

In The Matter Of:

City of Detroit

Kevyn Orr

August 30, 2013



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Min-U-Script® with Word Index

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **A. We believe that the Swap counterparties could act. I**
 2 **think there's a series of letters subsequently with**
 3 **discussion with your client about their lack of**
 4 **ability to stop the Swap counterparties from acting,**
 5 **but I'm -- what I'm trying to relay to you is we had**
 6 **to assess whether they were risks to that, and my**
 7 **understanding was that they had the right to exercise**
 8 **their remedies.**
 9 **BY MR. HACKNEY:**
 10 Q. Okay. Now, I want to also get a level set on your
 11 objectives going into the negotiations, and I
 12 understand that when I say you, I mean the City,
 13 Mr. Buckfire, there are multiple parts --
 14 **A. My -- my team --**
 15 Q. That's right.
 16 **A. -- consultants.**
 17 Q. I may be a little euphemistic, but I'll try to be
 18 precise at the right times.
 19 **A. That's fine.**
 20 Q. Okay.
 21 **MR. SHUMAKER:** Steve, if I could just
 22 object. If you could just define what you mean by
 23 level set, I would appreciate that.
 24 **MR. HACKNEY:** I want to go back in time --
 25 **MR. SHUMAKER:** Okay.

1 **MR. HACKNEY:** -- to prior to the June 4
 2 commencement of negotiations.
 3 **MR. SHUMAKER:** Okay.
 4 **MR. HACKNEY:** That's what I mean by level
 5 set.
 6 **MR. SHUMAKER:** Okay. Thank you.
 7 **BY MR. HACKNEY:**
 8 Q. Now, I'd like to ask about your objectives as you go
 9 into the negotiation. Okay?
 10 **A. Um-hm.**
 11 Q. You understand that when you go into a negotiation
 12 it's important to have an understanding of both the
 13 financial realities that your party is -- is facing as
 14 well as the legal realities that your party's facing,
 15 correct?
 16 **A. Yes.**
 17 Q. That informs the negotiation, right?
 18 **A. In making an informed decision, I would say you want**
 19 **to have an understanding of those factors.**
 20 Q. And you also want to understand what your counterparty
 21 in the negotiation needs and wants are as well as
 22 their potential legal rights, right?
 23 **A. What your counterparty negotiations perceived needs**
 24 **and rights are.**
 25 Q. That's right. That's right.

1 Now, I'm going to ask about the City's
 2 objectives in entering into the negotiations. Okay?
 3 Objective one of the City was to get the
 4 counterparties to waive their cash trap at least on an
 5 interim basis to allow the City access to casino
 6 revenues, correct?
 7 **A. I don't know if I would characterize it as objective**
 8 **one. It wasn't as if we were trying to prioritize one**
 9 **objective over the other. It was an objective to make**
 10 **sure that the cash did not get trapped.**
 11 Q. Okay. So that was one of the objectives.
 12 **A. Yes.**
 13 Q. A second objective was that you wanted to modify the
 14 Swap to get a discount on the termination amount,
 15 correct?
 16 **A. Yes. That was certainly an objective, yes.**
 17 Q. Okay.
 18 **MR. SHUMAKER:** Objection there to the
 19 extent that it calls for a legal conclusion.
 20 **BY MR. HACKNEY:**
 21 Q. And the third was that you wanted to obtain an option
 22 about when you could direct the termination of the
 23 Swap, correct?
 24 **MR. SHUMAKER:** Objection, calls for a legal
 25 conclusion.

1 **A. Here again, I understand your characterization. I'm**
 2 **going to say that that -- that is a fair**
 3 **characterization without trying to quantify as one**
 4 **objective is more important than the others, and let**
 5 **me explain my answer.**
 6 **The City was at risk of significant**
 7 **reduction in cash flow at that period. I think at one**
 8 **point there were various projections that showed as us**
 9 **having as little as four or nine million dollars of**
 10 **cash on hand in mid-June. In fact, sometime around**
 11 **that period I heard that an employee of the City had**
 12 **gone to cash their paycheck and the paycheck had**
 13 **bounced. They came back in later that afternoon and**
 14 **it cashed, but we were -- we were that precarious in**
 15 **terms of our cash.**
 16 **We knew we were at risk with regard to the**
 17 **Swap agreement both for trapping casino revenue as**
 18 **well as the termination payment. We also knew that we**
 19 **would need to analyze what the right were -- rights**
 20 **were and to have time to resolve that issue. So to**
 21 **the extent your characterization of three objectives**
 22 **encompasses those concepts, then that's a fair**
 23 **characterization.**
 24 **BY MR. HACKNEY:**
 25 Q. And I don't mean to order them, but -- so I won't

