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 City of Stockton
 8

9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION
 12

13 In re:
 14 CITY OF STOCKTON, CALIFORNIA,
 15 Debtor.

Case No. 2012-32118
 D.C. No. OHS-15
 Chapter 9

16
 17 WELLS FARGO BANK, NATIONAL
 ASSOCIATION, FRANKLIN HIGH
 18 YIELD TAX-FREE INCOME FUND,
 AND FRANKLIN CALIFORNIA
 19 HIGH YIELD MUNICIPAL FUND,

20 Plaintiffs,

21 v.

22 CITY OF STOCKTON, CALIFORNIA,
 23 Defendant.

**EXHIBITS H THROUGH L TO THE
 DIRECT TESTIMONY
 DECLARATION OF PATRICK B.
 BOCASH IN SUPPORT OF
 CONFIRMATION OF FIRST
 AMENDED PLAN FOR THE
 ADJUSTMENT OF DEBTS OF CITY
 OF STOCKTON, CALIFORNIA
 (NOVEMBER 15, 2013)¹**

Adv. No. 2013-02315

Date: May 12, 2014
 Time: 9:30 a.m.
 Dept: Courtroom 35
 Judge: Hon. Christopher M. Klein

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 27 ¹ While this declaration is made in support of confirmation of the Plan, out of an abundance of caution, and because
 the evidentiary hearing on Plan confirmation and the trial in the adversary proceeding share common issues, it is
 28 being filed in both in the main case and the adversary proceeding.

Exhibit H

< GAIN FROM OUR PERSPECTIVE >

Franklin California High Yield Municipal Fund

Fund Category: Tax Free Income

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Find a Fund

Share Class A		As of 03/28/2014		Average Annual Total Returns As of Quarter End 12/31/2013			Expense Ratio and Sales Charge As of 10/01/2013 (updated annually)	
Symbol	FCAMX	NAV ²	\$10.14		w/ Sales Charge	w/o Sales Charge	Gross Expense Ratio ⁵	0.61%
CUSIP	354 025 306	NAV Change	-\$0.01		-7.79%	-3.71%	Net Expense Ratio	0.61%
Fund Number	175	POP ³	\$10.59	1 Yr	10.03%	10.98%	Max Initial Sales Charge	4.25%
Inception Date ¹	May 03, 1993	YTD Total Return at NAV	5.03%	5 Yrs	4.41%	4.87%	CDSC	0.00%
Distributions	Monthly	Distribution Rate at NAV	4.91%	10 Yrs	5.27%	5.49%	12b-1 Fee	0.10%
Total Net Assets (all share classes) As of 02/28/2014	\$1,641.5 (millions)	30-day Standardized Yield ⁴	4.46%	Life				
		As of 02/28/2014 (updated monthly)						

Performance data represents past performance, which does not guarantee future results. Current performance may differ from figures shown. Investment return and principal value will fluctuate with market conditions, and you may have a gain or loss when you sell your shares.

Overview | Portfolio | Performance | Distributions | Pricing | Tax Information

Print

Fund Description

The Fund invests in high yielding, lower rated California municipal securities.

Strategy Statement



"In the Franklin Muni Department, we are committed to a conservative, disciplined investment strategy. For over 30 years, we have worked to provide shareholders with a

Portfolio Managers

Fund Alert 03/04/2014

In February, Franklin California High Yield Municipal Fund adjusted its dividends as follows: Class A from 4.10 to 4.15 cents per share; Class C from 3.66 to 3.71 cents per share and Advisor Class from 4.18 to 4.23 cents per share.

Exhibit I

< GAIN FROM OUR PERSPECTIVE >

Franklin High Yield Tax-Free Income Fund

Fund Category: Tax Free Income

Share This Page    

Find a Fund

Share Class A ▼		As of 03/28/2014		Average Annual Total Returns As of Quarter End 12/31/2013			Expense Ratio and Sales Charge As of 07/01/2013 (updated annually)	
Symbol	FRHIX	NAV ²	\$10.16		w/ Sales Charge	w/o Sales Charge	Gross Expense Ratio ⁵	0.65%
CUSIP	354 723 702	NAV Change	-\$0.01				Net Expense Ratio	0.65%
Fund Number	130	POP ³	\$10.61	1 Yr	-10.73%	-6.73%	Max Initial Sales Charge	4.25%
Inception Date ¹	Mar 18, 1986	YTD Total Return at NAV	5.23%	5 Yrs	7.93%	8.87%	CDSC	0.00%
Distributions	Monthly	Distribution Rate at NAV	4.95%	10 Yrs	3.90%	4.35%	12b-1 Fee	0.10%
Total Net Assets (all share classes) As of 02/28/2014	\$7,778.1 (millions)	30-day Standardized Yield ⁴	4.10%	Life	6.04%	6.21%		
		As of 02/28/2014 (updated monthly)						

Performance data represents past performance, which does not guarantee future results. Current performance may differ from figures shown. Investment return and principal value will fluctuate with market conditions, and you may have a gain or loss when you sell your shares.

Overview | Portfolio | Performance | Distributions | Pricing | Tax Information

Print

Fund Description

This Fund invests in high yielding, lower rated municipal securities from across the nation.

Strategy Statement



"In the Franklin Muni Department, we are committed to a conservative, disciplined investment strategy. For over 30 years, we have worked to provide shareholders with a

Portfolio Managers

Fund Alert 03/04/2014

In February, Franklin High Yield Tax-Free Income Fund adjusted its dividends as follows: Class A from 4.05 to 4.19 cents per share; Class C from 3.61 to 3.75 cents per share and Advisor Class from 4.13 to 4.27 cents per share. Dividends vary based

Exhibit J

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:

CITY OF STOCKTON, CALIFORNIA, Case No. 12-32118(CMK)

Chapter 9

Debtor.

WELLS FARGO BANK, NATIONAL ASSOCIATION,
FRANKLIN HIGH YIELD TAX-FREE INCOME FUND, AND
FRANKLIN CALIFORNIA HIGH YIELD MUNICIPAL FUND,

Plaintiffs.

Vs.

CITY OF STOCKTON, CALIFORNIA,

Defendant.

DEPOSITION OF JOHN WILEY

Thursday, March 6, 2014

8:59 a.m.

555 California Street, 26th Floor

San Francisco, California

REPORTED BY:

Kimberly A. Barrette

CSR No. 6671

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APPEARANCES:

For the FRANKLIN HIGH YIELD TAX-FREE INCOME
FUND and FRANKLIN CALIFORNIA HIGH YIELD
MUNICIPAL FUND:

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JOHN WILEY

March 6, 2014

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JOHN WILEY

March 6, 2014

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JOHN WILEY

In re: City of Stockton, California

Thursday, March 6, 2014

Kimberly A. Barrette CSR No. 6671

MARKED	DESCRIPTION	PAGE
Exhibit 3000	Four-page document, initial page Bates stamped FRK001359	17
Exhibit 3001	E-mail string, 1-15-09, FRK000001	22
Exhibit 3002	E-mail, 10-9-13, FRK001994	35
Exhibit 3003	Franklin Summary Prospectus FRK002088-99	39
Exhibit 3004	Franklin Prospectus, FRK002176-2216	41
Exhibit 3005	E-mail chain, 10-1-13, FRK001762	47
Exhibit 3006	Board Report, 5-31-12, FRK003756-57	53
Exhibit 3007	Board Report, 7-31-12, FRK003762-63	60

1 SAN FRANCISCO, CALIFORNIA

2 Thursday, March 6, 2014

3 8:59 a.m.

4
5 JOHN WILEY,

6 Having been first duly sworn, was examined and testified

7 as follows:

8
9 EXAMINATION

10 BY MR. HILE:

11 Q. Good morning, Mr. Wiley. My name is Norman
12 Hile. I'm a lawyer with the firm of Orrick, Herrington &
13 Sutcliffe. I represent the City of Stockton in this
14 matter. I'm going to be asking the questions today.
15 Have you ever had your deposition taken before?

16 A. No.

17 Q. All right. I'm sure you had a chance, with
18 your counsel, to go over the rules, but let me just make
19 sure we have an understanding.

20 You understand, sir, that in this deposition
21 you are under oath?

22 A. Yes.

23 Q. You understand that you're under oath just as
24 if we were in a courtroom with a judge or a -- and
25 parties there?

1 A. Yes.

2 Q. Do you understand that when you answer, I will
3 be able to ask you more questions based upon what your
4 answer is?

5 A. Yes.

6 Q. In preparation for this deposition, have you
7 looked at any documents?

8 A. Yes.

9 Q. What documents did you look at?

10 A. The objection.

11 Q. All right. "The objection" being the
12 objection filed by Franklin in the bankruptcy case,
13 correct?

14 A. Yes.

15 Q. Okay. Any other documents?

16 A. The ratings report --

17 Q. Okay.

18 A. -- from S & P.

19 Q. Anything else?

20 A. And market trading reports.

21 Q. Anything else?

22 A. No.

23 Q. Were those documents which were produced by
24 Franklin, to your knowledge, as part of this litigation?

25 A. I don't know.

1 which you're entitled to do, I will be allowed to comment
2 upon those objections (sic) if this case goes to trial.

3 Do you understand that?

4 A. Yes.

5 MR. JOHNSTON: Counselor, you said
6 "objections." I think you meant corrections.

7 MR. HILE: Corrections, yes. Thank you for
8 the correction.

9 BY MR. HILE: Q. The reason I ask those
10 questions is to make sure you understand that giving your
11 best testimony here today is important. Do you
12 understand that?

13 A. Yes.

14 Q. Okay. Now, at any point after this bankruptcy
15 case was filed in June of 2012, have you reviewed your
16 files to determine if there were documents that should be
17 produced as part of the bankruptcy proceedings?

18 A. No.

19 Q. What is your current employment?

20 A. I work for Franklin Advisors, Inc. I'm an
21 investment advisor on behalf of funds.

22 MR. JOHNSTON: And for the record, John, I
23 think it would be helpful if you said what the funds are.

24 THE WITNESS: The California High Yield
25 Municipal Bond Fund and the Franklin High Yield Tax-Free

1 Income Fund.

2 BY MR. HILE: Q. Are you an investment
3 advisor for any other Franklin funds?

4 A. Yes.

5 Q. What other ones?

6 A. California Insured Tax-Free Income Fund and
7 the California Intermediate Tax-Free Income Fund.

8 Q. Any others?

9 A. No.

10 Q. What are your duties as an investment advisor?

11 A. To make investment decisions on behalf of the
12 funds for our shareholders.

13 Q. How long have you worked for Franklin?

14 A. Twenty-five years this July.

15 Q. And, just briefly, what positions have you had
16 other than investment advisor?

17 A. I was a research analyst prior to becoming an
18 advisor. Well, I was a futures associate when I started
19 at Franklin, I'm sorry. And then was hired out of that
20 program to become an analyst.

21 Q. Before joining Franklin, can you briefly tell
22 me what your employment history was?

23 A. I was a waiter for Crogan's in Montclair.

24 Q. Right. New Jersey?

25 A. No. Montclair, California.

1 Q. Okay. And what is your educational
2 background?

3 A. I did my undergrad at University of
4 California, Berkeley, and graduate work for St. Mary's
5 College in Moraga.

6 Q. What degrees do you have?

7 A. I have a BA in political economics and a
8 master's in finance.

9 Q. Were you an investment advisor in September of
10 2009 when these bonds were issued?

11 A. Yes.

12 Q. How did you find out about the bond issue
13 that's the subject of this matter today?

14 MR. JOHNSTON: Counsel, could you clarify just
15 specifically what that bond issue is?

16 MR. HILE: Sure.

17 BY MR. HILE: Q. It's the -- a bond issue by
18 the City of Stockton in September of 2009. Are we
19 talking about the same thing?

20 A. Yes.

21 Q. All right. So can you answer my question?

22 A. From what I recall, our analyst brought it to
23 my attention.

24 Q. Okay. And when you say your analyst, who was
25 that?

1 A. Jennifer Johnston.

2 Q. And what did she tell you at that time?

3 A. That Stockton was preparing to come to market
4 with the 2009 offering.

5 Q. And did she tell you anything about the
6 history of the offering?

7 A. Not that I recall.

8 Q. Do you know whether or not this particular
9 bond transaction had been previously offered?

10 A. Not that I recall.

11 Q. Okay. Who was involved in analyzing this bond
12 transaction in 2009 to determine whether or not Franklin
13 should buy some or all the bonds for its funds?

14 A. From what I recall, it was primarily Jennifer
15 Johnston and myself.

16 Q. Anyone else you know of who analyzed it?

17 A. Jennifer Johnston was the primary analyst.
18 The only other participant would be, in our process, to
19 have a manager of research involved in our investment
20 making processes.

21 Q. Was there a manager involved?

22 A. I don't recall. I don't recall.

23 Q. Okay. If there was a manager involved, what
24 would be the duty of the manager?

25 A. We try to have a third person involved in the

1 decision-making process, in certain situations.

2 Q. Is a manager a person who is above an
3 investment advisor or below?

4 A. No.

5 Q. Below?

6 A. No.

7 Q. But you don't recall who the manager was in
8 this instance?

9 A. No.

10 Q. Who made the decision at Franklin with respect
11 to whether or not to purchase these bonds?

12 A. Me.

13 Q. Okay. It was not Ms. Johnston, it was you?

14 A. Me.

15 Q. And in doing that, what did you consider?

16 A. All of the documents, yields, structure,
17 credit. That's principally it.

18 Q. Who provided you the documents that you
19 reviewed for purposes of analyzing this credit?

20 A. Jennifer Johnston.

21 Q. Okay. So everything that you saw came from
22 her?

23 A. On the credit side. From credit, analytical.
24 Not market data. That's provided by RBC.

25 Q. All right. Did you, yourself, have any

1 conversations with anybody from RBC with respect to
2 Franklin purchasing these bonds?

3 A. Not on the credit side that I recall, but
4 certainly on the market side.

5 Q. Okay. When you say the credit side versus the
6 market side, can you explain the difference for me?

7 A. Yes. You have the banking underwriting side,
8 and the issuer that brings the deal and provides all the
9 credit background.

10 And then on the trading side, that would go
11 through on the dealer through our trading desk. So it's
12 different functions.

13 Q. Okay. When you were dealing with RBC, which
14 of those functions were you?

15 A. I'd be on the trading side.

16 Q. Who made the decision as to which funds these
17 bonds, if they were purchased, would go into?

18 A. Me.

19 Q. And my understanding, correct me if I'm wrong,
20 is that some of them went into the Franklin High Yield
21 Tax Free Income Fund and some went into the Franklin
22 California High Yield Municipal Fund; is that correct?

23 A. Yes.

24 Q. How did you decide which funds to put them in
25 and how much?

1 A. Who had the money, which fund had the money at
2 the time.

3 Q. Okay. All right. So as I understand the way
4 this would work, Franklin as an entity, separate from the
5 funds, did not purchase these bonds, these funds
6 purchased the bonds?

7 A. Yes.

8 Q. And the division, then, of how much each fund
9 got was based upon who had current money invested by
10 investors that was available to buy?

11 A. Yes.

12 Q. Were there any other funds that you considered
13 might be potential acquirers of the bonds that we're
14 talking about today?

15 A. Yes.

16 Q. What other funds?

17 A. The only other fund would have been the
18 California Tax-Free Income Fund.

19 Q. And why did you not put any of that -- of
20 these bonds into that fund?

21 A. Available money.

22 Q. Is it your testimony that there -- you were
23 not aware that these bonds had been previously offered in
24 the market?

25 A. Not that I recall.

1 Q. Okay. Now, both of the funds into which these
2 bonds were placed are high yield funds. How do you
3 define "high yield"?

4 A. Non-investment grade.

5 Q. All right. When you say non-investment grade,
6 what is investment grade?

7 A. Anything Triple B minus or higher. Triple B
8 minus to Triple A.

9 Q. So these were not even Triple B minus?

10 A. Not even close.

11 Q. Okay. Why not?

12 A. Because they are deemed higher quality. They
13 were high-quality, high-grade, A-grade securities.

14 Q. Was there any discussion or negotiation with
15 respect to what the yield on the bonds would be with
16 respect to what the interest rate would be?

17 A. Yes.

18 Q. Okay. What was that discussion?

19 A. With RBC pertaining to prevailing rates at the
20 time --

21 Q. Okay. And --

22 A. -- for given ratings.

23 Q. Who from Franklin had those discussions with
24 RBC?

25 A. Me.

1 Q. Okay. And with whom at RBC did you have those
2 discussions?

3 A. Karl Hummel.

4 Q. And who was Mr. Hummel at that time?

5 A. He is the institutional sales representative
6 that covers Franklin.

7 Q. In the discussions, did you negotiate what the
8 interest rate would be?

9 A. Yes.

10 Q. Okay. And what was he originally offering as
11 an interest rate?

12 A. I don't recall that.

13 Q. What were you asking for?

14 A. Prevailing rates.

15 Q. Which was what?

16 A. Where they came. Where the bonds came.

17 Q. Okay. When you say prevailing rate, would it
18 be a prevailing rate for just any high yield bond or
19 would it be related to a lease type of bond?

20 MR. JOHNSTON: I'm going to object to the form
21 of that question. That's ambiguous and vague.

22 If you understand the question, you can answer
23 it.

24 THE WITNESS: These were not high yield
25 securities. These were A-rated securities and they came

1 at A-rated levels.

2 BY MR. HILE: Q. All right. When you say
3 they were A-rated, where was that determined?

4 MR. JOHNSTON: I'll object to the form of that
5 question, too.

6 Where was that determined?

7 BY MR. HILE: Q. Yes. Who determined that
8 they were A-rated?

9 A. The rating agency.

10 Q. Okay.

11 MR. HILE: Off the record for just a second.

12 (Discussion held off the record.)

[REDACTED]

1 steps that were taken at that point.

2 MR. JOHNSTON: And, Counsel, we're using the
3 term "Franklin" perhaps in several different capacities.

4 The entities that purchased the bonds are what
5 he testified to earlier, the two funds who are parties to
6 the proceeding.

7 When you ask your questions, if you could
8 attempt to draw the distinction between the funds that
9 purchased the bonds, if that's what you're looking for,
10 or Franklin Advisers in its investment advisor capacity
11 to the funds, that would be good for clarification
12 purposes.

13 BY MR. HILE: Q. All right. Do you work for
14 Franklin Advisers?

15 A. I work for Franklin Advisers, Inc.

16 Q. Okay. And that is an investment advisor to
17 the various Franklin Funds?

18 A. Yes.

19 Q. Okay. Now, what steps did Franklin Advisers
20 take between January of 2009 and September of 2009 to
21 evaluate whether or not to purchase this issue?

22 A. I don't recall.

23 Q. Okay. You say you don't recall. Was there
24 somebody else who was responsible for doing that?

25 A. No. There certainly were steps taken, but

1 exactly what those steps are, I don't --

2 Q. Okay.

3 A. You mean all the steps involved between those
4 eight months or nine months?

5 Q. Yes.

6 A. I don't recall.

7 Q. Okay. What are the normal steps that you take
8 to evaluate an offering such as this to determine whether
9 or not they should be purchased by the Franklin Funds?

10 A. As mentioned previously, once we get
11 information that an issue is coming to market, then the
12 analyst gets all of the information through that banker
13 and issuer to determine the credit.

14 So by this e-mail, what information I received
15 I sent on to the analyst who then reviews the entire
16 credit.

17 Q. And for purposes of this credit, "the
18 analyst," as you're using it that term, was Jennifer
19 Johnston, is that correct?

20 A. Yes.

21 Q. And at some point did she report back to you
22 as to whether or not the Franklin Funds should acquire
23 these bonds?

24 A. Not in terms of should we or shouldn't we.
25 She gets back in terms of the factual evidence and

1 credit such as this, who would be the person who would
2 look at this?

3 A. The analyst.

4 Q. So that would be Ms. Johnston?

5 A. Jennifer. Yes.

6 Q. So if you did review the official statement,
7 you just don't remember?

8 A. I don't remember.

9 Q. Is there a document in which she provides you
10 her conclusions after reviewing all of the documents that
11 relate to this credit?

12 A. I don't recall.

13 Q. Mr. Wiley, do you have a current understanding
14 of what properties the City, through the financing
15 authority, leased as part of this transaction?

16 A. Yes.

17 Q. What are they?

18 A. In terms of the financing and what we financed
19 or what was the asset, the collateral?

20 Q. The assets that were being leased.

21 MR. JOHNSTON: I'll object to the form of the
22 question to the extent that you're asking him to confirm
23 that this is a lease, which, you know, is an ultimate
24 question in the bankruptcy case.

25 He certainly can answer to the best of his

1 knowledge as to what properties were subject to the
2 documents, one of which is called a Lease Agreement.

3 I just don't want his testimony to be
4 misconstrued as to somehow confirming that this is a
5 lease.

6 BY MR. HILE: Q. All right. We'll get to
7 that a little bit later. Can you tell me what the
8 properties are?

9 A. Two golf courses and the central park, the
10 main park.

11 Q. Okay. To your knowledge, did Franklin do any
12 appraisals of those properties?

13 A. No.

14 Q. To your knowledge, did Franklin determine what
15 the income stream was from the golf courses?

16 A. No.

17 Q. Are you aware of any appraisals or valuations
18 of these properties that were done by other parties other
19 than Franklin?

20 MR. JOHNSTON: Objection. Ambiguous as to
21 time. What period of time are you talking about?

22 MR. HILE: At any time.

23 MR. JOHNSTON: I will caution the witness not
24 to disclose privileged materials in answering that
25 question. Other than that, you can answer.

1 THE WITNESS: No, I'm not aware.

2 BY MR. HILE: Q. Okay. So, for instance, at
3 the time that Franklin was considering whether or not to
4 acquire these bonds for its funds, you're not aware of
5 any appraisals that were done of the two golf courses and
6 the park?

7 A. No.

8 Q. And since the bonds went into default, are you
9 aware of any appraisals, other than counsel said --

10 A. No.

11 Q. -- privileged?

12 (Exhibit 3002 was marked.)

13 BY MR. HILE: Q. Mr. Wiley, the reporter has
14 handed you what she marked as 3002, a document which is
15 one page, and it's Bates stamped FRK 001994.

16 It purports to be a copy of an e-mail or some
17 other message from Dan Workman to you and a number of
18 other people dated October 9, 2013. In October of 2013,
19 who was Dan Workman?

20 A. Dan Workman -- Dan Workman is now a portfolio
21 manager on the Franklin High Yield Fund.

22 October 9, 2013 -- I'm not sure when Dan
23 Workman became a full portfolio manager from when he was
24 an assistant portfolio manager. He works on the Franklin
25 High Yield Tax-Free Income Fund.

1 Q. When you say works on them, what does he do?

2 A. As an investment advisor, sorry.

3 Q. Okay. I'm going to apologize in advance. I
4 don't know your business as well as perhaps I should.

5 When you say a portfolio manager, I assume
6 that's somebody who, after the particular investments are
7 in the fund, watches over them to determine how they are
8 doing and whether they should be sold or things like
9 that?

10 A. The same capacity as I have in terms of being
11 an investment advisor, what to buy, sell on behalf of the
12 shareholders for the fund.

13 Q. Okay. So at the time of this document, which
14 is Exhibit 3002, Dan Workman was either a portfolio
15 manager or assistant portfolio manager for what
16 particular funds?

