

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

DEERHURST CONDOMINIUM OWNERS ASSOCIATION, INC., a Michigan non-profit corporation and WOODVIEW CONDOMINIUM ASSOCIATION, a Michigan non-profit corporation, individually and as representatives of a class of similarly-situated persons and entities,

Plaintiffs,

-vs-

Case No: 2015-006473-CZ

CITY OF WESTLAND, a municipal corporation,

Hon. Daphne Means Curtis

Defendant.

_____ /

VIDEOTAPED DEPOSITION OF STEVEN SMITH

Taken by the Plaintiffs, on the 17th day of June, 2016, at 41700 West Six Mile Road, Suite 101, City of Northville, State of Michigan, at 9:13 a.m.

APPEARANCES:

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Reported By: Kimberly A. Matro, CER-6215
 Certified Electronic Reporter
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1 Northville, Michigan
 2 Friday, June 17, 2016 - 9:13 a.m.
 3 VIDEO TECHNICIAN: We are now on the record.
 4 The time is 9:13 a.m. This is the videotaped
 5 deposition of Steven Smith, being taken on June
 6 17th, 2016. We are located at 41700 West Six Mile
 7 Road, Suite 101, Northville, Michigan 48168. We
 8 are here in the matter of Deerhurst Condominium
 9 Owners Association, Inc., et al versus City of
 10 Westland, Case Number 2015-006473-CZ. My name is
 11 Justin Dloski, Legal Videographer.

12 If the attorneys will identify themselves
 13 for the record, the reporter will then swear in the
 14 witness.

15 MR. HANLEY: Greg Hanley on behalf of the
 16 Plaintiffs.

17 MR. PELLAND: James Pelland on behalf of
 18 Defendant, City of Westland.

19 MR. ROBINETTE: Dean Robinette on behalf of
 20 Plaintiff.

21 STEVEN SMITH
 22 HAVING BEEN CALLED BY THE PLAINTIFF AND SWORN:
 23 MR. HANLEY: Good morning, Mr. Smith.
 24 THE WITNESS: Good morning.
 25 EXAMINATION

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1 BY MR. HANLEY:
 2 Q I'm going to hand you what we've previously marked
 3 in a prior deposition of the City as Exhibit Number
 4 2 and I think that you'll recognize this as the
 5 Administrative Cost Allocation Sheets for Fiscal
 6 Year 14-15. Can you confirm that?
 7 A Yes.
 8 Q And my understanding is that there was another one
 9 of these allocation sheets similar to Exhibit 2
 10 that was created for fiscal year 15-16, is that
 11 correct?
 12 A That's correct.
 13 Q And you're in the process of having that sent over
 14 so that we can review that in the course of your
 15 deposition?
 16 A Correct.
 17 Q And it's also my understanding that there's also
 18 some form of administrative cost allocation sheet
 19 for the fiscal year 16-17, is that correct?
 20 A That is correct.
 21 Q And are you the author of each of these cost
 22 allocation sheets?
 23 A I am.
 24 Q And I want to see if we can come to some
 25 understandings about these cost allocations and the

1 principles of cost allocation.
 2 Is the purpose of compiling a document
 3 like Exhibit 2 to reflect the fact that other City
 4 departments provide services to the Water and Sewer
 5 function?
 6 A That is correct.
 7 Q And is a cost allocation sheet an attempt to
 8 estimate the value of those services and goods?
 9 A That is correct.
 10 Q And after those values are determined there's an
 11 actual transfer of funds from the Water & Sewer
 12 Fund to the General Fund in recognition of those
 13 services.
 14 A That is correct.
 15 Q And for at least for the fiscal year that's
 16 reflected in Exhibit Number 2, that amount was
 17 roughly three point four million dollars.
 18 A Correct.
 19 Q And would you agree with me that it would be
 20 inappropriate to include costs that weren't
 21 actually related to the Water & Sewer function in
 22 these cost allocations?
 23 A Would it be incorrect, is that what your question
 24 was?
 25 Q Well, would it be inappropriate.

1 A Inappropriate. Well, these are estimates, mind
 2 you, so if it was not related to Water & Sewer,
 3 then it should not be included, that's correct.
 4 Q Right. And I understand that estimates are
 5 estimates, they may be off, but it would be
 6 inappropriate to intentionally include in the
 7 transfer from Water & Sewer to the General Fund
 8 amounts that did not fairly reflect the value of
 9 services that were actually provided to the Water &
 10 Sewer function.
 11 A Correct.
 12 Q And do you recall that in the City's original
 13 Interrogatory Answers they referenced some
 14 professional standards that had been authored by an
 15 entity called the Government Finance Officers
 16 Association?
 17 A Did I recollect that in the last deposition?
 18 Q No. In the Interrogatory responses there was some
 19 reference to GFOA Standards, correct?
 20 A Correct.
 21 Q And you believe that those are authoritative and
 22 appropriate to guide you in these kind of cost
 23 allocation methodologies?
 24 A Correct.
 25 Q By the way, do you actually consult those GFOA

1 Standards in coming to these cost allocations that
 2 are reflected in for example Exhibit Number 2?
 3 A I did not.
 4 Q Are there any other professional standards that you
 5 consulted in order to do the cost allocations that
 6 are reflected in documents like Exhibit 2?
 7 A I did not.
 8 (Document Marked for Identification as
 9 Smith Deposition Exhibit Number 34)
 10 BY MR. HANLEY:
 11 Q Let me show you what I've marked as Exhibit 34,
 12 which is a document that is authored by the GFOA
 13 Best Practices Regarding Pricing Internal Services.
 14 Have you ever seen Exhibit 34 prior to today?
 15 A I would have to read through it.
 16 Q Okay. Well, take your time. Have you had a chance
 17 to review Exhibit 34?
 18 A I have.
 19 Q And are you familiar with it?
 20 A I have read it at one point in time, yes.
 21 Q All right. One of the costs that are allocated to
 22 the Water & Sewer function is retirees insurance,
 23 is that correct?
 24 A That is correct.
 25 Q And if you turn to Page 2 of Exhibit 2, there's a

1 budget of three point two seven four million
 2 dollars for this fiscal year for retirees insurance
 3 and forty-two percent of that cost has been
 4 allocated to Water & Sewer, correct?
 5 A Correct.
 6 Q So that ended up being a one point three seven five
 7 million dollar allocation to the Water & Sewer
 8 Fund, correct?
 9 A Correct.
 10 Q And I learned in Ms. Kolar's deposition that after
 11 the lawsuit was filed, the City undertook an effort
 12 to identify how many retirees were actually
 13 retirees of the Water & Sewer Department, correct?
 14 A I think there was an email that went, yes.
 15 Q Right. But would it be fair to say that at the
 16 time you prepared this administrative cost sheet
 17 there hadn't been a lawsuit filed yet, correct?
 18 A Correct.
 19 Q And so it would be fair for me to say that at the
 20 time you did the allocations of retiree insurance
 21 cost, you didn't have the specific data in front of
 22 you as to what percentage or how many employees
 23 were actually retired Water & Sewer employees,
 24 correct?
 25 A This document goes back to basically '04-'05, so

1 this is a culmination of when this was started. So
 2 at a point in time there was documentation arrived
 3 at with regards to the retiree healthcare.
 4 Q But has it been your testimony that that
 5 information wasn't updated as of the time of the
 6 14-15 administrative cost allocation?
 7 A This gets updated every year. The allocation
 8 schedule gets updated every year.
 9 Q No, I understand that, but I'm talking about I
 10 asked you whether you had actual data in front of
 11 you as to how many of the retirees for which you're
 12 charging insurance were actually Water & Sewer
 13 employees and my question is did you investigate
 14 that at any time prior to the compiling Exhibit
 15 Number 2?
 16 A Well, like I said, this was a culmination of years
 17 of allocations, so it was updated every year. Was
 18 it -- if you're asking was there specific employees
 19 that were listed that came up to that forty-two
 20 percent and it's an estimate -- estimated number,
 21 you know, to the best of the information that we
 22 had available at that time.
 23 Q At what time?
 24 A At the time we did this allocation.
 25 Q All right. Well what was that information that you

