

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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Debtor. : 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 CERTAIN MATTERS PREVIOUSLY
DEEMED IRRELEVANT BY THE COURT OR THE CITY OF DETROIT**

Financial Guaranty Insurance Company (“FGIC”) respectfully submits this Motion in Limine (the “Motion”) to preclude at the hearing (the “Confirmation Hearing”) on the *Corrected Fifth Amended Plan for the Adjustment of Debts of the City of Detroit* (July 29, 2014) [Dkt. No. 6379] (the “Plan”) the introduction of evidence or testimony relating to the following matters previously deemed irrelevant by the Court and/or the City of Detroit (the “City”): (a) the validity of the COP Claims¹; (b) the alleged needs and hardships of the Holders of Pension Claims; and (c) the terms and conditions of the settlement negotiations leading to the “Grand Bargain.”

PRELIMINARY STATEMENT

1. Despite the fact that the Court and/or the City have previously deemed certain issues irrelevant to the confirmation of the Plan, the City now appears to be relying on those issues in support of confirmation. Specifically, the Court previously ruled that the needs and hardships of the City’s pensioners are irrelevant with respect to whether the Plan should be confirmed, a ruling with which the City indicated it agreed. The Court also ruled that the terms and conditions of the settlement negotiations leading to the Grand Bargain are irrelevant to the confirmation of the Plan or approval of such settlement, a ruling with which the City also indicated it agreed. Finally, the City previously represented to both the Court and the creditors that the validity of the COP Claims is irrelevant to Plan confirmation issues. As a result of these rulings and representations, FGIC and other creditors have either withdrawn discovery or been denied discovery with respect to each of these issues.

¹ All capitalized terms not otherwise defined herein shall have the meaning 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].

2. In spite of the aforementioned, the City recently made clear that it has relied on these issues in justification of its position that the Plan does not unfairly discriminate against Class 9. The Emergency Manager for the City, Kevin Orr (the “Emergency Manager”), testified as a designee for the City that the reasons the Plan discriminates against Class 9 include, among other things: (i) the purported invalidity of the COP Claims; (ii) compassion for individual pensioners and keeping the “covenant” the City made to provide them with pension payments for the rest of their lives; and (iii) the alleged fact that third parties required their contribution to the Grand Bargain be directed solely to the Retirement Systems. Both the City and the Retirement Systems have also raised certain of these issues in briefs filed with the Court in support of confirmation. As has been previously recognized, however, these factors do not provide a relevant justification for the discrimination against Class 9. Nor are they relevant to any other confirmation standard. Moreover, because FGIC has not had an opportunity to develop the facts and prepare its witnesses with respect to these issues, the introduction of evidence on these issues will result in significant, unfair surprise and prejudice. Accordingly, the Federal Rules of Evidence compel the exclusion of this evidence for the purposes of demonstrating that the Plan should be confirmed or that the settlements therein should be approved.²

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

² As discussed in Section IV, *infra*, the evidence is relevant and admissible for other narrow purposes.

ARGUMENT

I. Legal Standard

4. 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.*, 12013185, 2013 WL 5797614, at *1 (E.D. Mich. Oct. 28, 2013); *see also Dow Corning Corp. v. Weather Shield Mfg., Inc.*, 09-10429, 2011 WL 4506167, at *2 (E.D. Mich. Sept. 29, 2011). “It 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).

5. “In analyzing a motion in limine, the trial court considers issues of relevance, admissibility, and prejudice.” *Bar’s Prods., Inc. v. Bar’s Prods. Int’l, Ltd.*, 10-14321, 2014 WL 1922764, at *1 (E.D. Mich. May 14, 2014). Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence;” and the fact is of consequence in determining the action. Fed. R. Evid. 401.³ 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) (“Irrelevant evidence is not admissible”). Relevancy depends “not only on the character of the evidence

³ Federal Rule of Bankruptcy Procedure 9017 provides that “[t]he Federal Rules of Evidence ... apply in cases under the Code.”

itself but on the purpose for which it is offered.” Thus, “evidence which is not admissible for one purpose may be relevant and admissible for another.” *U.S. v. Hughes*, 308 F. App'x 882, 887 (6th Cir. 2009).

6. Even if the Court finds evidence to be relevant, it should still exclude the evidence if the “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 v. Flagstar Bank*, 295 F.3d 565, 577 (6th Cir. 2002). Courts have “broad discretion in determining potential prejudice based upon the full array of evidence.” *In re Second Chance Body Armor, Inc.*, 421 B.R. 823, 840 (Bankr. W.D. Mich. 2010). “In connection with the underlying principle of this rule, the courts disfavor ‘trials by ambush.’” *Jervis B. Webb Co. v. Kennedy Grp.*, No. 07-10571, 2008 U.S. Dist. Lexis 67941, at *4 (E.D. Mich. Sept. 5, 2008). Accordingly, “unfair surprise is a factor to be considered under Rule 403.” *U.S. v. Price*, 13 F.3d 711, 719 (3d Cir. 1994).

II. The Court Should Exclude Evidence Relating to the Validity of the COP Claims

7. On January 31, 2014, the City commenced an adversary proceeding (the “Adversary Proceeding”) in the Chapter 9 Case by filing a complaint alleging, among other things, that certain service contracts related to the COPs are illegal, void and of no effect. *See* Complaint for Declaratory and Injunctive Relief, *City of Detroit v. Detroit General Retirement System Service Corporation et al.*, Adv. Proc. No. 14-04112 (Bankr. E.D. Mich. Jan. 31, 2014) [Dkt. No. 1]. At the May 28, 2014 hearing before this Court, however, the City represented that evidence regarding the validity or invalidity of the COP Claims would not be introduced at the Confirmation Hearing because validity issues are irrelevant to whether the Plan should be confirmed:

Mr. Bennett: As to the first question, which relates to proof relating to factual issues on COPs validity, **we do not think that's part of the confirmation hearing**.... With respect to the COPs proposal to effectively bring to court a character witness for the COPs, we have said – first of all, that's the kind of thing that real time limits will eliminate because **it isn't germane to anything** – any of the business that we actually have to conduct at the confirmation hearing.

Hr'g Tr. 94:20-23; 231:4-9, May 28, 2014. The City also articulated precisely why the validity of the COP Claims is irrelevant for purposes of determining whether the Plan should be confirmed:

Mr. Bennett: We view the confirmation hearing insofar as it relates to the COPs as dealing with the adequacy of the reserves that are in the plan for the payment of the COPs in the event that they turn out to be valid, and that's why there are no fact issues in our statement relating to the COPs.... and we have said in an effort to be constructive, in an effort to narrow issues, that **we regard the issue as the adequacy of the claims reserve, which assumes that at the end of the day the COPs claims are allowed in full**... I think that it would be also fair to instruct the city that for purposes of confirmation the COPs are assumed to be an allowed claim...

Hr'g Tr. 94:23-95:3; 231:10-13; 231:25-232:2, May 28, 2014.

8. The Court accepted these representations and, on that basis, indicated that the only way in which evidence related to the transactions pursuant to which the COPs were issued (the “COPs Transactions”) might be allowed in at the Confirmation Hearing is to the extent the parties choose to “open the door” to the issue. *See* Hr'g Tr. 175:7-177:23, May 28, 2014. Accordingly, in light of the City's representations and the Court's admonitions, and in part to ensure that validity issues do not arise at the Confirmation Hearing, the parties negotiated a stipulation pursuant to which they agreed not call upon certain witnesses and to withdraw subpoenas related to the COPs Transactions. *See* Stipulation By and Between the City of Detroit, Michigan and the COPs Creditors Regarding Certain Facts and the Admission of Certain Exhibits for the Confirmation Trial, ¶¶ 5-6 [Dkt. No. 5984] (“COPs Stipulation”). The Court approved the COPs Stipulation on July 14, 2014. *See* Order Approving Stipulation By and

Between the City of Detroit, Michigan and the COPs Creditors Regarding Certain Facts and the Admission of Certain Exhibits for the Confirmation Trial [Dkt. No. 6002].

9. Despite the City's representations, and the resulting COPs Stipulation entered into by the parties, the Emergency Manager testified on July 22, 2014, that one of the bases for the Plan's discrimination against Class 9 is the alleged invalidity of the COP Claims. Specifically, when asked why the City decided to discriminate against Class 9 in favor of the Retirement Systems, the Emergency Manager responded that one of the reasons is the "legal arguments that have been made in the papers regarding the COPs that we believe they are void ab initio and that we have no obligation." Orr Dep. 223:16-224:10, July 22, 2014 (excerpts of which are attached hereto as Ex. 6A). Indeed, the Emergency Manager confirmed on numerous occasions during his deposition that the purported invalidity of the COP Claims was one of the considerations he took into account in deciding to propose a plan of adjustment that discriminates against Class 9:

Q. And then the last issue that you identified was the invalidity of the COPs; do you remember that?

A. Yes.

Q. And that was something that you factored into your decision in terms of paying the COPs less than classes 10 and 11, correct?

A. Yes.

....

Q. And I – just so I understand the way the judge – the factor plays through your judgment, you looked at the potential invalidity of the COPs and viewed that as one reason to the pay the COPs on their best day 10 cents?

A. Yeah ... I think that's a fair statement.

Q. Okay, I'm talking when you were deciding how to divide the pie, the COPs best day recovery was impacted by this factor of the potential invalidity of the COPs?

A. Yes.

Orr Dep. 237:5-11; 239:23-240:14.

10. In addition to the Emergency Manager's testimony, the Retirement Systems argued in their brief in support of the Plan⁴ that the Plan's discrimination is justified because "the legality of the claims of the COPs holders is subject to serious challenge, as described in the City's pending adversary proceeding. So, to the extent that financial creditors have argued that all unsecured creditors would have the same remedies and ability to obtain a judgment for their claims outside of a chapter 9 proceeding, that argument is belied by the City's own suit..." Retirement System's Brief, 23.

11. Given the aforementioned, it appears likely that the City, the Retirement Systems, and/or other Plan supporters will seek to introduce evidence at the Confirmation Hearing relating to the validity of the COP Claims for purposes of justifying the Plan's discrimination against Class 9. However, as the City previously represented, the terms of the Plan are neutral with respect to the validity of the COP Claims, reserving New B Notes in a Disputed Claims Reserve on behalf of Holders of Cop Claims until such time as it may be determined that such Holders have Allowed Claims against the City. As such, any evidence relating to validity of the COP Claims has no bearing on whether the Plan should be confirmed, rendering such evidence irrelevant and inadmissible at the Confirmation Hearing. *See U.S. v. Cope*, 312 F.3d 757, 775 (6th Cir. 2002) ("To be relevant, evidence need have some bearing on the probability of the existence of any fact that is of consequence to the determination of the action.") (citation and internal quotations omitted); *Search Mkt. Direct, Inc. v. Jubber (In re Paige)*, 439 B.R. 786, 796-797 (D. Utah 2010) (affirming bankruptcy court's decision to exclude evidence that was irrelevant to the issues raised in connection with the confirmation of a plan of

⁴ *See* Brief of the Detroit Retirement Systems in Support of Proposed Treatment of Pension Claims Under Proposed Treatment of Pension Claims Under "Alternative A" of the Corrected Fifth Amended Plan for the Adjustment of Debts of the City of Detroit and Statement of Reservations [Dkt. No. 6509] ("Retirement System's Brief").

adjustment because the evidence would not have required the court to make a finding one way or another with respect to those issues).

