

Exhibit 6B

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

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Designation:

9: 2 Q. Mr. Buckfire, would you please state your name and
3 business address for the record?
4 A. Kenneth Buckfire. 601 Lexington Avenue, New York, New
5 York.

Designation:

11:14 Q. Mr. Buckfire, what is your position with Miller
15 Buckfire?
16 A. Co-founder and co-president of Miller
17 Buckfire & Company.
18 Q. Miller Buckfire currently is employed as the financial
19 advisor to the City of Detroit, correct?
20 A. As the investment banker to the City, that's correct.

Designation:

19:22 Q. Now, is it fair to say that you have principal
23 responsibility for the engagement of the City and the
24 work that's being performed by the members of your
25 team?
20: 1 A. Yes.
2 Q. And so all the individuals we just discussed report
3 directly to you, is that correct?
4 A. Yes.

Designation:

21:11 MR. SUMMERS: If we could mark this as
12 Deposition Exhibit 2, please.

Designation:

21:17 Q. Mr. Buckfire, do you recognize this document?
18 A. I do.
19 Q. And it is the forbearance and optional termination
20 agreement that was executed by Mr. Orr among others on
21 or about July 15th, 2013, is that correct?
22 A. Yes.
23 Q. And this is the agreement that's the subject of the
24 pending motion in the bankruptcy court which brings us
25 here today, correct?
22: 1 A. Yes.
2 Q. Okay. And was the City's decision to enter into the
3 forbearance agreement made by Mr. Orr?
4 A. Yes, it was.

Designation:

22:13 Q. What role did you have in the negotiation of the
14 forbearance agreement?
15 A. On behalf of the City of Detroit I had responsibility
16 for negotiating the business terms of this agreement.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

Designation:

- 34: 8 Q. Is it fair -- let's draw down in detail a little bit
9 on the June 8th meeting. Who was -- what individuals
10 were present at the June 8th meeting?
11 A. It was the same attendees as at the June 4th meeting
12 except that Mr. Saxton and Mr. Martin did not attend.
13 Q. Were the service corporations present at the June 8th
14 meeting?
15 A. Not to my recollection.
16 Q. Were the service corporations present at the June 4th
17 meeting?
18 A. No.
19 Q. What point was information about the proposed
20 forbearance agreement communicated to the service
21 corporations?
22 A. I don't know.
23 Q. Do you know who was communicating with the service
24 corporations?
25 A. No.
35: 1 Q. Was anybody communicating with the service
2 corporations?
3 A. I don't know.
4 Q. Did Mr. Orr know?

Designation:

- 35: 6 A. I don't know.

Designation:

- 35: 8 Q. But you never spoke with a representative of a service
9 corporation about the forbearance agreement?

Designation:

- 35:11 A. I already testified to that.

Designation:

- 35:25 Q. Did the Swap counterparties ever say to the City that
36: 1 if a resolution is not reached by a certain date, they
2 will terminate?
3 A. Not to my knowledge.
4 Q. And you said that the first defaults occurred in your
5 view in March 2012, is that correct?
6 A. There was a credit rating downgrade which triggered
7 termination event under the collateral agreement which
8 had not been cured, and then after that the City
9 emergency manager was appointed, that in itself was an
10 event of default under the agreement. So, we had
11 several defaults.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

Designation:

40: 2 Q. Mr. Buckfire, the forbearance agreement in the City's
3 view allows the City to direct the termination of the
4 Swap agreements, is that correct?
8 A. Well, we negotiated for the right to do so if we can
9 deliver the Swap termination payment.
10 Q. Is that a right that the City currently possesses
11 under any other agreement?
12 A. This is the only agreement of which I'm aware.
13 Q. And it is the City's view that under the forbearance
14 agreement the City is able to direct the termination
15 of the Swap agreements without the consent of any
16 other party, is that correct?
21 A. Can you repeat your question?
22 Q. Sure. Under the forbearance agreement the City is
23 able to direct the termination of the Swap agreements
24 without the consent of any other party, is that
25 correct?

Designation:

41: 3 A. I don't know what I'm supposed to answer to. It's our
4 view that this is an agreement the City can perform it
5 has rights under.

Designation:

44: 6 Q. This document has been marked as Exhibit Number 3 is
7 the proposal to creditors, executive summary of the
8 proposal to creditors that was made on June 14th,
9 2013, is that correct?
10 A. Yes.
11 Q. And this was prepared in connection with a meeting
12 with creditors that was held at the Detroit Airport
13 Westin on June 14th, 2013, is that correct?
14 A. That's correct.
15 Q. And did you participate in creating this executive
16 summary?
17 A. I did.
18 Q. And you participated in the information that is --
19 gathering the information that is disclosed in this
20 executive summary, is that right?
21 A. Well, I reviewed drafts of it to make sure that it
22 made sense, that it was consistent, that it was
23 accurate, but I did not prepare the information
24 myself.
25 Q. You prepared -- leave it there. You're familiar with
45: 1 the contents of this document, correct?
2 A. Yes.
3 Q. If you turn to Page 35. And Page 35 contains a
4 summary of the current financial status of the City as
5 of June 14th, 2013, is that correct?
6 A. No, actually this is just one way of looking at it.
7 Page 8 and 9 are actually more relevant for the
8 discussion we've been having today.
9 Q. If you stay with -- what then do you think is

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 10 contained on Page 35?
- 11 A. This is a review of the City's reported historical
12 financials.
- 13 Q. If you look at the column at the very far right side
14 of the page it says prelim 2013. Do you know what
15 that column contains?
- 16 A. It contains a preliminary estimate of revenues,
17 operating expenses and legacy expenses for 2013.
- 18 Q. And if you look down here line labeled total revenues
19 which indicates 1.121.9 billion dollars, is that
20 correct?
- 21 A. Yes.
- 22 Q. And that is the total revenue that was projected as of
23 the date this executive summary was prepared for 2013?
- 24 A. Yes.
- 25 Q. Now, if you go down the next subsection of Page 35 is
46: 1 labeled operating expenditures, correct?
- 2 A. Yes.
- 3 Q. And operating expenditures preliminary 2013 column
4 indicates 692 million dollars, correct?
- 5 A. Yes.
- 6 Q. Now -- and the operating expenditures include --
7 included in this section include the essential
8 services that the City has to provide, is that
9 correct?
- 10 A. Yes.
- 11 Q. And then when you get to the legacy expenditures, is
12 it correct that the City is not currently making debt
13 payment, debt service payments to general obligation
14 bonds, is that correct?
- 15 A. Yes.
- 16 Q. And the City is not -- is currently deferring payments
17 for retiree health benefits, isn't that correct?
- 18 A. Yes.
- 19 Q. So, without making service or making payments on the
20 legacy expenditures for 2013, is it correct to say
21 that the City would have operated at a surplus for
22 fiscal year 2013?
- 23 A. Well, clearly if we're not making our fixed
24 obligations, we'd have more cash than if we did.
- 25 Q. And are you currently making payments on any of the
47: 1 items that are categorized under the legacy
2 expenditures part of Page 35?
- 3 A. Yes.
- 4 Q. What portions are you making?
- 5 A. Well, we're making payments on the POC Swaps because
6 they are a secured obligation. I'm not sure looking
7 at this whether the 141 million of debt service for
8 LTGO and UTGO incorporates payments made on the
9 secured state revenue share bonds which we have three
10 series. I have to go back and check, but clearly the
11 City is paying its obligations on secured, that is,
12 revenue protected debt and not paying on unsecured
13 debt.
- 14 Q. And the City is not at this point making its pension
15 contributions, correct?

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 16 A. Correct.
- 17 Q. The City at this point is not paying the health
18 benefits for retirees, correct?
- 19 A. Yes, that's correct.
- 20 Q. And the City is not making principal interest payments
21 to the service corporations, correct?
- 22 A. That's correct.
- 23 Q. Then turn to Page 38 of the executive summary. In
24 this document among other things or this page among
25 other things contains a preliminary forecast for
48: 1 fiscal -- for the City for fiscal year 2014, is that
2 correct?
- 3 A. Yes.
- 4 Q. And you see the column that's labeled 2014?
- 5 A. I do.
- 6 Q. The column labeled for 2014 indicates the total
7 revenues for the City for 2014 are projected to be 1
8 billion 108 -- so, it's 1 billion 82 million point 8,
9 is that correct?
- 10 A. Yes, a decline from 2013.
- 11 Q. And expenditures, the expenditures column indicates
12 that expenditures that the City will incur for
13 essential services will total 397.2 million dollars
14 for 2014, is that correct?
- 15 A. That's the projected net operating surplus, correct.
- 16 Q. Yeah, I'm sorry, it's 685.7 million in expenditures
17 for fiscal year 2014, correct?
- 18 A. Yes.
- 19 Q. And that results in a surplus of 397.2 million
20 dollars, correct?
- 21 A. Before debt service.
- 22 Q. Before debt service. But you're not making -- the
23 City is not making a significant portion of the debt
24 service, correct, in 2014?
- 25 A. That's correct.
- 49: 1 Q. So, for example, the City does not actually project
2 paying pension -- making pension contributions for
3 fiscal year 2014, isn't that true?
- 7 A. That's correct.
- 8 Q. And the City does not currently plan to pay the health
9 benefits for retirees in fiscal year 2014, correct?
- 13 A. Can you repeat the question, please?
- 14 Q. The City does not currently intend to pay the line
15 item for health benefits for retirees in fiscal year
16 2014?
- 17 A. That's correct.

Designation:

- 53:15 Q. So, do you believe that the City would be out of cash
16 without access to the casino revenues?
- 19 Q. As of December 2013?
- 20 A. If nothing else was done, yes.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

Designation:

- 54: 5 Q. Now, you've previously discussed the Swap
6 counterparties entered the negotiations with the view
7 that events of default had occurred under the Swap
8 contracts, correct?
9 A. It was a fact.
10 Q. And so the City had the same view that there were
11 events of default that had occurred under the Swap
12 contracts prior to the bankruptcy?
13 A. It wasn't a view, it was a fact. We had at least two
14 defaults.
15 Q. And can you tell us what the two defaults were?
16 A. The ratings downgrade default which had occurred in
17 2012 and the appointment of the emergency manager in I
18 believe it was March of 2013.
19 Q. And were there any other defaults other than those two
20 in the City's view?
22 A. There may well have been but those are the two that I
23 recollect.

