

Page 1	Page 3
<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 Page 5</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 7</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 8</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>

Page 9

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?

Page 10

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.

Page 12

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

<p style="text-align: right;">Page 13</p> <p>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.</p>	<p style="text-align: right;">Page 15</p> <p>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.</p>
<p style="text-align: right;">Page 14</p> <p>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.</p>	<p style="text-align: right;">Page 16</p> <p>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?</p>

Page 17

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.

Page 21

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.

Page 26

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.

Page 27

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?

Page 31

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?

Page 33

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

Page 37

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

Page 38

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

Page 39

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.

Page 40

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.

Page 41

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?

Page 42

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

Page 43

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 --

Page 44

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?

Page 45

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

Page 46

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?

Page 47

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.

Page 48

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."

Page 49

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?

Page 50

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

Page 51

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

Page 52

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;

Page 53

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

Page 54

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.

Page 55

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

Page 56

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

Page 57

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.

Page 58

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?

Page 59

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.

Page 60

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

Page 61

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.

Page 62

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

Page 63

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

Page 64

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

Page 65

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

Page 67

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

Page 68

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

Page 69

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;

Page 70

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

Page 71

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

Page 72

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.

Page 73

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

Page 74

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?

Page 75

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

Page 76

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

Page 77

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

Page 78

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

Page 79

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

Page 80

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

Page 81

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

Page 82

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

Page 83

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

Page 84

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

Page 85

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?

Page 86

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?

Page 87

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?

Page 88

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.

Page 89

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.

Page 90

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.

Page 91

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

Page 92

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

Page 93

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.

Page 94

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?

Page 95

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

Page 96

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

Page 97

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

Page 98

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

Page 99

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.

Page 100

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

<p style="text-align: right;">Page 101</p> <p>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</p>	<p style="text-align: right;">Page 103</p> <p>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?</p>
<p style="text-align: right;">Page 102</p> <p>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.</p>	<p style="text-align: right;">Page 104</p> <p>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</p>

<p style="text-align: right;">Page 105</p> <p>1 healthcare benefits, right, and then the top headings?</p> <p>2 A. Yes.</p> <p>3 Q. And for pensions, just using 2014 as an example, we</p> <p>4 see the number is 199.5 million?</p> <p>5 A. Yes.</p> <p>6 Q. And for the health benefits for 2014 it's</p> <p>7 140.7 million?</p> <p>8 A. Yes.</p> <p>9 Q. And obviously if you look over the next several years,</p> <p>10 it goes up?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And then so that I understand this, if you look</p> <p>13 at pages 97 to 98, this is the same spreadsheet but</p> <p>14 now showing what the figures would look like if this</p> <p>15 proposal for restructuring were to go through; is that</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. And so if we look again comparably for 2014, let's</p> <p>19 see, and let's start with -- I guess we can start with</p> <p>20 the pensions. On page 97, for 2014, we now see an</p> <p>21 item DC pension contribution.</p> <p>22 A. Uh-huh.</p> <p>23 Q. And that's -- that DC stands for what?</p> <p>24 A. You mean the DC?</p> <p>25 Q. Yeah, what do the words stand for?</p>	<p style="text-align: right;">Page 107</p> <p>1 147 million?</p> <p>2 A. Retiree health, yes.</p> <p>3 Q. For retiree health?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Under this proposal, the restructuring proposal, I</p> <p>6 don't see any line entry for the retiree health</p> <p>7 benefits.</p> <p>8 A. Yes.</p> <p>9 Q. So they're essentially being cut; correct?</p> <p>10 A. Well, the obligation is being provided with a</p> <p>11 different program, but yes, the City would not have an</p> <p>12 obligation going forward of that magnitude.</p> <p>13 Q. And going back to the pension contributions, you know,</p> <p>14 we had talked about a diminution on the order of 80</p> <p>15 percent from the 199.5 figure, and I think it's the</p> <p>16 City's contention that the 199.5 figure is really</p> <p>17 understated, right, because the obligations are really</p> <p>18 a lot higher?</p> <p>19 A. I think we think the liabilities -- this is the steady</p> <p>20 state projection on 91. I think we think the</p> <p>21 liabilities are higher because what we represented on</p> <p>22 the second page of 98 is the estimated undersecured</p> <p>23 claims for out years as opposed to a ten-year</p> <p>24 projection.</p> <p>25 Q. Right. And if the liabilities were really greater</p>
<p style="text-align: right;">Page 106</p> <p>1 A. Defined contribution.</p> <p>2 Q. Defined contribution?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Now, the existing -- the pension plan that exists</p> <p>5 under the steady state projections, is that defined</p> <p>6 contribution plan?</p> <p>7 A. That would be switched over. No, no, defined -- the</p> <p>8 steady state scenario?</p> <p>9 Q. That's a defined benefit?</p> <p>10 A. That's a defined benefit plan.</p> <p>11 Q. So what you're projecting here is a switch over to a</p> <p>12 defined contribution program and for 2014 we see the</p> <p>13 number for the city's contributions is now</p> <p>14 25.4 million; is that right?</p> <p>15 A. Yes, that's -- yes.</p> <p>16 Q. And that compares with the -- what was the figure?</p> <p>17 199.5 million that we saw under the as is?</p> <p>18 A. Yes, projections.</p> <p>19 Q. Yes. So the diminution it looks just on the rough</p> <p>20 math that the City's pension contributions under the</p> <p>21 restructuring are being cut by about 80 percent; is</p> <p>22 that right?</p> <p>23 A. Under 75 million, 80 percent, sure, roughly.</p> <p>24 Q. And for health, the health benefits, which we saw that</p> <p>25 were, what, under the current scenario something like</p>	<p style="text-align: right;">Page 108</p> <p>1 than the diminution from the steady state to the</p> <p>2 restructuring scenario would be greater than 80</p> <p>3 percent; wouldn't it?</p> <p>4 A. It might be. I mean, we've said 80 percent. I mean,</p> <p>5 199.5 less 25, you know, you just roughly cut those in</p> <p>6 half, that's a 12 and 1/2 percent, but you know, 88</p> <p>7 percent, somewhere in that neighborhood.</p> <p>8 Q. Now, the people who are -- the retirees who are</p> <p>9 getting impacted from these -- by these cuts in the</p> <p>10 proposed restructuring, these are who? These are men</p> <p>11 and women who previously served the City and are now</p> <p>12 retired?</p> <p>13 A. Yeah, they're two pension plans: one for General</p> <p>14 services and the other for Police and Fire.</p> <p>15 Q. And these individuals that serve the City in both</p> <p>16 public safety and nonpublic safety capacities?</p> <p>17 A. Uniform and nonuniform, yes.</p> <p>18 Q. And were these -- I guess the issue comes because the</p> <p>19 pension liabilities and the healthcare benefits that</p> <p>20 may be due are not -- there's not sufficient funding</p> <p>21 that was put into them; correct?</p> <p>22 A. Well, the healthcare benefit has no funding, the</p> <p>23 \$5.7 billion. And the pension underfunding has our</p> <p>24 estimate of the level of underfunding, the unfunded</p> <p>25 portion of the pensions, in them. There are assets</p>

