

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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**In re** : **Chapter 9**  
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**CITY OF DETROIT, MICHIGAN,** : **Case No. 13-53846**  
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: **Hon. Steven W. Rhodes**  
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**FINANCIAL GUARANTY INSURANCE  
COMPANY’S MOTION IN LIMINE TO PRECLUDE THE  
INTRODUCTION OF EVIDENCE OR TESTIMONY REGARDING MATTERS  
WITHHELD FROM DISCOVERY ON THE BASIS OF THE MEDIATION ORDER**

Financial Guaranty Insurance Company (“**FGIC**”)<sup>1</sup> hereby submits this motion in limine (the “**Motion**”) for entry of an order precluding at the hearing (the “**Confirmation Hearing**”) on the *Corrected Fifth Amended Plan for the Adjustment of Debts of the City of Detroit* [Docket No. 6379] (the “**Plan**”) the introduction of evidence or testimony that FGIC has heretofore been unable to discover because of this Court’s Mediation Order, entered on August 13, 2013 [Docket No. 322] (the “**Original Mediation Order**” and, as amended or supplemented, the “**Mediation Order**”). In support of this Motion, FGIC respectfully represents as follows:

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<sup>1</sup> All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Objection of Financial Guaranty Insurance Company to Plan for the Adjustment of Debts of the City of Detroit, filed May 12, 2014 [Docket No. 4660] and the Supplemental Objection of Financial Guaranty Insurance Company to Plan for the Adjustment of Debts of the City of Detroit, filed August 12, 2014 [Docket No. 6674].

### **Preliminary Statement**

1. Over the past four months, the parties have actively engaged in discovery—taking over thirty depositions and reviewing tens of thousands of documents. Throughout this process, FGIC and the other objectors have been unable to elicit information surrounding the numerous settlements that make up the Plan, including the “Grand Bargain,” because of claims of mediation confidentiality. It has become clear, however, that despite these claims of confidentiality, the City intends to rely at the Confirmation Hearing on evidence related to the negotiations that resulted in these settlements and/or evidence that FGIC cannot properly refute without conducting discovery related to the negotiations.

2. Critically, the Court has already made clear that this evidence is irrelevant to Plan confirmation issues. Moreover, FGIC will incur significant prejudice if evidence which has heretofore been withheld on the basis of mediation confidentiality is allowed at the Confirmation Hearing. FGIC has not had the opportunity to conduct discovery or prepare its witnesses on matters relating to mediation and thus will not be prepared to adequately address any such matters should they arise at the Confirmation Hearing. To the extent supporters of the Plan, including the City, are able to manipulate this Court’s Mediation Order to their benefit by selectively relying on evidence that they previously withheld on the basis of confidentiality, they will effectively be using the asserted confidentiality as a “sword and a shield,” a tactic the Sixth Circuit has repeatedly admonished.

### **Jurisdiction**

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### Factual Background

4. On August 13, 2013, the Court entered the Original Mediation Order which, among other things, outlines the procedures surrounding Court-ordered mediation and provides that “[a]ll proceedings, discussions, negotiation, and writings incident to mediation shall be privileged and confidential, and shall not be disclosed, filed or placed in evidence.” Original Mediation Order ¶ 4. Since entering the Original Mediation Order, the Court has expressed a preference for resolutions adopted through mediation and thus has stressed the importance of the protections offered by the Mediation Order. *See, e.g.*, Hr’g Tr. 187:5-7, May 28, 2014 (Court: “[T]he best way to resolve this bankruptcy is through mediation and settlement, and any crack in the wall of confidentiality undermines that goal.”). Indeed, on June 12, 2014, the Court entered a Supplemental Order Regarding Mediation Confidentiality [Docket No. 5294] (the “**Supplemental Mediation Order**”). FGIC has not had the opportunity to review the Supplemental Mediation Order, which was filed under seal, and, accordingly, is unable to ascertain what information is protected by that order.<sup>2</sup>

5. Over the past few months, the City, the Foundations and other parties to mediations have relied on the Mediation Order in refusing to respond to requests for information. *See, e.g.*, Hr’g Tr. 10:13-24, June 26, 2014; *Brief in Support of Joint Motion of the Foundations to Quash Subpoenas Duces Tecum*, dated June 13, 2014 [Docket No. 5300] 10-11; *State of Michigan Privilege Log*, attached as Exhibit 6 to the Supplemental Order Motion. For example,

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<sup>2</sup> On June 17, 2014, a number of creditors, including FGIC, filed the Motion of Creditors to View or, in the Alternative, Unseal Supplemental Order Regarding Mediation Confidentiality [Docket No. 5358] (the “**Supplemental Order Motion**”). The creditors reasoned that they should be permitted to view the Supplemental Mediation Order because, without knowing the parameters of that order, it would be impossible for creditors to know when a party’s invocation of the Mediation Order’s protection was warranted. The Court denied the Supplemental Order Motion, without hearing, on July 2, 2014 [Docket No. 5746].

claims of mediation confidentiality were made during at least fourteen depositions, including the depositions of Kenneth Buckfire, Glenn Bowen, James Doak, Lee Donner, Mayor Michael Duggan, Annmarie Erickson, Bart Foster, Edsel Jenkins, Brenda Jones, Sue McCormick, Dennis Muchmore, Kevyn Orr, Rip Rapson and Brom Stibitz. As a result, these deponents were either instructed not to answer a specific question or a specific line of questioning or cautioned to restrict their answer to a specific question or a specific line of questioning. Further, two of the City's key witnesses asserted claims of mediation confidentiality over a combined 45 times during their depositions—the protections of the Mediation Order were invoked at least 35 times during the deposition of Kevyn Orr, the Emergency Manager for the City (the “**Emergency Manager**”) (*see, e.g.*, Orr Dep. 336:10-340:13, 404:19-405:14, July 22, 2014) (excerpts of which are attached hereto as Ex. 6A), and at least 10 times during the deposition of Kenneth Buckfire (*see, e.g.*, Buckfire Dep., July 16, 2014) (*See FGIC's Motion to Exclude the Opinion of Kenneth Buckfire regarding Plan Treatment Compared to Treatment upon Dismissal*, filed on August 18, 2014 [Docket No. 6826], Ex. 7).

6. Information related to the “Grand Bargain” was withheld on the basis of mediation confidentiality by a variety of parties on a number of issues, including:

- the process for soliciting the Foundations to contribute funds to the City and what the Foundations were initially told about the purpose of the Grand Bargain, *see* Rapson Dep. 81:23-83:2, July 31, 2014 (excerpts of which are attached hereto as Ex. 6B) (“Q: When Judge – during your first conversation with Judge Rosen, where he proposed that the Kresge Foundation become involved in the process for the Grand Bargain, was it Judge Rosen who brought up that the involvement of the foundation should occur because it could soften the blow to the pensioners and help preserve the collection at the DIA? Mr. Shumaker: Objection. This calls for communications between Judge Rosen and Mr. Rapson. I believe this falls within the construct of the mediation order, and I would ask that the witness be instructed not to answer . . . Mr. Kurzweil: Under those circumstances, I’m going to instruct the witness not to answer.”);

- communications between the City and the Foundations regarding the Grand Bargain, *see* Orr Dep. 337:12-338:3 (“Q: So I guess I want to make a record of something I understand from the City’s position but it is the City’s position that communications with the foundation are either part of or incidental to the mediation, correct? . . . A: That is correct.”);
- discussions regarding monetization of the art through the Grand Bargain, *see* Orr Dep. 404:25-405:14 (“Q: . . . [W]hat steps did the City take to monetize the art? A: Putting aside any discussions we had in mediation, or the mediation process, about the art or the Grand Bargain, I think it’s fair to say that we didn’t take any steps to monetize the art. Q: So the Grand Bargain is it? A: Yes. Q: And that’s the product of the mediation, so you can’t talk about the efforts? A: Yes.”);
- whether the Foundations would have contributed funds absent the transfer of the DIA, *see* Orr Dep. 340:3-7 (“Q: If I ask you did the foundations ever offer to contribute money without insisting on transfer of the art institute, you’ll decline to answer that question, correct? A: I think I have to.”);
- the basis for liability that the pensioners are asserting against the State, *see* Stibitz Dep. 84:19-85:17, August 4, 2014 (excerpts of which are attached hereto as Ex. 6C) (“Q: [W]hat is the State’s understanding of the arguments that the pensioners are raising against the State . . . the basis for liability that the pensioners are, are asserting against the State. . . Ms. Nelson: Well, number one, that goes to the confidentiality of the mediation agreement, and I would have to instruct him not to answer on that ground.”);
- why the State Contribution will be going to the pensioners as opposed to other creditors, *see* Muchmore Dep. 56:13-57:6, August 4, 2014 (excerpts of which are attached hereto as Ex. 6D) (“Q: Does the State have a view, to your knowledge, based on why it is that funding will be going to pensioners versus other creditors? Ms. Nelson: I’m going to object, because that invades the confidentiality of the mediation process, and I will instruct him not to answer that question.”);
- the State’s view with respect to what the recovery of pensioners should be in the bankruptcy, *see* Muchmore Dep. 57:22-58:22 (“Q: [S]ince the mediation, does the State have a view, with respect to the priority that pensioners should be paid, vis-à-vis other creditors in the Detroit bankruptcy? . . . Ms. Nelson: . . . It invades the confidentiality of the mediation process.”); and
- whether the DIA believed that it would be able to raise the \$100 million it agreed to contribute to the Grand Bargain and when it agreed to raise such funds, *see* Erickson Dep. 183:13-184:17, July 22, 2014 (excerpts of which are attached hereto as Ex. 6E) (“Q: To the extent the DIA made statements within the course of the last year that it may have been impossible or very difficult to raise \$100 million, am I fair to assume that those statements were made in part because ongoing settlement discussions were going on? . . . When did the DIA learn that it would – that it was agreeing to undertake a commitment to contribute \$100 million to the settlement?

Mr. O'Reilly: I'm going to object. I think you're asking a time during – during the course of negotiations when they would have made some commitment. I think that's covered by the order.”).

7. Claims of mediation confidentiality were also asserted with regard to a number of other issues including:

- certain of the bases for the City's discrimination against Class 9, *see* Orr Dep. 349:20-350:2 (“Q: [D]o you have any bases for discriminating other than those two things? . . . A: I think that's caught up in the mediation.”);
- whether the City would be contributing to the reduction of certain pension underfunding, *see* Buckfire Dep. 352: 9-17 (Q: [W]as it also determined that the City would not be contributing to the – the reduction of the underfunding through 2023? Mr. Cullen: Objection, I think we're getting into negotiations under the mediation privilege.”); and
- communications with the labor unions regarding the work rules. *See* Jenkins Dep. 80:15-81:11, July 25, 2014 (excerpts of which are attached hereto as Ex. 6F) (“Q: I understand that there are ongoing negotiations with the labor unions about some of these work rules, is that right? . . . Ms. Kovsky-Apap: . . . [T]o the extent that anything is still short of the finish line, we're subject to the Court's order on mediation and can't discuss it. The Witness: Okay. Everything is a work in process right now.”).

8. Despite the numerous invocations of the Mediation Order during discovery, it has become clear that the City plans to use information related to mediation in the Confirmation Hearing. For example, the Emergency Manager, testifying in his capacity as the City's representative pursuant to Federal Rule 30(b)(6), stated that third-parties to the “Grand Bargain” conditioned their participation in the settlement on their funds being directed to pensioners.<sup>3</sup> *See* Orr Dep. 210: 16-20 (“[I]t became apparent that there was going to be

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<sup>3</sup> This Court has previously held that conditions imposed by third-parties to the Grand Bargain are irrelevant to Plan Confirmation issues. *See Financial Guaranty Insurance Company's Motion in Limine to Preclude the Introduction of Evidence or Testimony Regarding Certain Matters Previously Deemed Irrelevant by the Court or the City of Detroit* (“**FGIC's Irrelevant Matters Motion in Limine**”) at p. 15, filed contemporaneously herewith. Notwithstanding this ruling, the City has indicated that it plans to rely on the conditions imposed by third-parties to the Grand Bargain to justify the Plan's disparate treatment of creditors. *Id.*

additional money coming in in the form of the Grand Bargain from third-party guarantors who were – as a condition of those grants that they be dedicated solely to pension.”); *see also* Orr Dep. 275:6-13. For mediation confidentiality reasons, however, Orr refused to go into more detail about the City’s discussions with the Foundations. *See* Orr Dep. 336:10-21; 337:12-20; 338:10-339:9; 339:22-340:13; 439:13-17; 444:8-25 (declining to describe the process by which the Foundations were solicited for funding or answer questions about the way the Grand Bargain was structured, the DIA Corp. contributions, or the State Contribution on the basis of the Mediation Order). The City also indicated in its “Plan Confirmation Factual Propositions,” attached hereto as Ex. 6G, that it intends to rely on the alleged fact that the contributions by the State, DIA Corp. and Foundations were conditional and would not have been made if the funds were not passed through to the pensioners under the Plan.

9. Further, in its Motion to Strike Syncora’s Second Supplemental Objection to the Plan, filed on August 18, 2014 [Docket No. 6845] (“**Mot. to Strike Syncora’s Second Supp. Obj.**”), the City relies on the contention that the “outside funds” used in the Grand Bargain “were available *solely* for the purposes of providing relief to pensioners *or preserving the DIA in public trust*, or both” and that “these outside donations never would have been available for any other purpose.” Mot. to Strike Syncora’s Second Supp. Obj. 10-11; *see also id.* at 12 (“[T]he outside funds [ ] were donated on the express condition of providing pension relief and establishing the DIA as a public trust.”); *id.* at 20 “[T]he City has acted responsibly to establish the DIA as an independent public trust, in exchange for outside donations that are *specifically conditioned* on that purpose.”); *id.* at 23 (“[T]he City has agreed to insert provisions in the DIA Settlement Agreement making clear that no creditor can have any claim against the DIA’s assets now or in the future . . . . [This is] simply a reassurance to charitable donors, *who*

*expressly required the disclaimer* as a condition of their financial contributions.”).<sup>4</sup> The City cites *solely* to selective testimony of Rip Rapson for this contention. See Mot. to Strike Synocra’s Second Supp. Obj. 11n.4, 23n.16. However, when Mr. Rapson was further probed at his deposition, he was directed to not answer any further questions about the Foundations’ contribution to the Grand Bargain on the basis of mediation confidentiality:

Q: When Judge – during your first conversation with Judge Rosen, where he proposed that the Kresge Foundation become involved in the process for the Grand Bargain, was it Judge Rosen who brought up that the involvement of the foundation should occur because it could soften the blow to the pensioners and help preserve the collection at the DIA?

Mr. Shumaker: Objection. This calls for communications between Judge Rosen and Mr. Rapson. I believe this falls within the construct of the mediation order, and I would ask that the witness be instructed not to answer . . .

Mr. Kurzweil: Under those circumstances, I’m going to instruct the witness not to answer....

....

Q: So to the extent I ask you about the back and forth with Mr. Rosen or any other parties who were involved with mediation that took place after your initial meeting with Judge Rosen regarding the Grand Bargain ... will you be able to answer those questions here today?

Mr. Shumaker: I would be interposing an objection to all such questions, because I believe that back and forth would be covered by the mediation order entered by Judge Rosen.

Mr. Kurzweil: It’s my intention upon request of counsel to instruct the witness not to answer.

Q. Is it fair to say that you will follow those instructions, Mr. Rapson?

A. To a tee.

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<sup>4</sup> This argument is especially troubling. When, why and at whose request certain provisions were included in the DIA Settlement is the exact type of information that FGIC understood to be covered by the protections of the Mediation Order and that has been withheld from FGIC in discovery on the basis of mediation confidentiality. See, e.g., Erickson Dep. 184:11-17 (“Q: When did the DIA learn that it would – that it was agreeing to undertake a commitment to contribute \$100 million to the settlement? Mr. O’Reilly: I’m going to object. . . I think that’s covered by the order.”); Muchmore Dep. 56:18-56:24 (“Q: Does the State have a view, to your knowledge, based on why it is that funding will be going to pensioners versus other creditors? Ms. Nelson: I’m going to object, because that invades the confidentiality of the mediation process, and I will instruct him not to answer that question.”).



Rapson Dep. 81:23-87:6.<sup>5</sup> City witnesses, including the Emergency Manager, have also refused to testify about any conditions imposed by the Foundations, DIA Corp. and the State on the basis of mediation confidentiality. *See supra* 4-6; Orr Dep. 378:10-379:8 (noting that the Emergency Manager had only accepted the provisions in the Grand Bargain to the extent they had been publicly reported in the Plan and refusing to provide a date that terms were accepted because of mediation privilege). Indeed, the Emergency Manager specifically refused to provide information on whether the Foundations would have contributed funds to the DIA Settlement absent the transfer of the DIA, an argument that the City relies heavily upon in its Motion to Strike Syncora’s Supplemental Objection. *See* Orr Dep. 340:3-7 (“Q: If I ask you did the foundations ever offer to contribute money without insisting on transfer of the art institute, you’ll decline to answer that question, correct? A: I think I have to.”); Mot. to Strike Syncora’s Supp. Obj. 10-12, 20.

10. As a result of the Mediation Order, FGIC has been denied access to information on, among other things, when these alleged conditions were imposed, why they were imposed, at whose request they were imposed, and whether they were necessary to consummate the Grand Bargain. *See, e.g.,* Orr Dep. 340:3-7, 340:8-13; 439:13-17; 444:8-25; *supra* 4-6.

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<sup>5</sup> The deposition transcripts in this case are replete with situations like this, where the City inconsistently employs the protections of the Mediation Order by objecting to certain lines of questioning while allowing related lines of questioning to proceed. *Compare* Gilbert Dep. 130:2-26, July 29, 2014 (excerpts of which are attached hereto as Ex. 6H) (“Q: [W]hat did [Graham Beal] say about donating to the Grand Bargain when you had this meeting with him? Mr. Shumaker: I’m going to object because I believe that any of these discussions would have been covered by the mediation order.”) *and* Rapson Dep. 81:23-83:2 (prohibiting Rapson from testifying about how the Grand Bargain was presented to him and what he was told about the goals of the Grand Bargain) *with* Gilbert Dep. 133:14-135:21 (allowing Gilbert to testify about how the Grand Bargain was presented to him and what he understood the Grand Bargain to accomplish); *compare* Orr Dep. 337:12-338:16 (acknowledging that the City’s position with respect to the Mediation Order is that communications with the Foundations are either “part of or incidental to mediation”) *with* Orr Dep. 275:6-13 (noting that, when considering how to treat various creditor classes, he considered conditions placed on contributions from grantors).

FGIC has thus been denied any and all opportunity to test the allegations made by the City with respect to this issue, including whether the parties who contributed funds to the Grand Bargain in fact indicated that they would have refused to provide such funding had it not been directed solely to pensioners.

11. Although the Court has acknowledged that the Mediation Order is a court order which cannot be waived, Hr'g Tr. 48:6-7, June 26, 2014, the Court has also recognized that the City cannot use the Mediation Order as both a sword and a shield; if the City violates the confidentiality of mediation, then the parties may be able to conduct discovery otherwise protected by the Mediation Order. Hr'g Tr. 183:12-17, May 28, 2014 (Court: "If the city breaches the confidentiality of mediation . . . then you're in, but I can't assume that. I have to assume the city in discovery and, most importantly, at trial will respect the confidentiality of mediation in all of its proofs.").

### **Argument**

#### **I. Legal Standard**

12. Motions in limine "ensure an evenhanded and expeditious trial" by permitting the court to decide evidentiary issues in advance. *Cincinnati Ins. Co. v. Becker Ulman Const., Inc.*, No. 12013185, 2013 WL 5797614, at \*1 (E.D. Mich. Oct. 28, 2013); *see also Dow Corning Corp. v. Weather Shield Mfg., Inc.*, No. 09-10429, 2011 WL 4506167, at \*2 (E.D. Mich. Sept. 29, 2011). A motion in limine "performs a gatekeeping function and permits the trial judge to eliminate from further consideration evidentiary submissions that clearly ought not be presented [] because they clearly would be inadmissible for any purpose. The prudent use of the in limine motion sharpens the focus of later trial proceedings and permits the parties to focus their preparation on those matters that will be considered." *Jonasson v. Lutheran Child & Family Servs.*, 115 F.3d 436, 440 (7th Cir. 1997).

13. When analyzing such motions, courts typically consider “issues of relevance, admissibility, and prejudice.” *Bar’s Prods., Inc. v. Bar’s Prods. Int’l, Ltd.*, No. 10-14321, 2014 WL 1922764, at \*1 (E.D. Mich. May 14, 2014). As the Sixth Circuit has noted, “[r]elevancy is the threshold determination in any decision regarding the admissibility of evidence; if evidence is not relevant, it is not admissible.” *Koloda v. Gen. Motors Parts Div., Gen. Motors Corp.*, 716 F.2d 373, 375 (6th Cir. 1983) (citing Fed. R. Evid. 402). Even relevant evidence, however, should be excluded if its probative value is outweighed by the danger of unfair prejudice. Fed. R. Evid. 403; *see also Paschal v. Flagstar Bank*, 295 F.3d 565, 577 (6th Cir. 2002). Indeed, motions in limine often involve “matters which ought to be excluded from . . . consideration due to some possibility of prejudice or as a result of previous rulings by the court.” *Provident Life & Acc. Ins. Co. v. Adie*, 176 F.R.D. 246, 250 (E.D. Mich. 1997).

## **II. FGIC Will Be Severely Prejudiced if Previously Withheld Information is Introduced at the Confirmation Hearing**

14. The Federal Rules of Evidence provide that even relevant evidence should be excluded if its “probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing of the issues . . . , undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403; *see also Paschal*, 295 F.3d at 577 (citing Federal Rule of Evidence 403). Given the prejudice and injustice that would otherwise result, courts routinely hold that “the failure of a party to allow pre-trial discovery of a confidential matter which that party intends to introduce at trial will preclude the introduction of that evidence.” *Int’l Tel. & Tel. Corp. v. United Tel. Co. of Fla.*, 60 F.R.D. 177, 186 (M.D. Fla. 1973) (noting that “fundamental fairness and justice requires that if [a party] intends to waive the privilege at trial by the introduction of evidence within that privilege, then the [party] will be required to allow discovery with regard to matters material to that testimony”); *Baxter Travenol Labs., Inc. v.*

*Abbott Labs*, No. 84 C 5103, 1987 WL 10988, at \*1 (N.D. Ill. May 12, 1987) (“Abbott’s failure to allow pretrial discovery of the privileged material [] will preclude it from using that material at trial.”).

15. Prejudice occurs where, as here, a party is barred from obtaining confidential or privileged information during discovery which ultimately is used by its opponent at trial. “To allow a plaintiff to shield information during discovery and then utilize the information at trial would result in manifest injustice” and “frustrate attempts by the opposition to prepare for trial.” *Huzjak v. United States*, 118 F.R.D. 61, 64-65 (N.D. Ohio 1987); *see also Mariner v. Great Lakes Dredge & Dock Co.*, 202 F. Supp. 430, 434 (N.D. Ohio 1962) (“I cannot perceive how the interests of justice could be served by permitting plaintiff to stand on his privilege now and abandon it at trial.”). Indeed, it is axiomatic that a party cannot use a claim of privilege or confidentiality “as a shield and a sword.” *In re Lott*, 424 F.3d 446, 454 (6th Cir. 2005) (citation omitted); *see also Ross v. City of Memphis*, 423 F.3d 596, 604-605 (6th Cir. 2005) (“A popular image is that the attorney-client privilege cannot at once be used as a shield and a sword. This image is meant to convey that the privilege may implicitly be waived when defendant asserts a claim that in fairness requires examination of protected communications.”) (internal citation omitted); *Chevron Corp. v. Stratus Consulting, Inc.*, No. 10-CV-00047, 2010 WL 3923092, at \*10 (D. Colo. Oct. 1, 2010) (“Where a party injects part of a communication as evidence, fairness demand[s] that the opposing party be allowed to examine the whole picture ... privilege cannot be used as both a sword and a shield.”).

16. During the discovery process, FGIC has been repeatedly denied access to information on the basis of mediation confidentiality. *See supra* pp. 3-4. Indeed, as part of this process, the parties asserting mediation confidentiality have interpreted the Mediation Order’s

protections broadly, claiming, for example, that *all* substantive conversations between the City and certain parties are confidential. *See* Orr Dep. 337:12-338:9. The City has even claimed that it cannot disclose to FGIC all of the reasons that Class 9 is discriminated against under the Plan. Orr Dep. 349:11-350:3.