Designation:

- 55:15 Q. To your knowledge had the Swap counterparties ever
16 threatened to bring litigation claims against the
17 City?
18 A. No.
19 Q. Has the City considered whether the Swap
20 counterparties have claims against the City other than
21 those arising out of the defaults under the Swap
22 agreements?
24 A. I don't know.
56: 1 Q. Has the City evaluated whether it is in breach of the
2 collateral agreement?
10 Q. In your view have you engaged in any analysis of
11 whether the City has breached the collateral
12 agreement?
13 A. No.
14 Q. To your knowledge has anyone else associated with the
15 City analyzed whether the City is in breach of the
16 collateral agreement?
17 A. I don't know.
22 Q. Have the service corporations ever threatened to your
23 knowledge claims against the City?
57: 1 A. I don't know.
3 Q. Have you ever analyzed whether these service
4 corporations may have claims against the City?
5 A. No.
6 Q. Have you analyzed whether or evaluated -- strike that.
7 Let me start again.
8 Have you evaluated whether the City has
9 claims against the Swap counterparties?
12 Q. Has Miller Buckfire evaluated whether the City has
13 claims against the Swap counterparties?
14 A. No.
15 Q. Has anyone else working for the City analyzed whether
16 the City has claims against the Swap counterparties?

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

18 A. No.
20 Q. No, you don't know --
21 A. I don't know.
22 Q. So, Miller Buckfire performed no investigation into
23 whether the City has claims against the Swap
24 counterparties in connection with this forbearance
25 agreement, correct?
58: 2 A. No.

Designation:

58:10 Q. Do you have a view as to what claims the forbearance
11 agreement releases?
12 A. No. The answer was no at end of the table. I'll
13 speak up. I apologize.
14 Q. Does the forbearance agreement operate to release any
15 claims that might be held against the City?
17 A. I don't know.

Designation:

58:19 Q. Do you have an understanding of how interest rate
20 movements may affect the termination payment that
21 would become due under the Swap agreements?
22 A. Yes.

Designation:

58:25 Q. And what is that understanding?
59: 1 A. Well, as interest rates come down, the Swap
2 termination liability goes up.
3 Q. And if interest rates go up, what happens to the Swap
4 termination liability?
5 A. Comes down.
6 Q. And there would come a point if interest rates
7 increased enough where the City could actually become
8 in the money on the Swaps, is that correct?
9 A. It would except that the Swap counterparties in 2009
10 negotiated for the right to terminate the Swaps so
11 they would never actually be in a net liability
12 position against the City if that were to occur.
13 Q. What is your basis for stating that the Swap
14 counterparties negotiated the right to terminate the
15 Swaps in 2009?
16 A. Well, I've already testified that I reviewed the
17 collateral amendment entered into in 2009 and
18 discussed it with counsel to the City. In their
19 review of the contract, and I can't remember exactly
20 the provision now but that was their interpretation of
21 the contract right.
22 Q. Have you reviewed any of the other 2009 documents
23 related to the Swaps?
24 A. No.
25 Q. Has the City undertaken any analysis to evaluate
60: 1 future interest rate moves?
2 A. We have reviewed the forward LIBOR curve.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 3 Q. And who performed that review?
- 4 A. That review was performed by Mr. Sanjay Marken, one of
5 our associates. M A R K E N, first name S A N J A Y.
- 6 Q. And when did he perform that review?
- 7 A. The most recent one was performed a few days ago.
- 8 Q. What did that review show?
- 9 A. It showed that the current forward LIBOR curve does
10 not show that the interest rate that's relevant to
11 this Swap would ever rise above six-and-three-quarters
12 percent which is the fixed rate on the Swap, and,
13 therefore, the market is telling us that the
14 probability of the Swap ever going in the money for
15 the benefit of the City is very low.
- 16 Q. Does the analysis address whether interest rates are
17 generally rising or decreasing?
- 18 A. The LIBOR curve is an observable market fact. I'm not
19 going to speculate on when rates are going up or down.
20 They will fluctuate.
- 21 Q. Have interest rates increased since the forbearance
22 agreement was executed?
- 23 A. Yes.
- 24 Q. And what effect has that increase on -- in interest
25 rates had on the estimated termination payment under
61: 1 the forbearance agreement?
- 3 A. Well, the assumption in June of this year when we
4 began to negotiate with the Swap counterparties was
5 the termination payment was around four hundred
6 million dollars. The rise in rates since that time
7 and it's now almost August probably has reduced that
8 termination payment to around three hundred million
9 dollars or even lower.
- 10 So, yes, the rise in rates has resulted in
11 a reduction of the termination payment.
- 12 Q. And is that analysis of the reduction to the
13 termination payment something that Miller Buckfire has
14 prepared?
- 16 A. Well, there is a procedure embodied in the collateral
17 agreement that lets you determine the termination
18 payment if one is to occur. We've simply analyzed the
19 net value of the assumed LIBOR payments and Swap
20 payments and come up with our own estimate.
- 22 Q. And that analysis was performed by Mr. Marken?
- 23 A. That's right.

Designation:

- 63: 3 Q. Mr. Buckfire, did Mr. Marken perform any analysis
4 related to the interest rates' effect on the Swaps
5 prior to the analysis he performed a few days ago?
- 6 A. No.

Designation:

- 63:19 Q. Did you describe what claims you would litigate
20 aggressively to the Swap counterparties?
- 21 A. No.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 22 Q. Did you make any assertions to the Swap counterparties
23 concerning the validity of their liens at the June 4th
24 meeting?
25 A. No.
- 64: 1 Q. Was the potential of the City challenging the liens
2 held by the Swap counterparties ever a matter
3 discussed during the negotiation of the forbearance
4 agreement?

Designation:

- 64: 7 Q. Discussed with the Swap counterparties.
8 A. Yes.
9 Q. When was that discussed?
10 A. It was a very hectic period. I did really almost
11 nothing between June 4th and the 11th but try to
12 negotiate this deal. I know at several points in my
13 conversations with the business people I let them know
14 that if there were issues with the collateral, we
15 would raise them if necessary to protect the City.
16 Q. Did you articulate what those issues might be?
17 A. No.

Designation:

- 65: 8 Q. So, you never performed an analysis of the merits of
9 those claims?
10 A. No.

Designation:

- 65:19 Q. Did you assert any arguments or potential litigation
20 claims other than the issues surrounding the granting
21 of the liens in your negotiations with the Swap
22 counterparties?
23 A. No.
24 Q. Did you articulate to the Swap counterparties why in
25 the City's view the liens may or may not be valid?
66: 1 A. Not directly, no.

Designation:

- 69: 7 Q. You testified that as of the last analysis your
8 understanding is the estimated amount of the
9 termination payment that would be due is roughly three
10 hundred million dollars, is that correct?
11 A. Well, it clearly moves around as the interest rate
12 curve moves around. I think the most recent number is
13 somewhere reaching 275 and 300 million dollars.
14 That's before the application of the applicable
15 discount that we had provided for in the termination
16 agreement.
17 Q. And that last analysis, when was that performed?
18 A. A few days ago.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

Designation:

69:23 Q. Does the City have a plan at this point for how it
24 will obtain the cash necessary to pay the termination
25 payment?

Designation:

70: 3 A. Yes, the City has a plan.

Designation:

70: 5 Q. And what is that plan?
6 A. The City intends to secure a debtor in possession
7 financing of sufficient proceeds to fund the
8 termination payment as well as provide sufficient cash
9 for the City to execute on its reinvestment program
10 during the bankruptcy.

Designation:

70:18 Q. And is Miller Buckfire leading the effort to obtain
19 debtor in possession financing?
20 A. Yes.

Designation:

71:16 Q. And do you know who those ten entities are that have
17 said they are not interested?
18 A. I do, yes.
19 Q. And who are they?
20 A. I'm not going to tell you that.
21 Q. On what basis?
22 A. It's commercially sensitive information.

Designation:

73:24 Q. What covenants, if any, are included in the RFP as
25 being acceptable or not acceptable?
74: 1 A. I'm not going to discuss that. It's commercially
2 sensitive.

Designation:

74: 6 Q. And is the City offering a lien on casino revenues in
7 connection with the DIP financing?
8 A. In part.

Designation:

74:12 Q. No doubt. What other collateral is the City offering
13 to secure the DIP financing loan?
14 A. I'm not going to answer that question.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

Designation:

75: 2 Q. Is the City offering art work as collateral?
3 A. I'm not going to discuss the terms of the term sheet,
4 sorry.

Designation:

76:15 Q. Has the City had discussions with the State of
16 Michigan about providing financing?
17 A. I'm not going to discuss that.

Designation:

76:21 Are there certain events that the City
22 believes has to happen in the case for it to be able
23 to realistically obtain debtor-in-possession
24 financing?
25 A. Yes, there are events in the case.
77: 1 Q. And what is that deal?

Designation:

77: 4 A. Well, we have to find a willing lender, that's number
5 one. Number two, we have to have a court order
6 approving the form of the DIP financing, and, number
7 three, we believe we need to have approval of the
8 forbearance and termination agreements we get the
9 benefit of the elimination of the collateral pledge
10 and the benefit of the discount.

Designation:

77:12 Q. Do you need a determination on eligibility as well?
13 A. Probably as a condition to closing but not as a
14 condition to getting a loan commitment.

Designation:

79:10 Q. And if the City obtains a debtor-in-possession
11 financing, what's the intended use of the financing?

Designation:

79:14 A. I've already answered it.

Designation:

79:16 Q. Why don't you go ahead, say it again.
17 A. We'll use proceeds to terminate the Swaps at the
18 discount provided for in the forbearance agreement and
19 the balance of the DIP loan will be retained by the
20 City as working capital and to support its
21 reinvestment program.
22 Q. Are there any other intended uses to the DIP financing
23 other than the two you just said?