17 A. Franklin High Yield Tax-Free Income Fund.

18 Q. Just that one?

19 A. Just that one. I should say I don't -- I
20 don't think he's on any other fund right now.

21 Q. Okay. Did you direct Mr. Workman to go to
22 Stockton in October of 2013 to --

23 A. No.

24 Q. Do you know who -- if anyone else did?

25 A. I don't believe anyone directed Mr. Workman to

1 go out there. I think Mr. Workman decided on -- to go
2 out and look at the properties.

3 Q. Okay. Did he give you a report after he got
4 back?

5 A. Not that I recall.

6 Q. If he did, would it be in your files, either
7 e-mail or hard files?

8 A. I have no idea.

9 Q. Do you recall anything that he reported back
10 after visiting these properties?

11 A. Not that I recall.

12 Q. Did Franklin Advisers, at any point, do an
13 analysis of what the cash flow was for either of the golf
14 courses?

15 MR. JOHNSTON: I will caution the witness not
16 to disclose any attorney-client privileged communications
17 in your answer.

18 THE WITNESS: Not that I recall.

19 BY MR. HILE: Q. Okay. So separate and apart
20 from the litigation, Franklin has never done an analysis
21 of whether or not the golf courses break even or make
22 money?

23 A. Not that I know of.

24 Q. And that's true even before Franklin purchased
25 these funds?

1 A. Yes.

2 Q. Other than what your counsel instructed you
3 not to answer, which I fully agree I'm not entitled to,
4 are you aware of any appraisals done by other parties
5 other than Franklin Advisers or the City with respect to
6 the properties that are underlying this credit?

7 A. No.

8 Q. Are you aware of any third parties doing any
9 profit and loss or other studies of these properties?

10 A. No.

11 Q. At the time that Franklin Advisers instructed
12 the funds to purchase these bonds, that is in September
13 of 2009 --

14 A. Well, Franklin Advisers did not instruct.

15 Q. All right. Explain that to me.

16 A. I work for Franklin Advisers, Inc. --

17 Q. Okay.

18 A. -- as an investment advisor on behalf of the
19 two funds, so as an investment advisor to make that
20 decision.

21 Q. And so if you make that decision, how does the
22 -- how do the funds go about acquiring --

23 A. Depends on the available cash flow and money.

24 Q. But --

25 A. And diversification.

1 Q. Is there anybody else at the funds who has to
2 agree to acquire something if the advisors direct the
3 funds to buy it?

4 A. The advisors do not direct the funds to buy.

5 Q. Who directs them to buy?

6 A. On behalf of the investment advisor, me.

7 Q. In 2009, at the time that these bonds were
8 purchased by the funds, were you aware of operating
9 deficits for the Van Buskirk golf course?

10 A. No.

11 Q. Have you subsequently become aware of
12 operating deficits?

13 A. No.

14 Q. At the time of the bond purchase in 2009, were
15 you aware of the operating deficits at the Swenson golf
16 course?

17 A. No.

18 Q. Have you subsequently become aware of
19 operating deficits at that golf course?

20 A. No.

21 (Exhibit 3003 was marked.)

22 BY MR. HILE: Q. Mr. Wiley, the reporter has
23 marked as Exhibit 3003 a document, the first page of
24 which is Bates stamped FRK 002088 and the last page is
25 FRK 002099.

1 October, when this was put out. Did you read this
2 document at that time?

3 A. I don't recall.

4 Q. What events in California were likely to
5 affect the funds' investments and its performance as of
6 October 1st, 2013?

7 A. I don't recall.

8 Q. Please look at Page 7, which shows a Bates
9 number at the bottom of FRK 002094. There is a chart in
10 the middle of the page that talks about Average Annual
11 Total Returns.

12 Do you see that?

13 A. Mm-hmm, yes.

14 Q. And it has different periods, 1 year, 5 years,
15 and 10 years.

16 Do you see that?

17 A. Yes.

18 Q. And then the first listed fund is Franklin
19 California High Yield Municipal Fund-Class A. Then
20 there's a Class C further on down in the chart.

21 What's the difference between the Franklin
22 California High Yield Municipal Fund-Class A and Class C?

23 A. They are share classes. Different fees,
24 depending on the structure of the share class.

25 Q. To the extent that the California High Yield

1 Municipal Fund had the bonds that are the subject of this
2 deposition, were they put into Class A or Class C?

3 A. It's all -- they are not determined by share
4 class.

5 Q. How are they determined?

6 A. By fund.

7 Q. Well, if I look at the return for the Class C
8 of one year of 11.92 percent, does that relate to a fund
9 in which the Stockton bonds were placed?

10 A. Yes.

11 Q. I don't pretend to be a tax lawyer, but my
12 question is, if you have a one-year return of 11.92
13 percent, is that all tax-free income?

14 A. No.

15 Q. What percentage of --

16 A. It includes income and price appreciation.

17 Q. About what percentage would be taxable income
18 or price appreciation?

19 A. You don't have taxable income. These are
20 tax-free.

21 The price appreciation would be the income
22 distributed for the year minus -- you know, whatever that
23 return is minus the income would have been price
24 appreciation, approximately.

25 Q. Now, the entry below the Class C is Franklin

1 California High-Yield Municipal Fund-Advisor Class.

2 Would you please explain to me what advisor
3 class means?

4 A. It's just a different fee structure, as well
5 as Class A, Class C, and then advisor class. We have
6 three classes.

7 Q. For an investor who puts money into the
8 Franklin California High Yield Municipal Fund, do they
9 then have shares in each of the classes?

10 A. No. It depends on the advisor and which class
11 they purchased on that shareholder's behalf. There's
12 different fee structures involved.

13 Q. Okay. So for an investor who had purchased
14 shares in the California High Yield Municipal Fund
15 advisor class, they would have had a one-year return of
16 13.61 percent?

17 A. Yes.

18 Q. And some large portion of that would be
19 tax-free return?

20 A. Yes. Tax-free income.

21 MR. HILE: Let's take a break.

22 MR. JOHNSTON: Okay.

23 MR. HILE: Five minutes.

24 (Brief break.)

25 (Exhibit 3005 was marked.)

1 that Franklin purchased these bonds, that it was aware
2 that Stockton was a bankruptcy risk?

3 A. No. High grade, A rated securities.

4 Q. These were A grade securities?

5 A. A rated securities.

6 Q. So is it your testimony, as you sit here
7 today, that at the time these investments were made and
8 purchased, that no one at Franklin was aware that
9 Stockton was a potential bankruptcy risk?

10 A. I don't recall.

11 MR. HILE: That's all the questions I have.

12 MR. JOHNSTON: We're done.

13

14

15 (Deposition concluded at 11:01 a.m.)

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1 STATE OF CALIFORNIA)
)
2 COUNTY OF SACRAMENTO)

3
4 I, Kimberly A. Barrette, a Certified Shorthand
5 Reporter, do hereby certify:

6 That prior to being examined, the witness in
7 the foregoing proceedings was by me duly sworn to testify
8 to the truth, the whole truth, and nothing but the truth;

9 That said proceedings were taken before me at
10 the time and place therein set forth and were taken down
11 by me in shorthand and thereafter transcribed into
12 typewriting under my direction and supervision;

13 I further certify that I am neither counsel
14 for, nor related to, any party to said proceedings, nor
15 in any way interested in the outcome thereof.

16 In witness whereof, I have hereunto subscribed
17 my name.

18
19 Dated: March 17, 2014

20
21 *Kimberly A. Barrette*



22 Kimberly A. Barrette
23 CSR No. 6671
24
25

Exhibit K

04-16-14-CMoore.txt

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IMPORTANT IMPORTANT! IMPORTANT IMPORTANT!

It is understood by all attorneys and/or their staff using, saving onto a hard computer disk, or receiving a LiveNote/Realtime ASCII or emailed rough draft transcript that:

1. The following is an unedited rough draft transcript. Various corrections and/or changes may be made before the final version is complete. The use of this rough draft transcript is limited by C.C.P. 2025.540(b). This reporter, as well as any affiliated court reporting agency, will not be responsible for any variance of this draft from the final transcript.

2. Because of the nature of stenographic outlines, differences WILL exist between the LiveNote/Realtime rough draft copy and the certified transcript prepared by the reporter. Those differences will include the following, among others:

- A. Words may change;
- B. Page and line numbers may change;
- C. Punctuation may change; and/or
- D. Quotes may change.

3. Providing a LiveNote/Realtime ASCII and/or email or saving LiveNote/Realtime onto a computer hard drive will only be provided when a certified copy is purchased and there will be a charge for the LiveNote/Realtime rough transcript in addition to the charge for the certified copy.

04-16-14-CMoore.txt

1 This is the deposition of Charles Moore in the case of re
2 the City of Stockton.

3 (The time is now 1002 A.M. The witness is sworn.)

4 BY MR. HILE:

5 Q Good morning, Mr. Moore. My name is Norm Hile,
6 and I represent the City of Stockton in this Chapter 9
7 case.

8 I'm going to be taking your deposition today.
9 Have you ever been he did pest he had before?

10 A Yes, sir.

11 Q How many times?

12 A Somewhere between five and even if, probably
13 closer to ten though.

14 Q All right. And when was the last time?

15 A Last deposition that I had was as part of a
16 labor dispute with the City of Detroit and that would
17 have been within the last two months.

18 Q Okay. Well then you know the rules here but
19 let me go over some briefly for a second. You
20 understand sir that you are under oath?

21 A Yes.

22 Q You understand that you're under oath just as
23 if we are were in a courtroom with a judge?

24 A Yes.

25 Q When the deposition is over, you will have a

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1 chance to review the transcript and to make any
2 corrections. Do you understand that?

3 A Yes.

4 Q If do you make corrections to the transcript, I
5 will be entitled to comment upon them at the trial of
6 this matter. Do you understand that?

7 A Yes.

8 Q Is any reason as a result medication or any
9 other reason today that you cannot give your best
10 testimony?

11 A No.

12 Q In preparation for this deposition, did you
13 meet with anyone other than your counsel?

14 A No, sir.

15 Q Now, Mr. coughing Tonies here today and I
16 understand he's from your same firm; is that correct?

17 A Yes.

18 Q He is someone who has worked on the project
19 that we are here to take your deposition on?

20 A Yes.

21 Q What has been his role?

22 A Mr. Covington along with one of my colleagues,
23 Mr. Perea, Jeffrey, P.E. REA, have assisted me on
24 analysis of information related to this assignment.

25 Q Okay. Anyone else pat your firm that has

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1 worked on this assignment?

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2 A One of my partners, Van Conway has also had
3 some involvement.

4 Q What was his involvement?

5 A Mr. Conway has cofounder of our firm and one of
6 our lead litigation partners will review information and
7 so I basically coordinated and communicated with him
8 throughout the process.

9 Q What is his field? Is's a CPA?

10 A Mr. Conway is a CPA, yes.

11 Q He's an attorney?

12 A He is not an attorney.

13 Q He's an actuary?

14 A She is not an actuary.

15 Q Is Mr. Covington an actuary?

16 A No.

17 Q Another person from your firm that you
18 mentioned is that a person an actuary?

19 A No.

20 Q In preparation for this deposition, did you
21 review any dock you?

22 A Yes.

23 Q What did you review?

24 A I reviewed my report. I reviewed the amended
25 plan of adjustment and the modified disclosure

5

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1 statement. I reviewed the City's memorandum of law
2 supporting confirmation and the supplemental memorandum

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7 believe to be all responsive documents back on March 28,
8 and although we're still considering whether there are
9 any other documents we do not believe there are any
10 other responsive documents to your request based on our
11 objections and responses.

12 BY MR. HILE:

13 Q There is an engagement letter between your firm
14 and Mr. Morse's firm?

15 A Yes.

16 Q Has it -- is it something that was produced as
17 part of your report?

18 A It is not an exhibit to the report.

19 Q Does and where does right side at the moment?

20 A It would probably reside in the billing file at
21 my firm.

22 Q How about the billing -- bills you have
23 provided bills for your work on this case have you not?

24 A We have submitted invoices, yes.

25 Q Okay. What is the total that has been billed

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1 for this assignment so far?

2 A I believe the total is approximately \$520,000.

3 Q And does that include -- that has that all been
4 paid?

5 A No, sir.

6 Q And does that include expenses as well as time
7 of the professionals in your firm?

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11 this matter?

12 A No, sir.

13 Q Has the firm Conway MacKenzie been retained by
14 Jones Day other than this case and the Jefferson County
15 case, to your knowledge?

16 A I don't know specifically, but that's a high
17 likelihood that the answer is yes.

18 Q who would know?

19 A I would have to check with our director of
20 operations who would be able to go back and look.

21 Q How about Van Conway, is he somebody who might
22 know?

23 A He may, but I don't know. We -- our firm has a
24 lot of engagements every year and we've been around for
25 27 years, so during that course of time it's -- there's

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1 a very good chance we would have been engaged by
2 Jones Day in another Matter.

3 Q Now in your report you mention that your rate
4 for this assignment is \$695 per hour; is that correct?

5 A Yes, sir.

6 Q And tell me what the rates footer people would
7 have worked on this matter from your firm are for
8 this -- for this case?

9 A I don't recall the specific rates.

10 Q Does your firm have different levels of
11 employees for purposes of how you bill such as para lets

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12 in the legal field versus lawyers, something like that?

13 A Yes, sir.

14 Q What types of position there are in your firm
15 that have differ billing rates?

16 A There are senior manage direct or positions,
17 manage director, director, senior associate, paralegal,
18 and administrative professionals.

19 Q Within Conway MacKenzie, are there any
20 actuaries?

21 A Not that I'm aware of.

22 Q Now you mentioned Mr. Covington and one other
23 person would has worked on this assignment for Jones Day
24 in the Stockton case. Is there any other person you
25 know of who has billed time to the assignment that you

15

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1 are work on here today?

2 A I have an administrative assistant that has
3 billed time on assignment.

4 Q Anybody else?

5 A Not that I'm aware of.

6 Q Does the administrative assistant bill at the
7 \$135 an hour rate that is mentioned in your report as
8 the lowest rate mentioned?

9 A Yes, sir.

10 Q Let's mark that next.

11 (Exhibit ExhibitNo marked)

12 THE WITNESS: Thank you.

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14 As far as I know, this is a correct copy and it's the
15 one that we'll working from today.

16 A Mr. Hile, just because there are I think 200 --
17 over 200 pages I won't go through everyone so I will
18 take your word for it read it now.

19 Q Okay. Thank you.

20 Now, you mentioned that the -- your firm has
21 billed over \$500,000 in this matter.

22 Do you have an estimate of how many hours you
23 have spent on this assignment?

24 A I don't.

25 Q Do you have an idea of how many hours any of

17

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1 the other people working on the assignment have worked
2 on it?

3 A I don't.

4 Q What is Mr. Conway's job been in this
5 assignment? Has he actually billed time to it?

6 MR. MORSE: Objection. Asked and answered.

7 THE WITNESS: Mr. Conway as again the senior
8 litigation partner in our firm, typically will have
9 involvement on any matter in which we're providing
10 litigation support services and so from time to time
11 throughout the case I've consulted with Mr. Conway as it
12 relates to the issues of the case.

13 BY MR. HILE:

14 Q As part of your work on this assignment that

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15 resulted in your report which is Exhibit 3021, did you
16 visit the City of Stockton?

17 A Yes, sir.

18 Q when?

19 A The week of March 17.

20 Q Okay. How long were you there?

21 A I was there one full day.

22 Q Okay. And did you meet with anyone in Stockton
23 on that day?

24 A Yes, sir.

25 Q who did you meet with had?

18

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1 A The gentleman's name is going to escape me
2 right now but he was part of the travel and tourism
3 entity, if you will, for the City.

4 Q Okay.

5 A I think his first name was Manuel.

6 Q Okay. What about Manuel show you in the City
7 of Stockton?

8 A We walked all around the City and there were a
9 number of items that I was asking him about, and he
10 would take me there.

11 Q How did you contact Manuel in order to get him
12 to act as your tour guide?

13 A One of my colleagues contacted this group that
14 Manuel is a part of and arranged for a visit.

15 Q Now, what did you see in particular in the City

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16 during that visit?

17 A Well, I saw the City itself. I saw a lot of
18 buildings. I saw parks. I saw golf courses.

19 Q Okay. Just please describe what golf course
20 did you see?

21 A I saw the Swenson and Van Buskirk golf courses.

22 Q Okay. Anything else?

23 A I saw Oak Park.

24 Q Anything else?

25 A I walked around the whole downtown area.

19

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1 Q Okay. Anything else?

2 A Well, without getting into I building within
3 the downtown area I think that will encompass way looked
4 in the downtown area and then driving around the whole
5 City itself, include residential areas.

6 Q Did you go in City Hall?

7 A I did not go in the building but I was outside
8 City Hall.

9 Q Did you talk to any persons who are members of
10 the City staff?

11 A No, sir.

12 Q Did you talk to any members of the
13 City Council?

14 A No, sir.

15 Q Did you ask to meet with any people from the
16 City staff?

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17 A No, sir.

18 Q Did you ask to meet with any members of the
19 city council?

20 A No, sir.

21 Q I would like to ask you about Exhibit 1 to your
22 report, which is in Exhibit 3021, which appears to be
23 your resume. The page that I'm looking at the top says
24 document 1293 as they all do. But it has Charles M.
25 Moore, CPA, CFF, CTP at the top. Do you see that?

20

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1 A Yes, sir.

2 Q Okay. Is this your current biography or resume
3 or CV?

4 A Yes, sir.

5 Q Okay. There is anything that has happened
6 since this report was produced with this particular CV
7 that you have added to your CV since that time?

8 A No, sir.

9 Q Is this CV which is Exhibit 1 to your report,
10 which has been marked as Exhibit 3021, accurate in every
11 respect?

12 A As far as I'm aware, yes.

13 Q Going back to your visit to the golf courses,
14 did you meet with any people at the golf courses to talk
15 to any of them?

16 A No, sir.

17 Q Did you speak with Mr. Chin?

25 A 04-16-14-CMoore.txt
I think they're headquarters Tedder in Chicago

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1 but I'm not positive about that.

2 Q Does a certify indication process there include
3 training with respect to turnaround with respect to
4 government agencies?

5 A It could. It's not specific as to industry.

6 Q Have you ever had any formal training in
7 actuarial sciences?

8 A No.

9 Q Have you ever taken an actuary exam?

10 A No, sir.

11 Q Are you a member of the society of actuaries?

12 A No, sir.

13 Q Have you ever provided actuarial consulting
14 services either yourself or through your current firm to
15 any entities?

16 A How do you find actuarial consulting services.

17 Q Providing work that a licensed actuary would do
18 for a client?

19 A I have never held myself out as a licensed
20 actuary, no.

21 Q Now, the job that is listed in your resume as
22 the CFO for horizon technology, you would describe for
23 me a little bit of what the responsibilities that you
24 had were at horizon technology please?

25 A Those items are listed here object the resume.

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1 defined benefit pension plans as well as postretirement
2 healthcare.

3 Q Okay. What was your assignment for the bud
4 company?

5 A I serve as chief restructuring officer for the
6 bud company.

7 Q Where is that located?

8 A That's headquartered in Chicago.

9 Q Have you ever provided consultant consulting
10 services for a defined benefit pension plan in
11 California?

12 MR. MORSE: Do you mean a plan in California or
13 a company or municipal it located in California.

14 MR. HILE: Either one.

15 THE WITNESS: I don't believe that I have.

16 BY MR. HILE:

17 Q Have you ever had any experience with OPEB
18 claims that arose in California?

19 A That may have been the case. Very often
20 companies that I work with, not governmental entities,
21 but companies, will have collective bargaining
22 agreements that are specific to a plant in and plants
23 have may have been located in California. I would have
24 to go back and think through whether any of my clients
25 had plants or locations in California where employees

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1 receiving those benefits would have resided.

2 Q As you sit here today, you can't think of any;
3 correct?

4 A Not off the top of my head.

5 Q Is the Detroit Chapter 9 case the first time
6 that you've testified as an expert witness in a
7 Chapter 9 case?

8 A Just to clarify, my testimony in the Detroit
9 case has all been as a fact with it.

10 Q Okay. Have you ever testified as an expert
11 witness in a Chapter 9 case?

12 A No, sir.

13 Q Okay. Has there been any time other than the
14 Detroit case that you've testified as a fact with it?

15 A Yes, sir.

16 Q Where and when? Where was that?

17 A Part of my testimony in the Greek town casino
18 bankruptcy was as a fact with it. The synergy data
19 matter was as a fact with it. Other bankruptcy case
20 that I've testified in D.C. t- Inc., I was a fact with
21 it.

22 Q Anything else?

23 A I was a fact witness in wooler the corporation
24 and I believe I was a fact witness in hastings
25 manufacturing.

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1 Q Besides this case, that is in of your work ever
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2 involved a California public employees retirement system
3 will we're refer to here as CalPERS?

4 A No, sir.

5 MR. HILE: Next please.

6 (Exhibit ExhibitNo marked)

7 MR. MORSE: Thank you.

8 THE WITNESS: Thank you.

9 MR. HILE: This is item six.

10 BY MR. HILE:

11 Q Mr. Moore the reporter has marked as the next
12 Exhibit a three page document which is a printout of a
13 what else street he natural article dated June 1, 2011,
14 headline is turnaround firms go municipal. Have you
15 seen this before?

16 A I vaguely recall this article, yes.

17 Q On the second page at the top, you are quoted.
18 Do you see that?

19 A Yes, sir.

20 Q Okay. Is this an accurate quote of what you
21 told the reporter?

22 A This is from June 1, 2011, near lie three years
23 ago, so I can't recall exactly what I would have told
24 the reporter as compared to what's listed here.

25 Q Okay. Did you see this article when it came

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1 out?

2 A I seem to recall that, yes.

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3 Q Did you recall the reporter and say you got me
4 wrong? You quoted me on wrong or complained?

5 A Don't recall.

6 Q The quote says, quote, when you are dealing way
7 private company, for the most part, you're dealing with
8 economic considerations close quote.

9 And you go onto be quoted as saying quote, when
10 you're dealing with a governmental entity, not everyone
11 has economic considerations as the most important factor
12 close quote.

13 what was the experience that you relayed on
14 when you made that statement?

15 A I don't recall.

16 Q Do you agree that when you're dwelling a
17 governmental, entity not everyone has economic
18 considerations as the most poor factor?

19 A Yes I agree with that statement.

20 Q And what other considerations, other than
21 economic, you have seen when you're dealing with
22 governmental entities become factors?

23 MR. MORSE: Objection. Vague.

24 THE WITNESS: I've seen firsthand politicians
25 made decisions that are more about preserving their time

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1 in office than doing the right thing economically.

2 BY MR. HILE:

3 Q Okay. Have you seen instances where people in
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25 Q And how did you do that?

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1 A I reviewed information that was available from
2 the City as part of information that has been made
3 available through this process.

4 Q Okay. what documents did you look at?

5 A I certainly have looked at the long-range
6 financial plan. I've looked as a variety of pleadings
7 and declarations that have been filed in this case.
8 People that have indicated in quite detailed fashion how
9 the City operation and some of what has happened in the
10 past and what they would like to see happen in the
11 future.

12 Q Now, in the City of Detroit case have you tall
13 actually talked to the department heads?

14 A Yes.

15 Q And the City of Stockton case you haven't done
16 that, have you?

17 A No.

18 Q what documents in particular did you look at to
19 look at a department by department review of the City of
20 Stockton's operation?