17. Through discovery and motion practice it has become clear, however, that the supporters of the Plan, including the City, strictly apply the Mediation Order only when it benefits them and indeed are attempting to use the Mediation Order as both a sword and a shield. The City's selective use of Rip Rapson's deposition testimony in its Motion to Strike Syncora's Supplemental Objection is one example of this. The City allowed at his deposition, and now relies on, Mr. Rapson's testimony for the proposition that "outside donations would never have been available for any [ ] purpose" other than to benefit pensioners or preserve the DIA, Mot. to Strike Syncora's Second Supp. Obj. 11, 14, but cut off questioning on the basis of mediation confidentiality when FGIC asked Mr. Rapson about how and why these conditions were formulated. Rapson Dep. 81:23-85:3. The City cannot be permitted to rely on testimony that FGIC was not able to adequately explore. Notably, Mr. Rapson himself has made numerous public statements, including to the press, about mediation discussions. *See, e.g.*, Rapson Dep. 83:23-84:14; FGIC's Irrelevant Matters Motion in Limine 19. The City did not prohibit Mr. Rapson from making these public statements about the mediation at the time they were being made—statements which were clearly intended to promote, and garner public support for, the Grand Bargain—but objected, on the basis of the Mediation Order, to questions that FGIC asked about these very statements in the course of discovery.<sup>6</sup> *See* FGIC's Irrelevant Matters Motion

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<sup>6</sup> Indeed, although Mr. Rapson had been involved in mediation with the City for over seven months at the time of his deposition, he was not aware of the Mediation Order until the *day before* he was deposed, in late July 2014. Rapson Dep. 76:8-13 ("Q: Are you aware of the

in Limine 19 (discussing statements made by Mr. Rapson to the press and at a Wayne State University conference, which is publicly available on YouTube); Rapson Dep. 83:13-16 (“Mr. Shumaker: I’m going to object on the same line. You can ask whether he made that statement [about a conversation with Judge Rosen] at Wayne State, but you cannot ask whether in fact that was something that Judge Rosen said to him.”). The City’s use of Mr. Rapson’s deposition testimony in its Motion to Quash Syncora’s Supplemental Objection exemplifies the type of inappropriate behavior that is prohibited in this Circuit as impermissibly using confidential information as both a “sword” and a “shield.” *Ross*, 423 F.3d at 604-605.

18. FGIC will be severely prejudiced if information that was previously withheld from FGIC—or that FGIC is unable to adequately address as a result of claims of confidentiality—is introduced at the Confirmation Hearing. FGIC has not had an opportunity to develop facts, prepare its witnesses, or develop a trial strategy with respect to any such evidence or to probe the truthfulness of related issues. If the parties who possess this information are permitted to introduce such evidence at the Confirmation Hearing, thereby manipulating this Court’s Mediation Order to their benefit, FGIC will suffer severe injustice. Given the aforementioned, all evidence that has been withheld, or that cannot be adequately challenged, as a result of mediation confidentiality is highly prejudicial and must be excluded from the Confirmation Hearing. *See, e.g., Baxter*, 1987 WL 10988, at \*1.

### **III. Settlement Negotiations are Irrelevant and Inadmissible**

19. Notwithstanding the fact that any information that has been withheld on the basis of mediation confidentiality cannot be allowed at the Confirmation Hearing because it

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mediation order? A: I have been made aware of that, yes. Q: When did you become aware of that? A: Most recently, yesterday. I just didn’t know what the mediation order meant, and I still don’t think I do know what it means.”).

would substantially prejudice FGIC, such evidence is also largely irrelevant. Only relevant evidence is admissible at trial. Fed. R. Evid. 402; *Dow Corning*, 2011 WL 4506167, at \*2. The Federal Rules of Evidence, made applicable to this proceeding by Rule 9017 of the Federal Rules of Bankruptcy Procedure, provide that evidence is relevant if it has “any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action.” Fed. R. Evid. 401. The Court has previously concluded that “who said what to whom during the mediation that led to the successful settlement is irrelevant.” Hr’g Tr. 49:12-14, June 26, 2014; *see also* Hr’g Tr. 187:8-10, May 28, 2014 (“I remain unpersuaded that you can’t do everything you need to do very effectively potentially without that breach [of the Mediation Order’s protections].”). Accordingly, the introduction of *any* evidence related to the settlement negotiations should be precluded because the Court has already held that this information is irrelevant. *See Provident Life*, 176 F.R.D. at 250 (noting that motions in limine are appropriate where evidence ought to be excluded “as a result of previous rulings by the court”).

### **Notice**

20. Notice of this Motion has been given to all parties registered to receive electronic notices in this matter. FGIC submits that no other or further notice need be provided.

### **Statement of Concurrence Sought**

21. Pursuant to Local Rule 9014-1(g), on August 22, 2014, counsel for FGIC sought the concurrence of counsel for the City in the relief sought in the Motion. Counsel for the City has advised that they oppose the filing of the Motion.

WHEREFORE, FGIC respectfully requests that the Court enter the Order, substantially in the form attached hereto as Exhibit 1, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

DATED: August 22, 2014  
Houston, Texas

/s/ Alfredo R. Pérez  
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## ATTACHMENTS

Exhibit 1	Proposed Form of Order
Exhibit 2	Notice
Exhibit 3	None [Brief Not Required]
Exhibit 4	Certificate of Service
Exhibit 5	None [No Affidavit]
Exhibit 6A	7/22/2014 Deposition Transcript of K. Orr (excerpted)
Exhibit 6B	7/31/2014 Deposition Transcript of R. Rapson (excerpted)
Exhibit 6C	8/4/2014 Deposition Transcript of B. Stibitz (excerpted)
Exhibit 6D	8/4/2014 Deposition Transcript of D. Muchmore (excerpted)
Exhibit 6E	7/22/2014 Deposition Transcript of A. Erickson (excerpted)
Exhibit 6F	7/25/2014 Deposition Transcript of E. Jenkins (excerpted)
Exhibit 6G	City of Detroit Plan Confirmation Factual Propositions
Exhibit 6H	7/29/2014 Deposition Transcript of D. Gilbert (excerpted)

**Exhibit 1**

**Proposed Order**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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

**ORDER EXCLUDING EVIDENCE PROTECTED OR WITHHELD  
FROM DISCOVERY ON THE BASIS OF MEDIATION CONFIDENTIALITY**

This matter having come before the Court on *Financial Guaranty Insurance Company's Motion In Limine to Preclude the Introduction of Evidence or Testimony Regarding Matters Withheld from Discovery on the Basis of the Mediation Order* (the "**Motion**"),<sup>1</sup> filed by Financial Guaranty Insurance Company ("**FGIC**"); and due and proper notice of the hearing to consider the relief requested therein (the "**Hearing**") having been given to all parties registered to receive electronic notices in this matter; and the Court having held the Hearing with the appearances of interested parties noted in the record of the Hearing; and upon the entire record of all the proceedings before the Court; and the legal and factual bases set forth in the Motion establishing just and sufficient cause to grant the relief requested therein;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is granted.

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<sup>1</sup> All capitalized terms used but not defined herein shall have the meanings attributed to them in the Motion.

2. All parties are prohibited from introducing testimony or evidence at the Confirmation Hearing that is protected by the Mediation Order or was previously withheld on account of the Mediation Order or that cannot be adequately addressed without the introduction of testimony or evidence that is protected by the Mediation Order or was previously withheld on account of the Mediation Order.

It is so ordered.

**Exhibit 2**

**Notice**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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

**NOTICE OF FINANCIAL GUARANTY  
INSURANCE COMPANY’S MOTION IN LIMINE TO  
PRECLUDE THE INTRODUCTION OF EVIDENCE OR  
TESTIMONY REGARDING MATTERS WITHHELD FROM  
DISCOVERY ON THE BASIS OF THE MEDIATION ORDER**

Financial Guaranty Insurance Company has filed papers with the Court seeking entry of an order pursuant to Federal Rules of Evidence 402 and 403 to preclude the introduction of evidence or testimony regarding certain matters previously deemed irrelevant by the Court or the City of Detroit (the “Motion”).

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

If you do not want the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, **on or before August 27, 2014**, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:<sup>1</sup>

**United States Bankruptcy Court**  
211 W. Fort Street, Suite 2100  
Detroit, Michigan 48266

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date

---

<sup>1</sup> Response or answer must comply with F. R. Civ. P. 8(b), (c) and (e).

stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:

Alfredo R. Pérez  
WEIL, GOTSHAL & MANGES LLP  
700 Louisiana Street, Suite 1600  
Houston, TX 77002  
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Facsimile: (248) 642-0856

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

**If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.**

DATED: August 22, 2014

Respectfully submitted,

/s/ Alfredo R. Pérez

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*Attorneys for Financial Guaranty Insurance  
Company*



**Exhibit 3**

**None [Brief Not Required]**

**Exhibit 4**

**Certificate of Service**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2014 *Financial Guaranty Insurance Company's Motion in Limine to Preclude the Introduction of Evidence or Testimony Regarding Matters Withheld from Discovery on the Basis of the Mediation Order* was filed and served via the Court's electronic case filing and noticing system to all registered users that have appeared in this bankruptcy case.

/s/ Alfredo R. Pérez  
Alfredo R. Pérez  
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700 Louisiana Street, Suite 1600  
Houston, TX 77002  
Telephone: (713) 546-5000  
Facsimile: (713) 224-9511  
Email: alfredo.perez@weil.com

Dated: August 22, 2014

**Exhibit 5**

**None [No Affidavit]**

**Exhibit 6A**

**7/22/2014 Deposition Transcript of K. Orr (excerpted)**

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KEVYN ORR, VOLUME 2  
IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

In Re: ) Chapter 9  
CITY of DETROIT, MICHIGAN, ) Case No. 13-53846  
Debtor. ) Hon. Steven Rhodes

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VOLUME 2

The Videotaped Deposition of KEVYN ORR,  
in his personal capacity and as Rule 30(b)(6) witness,  
Taken at 2 Woodward Avenue,  
Detroit, Michigan,  
Commencing at 9:10 a.m.,  
Tuesday, July 22, 2014,  
Before Leisa M. Pastor, CSR-3500, RPR, CRR.

1 KEVYN ORR, VOLUME 2

2 **A. Yes.**

3 Q. And you understand that the pension class sizes were

4 for the UAAL, correct?

5 **A. Well, the pension class sizes were for the UAAL but**

6 **they took into account that those funds had assets in**

7 **them, as well, so you're trying to determine the**

8 **unfunded actuarial liability, but when you try to**

9 **determine the pension payments you also include the**

10 **amount of assets in the funds.**

11 Q. So the existence of assets in the retirement systems

12 was something that you considered in your

13 discrimination analysis, in your decision to propose a

14 plan that discriminated?

15 **A. In my decision to propose a plan that provided**

16 **different payout levels for creditors, yes.**

17 Q. And it weighed in favor of it?

18 **A. It weighed in -- not so much in favor, I'm -- favor of**

19 **what?**

20 Q. Well, in favor of paying pensioners more than

21 financial creditors?

22 **A. The fact that there are assets in the funds assisted**

23 **us in paying them more than financial creditors, yes.**

24 Q. Okay. What information did you base that -- that

25 decision to provide differing levels of recoveries on?

1 KEVYN ORR, VOLUME 2

2 **A. Well, there is a number of information. Generally, we**

3 **would go through the expected debt service of the**

4 **City, what anticipated revenue streams would be going**

5 **forward, what the City would need for reinvestment and**

6 **revitalization, what the funding levels of the pension**

7 **funds were, amongst others, there was a number of**

8 **information and -- and it was a very dynamic and fluid**

9 **process as we examined a number of different potential**

10 **outcomes and scenarios.**

11 Q. I understand that there is an enormous amount of

12 information that implicates what the City has to give

13 to creditors at all, okay? And I heard your answer to

14 relate to that subject, correct?

15 **A. Right.**

16 Q. I'm asking a more specific question, which is with

17 respect to your decision to pay classes 10 and 11 more

18 than financial creditors, what information did you

19 rely on in making that decision? So this is more not

20 how much money is there but who will get what money is

21 available.

22 **A. All of the information I just mentioned. I mean,**

23 **there is a number of different factors that go into**

24 **what we can potentially pay financial creditors, and**

25 **we took all that information in on a number of**

1 KEVYN ORR, VOLUME 2

2 **different scenarios and reduced.**

3 Q. But what information did you rely upon in deciding how

4 to allocate the money that could be paid in terms of

5 whether it went to pensioners or whether it went to

6 financial creditors?

7 **A. I think we're discussing the same answer. We would**

8 **look at information regarding the unfunded liability**

9 **of the funds, the amount of anticipated revenue the**

10 **City could take in and could expect to take in, the**

11 **obligations that the City could afford, the potential**

12 **obligations of the City going forward for retiree**

13 **healthcare, for instance, as well as for current**

14 **employee, active employee healthcare obligations, just**

15 **a number of different information that we could**

16 **provide, we could analyze to try to get at a**

17 **determination of what we could pay different classes**

18 **of creditors.**

19 Q. But that tells you what the total size of the pie is,

20 correct?

21 **A. But it also tells us what we think we can pay.**

22 Q. Right, to creditors?

23 **A. Right, there's an analysis of the total debt load**

24 **which we published in the June 14th proposal, and then**

25 **there is analysis of the revenue streams that come**

1 KEVYN ORR, VOLUME 2

2 **into the City that we could use to service those**

3 **obligations, not just financial creditors but**

4 **pensioners, and then there's an analysis of what we**

5 **would need to do to take the revenue stream to address**

6 **the unfunded actuarial liability and other obligations**

7 **that we would have with financial creditors, and we**

8 **would run different scenarios as to how that could be**

9 **done --**

10 Q. Okay.

11 **A. -- in this environment.**

12 Q. I'm looking -- I don't think -- we may not be

13 communicating well, I'm sure I'm not asking my

14 questions correctly, but once you've determined how

15 much you have in theory to distribute to creditors

16 there's a separate decision that has to be made as to

17 which creditors should get what parts of that pie; do

18 you agree with that statement?

19 **A. Yes, I think that's fair.**

20 Q. And I want to focus on the process of deciding which

21 creditors get which part of the pie, and I want to

22 understand what information you relied upon in

23 deciding to give pensioners a larger slice of the pie

24 than you gave financial creditors --

25 **A. Yeah.**

1 KEVYN ORR, VOLUME 2

2 Q. -- in the first plan.

3 **A. Yeah, let's do it this way: There are factors that**

4 **you're considering, and I think what you're trying to**

5 **get at is judgment, which is different than the**

6 **factors that come in to what you have and who you can**

7 **pay. And the judgment decisions about what we could**

8 **pay took into account a number of these other factors**

9 **regarding revenue streams, but ultimately in deciding**

10 **what we could pay pensioners, there were, I would say,**

11 **several different factors which really spurred that**

12 **decision.**

13 **One was the amount of funds that were in**

14 **the various pension funds. Two was the obligation to**

15 **try to take into account the situation of these**

16 **pensioners. Three was that at some point, it became**

17 **apparent that there was going to be additional money**

18 **coming in in the form of the Grand Bargain from**

19 **third-party guarantors who were -- as a condition of**

20 **those grants that they be dedicated solely to pension.**

21 **Three was that at some point, it became**

22 **clear that the pension funds, themselves, were**

23 **performing better over the year and had experienced**

24 **better rate of returns than in prior years, and, in**

25 **fact, the asset values went up. All of those factors**

1 KEVYN ORR, VOLUME 2

2 **went into the decision to decide how much we could pay**

3 **pensioners.**

4 Q. Any other factors than that?

5 **A. Probably, but I don't recall them sitting here today.**

6 Q. And when you say the obligation to take into account

7 the pensioner situation, that's referring to the human

8 dimension that we talked about earlier, correct?

9 **A. Yes, I think that's fair.**

10 Q. Now, let's go forward in time from the first plan

11 of -- that we've just been talking about, which is

12 February 21?

13 **A. Yes, mm-hmm.**

14 Q. Okay. Let's go forward in time to April 1, 2014,

15 which is about 40 days later, okay? April Fools' Day.

16 **A. I wasn't going to say that but --**

17 Q. You know I picked it. Now, let's -- so put yourself

18 back in your state of mind as of April 1, 2014, okay?

19 **A. Right.**

20 Q. As of that time, you still didn't have agreement with

21 any of the retiree associations or committees or

22 retirement systems with respect to the proposed

23 pension cuts, correct?

24 **A. The reason I'm not recalling whether or not that's**

25 **accurate, at some point in the spring -- we did not**

1 KEVYN ORR, VOLUME 2

2 **have publicly announced agreements, I think that's**

3 **fair.**

4 Q. You didn't have any publicly announced agreements with

5 anyone I don't believe until April 15th, 2014; is that

6 correct?

7 **A. When -- you may have information regarding -- when you**

8 **say anyone, you mean any creditors?**

9 Q. I mean any of these retiree representative --

10 **A. Okay.**

11 Q. -- bodies that --

12 **A. Okay.**

13 Q. -- or that I take to mean retiree associations,

14 pension systems official committee.

15 **A. Okay. And so you're taking out the swaps, for**

16 **instance, you're not including --**

17 Q. Oh, absolutely.

18 **A. Okay.**

19 Q. Yeah, I'm just talking about what the pensioners --

20 **A. Okay, yes, I think that's fair.**

21 Q. Okay. And just to get the record clear, as of -- your

22 recollection as you sit here today is that as of

23 April 1st, you did not have agreements with any of the

24 retiree representative parties, correct?

25 **A. Yes, I don't think we have formally announced**

1 KEVYN ORR, VOLUME 2

2 **agreements as of April 1st, to the best of my**

3 **recollection.**

4 Q. Now, on April 1st -- and the plan that was on file at

5 that time still called for the 26 percent and 6

6 percent cuts that we discussed earlier, correct?

7 **A. If -- I remember we filed a revised plan, I believe,**

8 **in March, but I'll take you at your -- at your**

9 **representation because it's just not -- I just don't**

10 **remember it in front of me, but I think that's true.**

11 Q. My recollection is that the revisions to the plan

12 changed the cut levels in the event that the plan was

13 voted down so they made it more draconian if those

14 classes rejected the plan --

15 **A. Right.**

16 Q. -- but that the top-level cuts, if the Grand Bargain

17 approved, stayed the same?

18 **A. Yeah, I think that's accurate, but the plan will speak**

19 **for itself so --**

20 Q. Okay.

21 **A. -- I'll be bound by what the plan says.**

22 Q. That's fine, I'm just trying to -- your best

23 recollection as you sit here today is that I have it

24 about right?

25 **A. Yes.**



1 KEVYN ORR, VOLUME 2  
 2 There are some individual retirees that  
 3 some people would characterize as helpless. Some are  
 4 disabled, some are of modest means, some are quite  
 5 confused by the situation. So I don't want to say  
 6 that there are not individual retirees who anyone  
 7 charitably would characterize as helpless, but there  
 8 are organizations that are designed to represent their  
 9 interests.  
 10 BY MR. HACKNEY:  
 11 Q. I mean -- I guess what I mean is to say is you would  
 12 not characterize the retirees as helpless?  
 13 A. Here again, there are organizations designed to  
 14 represent their interests, I am concerned about some  
 15 individual retirees who would be characterized as  
 16 helpless, yes.  
 17 Q. So have you ever attempted to make a determination as  
 18 to which percentage of the retiree class 10 and 11 are  
 19 helpless retirees as opposed to not helpless?  
 20 A. No, as I said, we tried to create a structure in place  
 21 there is someone we could talk to through the retiree  
 22 committee to make sure that retirees' interest was  
 23 represented.  
 24 Q. Do you agree that during the history of the City of  
 25 Detroit, to the extent active employees were concerned

1 KEVYN ORR, VOLUME 2  
 2 about the direction of the City of Detroit, they could  
 3 leave their job and seek employment elsewhere?  
 4 A. Yeah, there was no involuntary servitude in the City  
 5 of Detroit. People could -- people could resign.  
 6 Q. And in fact, isn't it your testimony that certainly in  
 7 the run-up to bankruptcy, you saw people leaving their  
 8 jobs because of concern?  
 9 A. Well, that goes to your prior question about  
 10 attrition, but yes, we did.  
 11 Q. Okay. Now, we talked a little bit about the  
 12 expectations of retirees in connection with the --  
 13 some of the discussions we had about whether people  
 14 had relied on the covenant that we talked about?  
 15 A. Yes.  
 16 Q. Do you remember that?  
 17 A. Yes, I do.  
 18 Q. Is it fair to say that your analysis of information  
 19 relating to retiree expectations is based principally  
 20 on the conversations that you had with people about  
 21 their reliance on the City's promise?  
 22 MR. ALBERTS: Objection.  
 23 A. I think it's fair to say that between conversations  
 24 that I had, analysis, talking with their professionals  
 25 and advocates on their behalf, listening -- as I said,

1 KEVYN ORR, VOLUME 2  
 2 listening to some of the statements that were made,  
 3 looking at some of the representations that have been  
 4 made by the City over the years, I think it's fair to  
 5 say there is a number of different information that  
 6 came in concerning the obligations to retirees.  
 7 BY MR. HACKNEY:  
 8 Q. Now, did you -- did you attempt to determine what  
 9 other creditors' expectations were vis-a-vis the City?  
 10 A. Oh, I certainly heard from other creditors,  
 11 expectations from rating agencies, from financial  
 12 publications, from statements made in the press from  
 13 them, as well, that their expectation was that they  
 14 were going to be paid.  
 15 Q. For example, did you talk to any of the -- of the COPs  
 16 holders to determine what their expectations were  
 17 about when they invested?  
 18 A. I know I talked to some of their representatives. I  
 19 don't know if I talked to any of the principals or any  
 20 of the individual holders.  
 21 Q. Okay. Fair to say that you haven't talked to any COPs  
 22 holder who told you that they expected not to be  
 23 repaid, correct?  
 24 A. I think that's fair.  
 25 Q. And you haven't talked to any other financial creditor

1 KEVYN ORR, VOLUME 2  
 2 who told you that their expectation was that they  
 3 would not be repaid, correct?  
 4 A. There was a conference in New York last fall where  
 5 some creditors as identified who represented that they  
 6 had interest in Detroit's debt said that they knew  
 7 that the City probably would not be able to pay this  
 8 debt but nonetheless they expected to be paid and they  
 9 were going to punish the City. They came up to me at  
 10 the conference with their finger in my face about  
 11 that. But I can't -- I don't know -- I didn't take  
 12 their card, I don't know their name, but generally  
 13 speaking, I -- I was -- excluding conversations we've  
 14 had in mediation discussions, which are protected by  
 15 the order, I don't recall with specificity any  
 16 particular creditor principal coming up to me and  
 17 saying they did not expect to be paid.  
 18 Q. I mean, let me try to tie it up this way. By the way,  
 19 I can't believe that thing actually happened to you,  
 20 only in New York.  
 21 A. No, it's happened to me many times --  
 22 Q. No offense to New Yorkers --  
 23 A. Oh, it was ugly.  
 24 Q. We don't do that in Chicago but...  
 25 MR. PEREZ: I thought you were a Michigan

1 KEVYN ORR, VOLUME 2  
 2 boy.  
 3 MR. HACKNEY: I am, born and raised, but  
 4 I've actually lived in Chicago now --  
 5 THE WITNESS: Are you coming back? Are you  
 6 coming back?  
 7 MR. HACKNEY: No, no, I'm a Chicagoan.  
 8 THE WITNESS: Okay.  
 9 MR. HACKNEY: You lost me.  
 10 BY MR. HACKNEY:  
 11 Q. Let me see if I can tie it up this way. You did not  
 12 attempt to undertake a systematic analysis of what all  
 13 the creditors thought that they were going to get when  
 14 they made their respective investment decisions to  
 15 decide who should get what?  
 16 **A. I did not poll all of the creditors regarding what**  
 17 **they thought they were going to get.**  
 18 Q. Okay, and you didn't factor that into your conclusion,  
 19 correct?  
 20 **A. No. Not at least that I can say -- I can't say what**  
 21 **discussions were made in mediation, but I -- publicly**  
 22 **the answer would be no.**  
 23 Q. I am talking about, you know, your state of mind,  
 24 though. I'm saying that you didn't go and pick  
 25 winners and losers based on what people's expectations

1 KEVYN ORR, VOLUME 2  
 2 were when they invested?  
 3 **A. No, I don't view it as picking winners and losers**  
 4 **because I don't think anybody here has said to me that**  
 5 **they think of themselves as winners.**  
 6 We tried to do an analysis of what we could  
 7 afford to pay based upon the factors we discussed  
 8 before with an understanding that \$866 million was  
 9 coming in as a gift from grantors with specific  
 10 condition that that money would flow to pensioners as  
 11 opposed to any other creditor class and that we would  
 12 accept that gift with that condition when those  
 13 discussions were made.  
 14 Q. Understood, I'm just trying to say -- picking winners  
 15 and losers was a euphemism, I didn't mean to be  
 16 casual. You didn't set respective recovery levels  
 17 based on the fact that you thought some creditors  
 18 should be paid less based on their expectations when  
 19 they invested as opposed to others?  
 20 **A. No, that really wasn't a factor. I mean, did I**  
 21 **personally believe that there may have been creditors**  
 22 **who were more capable of doing underwriting about the**  
 23 **City's debt condition has been -- as had been reported**  
 24 **in various publications that I'd read, yes, I**  
 25 **understood that but I didn't sit down and say, you**

1 KEVYN ORR, VOLUME 2  
 2 know, based upon your expectation of being paid, you  
 3 know, this is what we can pay. We generally drove the  
 4 determinations based upon the revenue stream and the  
 5 strengths and weaknesses and negotiations with any  
 6 particular creditor group?  
 7 Q. And I take it you did not, for example, go back and  
 8 review the due diligence materials that were provided  
 9 to the COPs creditors in the 2005 and 2006  
 10 transactions, correct?  
 11 **A. I didn't do it personally but some of my advisors did.**  
 12 Q. Okay. But, I mean, you don't know what was in those  
 13 due diligence materials?  
 14 **A. No, some of those materials, I -- I did see some of**  
 15 **those materials and I saw some of the legal opinions**  
 16 **that were provided back then.**  
 17 Q. In fact, the legal opinions that were provided back  
 18 then told COPs holders that the COPs were legal,  
 19 correct?  
 20 **A. Some of them did, there was one law firm in the City**  
 21 **that refused to do the transaction because they opined**  
 22 **or at least informed people that they thought it was**  
 23 **illegal.**  
 24 Q. And do you recall what the COPs holders were told  
 25 about the nature of the remedy that would exist if the

1 KEVYN ORR, VOLUME 2  
 2 City failed to pay the service corps?  
 3 **A. No.**  
 4 Q. Do you know who the COPs holders were at the time of  
 5 the COPs offering?  
 6 **A. There was a list of who they were, but sitting here**  
 7 **off the top of my head, no.**  
 8 MR. HACKNEY: Let's mark this as our next  
 9 exhibit.  
 10 MARKED FOR IDENTIFICATION:  
 11 DEPOSITION EXHIBIT 21  
 12 11:29 a.m.  
 13 BY MR. HACKNEY:  
 14 Q. Mr. Orr, is this the offering memorandum that was put  
 15 out in connection with the 2005 COPs?  
 16 **A. Without sitting here and reading through it, to the**  
 17 **best of my knowledge, this appears like a document**  
 18 **I've seen before as the offering document.**  
 19 Q. And have you read this document before?  
 20 **A. I have not read the document in total; I have read**  
 21 **pieces of it.**  
 22 Q. Okay. You didn't just sit down and one day say, I  
 23 want to read the offering memorandum?  
 24 **A. I did not read through the whole document.**  
 25 Q. Now, if you look at page 8, I want to read you a

1 KEVYN ORR, VOLUME 2

2 **A. Yes, I think Mr. Buckfire is an expert in that area.**

3 Q. And in this subject matter we're discussing of likely

4 rates of return, likely levels of risk, would you tend

5 to defer to him in terms of his view?