Page 109

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.

Page 110

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

Page 111

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

Page 112

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?

Page 113

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?

Page 114

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?

Page 115

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.

Page 116

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

Page 117

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

Page 118

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

Page 119

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.

Page 120

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,

Page 121

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

Page 122

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.

Page 123

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

Page 124

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

Page 125

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

Page 126

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?

Page 127

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

Page 128

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.

Page 129

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.

Page 130

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?

Page 131

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.

Page 132

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?

Page 133

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 --

Page 134

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.

Page 135

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.

Page 136

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

Page 137

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

Page 138

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

Page 139

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?

Page 140

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

Page 141

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.

Page 142

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

Page 143

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

Page 144

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

<p style="text-align: right;">Page 145</p> <p>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</p>	<p style="text-align: right;">Page 147</p> <p>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.</p>
<p style="text-align: right;">Page 146</p> <p>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.</p>	<p style="text-align: right;">Page 148</p> <p>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</p>

Page 149

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

Page 150

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

Page 151

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?

Page 152

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

Page 153

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

Page 154

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.

Page 155

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?

Page 156

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?

<p style="text-align: right;">Page 157</p> <p>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</p>	<p style="text-align: right;">Page 159</p> <p>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</p>
<p style="text-align: right;">Page 158</p> <p>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</p>	<p style="text-align: right;">Page 160</p> <p>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</p>

Page 161

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.

Page 162

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

Page 163

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.

Page 164

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.

Page 165

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

Page 166

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

Page 167

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

Page 168

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

<p style="text-align: right;">Page 169</p> <p>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</p>	<p style="text-align: right;">Page 171</p> <p>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.</p>
<p style="text-align: right;">Page 170</p> <p>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.</p>	<p style="text-align: right;">Page 172</p> <p>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>

<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>

Page 177

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

Page 178

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?

Page 179

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

Page 180

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

Page 181

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

Page 182

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

Page 183

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

<p style="text-align: right;">Page 185</p> <p>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</p>	<p style="text-align: right;">Page 187</p> <p>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</p>
<p style="text-align: right;">Page 186</p> <p>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</p>	<p style="text-align: right;">Page 188</p> <p>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</p>

Page 189

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

Page 190

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

Page 191

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?

