th of 2013 at 11:12 a.m.

14 (Sotto voce discussion.)

15 THE VIDEOGRAPHER: Yeah. The witness

16 is still sworn.

17 MS. LEVINE: Okay.

18 - - -

19 EXAMINATION (CONTINUED) BY COUNSEL FOR AFSCME

20 - - -

21 BY MS. LEVINE:

22 Q. Mr. Orr, thank you for coming back.

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1 Again, we --

2 A. Sure --

3 Q. -- appreciate it.

4 A. -- um-hum.

5 Q. As we understand from the court

6 reporter before we started the deposition, you've

7 been previously sworn. You're continued to be

8 sworn, and we're not going to go through again,

9 unless you'd like me to repeat it, the ground

10 rules for the deposition.

11 A. No, that's fine. I understand I'm

12 still under oath.

13 Q. Good.

14 Mr. Orr, we were talking the last

15 time we met about some of the discussions that you

16 had with the Governor leading up to the filing of

17 the bankruptcy, and some of those discussions, as

18 the Court has directed, are protected by the

19 common interest agreement --

20 A. Yes.

21 Q. -- but -- but our understanding is

22 that some of them may not be.

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1 So I'm going to ask you a series of

2 questions. I'm assuming you'll take a breath and

3 let your -- let -- let your attorney tell you

4 whether or not you can answer --

5 A. Okay.

6 Q. -- and depending upon his direction,

7 we'll go to the next question.

8 A. That's fine.

9 Q. Did you consider, just prior to the

10 filing of the Chapter 9 petition, whether there

11 were political ramifications associated with

12 dealing with the pension's retiree benefits, other

13 employee issues in the course of the Chapter 9?

14 MR. SHUMAKER: Go ahead.

15 THE WITNESS: Did I consider?

16 BY MS. LEVINE:

17 Q. (No audible response.)

18 A. No.

19 Q. Was it your understanding that any of

20 the City's elected officials were concerned about

21 political considerations impacting their workforce

22 pension's retiree benefits as a result of the

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1 Chapter 9 filing?

2 A. Was it my understanding that any of

3 the City officials were concerned?

4 Q. The Mayor, anybody working with the

5 Mayor.

6 A. I'd be speculating. They might have

7 been, but I don't know for sure.

8 Q. Did you have any discussions with the

9 Mayor or any of the City officials about the

10 political ramifications of a Chapter 9 filing?

11 A. No, not really political

12 ramifications, no.

13 Q. Did you discuss with the Governor any

14 of the political ramifications surrounding a

15 Chapter 9 filing?

16 A. Outside of any attorney-client

17 communications?

18 Q. (No audible response.)

19 A. You're shaking your head, so I

20 don't --

21 Q. Well, the political -- I'm -- I'm

22 asking the question about political ramifications,



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1 so I'm intentionally not asking the question with
 2 regard to any --
 3 A. Okay.
 4 Q. -- legal discussions.
 5 A. Explain for me, if you will, what you
 6 mean by "political ramifications." Just -- just
 7 so I make sure I understand what --
 8 Q. Well, let's put it this way --
 9 A. -- what you mean.
 10 Q. -- what would -- what's your
 11 understanding of political ramifications?
 12 A. Well, I'm -- I'm not sure. That's
 13 why I'm asking you.
 14 Q. Did you consider any political
 15 consequences at all in connection with the
 16 Chapter 9 filing?
 17 A. Did I consider?
 18 Q. Yes.
 19 A. No.
 20 Q. Do you believe that -- do you
 21 understand -- did you have any discussions with
 22 regard to whether or not the Governor was

Page 321

1 considering any political ramifications as a
 2 result of the Chapter 9 filing?
 3 A. I'm -- I'm trying to understand --
 4 let me put it to you this way: The answer would
 5 be no, because I believe the Governor wasn't
 6 concerned about political ramifications as you
 7 asked.
 8 Q. Okay.
 9 And what do you base that
 10 understanding on?
 11 Why do you believe the Governor
 12 wasn't concerned about political ramifications?
 13 A. Without -- and -- and let me just say
 14 this throughout the deposition. It is not my
 15 intent to waive or in any way impact the
 16 attorney-client privilege.
 17 So I'm going to try to be responsive,
 18 but I don't want to bleed over into any arguments
 19 later that I somehow waived the privilege.
 20 My impression is in any of my
 21 discussions outside of attorney-client
 22 communications with the Governor, he never

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1 demonstrated any concern about political
 2 ramifications as they're being used today.
 3 Q. Did you understand that reductions in
 4 vested pension benefits would be a necessary part
 5 of any restructuring for Detroit?
 6 A. I think that was certainly
 7 anticipated, yes.
 8 Q. Is it your understanding that the
 9 Governor understood that the reduction in vested
 10 pension benefits would be part of any
 11 restructuring for Detroit?
 12 MR. SHUMAKER: Objection: foundation.
 13 MS. LEVINE: I'm asking him his
 14 understanding.
 15 THE WITNESS: I'm not sure what the
 16 Governor understood. You'd have to ask him.
 17 BY MS. LEVINE:
 18 Q. Did the Governor ever communicate to
 19 you that he expected that vested pension benefits
 20 would be part of any restructuring for Detroit?
 21 A. The Governor communicated to me that
 22 he expected -- no.

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1 Q. Did you discuss the reduction in
 2 vested in pension benefits with the Governor prior
 3 to the filing of the Chapter 9 petition?
 4 A. Not outside of any attorney-client
 5 communications.
 6 Q. Did you discuss the reduction of
 7 vested pension benefits, without going into what
 8 was discussed, prior to the filing of the
 9 Chapter 9 petition with the Governor?
 10 A. Without waiving the attorney-client
 11 privilege, we may have.
 12 Q. You -- when you say "we may have,"
 13 you don't recall?
 14 A. I -- I don't recall a specific
 15 conversation with the Governor outside of
 16 attorney-client communications talking about
 17 reductions in pension benefits.
 18 The Governor generally -- without
 19 waiving the privilege, would generally say, you
 20 make the decision that's best for the City in your
 21 mind.
 22 Q. Was it your understanding, prior to



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1 the bankruptcy filing, that there was an issue
 2 with regard to whether or not pension benefit
 3 reductions would violate Michigan's State law or
 4 the State constitution?
 5 A. Can you repeat the question?
 6 MS. LEVINE: Can you read back the
 7 question, please?
 8 THE WITNESS: Yeah.
 9 - - -
 10 (Whereupon, the court reporter read
 11 back the pertinent part of the
 12 record.)
 13 - - -
 14 THE WITNESS: Yes.
 15 BY MS. LEVINE:
 16 Q. And was it -- and did the Governor
 17 also have an understanding that that was an issue?
 18 MR. SHUMAKER: Objection: foundation.
 19 BY MS. LEVINE:
 20 Q. Was it your understanding that the
 21 Governor also had an understanding that that was
 22 an issue?

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1 A. Without speculating as to what the
 2 Governor would understand, I believe -- to the
 3 extent I believe the Governor was aware that --
 4 what was being reported in the press and being
 5 discussed, I would say yes.
 6 Q. Was it your understanding that the
 7 only way to reduce pension benefits was to use
 8 or -- use Chapter 9 or file for Chapter 9
 9 protection?
 10 A. No.
 11 Q. Was it the Governor's understanding
 12 that the only way to reduce pension benefits or
 13 to -- was to use Chapter 9 or to file for
 14 Chapter 9 bankruptcy protection?
 15 MR. SHUMAKER: Objection: foundation;
 16 calls for speculation.
 17 THE WITNESS: Yeah. Here again, I
 18 don't know what the Governor's understanding was.
 19 MS. LEVINE: That's fine. I'm
 20 expecting objections, but please don't coach the
 21 witness. The objections --
 22 MR. SHUMAKER: I'm not coaching the

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1 witness --
 2 MS. LEVINE: -- the objection --
 3 MR. SHUMAKER: -- I'm just stating my
 4 objection.
 5 MS. LEVINE: I don't want -- yeah,
 6 but objection as to speculation, then, suddenly,
 7 he doesn't -- he -- his answer is I'm -- I don't
 8 want to speculate.
 9 Objections to form are fine.
 10 THE WITNESS: I -- I think I said
 11 before I want to be very careful about testifying
 12 to what the Governor's state of mind was. I can
 13 only testify as to what I understood.
 14 BY MS. LEVINE:
 15 Q. And that's all I'm asking --
 16 A. Okay.
 17 Q. -- we're only asking for your
 18 understanding --
 19 A. Okay.
 20 Q. -- I'm trying to use your
 21 understanding to avoid legal conclusions or
 22 speculation or anything else.

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1 I just want to -- I'm -- I just -- I
 2 just want to understand your understanding.
 3 A. Okay.
 4 MR. SHUMAKER: If you phrase the
 5 question that way, that will help us all out.
 6 BY MS. LEVINE:
 7 Q. What's your understanding of the
 8 Mayor's view with regard to the reduction in
 9 pension benefits?
 10 A. I don't have an understanding what
 11 the Mayor's view is.
 12 Q. Did you discuss, prior to the
 13 Chapter 9 filing, pension reductions with the
 14 Mayor?
 15 A. I don't believe so.
 16 Q. Did you discuss, prior to the
 17 Chapter 9 filing, pension reductions with anybody
 18 on behalf of the City Government?
 19 A. Let -- let me -- let me phrase my
 20 an -- outside of any public discussions and
 21 presentations I may have made at, say, for
 22 instance, the June 10th creditor's meeting or the



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1 June 14th meeting for creditors, I don't recall
 2 any specific discussions with anyone on behalf of
 3 the City about reductions.
 4 Q. You -- you testified at your last
 5 deposition that, in your view, concessionary
 6 bargaining changes to pensions could not occur
 7 within the time frame that you had to work with.
 8 And I have an extra copy here if you
 9 want to see the -- the transcript, but --
 10 A. Um-hum.
 11 Q. -- the question is what time period
 12 were you talking about?
 13 A. I think I said at the June 10th
 14 public meeting and, again, at the June 14th
 15 proposal for creditors -- I think I was fairly
 16 clear that we would need to have some agreements
 17 in principle or term sheets and the like within
 18 the next 30 days, and that if we were making
 19 movement, we might be willing to have further
 20 discussions for an additional 30 days.
 21 In fact, I believe at the back of the
 22 June 14th proposal, we learned -- we -- we

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1 identified an evaluation time frame. So that's
 2 the time frame that I thought I was being fairly
 3 clear about.
 4 Q. And were either the June 14 or the
 5 June 20 meetings audiotaped?
 6 A. The June 10th or the June 14th
 7 meeting --
 8 Q. Right. Was -- were -- were either
 9 the June 10th or the June 14th meeting audiotaped?
 10 A. I believe the June 10th meeting was
 11 audio and videotaped. I think I've seen that on
 12 the Internet.
 13 I don't know about the June 14th
 14 meeting for creditors.
 15 Q. Did -- did you videotape those
 16 meetings or did the EM -- were they videotaped on
 17 behalf of EM?
 18 A. To be honest with you, that -- that
 19 would have been done at a staff level. I don't
 20 know.
 21 I just know that I've seen the
 22 June 10th meeting -- my June 10th presentation on

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1 various Internet sites. I don't recall seeing my
 2 June 14th presentation.
 3 MS. LEVINE: Can we request a copy of
 4 that if -- if it exists?
 5 MR. MOSS: Which one? It's --
 6 MR. SHUMAKER: Both of them if you
 7 have them.
 8 THE WITNESS: I think they're on
 9 YouTube.
 10 MR. SHUMAKER: I'd ask you to put the
 11 request into writing so we have that.
 12 BY MS. LEVINE:
 13 Q. When you gave the presentation at the
 14 June 10th and the June 14th meeting, did you
 15 believe that it was possible to reach consensual
 16 agreements within the 30-day period that you
 17 outlined?
 18 MR. SHUMAKER: Can I just state an
 19 objection here? Where are you're going, Counsel?
 20 I'm going to be patient and allow you to -- to
 21 ask -- ask questions, but let's be very clear from
 22 the outset as to what Judge Rhodes ordered and

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1 what ASME requested in its -- its motion to compel
 2 additional testimony from Mr. Orr.
 3 The request that you made was -- to
 4 the Judge was that Mr. Orr reappear for three
 5 hours of deposition testimony concerning his
 6 communications with State officials in the
 7 presence of legal counsel since his appointment as
 8 emergency manager.
 9 That is what the subject of today's
 10 deposition is.
 11 MS. LEVINE: Right. And this is a
 12 foundation question.
 13 MR. SHUMAKER: Okay. I just want --
 14 I -- I'm just going to caution you from the --
 15 from the get-go that we're not going to meander
 16 all over that -- that's what the order is and
 17 that's why we're here.
 18 MS. LEVINE: Can you read back the
 19 question, please?
 20 - - -
 21 (Whereupon, the court reporter read
 22 back the pertinent part of the



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1 record.)

2 - - -

3 THE WITNESS: Yes.

4 BY MS. LEVINE:

5 Q. Did you discuss that with the

6 Governor before the June 10th meeting?

7 A. Let -- as I think I said at my

8 September 16th deposition, I would have regular

9 meetings with the Governor, typically weekly.

10 There were attorneys present at all of those

11 meetings.

12 I am not -- and I'll take guidance

13 from my counsel, but this is in terms of how I

14 intend to respond today.

15 I am not trying to assert the

16 privilege for people who have legal degrees but

17 were not acting as attorneys. For instance, the

18 Governor has a JD, and the Treasurer has a JD. So

19 I'm not trying to say that the privilege attaches

20 for their capacity as Governor and Treasurer, not

21 acting as attorneys. But there are attorneys in

22 those meetings on the Governor's staff acting as

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1 attorneys.

2 Without violating the privilege

3 during those meetings, what I can say is that --

4 well, if I could have the question again.

5 Q. It's really a simple -- it -- it's

6 a -- it's a narrow question --

7 A. Right.

8 Q. -- I understand the concern, but it's

9 a narrow question.

10 A. Right.

11 Q. Did you discuss -- you -- as I

12 understand your testimony, you indicated on

13 June 10th and June 14th that you were looking at

14 a 30-day time frame.

15 A. Um-hum.

16 Q. Did you discuss that 30-day time

17 frame prior to the June 10 meeting with the

18 Governor?

19 A. I'll look for a little guidance. If

20 I had discussions, they probably were during

21 meetings where attorneys were present.

22 Without disclosing what those

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1 communications were, we typically would have

2 discussed what we would have needed to present --

3 I don't recall so much for the June 10th public

4 meeting, so the answer is no for there.

5 For the June 14th meeting, we

6 probably would have discussed at a very high level

7 the nature of the presentation. I don't recall

8 discussing with specificity the exact time frames.

9 Q. In order to meet the 30-day time

10 frame that you're discussing, were there any

11 benchmarks or criteria that you thought would have

12 to be met -- would have to be met within that

13 30-day period in order to conclude what you needed

14 to conclude at the end of the 30-day period?

15 A. Well, I think what I said was that

16 that was an initial 30-day period, but if we were

17 moving forward and making progress, we'd be

18 willing to extend it for another 30-day period or

19 so. I think that's what I said.

20 So when you say "benchmarks," we were

21 looking for good-faith negotiations and movements

22 in the nature, I think I said on June 14th,

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1 agreements in principle, term sheets and the like.

2 So it's -- it's not as stringent as I

3 think -- I don't want to give the impression that

4 our expectation was as stringent as there had to

5 be specific benchmarks, but we wanted for people

6 to come in with good-faith, credible proposals to

7 show that we were moving forward on these issues,

8 and we would continue to negotiate on those

9 issues.

10 Q. Did you have -- following the June 10

11 and June 14 meeting, did you have any discussions

12 with the Governor with regard to the progress or

13 lack of progress being made in that regard?

14 A. Probably. Without violating the

15 privilege, we probably had discussions without

16 saying what those discussions were, because there

17 would have been -- would have been attorneys

18 present.

19 Q. When did those discussions take

20 place?

21 A. They would typically have taken

22 place, as I've said, at the weekly meetings that



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1 the Governor and I and his team and members of my
2 team would have.
3 Q. So after June 14, when was your next
4 weekly meeting?
5 A. I don't know specifically, but I'm --
6 I said it's typically weekly.
7 So I'm -- I think we probably had one
8 the next week.
9 Q. Do you recall what day the next week?
10 A. I do not.
11 Q. Do you recall if there was one
12 because it was -- do you recall if there was one
13 the following week?
14 A. I do not.
15 Q. Were there one or two meetings with
16 the Governor from the time of the June 14 meeting
17 to the time of the filing of the Webster
18 litigation on June 3?
19 A. Well, there could well have been more
20 than two. I do recall, and I think I said on
21 September 16th, I don't think we had one the 4th
22 of July -- week of the 4th of July, which was a

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1 Thursday.
2 Q. Understood. Not the question.
3 The question is, from June 14 up
4 until July 3, how many times did you meet with the
5 Governor?
6 A. No. Your question was did we have
7 one or two meetings, and my answer was I believe
8 we probably had more than two.
9 Q. And did you discuss the pension
10 and/or healthcare benefit issues that you had
11 discussed during the June 10 and June 14 meeting
12 with the Governor during those two, maybe more,
13 meetings?
14 A. Ms. Levine, let me -- let me say
15 this: We probably discussed them broadly, but
16 there were no discussions that I recall in detail
17 about what our plan would have to be in those
18 meetings, such as what level of cuts they would be
19 and the like, if any.
20 Q. Did -- did you get any proposals
21 during that two-week period in response to those
22 meetings?

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1 A. I think I said on June 16th, we've
2 had some discussions with some bargaining units.
3 I don't recall if they were between the June 14th
4 time frame -- if they were -- I think we were in
5 discussions with some bargaining units during that
6 time. So, yes, I believe we did get some
7 proposals.
8 Q. Did you report on those proposals to
9 the Governor?
10 A. I -- generally speaking, yes.
11 Q. Did you indicate to the Governor that
12 you were making progress?
13 A. I probably indicated that we were
14 making some progress, yes.
15 Q. Did you discuss with the Governor
16 whether there were additional proposals you were
17 hoping to receive?
18 A. We probably did express a wish for
19 additional proposals. We were hoping for a global
20 solution.
21 Q. Did you come up with an action plan
22 to solicit further proposals?

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1 A. I thought we began that on June 14th,
2 a proposal for creditors, where we ended it by
3 saying we're interested in responses.
4 Q. In any of the meetings that you had
5 with the Governor between June 14th and July 3rd
6 where you didn't get proposals, for -- did you
7 discuss constituents from whom you didn't get
8 proposals that you wish you would have gotten
9 proposals from?
10 A. No, I didn't --
11 MR. SHUMAKER: Objection to the form.
12 THE WITNESS: -- no, I don't recall
13 discussing at that level of specificity.
14 BY MS. LEVINE:
15 Q. The Governor authorized the Chapter 9
16 filing on July 18th.
17 Do you know who drafted the
18 Governor's authorization?
19 A. I do not.
20 Q. Do you know whether the language in
21 the Governor's authorization was discussed with
22 your attorneys at Jones Day?



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1 A. I do not.

2 Q. Did the Governor ask you to request

3 authorization to file the Chapter 9 or was it your

4 independent decision on July 16th?

5 A. It was my independent decision.

6 Q. Did you have any specific discussions

7 with the Governor concerning the conditions or

8 the -- or with respect to specific directions from

9 the Governor with regard to pension benefits?

10 MR. SHUMAKER: Object to the form.

11 THE WITNESS: No, not with the

12 Governor.

13 BY MS. LEVINE:

14 Q. Was it your understanding that the

15 Governor was seeking political cover by not taking

16 a position with respect to pension reductions, but

17 only citing to Section 943 of the Bankruptcy Code?

18 MR. SHUMAKER: Objection: form.

19 THE WITNESS: No.

20 BY MS. LEVINE:

21 Q. Did -- did you suggest the citing

22 to 943 of the Bankruptcy Code to the Governor?

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1 A. No. I had no involvement in the

2 letter -- the Governor's letter.

3 Q. Were there any discussions about

4 citing to 943 of the Bankruptcy Code outside of

5 the letter as a -- as of -- as a way to deal with

6 issues with regard to pension reductions?

7 MR. SHUMAKER: I'm just going to

8 caution the witness again. To the extent you can

9 answer the question without revealing

10 attorney-client communications, you may do so.

11 THE WITNESS: The -- there were none

12 with the Governor.

13 BY MS. LEVINE:

14 Q. Is it your understanding that the

15 language regarding conditions, specifically the

16 use of the reference to 943 of the Bankruptcy

17 Code, authorizes you to alter vested pension

18 benefits?

19 A. That seems to call for a legal

20 conclusion.

21 Let -- let me just say this

22 generally --

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1 Q. I'm just asking your understanding.

2 A. Let me -- let me just say this

3 generally.

4 I was not involved in any fashion in

5 drafting the Governor's response. My

6 understanding is that without citing to a specific

7 section of the code, because I have not analyzed

8 it, that the letter grants me authority to use any

9 resources that are available to propose a plan of

10 adjustment.

11 Q. After you got the letter, did you

12 discuss with the Governor what the meaning was in

13 the letter of the reference to Section 543 [sic]

14 of the Bankruptcy Code?

15 A. No.

16 Q. 943, I'm sorry.

17 A. Yeah, I knew -- I knew what you

18 meant.

19 No.

20 Q. Between June 14th -- or June 10th and

21 the filing on July 18th, besides legal

22 conclusions, besides pension benefits, did you

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1 discuss with the Governor certain ideas that you

2 had with regard to how to restructure or deal with

3 the financial situation in Detroit?

4 A. Yes, we likely did without divulging

5 any privileges, yes.

6 Q. I'm looking for the business

7 financial terms, not the legal terms.

8 In other words, did you --

9 A. Um-hum.

10 Q. -- discuss, for example, selling

11 assets?

12 A. No.

13 Q. Did you discuss generating additional

14 revenue with the Governor?

15 A. Here again, some of these

16 discussions, in fact, every meeting we had on a

17 regular basis would have had attorneys present, so

18 I want to be very careful.

19 For instance -- for instance, if

20 there are discussions about a millage rate and the

21 maximum legal millage amount, I would not want

22 those to bleed over into disclosing



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1 attorney-client protected communications.
 2 What I can say is that at -- at a
 3 high level, we discussed ways to potentially
 4 generate revenue.
 5 Q. Did you discuss privatization with
 6 the Governor during that same time frame from
 7 June 10th through the filing?
 8 MR. SHUMAKER: I'll just caution the
 9 witness, if you had discussions with the Governor
 10 where counsel was present in connection with a
 11 request for an indicia of legal advice --
 12 THE WITNESS: Right.
 13 MR. SHUMAKER: -- I don't want you to
 14 answer to that; but if you can do so outside of
 15 any such request or provision of legal advice, you
 16 can answer.
 17 THE WITNESS: Okay.
 18 Without disclosing legal advice, we
 19 may have discussed nonlegal-related issues, for
 20 instance, with an outstanding solid waste RFP and
 21 how that could save the City money and produced a
 22 higher level of services for the City.

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1 Legal issues regarding the RFP, I --
 2 I won't talk about, but, for instance, the --
 3 those privatization in that sense would have been
 4 discussed.
 5 Privatization in a broader sense, I
 6 don't recall having discussions of a philosophical
 7 issue about privatization. We probably would have
 8 had discussions about specific RFPs outstanding.
 9 BY MS. LEVINE:
 10 Q. Did you have any other specific
 11 discussions with regard to RFPs or outsourcing in
 12 connection with improving the financial
 13 condition -- or allegedly improving the financial
 14 condition of the City?
 15 A. Well, improving it. Like I said,
 16 I -- I do recall discussions about the solid waste
 17 RFP which we were somewhat excited about, save
 18 money and increase quality of services.
 19 I'm trying to think of anything else
 20 that could be called privatization. That's the
 21 one that sticks out in my mind. I don't recall
 22 anything else.

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1 Q. During the course of these
 2 conversations, did you have any conversations with
 3 the Governor about preserving jobs for the
 4 citizens of Detroit?
 5 A. Yes.
 6 Q. And what were those conversations?
 7 A. Well, for instance, in the solid
 8 waste RFP, one of the bidders -- I -- we probably
 9 discussed that one of the bidders had come in who
 10 had done this before and was able to move the City
 11 jobs over to private sector jobs with the same
 12 employees. And so there would be no net loss of
 13 jobs.
 14 Q. Did you discuss how that might impact
 15 vested benefits and vested pension rights?
 16 A. No, we really didn't have -- no.
 17 Q. You -- you approved the retention of
 18 Jones Day under EM Order Number 4 and officially
 19 approved Jones Day's contract on April 20 --
 20 THE COURT REPORTER: I -- I'm sorry.
 21 I can't hear you here.
 22 MS. LEVINE: Sorry.

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1 BY MS. LEVINE:
 2 Q. You approved the retention of
 3 Jones Day under EM Order Number 4 and officially
 4 approved Jones Day's contract on April 23, 2010;
 5 is that correct?
 6 A. If your represent -- representation
 7 is accurate, yes. I don't independently recall
 8 the dates, but that sounds correct.
 9 Q. Okay. So after April 23, 2013, you
 10 and Jones Day had an attorney-client relationship,
 11 yes?
 12 A. I think that's a legal conclusion.
 13 The attorney-client relationship could attach
 14 before then.
 15 Q. What was your understanding of when
 16 your legal attorney-client relationship with
 17 Jones Day attached?
 18 A. I don't know. That's what I'm saying
 19 it calls for a legal conclusion.
 20 My understanding of the days I
 21 practiced law is that the attorney-client
 22 relationship can attach prior to the actual



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1 formalization of an attorney-client relationship.
 2 Q. When did you first -- all right.
 3 Let me ask you this: Did Jones Day
 4 represent the City in any capacity before
 5 April 23, 2013?
 6 A. I don't know. That's why I keep
 7 saying it could be a legal conclusion.
 8 I know that their contract was before
 9 City -- the Mayor had selected them, and their
 10 contract was below -- before City Council before
 11 then.
 12 Q. What was the date that the Mayor
 13 selected Jones Day to represent the City?
 14 A. I don't recall.
 15 Q. Was it prior to February of 2013?
 16 A. I -- I don't recall. I don't recall.
 17 I don't think so.
 18 Q. Did Jones Day represent the State of
 19 Michigan in any capacity before April 2000 --
 20 April 2013?
 21 MR. SHUMAKER: Objection: foundation.
 22 THE WITNESS: Jones Day may have --

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1 I -- I don't know. They may have represented the
 2 State in other matters, but if you're talking
 3 about with regard to this matter, I don't recall.
 4 BY MS. LEVINE:
 5 Q. What does NERD stand for?
 6 MR. SHUMAKER: Object to the form.
 7 BY MS. LEVINE:
 8 Q. Do you know what NERD -- do you --
 9 have you heard the phrase "NERD" in connection
 10 with the New Energy to Reinvest Diversity Fund?
 11 A. Yeah. When you said "NERD," it
 12 stands for a kid who was like me when he was
 13 growing up, sort of a geek.
 14 But if you're talking about the
 15 acronym related to something affiliated with the
 16 Governor, then, yes, I've heard of that.
 17 Q. All right.
 18 Do you know what it is -- let me
 19 ask --
 20 A. I --
 21 Q. -- it this way: What's your
 22 understanding of what it is?

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1 A. I -- I -- only what I've read in the
 2 papers. I know nothing about the NERD Fund other
 3 than what I've read in the papers.
 4 Q. Do you know who any of the donors are
 5 to the NERD Fund?
 6 A. I haven't got a clue.
 7 Q. So it's not you?
 8 A. It is -- I've never donated to the
 9 NERD Fund, no.
 10 Q. Has Jones Day?
 11 A. Not that I know of.
 12 Q. Has any City retained professional?
 13 A. I have no idea.
 14 Q. Do you know whether any of the City's
 15 creditors are -- have donated to the NERD Fund?
 16 A. I know nothing about the NERD Fund
 17 other than what I've read in the papers. The
 18 first time I heard about the NERD Fund is when I
 19 read about it in the paper --
 20 Q. So do --
 21 A. -- I know nothing about the donors.
 22 Q. Do you know whether any -- do you

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1 know whether any of the SWAP parties have donated?
 2 A. No, I do not.
 3 Q. If you had access to the
 4 information -- if you have access to the
 5 information, would you be willing to disclose the
 6 donors?
 7 A. I don't have access to the
 8 information, and I think that's a question -- if
 9 it's a fund run by someone else, that's their
 10 decision. I don't have access to any information
 11 related to the NERD Fund.
 12 Q. Would you be willing to ask the
 13 Governor to have that information disclosed?
 14 A. Sitting here today, no.
 15 Q. Have any of your expenses as
 16 emergency manager been paid or reimbursed by the
 17 NERD Fund?
 18 A. Not --
 19 MR. SHUMAKER: I think we're getting
 20 pretty far afield here -- here, Counsel. This is
 21 not really --
 22 MS. LEVINE: Yeah, it is --



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1 MR. SHUMAKER: It's starting to
2 get --
3 MS. LEVINE: -- I'll be bring it
4 back.
5 MR. SHUMAKER: Okay.
6 THE WITNESS: What I read in the
7 paper is that my housing is paid for by the
8 NERD Fund. I've never seen the lease, and I've
9 never seen a payment.
10 That's the extent of what I know of
11 the NERD Fund and its involvement with me.
12 MS. LEVINE: This is Exhibit 20.
13 MR. SHUMAKER: Do you have an extra
14 copy?
15 MS. LEVINE: Yeah, one.
16 MR. SHUMAKER: Thank you.
17 - - -
18 (Whereupon, an e-mail string was
19 marked, for identification purposes,
20 as Orr Deposition Exhibit
21 Number 20.)
22 - - -

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1 A. Yeah, I do. Yes, I do.
2 Q. And it discusses the base
3 compensation of \$275,000 a year?
4 A. Yes, among other things.
5 Q. And contract period of -- include --
6 including a contract period not to
7 exceed 18 months?
8 A. Yes.
9 Q. Did your final contract have an
10 incentive if the job was completed sooner?
11 A. No.
12 Q. It also discusses an intent to raise
13 private funding for performance measure/outcome
14 bonus?
15 A. Yes.
16 Q. Does your final contract have a
17 performance measure/outcome bonus?
18 A. No. We never talked about it yet.
19 Q. Did you discuss the private funding
20 referenced in that e-mail?
21 A. No.
22 Q. Did you under -- do you -- did you

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1 MS. LEVINE: For -- for the record,
2 the -- the Bates number is JD-RD-0000334.
3 (Whereupon, the witness reviews the
4 material provided.)
5 BY MS. LEVINE:
6 Q. Mr. Orr, there are two e-mails on the
7 first page of this document.
8 A. Um-hum, yes.
9 Q. I'm going to ask you to look at the
10 second e-mail.
11 It's from --
12 A. Yes.
13 Q. -- Richard Baird to you?
14 A. Yes.
15 Q. Dated February 12, 2013, correct?
16 A. Yes.
17 Q. And it discusses -- well, let me ask
18 the question.
19 Is this e-mail discussing your
20 potential retention as the emergency manager?
21 A. Yes, it appears to do that.
22 Q. Do you recall receiving this e-mail?

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1 have any understanding of what the source of that
2 private funding would be?
3 A. Not at all.
4 Q. It discusses a sublease for a
5 furnished apartment in the City?
6 A. Yes.
7 Q. And that made it to the final
8 contract?
9 A. Actually, it's not in my contract, I
10 believe.
11 Q. But you have a subleased apartment in
12 the City -- or a leased apartment in the City?
13 A. I -- I have an apartment that I stay
14 in in the City; the arrangement I -- I can't speak
15 to.
16 Q. How did you learn that there was an
17 apartment available to you?
18 A. I believe the first day, I stayed in
19 a hotel room, and the next day, someone -- and I
20 really can't tell you if it was on behalf of the
21 State or if it was someone related to the hotel --
22 when I came back from work that day, took me to --



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1 and my suitcase to the apartment.

2 Q. Is it your understanding that the

3 City's paying for that apartment?

4 A. I -- I don't know who's paying for

5 the apartment.

6 Q. And you get your expenses reimbursed?

7 A. I haven't had any of my expenses

8 reimbursed.

9 Q. Does anybody -- who pays for your

10 flying, for example, back and forth from D.C.?

11 A. I do.

12 Q. And that -- and none of those have

13 been reimbursed?

14 A. Not a dime.

15 Q. And you get a security detail?

16 A. Yes.

17 Q. 24/7?

18 A. Certainly -- well, they say 24/7, but

19 I -- they walk me to my apartment and lock me in,

20 and then I see them in the morning. So I assume

21 it's 24/7. That's -- that's my detail.

22 Q. Do you know who's paying for that

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1 security detail?

2 A. I do not, but they are Michigan State

3 Police; they're not private.

4 Q. So there was no discussion, though,

5 back in or around February of 2013 with regard to

6 the source of any funding to help subsidize the

7 cost of the emergency manager?

8 A. No. In fact, I think there's an

9 e-mail that has been produced somewhere where I

10 say back I -- you know, the -- the -- something to

11 the effect the job is the job is, and I'm not

12 expecting anything supplemental.

13 Q. No, I'm not asking you if you were

14 expecting anything supplemental. I'm asking the

15 source of the funding to pay for you --

16 A. Oh, I've --

17 Q. -- as a --

18 A. -- had -- yeah, I -- I -- I -- my

19 checks come from a -- a Michigan State Government

20 Web site. I assume that's from the State, but I

21 have no idea if -- if there's any other

22 arrangement -- my direct deposits.

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1 MS. LEVINE: I have no further

2 questions. Thank you.

3 THE WITNESS: Okay.

4 THE VIDEOGRAPHER: Go off the record?

5 Going off the record at 11:50.

6 - - -

7 (Whereupon, a discussion was held off

8 the record.)

9 - - -

10 THE VIDEOGRAPHER: Going back on the

11 record at 11:53.

12 - - -

13 EXAMINATION (CONTINUED) BY COUNSEL

14 FOR RETIREES COMMITTEE

15 - - -

16 BY MR. ULLMAN:

17 Q. Good morning, Mr. Orr.

18 A. Good morning.

19 Q. As you know, I'm Anthony Ullman

20 and -- for the Retirees Committee from Dentons,

21 and I have some additional questions for you this

22 morning.

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1 A. Good morning, Mr. Ullman.

2 Q. First of all, I'd like to put a

3 document before you which we will mark as

4 Exhibit --

5 MR. ULLMAN: Are we up to 21?

6 THE COURT REPORTER: Yes.

7 THE WITNESS: Twenty-one.

8 MR. ULLMAN: Twenty-one. I need a

9 sticker for that.

10 - - -

11 (Whereupon, Jones Day Presentation to

12 the City of Detroit; Detroit,

13 Michigan, January 29, 2013 was

14 marked, for identification purposes,

15 as Orr Deposition Exhibit

16 Number 21.)

17 - - -

18 MR. ULLMAN: Here's a copy for you.

19 I want to get rid of my extras.

20 MR. SHUMAKER: Let me state on the

21 record a couple of things. One, I'm not sure

22 technically whether the Retirees even joined



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1 ASME's motion, so I'm not even certain that it's
2 proper that Mr. Ullman be asking questions.
3 Secondly, this is -- Mr. Ullman can
4 identify it, but this document is the Jones Day
5 presentation to the City of Detroit on January
6 29th, 2013.
7 I don't see how that funnels into the
8 request that was made to Judge Rolls -- Rhodes
9 regarding three hours of deposition testimony
10 concerning Mr. Orr's communications with State
11 officials in the presence of legal counsel since
12 his appointment as emergency manager.
13 That said, this document was produced
14 after the deposition, and I'm going to let you go
15 into it. But I am going to say --
16 MR. ULLMAN: I --
17 MR. SHUMAKER: -- within reason --
18 MR. ULLMAN: -- I don't -- I don't
19 intend to dwell very long on it --
20 MR. SHUMAKER: Okay.
21 MR. ULLMAN: -- and I appreciate your
22 recognition. This was produced after the last

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1 deposition.
2 BY MR. ULLMAN:
3 Q. Okay. Mr. --
4 THE COURT REPORTER: I have to mark
5 it there first.
6 BY MR. ULLMAN:
7 Q. Okay. Mr. Orr, what we've marked as
8 Exhibit 21 is entitled, Presentation to the City
9 of Detroit; Detroit, Michigan, January 29, 2013
10 from Jones Day.
11 Can you identify this document for
12 me, Mr. Orr?
13 A. Yes.
14 Q. Okay. And what is it, please?
15 A. I believe it's a slide deck
16 presentation to the City of Detroit for a -- in
17 response to a solicitation the firm received for
18 representation regarding potential restructuring
19 work on behalf of the City dated January 29th,
20 2013 marked confidential.
21 Q. Okay. And this is in connection with
22 the presentation that you testified about last

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1 time; is that correct?
2 A. Yes, when I said the end of January.
3 It's commonly referred to as a "pitch book."
4 Q. Okay. And you -- you were part of
5 the Jones Day team, and your picture appears on
6 Page 3 of this document; is that right?
7 A. Yes, I was part of the presentation
8 team, yes.
9 Q. Okay. And did you have any role in
10 the preparation of this document?
11 A. Yes. I mean, it -- it was a
12 collaborative effort from a number of different
13 attorneys in the Jones Day law firm, but I was
14 involved in that process as well.
15 Q. Okay. And did you review the
16 document -- can we refer to this as the pitch
17 book?
18 A. Yes.
19 Q. Okay. Did you -- did you review the
20 pitch book, Exhibit 21, before it -- before the
21 presentation?
22 A. Yes.

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1 Q. Okay. And I just note -- I'm not
2 going to go into my particular specifics here, but
3 if, for example, just picking one, if you look at
4 Page 18, there's what's called Speaker Notes,
5 which -- I assume this was a PowerPoint
6 presentation, so someone would be talking --
7 speaking orally as a slide goes on the screen; is
8 that right?
9 A. Well, it was -- it -- it -- it -- it
10 could have been a PowerPoint. As I recall, we did
11 not -- there weren't PowerPoint capabilities, so
12 we intended to work off the document --
13 Q. Um-hum.
14 A. -- but the discussion, within a
15 minute or two, veered away from the document and
16 more was a dialogue, so . . .
17 Q. Okay. So what we have as Exhibit 21
18 was the -- the internal -- at least was this
19 internal version of the pitch book; in other
20 words, were there speaker notes?
21 A. Yes, were the speaker -- this --
22 the -- the speaker notes were not presented to --



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1 Q. That's --

2 A. -- the review team.

3 Q. -- that's what I wanted to clarify.

4 A. Yes.

5 Q. Okay. And when you say that you

6 reviewed the document before -- before it went out

7 in its final form to the -- to the people you were

8 pitching to at the meeting, you know, with the

9 City, you reviewed the speaker notes as well?

10 A. Mr. Ullman, to be honest, I -- I

11 reviewed -- I can't be -- this document was not

12 generated solely by me --

13 Q. I understand.

14 A. -- it was generated by a team effort.

15 I think I reviewed a number of

16 different drafts of the document. I'm not -- I --

17 I believe I reviewed the final draft of the pitch

18 book that went out. I am not sure I reviewed the

19 final draft of the draft of the speaker notes,

20 because at that time, I think I was involved in

21 the actual mediation of another matter. So I was

22 doing this in between some other matters.

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1 But generally speaking, I'm familiar

2 with this document.

3 Q. Okay. And was there -- was there

4 anything in the document that you disagreed with?

5 MR. SHUMAKER: Object to the form.

6 THE WITNESS: Without reviewing it

7 today, generally speaking, no.

8 BY MR. ULLMAN:

9 Q. Okay. And can you tell me were there

10 any particular portions of Exhibit 21 that you had

11 primary responsibility for preparing?

12 A. No. The -- the document evolved

13 through -- as you are probably familiar with the

14 pitch books for attorneys seeking legal work, the

15 document evolves as you go through it, a number of

16 conversations, e-mails with a number of different

17 sources.

18 I don't recall being -- I don't

19 recall looking at this document and saying, oh, I

20 only did Pages 23 through 23 [verbatim], for

21 instance. I may have commented and edited

22 different pages. I may have made suggestions on

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1 who should be on the team, who should be on the

2 representation team, what -- what potential legal

3 services might be necessary.

4 And, for instance, at the back, you

5 have team members, things along those lines,

6 but -- but there was no specific section that was

7 dedicated solely to me.

8 Q. Okay. I'm not asking whether it was

9 dedicated solely to you, but whether you had

10 primary responsibility for preparing.

11 A. No.

12 Q. Okay.

13 A. No.

14 Q. And I think you indicated that the

15 slides themselves were given over to the City at

16 the meeting or -- was it the City or the State?

17 I'm trying to remember, did you --

18 A. It -- it was a review team composed

19 of I think --

20 Q. Buckfire was there?

21 A. -- the -- the investment bankers were

22 there --

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1 Q. Yeah.

2 A. -- for the City who had been

3 retained, the City representatives were there and

4 the State representatives were there.

5 Q. Okay. I'll talk -- call that the --

6 the review team --

7 A. Review team --

8 Q. -- is that the term you like?

9 Okay --

10 A. -- yeah.

11 Q. -- so as I understand what you're

12 saying, the -- the -- the slides themselves were

13 present -- given over to the review team as a --

14 a -- a bound --

15 A. Yes.

16 Q. -- volume or attached in some way?

17 A. Yes, the -- the -- the slide deck as

18 the pitch book was given to the review team.

19 Q. Okay. And then, at the presentation,

20 were -- how did that work? Did you -- did people

21 sort of go through the slides orally and then --

22 and -- and make comments as they were going



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1 through the different pages in the pitch book?
 2 A. No. As I recall, we handed out the
 3 pitch book and began sort of going through the
 4 slide, but within the first page or two, the
 5 discussion exceeded the slides. And we really
 6 ended up not going through the pitch book in any
 7 meaningful manner --
 8 Q. Okay.
 9 A. -- at the presentation.
 10 Q. Okay. And this -- at the time of the
 11 presentation, you were indeed still part of
 12 Jones Day --
 13 A. Yes.
 14 Q. -- and part of the pitch team?
 15 A. Yes, absolutely.
 16 Q. Okay.
 17 Okay. I'm going to mark another
 18 document, Mr. Orr, and ask if you've ever seen
 19 this, which is Number 22.
 20 A. Two.
 21 MR. ULLMAN: Here's a copy for you,
 22 two copies for you, and an extra, and an extra. I

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1 don't want to bring these back with me is all.
 2 - - -
 3 (Whereupon, City of Detroit —
 4 Restructuring Plan, Mayor's
 5 Implementation Progress Report was
 6 marked, for identification purposes,
 7 as Orr Deposition Exhibit
 8 Number 22.)
 9 - - -
 10 THE WITNESS: Thank you.
 11 BY MR. ULLMAN:
 12 Q. Okay. What we've marked as
 13 Exhibit 22, Mr. Orr, is entitled, City of Detroit
 14 — Restructuring Plan, Mayor's Implementation
 15 Progress Report, with the date of March 2013.
 16 Have you ever seen this document
 17 before?
 18 A. I think I've seen it before, but I
 19 think that was after I became emergency manager.
 20 Q. Okay. That's fine.
 21 And what I'd like to do is try to
 22 just ask you about one page of this.

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1 A. Um-hum.
 2 Q. If you could look at Page 6.
 3 A. Um-hum.
 4 Q. Okay. What we --
 5 MR. SHUMAKER: Of the -- of the
 6 actual document?
 7 MR. ULLMAN: Of the -- yes. I'm
 8 sorry, yeah.
 9 And just for clarity, this document
 10 bears Bates Number DTMI00129416, and Page 6 of the
 11 document bears the Bates number ending in 422.
 12 THE WITNESS: Um-hum.
 13 BY MR. ULLMAN:
 14 Q. Okay. And this page, in general, is
 15 entitled, The Mayor's plan includes strategies to
 16 implement changes that will significantly reduce
 17 general fund long-term liabilities.
 18 I'd like you to focus on Number -- or
 19 Letter (b) --
 20 A. Yes.
 21 Q. -- you see 3(b)?
 22 A. Um-hum.

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1 Q. It says, Pension unfunded
 2 liabilities, and the first bullet point says,
 3 Approximately 650 million of unfunded liability as
 4 of fiscal year 2012, of which only 250 million
 5 relates to general fund.
 6 A. Yes, I see that.
 7 Q. And do you have an understanding as
 8 to what's being said there and what that reference
 9 is?
 10 MR. SHUMAKER: Objection: foundation.
 11 THE WITNESS: Yeah. I was obviously
 12 not responsible for drafting, developing or the
 13 due diligence behind the document. The document
 14 speaks for itself.
 15 But what I think is being said there
 16 is that the unfunded liability for the -- and I
 17 assume it's speaking to both pension funds; it may
 18 be one or the other --
 19 BY MR. ULLMAN:
 20 Q. Um-hum.
 21 A. -- but the unfunded liability for
 22 fiscal year 2012 is 250, and 250 million of that



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1 is somehow an obligation of the general fund.
 2 Q. Okay. Did you say 250? It's -- you
 3 meant to say 650, right?
 4 A. No, no. It's 650 total --
 5 Q. Right.
 6 A. -- but 250 million of that is an
 7 obligation of the general fund.
 8 Q. You had misspoken and said 250 both
 9 times --
 10 A. Oh, I'm sorry --
 11 Q. -- so --
 12 A. -- oh, no -- okay. 650 and 250, I'm
 13 sorry. I was --
 14 Q. Okay.
 15 A. -- thinking ahead, thinking quicker
 16 than my mouth moved.
 17 Q. Okay. And as I -- I understand that
 18 the 650 million that's referred here -- to here by
 19 the Mayor corresponds pretty closely, if I recall,
 20 to the \$644 million figure that was referred to in
 21 the June 14th proposal; is that right?
 22 A. I would -- I -- yes, I -- I would

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1 think it does --
 2 Q. Okay.
 3 A. -- I'm -- I'm -- here again, I'm
 4 not -- I'm assuming it -- it speaks for itself and
 5 it's facially correct; but, yes, I would think
 6 that's the reference.
 7 Q. Okay. And so can you tell me what --
 8 what is your understanding when the Mayor says
 9 here that 250 million relates to the general fund,
 10 what the other 300 --
 11 A. 400.
 12 Q. -- 400 million relates to? And
 13 what's -- what is the distinction being drawn
 14 between what relates to the general fund versus
 15 what relates to something other than the general
 16 fund?
 17 A. I'm not sure.
 18 Q. Well, is it correct that -- that some
 19 portion -- let's just stick with the -- we can use
 20 the \$644 million number --
 21 A. Um-hum.
 22 Q. -- because I think that's what you

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1 would probably say is more accurate.
 2 That's the number that's cited in the
 3 June 14th proposal, right?
 4 A. Yeah, they may have -- they may have
 5 rounded up here --
 6 Q. Okay.
 7 A. -- but we'll -- it's -- it's
 8 approximately that amount.
 9 Q. Okay. Is it correct that for the
 10 approximately 644 million unfunded pension
 11 liability that you refer to in the June 14th
 12 proposal, that some portion of that is allocable
 13 to a payment source other than the general fund?
 14 A. I think that's correct.
 15 Q. Okay. And what are those --
 16 what is -- what are the other payment sources to
 17 which the total 650 -- or I'm sorry -- 644 million
 18 is allocable other than the general fund?
 19 A. Well, there are other sources, but it
 20 could be principally related to the Water
 21 department.
 22 Q. Okay. And what is your understanding

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1 as to how much of the approximately 644 million
 2 unfunded pension liability relates to liability
 3 for personnel from the Department of Water and
 4 Sewer?
 5 A. Approximately that difference.
 6 Q. Okay. So it's about 450 million?
 7 A. Approximately, yeah.
 8 Q. Okay. And I'm trying to recall from
 9 your last testimony.
 10 For the -- the pension monies that
 11 are due relative to personnel from the Department
 12 of Water and Sewer, are the pension payments made
 13 directly by the Department of Water Sewer to the
 14 retirement systems, or is the money paid first by
 15 the retirement -- I'm sorry -- by the Water and
 16 Sewer Department to the City, which then transmits
 17 it to the retirement system, or is there another
 18 mechanism for the payment?
 19 MR. SHUMAKER: Objection to form.
 20 THE WITNESS: I believe it's the -- I
 21 believe it's the latter.
 22



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1 BY MR. ULLMAN:
 2 Q. "The latter" meaning there's
 3 another --
 4 A. To the City --
 5 Q. -- payment mechanism?
 6 A. -- no, no, no, not -- the latter --
 7 not the -- not the discount; "the latter" meaning
 8 to the City and then to the fund.
 9 Q. Okay.
 10 A. I could be wrong, because may be --
 11 but I believe it's -- I believe it's that process.
 12 Q. Okay. I'm asking because I thought I
 13 had seen some other document which said that
 14 the -- maybe it's the same thing -- the City gets
 15 the money or has the right to bill the -- the
 16 funds or the -- the liabilities to the Department
 17 -- Department of Water and Sewer, and then the
 18 Department of Water and Sewer would pay the City.
 19 That's your understanding?
 20 A. Yeah, that -- that's -- that's what I
 21 was saying; that's the approximate mechanism.
 22 Q. Okay.

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1 A. I could go back and check it to be
 2 sure, but I think that's the approximate mechanism
 3 as I understand it.
 4 Q. Okay. Now, by my math -- I make no
 5 representations as to my math, but just looking at
 6 the numbers, it looked -- actually, do I have a
 7 calculator here? I don't think I do.
 8 What percentage is 250 over 650? I
 9 actually didn't do the math.
 10 A. Four -- it's 40-some odd.
 11 Q. It's 40-some -- yeah, we can get it
 12 precisely.
 13 Zero? Oh.
 14 250 divided by 6 -- let's say 650 --
 15 shoot, I didn't do that right. I apologize. Let
 16 me try to clear this and do it again.
 17 250 divided -- 6. This isn't right.
 18 Okay. It looks like about
 19 38 percent.
 20 A. Right.
 21 Q. Okay. You recall that -- that during
 22 the last deposition, you indicated that you

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1 thought that the actual unfunded liability was --
 2 was higher than the 644 number and could be as
 3 much as 3.5 billion or something like that?
 4 A. Yes.
 5 Q. Okay. My question is, does the --
 6 does the -- is the proportion of unfunded
 7 liability allocable to the general fund versus the
 8 Department of Water Sewer personnel constant if
 9 you -- if you use a higher liability figure?
 10 In other words --
 11 A. If we went up to 3.5 --
 12 Q. Yeah, yeah --
 13 A. -- million, would it be --
 14 Q. -- would the Department of Water and
 15 Sewer still be approximately 38 percent of the
 16 total unfunded liability?
 17 A. I'm -- I'm not sure. I would think
 18 that a rough estimate might be. But as I said, I
 19 think, in September 16th, part of those
 20 calculations had to do with a number of factors,
 21 so I don't want to say that my testimony is as
 22 exactly proportioned.

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1 Q. Okay. And is it correct that the
 2 Department of Water and Sewer itself, I think you
 3 indicated last time, is run as a separate entity,
 4 even though it's, I think, technically part of the
 5 City, but it has its own books and records?
 6 A. The Department of Water and Sewer is
 7 a department of the City both technically and
 8 practically. Pursuant to Judge Cox's order, it
 9 has certain functions, which it can run
 10 semiautonomously, but it remains a department of
 11 the City.
 12 Q. Okay. And as -- as a separate --
 13 as -- as an entity or a department of the City
 14 that keeps its own books and records, the
 15 Department of Water and Sewer itself shows a
 16 profit for its own operations; is that right?
 17 A. I'm not sure it shows a profit for
 18 its own operations. I -- I'd have to look into
 19 the word "profit" --
 20 Q. Okay.
 21 A. -- but -- but it -- it stands -- it
 22 generates revenue of its own and pays its



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1 obligations as they become due.
 2 Q. Okay. And is it correct the
 3 Department of Water and Sewer also has the
 4 ability, if it -- if it exercises it, to increase
 5 its revenues by raising the rates?
 6 A. I'm not sure. There are a number of
 7 things that go into rate increases --
 8 Q. Um-hum.
 9 A. -- it -- it might well have that
 10 capacity.
 11 You also have to consider the impact
 12 on customers, but I don't want to mislead you. It
 13 does have some capacity, yes.
 14 Q. Okay. Now, prior to the filing of
 15 the bankruptcy petition on July 18th, did you have
 16 any discussions with the Governor concerning the
 17 allocation of the unfunded pension liability
 18 between the general fund and the Department of
 19 Water and Sewer?
 20 A. No.
 21 Q. Did you have any such discussions
 22 with the Governor after the filing of the

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1 bankruptcy petition?
 2 A. No.
 3 MR. ULLMAN: Yeah. Good idea.
 4 Okay. Greg, could I ask you to
 5 produce the final version of the pitch book,
 6 the -- the one that was actually given over to the
 7 review team?
 8 MR. SHUMAKER: We'll look into it.
 9 I -- I believe that has been produced, but
 10 we'll --
 11 MR. ULLMAN: Okay.
 12 MR. SHUMAKER: -- certainly check.
 13 MR. ULLMAN: Okay. I appreciate it.
 14 Okay. I think, at least for the
 15 moment, that's all I have.
 16 THE WITNESS: Okay. Thank you.
 17 MR. ULLMAN: Peter?
 18 I'll pass the baton.
 19
 20
 21
 22

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1 - - -
 2 EXAMINATION (CONTINUED) BY COUNSEL
 3 FOR UNITED AUTO WORKERS UNION
 4 - - -
 5 BY MR. DECHIARA:
 6 Q. Good afternoon, Mr. Orr.
 7 Peter DeChiara from the law firm of Cohen, Weiss
 8 and Simon LLP for the United Auto Workers
 9 International Union.
 10 A. Good afternoon -- well, good
 11 afternoon.
 12 Q. Is -- is it your testimony that you
 13 don't know who's paying for your housing in
 14 Detroit while you serve as emergency manager?
 15 A. Yes. I'd -- I've read in the papers
 16 that it's the aforementioned NERD Fund, but I've
 17 never seen a list -- a lease, and I've never
 18 really inquired into it.
 19 Q. Okay. You testified when Mr. Ullman
 20 was questioning you about a meeting at which there
 21 was discussion in connection with Exhibit 21,
 22 which is what you refer to as "the pitch book."

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1 Do you remember that testimony?
 2 A. Yes.
 3 Q. Do you -- do you know whether
 4 Richard Baird was present when Jones Day made its
 5 presentation?
 6 A. Yes, he was present.
 7 Q. Do you recall whether he said
 8 anything, whether statements or questions, at the
 9 meeting?
 10 A. Oh, I think he -- he asked some
 11 questions, yes.
 12 Q. What did he ask?
 13 A. I don't recall with specificity;
 14 generally about the firm's qualifications to do
 15 the work.
 16 Q. Was there discussion at the meeting
 17 about accrued pension liabilities of the City of
 18 Detroit?
 19 A. Not that I recall.
 20 Q. Was there any discussion about the
 21 Michigan Constitution?
 22 A. No.



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1 Q. Did you have any one-on-one or
2 less-than-the-full-room-of-people conversations
3 immediately following the pitch presentation with
4 any of the -- at -- people who were attending on
5 behalf of the City or the State?
6 A. No. The only conversations I had
7 were, as a tested to -- testified to last time,
8 telephone conversations with Mr. Baird that
9 followed up. But we had no other conversations
10 with anyone else.
11 Q. When was the next time after
12 the -- well, was the presentation that Jones Day
13 made to the City on January 29th, 2013?
14 A. I believe so.
15 Q. Okay. When would -- was the next
16 time -- when, after January 29th, 2013, did you
17 speak to Mr. Baird?
18 A. I think it was a series of e-mail
19 exchanges that we went through on September 16th,
20 which was in a day or two after -- it was the 30th
21 of January or the 1st of February. It's that
22 whole discussion chain.

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1 Q. Okay. So within a day or two of the
2 pitch book presentation by Jones Day, Mr. Baird
3 calls Jones Day to make inquiries about having you
4 serve -- having you possibly serve as emergency --
5 emergency manager, correct?
6 A. Yeah, I think it's that discussion,
7 yes.
8 Q. Okay. And did you speak to Mr. Baird
9 on that occasion? And when I say "that occasion,"
10 I'm referring to one or two days after
11 January 29th.
12 A. Yes. I think, on September 16th, we
13 discussed that he reached out to Steve Brogan --
14 MR. SHUMAKER: Just so we're clear --
15 I don't mean to interrupt -- September 16th was
16 your deposition.
17 THE WITNESS: Yes.
18 MR. SHUMAKER: I want you to make
19 sure you get your dates right in your testimony.
20 THE WITNESS: Oh, you -- oh, you
21 mean -- I'm -- let me be clear. As we discussed
22 on September 16th during my deposition, that those

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1 conversations occurred within a day or two after.
2 And -- and I haven't read my deposition or looked
3 at it, but I recall there was a call made.
4 I was asked; I said I'm not
5 interested; they asked -- I assume it was
6 Mr. Baird asked that I at least talk to them; and
7 there was that whole discussion chain that
8 occurred after that.
9 BY MR. DECHIARA:
10 Q. Is it accurate that you were
11 appointed as EFM on March 15th, 2013?
12 A. No.
13 Q. When were you appointed EFM?
14 A. I think my appointment was March 25th
15 or 26th as EFM, yes.
16 Q. You were appointed EFM before you
17 were appointed EM, correct?
18 A. Yeah. I believe the statute changed.
19 Public Act 4, I believe, had been invalidated, so
20 it was under Public Act 72, which described an
21 EFM. And then under Public Act 436, you become an
22 EM.

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1 Q. Okay. So my question was -- and
2 maybe your answer is the same, but just -- I just
3 want to be sure -- what is the date you were
4 appointed EFM?
5 A. I believe it was the 25th or the
6 26th.
7 Q. Of March --
8 A. March --
9 Q. -- 2013?
10 A. -- March 2013.
11 Q. Okay. Before you were appointed EFM,
12 did you have any written exchanges -- and by
13 "written exchanges," I mean e-mails, letters,
14 exchange of memos -- with the Governor?
15 A. No.
16 Q. Did you have any such exchanges
17 before you were appointed EFM with
18 Treasurer Dillon?
19 A. No -- well, strike that.
20 I may have had an exchange with
21 Treasurer Dillon or the Governor just a -- a
22 courtesy, you know, hear you're a candidate, hope



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1 you're interested, hope you'll consider this, but
 2 nothing substantive. There may have been courtesy
 3 exchanges.
 4 Q. Okay. So let me -- let me go back.
 5 A. Right.
 6 Q. So let me ask just about the
 7 Governor.
 8 A. Right.
 9 Q. So to the best of your
 10 recollection -- well, strike that.
 11 Is it your testimony that you did
 12 have written exchanges with the Governor before
 13 you became EFM?
 14 A. I believe so.
 15 Q. Okay. To the best of your ability,
 16 can you tell me what those exchanges were?
 17 A. As I said, they were courtesy --
 18 there were no substantive discussions; they were
 19 more like one line, hear you're interested, hope
 20 you consider this, something along those lines.
 21 Q. Okay. And were those e-mails?
 22 A. There may have been e-mails.

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1 Q. Okay. Do you -- do you recall them
 2 being in any form other than e-mails?
 3 A. No. I'm just -- I'm trying to
 4 distinguish whether they were e-mails or whether
 5 they were texts.
 6 And I -- I think I recall -- I think
 7 I recall e-mails. There may have been a voice
 8 mail. I'm not sure.
 9 But it -- it was just, you know --
 10 it's what I call, you know, sort of a -- a -- a
 11 good -- good -- good home training. I mean, you
 12 follow-up and say, hey, glad you're interested,
 13 hope you consider it, something like that.
 14 Q. Okay. Is it your testimony you're
 15 not sure whether those exchanges with the Governor
 16 before you were EFM were e-mails, voice mails or
 17 texts? And when I say "texts" --
 18 A. Yeah.
 19 Q. -- I assume you're talking about --
 20 and tell me if -- if I'm mistaken --
 21 A. Right.
 22 Q. -- the kind of texts you would send

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1 over a cell phone.
 2 A. Yeah, that's what I'm talking
 3 about --
 4 Q. Okay.
 5 A. -- I -- I -- there could have been a
 6 voice mail, and there could have been an e-mail or
 7 two, or it could have been a text. It wasn't,
 8 like, every day or every week. I just seem to
 9 recall that there was a text or two and a voice
 10 mail or two after the meeting -- after -- or after
 11 discussions with Rich.
 12 Q. Okay.
 13 MR. DECHIARA: The UAW would call for
 14 the production of any cell phone texts that are
 15 otherwise responsive to our document request.
 16 MR. SHUMAKER: If you can put that
 17 into an letter. We're not certain it hasn't
 18 already been produced, but we'll certainly look
 19 into it.
 20 MR. DECHIARA: We'll be happy to put
 21 it into the letter.
 22

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1 BY MR. DECHIARA:
 2 Q. Let me now ask you the same question
 3 regarding Treasurer Dillon --
 4 A. Um-hum.
 5 Q. -- again, before you were appointed
 6 EFM, did you have any written exchanges in the
 7 form of cell phone texts, e-mails or hard copy
 8 documents with Treasurer Dillon?
 9 A. There may have been one.
 10 Q. And what -- do you have a specific --
 11 A. -- same -- it was the same, hey, you
 12 know, I hope you're interested, please consider it
 13 or something like that.
 14 I don't recall quite as clearly
 15 anything with Treasurer Dillon, but there may have
 16 been one.
 17 Q. Okay. But not more than one?
 18 A. I don't think more than one, no.
 19 Q. Okay. And what about -- same
 20 question for exchanges with Mr. Baird?
 21 A. I think I've seen some of those
 22 exchanges during my September 16th, 2013

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1 deposition; so yes.

2 Q. And what -- what's your recollection

3 as you sit here today of what your exchange --

4 written exchanges were with Mr. Baird before you

5 were EFM?

6 A. Kevyn, heard you're not interested --

7 just generally speaking -- hope you'll reconsider;

8 the e-mail exchange that we went through today;

9 things of that -- if you're considering, this is

10 what the job would entail; gee, Rich, I'd have to

11 take myself out of the firm. I'd be willing to

12 work with anyone side by side, but, you know, I

13 don't want to leave my firm. Well, this is an

14 important undertaking. Okay, I'll consider it;

15 public service. Here, we'll propose what the job

16 entails. That's fine, whatever it is, it is.

17 That's the extent of those exchanges.

18 Q. Okay. So the description you just

19 gave of your exchanges with Mr. Baird exhausts

20 your recollection --

21 A. Yeah.

22 Q. -- let me just finish the question --

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1 A. I'm sorry.

2 Q. -- exhausts your recollection of the

3 written exchanges you had with Mr. Baird before

4 you were appointed EFM?

5 A. Yes. I think you have those

6 exchanges.

7 Certainly, I've seen several of them.

8 Q. Okay. Now, I'm going to ask you the

9 same question, but instead of just limiting the

10 question to the Governor, Mr. Dillon and

11 Mr. Baird, I'm going to expand it --

12 A. Um-hum.

13 Q. -- to include their assistants or

14 their staff or people who work for them.

15 Again, did you have any written

16 exchanges of any form with any of those people

17 before you were appointed EFM that you recall?

18 A. I don't recall specifically, but in

19 an effort to be responsive, I think there must

20 have been probably at least one or two talking

21 about the March 13th-14th press conference.

22 Q. Okay. And what -- to the best of

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1 your recollection, what -- who were those

2 exchanges with? Do you -- do you recall?

3 A. I don't recall, but probably someone

4 in the Governor's scheduling office or -- or

5 communications office. I mean, I didn't -- I

6 didn't know who those -- I didn't know who those

7 people were at the time --

8 Q. Okay.

9 A. -- okay? But there was -- it was

10 something about, you know, you need to be here on

11 this date, and we'll have the rollout, something

12 like that.

13 Q. Okay. Was there anything more

14 substantive than scheduling matters?

15 A. No. Nope.

16 Q. Okay. Now, I'm going to change the

17 question -- series of questions and ask about the

18 time period after you were appointed EFM.

19 A. Right.

20 Q. So let me begin with the Governor.

21 A. Okay.

22 Q. Did you have any written exchanges,

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1 meaning e-mails, texts or hard copy

2 correspondence, with the Governor after you were

3 appointed EFM until today?

4 A. Yes, I believe so.

5 Q. And can you tell me what those

6 were -- or what those have been?

7 A. Well, generally, the 25th and 26th

8 was glad you're on board -- they're

9 congratulatory --

10 Q. I understand. So the 26th -- 20 --

11 A. March --

12 Q. -- of what month?

13 A. -- of March --

14 Q. Okay.

15 A. -- after I was actually appointed.

16 I think they were more courtesy and

17 protocol, congratulatory e-mails.

18 After that, there weren't -- after

19 the first day or so, there weren't a lot of

20 e-mails. And sitting here today, I don't recall

21 the last time I got an e-mail or text from the

22 Governor.



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1 Q. Okay. So my question was not limited
2 to e-mails; it was not limited to the last time
3 you got a text --
4 A. Okay.
5 Q. -- the question is, other than the
6 congratulate -- congratulatory exchange in --
7 around March 26th to 27th with the Governor, do
8 you have any recollection of any other exchanges
9 in written form that you've had with the Governor?
10 A. I don't -- I don't have any
11 recollection. I would think that there probably
12 are some, but they weren't very frequent -- it's
13 not like -- the Governor and I meet more than the
14 written exchanges, so it's not like there were a
15 lot of written exchanges or I would have had -- or
16 I would expect there to be a lot.
17 Q. Okay. Well, sitting here today, can
18 you testify as to the substance of any -- let --
19 let me finish --
20 A. Yeah.
21 Q. -- please --
22 A. Um-hum.

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1 Q. -- the substance of any written
2 exchange you've had with the Governor since you
3 became EFM apart from the congratulatory exchange
4 you had with him on March 26th or 27th?
5 A. Generally, I would -- I would
6 classify -- there were no substantive exchanges
7 that I recall. They were more in the nature of an
8 attaboy.
9 If there was a -- a press conference,
10 or something along those lines, or a meeting of
11 creditors or -- or -- I'm just saying, for
12 instance, I don't recall anything with
13 specificity.
14 But there's nothing substantive and
15 there were no directive, do this, do this, do
16 this, something like that -- there was nothing
17 like that. It was more like good job yesterday,
18 nice seeing you again, things along those lines.
19 Q. And who would be -- who would be
20 saying that to whom? The Governor would be saying
21 that to you?
22 A. Yeah. The Governor would typically

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1 reach out, and I'd typically respond, thanks,
2 Governor, I enjoyed our discussion, or something
3 along those lines.
4 Q. Okay. Same question for
5 Treasurer Dillon.
6 Since you were appointed EFM through
7 the present, have you had any written exchanges,
8 whether electronic or in hard copy --
9 A. Yes.
10 Q. -- with Governor Dillon?
11 A. With Treasurer?
12 Q. I'm sorry. Strike that.
13 With Treasurer Dillon. Sorry --
14 A. Yes.
15 Q. -- I didn't mean to give him a
16 promotion.
17 A. Right.
18 Q. Can you tell me what those were?
19 A. Those were initially the attaboy
20 e-mails.
21 I think, since then, for instance,
22 with regard to contracting of restructuring

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1 professionals, I generally have to send an e-mail
2 to the Treasurer and/or his staff seeking
3 permission to retain those professionals, and
4 we've done that --
5 Q. Let me just pause you there.
6 Did one of those exchanges have to do
7 with the retention of Jone- -- the law firm of
8 Jones Day?
9 A. I believe so.
10 Q. And did you -- what was the nature of
11 that exchange?
12 A. That -- that would be a -- a
13 technical -- Treasurer Dillon, attached is the
14 contract of insert restructuring professional. It
15 has been vetted by the City Council or it's been
16 reviewed by my staff. It provides X, Y, Z. Under
17 my contract and statute, I have to seek your
18 approval. Accordingly, I'm requesting your
19 approval of the contract.
20 Q. Okay. So you sought the approval of
21 Treasurer Dillon for the City to retain Jones Day?
22 A. Yes.



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1 Q. And he approved it?
 2 A. Yes.
 3 Q. Okay. Okay.
 4 I'm sorry. I had interrupted you --
 5 A. Yeah.
 6 Q. -- you -- if you could please
 7 continue with giving your recollection of the
 8 exchanges you've had with Treasurer Dillon.
 9 A. Those are the ones that -- that stick
 10 out in my mind. There -- there may have been --
 11 let's see. There are the contract approval
 12 process. There are the attaboys, like, good job,
 13 Kevyn, that sort of thing. They're
 14 nonsubstantive.
 15 There may have been others. None
 16 stick out in my mind and none were particularly
 17 substantive. For instance, if there was a group
 18 or organization that the treasury [verbatim]
 19 thought could provide a service to the City, for
 20 instance, benefits enrollment, he might send me an
 21 e-mail along the lines of this is someone who
 22 might be able to help you with your benefit

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1 outreach. You may want to talk with them.
 2 Similarly, if there was someone who
 3 had reached out to the State or reached out to the
 4 treasury, this is someone who asked that I put you
 5 in touch with them, things of that nature.
 6 Those were probably more regular.
 7 Q. Did you have any written exchanges
 8 with the Treasurer about the City's unfunded
 9 pension liability?
 10 A. Well, the reason I'm -- I'm
 11 hesitating -- I'm -- I think we had regular
 12 reports to the -- okay. I'm obligated to submit
 13 regular -- 30-day, 180-day reports, which I do,
 14 and those are published in public. So I'm going
 15 to --
 16 Q. And who do you submit those to?
 17 A. To -- to the Treasurer Dillon and, in
 18 some cases, the Governor.
 19 So my -- my reports that I'm required
 20 to submit, you know, I -- the staff submits them,
 21 but I'm going to include them in an effort to be
 22 responsive in your question.

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1 I don't technically send them;
 2 somebody on my staff sends them out. I sign the
 3 letter, and they -- they e-mail it.
 4 So I'm going to -- the public
 5 technical reporting requirements are -- could be
 6 qualified in your question.
 7 Q. Yes.
 8 So let me clarify my question --
 9 A. Okay.
 10 Q. -- I'm not limiting it to documents
 11 that you draft yourself, but documents that are
 12 prepared for you.
 13 A. Okay. I'm sure there are a lot of
 14 communications between my staff and the treasury
 15 having to do with the reports that we have. And
 16 when I say "a lot," I don't know how many, but
 17 I'm -- I'm taking them out of the attaboy, good
 18 luck questions and putting them in more to the
 19 substantive questions.
 20 I think my staff or people at my
 21 direction, my contractors, may submit cash flow
 22 projections and cash flows, projections over

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1 actuals, things like that, not
 2 necessarily directly -- I'm trying not to be
 3 technical --
 4 Q. Okay.
 5 A. -- not necessarily to
 6 Treasurer Dillon, but to his staff as well.
 7 Q. Okay. So let me --
 8 A. Okay.
 9 Q. -- I -- I appreciate your -- your --
 10 A. Um-hum.
 11 Q. -- your efforts to respond.
 12 Let me --
 13 A. Okay.
 14 Q. -- see if I can limit my question
 15 now.
 16 A. Um-hum.
 17 Q. So I'm not interested in
 18 correspondence that's official correspondence --
 19 A. Okay.
 20 Q. -- that's required -- you're required
 21 by your official duties to make, but so setting
 22 apart, you know, officially required



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1 correspondence --

2 A. Right.

3 Q. -- so let me -- let me limit my

4 question in that regard.

5 So --

6 A. Okay.

7 Q. -- so let me go back.

8 A. Okay.

9 Q. Do you recall any exchange -- written

10 exchanges with Treasurer Dillon regarding the

11 City's unfunded -- unfunded pension liabilities?

12 A. Outside of the official

13 correspondence?

14 Q. Right.

15 A. No, I don't recall any specific

16 correspondence between me and Treasurer Dillon

17 regarding unfunded pension liabilities, no.

18 Q. Okay. Do you recall ever seeing an

19 e-mail by Treasurer Dillon in the early part of

20 July 2013 where he says he speak -- he spoke to

21 the City consultants and he didn't realize how

22 significant the unfunded pension liabilities were?

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1 Do -- do you have any recollection of

2 ever seeing an e-mail like that?

3 A. Was I copied on it?

4 Q. I -- I -- I'm just asking if you

5 have --

6 A. Do I have any recollection?

7 Q. -- any recollection of an e-mail like

8 that.

9 A. I have no recollection. If you have

10 a writing, I'd be happy to look at it, but I

11 don't.

12 Q. Okay. Other than what you've

13 testified so far in response to my questions about

14 written exchanges with Treasurer Dillon, do you

15 have any recollection of any other written

16 exchanges with Treasurer Dillon?

17 A. No. We -- we have a -- we have --

18 you know, we have reporting requirements; we try

19 to make those. We have approval requirements; we

20 try to make those.

21 If you're looking for, like,

22 exchanges between us that are besides the

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1 congratulatory protocol attaboys, specifically

2 with related to pension liabilities, I don't have

3 any recollection of those exchanges. There might

4 be, I just -- we did not have specific exchanges

5 focused just solely on pension liabilities, and I

6 don't recall any.

7 Q. Okay. So now let me ask about

8 Mr. Baird.

9 A. Yes.

10 Q. Subsequent to your being appointed to

11 EFM --

12 A. Right.

13 Q. -- through to the present, have you

14 had any written exchanges, electronic or hard

15 copy, with Mr. Baird?

16 A. Yes.

17 Q. And can you tell me what those have

18 been?

19 A. Those are generally about staffing

20 decisions; how's it going with your staff; how's

21 it's going with restructuring City operations;

22 good job; generally staffing.

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1 I don't think I've had any exchanges

2 with Mr. Baird about pension liabilities.

3 Q. Okay. Have you had any exchanges

4 with Mr. Baird about any provisions of the

5 Michigan Constitution?

6 A. No, I don't recall. No, I don't

7 think I've had any of those exchanges with

8 Mr. Baird.

9 Q. Okay. Now, let me ask you whether

10 you've had any written exchanges with any State

11 officials or staff of the Governor or the

12 Treasurer or Mr. Baird after you were EFM apart

13 from any official documents -- any correspondence

14 that was required by law that touched on, in any

15 way, the City's unfunded pension liabilities?

16 A. Outside of attorney-client

17 communications?

18 Q. Well, I'm going to ask you about any

19 of them. If you -- if you're going to assert or

20 your attorney is going to assert a privilege,

21 that's your -- your option to do so, but I'm just

22 going to ask the question.



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1 A. Okay. I'll -- I'll answer two
2 ways -- well, three ways.
3 You said with anyone else in -- in
4 Government?
5 Q. In the State Government, right.
6 A. In the State Government.
7 One I may have had -- I certainly
8 recall a call, but I don't recall -- I recall a
9 courtesy call from the Attorney General that he
10 was going to be taking a stand on the
11 constitutionality of pensions. I don't recall a
12 writing.
13 So I'm -- I'm trying to be responsive
14 and going a little broad. You didn't ask about
15 calls, but I'll give it to you.
16 I am confident there are likely
17 communications either between me and my staff and
18 the Governor's office legal team not necessarily
19 about pension obligations, but regarding a
20 potential plan. I think those are privileged.
21 Not a lot.
22 Q. Okay. So -- I'm sorry --

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1 A. Okay.
2 Q. -- anything else come to mind?
3 A. And -- and just -- just -- here
4 again, I'm -- I'm -- you know, I'll lump them in
5 in the protocol calls -- not calls, protocol memos
6 from the Judge's scheduler, can you do this
7 meeting here with the Governor, can you -- just
8 generally protocol discussions like that.
9 Q. Okay. Let me go back to the -- the
10 telephone call you had with the Attorney General.
11 A. Right.
12 Q. When was that?
13 A. I think it was either the -- I think
14 it was the day before he made his public
15 announcement. I don't recall a specific day.
16 Q. Do you know what month it was in?
17 A. I -- I -- I -- I didn't -- it -- it's
18 in the public record. I just don't recall which
19 one. It wasn't March.
20 Q. It was after the bankruptcy filing?
21 A. No. It may have been before. I just
22 don't recall the date.

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1 Q. Okay. So he made a public filing.
2 And when in time in relation to
3 the -- when he made the filing did he call you?
4 A. I'm not sure it was a filing. I'm
5 just saying there was a -- I recall there was a
6 position he was going to take publicly, and he
7 made a courtesy call to me and left a message.
8 Q. Okay. And you don't recall when he
9 took that position publicly?
10 A. No, I don't.
11 Q. Do you remember what the position
12 was?
13 A. Whatever's been reported in the
14 papers as far as his position.
15 Q. Well, I'm asking you do you -- do you
16 remember what his position was?
17 A. I -- I remember his position was that
18 he believed that the Michigan State Constitution
19 protected pensions.
20 Q. Okay. And did he call you or did you
21 call him?
22 A. No. I believe he called me and left

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1 a message.
2 Q. And did you speak to him at some
3 point?
4 A. Not at that -- I think I called him
5 back that afternoon and said thank you, and that
6 was the extent of our conversation -- or that
7 evening, and that was the extent of our
8 conversation.
9 Q. So other than you're saying thank you
10 for the message, there's no other exchange between
11 you and the Attorney General?
12 A. No. It was of the nature of thank
13 you, Attorney General, I understand that you're
14 going to be taking this position. Thank you for
15 the courtesy call.
16 Q. Okay. Did you discuss the substance
17 of his position?
18 A. No, we did not.
19 Q. Okay. Have you ever discussed the
20 substance of his position with him?
21 A. Yes.
22 Q. When did you do that?



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1 A. I think in a meeting with my attorney
2 and someone from his office.
3 Q. Okay. And when was that?
4 A. I don't recall the day. I don't -- I
5 don't recall the -- it was after March. It may
6 have been prior to or after the bankruptcy filing.
7 I don't recall.
8 Q. Okay. And who was at the meeting?
9 A. I was at the meeting;
10 Attorney General Schuette was at the meeting; an
11 attorney from his office, Matt, was there -- I
12 forget his last name -- and my attorney,
13 David Heiman, was on the phone.
14 Q. Okay. And who -- how did the meeting
15 come about? Did someone ask to have the meeting?
16 A. I think -- yes, I think the Attorney
17 General's Office contacted my office and asked to
18 schedule a meeting.
19 Q. Did the person who asked to schedule
20 the meeting explain why they -- the Attorney
21 General wanted a meeting?
22 A. No.