6 **A. I would certainly solicit his view. His view is very**

7 **informed and very capable, but having been in the City**

8 **now for over a year, I certainly would want to be**

9 **informed but ultimately it's -- I'd have to make a**

10 **call of keeping my own counsel.**

11 Q. Would you agree that lenders are tripping over

12 themselves to lend the City money?

13 MR. SHUMAKER: Object to the form.

14 **A. I think we've had -- you know, every time I use a**

15 **literation (sic) or metaphor, you quote it back to me,**

16 **so I'm going to say that I think we've had a healthy**

17 **amount of interest, and some people might well**

18 **characterize that as tripping over themselves.**

19 BY MR. HACKNEY:

20 Q. And there's a great deal of enthusiasm that you're

21 finding from both investors and lenders, correct?

22 **A. That appears to be the case.**

23 Q. And that's based on the substantial deleveraging that

24 the City's achieving through this plan, correct?

25 **A. I think that --**

1 KEVYN ORR, VOLUME 2

2 Q. In part?

3 **A. I think that is fair.**

4 Q. You know, Mr. Orr, I've reached a good stopping point,

5 I think.

6 MR. SHUMAKER: Sure.

7 MR. HACKNEY: There's a lot of people in

8 the room, but I kind of defer to you.

9 THE WITNESS: No, I'm good, but if you guys

10 think that makes sense, we have a thing that we need

11 to do.

12 MR. HACKNEY: What time?

13 MR. HERTZBERG: At 1:15 for 5 minutes.

14 THE WITNESS: Okay.

15 MR. HACKNEY: That will be perfect then,

16 we'll take an hour for lunch, and then I'll see you at

17 1:30.

18 THE WITNESS: Okay.

19 VIDEO TECHNICIAN: The time is now 12:31

20 p.m., we are now off the record.

21 (Recess taken at 12:31 p.m.)

22 (Back on the record at 1:36 p.m.)

23 VIDEO TECHNICIAN: The time is 1:36 p.m.,

24 we are back on the record.

25 BY MR. HACKNEY:

1 KEVYN ORR, VOLUME 2

2 Q. Mr. Orr, welcome back from lunch.

3 **A. Thank you, Mr. Hackney.**

4 Q. Okay. So Mr. Orr, you're aware that certain

5 charitable foundations have agreed to contributed

6 money to the City's pension obligations in exchange

7 for the City conveying its art collection into a

8 public trust; is that correct?

9 **A. Yes.**

10 Q. And I take it if I ask you questions about your

11 communications with the charitable foundations in

12 connection with their agreement to contribute this

13 money, you will refuse to answer on the grounds of the

14 mediation order's confidentiality provisions; is that

15 correct?

16 **A. Yes, generally for most of them, I think that's**

17 **correct.**

18 Q. And just for the record, you didn't have any such

19 conversations prior to the entry of the mediation

20 order which was at some point in September of 2013?

21 **A. Yes, that's correct.**

22 Q. Okay.

23 **A. Well, let me think. I think I had one meeting with**

24 **Darren Walker at Ford Foundation, but it was not about**

25 **a contribution, it was just a meet and greet.**

1 KEVYN ORR, VOLUME 2

2 Q. Okay.

3 **A. Okay?**

4 Q. Yeah, I saw that in the documents, and there were some

5 issues about the Ford Foundation and the building that

6 they owned or something that --

7 **A. I didn't even get into all that.**

8 Q. Okay.

9 **A. It was just hi, how are you, they were helping us with**

10 **some grants, helping us stand up a grants**

11 **administrator.**

12 Q. So I guess I want to make a record of something I

13 understand from the City's position but it is the

14 City's position that communications with the

15 foundation are either part of or incidental to the

16 mediation, correct?

17 MR. SHUMAKER: I believe that's correct.

18 Again, I think you could fish outside the contours of

19 those mediation talks but my understanding is that all

20 those talks were within the context of mediation.

21 BY MR. HACKNEY:

22 Q. Yeah, I mean, I don't want to ask a hundred questions

23 today to establish what I think is relatively well

24 established, which is that you're not, generally

25 speaking, going to discuss your conversations with the

1 KEVYN ORR, VOLUME 2  
 2 foundations, correct?  
 3 **A. That is correct. You know, I may -- let me say this**  
 4 **generally. I may have had meetings with foundation**  
 5 **principals outside of the confines of the mediation,**  
 6 **just hail-fellow-well-met, saw them at an event, how**  
 7 **are you. There were no substantive conversations**  
 8 **about the contribution that did not occur outside of**  
 9 **the mediation order.**  
 10 Q. And that's fine, because the only ones that I really  
 11 want to ask you about are ones that relate to the  
 12 Grand Bargain?  
 13 **A. Right, right.**  
 14 Q. And those would fall under the gambit of the  
 15 mediation?  
 16 **A. Those would fall under the gambit of mediation.**  
 17 Q. Now, if I asked you your state of mind based on what  
 18 you understood the foundations to be willing to do or  
 19 what you thought they would be willing to do, you  
 20 would also invoke the mediation order to the extent  
 21 his state of mind was created by communications of the  
 22 foundation, correct?  
 23 MR. SHUMAKER: I think that's right because  
 24 I don't see how he could give you his impressions or  
 25 his understanding without going into what was going on

1 KEVYN ORR, VOLUME 2  
 2 in the mediation.  
 3 MR. HACKNEY: Right, because he lacks  
 4 foundation to speak to what the foundations thought.  
 5 If I asked him what he understood them to have  
 6 thought, you'll take the position that it would be  
 7 based on what they told him?  
 8 MR. SHUMAKER: Correct, it all would have  
 9 been derived from the mediation discussions.  
 10 MR. HACKNEY: Okay, and so I'll just note  
 11 for the record, Mr. Shumaker, that this is the  
 12 position that Ms. Kofsky (ph.), a cop, took in a prior  
 13 deposition, and I understand the basis for it. I will  
 14 let you know that I don't necessarily agree with it  
 15 based on comments that Judge Rhodes made about how  
 16 state of mind might work in the mediation context, but  
 17 it doesn't matter because I feel like we're not going  
 18 to work that out today anyway.  
 19 MR. SHUMAKER: Understood.  
 20 BY MR. HACKNEY:  
 21 Q. And I just want to understand you all's position on  
 22 it. So just a couple big ones, if I ask you did you  
 23 ever ask the foundations to contribute money with no  
 24 strings attached you'll decline to ask answer that  
 25 question, correct?

1 KEVYN ORR, VOLUME 2  
 2 **A. I think I have to.**  
 3 Q. If I ask you did the foundations ever offer to  
 4 contribute money without insisting on transfer of the  
 5 art institute, you'll decline to answer that question,  
 6 correct?  
 7 **A. I think I have to.**  
 8 Q. And if I ask you hey, who is it that imposed the  
 9 condition on the Grand Bargain that the art institute  
 10 would be transferred, was it you, or was it them, or  
 11 was it Judge Rosen, you'll decline to answer those  
 12 questions, correct?  
 13 **A. I believe so.**  
 14 Q. Mr. Orr, has the Grand Bargain -- which you know what  
 15 I'm talking about, right?  
 16 **A. Yes, the money we talked about before, the 366 million**  
 17 **from the foundations, a \$350 million value settlement**  
 18 **from the State, and \$100 million from the DIA**  
 19 **benefactors as funneled through the Founders' Society.**  
 20 Q. Correct, in exchange for the art -- in connection with  
 21 the art being -- the DIA being conveyed into a public  
 22 trust, correct?  
 23 **A. Contributions targeted towards the two pension funds**  
 24 **with the condition that not one piece of art be sold**  
 25 **or de-assessed as a result of this process.**

1 KEVYN ORR, VOLUME 2  
 2 Q. And the purpose of the transfer to a public trust is  
 3 to ensure that the art is never sold to satisfy the  
 4 claims of the City's creditors, correct?  
 5 **A. Yes, now and forever, yes.**  
 6 Q. Not only current creditors but future ones, as well?  
 7 **A. Correct.**  
 8 Q. So has the Grand Bargain, Mr. Orr, helped the COPs  
 9 holders to achieve a higher recovery?  
 10 **A. I don't think so.**  
 11 Q. Mr. Orr, what are the principal terms of the LTGO  
 12 settlement?  
 13 **A. The LTGO settlement centers around a dedicated millage**  
 14 **that's to extend for the next approximately 13 years,**  
 15 **and the terms of a settlement that roughly 26**  
 16 **percent -- oh, the LTGO, I'm sorry --**  
 17 Q. Yeah.  
 18 **A. Okay, I'm sorry, I'm going -- I thought you were just**  
 19 **talking about -- I'm doing it temporally --**  
 20 Q. That's okay.  
 21 **A. I'm sorry.**  
 22 Q. I'm hopping around.  
 23 **A. Okay.**  
 24 Q. Let's start over.  
 25 **A. Let's start over.**

1 KEVYN ORR, VOLUME 2

2 Q. So let's set the stage. The LTGO settlement has been

3 announced in the press, and there's some information

4 that's kind of available about it, but I actually

5 literally don't know --

6 **A. Right.**

7 Q. -- what the terms are, and there's been some

8 suggestion that it's the continued subject of

9 negotiations, so I want to give you a fair setup.

10 **A. Yeah, that's -- that's why I was -- I can talk about**

11 **UTGO...**

12 MR. SHUMAKER: You can discuss what's made

13 public.

14 **A. Okay. The mediators issued a statement on the LTGOs**

15 **we did not, my office did not, recognizing that there**

16 **was a settlement which, in part, dealt with a class of**

17 **creditors, I think 170-some-odd-million dollars of**

18 **claims, which would get an allowed claim in a certain**

19 **amount. The -- I know from e-mails that I received as**

20 **late as last night that some of the final details are**

21 **still under discussion so I'm a little -- that was**

22 **done in the mediation, so I don't want to run afoul of**

23 **the mediation order as far as if you have a press**

24 **release, I'll be happy to discuss about what's in the**

25 **release but I don't know if I can discuss any more**

1 KEVYN ORR, VOLUME 2

2 **than that.**

3 BY MR. HACKNEY:

4 Q. It's frankly been kind of confused on this, but I'll

5 tell you what I know. First, it's my understanding

6 that you do not have a final agreement with the LTGO;

7 is that correct?

8 **A. I think that is correct.**

9 Q. What you have is what is loosely described as an

10 agreement in principal on some but not all of the

11 terms, correct?

12 **A. I think that's fair.**

13 Q. Now, the -- but the one thing I'm able to see, I'll

14 tell you, in the expert reports is that Mr. Buckfire

15 says that the \$164 million of the unsecured portion of

16 LTGO is getting \$55 million in value of some form,

17 okay? I'll represent to you you can see that in the

18 exhibit. I'll also represent to you that somehow in

19 Mr. Malhotra's work there is some implication that

20 that is paid in 2015 under the forecasts, okay? I'm

21 less sure on that one, okay?

22 **A. Right.**

23 Q. What I will tell you is that 55 million on 164 million

24 of unsecured LTGO works out to a 34-cent recovery on

25 that, okay? So -- and I'm -- this is going on and on,

1 KEVYN ORR, VOLUME 2

2 but I asked like Heather for this, Ms. Lennox, and she

3 actually referred me to this information.

4 **A. Right.**

5 Q. But then I wasn't able to confirm that that was the

6 whole deal and so that's why you have this big

7 involved --

8 **A. Right.**

9 Q. -- lead-in, okay? So let's just start with, is it

10 your understanding that -- let's do it this way. Is

11 it your understanding that at least part of the deal

12 that is part of the agreement in principal that is

13 public is that they will get approximately 34 cents on

14 their unsecured claim?

15 **A. Yeah. Without having any intent to directly or**

16 **indirectly violate the mediation order, I do not think**

17 **it is unfair based upon published reports, but I do**

18 **not recall that the mediation statement included the**

19 **actual amount.**

20 Q. It didn't.

21 **A. Yeah, so I don't -- I don't want to necessarily go**

22 **beyond what was included in that statement, I think**

23 **the statement was generally there was a settlement of**

24 **a certain amount and recognition of a claim. I'll**

25 **stick with that. There is no reason for me to believe**

1 KEVYN ORR, VOLUME 2

2 **that mathematically that that 55 percent of roughly**

3 **100 --**

4 Q. No, 34 percent.

5 **A. No, 55 million of 170-some-odd million is equally**

6 **equivalent to 34 percent.**

7 Q. But like as you -- I mean, I'm trying to tell you that

8 it's not just, you know, me -- it's like the debtor's

9 counsel told me to look at these things to get at

10 least some of the terms.

11 **A. And like I said, I have no reason to dispute what you**

12 **were told or what they did; I just don't want to do**

13 **it, okay?**

14 Q. Okay.

15 **A. So I'm -- I'm trying to stay within -- I have been**

16 **admonished before about possible breaches of the**

17 **mediation privilege by -- by several judges now and I**

18 **don't want to run afoul of that in any way.**

19 Q. So is it fair to say, Mr. Orr, that I think you're

20 declining to discuss the terms of the LTGO settlement

21 based on caution about not knowing what is and what is

22 not public?

23 **A. I think that's fair.**

24 Q. Okay. I guess what I will say then is I'm going to

25 reserve my questioning on this, this is also a

1 KEVYN ORR, VOLUME 2

2 subject -- it was one of the drivers of our motion to

3 continue, but in fairness like I really may need to

4 come back and re-depose you on this when it's been

5 public for at least some period of time because it was

6 in flux.

7 **A. Let me say this, like I said, whatever's public I have**

8 **no reason to believe whatever's been made public is**

9 **inaccurate, but I do know that they're continuing**

10 **discussions regarding details of the settlement, so I**

11 **just want to be very careful.**

12 Q. And you're also -- fair to say you're unwilling to say

13 that the 55 million I alluded to represents the full

14 amount of what they're getting, correct?

15 **A. I have no reason to believe that's not -- there is**

16 **anything in addition to what you may have heard**

17 **economically.**

18 Q. Okay. But are they only getting 55 million or not?

19 **A. I have no reason to believe there's anything more than**

20 **that.**

21 Q. Okay. Well --

22 **A. Based upon published reports.**

23 Q. What is the basis for paying the LTGO 34 cents and

24 paying COPs holders 10 cents?

25 **A. Now, I do think we are getting into the mediation**

1 KEVYN ORR, VOLUME 2

2 order.

3 Q. Okay, so you're -- you'll decline to answer questions

4 about your basis for discriminating between those two

5 classes?

6 **A. I think I have to.**

7 Q. Okay.

8 MR. SHUMAKER: Well, you don't have to --

9 you don't have to reveal the terms of the settlement.

10 THE WITNESS: Right.

11 MR. SHUMAKER: But I think you could talk

12 in abstract, in the abstract about comparing the LTGO

13 settlement with the COPs holders, which I think is

14 what Mr. Hackney is getting at.

15 **A. Well, let's do this, see if I can talk about it**

16 **generally and I'll try to just step it as we go**

17 **through it to see. I mean, I think it's fair to say**

18 **that that is a result of a negotiated solution in the**

19 **mediation process. I think it's fair to say there was**

20 **some give and take between the parties as to what**

21 **potential claim was. I think it's been reported that**

22 **there was an argument made that that particular class**

23 **of creditors had a different status than just general**

24 **unsecured, and that that status should have some level**

25 **of recognition. I think that's about all I can say.**

1 KEVYN ORR, VOLUME 2

2 BY MR. HACKNEY:

3 Q. Okay, you do agree that the City has classified the

4 LTGO creditors as general unsecured?

5 **A. I believe that's our last classification, yes.**

6 Q. Okay, and that's the same classification as the COPs

7 holders?

8 **A. Yes.**

9 Q. And you also agree that the LTGO bondholders are

10 financial creditors like the COPs holders?

11 **A. Yes, I believe there's financial creditors as opposed**

12 **to pensioners, for instance, yes.**

13 Q. Right, and in fact, many of them have monoline

14 insurers standing behind the bond, correct?

15 **A. Yes.**

16 Q. So you would agree there are a lot of similarities

17 between the COP holder and the LTGO correct?

18 **A. There are a lot of perhaps superficial similarities**

19 **but I think the allegations that have been made**

20 **against the COP holders in the litigation raise other**

21 **dissimilarities between them.**

22 Q. And you're talking about the invalidity suit?

23 **A. Yes.**

24 Q. Okay, and you understand that the way the plan works

25 is that the -- a reserve is set up for the COP holders

1 KEVYN ORR, VOLUME 2

2 that represents what their total recovery could be?

3 **A. Yes.**

4 Q. And that's what their total recovery could be if they

5 prevail in the invalidity suit, correct?

6 **A. Yes, a reserve over a period of time as opposed to a**

7 **hundred-and-X-million dollars of cash, yes.**

8 Q. Yeah. Well, it's actually a bunch of B notes that go

9 into the reserve.

10 **A. That's what I said time, time wise, yes.**

11 Q. Okay, yeah. Now, are you aware of any other basis to

12 distinguish the LTGO from the COPs other than the

13 potential invalidity of the COPs and this argument

14 that the LTGO have made that they are not an unsecured

15 creditor?

16 **A. Am I aware?**

17 Q. Yeah.

18 THE WITNESS: Am I aware?

19 BY MR. HACKNEY:

20 Q. Or do you have any other basis for discriminating

21 other than those two things?

22 MR. SHUMAKER: I think you can answer that.

23 **A. Yes.**

24 BY MR. HACKNEY:

25 Q. What is it?

1 KEVYN ORR, VOLUME 2

2 **A. I think that's caught up in the mediation.**

3 Q. I'm not sure how that could be.

4 **A. Well, as I think I've said, there were negotiations,**

5 **there were positions taken. The awareness of what**

6 **those other bases could be came about typically as a**

7 **result of the mediation and reports provided to me out**

8 **of the mediation so I want to be careful about talking**

9 **about them, because that, I think is covered by the**

10 **mediation order.**

11 Q. Okay, so the two grounds that I identified, invalidity

12 and the arguable not unsecuredness of the LTGO are the

13 only two that you can publicly discuss?

14 **A. I believe so.**

15 Q. You would agree that the LTGO were not granted a lien

16 in any City property, correct?

17 **A. I would agree that I have seen no documents**

18 **memorializing a lien.**

19 Q. The difference between -- the difference that they

20 allege is relevant is that they are to be considered

21 quote/unquote a first budget item; isn't that correct?

22 **A. Here again, I think now we're starting to bump up**

23 **against the mediation.**

24 Q. So you're not able to answer that question either?

25 **A. If -- I'd be happy to validate any public statements**

1 KEVYN ORR, VOLUME 2

2 **that you have, but I don't think I should be the one**

3 **speaking to that.**

4 Q. It's the subject of a declaratory complaint and like a

5 pretty extensive motion to dismiss argument?

6 **A. Yeah, but I haven't necessarily been involved in the**

7 **legal aspects of that argument. Most of my**

8 **information comes as a result of communications that**

9 **occur in the mediation.**

10 Q. Okay. All right, so you have not followed the give

11 and take in the legal issue litigation?

12 **A. As you might imagine I have not been keeping up with**

13 **the over, as I understand it, almost 8,000 documents**

14 **filed in the bankruptcy, but I have no -- let me ask**

15 **answer it this way. I have no reason to dispute the**

16 **allegations that are contained in the filings.**

17 Q. By whom?

18 **A. By any party, whatever their allegations are, they**

19 **are.**

20 Q. Other than the reasons that you've put in your own

21 filings?

22 **A. Yes, whatever -- whatever's a public record, I have no**

23 **reason -- in the bankruptcy case, there's no reason**

24 **for me to dispute that parties have taken those**

25 **positions, I just can't speak to it of my own**

1 KEVYN ORR, VOLUME 2

2 **independent knowledge once it comes as a result of the**

3 **mediation.**

4 Q. Understood, and you also can't say as to whether or

5 not it's been a factor in your decision?

6 **A. I -- I don't think I can other than what we've talked**

7 **about.**

8 Q. Mr. Orr, how did the City arrive at the calculation of

9 the size of the OPEB claim that is contained in the

10 current plan?

11 **A. As contained in the current plan? Well, we did --**

12 **well, the City and our advisors in conjunction with**

13 **the advisors of the -- of the funds did an analysis of**

14 **the potential liability for retiree healthcare based**

15 **upon a number of factors including actuarial rates,**

16 **longevity, objective factors such as anticipated rates**

17 **of healthcare spend as published by Michigan State**

18 **institutions and Federal Government institutions and**

19 **healthcare providers, number of objective criteria as**

20 **calculated with the number of retirees that we have**

21 **and anticipate will have in the future.**

22 Q. And ultimately the ultimate number was the product

23 negotiation between the City and the retiree

24 representative parties, correct?

25 **A. Correct.**

1 KEVYN ORR, VOLUME 2

2 Q. Now, you know that in connection with the City's

3 bankruptcy petition that it stated that it had \$5.7

4 billion in OPEB; do you remember that number?

5 **A. Yes, I do.**

6 Q. And do you agree that the \$5.7 billion number includes

7 the present value of anticipated OPEB not only for

8 retirees but also for active employees, right?