12. Even if evidence relating to the validity of the COP Claims is minimally relevant (it is not), FGIC will incur significant prejudice and unfair surprise to the extent such evidence is introduced for the purposes of demonstrating that the Plan should be confirmed. FGIC previously agreed to withdraw discovery and potential witness testimony in reliance on the City's representations that the validity of the COP Claims was not an issue relevant to Plan confirmation. *See* COPs Stipulation, ¶¶ 5-6. As a result, FGIC is not adequately prepared to present any evidence or testimony on the issue. As the Ninth Circuit made clear in *Daly v. FESCO Agencies NA Inc.*, matters disclosed for the first time shortly before trial should be excluded "based on unfair surprise and prejudice" as "there ha[s] been no opportunity for discovery regarding [] those matters." 108 Fed. App'x 476, 479 (9th Cir. 2004); *see also C. Van Der Lely N.V. v. F Lli Maschi S.n.c.*, 1983 U.S. Dist. Lexis 16430, at *36 (S.D. Ohio June 7, 1983) (where no discovery occurred with respect to a particular issue as a result of the defendant's representation "that it was dropping any claim or defense based on [that issue,]" the introduction of evidence at trial related to that issue would "greatly prejudice" the plaintiff because it would "permit the defendant to 'ambush' the plaintiff at trial"). Thus, in light of the significant prejudice that FGIC will otherwise incur, any evidence or testimony related to the validity of the COP Claims should be excluded for purposes of demonstrating that the Plan should be confirmed or that the settlements therein should be approved.

III. The Court Should Exclude Evidence Relating to the Needs or Hardships of Creditors

13. Both the Court and the City have previously made clear that evidence relating to the needs or hardships of the creditors – including Holders of Pension Claims – is not

a relevant factor in determining whether the City's Plan should be confirmed. The Court addressed the irrelevance of this issue on several occasions:

- Court: "I've never seen a case where in deciding whether to confirm a plan, whether we're talking about best interest test or talking about unfair discrimination or fair and equitable, where the hardship or the neediness of creditors was considered." Hr'g Tr. 102:3-7, June 26, 2014.
- Court: "[I]n the case law I'm familiar with where the issue is the business justification for whatever discrimination is in the plan is determined based on the business needs of the debtor, not the business or financial needs of the creditors." *Id.* at 104:2-6.
- Court: "I'm going to say here as unequivocally as I can that **as a matter of law, creditors' needs is not an issue when it comes to determining unfair discrimination.**" *Id.* at 104:14-17.
- Court: "**[T]he retirees' hardships [i]s not at all relevant to issue of either unfair discrimination or fair and equitable....** [A]s the Court stated earlier, it is unaware of any case law interpreting section 1129 that holds that it is appropriate to consider the relative hardships of creditors in evaluating the issues under that section of the Bankruptcy Code." *Id.* at 128:16-22.
- Court: "I do not want and don't think it relevant to consider a series of retirees or employees, for that matter, testifying about their individual hardship. In my view, **neither fair and equitable nor unfair discrimination has ever in any bankruptcy case considered the impact of a plan on a creditor;** that is to say, the adverse impact of a plan on a creditor. The issue always is the business justification for the treatment from the debtor's perspective." Hr'g Tr. 81:9-17, August 6, 2014.

14. In accordance with the Court's ruling at the June 26, 2014 hearing, council for the City stated that he "can affirm that the city is **not going to be standing on the personal hardship argument.**" Hr'g Tr. 104:10-11, June 26, 2014. Accordingly, in reliance on the Court's holding and the City's representations, counsel for another creditor in Class 9 agreed to withdraw discovery requests related to this issue. *Id.* at 104:25-105:4. In fact, the Court recognized that the discovery requests were withdrawn precisely because of the Court's holding on the matter. *Id.* at 128:13-18 (Court: "The Court did state on the record earlier that it would find that Syncora had withdrawn this request [related to the retirees' personal information] based

on the Court's ruling that the retirees' hardships was not at all relevant to the issue of either unfair discrimination or fair and equitable."'). However, despite the Court's unequivocal ruling, the City's representations, and the resulting withdrawal of discovery requests, the Emergency Manager testified that the needs and hardships of the City's pensioners was a primary factor for the City in discriminating against Class 9:

Q. And what was your basis for the level of discrimination you proposed in the February 21st plan?

A. We were looking, we had been admonished I believe by the court on several occasions to be compassionate in our treatment of individuals and retirees.

...

Q. I want to focus on the process of deciding which creditors get which part of the pie, and I want to understand what information you relied upon in deciding to give pensioners a larger slice of the pie than you gave financial creditors –

A... in deciding what we could pay pensioners, there were, I would say several different factors which really spurred that decision.... Two was the obligation to try to take into account the situation of these pensioners.

Orr Dep. 203:23-204:6; 209:20-210:16, July 22, 2014.⁵

15. The Emergency Manager went on to explain that in determining the hardship to the City's pensioners, he considered "individual meetings with individual employees and pensioners who recount their stories in detail" and he met with "people on the street as well as hear[d] their accounts and press reports." *Id.* at 230:13-231:6.

16. The Emergency Manager also testified that he took into account what he termed "covenants" to the City's pensioners, which he described as "the commitment and reliance on that commitment behind the contractual obligation that various City employees and retirees will come and express to me in very real terms what this means to them." *Id.* at 236:8-

⁵ This testimony is consistent with the arguments the City raised in its Reply to Certain Objections to Confirmation of Fourth Amended Plan for the Adjustment of Debts of the City of Detroit [Dkt. No. 5034] ("City's Reply to Confirmation Objections"), wherein it asserted "the personal hardship that pensioners will endure" as one of the justifications for the Plan's discrimination against Class 9. *See* City's Reply to Confirmation Objections, 45.

12. He agreed, however, that these “covenants” were simply another element of the situation and needs of the pensioners. *Id.* at 236:23-237:4 (“Q. And isn’t it fair to say that this is another element of the human dimension, which is the unfairness of cutting the pensions of people who relied on the City’s covenant in making decisions about how to allocate their work time? A. You could say that.”).

17. Following the Emergency Manager’s testimony, council for the Retirement Systems stated that, with respect to “evidence of individual hardship... [the] parties sort of agreed that that wouldn’t be relevant.” Hr’g Tr. 11:4-6, August 6, 2014. However, in an abrupt change of position from the representations made at the June 26, 2014 hearing, council for the Retirement Systems argued that “if there was, you know, broad impoverishment of retirees, for example, that’s something that could be considered” with respect to justifying the Plan’s discrimination against Class 9. *Id.* at 82:11-15. The Retirement System’s Brief raised these same arguments, alleging that the Plan does not unfairly discriminate because the City’s pensioners purportedly “depend on their accrued pension benefits – often exclusively – for their livelihoods” and because of the alleged need to “avoid[] wide-scale impoverishment of the City’s retirees.” Retirement System’s Brief, 16-17.

18. In addition, it appears as if the Retiree Committee also intends to raise these same arguments. The Retiree Committee has disclosed their intention to rely on the expert testimony of Stuart Wohl. *See* Retiree Committee’s Memorandum of Law in Support of Confirmation of the Plan, [Docket No. 6508], at 27 (“The Committee is prepared to support the settlement through the testimony of fact witnesses, and expert witnesses Howard Atkinson and Stuart Wohl of the Segal Company.”). Mr. Wohl’s expert report is focused almost exclusively on the risks and hardships the Plan will impose on retirees with respect to their healthcare

benefits, as well as the fact that any further reductions “would have been devastating to the Retirees.” Stuart Wohl’s Expert Witness Report, dated July 22, 2014 (excerpts of which are attached hereto as Ex. 6B), at 5. Mr. Wohl also testified at length to this issue in his deposition, confirming that – in his opinion – “significant cuts in benefits are hardships for retirees.” Wohl Dep. 24:11-16, August 13, 2014 (excerpts of which are attached hereto as Ex. 6C).

19. Given the aforementioned, it appears likely that the City, the Retirement Systems, the Retiree Committee and/or other Plan supporters will seek to introduce evidence relating to the needs and hardships of the City’s pensioners for purposes of justifying the Plan’s discrimination against Class 9. The Court’s prior ruling, however, dictates that this evidence is irrelevant and should be excluded from consideration at the Confirmation Hearing. *See Provident Life & Acc. Ins. Co. v. Adie Co.*, 176 F.R.D. 246, 250 (E.D. Mich. 1997) (motions in limine can “involve matters which ought to be excluded from ... consideration ... as a result of previous rulings by the court.”). Moreover, the case law confirms that this evidence is irrelevant. *See In re Arn, Ltd. Ltd. P’ship*, 140 B.R. 5, 12 (Bankr. D.D.C. 1992) (“While the Debtors prefer to pay local businesses in full ... at the expense of banks and other lenders, this treatment is not sanctioned by the Bankruptcy Code. The focus on a particular claim should not be the claimholder, but rather the legal nature of the claim... An unsecured claim is simply that, an unsecured claim.”) (citation omitted); *cf. In re Graphic Commc’n, Inc.*, 200 B.R. 143, 149 (Bankr. E.D. Mich. 1996) (Rhodes, J.) (“[a]ntipathy toward a creditor is not proper basis for discrimination”).

20. In addition, given that discovery requests related to the pensioners’ needs were withdrawn in reliance on the Court’s ruling and the City’s representations, FGIC has not had an opportunity to take discovery or prepare its witnesses on the issue. As such, the

introduction of evidence relating to this issue would cause unfair surprise and prejudice to FGIC, further supporting the exclusion of the evidence for purposes of demonstrating that the Plan should be confirmed or that the settlements therein should be approved. *See, e.g., Daly*, 108 Fed. App'x at 479; *C. Van Der Lely N.V. v. F Lli Maschi S.n.c, Schlossberg*, 1983 U.S. Dist. Lexis 16430, at *36.

21. Importantly, counsel for the Retirement Systems represented at the August 6, 2014 hearing that, in their view, evidence regarding hardships to the City's pensioners is relevant to demonstrating the "hardship on a more macroscopic level to...the community as a whole." Hr'g Tr. 11:6-11, August 6, 2014.⁶ However, this position directly contradicts the Emergency Manager's testimony with respect to how the City gathered and considered information bearing on hardships to the City's pensioners. *See supra* ¶ 15. It is also an issue for which FGIC has not had an opportunity to fully develop the facts or prepare its witnesses. As such, even in this context, the evidence is both irrelevant and prejudicial, and should be excluded.⁷

IV. The Court Should Exclude Evidence Relating to the Terms and Conditions of the Settlement Negotiations That Led to the Grand Bargain

22. The Court has made clear to the parties that "who said what to whom during the mediation that led to the successful settlement is irrelevant." Hr'g Tr. 49:11-14, June

⁶ *See also id.* at 81:25-82:6 ("I just want to make sure that it was clear or understood by all parties that if there is information or an argument to be made as to the impact more broadly on retirees, not just as creditors but more specifically as a part of the entity that we are trying to rehabilitate, that that is relevant and fair game in the context of a Chapter 9.").