Page 192

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:

<p style="text-align: right;">Page 193</p> <p>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</p>	<p style="text-align: right;">Page 195</p> <p>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</p>
<p style="text-align: right;">Page 194</p> <p>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</p>	<p style="text-align: right;">Page 196</p> <p>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.)</p>

<p style="text-align: right;">Page 197</p> <p>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</p>	<p style="text-align: right;">Page 199</p> <p>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.</p>
<p style="text-align: right;">Page 198</p> <p>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.</p>	<p style="text-align: right;">Page 200</p> <p>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,</p>

Page 201

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.

Page 202

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

Page 204

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

Page 205

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?

Page 206

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.

Page 207

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?

Page 208

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.

<p style="text-align: right;">Page 209</p> <p>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</p>	<p style="text-align: right;">Page 211</p> <p>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</p>
<p style="text-align: right;">Page 210</p> <p>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.</p>	<p style="text-align: right;">Page 212</p> <p>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</p>

Page 213

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.

Page 214

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

Page 215

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 --

Page 216

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

Page 217

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.

Page 218

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?

Page 219

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

Page 220

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

Page 221

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.

Page 222

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,

Page 223

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

Page 224

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

Page 225

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

Page 226

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 --

Page 227

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

Page 228

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.

Page 229

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?

Page 230

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

Page 231

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?

Page 232

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

Page 233

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?

Page 234

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.

Page 235

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.

Page 236

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 retiree 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.

Page 237

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.

Page 238

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.

Page 239

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?

Page 240

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

Page 241

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

Page 242

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

Page 243

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

Page 244

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

Page 245

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.

Page 246

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.

Page 247

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

Page 248

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

Page 249

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?

Page 250

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

Page 251

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.)

Page 252

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

<p style="text-align: right;">Page 253</p> <p>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.</p>	<p style="text-align: right;">Page 255</p> <p>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;</p>
<p style="text-align: right;">Page 254</p> <p>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</p>	<p style="text-align: right;">Page 256</p> <p>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</p>

Page 257

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.

Page 258

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?

Page 259

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.

Page 260

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.

Page 261

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

Page 262

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?

Page 263

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.

Page 264

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?

Page 265

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

Page 266

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,

Page 267

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?

Page 268

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.

Page 269

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

Page 270

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

Page 271

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

Page 272

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

Page 273

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

Page 274

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?

Page 275

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

Page 276

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

Page 277

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

Page 278

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

Page 279

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.

Page 280

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.

Page 281

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

Page 282

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?

Page 283

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

Page 284

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?

Page 285

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.

Page 286

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

Page 287

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?

Page 288

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?

Page 289

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

Page 290

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

Page 291

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?

Page 292

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.

Page 293

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?

Page 294

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.

Page 295

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

Page 296

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

Page 297

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.

Page 298

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?

Page 299

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

Page 300

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

Page 301

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.?

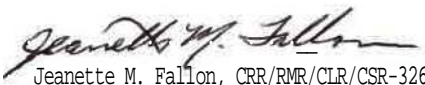
Page 302

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

Page 303

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 * * *

Page 304

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, 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

Page 305

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

21

22

23

24

25

Page 307

1 DEPOSITION ERRATA SHEET

2

3 Page No. ____ Line No. ____ Change to: _____

4 _____

5 Reason for change: _____

6 Page No. ____ Line No. ____ Change to: _____

7 _____

8 Reason for change: _____

9 Page No. ____ Line No. ____ Change to: _____

10 _____

11 Reason for change: _____

12 Page No. ____ Line No. ____ Change to: _____

13 _____

14 Reason for change: _____

15 Page No. ____ Line No. ____ Change to: _____

16 _____

17 Reason for change: _____

18 Page No. ____ Line No. ____ Change to: _____

19 _____

20 Reason for change: _____

21 Page No. ____ Line No. ____ Change to: _____

22 _____

23 Reason for change: _____

24 SIGNATURE: _____ DATE: _____

25 KEVYN ORR

Page 306

1 DEPOSITION ERRATA SHEET

2

3 Page No. ____ Line No. ____ Change to: _____

4 _____

5 Reason for change: _____

6 Page No. ____ Line No. ____ Change to: _____

7 _____

8 Reason for change: _____

9 Page No. ____ Line No. ____ Change to: _____

10 _____

11 Reason for change: _____

12 Page No. ____ Line No. ____ Change to: _____

13 _____

14 Reason for change: _____

15 Page No. ____ Line No. ____ Change to: _____

16 _____

17 Reason for change: _____

18 Page No. ____ Line No. ____ Change to: _____

19 _____

20 Reason for change: _____

21 Page No. ____ Line No. ____ Change to: _____

22 _____

23 Reason for change: _____

24 SIGNATURE: _____ DATE: _____

25 KEVYN ORR