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 checks bounce, we were running about four or nine
 2 million dollars, we needed urgent access to the -- to
 3 the revenue, and I think it caused all parties to take
 4 a step back.
 5 Q. And how long did they step back?
 6 A. I don't -- to be perfectly honest with you, I don't --
 7 I don't really recall. I remember, as I said before,
 8 after this letter there were a series of letters that
 9 went back and forth, and I recall that there was some
 10 concern by the counterparties as to their potential
 11 exposure based upon Syncora's behavior and whether or
 12 not they would be free to give us access to the casino
 13 revenue.
 14 Q. They were concerned that Syncora might be right,
 15 correct?
 16 A. No. That's your characterization. I think my general
 17 understanding was that everyone felt Syncora was quite
 18 wrong.
 19 Q. Didn't you just say that they were worried about their
 20 exposure?
 21 A. Well, their exposure in terms of -- not that they were
 22 right, their exposure in terms of potential litigation
 23 and having to parse through a position which they
 24 thought was unfounded.
 25 Q. So they were worried about having to engage in a

1 Q. Was there anything that you can recall today that
 2 happened on July 5th that was so urgent it couldn't
 3 wait six hours?
 4 A. Every -- every day -- let me be clear about this, so
 5 we can just get by it. Every day that the City does
 6 not make reinvestment in the City that has tens of
 7 thousands of abandoned structures, that has four of
 8 the most dangerous neighborhoods in the country, that
 9 has police cars with over 250,000 miles on them, that
 10 has police officers I believe during this time, one of
 11 whom got shot in the head by a perpetrator that nine
 12 cars had surrounded and remains in the hospital today,
 13 every day that this City does not make reinvestment is
 14 a dangerous day.
 15 Q. Were there any negotiations scheduled for July 5th,
 16 2013, the day after July 4?
 17 A. I don't -- I don't recall. If there's something you
 18 can refresh my recollection. I believe there was --
 19 there was something on July 5th. I'm just not
 20 recalling what it was.
 21 Q. Did this letter cause the negotiations to cease
 22 between June 17th and when you're able to obtain the
 23 TRO on July 5th?
 24 A. I wouldn't say whether it caused them to cease. As I
 25 said before, it had an impact and it was disruptive.

1 litigation with Syncora over a frivolous legal
 2 position that Syncora was taking?
 3 MR. SHUMAKER: Objection to form.
 4 BY MR. HACKNEY:
 5 Q. That's your understanding?
 6 A. Well, no. You're characterizing it as frivolous. I
 7 think any prudent business people when they receive
 8 letters like this, if they don't believe they are well
 9 founded are certainly justified in being concerned
 10 about potential litigation.
 11 Q. Were there any out-of-the-ordinary emergencies in the
 12 City of Detroit on July 5th that demanded your
 13 attention?
 14 A. There are always out-of-the-ordinary emergencies in
 15 the City of Detroit.
 16 Q. What were the ones on July 5th?
 17 A. I don't -- I don't remember the ones on July 5th, but
 18 I'm sure you can check. We can -- you know, you can
 19 check the press reports as far as -- so there are
 20 shootings daily, there are fires, there are unfunded
 21 mandates within the City.
 22 Q. Anything that stands out in your mind?
 23 A. There are always -- there are always emergencies.
 24 Nothing that stands out in my mind, but on any given
 25 weekend, we get 30 shootings a weekend.

1 Q. Okay. So it had an impact, but it didn't cause them
 2 to stop, correct?
 3 A. To some degree the parties -- you know, to some degree
 4 my recollection is -- here again, understanding that
 5 I'm the client and I'm relying on my team, my
 6 understanding was it had an impact and it was
 7 disruptive.
 8 Q. Did negotiations stop between June 17th and July 5th?
 9 A. I don't know if they completely stopped because your
 10 characterization of negotiations could include
 11 discussions about what to do with Syncora's
 12 interruption.
 13 Q. So the answer to my question is no, they did not stop?
 14 A. No. The answer to your question is just what I said.
 15 The characterization of the interruption could include
 16 this letter.
 17 Q. Okay. But it's a simple question, and you were the
 18 person that was involved for the City in making the
 19 ultimate decision. Did the negotiations of the
 20 forbearance agreement's final terms stop between
 21 June 17th and July 5th when you're able to get a TRO?
 22 MR. SHUMAKER: Objection, asked and
 23 answered.
 24 A. Sir, I'm going to stick with my answer. It was
 25 disruptive and it was -- had an impact.