1 had available to you?
 2 A Well, like I said, we had the prior years
 3 allocation and then when we started we had the
 4 allocation, so this would have been a continuing
 5 estimate of what the retiree healthcare was at that
 6 point.
 7 Q At any time prior to this lawsuit being filed in
 8 2015, did you or anybody under you undertake an
 9 analysis of how many employees that were being paid
 10 for retiree insurance costs were actually retired
 11 Water & Sewer employees?
 12 A Not a detailed analysis, no.
 13 Q Well describe the analysis that you did do.
 14 A Well, like I said, every year we do the update
 15 analysis. If something changed that would increase
 16 the water retiree portion of that, then that would
 17 be updated in the allocation.
 18 Q Well but what data would you have in front of you
 19 that would allow you to make those adjustments?
 20 A The retirements that had happened during the year
 21 or over the course of the year.
 22 Q Have you reviewed Ms. Kolar's deposition?
 23 A No.
 24 Q Are you familiar with what the data shows as to
 25 what the actual retiree health insurance costs are

1 for retired Water & Sewer employees?
 2 A I have not reviewed her deposition, no.
 3 Q No, have you become aware of what the data shows.
 4 A No.
 5 Q And have you in doing the cost allocation sheets
 6 for 15-16 and fiscal year 16-17 incorporated any
 7 new data into that analysis?
 8 A No.
 9 Q Is it still forty-two percent?
 10 A It's still forty-two percent.
 11 Q And upon what data does that judgment rest?
 12 A The forty-two percent?
 13 Q Yeah. That you've done for 15-16 and you're
 14 planning to do for 16-17.
 15 A So like I said, it's a culmination of years of
 16 obviously the retirees in the Water & Sewer Fund.
 17 So I'm not sure which data you received from
 18 Ms. Kolar, but I think what she would have given
 19 you is if they retired out of the Water & Sewer
 20 Department those employees and I'm not for sure
 21 because I haven't seen that data.
 22 Q We'll get into that.
 23 A Okay.
 24 Q But whatever that data shows, you didn't consult it
 25 in establishing the amount that was going to be

1 charged for retiree healthcare for the fiscal years
 2 15-16 and 16-17, isn't that true?
 3 A Correct.
 4 Q If you turn to I guess it's Page 4 of Exhibit 34,
 5 it's the one that has Table 1 at the top. In the
 6 middle of the page there's a paragraph that says
 7 governments should also regularly review their
 8 internal charge rates against actual experience for
 9 appropriate adjustments. Do you see that?
 10 A Yes.
 11 Q Would you agree with me that one of the things that
 12 if you wanted to review your internal charge rates
 13 for retiree healthcare against actual experience,
 14 one of the things you would need to do was take a
 15 look at what the actual costs were for retirees
 16 from Water & Sewer, correct?
 17 A Correct.
 18 Q And it's true, however, that you have not done
 19 that, correct?
 20 A Not a full detailed analysis, no.
 21 Q All right. And then if you turn to the preceding
 22 page at the bottom where it talks about deciding
 23 the basis of allocation, do you see that?
 24 A Um-hum.
 25 Q Yes?

1 A Yes.

2 Q Bullet Point 2 says benefit received. It says the

3 basis for allocation should bear a relationship to

4 the benefit the customer receives from the service.

5 Do you see that?

6 A Yes.

7 Q Do you agree with that statement?

8 A Yes.

9 Q And then the fourth bullet point says legal

10 constraints. State laws may place constraints on

11 how charges are developed. For example, if the

12 charge for providing a service exceeds the true

13 cost of the service, it could be construed as a tax

14 under the law. Do you see that?

15 A Yes.

16 Q Would you agree with that as well?

17 A Yes.

18 Q Are you aware of an association called The American

19 Waterworks Association?

20 A I've heard of that, yes.

21 Q Do you understand that they develop standards for

22 Water & Sewer utility rate-making?

23 A I understand that, yes.

24 (Document Marked for Identification as

25 Smith Deposition Exhibit Number 35)

1 BY MR. HANLEY:

2 Q Have you ever consulted them in making rates for

3 the City of Westland?

4 A No.

5 Q Let me show you what was marked as Exhibit 35.

6 This is the AWWA Policy Statement of Finance

7 Accounting and Rates and I'll ask you to review it

8 and then I just have a couple of questions about

9 it.

10 A Okay.

11 Q First of all are you familiar with Exhibit 35?

12 A I have not seen this Exhibit.

13 Q Okay. I just want to refer your attention to a

14 couple statements in the last paragraph and ask you

15 whether you concur with those statements.

16 The second sentence of the last paragraph

17 says water and wastewater utility funds should not

18 be diverted to uses unrelated to water or

19 wastewater utility services. Do you see that?

20 A Yes.

21 Q Do you agree with that statement?

22 A Yes.

23 Q And do you agree that if the rates are set in order

24 to accomplish that purpose of diverting the Water &

25 Sewer funds to unrelated services, that the rate

1 would be not reasonable.

2 A I'm not sure I understand what you're saying there.

3 Q Well, you've agreed that the Water & Sewer Fund

4 should not be diverted to uses unrelated to Water &

5 Sewer services, correct?

6 A Correct.

7 Q And so if a utility sets its rates at a level

8 sufficient to do that, the rates would not be

9 appropriate.

10 A Correct.

11 Q And the rates would be unreasonable.

12 A Would not be appropriate.

13 Q But would be unreasonable as well.

14 A Okay.

15 Q All right. Then the next sentence says reasonable

16 taxes, payments in lieu of taxes and payments for

17 services rendered to the utility by a local

18 government or other divisions of the owning entity

19 may be included in the utility's revenue

20 requirements after taking into account the

21 contribution for fire protection and other services

22 furnished by the utility to the local government or

23 to other divisions of the owning entity. Do you

24 see that?

25 A Yes.

1 Q Do you agree with that?

2 A I'm not sure I understand that.

3 Q Well, let's start with some basics. Your costs

4 allocation sheets allocate costs from General Fund

5 and perhaps other departments to the Water & Sewer

6 function, correct?

7 A Correct.

8 Q Do you agree that if the Water & Sewer function

9 provided services or support to General Fund

10 departments that that should also be recognized in

11 the cost allocations?

12 A I'm not sure what services they would provide that

13 would --

14 Q We'll get to that.

15 A Okay.

16 Q But do you agree it goes both ways? If there are

17 services provided from the Water & Sewer Fund to

18 other governmental departments, that those should

19 be accounted for in the cost allocations as well?

20 A Could go both ways, yes.

21 Q Would you agree with me that your cost allocations

22 don't go both ways?

23 A Not in this Exhibit, no.

24 Q Have you done it in any other way?

25 A No, not that I'm aware.

1 Q Well, let me just give you an example. It's my
 2 understanding that the DPW Director is paid from
 3 Water & Sewer.
 4 A I don't recall where exactly he's paid from.
 5 Q Well, you would agree with me that the DPW Director
 6 provides services to departments other than Water &
 7 Sewer.
 8 A Correct.
 9 Q And do those other departments contribute to his
 10 salary and benefits and compensation?
 11 A Like I said, I'm not sure his salary is a hundred
 12 percent in -- his salary gets charged a hundred
 13 percent to the Water Fund.
 14 Q But if it did, it would be appropriate to allocate
 15 that cost of his compensation among the various
 16 departments that he services.
 17 A If it did, yes.
 18 Q And the documents will show whether that's true,
 19 but you agree that it would be appropriate because
 20 he services other departments than just Water &
 21 Sewer.
 22 A Yes.
 23 Q Do you agree that the City's water supply system
 24 has a dual function?
 25 A Dual function, you have to explain.

1 Q Well, one of the functions is to provide fresh
 2 water for use by the inhabitants of the City,
 3 correct?
 4 A Correct.
 5 Q And the other function is to provide capacity and
 6 the infrastructure for firefighting purposes.
 7 A Fire hydrants, is that what you're talking about?
 8 Q Yes and associated infrastructure.
 9 A Correct.
 10 Q And the City incurs a cost to maintain and install
 11 and repair hydrants?
 12 A Yes.
 13 Q Is that quantified in any way in the budget for the
 14 Water & Sewer Fund?
 15 A There are line items for fire hydrants.
 16 Q And has there been any attempt to charge the
 17 General Fund for the cost associated with public
 18 fire protection, including hydrants?
 19 A Not that I'm aware of, no.
 20 Q Do you agree with the AWWA Policy Statement that
 21 the allocations of costs to the Water & Sewer Fund
 22 should also take into account the contribution for
 23 fire protection?
 24 A That's the first time I read this, so --
 25 Q I'm just asking whether you agree with it or not.

