

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE:

CITY OF DETROIT, MICHIGAN,  
Debtor.

Chapter 9

Case No. 13-53846

Hon. Steven W. Rhodes

\_\_\_\_\_ /

VIDEOTAPED DEPOSITION

DEPONENT: KEVYN D. ORR  
DATE: Tuesday, December 31, 2013  
TIME: 10:32 a.m.  
LOCATION: MILLER, CANFIELD, PADDOCK & STONE  
150 West Jefferson Avenue, Suite 2500  
Detroit, Michigan  
REPORTER: Karen Fortna, CRR/RMR/RPR/CSR-5067  
VIDEO: Tim Reitman  
JOB NO: 198610

Page 2

1 APPEARANCES:  
 2  
 3 JONES DAY  
 4 By: Mr. Gregory M. Shumaker  
 5 Mr. Dan T. Moss  
 6 51 Louisiana Avenue, NW  
 7 Washington, DC 20001  
 8 202.879.3679  
 9 Appearing on behalf of City of Detroit  
 10  
 11 PEPPER HAMILTON, LLP  
 12 By: Mr. Robert S. Hertzberg  
 13 4000 Town Center, Suite 1800  
 14 Southfield, Michigan 48075  
 15 248.359.7300  
 16 Appearing on behalf of City of Detroit  
 17  
 18 ARENT FOX, LLP  
 19 By: Ms. Caroline Turner English  
 20 Ms. Carol Connor Cohen (VIA TELEPHONE)  
 21 1717 K Street, NW  
 22 Washington, DC 20036  
 23 202.857.6000  
 24 Appearing on behalf of AMBAC Assurance  
 25 Corporation

Page 3

1 APPEARANCES: (Continued)  
 2  
 3 CLARK HILL, PLC  
 4 By: Ms. Jennifer K. Green  
 5 500 Woodward Avenue, Suite 3500  
 6 Detroit, Michigan 48226  
 7 313.965.8300  
 8 Appearing on behalf of Retirement Systems  
 9  
 10 KIRKLAND & ELLIS  
 11 By: Mr. William E. Arnault  
 12 Mr. Stephen C. Hackney (VIA TELEPHONE)  
 13 Ms. Lally Gartel (VIA TELEPHONE)  
 14 300 North LaSalle  
 15 Chicago, Illinois 60654  
 16 312.862.3062  
 17 Appearing on behalf of Syncora Capital  
 18 Assurance and Syncora Guarantee  
 19  
 20 WEIL, GOTSHAL & MANGES, LLP  
 21 By: Mr. Alfredo R. Perez  
 22 700 Louisiana, Suite 1600  
 23 Houston, Texas 77002  
 24 713.546.5040  
 25 Appearing on behalf of FGIC

Page 4

1 APPEARANCES: (Continued)  
 2  
 3 BALLARD SPAHR, LLP  
 4 By: Mr. Vincent J. Marriott, III  
 5 1735 Market Street, 51st Floor  
 6 Philadelphia, Pennsylvania 19103  
 7 215.665.8500  
 8 Appearing on behalf of EEPK and affiliates  
 9  
 10 BINGHAM McCUTCHEEN, LLP  
 11 By: Mr. Jared R. Clark  
 12 399 Park Avenue  
 13 New York, New York 10022  
 14 212.705.7770  
 15 Appearing on behalf of UBS AG  
 16  
 17 SCHIFF HARDIN, LLP  
 18 By: Mr. Rick L. Frimmer  
 19 233 South Wacker Drive, Suite 6600  
 20 Chicago, Illinois 60606  
 21 312.258.5511  
 22 Appearing on behalf of FMS Wertmanagement  
 23  
 24  
 25

Page 5

1 APPEARANCES: (Continued)  
 2  
 3 WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, PC  
 4 By: Mr. Mark R. James  
 5 380 North Old Woodward Avenue, Suite 300  
 6 Birmingham, Michigan 48009  
 7 248.642.0333  
 8 Appearing on behalf of Creditor  
 9  
 10 CADWALADER, WICKERSHAM & TAFT, LLP  
 11 By: Mr. Howard R. Hawkins, Jr.  
 12 One World Financial Center  
 13 New York, New York 10281  
 14 212.504.6422  
 15 Appearing on behalf of Bank of America and  
 16 Merrill Lynch  
 17  
 18 JEROME D. GOLDBERG, PLLC  
 19 By: Mr. Jerome D. Goldberg  
 20 2921 East Jefferson Avenue, Suite 205  
 21 Detroit, Michigan 48207  
 22 313.393.6001  
 23 Appearing on behalf of David Sole  
 24  
 25

Page 6

1 APPEARANCES: (Continued)

2

3 DRINKER, BIDDLE & REATH, LLP

4 By: Mr. Heath D. Rosenblat (VIA TELEPHONE)

5 1177 Avenue of the Americas, 41st Floor

6 New York, New York 10036

7 212.248.3140

8 Appearing on behalf of Creditor

9

10 LIPPITT O'KEEFE, PLLC

11 By: Mr. Ryan C. Plecha (VIA TELEPHONE)

12 370 East Maple Road, Floor 3

13 Birmingham, Michigan 48009

14 248.646.8292

15 Appearing on behalf of Retiree Association

16

17 DENTONS

18 By: Ms. Carole Neville (VIA TELEPHONE)

19 1221 Avenue of the Americas

20 New York, New York 10020

21 212.768.6700

22 Appearing on behalf of Official Committee of

23 Retirees

24

25

Page 7

1 INDEX

2

3 WITNESS

4

KEVYN D. ORR	PAGE
7 Examination by Ms. English	10
8 Examination by Mr. Marriott	129
9 Examination by Mr. Arnault	144
10 Examination by Mr. Goldberg	166
11 Examination by Ms. Green	175

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 8

1 EXHIBITS

2

EXHIBIT	DESCRIPTION	PAGE
5 Ex. No. 1	Sixth Amendment to Forbearance . . .32	
	and Optional Termination Agreement	
7 Ex. No. 2	Supplement to Motion of Debtor . .32	
	for Entry of an Order (I)	
	Authorizing the Assumption of that	
	Certain Forbearance and Optional	
	Termination Agreement Pursuant to	
	Section 365(a) of the Bankruptcy	
	Code, (II) Approving Such	
	Agreement Pursuant to Rule 9019,	
	and (III) Granting Related Relief	
16 Ex. No. 3	DerivActiv document, Document . .47	
	No. 4.4.2.8	
18 Ex. No. 4	Mediators' Recommendation for . .51	
	Approval of Settlement Between the	
	Debtor and Swap Counter-Parties	

19

20

21

22

23

24

25

Page 9

1 Tuesday, December 31, 2013

2 Detroit, Michigan

3 10:32 a.m.

4 \* \* \*

5 VIDEOGRAPHER: This is the beginning of

6 Videotape No. 1 in the deposition of Mr. Kevyn Orr,

7 in the matter of the Detroit Bankruptcy, held at

8 150 West Jefferson, Suite 2500, in Detroit,

9 Michigan, on December 31, 2013, at 10:32 a.m.

10 The court reporter is Karen Fortna, I am

11 Tim Reitman, the videographer, with Litigation

12 Services. This deposition is being videotaped

13 at all times unless specified to go off the

14 record.

15 Could our reporter administer the

16 oath?

17 \* \* \* \*

18 KEVYN D. ORR,

19 having first been duly sworn, was examined and

20 testified as follows:

21 MS. ENGLISH: Good morning, Mr. Orr.

22 THE WITNESS: Good morning.

23 MS. ENGLISH: My name is Caroline

24 English. We've met before.

25 THE WITNESS: Yes.

Page 10

1 MS. ENGLISH: In fact, I've deposed you  
 2 before on this very matter, correct?  
 3 THE WITNESS: Yes.  
 4 EXAMINATION  
 5 BY MS. ENGLISH:  
 6 Q. Could you please state your name and your business  
 7 address for the record?  
 8 A. My name is Kevyn D. Orr. My business address is  
 9 City Hall, Coleman A. Young Municipal Center.  
 10 Q. Now to save time, I'm going to establish the same  
 11 ground rules we've had in your prior depositions in  
 12 this matter; is that fair?  
 13 A. Yes.  
 14 Q. So if you don't understand a question I've asked,  
 15 please ask me to rephrase it; otherwise, I'm going  
 16 to assume that you understand the question, okay?  
 17 A. Okay.  
 18 Q. All right. And I assume that there is nothing that  
 19 would affect your ability to testify truthfully  
 20 this morning?  
 21 A. No.  
 22 Q. And there's nothing that would affect your  
 23 ability -- your memory, your ability to recall  
 24 events this morning?  
 25 A. No.

Page 11

1 Q. And the same should be true for your last  
 2 deposition that we took on August 30; is that  
 3 correct? There was nothing affecting your memory  
 4 at that time or your ability to testify truthfully  
 5 at that time?  
 6 A. No.  
 7 Q. And you're being deposed today with respect to the  
 8 forbearance agreement; is that your understanding?  
 9 A. I believe so.  
 10 Q. And you were already deposed on that subject back  
 11 in August, correct?  
 12 A. Yes.  
 13 Q. You don't intend to change any of the answers you  
 14 gave in your earlier testimony; is that right?  
 15 A. I don't intend to.  
 16 Q. There's nothing in your earlier deposition that  
 17 occurs to you now as having been false or  
 18 inaccurate?  
 19 A. No.  
 20 Q. Now it's my understanding that the City undertook  
 21 some new negotiations with the swap counter-parties  
 22 on December 23rd and 24th, just last week; is that  
 23 right?  
 24 A. That's correct.  
 25 Q. And when I say the swap counter-parties, you know

Page 12

1 who I'm talking about?  
 2 A. Yeah, commonly referred to as Bank of America,  
 3 Merrill Lynch, it's Merrill Lynch Services and also  
 4 UBS.  
 5 Q. Okay. Thank you.  
 6 And the reason that those negotiations  
 7 took place was because the Court issued a  
 8 court-ordered mediation process; is that right?  
 9 A. I believe so.  
 10 Q. Was it otherwise something that you had intended to  
 11 do to reopen negotiations with the swap  
 12 counter-parties?  
 13 A. No.  
 14 Q. No. Okay. What were your goals as you went into  
 15 these new negotiations with the swap  
 16 counter-parties?  
 17 A. To try to reduce the amount of the termination fee.  
 18 Q. Did you have any other objectives?  
 19 A. No, other than to maintain the general structure of  
 20 the prior agreement.  
 21 Q. Okay. Who was present during these negotiations?  
 22 A. Well, the plenary session, which began at nine a.m.  
 23 on the 23rd and lasted until about 8:30, 9:00 that  
 24 night -- it was 12 hours -- and then there was  
 25 another session on the 24th that began at eight

Page 13

1 a.m. and lasted to twelve or one for about another  
 2 five to six hours, 18 hours total.  
 3 At the plenary session, I didn't count  
 4 everyone, but there were -- from the large  
 5 conference room we were in, probably three or four  
 6 dozen people involved at the major session, which  
 7 included people representing the counter-parties as  
 8 well as the COPs parties, and I suppose their  
 9 attorneys and advisors.  
 10 Q. Okay. Who was there on behalf of the City?  
 11 A. I was there, Corinne Ball was there, Bob Hertzberg  
 12 of the Pepper Hamilton firm was there, David Heiman  
 13 was present. I think that's it on behalf of the  
 14 City.  
 15 Q. Okay. And who was there on behalf of the swap  
 16 counter-parties?  
 17 A. I don't recall their names.  
 18 Q. Any of them?  
 19 A. No. There are people I have seen representing the  
 20 swap counter-parties and their attorneys, but right  
 21 now I don't recall their names.  
 22 Q. Okay. And you said there were also parties  
 23 representing COPs holders. Do you recall who was  
 24 there on behalf of the COPs holders?  
 25 A. I do not. I wasn't introduced to all of them and

Page 14

1 some I had never seen before.

2 Q. Okay. How about COPs insurers, were any of those

3 parties there?

4 A. I don't know. I believe so, but I don't know their

5 names and I wasn't introduced to everybody that was

6 there.

7 Q. How about swaps insurers?

8 A. I don't know.

9 Q. Okay. Anyone else you can recall that was present?

10 A. Well, the judges were present. Judge Rosen and

11 Judge Elizabeth Perris and Professor -- advisor to

12 the mediators, whose name escapes me right now.

13 Q. Where did these negotiations take place?

14 A. At the federal courthouse.

15 Q. Did any negotiations take place outside of the

16 mediation at the courthouse?

17 A. Not that I know of.

18 Q. What about before the 23rd? As you'll recall, the

19 trial recessed on the 18th, I believe it was, the

20 Wednesday before. Were there any negotiations with

21 the swap counter-parties between the 18th and the

22 23rd?

23 A. I don't think -- as you're using, I don't think

24 there were any negotiations. I believe the judge

25 held a status conference on Friday, whatever date

Page 15

1 that was, but I don't know if those constitute

2 negotiations.

3 Q. Well, what I'm asking is, did you engage in any

4 talks with anyone on behalf of the swap

5 counter-parties in that interval?

6 A. No.

7 Q. Did anyone else on behalf of the City?

8 A. Not that I know of.

9 Q. It's my understanding that through these

10 negotiations, the City reached some new terms of

11 the forbearance agreement as of the 24th of

12 December; is that right?

13 A. Yes.

14 Q. Can you describe for me why -- let me ask you this:

15 Do you consider the -- I want to call it the new

16 deal, okay, that you reached on the 24th. Is that

17 fair?

18 A. Okay.

19 Q. All right. And that new deal is evidenced by a

20 sixth amendment to the forbearance agreement; is

21 that right?

22 A. Well, I think the new deal is memorialized in both

23 the transcript and the mediation order and

24 recommendation that was entered by the mediators

25 and I think the sixth amendment extends the time to

Page 16

1 execute on the new deal.

2 Q. Okay. So your understanding is that the new deal

3 is reflected in the mediators' closing transcript,

4 the mediators' recommendation and the sixth

5 amendment to the forbearance agreement; is that

6 fair?

7 A. I believe so.

8 Q. Okay. Now do you consider the new deal to be

9 materially better than the original deal you

10 struck?

11 A. Yes.

12 Q. And how do you consider it to be materially better?

13 A. It reduces the sum of the optional termination fee

14 by tens of millions of dollars, approximately

15 \$65 million.

16 Q. Are there any other material differences between

17 the new deal and the original forbearance

18 agreement?

19 A. No.

20 Q. Did you have a second thought about that?

21 A. Well, when you say material, I mean, the reduction

22 in the number is going to drive down the interest

23 payment for the City in terms of the associated DIP

24 loan, but if you're just looking at the swap

25 settlement, the principal change in the swap

Page 17

1 settlement is the reduction in the amount of the

2 optional termination fee.

3 Q. Okay. So what you're telling me is that another

4 benefit to the City is that the reduction in the

5 swaps termination payment will also correspondingly

6 reduce the total amount of the DIP loan?

7 A. Yes.

8 Q. Now I'm going to mark the sixth amendment to the

9 forbearance agreement as an exhibit, but I can't do

10 so yet because Jennifer Green has not yet arrived,

11 okay, and she's got the documents, but she'll be

12 here shortly so we're going to come back to that,

13 okay?

14 A. Okay.

15 Q. But you know what we're talking about when we talk

16 about the sixth amendment to the forbearance

17 agreement?

18 A. Yes, I do.

19 Q. My understanding is that the new deal provides for

20 a fixed termination payment as opposed to a

21 percentage payment that was embodied in the

22 original agreement; is that right?

23 A. Yes.

24 Q. Okay. And the new fixed payment is \$165 million?

25 A. Yes.

Page 18

1 Q. So we've gone from the original forbearance  
 2 agreement that provided a termination, a discount  
 3 of 75 percent of the total termination fee that you  
 4 would otherwise have to pay, and now we're  
 5 paying -- the City is paying a fixed 165 million;  
 6 is that correct?  
 7 A. Yes. The original agreement provided for a  
 8 discount range of 75 to 82 percent and now it's a  
 9 whole number, \$165 million.  
 10 Q. Okay. Why -- why did you opt to change the  
 11 structure in that way, to go from a percentage  
 12 discount to a fixed fee?  
 13 A. During the course of the negotiations, the parties  
 14 wanted to reduce the risk that any sort of interest  
 15 rate fluctuation could potentially increase the  
 16 \$165 million figure, so in order to reduce that  
 17 risk, the parties just agreed we would make that a  
 18 number as opposed to a percent.  
 19 Q. So you were concerned that interest rates would  
 20 fluctuate in a way such that the termination  
 21 payment could increase?  
 22 A. Yes.  
 23 Q. Who -- changing to the fixed fee number, was that  
 24 your idea?  
 25 A. No.

Page 19

1 Q. Whose idea was it?  
 2 A. I believe it was the mediators. Let me clarify my  
 3 answer.  
 4 Q. Sure.  
 5 A. The first day, the 23rd, was very dynamic, shall we  
 6 say, with a number of different meetings. The  
 7 plenary session occurred, the parties broke out  
 8 into separate rooms and then the mediators went  
 9 back and forth between the rooms, shuttled back and  
 10 forth.  
 11 As the parties began to discuss different  
 12 numbers, different concepts came out, so when you  
 13 said was it my idea, there were many times we were  
 14 discussing ways to reduce the risk to the City that  
 15 any agreement we would reach could fluctuate before  
 16 it was actually closed, so it may have been -- I  
 17 don't recall any specific party being responsible.  
 18 I do recall the mediators working very hard to try  
 19 to address that concern on behalf of the City.  
 20 Q. Okay. Fair to say, you didn't go into these  
 21 negotiations thinking, "I'd really like to change  
 22 this deal from a percentage to a fixed fee deal"?  
 23 A. I think that's fair.  
 24 Q. Were other numbers other than the 165 discussed and  
 25 rejected? Was there a proposal to do more or less?

Page 20

1 A. Yes.  
 2 Q. What -- did you propose a lower number?  
 3 A. Yes.  
 4 Q. What number did you propose?  
 5 THE WITNESS: Do you want me to --  
 6 MS. ENGLISH: You're waiting for your  
 7 counsel's instruction as to whether you can answer?  
 8 THE WITNESS: Yeah. The mediation order  
 9 said that things should remain confidential and I  
 10 want to make sure that I'm not violating that  
 11 order.  
 12 MS. ENGLISH: And I absolutely do not  
 13 want you to violate it either and your counsel are  
 14 having a fervent discussion over here, so --  
 15 THE WITNESS: And my counsel will consult  
 16 and decide what I can say.  
 17 MR. SHUMAKER: I think you can answer.  
 18 THE WITNESS: The question was, were  
 19 lower numbers proposed?  
 20 MS. ENGLISH: Yeah.  
 21 THE WITNESS: Yes, there were.  
 22 BY MS. ENGLISH:  
 23 Q. And I think the question actually was, what number  
 24 did you propose?  
 25 A. The lower number we proposed at one point,

Page 21

1 145 million, somewhere -- a range between 145 to  
 2 155.  
 3 Q. Okay. Do you remember where -- let me just back up  
 4 for a minute. In the discussions, did you first  
 5 try to negotiate a different percentage before you  
 6 went to the fixed fee deal?  
 7 A. I believe so, yes.  
 8 Q. Okay. So let's start there, if we can back up just  
 9 for a minute.  
 10 So did you go in with a proposal for a  
 11 different percentage? Is that how the negotiations  
 12 started?  
 13 A. The negotiations started with a plenary session  
 14 where the mediators admonished all parties to be  
 15 flexible and to be receptive to a comprehensive  
 16 solution. We then broke out into separate rooms.  
 17 After a period of time, the mediators would visit  
 18 each group and they eventually came to our group  
 19 and said, more or less, "What do you think is an  
 20 appropriate range?"  
 21 We said, "We would like to see the range  
 22 go as low as possible."  
 23 We understood that we had been admonished  
 24 by Judge Rhodes that the original percentage that  
 25 we had was not particularly attractive to the

Page 22

1 Court, I think it's fair to say, and therefore, we  
 2 were going to try to drive that percentage down as  
 3 low as possible.  
 4 We initially began talking about figures  
 5 in the high 50s percentage range, low 50s range,  
 6 somewhere in there, to get a feel for the  
 7 mediators' since they gave us some feedback as far  
 8 as what they thought might be reasonable and  
 9 receptive, having talked to the other parties.  
 10 They did not disclose to us what those confidential  
 11 conversations were with the other parties, but they  
 12 tried to give us a sense of what would be a fair  
 13 range as a good ask for the City going through  
 14 negotiations and they would take that generally  
 15 back to the other parties, and after a period of  
 16 time, come back to us with a range, we would then  
 17 typically reject that range and go back in another  
 18 way, as standard negotiations go.  
 19 Q. Okay. I think you've answered my question, so  
 20 would you mind if I cut you off?  
 21 A. Sure. No problem. I'm just trying to give you an  
 22 idea of the fluid nature of the negotiations.  
 23 Q. And I appreciate that. And I also appreciate how  
 24 open and candid you're being about the  
 25 negotiations.

Page 23

1 A. Yes, right.  
 2 Q. I want to go back in your answer. You said that  
 3 the starting range was in the 50 percent range for  
 4 the City; is that correct?  
 5 A. Yes.  
 6 Q. Okay. Why didn't you decide to go in with a  
 7 starting point that was lower than a 50 percent  
 8 range?  
 9 A. My understanding from my attorneys was that -- can  
 10 I discuss the conference with the Court?  
 11 MR. SHUMAKER: The conference with the  
 12 Court --  
 13 THE WITNESS: With Judge Rhodes.  
 14 MR. SHUMAKER: In open court?  
 15 THE WITNESS: No.  
 16 MS. ENGLISH: Perhaps I could clarify the  
 17 question because I -- I understand the City is not  
 18 waiving the attorney-client privilege; is that  
 19 correct?  
 20 THE WITNESS: Yeah.  
 21 MR. SHUMAKER: Right, yes.  
 22 MS. ENGLISH: So on the basis of that  
 23 assertion, I'm not intending to ask you questions  
 24 about your communications with your attorneys that  
 25 are protected by the attorney-client privilege.

Page 24

1 THE WITNESS: Okay.  
 2 BY MS. ENGLISH:  
 3 Q. What I'm asking you -- you were the one negotiating  
 4 on behalf of the City, correct?  
 5 A. Yes.  
 6 Q. Okay. So what I'm asking you is, you said your  
 7 starting point was in the 50 percent range?  
 8 A. The 50s.  
 9 Q. Correct, the 50 percent range.  
 10 A. Right.  
 11 Q. Why didn't you go in with a lower starting point?  
 12 A. It was communicated to me that that was an  
 13 appropriate range based upon impressions that my  
 14 counsel had due to a number of conferences.  
 15 Q. Did you not make an independent assessment separate  
 16 from your conversations with your counsel as to  
 17 what an appropriate starting range would be?  
 18 A. An appropriate starting range independent of me  
 19 would be nothing, but there are a number of  
 20 different communications with my attorneys and  
 21 their impressions of what was appropriate in the  
 22 mediation that helped us decide on the range that  
 23 we should start out with.  
 24 Q. Well, what I'm asking you is what did you think,  
 25 though, not what your attorneys thought. Did you

Page 25

1 think that 50 percent was the appropriate range to  
 2 start at?  
 3 A. I think, in consultation with my attorneys, based  
 4 upon their consultation and feedback they get from  
 5 a number of different sources. So they advise me  
 6 and then I make a conclusion. Did I think  
 7 50 percent -- 50s. I don't want to leave you with  
 8 the impression that it was 50 percent.  
 9 Q. Okay. In the 50s, we'll say.  
 10 A. In the 50s. I thought that that was an appropriate  
 11 range, yes.  
 12 Q. Did the swap counter-parties have a starting point  
 13 at the beginning of the negotiations that you  
 14 understood?  
 15 A. I don't know. It was communicated to us by the  
 16 mediator, so I don't know what their point was.  
 17 Q. Did you not have negotiations directly with the  
 18 swap counter-parties? Did all of the negotiations  
 19 go through the mediator?  
 20 A. Yes.  
 21 Q. Okay. At what point in time did you switch from  
 22 proposing a percentage deal to a fixed fee deal?  
 23 A. I think that was later in the first day.  
 24 Q. Do you remember what sparked that change?  
 25 A. I believe, after a series of negotiations on the

1 percentage through the day, that my team and I  
 2 began to think that rather than risk interest rate  
 3 fluctuations -- because I think at some point  
 4 during the day we actually reached out to our  
 5 investment bankers to ask what interest rates we're  
 6 doing, for instance, with the swaps, so we would  
 7 have an idea what they did any given day, and I  
 8 think they -- they actually were dropping, so the  
 9 price might have gone up for us. We began to  
 10 think at that point, well, rather than stick to a  
 11 percent, let's go to a whole number, so we reduce  
 12 that risk.  
 13 Q. You said -- when you say your investment bankers,  
 14 you're talking about Miller Buckfire; is that  
 15 right?  
 16 A. Yes.  
 17 Q. And you said you did reach out to them to assess  
 18 how the current interest rates would affect a  
 19 termination payment; is that right?  
 20 A. Yes, uh-hum.  
 21 Q. So when you were proposing a deal that was in the  
 22 range of the 50s percentile, what did you assess  
 23 that payment to calculate to be?  
 24 MR. SHUMAKER: You're talking about a  
 25 number?