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1 Q. Did you have an understanding of why
2 he wanted a meeting?
3 A. I don't think so. I think -- you
4 know -- no, I don't think so until we got to the
5 meeting. It was in Lansing.
6 Q. Okay. Do you recall the meeting?
7 A. Yes.
8 Q. What was said in the meeting?
9 A. Is that privileged?
10 MR. SHUMAKER: To -- to the extent
11 that there was a common interest between what the
12 Attorney General and his counsel was relating with
13 you and Mr. Heiman, I'm going to ask you --
14 instruct you not to answer.
15 If it related to issues where there
16 was no common interest, you can testify to that.
17 MR. DECHIARA: I -- I just -- can we
18 just pause? Are we on -- is there -- are you out
19 of tape or what's --
20 THE VIDEOGRAPHER: I've got
21 five minutes on the tape.
22 MR. DECHIARA: Okay. You'll tell me

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1 when the tape runs out?
2 THE VIDEOGRAPHER: Two minutes.
3 MR. DECHIARA: Okay.
4 Why don't -- why don't we take a --
5 maybe this is a good time -- do you have to -- how
6 long does it take to change the -- change --
7 THE VIDEOGRAPHER: I can go off the
8 record now and change.
9 MR. DECHIARA: Okay.
10 MR. ULLMAN: Why don't we take a
11 break and --
12 MR. DECHIARA: Why we don't take a
13 break now? Is that --
14 THE WITNESS: Sure.
15 MR. DECHIARA: -- is that good? He
16 has to change the tape.
17 THE VIDEOGRAPHER: Going off the
18 record at 12:42. This marks the end of Tape
19 Number 1.
20 - - -
21 (Whereupon, a brief recess was taken
22 from 12:42 p.m. to 1:06 p.m.)

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1 - - -
2 THE VIDEOGRAPHER: Going back on the
3 record at 1306. This marks the beginning of
4 Tape Number 2.
5 MR. DECHAIRA: Okay.
6 BY MR. DECHAIRA:
7 Q. Mr. Orr, before we broke, I was
8 asking you about a meeting you had with the
9 Michigan Attorney General.
10 And my question was, what was said at
11 that meeting?
12 A. Yes.
13 With Attorney General Schuette, I
14 don't recall the exact date; but, generally
15 speaking, the Attorney General -- at the meeting,
16 as I said, was Mr. Heiman on the phone, the
17 Attorney General and an attorney from his office,
18 Matt, whose last name escapes me right now. And
19 generally what was said, the Attorney General
20 wanted to express why he felt duty-bound to take a
21 position that the Michigan State Constitution
22 protected vested pension obligations.



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1 I believe our side expressed to him
2 that we believed Federal law allowed those
3 obligations to be adjusted.
4 The meeting was cordial, and the
5 meeting concluded fairly quickly with everybody
6 saying their -- their goodbyes.
7 Q. Did you, at the time, have an
8 understanding about the authority of the Attorney
9 General of the State of Michigan to interpret the
10 Michigan Constitution?
11 A. My understanding is that the Attorney
12 General is the chief legal officer of the State.
13 And I presumed -- did I have an understanding of
14 his authority?
15 My -- my understanding was, as chief
16 legal officer of the State, he has the ability to
17 determine what positions he believes he should
18 take on behalf of the State, subject to a ruling
19 by a court of law.
20 Q. Okay. Would it be fair to say that
21 in your mind, the opinions of the Attorney General
22 of the State of Michigan regarding questions of

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1 Michigan State law are -- should be accorded
2 considerable weight?
3 A. No.
4 Q. Okay. And who -- who was it -- were
5 you receiving legal advice from somebody that was
6 contrary to the position that was being asserted
7 by the Attorney General?
8 A. Yes.
9 Q. And was that the Jones Day law firm
10 that was advising you?
11 A. I believe amongst others.
12 Q. Who else?
13 A. Our local counsel at, um -- I'm --
14 I'm -- I'm -- I'm -- I'm drawing a blank on the
15 firms now -- Bob Hurwitz (phonetic) -- our local
16 counsel.
17 Q. Okay. Anyone else?
18 A. Yeah, I don't -- I don't want to
19 violate any attorney-client confidences --
20 Q. No, I'm just asking you to
21 identity -- I'm not asking --
22 A. Okay.

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1 Q. -- you what was said --
2 A. Okay.
3 Q. -- I'm just asking you the identity
4 of the attorneys who were telling you that what
5 the Attorney General was telling you was not
6 correct.
7 And you've identified Jones Day.
8 You've identified your local counsel.
9 I'm just asking you, was there anyone
10 else giving you advice on that matter?
11 A. I wouldn't call it "advice." I mean,
12 I've -- you know, at various meetings and events,
13 other attorneys will come up to me as recently as
14 yesterday and said that the position that we're
15 asserting is the correct one.
16 Q. Who said that to you yesterday?
17 A. An attorney from -- I forget his law
18 firm; but, you know, at various places, different
19 people come up to me and offer their opinions as
20 to what the position should be --
21 Q. Let me --
22 A. -- I wouldn't call that "advice,"

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1 though; it's just, you know, public commentary.
2 Q. Okay. So the -- the lawyers who were
3 giving you -- giving you advice in their capacity
4 as attorneys for the City or as attorneys for the
5 emergency manager were the Jones Day law firm and
6 a local counsel?
7 A. Yes.
8 Q. Okay. Let me now refer you to the
9 June 14th, 2013 meeting with creditors.
10 Do you recall that meeting?
11 A. Yes.
12 Q. Okay. Do you recall being asked a
13 question at that meeting about Article IX,
14 Section 24 of the Michigan Constitution?
15 A. Do I recall?
16 There -- there -- I think there was a
17 question. I don't know if -- I don't think that
18 meeting was recorded. So I don't know if there's
19 something to refresh my recollection. But I don't
20 specifically recall. I think there probably was a
21 question. I just don't recall it with
22 specificity.



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1 Q. Okay. And do you recall if there
2 were any questions about Detroit's pensions?
3 A. I believe there were.
4 Q. Okay. Do you -- in -- do you recall
5 responding to any of those questions?
6 A. I don't recall specifically what I
7 said, but I believe I probably did.
8 Q. Okay. Do you recall -- go ahead.
9 I'm sorry.
10 A. No, I'll answer your question.
11 I -- I think I did recall to a
12 question about pensions, and I think I mentioned
13 that in other cases in which I've been involved,
14 that Federal preemption dealt with states'
15 rights -- states' protections. I think there was
16 that discussion, excuse me, on June 14th.
17 Q. Do you recall making a reference to
18 legislative -- legislative relief?
19 A. Yeah. Yes, I do.
20 Q. Can you tell me what you said in that
21 connection?
22 A. I think it was a pretty short offhand

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1 comment, that I said, well, it could be either
2 Federal preemption, or it might require some
3 legislative relief.
4 Q. And what did you mean by "legislative
5 relief"?
6 A. I didn't really mean anything with
7 specificity other than to say there might be an
8 opportunity to seek some sort of legislative
9 relief. I didn't really have a plan or anything
10 with specifics in mind at that time.
11 Q. Let me now refer you to the
12 bankruptcy petition --
13 A. Yes.
14 Q. -- that was filed on behalf of the
15 City.
16 Do you recall that document?
17 A. Yes.
18 MR. SHUMAKER: You're getting pretty
19 far afield here, Counsel. I hope you can tie it
20 in with the State officials.
21 BY MR. DECHAIRA:
22 Q. Did -- do you recall that that

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1 petition was originally dated July 19th and it
2 said July 19th, 2013 in print on it, and that it
3 was then changed by hand to say July 18th?
4 MR. SHUMAKER: Object to the form.
5 THE WITNESS: I -- I don't recall
6 that then. But I think we talked about this at my
7 September 16th, 2013 deposition. I think someone
8 asked me that question.
9 So I -- I -- I recall it from that
10 deposition.
11 BY MR. DECHAIRA:
12 Q. Well, do you have an independent
13 recollection --
14 A. I -- I don't --
15 Q. Let me just finish for the clarity of
16 the record.
17 Do you have an independent
18 recollection of the bankruptcy petition saying
19 July 19th in print on it and then someone changing
20 it by hand to say the 18th?
21 Do you have an independent
22 recollection of that?

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1 A. It's a little fuzzy, but I think in
2 signing it, I'm the one who changed it.
3 Q. You changed it to the 18th?
4 A. Yeah. Whatever day I signed it, I
5 think I -- I routinely will get documents that are
6 dated with different dates, and I'll change them,
7 interlineate on them the correct date.
8 Q. Okay. Let me just -- I had been
9 asking you a line of questions about written
10 communications you were having with State
11 officials.
12 A. Yes.
13 Q. Let me go back and ask you, do you
14 recall written communications with staff or
15 other -- officials other than the Governor, the
16 Treasurer or Mr. Baird, after you were appointed
17 as EFM, that touched on or concerned in any way
18 the issue of Detroit City pensions?
19 A. No, not really.
20 No.
21 Q. Prior to your being appointed as EFM,
22 did you have any oral exchanges, spoken exchanges,



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1 whether by telephone or in person, with the
 2 Governor?
 3 A. Yeah, I think I testified this
 4 morning that he may have called me prior to my
 5 actual appointment to say we hope you consider it
 6 and would like you to come on board, things along
 7 those lines.
 8 Q. Was it -- did it -- was that just one
 9 exchange you had with him?
 10 A. No, I think I said there may have
 11 been one or two along those lines.
 12 Q. Were there any exchanges other than
 13 where the exchange was limited to, you know,
 14 welcome on board?
 15 A. There -- there were no substantive
 16 exchanges. Mostly exchanges I -- I had --
 17 conversations I had with the Governor were
 18 pleasantries.
 19 Q. Okay.
 20 Now let me ask the same question, but
 21 I'm going to change the time frame from between
 22 the time you were appointed EFM until the Governor

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1 authorized the bankruptcy filing.
 2 So --
 3 A. Um-hum.
 4 Q. -- in that period, did you have any
 5 spoken exchanges with the Governor?
 6 A. Yes.
 7 Q. And do you know how many you had?
 8 A. Well, I've said we've -- we've had
 9 regular meetings with the Governor. My contract
 10 requires me to keep the Governor and the Treasurer
 11 apprised as to what we're doing. We have those
 12 meetings almost weekly. There may have been a
 13 week here or there that we missed, but we have
 14 regular weekly meetings.
 15 Q. And those are face-to-face meetings
 16 with -- with --
 17 A. They're typically face-to-face.
 18 Occasionally, they're by phone.
 19 Q. Okay. Have you had any meetings
 20 during that period -- actually, I'm not even going
 21 to call them meetings.
 22 Have you had any spoken exchanges

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1 with the Governor between the time you were
 2 appointed as EFM until the Governor authorized the
 3 bankruptcy filing where it was just you and the
 4 Governor speaking with no one else present?
 5 A. Yes.
 6 Q. And how many times did that occur?
 7 A. More than a couple. Sometimes after
 8 the weekly meetings, if they're in person, the
 9 Governor and I -- the Governor will take me aside
 10 into his office and we'll have separate one-on-one
 11 meetings.
 12 Q. And do you have a specific memory of
 13 any of those meetings?
 14 A. Yeah, those meetings are typically
 15 just an opportunity for the Governor -- they --
 16 they comprise a combination of -- of
 17 personal -- you know, personal inquiries: How's
 18 your family doing; do you need anything; how are
 19 you holding up; how's your staff; do you need any
 20 help in any way fashion, things along those lines.
 21 They're not -- they're not really
 22 substantive follow-ups of the actual meetings that

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1 we've had just prior to those meetings.
 2 Q. Have you ever, in those one-on-one
 3 meetings with the Governor, spoken about the issue
 4 of Detroit's unfunded pension liability?
 5 A. Not that I recall, no.
 6 Q. Did you ever discuss with the
 7 Governor, in those one-on-one meetings, anything
 8 having to do with restrictions or prohibitions in
 9 the Michigan Constitution?
 10 A. No.
 11 Q. Did you ever speak to him about the
 12 Attorney General's position on the issue of
 13 pensions?
 14 A. I -- I may have.
 15 Q. And what was said?
 16 A. The substance of those conversations,
 17 the one-on-one meetings, was that, you know, I
 18 understand the Attorney General believes he has to
 19 take a position, obviously --
 20 Q. Who is speaking when you're saying
 21 that?
 22 A. Oh, me. I'm -- the Governor and I



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1 are speaking, just the two of us in the room. I
 2 think it was something along the lines, I
 3 understand he's taken a position; we disagree with
 4 it; ultimately, this will be sorted out in court.
 5 Q. And that's -- that's what you said?
 6 A. Yeah, pretty much what I said.
 7 Q. Okay. And did the Governor respond,
 8 or did he say anything?
 9 A. No; the Governor responded, yeah, I
 10 understand you have to take the position that you
 11 have to take in your case.
 12 Q. Has the Governor ever expressed to
 13 you, in a one-on-one meeting, his view of the
 14 Attorney General's position?
 15 A. No.
 16 Q. So it was just a -- when you and the
 17 Governor had a meeting where the issue of the
 18 Attorney General's position came up, it was just a
 19 one-way communication by you saying what it is you
 20 just said?
 21 A. Yeah, as I said, these are not
 22 substantive meetings. These are more sort of what

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1 I call the personal meetings, where the Governor
 2 just takes time out of his schedule to ask me how
 3 things are going; how am I holding up; how my
 4 staff is; and, you know, I -- I would occasionally
 5 say, yeah, you know, I met -- for instance, the
 6 meeting I had with the Attorney General, met with
 7 the Attorney General. He expressed his interests
 8 in the position he has to take. We obviously
 9 disagree with it.
 10 The Governor would take no position
 11 on that. He would say, okay, I understand, you
 12 know, you have to do what you think is appropriate
 13 on behalf of the City.
 14 That was the extent of the
 15 conversations.
 16 Q. So am I correct that the Governor
 17 never actually told you that the Attorney
 18 General's position was wrong?
 19 A. I -- yeah, I don't believe the
 20 Governor ever opined as to the Attorney General's
 21 position.
 22 Q. Let me now speak beyond the -- in the

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1 same time frame between when you were appointed as
 2 EFM until the Governor authorized the bankruptcy
 3 filing.
 4 Let me now refer to meetings you've
 5 had with the Governor where there were other
 6 people present.
 7 A. Yes.
 8 Q. Were there any discussions in any of
 9 those meetings about Detroit's pension
 10 liabilities?
 11 A. Now, these are where attorneys are
 12 present or covered by the common interest
 13 privilege?
 14 Q. Well, I'm just going to ask you about
 15 what was said in those meetings, and if you want
 16 to refuse to answer or if your attorney wants to
 17 instruct you -- you to refuse to answer, that's --
 18 A. Okay.
 19 Q. -- a decision you have to make.
 20 MR. SHUMAKER: You -- you can -- you
 21 can answer that question.
 22 THE WITNESS: Yeah. There were

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1 meetings. As I said before, we have, typically,
 2 weekly meetings. Occasionally, we've missed a
 3 week or two, but typically, weekly.
 4 BY MR. DECHAIRA:
 5 Q. Okay. And in any of those meetings,
 6 were Detroit's pension liabilities discussed?
 7 MR. SHUMAKER: You can answer that.
 8 THE WITNESS: Yes.
 9 BY MR. DECHAIRA:
 10 Q. And what was said?
 11 MR. SHUMAKER: I'm -- I'm going to
 12 object here and caution the witness to the extent
 13 that any of the communications called for by the
 14 question ask for information relating to your
 15 seeking or the provision of legal advice, I
 16 instruct you not to answer. Outside of that, you
 17 can.
 18 THE WITNESS: Those -- I think
 19 those -- those conversations are covered by the
 20 attorney-client privilege and the common interest
 21 privilege.
 22 BY MR. DECHAIRA:



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1 Q. Okay. So just so the record's clear,
2 Mr. Orr, you're declining to respond to the
3 question, what was said in those meetings
4 regarding Detroit's pension liabilities?
5 A. Yes, I -- I think, without waiving
6 the privilege -- I want to be very careful here,
7 because I have both the attorney-client privilege
8 and common interest agreement and I don't want to
9 abridge either of those; but without waiving,
10 there were discussions and those discussions
11 probably concerned our perception of what -- what
12 the issues that have been talked about in the
13 public domain concerned regarding vested pension
14 rights.
15 Q. Did the Governor ever say to you
16 whether in a one-on-one -- let me start with a
17 one-on-one meeting.
18 Did the Governor ever say to you in a
19 one-on-one meeting that it was his view that
20 Detroit's pension liability -- strike that -- that
21 Detroit's accrued pension liabilities had to be
22 cut?

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1 Did the Governor ever say that to
2 you?
3 A. No.
4 Q. Okay. And did he ever say that to
5 you in any meeting where there were other people
6 present?
7 MR. SHUMAKER: Again, I'm going to
8 caution the witness to the extent that attorneys
9 were at such meetings and there were -- you were
10 seeking legal advice or legal advice was being
11 given in connection with the Governor's comments,
12 I would instruct you not to answer.
13 If that is not the case, you are free
14 to answer.
15 THE WITNESS: I want to be
16 responsive, but I don't want to waive the
17 privilege.
18 Those discussions were always held in
19 the presence of attorneys generally in discussion
20 of what the rights and positions would be in the
21 case. I can say this, I think -- can I just
22 consult my attorney briefly?

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1 BY MR. DECHAIRA:
2 Q. Not while there's a question pending.
3 A. Okay.
4 Q. Your attorney is free to -- he's
5 already given you guidance on the record.
6 A. I'm -- I'm trying to be responsive to
7 you.
8 I think those discussions are covered
9 by the attorney-client privilege.
10 Q. Okay. So just to be clear, you're --
11 you're declining to answer my question?
12 A. Without further guidance, I think I
13 have to.
14 Q. Okay.
15 Let me now change the time frame to
16 after the Governor authorized the bankruptcy
17 filing.
18 Did you have any one-on-one spoken
19 exchanges with the Governor -- or have you had?
20 A. Yes, I believe so.
21 Q. And one or more than one?
22 A. Maybe more than one.

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1 Q. And what was the context for those?
2 A. Here again, the same nature of the
3 discussions. They were more general check-in:
4 How's things going; how's staff going; how's City
5 operations going; new chief seems to be doing very
6 well, things along those natures.
7 Q. In -- in any of those one-on-one
8 meetings you've had with the Governor since he
9 authorized the bankruptcy filing, did
10 the Governor -- has the Governor ever expressed
11 the view to you that Detroit's accrued pension
12 liabilities should be cut?
13 A. No.
14 The Governor's never expressed the
15 view to me in any of those meetings that Detroit
16 pension liabilities need to be cut either before
17 or after the filing.
18 Q. Okay. And has he ever expressed a
19 view to you regarding whether he agrees or doesn't
20 agree with the position that was publicly taken by
21 the Attorney General that you testified about
22 earlier?



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1 A. No, I don't recall him ever doing
2 that.
3 Q. Did you ever, in any one-on-one
4 conversation with the Governor, speak about any
5 prohibitions or restrictions in the Michigan
6 Constitution?
7 A. No, I don't recall us speaking about
8 that.
9 Q. Okay. Now -- now I'm going to ask
10 you about Treasurer Dillon --
11 A. Yes.
12 Q. -- I'm going to ask you another --
13 the same line of questions -- questions about
14 spoken exchanges --
15 A. Um-hum.
16 Q. -- the time frame is now between --
17 well, let's say before you were appointed EFM.
18 Did you have any spoken exchanges
19 with -- with the Treasurer?
20 A. Yes.
21 Q. And can you tell me what those were?
22 A. Those were more in the nature of,

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1 here again, pleasantries; enjoy you considering
2 being a candidate; I had early on hoped and
3 encouraged you to do so; thank you for doing so,
4 along those lines.
5 Q. Did the -- did the Treasurer in any
6 of those spoken exchanges you had with him ever
7 express any views about the economic distress that
8 was facing the City of Detroit?
9 A. Oh, I think he -- I think we may have
10 discussed the -- yes -- yeah, I think we probably
11 discussed the fact that Detroit was under a
12 consent agreement, things of that nature, but it
13 was very high level; it wasn't with any
14 specificity.
15 Q. Well, did you ever speak to him
16 during that time frame about the burden of accrued
17 pension liabilities that was going on in the City?
18 A. Yeah -- no, not that I recall. There
19 were never any discussions in -- in that level of
20 detail.
21 Q. In the time frame after you were
22 appointed EFM, but before the State authorized the

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1 bankruptcy filing, did you have any spoken
2 exchanges with the Treasurer?
3 A. Yes.
4 Q. And what was the context for those?
5 A. Those discussions were, here again as
6 I said before, generally around retention of
7 professionals, cash flow projections, actuals over
8 projected, potential help that we could get from
9 contractors, sending out the RFP for solid waste,
10 standing up the Public Lighting Authority,
11 standing up the Detroit Land Bank Authority in
12 conjunction with MSHDA, things of those nature.
13 Q. Were these exchanges that you had in
14 the context of meetings with other people present?
15 A. Some of them were, yes.
16 Q. Were any of them one-on-one?
17 A. The Treasurer and I would -- would
18 sometimes -- we -- our meetings were -- the
19 Governor and I would try to have one-on-one
20 meetings after our Detroit team meetings. The
21 Treasurer and I would have one-on-one meetings in
22 a much more irregular ad-hoc basis, if you will.

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1 If he was in the office building, in the Cadillac
2 office building, at the same time, he might stop
3 by my office. But there was no regular --
4 regularly set meeting between me and the
5 Treasurer.
6 Q. Okay. Do you -- do you recall those
7 one-on-ones that you had with the Treasurer on
8 those occasions?
9 A. I recall some of them, yes.
10 Q. Okay. And in those, did you ever
11 speak to him about Detroit's accrued pension
12 liability?
13 A. Not specifically. We may have talked
14 about the -- what I call the "balance sheet
15 issues," the amount of debt that the City had,
16 including pension funds, OPEB and GO bond debt; we
17 may have talked about the -- here again, actuals
18 over projections, things -- financial
19 transactions, yes.
20 Q. Did he ever express the view to you
21 in those one-on-one meetings that Detroit's
22 accrued pension liabilities should be -- could be



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1 or should be reduced?

2 A. I don't recall any specific

3 conversations about what should happen with

4 Detroit pension liabilities.

5 Q. Do you remember the Treasurer talking

6 about that, whether specifically or generally or

7 in any other way, about that subject?

8 A. Not in the one-on-one meetings.

9 Q. Did he talk about that in meetings

10 where there were other people present?

11 A. Yes. The Treasurer attended the

12 Detroit team meetings that we had weekly with the

13 Governor.

14 Q. And did he, at any of those meetings,

15 express the view that -- did he -- strike that.

16 Did he, at those meetings, say

17 anything about whether Detroit's accrued pension

18 liabilities should be reduced?

19 MR. SHUMAKER: Again, I'm going to

20 caution the witness to the extent that any of

21 these communications occurred when counsel was

22 present in connection with the provision or the

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1 seeking of legal advice, I will instruct him not

2 to answer.

3 If that's not the case or there's

4 some nonlegal component to it, you can answer.

5 THE WITNESS: Okay. Let me -- let me

6 try to respond this way. Any of the Detroit team

7 meetings with the Governor would have counsel

8 present, oftentimes several layers of counsel; in

9 fact, I think there were meetings where either my

10 counsel was on the phone or counsel on behalf of

11 the Governor and his office on the phone. There

12 were no team meetings where counsel was not

13 present.

14 In any of those discussions, those

15 discussions would implicate attorney-client

16 communications because we would be seeking legal

17 advice either from my counsel or from State

18 counsel or from both. So I'm going to be very

19 careful with those discussions where the

20 Treasurer, the Governor and counsel were present.

21 So I -- I -- I can't answer about

22 those discussions.

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1 BY MR. DECHAIRA:

2 Q. Okay. Just to be clear. For -- for

3 the reasons you just expressed, you're not going

4 to answer the question?

5 A. Yes.

6 Q. Yes, you're not going to answer?

7 A. Yes, I'm not going to answer the

8 question.

9 Q. Did the Governor -- did the Treasurer

10 in any way -- let me ask you about one-on-one.

11 In any one-on-one meeting you've ever

12 had with him, did he ever express a view about

13 whether the Attorney General's position, that you

14 testified about earlier, was correct or not?

15 A. No.

16 Q. Okay. And if I asked you whether he

17 ever expressed an opinion on that topic in -- in

18 one of the Detroit team meetings, would you

19 decline to answer the question on the grounds that

20 you just declined to answer my prior question?

21 MR. SHUMAKER: I would give the

22 witness the same admonition.

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1 THE WITNESS: Yes, I would decline to

2 answer your question on the grounds it's protected

3 by the attorney-client privilege and joint --

4 and/or joint interest privilege.

5 BY MR. DECHAIRA:

6 Q. Okay. Let me now ask you about

7 Mr. Baird.

8 A. Yes.

9 Q. Prior to your being appointed EFM,

10 did you have any spoken exchanges with Mr. Baird?

11 A. Yes.

12 Q. And can you tell me what those were?

13 A. Yes, I think as I testified on

14 September 16th and, again, earlier today, and as

15 has been represented in the e-mail chains that

16 were gone over on September 16th and the ones that

17 were discussed this day, they were about my

18 potentially becoming the emergency financial

19 manager, subsequently emergency manager for the

20 City of Detroit.

21 Q. Did you have any exchanges with him

22 before you -- spoken exchanges with him before you



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1 were appointed EFM on any topic other than what
2 you just testified to?

3 A. That was generally the broad topic.
4 He -- he may have asked me about how my family
5 would hold up, how I could extricate myself from
6 my then law firm, things of that nature, but no
7 substantive discussions.

8 Q. And when you say "no substantive
9 discussions," would that also mean that you did
10 not discuss anything having to do with Detroit's
11 pension liabilities?

12 A. I -- I don't recall really ever
13 talking to Mr. Baird about Detroit's pension
14 liabilities.

15 Q. At any time?

16 A. At any time.

17 Q. Did you ever speak to Mr. Baird at
18 any time about the issue of the Michigan
19 Constitution?

20 A. I don't recall ever speaking to
21 Mr. Baird about the issue of the Michigan
22 Constitution.

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1 Q. Did Mr. Baird ever express to you a
2 view about whether or not Detroit's accrued
3 pension liabilities could or should be cut?

4 A. No.

5 Q. Did Mr. Baird ever express a view to
6 you about whether or not the position taken by the
7 Attorney General that you testified about earlier
8 was correct or incorrect?

9 A. No.

10 Q. In any one-on-one meetings that
11 you've ever had with the Governor, the Treasurer
12 or Mr. Baird, was there any discussion about when
13 Detroit should file for bankruptcy?

14 A. Well, there are three questions. Not
15 with Mr. Baird; I don't recall any with
16 Treasurer Dillon; and none with specificity with
17 the Governor.

18 Q. Do you do -- do you have any -- when
19 you say "none with specificity," do you mean your
20 recollection is not specific or what was discussed
21 was not specific?

22 A. What was discussed was not specific.

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1 Q. Okay. What was discussed, to the
2 best of your recollection, with the Governor about
3 when Detroit should file for bankruptcy?

4 A. Generally, after -- and I'll just
5 give it to you generally after the June 14th
6 meeting, on the one-on-one meetings, we discussed
7 my hope that we get some settlements in. We were
8 having discussions with some parties.

9 We discussed that, you know, time was
10 drawing -- was -- seemed to be moving quite
11 quickly, but we were hopeful, and we were -- had
12 some initial discussions. Later we discussed, I
13 think June -- I'll do it this way -- June 14th
14 through July 3rd, we continued to have discussions
15 along those lines.

16 In July, in the one-on-one meetings,
17 the one or two that we might have had, the general
18 discussion was there was this litigation, but we
19 were still hoping that we could resolve some
20 issues. And we continued to have those
21 discussions up until a day or so -- no, not until
22 a day or so -- until the week before the filing.

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1 Q. So -- so am I correct that you had
2 multiple one-on-one exchanges with the Governor
3 about the question about when the City should file
4 for bankruptcy?

5 A. We -- as I said, we may have had one
6 or two. I remember one week in there in July was
7 the 4th of July holiday week, and I don't think we
8 had a meeting there. But I -- I don't recall
9 specifically the dates of the meeting. I think we
10 may have had one or two one-on-ones.

11 Q. Okay.

12 So in those one-on -- one-on-ones,
13 those one or two one-on-ones --

14 A. Um-hum.

15 Q. -- to the best of your recollection,
16 what did you say to the Governor in connection
17 with the issue about when the petition should be
18 filed?

19 A. All I said to the Governor is we
20 continue -- I understand that we're trying to work
21 towards some resolutions; we hope people take us
22 seriously; we hope they're listening to what we're

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1 saying. I'm really not hearing any debate on the
2 level of debt. I'm hearing some people being
3 concerned about, you know, what our proposal is.
4 We hope they make a resolution. Towards the end,
5 the question was hopefully we will be able to work
6 things out.
7 Q. And did -- what did the Governor say,
8 to the best of your recollection, in those
9 one-on-ones?
10 A. Thank you for the information. You
11 know, I appreciate your trying to do -- you're
12 doing a good job; I appreciate the job you're
13 trying to do. This is going to be difficult.
14 Keep trying to work towards a resolution. You
15 know, it -- make the right decision; it's
16 ultimately your call.
17 Q. Did he ever give you any view as to
18 what he thought you should do or what the City
19 should do in connection with the timing of the
20 filing?
21 A. No.
22 Q. Did you ever have any one-on-one

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1 meetings with the Governor in which he or you
2 discussed what the political implications might be
3 of a bankruptcy filing?
4 A. It's -- the discussion we had earlier
5 this morning about political implications, and I'm
6 going to -- you know, that's -- that's a broad
7 discussion from people being angry to editorial
8 pages, things like that.
9 So there -- there may have been some
10 discussion in that regard. But I don't recall
11 anything particularly political about our
12 discussions.
13 Q. Okay. Well, I -- I -- I didn't mean
14 to ask you about whether there's anything
15 political about your discussions. But my question
16 was, in any one of your one-on-ones with the
17 Governor, was there any discussion between the two
18 of you, whether you were saying something or
19 whether he was saying something, about what might
20 be the political implications of the bankruptcy
21 filing?
22 And when I say "political

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1 implications," I mean that in a broad sense, so
2 public reaction is --
3 A. Oh.
4 Q. -- broadly -- broadly, would it --
5 would it be included within that?
6 A. Well, if you say "public reaction,"
7 yeah, we probably did have discussions about
8 potential public reaction.
9 Q. And what -- and what did you -- what
10 did you say, or what did he say about that?
11 A. Generally, you know, this -- this
12 would be -- and this is towards the end -- well,
13 you know, I don't know if -- I'm trying to recall
14 now. I don't know if we had discussions about
15 that prior to the week of the filing. Because I
16 don't think we had that many one-on-one meetings
17 in -- in between June 14th and July because of the
18 holiday.
19 So there may have been a discussion,
20 but I don't think it was in a one-on-one meeting.
21 I think it was in one of the Detroit team meetings
22 the week before the filing --

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1 Q. Okay.
2 A. -- that was the Friday.
3 Q. So at one of -- your testimony is
4 that at one of the Detroit team meetings, there
5 was -- before the filing, there was the discuss
6 -- a discussion about what might have been the
7 political implications of the filing?
8 A. The political implications as you
9 just defined it meaning public reaction.
10 Q. Well, let -- let me just be clear --
11 A. Okay.
12 Q. -- it -- it would include public
13 reaction.
14 A. Okay.
15 Well, without getting into
16 discussions, because there were attorneys at that
17 meeting, and I don't -- here again, I want to be
18 careful about the privilege. If you include the
19 definition spanning from political implications
20 meaning potential public reaction, I believe there
21 were discussions in that regard, but not in the
22 sense that political reactions should in any way



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1 impact the decision that we needed to make.
 2 The discussions were always about
 3 what's the best decision; are we making progress;
 4 the discretion is up to me, within my authority,
 5 to make a recommendation; and if I make a
 6 recommendation, the Governor would take it up in
 7 due course.
 8 Q. What was said at -- was this said --
 9 was this discussion that you just testified about
 10 at one or more of the Detroit -- the Detroit team
 11 meetings?
 12 MR. SHUMAKER: You say "this
 13 discussion," are you talking about the discussion
 14 about the political --
 15 MR. DECHAIRA: Yeah, right.
 16 MR. SHUMAKER: -- implications?
 17 MR. DECHAIRA: Correct.
 18 THE WITNESS: I believe that when you
 19 say "political implications," you know, I don't
 20 want to give the impression that there was
 21 something overt -- there was some overt concern
 22 about the political implications. Our general

Page 453

1 discussions were we were going to do the right
 2 thing as we saw fit --
 3 BY MR. DECHAIRA:
 4 Q. Okay.
 5 A. -- they were not being driven by
 6 political concerns. We were aware that it would
 7 garner public attention, but we were still going
 8 to do the right thing.
 9 Q. Can you tell me who said what at
 10 those meetings about that -- the issue that you're
 11 talking about?
 12 A. Here again, there were attorneys
 13 present at that meeting giving legal advice, so
 14 I'm going to see if I can answer the question
 15 without implicating any of the legal advice.
 16 And as I just said, the discussion
 17 generally centered around we're not getting the
 18 progress that we want. As I said at the June 14th
 19 meeting, we're not getting the progress we need.
 20 We had to make some difficult decisions. As I
 21 said at the June 10th meeting, bankruptcy is
 22 potentially an option, but we don't want to use

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1 it.
 2 We were being involved in litigation,
 3 as I said before on September 16th, and the
 4 general discussion was we need to make some
 5 decisions, let's make the right decision
 6 irrespective of any political considerations.
 7 Q. Mr. Orr, are you paid by the State of
 8 Michigan?
 9 A. I believe so.
 10 Q. Okay. Is it -- is it correct that
 11 you're a -- you're an employee -- are you an
 12 employee of the State of Michigan?
 13 A. No, I'm a contractor to the State of
 14 Michigan.
 15 Q. Okay. You're an -- you're an
 16 agent -- are you an agent of the State of
 17 Michigan?
 18 MR. SHUMAKER: Objection --
 19 THE WITNESS: I --
 20 MR. SHUMAKER: -- calls for a legal
 21 conclusion.
 22 THE WITNESS: Yeah, that's what I was

Page 455

1 going to say.
 2 BY MR. DECHAIRA:
 3 Q. Okay.
 4 Do you consider yourself bound by the
 5 laws and the Constitution of the State of
 6 Michigan?
 7 A. I consider myself bound by the laws
 8 in the Constitution of the United States and the
 9 State of Michigan.
 10 Q. And do you consider yourself bound by
 11 the interpretations of the laws and Constitution
 12 of the State of Michigan that are made by the
 13 Michigan Attorney General?
 14 A. I consider myself bound by the laws
 15 of the U.S. Constitution and the State of Michigan
 16 as interpreted by the Federal courts.
 17 Q. But not the Attorney -- Attorney
 18 General of the State of Michigan?
 19 A. Not necessarily. If -- if there's a
 20 law or a ruling by a Court, I would think that
 21 supersedes the interpretation of an attorney
 22 general.



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1 Q. Okay. In the absence of a ruling by
2 a Court, do you consider yourself as -- in your
3 capacity as an emergency manager, bound by the
4 interpretations of the Michigan Constitution made
5 by the Michigan Attorney General?
6 A. As I just said, I consider myself
7 bound by the laws of the United States and the
8 State of Michigan as interpreted ultimately by a
9 Court.
10 Q. Right.
11 But my question is, in the absence of
12 a Court ruling on a particular question, do you
13 consider yourself -- on a particular question of
14 Michigan law, do you consider yourself bound by
15 the interpretation of the Michigan Attorney
16 General?
17 A. I'll repeat my answer.
18 I understand what you're getting at.
19 But I'll repeat my answer.
20 I feel ultimately the question has to
21 resolve -- be resolved by the courts of the
22 United States. And I've said that before, and

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1 that's the position we've taken.
2 Q. Did you ever speak to the Governor in
3 a one-on-one meeting about the absence of
4 contingencies in his authorization letter?
5 A. No.
6 Q. I'd like to show you what I'll ask to
7 have marked as Exhibit 23.
8 - - -
9 (Whereupon, e-mail string was marked,
10 for identification purposes, as Orr
11 Deposition Exhibit Number 23.)
12 - - -
13 MR. DECHIARA: And for the record --
14 THE COURT REPORTER: Hold on.
15 (Sotto voce comments by counsel and
16 court reporter.)
17 MR. DECHIARA: Are we on the record?
18 BY MR. DECHAIRA:
19 Q. Mr. Orr, if you look at Exhibit 23,
20 do you see that the bottom two-thirds of the page
21 is in -- appears to be an e-mail from
22 Richard Baird to various people, dated

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1 February 7th, 2013?
2 Do you see that?
3 A. Yes.
4 Q. Okay.
5 And then you see there appears to be
6 a schedule under that?
7 A. Yes.
8 Q. Okay. Did you meet with Andy Dillon,
9 or did you go out to lunch with Andy Dillon and
10 another person on Monday, February 11th?
11 A. Yes.
12 Q. And who was the other person?
13 A. I went out to lunch, actually, with
14 three people: Andy Dillon, Brom Stibitz, and
15 Tom Saxton.
16 Q. Who are those two other people?
17 A. Two other people are employees of the
18 Treasury Department and work under Andy Dillon.
19 Q. Okay. And what was discussed at that
20 lunch?
21 A. Me potentially --
22 MR. SHUMAKER: Let me just -- they're

Page 459

1 not lawyers; is that correct?
2 THE WITNESS: I don't know if Brom
3 and Tom are.
4 BY MR. DECHAIRA:
5 Q. Well, I guess that was the question,
6 is, were they acting in -- in their capacity as
7 attorneys for the State during that lunch?
8 A. I don't know if Brom and -- and Tom
9 Saxton are attorneys.
10 MR. SHUMAKER: You can -- you can
11 answer.
12 THE WITNESS: Okay.
13 This -- my understanding what this is
14 was a schedule for me to come and discuss their
15 interests in me applying to become the emergency
16 manager for the City of Detroit.
17 BY MR. DECHAIRA:
18 Q. Right.
19 But what was -- do you have a
20 recollection of what you talked about at lunch?
21 A. Yeah, generally, what the statute
22 required, the financial stability agreement



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1 provisions, potentially when I would be able to --

2 to -- to apply; generally, sort of high-level

3 preliminary discussions about becoming the EM.

4 Q. Did you talk about pensions?

5 A. No, we didn't talk about the detail.

6 I wish I had.

7 Q. Did you -- after lunch, did you meet

8 with the Governor and Mr. Baird?

9 A. Yes.

10 Q. And who else was present at --

11 present, if anyone, at that meeting?

12 A. I -- I believe his scheduler,

13 Allison, walked me into the room, and it was just

14 me, the Governor and Rich Baird.

15 Q. And do you recall what you talked

16 about in that meeting?

17 A. Very high level. This was a -- a --

18 a meet-and-greet, as I call it; get to know you;

19 are you interested? Frankly, at this time, I was

20 still on the fence as to whether or not I would

21 apply for the job, and this -- these were

22 discussions about, well, this is what the job

Page 461

1 would entail. We're doing our due diligence.

2 There's some other candidates we're considering,

3 but we would like you to be interested, things

4 along those lines.

5 Q. Did they say who the other candidates

6 were?

7 A. No, they did not.

8 Q. Did they talk about the pitch meeting

9 that you participated in earlier?

10 A. No, not so much -- tangentially, I

11 mean, that -- that discussions were about, you

12 know, we -- we -- we saw your firm's pitch at the

13 meeting; we were impressed with your passion for

14 the City; how you had been a Michigander; the work

15 you did on other cases related to the City; you

16 know, would you -- would you at least -- and this

17 was more -- as I interpreted it, this was more

18 getting me to -- I was still taking a position I

19 don't want the job, but this was more me trying to

20 explore it a little bit and see what it would

21 entail, and them saying that it's probably -- we

22 would appreciate it if you would consider it.

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1 Q. Did they -- did Mr. Baird or the

2 Governor express any views about what they thought

3 of the substance of the ideas that were put forth

4 in the Jones Day pitch book?

5 A. No, not really. They -- they -- I

6 mean, all they ever said was it -- it was a good

7 pitch book, but there was not -- there was no

8 substantive discussion during these meetings.

9 Q. Mr. Orr, I would like to show you

10 what I'll now mark as Exhibit 24. It's a

11 document -- it's a two-page document. It says at

12 the top, Is the Emergency Manager Moving Fast

13 Enough, question mark. It's Bates stamped

14 DTMI00113909 --

15 A. Right.

16 Q. -- and -10 --

17 THE COURT REPORTER: Do you want me

18 to mark it?

19 MR. DECHAIRA: Yes, please, as

20 Exhibit 24.

21 - - -

22 (Whereupon, Excerpt from report of

Page 463

1 Emergency Manager was marked, for

2 identification purposes, as

3 Deposition Exhibit Number 24.)

4 - - -

5 THE WITNESS: Thank you.

6 THE COURT REPORTER: Um-hum.

7 BY MR. DECHAIRA:

8 Q. Can you identify what this document

9 is?

10 A. Is this a excerpt from one of my

11 reports --

12 Q. I'm --

13 A. -- you're asking me?

14 Q. I'm asking you.

15 A. Yeah, because I'd -- I'd -- I'm --

16 no. Can I identify this document is?

17 No, it speaks for itself.

18 Q. Well, let me -- I mean, have you ever

19 seen this document before?

20 A. I think I've seen this document

21 before, but I don't think this is from -- I don't

22 know if this is from my office.



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1 Q. You don't know who prepared this?

2 A. No.

3 Q. And you don't know what purpose this

4 document was used for?

5 A. No. Now, that's not saying it could

6 have been prepared from my office, but it could

7 have been done in our communications division. I

8 just -- there's so many documents that are

9 prepared in my office, I'm not -- I don't see all

10 of them.

11 Q. I don't want you to guess or

12 speculate.

13 A. Yeah; no, I don't -- I don't --

14 Q. You don't know?

15 A. -- yeah, I don't know.

16 Q. Okay.

17 I'd like to show you what I'll ask to

18 have marked as Exhibit 25, which is a set of

19 e-mail exchanges stamped JD-RD-0000354.

20 - - -

21 (Whereupon, e-mail string was marked,

22 for identification purposes, as

Page 465

1 Deposition Exhibit Number 25.)

2 - - -

3 THE COURT REPORTER: Hold on.

4 THE WITNESS: Thank you.

5 BY MR. DECHAIRA:

6 Q. Let me refer you to the bottom of the

7 first page. Do you see there's an e-mail from you

8 to the Governor?

9 A. Yes.

10 Q. Dated February 13th, 2013?

11 A. Yes.

12 Q. It refers to a meeting you had

13 with -- with the Governor.

14 Do you see that?

15 A. Yes.

16 Q. When was that meeting or was -- was

17 there a meeting?

18 A. I think this refers to the meeting

19 schedule that you showed me on -- for

20 February 11th. I think this is a follow-up to

21 that meeting.

22 Q. Okay. So this is the meeting --

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1 this -- this -- in this e-mail, you're referring

2 to the meeting you had with Mr. -- with the

3 Governor and Mr. Baird?

4 A. Yeah, I think the e-mail chain is, as

5 I said today, there may have been back-and-forth

6 pleasantries, and this is the type of stuff that

7 I -- the type of e-mails I was talking about.

8 It's the Governor saying to me, you know, nice to

9 meet you; excited about the prospect of working

10 with you; job is difficult. I mean, it speaks for

11 itself.

12 He talks about the job, the -- the --

13 the collaborative irrational acts. That's people

14 doing things that seem --

15 Q. And --

16 A. -- insurmountable.

17 Q. -- Mr. Orr, I don't mean to cut you

18 off. I just asked if this was the meeting that

19 you were referring to --

20 A. Yeah, I think -

21 Q. -- I think the answer is yes --

22 A. -- this all speaks for it itself.

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1 Yeah, this all speaks for itself.

2 Q. Let me refer -- show you a document

3 I'll ask to have marked as Exhibit 26. This is a

4 two-page document stamped at the bottom

5 JD-RD-0000334 and -35 on the second page.

6 A. I think this is -- I think this is

7 Exhibit 20.

8 Q. Oh, it may be.

9 A. I think we already talked about this.

10 Q. Okay. Well --

11 A. Yeah. Yeah, it's the same -- no, I

12 have it. It's the same thing.

13 Q. Okay. I don't have Exhibit 20.

14 Okay. Thank you for pointing that

15 out.

16 A. Yeah.

17 Q. Let me refer you to Exhibit 20.

18 A. Okay.

19 Yeah, it's the same -- yes, it's the

20 same document.

21 Q. So if you look in the e-mail that you

22 wrote to Mr. Baird at the top of Exhibit 20 --



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1 A. Um-hum.

2 Q. -- towards the bottom of the

3 paragraph -- that block of text that's at the top

4 of the first page, it says -- there's a sentence

5 that says, In the interim, when you have time, I'd

6 like to speak with you about the timing and

7 process for the retention of the EM and legal

8 counsel --

9 A. Yes.

10 Q. -- you wrote that?

11 A. Yes.

12 Q. And what -- what -- did you -- what

13 did you mean when you wrote that?

14 A. Oh, I just meant -- what I had said I

15 think at the February 11th meeting is that my

16 consideration as EM -- there were a number of news

17 reports going around about how I would not have to

18 resign from my firm, and what I said in order to

19 remove issues -- because trustees and bankers, as

20 I suspect you know, don't typically resign from

21 their law firm -- in order to remove any issues

22 with that regard, that I'd probably have to resign

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1 from my law firm.

2 And what I was saying here is -- and

3 what I said at the February 11th meeting was,

4 look, I don't want my potential candidacy as EM to

5 either help or hurt Jones Day, who originally came

6 into this for pitching the legal work. I want it

7 to be neutral as far as what I do.

8 And -- and to that regard, I think

9 there's an e-mail that we talked about,

10 September 16th, where I recused myself from the

11 Jones Day selection process and I was considering,

12 you know, how I would extricate myself from my

13 firm.

14 I was involved in -- in a couple of

15 very important matters -- in the midst of them, as

16 a matter of fact -- and all I was saying here is

17 let's talk about the process for both the

18 retention of the EM and legal counsel .

19 And what I said February 11th was

20 just, look, whoever -- I'll work with whoever it

21 is, but I don't want this to hurt Jones Day in any

22 way. I don't necessarily want it to help.

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1 I just want it to be neutral if I'm

2 going to consider this, because I don't want to

3 put my interests above the interests of my then

4 law firm.

5 Q. Okay. And then in -- in the e-mail

6 you write, I'd like to speak with you --

7 A. Yes.

8 Q. -- did you subsequently speak to

9 Mr. Baird about this topic?

10 A. I don't know if I spoke to him about

11 this topic. I was probably -- I don't recall if I

12 spoke to him about this topic. I think I probably

13 did speak to him subsequent to this e-mail.

14 Q. Let me show you what I'll mark as

15 Exhibit 27 --

16 THE COURT REPORTER: Twenty-six.

17 MR. DECHAIRA: -- 26, thank you.

18 Right.

19 What I had offered as 26 I'm not

20 offering because, as Mr. Orr correctly pointed

21 out, the e-mail was already in -- it had already

22 been marked as Exhibit 20.

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1 - - -

2 (Whereupon, Contract for Emergency

3 Financial Manager Services was

4 marked, for identification purposes,

5 as Deposition Exhibit Number 26.)

6 - - -

7 BY MR. DECHAIRA:

8 Q. And I'll identify Exhibit 26 as a

9 multipage document, the first page is stamped

10 DTMI00113325.

11 Mr. Orr, is this your employment

12 contract?

13 A. No.

14 Q. Is -- what is this document? Do you

15 know?

16 A. This document is -- this document is

17 substantially similar to my ultimate employment

18 contract. My employment contract, which I think

19 is on the Web site, has the names written in.

20 My employment contract, the initial

21 one, I think was executed on the 25th or 26th, and

22 then a subsequent one was executed on the 28th.



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1 Q. And the subsequent one sets out what
2 your compensation is from the City?
3 A. Yes, substantially, the -- my actual
4 contract is substantially similar. You said "from
5 the City." The subsequent one -- the com -- the
6 compensation on Page 3.2 is the same --
7 Q. Okay.
8 A. -- but it's substantially similar to
9 my contract. But the actual contract is different
10 from this document (indicating).
11 Q. Okay. And then the last sentence on
12 Section 3.2 says, The emergency financial manager
13 shall not receive or accept any compensation from
14 the City except as provided for in this contract.
15 My question is, do you receive any
16 compensation from anybody or any entity for your
17 services as emergency manager other than what's
18 set out in Section 3.2 here or in the analogous
19 3.2 of what -- of your current contract?
20 A. Not one dime.
21 Q. Well, you may -- you may receive
22 housing, a pay for your housing -- pay for your

Page 473

1 housing, correct?
2 A. Yeah; but I think you said as set out
3 in the contract. Maybe you meant 3.2. But
4 whatever we've discussed today, the housing, but I
5 don't receive that. That's -- I receive the
6 housing. I don't get four -- \$4,200 or whatever
7 the rent is; I've never seen it. I get the
8 compensation as stated in the contract, and that's
9 it.
10 Q. Right. But you -- you have -- you
11 live in the housing, correct?
12 A. I live in the housing, yes.
13 Q. And you don't pay for it, correct?
14 A. I don't pay for it --
15 Q. Okay.
16 A. -- that's correct.
17 MR. DECHAIRA: If we -- if I can just
18 have a minute.
19 MR. SHUMAKER: Sure.
20 (Pause.)
21 THE VIDEOGRAPHER: Do you want to go
22 off the record?

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1 MR. DECHAIRA: Yes, please.
2 THE VIDEOGRAPHER: Going off the
3 record at 1359.
4 - - -
5 (Whereupon, a discussion was held off
6 the record.)
7 - - -
8 THE VIDEOGRAPHER: Going back on the
9 record at 1401.
10 BY MR. DECHAIRA:
11 Q. Mr. Orr, do you know what other law
12 firms pitched for the job of restructuring counsel
13 for the City besides Jones Day?
14 A. I -- I don't know them all. I -- I
15 know that there were approximately 20 other law
16 firms, but I don't -- I -- I think Foley was one.
17 I think Weil was one. I -- I don't recall them
18 all, no.
19 Q. Okay. Do you know who else was
20 considered for the EM position besides yourself?
21 A. I do not.
22 Q. Okay.

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1 A. There was some published reports, but
2 I don't recall early on. That's all --
3 Q. Would --
4 A. -- I -- I don't know with specificity
5 who it was. I just remember there were some
6 reports.
7 Q. Okay. Whether -- whether from any
8 source, whether public or otherwise, do you have
9 any -- as you sit here today, do you remember any
10 names of anyone who was considered as EM other
11 than yourself?
12 A. The -- the only report that I
13 remember with specificity is that Andy Williams,
14 the -- the -- essentially the counterpart in the
15 D.C. control board was reported had been
16 considered, and he turned it down. He's a lot
17 smarter than me.
18 Q. Anyone else?
19 A. Not that I remember.
20 (Sotto voce discussion.)
21 THE WITNESS: He has better judgment
22 than me.



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1 BY MR. DECHAIRA:
 2 Q. Do you know who Bill Brandt is?
 3 A. I've -- I've heard that name before.
 4 I -- I think he was -- he's a bankruptcy trustee.
 5 Q. Do you know whether he was considered
 6 for any -- for the EM position?
 7 A. I do not.
 8 Q. Do you know whether he was considered
 9 for any position as -- any professional position
 10 in connection with the restructuring of the City
 11 of Detroit?
 12 A. I do not.
 13 Q. Okay.
 14 MR. DECHAIRA: Thank you for your
 15 time, Mr. Orr. I have no further questions.
 16 THE WITNESS: Thank you.
 17 MR. ULLMAN: I have a few follow-ups.
 18
 19
 20
 21
 22

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1 Q. Okay. And you see we had talked
 2 about the 250 million general fund relative to the
 3 650 million total unfunded liability?
 4 A. Yes.
 5 Q. And we had calculated ratio
 6 approximately 38-1/2 percent?
 7 A. Right.
 8 Q. And I think previously, when I was
 9 asking about this, I had referred to the
 10 38.5 percent as being the amount of the unfunded
 11 liability allocable to the Department of Water and
 12 Sewer. I think I -- I misspoke in that, because
 13 the 250 would be -- the 38.5 percent would be the
 14 amount allocable to the general fund, correct?
 15 A. Yes, I -- I think that's accurate,
 16 yes, we were talking about the numbers, but --
 17 Q. We had them backwards?
 18 A. -- we had them backwards.
 19 Q. And so if the -- if the math is right
 20 and it was about 38.5 percent, then the percentage
 21 of the unfunded liability allocable to the
 22 Department of Water and Sewer would be

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1 - - -
 2 EXAMINATION (CONTINUED)
 3 BY COUNSEL FOR RETIREES COMMITTEE
 4 - - -
 5 BY MR. ULLMAN:
 6 Q. Hello, Mr. Orr.
 7 A. Hello, Mr. Ullman.
 8 Q. I just have a few questions for you
 9 just to clarify the record, because I saw when I
 10 was looking at the transcript that as sometimes
 11 happens when lawyers do math, I got some numbers
 12 transposed.
 13 A. Okay.
 14 Q. So if you could turn back to
 15 Exhibit 22.
 16 A. Okay.
 17 Um-hum.
 18 Okay.
 19 Q. And if you could look at the Bates
 20 page that we were looking at before which ends in
 21 422.
 22 A. Yes.

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1 approximately 61.5 percent?
 2 A. But, remember, I said that you have
 3 to be careful with trying to draw a straight-line
 4 comparison between the two numbers you may
 5 calculate in. But generally speaking, if we're
 6 just talking about the math, that -- that --
 7 Q. Right --
 8 A. -- would be the estimate.
 9 Q. -- I'm right here just talking about
 10 the ratio on the -- the number that's referred to
 11 as the 650 -- the approximately 650 by the Mayor.
 12 A. Yes.
 13 Q. And then I think the next question I
 14 asked you, which I think is what you were alluding
 15 to, that if you assumed a larger liability figure,
 16 would that ratio continue to hold; and my
 17 recollection is, your answer was roughly it would,
 18 but you may have to, you know, fine-tune the math.
 19 A. It -- it -- it might roughly hold,
 20 but you need to be careful to not draw the
 21 conclusion that is -- it's exactly comparable.
 22 Q. Okay. I understand.



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1 A. Okay.

2 Q. Okay.

3 And then the other question I have

4 for you -- this is referring to the unfunded

5 pension liability --

6 A. Um-hum.

7 Q. -- you're also familiar with the

8 medical benefits for retirees --

9 A. Yes.

10 Q. -- the health -- and I think that's

11 sometimes referred to as OPEB?

12 A. Yes, other [sic] employee benefits.

13 Q. Okay. And for the OPEB is -- are --

14 is the -- is the situation similar that some

15 amount of the total OPEB liability that the City

16 faces is allocable to sources other than the

17 general fund?

18 A. You -- you know, I think it is; but

19 I'm not recalling that mechanism as well as I

20 recall the pension mechanism, but I think it is.

21 Q. Okay. And would then some portion of

22 the total OPEB unfunded liability be allocable

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1 also to the Department of Water and Sewer to their

2 retirees?

3 A. It might well be, but I'd need to

4 confirm that.

5 Q. Okay. And have you done any analysis

6 of that question?

7 A. Yes --

8 Q. Okay.

9 A. -- well, our contractors have done an

10 analysis of the question.

11 Q. Okay. And who specifically has done

12 an analysis of that?

13 A. Oh, I think our team at -- the entire

14 team: Conway MacKenzie, Ernst & Young,

15 Miller Buckfire.

16 Q. And do you recall their general

17 conclusions to what percentage of the total

18 unfunded OPEB liability is allocable to the -- A,

19 to the Department of Water of Sewer; or, B, some

20 other fund or entity apart from the general fund?

21 A. I'm -- I'm not -- I don't recall if

22 it is, and I don't recall the percentage.

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1 MR. ULLMAN: Okay. Could I ask for

2 any documents relating to that to be produced,

3 Greg?

4 MR. SHUMAKER: You can certainly put

5 that in writing and look into it. I'm pretty sure

6 that that has already been produced, but we'll

7 certainly look into it.

8 MR. ULLMAN: Okay.

9 I don't believe I have anything else,

10 so --

11 THE WITNESS: Okay.

12 MR. ULLMAN: -- anything further

13 from -- no.

14 MR. DECHIARA: I think Jennifer

15 Green.

16 MR. ULLMAN: Jennifer, are you there?

17 MS. GREEN: No.

18 MR. ULLMAN: Okay.

19 MS. GREEN: My turn?

20 MR. ULLMAN: Yeah, if you are

21 ready -- if you have questions and you want to go.

22 MS. GREEN: I literally have a

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1 handful. Very quickly.

2 MR. ULLMAN: Go -- go ahead. I'm

3 done.

4 Thank you very much, Mr. Orr.

5 THE WITNESS: Thank you very much,

6 Mr. Ullman.

7 Hello, Jennifer -- hello, Ms. Green.

8 - - -

9 EXAMINATION (CONTINUED) BY COUNSEL FOR

10 GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT AND

11 THE POLICE AND FIRE RETIREMENT SYSTEM OF THE

12 CITY OF DETROIT

13 - - -

14 BY MS. GREEN:

15 Q. Hi, how are you?

16 A. Just fine.

17 Q. You began acting as emergency manager

18 as of March 26th, and Jones Day was hired to

19 represent the City after you became emergency

20 manager, correct?

21 A. The relationship was formalized after

22 I became emergency manager, yes.



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1 Q. Are you saying there was an informal
2 relationship before then?

3 A. No. As -- as I said before today,
4 the -- the question of when the attorney-client
5 privilege attaches isn't necessarily based upon
6 just a formalization of a relationship; it's based
7 upon one of confidence and reposed and -- and a
8 relationship is accepted. An exact date of that,
9 I don't know sitting here today from a legal
10 perspective.

11 Q. Can you tell me, from your view as
12 emergency manager, was the firm of Jones Day
13 acting as legal representation -- giving legal
14 representation to the City prior to your being
15 appointed EM on March 26th?

16 A. I don't -- I don't know.
17 I -- as I testified earlier today, I
18 recused myself from that process, so I don't know
19 when that relationship arose.

20 Q. Well, let me ask you this: You
21 worked at Jones Day, and you worked on the pitch
22 materials, correct?

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1 A. Yes.

2 Q. And so you were involved with the
3 process of the pitch and the PowerPoint?

4 A. Yes; but that was in early -- that
5 was in late January and early February, sometime
6 in February, and I think the e-mails have been
7 discussed in my prior deposition.

8 I -- I pulled myself out of that
9 process, it was in early February prior to the
10 meeting we discussed today. So I don't know what
11 happened after I recused myself.

12 Q. I understand that. I understand
13 that.

14 But what I'm saying is, the pitch
15 that occurred, you were not acting as legal
16 counsel when you did the pitch, right?

17 A. No, no, we were not --

18 Q. Okay.

19 A. -- we were soliciting becoming legal
20 counsel.

21 Q. Exactly.

22 So at least it was some point after

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1 the pitch, correct?

2 A. Yes.

3 Q. And similar to that, Jones Day was
4 never hired by the State of Michigan at any point
5 for any sort of representation, correct?

6 MR. SHUMAKER: Object to the form:
7 Foundation.

8 THE WITNESS: Yeah, I think I
9 testified earlier today -- I said earlier today,
10 I -- I don't know if Jones Day has ever
11 represented the State of Michigan, but -- but with
12 regard to this matter, I don't -- I don't know of
13 Jones Day representing the State of Michigan other
14 than --

15 BY MS. GREEN:

16 Q. Okay.

17 A. -- through my office.

18 Q. So in 2011 and in 2012, and prior to
19 spring of 2013, you have no knowledge of there
20 being any attorney-client relationship between
21 Jones Day and the State of Michigan, correct?

22 A. I have no knowledge.

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1 Q. Okay.

2 And, certainly, I would assume if you
3 were preparing pitch materials in a PowerPoint,
4 where you were pitching Jones Day to the State and
5 to the City, you would've, I assume, included any
6 prior representation of the City and the State,
7 correct?

8 MR. SHUMAKER: Objection: calls for
9 speculation.

10 THE WITNESS: Calls for speculation,
11 that's what I was going to say.

12 It -- you know, I -- I don't know.
13 It would be speculative on my part to say that --
14 that it may or may not included it. We -- I would
15 like to think that we -- before the retention, I
16 would like to think that any law firm would have
17 run a conflicts check.

18 I'm not sure whether or not that
19 would have been included in the pitch material.

20 BY MS. GREEN:

21 Q. Well, during the pitch, was there any
22 point where any of the Jones Day attorneys that



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1 you were doing the pitch with said, oh, by the
2 way, we were -- we were once your legal counsel,
3 State of Michigan, or we were once your legal
4 counsel, City of Detroit?
5 MR. SHUMAKER: Objection to the form.
6 THE WITNESS: As I said earlier
7 today, the discussion quickly went off the pitch
8 materials in the far-ranging; so I don't recall
9 any -- any statement in that respect.
10 BY MS. GREEN:
11 Q. Okay.
12 So you have no evidence that there
13 was ever any attorney-client relationship between
14 Jones Day and the State of Michigan; is that
15 correct?
16 MR. SHUMAKER: Object to the form.
17 THE WITNESS: All -- all the
18 questions I said earlier today, there -- there
19 could have been. I'm not aware of any.
20 MS. GREEN: Okay. That's the only
21 question I have.
22 THE WITNESS: Okay.

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1 MR. SHUMAKER: Thank you, Jennifer.
2 MR. DECHAIRA: I have one question.
3 ---
4 EXAMINATION (CONTINUED) BY COUNSEL FOR
5 UNITED AUTO WORKERS UNION
6 ---
7 BY MR. DECHAIRA:
8 Q. Mr. Orr, do you know whether any of
9 the liabilities of the Detroit -- Detroit's
10 general pension fund are attributable to the
11 pensions of employees or retirees of the Detroit
12 public library system?
13 MR. SHUMAKER: Getting pretty far
14 afield here, Counselor.
15 You can answer that one.
16 THE WITNESS: I -- I -- specifically,
17 library employees?
18 I don't -- I don't know that. I know
19 that they're attributable to GRS. Service
20 employees are typically nonuniform. I don't know
21 if it includes library employees. It might; it
22 might not.

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1 MR. DECHAIRA: Thank you.
2 THE WITNESS: Um-hum.
3 MR. SHUMAKER: Thank you, Counsel.
4 THE WITNESS: Okay. Thank you.
5 THE VIDEOGRAPHER: Going off the
6 record at 1412. This marks the end of
7 Tape Number 2. This also marks the end of the
8 deposition.
9 (Whereupon, at 2:12 p.m., the
10 deposition was concluded.)
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22

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C E R T I F I C A T E

2 DISTRICT OF COLUMBIA:
3 I, Cindy L. Sebo, a Notary Public within
4 and for the Jurisdiction aforesaid, do hereby
5 certify that the foregoing deposition was taken
6 before me, pursuant to notice, at the time and place
7 indicated; that said deponent was by me duly sworn
8 to tell the truth, the whole truth, and nothing but
9 the truth; that the testimony of said deponent was
10 correctly recorded in machine shorthand by me and
11 thereafter transcribed under my supervision with
12 computer-aided transcription; that the deposition is
13 a true record of the testimony given by the witness;
14 and that I am neither of counsel nor kin to any
15 party in said action, nor interested in the outcome
16 thereof.
17
18
19
20
21
22

Cindy L. Sebo
Cindy L. Sebo, RMR, CRR, RPR, CSR,
CCR, CLR, RSA, Notary Public

My Commission Expires
April 14, 2015



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1 Gregory M. Shumaker, Esquire
2 Jones Day
3 51 Louisiana Avenue, Northwest
4 Washington, D.C. 20001-2113

5 IN RE: City of Detroit, Michigan

6 Dear Mr. Shumaker:

7 Enclosed please find your copy of the continued
8 deposition of KEVYN D. ORR, along with the original
9 signature page.

10 As agreed, you will be responsible for
11 contacting the witness regarding reading and
12 signing the transcript.

13 Within 30 days of receipt, please forward errata
14 sheet and original signature page signed to
15 opposing counsel.

16 If you would like to change this procedure or if
17 you have any questions, please do not hesitate to
18 call.

19 Thank you.

20 Yours,
21 Cindy L. Sebo, RMR, CRR, CSR, RPR, CCR, CLR, RSA
22 Reporter/Notary

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1 CERTIFICATE

2 STATE OF :

3 COUNTY/CITY OF :

4 Before me, this day, personally appeared,
5 KEVYN D. ORR, who, being duly sworn, states that the
6 foregoing transcript of his/her Deposition, taken in
7 the matter, on the date, and at the time and place
8 set out on the title page hereof, constitutes a true
9 and accurate transcript of said deposition.

10

11 _____

12 KEVYN D. ORR

13 SUBSCRIBED and SWORN to before me this
14 _____ day of _____, 20____ in the
15 jurisdiction aforesaid.

16

17 _____

18 My Commission Expires _____ Notary Public

19 *If no changes need to be made on the following
20 two pages, place a check here ____, and return only
21 this signed page.

22 DEPOSITION ERRATA SHEET

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1 CAPTION

2 The Continued Deposition of KEVYN D.
3 ORR taken in the matter, on the date, and at the
4 time and place set out on the title page hereof.

5 It was requested that the deposition
6 be taken by the reporter and that same be reduced
7 to typewritten form.

8 It was agreed by and between counsel
9 and the parties that the Deponent will read and
10 sign the transcript of said deposition.

11

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1 RE: Esquire Deposition Services, L.L.C.

2 File No. 105824

3 Case Caption: In Re: City of Detroit, Michigan

4 Deponent: KEVYN D. ORR (Volume II)

5 Deposition Date: Friday, October 4, 2013

6

7 To the Reporter:

8 I have read the entire transcript of my
9 Deposition taken in the captioned matter or the same
10 has been read to me.

11 I request that the following changes be entered
12 upon the record for the reasons indicated. I have
13 signed my name to the Errata Sheet and the
14 appropriate Certificate and authorize you to attach
15 both to the original transcript.

16 Page No. _____ Line No. _____ Change to: _____

17 _____

18 Page No. _____ Line No. _____ Change to: _____

19 _____

20 Page No. _____ Line No. _____ Change to: _____

21 _____

22



1 DEPOSITION OF: KEVYN D. ORR
2 Page No. _____ Line No. _____ Change to: _____
3 _____
4 Page No. _____ Line No. _____ Change to: _____
5 _____
6 Page No. _____ Line No. _____ Change to: _____
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8 Page No. _____ Line No. _____ Change to: _____
9 _____
10 Page No. _____ Line No. _____ Change to: _____
11 _____
12 Page No. _____ Line No. _____ Change to: _____
13 _____
14 Page No. _____ Line No. _____ Change to: _____
15 _____
16 Page No. _____ Line No. _____ Change to: _____
17 _____
18 Page No. _____ Line No. _____ Change to: _____
19 _____
20 _____
21 SIGNATURE: _____ DATE: _____
22 KEVYN D. ORR



UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
11.	1222	10/17/2013	Krystal A. Crittendon's Objections to the Petition Filed by One Kevyn D. Orr Seeking to Commence a Case Under Chapter 9 of Title 11 of the United States Code on Behalf of the City of Detroit, Michigan

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED 13

In re

Chapter 9

2013 OCT 17 5 2: 24 Case No. 13-53846

CITY OF DETROIT, MICHIGAN,

Hon. Steven W. Rhodes

Debtor U.S. BANKRUPTCY COURT
E.D. MICHIGAN - DETROIT

**INTERESTED PARTY KRYSTAL A. CRITTENDON'S OBJECTIONS TO THE
PETITION FILED BY ONE KEVYN D. ORR SEEKING TO COMMENCE A CASE
UNDER CHAPTER 9 OF TITLE 11 OF THE UNITED STATES CODE ON BEHALF OF
THE CITY OF DETROIT, MICHIGAN**

Krystal A. Crittendon, an interested party, hereby submits these written Objections which memorialize oral Objections made before this Honorable Court on October 15, 2013:

OBJECTIONS

1. KEVYN ORR IS NOT AN EMERGENCY MANAGER FOR THE CITY OF DETROIT BECAUSE THERE WAS NO EMERGENCY MANAGER OR EMERGENCY FINANCIAL MANAGER LAW IN PLACE AT THE TIME HE WAS ALLEGEDLY APPOINTED.

In March of 2011, Public Act 4, "The Local Government and School District Fiscal Accountability Act," commonly known as "The Emergency Manager Act" repealed Public Act 72, "The Local Government Fiscal Responsibility Act," commonly known as "The Emergency Financial Manager Act." In November of 2012, the people of the State of Michigan voted to repeal Public Act 4 by referendum. Pursuant to well-settled Michigan law, the repeal of P.A. 4 left the State of Michigan without an emergency manager or emergency financial manager law. Michigan Compiled Law 8.4 provides:

8.4 Effect of repeal of repealing statute.

Sec. 4. Whenever a statute, or any part thereof shall be repealed by a subsequent statute, such statute, or any part thereof, so repealed, shall not be revived by the repeal of such subsequent repealing statute.



Despite the fact that Michigan did not have an EM or EFM after the November, 2012 election, on March 14, 2013, a contract was purportedly entered into between the State of Michigan and Kevyn Orr, appointing him Emergency Financial Manager for the City of Detroit pursuant to P.A. 72.

Because P.A. 72 was not revived when P.A. 4 was repealed given the clear and plain language of MCL 8.4, there was no Emergency Manager law in place for the Governor to appoint an Emergency Financial Manager for the City of Detroit on March 14, 2013. Kevyn Orr's allegedly appointment, therefore, never occurred and he is not a duly-appointed Emergency Manager for Detroit. Mr. Orr did not, therefore, have authority to take any actions on behalf of the City of Detroit, including the filing of the bankruptcy petition.

2. EVEN ASSUMING, ARGUENDO, KEVYN ORR HAD BEEN APPOINTED AN EMERGENCY FINANCIAL MANAGER FOR THE CITY OF DETROIT ON MARCH 14, 2013, HIS ALLEGED CONTRACT HAD EXPIRED BEFORE THE DATE PUBLIC ACT 436 BECAME EFFECTIVE ON MARCH 28, 2013 AND MR. ORR, THEREFORE, WOULD NOT HAVE BEEN GRANDFATHERED-IN AS AN EMERGENCY MANAGER UNDER PUBLIC ACT 436.

After the referendum vote in November of 2013, the Michigan Legislature, in a lame duck session, enacted a new Emergency Manager Act, Public Act 436, "The Local Financial Stability and Choice Act," which became effective on March 28, 2013. The Act has a grandfathering clause at MCL 141.1572, which provides:

141.1572 Emergency manager serving prior to effective date of act.

Sec. 31. An emergency manager or emergency financial manager appointed and serving under state law immediately prior to the effective date of this act shall *continue* under this act as an emergency manager for the local government. (Emphasis added).

Section 2.2 of Kevyn Orr's contract with the State of Michigan provides: "This contract is effective on Monday, March 25, 2013 and shall terminate at midnight on Wednesday, March 27, 2013." (See Exhibit A).

Midnight on March 27 occurred on *Wednesday* morning at 12:00 a.m. Public Act 436 became effective *Thursday* morning. Kevyn Orr's contract, therefore, expired one full day before Public Act 436

became effective so he could not have been grandfathered-in as an Emergency Manager under P.A. 436, even had he been duly-appointed under an existing Public Act 72.

3. UNDER CHAPTER 9 OF THE BANKRUPTCY CODE, THE CITY OF DETROIT DID NOT FILE FOR BANKRUPTCY AND, THEREFORE, THE BANKRUPTCY FILING IS DEFECTIVE.

Chapter 9 of the Bankruptcy Code at 11 U.S.C. 109 (c) provides that only a "municipality" may file for relief under Chapter 9. A filing by anyone other than the municipality is considered an "involuntary" bankruptcy, which is prohibited by Chapter 9. In this case, since the Mayor and Detroit City Council did not file the bankruptcy petition, the petition filed by Kevyn Orr is defective and must, therefore, be dismissed.

CONCLUSION

For the reasons stated above and at the Objection hearing on October 15, 2013, the Court should hold that the bankruptcy petition filed by Kevyn Orr is defective and unauthorized and dismiss the case.

Respectfully submitted,

/s/ Krystal A. Crittendon

Interested Party (P49981)

19737 Chesterfield Road

Detroit, MI 48221

EXHIBIT A



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

ANDY DILLON
STATE TREASURER

CONTRACT FOR EMERGENCY FINANCIAL MANAGER SERVICES

The Local Emergency Financial Assistance Loan Board (the Board) retains and appoints Kevyn Orr as the Emergency Financial Manager (Emergency Financial Manager) for the City of Detroit (City) under Public Act 72 of 1990, the Local Government Fiscal Responsibility Act, MCL 141.1201 *et seq.*, (the Act).

The Emergency Financial Manager will provide services to the City pursuant to the terms and conditions set forth in this Contract and the Act.

The Emergency Financial Manager's role is to remedy the financial distress of the City by requiring, within available resources, prudent fiscal management and an efficient provision of municipal services by exercising the necessary authority conferred herein to take appropriate action on behalf of the City and its residents. In accepting this appointment, the Emergency Financial Manager agrees to leverage all the Emergency Financial Manager's skills and abilities to accomplish these objectives on behalf of City residents.

1. PARTIES, PURPOSE, DUTIES, AND REPORTS

1.1 Parties. The parties to this Contract are the Board and Kevyn Orr.

1.2 Purpose. The parties to this Contract agree that Kevyn Orr will act as the Emergency Financial Manager for the City. The Emergency Financial Manager's duties and responsibilities are delineated in the Act and include conducting all aspects of the operations of the City and establishing and implementing a written financial plan as required by Section 20 of the Act.

1.3 Duties. The Emergency Financial Manager shall possess all the powers and duties authorized under the Act, including those specifically related to local governments. In addition, the Emergency Financial Manager shall work cooperatively with the Office of the Governor and the State Treasurer. The Emergency Financial Manager agrees to continue to keep these officials informed of major initiatives to be undertaken in furtherance of this Contract before their public announcement. The Emergency Financial Manager shall seek the approval of the State Treasurer before entering into a new collective bargaining agreement.

1.4 Reports. The Emergency Financial Manager shall file quarterly reports with the Department of Treasury beginning on July 15, 2013, for the immediately preceding quarter and shall file the first report required by Section 21a of the Act within six months of the Emergency Financial Manager's appointment and every six months thereafter.

1.5 Communications. The Emergency Financial Manager shall establish and maintain an appropriate protocol for ongoing communications with officials of the City, City residents, and the media. The communications protocol should include a variety of means, including personal interactions.

2. TERM OF CONTRACT

2.1 The Emergency Financial Manager serves at the pleasure of the Board as provided in Section 18 of the Act.

2.2 Effective Date. This contract is effective on Monday March 25, 2013 and shall terminate at midnight on Wednesday March 27, 2013.

2.3 Oath of Office. Before exercising the duties of office, the Emergency Financial Manager shall take and subscribe an oath of office administered by an official authorized to administer oaths under the laws of Michigan and file such oath with the Office of the Great Seal.

3. COMPENSATION FOR SERVICES PROVIDED

3.1 Source of Payment. The City shall pay the compensation of the Emergency Financial Manager for all services rendered under this Contract.

3.2 Salary. The Emergency Financial Manager's salary for services rendered under this Contract shall be \$275,000 per year. If this Contract is terminated after the Emergency Financial Manager has provided services for a portion of a month, the Emergency Financial Manager shall be entitled, for that portion of that month, to \$22,916.67 multiplied by the proportion that the number of days of the month for which services were provided bears to the number of days of the whole month. The Emergency Financial Manager shall not receive or accept any compensation from the City except as provided for in this contract.

3.3 Payment for Services. The Emergency Financial Manager shall be paid in installments consistent with the established written policies and procedures of the Michigan Department of Treasury. If requested by the State Treasurer, the Emergency Financial Manager shall provide to the Michigan Department of Treasury additional information regarding services performed pursuant to this Contract.

3.4 Reimbursement for Actual and Necessary Expenses. The actual and necessary expenses of the Emergency Financial Manager, including customary expenses related to travel, meals, and lodging which are incurred in connection with service to the City will be reimbursed by the City. The Emergency Financial Manager shall provide original copies of all receipts for meals, lodging, and travel reimbursement with any request for reimbursement. Any reimbursement for expenses under this contract shall be reviewed and approved in writing by the City's Chief Financial Officer.

4. ADDITIONAL STAFF AND CONSULTANT FEES

4.1 Staff. The Emergency Financial Manager may, as provided in the Act, appoint addi-

tional staff as necessary to fulfill the obligations of the Emergency Financial Manager's appointment and duties under this Contract. Payment of compensation for additional staff will be the obligation of the City. While authority to hire additional staff rests with the Emergency Financial Manager, the Emergency Financial Manager agrees to consult with the State Treasurer, or the designee of the State Treasurer, at least 24 hours before extending offers of employment for positions paying \$50,000.00, or more, annually. The Emergency Financial Manager shall issue a written employment contract to each individual hired pursuant to this Section, regardless of the compensation paid to that individual. The employment contract issued pursuant to this Section shall, as of the date the individual is hired by the Emergency Financial Manager, prohibit the individual from engaging in any other employment for remuneration without the express written approval of the Emergency Financial Manager. The Emergency Financial Manager agrees to consult with the State Treasurer, or the designee of the State Treasurer, at least 24 hours before approving outside employment for any individual. A breach of this Section shall be a material breach of this Contract.

4.2 Professional Assistance. The Emergency Financial Manager may, as provided in the Act, secure professional assistance as necessary to fulfill the obligations of the Emergency Financial Manager's appointment and duties under this Contract. Payment of compensation for additional professional assistance will be the obligation of the City. The Emergency Financial Manager agrees to consult with the State Treasurer, or the designee of the State Treasurer, at least 24 hours before authorizing professional services contracts of \$50,000.00, or more, per engagement or project.