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

24 A. Not that I'm aware of.

Designation:

85: 6 Q. Go back to the negotiations that occurred in 2013.
7 Did you invite Syncora to participate in those
8 negotiations?
9 A. No.
10 Q. Why not?
11 A. They weren't a party to the collateral agreement.
12 Q. Did you consult with Mr. Orr as to whether Syncora
13 should be invited to the negotiations?
14 A. No.
15 Q. Did you invite Financial Guaranty Insurance Company to
16 participate in the negotiations concerning the
17 forbearance agreement?
18 A. No.
19 Q. Did you consult with Mr. Orr with respect to the
20 decision whether Financial Guaranty Insurance Company
21 should be invited to those negotiations?
22 A. No.
23 Q. So, you made that decision -- how did you come to the
24 decision not to invite -- we'll call it FGIC?
25 A. It never came up. They weren't a party to the
86: 1 agreement.
2 Q. Did you invite US Bank to participate in the
3 negotiations concerning the forbearance agreement?
4 A. No.
5 Q. Why not?
6 A. Not a party to the agreement.
7 Q. To the collateral agreement?
8 A. Correct.
9 Q. And to your knowledge no one else invited Syncora,
10 FGIC or US Bank to participate in the negotiations on
11 the forbearance agreement?
12 A. Correct.

Designation:

87:11 Q. Did you ever advise Mr. Orr that you thought Syncora
12 should be a party to the negotiations?
13 A. No.

Designation:

88:11 Q. At any time during the negotiations in 2013 did the
12 Swap counterparties send a notice of an event of
13 default?
14 A. I don't recall if we ever received an official notice
15 but we certainly were aware of the fact they could
16 send one at any time.
17 Q. And at any time during the negotiations in 2013 did
18 the Swap counterparties formally designate an early
19 termination date?
20 A. No.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

Designation:

89: 3 Q. Now, you've indicated there was I guess an agreement
4 -- is it fair to say there was an agreement at least
5 in principle on the terms of the forbearance agreement
6 on or before June 11th, is that correct?
8 A. There was an economic understanding, yes.

Designation:

89:10 Q. What happened after June 11th with respect to the
11 negotiations?
12 A. Well, the attorneys for the City and for the Swap
13 counterparties began to negotiate the forbearance
14 agreement. I was not directly involved in that
15 because it was primarily in fact solely with respect
16 to the nonfinancial terms of it.
17 That took several weeks of very intensive
18 work amongst the lawyers for all the parties to arrive
19 at an agreement that could be executed which it turned
20 out not before July 15th.
21 So, it took about a month to complete the
22 negotiations for the agreement, so --
23 Q. Other than attorneys working to document I guess the
24 legal terms -- well, document the whole thing, was
25 there anything else that caused a month, approximately
90: 1 a month to elapse between agreement on the financial
2 terms and execution of the forbearance agreement?
3 A. No, it was a very, very active negotiation amongst the
4 parties to the arrive at the final document.

Designation:

93: 8 Q. To your knowledge at no point in 2012 did the Swap
9 counterparties send a notice of an event of default to
10 the City?
13 A. Not to my knowledge.

Designation:

94:17 Q. You're familiar with the Detroit General Retirement
18 System Service Corporation and the Detroit Police and
19 Fire Retirement System Service Corporation?
20 A. I know they exist.
21 Q. Do you have an understanding -- just for the record
22 I'll refer to them as the service corporations, do you
23 have an understanding what the service corporations
24 are?
25 A. Yes.
95: 1 Q. And what is that understanding?
2 A. They were created for the purpose of the City
3 borrowing 1.4 billion dollars in 2005 and 2006 and
4 making a contributions of the like amount to the
5 pension funds.
6 Q. Do you understand the service corporations to be

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 7 controlled by the City?
- 8 A. Yes.
- 9 Q. And do you understand the service corporations to be
10 controlled by the emergency manager?
- 11 A. I assume that's the case but I don't know for a fact.
- 12 Q. And the service corporations are in fact parties to
13 the forbearance agreement, correct?
- 14 A. Yes, they are.
- 15 Q. Who acted on behalf of the service corporations in
16 connection with the forbearance agreement?
- 17 A. The City did.
- 18 Q. And by the City can you identify the individuals that
19 you are referring to when you say the City?
- 20 A. Mr. Orr.
- 21 Q. To your knowledge did any members of the Board of
22 Directors of the service corporations consult with
23 Mr. Orr about the forbearance agreement?
- 24 A. I don't know.
- 25 Q. Did Mr. Orr -- let's ask it the other way. Did
96: 1 Mr. Orr consult with any members of the Board of
2 Directors of the service corporations in connection
3 with the forbearance agreement?
- 4 A. I don't know.
- 5 Q. Did anyone at Miller Buckfire have any contact with
6 anyone, any -- any member of the Board of Directors of
7 the service corporations in connection with the
8 negotiations?
- 9 A. I don't think so.
- 10 Q. And do you know who presented the forbearance
11 agreement to the service corporations for execution?
- 12 A. No.
- 13 Q. Would Mr. Orr know that?
- 14 A. I don't know.
- 15 Q. Do you know who would know that?
- 16 A. I don't know.
- 17 Q. The person who signed the forbearance agreement on
18 behalf of the service corporations, a woman named
19 Cheryl Johnson, is that correct?
- 20 A. Yes.
- 21 Q. Do you know Miss Johnson?
- 22 A. No.
- 23 Q. Do you know what position Miss Johnson holds, if any,
24 on the service corporations?
- 25 A. Well, the signature page indicates that she's the
97: 1 president.
- 2 Q. You've never spoken to Miss Johnson about the
3 forbearance agreement?
- 4 A. No.
- 5 Q. Have you ever spoken with Portia Roberson about the
6 forbearance agreement?
- 7 A. No.
- 8 Q. Do you know Miss Roberson?
- 9 A. No.
- 10 Q. Has anyone from Miller Buckfire ever spoken with
11 Miss Roberson?
- 12 A. I don't know.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 13 Q. Are you aware that the insurers contend that the Swap
14 agreements cannot be terminated without their consent?
15 A. Yes.
16 Q. And when did you first become aware of that
17 contention?
18 A. Well, last week in court I heard Mr. Hackney describe
19 those arguments to the judge.
20 Q. Have you taken any steps to evaluate whether the City
21 agrees with the insurer's construction of the
22 operative documents on this point?
23 A. No.

Designation:

- 98:25 Q. Are you aware that the insurers contend they have the
99: 1 right to control essentially all actions to be taken
2 by the Swap counterparties in connection with the Swap
3 agreements?

Designation:

- 99: 5 A. Yes, I am.

Designation:

- 99: 7 Q. And when did you develop that awareness?
8 A. When I was in court last week listening to
9 Mr. Hackney's description of those issues to the
10 judge.
11 Q. And have you taken any steps to evaluate whether the
12 City concurs with the insurer's construction of the
13 documents on this point?
14 A. No.

Designation:

- 101: 8 Q. In determining whether to enter into the settlement
9 agreement, did the City consider whether the casino
10 revenues constituted special revenues under the
11 bankruptcy code?
16 A. No.
18 Q. So, you didn't consider it or you don't know?
19 A. I said we didn't consider it.

Designation:

- 107:10 Q. Has the City considered selling or leasing Belle Isle?
11 A. Not to my knowledge.

Designation:

- 107:12 Q. Has the City looked into possible sources of funding
13 from the State of Michigan?
14 A. I'm not going to discuss that.
15 Q. Has the City looked into possible sources of funding

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

16 from the federal government?
17 A. I'm not going to discuss that either.
18 Q. On what basis?
19 A. Commercially sensitive information.

Designation:

108: 6 Q. Mr. Buckfire, good afternoon. My name is Steve
7 Hackney. I'm an attorney at Kirkland & Ellis, and I
8 represent Syncora Capital Assurance and Syncora
9 Guaranty. Nice to meet you.
10 A. Likewise.

Designation:

109: 4 So, as I understood your testimony, you
5 were the lead negotiator for the City when it came to
6 negotiating the business deal, is that correct?
7 A. Yes.
8 Q. Other people were going to paper the business deal in
9 terms of the legal terms that would embody it,
10 correct?
11 A. Yes.
12 Q. Let me ask you a question. The kickoff of the
13 negotiations that led to the forbearance agreement I
14 understood you to say began on June 4th, correct?
15 A. Yes.
16 Q. Who called that meeting?
17 A. Counsel to Jones Day called counsel for BAML and
18 invited them to the meeting.
19 Q. Fair to say that the meeting was held at the behest of
20 the City of Detroit?
21 A. Yes.
22 Q. Did you take legal advice, you personally as the lead
23 negotiator for the City, did you take legal advice
24 from Jones Day in advance of the June 4 meeting?
25 A. Yes.
110: 1 Q. Would you disclose to me the legal advice you obtained
2 from them?
3 MR. CULLEN: I'll instruct him not to
4 answer.
5 MR. HACKNEY: So, if I ask questions about
6 the legal advice you had been given about the COPs
7 Swap structure or various parties' rights thereunder,
8 you would instruct the witness not to answer those
9 questions?
10 MR. CULLEN: Right.
11 MR. HACKNEY: And I take it, Mr. Cullen,
12 that instruction would remain true both from -- at any
13 time?
14 MR. CULLEN: Right.
15 MR. HACKNEY: Not just with respect to the
16 June 4 meeting?
17 MR. CULLEN: Precisely.
18 BY MR. HACKNEY:
19 Q. Okay. Let me ask you, Mr. Buckfire, I'm going to