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

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

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

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

1 may be other reasons why they made those
 2 representations. What I will say to you is what I
 3 said before. If my counsel represented to you that we
 4 were willing to dissolve it, I have no reason to
 5 contradict that.

6 Q. And they would have done that at your behest, right?

7 **MR. SHUMAKER:** Objection, form, foundation.

8 **A. They -- we would have the -- they would have had the**
 9 **authority to do that, yeah.**

10 **BY MR. HACKNEY:**

11 Q. During the course of your negotiations back to the
 12 agreement in principle of what became the forbearance
 13 agreement, did you ever solicit the views of any of
 14 the other monoline insurers, such as Ambac or Assured
 15 or National about what they thought the City should
 16 do?

17 **A. Not that I recall.**

18 Q. Did you ever solicit the views of any COP holders
 19 about what they thought the City should do with
 20 respect to the --

21 **A. I didn't solicit their views, no.**

22 Q. Did you direct anyone acting on your behalf to solicit
 23 the views of any of those parties?

24 **A. Not that I recall.**

25 Q. Isn't it true that getting the forbearance agreement

1 was a life or death issue for the City of Detroit?

2 **A. Yes, getting the forbearance agreement was very**
 3 **important to the City of Detroit.**

4 Q. Is it a life or death issue?

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

6 **A. When you say life or death, you know, here again I'm**
 7 **trying to be responsive, but I want (sic) to**
 8 **characterize it. The City needs the casino revenue**
 9 **badly. It was cash poor at that time. It would have**
 10 **facilitated without access, and it continues to be**
 11 **relatively cash poor without access. It could have**
 12 **facilitated a cash crisis. Life or death suggests to**
 13 **me it was critical and it might have been life or**
 14 **death, but what it does mean is that we could not have**
 15 **made the investment and cannot make the investment**
 16 **that is so crucial for the City.**

17 **BY MR. HACKNEY:**

18 Q. In fact, isn't it your position that without access to
 19 the casino revenues that people in the City of Detroit
 20 may die?

21 **A. Yes.**

22 Q. Okay.

23 **A. People -- you know, you may think of that as**
 24 **hyperbole, but this is a City where between car**
 25 **jackings, crime -- just last week, there was a woman**

1 who had a gun pointed at her three times in her front
 2 yard by people who were stripping a car in front of
 3 her -- that's a very serious threat in the City, and I
 4 don't want anyone to undermine the concept that this
 5 revenue is necessary to make this City a safer place.

6 Q. So it's fair to say that when it comes to the City's
 7 access to casino revenues, lives of the people of the
 8 City of Detroit are at stake?

9 **A. Lives of the people of the City of Detroit are at**
 10 **stake every day.**

11 Q. I know that's true. I'm aware of the fact people that
 12 live and die, but I'm asking with respect to access to
 13 the casino revenues. Access to the casino revenues is
 14 something that lives are at stake regarding, correct?

15 **A. Health, safety and welfare of the citizens are crucial**
 16 **and this casino revenue allows us to enhance that.**

17 Q. And lives are at stake, right?

18 **A. Health, safety and welfare of the City is crucial and**
 19 **this casino revenue allows us to enhance that.**

20 Q. Can you agree with me that lives are at stake?

21 **MR. SHUMAKER:** Objection, asked and
 22 answered.

23 **A. I've answered the question.**

24 **BY MR. HACKNEY:**

25 Q. That's not something you can agree with?

1 **A. I told you, lives are at stake in the City every day.**

2 Q. Are they at stake with respect to access to the --

3 **A. Every day --**

4 Q. -- casino revenues?

5 **A. I will say again, every day that we don't have access**
 6 **to casino revenue, we cannot make the necessary**
 7 **reinvestment in this City to provide for the health,**
 8 **safety and welfare of the citizens, and that's a true**
 9 **statement.**

10 Q. If I said that lives are at stake with respect to the
 11 casino revenues, can you agree with that statement?

12 **MR. SHUMAKER:** Objection, asked and
 13 answered.