1 MS. ENGLISH: Yeah.  
 2 BY MS. ENGLISH:  
 3 Q. So in other words, if you had settled at your  
 4 original proposal, which was in the range of the  
 5 50s percentile, what would your swaps termination  
 6 payment have been?  
 7 A. It might have been around 150 or 155 million range.  
 8 Don't keep me to the specific percentages because  
 9 when I say 50s, it could be 58, it could be 59, but  
 10 generally, that was a number that we were looking  
 11 at.  
 12 Q. Okay. So in your mind, as you're negotiating and  
 13 you're making the proposal to settle somewhere in  
 14 the range of 50 to 60 percent, your understanding  
 15 was that that would equate to a termination payment  
 16 of roughly 150 to 155 million?  
 17 A. Yes, somewhere in that neighborhood, yes.  
 18 Q. I would like to ask you a little bit more about the  
 19 interest rate analysis that Miller Buckfire might  
 20 have done. When did you contact them to do an  
 21 interest rate analysis?  
 22 A. Frankly, an interest rate analysis probably gives  
 23 it more heft than it was. We made a call to Jim  
 24 Doak at Miller Buckfire, asked him, "What are  
 25 interest rates doing today?" He said, "Oh, they're

1 going down."  
 2 Q. Oh, I see.  
 3 A. "So what impact might that have?"  
 4 He said, "Oh, it might raise the amount if  
 5 you use a percentage."  
 6 Q. And other than the phone call you made to Mr. Doak,  
 7 did you request any other interest rate analysis  
 8 from Miller Buckfire?  
 9 A. I think we had -- I'm trying to recall. I think we  
 10 may have had more than just one call during the  
 11 course of the day to get an idea of what was going  
 12 on, but here again, I don't want you to get the  
 13 impression that when I say interest rates analysis  
 14 it was complex, it was just a benchmark. We wanted  
 15 to get an idea about what the outcome would be  
 16 based upon negotiations. And at some point during  
 17 that afternoon, we sort of evolved as a team to the  
 18 concept of let's switch out of percentages because  
 19 that allows too much fluctuation and volatility,  
 20 let's go with a number that we can lock in so that  
 21 number remains fixed with whatever comes out of  
 22 this negotiation.  
 23 Q. So would I be -- is it correct that when you --  
 24 before you went into these negotiations on the  
 25 23rd, you did not ask Miller Buckfire to run an

1 analysis that looked at trending interest rates and  
 2 how that would -- might affect your termination  
 3 payment, say, going into the future?  
 4 A. Well, here again, I'm going to stay away from  
 5 analysis there. I had many calls with Miller  
 6 Buckfire and we asked what are interest rates  
 7 doing, what's the cost of the termination fee.  
 8 Sometimes those occurred day to day, sometimes  
 9 several days passed, so we have those conversations  
 10 regularly.  
 11 Q. Did you get anything in writing from Miller  
 12 Buckfire that assessed interest rates and their  
 13 impact on your potential termination payment?  
 14 A. During the negotiations?  
 15 Q. At any time in the last two weeks.  
 16 A. I don't recall anything in writing. There may have  
 17 been emails, but I don't recall anything.  
 18 Q. Did Miller Buckfire advise you that -- strike that.  
 19 Do you have an understanding that over,  
 20 say, the past six months, interest rates have  
 21 generally been increasing?  
 22 A. I don't know.  
 23 Q. You don't know?  
 24 A. No. When we have conversations, the rates can  
 25 fluctuate back and forth. I really haven't looked



Page 30

1 at the general -- well, that's not true. We have  
 2 had a conversation of the general trending, so  
 3 there's a general understanding that rates are  
 4 tipping up a little bit, yes.  
 5 **Q. Okay. And do you also have an understanding that**  
 6 **interest rates -- forecasts show that interest**  
 7 **rates are likely to continue to increase?**  
 8 **A. No, I don't have that understanding.**  
 9 **Q. You don't?**  
 10 **A. No. I don't think I've looked at any forecast**  
 11 **along those lines for long term.**  
 12 **Q. You have not looked at any forecast projecting**  
 13 **interest rates going into the future?**  
 14 **A. No, you said forecast.**  
 15 **Q. Interest rates.**  
 16 **A. Yeah, interest rates. I mean, from time to time,**  
 17 **you may -- I may read the financial pages and I may**  
 18 **read stories about what interest rates may do, so**  
 19 **on and so forth, but when you said forecast, I**  
 20 **don't want to give the impression that there was**  
 21 **something in particular that we're looking at. I**  
 22 **read the financial pages and get different views on**  
 23 **what interest rates may or may not do.**  
 24 **Q. But are you telling me you have no view, no**  
 25 **understanding as to where the market is predicting**

Page 31

1 interest rates to go in the future?  
 2 **A. No. As one of my investment banker friends told**  
 3 **me, you can't catch a falling knife, so trying to**  
 4 **predict what the rates may do on any given time may**  
 5 **or may not be accurate.**  
 6 **Q. So is it true then that you never tried to predict**  
 7 **how interest rates might affect your termination**  
 8 **payment liability out in the future?**  
 9 **A. No. As I said, from time to time, we have calls**  
 10 **about what the rates are doing on a daily basis,**  
 11 **what they might do, I read financial papers on what**  
 12 **they might do, but no one -- to the best of my**  
 13 **knowledge, we haven't tried to predict with, you**  
 14 **know, scientific certainty what interest rates may**  
 15 **or may not do in the future.**  
 16 **Q. Well, hasn't the City, in conjunction with Miller**  
 17 **Buckfire, predicted that over time interest rates**  
 18 **are likely to increase and therefore the**  
 19 **termination payment is likely to decrease? Isn't**  
 20 **that true?**  
 21 **A. I think there is a general expectation that they**  
 22 **might increase and payments might decrease; yes, I**  
 23 **think that's fair.**  
 24 MR. SHUMAKER: Caroline --  
 25 MS. ENGLISH: Do you need your break?

Page 32

1 We're going to go off the record for ten minutes.  
 2 Mr. Orr has a call with the governor.  
 3 VIDEOGRAPHER: Off the record at 11:00  
 4 a.m.  
 5 (Whereupon a break was taken  
 6 from 11:00 a.m. to 11:20 a.m.)  
 7 VIDEOGRAPHER: We are back on the record  
 8 at 11:20 a.m.  
 9 (Marked for identification:  
 10 Deposition Exhibit Nos. 1-2.)  
 11 BY MS. ENGLISH:  
 12 **Q. Mr. Orr, in front of you, I have taken the liberty**  
 13 **of marking the forbearance -- the sixth amendment**  
 14 **to the forbearance agreement as Exhibit 1.**  
 15 **A. Yes.**  
 16 **Q. And can you just review that document for a moment**  
 17 **and -- are you familiar with this document, sir?**  
 18 **A. Yes, I am.**  
 19 **Q. Can you identify it for the record?**  
 20 **A. Yes. It's the sixth amendment to the forbearance**  
 21 **and optional termination agreement, which**  
 22 **essentially extends the time for the exercise of**  
 23 **the optional termination amount until January 31st,**  
 24 **2014.**  
 25 **Q. Okay. And when we were talking earlier about the**

Page 33

1 "new deal" that was reached on Christmas Eve, this  
 2 is reflective of that new deal; is that correct?  
 3 **A. Yes.**  
 4 **Q. I want to return to our discussion about the**  
 5 **negotiations that took place on the 23rd and 24th.**  
 6 **A. Yes, uh-hum, yes.**  
 7 **Q. And I want to go back to your testimony that your**  
 8 **starting point was in the range of 50 to 60 percent**  
 9 **in terms of restarting negotiations with the swap**  
 10 **counter-parties.**  
 11 **A. Yes.**  
 12 **Q. And you testified that based on consultation with**  
 13 **your attorneys, your assessment was that that was a**  
 14 **reasonable starting point --**  
 15 **A. Yes.**  
 16 **Q. -- to undertake?**  
 17 **A. Uh-hum.**  
 18 **Q. Can you tell me why you thought a range of 50 to**  
 19 **60 percent was reasonable?**  
 20 **A. It was relayed to me that based upon impressions,**  
 21 **if not discussions my attorneys had had, based upon**  
 22 **events that occurred in the courtroom when I wasn't**  
 23 **there, as well as a status conference I understand**  
 24 **they had with Judge Rhodes on the Friday preceding**  
 25 **the 23rd, that there was an interest by the**

1 Bankruptcy Court, as had been expressed openly in  
 2 court, that the original number was not being  
 3 perceived as perhaps appropriate and should be  
 4 lower and that that percentage was a more  
 5 appropriate percentage to at least start at or try  
 6 to achieve as an aspiration of what we would like  
 7 to get to.  
 8 Q. Starting at a 50 to 60 percent number, does that  
 9 mean that you only ascribed a value to the claims  
 10 you would have against the swap counter-parties as  
 11 worth 50 to 60 cents on the dollar?  
 12 A. I don't know if you're going to draw the conclusion  
 13 that we only ascribed a value. We were trying to  
 14 get to a settlement agreement to release liens and  
 15 get the cash flow going from the casino revenue, so  
 16 I don't know if you would draw that conclusion.  
 17 Q. I'm going to return to that issue a little bit  
 18 later and ask you some more detailed questions on  
 19 claims and defenses, but I want to stick with the  
 20 negotiations and your mindset right now.  
 21 You testified that you had a call with  
 22 Mr. Doak or maybe more than one call?  
 23 A. Yes.  
 24 Q. And you talked about how interest rates might  
 25 impact the termination agreement, and you testified

1 A. Yeah, I think -- I think that number, it was  
 2 somewhere in the range of 230, somewhere around  
 3 there.  
 4 Q. Okay. When you began looking at doing the fixed  
 5 fee deal which ultimately became 165 million, did  
 6 you do any calculations to determine what  
 7 percentage of your total termination liability the  
 8 \$165 million represented?  
 9 A. Yeah, I think we did.  
 10 Q. And what was that calculation?  
 11 A. Well, it depends upon the date you use. If you go  
 12 back to the date in the original motion, I think  
 13 it's somewhere in the neighborhood of 62 or  
 14 63.7 percent.  
 15 Q. Well, what I'm asking, though, is as of the date  
 16 you're doing the negotiations, so it's December --  
 17 now --  
 18 A. December 23rd.  
 19 Q. When did the 165 million come about? Was that on  
 20 the first day or the second day?  
 21 A. That was on the first day.  
 22 Q. The first day. Okay. So it's December 23rd.  
 23 A. Yes.  
 24 Q. Did you know, as you're negotiating the  
 25 165 million, you're considering whether to take

1 that your starting point you determined to be  
 2 roughly around 150 to 155 million; is that right?  
 3 A. Somewhere in that neighborhood, yes.  
 4 Q. Okay. So as of the date you're doing these  
 5 negotiations, the 23rd and the 24th, what did you,  
 6 in conjunction with Miller Buckfire, determine was  
 7 the total termination payment as of that date?  
 8 A. I don't know if we determined the total termination  
 9 payment as of that date. We just talked in general  
 10 terms of what it might be.  
 11 Q. And what did you think it might be?  
 12 A. I don't -- to be fair, Ms. English, I don't really  
 13 recall what it might be that day, we were just  
 14 talking about what interest rates might do. I  
 15 don't recall us having discussions about what the  
 16 payment might be that day.  
 17 Q. You didn't think that was important when you went  
 18 into the negotiations to know what your current  
 19 liability was that you were facing?  
 20 A. I just don't recall it, Ms. English. That's all  
 21 I'm saying.  
 22 Q. Do you recall having an understanding at that point  
 23 in time what the current deal equated to in terms  
 24 of your termination payment, in other words, the  
 25 75 percent deal, what number that was?

1 that deal, did you know what percentage of your  
 2 total termination liability that represented?  
 3 A. Yes, I think it was somewhere in the neighborhood  
 4 of about 63 to 64 percent.  
 5 Q. And your understanding is that was off a number  
 6 that was approximately 230 million, correct?  
 7 A. Approximately in that range, yes.  
 8 Q. Now I would like you to take a look at the second  
 9 document I've placed --  
 10 A. No, no. Wait a minute. Let me correct you.  
 11 The 230 was the amount of the original  
 12 range for the 72 to 75 to 82 percent, but that  
 13 number was off of a higher number in the motion.  
 14 The 65 would have been off a higher number in the  
 15 motion, which could have been more in the  
 16 neighborhood of some 300 or so, so I think I was --  
 17 Q. Okay. Let's try to clarify because I think it's  
 18 really important for this --  
 19 A. I think I can clarify this for you.  
 20 Q. Okay.  
 21 A. You know, if you do numerator/denominator, however  
 22 you want to do it, the total amount of the  
 23 obligation for the termination fee without a  
 24 discount would probably be somewhere in the  
 25 neighborhood of \$300 million or so.

1 Q. And as of what date?  
 2 A. I believe that's as of the date of the original  
 3 motion. I don't recall the exact date that it was  
 4 filed.  
 5 Q. In other words, in July we're talking about, when  
 6 the original the motion was filed --  
 7 A. Sure.  
 8 Q. -- the total termination amount as of July, in  
 9 July, was 300 million?  
 10 A. Yeah, somewhere in that neighborhood, yeah.  
 11 Q. Do you know -- I'm going to try to break this down  
 12 into pieces if we could. Do you know what the  
 13 total termination amount was as of December 23rd?  
 14 A. No, I don't recall. I don't recall.  
 15 Q. Did you know on December 23rd?  
 16 A. I think we -- I think we had a discussion that day  
 17 about what the range of the numbers could be,  
 18 depending upon the factors. I just don't recall if  
 19 a specific number was discussed that day.  
 20 Q. I'm not trying to be disrespectful, but it was only  
 21 a week ago.  
 22 A. I understand, but I'm trying to be accurate, so I  
 23 don't want to mislead you because -- let me go back  
 24 a little bit and maybe this will clarify the  
 25 process.

1 Another couple hours went by. I believe  
 2 it was after lunch because we broke for lunch. The  
 3 mediators came back and said, "That's going to be a  
 4 bridge too far" -- I think that phrase was used --  
 5 "as far as that number." There was another  
 6 discussion of a number in the 170 or high 60s  
 7 range. We said that was going to be too much.  
 8 They left again.  
 9 Later in the afternoon, they came back  
 10 in and said it appears that a number around  
 11 165 million would be an appropriate number. We  
 12 said, "No, we would like that number to be lower."  
 13 They said, "You're not going to get there." That's  
 14 what the mediators said. We said, "Well, we would  
 15 like to push for it." They said, "Well, let me  
 16 tell you how hard it's been." We had some  
 17 discussion about how hard it had been for them to  
 18 get the counter-parties down to 165. In fact, I  
 19 believe Chief Judge Rosen had threatened -- because  
 20 he did not feel that the counter-parties were  
 21 moving throughout the day -- had threatened to hold  
 22 them in contempt for not bringing a principal with  
 23 them who had the authority to authorize an  
 24 agreement that day and holding them in contempt or  
 25 entering a default judgment because they had not

1 We started at nine in the plenary session,  
 2 then we broke out in different rooms. As we went  
 3 in different rooms, I said the mediators went  
 4 around and met with different parties. We were in  
 5 our room for several hours before the mediators  
 6 worked their way back to us.  
 7 Q. When you say, "We were in our room," just City  
 8 representatives?  
 9 A. Just City -- just me, Corinne Ball, David Heiman  
 10 and Mr. Hertzberg, okay, were in our little room,  
 11 the jury room behind the courtroom on the eighth  
 12 floor, I think it is.  
 13 The mediators came in and said, "Well,  
 14 we've had some discussions. Where would you like  
 15 to start?"  
 16 We thought, "Well, we thought we would  
 17 like to come in somewhere in the neighborhood of a  
 18 50 percent range or \$145 million."  
 19 I'm going to talk about the discourse with  
 20 the mediators if that's okay. The mediators said,  
 21 "That's probably going to be too high based upon  
 22 our discussions with the other parties, but we'll  
 23 take that back, see what their response is." We  
 24 had some initial discussions about what the  
 25 potential exposure was, they left.

1 brought that principal with them that day to get  
 2 them to move. That was later in the afternoon.  
 3 Even after that -- this was now going into  
 4 the evening because I believe it was dark -- there  
 5 was further discussions that they, as we understood  
 6 it, had to make calls to principals who were not in  
 7 the building that day to try to get authority to  
 8 get the 165. They were threatened again with a  
 9 default judgment, I believe.  
 10 We again asked if it was possible to get  
 11 to 155, the mediators told us, "No, 165 is the  
 12 number. That's the best number you're going to get  
 13 today and I'm going to hold them in contempt if  
 14 they don't agree to it."  
 15 And eventually later that evening, about  
 16 seven, 8:00, we reconvened and the parties  
 17 confirmed that the number was 165.  
 18 Q. So you reached your deal on the 23rd then?  
 19 A. We did in the -- there was some additional  
 20 discussion the following morning about whether or  
 21 not that could be a whole number or could they  
 22 convert that to a percentage. We said we don't  
 23 care for whatever -- we didn't understand why they  
 24 were focused on a percentage and we didn't care as  
 25 long as that number would never exceed 165;

1 however, they needed to convert it in some way that  
 2 the net had to be 165. And that was a further  
 3 discussion earlier that morning.  
 4 The parties went back and forth again. It  
 5 was our view that the number was 165 firm, not a  
 6 percentage that could fluctuate, it was their view  
 7 that they wanted to convert it to a percentage  
 8 because numbers might go up or down. We said no.  
 9 The Court again came in and said, "This is going to  
 10 be the deal we're going to have and I'm going to  
 11 announce it on the record and all parties are going  
 12 to come out and confirm that that's the deal on the  
 13 record," and we did that at approximately 12:00.  
 14 Q. Okay.  
 15 A. On the second day.  
 16 Q. I appreciate your narrative. I'm going to try to  
 17 get us back to a little bit more of a question and  
 18 answer structure.  
 19 A. Sure. I wanted to get that out for you. That's  
 20 the way it went.  
 21 Q. All right. So -- but I do appreciate your giving  
 22 us the big picture.  
 23 Okay. The question that I was asking you,  
 24 however, went to -- I'm trying to understand your  
 25 mindset and your goals as you go into these

1 phone, it's the debtors' supplement to their  
 2 motion, Docket No. 2341.  
 3 BY MS. ENGLISH:  
 4 Q. Mr. Orr, do you recognize this document?  
 5 A. No, I don't think I've ever seen this document.  
 6 Q. Did you have any discussions as to what the  
 7 \$165 million payment represented in terms of a  
 8 discount off your liability as of December 10th?  
 9 A. As of December 10th?  
 10 Q. Yes.  
 11 A. Did I have any discussions within what timeframe?  
 12 Are you talking about on the 23rd and 24th?  
 13 Q. Well, I understand that you haven't seen this  
 14 document before.  
 15 A. Right.  
 16 Q. I'm going to represent to you this was a public  
 17 filing that was made disclosing the terms of the  
 18 new deal.  
 19 A. I believe you.  
 20 Q. I understand you've never seen it.  
 21 A. Right.  
 22 Q. And I'm also going to represent to you, for the  
 23 purposes of my questions, that in this document,  
 24 the City says that the \$165 million represents a  
 25 62 percent discount on the termination fee --

1 negotiations, and while you testified that the  
 2 total termination liability without any discounts  
 3 as of July was roughly 300 million, I believe I  
 4 understood you to testify that you didn't know what  
 5 that total liability was as of December 23rd; is  
 6 that correct?  
 7 A. I didn't know the exact number. We may have  
 8 discussed the range of what it could have been or  
 9 whether it was coming down, but I just don't recall  
 10 the exact number.  
 11 Q. Okay. Do you recall the range that you understood  
 12 it to be as you were negotiating?  
 13 A. Yeah, it was, you know, approximately in the high  
 14 twos.  
 15 Q. High 200s?  
 16 A. Yeah.  
 17 Q. And you can't be any more specific than that? It's  
 18 fine if you can't. I'm not trying to -- if your  
 19 answer is, "I don't know," that is your answer.  
 20 A. Yeah, I just don't recall. We had a little sheet  
 21 that we were writing it down and that sheet is  
 22 somewhere, I just don't recall.  
 23 MS. ENGLISH: Now let's look at the  
 24 second document I have put before you, which I have  
 25 premarked as Exhibit No. 2. For the people on the

1 A. Yes.  
 2 Q. -- as of the date of its omnibus reply, which is  
 3 December 10th.  
 4 A. Okay.  
 5 MR. SHUMAKER: You said discount,  
 6 counsel. It doesn't say discounted. The discount  
 7 would be 38 percent, correct?  
 8 MS. ENGLISH: Correct.  
 9 MR. SHUMAKER: Okay.  
 10 BY MS. ENGLISH:  
 11 Q. But I think we're all using the percentage of the  
 12 total termination, right?  
 13 A. I know what you mean. I know what you mean.  
 14 Q. All right. So I guess I'm wondering, even though  
 15 you didn't see this document, did you have any  
 16 discussions with your advisors or anyone else on  
 17 behalf of the City that the 165 million represented  
 18 62 percent of the total termination fee as of  
 19 December 10th?  
 20 A. We had a discussion on the 23rd that the 165, as I  
 21 said before, be in that range -- I think I said  
 22 62.7 or 62 percent, something in there, 63 percent,  
 23 whatever that range is. I don't know if we indexed  
 24 that to December 10th. I don't recall that.  
 25 Q. When you went into the negotiations, did you have

Page 46

1 in front of you data for the amount of the  
 2 termination payment or the discount as of  
 3 December 10th? Do you recall that being a set of  
 4 information you were working with?  
 5 A. We had a bunch of information in front of us. I  
 6 don't recall if it was as of December 10th.  
 7 Q. Do you do any assessment -- the new deal is  
 8 expected, if approved, to close on January 31st; is  
 9 that correct?  
 10 A. On or before.  
 11 Q. When do you expect it to close?  
 12 A. As soon as we get authority, approval for the deal  
 13 and we're able to close, whenever we can.  
 14 Q. And there's a notice period that you have to give  
 15 before you can close; is that right?  
 16 A. There's a timeframe involved, yes.  
 17 Q. Okay. And January 31 is the last day it could  
 18 close, correct?  
 19 A. Well, January 31, I believe, is the date that was  
 20 extended by the sixth amendment.  
 21 Q. So is that correct?  
 22 A. Yeah, per the sixth amendment, yes, that's correct.  
 23 Q. Okay. So did you do any analyses as to what the  
 24 total termination liability would be on January 31,  
 25 2014?