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 20 speculate, perhaps not wildly, that you've negotiated
21 a few deals in your lifetime.
- 22 A. Yes.
- 23 Q. Isn't it fair to say as a negotiator, you have to have
24 an understanding of the financial needs and desires of
25 your client as well as the counterparty with whom you
111: 1 are negotiating?
- 2 A. Yes.
- 3 Q. You also have to have at least some understanding of
4 the legal framework in order to negotiate effectively,
5 correct?
- 6 A. Yes.
- 7 Q. You don't have to go to law school, right, but you do
8 have to understand some of the ins and outs of the
9 various legal documents that you're negotiating over,
10 correct?
- 11 A. As well as any layman can be expected to do so.
- 12 Q. Now, I'd like to get a level set as to where you were
13 on June 4th, 2013 as you're going into this meeting
14 with BAML.
- 15 A. And UBS.
- 16 Q. And UBS. So, they were there too?
- 17 A. Yes.
- 18 Q. Okay. I want to make sure I have a level set under
19 the operating assumptions that you had in your mind as
20 you were going into the meeting to negotiate with the
21 Swap counterparties, okay?
- 22 One of your operating assumptions was that
23 there were termination events existing under the
24 Swaps, correct?
- 25 A. There were events of default existing under the Swaps,
112: 1 the collateral agreement.
- 2 Q. Okay. So, let's take a step back and let me be more
3 precise.
- 4 A. Okay.
- 5 Q. So, there is a Swap agreement that the Swap
6 counterparties are parties to with the service
7 corporations?
- 8 A. Correct.
- 9 Q. You are aware of that?
- 10 A. I am.
- 11 Q. You are also aware that there is a collateral
12 agreement that is between among other parties the
13 City, the service corporations and the Swap
14 counterparties, correct?
- 15 A. Yes.
- 16 Q. Now, at the time you're going into the June 4 meeting,
17 one of your operating assumptions was that there were
18 termination events under the Swap that would give the
19 Swap counterparties the right to terminate?
- 25 A. No, I was focused on the cash issue that would be at
113: 1 risk under the collateral agreement.
- 3 Q. And let me tie it up a little bit to see if this jogs
4 your memory. The collateral agreement certainly
5 relates to the Swaps that was entered into in 2009,
6 correct?

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 7 A. Correct.
- 8 Q. The collateral agreement cash trap arguably slams shut
9 upon the occurrence of termination events or events of
10 default under the Swap, is that your understanding?
- 15 Q. Okay.
- 16 A. Want to try again.
- 17 Q. Did you understand that the collateral agreement and
18 the cash trapping were securitizing the City's
19 obligations to the service corporations and the
20 service corporations' obligations to the Swap
21 counterparties under the Swap?
- 22 A. No.
- 23 Q. Did you understand that the collateral agreement what
24 it was ultimately securing was the termination payment
25 that might be made under the Swaps?
- 114: 2 A. No.
- 4 Q. Did you believe that the collateral agreement had
5 created like a new obligation by the City to pay the
6 Swap counterparties?
- 7 A. It created a collateralized obligation to pay the Swap
8 counterparties.
- 9 Q. Okay. So, going back to the June 4 meeting, let me
10 put it in vernacular that I hope is more correct about
11 what you were assuming. Okay?
- 12 You were assuming that there had been
13 events of default under the collateral agreement that
14 would allow the Swap counterparties to trap cash,
15 correct?
- 16 A. I wasn't assuming anything. I knew there were two
17 events of default.
- 18 Q. Let me --
- 19 A. But they had not been asserted by the Swap
20 counterparties but they existed.
- 21 Q. Let me restate it. As of June 4 you knew that there
22 were events of default under the collateral agreement
23 that would allow the Swap counterparties to trap cash,
24 fair statement?
- 25 A. If they chose to do so, yes.
- 115: 1 Q. If they chose to do so.
- 2 A. Correct.
- 3 Q. And you also -- let me make sure I get this right.
4 You also believed that they would be able to declare
5 termination event and potentially be paid four hundred
6 million dollars, correct?
- 7 A. Yes.
- 8 Q. And that was also one of your operating assumptions as
9 you're going into the negotiation, correct?
- 10 A. Yes.
- 11 Q. And your understanding that they could do so was that
12 they could do so unilaterally, correct?
- 13 A. Correct.
- 14 Q. And your understanding with both with respect to
15 declaring termination of the Swaps and getting a
16 termination payment and trapping cash was that there
17 was no other party that could direct their actions,
18 correct?

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 19 A. That's correct.
- 20 Q. And your understanding of these operating assumptions
21 remain consistent between June 4 and June 11 when you
22 struck the agreement in principle, correct?
- 23 A. Correct.
- 24 Q. And in fact it remained consistent for you all the way
25 through the execution on July 15th of the forbearance
116: 1 agreement, correct?
- 2 A. Correct.
- 3 Q. And the forbearance agreement itself did not
4 materially change the business terms of the deal that
5 you had struck on June 11th, correct?
- 6 A. No, except for the small negotiation we had around the
7 date of the first option. It was the only material
8 business term that changed.
- 9 Q. Okay. So, there was some changes of timing in terms
10 of when the percentages stepped up?
- 11 A. Yes, because the agreement took a long time to
12 negotiate. We had originally assumed we would
13 complete a forbearance in June. It took until July so
14 we asked for and were granted an additional month on
15 the first option payment.
- 16 Q. Fair point. Thank you for that correction. Other
17 than that change to what I'll describe as the business
18 terms that you negotiated on June 11th, there were no
19 other material changes to the deal that you struck,
20 correct?
- 21 A. No.
- 22 Q. It was just legal beagles doing what they do, correct?
- 23 A. I would never call them legal beagles, but yes, the
24 lawyers were doing what they were supposed to do.
- 25 Q. Okay. All right. Now, I want to clarify at the June
117: 1 4 meeting other than saying that the City would
2 vigorously litigate attempts to trap cash, you did not
3 express the City's views on the merits of that
4 litigation, correct?
- 5 A. Correct.
- 6 Q. You just said we're going to fight like hell to stop
7 you from trapping cash or words to that effect?
- 8 A. That's correct.
- 9 Q. And you didn't say by the way here's why we are going
10 to win because we have this great argument and you're
11 going to lose, right?
- 12 A. I never said that.
- 13 Q. Never said words to that effect, correct?
- 14 A. No.
- 15 Q. Never attempted to argue the merits of why the Swap
16 counterparties wouldn't be able to trap cash, fair
17 statement?
- 18 A. Correct.
- 19 Q. And no one else on the City side did either, correct?
- 21 A. Not to my recollection.
- 23 Q. And you never attempted to argue the merits of the
24 City's case to the Swap counterparties at any time
25 between June 4 and June 11 when you reached the
118: 1 agreement in principle, correct?

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 2 A. Correct.
3 Q. And you never witnessed anyone else do so on behalf of
4 the City either, correct?
5 A. Not that I recall.

Designation:

- 120:13 Q. Now, at the time of the June 4 meeting you were aware
14 that a bankruptcy filing for the City of Detroit was
15 at least a possibility, correct?
16 A. Yes.
17 Q. Had you reached the view at that time that it was a
18 likelihood?
19 A. It was a possibility.

Designation:

- 121: 4 Q. And if I ask you at the time -- well, let me ask a
5 general question. I'm not asking you to disclose the
6 subject of communication -- the communications
7 themselves, but I want to ask whether you had taken
8 legal advice on the subject of the automatic stay.
9 Don't tell me what the legal advice was.
10 Had you taken legal advice on the subject
11 of the automatic stay at any time between June 4 and
12 June 11?
14 A. Yes, I did.
16 Q. So, you had taken legal advice from Jones Day, is that
17 correct?
18 A. Correct.
19 Q. But if I ask you what the advice was, you'll follow
20 your counsel's instruction and not answer, correct?
21 A. Correct.

Designation:

- 122: 4 Q. I have a broader question which is at any time prior
5 to June 11th did you or anyone else at Miller Buckfire
6 to your knowledge perform an analysis of what interest
7 rates were likely to do in the future?
8 A. No.
9 Q. Did anyone study any LIBOR curves prior to June 11?
10 A. I don't recall.
11 Q. You certainly didn't?
12 A. I did not.
13 Q. Okay. When you testified about Mr. Marken, you
14 testified about something I think he had done a couple
15 days ago and we're in August. So, I'm going to ask
16 the same question now about July 15th which is the
17 execution date.
18 As of the execution date of the forbearance
19 agreement, had you or anyone else at Miller Buckfire
20 undertaken an assessment of what interest rates were

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

21 likely to do?
22 A. No.

Designation:

123: 6 Q. You were asked a lot of questions about the service
7 corporations. I think we established that you don't
8 know their directors and haven't met them, but I want
9 to make a point clear about the negotiations which is
10 you never engaged in arm's length negotiations with
11 the service corporations, correct?
12 A. Correct.
13 Q. And you never witnessed anyone else do so either,
14 correct?
15 A. Correct.
16 Q. And it's your understanding that Mr. Orr directed the
17 service corporations to execute the agreement and they
18 did, correct?
19 A. Correct.
20 Q. Now, you referenced a standstill agreement that was
21 something that had been proposed by the Swap
22 counterparties prior to June 4, 2013.
23 Do you recall that testimony?
24 A. I do.
25 Q. Your understanding of the standstill agreement, I
124: 1 understand we are going to get it but we don't have it
2 today so I have to tell you what I understand from
3 your testimony.
4 Your understanding of it was that it
5 allowed the cash to flow out of the -- it allowed the
6 casino revenues to flow in exchange for the City
7 agreeing to waive arguments about the invalidity of
8 the Swaps but was terminable at any time?
9 A. By the Swap counterparties.
10 Q. By the Swap counterparties, correct?
11 A. Correct.
12 Q. And that was unacceptable because that meant at any
13 time they could change their mind and trap the cash,
14 correct?
15 A. By those terms, yes.
16 Q. Now, under the forbearance agreement I understand that
17 you're not an attorney but you are a sophisticated
18 businessman who deals with legal documents on a
19 regular basis, true statement?
20 A. Regrettably.
21 Q. More than he wants to? But under the forbearance
22 agreement isn't it true that your understanding is
23 that the City has agreed during the forbearance period
24 that it won't seek to declare the Swaps invalid,
25 correct?
125: 1 A. Correct.
2 Q. And during the forbearance period the Swap
3 counterparties are allowing the cash to flow through
4 the collateral account, right?
5 A. Yes.
6 Q. So, they waive their argument to trap the cash in

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

7 exchange for other things that they got, correct?
8 A. Correct.