9 **A. Active employees who will retire.**

10 Q. Right, it's sort of like it was the analog of the

11 pension UAAL --

12 **A. Right.**

13 Q. -- which is it looked not just at retirees but it also

14 looked at active employees, what their costs will be

15 when they retire?

16 **A. And yes --**

17 MR. ALBERTS: Objection to form.

18 **A. In the out-years, so for instance, someone who is an**

19 **active employee today but will retire in 2015 will**

20 **become a retiree in the out-years, yes.**

21 BY MR. HACKNEY:

22 Q. And that OPEB number was in the 5.7 billion?

23 **A. I believe so.**

24 Q. Does the City believe that its retirees have a vested

25 right to healthcare benefits?

1 **KEVYN ORR, VOLUME 2**

2 Q. Okay. Do you agree that if the petition -- the

3 bankruptcy petition were dismissed, it's likely that

4 at a minimum, the City could continue to get from the

5 DWSD its share of the COPs principal and interest

6 service?

7 **A. I have no reason to believe that is not true.**

8 Q. The DWSD is not insolvent; isn't that correct?

9 MR. SHUMAKER: Object to the form.

10 **A. Yeah, I -- I -- there -- there may be -- I don't know**

11 **if they are or they aren't.**

12 BY MR. HACKNEY:

13 Q. In the -- in the postconfirmation time period, if the

14 plan is confirmed, will the DWSD bear any of the

15 interest expense associated with the B notes?

16 **A. There are currently a series of mediations ongoing**

17 **surrounding DWSD and its obligations. I don't want to**

18 **bump up against the confidentiality provisions that**

19 **I've been admonished not to -- not to breach. That**

20 **being said, I think I can answer your question. Can**

21 **you repeat your question?**

22 Q. Let's try it this way, Mr. Orr.

23 **A. Yeah.**

24 Q. Let's try it this way.

25 **A. Yeah.**

1 **KEVYN ORR, VOLUME 2**

2 Q. There are forecasts that you've reviewed, right?

3 **A. Right.**

4 Q. And the forecasts include postconfirmation forecasts

5 that assume the plan of confirmation, right?

6 **A. Right.**

7 Q. In those forecasts, does the City bear the entirety of

8 the B note interest expense? That's a good way to

9 back into it.

10 **A. Okay, or is there some expense allocated to an**

11 **enterprise --**

12 Q. Exactly right.

13 **A. I think your question -- that way of doing it, I think**

14 **your question is fair. It does not bear the entirety**

15 **of it; there is an allocation.**

16 Q. Oh, there is an allocation?

17 **A. I think that --**

18 Q. Let's put it this way. The answer to that question

19 should be found in the forecast? I literally don't

20 know.

21 **A. No, but I --**

22 Q. I was literally asking you a discovery question.

23 **A. Well, I'm trying -- there is an allocation of 428**

24 **million at DWSD that is supposed to go to help finance**

25 **the note. I think I can speak to that.**

1 **KEVYN ORR, VOLUME 2**

2 Q. Oh, I see.

3 **A. Yeah.**

4 Q. Because do the pensioners get -- I thought the

5 pensioners don't get B notes, do they?

6 **A. No, but I'm trying to -- I'm trying to --**

7 Q. Because I thought that -- that was the nine-year

8 payment that you matched up with the Grand Bargain,

9 but that was cash money --

10 **A. Yeah, that was --**

11 Q. -- over the retirement --

12 **A. That payment is year over year for nine years that's**

13 **indexed to the possibility of restoration, that's why**

14 **it's nine years. I'm not sure that goes into what 388**

15 **million B note but -- I'm trying to make sure that I**

16 **don't bump up against any discussions that are going**

17 **in -- that are ongoing.**

18 Q. Okay. I mean, is it a fair summary to say you don't

19 know whether the forecast allocated a percentage of

20 the B note interest expense through the DWSD or not?

21 **A. Yeah, I'd say that.**

22 Q. Okay. Let's talk about the Grand Bargain some more if

23 we could, Mr. Orr.

24 **A. Sure.**

25 Q. Do you know -- the Grand Bargain can also be -- is

1 **KEVYN ORR, VOLUME 2**

2 also known as the DIA settlement, correct?

3 **A. Yeah, people call it different things, but I think**

4 **it's fair that people call it either one of those.**

5 Q. Okay, and so the way it works, we've talked about it,

6 but the DIA settlement is the -- is the contributions

7 of the charitable foundations and the DIA Corp. in

8 connection with the art collection going into a public

9 trust, correct?

10 **A. Yes.**

11 Q. And then the state contribution of its money has a

12 number of bells and whistles to it but is, itself,

13 conditioned on the DIA settlement?

14 **A. Well, yes, it's conditioned on a settlement of claims**

15 **against the State relating to that provision of the**

16 **constitution, article 9, section 24 regarding pension**

17 **rights and also in part for the DIA settlement and the**

18 **art to be put into the trust.**

19 Q. Yeah, and that's what I meant by the other bells and

20 whistles. Like even if the retirees gave the State a

21 waiver, that's actually not sufficient for the State

22 contribution. You have to get the DIA settlement, as

23 well?

24 **A. Yes.**

25 Q. When did you agree to the Grand Bargain? Let me put



1 KEVYN ORR, VOLUME 2  
 2 it to you this way. The first plan of February 21  
 3 contained within it statements to classes 10 and 11  
 4 that if you vote to approve and the moneys are  
 5 received, you'll get X, and if you don't, you'll get  
 6 Y?  
 7 **A. Yeah.**  
 8 Q. Do you remember that?  
 9 **A. Yeah, it had the little box.**  
 10 Q. Yeah. So can we start with that date? Had you agreed  
 11 to the Grand Bargain as of Feb 21, 2014?  
 12 **A. The only reason I'm hesitating is I believe that the**  
 13 **values had been discussed but there may have been some**  
 14 **other issues still ongoing in the mediation, but I**  
 15 **think it's fair to say that to the extent we reported**  
 16 **it out in the version of the plan that I had agreed to**  
 17 **accept the Grand Bargain.**  
 18 Q. Okay. You had made the decision to go with the Grand  
 19 Bargain?  
 20 **A. Yes.**  
 21 Q. And you'd made that decision certainly by  
 22 February 21st, when it's in the plan or at least the  
 23 contours of it are?  
 24 **A. Yes.**  
 25 Q. But assuming that you didn't decide on, you know,

1 KEVYN ORR, VOLUME 2  
 2 midnight on February 20th, like when had you reached  
 3 in your own mind the decision that you were going to  
 4 go with the approach embodied in the Grand Bargain?  
 5 **A. I don't recall. It was sometime prior to the 21st.**  
 6 **I'm just trying to make sure that I don't trip over**  
 7 **any of the discussions in the mediation but I think it**  
 8 **was prior to the 21st, I think that would be fair.**  
 9 Q. Are you able to dial it in with any more specificity  
 10 than that, days or weeks or months?  
 11 **A. No, it was evolving for a period of time from late**  
 12 **2013 until early 2014 and I just don't remember a**  
 13 **specific date when I said this is something we'll go**  
 14 **with.**  
 15 Q. Now, the Christie's valuation was not given to you  
 16 until on or about December 17th, 2013; is that right?  
 17 **A. Yes, I believe that's accurate.**  
 18 Q. Is it fair to say that you had not decided to go  
 19 with -- that's -- I'm trying to use a euphemism for  
 20 the Grand Bargain but --  
 21 **A. Right, no, I know what you mean.**  
 22 Q. You had not decided to go with the Grand Bargain prior  
 23 to December 17th, 2013?  
 24 **A. When you say go with, that is, that I had not had the**  
 25 **full number of the 800 -- what do you mean by go with?**

1 KEVYN ORR, VOLUME 2  
 2 Q. Yeah, I mean I guess what I will say is that I  
 3 understand that the concept's out there and it's kind  
 4 of building momentum and speed, but can we agree that  
 5 as an earliest date, let's use the term agreed to.  
 6 **A. Right.**  
 7 Q. You had not agreed to the Grand Bargain on or about  
 8 December 17th, 2013, which is the date that you got  
 9 the Christie's valuation, you had not agreed to it?  
 10 **A. I don't recall when you can say I had agreed to it.**  
 11 **There had been --**  
 12 Q. I'm trying to say a date that we know you hadn't?  
 13 **A. Yeah, I know, and I'm trying to -- I don't recall -- I**  
 14 **don't recall if that's true or not, I don't recall.**  
 15 Q. Oh, so it's possible that you had agreed to the Grand  
 16 Bargain prior to December 17, you just can't recall  
 17 one way or the other?  
 18 **A. I can't recall one way or the other.**  
 19 Q. Okay, so whatever the time is that you agreed to the  
 20 Grand Bargain, whatever that date is, that's how we're  
 21 going to describe it since we don't have a date --  
 22 **A. Okay.**  
 23 Q. -- okay?  
 24 As of that time, had the City inventoried  
 25 the artwork in the DIA collection?

1 KEVYN ORR, VOLUME 2  
 2 **A. In connection with this process or just as a general**  
 3 **principal of running DIA?**  
 4 Q. Either.  
 5 **A. Okay. I believe that the DIA maintained an inventory**  
 6 **of the objet d'art that are at the art institute on a**  
 7 **regular basis. In fact, I believe that some of that**  
 8 **inventory is available via the website, so I think the**  
 9 **DIA maintained an ongoing inventory of objects of art**  
 10 **at the museum.**  
 11 Q. Okay, let me separate for a moment the DIA from what  
 12 I'll call the City.  
 13 **A. Okay.**  
 14 Q. Because the DIA is an entity that has an operating  
 15 agreement with the City, correct?  
 16 **A. There is the DIA Corp., which has an operating**  
 17 **agreement starting in 1984 and most recently dated**  
 18 **1997, and then there is the Detroit Institutes of Art**  
 19 **which is an enterprise with art in it, meaning the**  
 20 **real estate and the art that is owned generally by the**  
 21 **City, although there's some dispute about that.**  
 22 **Generally the DIA Corp. works as a contractor on**  
 23 **behalf of the City, but the art and its inventory**  
 24 **including any -- any listing of inventory belonged to**  
 25 **the City.**

1 KEVYN ORR, VOLUME 2

2 Q. You're good. So 60,000 pieces at a thousand dollars

3 apiece is 60 million?

4 **A. It could well be.**

5 Q. And at 10,000, it would be 600 million?

6 **A. Sure, you can do the math. At a hundred thousand, you**

7 **could go into the billions.**

8 Q. And is --

9 **A. You can do the math.**

10 Q. Well, sure, but is \$10,000 a fair average price of the

11 pieces that are in the collection?

12 MR. SHUMAKER: Object to the form.

13 **A. Yeah, I don't know.**

14 BY MR. HACKNEY:

15 Q. I take it you don't have a basis to agree or disagree

16 with that number?

17 **A. Correct.**

18 Q. If the -- do you think it's fair and equitable for the

19 City to exit bankruptcy with hundreds of millions of

20 dollars in art in storage?

21 MR. SHUMAKER: Object to the form.

22 **A. I haven't testified that there's hundreds of millions**

23 **of dollars of art in value in storage.**

24 BY MR. HACKNEY:

25 Q. That's right, because you don't know the value of it,

1 KEVYN ORR, VOLUME 2

2 correct?

3 **A. Correct.**

4 Q. Now, you remember the first time you and I met was at

5 your August 30 deposition in connection with the first

6 swap settlement. Do you remember that?

7 **A. Yeah, I don't remember the date but I do think it was**

8 **over at the Book Cadillac in connection with the swap**

9 **settlement.**

10 Q. It doesn't -- you didn't commit that date to memory

11 because you're so glad you met me?

12 **A. I don't necessarily regret having met you, most of the**

13 **time.**

14 Q. Nor do I.

15 **A. Most of the time --**

16 Q. That --

17 **A. -- but I don't remember the date.**

18 Q. Now, part of the reason I'm setting this up is it's

19 not my intention to trap you with these questions but

20 I'm about to remind you of testimony, okay? So as of

21 August 30th, the City was not giving active

22 consideration to using the art to alleviate the City's

23 liquidity crisis or otherwise fund the initiatives

24 described in the June 2013 creditor's proposal,

25 correct?

1 KEVYN ORR, VOLUME 2

2 **A. Is that my testimony?**

3 Q. That was your testimony as of August 30th, but I want

4 to confirm that it's correct.

5 **A. Yeah, if that's my testimony, I'll stand by it.**

6 Q. Okay, and in fact, as of August 30th, you would have

7 been speculating as to the value of the art

8 collection, correct?

9 MR. SHUMAKER: Object to the form. Object

10 to the form.

11 **A. I had no objective assessment of the value of the art**

12 **BY MR. HACKNEY:**

13 Q. And you had made no effort to sell the art collection

14 as of August 30, 2014, correct?

15 **A. That is correct.**

16 Q. And you had made no effort to otherwise monetize it

17 either, correct?

18 **A. That is correct.**

19 Q. Okay. What efforts did the City take subsequent to

20 August 30, 2014 to monetize the art?

21 MR. ALBERTS: In 2013 or --

22 MR. HACKNEY: '13, God...

23 THE WITNESS: You mean '13.

24 BY MR. HACKNEY:

25 Q. Subsequent to August 30, 2013, what steps did the City

1 KEVYN ORR, VOLUME 2

2 take to monetize the art?

3 **A. Describe what you mean by monetize. Getting some**

4 **value for the art?**

5 Q. Yeah.

6 **A. Putting aside any discussions we had in mediation, or**

7 **the mediation process, about the art or the Grand**

8 **Bargain, I think it's fair to say that we didn't take**

9 **any steps to monetize the art.**

10 Q. So the Grand Bargain is it?

11 **A. Yes.**

12 Q. And that's the product of the mediation, so you can't

13 talk about the efforts?

14 **A. Yes.**

15 Q. And -- well, it follows, the City never conducted a

16 market test of any portion of the art collection,

17 correct?

18 **A. Do you mean in auction or some other appraisal process**

19 **of particular pieces of art to get a valuation?**

20 Q. I mean separate from an appraisal which an appraiser

21 does.

22 **A. Okay.**

23 Q. But I mean a market-oriented process by which you

24 allow potential buyers to assert their views of the

25 potential value of any portion of the art collection?

1 KEVYN ORR, VOLUME 2

2 **A. Yes, correct, like an auction with a reserve to try to**

3 **get a real value of the market, yes.**

4 Q. And it has never conducted a sale process with respect

5 to any portion of the art collection, correct?

6 **A. That is correct.**

7 Q. It never put any portion of the art collection up for

8 competitive bidding in an auction setting, correct?

9 **A. That is correct.**

10 Q. Now, the City has received inquiries from parties

11 interested in buying the art collection or a portion

12 thereof; isn't that correct?

13 **A. I have seen reports that there were inquiries from**

14 **parties to buy the art or a portion thereof, correct.**

15 Q. Okay, and what -- you have seen reports -- oh, are you

16 talking about the Houlihan Lokey?

17 **A. Yes.**

18 Q. Okay. So we're going to get to the Houlihan Lokey

19 efforts. I'm talking about inbound inquiries to you

20 and your team where you -- where Mr. Shumaker or

21 someone comes in and says I've got an inquiry about

22 buying the art.

23 **A. No, I haven't received any.**

24 Q. Didn't it get inquiries from Russian oligarchs and

25 Brazilian millionaires?

1 KEVYN ORR, VOLUME 2

2 **A. Those weren't -- those were statements that I made.**

3 **Those were general statements that I had heard, but**

4 **when you said inquiries, I thought you meant like a**

5 **letter or an offer or an actual real statement, and we**

6 **had just heard general chatter from time to time about**

7 **people expressing interest but nothing formal.**

8 Q. The City had not actually received inquiries from

9 Russian oligarchs or Brazilian millionaires, correct?

10 **A. No, I had heard from word of mouth that someone**

11 **overseas was potentially interested in the art**

12 **institute, but nothing firm.**

13 Q. Okay, who did you hear that from?

14 **A. That was at a -- one of these meetings that you go to**

15 **and, you know, it was like the comments from the**

16 **bondholders about how they're going to punish the**

17 **City, that sort of thing, I don't even know their**

18 **name.**

19 Q. Okay, and I take you it you never followed up with

20 that, whoever that person making that inquiry was?

21 **A. No, that person was quite agitated, so I never**

22 **followed up.**

23 Q. Oh, they were saying that they were upset by the fact

24 that they were hearing this?

25 **A. Yes.**

1 KEVYN ORR, VOLUME 2

2 Q. Was it a DIA person?

3 **A. No.**

4 Q. Who was it that told you this?

5 **A. It was some -- some individual at a meeting that I was**

6 **at, I think in New York.**

7 Q. But you can't remember who?

8 **A. No, as you might imagine, a number of people come up**

9 **to me on any given day with a number of different axes**

10 **to grind about something I'm doing, to tell me either**

11 **what I'm doing wrong or how they support something I'm**

12 **doing right, and that includes how I dare -- there**

13 **have been many people who have come up to me in many**

14 **different venues in airports, on vacation, walking**

15 **into my apartment about how I dare not sell the art,**

16 **there are some people who are going to come and denude**

17 **the City of all its assets.**

18 Q. Okay, I take it that this person told you that they

19 had heard that some foreign person was interested in

20 the art?

21 **A. Yes.**

22 Q. The City, itself, never received such inquiries,

23 though?

24 **A. Not to the best of my knowledge.**

25 Q. Okay. And you never engaged other museums to see what

1 KEVYN ORR, VOLUME 2

2 they might pay for the art collection, correct?

3 **A. Other museums I think actually engaged us and said**

4 **that they wouldn't do business with us if we tried to**

5 **sell any art.**

6 Q. My statement's, therefore, correct, right?

7 **A. Yes.**

8 Q. The City also has never attempted to borrow against

9 the art collection as collateral, correct?

10 **A. That is correct.**

11 Q. Now, we alluded to this earlier, which is the Houlihan

12 Lokey efforts, you were made aware of those, correct?

13 **A. Yes.**

14 Q. And you became aware that Houlihan Lokey had received

15 a number of different indications of interest from

16 certain parties with respect to the art, correct?

17 **A. I became aware that I believe there were four**

18 **different parties or groups of parties that I -- that**

19 **Houlihan Lokey had gone out and in some fashion either**

20 **solicited or received expression of interest from.**

21 Q. And do you know the names of those four parties?

22 **A. No, it's in the Artvest report and several other**

23 **reports. I know that two are related to -- one is**

24 **related to the Chinese government, another is related**

25 **to an entity, there are two others and their exact**

1                   **KEVYN ORR, VOLUME 2**  
 2       **New York and he'll pull me aside and ask me how's the**  
 3       **family going, how are you doing, is there anything you**  
 4       **need? More of a personal nature, but there are no**  
 5       **discussions that we typically have outside --**  
 6       **substantive discussions that we typically have outside**  
 7       **of the earshot of attorneys, and I think any of the**  
 8       **discussions regarding what to do with the art were**  
 9       **likely within the common interests and mediation**  
 10       **privilege.**

11               MR. HACKNEY: Is there a common interest  
 12       agreement between the City and the State of Michigan?

13               MR. SHUMAKER: There is.

14               MR. HACKNEY: A written one?

15               MR. SHUMAKER: Yes.

16               MR. HACKNEY: And what does it relate to?

17               MR. SHUMAKER: The matters in the case.

18               MR. HACKNEY: Okay.

19               MR. SHUMAKER: In the bankruptcy case.

20               MR. HACKNEY: Hmm. Okay.

21 BY MR. HACKNEY:

22 Q. So I take it your testimony is that there were  
 23       conversations but that they are covered by this  
 24       privilege?

25 **A. Yes.**

1                   **KEVYN ORR, VOLUME 2**  
 2 Q. And if I ask you about your conversations with the  
 3       governor on the subject of what to do with the art,  
 4       how to monetize it, whether it could be sold,  
 5       etcetera, you will invoke the protections of this  
 6       common interest privilege?

7 **A. Yes.**

8 Q. You were aware that the DIA was strongly opposed to  
 9       selling the art; isn't that correct?

10 **A. Yes.**

11 Q. And you were aware of their position on that issue  
 12       dating all the way back to April of 2013, correct?

13 **A. At least, yes.**

14 Q. They were not shy about letting the world know what  
 15       their position was on this issue, correct?

16 **A. Yes.**

17 Q. Now, you agree with me that with respect to the DIA  
 18       that you have said that you were deferring to the DIA  
 19       to find a way to leverage money out of the art and  
 20       save themselves, correct?

21 **A. I believe I was encouraging them to find ways out of**  
 22 **this problem and save themselves, yes.**

23 Q. And isn't it -- it's fair to say that you were  
 24       deferring to them to give them an opportunity to do  
 25       that, correct?

1                   KEVYN ORR, VOLUME 2  
 2 **A. I was encouraging them to give them an opportunity to**  
 3 **do that.**

4 Q. Okay. And what level of -- what level did they have  
 5       to reach to save themselves?

6 **A. I didn't have a level in my mind of what they had to**  
 7 **reach to save themselves, but my general thought was**  
 8 **that they needed to raise some money to contribute to**  
 9 **the effort that would justify, in my mind, a**  
 10 **contribution so that we would not have to pursue a**  
 11 **road of necessarily attempting to sell the art.**

12 Q. Now, I want to talk about this notion of deferring.  
 13       I'm happy to mark this if you'd like.

14 **A. Sure.**

15 Q. It's a Michigan Radio October 3, 2013, where they hit  
 16       a number of different issues. It says:

17               "Citing the City's --" quote/unquote,  
 18               'obligation' to pay off its creditors, Orr said  
 19               he's hopeful that the DIA's operators can,  
 20               'come up with a solution that makes sense  
 21               both for the City and for the creditors,' but if  
 22               not, he'll need to develop one himself. Asked  
 23               whether there was a way for the DIA to monetize  
 24               its assets without selling them off, Orr  
 25               said --" quote/unquote, "Yes," but he

1                   KEVYN ORR, VOLUME 2  
 2               wouldn't elaborate, saying he's deferring to the  
 3               DIA to, 'save themselves.'"

4               Did that reporter inaccurately capture what  
 5               you told him?

6 **A. No, I just don't know if -- did I use the word**  
 7 **"deferring" or did they --**

8 Q. That's not in quotes, you said --

9 **A. Yeah.**

10 Q. -- but he wouldn't elaborate saying he's deferring?

11 **A. Yeah, I don't know if I ever said I would defer, but I**  
 12 **think it captures the essence of the sentiment that I**  
 13 **had was that there had to be some contribution related**  
 14 **to DIA as part of this effort.**

15 Q. And that at least that you were giving the DIA the  
 16       opportunity to take the lead on figuring that out?

17 **A. Yes, I was saying they had to save themselves.**

18 Q. But you hadn't decided what level they had to reach  
 19       where you could say, ah, you've saved yourself?

20 **A. That is correct.**

21 Q. So how in your own mind if they came back and said,  
 22       Mr. Orr, I think we've done it, we've saved ourselves,  
 23       we've raised a million dollars, I'm assuming that you  
 24       had a state of mind back in the fourth quarter of 2012  
 25       where you -- you would say, that's not what I meant by

1 KEVYN ORR, VOLUME 2

2 saving yourselves, so I'm trying to size what was in

3 your mind when you were like this is what I -- this is

4 what I mean by save yourself.

5 **A. Mr. Hackney, I can't say that at that period of time I**

6 **had a specific hold number in my mind, or anyway -- I**

7 **was trying to encourage the institute and its**

8 **benefactors to come up with a solution that would**

9 **justify in my mind -- even though we weren't obligated**

10 **to sell any art for the institute, to come up with a**

11 **solution in my mind that would allow us to fairly say**

12 **in my opinion that we have had provided a solution for**

13 **DIA.**

14 Q. Did you tell the DIA what you meant when you said that

15 they needed to come up with something that would save

16 themselves?

17 **A. In terms of, like, giving them a number?**

18 Q. Mm-hmm.

19 **A. No.**

20 Q. So you didn't say, guys, I'm going to give you a

21 chance to save yourself and save yourself means

22 ballpark X?

23 **A. Yeah, I don't think we ever had a discussion like**

24 **that.**

25 Q. Did you even give them a range?

1 KEVYN ORR, VOLUME 2

2 **A. I don't believe so.**

3 Q. Did you direct any of your advisors to give them some

4 parameters about what they were targeting?

5 **A. I believe there was a meeting in May and then perhaps**

6 **another one in the summer. I don't recall whether or**

7 **not I had told them about a range.**

8 Q. You may have, you may not have?

9 **A. I don't recall just talking about a range.**

10 Q. Did there come a time when you did communicate a range

11 to them?