14 **A. I've answered your question.**

15 **BY MR. HACKNEY:**

16 Q. Can you -- can you agree with my statement?

17 **A. I've answered your question.**

18 Q. I disagree that you've answered my question. We'll
 19 take the objection up at the -- with the Court, but
 20 are lives at stake with respect to access to the
 21 casino revenues?

22 **A. I've answered your question.**
 23 **(Whereupon Rick Frimmer left the**
 24 **deposition at 9:41 a.m.)**

25 **MR. HACKNEY:** Well, we're going to have to

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

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

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

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

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1 correct?

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

3 **collection.**

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

5 an eye towards selling pieces of the art collection to

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

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

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

9 **BY MR. HACKNEY:**

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

11 in principle.

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

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

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

15 **determine the value of assets.**

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

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

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

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

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

21 **valuable.**

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

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

24 **valuable.**

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

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1 not the City might have billions of dollars of art

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

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

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

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

6 to engaging in the negotiations with the Swap

7 counterparties, correct?

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

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

10 attempt to obtain federal aid prior to the June 4

11 commencement of negotiations with the Swap

12 counterparties?

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

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

15 **prior to that.**

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

17 whomever you spoke to at the federal government?

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

19 **seriousness of the situation.**

20 Q. And the federal government was also unwilling to

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

22 testimony?

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

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

25 corporations. The service corporations are two

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

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

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

4 **corporations.**

5 Q. And there are two of them?

6 **A. There are two.**

7 Q. Okay.

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

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

10 the names. So the two service corporations are

11 parties to the forbearance agreement, correct?

12 **A. Yes.**

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

14 to you, that his understanding is that you directed

15 the service corporations to execute the forbearance

16 agreement and they did so; is that correct?

17 **A. No.**

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

19 service corporations?

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

21 Q. And who led those?

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

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

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

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

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

2 **corporations.**

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

4 service corporations.

5 **A. Right.**

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

7 service corporations on behalf of the City?

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

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

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

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

12 direct negotiations with the service corporations?

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

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

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

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

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

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

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

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

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

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

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

24 negotiate with the service corporations?

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

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

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

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

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

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

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

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

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

1 construction on this point?

2 **A. No. I don't think that's exactly true. I think there**

3 **were -- as I said before, there were a series of**

4 **letters and discussions that went on from the second**

5 **week of June throughout some point in July where I**

6 **believe there may have been discussions in that**

7 **regard, validity of that point.**

8 Q. Okay. But if I ask you to express the City's view on

9 the legal merits of the insurers' contention that they

10 have the right to consent, you'll decline to answer

11 those questions because it tends to reveal the

12 attorney-client privilege.

13 **MR. SHUMAKER:** That's right and also calls

14 for a legal conclusion, yes.

15 **MR. HACKNEY:** But you'll -- I want to save

16 a big string of questions, so if I want to ask him

17 what are the pros and cons of the argument, who's

18 likely to win, how will it all come out --

19 **BY MR. HACKNEY:**

20 Q. You won't answer those questions on the grounds of

21 the -- because it would tend to reveal attorney-client

22 advice, correct?

23 **MR. SHUMAKER:** Well, I don't want to

24 prevent you from asking any questions and I don't --

25 but if he has an understanding independent of advice

1 he's given -- but clearly to the extent it's going to

2 reveal attorney-client communication, I will tell him

3 not to answer.

4 **MR. HACKNEY:** Okay. I'll ask him that.

5 **BY MR. HACKNEY:**

6 Q. Does the City concur in the insurers' view?

7 **MR. SHUMAKER:** Objection, calls for a legal

8 conclusion and could ask for attorney-client

9 communications.

10 **MR. HACKNEY:** Are you instructing him not

11 to answer?

12 **MR. SHUMAKER:** To the extent that the

13 question goes to that, yes.

14 **A. Maybe I can help out in this line of questioning.**

15 **Any -- I have not acted as an attorney on this job for**

16 **the aforementioned reasons, so any opinion that I**

17 **would express on behalf of the City in this regard**

18 **would be solely as a result of communications with**

19 **counsel and discussions.**

20 **BY MR. HACKNEY:**

21 Q. That was my expectation. So if I ask you if the City

22 concurred, that's going to get into what your lawyer

23 thinks.

24 **A. That's exactly right.**

25 Q. So you -- you will assert the privilege.

1 **A. I will assert the privilege.**

2 Q. And if I ask you what are the arguments for and

3 against this point, you'll assert the privilege.