1 A If I agree with --
 2 Q With the statement that -- well, public fire
 3 protection is a service provided by Water & Sewer
 4 to the general public, correct?
 5 A Correct.
 6 Q And people get that service regardless of whether
 7 they actually have a Water & Sewer account.
 8 A Correct.
 9 Q And the AWWA Policy Statement says that yes, you
 10 can allocate General Fund costs to Water & Sewer,
 11 but you also have to allocate the value of the
 12 services provided by Water & Sewer back to the
 13 General Fund, correct?
 14 A Well, that's what it's saying. This is the first
 15 time I read this, so --
 16 Q All I'm asking you is whether you agree with what
 17 the AWWA says or you don't know whether you agree,
 18 or --
 19 A I don't know whether I agree.
 20 Q Okay. But in any event, there's no recognition in
 21 your cost allocations for the value of public fire
 22 protection.
 23 A Correct.
 24 Q And there's no recognition in your allocations for
 25 any services -- for the value of any services

1 provided by the Water & Sewer Fund back to the
 2 General Fund, correct?
 3 A Not that I'm aware of, no.
 4 Q Since the lawsuit's been filed, have your auditors
 5 been involved at all in assisting with your cost
 6 allocations?
 7 A Not that I'm aware of, no.
 8 Q We subpoenaed Plante Moran and they provided us
 9 with a single work paper for one year in which they
 10 tested one item of cost as to the reasonableness.
 11 Are you aware of any other attempts by your
 12 auditors to undertake an investigation or analysis
 13 of your cost allocations other than that?
 14 A I'm not even aware of that, so --
 15 Q But you don't as you sit here have any specific
 16 recollection of the auditors being involved at all.
 17 A We prepared -- they get a copy of this document
 18 when they come in to do our annual audit.
 19 Q Right.
 20 A What they do with it after that, I -- I do not
 21 know.
 22 Q But they've never come back to you and said we've
 23 tested this and you should adjust it in some way?
 24 A Not that I recall, no.
 25 Q It's my understanding that the retiree healthcare

1 is provided by -- the insurance is provided by
 2 three providers, is that correct?
 3 A I do believe so, yes.
 4 Q One of those is Blue Care Network?
 5 A Correct.
 6 Q And one of those is HAP?
 7 A Correct.
 8 Q And one of those is Blue Cross/Blue Shield.
 9 A Correct.
 10 Q And the Blue Cross/Blue Shield is by far the bulk
 11 of the expense.
 12 A Yes.
 13 Q I'm going to show you some documents that we marked
 14 in Ms. Kolar's deposition. First I'm going to show
 15 you Exhibit Number 24, which is a Blue Care Network
 16 Prepay Request that was processed by
 17 Ms. Kolar. Do you recognize the form of this
 18 document?
 19 A Yes.
 20 Q It's my understanding this is prepared on a monthly
 21 basis by Ms. Kolar in order to reconcile the
 22 payments that are being made to Blue Care Network.
 23 A Correct.
 24 Q And so for Water & Sewer retirees for the month of
 25 December, 2015, the City's expense was four

1 thousand, four hundred and ninety-three dollars and
 2 sixty-one cents. Do you see that?
 3 A That's what this document says, yes.
 4 Q Do you have any basis to quarrel with that?
 5 A Absolutely.
 6 Q Absolutely?
 7 A I mean four thousand dollars for Water & Sewer
 8 retirees for -- oh, this is Blue Care Network. I
 9 thought this was Blue Cross, I apologize.
 10 Q We'll get to Blue Cross.
 11 A Okay.
 12 Q But you don't have any basis to quarrel with the
 13 fact that the payment to Blue Care Network for the
 14 month of December, 2015 was four thousand, four
 15 hundred and ninety-three dollars?
 16 A No. That's what it says.
 17 Q Let me show you what we've marked as Exhibit Number
 18 23, which Ms. Kolar told me was the same prepay
 19 check request for December, 2015 for Health
 20 Alliance Plan, also known as HAP. And are you
 21 familiar with the form of this document?
 22 A Yes.
 23 Q And you'd agree with me that this shows that the
 24 payment to HAP for Water & Sewer retiree insurance,
 25 health insurance was eleven thousand, forty-three

1 dollars and seventy-two cents.
 2 A That's what this shows, yes.
 3 Q And do you have any basis to quarrel with it?
 4 A I haven't seen where or how she came -- derived at
 5 the number, so it's not that I quarrel with it, but
 6 I don't necessarily would agree with it until I can
 7 see how she came up with the numbers.
 8 Q All right. But have you ever questioned her in the
 9 past?
 10 A On?
 11 Q When she did this reconciliation did you say oh
 12 this is wrong or change this?
 13 A No.
 14 Q So you've relied upon her to accurately do these
 15 reconciliations, correct?
 16 A She does the -- she does the -- yes, she prepares
 17 this.
 18 Q And you have no basis as you sit here today to
 19 question whether the eleven thousand forty-three
 20 dollars is incorrect.
 21 A I wouldn't say it's incorrect, no.
 22 Q Then I want to show you finally Exhibit 25 which
 23 Ms. Kolar said was the billing reconciliations for
 24 the Blue Cross/Blue Shield for the period of March,
 25 2015 through December, 2015. Are you familiar with

1 the form of Exhibit Number 25?
 2 A Yes.
 3 Q If you look at the first page of the
 4 reconciliation, March, 2015, you'd agree with me
 5 that there's no column or line item for Water &
 6 Sewer retirees.
 7 A I would agree.
 8 Q And if you turn to the one for July, 2015, there is
 9 a line item for Water & Sewer retirees, correct?
 10 A Correct.
 11 Q And that line item that began in July of 2015 is
 12 included in each of the sheets through December,
 13 2015, correct?
 14 A Correct.
 15 Q And the amount that is attributable to Water &
 16 Sewer retirees for December, 2015, which is the
 17 last page is thirty-three thousand, four hundred
 18 and eighteen dollars.
 19 A Correct.
 20 Q And do you have any reason to believe that that is
 21 an incorrect computation?
 22 A Again, I don't know how she prepared this, so I'm
 23 not going to agree to her computation. Like I said
 24 earlier, I do believe she looks at the costs when
 25 the employee retires. If they retired out of Water

1 & Sewer then she -- she puts the costs as charged
 2 to Water & Sewer.
 3 Q All right. But until today, you haven't gone back
 4 and determined whether she was right or wrong,
 5 correct?
 6 A We do our allocation on the allocation schedule.
 7 These costs that you see here for Water retirees do
 8 not get charged to the Water Fund, they go through
 9 the General Fund. So it's all the same cost center
 10 until the allocation.
 11 Q I understand, but your allocation is an attempt to
 12 recapture that cost that the General Fund pays,
 13 correct?
 14 A And I think our allocation is a lot more detailed
 15 than what she does here.
 16 Q Your allocation in Exhibit 2 is more detailed than
 17 what I just presented to you, Exhibits 23 through
 18 25?
 19 A What's behind this is more detailed. Alls you see
 20 here are the numbers that are associated --
 21 Q Where's the detail?
 22 A Pardon me?
 23 Q We're a year into this case. Where's the detail?
 24 A Well, I'll give you -- okay. So just for example
 25 like I said, she takes the retirees if they retire

1 out of the Water & Sewer Fund, that's where their
 2 retirement gets charged. That's where she puts the
 3 line item there.
 4 Q Okay. And you told me -- and you told me --
 5 A Can I finish?
 6 Q Well, sure.
 7 A You can go, go ahead.
 8 Q Well, you told me in your first deposition under
 9 oath that that line item in your allocation sheet
 10 was intended to reflect the costs the City incurs
 11 for retirees from the Water & Sewer Department or
 12 Water & Sewer Fund. Do you remember that
 13 testimony?
 14 A That is correct.
 15 Q Okay. So Ms. Kolar testified in her deposition
 16 that Exhibits 23 through 25 are her reconciliation
 17 of those same employees, those same retired
 18 employees, correct?
 19 A Retirees that retired out of the Water & Sewer
 20 Fund, yes.
 21 Q Okay. And that monthly cost, there's no other
 22 insurance carriers other than the ones that we've
 23 talked about, correct?
 24 A I do believe so, yes.
 25 Q All right. That monthly cost that we just did for