Designation:

126:15 Q. You never proposed what I'll call a smaller deal that
16 would have attempted to maintain the status quo for
17 some period of time without trying to achieve a
18 potential termination of a Swap at a discount so on
19 and so forth, true statement?
20 A. True.

Designation:

127: 6 Q. Isn't it true that between March 12th of -- between
7 March of 2012 and June 4th, 2013, the Swap
8 counterparties had never terminated the Swaps,
9 correct?
10 A. That's true.
11 Q. Despite the fact that in your view they had the right
12 to do so, right?
13 A. That's correct.
14 Q. And during that entire time period which is 14 months
15 they had never demanded that cash be trapped, correct?
16 A. No, they hadn't.

Designation:

129:13 Q. Understood. That's very helpful. So, let me try and
14 summarize it which is when you re-engaged in January
15 of 2013, you were made aware of a -- of the general
16 desire of the Swap counterparties to for lack of a
17 better term figure out what the City and the Swap
18 counterparties were going to do about the Swap,
19 correct?
20 A. Yes.
21 Q. And you then held them off between that time and June
22 4 as you tried to buy time for Ernst & Young to get
23 its arms around the financial position of the City,
24 correct?
25 A. Yes, and our other advisors.
130: 1 Q. And your other advisors, absolutely. And it was only
2 after you had gotten that analysis done that you felt
3 you were now ready to initiate a meeting with the Swap
4 counterparties to speak meaningfully about what should
5 be done with the Swap?
6 A. In the context of an overall recommendation to Mr. Orr
7 about how to protect the City and its liquidity.
8 Q. And so during that time period which was from January
9 of 2013 to June of 2013, despite these growing signs
10 of impatience by the Swap counterparties, they still
11 didn't trap cash, did they?
12 A. They were being paid in the ordinary course. There
13 was no economic consequence that they had to worry
14 about. They didn't know the financial condition of
15 the City. There was no economic reason for them to do

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 16 anything, but clearly as the condition of the City
17 became more desperate and everyone became more aware
18 of it, the risk they would do something became
19 greater.
- 20 Q. I see. So, it was the disclosure of information by
21 Mr. Orr on June 14th, was that a factor that drove you
22 to negotiate in advance of that?
- 23 A. No. Recall that his earlier disclosure was I believe
24 in April.
- 25 Q. Oh, that's right.
- 131: 1 A. And that was the first time that the public and the
2 capital markets really became aware of the true
3 financial condition of Detroit.
- 4 Q. So, in April Mr. Orr made a disclosure that basically
5 said if I could summarize that things are not well in
6 Detroit, correct?
- 7 A. That's accurate.
- 8 Q. But despite that disclosure and subsequent to the
9 report in April and May, Swap counterparties didn't
10 demand cash be trapped, correct?
- 11 A. Correct.
- 12 Q. They didn't terminate the Swap, correct?
- 13 A. Correct.
- 14 Q. After June 11, after you've cut the business deal and
15 here come the lawyers to write it down, fair to say
16 that you're on the sidelines now as the lawyers work
17 out the legal language, but you're still monitoring
18 the course of the legal negotiations given the
19 importance of what's at stake?
- 22 A. I was generally aware of what was going on.
- 24 Q. I'm trying to get on the idea that you're not on the
25 phone with all these lawyers like directly
132: 1 participating and listening to the negotiations of the
2 forbearance agreement itself but you're keeping tabs
3 on how it's progressing and when it's hoped to be
4 executed, correct?
- 5 A. Correct.
- 6 Q. Put another way, you are aware of the legal
7 negotiation process as it goes along even though
8 you're not personally involved in it, correct?
- 9 A. Correct.
- 10 Q. And that's because this was such an important
11 agreement that you as an important advisor to the City
12 needed to be up to speed on what was going on with the
13 forbearance agreement?
- 14 A. Correct, but recall that on June 11th the Swap
15 counterparties did issue a letter to US Bank
16 authorizing them to release the tranche of cash due to
17 us on June 15th and therefore we knew we had until
18 July 15th to get to the next tranche.
- 19 So, from a financial perspective I was
20 comfortable with where we were with the Swap
21 counterparties.
- 22 Q. Because after that discharge of cash, then it goes
23 back to just slowly building up, you get it for the
24 rest of the month and then it slowly builds up in the

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 25 first part of July?
- 133: 1 A. Correct.
- 2 Q. So, you felt like we had some time to negotiate?
- 3 A. That's correct.
- 4 Q. Yeah. Your understanding is that the legal
- 5 negotiations of the forbearance agreement were
- 6 complicated but that they proceeded uninterrupted from
- 7 June 11th to July 15th, correct?
- 8 A. Correct.
- 9 Q. And if there had been a serious interruption in these
- 10 negotiations, you would have likely known about this
- 11 as an important advisor to the City, correct?
- 12 A. Yes.
- 13 Q. And you are aware of no serious interruption, correct?
- 14 A. No.
- 15 Q. That's not correct?
- 16 A. I'm not aware of any serious interruptions.
- 17 Q. In late June of 2013 you learned that Syncora wanted
- 18 to make a proposal to the City, isn't that correct?
- 19 A. Yes.
- 20 Q. And you had a conversation with Todd Snyder on the
- 21 subject of Syncora's potential proposal on Saturday,
- 22 June 29th, isn't that correct?
- 23 A. That's correct.
- 24 Q. Mr. Snyder you understood is a banker at Rothschild's,
- 25 correct?
- 134: 1 A. Correct.
- 2 Q. And you also understood that he was representing
- 3 Syncora, correct?
- 4 A. Yes.
- 5 Q. And you also understood that at the time that he was
- 6 calling you, that there had been previous
- 7 communications between counsel to Syncora and counsel
- 8 to the City, correct?
- 9 A. I had heard about it but I wasn't aware of the
- 10 specifics.
- 11 Q. Okay. So, you knew Jones Day and Kirkland and maybe
- 12 others had met and talked about something but you
- 13 didn't know what it was?
- 14 A. I knew they were talking about the issues raised by
- 15 Syncora.
- 16 Q. Okay. Now, tell me -- so, in terms of Syncora's
- 17 potential proposal, your first percipient knowledge of
- 18 it as a witness happens on that Saturday when you have
- 19 your conversation with Mr. Snyder, is that a fair
- 20 statement?
- 21 A. Correct.
- 22 Q. Tell me everything you can recall about that
- 23 conversation.
- 24 A. It was quite brief. Todd told me he had been retained
- 25 by Syncora and that they wanted to propose something
- 135: 1 that would be of benefit to the City in resolving the
- 2 Swap matter. I told him that we were always willing
- 3 to listen to anything anyone had to say and I asked
- 4 him to tell me what he had in mind. He never did.
- 5 Q. Have you told me everything you can recall about that

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 6 conversation?
- 7 A. Yes.
- 8 Q. During that conversation didn't Mr. Snyder describe
9 the general structure of a proposal Syncora wanted to
10 make?
- 11 A. No.
- 12 Q. So, if Mr. Snyder says he did, he's lying or mistaken?
- 13 A. He never made a specific proposal to me.
- 14 Q. I'm not saying a specific proposal, I'm saying a
15 general structure of a proposal, that's what he
16 testified to in his affidavit.
- 17 Did he provide to you the general structure
18 of a proposal that Syncora wanted to make?
- 19 A. Not that I recall.
- 20 Q. Possible he did, possible he didn't, you just can't
21 remember?
- 22 A. I can't remember.
- 23 Q. Did he tell you that we'd be able to put specifics
24 into the general structure of the proposal if we could
25 execute an NDA that would allow us to learn about the
136: 1 negotiations with the Swap counterparties?
- 2 A. Yes, he did.
- 3 Q. What did you tell him in response to that?
- 4 A. I said he should send us an NDA and we'll take a look
5 at it.
- 6 Q. And you understood that at least as he expressed to
7 you that he wanted an NDA as a precursor in order to
8 make a specific proposal, correct?
- 9 A. Correct.
- 10 Q. Isn't it true that after that time you understood that
11 an NDA was proposed to the City, correct?
- 12 A. Yes.
- 13 Q. And the City refused to execute that NDA, isn't that
14 correct?
- 15 A. That's correct.

Designation:

- 137:15 Q. And that's because -- but you do remember him telling
16 you the specifics would come after we sign an NDA?
- 17 A. I do.
- 18 Q. Yeah. And then your understanding is that there was a
19 problem with the NDA that you couldn't discuss the
20 proposal with the EFM?
- 21 A. That's correct.
- 22 Q. And that was something that the parties couldn't get
23 over?
- 24 A. I asked Jones Day to go back to Kirkland Ellis and try
25 to fix the problems we had in the NDA and then I moved
138: 1 on to other issues.
- 2 Q. And your understanding was that to the extent those
3 problems didn't get fixed it was because Kirkland
4 Ellis was being obstinate with respect to the terms of
5 NDA?
- 6 A. I don't know why we never resolved it.
- 7 Q. So, to this day you don't know whether or not an NDA