Page 47

1 A. No.  
 2 (Marked for identification:  
 3 Deposition Exhibit No. 3.)  
 4 MS. ENGLISH: I would like you to look at  
 5 this document that I've marked Exhibit No. 3. For  
 6 the people on the phone, this is City Data Room  
 7 Document 4.4.2.8, I believe. It's the City of  
 8 Detroit valuation as of November 29th.  
 9 BY MS. ENGLISH:  
 10 Q. Mr. Orr, do you recognize this document?  
 11 A. No, I've never seen this document.  
 12 Q. Do you recall -- have you ever reviewed any -- you  
 13 can put it away if you don't recognize it. That's  
 14 just fine.  
 15 Do you recall having seen any documents  
 16 that assessed the total termination liability?  
 17 A. Yes.  
 18 Q. Okay. What documents did you review that assessed  
 19 the City's potential termination liability?  
 20 MR. SHUMAKER: As of any particular date  
 21 or...  
 22 MS. ENGLISH: As of any particular date.  
 23 THE WITNESS: From time to time, there  
 24 are various emails that are sent and other  
 25 documents that have been sent from March that talk

Page 48

1 about what the potential exposure or termination  
 2 may be on any particular day.  
 3 BY MS. ENGLISH:  
 4 Q. But you don't recall ever -- have you reviewed any  
 5 documents that look like Exhibit No. 3?  
 6 A. I may have reviewed documents that are  
 7 spreadsheets, I just don't remember this particular  
 8 document.  
 9 Q. Do you remember a document that looked like this  
 10 that might have had a different date on it?  
 11 A. There was no document by DerivActiv like this.  
 12 There may have been -- this information regarding  
 13 what appears to be the values of -- potential net  
 14 value of the swap obligations may have been related  
 15 in other forms, but I don't recall seeing a  
 16 document like this.  
 17 Q. Okay. Do you see on this document -- you just  
 18 testified you understand that this shows the value  
 19 of the POC termination liability, correct?  
 20 A. That's what it appears to show.  
 21 Q. Okay. And do you see in the far right-hand column  
 22 at the bottom, the total liability is roughly  
 23 \$277.7 million?  
 24 A. Yes.  
 25 Q. Do you recall having an understanding at the end of

Page 49

1 November that the total termination liability the  
 2 City was facing on the swaps was \$277.7 million?  
 3 A. No, I don't recall that specific number.  
 4 Q. Do you have any reason to question the accuracy of  
 5 this document?  
 6 A. No, I just -- I have no reason to question the  
 7 accuracy of the document.  
 8 Q. Okay. Do you know who on behalf of the City would  
 9 have been looking at assessments like this?  
 10 A. I don't know, but I would think that our investment  
 11 bankers and perhaps our accountants would look at  
 12 data like this.  
 13 Q. So Miller Buckfire and Ernst & Young?  
 14 A. Yes. Maybe -- let me include maybe our attorneys,  
 15 I don't know for sure, but they might be looking at  
 16 documents like this.  
 17 Q. Did you ever ask any of your advisors specifically  
 18 to assess the termination liability at different  
 19 points in time and report to you what it was?  
 20 A. From time to time, they would report what the  
 21 potential termination liability was from time to  
 22 time.  
 23 Q. But they didn't report what it was to you in  
 24 November?  
 25 A. They may have reported in November. What I'm

Page 50

1 saying to you, I don't recall seeing this document.  
 2 There have been -- Ms. English, let me say this:  
 3 There are emails that go back and forth between  
 4 attorneys, investment bankers, to me, there are  
 5 conference calls, there are a number of discussions  
 6 at any given time.  
 7 **Q.** Sure. Let me ask another one --  
 8 **A.** If you're trying to stick me to a document on a  
 9 certain day, I just don't recall -- I've never seen  
 10 this document, but I don't recall a specific  
 11 document on a certain day.  
 12 **Q.** That's fine.  
 13 When was the last time, the most recent  
 14 time you can recall getting a report on the total  
 15 termination liability the City faced?  
 16 **A.** Probably sometime in the last few weeks.  
 17 **Q.** And how did that report come to you?  
 18 **A.** Probably verbal.  
 19 **Q.** From whom?  
 20 **A.** It would have been either Ken Buckfire or Jim Doak.  
 21 **Q.** You don't remember which it was?  
 22 **A.** No, sometimes we -- conversations go back and  
 23 forth, so I don't remember specifically who it was.  
 24 **Q.** And do you remember what the report was as to how  
 25 much the total termination liability was?

Page 51

1 **A.** As I said, I believe it was in the high twos. I  
 2 don't remember the exact number.  
 3 (Marked for identification:  
 4 Deposition Exhibit No. 4.)  
 5 MS. ENGLISH: I'm going to show you  
 6 another document that I'm going to mark as Exhibit  
 7 No. 4. For the people on the phone, this is Docket  
 8 No. 2343, the mediators' recommendation.  
 9 BY MS. ENGLISH:  
 10 **Q.** Mr. Orr, do you recognize this document?  
 11 **A.** Yes.  
 12 **Q.** Can you identify it for the record, please?  
 13 **A.** Yes. I believe this is the recommendation of  
 14 Chief Judge Rosen and Judge Perris of the swap  
 15 settlement and recommendation for approval of the  
 16 settlement.  
 17 **Q.** Did you know this recommendation was going to be  
 18 filed by the mediators?  
 19 **A.** I think the judge said on the morning around  
 20 noon on the 24th that he was going to file a  
 21 recommendation; yes, I think he said that in the  
 22 transcript.  
 23 **Q.** Did you have any input into what went into the  
 24 mediators' recommendation?  
 25 **A.** No.

Page 52

1 **Q.** Do you see on page 2, towards the top, where the  
 2 mediators say that the new deal represents a  
 3 savings of approximately 65 million?  
 4 **A.** Yes.  
 5 **Q.** Do you know how that \$65 million number was  
 6 derived?  
 7 **A.** I believed it was from taking the 165 and backing  
 8 out the 165 from the 230 that was in the original  
 9 post-petition financing motion.  
 10 **Q.** And the 230 number representing a 75 percent  
 11 discount of the total termination liability,  
 12 correct?  
 13 **A.** Yes, approximately that sum, yes.  
 14 **Q.** And then there's another number in the mediators'  
 15 report as well, a \$25 million number. Do you know  
 16 how that number was derived?  
 17 **A.** As I said, I didn't have any input into it. I  
 18 think that's a calculation of -- well, I'm  
 19 speculating. I think that's a calculation of what  
 20 the -- I think they're trying to refer back to what  
 21 the 65 million was the original number and what  
 22 that \$25 million number could have been at the time  
 23 of the assumption agreement.  
 24 **Q.** I'm not sure I understand. Do you know what the  
 25 \$25 million number represents? What does that

Page 53

1 mean?  
 2 MR. SHUMAKER: Objection. Foundation.  
 3 You can answer what your understanding is.  
 4 THE WITNESS: Yeah, well, I don't want to  
 5 speak for the --  
 6 MS. ENGLISH: No, and I'm not asking  
 7 you -- I'm asking you --  
 8 THE WITNESS: What I think it's trying to  
 9 say is --  
 10 MS. ENGLISH: Yes.  
 11 THE WITNESS: -- as it says here,  
 12 "...allows the City to refinance its debt, saving  
 13 approximately 65 million from the original terms of  
 14 the forbearance agreement." So we talked about  
 15 that number, the 65 is 165, 230, approximately  
 16 25 million at the time of the hearing on the  
 17 assumption agreement, and I think they're saying  
 18 that -- I think -- I want to be careful.  
 19 MS. ENGLISH: And again, Mr. Orr, if you  
 20 don't know, "I don't know," is a perfectly  
 21 acceptable answer.  
 22 THE WITNESS: Yeah.  
 23 MS. ENGLISH: I'm only trying to  
 24 understand what you know and what you understand.  
 25 THE WITNESS: Rather than speculate, I'll

Page 54

1 say I don't know.  
 2 BY MS. ENGLISH:  
 3 **Q. Okay. Was a \$25 million figure as a savings number**  
 4 **something that was discussed in the settlement**  
 5 **negotiations?**  
 6 **A. I don't recall a \$25 million figure. I recall us**  
 7 **talking about the 165 and how much that would be**  
 8 **off of the 230.**  
 9 **Q. I would like to ask you about another change to the**  
 10 **forbearance agreement, something that you mentioned**  
 11 **earlier, which is -- actually, you might not have**  
 12 **mentioned this earlier.**  
 13 **Is my understanding correct that after**  
 14 **January 31st, 2014, the swap counter-parties can**  
 15 **terminate at will, if you will?**  
 16 MR. SHUMAKER: Object to the form.  
 17 THE WITNESS: Yeah, it's my understanding  
 18 that the sixth amendment expires on January 31st if  
 19 the optional termination payment is not made and  
 20 whatever the parties' rights are would be what they  
 21 are at that time.  
 22 BY MS. ENGLISH:  
 23 **Q. Right. And in the prior forbearance agreement,**  
 24 **isn't it correct that the forbearance period ran**  
 25 **out through June of 2014?**

Page 55

1 **A. You mean the original document?**  
 2 **Q. Uh-hum, yes.**  
 3 **A. Yes, uh-hum.**  
 4 **Q. Why did you negotiate to shorten the runway of the**  
 5 **forbearance period from June 2014 to January 31,**  
 6 **2014?**  
 7 **A. You said June 2014. The -- as I understand it, the**  
 8 **concept that that June date included a lower**  
 9 **percentage figure, the 82 percent -- lower discount**  
 10 **figure, the 82 percent, and here now that we're**  
 11 **working with whole numbers and the parties want to**  
 12 **close the transaction as soon as possible so we can**  
 13 **resolve the situation and get to the needs of the**  
 14 **City, that we believe that if the agreement is**  
 15 **approved on a reasonable time, we can do that on**  
 16 **the 31st and finally extinguish this agreement.**  
 17 **Frankly, that's why we wanted to do it, to get this**  
 18 **done as soon as possible.**  
 19 **Q. By shortening the forbearance period, doesn't that**  
 20 **mean that if interest rates continue to rise and**  
 21 **the termination payment continues to drop, you**  
 22 **can't take advantage of that market impact?**  
 23 **A. No, what it means is that we continue to accrue**  
 24 **about \$4.2 million a month that will be paid on**  
 25 **March 15th for the quarterly payment that's due on**

Page 56

1 **that date, so that's why we want to shorten it. We**  
 2 **don't want to have to make those monthly payments.**  
 3 **We talked before in my deposition about**  
 4 **the general receipts account and how that swept on**  
 5 **the 15th into the subreceipts account and how that**  
 6 **amount is paid by the City monthly into a quarterly**  
 7 **account and then disbursed approximately somewhere**  
 8 **in the neighborhood of, you know, 12 some odd**  
 9 **million, 12, \$13 million every quarter. If we**  
 10 **close this by the 31st, we don't have to make that**  
 11 **March payment. If it extends out to June and we**  
 12 **don't exercise that option, we have to make that**  
 13 **payment. So it's unclear that even if interest**  
 14 **rates were to go up and our payment was to drop it**  
 15 **would save us any money because we still might have**  
 16 **to make the payment.**  
 17 **Q. Did you have an analysis done that would compare**  
 18 **making additional swap payments with the value we**  
 19 **gained from rising interest rates?**  
 20 **A. No, no, I don't recall that specific analysis.**  
 21 **Q. At the time you agreed to this new deal with**  
 22 **\$165 million with the swap counter-parties, did you**  
 23 **have an understanding that the objecting creditors**  
 24 **were -- still believed that the deal was too rich**  
 25 **for the swap counter-parties?**

Page 57

1 **A. I was generally aware that the -- I read some of**  
 2 **the objections of the objecting creditors and I was**  
 3 **generally aware that they probably wouldn't be in**  
 4 **favor of any deal with the swap counter-parties, so**  
 5 **yes.**  
 6 **Q. So you mentioned earlier that present during the**  
 7 **negotiations were COPs holders and possibly some**  
 8 **swaps and COPs insurers, correct?**  
 9 **A. Yes.**  
 10 **Q. Did you know that they were continuing to object to**  
 11 **even the terms of this new deal you were reaching?**  
 12 **A. I didn't -- I had no reason to believe that they**  
 13 **would agree to it, yes, so I would assume that they**  
 14 **were still objecting. I did not hear during the**  
 15 **two days that they had withdrawn their objection or**  
 16 **were going to concur in the new deal.**  
 17 **Q. Okay. Is it fair to say that over the course of**  
 18 **the two days, the 23rd and 24th, most of your**  
 19 **negotiations were focused on back and forth with**  
 20 **the swap counter-parties and not with the creditor**  
 21 **parties that were present?**  
 22 **A. Most of our negotiations were through the mediator,**  
 23 **so I don't -- I don't know who exactly they were**  
 24 **talking to when they left our room.**  
 25 **Q. I think you --**

1 A. Well, let me -- with our room, I assume that -- let  
 2 me just say this to clarify. I think during the  
 3 first day there was an effort to have discussions  
 4 to reach a global agreement with all of the  
 5 parties, including the COPs and the insurers, if  
 6 they were there. I think at some point during that  
 7 day, the mediator suggested to us that it might be  
 8 better for us -- and we agreed it might be better  
 9 for us -- just to try to reach a deal with the swap  
 10 counter-parties because that seemed to be more  
 11 likely given some of the positions that were  
 12 relayed to us -- not in detail, just that they  
 13 were -- it was going to be difficult with some of  
 14 the other parties, and during the first day, we  
 15 tried to reach that agreement with the swap  
 16 counter-parties.

17 Q. Okay. When I was asking you earlier who was  
 18 present at the mediation, you did not recall that  
 19 AMBAC and the retirement systems were present, but  
 20 they were also there, were they not?

21 A. The people I usually see in this room representing  
 22 those parties were not there.

23 Q. You mean I wasn't there?

24 A. You weren't there, the others weren't there.

25 Q. Mr. Hackney wasn't there?

1 A. Mr. Hackney wasn't there. So I didn't recognize  
 2 the original representatives who were there at this  
 3 meeting. They might well have been there, I just  
 4 didn't know them. And we didn't do an introduction  
 5 at the plenary session.

6 Q. Okay. Did you -- did you have any discussions with  
 7 David Dubrow, who represents AMBAC?

8 A. I didn't have any discussions with Mr. Dubrow.

9 Q. Any discussions with Peter Cain, who is from AMBAC?

10 A. I didn't have any discussions with Mr. Cain.

11 Q. You don't recognize that name even, do you?

12 A. No, I recognize that on the order of mediation that  
 13 they were included, I just didn't recognize who was  
 14 in the room. That's why I said earlier, I didn't  
 15 know who was in the room because I didn't recognize  
 16 the usual suspects.

17 Q. All right. And you didn't have any discussions  
 18 with Bob Gordon on behalf of the Retirement Systems  
 19 those two days?

20 A. I think Bob was there. I think I did see Bob, now  
 21 you that you mentioned it.

22 Q. Did you have any negotiations that involved him?

23 A. No, we had pleasantries. All the negotiations,  
 24 even with the swap counter-parties, were conducted  
 25 by the mediators. We had no direct negotiations.

1 Q. You were never in a room with the swap  
 2 counter-parties sort of debating your points back  
 3 and forth?

4 A. Nope. The whole -- the only time we were in a room  
 5 with the swap counter-parties was at the beginning  
 6 of the first day, at the end of the first day to  
 7 confirm the 165 number. I think there may have  
 8 been a time when Mr. Hertzberg may have stepped out  
 9 on the first day to try to talk with some  
 10 representatives from the counter-parties, I never  
 11 did.

12 And then on the second day, the next time  
 13 we were all in a room was when the Court announced  
 14 the swap counter-party settlement. We never had  
 15 bilateral negotiations.

16 Q. Did you ever ask to get in the same room with the  
 17 swap counter-parties?

18 A. No, the mediator suggested that would be  
 19 unproductive.

20 Q. When you were negotiating through the mediator, did  
 21 you try to argue -- make any legal arguments, sort  
 22 of argue your legal position and why you should be  
 23 getting a better deal from the swap  
 24 counter-parties?

25 A. Yes, I believe we had discussions about the pros

1 and cons of the various positions, yeah.

2 Q. Okay. Why don't you tell me about those pros and  
 3 cons.

4 A. We discussed generally some of the issues that  
 5 had been raised in the objections, specifically  
 6 whether or not the pledge of the casino revenue  
 7 was authorized by the Gaming Act, whether it was  
 8 susceptible to being invalidated as void ab  
 9 initio --

10 Q. I'm sorry, what would be invalidated as void ab  
 11 initio?

12 A. The swap contract itself.

13 Q. Okay.

14 A. The 2005 and/or 2006 transactions, swap  
 15 transactions. Whether or not there were other  
 16 claims that could have been brought, such as unjust  
 17 enrichment, equitable subordination, equitable  
 18 estoppel, breach of contract, implied duty of good  
 19 faith.

20 Q. Hold on. Hold on. I'm trying to write and keep up  
 21 with you.

22 A. I'm sorry. I'm sorry.

23 Q. Unjust enrichment. And then equitable estoppel was  
 24 next?

25 A. Right. Breach of contract, implied duty of good



Page 62

1 faith, breach of contract and conscionability. I  
 2 think we talked about a potential injunction  
 3 prohibiting the counter-parties from trapping any  
 4 casino revenue if we had to file litigation. I  
 5 think I said equitable subordination.  
 6 I think we talked about fraud, both ab  
 7 initio, fraud in factum, fraudulent inducement. I  
 8 think there was a discussion about conspiracy to  
 9 defraud, potential theories. I think we discussed  
 10 the fact -- in fact, we may have -- we discussed  
 11 that we had a draft complaint that we had prepared  
 12 against the swap counter-parties and it had some of  
 13 those theories and probably seven or eight counts  
 14 in the complaint against those theories, including  
 15 a request for a temporary restraining order,  
 16 preliminary injunction and permanent injunction  
 17 prohibiting the swap, including a count for  
 18 revocation of the so-called irrevocable letters of  
 19 instruction to the trustee and a revocation of  
 20 letters of instruction to the casinos, to the three  
 21 casinos. We discussed those issues with the  
 22 mediators.  
 23 Q. Okay. I want to start by getting -- I appreciate  
 24 you just sort of --  
 25 A. Downloaded.

Page 63

1 Q. -- downloaded.  
 2 A. Sorry.  
 3 Q. I appreciate the download. No, that's great. I  
 4 just want to -- because I wasn't always necessarily  
 5 keeping up with you.  
 6 A. Okay.  
 7 Q. So I'm going to go through the list because I want  
 8 to ask you some questions about each claim, so  
 9 let's make sure we've got the list straight.  
 10 A. Sure. Okay.  
 11 Q. I've got whether the pledge of casino revenues was  
 12 authorized by the Gaming Act --  
 13 A. Can I --  
 14 Q. You want paper?  
 15 A. Yes. To make sure I can keep up with you.  
 16 Q. Sure. You betcha.  
 17 A. And I'm not doing this to create a exhibit, I just  
 18 want to be able to talk.  
 19 Q. Good.  
 20 I have pledge of casino revenues  
 21 authorized by the Gaming Act as No. 4.  
 22 A. Yes, okay.  
 23 Q. Okay. And then you said whether the swap  
 24 transactions could be invalidated as void ab  
 25 initio; is that right?

Page 64

1 A. Yes.  
 2 Q. And then I had unjust enrichment.  
 3 A. Yes.  
 4 Q. No. 4, equitable subordination?  
 5 A. Yes.  
 6 Q. No. 5, equitable estoppel?  
 7 A. Yes.  
 8 Q. No. 6, breach of contract?  
 9 A. Yes.  
 10 Q. No. 7, implied duty of good faith and fair dealing?  
 11 A. I'm not trying to lawyer, but the breach of  
 12 contract may have been based upon a breach of  
 13 implied duty of good faith and fair dealing.  
 14 Q. Okay. So that's really one in the same?  
 15 A. One, right.  
 16 Q. All right. No. 7 then, the possibility of getting  
 17 an injunction that would prohibit trapping of the  
 18 casino revenue?  
 19 A. Yes.  
 20 Q. No. 8, you said fraud, and you listed various forms  
 21 of fraud, but I think we can collapse them all into  
 22 fraud-type claims?  
 23 A. Yes, because fraud -- the ab initio claim would  
 24 have a fraud -- I presume a fraud heading, ab  
 25 initio, fraudulent inducement, fraud in factum is a

Page 65

1 way of just saying fraudulent transaction, but you  
 2 can collapse them all into concepts of fraud.  
 3 Q. Okay. And would you put conspiracy to defraud in  
 4 that fraud category as well?  
 5 A. Yeah, I would put it in that category as well.  
 6 Q. Okay. So I think we've come up with a list of  
 7 eight potential claims. Are there any others that  
 8 I did not capture?  
 9 A. I think I said equitable subordination.  
 10 Q. That's No. 4.  
 11 A. Okay. You got that?  
 12 Q. Yeah.  
 13 A. Estoppel, subordination, unjust enrichment,  
 14 unconscionability, breach of contract --  
 15 Q. Unconscionability, is that in your breach of  
 16 contract, good faith and fair dealing?  
 17 A. That's in the breach of contract, good faith and  
 18 fair dealing.  
 19 Q. Okay.  
 20 A. Oh, declaratory judgment for the irrevocable  
 21 letters of instruction, both through to US Bank as  
 22 well as to the casinos.  
 23 Q. Okay. So those claims are not against the swap  
 24 counter-parties, correct? Just put them to the  
 25 side?

Page 66

1 **A. Yeah, yeah, those claims are not against the swap**  
 2 **counter-parties.**  
 3 **Q. Any other claims between the City and the swap**  
 4 **counter-parties other than the eight that we**  
 5 **listed?**  
 6 **A. I think -- I think those -- we're lumping fraud and**  
 7 **breach of contract into two categories, right?**  
 8 **Q. We had them separate.**  
 9 **A. Yeah, okay. I think those capture the majority of**  
 10 **the claims, yes.**  
 11 **Q. Okay. So let's start with the first one, the issue**  
 12 **of whether the pledge of casino revenues was**  
 13 **authorized by the Gaming Act.**  
 14 **A. Right.**  
 15 **Q. What would be the basis for that claim?**  
 16 **A. As mentioned in some of the objections, that the**  
 17 **Gaming Act is not authorized to pledge casino**  
 18 **revenue in connection with a financial instrument.**  
 19 **On the other hand, there were pros and cons that**  
 20 **were discussed, that, in fact, the City had**  
 21 **received legal opinions -- several legal opinions**  
 22 **from its attorneys, Lewis & Munday, said that the**  
 23 **transaction was okay because it wasn't a direct**  
 24 **pledge, that there was service corporations that**  
 25 **were created, so it wasn't the City as direct**

Page 67

1 **obligor, it was the service operation, and**  
 2 **therefore, that was appropriate. There was a -- I**  
 3 **can talk about legal opinions?**  
 4 **MR. SHUMAKER: Uh-hum.**  
 5 **THE WITNESS: There was a legal opinion**  
 6 **from Orrick that I believe said that there was no**  
 7 **compliance issues with the structure of the**  
 8 **transaction -- this is back in 2006 and 2009 -- in**  
 9 **connection with the pledge and the collateral**  
 10 **pledge agreement, that these types of**  
 11 **transactions -- the City, I think, has over 21**  
 12 **service corporations, different types of**  
 13 **transactions, I think it was in the footnote of**  
 14 **one of the objections -- one of the replies to the**  
 15 **objections, I think, Bank of America's footnote 21,**  
 16 **that the transaction -- that the transaction -- I**  
 17 **believe the Gaming Board -- the letter I think you**  
 18 **and I discussed on August 20th -- from the Gaming**  
 19 **Board saying that they didn't see any compliance**  
 20 **issues in that there were no goods or services**  
 21 **being provided, there was no requirement for the**  
 22 **parties to get a license from the state.**  
 23 **BY MS. ENGLISH:**  
 24 **Q. That letter actually has nothing to do with whether**  
 25 **the pledge of the casino revenues was valid under**

Page 68

1 **the Gaming Act, does it?**  
 2 **A. Well, I don't know, I'm just saying --**  
 3 **Q. You don't know?**  
 4 **A. No, these are pros and cons that were being**  
 5 **discussed as to whether or not you would assert**  
 6 **claims to try to invalidate the swaps and whether**  
 7 **or not you could be successful.**  
 8 **Q. Okay. Let me ask you this because you mentioned a**  
 9 **number of opinion letters --**  
 10 **A. Uh-hum.**  
 11 **Q. -- that the City got back in 2009?**  
 12 **A. Yes.**  
 13 **Q. Is it your understanding that those opinion**  
 14 **letters, that in those opinion letters, the**  
 15 **lawyers actually opined that the pledge of casino**  
 16 **revenues was authorized and valid under the Gaming**  
 17 **Act?**  
 18 **A. Yes, I believe they did.**  
 19 **Q. Do you have an independent -- did you make an**  
 20 **independent assessment as to -- sort of weighing**  
 21 **all these factors that you've just talked about, do**  
 22 **you have an independent assessment as to the**  
 23 **strength of the claim that casino revenues -- the**  
 24 **pledge of casino revenues was invalid under the**  
 25 **Gaming Act?**

Page 69

1 **A. In consultation with my counsel, there were pro and**  
 2 **cons discussions about whether or not they would be**  
 3 **strong, but ultimately the assessment would be**  
 4 **decided by a Court if we were to pursue litigation.**  
 5 **Q. Well, let me ask it another way. What provision of**  
 6 **the Gaming Act do you believe could have authorized**  
 7 **the pledge of the casino revenues?**  
 8 **A. If you have it in front of me, I can show it to**  
 9 **you, but I believe there are various sections that**  
 10 **the attorneys -- at least legal counsel at that**  
 11 **time -- opined authorized a pledge of casino**  
 12 **revenues.**  
 13 **Q. Can you name one of them?**  
 14 **A. The provisions?**  
 15 **Q. Yeah.**  
 16 **A. Without being -- I'm not acting as a lawyer, so I**  
 17 **don't want to name the wrong one, but I would be**  
 18 **happy to --**  
 19 **Q. I'm not asking for the cite. I understand you**  
 20 **might --**  
 21 **A. You mean like the Act 34?**  
 22 **Q. No, I'm asking -- I mean --**  
 23 **A. The provision that -- there was a discussion**  
 24 **regarding a provision that said that the**  
 25 **55/45 percent split -- it may be Section 12 or**

Page 70

1 Section 18, that's why I want to be careful, I  
 2 don't remember a specific section -- but it  
 3 authorized approximately six or seven different  
 4 uses for the revenue, and in fact, as I understand,  
 5 it went back through that analysis that the city  
 6 council ultimately passed an ordinance approving  
 7 the pledge on the basis as contained in the act,  
 8 under the Home Rule Act.

9 So there was a lot of discussion about not  
 10 only was this perceived to be authorized by the  
 11 attorneys, that the city council ultimately ended  
 12 up approving it, I believe, by a two-thirds vote  
 13 and that they actually passed an ordinance  
 14 approving the pledge as well.