1 December, 2015 is forty-eight thousand, nine
 2 hundred and fifty-four dollars, okay. Annualized
 3 that's five hundred and eighty-seven thousand
 4 dollars.
 5 A That's according to her schedules.
 6 Q That's according to her schedule.
 7 A Okay. If you're asking me to agree with your math,
 8 okay, that's fine.
 9 Q But in your allocation for 14-15 you've allocated
 10 one million, three hundred seventy-five thousand to
 11 the Water & Sewer Fund, correct?
 12 A Correct.
 13 Q And in light of -- you now understand, a year into
 14 this case, that one of the major things that we're
 15 complaining about is that you are overcharging the
 16 Water & Sewer Fund for retiree healthcare expenses.
 17 You understand that's our allegation.
 18 A Correct. I knew that.
 19 Q Have you personally investigated at any time prior
 20 to today whether Ms. Kolar's calculations should
 21 require an adjustment in what you're charging Water
 22 & Sewer?
 23 A I don't look at Ms. Kolar's what she says are the
 24 retirement costs for each individual insurance
 25 company. So those all go -- like I said, those do

1 not get charged to the Water & Sewer Fund even
 2 though she may have separated it out. Those do not
 3 get charged to the Water & Sewer Fund.
 4 Q No, they get charged to the General Fund and then
 5 it's part of what you allocate back to Water &
 6 Sewer.
 7 A Correct.
 8 Q All right. So her data is showing that the cost in
 9 December of 2015 for that expense was five hundred
 10 eighty-seven thousand dollars, correct?
 11 A Correct.
 12 Q And your allocation for that same time period is
 13 one million, three hundred and seventy-five
 14 thousand dollars, correct?
 15 A Correct.
 16 Q More than double what her data shows.
 17 A Correct.
 18 Q And through today, you've not adjusted your cost
 19 allocations in any way to reflect the data that
 20 Ms. Kolar has compiled, correct?
 21 A Correct. And like I said, she looks at when they
 22 retire if they're in the Water & Sewer Fund, that's
 23 where she charges that to. It could have been they
 24 worked in the Highway Maintenance Department for
 25 twenty years of their career and the last five are

1 Water & Sewer, but --

2 Q But that would itself be an over-allocation then,

3 wouldn't it?

4 A Exactly. Absolutely.

5 Q All right. But where is the data that contradicts

6 her?

7 A So this calculation is based on --

8 Q You're pointing to Exhibit Number 2.

9 A Exhibit Number 2.

10 Q Okay.

11 A This is based off of the allocation, and I'll give

12 you an example. In Finance, we used to have three

13 water billing clerks that their salary was charged

14 a hundred percent to the Water & Sewer Fund, so

15 what Ms. Kolar doesn't have on her sheet are their

16 retirement costs because when they worked in the

17 Finance Department and their salaries got charged

18 to Finance, really should have been an allocation

19 of Water & Sewer.

20 Q Yeah, but you've never done that allocation. You

21 have no idea what the outcome of that allocation

22 would be, correct?

23 A That's what this is. The one point three million

24 is not just Water & Sewer retirees when they

25 retired out of the Water Fund, it's everybody, the

1 cost for everybody --

2 Q Yeah, I know it's everybody, that's the problem.

3 Where is the document that you could show me that

4 says we justify our forty-two percent calculation

5 by virtue of these calculations?

6 A Okay. Like I said, there was a document when this

7 originally was prepared back in the time that

8 showed --

9 Q Twelve years ago.

10 A Yeah, that document.

11 Q And just roll with that, right?

12 A We've taken that original and moved it forward,

13 correct.

14 Q If there was such a document, that document has

15 never been given to us, correct?

16 A Correct.

17 Q And have you looked for that document?

18 A Absolutely when -- but it wasn't found, so --

19 Q Well, have you ever -- what you're saying to me now

20 is that Ms. Kolar's calculation might understate

21 the retiree healthcare costs for Water & Sewer

22 because the Water & Sewer function is supported by

23 other employees who should be allocated some

24 portion of their retiree healthcare benefits to

25 Water & Sewer.

1 A Not might understate, it does understate.

2 Q Yeah. But my point is you don't know how much it

3 understates if at all because you've never done a

4 calculation.

5 A We've done a calculation.

6 Q Where is it?

7 A I said this was done years ago, so --

8 Q Years ago.

9 A Yeah.

10 Q Twelve years ago. How is that relevant now?

11 A Because those costs don't change obviously, they

12 move forward. And if someone else retires, you

13 know --

14 Q What if they died?

15 A Then obviously we don't charge -- we don't pay

16 their healthcare if they die unless we pay for the

17 spouse, we would pay their healthcare, but -- so it

18 changes, you know.

19 Q It changes, right.

20 A Yeah, it changes.

21 Q That's why you have to review it every year against

22 actual experience, right? That's what the GFOA

23 says. And now you're saying we don't do anything.

24 We're just relying upon something we did in 2004

25 based upon a document that we can't find and that

1 we can establish.

2 A I never said that, so --

3 Q But I'm saying it.

4 A You're saying it.

5 Q Is it true?

6 A You can say it.

7 Q You're relying upon a document, an alleged document

8 that doesn't exist and has never been produced to

9 us, correct?

10 A Never been produced to you, right, that's correct.

11 Q All right. And now that you know that we're

12 claiming millions of dollars has been overcharged,

13 have you deputized somebody or done it yourself to

14 go back and look at the data to support what you're

15 now saying?

16 MR. PELLAND: I'm going to object because

17 asking if he did it in the ordinary course of

18 business, doing it at the request of an attorney is

19 going to be a different --

20 MR. HANLEY: Well let's get the answer to the

21 question and then we'll find out whether --

22 BY MR. HANLEY:

23 Q Has it been done?

24 A Has what been done?

25 Q Has an analysis been done to support what you say

1 is the appropriate retiree health insurance cost
 2 allocated to Water & Sewer.
 3 THE WITNESS: Can I answer?
 4 MR. PELLAND: You can answer that question.
 5 THE WITNESS: That has been done --
 6 MR. PELLAND: It's a yes or no question
 7 though.
 8 THE WITNESS: Yes. Yes.
 9 BY MR. HANLEY:
 10 Q And it's been done only in response to the
 11 litigation, correct?
 12 A Yes.
 13 Q And it was never done at any time prior.
 14 A It was done prior. I said this goes back a number
 15 of years when it was done.
 16 Q All right. Other than this alleged thing that
 17 happened in 2004 that we can never find out about
 18 because nothing exists to support it, there
 19 certainly wasn't an annual effort to actually look
 20 at the data and determine what the appropriate
 21 charge for Water & Sewer retiree healthcare costs
 22 should be.
 23 A There were modifications during certain years done.
 24 So it was looked at.
 25 Q And where are the documents that show how it was

1 revised other than the allocation sheets
 2 themselves?
 3 A You can see them on the allocation sheets. If the
 4 percentage goes up, then the number of retirees
 5 went up.
 6 Q Okay. But again, there's no documents.
 7 A Other than the physical actual retirements.
 8 Q Has the City compiled a number since the lawsuit
 9 has been filed that it believes is the appropriate
 10 charge for retiree healthcare to Water & Sewer?
 11 MR. PELLAND: I'm going to object. That's
 12 work product.
 13 MR. HANLEY: Well, I assume you're going to
 14 present it at trial. How can it be work product?
 15 It's evidence. I mean just because you did it in
 16 response to litigation doesn't mean it's work
 17 product.
 18 MR. PELLAND: He did it at our request, yeah.
 19 I think it is work product, the actual number.
 20 MR. HANLEY: All right. I'll accept that.
 21 Good luck presenting it at trial then.
 22 Are you refusing to answer any questions
 23 about the calculation that's been done?
 24 MR. PELLAND: I'm not refusing to answer any
 25 underlying -- the facts that went into it. You're

1 asking for what the ultimate outcome of the
 2 analysis was, but not withholding any of the
 3 underlying facts or documents or anything that
 4 supported it. You can ask about any of that.
 5 BY MR. HANLEY:
 6 Q How many employees are factored into it, how many
 7 retired employees?
 8 A I don't recall the actual number of retirees.
 9 Q How many employees that were not actually Water &
 10 Sewer employees at the time they retired were
 11 included in the analysis?
 12 A I don't recall the exact number of employees that
 13 were included.
 14 Q What is the dollar magnitude of the charge relating
 15 to non-Water & Sewer employees that you included in
 16 the analysis?
 17 A When you say non-Water & Sewer employees, I'm not
 18 sure --
 19 Q The ones that didn't retire out of the Water &
 20 Sewer Department.
 21 A That we included?
 22 Q Yep.
 23 A What's the magnitude of the cost?
 24 Q Yeah.
 25 A I don't recall the exact number. I don't remember