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 8 could have been struck that would have allowed Syncora
9 to make a rival proposal, correct?
- 10 A. All I can tell you is that no NDA was entered into
11 because the terms were unacceptable.
- 12 Q. And you don't know why one wasn't entered into
13 ultimately after that?
- 14 A. I don't think we could ever resolve the issues.
- 15 Q. And this was in advance of your having executed the
16 forbearance agreement, correct?
- 17 A. Yes.
- 18 Q. As a negotiator, don't you agree that it's nice
19 whenever you can play two parties off against each
20 other?
- 21 A. I didn't have two parties, I had one party. I had the
22 Swap counterparties.
- 23 Q. And I'm not asking about in this case, I'm asking
24 about as a general principle, isn't it nice when you
25 can play two parties off against each other?
- 139: 1 A. Sometimes.
- 2 Q. Isn't that something that you'll do in the DIP
3 financing which is you'll get all these offers in and
4 then you'll make these guys compete with each other in
5 order to drive best possible deal for the City,
6 correct?
- 7 A. Only if you assume a level playing field which this
8 negotiation was not.
- 9 Q. I'm just asking generally about the idea of trying to
10 drive the best deal possible through competition
11 amongst different negotiating parties. Can be
12 valuable, right?
- 13 A. Can be under the right circumstances. This was not
14 one of them.
- 15 Q. And what was wrong about the circumstances?
- 16 A. Because we had only two parties to the table, the Swap
17 counterparties who had signed the collateral
18 agreement. There was nobody else to negotiate with.
- 19 Q. That's right, that's right, because your understanding
20 was that Syncora had no rights whatsoever under the
21 collateral agreement, correct?
- 22 A. Correct.
- 23 Q. And your understanding was they had no ability to
24 direct the actions of the Swap counterparties,
25 correct?
- 140: 1 A. I testified earlier that my understanding, I was
2 advised, the only parties of interest here are the
3 Swap counterparties.
- 4 Q. And it was also your understanding that Syncora didn't
5 have any rights under the Swaps that would be
6 terminated, correct?
- 7 A. Only talking about the collateral agreement.
- 8 Q. We talked about the fact that there might be a
9 termination event for four hundred million dollars.
10 That's not under the collateral agreement, right?
- 11 A. True.
- 12 Q. So, we are talking about the Swaps, right?
- 13 A. Yes.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 14 Q. Now, let's put aside what you've been told about who
15 the relevant parties were. You did know that Syncora
16 was a Swap insurer, right?
- 17 A. Yes.
- 18 Q. And you understood as a layperson but a sophisticated
19 one that if an insurer makes a payment to the insured
20 it becomes subrogated to the rights of the insured
21 with respect to that payment, correct?
- 22 A. Yes.
- 23 Q. And isn't it true that if the Swap counterparties had
24 terminated, they wouldn't have waited around for two
25 years to collect the casino revenues, right, they
141: 1 would have demanded Syncora made good on its Swap
2 insurance and let Syncora try and stick around and
3 collect the casino revenues, correct?
- 6 A. It wasn't an issue for the City.
- 8 Q. I'm asking whether you thought that was a possibility
9 back at the time you were negotiating the forbearance
10 agreement?
- 11 A. It wasn't an issue for the City. Had no impact on the
12 City's access to cash.
- 13 Q. But if Syncora was a party that might come in in lieu
14 of the Swap counterparties, didn't you want to find
15 out whether you might be able to cut a better deal
16 with Syncora?
- 19 A. I can't speculate to that.
- 21 Q. All you can say is that you never did, correct?
- 22 A. Correct.
- 23 Q. And in fact between June 29th when you spoke to
24 Mr. Snyder and today, there have never been
25 substantive negotiations between the City and Syncora
142: 1 to your knowledge, isn't that correct?
- 2 A. Not on this, no.

Designation:

- 142:19 As the banker who is leading the DIP,
20 what's your understanding of the role the casino
21 revenues will play in the collateral package offered
22 in connection with the DIP?
- 23 A. They will be part of the collateral package.
- 24 Q. So, they will be part, and when you say they, do you
25 mean a specific period of time of the casino revenues
143: 1 or do you mean casino revenues projecting into the
2 future?
- 3 A. It's commercially sensitive so I'm going to decline to
4 answer it.

Designation:

- 143:12 Q. You agree that the goal of the forbearance agreement
13 is to get the collateral agreement to terminate so
14 that the City can get access to the casino revenues,
15 correct?
- 17 A. That is one of the goals.
- 19 Q. That is one of the goals. And isn't it true that your

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 20 current expectation is that you need the postpetition
21 financing, the DIP loan to close in order to be able
22 to exercise the option under the forbearance
23 agreement, correct?
- 24 A. Correct.
- 25 Q. And there was testimony on that today because you
144: 1 don't have the money otherwise, right, Mr. Buckfire?
2 A. That is part of the collateral package, yes.
3 Q. I'm talking about the use of proceeds of the DIP just
4 so we're clear. Part of the use of proceeds of the
5 DIP will be to exercise the option under the
6 forbearance agreement, correct?
- 7 A. Correct.
- 8 Q. You understand that you won't have unfettered access
9 to the casino revenues until you exercise the option
10 that leads to the termination of a Swap in the
11 collateral agreement, correct?
- 12 A. Yes.
- 13 Q. Isn't this a bit circular?
- 14 A. Regrettably.
- 15 Q. How did you factor that consideration into the
16 determination as to whether to engage in the
17 forbearance agreement?
- 18 A. Well, this is why the Swap collateral agreement is
19 such a problem for the City. Unless we can eliminate
20 the collateral and regain control over gaming revenues
21 without risk of loss because of defaults that would
22 trap it, we need to rationalize and clean this up in
23 order to put the City on a sound financial basis.
- 24 Q. So, there are two parts -- there are -- there may be
25 many parts but two of the important parts of the
145: 1 forbearance agreement are getting the Swap
2 counterparties to waive their right to trap cash and
3 then taking out the Swap at a discounted value,
4 correct?
- 5 A. Well, if we take out the Swap at a discounted value
6 and we pay off the Swap, then there is no need for the
7 collateral agreement.
- 8 Q. That's true but that may be something that happens
9 down the road. So, in the interim between then it's
10 the waiver of the cash trapping rights and the
11 discounted potential value of the termination,
12 correct?
- 13 A. Which is a short-term agreement. It only goes to next
14 June. There are termination events along the way and
15 in any case as I am aware as a sophisticated layman,
16 there is risk under the bankruptcy code that the Swap
17 counterparties could avail themselves of relief under
18 the provisions for Swaps and irrespective of the
19 automatic state, still take the money.
- 20 Q. Okay. But they've waived those rights under the
21 forbearance agreement?
- 22 A. So long as the forbearance agreement exists.
- 23 Q. And they waive their rights under the collateral
24 agreement to trap crash, correct?
- 25 A. For now.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

Designation:

147:12 Q. So, I'd like to ask you about the concept of what I
13 call a clean closing, okay, and a clean closing is one
14 where you engage in a transaction with someone and
15 both parties walk away from the transaction with an
16 expectation that neither of them will have liability
17 arising from the closing. That's what I mean when I
18 say a clean closing.
19 Isn't it true that it's your understanding
20 that it is important to the Swap counterparties that
21 they get a clean closing with the City if the City
22 exercises its option?
23 A. Yes.

Designation:

149:16 Q. All right. Do you remember we talked about -- do you
17 remember that you talked about the concept that the
18 Swap counterparties could walk away from the Swaps if
19 interest rates ever look like they were going into
20 territory that was positive for the service
21 corporations?
22 A. Yes.
23 Q. And that was a right that you understood they had
24 received as part of the 2009 restructuring that led to
25 the collateral agreement, correct?
150: 1 A. Yes.
2 Q. Do you understand that that's called an optional early
3 termination?
4 A. Yes.
5 Q. And you understand that under -- when they exercise an
6 optional early termination, the Swap counterparties
7 take nothing from the service corporations, correct?
8 A. That's correct.
9 Q. That's the point of the walkaway which is they get to
10 walk away but they don't get paid anything?
11 A. That's because the Swaps not in the money anymore.
12 Q. Well, even if it is or is it isn't, right?
13 A. Right.
14 Q. In fact today the Swaps are very much in the money,
15 correct?
16 A. Correct.
17 Q. And obviously the Swap counterparties have never
18 threatened to exercise an optional early termination,
19 correct?
23 Q. To you?
24 A. No.
25 Q. That wouldn't make sense, would it?
151: 1 A. Not as long as you're being paid on time.
2 Q. And also why would you terminate a Swap on an optional
3 early basis and be paid nothing when it is worth by
4 your testimony approximately three hundred million
5 dollars, correct?
7 A. It wouldn't be economically rational.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 9 Q. That would not be economically rational. And your
10 understanding under the forbearance agreement is
11 what's happening is that in exchange for all the
12 consideration, the Swap counterparties' termination
13 rights are being discounted to somewhere between 75
14 and 82 percent, correct?
- 15 A. Correct.
- 16 Q. We talked a lot about cash flow forecasts earlier.
17 The cash flow forecasts that are contained in the
18 proposal that you discussed with Mr. Summers, do you
19 remember those?
- 20 A. Yes, uh-huh.
- 21 Q. E & Y prepared those, correct?
- 22 A. Yes.
- 23 Q. And you have certainly reviewed them and familiarized
24 yourself with them, correct?
- 25 A. Yes.
- 152: 1 Q. But you are not someone who can answer specific
2 questions about how they were created, correct?
- 3 A. No, that's correct.
- 4 Q. If I wanted to ask about any particular line item how
5 did they get this number, the person to ask that would
6 be Ernst & Young?
- 7 A. Correct.
- 8 Q. I'd like to go back and talk briefly about the art and
9 I don't want to talk about the art as part of the DIP
10 or anything like that or what you're going to do with
11 it.
- 12 I want to go back to June 4 and ask as of
13 June 4, had you made an assessment of the value of the
14 City's art collection?
- 15 A. No.
- 16 Q. Have you made even a rough approximation of its worth?
- 17 A. No.
- 18 Q. And why hadn't you done that?
- 19 A. We're not qualified to do so.
- 20 Q. Why hadn't you retained someone, gosh, back in
21 January, February that was qualified to do so to come
22 in and see whether these assets were valuable?
- 23 A. We identified early on as an issue. We got to it as
24 we could, but it was not a significant crisis for the
25 City because we were focused on cash and preserving
153: 1 cash.
- 2 Q. Well, sometimes art can be turned into cash I think,
3 isn't that right?
- 4 A. Some people would think so.
- 5 Q. In fact there are art sales of significant amount
6 every year in this country, isn't that right?
- 7 A. So I'm told.
- 8 Q. And you've read about them in the paper from time to
9 time when you read the Wall Street Journal, correct?
- 10 A. Yes.
- 11 Q. And this is art that the City owns, right?
- 14 Q. Correct?
- 15 A. That's correct.
- 16 Q. But you understood took no effort to see whether the