⁷ If Plan supporters are ultimately allowed to raise the issue in this context at the Confirmation Hearing, it is critical that they be prohibited from doing so via anecdotal, episodic testimony from individual pensioners. Rather, any such evidence must be introduced solely through empirical data of sufficient magnitude in order to reduce the prejudicial impact of this evidence (even so, however, the evidence will remain prejudicial).

26, 2014. The Court has also articulated that “the issue of unfair discrimination is based upon not where money comes from but where money goes to.” *Id.* at 40:4-5. Pursuant to these directions, the Court denied various discovery requests by creditors in Class 9 directed to the Foundations, including document requests and depositions relating to the terms of the DIA Settlement, the reasons for entering into the DIA Settlement, and the negotiations with the Foundations relating to the DIA Settlement (which is part of the Grand Bargain)⁸:

Court: The Court concludes that none of the 30(b)(6) subjects and none of the documents that are sought from the foundations are relevant to or even arguably relevant to the issues of whether the plan is discriminatory or whether it is unfairly discriminatory, the best interest of creditors or even the extent to which the so-called grand bargain settlement protects the art of the city.

Id. at 126:23-127:5. The Court’s ruling is consistent with the arguments raised by the City in support of the Foundation’s motion to quash the discovery, wherein the City argued that the discovery sought “is far afield from what could reasonably be considered relevant in the upcoming confirmation hearing.” *See* Statement in Support of Foundations’ Mot. to Quash [Dkt No. 5494], at 4.

23. In addition to the Court’s aforementioned ruling, the Mediation Order entered on August 13, 2013 [Dkt. No. 322] has prevented FGIC from obtaining discovery related to the negotiations that took place during the mediation, including details surrounding the conditions allegedly imposed by the parties with respect to the recipients of the settlement proceeds. *See* FGIC’s Motion in Limine to Preclude the Introduction of Evidence or Testimony Regarding Matters Withheld from Discovery Based on the Mediation Order at 4-6 [filed

⁸ *See, e.g.*, John S. and James L. Knight Foundation Subpoena, Schedule A at 3 [Dkt No. 5224, at p. 521]. As noted at the hearing held with respect to these discovery requests, the types of evidence sought included “whether the foundations were the ones that imposed on the city the requirement that all monies go to the retiree classes or whether the city was the one that proposed that to the foundations.” Hr’g Tr. 22:22-25, June 26, 2014.

concurrently herewith] (citing the deposition testimony of various witnesses who refused to provide this information pursuant to the Mediation Order).

24. Nevertheless, the Emergency Manager testified that in discriminating against Class 9, the City took into account the purported fact that the parties who contributed funds to the Grand Bargain insisted that, as a condition to their contribution, the proceeds of this transaction be directed solely to the Retirement Systems:

Q. I want to focus on the process of deciding which creditors get which part of the pie, and I want to understand what information you relied upon in deciding to give pensioners a larger slice of the pie than you gave financial creditors?

A. ... in deciding what we could pay pensioners, there were, I would say, several different factors which really spurred that decision.... Three was that at some point, it became apparent that there was going to be 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.

...

Q. I am talking about, you know, your state of mind though. I'm saying you didn't go and pick winners and losers based on what people's expectations were when they invested?

A. ... We tried to do an analysis of what we could afford to pay based upon the factors we discussed before with an understanding that \$866 million was coming in as a gift from grantors with specific condition that that money would flow to pensioners as opposed to any creditor and that we would accept that gift with that condition when those discussions were made.

Orr Dep. 209:20-210:20, 274:23-275:13, July 22, 2014.

25. Critically, the City has also relied on similar contentions in their Motion to Strike Syncora's Second Supplemental Objection to the Plan [Dkt. No. 6845] ("Mot. to Strike Syncora's Second Supp. Obj."). Specifically, the City repeatedly alleged throughout the motion that "[t]he Grand Bargain makes use of outside funds and charitable contributions that were available **solely for the purposes** of providing relief to pensioners or preserving the DIA in a public trust, or both. Because **these outside donations never would have been available for any other purpose** ... the Grand Bargain does not inflict any cognizable harm on Syncora or anyone else." Mot. to Strike Syncora's Second Supp. Obj. 10-11; *see also id.* at 13 ("Rosen was

simply acknowledging that there were outside donors who were willing to make charitable contributions to the City, but only if the donations were specifically earmarked to provide relief to the City's pensioners."); *id.* at 23 ("the outside donations received by the City were specifically earmarked for pension relief, and they never would have been forthcoming but for the satisfaction of that condition."); *id.* ("even if the City wanted to, it has no ability to redirect these donor-specified gifts").

26. Given the aforementioned, it appears likely that the City and/or other Plan supporters will seek to introduce evidence relating to the conditions allegedly imposed by the parties during the settlement negotiations in support of confirmation. The Court's prior ruling, however, dictates that this evidence is irrelevant and should be excluded from consideration at the Confirmation Hearing. *See Provident Life & Acc. Ins.*, 176 F.R.D. at 250.

27. More importantly, the City should not be allowed to rest on the allegation that parties would not have contributed funds to the Grand Bargain had those funds not been directed solely to the Retirement Systems, when FGIC has not had any opportunity to take discovery on that issue or test its truthfulness. Indeed, because FGIC has been unable to obtain discovery related to this issue, it is impossible for it to further probe this issue to test its veracity and determine who decided, at what point it was decided, and why it was decided that the settlement proceeds would be directed exclusively to the Retirement Systems.

28. Notably, the City cites solely to the testimony of Rip Rapson in support of their contention that the parties who contributed funds to the Grand Bargain would never have provided those funds had they not been directed to the pensioners. *See* Mot. to Strike Syncora's Second Supp. Obj. 11 n.4, 23 n.16. But FGIC has not had an opportunity to depose witnesses from eleven of the twelve Foundations that contributed funds to the Grand Bargain based on the

Court's ruling at the June 26, 2014 hearing.⁹ As such, it is patently unfair for the City to make this contention without FGIC having had an opportunity to develop the facts through discovery.

29. Moreover, even as to Mr. Rapson himself, when further probed at his deposition with respect to the issue, Mr. Rapson was directed not to provide any additional details surrounding the conditions on which the Kresge Foundation purportedly insisted, based on the Mediation Order:

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: 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.

See Rapson Dep. 81:23-87:6, 86:14-87:6, July 31, 2014 (excerpts of which are attached hereto as Ex. 6D).

⁹ *See Order Regarding Foundations' Joint Motion to Quash (Dkt. #5300), entered on June 27, 2014 [Docket No. 5623] (granting motion to quash subpoenas seeking information from the twelve Foundations that contributed funds to the Grand Bargain). FGIC was ultimately allowed to depose Rip Raspon from the Kresge Foundation only because the City included him on their witness list.*

30. Mr. Rapson would not provide any additional testimony on this issue despite the fact that he admittedly made public statements regarding the settlement negotiations and how it came about that the Foundations would provide funds for the benefit of the pensioners. *See id.* 83:23-85:3 (agreeing that he made statement regarding the settlement negotiations and the purpose of the settlement funding at a public address at Wayne State). In fact, during that address at Wayne State – which has been made publicly available through a YouTube video – Mr. Rapson emphasized that “the adjustment of long-term debt with all of the complexities of pensioners **and bondholders** and health benefits and everything else” is “terribly important” to the bankruptcy. *See Detroit Bankruptcy & Beyond – Rip Rapson*, YouTube, https://www.youtube.com/watch?v=z7nXphsL_QA (last visited Aug. 19, 2014). In addition, Mr. Rapson sent numerous emails to the press describing various issues being addressed during the settlement negotiations, including for instance: (a) whether to form a new entity to receive DIA assets; (b) the Foundations’ commitment to provide support for the City; (c) a proposed governance structure involving the Foundations and the DIA; (d) the need for a union contribution to the settlement; and, notably (e) the “motivations driving each of the parties.” *See* K001265-1266; 1272-1273 (attached hereto as Ex. 6E). Nevertheless, when pressed at his deposition for further details regarding the settlement negotiations such that FGIC could test the veracity of his assertions, Mr. Rapson was directed not to provide any testimony on the issue.

31. Moreover, as previously noted, numerous other witnesses also refused to provide details surrounding the conditions allegedly insisted on by the parties who contributed funds to the Grand Bargain. *See, e.g.*, Muchmore Dep. 56:13-57:6, August 4, 2014 (excerpts of which are attached hereto as Ex. 6F) (“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.”); Orr Dep. 336:10-17 (Q. I take it if I ask you questions about your communications with the charitable foundations in connection with their agreement to contribute this money, you will refuse to answer on the grounds of the mediation order's confidentiality provisions; is that correct? A. Yes, generally for most of them, I think that's correct”).¹⁰ As a result, FGIC has been denied any and all opportunity to verify or 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 the Retirement Systems.

32. As the court in *International Tel. & Tel. Corp. v. United Tel. Co. of Florida* articulated, “the failure of a party to allow pre-trial discovery of confidential matter which that party intends to introduce at trial will preclude the introduction of that evidence.” 60 F.R.D. 177, 186 (M.D. Fla. 1973); see also *Baxter Travenol Labs., Inc. v. Abbott Labs.*, No. 84 C 5103, 1987 WL 10988 (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.”). The court in *International Tel. & Tel. Corp.* aptly noted 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.” 60 F.R.D. at 186. Because FGIC has been denied discovery time and time again with respect to the settlement negotiations, including the conditions on which the parties

¹⁰ See also FGIC's Motion in Limine to Preclude the Introduction of Evidence or Testimony Regarding Matters Withheld from Discovery Based on the Mediation Order at 4-5 (filed concurrently herewith).

insisted during those negotiations, “fundamental fairness and justice” requires that such evidence be excluded to the extent it is introduced for purposes of demonstrating that the Plan should be confirmed or that the settlements therein should be approved. *Id.*

V. The Evidence is Relevant and Admissible for Other Limited Purposes

33. It is well settled that evidence “which is not admissible for one purpose may be relevant and admissible for another.” *Hughes*, 308 F. App’x at 887 (holding that the district court did not err in excluding evidence for purposes of negating claims that the defendant acted wilfully, while admitting the same evidence for purposes of impeachment). As the Sixth Circuit recognized in *Shanklin v. Norfolk*, “it is preferable to admit a relevant [piece of evidence] for a limited purpose with appropriate instructions, rather than exclude admissible evidence altogether.” 369 F.3d 978, 989 n. 7 (6th Cir. 2004) (holding that certain materials could not have been admitted for the purpose of establishing the defendant’s duty, but were useful and admissible “for the limited purpose of establishing notice.”).