1 the exact number.
 2 Q All right. And in order to do this did you
 3 actually go back and -- describe for me the
 4 exercise that was involved.
 5 A The records were obtained from Personnel were the
 6 employees -- the General Government employees that
 7 worked and based on the number of months I'll use
 8 -- let me see if I can give you an example. In the
 9 allocation schedule if there's a percentage -- if
 10 they worked in the Finance Department and there's a
 11 percentage associated with that, then if they
 12 worked five years in the Finance Department, we
 13 would take the five years of their retirement,
 14 times it by the appropriate percentage and come up
 15 with the number.
 16 Q Are you talking about three additional employees,
 17 are we talking about a hundred additional
 18 employees?
 19 A No, there's more than three and I'm not sure --
 20 Q How many are there?
 21 A I don't -- I answered that before. I don't recall
 22 the exact number. It's more than three.
 23 Q Is it less than ten?
 24 A It's not less than ten. It's more than ten. It's
 25 a substantial amount of employees. I don't recall

1 the exact number.

2 Q Did you allocate all of their costs?

3 A It depends where they worked and how long they

4 worked there. Like I said, the example I'll give

5 you in the -- in the Finance Department if they

6 were in the water billing and we allocate a hundred

7 percent of their salary back to Water, because

8 that's what they do, and they worked twenty-five

9 years doing that, then their total retirement cost

10 would be charged back to Water. But Nicole

11 wouldn't have that on her sheet because they didn't

12 retire out of Water & Sewer, they retired out of

13 Finance.

14 Q All right. So now I just have to guess at what the

15 difference is, is that what you're saying?

16 A I'm not saying you have to guess.

17 Q Well, what is it?

18 A I don't know, I said. I already answered the

19 question. I don't know what the -- I don't know

20 the exact answer that you're looking for.

21 Q In your prior deposition you told me under oath

22 that that line item, the one point three seven five

23 million dollars was intended to represent the

24 healthcare cost of retired Water & Sewer employees.

25 Are you now changing your testimony?

1 A Okay. It represents the cost of the retirement

2 healthcare for employees. If they worked in the

3 Water & Sewer Department for part of their career,

4 then part of their retirement healthcare would get

5 charged. And that's been the basis of this since

6 day one. So that hasn't changed any.

7 Q All right. So you did this analysis, right? Why

8 did you have to do the analysis now?

9 A The analysis --

10 Q Why couldn't you go back and get the analysis that

11 you had been doing along with this?

12 A Well just like you said, I said it's been carried

13 forward and no detailed analysis has been done to

14 verify the number.

15 Q But did you do the analysis of how many people

16 retired in the Water & Sewer Department but had

17 spent twenty years before that in the Highway

18 Maintenance Department?

19 A Absolutely.

20 Q So these allocations --

21 A It goes both ways.

22 Q It goes both ways.

23 A Yes.

24 Q And where's the data?

25 A Well, like I said, the original data that was done

1 back in the year, that wasn't available. So now

2 over the years obviously we've estimated it and now

3 we're taking a deeper look into it obviously.

4 Q That deeper look, when did that start?

5 A That started recently.

6 Q Is it ongoing or has it been completed?

7 A It's not complete yet because we go back a number

8 of years.

9 Q Are you being assisted by outside professionals?

10 A No.

11 MR. HANLEY: Why don't we take a short break.

12 VIDEO TECHNICIAN: Off the record 10:01.

13 (Whereupon a short break was taken)

14 VIDEO TECHNICIAN: Back on the record 10:17.

15 BY MR. HANLEY:

16 Q Mr. Smith, we took a break and we were talking

17 about getting some additional production of the

18 allocation sheets similar to Exhibit Number 2. I

19 think I now understand that there is one for fiscal

20 year 15-16 which is in the process of being

21 processed and will be produced to us here in the

22 deposition, is that correct?

23 A Correct.

24 Q But that there is not one in existence for fiscal

25 year 16-17, is that correct?

1 A Not that we could find at this point.

2 Q Would it be fair to say that if -- well, let me ask

3 a more basic question.

4 Documents like Exhibit 2, are they

5 typically prepared earlier than the approval of the

6 new Water & Sewer rates for the budget?

7 A That's part of the analysis, yes.

8 Q In other words, the cost allocation sheets are part

9 of the budgeting process so they're not prepared

10 after the fact.

11 A Correct.

12 Q And so Exhibit 2 that's for fiscal 14-15 would have

13 been created prior to -- some time prior to July

14 1st, 2014.

15 A Correct.

16 Q And the one for '15 and '16 that we're going to

17 receive would have been created before July 1st,

18 2015.

19 A Correct.

20 Q And probably months earlier.

21 A Correct.

22 Q And would it be fair to say that whatever the cost

23 allocations were for fiscal year 16-17, they were

24 based upon the data that had been put into a cost

25 allocation sheet for fiscal year 15-16.

1 A That is correct.

2 Q So the 15-16 cost allocations are the same as the

3 allocations for fiscal year 16-17.

4 A The total amount is the same, yes.

5 (Document Marked for Identification as

6 Smith Deposition Exhibit Number 36)

7 BY MR. HANLEY:

8 Q Right. Okay. We have sent some Interrogatories to

9 the City, I just have a couple questions because

10 there's some things that appear to be incomplete.

11 I've marked them as Exhibit 36, Defendant

12 City of Westland's Responses to Plaintiff's Second

13 Set of Interrogatories and Second Document Request.

14 Take a minute to look through it. My first

15 question is whether you're familiar with these

16 Interrogatory Responses.

17 A Yes.

18 Q And you played a part in compiling these responses?

19 A In part, yes.

20 Q Do you know off the top of your head which

21 information you were responsible for providing?

22 A I would have to read through the whole document to

23 see. I'm sure it's a mix of something I provided

24 and I think the Budget Director would have

25 responded.

1 Q That would have been Ms. Peck?

2 A Yes.

3 Q Okay. I'll just refer you to a few of these. If

4 you turn to Page 17, Interrogatory Number 8. It

5 says identify all building structures and

6 properties that are included within the City Hall

7 grounds expense set forth in Deposition Exhibit

8 Number 2. Do you see that?

9 A Yes.

10 Q And the response appears to be incomplete. It says

11 Building structures and properties included within

12 City Hall and grounds and then it just stops. Do

13 you see that?

14 A Yes.

15 Q Do you know what building structures and properties

16 are included within the City Hall Grounds expense

17 that's part of Exhibit Number 2?

18 A Are you asking which buildings does the City Hall

19 and Grounds on the allocation schedule include?

20 Q Yeah.

21 A It's a majority City Hall and there may be the old

22 City Hall in there as well for the utilities. I'd

23 have to check.

24 Q Well, I guess what I'm saying is I understand

25 there's a separate cost allocation for the DPS

1 Building Garage, correct?

2 A Correct.

3 Q And then there's a separate cost allocation for

4 City Hall Grounds, correct?

5 A Correct.

6 Q Are there other City buildings or grounds that the

7 City incur expenses for other than the ones we've

8 identified here?

9 A That are included in the water allocation?

10 Q No, that are included in the overall City Hall

11 Grounds expense for the City.

12 A Like I said, the building that's the City Hall and

13 Grounds would be City Hall, not the DPS Building in

14 that line item.

15 Q Well how does the City pay for maintenance and

16 utilities and repairs to other buildings and

17 structures other than City Hall and the DPS

18 Building Garage?

19 A They have their own line items within their own

20 budget to pay for their own building.

21 Q Okay. For example like the library, would they

22 have a separate line item --

23 A Correct.

24 Q Okay. So as far as you know the City Hall and

25 Grounds Expense definitely includes the new City

1 Hall and it may include some expenses associated

2 with the old City Hall.

3 A Correct.

4 Q Is the old City Hall still being utilized?

5 A No.

6 Q Is it being demolished?

7 A It has been demolished already.

8 Q My understanding is with respect to the City Hall

9 in prior years the Water & Sewer Department

10 occupied about thirteen percent of the total space?