12 **A. No.**

13 Q. I take it if I asked you to describe the process by

14 which the foundations were solicited for funding,

15 you'll decline to answer on the basis of the mediation

16 order.

17 **A. I think that's correct.**

18 Q. Did the City -- don't tell me about the

19 communications -- did the City do the soliciting?

20 MR. SHUMAKER: I think that falls under the

21 process of -- that's referred to and it's incident to

22 mediation as the mediation orders articulate, so if --

23 BY MR. HACKNEY:

24 Q. I'm not asking you to say what it is you say --

25 MR. SHUMAKER: -- ideas, I think it is

1 KEVYN ORR, VOLUME 2

2 covered by the order.

3 BY MR. HACKNEY:

4 Q. But I guess putting aside disagreements about how the

5 order works -- and I appreciate your position,

6 Mr. Shumaker -- I guess my question, Mr. Orr, is did

7 the City make direct contact with the foundations?

8 MR. SHUMAKER: Outside the context of the

9 mediation?

10 MR. HACKNEY: No, in the mediation.

11 BY MR. HACKNEY:

12 Q. I'm just asking you for who drove the -- was it

13 Mediator Rosen, was it the City, who was doing what,

14 and don't tell me what they were doing.

15 **A. Okay.**

16 Q. I can read Mr. Rosen's press releases for that.

17 **A. Yeah, I was going to say I think there are published**

18 **reports about what efforts Chief Judge Gerald Rosen**

19 **made as a mediator. And I think there are published**

20 **reports about what meetings I may have had from time**

21 **to time at various foundation boards, and meetings.**

22 **Both here in the City and outside -- outside the City**

23 **and outside the State. I think outside of those**

24 **published reports that I probably should not**

25 **characterize what was said to whom and whom was doing**

1 KEVYN ORR, VOLUME 2

2 **what.**

3 Q. You were at the press conference at the DIA announcing

4 the -- I think that's where there was the rollout of

5 the legislation approval, correct?

6 **A. Yeah, and some announcement regarding the funding**

7 **level and that's one of the press reports to which I'm**

8 **referring.**

9 Q. Yeah, you were actually there --

10 **A. I was there.**

11 Q. And that was a press conference that Mr. -- that Judge

12 Rosen participated in, correct?

13 **A. Yes.**

14 Q. And do you recall during that press conference that he

15 said that the Grand Bargain was an idea that he and

16 Gene Driker spun out together?

17 **A. Whatever he said at that conference, I was there and I**

18 **heard.**

19 Q. And do you remember him saying that?

20 **A. Yes, generally speaking, I remember him saying that,**

21 **yeah.**

22 Q. Okay, that it was an idea that he and Gene Driker spun

23 out together?

24 **A. Yes, I generally remember that.**

25 Q. Is that statement by Judge Rosen true?

1 KEVYN ORR, VOLUME 2

2 **A. Yes.**

3 Q. Okay. So it's fair to say that the Grand Bargain was

4 Judge Rosen's idea from your vantage point?

5 MR. SHUMAKER: Again, I think we're getting

6 into --

7 MR. HACKNEY: Well, but --

8 MR. SHUMAKER: -- the guts of the

9 mediation.

10 MR. HACKNEY: I'm asking him about a public

11 statement that the mediator made.

12 MR. SHUMAKER: If you're asking did the

13 public statement reflect that, he can answer that.

14 MR. HACKNEY: I'm asking if the public

15 statement was true.

16 MR. SHUMAKER: Then that goes to what

17 actually occurred in the mediation and --

18 MR. HACKNEY: Well, Mr. Shumaker, now I

19 think you're being too selective about the mediation

20 order. I mean, you have the mediator standing up and

21 saying boom, and now I'm saying is that true, and

22 everyone says oh.

23 MR. SHUMAKER: And I'm fine with you asking

24 about the statements made in public by Judge Rosen.

25 What I have an issue with is then asking the witness

1 KEVYN ORR, VOLUME 2

2 whether it reflects what was occurring in the

3 mediation. There's a --

4 MR. HACKNEY: Okay.

5 MR. SHUMAKER: -- a clear divide there.

6 BY MR. HACKNEY:

7 Q. So are you going to decline to answer that?

8 **A. Yes, and I would say I have no reason to dispute any**

9 **published reports and statements made by Judge Rosen.**

10 Q. Okay, and Judge Rosen also described in that statement

11 that he had run into a member of -- of the -- a

12 foundation member in a deli near the courthouse; do

13 you remember that, too?

14 **A. Yes, Miriam Nolan.**

15 Q. Yes, and had talked to her about this idea, correct?

16 **A. Yes, I believe he said that.**

17 Q. Do you remember witnessing Judge Rosen saying that?

18 **A. Yes.**

19 Q. And Ms. Nolan has been quoted as saying that on the

20 basis of her conversation with Judge Rolan (sic), she

21 began to engage efforts to find whether other

22 foundations might contribute money, you're aware of

23 her statements?

24 **A. Yes, I'm aware of those statements.**

25 Q. Okay, do you have any reason to dispute those

1 KEVYN ORR, VOLUME 2

2 statements?

3 **A. No.**

4 Q. And do you remember that Judge Rosen also said that --

5 for example, that Shirley Lightsey was one of the

6 heroes of the bankruptcy?

7 **A. Yes.**

8 Q. If I ask for the specifics of -- with respect to the

9 foundations, who was approached, what they were asked,

10 which ones declined, which entities were approached,

11 who said yes, and the negotiations over the amount of

12 any contribution, is it correct that you would decline

13 to answer those questions on the basis of the

14 mediation order?

15 **A. Yes.**

16 Q. And if I asked you questions about the way the Grand

17 Bargain was structured, you'll similarly decline,

18 correct?

19 **A. Yes.**

20 Q. And that would also apply with respect to DIA Corp.

21 contributions, as well, correct?

22 **A. Yes.**

23 Q. And that also would apply to the State contribution

24 that is connected to the Grand Bargain, correct?

25 **A. Yes, except for any public statements.**

1 KEVYN ORR, VOLUME 2

2 Q. Have you ever visited the Charles H. Wright Museum

3 here in the City of Detroit?

4 **A. Yes.**

5 Q. Do you consider that museum critical to the economic

6 revitalization of the City?

7 **A. I consider it critical to the cultural and historical**

8 **revitalization of the City, yes, I do.**

9 Q. I was talking to the economic revitalization.

10 **A. It might well include the economic revitalization.**

11 Q. Is the DIA critical to the economic revitalization of

12 the City?

13 **A. Yes, I believe it is.**

14 Q. Okay, and which one's more important between the two,

15 the Charles H. Wright Museum or the DIA museum when it

16 comes to the economic revitalization of the City?

17 **A. I don't -- I've done no analysis as to whether one is**

18 **more important than the other. I think they are both**

19 **important to the cultural and economic vitality of the**

20 **City.**

21 Q. Which one has more visitors?

22 **A. I think the DIA does.**

23 Q. Has more than the Charles H. Wright?

24 **A. Yes.**

25 Q. Do you know if it has substantially more visitors?

1 KEVYN ORR, VOLUME 2

2 **A. I don't know offhand.**

3 Q. Do you know how many visitors the DIA has in a given

4 year?

5 **A. There have been discussions about several hundred**

6 **thousand, but sitting here today, I don't know the**

7 **exact number.**

8 Q. Is there any museum in the City that isn't critical to

9 the economic revitalization of the City?

10 **A. None in my opinion.**

11 Q. They're all critical?

12 **A. I think they are all critical.**

13 Q. And I am driving on the economic revitalization of the

14 facility, you understand that?

15 **A. Yes.**

16 Q. Do you understand that Christie's was retained,

17 putting apart what they actually appraised, they were

18 initially retained to appraise all of the art that was

19 purchased with City-owned funds, at least in part,

20 correct?

21 **A. Yes, either outright or in part. I think they**

22 **appraised something like 2,700 of the roughly 60,000**

23 **pieces of art.**

24 Q. And is it correct that approximately 35,000 pieces in

25 the collection are believed to have been purchased

1 KEVYN ORR, VOLUME 2

2 with City-owned funds in whole or in part?

3 **A. I believe that's the approximate amount.**

4 Q. And that was the aggregate amount that was subject to

5 the Christie's of retention, they ended up focusing on

6 doing proper valuations of just 2,700, correct?

7 **A. Yes.**

8 Q. And do you agree that the property that was the

9 subject of the Christie's appraisal, the subject of

10 the retention letter, was property that the City had

11 free, clear, and marketable title to?

12 **A. I agree that it appeared that the City had clear,**

13 **free, and marketable title to that property.**

14 Q. And you, in fact, represented to Christie's that the

15 City did, correct?

16 **A. Well, I don't know if I personally represented, but we**

17 **instructed them to review the properties to which the**

18 **City owned.**

19 Q. And in fact, you told Michigan Radio that the City

20 owns 35,000 of the DIA works quote/unquote free and

21 clear; isn't that correct?

22 **A. Yes, but I may not have meant that in a technical**

23 **legal sense but I probably said that.**

24 Q. Okay. Now, it's fair to say that you knew that the

25 DIA was strongly opposed to selling the art collection

1 KEVYN ORR, VOLUME 2

2 back in April of 2013, correct?

3 **A. Yes.**

4 Q. And you're aware that the attorney general issued his

5 art-related opinion on June 13th, 2013, which was

6 actually the day before your proposal to creditors

7 meeting?

8 **A. Yeah, I didn't recall the exact date, but I remember**

9 **that the Attorney General Schute issued his opinion**

10 **approximately around that time, and if you tell me**

11 **it's June 13th, I'll take it on face.**

12 Q. Yeah, that's okay. I thought you might remember it

13 because I thought you might be getting ready for the

14 June 14th creditor proposal and then somebody comes in

15 and goes hey, by the way.

16 **A. Yeah, that -- there were --**

17 Q. Do you remember if it was contemporaneous to --

18 **A. I remember it was -- the week was June 10th, Monday**

19 **was the meeting, the first public meeting, in**

20 **preparing for the proposal for creditors and I**

21 **remember it was sometime in that time frame, if you'd**

22 **asked me if it was before or after, I didn't remember,**

23 **but I do remember when he issued it.**

24 Q. Got it. Were you aware that it was coming?

25 **A. I may have been.**

1 KEVYN ORR, VOLUME 2

2 Q. Okay. You don't recall whether you were or not given

3 a heads up?

4 **A. Well, I don't recall whether or not I was aware there**

5 **was an opinion coming but I -- I have met Attorney**

6 **General Schute several times and I recall in one**

7 **meeting him stating he would have to discharge his**

8 **duties as he saw fit and that, you know, he would**

9 **assume that I understood this wasn't a personal**

10 **assault on what I was trying to achieve or something**

11 **like that.**

12 Q. Was it about the art or was it about the pensions?

13 **A. No, it could have been -- I don't recall it being**

14 **about the art specifically or about the pensions. It**

15 **was just sort of a meet and greet, that I'm going to**

16 **handle things as I see appropriate under my office as**

17 **a constitutional official.**

18 Q. Prior to getting the opinion, whenever you got it --

19 **A. Right.**

20 Q. -- did you know that the DIA and its counsel were

21 communicating with the attorney general on the subject

22 of that opinion?

23 **A. No, I didn't know until you just said that.**

24 Q. Oh, you didn't know it even as you sit here today?

25 **A. Even as I sit here today.**

**Exhibit 6B**

**7/31/2014 Deposition Transcript of R. Rapson (excerpted)**



RIP RAPSON  
IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

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

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The Videotaped Deposition of RIP RAPSON,  
Taken at 1114 Washington Boulevard,  
Detroit, Michigan,  
Commencing at 9:02 a.m.,  
Thursday, July 31, 2014,  
Before Rebecca L. Russo, CSR-2759, RMR, CRR.

RIP RAPSON

contribute under the Detroit Future City plan in any way?

A. Ability to?

Q. Yes.

A. No.

Q. Could it?

A. No.

Q. Why is that?

A. The amount of money that we dedicated to the Grand Bargain is over and above our annual what's called payout. Every year a private foundation like Kresge is required to pay a certain percentage of its assets according to a complicated IRS formula.

We set that amount at the beginning of every year. So for 2015 we would say five percent of a three-and-a-half billion dollar asset base is approximately 150, 60 million dollars, add to that administrative expenses, that's what we're going to pay.

What we did with the Grand Bargain is to say this is an extraordinary circumstance, it has never come up before, therefore our contribution to the Grand Bargain will sit on top of that. It will not diminish in any way our existing commitments or

RIP RAPSON

that's the view from the City, as well, is that fair?

A. Again, from the mayor or from Kevyn Orr?

Q. Let's break it up. Let's start with Mayor Bing.

A. Mayor Bing, he, he initially was very supportive, and for all sorts of complex political and interpersonal reasons found himself distancing from the plan, was one of the reasons that we took it outside of city hall. For a while it was inside city hall as his Detroit Works project. We took it out.

So I think his relationship to the plan was somewhat complex. I think he believed in its essential principles, but some of the, some of the interpersonal dynamics between his staff, and who was in control, and who was making decisions, and who was Toni Griffin, and why was she in such a position of influence, it was a lot of complex, not entirely productive interaction.

Q. And has that, that relationship stayed the same up through today?

A. No, no, no. Mayor Duggan has been extraordinarily supportive of the plan. His deputy, Tom Lewand, once said that he -- to me that he had memorized the entire economic development chapter of the plan, that he was that committed to it.

RIP RAPSON

our existing budget items.

Q. To your knowledge, did anybody from the City that was involved with drafting the plan of adjustment review the Detroit City Future plan before they -- as part of drafting the City's plan of adjustment?

MR. SHUMAKER: Object to the form.

A. I don't know if it was a part of, but in my conversations with Kevyn Orr, when I've been in his office, the Detroit Future City plan sits on his desk, and he has gone out of his way a couple of times to thank us for the work and to convey that he believes that it is in many ways an investment blueprint for the future of the City. That he can adjust long-term debt, he can even help restructure municipal services, but at the end of the day, the kind of long-term investment plan that the City requires in order to return for health is at least, in part, provided by the Detroit Future City plan.

BY MR. MCCARTHY:

Q. Is it your opinion as you sit here today that the Detroit Future City plan will work hand-in-hand with the City's proposed plan of adjustment?

A. Yes.

Q. And has anyone from the -- and it's your opinion that

RIP RAPSON

Q. Are you aware, one way or the other, whether anyone at Conway MacKenzie has reviewed the Detroit Future City plan?

A. I do not know.

Q. I want to talk about the Grand Bargain a little bit, with this caveat. I understand there's a mediation in order. Are you aware of the mediation order?

A. I have been made aware of that, yes.

Q. When did you become aware of that?

A. Most recently, yesterday. I just didn't know what the mediation order meant, and I still don't think I do know what it means.

Q. And with this entire conversation, the caveat, of course, goes with what I've said before, which is to the extent you and your personal lawyer, Kresge's lawyers had discussions even outside of the mediation, I don't want to get into the substance of those conversations.

But prior to yesterday, did you have any understanding with respect to whether or not the Kresge Foundation's involvement with the Grand Bargain, whether those conversations or that happened during the process leading up to the Grand Bargain --

A. I see.

RIP RAPSON

RIP RAPSON

1 Q. -- were protected from disclosure?  
 2 A. I see, yes. A couple of months ago Judge Rosen  
 3 conveyed that to a group of us. Someone raised the  
 4 question of whether these, these conversations during  
 5 the mediation and during the formulation of the Grand  
 6 Bargain would then become a matter of public record,  
 7 and he at that point explained that there was a  
 8 mediation privilege that he felt would cover those  
 9 conversations.  
 10 Q. And I don't, I do not want to get into any of those  
 11 conversations that you feel as though are privileged  
 12 by that mediation order or Judge Rosen's instructions  
 13 to you. So to the extent I ask a question and that  
 14 objection comes up or you feel as though you'd be  
 15 violating that, please let me know. Is that fair?  
 16 A. Yes.  
 17 Q. Okay. Prior to any discussions with anyone who's  
 18 involved with the bankruptcy currently, whether it be  
 19 Judge Rosen, Judge Rhodes, the City, had the Kresge  
 20 Foundation discussed getting involved in the  
 21 bankruptcy in any way?  
 22 MR. KURZWEIL: When you say the Kresge  
 23 Foundation, I assume you mean Mr. Rapson.  
 24 MR. MCCARTHY: I do, Mr. Rapson, and  
 25

1 Q. Let me be a little bit more specific with it. From  
 2 the time that the bankruptcy filing occurred, Detroit  
 3 bankruptcy occurred, and up until the time where you  
 4 believe your conversations regarding the mediation,  
 5 the mediation back and forth started --  
 6 A. Mmm-hmm.  
 7 Q. -- we're not talking about those, did you have any  
 8 conversations with the folks -- did you have any  
 9 conversations with anyone that you can remember  
 10 regarding whether Kresge would get involved in the  
 11 bankruptcy --  
 12 A. Oh, I see.  
 13 Q. -- in order to, one, preserve the collection at the  
 14 DIA?  
 15 A. No, no.  
 16 Q. And prior to -- after the filing of the City of  
 17 Detroit's bankruptcy and prior to the time that Kresge  
 18 became involved in conversations back and forth  
 19 regarding the Grand Bargain mediation, were you  
 20 involved with any discussions regarding Kresge  
 21 becoming involved in the bankruptcy to soften the blow  
 22 to the pensioners?  
 23 A. No.  
 24 Q. When did, when did you first become aware of what's  
 25

RIP RAPSON

RIP RAPSON

1 internal conversations within your foundation.  
 2 BY MR. MCCARTHY:  
 3 Q. Correct, I'm not asking a corporate  
 4 representative-type question, that's fair.  
 5 A. Yeah, I think I understand. I'll try not to overthink  
 6 the answer. One of the things that I'm reminded of is  
 7 that three or four years ago we were in a meeting of a  
 8 number of civic leaders and talking about how to be  
 9 helpful to the Bing administration, and I remember one  
 10 person in the room just sort of saying, you know, this  
 11 is all fine and good, but the City is going to go into  
 12 bankruptcy. And I remember at that time thinking,  
 13 "Yeah, right," you know, "that's not going to happen."  
 14 So that aside, I think when the bankruptcy  
 15 conversations began to hit the press and become more  
 16 visible, I think we had conversations internally about  
 17 how would that affect us. Would that in any way cause  
 18 us to change course. Were we investing in the right  
 19 kinds of things. Would the bankruptcy undo  
 20 investments we had spent so much time and money and  
 21 energy engaging in.  
 22 But there was -- that's -- it was just sort  
 23 of a generalized anxiety, I think, about the effects  
 24 of the bankruptcy and our work.  
 25

1 now become known as the Grand Bargain or the process  
 2 leading towards the Grand Bargain?  
 3 A. I think it was at the time that Judge Rosen asked the  
 4 group of foundations together and hear him out on an  
 5 idea he had.  
 6 Q. So I take it that the way you and your organization  
 7 became involved with the Grand Bargain was by Judge  
 8 Rosen reaching out to you and not the opposite, you  
 9 actually reaching out to Judge Rosen?  
 10 A. That's correct.  
 11 Q. And when did Judge Rosen reach out to you directly to  
 12 get involved in the Grand Bargain?  
 13 A. I'm sorry, I don't recall what that date was, but it  
 14 was, it was right at the same time that he was  
 15 gathering -- I wasn't able to attend that first  
 16 meeting, but I think -- didn't he gather people in his  
 17 chambers? The foundation community in his chambers.  
 18 I think that was really, it was in that time slot that  
 19 I first became aware of it.  
 20 Q. And did Judge -- is the first time you considered  
 21 becoming involved in the Grand Bargain, was that on a  
 22 phone call where Judge Rosen contacted you personally?  
 23 A. No.  
 24 Q. When was it?  
 25

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1 RIP RAPSON  
2 A. It was in a, a dinner conversation I had with him.  
3 Q. And during this dinner conversation, this is when  
4 Judge Rosen proposed that the Kresge Foundation become  
5 involved with the Grand Bargain, is that fair?  
6 A. Yes.  
7 Q. And I've reviewed on YouTube, of all places, a speech  
8 that you gave at Wayne State University -- maybe not a  
9 speech, but it certainly was a formal type speech, and  
10 do you remember that, that address?  
11 A. I do.  
12 Q. Okay. Do you remember when that was?  
13 A. It was, what, I don't know, two-and-a-half months ago,  
14 I think.  
15 Q. And during that address to the audience, you  
16 referenced your initial conversations with Mr. Rosen,  
17 is that fair, with Judge Rosen?  
18 A. I don't recall, but if it's on YouTube, I'll take your  
19 word for it.  
20 Q. And we thought about bringing it in and playing it for  
21 you.  
22 A. Oh, that would have really been torture.  
23 Q. Tell me if I'm right. When Judge -- during your first  
24 conversation with Judge Rosen, where he proposed that  
25 the Kresge Foundation become involved in the process

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1 RIP RAPSON  
2 for the Grand Bargain, was it Judge Rosen who brought  
3 up that the involvement of the foundation should occur  
4 because it could soften the blow to the pensioners and  
5 help preserve the collection at the DIA?  
6 MR. SHUMAKER: Objection. This calls for  
7 communications between Judge Rosen and Mr. Rapson. I  
8 believe this falls within the construct of the  
9 mediation order, and I would ask that the witness be  
10 instructed not to answer.  
11 If you have specific parts of the YouTube  
12 video or Mr. Rapson's statements you would want to ask  
13 him about, that's a different story. But I think when  
14 you get to the back and forth between Mr. Rapson and  
15 Judge Rosen, you are intruding into the area protected  
16 by the mediation order.  
17 MR. KURZWEIL: Under those circumstances,  
18 I'm going to instruct the witness not to answer that  
19 specific question.  
20 BY MR. MCCARTHY:  
21 Q. And is it fair to assume that you will follow those  
22 instructions and not answer questions based on the  
23 mediation order with respect to your initial  
24 back-and-forth conversations with Judge Rosen at your  
25 initial meeting with him?

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1 RIP RAPSON  
2 A. Yes.  
3 Q. Let me try to reframe it and see if we can do it that  
4 way. If not, I understand.  
5 At 10 minutes and 45 seconds into the  
6 speech that you gave at Wayne State University on the  
7 topic of the bankruptcy, you noted to the audience  
8 that Judge Rosen asked you specifically to get  
9 involved within the Grand Bargain in order to, quote,  
10 soften the blow that pensioners might be forced to  
11 take.  
12 Do you remember that?  
13 MR. SHUMAKER: I'm going to object on the  
14 same line. You can ask whether he made that statement  
15 at Wayne State, but you cannot ask whether in fact  
16 that was something that Judge Rosen said to him.  
17 MR. KURZWEIL: I'll instruct the witness  
18 not to answer that particular question.  
19 BY MR. MCCARTHY:  
20 Q. And you'll follow those instructions based on the  
21 mediation order?  
22 A. Yes.  
23 Q. Okay. Did you make the following statement at Wayne  
24 State in your address regarding, in part, the Detroit  
25 bankruptcy, quote: So he said, and he being Judge

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1 RIP RAPSON  
2 Rosen, what I want to propose is that the foundations  
3 come to the table with a solution that helps avoid  
4 having to litigate those two issues, and the solution,  
5 of course, that you all have become familiar with  
6 since then is sort of the Grand Bargain, or what he  
7 for a while was calling the art trust, in which we  
8 would try to identify an amount of money that would be  
9 sufficient to help soften the blow that the pensioners  
10 might be forced to take, and we would also try to  
11 figure out an amount that would be -- constitute  
12 sufficient consideration for the transfer of the art  
13 into a new non-profit and sort of take those issues  
14 off the table.  
15 MR. KURZWEIL: Counsel, without asking to  
16 let me see a copy, are you representing that that's a  
17 complete recitation of the words spoken by the  
18 witness?  
19 MR. MCCARTHY: I am, Counsel. We attempted  
20 to do our best to translate what was said at that  
21 YouTube in to this direct quote, and the direct quote  
22 was written for me from the good folks at my office.  
23 MR. SHUMAKER: Then I would suggest that  
24 the witness can answer whether he recalls making the  
25 statement as Mr. McCarthy has articulated.