21 A well I looked at long-range financial plan
22 which contains affair amount of financial information
23 and projection for the City and as I indicated before a
24 number of declaration and other information including
25 deposition transcripts in individuals that work for the

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1 to your knowledge, something that has been published to
2 the public?

3 A I have not gone through to look at everyone of
4 the 128 pages, but if it is the document that I believe
5 it is, then this is a public document.

6 Q All right. And if at any time as we go through
7 it you see something that you think isn't public, please
8 let me the fact that I have it says to me it's public
9 because I wouldn't have it if it weren't public?

10 MR. MORSE: The only reason I ask that is I
11 know that your rebuttal witness is involved in the City
12 of Detroit so I want to make sure that your access to
13 information that you are using here is public
14 information and we don't get into any trouble. That's
15 all.

16 BY MR. HILE:

17 Q Now, tell me what Exhibit 3024 is, if you
18 would?

19 A I again, just indicating that I have I haven't
20 gone through and verified all 128 pages but this
21 document is the document that was presented to creditors
22 of the City of Detroit last June.

23 Q Okay. And was your firm involved in the
24 preparation of it?

25 A Yes, sir.

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1 Q And were you involved in the preparation of it?

2 A Yes, sir.

3 Q Take a look, if you work at page 41. This is
4 headed key objectives for financial restructuring and
5 rehabilitation of Detroit.

6 And the first bullet says provide incentives,
7 parenthesis and eliminate disincentives, close
8 parenthesis for business and residents to locate and/or
9 remain in the City.

10 That is one of the key objectives that you
11 proposed for creditors to consider in looking at the
12 proposal as to how they would be treated in the
13 Chapter 9 proceedings?

14 MR. MORSE: I'm just object. This is not his
15 document. This is the City of Detroit's document and
16 the question is irrelevant, so any of the information
17 set forth in this document as it relates to the expert's
18 reports and opinion in this case. Is.

19 BY MR. HILE:

20 Q A question pending.

21 (Record read as follows:

22 "QUESTION:

23 THE WITNESS: I don't think this is a key
24 objective that we proposed to the creditors. This is
25 laying out what the City's key objectives are.

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1 BY MR. HILE:

2 Q And this is an objective that you, as a
3 consultant to the City, agreed to as part of your
4 preparation of this document; correct?

5 MR. MORSE: Same objection.

6 THE WITNESS: Yes.

7 BY MR. HILE:

8 Q And the first sub bullet says the City cannot
9 stabilize or pay creditors meaningful recoveries fits
10 considers to sling. That is also something that was
11 part of your recommendation for what the creditors
12 should be known were key objectives for the City?

13 MR. MORSE: Same objections.

14 THE WITNESS: Those were different questions.
15 Originally, I believe you were asking me if I agree with
16 these and the answer is yes.

17 That's serve ASCII principles, key objectives
18 that the City has as part of it's structuring. This was
19 not -- these were not proposals to creditors. This was
20 laying out what the City's objectives are.

21 BY MR. HILE:

22 Q Okay. And you would agree with knee that's are
23 valid objectives for the City of Detroit; correct?

24 MR. MORSE: Same objections.

25 THE WITNESS: Yes.

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1 BY MR. HILE:

2 Q And you would agree that they're also valid
3 objectives for the City of Stockton?

4 MR. MORSE: Same objections. Calls for
5 speculation.

6 THE WITNESS: We would have to go through each
7 one of them and there's probably be a lot more
8 information that I would want to look at before I would
9 feel comfortable taking that position for Stockton.

10 BY MR. HILE:

11 Q I'm just asking you about the first one?

12 MR. MORSE: Same objections.

13 BY MR. HILE:

14 Q That is, provide incentives for businesses and
15 residents to locate or stay in the City.

16 A Mr. Hile, I don't know if this is one of the
17 key objectives that Stockton needs to have for its
18 financial restructuring or not.

19 Q Is that was haven't had a chance to talk to
20 city staff and talk to people in the City about what's
21 necessary for the City to stop shrinking?

22 MR. MORSE: Same objection. I don't think it's
23 been established that -- Stockton is shrinking or
24 anything that would be remotely applicable that is on
25 this page.

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1 THE WITNESS: I haven't seen anything from the

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2 City are you City of Stockton that says this. Now, if
3 you are asking me what my opinion is, should be a
4 financial objective or this be in an objective for the
5 City of Stockton nine a position to make that opinion.

6 BY MR. HILE:

7 Q So you are not in a position based upon the
8 information that you have to determine whether or not
9 that's key objectives apply to Stockton?

10 A That yeah. And just to be clear, I don't know
11 if they are objectives that the City already had has or
12 if they should be objectives that the City has.

13 Q Take a look, if you would, please, sir, at
14 page 61 of this exhibit.

15 At the top under restructuring and reinvesting
16 in City give it to says to address the crises
17 confronting the City, and Emery did the deficiencies and
18 services addressed above, including in particular
19 deficiencies in services relating to public safety, and
20 to achieve a sustainable restructuring that promotes the
21 long term health and safety of the City the City must
22 aggressively and devote substantial resources to the
23 objective described below.

24 And you see that public safety recommendations
25 for purposes of police and fire, do you see those in the

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1 area of -- on the following pages?

2 A Yes, police on page 61, continuing on into

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3 page 64, where fire and EMS is, yes, I see those.

4 Q And it talks about spending approximately
5 \$125 billion over the next ten years.

6 Can you tell me how much of the --
7 \$1.25 billion should be dedicated to public safety?

8 A You corrected yourself, but I want to be clear
9 you had said \$125 billion.

10 Q It's 1.25 billion.

11 A 1.25 billion.

12 Q Right.

13 A I also provided a clarification that this
14 document is from June of 2013, that the plans the
15 reinvestment plans have been refined since then so the
16 total investment by the City is not just \$1.25 billion
17 any longer, so that's the first item.

18 The second item is I don't have offhand exactly
19 how much ever that goes to police and fire.

20 Q Okay. From your perspective then, why was it a
21 good idea to direct significant sums of money towards
22 police and fire services?

23 MR. MORSE: Objection.

24 THE WITNESS: The devote of these resources has
25 a direct impact on the City's long term financial

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1 projections. As will you see, if you go through the
2 pages that follow, there were very specific criteria
3 that were defined in terms of where the police and fire

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4 dents should get, to which I'll note is not world class
5 at all. It's to bring the City up to essentially an
6 acceptable level of services, but in addition to that,
7 that driver's number of the financial benefits that are
8 in the long term financial projections, so some of the
9 money has to go towards just replacing capital assets.
10 Other amounts that are being spent have a direct return
11 to the City in the form of additional refer flu.

12 BY MR. HILE:

13 Q So in the -- in the Detroit plan, there is
14 going to be money spent not only to upgrade assets like
15 police cars and radios and those things, but there's
16 also an attempt to improve the quality of the police
17 training and those things; correct?

18 MR. MORSE: When you use the term plan you are
19 referring to the long term financial plan.

20 MR. HILE: I'm talking about this
21 restructuring proposals for creditors.

22 MR. MORSE: Go ahead. Of course this is from
23 2013 of June.

24 THE WITNESS: That was my comment. This is --
25 that I document that was put out in June. The City has

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1 part of the Chapter 9 process is specifically going to
2 be assuming that the disclosure statement is approved by
3 the Court, moving into a solicitation phase for its plan
4 of adjustment. That plan contains the most current

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5 information as it relates to what would be spent where
6 and everything else associated with plan in terms of how
7 different creditors would fair.

8 To go back to your question, though, the answer
9 is yes, we have money being spent to replace police cars
10 as an example, and you will see as you go through the
11 document that I pointed you to that in its disclosure
12 statement, very specific schedules of what specific
13 vehicles get replaced when and how much those vehicles
14 cost. And we also as part of that, have a number of
15 cost saving initiatives as an example, when we replace
16 police cars and we improve the technology in those
17 police cars, it's substantially hems the amount of time
18 that officers currently spend doing a lot of manual
19 activities so the number of officers needed to perform
20 the same functions is a lot less.

21 BY MR. HILE:

22 Q Now are you aware of the crime rate -- rates
23 that have been prevalent in Stockton for the last couple
24 of years?

25 A I am general lay aware, yes.

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1 Q The response time to calls from citizens
2 reporting activities that require police help?

3 A Generally, yes.

4 Q And I take it you have read clever Eric Jones
5 declaration in support of eligibility as one of the

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6 documents that is in your list of documents you
7 reviewed; is that correct?

8 A Yes.

9 Q And you have read the Justin McCrary's
10 declaration that was submitted as part of eligibility
11 proceedings?

12 A I siege to recall that's correct yes.

13 Q And do you see reason why Stockton has the same
14 problems that are prevalent in Detroit?

15 A I think that both municipalities have unique
16 issues but certainly there are a number of similarities.

17 Q And there is any reason why the recommendations
18 for reinvesting in safety assets in Stockton is any
19 different than the need in Detroit?

20 A Certainly one thing that I've noticed is that
21 whereas with the City of Detroit, we are very specific
22 measurable objectives, that drive what the investment
23 needs to be and then significant detail on what those
24 investments will be and when they are as well as the
25 benefits that come from them, I have not seen that same

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1 level of detail as relates to the City of Stockton. It
2 comes across morass setting the Marshall Plan aside
3 which is a very important initiative, we will spend
4 money if we have money but it's unclear as to
5 specifically how much will be spent or when or when the
6 goals will be achieved.

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7 Q Well, when you say the Marshall Plan is I
8 don't, do you say that?

9 A As I understand it, the primary goal is to
10 increase the number of officers is per resident or per
11 thousand residents and generally speaking, that's a good
12 thing to happen when you are trying to reduce right.
13 It's not a guarantee things going to hand though. There
14 are numerous instances around the country where just by
15 adding officers it did not change crime rates.

16 Q Have you reviewed the Marshall Plan to
17 determine whether or not it should or should not be
18 implemented?

19 A I have not.

20 Q But in general, you think that the Marshall
21 Plan is an important part of what the City is proposed;
22 correct?

23 MR. MORSE: Objection misstates testimony.

24 THE WITNESS: My observation in that regard is
25 increasing the number of officers typically -- and I

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1 have to stress the word typically is an important
2 initiative in bringing crime rates down.

3 MR. HILE: Let's go off the record for a
4 second.

5 (Off the record)

6 MR. HILE: Let's mark this next.

7 (Exhibit ExhibitNo marked)

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8 BY MR. HILE:

9 Q Mr. Moore, the reporter has marked as
10 Exhibit 3025 a humongous document for which I apologize.

11 Can you tell me if you've seen this document
12 before?

13 A Without going through all 440 pages.

14 Q Right?

15 A It appears to be the disclosure statement filed
16 in the City of Detroit Chapter 9 case.

17 Q And when was this filed?

18 A Going off of the caption on the bottom,
19 February 21st.

20 Q Of which year?

21 A 2014.

22 Q Okay. And did you have a role in the creation
23 of this disclosure statement?

24 A Yes, sir.

25 Q What was your role?

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1 A I helped draft certain sections and there are
2 elements in here that my firm has put together.

3 Q Okay. What parts of it did you work on?

4 A Mr. Hile, there are a variety of items in here
5 and I couldn't even begin to tell you all of the
6 sections that I reviewed or provided comments on.

7 Q Were you involved in the ten year financial
8 projections?

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9 A Yes, sir.

10 Q What was your role there?

11 A To clarify, the -- there are multiple firms
12 involved on behalf of the City of Detroit.
13 Ernst & Young acts as the financial advisers for the
14 City of Detroit. They are the gatekeepers of the
15 overall financial projections. As as part of the ten
16 year plan and there's both ten year plan as a well as a
17 40 year plan, the ten year plan, they utilize the entire
18 reinvestment plan that my firm has put together and then
19 there are additional elements with the ten year plan
20 that we provide inputs to and then Ernst & Young
21 publishes the overall professional.

22 Q So the ten year plan was originally authored by
23 your firm? Did I get that right?

24 A No. There are multiple people that are provide
25 inputs into it. Ernst & Young is the gate keep inform

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1 the actual financial projection.

2 Q Okay. How was the ten year financial
3 projection prepared? who was involved in that? what
4 was done?

5 A The parties that are involved are, from an
6 outside adviser standpoint, Ernst & Young, Miller
7 Buckfire, Jones Day, certainly Conway MacKenzie.

8 And then from the City's standpoint, there's
9 Kevin Orr as the emergency manager, and his staff which

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14 MR. HILE: Back on the record.

15 BY MR. HILE:

16 Q All right. When we -- before we broke for
17 lunch, Mr. Moore, we were talking about what's been
18 marked as Exhibit 3025, and in particular page 361 of
19 440. For the ten year financial projections for the
20 City of Detroit.

21 And at the next to last line on the page that
22 we're looking at shows contingency, do you see that?

23 A Why it.

24 Q Reflects amounts reserved for unexpected
25 events. Do you see that?

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1 A Yes, I do.

2 Q So it was part of this plan, that is
3 Exhibit 3025 to include a contingency within the
4 financial projections for unexpected events; is that
5 correct?

6 A Yes, that's right.

7 Q And were you in agreement that that was an
8 appropriate way to create this ten year financial
9 projection?

10 A For this specific projection, yes.

11 Q When you say for this one, are there reasons
12 why you wouldn't in other cases?

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13 A Yes.

14 Q What would those be?

15 A It all depends on the nature of the projections
16 themselves. This came about as part of negotiations
17 where there were a number of credit or constituents that
18 were looking for changes to be made in various line
19 items of the projections, that changed the nature of the
20 projections to become more aggressive and so we decided
21 rather than taking and debating each individual line
22 item, that we would use more aggressive assumptions on
23 a number of line items and then use a contingency in
24 order to address risks that we felt existed in the
25 aggressive nature of those line items where we had

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1 modified them.

2 Q What did you mean by aggressive?

3 A Aggressive just means that the assumptions that
4 underlie those line items have a fairly good chance of
5 potentially not coming to be, to fruition.

6 Q And what were they in this report that -- the
7 ones that were aggressive?

8 A This ten year projection is rolled up on a
9 department by department basis and as you can tell there
10 is 80 pages just in the financial projection. There is
11 another 70 pages in the reinvestment and so you have
12 essentially 150 pages worth of projections with ten
13 years on those projections, the amounts are not at a

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14 higher level, just with overall line items, but specific
15 amounts and specific years that we addressed through the
16 contingency.

17 Q So is it your testimony that in order to
18 satisfy the creditors, you made aggressive assumptions
19 and then just put in the contingency that is what you
20 are saying?

21 A Yes as we negotiated and we were working
22 towards deals with creditors, our financial projections
23 became more aggressive in certain areas and instead of
24 continuing to debate those line items orthos areas which
25 are numerous, yes, we used a contingency.

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1 Q Show knee, you would, within this exhibit,
2 where a particular line item that you say is aggressive
3 increased?

4 A Okay. I will direct to you page 286 of 440.
5 Are you there?

6 Q I am.

7 A This represents the -- it's 70 or so pages of
8 all of the reinvestment initiatives in the City. The --
9 on page 289, which is just a few pages back, there is a
10 section that's labeled at the top revenues.

11 Q Yes.

12 A Total revenues for the ten year total are
13 477.6 million. Do you see that?

14 Q I do.

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16 been reported before that, there is a set of 40 year
17 projections that are used as part of the mediation
18 process with all of the credit or constituents. The 40
19 year projections, what is included in the disclosure
20 statements are ten year projections, but 40 year
21 projections exist for the City and have been utilized
22 with all of the creditor constituents related to the
23 City of Detroit.

24 Q If you used aggressive assumptions for such
25 things as income, how you would handle the chance that

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1 there might be an economic downturn during that ten year
2 period?

3 A Well, we have two items.

4 The first, the contingency relates to where we
5 think we are going to be off in these projections, and
6 the contingency is meant to address where we think we
7 are going to be off. Separately we have I have minimum
8 fund balance that we maintain as well. And so between
9 those two items, that provides the City a cushion for an
10 economic downturn.

11 Q Show me where the minimum fund balance is?

12 A I don't know if that would actually be in this
13 document. This is the minimum fund balance that we're
14 utilizing is part of 40 year projections which you are
15 utilized in the mediation process.

16 Q And how much is that?

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17 A Approximately eight onto \$85 million. It
18 changes as you go out because it's based on a part of
19 the budget.

20 Q How was that eight to zero, to \$85 million
21 created or collector saved?

22 A Well it's a minimum cash. What so the -- we
23 always have to ever that level of cash.

24 Q So there is two elements in the Detroit
25 financial projections that you've talked about to help

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1 with the possibility of an economic downturn, the first
2 is the minimum -- the contingency and the second is the
3 minimum fund balance, is that accurate?

4 A It is. I just want to clarify though acid
5 specified before, the contingency is mainly to deal with
6 aggressive assumptions that are in the projections while
7 they would be utilized for an economic downturn, the
8 primary purpose of the contingency is to address the
9 more aggressive assumptions in the projections. We did
10 not have a contingency in the June 2013 projections.

11 Q Okay. So let's look at what the contingency
12 actually is in this plan and let me direct you to
13 page 363. Of Exhibit 3025.

14 Am I reading correctly if you go to the bottom
15 it says funds available for unsecured claims and you
16 have contingency as one of the line items there. Do you
17 see?

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- 18 A That I do, yes.
- 19 Q And when is the first time that there is a
20 contingency?
- 21 A In fiscal Year 2015.
- 22 Q How much is?
- 23 A \$12.6 million.
- 24 Q Okay. And the contingency in 2167 is 10.5
25 is than additional \$10.5 million?

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- 1 A It is.
- 2 Q And every year thereafter is an additional
3 amount, whether it be 10.4, 10.3, that's the plan calls
4 for the City to place into the contingency fund?
- 5 A Correct for a total of \$98.5 million by fiscal
6 2030.
- 7 Q And the purpose of that again is?
- 8 A To offset increasingly aggressive assumptions
9 that were incorporated in these projections. I
10 highlighted one of those, which is revenue initiatives,
11 where revenue initiatives grew by approximately
12 \$227 million as compared to the June 2013 document.
- 13 We have a contingency in here of \$97.5 million
14 during that same time period.
- 15 Q What percentage is the \$80 million minimum cash
16 balance that you've talked about here as a percentage of
17 total expenditures?
- 18 A Approximately 8 percent of the general fund.

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19 And we're just using it -- I'm giving you that
20 percentage as a percentage of the general fund revenues
21 on average.

22 Q And was that 8 percent the number that was
23 chosen particularly or is it just the one that turned
24 out? There is a reason to have 8 percent versus some
25 other percentage?

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1 A Well there certainly is a reason for every
2 number other here. We didn't have a random number
3 generated for anything. The number was specifically
4 derived. We targeted 8 percent.

5 Q Why?

6 A 8 percent was deemed to be an appropriate
7 cushion for the City is in the overall condition, that
8 everyone felt comfortable with.

9 Q Okay. But was there -- just a question of
10 people feeling comfortable? Was there any other basis
11 for it?

12 A Well, we have a particular -- we have line
13 items that we point to that serve as part of the basis
14 for coming up with a minimum cash will.

15 Q Are you aware of any guidelines that are out
16 there for cities or government agencies to have for
17 purposes of maintaining a cash balance?

18 A I am.

19 Q What are they that you are aware of?

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20 A well, in this case, people have made reference
21 to the GFOA, and certainly I think a keyword in what you
22 indicated is guidelines. There is not any sort of
23 statutory rule that the City of Detroit has ever a
24 minimum fund balance that needs to exist.

25 Q what are the GFOA guidelines?

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1 A well, they -- they indicate approximately two
2 months of core expenditures, but again those are
3 guidelines.

4 Q Is 8 percent, two months in the case of the
5 City of Detroit?

6 A No. Two most could be -- but it depends on
7 what you are look at as to two months of what. For the
8 City of Detroit, 8 percent actually is two months.
9 we've looked at it specifically as two months of
10 employee related expense. And that turns out to be
11 8 percent of -- of the average amount of general fund
12 revenues.

13 Q So Mr. Moore, is it your testimony here that in
14 the case of the City of Stockton having both a
15 contingency for unexpected events and a minimum cash
16 balance is not necessary?

17 A As I indicated in my report, I go off of first
18 what the City included as the narrative surrounding this
19 long-range financial plan. And that is that it is a
20 conservative plan, and the variances are more likely to

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21 be favorable than unfavorable, and I'm paraphrasing. I
22 don't know if that's the exact quote.

23 So if that's the case, then that does not match
24 up with our use of the contingency in the City of
25 Detroit. I think it's absolutely prudent for all

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1 municipal amounts to have some sort of minimum fund
2 balance. Now, what the minimum balance should be is
3 specific to that municipal it and the circumstances that
4 it faces, but it's absolutely prudent for any
5 municipality to have a minimum fund balance.

6 Q Have you come to a conclusion as to what the
7 minimum fund balance should be for Stockton?

8 A No. As I indicated in my report, I have a
9 variety scenarios, anywhere from 5 to 16 and two thirds
10 percent of total expenditures that are in there.

11 But I don't have an opinion as to what the
12 exact amount of the minimum fund balance should be.

13 Q So your opinion as that it should be somewhere
14 between five and 16 percent; is that correct?

15 MR. MORSE: Objection. Misstates testimony.

16 THE WITNESS: No, I just said I don't have a
17 specific opinion -- I don't have an opinion as to what
18 the specific amount should be. My report includes
19 scenarios running from 5 percent to 16 and two thirds
20 percent.

21 BY MR. HILE:

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22 Q Okay.
23 A But I do not make an opinion.
24 Q So you are not expressing an opinion as to what
25 Stockton's minimum fund balance should be?

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1 A Correct. What the specific fund -- minimum
2 fund balance should be. I do not espresso -- do not
3 express an opinion on that.
4 Q There is a reason why you didn't express an
5 opinion on that? Is it because you don't have enough
6 information or you think that is something the City
7 should decide for itself or. I I'll caution the witness
8 also not to reveal any attorney work product to the
9 extent that would come about in the course of making
10 your response.
11 A I think I would like to review more information
12 and before I would have an pans to the specific amount
13 of fund balance that would be appropriate in this
14 situation.
15 Q Now you have seen the fund balance that the
16 City's long-range financial plan proposes, you have not?
17 A I have, yes.
18 Q And you are not disagreeing with that, that is
19 your testimony?
20 MR. MORSE: Objection. Misstates testimony.
21 THE WITNESS: Yeah. Is that -- that is -- my
22 testimony regarding the minimum fund balance first of

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THE WITNESS: Could you clarify that question.

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1 BY MR. HILE:

2 Q If it's going to take several years before they
3 even get to the minimum fund under the long-range
4 financial plan isn't that an additional reason to have a
5 contingency fund to starting in Year 1 or Year 2 or year
6 three?

7 A That's not how I would do it. If my
8 projections are conservative, than I don't have to have
9 a contingency; but if I want to have a minimum fund
10 balance, I'm going to get to that minimum fund balance
11 right away.

12 Q The City of Detroit City of Detroit's ten year
13 financial projection has the contingency for what they
14 call unexpected events.

15 what are those types of events that are
16 included within that term unexpected events?

17 A I didn't write that line, so that's not the
18 wording that I would have chosen. What I was referring
19 to is a it specifically relates to where we anticipate
20 were going to miss on some of our line items. We can't
21 tell you which line items we're going miss on, but the
22 overall risk profile of this set of projections is a
23 higher risk profile than we're -- what we had before
24 when we did not have a contingency built in.