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 17 City could obtain cash out of assets that were hanging
18 in the Detroit Art Institute as a substitute for going
19 in and engaging in this negotiation with the Swap
20 counterparties, correct?
- 21 A. Correct.
- 22 Q. We talked earlier about creditor recoveries and I want
23 to make sure that I understood your testimony on that
24 point.
- 25 You understand that Mr. Orr made a proposal
154: 1 to creditors that's called proposal for creditors back
2 in June of 2013, correct?
- 3 A. Correct.
- 4 Q. You helped him formulate that proposal, isn't that
5 right?
- 6 A. Yes.
- 7 Q. The proposal -- I'm going to summarize it but you
8 should feel free to correct me as somebody who knows
9 it better and can say it better than I, but basically
10 put the proposal suggests that unsecured creditors
11 will share in two billion dollars of bonds that are
12 issued by the City upon emergence, correct?
- 13 A. Correct.
- 14 Q. And the proposal assumes that the City will have
15 unfettered access to casino revenues because that's
16 what its projections show, correct?
- 17 A. Yes.
- 18 Q. So, even if the City has unfettered access to the
19 casino revenues, its current proposal is still that
20 the unsecured creditors will just share in this two
21 billion dollar pot, correct?
- 22 A. That's correct.
- 23 Q. So, is it fair to say that getting access to this
24 money will not by itself increase creditor recoveries?
- 25 A. No, it's part of the base case plan that we presented
155: 1 which is the base case recovery we presented on June
2 14th.
- 3 Q. Right. So, if the court grants the motion and you get
4 access to it, that will be consistent with the base
5 case which is consistent with the two billion dollar
6 offer, right?
- 7 A. Correct.
- 8 Q. So, it won't go up if the court grants you the access
9 that you're assuming you'll get?
- 10 A. But it will go down if the court does not.
- 11 Q. That's a different question. I'll get to that in a
12 moment.
- 13 It won't go up if the court grants the
14 motion, correct?
- 15 A. Correct.
- 16 Q. Your argument if I understood it was that the
17 casino revenues will be used to invest in the City,
18 correct?
- 19 A. Revenues of the City are fungible. All I'm saying if
20 you don't have access to those revenues, then you
21 don't have the billion dollar plus of revenues that
22 you thought you had which is supporting not only

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 23 current operations but the reinvestment plan.
- 24 Q. And I will say that I had understood you earlier to
25 say if you didn't have access to casino revenues, that
156: 1 City services would suffer?
- 2 A. In the short-term, yes.
- 3 Q. Yeah. But it's fair to say that you're not proposing
4 to obtain the casino revenues, access to them and
5 throw them on to the pot of the two billion dollars
6 that's already being proposed to unsecured creditors,
7 correct?
- 11 A. I've already testified that the access to gaming
12 revenues is part of the plan which supports the two
13 billion dollar anticipated issuance of notes.
- 15 Q. And you mean that from a feasibility standpoint,
16 right?
- 17 A. Yes.
- 18 Q. You mean it will strengthen the City and that will
19 make the City more able to perform under the notes and
20 that will make the notes more valuable to the
21 creditors, right?
- 22 A. That would be one result.
- 23 Q. Let me ask you by how much will creditor recoveries go
24 down if the court declines to approve the forbearance
25 agreement?
- 157: 1 A. We haven't calculated that plan yet. It would
2 certainly be a significant reduction and it would be
3 borne primarily by the unsecured creditors as a
4 group.
- 5 Q. Prior to July 15th you had not attempted a detailed
6 calculation to understand the impact to unsecured
7 creditor recoveries if the casino revenues were not
8 unfreed, correct?
- 9 A. That's correct.
- 10 Q. So, you don't know whether it's pennies on the dollar
11 or dimes on the dollar, correct?
- 12 A. We are already at dimes on the dollar in this --
- 13 Q. There's only pennies left.
- 14 A. We hope there's pennies left.
- 15 Q. There was some -- there was a lot of questioning
16 about the financial forecasts, and I'm not going to
17 try and reinvent the wheel, but I would ask you to go
18 back to that Page 35 that you were discussing
19 earlier.
- 20 Do you remember, Mr. Buckfire, being asked
21 questions about this page?
- 22 A. I do.
- 23 Q. And I guess I want to be clear that -- I know we're
24 coming to the end of 2013, so, we'll move to this
25 other page in a second, but at least with respect to
158: 1 2013 if you put legacy expenditures aside,
2 Ernst & Young forecast is of a substantial net
3 operating surplus in excess of four hundred million
4 dollars, correct?
- 5 A. But how can you put legacy expenditures aside in 2013
6 because we were doing all this through the end of
7 June.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 8 Q. Fair enough.
- 9 A. So, these are the numbers.
- 10 Q. Well, these are -- 2013 includes probably a full year
11 projection, so --
- 12 A. Fiscal year ends June 30th.
- 13 Q. Oh, so, fiscal year 2013 ends on June?
- 14 A. That's correct.
- 15 Q. Let's go to 38 then.
- 16 A. Okay.
- 17 Q. Good correction there. We'll see if it's a big
18 difference in 2014. So, this is the next fiscal year,
19 right?
- 20 A. Correct.
- 21 Q. And this is again a financial forecast prepared by
22 Ernst & Young, correct?
- 23 A. Yes.
- 24 Q. Now, I understand your point about the fact that this
25 doesn't reflect the different initiatives that Mr. Orr
159: 1 wants to implement, okay, so let me bracket that, I
2 heard you say that earlier, but if you hold those to
3 one side and if you also hold legacy expenditures to
4 one side, what the City's numbers reveals is that it
5 has a nearly four hundred million dollar net operating
6 surplus, correct?
- 7 A. One could look at it that way.
- 8 Q. And all of the cops and the fire department and the
9 ambulance drivers, their payroll, that's all included
10 in these numbers, correct?
- 12 A. Yes.
- 14 Q. And so are their health benefits, correct?
- 15 A. Yes.
- 16 Q. Okay. So, if I understood it correctly, Mr. Orr wants
17 to do a billion and a quarter of reinvestment in the
18 City over the next ten years, correct?
- 19 A. That's right.
- 20 Q. And that's about 125 million a year, correct?
- 21 A. That's correct.
- 22 Q. And, so, even if we took the 397 down by his
23 initiatives by 125 million, you'd still have
24 approximately 272 million dollars left, correct, in
25 net operating surplus?
- 160: 1 A. Yes.
- 2 Q. And that's even with him being able to do all the
3 wonderful things that he wants to do for the City,
4 right?
- 5 A. That's correct.
- 6 Q. So, we're now going to go to the area where I begin to
7 do complex math which means adding things twice in a
8 row where I often fall down. But I said it was about
9 272 and the casino revenues are only about 170 in this
10 forecast, right?
- 11 A. That's correct.
- 12 Q. So, even if you didn't have those and even if Mr. Orr
13 did all his improvements, you'd still have a hundred
14 million dollar net operating surplus, correct?
- 15 A. No, that's actually not the case, and this is not

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

- 16 meant to be the City's plan, it's not the City's plan.
17 If you are proposing a different plan where the City
18 plans to liquidates itself, then yes, I guess you
19 could look at it this way.
- 20 Q. I'm just referring to the preliminary forecast that
21 you all put together in this proposal and gave to us.
- 22 A. This is not the City's plan and it's not the City's
23 forecast. This is an illustration of what happens if
24 you don't do anything.
- 25 Q. And the key differences between this and what the
161: 1 City's plan is are the investments that Mr. Orr wants
2 to make, right?
- 3 A. Right.
- 4 Q. And the cost reductions he wants to make, right?
- 5 A. And the increase in staffing levels across services to
6 provide higher level services to the City.
- 7 Q. But that's in the reinvestment, right?
- 8 A. No, it's actually hard to break out that way because a
9 lot of it is actually in the salaries line and the HR
10 lines.
- 11 So, you have to go back to the numbers and
12 ask me a lot of those questions.
- 13 Q. The proposed investments that he wants to make, that
14 he proposes to make that I'm so ruthlessly omitting,
15 they are in this document, right?
- 16 A. Not in this projection.
- 17 Q. They're not in this projection, but they are in this
18 proposal?
- 19 A. That's right.
- 20 Q. He laid them all out in gory detail?
- 21 A. Yes, he did.
- 22 Q. He also lays out a number of cost cutting initiatives,
23 isn't that correct?
- 24 A. Yes, he does.
- 25 Q. And one of his goals is also to make the City more
162: 1 efficient, correct?
- 2 A. Yes.
- 3 Q. At the same time he also wants to make it operate
4 better, correct?
- 5 A. Correct.
- 6 Q. Those two things from a net operating standpoint work
7 in tension with one another, right?
- 8 A. They do over time, but you have to consider the
9 timetable and when these things are done.
- 10 Q. I want to ask you a question about state and federal
11 aid but I don't want to mix it up into the DIP which I
12 understand -- which I took to mean earlier was one of
13 the sensitivities there. I want to go back to June 4,
14 2011.
- 15 Prior to June 4, 2011 had you undertaken
16 any effort to evaluate whether there was either state
17 aid or federal aid that you could use in lieu of
18 having to negotiate this deal with the Swap
19 counterparties?
- 20 A. We are assuming there is no aid available to the City.
- 21 Q. You were assuming that there was none, but had you

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

22 undertaken an effort to determine whether there could
23 be some?
24 A. I've already testified that I'm not going to discuss
25 that.
163: 1 Q. And why aren't you going to tell me about that?
 2 A. It's commercially sensitive information.
 3 Q. Why?
 4 A. That's my answer.