1 RIP RAPSON  
 2 A. I don't, I don't recall word-for-word, but that  
 3 certainly sounds like my words.  
 4 BY MR. MCCARTHY:  
 5 Q. What did you do to prepare for your address at Wayne  
 6 State, and specifically with respect to the statement  
 7 that I just read? Did you do anything to prepare to  
 8 make that particular statement?  
 9 A. If I recall correctly, I was working off of a series  
 10 of schematic diagrams and I was talking to the  
 11 diagrams. So I, I don't believe I was working from  
 12 notes, and I know I was not working from a script.  
 13 Q. And those diagrams that you're referencing now, are  
 14 those the diagrams you referenced that you reviewed in  
 15 preparation for today's testimony?  
 16 A. Yes.  
 17 Q. And you mentioned you believe those diagrams have been  
 18 produced in this case?  
 19 A. Yes.  
 20 Q. To the extent they haven't been, and I don't know,  
 21 I've reviewed them, we'd ask that they be produced.  
 22 We'll follow up with your counsel.  
 23 MR. SHUMAKER: I can state that they have  
 24 been produced by the City.  
 25 MR. MCCARTHY: Okay.

1 RIP RAPSON  
 2 answer.  
 3 BY MR. MCCARTHY:  
 4 Q. Is it fair to say that you will follow those  
 5 instructions, Mr. Rapson?  
 6 A. To a tee.  
 7 Q. Prior to your meeting with Mr. Rosen that you've  
 8 talked about here today, your initial meeting, did you  
 9 have any opinion one way or the other whether  
 10 softening the blow to the pensioners or transferring  
 11 the art at the DIA to a new non-profit entity were  
 12 issues that could tie up the bankruptcy?  
 13 A. Yes.  
 14 Q. And when did, when did you personally come to that  
 15 realization?  
 16 A. There was so much writing in the, in the public press  
 17 about the constitutional protection of the pensions  
 18 and the likelihood that any diminution of their value  
 19 would be litigated extensively, and that there were a  
 20 series of issues surrounding the Detroit Institute's  
 21 art collection, and whether they were held in trust or  
 22 whether they were reachable by creditors, that whole  
 23 suite of issues, that in turn appeared from the  
 24 popular accounts to suggest that these would be issues  
 25 that would be litigated for quite some time.

1 RIP RAPSON  
 2 MR. SHUMAKER: At least I should say the  
 3 schematics from Mr. Rapson have been produced.  
 4 Whether they are in fact the exact same ones that he  
 5 had at Wayne State, I do not know.  
 6 THE WITNESS: I think they are the same.  
 7 BY MR. MCCARTHY:  
 8 Q. Mr. Rapson, so that I can maybe streamline some of the  
 9 additional questions I have, as you sit here today,  
 10 will you -- and I don't want you to answer this  
 11 question, I want to find out whether you believe these  
 12 questions, line of questions is covered by the  
 13 mediation privilege.  
 14 So to the extent I ask you about the back  
 15 and forth with Mr. Rosen or any other parties who were  
 16 involved with the mediation that took place after your  
 17 initial meeting with Judge Rosen regarding the Grand  
 18 Bargain, which was at a dinner, as you referenced,  
 19 will you be able to answer those questions here today?  
 20 MR. SHUMAKER: I would be interposing an  
 21 objection to all such questions, because I believe  
 22 that back and forth would be covered by the mediation  
 23 order entered by Judge Rosen.  
 24 MR. KURZWEIL: It's my intention upon  
 25 request of counsel to instruct the witness not to

1 RIP RAPSON  
 2 It certainly struck me at a very lay  
 3 person's level of understanding that those two issues  
 4 were going to be tough issues to mud wrestle through  
 5 the bankruptcy.  
 6 Q. Prior to your meeting with Judge Rosen, had you had  
 7 any discussions with anybody regarding how the Kresge  
 8 Foundation might get involved in the bankruptcy at all  
 9 in order to help address either of those issues, that  
 10 being softening the blow to the pensioners or  
 11 preserving the collection at the DIA?  
 12 A. There were, there were no serious conversations about  
 13 specific ideas to resolve either issue.  
 14 Q. So I take it, then, the point in time where you did  
 15 meet with Judge Rosen regarding potentially getting  
 16 involved with the Grand Bargain, that was the first  
 17 time that you at the Kresge Foundation gave any  
 18 serious consideration or had a serious conversation  
 19 about how the Kresge Foundation might get involved  
 20 with the bankruptcy in order to either soften the blow  
 21 to the pensioners or preserve the collection at the  
 22 DIA?  
 23 MR. SHUMAKER: Object to the form.  
 24 A. Yeah, or to expedite the resolution of the bankruptcy,  
 25 yes, that was the first time.

**Exhibit 6C**

**8/4/2014 Deposition Transcript of B. Stibitz (excerpted)**

BROM STIBITZ  
IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

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

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The Videotaped Deposition of BROM STIBITZ,  
a 30(b)(6) witness,  
Taken at 215 South Washington Square, Suite 200,  
Lansing, Michigan,  
Commencing at 12:59 p.m.,  
Monday, August 4, 2014,  
Before Rebecca L. Russo, CSR-2759, RMR, CRR.

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1 BROM STIBITZ  
 2 without City authorization?  
 3 A. No.  
 4 Q. And what about the NHL arena? At this time is that  
 5 set to go forward?  
 6 A. My understanding is yes.  
 7 Q. Is it your understanding that the State has allocated  
 8 funds and put those aside already for the NHL arena?  
 9 A. I don't know.  
 10 Q. Do you know whether the City, City leaders have  
 11 accepted the proposal at this time for the NHL arena?  
 12 A. I don't know.  
 13 MS. NELSON: We can get those answers if  
 14 you want them, within five minutes.  
 15 MR. MCCARTHY: Why don't we do that at the  
 16 next break, if it's a good time.  
 17 MS. RUTNER: Yeah, we'll talk about it at  
 18 the next break, actually, yeah.  
 19 BY MS. RUTNER:  
 20 Q. Now, putting aside the State proposal, proposals for  
 21 these projects, did the State ever consider providing  
 22 the City with any loans?  
 23 A. Not that I'm aware of.  
 24 Q. So in the days leading up to the bankruptcy, you're  
 25 not aware of any considerations or discussions at the

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1 BROM STIBITZ  
 2 State with respect to providing the City with a loan?  
 3 A. Not that I recall.  
 4 Q. Do you know of anybody at the State who might know  
 5 about that?  
 6 A. No.  
 7 Q. Okay, if you could turn back to -- I apologize.  
 8 All right, if you could turn back to the  
 9 subpoena, which is Exhibit 1, let's take a look at  
 10 topic five, which is on the bottom of page 6.  
 11 What did you do to prepare to testify for  
 12 this topic?  
 13 A. I reviewed the, the State Contribution Agreement, and  
 14 I reviewed their responses to the interrogatories from  
 15 the public safety unions. I reviewed the legislation  
 16 associated with the State contribution.  
 17 Q. Do you have any personal knowledge as to the issues in  
 18 topic five outside of what you did to prepare for the  
 19 deposition?  
 20 A. No.  
 21 Q. Okay, let's walk through any communications among  
 22 State officials regarding potential claims that could  
 23 be brought against the State by the pensioners.  
 24 Have there been any discussions among State  
 25 officials regarding potential, potential claims

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1 BROM STIBITZ  
 2 brought against the State by the pensioners?  
 3 MS. NELSON: Well, I'm going to object,  
 4 first of all, because those discussions are  
 5 principally attorney-client privilege, and the State's  
 6 discussions and its answers are set forth in the  
 7 interrogatory responses to the public safety union's  
 8 interrogatories.  
 9 BY MS. RUTNER:  
 10 Q. Outside of discussions with your -- with attorneys  
 11 present, do you know of any discussions amongst State  
 12 officials regarding potential claims brought against  
 13 the State by the pensioners?  
 14 A. No.  
 15 Q. Outside of communications with counsel, what is the  
 16 State's understanding of the basis for any potential  
 17 liability for claims brought against it by the  
 18 pensioners, in other words, the arguments --  
 19 MR. MORRIS: Objection, form.  
 20 BY MS. RUTNER:  
 21 Q. -- you are raising?  
 22 A. I'm sorry, could you restate the question?  
 23 Q. Sure. Outside of any communications with counsel,  
 24 what is the State's understanding as to the basis of  
 25 any potential liability for claims brought against the

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1 BROM STIBITZ  
 2 State by the pensioners?  
 3 MS. NELSON: Well, I'm going to object --  
 4 MR. MORRIS: Objection.  
 5 MS. NELSON: I'm going to object as to form  
 6 and foundation, because he's already indicated there  
 7 were no discussions amongst State officials outside of  
 8 their counsel regarding potential claims, in answer to  
 9 your last question.  
 10 BY MS. RUTNER:  
 11 Q. So as you sit here today, are you aware, are you aware  
 12 of any -- of what the State's understanding is outside  
 13 of any communications with counsel as to the basis of  
 14 any potential liability for claims brought against it  
 15 by the pensioners?  
 16 MR. MORRIS: Object to form.  
 17 A. The State's position is that there are no claims.  
 18 BY MS. RUTNER:  
 19 Q. But what I'm asking about is, what is the State's  
 20 understanding of the arguments that the pensioners are  
 21 raising against the State?  
 22 MR. MORRIS: Object to form.  
 23 MS. RUTNER:  
 24 Q. Or the basis for liability?  
 25 MS. NELSON: By who?



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1 BROM STIBITZ  
 2 MR. MORRIS: Object to form.  
 3 MS. RUTNER: The basis for liability by the  
 4 pensioners -- excuse me, by the, the basis for  
 5 liability that the pensioners are, are asserting  
 6 against the State.  
 7 MR. MORRIS: Object to form.  
 8 MS. NELSON: Well, number one, that goes to  
 9 the confidentiality of the mediation agreement, and I  
 10 would have to instruct him not to answer on that  
 11 ground, and two, it's attorney-client privilege.  
 12 MS. RUTNER: So are you instructing him not  
 13 to answer?  
 14 MS. NELSON: Yes.  
 15 BY MS. RUTNER:  
 16 Q. And are you going to follow that instruction?  
 17 A. Yes.  
 18 Q. Has the State's position ever changed with respect to  
 19 its concern about its potential liability for claims  
 20 raised by the pensioners?  
 21 MS. NELSON: Objection --  
 22 MR. MORRIS: Object to form.  
 23 MS. NELSON: Objection, it invades the  
 24 confidentiality of the mediation process, and I  
 25 instruct him not to answer.

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1 BROM STIBITZ  
 2 MS. RUTNER: I'm referring to prior to the  
 3 mediation.  
 4 BY MS. RUTNER:  
 5 Q. Was there ever a time in which, or has there ever been  
 6 a time in which the State's position was one thing  
 7 with respect to what they felt -- or with respect to  
 8 their concerns about the pensioners' potential claims  
 9 against the State and then that position changed?  
 10 MR. MORRIS: Object to form.  
 11 MS. NELSON: Well, again, the second  
 12 portion of your question I object to, because it  
 13 invades the confidentiality of the mediation  
 14 process --  
 15 MS. RUTNER: I'm only referring to --  
 16 MS. NELSON: -- which is a give and take.  
 17 MS. RUTNER: -- I'm only referring to  
 18 conversations or -- conversations or discussions or  
 19 communications or anything prior to August 13th, 2013.  
 20 MR. MORRIS: Same objection.  
 21 A. Not to my knowledge.  
 22 MS. RUTNER: I'm marking as Exhibit 10 --  
 23 is that what we're up to? Sorry, I apologize,  
 24 Exhibit 7. I'm marking as Exhibit 7 the State's  
 25 answers to the public safety union's interrogatories.

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1 BROM STIBITZ  
 2 MARKED FOR IDENTIFICATION:  
 3 DEPOSITION EXHIBIT 7  
 4 3:00 p.m.  
 5 BY MS. RUTNER:  
 6 Q. If you see the first answer, have you reviewed this  
 7 response?  
 8 A. Yes.  
 9 Q. And are you familiar with the contents of it?  
 10 A. Yes.  
 11 Q. Do you know who at the State was involved in making  
 12 the decision that, and I'm quoting from the  
 13 interrogatory response: There are no valid claims  
 14 that can be or have been asserted against the State,  
 15 the State entities, or the State-related entities by  
 16 any person?  
 17 A. No.  
 18 Q. Do you know if the State conducted any sort of  
 19 analysis about the reliability specifically in  
 20 response to this interrogatory, or was it a -- or was  
 21 this response made based on an analysis that predated  
 22 the interrogatory?  
 23 A. I don't know.  
 24 Q. I want to understand, and this is outside of any  
 25 communications with your attorney, what exactly is the

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1 BROM STIBITZ  
 2 basis for the State's position that there are no valid  
 3 claims that can be asserted against it by the  
 4 pensioners?  
 5 What's the State's position -- why does the  
 6 State feel that the claims raised by the pensioners  
 7 are invalid?  
 8 MS. NELSON: Well, I'm going to object  
 9 because that encompasses the attorney-client  
 10 privileged communications that related specifically to  
 11 the pensioners' claims and the formulation of response  
 12 to this interrogatory.  
 13 MS. RUTNER: So are you instructing your  
 14 witness not to answer?  
 15 MS. NELSON: Yes.  
 16 BY MS. RUTNER:  
 17 Q. And you're going to follow that instruction?  
 18 A. Yes.  
 19 Q. Okay, putting aside the State's position as to the  
 20 validity of any claims brought against it by the  
 21 pensioners, I want to discuss any concerns the State  
 22 may have had about, about the lawsuit, with respect to  
 23 the cost of litigating the lawsuit, the time it might  
 24 take, the bad press it might bring.  
 25 Were there ever discussions that you know

**Exhibit 6D**

**8/4/2014 Deposition Transcript of D. Muchmore (excerpted)**

DENNIS MUCHMORE  
IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

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

---

The Videotaped Deposition of DENNIS MUCHMORE,  
a 30(b)(6) witness,  
Taken at 215 South Washington Square, Suite 200,  
Lansing, Michigan,  
Commencing at 9:00 a.m.,  
Monday, August 4, 2014,  
Before Rebecca L. Russo, CSR-2759, RMR, CRR.

DENNIS MUCHMORE

mean once a week or do you mean --

Q. Once a week, let's start with.

A. We don't have a formal once-a-week meeting, no.

Q. Based on your knowledge, does it happen for one reason or another that the governor -- someone from the governor's office is talking to the mayor of Detroit about once a week?

A. Oh, yes.

Q. And what's the nature of those conversations, typically?

A. They would be anything from what help can we give you on a -- income tax collections, to this is my latest argument on Belle Isle, to here is somebody we're hiring, what do you think about that, mayor to us.

We have a lot of discussions about the transition that's coming and how that is going to affect relationships.

Q. And what transition is that?

A. Well, Mr. Orr will be leaving in September, leaving his emergency manager position.

Q. Will Mr. Orr be maintaining other, any other position in relationship to the State of Michigan, to your knowledge, after he leaves in September?

A. Not to my knowledge.

DENNIS MUCHMORE

Q. Thank you. Within your role within the executive office, would you say that you take part in most formal meetings that relate to the City of Detroit and its bankruptcy?

A. Yes, I would.

Q. Are you typically made aware of any formal press releases that come from the governor's office that relate to the City of Detroit's bankruptcy?

A. Typically. It's kind of a general word.

Q. It is, and I apologize for that.

A. That's all right.

Q. But what is the process when the governor's office is going to make a formal statement in the press, specifically with respect to the City of Detroit's bankruptcy over the last year?

A. We would talk about it at comms. Comms, I mean, we have a comms meeting, as I described earlier. We'd talk about it at comms. We typically run the content of that press release past our legal counsels, and we typically run that content of that past Kevyn Orr. And sometimes we may give the mayor a heads-up if it deals with his, you know, the political machinations of the city.

Q. And if -- did the State have any view -- moving on to

DENNIS MUCHMORE

a different topic.

A. Okay.

Q. Prior to the mediation, did the State have any view, to your knowledge, based on what the priority of the pensioners -- based on the priority the pensioners should receive any funds that come from the State, vis-a-vis other creditors in the Detroit bankruptcy?

A. No, not to my knowledge.

MR. MORRIS: Objection, form.

THE WITNESS: What was that?

MS. NELSON: Somebody on the telephone had an objection.

THE WITNESS: Oh, okay.

BY MR. MCCARTHY:

Q. That's what I mentioned earlier, someone objects and we have a few people --

A. Okay.

Q. -- on the phone that represent other -- I believe they represent other parties, not the State, but you can go ahead and answer the question, if you can, with that objection, which you did. Thank you.

Prior to the mediation, did the State have any view, to your knowledge, with respect to whether any funds that would be coming from the State should

DENNIS MUCHMORE

go solely to the benefit of the pensioners versus other creditors in the bankruptcy?

A. No.

Q. Has that view changed since the onset of mediation, from the State's perspective?

A. No, not really, no. I don't think the view has changed on that. It's not a focus on one thing. It's a focus on a comprehensive solution of the whole City bankruptcy. We spend a lot of time with creditors. We spend a lot of time with pensioners. We spend a lot of time with judges.

Q. Funding for the State under the Grand Bargain, as it's been described, will be going to pensioners, specifically, as opposed to certain other groups of creditors, is that fair?

A. I think that's fair, yes.

Q. Does the State have a view, to your knowledge, based on why it is that that funding will be going to pensioners versus other creditors?

MS. NELSON: I'm going to object, because that invades the confidentiality of the mediation process, and I will instruct him not to answer that question.

BY MR. MCCARTHY:

1 DENNIS MUCHMORE  
 2 Q. I assume you will follow those instructions, but let  
 3 me ask you, just to be sure. Will you follow those  
 4 instructions from your counsel and not answer the  
 5 question?  
 6 A. I always do.  
 7 MR. GADOLA: Always?  
 8 THE WITNESS: Generally, when I agree with  
 9 it, I do.  
 10 MR. MCCARTHY: I'm going to ask another  
 11 question, Margaret, that may call for the same answer,  
 12 and that's absolutely fine and appropriate, I'm sure,  
 13 but let me -- just so we can streamline some of the  
 14 other material.  
 15 BY MR. MCCARTHY:  
 16 Q. Since the mediation has started, has the State --  
 17 earlier we talked about that, to your knowledge, you  
 18 weren't aware of the State having any view as to the  
 19 priority of pensioners, as to who should get paid when  
 20 or what they should get paid within the State's  
 21 bankruptcy.  
 22 I want to ask now, since the mediation,  
 23 does the State have a view, with respect to the  
 24 priority that pensioners should be paid, vis-a-vis  
 25 other creditors in the Detroit bankruptcy?

1 DENNIS MUCHMORE  
 2 the pensioners might have to face reductions in the  
 3 benefits that they receive under their pensions for  
 4 the City of Detroit?  
 5 A. Yes, I believe so.  
 6 Q. And prior to the mediation, did the -- to your  
 7 knowledge, was it the State's view that that could  
 8 happen, that the pensioners for the City of Detroit  
 9 might face reductions in the amount that they receive  
 10 under their pensions?  
 11 A. Yes.  
 12 Q. What was the basis for that view, as you understand  
 13 it, coming from the State? And again, if this only  
 14 comes from information from your lawyers, I'd like to  
 15 try to stay away from that.  
 16 MR. MORRIS: Objection, form.  
 17 A. There are only so many ways to get to an overall  
 18 comprehensive settlement of this, and each party in  
 19 the settlement was going to have to take a reduction  
 20 in what they felt they were being owed, regardless of  
 21 who it was, and there was just no way around it, from  
 22 our point of view.  
 23 BY MR. MCCARTHY:  
 24 Q. Has that -- moving forward. For whatever reason, has  
 25 that viewpoint from the State that every party,

1 DENNIS MUCHMORE  
 2 MS. NELSON: I'm going to assert the same  
 3 objection.  
 4 MR. MORRIS: Objection, form.  
 5 MS. NELSON: Thank you. I was going to  
 6 object as to form and foundation, as well, and also  
 7 that it invades the confidentiality of the mediation  
 8 process, and instruct him not to answer.  
 9 MR. MCCARTHY: And so I'm --  
 10 MS. NELSON: Also, attorney-client  
 11 privilege.  
 12 MR. MCCARTHY: And so I'm clear, any  
 13 information that I might be able to gather from that  
 14 that is not based on attorney-client, should I still  
 15 expect an objection based on the mediation order if it  
 16 gets into the substance of the State's view with  
 17 respect to priority of the pensioners or whether --  
 18 why it is that -- if the State has a view as to why  
 19 money should go to the benefit of the pensioners after  
 20 the August mediation began?  
 21 MS. NELSON: Correct. It invades the  
 22 confidentiality of the mediation process.  
 23 BY MR. MCCARTHY:  
 24 Q. Prior to the mediation, to your knowledge, did the  
 25 State ever make any statements with respect to whether

1 DENNIS MUCHMORE  
 2 including perhaps the pensioners, may need to take a  
 3 reduction, has that view changed at all --  
 4 MR. MORRIS: Objection, form.  
 5 BY MR. MCCARTHY:  
 6 Q. -- has that view changed at all from the State?  
 7 MS. NELSON: I'm going to object as to  
 8 form. I'm also going to object on the basis of  
 9 attorney-client privilege, and that it invades the  
 10 confidentiality of the mediation process, as there is  
 11 more than just pensions involved in the mediation  
 12 process, and instruct him not to answer.  
 13 MR. MCCARTHY: And can I assume that to the  
 14 extent my question asks for information after  
 15 August 2013, there will be an objection based on the  
 16 confidentiality order related to the mediation if  
 17 we're asking for information with respect to the  
 18 State's view on whether the pensioners could face  
 19 reductions in the amounts they receive under their  
 20 pensions?  
 21 MS. NELSON: Yes, that's a principal issue  
 22 of the mediation.  
 23 BY MR. MCCARTHY:  
 24 Q. And I assume you will follow that instruction from  
 25 your counsel?

**Exhibit 6E**

**7/22/2014 Deposition Transcript of A. Erickson (excerpted)**

Page 1

1 ANNMARIE ERICKSON  
 2 IN THE UNITED STATES BANKRUPTCY COURT  
 3 FOR THE EASTERN DISTRICT OF MICHIGAN  
 4  
 5  
 6 In re: ) Chapter 9  
 7 CITY OF DETROIT, MICHIGAN, ) Case No. 13-53846  
 8 Debtor. ) Hon. Steven W. Rhodes  
 9  
 10 \_\_\_\_\_  
 11  
 12  
 13 The Videotaped Deposition of ANNMARIE ERICKSON,  
 14 in her personal capacity and as Rule 30(b)(6) witness,  
 15 Taken at 1114 Washington Boulevard,  
 16 Detroit, Michigan,  
 17 Commencing at 10:07 a.m.,  
 18 Tuesday, July 22, 2014,  
 19 Before Cheri L. Poplin, CSR-5132, RPR, CRR.  
 20  
 21  
 22  
 23  
 24  
 25

Page 3

1 ANNMARIE ERICKSON  
 2 PAUL C. GUNTHER, ESQ.  
 3 Dentons US LLP  
 4 1221 Avenue of the Americas  
 5 New York, New York 10020-1089  
 6 Appearing on behalf of the Retiree Committee.  
 7  
 8  
 9  
 10 DIANA A. SANDERS, ESQ. (via telephone)  
 11 Chadbourne & Parke, LLP  
 12 30 Rockefeller Plaza  
 13 New York, New York 10112  
 14 Appearing on behalf of Assured Guaranty Municipal  
 15 Corp.  
 16  
 17 MICHAEL J. PATTWELL, ESQ.  
 18 Clark Hill, PLC  
 19 212 East Grand River Avenue  
 20 Lansing, Michigan 48906  
 21 Appearing on behalf of the Retirement Systems for the  
 22 City of Detroit.  
 23  
 24  
 25

Page 2

1 ANNMARIE ERICKSON  
 2 APPEARANCES:  
 3  
 4 ARTHUR THOMAS O'REILLY, ESQ.,  
 5 SCOTT B. KITEI, ESQ.  
 6 Honigman, Miller, Schwartz & Cohn, LLP  
 7 2290 First National Building  
 8 660 Woodward Avenue  
 9 Detroit, Michigan 48226  
 10 Appearing on behalf of the Detroit Institute of Arts.  
 11  
 12  
 13  
 14  
 15 GEOFFREY S. IRWIN, ESQ.,  
 16 ALEXANDER E. BLANCHARD, ESQ. (via telephone)  
 17 Jones Day  
 18 51 Louisiana Avenue, N.W.  
 19 Washington, D.C. 20001  
 20 Appearing on behalf of the Debtor, City of Detroit.  
 21  
 22  
 23  
 24  
 25

Page 4

1 ANNMARIE ERICKSON  
 2 EDWARD R. MCCARTHY, ESQ.  
 3 Weil, Gotshal & Manges LLP  
 4 1395 Brickell Avenue  
 5 Suite 1200  
 6 Miami, Florida 33131  
 7 Appearing on behalf of the Financial Guaranty  
 8 Insurance Company.  
 9  
 10  
 11  
 12 FARAYHA J. ARRINE, ESQ.  
 13 Dickinson Wright, PLLC  
 14 500 Woodward Avenue  
 15 Suite 4000  
 16 Detroit, Michigan 48226  
 17 Appearing on behalf of the State of Michigan.  
 18  
 19  
 20  
 21 ALSO PRESENT:  
 22 Ben Solorzano - Video Technician  
 23  
 24  
 25

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1 ANNMARIE ERICKSON

2 **A. Yes.**

3 Q. Did anyone else from the DIA have input, not lawyers,

4 but your -- any other staff members from the DIA?