4.3 Security. The Emergency Financial Manager will be entitled to receive security protection in connection with the Emergency Financial Manager's duties under this Contract. Security personnel will be retained only upon the approval of the State Treasurer, or the designee of the State Treasurer, and only after consultation with the Director of the Michigan Department of State Police, or the designee of the Director of the Michigan Department of State Police. Payment of compensation for security personnel will be the obligation of the City.

5. REPRESENTATIONS

5.1 Qualifications. By signing this Contract, the Emergency Financial Manager, represents that the Emergency Financial Manager meets the minimum qualifications for appointment set forth in the Act. The Emergency Financial Manager shall perform the duties of that office on a full-time basis and shall not accept any other employment or engage in any other activity for remuneration without the express written approval of the State Treasurer.

5.2 Conflict of Interest. The Emergency Financial Manager represents and warrants that the Emergency Financial Manager has no personal or financial interest, and will not acquire any such interest, that would conflict in any manner or degree with the performance of this Contract.

5.3 Non-competition. The Emergency Financial Manager represents and warrants that the Emergency Financial Manager is not subject to any non-disclosure, non-competition, or similar clause with current or prior clients or employers that will interfere with the performance of this Contract. The Board will not be subject to any liability for any such claim.

5.4 Facilities and Personnel. The City will provide the Emergency Financial Manager with proper facilities and personnel to perform the services and work required to be performed pursuant to this Contract.

5.5 Records. The Emergency Financial Manager shall maintain complete records in accordance with generally accepted accounting practices and sound business practices. This requirement applies to all information maintained or stored in the computer system of the Emergency Financial Manager or computer system of the City. The State Treasurer and his designees shall have the right to inspect all records related to this Contract.

5.6 Non-Discrimination.

a) The Emergency Financial Manager shall comply with Public Act 220 of 1976, the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, and all applicable federal, State, and local fair employment practices and equal opportunity laws. The Emergency Financial Manager covenants that the Emergency Financial Manager will not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. The Emergency Financial Manager shall impose this covenant upon every subcontractor that enters into an agreement for the performance of any obligation imposed by this Contract. A breach of this covenant shall be a material breach of this Contract.

b) The Emergency Financial Manager shall comply with Public Act 453 of 1976, the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, and all applicable federal, State, and local fair employment practices and equal opportunity laws. The Emergency Financial Manager covenants that the Emergency Financial Manager will not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. The Emergency Financial Manager shall impose this covenant upon every subcontractor that enters into an agreement for the performance of any obligation imposed by this Contract. A breach of this covenant shall be a material breach of this Contract.

5.7 Unfair Labor Practices. The Emergency Financial Manager shall not enter into a contract for the performance of any obligation imposed by this Contract with a subcontractor, manufacturer, or supplier whose name appears in the register prepared pursuant to Public Act 278 of 1980, MCL 423.322, of employers found in contempt of court for failure to correct unfair labor practices. The State may void this Contract if the Emergency Financial Manager, or any subcontractor, manufacturer, or supplier of the Emergency Financial Manager that is a party to a contract for the performance of any obligation imposed by this Contract, appears in the above mentioned register.

5.8 Independent Contractor. The relationship of the Emergency Financial Manager to the Board and to the City under this Contract is that of an independent contractor. Except as specifically provided in the Act, no liability, benefits, workers compensation rights or liabilities, insur-

ance rights or liabilities, or any other rights or liabilities arising out of, or related to, a contract for hire, nor employer-employee relationship, shall arise, accrue, or be implied to either party under this Contract or to an agent, subcontractor, or employee of either party under this Contract, as a result of the performance of this Contract.

6. NOTICES

6.1 The State Treasurer is the designee of this Board for this Contract unless notice of another designation is provided by the Board. All notices, correspondence, requests, inquiries, billing statements, and other documents mentioned in this Contract shall be directed to the attention of the State Treasurer, Andy Dillon, and to the following:

For the Board:

Michigan Department of Treasury
Office of Legal Affairs
Richard H. Austin Building, 430 West Allegan Street
Lansing, Michigan 48922
Phone: (517) 373-3223

For the Emergency Financial Manager:

_____, MI 4_____

7. LIMITATION UPON LIABILITY

7.1 The Board. The Board, this State, the Treasurer, and all other State officials are not liable for any obligation of or claim against the City resulting from actions taken in accordance with the Act or this Contract.

7.2 The Emergency Financial Manager. Pursuant to the Act, in performing this Contract the Emergency Financial Manager is engaging in a governmental function and is immune from liability for any action taken which the Emergency Financial Manager reasonably believes to be within the scope of the Emergency Financial Manager's authority granted by the Act or by this Contract.

8. INSURANCE

8.1 General. The Emergency Financial Manager may procure and maintain, at the expense of the City, health, worker's compensation, general liability, professional liability, and motor vehicle insurance for the Emergency Financial Manager and any employee, agent, appointee, or contractor of the Emergency Financial Manager as may be provided to elected officials, appointed officials, or employees of the City. The insurance procured and maintained by the Emergency Financial Manager may extend to any claim, demand, or lawsuit asserted or costs recovered against the Emergency Financial Manager and any employee, agent, appointee, or contractor of the

Emergency Financial Manager to the extent permitted by the Act.

8.2 Post-Contract. If, after the date that the service of the Emergency Financial Manager is concluded, the Emergency Financial Manager or any employee, agent, appointee, or contractor of the Emergency Manager is subject to a claim, demand, or lawsuit arising from an action taken during the service of the Emergency Financial Manager, and not covered by a procured insurance policy, litigation expenses, including but not limited to attorney fees, payments in satisfaction of judgments, and payments made in settlement as specified pursuant to the Act, shall be paid by the City. If such expenses are not paid by the City, they shall be treated as a debt owed to this State pursuant to section 17a(5) of Public Act 140 of 1971, the Glenn Steil State Revenue Sharing Act of 1971, MCL 141.917a.

8.3 Additional Insurance. If the City has purchased, or otherwise obtained, an errors and omissions policy, then the Emergency Financial Manager may choose to be covered under such policy at the expense of the City.

8.4 Payment by City. All insurance required under this Contract shall be acquired at the expense of the City under valid and enforceable policies, issued by insurers of recognized responsibility. The Board reserves the right to reject as unacceptable any insurer.

9. TERMINATION OF CONTRACT AND APPOINTMENT

9.1 Termination by the Board.

a) The Board. The Emergency Financial Manager serves at the pleasure of the Board which has the power to rescind the appointment and terminate this Contract at any time, and without cause, by issuing a Notice of Termination to the Emergency Financial Manager.

9.2 Termination Process. Upon receipt of a Notice of Termination, and except as otherwise directed by the Board, the Emergency Financial Manager shall:

a) Cease work under this Contract upon the date and to the extent specified in the Notice of Termination;

b) Incur no costs beyond the date specified by the Notice of Termination;

c) Submit to the State Treasurer on the date the termination is effective all records, reports and documents as this State shall specify and carry out such directives as the State Treasurer may issue concerning the safeguarding and disposition of files and property; and

d) Submit within 30 calendar days a closing memorandum and final billing, which shall be paid within 30 days.

9.3 Termination by Emergency Financial Manager. The Emergency Financial Manager may terminate this Contract at any time, with or without cause, with 30 days written notice to the State Treasurer. Within 30 days of the Emergency Financial Manager's final day of service, the

Emergency Financial Manager shall submit a closing memorandum and final billing, which shall be paid within 30 calendar days.

10. GENERAL PROVISIONS

10.1 Governing Law and Jurisdiction. This Contract shall be subject to, and construed according to, the laws of the State of Michigan, and no action shall be commenced against this State, its agents, or employees for any matter whatsoever arising out of this Contract, in any court other than a Michigan State court.

10.2 No Waiver. A party's failure to insist on the strict performance of this Contract shall not constitute waiver of any breach of the Contract.

10.3 Other Debts. The Emergency Financial Manager represents and warrants that the Emergency Financial Manager is not, and will not become, in arrears on any contract, debt, or other obligation to the State of Michigan, including taxes.

10.4 Invalidity. If any provision of this Contract or its application to any persons or circumstances shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected, and each remaining provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

10.5 Headings. Section headings contained in this Contract are for convenience only and shall not be used to interpret the scope or intent of this Contract.

10.6 Entire Agreement. This Contract represents the entire and exclusive agreement between the parties and supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties.

10.7 Amendment. No Contract amendment will be effective and binding upon the parties to this Contract unless the amendment expressly makes reference to this Contract, is in writing, and is signed by duly authorized representatives of all parties and all the requisite State approvals are obtained.

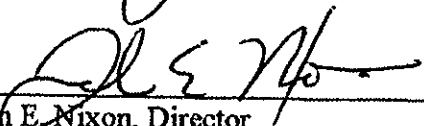
10.8 Order of Priority. This Contract and the Act shall be read to be consistent one with the other. However, if a conflict is deemed to exist between the terms of this Contract and the Act, the Act shall supersede the terms of this Contract.

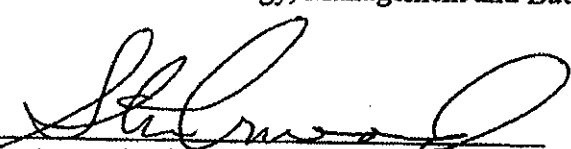
10.9 Counterparts. This Contract may be executed in separate counterparts, each of which when executed shall be deemed an original, but all of which when taken together shall constitute one and the same Contract.

IN WITNESS WHEREOF, the members of the Board, or their designees, and the Emergency Financial Manager have signed and executed this Contract.

LOCAL EMERGENCY FINANCIAL ASSISTANCE
LOAN BOARD

By 
Andy Dillon, State Treasurer

By 
John E. Nixon, Director
Department of Technology, Management and Budget

By 
Steve Arwood, Director
Department of Licensing and Regulatory Affairs

By _____
_____, Emergency Financial Manager

Dated: 3-14-13

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
12.	1228	10/17/2013	Supplemental Declaration of Michael Artz filed by creditor Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees

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

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

SUPPLEMENTAL DECLARATION OF MICHAEL ARTZ

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

1. I am Associate General Counsel of the American Federation of State, County & Municipal Employees, AFL-CIO (“**AFSCME**”), and I submit this supplemental declaration in support of *The Michigan Council 25 Of The American Federation Of State, County & Municipal Employees, AFL-CIO And Sub-Chapter 98, City Of Detroit Retirees’ Pre-Trial Brief Regarding The City Of Detroit’s Eligibility To Obtain Relief Under Chapter 9 of The Bankruptcy Code* (the “**Pretrial Brief**”).

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

Exhibit A	A copy of a transcript of the deposition testimony given by Richard Baird on October 10, 2013.
Exhibit B	A copy of a transcript of the deposition testimony given by Treasurer Andrew Dillon on October 10, 2013.
Exhibit C	A copy of a transcript of the deposition testimony given by Mayor David Bing on October 14, 2013.



Executed on this 17th day of October, 2013

/s/ Michael Artz
Michael Artz, Esq.

EXHIBIT A

In Re: City of Detroit, Debtor

Richard Baird
October 10, 2013

Moretti Group
471 W. South Street
Suite 41B
Kalamazoo, MI 49007
800-536-0804



Original File 101013RB.TXT

Min-U-Script® with Word Index

1 UNITED STATES BANKRUPTCY COURT
 2 FOR THE EASTERN DISTRICT OF MICHIGAN
 3 SOUTHERN DIVISION - DETROIT
 4 -----
 5 In re: Chapter 9
 6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846
 7 Debtor, Hon. Steven W. Rhodes
 8 -----
 9 V I D E O T A P E D D E P O S I T I O N O F
 10 WITNESS: RICHARD BAIRD
 11 LOCATION: Dickinson Wright, PLLC
 12 215 South Washington Street, Suite 200
 13 Lansing, Michigan 48933
 14 DATE: Thursday, October 10, 2013
 15 1:56 p.m.
 16 APPEARANCES:
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 202.875.3939
 gshumaker@jonesday.com
 BY: GREGORY M. SHUMAKER, ESQUIRE

1 I N D E X

2 WITNESS: RICHARD BAIRD	PAGE NO.
3 Examination by Mr. DeChiara	7
4 Examination by Mr. Wertheimer	68
5 Examination by Mr. Sherwood	80

12 E X H I B I T I N D E X		
13 EXHIBIT NO.	DESCRIPTION	PAGE NO.
14 Exhibit 1	Jones Day Presentation to the	
15	City of Detroit; Detroit, Michigan	
16	Jan. 29, 2013	
17	(Bates Nos. DTMI 000128731-805)	13
18 Exhibit 2	Jan. 30, 2013 email	
19	Subject: Your call	
20	(Bates No. JD-RD 0000113)	21
21 Exhibit 3	Jan. 31, 2013 email	
22	Subject: D	
23	(Bates No. JD-RD 0000303)	24

Page 5

EXHIBIT NO.	DESCRIPTION	PAGE NO.
1	E X H I B I T I N D E X	
2	EXHIBIT NO.	PAGE NO.
3	Exhibit 4	Feb. 11, 2013 email
4		Subject: Revised (Final) Schedule
5		for Kevyn Orr Monday, Feb. 11
6		(Bates No. JD-RD 0000327) 27
7	Exhibit 5	Feb. 20, 2013 email
8		Subject: Message from
9		RUP0026732F87D1
10		(Bates Nos. JD-RD 0000216 and 218) 31
11	Exhibit 6	Feb. 22, 2013 email
12		Subject: 11 Point Plan
13		(Bates Nos. JD-RD 0000459-463) 38
14	Exhibit 7	July 8, 2013 email
15		Subject: Detroit
16		(Bates No. SOM 20003601) 60
17	Exhibit 8	July 9, 2013 email
18		Subject: Detroit
19		(Bates No. SOM 20003657) 65
20	Exhibit 9	Outline: Is the Emergency Manager
21		Moving Fast Enough?
22		(Bates Nos. DTMI 00113909-910) 67
23		
24		
25		

Page 7

October 10, 2013
Lansing, Michigan
1:56 p.m.

- - -

VIDEO TECHNICIAN: Today's date is October the 10th, 2013, and we're on the record at 1:56 p.m. This is the video deposition of Mr. Richard Baird and we're at 211 South Washington Street in Lansing, Michigan. Can the witness be sworn, please.

-RICHARD BAIRD-

called as a witness, being first duly sworn, was examined and testified as follows:

EXAMINATION

15 BY MR. DeCHIARA:

16 Q. Good afternoon, Mr. Baird. My name is Peter

17 DeChiara. I'm a lawyer with the law firm of Cohen,

18 Weiss and Simon LLP. We represent the United Auto

19 Workers International Union in this case.

20 Did you prepare in any manner for this

21 deposition?

22 A. Yes.

23 Q. What did you do?

24 A. I reviewed emails, reviewed other depositions and

25 discussed with my attorneys.

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EXHIBIT NO.	DESCRIPTION	PAGE NO.
1	E X H I B I T I N D E X	
2	EXHIBIT NO.	PAGE NO.
3	Exhibit 10	Jan. 31, 2013 email
4		Subject: D
5		(Bates Nos. JD-RD 0000300-301) 104
6		
7		
8		(Exhibits attached to transcript.)
9		- - -
10		
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Page 8

1 Q. What depositions did you review?

2 A. I reviewed the depositions for Kevyn Orr and for

3 Governor Snyder and my own deposition from a case

4 brought by Robert Davis.

5 Q. Okay. That was the May 24th, 2013 deposition?

6 A. I don't recall the exact date.

7 Q. Okay. It was in Davis versus Local Emergency

8 Financial Assistance Loan Board?

9 A. Yes.

10 Q. And it was in the spring of this year?

11 A. Yes.

12 Q. Other than your attorneys, did you speak to anyone

13 else in preparation for this deposition?

14 A. No.

15 Q. Other than the deposition that you gave in the Davis

16 case, have you given any other depositions in 2013?

17 A. No.

18 Q. What about in 2012?

19 A. No.

20 Q. Are you familiar with an organization called MI

21 Partners?

22 A. Yes.

23 Q. What is MI Partners?

24 A. It's actually MI Partners LLC, a limited liability

25 corporation, which is owned by me.

Page 9

1 Q. Okay. Are you an employee of MI Partners LLC?
 2 A. I am.
 3 Q. And what's your position?
 4 A. I am its president.
 5 Q. Are there any other employees?
 6 A. No.
 7 Q. Are there any other owners?
 8 A. No.
 9 Q. What business is MI Partners in?
 10 A. Provides consulting services, mainly organizational,
 11 talent, strategy.
 12 Q. And how many clients does MI Partners have?
 13 A. One.
 14 Q. And who is that or what is that?
 15 A. It is the New Energy to Reinvent and Diversify.
 16 Q. And what services does MI Partners provide to New
 17 Energy to Reinvest and Diversify?
 18 A. New Energy to Reinvent and Diversify is --
 19 Q. I'm sorry, is it Reinvent or Reinvest?
 20 A. Reinvent.
 21 Q. I'm sorry, Reinvent.
 22 A. Is the fund which covers my fees. My services are
 23 provided to the Governor, his executive office and
 24 his extended leadership team.
 25 Q. Do you receive any monies -- do you or do MI

Page 10

1 Partners receive any monies directly from the State?
 2 A. No.
 3 Q. Does New Energy to Reinvent and Diversify receive
 4 any monies from the State?
 5 A. I don't know.
 6 Q. Okay. Do you know whether -- I'm just going to
 7 refer -- so I don't have to keep repeating that
 8 name, I'm just going to refer to it as NERD,
 9 N-E-R-D. Is that okay? Do you understand what I'm
 10 talking about?
 11 A. I will know the fund you're referring to.
 12 Q. Does NERD receive any monies from any of the
 13 creditors in the Detroit bankruptcy case?
 14 A. I don't know.
 15 Q. Okay. Do you know whether NERD receives any monies
 16 from the Jones Day law firm?
 17 A. I don't know.
 18 Q. Do you know whether it receives any monies from
 19 Kevyn Orr?
 20 A. I don't know.
 21 Q. Do you know who or what finances NERD?
 22 A. I don't know the donors. I've been advised that
 23 they are private donors, but I have no way of
 24 knowing who they are.
 25 Q. And for how long has this arrangement existed

Page 11

1 whereby NERD pays MI Partners for you to provide
 2 consulting services to the Governor and his staff?
 3 A. Since January of 2011.
 4 Q. Apart from the arrangement I just mentioned, do you
 5 have any other paid employment?
 6 A. Employment, no.
 7 Q. Do you have any other paid consultancy work that you
 8 perform?
 9 A. No.
 10 Q. Are you an employee of the State of Michigan?
 11 A. No.
 12 Q. Okay. But you have a Michigan government email
 13 address?
 14 A. Yes.
 15 Q. Okay. And do you have -- do you or MI Partners have
 16 offices out of which you work?
 17 A. I have an office out of which I work at Romney and I
 18 have an office off premise in Michigan.
 19 Q. Do you or MI Partners pay rent for your office in
 20 the Romney Building?
 21 A. No.
 22 Q. Have you played any -- as part of your consultancy
 23 for the Governor and his staff, did you play or have
 24 you played any role in connection with the
 25 restructuring of the City of Detroit?

Page 12

1 A. Define restructuring.
 2 Q. The efforts by the City of Detroit to get its
 3 economic house in order beginning before the
 4 bankruptcy, from whenever it began doing that, up
 5 and through to today.
 6 A. I have not consulted with the City of Detroit on its
 7 restructuring directly.
 8 Q. Okay. Have you worked -- in your consultancy for
 9 the Governor, has part of your work for the Governor
 10 been in connection with the -- Detroit's
 11 restructuring efforts?
 12 A. No. Again, I have been involved in talent
 13 identification assessment but not in the direct
 14 restructuring efforts for the City of Detroit.
 15 Q. Okay. Other than talent identification, have you
 16 performed any other work that had to do with or that
 17 related in some way to Detroit?
 18 A. I would -- I have been part of meetings where if
 19 asked an opinion, I would provide an opinion. If I
 20 saw an area where I had some experience or value, I
 21 would render that opinion. But in terms of specific
 22 services of a restructuring nature, no.
 23 Q. Do you as a regular matter as part of your work for
 24 the Governor and his staff attend official meetings
 25 of the Governor and his staff?

Page 13

1 A. Yes.
 2 Q. Okay. And how frequently do you do that?
 3 A. Define frequently. Every day?
 4 Q. Well, why don't you just tell me how often you do
 5 it.
 6 A. Well, every day I'm probably in some meetings with
 7 members of his staff.
 8 Q. Would it be fair to say you work intimately with the
 9 Governor and his staff?
 10 A. Sure.
 11 Q. Did you attend a meeting on January 29, 2013, at
 12 which various law firms were making a pitch to be
 13 hired as restructuring counsel by the City of
 14 Detroit?
 15 A. I don't recall the exact date, but it was toward the
 16 end of January.
 17 Q. Okay. I'd like to show you a document which I'll
 18 mark as Exhibit 1.
 19
 20 (Deposition Exhibit 1 was marked.)
 21
 22 BY MR. DeCHIARA:
 23 Q. And for the record, I'll identify Exhibit 1 as a
 24 document that on the first page says Presentation to
 25 the City of Detroit; Detroit, Michigan; January 29,

Page 14

1 2013, and it's Bate stamped the first page at the
 2 bottom DTMI 00128731.
 3 Mr. Baird, looking at Exhibit 1, does that
 4 refresh your recollection of the date of what I'll
 5 call the pitch meeting?
 6 A. Well, the document's dated January 29th. If it was
 7 delivered the same day then I was there.
 8 Q. Okay. Who else besides you on behalf of the State
 9 was at that meeting?
 10 A. I'm not sure I recall everyone, but Andy Dillon was
 11 there, and Tom Saxton from Treasury was there.
 12 Those would be the only ones I recall from the State
 13 right now.
 14 Q. Do you have a recollection of what was -- do you
 15 have a recollection of the meeting?
 16 A. Yes.
 17 Q. Okay. And Jones Day was one of the law firms that
 18 made a pitch?
 19 A. Correct.
 20 Q. Do you have any recollection of what the people from
 21 Jones Day said at the meeting?
 22 A. I mean, that was eight, nine months ago but a
 23 directional recollection, yes.
 24 Q. What's the best of your recollection?
 25 A. My recollection is that Jones Day -- well, first of

Page 15

1 all, let me say that this was not a formal pitch.
 2 This meeting was set up to provide the City, the
 3 emergency -- I'm sorry, the program management
 4 director and the CFO with some parameters associated
 5 with what needs to be going into an RFP that had yet
 6 to be completed.
 7 So this was simply bringing together a
 8 number of law firms with relevant experience to
 9 discuss things that the City should contemplate
 10 keeping in mind for a future RFP.
 11 Q. Okay. Before I -- I have a -- I had asked you a
 12 question about what was said by the Jones Day
 13 people, but before I ask you that, let me ask you do
 14 you know whether Jones Day provided any services
 15 paid or unpaid or legal advice to the State prior --
 16 at any time prior to this meeting?
 17 A. I don't know. I was not aware of any such services
 18 provided.
 19 Q. Okay. All right. So what's the best of your
 20 recollection of what the Jones Day people said at
 21 the meeting?
 22 A. Well, they went through this presentation.
 23 Q. You're referring to Exhibit 1?
 24 A. Exhibit 1.
 25 Q. Okay.

Page 16

1 A. They introduced themselves. They talked about their
 2 background and their qualifications. They talked
 3 about experience that they had in Detroit and in
 4 Michigan. They discussed the fact that out-of-court
 5 solutions are absolutely preferred, and they talked
 6 about their experience in out-of-court
 7 restructuring.
 8 And then they talked about various -- the
 9 experience that they had both in out-of-court
 10 restructurings and in-court restructurings.
 11 Q. Did they say anything about a potential bankruptcy
 12 filing by the City of Detroit?
 13 A. I don't recall specifically, but certainly they
 14 indicated a continuum of potential proceeding
 15 depending on what transpired prior to the last
 16 resort, which would be a Chapter 9 filing.
 17 Q. That's what they said? They said that would be a
 18 last resort?
 19 A. I don't recall if they said that specifically, but
 20 members of our team made it very clear that it was
 21 our intent to stay out of the courts.
 22 Q. When you say our team, who are you referring to?
 23 A. Mainly Treasury, and I think that would be shared by
 24 the City leadership that were put in place under the
 25 consent agreement, the CFO and the program

Page 17

1 management director.
 2 Q. Okay. Do you recall whether Kevyn Orr spoke at the
 3 meeting?
 4 A. Yes, he did.
 5 Q. And do you recall what he said?
 6 A. He talked about his background and credentials. He
 7 talked about his experience with Chrysler. He
 8 talked about his broad restructuring expertise. He
 9 talked about his ties to Detroit. His mother was a
 10 professor at University of Michigan. He had
 11 relatives that continued to have ties in Michigan.
 12 He recalled even elements of his education where he
 13 spent a fair amount of time in Detroit.
 14 It was clear that -- I was impressed by the
 15 fact that he had a passion for the City, and I was
 16 very impressed by his knowledge of Michigan and the
 17 City from his years as an undergrad and law school
 18 student.
 19 Q. At the meeting, did you speak to Mr. Orr one-on-one?
 20 At the meeting or after the meeting. When I say
 21 after, I mean that day.
 22 A. I did not speak to -- if you mean one-on-one, did
 23 the two of us have a one-on-one conversation.
 24 Q. Right. Did you break off and have a one-on-one?
 25 A. No. No, I did not.

Page 18

1 Q. Okay. Let me ask you also, did either Jones Day or
 2 Mr. Orr at that meeting say anything about Detroit's
 3 pensions or pension liability?
 4 A. I don't recall.
 5 Q. Let me turn your attention to page 41 of Exhibit 1.
 6 A. Did I just lose my mic?
 7 VIDEO TECHNICIAN: Yeah, you did.
 8 THE WITNESS: What page was that, 41?
 9 BY MR. DeCHIARA:
 10 Q. Right. And I'd like to draw your attention in
 11 particular to the very last line on page 41. I'll
 12 read it for the record. It says "If needed,
 13 Chapter 9 could be used as a means to further cut
 14 back or compromise "accrued financial benefits"
 15 otherwise protected under the Michigan
 16 Constitution."
 17 Do you recall any spoken statements by the
 18 people from Jones Day along the lines of what's --
 19 what I just read?
 20 A. I do not.
 21 Q. Did you get a copy of what's been marked as
 22 Exhibit 1?
 23 A. I believe I did.
 24 Q. And did you -- after the meeting, did you share it
 25 with anybody?

Page 19

1 A. No.
 2 Q. Now, the day after the meeting, you called Jones
 3 Day; isn't that correct?
 4 A. I did.
 5 Q. Okay. And why did you call Jones Day?
 6 A. Specifically, I called Stephen Brogan, the managing
 7 partner for Jones Day, and I asked him for
 8 permission to speak with Kevyn Orr about the
 9 potential of an emergency manager position if, in
 10 fact, Detroit were found to be in emergency
 11 financial distress and the Governor found it
 12 necessary to recommend to the ELB an EM candidate.
 13 Q. So you were as of January 30th interested in Mr. Orr
 14 as a potential candidate to be EM?
 15 A. I was interested in Mr. Orr after seeing him and his
 16 background and experience. I was very impressed,
 17 and that's why I made the call the next day.
 18 Q. Right, but is it fair to say you were interested in
 19 him as a potential candidate for EM?
 20 A. Yes.
 21 Q. And before you made the call, did you speak to the
 22 Governor about your interest in Mr. Orr?
 23 A. I don't recall. I don't think so.
 24 Q. Did you speak to Mr. Dillon?
 25 A. Yes.

Page 20

1 Q. And what did you and Mr. Dillon -- can you recount
 2 what you said to Mr. Dillon and what he said to you?
 3 A. I spoke to Mr. Dillon at the close of the same day,
 4 which according to this was January 29th, and I
 5 indicated to him that I was very impressed with
 6 Mr. Orr and that I was going to call Mr. Brogan the
 7 next day and see if there was any potential that I
 8 could talk to Mr. Orr.
 9 Q. And what did Mr. Dillon say, if anything, in
 10 response to that?
 11 A. My recollection is that he said I don't think you
 12 could ever get him, but he would be an extremely
 13 quality candidate.
 14 Q. Okay. Other than the reasons you've already
 15 testified to today, are there any other reasons you
 16 were interested in Mr. Orr as a potential candidate
 17 for EM?
 18 A. Yeah. Really two. One is that it was always our
 19 intent to see if we could not solve the incredible
 20 financial problems by avoiding a Chapter 9 filing,
 21 and to be honest it was that meeting where it became
 22 clear to me that somebody who knew their way around
 23 the courts would actually stand a much better chance
 24 of keeping us out of the courts in terms of our
 25 negotiations with creditors and other stakeholders.

Page 21

1 Q. I think you said there were two.
 2 A. Yeah.
 3 Q. Was that --
 4 A. That was one. I'm sorry.
 5 Q. What was the second?
 6 A. The second one was that he was -- I didn't learn
 7 this then, but in my first conversation with him I
 8 learned that he was the son of a teacher and he was
 9 also the son of a minister, and as part of the
 10 conversation I had with him going forward I felt
 11 that the man's character was exactly what we would
 12 be looking for. If we could convince him to do this
 13 role he'd do it for the right reasons.
 14 Q. I'd like to show you a document I'll mark as
 15 Exhibit 2.
 16
 17 (Deposition Exhibit 2 was marked.)
 18
 19 BY MR. DeCHIARA:
 20 Q. And it's a one-page document which is stamped at the
 21 bottom JD-RD 0000113.
 22 Mr. Baird, if I can refer your attention to
 23 the bottom of Exhibit 2, is that an email you wrote
 24 to Corinne Ball on January 30th, 2013?
 25 A. Yes.

Page 22

1 Q. And does this refresh your recollection about the
 2 date on which you called Steve Brogan?
 3 A. Yes. It was the day after this date, yes.
 4 Q. Right. So -- well, the email is dated January 30th,
 5 and the email says in the second sentence "Was on
 6 phone with Steve Brogan."
 7 So is it accurate that you called Steve
 8 Brogan on January 30th?
 9 A. As I testified, I called Steve Brogan on
 10 January 30th.
 11 Q. Okay. So the meeting at which Jones Day made a
 12 presentation the day before was January 29th?
 13 A. Correct.
 14 Q. What did Steve Brogan say when you spoke to him?
 15 A. Steve said that you're killing me, I just asked this
 16 man to be the managing partner of our Miami office.
 17 He also said we would not stand in the way of
 18 anything that any of our partners wanted to do, but
 19 frankly, I think the chances of your getting him
 20 would be highly unlikely.
 21 With that said, I would give you permission
 22 to talk to him, and I made it -- no, I take that
 23 back. It's not that I would give you permission to
 24 talk to him. I retract that. He said I will talk
 25 to him, and if there is an interest in him speaking

Page 23

1 with you I will ask that he call you.
 2 At that time I thanked Steve and I told him
 3 that I want you to know whether he talks to us or
 4 not, you will -- Jones Day will neither be hurt nor
 5 helped if there's any further discussions about
 6 Kevyn in this particular role.
 7 Q. Hurt or helped in what regard?
 8 A. With regard to their bid -- potential bid to do work
 9 for the City of Detroit.
 10 Q. And were you in a position to make that commitment
 11 to Jones Day as to what the decisionmaking of the
 12 City of Detroit would be?
 13 A. Actually, on reflection, no.
 14 Q. But you made it anyway.
 15 A. I did.
 16 Q. Okay. Did Mr. Brogan tell you why he thought it
 17 was highly unlikely that you'd be able to get
 18 Kevyn Orr?
 19 A. He said he had two young children, a wife who was a
 20 surgeon at Johns Hopkins and the fact that he'd just
 21 committed to do the Miami deal, and he thought this
 22 would be too much of a deviation from those plans.
 23 Q. Did you speak to Mr. Orr that day, January 30th,
 24 2013?
 25 A. I don't recall.

Page 24

1 Q. Let me show you a document that may help your
 2 recollection. I'm going to mark it as Exhibit 3.
 3
 4 (Deposition Exhibit 3 was marked.)
 5
 6 BY MR. DeCHIARA:
 7 Q. Mr. Baird, is Exhibit 3 an email --
 8 A. Well --
 9 Q. Well, can you identify the top email on Exhibit 3?
 10 MR. SHERWOOD: Is this the document 303 at
 11 the end?
 12 BY MR. DeCHIARA:
 13 Q. Yes. I'm sorry, let me read the Bate stamp. It's
 14 stamped at the bottom JD-RD 000303.
 15 A. Okay. First of all, you asked me if I spoke to
 16 Kevyn Orr on the same day as I spoke to Stephen
 17 Brogan --
 18 Q. Right.
 19 A. -- and I said I did not recall.
 20 And according to this email which you've
 21 handed me it appears that I spoke to Kevyn Orr the
 22 very next day, the 31st.
 23 Q. Okay. So this refreshes your recollection that you
 24 spoke to him the next day?
 25 A. Yes.

Page 25

1 Q. Okay. And what did you -- was it just you and
 2 Mr. Orr on the phone when you spoke to him on
 3 January 31st, 2013?
 4 A. I believe so.
 5 Q. And to the best of your recollection tell us what
 6 you said and what he said in that discussion.
 7 A. I'm going to finish reading this --
 8 Q. Sure.
 9 A. -- for a moment.
 10 Q. Feel free to do that.
 11 A. Okay. Your question?
 12 Q. So apart from the document, although feel free to
 13 look at the document, what is your recollection of
 14 what you said and what he said in the telephone call
 15 you had with him on January 31st?
 16 A. My recollection is I told him that we were very
 17 impressed with his presentation, I was very
 18 impressed with his background and experience and
 19 that I'd asked Steve Brogan for permission to talk
 20 to him.
 21 I said that we did not know whether or not
 22 Detroit would have to have an emergency manager
 23 recommended and appointed, but in the event that
 24 such were the case would he under any circumstances
 25 be willing to consider I think I called it joining

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1 the Governor's irrational act club.
 2 Q. What did he say?
 3 A. He shut it down pretty summarily. And he indicated
 4 the reasons I'd already mentioned, that he had young
 5 children, you know, his schedule -- the scheduling
 6 protocol with a surgeon wife made the situation
 7 already difficult, he'd just agreed to take the
 8 Miami job, and he said he really didn't see under
 9 any circumstances how this might work.
 10 And I said did you talk to your wife about
 11 it? He said well, no, not yet. And I said well,
 12 let me just tell you a little bit about other
 13 members of the team, let me tell you a little bit
 14 about what we've learned about Detroit, and let me
 15 ask if you would at least take a night and sleep on
 16 it and talk to your wife about this because,
 17 frankly, this is the kind of a situation that, you
 18 know, a lot of people would not be able to step up
 19 to, but I firmly think that you are one who could.
 20 Q. Was there any discussion in the conversation about a
 21 potential filing for bankruptcy by the City of
 22 Detroit?
 23 A. No, I don't think so.
 24 Q. Okay. Let me now show you a document I'll mark as
 25 Exhibit 4.

Page 27

1
 2 (Deposition Exhibit 4 was marked.)
 3
 4 BY MR. DeCHIARA:
 5 Q. For the record, it's one-page document. Exhibit 4
 6 is a one-page document stamped at the bottom JD-RD
 7 0000327. In the bottom portion of Exhibit 4 there's
 8 an email.
 9 Mr. Baird, is that an email that you wrote
 10 to the various people identified in the email?
 11 A. Yes, I recall -- I recall writing this.
 12 Q. Okay. And it refers, does it not, to a schedule
 13 for Mr. Orr to meet with various people on
 14 February 11th?
 15 A. Correct.
 16 Q. And it refers to a schedule for a 2:30 p.m. meeting
 17 with the Governor and with yourself, correct?
 18 A. Correct.
 19 Q. Did that meeting take place on February 11th?
 20 A. I believe it did.
 21 Q. And was anyone else present for that meeting other
 22 than the three of you; Mr. Orr, yourself and the
 23 Governor?
 24 A. No.
 25 Q. And do you recall what was discussed in that

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1 meeting?
 2 A. Kevyn's background was discussed, the Governor's
 3 passion and commitment for Detroit was discussed. A
 4 fair amount of discussion around the two of them and
 5 their law school experiences being a year apart was
 6 discussed, and that's -- again, most of it was spent
 7 talking about Kevyn and his background and
 8 experience and some was reminiscing about Michigan
 9 law school days.
 10 Q. Was there any discussion of a potential bankruptcy
 11 filing by the City of Detroit?
 12 A. I don't recall; however, in the process of talking
 13 with Kevyn, it would have been -- we would have
 14 discussed the fact that we need to do everything
 15 possible to fix the problem, and the courts should
 16 be avoided, but if they can't be avoided then it
 17 would have been -- it would have been misleading to
 18 suggest that that wasn't a possibility.
 19 Q. When you say -- who is the we in that sentence?
 20 A. Well, you asked me about a specific meeting. It
 21 would have been Governor Snyder and me.
 22 Q. So it's the two -- the Governor and yourself who
 23 were saying what you just said in the prior
 24 sentence?
 25 A. Yes.

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1 Q. In your prior answer?
 2 A. Yes.
 3 Q. Okay.
 4 A. You have to understand, in general, it's difficult
 5 to talk about the financial way forward and the
 6 operating way forward for Detroit without
 7 contemplating all of the avenues of rescue
 8 available. Restructuring is clearly the optimum,
 9 but in the absence of proper movement or ability to
 10 negotiate, you can't have a discussion about the
 11 future without looking at all of the options.
 12 And, of course, the actual discussion with
 13 Kevyn at this point was simply an option because we
 14 didn't know if the review would ultimately find
 15 Detroit in a state of emergency at this point. What
 16 we did know by this point is that there were several
 17 areas under the consent agreement that were falling
 18 short of what had been agreed.
 19 Q. In the February 11th meeting with you and the
 20 Governor and Mr. Orr, did any of the three of you
 21 talk about pensions or pension liability in Detroit?
 22 A. No, I don't believe so.
 23 Q. Did you have meetings or discussions with Mr. Orr
 24 between the -- well, actually, let me back up.
 25 Was the January 31 telephone call that you

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1 had with Mr. Orr the first time you had a
 2 conversation with him?
 3 A. Except for the public back and forth on the 29th.
 4 Q. Okay. So between the 31st of January and this
 5 February 11th meeting, did you have additional
 6 discussions with Mr. Orr?
 7 A. I don't recall explicitly, but I'm sure that I did.
 8 Q. Okay. Do you recall whether in any of those
 9 discussions you talked about Detroit's pensions or
 10 pension liability?
 11 A. I don't believe so.
 12 Q. Okay. Did you talk about the prospect of or a
 13 possibility of Detroit filing for bankruptcy?
 14 A. I don't recall.
 15 Q. Now, Mr. Orr was appointed as EM, correct?
 16 A. He was recommended by the Governor to the Emergency
 17 Loan Board, and the Emergency Loan Board appointed
 18 him as EM, yes.
 19 Q. And do you know the date that that appointment
 20 became effective?
 21 A. I don't remember the exact date. It was around mid
 22 March.
 23 Q. Now, is it correct that before Mr. Orr was appointed
 24 as EM, emergency manager, he had earlier been
 25 appointed under a prior statute, PA 72, as the EFM,

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1 the emergency financial manager?
 2 A. I think that is correct.
 3 Q. And when did -- when did he become -- when was he
 4 appointed as EFM?
 5 A. I don't recall the exact date.
 6 Q. Do you recall the ballpark in relation to mid March?
 7 Was it -- actually, let me strike that.
 8 In relation to the mid March effective date
 9 of Mr. Orr's appointment as EM, was his appointment
 10 as EFM days before or weeks before? Do you have
 11 some order of magnitude?
 12 A. My recollection is it was days before PA 72 was in
 13 effect when he was appointed and then 436 came into
 14 effect I think a matter of days thereafter.
 15 Q. Okay. So he was -- is it fair to say he was
 16 appointed as EFM in early to mid March?
 17 A. Again, I remember mid March. That's all I remember.
 18 Q. Okay. I'd like to show you a document I'll mark as
 19 Exhibit 5.
 20
 21 (Deposition Exhibit 5 was marked.)
 22
 23 BY MR. DeCHIARA:
 24 Q. And for the record, I'll identify it as a three-page
 25 document that's stamped at the bottom. The stamp on

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1 the first page is JD-RD 0000216.
 2 MR. WERTHEIMER: That's five you said?
 3 MR. DeCHIARA: Yes.
 4 BY MR. DeCHIARA:
 5 Q. Mr. Baird, if you could look at the email at the
 6 bottom half of Exhibit 5. If you want to take the
 7 time to look at the whole document, why don't you do
 8 that.
 9 A. Well, I'll let you know if I need to.
 10 Q. All right.
 11 A. I recall the document.
 12 Q. Okay. All right. So is it accurate that the email
 13 at the bottom of Exhibit 5 is an email that you
 14 wrote to Kevyn Orr on February 20th, 2013?
 15 A. I believe so.
 16 Q. What were you -- what was the reference in the first
 17 sentence to the summary of partnership?
 18 A. Mayor Bing crafted a document that he described as a
 19 working arrangement or working partnership or
 20 something, I forget exactly -- summary of
 21 partnership perhaps is what he called it, and he
 22 gave that to me in a meeting. We discussed it.
 23 I told him that if, in fact, there was to
 24 be an emergency manager for Detroit that this would
 25 be something that he or she would have to review. I

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1 also said that this would be a good aspirational
 2 document but that it would be imprudent to bind a
 3 future emergency manager to something that he or she
 4 had not developed.
 5 Q. Had the emergency manager at that point been chosen?
 6 A. No.
 7 Q. Let me refer you to the second -- the second
 8 sentence of your email. It says "Told him that
 9 there were certain things I would not think we could
 10 agree to without your review, assessment and
 11 determination (such as keeping the executive team in
 12 its entirety)."
 13 A. Uh-huh.
 14 Q. Now, the you in that -- the your in that sentence
 15 refers to Mr. Orr, correct?
 16 A. Correct.
 17 Q. So is it -- am I reading this correctly that what
 18 you're saying to Mr. Orr in this sentence is that
 19 unless Mr. Orr agreed to certain things that you
 20 spell out in this sentence -- or you were saying
 21 that Mr. Orr's agreement to certain things that you
 22 refer to in this sentence were necessary.
 23 A. No. I don't think that would be correct.
 24 What I intended is that Kevyn Orr had not
 25 yet agreed if recommended to serve in this capacity.

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1 He was still doing his own due diligence determining
 2 if he could separate from his firm, a number of
 3 other issues. What he did say to me is that if he
 4 were, in fact, to go forward it would be important
 5 to him that he have a working relationship with the
 6 Mayor. And that's actually where this document came
 7 from because I'd mentioned to the Mayor that that
 8 would be important. At this point, the Mayor didn't
 9 know who Kevyn Orr was.
 10 So the purpose of writing this to Kevyn was
 11 that so he could have an understanding of where the
 12 Mayor's thought process was and so that he could use
 13 this information in the event that he and the Mayor
 14 met, which we had been discussing doing because of
 15 the fact that he wanted a strong working
 16 relationship with the Mayor.
 17 Q. Okay. In the sentence it's -- I'll quote part of
 18 the sentence. It says "...I would not think we
 19 could agree to without your review, assessment and
 20 determination."
 21 Who is the we in that sentence?
 22 A. I think I used a poor choice of words. I was
 23 referring to myself, looking at this, and having
 24 some difficulty with a few of the issues here. And
 25 so I think the we would be certainly me, and I may

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1 have been thinking at the time of what I thought the
 2 chief of staff and/or the Governor might be
 3 thinking, but I don't recall who my we was other
 4 than me.
 5 Q. Let me read the third sentence. It says "Will
 6 broker a meeting via note between you and the
 7 Mayor's personal assistant who is not FOIAble."
 8 That's F-O-I-A-b-l-e.
 9 A. Uh-huh.
 10 Q. Did you attempt to broker a meeting -- did you
 11 broker a meeting between Mr. Orr and the Mayor's
 12 personal assistant?
 13 A. I brokered a connection via note.
 14 Q. And when did you do that?
 15 A. I don't recall, but it would have been fairly soon
 16 after this.
 17 Q. Okay. And can you explain what you mean by broker a
 18 meeting by a note?
 19 A. That I would introduce them to one another, provide
 20 their contact information, and step back and ask
 21 them to work out when and where they would meet to
 22 determine the kind of relationship they might seek
 23 to have.
 24 Q. Were there other candidates for EM who were still
 25 being considered as of February 20th, 2013?

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1 A. Yes.
 2 Q. Did you broker a meeting between the Mayor's
 3 personal assistant and those other candidates?
 4 A. No.
 5 Q. Did you write an email similar to this one to the
 6 other candidates where you said I would not think we
 7 could agree to without your review, assessment and
 8 determination?
 9 A. No.
 10 Q. Do you know whether Mr. Bing -- I'm sorry, Mr. Orr
 11 met with the Mayor's personal assistant?
 12 A. I don't know.
 13 Q. Okay. What did you mean by the phrase who is not
 14 FOIAble?
 15 A. The Mayor and Kevyn wished to meet privately, and so
 16 the person who was going to set that up was someone
 17 the Mayor had recommended set it up because she, I
 18 believe, was not a City employee.
 19 Q. Oh, so the Mayor's personal assistant was not a City
 20 employee?
 21 A. I believe when I said personal, it was personal
 22 assistant.
 23 Q. And why did you tell Mr. Orr in this email that the
 24 personal assistant was not FOIAble?
 25 A. Because she was not -- it was my understanding she

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1 was not a City employee.
 2 Q. Why did you think that was something -- that she was
 3 not FOIAble, why did you think that was something
 4 worth mentioning to Mr. Orr in this email? What did
 5 it matter?
 6 A. Because the Mayor wished for a private meeting, not
 7 a meeting that would be publicly disclosed.
 8 Q. Did Mr. Orr say anything about whether he wanted a
 9 private meeting?
 10 A. I don't recall. He said he wanted a meeting. I
 11 don't recall him saying he wanted a private meeting.
 12 Q. Okay. So who was it that wanted the meeting or was
 13 it both? The Mayor or Mr. Orr?
 14 A. Mayor Bing wanted to meet the potential candidate,
 15 and Mr. Orr wanted to assess a potential working
 16 relationship with Mayor Bing as one of the
 17 conditions for success in the event he accepted the
 18 recommendation.
 19 Q. How did Mr. Bing know that Mr. Orr was a candidate?
 20 A. I told him.
 21 Q. Okay. Did you tell him who the other candidates
 22 were?
 23 A. No. And I didn't tell him Mr. Orr's name until such
 24 time as he -- the two of them expressed a desire to
 25 meet.

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1 Q. Okay. I'd like to mark as Exhibit 6 another
 2 document which I'll have the court reporter show
 3 you.
 4
 5 (Deposition Exhibit 6 was marked.)
 6
 7 BY MR. DeCHIARA:
 8 Q. And for the record, I'll identify it as a multipage
 9 document. The first page is stamped at the bottom
 10 JD-RD 0000459.
 11 Mr. Baird, let me refer your attention to
 12 the email that's in the middle of the first page of
 13 Exhibit 6. Is that an email that you wrote to Kevyn
 14 Orr on February 22nd, 2013?
 15 A. Is that the one timed 11:35 a.m.?
 16 Q. I'm looking at the one that says 11:41 a.m.
 17 A. Okay.
 18 Q. That's sort of smack in the middle. Or at least the
 19 date code is sort of right in the middle of --
 20 A. Yes, I believe I sent that.
 21 Q. Okay. And do you recall this email?
 22 A. Vaguely I recall it.
 23 Q. It says "Kevyn, about to be in a car for several
 24 hours so I thought I would send this to you prior to
 25 hearing back from the G a final time."

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1 The G is the Governor?
 2 A. Yes.
 3 Q. Okay. And then it continues "If you agree with what
 4 I have done to the doc based on everyone's input,
 5 and agree that you should be the one to provide it
 6 to the Mayor as fully endorsed by the Governor and
 7 the Treasurer (and you), then I think that clearly
 8 establishes that you are already behaving as an
 9 agent of the State committed to getting Detroit back
 10 on track."
 11 What was the doc? And I assume that was
 12 short for document?
 13 A. Yes.
 14 Q. What was the document you were referring to?
 15 A. It would have been the summary of partnership that
 16 the original draft had been provided by Mayor Bing.
 17 Q. Okay. So you were showing -- in this email you were
 18 showing Mr. Orr certain modifications you had made
 19 to the document; is that correct?
 20 A. Yes.
 21 Q. And were you looking for his input?
 22 A. I was looking for input and/or agreement.
 23 Q. From Mr. Orr?
 24 A. Yes.
 25 Q. Okay. Did you -- this is two days after the

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1 document we were discussing in Exhibit 5.
 2 Were there still other candidates for the
 3 EM position as of February 22nd, 2013?
 4 A. There was one other candidate.
 5 Q. Okay. Did you send that other candidate an email
 6 like this looking for the other candidate's input
 7 and agreement to the document you refer to in
 8 Exhibit 6?
 9 A. No.
 10 Q. Okay. Did Mr. Orr give you his input and/or
 11 agreement?
 12 A. I believe he did.
 13 Q. Okay. And did his giving the input or agreement
 14 clearly establish to you that he was already
 15 behaving as an agent of the State?
 16 A. No. The use of the term agent of the State was my
 17 attempt at continuing the recruiting pressure on
 18 Kevyn Orr because he was clearly not an agent of the
 19 State.
 20 Q. But nonetheless you wrote to him saying that if he
 21 did what you were asking, he -- that would clearly
 22 establish that he was already behaving as an agent
 23 of the State.
 24 Am I reading what you wrote there
 25 correctly?

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1 A. The man had not formally committed to the role, and
 2 I was attempting to recruit him. And it was in that
 3 context that I put that statement, which now would
 4 appear to be a little presumptuous on my part.
 5 Q. Just to be clear, at this point Mr. Orr was still a
 6 partner at the Jones Day law firm?
 7 A. I believe so.
 8 Q. Okay. Well, in fact, he didn't cease to be a
 9 partner until he became EM -- or EFM; is that
 10 correct?
 11 A. I never saw his withdrawal from the partnership, so
 12 you'd have to talk to them about that.
 13 Q. Okay. Do you have a general understanding about
 14 when he severed his ties with the firm?
 15 A. My understanding is he was no longer a partner when
 16 he became the EM.
 17 Q. Was he a partner when he became the EFM?
 18 A. No. Well, I don't know, but my understanding was
 19 that he was not.
 20 Q. Are you familiar with a provision of the Michigan
 21 State Constitution, Article 9 Section 24, that
 22 refers to pensions?
 23 A. I am.
 24 Q. What's your understanding of that provision?
 25 A. Would you like to read it?

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1 Q. No, I just want to know what your general
 2 understanding is of the provision.
 3 A. Well, I'm not an attorney so I'm not going to give a
 4 legal interpretation.
 5 Q. And just for the record, I'm not seeking one.
 6 A. Okay. Good.
 7 Q. But you do have some idea what the provision is
 8 about?
 9 A. I've read the provision.
 10 Q. Okay. What's your understanding of it?
 11 A. My understanding of it is that the Constitution
 12 protects pensions to the extent that they are fully
 13 accrued and then they cannot be altered.
 14 There is some degree of difference of
 15 opinion about whether a fully-funded pension has the
 16 same protection under the Constitution as one that
 17 is not fully funded.
 18 Q. And do you have a view on that subject?
 19 A. No.
 20 Q. Have you ever discussed Article 9 Section 24 with
 21 anybody?
 22 A. Yes.
 23 Q. With whom have you discussed it?
 24 A. I don't recall. Various people.
 25 Q. Have you ever discussed it with Kevyn Orr?

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1 A. Yes.
 2 Q. And on one occasion or more than one occasion?
 3 A. One occasion.
 4 Q. What occasion was that?
 5 A. It was early on in our conversation where I
 6 indicated to him that I was aware of the existence
 7 of the article and that he should be aware of it as
 8 well. He said he was aware of it. And that was our
 9 discussion.
 10 Q. And was this -- can you locate this conversation in
 11 time? Was it, for example, before the February 11th
 12 meeting that you and Mr. Orr and the Governor had?
 13 A. No, sir, I can't. During the course of a
 14 recruitment you cover an awful lot of ground and you
 15 answer a lot of questions and you raise lots of
 16 issues, and you do the best you can to help an
 17 individual get to the best answer as it relates to
 18 an opportunity like this.
 19 Q. Okay. Was it -- the conversation before Mr. Orr
 20 became EM?
 21 A. Yes. I believe it was.
 22 Q. It was while you were recruiting him, correct?
 23 A. Yes.
 24 Q. Okay. So you -- just so I understand, you on one
 25 occasion brought up to him, Mr. Orr, the subject of

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1 Article 9 Section 24?
 2 A. I brought up to him the fact that the Michigan
 3 Constitution has a provision as it relates to
 4 pensions and he should be aware of it.
 5 Q. And what did he respond?
 6 A. He said he was aware of it.
 7 Q. Did you have any further discussion about Article 9
 8 Section 24?
 9 A. No.
 10 Q. Okay. Other than Mr. Orr -- well, strike that.
 11 Did you ever speak to the Governor about
 12 Article 9 Section 24?
 13 MR. ELLSWORTH: Object to the extent that
 14 it may call for lawyer-client privileged
 15 information.
 16 BY MR. DeCHIARA:
 17 Q. Okay. I'm going to modify my question to ask you to
 18 exclude occasions on which you spoke to the Governor
 19 in the presence of counsel.
 20 A. The answer would be no.
 21 Q. Did you ever speak to Mr. Dillon about Article 9
 22 Section 24 with the same caveat as to not in front
 23 of counsel?
 24 A. I don't think so.
 25 Q. Do you recall speaking to anyone at Jones Day about

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1 Article 29 -- Article 9 Section 24 of the Michigan
2 Constitution?

3 MR. ELLSWORTH: Same objection.
4 MR. DeCHIARA: Okay.
5 BY MR. DeCHIARA:
6 Q. Let me modify it to say before Jones Day was
7 retained by the City, did you speak to anyone at
8 Jones Day about Article 9 Section 24?
9 A. No, I don't believe so.
10 Q. Did you ever speak to the Attorney General of the
11 State of Michigan about Article 9 Section 24?
12 A. No.
13 MR. ELLSWORTH: Objection; attorney-client.
14 BY MR. DeCHIARA:
15 Q. Did you ever speak to Mr. Orr about what could or
16 should be done about Detroit's pension liability?
17 A. No.
18 Q. Outside of the presence of counsel, did you ever
19 have a discussion on that subject with the Governor?
20 A. No.
21 Q. What about with Mr. Dillon?
22 A. No.
23 Q. What about with anyone else on the staff of Mr. Orr
24 or on the staff of the Governor or the staff of
25 Mr. Dillon, again, outside the presence of counsel?

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1 A. I recall one conversation where I requested some
2 analytics on the distribution of pensioner income,
3 so instead of dealing with averages I could see the
4 distribution between those at the low end, those at
5 the high end and where it all fell so I could at
6 least have some understanding of what any impact
7 would be in the event of pension reduction.
8 Q. Who did you have that conversation with?
9 A. I know I had it with Kevyn Orr once and I believe I
10 had it with Andy Dillon once.
11 Q. When was your conversation with Mr. Orr on the
12 subject?
13 A. It would have been after he was the emergency
14 manager, but I don't recall how long he'd been in
15 that role.
16 Q. Okay. Was it before the bankruptcy filing?
17 A. I don't believe so.
18 Q. You think it was after the bankruptcy filing?
19 A. I think it was.
20 Q. Okay. And did you say that you requested data on
21 pensions from somebody?
22 A. I requested data on -- whether the data existed on
23 the distribution by pension amount, numbers of
24 pensioners and pension amount, for the current
25 roughly 20,000 pensioners.

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1 Q. And who -- did you ask Mr. Orr for this data?
2 A. I asked Mr. Orr to see if the data could be obtained
3 because I thought it was relevant.
4 Q. And what would it be relevant to in your -- why did
5 you think it was relevant?
6 A. At the time I was wondering if it was possible for
7 the State to consider legislation that would provide
8 an incremental safety net to those at the lower end
9 of the spectrum.
10 Q. And you said you thought that was relevant. What
11 did you think it was relevant to?
12 A. Well, it was relevant to a question I had, and I
13 didn't know the answer so I asked to get the data.
14 Q. What was the question you had?
15 A. My question was whether or not there were other
16 avenues to provide relief to those pensioners that
17 conceivably could be impacted at the lower end of
18 the continuum.
19 And that was not based on discussions with
20 anybody else, it was simply a question that I had
21 because I didn't know the answer.
22 Q. And the question you had, when you say the person --
23 the pensioners who would be impacted, were you
24 thinking impacted in that their accrued pension
25 benefits might be reduced?

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1 A. Yes.
2 Q. And did Mr. Orr provide you the data you requested?
3 A. No.
4 Q. Did he -- when you asked him for it, what did he
5 say, if anything?
6 A. He said it was a good question and he'd get back to
7 me. But to the best of my recollection, he didn't.
8 Q. Did you ever follow up?
9 A. I honestly can't remember.
10 Q. Okay. Did he say anything other than it's a good
11 question?
12 A. Nope.
13 Q. You said you had a conversation with Andy Dillon on
14 the same subject. When was your conversation with
15 him on this subject?
16 A. It would have been about the same time. This was
17 after the bankruptcy had already been filed and
18 there was a lot of noise about whether pensions
19 would be impacted, and I was trying to ascertain the
20 practical implications if they were.
21 Q. And did you ask Mr. Dillon for the data on the
22 distribution of the number of pensioners and --
23 A. No.
24 Q. -- the amount of pensions?
25 A. No. I asked -- I actually told him that I'd ask

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1 Kevyn, that I'd made that question to Kevyn.
 2 Q. And did Mr. Dillon say anything in response when you
 3 told him that?
 4 A. Good question.
 5 Q. Did he ever -- did he or anyone on his staff ever
 6 get back to you with the data you were looking for?
 7 A. Not that I recall.
 8 Q. Did you speak to anyone about your idea to have
 9 legislation that would provide an incremental safety
 10 net for the people on the low end of the spectrum?
 11 A. I spoke with Dennis Muchmore about it, the
 12 Governor's chief of staff, and he's the only one.
 13 Q. And what did he say, if anything?
 14 A. He didn't know. He said I don't know what the
 15 appetite for that would be, but it's a good
 16 question.
 17 Q. Now, were you -- when you spoke to Mr. Muchmore,
 18 were you proposing that Mr. Muchmore take steps to
 19 see if such legislation could be enacted?
 20 A. No. I was asking a question about in the event that
 21 pensions were impacted what is the practical
 22 implication to those depending on the money every
 23 month. I wanted to know.
 24 Q. And do you know now as you sit here today? Have you
 25 ever seen that data?

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1 A. No, I have not.
 2 Q. Okay. But did you speak to Mr. Muchmore about the
 3 idea of the legislation you described?
 4 A. I just mentioned to him -- I asked him the question
 5 what do you think the appetite would be, and he said
 6 he didn't know.
 7 Q. Okay. Do you know whether there had been any
 8 discussions by the Governor and his staff about the
 9 legislation you described?
 10 A. No, I don't.
 11 Q. Have you ever followed up?
 12 A. Not on that, no.
 13 Q. Do you have any sense without having seen the data
 14 of what the practical impact would be on the
 15 individuals at the low end of the spectrum if their
 16 accrued pension benefits were reduced?
 17 A. Only anecdotal.
 18 Q. And what's your anecdotal knowledge?
 19 A. Anecdotal knowledge is that the majority of the
 20 pensioners are at the lower end of the spectrum and
 21 so the implications of a pension reduction probably
 22 couldn't be directed toward the higher end of the
 23 spectrum at a sufficient level to make it feasible.
 24 Q. So your understanding is that -- to make what
 25 feasible?

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1 A. Let me back up. I'm a numbers guy. I wanted to
 2 know of the 20,000 pensioners that exist, where do
 3 they fall along a distribution continuum.
 4 What I was looking to see is whether the
 5 distribution, the standard deviation was such that
 6 if there was a reduction that the number -- would
 7 the numbers be material if that reduction were
 8 weighted toward the larger pension earners versus
 9 the lower pension earners.
 10 And, anecdotally, I was told that the
 11 number of pension earners are at the lower end and
 12 that the standard deviation is not very great.
 13 Q. So in order for there to be a meaningful savings by
 14 the City if it reduced pensions, it would have to
 15 reduce the pensions of many of those people who are
 16 at the low end of the spectrum; is that -- am I
 17 understanding that correctly?
 18 A. Anecdotally, that's my understanding.
 19 Q. Okay. And did you have any practical -- I'm
 20 sorry -- did you have any sense, anecdotally or
 21 otherwise, of what the real world impact would be on
 22 those individuals on the low end of the spectrum if
 23 their pensions were reduced?
 24 A. No, because the data never materialized for me.
 25 Q. Do you have any sense whether if pensions of those

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1 people at the low end of the spectrum were reduced
 2 it would be difficult for those individuals to make
 3 ends meet?
 4 A. I don't know.
 5 MR. ELLSWORTH: I wasn't sure he heard your
 6 question because he was retrieving his microphone.
 7 BY MR. DeCHIARA:
 8 Q. Did you hear my question?
 9 A. Would you repeat it?
 10 Q. Sure. Do you have any sense whether if the pensions
 11 of those people at the low end of the spectrum were
 12 reduced, would it be difficult for those individuals
 13 to make ends meet?
 14 A. I would have no way of knowing in the absence of
 15 real data.
 16 Q. Are you familiar with a letter that the Governor
 17 signed on July 18th, 2013, in which he purported to
 18 authorize the filing of the bankruptcy of the City
 19 of Detroit?
 20 A. I know that that letter existed.
 21 Q. Okay. Did you see the letter in any draft or
 22 nonfinal forms before the Governor signed it?
 23 A. No.
 24 Q. Did you participate in any way in the preparation of
 25 that letter?

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1 A. No.

2 Q. Did the Governor speak to you about the preparation
3 of that letter?

4 A. No.

5 Q. Did he speak to you about the contents of the letter
6 before he signed the letter?

7 A. No.

8 Q. Did you have anything at all to do with that letter?

9 A. No.

10 Q. Okay. You're aware, are you not, that a couple days
11 before the Governor signed that letter that Mr. Orr
12 had sent the Governor a letter in which Mr. Orr
13 requested permission to file for bankruptcy, right?

14 A. I am aware. I don't recall having seen that letter
15 but I am aware one was sent.

16 Q. Have you ever seen that letter?

17 A. I don't think so.

18 Q. Did Mr. Orr ever speak to you about that letter
19 before he sent it?

20 A. He spoke to me, yes.

21 Q. And was it on one or more than one occasion?

22 A. No, just on one occasion.

23 Q. Let me represent to you the letter was dated
24 July 16th, 2013.

25 When did you speak to Mr. Orr about the

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1 letter?

2 A. I don't recall, but it would have been very near
3 when it was sent.

4 Q. Near before or near after?

5 A. Maybe right at the time it was sent. I recall a
6 conversation with Kevyn where he said I'm going to
7 do this.

8 Q. Okay. What else, if anything, do you recall about
9 that conversation?

10 A. The reason I recall it is because he had asked me to
11 circle back to members of the consulting
12 restructuring team to talk to them about their scope
13 and service and fees because it was -- these were
14 conversations he had planned to have but hadn't had
15 a chance, and so I did that.

16 Q. So about the time that -- I just want to see if I'm
17 understanding your testimony.

18 About the time that Mr. Orr sent his
19 July 16th letter to the Governor requesting
20 permission to file for bankruptcy, he spoke to you
21 about the letter?

22 A. I believe he did.

23 Q. Okay. Did he call you?

24 A. I don't recall.

25 Q. Did he initiate the contact?

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1 A. I don't recall.

2 Q. Was it a face-to-face meeting or a telephone call?

3 A. I believe it was telephone.

4 Q. And to the best of your recollection, can you
5 recount what you said and what he said in that
6 telephone call?

7 A. I honestly don't recall other than he said I haven't
8 completed my conversations with the restructuring
9 team relative to their scope and services and fee
10 projections, and I agreed to do that on his behalf.

11 Q. Who was the restructuring team?

12 A. These would have been the principals associated with
13 Conway MacKenzie, Ernst and Young, Jones Day, and
14 Miller Buckfire.

15 Q. And Mr. Orr said he wanted to complete a
16 conversation with those individuals you just
17 mentioned about their fees?

18 A. Yeah. He had been engaged with them around putting
19 a fine point on their fee estimates as opposed to a
20 broad -- you know, sort of broad here's what we
21 think it might cost, but he hadn't had the, you
22 know, detailed discussions and so he asked if I
23 would do that.

24 Q. And did you do that?

25 A. I did.

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1 Q. And what, if anything, did that have to do with the
2 July 16th letter that Mr. Orr sent to the Governor
3 to request permission to file for bankruptcy?

4 A. I think it was important because the fees and the
5 scope once the filing had been completed would not
6 have been subject to much in the way of reduction.

7 Q. Did you have any other -- was that the extent of
8 your conversation with Mr. Orr on that occasion?

9 A. Yes.

10 Q. And did you have any other discussions with Mr. Orr
11 about his July 16th letter before he sent the
12 letter?

13 A. No.

14 Q. Do you -- are you aware that in the Governor's
15 letter, the July 18th, 2013 letter, the Governor
16 said that he was not going to impose contingencies
17 on the filing? Are you familiar with that?

18 A. No, I don't recall actually having ever seen the
19 letter.

20 Q. Okay. Are you aware that there were certain state
21 court lawsuits that were filed prior to the
22 bankruptcy filing concerning issues related to
23 Article 29 Section 24 of the Michigan Constitution?

24 MR. WERTHEIMER: Article 9.

25 MR. DeCHIARA: Thank you.

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1 BY MR. DeCHIARA:
 2 Q. Article 9 Section 24 of the Michigan Constitution?
 3 A. No.
 4 Q. Did you ever discuss with the Governor the timing of
 5 the bankruptcy filing, meaning outside of the scope
 6 of counsel, did you ever discuss with the Governor
 7 when it would be best to -- for the City of Detroit
 8 to file for bankruptcy?
 9 A. No.
 10 Q. Are you aware that the State or at least the
 11 Governor's office had prepared a schedule that
 12 indicated that the bankruptcy filing was to occur on
 13 July 19th, 2013, but it actually occurred the prior
 14 day? Are you aware of that?
 15 A. I'm aware of a communications schedule that had the
 16 19th I think as the date.
 17 Q. And are you aware that the filing actually occurred
 18 the day before?
 19 A. I was aware of the filing when it occurred, which
 20 occurred the day before.
 21 Q. Okay. Do you have any understanding or knowledge as
 22 to why it occurred the day before it had been
 23 planned to occur?
 24 A. No.
 25 Q. Did you ever -- outside of the presence of legal

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1 counsel, did you ever discuss that with the
 2 Governor?
 3 A. No.
 4 Q. Okay. Did you speak with the Governor outside of
 5 the presence of legal counsel since he had his
 6 deposition taken yesterday?
 7 A. Yes.
 8 Q. Did you speak about his deposition?
 9 A. No.
 10 Q. I'd like to show you a document -- well, are you
 11 aware of a document that Mr. Orr presented to
 12 creditors on January 14th, 2013 called --
 13 MR. WERTHEIMER: June 14th.
 14 MR. DeCHIARA: Thank you.
 15 BY MR. DeCHIARA:
 16 Q. June 14th, 2013 called Proposal for Creditors?
 17 A. May I see it?
 18 Q. Yes.
 19 A. Yes, I am familiar with this document.
 20 Q. Okay. And did you participate in its preparation?
 21 A. No.
 22 Q. Did you comment on it before it was in its final
 23 form?
 24 A. No.
 25 Q. Were you asked to review it before it was made

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1 final?
 2 A. No. Well, not that I recall.
 3 Q. Not that you recall?
 4 A. Yeah. If somebody asked me, it's an email I never
 5 saw because I didn't review it.
 6 Q. Okay. Okay. Did you speak to the Governor outside
 7 of the presence of legal counsel about the
 8 June 14th, 2013 proposal?
 9 A. I don't believe so.
 10 Q. Did you speak to Mr. Dillon?
 11 A. Yes.
 12 Q. Outside of the presence of legal counsel about the
 13 June 14th, 2013 proposal?
 14 A. No.
 15 Q. You spoke to him, but it was in the presence of
 16 legal counsel?
 17 A. Yes.
 18 Q. Okay. Did you speak to anyone on the Governor's
 19 staff or Mr. Dillon's staff outside of legal counsel
 20 about the June 14th, 2013 proposal?
 21 A. No.
 22 Q. Did you speak to Mr. Orr about his proposal at any
 23 time on or before June 14th, 2013?
 24 A. No.
 25 Q. Did you speak to him about -- did you speak to

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1 Mr. Orr outside of the presence of legal counsel
 2 about the proposal after June 14th, 2013?
 3 A. I attended that meeting and told him I thought he
 4 did a good job in its presentation.
 5 Q. By that meeting you mean the June 14th, 2013
 6 meeting?
 7 A. Yes.
 8 Q. Okay. Do you recall Mr. Orr at the June 14th, 2013
 9 meeting saying words to the effect to the people who
 10 were in attendance that this was not a negotiation?
 11 A. No.
 12 Q. Are you denying he said it or you just don't
 13 remember if he said it or not?
 14 A. I don't recall him using those words.
 15 Q. Okay. Is it true that those in attendance on
 16 June 14th, 2013 in order to be able to speak had to
 17 fill out a card and have the card read by someone?
 18 A. I don't know.
 19 Q. I'd like to show you a document which I'll mark as
 20 Exhibit 7.
 21
 22 (Deposition Exhibit 7 was marked.)
 23
 24 BY MR. DeCHIARA:
 25 Q. For the record, it's a one-page document stamped at

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1 the bottom SOM 20003601.
 2 MR. WERTHEIMER: Seven?
 3 MR. DeCHIARA: Yes.
 4 BY MR. DeCHIARA:
 5 Q. Do you recall receiving this email from Mr. Dillon
 6 on July 18th -- on July 8th, 2013?
 7 A. Let me just finish reading it.
 8 Q. Please.
 9 A. I believe I've seen this before, yes.
 10 Q. In the first sentence Mr. Dillon refers to the
 11 Detroit consultants.
 12 Do you know who he's referring to?
 13 A. No. I mean, when he says weekly call with the
 14 Detroit consultants, that generally includes Jones
 15 Day, Miller Buckfire, Ernst and Young, Conway
 16 MacKenzie, and at times Milliman.
 17 Q. In the second paragraph it says "We met with the
 18 consultants to get briefed on the pension issue this
 19 afternoon. I invited Baird and Tedder to join."
 20 Did you join that briefing?
 21 A. I don't believe so, but I don't recall.
 22 Q. Next sentence says "Bottom line, the situation is
 23 not good and the view of the consultants is that
 24 current pensions have to be cut significantly."
 25 Did you have any conversations with

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1 Mr. Dillon about that view that current pensions
 2 have to be cut significantly outside of the presence
 3 of legal counsel?
 4 A. I don't recall. I've had -- I have had discussions
 5 with Andy relative to the funding levels of pensions
 6 and have had discussions with him about the 13th
 7 Check, but I do not recall a specific discussion
 8 around the pensions have to be cut significantly.
 9 Q. Do you have a view yourself -- or strike that.
 10 As of the time of this email, July 8th,
 11 2013, at that period of time did you have a view
 12 yourself as to whether current pensions had to be
 13 cut significantly?
 14 A. My view of what's been reported publicly is that the
 15 pension funding is not sustainable for the current
 16 obligations and future obligations.
 17 Q. What do you mean the pension funding?
 18 A. The funding level of the pension -- the pension
 19 funds.
 20 Q. When you say the funding, do you mean the
 21 contributions that are being made are not
 22 sufficient?
 23 A. That's correct.
 24 Q. Okay. And have you -- and, therefore, is it your
 25 view because the funding is insufficient that the

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1 pensions that are being paid out of the funds need
 2 to be cut significantly?
 3 A. I'm not an actuary, and I don't know the answer to
 4 that question.
 5 Q. But do you have a view on that question or an
 6 opinion?
 7 A. I have an opinion.
 8 Q. What's your opinion?
 9 A. My opinion is that underfunded -- significantly
 10 underfunded pensions are not sustainable long-term
 11 for current workers or for workers who are more than
 12 just a few years away from retirement.
 13 Q. Therefore, is it your view that the Detroit
 14 pension -- accrued pension liabilities need to be
 15 reduced?
 16 A. No. It's my view that there's not enough money for
 17 the current pension obligations and the future
 18 pension obligations. It's not my call whether they
 19 get reduced or not.
 20 Q. Well, whether it's your call or not, I'm just asking
 21 do you have a view as to whether or not --
 22 A. My view --
 23 MR. ELLSWORTH: I object to the form, and
 24 he's already answered the question.
 25 BY MR. DeCHIARA:

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1 Q. Can you answer the question, Mr. Baird?
 2 Do you have a personal view as to whether
 3 or not Detroit's accrued pension liabilities need to
 4 be reduced?
 5 A. My view is that if the pensions are underfunded that
 6 there will come a time when the obligations cannot
 7 be met, and you can't create money out of nothing.
 8 It's not my place to ascertain where the
 9 money comes from. It is my place to say to you I
 10 have an opinion that the current pension funds are
 11 not sustainable in the current model.
 12 Q. Okay. But you're aware, are you not, that whether
 13 or not -- the question of whether or not Detroit's
 14 pension liabilities should be cut is a matter that's
 15 been a matter of sharp debate in Detroit over the
 16 course of the last few months?
 17 A. I'm aware there's been a lot of debate around this
 18 issue.
 19 Q. Okay. And have you ever spoken to the Governor
 20 outside of the presence of legal counsel about this
 21 issue, about this debate?
 22 A. Not that I recall.
 23 Q. Okay. Have you ever spoken to anyone on the
 24 Governor's staff outside of legal counsel on this --
 25 about this debate?

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1 A. Not that I recall.
 2 Q. Same question for Mr. Dillon and Mr. Dillon's staff.
 3 A. Generally speaking, I know we've had discussions but
 4 nothing explicit or a course of action forward.
 5 Q. What's your best recollection of the discussions
 6 you've had with Mr. Dillon --
 7 A. Very --
 8 Q. -- outside of the presence of legal counsel?
 9 A. Very general discussions around the sustainability
 10 of the current model and whether it can survive.
 11 Q. Did Mr. Dillon ever say to you words to the effect
 12 that he believed that the pension liabilities of the
 13 City of Detroit need to be reduced?
 14 A. No, I don't recall him ever saying that. I recall
 15 him saying that the issues are significant.
 16 Q. Have you ever spoken to Mr. Orr or his -- anyone on
 17 his staff outside the presence of legal counsel
 18 about this subject?
 19 A. No.
 20 Q. I'd like to show you a document I'll mark as
 21 Exhibit 8.
 22
 23 (Deposition Exhibit 8 was marked.)
 24
 25 MR. SHERWOOD: What's the bates number?

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1 BY MR. DeCHIARA:
 2 Q. It's a one-page document that's stamped SOM
 3 20003657.
 4 A. Okay.
 5 Q. Do you recall receiving this email from Andy Dillon
 6 on July 9th, 2013?
 7 A. No.
 8 Q. Have you ever seen this email before?
 9 A. I don't recall seeing this email before. I get
 10 hundreds of emails every day and I don't look at all
 11 of them.
 12 Q. If you look at the second paragraph of the email,
 13 let me just read it. It says "On Thursday, we
 14 expect to receive financials that will help us
 15 better understand the potential negative impact on
 16 pensions and what options may be available to us to
 17 avoid them."
 18 A. Uh-huh.
 19 Q. Did you ever speak to Mr. Dillon outside of the
 20 presence of legal counsel about what options might
 21 be available to avoid the potential negative impact
 22 on pensions?
 23 A. No.
 24 Q. Let me read the last sentence of the email. It says
 25 "I have some thoughts as to how you could address

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1 some pointed questions if you were interested in
 2 hearing them."
 3 I believe the you in there is -- well,
 4 actually, I don't know who the you in there is. The
 5 email was sent -- oh, I guess it's addressed to the
 6 Governor. So I assume the you in that email is the
 7 Governor.
 8 But let me nonetheless ask you, Mr. Baird,
 9 did Mr. Dillon ever share any thoughts he had with
 10 you outside of the presence of legal counsel
 11 regarding thoughts he had about issues related to
 12 Detroit's pension liability other than what you've
 13 testified to already today?
 14 A. No, not outside presence of legal counsel.
 15 Q. I'd like to show you a document I'll mark as
 16 Exhibit 9.
 17
 18 (Deposition Exhibit 9 was marked.)
 19
 20 BY MR. DeCHIARA:
 21 Q. It's a two-page document that's stamped at the
 22 bottom DTMI 00113909.
 23 My question on this document, Mr. Baird, is
 24 simply can you identify this document?
 25 A. I'm not sure. Some of the content appears familiar,

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1 but this format of the document is not familiar to
 2 me.
 3 Q. Okay. So you're not -- can you testify where this
 4 document came from or what it is?
 5 A. I couldn't tell you that, no.
 6 MR. DeCHIARA: I have no further questions.
 7 Thank you for your time, Mr. Baird.
 8 THE WITNESS: Thank you.
 9 MR. WERTHEIMER: I've got a few questions.
 10 Want to take a break?
 11 VIDEO TECHNICIAN: Off the record 3:31 p.m.
 12 (A brief recess was taken.)
 13 VIDEO TECHNICIAN: We're back on the record
 14 at 3:46 p.m.
 15 EXAMINATION
 16 BY MR. WERTHEIMER:
 17 Q. Mr. Baird, my name is Bill Wertheimer. I represent
 18 what we've been calling the Flowers plaintiffs,
 19 which are a group of Detroit retirees who filed one
 20 of the lawsuits that preceded the bankruptcy, and
 21 I'm going to ask you a few questions.
 22 You testified about a conversation you had
 23 with Kevyn Orr right around the time that he sent
 24 the letter to the Governor seeking authorization for
 25 bankruptcy. Do you recall that?