4 **A. I will assert the privilege, but I am aware there are**

5 **a number of objections that have been filed in the**

6 **case that have addressed those issues and none of them**

7 **have caused me any surprise.**

8 Q. If I said that the City -- if I asked you what the

9 City's view is on -- well, let me take a step back.

10 Do you agree that the insurers can block an

11 early termination of the Swap, that this would be

12 important to assessing whether the City was in danger

13 of owing a termination payment?

14 **MR. SHUMAKER:** Objection, calls for a legal

15 conclusion.

16 **A. Yes, same thing. I'd only have a response to that**

17 **based upon discussions I've had with counsel.**

18 **BY MR. HACKNEY:**

19 Q. Do you agree that the insurers can block a

20 termination, that it would make sense to negotiate

21 with the insurers to determine whether you can secure

22 their agreement not to consent to any termination?

23 **MR. JURGENS:** Objection, form.

24 **MR. SHUMAKER:** Same objection.

25 **A. Same response. It would only be based upon**

1 **discussions I've had with counsel.**

2 **BY MR. HACKNEY:**

3 Q. Are you aware that the insurers contend that they have

4 the right to control all actions that may be taken by

5 the Swap counterparties in connection with the -- with

6 the Swaps?

7 **A. I am aware of that, yes.**

8 Q. When did you first develop that awareness?

9 **A. During some course of the correspondence that occurred**

10 **during this time frame that we previously discussed**

11 **today.**

12 Q. And have you taken steps to evaluate whether the City

13 concurs with the insurers' construction of the

14 operative documents on this point?

15 **A. Have we taken steps? Yes.**

16 Q. Yeah. And what is the City's position?

17 **MR. SHUMAKER:** Objection, calls for the

18 provision of attorney-client communications, and I

19 will instruct him not to answer.

20 **BY MR. HACKNEY:**

21 Q. Yeah, I'm just going -- I'm making a record here.

22 Okay? I don't want to have -- I tried to --

23 **A. I'm with you. I'm with you.**

24 Q. And if I ask you what the arguments are on both sides

25 of this point, you'll also refuse to answer on the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 the Swap?

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

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

4 **A. It is a discount to that, yes. It is a discount to**

5 **that expected amount.**

6 **BY MR. HACKNEY:**

7 Q. Yeah. It is a discount to what would otherwise be

8 owing under the Swap in the absence of the forbearance

9 agreement if the Swap counterparties designated an

10 early termination.

11 **A. I believe that's correct.**

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

13 **BY MR. HACKNEY:**

14 Q. Okay. Now, you know that there's a different concept

15 which is an optional early termination under the Swap,

16 correct?

17 **A. Um-hm.**

18 Q. Is that correct?

19 **A. Well, the way the agreement is worded, forbearance and**

20 **optional termination --**

21 Q. I'm not talking about the forbearance agreement.

22 **A. Okay.**

23 Q. I'm sorry if that wasn't clear --

24 **A. Oh.**

25 Q. -- and I don't mean to interrupt you.

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1 **A. Okay.**

2 Q. Under the Swap --

3 **A. Right.**

4 Q. -- there is a different type of termination that's

5 called an optional early termination. Are you aware

6 of that?

7 **A. I am aware of that.**

8 Q. Okay. That's one where the insured -- the Swap

9 counterparties contend that they can terminate the

10 Swap and walk away with no payment.

11 **A. Any understanding I would have about what the Swap**

12 **counterparties can do would be based upon**

13 **consultations with counsel, but suffice it to say I**

14 **have heard of that concept.**

15 Q. Okay. So if I ask you about the pros and cons of that

16 argument and who would likely to win, you would assert

17 the attorney-client privilege; is that correct?

18 **MR. SHUMAKER:** We would.

19 **A. Yes.**

20 **BY MR. HACKNEY:**

21 Q. Okay. But I do want to say that you understand that

22 the Swap counterparties are substantially in the money

23 under prevailing interest rates, correct?

24 **A. There is a lot of money that the City's going to owe,**

25 **yes.**

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1 Q. I'm just talking about with respect to the Swap.

2 Interest rates are favorable for the Swap

3 counterparties.