15 Q. Okay. I appreciate that, but it wasn't really my  
 16 question. What I want to know is what you think  
 17 and what your assessments are because your  
 18 assessment is what informed your negotiation of  
 19 this deal, correct?

20 A. Uh-hum.

21 Q. Okay. So what I would like to know is, how -- is  
 22 whether the pledge of the casino revenues, how you  
 23 think that was authorized by the Gaming Act.

24 A. As I said, there were various legal analyses that  
 25 were provided to the City at that time that opined

Page 71

1 that it was authorized -- they cited specific  
 2 sections, I don't want to get them wrong, talking  
 3 about Act 34 right now -- so I will rely on those,  
 4 but the analysis, when you ask my state of mind of  
 5 what I analyzed, it was that there were various  
 6 pros and cons to claiming that it wasn't  
 7 authorized, on the one hand, to pursue litigation,  
 8 and then another list of actions and approval that  
 9 said it was authorized, so there was risk to the  
 10 City of pursuing litigation whether it would win or  
 11 whether it would lose.

12 Q. When you're going into negotiations, you want to  
 13 take the strongest position possible for your  
 14 client when you're a lawyer, correct?

15 A. Generally, yes.

16 Q. And so now that you're working as the emergency  
 17 manager of the City of Detroit and you're  
 18 negotiating with various creditors, you want to  
 19 argue the City's strongest positions it has, don't  
 20 you?

21 A. Well, my lawyers argue the City's strongest  
 22 position. I have to exercise my business judgment  
 23 taking into account a number of factors and try to  
 24 balance them in the best interest of the City.

25 Q. But you were the one entering into the forbearance

Page 72

1 agreement on behalf of the City, are you not?

2 A. Forbearance and optional termination agreement?

3 Q. Is there another forbearance agreement?

4 A. Well, there's -- you're talking about the one  
 5 that -- the one that's referenced in the sixth  
 6 amendment, correct?

7 Q. Yes, I'm talking about the one we've been talking  
 8 about all day that we clarified at the start of the  
 9 deposition that was going --

10 A. No, Ms. English, I'm just trying to be clear.  
 11 There was a 2009 forbearance agreement which I was  
 12 not involved with and then there was one which we  
 13 negotiated earlier this year. I'm just trying to  
 14 be clear for the record.

15 Q. The 2009 agreement you're referring to, is that the  
 16 collateral agreement?

17 A. The collateral agreement, which had a forbearance  
 18 provision, yes, so I just want to make sure we're  
 19 talking about the right document, that's all.

20 Q. Okay. My question was, as you're embarking upon  
 21 negotiations on behalf of the City --

22 A. Yes.

23 Q. -- don't you want to argue the City's strengths and  
 24 from the City's best position? Aren't you looking  
 25 for the best arguments the City has?

Page 73

1 MR. HAWKINS: Asked and answered.

2 THE WITNESS: I'll say again, my  
 3 attorneys are in charge of making legal arguments,  
 4 they consult with me and brief me as to the  
 5 strength of the City's arguments and the potential  
 6 risk of taking those arguments, particularly with  
 7 regard to litigation. Litigation might be costly  
 8 and lengthy. I then have to balance those issues  
 9 as best I can from a business perspective and make  
 10 the best business judgment that I can.

11 BY MS. ENGLISH:

12 Q. I understand that. My question goes to your  
 13 negotiations.

14 A. Yes.

15 Q. Aren't you trying to find the best arguments for  
 16 the City and argue those positions in order to  
 17 achieve the best settlements possible?

18 MR. SHUMAKER: Objection. Asked and  
 19 answered.

20 MS. ENGLISH: It's a yes or no question.  
 21 We can do asked and answered if we got a yes or no  
 22 answer.

23 MR. SHUMAKER: Well, he's answered your  
 24 question a couple of times, how he's handled the  
 25 negotiations.

Page 74

1 THE WITNESS: You keep asking me am I  
 2 going to argue. I'm not acting as an attorney, I'm  
 3 acting as an emergency manager and I'm making a  
 4 business decision.  
 5 BY MS. ENGLISH:  
 6 **Q. Do you disagree with me that when you go into**  
 7 **negotiations you want to put your best foot**  
 8 **forward and make the best arguments for the City**  
 9 **you can?**  
 10 **A. I just said generally speaking, yes.**  
 11 **Q. Okay. And so what did you think was the best**  
 12 **argument that could be made that the casino revenue**  
 13 **pledge was invalid under the Gaming Act?**  
 14 **A. I think there was an argument to be made that it**  
 15 **wasn't made for one of the purposes enumerated in**  
 16 **that act for, you know, economic development,**  
 17 **health, safety and welfare, police on the street,**  
 18 **the provisions of the act that speak to those**  
 19 **specific purposes.**  
 20 **Q. And in fact, it's a very strong argument, don't you**  
 21 **think?**  
 22 MR. SHUMAKER: Object to the form.  
 23 THE WITNESS: I don't know if it is or  
 24 isn't. I know there are countervailing arguments  
 25 that despite those provisions, the reality is a

Page 75

1 number of different attorneys and the city council  
 2 approved the transaction, so even if there were  
 3 those arguments, other parties ultimately approved  
 4 it and authorized it, and you have to balance those  
 5 concerns before you go into litigation.  
 6 BY MS. ENGLISH:  
 7 **Q. So you viewed the biggest weakness of this claim**  
 8 **then was the opinion letters that came in in 2009**  
 9 **and the city council's ordinance; is that right?**  
 10 **A. Not just the opinion letters, the city council's**  
 11 **ordinances, the letter from the State, the conduct**  
 12 **of the parties, the acquiescence of other parties**  
 13 **in the transaction at that time, that nobody raised**  
 14 **any objections, and indeed, I believe some parties**  
 15 **may have consented to it.**  
 16 **So I'm trying to balance -- I'll say it**  
 17 **again. I'm trying to balance the arguments that**  
 18 **would be made that it's not authorized by Act 34**  
 19 **versus a number of different factors which are**  
 20 **quite to the contrary that a number of difference**  
 21 **parties not only approved it, but took some very**  
 22 **affirmative steps to authorize the very transaction**  
 23 **which people are objecting about.**  
 24 **Q. Can you tell me -- you mentioned Act 34 a number of**  
 25 **times. How does Act 34 relate to the pledge of**

Page 76

1 **casino revenues?**  
 2 **A. Well, the issue is the underlying transaction**  
 3 **authorized, meaning the swaps -- I'm sorry --**  
 4 **meaning the COPs, and if that's not authorized,**  
 5 **then presumably the swaps aren't authorized, so**  
 6 **there are a number of different factors that go**  
 7 **into it, but they're all -- they're all mitigated**  
 8 **by the fact that, here again, a number of different**  
 9 **parties approved the 2009 transaction and entered**  
 10 **legislation to authorize it.**  
 11 **Q. My question was -- we were talking about the**  
 12 **validity of the casino revenue under the Gaming**  
 13 **Act.**  
 14 **A. Right.**  
 15 **Q. And you mentioned Act 34 in that context three**  
 16 **times and I wasn't sure how that linked.**  
 17 **A. Yeah, that was linked to the argument that if the**  
 18 **underlying debt wasn't authorized under Act 34,**  
 19 **then you couldn't have a swap authorized to hedge**  
 20 **the underlying debt and that therefore the whole**  
 21 **transaction is void.**  
 22 **Q. Okay. I just want to stick with the pledge of the**  
 23 **casino revenue claim for just one more minute.**  
 24 **A. Okay.**  
 25 **Q. Ultimately, as you weighed the pros and cons that**

Page 77

1 **you've just described, what did you assess to be**  
 2 **the strength of this argument?**  
 3 MR. SHUMAKER: Hold on. This is the  
 4 pledge argument or the Act 34 argument?  
 5 MS. ENGLISH: The pledge.  
 6 MR. SHUMAKER: You're going back and  
 7 forth.  
 8 MS. ENGLISH: No, I said I was coming  
 9 right back to the pledge of the casino revenue.  
 10 MR. SHUMAKER: I wanted to make sure we  
 11 weren't off on Act 34.  
 12 THE WITNESS: I felt that in consultation  
 13 with my attorneys that at best -- can I?  
 14 MR. SHUMAKER: I don't want you to say  
 15 what your lawyers told you.  
 16 THE WITNESS: Okay. We had a number of  
 17 discussions and I came to the conclusion that there  
 18 was perhaps a 50/50 chance of prevailing on these  
 19 arguments to undermine the swaps.  
 20 BY MS. ENGLISH:  
 21 **Q. Did you ever convey that to the swap**  
 22 **counter-parties?**  
 23 **A. No, I don't think we -- I never conveyed it to**  
 24 **them.**  
 25 **Q. And you never argued that the swap counter-parties,**

1 this potential claim that you would have that would  
 2 invalidate the pledge of the casino revenues,  
 3 correct?  
 4 A. Ms. English, I never argued with them. My  
 5 attorneys argued with them about the strength of  
 6 our claims, and my understanding is, without  
 7 discussing what was said, my understanding is that  
 8 those discussions were very focused and robust.  
 9 Q. When did the attorneys argue with the swap  
 10 counter-parties?  
 11 A. Throughout the week of June 10 through June 14.  
 12 As I testified -- as I said before, we were trying  
 13 to reach a settlement, we were also discussing, as  
 14 I understand it of my attorneys with their  
 15 attorneys, about the strengths of the claims we  
 16 would have to bring if we did not reach a  
 17 settlement.  
 18 Q. So I just want to make sure I understand your  
 19 testimony now, and that is that during that week of  
 20 negotiations in June, separate from you, your  
 21 attorneys had discussions with the swap  
 22 counter-parties about the strengths and weaknesses  
 23 of the City's claims against them?  
 24 A. Yes, I believe so.  
 25 Q. And Ken Buckfire, was he in those discussions?

1 A. There was some discussion as to whether or not the  
 2 revenue -- the underlying -- here's the Act 34  
 3 issue -- the underlying COPs transaction was valid,  
 4 and if it wasn't valid, then there was no basis  
 5 under state law to allow the swap transaction.  
 6 Q. Is that the only argument?  
 7 A. I think that's generally the gist of the argument.  
 8 As I said, I didn't do independent research on my  
 9 own, that's what's relayed to me by my counsel.  
 10 Q. Okay. What did you see as the potential weaknesses  
 11 in that argument?  
 12 A. Here again, weaknesses in that argument was there  
 13 was some discussion that the city council, in  
 14 approving the ordinance of the underlying  
 15 transaction as well, had cited, I believe, general  
 16 welfare, and one of the provisions of Act 34 talked  
 17 about reducing the taxes and they had cited that in  
 18 the approving ordinance authorized by city council  
 19 and that the parties had gone forth with the  
 20 transaction based upon those approvals.  
 21 Q. Act 34 had a provision about reducing taxes?  
 22 A. I believe, or it could be the Gaming Act, but I  
 23 believe it was Act 34. That there was certain  
 24 conditions that had to be met and that the council  
 25 had approved an ordinance authorizing the

1 A. I don't recall Ken Buckfire. I think I said the  
 2 attorneys were involved. I think it was -- in  
 3 fact, I know Corinne was involved, I know David  
 4 Heiman was involved, I believe Bruce Bennett from  
 5 Jones Day was involved, and I believe during that  
 6 week, Mr. Hertzberg was returning as conflicts  
 7 counsel in case we had to file litigation, and, in  
 8 fact, drafted a complaint.  
 9 Q. Let's go to the second claim, which you said was  
 10 the claim to invalidate swap transactions as void  
 11 ab initio.  
 12 A. Yes.  
 13 Q. What would be the basis for that claim?  
 14 A. Well, that was the discussion we had about Act 34,  
 15 that if that was the underlying claim, as I  
 16 understand it -- I've done no independent legal  
 17 research on my own and I'm not acting as a  
 18 lawyer -- but as was relayed to me, my attorneys,  
 19 if the underlying transaction was void and  
 20 therefore the basis for the transaction as well  
 21 as the state law authorizing swap transactions  
 22 would be invalidated, that the whole transaction  
 23 falls.  
 24 Q. And why do you -- why would the transaction be  
 25 deemed void?

1 transaction based upon having met those conditions  
 2 and that the parties had operated based upon those  
 3 approvals for a period of time.  
 4 There was concern expressed that a lot of  
 5 these potential claims were claims that would be  
 6 brought in equity and that in equity has two sides,  
 7 that at the end of the day, the City had received  
 8 the money, had performed under the existing  
 9 documents and contracts may have waived any  
 10 objections to the underlying transaction, the  
 11 underlying COPs transaction as well as the swaps,  
 12 and that those factors -- you know, estoppel on  
 13 behalf of the City, waiver on behalf of the City  
 14 had to be taken into account as well.  
 15 Q. You don't actually know the difference between Act  
 16 34 and the Gaming Act, do you?  
 17 A. Yeah, I do, but sometimes I get -- I get the two a  
 18 little confused when you talk --  
 19 Q. Yeah.  
 20 A. I get the sections confused.  
 21 Q. Yeah.  
 22 A. So when I talk about the Gaming Act, I remember the  
 23 55/45 split and I'm trying to remember the section  
 24 that you're asking, and when I think about Act 34,  
 25 sometimes I switch them about.

Page 82

1 **Q. Yeah. Do you know which legal claim the Gaming Act**  
 2 **would be relevant to?**  
 3 **A. I think the Gaming Act would be relevant to the**  
 4 **swaps because it pledged casino revenue.**  
 5 **Q. And how is the Act 34 relevant to your claims?**  
 6 **A. Here again, whether or not the City was authorized**  
 7 **to enter into the COPs. If that transaction falls,**  
 8 **then all the other transactions fall.**  
 9 **Q. Is there any separate argument you're aware of with**  
 10 **respect to voidness or invalidity of the swaps**  
 11 **obligations themselves?**  
 12 **A. Yeah, there could be arguments that were made that**  
 13 **the swap obligations themselves were not properly**  
 14 **authorized under the Gaming Act because the gaming**  
 15 **revenue, which is a provision -- I think we're**  
 16 **talking about the 55/45 split and in the certain**  
 17 **conditions that have to be met to use the proceeds**  
 18 **of the Gaming Act -- the up to 18 percent of gross**  
 19 **gaming receipts split between the State and City,**  
 20 **the City gets 55, certain conditions the City has**  
 21 **to meet under the Gaming Act, that those conditions**  
 22 **were not met with regard to the swaps.**  
 23 **Q. So your understanding is that the Gaming Act**  
 24 **imposes conditions on swap obligations?**  
 25 **A. It might.**

Page 83

1 **Q. Let's talk about -- unjust enrichment was the third**  
 2 **claim we had on our list.**  
 3 **A. Yes.**  
 4 **Q. What would be the basis -- oh, they're going to**  
 5 **yell at me to go back. One more question on the**  
 6 **void ab initio argument.**  
 7 **How did you assess the likelihood of**  
 8 **success on that claim?**  
 9 **A. Here again --**  
 10 **MR. SHUMAKER: I'm going to object. To**  
 11 **the extent you're asking the witness for**  
 12 **likelihood of success and what counsel quantified**  
 13 **that as, that's calling for attorney-client**  
 14 **information. If you've got a question as to how it**  
 15 **related to negotiating position, that's a different**  
 16 **story.**  
 17 **MS. ENGLISH: Court Reporter, would you**  
 18 **please read back the question that I asked?**  
 19 **(Whereupon the question was read**  
 20 **back by the court reporter.)**  
 21 **MR. SHUMAKER: Same objection.**  
 22 **THE WITNESS: We -- I assessed it that**  
 23 **there were pros and cons, as I said before, in any**  
 24 **of these claims and that you had to balance the**  
 25 **two.**

Page 84

1 **BY MS. ENGLISH:**  
 2 **Q. You testified earlier that you gave the casino**  
 3 **revenue argument a 50/50 chance of success?**  
 4 **A. Yeah.**  
 5 **Q. Did you subscribe a similar type of percentage to**  
 6 **the likelihood of success on the swaps obligation**  
 7 **argument?**  
 8 **A. Yeah, let me say this: I think on all these**  
 9 **claims, whatever their legal theory, all of them**  
 10 **were basically 50/50 chance of success because for**  
 11 **each claim there was always a corresponding risk**  
 12 **that the claim would not be successful.**  
 13 **Q. Okay. So on none of the claims that the City might**  
 14 **have against the swap counter-parties did you give**  
 15 **them any greater chance of success in your mind**  
 16 **than 50 percent?**  
 17 **A. Yeah, generally speaking, I did not.**  
 18 **Q. So let's go now to the third claim, which was**  
 19 **unjust enrichment. What would the basis be for**  
 20 **that claim?**  
 21 **A. Well, based upon the conduct of the parties, there**  
 22 **had been some analysis that in connection with the**  
 23 **swaps, and I think as had been reported -- can we**  
 24 **talk about the complaint?**  
 25 **MR. SHUMAKER: You can talk about that.**

Page 85

1 **THE WITNESS: Okay. There had been some**  
 2 **analysis in the complaint that some of the**  
 3 **counter-parties had been involved with the LIBOR**  
 4 **scandal, and that based upon the LIBOR scandal,**  
 5 **they might have some exposure for having tried to**  
 6 **rig LIBOR rates and that therefore they were**  
 7 **unjustly enriched as a result of the swap agreement**  
 8 **and that that unjust enrichment should allow the**  
 9 **City to either not pay it or recover damages or in**  
 10 **some fashion have a remedy fashioned because of the**  
 11 **conduct of the swap counter-parties.**  
 12 **BY MS. ENGLISH:**  
 13 **Q. And what did you see as the potential defenses to**  
 14 **or weaknesses of that claim?**  
 15 **A. Well, here again, unjust enrichment, as I said**  
 16 **before in all of the claims, is factually**  
 17 **intensive, it depends upon the conduct of the City**  
 18 **itself, that despite some of those transactions,**  
 19 **the City continued to perform, never objected to it**  
 20 **in any fashion, continued to perform its duties,**  
 21 **never brought claims with regard to it, so you**  
 22 **would have to weigh whether or not the City could**  
 23 **pursue those claims based upon its conduct.**  
 24 **Q. Okay. And if I understood your earlier testimony,**  
 25 **you also assigned that as having a 50/50 chance of**

Page 86

1 success in your mind?  
 2 A. Yeah, you know, this goes back to the discussion  
 3 that we had in August about --  
 4 Q. Mr. Orr, I'm sorry --  
 5 A. -- whether or not --  
 6 Q. Can I interrupt you for a minute? And I'll let you  
 7 finish.  
 8 A. Uh-hum.  
 9 Q. But none of us, including yourself, want to be here  
 10 all day, so I would appreciate when I ask you a yes  
 11 or no question, if you could try as best -- and I  
 12 understand it's not maybe always possible, but try  
 13 as best as you can to give a yes or no answer if I  
 14 ask a yes or no question.  
 15 A. I will try, I just don't want to be misleading.  
 16 Q. I appreciate that.  
 17 So my question was, on the claim of unjust  
 18 enrichment, the potential claim of unjust  
 19 enrichment, did you also assign that a 50/50  
 20 likelihood of success chance?  
 21 A. Yes. Here again, not to be misleading, all of  
 22 these claims, as I said before, the totality of the  
 23 potential claims that the City had we more or less  
 24 assessed at a 50/50.  
 25 Q. The next claim was equitable subordination.

Page 87

1 A. Yes.  
 2 Q. Can you tell me what is the basis for that claim?  
 3 A. Well, here again, to get equity, you must do equity  
 4 based upon the conduct of the parties, that the  
 5 swap counter-parties would not be entitled to a  
 6 secured position and that their lien and pledge of  
 7 the casino revenue was inappropriate and should be  
 8 extinguished and that they would be treated as an  
 9 unsecured creditor.  
 10 Q. So if I'm understanding you correctly, this is sort  
 11 of an outgrowth of the argument that the pledge of  
 12 casino revenues was invalid?  
 13 A. Yeah.  
 14 Q. Or is it something totally different?  
 15 A. No, it's totality of the circumstances, all the  
 16 things involved in terms of -- when you make -- as  
 17 I understand it, when you make an equitable  
 18 subordination claim, you would include all the  
 19 facts involved in the conduct of the parties and  
 20 why the secured interest of the parties, the  
 21 counter-parties, should be subordinated to an  
 22 unsecured position, so it might well include all  
 23 the facts that you take up.  
 24 Q. Okay. And what did you see as the potential  
 25 defenses or weaknesses in an equitable

Page 88

1 subordination claim?  
 2 A. Here again, I said before, with equity, you have to  
 3 take into account the conduct of the City, the  
 4 approval of both the underlying COPs transaction  
 5 and the swaps transaction, both by city council, by  
 6 the other parties, the opinion -- legal opinions of  
 7 counsel that were involved, the reasonableness of  
 8 the parties' behavior, the performance of the  
 9 parties over time. All of those factors would go  
 10 into that.  
 11 Q. Okay. And consistent with your earlier testimony,  
 12 you assigned no more than a 50/50 chance of success  
 13 on this claim as well, correct?  
 14 A. Yes.  
 15 Q. Let's talk about the equitable estoppel claim.  
 16 What would be the basis for that claim?  
 17 A. That based -- here again, based on the conduct of  
 18 the parties, when you're talking about equity, that  
 19 the swap counter-parties would be estopped from  
 20 trying to assert their interest or their liens or  
 21 their right to payment.  
 22 Q. Can you flesh that out just a little bit more?  
 23 What facts would support an equitable estoppel  
 24 argument by -- this is an argument that the City  
 25 would bring or that the swap counter-parties --

Page 89

1 A. No, that the City --  
 2 Q. The City would argue that the swap counter-parties  
 3 are equitably estopped from asserting their liens?  
 4 A. Yes, from asserting their liens or claims to a  
 5 secured payment based upon all the factors we  
 6 discussed before; that in an equitable claim, you  
 7 would argue that based upon the conduct of the  
 8 parties, that their lien interest, their right to  
 9 payment should not be observed or certainly should  
 10 not be observed as a secured interest and they  
 11 should be estopped from asserting that.  
 12 Q. Okay. And what would be the potential defenses or  
 13 weaknesses in that claim?  
 14 A. As I said, for equity, all the factors we discussed  
 15 before, that the underlying transaction had been  
 16 approved by council, that the swap transaction had  
 17 been approved by ordinance, that they got an  
 18 opinion on legal counsel, that the State Gaming  
 19 Commission had submitted the letter, that the  
 20 parties had acted under the agreement, that there  
 21 might be waiver or estoppel arguments against the  
 22 City.  
 23 Q. What would the waiver or estoppel arguments against  
 24 the City look like?  
 25 A. That the City had performed under the agreements

Page 90

1 despite these issues over a period of time, that it  
 2 had never raised any of the alleged or claimed  
 3 imperfections with the transaction, and that it may  
 4 have waived those claims.  
 5 **Q. Did you have any analysis done as to whether**  
 6 **arguments such as waiver or estoppel could counter**  
 7 **an argument that a municipal transaction was void**  
 8 **ab initio?**  
 9 **A. Yeah, I believe -- yeah, I believe there were**  
 10 **analyses prepared about the potential strengths and**  
 11 **weaknesses of all the claims.**  
 12 **Q. And what do those analyses show?**  
 13 MR. SHUMAKER: I'm going to object. I  
 14 believe that question calls for the witness to  
 15 reveal attorney-client communications, so I'm going  
 16 to instruct him not to answer. If you want to  
 17 rephrase that, that's fine.  
 18 BY MS. ENGLISH:  
 19 **Q. These are analyses that you got from your**  
 20 **attorneys?**  
 21 **A. Yes.**  
 22 **Q. And you reviewed them?**  
 23 **A. I reviewed -- I believe there were possibly over a**  
 24 **dozen memos, I think I reviewed somewhere in the**  
 25 **neighborhood of -- somewhere between six, seven or**

Page 91

1 eight, various emails I would get from my  
 2 attorneys, various conversations that I would have  
 3 with my attorneys.  
 4 **Q. Why didn't you review all twelve?**  
 5 **A. Some of them were subsumed -- I was told there were**  
 6 **twelve, but some of them were subsumed within the**  
 7 **other memos that I did get, so for instance, you**  
 8 **would have a research product done and they'd put**  
 9 **it into one memo.**  
 10 **Q. Okay. Did you -- so there was an analysis done of**  
 11 **potential defenses of waiver and estoppel, correct?**  
 12 **A. I believe so, yes.**  
 13 **Q. Are you not sure?**  
 14 **A. No, yes.**  
 15 **Q. Yes.**  
 16 **And did you take that into account when**  
 17 **you were negotiating the forbearance agreement?**  
 18 **A. Yes.**  
 19 **Q. And what was your assessment as to the strength of**  
 20 **defenses of estoppel and waiver to an argument that**  
 21 **a transaction was void ab initio?**  
 22 **A. Without --**  
 23 MR. SHUMAKER: Are you asking for him to  
 24 repeat the 50/50 --  
 25 MS. ENGLISH: His assessment.