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1 A. I do.
 2 Q. Did he in any way indicate why he was going to make
 3 the request at that time?
 4 A. No. Well, I don't recall that he did.
 5 Q. Do you recall asking him anything about that, you
 6 know, why now Kevyn or what's happening or --
 7 A. No.
 8 Q. Do you recall whether you were surprised about it;
 9 that is the timing, not the act?
 10 Or put another way had you had any kind of
 11 a warning or anything going on that would lead you
 12 to think that --
 13 A. I had seen a communications document that had
 14 Friday, the -- I don't remember the exact date, but
 15 Friday, might have been the 19th?
 16 Q. Right. Friday was the 19th.
 17 A. Right, Friday the 19th as the date that it appeared
 18 we'd go forward.
 19 Q. Had you seen that document before the conversation
 20 with Orr?
 21 A. No.
 22 Q. After?
 23 A. After.
 24 Q. Okay. Is the document you saw what was marked at
 25 the Governor's deposition as Exhibit 6 or something

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1 like it?
 2 A. Yes.
 3 Q. Okay. And do you remember how you came to see that
 4 document? Was it emailed to you, were you talking
 5 to somebody about it?
 6 A. No, I believe it was emailed to me.
 7 Q. Do you remember by who?
 8 A. I don't.
 9 Q. Do you remember whether you talked to anybody about
 10 it between its issuance and the actual filing?
 11 A. Talked about the communications plan?
 12 Q. Well, broader than the communications plan but just
 13 the fact that it was going to be -- the bankruptcy
 14 was going to occur.
 15 A. No.
 16 Q. Now, you also testified that you had had
 17 conversations or a conversation I think you said
 18 with Orr where you asked him a question about the
 19 distribution of the income of retirees?
 20 A. Yes.
 21 Q. And you also talked to the Governor's is it chief of
 22 staff, Mr. Muchmore?
 23 A. Yes.
 24 Q. About that same issue, not asking a question but
 25 about --

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1 A. I related my conversation with Kevyn to Dennis.
 2 Q. Can you put a time frame on these conversations?
 3 Can you tell us approximately when they occurred?
 4 A. I believe it was after the filing because of all of
 5 the public consternation around pensions, and I --
 6 as I testified earlier, I wanted to know what the
 7 practical impact of any action would be.
 8 Q. And if I understand it right, the reason you wanted
 9 to know is that was kind of the germ of an idea for
 10 maybe some legislation that might be able to at
 11 least in some way ameliorate the condition or the
 12 problem?
 13 A. Correct. I was thinking unilaterally, which I'm
 14 known to do.
 15 Q. I understand. Well, you anticipated my next
 16 question.
 17 At the point you had these conversations,
 18 was it your understanding that it was the Governor's
 19 position that the State was not going to be putting
 20 any money into Detroit at least as it would relate
 21 to the retiree issue?
 22 A. I don't recall if I would know whether that was the
 23 Governor's position, but I was well aware that the
 24 legislative appetite for funding to Detroit was
 25 highly -- was very low.

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1 Q. Okay. Okay. Had you had any conversations up to
 2 that point with the Governor where -- excluding
 3 conversations with counsel present -- where you
 4 discussed that fact; that is, we're not going to be
 5 able to get legislation through to do anything about
 6 that?
 7 A. No, not explicitly.
 8 Q. Implicitly.
 9 A. Not even implicitly. I don't recall any
 10 conversations with the Governor talking about a
 11 strategy where funds would be appropriated for
 12 Detroit.
 13 Q. Do you recall as of the point that you made this
 14 inquiry of Orr and had the conversation with
 15 Muchmore that the Governor publicly was taking the
 16 position that although the State might be willing to
 17 assist relative to services for residents of the
 18 City, it would not be willing to put money in for
 19 pensions or anything other than services for the
 20 City?
 21 A. I wasn't part of those conversations --
 22 Q. Okay.
 23 A. -- if they existed.
 24 Q. All right. You were shown -- well, it's your
 25 deposition, Exhibit No. 1. This is the Jones Day --

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1 A. Uh-huh.
 2 Q. -- pitch from January 31st.
 3 A. Yep. Yep.
 4 Q. The pages you were shown, and I'm going to show them
 5 to you again, where there's these ref -- one or more
 6 references to pensions is in part four of the
 7 written presentation entitled Components and
 8 Considerations for Restructuring Plan.
 9 MR. ELLSWORTH: Do you have a page number,
 10 Mr. Wertheimer?
 11 MR. WERTHEIMER: Yeah, that's page 34.
 12 MR. ELLSWORTH: Thank you.
 13 MR. WERTHEIMER: Sure.
 14 BY MR. WERTHEIMER:
 15 Q. Do you recall who from Jones Day was presenting this
 16 part of the pitch? And, again, I'm assuming it was
 17 actually presented to you. This isn't just a
 18 writing that they handed out.
 19 A. That's correct.
 20 Q. Okay. Go ahead, then.
 21 A. I believe it was Bruce Bennett.
 22 Q. Did Mr. Orr make any part of the presentation?
 23 A. He did.
 24 Q. What part did he make?
 25 A. His was predominantly a presentation around his

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1 background, credentials, experience, and his ties to
 2 Michigan.
 3 Q. Not as to any of the specific parts unless there's
 4 some reference to Orr and his background in this
 5 document?
 6 A. That's correct.
 7 Q. Okay. Now, I think if you take a look at page 43, I
 8 think that's what counsel showed you before, you'll
 9 see the bottom line literally on page 43 reads
 10 "Chapter 9 could be used or threatened..." -- I'm
 11 sorry, let me let you get there.
 12 A. Okay.
 13 Q. Take a look at the bottom line. "Chapter 9 could be
 14 used or threatened as a means to accomplish a
 15 compromise of benefit cost rejecting or compromising
 16 claims." Do you see that?
 17 A. I do see it.
 18 Q. Do you recall the presentation including that point?
 19 A. I do not recall that specific point, and I note that
 20 these are speaker notes which may or may not have
 21 been articulated.
 22 Q. Well, that's one of the reasons I'm asking.
 23 A. Because this is the first time I've seen -- I don't
 24 have a version --
 25 Q. In this form. I understand.

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1 A. -- like this.
 2 Q. I understand. And I think you were -- I had
 3 misspoke before. You were not shown that page by
 4 previous counsel.
 5 You were shown I think if you turn to page
 6 41 the question referenced it. Again, the bottom
 7 line, "If needed, Chapter 9 could be used as a means
 8 to further cut back or compromise accrued financial
 9 benefits otherwise protected under the Michigan
 10 Constitution."
 11 Do you recall that point even in a general
 12 way being made in the presentation?
 13 A. This was back in January.
 14 Q. Right.
 15 A. And I don't recall the specific point, but every one
 16 of those firms would have discussed all of the
 17 various approaches, strategies, options and whatever
 18 their background and experience had them -- had
 19 taught them from other municipal situations.
 20 So generally, it could have been made, but
 21 I don't recall it.
 22 Q. All right. Do you recall that by the time all those
 23 pitches were made that you were of the understanding
 24 that the lawyers, whether Jones Day or one of the
 25 other firms, were of the view that Chapter 9 could

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1 be used as a means to cut back these Michigan --
 2 these benefits that are otherwise covered by this
 3 Michigan constitutional provision?
 4 A. No, I am not. Not explicitly.
 5 I do recall discussions around Chapter 9
 6 but not as it pertains specifically to any Michigan
 7 Constitution article.
 8 Q. Do you recall -- and I think the time frame is May,
 9 I could find it somewhere, but Kevyn Orr was already
 10 emergency manager, he was interviewed by the Detroit
 11 Free Press and rather publicly, and in a way that
 12 ended up getting spread around publicity wise,
 13 talked about the fact that in a Chapter 9 filing the
 14 pension rights of retirees could be trumped, was the
 15 word he used, by federal law.
 16 Do you recall generally the Emergency
 17 Manager making that point at around that point in
 18 time?
 19 A. I've made it a practice to not read the Detroit
 20 newspapers these days.
 21 Q. All right. I'll accept that. Do you recall that at
 22 least by that point in time you knew that, in fact,
 23 that Orr was taking that position; that is, that he
 24 was using Chapter 9 -- I don't want to use
 25 pejorative terms --

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1 A. No.
 2 Q. -- but that he was using the possibility of a
 3 Chapter 9 as a way to try and convince people to sit
 4 down and talk with him --
 5 A. What I --
 6 Q. -- particularly retirees?
 7 A. Right.
 8 Q. Go ahead.
 9 MR. ELLSWORTH: Just let him get his
 10 question out before you answer.
 11 THE WITNESS: Yeah. No, no, I got it.
 12 You'll have to ask Kevyn Orr, but were I he, I would
 13 use every possible means to get people to the table
 14 before petitioning The Court, and I believe he was
 15 doing exactly that.
 16 BY MR. WERTHEIMER:
 17 Q. Okay, fair enough.
 18 At the point he filed bankruptcy, do you
 19 have an understanding as to whether there was any
 20 way that the City could deal with the problem of
 21 pensions without going into bankruptcy?
 22 A. Repeat the question.
 23 Q. As of let's say the time the bankruptcy was filed,
 24 as of that time, did you have an understanding that
 25 bankruptcy was going to be the only way that the

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1 City could deal with its pension problem without
 2 asking for State assistance, State assistance that
 3 you knew you'd have -- that the Governor would have
 4 difficulty getting?
 5 A. I had not contemplated it in terms of the City's
 6 pension problem. I have contemplated it in terms of
 7 \$18 billion in liability and bondings that couldn't
 8 be paid and debt service that it was becoming clear
 9 to me that in the absence of any negotiated
 10 agreements with any of the major constituencies that
 11 bankruptcy was becoming more and more evident with
 12 each passing month.
 13 Q. You had mentioned that you had a -- when I say you
 14 mentioned, you testified in response to earlier
 15 counsel's questions that you do recall having one
 16 conversation with Orr about the issue of this
 17 state constitutional provision that protects
 18 pensions.
 19 Do you recall that?
 20 A. I do.
 21 Q. Okay. Can you put a time frame on that at all?
 22 A. It was back during the early interaction with Kevyn.
 23 I had gotten in the habit of carrying a small
 24 Constitution with me because I was referring to it
 25 on a regular basis across many things, and so I knew

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1 the article was there and I said to Kevyn, are you
 2 aware of this? He said we're aware.
 3 Q. He didn't go beyond that at all. He didn't suggest
 4 in any way, shape or form how he intended to deal
 5 with it?
 6 A. No, not to me.
 7 Q. Okay. And do you have a memory as to what triggered
 8 you to talk to him about it at that point in time
 9 other than that you had the Constitution in your
 10 pocket?
 11 A. No, sir, other than -- you asked about the trigger.
 12 During the recruitment process, we covered
 13 a lot of ground, and that ground included all the
 14 reasons you should do this and all the reasons you
 15 shouldn't do it. And it was a discussion that took
 16 place over a few weeks, and I don't recall any
 17 specific trigger other than an old T square saying
 18 here are the pros and the cons and the things you
 19 ought to be thinking about it.
 20 Q. All right. It's part of you giving him information?
 21 A. Yes, that's fair.
 22 Q. That you are hoping will be helpful to him?
 23 A. That would be a fair characterization.
 24 MR. WERTHEIMER: Okay. All right. I have
 25 nothing further. Thank you.

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1 EXAMINATION
 2 BY MR. SHERWOOD:
 3 Q. Good afternoon, Mr. Baird. I'm Jack Sherwood from
 4 Lowenstein Sandler, and we represent AFSCME in the
 5 City's bankruptcy. I have a few questions. I'll
 6 try not to go over ground that's already been
 7 covered.
 8 Let me just go back to your engagement by
 9 the Governor. In reviewing your testimony from the
 10 prior case, did that start in January 2011?
 11 A. It did.
 12 Q. And I think you also testified that the EM selection
 13 process began in October or November 2012; is that
 14 right?
 15 A. I would not characterize it as a selection process,
 16 but I would characterize it as I began thinking
 17 about planning for the future in a substantive way
 18 about that time.
 19 Q. And I think you said that you were looking for
 20 sources and candidates. Does that sound right?
 21 A. Yes. I would through my own network or the network
 22 of people that I knew and trusted, I would look for
 23 individuals that had characteristics, and then I
 24 would talk to them about either their potential for
 25 a role like this or whether they knew of

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1 individuals.
 2 So that's what I meant by sources or
 3 candidates.
 4 Q. Right. So a source is someone who isn't necessarily
 5 a candidate but might refer someone, a candidate, to
 6 you, correct?
 7 A. They could be both.
 8 Q. Okay. Was Jones Day or anyone from Jones Day a
 9 source that you contacted?
 10 A. Prior to meeting Steve Brogan, no.
 11 Q. And when did you meet Steve Brogan?
 12 A. January 29th, it appears.
 13 Q. So prior to that, no sources from Jones Day. How
 14 about Miller Buckfire source?
 15 A. Yes. Ken Buckfire was a source.
 16 Q. I want to talk a little bit about NERD. We'll use
 17 that acronym again. They pay your bills, correct?
 18 A. They pay my fees, yes.
 19 Q. And that's been the case since January of 2011?
 20 A. Correct.
 21 Q. Can you just give me a little more detail on how
 22 that came about?
 23 A. Do you have specific questions, because I've
 24 testified already.
 25 Q. I -- yeah. I'd like to know how it came about.

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1 A. Okay. My original agreement with Governor Snyder
 2 was once we pulled the cabinet and his direct
 3 reports together after he was elected during the
 4 transition period that I would be returning to my
 5 home at that time in Illinois.
 6 On the first day after his inauguration,
 7 the first working day, he asked me if I would
 8 consider staying on for a year, and I said I would.
 9 And he said -- I said but I don't make for a very
 10 good bureaucrat or government employee, and he said
 11 if you would make me -- if you would make, you know,
 12 the team your exclusive client, how much would it
 13 cost? And I gave him a very cut rate amount, and he
 14 said we could cover that out of this fund to further
 15 good government at non-taxpayer expense.
 16 Q. And would you describe the fund as a lobbyist fund?
 17 A. A lobbyist?
 18 Q. Yeah.
 19 A. What would a lobbyist fund be?
 20 Q. I don't know. I guess you're --
 21 A. If you tell me what a lobbyist fund is, I'll tell
 22 you if I think it's a lobbyist fund.
 23 Q. Well, is --
 24 MR. WERTHEIMER: It's not good.
 25 BY MR. SHERWOOD:

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1 Q. Would you describe the New Energy to Reinvent and,
 2 what is it, Diversify?
 3 A. Yes.
 4 Q. Would you describe that as an entity that engages in
 5 lobbying?
 6 A. No.
 7 Q. And do you know who manages NERD?
 8 A. No.
 9 Q. And you don't know who is on the board? You don't
 10 know who the officers, directors are --
 11 A. No.
 12 Q. -- or trustees?
 13 A. Nope.
 14 Q. You just know the name of the person who signs your
 15 check; is that right?
 16 A. I do. I know who I submit the invoice to and I know
 17 who signs the check. Outside of that, I don't know
 18 anything else.
 19 Q. You don't know who any of their backers are?
 20 A. Don't know a single donor.
 21 Q. Okay. The January 29th meeting -- a couple more
 22 questions -- was Mr. Buckfire there?
 23 A. He was.
 24 Q. And what role did he play in organizing the meeting?
 25 A. Ken advised Andy, Chris Andrews and Jack Martin, the

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1 City's CFO at the time, on considerations and
 2 capabilities of firms that specialized in
 3 restructuring.
 4 And so he identified the firms that he
 5 thought had significant expertise in the areas that
 6 would be of greatest interest to the City, and he
 7 said these are the firms that we should bring in to
 8 help you understand how to construct a request for
 9 proposal to a broader variety of firms.
 10 Q. Did he devise some type of scoring system for the
 11 firms at that meeting?
 12 A. Not that I saw, no.
 13 Q. How about afterwards?
 14 A. No. I'm trying to recall, and I don't think I ever
 15 saw any sort of a scoring mechanism for any of these
 16 firms.
 17 Q. Did you have any role in the selection of Jones Day
 18 as the City's counsel?
 19 A. I did not.
 20 Q. Did you express any preference to the City as to who
 21 should be retained as counsel?
 22 A. I believe Jack Martin asked my opinion from what I
 23 thought at that meeting and from my prior experience
 24 with firms when I was with Price Waterhouse Coopers,
 25 and I believe that I gave him my opinion at the

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1 time.

2 And my opinion was that I didn't think he

3 would go wrong with several of the firms, but that I

4 thought Jones Day by and large had more of the fire

5 power in the various areas that the firm -- that the

6 City was looking for than the others did.

7 Q. During the Jones Day presentation -- hold it. Let

8 me step back.

9 I think you said something like one of the

10 reasons you chose Jones Day was that they have --

11 they'd do a better job of keeping Detroit out of

12 bankruptcy.

13 Do you remember testifying to that?

14 A. No, I don't believe I testified to that. I do

15 recall what I intended to say if that wasn't it.

16 Q. What did you intend to say? Did you think Jones Day

17 had offered the City a better chance to stay out of

18 Chapter 9?

19 A. I don't know that Jones Day as a firm had -- I don't

20 have an opinion whether Jones Day as a firm is --

21 would help the City stay out of Chapter 9 or not.

22 It was my contention that in the

23 recommendation of Kevyn Orr as a great candidate for

24 the emergency manager, that his background and

25 experience would serve as a significant reminder to

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1 folks that they should negotiate in good faith to

2 stay out of the courts because here is a man who

3 understood exactly how to navigate the courts.

4 Q. But isn't it true that Mr. Orr and Jones Day were of

5 the view at all times that it would be extremely

6 difficult to keep the City of Detroit out of

7 Chapter 9?

8 MR. ELLSWORTH: I object to foundation.

9 THE WITNESS: I don't know that.

10 BY MR. SHERWOOD:

11 Q. Can you look at page 13 of the presentation.

12 A. Uh-huh.

13 Q. And if you look at the end of it, basically you'd

14 agree that this slide talks about out-of-court

15 solutions being preferred, but the conclusion at the

16 end is that they are extremely difficult to achieve

17 in practice. Do you see that?

18 A. I do see it.

19 Q. Did anyone from Jones Day convey this message to the

20 group at the meeting on January 29th?

21 A. I don't recall explicitly, no.

22 Q. And if you look at the next page, page 14, you know

23 even for the speaker notes it says an out-of-court

24 solution requires consensus or near consensus of

25 affected constituencies. This is extremely hard to

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1 achieve in practice.

2 Do you recall as part of the oral

3 presentation someone from Jones Day saying that the

4 idea that the City of Detroit is going to avoid

5 Chapter 9 is pretty farfetched?

6 A. I don't recall anyone saying that the idea was

7 farfetched.

8 Q. Well, do you recall them using words like that?

9 A. No, I don't.

10 Q. You don't recall words like extremely difficult, as

11 it says on the slide?

12 A. Well, I don't recall those words, but I wouldn't

13 dispute them.

14 Q. Do you recall words like -- do you recall Mr. Orr

15 having conversations with you wherein he suggested

16 that it would be extremely difficult to achieve an

17 out-of-court solution to Detroit's fiscal problems?

18 MR. ELLSWORTH: Objection to the extent

19 that it would disclose lawyer-client conversations.

20 BY MR. SHERWOOD:

21 Q. Do you recall any such conversations outside the

22 presence of counsel?

23 A. Again, which conversations? That achieving success

24 out of court is difficult?

25 Q. Right.

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1 A. Yes, I do recall those conversations.

2 Q. Do you recall those conversations with Mr. Orr

3 outside of the presence of counsel, correct?

4 A. No, not with Mr. Orr.

5 Q. With who?

6 A. With the principals at McKenna Long.

7 Q. Is that a law firm?

8 A. Yes.

9 Q. And who do they represent?

10 A. We asked them for -- I guess when I say we, Andy

11 Dillon asked them for their best rationale on how to

12 keep us out of the courts and what the implications,

13 you know, of going into the courts were, to educate

14 the team on our resolve to stay out of the courts.

15 MR. ELLSWORTH: Excuse me. Was that

16 another presenter, just to clarify this.

17 BY MR. SHERWOOD:

18 Q. Was McKenna Long making a presentation?

19 A. They were one of the firms in presence at this

20 meeting.

21 Q. Did they have that conversation with you at that

22 meeting or is that something that occurred before or

23 after that meeting?

24 A. It occurred before.

25 Q. How long before?

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1 A. I don't recall.
 2 Q. And at the time, McKenna Long wasn't retained by the
 3 City as its counsel?
 4 A. No, they weren't retained by anyone.
 5 Q. Okay. What was their view on the prospects for
 6 keeping the City of Detroit out of Chapter 9, if you
 7 remember?
 8 A. I don't think they opined on the prospects.
 9 Q. What did they opine on?
 10 A. They opined on all of the benefits associated with
 11 staying out. They were part of the education
 12 process for why you should stay out of the courts.
 13 Q. And but just to be clear, did they opine on the --
 14 on the likelihood that Detroit would be able to stay
 15 out of bankruptcy and still resolve its financial
 16 issues in sort of an out-of-court restructuring?
 17 A. No.
 18 Q. They never opined on that?
 19 A. No.
 20 Q. Getting back to Jones Day, did you recall them
 21 making a presentation at the January 28th meeting
 22 where they stressed the importance of making a
 23 record of good faith negotiations?
 24 A. It was the 29th, now that I've been educated.
 25 Q. Okay. I'm sorry. The 29th meeting.

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1 Did they -- at that meeting did they stress
 2 the importance of making a record of negotiations
 3 with creditors?
 4 A. Did Jones Day stress the importance of making a
 5 record of negotiations?
 6 Q. Right.
 7 A. I don't recall that explicitly.
 8 Q. Now, if we can look at B-5 -- I call it Baird 5.
 9 Can you get that one, sir? I'm really not asking
 10 about this document, but it's February of 2013, and
 11 the email from you to Kevyn Orr on February 20th
 12 talks about brokering a meeting between Mr. Orr and
 13 the Mayor.
 14 Was it important from your perspective to
 15 broker peace between the Mayor and Mr. Orr?
 16 A. It was my belief that a good working relationship
 17 between the two of them would be in the best
 18 interest of the City.
 19 Q. What about the City Council? Did you have the same
 20 view towards the relationship between Mr. Orr and
 21 the City Council for the City of Detroit?
 22 A. If your question is do I believe that a good
 23 relationship between Kevyn Orr and the City Council
 24 would be in the City's best interest, the answer
 25 would be yes.

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1 Q. I guess the question is given that, right, did you
 2 try to broker some type of meeting between Mr. Orr
 3 and the City Council?
 4 A. No.
 5 Q. Why not?
 6 A. Because I did not think that it was possible.
 7 Q. There were members of the City Council that
 8 supported Mr. Orr; were there not?
 9 A. I don't know.
 10 Q. And I know that certain members of the City Council
 11 were very vocal against him or any other emergency
 12 manager; is that right?
 13 A. I read the papers, and there were arguments against
 14 it that came from members of Council that I recall,
 15 yes.
 16 Q. Ultimately, were you able to broker a working
 17 relationship between Mr. Orr and the Mayor?
 18 A. You'd have to ask Mr. Orr and the Mayor.
 19 Q. From your perspective, do you think --
 20 A. I can't opine. I testified that Kevyn Orr thought
 21 it important to meet the Mayor and to determine if
 22 they could work together if he were to accept the
 23 Governor's recommendation. The Mayor indicated the
 24 same about Kevyn Orr.
 25 We did the best to articulate a framework

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1 under which that working relationship could exist,
 2 and you'll have to talk to those two men as to how
 3 successful that arrangement turned out to be.
 4 Q. Now, in February of 2013, I guess we'll use B-5 just
 5 for time purposes. I think you testified that there
 6 was one other candidate that still was sort of in
 7 the running at that point in time?
 8 A. There was a candidate that we had agreed -- we
 9 meaning the Governor and his Chief of Staff and
 10 Treasurer, that we had agreed had the requisite
 11 capabilities and had indicated a willingness to do
 12 the job, but we wished to continue the vetting of
 13 Kevyn to determine whether he would be a better
 14 candidate.
 15 Q. Had you determined at this point that Mr. Orr was
 16 the top candidate February 2013?
 17 A. I don't -- I believe I was still doing due diligence
 18 at this particular time, I think, but I was
 19 cautiously optimistic that Kevyn might be the better
 20 candidate.
 21 Q. And at this time, again, February 20th, 2013, do you
 22 know whether the Governor shared that view?
 23 A. I don't recall on the timetable if that were the
 24 case or not.
 25 Q. What about Mr. Dillon?

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1 A. I think Mr. Dillon, you'd have to ask him as to
2 whether he thought Kevyn was the better of the two
3 candidates.
4 Q. Did Mr. Dillon express to you who he thought was the
5 better of the two candidates?
6 A. At some point after Kevyn had indicated that he
7 could work his way clear of a withdrawal from his
8 firm and that if nominated by the Governor he would
9 be in a position to accept an appointment by the
10 ELB, yes, I think Andy indicated to me at that time
11 that he thought Kevyn was the better of the two
12 candidates.
13 Q. Now, was the other candidate an attorney?
14 A. No.
15 Q. Was the other candidate a man or a woman?
16 A. A man.
17 Q. Was the other candidate local?
18 A. Define local.
19 Q. A Detroit resident?
20 A. No.
21 Q. A surrounding area of Detroit resident?
22 A. I don't -- I won't dance here. I'll tell you he
23 was -- his residence was south but he had been a
24 Detroit resident.
25 Q. Did the person have restructuring experience?

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1 A. He did.
2 MR. WERTHEIMER: I'm sorry, did you say he
3 was a Detroit resident?
4 THE WITNESS: He had been a Detroit
5 resident, but he was not at the time that I had
6 discussed with him.
7 MR. WERTHEIMER: I just missed it. Thank
8 you.
9 BY MR. SHERWOOD:
10 Q. I'd like to ask you to look again at Exhibits 7 and
11 8. If you could get those and look at 7 first.
12 You got this email, Exhibit 7; is that
13 correct?
14 A. Yeah, I'm looking at 7.
15 Q. I'm looking at the second paragraph and it appears
16 that Mr. Dillon is reporting to the Governor and
17 others including yourself when he says he "...met
18 with the consultants to get briefed on the pension
19 issue this afternoon", which consultant -- do you
20 know what consultants he's referring to?
21 A. No. I testified earlier that there are weekly
22 consultant meetings, and I gave you the names of who
23 were on those calls but I don't recall who he
24 specifically is referring to here.
25 Q. Do you know if they were the consultants for the

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1 City or some other consultants?
2 A. I don't.
3 Q. And he concluded that the situation was not good and
4 that current pensions had to be cut significantly,
5 correct?
6 A. Well, I mean, I'm reading this. It says "Bottom
7 line the situation's not good and the view of the
8 consultants is that current pensions have to be cut
9 significantly." I don't know which consultants he's
10 referring to.
11 Q. Okay. So if you look at -- so at least at some
12 point as of this date certain consultants were
13 telling Mr. Dillon and Governor Snyder that the
14 pensions had to be cut significantly.
15 Can we agree on that?
16 A. I can agree that I'm reading the same line that
17 you're reading.
18 Q. Okay. Let's look at B --
19 MR. ELLSWORTH: Were you finished with your
20 answer, Rich?
21 THE WITNESS: Yes.
22 MR. SHERWOOD: I'm sorry.
23 BY MR. SHERWOOD:
24 Q. Let's look at the next, Exhibit 8. And this exhibit
25 also deals with the issue of pension liability.

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1 Would you agree?
2 A. It would appear so.
3 Q. And in this email Mr. Dillon reports that in
4 Mr. Orr's discussion with the pension, he is not
5 going to translate the underfunded amount into an
6 impact on retirees or employees vested rights.
7 Do you see that?
8 A. I do.
9 Q. When you read this email on July 9th, the day after
10 you got Exhibit 7, did you ask Mr. Dillon or the
11 Governor why Mr. Orr is refusing to send a message
12 on the underfunding amount to the representatives of
13 the pensions?
14 A. I don't recall asking that question, no.
15 Q. Did it appear to you that Mr. Orr was not being
16 candid with the pensions by not reporting the fact
17 that they had to be cut significantly?
18 A. I'm sorry, say that again.
19 Q. Did it occur to you that Mr. Orr might not be being
20 candid with the pensions by not reporting to them
21 the fact that the pensions had to be cut
22 significantly?
23 A. That would be pure speculation on my part.
24 Q. But this situation didn't cause you to make any
25 recommendations to Mr. Dillon or the Governor or

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1 Mr. Orr; is that your testimony?
 2 A. Yes. I get copied on a lot of emails but I've
 3 testified that pension liability, pension models are
 4 frankly outside of my wheelhouse, and that's not my
 5 area of focus in consulting to the Governor or his
 6 team.
 7 Q. You testified that one of the things you did in the
 8 pensions is look at the practical impact on the
 9 people losing their pensions.
 10 Do you remember that testimony?
 11 A. I testified that I was -- it was desirable for me to
 12 see what that impact was but that I never received
 13 the data to actually understand the impact.
 14 Q. And but you said you talked to the Governor about
 15 that and I think Mr. Orr and Mr. Dillon and they all
 16 said that that was a good question.
 17 Do you recall that testimony?
 18 A. I don't recall talking to the Governor about that.
 19 I recall talking to Mr. Orr about that. And I
 20 recall saying to Andy that I had that conversation
 21 with Mr. Orr.
 22 Q. And is it -- am I right -- or tell me why you
 23 thought that was important.
 24 A. I'm a curious guy. I don't know what to tell you.
 25 I thought it was important because I did not

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1 understand -- this would be the third time I've
 2 testified to this. I did not understand what the
 3 distribution of those 20,000 pensioners was and what
 4 it meant in real dollars and real lives, and that
 5 was a question that I wanted to know the answer to,
 6 and so I was looking for the data set to ascertain
 7 that.
 8 Q. And the pensioners whose benefits are being cut, you
 9 understand, do you not, that they don't have a
 10 safety net like people in private industry do?
 11 MR. ELLSWORTH: Objection as to the form.
 12 Go ahead and answer, Rich.
 13 THE WITNESS: Which pensioners are being
 14 cut?
 15 BY MR. SHERWOOD:
 16 Q. Well, to the extent pensioners are being cut, they
 17 don't have a safety net like the PBGC, right?
 18 A. Well, I know that they don't have a PBGC; that's
 19 correct.
 20 Q. Are you aware of any other safety net that they
 21 might have?
 22 A. I'm only aware of safety nets that exist for all
 23 citizens once they get below a certain poverty line.
 24 Q. But they don't relate to their pension, do they?
 25 A. I believe that certain benefits are contingent upon

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1 what your income is, and whether that income comes
 2 from a pension or some other form it's your income.
 3 Q. So you're suggesting that these other government
 4 programs act as a safety net in lieu of the PBGC for
 5 lost pension benefits?
 6 A. No, I think you're suggesting that.
 7 Q. I'm just trying to understand what you're saying.
 8 I'm not trying to argue with you. I'm just trying
 9 to --
 10 A. What question is it you would like me to answer?
 11 Q. I'd like to know why -- whether you consider the
 12 fact -- in your investigation of the practical
 13 impact on people, were you doing that investigation
 14 out of concern for the people who were losing or
 15 stood to lose their pensions because they didn't
 16 have a safety net? That's what I want to know.
 17 A. Okay. I am not aware of what safety net does or
 18 doesn't exist for them currently. I was interested
 19 in what the practical implications of material
 20 savings would be against the distribution of those
 21 receiving pensions.
 22 And it was the answer to that question that
 23 led me to ask another question which is whether or
 24 not there might be an appetite for legislative
 25 remedy in the absence of safety net.

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1 Is that sufficiently clear?
 2 Q. Let me read it. And in terms of appetite for
 3 legislative remedy, your prior testimony was that
 4 your understanding was that that appetite was very
 5 low and that's why the inquiries kind of stopped
 6 there?
 7 A. My understanding is that the appetite for a large
 8 scale appropriation to Detroit was pretty low.
 9 I didn't have an opinion about whether or
 10 not there was an appetite for incremental safety net
 11 for impacted pensioners were they to be impacted. I
 12 was simply asking the question.
 13 Q. The June 14th meeting, you were at the meeting and I
 14 think you testified something like that you
 15 indicated that you thought Mr. Orr did a good job
 16 presenting the June 14th proposal.
 17 Do you remember that topic?
 18 A. Yes, I do.
 19 Q. Do you know whether at that meeting Mr. Orr or
 20 anyone on behalf of the City of Detroit requested
 21 that the parties there provide counterproposals to
 22 the proposal that was being made on June 14th?
 23 A. I don't recall the term counterproposal, but I do
 24 recall an invitation being put out to the group that
 25 says once you've digested this financial information

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1 and you understand the wherewithal what exists, to
 2 the extent that you want to sit down and negotiate
 3 in good faith now is not the time to do that, but
 4 there will be that time and here's the information
 5 that you need in order to interact intelligibly.
 6 I do recall that.
 7 Q. And that meeting was approximately a month before
 8 the bankruptcy filing.
 9 Were there follow-up -- were you present at
 10 any follow-up meetings after the June 14th meeting?
 11 A. With creditors?
 12 Q. Right.
 13 A. No.
 14 Q. Did anyone report to you on the status of follow-up
 15 meetings with creditors that occurred after the
 16 June 14th meeting?
 17 A. With counsel, yes.
 18 Q. What about without counsel?
 19 A. Not that I recall.
 20 Q. And what was said?
 21 MR. ELLSWORTH: Well, I -- I object to the
 22 extent that would call for disclosure of
 23 lawyer-client conversations.
 24 I think Mr. Baird said that the
 25 conversations that he had were with counsel present.

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1 He can clarify if I heard that wrong.
 2 THE WITNESS: No, that's correct. Counsel
 3 was present.
 4 BY MR. SHERWOOD:
 5 Q. But counsel was -- was counsel reporting back on how
 6 the negotiations were going with the creditor
 7 groups?
 8 A. No.
 9 Q. Who was making that report?
 10 A. Kevyn Orr.
 11 Q. What did he say?
 12 MR. ELLSWORTH: Well, I object again. If
 13 counsel was present during that discussion then
 14 that's subject to the attorney-client privilege and
 15 I object.
 16 MR. SHERWOOD: Are you instructing him not
 17 to answer --
 18 MR. ELLSWORTH: Yes.
 19 MR. SHERWOOD: -- a conversation between
 20 Mr. Orr and him --
 21 MR. ELLSWORTH: If it was a one-on-one
 22 conversation.
 23 MR. SHERWOOD: -- reporting on what
 24 happened at negotiations with creditors? I just
 25 want to make sure.

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1 MR. ELLSWORTH: It was --
 2 THE WITNESS: This was not a one-on-one.
 3 MR. ELLSWORTH: Was counsel present?
 4 THE WITNESS: Yes.
 5 MR. ELLSWORTH: I object, and I'm
 6 instructing him not to answer.
 7 BY MR. SHERWOOD:
 8 Q. Were you involved in any negotiations or did anyone
 9 report to you on negotiations with the bondholder
 10 creditors of the City of Detroit?
 11 MR. ELLSWORTH: Again, to the extent that
 12 would require a disclosure of lawyer-client
 13 privileged conversations, I object.
 14 MR. SHERWOOD: I just want a yes or no. I
 15 mean, I don't want the content.
 16 MR. ELLSWORTH: That's fine.
 17 THE WITNESS: Updates of those discussions
 18 were provided with counsel present.
 19 BY MR. SHERWOOD:
 20 Q. And none of that happened outside the presence of
 21 counsel?
 22 A. No.
 23 Q. During your discussions with Mr. Orr prior to his
 24 appointment, did he ever say to you that the
 25 appointment of an emergency manager and the filing

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1 of a Chapter 9 provides political cover for the
 2 Governor and/or the Mayor in regard to the process
 3 of making the tough decisions that face the City of
 4 Detroit in the context of the restructuring?
 5 A. He never said that to me.
 6 Q. Did anyone ever say that in your presence?
 7 A. Say it, no.
 8 Q. Write it?
 9 A. I saw an email where it was written, so I know that
 10 somebody said it.
 11 Q. Okay. I think I might have a copy of that email.
 12 Maybe I'll show it to you. Let's look at this one.
 13
 14 (Deposition Exhibit 10 was marked.)
 15
 16 BY MR. SHERWOOD:
 17 Q. We've marked this as Baird 10. You haven't seen it
 18 yet though, huh?
 19 A. Okay. Is this one where I need to start at the
 20 bottom and read it through? This doesn't look like
 21 any that I've ever seen before.
 22 Q. Yeah, it's really just two pages. If you start on
 23 the second page -- actually, you are referred to in
 24 this, so why don't we take a second to go through
 25 this and start with the --

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1 MR. ELLSWORTH: Rich, do you need a chance
2 to read it?
3 THE WITNESS: Yeah, I need to read this.
4 BY MR. SHERWOOD:
5 Q. Okay. Tell me when you're done.
6 A. Okay, I've completed reading it.
7 Q. Let's start with the email on page 301, which is the
8 second page. And Corinne Ball is talking to Kevyn,
9 and she talks about the Bloomberg Foundation and
10 whether we should talk to you, Mr. Baird, about
11 financial support for the project and the EM. And
12 then she refers to Harry Wilson from the Auto Task
13 Force told me about the Foundation and its interest.
14 I can ask Harry for contact info. This kind of
15 support in ways nationalizes the issue and the
16 project. Do you see that?
17 A. I do.
18 Q. Do you know whether the Bloomberg Foundation and
19 Harry Wilson, whether they were ever brought to your
20 attention by anyone at Jones Day?
21 A. They were not.
22 Q. So this is the first you're hearing of this?
23 A. No. I've seen not this entire string of email, but
24 I have seen -- from some emails that were provided
25 in discovery to me, I've seen this, the 1-31-13

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1 8:10 a.m., and I have seen all the way up through
2 the 1-31 11:01 a.m. from Kevyn Orr to Dan Moss, but
3 I have not seen this last piece which is from
4 Dan Moss to Kevyn Orr.
5 Q. And by this last piece, you're referring to really
6 the top of the email string, correct?
7 A. The top of the email string, right. The most recent
8 string of this.
9 Q. So as of January 31st, 2013, do you know who
10 Dan Moss is?
11 A. I believe -- I don't know exactly who he is, but I
12 know he's a colleague of Kevyn Orr's at Jones Day.
13 That's all I know. I've heard the name.
14 Q. As of January 31st, 2013, did Mr. Orr suggest to you
15 that Chapter 9 would be the best solution for the
16 City of Detroit for political reasons?
17 A. No, he did not.
18 Q. Did he suggest to you that Chapter 9 would not be an
19 alternative as of January 31st, 2013?
20 A. I don't believe he placed any priority of any sort
21 on Chapter 9 to me in any conversation or
22 communication.
23 Q. During the course of your discussions with Mr. Orr,
24 did he emphasize the need to have the unqualified
25 support from the Governor during the -- during his

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1 tenure as emergency manager?
2 A. I'm not sure I would use the term unqualified
3 support, but I certainly would testify that he
4 believed that support from the Governor for the
5 undertaking at hand was going to be an important
6 consideration.
7 Q. Did he say why that was important?
8 A. Yes, he did. That he recognized that this was going
9 to be a thankless job, a job where he would probably
10 be vilified and called a traitor to his race and to
11 his Democrat background, and that it would require a
12 great deal of resolve to overcome the difficulties
13 of the past decades that have gotten Detroit to
14 where it is today.
15 Q. Did he also seek the support of the Financial
16 Advisory Board?
17 A. At the -- well, yes, but not during the recruitment
18 process.
19 Q. When did he make the request that the Financial
20 Advisory Board should provide him with support and
21 oversight?
22 A. You'd have to --
23 Q. If he ever did.
24 A. Well, I have heard from members of the Financial
25 Advisory Board that he has made those overtures, but

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1 you'd have to ask him as to when and context.
2 Q. But he never had any discussions with you about
3 whether it would be beneficial to get support from
4 the Financial Advisory Board and how he was going to
5 go about that?
6 A. In general, Counselor, I think he -- we had a lot of
7 discussions about he was going to need all the
8 support he could get from every corner he could get
9 it from including the FAB and City Council.
10 Q. All right. Can I have one second? I think I'm done
11 but I don't want to close the record until I'm sure.
12 I just need one second.
13 (A pause was had in the proceedings)
14 MR. SHERWOOD: All right. I think that's
15 all. Thank you. I appreciate it.
16 THE WITNESS: Okay. Thank you.
17 MR. ELLSWORTH: Anybody else?
18 VIDEO TECHNICIAN: Deposition's concluded
19 at 4:49 p.m.
20 (Deposition concluded at 4:49 p.m.)
21 - - -
22
23
24
25

1 CERTIFICATE
 2 STATE OF MICHIGAN)
 3 COUNTY OF OAKLAND) SS:
 4

5 I, LAUREL A. JACOBY, Certified Shorthand
 6 reporter, a Notary Public, hereby certify that I recorded
 7 in shorthand the examination of RICHARD BAIRD, the
 8 deponent in the foregoing deposition; and that prior to
 9 the taking of said deposition the deponent was first duly
 10 sworn, and that the foregoing is a true, correct and
 11 complete transcript of the testimony of said deponent.

12 I further certify that no request was made for
 13 submission of the transcript to the deponent for reading
 14 and signature and that no such submission was made.

15 I also certify that I am not a relative or
 16 employee of a party or an attorney for a party; or
 17 financially interested in the action.

18
19

20 LAUREL A. JACOBY, CSR-5059, RPR

21 Notary Public, Oakland County, Michigan

22 My commission expires: 9/1/18

23 Dated: This 13th day of October, 2013.

24
25

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EXHIBIT B

In Re: City of Detroit, Debtor

*Treasurer Andrew Dillon
October 10, 2013*

*Moretti Group
471 W. South Street
Suite 41B
Kalamazoo, MI 49007
800-536-0804*



Original File 101013AD.TXT

Min-U-Script® with Word Index

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EXHIBIT NO.	DESCRIPTION	PAGE NO.
1	E X H I B I T I N D E X	
2	Exhibit 6	March 1-2, 2012 email chain
3		Subject: Consent Agreement
4		(Bates Nos. DTMI 00234878-870)
5	112	
6	Exhibit 7	March 3, 2012 email Re: Detroit-
7		Email list for status updates
8		(Bates No. DTMI 00234877)
9	112	
10	Exhibit 8	March 22, 2013 email
11		Subject: Detroit pension info
12		(Bates Nos. SOM 20009920-921)
13	116	
14	Exhibit 9	June 11, 2013 email
15		Subject: Professional fees
16		(Bates Nos. DTMI 00234907-08)
17	118	
18	(Exhibits attached to transcript.)	
19	- - -	
20		
21		
22		
23		
24		
25		

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1 purposes of the record we're marking this as
2 Governor's Exhibit 11. It is the email that was
3 discussed and is now being produced that was the
4 transmission of the July 18th letter from the
5 Governor's office to Kevyn Orr at 3:47 p.m.
6 And I would also note on the record that
7 the 7-18 letter was attached to the filing that was
8 made with the petition. I believe the time stamp
9 for The Court was 4:06 p.m. for that as well.
10 - - -
11 VIDEO TECHNICIAN: Today's date is October
12 the 10th, 2013 and we're on the record at 9:20 a.m.
13 This is the video deposition of Treasurer
14 Andrew Dillon. We're at the Treasury Building,
15 430 West Allegan in Lansing, Michigan.
16 Can the Secretary be sworn, please.
17 - - -
18 -TREASURER ANDREW DILLON-
19 called as a witness, being first duly sworn, was
20 examined and testified as follows:
21 EXAMINATION
22 BY MR. SHERWOOD:
23 Q. Treasurer Dillon, good morning. My name is
24 Jack Sherwood from Lowenstein Sandler, and we
25 represent AFSCME in the Detroit bankruptcy case.

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1 October 10, 2013
2 Lansing, Michigan
3 9:17 a.m.
4 - - -
5 MS. NELSON: This is for purposes of the
6 record of the Governor's deposition that was taken
7 on October 9th.
8 There was a request at the conclusion of
9 the Governor's dep for the production of an email
10 which is the transmission email from the Governor's
11 office to Kevyn Orr of what was marked as Governor's
12 Exhibit 2, which was his July 18th, 2013 letter
13 authorizing the filing of the bankruptcy.
14 I have produced this email and provided it
15 to all counsel that are present today and we have
16 agreed to mark it as Governor's Exhibit 11. The
17 email is dated Thursday, July 18th, 2013. It was
18 transmitted at 3:47 p.m., and the subject is high
19 priority, and the attachment which is identified as
20 2013 0718 155044034 dot pdf is identical to the
21 attachment identified in Governor's Exhibit 10 that
22 was marked at the deposition yesterday.
23 And the subject matter I would point out
24 between Governor's Exhibit 11 and Governor's Exhibit
25 10 is also identical, high priority. So for

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1 Thanks for being here today.
2 Have you ever been deposed before?
3 A. I believe so.
4 Q. Okay. On how many occasions?
5 A. A couple probably.
6 Q. Okay. Let me just give you some of the ground rules
7 as a reminder.
8 My questions and your answers will be taken
9 down by the court reporter and videotaped. You're
10 under oath so it's like you're testifying in court.
11 Do you understand that?
12 A. Yes.
13 Q. And to the extent that you can wait for me to ask a
14 full question before answering, that would be good,
15 make it easier for the court reporter.
16 Your attorney might object from time to
17 time, and to the extent that she does, obviously,
18 you'll take your advice from her.
19 If you don't know the answer to a question
20 or you don't understand a question, please let me
21 know, and I'll try to clear it up for you.
22 Do you understand those --
23 A. Yes.
24 Q. -- instructions?
25 Is there any reason why you can't testify

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1 truthfully today?
 2 A. No.
 3 Q. And are you taking any medications or suffering from
 4 any illnesses or under the care of a doctor --
 5 A. No.
 6 Q. -- for any medical condition at this time?
 7 A. No.
 8 Q. Okay. Can you just briefly -- you are the Treasurer
 9 of the State of Michigan; is that right?
 10 A. Yes.
 11 Q. And can you -- how long have you held this post?
 12 A. Since January 1 of '11.
 13 Q. And what did you do before that? Just give me, you
 14 know, your previous work history before that.
 15 A. I served in the Michigan Legislature for six years,
 16 the last four as the Speaker of the House.
 17 Q. And prior to that?
 18 A. I worked for a private equity fund based out of
 19 Chicago.
 20 Q. What was the name of that firm?
 21 A. Wynnchurch Capital.
 22 Q. For how long were you at Wynnchurch?
 23 A. Three years.
 24 Q. And what three years were those? Was it like --
 25 A. '01 to '04.

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1 Q. And what was your position there?
 2 A. I was a managing partner. I found opportunities for
 3 them to buy -- companies to buy.
 4 Q. And did Wynnchurch specialize in any type of
 5 industry or financial products?
 6 A. Middle market companies based in the midwest or
 7 Canada was the focus.
 8 Q. And how long have you known Governor Snyder?
 9 A. I met him for the first time when I was in the
 10 Legislature, and it was just a brief meeting. I
 11 drove to Ann Arbor to meet him because Governor
 12 Granholm at the time had announced the 21st Century
 13 Jobs Fund plan, and I had a private equity
 14 background but not a venture capital background, and
 15 his name came to me as someone who understood
 16 venture capital.
 17 So I asked for a meeting, drove to Ann
 18 Arbor. We met for half hour to an hour, and I
 19 incorporated his thoughts and ideas into the 21st
 20 Century Jobs plan. And I didn't see him after that
 21 until he was running for Governor.
 22 Q. And when was that about?
 23 A. Probably 2010.
 24 Q. Did he appoint you as the Treasurer of the State?
 25 A. Yes.

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1 Q. And how did that come to pass?
 2 A. Got a phone call in the fall of 2010, I believe it
 3 was, and they asked if I would consider the
 4 position. Initially, I respectfully declined
 5 because I was ready to go back to the private
 6 sector. And I reconsidered about two weeks later,
 7 called back and said if you haven't filled it, I'll
 8 do it.
 9 Q. What was it about the job that excited you?
 10 A. I was having lunch with a friend of mine. He just
 11 said, hey, it's a great opportunity, why would you
 12 say no to that.
 13 And even though I had spent six years in
 14 Lansing, I didn't fully appreciate the role of the
 15 Treasurer for the State, and it's a fascinating job
 16 and fascinating time to have it.
 17 Q. When you say a fascinating time, what do you mean?
 18 Is it because of economic challenges facing
 19 Michigan?
 20 A. Local units primarily, yes.
 21 Q. Things like school boards and cities and the like?
 22 A. Right.
 23 Q. Did you have, going into the job, discussions with
 24 Governor Snyder about your view of the financial
 25 situations that existed in the local government

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1 units here in the State of Michigan?
 2 A. I don't recall. There may have been some high-level
 3 discussions in December '10 where we understood that
 4 there could be a lot of troubled cities and school
 5 districts in the cue, so it was on our radar before
 6 we started but nothing about my philosophy, what I
 7 would do in this role.
 8 Q. Okay. So when you say high-level discussions, can
 9 you tell me what you recall specifically about the
 10 high -- or even generally about the high-level
 11 discussions?
 12 A. We understood that we would be inheriting some
 13 financial crises throughout the state and we thought
 14 there was more to come and -- but we never got into,
 15 you know, he didn't grill me about what's my
 16 philosophy and how would I approach, you know, the
 17 challenges that would come our way.
 18 Q. Did you have any relevant experience in your career
 19 as a Legislator or Speaker of the House or in your
 20 private career that you thought you could bring to
 21 bear to address the financial issues facing the
 22 local units of government here in the State?
 23 A. A little bit. I have an accounting and a law
 24 degree, but I had three jobs that translated some
 25 relevance. I'd spent three years with GE Capital.

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1 We tended to -- they were called the lender of last
2 resort, so we financed tough credits typically.
3 From there I went to a bankrupt steel mill
4 and helped the owner try to restart that mill, so
5 that was kind of hands-on operational restructuring.
6 And then a lot of the companies we chased
7 at Wynnchurch would either be growth companies or
8 turnarounds, so I would say there was a nine-year
9 window there where I had some experience in the area
10 of turnarounds.
11 Q. What did you do to prepare for your deposition
12 today?
13 A. About a month ago I had a meeting. A couple of
14 Attorney Generals came to -- we didn't know if this
15 deposition was even going to happen because I don't
16 think the judge had ruled yet. And then last week I
17 had a meeting to prepare, and I think that meeting
18 lasted about two hours.
19 Q. Who was in that meeting?
20 A. My friend here to my right and --
21 MR. SCHNEIDER: Matthew Schneider.
22 THE WITNESS: And we have one other.
23 MS. NELSON: Oh, Mark Donnelly, just to
24 refresh his memory.
25 BY MR. SHERWOOD:

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1 Q. So it was Mark Dowling? Who's he with?
2 MS. NELSON: Mark Donnelly.
3 MR. SHERWOOD: I'm sorry.
4 MS. NELSON: Assistant Attorney General.
5 BY MR. SHERWOOD:
6 Q. Sorry. Who else?
7 A. Just the three and myself.
8 Q. Matthew Schneider is with who?
9 A. The Attorney Generals' office. We had a brief
10 meeting this morning at 8:30.
11 Q. Same crew?
12 A. Just the two this morning.
13 Q. I'd like to start talking a little bit about some of
14 the legislation, the State legislation.
15 Do you know what PA 4 is, correct?
16 A. Yes.
17 Q. And my understanding is that was signed into law in
18 March of 2011; is that right?
19 A. I don't recall the specific date but, generally
20 speaking, I think that's pretty close.
21 Q. And PA 4, the predecessor to PA 4 was a statute that
22 people call PA 72; is that right?
23 A. Right.
24 Q. Can you just generally describe your role in the
25 drafting or passage of either of those statutes?

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1 A. PA 72 is before my time. I believe it was 1990 give
2 or take.
3 PA 4, we started talking about it during
4 the transition period. We understood that PA 72 had
5 some limitations. So there was a few folks during
6 the transition that started looking at what you
7 could do to Public Act 72 to improve it, make it a
8 better tool for the State.
9 So my involvement was on the front end at
10 high level, thematic direction of what would later
11 become --
12 MR. WERTHEIMER: I'm sorry, high level
13 what?
14 THE WITNESS: Thematic. But in terms of
15 specific language or, you know, getting under the
16 hood of the actual words that were being
17 incorporated into the bills, I had very limited if
18 any role.
19 BY MR. SHERWOOD:
20 Q. So is it fair to say that PA 4 was passed at the
21 initiative of Governor Snyder?
22 A. I don't know the mechanics, but I would say -- I
23 mean, we obviously at the administration level were
24 focused on it and we had ideas about it in terms of
25 who -- typically what happens is if the

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1 administration wants a law passed they'll work with
2 the Legislature and find a sponsor, and I wasn't
3 part of that but I assume that probably happened
4 here.
5 Q. And is it fair to say that PA 4 was promoted by the
6 Governor to the Legislature?
7 A. I believe so.
8 Q. Okay. And you talked about PA 4 containing
9 improvements.
10 What was it about PA 72 that needed to be
11 improved?
12 A. Well, what we found is -- typically for a
13 governmental unit 75 give or take percent of your
14 costs are wages and benefits which leaves you -- if
15 you have a unit that might have a three-year
16 collectively bargained agreement in place, that
17 takes 75 percent of the ability to reduce expenses
18 off the table. It leaves you 25 percent of the
19 remaining spent. Typically, in government it's very
20 difficult to increase the revenue side of the
21 equation.
22 So that would be the major theme --
23 thematic difference I think from 72 to Public Act 4.
24 Q. So let me make sure I'm hearing you right. Was
25 there something about PA 4 that enabled the State to

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1 deal with wage and benefit issues that presented
 2 themselves to these local government units?
 3 A. Yeah. And I would add also it enabled us to get in
 4 earlier because typically if you can get into a
 5 situation earlier you might be able to avoid more
 6 Draconian or drastic measures that have to be
 7 implemented.
 8 So I'd say the primary goal of Public Act 4
 9 was to allow the State to have an earlier road in
 10 the crisis that a particular school district or
 11 city's encountering. And then in the law we spent a
 12 lot of time on this issue about, you know, the
 13 constitutionality of can you modify a CBA. And by
 14 the word CBA, I use collectively bargained
 15 agreement.
 16 But the thought was that we have two
 17 conflicting constitutional provisions here. One is
 18 the prohibition against impairing of contracts and
 19 then the other is the duty of the State to provide
 20 for the public health, safety and welfare. So those
 21 are your competing constitutional provisions, as I
 22 understand it.
 23 And where we came out on that, to my
 24 memory, is that -- that if you temporarily modify.
 25 So the thought wasn't that you just blow up a

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1 contract or you permanently change the terms of the
 2 contract, but in order to deal with the crisis to
 3 protect the public health, safety and welfare, the
 4 thought was that the State has the ability to
 5 temporarily modify until the crisis or the emergency
 6 is over.
 7 To me that's the two primary differences
 8 between PA 72 and PA 4.
 9 Q. And how is it that PA 4 specifically gave the State
 10 more power to address those issues?
 11 A. On the front end I'd have to review PA 72 and
 12 compare it to PA 4 before I would feel comfortable
 13 answering that, but PA 72 did not have a provision
 14 that allowed for a temporary modification of the
 15 CBA.
 16 Q. Did PA 72 have a provision for the appointment of an
 17 emergency manager?
 18 A. Yes.
 19 Q. And PA 4 retained that?
 20 A. Right. And they had two different terms. I think
 21 under 72 it was emergency financial manager, an EFM.
 22 Q. Right.
 23 A. Under PA 4 it was changed to just an emergency
 24 manager.
 25 There's another big difference I guess as

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1 well which was my memory is that under schools, an
 2 EFM could pursue a Chapter 9 without the Governor's
 3 consent but not for a city.
 4 Q. I'm sorry, I just want to make sure the record's
 5 clear. I'm reading it here.
 6 Did PA 4 allow a school board to file
 7 Chapter 9 without the Governor's consent?
 8 A. I don't believe -- well, again, I'd like to look at
 9 PA 72 but my memory was --
 10 MS. NELSON: He's speaking about PA 4.
 11 THE WITNESS: Oh, PA 4.
 12 MS. NELSON: His question was to PA 4.
 13 THE WITNESS: No, under PA 4 both cities
 14 and school districts require the Governor's approval
 15 for a filing.
 16 BY MR. SHERWOOD:
 17 Q. Okay. Now, I assume you're aware that PA 4 during
 18 2011 and 2012 was heavily criticized by certain
 19 members of the population here in Michigan, correct?
 20 A. I recall some of that.
 21 Q. And it was referred to as a dictatorship law,
 22 undemocratic, emergency managers don't answer to the
 23 public. Does that sound familiar to you?
 24 A. I have a recollection of that, yes.
 25 Q. And, actually, some of that criticism was directed

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1 at you, correct?
 2 A. Correct.
 3 Q. And certainly Governor Snyder as well.
 4 Do you think that that was fair criticism?
 5 A. I think it's just a harsh reality that when you have
 6 a -- whether it be a school district or a city in a
 7 severe financial crisis that you've got to have
 8 someone that can make decisions. And often times
 9 what you'll find is the governance more in cities
 10 maybe than school districts is -- makes it very
 11 difficult to navigate through a financial crisis.
 12 So I understand the criticism but the stark
 13 reality is that it's the best path that I'm aware of
 14 to solve a financial crisis.
 15 Q. Now, PA 4 was submitted for a referendum in November
 16 of 2012; is that right?
 17 A. I believe so, yeah.
 18 Q. And did you take a position with respect to the
 19 proposed referendum with respect to PA 4?
 20 MS. NELSON: Are you speaking in his
 21 official capacity as Treasurer or in his personal,
 22 because his personal capacity is privileged.
 23 I assume you're speaking in his official
 24 capacity as Treasurer did he take a position?
 25 MR. SHERWOOD: I never heard of a personal

Page 21

1 capacity of privilege.
 2 MS. NELSON: It's right to vote, his right
 3 to vote.
 4 MR. SHERWOOD: Okay.
 5 BY MR. SHERWOOD:
 6 Q. In your capacity as Treasurer.
 7 A. I don't recall. I do recall that there was six
 8 measures on the ballot and there was really no one
 9 out there advocating in favor of preserving the law,
 10 Public Act 4, but I don't recall if we ever issued a
 11 statement from the Treasurer's Office defending
 12 Public Act 4.
 13 Q. Did you have any conversations with the Governor
 14 about this proposed referendum with respect to PA 4?
 15 A. I think we had a few, and I think there was, as I
 16 said, six measures and some were deemed -- you know,
 17 you can't fight a six-front battle, right, so I
 18 think we all thought PA 4 was a necessary law and we
 19 hoped it would be preserved.
 20 But there was other measures on the ballot,
 21 and often times the electorate only has so much
 22 attention span, so I think we weren't out there
 23 putting a full court press on to preserve the law.
 24 Q. Why did you think -- or when you say we, are you
 25 talking about, you the Treasurer, and the Governor?

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1 Why did you think that was a necessary law?
 2 A. Because in my experience Public Act 72, you know,
 3 wasn't as effective as the residents or the children
 4 in school districts needed, and I thought that
 5 Public Act 4 was a significant improvement.
 6 Q. One of the other criticisms that I read about about
 7 PA 4 was that it protected bondholders over other
 8 types of creditors.
 9 Are you familiar with that type of
 10 criticism being lodged during the referendum
 11 process?
 12 A. Not specifically.
 13 Q. What about generally?
 14 A. I just don't recall. I mean, I'm certain it was
 15 probably used as a talking point for those that
 16 wanted to repeal PA 4, but I don't have a specific
 17 recollection of it.
 18 Q. Do you remember talking to a publication called Bond
 19 Buyer Online about the referendum to repeal PA 4?
 20 A. I've spoken to them several times so I don't know
 21 the specific interview that you're referring to.
 22 Q. Do you recall saying to Bond Buyer Online that the
 23 criticism of PA 4 reflects a lack of understanding
 24 of the municipal market?
 25 A. I -- that sounds like something I would say, but I

Page 23

1 don't specifically recall saying that.
 2 Q. Tell me what is it about the municipal market that
 3 PA 4 helped.
 4 A. Can you restate that?
 5 Q. What is it -- how does PA 4 help a city or a school
 6 board or a city like the state of Detroit deal with
 7 the municipal market?
 8 A. Can you read my statement again one more time?
 9 Q. It says that "Criticism of PA 4 reflects a lack of
 10 understanding of the municipal market."
 11 Actually, I have a copy of it if that will
 12 help.
 13 A. That's fine. I think if you can go in and address
 14 issues you're going to make that particular unit
 15 more financially stable, and thus you'll have a
 16 healthier community that can provide services and
 17 pay its obligations.
 18 Q. I guess we can mark this as Exhibit 1.
 19
 20 (Deposition Exhibit 1 was marked.)
 21
 22 BY MR. SHERWOOD:
 23 Q. Sorry about the small type and everything, but it
 24 says -- this is just something I pulled off line.
 25 It says Critics of Public Act 4 argue that

Page 24

1 the law protects bondholders above other creditors,
 2 an argument that Dillon said lacks an understanding
 3 of the municipal market.
 4 A. Okay, this helps, having read it.
 5 Q. Okay, sorry.
 6 A. Often times when a unit gets into financial trouble
 7 they can't access the market on their own. So the
 8 way that they can access the market is they'll work
 9 with Treasury where we will say, all right, if
 10 you're going to borrow money we tell the bond money
 11 providers that we will intercept the money, make
 12 certain that you get paid first.
 13 So if someone wanted to say that an
 14 unsecured creditor or a nonbond creditor of a
 15 community could be pari passu, on equal footing of
 16 an existing bondholder, in that circumstance they'd
 17 be misguided because when the bond deal got done for
 18 the troubled unit we have an agreement with the
 19 trustee typically that will intercept the revenues
 20 that come from the State to the unit, pay the debt
 21 of the bonds, and then whatever surplus is left goes
 22 to the City.
 23 So once that deal is put in place, you
 24 can't undo it, per se, and then say well, we're just
 25 not going to pay the bondholders so we can put more

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1 money into the City so they can pay their bills.
 2 So I think what I'm referring to here is
 3 that situation where there's a trustee in place or
 4 an intercept agreement where the State has an
 5 obligation to make certain that the bond providers
 6 are paid first. And once that's in place you can't
 7 undo it.
 8 Q. Okay. And by an intercept agreement, you're -- I
 9 mean, would that be something like a security
 10 interest in a pledged flow of funds from a
 11 particular source?
 12 A. Can you restate that?
 13 Q. By intercept agreement that's not a concept I've
 14 heard before, but I have heard things like
 15 collateral, pledge, assignment, security interest.
 16 Is that what you mean?
 17 A. I think you're too narrow. There's several
 18 different ways to do this. For example, and this
 19 happens in school districts where state aid can be
 20 intercepted first.
 21 In Detroit, for example, there's a trustee
 22 set up that collects the casino revenues before they
 23 go to the City, and that trustee then transfers
 24 those payments to certain creditors of the City.
 25 So sometimes it's a state acting, sometimes

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1 it could be a private entity, a trustee, that
 2 receives the monies first, and I think there could
 3 be a variety of ways these get structured.
 4 Q. Okay. And by saying -- you say "I appreciate Main
 5 Street saying everyone should share in the pain, but
 6 troubled cities have to structure their deals in a
 7 certain way to get access to the market."
 8 So you're saying that with respect to
 9 creditors that have intercept agreements, they don't
 10 have to share the pain with Main Street?
 11 A. It's harder for them to, I think, because they do --
 12 if -- they have a -- typically, in this case, and I
 13 don't want to overstate it and be too broad here,
 14 but when there's an intercept agreement in place I
 15 think it effectively serves like a filed lien, like
 16 a mortgage on a home.
 17 There may be exceptions to that, but
 18 generally speaking, yes, and you'll find some older
 19 communities before they got in financial trouble
 20 they might have gone out and done unsecured
 21 borrowing, right? So there's no intercept there.
 22 They're then unsecured and in the pool of all the
 23 unsecureds.
 24 When you have an intercept, you know, I
 25 want to be careful not to say every intercept

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1 agreement creates a secured, you know, lender but
 2 probably most would be effectively a secured lender.
 3 Q. So are you saying that it's your view that to the
 4 extent that a bondholder has an intercept agreement
 5 in a restructuring, particularly in the
 6 restructuring of the City of Detroit, that they
 7 don't have to share the pain with the other
 8 creditors of the City?
 9 A. I don't think I understand your question because
 10 restructuring at what point? I mean, a city can be
 11 restructuring before Treasury is even involved so.
 12 Q. Before or after? At any time? I mean, at what
 13 point is it appropriate if ever for the bondholders
 14 with intercept agreements or other special
 15 collateral arrangements to share the pain?
 16 A. Well, it's my -- I mean, some of this calls for a
 17 legal -- a lot of this calls for a legal conclusion,
 18 but it's my understanding that if you're let's say a
 19 revenue bondholder, right, you're a -- typically,
 20 you're a secured lender, and you're entitled to the
 21 revenue streams that you negotiated at the front end
 22 of the deal.
 23 So in Detroit's case you have a lot of
 24 revenue bondholders that are entitled to revenue
 25 streams that come in to pay for water and sewer

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1 services. Their collateral is that revenue stream,
 2 and if that revenue stream is inadequate to service
 3 the debt then they could be in harms's way. And
 4 it's my understanding that that's how Chapter 9
 5 would deal with revenue bondholders.
 6 There's a myriad of different ways. I
 7 don't mean to be evasive, but there's a lot of
 8 different ways where intercept agreements can get
 9 negotiated. I think that the one as it relates to
 10 the casino revenues in Detroit is rather unique, and
 11 it may not reflect kind of a standard borrowing that
 12 may take place going forward.
 13 We did a financing a year and a half ago
 14 for Detroit. It was \$137 million deal and that to
 15 my knowledge my staff helped secure that, but that
 16 was done with an agreement to intercept State
 17 revenue sharings to make certain that that debt was
 18 serviced.
 19 So if the lenders did their job and got the
 20 legal requirements that they need to have the
 21 priority their first right to that revenue stream,
 22 then they're probably protected. If they have
 23 defects in the legal work or they don't have a
 24 contractual right to that revenue stream, they
 25 probably will be treated like any other creditor.

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1 Q. Well -- all right. So let me just move forward now
 2 to the striking down of PA 4 by the voters of the
 3 State. That happened in November of 2012; is that
 4 right?
 5 A. Right.
 6 Q. And as State Treasurer, did you have a view on how
 7 if at all this would impact Wall Street's view on
 8 the subdivisions, the government subdivisions of the
 9 State of Michigan and specifically the City of
 10 Detroit?
 11 A. At least one and maybe more credit rating agencies
 12 said the fact that the State of Michigan had Public
 13 Act 4 on the books was a credit positive. They
 14 viewed it as a favorable environment for lending
 15 into the State.
 16 So when it got repealed, as it relates to
 17 at least those one, maybe two credit rating
 18 agencies, it would be deemed a credit negative that
 19 Michigan now doesn't have that law which they deemed
 20 to be a credit positive on the books.
 21 And we then reverted back to Public 72
 22 which was in my mind, you know, a good start, but it
 23 needed some improvements to be effective.
 24 Q. Would the repeal of Public Act 4 have any impact on
 25 the credit rating of the State of Michigan?

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1 A. Indirectly. I mean, the State has its own credit
 2 rating and its own revenues and expenses and
 3 obligations. Local units are stand-alone and have
 4 their own responsibilities and obligations. So I
 5 would only say it's indirectly.
 6 I think if -- the rating agencies, I think
 7 if they view that a state is mismanaging its local
 8 units I think that they would view that negatively
 9 on the State, but it doesn't directly provide a
 10 commentary on whether or not the State is going to
 11 repay its debt.
 12 Q. You said that the markets reflected PA 4 as a credit
 13 positive. What was it about PA 4 based on your
 14 experience that had a positive impact on the credit
 15 rating of the government subdivisions here in
 16 Michigan?
 17 A. Well, I mean, I think we should pull the statements
 18 that were issued by the ratings agencies. I don't
 19 remember if it was Moody, Standard or Poor or Fitch.
 20 I think it might have been Moody's. I mean, they
 21 issued actually statements saying it's a credit
 22 positive.
 23 I think they appreciate a state that is
 24 proactively managing its finances as well as those
 25 of their cities and school districts.

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1 Q. So is it the view of Wall Street or the credit
 2 markets that where a state has the power to go in
 3 and take over or manage a political subdivision,
 4 that is positive from the perspective of the
 5 markets, based on your experience?
 6 MS. NELSON: Compound question, form,
 7 foundation. Do you want to talk about a takeover?
 8 You said take over or manage.
 9 MR. SHERWOOD: You can object.
 10 MS. NELSON: Form, foundation.
 11 MR. SHERWOOD: And --
 12 MS. NELSON: Compound.
 13 MR. SHERWOOD: -- Treasurer Snyder can tell
 14 me if he doesn't understand the question.
 15 Now, can you read back the question?
 16 MR. WERTHEIMER: Actually, it's Treasurer
 17 Dillon.
 18 MR. SHERWOOD: I'm sorry.
 19 THE WITNESS: I got a promotion at the
 20 deposition.
 21 MR. SHERWOOD: Hold on. Let her read back
 22 the question.
 23 THE WITNESS: Actually, if I give you a
 24 comment maybe you can rephrase it. That will make
 25 it easier, because you're asking me to say what the

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1 credit markets think, and I'm not the credit
 2 markets.
 3 BY MR. SHERWOOD:
 4 Q. I understand that, but as State Treasurer and a
 5 person with substantial experience both in private
 6 life and public life, I think you can give me your
 7 perception of why PA 4 was viewed by the credit
 8 markets as something that was attractive --
 9 A. Yeah.
 10 Q. -- and I'd like you to do that.
 11 A. Detroit's a good example. The health of your
 12 biggest city has an impact on the health of the
 13 State, right, and if you have a city of 700,000
 14 folks that don't have access to public safety, kids
 15 can't walk safely to school, there's no lights on,
 16 that's going to have a negative impact on the
 17 State's economy.
 18 So my personal opinion is yes, that's a
 19 credit positive, that if you have a state that
 20 proactively tries to prevent those types of health,
 21 safety and wellness crises within their state to
 22 have a healthy vibrant city, it's good to make the
 23 state healthy and vibrant.
 24 Q. But isn't it in the first instance the job of the
 25 city government to fulfill those needs and address

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1 those concerns?
 2 A. That's how we've set it up.
 3 Q. And are you saying that in the case of Detroit, city
 4 government did not fulfill those needs?
 5 A. I think we've found there are circumstances where
 6 local units have been unable to provide essential
 7 services or gotten themselves too far into debt that
 8 it becomes very difficult to navigate out of.
 9 Q. What was your understanding of the repeal of PA 4?
 10 How did that operate practically? Did that mean,
 11 based on your understanding, that there was no
 12 emergency manager law as of the date of that repeal?
 13 A. My memory is the Attorney General told us that upon
 14 the repeal of PA 4, PA 72 was the law that we should
 15 follow.
 16 Q. And but didn't -- wasn't that opinion struck down by
 17 the Supreme Court of the State of Michigan?
 18 A. I don't recall that.
 19 Q. Okay. Was that opinion challenged in court?
 20 A. It may have been. I don't recall.
 21 Q. And you don't know what the result of that legal
 22 challenge was?
 23 A. I don't ever remember that PA 72 was not a law that
 24 we at Treasury were supposed to rely upon during
 25 these windows where PA 4 was repealed and before

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1 PA 436 took effect.
 2 Q. All right. So let's turn to PA 436 real quick.
 3 Why was PA 436 implemented if PA 72 was in
 4 effect?
 5 A. Because the same reason we put PA 4 in place. We
 6 thought PA 72 could be improved upon. So after the
 7 election there's a few meetings where we really did
 8 gather what were the criticisms of PA 4 and looked
 9 to see if we could improve PA 4 to make it address
 10 those concerns.
 11 And then as we had worked with PA 4 for a
 12 period of time, we identified some areas that we
 13 would want to seek improvement, and I'll give you
 14 one example. Often times we would want to give the
 15 reigns, the power back to the local electeds, and in
 16 order to do that under Public Act 4 you'd have to
 17 end the emergency. And we were uncomfortable about
 18 that because we were prepared to give -- return the
 19 power before we were a hundred percent certain that
 20 the financial emergency was over.
 21 So if you see in 436 what we did was we put
 22 in place something called a Transition Advisory
 23 Board, and that allows us to transfer power back to
 24 the Mayor and the City Councils without having to
 25 terminate the emergency status, so it allows us to

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1 get out sooner. That would be something we learned
 2 during, you know, using or relying on Public Act 4.
 3 We also looked at, you know, various
 4 criticisms and we tried to put more local
 5 involvement into Public Act 436. So, for example,
 6 you'll see if the locals don't like a decision, a
 7 material decision being made by a manager, they're
 8 given a chance to come up with a better idea. And
 9 there's various ingredients like that that we added
 10 to address some of the criticisms of PA 4.
 11 Q. So in enacting PA 436 after the repeal of PA 4, it
 12 was not your view that the Legislature and the
 13 Governor were going against the will of the voters?
 14 A. I think we tried to accommodate the criticisms we
 15 heard during the campaign.
 16 Q. Well, the voters didn't -- they didn't like the EM
 17 law. They thought it was a dictatorship, they
 18 thought it was undemocratic.
 19 How specifically did 436 address the
 20 concern of, you know, the EM law being a
 21 dictatorship?
 22 A. Well, for example, one of the changes were, you
 23 know, it wasn't just right to emergency. We had a
 24 path for a consent agreement, we had a path for
 25 emergency, we had a path for a restructuring, and

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1 then the fourth option was an actual Chapter 9 in
 2 case someone was really out of cash.
 3 So we tried to create options for the local
 4 units and we tried to give them a chance to come up
 5 with better ideas if they didn't like the plans of
 6 the manager. From the meetings I sat in, I think
 7 there was a sincere effort to address that. And,
 8 you know, my memory was that the vote on PA 4 was
 9 not a landslide. It was actually -- there was not
 10 anyone advocating for the protection of PA 4, and
 11 the vote was pretty close.
 12 If -- it wasn't one of six ballot measures
 13 and the only one -- I think it was the only one that
 14 you wanted a vote the other way. I forget whether
 15 it was yes or no kept the law, but it was the only
 16 one where I think you had to vote yes to keep it and
 17 all the other ones, you know, required a no vote.
 18 So it was a pretty close vote without one
 19 advocate out there saying why this law makes sense.
 20 And in my experience, I don't know that a lot of
 21 people spent a lot of time really reading through PA
 22 4 and why it was necessary.
 23 Q. Did any of the changes between PA 4 and PA 436 deal
 24 specifically with the ability of the emergency
 25 manager to file bankruptcy?

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1 A. I don't recall if there's differences there.
 2 Q. In your discussions with Mr. Orr, did you discuss
 3 with him the differences between PA 4 and PA 436?
 4 A. I don't recall. I do know that we spent time
 5 briefing him on how 436 works, and I know he spent a
 6 lot of time reading the statutes, and I think he had
 7 a good understanding of what 436 was, but in terms
 8 of a discussion where we compared the two, I don't
 9 recall that.
 10 Q. Give me one second. Did you have any role -- I'm
 11 sorry. We okay?
 12 VIDEO TECHNICIAN: We haven't gone off the
 13 record.
 14 MR. SHERWOOD: Good.
 15 BY MR. SHERWOOD:
 16 Q. Did you have any role in the drafting of PA 436?
 17 A. Not in the drafting, but as I indicated earlier,
 18 there was some meetings probably late November,
 19 early December about trying to address and improve
 20 Public Act 4.
 21 So there was some high-level themes that I
 22 attended meetings and discussed, but in terms of the
 23 actual drafting of language, I didn't have any role
 24 in that.
 25 Q. Let's mark this as Exhibit 2.

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1
 2 (Deposition Exhibit 2 was marked.)
 3
 4 MS. NELSON: Do you have a copy that I can
 5 look at?
 6 MR. WERTHEIMER: For the record, all of us
 7 have seen this before.
 8 BY MR. SHERWOOD:
 9 Q. All right. So we've marked as D-2 Section 24 of the
 10 State Constitution. It's just an excerpt of the
 11 Constitution which says "The accrued financial
 12 benefits of each pension plan and retirement system
 13 of the State and its political subdivision shall be
 14 a contractual obligation thereof which shall not be
 15 diminished or impaired thereby."
 16 Are you familiar with this provision of the
 17 State Constitution?
 18 A. I am aware it existed and I now just read it.
 19 Q. Okay. Based on your review and understanding of PA
 20 436, does PA 436 in any way impact Section 24 of the
 21 Michigan Constitution?
 22 MS. NELSON: Objection; calls for a legal
 23 conclusion.
 24 BY MR. SHERWOOD:
 25 Q. I just want your understanding.