11 A Correct.

12 Q And now because you have a bigger City Hall the

13 size of the Water & Sewer occupied space is a

14 smaller percentage?

15 A Correct.

16 Q And as I understand from Exhibit Number 2, it's

17 approximately three percent of the size of the

18 current City Hall?

19 A Correct.

20 Q So when you allocated rent expense to Water & Sewer

21 for the City Hall and building insurance, you

22 allocated based upon the percentage of square

23 footage that was occupied by the Water & Sewer

24 Department, correct?

25 A Correct.

1 Q And that's an appropriate allocation methodology as
2 you understand it, correct?
3 A Correct.
4 Q But when you got around to allocating the actual
5 expense of the City Hall Grounds, you ended up
6 allocating twenty-five percent to the Water & Sewer
7 Department, correct?
8 A Twenty-five percent of the line items within the
9 City Hall and Grounds account.
10 Q So you allocated twenty-five percent of the
11 operating supplies to Water & Sewer, correct?
12 A Correct.
13 Q You allocated twenty-five percent of the
14 maintenance expenses for City Hall Grounds to Water
15 & Sewer, correct?
16 A Correct.
17 Q You allocated twenty-five percent of professional
18 services for the City Hall Grounds to Water &
19 Sewer, correct?
20 A Correct.
21 Q You allocated twenty-five percent of the utilities
22 for the City Hall Grounds to Water & Sewer,
23 correct?
24 A Correct.
25 Q You allocated twenty-five percent of the repairs to

1 the City Hall Grounds to the Water & Sewer,
2 correct?
3 A Correct.
4 Q You allocated twenty-five percent of the leases and
5 rentals associated with the City Hall Grounds to
6 the Water & Sewer, correct?
7 A Correct.
8 Q And you allocated twenty-five percent of the
9 communications expenses for the City Hall Grounds
10 to the Water & Sewer Fund, correct?
11 A Correct.
12 Q And what was the basis -- on what grounds did you
13 conclude it was appropriate to allocate twenty-five
14 percent of these costs to Water & Sewer when Water
15 & Sewer only occupied three percent of the space?
16 A They may only -- okay. The three percent of the
17 space, one, I'm not sure where that three percent's
18 coming from, but two is just because they don't
19 occupy the space doesn't mean they don't use these
20 line items more frequently. So Water & Sewer is a
21 big part of the City Hall operations.
22 Q Well in what way? I thought you said they only
23 occupied three percent of the space.
24 A I just said I don't know where the three percent
25 came from.

1 Q Well, you'd agree with me that operations and
2 maintenance expenses for a building should be
3 allocated to various departments based upon their
4 percentage of square foot in the same way that
5 you've allocated rent and insurance, correct?
6 A Correct.
7 Q So if indeed it turns out that the Water & Sewer
8 Department occupies three percent or ten percent or
9 some amount significantly lower than twenty-five
10 percent, then it would not have been appropriate to
11 allocate twenty-five percent of the operations and
12 maintenance expenses of the City Hall to Water &
13 Sewer.
14 A And I'm not saying that the percentage of occupancy
15 is only three percent, so --
16 Q Right. I'm saying if it is, which your sheet says
17 it is, then it's inappropriate to allocate twenty-
18 five percent.
19 A I'd have to see where it shows three percent.
20 Q Well, if you go to the first page it says City Hall
21 Building, sixty-four thousand square feet. That is
22 in fact the size of the new City Hall, correct?
23 A That is correct.
24 Q All right. And it says Water Department is
25 eighteen hundred and thirty square feet. Do you

1 see that?
2 A Okay. There's -- that sixty-four thousand actually
3 -- this was updated to the new City Hall, but the
4 eighteen hundred and thirty square foot has not
5 been updated to the new City Hall.
6 Q All right. And so what should it be?
7 A I'd have to go back. I don't recall off the top of
8 my head, but that's what it was in the old
9 building. It was calculated out.
10 Q So in order to be twenty-five percent of the new
11 City Hall, their square footage would have to go
12 from eighteen hundred and thirty to sixteen
13 thousand, correct?
14 A Sure.
15 Q You're not going to tell me that the Water & Sewer
16 Department occupies sixteen thousand square feet in
17 the new City Hall, are you?
18 A I didn't say that.
19 Q Do you have an idea?
20 A I don't have an idea. I don't recall off the top
21 of my head what that number is.
22 Q What you didn't do though is in compiling this
23 sheet there's a material difference in the City
24 Hall Grounds Expense between three percent and
25 twenty-five percent, correct?

1 A Absolutely.

2 Q But you didn't go back because you don't know even

3 as you sit here today what that twenty-five percent

4 should be based upon a square footage occupied,

5 correct?

6 A Correct.

7 Q And if they actually only occupy five percent or

8 ten percent, it would be appropriate to adjust that

9 down to reflect that square footage.

10 A Well, this -- the sixty-four thousand square feet

11 wouldn't have even -- shouldn't have even been on

12 this sheet because we didn't move into the new City

13 Hall until after this was already completed, so it

14 may have been an error going back and putting that

15 in.

16 Q Well, when did you move in?

17 A We moved in approximately a year and a half ago.

18 September of '14.

19 Q So for three months you weren't in that building.

20 A Right.

21 Q But this sheet would have covered that, the bulk of

22 that period, correct?

23 A Right.

24 Q But in any event, have you updated the ones for '15

25 and '16 and '16 and '17?

1 A I don't recall if that's been updated for square

2 footage.

3 Q And we'll get that information, but I just want to

4 make sure we agree on one thing which is the City

5 Hall Grounds Expense is properly allocable based

6 upon square footage occupied, correct?

7 A We base the rent on the square foot occupied, yes.

8 Q Right. But it's also appropriate to base the

9 operating expenses, maintenance, utilities, repairs

10 on that square footage as well.

11 A Well, no, I don't agree with that.

12 Q And you don't agree with it because you think you

13 have to do an analysis of how much Maintenance the

14 Water & Sewer Department actually uses out of the

15 total Maintenance?

16 A I think the percentages are there, so --

17 Q But what are the percentages based on?

18 A The percentage is where -- the eighteen hundred and

19 thirty square foot is where somebody sat that was a

20 hundred percent charged to Water, but that -- in

21 the old City Hall. And their storage space that

22 they took up for water bills or paid receipts or

23 what have you.

24 So now that we're in the big City Hall,

25 there's more people that have a hand in Water, so

1 the square footage, you know, you can't attribute

2 to just one person's desk anymore. You have to

3 look at everything.

4 Q All right. But you haven't looked at everything,

5 right?

6 A Well, I don't recall what that number is.

7 Q Well, you got twenty-five percent for Water. On

8 the same sheet that shows that Water & Sewer

9 occupies three percent of that same building that

10 you're allocating expense for. How did you come up

11 with the twenty-five percent?

12 A One, the three percent, like I said, that sixty-

13 four thousand is the new City Hall. So this sheet

14 would have been prepared prior to us moving into

15 the new City Hall.

16 Q All right. But it reflects you using the new City

17 Hall at sixty-four thousand square feet. It's your

18 document, right? I didn't put these numbers in

19 here, right?

20 A I think I said the sixty-four thousand probably was

21 put in error there on the document. So this

22 document would have been prepared from the old City

23 Hall still.

24 Q All right. But the old City Hall wasn't sixty-four

25 thousand square feet.

1 A That's what I said. This is --

2 Q And you only occupied the old City Hall for three

3 more months.

4 A Yeah, but when this document was prepared, we

5 didn't know exactly the move-in date. That was a

6 target. We didn't know what that date was. So we

7 prepared this document based on the old City Hall.

8 Q But you're missing my question. My question is --

9 I'll accept all that. How did you come up with the

10 twenty-five percent?

11 A Because that's what, you know, that's the estimate

12 of what the resources that they use.

13 Q And what's that estimate based upon? Where's the

14 document?

15 A It's based on everyday activity in the Water &

16 Sewer Finance Department.

17 Q So they use a disproportionate amount of

18 maintenance, they use a disproportionate amount of

19 utilities, they use a disproportionate amount of

20 operating supplies. Is that what you're telling

21 me?