Page 92

1 MR. SHUMAKER: -- that he said before?  
 2 THE WITNESS: As I said --  
 3 MR. SHUMAKER: I'm going to object to the  
 4 form.  
 5 THE WITNESS: As I said, with all these  
 6 claims and potential defenses, there was generally  
 7 a feeling that there was a 50/50 chance of success.  
 8 BY MS. ENGLISH:  
 9 **Q. Are you telling me that you relied on an analysis**  
 10 **saying there was a 50/50 -- indicating to you that**  
 11 **there was a 50/50 chance of success on the argument**  
 12 **that estoppel or waiver could counter a void ab**  
 13 **initio claim?**  
 14 **A. I'm telling you --**  
 15 **Q. Isn't it -- go ahead. Go ahead.**  
 16 **A. I'm telling you that on all these claims, as I said**  
 17 **before, the analysis generally was that we would**  
 18 **have a 50/50 chance of prevailing based upon a**  
 19 **number of factors that went into all of these**  
 20 **potential claims.**  
 21 **Q. I'm trying hard not to invade the City's privilege**  
 22 **that it is continuing to claim. At the same time,**  
 23 **I'm trying to understand your assessment of the**  
 24 **strengths and weaknesses and how you understood**  
 25 **what the strengths and weaknesses were and I'm**

Page 93

1 struggling a little bit to understand that -- do  
 2 you have -- let me ask it this way: Do you have an  
 3 understanding of the doctrine of estoppel?  
 4 **A. Yes.**  
 5 **Q. Okay. And do you have an understanding that the**  
 6 **doctrine of estoppel has no applicability**  
 7 **whatsoever to an argument that a transaction is**  
 8 **ultra vires or void ab initio?**  
 9 MR. SHUMAKER: Objection. Calls for a  
 10 legal conclusion.  
 11 THE WITNESS: Ms. English, I'm going to  
 12 say again, in this matter -- I am an attorney, but  
 13 I'm not in this case. I rely upon discussions with  
 14 my advisors and my attorneys regarding what the  
 15 potential strengths and weaknesses of any claim  
 16 could be and their analyses as relayed to me both  
 17 in writing and orally.  
 18 BY MS. ENGLISH:  
 19 **Q. Let me ask it this way: Is it your understanding**  
 20 **that the doctrine of estoppel is applicable to an**  
 21 **argument that a municipal transaction is void ab**  
 22 **initio?**  
 23 MR. SHUMAKER: Objection. Calls for  
 24 legal conclusion. You can answer.  
 25 THE WITNESS: Yeah, here again, as I



Page 94

1 said, my attorneys advised me as to potential  
 2 strengths and weaknesses of any claim.  
 3 BY MS. ENGLISH:  
 4 **Q. And I'm asking what your understanding is as to the**  
 5 **applicability of an estoppel defense to a void ab**  
 6 **initio claim. Do you have an understanding of that**  
 7 **or not?**  
 8 MR. SHUMAKER: Same objection.  
 9 THE WITNESS: Yeah, I don't have any  
 10 understanding of that outside of what is relayed by  
 11 my counsel.  
 12 MS. ENGLISH: The next claim you talk  
 13 about -- are you okay to keep going?  
 14 THE WITNESS: Let's keep going.  
 15 THE REPORTER: We have five minutes.  
 16 MS. ENGLISH: We have five minutes on the  
 17 tape.  
 18 BY MS. ENGLISH:  
 19 **Q. Let's do the breach of contract claim. Can you**  
 20 **tell me what the basis for that claim would be?**  
 21 **A. Sure. The basis of the breach of contract, as I**  
 22 **said, had to do with an allegation of good faith**  
 23 **and fair dealing, and that in connection with the**  
 24 **swap counter-parties' conduct in the LIBOR scandal,**  
 25 **that they were not engaged in fair dealing; in**

Page 95

1 fact, they may have been trying to manipulate the  
 2 London Interbank rate knowing that that  
 3 manipulation might cause the City to pay more than  
 4 it otherwise would in a standard market-based  
 5 transaction, and that in every contract, there is  
 6 an implied covenant of good faith and that that  
 7 conduct was not in good faith and consequently that  
 8 was a breach.  
 9 BY MS. ENGLISH:  
 10 **Q. And what is your understanding as to the potential**  
 11 **defenses to that claim?**  
 12 **A. Potential defenses could be factual in that you --**  
 13 **in addition to all the issues we talked about about**  
 14 **the City continuing to operate under the contract,**  
 15 **that, in fact, you would have to do an analysis as**  
 16 **to whether or not the City was actually damaged by**  
 17 **that behavior, whether or not that changed rates**  
 18 **significantly for the City, what those damages**  
 19 **would be, whether -- to others, all the factors**  
 20 **that would go into an analysis of a breach of**  
 21 **contract based upon alleged good or bad -- whether**  
 22 **or not they engaged in bad faith, whether or not it**  
 23 **was intentional, all those sorts of factors.**  
 24 **Q. And based upon your earlier testimony, you also**  
 25 **assigned this claim the chance no better than**

Page 96

1 **50 percent chance of success; is that right?**  
 2 **A. Generally speaking, yes.**  
 3 MS. ENGLISH: I guess we're getting low  
 4 on the tape. Is everybody okay if we take a  
 5 break?  
 6 MR. SHUMAKER: Sure.  
 7 VIDEOGRAPHER: Off the record at 12:41  
 8 p.m.  
 9 (Whereupon a break was taken  
 10 from 12:41 p.m. to 1:07 p.m.)  
 11 VIDEOGRAPHER: This is the beginning of  
 12 Videotape No. 2 in the continuing deposition of  
 13 Mr. Kevyn Orr. We're back on the record at 1:07  
 14 p.m.  
 15 MS. ENGLISH: Hello again.  
 16 THE WITNESS: Hello.  
 17 MS. ENGLISH: Thank you for taking a  
 18 quick break.  
 19 THE WITNESS: Thank you.  
 20 BY MS. ENGLISH:  
 21 **Q. All right. I think we left off running through the**  
 22 **list of claims you had given me that informed your**  
 23 **judgment, and the next one I get to on my list here**  
 24 **is you had mentioned pursuing a claim for an**  
 25 **injunction that would prohibit the swap**

Page 97

1 counter-parties from trapping the casino revenue;  
 2 is that right?  
 3 **A. Yes.**  
 4 **Q. Can you tell me what is the basis for that claim?**  
 5 **A. Well, based upon the inequitable conduct that we**  
 6 **would have alleged that we discussed here this**  
 7 **afternoon, the injunction would seek -- under 436,**  
 8 **the emergency management statute, I would seek to**  
 9 **abrogate the so-called irrevocable letters of**  
 10 **instruction to both the -- both the US Bank, as**  
 11 **trustee, so that they would neither trap casino**  
 12 **revenue or turn over the revenue that we pay on a**  
 13 **monthly basis, but also seek to revoke the**  
 14 **irrevocable letters of instruction to the three**  
 15 **casinos that pay the casino revenue into the**  
 16 **general receipts account and I would seek an**  
 17 **injunction against the counter-parties from**  
 18 **interfering with my exercise of authority under 436**  
 19 **to revoke those letters of instruction.**  
 20 **Q. Other than looking at it from the standpoint of**  
 21 **your authority under 436, would there be any other**  
 22 **legal bases for a claim against the swap**  
 23 **counter-parties prohibiting them from trapping?**  
 24 **A. Yeah, as I said, I believe part of the claim is**  
 25 **wrapped up in the totality of the issues**

Page 98

1 **alleging -- alleging -- sorry for lunch.**  
 2 MS. ENGLISH: You're sorry for lunch?  
 3 THE WITNESS: That's lunch. I don't mean  
 4 to burp on the record. Excuse me.  
 5 MS. ENGLISH: Do you need another break?  
 6 THE WITNESS: Okay.  
 7 MS. ENGLISH: Take your time. That's  
 8 fine.  
 9 THE WITNESS: Just a little indigestion.  
 10 MS. ENGLISH: That's what happens when  
 11 you eat in five minutes, right?  
 12 THE WITNESS: That based upon the alleged  
 13 inequitable conduct of the counter-parties, as a  
 14 matter of equity for the injunction, that would be  
 15 the basis for why we would have a right to invoke  
 16 those letters of instruction and seek to prohibit  
 17 them from interfering with that revocation.  
 18 BY MS. ENGLISH:  
 19 **Q. Okay. Other than the revocation of those letters**  
 20 **and your authority under Act 34 --**  
 21 **A. Four --**  
 22 **Q. Sorry, Act 436.**  
 23 **A. See?**  
 24 **Q. Would there be any other legal bases for arguing**  
 25 **that the swap counter-parties shouldn't be able to**

Page 99

1 **trap the casino revenue?**  
 2 **A. There might be. There might be other equitable**  
 3 **bases based upon the conduct. You might be able to**  
 4 **allege -- there might be.**  
 5 **Q. Are there any other claims that you analyzed?**  
 6 **A. Relating to injunction?**  
 7 **Q. Yeah.**  
 8 MR. SHUMAKER: Aside from the ones he's  
 9 already --  
 10 MS. ENGLISH: Aside from the ones you  
 11 just listed.  
 12 THE WITNESS: Just a general injunction  
 13 relating to the fraud allegations. There would be  
 14 claims for injunction related to my conduct under  
 15 436 or the letters of instruction, but also based  
 16 upon alleged fraud and conspiracy to defraud as a  
 17 basis for why they should not trap the revenue.  
 18 BY MS. ENGLISH:  
 19 **Q. Did you look at any arguments that exist under the**  
 20 **Bankruptcy Code?**  
 21 **A. There were some arguments under the Bankruptcy**  
 22 **Code.**  
 23 **Q. What are those?**  
 24 **A. Well, the arguments under the Bankruptcy Code**  
 25 **related to whether or not the safe harbor rules in**

Page 100

1 **the Bankruptcy Code would apply and whether or not**  
 2 **this would constitute special revenue under the**  
 3 **definition under the Bankruptcy Code to allow the**  
 4 **counter-parties to seek the benefit of the safe**  
 5 **harbor provisions of the Bankruptcy Code.**  
 6 **Q. How does the special revenues section of the**  
 7 **Bankruptcy Code interrelate with the swap safe**  
 8 **harbor provisions?**  
 9 **A. Well, there's -- as I understand it, there was an**  
 10 **argument to be made that because these revenues**  
 11 **were not related to a specific project, they may or**  
 12 **may not be special revenues, and if they're not**  
 13 **special revenues, they may not be entitled to the**  
 14 **protections of the safe harbor of the Bankruptcy**  
 15 **Code.**  
 16 **Q. So your understanding is that the special revenues**  
 17 **issue is linked to whether the swap counter-parties**  
 18 **can trigger those safe harbor protections?**  
 19 **A. Yes.**  
 20 **Q. Do you have a view as to whether the casino**  
 21 **revenues constitute special revenues under the**  
 22 **Bankruptcy Code?**  
 23 **A. Here again, there are pro and con. As I said**  
 24 **before, there was a -- all the ordinances and the**  
 25 **opinions related to the fact that -- I believe**

Page 101

1 **Orrick in particular issued an opinion that the**  
 2 **structure was appropriate and that they might be**  
 3 **entitled or would be entitled to safe harbor**  
 4 **protection, so there were pros and cons as to**  
 5 **whether or not there were. There were arguments**  
 6 **against, that to the extent casino revenues were**  
 7 **not related to a specific project as has been**  
 8 **commonly understood to be special revenues, like a**  
 9 **drainage ditch or a public work, that they should**  
 10 **not be classified as special revenues.**  
 11 **Q. How do you view the strength of the argument that**  
 12 **post-petition-acquired casino revenues are not**  
 13 **special revenues?**  
 14 **A. It is my understanding that there are arguments**  
 15 **back and forth that the security interest is not**  
 16 **attached to post-petition revenues and there are**  
 17 **arguments that -- I understand that there are**  
 18 **arguments to be made that, in fact, they do, so in**  
 19 **my view, here again, is that generally speaking,**  
 20 **it's a toss-up.**  
 21 **Q. So you ascribe a 50/50 chance of success on this**  
 22 **claim then, too?**  
 23 **A. Yes.**  
 24 **Q. Did you look at whether the casino revenues might**  
 25 **constitute a special excise tax into the Bankruptcy**

Page 102

1 Code?  
 2 A. I believe there was some analysis as to whether or  
 3 not they might constitute a special excise tax. I  
 4 believe that's the 928(a), 902 -- I don't have the  
 5 code in front of me and I haven't looked at it in  
 6 some time, but I believe there was an analysis of  
 7 that issue.  
 8 Q. And what is your assessment of that issue and the  
 9 strengths and weaknesses?  
 10 A. Here again, it's a toss-up.  
 11 Q. Did you review the legislative history of the  
 12 various code sections that might apply to these  
 13 claims and defenses?  
 14 A. The Bankruptcy Code sections?  
 15 Q. Yes.  
 16 A. I think I reviewed -- in some of the memoranda,  
 17 there were excerpts of the legislative history, I  
 18 don't know if I read the entire legislative  
 19 history.  
 20 Q. Do you remember which pieces of the legislative  
 21 history you reviewed?  
 22 A. I do not.  
 23 Q. And after reviewing those legislative history  
 24 excerpts, you still adjudged all of these claims as  
 25 only 50/50?

Page 103

1 A. Yes.  
 2 Q. Returning back to your comment about the safe  
 3 harbor protections.  
 4 A. Yes.  
 5 Q. Tell me about the analysis and assessment you did  
 6 with respect to the swap counter-parties' ability  
 7 to invoke the safe harbor protections.  
 8 A. Here again, I did no independent analysis, I relied  
 9 on my counsel and advisors, but the analysis was  
 10 that while there was some question as to whether or  
 11 not the gaming revenue would qualify as for the  
 12 protection of safe harbor, they could execute in  
 13 their security interest, there was also a question  
 14 as to whether or not they could, and so that the  
 15 City was at risk specifically because of all the  
 16 issues we discussed regarding the City approving  
 17 the ordinance for the swaps, the parties acting  
 18 under it, continuing to observe it, that -- and  
 19 acting as if it was entitled to that protection,  
 20 indeed recognizing as if it was, that the City  
 21 would be at risk in some fashion that the  
 22 counter-parties would be entitled to that  
 23 protection.  
 24 Q. Did you analyze whether the safe harbor protections  
 25 would apply if the City were successful in its

Page 104

1 argument that the swap obligations were void ab  
 2 initio?  
 3 A. I believe there was an analysis like that, yes.  
 4 Q. And what was your conclusion based on that  
 5 analysis?  
 6 A. It is my understanding that there may be an  
 7 argument that it was void -- as I said before, it  
 8 was void ab initio, then the pledge would fail as  
 9 well.  
 10 Q. And did you not assign that any better likelihood  
 11 of success than 50/50, like all of the other  
 12 claims?  
 13 A. Here again, it was a toss-up, it was a 50/50.  
 14 Q. Did you analyze whether the swap counter-parties  
 15 were actually swap participants under the  
 16 Bankruptcy Code?  
 17 A. Let me just say this about this line of  
 18 questioning: I did no independent analysis, I  
 19 relied on my attorneys and my advisors. There was  
 20 analysis regarding the status of the swap  
 21 counter-parties, whether or not they fit the  
 22 definitions of participants and whether or not they  
 23 would be entitled to those provisions, so the  
 24 answer is yes.  
 25 Q. I'm sorry, the answer is yes, you did review

Page 105

1 analyses as to whether the swap counter-parties  
 2 were swap participants?  
 3 A. Yes.  
 4 Q. Okay. And what are the pros and cons of that  
 5 issue?  
 6 A. As I said before, the parties had recognized  
 7 their -- had recognized their status, had acted as  
 8 if that was recognized status, that status was  
 9 approved pursuant to city council ordinance, there  
 10 were legal opinions related both to the 2005 and  
 11 2006 underlying COPs transaction, and there were  
 12 legal opinions related to the 2009 collateral  
 13 pledge that approved the transaction and said it  
 14 was appropriate, so there were pros and cons as to  
 15 whether or not that would somehow invalidate the  
 16 swaps.  
 17 Q. How do those factors play into the issue of whether  
 18 the swap counter-parties are "swap participants"  
 19 under the code?  
 20 A. My understanding, there was some analysis that if,  
 21 in fact, they weren't participants, that their  
 22 interests might somehow be impacted, subordinated  
 23 or otherwise affected.  
 24 Q. Does the City have a position as to whether the  
 25 swap counter-parties are swap participants?

Page 106

1 A. No.

2 Q. You have no position on that?

3 A. None other than the City has expressed in the prior

4 approvals going forward.

5 Q. What would be the basis for drawing the conclusion

6 that swap counter-parties are swap participants?

7 A. As I said, it's my understanding that there was

8 some legal analysis prepared, pro and con, that

9 they would be participants and the City's prior

10 recognition of their status and approval and the

11 number of City ordinances.

12 Q. Do you know what -- how a swap participant is

13 defined under the code?

14 A. Yes, I believe I do.

15 Q. How is it defined?

16 A. I don't have the code section in front of me. I

17 would be happy to look at it.

18 Q. I'm asking what your current understanding is.

19 A. My current understanding is a party that

20 participates in the cash flow stream of the swap,

21 it is entitled to certain protections under the

22 code.

23 Q. Okay. Does the swap participant need to have a

24 swap contract with the debtor?

25 A. I think that's -- I don't know.

Page 107

1 Q. Is it the City's position that the City has swap

2 obligations pursuant to its service contracts?

3 A. I'm sorry, could you rephrase the question?

4 Q. Does the City have swap obligations?

5 A. The service corporations have swap obligations, but

6 I think it's been recognized and certainly I think

7 in some of the papers it's been said that the City

8 has said that they're their obligations.

9 Q. And those swap obligations of the City are affected

10 through the service contracts, correct?

11 A. Yes.

12 Q. I think we've come back to our list of claims and I

13 have -- the last one that you had mentioned were

14 various forms of fraud claims; is that right?

15 A. Yes.

16 Q. So can you please tell me about what the bases

17 would be for a fraud claim against the swap

18 counter-parties?

19 A. As I said today, the allegations certainly in

20 connection with the LIBOR price-fixing scandal that

21 have gone into effect, I think that was a

22 multi-enforcement, regulatory enforcement agreement

23 between, I think, the Department of Justice, the

24 London regulatory agency and I believe a Swiss

25 agency, where one of the parties, at least UBS,

Page 108

1 acknowledged improper conduct, that that

2 fraudulent -- that conduct would constitute a basis

3 for a fraud claim, and therefore, the City was

4 damaged by paying more than it might have been

5 obligated to pay had ordinary market forces been at

6 work.

7 Q. And what's your understanding as to the potential

8 defenses to that kind of a claim?

9 A. As I said, that kind of a claim involves factual

10 inquiry, analysis, calculations and projections of

11 what the potential damages were, whether or not

12 there was causation involved from the actual

13 behavior and litigation related to the City's

14 contracts, if there was, what that damage --

15 whether or not it was approximate, a number of

16 different issues, to show that that in fact there

17 was conduct that constituted fraud, it caused the

18 City damages.

19 Q. And pursuant to your earlier testimony, you

20 assigned fraud claims as only having a 50/50 chance

21 of success as well; is that correct?

22 A. Yes, as I said with all these claims, it was at

23 best a toss-up.

24 Q. I want to return to one of the earlier claims, the

25 second claim. You discussed that the swap

Page 109

1 transactions might have been void ab initio?

2 A. Yes.

3 Q. Is it your understanding that if the City were

4 successful on that claim, it could seek to disgorge

5 all of its swap payments from the swap

6 counter-parties?

7 A. Yes, that could be a potential remedy.

8 Q. Have you assessed what the value of that would be,

9 what the amount of payments would be that you could

10 disgorge?

11 A. I don't have a recollection for you today, but

12 there was an analysis -- I don't want to use a big

13 word like analysis. There was a discussion that it

14 could have been all payments made under the swap.

15 Q. Do you have an estimate as to how much that would

16 be?

17 A. It could be as much as several of tens if not

18 hundreds of millions of dollars.

19 Q. Okay. Other than the eight claims that we've just

20 run through in detail, were there any other claims

21 or legal arguments you thought the City had against

22 the swap counter-parties?

23 A. No, I think those are generally the theories and

24 categories of claims that we discussed and

25 analyzed.

Page 110

1 Q. Did you analyze whether the City used the service  
 2 corporations in a way that was unlawful?  
 3 A. Yes.  
 4 Q. And what is your evaluation of that issue?  
 5 A. That there are arguments pro and con.  
 6 Q. What are the arguments pro?  
 7 A. Pro, meaning pursue litigation, where that the  
 8 service corporations were sham, that they were just  
 9 merely put in place to deal with the Act 34  
 10 prohibition against the City incurring a certain  
 11 amount of debt, perhaps above debt limits, and  
 12 that, in fact, the true obligor was the City.  
 13 Q. Any other bases that would support that claim?  
 14 A. There might be, but that's generally the gist of  
 15 the claim.  
 16 Q. And what would be the potential defenses to that  
 17 claim?  
 18 A. That service corporations are used regularly, that,  
 19 in fact, as I said before, the legal opinions of  
 20 Lewis & Munday gave an unqualified legal opinion, I  
 21 believe, that it was appropriate, that it did not  
 22 violate Act 34 or the underlying transaction, that  
 23 their use was an appropriate use for the  
 24 transaction and that it did not violate the law.  
 25 Q. Your understanding is that there is legal opinion

Page 111

1 saying that the use of the service corporations  
 2 to engage in swap obligations without following  
 3 Act 34, et cetera, et cetera, is valid?  
 4 A. Yes.  
 5 MR. SHUMAKER: Object to the form.  
 6 BY MS. ENGLISH:  
 7 Q. One thing I did just want to establish, the City  
 8 does agree that Act 34 was not followed in  
 9 undertaking the swap obligations, correct?  
 10 MR. SHUMAKER: Objection. Calls for a  
 11 legal conclusion.  
 12 THE WITNESS: Yeah, I'm -- I have seen  
 13 legal opinions by the City's attorneys that say it  
 14 was valid and it was followed.  
 15 BY MS. ENGLISH:  
 16 Q. No, not that it was valid, but the requirements  
 17 under Act 34 --  
 18 A. I don't know.  
 19 Q. -- they weren't followed, were they?  
 20 A. I don't know.  
 21 Q. You don't know.  
 22 I just want to establish for the record,  
 23 you've made several references to analyses or memos  
 24 prepared by counsel that were provided to you. I  
 25 just want to establish for the record that the City

Page 112

1 is claiming the attorney-client privilege with  
 2 respect to those memos and is not producing any of  
 3 those pieces of paper; is that correct?  
 4 A. Yes.  
 5 Q. And you're also not producing the draft complaint  
 6 that you referenced earlier; is that right?  
 7 A. Correct.  
 8 Q. Of the all the arguments we've just discussed, did  
 9 you discuss all of these claims with the mediator  
 10 on December 23rd and 24th?  
 11 A. I don't recall us discussing them specifically,  
 12 individually as you and I have today, I think we  
 13 discussed them generally.  
 14 Q. So you couldn't say, sitting here today, whether  
 15 any specific sort of line item that we've just  
 16 gone through on my list was discussed with the  
 17 mediator?  
 18 A. That's correct.  
 19 Q. Why didn't you bring Buckfire into the negotiations  
 20 on the 23rd and the 24th?  
 21 A. Well, one, I think Mr. Buckfire was on vacation;  
 22 second, both he and Jim Doak were available by  
 23 phone. The order ordering mediation specifically  
 24 referenced that I had to be there, so I was there.  
 25 Q. In renegotiating this deal, did you evaluate what

Page 113

1 the cost would be of litigating these claims as  
 2 opposed to settling?  
 3 A. Generally speaking, yes.  
 4 Q. And what did you evaluate that cost to be?  
 5 A. We generally thought that it would be several  
 6 millions of dollars. We assumed that in bringing  
 7 any claims against the counter-parties who are  
 8 financial institutions, that we would have  
 9 well-funded adversaries who would be willing to  
 10 litigate the issue and would be able to prevent --  
 11 present a robust defense to any claims and that we,  
 12 in pursuing those claims, might incur expenses into  
 13 the millions if not tens of millions of dollars.  
 14 Q. When you say into the millions if not tens of  
 15 millions, you honestly think litigating these  
 16 claims could have cost tens of millions of dollars?  
 17 A. Yeah, it very well might, yes.  
 18 Q. And you had some type of analysis -- did you  
 19 prepare a budget?  
 20 A. No, I don't think there was anything as detailed as  
 21 a budget. We discussed it amongst ourselves. I  
 22 personally have been a litigator for 30 years, and  
 23 recognizing that oftentimes in very hard-fought  
 24 litigation, you will spend millions of dollars.  
 25 Q. Did you think you could have spent \$20 million on

Page 114

1 the litigation?  
 2 A. Ms. English, as you know, it all depends upon how  
 3 long the litigation goes.  
 4 Q. I'm asking what your assessment was because you're  
 5 trying to decide, "Do I litigate or do I settle?"  
 6 Right?  
 7 A. Yes.  
 8 Q. So I'm trying to decide, did you think the  
 9 litigation was going to cost you \$165 million?  
 10 A. No, that would seem on the high side.  
 11 Q. Ridiculously high, wouldn't you agree?  
 12 A. That would seem on the high say.  
 13 Q. Ridiculously high, wouldn't you agree?  
 14 MR. SHUMAKER: Objection. Asked and  
 15 answered.  
 16 MS. ENGLISH: That's fine.  
 17 BY MS. ENGLISH:  
 18 Q. So what did you assess the litigation costs to be?  
 19 A. There was a range of potential cost anywhere from  
 20 several millions of dollars upwards of in excess of  
 21 \$20 million depending upon how long the litigation  
 22 would go.  
 23 Q. And the \$20 million figure, what period of time  
 24 were you estimating that that gave way to the  
 25 \$20 million?