25 Q Let me ask you some questions about some of the

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1 constraints that we face in California with respect to
2 city finance.

3 Do you know what the statute is that governs
4 whether or not a city can levy public facility fees on
5 developers when they are developing projects within a
6 city?

7 A No, I certainly don't think that I can tell you
8 a specific statute.

9 Q Can you tell me how it works?

10 A How the public facility fees work?

11 Q No. How the statute sets up the requirements
12 for the City to use public -- to charge public facility
13 fees.

14 A No, I could not tell you exactly how it works.

15 Q Have you ever heard of article 16, you
16 section 18 of the California Constitution?

17 A I have not memorized code numbers of the
18 California Constitution, no.

19 Q Do you know what the special fund doctrine is?

20 A I do not.

21 Q Do you know what proposition 13 is?

22 A I certainly have heard of it, but I could not
23 tell you all of the specifics.

24 Q Do you know what proposition four, began limit
25 initiative is?

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1 A I do not.

2 Q Do you know what article 13 B of the California
3 Constitution is?

4 A I do not.

5 Q Do you know what proposition 218 is?

6 A I do not.

7 Q Do you know what the public employees pension
8 reform act is?

9 A Yes, I do.

10 Q What is that?

11 A That's a set of legislation that was enacted, I
12 believe, in January of 2013 that overhauled public
13 employee pensions.

14 Q How did it overhaul them?

15 A It mainly focused on new employees, so the
16 majority of the provisions relate to what become or what
17 are defined as new employees of public entities.

18 Q Did you take into consideration when you were
19 doing your report the fact that the employees pension
20 reform act would be apply to new employees in
21 Stockton?

22 MR. MORSE: Objection. Vague and ambiguous.

23 THE WITNESS: Could you define what you mean by
24 did I take into account when I did my report?

25 ///

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6 BY MR. HILE:

7 Q Well, I move to strike that as inaccurate.

8 Take a look at the sentence that says property
9 taxes are forecast to grow at throw .4 percent. Do you
10 see that, over the annual rate of the forecast? Do you
11 see that?

12 A This is the second sentence in the second
13 paragraph under A?

14 Q Yes.

15 A Yes. That's the City's forecast.

16 Q And then you say as compared to 4.3 percent
17 over the past 15 years?

18 A Yes.

19 Q And whose 4.3 percent is that?

20 A That's the actual results of the City.

21 Q That's not in the long-range financial plan of
22 the City is it?

23 A That's a lis for y'all period so it would not
24 be in the forecast.

25 Q You are the one would computed 4.3 percent over

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1 the last 15 years, isn't that true sir?

2 A I computed that based on the City's actual
3 information. These are two different numbers.
4 Homeowners association that is clear. The 3.1 percent
5 is a forward looking number, and that's being compared
6 to 4.3 percent, which is a historical number.

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7 Q But the historical number that is 4.3 percent
8 is something that you calculate, it's not something part
9 of City's long-range financial plan, is it?

10 MR. MORSE: Objection. Asked and answered.

11 THE WITNESS: That's correct. I calculated the
12 4.3 percent.

13 BY MR. HILE:

14 Q The same I true with respect to the sales
15 taxes, the City's forecast is 3.2 percent versus
16 3.8 percent that you calculated over the last 15 years;
17 correct?

18 A Yes. And I don't know if the City calculated
19 and used the historical levels as an input or a factor
20 in coming up with those future numbers are not.

21 Q Why did you choose a 15-year historical
22 comparison as your baseline?

23 A That's amount of information I had.

24 Q If you had 25 years you would have gone back 25
25 years?

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1 A I might have.

2 Q Where you would have decided that it wasn't any
3 longer relevant?

4 A I would have to see what the data would show.

5 Q A what about what happened 12, 13, or 14 years
6 ago is relevant to a forward projection of revenues for
7 a city like Stockton?

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19 MR. HILE: Let's go back on the record.

20 BY MR. HILE:

21 Q Mr. Moore, let's turn to page 10 of your
22 report. The section that deals with the public facility
23 fees.

24 As parts of your report, did you do any study
25 to determine how it is that a California City can levy

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1 public facility fees on developers?

2 A No.

3 Q Did you do any study to determine what the
4 process is for public facility fees being allocated to
5 different funds?

6 A No.

7 Q Did you do a study to determine whether or not
8 the particular funds into which public facility fees
9 have been paid for streets, fire stations, police
10 stations and park land have -- with the money has come
11 that other's in them now?

12 MR. MORSE: Vague as to time.

13 MR. HILE: At any time.

14 THE WITNESS: No. Mr. Hile, I just took the
15 information directly from what has already been defined
16 in terms of the funds, the application to the funds, and
17 did not look at what has happened in the past there.

18 BY MR. HILE:

19 Q Okay. So what your study did -- correct me if
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20 I'm wrong -- is to look at what fees you think in the
21 future may come into these funds and then try determine
22 whether or not that -- there's enough money from those
23 funds that could be used to pay the dent service and
24 machine pal on the bonds is that fair?
25 MR. MORSE: Objection. Misstates the report.

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1 THE WITNESS: That is not correct.
2 BY MR. HILE:
3 Q Okay.
4 A I have not -- the question was kind of long.
5 I think you used the word what I think will
6 come into the funds. I take no position as to what will
7 come into the funds.
8 Q Okay. How is it then that you conclude that
9 the City has the ability to pay off the Franklin bonds
10 from these four funds?
11 MR. MORSE: Objection. Misstates the report.
12 THE WITNESS: I don't take that position. This
13 an additional source of cash that could be used to pay
14 some or all the Franklin bonds, but all depends on
15 the -- the PFFs.
16 BY MR. HILE:
17 Q Did you look at what the projection was for
18 public facility fees in the almost?
19 A The long-range financial plan from a general --
20 is a general fund forecast and it does not have PFFs in

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21 that forecast.

22 Q So you don't have a forecast from the City with
23 respect to what future public facility fees will be, do
24 you?

25 A No, that's incorrect. I actually recall

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1 reviewing information that was provided by the City as
2 it relates to what the PFFs or at least the -- the
3 building permits May.

4 Q And what information was that? And feel free
5 to look at your report.

6 A Sure. I just want to make sure that I have the
7 exact reference here.

8 But it was specifically on the top of page 12,
9 write reference the market absorption stud, I the long
10 term average of 700 new units annually.

11 Q All right. So your report I based upon public
12 facility fees being generated, going into the City
13 coffers based on 700 new units an lay?

14 MR. MORSE: Objection. Misstates the report.

15 THE WITNESS: No, that is not --

16 BY MR. HILE:

17 Q Okay. How many units annually are you basing
18 your conclusion on?

19 A Let's review my conclusion.

20 Q Okay?

21 A I don't think we've established that at all.

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1 Q Do you anything to try to determine the
2 likelihood that that the number of permits would
3 increase over 100 per year in the future?

4 A No. I relied upon what the city had in its
5 long-range financial plan, which again cites a long-term
6 absorption rate of 700 units per year.

7 Q Do you think that the 700 number that you just
8 referred to is was a conservative number on aggressive
9 number?

10 A I don't have an opinion on that.

11 Q Let's go on page 12, the section d- as in
12 David, that is headed the City has not undertaken
13 certain revenue and cost initiatives that could improve
14 financial performance.

15 In writing this part of your report, you say
16 without dictating to the City how it conducts its
17 affairs.

18 why did you say that?

19 A Certainly I took note of some of the testimony
20 that was provided during the eligibility phase, and also
21 being involved in other Chapter 9 proceedings, I wanted
22 to make sure that it was clear that I'm not trying to
23 dictate to the City what I think it should do. I'm
24 merely observing what I see in the way of cost
25 reductions that are built into the LRFP.

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1 Q So you didn't try to make a judgment call with
2 respect to whether there were more important sort of
3 needs for the City to pay for other than Franklin bonds?

4 MR. MORSE: Objection. Vague and ambiguous.

5 THE WITNESS: I didn't follow the previous
6 question to the question that you just asked.

7 MR. HILE: Can you read the question back,
8 please.

9 (Record read as follows:

10 "QUESTION:

11 THE WITNESS: I'm not sure that I necessarily
12 understand the tie between those two questions.

13 But I did not get into whether there are -- is
14 additional spending or what the priority of that
15 spending should be.

16 BY MR. HILE:

17 Q So you didn't attempt to determine what the
18 priority should be as far as whether the money should be
19 used to repay Franklin or some other civic purpose; is
20 that correct?

21 A I went off of what's in the long-range
22 financial plan and to the extent that is information in
23 there, I evaluated it. But to the extent that there are
24 other items that have not been considered that have not
25 been disclosed, I have no visibility to that.

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1 Q Let's look at the subheading one, efficiency
2 recovery cost for a second.

3 In the second sentence of this, you say for the
4 rest of the entire 30-year projection period the City
5 forecasts no additional efficiencies or reduced cost
6 discovery.

7 Can you show where that is in the long-range
8 financial plan or just where you got that from?

9 MR. MORSE: You haven't marked the long-range
10 financial plan.

11 MR. HILE: Okay.

12 MR. MORSE: Maybe you should do that.

13 MR. HILE: Let's mark this next.

14 (Exhibit ExhibitNo marked)

15 MR. MORSE: This is in a format that we've
16 never seen before.

17 MR. HILE: The record for pay second.

18 MR. MORSE: Okay.

19 (Off the record)?

20 MR. HILE: For the record the witness has been
21 given Exhibit 3026 and which is a keep of a most recent
22 long-range financial plan as well as Exhibit 2006, which
23 is the earlier version of the long-range financial plan.
24 Let me just ask first, Mr. Moore, you have seen either
25 of these before?

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21 Q Okay. And you're not questioning the actual
22 values that are in the long-range financial plan are
23 you?

24 A I -- I comment here I actually -- I comment on
25 a couple of things. First of all, the CalPERS is the

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1 party that is going to dictate what the contributions
2 need to be. The City has under taken its own process to
3 try to get ahead and understand and predict what those
4 may be. As I commented here I have no problem with what
5 the City's process was in terms of trying to develop
6 estimates of those projections, so I don't have any
7 opinion as to whether the City's process that it went
8 through to try to project these amounts is valid or
9 invalid. I have no problems with them.

10 Q Okay. And as far as their they're growing
11 that's just something you can see by looking at year by
12 year projection of CalPERS's costs; correct?

13 A Yes, sir.

14 Q And nothing else? You just took what the City
15 rate in the long-range financial plan; correct?

16 A Well, yes, that's -- in the end the fact that
17 the amounts are going up each year supports that they
18 are growing.

19 Q Okay. And then the last part of that was you
20 say that they are unpredictable. That is based upon
21 something in the long-range financial plan or something

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22 outside of that?

23 A It's outside of that was the City does not
24 dictate what it's pension contributions are going to be.

25 So CalPERS will indicate or will provide to the

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1 City what the contributions are going to be, and because
2 of that, the City can have the best forecast in the
3 world on its own, but that's not going to dictate what
4 the pension contributions are going to be.

5 Q But there are some aspects of the pension
6 liability that the City will have that the City has
7 control over aren't there?

8 A Some.

9 Q Yes. Okay. So tell me what some of them are?

10 A Well the benefits themselves. So they are a
11 collectively bargained items that will term what the
12 City's share as an example, may be. Whether the City
13 will pay some of the employee portion of the
14 contribution would be a collectively bargained item but
15 as it relates to underlying actuarial assumptions those
16 are going to be dictated by CalPERS, decided and
17 determined by CalPERS.

18 Q Understanding that CalPERS has -- has of some
19 its own ability to change things but are there any other
20 ways in which the City has the ability to manage it --
21 the growth of its pension obligations other than what
22 you already said?

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MR. MORSE: Vague and ambiguous.
24 THE WITNESS: Certainly.
25 ///

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1 BY MR. HILE:
2 Q Give me some more examples.
3 A The headcount. The City can manage its own
4 headcount and presumably, if those individuals are going
5 to be members of a -- of one of the two defined benefit
6 plans that also would impact the level of benefits.
7 Q Now, have you ever consulted with a California
8 public entity that participates in CalPERS with respect
9 to what their pension obligations will be?
10 A When you say have I ever consulted with, what
11 do you mean by that?
12 Q Have you ever been hired by a California public
13 entity to give your advise or help with respect to what
14 their pension obligations will be to CalPERS?
15 MR. MORSE: Objection. Vague and also to the
16 extent that you being answer and not violate any of your
17 confidentiality restrictions in your engagement letters.
18 THE WITNESS: No not.
19 MR. MORSE: And Conway MacKenzie also for that
20 matter.
21 BY MR. HILE:
22 Q Do you know what actuarial cost method CalPERS
23 uses currently?

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1 on what you're looking at when you are trying to perform
2 benchmarking analysis.

3 Q So I take it that you did not attempt to find
4 out whether or not any of these cities within the
5 200,000 to 500 now population have differences in their
6 pension or employee benefit plans from Stockton; is that
7 correct?

8 A Can you define what you mean by differences in
9 the plans.

10 Q Sure.

11 Did you look to see whether or not any of the
12 cities that are in this group of what you call peer
13 cities participate or have part of their benefits in
14 Social Security?

15 A I did not.

16 Q Why not?

17 A This was just a comparison of these peer cities
18 based on what the employer contribution is. Whether the
19 employer contribution is going towards members of a plan
20 that participate in Social Security or don't participate
21 in Social Security, I do not have that.

22 Q Okay. But if a city does participate in the
23 Social Security program, that increases their pension
24 obligations by a certain percentage over what a city
25 that doesn't participate in Social Security has as an

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1 obligation; correct?

2 MR. MORSE: Objection. Incomplete
3 hypothetical. Assumes facts not in evidence.

4 THE WITNESS: I would like to understand your
5 hypothetical a little more clearly. A city who's
6 employees participate in social security, you said that
7 would be a lower pension expense than a city who's --

8 BY MR. HILE:

9 Q Higher one (he levers whoever that was.

10 A Could you restate your hypothetical.

11 Q If a city has its employee participating in
12 social security, how does it affect the overall CalPERS
13 contribution requirement?

14 MR. MORSE: Same objection.

15 THE WITNESS: Generally speaking, people that
16 participate in social security are going to ever lower
17 pension amounts than those that don't participate in
18 social security because the members or the individuals
19 that don't participate in social security typically have
20 more benefits being provided.

21 BY MR. HILE:

22 Q Okay. And you didn't try to determine which of
23 the California cities in your peer cities have their
24 employees participate in social security did you?

25 A No. This is just pointing out what the

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1 amounts -- the contribution differences are.

2 Q Did you consider in trying to decide whether or
3 not these were really peer cities, whether or not a city
4 had pension obligation bond debt that also was a cost
5 ever providing retirement benefits?

6 A I did not.

7 Q Did you consider whether any of the cities in
8 your peer city group paid retiree medical costs?

9 A I did not.

10 Q Did you consider in choosing your peer cities
11 whether any of those cities paid something for employees
12 in the way of deferred compensation in addition to
13 deferred benefits?

14 A I did not. And again I just want to stress to
15 you Mr. Hile the primary point here that I'm make in the
16 report is that Stockton, even if you don't compare it to
17 peers, Stockton's levels grow very high.

18 Q So you would agree that, if a city that is
19 different from Stockton is not -- in all the ways we've
20 just described, is not necessarily a peer city; correct?

21 MR. MORSE: Objection.

22 THE WITNESS: I did not take that view. My
23 point is simply this. The cash that Stockton has to pay
24 toward retirement benefits going to be the cash that
25 Stockton has to pay, regardless of what another peer

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1 city is. It's sometimes useful to highlight how a
2 municipality will compare.

3 But the purpose of this was not to do an
4 in-depth benching marking analysis to identify every
5 difference. The purpose of this was to highlight what
6 Stockton's anticipated contributions are going to be and
7 just to compare it to other cities of a similar size.

8 BY MR. HILE:

9 Q Okay. And to the extent that those cities have
10 different pension plans and different pension
11 obligations, you did not factor that into your
12 comparison at all; correct?

13 A No. Because what the other cities pay or what
14 the -- the parameters of the other City's plans don't
15 impact what Stockton's contributions are going to be.

16 Q Now, is it true that under the long-range
17 financial plan, even though the City has plotted what
18 the -- what the CalPERS contribution will be, the City
19 does under the long-range financial plan arrive at after
20 30 years, the ability to still have a balanced budget?
21 Isn't that true?

22 A The -- as the City has in its long-range
23 financial plan right now is based on estimates that its
24 actuary provided to it. The City's long-range financial
25 plan does not have the CalPERS contributions going out

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1 comparison for the period through fiscal Year 20.

2 Q And how does this show that the City will not
3 be able to sustain itself under the CalPERS projections?

4 MR. MORSE: Objection. Misstates testimony.

5 THE WITNESS: I have not -- I don't have an
6 opinion and I have not stated that the City is not going
7 to be able to sustain itself under the CalPERS
8 projections.

9 BY MR. HILE:

10 Q Now, do you know what assumptions CalPERS
11 forecasts include versus those that are included in the
12 Segal assumptions?

13 A Generally, yes.

14 Q Okay. And where did you get that?

15 A I reviewed the information that Segal, the
16 City's actuary, had compiled and I've also looked at
17 information from CalPERS.

18 Q And do you disagree with Segal's assumption?

19 A Mr. Hile, I'm going to say this one more time.

20 I at no point anywhere in my report do I take
21 any exception with any actuarial assumptions.

22 Q Okay.

23 A I am simply highlighting that CalPERS is the
24 body that will determine contributions rates that the
25 City will have to pay and while we did talk about there

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1 are some factors within the City's control that impact
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2 contributions such as the level of benefits provided
3 and -- and the headcount in the end CalPERS will dictate
4 those contributions.

5 Q All right. But under either scenario CalPERS
6 or Stockton under the long-range financial plan would
7 Stockton be unable to have a balanced budget?

8 MR. MORSE: Asked and answered.

9 THE WITNESS: Right now in the long-range
10 financial plan, the City has a balanced budget and it
11 has it on what I assume to be it best estimate as to
12 what the contribution percentages are going to be -- the
13 contribution amounts.

14 As see -- as I a light in here, there are a
15 number of things that could cause those contributions
16 shun amounts to change and just within the last couple
17 of years, those contribution amounts have grown pretty
18 substantially based on changes in actuarial assumptions.

19 BY MR. HILE:

20 Q So while you call the City a future pension
21 obligations unpredictable, you aren't saying that the
22 long-range financial plan under either the Segal
23 assumptions or CalPERS assumptions is unsustainable;
24 correct?

25 MR. MORSE: Asked and answered.

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1 THE WITNESS: What I'm saying is that right now
2 the City has an estimate in its long-range financial

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4 to grow.

5 Q But you haven't made an assumption as to what
6 that might be or run numbers to see whether or not it
7 would put City back into Chapter 9, have you?

8 A I think there are a couple items there,
9 Mr. high.

10 The first one is I'm not -- I'm not making any
11 assumptions as to what other actions the City could take
12 to offset increased contributions.

13 Secondly, I certainly am not making any
14 conclusions as to what the City would do to determine
15 whether it needs to file a -- another Chapter 9
16 petition.

17 Q All right. Let me get back to the peer City
18 then for a moment.

19 Did you do anything in your report in this
20 section talking about pension obligations for the City
21 to determine -- to determine the demographics of
22 Stockton workforce versus any of these other peer
23 cities?

24 A No.

25 Q Did you do anything in your part to try to

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1 determine how the age of the employees at Stockton
2 versus other cities would affect the comparability with
3 the peer cities?

4 MR. MORSE: Counsel, I'm going to object. He's
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5 already told you exactly what he did. And beating a
6 dead horse over and over is not going to change
7 anything. So you can use the argument at -- at trial or
8 the appropriate time, but I think you now have his
9 testimony at least twice as to what he did to obtain the
10 peer city group.

11 MR. HILE: Can you read the question back,
12 please.

13 (Record read as follows:

14 "QUESTION:

15 THE WITNESS: No.

16 Mr. Hile, I just want to reiterate, regardless
17 whatever the age mix is of any peer city, that will not
18 impact Stockton's contributions. So I'll just say it
19 one more time.

20 Benchmarking or having a comparable analysis
21 like this can be useful to a certain extent, but the
22 most important element is what the contributions are
23 going to be that Stockton has to pay and that it doesn't
24 matter what any other municipality has in the way of
25 employee benefits, demographic mix, or any other factor.

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1 BY MR. HILE:

2 Q But your report on page 20, the first sentence
3 of the first full paragraph, does concede that the City
4 has attempted to factor in anticipated increases in the
5 CalPERS contributions rate; isn't that true?

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6 MR. MORSE: Asked and answered.

7 THE WITNESS: Yes. And I said that before.

8 I have no issue -- I'll just reiterate it one
9 more time. I have no issue with the City's approach or
10 its actuary in terms of coming up with estimates of
11 future contributions. I take no position on that at
12 all.

13 BY MR. HILE:

14 Q Could any City in California predict or
15 anticipate what future increases there could be in
16 CalPERS's contribution?

17 MR. MORSE: Objection. Incomplete
18 hypothetical.

19 THE WITNESS: If I understand your question
20 correctly, you're asking me can, anyone okay any other
21 California municipality predict with 100 certainty what
22 CalPERS's contributions rates be in say fiscal
23 Year 2030?

24 BY MR. HILE:

25 Q I'm not asking with 100 percent pavement's just

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1 saying is Stockton different than any other? I
2 California?

3 MR. MORSE: Objection.

4 BY MR. HILE:

5 Q Is that CalPERS City.

6 A No. And that's exactly my point, is that the
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7 contribution amounts in the ends will be determined by
8 CalPERS, not by the City. So regardless of how good of
9 an estimate the City comes up, with the actual
10 contributions are not theirs to determine.

11 Q On the other side of the coin, Mr. Moore, did
12 you look at all into what it would cost Stockton if it
13 were to attempt to impair its CalPERS's obligations?

14 A Can you define by what you mean impair.

15 Q In effect default on its contract with CalPERS,
16 fail to make payments as required by CalPERS's
17 calculations.

18 A It seems like there could be a lot of different
19 hypotheticals there that if you could be more clear, I
20 could answer.

21 Q well, let's suppose that Stockton just decided
22 to stop paying CalPERS and tried to set up its own
23 pension plan for its employees going forward, did you
24 make any attempt to determine what obligation the City
25 would -- the CalPERS when did it that?

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1 A No.

2 Q Do you know what it would be in any way, shape
3 or form?

4 A Seems to me that that would be the subject of a
5 lot of legal analysis and I'm not in a position to make
6 that determination and there are a lot of specific facts
7 in the situation that would likely be involved.

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8 Q Have you read the report of Kim Nicholl?

9 A The rebuttal report to my report?

10 Q Yes.

11 A Yes, sir.

12 Q You've seen in there some calculations that she
13 set forth with respect to what the amount of termination
14 liability would be to CalPERS.

15 Do you remember that part of it?

16 A If you happen to have that an assisting an
17 exhibit it would be helpful to look at.

18 Q Well, I can certainly get it. Let's take a
19 break.

20 MR. MORSE: Okay.

21 (Recess)

22 (Exhibit ExhibitNo marked)

23 BY MR. HILE:

24 Q Reporter has marked as Exhibit 3027 a document
25 on the Stockton case caption says submission by the City

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1 of Stockton of rebuttal expert report of Kim Nicholl.