34. As discussed, evidence bearing on the validity of the COP Claims, the potential hardships of the creditors, and the terms of the settlement negotiations is irrelevant with respect to demonstrating that the Plan should be confirmed or that the settlements therein should be approved, and it should be excluded for those purposes. However, the fact that the City relied on these factors in deciding to discriminate against Class 9 is highly relevant for the purpose of demonstrating that the Plan’s discrimination is unfair under 11 U.S.C. § 1129(b). *See In re Graphic Commc’n, Inc.*, 200 B.R. at 149 (where debtor relied on an improper basis for discrimination – antipathy towards the creditor – there was no justification for the disparate treatment between two classes and confirmation of debtor’s plan was therefore denied). Importantly, unlike the purpose for which the City and/or other Plan supporters would seek to introduce the evidence, simply demonstrating that the City relied on these factors does not

(pursuant to the City's own admissions) require any additional discovery or witness preparation. As such, the evidence should be admitted for this limited purpose.

STATEMENT OF CONCURRENCE SOUGHT

35. Pursuant to Local Rule 9014-1(g), on August 18, 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 an Order granting FGIC's Motion in its entirety and excluding any evidence or testimony related to the following matters previously deemed irrelevant by the Court and/or the City: (a) the validity of the COP Claims; (b) the alleged needs and hardships of the Holders of Pension Claims; and (c) the terms and conditions of the settlement negotiations leading to the Grand Bargain, to the extent such evidence is introduced for the purpose of demonstrating that the Plan meets the requirements for confirmation under Section 1129 of the Bankruptcy Code.

DATED: August 22, 2014

/s/ Alfredo R. Pérez

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*Attorneys for Financial Guaranty Insurance
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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	July 21-22, 2014, Deposition Transcript of Kevyn Orr (excerpted)
Exhibit 6B	July 22, 2014 Expert Witness Report of Stuart Ira Wohl (excerpted)
Exhibit 6C	August 13, 2014 Deposition Transcript of Stuart Ira Wohl (excerpted)
Exhibit 6D	July 31, 2014 Deposition Transcript of Rip Rapson (excerpted)
Exhibit 6E	Emails (K001265-1266; 1272-1273)
Exhibit 6F	August 4, 2014 Deposition Transcripts of D. Muchmore (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 PRECLUDING THE INTRODUCTION OF EVIDENCE
OR TESTIMONY REGARDING CERTAIN MATTERS PREVIOUSLY
DEEMED IRRELEVANT BY THE COURT OR THE CITY OF DETROIT**

This matter having come before the Court on *Financial Guaranty Insurance Company’s Motion In Limine for Entry of an Order Precluding the Introduction of Evidence or Testimony Regarding Certain Matters Previously Deemed Irrelevant by the Court or the City of Detroit Excluding* (the “**Motion**”),¹¹ 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;

¹¹ All capitalized terms used but not defined herein shall have the meanings attributed to them in the Motion.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is granted.

2. All parties are precluded from introducing evidence or testimony at the Confirmation Hearing related to the following matters previously deemed irrelevant by the Court and/or the City: (a) the purported invalidity of the COPs; (b) the needs and hardships of the pensioners; and (c) the terms and conditions of the settlement negotiations leading to the Grand Bargain, to the extent such evidence is introduced for the purpose of demonstrating that the Plan meets the requirements for confirmation under Section 1129 of the Bankruptcy Code.

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
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 :
 :
-----X

**NOTICE OF 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**

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:¹

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

¹ 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
Telephone: (713) 546-5000
Facsimile: (713) 224-9511

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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 the *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* was filed and served via the Court's electronic case filing and noticing system to all registered users that have appeared in the main Chapter 9 proceeding.

/s/ Alfredo R. Pérez
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Facsimile: (713) 224-9511
Email: alfredo.perez@weil.com

Dated: August 22, 2014

Exhibit 5

None [No Affidavit]

Exhibit 6A

July 22, 2014, Deposition Transcript of Kevyn 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

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 wanted to be sure that we addressed the human
3 dimension.

4 Q. And you didn't have -- is it -- are you referring to
5 the fact that as of the first plan, you didn't even
6 have an impaired assenting class?

7 A. I think it's fair to say that we did not have -- well,
8 when was the date?

9 Q. Feb 21, 2014.

10 A. I don't know if that's true because I don't recall the
11 dates that we may have reached agreements with the
12 financial creditors.

13 Q. And when you're talking about the human dimension,
14 what are you talking about there?

15 A. Very simply, and I think I've said this before, the --
16 the pensioners are people many of whom are in their
17 sixties, seventies, and eighties and don't have an
18 option. They have worked for the City, most of them
19 have done nothing wrong. They are -- the covenant
20 that the City had with its employees and retirees was
21 that if they perform work for the City that upon their
22 retirement they'd be taken care of for the rest of
23 their natural life, that some of this came as quite a
24 shock to them because they had planned their affairs
25 accordingly. Many of them, like my own family members

1 KEVYN ORR, VOLUME 2

2 or grandmother, wouldn't have options of going back
3 into the job market to supplement income or make up
4 for some of the cuts and that there were -- there was
5 a real-world dimension impact to the people that were
6 going to be affected by these cuts.

7 Q. Putting aside the human dimension, if you'd had an
8 impaired assenting class do you believe that you could
9 have crammed down the first plan on the pensioners?

10 MR. SHUMAKER: Object to the form.

11 A. Yeah, I don't know, I'd have to consult with my
12 attorneys.

13 BY MR. HACKNEY:

14 Q. Okay, and I mean back at the time. Did you believe
15 you could or could not?

16 A. To be honest with you Mr. Hartley (sic), I don't -- I
17 don't -- I don't really recall. I don't really recall
18 that being the crux of the discussion, but it might
19 have been true.

20 Q. Okay. You may have thought you could cram them down,
21 you may have thought you couldn't, you just don't
22 know?

23 A. I just don't remember.

24 Q. Okay. You previously called me Hartley --

25 A. Did I call you Hartley?

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KEVYN ORR, VOLUME 2

- Q. There is something in your brain --
- A. No, I --
- Q. -- that says Hartley when you see me.
- A. This is going to be surprising, I have a friend named Hartley, and he reminds me of you.
- Q. And he's like a handsome, suave guy?
- A. Let's not get carried away.
- Q. Now, you did understand that the February 21st plan of adjustment still discriminated in favor of retirees as compared to COPs holders in terms of their respective recoveries, correct?
- A. Yes, I understand that there were -- there were a lot of reports and the financial community was taking the position that there was discrimination in the plan.
- Q. But there was objectively discrimination in that first plan, correct?
- A. There was a higher percentage recovery relative to some of the financial creditors.
- Q. And you were aware of that discrimination at the time you proposed that plan, correct?
- A. Yes.
- Q. And what was your basis for the level of discrimination you proposed in the February 21st plan?
- A. Well, I believe at that point, we were looking at some

1 KEVYN ORR, VOLUME 2

2 contribution from third parties, meaning the
3 foundations, the benefactors and others. We were
4 looking, we had been admonished I believe by the court
5 on several occasions to be compassionate in our
6 treatment of individuals and retirees. And unlike
7 financial creditors, the GRS and PFRS unlike some
8 financial creditors actually had assets in their
9 pension fund, so there was an existing basis by which
10 those assets would allow for a higher rate of recovery
11 ab initio, that is, from the start, as opposed to the
12 financial creditors to whom we owed money but did not
13 have a cache of money available to pay them.

14 Q. So there -- let me break down what I heard. You tell
15 me if I got it right.

16 A. Mm-hmm.

17 Q. I heard that the basis for the decision to
18 discriminate in the first plan was in part the
19 compassion for retirees, but it was also in part the
20 fact that there were assets in the retirement systems?

21 A. Yes.

22 Q. Okay, anything other than those two things?

23 A. No, as I said, there are a number of other factors in
24 trying to incentivize a workforce, in trying to keep
25 the covenant that the City made, a number of other

1 KEVYN ORR, VOLUME 2

2 factors, but generally those are the ones that seem to
3 be driving a sort of the treatment of those classes.

4 Q. Okay, so I heard compassion, the fact that assets
5 exist in the retirement trust, trying to incentivize
6 City workers. Anything else that justified that level
7 of discrimination?

8 A. There may have been other things that I said in terms
9 of the level of different treatment, you call
10 discrimination. That was reported out in the first
11 plan, but generally speaking, the principal driving
12 force was that the retirement systems had assets in
13 them and we were trying to bring levels down below to
14 the predictable funding level verse -- based upon the
15 unfunded actuarial liability of those funds. You
16 start with a cache of money in those funds that are
17 available conceivably to pay pensions if you are able
18 to adjust the payment levels, whereas with financial
19 creditors, we didn't have a cache of money available
20 to them. We're paying them out of existing City cash
21 flow going forward.

22 Q. But you understand that the amount of assets in the
23 pension systems, the difference between the amount of
24 assets and what is needed to fully fund pensions is
25 called the UAAL?

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

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KEVYN ORR, VOLUME 2

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went into the decision to decide how much we could pay pensioners.

3

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 the pensioner situation, that's referring to the human dimension that we talked about earlier, correct?

7

8

A. Yes, I think that's fair.

9

Q. Now, let's go forward in time from the first plan of -- that we've just been talking about, which is February 21?

10

11

12

A. Yes, mm-hmm.

13

Q. Okay. Let's go forward in time to April 1, 2014, which is about 40 days later, okay? April Fools' Day.

14

15

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

16

Q. You know I picked it. Now, let's -- so put yourself back in your state of mind as of April 1, 2014, okay?

17

18

A. Right.

19

Q. As of that time, you still didn't have agreement with any of the retiree associations or committees or retirement systems with respect to the proposed pension cuts, correct?

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A. The reason I'm not recalling whether or not that's accurate, at some point in the spring -- we did not

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KEVYN ORR, VOLUME 2

have publicly announced agreements, I think that's fair.

Q. You didn't have any publicly announced agreements with anyone I don't believe until April 15th, 2014; is that correct?

A. When -- you may have information regarding -- when you say anyone, you mean any creditors?

Q. I mean any of these retiree representative --

A. Okay.

Q. -- bodies that --

A. Okay.

Q. -- or that I take to mean retiree associations, pension systems official committee.

A. Okay. And so you're taking out the swaps, for instance, you're not including --

Q. Oh, absolutely.

A. Okay.

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

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

Q. Okay. And just to get the record clear, as of -- your recollection as you sit here today is that as of April 1st, you did not have agreements with any of the retiree representative parties, correct?

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

1 KEVYN ORR, VOLUME 2

2 plan are different from the pension cuts we've been
3 discussing up until this point?

4 A. Yes.

5 Q. The pension cuts are reduced to 4-1/2 percent for GRS,
6 with the elimination of COLA, and 0 percent for PFRS
7 with the elimination of approximately 45 percent of
8 the COLA, correct?

9 A. I think that's accurate.

10 Q. There are also additional nuances with respect to the
11 possibility for restoration and ASF recoupment that
12 were parts of both of those deals, correct?