Designation:

163:25 Q. And let me first ask you, Mr. Buckfire, had your firm,
164: 1 you or your firm undertaken any analysis of this
 2 question? You don't have to tell me what it was.
 3 Let's go in stages.
 4 Had you analyzed the problem?
 5 A. Yes, we did.
 6 Q. You had analyzed the problem. And is it your
 7 testimony that divulging the results of that analysis
 8 would be commercially sensitive?
 9 A. Yes.
 10 Q. Is part of the reason for that because of the way any
 11 potential aid from the City or from the state or the
 12 feds might interplay with the DIP process, is it the
 13 way they knit up, is that the problem?
 14 A. Yes.

Designation:

165:18 Q. Is it your understanding that the Series 2006-B COPs
 19 were issued with a floating interest rate?
 20 A. Yes.
 21 Q. And is it your understanding that the Swap contracts
 22 were entered into to hedge against the interest rate
 23 risk associated with the Series 2006-B COPs?
 24 A. Yes.
 25 Q. And the Swap contracts accomplish this hedge by
166: 1 effectively limiting the City's payment obligations
 2 under the service contracts with respect to the Series
 3 2006-B COPs to the fixed rate that's set forth in the
 4 Swap contracts, is that correct?
 5 A. Correct, which was amended in 2009.
 6 Q. What was amended?
 7 A. The original fixed rate was lower in 2006 and it was
 8 increased slightly in 2009 as part of the amendment.
 9 Q. The Swap contracts were amended in 2009 --
 10 A. The rate, the rate was.
 11 Q. The rate on the Series 2006-B --
 12 A. That's my understanding.
 13 Q. Okay. And with the amendment in 2009 the Swap
 14 contracts still remained in place, correct?
 15 A. That's my understanding.
 16 Q. And those Swap contracts are still in place today and,
 17 therefore, still hedging the interest rate risk today?
 19 A. Except as modified by the 2009 amendment.
 21 Q. So, do you agree that from the perspective of the City

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

22 with the Swap contracts in place it's as if the
23 Series 2006-B COPs have a fixed interest rate?
24 A. Yes.
25 Q. Have you heard of structures like this being referred
167: 1 to as a synthetic fixed rate of interest?
2 A. Yes.

Designation:

167:22 Q. Is there any benefit to the City from having this
23 structure with the 2006-B COPs having a floating rate
24 hedged by the Swap contracts as opposed to merely
25 issuing those COPs with a traditional fixed rate?
168: 2 A. All their debt is now fixed. I mean they are not
3 taking any interest rate risk as a result of the Swap
4 that was put on top of the floating rate COPs. That
5 is the benefit to the City.
7 Q. The benefit to the City from the structure is that
8 it's a comparable interest rate risk exposure for the
9 City?
10 A. They have eliminated the floating rate exposure and
11 now they have a fixed rate on this debt similar to the
12 rate exposure they have on the 2005 COPs which are
13 fixed rate. So, it's all fixed now.

Designation:

172:17 Q. Did you discuss any legal arguments that the City
18 might have had against the Swap counterparties with
19 Mr. Orr?
20 A. No.

Designation:

174:24 Q. You want to give a minute here for your counsel maybe
25 to object, maybe not, what legal arguments did you
175: 1 discuss that the City might be able to raise against
2 the Swap counterparties?
3 MR. CULLEN: I'm going to object and direct
4 him not to answer.
5 A. I wouldn't have answered anyway, but thank you.

Designation:

175:17 Q. All right. May I assume that any questions I ask you
18 about what legal arguments or issues you might have
19 discussed that the City would have had to assert
20 against the Swap counterparties, conversations you
21 would have had with Jones Day people your counsel is
22 going to object and instruct you not to answer?
23 MR. CULLEN: You can assume that.

Designation:

175:25 Q. Slightly different question. Did you have any

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

176: 1 discussions with Mr. Orr regarding the probability of
2 success on legal arguments the City could raise
3 against the Swap counterparties?
4 A. Yes.
5 Q. When did those discussions take place?
6 A. During May.
7 Q. Can you tell me about those discussions with Mr. Orr?
8 MR. CULLEN: Direct him not to answer.

Designation:

177: 5 MS. ENGLISH: And if I ask him to tell me
6 about those conversations, will you direct him not to
7 answer?
8 MR. CULLEN: I will indeed.

Designation:

177:10 Q. Did you discuss with anyone else the probability of
11 success that the City might have had on legal
12 arguments against the Swap counterparties?
13 A. No.
14 Q. Were there any written documents or memos that
15 evaluated the City's legal arguments against the Swap
16 counterparties?
20 A. No.
21 Q. Are you aware of any written analyses that were done
22 about the legal arguments the City might assert?
23 A. No.

Designation:

178: 6 Q. Going into the start of the negotiations with the Swap
7 counterparties on June 4th, did you assume that the
8 Swap counterparties' liens were valid?
9 A. I did.

Designation:

179:12 Q. Can you tell me what the other alternatives were that
13 you considered?
14 A. Well, we considered finding another lender to fund the
15 termination of the Swaps. This is back in May when we
16 knew the financial condition of the City was dire. We
17 did not think we could attract a lender to come in to
18 take out the Swap termination payment at a hundred
19 cents or even at a discount under the tight time frame
20 that we had to work with nor did we think we could do
21 that at a rate of interest that could ever be
22 acceptable to the City.
23 Q. Let me stop you right there and ask did you try?
24 A. No.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

Designation:

- 180:13 Q. Prior to June 4th, did you submit a request to the
14 state for aid on behalf of the City?
15 A. I'm not going to answer that question.
16 Q. You will not answer even whether the City made a
17 request for state aid prior to June 4th?
18 A. It's commercially sensitive information. I
19 respectfully cannot answer that question.
20 Q. Was there a request for state aid that was rejected
21 prior to June 4th?
22 A. I'm not going to answer that question.
23 Q. On what basis won't you answer whether there was one
24 that was rejected?
25 A. Commercially sensitive information.
181: 1 Q. How is it commercially sensitive? If there was a
2 state aid request that was rejected, how is that
3 sensitive now?
4 A. You're asking me to speculate.
5 Q. I'm asking you why you're not answering.
6 A. It's commercially sensitive information.
7 Q. Tell me why it's commercially sensitive in your view.
8 A. It would have an impact on our ability to prosecute a
9 successful DIP financing process for the City at this
10 point.
11 Q. It would jeopardize your DIP financing if the public
12 knew that a state aid request had been rejected prior
13 to June 4th?
14 A. You're saying that. I didn't say that.
15 Q. I'm trying to understand why you won't give us the
16 information.
17 A. It's commercially sensitive.
18 Q. How is it commercially sensitive?

Designation:

- 181:20 A. I'm not going to answer it.

Designation:

- 181:22 Q. Just for kicks let's do the same line of questioning
23 for federal aid, okay? Was there a request made by
24 the City for federal aid prior to June 4th?
25 A. I decline to answer that question.
182: 1 Q. On what grounds do you decline to answer?
2 A. It's commercially sensitive information.
3 Q. And why do you feel it's commercially sensitive?
4 A. Because it would have an impact on our DIP financing
5 process.
6 Q. Was there a request for federal aid that was rejected
7 prior to June 4th?
8 A. I decline to answer that question.
9 Q. And do you decline on the exact same grounds you've
10 just given me?
11 A. Yes.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

Designation:

183:25 Q. Did you have any substantive conversations with the
184: 1 Swap counterparties about whether or not their liens
2 were valid other than, you know, we threaten to
3 litigate, we threaten to defend, did you actually get
4 into a discussion about the validity of their liens
5 with them?
6 A. No, I had no other cards to play so I just kept
7 reminding them we would be aggressive.

Designation:

184:12 Q. What other unencumbered revenue streams or assets does
13 the City have?
14 A. Well, we have income tax revenues, we have property
15 tax revenues. I'm speaking now in the Chapter 9
16 context. The state revenues are pledged to three
17 series of bonds that were issued historically by the
18 City. So, there really is no other source of revenue
19 that's available to the City that could be pledged or
20 used aside from these.
21 There are, of course, a list of noncore
22 assets we identified on June 14th that we are
23 evaluating for potential value but we have reached no
24 conclusion yet as to how much is available there.
25 Q. I just want to make sure. You were talking about
185: 1 state shared revenues are pledged, right, did I get
2 that correct?
3 A. They are securing three different series of bonds that
4 have a pledge of those revenues and that's already
5 been used.
6 Q. So, the remaining unencumbered City assets or revenues
7 are the noncore assets that were listed?
8 A. Right.
9 Q. Income tax and property tax?
10 A. Correct.
11 Q. Is that all?
12 A. Well, the gaming revenues if we can eliminate the
13 collateral agreement.
14 Q. Is there any reason that the noncore assets, income
15 tax or property tax could not be pledged as collateral
16 to secure DIP financing?
17 A. They could be.

Designation:

185:18 Q. You testified earlier that if the forbearance
19 agreement was not approved, it would have dire
20 consequences for the City, is that correct?
21 A. Yes.
22 Q. Does the City have a backup plan if the forbearance
23 agreement is not approved?
24 A. Well, we're developing one now. We are proceeding on
25 the assumption the court will grant relief on this
186: 1 transaction and let us proceed with it and if they
2 tell us they won't, we'll have a backup plan.

Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

3 Q. What is the backup plan you're currently considering?
4 A. It's being developed right now. It would be not the
5 plan currently proposed.

Designation:

190:17 Q. Okay. Do you understand that under certain
18 circumstances the agreement prohibits the City from
19 taking action that's inconsistent with the position of
20 the counterparties in litigation, for instance?
21 A. That's my understanding.

Designation:

201:18 Q. Is it your understanding that after March 1st the City
19 has another opportunity to challenge anything related
20 to this agreement?
21 A. It's not my understanding.
22 Q. Okay.
23 A. I don't know.
24 Q. Okay. Do you recognize there's a possibility then
25 that the City could be stuck with paying a very large
202: 1 figure after the Chapter 9 plan and have no ability to
2 challenge it if -- at some certain stage regardless of
3 the validity of those liens?
4 A. That's a possibility.
5 Q. Okay.