2 Do you have that in front of you?

3 A Yes, sir.

4 Q And you have read this before?

5 A Based on what I've looked at it looks like the
6 report that I have reviewed before, yes.

7 Q Okay. You are being confident I didn't slip
8 you a Mickey. But this is the report?

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15 that was 20 percent of its gross revenues?

16 MR. MORSE: Objection. Vague and ambiguous.

17 THE WITNESS: Can you define what gone under
18 means?

19 BY MR. HILE:

20 Q Gone into Chapter 9?

21 A Well there are very few is that have filed for
22 chapter pine. We've been talking about two of them here
23 today extensively, Stockton and the City of Detroit and
24 one element that is consistent with both of them is
25 significant legacy expenditures and I've just

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1 highlighted that through the plan of adjustment --
2 through the plan of adjustment, the City of Detroit
3 proposes to bring its mention expense downs to
4 approximately 10 percent of revenue. The City of
5 Stockton is looking at levels that would approach
6 20 percent.

7 Q Now, you say that Vallejo's failure to contain
8 its pension expenses presents a cautionary tale on
9 page 21.

10 what research have you done into the state of
11 the Vallejo's finances?

12 MR. MORSE: Vague and ambiguous as to time.

13 THE WITNESS: Only what you see in this report
14 in terms of comparing what Vallejo was anticipating when
15 it exited bankruptcy and where it is now.

04-16-14-CMoore.txt

16 BY MR. HILE:

17 Q Where did you find out that Vallejo projects
18 budget deficits for this year and next?

19 A I believe that those were publicly filed
20 documents. I would have to go back and check my list of
21 documents but I believe that that's publicly available
22 information.

23 Q So it should be in this list of Exhibit 2 to
24 your report?

25 A Yes. We can go to that.

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1 Yes, on page 3, City of Vallejo adopted budge
2 bet fiscal 13, 14.

3 Q Any other documents that looked at?

4 A The valuation reports for Vallejo from CalPERS,
5 the disclosure statement. I would have to look at the
6 rest of the list to see if there was anything else but
7 those were the primary documents.

8 Q Are you saying that the document, which is
9 listed here, City of Vallejo adopted budget, fiscal year
10 2013-14 has the information about the budget for fiscal
11 year 2014-15?

12 A I would have to go back to see if that was in
13 that document or a different document.

14 Q When you say ballooning obligations to CalPERS,
15 do you know what those are?

16 A It's talking about the increase in the

04-16-14-CMoore.txt

17 contributions.

18 Q So in order to see what you consider to be a
19 what ballooning obligation I would like at these
20 documents and I he would see what you label what pooling
21 document?

22 A Can you point where I use the word what
23 ballooning.

24 Q Page 21, d is -- the second sentence.

25 A Yes.

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1 Q I could see these ballooning obligations by
2 looking at these documents that you listed in Exhibit 2
3 to your report?

4 A You can actually just go to Table 9 in my
5 report and see them there.

6 Q Have you talked to anyone at the the City of
7 vallejo about where it sits at the moment?

8 A Yes.

9 Q who?

10 A Manuel.

11 Q The City of Vallejo, not Stockton.

12 A Oh, I'm sorry.

13 No, I have not spoken to anyone at the City of
14 Vallejo.

15 Q Okay. Please tell me what reasons you think
16 that Vallejo's financial situation is predictive of what
17 going to happen to Stockton.

04-16-14-CMoore.txt

- 18 A I don't indicate that it is predictive.
- 19 Q Does the dwindling cash baffle 4.5 percent of
- 20 general fund expenditures that you refer to in your
- 21 report in Vallejo, doesn't that argue for a ten to
- 22 15 percent general fund cash balance for Stockton?
- 23 A Not necessarily.
- 24 Q Why not?
- 25 A It can argue a number of things, one of them

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- 1 could be to review what options may exist to try to rain
- 2 in this obligation.
- 3 Q Anything else?
- 4 A There can be a variety of other methods, but
- 5 just having as an example, you cover a 20 percent fund
- 6 balance, but if you have bad -- if your eye making bad
- 7 management decisions that's not going to help you. So
- 8 a -- a minimum fund balance is really meant to deal with
- 9 uncertainties that presumably are of a temporary nature
- 10 to allow management then to take action, but there is
- 11 something that is continuing on, then it doesn't matter
- 12 what your cash balance is typically because eventually
- 13 I'll work through your fund balance.
- 14 Q So is it your conclusion that regardless
- 15 whatever the fund balance is at Stockton, that Stockton
- 16 is not going to be able to make it financially
- 17 notwithstanding the long-range financial plan?
- 18 A No that's not my conclusion.

04-16-14-CMoore.txt

21 Ms. Nicholl and I are in agreement with the point that
22 or -- my opinion in my report.

23 Q Take a look at the third bullet on page 3.

24 Have you had a chance to consider the
25 ramifications of Stockton defaulting on his CalPERS

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1 contract?

2 A I was not asked to do that.

3 Q Okay. Have you looked at all about -- into
4 what alternative Stockton has to providing pension
5 benefits through CalPERS?

6 MR. MORSE: Objection. Asked and answered.

7 THE WITNESS: I was not asked to do that.

8 MR. HILE: Let's take a minute or two -- take
9 five minutes and we should be able to finish up soon.

10 MR. MORSE: Before we go off the record I would
11 like to again to just indicate our reservation of rights
12 to have Mr. Moore comment on Ms. Nicholl's report at
13 another appropriate time, including at trial, given how
14 the City's sequenced its expert reports, he hasn't
15 necessarily had the ability to do that formally. And,
16 you know, trying to force him to do it today is unfair
17 and just -- we'll leave it at that.

18 MR. HILE: Our -- let me just respond because
19 that's outrageous.

20 We produced Ms. Nicholl's report on time with
21 the schedule that was set by everybody. He's had it for

Exhibit L

04-18-14-FChin.txt

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04-18-14-FChin.txt

1 This is the deposition of Fred Chin in the case of the
2 City of Stockton bankruptcy.

3 The time is approximately 10:00 A.M.

4 BY MR. HERMANN:

5 Q Mr. Chin, could you state your name and your
6 business address.

7 A Frederick Eliot Chin, 1600 Lake Las Vegas
8 Parkway, Henderson, Nevada 89011.

9 Q And have you been deposed before?

10 A Yes.

11 Q Do you know how many times you've been deposed?
12 Probably only proposed once, right?

13 A Never.

14 Q Never. Okay.

15 A Never proposed.

16 I don't recall exactly. Somewhere north of 50
17 times.

18 Q Okay. So you're an old hand at this. But let
19 me go over the instructions that I would like to cover
20 today.

21 The first is are you on any medication or there
22 is any other reason why you would not be able to testify
23 competently today?

24 A No.

25 Q Obviously I'm going to ask questions. If you

3

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14 alternatives in the marketplace, and there was only so
15 much department in that particular price segment that
16 would cause you to think that maybe we had too many golf
17 courses at Lake Las Vegas.

18 Q And so how did that situation affect the three
19 golf courses at Lake Las Vegas?

20 A It was one of the elements that affected your
21 ability to make changes.

22 Q In a negative bay I assume?

23 A I'm not sure what you mean by negative.

24 Q The impact on the courses was -- was it that
25 affected the way in which you could make changes and I'm

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1 trying to understand what you mean by that.

2 A I'm sorry. I was trying to understand what you
3 meant by negative.

4 Q Right. So let me go back to the question and
5 we'll start again.

6 In fact, let's have the question read back. I
7 think it's three questions ago.

8 (Record read as follows:

9 "QUESTION:

10 BY MR. HERMANN:

11 Q So can you explain what you mean when you say
12 the market situation affected your ability to make
13 changes?

14 A The market situation was one component that we

04-18-14-FChin.txt

15 had to consider in the context of the performance of
16 Lake Las Vegas golf courses.

17 Q And how did the market situation play into
18 those considerations?

19 A It was one element that affected how we would
20 want to price the golf courses and how we would want to
21 operate and maintain them and how we might be able to
22 improve them.

23 Q So you said the prior owners had a strategy of
24 putting them at the top of the market.

25 Did you bring them down market?

18

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1 A At the time we felt we were constrained by the
2 previous actions of the equity.

3 Q And what actions would those be?

4 A There were various enter relationships of the
5 golf courses and the pricing structure with the
6 membership and there was considerable pushback from the
7 members regarding what they believe the golf courses
8 should perform and how it was positioned. That was
9 further complicated by the overall Lake Las Vegas
10 community residents who had originally been essentially
11 told that Lake Las Vegas would be the premier golf
12 course recreational lake master-planned community that
13 they had bought into.

14 Q Did you manage the Scottsdale course that you
15 bought into?

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16 A I did not.
17 Q Someone else managed it?
18 A Yes.
19 Q Obviously. Okay.
20 And when you managed the three courses at Lake
21 Las Vegas, what were some of the economic metrics that
22 you looked at in your analysis?
23 MR. MORSE: Objection. Vague as to analysis.
24 I'm not sure what you mean.
25 ///

19

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1 BY MR. HERMANN:
2 Q Let's talk about analysis did you in the first
3 eight months to determine the viability of the courses.
4 A Besides looking at the historic financial
5 performance of the golf courses, we then looked at the
6 seasonality aspects. We looked at the membership and
7 customer base that the golf courses attracted. We
8 looked at supplier agreements and contracts that we had
9 had with people that provided services to the golf
10 course. We looked at the employee roster and their
11 functions of what employees did and we looked at -- I'm
12 not sure if I said this or not -- but we looked at the
13 marketing programs that were used for each of the
14 different golf courses. We also looked at the pry
15 priority tea time agreements that the hotels had with
16 the golf courses, and we looked at how things were

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17 accounted and procured through the accounting system.
18 That generated the financial reporting. And and throws
19 were the operational detailed items that we had looked
20 at as part of our overall analysis of the golf courses.

21 Q And you looked at historical departmental
22 revenue take it?

23 A That was one element of many.

24 Q And you looked at the historical cost of goods
25 sold as one of many factors?

20

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1 A It was one of many.

2 Q And of course the overall operating expenses on
3 a historical basis were important in that analysis?

4 MR. MORSE: Objection as to "important."

5 THE WITNESS: The operating, the fixed costs,
6 the amount of insurance, how it was insured, what
7 real estate taxes were against the property, all those
8 elements were embodied in operating expenses.

9 BY MR. HERMANN:

10 Q Okay. Did you do any preparation for today's
11 deposition?

12 A I did.

13 Q And what did that consist of?

14 A It involved re-reading my report, reading
15 Mr. Smith's report, reviewing the data and information
16 that was contained in Exhibit A or I believe it was A,
17 the documents that were turned over to you as part of

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18 the -- to be responsive to the discovery request -- I --
19 and then met with our -- met with counsel to discuss my
20 findings -- we discussed the report.

21 Q Did you talk to anybody on your staff?

22 A Yes.

23 Q Who was that?

24 A The staff people that worked for me is
25 Mark Kemper and Evan Forrest.

21

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1 Q And what were those discussions about?

2 A Refreshing my memory and providing some
3 comments as to various aspects of my report.

4 Q Okay. Have you undertaken, other than
5 reviewing the documents at yesterday's deposition, any
6 further investigation or analysis since issuing your
7 report?

8 A As I mentioned, I read Mr. Smith's report and
9 tried to understand the context of what he was saying in
10 my report, and that was the extent of my further
11 analysis.

12 Q So did -- did you or any member of your staff
13 do any further fieldwork?

14 MR. MORSE: As to time, are you talking about
15 as the issuance of his report.

16 MR. HERMANN: Right.

17 MR. MORSE: Or just in the preparation of the
18 deposition.

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19 MR. HERMANN: The question was since issuing
20 your report.

21 MR. MORSE: Thanks.

22 THE WITNESS: I believe I may have had Mark and
23 Evan do some research that that was responsive for under
24 my instruction that might have been triggered by
25 Mr. Smith's comments.

22

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1 BY MR. HERMANN:

2 Q Do you recall what that is?

3 A I don't recall specifically.

4 Q Have you reviewed the trial briefs of either
5 Franklin or the City of Stockton in the adversary
6 proceeding?

7 A I have.

8 Q And what was your overall reaction to the
9 City's position on valuations set forth in that trial
10 brief?

11 MR. MORSE: I will I'll caution the witness to
12 the extent that you -- your answer reveals any
13 privileged communication or attorney work product, that
14 you should not include that in your answer.

15 THE WITNESS: Madam Court Reporter, could you
16 repeat the question, please, or -- if that's okay.

17 MR. HERMANN: Okay. Yeah. Any time you want
18 her to read a question back, feel free to ask her just
19 like that.

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2 and that's why I'm asking a simple question.

3 MR. MORSE: Okay.

4 THE WITNESS: It would be the same answer.

5 BY MR. HERMANN:

6 Q Okay. As far as you know, is there an
7 identified market for the sale of possessory interests
8 in golf courses?

9 A I believe there is, yes.

10 Q Good. Can you tell us what kind of sales have
11 occurred of possessory interests in golf courses?

12 A I don't know if the exact interest to be
13 conveyed in the sales that have occurred in the
14 United States. I don't know specifically which ones
15 were of possessory interest. All of them assume some
16 sort of ownership interest in golf courses. There could
17 be partners. There could be different interests that
18 were conveyed in all of them, but I cannot tell you
19 specifically which ones.

20 Q But it's your belief that there is an
21 identified market for the sale of possessory interest in
22 golf course?

23 A Correct.

24 Q But you don't know what it is?

25 A I -- I know that there are active investors in

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1 buying all sorts of interests, peaces of debt, partial
2 interest, mezzanine loans, partial interest in

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3 ownerships, options to purchase golf courses, all those
4 exist. I'm aware of that. And I believe that there is
5 a market active to purchase possessory interest of golf
6 courses.

7 Q Did you investigate that as part of your
8 report?

9 A I know that in general. When I speak with
10 investors buying all sorts of real estate type of
11 investments besides golf courses.

12 Q Did you investigate existence of -- an
13 identified market for the sale of possessory interest in
14 golf courses in preparing your report?

15 A I believe I answered who I believe were the
16 targets. I did not speak specifically with a golf
17 course management company regarding the specific asset
18 as I didn't want to have other parties start calling and
19 finding out or compromising what the resolution of these
20 golf courses are. That's golf courses are on the radar
21 screens, all golf courses are on the radar screens of
22 various types of by, particularly troubled once, and
23 they're looking for investment opportunities in the case
24 of these properties, knowing that the City is in
25 bankruptcy and knowing that there may be a possibility

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1 of acquisition, the acquisition people would be all over
2 the City in terms of find out about there their interest
3 was for sale. I did not want to telegraph that was it's

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4 not my responsibility or I didn't want to be
5 compromising any positions in that regard.

6 Q Isn't comparable sales one of the three
7 approaches to value?

8 A The sales comparison approach is one.

9 Q Of three?

10 A Correct.

11 Q And you did not investigate any comparable
12 sales of the sale of possessory interest in golf courses
13 for the reasons you just stated; correct?

14 A I did not identify any specific comparable
15 sales for sales of a possessory interest.

16 Q And when you investigate comparable sales of
17 golf courses in general, I take it that you do attempt
18 to identify the interest that was sold, whether it's 100
19 fee simple or partial interest of some kind?

20 A Yes.

21 Q On page 6, the fifth bullet point says, one of
22 the procedures you performed was you considered the
23 marketability of possessory interest in the properties.
24 Do you see that?

25 A Yes.

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1 Q And what did you do in this regard?

2 A In the context of understanding the lease
3 agreement, the time periods of the lease agreement, I
4 considered whether or not there would be interested

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5 parties the possessory interest in the golf courses.

6 Q But how did you go about doing that?

7 A I of from my own knowledge as well as my
8 conversations with real estate investment companies that
9 acquire as I mentioned before, all sorts of interests in
10 real estate.

11 Q So are you aware of any purchaser of a
12 possessory interest in any golf course?

13 MR. MORSE: Objection. Vague and ambiguous.
14 Are you talking about any time of in the history of the
15 purchase of golf course?

16 MR. HERMANN: Exactly, Counsel.

17 MR. MORSE: Okay.

18 THE WITNESS: well, if I think about National
19 Golf Properties they were involved of lots of
20 acquisitions of these leasehold and lease fee interest
21 and the interest of the two companies were differ and
22 there were -- was active trading between those
23 particular entities, and generally the golf REIT would
24 purchase golf course and then set up a lease arrangement
25 with its operating company, and there was those sort of

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1 transactions and that was done frequently. I was
2 actually part of their business mold.

3 BY MR. HERMANN:

4 Q Any others?

5 A I seem to recall in one of the golf courses or

04-18-14-FChin.txt

6 a few of the golf courses that I had value that's
7 correct there was master lease of golf courses that
8 would involve less than a whole ownership in golf
9 courses. I did not know what the exact terms of the
10 lease arrangement was, but I do know that there were
11 subsequent after transaction interest that were conveyed
12 that were less than fee simple.

13 Q And what sale was that?

14 A I don't recall. I remember that there was
15 various lease structuring that occurred with some of the
16 golf courses that I had valued.

17 Q But you don't recall which golf courses?

18 A They that have been the golf courses involved
19 in -- it might have been Florida. There were some golf
20 courses that I believe it was contemplated some sort of
21 division of rights that had occurred.

22 Q Okay. But you aren't currently aware of any of
23 the details of those transactions?

24 A Not take recall right now.

25 Q Okay.

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1 MR. MORSE: Counsel, when you get to a good
2 point.

3 MR. HERMANN: Let me ask one more question in
4 vain and then we'll do that.

5 MR. MORSE: Perfect.

6 BY MR. HERMANN:

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7 Q What is the relationship between National Golf
8 Properties and I believe it was American Golf
9 Properties?

10 A From what I recall, one was a REIT, one was the
11 operating part of the REIT.

12 Q And who owned American Golf Properties?

13 A I believe American Golf Properties was one of
14 the -- I don't know if he owned all of it or portion of
15 it, but was one of the major shareholders of National
16 Golf Properties. I believe it was the founder did.

17 Q So any transactions between the two would be
18 less than a arm's length transaction, if you know what
19 that means?

20 MR. MORSE: Objection to the extent it calls
21 for a legal conclusion.

22 THE WITNESS: No, I don't agree with that.

23 BY MR. HERMANN:

24 Q And why not?

25 A Between -- because of shareholders and

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1 fiduciary duty, the -- offering has to be between an
2 arms length purpose between an operating company and a
3 REIT, there has to be justification to make it arms
4 length, particularly in the light of a public company
5 with SEC and all another obligations, boards, that
6 public companies have.

7 MR. HERMANN: Take a break. 15 minutes.
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8 MR. MORSE: Sure.

9 (Recess)

10 BY MR. HERMANN:

11 Q Turning to page 6 of your report, under the
12 underlying assuming assumptions, point No. 2 states that
13 the lease agreement is assumed to be terminated as of
14 the date of valuation. Do you see that?

15 A Yes.

16 Q why did you make that assumption? Or let me
17 strike the question and ask you a more fundamental
18 question. what did you mean that the lease agreement is
19 terminated as of the date of valuation? And by the way
20 the date of valuation is March 26, 2014; is that
21 correct?

22 A Correct.

23 There are two leases affect the property one is
24 the nominal lease. The other is the leaseback, very
25 different lease terms, and the -- I have I believe it's

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1 my understanding the default happened as terms of the
2 leaseback agreement, and that I presume that that would
3 not exist.

4 Q Are you finished?

5 A Yes.

6 Q what would not exist?

7 A That leaseback agreement.

8 Q so how did this assumption play into any of

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9 your conclusions in this report?

10 A It would be a different analysis if I had
11 valued essentially a possessory interest subject to the
12 that leaseback agreement.

13 Q And how would it be different?

14 A The terms and conditions of that leaseback
15 agreement, including the contractual rent obligations,
16 would then be considered in the overall analysis.

17 Q And were you instructed to make this assumption
18 by either Franklin or Jones Day?

19 A Yes.

20 Q By Jones Day?

21 A Yes, I believe in my appraisal assignment I had
22 asked what interest was going to be appraised.

23 Q And they specifically told you to assume that
24 the lease agreement is terminate?

25 A The lease agreement being terminated was my

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1 wording. I was told to consider that the nominal lease
2 existed.

3 Q Okay. Let's mover to point No. 3.

4 In here you state that it was one of your
5 underlying assumption that the possessory interest in
6 the properties can be segregated, allocated and held by
7 different entities; correct?

8 A Yes.

9 Q why did you make that assumption?

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10 A The current nominal lease embodies all the
11 different properties. I'm not aware of any prohibition
12 to sublet or assign various parts of the properties
13 under that overall lease. So I presumed that the
14 properties would be differ and segregated.

15 Q So are you stating by this assumption that
16 you're presuming that if the possessory interest were
17 sold it could be subleased to various other entity is?

18 MR. MORSE: Objection to the extent it
19 mischaracterizes testimony.

20 MR. HERMANN: That's exactly what I'm asking
21 you.

22 THE WITNESS: My presumption was that -- that
23 is correct, that the various possessory interests could
24 be essentially subleased as part -- subject to the
25 nominal lease.

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1 BY MR. HERMANN:

2 Q And is part of that assumption that the
3 purchaser, full, of the possessory interest would be
4 able to abandon certain portions of the leased property?

5 MR. MORSE: Objection to the extent it calls
6 fare legal conclusion as to abandoned but.

7 BY MR. HERMANN:

8 Q If you understand the question, go ahead and
9 answer it?

10 A I'm trying to understand but I don't understand
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12 the possessory interest under the lease, would they be
13 able to pick and choose what parts of it that they
14 wanted to quote keep and what parts of the underlying
15 properties they could leave behind and take no
16 responsibility for it?

17 MR. MORSE: Again, just to the extent that your
18 answer would call for a legal conclusion or analysis of
19 what may or may not be done under the nominal lease
20 outside of the assumptions that are in your report.

21 THE WITNESS: I'm not sure I actually intended
22 to have what you suggested. I am not aware of what the
23 plan to abandon or not is, and what to keep or not to
24 keep. I just presumed that the -- there would be
25 different properties that could be conveyed and that's

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1 the different interests that I had appraised you but not
2 what the actions of to keep or abandon or run would be
3 for any of those properties.

4 BY MR. HERMANN:

5 Q Okay. I think we'll come back to this concept
6 and question later. But let's move on.

7 Following page 6 is your certificate of
8 appraisal and torts are towards the bottom you say I
9 have made personal inspection of the properties.

10 My question would be can you tell us about your
11 personal inspection of the properties.

12 A Sure. Which time?

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13 Q Okay. That's the first question. How many
14 times have you did you inspect the properties?

15 A No.

16 Q And the first occasion was?

17 A I believe it was sometime in February.

18 Q And what properties did you visit?

19 A All of the properties.

20 Q And what did you do in your visit?

21 A I drove around the boundaries of the
22 properties. I walked the -- full kind of common areas
23 of the properties I did not play the golf course.

24 Q Are you a golfer?

25 A No. Golf owner.

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1 MR. MORSE: Such a travesty, by the way, that
2 you're not.

3 THE WITNESS: I looked at the improvements on
4 the properties, and to the extent -- I could have -- I
5 tried to see as much of the property I as I could, and
6 also then got a sense of the areas in which the
7 properties are located.

8 BY MR. HERMANN:

9 Q Did you talk to anybody about the properties on
10 that visit?

11 A I believe I spoke to a few of the golfers and
12 some of the employees that were there.

13 Q And what did you speak about?

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14 A Just general questions about some inquisition
15 about the -- their impression of the golf course and
16 just little bit of the background of the properties --
17 and.