13 A. ASF is part of GRS but restoration is part of GRS and
14 PFRS.

15 Q. Okay, but I just want to basically get on the same
16 page with you that the deals that you ultimately got
17 the retiree representative groups to buy into were at
18 the 4-1/2 percent cut level on the GRS pension and the
19 0 percent cut level on the PFRS pension, correct?

20 A. Yes.

21 Q. And that represented a substantial improvement in the
22 deal from the prior proposed cuts of 26 percent and 6
23 percent, correct?

24 A. I think that's fair.

25 Q. And you understand that at the current proposed rates

1 KEVYN ORR, VOLUME 2

2 of recovery in the plan that is currently on file,
3 classes 10 and 11 are being paid more than the COP
4 holders; isn't that correct?

5 A. Yeah, are being paid more than as proposed to the COP
6 holders, yes.

7 Q. Okay. And they're being paid substantially more,
8 correct?

9 A. I think it's a significant difference.

10 Q. Okay. Now, in fact, under the current plan, according
11 to the disclosure statement the GRS and PFRS classes
12 recover approximately 59 cents on the dollar, correct?

13 A. Yeah, I think in the plan, obviously, there's a
14 schedule that shows percentage, but if that's the
15 schedule, yes.

16 Q. I think it's actually technically 60 cents for GRS and
17 59 cents for PFRS?

18 A. Yeah, that's --

19 Q. That's about correct, right?

20 A. That's about correct, maybe a little bit lower on the
21 PFR -- but that's about correct.

22 Q. Okay, and the COPs recover at most 10 cents on the
23 dollar, correct?

24 A. Yeah, there's a range of potential recovery for the
25 certificates of participation but it's stated at 10

1 KEVYN ORR, VOLUME 2

2 percent.

3 Q. That's based, in part, on the fact that there is an
4 invalidity lawsuit against the certificates and the
5 potential to settle that as part of the plan, correct?

6 A. Yes, I think that's fair.

7 Q. The 10 cents that's in the disclosure statement
8 represents the best the COPs can do if they are
9 vindicated in the invalidity lawsuit, meaning that the
10 certificates are found to be valid?

11 A. Well, no, that's why I said I think there's a range.
12 The --

13 Q. I mean the 10 cents is the best they can do?

14 A. Yeah, I -- okay, 10 cent -- the 10 cents is our
15 estimate of the best they could do.

16 Q. Okay, so with respect to the plan that is on file, and
17 that you're seeking to confirm, with respect to
18 classes 10 and 11 on the one hand and the COPs holder
19 class on the other hand, why did you decide to
20 discriminate in favor of classes 10 and 11 as compared
21 to the COPs holders? And by discriminate, I mean pay
22 them more recovery than you've paid to the COPs holder
23 class?

24 A. Right. As we said earlier this morning, in addition
25 to, you know, the assets that the retirement funds had

1 KEVYN ORR, VOLUME 2

2 in them, which would mean we'd have less ground to
3 make up as opposed to the liability of the
4 certificates which is a -- an ongoing liability, as
5 between the concerns that the obligations, the human
6 dimension, the responsibility the City had to try to
7 keep its covenant with its employees and retirees as
8 opposed to legal arguments that have been made in the
9 papers regarding the COPs that we believe they are
10 void ab initio and that we have no obligation and
11 probably a number of other factors that I'm just not
12 recalling as I sit here today, that resulted in us
13 proposing in the plan that the GRS and PFRS
14 beneficiaries receive a higher recovery than the COPs.

15 Q. Okay. So my question is trying to drive on the
16 factors that you considered in exercising your
17 judgment to discriminate between these two classes.

18 A. Right.

19 Q. Do you understand that?

20 A. Yes.

21 Q. And you identified four, the existence of assets held
22 in the trusts --

23 A. Mm-hmm.

24 Q. -- the human dimension that we've discussed earlier,
25 the City's covenant to pay retirees their pensions --

KEVYN ORR, VOLUME 2

- 1
- 2 A. Mm-hmm.
- 3 Q. -- and the invalidity of the COPS?
- 4 A. Yeah, the legal position of the COPS, but there may
- 5 be -- there may be other factors that go into that
- 6 analysis. I'm just trying to give you off the top of
- 7 my head sitting here today some of the factors that we
- 8 considered in terms of proposing the plan.
- 9 Q. Well --
- 10 A. There may be --
- 11 Q. Oh, sorry.
- 12 A. There may be factors having to do with negotiated
- 13 positions, with a number of other issues, so I don't
- 14 want to give you the impression that the only thing
- 15 are the factors you're writing down, there may be
- 16 other considerations we took into account.
- 17 Q. Well, I guess I'll say understood, but you are the
- 18 decider, right?
- 19 A. Yes, I am.
- 20 Q. Okay, and so --
- 21 A. I am the -- the decider has a different connotation to
- 22 it, so I'm the emergency manager.
- 23 Q. You're talking what, the "W" connotation?
- 24 A. Yeah.
- 25 Q. Oh, okay.

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KEVYN ORR, VOLUME 2

A. I don't want to --

Q. How easy (ph.) do you think I'm going to get on cross?

A. Yeah, yeah, I don't want to read in the paper Kevyn Orr --

Q. Okay.

A. -- thinks he's the decider.

Q. Kevyn Orr --

A. I'm the emergency manager who's charged under 436 with discharging certain obligations in a sole discretion including making decisions regarding proposals to classes of creditors.

Q. You are the man. No. Okay. They were ready to hang up.

(Whereupon conference phone makes noise.)

BY MR. HACKNEY:

Q. I'm out of here, they said, okay, this deposition is off the rails. Hang up and...

MR. ALBERTS: Should we go off the record for a minute?

BY MR. HACKNEY:

Q. Hold on, let me just finish this. It's just a couple more questions, then perhaps we can take a break.

Then we can reconnect our friends on the phone and...

Okay, so you are the emergency manager that

KEVYN ORR, VOLUME 2

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correct?

A. Yeah, I don't want to give you the impression that, you know, I say something, and next thing I know, there's a discovery request well, prove that you considered this or any -- there are many other factors that went into the decision; those are the ones I can remember sitting here today.

Q. Okay. But is it fair to say that you can remember all of the important factors?

A. Those are the ones that I can remember today, there may be other ones that are important that I'm just simply not remembering.

Q. So there may be important factors that went into your decision that you can't recall as you sit here today?

A. As I sit here today.

Q. Okay. This is a good time to take a break, so especially with this phone thing.

A. I'm -- do you want to take? I'm good to go.

Q. No, I know you are, but I got to --

A. Okay, you want to take a break, okay.

MR. SHUMAKER: Let's take a break.

VIDEO TECHNICIAN: The time is 10:16 a.m., we are now off the record.

(Recess taken at 10:16 a.m.)

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KEVYN ORR, VOLUME 2

(Back on the record at 10:35 a.m.)

VIDEO TECHNICIAN: The time is now 10:35 a.m., we are back on record.

BY MR. HACKNEY:

Q. Mr. Orr, did you discuss your testimony with your counsel at the break?

A. No.

Q. Okay, I want to talk about with respect to the four grounds that you can recall, the information that you relied upon with respect to each.

A. Mm-hmm, yes.

Q. And I wanted to start with the assets held in the trusts.

A. Mm-hmm.

Q. That was the first ground you mentioned. For that, I take it you relied upon data from the retirement trust regarding the various levels of their assets?

A. We relied on data from the retirement trust including reports by Gabriel Roeder, their actuary, as well as their own documents but we also relied upon data from Milliman, which was the actuary hired by the City, and analyses prepared by E & Y, Miller Buckfire, and Conway MacKenzie, as well.

Q. Is it fair to say that to describe the body of

1 KEVYN ORR, VOLUME 2

2 information that you relied upon with respect to this
3 first ground which are assets held in the trust that
4 you relied on either financial information from the
5 trusts about their assets or expert analysis relating
6 to appropriate discount and other actuarial rates to
7 be applied to those assets and liabilities?

8 A. Yes, I relied on things other than my own analysis
9 from professionals who do this.

10 Q. But did I accurately describe kind of the body of
11 information?

12 A. Yeah, you did. Yes, you did.

13 Q. Okay. Now, with respect to the human dimension that
14 we talked about, with respect to the classes 10 and
15 11, what type of information did you rely upon in
16 connection with that judgment?

17 A. Well, I think some of the information we just
18 discussed is captured within that, as well as the
19 representatives on the art -- on the retiree
20 committee, the pension boards, as well, as well as
21 individual meetings with individual employees and
22 pensioners who recount their stories in detail, as
23 well as statements made in court by the court itself
24 as well as others. I listened to the September 19th,
25 2013 tape of the meeting of creditors. I listened to

1 KEVYN ORR, VOLUME 2

2 the blog of last -- was it last Monday or Tuesday's
3 objectors meeting, general objectors meeting as well
4 as far as the impact, and from time to time obviously
5 I meet people on the street as well as hear their
6 accounts and press reports.

7 Q. Is it fair to describe this body of information as,
8 you know, oral testimonies to you about the personal
9 hardship people will endure if there are -- if steeper
10 cuts are imposed?

11 A. Yeah, I think it's fair to say oral testimony as well
12 as, as I said, the actual analyses that are provided
13 that, for instance, will tell you that general
14 retirement system employees get an average of 19,400
15 approximately in their pension, whereas PFRS may be in
16 the neighborhood of the mid-thirties. So it's
17 actually analyses as well as oral testimony, oral
18 statements, written statements, and press reports.

19 Q. Okay. So you relied on aggregate financial data about
20 the approximate average size of pensions as well as
21 oral testimonies to you about how steeper cuts would
22 impose personal hardship on the pensioners?

23 A. Yeah, the approximate average size -- you know,
24 included in this documentation for instance, I've
25 reviewed rolls of information regarding the actual

1 KEVYN ORR, VOLUME 2

2 amount of pensions that thousands of pensioners have,
3 which have been provided to me by professionals. So
4 it's not just summary information, it's actually
5 sometimes raw data discussions with -- with my
6 advisors, including attorneys, as well as discussions
7 with representatives including depositions of the --
8 of the -- some of whom are here today, representatives
9 of the various funds.

10 Q. The financial data that you relied upon, though, was
11 the -- was limited to the size of their pensions,
12 whether it was aggregate or individual pensions,
13 right?

14 A. No.

15 Q. You didn't review personal financial information of
16 any of the retirees, did you?

17 A. No, we didn't review -- I didn't review financial
18 statements of retirees but I did review reports as
19 indexed by account number on the pensions of
20 individual retirees.

21 Q. Yes.

22 A. Yeah. I did review things like that.

23 Q. I'm trying to say that when it came to the financial
24 information you considered, it related to the size of
25 the pensions, correct?