4 **A. On -- and I'm going to be careful here because on any**

5 **given day interest rates might swing and be favorable**

6 **to us based upon what we might owe, but generally**

7 **speaking, if you're saying -- what do you mean by in**

8 **the money?**

9 Q. Yeah. So what I mean is if the Swap was terminated

10 today --

11 **A. Right.**

12 Q. -- it's the service corporations that would owe money

13 to the Swap counterparties, not the Swap

14 counterparties that would owe money to the service

15 corporations.

16 **MR. JURGENS:** Objection.

17 **MR. SHUMAKER:** To be clear, the Swap

18 counterparties are UBS and Merrill Lynch.

19 **A. Yeah.**

20 **BY MR. HACKNEY:**

21 Q. That's what I mean by in the money.

22 **A. Yeah, I -- I think that's true.**

23 Q. Okay. I mean that's -- I'm not trying to be flip, but

24 that is the reason that you negotiated the discount?

25 **A. That's the mechanism, yes. Yeah.**

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1 Q. Okay. I want to make an obvious point, which is the

2 Swap counterparties have never come to the City and

3 said hey, we're going to exercise that optional early

4 termination rights that has us walking away and being

5 paid nothing, correct?

6 **MR. JURGENS:** Form.

7 **MR. SHUMAKER:** Objection form, too.

8 **A. To the best of my knowledge, I've never heard that.**

9 **BY MR. HACKNEY:**

10 Q. Obviously if they had, you would have been --

11 **COURT REPORTER:** I'm sorry.

12 **BY MR. HACKNEY:**

13 Q. Let me -- if you had heard them threaten that, it

14 would have made Mr. Buckfire's negotiation a lot

15 easier.

16 **A. I think it would have made the entire situation a lot**

17 **easier, but I've never heard that.**

18 Q. They've never offered to walk away without any

19 payment.

20 **A. I've never heard them offer to walk away without a**

21 **payment.**

22 Q. Okay. Too bad.

23 **A. I'm more than willing to accept that offer.**

24 Q. I was going to say we're all open, right?

25 **A. Right.**

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

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

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

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

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

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

13 **BY MR. HACKNEY:**

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

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

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

22 **A. And I won't.**

23 Q. That's right.

24 **A. And I won't, yes.**

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

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

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

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

6 **A. Yes.**

7 Q. -- correct?

8 **A. Certainly is, yes.**

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

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

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

19 **A. Right.**

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

1 the City?
2 **A. From my perspective?**

3 Q. Yeah.

4 **A. None.**

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

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

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

21 **A. Right.**

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

23 **A. Right.**

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

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

4 Q. Okay.

5 **A. -- how it operates.**

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

12 **A. Yes. There should be.**

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

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

19 **A. I--**

20 **BY MR. HACKNEY:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 agreement.

2 **A. Right.**

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

4 settlement of?

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

6 **each other.**

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

8 or the collateral agreement or the service contracts

9 or any other contracts --

10 **A. Yes.**

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

12 agreement?

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

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

15 that the City will be able to perform under the

16 forbearance agreement without being subject to any

17 liability to any third party?

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

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

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

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

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

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

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

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

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1 **A. Right.**

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

3 connection with the relevant agreements?

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

5 **BY MR. HACKNEY:**

6 Q. As a result of performance under the forbearance

7 agreement, correct?

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

9 **speculation.**

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

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

12 **that the parties have.**

13 **BY MR. HACKNEY:**

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

15 **A. That is correct.**

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

17 likelihood of success of all of the different claims

18 that are being resolved by the forbearance agreement,

19 you would assert the attorney-client privilege and

20 refuse to answer?

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

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

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

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

25 negotiated a settlement or two in your life as a

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1 lawyer.

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

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

4 well, but --

5 **A. Right.**

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

7 involve releases of liability by the parties against

8 one another?

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

10 **settlement agreements.**

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

12 see whether I ever entered into a settlement agreement

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

14 Have you ever entered into a settlement agreement that

15 didn't have a release?

16 **A. Yes.**

17 Q. Okay. You have?

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

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

20 contains a release of claims by the parties against

21 one another?

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

23 **conclusion.**

24 You can answer.

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

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

2 **itself.**

3 **BY MR. HACKNEY:**

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

5 reviewed the forbearance agreement in connection with

6 the preparation for your deposition?

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

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

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

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

11 whether there's a release in the forbearance

12 agreement?

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

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

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

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

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

18 agreement or in the effect of its approval, it

19 operates as a release for everyone involved?