18 Q How about the employees? what did you took you
19 them about?

20 A Generally the same thing.

21 Q Okay. When was your second visit?

22 A I believe it was before the issuance of the
23 reports, sometimes in March.

24 Q And what did you do in that visit?

25 A Same -- same reinspection of the property, see

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1 if there were any changes that were notable in the
2 physical aspects of the property or the neighborhood.

3 Q Did you talk to anybody the properties on your
4 inspection?

5 A I might have spoken with a few of the patrons
6 of the golf course.

7 Q Okay. Your third inspection?

8 A Last week.

9 Q And what did you do on that occasion?

10 A The same sort of inspection, same, drive the
11 property, walk the property, talk to a few people.

12 Q You didn't talk to anybody that is responsible
13 for the management of the golf course?

14 A I did not.

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15 Q Have you ever?

16 A I didn't know who was what. I might have, but
17 not any great detail or length specifically about the
18 operations of the property.

19 Q Okay. And on all three occasions you went to
20 Oak Park also?

21 A Yes.

22 Q In the same vein, jumping forward a bit, let's
23 talk about the survey that was performed. Let's talk
24 first about the comparable survey, golf course
25 comparable survey, the bottom of page 36 and the top of

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1 page 37.

2 Did you perform that survey or did someone on
3 your staff perform that survey?

4 A I set up the survey, and then the staff went
5 out and did their inspections of the properties and
6 analysis before I went to look at the golf courses.

7 Q That would have been Mr. Kemper or Mr. Forrest?

8 A Correct.

9 Q Do you know what they did to complete the
10 survey? By the way, are they golfers?

11 A I don't think so.

12 Q Okay.

13 A They went to look at the physical assets of the
14 various comparables and looked at various
15 characteristics as we had laid out the survey, and then

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16 made their rankings.

17 Q And how can they rate the greens, the fairways,
18 the bunkers, the ponds and the overall design unless
19 they actually travel the course?

20 MR. MORSE: What do you mean?

21 BY MR. HERMANN:

22 Q I am not assuming they didn't but --

23 A I think they looked at it from physical aspects
24 and condition and character quality of those particular
25 assets orthos particular characteristics of the golf

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1 course.

2 Q Those would certainly be the qualitative
3 judgments to be made.

4 But did they -- did they traverse in any manner
5 these courses?

6 A I don't recall if they did. I would have to
7 ask them.

8 Q Okay. And then with if we go to the bottom of
9 page 37, the to being not to competitors round rates,
10 how was this survey put together and implemented?

11 A This was by looking at each course and finding
12 outs what their posted rates were for various times.

13 Q And who informed that work?

14 A I believe Mr. -- Mr. Kemper or Mr. Forrest did
15 this work.

16 Q And do you know how they went about

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17 ascertaining the posted rates?

18 A Either through the -- when they were collecting
19 information at the property or whatever other
20 information they had available to them, either through
21 the Internet or through fliers that were posted at the
22 property.

23 Q And do you know how many trips to Stockton the
24 Stockton area they made for these purposes?

25 A I believe Mr. Kemper went twice, and

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1 Mr. Forrest went three times.

2 Q Do you know when those trips occurred?

3 A The first visit was probably at the beginning
4 of the year, maybe yeah, and then follow-up likely a
5 month after.

6 Q And was it necessary for them to make multiple
7 visits -- or why was it necessary for them to make
8 multiple visits?

9 A To do further research or questions for
10 identification questions that I wanted to have research,
11 then for them to do further physical inspections or
12 ascertain additional questions.

13 Q Were they able to cover all these golf courses
14 in one visit?

15 A I believe so, yes.

16 Q And how long was the visit? Do you know?

17 A I believe it was a -- in terms of cover, they

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18 might have spent days researching before they went to
19 the golf courses. I believe national physical
20 inspection probably entailed one day.

21 Q And what was their methodology for obtaining
22 again the posted rates that appear in the Stockton
23 competitors's round rates survey?

24 MR. MORSE: Objection. Asked and answered.

25 THE WITNESS: The rates were to basically

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1 compare and contrast of the Swenson to what the
2 competitors were charge or at least what their posted
3 rates were.

4 BY MR. HERMANN:

5 Q And did they ask, if you know, any questions
6 beyond the posted rates?

7 A From I don't know all the specific questions
8 they asked.

9 Q You don't know if they talked to employees at
10 the golf course about the posted rates in any and any
11 specials or alternatives to posted rates?

12 A I don't know as I sit here.

13 Q Did Mr. Kemper or Mr. Forrest ever visit the
14 Van Buskirk or Swenson courses?

15 A Yes.

16 Q And when is that? The same time they went in
17 early January and a month later for these purposes of
18 visiting the other courses?

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19 A Yes.

20 Q And what did they do at Swenson and Van Buskirk
21 on those two occasions?

22 A My recollection is they physically inspected
23 the profit, walked around various areas of the property,
24 looked at the improvements.

25 Q That's because they had to fill out the form

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1 the qualitative form for Swenson and Van Buskirk in
2 addition to the other courses obviously?

3 A well, actually, there was steps before. They
4 did the physical inspection first before we had the form
5 established.

6 Then we had the form and then we characterized
7 Van Buskirk and Swenson along with the competitors.

8 Q And do you know how they obtain the round rates
9 for Van Buskirk and Swenson?

10 A Believer those were the posted rates as well.

11 Q And to your knowledge, did they discuss -- did
12 they make contact with any of the employees at
13 Van Buskirk and Swenson?

14 A I don't know.

15 Q Looking at page 8 of your report under the did
16 it will of even have sons and Van Buskirk. You have a
17 discussion of these two golf courses and you make
18 numerous reference to the need for renovation, upgrading
19 additional capital improvements, et cetera; needed

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20 repairs and capital investments to the existing
21 improvements in another section.

22 Do you have in mind that what those would be?

23 A I have a general idea, but not specifically.

24 Q Okay. Well, what's your general idea of what
25 needs to be done?

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1 A First it would be an assessment of all the
2 existing contracts in terms of what the obligations to
3 suppliers and how they were procured and how they are --
4 who provides what and what the scope of work would be.

5 Then I would look at the information regarding
6 play, specifically any --

7 Q Let me stop you there because I think you're
8 answering a question I didn't ask and probably will
9 later.

10 A Okay. Sorry.

11 Q But here I'm just talking about the renovation
12 upgrading additional capital improvements and the like.

13 Do you have a general idea of -- do you have a
14 general or a specific idea of what those would consist
15 of?

16 MR. MORSE: Counsel I think he was testifying
17 that you can't just look at that in isolation that you
18 have to start from the beginning and go through a
19 comprehensive determination of how that fits into the
20 integrated hole.

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21 BY MR. HERMANN:

22 Q If that's where you are heading that's fine. I
23 apologize for interrupting you and please proceed?

24 A No apologies necessary.

25 First I would look at operational and

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1 contractual side whatever goes on at the property before
2 making sort of if you will, heart decisions about what
3 could be. Do but perhaps there are policies and
4 practices that currently exist with respect to operating
5 expenses or revenues in terms of who's playing, who's
6 paying, who's not playing -- paying. Who is getting
7 discounted rates and what those sources would be. I
8 would look at that as a possible operating improvement
9 that could be implemented along with that's correct I
10 would look at looking at the expense side and how as I
11 was said, how things were procured or how the method of
12 operation was to see what influence, if any, there would
13 be on the possibility of rounds played or the course
14 condition. That might not necessarily make it
15 attractive to customers and then link that with what
16 marketing programs maybe not exist at the property to
17 see how they may be able to attract and attract
18 additional play.

19 Q So do you have -- given all of that that you
20 haven't done, I take it, right?

21 A No not -- I have not done that detailed

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22 analysis.

23 Q So you don't really have an idea of what
24 capital improvements need to be implemented?

25 MR. MORSE: Objection to the extent it

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1 misstates testimony or information in the report.

2 THE WITNESS: The capital improvements would be
3 the part of what overall revised business plan would be
4 implemented at the property so what would be done would
5 be first as mentioned a thorough review of how the club
6 is currently or the golf course is currently operating
7 and the enter relationships of that and then determine
8 what I am pact or what effect someone as a new owner
9 turning around these properties would do in terms of
10 capital improvements.

11 BY MR. HERMANN:

12 Q Are you familiar about the deficiency of the
13 irrigation systems at Van Buskirk?

14 A Yes. I read about them, yes.

15 Q You read about this them in the 2010
16 consultant's report that you refer to in your report; is
17 that correct?

18 A I believe there were some other citings of that
19 in emails or exchanges between City officials and other
20 folks but I believe there was also notation of that in
21 the 2010 consultants's report.

22 Q And you can't say as you sit here today whether
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23 that's a capital improvement that would need to be made
24 right away or could be deferred?

25 A I can't tell you specifically because I don't

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1 know what other options were considered at that time.
2 There are various different ways of handling irrigation
3 and there are different methods to attack it. One could
4 be a revision of the overall irrigation system, perhaps
5 some sort of redesign of the golf course or could be
6 trying to fix what's already there, assuming it's okay
7 the way it is. I don't know what the scope and nature
8 is of the capital improvements that were proposed at
9 that time and I don't know what alternatives were
10 considered aside from those.

11 Q When you visited the Van Buskirk golf course,
12 did you walk any of the fairways?

13 A I walked a small portion of them.

14 Q And did you note any deficiencies in the
15 irrigation of the golf course in your visit?

16 A I noted that many of the ponds, which our
17 presumption would be used either for drainage or
18 irrigation, looked like they were dry or looked like
19 they had not been maintained, that there had been some
20 or quite a bit -- I looked like deferred maintenance or
21 repairs were need. I don't know what the scope of that
22 was. I did not test the pavements I did not know what
23 the age of the pipes were. But it did seem as though

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24 there was some sort of need for irrigation improvements.
25 I don't know what scope that would be.

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1 Q How about the idea of putting in cart paths at
2 either course? Is that something that you would
3 consider to be either necessary or optional depending
4 upon your operational evaluation?

5 A The operation evaluation would be tied to
6 whether or not the need for cart paths or maybe some
7 positioning of cart paths might be there. Again, but
8 not would need to consider alternatives and whether or
9 not the cart paths are going to bring additional revenue
10 to the golf course.

11 Q At the time you wrote your report, you were
12 aware of the recommended capital improvements, at least
13 the ones that were on the City's wish list, if will you?

14 A I did see that schedule.

15 Q And you saw the dollar amount of that schedule?

16 A I did.

17 Q And you didn't feel that it was necessary in
18 evaluating the value of the possessory interest in the
19 golf course to somehow dig a little bit deep enter those
20 issues?

21 A The capital improvements were an element of
22 consideration. I don't believe I would have or -- or
23 nor were provided the research that went into
24 considering all those alternatives and whether other

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25 cost effective methods were there and my evaluation of

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1 the golf course is considered what existed as of the day
2 that I inspected it without specific regards to those
3 capital improvements as well as other operational --
4 specific operational improvements that could be done to
5 the course.

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MR. HERMANN: Can you read that back, please.

(Record read as follows:

"ANSWER: The capital improvements were an
element of consideration. I don't believe I
would have or -- or nor were provided the
research that went into considering all those
alternatives and whether other cost effective
methods were there and my evaluation of the
golf course is considered what existed as of
the day that I inspected it without specific
regards to those capital improvements as well

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1 as other operational -- specific operational
2 improvements that could be done to the course.

3 THE WITNESS: A run-on sentence.

4 BY MR. HERMANN:

5 Q Let me back up a little bit.

6 In your evaluation methodology, how did you
7 divide the task up between the three of you?

8 MR. MORSE: which task are you talking about?

9 MR. HERMANN: Preparing this report and
10 completing the assignment that Jones Day gave to your
11 firm.

12 THE WITNESS: I formulated and designed
13 basically the overall structure and processes that we
14 need -- or tasks we needed to accomplish to complete an
15 appraisal, so Mr. Kemper, Mr. Forrest undertook various
16 and general research activities that were part of those
17 tasks necessary to perform the appraisal.

18 BY MR. HERMANN:

19 Q Well, again what were their assigned tasks?

20 A It would generally be under the category of
21 research and to the extent that there was data and
22 quantitative information that was gathered, then it
23 would be an analysis of that quantitative information.
24 They would assemble and compile that information with
25 their analysis's and then I would review it.

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1 Q How much time -- let me rephrase phrase it this
2 way.

3 How much has either Franklin or Jones Day been
4 billed by your firm for these services?

5 A Since inception, approximately -- over 200,000.

6 Q And when was the -- put it this way. The last
7 invoice that was sent to them covered what period?

8 A The last invoice covered March.

9 Q And do you have an estimate of how much
10 additional fees have been incurred in April?

11 A No.

12 Q Not even a rough estimate?

13 A Well are we're halfway through the month and I
14 don't have the time estimates yet from the others on my
15 team.

16 Q Okay. You stated in the answer that I asked
17 the court reporter to read back that you otherwise
18 provided for the capital improvements in your report.
19 And can you explain to me what you meant by that?

20 A I meant that they would be considered that any
21 perspective buyer of this golf course would have to
22 invest some sort of dollars to enhance and turnaround
23 the golf course.

24 Q So your assumption is that, in addition to
25 paying for the possessory interest, the purchaser would

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1 need to fund the capital improvements?

2 MR. MORSE: Objection. Misstates the
3 testimony.

4 THE WITNESS: My value estimates assume the
5 courses are purchased in their current condition and
6 that someone would have working capital and capital to
7 basically reinvest in the property and turn this around.

8 BY MR. HERMANN:

9 Q Okay. The other part of your answer was that
10 you were not provided with the information necessary to
11 analyze the operational analysis that you referred to
12 that I needed to be undertaken to evaluate the
13 necessities of capital improvements; is that correct?

14 MR. MORSE: I think he testified about the
15 underlying numbers that go into the capital improvements
16 estimates and that relates back to the spreadsheet I
17 think you were talking about.

18 THE WITNESS: Is that what you are referring to
19 is the capital improvements that were noted on the
20 spreadsheet?

21 MR. HERMANN: Let's have the answer read back
22 again if you can find it. And will you listen for the
23 part where you see say that you were prone vied he the
24 information needed?

25 THE WITNESS: I will.

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1 (Record read as follows:
2 "ANSWER: The capital improvements were an
3 element of consideration. I don't believe I
4 would have or -- or nor were provided the
5 research that went into considering all those
6 alternatives and whether other cost effective
7 methods were there and my evaluation of the
8 golf course is considered what existed as of
9 the day that I inspected it without specific
10 regards to those capital improvements as well
11 as other operational -- specific operational
12 improvements that could be done to the
13 course.")

14 BY MR. HERMANN:

15 Q Does that refresh your recollection of your
16 answer?

17 A Yes.

18 And no.

19 Q So what was it you were referring to that you
20 had not been provided? You called it the additional
21 research necessary.

22 what is that?

23 A Specific regard to the capital improvements
24 amounts. There was no information that I was able to
25 ascertain from the documents that we were provided about

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1 what alternatives were considered besides those that
2 showed up on a number on a page. Don't know if there
3 were other alternatives, was that someone's estimate.
4 was that based on bids to have those services done.
5 I -- I don't know the basis of that number.

6 Q And what did you do in response to that
7 challenge?

8 MR. MORSE: The challenge of not having the
9 information.

10 MR. HERMANN: Correct.

11 THE WITNESS: We tried to ascertain it and get
12 additional information and we dug through all the
13 documents that were produced by the City and did not see
14 any back up, any support for any of those numbers.

15 BY MR. HERMANN:

16 Q Did anyone -- did you or anyone on your staff
17 talk to any employees about any aspect of your
18 evaluation?

19 MR. MORSE: Other than the people he may have
20 talked to at the golf course?

21 BY MR. HERMANN:

22 Q Other than what you described as casual
23 conversations at the golf courses, yes.

24 A And I'm sorry. Is this the City?

25 Q The City of Stockton, yes or any of their

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1 employees or staff members.

2 A It is possible one of my staff people may have
3 called the City about some aspect of regulations or
4 information or clarification information that we might
5 have received.

6 Q Are you aware that KemperSports has the
7 contract to manage the two golf courses?

8 A I am.

9 Q Did you or anyone at your staff of contact
10 KemperSports about your evaluation?

11 A Not that I'm aware of.

12 Q Are you aware that SMG operates the ice ring?

13 A Yes.

14 Q And maybe certain other parts of the park? I'm
15 not sure.

16 A Yes.

17 Q And did you or your staff ever contact SMG
18 about your evaluation?

19 A Not that I'm aware of.

20 Q And do you know who operates the swimming pool
21 at Oak Park?

22 A I don't recall.

23 Q It's the YMCA.

24 Did you ever talk to anyone at the YMCA?

25 A No.

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1 MR. MORSE: And I would object to you saying is
2 the YMCA because it's my recollection that, when we
3 spoke with Ms. Wren, she was not certain whether it was
4 the YMCA or the Boys Club. So to the extent that that
5 ever matters.

6 BY MR. HERMANN:

7 Q Did you talk to anybody at the Boys Club?

8 A Not in Stockton.

9 Q Were you instructed not to talk to any of those
10 entities or people?

11 A No.

12 Q Was that a decision you made on your own?

13 A Yes.

14 Q And what is the reason for that decision?

15 A In considering the information that we had
16 gotten through discovery and considering that I believe
17 that these properties are not run the way a normal owner
18 investor would run them and that there is significant
19 need for turnarounds, I relied more heavily on what the
20 information that we had was as opposed to someone's
21 perspective of the properties in the context of what's
22 going on at the City.

23 Q So the fact that the -- that the -- I guess the
24 golf courses in Oak Park were not run in your opinion,
25 in a -- in an efficient manner that caused you not to

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1 discuss any aspect of your appraisal with any either

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2 KemperSports or SMG or the City?

3 MR. MORSE: Objection to the extent it
4 misstates his prior answer but that speaks for itself.

5 THE WITNESS: Based on the information that we
6 had reviewed, I understand that there are many problems
7 and challenges that are faced by both the City and the
8 managers in operating the facilities. In my
9 perspective, that is helpful information, but that the
10 information I might receive from Kemper to the extent
11 they may even be willing to court rate and the same
12 thing with the if I would only just be additive to the
13 situation as I already understood it.

14 BY MR. HERMANN:

15 Q What did you mean by additive to the situation?

16 A There are problems with all the different
17 properties. There's cost cutting. There's lack of
18 spending cash. The City doesn't have -- doesn't appear
19 to be making investments in the property. After
20 speaking with lots of employees about performance and
21 what their roles are, it's -- all stems from the basic
22 problems that exist. So as I say that their information
23 would be additive, but it doesn't negate the issue that
24 is readily apparent.

25 Q No. I'm confused because you just mentioned

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1 you talked to a lot of employees about their role?

2 MR. MORSE: I think he said talking to them

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3 would be additive to the information he already was able
4 to ascertain from the review of various documents.

5 THE WITNESS: My apologies.

6 MR. HERMANN: If you can read the answer back,
7 maybe I'll better understand it.

8 (Record read as follows:

9 "QUESTION:

10 BY MR. HERMANN:

11 Q So when you talked about after speak to the
12 employee, was that hypothetical or was actual?

13 A Just to clarify. So speaking with employee, I
14 meant in general, not specifically to City of Stockton.
15 I've managed lots of conditions over a lots of
16 dividends, and usually there's a root cause issue, and
17 their perspectives while helpful, doesn't change the
18 root cause problem.

19 Q Okay. well, when faced with a situation where
20 you are in need of further information, in this case,
21 why wouldn't you have sought out that information
22 directly? And if you're having trouble with sought out
23 the information directly, either gone to the City and
24 talked to them and saying I need information or go to
25 Jones Day and say you need to get this information for

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1 me or even anything else?

2 MR. MORSE: Counsel, I need to object to this
3 line of questions. Obviously, we're embattled in not

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4 only a confirmation fight but in an active piece of
5 litigation.

6 And to the the extent you are implying that it
7 would be appropriate for someone on our side to reach
8 out and talk directly to your client, I -- think that's
9 leaving you know a false impression that that somehow
10 would have been appropriate under the circumstances.

11 MR. HERMANN: I could argue with you on the the
12 record, but I'm not sure that would do any good.

13 Q But I think I'm entitled to an answer to the
14 question.

15 A There were many occasions where I had asked
16 staff and had asked Jones Day for further information
17 that I would have expected. And the information came in
18 drips and drabs, and there was many requests of reports
19 that came sporadically offer our involvement of this
20 project. And it would be my presumption, before we got
21 involved, that this information be readily attainable
22 given that camper and others manage for the City, that
23 there would be reports and email conversations of at
24 least how the City manages their assets that would be
25 robust in terms of providing color and that both parties

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1 have a vested interest in obtaining what the situation
2 is. That information throughout this process has been
3 lacking.

4 Q Are you suggesting that your need for

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5 information that of a specific nature was made known to
6 the City or Kemper or SMG and was not responded to and
7 only responded to in drips and drabs?

8 A I was saying that I had asked my staff as well
9 as Jones Day where is this information? This should be
10 readily available. And then we would get pieces of
11 information flew -- premy resumption would be from
12 Jones Day to yourself or the City, and there were
13 certainties cover I dates that we had expected this
14 information that we were waiting for; that the dates
15 ended up being multiple dates and the information that
16 was provided was sparse at best.

17 Q So you're saying basically that you talked to
18 Jones gate need for information, and Jones Day provided
19 that information to you in dribs and drabs and in smarts
20 quantities?

21 MR. MORSE: Objection. Mischaracterizes his
22 testimony.

23 THE WITNESS: I don't know how Jones Day
24 received the information and --

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1 BY MR. HERMANN:

2 Q And I understand but you received what you
3 received from Jones Day; correct?

4 A Correct.

5 Q Yeah?

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6 A And the discovery was these documents came to
7 us and then we would go through them to see if we had
8 gotten any further information that would be helpful in
9 terms of the consideration of what we were doing.

10 Q So in your report you talked about the fact
11 that you testified in bankruptcy cases in California and
12 elsewhere, right?

13 A Yes.

14 Q Is that typical in a relief from stay situation
15 where you're asked to appraise the value of a secured
16 lender's collateral?

17 A Some of it. Some of it is in plan feasibility.

18 Q Okay. And in that context, do you do formal
19 appraisals?

20 A Yes.

21 Q What is the most recent situation where you
22 testified in Federal court where you had conducted a
23 formal appraisal?

24 A In the bankruptcy court setting, the one that
25 comes to mind is Ocean Trails, which is a golf community

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1 in Southern California.

2 Q And the owner of Ocean Trails was in
3 bankruptcy?

4 A Correct.

5 Q And there was a secured lender?

6 A Correct.

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9 Q So in that case, what were you evaluating, what
10 property?

11 A The valuation of both Bally's Reno and Bally's
12 Las Vegas.

13 Q The casino itself?

14 A Yes. The whole entire asset.

15 Q Big assignment?

16 A It was.

17 Q So when you had questions about operations,
18 plans, projections, how did you get those questions
19 answered?

20 A In that particular case, I believe there was
21 pretty good financial reporting and systems that would
22 also be included with what's called management
23 discussions and analysis, so there would be frequent
24 reports of how the property was performing, what the
25 composition were, and oftentimes that would be provided

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1 by perhaps a controller of the property as opposed to
2 somebody at the corporate level. It just depended on
3 the situations, but usually the information was fairly
4 robust.