5 **A. Mr. Beal also looked at it and our chief financial**

6 **officer, Mr. Bowen.**

7 Q. If you turn to Page 6 of this, and I apologize. The

8 page number is a little tough to see because they're

9 buried with the stamp of the court, but it's Page 123

10 of 301 in the bottom right-hand corner.

11 **A. Um-hmm.**

12 Q. And the first full box in the term sheet on Page 6 of

13 Exhibit 15 states "The DIA Commitment Regarding

14 Funding"; correct?

15 **A. That's correct.**

16 Q. And it notes in the box amongst other things that "The

17 DIA undertakes to secure commitments for contributions

18 of \$100 million"; correct?

19 **A. That's correct.**

20 Q. Is it your understanding that as part of this

21 settlement the DIA has committed to raising \$100

22 million?

23 **A. Yes.**

24 Q. At the time the term sheet was entered into, did the

25 DIA believe it could raise \$100 million under the

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1 ANNMARIE ERICKSON

2 terms of the settlement?

3 **A. At the time the term sheet was entered into?**

4 Q. Yeah.

5 **A. Yes.**

6 Q. Does the DIA still believe that today?

7 **A. Yes.**

8 Q. Has anything changed over the course of the last year

9 that would lead you to believe that it's become more

10 possible for the DIA to raise \$100 million than it

11 would have been say a year ago?

12 MR. O'REILLY: Objection. Form.

13 **A. Could you restate that, please? I'm not sure how to**

14 **answer.**

15 BY MR. McCARTHY:

16 Q. Sure. I've read some -- I've seen some articles and I

17 can put one before you, where there's some statements

18 a while ago that the DIA previously believed it would

19 be impossible to raise \$100 million, and I'm curious

20 if, you know, if that's your position and what has

21 changed since then. So my question --

22 MR. O'REILLY: Objection. Form.

23 BY MR. McCARTHY:

24 Q. Go ahead.

25 **A. Mr. McCarthy, we were in a negotiation at that point**

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1 ANNMARIE ERICKSON

2 in time and --

3 **MR. O'REILLY: And I'm just -- before we go**

4 **down that road, there is a standing order in place in**

5 **which there's a mediation order that says we are not**

6 **to disclose negotiations pertaining to the mediation**

7 **or things attendant thereto, so as you formulate your**

8 **response, please be judicious and careful about what**

9 **you say and I'll object as appropriate. So far**

10 **Mr. McCarthy's questions haven't called for it, but I**

11 **heard you going down a road I didn't want you to go.**

12 BY MR. McCARTHY:

13 Q. The -- let me try to streamline this. To the extent

14 the DIA made statements within the course of the last

15 year that it may have been impossible or very

16 difficult to raise \$100 million, am I fair to assume

17 that those statements were made in part because

18 ongoing settlement discussions were going on?

19 MR. O'REILLY: Hold on.

20 MR. McCARTHY: I'm trying to get at this

21 without digging into --

22 MR. O'REILLY: I know. I'm just trying to

23 figure out --

24 MR. McCARTHY: Let's --

25 MR. O'REILLY: Let's go off the record, if

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1 ANNMARIE ERICKSON

2 we could.

3 MR. McCARTHY: Sure.

4 VIDEO TECHNICIAN: The time is 2:33 p.m.

5 We are off the record.

6 (Recess taken at 2:33 p.m.)

7 (Back on the record at 2:42 p.m.)

8 VIDEO TECHNICIAN: We are now on the

9 record. The time is 2:42 p.m.

10 BY MR. McCARTHY:

11 Q. When did the DIA learn that it would -- that it was

12 agreeing to undertake a commitment to contribute \$100

13 million to the settlement?

14 MR. O'REILLY: I'm going to object. I

15 think you're asking a time during -- during the course

16 of negotiations when they would have made some

17 commitment. I think that's covered by the order.

18 MR. McCARTHY: So the objection is the

19 mediation privilege? Just so I'm clear.

20 MR. O'REILLY: The mediation order. Unless

21 you want to try and work around it.

22 MR. McCARTHY: I just want to make sure

23 we're clear. So you're instructing the witness not to

24 answer based on privilege?

25 BY MR. McCARTHY:



1 ANNMARIE ERICKSON  
 2 Q. And I assume you will be --  
 3 **A. I will comply.**  
 4 Q. Okay.  
 5 MR. O'REILLY: And I'll just articulate the  
 6 reason why the question was when during the course of  
 7 negotiation did the DIA make a decision as to when to  
 8 participate, and that would be covered by the  
 9 mediation order of the Court.  
 10 BY MR. McCARTHY:  
 11 Q. This term sheet's dated May 5th, 2014; correct?  
 12 **A. Correct.**  
 13 Q. As of May 5th, 2014, in your capacity as a corporate  
 14 representative for the DIA, did the DIA view the  
 15 undertaking to raise \$100 million as a difficult  
 16 undertaking?  
 17 **A. Absolutely.**  
 18 MR. IRWIN: Just for the record, when you  
 19 say May 5th, 2014, you mean the date it was filed --  
 20 THE WITNESS: Filed.  
 21 MR. IRWIN: -- by the City in the  
 22 bankruptcy proceeding?  
 23 MR. McCARTHY: That is the date --  
 24 MR. IRWIN: Or the date of the document?  
 25 MR. McCARTHY: That is the date I was

1 ANNMARIE ERICKSON  
 2 referencing, the filing date that is on this document.  
 3 MR. IRWIN: Okay. Are you representing  
 4 that that is the date of the document as opposed to  
 5 the date of the filing?  
 6 MR. McCARTHY: I am not.  
 7 MR. IRWIN: Or it may not be material to  
 8 your question.  
 9 MR. McCARTHY: I agree. And thank you for  
 10 the clarification.  
 11 **A. No matter the date, raising \$100 million is very**  
 12 **difficult.**  
 13 BY MR. McCARTHY:  
 14 Q. And so we're clear for the record -- and I do not have  
 15 this information before me. Do you know what date  
 16 this term sheet which was filed as of May 5th, 2014,  
 17 was agreed to?  
 18 **A. I do not know.**  
 19 Q. Has your view changed since agreeing -- since the DIA  
 20 agreed to this term sheet, has the stance of the DIA  
 21 changed at all with respect to the relevant  
 22 difficulties in raising the \$100 million obligation  
 23 under the settlement term sheet?  
 24 **A. Not at all. It's been very difficult. It's taken us**  
 25 **away from our regular course of business.**

1 ANNMARIE ERICKSON  
 2 Q. What has the DIA done to meet its obligations to  
 3 secure the \$100 million in commitments under the  
 4 settlement term sheet?  
 5 **A. We have a meeting with donors consistently to**  
 6 **negotiate gifts.**  
 7 Q. Without getting into specific names, who are the  
 8 donors? Are they businesses?  
 9 **A. Primarily corporations. Some foundations and some**  
 10 **individuals.**  
 11 Q. Outside of -- are the donors -- does the DIA have any  
 12 way of knowing as you sit here today what percentage  
 13 of the donors are Michigan-based?  
 14 MR. O'REILLY: Objection. Vague.  
 15 **A. As I sit here today, I would say that the large**  
 16 **percentage of them are Michigan-based.**  
 17 BY MR. McCARTHY:  
 18 Q. Have you yourself personally been one of the key  
 19 players in attempting to raise the \$100 million  
 20 commitment under the settlement term sheet?  
 21 **A. Yes, I have.**  
 22 Q. How is the DIA doing in raising that commitment?  
 23 **A. We just held a news conference last week and announced**  
 24 **that we were 80 percent of the way there.**  
 25 Q. Do you have an estimated time frame within which

1 ANNMARIE ERICKSON  
 2 you'll be able to raise the full \$100 million?  
 3 **A. I do not. We were trying to do it as expeditiously as**  
 4 **possible, but I don't have a deadline.**  
 5 Q. As you sit here today, do you believe the DIA will be  
 6 able to meet that commitment?  
 7 **A. Without a doubt.**  
 8 Q. How has the DIA been balancing the fundraising it's  
 9 doing with respect to meeting the \$100 million  
 10 commitment under the settlement term sheet with its  
 11 regular fundraising with respect to endowments or  
 12 operational funding?  
 13 **A. Meeting the \$100 million has mostly derailed our**  
 14 **endowment campaign, partially because we're raising a**  
 15 **large sum of money for another purpose and partially**  
 16 **for the reason I articulated earlier, that until the**  
 17 **bankruptcy is settled, most people do not want to give**  
 18 **large endowment gifts and make multi-year commitments.**  
 19 **In terms in terms of our normal fundraising, we're**  
 20 **continuing to be very aggressive with our membership**  
 21 **program, with our major gifts program, with our annual**  
 22 **fund program, and at the end of our fiscal year we had**  
 23 **exceeded most of our goals.**  
 24 Q. With respect to balancing the fundraising for the \$100  
 25 million commitment under the settlement term sheet and

**Exhibit 6F**

**7/25/2014 Deposition Transcript of E. Jenkins (excerpted)**

Page 1

1 EDSEL JENKINS  
2 UNITED STATES BANKRUPTCY COURT  
3 FOR THE EASTERN DISTRICT OF MICHIGAN  
4 SOUTHERN DIVISION  
5  
6 In Re:  
7  
8 CITY OF DETROIT, MICHIGAN Chapter 9  
9 Case No.13-53846  
10 Debtor. Hon. Steven Rhodes  
11 \_\_\_\_\_ /  
12  
13 The Videotaped Deposition of EDSEL JENKINS,  
14 Taken at 1114 Washington Boulevard,  
15 Detroit, Michigan,  
16 Commencing at 9:00 a.m.,  
17 Friday, July 25, 2014,  
18 Before Kathy Adkins, CRR, RMR, CSR-4697.  
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Page 3

1 EDSEL JENKINS  
2 SEAN GALLAGHER, ESQ.  
3 Clark Hill, PLC  
4 212 East Grand River Avenue  
5 Lansing, Michigan 48906  
6 Appearing on behalf of Police and Fire  
7 Retirement System and Police and Fire General  
8 Retirement System.  
9  
10  
11  
12 JEREMY M. MANSON, ESQ.  
13 Williams, Williams, Rattner & Plunkett, P.C.  
14 380 North Old Woodward  
15 Suite 300  
16 Birmingham, Michigan 48009  
17 Appearing on behalf of Financial Guaranty  
18 Insurance Company.  
19  
20  
21  
22  
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24  
25

Page 2

1 EDSEL JENKINS  
2 APPEARANCES:  
3  
4 WILLIAM E. ARNAULT, ESQ.,  
5 BRETT NERAD, ESQ.  
6 Kirkland & Ellis, LLP  
7 300 North LaSalle  
8 Chicago, Illinois 60654  
9 Appearing on behalf of Syncora Capital Assurance.  
10  
11  
12  
13  
14 DEBORAH KOVSKY-APAP, ESQ.,  
15 LESLEY S. WELWARTH, ESQ.  
16 Pepper Hamilton LLP  
17 4000 Town Center  
18 Suite 1800  
19 Southfield, Michigan 48075  
20 Appearing on behalf of the City of Detroit.  
21  
22  
23  
24  
25

Page 4

1 EDSEL JENKINS  
2 DANIEL MORRIS, ESQ.  
3 Dentons US, LLP  
4 1301 K Street, NW  
5 Suite 600, East Tower  
6 Washington, DC 20005  
7 Appearing on behalf of Official Committee of Retirees.  
8  
9  
10  
11 JACOB MARTINEZ, ESQ.  
12 Chadbourne & Parke, LLP  
13 30 Rockefeller Plaza  
14 New York, New York 10112  
15 Appearing telephonically on behalf of Assured  
16 Guaranty Municipal Corp.  
17  
18  
19  
20 ALSO PRESENT:  
21 William A. Dunbar - Video Technician  
22  
23  
24  
25

1 **EDSEL JENKINS**

2 Q. And at that point in time was that the ideal level of

3 staffing?

4 MS. KOVSKY-APAP: Objection, form.

5 **A. I would say no.**

6 BY MR. ARNAULT:

7 Q. And what is -- do you know what the ideal level of

8 staffing is?

9 **A. Ideal would be to have at least 1,000 firefighters and**

10 **at least 300 EMTs in addition to the other**

11 **administrative staff.**

12 Q. And that's as of today you would want 1,000

13 firefighters, 300 EMT, and then what was the other

14 number? Sorry.

15 **A. The other number would be the rest of the**

16 **administrative staff.**

17 Q. Do you know what the ideal staffing level would be for

18 the rest of the administrative staff?

19 **A. Off the top of my head, another maybe 200 people.**

20 Q. And if we look down at the section C, this handles or

21 talks about revenue, is that right?

22 **A. Yes.**

23 Q. What are the sources of revenue for DFD?

24 **A. Sources of revenue for Fire Marshal division, that**

25 **would be the annual permits for occupancy from the**

1 **EDSEL JENKINS**

2 **Fire Marshal, and also through inspections that are**

3 **done by the fire inspectors.**

4 Q. Any other sources of revenue?

5 **A. That would be EMS generated from picking up patients**

6 **and delivering them to the hospitals and for the**

7 **services that the EMTs provide, and grants.**

8 Q. And those are the federal, state and private grants

9 that we talked about before, is that right?

10 **A. That's correct.**

11 Q. And if you wanted to complete an effective

12 restructuring of DFD, you would want to understand the

13 sources of revenue for DFD, is that right?

14 **A. Yes.**

15 Q. And what would you need to do to understand the

16 sources of revenue for DFD?

17 **A. I would look at how it's generated and look at the --**

18 **the rate in which it's generated in terms of billing,**

19 **collection rate, and for grants opportunity.**

20 Q. And who would you talk to to understand the revenue

21 sources of DFD?

22 **A. For that I would speak to the director of budget**

23 **operations, the Fire Marshal, chief of EMS and now our**

24 **grants manager.**

25 Q. Anyone else that you would talk to?

1 **EDSEL JENKINS**

2 **A. The commissioner.**

3 Q. Section D says approximately 95 percent of costs

4 within DFD are labor related, and we had briefly

5 talked about this earlier, but when we were thinking

6 about the costs within DFD and coming from labor, what

7 exactly does that mean?

8 **A. That means that 95 cents out of each dollar that is**

9 **allocated to the Fire Department is for labor.**

10 Q. What's labor comprise?

11 **A. Salaries and ben -- wages and benefits.**

12 Q. Is that for actives or is that just for actives?

13 **A. Yes.**

14 Q. So it doesn't comprise retirees?

15 **A. No, they're handled by a separate entity.**

16 Q. Right. And finally we have E and it talks about some

17 of the ways that operations have been impacted, and we

18 talked about little one, right? The older work force.

19 **A. Yes.**

20 Q. The second one is labor constraints due to work rules,

21 seniority-based promotion, bumping, et cetera, is this

22 referring to certain work rules within the CBAs?

23 **A. Yes, labor constraints due to work rules. I know at**

24 **the repair shop we have general mechanics that work a**

25 **regular shift, and you have emergency mechanics, and**

1 **EDSEL JENKINS**

2 **those mechanics are only allowed to work on apparatus**

3 **if they break down in the field, and they're on call**

4 **24 hours a day, and the apparatus superintendent would**

5 **like to be able to have them do work while they're**

6 **waiting on a call at the shop.**

7 Q. And does that negatively impact operations then?

8 **A. It slows down the repair of the apparatus.**

9 Q. Creates certain inefficiencies?

10 **A. Yes, and with seniority-based promotions, what we're**

11 **moving to is testing, not only just waiting in line,**

12 **seniority based, but testing, looking at your**

13 **professional education, your performance evaluations**

14 **before an individual is progressed up in rank.**

15 Q. Okay. And I understand that there are ongoing

16 negotiations with the labor unions about some of these

17 work rules, is that right?

18 **A. That's correct.**

19 Q. And some of them are occurring in the mediation

20 context, is that right?

21 **A. Yes.**

22 Q. And I just want to caution you, I'm sure your counsel

23 will do the same, not to reveal anything that hasn't

24 been completed yet that's still in ongoing mediation.

25 **A. Um-hum.**

1 **EDSEL JENKINS**

2 **MS. KOVSKY-APAP: And to clarify, by**

3 **completed, you mean anything that has not actually**

4 **been ratified by the union and approved and made**

5 **public; so to the extent that anything is still short**

6 **of the finish line, we're subject to the Court's order**

7 **on mediation and can't discuss it.**

8 THE WITNESS: Okay. Everything is a work

9 in process right now.

10 MS. KOVSKY-APAP: So might be best to just

11 avoid this whole topic.

12 BY MR. ARNAULT:

13 Q. Well, yeah, so I don't want to talk about what you're

14 doing right now and what work rules you may or may not

15 have improved or changed, but if we could just talk

16 about work rules as of this date that you saw to be a

17 problem.

18 Sounds like you mentioned the bumping, the

19 mechanics, the rules around mechanics, are there any

20 other work rules that you saw as problems as of May of

21 2013?

22 **A. No, other than what I mentioned before, I would say**

23 **no.**

24 Q. Nothing related to the grievance procedures?

25 **A. With the grievance, well, that's still under**

1 **EDSEL JENKINS**

2 **negotiations too. That's part of how that will be**

3 **solved, so --**

4 Q. Right, but -- and I don't want to know about that, but

5 at the time that this document was written, outside of

6 the mediation context, did you see the grievance

7 procedures that were in the CBAs as negatively

8 impacting operations?

9 MR. GALLAGHER: Objection to form.

10 **A. I would say no.**

11 BY MR. ARNAULT:

12 Q. But changing work rules was something that was a focus

13 of both you and Conway MacKenzie in May of 2013?

14 **A. Yes.**

15 Q. And then we've also, if we move down, it talks about

16 aged and under-maintained facilities and equipment,

17 and we've talked about that, right?

18 **A. Yes.**

19 Q. The fourth one, is blight significantly impacting

20 service and response times, how did blight impact

21 operations?

22 **A. Well, today there's approximately 60,000 vacant**

23 **dangerous structures in the city of Detroit, and**

24 **that's a fire load. 80, I would say 70 percent of our**

25 **calls are to vacant structures. That takes up time,**

1 **EDSEL JENKINS**

2 **costs money, and also creates injury.**

3 Q. And puts more miles on the vehicles?

4 **A. Yes, it does, other than the men too, men and women**

5 **too.**

6 Q. Yeah. And I'm sure you understand that as part of the

7 city-wide restructuring they will be remediating a

8 certain amount of blight, is that right?

9 **A. Yes.**

10 Q. And will that have a positive effect on DFD?

11 **A. I believe so, yes, yes.**

12 Q. It will reduce the number of calls?

13 **A. The fire side, but it also will leave them, give them**

14 **more opportunity to provide emergency medical**

15 **response, so --**

16 Q. So it will reduce the number of calls; it will

17 decrease the number of miles on the fleet and the

18 people?

19 **A. Yes.**

20 Q. So the remediation of blight will actually save DFD

21 money, would that be fair to say?

22 MS. KOVSKY-APAP: Objection, form and

23 foundation.

24 **A. That's kind of soft right now because when you change**

25 **one part of the equation, something else changes.**

1 **EDSEL JENKINS**

2 BY MR. ARNAULT:

3 Q. Right. I guess I'm thinking if you're making, if 70

4 percent of the calls are to blighted structures, and

5 you remediate some of the blights, you're going to

6 make fewer calls, is that fair?

7 **A. Fewer calls, yeah, and would allow them to perform**

8 **more fire prevention activities.**

9 Q. Right, which is stuff that they, activities that they

10 can't do now.

11 **A. That's correct.**

12 Q. And at the end of the day that's going to make DFD

13 more efficient.

14 **A. Yeah, and make the city safer.**

15 MR. GALLAGHER: Foundation, form.

16 BY MR. ARNAULT:

17 Q. So that was the current situation, if you will, and

18 then if we move down to number two, this is

19 essentially some of the restructuring tasks, is that

20 right?

21 **A. Yes.**

22 Q. And these are all areas that you think would need to

23 be addressed for an effective restructuring?