Page 115

1 A. We were thinking that if the litigation were strung  
 2 out over a number of years, that if you rounded  
 3 off, for instance, a million or two a quarter, just  
 4 for an average, that you could spend somewhere in  
 5 the neighborhood of almost four to \$8 million a  
 6 year.  
 7 If we did not have an injunction or the  
 8 parties were able to trap the revenue or they were  
 9 able to somehow continue receiving payments, we  
 10 would have a loss of that revenue, the interest  
 11 payments that we have to make averaging  
 12 approximately \$12 million a quarter, in addition to  
 13 the out-of-pocket expense that we would be paying  
 14 for litigation, we would not be able to stabilize  
 15 the City's finances going forward because we  
 16 wouldn't have the stabilized casino revenue coming  
 17 into the City, and so we could not plan  
 18 strategically to put the City in a sustainable  
 19 fashion.  
 20 So in addition to the out-of-pocket cost  
 21 of litigation, which could be anywhere from four to  
 22 \$8 million a year or more, depending upon how  
 23 heated litigation was, we would also be losing the  
 24 revenue stream from the casino revenue if that  
 25 money was either trapped or we were obligated to

Page 116

1 pay it.  
 2 Q. If you lost the argument, you -- you would make the  
 3 argument that it shouldn't be trapped, right?  
 4 A. Well, yeah, as we said in the potential complaint,  
 5 we tried to enjoin that.  
 6 Q. When we're talking about your assessment of  
 7 litigation costs, I assume you're talking about --  
 8 you're including all the claims you could  
 9 potentially bring against all potential parties,  
 10 correct?  
 11 A. Yes, yes, multiple parties.  
 12 Q. Did you do any assessment of what it might cost or  
 13 what it might entail just to sue the swap  
 14 counter-parties on the legal validity claims?  
 15 A. I think part of that range included an analysis of  
 16 whether or not you would be able to break that out,  
 17 but that analysis also took into account that they  
 18 might well seek to recover on insurance, and then  
 19 insurers, your clients, would be subrogated to  
 20 their claims, and as we've seen, they've been  
 21 fairly litigious and would pursue potential  
 22 recovery against the City as a subrogee, so the --  
 23 Q. I'm just going to correct you because my client  
 24 does not insure swap obligations, so --  
 25 A. I'm sorry, I was -- Mr. Marriott.

Page 117

1 Q. -- I think you misspoke there.  
 2 A. But I'm saying clients involved with that. So we  
 3 might -- we might actually, by suing them, end up  
 4 worse off because if they sought to execute on  
 5 their security -- execute on their insurance, then  
 6 their insurer might come after us much more  
 7 strongly.  
 8 So when we say the range of potential  
 9 claims, it didn't just include if you're just going  
 10 after, say, a declaratory judgment to invalidate  
 11 their interest, but you had to take into account  
 12 that might actually create follow-on litigation  
 13 from their insurers.  
 14 Q. And what claims did you believe the swap  
 15 counter-parties' insurers would be able to assert  
 16 back against the City?  
 17 A. Well, I think all the claims that we discussed, if  
 18 they were subrogated, they would stand in the shoes  
 19 of the parties and be able to assert those claims.  
 20 Principal among them was their right under the swap  
 21 agreements.  
 22 Q. Their right to do what?  
 23 A. To recover the pledge amount, the casino revenue.  
 24 Q. Do you mean to trap the casino revenue?  
 25 A. To potentially trap it or keep recovering it in the

1 ordinary course, yeah, either one.  
 2 **Q.** So it's not really a different claim than the claim  
 3 you were talking about bringing in the first place?  
 4 **A.** Right, they step into the shoes of the  
 5 counter-parties.  
 6 **Q.** Were there any counter-claims you were concerned  
 7 the swap counter-parties' insurers could bring  
 8 against the City that weren't among the claims  
 9 we've already analyzed?  
 10 **A.** There were concerns expressed that, given the  
 11 nature of the transaction and some of the  
 12 representations made by the City, there might be  
 13 counter-claims, but I didn't have a specific list  
 14 of the potential counter-claims like I do of the  
 15 claims that we might assert against them.  
 16 **Q.** I understand. Do you think you could name one of  
 17 those counter-claims?  
 18 **A.** Sure. There might be claims couched in estoppel  
 19 against us, which is what I was saying as a defense  
 20 earlier today. They might say, "You're estopped  
 21 from asserting this claim because you, the City,  
 22 passed an ordinance approving them; you, the City,  
 23 gave us a legal opinion from Orrick saying they  
 24 were appropriate; you, the City, agreed to enter  
 25 into this transaction to forbear the termination

1 we're talking about those eight theories, there may  
 2 be other issues at play within them that we  
 3 discussed with both sides.  
 4 BY MS. ENGLISH:  
 5 **Q.** But are there any other issues not within those  
 6 eight categories that we discussed?  
 7 **A.** Generally speaking, no.  
 8 **Q.** Did you have Ernst & Young run any cash flow  
 9 forecasts that included a litigation strategy as  
 10 opposed to the swap settlement?  
 11 **A.** Yes.  
 12 **Q.** When did you have them do that?  
 13 **A.** From time to time, Ernst & Young would run cash  
 14 forecasts based upon DIP, no DIP, ordinary course.  
 15 It says DIP, but it's post-petition financing, but  
 16 that's what we call it. So those are run and  
 17 refreshed -- there's no set time. They're run and  
 18 refreshed regularly, every few weeks.  
 19 **Q.** Again, you may have misunderstood my question.  
 20 What I'm asking is -- obviously everyone in this  
 21 room has pored over the cash flow forecasts,  
 22 including yourself, right?  
 23 **A.** Uh-hum.  
 24 **Q.** And none of them that have been produced thus far  
 25 show a litigation strategy with the swap

1 event that occurred in 2009 and we gave  
 2 consideration for not executing on that termination  
 3 event in 2009 based upon your representation," so  
 4 there are a bunch of issues going back and forth.  
 5 **Q.** I'm sorry, I must not have been clear in my  
 6 question. What I wanted to know is, were there any  
 7 counter-claims you were anticipating that could be  
 8 brought by the swap counter-parties or their  
 9 insurers --  
 10 **A.** Yeah.  
 11 **Q.** -- that were not among the claims we've already  
 12 discussed here today?  
 13 **A.** Well, then I misunderstood. What I was saying was,  
 14 as I said before, those counter-claims could be  
 15 couched in estoppel and others, but if you're  
 16 including all of those claims and counter-claims in  
 17 the discussion we had today, there are none that I  
 18 recall sitting here today.  
 19 **Q.** So there's no other issues at play in a potential  
 20 litigation other than the eight we discussed today;  
 21 is that right?  
 22 MR. SHUMAKER: Object to the form.  
 23 THE WITNESS: Yeah, we discussed those  
 24 eight theories. As I said before, there might be  
 25 separate claims within those theories, but assuming

1 counter-parties as opposed to settlement. I'm  
 2 asking, did you have a cash flow forecast run by  
 3 E&Y that included litigating with them, not  
 4 settling?  
 5 **A.** I'm sorry, you mean besides the ones that you've  
 6 already seen in the cash flow forecast?  
 7 **Q.** Well, there aren't any that show litigation.  
 8 **A.** Right, I'm saying besides the ones we've already  
 9 seen. I don't think so.  
 10 **Q.** Also, just to clarify for the record, you testified  
 11 earlier that there were some analyses run as to the  
 12 cost and time litigation would take, and I assume  
 13 the City is claiming the attorney-client privilege  
 14 to production of those documents as well; is that  
 15 correct?  
 16 MR. SHUMAKER: Objection.  
 17 Mischaracterizes the witness' testimony.  
 18 MS. ENGLISH: Then I don't want to  
 19 mischaracterize, so let me start from the  
 20 beginning.  
 21 BY MS. ENGLISH:  
 22 **Q.** Didn't you testify just a little while ago that  
 23 there had been some analyses done with respect to  
 24 the cost of litigation?  
 25 **A.** I said there were analyses, I didn't say they were

Page 122

1 written. I said I had discussion with counsel from  
 2 time to time and we would talk about what potential  
 3 costs were.  
 4 Q. Okay. So let me just establish then, were there  
 5 any written analyses done as to the cost or time  
 6 involved in a litigation strategy?  
 7 A. I don't -- you say analyses as in a spreadsheet.  
 8 There might have been memos, there might have been  
 9 emails discussing cost --  
 10 Q. Sure.  
 11 A. Let me finish my thought. But if you're looking  
 12 for a specific analysis like a spreadsheet, I don't  
 13 recall that.  
 14 Q. Let's say written document.  
 15 A. Yes.  
 16 Q. Okay?  
 17 A. Yes.  
 18 Q. Were there any written documents that analyzed or  
 19 discussed in any way what the cost of litigating  
 20 against the swap counter-parties would be?  
 21 A. Yes.  
 22 Q. And are you -- is the City claiming the  
 23 attorney-client privilege protects those documents  
 24 from being produced?  
 25 A. Yes.

Page 123

1 Q. Were there any written documents that discussed or  
 2 assessed the time that would be involved in  
 3 litigating with the swap counter-parties?  
 4 A. Yes.  
 5 Q. And is the City also claiming attorney-client  
 6 privilege with respect to those documents?  
 7 A. Yes.  
 8 Q. Are those two things the same documents?  
 9 A. In some cases they are, in some cases they aren't.  
 10 Q. When were they prepared?  
 11 A. As I said, during this time there were many  
 12 documents and emails going back and forth, so they  
 13 -- on a regular basis. There were communications  
 14 going back and forth between counsel, amongst  
 15 counsel, to me, back and forth, so I don't want to  
 16 give you an impression there's something that looks  
 17 like the cash flow projections as a document.  
 18 There were many communications going back and forth  
 19 regarding the cost.  
 20 Q. Did any of these communications or these documents,  
 21 did any of them take place between the day the  
 22 trial ceased and the day you started renegotiating  
 23 with the swap counter-parties?  
 24 A. You mean between what I think was the 20th and the  
 25 23rd?

Page 124

1 Q. Between December 18th when you were on the stand --  
 2 A. Right.  
 3 Q. -- and the trial was halted --  
 4 A. Okay.  
 5 Q. -- and the day you started renegotiating with the  
 6 swap counter-parties over this deal.  
 7 A. On the 23rd?  
 8 Q. On the 23rd.  
 9 A. Not that I have seen.  
 10 Q. Is it fair to say then that you did not reassess  
 11 the possibility of a litigation strategy in that  
 12 interval?  
 13 MR. SHUMAKER: Object to the form.  
 14 THE WITNESS: No.  
 15 BY MS. ENGLISH:  
 16 Q. How did you reassess it?  
 17 A. We had discussions throughout that timeframe that  
 18 we may have to get the complaint ready to go  
 19 forward and we should be prepared that if  
 20 negotiations were not successful to file a  
 21 complaint.  
 22 Q. So in your mind then, you're drawing a distinction  
 23 between oral communications that you had and  
 24 written pieces of paper; is that what I'm  
 25 understanding?

Page 125

1 A. No, there may -- you asked me was there any  
 2 analysis regarding the cost. Not that I recall.  
 3 But was there analysis regarding whether or not we  
 4 might have to sue the counter-parties? Yes, we had  
 5 communications in that regard, some of which might  
 6 be written, that if these negotiations were not  
 7 successful, that we would be prepared to file a  
 8 complaint virtually immediately after negotiations  
 9 were over.  
 10 Q. During the negotiations on the 23rd and the 24th  
 11 when you were listing for me the parties that were  
 12 present, you didn't mention the service  
 13 corporations. Were they there or not there?  
 14 A. I don't recall seeing any representatives from the  
 15 service corporations.  
 16 Q. Did you discuss the negotiations with any  
 17 representatives of the service corporations?  
 18 A. No.  
 19 Q. Have they agreed to the sixth amendment to the  
 20 forbearance agreement?  
 21 A. Not with me.  
 22 Q. Do you have any knowledge of anyone on behalf of  
 23 the City engaging in any negotiations with the  
 24 service corporations over the sixth amendment to  
 25 the forbearance agreement?



Page 126

1 A. No.

2 Q. Do you have any knowledge of anyone on behalf of

3 the swap counter-parties negotiating with the

4 service corporations over the sixth amendment to

5 the forbearance agreement?

6 A. No.

7 Q. Do you know if the service corporations have agreed

8 to it?

9 A. No.

10 Q. Do you know if they've signed it?

11 A. No.

12 Q. Do you know how that might be accomplished?

13 A. No.

14 Q. Is the City going to be filing an amendment to its

15 motion to approve the DIP financing to reflect the

16 lower swaps termination payment?

17 A. I don't know.

18 Q. It's my understanding, as initially proposed, the

19 DIP loan from Barclays was a total of \$350 million;

20 is that correct?

21 A. Yes.

22 Q. And that was broken down approximately \$120 million

23 on a quality of life loan and \$230 million for a

24 swaps payment; is that right?

25 A. Yes.

Page 127

1 Q. And the \$120 million for the quality of life loan,

2 that was going to be secured by the casino

3 revenues; is that right?

4 A. Yes.

5 Q. And the \$230 million for the swaps termination

6 payment would be secured by income tax revenues and

7 asset proceeds; is that correct?

8 A. Yes.

9 Q. Is it your understanding, now that you've

10 negotiated a swaps termination payment of

11 165 million, that that portion of the DIP loan will

12 decrease from 230 million to 165 million?

13 A. Most likely, yes.

14 Q. You're not sure at this point?

15 A. Well, it's my intent that we borrow as little money

16 as possible. Generally speaking, we want to reduce

17 the DIP loan by that amount, but I want to make

18 sure that we finally decide to do that before I say

19 that's absolutely what's going to happen, but

20 that's generally the intent.

21 Q. That's -- I'm sorry.

22 A. That's generally the intent, yes, to reduce it

23 dollar for dollar.

24 Q. But that decision has not been conclusively made at

25 this time?

Page 128

1 A. It has, I just want to leave -- there's no intent

2 for me not to do it, I just want to make sure that

3 we finally decide to do it.

4 MS. ENGLISH: Okay. It's ten of two. I

5 want to take just five minutes to caucus with my

6 co-objectors' counsel before I give up my mic. If

7 you could give us just five minutes.

8 MR. SHUMAKER: Sure.

9 VIDEOGRAPHER: Off the record at 1:48

10 p.m.

11 (Whereupon a break was taken

12 from 1:48 p.m. to 2:00 p.m.)

13 VIDEOGRAPHER: We are back on the record

14 at 2:00 p.m.

15 MS. ENGLISH: Mr. Orr, I just wanted to

16 thank you for your time. That concludes my portion

17 of the questioning and I'm going to turn it over to

18 Mr. Marriott.

19 THE WITNESS: You're welcome,

20 Ms. English.

21 MS. ENGLISH: Thank you.

22 MR. MARRIOTT: Good afternoon, Mr. Orr.

23 THE WITNESS: Good afternoon,

24 Mr. Marriott.

25 MR. MARRIOTT: As you know, I represent

Page 129

1 EEPK and affiliates.

2 THE WITNESS: Yes.

3 MR. MARRIOTT: And I don't have a whole

4 lot of questions.

5 EXAMINATION

6 BY MR. MARRIOTT:

7 Q. Let me start briefly with the post-petition

8 financing.

9 A. Yes.

10 Q. You indicated that it is your present intention to

11 drop the amount of the DIP from 350 to -- if my

12 math is correct -- 285 million, which would be 120

13 plus 165; is that right?

14 A. Correct.

15 Q. Have you had any discussions at this point with

16 Barclays about whether or not they would agree to a

17 reduction in the amount of the post-petition

18 financing to 285 million?

19 A. Have I personally?

20 Q. Yes.

21 A. No.

22 Q. Do you know if anybody has?

23 A. I believe my counsel has.

24 Q. Do you know if they've indicated a willingness to

25 do so?

Page 130

1 A. No.

2 Q. You don't know or they haven't?

3 A. I do not know.

4 Q. Okay. You testified early on that one of the -- if

5 I understood your testimony correctly early on, you

6 testified that among the reasons that you went to a

7 fixed amount rather than maintaining a percentage

8 of the termination payment as the price to be paid

9 to the swap counter-parties, that it was to reduce

10 the risk of interest rate; is that a correct

11 statement?

12 A. Yes, yeah.

13 Q. And I believe your testimony was that during the

14 period of this mediation, the 23rd and 24th of

15 December, the interest rate information that you

16 were provided was limited to what's happening to

17 interest rates today; is that correct?

18 A. Yes, that day, yeah.

19 Q. Okay. So that there was no updated LIBOR curve

20 analysis done to support your negotiations in the

21 mediation on the 23rd and 24th; is that correct?

22 A. Not that I know of.

23 Q. Okay. Not that you saw?

24 A. Not that I saw.

25 Q. Okay. And I'm correct, am I not, that as LIBOR --

Page 131

1 or to the extent that LIBOR rates rise, the

2 termination payment due to the swap counter-parties

3 comes down, correct?

4 A. Correct.

5 Q. If a LIBOR curve analysis had been provided to you

6 on the -- during the period of the 23rd and 24th of

7 December which reflected that interest rates were

8 going to rise over time, that the trend was up even

9 though on that particular date rates had dropped,

10 would that have affected your decision to go to a

11 fixed fee rather than a percentage?

12 A. I don't know.

13 Q. Would it have affected your agreement to

14 165 million versus a lower number?

15 A. I don't know.

16 Q. We're about to enter some dangerous territory here:

17 Lawyers doing math.

18 If you could pull out Exhibit 4, which is

19 the mediators' recommendation. And I think you

20 testified that you had seen this before, correct?

21 A. Yes.

22 Q. Okay. If you would turn to page 2.

23 A. Yes.

24 Q. I want to go over again something that was

25 discussed in the previous questioning. At the top

Page 132

1 of the page, the first full sentence reads, "It" --

2 and "it" in this context means the settlement

3 reached on the 23rd and 24th -- "allows the City to

4 refinance its debt in more favorable terms, saving

5 approximately 65 million from the original terms of

6 the forbearance agreement, approximately 25 million

7 at the time of the hearing on the assumption of the

8 agreement..."

9 I want to parse those numbers a little

10 bit. My understanding is the 65 million is the

11 difference between what was the notional

12 termination payment at 75 percent due when the

13 motion to approve the forbearance agreement was --

14 and the DIP was approved at \$230 million versus

15 165 -- 230 million versus 165; is that your

16 understanding of the 65 million as well?

17 A. Yes.

18 MR. SHUMAKER: Objection. Foundation.

19 Form.

20 THE WITNESS: Yes.

21 BY MR. MARRIOTT:

22 Q. Now if we take the 25 million, the difference -- if

23 you add 25 million to 165 million, you get

24 190 million, correct?

25 A. Correct.

Page 133

1 Q. Now my understanding of what the mediators are

2 referring to here is that a \$25 million savings

3 means their understanding at the time of the --

4 that the settlement was entered into on the 23rd

5 and 24th, that the payment due to the swap

6 counter-parties under the 75 percent payment amount

7 would have been 190 million. Is that your

8 understanding as well?

9 MR. SHUMAKER: Objection. Foundation.

10 THE WITNESS: That's why I hesitated and

11 I eventually concluded I don't know what they mean.

12 The reason is two-fold. One, that could be an

13 interpretation, but this clause could also be

14 modifying the term "forbearance agreement" and it

15 could be a typo. It could just be -- so I don't

16 know for sure.

17 BY MR. MARRIOTT:

18 Q. All right. Let me ask you this: Does 190 million

19 as a payment due to the swap counter-parties under

20 the original forbearance agreement at 75 percent,

21 do you recall that number being discussed in the

22 mediation session on the 23rd and 24th?

23 A. The \$190 million?

24 Q. Yes.

25 A. I don't recall. It may have been, I just don't

1 recall it.  
 2 **Q.** And I believe your testimony was that as to the  
 3 extent that 190 number doesn't remind you of what  
 4 number was discussed, you don't have a specific  
 5 recollection of a number that would have been due  
 6 to the swap counter-parties under the original  
 7 forbearance agreement, 75 percent, if calculated on  
 8 the 23rd and 24th of December?  
 9 **A.** That's correct.  
 10 **Q.** So where did the \$165 million number come from?  
 11 **A.** From the mediators. As I said earlier today, we  
 12 had put forward a lower amount initially, the other  
 13 side, I understand through the mediators, have put  
 14 up a higher amount, the mediators eventually,  
 15 towards the end of day one, came in and said this  
 16 was the best amount for both parties and that in  
 17 their opinion this was a fair amount that we  
 18 should agree to and they were going to go to the  
 19 other side and make sure that they agreed to it,  
 20 too.  
 21 **Q.** So is it fair to say that the analysis was no more  
 22 complicated than the mediator said to you, "This is  
 23 the best I can do for you," and you said, "Okay"?  
 24 MR. SHUMAKER: Object to the form.  
 25 THE WITNESS: I think it was a little

1 as the fixed deal."  
 2 We agreed to that. At the end of the  
 3 first day, we went into a room with the  
 4 counter-parties, they asked if they could convert  
 5 that to a percentage, we said we didn't care as  
 6 long as it stayed at that whole number as opposed  
 7 to a fraction.  
 8 **Q.** Okay. I would like to move on to the list of  
 9 potential claims or defenses against the swap  
 10 counter-parties that were ultimately settled by the  
 11 agreement reached on the 23rd and 24th.  
 12 **A.** Yeah.  
 13 **Q.** And as I interpret the list of eight, they fall  
 14 really into three categories. The first are claims  
 15 that really are statutorily based and as to which  
 16 the conduct of the parties really isn't relevant.  
 17 And I include in that the pledge of the casino  
 18 revenues, whether that was authorized, and the  
 19 swap -- whether or not the swap transactions were  
 20 invalid under Act 34. Would you agree with the  
 21 characterization that those two were statutorily  
 22 based?  
 23 MR. SHUMAKER: Objection to the form.  
 24 THE WITNESS: They may be statutorily  
 25 based, but I don't think I would agree to the

1 more back and forth than that during the course of  
 2 the day, but ultimately the mediators made it clear  
 3 this was going to be the best number that both  
 4 parties would get to.  
 5 BY MR. MARRIOTT:  
 6 **Q.** Okay. And when I asked you earlier if you had had  
 7 available to you a LIBOR curve generated around the  
 8 23rd of December that reflected interest rates  
 9 rising, that you don't know whether that would have  
 10 affected your willingness to take 165 million?  
 11 MR. SHUMAKER: Objection. Asked and  
 12 answered.  
 13 THE WITNESS: That is correct.  
 14 BY MR. MARRIOTT:  
 15 **Q.** I think you testified that you began the day  
 16 negotiating percentages and ended the day  
 17 negotiating a fixed number; is that correct?  
 18 **A.** Generally speaking, yes.  
 19 **Q.** Who made the switch from discussing percentages to  
 20 a fixed number?  
 21 **A.** I think I said I don't recall who as a specific  
 22 person. There was back and forth. Eventually,  
 23 during the course of the day, the parties said,  
 24 "Well, let's remove the risk of fluctuation either  
 25 up or down and let's talk in terms of whole numbers

1 characterization that facts aren't relevant to  
 2 them.  
 3 BY MR. MARRIOTT:  
 4 **Q.** So what facts would be relevant in your mind to  
 5 those two claims?  
 6 **A.** Some of those claims could be facts related to the  
 7 conduct of the parties and whether or not, as I  
 8 said before, that conduct would mitigate the  
 9 potential legal implications, such as estoppel,  
 10 waiver, so on and so forth.  
 11 **Q.** So -- I'm sorry, go ahead.  
 12 **A.** That's it.  
 13 **Q.** So it's your view that even if the casino revenue  
 14 pledge was statutorily invalid and the swap  
 15 transaction or the COPs/swaps transaction itself  
 16 was also invalid, that it is a defense to statutory  
 17 invalidity -- that estoppel is a defense to  
 18 statutory invalidity?  
 19 MR. SHUMAKER: Object to the form.  
 20 THE WITNESS: No, Mr. Marriott, not  
 21 necessarily. What I'm saying is I can't agree with  
 22 you today that facts might not be relevant. I  
 23 can't draw a legal conclusion as to whether or not  
 24 it's a defense. I've done no independent legal  
 25 analysis.