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1 A. Can you restate the question?
 2 Q. During your consideration of PA 436 and your
 3 discussions about it, did anyone ever come out and
 4 say anything like let's try to modify Section 24 of
 5 the Constitution?
 6 A. No, but when we did Public Act 4 we had this
 7 discussion.
 8 Q. Okay. And what was said in that discussion?
 9 A. I asked various lawyers that were involved, you
 10 know, how does this shake out? You know, you have
 11 these -- you know, can you -- the key item of PA 4
 12 that raised a lot of concerns was the ability to
 13 temporarily modify CBAs, and I have a different unit
 14 too.
 15 So we discussed this provision when we
 16 drafted PA 4, and the answer I recall getting at the
 17 time was that you have these competing provisions;
 18 the responsibility to provide for the public, health
 19 safety and welfare as well as that you can't impair
 20 contracts.
 21 And I believe there's a case back in the
 22 thirties, and don't hold me to this, but I think
 23 there was one case that addressed this issue a long
 24 time ago. So in my mind the issue was resolved for
 25 me during the PA 4 discussions, so when 436

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1 resurfaced I didn't revisit the discussion but
 2 others may have.
 3 Q. Was it your understanding based on your experience
 4 and knowledge somehow under the authority of PA 436
 5 that the State of Michigan or the City of Detroit
 6 could disregard the constitutional provision
 7 protecting pension and retirement benefits?
 8 A. I'm sorry, could you read it?
 9 MR. SHERWOOD: You can read it back.
 10 (Reporter read pending question.)
 11 THE WITNESS: Could you read it one more
 12 time?
 13 (Reporter read record as follows:
 14 "Q. Was it your understanding based on your
 15 experience and knowledge somehow under the
 16 authority of PA 436 that the State of
 17 Michigan or the City of Detroit could
 18 disregard the constitutional provision
 19 protecting pension and retirement
 20 benefits?").
 21 THE WITNESS: No, I don't think PA 436 gave
 22 you that right. I think you have economic
 23 realities.
 24 For example, I have a different unit where
 25 their pension fund is funded at less than 10

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1 percent, and I do recall asking for legal advice
 2 about if that thing runs to zero, what happens? And
 3 it's a unit that can't afford to raise taxes or
 4 service that.
 5 And the memory I have is that, yeah, it's
 6 still there in the Constitution, but if the unit
 7 can't pay the pension they can't pay the pension.
 8 So I would say 436 --
 9 BY MR. SHERWOOD:
 10 Q. Why doesn't that logic also apply to the bondholder
 11 creditors of the City of Detroit? If the unit can't
 12 pay, doesn't have enough to pay its pension
 13 obligations and its obligations to Wall Street, why
 14 doesn't that logic also apply?
 15 MS. NELSON: Objection; calls for a legal
 16 conclusion and for speculation.
 17 THE WITNESS: I'm not certain that it
 18 doesn't. If the unit doesn't have the money to pay
 19 their bondholders, there's a problem, and I guess
 20 that's what Chapter 9 is for or some type of effort
 21 to resolve it in a different way.
 22 We do that all the time working with units
 23 to see if we can restructure and help them
 24 restructure debts that they may have. But if
 25 there's no money to pay, whether it be payroll or a

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1 pension or a bondholder, there's no money.
 2 BY MR. SHERWOOD:
 3 Q. But I think you testified earlier that, you know,
 4 because certain bondholders have the protection of
 5 entitlement to revenue streams that they should have
 6 exclusive claims to those streams; is that right?
 7 A. I don't know if I said they should have, but I think
 8 that if they've done their legal work and they've
 9 got the right to that stream, I think the courts
 10 will recognize they have the right to that revenue
 11 stream.
 12 Q. By the same token, the holders of vested pension and
 13 retirement benefits have the protection of the
 14 Constitution of the State of Michigan which prevents
 15 those benefits from being diminished or impaired in
 16 any way.
 17 Why is it that they have to make sacrifice
 18 in the context of the Chapter 9 case but not the
 19 bondholders?
 20 MS. NELSON: Objection; form, foundation,
 21 assumes facts not in evidence. There's no plan
 22 that's even been filed that suggests that.
 23 MR. SHERWOOD: You can object to form.
 24 MS. NELSON: Form, foundation, speculation,
 25 improper hypothetical, and assumes facts not in

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1 evidence.
 2 THE WITNESS: Yeah, I mean, I think those
 3 are decisions that would be made by a judge at some
 4 point.
 5 BY MR. SHERWOOD:
 6 Q. Well, didn't the Governor make that decision by
 7 appointing the emergency manager?
 8 A. I don't believe so.
 9 Q. Wasn't one of the purposes of 436 to enable an
 10 emergency manager to file Chapter 9?
 11 A. I -- I mean, it was in PA 72, it was in PA 4, it was
 12 in 436. I don't think that PA 436 changed that. In
 13 fact, the law we were relying on at the time was
 14 PA 72 that allowed for filing of a Chapter 9, so I
 15 don't think I accept that premise.
 16 Q. Let's -- this has been marked a hundred times, but
 17 let's mark this as Dillon 3. It's the July 18th,
 18 2013 authorization letter.
 19
 20 (Deposition Exhibit 3 was marked.)
 21
 22 MR. WERTHEIMER: It's now Orr 11, Snyder 2
 23 and Dillon 3.
 24 MR. SHERWOOD: Orr 11, Snyder 2 and
 25 Dillon 3, okay.

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1 BY MR. SHERWOOD:
 2 Q. Treasurer Dillon, I assume you've seen Dillon 3
 3 before?
 4 A. Yes.
 5 Q. Okay. Did you review this in preparation for your
 6 deposition today?
 7 A. I did take a glance at it, yes.
 8 Q. Turning to the last page in the contingencies
 9 paragraph, that's a reference to PA 436.
 10 It says "...my approval of the
 11 recommendation to commence a Chapter 9 proceeding
 12 may place contingencies on such a filing.... I am
 13 choosing not to impose any such contingencies today.
 14 Federal law already contains the most important
 15 contingency - a requirement that the plan be legally
 16 executable."
 17 Are you familiar with that language?
 18 A. I am.
 19 Q. Did you help the Governor draft this letter?
 20 A. I did not.
 21 Q. Did you see it in draft form before it went out?
 22 A. I did not.
 23 Q. Okay. In PA 436, do you have an understanding of
 24 why that legislation provided that the Governor
 25 could place contingencies on a Chapter 9 filing?

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1 A. I wasn't part of the drafting of the language, so I
2 don't feel that I can answer that question.
3 Q. During the time leading up to the issuance of this
4 letter on July 18th, 2013, did you have discussions
5 with anybody about this contingency provision of
6 436?
7 A. I believe there was a -- yes, I did.
8 Q. And who did you have those discussions with?
9 A. I don't recall specifically. I had -- there was a
10 conference call, I believe, of the Governor's --
11 folks from the Governor's office as well as some
12 from Treasury where we discussed the pros and cons
13 of the issue and that was, you know, days before the
14 Governor's letter came out.
15 And then I had a brief conference call with
16 some Jones Day lawyers about the concept of it as
17 well.
18 Q. All right. So I think you talked about two
19 conversations?
20 A. I believe that's what I recall.
21 Q. All right. So let's leave out the Jones Day
22 discussion for now.
23 During the first conversation --
24 discussion, what was said about this provision in PA
25 436 concerning contingencies?

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1 MS. NELSON: Objection; attorney-client
2 privilege.
3 BY MR. SHERWOOD:
4 Q. Were attorneys present during that conference?
5 MS. NELSON: You need to answer verbally.
6 THE WITNESS: Oh, yes. Yes, I believe Mike
7 Gadola was on the conference call.
8 BY MR. SHERWOOD:
9 Q. Who is Mike Gadola?
10 A. He's the Governor's general counsel.
11 Q. And was he there to give legal advice?
12 A. I assume so.
13 Q. All right. But when you were -- when -- you can do
14 nothing but assume he was there. He was just there?
15 He wasn't there providing legal counsel to the folks
16 on the phone?
17 A. That was my understanding, that he was the
18 Governor's general counsel and he was advising us on
19 that issue.
20 Q. Did you view the conversation as one that was
21 confidential and privileged? Did you say anything
22 that you wouldn't say if a lawyer was in the room?
23 MS. NELSON: Which question would you like
24 him to answer first? You have two questions there.
25 MR. SHERWOOD: Okay.

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1 BY MR. SHERWOOD:
2 Q. Did you view the conversation as confidential?
3 A. Yes.
4 Q. Did you say anything that you wouldn't have said if
5 a lawyer was not in the room?
6 A. I don't believe so. I don't recall all the
7 specifics of that discussion.
8 Q. But you do know that the contingency provision of PA
9 436 was discussed on that call, right?
10 A. Yes.
11 Q. And then there was a follow-up call which -- when
12 did that call take place? Can you tell me the date
13 of the call, approximately?
14 A. No, but it would be within a week of the Governor's
15 letter coming out, I believe.
16 Q. Okay. And then the call with Jones Day that you
17 also described, did that happen before, did that
18 happen later?
19 A. I believe it happened before that conference call.
20 Q. Okay. So first there was a conference call where
21 Jones Day participated, and who was on that call?
22 A. There was -- I don't recall specifically. The call
23 happened in my office. I probably had one or two of
24 my staff on the call, and then who was on the other
25 end of Jones Day, I don't recall any names, to be

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1 honest with you.
2 Q. Did you ever suggest to the Governor that in
3 authorizing the filing of Chapter 9 the Governor
4 should place a contingency on his authorization that
5 prohibited the emergency manager from violating the
6 constitutional rights of the City's pension and
7 benefit claimants?
8 A. I don't recall having done that.
9 Q. Was that your view?
10 A. I don't believe so. I mean, I appreciated that we
11 had an issue here, but I didn't tell the Governor
12 hey, you can't do that without having a contingency
13 in this constitutional provision.
14 Q. Did the Governor ever solicit your point of view
15 with respect to that issue?
16 A. No.
17 Q. Did you ever suggest to the Governor that the use of
18 the language that's set forth in D-3 under
19 contingencies, that the use of that language was a
20 way to sort of punt the issue to the federal court?
21 A. No. I didn't discuss any of this paragraph with the
22 Governor.
23 VIDEO TECHNICIAN: Secretary Dillon, you're
24 losing your microphone.
25 BY MR. SHERWOOD:

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1 Q. So you're not aware of any discussions where the use
 2 of this language in D-3 was viewed as a way to avoid
 3 having to make a decision as to the constitutional
 4 protections for pension benefits and the like?
 5 A. The first time I saw this letter was on freep dot
 6 com, so I didn't have discussions with the Governor
 7 about this provision.
 8 Q. Did you ever discuss just the idea with the Governor
 9 of how it would -- how he would authorize the filing
 10 of a Chapter 9 given the constitutional protection
 11 for vested pension and retirement benefits?
 12 A. I don't recall any specific discussion in that
 13 context.
 14 Q. What about general discussions in that context?
 15 A. Yeah, I don't recall. I mean, I may have shared
 16 with him the advice I got about another unit who I
 17 was worried about where I knew that they didn't have
 18 any funding in their pension plan and that when the
 19 money runs out, you know, the view was that the
 20 State was not liable for making up that difference.
 21 We may have -- I may have shared that
 22 opinion I got from a lawyer, but I don't remember
 23 the specific date or time or window when that may
 24 have been shared, but I'm pretty certain I probably
 25 did share that concept with him.

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1 Q. During your conversations with the Governor, did
 2 you -- either you or the Governor indicate to one
 3 another that you were looking for a way to avoid the
 4 constitutional obligation to not impair the rights
 5 of vested pensions and benefits?
 6 MS. NELSON: Objection; asked and answered.
 7 Go ahead.
 8 THE WITNESS: Can you read that question
 9 back?
 10 (Reporter read pending question.)
 11 THE WITNESS: We never had a discussion
 12 about the desire to circumvent the Constitution in
 13 any way.
 14 MR. SHERWOOD: Can we take a five-minute
 15 break at this point?
 16 VIDEO TECHNICIAN: Going off the record at
 17 10:21 a.m.
 18 (A brief recess was taken.)
 19
 20 (Deposition Exhibit 4 was marked.)
 21
 22 VIDEO TECHNICIAN: We're back on the record
 23 at 10:30 a.m.
 24 BY MR. SHERWOOD:
 25 Q. Okay, Treasurer Dillon, I've showed you what's been

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1 marked as Dillon 4, and I realize these are emails
 2 that you probably have not seen before, but they are
 3 emails that were sent by the emergency manager where
 4 he describes the new EM law as a "end around the
 5 prior initiative that was rejected by the voters in
 6 November."
 7 MS. NELSON: I'm going to object to your
 8 characterization it was sent by the emergency
 9 manager.
 10 At the date of January 31st, 2013, Kevyn
 11 Orr was not the emergency manager.
 12 MR. SHERWOOD: Okay. And you can only
 13 object to form and privilege so, please, no more
 14 speaking objections.
 15 BY MR. SHERWOOD:
 16 Q. Would you agree with Mr. Orr's statement on
 17 January 31st, 2013, that the EM law was a "end
 18 around the prior initiative that was rejected by the
 19 voters in November"?
 20 A. I don't. I recall sincere meetings where we
 21 examined what were the criticisms of the PA 4 and
 22 tried to address them in the new legislation.
 23 Q. So you don't agree with his characterization?
 24 A. No.
 25 Q. Do you know -- if you look down to the bottom

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1 paragraph where Mr. Orr states that "...although the
 2 new law provides the thin veneer of a revision it is
 3 essentially a redo of the prior rejected law and
 4 appears to merely adopt the conditions necessary for
 5 a Chapter 9 filing."
 6 Do you agree with that statement?
 7 A. No, because I -- we spoke earlier about the tab
 8 added, the four options that the locals have, the
 9 18-month window for which an EM can serve.
 10 So, I mean, those were sincere efforts on
 11 the part of the Governor as well as my staff to
 12 address issues that were raised during the ballot
 13 initiative.
 14 Q. So you disagree with this statement by Mr. Orr as
 15 well; is that your testimony?
 16 A. I disagree with his characterization.
 17 Q. Does the new law 436 adopt the conditions necessary
 18 for a Chapter 9 filing?
 19 A. I believe it does. I don't have a legal opinion to
 20 that effect, but I think it's -- 72 had it, 4 had it
 21 and I believe 436 has it. So we didn't need 436
 22 because we had 72 at the time, so --
 23 Q. Was there any discussion that you were a part of
 24 where the start date for Mr. Orr was discussed?
 25 A. Sure. Yes.

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1 Q. And was there ever a discussion about sort of
 2 coordinating the start date for Mr. Orr with the
 3 expiration of the old EM law?
 4 A. I don't recall.
 5 Q. Do you recall that initially the start date for
 6 Mr. Orr was going to be somewhere in mid March of
 7 2013?
 8 A. I believe -- my memory is his actual start date had
 9 more to do with his schedule than ours.
 10 Q. Did his start date have anything to do with the
 11 expiration of the old EM law and the -- I guess the
 12 start date for the new EM law, 436?
 13 A. I don't believe so.
 14 Q. So you weren't party to any conversations with
 15 Mr. Orr or the Governor where it was discussed that
 16 the start date for the EM should sort of coincide
 17 with either the expiration of the old law or the
 18 effective date of the new law?
 19 A. I don't recall that discussion. It's not that it
 20 didn't happen, I just don't recall it.
 21 Q. Yeah, because the effective date of the new law is
 22 March 28th, 2013, and I believe that's the same date
 23 that he was formally appointed. Isn't that right?
 24 A. My memory is he served three days under 72 give or
 25 take and then the new law kicked in, so he actually

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1 served under both is my memory.
 2 Q. Okay. Do you -- were you part of the search team
 3 for the emergency manager?
 4 A. I don't think we had an official search team, but
 5 yes, I was involved.
 6 Q. Who else was involved with you?
 7 A. Primarily Rich Baird.
 8 Q. And were you at the meeting on I think it was
 9 January 28th, 2013, at the airport in Detroit where
 10 the law firms were interviewed?
 11 A. Yes.
 12 Q. And Mr. Baird was there as well?
 13 A. Yes.
 14 Q. And I think Mr. Buckfire was there?
 15 A. Most likely.
 16 Q. Anyone else on the side of the City and the State
 17 that you remember?
 18 A. I believe Tom Saxton and Brom Stibitz from Treasury
 19 were there. I believe Chris Andrews and Jack Martin
 20 from the City were there. I believe we may have had
 21 some members of the Financial Advisory Board there.
 22 There may have been a few others I don't recall.
 23 Q. Had you known or heard of Mr. Orr before that
 24 meeting?
 25 A. No.

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1 Q. Why was it that people from the State were at a
 2 meeting to select counsel for the City of Detroit?
 3 A. Well, the City, as you might recall at the time, was
 4 under a consent agreement, and we were struggling
 5 with that and we were bringing in some professionals
 6 to help with the City. And December it involved an
 7 investment bank and some restructuring firms; E and
 8 Y and Conway MacKenzie, and then the last piece of
 9 the puzzle was the law firm.
 10 Q. And before that meeting, where did the search for an
 11 emergency manager stand? How many candidates -- how
 12 many serious candidates did you guys have at that
 13 point?
 14 A. Before the -- what meeting?
 15 Q. Before the meeting at the airport with the law
 16 firms.
 17 A. At the Jones Day?
 18 I don't recall specifically but there
 19 wasn't a lot. You know, we -- at that point I would
 20 say we thought we had very few candidates that, A,
 21 could do it and, B, were willing to do it.
 22 Q. And how did it develop that Mr. Orr was identified
 23 as a candidate? Did it happen at that meeting or
 24 after that meeting?
 25 A. I believe it was after that meeting Rich called me,

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1 Rich Baird called me and said what do you think of
 2 Orr? And it was just a phone conversation is how it
 3 started is my memory.
 4 Q. And before that meeting, your only knowledge of or
 5 exposure to Mr. Orr was his being part of the Jones
 6 Day pitch team; is that fair to say?
 7 A. Right.
 8 Q. And your first notice that Mr. Orr was a prospect
 9 was -- came from Mr. Baird?
 10 A. Right.
 11 Q. Do you know whose idea it was to propose Mr. Orr as
 12 a candidate?
 13 A. I believe it was Mr. Baird.
 14 Q. And what was your reaction?
 15 A. I was favorably inclined to explore it. We had only
 16 met him for -- I forget how long those interviews
 17 lasted but give or take an hour. So I had never met
 18 him before then, so my experience with him is
 19 limited.
 20 Q. What was it about Mr. Orr that in your view made him
 21 qualified to be the emergency manager?
 22 A. There's two primary attributes that I appreciated.
 23 One was he had a restructuring background which
 24 clearly we needed and we'd been struggling in the
 25 City, both from an operational as well as a balance

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1 sheet restriction.
 2 The other is my experience as Treasurer
 3 dealing with emergencies in other cities, it's
 4 really important that the manager has the right
 5 personality because there's a way to do the job and
 6 a way that calms the critics and the community, and
 7 there's a way to kind of ruffle feathers. And I
 8 liked Mr. Orr's disposition. I thought he would
 9 have the ability to communicate a clear message as
 10 to the reason why what is being done is being done,
 11 and I thought that in many ways that is in large
 12 measure probably the most important requirement.
 13 Q. Did there come a time when you expressed your
 14 support of Mr. Orr as the potential emergency
 15 manager?
 16 A. Yeah. I had one meeting with him in my memory, and
 17 it was a lunch really and it was more social -- as
 18 much social as business related, but coming away
 19 from that meeting I was impressed and supportive,
 20 and I know Rich was doing a lot of the groundwork to
 21 vet him as a potential candidate and I trust Rich's
 22 judgment.
 23 Q. During those meetings with Mr. Orr, did you discuss
 24 the path to Chapter 9 for the City of Detroit?
 25 A. No. I think it was more us sharing with him what

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1 our experience is in dealing with emergencies and
 2 how the law works, and in a way I think it was more
 3 information coming from Treasury to Orr than the
 4 other way around.
 5 Q. During the Jones Day legal presentation at the
 6 airport on the 28th of January, did Jones Day lay
 7 out to the group a path to Chapter 9 for the City of
 8 Detroit?
 9 A. No.
 10 Q. Did they provide a written slide show or
 11 presentation that laid out bankruptcy issues and
 12 restructuring issues?
 13 A. We interviewed six firms that day, I believe. I
 14 don't remember the specifics of any particular
 15 pitch. I do know that Chapter 9 was a discussion,
 16 you know, in probably most all of the firms that we
 17 met with, but I don't -- I have zero memory of any
 18 discussion about a path.
 19 Q. And just for the record, I've been saying the
 20 January 28th meeting in the airport. I'm told that
 21 it's really January 29th.
 22 A. Okay.
 23 Q. So, for the record, we're talking about the same
 24 meeting.
 25 During your discussions with Mr. Orr, did

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1 he -- did you or he address the political issues
 2 that were confronted by the Governor in terms of the
 3 emergency manager statute and treatment of
 4 retirement and pension benefits for the City
 5 employees?
 6 A. I don't recall that.
 7 Q. You don't recall that at all?
 8 A. I don't recall the specifics of our discussion. I
 9 remember the lunch meeting where I think it was, as
 10 I said before, more of us sharing with him what the
 11 role of an EM is like and less some lessons that
 12 were learned by us.
 13 It wasn't like -- I don't recall any
 14 circumstance where I was with Kevyn and I felt like
 15 I was getting a tutorial about how did we get into
 16 Chapter 9. I don't have any memory of something
 17 like that.
 18 Q. But during those discussions certainly you discussed
 19 the pension exposure, the exposure to the pension
 20 and the obligation to pay retiree benefits and the
 21 impact that -- of that on the financial affairs of
 22 the City of Detroit, didn't you?
 23 A. We would have discussed the City's cash position
 24 because that was front and center at the time. You
 25 know, do they have enough cash to navigate through

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1 the next year was probably the biggest issue.
 2 And I suspect we would have high-level
 3 discussions about the balance sheet of the City, but
 4 there was no discussion about, you know, how do you
 5 circumvent any liability and there was no talk about
 6 hair cutting bondholders or pensioners or walking
 7 away from health care, but there was general
 8 discussions I'm sure about the condition of the
 9 balance sheet.
 10 Q. And you don't recall any specific discussions with
 11 Mr. Orr in all of your interaction with him where
 12 pension and health care obligations of the City
 13 were discussed and plans for dealing with those
 14 obligations were discussed?
 15 MS. NELSON: I'm going to object to form
 16 and foundation. Is there a time frame?
 17 BY MR. SHERWOOD:
 18 Q. Well, I guess it would be January --
 19 MS. NELSON: You said all his
 20 conversations. Are you --
 21 MR. SHERWOOD: January 28th through the
 22 filing date of July 18th.
 23 MR. WERTHEIMER: Yeah.
 24 THE WITNESS: Yes.
 25 BY MR. SHERWOOD:

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1 Q. So you had discussions with him about those issues?
 2 A. Yes.
 3 Q. And what did you say and what did he say?
 4 MS. NELSON: Well, I'm going to object
 5 because that will intrude on attorney-client
 6 privileged communications, so you're going to have
 7 to parse it out.
 8 BY MR. SHERWOOD:
 9 Q. Did you have any conversations without counsel
 10 present?
 11 A. Yes.
 12 Q. Okay. And what was said during those?
 13 A. I mean, there was dozens of conversation so it's
 14 hard for me to pick out one particular one and have
 15 a clear memory of what was said.
 16 Q. Did you talk about the number, how much of -- how
 17 much the pension was underfunded with Mr. Orr
 18 outside the presence of counsel?
 19 A. There was discussions about what the funding status
 20 of the pensions was, and it was and continues to be
 21 a bit of a moving target. So we discussed that yes,
 22 there's a study being done to estimate what is the
 23 current funding status of the pension funds.
 24 Q. Did you discuss with him outside the presence of
 25 counsel the cost of health care to the retired City

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1 employees and the impact of that on the City's
 2 finances going forward?
 3 A. I'm sure we did.
 4 Q. Did you discuss with him the fact that Section 24 of
 5 the State --
 6 MR. WERTHEIMER: Article 9 Section 24.
 7 BY MR. SHERWOOD:
 8 Q. Article 9 Section 24 of the Michigan Constitution
 9 provided that financial benefits of each pension
 10 plan and retirement system shall not be diminished
 11 or impaired?
 12 A. There was a general understanding that there was a
 13 constitutional protection of pensions that was
 14 understood by folks from day one. So I think it
 15 would be a premise of all discussions that were had.
 16 Q. That was something that you understood, right?
 17 A. I understood that there was a constitutional
 18 provision, yes.
 19 Q. And based on your discussions with Mr. Orr, did you
 20 understand that he understood the constitutional
 21 protection?
 22 A. I'm -- I believe he understood there was a provision
 23 in the Michigan Constitution that addressed this
 24 issue.
 25 Q. And certainly the Governor understood that as well?

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1 A. I believe he did.
 2 Q. And you guys all had that understanding before the
 3 bankruptcy was filed, correct?
 4 A. Yes.
 5 Q. And was it your understanding in the course of the
 6 restructuring of the City of Detroit that a proposal
 7 was made on June 14th to address those liabilities?
 8 A. I attended that and I probably flipped through the
 9 book during the presentation, and I believe there
 10 was an area that covered that topic, yes.
 11 Q. And would you describe the treatment of the claims
 12 of the pensions and retirement systems as being
 13 diminished or impaired under that proposal?
 14 A. I'd like to see it before I comment on it.
 15 Q. You'd like to see the proposal?
 16 A. The language in there, yeah.
 17 Q. While they're looking for it, do you know -- if you
 18 look at -- and I'm sorry, everybody's seen this, but
 19 it has been previously marked as Snyder 3, and this
 20 is the June 14th proposal for creditors.
 21 And if you turn to page 109 there is a
 22 underlined bullet point on treatment of pensions.
 23 MR. WERTHEIMER: Just for the record,
 24 that's one or another of us line. It isn't on the
 25 original document.

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1 MR. SHERWOOD: Yeah.
 2 THE WITNESS: I recall this and my memory
 3 is that the intent of this document was to lay out
 4 the facts for the creditors so that they could
 5 understand the financial condition of the City.
 6 BY MR. SHERWOOD:
 7 Q. Can I have it back? Oh, you lost the page.
 8 A. Sorry.
 9 Q. That's okay, I'll find it.
 10 But it does say at the bottom of page 109
 11 that "Given the underfunding amount, there must be
 12 significant cuts in accrued vested pension amounts
 13 for both active and currently retired employees",
 14 correct?
 15 A. That's what the document says.
 16 Q. And would you -- is it your view that the -- that
 17 significant cuts in accrued vested pension amounts
 18 for both active and currently retired persons is
 19 consistent with the Michigan Constitution,
 20 Section 24?
 21 A. That's a legal question that in my mind the courts
 22 will decide.
 23 Q. Okay. But it's really not a legal question. It's
 24 pretty obvious that it is a violation of the
 25 Constitution, isn't it?

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1 A. I don't agree with that.
 2 MS. NELSON: Objection; argumentative.
 3 BY MR. SHERWOOD:
 4 Q. And without giving your -- as a Treasurer, as a
 5 former Legislator, is it your view or do you agree
 6 that the proposed treatment on June 14th, 2013,
 7 providing for cuts in accrued vested pension amounts
 8 for both active and currently retired persons would
 9 be violative of Section 24 of the Michigan
 10 Constitution?
 11 A. No, because that doesn't provide for it. To my
 12 mind, and this is how this Governor does business,
 13 is he hires good people and lets them do their job.
 14 To me that document was laying out the
 15 facts for creditors so they could understand the
 16 financial condition of City.
 17 Q. So this wasn't a proposal even though it's -- even
 18 though the title of the document is proposal for
 19 creditors?
 20 A. I think he's just laying out the facts. This is the
 21 economic reality of the City of Detroit. From
 22 there, as you know, there was various meetings with
 23 various creditors to discuss can we get this thing
 24 settled out of court.
 25 Q. Did you participate in any of those meetings?

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1 A. I don't believe so.
 2 Q. Were you given reports by the emergency manager as
 3 to how those meetings were going?
 4 A. We typically had a weekly either meeting or call
 5 where we were given an update on the status of
 6 events.
 7 Q. Who was on the weekly meeting call?
 8 A. It would be Kevyn and some of the members from his
 9 team, various members of the Governor's office as
 10 well as my office.
 11 Q. And what was reported in terms of the progress that
 12 the emergency manager was or wasn't making with the
 13 out-of-court negotiations?
 14 MS. NELSON: I'm going to object to the
 15 extent that it calls for attorney-client
 16 communications and instruct him not to answer.
 17 That, in fact, is what it calls for.
 18 BY MR. SHERWOOD:
 19 Q. Did you have any communications with Mr. Orr outside
 20 the presence of counsel --
 21 A. Yes.
 22 Q. -- concerning -- concerning negotiations with
 23 creditors before the Chapter 9?
 24 A. Yes.
 25 Q. And what did you say during those communications?

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1 A. I was mostly just listening because I was getting an
 2 update about how things were going.
 3 Q. What was the -- what did he say?
 4 A. The only specific memory I have would be the one
 5 dealing with the SWOPS, discussions with the SWOP
 6 providers and whether or not there could be a
 7 settlement reached with them.
 8 Q. What did Mr. Orr say about the SWOPS?
 9 A. He reached an agreement with two of the SWOP
 10 providers that he could get a discount on the monies
 11 owed on the SWOPS, and that's my only memory of a
 12 specific -- I knew every week that he was meeting
 13 with various creditors, but that's the only one that
 14 I remember kind of a specific deliverable for.
 15 Q. And do you recall anything else about those
 16 nonprivileged conversations?
 17 Did he report that the negotiations were
 18 going well, that they were going poorly, that they
 19 were not going at all, anything along those lines or
 20 do you just recall the specific discussion about the
 21 SWOPS?
 22 A. Yeah. I -- there was, I think, just general
 23 comments that they weren't real productive, right,
 24 that we weren't making progress.
 25 Q. Did he say why?

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1 A. I'm sure he did, but it would require going through
 2 each of the various creditors that he met with at
 3 the time so I don't have specific memories of each.
 4 The only one I have a specific memory right
 5 now about would be very difficult discussions with
 6 the suretys, the insurance companies, a lot of
 7 unwillingness to embrace what the economic realities
 8 were, and then a lot of concern about the number of
 9 retirees and the unions not wanting to represent the
 10 retirees, making it difficult to negotiate for
 11 20,000 people.
 12 Q. Did he say it was impossible to negotiate with all
 13 of the creditors of the City of Detroit? Did he
 14 reach that conclusion in your presence?
 15 A. I don't recall the specific words he used but
 16 clearly he was expressing that it was very difficult
 17 to work and negotiate with a pool of creditors that
 18 include 20,000 individuals, yes.
 19
 20 (Deposition Exhibit 5 was marked.)
 21
 22 BY MR. SHERWOOD:
 23 Q. Treasurer Dillon, we've marked as Dillon 5 an email
 24 from you dated July 9th to the Governor and others.
 25 Are you familiar with this email?

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1 A. Yes.
 2 Q. And it says that "Kevyn will meet with the Detroit
 3 pensions tomorrow after all."
 4 I want to ask you about the word after all.
 5 Was there a suggestion before you wrote this email
 6 that Kevyn was not going to meet with the Detroit
 7 pensions?
 8 A. Yeah. I think before that there was some thought
 9 that that meeting was going to get cancelled.
 10 Q. And who was going to cancel it?
 11 A. My memory is Kevyn might have. There was a lawsuit
 12 that was filed that I think caused some
 13 consternation about whether or not he should meet
 14 with them.
 15 Q. So initially Mr. Orr was considering not meeting
 16 with the pensions on July 10th, 2013, and then he
 17 changed his mind and decided to meet with them?
 18 A. My memory is there was a plan to meet with them,
 19 then some lawsuits got filed which I think he
 20 contemplated not going forward with the meeting.
 21 And from reading this, apparently he went forward
 22 with the meeting.
 23 Q. Going down to the last paragraph it says "Tomorrow's
 24 meeting could lead to questions directed to you
 25 about your view on this topic."

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1 Obviously, you is the Governor, and the
 2 Governor's view on this topic, I assume this topic
 3 is the Detroit pensions. Would that -- is that
 4 right? Am I right saying those things?
 5 A. Right.
 6 Q. So and then you -- then you say "...it's too
 7 early in the process to respond to hypothetical
 8 questions. We remain in many ways in the
 9 informational stage."
 10 Does that mean that at this point in time,
 11 July 9th, 2013, you were still in the informational
 12 stage vis-a-vis the Detroit pensions?
 13 A. We were learning things. We were learning about an
 14 annuity program that the City had offered employees.
 15 We were learning that there was alternative
 16 investments that were made that were not written
 17 down. We were learning what assumptions the
 18 City's actuarial firm was making versus the ones
 19 that Milliman was hired to really appreciate and
 20 understand what was the level of underfunding.
 21 So on that date in question I couldn't tell
 22 you that these funds were funded at X percent
 23 because there was too many moving pieces to the
 24 puzzle.
 25 Q. So your advice to the Governor was in response to

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1 questions about his view on the Detroit pensions was
 2 to just say it was too early in the process and you
 3 were still in the informational stage; is that
 4 right?
 5 A. That's right.
 6 Q. And this was before the Governor authorized
 7 Chapter 9 filing, correct?
 8 A. Correct.
 9 Q. Did that -- did your view of the Governor's -- what
 10 the Governor's position should be change before
 11 July 18th, in the next week?
 12 A. No.
 13 MR. SHERWOOD: All right. I'm going to
 14 stop here, Treasurer. Thank you.
 15 I reserve the right if we have time to ask
 16 a question or two later, but I think as a courtesy
 17 to my -- the other lawyers here I'm going to turn
 18 over the mic to them.
 19 Thank you for your testimony this morning.
 20 Should we take a quick break?
 21 VIDEO TECHNICIAN: Off the record 11:02
 22 a.m.
 23 (A brief recess was taken.)
 24 VIDEO TECHNICIAN: We're back on the record
 25 at 11:06 a.m.

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1 EXAMINATION
 2 BY MR. WERTHEIMER:
 3 Q. Mr. Dillon, my name is Bill Wertheimer. We've met
 4 off the record. I'm going to be asking you some
 5 questions.
 6 I represented and represent what we've
 7 called the Flowers Plaintiffs. That is one of the
 8 group of retirees that filed lawsuits in state court
 9 before the bankruptcy was filed.
 10 You indicated early in your testimony that
 11 you were involved in some discussions shortly after
 12 you took office as Treasurer about replacing Public
 13 Act 72. Do you recall that?
 14 A. Uh-huh. Yes.
 15 Q. You need to say your answer.
 16 A. Yes.
 17 Q. And you talked about competing constitutional
 18 provisions, one of them being the constitutional
 19 provision relating to public health, safety,
 20 welfare, correct?
 21 A. Correct.
 22 Q. And as I understand it, your focus at the time had
 23 to do with your ability to modify CBAs; is that
 24 right?
 25 A. That's right.

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1 Q. Would the competing constitutional provision that
2 you were discussing at the time have been the
3 impairment of contracts provision?
4 A. Yes.
5 Q. So it wasn't the provision dealing specifically with
6 pensions?
7 A. Correct.
8 Q. Am I right?
9 A. Right?
10 Q. Okay, that's what I thought.
11 Do you recall any discussions that dealt
12 with the pension provision in those discussions that
13 led up to Public Act 4?
14 A. Not specifically, and if -- it may have been at the
15 time, but when I look back now my memory is really
16 it was the two competing ones were the impairment of
17 contract and the health, safety and welfare.
18 So not that we never discussed nine, but
19 those were really the two that were the focal point
20 for me, and it's very likely that the other
21 Article 9 provision was discussed as well, but I
22 don't have as much memory about that.
23 Q. You don't have a memory about it.
24 When you were talking after the referendum
25 where Public Act 4 went down and you're now talking

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1 about a replacement for that, were there any
2 specific discussions relating to the Article 9
3 provision; that is, the one relating to pensions?
4 A. Not to my memory.
5 Q. Do you recall any consideration at all as to whether
6 you should put any kind of contingencies in the
7 statute in -- at that point in the statute where
8 you're giving the emergency manager or the City the
9 ability to file for bankruptcy?
10 A. I was not part of discussions in that regard, and I
11 was not close to the actual drafting and movement of
12 the legislation through the Legislature.
13 Q. Okay. You have been -- would it be fair to say
14 you've been closely involved in the Detroit
15 situation from the time you took office in January
16 of 2011?
17 A. Yes.
18 Q. Could you briefly tell us what your role has been
19 since then and how that role has changed, briefly,
20 from January of 2011 up to date?
21 A. Yeah. To the best I can, because it goes back a
22 long time. There's been a lot of activities in
23 between.
24 Q. I understand. And we've got underlying documents
25 with dates and stuff and titles, but I just want

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1 kind of a general framework.
2 A. I mean, just generally speaking, Detroit was on our
3 radar when we came in. We knew it was, you know,
4 potentially in trouble. But the first six months I
5 think that the dealings were rather limited. I
6 recall we had some issues regarding Flint and DPS
7 that predated our more active engagement with
8 Detroit.
9 And then Detroit started to experiencing,
10 you know, cash crunches. And one of the consultants
11 we used at DPS, we asked if he would help with
12 Detroit. That was Gora Mahatra (ph.) from Ernst and
13 Young. And really the focus on the early end was
14 just understanding the City's cash position and
15 making certain that they would be able to meet
16 payroll and their essential obligations.
17 And I had always told the Governor that to
18 me kind of the trigger number was if the City got
19 below 50 million in cash, I would come to him at
20 that point and likely recommend that we begin a
21 review, an emergency review. And that was kind of
22 our benchmark is to -- I didn't want to be in a
23 situation where the City got below 50 and then we're
24 starting a review because it might be too late to
25 help the City at that point.

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1 So on the early end it was a partnership
2 with the City and just working with them, and then
3 when the cash got tight, you know, we moved into the
4 initial -- there was two reviews, right, the initial
5 review which I think happened in '11 that led to a
6 consent agreement and --
7 Q. And the consent agreement was when, approximately?
8 A. April, I think of '12 --
9 Q. '12, okay.
10 A. -- is my memory.
11 And so during that, prior to the consent
12 agreement there was a lot of obviously negotiations
13 to get to that point so that we had an understanding
14 and that the City had the ability to address their
15 issues on their own. And then it wasn't until
16 December of '12 where I had a meeting with Chris
17 Andrews, and the City had gone through -- don't hold
18 me to the number -- but tens of millions of dollars
19 of cash from September through December where their
20 disposable cash was eroding rapidly.
21 And immediately after that meeting, I
22 called the Governor and I said I think they're at
23 the \$50 million threshold and I think we have to
24 commence another review immediately. I believe that
25 was because the law had changed. So the initial

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1 review was no longer valid because it was done under
 2 a prior law. So we initiated the new review in
 3 December of '12 which led ultimately to the
 4 emergency manager's appointment.
 5 Once the manager was appointed our
 6 day-to-day active role diminished somewhat.
 7 Q. Let me ask you a question about that.
 8 Do you have one-on-one conversations with
 9 Mr. Orr?
 10 A. Yes.
 11 Q. How often?
 12 A. It varies. One-on-ones would be -- it could be
 13 twice in a week or it could be zero in a week.
 14 Depends what issues are brewing.
 15 Q. What about larger discussions with other people
 16 ever, either in person or telephone conferences?
 17 How often with Mr. Orr since he's been appointed?
 18 A. We have a standing meeting on Mondays where it could
 19 be face-to-face or it could be over the phone where
 20 it's just a briefing on what happened last week,
 21 what's happening next week, where are we.
 22 Q. Has your role stayed essentially the same from the
 23 time Mr. Orr took over or did it at all change when
 24 he filed Chapter 9?
 25 MS. NELSON: Objection; form, foundation.

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1 You said when he took over and then when he filed
 2 Chapter 9.
 3 MR. WERTHEIMER: Well, there were two
 4 different times and I'm just trying to find out
 5 whether --
 6 BY MR. WERTHEIMER:
 7 Q. Go ahead.
 8 A. I think it's pretty much the same.
 9 Q. Okay.
 10 A. When he first came in, we gave him time to find out
 11 where the desks were and chairs and gave him time to
 12 assemble and then -- but the weekly standing meeting
 13 was pretty much a given.
 14 Q. At either the weekly meetings or in your one-on-one
 15 conversations with Mr. Orr, have you ever discussed
 16 with him either the subject of Article 9 Section 24
 17 of the Constitution specifically or generally the
 18 fact that the State Constitution does have some
 19 special protections for pensions?
 20 Has that subject matter come up in any of
 21 these conversations?
 22 MS. NELSON: Objection; attorney-client
 23 privilege. If you want to go ahead and establish
 24 whether those conversations occurred with or without
 25 counsel, then he can appropriately answer.

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1 BY MR. WERTHEIMER:
 2 Q. I'll ask you to exclude any conversations where your
 3 counsel was present, so either the one-on-ones or if
 4 in any of these group meetings you did not have
 5 attorneys present.
 6 A. I don't have any specific memory of a discussion
 7 about Article 9 with Mr. Orr.
 8 Q. How about discussions about the fact that there was
 9 this state provision that protected pensions?
 10 A. I'm -- I presume that it was discussed early on and
 11 it was understood by people that there was this
 12 provision in the Constitution.
 13 Q. Including Mr. Orr? That is, I assume you're saying
 14 that this came up in some way in your conversations?
 15 A. Yes.
 16 Q. Okay. Did it also come up in your conversations
 17 that the only practical way to deal with this issue
 18 absent getting consent from the 20,000 retirees or
 19 the unions on their behalf was the filing of a
 20 Chapter 9?
 21 A. I don't recall that conversation.
 22 Q. Isn't that, in fact, your understanding; that is,
 23 isn't it your understanding as you sit here that the
 24 only practical way that the State could have dealt
 25 with the State constitutional provision other than

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1 honoring it and the State coming in and making good
 2 on the pensions was for a bankruptcy to be filed?
 3 A. Not necessarily.
 4 Q. How else, as you sit here, do you think it could as
 5 a practical matter be dealt with?
 6 MS. NELSON: Objection; calls for a legal
 7 conclusion.
 8 BY MR. WERTHEIMER:
 9 Q. Go ahead, Mr. Dillon.
 10 A. There's another unit that I referenced earlier that
 11 has virtually no funding in their pension fund,
 12 right? So, I mean, my understanding is the law is
 13 very unsettled here, right?
 14 Q. Which law?
 15 A. That the law is unsettled.
 16 Q. Just the law generally?
 17 A. Right.
 18 Q. Go ahead.
 19 A. So if you have a unit that basically exhausts all of
 20 their pension monies and then has no means by which
 21 to honor those pension payments, what happens? I
 22 can't sit here and tell you, but I've had
 23 discussions. I've asked for legal advice on what
 24 happens, and the advice I got was --
 25 MS. NELSON: It's attorney-client

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1 privilege.
 2 THE WITNESS: Oh, okay.
 3 BY MR. WERTHEIMER:
 4 Q. You know as you sit here -- I'm assuming, I'm
 5 asking -- that the Attorney General has filed papers
 6 in the bankruptcy in which he has said that it's his
 7 legal opinion that Article 9 Section 24 applies in
 8 the bankruptcy; do you not?
 9 MS. NELSON: Objection to form and
 10 foundation. As we indicated yesterday, an Attorney
 11 General opinion has a specific -- you're saying
 12 legal opinion.
 13 MR. WERTHEIMER: Margaret.
 14 MS. NELSON: You're talking about a brief.
 15 MR. WERTHEIMER: Margaret, you are entitled
 16 to make an objection. You are not entitled to
 17 comment.
 18 MS. NELSON: Well, your characterization of
 19 a legal opinion is incorrect. So my objection is
 20 form, foundation,
 21 MR. WERTHEIMER: That's fine.
 22 MS. NELSON: And calls for a legal
 23 conclusion.
 24 MR. WERTHEIMER: Thank you.
 25 BY MR. WERTHEIMER:

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1 Q. Could you answer?
 2 A. I'm aware that the Attorney General has intervened,
 3 but I haven't read his brief and I don't know the
 4 position he's taken.
 5 Q. Haven't you read the press reports?
 6 A. Yeah.
 7 Q. And, I mean, you know that the Attorney General's
 8 position is, would it be fair to say, not consistent
 9 with the position that Emergency Manager Orr has
 10 stated publicly to the Detroit Free Press and
 11 others?
 12 A. I don't mean to be difficult, but that's an overly
 13 broad statement because in my mind -- I haven't read
 14 what the Attorney General is saying. He may be
 15 acknowledging that this constitutional provision
 16 exists, which I assume is one position.
 17 How that's dealt with in a Chapter 9
 18 proceeding, I don't know if the AG's opined or taken
 19 a position on that, so I don't know.
 20 Q. Okay. Has the Attorney General ever communicated to
 21 you as the head of Treasury the opinion that
 22 Article 9 Section 24 applies in the bankruptcy?
 23 A. I haven't discussed this topic with the Attorney
 24 General. And by that I mean the person, Bill
 25 Schuette.

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1 Q. I understand. That's what I thought you meant.
 2 Have you had any one-on-one discussions
 3 with the Governor about -- either specifically about
 4 Article 9 Section 24 or generally about the fact
 5 that there is a state constitutional provision that
 6 protects pensions?
 7 MS. NELSON: Objection; asked and answered.
 8 You can go ahead and answer again.
 9 THE WITNESS: No.
 10 BY MR. WERTHEIMER:
 11 Q. The subject has never come up between the two of
 12 you?
 13 A. Well, you said one-on-one.
 14 Q. You're right, I did say one-on-one.
 15 Has it ever come up in group meetings
 16 without attorneys present?
 17 A. And what precisely was that again? Can we --
 18 Q. A conversation in which you discussed either the
 19 specifics of Article 9 Section 24 or generally the
 20 fact that there is a state constitutional provision
 21 that protects pensions.
 22 A. I don't recall.
 23 Q. Do you recall that in early July initially two
 24 lawsuits were filed against you in your official
 25 capacity and against the Governor in his that

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1 related to what was going on in Detroit and this
 2 pension provision we've been asking you about?
 3 A. That rings a bell.
 4 Q. Okay. Did you learn -- do you recall whether you
 5 learned about them the day they were filed? And if
 6 it helps, they were filed on July 3rd.
 7 A. I don't know the exact number but I think there are
 8 give or take a hundred lawsuits against the Governor
 9 and I related to this topic, so I'm nervous about
 10 saying I have specific memory on any particular one,
 11 but --
 12 Q. You mean among these hundred cases you can't
 13 differentiate either the Flowers or the Webster case
 14 or the case that the pension boards brought that
 15 specifically dealt with the ability of the Governor
 16 to authorize a bankruptcy in the face of Article 9
 17 Section 24? You really can't differentiate?
 18 A. I recall that those suits got filed. The day and
 19 the time I got notified, I don't recall.
 20 Q. Okay. Do you recall learning that there was going
 21 to be a hearing on requests for injunctive relief
 22 that would have in some way precluded the Governor's
 23 ability to authorize a bankruptcy and that that
 24 hearing was scheduled for July 22nd?
 25 A. I recall that there was a hearing scheduled. I

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1 don't recall the specific date.
 2 Q. Okay. But you knew about it before the hearing
 3 itself?
 4 A. Yes.
 5 Q. A week, 10 days before?
 6 A. I don't recall.
 7 Q. Did you have any discussions internal at Treasury
 8 about the fact that there was going to be this
 9 hearing at which a state court judge was going to be
 10 asked to issue injunctive relief along the lines
 11 I've suggested?
 12 MS. NELSON: Objection; attorney-client
 13 privilege. If you want to sort that out because he
 14 does have as legal counsel Fred Headen.
 15 BY MR. WERTHEIMER:
 16 Q. Again, let's exclude any conversations where your
 17 attorneys were present for the purpose of either
 18 giving advice or potentially giving advice.
 19 Did you have any conversations excluding
 20 those between the time you learned of the lawsuit
 21 and learned that there was going to be a hearing
 22 later in July?
 23 A. I don't recall any conversations where a lawyer was
 24 not present for that topic.
 25 Q. So you were -- and how many conversations did you

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1 have about that subject matter with lawyers present?
 2 A. I don't recall, but I would say three or less.
 3 Q. Okay. Did you at any point learn that the
 4 Governor's office planned to -- in conjunction with
 5 the Detroit Emergency Manager planned to file
 6 bankruptcy the Friday before that Monday hearing or
 7 July 19th?
 8 A. I was aware that there was a sequence of events, a
 9 time schedule for when things would happen. And my
 10 memory was I wasn't -- I don't know if I wasn't in
 11 Lansing or I wasn't, you know, having meetings at
 12 the Governor's office during that window and right
 13 prior to the filing.
 14 I wasn't having meetings in those three-
 15 and four-day window with them, so I knew there was a
 16 schedule and a timeline, but I wasn't having direct
 17 discussions with the Governor's office.
 18 Q. Did you know that the plan was to file for
 19 bankruptcy before the court hearings?
 20 A. I -- can you restate the question?
 21 Q. Yes. Did you at least know that the plan was that
 22 if the plan went forward, the bankruptcy filing
 23 would occur before the hearings that were scheduled
 24 in the cases that had been filed against you and the
 25 Governor?

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1 A. I don't remember the sequence of the dates so -- and
 2 I wasn't part of that decision so I --
 3 Q. Okay.
 4 A. I'd have to see some documents to show, yeah, this
 5 is the time schedule we discussed on such and such
 6 date, and I don't remember the date the hearing was
 7 scheduled on the Flowers case.
 8 Q. Let me show you what we marked yesterday at the
 9 Governor's deposition Snyder Exhibit 6, and let me
 10 just direct your -- I'm going to show it to you but
 11 I'm going to direct your attention because there's a
 12 lot of information in the document.
 13 It looks to me from the upper right as
 14 though this is a document created the 17th of July,
 15 which would have been the Wednesday, and it's a
 16 rollout plan that indicates that the Governor's
 17 going to sign the authorization 8 p.m. on Thursday
 18 the 18th, and then the filing is going to be the
 19 morning of the 19th, and all kinds of events follow
 20 that up to and including Fox News Sunday and George
 21 Stephanopoulos and Frank Beckman and you name it.
 22 A. Uh-huh.
 23 Q. Let me just ask you have you ever seen that
 24 document?
 25 A. I don't have a specific memory of it. I think we

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1 met that Monday where the timeline was discussed.
 2 Q. The preceding Monday?
 3 A. Yeah.
 4 Q. Which would have been the 15th? Am I right?
 5 A. I believe so.
 6 Q. Okay.
 7 A. I don't know if this got circulated at that meeting
 8 or was just discussed.
 9 Q. Well, does it refresh your memory as to what the
 10 plan was?
 11 A. Generally speaking, yes.
 12 Q. Okay. And the plan was to -- the Governor would
 13 sign it Thursday night and Orr would file on Friday,
 14 right?
 15 A. That's my memory.
 16 Q. Do you recall that the plan changed at the last
 17 minute?
 18 A. I believe it may have. Yes. I think it --
 19 Q. Were you involved in any conversations with anyone
 20 excluding conversations where attorneys were present
 21 for the purpose of giving legal advice where anyone
 22 gave a reason for that change of plan?
 23 A. I was not present for any of those discussions.
 24 Q. Did you hear secondhand?
 25 A. No.

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1 Q. You never heard why Orr moved it up by a day or it
2 was moved up by a day?
3 A. No, and, in fact, it was -- I'd like to look at my
4 schedule because I don't know if I was even in
5 Lansing during those dates.
6 Q. Okay. But you do -- you have no memory as to ever
7 knowing the reason why it was moved up. That's just
8 what I want to know about.
9 A. I've heard speculation on the street.
10 Q. We're not talking about the street, but if the
11 street includes people at Treasury --
12 A. No. No.
13 Q. -- or people in the Governor's office?
14 A. No one briefed me on why the date moved.
15 Q. Okay. I'm going to show you what we had marked
16 yesterday at the Governor's deposition as Exhibit 8.
17 This is an email from you to the Governor a
18 day before the one that you were previously shown.
19 Could you take a look at that, please.
20 Do you recall sending that email to the
21 Governor?
22 A. Yes.
23 Q. And would I be correct I guess in my arithmetic that
24 last Wednesday would have been July 3rd, as you
25 begin last Wednesday.

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1 A. That sounds about right.
2 Q. Okay. And for the record, that's when the Flowers
3 and Webster's cases were filed, on July 3rd.
4 Is that -- would that have been the
5 reason -- would that be the information you learned
6 on that last Wednesday?
7 A. I don't believe so.
8 Q. What was it, if you recall? There's a reference to
9 Detroit consultants, that's why I am --
10 A. Yeah. No, I think this had to do with the level of
11 funding for the pensions, how it was getting
12 measured. So I was -- the filing of the suit
13 wouldn't tie into this comment about their thought
14 about the impact on the ability to pay pensions.
15 So the number was moving about how well
16 funded the pension plans were, and there were
17 several issues that we were learning about; the
18 annuity program, the failure to write down
19 alternative assets that were on the books, the
20 actuarial assumptions to get to the level of
21 funding, calculus.
22 So there was a lot of activity around the
23 pensions in trying to get our arms around it at that
24 time and --
25 Q. Do you recall, if you look further down in the first

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1 paragraph, the sentence that reads "I learned today
2 that due to the pension funds recent suits against
3 you and me...", is that a reference -- can you tell
4 me what that's a reference to?
5 A. I don't have a specific recollection about if it was
6 the Flowers suit or not.
7 Q. It may have been?
8 A. Probably was.
9 Q. Probably was. Okay.
10 And in this email you're telling the
11 Governor in the next paragraph that the consultants
12 think that current pensions have to be cut
13 significantly, correct?
14 A. I expressed the view of the consultants, yes.
15 Q. Did you agree with that view?
16 A. To me it was -- there's a lot of -- to value the
17 level of funding of a pension fund requires a lot of
18 assumptions on a lot of different factors, and to me
19 it was very fluid. And I think there was an earlier
20 email we looked at before where I just -- I think my
21 advice to the Governor was let's -- we're in the
22 informational stage, so I viewed it that way.
23 I was troubled though by, for example, the
24 annuity program which I thought was very damning and
25 damaging to the status of the pension funds. You

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1 know, The 13th Checks that go out. There's a lot of
2 activities that I thought were doing damage to the
3 pension funds, but until I really knew what the
4 funding status was it was hard to form an opinion
5 about what the impact would be on retirees.
6 Q. Okay. Did you have any personal conversations with
7 the Governor around these issues at this time or was
8 it just the email -- the two emails?
9 A. From reading the one email it looks like I called
10 him.
11 Q. Right. Do you remember whether you just left a
12 message or you had a substantive conversation?
13 A. I think we spoke briefly, yeah.
14 Q. What was the content of that conversation?
15 A. It was one of these issues that was bubbling up that
16 I wanted to get on his radar so --
17 Q. Do you remember which one?
18 A. I'd have to guess, but it would be in this area that
19 I was referring to. But there was one in
20 particular.
21 Q. Are you referring to the Flowers, Webster litigation
22 or are you referring to this other litigation you've
23 been talking about?
24 A. Not litigation. I think I was referring to the
25 information we were learning about the health of the

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1 pension funds.
 2 Q. Okay. All right.
 3 Did you have any conversations with the
 4 Governor about the issue of whether Orr should file
 5 for bankruptcy say in the couple weeks preceding the
 6 filing?
 7 MS. NELSON: Again, are you speaking just
 8 one-on-one other than attorney-client?
 9 BY MR. WERTHEIMER:
 10 Q. One-on-one or in group conversations -- I don't
 11 want -- I'm not asking you to violate the
 12 attorney-client privilege. I think you understand
 13 what we're getting at here.
 14 A. Yeah.
 15 Q. So my questions you should assume are modified in
 16 that respect.
 17 A. Yeah, so can you restate the question?
 18 (Reporter read record as follows:
 19 "Q. Did you have any conversations with the
 20 Governor about the issue of whether Orr
 21 should file for bankruptcy say in the
 22 couple weeks preceding the filing?")
 23 THE WITNESS: I have a question for my
 24 lawyer.
 25 MR. WERTHEIMER: That's fine. If you want

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1 to take a break or just go outside.
 2 VIDEO TECHNICIAN: Off the record 11:35
 3 a.m.
 4 (A brief recess was taken.)
 5 VIDEO TECHNICIAN: We're back on the record
 6 at 11:37 a.m.
 7 THE WITNESS: Yeah, I don't recall any
 8 conversations with the Governor outside the presence
 9 of counsel on that topic.
 10 BY MR. WERTHEIMER:
 11 Q. Okay. If you take a look at the July 9 -- do you
 12 have that one in front -- that's five. This one
 13 here.
 14 A. Okay.
 15 Q. And let me direct your attention to the first
 16 paragraph. You're telling the Governor that the
 17 emergency manager's going to meet relative to the
 18 pensions the next day, and then a couple of
 19 sentences down you say he, meaning Orr, will not
 20 translate that into an impact on retirees or
 21 employees' vested rights or what share of monies
 22 available to unsecured creditors would go to the
 23 pension plans.
 24 What was your understanding of why Orr was
 25 not going to do that? What's the point, and why are

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1 you telling the Governor?
 2 That's -- your attorney's going to object.
 3 That was three questions.
 4 A. Okay.
 5 MS. NELSON: Yes, which one would you like
 6 him to answer first?
 7 MR. WERTHEIMER: He can do it in order or
 8 however he'd like.
 9 MS. NELSON: Well, I don't know that he's
 10 going to remember them all by the time he gets to
 11 the last one.
 12 THE WITNESS: I mean, to me the building
 13 block is what's the funded status. And that issue
 14 was fluid, and I think that's the first issue that
 15 if you're going to reach a settlement with your
 16 creditors it's important to understand, all right,
 17 what's the funding level. From there you can start
 18 to figure out how do you solve this equation going
 19 forward. So I was comfortable with that.
 20 BY MR. WERTHEIMER:
 21 Q. Well, isn't there a political reason to not
 22 translate it into the impact on retirees because the
 23 impact is going to be negative? All we need to do
 24 is look at the June 14th creditors' proposal to know
 25 that, don't we?

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1 MS. NELSON: Objection; form, foundation,
 2 calls for speculation.
 3 BY MR. WERTHEIMER:
 4 Q. Go ahead.
 5 A. That wasn't my thinking. My thinking was until you
 6 really know the funding status, it's hard to really
 7 understand what the impact may be.
 8 So it was more important to understand that
 9 first.
 10 Q. Okay. I have nothing further. Thank you.
 11 MS. NELSON: Is everybody done?
 12 MR. SHERWOOD: I have one or two followup,
 13 but I'll let you go first.
 14 MS. GREEN: You can go. Do your followup
 15 first. We'll wait.
 16 MR. SHERWOOD: Can I use this microphone?
 17 MS. NELSON: Well, you're the Retiree
 18 Committee and I don't believe you --
 19 MR. GALLAGHER: We're not the Committee,
 20 we're the Retirement Systems.
 21 MS. NELSON: I'm sorry, the Retirement
 22 Systems. You did not subpoena -- did not issue a
 23 subpoena to the Treasurer, and it's my understanding
 24 the parties that didn't subpoena aren't entitled to
 25 question.

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1 MR. GALLAGHER: Why would they not be
2 entitled to question?
3 MS. NELSON: Because you didn't subpoena
4 the witness. I thought that was in the judge's
5 order.
6 MR. WERTHEIMER: I've got the judge's
7 order.
8 MS. NELSON: Not the one that we signed.
9 Isn't that in his discovery order, only the parties
10 seeking the discovery?
11 MR. WERTHEIMER: I'm not sure. Let me
12 look. Let me look.
13 MR. SHERWOOD: Do we have to have this on
14 the record?
15 MS. NELSON: No, we don't have to do this
16 on the record.
17 VIDEO TECHNICIAN: Off the record at 11:40
18 a.m.
19 (Discussion held off the record.)
20 VIDEO TECHNICIAN: We're back on the record
21 at 11:43 a.m.
22 RE-EXAMINATION
23 BY MR. SHERWOOD:
24 Q. Treasurer Dillon, Jack Sherwood again for AFSCME. I
25 have just a few follow-up things. It won't be too

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1 much longer, for me anyway. Just following up on
2 the --
3 MS. NELSON: Famous last words of a lawyer.
4 BY MR. SHERWOOD:
5 Q. Following up on the sequence of events that led to
6 the -- on the bankruptcy filing timeline, you know,
7 there was a -- you talk about this July 18th date
8 and you gave prior testimony that you didn't really
9 know what the impact of Flowers and Webster was on
10 that date.
11 Do you recall that discussion?
12 A. Yes.
13 Q. Do you know what drove the filing date of the 18th
14 in the first place? Was there any compelling reason
15 to file on July 18th that you're aware of?
16 A. We were briefed a few times on the schedule, and
17 the -- just there's a lot of events that have to
18 happen postfiling. So I was briefed on it. I don't
19 recall the specifics other than that the process to
20 go through a nine is lengthy, and there was a desire
21 on the Governor's part if you're going to do this he
22 wants it to be fast and efficient.
23 And so we got briefed on several occasions
24 about a calendar and all the events that would have
25 to follow. So precisely that date, I don't think

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1 there was a specific reason other than there's a
2 lengthy process involved with this and it was to
3 deal with that timing.
4 Q. All right. And I think in one of the exhibits the
5 original date reflected the 19th as the proposed
6 filing date.
7 Do you know when the 19th or the 18th was
8 established as the proposed filing date?
9 A. I don't recall.
10 Q. Do you know whether it was before July 1st?
11 A. It was after July 1st.
12 Q. So it's your clear recollection that the 18th or the
13 19th was established as the filing date after
14 July 1st? That's your testimony?
15 A. I don't remember being briefed on a specific date,
16 you know, weeks ahead of time. I remember --
17 Q. Is it possible that it could have been established
18 as the filing date before July 1st?
19 A. If it was, no one told me about it.
20 Q. Are you familiar with the New Energy to Reinvest
21 Diversity Funds a/k/a the NERD Funds?
22 A. I'm sorry?
23 Q. Are you familiar with an organization called New
24 Energy to Reinvest Diversity, also known as NERDs?
25 A. I'm aware that this fund exists.

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1 Q. Do you know what the purpose of the fund is?
2 A. I don't.
3 Q. Do you know whether any of the funds from NERDs,
4 N-E-R-D-s, are being used to fund any expenses of
5 the emergency manager?
6 A. I've read about it in the paper. Rich Baird is
7 closer to that than I am. He may be able to give
8 you more precise information.
9 Q. Do you know any of the major donors for the NERDs
10 Fund?
11 A. No.
12 Q. Do you recall meeting with Al Garrett and Ed McNeil
13 in December of 2012 regarding the City of Detroit?
14 A. I have met with them several times. I have a vague
15 memory of that.
16 Q. And for the record, who are Al Garrett and
17 Ed McNeil?
18 A. Al is the head of AFSCME in Detroit and Ed works for
19 him.
20 Q. Was the last time you met with them December 2012?
21 A. I'm not certain but probably. I think I've seen Ed
22 since then, but I don't recall meeting with Al since
23 then.
24 Q. During that meeting, did you discuss ways to
25 increase revenues for the City of Detroit to satisfy

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1 its liabilities?

2 A. I don't have specific memory of that, but it sounds
3 familiar.

4 Q. And at that point in time do you recall that there
5 was over \$700 million owed to the City by various
6 parties?

7 A. I recall that and I recall that we looked into it,
8 and the information I got back from my staff is that
9 it's virtually uncollectible.

10 Q. What did your staff base that conclusion on?

11 A. I have a Department of Collections here within
12 Treasury so we have some people that are skilled in
13 collections, and they looked at what was available
14 to Detroit, and the view of the world was that over
15 90 percent of these are uncollectible.

16 Q. Did you provide Mr. Orr with access to your people
17 that worked on collection of this \$700 million?

18 A. Indirectly. I mean, we made them available to the
19 City. That might have predated Kevyn.

20 Q. What is the basis for the conclusion that this money
21 is uncollectible?

22 A. It'd be a variety of reasons. Agings, can't find
23 who owes the money. It would probably be five or
24 six different reasons that make up the vast majority
25 of that conclusion.

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1 Q. In February of 2012, were you involved with an
2 effort to have a tentative agreement with a
3 coalition of unions?

4 A. No, but --

5 MS. NELSON: That's all you --

6 THE WITNESS: No.

7 BY MR. SHERWOOD:

8 Q. Did you have any discussions or were you aware that
9 there was a coalition of unions that were working on
10 a tentative agreement in February of 2012?

11 A. I was aware that the City was working with their
12 unions to negotiate solutions to wage and benefit
13 costs.

14 Q. What, if any, was your role in connection with that
15 Coalition-City negotiation?

16 A. My memory is none until they came up with tentative
17 agreements.

18 Q. What was the view of yourself with respect to the
19 tentative agreements?

20 A. I had them reviewed by labor experts, and the advice
21 that came back to me is that they were not something
22 that should be agreed to.

23 Q. Why not?

24 A. A variety of reasons. That it -- fundamental issues
25 about management versus, you know, the ability of

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1 the City to manage itself with some of the
2 provisions of the agreements were problematic.

3 We had -- I don't remember the number of
4 issues, but there was substantial number of issues
5 that were problematic.

6 Q. Did you communicate those issues to the coalition of
7 unions?

8 A. I don't recall.

9 Q. Who did you communicate those issues to?

10 A. To the City. I do recall one meeting I had with
11 Joe Duncan, but that may have been after the fact
12 about this issue. But our communications would have
13 been with the City itself.

14 Q. Isn't it true that the tentative agreement that the
15 City and the unions were working on would have saved
16 the City money?

17 A. I know that they believed it would.

18 Q. And you didn't agree with them?

19 A. The advice that I got from the people I had review
20 this for me was that we shouldn't support these
21 tentative agreements because they won't work. They
22 won't help solve the City's problems.

23 Q. And, in fact, you didn't -- or the Governor didn't
24 support the tentative agreements; isn't that right?

25 A. I don't know if the Governor had any role with

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1 respect to the tentative agreements.

2 Q. So that was your decision to make?

3 A. Yes.

4 Q. And you decided not to support these tentative
5 agreements with the union, correct?

6 A. Correct.

7 Q. Even though those tentative agreements might have
8 saved the City money?

9 MS. NELSON: Objection; asked and answered.

10 BY MR. SHERWOOD:

11 Q. Do you recall whether health care savings were
12 negotiated as part of that tentative agreement with
13 the unions?

14 A. I'd have to review them to recall that.

15 Q. You don't recall whether health care savings for the
16 City was part of the tentative agreement
17 negotiation?

18 MS. NELSON: Asked and answered.

19 THE WITNESS: I don't recall.

20 MR. SHERWOOD: Okay. I just wanted to make
21 sure.

22 BY MR. SHERWOOD:

23 Q. What about efforts to use amnesty as a means of
24 collecting funds by the City, has that been
25 explored?

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1 A. I believe the City did it.
 2 Q. Was it done in 2012?
 3 A. I -- I don't recall.
 4 Q. Have any -- with respect to \$700 million worth of
 5 receivables that we talked about, has any effort
 6 been used to use amnesty as a means to collect that
 7 money?
 8 A. I recall that the City put in place an amnesty
 9 program. Whether any of those receivables in that
 10 700 million were collected through that program, I
 11 can't answer.
 12 Q. When was the last time the City implemented an
 13 amnesty program?
 14 A. I don't know.
 15 Q. Was one -- has one been implemented since December
 16 2012?
 17 A. I know that they did one recently. I don't recall
 18 the date.
 19 Q. Okay. Now I'm really done. Thank you.
 20 EXAMINATION
 21 BY MS. GREEN:
 22 Q. Hi, Mr. Dillon.
 23 A. Hello.
 24 Q. I'm Jennifer Green. I represent the Retirement
 25 Systems for the City of Detroit.

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1 Following up with the prior line of
 2 questioning, you said you think you were traveling
 3 the day the petition was filed; is that correct?
 4 A. I don't recall.
 5 Q. Do you recall where you were when you first found
 6 out the petition was filed?
 7 A. No.
 8 Q. Were you not aware that day that it was going to be
 9 filed?
 10 A. I knew from the meeting on the Monday that there was
 11 a schedule, and I had no reason to believe that that
 12 schedule would change or not change so I was not
 13 aware of any changes until after it happened.
 14 Q. So was it a surprise when you found out that the
 15 petition had indeed been filed?
 16 A. It wasn't like there was this iron clad schedule
 17 that wasn't movable, so I don't think I really gave
 18 it a lot of thought.
 19 Q. You mentioned earlier that the first time that you
 20 saw the Governor's authorization letter was online
 21 on freep dot com. Do you recall?
 22 A. (Nodding head up and down.)
 23 MR. WERTHEIMER: You need to say your
 24 answer.
 25 THE WITNESS: Oh. Yes.

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1 BY MS. GREEN:
 2 Q. Do you remember where you were or what time it was
 3 that you were reading about this, that the petition
 4 had been filed?
 5 A. Vague recollection. I was in the Detroit area when
 6 I read it. The letter, I believe, was addressed to
 7 me so I imagine it came in hard copy, but the first
 8 time I read it was online.
 9 Q. Would have been that night, do you recall?
 10 A. I don't recall.
 11 Q. Did you not see the email prior to the filing that
 12 had sent the authorization letter?
 13 A. I don't recall.
 14 Q. Do you recall getting the email with the
 15 authorization letter?
 16 A. I do not. In fact, I don't know if it came via hard
 17 copy or email.
 18 Q. You testified earlier that you did not have a role
 19 in drafting PA 436. Who was involved in drafting it
 20 as far as outside counsel?
 21 A. I guess I want to be -- 436? I want to be careful.
 22 There was meetings let's say late November, early
 23 December with me and some folks on my staff as well
 24 as the Governor's office where we talked high level
 25 about how could we address some of the issues that

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1 led to the repeal of PA 4.
 2 Once those themes were kind of framed out
 3 then it would be handed off to folks on my staff as
 4 well as the Governor's staff that moved legislation
 5 through the Legislature. And my involvement in any
 6 nuance from that point was pretty much over.
 7 Q. So you don't know?
 8 A. I can name some of the people that were part of
 9 that.
 10 Q. Oh, okay. Who would that be?
 11 A. Howard Ryan on my staff, Brom Stibitz, and the
 12 Governor's office I can only guess who it was, but,
 13 you know, there's someone responsible for dealing
 14 with the Legislature. I assume he was involved.
 15 Q. Who was that?
 16 A. Dick Posthumus.
 17 Q. What about with respect to PA 4; you said you didn't
 18 have a role in drafting PA 436 but what about PA 4?
 19 A. It would be the same. High level, you know,
 20 directional and then pretty much the same team I
 21 just described would have been the arms and legs on
 22 the ground executing the process through the
 23 Legislature.
 24 Q. Do you know who outside of the Legislature or
 25 outside of the State of Michigan would have been

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1 consulted with respect to PA 4?
 2 A. Well, during the transition -- if it's lawyers can I
 3 disclose lawyers?
 4 MS. NELSON: With respect to PA 4, is
 5 that --
 6 THE WITNESS: Initial formation of PA 4.
 7 MS. NELSON: If they're attorney-client
 8 privileged communications, no, they're privileged.
 9 THE WITNESS: Yeah. So some were lawyers
 10 and then some were just people that were on the
 11 transition advisory board. Like Bob Daddow was
 12 involved, Mark Murray was on the Treasury transition
 13 aspect, Brom Stibitz from my staff was involved. I
 14 don't recall -- Dick Posthumus, I believe, was
 15 involved. I don't recall others that were
 16 nonlawyers that were part of the consultants.
 17 BY MS. GREEN:
 18 Q. What about restructuring consultants? Did you have
 19 any restructuring consultants that took part in the
 20 process?
 21 A. For PA 4?
 22 Q. Yes.
 23 A. I don't recall that.
 24 Q. Isn't it true that Jones Day actually provided you
 25 with review and comment of PA 4 at certain times?

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1 A. No.
 2 Q. Did they write memos to you regarding PA 4 or any of
 3 the topics related to the pensions or Chapter 9?
 4 A. I don't recall.
 5 Q. Were you involved in an RFP process relating to
 6 either Chapter 9, the pensions or the emergency
 7 manager law in 2011?
 8 A. Can you restate the question?
 9 Q. Were you involved in an RFP process in 2011 relating
 10 to either PA 4 or the emergency manager law?
 11 A. We did an RFP process here in Treasury that you
 12 could say was related to PA 4 to get a short list of
 13 firms that we could work with when we have a crisis.
 14 Q. And who were they at that time?
 15 A. And there's a list we can provide, and I could name
 16 some of the firms that were on it, but not all.
 17 Q. Was Jones Day one of the firms that was looked at
 18 during the 2011 RFP process?
 19 A. No.
 20 Q. Is it possible that they would have submitted an RFP
 21 related to that and you just didn't know about it?
 22 A. It's possible.
 23 Q. Do you remember having conversations with Jones Day
 24 attorneys relating to PA 4 in 2012?
 25 A. No.

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1 Q. If there's an email dated 3-2-2012 from Jones Day
 2 that just said we spoke to someone in Andy's office,
 3 do you recall those types of conversations back in
 4 2012?
 5 A. Can you show me the --
 6 Q. Yeah. I only have one. We just got it a day ago so
 7 I apologize, I don't have copies for everyone. We
 8 copied some of them.
 9 MR. SHERWOOD: Is it Bate stamped?
 10 MS. GREEN: It is.
 11 MR. WERTHEIMER: Can you identify it?
 12 MS. GREEN: Yeah.
 13 THE WITNESS: Yeah, the only person I
 14 recall knowing prior to 2013 from Jones Day was
 15 Corinne Ball.
 16 BY MS. GREEN:
 17 Q. What about Heather Lennox?
 18 A. I don't think I met her prior to 2013.
 19 Q. Yeah, can we mark that -- well, the problem is I
 20 only have one copy and it has my handwriting on it
 21 because we just got the document, but I can state
 22 for the record the Bates number if that's
 23 appropriate. We can have an agreement on that.
 24 The Bates number is DTMI 00234878 to 880 is
 25 the last page.

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1 MR. SHERWOOD: DTMI 00234.
 2 MS. GREEN: 878.
 3 MR. WERTHEIMER: Why don't we just mark it
 4 and you can identify that it should not include any
 5 of the underlining and handwriting.
 6 MS. GREEN: That's fine.
 7 MS. NELSON: Well, why don't we just have
 8 her produce one that doesn't have handwriting on it
 9 and mark it.
 10 MR. WERTHEIMER: That would be fine too.
 11 MS. NELSON: And mark it -- what's the next
 12 one, six?
 13
 14 (Deposition Exhibit 6 marked post deposition.)
 15
 16 MS. GREEN: I do have copies of the next
 17 one, which we can mark as Exhibit 7.
 18
 19 (Deposition Exhibit 7 was marked.)
 20
 21 BY MS. GREEN:
 22 Q. Do you recognize this email?
 23 A. Yeah. Okay. I mean, I forgot about this but I
 24 think when we were working on the consent agreement
 25 we were seeking advice from Huron Consulting and

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1 Miller Buckfire. They used various law firms on
2 occasion.
3 And in this case, I don't know that I ever
4 actually met Heather other than maybe over the
5 phone, but we were -- through Huron or through
6 Miller Buckfire we were getting advice from various
7 law firms, Jones Day being included.
8 They weren't a vendor to the Treasury
9 Department.
10 Q. And did Jones Day also weigh in on the drafting in
11 preparation of the consent agreement?
12 A. From my reading of this, they did.
13 Q. Do you recall receiving a blackline copy from Jones
14 Day at any time relating to the consent agreement
15 between the City and the State?
16 A. I don't recall. We may have but we had counsel
17 representing us, and this may have been just
18 friendly free advice, but there's other people that
19 can answer that question more precisely than I.
20 Q. Do you recall getting any free advice, any memos
21 given to you by Jones Day during this process?
22 A. I'd have to look in my files to know.
23 Q. Do you know if any of those memos have been produced
24 by the State of Michigan in this case?
25 A. I don't know. I'd have to look.

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1 Q. Would you recall if any of those memos were related
2 to Chapter 9 filing or the pension obligations of
3 the City of Detroit?
4 A. I don't recall any memos covering those topics.
5 Q. During the vetting process for the City of Detroit's
6 restructuring counsel, were you involved in the
7 interview on the 29th of the law firms?
8 A. Yes.
9 Q. I should have restated it. Were you involved in
10 putting together the list of questions that would be
11 asked of the law firms on the 29th?
12 A. I don't believe so.
13 Q. Do you recall the interview topics that were asked
14 of the law firms on the 29th?
15 A. I don't recall. I mean, we had a group I described
16 earlier in the deposition who was there. I think
17 everyone was -- felt free to ask the questions that
18 they had.
19 Q. Do you know who was responsible for putting together
20 the list of interview topics for the law firms at
21 the 29th meeting?
22 A. I don't think it was that structured. I think
23 Miller Buckfire played a significant role in who was
24 invited, and the City worked with them and may have
25 added some names to who was invited.

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1 I don't remember walking in with any
2 proposed questions to ask. We did have a huge
3 volume of submissions from each of the firms.
4 Q. And the State is paying in part the professional
5 fees that are being incurred by the City of Detroit
6 in the Chapter 9 process, correct?
7 A. We agreed to pay half of the cost up to five million
8 prior to the bankruptcy filing.
9 Q. And after the bankruptcy filing?
10 A. Then we suspended contributions. There may be one
11 exception to that. I don't recall specifically but
12 there might have been one vendor contract we
13 supported after the filing.
14 Q. Do you know which one that would have been?
15 A. I'd have to check.
16 Q. Were you familiar with an email from the Treasury
17 Department which sent the Milliman report to the
18 local media?
19 A. Can I see it?
20 Q. Yeah. This can be eight.
21 MS. NELSON: Is in your only copy?
22 MS. GREEN: No, there's several in there.
23 MS. NELSON: Are you going to mark it?
24 MS. GREEN: Eight.
25

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1 (Deposition Exhibit 8 was marked.)
2
3 BY MS. GREEN:
4 Q. Who is Terry Stanton from the Treasury Department?
5 A. He works for Treasury. He's a public information
6 officer.
7 Q. So he's one of your employees?
8 A. Yes.
9 Q. Have you ever seen the email that's in front of you?
10 A. I don't believe I have.
11 Q. Were you made aware after the fact that Mr. Stanton
12 had leaked the Milliman report to Mr. Pluta?
13 MS. NELSON: Objection; form, foundation to
14 the term leaked.
15 BY MS. GREEN:
16 Q. You can still answer.
17 A. Can you restate the question?
18 Q. My question was were you aware after the fact that
19 even if you didn't see this email, were you aware
20 that Mr. Stanton had provided the Milliman report to
21 the news media?
22 A. I imagine he would have advised me that he did this
23 or was going to do it.
24 Q. So if you read the email it does state that the
25 Milliman report was incomplete at the time that it

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1 was provided to the media, and it states it's being
 2 done solely off the record and it's critical this
 3 information is not traced back to the Department
 4 because it has not been finalized.
 5 Is it the practice of the Treasury
 6 Department to allow admittedly incomplete
 7 information regarding the pensions to be leaked to
 8 the media?
 9 A. I would say it's unusual.
 10 Q. Why would it be critical, as stated in the email,
 11 for the Milliman summary that Mr. Stanton had asked
 12 for to be deleted and not in connection to the
 13 Treasury Department?
 14 A. Does it say deleted in here? Oh, yeah. I see.
 15 Okay.
 16 I assume he didn't want to -- yeah, he
 17 thought it was out there with other news media.
 18 Rick Pluta must have been asking about it, so he
 19 shared with him that which he thought other media
 20 outlets probably already had.
 21 Q. You mentioned that there was a cap for the fees that
 22 the State would pay in connection with the
 23 Chapter 9. Have we reached --
 24 A. Actually, you mischaracterized it.
 25 Q. I'm sorry, what was your --

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1 A. We offered to pay 50 percent of consulting fees
 2 prior to the filing.
 3 Q. Up to five million?
 4 A. Up to five million.
 5 Q. And so in June of 2013 that would have been prior to
 6 the filing and the State was still contributing to a
 7 portion of those fees, correct?
 8 A. I believe so.
 9 Q. We can mark this as Exhibit 9.
 10
 11 (Deposition Exhibit 9 was marked.)
 12
 13 BY MS. GREEN:
 14 Q. Do you recall sending this email?
 15 A. I do.
 16 Q. Is it safe to say the five million dollar cap has
 17 been maxed out?
 18 A. What I was reviewing was both the forecast as well
 19 as the historical, so I was looking at more than
 20 just the history.
 21 Q. So what is the summary of fees that you were
 22 referring to?
 23 A. We were given an estimate of what the fees were
 24 looking like and I reviewed it and wasn't very
 25 happy.