- 1 KEVYN ORR, VOLUME 2
- 2 A. As opposed to the personal financial situation of each
3 individual pensioner?
- 4 Q. Right.
- 5 A. No, I have seen no information like that.
- 6 Q. And you haven't seen that in the aggregate, either,
7 correct?
- 8 A. Well, let's be careful with aggregate. I mean, you
9 know, 14,000 approximately pensioners live within the
10 City of Detroit and/or Wayne County, I believe, so a
11 significant percentage live here, and when you look at
12 aggregate demographic data, you know, 40 percent of
13 our residents live at or below the poverty line per
14 capita GDP, all of this, I have reviewed aggregate
15 data, U.S. Census Bureau --
- 16 Q. But this is stuff -- sorry to interrupt you.
- 17 A. Yeah.
- 18 Q. This is stuff that relates generally to the
19 population?
- 20 A. Right.
- 21 Q. It's not specific data to the retirees?
- 22 A. No, but there was aggregate data that I did review
23 regarding retirees as a group but not their personal
24 financial information.
- 25 Q. Right, the aggregate data on the retirees was with

1 KEVYN ORR, VOLUME 2

2 respect to their mean pensions.

3 A. No, it was also with probable -- it wasn't just
4 pensions, it also -- there was aggregate data
5 regarding healthcare, there's aggregate data regarding
6 an alternative savings fund recoupment. So I know
7 you're focusing principally on pensions, but I looked
8 at a number of data as a composite of what the impact
9 would be to these pensioners from a human dimension.

10 Q. Okay, and evaluating the personal hardship they would
11 suffer?

12 A. Correct.

13 Q. Okay. And that was -- was that one of the most
14 important things that drove you in connection with
15 this decision? It seems like it's moved you.

16 A. Well, I don't know if it's one of the most important,
17 but it -- all of them are important, the amount of
18 money, the Grand Bargain, the -- the grantors have
19 given us \$866 million we didn't have seven months ago,
20 so that's pretty important.

21 The human dimension certainly is something
22 that you have to take into account. These are real
23 people with real consequences. So all of it's fairly
24 important to me.

25 Q. Okay. Now, you -- the third thing you talked about

1 KEVYN ORR, VOLUME 2

2 was the City's covenant, which I understood you to
3 mean the City's promise that it would pay these people
4 their pensions?

5 A. Yes.

6 Q. And I take it from that the information you would have
7 relied upon was just the contract saying that folks
8 were entitled to these pensions?

9 A. No, you know, we -- I also had access -- you know, I
10 talked with some City employees, for instance, who
11 currently work for the City, Gary Brown, who is a
12 retired Detroit police officer but is on a personal
13 service contract here in the City now, PSC, and I
14 talked to him about the historical commitments that
15 the City has made, he's a lifetime resident, been here
16 a long time. Chief Craig, who was born here, for
17 instance, and his parents have been in the City, I
18 talked to him. I talked to individuals.

19 So it's not just an analysis of, say, raw
20 data. I mean, I have communications with people on
21 staff here in the City who will ask me if they can
22 come in and talk to me, and I'll listen to them.

23 Q. I guess what I meant here is one of the factors you
24 identified as -- as informing your judgment with
25 respect to what to pay classes 10 and 11 versus COPs

1 KEVYN ORR, VOLUME 2

2 holders, you identified was the City's covenant.

3 A. Yes.

4 Q. And I took that to mean the fact that the City had a
5 contractual obligation to pay these people?

6 A. Right, and what I'm trying to relay to you is it's not
7 just a fact that the City had a contractual
8 obligation; it is the commitment and reliance on that
9 commitment behind that contractual obligation that
10 various City employees and retirees will come and
11 express to me in very real terms what this means to
12 them.

13 Q. I see.

14 A. And so the covenant is not just a technical document,
15 it is also an expectation, a reliance, a commitment
16 the City has made, and employees and retirees express
17 it to me in very -- sometimes very candid terms.

18 Q. I see. What you're saying is you relied not only the
19 existence of the legal obligation to pay but also
20 testimonies you got from people that they had relied
21 on that?

22 A. Yes.

23 Q. And isn't it fair to say that this is another element
24 of the human dimension, which is the unfairness of
25 cutting the pensions of people who relied on the

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KEVYN ORR, VOLUME 2

City's covenant in making decisions about how to allocate their work time?

A. You could say that.

Q. And then the last issue that you identified was the invalidity of the COPs; do you remember that?

A. Yes.

Q. And that was something that you factored into your decision in terms of paying the COPs less than classes 10 and 11, correct?

A. Yes.

Q. And I take it you relied upon legal analysis from your counsel about the potential invalidity of the COPs, correct?

A. Yes.

Q. And I know that there had been a lawsuit filed prior to the time of the current plan being filed, but I assume that if I asked you questions about what your attorneys had advised you with respect to the invalidity of the COPs you'll invoke the attorney-client privilege and decline to answer?

A. Yes.

Q. Okay, so I hope we can stipulate that if I ask a bunch of questions about how the COPs analysis factored into the decision that the attorney-client privilege will

1 KEVYN ORR, VOLUME 2

2 be invoked?

3 MR. SHUMAKER: Assuming your question gets
4 to communications between counsel and Mr. Orr, yes.

5 BY MR. HACKNEY:

6 Q. Well, I mean, did you -- did you -- in assessing the
7 invalidity of the COPs as a factor justifying the
8 level of discrimination, did you consider anything
9 other than legal advice around the invalidity of the
10 COPs? It seems like a legal question.

11 A. It's a legal question, but in an effort to be
12 forthcoming and fair to you, I'd have to say yes, and
13 I'll try to tell you, for instance, without discussing
14 the -- and going afield of many discussions, legal
15 opinions, analyses, meetings, written opinions, that I
16 received from counsel.

17 So for instance, in looking at the COPs, in
18 addition to those things, you know, I examined news
19 reports about that transaction, I think I've even
20 examined those -- some of those before I got here.
21 Reports, for instance, by the auditor general that it
22 questioned the propriety and validity of the COPs
23 reports at that time when -- I think it was Auditor
24 General Hart (ph.) back in 2005, City Council
25 statements that were made. Statements made by the

1 KEVYN ORR, VOLUME 2

2 City treasurer back then that it was invalid and
3 inappropriate to enter into the COPs and that it would
4 make the City bankrupt and that the City should have
5 declared bankruptcy in 2005.

6 So there's other data that I looked at to
7 inform myself, just not the legal analyses about
8 position of the COPs, and some of that data was
9 contemporaneous with when they were initially entered
10 into and some of that was subsequent to that.

11 Q. And you identified a number of individuals or reports
12 that you had read; I didn't hear any lawyers in any of
13 those things. Were there?

14 A. None of my lawyers were in those things, so there
15 was -- there's, you know, document -- documentary
16 evidence that is short of the legal opinions I got
17 from my counsel.

18 Q. Okay, so but to tie it up, was the principal
19 information that you relied upon legal advice conveyed
20 to you by your lawyers about the invalidity of the
21 COPs?

22 A. Yes.

23 Q. And I -- just so I understand the way the judge -- the
24 factor plays through your judgment, you looked at the
25 potential invalidity of the COPs and viewed that as

1 KEVYN ORR, VOLUME 2

2 one reason to pay the COPs on their best day 10 cents?

3 A. Yeah, I don't know -- I don't want to give the
4 impression that it was that binary, you know, a number
5 of issues, as I said before, went into what we could
6 afford to pay --

7 Q. Yes.

8 A. -- the validity of the claim, which is pretty typical
9 in bankruptcies, all that stuff, but I think that's a
10 fair statement.

11 Q. Okay, I'm talking when you were deciding how to divide
12 the pie, the COPs best day recovery was impacted by
13 this factor of the potential invalidity of the COPs?

14 A. Yes.

15 Q. Now, with respect to the information in these four
16 areas that we've just talked about, the information
17 that relates to each of the four factors you
18 identified --

19 A. Mm-hmm.

20 Q. -- was there a material change in this body of
21 information between April 1 and April 15 of 2014?

22 A. I don't know, you say material change, what are you --
23 what do you mean?

24 Q. Is there anything that sticks out to you with respect
25 to any of your four factors and the information

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KEVYN ORR, VOLUME 2

associated with each that changed materially between April 1 and April 15?

A. To be frank with you, I can't -- I can't recall if there was, but I don't -- nothing jumps out at me.

Q. Okay. Now, in structuring the plan, did you take advice from Miller Buckfire?

A. Yes.

Q. And in deciding what levels of discrimination between creditors was appropriate, did you also take advice from Miller Buckfire?

A. Yes.

Q. And did you specifically take advice from Ken Buckfire?

A. I -- I would have regular restructions (sic) with Ken and other members of his team, so I think it's fair to say yes.

Q. Did Mr. Buckfire recommend to you that when it came to evaluating the recovery of the retirees that the City should consider the pension recoveries in combination with the OPEB recoveries in making a determination as to what the level of discrimination was?

MR. SHUMAKER: Object to the form.

BY MR. HACKNEY:

Q. Do you understand my question?

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

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KEVYN ORR, VOLUME 2

boy.

MR. HACKNEY: I am, born and raised, but I've actually lived in Chicago now --

THE WITNESS: Are you coming back? Are you coming back?

MR. HACKNEY: No, no, I'm a Chicagoan.

THE WITNESS: Okay.

MR. HACKNEY: You lost me.

BY MR. HACKNEY:

Q. Let me see if I can tie it up this way. You did not attempt to undertake a systematic analysis of what all the creditors thought that they were going to get when they made their respective investment decisions to decide who should get what?

A. I did not poll all of the creditors regarding what they thought they were going to get.

Q. Okay, and you didn't factor that into your conclusion, correct?

A. No. Not at least that I can say -- I can't say what discussions were made in mediation, but I -- publicly the answer would be no.

Q. I am talking about, you know, your state of mind, though. I'm saying that you didn't go and pick 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 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

Exhibit 6B

July 22, 2014 Expert Witness Report of Stuart Ira Wohl (excerpted)

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

In re

City of Detroit, Michigan
Debtor

Chapter 9
Case No. 13-53846

**REPORT OF
STUART I. WOHL**

I, STUART I. WOHL, subject to the penalties provided by law for perjury, do hereby declare the following to be true and correct based on my personal knowledge and upon information provided by the City of Detroit.

1. I am currently a Senior Vice President, East Region Health Practice Leader and National Retiree Health Practice Leader of The Segal Company. I have more than 26 years of health consulting experience with The Segal Company. I have been Segal's Retiree Health Practice Leader for more than ten years and the East Region's Health Practice Leader for more than six years. Prior to The Segal Company, I worked in the Actuarial and/or Underwriting Departments at two insurance companies.
2. The Segal Company was founded in 1939 and is one of the nation's leading actuarial and employee benefit plan consulting firms. The Segal Company provides pension and health benefit consulting services. Segal maintains a staff of approximately 1,000 and has offices in 22 cities in the United States and Canada. Segal provides employee

benefits and human resource consulting to more than 2,500 clients. We consult on the full range of health and welfare, retirement and human resources-related issues.