22 A No, I'm telling you basically the square footage

23 was calculated using somebody's area that was

24 charged a hundred percent to Water & Sewer. That

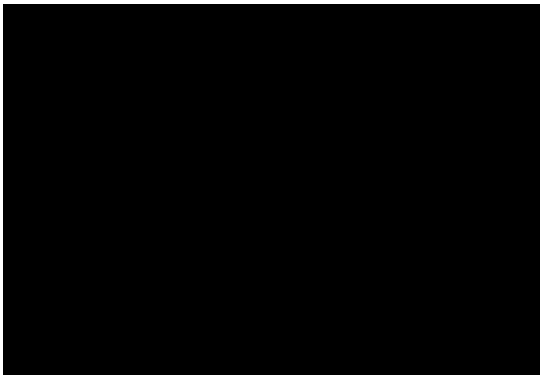
25 square footage did not take into account the other

1 areas within City Hall that the Water touched upon.
 2 So for example, if a cashier's processing Water
 3 payments, she's taking up space, but that's not
 4 included in the square foot, but it is included in
 5 the maintenance portion of it -- or the supply
 6 portion of it.
 7 Q Where is the calculation of that?
 8 A It's right here. It's twenty-five percent.
 9 Q Okay. I understand that's the end process of a
 10 calculation. That may be just I'm going to
 11 allocate twenty-five percent. I'm asking and a
 12 year into this case, is there a document where
 13 somebody did what you're saying is done? Oh, well,
 14 we have this much square space -- square footage
 15 that's actually occupied by Water & Sewer, but we
 16 have all these other employees that are dotted
 17 around the building that we're going to allocate
 18 some of their space to. Where is that document?
 19 A Not their space, the cost of the supplies and
 20 everything that they use, yes. I don't recall the
 21 document with that.
 22 MR. PELLAND: Just to help answer his
 23 question, I think his question is is there a
 24 document that has that calculation?
 25 MR. HANLEY: Yes.

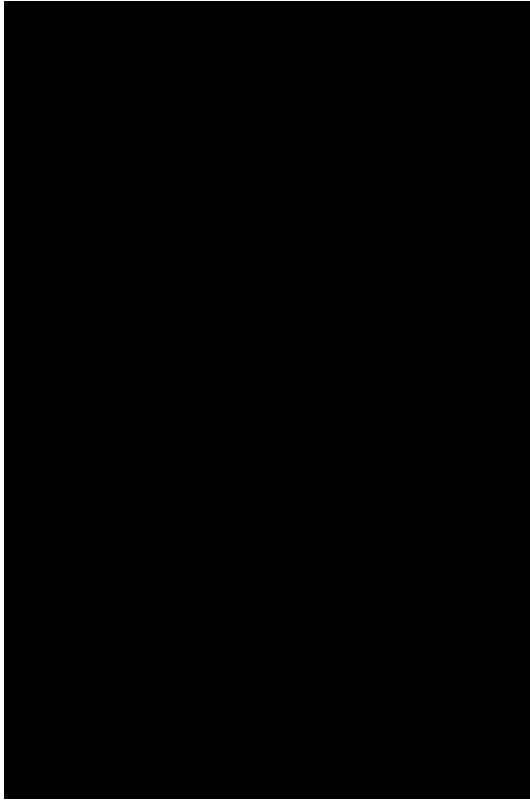
1 THE WITNESS: No. No.
 2 BY MR. HANLEY:
 3 Q Are you aware that one of the complaints that we
 4 have in the case is that the City is allocating too
 5 much of what's called municipal risk reserves
 6 expense to the Water & Sewer Department?
 7 A Yes.
 8 Q Did you become aware at any time that -- and you'd
 9 agree with me that the major part of that expense
 10 is the amounts that are paid on an annual basis to
 11 the MMRMA?
 12 A Correct.
 13 Q Did you become aware that we had subpoenaed the
 14 MMRMA to get their premium breakdown?
 15 A Yes.
 16 Q And did you review and analyze those premium
 17 breakdowns once they were received?
 18 A I have not done a detailed analysis of that.
 19 Q But did you understand that we wanted the premium
 20 breakdown so that we could make a better judgment
 21 as to how much of the total municipal risk reserve
 22 expense should be allocated to Water & Sewer?
 23 A Yes.
 24 Q Do you know whether anybody's done an analysis as
 25 to whether your MMRMA allocation to Water & Sewer

1 should be revised?
 2 A Not that I'm aware of.
 3 (Document Marked for Identification as
 4 Smith Deposition Exhibit Number 37)
 5 BY MR. HANLEY:
 6 Q I'm going to show you what I've marked as Exhibit
 7 37. First of all, in Exhibit 2 your municipal risk
 8 reserve cost that you're allocating to Water &
 9 Sewer expressly does not include building
 10 insurance, correct? On the second page of Exhibit
 11 2. I just want to make sure we're having an apples
 12 to apples comparison.
 13 A I'm not sure if that includes building insurance.
 14 Q Well, no. It says not including building
 15 insurance.
 16 A Oh, okay.
 17 Q So building insurance is backed out of that one
 18 million, five hundred dollar number -- one million,
 19 five hundred thousand dollar number, correct?
 20 A I am not sure of that actually. I know what it
 21 says, but I'm just not sure.
 22 Q Well, the reason I'm assuming that's true is
 23 because if you look up to DPS Building Garage,
 24 there's a separate allocation for building
 25 insurance for the DPS Garage, correct?

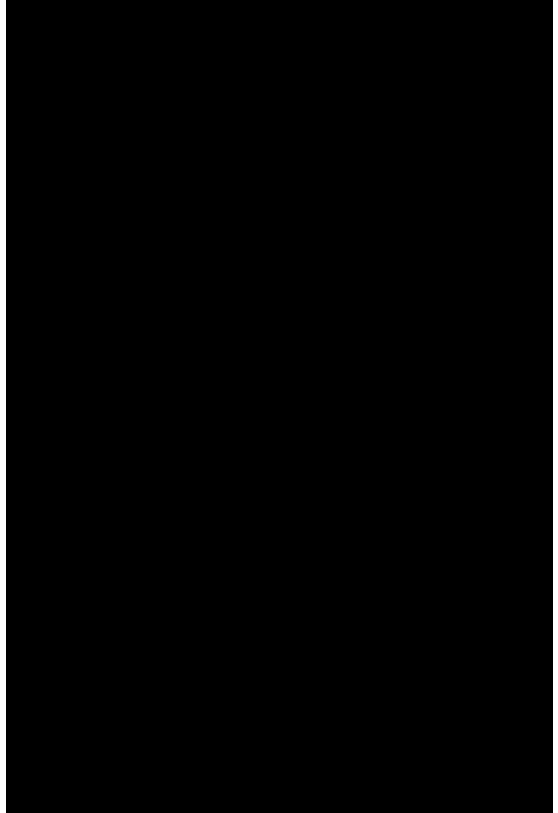
1 A Correct.
 2 Q And on the City Hall building there's a separate
 3 allocation for the insurance on the City Hall
 4 building, correct?
 5 A Correct.
 6 Q So it would be reasonable for me to assume that
 7 whatever's in that one million, five hundred
 8 thousand dollars doesn't include building insurance
 9 at least on those particular places, correct?
 10 A Like I said, I'm not positive on that, so --
 11 Q Well, if the municipal risk reserves expense
 12 included building insurance, there would be a
 13 partial double dip in your allocations, correct?
 14 A If it included, yes.