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1 Q. The last question is relating to Exhibit 5 which has
 2 already been marked. It's the July 9th email.
 3 The email states "Tomorrow's meeting could
 4 lead to questions directed to you about your view on
 5 this topic." It's relating to the pension issue.
 6 Is that a fair characterization of the
 7 email?
 8 A. Right.
 9 Q. "In my view, it's too early in the process to
 10 respond to hypothetical questions. We remain in
 11 many ways in the informational stage. I have some
 12 thoughts as to how you could address some pointed
 13 questions if you're interesting in hearing them."
 14 What pointed questions were you expecting?
 15 A. Anything from -- well, going back in time here, but
 16 just obviously the whole gamut of questions
 17 regarding what the underfunding status could mean to
 18 retirees, and I thought that the situation was not
 19 understood enough for the Governor to go on record
 20 yet because I couldn't even tell him with any degree
 21 of confidence what level of funding these pension
 22 funds had, so why should he get in the middle of a
 23 debate about this. It's obviously a very charged
 24 and sensitive issue, and it was my free political
 25 comments to him.

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1 Q. And this was really just over a week before the
 2 filing. That was your stance?
 3 A. Yeah. I don't -- yeah, obviously. But I don't -- I
 4 think it was in the context of this meeting that
 5 Kevyn was going to have with the committee that
 6 drove this email.
 7 Q. Did anything change between the ninth and the filing
 8 on the 18th that changed your opinion regarding what
 9 you, I believe, just stated was too early to tell
 10 him with any degree of confidence what level of
 11 funding the pension funds had I believe is what you
 12 just stated.
 13 A. Yeah, I have not -- my opinion is pretty much the
 14 same.
 15 Q. The last sentence of the email says "I have some
 16 thoughts as to how you could address some pointed
 17 questions if you're interesting in hearing them."
 18 What were your ideas for how to answer the
 19 questions?
 20 A. I don't recall specifically at this point.
 21 Q. Did you ever have a conversation with him regarding
 22 your thoughts on how to answer the questions?
 23 A. No.
 24 Q. You mentioned in the email "Because pensions have
 25 such a long life there are a lot of creative options

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1 we can explore to address how they will be treated
 2 in restructuring."
 3 What were your creative options that you
 4 had on the table?
 5 A. There's dozens. I mean, I don't have one that I
 6 would pick out. But pension funds do have a long
 7 life and there's a lot of creative things that can
 8 be done, so I -- I don't have one or two that I
 9 would just throw out, but I do know that there's a
 10 lot of ways to address that issue.
 11 Q. Have there been any formal reports or proposals
 12 identifying and explaining what you consider to be
 13 these creative options?
 14 A. No.
 15 Q. Were these creative options ever explored with the
 16 pension systems directly --
 17 A. Not to my knowledge.
 18 Q. -- to your knowledge?
 19 I don't have any further questions.
 20 MR. SHERWOOD: Anybody else have questions?
 21 MR. WERTHEIMER: I do not.
 22 RE-EXAMINATION
 23 BY MR. SHERWOOD:
 24 Q. I have one question about D-7, which I hadn't seen
 25 before the deposition. It's an email to you from

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1 Heather Lennox.
 2 I just want to know what your understanding
 3 of the sentence "Many provisions in here are
 4 designed to take advantage of PA 4 while it is still
 5 in existence, but this also references other state
 6 laws that would buttress the FCB and PCA powers..."
 7 What is FCB -- what is your understanding
 8 of what FCB and PCA powers, what that means?
 9 A. FCB I don't know. She might be referring to
 10 Financial Control Board, but as opposed to the FAB
 11 I'm surmising.
 12 PCA is not ringing a bell either.
 13 Q. At this time there was a Financial Control Board in
 14 existence, right?
 15 A. No, I think that -- well, I think it was part of the
 16 financial stability agreement, the creation of the
 17 FAB, I think.
 18 Q. And PCA, you don't know what that means?
 19 A. I'm not recalling offhand, no.
 20 Q. Was it -- did you express a desire to buttress the
 21 powers of the Financial Control Board and insulate
 22 those powers from attack in the event of a repeal?
 23 A. Can you restate the question? I'm sorry.
 24 Q. Was it -- were you interested at this point in time,
 25 in March of 2012, to take steps to buttress the

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1 power of the Financial Control Board and insulate
 2 those powers from being attacked in the event PA 4
 3 was repealed?
 4 A. I don't know if buttress is the right word. If
 5 you're going to put in place all the structuring and
 6 negotiate a consent agreement with the City, there's
 7 other ways -- other legal basis to do that through
 8 interlocal agreements. There's other laws that we
 9 could look to that would give us the authority to
 10 have this agreement have meaning to it.
 11 So the thought was, you know, identify all
 12 those legal arguments that would give legal standing
 13 to the Financial Advisory Board and the consent
 14 agreement is my memory.
 15 MR. SHERWOOD: That's all.
 16 MS. NELSON: All right, we're done. Thank
 17 you.
 18 THE WITNESS: Thank you.
 19 VIDEO TECHNICIAN: Deposition has concluded
 20 at 12:23 p.m.
 21 (Deposition concluded at 12:23 p.m.)
 22 - - -
 23
 24
 25

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1 CERTIFICATE
 2 STATE OF MICHIGAN)
 3 COUNTY OF OAKLAND) SS:
 4
 5 I, LAUREL A. JACOBY, Certified Shorthand
 6 reporter, a Notary Public, hereby certify that I recorded
 7 in shorthand the examination of TREASURER ANDREW DILLON,
 8 the deponent in the foregoing deposition; and that prior
 9 to the taking of said deposition the deponent was first
 10 duly sworn, and that the foregoing is a true, correct and
 11 complete transcript of the testimony of said deponent.
 12 I further certify that no request was made for
 13 submission of the transcript to the deponent for reading
 14 and signature and that no such submission was made.
 15 I also certify that I am not a relative or
 16 employee of a party or an attorney for a party; or
 17 financially interested in the action.
 18
 19
 20 LAUREL A. JACOBY, CSR-5059, RPR
 21
 22 Notary Public, Oakland County, Michigan
 23 My commission expires: 9/1/18
 24 Dated: This 13th day of October, 2013.
 25

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EXHIBIT C

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<p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 EASTERN DISTRICT OF MICHIGAN 3 SOUTHERN DIVISION 4 5 In re Chapter 9 6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846 7 Debtor. Hon. Steven W. Rhodes 8 _____/ 9 10 DEPONENT: MAYOR DAVE BING 11 DATE: Monday, October 14, 2013 12 TIME: 10:27 a.m. 13 LOCATION: CITY OF DETROIT MAYOR'S OFFICE 14 2 Woodward Avenue 15 11th Floor Conference Room 16 Detroit, Michigan 17 REPORTER: Jeanette M. Fallon, CRR/RMR/CSR-3267 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES (continued): 2 3 COHEN WEISS AND SIMON LLP 4 By: Joshua J. Ellison 5 330 West 42nd Street 6 New York, NY 10036.6979 7 212.356.0216 8 Appearing on behalf of UAW 9 10 LOWENSTEIN SANDLER LLP 11 By: Sharon L. Levine 12 65 Livingston Avenue 13 Roseland, NJ 07068 14 973.597.2374 15 Appearing on behalf of AFSCME 16 17 CLARK HILL PLC 18 By: Jennifer K. Green 19 500 Woodward Avenue, Suite 3500 20 Detroit, MI 48226 21 313.965.8384 22 Appearing on behalf of Retirement Systems 23 24 25</p>
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<p>1 APPEARANCES: 2 3 JONES DAY 4 By: Thomas Cullen 5 Dan T. Moss 6 51 Louisiana Avenue, NW 7 Washington, D.C. 20001.2113 8 202.879.3939 9 Appearing on behalf of the Debtor 10 11 DENTONS US LLP 12 By: Anthony B. Ullman 13 620 Fifth Avenue 14 New York, NY 10020.2457 15 212.632.8342 16 Appearing on behalf of Official Committee of Retirees 17 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES (continued): 2 3 WILLIAMS WILLIAMS RATTNER & PLUNKETT PC 4 By: Ernest J. Essad, Jr. 5 380 N Old Woodward Ave Ste 300 6 Birmingham, MI 48009 7 248.642.0333 8 Appearing on behalf of FGIC 9 10 CITY OF DETROIT LAW DEPARTMENT 11 By: Portia L. Roberson 12 2 Woodward Avenue, Suite 500 13 Detroit, Michigan 48226 14 313.237.3018 15 Appearing on behalf of the City of Detroit, 16 Residents of the City, Mayor's Office and City Council 17 18 19 20 21 22 23 24 ALSO PRESENT: 25 Patrick Murphy, videographer</p>



<p>Page 5</p> <p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4</p> <p>5 MAYOR DAVE BING</p> <p>6 Examination by Mr. Ullman 7</p> <p>7 Examination by Mr. Ellison 98</p> <p>8 Examination by Ms. Levine 100</p> <p>9</p> <p>10</p> <p>11 E X H I B I T S</p> <p>12</p> <p>13 NUMBER IDENTIFICATION PAGE</p> <p>14</p> <p>15 Exhibit 1 Email from Andrews to Bing, 12/6/12 16</p> <p>16 Exhibit 2 Emails dated 11/27/12 40</p> <p>17 Exhibit 3 City of Detroit Restructuring Plan, 18 March 23, 2012 50</p> <p>19 Exhibit 4 Comprehensive Annual Financial Report, 20 City of Detroit, for its fiscal year-ended 21 June 30, 2012, two pages 62</p> <p>22 Exhibit 5 Email from Andrews to Bing, 7/10/13 74</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 7</p> <p>1 Williams, Rattner & Plunkett, on behalf of the FGIC.</p> <p>2 MR. CULLEN: Tim Cullen, Jones Day, for the</p> <p>3 City and the Emergency Manager.</p> <p>4 MS. ROBERSON: Portia Roberson, corporation</p> <p>5 counsel for the City of Detroit, for Residents of the</p> <p>6 City, Mayor's Office and City Council.</p> <p>7 MR. MOSS: Dan Moss, Jones Day, for the</p> <p>8 City.</p> <p>9 MAYOR DAVE BING</p> <p>10 was thereupon called as a witness herein, and after having</p> <p>11 first been duly sworn to tell the truth, the whole truth,</p> <p>12 and nothing but the truth, was examined and testified as</p> <p>13 follows:</p> <p>14 EXAMINATION</p> <p>15 BY MR. ULLMAN:</p> <p>16 Q. Good morning, Mr. Mayor.</p> <p>17 A. Good morning.</p> <p>18 Q. Have you ever been deposed before?</p> <p>19 A. Yes.</p> <p>20 Q. Okay, so I assume you're generally familiar with the</p> <p>21 process, but let me just go over a few ground rules.</p> <p>22 I will ask questions and you will give me answers and</p> <p>23 I would appreciate it if you could wait until I finish</p> <p>24 asking the question before you start giving the answer</p> <p>25 and I'll wait until you answer before asking the next</p>
<p>Page 6</p> <p>1 Detroit, Michigan</p> <p>2 Monday, October 14, 2013</p> <p>3 * * *</p> <p>4 THE VIDEOGRAPHER: We are on the record.</p> <p>5 This is disk one of the video deposition of David Bing</p> <p>6 being taken at number 2 Woodward Avenue, 11th Floor in</p> <p>7 Detroit, Michigan. Today is Monday, October 14th,</p> <p>8 2013, the time is 9:27 (sic) a.m.</p> <p>9 This is in re City of Detroit, Michigan,</p> <p>10 Case Number 13-53846, pending in U.S. Bankruptcy Court</p> <p>11 for the Eastern District of Michigan.</p> <p>12 My name is Patrick Murphy, legal</p> <p>13 videographer, our court reporter today is</p> <p>14 Jeanette Fallon and we both represent Esquire</p> <p>15 Deposition Solutions.</p> <p>16 The attorneys will now introduce themselves</p> <p>17 for the record.</p> <p>18 MR. ULLMAN: This is Anthony Ullman from</p> <p>19 Dentons, counsel for the Official Committee of</p> <p>20 Retirees.</p> <p>21 MR. ELLISON: Josh Ellison from Cohen Weiss</p> <p>22 and Simon LLP, counsel for the UAW.</p> <p>23 MS. LEVINE: Sharon Levine, Lowenstein</p> <p>24 Sandler, for AFSCME.</p> <p>25 MR. ESSAD: Ernest Essad, Williams,</p>	<p>Page 8</p> <p>1 question; otherwise, the court reporter can't get</p> <p>2 things down if both of us are speaking; okay?</p> <p>3 If at any point there's anything in a</p> <p>4 question that I ask that you don't understand, let me</p> <p>5 know and I'll rephrase it and if you don't indicate</p> <p>6 that you don't understand the question, the assumption</p> <p>7 will be that you do; okay?</p> <p>8 A. Sure.</p> <p>9 Q. Okay. Now, you are currently the Mayor of Detroit; is</p> <p>10 that right?</p> <p>11 A. That is correct.</p> <p>12 Q. And when did you -- when were you elected Mayor, when</p> <p>13 did you become Mayor?</p> <p>14 A. I was elected Mayor May 5th, 2009.</p> <p>15 Q. And is it correct that at that time when you were</p> <p>16 elected Mayor that Detroit was in fiscal difficulties?</p> <p>17 A. That would be correct.</p> <p>18 Q. And can you describe just in very general terms, I'm</p> <p>19 not looking for detail, but just generalities what</p> <p>20 steps if any you took to attempt to address that</p> <p>21 situation?</p> <p>22 A. Detroit, when I came in office, was \$330 million</p> <p>23 accumulated deficit over several different years.</p> <p>24 Budget for the 2009 period -- '09 and '10 was already</p> <p>25 in place when I got here. There were several areas</p>



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1 that we had to make cuts. Revenue was going south and
2 the only way that we thought that we could maintain a
3 balanced budget was in cuts. Most of those cuts
4 occurred with layoffs and retirements. There were
5 some areas over in the transportation area that we
6 made some significant improvements, but overall I made
7 it very clear that we could not balance our budget
8 just with cuts, we had to try to generate revenue and
9 that was an ongoing problem.
10 Q. So I take it then that as of the end of 2012, Detroit
11 was still, notwithstanding the efforts you made, in
12 substantial financial difficulties?
13 A. That would be correct.
14 Q. Now, of course you're aware that Kevyn Orr has been
15 appointed the Emergency Manager?
16 A. That is correct.
17 Q. Did you have any involvement in the selection of
18 Mr. Orr as Emergency Manager?
19 A. None whatsoever.
20 Q. And when was Mr. Orr appointed the Emergency Manager?
21 Actually to be technically accurate I believe he was
22 first appointed Emergency Financial Manager; is that
23 right?
24 A. That would be correct.
25 Q. Okay, and then he became automatically the Emergency

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1 Manager under the new law; is that right?
2 A. Under 436, yes.
3 Q. So when, as you understood it, was Mr. Orr selected as
4 the Emergency Financial Manager?
5 A. I met Mr. Orr in mid February of 2012. I was asked to
6 go down and meet him at the law firm of Jones Day in
7 Washington, D.C. I met him, spent maybe a half a day
8 with him, because he at that time was the leading
9 candidate to be selected.
10 (Ms. Green enters deposition room.)
11 Q. Okay, and did you have an understanding as of that
12 time whether Mr. Orr had in fact or a decision had
13 been made to appoint Mr. Orr, assuming he took the
14 appointment?
15 MR. CULLEN: Objection, foundation, form,
16 but you can address the question.
17 A. I believe Mr. Orr had not made his mind up at that
18 point. In my meeting and conversation with him he was
19 going through a process to see whether or not, if the
20 job was offered to him, whether or not he would
21 accept.
22 Q. Okay. And what was your understanding as to the
23 situation from the other side, from the State side?
24 As you understood it, had the State decided that Orr
25 was the man they wanted if he took the job?

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1 A. I believe that the State had made the decision that
2 Orr not only was a leading candidate but was their
3 choice.
4 Q. And do you know as of that time when you met with
5 Mr. Orr in you said mid February were there any other
6 candidates that the State was actively considering?
7 A. If there were, I didn't know, because I met no one
8 else.
9 Q. Okay. How was Mr. Orr's name first brought to your
10 attention? How did you first come to hear of him
11 being a candidate for the Emergency Financial Manager
12 or Emergency Manager position?
13 A. I was contacted by phone by Rich Baird of the
14 Governor's office who said that they thought that they
15 had identified a key candidate for the position of
16 Emergency Financial Manager, so Rich Baird was the one
17 who made contact with him.
18 Q. And do you recall when that contact was?
19 A. Pardon?
20 Q. When, do you recall?
21 A. That would have been in late January, early February.
22 Q. And did Mr. Baird give you any further information
23 about Mr. Orr's background or qualifications for the
24 Emergency Financial Manager position?
25 A. Yes, he did. He said he had met -- in an interview

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1 process that I was not a part of, they were
2 interviewing counsel for the City and Mr. Orr was part
3 of the Jones Day law firm and I think through that
4 interview process Baird was impressed with him and,
5 therefore, moved down the road to try to select him as
6 the candidate.
7 Q. And did Mr. Baird at that time give you any
8 indications as to what he believed Mr. Orr's
9 qualifications were to serve as Emergency Financial
10 Manager?
11 A. No, he didn't. He said he was impressed with him,
12 that he had been part of the bankruptcy team
13 representing Chrysler and I guess from that ordeal was
14 pretty impressed with him.
15 Q. And did you ask Mr. Baird anything else about
16 Mr. Orr's qualifications to serve as Emergency
17 Financial Manager?
18 A. He -- yes, I did, and he felt --
19 Q. Thank you.
20 A. -- and he felt that not only was he a lawyer that
21 dealt with bankruptcy for over 30 years but also had
22 some qualifications as it related to restructuring. I
23 think it was important to Lansing that the financial
24 manager would be of African-American descent. Kevyn
25 also I understand was a graduate of the University of

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1 Michigan and had some understanding of Detroit and our
2 issues, so those were the background qualifications
3 that he gave me.
4 Q. And did Mr. Baird indicate that Orr had qualifications
5 concerning restructuring outside the context of
6 bankruptcy?
7 A. That would be no.
8 Q. Did you ask Mr. Baird anything further about Mr. Orr's
9 qualifications?
10 A. But they were very generic, the questions that I was
11 asking, trying to find out if in fact he was going to
12 be selected, you know, how were we going to work
13 together, because I was not in support of an Emergency
14 Manager.
15 Q. And did you ask Mr. Baird how you and the Emergency
16 Manager were going to work together during that
17 conversation?
18 A. The answer would be yes and the conversation was that
19 he would be responsible, meaning Kevyn Orr would be
20 responsible for really trying to restructure the
21 balance sheet in the -- for the City of Detroit and
22 that me and my administration would continue to try to
23 restructure City government and run the City on a
24 day-to-day basis.
25 Q. That was the plan or the idea, the concept, in -- this

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1 was around -- did you say this was in the February
2 time frame or January time frame? I forget.
3 A. That would have been in the February time frame.
4 Q. So that was the concept that was articulated to you in
5 the February time frame?
6 A. That is correct.
7 Q. And is that how things in fact turned out?
8 A. That is not how things have turned out.
9 Q. Had you yourself -- you were aware prior to the time
10 that you were told about Mr. Orr in the conversation
11 with Mr. Baird that you just related that there was an
12 Emergency Manager that was being sought; correct?
13 A. That is correct.
14 Q. And had you yourself proposed any candidates for that
15 position?
16 A. The answer would be no.
17 Q. Did you have any discussions with people on your staff
18 about possibly proposing one or more candidates for
19 that position?
20 A. That answer would be no, because I along with my staff
21 were not in favor of an Emergency Manager coming on.
22 Q. Do you recall any discussions or communications via
23 email or otherwise with Kriss Andrews about the
24 possibility of proposing a candidate for Emergency
25 Manager?

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1 A. The answer would be yes. I've had conversation with
2 Kriss and Kriss indicated that he was aware of someone
3 that he felt could come in and work with us as an
4 Emergency Manager.
5 Q. Okay, and just so the record is clear, I made
6 reference to Kriss Andrews, you made reference to
7 Kriss, who is Kriss Andrews?
8 A. Kriss Andrews was the -- his title was director of --
9 he actually was COO, but he had a different title.
10 I'm trying to remember what that title was now.
11 Q. Perhaps program management director?
12 A. Director of program management.
13 Q. Okay. And he had been brought on by you, is that
14 right, or had he been here before you came on?
15 A. Kriss was selected by Lansing for that position.
16 Q. And do you know when he had been put in that position
17 by Lansing?
18 A. Kriss came in in May of 2012.
19 Q. Is he still in that same position?
20 A. Kriss is no longer with City government. He left in
21 July of '13.
22 Q. And do you know why he left?
23 A. He was asked to leave by Lansing.
24 Q. Let me show you a document that we'll mark as Bing
25 Exhibit 1.

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1 (Marked Exhibit No. 1.)
2 Q. Are you familiar with what we've marked as Exhibit
3 Bing 1, Mr. Mayor?
4 A. I am familiar with this document.
5 Q. And just for the record it bears Bates numbers DM --
6 I'm sorry, DTMI0007955, that's the starting number.
7 And it's an email from Kriss Andrews to the Mayor,
8 December 6th, 2012.
9 Now, before I -- first of all, can you tell
10 me what this is? Can you identify this for me?
11 A. This is a memo from Kriss Andrews to me recommending
12 an individual that he knew that he thought could work
13 well with us as we move to an Emergency Manager.
14 Q. Did you have a good working relationship with
15 Mr. Andrews?
16 A. Very good working relationship with, yes.
17 Q. And you had previously indicated that you had been
18 against the appointment of an Emergency Manager. Why
19 was that?
20 A. We thought, meaning this administration thought we --
21 we could run the City without an Emergency Manager
22 coming in.
23 Q. Now turning back to Exhibit Bing 1, Mr. Andrews is
24 writing this email to you and he starts out with a
25 phrase, though the Group did not agree.



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1 Do you have an understanding as to what
2 Group Mr. Andrews is referring to? And that's Group
3 with a capital G.
4 A. I think that would have been the representation from
5 Lansing.
6 Q. And who was in that Group? Was that --
7 A. It would have been Rich Baird, it would have been
8 Andy Dillon and I'm not sure who else may have
9 represented the State.
10 Q. And was this Group concerned with the selection of the
11 emergency -- or an Emergency Manager?
12 A. That would be yes.
13 Q. Now, if you go down -- so in this email, as I
14 understand it, Mr. Andrews is proposing a candidate
15 that he says might be a good fit as Emergency Manager
16 who, as he writes, would align with your, meaning the
17 Mayor's, reform agenda; right?
18 A. That's correct.
19 Q. Now, in the third paragraph Mr. Andrews writes, I
20 realize he, referring to the candidate being proposed,
21 does not meet the standards of what the State would
22 want but he would meet the standards of what we would
23 want with you firmly in place to pursue your agenda.
24 Do you have an understanding of what
25 Mr. Andrews is referring to in that paragraph?

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1 A. Yeah, I think what he meant is the State -- you know,
2 my agenda had been laid out for some time going all
3 the way back to 2011 and some of the things that we
4 wanted to do and focus on did not necessarily align
5 with what the State wanted us to do and Kriss felt
6 that this individual would be much more aligned with
7 us.
8 Q. And in brief can you tell me what some of those items
9 were?
10 A. You know, we had somewhere around 21 different items
11 that the State and our administration agreed upon from
12 a restructuring standpoint, but I knew it was
13 impossible for us to attack all of those at one time
14 and have any success, so I selected about six
15 different areas that we should focus on. Number one
16 being public safety. Number two, public lighting.
17 Number three, public transportation. Number four,
18 eradication of blight. And number five, the support
19 and maintenance of our recreation and parks system.
20 Q. And I take it from your prior answer that the State
21 had different priorities?
22 A. I think the State had different priorities. They were
23 never spelled out to us, if you will. Because of the
24 21 that we had agreed upon, I think maybe their focus
25 and mine just wasn't aligned.

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1 Q. And do you recall whether the State had a particular
2 focus with which you disagreed or that you did not
3 think should be the priority?
4 A. I don't really recall that.
5 Q. Now, Mr. Andrews in his email says, I realize he,
6 meaning the candidate attached, does not meet the
7 standards of what the State would want.
8 Do you have an understanding as to what
9 Mr. Andrews is referring to when he writes that this
10 person would not meet the standards of what the State
11 would want?
12 A. I think the standards that he was referring to was
13 whatever the State wanted that person to do, that
14 person would do it and this person was going to be
15 much more aligned with our agenda as opposed to the
16 State's.
17 Q. And did you have discussions with Mr. Andrews on that
18 point?
19 A. Yes.
20 Q. And is that what he conveyed to you orally as well as
21 in writing?
22 A. Yes.
23 Q. And did you have any discussions with Mr. Andrews as
24 to whether Mr. Orr was a person who would essentially
25 follow what the State wanted him to do?

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1 MR. CULLEN: Objection, foundation, form.
2 You can address the question.
3 A. Kriss at that time had not met Mr. Orr --
4 Q. Uh-huh.
5 A. -- so I don't think he had a determination one way or
6 the other about Mr. Orr.
7 Q. And did you have conversations on that topic with
8 Mr. Andrews subsequent to the appointment of Orr as
9 Emergency Manager?
10 A. The answer would be yes.
11 Q. Okay, and what was the substance of those
12 conversations?
13 A. Based on the meeting that I had with Kevyn in
14 Washington, he seemed to understand the plight that we
15 were facing here in Detroit and seemed to be willing
16 to work with us on our agenda.
17 Q. And did he ultimately work with you on your agenda?
18 A. Not to my satisfaction.
19 Q. And did you form an impression as to whether Mr. Orr
20 was someone who was essentially willing to do what the
21 State wanted him to do?
22 MR. CULLEN: Objection, foundation, form.
23 A. He was chosen by the State and so he was taking his
24 direction from the State.
25 Q. And is there anything else that leads you to believe



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1 that he was willing to do essentially what the State
2 was asking him to do?
3 MR. CULLEN: Objection, foundation, form.
4 A. The answer would be no.
5 Q. I take it from your prior testimony that you never in
6 fact proposed this individual that was recommended as
7 a possible candidate by Mr. Andrews; is that right?
8 A. That would be correct.
9 Q. I'm going to show you another document, which was
10 previously marked as Exhibit 6 to the deposition of
11 Mr. Orr, which commenced on September 16 and was
12 continued on October 4th.
13 And just so the record is clear, there are
14 other documents I'm going to show you that were marked
15 as exhibits to the Orr deposition that began on
16 September 16 and continued on October 4 and I'm going
17 to refer to those just generically as Orr Deposition
18 Exhibits and I say that -- we'll use that terminology,
19 because there was a prior deposition with Mr. Orr in
20 connection with the SWAP issues. So when I refer to
21 Orr deposition, it's referring to the ones that were
22 done on September 16th and October 4th. Is that okay?
23 A. Okay.
24 Q. Have you ever seen this Orr Exhibit 6 before, which
25 begins with Bates number JD-RD-0000216, or parts of

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1 it?
2 A. I have.
3 Q. And have you seen the entire document or only parts of
4 it?
5 A. Parts of it.
6 Q. And what part would that be?
7 A. That would be the summary of partnership.
8 Q. And can you tell me what that is? Can you identify
9 that?
10 A. The conversation that I had with Rich Baird and made
11 reference to as I met with Kevyn, I asked for some
12 things that I thought were germane to helping to turn
13 the City around and I spoke to Kevyn about that, I
14 spoke to Rich Baird about that, and I guess Rich Baird
15 and Kevyn spoke after my meeting with Kevyn. So I
16 don't remember seeing the front -- this front page
17 from Rich Baird.
18 Q. Okay, and the document you're referring to is what
19 appears on Bates pages 217 and 218; is that right?
20 A. That would be correct.
21 Q. And this was in fact a summary of partnership document
22 that was -- it was not drafted by you; was it?
23 A. No, it was not.
24 Q. It was given to you by Mr. Baird?
25 A. No, this was -- I think this was prepared by Kriss

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1 Andrews.
2 Q. Okay, and if you look at the first page of the
3 document, this is an email from Mr. Baird saying -- by
4 the way, just so the record's clear, just tell me
5 quickly who Mr. Baird is. We've used his name and
6 actually haven't identified him.
7 A. He is the advisor to Governor Snyder.
8 Q. And in this email dated February 20th, which is to
9 Mr. Orr, Baird writes, FYI, the summary of partnership
10 prepared by the Mayor from the outline I gave him last
11 week.
12 So I think you indicated that the summary
13 of partnership was actually drafted by Mr. Andrews
14 from your office or the COO for the City?
15 A. Yes.
16 Q. And had Mr. Baird given you an outline previously?
17 A. Not an outline, but he did give me some areas that he
18 thought we could agree upon.
19 Q. Was that in written form?
20 A. Yes.
21 Q. And that was one of the things that Mr. Andrews used
22 to prepare the summary of partnership?
23 A. That is correct.
24 Q. If you'd look at the first page of this document,
25 Mr. Baird is writing about a conversation that he had

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1 with you. He says, told him, meaning you, Mr. Mayor,
2 that there were certain things I would not think we
3 could agree to without your, meaning Mr. Orr's,
4 review, assessment and determination such as keeping
5 the executive team in its entirety.
6 Do you have an understanding what that's
7 referring to?
8 MR. CULLEN: Objection, foundation, form.
9 Mr. Baird's note, he's never seen it before.
10 Q. You can answer my question, Mr. Mayor.
11 A. One of the things that I wanted to keep intact was my
12 executive team. It took me a couple years to really
13 put that team together and I thought not keeping that
14 team together would not be good in terms of helping us
15 turn the City around so I wanted to keep my team in
16 place.
17 Q. Okay, and was Mr. Andrews part of that team?
18 A. He was.
19 Q. And did you have a discussion about keeping the
20 executive team in place with Mr. Baird, as is
21 recounted by Mr. Baird in this email?
22 A. That would be correct.
23 Q. And can you tell me the substance of the conversation
24 on that point you had with Mr. Baird?
25 A. Once again, because it took such a long time, I didn't



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1 want to see a lot of turnover, additional turnover.
 2 With an Emergency Manager coming in, if we started
 3 losing some of our key players that have been there
 4 with me to put a plan together and then try to execute
 5 the plan, relieving or dismissing any of those people
 6 I thought would be a negative, would take us backwards
 7 and not forward.
 8 Q. And by this in terms of timing, we had talked before
 9 about the call or conversation you had with Baird when
 10 he first told you about Mr. Orr as being considered
 11 for the Emergency Manager position. The conversation
 12 we're talking about now, is this part of the same
 13 conversation or is it subsequent?
 14 A. Same conversation.
 15 Q. Okay. And in the email that Mr. Baird writes, he
 16 says, that Mr. Baird told you during this conversation
 17 that there were some things that he, Baird, couldn't
 18 agree to without first getting Orr's approval.
 19 Do you recall that?
 20 A. Yes.
 21 Q. Can you tell me what -- as much as you can about that
 22 subject matter?
 23 A. No guarantees in terms of making sure that the
 24 executive team in its entirety stayed in place with
 25 their pay level.

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1 Q. And did he talk to you specifically about having a
 2 need to get, as he puts it here, the review,
 3 assessment and determination from this -- on that
 4 subject from Mr. Orr? In other words, did he tell you
 5 that he needed to run that by Orr and get Orr's
 6 approval?
 7 A. Yes, he did.
 8 MR. CULLEN: Objection, foundation, form.
 9 Q. And did he tell you why he needed to get approval from
 10 Mr. Orr?
 11 A. I think he wanted to make sure that Orr was
 12 comfortable with the staff that was already here.
 13 Q. Because the Emergency Manager would have the power to
 14 fire the staff; wouldn't he?
 15 A. That is correct.
 16 Q. Now, if you look at some of the items that are on this
 17 list in the partnership, like number 4, number 5, 6,
 18 7, what are those? Can you just tell me briefly?
 19 MR. CULLEN: Objection, foundation, form.
 20 You want him to go through them one by one, counsel?
 21 MR. ULLMAN: Yeah, just a brief summary of
 22 what each of these points is.
 23 Q. And these are things, as I say, were prepared by
 24 Mr. Andrews and had been discussed at least in concept
 25 with Mr. Baird; is that right?

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1 MR. CULLEN: Objection, foundation, form.
 2 A. That is correct. Number 4 I will respond to. Wanted
 3 to make sure that if I called an executive meeting or
 4 Mr. Orr called an executive meeting, we wanted to make
 5 sure that all the key people were invited to the
 6 meeting and so that, you know, everybody would know
 7 what was going on. That was number 4.
 8 As relates to number 5, back in December of
 9 '12 I had agreed with the Governor in concept that the
 10 State would lease Belle Isle and run it as a State
 11 park, which would relieve us from an expense of
 12 roughly \$6 million a year, it would allow my 38
 13 recreation department employees to be redeployed to
 14 other parks across the City and also the State would
 15 invest somewhere up to 10 to \$20 million to upgrade
 16 Belle Isle over a three-year period.
 17 Q. Okay.
 18 A. I don't know if there were other ones that you --
 19 Q. Number 6 briefly. This is --
 20 A. Okay. We had put together over maybe an 18-month
 21 period with a lot of input from a lot of constituents
 22 across the City developing the Detroit Future City
 23 Plan and I wanted to make sure that we didn't just put
 24 that plan on a shelf somewhere. That with so many of
 25 our constituents involved in that process we needed to

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1 use that as a blueprint to move forward and I never
 2 got heavily involved with Kevyn on the financial
 3 initiatives as it relates to reducing the long-term
 4 liabilities, managing cash flow, achieving the
 5 long-term sustainable financial stability. He's
 6 basically taken that upon himself.
 7 Q. Okay. And what was the Detroit Future City framework
 8 that's referred to in point six?
 9 A. It's a booklet, a plan, that was put together over an
 10 18-month period by -- I don't even -- I think it said
 11 they had over 30,000 meetings with constituents all
 12 across the City so everybody had some input into what
 13 the City's future would look like.
 14 Q. Okay. And those -- those initiatives, were they --
 15 let me ask you this more as a question. Were the
 16 initiatives outlined in that booklet that you
 17 mentioned intended to assist in reducing long-term
 18 liabilities and manage cash flow and achieve long-term
 19 and sustainable financial stability?
 20 MR. CULLEN: Objection, foundation, form.
 21 A. I don't believe -- not with any specificity. It was
 22 more of the areas that we were going to focus on in
 23 the City, so I don't think it had a lot to do with the
 24 financial stability of the City.
 25 Q. Okay. And when had that booklet been put together?



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1 Did you say?
2 A. It was about six months ago so it was in -- probably
3 in March/April of '13.
4 Q. Well, this email is dated February of 2013.
5 A. That -- that book did not come out for public
6 consumption I think until sometime in '13. I think it
7 was really the March/April time frame.
8 Q. Okay. So at this point in time what you're referring
9 to in this draft partnership agreement is something --
10 a booklet that had been drafted but had not yet been
11 published?
12 A. That would be correct.
13 Q. Okay. And what is number 7 on this list?
14 A. There were a lot of negotiations that had gone on
15 prior to Mr. Orr coming on board and we wanted to go
16 back and relook at a lot of those initiatives, things
17 that we had already been negotiating with labor, but
18 once again, I never -- since Kevyn came on board, I
19 never sat in another meeting where labor initiatives
20 were discussed.
21 Q. Now, as of the date of this email, and this is around
22 the time of your conversation with Mr. Baird, had you
23 spoken with anyone else from the State about Mr. Orr
24 as a candidate for the Emergency Manager or Emergency
25 Financial Manager position?

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1 A. Mostly that was done with Rich Baird, but I do think
2 the Governor and I may have had a brief conversation
3 in one of our meetings, because Baird had made the
4 recommendation to the Governor and I think the
5 Governor was receptive to his -- to his
6 recommendation.
7 Q. And do you recall any discussions with the Governor as
8 to the qualifications of Mr. Orr to serve as Emergency
9 Financial Manager or Emergency Manager?
10 A. No.
11 Q. If you turn back to the first page of this Exhibit Orr
12 Number 6, in the bottom email on the first page
13 Mr. Baird is saying, will broker a meeting via Note
14 between you, meaning Mr. Orr, and the Mayor's personal
15 assistant who is not FOIAable.
16 Do you have an understanding as to what
17 that's referring to?
18 MR. CULLEN: Objection, foundation, form.
19 A. I don't think he wanted to send something on my
20 personal email. I don't have -- I should say my City
21 email, because I don't have a personal email, so he
22 wanted to send it to somebody else, he didn't want to
23 send it on a City email.
24 Q. Do you ever recall any discussions with Mr. Baird in
25 which Mr. Baird indicated that he didn't want to send

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1 anything to you on your City email?
2 A. No.
3 Q. Do you have an understanding as to why Mr. Baird would
4 not want to send something to you under City email?
5 A. No.
6 Q. Who is the personal assistant that's referred to here?
7 A. Her name is Sue Ray, R-A-Y.
8 Q. And do you recall Ms. Ray getting an email from
9 Mr. Baird to set up a meeting between you and Mr. Orr?
10 A. I don't recall that. I mean, I knew the meeting, it
11 was by phone that Mr. Baird and I talked about going
12 down to meet Kevyn.
13 Q. I'm going to show you another document which we --
14 which was previously marked as Orr Deposition Exhibit
15 7.
16 And for the record this first page of this
17 document bears Bates numbers JD-RD-0000459.
18 A. Okay.
19 Q. Okay. Mr. Mayor, have you ever seen this document or
20 parts of it before?
21 A. I don't recall seeing this.
22 Q. And if I can direct your attention to the last two
23 pages of the document, there's a summary of
24 partnership again.
25 A. Okay.

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1 Q. Do you recall --
2 A. This --
3 Q. -- seeing specifically the last two pages?
4 A. The last two pages, yes.
5 Q. Okay. And that is, is it not, a revised version of
6 what appears at the end of what we've put in the
7 record as Orr Exhibit 6?
8 MR. CULLEN: Objection, foundation, form.
9 You can address the question.
10 A. I have read all of this. I don't know if this is
11 different from the other one that we saw.
12 Q. Okay, I guess if you look at the date of the last one,
13 you'll see it's dated February 18 and this one is
14 dated February 21.
15 A. Twenty-one.
16 MR. CULLEN: Is there a question, counsel?
17 Q. Do you see that?
18 MR. CULLEN: I beg your pardon?
19 MR. ULLMAN: I asked him if he saw the
20 dates.
21 MR. CULLEN: Okay.
22 A. Yes, I see the dates.
23 Q. Okay. And I think if you look at the text -- do you
24 recall getting an updated version or one or more
25 versions of this partnership agreement?



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1 A. Yes.
2 Q. And I think if you look at the text, you'll see that
3 there are indeed some differences, some of which I'm
4 going to ask you about.
5 A. Okay.
6 Q. First of all, if you look at the first page of this
7 exhibit, there's a note from Mr. Orr who says he spoke
8 with the Mayor this morning, he's writing as of
9 February 22nd, and we're all set to meet Monday
10 morning.
11 The Monday would be the 25th.
12 A. Okay. Yes.
13 Q. Okay, did you in fact meet with Mr. Orr on February
14 25th, Monday?
15 A. If -- yeah, I mean, I think we can go back and track
16 my travel day, and yeah, I do remember going then. I
17 don't know if it was the 25th or not, but I only went
18 there once.
19 Q. Okay, so it was around -- that's the meeting that
20 Mr. Orr --
21 A. Yes.
22 Q. -- is referring to in his email?
23 A. Yes.
24 Q. You said it took place at Jones Day in Washington?
25 A. Correct.

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1 Q. So you actually physically traveled up to Washington
2 to meet with Mr. Orr?
3 A. That is correct.
4 Q. Is there a particular reason he didn't come down to
5 Detroit to meet with you?
6 A. I don't know if there was a reason that he wouldn't
7 come here. He wasn't -- I guess he felt more
8 comfortable with me coming to Washington as opposed to
9 his coming here.
10 Q. Okay. And do you recall discussing a summary of
11 partnership document with Mr. Orr at the meeting?
12 A. Yes.
13 Q. And let me just ask you in particular about number 7
14 here. And if you compare this with a version number 7
15 on what's attached to Orr Deposition Exhibit 6, you'll
16 see that the earlier version from Exhibit 6 has item 7
17 as labor and it says labor initiatives will be pursued
18 jointly by the Mayor and the manager.
19 A. Just a moment here. Now, give me your question again,
20 please.
21 Q. If you look at the first version which is attached to
22 Orr 6, number 7 says labor initiatives will be pursued
23 jointly by the Mayor and the manager?
24 A. Uh-huh.
25 Q. And if you look at number 7 on the February 21 version

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1 attached to Orr Exhibit 7, item 7 has been revised to
2 say labor, retiree and benefit initiatives will be
3 pursued jointly by the Mayor and the manager to the
4 extent permitted by law.
5 A. And the question is?
6 Q. Okay, do you recall any discussion as to the reason
7 for those changes?
8 A. No.
9 Q. Do you recall any discussion -- let me ask you this.
10 Do you have an understanding as to what
11 labor, retiree and benefit initiatives are being
12 referred to in item 7 of the summary agreement at the
13 end of Orr Deposition Exhibit 7?
14 A. Yes, I do.
15 Q. And what are those?
16 A. One of the things that was being discussed even before
17 Kevyn came on board was the healthcare cost, which we
18 wanted to change. We knew also that we needed to take
19 a look at the pension funds. But we had made no
20 determination as to what direction that we were going
21 to go in.
22 Q. And did you have any discussion with Mr. Orr at this
23 meeting in DC concerning pension related issues?
24 A. No, not to my knowledge, no, I don't remember that.
25 Q. In item 7 on this document it refers to initiatives

Page 36

1 will be jointly pursued to the extent permitted by
2 law. Do you have an understanding as to what that
3 phrase was referring to?
4 A. No, I don't.
5 Q. Did you have any discussion with Mr. Orr at the
6 meeting in DC as to legal constraints on actions that
7 could be taken to address various of the City's
8 financial issues?
9 A. No.
10 Q. Now, this last document is around February 22nd. You
11 had said that you had -- you were taking a look at
12 issues relating to healthcare and pensions but nothing
13 -- no determinations had been made?
14 A. That's correct.
15 Q. And what -- what avenues, what possibilities, were you
16 exploring as regards pensions?
17 A. We were looking at the potential of moving everything
18 to a 401(k) plan, because we knew that we couldn't
19 continue to fund the pension as it had historically
20 been funded. It was -- it was obviously hurting us.
21 The same thing would be true on the healthcare side.
22 We had looked back three or four years where we saw
23 the healthcare costs were increasing by double numbers
24 on an annualized basis and from an affordability
25 standpoint we knew that we could no longer continue to



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1 do that.

2 Q. Now, with respect to the pensions had you given any

3 consideration to how the pension clause in the

4 Michigan Constitution affected your ability to take

5 various actions that you might like to take?

6 A. No.

7 MR. CULLEN: Again -- just going to ask if

8 you had a time frame, counsel, but if it's no, it's

9 no.

10 Q. I'm asking about the time frame we're talking about

11 here as of the end of February of 2013.

12 A. No.

13 Q. At this point in time were you -- I've made reference

14 to the pension clause in the Michigan Constitution.

15 As of February 2013 were you aware of that?

16 Let me withdraw that and ask you, first of

17 all, do you understand what I'm referring to when I

18 use the term pension clause?

19 A. Maybe you want to explain it.

20 Q. Okay. Well, let me show you another document that

21 we've also had marked at the Orr deposition. This is

22 Orr Deposition Exhibit 5. And what we have as Exhibit

23 5 from the Orr deposition is a copy of the Michigan

24 Constitution, Article 9, Section 24.

25 A. Okay.

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1 Q. Have you ever seen that provision before?

2 A. No.

3 Q. You never saw it before today?

4 A. I don't recall it, no.

5 Q. Were you -- prior to seeing it now, were you aware

6 that there is a clause in the Michigan Constitution

7 that provides certain protection for vested pension

8 rights and payments in respect thereof?

9 MR. CULLEN: Objection, foundation, form.

10 You can address the question.

11 A. I think those responsibilities rested with the labor

12 law department. I mean, I didn't get involved in

13 that.

14 Q. So your testimony is similarly that you were

15 completely unaware up till now that there is a clause

16 in the Michigan Constitution that deals specifically

17 with issues pertaining to pensions and payments

18 associated therewith?

19 A. No, I mean --

20 MR. CULLEN: Objection, foundation, form.

21 Q. You can answer the question.

22 MR. CULLEN: You can answer the question,

23 if you can unpack it.

24 THE WITNESS: Yeah.

25 A. I mean, I read in the paper like everybody else, so

Page 39

1 this is not -- seeing this here today at this time is

2 not the first time that I'm aware of it. I mean, I've

3 read -- I read the paper.

4 Q. Okay. And were you aware of this clause in the

5 Michigan Constitution at the time while you as Mayor

6 were considering issues that might be taken to lower

7 the pension costs that the City of Michigan -- of

8 Detroit was facing?

9 MR. CULLEN: Objection, foundation, form.

10 You can address the question to the extent you

11 understand it.

12 A. The answer would be no.

13 Q. I think you indicated there was another -- there was a

14 department within the City that was responsible for

15 pension related issues?

16 A. That would be correct.

17 Q. Okay. And who was the head of that?

18 A. What's his -- I'm trying to think of the name right

19 now. I can't -- yes, Lamont Satchel. He heads up our

20 labor law department.

21 Q. And does Mr. Satchel have access to legal advice,

22 legal counsel provided by the City of Detroit?

23 A. I'm sure he does. He's a lawyer himself.

24 Q. And do you recall any discussions with Mr. Satchel as

25 to any constitutional limits on the City's ability to

Page 40

1 take steps with respect to pension rights and related

2 payments?

3 MR. CULLEN: Objection, foundation, form,

4 calls for a -- to the extent you're calling beyond the

5 fact of any such conversations, for the substance of

6 any conversations which would be privileged.

7 Q. You can answer the question.

8 A. No, I had none of those conversations with

9 Mr. Satchel.

10 Q. Okay. I'm going to show you another document. This

11 one we will mark as Bing Number 2.

12 (Marked Exhibit No. 2.)

13 A. Okay.

14 Q. Okay, for the record what we've marked as Bing 2 is a

15 chain of emails, this top one is November 27, 2012.

16 Beginning Bates page number is DTMI00079928.

17 Have you ever seen these emails before,

18 Mr. Mayor?

19 A. Yes, I have.

20 Q. And what was the context in which you saw them?

21 A. That Leonard Fleming, who is a reporter for the

22 Detroit News, wanted to write an article on how close

23 we were to bankruptcy, and I think Bob got in contact

24 with Kriss and Kriss put that document -- put this

25 email together for Bob answering the question from the



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1 media.

2 Q. Okay. And Mr. Andrews writes in the top email, this

3 is recounting his conversation with Leonard Fleming,

4 he says, I made the following three major points: The

5 first one is we fully intend to be successful without

6 the use of bankruptcy.

7 Do you have an understanding of what

8 Mr. Andrews was referring to there?

9 A. Yeah, if we could continue to get the support that we

10 needed from the State on our 21 initiatives that we

11 agreed upon, we should not have to go the route of

12 bankruptcy.

13 Q. And did that -- the substance of what you just said

14 reflect conversations that you had had with Mr. Kriss

15 -- I'm sorry, with Mr. Andrews --

16 A. Yes.

17 Q. -- apart from the email?

18 A. That would be yes.

19 Q. So is it correct then that at least as of the date of

20 this email, which is November 2012, November 27, 2012,

21 the possibility of filing for Chapter 9 had been

22 discussed with you and members of your team?

23 A. I wasn't part of that, maybe Kriss was part of that,

24 but not myself.

25 Q. Okay. But you said you were aware that this -- I'm

Page 42

1 sorry, I thought you said you were aware that the idea

2 was to be successful without the need to file

3 bankruptcy?

4 A. Correct.

5 Q. So the possibility of filing bankruptcy had been

6 something that had been discussed and I take the

7 conclusion was you didn't think you needed to go that

8 route?

9 A. That would be correct.

10 Q. And when did those discussions take place?

11 A. I can't -- I mean, it was in -- I'm sure at the end of

12 2012 and ongoing up until bankruptcy was actually

13 filed.

14 Q. And with whom did you have those discussions?

15 A. That would have been internally with the leadership

16 team, Jack Martin, Kriss, the executive team. None of

17 us wanted to go in that direction.

18 Q. Who is Jack Martin?

19 A. Jack Martin was the CFO.

20 Q. And you made reference to a leadership team. Does

21 that involve individuals other than Martin and

22 Andrews?

23 A. It would have involved -- I don't know if -- I don't

24 think Portia was part of that at that time; but it

25 would have been I think Kirk Lewis was still here, who

Page 43

1 was Deputy Mayor; I think at that time I'm not sure

2 that Chris Brown, I don't remember when he left, but

3 Chris Brown was part of that leadership team; and

4 Bob Warfield.

5 Q. And what was the basis on which the people involved in

6 those discussions concluded that the City's finances

7 could be redressed without the need to file a Chapter

8 9 bankruptcy?

9 MR. CULLEN: Objection, foundation, form.

10 You can address the question.

11 A. We all felt that if we got the kind of resources that

12 we needed, the support that we needed from the State,

13 that we could manage our way through the catastrophe

14 without necessarily going bankrupt, filing for

15 bankruptcy.

16 Q. And was that through a combination of raising revenue

17 and cutting costs?

18 A. That would be correct.

19 Q. And the proposal -- the means by which you would do

20 that or wanted to try to do that, was that set out in

21 a document?

22 A. There were several different documents that had been

23 prepared internally. In terms of raising revenue was

24 the collection of taxes, which was a big thing for us,

25 but still, I mean, we wanted to go back to the State,

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1 we thought that from a cash flow standpoint we saw

2 where we were running out of money, we saw where we

3 were hitting the wall, we needed some support from the

4 State and we did get that to the tune of a

5 \$137 million loan that we got. The State was to

6 release over time certain amounts of that loan. We

7 had to repay I think an \$80 million loan that we had

8 prior to the 137. I don't recall all of the details

9 right now, but I do know that some of the initiatives

10 that we and the State had agreed upon releasing those

11 funds was contingent upon us making sure that those

12 were deliverables that we could live up to.

13 Q. And was the -- did the initiatives that you had --

14 that you described and that were proposing entail the

15 City of Michigan -- I keep saying that. Let me

16 withdraw that and start again.

17 Did the initiatives that you described for

18 cost cutting, raising revenue, require the City of

19 Detroit doing anything that was prohibited by Michigan

20 law?

21 MR. CULLEN: Objection, foundation, form.

22 A. I don't know.

23 MR. CULLEN: You're asking for a legal

24 conclusion.

25 A. I don't know the answer to that.



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1 Q. Well, did you -- as part of this initial -- this
2 restructuring program, were you aware in any way that
3 anything that was being proposed was contrary to the
4 laws or Constitution of the State of Michigan?
5 A. No.
6 Q. And do you recall specifically how if at all the
7 pension liabilities were to be dealt with under your
8 proposed approach?
9 A. No.
10 Q. Would that be set out in whatever documents there are
11 that describe your initiatives?
12 A. I didn't understand your question.
13 Q. Would the approach to pensions be set out in whatever
14 documents exist that describe the initiatives that
15 you've referred to?
16 A. Those probably were internal meetings between the CFO
17 and the COO and probably people from the labor
18 department. Those aren't meetings that I sat in.
19 Q. So you don't recall the specifics of how the pension
20 issues were --
21 A. No.
22 Q. -- being dealt with?
23 A. No.
24 Q. But as you understood it, the City's -- if the
25 proposed restructuring, the initiatives that you put

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1 in place went through, you believe that the City would
2 be able to survive without bankruptcy and would
3 continue to be able to meet its legal obligations?
4 MR. CULLEN: Objection, foundation, form.
5 A. The answer would be we wanted that opportunity.
6 Q. Okay. And you thought that if you had that
7 opportunity, you could make it happen; is that right?
8 A. That would be correct.
9 Q. But you weren't given that opportunity; were you?
10 A. That is correct.
11 Q. Let me go back to what we've marked as Orr Exhibit --
12 that we haven't marked but we've identified as Orr
13 Deposition Exhibit 7, which has the proposed summary
14 of partnership.
15 A. Uh-huh.
16 Q. Was this partnership agreement, the document that
17 appears here where it has a draft label on it, was
18 that ever made final?
19 A. Not to my knowledge.
20 Q. When you met with Mr. Orr on -- at the end of February
21 in DC, you indicated that you discussed this with him,
22 though; correct?
23 A. Correct.
24 Q. And did he tell you that he was -- that he was
25 agreeable to it?

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1 A. He was agreeable in working together, but we didn't go
2 step by step and say that I agree or I don't agree.
3 Q. Okay. So did you have an understanding as when you
4 left that meeting in DC whether Mr. Orr had in fact
5 agreed to the points that were set out in this summary
6 of partnership document?
7 MR. CULLEN: Objection, foundation, form.
8 A. One of the areas that I do recall and me saying is
9 that it made reference to keeping the executive team
10 intact. He wanted the opportunity to make an
11 assessment himself.
12 Q. Okay, and did he make an assessment?
13 MR. CULLEN: Objection, foundation, form.
14 A. I think over the time that he's been here, I don't
15 think he personally made an assessment. I think there
16 were others who may have made an assessment and made
17 recommendations to him.
18 Q. And was your team -- your executive team left intact?
19 A. No.
20 Q. And who was gotten rid of besides Mr. Andrews, if
21 anyone?
22 A. Jack Martin is no longer here as the CFO. Karla
23 Henderson, who was the group executive for planning
24 and development and BC, is no longer here. I think
25 before Kevyn came on Kirk Lewis was already gone. I

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1 do think that Chris Brown was already gone. As of
2 today our purchasing director is no longer here,
3 Andre DuPerry. Richard Kay, who was the director of
4 the lighting department, is no longer here. The
5 director of DDOT is no longer here. I think there --
6 that's right off the top of my head. I think there
7 were nine or ten department heads that are no longer
8 here.
9 Q. And were they asked to leave by Mr. Orr or --
10 A. For the most -- for the most part, yes. There was one
11 guy who headed up -- he was the director of homeland
12 security, he left on his own accord because of the
13 environment that he felt he could no longer work in,
14 but for the most part all of those other people were
15 asked to leave.
16 Q. Now -- and are the positions that those people held
17 vacant or have they been replaced with other people?
18 A. There's a mixed bag, quite frankly. I mean, some of
19 them -- I think you got some consultants in some of
20 those positions. I mean, I had no input at all. I
21 mean, I found out after the fact that either people
22 were removed or if somebody was coming in. I had -- I
23 never had the opportunity to interview even the new
24 CFO who came in, the new COO who came in. Those were
25 selected by Kevyn in a vacuum, as far as I'm



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1 concerned.

2 Q. Moving on past February of 2013, as I recall, the

3 official appointment of Mr. Orr as the emergency -- I

4 forget whether it was the Emergency Financial Manager

5 or Emergency Manager, but it took place sometime

6 around the end of March. Is that generally consistent

7 with your recollection?

8 A. Yeah, I think March 25th was his first day.

9 Q. And from the meeting in DC up to March -- say March

10 25th, did you have any conversations with Mr. Orr?

11 A. I may have had one phone -- one other phone

12 conversation with him.

13 Q. And do you recall what the substance of that call was

14 about?

15 A. I think more than anything else it was making sure

16 that when he came on board, we were having a press

17 conference, introducing him as the Emergency Financial

18 Manager and wanted me to stand with he and the

19 Governor at that, because we didn't want, quote

20 unquote, a divided house, if you will, and I thought

21 it was better since an Emergency Manager was coming on

22 board, it was no sense in us continuing to fight that.

23 If he could be helpful to turn this City around, it

24 would be better we do it together.

25 Q. So in that phone conversation was there any discussion

Page 50

1 of Chapter 9 filing?

2 A. No.

3 Q. Was there any discussion of anything related to

4 pensions?

5 A. No.

6 Q. I'm going to show you another document, Mr. Mayor,

7 which we'll mark as Bing Number 3.

8 (Marked Exhibit No. 3.)

9 Q. For the record what we've marked as Bing Exhibit --

10 what is this, 4? Three. Actually I think we had

11 previously marked this as Exhibit 22 to the Orr

12 deposition, but since I've forgotten about that, now

13 we'll just leave it as Bing Number 3, but I believe it

14 is the same document.

15 Do you recognize this document, Mr. Mayor?

16 A. Yes.

17 Q. For the record it's entitled City of Detroit

18 Restructuring Plan, dated March 23, begins with Bates

19 number DTMI00129416.

20 A. Yes.

21 Q. And just briefly tell me what this is and I'll ask you

22 a few questions about it.

23 A. Well, it speaks to the things that we were working on,

24 the recommendations that we had put together to get us

25 through a very tumultuous time in the City of Detroit.

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1 We knew that this plan was going to negatively impact

2 a lot of folks in order for us to move forward with

3 implementation, but it was all about trying to manage

4 our way through without going to the route of

5 bankruptcy.

6 Q. And this was a document that was put together by you

7 and people on your team; is that right?

8 A. That would be correct.

9 Q. And I see we've been going for a little over an hour,

10 an hour and 20 minutes. It's probably a good time for

11 a break, but let me ask you first up to this time this

12 is now March 13, towards the -- by the end of March

13 had you had any conversations with anyone else from

14 the Governor's staff or with the Governor himself

15 about Mr. Orr as the Emergency Financial Manager or

16 the Emergency Manager?

17 MR. CULLEN: Objection, foundation, form.

18 You can address the question.

19 A. It was obvious to me in this time frame that Lansing

20 had made their selection, so, I mean, that's something

21 that I couldn't control so it was more important to

22 me, once again, to be part of the team to help fix the

23 City as opposed to constantly fighting and pushing --

24 and pushing back. I didn't think that would get us

25 anywhere.

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1 Q. Okay. So after you had your initial conversations

2 with Baird in February, you then met with Orr in the

3 end -- towards the end of February also in DC, and

4 then Orr -- there was an official announcement at the

5 end of March saying Orr's the new EM or the new EFM.

6 Prior to the meeting in DC and the official

7 announcement of Orr, did you have any contact with

8 anyone from the State about Mr. Orr's being made the

9 Emergency Manager or Emergency Financial Manager?

10 A. The answer would be very little, if any, because they

11 had the right to make the decision, they made the

12 decision, so once again, I would prefer to work with

13 the individual seeing what we could do together to fix

14 the City, a broken City.

15 Q. Okay, so let me just ask more directly. Did you have

16 advanced notice before the public announcement that

17 the City -- the State was going to come out and make

18 an announcement saying Kevyn Orr is our man?

19 A. Yes.

20 Q. And when were you told?

21 A. That had to be in early -- early to mid March.

22 Q. And do you remember the specifics of that discussion,

23 who told you what was said?

24 A. Whether that was Rich Baird or Andy Dillon, it wasn't

25 the Governor.



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1 Q. And other than them telling you that Orr was the man,
2 did you have any other discussions about Mr. Orr with
3 anyone from the State up till the end of March when
4 the formal announcement was made?
5 A. No.
6 MR. ULLMAN: Okay, why don't we just take a
7 short break now, because we've been going for awhile.
8 THE VIDEOGRAPHER: Okay, we're off the
9 record, 11:40 a.m. This completes disk one.
10 (A brief recess was taken.)
11 THE VIDEOGRAPHER: We are back on the
12 record at 11:48 a.m. This is disk two of the
13 deposition of David Bing. Please proceed.
14 BY MR. ULLMAN:
15 Q. Mr. Mayor, I would like you to refer to what we've
16 marked as Bing Exhibit 3 and ask you to turn to the
17 Bates page ending in 421 at the bottom.
18 A. Uh-huh.
19 Q. I guess before I ask you a specific question about
20 this, this document in general was intended to lay out
21 ways to raise -- both raise and save money from the
22 City's perspective; is that right?
23 A. That would be correct.
24 Q. And laid out in here were perhaps not all but a number
25 of the initiatives that you've previously made

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1 reference to; is that right?
2 A. That would also be correct.
3 Q. And I see in some of them there are cost savings that
4 are identified or potential cost savings in
5 parentheses. We were just looking at this page 421;
6 is that right?
7 A. Correct.
8 Q. Now, with respect to item 2C on the page I've asked
9 you to refer to, it's headed identified future cost
10 savings initiatives and there's a parenthetical saying
11 that's in process and there's a long list of various
12 items that the City is pursuing at this time, and the
13 last one says asset monetization strategies; do you
14 see that?
15 A. Yes.
16 Q. Can you explain what that is referring to?
17 A. There was real estate that I knew we had been in
18 discussions in terms of selling some real estate.
19 They also had been -- even going back in the
20 Kilpatrick administration there was discussion about
21 selling our rights in the Detroit/Windsor tunnel.
22 There was -- there was a recreation center that we had
23 a proposal on, a closed recreation center. Those were
24 some of the things that we talked about potentially
25 for monetization.

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1 Q. Did you have an understanding at the time this
2 document was prepared, which was March 2013, as to
3 what the potential or estimated value of the real
4 estate that you referred to was?
5 A. The UAW building across the street is for UAW, that
6 was a \$5 million proposal. The recreation center was
7 a \$1.7 million proposal. I don't recall, because I
8 think there was an updated assessment being done on
9 the valuation for the tunnel.
10 Q. Okay, I'm not sure -- can you explain a little more
11 briefly what you meant about the UAW? You said that
12 there was a --
13 A. There's a building across the street, it's city-owned,
14 but the UAW has been leasing the building.
15 Q. You mean across the street from where we're sitting
16 here now?
17 A. From where we're sitting, yes, across the street on
18 Jefferson Avenue.
19 Q. Okay.
20 A. The UAW is leasing that building from the City. They
21 made a proposal to purchase the building and we had
22 really come to an agreement in principle to the tune
23 of about \$5 million.
24 Q. And what happened?
25 A. It's never closed. It has never closed at this point.

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1 Q. So am I to understand it was effectively taken out of
2 your hands and you don't know what happened to it
3 since?
4 A. That would be --
5 MR. CULLEN: Objection, foundation, form.
6 Go ahead.
7 Q. You can answer the question.
8 A. That would be correct.
9 Q. And the Windsor tunnel, you said you're not certain
10 what the current -- there may be an updated valuation?
11 A. There may be an updated valuation. If I were to go
12 back 60 to 90 days or maybe even more than that, I
13 knew that there was an updated evaluation being done.
14 Q. And what was the valuation that you were familiar with
15 as of March --
16 A. I don't recall. I don't recall what that was.
17 Q. Then you made also reference to a recreation center.
18 You said it was closed but there was some proposal
19 that was made to purchase it; is that right?
20 A. Correct, to the tune of about 1.7 million.
21 Q. Do you know who made that proposal?
22 A. That was the Salvation Army.
23 Q. And as of the time as around March 13th, was that
24 something that looked like it was proceeding towards
25 this closing?



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1 A. Yes, it did.
2 Q. And was that taken out of your hands also?
3 A. Yes, it was.
4 Q. And that like the other real estate you mentioned was
5 taken out of your hands by the Emergency Manager and
6 his team I take it?
7 A. The whole process --
8 MR. CULLEN: Objection, foundation, form.
9 A. -- yeah.
10 Q. And did there come a time when someone -- how did this
11 process come about that it was taken out of your
12 hands? Did the Emergency Manager or someone from his
13 staff actually tell you or your staff, don't worry
14 about these things anymore, it's not your business or
15 words to that effect?
16 MR. CULLEN: Objection.
17 A. No.
18 MR. CULLEN: Foundation, form.
19 Q. How did it come about that it was taken out of your
20 hands?
21 A. I actually went to the Emergency Manager and told him
22 about these potential deals and in order for them to
23 go forward, he had to sign-off on it. He said to me
24 that it looked like they were decent deals and that he
25 would, but obviously that hasn't happened yet.

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1 Q. And has there been any follow-up with the Emergency
2 Manager between him and you as to why he hasn't signed
3 off?
4 MR. CULLEN: Objection, foundation, form.
5 A. I think more than anything else he wants to look at
6 some of the bigger issues that he's got to deal with
7 as opposed to these things which he may consider, you
8 know, not big issues.
9 Q. Even though if these things went through, they would
10 at least bring in some immediate cash; is that right?
11 A. They would.
12 Q. As part of the asset monetization, did you give any
13 consideration to try to monetize art that is owned by
14 the City of Detroit and maintained at the Detroit
15 Institute of Arts?
16 A. The answer would be no.
17 Q. And was there a particular reason you didn't give any
18 consideration to that?
19 A. Back at that time when we were thinking about it, that
20 never came up, that was never a conversation that we
21 had internally. I think since he's been on board, the
22 subject obviously has gotten a lot of heat and a lot
23 of visibility. I'm not sure what's going to happen
24 there.
25 Q. Okay. And do you -- let me ask it this way.

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1 Did you as of the March 2013 time frame
2 have any understanding, just a general understanding,
3 as to what the value was of the art that's owned by
4 the City of Detroit?
5 MR. CULLEN: Objection, foundation, form.
6 A. The answer would be no.
7 Q. And as you sit here today, do you have any
8 understanding as to the value of the art that's owned
9 by the City of Detroit?
10 MR. CULLEN: Same objection.
11 A. The answer would still be no.
12 Q. Are you aware of reports in the press stating that the
13 city-owned art could easily be worth billions of
14 dollars?
15 A. I have read that, yes.
16 Q. And do you have any reason to believe those reports
17 are inaccurate?
18 MR. CULLEN: Objection, foundation, form.
19 Of what they report or the value or what, counsel?
20 MR. ULLMAN: I think my question was clear.
21 Q. You can answer my question.
22 A. I know that he's engaged Christie's to do an
23 evaluation and I'm not sure that that's complete yet,
24 so I have no idea of what the value may or may not be.
25 Q. Okay. Let me ask you to turn now to the next page of

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1 this document, which is ending in Bates page 422. And
2 this heading says, and I quote, "The Mayor's plan
3 includes strategies to implement changes that will
4 significantly reduce general fund long-term
5 liabilities."
6 Do you see that?
7 A. Yes.
8 Q. And so we're clear, what in brief is the general fund?
9 A. That's the -- the general fund is what we use to run
10 the City on a day-to-day basis.
11 Q. Now, in subpoint A, 3A, you give some -- you give two
12 subpoints, two bullets. The second one says,
13 approximately 6 billion of City debt is owed by the
14 water and sewer department and does not have an impact
15 on the general fund. Do you see that?
16 A. Yes.
17 Q. Can you explain what you were referring to by those
18 words?
19 A. That -- that debt is paid by the users of the water
20 and sewerage department, so there's a revenue stream
21 that pays that debt down, so it's not part of the
22 general fund.
23 Q. Okay, and as you put it here, that that debt, while
24 it's on the books as City debt because the department
25 of water and sewer is part of the City, that doesn't,



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1 as you put it, have an impact on the general fund
2 because it's -- the water and sewer debt is paid for
3 by the department of water and sewer?
4 A. That would be correct.
5 Q. And that, as I understand it, is run as a separate
6 authority and has its own books and records and is
7 solvent; is that right?
8 A. That would be correct.
9 Q. You then go on in the next point, sub B, to refer to
10 pension unfunded liabilities, and you say
11 approximately 650 million of unfunded liability as of
12 FY 2012 of which only 250 million relates to general
13 fund.
14 A. Uh-huh.
15 Q. Do you see that? And could you tell me what you meant
16 when you wrote that?
17 MR. CULLEN: Objection, foundation, form.
18 A. I believe that makes reference to both the payment to
19 the pension fund and maybe even to the healthcare
20 benefits.
21 Q. Okay, I'm going to be a little more specific. The
22 language of this restructuring plan states that
23 there's 650 million of unfunded pension liability. Do
24 you see that?
25 A. Uh-huh.

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1 Q. And then it says of that only 250 million relates to
2 the general fund.
3 Can you tell me what that's referring to?
4 A. No, not right off the top of my head I can't, no.
5 Q. So you don't recall what that level of detail is as to
6 the --
7 A. Correct, correct, correct.
8 Q. Then the next bullet it -- well, I guess -- do you
9 recall where the 650 million liability -- unfunded
10 liability number comes from?
11 A. We have not -- we're not current with our pension
12 contributions.
13 Q. I guess let me ask it a little -- let me mark then
14 another document. We'll mark this as Bing 4.
15 (Marked Exhibit No. 4.)
16 Q. And Bing 4 for the record is an excerpt from a
17 document entitled Comprehensive Annual Financial
18 Report for the City of Detroit for its fiscal
19 year-ended June 30, 2012 and I've attached just two
20 pages of it because it's a very long document.
21 Okay, Mr. Mayor? You've seen -- you know
22 what the Comprehensive Annual Financial Report is;
23 right?
24 A. Yes.
25 Q. And I've attached the pages that pertain to the

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1 pensions and if you look on page 124, it talks about
2 the unfunded AAL on line 3 of that table.
3 A. Uh-huh.
4 Q. And which stands for unfunded actuarial -- as I
5 understand it, actuarial accrued liability?
6 A. Correct.
7 Q. And then if you look at the table, it says for the
8 General Retirement System there's a number of
9 approximately 640 million and on the Police and Fire
10 Retirement System it's about 4 million. Do you see
11 that?
12 A. Yes.
13 Q. And is it correct that that -- so that adds up to
14 about 644 million. Does that correspond to the
15 650 million that's in the restructuring plan that we
16 have as Exhibit 3?
17 A. Yes, yes.
18 MR. CULLEN: Objection, foundation, form.
19 Q. And when you -- the restructuring document refers to
20 the unfunded liability at fiscal year 2012, is that
21 referring to the valuation that's referred to at the
22 top of page 124 of Bing 4 where it says, and I quote,
23 "The funded status of each plan as of June 30, 2011,
24 the most recent actuarial valuation date, is as
25 follows" and then gives a table?

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1 MR. CULLEN: Objection, foundation, form.
2 A. And your question was?
3 MR. ULLMAN: Do you want to read it back?
4 If you don't understand, I'll rephrase it, but --
5 THE WITNESS: Yes. I just need --
6 Q. Would it be easier if I just rephrased the question?
7 A. Go ahead.
8 Q. Okay. When you referred to the approximately
9 650 million of unfunded liability as of fiscal year
10 2012, okay, the unfunded liability as of 2012, is that
11 referring to the underfunding as reported as of the
12 June 30, 2011 actuarial valuation which is referred to
13 on the top of page 124?
14 A. The answer would be --
15 MR. CULLEN: Objection, foundation, form.
16 When you say when you refer, you mean -- are you
17 implying that he wrote this document personally?
18 MR. ULLMAN: No, he and his team.
19 Q. I'm obviously referring to that in the general sense.
20 I didn't intend to imply that you physically drafted
21 this, Mr. Mayor. I understand this was put together
22 by you and people working for you.
23 A. And the answer to that would be yes.
24 Q. And also under this -- going back to page 422 of
25 Exhibit 3 under the subheading B under pension



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1 unfunded liabilities it says, the City is developing a
2 plan to reduce the unfunded liability.
3 Do you have any recollection as to the
4 specifics of that plan?
5 A. No, I don't.
6 Q. Now, you recall -- or let me ask you.
7 Are you aware that on June 14th, 2013 the
8 Emergency Manager had a meeting with creditors?
9 A. I'm aware.
10 Q. Prior to the time that he was appointed or I should
11 say -- let me withdraw that.
12 Prior to the time that the Emergency
13 Manager's appointment was formally announced and June
14 14, 2013, did you have any conversations with the
15 Emergency Manager himself?
16 A. Yes.
17 Q. And do you recall how many?
18 A. We don't -- we don't meet that often. You know, if we
19 meet once or twice a week, that's about it and the
20 meetings are usually very short meetings. Usually
21 called by me.
22 Q. And can you say how long a typical meeting would last?
23 A. Thirty minutes tops.
24 Q. During that time between March 25th and June 14th do
25 you recall any discussions with the Emergency Manager

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1 concerning pensions, anything to do with pensions?
2 A. I -- yes.
3 Q. And tell me what you recall.
4 A. You know, the general conversation was that pensions
5 are a major problem that we have and we've got to
6 address it.
7 Q. And do you recall when those conversations took place?
8 A. Probably more in the May time frame.
9 Q. And was there any conversation with the Emergency
10 Manager as to how the Emergency Manager intended to
11 address the issues of pensions?
12 A. No.
13 Q. Was there any discussion with the Emergency Manager
14 during the period I've been asking about, the end of
15 March and June 14, about the City's filing for Chapter
16 9 bankruptcy?
17 A. I think the only conversations we may have had about
18 that is that's the last resort and that's from him
19 saying, you know, that's not the direction we want to
20 go in and it would be last resort.
21 Q. Did the emergency -- did you have any discussions with
22 the Emergency Manager in which he indicated that he
23 had any approaches or thoughts as to how to address
24 issues relating to pensions other than filing for
25 Chapter 9 bankruptcy?

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1 A. No.
2 Q. And did you have any conversations with him in which
3 he specifically referred to a Chapter 9 bankruptcy as
4 a way to deal with the pension issues?
5 A. I believe the answer to that would be yes. I can't be
6 very specific, I don't recall, but I think -- I
7 believe that conversation -- or a conversation like
8 that did occur.
9 Q. Okay, and can you give me, as best you can recall, a
10 time frame as to when?
11 A. I think it would be in that same May time frame in one
12 of our discussions.
13 Q. And can you tell me with as much specificity as you
14 can remember what the Emergency Manager said during
15 that conversation?
16 A. Once again, with not a lot of specifics, but in order
17 to fix the problems of the City where -- I know this
18 number has been thrown out a lot, the \$3.5 billion of
19 unfunded liabilities, etc., etc., I mean, he talked
20 about that, but that was a generality and so it was no
21 more -- it was not more specific than that.
22 Q. But he referred to Chapter 9 as a way to get rid of or
23 address what he referred to as a 3.5 billion unfunded
24 liability?
25 A. As a possibility.

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1 MR. CULLEN: Objection, foundation, form.
2 You can answer.
3 A. As a possibility.
4 Q. And did Mr. Orr tell you at that time that the
5 unfunded liability was indeed 3.5 billion?
6 A. The answer to that would be yes.
7 Q. And did he tell you that that had been shown through
8 an actuarial valuation?
9 A. The answer to that would be yes.
10 Q. During that conversation or any other conversation
11 with Mr. Orr during the March 25 through June 14 time
12 frame, was there any discussion with Mr. Orr of what
13 we've referred to previously and I've shown you the
14 pension clause in the Michigan Constitution or any
15 other legal impediments to -- affecting pension
16 rights?
17 A. No.
18 Q. Let me ask you the same questions now -- well, let me
19 preface it by saying you're aware, of course, that
20 there was a bankruptcy filing on July 18.
21 A. That would be correct.
22 Q. Okay. Now, during the period between June 14, that
23 was when the creditor proposal was issued, and the
24 filing, did you have any conversations with Mr. Orr?
25 A. About?



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1 Q. Just in general first.
2 A. Yeah, we probably had general conversations, but
3 nothing relative to the filing.
4 Q. Okay. So between June 14th and July 18th did you have
5 any conversations with Mr. Orr regarding pensions at
6 all?
7 A. No.
8 Q. Any discussions with Mr. Orr at all regarding the
9 possibility of a Chapter 9 filing?
10 A. No.
11 Q. So I take it the Chapter 9 filing a complete surprise
12 to you?
13 A. Yes, it was.
14 Q. I've asked you conversations with Mr. Orr concerning
15 pensions and Chapter 9. Going back, we don't have to
16 do it in two time frames, but between March 25th which
17 is when the -- the last point we asked about and July
18 18th, did you have any conversations with anyone from
19 the State about the City's unfunded pension liability?
20 A. No.
21 Q. And during that same time frame did you have any
22 conversations with anyone from the State about the
23 possibility of a Chapter 9 bankruptcy filing?
24 A. No.
25 Q. Now, you said you were not made aware in advance of

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1 the bankruptcy filing. I take it you were made aware
2 of the bankruptcy filing after it happened?
3 A. No. The day that he was going to file is when he told
4 me he was going to file.
5 Q. Okay. And did he -- what was the substance of what he
6 told you? Did he just say we're filing or did he give
7 any explanation?
8 A. That's all he said, we're filing, today.
9 Q. And what time did he say that? Do you remember?
10 A. This was in the afternoon so it had to be somewhere
11 between 3 and 4 o'clock, somewhere in there I think.
12 Q. And at that time he didn't give you any explanation as
13 to why?
14 A. No.
15 Q. And did you have conversations with Mr. Orr subsequent
16 to the filing discussing the reasons why the filing
17 had been done?
18 A. No.
19 Q. Did Mr. Orr ever discuss with you the reasons for the
20 timing, the specific timing, of the filing?
21 A. No, he didn't.
22 Q. Did you have any discussions with anyone from the
23 State as to the specifics of the timing of the
24 bankruptcy filing?
25 A. No.