5 Q So coming back to our situation, no one gave
6 you any instruction to not make contact with the City or
7 Kemper or SMG; is that correct?

8 A I was not instructed; correct, not to talk to
9 those people.

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10 Q In and back to your answer about the capital
11 improvements where you said you didn't have -- you were
12 are weren't provided with the research that you needed.
13 what type of information were you not provided with?
14 what would that consist of?

15 A For what I would like to have seen would have
16 been what was the rationale behind whatever number was
17 presented, what alternatives were considered, why and
18 what the economic benefit might have been for those
19 types of improvements, was this formally bid out and
20 were there construction plans or because this just a
21 preliminary estimate. The validity of the number, the
22 authenticity of the number, and how deep did anyone
23 prepare in that schedule actually go into coming up to
24 that number.

25 Q Those are all excellent questions. Did you

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1 expect that those should be contained in a document
2 somewhere -- sorry the answers to those questions should
3 be could not neighborhood document some where?

4 A I would make an overriding general presumption
5 that if it was presented to the City, that someone would
6 support that information with some sort of research so
7 that the City Council could make an informed decision.

8 Q And again, not having access to any document in
9 answer to all those very good questions, it didn't occur
10 to you to go talk to somebody about it?

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14 Q Well the ones that you mentioned in your
15 report.

16 A I didn't mention any specific capital
17 improvements.

18 Q Okay. How long would it take to put a new
19 irrigation system into Van Buskirk, if you have an
20 opinion?

21 MR. MORSE: Objection. Vague and ambiguous.

22 THE WITNESS: I don't have an opinion.

23 BY MR. HERMANN:

24 Q Do you have an opinion as to how long it would
25 take to install golf carts at Swenson and install paths

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1 if you ball?

2 A Golf cart paths.

3 Q Golf cart paths at Van Buskirk and Swenson sir.

4 MR. MORSE: Same objection.

5 THE WITNESS: Not knowing the breadth and depth
6 of the construction, I don't have an opinion.

7 BY MR. HERMANN:

8 Q Do you have any other capital improvements in
9 mine when you refer to them in your report other than
10 things like that?

11 A Nothing specific. You think there are a number
12 of items that could be done. Whether or not they are
13 feasible and what the costs would be would be relevant.

14 Q And assuming that those owe improvements are

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21 identified on Exhibit A as one of the documents that was
22 considered in the preparation of the report.

23 THE WITNESS: This appears to be a different --
24 it doesn't tie to the schedule that I have in the
25 report.

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1 BY MR. HERMANN:

2 Q Well, if you look at page 35 of your report, in
3 the chart for the Swenson golf course projected 2,014
4 slash 15 there is a figure of 1,443,488. Do you see
5 that in your chart?

6 A Yes.

7 Q And do you see on the second page of
8 Exhibit 3029, is there a projection 2014 slash 15 for
9 the Swenson golf course of a million 43488?

10 A Yes.

11 Q Does that refresh your recollection as to where
12 these numbers may have come from?

13 A Well, those two specific numbers would, but the
14 actuals don't.

15 Q So it doesn't refresh our recollection?

16 A In that they don't appear to be the same
17 schedule, at least the schedule that I had would have
18 been in my work papers that were produced. I'm not
19 sure -- there is some difference between this schedule
20 and what's presented on 35.

21 Q Okay. And the last sentence on page 8 of your

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22 report that carries over to page 9 reads: I have
23 considered KemperSports and the consultant's projections
24 and for valuation purposes applied an income
25 capitalization method that would be used by perspective

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1 purchasers of trouble golf courses to indicate value
2 ranges for a possessory interest in the courses for
3 specified periods of time.

4 Do you see that?

5 A Yes.

6 Q Did you in fact do that?

7 A I believe I did.

8 Q So didn't you instead do an income
9 capitalization approach to determine the fee simple
10 value of the interest?

11 A I used the income approach to estimate the fee
12 simple interest value of the golf courses.

13 Q And you did not use the income capitalization
14 method to appraise the possessory interest in the golf
15 courses; correct?

16 A I made an adjustment to the fee simple value to
17 get the possessory interest.

18 Q Correct. And knees not what this says, right?

19 A The income capitalization approach was used to
20 establishing the fee and then there was a discount,
21 which then was major component to the possessory
22 interest valuation.

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23 Q Okay. And what data do you have regarding
24 perspective purchasers that would indicate to you that
25 this would be the methodology that perspective purchaser

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1 would engage in to consider purchasing a possessory
2 interest in a golf course?

3 A Well, in my experience, I have spoken with
4 potential acquirers of golf courses and when talking
5 about golf courses underperforming or properties that
6 produce negative cash flow, asking how they might look
7 at acquiring or prying the golf course, that is one
8 approach that they would use.

9 Q But that's for acquiring the golf course;
10 correct?

11 A Correct.

12 Q What about acquiring a possessory interest in
13 the golf course?

14 A They would look at the interest that we would
15 have and what sort of control or length of time they
16 would have a possessory interest and then make certain
17 adjustments.

18 Q And the question really is what data do you
19 have to support that?

20 A I was using as a reference point partnership
21 interest discounts that are less than a 100 percent fee
22 interest in a property or 100 percent control.

23 Q But you testified that you're aware of sales of

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24 possessory interest in golf courses; correct?

25 A I am aware they exist but I don't have any

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1 specifics is what I had testified to.

2 Q And you haven't spoken with any perspective or
3 actual purchasers of possessory interest in golf courses
4 ever?

5 A That's what I was referring to when you had
6 asked me the question. I speak with people that are
7 actively looking in the marketplace and ask them what
8 they are pricing golf courses and how they look at --
9 and may look at some sort of interest.

10 Q So you -- do you or don't you talk to
11 perspective purchasers of a portfolio in golf courses?
12 Knees all I'm trying to figure out?

13 MR. MORSE: I think he's testified to earlier
14 that he talks to potential purchasers of various --
15 varying interests.

16 MR. HERMANN: I did. Any. Distressed profit,
17 including among other things, parties that are
18 interested in purchasing possessory interests. So I
19 don't know what else you want him to testify about. But
20 I think he's already answered your question a couple of
21 times.

22 BY MR. HERMANN:

23 Q is that correct?

24 A Yes.

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25 Q So let's move on to Oak Park. And can you tell

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1 me about your visits to Oak Park and what you observed.

2 A As I mentioned, I visited Oak Park on my three
3 visits that we talked about before. I drove around the
4 property and drove through the property. I walked
5 portion of the property. And drove the neighborhood and
6 areas around the property.

7 Q And you say in your report that there is
8 significant deferred maintenance; is that correct?

9 A In my opinion, yes.

10 Q And what did that consist of?

11 A The parking lots were not necessarily kept.
12 The improvement on ice skating ring appeared to have --
13 it wasn't as neat and tidy, if you will, in terms of its
14 appearance. There appeared to be some areas that looked
15 like there was additional repairs and maintenance that
16 were required, parking lots were not the usual smooth
17 surfaces. Just general condition that might be
18 reflective of some older improvements that have had
19 periodic maintenance but not active upkeep.

20 Q Okay. You state in the middle of page 9,
21 additionally, these particular facilities are
22 specialized in use as such, there is a considerable
23 amount of functional obsolescence inherent in the
24 improvements.

25 what do you mean when by your reference here to

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1 functional obsolescence?

2 A In my opinion, some of the improvements are
3 specialized in use and function and would have pretty
4 limited appeal, except for -- except to the -- a
5 specific user that might benefit from a baseball field
6 or baseball facility or pool or tennis.

7 Q And at bottom of that same paragraph you
8 conclude thus the cost approach was not used. Can you
9 tie those two thoughts together.

10 A Functional obsolescence would be a component of
11 the cost approach file. Opinion is improvements are
12 fairly old and suffer from considerable physical as well
13 as some functional obsolescence.

14 Q But why is that rule out the cost approach?

15 A The estimates of depreciation, in my opinion,
16 would be fairly subjective, given the age and
17 potentially remaining economic liver of these
18 facilities.

19 Q But isn't that physical obligations. I'm
20 trying to figure out what role functional obsolescence
21 plays in whether or not you used the cost approach.

22 A well, in totality, both the aspect that the
23 improvements are fairly old and suffer from considerable
24 physical depreciation or deterioration and obligations.
25 The functional obsolescence is difficult to really

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1 measure in terms of what the limitations on its use
2 might be to a specific user.

3 Q In the next paragraph, you mention that it was
4 reported to you that the operating deficits at Oak Park
5 aggregated approximately 804 through throw thousand
6 dollars for the prior three years.

7 Do you see that?

8 A Yes.

9 Q what role does that fact play in your analysis
10 of the valuation of Oak Park?

11 A It is a consideration as to whether those
12 improvements and which of those improvements can be, if
13 will you, turned around or reused.

14 MR. HERMANN: Can you read that back, please.

15 (Record read as follows:

16 "QUESTION:

17 BY MR. HERMANN:

18 Q what do you mean by turned around or reused?

19 A Changing the character or finding a method to
20 help mitigate the operating loss, those properties,
21 trying to find another use or function that might help
22 minimize or reduce that loss.

23 Q And did you identify any such use?

24 A In this case of the ice skating ring, which
25 generates the bulk of the revenue for the properties, I

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1 believe that an operator could go in and turnaround that
2 particular facility and make it more income producing.
3 In the case of the other assets, my presumption would be
4 that -- it was my opinion that those assets could
5 potentially be leased out to other parties, perhaps,
6 such as the City or to little lesion or others that
7 might find it a use to help he did freight costs of
8 those facilities.

9 Q And in considering the value of the ice ring,
10 did you -- well let me back up.

11 You just mentioned that another operator could
12 come in and turnaround the ice ring and improve its
13 revenues. would that involve a -- making capital
14 improvements by the new operator to the ice ring?

15 A It would involve repairing certain of the I
16 think older equipment and deferred maintenance that
17 exist at the property.

18 Q And do you have any idea what the cost of that
19 would be?

20 A There was some indications I believe in some
21 email interchange, with SMG or other sources of
22 approximately what some of the repair items were. Did
23 not verify the authenticity of those numbers and how
24 reliable they are but I notice there were some
25 improvements that needed to be made and repairs.

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1 Q And that's another instance where you didn't
2 directly consider the -- the amount of deferred
3 maintenance and capital -- in necessary capital
4 improvements in determining the value of the ice ring?

5 MR. MORSE: Objection just to the extent it's
6 inconsistent with the report. It speaks for itself.

7 THE WITNESS: The value estimate that I had
8 ascribed did consider that certain amount of repairs and
9 maintenance and the placement of equipment would be
10 necessary.

11 BY MR. HERMANN:

12 Q And that was when you chose the lower end of
13 the comparable sales?

14 A My value estimate per square foot did
15 contemplate that there could be a -- another buyer that
16 would have to go in and spend some money perks sides
17 turning around the operations.

18 Q But you didn't make any assumption about how
19 much money they had to spend?

20 A Not specifically or explicitly.

21 Q And now turning to page 10 of your report, you
22 discuss the community center and the first question is
23 why was the community center separately delineated for
24 valuation purposes?

25 A It was and is a different use than the

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1 remainder of the property, which is the golf course, and
2 in my opinion, that would be the method, in one were to
3 maximize value of that particular facility relative to
4 the entirety of that property that is known as van dust
5 bus kirk.

6 Q And you talked about funk functional
7 obsolescence in the case of Oak Park. But here you seem
8 to rule it there being any functional obsolescence for
9 the community center. Is that right?

10 A Correct.

11 Q And why is there a distinction? Isn't this
12 also facility with a very, very limited use?

13 A This is -- first of all was recently remodel or
14 fairly recently remodeled and configured with more
15 modern and different type of amenities, and in my
16 opinion, it has a broader change of marketability to
17 potential buyers than does Oak Park.

18 Q Under the heading of possessory interest on
19 page 10, you say once in possession, such lessee would
20 then devise ways to efficiently effectively and
21 profitably manage and operate the properties while
22 undertaking the time, effort and risk to hold the
23 possessory position as well as recapture its initial
24 investment. Do you see that?

25 A Yes.

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1 Q Would the initial investment include capital
2 improvements and repairing deferred maintenance?

3 A My values do not explicitly consider those
4 capital improvements. The numbers are and values are
5 what someone would acquire them and then potentially
6 make a variety of different types of improvements to
7 those properties.

8 Q And if a possessory interest in the community
9 center were for marketed, how would that marketing
10 effort occur?

11 A Perhaps acid described before in terms of a
12 marketing process, but I believe that this would be
13 probably modified in the sense that the persons investor
14 or buyer list -- not investor, I'm sorry -- might be a
15 little more defined in the smaller universe than in the
16 case of a golf course.

17 Q So who would -- what type of entity would be in
18 that smaller universe? Who would the target audience of
19 such a marketing campaign be?

20 A Could be fraternal organizations. It might be
21 homeowners association. It could be a nonprofit. Could
22 be a government City type of entity.

23 Q If it were for instance a fraternal
24 organization, it would be your thought at that fraternal
25 organization would use or if it their own proprietary

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1 purposes?

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2 A That would be my presumption.

3 Q would a fraternal organization use the
4 community center for public recreation or public park
5 services, which to put that in context, that's the
6 limitation on the deed in Van Buskirk that you reflect
7 on page 23 of your report?

8 A I don't know if I could draw that conclusion as
9 how broad that might be in terms of the restriction.

10 Q But your thought is that whoever were to buy
11 the possessory interest in the community center would
12 not do so for profit?

13 A It would be more premised on their need for
14 that type favor silt and if it fulfilled a need for
15 their organizational objectives.

16 Q So did you consider looking for comparable
17 sales to fraternal organizations of meeting facilities
18 or other buildings that they might purchase?

19 A If I recall correctly, I believe it was in some
20 of the data that we might have collected.

21 Q What was in there?

22 A There may have been sales of fraternal
23 organizations.

24 Q Did you do any sales comparison work for the
25 community center?

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1 A I did not. I considered it but did not use it.

2 Q Did you consider looking for governmental
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3 purpose -- purchases of facilities and other type
4 another type of entity that you described might be
5 interested in the community center?

6 A I believe I did.

7 Q Did you find anything?

8 A I don't recall.

9 Q Did you do any other looking for comparable
10 sales by the types of organizations that you testified
11 would be -- might be interested in the community center
12 possessory interest?

13 A I believe we did.

14 Q And what was the result of that?

15 A If I recall, that the data was pretty dispersed
16 in terms of the prices that were indicated and we tried
17 to understand what the reason why there was such a
18 dispersion in price. And part of it was because of site
19 size or because of their locations in different
20 metropolitan areas or the facility was, in my opinion,
21 it was inconclusive.

22 Q But often you contrast the results of one
23 method compared to another and you reconciled them in
24 the evaluation; correct?

25 A As appropriate, if the approach is considered

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1 to be reasonable and yields reliable information.

2 Q So are you saying that the compare able sales
3 that you found were in your opinion, not reliable?

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4 A I found that the sales did not provide me a
5 meaningful basis to come up with an opinion of value
6 through that approach.

7 Q Bottom of page 10 you say I have been asked to
8 value the possessory interest for four points in time.

9 A Yes.

10 Q Do you see that?

11 A Yes I do. Thank.

12 Q Is that the only reason that you chose
13 July 1, 2053, as one of the points in time?

14 A I'm sorry?

15 Q Is --

16 A It is one of the points in time. But I
17 didn't --

18 Q You selected that as a point in time for your
19 analysis because you were instructed to do so?

20 A Yes. That was my understanding of when the
21 City's debts would be restructured to, at the end of
22 that period.

23 Q Was it based on your understanding, as you just
24 stated it, or was it based on an instruction?

25 A It was based on an instruction.

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1 Q Okay. And similarly, for the perpetually as
2 you call it here in perpetuity for and other places in
3 the report, was that also per instruction?

4 A Yes, it was.

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5 Q And you didn't independently come up with --
6 with that point in time as an appraisal approach to
7 these properties?

8 MR. MORSE: Objection to the extent that the
9 report speaks for itself.

10 THE WITNESS: Once I understood the context of
11 the bond repayments and whether it would be repaid, then
12 I agreed with their -- the comment about being
13 perpetual.

14 BY MR. HERMANN:

15 Q So you independently determined that the -- one
16 of the four points in time that you should consider in
17 this approach -- in this appraisal is a perpetual
18 interest?

19 MR. MORSE: Objection. Misstates the
20 testimony.

21 THE WITNESS: I don't believe I independently
22 made that. But I recall discussing the context --

23 BY MR. HERMANN:

24 Q I don't want you to tell me anything about what
25 you discussed with the attorneys.

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1 A Okay.

2 Q And my question is really as simply as was it
3 your idea or was it their idea to come up with that as a
4 point in time, the in perpetuity. It's really a simple
5 question?

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6 A I understand. I did not independently come up
7 with that data.

8 Q Thank you.

9 At the top of page 11, you talk about a
10 possessory interest perpetually. And you talk about
11 applying values to that as if it were a residential
12 mixed use residential and commercial use.

13 Do you see that?

14 A Yes.

15 Q And that is on the assumption that the general
16 plan designation of these properties would be changed
17 and the zoning of these properties would be changed; is
18 that correct?

19 A At some point; correct.

20 Q And did you undertake any analysis or
21 investigation to determine whether or not such a change
22 in the general plan and zoning was viable or likely?

23 A I did understand and did some research to
24 understand that it is possible.

25 Q Possible in the sense that it can be applied

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1 for?

2 A Correct.

3 Q How about whether it's likely to hand?

4 A I cannot say what the probability of it
5 happening would be.

6 Q Okay. At the bottom of page 11, the next to
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7 last paragraph you talk -- you state that thus a
8 substantial discount exists relative to fee simple
9 values.

10 what do you mean by substantial discount?

11 MR. MORSE: Objection to the extent the reports
12 speak for themselves, specifically the sections that
13 describe those actual discounts.

14 THE WITNESS: I'm sorry. would you please
15 remind -- read back the question.

16 (Record read as follows:

17 "QUESTION:.

18 THE WITNESS: In this particular context on 11,
19 I'm making the commentary regarding the -- full,
20 encumbrance of the existence of the nominal lease
21 relative to essentially almost fee title or possession
22 and perpetually of the properties and rendering that --
23 that discount exists relative to the fee values to the
24 nominal lease values.

25 ///

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1 BY MR. HERMANN:

2 Q So what is a substantial discount?

3 A In effect it is the difference between the fee
4 simple value and the possessory value subject to certain
5 time limitations dictated by the nominal lease.

6 Q The next sentence reads the discount applied to
7 similar to the same concept as the discount for a

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8 partial partnership of fractional interest in
9 real estate.

10 what support do you have for that statement and
11 that approach?

12 A I've worked with affair amount of partial
13 interests over my career, and looking at how one might
14 approach it in terms of what discount and how they might
15 apply it relative to what it was -- a property could be
16 as if unencumbered.

17 That is what the basis of my opinion is.

18 Q well, if we all agree here -- and I think we
19 would -- that there is a discount applied to the value
20 of a partnership or fractional interest in real estate,
21 something lease than the whole, why is that the same as
22 a leasehold or in your terminology, a possessory
23 interest?

24 A In my opinion, it is similar in that there are
25 durations of time in which one would have less than full

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1 100 percent ownership in. So my by virtue of the lease,
2 there are durations of time that are specified in terms
3 of what the right and control elements of a lessee, and
4 that that is for -- it is different and contrasted than
5 someone who has fee title.

6 Q And do you have -- other than your opinion, any
7 support for that approach to values of a leasehold or
8 possessory interest?

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9 MR. MORSE: I believe he also testified it's in
10 his experience. You limited it to?

11 BY MR. HERMANN:

12 Q Other than your experience and your opinion?

13 MR. MORSE: Thank you.

14 THE WITNESS: well my opinion experience a name
15 things I've rated in a which are partnership discounts
16 and the various studies and literature and data points
17 that come from partnership discounts and then the
18 application and seeing it being applied by investors,
19 owners, in terms of their analysis of the properties.

20 BY MR. HERMANN:

21 Q Okay. But that applies to partnership
22 discounts. I'm really asking whether there is any
23 support, other than your opinion and your experience,
24 for the methodology of determining a fee simple value
25 and discounting it as if it were a partial interest when

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1 you're valuing a possessory interest in that property?

2 A If you're asking me to speak if other people
3 with have written about leaseholds and lease fee
4 interests and how that he approach it, I'm sure they're
5 entitled to their opinions. I could only address what
6 my experiences have been.

7 Q Anything else?

8 A No.

9 Q And what is your experience in purchasers of a
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10 possessory interest in any property valuing their
11 willingness to purchase that interest -- that possessory
12 interest by applying a discount to the fee simple value
13 of the property?

14 A My apologies. would you mind reading back the
15 question.

16 (Record read as follows:

17 "QUESTION:

18 BY MR. HERMANN:

19 Q would you help if I just rephrase it. I I'm a
20 little difficult near to understand as well?

21 MR. HERMANN: why don't you read it back.

22 (Record read as follows:

23 "QUESTION:

24 THE WITNESS: I have one instance that I can
25 recall was working with an an Erin investor who was

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1 acquiring a property subject to a master lease and had a
2 also an addition had a partnership interest in that
3 particular property.

4 So there were multilevels of valuation that
5 were necessary, was what was the value of the property
6 encumbered and under encumbered by the master lease as
7 well as after that, then how would one deal with the
8 partial interest that would be applied in that master
9 lease situation. So there were multiple levels of
10 valuation that dealt with both leasehold lease fee,

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11 possessory interest, if you will, as well as the
12 partnership discounting.

13 BY MR. HERMANN:

14 Q And in that situation in values the leasehold
15 interest, the methodology was to determine the fee
16 simple value and apply a discount?

17 A Yes.

18 Q It was not an independent valuation of the
19 leasehold interest and then subtracting that fleet to
20 determine the lease fee interest?

21 A No. It was starting with the fee simple value
22 and then looking at the particular leasehold interest.

23 Q Do you recall what the discount was in that
24 situation?

25 A I don't recall what it ended up settling at,

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1 but I recall that I thought that the discount for the
2 leasehold was somewhere around five to 10 percent.

3 Q And do you recall the term of the lease?

4 A I don't recall what the specifics were other
5 than that there were options to renew at fixed price
6 foil -- strike prices at those option dates. So the --
7 the fill extended and exercise the term could have
8 been -- I believe was over 35 years.

9 Q Mr. was the name of this transaction?

10 A This was the lake Mason building in Baltimore
11 Maryland.

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12 Q And when did this transaction or evaluation
13 occur?

14 A I believe it was in the late '90s or
15 early 2000s.

16 Q Any others?

17 A We -- the last company I was running, we had a
18 property subject to a master lease and it was put on the
19 marketplace, and we knew what the fee value was and
20 relatively to the fee value, there was an implied
21 discount of what people were willing to buy and transact
22 it for.

23 Q And was that situation?

24 A It was a bank building in Orange County.

25 Q Which building?

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1 A I think it was Citibank that was the master
2 tenant.

3 Q When you say master lease, what are you
4 referring to?

5 A The leasing of the entire property that were
6 subject to that. We had essentially the residual
7 interest in the property, and there was a lessor
8 possessory interest that encumber that property.

9 Q Any others?

10 A I recall a property when I was involved in
11 executive life, a rehabilitate of executive live. I
12 believe there were some properties around the

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13 Marina del Rey area that had been subject to some master
14 lease encumbrance that basically precluded or affected
15 the interest that executive life or its subsidiaries
16 had.