Page 138

1 BY MR. MARRIOTT:  
 2 Q. Let's try it this way: You would agree with me  
 3 that those two are primarily statutorily based,  
 4 correct?  
 5 A. I would agree that they are statutorily based.  
 6 Q. And then we have what I would describe as the  
 7 conduct-based claims, which were unjust enrichment,  
 8 estoppel, equitable estoppel, equitable  
 9 subordination, breach of contract and fraud. Would  
 10 you agree with me that those are principally  
 11 conduct based?  
 12 A. They are factually intensive, yes.  
 13 Q. And then the injunction action really was a mixed  
 14 one because the injunction could be available on a  
 15 statutory basis or it could be available because of  
 16 some of the earlier causes of action, correct?  
 17 A. Well, if you say so. Like I said, I've done no  
 18 independent legal analysis. This is your analysis.  
 19 Q. Let me ask you this: Was it your understanding  
 20 that an injunction might be available either on a  
 21 statutory basis or on the basis that one of these  
 22 other claims entitled you to an injunction?  
 23 A. I think that's fair.  
 24 Q. Okay. That's all I was getting at.  
 25 A. Okay, that's fair.

Page 139

1 Q. Now to go back to the conduct-based causes of  
 2 action. I want to talk -- make sure I understood  
 3 what you believed to be the facts supporting and  
 4 the facts against the validity of those claims and  
 5 just see if there are any others that you should  
 6 mention.  
 7 My understanding of the facts supporting  
 8 essentially all of the conduct-based causes of  
 9 action is the alleged manipulation of the LIBOR  
 10 markets by the swap counter-parties, correct?  
 11 A. Well, correct, but it may not be just those facts,  
 12 it may also be superior knowledge that those  
 13 parties had relative to the City, it may be a  
 14 superior experience, it may be facts of that  
 15 nature, superior knowledge and experience, that  
 16 they did not share with the City at that time.  
 17 Q. When you say superior knowledge and superior  
 18 experience, do you mean of financial transactions  
 19 or do you mean of the condition of the City?  
 20 A. All the above. There may be allegations that could  
 21 be made that whereas these parties could have  
 22 represented to the City that the swap transaction  
 23 pose no risk -- a risk, the reality is they may  
 24 have been well aware based upon their participation  
 25 in the market at a very high level that they could

Page 140

1 be quite risky, so relaying that information to  
 2 people who are less knowledgeable about these types  
 3 of synthetics and derivatives would be unfair  
 4 because you're not being truthful.  
 5 Q. So if I understand what you're saying, the City's  
 6 relative -- relative -- lack of sophistication in  
 7 transactions of this type may have imposed upon the  
 8 swaps termination an obligation to disclose risks  
 9 that they failed to disclose?  
 10 A. Yeah, I think that's generally fair.  
 11 Q. Let me ask you this along those lines: Do you know  
 12 where the proposed transactional structure for the  
 13 COPs/swaps transaction originated?  
 14 A. No.  
 15 Q. You don't know whose idea it was?  
 16 A. I don't know for sure. I understand that there was  
 17 the finance director at the time in consultation  
 18 with some of the lenders, but I don't know  
 19 specifically where it came from.  
 20 Q. Do you know if, in connection with preparation of  
 21 the complaint that we previously described, if any  
 22 fact investigation was done into the origins of the  
 23 transactional structure of the COPs/swaps  
 24 transaction?  
 25 A. I don't know.

Page 141

1 Q. None that was shared with you?  
 2 A. I think -- well, I think there was some factual  
 3 investigation, I just don't know if it was of the  
 4 nature you're talking about.  
 5 Q. Do you know what factual investigation was  
 6 conducted?  
 7 A. Yes, I believe we -- there was a review of the  
 8 documentation underlying it, a review of some  
 9 background information, legislative history, city  
 10 council records, things of that nature.  
 11 Q. And you don't know whether that investigation  
 12 revealed the origin of the transactional structure?  
 13 A. That's correct.  
 14 Q. All right. So we have alleged manipulation of the  
 15 LIBOR markets and superior knowledge and experience  
 16 on the part of the swap counter-parties vis-a-vis  
 17 the City. Any other facts supporting the potential  
 18 conduct-based causes of action against the swap  
 19 counter-parties?  
 20 A. Those are the general topic areas, there may be  
 21 more specific facts, but I think that captures the  
 22 general thought process.  
 23 Q. All right. Now in terms of -- so those are good  
 24 facts, assuming you could prove them. Now you  
 25 listed as sort of bad facts what I would -- what I

Page 142

1 will characterize, and see if you agree with this  
 2 characterization, as really two things. The first  
 3 is that the City was a willing party to the  
 4 transactions and passed the necessary ordinances  
 5 and executed the necessary documents to effect the  
 6 COPs and swaps transaction, correct?  
 7 A. Yes, and I think in the documentation, the City  
 8 also represented that they were fully informed and  
 9 they made a decision and that they deliberated and  
 10 things -- all of those bucket of things like that.  
 11 Q. And then I think the second, what I will call bad  
 12 fact, that you testified to earlier was that the  
 13 City then, for a number of years, performed without  
 14 complaint under the various documents evidencing  
 15 the COPs and the swaps transaction, correct?  
 16 A. Yes, regularly.  
 17 Q. Almost -- would it be fair to characterize that as  
 18 something along the lines of a laches argument,  
 19 they sat on what might have been claims?  
 20 A. I'm going to try to stay away from legal  
 21 conclusions. All I can say is that the City  
 22 performed and represented that it was arm's length.  
 23 On the documentation, it stated that it was fully  
 24 informed, it was making independent decision, the  
 25 underlying transaction was deliberated by city

Page 143

1 council, it was debated, it was voted on and  
 2 approved, the City had the opportunity to fully  
 3 inform itself about this market and the  
 4 opportunities for volatility or exposure and risk  
 5 if it chose to do so, so all of those facts go into  
 6 that sort of bucket.  
 7 Q. Okay. Any other bad facts that you considered in  
 8 your analysis of the viability of the conduct-based  
 9 causes of action?  
 10 A. I'm sure there are, I'm just not recalling all of  
 11 them right now, but I'm sure we, you know, looked  
 12 at, as I said, legal opinions, the conduct of the  
 13 State, the representation by the lawyers as to the  
 14 validity and appropriateness of the transaction,  
 15 those types of facts.  
 16 Q. When you say "conduct of the State," did you mean  
 17 conduct of the City or do you actually have conduct  
 18 of the State?  
 19 A. No, I mean the State in terms of the Gaming Control  
 20 Board's letter and things like that.  
 21 MR. MARRIOTT: I'm done. Thank you.  
 22 THE WITNESS: Thank you.  
 23 MR. SHUMAKER: Thank you.  
 24 MR. ARNAULT: Good afternoon, Mr. Orr.  
 25 How are you?

Page 144

1 THE WITNESS: Good afternoon.  
 2 MR. ARNAULT: My name is Bill Arnault and  
 3 I represent Syncora. Just a few questions for you  
 4 this afternoon.  
 5 THE WITNESS: Sure.  
 6 EXAMINATION  
 7 BY MR. ARNAULT:  
 8 Q. So as I'm sure you recall, Ms. English went through  
 9 in quite extensive detail the claims that the City  
 10 has against the swap counter-parties.  
 11 A. Yes.  
 12 Q. And she focused on the legal analysis that the City  
 13 performed and took into account when it was  
 14 evaluating those claims.  
 15 A. Yes.  
 16 Q. And then Mr. Marriott just went through some of the  
 17 factual investigation that the City performed as  
 18 well.  
 19 A. Yes.  
 20 Q. I just want to go through and make sure that we've  
 21 hit all of the factual inquiry that the City  
 22 conducted and I would just like to go through each  
 23 claim because I don't know if that was touched on,  
 24 so I just want to make sure we're hitting it all.  
 25 So if we could just begin the first claim.

Page 145

1 Do you have that in front of you, that list of  
 2 claims?  
 3 A. No, I stopped taking them.  
 4 Q. Okay. So I believe that was the pledge authorized  
 5 by the casino Gaming Act, correct?  
 6 A. Yes.  
 7 Q. And was there any factual investigation that the  
 8 City conducted or that you conducted when you were  
 9 analyzing this claim?  
 10 A. Here again, I conducted no independent factual or  
 11 legal analysis, I relied on my team of attorneys  
 12 and advisors to do the analysis and research.  
 13 Q. Do you know what factual analysis they conducted?  
 14 A. Yes. As I said today, they reviewed a number of  
 15 documents, looked at the underlying documents, the  
 16 legislative history of the acts as well as the city  
 17 council ordinances, I understand that there was a  
 18 review of perhaps the city council deliberations  
 19 that went into these documents as well as any  
 20 correspondence related thereto.  
 21 Q. And I'm just trying to pidgeon out between legal  
 22 analysis and factual analysis. So for example,  
 23 factual inquiry. Do you know if they talked to any  
 24 witnesses or talked to any city council members for  
 25 example?

1 A. I do not.  
 2 Q. Okay. Do you know if they investigated any  
 3 representations that were made during the course of  
 4 these negotiations?  
 5 A. I do not.  
 6 Q. So that's not anything that you looked into?  
 7 A. Well, no, it's not anything I would have performed.  
 8 General instructions for my team was to investigate  
 9 the transaction and come up with a complaint that  
 10 if we had to file it, it would stand muster.  
 11 Q. And there was no mention of any interviews of  
 12 potential witnesses in any of the memorandum that  
 13 you reviewed?  
 14 A. Not that I recall.  
 15 Q. And there was no mention of any interviews with  
 16 witnesses in any of the conversations that you had  
 17 with --  
 18 A. Not that I recall.  
 19 Q. And there were no -- there was no mention of any  
 20 investigation into any misrepresentations in any of  
 21 the memoranda that you reviewed?  
 22 MR. SHUMAKER: Objection to form.  
 23 THE WITNESS: Not that I recall.  
 24 BY MR. ARNAULT:  
 25 Q. And there was no mention of any misrepresentations

1 in any conversations you had with counsel, right?  
 2 MR. SHUMAKER: Same objection.  
 3 THE WITNESS: Yeah, not that I recall.  
 4 BY MR. ARNAULT:  
 5 Q. So it seems like when we're talking about the claim  
 6 that the pledge was not authorized by the casino  
 7 Gaming Act that most of the analysis was actually  
 8 legal in nature; would that be a fair statement?  
 9 A. Perhaps not. As I said, I wasn't on the ground  
 10 doing the analysis. There may have been all the  
 11 things you just discussed, interviews, reviews, so  
 12 on and so forth, but they would not have been done  
 13 by me. I don't have a legal license, I'm not  
 14 acting as a lawyer. It would have been done by my  
 15 counsel and their investigators. I did, however,  
 16 personally have a conversation with representatives  
 17 of the SEC regarding these transactions and  
 18 potential analysis and looking at those things.  
 19 Q. Okay. And what was your conversation with the SEC?  
 20 A. I don't want to interfere with what could be a  
 21 federal investigation. I think it's fair to say,  
 22 though, that I discussed with them, was their  
 23 review into both the 2005 and 2006 transactions,  
 24 the 2009 transaction as well. They generally  
 25 relayed to me that there was. One of the concerns

1 they had is that they have a four-year look-back  
 2 period and that for some of these transactions they  
 3 had gone beyond that look-back period, that they  
 4 were willing to have further discussions and  
 5 analysis.  
 6 Q. And when did you have this conversation with the  
 7 SEC?  
 8 A. Several months ago.  
 9 Q. June, before you signed the forbearance agreement?  
 10 A. It could have been. I'm just not recalling the  
 11 exact month, but it could have been, yes.  
 12 Q. Okay. But you're not sure?  
 13 A. I'm not sure.  
 14 Q. And do you remember who at the SEC you had this  
 15 conversation with?  
 16 A. It's -- I do not.  
 17 Q. Was there any correspondence that was exchanged  
 18 with the SEC?  
 19 A. No, no.  
 20 Q. This was all oral?  
 21 A. It was all oral.  
 22 Q. And besides that, we'll say, conversation with the  
 23 SEC, was there any other witness-type interviews  
 24 that you conducted?  
 25 A. Not that I know of.

1 Q. Or that you're -- and there are no others ones that  
 2 you're aware of --  
 3 A. No.  
 4 Q. -- that anyone else conducted?  
 5 A. No. As I said, I didn't conduct any and I'm not  
 6 aware of which ones were done, if any.  
 7 Q. The next claim is the void ab initio claim, the  
 8 Act 34 one. And again, putting aside for the  
 9 moment any legal analysis, are you aware of any  
 10 factual investigation that was done surrounding  
 11 this claim?  
 12 A. My answer would be the same as the prior answer.  
 13 That would have been done by the attorneys.  
 14 Q. Okay. So -- but in your conversations with the  
 15 attorneys or in the documents that you reviewed,  
 16 did you see any evidence of a factual  
 17 investigation?  
 18 A. No.  
 19 Q. And we can save a lot of time and try and short  
 20 circuit-this. There are a number of claims that --  
 21 A. It's all the same.  
 22 Q. It's all the same? So for all the claims we've  
 23 discussed this morning, you have no evidence of  
 24 any factual investigation that was conducted,  
 25 correct?

1 MR. SHUMAKER: Objection to form. You  
 2 already talked about all the documents he took a  
 3 look at, right?  
 4 MR. ARNAULT: I'm just asking the  
 5 question.  
 6 THE WITNESS: My answer would be the  
 7 same.  
 8 BY MR. ARNAULT:  
 9 Q. You're not aware of any factual investigation?  
 10 A. No, my answer was there was factual investigation,  
 11 but in your response to your question as to whether  
 12 or not there were any interviews, I'm unaware of  
 13 interviews with individuals and persons along that  
 14 like, but I am aware that there was a factual  
 15 investigation into the documentation, the  
 16 underlying issues, the city council resolutions, so  
 17 on and so forth.  
 18 Q. Are you aware -- for any of the claims, are you  
 19 aware of any investigation into any representations  
 20 that were made?  
 21 A. Other than what I just said regarding the analysis  
 22 of the documents and background information, no.  
 23 Q. And you and Ms. English this morning talked about  
 24 all of the claims that the City has against the  
 25 swap counter-parties, right?

1 A. No.  
 2 Q. Do you know if anyone at the City looked at any  
 3 claims that the swap counter-parties have against  
 4 the service corporations?  
 5 A. I don't know.  
 6 Q. Did you look at any claims that the service  
 7 corporations have against the swap counter-parties?  
 8 A. I don't recall.  
 9 Q. Do you recall if anyone at the City looked at  
 10 claims that the service corporations have against  
 11 the swap counter-parties?  
 12 A. The reason I say I don't recall, I believe there  
 13 were -- I don't recall.  
 14 Q. A quick one-off question. So earlier we were  
 15 talking about -- you mentioned high twos. I was  
 16 just wondering if we could get a better range.  
 17 When you say high twos, what exactly do you mean?  
 18 A. In excess of 250 million. We were having that  
 19 discussion about what the potential notional amount  
 20 was.  
 21 Q. So anywhere from 250 to 300 million?  
 22 A. Somewhere in there, yes.  
 23 Q. I don't think we talked about this earlier, but  
 24 forgive me if you have. So as part of your  
 25 analysis of the claims that the swap

1 A. Yes.  
 2 Q. And you also discussed the claims that the swap  
 3 counter-parties have against the City, right?  
 4 A. Potential claims, yes.  
 5 Q. Potential claims. You went through all those.  
 6 As part of your analysis, did you look at  
 7 any claims that the City has against service  
 8 corporations?  
 9 A. Did I personally?  
 10 Q. Did you personally? We can start there.  
 11 A. No.  
 12 Q. Okay. Do you know if anyone at the City looked  
 13 at any claims that it has against service  
 14 corporations?  
 15 A. No, I don't.  
 16 Q. And did you personally look at any claims that the  
 17 service corporations have against the City?  
 18 A. No.  
 19 Q. Do you know if anyone at the City looked at any  
 20 claims that the service corporations have against  
 21 the City?  
 22 A. I don't know.  
 23 Q. Did you personally look at any claims that the  
 24 swap counter-parties have against the service  
 25 corporations?

1 counter-parties could potentially have against the  
 2 City, one of the things I think you looked at was  
 3 whether the swap counter-parties could trap cash;  
 4 is that right?  
 5 A. Yes.  
 6 Q. And as part of that analysis, did you look at  
 7 whether the swap counter-parties could trap cash  
 8 without the consent of Syncora or FGIC?  
 9 A. There was an analysis done -- yes, I think my  
 10 counsel looked at that question.  
 11 Q. What did your counsel say about that question?  
 12 MR. SHUMAKER: Objection. Calls for the  
 13 witness to reveal attorney-client communications.  
 14 I'll instruct the witness not to answer.  
 15 BY MR. ARNAULT:  
 16 Q. Are you going go follow your counsel's instruction?  
 17 A. Yes.  
 18 Q. And hopefully putting to the side any legal  
 19 analysis, do you know whether there was any factual  
 20 investigation into whether the swap counter-parties  
 21 were likely to actually trap cash?  
 22 A. Well, yes, yes.  
 23 Q. Okay. And what was the result of that  
 24 investigation?  
 25 A. Well, I think we looked at the fact that there was

Page 154

1 a declaration of default on the termination event  
 2 in 2009 and that got us to the collateral pledge,  
 3 so they actually had declared a default previously,  
 4 and that, in fact, I believe my appointment was an  
 5 event of default, perhaps a termination event, and  
 6 I believe there was a reservation of rights taken,  
 7 so there was some analysis as to whether or not  
 8 there was a likelihood that they would declare a  
 9 default.  
 10 Q. And was this a written analysis?  
 11 A. Yes, there were communications back and forth. I  
 12 don't recall a specific memo dedicated to just this  
 13 issue, but it was certainly wrapped up in a number  
 14 of different writings that I saw.  
 15 Q. And the conclusion was that the swap  
 16 counter-parties were likely to trap cash?  
 17 A. Not necessarily. The conclusion was that the City  
 18 was at risk that that could occur.  
 19 Q. Now over the past few weeks, it's been suggested at  
 20 various times that if the City was not able to  
 21 reach an agreement with the swap counter-parties  
 22 that it would instead choose to sue them; is that a  
 23 fair statement?  
 24 A. Yes.  
 25 Q. And as you noted, the City has various claims

Page 155

1 against the swap counter-parties, right?  
 2 A. Yes.  
 3 Q. For example, the City could sue the swap  
 4 counter-parties on the grounds that the swaps and  
 5 the collateral agreement are invalid, right?  
 6 A. Yes.  
 7 Q. So as it currently stands before the forbearance  
 8 agreement -- or if it's executed, the City has  
 9 potential third-party claims against the swap  
 10 counter-parties, right?  
 11 MR. SHUMAKER: Object to the form.  
 12 THE WITNESS: Yes.  
 13 BY MR. ARNAULT:  
 14 Q. And this potential legal claim against the swap  
 15 counter-parties would be considered an asset for  
 16 purposes of bankruptcy, correct?  
 17 MR. SHUMAKER: Objection. Calls for a  
 18 legal conclusion.  
 19 THE WITNESS: It could be.  
 20 BY MR. ARNAULT:  
 21 Q. Well, I mean, typically in the bankruptcy context,  
 22 the claim against a third party is considered an  
 23 asset?  
 24 A. Claims and defenses, yes.  
 25 Q. And that's true in this instance, right?

Page 156

1 MR. SHUMAKER: Same objection.  
 2 THE WITNESS: It could be, yes.  
 3 BY MR. ARNAULT:  
 4 Q. And the forbearance agreement would actually allow  
 5 the City to dispose of this asset, right?  
 6 MR. SHUMAKER: Objection. Same  
 7 objection.  
 8 THE WITNESS: I think the forbearance  
 9 agreement attempts to provide the basis for a  
 10 settlement. If it's a conclusion that it's a  
 11 disposition of an asset, that's a different  
 12 conclusion, but we're trying to get a settlement.  
 13 BY MR. ARNAULT:  
 14 Q. Sure. But it would essentially dispose of the  
 15 claim, right?  
 16 A. It will resolve the claim.  
 17 Q. And you submitted the terms of the forbearance  
 18 agreement to the governor for approval, right?  
 19 A. To the State?  
 20 Q. Yeah.  
 21 A. Yes.  
 22 Q. But you never submitted the forbearance agreement  
 23 to the city council for approval, right?  
 24 A. I don't recall.  
 25 Q. You don't recall whether you submitted it?

Page 157

1 A. Yes.  
 2 Q. And you never submitted the sixth amendment to the  
 3 city council for approval, right?  
 4 A. I don't believe so.  
 5 Q. So you'll recall during your first deposition that  
 6 you were asked certain questions regarding the  
 7 operation of the forbearance agreement. Given the  
 8 events of the past week, I just want to go through  
 9 those just to make sure we're still on the same  
 10 page.  
 11 So is it still your current understanding  
 12 that the forbearance agreement releases all claims  
 13 that the swap counter-parties, the service  
 14 corporations and the City may have against one  
 15 another?  
 16 A. Yes.  
 17 Q. And is it also your current understanding that the  
 18 forbearance agreement resolves any defaults that  
 19 exist under the collateral agreement and the  
 20 amended swaps?  
 21 A. Yes.  
 22 Q. And is it your current understanding that the  
 23 result of the forbearance agreement is that the  
 24 City and the swap counter-parties will be able to  
 25 perform under the forbearance agreement without



Page 158

1 being subject to any liability to any third  
 2 parties?  
 3 A. I don't know.  
 4 Q. You don't know whether -- so you don't know  
 5 whether -- if the forbearance agreement is  
 6 executed, whether or not the City and swap  
 7 counter-parties will be immunized from any  
 8 liability of third parties?  
 9 MR. SHUMAKER: Object to the form.  
 10 THE WITNESS: Yes, that's correct.  
 11 BY MR. ARNAULT:  
 12 Q. And is it your current understanding that during  
 13 the forbearance period, the swap counter-parties  
 14 have relinquished the right to direct cash trapping  
 15 so long as the optional termination period is  
 16 pending?  
 17 A. I believe so.  
 18 Q. And is it your current understanding that if the  
 19 option expires without the City having exercised  
 20 it, the City is under no obligation to put the cash  
 21 that it received in the interim back into the  
 22 general receipt account?  
 23 A. No.  
 24 Q. That's not your understanding?  
 25 A. No.

Page 159

1 Q. You believe that the City has an obligation to put  
 2 the money back?  
 3 A. No.  
 4 Q. What's your understanding then?  
 5 A. I don't believe the City is the one that exercises  
 6 the optional termination payment.  
 7 Q. Okay.  
 8 A. I believe it's the other parties. But the other  
 9 part of your question as to whether or not we're  
 10 obligated to put the cash back, I believe is  
 11 accurate.  
 12 Q. Okay. So the City is not required to put the cash  
 13 back?  
 14 A. Correct.  
 15 Q. And you're also aware that the City has proposed  
 16 an order approving the forbearance agreement,  
 17 right?  
 18 A. Yes.  
 19 Q. And it's your current belief that the proposed  
 20 order is important to the forbearance agreement,  
 21 correct?  
 22 A. Yes.  
 23 Q. You may also recall that during your previous  
 24 deposition, you were asked questions regarding some  
 25 of the operating assumptions that went into the

Page 160

1 previous negotiations of the swap counter-parties,  
 2 so again, similar as before, I would like to run  
 3 through those.  
 4 A. I may recall them, but please --  
 5 Q. I just want to run through those to see if they've  
 6 changed.  
 7 A. Okay.  
 8 Q. So to begin, your assumption going into the prior  
 9 negotiations was that there were events of default  
 10 under the swap that had occurred such that the swap  
 11 counter-parties could unilaterally terminate the  
 12 swap and demand payment from the service  
 13 corporations; is that right?  
 14 A. Yes.  
 15 Q. And I assume that you had the same assumption going  
 16 into the most recent round of negotiations?  
 17 A. Yes.  
 18 Q. Another assumption you had was that the swap  
 19 counter-parties could instruct the custodian to  
 20 trap cash under the collateral agreement; is that  
 21 right?  
 22 A. Yes.  
 23 Q. And I take it, again, that was the same assumption  
 24 you had going into the most recent round of  
 25 negotiations?