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1 Q. Now, were you aware that around -- as of the time the
2 bankruptcy filing was made that there was state court
3 litigation that was ongoing that was challenging the
4 ability of the Emergency Manager to file for Chapter
5 11 -- I'm sorry, for Chapter 9 in the first place?
6 A. I read that in the paper.
7 Q. Okay. Did you ever hear that the City made its
8 bankruptcy filing at the time it did in order
9 effectively to get it in before the state court issued
10 what the City expected to be an adverse ruling?
11 A. No.
12 MR. CULLEN: Objection, foundation, form.
13 A. I think I read that in the paper the following day.
14 Q. Now, I think you had indicated previously that you had
15 been opposed to the idea of the City having to file
16 for bankruptcy, you didn't think it was necessary; is
17 that right?
18 A. That's correct.
19 Q. And I remember you gave -- one last -- a couple last
20 questions.
21 You gave an interview with the Emergency
22 Manager I think it was either the day of or the day
23 after the filing. Do you recall that? You -- I think
24 you talked about a troubling day for Detroit.
25 A. Somewhat remember that, yeah.

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1 Q. And you introduced Mr. Orr who then made his comments.
2 In the course of that press conference you made the
3 statement to the effect that Mr. Orr and his team have
4 brought together -- have brought together a lot of
5 history of success or words to that effect. Do you
6 recall making that statement?
7 A. No.
8 Q. Do you -- are you aware of any history of success that
9 Mr. Orr and his team have?
10 A. Only Chrysler.
11 Q. Only in the context of bankruptcy?
12 A. Yeah.
13 Q. Are you aware of any success or history of success
14 that Mr. Orr has had outside the context of
15 bankruptcy?
16 A. No.
17 Q. Now, you obviously, you know, have been following even
18 if you've not been directly involved in what the
19 Emergency Manager has been doing; right?
20 A. Uh-huh.
21 Q. And you've been looking at or since obviously Detroit
22 is impacted by what he's doing in terms of both
23 reducing liabilities and trying to raise or conserve
24 cash; right?
25 A. Correct.



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1 Q. Now, when exactly did Kriss Andrews leave? I forget.
 2 You may have told me.
 3 A. It was late July of '13.
 4 Q. And did you just have discussions with Mr. Andrews
 5 before the time he left as to -- with the job that the
 6 Emergency Manager was doing, whether he was doing a
 7 good job or a bad job, being effective or not being
 8 effective?
 9 A. Yes.
 10 Q. And can you relate -- were you in agreement with the
 11 views of Mr. Andrews or did you and he have different
 12 views?
 13 MR. CULLEN: Objection, foundation, form.
 14 That's an unfair question, counsel. Which views?
 15 Q. You can answer my question.
 16 A. I was in agreement with Mr. Andrews.
 17 Q. And can you tell me what the substance of the
 18 discussions were and in particular the views expressed
 19 by Mr. Andrews with which you agreed?
 20 A. I think he felt as far as --
 21 MR. CULLEN: Objection, foundation. You
 22 can address it.
 23 A. I think he felt as far as the balance sheet issues
 24 were concerned that Kevyn had the ability to help
 25 solve problems in that realm, but from a restructuring

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1 standpoint he didn't think that he had the requisite
 2 skills to do an effective restructuring.
 3 Q. Now, was this -- these were discussions -- let me ask
 4 it this way.
 5 Was this a discussion that took place at
 6 one point in time or was this --
 7 A. It was ongoing.
 8 Q. These were ongoing discussions with Mr. Andrews? Just
 9 during what time frame?
 10 A. I think from probably April through June.
 11 Q. Let me mark as the last exhibit I will show you Bing
 12 5.
 13 (Marked Exhibit No. 5.)
 14 MR. ULLMAN: I'll just state for the record
 15 what we've marked as Bing 5 is an email from
 16 Kriss Andrews to Mayor Bing dated July 10, 2013. The
 17 first page bears Bates numbers DTMI00098861.
 18 Q. Are you familiar with what we've marked as Exhibit
 19 Bing 5, Mr. Mayor?
 20 A. Yes.
 21 Q. And can you tell me what this is?
 22 A. I asked Kriss, because at this time I knew he was
 23 leaving and I asked him to give me a kind of overview
 24 in terms of what he'd seen since Kevyn came on board
 25 and this is the feedback that I got from him.

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1 Q. Okay, and did you have an oral discussion with
 2 Mr. Andrews about this?
 3 A. Yes, I did.
 4 Q. Okay, and did you advise Mr. Andrews that you
 5 concurred in the views that he expressed here?
 6 MR. CULLEN: Objection, foundation, form.
 7 A. I would say the answer would be yes.
 8 Q. And then did you in fact agree with the views
 9 expressed in this document, Bing 5, by Mr. Andrews?
 10 MR. CULLEN: Objection, foundation, form.
 11 A. The answer would be yes.
 12 Q. Okay, and let me just go through some of this briefly.
 13 I think in the first couple of paragraphs Mr. Andrews
 14 essentially says that he's giving the Emergency
 15 Manager good mark -- good marks in long-term
 16 liabilities, stating at least in his view that the
 17 Emergency Manager was building on many of the
 18 initiatives that you had started previously?
 19 A. Correct.
 20 Q. And did you agree with that assessment?
 21 A. Yes.
 22 Q. Then Mr. Andrews goes on and starts discussing
 23 operations, which he says are a different matter
 24 altogether and basically his -- Mr. Andrews'
 25 conclusion is that the Emergency Manager, and I quote,

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1 "threw away the head start we gave him. He frankly is
 2 not competent at all. In fact, he's embarrassingly
 3 incompetent and only listened to his equally
 4 incompetent staff and did not well-exercise the added
 5 powers he had."
 6 So Mr. Andrews gives him an A in long-term
 7 liabilities and an F in operations.
 8 And did you agree with that assessment by
 9 Mr. Andrews?
 10 MR. CULLEN: Objection. Every word of it,
 11 counsel? Is that what you're asking?
 12 MR. ULLMAN: My question is pretty plain.
 13 You can answer.
 14 MR. CULLEN: No, it's an objectionable
 15 question, but he can answer it.
 16 MR. ULLMAN: Then your objection stands and
 17 the question would be answered.
 18 A. From my vantage point, you know, I'm not going to give
 19 him a grade from A to F in either one of those areas,
 20 but I would agree that his strength was in dealing
 21 with the long-term liabilities and not operations.
 22 Q. And Mr. Andrews goes so far as to say that in at least
 23 Mr. Andrews' view that he's not doing a competent job
 24 in the restructuring aspect and the operational
 25 aspect. Did you agree with that?



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1 MR. CULLEN: Objection, form and
2 foundation.
3 A. Yes, I would.
4 Q. And he gives -- he, meaning Mr. Andrews, goes on to
5 discuss some specific points that he believes, he
6 Mr. Andrews, believes support that conclusion. I want
7 to ask you about some of those.
8 MR. ANDREWS -- he has items 1 through 4
9 initially. Mr. Andrews first talks about issues
10 with -- you called it DDOT?
11 A. Yes.
12 Q. And he says that they were ready to choose -- I guess
13 MV is someone, is a person?
14 A. No, that's a company --
15 Q. Oh.
16 A. -- that manages transportation.
17 Q. Okay. And then it goes on to say, the Emergency
18 Manager slowed the process down and he says that
19 although he, meaning Orr, gave me a poor excuse for so
20 doing, it does not hold water.
21 Can you tell me in your own words, what was
22 the situation, the issue, with DDOT?
23 A. We had poor management at best at DDOT. And before we
24 wanted to make any long-term decisions, what to do
25 with the transportation department, we felt we had to

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1 get a capable management team in there to do the
2 assessment and make some improvements before we made
3 any final long-term decision and so we chose -- we had
4 chosen MV and Kevyn stopped that process and
5 ultimately, maybe three months later, chose the same
6 company that we recommended. So we think we lost
7 time.
8 Q. Okay, and so during that three-month period the same
9 prior, as you characterize it, bad management
10 continued in place?
11 A. Yes.
12 Q. And that resulted in continued -- were they losing
13 money, DDOT?
14 A. Yes.
15 Q. So it continued -- that perpetrated -- or perpetuated
16 at least for that three-month period the same
17 operation losing money?
18 MR. CULLEN: Objection, foundation, form.
19 A. We didn't see any improvement in efficiencies plus the
20 fact they were still the same kind of complaints that
21 we were getting from the ridership and we felt that if
22 there had been a management team in there sooner, we
23 could have probably made some improvements.
24 Q. Okay. And have there been improvements since MV was
25 put in place as the manager?

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1 A. I would say yes, but they've only been there for the
2 last four to six weeks so maybe it's too soon to
3 really do a good assessment, but they are the right
4 company and I believe given time and tools, they will
5 make major improvements.
6 Q. Okay, and does DDOT have any importance as concerns
7 Detroit's financial viability in terms of being able
8 to offer public transportation to citizens or things
9 like that?
10 MR. CULLEN: Objection.
11 Q. Is that something that's important to have in place
12 for recovery?
13 MR. CULLEN: Objection, foundation -- I'm
14 sorry. I didn't know whether there was going to be
15 another clause in the question.
16 MR. ULLMAN: No, no more clauses.
17 MR. CULLEN: Okay. Objection, foundation,
18 form.
19 MR. ULLMAN: Duly noted.
20 Q. You can answer.
21 A. As one of my initiatives, one of my key initiatives,
22 public transportation is one of the top five
23 initiatives from my vantage point, because it impacts
24 so many of our citizens who have either got to travel,
25 a lot of them don't have cars, a lot of them work

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1 outside of the City and if you don't have dependable
2 public transportation, it does create a major issue.
3 Plus we've been subsidizing DDOT out of our general
4 fund for some time so the quicker that we can fix it,
5 the less subsidizing we have to get -- get over to
6 DDOT.
7 Q. Let me go onto -- the next item listed is number 2.
8 Mr. Andrews writes, we should also be progressing on
9 providing the new management team in PLD.
10 Can you tell me what --
11 A. Public lighting department.
12 Q. Ah, okay. And can you explain what the issue is here?
13 A. We have 88,000 lights in our City with about 40,000
14 that are working. We have a system that is so
15 outdated that even with new technology, you know, we
16 -- we can't fix it. So there's got to be a huge
17 investment into public lighting. It's something that
18 we've been talking about for years and years. We have
19 a plan to put in place to invest in a new lighting
20 grid across the entire City and, once again, we
21 haven't moved the needle on that at all. We had a
22 Lighting Authority legislation was passed in December
23 of 2012 and we had an opportunity I think to put some
24 lights on in different parts of the City, but it
25 hasn't happened as I speak to you now.



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1 Q. And do you know why it -- why things have been, in the
2 words of Mr. Andrews, been slowed down?
3 A. Once again, I would say to you, and this is more
4 hearsay than anything else and this would be from --
5 MR. CULLEN: Objection, foundation.
6 A. What I hear is Lansing wants to take some credit for
7 fixing the lighting system and they're trying to get
8 the funding, 100 -- I think it's \$150 million they
9 want to go to the bond market. That hasn't happened
10 yet. So the investment that's necessary to put on
11 lights and start to fix the system has taken much
12 longer than any of us anticipated.
13 Q. Now, at the time that Mr. Andrews wrote this email to
14 you, he was still part of your team; right?
15 A. Correct.
16 Q. He was still the -- what was his title? Was it
17 program manager director?
18 A. Program director.
19 Q. And you had asked him to write this email to you as
20 part of his job duties?
21 A. Yes.
22 Q. To inform you as to --
23 A. How things were going, yes.
24 Q. And that's what this is? This is the email that he
25 wrote while in the -- employed in the capacity of

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1 program manager director in response to your request
2 that he do so?
3 A. That would be correct.
4 Q. And this was within the ordinary scope of his job
5 activities?
6 A. Yes.
7 Q. And you had asked him as part of his job to observe
8 and monitor what was going on in the City under the
9 direction of the Emergency Manager and report back to
10 you?
11 A. Yes.
12 Q. Now, Mr. Andrews writes in this -- and this is on both
13 points one and two, he writes, and I quote, "He" --
14 the he there referring to Mr. Orr -- "He told me a
15 disaster at DDOT would not be a problem for him since
16 it would highlight how screwed up the City is." And
17 then similarly, if you look at number 2, Mr. Andrews
18 writes that the EM slowed the process here also and
19 said the same thing, a disaster at PLD would not be a
20 bad thing because it would highlight how messed up the
21 City is.
22 Did you ever have any conversations with
23 Mr. Orr in which Mr. Orr conveyed the substance of
24 what is reported here by Mr. Andrews to you?
25 A. No.

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1 Q. Going onto number 3, it says, similar issues surfaced
2 around the Lighting Authority.
3 Let me ask you. What's the difference
4 between the PLD and the Lighting Authority?
5 A. Lighting Authority is independent of PLD. The
6 Lighting Authority is more regional. We had had
7 legislation passed and so those people on the
8 authority are not employees of the City, it's
9 independent.
10 Q. And do they have -- do they deal with different --
11 with lights in different parts of Detroit than PLD?
12 I'm not sure what the interplay between the two is.
13 A. No, it would be the exact same PLD, but see, with PLD,
14 we don't control all the lighting in the City, DTE
15 controls probably at least 40 percent of the lights in
16 the City because they have upgraded and they have made
17 the necessary technology, investments in 40 percent of
18 lights in the City so their grid works, ours doesn't.
19 Q. DTE is what?
20 A. Detroit -- DTE, Detroit -- Detroit Edison.
21 Q. Detroit Edison supplies the electricity or --
22 A. PLD also has the ability to generate electricity, but
23 once again, it's such an old, outdated entity they've
24 not made any kind of investments in their system in 30
25 or 40 years, so a lot of the system is just broken, it

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1 can't even be fixed, you can't even get replacement
2 parts.
3 Q. Okay, just -- so you had indicated there were 88,000
4 lights --
5 A. Correct.
6 Q. -- in Detroit? And some of those --
7 A. Some of them are on the grid with DTE.
8 Q. Okay. And those are DTE's responsibility?
9 A. Correct.
10 Q. And some are the responsibility of PLD?
11 A. That would be correct.
12 Q. And that's about how many?
13 A. That's probably around 55,000.
14 Q. And then are others the responsibility of the Lighting
15 Authority?
16 A. No, no.
17 Q. That's why I'm still a little unclear as to how the
18 Lighting Authority factors into this.
19 A. We went to the outside, because we thought that one of
20 the things we were thinking about doing was
21 outsourcing the responsibility of lighting the City of
22 Detroit. We didn't think that we had the capacity or
23 the capability to do that internal so we were talking
24 to DTE as an alternative source, but we wanted to have
25 the Lighting Authority in place because DTE did not



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1 want to make the necessary investment, so we had to do
2 that through this Lighting Authority by issuing bonds.
3 Q. Okay, so one option was to work with DTE, but that
4 didn't look like it was going to work so the Lighting
5 Authority is a regional authority and you were going
6 to like bring them in through the floating of bonds to
7 have them help take over and fix the lights in
8 Detroit; is that it?
9 A. Yep, yep, yep.
10 Q. And is there a name of this authority or is that a
11 particular name?
12 A. No, Detroit Lighting Authority.
13 Q. Just called the --
14 A. Yeah.
15 Q. There you go. Works for me.
16 Okay, and so what is -- can you explain the
17 issue that Mr. Andrews is writing about here in item 3
18 when he says similar issues surfaced with the Lighting
19 Authority?
20 A. We -- one of the big issues that we have is with our
21 union employees, because as you start talking about
22 outsourcing, in a lot of cases they may very well lose
23 a job, they're at risk, and as far as the lighting --
24 the lighting department is concerned, you're not
25 talking about a lot of people and there were

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1 negotiations, I'm not involved in that, where those
2 people who wanted to stay as City employees could be
3 transferred over to an outside third-party and
4 wouldn't lose their jobs. So a lot of those
5 negotiations were going on, but what Kriss is saying
6 is that Kevyn slowed that process down which kept us
7 from moving forward to try to get the investment in
8 place and start to get lights on in the City.
9 Q. And is that process still ongoing to where --
10 A. That's ongoing.
11 Q. And are people -- but it's just ongoing, as I think
12 you had said, in a slower way than you had expected it
13 would be given the work -- the groundwork that you had
14 done?
15 A. That would be correct.
16 MR. CULLEN: Objection, foundation, form.
17 Q. And Mr. Andrews writes that they went to Kevyn and got
18 a deal which forces the City to put in more money than
19 they need and essentially saying a better deal than
20 they were able to negotiate with the City without the
21 Emergency Manager.
22 Do you have an understanding as to what
23 Mr. Andrews is referring to here?
24 A. If I recall, there's a tax that's about \$12.5 million
25 a year that I think I recall that is utilized once the

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1 -- once you've gone out and you've secured the bonds,
2 you can use this tax to pay down the loan, and this
3 Authority did not need the \$12.5 million in year one,
4 but he's -- I think he told me that Kevyn gave them
5 the \$12.5 million and his feeling was that they only
6 needed as a startup entity 2 to \$3 million. Why not
7 use the rest of the money to put into other areas that
8 the City needs and I think that's what his -- what he
9 was referring to.
10 Q. Okay. In item 4 Mr. Andrews makes a number of -- I
11 guess it's some general observations. One is ordering
12 us not to coordinate with the consultants we hired to
13 help us.
14 Do you have an understanding as to what
15 that's referring to?
16 A. Yeah, Kriss was told not to -- not to have any contact
17 with the consultants and that the consultants that
18 were coming in were very inexperienced people, that
19 had really no knowledge of Detroit and of municipal
20 government, so it really slowed the process down.
21 Q. And did Mr. Andrews tell you that he had been told not
22 to have contacts with the consultants?
23 A. Yes.
24 Q. And when did -- did he tell you that directive was
25 given?

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1 A. Oh, that was given by Kevyn. I don't know the exact
2 timing of that. It had to be in the April/May time
3 frame.
4 Q. And up to the point of that directive had Mr. Andrews
5 been having contact with the consultants?
6 A. Yes.
7 Q. And is that something you would know due to your
8 supervision of Mr. Andrews?
9 A. Yes.
10 Q. And after that directive was given did Mr. Andrews
11 continue to have contact with the consultants?
12 A. No.
13 Q. And then Mr. Andrews goes on to say, putting in place
14 very inexperienced staff to control things.
15 Do you have an understanding as to what
16 Andrews was referring to there?
17 A. All the consultants.
18 Q. Well, he's referring specifically to staff. Is
19 that --
20 A. Well, they -- they became staff.
21 Q. Oh, okay. Anyone in particular?
22 A. It's a bunch of them.
23 Q. You mean these were people that Mr. Andrews -- Mr. Orr
24 brought in to take on positions in the City management
25 structure to replace people that you had previously



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1 installed; is that right?

2 A. That would be correct.

3 Q. And can you just give me -- you don't have to name

4 names but give me some of the positions where you

5 believe he put in people who are inexperienced or very

6 inexperienced.

7 MR. CULLEN: Objection, foundation, form.

8 Which is it?

9 MR. ULLMAN: I think we'll go with very

10 inexperienced.

11 A. He brought on a CFO from the outside to replace Jack

12 and everybody said from day one he was not a good fit.

13 I believe he'll be relieved of his duties for other

14 reasons this week. Kriss was replaced by Gary Brown,

15 who was a City Council -- City Councilman who has

16 never run anything much less 11 different departments

17 reporting to him. He was a police officer before he

18 became a City Councilman and he took Kriss' place.

19 Karla has not been replaced at all, Karla Henderson,

20 who I think was one of our high profile leaders that

21 really did an outstanding job in blight elimination

22 and planning for the City. She's not been replaced to

23 my knowledge. Only recently our director of

24 purchasing has left and he has not been replaced. So

25 a lot of the key people that they're taking out, what

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1 they're doing is putting in consultants in those

2 positions and, you know, they're learning on the fly

3 and just, once again, it's not efficient.

4 Q. I think you mentioned specifically two people who were

5 replaced who you didn't believe were good people or

6 experienced people. You mentioned CFO, Jack Martin,

7 as I recall, and then Kriss Andrews himself who was

8 replaced by Gary Brown. Anyone else that was put out

9 and replaced by someone that you believe to be not

10 suited, not experienced enough for the job apart from

11 those two? And put aside positions that are currently

12 unfilled.

13 A. No, those would be the two key along with Karla and

14 Karla's just hasn't been replaced. They may be

15 looking for a person for that, I don't know, but some

16 of the other positions they've just put young

17 consultants in those positions. My big concern there

18 is at some point in time we will come out of

19 bankruptcy and if you don't have the people internally

20 that know the system and you have all these

21 consultants doing the job that City employees ought to

22 be doing, when Kevyn leaves, which could be within the

23 next 11 months, and those consultants leave, you

24 haven't developed anybody to run the City on a

25 day-to-day basis. That's my biggest concern. We

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1 don't even have a line item in our budget for

2 training. Somebody's got to get trained to do these

3 jobs on a long going basis.

4 Q. So when you said -- you made some reference to young

5 consultants that were brought in. Is it the case that

6 the Emergency Manager has put in staff positions

7 people who are actually consultants rather than

8 long-term employees of the City?

9 A. Yes.

10 MR. CULLEN: Objection, foundation, form.

11 Q. And do you know the names or positions of those

12 people?

13 A. No, I don't.

14 Q. But that's at a lower level so you don't know the

15 specific names?

16 A. Correct.

17 Q. But it's your understanding that that's what's

18 happened?

19 A. Correct. I get feedback from a lot of my department

20 heads and directors that that's what's going on and

21 they're frustrated as hell.

22 Q. And can you tell me who are some of these department

23 heads who are --

24 A. All of them.

25 Q. Mr. Andrews also says that the Emergency Manager is

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1 not listening to Conway MacKenzie. Do you see that at

2 the top of Bates page 862?

3 A. Yes, I see that.

4 Q. Do you have an understanding of what he was referring

5 to there?

6 A. No, I don't. Conway MacKenzie is the restructuring --

7 the primary restructuring firm, but I'm -- you know, I

8 have no contact with them at all.

9 Q. So you don't know the specifics of what Mr. Andrews

10 was referring to?

11 A. No, no, I don't.

12 Q. Okay. Let me just go quickly through the last couple

13 of things. Mr. Andrews continues in this email

14 stating that the Emergency Manager and his team also

15 pursued wrong things and he gives a list. First he

16 talks about focusing on outsourcing solid waste. Do

17 you have an understanding of what the issue is there?

18 A. Yeah, trash is getting picked up, garbage and trash is

19 getting picked up. Maybe not as efficient as it

20 should be, but it's not like it's not happening. You

21 know, there may be a delay of several hours or maybe a

22 day and he's saying that's not an area to overly

23 concern itself with. You know, the real issues still

24 are the things that I focused on earlier.

25 Q. Mr. Andrews states in this paragraph that the



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1 announced savings of 15 million are ridiculous and he
 2 says they don't really know what the savings are, if
 3 there are any.
 4 Do you see that? Do you have an
 5 understanding of what's referred to there?
 6 A. Yeah, I think you first got to know your internal
 7 costs and I think what Kriss is saying if you don't
 8 know your internal costs, how do you know that when
 9 you go out, without quoting other companies, that
 10 you're going to save this money? And so, you know,
 11 that work had not been quoted out.
 12 Q. I'm sorry, what work had not been quoted out?
 13 A. Trash and garbage pickup.
 14 Q. I'm -- I'm not -- I'm sorry, I'm not following.
 15 A. Solid waste.
 16 Q. It had not been quoted out. I thought there was an
 17 RFP that was put out for solid waste?
 18 A. It may have been now, but before -- but I think he was
 19 given information on this 15 million savings before
 20 any information came back from the RFP.
 21 Q. Oh, you're saying that there was an announcement that
 22 there would be a savings of 15 million --
 23 A. Right.
 24 Q. -- before the specifics of the RFP were in --
 25 A. Correct.

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1 Q. -- compared so you could then compare with what the
 2 internal --
 3 A. What the internal cost was, correct.
 4 Q. Okay. And at that time were the internal costs -- had
 5 they been tabulated, calculated?
 6 A. I don't know the answer to that.
 7 Q. Number 2 on this last list of Mr. Andrews is moving
 8 PDD to DEGC.
 9 Can you tell me what that refers to?
 10 A. You got to learn the acronyms here. Planning and
 11 development and DEGC is Detroit Economic Growth
 12 Corporation, and you know you got two functions that
 13 do planning for the City of Detroit. DEGC is a little
 14 different. They're basically about new business
 15 coming into town and they're more growth oriented than
 16 anything else. They don't get into the nitty-gritty
 17 of managing what happens in city departments on a
 18 day-to-day basis. We don't think, meaning my
 19 administration, don't think that that's a good use of
 20 the skill sets that we have in the two departments.
 21 There may be some things and we've even heard from
 22 HUD, which is a big supporter of our Planning
 23 Department, there are things that we can't transfer to
 24 DEGC. And so when people just with blinders on
 25 saying, you know, take all the responsibilities from

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1 the Planning Department and shift it over to DEGC,
 2 DEGC doesn't even want all of that, doesn't make -- we
 3 don't think it makes a lot of good sense right now.
 4 Q. Okay. And there's also the last point that
 5 Mr. Andrews makes, number 3, is about putting a new
 6 chief in place. I think he's suggesting it should be
 7 an existing person as opposed to someone brought in
 8 from the outside?
 9 A. Too late. That's done. Traditionally -- historically
 10 I should say the police chief and the fire
 11 commissioner were always appointees selected by the
 12 Mayor. With the kind of problems that we've had from
 13 a public safety standpoint and with the turnover of
 14 police chiefs since I've been in office, they made a
 15 change so that the Mayor no longer selected the police
 16 chief. The police chief was selected by Lansing going
 17 back -- actually he started July 1st, but they didn't
 18 follow the process and we have a police commission
 19 that purportedly has the responsibility of selecting
 20 and interviewing and they have a process of
 21 identifying police chiefs. It didn't happen that way
 22 with them. And I had no input into it at all and when
 23 I found out that they were ready to name a police
 24 chief and they showed me a couple names, they had no
 25 internal candidates at all and I went to Kevyn and

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1 said, you know, you got to -- we've got almost 3,000
 2 police officers in the City of Detroit, you can't make
 3 me believe that we don't have somebody internally who
 4 has the capability and capacity to be considered and
 5 at the 11th hour they did interview two internal
 6 candidates but the reality is that the die was cast.
 7 The guy who they selected is the guy that's here now
 8 from Cincinnati.
 9 Q. And then lastly, if you look at the second to the last
 10 paragraph in this email, Mr. Andrews makes reference
 11 to a gag order or gag orders from Kevyn, which he says
 12 only support the very poor reporting.
 13 Do you have an understanding as to what
 14 he's referring to when he uses the phrase gag orders
 15 from Kevyn?
 16 A. I think anytime -- we got a different kind of press
 17 here. I don't know. Are you from here?
 18 Q. I'm from New York.
 19 A. Okay, our press may be worse than New York press.
 20 Q. That's a matter of opinion.
 21 A. Having said that, having said that, the negative
 22 stories about Detroit is pretty rampant and you know,
 23 I guess things happen internally that you would hope
 24 would maybe stay inside, but our press does a pretty
 25 good job of digging and so when something happens



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1 internally and the press gets ahold of it, I think
 2 what Kevyn is saying, you know, there must be a leak
 3 somewhere so, you know, we don't -- we want to make
 4 sure that that stops, we don't need to read about some
 5 of the things that are being discussed internally,
 6 etc., etc., so I'm putting a gag order out and
 7 anybody -- if I find out that you are the leak, then
 8 I'm going to have to deal with you appropriately.
 9 Q. Okay. And then actually as I see in the email above
 10 this Mr. Andrews says, we need to talk, we need to
 11 plan this communication well, how do we get out a
 12 message that helps matters.
 13 Do you know what he was referring to by
 14 planning this communication well?
 15 A. I'm not 100 percent sure on that, but it's one of the
 16 things that we talk about internally a lot. You know,
 17 I have an administration that have accomplished a lot
 18 of things and because the focus is always on the
 19 negative things that are happening, we're trying to
 20 figure out -- there are some good stories. I mean,
 21 even yesterday with 60 Minutes, I guess, it was all
 22 pretty negative about the City. It's the same thing
 23 over and over and over. Nobody talks about some of
 24 the positive things that are going on and I think in
 25 deference to staff, I want people to understand that

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1 they've accomplished a lot and so we wanted -- I think
 2 Kriss and Bob wanted to make sure that our press
 3 understood that there were good things, that we had
 4 accomplished things, etc., etc. It's not all about
 5 the Emergency Manager coming in and now things start
 6 to happen. It's about things were already happening.
 7 MR. ULLMAN: Okay, I have no further
 8 questions at this time. I will pass the witness.
 9 THE VIDEOGRAPHER: We'll go off the record
 10 at 12:49.
 11 (A brief recess was taken.)
 12 THE VIDEOGRAPHER: Back on the record,
 13 12:52. Go ahead.
 14 EXAMINATION
 15 BY MR. ELLISON:
 16 Q. Good afternoon, Mr. Mayor. I just have a few
 17 questions so I'll be very brief.
 18 How many discussions did you have with
 19 Mr. Baird about the Emergency Manager; do you recall?
 20 A. No more than two.
 21 Q. And when was the last one?
 22 A. I think after -- after I met with Kevyn.
 23 Q. So that would have been in the February or March time
 24 frame?
 25 A. In late February, yeah.

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1 Q. And earlier you had mentioned Treasurer Andy Dillon.
 2 Did you have any discussions with him about the
 3 Emergency Manager?
 4 A. Not as much. Rich seemed to have taken the lead on
 5 that. I think the Treasurer was more involved in what
 6 was happening in Detroit in 2012 as opposed to 2013.
 7 I've not seen a lot of him in 2013.
 8 Q. But did you have any discussion about --
 9 A. No, no with Andy, no.
 10 Q. Did you have any discussions with him about Detroit's
 11 pension issues?
 12 A. With Andy, no.
 13 Q. Okay. And how about Governor Snyder? Have you had
 14 any discussions with him about the Emergency Manager?
 15 A. Just once.
 16 Q. And when was that?
 17 A. That was before I went to DC to meet Kevyn.
 18 Q. And what was the substance of that conversation, if
 19 you remember?
 20 A. That they think that they found the right guy.
 21 Q. How long was the conversation?
 22 A. Short conversation.
 23 Q. Did you say anything back or was it him simply
 24 informing you that --
 25 A. Just informing me.

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1 Q. Did you have any discussions with the Governor about
 2 the possibility of filing for bankruptcy?
 3 A. No.
 4 Q. And did you have any discussions with him about the
 5 City's pension issues?
 6 A. No.
 7 MR. ELLISON: That's all I have for the
 8 witness.
 9 EXAMINATION
 10 BY MS. LEVINE:
 11 Q. Good afternoon, Mr. Mayor.
 12 A. Good afternoon.
 13 Q. Sharon Levine, Lowenstein Sandler, for AFSCME.
 14 A. Okay.
 15 Q. Just a couple more questions.
 16 Prior to -- going back 18 months before the
 17 bankruptcy filing, are you aware that there were
 18 negotiations with the City and a coalition of unions
 19 with regard to certain tentative agreements?
 20 A. Yes.
 21 Q. Were you involved in those negotiations?
 22 A. Yes.
 23 Q. Is it your understanding that those negotiations with
 24 your unions actually did result in tentative
 25 agreements?



<p style="text-align: right;">Page 101</p> <p>1 A. Yes.</p> <p>2 Q. And is it your understanding that those tentative</p> <p>3 agreements were ratified by the unions?</p> <p>4 A. Yes.</p> <p>5 Q. Were those -- and was it your understanding that those</p> <p>6 tentative agreements would have resulted in savings</p> <p>7 for the City?</p> <p>8 A. Yes.</p> <p>9 Q. Were the tentative agreements -- were the tentative</p> <p>10 agreements ever implemented by the City?</p> <p>11 A. No.</p> <p>12 Q. Do you know why?</p> <p>13 A. They were rejected by the Treasurer, Andy Dillon.</p> <p>14 Q. After the rejection of the tentative agreements did</p> <p>15 there come a point in time where you were involved in</p> <p>16 further negotiations with your unions with regard to</p> <p>17 concessions, specifically including meetings with</p> <p>18 Ernst & Young?</p> <p>19 A. I wasn't actually involved in any of that so I'm not</p> <p>20 100 percent sure what other meetings occurred after we</p> <p>21 didn't get the tentative agreements implemented.</p> <p>22 Q. Were there meetings -- were you aware of meetings</p> <p>23 between various union representatives and E&Y or</p> <p>24 Ernst & Young?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 103</p> <p>1 finish?</p> <p>2 A. Kriss and Jack Martin would have been the two guys,</p> <p>3 the CFO and the COO would have been the guys that were</p> <p>4 heading that up, and I would think HR guy had to be</p> <p>5 involved in that who's no longer here, Patrick Aquart,</p> <p>6 and then our labor person would have been involved in</p> <p>7 that, and they reported to either Jack or Kriss.</p> <p>8 Q. To your knowledge did those meetings result in</p> <p>9 tentative agreements or any agreements with the</p> <p>10 unions?</p> <p>11 A. Not to my knowledge.</p> <p>12 Q. Why did those -- did those discussions come to a halt?</p> <p>13 A. I believe they did, once the determination was made</p> <p>14 that an Emergency Manager was imminent.</p> <p>15 Q. Following the appointment of the Emergency Manager,</p> <p>16 were you -- are you aware of any further discussions</p> <p>17 with your unions or coalition of unions before the</p> <p>18 filing of the Chapter 9 case?</p> <p>19 A. I'm sure there were ongoing meetings, but I've not</p> <p>20 been involved in any of them because that was under</p> <p>21 the purview of the Emergency Manager.</p> <p>22 Q. How are you sure that there were ongoing meetings if</p> <p>23 you weren't involved?</p> <p>24 A. Just conversations, you hear conversation, people let</p> <p>25 you know what's going on.</p>
<p style="text-align: right;">Page 102</p> <p>1 Q. When did those occur?</p> <p>2 A. Those would have been late 2012 and maybe the first</p> <p>3 quarter of '13.</p> <p>4 Q. And who was present at those meetings on behalf of the</p> <p>5 City?</p> <p>6 MR. CULLEN: Objection, foundation.</p> <p>7 Q. Are you aware who was in attendance at those meetings</p> <p>8 on behalf of the City?</p> <p>9 A. That would have been our top labor guy, I don't know</p> <p>10 if he was by himself. I don't know if Kriss was still</p> <p>11 involved in it, Andrews. I'm not sure from the City's</p> <p>12 perspective who all may have been there.</p> <p>13 Q. But these took place before the Emergency Manager was</p> <p>14 appointed in March of 2013; correct?</p> <p>15 A. Correct.</p> <p>16 Q. And these were done under -- although you weren't</p> <p>17 physically there, they were done under your</p> <p>18 supervision and control and the people who were</p> <p>19 involved in those conversations reported to you; is</p> <p>20 that correct?</p> <p>21 A. No, they reported to Kriss.</p> <p>22 Q. To Kriss Andrews and Kriss Andrews reported to you?</p> <p>23 A. Yes, Kriss --</p> <p>24 Q. In other words, they weren't done --</p> <p>25 MR. CULLEN: Could you let the witness</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. So what -- with whom did you have a conversation that</p> <p>2 indicated to you that there were ongoing meetings with</p> <p>3 the coalition of unions after the appointment of the</p> <p>4 Emergency Manager?</p> <p>5 A. Jack or Kriss.</p> <p>6 Q. And when did those meetings take place?</p> <p>7 A. Once again, it was sometime in the first quarter of</p> <p>8 '13. I don't know that there were ongoing meetings.</p> <p>9 Once Kevyn got here I do think there were still</p> <p>10 meetings, but like I said, I'm not involved in that at</p> <p>11 all anymore.</p> <p>12 Q. So while you were in control, there were negotiations</p> <p>13 with the coalition of unions that resulted in a TA</p> <p>14 where the unions ratified those TAs and those were not</p> <p>15 implemented because Mr. Baird declined to implement</p> <p>16 them; is that your understanding?</p> <p>17 A. Not --</p> <p>18 MR. CULLEN: Objection, foundation, form.</p> <p>19 A. Not Mr. Baird. That was the Treasurer, Andy Dillon.</p> <p>20 Q. Andy Dillon, okay.</p> <p>21 After the appointment of Emergency Manager</p> <p>22 you're not sure what meetings took place, although you</p> <p>23 did hear around the halls that some meetings were</p> <p>24 ongoing?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 105</p> <p>1 Q. Before the Emergency Manager was appointed were you 2 involved in budgeting for the City? 3 A. At a very high level. Not so much in budgeting. I 4 mean, the budget director -- 5 Q. Who was responsible -- and did the budget director 6 report to you? 7 A. No, he reported to the CFO. 8 Q. And did the CFO report to you? 9 A. Correct. 10 Q. Okay, since the appointment of the Emergency Manager 11 do you know who's involved in budgeting for the City? 12 A. Brent Hartzell. Brent Hartzell. H-A-R-T-Z-E-L-L. 13 He's the budgeting director. 14 Q. And to whom does he report? 15 A. He reported directly to the new CFO, the guy that I 16 don't think's going to be here after this week, 17 Jim Bonsall. 18 Q. And does he report to you? 19 A. I've never seen an org chart. I've asked for it on 20 several occasions and I've never seen one. 21 Q. So you're not sure what the reporting org chart would 22 be after the appointment of the Emergency Manager? 23 A. That is correct. 24 Q. Do you know whether or not any of the consultants 25 retained by the financial manager are involved in the</p>	<p style="text-align: right;">Page 107</p> <p>1 restructuring standpoint. Maybe Ernst & Young from a 2 financial standpoint. 3 Q. But that's not the -- that's not the -- the line of 4 folks we just discussed with regard to budgeting? 5 MR. CULLEN: Objection, foundation, form. 6 A. I'm not sure your question. 7 Q. Before the Emergency Manager was appointed when you 8 did budgeting, did you look at things in your budget 9 like what, for example, you would spend on solid 10 waste? 11 A. Yes. 12 Q. And did you consider in the budget whether or not 13 there were ways to save costs with things such as 14 solid waste? 15 A. Yes. 16 Q. Okay, and one of the things that you talked about 17 earlier was whether or not you could save money if you 18 outsourced? Without the City would save money by 19 outsourcing various function such as solid waste; 20 correct? 21 A. Correct. 22 Q. And one of the concerns you had was it appeared people 23 were reaching conclusions with regards to numbers 24 about those savings without having gone through an RFP 25 process first; is that correct?</p>
<p style="text-align: right;">Page 106</p> <p>1 budgeting functions? 2 A. I'm sure they are. 3 Q. But you're not involved in those meetings? 4 A. No. 5 Q. And you don't get reports from those meetings? 6 A. No. 7 Q. You discussed earlier a conversation that you had with 8 Kriss around outsourcing. I believe that was with 9 regard to solid waste; is that correct? 10 A. Correct. 11 Q. And I believe you testified that one of the concerns 12 you had was that there was an estimated savings from 13 outsourcing that had been announced before RFPs had 14 gone out and the actual numbers had come in; is that 15 correct? 16 MR. CULLEN: Objection, foundation, form. 17 A. Maybe not before the proposals went out, but before 18 they came back in I think that number of 15 million 19 was out there. 20 Q. Since the appointment of the Emergency Manager, is 21 there somebody who's specifically looking at whether 22 or not outsourcing specific City functions would save 23 money for the City? 24 MR. CULLEN: Objection, foundation, form. 25 A. I think that would be Conway MacKenzie from a</p>	<p style="text-align: right;">Page 108</p> <p>1 A. That would be correct. 2 Q. Okay. My question to you is who's the point person 3 now under the Emergency Manager who was looking at 4 these outsourcing issues? 5 A. I would assume it's somebody from Ernst & Young and 6 somebody from Conway MacKenzie. 7 Q. Do you have any -- have you had any conversations with 8 that person? 9 A. Neither, neither organization. 10 Q. From the period from November 2012 through March of 11 2013 did you have any discussions with anybody from 12 Lansing with regard to the ability to restructure 13 Detroit without the need to appoint an Emergency 14 Manager or an Emergency Financial Manager? 15 A. I think I made it clear to all of those that we were 16 in contact in Lansing that that was not the direction 17 that I supported. 18 Q. And did you -- did you have an opportunity to discuss 19 with the folks in Lansing your particular ideas with 20 regard to how to restructure or rehabilitate Detroit? 21 A. Yes, they had -- they had what we would call a -- we 22 gave them a lot of information in terms of department 23 by department what we thought we needed to do to 24 either create savings or generate some revenue from a 25 reorganization standpoint.</p>

<p style="text-align: right;">Page 109</p> <p>1 Q. During the course of those discussions did you ever 2 have conversations with anybody in Lansing about the 3 prospect of filing a Chapter 9 without appointing an 4 Emergency Manager? 5 A. No. 6 Q. Did your plan or plans or any of the issues you 7 discussed include modifying vested pension benefits? 8 A. Yes. 9 Q. With whom did you have discussions with regard to 10 modifying vested pensions? 11 A. I had personally no discussion. I think the COO and 12 the CFO had those discussions, I believe probably with 13 Andy. 14 Q. Was there any discussion to your knowledge of how to 15 implement a change to vested pension benefits given 16 the Michigan State Constitution? 17 A. No. 18 Q. Did your plan or the plans that were adopted by you 19 include privatization? 20 A. Of? 21 Q. Anything. 22 A. I think we looked at privatization, yes. I mean, we 23 just talked about the DDOT, we just talked about PLD, 24 as two. 25 Q. So in connection with outsourcing or privatization did</p>	<p style="text-align: right;">Page 111</p> <p>1 insurance to cover certain otherwise provided pension 2 benefits that are now lost? 3 MR. CULLEN: Objection, foundation, form, 4 asks for a legal conclusion. 5 A. I wouldn't know the answer to that. 6 Q. I'm asking your understanding. I'm going to try 7 again. 8 Do you understand that in a Chapter 11 9 corporate case if there's a defined pension benefit 10 plan that's terminated, the PBGC provides federal 11 insurance protection for the pension beneficiaries? 12 MR. CULLEN: Why don't you just ask him the 13 foundation question whether he has any understanding 14 about that whatsoever? 15 MS. LEVINE: I did. That's the start of 16 the question is -- is it his understanding. 17 MR. CULLEN: Well, that's not the rest of 18 the question, but I'll object to the form and the 19 foundation and you can address the question. 20 A. You have to ask me the question again I think. 21 Q. If the pension is terminated -- if Detroit's pension 22 is terminated, is there any federal program that 23 provides pension benefits for the retirees who have 24 now lost their benefits? 25 A. Not to my knowledge.</p>
<p style="text-align: right;">Page 110</p> <p>1 your plan include a process for evaluating or valuing 2 whether or not there really truly would be savings to 3 the City as a result of that job loss? 4 A. Yes, that was done through the purchasing department. 5 Q. And what was your process for evaluating outsourcing? 6 A. I can't tell you the process. 7 Q. But did it include getting RFPs before you announced 8 what the purported savings would be? 9 A. Yes, yes. 10 Q. Did your plan include the sale of assets? 11 A. Some. 12 Q. And you discussed them previously with counsel? 13 A. Correct. 14 Q. So I won't do that again. 15 A. Correct. 16 Q. Did your plan include a loss of City jobs? 17 A. Yes. 18 Q. Do you recall how many? 19 A. I don't -- we -- I think it was a number of 1,500 jobs 20 in total. 21 Q. How many of those were nonuniform employees? 22 A. I don't know the answer to that. 23 Q. Do you understand that in a Chapter 11 corporate case 24 if a pension is terminated, the PBGC or the Pension 25 Benefit Guaranty Corp, provides federally provided</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. In a Chapter 11 case or in a bankruptcy case that 2 doesn't involve a municipality, is there a federal 3 program that provides benefits to pension 4 beneficiaries who've lost their benefit from a private 5 pension? 6 MR. CULLEN: Objection, foundation, form. 7 A. I wouldn't know the answer to that. 8 Q. In the plans that you discussed with Lansing what was 9 your understanding of how retirees were going to live 10 post restructuring if pension benefits were going to 11 be cut? 12 A. Never had that conversation. 13 Q. Did you have any input into the retention of 14 restructuring counsel for the City? 15 A. No. 16 Q. How did you learn that Jones Day was retained as the 17 City's restructuring counsel? 18 A. There was a meeting in the airport in the December 19 time frame of 2012. Representing the City was 20 Kriss Andrews and Jack Martin and they're the ones 21 that made me aware. 22 Q. Since November of 2012 have you had any conversations 23 with House Speaker Bolger with regard to Detroit's 24 financial issues? 25 A. No.</p>



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1 Q. Any conversations with Randy Richardville?
 2 A. I think I was up in Lansing and at that time it was
 3 really trying to get the legislature to vote and pass
 4 some legislation for the Lighting Authority and the
 5 Regional Transportation Authority.
 6 Q. And what were those conversations that you had with --
 7 A. We needed them to support it, because we were in dire
 8 need of both.
 9 Q. Did they agree to support it?
 10 A. They did. The legislation was passed in December.
 11 Q. Did that provide State assistance?
 12 A. It's supposed to. That hasn't happened yet.
 13 Q. What's your understanding why that hasn't happened
 14 yet?
 15 A. They had to get the Authorities' board together and
 16 they've been working on that for a long time for both
 17 authorities, but I think they're both in play right
 18 now and they have both chosen the leadership for the
 19 Regional Authority for Transportation as well as for
 20 the Lighting Authority.
 21 Q. Prior to the appointment of the Emergency Manager did
 22 you have any involvement to trying to get access to
 23 federal assistance for Detroit?
 24 A. Absolutely.
 25 Q. Since the appointment of the Emergency Manager do you

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1 continue to have involvement in trying to get federal
 2 assistance for Detroit?
 3 A. Absolutely.
 4 Q. Who were you talking to before the appointment of the
 5 Emergency Manager?
 6 A. Three to four of the different secretaries under the
 7 Obama administration.
 8 Q. And who have you been talking to since the appointment
 9 of the Emergency Manager?
 10 A. The same ones, except now there's a new department,
 11 there's a new Secretary of Transportation.
 12 Q. Prior to the appointment of the Emergency Manager did
 13 you have any discussions other than what we've just
 14 been talking about with anybody in Lansing with regard
 15 to assistance for Detroit?
 16 A. Yes. We have talked -- I mean, I've had ongoing
 17 conversations with the Treasurer as well as the
 18 Governor.
 19 Q. Have you continued those discussions post the
 20 appointment of the Emergency Manager?
 21 A. No.
 22 Q. Prior to the appointment of the Emergency Manager did
 23 you have any discussions with anybody about accessing
 24 private or not-for-profit assistance to help with the
 25 financial issues in Detroit?

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1 A. Yes, I've met with our business community leadership,
 2 I've met with most of our foundations and I think
 3 because of that we've gotten the kind of support we've
 4 gotten.
 5 Q. Have you continued to have those discussions since the
 6 appointment of the Emergency Manager?
 7 A. Yes. For the record let me be specific about that.
 8 MR. CULLEN: Always a bad idea, but go
 9 ahead.
 10 A. You know, I've been able to raise -- I raised
 11 \$8 million from our corporate community to assist us
 12 with 100 police vehicles, with 23 brand-new fleet of
 13 EMS vehicles. From the corporate and foundation
 14 community, I've been able to generate \$14 million to
 15 keep our recreation and parks open. So -- and that's
 16 been ongoing. So all of this was before the Emergency
 17 Manager and since the Emergency Manager I've continued
 18 to do that and will continue.
 19 MS. LEVINE: If I can confer for a second.
 20 THE VIDEOGRAPHER: We're off the record,
 21 1:14.
 22 (A brief recess was taken.)
 23 THE VIDEOGRAPHER: Back on the record,
 24 1:17. Go ahead.
 25 MS. LEVINE: Thank you. Just a couple more

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1 questions.
 2 BY MS. LEVINE:
 3 Q. We've had some discussion with regard to quoting
 4 potential savings from outsourcing without RFPs having
 5 gone out. To your knowledge as we sit here today have
 6 RFPs -- have any RFPs gone out and come back?
 7 A. Not to -- not to my knowledge. I'm not involved in it
 8 anymore and I know there's a concern from our
 9 purchasing department that the process isn't being --
 10 they got a process that's not being followed.
 11 Q. And as we sit here today, is it your understanding
 12 that that concern persists?
 13 A. Yes.
 14 Q. And that's part of the discussion we had earlier where
 15 you just hear things in the hall?
 16 A. Yes.
 17 Q. Is it your understanding that Miller Buckfire has been
 18 retained by the City?
 19 A. Yes.
 20 Q. When were they retained?
 21 A. I think they may have been retained back in the
 22 December/January time frame.
 23 Q. Were they retained as a restructuring professional?
 24 A. I think they were as the bank -- the corporate bank
 25 representing the City.



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1 Q. Did you hire them?
 2 A. No.
 3 Q. Who retained them?
 4 A. I think -- once again, most of these companies were
 5 being -- they were being pressed by the -- we were
 6 pressed by the State to my understanding, the State
 7 had a lot of input into the selection process and in
 8 some cases where the City has a responsibility for
 9 paying part of the fees, you know, I've always had a
 10 problem that I was not at the table to participate in
 11 the selection process.
 12 Q. Do you pay part of the fees for Miller Buckfire?
 13 A. Yes.
 14 Q. Does the State pay part of the fees for Miller
 15 Buckfire?
 16 A. Yes.
 17 Q. Does the NERD Fund pay part of the fees for Miller
 18 Buckfire?
 19 A. I wouldn't know that.
 20 Q. Do you have a copy of Miller Buckfire's retention or
 21 engagement letter?
 22 A. I would think we have that. I don't -- I don't have
 23 it personally, but I would think we do in the purchase
 24 department and maybe in the law department.
 25 MS. LEVINE: We would request a copy of


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1 that letter. I know that there's been a lot of
 2 documents that have been produced but we didn't happen
 3 to see what in there so we would make that specific
 4 request.
 5 MR. GREEN: And if I may add the 2012
 6 engagement letter from Miller Buckfire as well. I
 7 understand they were initially engaged the prior year.
 8 There may be two engagement letters.
 9 MR. MOSS: Please put that in a letter so
 10 we make sure we get it part of the record. We'll take
 11 a look.
 12 MS. LEVINE: So the request will be for any
 13 engagement letters or contracts with Miller Buckfire
 14 and we'll clarify that.
 15 Q. During the deposition last week with Treasurer Dillon
 16 he made a reference to a report with regard to certain
 17 tax write-offs or uncollected taxes. Are you familiar
 18 with that?
 19 A. No, I'm not. Not specifically.
 20 Q. Are you familiar with any issue with regard to
 21 potential tax write-offs where the taxes could have
 22 been collected?
 23 MR. CULLEN: Objection, foundation, form.
 24 A. No, I'm not. You know, we've got uncollected taxes
 25 that go back ten, 12 years, and so prior

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1 administrations in my -- in my perspective a lot of
 2 that should have been written off a long time ago but
 3 they've been carrying it on books and I just think
 4 that's the wrong approach.
 5 Q. Under your administration were -- how many -- how much
 6 did you write-off in what you believe to be
 7 uncollected taxes?
 8 A. I'm not sure of that. I would have to get with the
 9 CFO.
 10 Q. Do you have an approximate number?
 11 A. No, I don't.
 12 MS. LEVINE: I don't have anything further.
 13 Thank you.
 14 THE WITNESS: Thank you.
 15 MR. GREEN: No, I don't have any questions.
 16 MR. CULLEN: We don't need the Pistons
 17 question on the record?
 18 MR. ESSAD: No.
 19 MR. CULLEN: Thank you very much.
 20 THE VIDEOGRAPHER: This completes the
 21 deposition. We're off the record, 1:22.
 22 (Deposition concluded at 1:22 p.m.)
 23 * * *
 24
 25

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



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1 DEPOSITION ERRATA SHEET

2

3 Our Assignment No. 19355

4 Case Caption: In re City of Detroit, Michigan

5

6 DECLARATION UNDER PENALTY OF PERJURY

7

8 I declare under penalty of perjury that I have read

9 the entire transcript of my Deposition taken in the

10 captioned matter or the same has been read to me, and the

11 same is true and accurate, save and except for changes

12 and/or corrections, if any, as indicated by me on the

13 DEPOSITION ERRATA SHEET hereof, with the understanding that

14 I offer these changes as if still under oath.

15 Signed on the ____ day of _____, 20__.

16 _____

17 MAYOR DAVE BING

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1 DEPOSITION ERRATA SHEET

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24 SIGNATURE: _____ DATE: _____

25 MAYOR DAVE BING

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1 DEPOSITION ERRATA SHEET

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25 MAYOR DAVE BING

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
13.	1428	10/28/2013	Addendum to Objections filed by creditors Hassan Aleem, Carl Williams

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

In re:
CITY OF DETROIT, MICHIGAN
AND EMERGENCY MANAGER
KEVYN D. ORR

Chapter 9
Case No. 13-53846
Hon: Steven W. Rhodes

Debtor

_____ /

ADDENDUM TO OBJECTIONS

Now comes the creditors and persons of interest in Propria

persona Carl Williams and Hassan Alean

We are residents of the city of Detroit and taxpayers and citizens in the State of Michigan and of the United States.

The Bankruptcy court hearing for eligibility on September 19, 2013 the judge stated we could file additional information and it was also reported in the news, therefore, we submit the following objections:

The creditors and parties of interest in this action the moving parties move to add objections to pending decision in this case show the following:

- 1) The city of Detroit never legally approved, agreed or consented to

U.S. BANKRUPTCY COURT
E.D. MICHIGAN-DETROIT

1 2013 OCT 28 P 3:00

FILED



Kevyn Orr filing for bankruptcy and Kevyn Orr contravened 11 U.S.C. 903 (1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition (2) a judgment entered under such a law may not bind a creditor that does not consent to such composition. 11 U.S.C. 903, thus has failed to meet the requirement of title 11 U.S.C. 903 (c) and there is no binding agreement or contract added to previous cited objections and/or a correction and should be dismissed.

During the bankruptcy procedure in Pontiac the emergency manager had to get approval from the Local emergency financial assistance loan board before filing bankruptcy, however, here Kevny Orr didn't receive approval from the Local emergency financial assistance board which included the State Treasury. Nowhere in the Emergency Municipal Loan Act 243 of 1980 does it give the Local emergency financial assistance loan board this authority. Kevyn Orr is not an elected official buy only an agent of the State. The petition for bankruptcy is invalid because the party that signed it failed to receive legal authorization and lacks the proper authority. See Bankruptcy City of Harrisburg Pennsylvania, 465 B.R. 744 (Bankr. M.D.Pa 2011), In this case the court determined that this case should be dismissed because the City Council did

not have the authority under the chapter law and third class city code to commence a bankruptcy case on the behalf of the city of Harrisburg and (2) the city of Harrisburg was not specifically authorized under state law to be a debtor under chapter 9 of the Bankruptcy code as required by 11 USC sect 109 (c) (2). In this case the circumstances are the same both officials are not authorized to file for Bankruptcy and Detroit have no legal state authority to be a debtor therefore, the court lack jurisdiction over the person which is Kevyn Orr and the subject matter being Bankruptcy and violated 11 U.S.C. 109 (c). "Only a municipal may file for relief under chapter 9 for bankruptcy." and Fed.R.Civ.Proc Rule 12 b (1), (2) and (h3) and the case should be dismissed.

Whenever it appears by suggestion of the parties or otherwise that the court lack jurisdiction of the subject matter, the court shall dismiss the action. Fed R. Civ Proc. 12 (h) (3).

3) The Official Committee of Retirees (the Committee) objection asserted that the Emergency Manager was not duly authorized, as a matter of law, to have filed a Chapter 9 petition on behalf of the city. We agree, however, we disagree with the withdrawal of the reference of the Eligibility.

4) The Emergency Manager Kevyn Orr violated the Administrative Procedure Act 24.201 et seq, by not publishing his orders for sixty 60 days and a hearing before it can become effective. The Supreme Court would sua sponte vacate order of state tax commission in equalization case for failure

of the commission to proceed in accordance with the Administrative Procedure Act. *Saginaw County v. State Tax Commission* (1974) 224 N.W.2d 283, 933 Mich 779, affirmed 244 N.W. 2d 909, 397 Mich. 550.

5) We must emphasize that the state through Kevyn Orr didn't file the Bankruptcy in "Good Faith:" (1) The state through their appointed representative, agent, or point man has failed to even attempt to provide a financial and operational plan within 45 days after his appointment, nor has there been an attempt since then or until this day to present a financial and operational plan, therefore is a violation of P.A. 436 Section 11 (2).

The purpose of a chapter 9 is to provide a means to restructure and adjust debt through a plan. Liquidation is not allowed under 11 U.S.C. 926 (a) and is not an alternative to municipal chapter 9 Bankruptcy there is no provision in the law for liquidation of assets of the municipality and distribution of the proceeds to creditors. Such a liquidation or dissolution would undoubtedly violate the Tenth (10th) Amendment to the Constitution and the reservation to the state sovereignty over their internal affairs and they have not shown or presented a financial plan to avoid Bankruptcy.

The State through Governor Richard Snyder, Andy Dillon the state Treasury and the Emergency Manager Kevyn Orr showed material prejudice" and "unclean hands" and a continue failure to conduct business in good faith such as: When the

state withheld and refused to pay \$224,000,000.00 for January 2012 and \$139,000,000.00 still owed for January 2013 plus interest of unrestricted revenue sharing funds, thus a violation of the Michigan State Revenue Sharing Act 140 of 1971. The State through Emergency Manager Kevyn Orr has a peculiar way of bargaining in good faith when they deliberately refused to pay the unrestricted revenue sharing money they owed to the city of Detroit and other expenses owed by the state revealed by the formal corporation council Krystal A. Crittendon reported that the state was in default to the city for the following debts such as:

The State of Michigan Department of Natural Resources past due invoices for electrical service for \$39,730.58.

The State of Michigan Department of Transportation for delinquent parking violations \$1,225.00.

The State of Michigan Department of Transportation for past due invoices past due totaling \$1,395,377.10.

The Michigan State Highway owes \$267,946.76

The state owes this money and the governor Rick Snyder has openly stated he was not going to pay; and this is what the state called good faith and then turned around and filed for Bankruptcy. What a show of arrogance and disrespect and no sense of good faith what so ever. The state through Governor Snyder who stated he was not going to pay and Andy Dillon the state treasurer legally authorized to receive, care for and disbursement of public revenue or corporation,

upon lawful order; along with Kevyn Orr all agents or officers of the state has assisted and help cause the financial problems and contributory negligence on the State of Michigan.

The state action is contrary to and just the opposite of what “bargaining in good faith” means. Bankruptcy Court may dismiss a chapter 9 petition, after notice and hearing, if it concludes the debtor did not file a petition in good faith or if the person does not meet the requirements of chapter 9 title 11 U.S.C. Section 921 (c).

In this case we have both failed to bargain in good faith and did not meet the requirements of title 11 of Section 921. We demand’s this case be dismissed in according to the code and rule of the Bankruptcy procedures in the interest of justice.

6) The Bankruptcy Court have failed to enter an order designating who is to give and receive notice by mail and identifying the newspaper in which the additional notice is to be published according to Fed. R. Bankr. P. 9007, 9008, therefore, failed to meet the requirement of title 11 U.S.C. 921(c) and should be dismissed.

7) To clarify the record the Creditors, people of interest, Hassan Aleem and Carl Williams and others **were not notified at all, not personally or publicly.** In our Reconsideration of Objections to chapter 9 Bankruptcy we stated: "most creditors and anyone of interest never received a notice that violated. 11 U.S.C.

923 of the Bankruptcy code. The Bankruptcy rule provides that the clerk, or such other person as the court may direct is to give notice Fed. R. Bankr. P 2002 (f). The notice must also be published" at least once a week for three successive weeks in at least one newspaper of general circulation published within the district in which the case commenced and in such other newspaper having a general circulation among bond dealers and bondholders as the court designates," in title 11 U.S.C. sect 923 of the Bankruptcy code. This simply was not done and continues to show the lack of conducting business in good faith. They also did not meet the requirements of title 11 of chapter 9 bankruptcy procedures, which are a failure to comply with the bankruptcy rule and code that is grounds for dismissal for just one noncompliance or violations and we have them both, thus denial of due process and equal protection of the law of the 5th and 14th Amendments of the Constitution of the United States. See page 3 of Reconsideration of Objection to chapter 9 Bankruptcy this case should be dismissed.

In the present context these principles require that a person have timely and adequate notice detailing the reasons for the notice and an effective opportunity to defend. Goldberg v. Kelly 397 U.S. 254 (1970) citing Armstrong v. Manzo, U.S. 545, 552 (1965). Goldberg also states that the parties are entitled to an impartial decision maker. The decision maker Judge Steven W. Rhodes has not been impartial as a result of his decisions to the creditors and other parties of interest in

this case and placed them at a disadvantage to lose this case against debtors, first stating their objections were ineligible for various reasons as a consequence of the court failure to have met their requirements to the Bankruptcy code title 11 U.S.C. Section 923, therefore, should be dismissed as provided by the bankruptcy code.

a) The court have yet to explained how a creditor or any person not being notified at all could be classified as being untimely in his orders is an essential objection?

b) How a person could be untimely if not notified in according to 11 U.S.C. Section 923 of the Bankruptcy Code, which the court failed to comply with?

6) The city position was and still is that they was not going to bargain and did not have to because P.A. 436. Three Police Officer Unions challenged the city position not to negotiate for collective bargaining:

As such, the Employer has no obligation to participate in Act 312 arbitration and is not required to do so. Accordingly, the arbitrations in the cases before us must be dismissed. **Case No.- D09 F-0703, D11 J-1169 and D13 A-0005.**

These Labor Relation cases show irrefutably and show prime facie evidence that the city failed and **refused to bargain in good faith and not at all in these cases cited above**, therefore, continue refusal to comply and meet the requirements of title 11 and these violations demand's this case to be dismissed. See exhibit A attached.

7) The court through Judge Steven W. Rhodes is setting the creditors up to fail by giving creditors and other people of interest an informal hearing without sworn testimony and their creditability verses a formal hearing without sworn testimony place them at disadvantage and their testimony is consider nothing more than hearsay. In Goldberg v Kelly supra, citing Armstrong v Manzo supra, the court stated an effective notice and hearing and three (3) minutes was hardly sufficient or adequate and just a show trial.

The court didn't explain to the creditors and the people of interest the difference and how it affects them, especially the informal hearing proceeding. The Court has shown prejudice toward the creditors and they have been denied due process of the law and equal protection of the law, thus violation of the 14th Amendment of the Constitution of the United States.

8) The Bankruptcy Court is a non Article III Constitutional court and is without constitutional authority to hear and determine the issue raised in the Eligibility Objections or regular Municipal Bankruptcy hearing. The retirees, pensioners and any person of interest and those who are affected by the Bankruptcy are Constitutionally entitled to have an Article III court determine basic redressable Constitutional issues affecting their livelihood as citizens of the state of Michigan is a due process and equal protection of the of law violation Article 1 section 2 of the State of Michigan Constitution and the 14th Amendment of the United State

Constitution.

The Bankruptcy Court had no authority over our Constitutional rights and denied the creditors due process of law and equal protection of the law and lacks Jurisdiction to hear case raising constitutional issues and demands a dismissal.

9) Judge Steven W. Rhodes stated he was going to place the Bankruptcy on the fast track proceeding as a result he showed material prejudice against the creditors and denied them due process and fair treatment (1) most creditors didn't receive notices, (2) Creditors did not receive ample and adequate time to respond during the oral hearing only three minutes but the attorneys had more time, (3) most creditors was given a informal hearing that placed them at a disadvantage regarding their testimony as hearsay with no creditability to the Bankruptcy proceeding vs. those with formal hearing of the Debtors, (4) The judge showed bias from the beginning when he fail to dismissed this case for failure to notice the creditors and then classified most of their objections ineligible for being untimely (5) most or practically all of the creditors didn't have an attorneys or any legal assistant to prepare and represent themselves and denied due process of law and equal protection of the law and we demand this case to be dismissed.

10) Hypothetically speaking, if Public act 436 was valid the emergency manager still wouldn't have the authority because under P.A. 436 the mayor or local governing body can legally declare or apply for Bankruptcy, not an unelected

official Kevyn Orr, The Public Act 436, nor the Bankruptcy Code provided for Kevyn Orr to file for Bankruptcy. Although they both provides for the municipality only, therefore, the Bankruptcy Court lack jurisdiction over the person and the subject matter in this instance. This is a violation of Federal Rule of Civil Procedure Rule 12(b) (1) and (2) and should be dismissed.

11) We like reiterate our objection 3 in supplemental reconsideration with an affidavit in support this time and the city continue to not to bargain in good faith. It has been reported that through Ed McNeil special assistant to the president of AFSCME Council 25 that the union was trying to get Kevyn Orr to come to the table to negotiate. He refused and this is clearly an example of worst than bargaining in “bad faith.” In bad faith you still come to the table even if you don’t come to an agreement but at least try, thus failed to meet the requirement of title 11 U.S.C. section 109 (c) (5). The best solution is for the union to file unfair labor practice against Kevyn Orr.

12) In relation to objection number five in our original or initial objection we like to reiterate: In a statement “Kevyn Orr recommended the chapter 9 filing having determined that no feasible financial plan could be adopted that could satisfactorily rectify Detroit’s financial emergency in a timely manner” The assistant attorney general Steven Flancher stated in a court document that Orr could not adopt a plan in a timely manner. Kevyn Orr action demonstrates for itself he was incompetent and negligent in his own words and action that he could not adopt a plan in a timely manner and his action was substantiated by failing to comply

within 45 days. Kevyn Orr could have file for an extension of time under the circumstance and failed to do so.

Kevyn Orr was not the lead attorney in the Chrysler Bankruptcy case and Bankruptcy for Auto Plant is different from a municipality. He has not been a lead attorney in a Jones Day Law Firm. In an e-mail that was discovered by Robert Davis, pursuant to a Freedom of Information (FOIA).

Mike Duggan in a discussion with governor Snyder stated that Kevyn Orr should be appointed emergency manager because he was Black, not because he had skill, experience, or intelligence to perform the job. In the P A 436 approximately, \$700,000 was appropriated for the salary. It was reported Kevyn Orr only received \$250,000 in salary and also was reported that he owed the state of Maryland approximately \$12,000 in taxes before being appointed as emergency manager. This illustrate that Mr. Orr was only political window dressing and Mr. Orr does not have the financial acumens to lead a bankruptcy and the court cannot make up the deficient of Kevyn Orr lack of legal talent and the case should be dismiss.

13) The city attorney was disingenuous and misrepresented the facts when they made a deliberate, conscious, tactical decision to cite part of Article 2 section 9 of the Constitution that really didn't apply when they hijack or displaced a referendum or initiative of the people. Reed v Allen, 268 U.S. 191, 193 (1913).

The union attorneys failed to submit the union unfair labor practice charge in the court cases **No. D09 F-0703, D11 J-1169, and D13 A-005.**

The attorney for the city intentionally omitted part of Article 2 section 9 paragraph 5 that requires 3/4 votes to become a law. This will adversely affected his client the city and therefore, a violation of ABA model of Professional Responsibility DR 1-102(A) (E) states:

A lawyer shall not engage in conduct involving dishonesty, Fraud, deceit, or misrepresentation.

It is customary and a long standard principle that once an agency or a court has issued rules and regulations to govern its activity, The court's ruled that any time an agency promulgate rules they must scrupulously follow those rules or the decision cannot stand and may not violate them. In this case we are referring to Bankruptcy rules and codes and to bargain in good faith, regardless who makes the rule they must be followed in a civilized society of rules and law making procedures. Security & Exchange Comm v. Chenery 318 U.S. 80 87, 88 (1943), Service v Dulles, 354 U.S. 363 77 S. Ct 1152, p1 L.ED2nd 1403 (1957) Pacific Molasses Co. v FTC, Tex (356 F2d 386 (1966).

Wherefore, and the above facts and laws we demand that this honorable court grant relief declaring the Bankruptcy invalid, null and void and dismiss this case.

Sincerely submitted

Carl Williams

Name interest party/creditor

Address: 10112 Somerset

City and state Detroit Michigan

Hassan Khan

Name interest party/creditor

2440 Taylor

Detroit Mich 48206

Dated October 28, 2013

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:
CITY OF DETROIT, MICHIGAN
AND EMERGENCY MANAGER
KEVYN D. ORR

Chapter 9
Case No. 13-53846
Hon: Steven W. Rhodes

Debtor

_____ /

AFFIDAVIT IN SUPPORT OF ADDENDUM OBJECTION
TO CHAPTER 9 BANKRUPTCY

FILED
2013 OCT 28 P 1:00
U.S. BANKRUPTCY COURT
E.D. MICHIGAN-DETROIT

STATE OF MICHIGAN)
)SS
COUNTY OF WAYNE)

We Carl Williams HASSAN ALeem

Being first duly sworn deposes and says:

That we make this affidavit of personal knowledge: That we are creditors and
interest party in this bankruptcy action and resident of Detroit, Taxpayers of the
State of Michigan and Citizen of the United States.

We show to the best of our knowledge and belief that the state through
the Emergency Manager Kevyn Orr did not negotiate and conduct business with

the city in good faith. That the state through Kevyn Orr also failed to comply and does not meet the requirements of title 11 of the Bankruptcy code and rule.

That the law and facts herein this affidavit are in support of the objections of the Bankruptcy. We have read and understand the facts to be true.

That we the affiant, if sworn as a witness, can testify competently to the facts stated in the objection and is true and correct to the best of our knowledge and belief.

Signed Carl Williams Hassan Reem

Subscribed and sworn to before me,

This 28th day of October, 2013

Gloria Ann Surles

Notary
GLORIA ANN SURLS
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Sep 15, 2017
ACTING IN COUNTY OF Wayne

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:
CITY OF DETROIT, MICHIGAN
AND EMERGENCY MANAGER
KEVYN D. ORR

Chapter 9
Case No. 13-53846
Hon: Steven W. Rhodes

Debtor

_____ /

PROOF OF SERVICE

FILED
2013 OCT 28 P 3:00
U.S. BANKRUPTCY COURT
E.D. MICHIGAN-DETROIT

Carl Williams, being first duly sworn deposes and

Say that on October 28 2013. I sent a copy of Addendum Objection and affidavit Upon the concern parties by certified mail at the following address:

City of Detroit
Corporation Council
First National Building
600 Woodward Ave
Detroit, Michigan 48226

Emergency Manager
Kenyn Orr
Coleman A Young Municipal Center
2 Woodward 11th floor
Detroit, Michigan 48226

Sign Carl Williams

Subscribed and sworn to before me, This 28th day
of October 2013

Gloria Ann Surles

Notary
GLORIA ANN SURLES
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Sep 15, 2017
ACTING IN COUNTY OF Wayne

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
14.	1458	10/30/2013	Supplemental Brief filed by creditor David Sole (Attachments: Index of Exhibits; Exhibit 1; Exhibit 2)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Chapter 9

Case No. 13-53846

City of Detroit, Michigan,

Debtor.

**SUPPLEMENTAL BRIEF IN SUPPORT OF OBJECTION BY INTERESTED PARTY
DAVID SOLE TO THE CITY OF DETROIT’S ELIGIBILITY TO OBTAIN RELIEF
UNDER CHAPTER 9 OF THE BANKRUPTCY CODE [DOCKET 495]**

Interested Party David Sole’s Objection to the City of Detroit’s Eligibility Petition for Relief under Chapter 9 of the Bankruptcy code centered on two issues: (1) that the authorizing statute, PA 436, specifically mandated that the Michigan Constitutional protection against the impairment of public pensions be a contingency of any bankruptcy filing under the statute, and (2) that including such a bar to the impairment of pensions in the Chapter 9 filing would not be preempted by federal law. Interested Party Sole offers this brief as a supplement to arguments put forward in his initial objection [Docket 495] and in oral argument in front of this honorable Court on October 15, 2013.

I. STATE LAW IS DETERMINATIVE AT THE ELIGIBILITY STAGE OF A CHAPTER 9 BANKRUTPCY

As outlined in Interested Party Sole’s objection [Docket 495], 11 USC 109 states that a local municipality must be “specifically authorized by state law to file a Chapter 9 bankruptcy.” The phrase “authorized by law” refers to the law of the state. *U.S. v Bekins*, 304 U.S. 27, 49, 58 SCt 811, 82 Led 1137 (1937) ” “States act as gatekeepers to their municipalities to access to relief under the Bankruptcy Code.” *In Re: City of Harrisburg*, 465 BR 744 (U.S. Bankruptcy Court Middle District of PA, 2011).



II. PURSUANT TO THE STATE AUTHORIZING STATUTE, PA 436, AND APPLYING MICHIGAN PRINCIPLES OF STATUTORY CONSTRUCTION, THE CITY OF DETROIT’S CHAPTER 9 FILING MUST INCLUDE AS A CONTINGENCY THE MICHIGAN CONSTITUTION’S NON-IMPAIRMENT OF PUBLIC PENSIONS

Article IX Section 24 of the Michigan Constitution states:

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

Article IX Section 24, the constitutional non-diminishment of pension clause, is incorporated into two sections of PA 436. Section 12(1)(m), the section of PA 436 that designates the powers of an emergency manager relative to pension funds, specifically mandates that “the emergency manager shall fully comply with . . .section 24 of article IX of the state constitution of 1963.” Section 12(1)(m)(ii).

Section 13 of PA 436 gives the emergency manager the discretion to reduce and even eliminate the salary, wages and other compensation of the chief administrative officer and members of the governing body of the local government. However, Section 13 “does not authorize the impairment of vested pension benefits.”

Section 18 of PA 436 empowers the emergency manager to recommend a Chapter 9 bankruptcy filing to the governor, and states that the governor may place contingencies of a local government in order to proceed under chapter 9.

In *Pohutski*, 465 Mich at 683, 684 (2002), the Michigan Supreme held:

When parsing a statute, we presume every word is used for a purpose. As far as possible, we give effect to every clause and sentence. "HN6The Court may not assume that the Legislature inadvertently made use of one word or [***10] phrase instead of another." *Robinson v Detroit*, 462 Mich. 439, 459; 613 N.W.2d 307 (2000). **Similarly, we should take care to avoid a construction that renders any part of the statute surplusage or nugatory.**

At the October 15 hearing in front of this honorable Court, City of Detroit attorneys argued that because Article IX, Section 24, of the Michigan constitution was not specifically included into Section 18 of PA 436, the governor and emergency manager were not required to include a contingency barring the diminishment or impairment of pensions with the Chapter 9 filing. However, this interpretation of PA 436 completely misapplies Michigan law on statutory construction. It parses the statute and renders the sections of the statute incorporating the non-impairment of pensions nugatory, in express violation of the Michigan rules of statutory construction.

In *General Motors Acceptance Corporation v Citizens Commercial & Savings Bank*, 2001 Mich App LEXIS 295, the Michigan Court of Appeals noted that the *Pohutski* interpretation on statutory construction even extends to separate statutes that relate to the same subject matter. The Court held:

Generally, statutes that ‘relate to the same subject or share a common purpose are in pari materia and must be read together as one law. Reviewing courts should also avoid any statutory construction that would render a statute, or merely part of it, surplusage or nugatory. [internal citations omitted]

In this case, the court interpreted the two statutes in a manner consistent with both in rendering its decision.

Exhibit 1, attached.

In *Bolhuis v Public School Retirement System*, 2011 Mich App LEXIS 1392, the court read various sections of the statute in conjunction with each other in making a determination as to what constitutes compensation under that law. Significantly, the Court noted the exclusion of certain amounts from the calculation of compensation in one part of the statute played a role in making its determination on how to interpret a separate section of the statute.

Exhibit 2, attached.

In *Knight Enterprises v Fairlane Car Wash*, 482 Mich 1006 (2008), the Michigan Supreme Court overturned a lower court decision on contract interpretation, where the lower court's interpretation would have rendered one section of the contract surplusage or nugatory. The Court held: "Courts must give effect to every word, phrase and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory." Michigan courts apply the same principles of construction to contract interpretation as they do to statutes. *Klapp v United Insurance Agency, Inc.*, 468 Mich 459 (2003).

In the present case, the fact that PA 436 incorporates the Michigan constitutional non-impairment of pensions bar into two sections of the law, including the section that specifically delineates the powers of the emergency manager relative to pension funds, demonstrates the legislative intent to insure that this constitutional protection of pensions is to be respected and upheld, even in the context of a Chapter 9 bankruptcy filing.

This legislative intent is further demonstrated by the absence of the power to impair pensions in Section 12 of PA 436, which provides the emergency power with the power to break all sorts of other contracts including collective bargaining agreement, but specifically excludes pensions. Michigan courts follow the doctrine of expression unius exclusion alterius (the expression of one thing is the exclusion of another). *Smitter v. Thornapple Twp.*, 494 Mich. 121 (Mich. 2013)

In *In re City of Vallejo, CA*, 432 BR 262, 270 (2010)(US Dist Ct., Eastern District CA), , while the Court held on appeal that the California statute authorizing a Chapter 9 filing did not preclude the modification of labor contracts, the Court's explanation is relevant to the facts of this fact. The Court noted:

State labor law is not explicitly identified in California Government Code Section 53760 as an exception to the general grant of authority for municipalities to

pursue Chapter 9 bankruptcy. **If California had desired to restrict the ability of its municipalities to reject public employee contracts in light of state labor law, it could have done so as a pre-condition to seeking relief under Chapter 9.** (emphasis added)

In present case, the Chapter 9 authorizing statute, PA 436, specifically incorporates the Michigan constitutional protection of pensions into the law. Because the legislature in its writing of PA 436 evidenced its intent to maintain the constitutional protections of public pensions, any Michigan Chapter 9 filing pursuant to PA 436 must incorporate the non-impairment of pensions as a contingency attached to Chapter 9 filing.

The failure to incorporate the non-impairment of pensions into the City of Detroit's Chapter 9 filing violates the specific authorization for the filing under Michigan law. As a result, the City of Detroit's bankruptcy filing must be declared void ab initio, or at the minimum, this honorable Court must amend the petition to include a contingency protecting public pensions into the City of Detroit's bankruptcy filing.