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

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

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

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

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

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

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

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

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

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

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

10 **BY MR. HACKNEY:**

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

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

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

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

23 Q. It was.

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

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

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

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

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

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

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

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

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

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

18 **MR. SHUMAKER:** Objection --

19 **A. No.**

20 **MR. SHUMAKER:** -- asked and answered.

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

23 **BY MR. HACKNEY:**

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

1 Q. And those are?

2 **COURT REPORTER:** Can you please slow down?

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

4 **BY MR. HACKNEY:**

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

7 **A. That's correct.**

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

10 **A. I was informed without telling specific --
11 BY MR. HACKNEY:**

12 Q. Right.

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

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

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

22 **BY MR. HACKNEY:**

23 Q. I'll do it that way.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **A. Yeah. The agreement speaks for itself and there are**
2 **other provisions in there, but the net effect is that**
3 **you have to do -- obtain the order within 60 days**
4 **and --**

5 **BY MR. HACKNEY:**

6 Q. Yeah.

7 **A. -- I believe that's -- if you represent that's the**
8 **correct date, then I have no reason to disagree.**

9 Q. And there are actually two elements to this here. One
10 of them is that, whatever the order says, it has to be
11 final and unappealable by September 16, correct?

12 **MR. SHUMAKER:** Objection, document speaks
13 for itself.

14 **A. I'll have to rely on the documents speaking to itself**
15 **because without going through the whole -- I do recall**
16 **that there was an obligation that the order be a final**
17 **order. I don't recall specifically the -- the**
18 **unappealable aspect of it. I do -- I do see in J that**
19 **there's a 60-day provision going forward.**

20 **BY MR. HACKNEY:**

21 Q. And do you see it says final and unappealable in J?

22 **A. I'm sorry, I'm looking through it.**

23 Q. No, that's okay. You what, the court order
24 definition?

25 **A. Yeah. It doesn't say it in J as defined in 2.1(d),**

1 whether they will extend that 60-day deadline we were
2 just discussing?

3 **A. I have not had any discussions. I am unaware as to**
4 **whether or not any of my representatives have.**

5 Q. You haven't directed them to have any, correct?

6 **A. No, not directly.**

7 Q. It's correct that you have not directed them?

8 **A. It is correct -- it is correct that I have not**
9 **directed them, but generally, just so we have an**
10 **understanding here, once the forbearance agreement was**
11 **reached, my counsel and representatives have all the**
12 **authority necessary to do what's required to get the**
13 **order entered.**

14 Q. Okay. Well, let me ask it this way, which is, there
15 are a number of provisions that are in this order that
16 I -- I guess I'm maybe having the sense that you're
17 not intimately familiar with as you sit here today; is
18 that correct?

19 **A. Yes, I know generally what the provisions of the order**
20 **are. I know that the motion speaks to both the**
21 **assumption and the 9019 agreement and their different**
22 **principles, but the specific inner workings of the**
23 **order, I will defer to my counsel on those.**

24 Q. Let me ask you about some of them then. Look on the
25 page 3 at E which is entitled Consent to Use of Casino

1 **and that's what I was looking. Unfortunately I -- I**
2 **remembered it was in 2. It's D. It's 2.1(d).**

3 Q. And you --

4 **A. It says obtain entry of a final and unappealable**
5 **order, yeah.**

6 Q. Are you aware that that's actually not possible as we
7 stand here today under the rules of the bankruptcy
8 code?

9 **MR. SHUMAKER:** Objection, calls for
10 speculation and a legal conclusion.

11 **A. Yeah, here again, since I'm not acting as an attorney,**
12 **I'm going to defer from asking (sic) that question. I**
13 **do understand that there are time frames involved**
14 **under the bankruptcy code and under the rules as to**
15 **whether or not they can occur.**

16 **BY MR. HACKNEY:**

17 Q. So you don't know whether or not it's -- it's
18 potentially impossible for the City to comply with
19 this --

20 **A. Yeah, I would --**

21 **MR. SHUMAKER:** Same objection.

22 **A. I would not opine as to whether or not it's possible.**

23 **BY MR. HACKNEY:**

24 Q. Have you or your representatives had any
25 communications with the Swap counterparties regarding

1 Revenues.

2 **A. Um-hm. Um-hm.**

3 Q. And it contains a finding that says, "Pursuant to
4 section 1.2 of the forbearance agreement, UBS AG and
5 MLCS consent to the City's use of the casino revenue
6 as set forth in the forbearance agreement."