Page 161

1 A. Yes.  
 2 Q. And then one of your objectives in the previous  
 3 negotiations was to get the swap counter-parties to  
 4 waive their cash trapping rights on an interim  
 5 basis so the City could access the casino revenues,  
 6 right?  
 7 A. Correct.  
 8 Q. And that was still an objective in this most recent  
 9 round of negotiations, right?  
 10 A. Yes.  
 11 Q. Another objective in the previous negotiations was  
 12 that you wanted to modify the swap to get a  
 13 discount on the termination amount, right?  
 14 MR. HAWKINS: Objection to form.  
 15 MR. SHUMAKER: Same objection.  
 16 THE WITNESS: Yes, we wanted to get a  
 17 discount on the termination amount.  
 18 BY MR. ARNAULT:  
 19 Q. Okay. And that was still an objective in the most  
 20 recent round of negotiations, right?  
 21 MR. SHUMAKER: Same objection.  
 22 MR. HAWKINS: Same objection.  
 23 THE WITNESS: Yes, a greater discount.  
 24 BY MR. ARNAULT:  
 25 Q. And another objective in the prior negotiations

Page 162

1 was that you wanted to obtain an option about when  
 2 you could direct the termination of the swaps,  
 3 right?  
 4 MR. SHUMAKER: Objection. Calls for a  
 5 legal conclusion.  
 6 MR. HAWKINS: Objection to the form.  
 7 THE WITNESS: Generally speaking, we  
 8 wanted to extend the time by which we could  
 9 instruct the parties to exercise the option to  
 10 terminate the swaps.  
 11 BY MR. ARNAULT:  
 12 **Q. And you wanted to obtain the option to do so,**  
 13 **right?**  
 14 MR. HAWKINS: Objection to form.  
 15 MR. SHUMAKER: Same objection.  
 16 THE WITNESS: I don't know if it was our  
 17 option, but whatever the procedure was for that  
 18 process to occur, we wanted to extend that time  
 19 out.  
 20 BY MR. ARNAULT:  
 21 **Q. And I'm going back. Not just to extend the time,**  
 22 **but you wanted to have the ability to do that,**  
 23 **right?**  
 24 **A. Yes --**  
 25 MR. SHUMAKER: Same objection.

Page 163

1 THE WITNESS: Yes, that comes with  
 2 extending the time to allow the exercise of the  
 3 optional termination.  
 4 BY MR. ARNAULT:  
 5 **Q. And that was still an objective in this most recent**  
 6 **round of negotiations, right?**  
 7 **A. Yes.**  
 8 **Q. And you achieved all the objectives we just**  
 9 **described as part of the forbearance agreement,**  
 10 **right?**  
 11 MR. SHUMAKER: Objection to form.  
 12 THE WITNESS: Yes.  
 13 BY MR. ARNAULT:  
 14 **Q. And you achieved all of these objectives with the**  
 15 **sixth amendment, right?**  
 16 **A. Yes.**  
 17 **Q. And another one of the benefits of the forbearance**  
 18 **agreement is that it provides for a workable unwind**  
 19 **of the swap; is that right?**  
 20 **A. Yes, I believe so.**  
 21 **Q. And that is still one of the benefits of the**  
 22 **forbearance agreement, right?**  
 23 **A. Yes.**  
 24 **Q. And the discount you obtained is a discount of the**  
 25 **so-called early termination of the swap; is that**

Page 164

1 right?  
 2 **A. Yes.**  
 3 **Q. So the effect of the forbearance agreement would be**  
 4 **that instead of owing what the City would owe under**  
 5 **the swap, which is the 100 percent termination**  
 6 **value, the City now owes only the discounted**  
 7 **amount; is that right?**  
 8 MR. SHUMAKER: Objection to form.  
 9 THE WITNESS: Generally speaking,  
 10 yes.  
 11 BY MR. ARNAULT:  
 12 **Q. So the effect is that it modifies that provision**  
 13 **in the swap --**  
 14 MR. HAWKINS: Objection to "modifies."  
 15 Objection to form.  
 16 MR. ARNAULT: Can I finish my question?  
 17 BY MR. ARNAULT:  
 18 **Q. So the effect is that it modifies that provision of**  
 19 **the swap in a way that's favorable for the City; is**  
 20 **that right?**  
 21 MR. HAWKINS: Asked and answered.  
 22 MR. SHUMAKER: Objection to form.  
 23 THE WITNESS: It allows us to exercise  
 24 the provision in the forbearance and optional  
 25 termination agreement at a discount to the par rate

Page 165

1 of the termination fee.  
 2 BY MR. ARNAULT:  
 3 **Q. And in a way that's favorable to the City, correct?**  
 4 **A. Yes.**  
 5 **Q. And now you're aware that, as things currently**  
 6 **stand, the swap counter-parties are substantially**  
 7 **in the money under prevailing interest rates,**  
 8 **right?**  
 9 **A. As compared to us?**  
 10 **Q. Yes.**  
 11 **A. Yes.**  
 12 **Q. And the swap counter-parties have never come to the**  
 13 **City and indicated that they were going to exercise**  
 14 **that optional termination right and walk away being**  
 15 **paid nothing, right?**  
 16 **A. Being paid nothing?**  
 17 **Q. And being paid nothing.**  
 18 **A. Yes.**  
 19 **Q. They have said they would exercise their optional**  
 20 **termination right and walk away and be paid**  
 21 **nothing?**  
 22 **A. No, they have never come to us and said that.**  
 23 MR. ARNAULT: Okay. I think that's it  
 24 for me. Thank you very much.  
 25 THE WITNESS: Sure.

Page 166

1 MR. GOLDBERG: Jerome Goldberg on behalf  
 2 of interested party, David Sole.  
 3 Good afternoon, Mr. Orr.  
 4 THE WITNESS: Good afternoon,  
 5 Mr. Goldberg.  
 6 MR. GOLDBERG: I just have a few  
 7 questions.  
 8 EXAMINATION  
 9 BY MR. GOLDBERG:  
 10 **Q. I want to call your attention to Exhibit 4, which**  
 11 **is the mediator recommendation.**  
 12 **A. Yes.**  
 13 **Q. In the -- under the second page, toward the end of**  
 14 **the first paragraph, it says, "As for the swap**  
 15 **counter-parties, it will enable them to avoid the**  
 16 **risk of losing all that they invested and further**  
 17 **avoid the lawsuit the City threatened to bring,**  
 18 **which, if successful, could have forced them to**  
 19 **disgorge and pay back to the City all of the**  
 20 **payments they received under the swaps."**  
 21 **So I would take it that this idea that**  
 22 **potentially there was a lawsuit was brought to the**  
 23 **mediators' attention in the course of negotiation?**  
 24 **A. Yes.**  
 25 **Q. And just so I'm clear, when we talk about**

Page 167

1 **disgorging -- we had the deposition on August 30th**  
 2 **and I believe we went through the June 14th report,**  
 3 **and at that time you agreed with me that from the**  
 4 **year 2008 to 2012, the payments to the swaps**  
 5 **because of the loss to the City totaled**  
 6 **247.5 million; does that sound about right?**  
 7 **A. I haven't looked at it recently, but if that's what**  
 8 **my deposition says, yes, I'll stand by that.**  
 9 **Q. And it would probably be likely that the amount for**  
 10 **this year's been another 40 to 50 million; would**  
 11 **that be fair?**  
 12 **A. Yes.**  
 13 **Q. So we're talking about 300 million up to this**  
 14 **point?**  
 15 **A. I think that's fair.**  
 16 **Q. That's potentially recoverable if the City was to**  
 17 **prevail in this litigation?**  
 18 **A. Yes.**  
 19 **Q. And that doesn't include, of course, the**  
 20 **200 million going forward?**  
 21 **A. Yes, whatever that number is, yes.**  
 22 **Q. So potentially, we're talking about if the City**  
 23 **prevailed on this 50/50 odds, it could recover up**  
 24 **to \$500 million?**  
 25 **A. Approximately, yes.**

Page 168

1 **Q. And the savings on the termination to the City and**  
 2 **the City determination is 165 million, correct?**  
 3 MR. SHUMAKER: Object to the form.  
 4 BY MR. GOLDBERG:  
 5 **Q. Under the forbearance agreement, we're terminating**  
 6 **the swaps for 165 million, correct?**  
 7 **A. Yeah, the -- the cost to terminate the swaps is**  
 8 **165 million.**  
 9 **Q. And the savings is approximately 35 million**  
 10 **compared to the -- I'm sorry. I apologize. The**  
 11 **savings is -- that's 62 percent, so it's about a**  
 12 **\$100 million savings, approximately?**  
 13 **A. Yeah, approximately, somewhere in there.**  
 14 **Q. Okay. A few other questions.**  
 15 **I was listening carefully to a lot of the**  
 16 **claims that were made, and, you know, which -- and**  
 17 **one of the claims in terms of unfairness dealt with**  
 18 **the unevenness between the City and the banks when**  
 19 **it comes to dealing with a complex financial**  
 20 **instrument like swaps, correct?**  
 21 **A. Yes.**  
 22 **Q. And have you read by any chance, looked at the**  
 23 **report that was issued by the SEC on the report on**  
 24 **the municipal securities market?**  
 25 MR. SHUMAKER: Is it dated?

Page 169

1 MR. GOLDBERG: It's dated July 31, 2012.  
 2 It's actually an exhibit in this bankruptcy -- in  
 3 this hearing.  
 4 THE WITNESS: I have read several SEC  
 5 reports. I don't know -- I don't recall that one  
 6 specifically, but I may have read it.  
 7 BY MR. GOLDBERG:  
 8 **Q. But it's fair to say that that is one of the things**  
 9 **that the SEC has raised, that there's so much**  
 10 **unevenness between municipalities and banks when it**  
 11 **comes to dealing with these kind of financial**  
 12 **transactions and it puts the City at a**  
 13 **disadvantage, correct?**  
 14 MR. SHUMAKER: In that particular report?  
 15 MR. GOLDBERG: In general. He said he's  
 16 read several reports.  
 17 THE WITNESS: You'd have to point me to  
 18 something with specificity, but I think those  
 19 issues have been raised in some context before.  
 20 BY MR. GOLDBERG:  
 21 **Q. All right. Did you look at the -- that in the**  
 22 **context of this specific instrument that the swap**  
 23 **advisor for the City was actually paid out of the**  
 24 **proceeds of the swap?**  
 25 MR. SHUMAKER: Objection. Foundation.

1 Form.  
 2 MR. GOLDBERG: I asked him if he looked  
 3 at it.  
 4 MR. SHUMAKER: But you haven't identified  
 5 who you're talking about.  
 6 MR. GOLDBERG: I'm talking about Scott  
 7 Bayless is the name and he's identified in all of  
 8 the swap documents as the swap advisor.  
 9 THE WITNESS: I'm aware that advisors  
 10 were paid out of proceeds of the swap.  
 11 BY MR. GOLDBERG:  
 12 **Q. And are you aware that the SEC raises that as a**  
 13 **potential problem?**  
 14 **A. Not with specificity. If you point me to**  
 15 **something...**  
 16 **Q. Fair enough. That's fine. I'm not going to make**  
 17 **you look at something.**  
 18 **You raised that you had considered if --**  
 19 **had discussions with the SEC about coming in to aid**  
 20 **the City in the investigation of the swap; is that**  
 21 **what you testified to earlier?**  
 22 **A. No, what I said is I discussed with the SEC**  
 23 **whether or not there was -- they had or there was a**  
 24 **possibility of them to look into transactions in**  
 25 **the City, including the COPs and the swaps.**

1 of the banks had contributed to the financial  
 2 crisis in Detroit, and at that time you said you  
 3 hadn't made a determination of that.  
 4 **A. Yes.**  
 5 **Q. Have you looked into that issue further?**  
 6 **A. Not at the level that I think you're asking. I**  
 7 **certainly am aware that there are theories and**  
 8 **reports to that extent.**  
 9 **Q. Okay. Have you had a chance to look at the City of**  
 10 **Detroit Planning & Development Department document**  
 11 **from July -- January 2009, where they went into --**  
 12 **they did a pretty detailed study of that?**  
 13 **A. I don't recall looking at that document.**  
 14 **Q. Okay. If that document documents that the City of**  
 15 **Detroit actually led the country in mortgage**  
 16 **foreclosures with 67,000 foreclosures between 2005**  
 17 **and 2009, you would agree that's a significant**  
 18 **number in a city like Detroit, wouldn't you?**  
 19 **A. I heard something along those lines, without**  
 20 **looking at that document. I may have seen that in**  
 21 **the press report or something else.**  
 22 **Q. Fair enough.**  
 23 **And would you agree with me that at least**  
 24 **potentially the question of the role of the banks,**  
 25 **like Bank of America through Countrywide and**

1 **Q. And so you had specific discussions with the SEC on**  
 2 **that topic?**  
 3 **A. Yes.**  
 4 **Q. And of course, the SEC could potentially intervene**  
 5 **in this bankruptcy? Under the Bankruptcy Code,**  
 6 **they're a potential intervenor in the bankruptcy;**  
 7 **is that correct?**  
 8 MR. SHUMAKER: Objection. Calls for a  
 9 legal conclusion.  
 10 MR. GOLDBERG: If you're aware.  
 11 THE WITNESS: I don't know.  
 12 MR. GOLDBERG: Okay.  
 13 THE WITNESS: I assume they could, I  
 14 don't know.  
 15 BY MR. GOLDBERG:  
 16 **Q. I was just wondering why, when I asked you about**  
 17 **that in your October -- August 30th deposition, I**  
 18 **specifically asked if there had been discussions**  
 19 **with the SEC concerning potential investigation of**  
 20 **the swaps, you said no?**  
 21 **A. I don't know if I had the discussions then.**  
 22 **Q. Okay. And when I previously deposed you on**  
 23 **August 30th, I raised the question as to whether**  
 24 **you were aware -- believed that the subprime**  
 25 **mortgage crisis and the predatory lending practices**

1 subprime lending in Detroit, could contribute to a  
 2 question of equity in terms of reviewing the swaps  
 3 in light of the fact that the collapse -- these  
 4 hedging derivatives became such bad deals is a  
 5 product of the collapse of interest rates due to  
 6 the subprime mortgage crisis?  
 7 MR. SHUMAKER: Objection to form.  
 8 THE WITNESS: I don't know.  
 9 BY MR. GOLDBERG:  
 10 **Q. Have you considered that?**  
 11 **A. I've seen a lot of reports about a lot of theories**  
 12 **that contributed to the subprime crisis.**  
 13 **Q. Sure. Fair enough.**  
 14 **And I appreciate your testimony today that**  
 15 **based on -- your view is that you would -- in**  
 16 **weighing the equitable -- potential equitable**  
 17 **claims against the banks, it's about a 50/50 weigh,**  
 18 **correct?**  
 19 **A. Yes.**  
 20 **Q. Just one other question I had was during the**  
 21 **Chrysler bankruptcy, secured creditors got paid at**  
 22 **29 percent; is that not correct?**  
 23 **A. I don't recall the specific payout.**  
 24 **Q. Okay. One other question, too. The City is**  
 25 **continuing to pay the hedging derivative amount to**

Page 174

1 the US Bank during the course of this bankruptcy;  
 2 is that correct?  
 3 A. Yes.  
 4 Q. I just wondered why. Isn't it a fact that --  
 5 the City is not paying pension payments,  
 6 correct?  
 7 A. Yes.  
 8 Q. And it's not paying payments to certain other  
 9 unsecured creditors?  
 10 A. Yes.  
 11 Q. I was just wondering why those payments are being  
 12 made when there is an order saying the casino tax  
 13 or casino revenues are still subject to the  
 14 automatic stay.  
 15 A. I'm not aware of the order, but I know that we  
 16 continue to make the payment so that we do not  
 17 create a further event of default.  
 18 MR. GOLDBERG: I have no further  
 19 questions. Thank you.  
 20 THE WITNESS: Thank you, sir.  
 21 MS. GREEN: Hi, Mr. Orr. Jennifer Green  
 22 on behalf of the Retirement Systems.  
 23 THE WITNESS: Good afternoon.  
 24 MS. GREEN: And I only have a few  
 25 questions.

Page 175

1 THE WITNESS: Yes.  
 2 EXAMINATION  
 3 BY MS. GREEN:  
 4 Q. Did you share a copy of the draft complaint with  
 5 the swap counter-parties at any point?  
 6 A. Did I?  
 7 Q. Yes.  
 8 A. Not me personally.  
 9 Q. Did anyone from your legal team do that?  
 10 A. I don't know.  
 11 Q. Do you know if anyone from Miller Buckfire did  
 12 that?  
 13 A. I don't know.  
 14 Q. Earlier Ms. English was asking you questions about  
 15 some of the Bankruptcy Code claims or defenses that  
 16 you may have considered.  
 17 A. Right.  
 18 Q. Specifically, you talked about Section 902 and  
 19 Section 928; do you recall that?  
 20 A. Uh-hum.  
 21 Q. At what point in time did you look at Sections 902  
 22 and 928?  
 23 A. I did not look at Sections 902 and 928.  
 24 Q. Was it brought to your attention at any time that  
 25 Sections 902 and 928 had been, in fact, reviewed?

Page 176

1 A. Yes.  
 2 Q. And who brought that to your attention?  
 3 A. My attorneys.  
 4 Q. Okay. When was that brought to your attention?  
 5 A. It is my understanding that those issues -- I  
 6 became aware of those issues back in June.  
 7 Q. Would it have been before June 10th and June 14th,  
 8 that week of negotiations?  
 9 A. It would have been around that time or slightly --  
 10 or it may have been before that time.  
 11 Q. Did you confront the swap counter-parties with what  
 12 you had found or what you thought maybe would be  
 13 your arguments under 902 and 928?  
 14 A. Did I personally?  
 15 Q. Yes.  
 16 A. No.  
 17 Q. Do you know if your legal team did on your behalf?  
 18 A. I believe they did.  
 19 Q. Okay. Who would that have been?  
 20 A. As I said, Corinne Ball, David Heiman, Bruce  
 21 Bennett, and perhaps Mr. Hertzberg.  
 22 Q. Do you know if the same answers would apply with  
 23 respect to the safe harbor provisions?  
 24 A. Yes, the same answers would apply.  
 25 Q. Do you know if there were any legal memorandums

Page 177

1 prepared on any of those issues that we just  
 2 discussed? And I'm going to limit it to the 928  
 3 and 902 and the safe harbor provisions, those types  
 4 of issues.  
 5 A. Yes, I believe there were.  
 6 Q. Okay. And when were those prepared?  
 7 A. I don't recall.  
 8 Q. Do you know if you reviewed any?  
 9 A. Yes, I did.  
 10 Q. Do you know if Ken Buckfire, who was the lead  
 11 negotiator for the City, do you know if he reviewed  
 12 these memos?  
 13 A. I do not.  
 14 Q. Do you remember when he reviewed the memos?  
 15 A. Some of the memos that I reviewed could have been  
 16 as early as March or April, prior to being  
 17 appointed.  
 18 MS. GREEN: And I'm going to renew on the  
 19 record a request for a privilege log just because  
 20 now that we've gone down this path of all these  
 21 claims and issues, I think that there's been a  
 22 discussion among the other objecting parties that  
 23 we'll raise it with the judge on Friday, but maybe  
 24 we can just agree that the memos we talked about  
 25 today could be listed on a privilege log.

1 MR. SHUMAKER: I'll look into it.  
 2 MR. PEREZ: I don't understand how the  
 3 privilege could attach if he reviewed something  
 4 before he was the emergency manager.  
 5 MS. GREEN: And that's kind of why we  
 6 need it is it's very hard to assess what privilege  
 7 actually applies if we don't have a log to know  
 8 when they were prepared, the context they were  
 9 prepared, who they were shared with, maybe they  
 10 were shared with third parties, things of that  
 11 nature. So if we could get one, that would be very  
 12 helpful; otherwise, I think we've all agreed we're  
 13 going to raise it with the judge.  
 14 BY MS. GREEN:  
 15 Q. You talked earlier with Mr. Marriott about legal  
 16 claims that we considered to be kind of  
 17 fact-intensive versus some that are more pure legal  
 18 questions.  
 19 A. Yes.  
 20 Q. And I think that with Ms. English, you sort of  
 21 talked about how you thought it would be lengthier  
 22 and more complex to litigate those fact-intensive  
 23 claims?  
 24 A. I think I said I thought it would be lengthy and  
 25 complex to litigate any of the claims.

1 caught up in the range that it might cost. If  
 2 you're able to do things quickly, you might be in  
 3 the low end of the range, if it took time, it might  
 4 be on the high end of the range.  
 5 Q. Well, you would agree with me that the City could  
 6 file and prepare a motion for summary judgment for  
 7 less than \$20 million, for instance, correct?  
 8 A. I think that's fair.  
 9 Q. Okay. What claims did the City consider then with  
 10 respect to that litigation strategy, which would be  
 11 trying to do it in a summary fashion or declaratory  
 12 relief fashion? Which claims would those have  
 13 been?  
 14 A. Well, here again, I rely on my counsel, but I think  
 15 when I discussed earlier today the declaratory  
 16 judgment claims, that my authority under 436 to  
 17 revoke the irrevocable letters -- so-called  
 18 irrevocable letters of instruction was authorized  
 19 might be the types of claims we would pursue and  
 20 whether or not the underlying transactions as well  
 21 as the swaps were authorized by either Act 34  
 22 and/or the Gaming Act might be pursued.  
 23 Q. Was there, in fact, a draft motion for summary  
 24 judgment ever prepared by the City in connection  
 25 with that litigation strategy?

1 Q. Oh, okay. So if we have some claims that are  
 2 purely statutory, did you not consider litigating  
 3 those claims separately?  
 4 A. I think with Mr. Marriott I was very careful to say  
 5 that I'm not sure there were any claims that were  
 6 purely statutory, but was there a consideration of  
 7 perhaps just pursuing legal issues, for instance,  
 8 in a declaratory judgment, and the answer is yes.  
 9 Q. Okay. Well, what facts would be necessary, for  
 10 instance, to determine whether 552 or 928 applied  
 11 in this case?  
 12 A. Like I said, there may be facts that need to be  
 13 developed that I would rely on my counsel to get  
 14 me.  
 15 Q. So did the City never consider a litigation  
 16 strategy where a motion for summary judgment would  
 17 be prepared?  
 18 A. No, I didn't say that. I said the City had  
 19 considered perhaps pursuing a claim such as a  
 20 declaratory judgment act, but there may be facts  
 21 that would be attendant to that.  
 22 Q. Okay. Did you separately consider how that would  
 23 impact the legal cost or the length of time it  
 24 would take to litigate these claims?  
 25 A. I think I said earlier today that part of that was

1 A. I don't recall.  
 2 Q. Did you ever prepare a separate budget for a  
 3 litigation strategy that would entail moving in  
 4 summary fashion versus going into all the  
 5 fact-intensive claims?  
 6 A. I think I said today that we were talking in terms  
 7 of ranges, whatever the issues were. I don't  
 8 recall a separate budget just for a declaratory  
 9 judgment, legal-based claim, as opposed to very  
 10 complex and intensive factual-based litigation.  
 11 Q. Do you know -- did your legal advisory team conduct  
 12 a debriefing session with Ken Buckfire before he  
 13 went into the negotiations with the swap  
 14 counter-parties back in June?  
 15 Let me back up. By debriefing session, I  
 16 mean, did you sit him down with all the legal memos  
 17 and did you sit him down and explain to him some of  
 18 the legal claims and defenses at issue before he  
 19 went into the negotiation?  
 20 A. I don't know.  
 21 MS. GREEN: I don't have anything  
 22 further.  
 23 MR. JAMES: Nothing.  
 24 MS. ENGLISH: Anybody on the phone have  
 25 any questions?

Page 182

1 VIDEOGRAPHER: This concludes the  
 2 deposition of --  
 3 MS. ENGLISH: Oh, wait. Go ahead.  
 4 MR. ROSENBLAT: I have no questions. I  
 5 just wanted to state it for the record.  
 6 VIDEOGRAPHER: This concludes the  
 7 deposition of Mr. Kevyn Orr on December 31, 2013,  
 8 which consists of two videotapes. The original  
 9 videotape will be retained by Litigation Services.  
 10 Off the record at 3:02 p.m.

(Deposition concluded at 3:02 p.m.)

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Page 183

1 STATE OF MICHIGAN)  
 2 COUNTY OF OAKLAND)  
 3  
 4 Certificate of Notary Public  
 5 I do hereby certify the witness, whose attached  
 6 testimony was taken in the above matter, was first duly  
 7 sworn to tell the truth; the testimony contained herein  
 8 was reduced to writing in the presence of the witness, by  
 9 means of stenography; afterwards transcribed; and is a  
 10 true and complete transcript of the testimony given. I  
 11 further certify that I am not connected by blood or  
 12 marriage with any of the parties, their attorneys or  
 13 agents, and that I am not interested directly, indirectly  
 14 or financially in the matter of controversy.  
 15 In witness whereof, I have hereunto set my hand  
 16 this day at Royal Oak, Michigan, State of Michigan.  
 17 I hereby set my hand this day, December 31, 2013.

18  
19  
20  
21  
22  
23  
24  
25

---

Karen Fortna, CRR/RMR/RPR/CSR-5067  
 Notary Public, Oakland County, Michigan  
 My Commission expires 4/30/2019