III. PA 436 ANTICIPATES A PENSION SHORTFALL BUT STILL MAINTAINS THE CONSTITUTIONAL BAN ON IMPAIRMENT OF ACCRUED PENSIONS

At the October 15, 2013, this honorable Court focused on whether the Michigan constitutional bar on impairment of accrued pensions could be maintained if there was, in fact, a pension shortfall.

Significantly, PA 436, Section 12(1)(m) anticipates such a shortfall and offers the emergency manager remedies to restructure the pension fund operation in the face of such a shortfall. However, Section 12(1)(m)(ii) specifically mandates that even in the fact of such a shortfall the emergency manager must full comply with the constitutional prohibition on impairing pensions pursuant to Article IX Section 24. The explicit language of PA 436 makes

clear that even in the face of financial difficulties including in the funding of the pensions themselves, the constitutional bar on impairment of accrued pensions is to be adhered to.

In addition, while PA 436 affords the emergency broad latitude to renegotiate or even abrogate most municipal contracts, and even to stop paying local officials, the legislative intent to maintain the constitutional bar on diminishing accrued pensions is explicitly affirmed by the Act's language that the emergency manager shall fully comply with section 24 of article IX of the Michigan constitution even with regard to public officials whose wages and benefits are otherwise cut-off pursuant to Section 13.

Viewing the statute in its entirety, the only possible interpretation of PA 436 is that non-impairment of accrued pension must be a contingency for a Chapter 9 filing to be strictly authorized under PA 436.

IV. SIXTH CIRCUIT PRECEDENT UPHOLDS THE POWER OF A STATE TO LEGISLATE LIMITATIONS ON BANKRUPTCY

During the October 15 hearing, the City of Detroit attorneys argued that a contingency protecting accrued pensions attached to the City of Detroit's Chapter 9 filing would be in violation of federal preemption. However, in his objection, Interested Party Sole noted that pursuant to the 2012 Sixth Circuit decision in *Richardson v Schafer*, 689 F3d 601 (2012), a narrow state limitation on the scope of the relief available in a Chapter 9 bankruptcy is not preempted by federal law.

In *Schafer*, supra, the Court noted that the interpretation of the phrase "uniform laws" by both the Supreme Court and this Court permits states to act in the arena of bankruptcy exemptions even if they do so by making certain exemptions available only to debtors in bankruptcy, and that such exemptions schemes are not invalidated by the Supremacy clause." *Id.* at 603.

The Sixth Circuit cited to its own holding in *Rhodes v Stewart*, 705 F.2d 159 (6th Cir 1983) for the proposition that states have concurrent authority to promulgate laws governing exemptions applicable in bankruptcy cases. The Court further noted that “this understanding that the federal power was exclusive eventually gave way to an acceptance that states could, in the absence of federal legislation, pass laws on bankruptcy.” *Id.* at 606. The Court noted that the standard in evaluating whether a state activity was preempted by federal law was conflict preemption., whether “the laws in question conflict such that it is impossible for a party to comply with both laws simultaneously, or where the enforcement of the state law would hinder or frustrate the full purposes and objectives of the federal law.” *Id.* at 611.

In *Rhodes v. Stewart*, 705 F.2d 159, 163, the Sixth Circuit held:

It is fundamental that the state and federal legislatures share concurrent authority to promulgate bankruptcy laws, *Sturges v. Crowninshield*, 17 U.S. (4 Wheat) 122, 4 L. Ed. 529 (1819), and that the Supremacy Clause and the doctrine of preemption will serve to invalidate state promulgations to the extent that they are inconsistent with or contrary to federal laws. *Perez v. Campbell*, 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233 (1971). It is equally axiomatic, however, that Congress has not preempted an area wherein it has legislated when it expressly and concurrently authorizes the state legislatures to disregard or opt-out of such federal legislative area. In such instance, rather than preempting the area, Congress expressly authorizes the states to "preempt" the federal legislation. Congress did not intend to preempt bankruptcy exemptions through promulgation of 11 U.S.C. § 522(d) since it vested in the states the ultimate authority to determine their own bankruptcy exemptions. 11 U.S.C. § 522(b)(1).

The principle of concurrent state and federal authority to determine bankruptcy exemptions is especially apt in the Chapter 9 setting, where Congress has delegated to individual states whether or not to even authorize a Chapter 9 filing, and approximately half of the states have chosen to not do so. A contingency attached to the City of Detroit bankruptcy would not fundamentally conflict with the bankruptcy scheme under Chapter 9. It allows ample room for adjustment of debt, even debt associated with retiree benefits where unaccrued pension benefits

are not afforded the constitutional protection and it is questionable whether health benefits for retirees are covered as well.

It should be noted that the legislative purpose behind PA 436 is in part to provide necessary services essential to the public, health, safety and welfare. Certainly, the protection of what amount to pretty meager pension benefits is consistent with that public purpose, where retirees are a significant portion of the population in the City of Detroit.

Moreover, at the same time the City of Detroit contends that it should have the right to reduce pensions to as little as 16 cents on the dollar owed, the City has the audacity to ask this Court to approve a forbearance agreement it negotiated with Bank of America and UBS, allowing for payment of 80 cents to the dollar on termination fees associated with interest rate swaps that the City admits have drained the treasury while providing no public benefit except to line the pockets of the bankers for engineering hedging derivatives to their own benefit.

CONCLUSION

For the reasons stated herein and in the objection filed by Interested Party David Sole [Docket 495], Interested Party Sole respectfully requests that this honorable Court deny the City of Detroit's (through the Emergency Manager) eligibility for filing this Chapter 9 bankruptcy because the petition violates the state authorization statute which mandates that any Chapter 9 filing under PA 436 must be subject to the Michigan constitutional limitation on not diminishing or impairing accrued pensions, or in the alternative, that this honorable Court specifically exclude any diminishing or impairing of accrued pension benefits as part of the City of Detroit's restructuring of debt pursuant to this Chapter 9 bankruptcy.

Respectfully submitted,

JEROME D. GOLDBERG, PLLC

By: /s/ Jerome D. Goldberg
Jerome D. Goldberg (P61678)
Attorney for David Sole, Party in Interest
2921 East Jefferson, Suite 205
Detroit, MI 48207
Phone: 313-393-6001
Fax: 313-393-6007
Email: apclawyer@sbcglobal.net

DATED: October 30, 2013

INDEX OF EXHIBITS

1. *General Motors Acceptance Corp. v Citizens Commercial Bank*

2. *Bolhuis v Public Schools Retirement System*

EXHIBIT 1



5 of 100 DOCUMENTS

**GENERAL MOTORS ACCEPTANCE CORPORATION, Plaintiff-Appellant, v
CITIZENS COMMERCIAL & SAVINGS BANK, Defendant-Appellee.**

No. 222080

COURT OF APPEALS OF MICHIGAN

*2001 Mich. App. LEXIS 295***December 18, 2001, Decided**

NOTICE: [*1] IN ACCORDANCE WITH THE MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

PRIOR HISTORY: Genesee Circuit Court. LC No. 97-057734-CK.

DISPOSITION: Affirmed.

JUDGES: Before: Owens, P.J., and Holbrook, Jr. and Gage, JJ.

OPINION

PER CURIAM.

Plaintiff appeals as of right from a trial court order denying its motion for summary disposition against defendant Citizens Commercial & Savings Bank, as well as a judgment of no cause of action against defendant following a bench trial. Plaintiff had sought to recover from defendant under a conversion theory. We affirm.

The underlying facts in this matter are not in dispute. On October 30, 1992, Lafonza and Joan Washington purchased a new 1993 Pontiac Transport Van. As part of the purchase, the Washingtons executed a purchase

security agreement with plaintiff ("GMAC loan"), which required them to make weekly payments of \$ 84.81. A final payment of \$ 8,221.68 was due on November 4, 1996.

On April 1, 1996, the Washingtons executed an installment loan agreement with NBD Bank, which apparently was intended to both pay off the balance of the GMAC loan and provide the Washingtons approximately \$ 1,000. NBD [*2] Bank issued a cashier's check for \$ 9,126.87, made payable to both plaintiff and the Washingtons, and gave the check to the Washingtons. The title for the vehicle was modified to both reflect NBD Bank's new security interest and delete plaintiff's security interest. The Washingtons endorsed the check and presented it to defendant without plaintiff's endorsement. Defendant erroneously accepted the cashier's check without plaintiff's endorsement, and paid the Washingtons the entire check proceeds. However, in the absence of plaintiff's endorsement, NBD Bank refused to honor the check.

The Washingtons continued making payments on the GMAC loan, but eventually defaulted. The vehicle was involved in an accident on October 24, 1996, resulting in NBD Bank--the party holding a security interest according to the title--receiving insurance proceeds for the van's salvage value. Plaintiff filed an action against the Washingtons and NBD Bank, and subsequently amended its complaint to add defendant as a party under

a conversion theory. NBD Bank eventually transferred the insurance proceeds to plaintiff, and was voluntarily dismissed from the lawsuit. The trial court, however, denied plaintiff's [*3] motion for summary disposition against defendant on the conversion claim. In addition, following a bench trial, the trial court ruled that plaintiff could not recover for conversion against defendant because NBD Bank never honored the cashier's check.

On appeal, plaintiff argues that the trial court erred as a matter of law by ruling that defendant was not liable for conversion of the cashier's check. Plaintiff contends that defendant, as the depository bank, converted the cashier's check when it paid funds to the Washingtons without plaintiff's endorsement. However, defendant contends that it did not convert the check because NBD Bank (the drawee bank) dishonored the check, thereby prevented it from receiving any check proceeds. The parties' arguments concern the application of MCL 440.3420(1), which provides in pertinent part:

The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. [*4]

We must decide whether a depository bank that improperly pays on a presented check to one of multiple intended payees is liable to the other intended payees for conversion under MCL 440.3420(1) if the drawee bank dishonors the check (i.e., the depository bank does not receive proceeds on the check).

We review de novo conclusions of law. *Walters v Snyder*, 239 Mich. App. 453, 456; 608 N.W.2d 97 (2000). Issues of statutory construction are also reviewed de novo. *Hinkle v Wayne Co Clerk*, 245 Mich. App. 405, 413-414; 631 N.W.2d 27 (2001). In regard to statutory construction, we have opined:

The primary goal of statutory interpretation is to give effect to the intent of the Legislature. This determination is accomplished by reviewing the plain language of the statute itself. If the

statutory language is unambiguous, it is presumed that the Legislature intended the clearly expressed meaning, and judicial construction is neither required nor permitted. If the statutory language is ambiguous, only then may we look outside the statute to ascertain the Legislature's intent. [*Hinkle, supra at 414* [*5] (citations omitted).]

Generally, statutes that "relate to the same subject or share a common purpose are in pari materia and must be read together as one law." *Ypsilanti Housing Comm'n v O'Day*, 240 Mich. App. 621, 625; 618 N.W.2d 18 (2000). Reviewing courts should also avoid any statutory construction that would render a statute, or merely part of it, surplusage or nugatory. *Id. at 624*.

Here, defendant contends that MCL 440.3420(1) should be read to impose conversion liability on a depository bank when it obtains payment on a check and a drawee bank when it makes payment on a check. In contrast, plaintiff contends that the statutory language should be read to allow both a drawee bank and a depository bank to be liable for *either* making or obtaining payment. At first glance, plaintiff's construction seems consistent with the term "a bank," rather than the more specific breakdown suggested by defendant. However, a drawee is a party ordered to *make* payment on a check, and, by definition, does not ever *obtain* payment on a check. See MCL 440.3103(1)(b).¹ As such, plaintiff's interpretation [*6] of MCL 440.3420(1) conflicts with another pertinent statute. At the very least, therefore, we find an ambiguity in MCL 440.3420(1) that mandates statutory construction. *Hinkle, supra at 414*.

¹ This definition occurs within the negotiable instruments section of the Uniform Commercial Code, as codified in Michigan. Sharing a common subject and purpose, we believe that these statutes-- MCL 440.3420(1) and MCL 440.3103(1)(b)--are in pari materia and must be read together. *Ypsilanti, supra at 625*.

Generally, the remedies allowed by the various UCC provisions "shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed . . ." "A conversion is any distinct act of dominion wrongfully exerted over another person's personal property." *Pamar Enterprises,*

Inc v Huntington Banks of Michigan, 228 Mich. App. 727, 734; [*7] 580 N.W.2d 11 (1998). A check is the personal property of the designated payee or payees. *Id.*: MCL 440.3420(1). An intended payee may bring a conversion action against either the drawee bank or the depository bank. *Pamar, supra* at 734. For example, where a depository bank improperly allows one of multiple intended payees to cash a check, and the drawee bank honors the check and pays the depository bank, it follows that either the depository bank or the drawee bank should bear the responsibility of making the other intended payees whole.

However, plaintiff seeks to make defendant liable even though the drawee bank did not honor the check. In other words, defendant would have to pay plaintiff the face value of the cashier's check. If so, this remedy would essentially "punish" defendant twice for one error because both the Washingtons and plaintiff would have received the full face value of the cashier's check. Plaintiff's risk in financing the Washington's automobile would be eliminated. Similarly, NBD Bank, who assumed the risk of loaning money to the Washingtons, would not have to pay anything. In other words, the two parties [*8] who knowingly assumed the risk of dealing with the Washingtons would have their risk obviated by one error. Even though defendant erroneously accepted the cashier's check from the Washingtons, we do not believe that such a "double punishment" is consistent with the UCC goal of leaving the parties in as good a position as they would have been in but for the error.

Again, had defendant received money from NBD Bank, defendant would have commensurate liability to plaintiff for conversion. Indeed, under this scenario, the drawee bank (NBD Bank) would have "made payment" and the depository bank (defendant) would have "obtained payment"--the circumstances suggested by defendant's interpretation of MCL 440.3420(1).

Moreover, in *Alumax Aluminum Corp v Norstar Bank, NA*, 168 A.D.2d 163, 572 N.Y.S.2d 133, 135 (NY App., 1991), a case involving similar facts, the court reached the same conclusion: "In order to be liable for conversion under the statute, the depository [sic] bank must, at some point, have received the proceeds of the wrongfully accepted check." We agree. Therefore, we hold that a depository bank is liable for conversion under MCL 440.3420(1) [*9] only if the drawee bank honors the improperly accepted check. Because NBD Bank did not honor the cashier's check in the instant matter, we conclude that the trial court did not err as a matter of law by dismissing plaintiff's conversion claim.

Affirmed.

/s/ Donald S. Owens

/s/ Donald E. Holbrook, Jr.

/s/ Hilda R. Gage



2 of 100 DOCUMENTS

**MARGARET K. BOLHUIS, Petitioner-Appellee, v PUBLIC SCHOOL
EMPLOYEES RETIREMENT SYSTEM and PUBLIC SCHOOL EMPLOYEES
RETIREMENT BOARD, Respondents-Appellants.**

No. 298279

COURT OF APPEALS OF MICHIGAN

2011 Mich. App. LEXIS 1392

July 26, 2011, Decided

NOTICE: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

SUBSEQUENT HISTORY: Leave to appeal denied by *Bolhuis v. Mich. Pub. Sch. Employees' Ret. Sys.*, 2012 Mich. LEXIS 452 (Mich., Apr. 18, 2012)

PRIOR HISTORY: [*1]
Ingham Circuit Court. LC No. 09-001515-AA.

JUDGES: Before: BECKERING, P.J., and FORT HOOD and STEPHENS, JJ.

OPINION

PER CURIAM.

Respondents, Public School Employees Retirement System and Public School Employees Retirement Board (board), appeal by leave granted the circuit court order reversing their calculation of pension benefits and remanding for a determination whether the lump sum longevity payment to petitioner, Margaret K. Bolhuis, is "creditable compensation" pursuant to the retirement act. We vacate the circuit court order and reinstate the order of respondent board.

Following petitioner's application for retirement, an estimate of benefits was prepared. According to the estimate, petitioner's final average compensation (FAC) of \$71,376.25 was premised on the last three years of employment when her wages were \$62,892.74 for the 2002/2003 school year, \$85,695.61 for the 2003/2004 school year, and \$65,540.40 for the 2004/2005 school year. On March 1, 2006, a benefit award letter mailed to petitioner concluded that her FAC was \$72,044.21, with a monthly pension of \$2,522.39. However, the wage calculation of \$85,695.61 included a retroactive lump-sum longevity payment of \$10,247 covering the years [*2] from 1989 to 2003. The lump sum payment of \$10,247 was actually erroneously included twice. Petitioner testified that she was unaware of any error in the computation of her income for the 2003/2004 school year because she received the lump sum longevity payment, mentored two teachers, and was the head of the English Department. She also testified that the lump sum longevity payment of \$10,247 was included in her paycheck. In May 2006, petitioner sent a letter seeking an adjustment to her pension benefits because a contract was not in place for the last eighteen months of her employment, and a settlement had recently resolved the outstanding contract issue. In April 2007, petitioner received a response by letter indicating that the contract settlement was taken into account with regard to her FAC. However, the letter also advised that \$20,494 in

compensation had erroneously been reported for the 2003/2004 wages. Therefore, petitioner's FAC was reduced to \$66,111.75.

Petitioner appealed the reduction in her benefits to the circuit court. The circuit court held that the decision by respondent board was arbitrary and capricious because there was no clear definition or standard to determine [*3] when an amount was earned under the retirement act. The circuit court remanded the case to respondent board to determine whether a lump sum longevity payment was "creditable compensation." We granted respondents' application for leave to appeal.

The Michigan Constitution provides for judicial review of administrative decisions, stating in relevant part:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. [*Const 1963, art 6, § 28.*]

The application of the standard of review is contingent on the type of challenge at issue and must be in accordance with separation-of-power principles. *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 97-99; 754 NW2d 259 (2008). The agency's interpretation [*4] of a statute "is not binding on the courts, and it cannot conflict with the Legislature's intent as expressed in the language of the statute at issue." *Id. at 103*. Rather, a reviewing court must give "respectful consideration" to the agency's construction of the statute and provide "cogent reasons" for overruling an agency's interpretation. *Id.* When the law is doubtful or obscure, the agency's interpretation can be particularly helpful. *Id. at 108*. Therefore, "[w]hen considering an agency's statutory construction, the primary question presented is whether the interpretation is consistent with or contrary to the plain language of the

statute." *Id.* Respectful consideration is not equal to deference. *Id.* Ultimately, the key issue is the proper construction of the plain language of the statute, and the agency's interpretation cannot conflict with this meaning. *Id.*

The rules regarding statutory construction are well established:

Our primary task in construing a statute is to discern and give effect to the intent of the Legislature. The words contained in a statute provide us with the most reliable evidence of the Legislature's intent. In ascertaining legislative intent, this Court gives effect [*5] to every word, phrase, and clause in the statute. We must consider both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme. This Court must avoid a construction that would render any part of a statute surplusage or nugatory. The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. If the wording or language of a statute is unambiguous, the Legislature is deemed to have intended the meaning clearly expressed, and we must enforce the statute as written. A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. [*Zwiers v Growney*, 286 Mich App 38, 44; 778 NW2d 81 (2009) (citations and quotations omitted).]

"When a statute specifically defines a given term, that definition alone controls." *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007).

The public school employees retirement act of 1979, *MCL 38.1301 et seq.*, contains a provision defining compensation:

(1) Except as otherwise provided in this [*6] act, "compensation" means the

remuneration earned by a member for service performed as a public school employee.

(2) Compensation includes salary and wages and all of the following:

(a) Remuneration earned for all services performed as a public school employee including, but not limited to, teaching, coaching, and participation in extracurricular activities.

(b) On a current basis, investments made in a tax sheltered annuity for a public school employee as remuneration for service under this act. The remuneration shall be valued at the amount of money actually paid into the annuity.

(c) All amounts deducted from the pay of a public school employee, including amounts deducted pursuant to the member investment plan.

(d) Longevity pay.

(e) Overtime pay for service performed outside of what is considered normal working hours for the affected employee.

(f) Pay for vacation, holiday, and sick leave while absent from work. As used in this subdivision, "sick leave" includes weekly worker's disability compensation payments received for personal injury in the employ of and while employed by a reporting unit.

(g) [*7] Items of deferred compensation, exclusive of employer contributions to the retirement system.

(h) Merit pay as established by a reporting unit for the purpose of rewarding achievement of specific performance objectives.

(3) Compensation does not include any of the following:

(a) Payments for unused sick or annual leave.

(b) Bonus payments.

(c) Payments for hospitalization insurance and life insurance premiums.

(d) Other fringe benefits paid by and from the funds of employers of public school employees.

(e) Remuneration paid for the specific purpose of increasing the final average compensation.

(f) Compensation in excess of an amount over the level of compensation reported for the preceding year except increases provided by the normal salary schedule for the current job classification. ... [MCL 38.1303a.]

The retirement board must determine whether any form of remuneration paid to a member is included in the definition of compensation, *MCL 38.1303a(2), (3)*, and if not identified as compensation, determine if it should be compensation reportable to the retirement system. *MCL 38.1303a(5)*. "In any case where a petitioner seeks to have remuneration included in compensation reportable to the retirement [*8] system, the petitioner shall have the burden of proof." *MCL 38.1303a(6)*.

In the present case, the circuit court erred in holding that the decision by respondent board was arbitrary and capricious. The issue in this case involves a matter of statutory construction. Accordingly, a reviewing court does not examine the decision under the arbitrary and capricious standard, but rather, must determine if the agency's interpretation is consistent with the plain language of the statute. *Rovas, 482 Mich at 103*.

MCL 38.1303a(1) defines "compensation" as "remuneration earned by a member for service performed as a public school employee." The statute further provides that salary and wages are compensation as well as longevity pay. *MCL 38.1303a(2)(d)*. However, the statute also delineates items that are not compensation and prohibits inclusion of payments deliberately designed to increase the final average compensation, such as payment of unused sick or annual leave. *MCL*

38.1303a(3)(a), (e). Additionally, as set forth above, compensation does not include: "(f) Compensation in excess of an amount over the level of compensation reported for the preceding year except increases provided by the normal salary [*9] schedule for the current job classification." *MCL 38.1303a(3)(f)*. In the present case, although petitioner received a lumpsum payment of \$10,247.00 to govern the underpayment of longevity, she also received an itemization of the year and the corresponding amount of the longevity pay earned that year. For example, in 1989, petitioner's longevity pay was only \$392, in 1995, she received \$1095, and in 2003, she received \$673.

The plain language of *MCL 38.1303a* details the items that are compensation, including longevity pay, *MCL 38.1303a(2)(d)*, but also excludes from compensation amounts that exceed the prior year unless it is a normal increase, *MCL 38.1303a(3)(f)*. The plain language of *MCL 38.1303a(3)(f)* precludes the aggregation of retroactive longevity payments into a lump sum for purposes of calculating compensation for a given year. *Zwiers*, 286 Mich App at 44. Rather, it requires that compensation include the amount designated for a particular year by holding that only normal increases are to be included and requires an examination of compensation to the extent that it deviates substantially from the preceding year. This statutory interpretation of the plain language of the statute [*10] is consistent with the decision rendered by respondents.¹ Accordingly, the circuit court erred in holding that the decision was arbitrary and capricious. We vacate the decision of the circuit court and remand for reinstatement of the decision by respondent board.

1 Contrary to the assertions raised by petitioner, this decision is consistent with case law regarding calculation of a retiree's average final compensation, albeit when considered under another statutory provision. In *Stover v Retirement Bd of the City of St Clair Shores Firemen & Police Pension Sys*, 78 Mich App 409, 412-413; 260 NW2d 112 (1977), this Court held that payments for unused sick and vacation days should not be included in calculating a retiree's average final compensation, because those payments were not pay that an employee received "for work done that year." See also *Lansing Firefighters Ass'n Local 421 v Bd of Trustees of the City of Lansing Policemen's & Firemen's Retirement Sys*, 90 Mich App 441, 445; 282 NW2d 346 (1979). Petitioner's reliance on the tax code is not properly presented for review. It was not raised in the statement of questions presented by respondents, see *Leavitt v Monaco Coach Corp*, 241 Mich App 288, 312 n.4.; [*11] 616 NW2d 175 (2000), and petitioner failed to file a cross appeal. See *MCR 7.207*. Moreover, petitioner's reliance on the federal tax code is misplaced in light of the statute at issue in the present case.

Vacated and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering

/s/ Karen M. Fort Hood

/s/ Cynthia Diane Stephens

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

ATTACHMENT

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
15.	1480	10/31/2013	Amendment to Objections filed by creditors Hassan Aleem, Carl Williams

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

In re:
CITY OF DETROIT, MICHIGAN
AND EMERGENCY MANAGER
KEVYN D. ORR

Chapter 9
Case No. 13-53846
Hon: Steven W. Rhodes

Debtor

2013 OCT 31 P 2:18
U.S. BANKRUPTCY COURT
E.D. MICHIGAN-DETROIT

FILED

ADMENDMENT TO OBJECTIONS

NOW comes the creditors Hassan Aleem and Carl Williams to Amend objections docket No. 1428 in this case in the above caption and persons of interest in Propria persona and states the following: The Judge Steven W Rhodes during a hearing held September 19, 2013, stated that the creditors and people of interest could add information to this case. We have filed Objections and amending additional objections includes:

The creditors and parties of interest in this action the moving parties move to add objections to pending decision in this case show the following:

- 1) The city of Detroit never legally approved, agreed or consented to



Kevyn Orr filing for bankruptcy and Kevyn Orr contravened 11 U.S.C. 903 (1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition (2) a judgment entered under such a law may not bind a creditor that does not consent to such composition. 11 U.S.C. 903, thus has failed to meet the requirement of title 11 U.S.C. 903 (c) and there is no binding agreement or contract added to previous cited objections and/or a correction and should be dismissed.

During the bankruptcy procedure in Pontiac the emergency manager had to get approval from the Local emergency financial assistance loan board before filing bankruptcy, however, here Kevny Orr didn't receive approval from the Local emergency financial assistance board which included the State Treasury. Nowhere in the Emergency Municipal Loan Act 243 of 1980 does it give the Local emergency financial assistance loan board this authority. Kevyn Orr is not an elected official but only an agent of the State. The petition for bankruptcy is invalid because the party that signed it failed to receive legal authorization and lacks the proper authority. See Bankruptcy City of Harrisburg Pennsylvania, 465 B.R. 744 (Bankr. M.D.Pa 2011), In this case the court determined that this case should be dismissed because the City Council did

not have the authority under the chapter law and third class city code to commence a bankruptcy case on the behalf of the city of Harrisburg and (2) the city of Harrisburg was not specifically authorized under state law to be a debtor under chapter 9 of the Bankruptcy code as required by 11 USC sect 109 (c) (2). In this case the circumstances are the same both officials are not authorized to file for Bankruptcy and Detroit have no legal state authority to be a debtor therefore, the court lack jurisdiction over the person which is Kevyn Orr and the subject matter being Bankruptcy and violated 11 U.S.C. 109 (c). "Only a municipal may file for relief under chapter 9 for bankruptcy." and Fed. R. Civ. Proc Rule 12 b (1), (2) and (h3) and the case should be dismissed.

Whenever it appears by suggestion of the parties or otherwise that the court lack jurisdiction of the subject matter, the court shall dismiss the action. Fed R. Civ Proc. 12 (h) (3).

3) The Official Committee of Retirees (the Committee) objection asserted that the Emergency Manager was not duly authorized, as a matter of law, to have filed a Chapter 9 petition on behalf of the city. We agree, however, we disagree with the withdrawal of the reference of the Eligibility.

4) The Emergency Manager Kevyn Orr violated the Administrative Procedure Act 24.201 et seq, by not publishing his orders for sixty 60 days and a hearing before it can become effective. The Supreme Court would sua sponte vacate order of state tax commission in equalization case for failure

of the commission to proceed in accordance with the Administrative Procedure Act. *Saginaw County v. State Tax Commission* (1974) 224 N.W.2d 283, 933 Mich 779, affirmed 244 N.W. 2d 909, 397 Mich. 550.

5) We must emphasize that the state through Kevyn Orr didn't file the Bankruptcy in "Good Faith:" (1) The state through their appointed representative, agent, or point man has failed to even attempt to provide a financial and operational plan within 45 days after his appointment, nor has there been an attempt since then or until this day to present a financial and operational plan, therefore is a violation of P.A. 436 Section 11 (2).

The purpose of a chapter 9 is to provide a means to restructure and adjust debt through a plan. Liquidation is not allowed under 11 U.S.C. 926 (a) and is not an alternative to municipal chapter 9 Bankruptcy there is no provision in the law for liquidation of assets of the municipality and distribution of the proceeds to creditors. Such a liquidation or dissolution would undoubtedly violate the Tenth (10th) Amendment to the Constitution and the reservation to the state sovereignty over their internal affairs and they have not shown or presented a financial plan to avoid Bankruptcy.

The State through Governor Richard Snyder, Andy Dillon the state Treasury and the Emergency Manager Kevyn Orr showed material prejudice" and "unclean hands" and a continue failure to conduct business in good faith such as: When the

state withheld and refused to pay \$224,000,000.00 for January 2012 and \$139,000,000.00 still owed for January 2013 plus interest of unrestricted revenue sharing funds, thus a violation of the Michigan State Revenue Sharing Act 140 of 1971. The State through Emergency Manager Kevyn Orr has a peculiar way of bargaining in good faith when they deliberately refused to pay the unrestricted revenue sharing money they owed to the city of Detroit and other expenses owed by the state revealed by the formal corporation council Krystal A. Crittendon reported that the state was in default to the city for the following debts such as:

The State of Michigan Department of Natural Resources past due invoices for electrical service for \$39,730.58.

The State of Michigan Department of Transportation for delinquent parking violations \$1,225.00.

The State of Michigan Department of Transportation for past due invoices past due totaling \$1,395,377.10.

The Michigan State Highway owes \$267,946.76

The state owes this money and the governor Rick Snyder has openly stated he was not going to pay; and this is what the state called conducting business good faith and then turned around and filed for Bankruptcy. What a show of arrogance and disrespect and no sense of good faith what so ever. The state through Governor Snyder who stated he was not going to pay and Andy Dillon the state treasurer legally authorized to receive, care for and disbursement of public revenue or

corporation, upon lawful order; along with Kevyn Orr all agents or officers of the state has assisted and help cause the financial problems and contributory negligence on the State of Michigan.

The state action is contrary to and just the opposite of what “bargaining in good faith” means. Bankruptcy Court may dismiss a chapter 9 petition, after notice and hearing, if it concludes the debtor did not file a petition in good faith or if the person does not meet the requirements of chapter 9 title 11 U.S.C. Section 921 (c).

In this case we have both failed to bargain in good faith and did not meet the requirements of title 11 of Section 921. We demand’s this case be dismissed in according to the code and rule of the Bankruptcy procedures in the interest of justice.

6) The Bankruptcy Court have failed to enter an order designating who is to give and receive notice by mail and identifying the newspaper in which the additional notice is to be published according to Fed. R. Bankr. P. 9007, 9008, therefore, failed to meet the requirement of title 11 U.S.C. 921(c) and should be dismissed.

7) To clarify the record the Creditors, people of interest, Hassan Aleem and Carl Williams and others **were not notified at all, not personally or publicly.** In our Reconsideration of Objections to chapter 9 Bankruptcy we stated: "most creditors and anyone of interest never received a notice that violated. 11 U.S.C.

923 of the Bankruptcy code. The Bankruptcy rule provides that the clerk, or such other person as the court may direct is to give notice Fed. R. Bankr. P 2002 (f). The notice must also be published" at least once a week for three successive weeks in at least one newspaper of general circulation published within the district in which the case commenced and in such other newspaper having a general circulation among bond dealers and bondholders as the court designates," in title 11 U.S.C. sect 923 of the Bankruptcy code. This simply was not done and continues to show the lack of conducting business in good faith. They also did not meet the requirements of title 11 of chapter 9 bankruptcy procedures, which are a failure to comply with the bankruptcy rule and code that is grounds for dismissal for just one non-compliance or violations and we have them both, thus denial of due process and equal protection of the law of the 5th and 14th Amendments of the Constitution of the United States. See page 3 of Reconsideration of Objection to chapter 9 Bankruptcy this case should be dismissed.

In the present context these principles require that a person have timely and adequate notice detailing the reasons for the notice and an effective opportunity to defend. Goldberg v. Kelly 397 U.S. 254 (1970) citing Armstrong v. Manzo, U.S. 545, 552 (1965). Goldberg also states that the parties are entitled to an impartial decision maker. The decision maker Judge Steven W. Rhodes has not been impartial as a result of his decisions to the creditors and other parties of interest in

this case and placed them at a disadvantage to lose this case against debtors, first stating their objections were ineligible for various reasons as a consequence of the court failure to have met their requirements to the Bankruptcy code title 11 U.S.C. Section 923, therefore, should be dismissed as provided by the bankruptcy code.

a) The court have yet to explained how a creditor or any person not being notified at all could be classified as being untimely in his orders is an essential objection?

b) How a person could be untimely if not notified in according to 11 U.S.C. Section 923 of the Bankruptcy Code, which the court failed to comply with?

6) The city position was and still is that they was not going to bargain and did not have to because P.A. 436. Three Police Officer Unions challenged the city position not to negotiate for collective bargaining:

As such, the Employer has no obligation to participate in Act 312 arbitration and is not required to do so. Accordingly, the arbitrations in the cases before us must be dismissed. **Case No.- D09 F-0703, D11 J-1169 and D13 A-0005.**

These Labor Relation cases show prime facie irrefutable evidence that the city failed and **refused to bargain in good faith and not at all in these cases cited above**, therefore, continue refusal to comply and meet the requirements of title 11 and these violations demand's this case to be dismissed. See exhibit A attached.

7) The court through Judge Steven W. Rhodes is setting the creditors up to fail by giving creditors and other people of interest an informal hearing without sworn testimony. The creditors creditability verses a formal hearing without sworn testimony place them at disadvantage and their testimony is consider nothing more than hearsay. In Goldberg v Kelly supra, citing Armstrong v Manzo supra, the court stated an effective notice and hearing and three (3) minutes was hardly sufficient or adequate and just a show trial.

The court didn't explain to the creditors and the people of interest the difference and how it affects them, especially the informal hearing proceeding. The Court has shown prejudice toward the creditors and they have been denied due process of the law and equal protection of the law, thus violation of the 14th Amendment of the Constitution of the United States.

8) The Bankruptcy Court is a non Article III Constitutional court and is without constitutional authority to hear and determine the issue raised in the Eligibility Objections or regular Municipal Bankruptcy hearing. The retirees, pensioners and any person of interest and those who are affected by the Bankruptcy are Constitutionally entitled to have an Article III court determine basic redressable Constitutional issues affecting their livelihood as citizens of the state of Michigan is a due process and equal protection of the law violation of Article 1 section 2 of the State of Michigan Constitution and the 14th Amendment of the United State

Constitution.

The Bankruptcy Court had no authority over our Constitutional rights and denied the creditors due process of law and equal protection of the law and lacks Jurisdiction to hear case raising constitutional issues and demands a dismissal.

9) Judge Steven W. Rhodes stated he was going to place the Bankruptcy on the fast track proceeding as a result he showed material prejudice against the creditors and denied them due process and fair treatment (1) most creditors didn't receive notices, (2) Creditors did not receive ample and adequate time to respond during the oral hearing only three minutes but the attorneys had more time, (3) most creditors was given a informal hearing and inadequate time that placed them at a disadvantage regarding their testimony as hearsay with no creditability to the Bankruptcy proceeding vs. those with formal hearing of the Debtors, (4) The judge showed bias from the beginning when he fail to dismissed this case for failure to notice the creditors and then classified most of their objections ineligible for being untimely (5) most or practically all of the creditors didn't have an attorneys or any legal assistant to prepare and represent themselves and denied due process of law and equal protection of the law and we demand this case to be dismissed.

10) Hypothetically speaking, if Public act 436 was valid the emergency manager still wouldn't have the authority because under P.A. 436 the mayor or local governing body can legally declare or apply for Bankruptcy, not an unelected

official Kevyn Orr, The Public Act 436, nor the Bankruptcy Code provided for Kevyn Orr to file for Bankruptcy. Although they both provides for the municipality only, therefore, the Bankruptcy Court lack jurisdiction over the person and the subject matter in this instance. This is a violation of Federal Rule of Civil Procedure Rule 12(b) (1) and (2) and should be dismissed.

11) We like reiterate our objection 3 in supplemental reconsideration with an affidavit in support this time and the city continue to not to bargain in good faith. It has been reported that through Ed McNeil special assistant to the president of AFSCME Council 25 that the union was trying to get Kevyn Orr to come to the table to negotiate. He refused and this is clearly an example of worst than bargaining in “bad faith.” In bad faith you still come to the table even if you don’t come to an agreement but at least try, thus failed to meet the requirement of title 11 U.S.C. section 109 (c) (5). The best solution is for the union to file unfair labor practice against Kevyn Orr.

12) In relation to objection number five in our original or initial objection we like to reiterate: In a statement “Kevyn Orr recommended the chapter 9 filing having determined that no feasible financial plan could be adopted that could satisfactorily rectify Detroit’s financial emergency in a timely manner” The assistant attorney general Steven Flancher stated in a court document that Orr could not adopt a plan in a timely manner. Kevyn Orr action demonstrates for itself he was incompetent and negligent in his own words and action that he could not adopt a plan in a timely manner and his action was substantiated by failing to comply

within 45 days. Kevyn Orr could have file for an extension of time under the circumstance and failed to do so. He also could have requested a postponement.

Kevyn Orr was not the lead attorney in the Chrysler Bankruptcy case and Bankruptcy for Auto Plant is different from a municipality. He has not been a lead attorney in a Jones Day Law Firm. In an e-mail that was discovered by Robert Davis, pursuant to a Freedom of Information (FOIA).

Mike Duggan in a discussion with governor Snyder stated that Kevyn Orr should be appointed emergency manager because he was Black, not because he had skill, experience, or intelligence to perform the job. In the P A 436 approximately, \$700,000 was appropriated for the salary. It was reported Kevyn Orr only received \$250,000 in salary and also was reported that he owed the state of Maryland approximately \$12,000 in taxes before being appointed as emergency manager. This illustrate that Mr. Orr was only political window dressing and Mr. Orr does not have the financial acumens to lead a bankruptcy and the court cannot make up the deficieny of Kevyn Orr lack of legal talent and the case should be dismiss.

13) The city attorney was disingenuous and misrepresented the facts when they made a deliberate, conscious, tactical, decision, to cite part of Article 2 section 9 of the Constitution that really didn't apply when they hijack or displaced a referendum or initiative of the people. Reed v Allen, 268 U.S. 191, 193 (1913).

The union attorneys failed to submit the union unfair labor practice charge in the court cases **No. D09 F-0703, D11 J-1169, and D13 A-005.**

The attorney for the city intentionally omitted part of Article 2 section 9 paragraph 5 that requires 3/4 votes to become a law. This will adversely affected his client the city and therefore, a violation of ABA model of Professional Responsibility DR 1-102(A) (E) states:

A lawyer shall not engage in conduct involving dishonesty, Fraud, deceit, or misrepresentation.

It is customary and a long standard principle that once an agency or a court has issued rules and regulations to govern its activity, The court's ruled that any time an agency promulgate rules they must scrupulously follow those rules or the decision cannot stand and may not violate them. In this case we are referring to Bankruptcy rules and codes and to bargain in good faith, regardless who makes the rule they must be followed in a civilized society of rules and law making procedures. Security & Exchange Comm v. Chenery 318 U.S. 80 87, 88 (1943), Service v Dulles, 354 U.S. 363 77 S. Ct 1152, p1 L.ED2nd 1403 (1957) Pacific Molasses Co. v FTC, Tex (356 F2d 386 (1966)).

Wherefore, and the above facts and laws we demand that this honorable court grant relief declaring the Bankruptcy invalid, null and void and dismiss this case.

Sincerely submitted

Carl Williams

Name interest party/creditor

Address: 10112 Somerset

City and state Detroit Michigan 48224

Hassan Khan

Name interest party/creditor

2440 Taylor

DETROIT, MICH 48206

Dated October 28, 2013

Exhibit A

1428 Docket No.
1428

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. D09 F-0703

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN
(EMERGENCY MEDICAL TECHNICIAN UNIT),
Labor Organization-Petitioner.

CITY OF DETROIT,
Public Employer-Respondent,

Case No. D11 J-1169

-and-

DETROIT POLICE COMMAND OFFICERS ASSOCIATION,
Labor Organization-Petitioner.

CITY OF DETROIT,
Public Employer-Respondent,

Case No. D13 A-0005

-and-

DETROIT POLICE LIEUTENANTS & SERGEANTS ASSOCIATION,
Labor Organization-Petitioner.

APPEARANCES:

Butzel Long, P.C. by Malcolm D Brown, and Miller, Canfield, Paddock and Stone, P.L.C., by John H. Willems, for Respondent

Frank A. Guido, General Counsel, for Petitioner Police Officers Association of Michigan

Sachs Waldman, P.C., by Mary Ellen Gurewitz, Marshall J. Widick, and James A. Britton for Petitioner Detroit Police Command Officers Association

Miller Cohen P.L.C., by Richard G Mack, Jr., and Keith D. Flynn, for Petitioner Detroit Police Lieutenants & Sergeants Association

Legghio & Israel P.C., Christopher P. Legghio for Amicus Curiae Detroit Fire Fighters Association

DECISION AND ORDER

This matter is before the Commission on the motions of the Employer, the City of Detroit. On April 18, 2013, the Employer filed its Emergency Motion for Determination of Arbitral Jurisdiction and Dismissal of Act 312 Petitions and Motion for Stay Pending Ruling and its supporting brief. In its motion to the Commission, the Employer states that in each of the three Act 312 arbitration proceedings, the Employer filed a motion with the arbitrator seeking dismissal of the petition on the grounds that the arbitrator had no jurisdiction over this matter based on the suspension of the Employer's duty to bargain set forth in § 27(3) of the Local Financial Stability and Choice Act, 2012 PA 436 (PA 436), MCL 141.1541 – 141.1575. The Employer also filed a motion with each arbitrator seeking a stay of proceedings pending the outcome of the arbitrator's ruling. According to the Employer's motion to the Commission, two of the arbitrators denied the Employer's motion to dismiss and the third had failed to rule at the time the Employer filed the instant motion with the Commission.

Each of the Unions involved in the three arbitrations, Police Officers Association of Michigan (POAM), Detroit Police Command Officers Association (DPCOA), and Detroit Police Lieutenants & Sergeants Association (DPLSA) have filed responses to the Employer's motions to the Commission. At our meeting on May 14, 2013, we stayed the Act 312 proceedings pending our decision in this matter, granted leave to the Detroit Fire Fighters Association to file an amicus curiae brief in response to the City's motions, and heard oral argument from the Employer, POAM, DPCOA, and DPLSA.

The Employer claims that each of the three Act 312 arbitration cases should be dismissed based on the suspension of its duty to bargain pursuant to PA 436. Each of the involved Unions and the amicus curiae contend that there is no basis for dismissal of the Act 312 arbitrations and have raised several arguments in an effort to rebut the Employer's contention that the arbitrations should be dismissed. The Unions question the Commission's jurisdiction to dismiss a pending Act 312 arbitration. The three involved Unions contend that the suspension of the Employer's duty to bargain under PA 436 does not impact the parties' rights and obligations to proceed with Act 312 arbitrations on petitions filed prior to March 28, 2013, the effective date of Act 436.

Procedural History

In *City of Detroit and Police Officers Association of Michigan*, Case No. D09 F-0703, the Commission received notice on June 1, 2009, that the parties were in negotiations for a new collective bargaining agreement pursuant to §7(2) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.207(2). On June 15, 2010, the POAM filed a petition for Act 312 arbitration. The arbitrator currently assigned to the case, William E. Long, was appointed on October 2, 2012. On or about April 15, 2013, the Employer filed two motions with Arbitrator Long, a motion for an Award of Dismissal Due to Lack of Arbitral Jurisdiction,

and a motion for a Stay of Proceedings Pending Determination of Jurisdiction by MERC. On April 17, 2013, Long denied the motion to dismiss but granted the stay after learning that the Employer had brought similar motions before this Commission and based on his belief that this Commission was the appropriate body to resolve this issue.

At the time of Long's April 17 ruling, hearing dates had already been scheduled for April 22, April 29, and May 2, 2013. He notified the parties that the hearing scheduled for April 22 would proceed, but directed the parties to meet on the remaining two dates for the purpose of reviewing, clarifying, and possibly resolving some of the issues in advance of any subsequent hearing dates. He concluded that if "MERC rules that Section 27(3) of Act 436 does preclude MERC from retaining jurisdiction of this case, proceeding with the April 22, 2013 hearing and scheduling others, if needed, following a ruling by MERC, is not a significant financial burden on the parties and the information obtained from the April 22, 2013 hearing, and the April 29, 2013 and May 2, 2013 meetings of the representatives for the parties, may assist the parties in ultimate resolution of many matters in dispute through further collective bargaining." The April 22, 2013 hearing was conducted and is the only hearing that has been held in this case.

In *City of Detroit and Detroit Police Command Officers Association*, Case No. D11 J-1169, the Employer filed a petition for Act 312 arbitration on October 5, 2011. On September 11, 2012, the Employer withdrew its petition over the objection of the DPCOA. In response, the director of the Bureau of Employment Relations, notified the parties by letter dated September 13, 2012, that the Commission had reviewed the parties' filings at its September 11, 2012 meeting and concluded that nothing in the Act 312 statute and/or rules requires or allows the Commission to approve or deny a party's request to withdraw its petition. The letter went on to explain that the "obvious remedy for a Union that objects to the withdrawal is to file its own Act 312 petition." The DPCOA filed its petition for Act 312 arbitration on September 20, 2012. Arbitrator Gregory M. Saltzman was appointed on October 5, 2012 and held a prehearing conference on March 1, 2013. In an e-mail to the parties dated April 19, 2013, Arbitrator Saltzman acknowledged receipt of the two motions from the Employer and deferred the issue to the Commission.

In *City of Detroit and Detroit Police Lieutenants & Sergeants Association*, Case No. D13 A-0005, a petition for Act 312 arbitration was filed on February 4, 2013 by the DPLSA. Arbitrator Francis L Hill was appointed on February 19, 2013, and held a prehearing conference on February 26, 2013. In an e-mail to the parties on April 28, 2013, Arbitrator Hill notified the parties of hearing dates scheduled for May 15, 16, and 21, and June 11 and 13, 2013. She informed the parties that the Employer's motion to dismiss was pending before the Commission and that she would advise them if MERC's decision had an impact on the scheduled hearing dates.

Discussion and Conclusions of Law:

I. COMMISSION JURISDICTION

The Employer argues that the Commission should rule on its motion to dismiss because the arbitrators are deferring the question of jurisdiction to MERC. The Employer seeks a global

ruling on the legal issues presented by the impact of PA 436 on pending Act 312 arbitrations and wants the Commission to provide guidance on the question of whether the arbitrators may exercise jurisdiction in these matters. Whether the Commission has jurisdiction to rule on the questions presented by the Employer's motion to dismiss depends on the authority granted by the Legislature to MERC in the Labor Relations and Mediation Act (LRMA), Act 176 of 1939; the Public Employment Relations Act (PERA), Act 336 of 1947; and the act that provides for compulsory arbitration of labor disputes in police and fire departments, Act 312 of 1969 (Act 312).

A. Act 312 Provisions with Respect to MERC's Authority

Matters proceed to Act 312 arbitration following mediation initiated pursuant to §7 of PERA, MCL 423.207¹. After a matter has been submitted to mediation for at least 30 days, either of the parties may request binding arbitration pursuant to § 3 of Act 312, MCL 423.233. In *City of Manistee v Employment Relations Comm & Manistee Fire Fighters Ass'n*, 168 Mich App 422, 428 (1988), the Court commented: "The only prerequisites [to Act 312 arbitration] are those expressly stated in § 3 of Act 312." Section 3 of Act 312, MCL 423.233, sets the prerequisites for proceeding to Act 312 arbitration as follows:

Whenever in the course of mediation of a public police or fire department employee's dispute, except a dispute concerning the interpretation or application of an existing agreement (a "grievance" dispute), the dispute has not been resolved to the agreement of both parties within 30 days of the submission of the dispute to mediation, or within such further additional periods to which the parties may agree, the employees or employer may initiate binding arbitration proceedings by prompt request therefor, in writing, to the other, with copy to the employment relations commission.

Only §§ 3, 4, 5, 6 and 7a of Act 312, as amended, mention or refer to the Commission. Section 4, MCL 423.234, provides the process for the parties to select their delegates to the arbitration panel and notify each other and the "mediation board" of their selections. Section 5, MCL 423.235, establishes the procedure to be used in selecting the chair of the arbitration panel

¹ Section 7 of PERA provides as follows:

- (1) Upon the request of the collective bargaining representative defined in section 11 or, if a representative has not been designated or selected, upon the request of a majority of any given group of public employees evidenced by a petition signed by the majority and delivered to the commission, or upon request of any public employer of the employees, the commission forthwith shall mediate the grievances set forth in the petition or notice, and for the purposes of mediating the grievances, the commission shall exercise the powers and authority conferred upon the commission by sections 10 and 11 of Act No. 176 of the Public Acts of 1939, as amended, being sections 423.10 and 423.11 of the Michigan Compiled Laws.
- (2) At least 60 days before the expiration date of a collective bargaining agreement, the parties shall notify the commission of the status of negotiations. If the dispute remains unresolved 30 days after the notification on the status of negotiations and a request for mediation is not received, the commission shall appoint a mediator.

from MERC's panel of arbitrators, authorizes MERC to establish and appoint members of the panel of arbitrators, and requires MERC to establish qualifications and training for panel members. Section 6, MCL 423.236, sets time periods for the arbitration and establishes procedures that the arbitration panel members are to follow. It also provides that the fee to be paid to the panel's chair is to be established in advance by the Commission. Section 7a, MCL 423.237a, authorizes the chair of the arbitration panel to remand the matter for further bargaining and requires the chair to notify the Commission of any such remand.

B. Prior MERC Actions in Act 312 Cases

The Employer contends that the Commission is empowered to determine jurisdictional limits for Act 312 panels, citing *City of Detroit*, 1990 MERC Lab Op 561, 565. In the *City of Detroit* case, after noting that the Commission has jurisdiction to determine what is a mandatory subject of bargaining and whether employees are eligible for Act 312 arbitration, the Commission denied the employer's motion to instruct the Act 312 arbitrator to refrain from deciding those issues. The Commission stated, *id.* at 565:

The jurisdiction of an Act 312 arbitration panel to make findings on these issues in the absence of, or concurrent with, our rulings has now been firmly established. We see no reason to grant the employer's request that we direct the Act 312 panel's actions in this case. Under Section 12 of Act 312, the employer may seek review by the Circuit Court of findings by the arbitration panel on the grounds that the panel exceeded its jurisdiction.

While it may be noted that the Commission refused to dismiss the Act 312 proceeding in this case, MERC did not find that it lacks the authority to do so.

In support of its contention that the Commission should decide this issue, the Employer also argues that Act 312 panels function under the auspices of the Commission and are bound by the Commission's decisions, citing *Jackson Fire Fighters Ass'n v City of Jackson*, 227 Mich App 520, 523 (1998). In the *Jackson Fire Fighters Ass'n* case, the Act 312 arbitrator held that a matter was a mandatory subject of bargaining. The circuit court affirmed the arbitration award on appeal. In a concurrent unfair labor practice charge case involving the same parties, *City of Jackson*, 1996 MERC Lab Op 125; 9 MPER 27050, the Commission found the disputed matter to be a permissive subject of bargaining. Upon subsequent review of the circuit court ruling and MERC's decision, the Court of Appeals held that MERC had primary jurisdiction to determine whether the matter was a mandatory subject of bargaining, and therefore, the decision of the arbitrator did not bar MERC from adjudicating the issue based on collateral estoppel. In the two cases cited above, it is clear that the Commission has jurisdiction to determine, in an unfair labor practice charge case, whether subjects of bargaining brought before an Act 312 arbitrator are mandatory or permissive.

This Commission also has jurisdiction to determine whether an Act 312 arbitration should proceed by ascertaining whether the employees in the bargaining unit are eligible for Act 312 arbitration. *Metropolitan Council 23, AFSCME v Oakland Co (Prosecutor's Investigators)*, 89 Mich App 564 (1979) rev'd on other grounds, 409 Mich 299 (1980); *Kalamazoo Co*, 23

MPER 22 (2010); *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007); *City of Grand Rapids*, 1981 MERC Lab Op 327. Typically, such determinations are made in the context of a unit clarification or other representation proceeding.

In a representation proceeding, *Oakland Co Sheriff's Dep't*, 1977 MERC Lab Op 843, the Commission was called upon to determine whether a pending Act 312 arbitration was appropriate. The union, Metropolitan Council 23 of AFSCME, and the employer, Oakland County Sheriff's Department, had reached an impasse in negotiations and in mediation. The union initiated arbitration under Act 312. The employer objected, contending that the arbitration included the issue of wages for "nonpolice" classifications that were not eligible for Act 312 arbitration. The employer moved to dismiss the representation hearing, which was scheduled before a MERC ALJ, contending the matter was within the sole discretion of the Act 312 arbitrator. The Commission denied the employer's motion and concluded, *id.* at 846-848, that it did indeed have jurisdiction to resolve the issue. The MERC noted that § 14 of Act 312 specifically makes the Act supplementary to PERA and observed that § 7 of PERA MCL 423.207, and §§ 10 and 11 of the LRMA, MCL 423.10 and 423.11, conferred broad powers upon it. The Commission explained, *id.* at 847,

We find that the responsibility for implementing Act 312 necessarily includes the power to determine who is covered by the Act. This is simply an extension of the Commission's function in representation matters. The resolution of questions involving employer and employee status, exclusions under PERA and the LRMA, community of interest and appropriate bargaining units, is an integral part of the work of the Commission. Clearly, the Commission's expertise in determining such issues is significant in determining the question raised in these proceedings. In addition, a determination by the Commission ensures the necessary uniformity and consistency in this important area.

. . . . [A] determination of who is covered by the Act is a condition precedent to the arbitration proceeding itself, and is not properly before the arbitrator since it is not an "issue in dispute" as asserted by the Employer.

In a separate, unrelated matter, *Metropolitan Council 23, AFSCME v Oakland Co (Prosecutor's Investigators)*, 89 Mich App 564 (1979) rev'd on other grounds, 409 Mich 299 (1980), the Court of Appeals considered an appeal of MERC's decision in *Oakland Co (Prosecutor's Investigators)*, 1978 MERC Lab Op 328, and adopted the Commission's reasoning *Oakland Co Sheriff's Dep't*. There, the Court of Appeals found, at 89 Mich App 567, that the Legislature intended to provide public employees eligible for Act 312 arbitration with an "expeditious, effective and binding procedure for the resolution of disputes." Noting that the Legislature's purpose of establishing an expeditious dispute resolution procedure would be impeded by the lengthy delays inherent in court procedures, the Court reasoned, *id.* at 567-568, that MERC "has the necessary implied authority and expertise in labor relations to initially determine the eligibility of public employees for compulsory arbitration" and cited *Oakland Co Sheriff's Dep't*, 1977 MERC Lab Op 843. The Court of Appeals affirmed MERC's finding, in *Oakland Co (Prosecutor's Investigators)*, 1978 MERC Lab Op 328, that the Oakland County prosecutor's investigators were eligible for Act 312 arbitration.

Subsequently, the Michigan Supreme Court granted the employer's motion for leave to appeal and both MERC and the Court of Appeals were reversed on the issue of the investigators' eligibility for Act 312 arbitration. *Metropolitan Council 23, AFSCME v Oakland Co (Prosecutor's Investigators)*, 409 Mich 299 (1980). The Supreme Court found the employees were not subject to Act 312 coverage. Although the Supreme Court did not address the issue of whether MERC has the authority to determine Act 312 eligibility, it has been widely accepted that MERC's authority extends to determining the eligibility of employees for Act 312 arbitration. Since that time, MERC has reviewed the Act 312 eligibility of numerous bargaining units in which the union and employer disputed the eligibility of all or part of the unit's members. *Macomb Co (Sheriff's Dep't)*, 1991 MERC Lab Op 542, 547. See, e.g. *Michigan State Univ (Police Dep't)*, 26 MPER 44 (2013); *Kalamazoo Co*, 23 MPER 22 (2010); *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007); *Kent Co & Kent Co Sheriff*, 1991 MERC Lab Op 549; 4 MPER 22071; *Washtenaw Co (Sheriff's Dep't)*, 1990 MERC Lab Op 768; *City of Detroit (Police Detention Facility)*, 1990 MERC Lab Op 598; *Midland Co*, 1989 MERC Lab Op 923; *Mecosta Co*, 1989 MERC Lab Op 607.

We agree with the prior Commission in *Oakland Co Sheriff's Dep't*, and with the Court of Appeals in *Metropolitan Council 23, AFSCME v Oakland Co (Prosecutor's Investigators)* that by enacting § 7 of PERA and §§ 10 and 11 of the LRMA, the Legislature conferred broad powers upon the Commission for the purpose of resolving labor disputes. We also agree with the previous Commission that it is our responsibility to exercise these powers "as are necessary to carry out the purposes of PERA and the supplementary Act 312." As with the Commission in *Oakland Co Sheriff's Dep't*, 1977 MERC Lab Op 843, 847, "We find that the responsibility for implementing Act 312 necessarily includes the power to determine who is covered by the Act." Therefore, given the importance of this issue and the number of parties affected, including those beyond the instant cases, we find it is necessary to provide the parties and our panel of arbitrators with our decision on the question of whether the suspension of the duty to bargain pursuant to § 27(3) of the Local Financial Stability and Choice Act, Public Act 436 of 2012, MCL 141.1567(3), also suspends the authority of the Act 312 arbitrator in a pending arbitration.

C. Does This Matter Raise a Constitutional Question That Must Be Resolved by the Courts?

DPCOA argues that the question of whether PA 436 deprives an Act 312 arbitrator of jurisdiction must be determined by the courts, citing *Kent Co Sheriffs Ass'n v Kent Co*, 463 Mich 353, 359-362 (2000).² DPCOA argues at length that the Legislature's failure to amend §15(8) of PERA, to replace the reference to 2011 PA 4 with a reference to PA 436, makes the language of that provision invalid and creates a conflict with § 27(3) of PA 436 in violation of the Michigan Constitution. Section 15(8) of PERA states:

Collective bargaining agreements under this act may be rejected, modified, or terminated pursuant to the local government and school district fiscal

² In the *Kent Co Sheriffs Ass'n* case, the State Supreme Court held that the circuit court correctly ruled on a Freedom of Information Act issue even though the matter impacted a labor dispute over which MERC would have had jurisdiction if it had involved an unfair labor practice charge. Since the case did not involve an unfair labor practice charge, the circuit court was not required to defer to MERC.

accountability act, 2011 PA 4, MCL 141.1501 to 141.1531. This act does not confer a right to bargain that would infringe on the exercise of powers under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531.

The Commission has no jurisdiction to resolve questions of the constitutionality of legislative enactments. *Michigan State Univ*, 17 MPER 75 (2004). The Commission must decide matters before it based on the language of PERA and its amendments. *Waverly Cmty Sch*, 26 MPER 34 (2012). Thus, any constitutional issues that the parties wish to raise must be raised elsewhere.

II. THE IMPACT OF PA 436 ON RIGHTS AND OBLIGATIONS UNDER ACT 312

The Employer argues that the arbitration panels have no jurisdiction over the parties, the petitions, or the matters in dispute where the City's duty to bargain has been suspended by the operation of § 27(3) of PA 436. According to the Employer, Act 312 is a procedural statute and acts as an extension of, or supplement to, PERA, while PERA is the substantive enabling statute that defines the contents and parameters of the duty to bargain. The Employer contends: "Where the duty to bargain under PERA is suspended, there can be no compulsory arbitration over mandatory subjects of bargaining because no subjects remain 'mandatory' and therefore, [there is] no dispute to resolve."

A. The Relationship between 1969 PA 312, As Amended, and 2012 PA 436

This Commission's interpretation of these two statutes is constrained by rules of statutory construction established by the courts. The rules of statutory construction tell us that, much like any literary composition, a statute is enacted and is meant to be read as a whole. *Metropolitan Council 23, AFSCME v Oakland Co Prosecutor*, 409 Mich 299, 317-318 (1980). As such, any provision that is in dispute must be read in the light of the general purpose of the act. *Romeo Homes, Inc v Comm'r of Revenue*, 361 Mich 128, 135 (1960).

While both statutes deal with local government administration there is no express conflict in their purposes or in their wording. Act 312 of 1969 was recently amended by 2011 PA 116 which became effective July 20, 2011. Less than two years later, 2012 PA 436 took effect on March 28, 2013. Indeed, PA 436 makes no reference to Act 312 or to its recent amendment in 2011 PA 116. PA 436 does not exclude bargaining units eligible for Act 312 arbitration from its coverage.³

Under well-established principles of statutory construction, the legislature is presumed to be aware of and to have considered the effect on all existing statutes when enacting new ones. *Walen v Dep't of Corrections*, 443 Mich 240, 248 (1993). Moreover, rules of statutory construction hold that the legislature is presumed to be aware of statutory interpretations by the

³ We note that the Legislature expressly excluded employees eligible for Act 312 arbitration from the changes under the "Freedom-to-Work" amendment to PERA, 2012 PA 349, which became effective on the same day as 2012 PA 436.

courts and by the administrative bodies charged with statutory enforcement. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 505-506 (1991); *Melia v Appeal Bd of Michigan Employment Sec Comm*, 346 Mich 544, 565-566 (1956); *Parker v Bd of Ed of Byron Center Pub Sch*, 229 Mich App 565, 570-5712 (1998).

The Commission has found that the failure to honor terms and conditions of employment established by an Act 312 award is a violation of § 10(1)(e) of PERA. *City of Jackson*, 1979 MERC Lab Op 1146, 1151-1154. See also, *City of Hamtramck*, 1984 MERC Lab Op 520, 524.

In *City of Jackson*, at 1151, the Commission explained:

A refusal to execute a completed collective bargaining agreement is an unfair labor practice whether negotiated through voluntary collective bargaining or by submission of unresolved issues to Act 312 arbitration.

The Commission went on to say, *id.* at 1153-1154:

The legislative policy of providing an "expeditious," "effective," and "binding" procedure for resolving labor disputes would be severely undermined if the parties could short circuit the Act by refusing to execute the contract.

* * *

The term "resolution of disputes" in § 1 of the Act [312] means that the product of compulsory arbitration is a completed collective bargaining agreement. The refusal to execute that agreement is a refusal to bargain in good faith

Section 10(1)(e) of PERA prohibits public employers that have a duty to bargain from refusing to bargain collectively with the representatives of their employees. However, if their duty to bargain has been suspended, their refusal to bargain does not violate § 10(1)(e). Quite simply, there can be no breach of duty if there is no duty. Thus, when a public employer's duty to bargain has been suspended, their failure to comply with the terms and conditions of an Act 312 award would not violate § 10(1)(e) of PERA and the Act 312 award cannot be enforced under PERA.

As we stated in *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007):

Act 312 functions primarily as an extraordinary restriction on the ordinary rights of certain public employers to unilaterally impose changes in conditions of employment when good faith negotiations have failed to result in agreement.

Nevertheless, without reference to Act 312, § 12(1)(j) of PA 436 in conjunction with § 15(8) of PERA gives the Emergency Manager the right to reject, modify, or terminate terms of an existing collective bargaining agreement. Section 15(8) of PERA states:

Collective bargaining agreements under this act may be rejected, modified, or terminated pursuant to the local government and school district fiscal

accountability act, 2011 PA 4, MCL 141.1501 to 141.1531. This act does not confer a right to bargain that would infringe on the exercise of powers under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531.⁴

Section 12(1)(j) of PA 436 states:

(1) An emergency manager may take 1 or more of the following additional actions with respect to a local government that is in receivership, notwithstanding any charter provision to the contrary:

* * *

(j) Reject, modify, or terminate 1 or more terms and conditions of an existing contract.

⁴ We recognize the arguments made by the Petitioners challenging the constitutionality of PA 436 and the substitution of its provisions for the provisions of 2011 PA 4. However, as indicated above in our discussion of Petitioners' constitutional challenge, we must administer the law as it is enacted and must give effect to the provisions of PA 436, as well as its enacting § 2 which provides as follows:

2012 PA 436, enacting § 2, provides:

It is the intent of the Legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following:

- (a) The Charter Township Act, 1947 PA 359, MCL 42.1 to 42.34.
- (b) 1966 PA 293, MCL 45.501 to 45.521.
- (c) 1851 PA 156, MCL 46.1 to 46.32.
- (d) The General Law Village Act, 1895 PA 3, MCL 61.1 to 74.25.
- (e) The Home Rule Village Act, 1909 PA 278, MCL 78.1 to 78.28.
- (f) The Fourth Class City Act, 1895 PA 215, MCL 81.1 to 113.20.
- (g) The Home Rule City Act, 1909 PA 279, MCL 117.1 to 117.38.
- (h) The Metropolitan Transportation Authorities Act of 1967, 1967 PA 204, MCL 124.401 to 124.426.
- (i) 1947 PA 336, MCL 423.201 to 423.217.

In the light of the language of PA 436, we cannot find that the Legislature intended to impose the aforesaid "extraordinary restrictions" of Act 312 on an emergency manager. Inasmuch as an Act 312 award serves as the parties' collective bargaining agreement, it appears that pursuant to § 15(8) of PERA and § 12(1)(j) of PA 436 that the Emergency Manager could reject, modify, or terminate terms of an Act 312 award. If that is the case, it seems doubtful that the Legislature would have intended an employer in receivership, with no duty to bargain and with an emergency manager in place, to be subject to Act 312 arbitration proceedings.

Petitioners have argued that the amendment to § 9 of Act 312 by 2011 PA 116 indicates that an employer in receivership remains subject to the operation of Act 312. Section 9 of Act 312, as amended, provides in relevant part:

(1) If the parties have no collective bargaining agreement or the parties have an agreement and have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors:

(a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:

* * *

(iv) Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.⁵

The Employer contends that the amendment to § 9 of Act 312 by 2011 PA 116 does not show that an employer in receivership remains subject to the operation of Act 312. The Employer asserts, that the amended § 9 of Act 312 applies to those municipalities where the duty to bargain has not been suspended. We agree.

B. Is Act 312 Arbitration Dependent on the Presence of a Duty to Bargain?

In *Metropolitan Council 23, AFSCME v Center Line*, 414 Mich 642 (1982), the Court inferred from PERA that the distinction drawn between mandatory and permissive subjects of bargaining determines the scope of the Act 312 arbitration panel's authority. Given the fact that Act 312 supplements PERA and that under § 15 of PERA the duty to bargain only extends to mandatory subjects, the Court concluded that the arbitration panel can only compel agreement as to mandatory subjects. The Court noted further that it would be inconsistent to conclude that the arbitration panel can issue an award on a permissive subject when the parties do not even have a

⁵ See previous footnote regarding Enacting § 2 of PA 436

duty to bargain over such a subject. Based on that, we might infer that the arbitration panel has no authority over matters for which there is no duty to bargain.

The mediation process is a condition precedent to initiation of Act 312 arbitration. A public employer that has no duty to bargain has no duty to participate in mediation. Only a public employer not in receivership under PA 436 or a labor organization may be required by this Commission under § 10 of PERA to participate in mediation. Therefore, the duty to bargain must be present before a party can be compelled to involuntarily participate in mediation. If parties have no duty to participate in mediation, they cannot be required to participate in Act 312 arbitration.

Moreover, § 7a of Act 312 gives the arbitration panel chair the authority to remand the matter to mediation. Mediation is a function of bargaining pursuant to PERA. If there is no duty to bargain, there is also no duty to engage in mediation. Therefore, § 7a of Act 312 presupposes the presence of a duty to bargain. In the absence of a duty to bargain, there is no obligation to participate in Act 312 arbitration.

C. Does Suspension of the Duty to Bargain Pursuant to 2012 PA 436 Convert Mandatory Subjects of Bargaining to Non-Mandatory Subjects of Bargaining?

The Employer contends: "Where there is no duty to bargain, there are no mandatory subjects in dispute regarding which an Act 312 panel has jurisdiction to fashion an Award." It asserts that "by operation of Act 436, there are no subjects regarding which there is a duty to bargain and therefore none can be the subject of an Award." (Emphasis in original.)

As previously noted, an Act 312 arbitration panel can only issue an award regarding mandatory subjects of bargaining. *Metropolitan Council 23, AFSCME v Center Line*, 414 Mich 642, 654-655 (1982). Moreover, as indicated above, both this Commission's past enforcement of an Act 312 award as a violation of the duty to bargain and the arbitration panel chair's authority under § 7a of Act 312 to remand a matter to mediation indicates an assumption that the duty to bargain is a condition precedent to participation in Act 312. However, we reject the Employer's premise that the suspension of the duty to bargain automatically converts the nature of subjects of bargaining from mandatory to non-mandatory. The existence of a duty to bargain is a separate and distinct issue from the question of whether a particular subject of bargaining is mandatory or permissive.

Whether a matter is a mandatory subject of bargaining depends on whether it has a significant or material impact on wages, hours, and other terms and conditions of employment or settles an aspect of the employer-employee relationship. *Detroit v Michigan Council 25, AFSCME*, 118 Mich App 211, 215 (1982); *Houghton Lake Ed Ass'n v Houghton Lake Cmty Sch, Bd of Ed*, 109 Mich App 1, 6 (1981). Once a subject has been determined to be a mandatory subject of bargaining, parties bound by the duty to bargain under PERA, must bargain concerning the subject. Neither party may take unilateral action on that subject unless the parties arrive at an impasse in their negotiations or there is a clear and unmistakable waiver. *Wayne Co Gov't Bar Ass'n v Wayne Co*, 169 Mich App 480, 486 (1988); 1 MPER 19105, aff'g 1987 MERC Lab Op 230; *Central Michigan Univ Faculty Ass'n v Central Michigan Univ*, 404 Mich 268, 277

(1978). See also *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 54-55 (1974). The Commission and the courts have adopted an expansive interpretation of "wages, hours, and other terms and conditions of employment" under § 15 of PERA. *Local 1383, Int'l Ass'n of Fire Fighters v Warren*, 411 Mich 642, 652 (1981).

A matter that is a mandatory subject of bargaining remains so, even if a party's duty to bargain is suspended. The nature of the subject does not change just because the duty ceases. Wages, hours, and other terms and conditions of employment continue to be mandatory subjects for the purpose of determining what must be bargained by those parties who have a duty to bargain.

Where a public employer's duty to bargain is statutorily suspended, the employer has no *obligation* to bargain. However, nothing in PERA denies a public employer the *right* to bargain, even when the duty to bargain under § 15(1) has been suspended. Indeed, the suspension of a public employer's duty to bargain does not suspend the bargaining obligation of the labor organization representing that employer's employees. Therefore, if an emergency manager of a public employer in receivership determines that the employer should bargain with the labor organization, the employer has the right to bargain with that labor organization. The labor organization, in that situation, still has a duty to bargain in good faith pursuant to §§ 10(3)(c) and 15(1) of PERA. Similarly, if an emergency manager of a public employer in receivership determines that the employer should petition for Act 312 arbitration in an effort to resolve a labor dispute with a bargaining unit of police or fire fighters, that employer may petition for Act 312 arbitration. In that case, unless the parties agree otherwise, the arbitration would be limited to mandatory subjects of bargaining, that is, matters that have a material impact on wages, hours, and other terms and conditions of employment or settle an aspect of the employer-employee relationship.

The finding urged by the Employer on this issue, could result in the denial of an employer's right to settle a pending labor dispute through Act 312 proceedings. Even though we agree with the Employer that the suspension of its duty to bargain under PA 436 also suspends its obligation to participate in Act 312 proceedings, we cannot agree that such suspension denies the Employer the opportunity to participate in Act 312 arbitration should it so choose. Accordingly, we find the suspension of the duty to bargain does not convert mandatory subjects of bargaining to non-mandatory subjects. The underlying nature of subjects of bargaining, whether they are mandatory or permissive, does not change upon the suspension of an employer's duty to bargain. Indeed, nothing in PA 436 declares a change in the nature of subjects of bargaining. It merely suspends the duty to bargain of an employer in receivership. That employer still retains the right to bargain and the right to proceed to Act 312 arbitration if it determines that to be appropriate under the circumstances. However, where an employer in receivership chooses not to participate in Act 312 arbitration they have no obligation to do so. For the foregoing reasons, we conclude that where an employer has no duty to bargain under PERA and has not voluntarily consented to Act 312 arbitration, the arbitration panel has no authority to issue an award binding that employer.

III. CONCLUSION

The Employer in this matter is in receivership and has no duty to bargain under PA 436. It has expressed an unwillingness to bargain or participate in Act 312 arbitration in light of PA 436. As such, the Employer has no obligation to participate in Act 312 arbitration and is not required to do so. Accordingly, the arbitrations in the cases before us must be dismissed.

We have considered all other arguments submitted by the parties and conclude that they would not change the result in this case.

ORDER

The Employer's motion to dismiss the Act 312 arbitrations pending in these three cases is granted. The Act 312 arbitrations in *City of Detroit and Police Officers Association of Michigan*, Case No. D09 F-0703, *City of Detroit and Detroit Police Command Officers Association*, Case No. D11 J-1169, and *City of Detroit and Detroit Police Lieutenants & Sergeants Association*, Case No. D13 A-0005, are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Edward D. Callaghan, Commission Chair

Robert S. LaBrant, Commission Member

Dated: _____

COMMISSIONER GREEN, CONCURRING IN PART; DISSENTING IN PART:

Although I agree with the Majority's rejection of the Employer's argument that the suspension of the duty to bargain converts mandatory subjects of bargaining to permissive subjects, I disagree with the Majority's conclusion that the three Act 312 arbitration cases should be dismissed.

In numerous representation cases, we have been called upon to determine whether Act 312 petitions met the requirements of § 3 of Act 312 to initiate binding arbitration proceedings. In those cases, we were required to decide whether bargaining unit members met the definition of "public police or fire department employee" contained in § 2 of Act 312. Where the bargaining unit members were not public police or fire department employees, the requirements for initiating an Act 312 proceeding under § 3 were not met and, we dismissed the proceeding. For this Commission to initially determine the eligibility of public employees for compulsory arbitration in the context of representation proceedings is simply an extension of the Commission's function in representation matters.

However, in the three cases before us, there is no assertion by the Employer that the requirements for initiating Act 312 proceedings were not met. The Employer has not filed any representation proceeding claiming that the members of the three involved bargaining units are not public police or fire department employees as defined by § 2 of Act 312 nor has the Employer made any assertion that a creditable claim could be filed on that basis.

In these cases, the requirements for submitting the matters to mediation were met before PA 436 took effect and nothing in PA 436 indicates that the suspension of the duty to bargain is retroactive. When the parties were in mediation, the employer had a duty to bargain. In each case, the labor dispute was not resolved to the agreement of both parties and a petition for Act 312 arbitration was filed. All three petitions were filed and arbitrators were appointed in each case before PA 436 became effective.

I find nothing in PERA or Act 312 that authorizes this Commission to dismiss an Act 312 petition when the conditions in § 3 of Act 312 have been fully met. The Employer contends that the suspension of its duty to bargain, by PA 436, also suspends its obligations under Act 312. However, PA 436 contains no explicit prohibition barring Act 312 arbitration. Whether there is an implicit bar of binding arbitration by virtue of Act 436 is a matter for the courts to decide.

Although an emergency manager's authority to reject, modify, or terminate the provisions of a labor contract raises doubt as to whether a compulsory arbitration award is enforceable against an emergency manager, I conclude that the Commission lacks authority to dismiss an Act 312 arbitration where the requirements of Act 312 have been met. Consequently, I would deny the Employer's motion to dismiss the three Act 312 petitions.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nino E. Green, Commissioner

Dated: _____

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:
CITY OF DETROIT, MICHIGAN
AND EMERGENCY MANAGER
KEVYN D. ORR

Chapter 9
Case No. 13-53846
Hon: Steven W. Rhodes

Debtor

_____ /

AFFIDAVIT IN SUPPORT OF ADDENDUM OBJECTION
TO CHAPTER 9 DOCKET No. 1428 BANKRUPTCY

FILED
2013 OCT 31 P 2:18
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN-DETROIT

STATE OF MICHIGAN)
)SS
COUNTY OF WAYNE)

We Cord Williams HASSAN ALEEM

Being first duly sworn deposes and says:

That we make this affidavit of personal knowledge: That we are creditors and interest party in this bankruptcy action and resident of Detroit, Taxpayers of the State of Michigan and Citizen of the United States.

We show to the best of our knowledge and belief that the state through the Emergency Manager Kevyn Orr did not negotiate and conduct business with

the city in good faith. That the state through Kevyn Orr also failed to comply and does not meet the requirements of title 11 of the Bankruptcy code and rule.

That the law and facts herein this affidavit are in support of the objections of the Bankruptcy. We have read and understand the facts to be true.

That we the affiant, if sworn as a witness, can testify competently to the facts stated in the objections and is true and correct to the best of our knowledge and belief.

Signed Carl Williams Hassan Reem

Subscribed and sworn to before me,

This 30th day of October, 2013

Gloria Ann Surlles

Notary
GLORIA ANN SURLLES
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Sep 16, 2017
ACTING IN COUNTY OF Wayne

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

In re:
CITY OF DETROIT, MICHIGAN
AND EMERGENCY MANAGER
KEVYN D. ORR

Chapter 9
Case No. 13-53846
Hon: Steven W. Rhodes

Debtor

_____ /

PROOF OF SERVICE

U.S. BANKRUPTCY COURT
E.D. MICHIGAN-DETROIT

2013 OCT 31 P 2:18

FILED

Curt Williams, being first duly sworn deposes and

Say that on October 30th 2013. I sent a copy of Addendum Objection and affidavit docket No. 1428 Upon the concern parties by certified mail at the following address:

City of Detroit
Corporation Council
First National Building
600 Woodward Ave
Detroit, Michigan 48226

Emergency Manager
Kenyn Orr
Coleman A Young Municipal Center
2 Woodward 11th floor
Detroit, Michigan 48226

Sign Carl Williams

Subscribed and sworn to before me, This 30th day
of October 2013

Gloria Ann Surles
Notary

GLORIA ANN SURLES
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Sep 15, 2017
ACTING IN COUNTY OF Wayne