7 Do you see that?

8 **A. Yes, I do.**

9 Q. And then it says, "The consent of the UBS AG and MLCS
10 will allow the City immediate access to its casino
11 revenue as set forth in forbearance agreement and no
12 other or further consents are required."

13 Do you see that?

14 **A. Yes, I do.**

15 Q. Okay. Is this an important part of the proposed
16 order?

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

18 **A. Well, first, the document speaks for itself. Two --**
19 **BY MR. HACKNEY:**

20 Q. It doesn't speak for itself in terms of whether it's
21 important.

22 **A. Well, let me respond. Two, to the extent this is an**
23 **order into a motion, it -- as we had discussed earlier**
24 **today, it's important that we have unfettered access**
25 **to the casino revenue; and, three, I do think this is**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 BY MR. MARRIOTT:

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

10 MR. JURGENS: Objection --

11 A. Yes.

12 MR. JURGENS: -- to form.

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

16 BY MR. MARRIOTT:

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

19 A. Right.

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

21 A. Yes.

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

1 A. Um-hm.

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

3 A. To currently operate?

4 Q. Yes.

5 MR. SHUMAKER: Object to the hypothetical.
6 Go ahead.

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

14 BY MR. MARRIOTT:

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

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

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

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

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

12 BY MR. MARRIOTT:

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

14 A. Okay.

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

16 A. Sure.

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

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

24 A. Um-hm.

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

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

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

8 A. Right.

9 Q. -- tell me.

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

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

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

24 A. Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 one.

2 **BY MR. GOLDBERG:**

3 Q. Okay. So Exhibit Number 6.

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

5 Q. Page 34.

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

7 Q. Yes.

8 **A. Okay.**

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

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

11 expenditures for 2008 to 2012; is that correct?

12 **A. Yes.**

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

14 That means general fund?

15 **A. Yes.**

16 Q. EF, is that enterprise fund?

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

18 **transportation.**

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

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

21 the enterprise fund?

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

23 **those categories.**

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

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

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1 Swaps during those years.

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

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

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

5 million a year.

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

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

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

9 Detroit, did it?

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

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

12 **BY MR. GOLDBERG:**

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

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

15 right?

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

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

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

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

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

21 **BY MR. GOLDBERG:**

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

23 the difference between the interest rate on the

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

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

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1 to pay the Swap counterparties, correct?

2 **A. Yes --**

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

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

5 **BY MR. GOLDBERG:**

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

7 with the optional termination event. The exhibit --

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

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

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

11 Q. Same exhibit.

12 **A. Okay.**

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

14 May 31, 2013, according to your proposal for

15 creditors, the negative fair value of the Swaps was

16 \$343.6 million?

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

18 **the negative fair value --**

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

20 way too fast.

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

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

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

24 **of May 31st.**

25 **BY MR. GOLDBERG:**

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

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

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

4 be paying 264 million approximately on the Swaps?

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

6 **BY MR. GOLDBERG:**

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

8 amount is at that point?

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

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

11 **May 31st.**

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

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

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

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

16 **optional termination provision of the forbearance**

17 **agreement.**

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

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

20 **A. Yes.**

21 Q. The three-month LIBOR?

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

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

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

25 an exhibit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

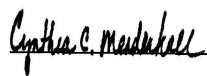
1 **VIDEO TECHNICIAN:** All set?
 2 **THE WITNESS:** All done? Okay. Thank you
 3 very much.
 4 **VIDEO TECHNICIAN:** This concludes today's
 5 deposition. The time is 3:52 p.m. We are off the
 6 record.
 7 (The deposition was concluded at 3:52 p.m.
 8 Signature of the witness was not requested by
 9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

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1 **CERTIFICATE OF NOTARY**
 2 **STATE OF MICHIGAN)**
 3 **) SS**
 4 **COUNTY OF OAKLAND)**

5
 6 I, CYNTHIA C. MENDENHALL, certify that this
 7 deposition was taken before me on the date
 8 hereinbefore set forth; that the foregoing questions
 9 and answers were recorded by me stenographically and
 10 reduced to computer transcription; that this is a
 11 true, full and correct transcript of my stenographic
 12 notes so taken; and that I am not related to, nor of
 13 counsel to, either party nor interested in the event
 14 of this cause.

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CYNTHIA C. MENDENHALL, CSR 5220
 Notary Public,
 Oakland County, Michigan.

My Commission expires: April 5, 2017

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