3. As Segal's Retiree Health Practice Leader, I provide thought leadership and guidance to our actuaries and staff regarding retiree health benefits and retiree health valuations. I also help with developing policies, procedures, and guidelines for use in retiree health consulting.
4. As the East Region's Health Practice Leader, I provide thought leadership, guidance, and management of the health consulting practice within Segal's East Region. I also provide direct consulting services to certain Segal clients including a number of retiree-only plans, some of which maintain Voluntary Employee Beneficiary Associations (VEBAs), and a number of large Public Sector clients including the health plans for active and retired employees for the State of Delaware, the retiree health plan offered through the Pennsylvania School Employee Retirement System and the New Mexico Retiree Health Care Authority.
5. During my 26 years at The Segal Company, I have provided support in many bankruptcies, usually in Bankruptcy Code Section 1114 matters. In such instances, I was part of the team providing support to a Section 1114 Committee or a union. I was part of the team providing support to Section 1114 Committees in bankruptcies of: Eastern Airlines; Pan Am Airways; United Airlines; Northwest Airlines; American Airlines; Federated Department Stores; Lone Star Industries; Solutia; Eastman Kodak; Copperweld Steel; LTV Steel; Bethlehem Steel; Bonwit Teller; HK Porter, and Dana Corporation.
6. I have spoken numerous times on retiree health benefits and other health topics including:
 - Teamster Trustees Benefits and Capital Strategies Session, November 2, 2007
"Retiree Health VEBAs – Are they the Solution?"

- American Bankruptcy Institute’s 19th Annual Winter Leadership Conference, December 2, 2007, “Section 1114 Issues in Large and Middle-Market Cases.”
 - American Bar Association, Section of Labor and Employment Law, Employee Benefits Committee, March 1, 2008, “New Developments in Funding Retiree Medical with a VEBA.”
 - Pensions and Capital Stewardship Project, Labor and Worklife Program, Harvard Law School, Capital Matters: Managing Labor’s Capital Conference, April 18, 2008, “What to Do While Waiting for Universal Health Insurance: Are VEBAs and Other Pre-Funded Schemes Part of the Solution or Part of the Problem?”
 - 2010 CONNPELRA Annual Conference, June 4, 2010, “Health Care Reform: First Steps for Public Sector Plans.”
 - Graphic Communications Conference, September 23, 2011, “Health Care Reform: Issues for Multi-Employer Plans and for Collective Bargaining.”
7. I was the primary author of Segal’s Winter 2008 Survey, “*Study of Retiree Health VEBAs*,” as well as the author of a March 2008 article for Employee Benefit News, “*Retiree Health VEBAs: A Brief Profile*.”
8. The Segal Company has been retained by the Official Retiree Committee in the City of Detroit Bankruptcy and is being compensated for my time in this matter at the rate of \$535 per hour. Segal’s compensation in this matter is not, in any way, contingent upon the outcome of the case.
9. I have prepared Affidavits, Declarations and/or provided Deposition testimony in the following matters during the previous four years:
- AMR Corporation, et al., (Chapter 11 Case No. 11-15463) (United States Bankruptcy Court – Southern District of New York)

- City of Detroit, Michigan (Chapter 9 Case No. 13-53846) (United States Bankruptcy Court – Eastern District of Michigan, Southern Division)
 - Michael Merrill et al. v. Briggs & Stratton Corporation (Case No. 10-C-700-LA – United States District Court, Eastern District of Wisconsin)
10. I have also prepared affidavits, declarations and/or provided deposition testimony in the following matters more than 4 years ago:
- Peter A. Raetsch, et al v. Lucent Technologies (Civil Action No. 2:05-cv-5134 (PGS) United States District Court, District of New Jersey)
 - Beaty et al v. Continental Automotive Systems U.S., Inc., Case 5:11-cv-00890-CLS (N.D. Ala.)
 - Joseph Tourangeu, Molly Cobbol, Robert Lowell, Robert Frank on behalf of themselves and all others similarly situated v. Uniroyal Inc. (Civ. Act. No. N-28-208 (ANH) – United States District Court, District of Connecticut)
 - Trull v. Dayco Prod LLC (Case No. 1:02-cv-243-LHT), United States District Court, Western District of North Carolina
 - Diehl v. Twin Disc, Inc. (Case No. 3:94-cv-50031), United States District Court, Northern District of Illinois
 - International Association of Machinists and Aerospace Workers and its Affiliated District Lodges, v. The Boeing Company (Charge NOS 19-CA-24154 before the National Labor Relations Board)

OPINION

11. The purpose of my testimony is to describe the impact of the City's Plan of Adjustment ("POA") upon the health care benefits previously received by the City's retired workers. As I will describe, the funding available through the POA for Retiree Health Benefits is very limited and will result in significant reductions in the subsidies that were provided

prior to the bankruptcy. It will also expose them to significant risks. The Official Committee of Retirees is supporting the POA, including as to OPEB, despite these risks and funding reductions because any further reductions would have been devastating to Retirees.

BACKGROUND

12. Before the bankruptcy filing and post-filing until February 28, 2014, the City of Detroit (the City) offered health insurance coverage to approximately 17,000 retirees and surviving spouses, plus approximately 7,400 dependent spouses. Not only did the City offer these benefits, the City paid the majority of the costs of such benefits. In many instances, the City paid 100% of the cost of these benefits. Of the approximately 24,700 retirees and spouses, approximately 6,000 are under age 65 and I have been told that approximately 650 are age 65 and older but are not, and will never be, eligible for Medicare.
13. Until February 28, 2014, the City offered retirees a choice of plans. For example, according to the 2012-2013 City of Detroit Retiree Modified Option III Plan Enrollment Guide, retirees had as many as five plans from which to choose. Some of the contracts with retirees required monthly contributions, with the actual amount dependent on the Collective Bargaining Agreement and the choice of plan.
14. According to a City-provided document titled "City of Detroit, Retiree Legacy Cost Restructuring" dated September 11, 2013, the City projected a net cost for retiree health benefits of around \$176 million for the Fiscal Year Ending in 2014. The City proposed to reduce annual City spending for postretirement health care benefits by \$144 million for FYE 2014 or more than 80% -- from approximately \$176 million per year (per the September 11, 2013 document) to approximately \$31.3 million (per the 6/30/2012 Actuarial Valuation prepared by Milliman).

Exhibit 6C

August 13, 2014 Deposition Transcript of Stuart Ira Wohl (excerpted)

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STUART IRA WOHL
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 STUART IRA WOHL,
Taken at 1114 Washington Boulevard,
Detroit, Michigan,
Commencing at 2:32 p.m.,
Wednesday, August 13, 2014,
Before Kathryn L. Janes, CSR-3442, RMR, RPR.

STUART IRA WOHL

1
2 team members actually took a prior deposition and
3 copied into for the background for my introduction
4 about myself.

5 Q. It's fair to say that the work done by your team
6 was at your direction, right?

7 A. Correct.

8 Q. And did you have an opportunity to review the
9 final report before it was served on the other
10 parties in this case?

11 A. I reviewed it and then signed it.

12 Q. Got it. And so it's -- it's fair to say that you
13 had an opportunity -- you had the last
14 opportunity to make changes; is that right?

15 A. Correct.

16 Q. Is there anything today after having completed
17 and -- and signed the report, is there anything
18 today that you want to change about the report?

19 A. No.

20 Q. Is it fair to say you stand behind the report
21 completely?

22 A. Yes.

23 Q. And you understand that when you submitted your
24 report, it was important for your report to
25 contain all of your opinions that you -- all of

1 STUART IRA WOHL

2 the opinions you were providing in connection
3 with this case?

4 A. Yes.

5 Q. Which is to say, you are not providing opinions
6 other than what is contained in your report,
7 correct?

8 A. Correct.

9 Q. And when you prepared the report, you made your
10 best efforts to assure that the opinions and data
11 contained in the report are accurate and
12 truthful, correct?

13 A. Yes.

14 Q. If you -- if you can, would you give me a brief
15 summary of the opinions that you're offering in
16 this case?

17 MR. BARNOWSKI: Object to form.

18 A. I am offering an opinion that says that the
19 plan -- the POA requires significant cutbacks and
20 benefits of retirees, and even within the POA,
21 there is further risk that aspects that are being
22 relied upon in the POA may not come to fruition.

23 BY MR. BERNBROCK:

24 Q. Any other opinions that you're offering like
25 macro opinions?

1 STUART IRA WOHL

2 MR. BARNOWSKI: Object to form.

3 BY MR. BERNBROCK:

4 Q. Other than that?

5 A. I also describe the impact of some individual
6 class members, just to show the impact how -- the
7 changes could impact the expense, I think it's for
8 six or seven folks, which are just one very small
9 subset of the 17,000 retirees and their 7,000,
10 8,000 dependents.

11 Q. And you're not offering your opinions in this
12 case to demonstrate the hardship on retirees, are
13 you?

14 MR. BARNOWSKI: Object to form.

15 A. I think I said that, that significant cuts in
16 benefits are hardships for retirees.

17 BY MR. BERNBROCK:

18 Q. Okay. The -- we're going to do this -- this
19 laundry list again of things that you're not, and
20 you'll pardon me, I hope. I want to be clear
21 that you are not offering opinions about the
22 General Retirement System or the Police and Fire
23 Retirement System Pensions; is that correct?

24 A. Correct.

25 Q. You are not offering an opinion regarding the

1 STUART IRA WOHL

2 claims held by the pension systems; is that
3 correct?

4 A. Correct.

5 Q. You are not offering your opinion as to whether
6 the POA contains unfair discrimination as that
7 term is understood under the bankruptcy laws?

8 MR. BARNOWSKI: Object to form.

9 BY MR. BERNBROCK:

10 Q. Is that correct?

11 A. Correct.

12 Q. You're not offering an opinion that the plan --
13 the POA is fair and equitable as that term is
14 used in connection with bankruptcy law?

15 MR. BARNOWSKI: Object to form.

16 A. Correct.

17 BY MR. BERNBROCK:

18 Q. You're not offering an opinion that the plan --
19 the POA -- I'm going to do that all day.

20 A. I got mine right before.

21 Q. You did, I know.

22 MR. BARNOWSKI: Then it's definitely
23 not simplifying things here.

24 MR. BERNBROCK: Yeah, that's right.

25 BY MR. BERNBROCK:

Exhibit 6D

July 31, 2014 Deposition Transcript of Rip 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

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.

1 RIP RAPSON

2 Q. Let me be a little bit more specific with it. From
3 the time that the bankruptcy filing occurred, Detroit
4 bankruptcy occurred, and up until the time where you
5 believe your conversations regarding the mediation,
6 the mediation back and forth started --

7 A. Mmm-hmm.

8 Q. -- we're not talking about those, did you have any
9 conversations with the folks -- did you have any
10 conversations with anyone that you can remember
11 regarding whether Kresge would get involved in the
12 bankruptcy --

13 A. Oh, I see.

14 Q. -- in order to, one, preserve the collection at the
15 DIA?

16 A. No, no.

17 Q. And prior to -- after the filing of the City of
18 Detroit's bankruptcy and prior to the time that Kresge
19 became involved in conversations back and forth
20 regarding the Grand Bargain mediation, were you
21 involved with any discussions regarding Kresge
22 becoming involved in the bankruptcy to soften the blow
23 to the pensioners?