24 **A. Yes.**

25 Q. And if we just look at little A, it says that CM

**Exhibit 6G**

**City of Detroit Plan Confirmation Factual Propositions**

# **PLAN CONFIRMATION FACTUAL PROPOSITIONS**

## **1. REVENUE PROJECTIONS ARE REASONABLE**

- a. All material revenue streams are included in the Plan projections (**Robert Cline (EY); Caroline Sallee (EY); John Hill (City)**)
  - i. Income tax
  - ii. Property tax
  - iii. Casino tax
  - iv. State revenue sharing
  - v. Utility tax/ users taxes
  - vi. Fines and fees
  
- b. Revenue forecasts and assumptions reflected in the Plan projections are reasonable (**Gaurav Malhotra (EY); Robert Cline (EY)**)
  - i. City is unable and it is impractical to raise taxes (**Kevyn Orr (EM); Michael Duggan (City); Robert Cline (EY); Caroline Sallee (EY)**)
  
  - ii. State revenue sharing contributions are expected to be consistent with assumptions in the Plan (**Robert Cline (EY); Caroline Sallee (EY); Gaurav Malhotra (EY)**)
  
  - iii. Restructuring and reinvestment initiatives are reasonably expected to lead to slightly increased revenues and decreased expenses over the next 10 years (**Gaurav Malhotra (EY); Charles Moore (Conway); John Hill (City); Michael Duggan (City); Beth Niblock (City)**)
  
  - iv. Plan projections are generally consistent with the City's internal forecasts (**John Hill (City)**)
  
  - v. The City reasonably expects to be able to obtain required exit financing (**Gaurav Malhotra (EY); Kenneth Buckfire (Miller Buckfire)**)

## 2. FEASIBILITY (11 U.S.C. § 943(b)(7))

- a. The Plan projections present a realistic picture of the City's ability to pay its expenses and obligations under the Plan and fund reinvestment and revitalization programs (**Gaurav Malhotra (EY); John Hill (City); Michael Duggan (City)**)
  - i. City is able to fund normal municipal operations and provide adequate services post-confirmation (**Gaurav Malhotra (EY); John Hill (City); Michael Duggan (City); Brenda Jones (City); Rip Rapson (Kresge); Dan Gilbert (Rock Ventures); Roger Penske (Penske Corp.)**)
    1. The City's restructuring and reinvestment initiatives are necessary:
      - a. Blight (**Kevyn Orr (EM); Michael Duggan (City); Rip Rapson (Kresge); Dan Gilbert (Rock Ventures)**)
      - b. Public Safety (Police, Fire, EMS) (**Kevyn Orr (EM); Michael Duggan (City); James Craig (City)**)
      - c. Finance (**John Hill (City)**)
      - d. Information Technology (**Beth Niblock (City)**)
    - ii. City is able to also satisfy obligations under the Plan ( **Gaurav Malhotra (EY); John Hill (City); Michael Duggan (City)**)
      1. Grand Bargain facilitates payment of City's pension obligations (**Kevyn Orr (EM); John Hill (City); Gaurav Malhotra (EY)**)
      2. City's restructured legacy costs are reasonable and manageable (**Gaurav Malhotra (EY); John Hill (City); Glenn Bowen (Milliman)**)
      3. City can afford to issue new B-notes to non-pension unsecured creditors (**Gaurav Malhotra (EY); John Hill (City)**)
      4. The City can afford exit financing (**Gaurav Malhotra (EY); Kenneth Buckfire (Miller Buckfire)**)
  - b. Plan is likely to be sustainable for the long-run (**Michael Duggan (City)**)
    - i. Post-confirmation City governance is sustainable (**Michael Duggan (City); Brenda Jones (City)**)
      1. The City will be subject to certain ongoing State oversight (**Michael Duggan (City); Brenda Jones (City)**)
    - ii. Plan provides the City Council and Mayor with tools that were previously unavailable to the City prior to the Chapter 9 Case to implement and build upon revitalization efforts developed under the Plan (**Michael Duggan (City); Brenda Jones (City)**)
    - iii. Community and business leaders have faith in the Plan and have planned complementary projects to enhance the City's reinvestment and restructuring efforts (**Rip Rapson (Kresge); Dan Gilbert (Rock Ventures); Roger Penske (Penske Corp.)**)



- iv. Plan has been designed to work whether or not the City obtains access to the capital markets in the near future, nevertheless, it is more likely than not that the City will secure access to the capital markets, particularly for DWSD and other special revenue secured debt, post-confirmation (**John Hill (City); Kenneth Buckfire (Miller Buckfire)**)

### 3. REASONABLENESS OF FED. R. BANKR. P. 9019 SETTLEMENTS IN THE PLAN

- a. Settlements in the Plan are: (1) fair, equitable and reasonable settlements of complex issues; (2) are agreements reached in mediation supervised by distinguished judicial officers and thus should be presumed to be the product of good faith arm's length bargaining; (3) further the policies and purposes of chapter 9; and (4) are in the best interests of the City, its creditors and all other parties in interest. **(Kevyn Orr (EM))**
  - i. UTGO Settlement **(Kevyn Orr (EM); Gaurav Malhotra (EY))**
    1. The City will establish the range of reasonableness
    2. The product of the UTGO Settlement is within the range of reasonableness in that it provides economic benefit (preservation of *ad valorem* taxes) to the City
  - ii. OPEB Settlement **(Kevyn Orr (EM); Gaurav Malhotra (EY); Suzanne Taranto (Milliman))**
    1. The City will establish the range of reasonableness
    2. The product of the OPEB Settlement is within the range of reasonableness in that it is between the parties' respective litigation positions and represents a fair compromise of the factual and legal arguments
  - iii. Grand Bargain Settlement **(Kevyn Orr (EM); Michael Duggan (City); Rip Rapson (Kresge); Dan Gilbert (Rock Ventures); Roger Penske (Penske Corp.); Vanessa Fuco (Christie's); [DIA])**
    1. ***Foundation and DIA Contributions in Exchange for Settling City's DIA Ownership Claims***
      - a. The City will establish the range of reasonableness
      - b. Christie's valuation and State AG opinion informs the range of reasonableness; the City is currently seeking expert evaluation of value of the entire collection
      - c. Values contributed by State, DIA, Foundations and unions falls within the range of reasonableness
      - d. Preserves cultural asset of the City that also provides economic benefit and provides the City with a unique and practical opportunity to obtain significant value from third parties on account of its interest in the collection
    2. ***State Contribution in Exchange for Release of Claims***
      - a. The consideration provided by the State is reasonable in view of the scope of releases
      - b. Legislation and other conditions precedent that must be satisfied by the time of confirmation are on track to be satisfied (e.g. recent passage of contribution legislation by the Michigan House of Representatives)

#### **4. BEST INTERESTS (11 U.S.C. § 943(b)(7) / FAIR AND EQUITABLE (11 U.S.C. § 1129(b)(1))**

- a. There is no requirement to sell City assets, whether assets are characterized as core or non-core (**Kevyn Orr (EM)**)
- b. DIA is a “core” asset (**Kevyn Orr (EM); [DIA]**)
  - i. The DIA provides an economic contribution to the City (**Kevyn Orr; [State]; [DIA]; Rip Rapson (Kresge)**)
  - ii. The DIA provides a cultural contribution to the City (**[DIA]**)
- c. Creditors are receiving all they can reasonably expect under the circumstances (**Kevyn Orr (EM); Gaurav Malhotra (EY)**)
- d. No creditor will do better outside chapter 9 (**Gaurav Malhotra (EY); Kenneth Buckfire (Miller Buckfire)**)
- e. City is unable and it is impractical to raise taxes (**Kevyn Orr (EM); Michael Duggan (City); Robert Cline (EY); Caroline Sallee (EY)**)
- f. Restructuring and reinvestment initiatives help the City provide adequate levels of municipal services (**Kevyn Orr (EM); Charles Moore (Conway); Michael Duggan (City); Brenda Jones (City); Beth Niblock (City); Rip Rapson (Kresge); Dan Gilbert (Rock Ventures); Roger Penske (Penske Corp.)**)
  - i. The needs City’s residents are legitimately given priority over payment of debts (**Kevyn Orr (EM); Michael Duggan (City); Brenda Jones (City); Rip Rapson (Kresge); Dan Gilbert (Rock Ventures); Roger Penske (Penske Corp.)**)
  - ii. The City’s reinvestment initiatives are necessary to provide adequate levels of municipal services, helping to stabilize declining population and are primarily devoted to the following (**Kevyn Orr (EM); Charles Moore (Conway); Michael Duggan (City); Brenda Jones (City); John Hill (City); Beth Niblock (City); Rip Rapson (Kresge); Dan Gilbert (Rock Ventures); Roger Penske (Penske Corp.)**)
    - 1. Blight
    - 2. Public Safety (Police, Fire, EMS)
    - 3. Finance
    - 4. Information Technology
  - iii. The City’s restructuring and reinvestment initiatives cannot be achieved with less money (**Kevyn Orr (EM); Charles Moore (Conway); Michael Duggan (City)**)
- g. DWSD-related issues are treated fairly (**Sue McCormick (DWSD); Kenneth Buckfire (Miller Buckfire)**)
  - i. The modification to the DWSD-related bond claims are fair and equitable
  - ii. DWSD is in need of capital improvements

## **5. RESET OF DWSD INTEREST RATES IS CONSISTENT WITH REQUIREMENTS OF BANKRUPTCY CODE SECTION 1129(b)**

- a. Proposed interest rates for impaired issues of DWSD-debt give holders payments having a present value equal to the allowed amount of their claims (**Kenneth Buckfire (Miller Buckfire)**)
- b. No liens have been modified
  - i. The payments to GRS are operating and maintenance expenses
- c. Modification of call protection is appropriate and does not result in any additional allowed claims

## 6. NO UNFAIR DISCRIMINATION (11 U.S.C. § 1129(b)(1))

- a. The Plan provides an augmented recovery for pensioners while respecting the Bankruptcy Code's prohibition against unfair discrimination between creditor classes (**Kevyn Orr (EM); Michael Duggan (City)**)
- b. The Plan's distributions on account of pension claims are, in part, made up with non-debtor contributions
  - i. State contribution funds are not the City's funds and would not otherwise be available to the City (**Kevyn Orr (EM); Rip Rapson (Kresge); [DIA]; Dan Gilbert (Rock Ventures); Roger Penske (Penske Corp.)**)
  - ii. Foundations and DIA funds are not the City's funds and would not otherwise be available to the City (**Kevyn Orr (EM); [DIA]; Dan Gilbert (Rock Ventures); Roger Penske (Penske Corp.)**)
  - iii. The Plan's distribution percentages should be regarded as lower than calculated based on settlement assumption of 6.75% (**Charles Moore (Conway); Glenn Bowen (Milliman)**)
- c. The remaining difference in treatment is justified by the unique aspects of pension claims (**Charles Moore (Conway); Glenn Bowen (Milliman)**)
  - i. Purpose of chapter 9 is to help municipalities restore adequate services, and funding pensions over bondholders will further facilitate this purpose (**Kevyn Orr (EM); Michael Duggan (City); Brenda Jones (City); Charles Moore (Conway); John Hill (City)**)
  - ii. Providing better treatment to pensioners will promote relationships with those whose ongoing cooperation is vital to the City's recovery (**Kevyn Orr (EM); Michael Duggan (City); Brenda Jones (City); Rip Rapson (City)**)
  - iii. Comparative harm to individuals versus institutions (**Kevyn Orr (EM); Michael Duggan (City)**)

## **7. PROPOSED IN GOOD FAITH (11 U.S.C. § 1129(a)(3))**

- a. Good faith should be measured based on the totality of the circumstances (**All City Witnesses**)
  - i. Settlements were achieved with numerous and distinct parties (e.g., secured v. unsecured; labor v. non-labor; individuals v. institutions)
  - ii. General consensus among all the parties is that the City is in need of reinvestment and restructuring
  - iii. The Plan requires shared sacrifices from all interested parties
  - iv. Mediated settlements included in Plan have to be presumed to be in good faith

## 8. DWSD-RELATED ISSUES

- a. The DWSD pension funding proposed under the Plan is lawful (**Glenn Bowen (Milliman)**)
- b. The Plan's allocation of proceeds from a potential DWSD transaction is lawful (**Gaurav Malhotra (EY); John Hill (City)**)

## **9. ALTERNATIVE SAVINGS FUND RECOUPMENT**

- a. Explanation of program and its impact (**Charles Moore (Conway)**)
- b. Explanation of how the City determined its calculations and caps (**Charles Moore (Conway); Glenn Bowen (Milliman)**)



## 10. NONCONSENSUAL THIRD PARTY RELEASES

- a. The City has identified “unusual circumstances” that satisfy some or all of the seven factors identified in *Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.)*, 280 F.3d 648, 658 (6th Cir. 2002) (**Kevyn Orr (EM)**)
  - i. The failure to obtain approval of and effect the release, injunction, exculpation and discharge provisions of the Plan would seriously impair the City’s ability to confirm the Plan (**Kevyn Orr (EM)**)
  - ii. The contributions and concessions by the third party releasees are an essential component to the reorganization of the City and its future success and to the feasibility of the Plan. (**Kevyn Orr (EM)**)

**11. 36TH DISTRICT COURT**

- a. Explanation of the City's ownership of property related to and the financial relationship with the 36th District Court (**Gaurav Malhotra (EY); John Hill (City)**).

Will Call Witnesses

1	Glenn	Bowen	Milliman
2	Ken	Buckfire	Miller Buckfire
3	Robert	Cline	EY
4	James	Craig	Detroit Police Chief
5	Michael	Duggan	Detroit Mayor
6	Vanessa	Fuco	Christie's
7	Dan	Gilbert	Rock Ventures
8	John	Hill	Detroit Chief Financial Officer
9	Brenda	Jones	City Council President
10	Gaurav	Malhotra	EY
11	Sue	McCormick	DWSD
12	Charles	Moore	Conway MacKenzie
13	Beth	Niblock	Detroit Chief Information Officer
14	Kevyn	Orr	Detroit Emergency Manager
15	Roger	Penske	Penske Corp.
16	Rip	Rapson	Kresge
17	Caroline	Sallee	EY
18	Suzanne	Taranto	Milliman

Conditional Call Witness List

1	Tonya	Allen	Skillman
2	Graham	Beal	DIA
3	Ryan	Bigelow	Retirement Systems' Chief Investment Officer
4	Annmarie	Erickson	DIA
5	Eugene	Gargano	DIA
6	Edsel	Jenkins	Detroit Executive Fire Commissioner
7	Susan	Mosey	DIA-related
8	Michael	Paque	KCC
9	Marc	Schwartz	DIA-related
10	Cynthia	Thomas	Retirement Systems' Administrator
11	Peter	Walsh	KCC

**Exhibit 6H**

**7/29/2014 Deposition Transcript of D. Gilbert (excerpted)**

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DAN GILBERT  
IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

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

---

The Videotaped Deposition of DAN GILBERT,  
Taken at 4000 Town Center, Suite 1800,  
Southfield, Michigan,  
Commencing at 9:46 a.m.,  
Tuesday, July 29, 2014,  
Before Cheri L. Poplin, CSR-5132, RPR, CRR.

1 DAN GILBERT  
2 discussions with the mediators that have been  
3 appointed in this case?  
4 **A. Who are the mediators?**  
5 Q. Okay. Well, let me ask a better question. Are you  
6 aware that this -- in this bankruptcy the Court has  
7 appointed mediators to help out?  
8 **A. I think I've read that, yes.**  
9 Q. Okay. Have you had -- and Judge Rosen is one of those  
10 mediators?  
11 **A. Yeah.**  
12 Q. Okay. Have you had any conversations with Judge Rosen  
13 about the Grand Bargain?  
14 **A. Yeah. He called me up.**  
15 Q. Okay.  
16 **A. Well, let me see was it about the Grand Bargain. I**  
17 **know he called me up and asked me to attend some**  
18 **event. I can't recall whether it was about**  
19 **specifically -- no. I don't -- I don't think he -- we**  
20 **talked about the Grand Bargain actually.**  
21 Q. Have you had any conversations with Judge Rosen about  
22 the case in general?  
23 **A. Yeah. In general. And that phone call when he called**  
24 **me, how's it going, what do you think, you know, that**  
25 **kind of thing.**

1 DAN GILBERT  
2 Q. Okay. But he didn't ask you to donate to the Grand  
3 Bargain?  
4 **A. I don't believe so. No. Because I know he didn't**  
5 **because that was -- the person who came in was the guy**  
6 **that runs the -- well, he's the -- he doesn't run it.**  
7 **He's the non-paid chairman. I don't know his name.**  
8 THE WITNESS: Do you guys know his name?  
9 MR. SHUMAKER: From the DIA?  
10 THE WITNESS: Yeah.  
11 **A. He came in. If I heard his name, I'd know it.**  
12 BY MR. ARNAULT:  
13 Q. I don't know. So this was --  
14 MR. SHUMAKER: Gargaro?  
15 THE WITNESS: No. It's not him. He  
16 runs -- it's the other guy. The guy who's -- Gene --  
17 the other Gene. Gene --  
18 BY MR. ARNAULT:  
19 Q. Driker?  
20 **A. No, no, no. Maybe. I don't know. I've got to get --**  
21 **I'm sorry.**  
22 Q. That's all right.  
23 **A. He's the -- he's like the -- he's like the chairman of**  
24 **the board. He doesn't work there. He's like the**  
25 **nonprofit chairman of the board guy.**

1 DAN GILBERT  
2 Q. Okay.  
3 **A. Might be Driker. I just don't know.**  
4 Q. Okay.  
5 **A. I don't think it is. I think this guy -- Driker is a**  
6 **Wayne State guy. I think he -- he worked at Comerica**  
7 **before this.**  
8 Q. And do you know if you've had any conversations with  
9 any of the other mediators besides that one  
10 conversation with Judge Rosen?  
11 **A. Who's the other mediators?**  
12 Q. So as far as you know, no?  
13 **A. Well, yeah. I've got to know their names so I can**  
14 **tell you.**  
15 Q. Okay. But it was never in -- to be honest, I don't  
16 have them off the top of my head either. But as far  
17 as you know, there were never any conversations with  
18 mediators about the bankruptcy case; is that right?  
19 MR. SHUMAKER: That he had?  
20 MR. ARNAULT: Yeah. That he had.  
21 **A. Yeah. You know, until I know the names of the people**  
22 **I don't want to go on record and say that, so I**  
23 **don't . . .**  
24 BY MR. ARNAULT:  
25 Q. Sure. That's fair. And who were you first contacted

1 DAN GILBERT  
2 by about donating to the Grand Bargain?  
3 **A. Yeah. This was Gene -- I'm going to get you his name.**  
4 Q. Okay. Yeah. Yeah.  
5 **A. Want his name?**  
6 Q. Sure.  
7 **A. You can ask the que -- I'll just keep talking.**  
8 MR. SHUMAKER: Is it Graham?  
9 BY MR. ARNAULT:  
10 Q. Was it Graham Beal?  
11 **A. Yes. That's it.**  
12 Q. All right. There we go.  
13 **A. Did I say Gene?**  
14 Q. Yeah.  
15 **A. Graham.**  
16 Q. Okay.  
17 **A. Graham Beal.**  
18 Q. So Graham Beal called you in about May 2014 asking you  
19 to donate to the Grand Bargain?  
20 **A. Yeah. He said to come into the -- he wanted to meet,**  
21 **come to the office, and when he came to the office, he**  
22 **talked about it, yes.**  
23 Q. Okay.  
24 **A. And Matt Cullen was in the meeting with me from my**  
25 **office.**

1 **DAN GILBERT**

2 Q. Okay. And what did he say about donating to the Grand

3 Bargain when you had this meeting with him?

4 MR. SHUMAKER: I'm going to object because

5 I believe that any of these discussions would have

6 been covered by the mediation order, and, as you know,

7 Judge Rhodes has indicated that there are not going to

8 be communications revealed in connection with those

9 mediations, and so I think this is off limits.

10 MR. ARNAULT: Okay. So your position is

11 that Mr. Gilbert was part of the -- the mediation?

12 MR. SHUMAKER: Yes. I -- I believe that's

13 correct.

14 MR. ARNAULT: Okay. And you're going to

15 instruct him not to answer any questions about what

16 was discussed during the meeting with Mr. Beal?

17 MR. SHUMAKER: His personal attorney can do

18 that, but that is our position, yes.

19 MR. ARNAULT: Okay.

20 MR. SHUMAKER: The City's position.

21 BY MR. ARNAULT:

22 Q. After that meeting in May 2014, did you have any other

23 meetings with the DIA or anyone about the Grand

24 Bargain?

25 **A. No.**

1 **DAN GILBERT**

2 Q. Did you agree at that meeting to donate to the Grand

3 Bargain?

4 **A. Yes.**

5 Q. And I assume you were aware of that back in November

6 or early 2013 when the Grand Bargain was first

7 materializing? Were you aware of that?

8 MR. SHUMAKER: Object to the form.

9 **A. Aware -- I don't understand the question.**

10 BY MR. ARNAULT:

11 Q. Well, did you see any -- prior to the point in time

12 when you donated, did you see any media reports about

13 the -- the formation of the Grand Bargain and the fact

14 that all these foundations were contributing?

15 **A. I -- I really can't recall whether the meeting is the**

16 **first time I heard it or I read it -- I'm sure it was**

17 **all around the same time. I just can't recall.**

18 Q. There was never a point in time when the media reports

19 came out and you saw that all these foundations were

20 donating and made the decision or decided not -- not

21 to donate?

22 **A. That -- that I made the decision not to donate?**

23 Q. Yeah. Or you just -- you decided -- you didn't see

24 that and say, well, maybe I should donate to the Grand

25 Bargain?

1 **DAN GILBERT**

2 **A. No. I don't think so. I don't think I -- I can't**

3 **tell you for sure, you know, recollection of dates.**

4 **But I do believe that the meeting was likely the first**

5 **time that I heard the specifics about it or, you know.**

6 Q. And the first time that you were approached about it?

7 **A. Yeah.**

8 Q. Why did you decide to donate to the Grand Bargain?

9 **A. Well, we -- we're heavily invested in the City of**

10 **Detroit and its well-being and, you know, they're**

11 **asking us to participate along with other businesses**

12 **and foundations and -- and companies that if we could,**

13 **you know, have a way where the -- these pensioners**

14 **could get their -- you know, most of their pensions**

15 **and we could also move the DIA outside of the assets**

16 **of the City, as it probably should have been done a**

17 **long time ago. You know, it's hard to sort of say no**

18 **to that based on our position where we're at.**

19 Q. So you understood when you agreed to donate that you

20 would be helping to save the art in the DIA; is that

21 right?

22 MR. MORRIS: Objection. Form.

23 **A. First of all, my understanding reading this stuff,**

24 **there may be zero legal authority, anyway, for -- for**

25 **those assets to be subject to bankruptcy, so I'm not**

1 **DAN GILBERT**

2 **sure that that's a great way to characterize it. We**

3 **were saving -- the safer thing for sure would be to**

4 **move it outside of the City.**

5 BY MR. ARNAULT:

6 Q. Okay. So you understood that when you were donating,

7 you were helping to transfer the assets in the DIA

8 outside the City? Would that be a better way to put

9 it?

10 MR. MORRIS: Objection. Form.

11 MR. SHUMAKER: Object to the form.

12 **A. Say -- say that again.**

13 BY MR. ARNAULT:

14 Q. You understood that when you were donating money to

15 the Grand Bargain that the money would be used to

16 transfer the DIA assets out of the City? Would that

17 be a fair way to put it?

18 MR. MORRIS: Same objection.

19 MR. SHUMAKER: Same objection.

20 **A. Yeah. I think going -- I think the way it was**

21 **presented was going forward in time and as part of**

22 **this agreement and all the creditors and the judge,**

23 **that that would be the case and the results of this**

24 **would be that the museum would then sit outside going**

25 **forward. Yeah.**

1 DAN GILBERT

2 BY MR. ARNAULT:

3 Q. Okay. So you understood that the art in the DIA was

4 part of the Grand Bargain; would that be fair?

5 **A. I don't understand the question, if the art was part**

6 **of it.**

7 Q. Or that it was one of the components of the Grand

8 Bargain?

9 **A. Still -- I don't understand the question.**

10 Q. Would you have entered into the Grand Bargain if one

11 of the terms of the Grand Bargain was that -- actually

12 strike that.

13 Would you have entered into the Grand

14 Bargain if the art was not being transferred as part

15 of the Grand Bargain?

16 MR. SHUMAKER: Object to the form.

17 MR. MORRIS: Object to form.

18 **A. I don't know how to answer that question. The way it**

19 **was presented to us was this is how it's all going to**

20 **work, do you want to be in or out, and we said**

21 **we'll -- yeah, we'll participate, so I can't speculate**

22 **to possibilities of things.**

23 BY MR. ARNAULT:

24 Q. Okay. It was essentially here's the structure, are

25 you going to agree or not agree; is that right?

1 DAN GILBERT

2 **A. Yeah. I mean, they didn't say it like -- you know,**

3 **that way, but they said here's -- here's -- here's**

4 **what we want to do here, here's how it's going to all**

5 **work, here's who we think is going to participate,**

6 **would you guys participate at this level, and we said**

7 **yes.**

8 Q. Did you propose any changes to the structure of the

9 deal?

10 **A. No.**

11 Q. And did you understand that the money you provided

12 would go directly to the retirees?

13 **A. Yeah. I believe it was -- it was presented that way**

14 **to us, that this will hel -- again, I can't recall the**

15 **word for word, it was a verbal thing, but this would**

16 **help save the majority of the -- the pensioners'**

17 **pensions and they were at the same time moving forward**

18 **forever, so if this -- you know, in the one in a**

19 **million chance this happened again, it would -- you**

20 **know, it wouldn't even be a question as to the assets**

21 **being outside of the City.**

22 Q. Would you have entered into the Grand Bargain if the

23 money you contributed did not go directly to the

24 retirees?

25 MR. SHUMAKER: Object to the form.

1 DAN GILBERT

2 MR. MORRIS: Object to form.

3 **A. So where would it go? I mean, I guess I would ask the**

4 **question if it wasn't there, I would say, okay, well,**

5 **where -- where is it going to go to?**

6 BY MR. ARNAULT:

7 Q. Would you have contributed money to the Grand Bargain

8 if some of the money went to pay the debts of the

9 City's other financial creditors?

10 MR. SHUMAKER: Object to the form.

11 MR. MORRIS: Objection. Form.

12 **A. I'd have to understand who the creditors were and**

13 **what -- I -- I guess there's thousands of creditors;**

14 **right? I don't -- so I'd need to know more specifics**

15 **for -- to answer that question.**

16 BY MR. ARNAULT:

17 Q. Okay. Would you have contributed money to the Grand

18 Bargain if some of the money went to pay the debts of

19 the insurers who insure the City's Certificates of

20 Participation?

21 MR. SHUMAKER: Object to the form.

22 MR. MORRIS: Objection. Form.

23 MR. SHUMAKER: Calls for hypothetical.

24 THE WITNESS: So do you want me to answer

25 the question?

1 DAN GILBERT

2 MR. SHUMAKER: Go ahead.

3 **A. No. You know, to think that sophisticated Wall Street**

4 **insurance companies and investors who knew the City of**

5 **Detroit was in dire financial straits for decades and**

6 **took a risk in insuring those bonds and -- would I**

7 **personally have invested money into a scheme that**

8 **would get them part of the recovery? No. The answer**

9 **is no.**

10 BY MR. ARNAULT:

11 Q. Okay. And you say that sophisticated Wall Street

12 banks and companies who invested in the City of

13 Detroit.

14 **A. Um-hmm.**

15 Q. Do you know what information they were provided in

16 connection with those investments?

17 **A. No. I would assume that they were provided whatever**

18 **is required by the law. I don't know.**

19 Q. But you haven't looked at exactly what was provided?

20 **A. No. No.**

21 Q. And you don't know what representations were made by

22 the City to those financial creditors?

23 **A. No. I'm sure they did their due diligence, though.**

24 Q. Would you have contributed money to the Grand Bargain

25 if some of the money was earmarked to demolish blight