17 Q And in applying this approach in your report,
18 you didn't feel it necessary to explain the basis for
19 applying this approach?

20 A I'm not sure what you mean. I mean, this
21 report combined with my work papers and what I'm telling
22 you now is my approach. And it is based on my
23 experiences. I think I -- sorry.

24 Q That's all right. We're here to hear your
25 answers, not my questions.

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1 A I think I laid the premise for why there were
2 certain discounts that would be applicable given the
3 constraints on the possessor and the ability to not
4 freely or freely do certain actions based on the
5 differences in possessory period.

6 Q Would you feel comfortable characterizing this
7 approach as an established practice in the appraisal
8 industry?

9 A I think there are differ approaches and the
10 appraisal literature suggests the other or other
11 approaches. I find that that's a mathematical approach
12 and a hypothetical. That isn't necessarily practiced in
13 the marketplace.

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14 Q So the answer is no, you would not feel
15 comfortable calling this approach an established
16 practice in the appraisal industry?

17 MR. MORSE: Objection. Misstates the prior
18 testimony. Asked and answered.

19 THE WITNESS: Perhaps according to appraisers,
20 it may not be a widely known or standard approach. In
21 the real estate market in the way the world seems to
22 transact, it is I think far more common.

23 MR. HERMANN: Would now be a good time for a
24 break? It's been an hour.

25 MR. MORSE: Yeah.

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1 (Recess)

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11 BY MR. HERMANN:

12 Q Page 36 of your report, in the first sentence,
13 you say in the golf consul teen opinion to achieve
14 enhanced financial performance an owner must make

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16 Is there the likelihood that the owner will be
17 able to achieve enhanced financial course from the golf
18 courses?

19 MR. MORSE: Objection. Vague and ambiguous.

20 BY MR. HERMANN:

21 Q If you understand the question.

22 A I think.

23 MR. MORSE: Same objection.

24 THE WITNESS: I think I understand. I don't
25 know what his -- necessarily his frame of reference was

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1 back in 2010.

2 BY MR. HERMANN:

3 Q So it's an old report, right?

4 MR. MORSE: Objection as to old. The date
5 speaks for itself.

6 THE WITNESS: It was done many years ago.

7 BY MR. HERMANN:

8 Q Okay. And in fact many of the projections of
9 income in that report have not been achieved in
10 actuality; correct?

11 A Correct.

12 Q You say many more improvements and investments
13 are necessary to materially enhance performance. The
14 competent owner with professional management would make
15 these improvements.

16 Do you see that?

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17 A Yes.

18 Q What are the other improvements and investments
19 that you have in mind?

20 MR. MORSE: Objection. Asked and answered.

21 THE WITNESS: Nothing specific, but in the
22 general category of those operational marketing and as
23 appropriate certain improvements to the courses.

24 BY MR. HERMANN:

25 Q And you don't have anything specific in mind in

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1 terms of cost or time to implement?

2 MR. MORSE: Asked and answered. We have been
3 through this ad nauseam.

4 THE WITNESS: As far as most or cost or timing
5 I haven't studied them specifically. I would like to
6 know what the impact of each would be on the revenue, I
7 did not do that analysis.

8 BY MR. HERMANN:

9 Q Turning to page 38 -- well let me ask you this
10 question which is just a general question.

11 Did you develop any projections of income and
12 expenditures for the golf courses going into future
13 years?

14 A No.

15 Q Did you develop any opinion of when, if ever,
16 the golf courses, either jointly or individually, would
17 become cash flow positive?

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18 A I did not do those projections.

19 Q So when we're looking at your gross income
20 multiplier approach which is set -- explained on page 38
21 and then implemented on page 39, you're working off of
22 a -- what you described as the annual gross potential
23 revenues for Swenson of \$1,344,000.

24 Do you see that?

25 A Yes.

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1 Q Isn't that, in effect, a projection that you
2 make?

3 A For the rounds and revenues, that is correct.

4 Q And in making that projection, did you assume
5 that there would be improvements and -- well,
6 improvement to the course -- courses?

7 A I presumed that there would be some changes as
8 to the amount of complimentary and discounted rates or
9 rounds that were provided for, and that there would be
10 slight increases in the rounds -- their average revenue
11 per round.

12 Q So no capital improvements, just operating
13 enhancements?

14 A Correct.

15 Q And the actual revenue for -- let's focus on
16 Swenson that you have indicated for 2012 slash 13 is
17 \$100,170,185?

18 A Correct.

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19 Q And that is 15 percent higher than -- your
20 annual gross rev knew of a million 344 are 15 percent
21 higher than that?

22 A I will -- I don't have a calculator but I will
23 take your word for it. It's close.

24 Q I did the math.

25 A Thank you.

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1 Q I have an engineering degree. You can trust
2 it.

3 And?

4 MR. MORSE: Objection.

5 BY MR. HERMANN:

6 Q If you do similar math or Van Buskirk there is
7 a 13.6 percent increase in your projection over the
8 actual force 2012 slash?

9 A Yes.

10 Q And I will tell you that the -- the actual for
11 201314 -- well skip that. Here is the question.

12 Are you aware of any point in time where either
13 course has achieved pay 13.6 or even a 15 percent year
14 over year increase in revenues?

15 MR. MORSE: Are you talking about any time
16 since intention, since they were built.

17 MR. HERMANN: within his knowledge.

18 MR. MORSE: I just want to clarify your
19 question.

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20 THE WITNESS: As per a year over year basis, I
21 am not aware of that level of increase at these golf
22 courses.

23 BY MR. HERMANN:

24 Q In terms of the gross income multipliers that
25 you used, you consulted a national survey for that

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1 information?

2 A Yes.

3 Q And that's identify in the middle of page 38?

4 A Correct.

5 Q Did you consult any actual sales to obtain that
6 information?

7 A I recall I looked at some multiple force those
8 sales. I also considered a number of listings of golf
9 courses that had gross income multipliers, that I also
10 considered.

11 Q And do you identify in here the compare able
12 sales that you consulted snow -- that you considered?

13 A I don't believe they're in my appraisal report.
14 They would be -- data would be contained any other work
15 papers.

16 Q So even the society of golf appraisers survey,
17 as you stated on page 38 for courses with nominal or
18 negative net margins, have gross income multipliers
19 between .9 and 1.3. Yet on Swenson, you assumed at the
20 bottom of page 39 a gross income multiplier of one point

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21 to 1.5 which is above that range. Why did you do that?

22 A In my opinion, I believe that looking at
23 Swenson by itself, it has greater potential near term to
24 make improvement in the revenue ability. It
25 financial performance is closer to actually breaking

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1 even.

2 Q And that would be a reason for going above the
3 range reported by the s- GA?

4 A In if my pin, yes.

5 Q What about for Van Buskirk where again the
6 range was .9 to 1.3 and you put Van Buskirk in the range
7 of terms of gross income multipliers of 1.1 to 1.3 file.
8 Why did you do that?

9 A It has an established base of revenues, despite
10 all the troubles associated with it. So I believe that
11 it a new purchaser or buyer could turn the situation
12 around without having to necessarily rebuild the entire
13 organization or operation.

14 Q And did you provide any projections as to how
15 that would occur?

16 A Not specifically, no.

17 Q Did you provide any explanation for that in
18 your report?

19 A Than what I just provided you.

20 (Exhibit ExhibitNo previously marked)

21 Q I put in front you have what we marked as
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22 yesterday as document No. 2990. It is as I recall the
23 testimony, notes taken by Mr. Smith during his
24 conversation with Mr. hopper on April 15, 2014.

25 Do you recognize this at least from looking at

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1 it yesterday?

2 A Yes.

3 Q And can you turn to the next to last page where
4 there is a chart, Northern California and northern
5 Nevada gross income multipliers.

6 MR. MORSE: Counsel for the record I want to
7 note, prior to asking any questions about this, that it
8 was Mr. Smith's testimony that this information was
9 gathered from Mr. hopper. He did not do any independent
10 a analysis of the data. So we need keep that mind to
11 the extent you are going to use or rely on test the
12 witness here as to any information on the page
13 identified as 426.

14 BY MR. HERMANN:

15 Q You understand this information came from
16 Mr. Kent hopper?

17 A That's what's referenced on the handwritten
18 notes.

19 Q You don't any personal knowledge but that's
20 what we've been told; correct?

21 A Correct.

22 Q And do you know Mr. Ken hopper or know of him?
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23 A Only through names in this case.

24 Q Okay. And of these ten comparable sales, how

25 many of these can you consider in your report?

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1 MR. MORSE: Object to the use of comparable
2 sales. I don't know that that estate he had on this
3 page nor has that been established that they are
4 comparable sales, Counsel.

5 THE WITNESS: It appears that two of my sales
6 cited are included in this list.

7 BY MR. HERMANN:

8 Q And for the record you are referring to the
9 sales listed on page 40 of your report?

10 A That's correct.

11 Q So looking at page 40, I gnats there is no
12 gross income listed for any of the sales in your report;
13 is that correct?

14 A Yes.

15 Q And why is that?

16 A I don't recall.

17 Q Did you have access to the gross income for
18 these sales?

19 A We may have. I'd have to look at the data in
20 my work papers to see if we did or didn't.

21 Q In if fact you did, wouldn't you have been able
22 to calculate the gross income multipliers?

23 A Yes.

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24 Q And wouldn't have that been a of more
25 significance in determining value than a national

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1 survey?

2 MR. MORSE: Objection as to more significant.

3 THE WITNESS: AS I mentioned, I also considered
4 numerous listings that have Bono of golf course all
5 around the country. I looked at that data as well.

6 BY MR. HERMANN:

7 Q But listings are just listings, right?

8 A They are.

9 MR. MORSE: Objection. Argumentative.

10 MR. HERMANN: It was.

11 MR. MORSE: It's two for two.

12 MR. HERMANN: Good catch on those.

13 Q The information that you can obtain in a
14 listing is inherently less reliable than an actual sale;
15 is that correct?

16 A It's not consummated so it dots haven't the
17 fuel weight as a sale.

18 Q Right.

19 So according to the information that Mr. Smith
20 obtained from Mr. hopper, the unprofitable golf courses
21 have a gross income multipliers in the range of .22 to
22 1.58 with an average of .99.

23 Do you see that?

24 A I do.

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1 is the price her hole, and then there is also the price
2 per acre.

3 Those are indicators that I would look at and
4 not Cap X spent because the business plans for -- any of
5 these properties have turned around, for instance, Elk
6 Horn was acquired and then closed and turned around,
7 would be different than perhaps other once.

8 Q Your page 40, you include the sale of valley
9 Rose golf course in the far right-hand column?

10 A Yes.

11 Q Have you are you familiar with what use that
12 golf course was put to after the sale?

13 A Not that I can recall as I sit here.

14 Q Okay. You recall yesterday that Mr. Morse
15 inquired of Mr. Smith as to every paragraph of his
16 report as to whether he had any additional analysis or
17 opinions or conclusions and I'm not going to put you
18 threw that exercise, especially since your report is so
19 long. But do you have any -- anything in this report
20 that you think you should change or you would change?

21 MR. MORSE: Objection. To the extent that the
22 disclosure of any information that would be privileged
23 information would be contained in your answer. I just
24 caution you on that.

25 THE WITNESS: One second.

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1 BY MR. HERMANN:

2 Q Sure. It's a long report.

3 A Would it be possible that maybe perhaps during
4 our next break I can find the cite. There was a date
5 that I had listed month my report that I believe I used
6 the wrong date.

7 Q What was the date? I've got it electronically.
8 I can search it. I mean, what kind of date was it?

9 A It was a date that I had -- I believe it was
10 something 2014 when it should have been a different
11 year, yeah.

12 MR. HERMANN: Let's go off the record.

13 MR. MORSE: Yeah, let's go off the record.

14 (Off the record)

15 MR. HERMANN: Back on.

16 THE WITNESS: Thanks.

17 Page 44, the second-to-the-last line, it says
18 possessory interest through March 26, 2014, that should
19 be possessory interest as of March 26, 2014.

20 BY MR. HERMANN:

21 Q Anything else?

22 A No.

23 Q Have you ever before valued a golf course
24 leasehold interest or possessory interest?

25 A We had previously discussed the National Golf

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1 Properties.

2 Q Correct.

3 A Okay. Where we were valuing various sorts of
4 interest to the REIT and to the operating company.
5 That's the area where with he had been valuating,
6 specifically various interests.

7 Q Any others?

8 A I can't recall any right now.

9 Q And in that National Golf Properties case, did
10 you apply a discount of fee simple for your leasehold
11 interest valuation?

12 MR. MORSE: Objection. I don't think it was a
13 case of it was an engagement.

14 BY MR. HERMANN:

15 Q With that modification. He's correct of
16 course.

17 A We did apply discounts.

18 Q But did you apply a discount of fee simple to
19 derive a leasehold interest valuation?

20 A I recall in certain instances we did.

21 Q Can you explain on page 38 of your report why
22 you summarily rule out the discounted cash flow approach
23 to value?

24 A The application of the discounted cash flow
25 here would have to be premised on a business plan for

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1 the property regarding future performance and what would
2 be done. In my opinion, this is a -- as I mentioned
3 before, a troubled course and maintaining the status quo
4 is not optimally the right approach for this golf course
5 and not how potential buyers would view this course.
6 There is no other business plan for the property that
7 has been articulated. So it would be me overlaying a
8 whole host of assumptions to establish a discounted cash
9 know and looking at its historical operations, I
10 couldn't tell you if all those things and projections
11 would be reasonably supportable.

12 Q Anything else?

13 A I think that summarizing what my approach would
14 be of why a discounted cash flow would not be
15 appropriate here.

16 Q And with all those caveats in mind, how was it
17 you were able to come up with a projection of 22014
18 slash 15 revenues?

19 A In my opinion those were slight policy
20 operational changes that could be implemented and it was
21 near term as opposed to something that might be
22 hypothetically five to ten years off as a discounted
23 cash flow a analysis might use.

24 I might add that the economy of Stockton has
25 seen some changes over the last few years it has

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1 improving, so that market environment is also another
2 component of the DCF, and how people might look at or
3 not look at and try to replicate what might happen.

4 Q And none of those even certainties are present
5 in a gross income multiplier approach?

6 MR. MORSE: Objection. Misstates testimony.

7 BY MR. HERMANN:

8 Q That's a question.

9 A In this particular case, we're dealing with
10 what we've known as as happened over the property with
11 reasonable certainty, that being the historic results
12 and projections that I believe can be reasonably
13 obtained by making some changes in policy and practice.

14 Q But the gross income multipliers is not
15 necessarily tied to historical results? It's tied to
16 your projections for the next year; correct?

17 A well, the selection of the gross income
18 multipliers did consider past results and the, if you
19 will, consistency of those results that have occurred
20 and and have been realized. I'm not for casting or
21 speculate on what may or may not happen in the future
22 given all the dynamics I mentioned.

23 Q Do you have an opinion as to golf course supply
24 and did he manned in Stockton over the last three years?

25 A Generally.

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1 Q And what is that opinion?

2 A As the economy has had challenges that the golf
3 course market has become quite competitive and price
4 conscious.

5 Q What about supply and demand? Are they one and
6 the same? They may be but --

7 A They're an element of market demand and
8 competition. There was the reopening of Elk Horn. It
9 closed and then reopened later after a bunch of
10 renovations were done and repositioned it, so at one
11 point the supply probably changed and demand changed.

12 Q Did you attempt to make any estimate of future
13 revenues or expenses at -- for any of the other
14 activities at Oak Park other than the ice arena?

15 A No.

16 Q Did you do so for the ice arena?

17 A I did not make any projections there.

18 Q And just, in general, how would someone
19 capitalize on the opportunity to takeover the possessory
20 interest of Oak Park for the next 24 or 34 years?

21 A I'm not sure I could say for that long a period
22 of time. But I think the immediate situation would
23 be -- is to try to stem the bleeding that's occurred and
24 segregate and focus on the greatest contribute of
25 revenue, which would be the skating ring and attempt to

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1 make some operating and changes to try to turn around
2 its perspective.

3 And, then, as to the other components, would
4 look at leasing out or having other parties come in and
5 actively if owned -- own and control those elements so
6 that they would be essentially revenue and expense
7 controlled.

8 Q Have you had any discussions with Franklin
9 about Franklin operating the golf courses or the park?

10 MR. MORSE: Objection to the extent that
11 it's -- about disclose any privileged communications and
12 I'm not sure that you would be able to even answer that
13 question without divulging those privileged
14 communications.

15 THE WITNESS: I have not.

16 BY MR. HERMANN:

17 Q And you've not been asked to prepare any
18 budgets for operating any of the three facilities --
19 properties, I should say?

20 MR. MORSE: Same objection.

21 THE WITNESS: No, I have not.

22 BY MR. HERMANN:

23 Q Turning to page 44 of your report, is there a
24 Oak Park valuation and sales comparison approach chart,
25 and there is a report of a sale within Stockton at the

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1 dread of 3131 west hammer lane.

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2 Do you see that?
3 A I do.
4 Q What was the condition of that property, if you
5 know?
6 A I'd have to look at that sale. I don't recall.
7 Q But these are all ice rings that sold? And
8 just to refresh your recollection, I'll refer you to the
9 bottom of page 43.
10 A That is my understanding, that they were rice
11 rings or improvements that might have been ice rings
12 that were later demolished.
13 Q And do you know the fate of the property?
14 Stockton after the sale?
15 A If I recall correctly, I believe that was
16 demolished and put to a different use.
17 Q Okay. And I've noticed at the bottom of
18 page 40 you apply a 40 percent discount to the fee
19 sample value of the ice arena to account for the
20 possessory interest?
21 MR. MORSE: You said page 40.
22 MR. HERMANN: I'm sorry. Page 44.
23 THE WITNESS: That's correct.
24 BY MR. HERMANN:
25 Q I think we would agree that is a substantial

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1 discount but you only applied a 10 percent discount to
2 Swenson, and in fact for the longer term it's only a

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3 5 percent discount.

4 Can you justify the difference in the
5 magnitude?

6 A The differences would be that Swenson has more
7 earning power and more potential to improve its
8 operations and that the skating ring has a much more
9 limited market in terms of find the possessor to
10 operate, run, and improve and turnaround the operations
11 there, so from my perspective, it is a larger discount
12 that's warranted for Oak Park and the skating ring than
13 there would be at Swenson.

14 Q And where did you obtain your discounts for
15 Swenson, which is 10 percent for the 2038 term and
16 5 percent for the for the 2053 term?

17 A Because I my understand experience that the
18 range of discounts vary depending upon control, and term
19 and the characteristics of the property, and it's in
20 line with what the partnership discounting general
21 ranges are. So in that case, in looking at the
22 characteristics and the income producing ability of
23 Swenson, that I selected the 10 percent rate.

24 Q But there are no objective standards that
25 anyone could consult to determine whether or not they

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1 believe that your 10 percent or 5 percent discount with
2 Swenson is either high or low?

3 A To my knowledge, there is no the application or

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4 calculator you can plug it in and it spits out an
5 answer.

6 Q And you said there were two factors, the first
7 is your experience in dealing with the sale of
8 possessory interests and did you tell us what your
9 experience is in dealing with sales of possessory
10 interest and -- that were could not you made the on the
11 basis of this type of a metric, a discount to fee
12 simple?

13 A I think we've -- you've asked me that before.
14 And I think I've answered that.

15 Q I think I asked you if you were I aware of a
16 comparable sales market, and you answered that. I think
17 I asked you what sales you were aware of that were in
18 that comparable sales market. But.

19 MR. MORSE: I think also asked him about his
20 experience and he testified at great length about
21 various transactions that he's been involved in the sale
22 of, including portfolio.

23 BY MR. HERMANN:

24 Q And this is limited only to possessory
25 interest, where -- I mean maybe you've already told me

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1 but I don't recall discussing transactions where you
2 were involved in the sale of a possessory interest from
3 which you would have the experience to say 10 percent,
4 5 percent is the right number.

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6 don't recall.

7 MR. HERMANN: Let's take a five-minute break
8 and see if I have anything else to ask.

9 MR. MORSE: Okay.

10 (Recess)

11 MR. HERMANN: Going back to the issue of
12 capital improvements, which I know we spent a lot of
13 time on, but if you're an investor in a golf course,
14 whether it's for an outright purchase or a possessory
15 interest, wouldn't you have to know how much in capital
16 improvements need to be expended before the course can
17 meet your expectation.

18 MR. MORSE: Objection. Incomplete
19 hypothetical. Vague and ambiguous as to expectations.

20 THE WITNESS: The magnitude and type of capital
21 improvements certainly are a consideration when people
22 are looking at potential investment, be it government
23 course or otherwise. But that is in the context of the
24 spending of those dollars relative to what the business
25 plan or focus of the property is.

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1 BY MR. HERMANN:

2 Q So what you're saying, if I can try and
3 paraphrase it, that is one purchaser may decide to make
4 all the capital improvements, another may have a
5 different business plan and only make half of them and a
6 third may make a minority of them is that what you are

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7 saying?

8 MR. MORSE: Sorry. Just to clarify. When you
9 are using the capital improvements, are you referring to
10 the ones that are identified on.

11 BY MR. HERMANN:

12 Q This is in general?

13 MR. MORSE: Or hypothetical.

14 MR. HERMANN: This is general.

15 MR. MORSE: Okay.

16 THE WITNESS: In general, the -- what is
17 implemented or not in the capital improvements would
18 depend upon what direction the business is either
19 already heading or would be anticipated to head. So if
20 it's ongoing, operations are stable, and the new buyer
21 look at a property and says I like the way this is
22 performing, the capital improvements would be of more
23 consideration than as compared to a situation where a
24 whole new direction has to be established, be it a
25 turnaround or a repositioning, and then the relevancy of

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1 those particular capital improvements that might have
2 been stated, would be dependent if it aligns with the
3 new direction or reposition.

4 BY MR. HERMANN:

5 Q So if you're looking at a perspective purchaser
6 and let's just keep it simply neat simple interest, in
7 Swenson and Van Buskirk and that purchaser doesn't know

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8 whether the capital improvements are going to be 50,000
9 or 9 million, what would that purchaser do?

10 MR. MORSE: Objection. Incomplete
11 hypothetical.

12 THE WITNESS: The underlying foundation of that
13 would be is they have a if he fin tiff idea of what they
14 want to do and then he would look at the capital
15 improvements amount that may have been projected by
16 somebody else and determine whether it is relevant or
17 appropriate relative to their strategy.

18 BY MR. HERMANN:

19 Q And in your appraisal, didn't you take a
20 position on any of these issues, right? These issues
21 being what the business plan would be for the government
22 courses going forward which would dictate a certain
23 level of capital improvements.

24 A I did not establish a specific business
25 implementation plan for the property assuming it was

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1 turned around. I reside on the existing operations and
2 that would be the baseline.

3 Q Doesn't your failure to take a position on that
4 reduce the utility of your appraisal to any perspective
5 purchase?

6 MR. MORSE: Objection. Argumentative.

7 THE WITNESS: I disagree with the word failure.
8 I certainly considered it but I considered it in light

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9 of the tools that an appraiser would have to have in
10 terms of looking at what is it actually performed at
11 versus my ability or another person's to make a forecast
12 and projections on something that doesn't exist.

13 MR. HERMANN: Okay. I have no further
14 questions. Thank you, Mr. Chin.

15 THE WITNESS: Thank you.

16 (The time is 3:54 P.M.)

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