24 A. No.

25 Q. When did, when did you first become aware of what's

1 RIP RAPSON

2 now become known as the Grand Bargain or the process
3 leading towards the Grand Bargain?

4 A. I think it was at the time that Judge Rosen asked the
5 group of foundations together and hear him out on an
6 idea he had.

7 Q. So I take it that the way you and your organization
8 became involved with the Grand Bargain was by Judge
9 Rosen reaching out to you and not the opposite, you
10 actually reaching out to Judge Rosen?

11 A. That's correct.

12 Q. And when did Judge Rosen reach out to you directly to
13 get involved in the Grand Bargain?

14 A. I'm sorry, I don't recall what that date was, but it
15 was, it was right at the same time that he was
16 gathering -- I wasn't able to attend that first
17 meeting, but I think -- didn't he gather people in his
18 chambers? The foundation community in his chambers.
19 I think that was really, it was in that time slot that
20 I first became aware of it.

21 Q. And did Judge -- is the first time you considered
22 becoming involved in the Grand Bargain, was that on a
23 phone call where Judge Rosen contacted you personally?

24 A. No.

25 Q. When was it?

RIP RAPSON

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A. It was in a, a dinner conversation I had with him.

Q. And during this dinner conversation, this is when Judge Rosen proposed that the Kresge Foundation become involved with the Grand Bargain, is that fair?

A. Yes.

Q. And I've reviewed on YouTube, of all places, a speech that you gave at Wayne State University -- maybe not a speech, but it certainly was a formal type speech, and do you remember that, that address?

A. I do.

Q. Okay. Do you remember when that was?

A. It was, what, I don't know, two-and-a-half months ago, I think.

Q. And during that address to the audience, you referenced your initial conversations with Mr. Rosen, is that fair, with Judge Rosen?

A. I don't recall, but if it's on YouTube, I'll take your word for it.

Q. And we thought about bringing it in and playing it for you.

A. Oh, that would have really been torture.

Q. Tell me if I'm right. When Judge -- during your first conversation with Judge Rosen, where he proposed that the Kresge Foundation become involved in the process

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?

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

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 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 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 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.

RIP RAPSON

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BY MR. MCCARTHY:

Q. Prior to the Grand Bargain, are you aware of any other attempts that the City made or the DIA made in order to transfer part or all of the collection at the DIA in order to preserve the collection?

A. No.

Q. And prior to the Grand Bargain, had anybody -- to your knowledge, has anybody reached out to you or the folks at Kresge in order to contribute money in order to support a transfer of part or all of the collection at the DIA?

A. No.

Q. I want to talk about -- moving aside from this and talk a little bit about some of the essential services that the City of Detroit specifically provides.

Does the City of Detroit need to provide decent housing to its residents, in Kresge's view?

A. Yes.

Q. And is the City currently providing decent housing?

A. It is, it is providing some decent housing. It is providing a lot of indecent housing, and the level of decent housing is insufficient.

Q. Is it fair to say that improving the level of decent housing that the City is providing to its residents is

Exhibit 6E

Emails (K001265-1266; 1272-1273)

Sharon Zimmerman

From: Rip Rapson
Sent: Tuesday, January 21, 2014 6:36 PM
To: daniel.howes@detroitnews.com
Subject: FW: DIA governance

From: Rip Rapson
Sent: Monday, January 20, 2014 8:23 PM
To: Darren Walker
Subject: FW: DIA governance

Greetings Darren:

Thank you for your thoughtful response. As Laura, Rob, Steve Hamp, and I have tossed this around, it strikes us that a more active, facilitative approach - rather than a harder stance - seems appropriate and might serve to help unify the philanthropic community. Our thought is that we might engage more actively with the DIA's leadership to help surface ideas that ensure the best possible future governance of the institution.

With apologies, let me try out on you how I think we might position this.

A Frame

We start from the proposition that the DIA's leadership is - understandably and rigidly - in a defensive crouch. The DIA has been in survival mode for many years, warding off first the challenges of fiscal instability and then the serious threat of art sales (or worse) from the bankruptcy. This has been compounded by being located in a declining city and depressed economic environment.

If the ArtTrust effort is successful, all of these factors will change, opening up the opportunity for the DIA to enter an entirely new chapter of its future. It will be freed from dire, constant funding challenges and from the doomsday threat of city bankruptcy for the city. It would be liberated to appreciate the new reality that its location in Detroit can be a positive factor in its future success. Just as the City is hitting the re-set button, so too would the DIA.

I think it will be important to convey to the DIA's leadership our belief that the DIA has the opportunity to re-imagine what it wants to become next. A stronger driver of efforts to restore the City to greatness. A more engaged partner in community redevelopment efforts. An emblematic institution for museums across the country who now view the DIA as perilously close to collapse.

But that re-imagination requires a reconceptualization of the governance model. A revitalized, renewed, and re-positioned DIA won't emerge automatically, but instead through a carefully crafted redefinition of mission and direction. Changes in governance will be essential to that task.

It's not the foundations' remit to define for the DIA how all of this plays out - or even exactly what elements it has to buy lock, stock, and barrel. But we do have a stake - one far more substantial than I think Gene and his colleagues have contemplated. I would accordingly propose that we open the conversation with them as a way of helping them stand outside of their received perspective and take in input they are unaccustomed to hearing. My hope is that this could be done in a way that is neither directive nor presumptuous, but is instead suggestive and supportive. And it would, I believe, lead naturally to the questions of how to build the kind of board, structures, and team the DIA will need to move forward most fruitfully.

Kresge's Conversations with the DIA

As I mentioned in my earlier note, Laura and Rob (who sits on the DIA's Investment Committee) have had a number of conversations with the DIA's leadership over the last weeks. Laura spoke with Gene Gargaro this afternoon. She reminded Gene that our Legal Committee had begun its work by analyzing Judge Rosen's proposal to form a entirely new entity to receive the DIA's assets. The Committee chose not to go that route, advocating instead with the Judge to keep the DIA in the ownership role. Laura assured Gene that the foundations don't want to dictate a structure, but rather to ensure a form of future governance is fully able to encompass future realities. Gene agreed with this wholeheartedly and assured her the DIA will welcome this kind of dialogue.

Laura and Gene agreed that the foundations and DIA have to move forward in full partnership on all fronts -- mutually committed to providing support for the city in its time of crisis and helping the pensioners who could lose much of their livelihood. We might start by establishing, much as we did with the Legal Committee, some first principles on which both sides could agree. We could then actively raise and assess options. But at some point, the process will need to be handed off to the DIA for them to design a governance structure that ultimately serves their needs.

Because that couldn't be ironed out before tomorrow's release to the creditors of the Plan of Adjustment, Laura and Gene agree to meet later this week and think through what this kind of process might look like and how best to move it forward.

I'd suggest that Laura carry into that meeting a suggestion that the process include several foundation partners (perhaps the members of Judge Rosen's steering committee?), as well as a couple of other entities that have a stake in the outcome, particularly the City of Detroit and State of Michigan. In the meantime, we might ask for a seat or two on the DIA Board until this process has been completed.

I have no sense of whether this approach would be well-received by our other funder colleagues. But I think we might propose it to them and see if there are others who see this as beneficial or have other suggestions for how we might proceed.

Again, sorry for the length. But thanks for listening.

Very best,

Rip

Sharon Zimmerman

From: Howes, Daniel <Daniel.Howes@detroitnews.com>
Sent: Monday, May 12, 2014 10:50 AM
To: Rip Rapson
Subject: RE: Your column

Rip:

Let's discuss. Have a few thoughts. Can we chat today? Think I see fodder for another column in this issue.

-- DCH

Daniel Howes
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E-mail: daniel.howes@detroitnews.com
My webpage: <http://detroitnews.com/howes>

From: Rip Rapson <RRapson@kresge.org>
Sent: Friday, May 9, 2014 8:08 PM
To: Howes, Daniel
Subject: Your column

What a masterful column Daniel. Congratulations - the clearest statement we've had on the true implications of what we've navigated and on the potential for where we might land.

I've been in quite a tizzy, together with a great number of others, by the news today that Bolger is, in fact, not willing to compromise on his demand for a union contribution to the bargain. When I last heard this discussed among people in a position to know - Wednesday night - it seemed as if some options were being generated to permit Bolger to save face and move the package forward. But the Governor and Judge Rosen are of the view - as of today - that the bills will not be permitted to the floor without a union contribution. Evidently, the amount can be relatively *de minimus* to satisfy Bolger and his caucus. But it's very hard for me to see how even a \$5 million contribution comes together - what the source would be, how the unions would stomach it, and on and on.

Darren Walker and I have had conversations all around the horn, and creativity seems to be in remarkably short supply. I do have some confidence that Mayor Duggan may have an angle in on this - earlier this week, he suggested that something was in the works. But it struck me reading your piece that I would be crazy not to ask your advice - less as a journalist than as someone who knows all the players, has deep insight about the motivations driving each of the parties, and might see a path out of this that the rest of us haven't thought about. Any thoughts?

Thanks,

Rip

Exhibit 6F

August 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

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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

1 DENNIS MUCHMORE

2 a different topic.

3 A. Okay.

4 Q. Prior to the mediation, did the State have any view,
5 to your knowledge, based on what the priority of the
6 pensioners -- based on the priority the pensioners
7 should receive any funds that come from the State,
8 vis-a-vis other creditors in the Detroit bankruptcy?

9 A. No, not to my knowledge.

10 MR. MORRIS: Objection, form.

11 THE WITNESS: What was that?

12 MS. NELSON: Somebody on the telephone had
13 an objection.

14 THE WITNESS: Oh, okay.

15 BY MR. MCCARTHY:

16 Q. That's what I mentioned earlier, someone objects and
17 we have a few people --

18 A. Okay.

19 Q. -- on the phone that represent other -- I believe they
20 represent other parties, not the State, but you can go
21 ahead and answer the question, if you can, with that
22 objection, which you did. Thank you.

23 Prior to the mediation, did the State have
24 any view, to your knowledge, with respect to whether
25 any funds that would be coming from the State should

DENNIS MUCHMORE

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2 go solely to the benefit of the pensioners versus
3 other creditors in the bankruptcy?

4 A. No.

5 Q. Has that view changed since the onset of mediation,
6 from the State's perspective?

7 A. No, not really, no. I don't think the view has
8 changed on that. It's not a focus on one thing. It's
9 a focus on a comprehensive solution of the whole City
10 bankruptcy. We spend a lot of time with creditors.
11 We spend a lot of time with pensioners. We spend a
12 lot of time with judges.

13 Q. Funding for the State under the Grand Bargain, as it's
14 been described, will be going to pensioners,
15 specifically, as opposed to certain other groups of
16 creditors, is that fair?

17 A. I think that's fair, yes.

18 Q. Does the State have a view, to your knowledge, based
19 on why it is that that funding will be going to
20 pensioners versus other creditors?

21 MS. NELSON: I'm going to object, because
22 that invades the confidentiality of the mediation
23 process, and I will instruct him not to answer that
24 question.

25 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 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

DENNIS MUCHMORE

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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,