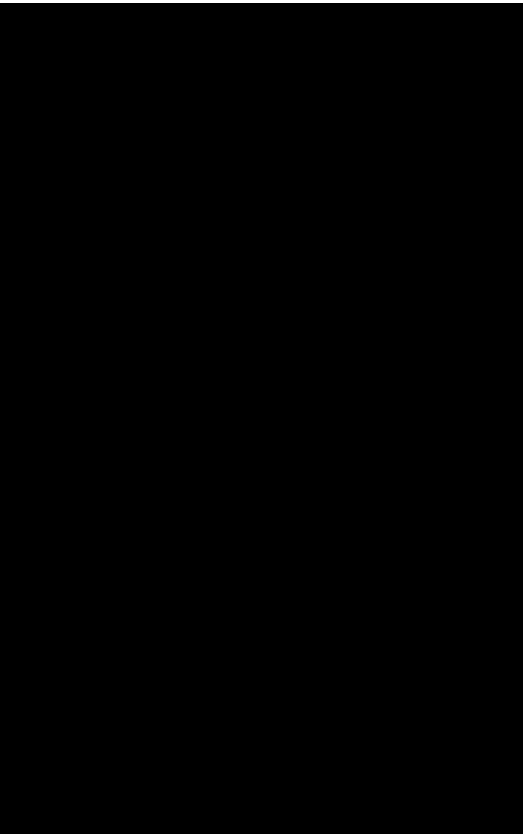
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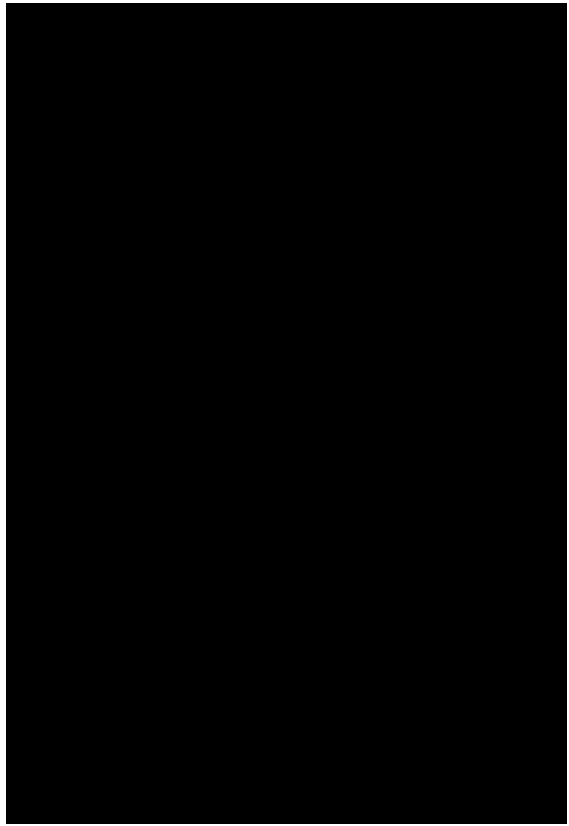
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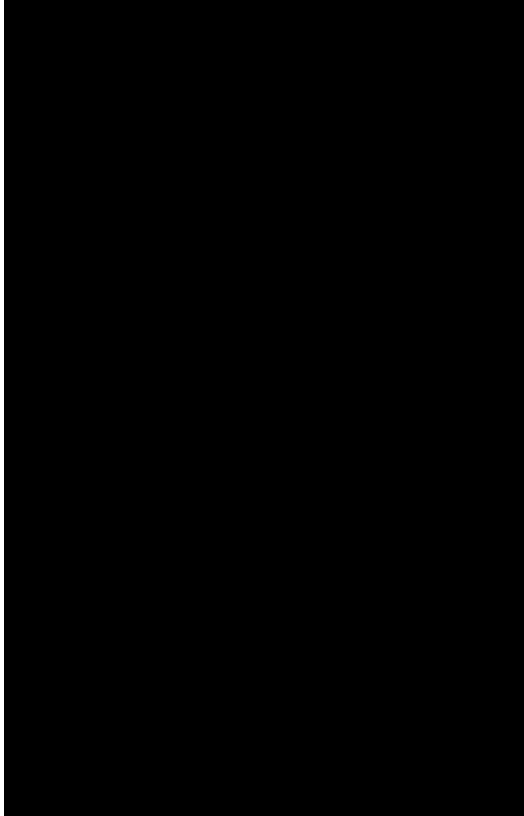
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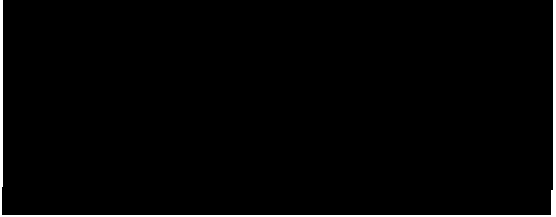
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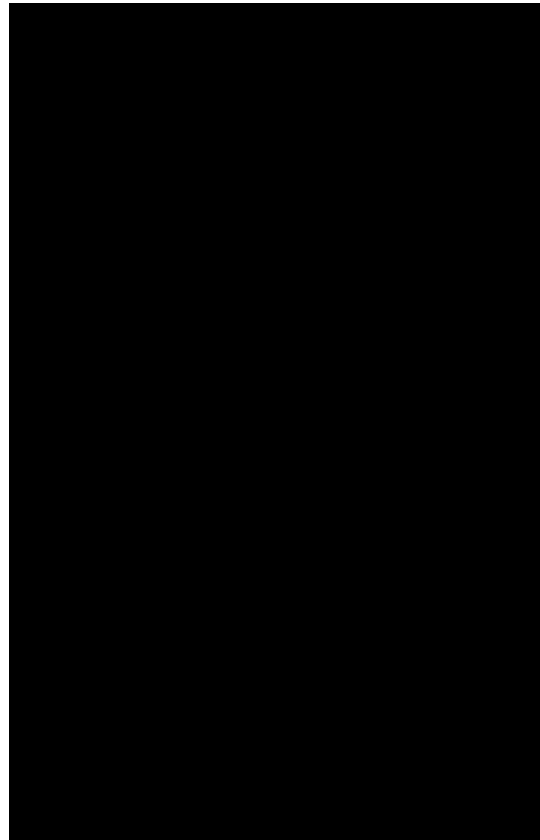


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Q Did you ever ask the MMRMA for a premium breakdown at any time prior to this lawsuit?
A Prior to the lawsuit?
Q Yeah.
A We would have had this when we first developed this spreadsheet, yes.
Q Do you know that for a fact so that you can testify under oath as to the truth of that statement or are you just -- it's what you believe must have been the basis at some point.
A No, we would have looked at it back then when we did it.
Q Do you have those documents in your possession?
A No.
Q You would agree with me that in the last several years the City has received refunds from the MMRMA.
A Correct.
Q And you'd also agree with me that those refunds

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have not been in your cost allocations been utilized to reduce the municipal risk reserve expense that's allocated to Water & Sewer.
A Those get put in a revenue account and they don't go against the expense account.
Q Okay. But you'd agree with me that leaving aside the separate accounts, if you were trying to look at your net insurance expense, you would include the refunds from the MMRMA.
A Well, the insurance expense is what they bill us and then if they give us a refund back, that goes into a revenue account.
Q Right. But it also reflects that there's -- what your net cost of insurance was for that period.
A You could look at it that way.
Q All right. But my point is that your allocation numbers here on Exhibit 2 and similar cost allocation documents are not net of those refunds.
A No.
Q In the municipal risk reserve line item of a million five that's in Exhibit 2, other than the MMRMA expense, are there any other expenses within that line item?
A The one point five million would also include any reserve contributions that we make.

1 Q Anything else?

2 A Not that I recall at this time, but there could be

3 additional ones.

4 Q So for example in -- for 2015 and 2016, there's a

5 total amount of nine hundred and thirty-seven

6 thousand dollars, correct?

7 A Correct.

8 Q And then there's a two hundred thousand retention

9 fund allocation, correct?

10 A Correct.

11 Q And for 2014-15, the year in question, there's an

12 eight hundred and ninety-four thousand dollar

13 payment -- premium payment and a retention fund

14 allocation of two hundred thousand again as well,

15 correct?

16 A I can't read the numbers.

17 Q But if it is two hundred, then the total amount is

18 about a million one for 2014-2015 as opposed to a

19 million five, correct?

20 A The insurance premium would be the one million one,

21 one million two, correct.

22 Q Well, no. I thought you said that the municipal

23 risk reserve expense also included the retention

24 fund allocation as well as the premium portion.

25 A There's additional retention fund contributions

1 made during the year, that's why the budget's

2 higher than the premium.

3 Q And have you reviewed that against actual

4 experience to track what was actually paid versus

5 what was allocated in the budget?

6 A No.

7 MR. HANLEY: You can set that aside for now.

8 VIDEO TECHNICIAN: Off the record 10:53.

9 (Whereupon a short break was taken)

10 (Document Marked for Identification as

11 Smith Deposition Exhibit Number 38)

12 VIDEO TECHNICIAN: Back on the record 11:15.

13 BY MR. HANLEY:

14 Q I've marked as Exhibit 38 a document that Counsel

15 provided during the break. It's Deerhurst 43486

16 through 43491. It's entitled Administrative Costs

17 Fiscal Year 15-16. It's my understanding that this

18 is the cost allocation sheet for fiscal year 15-16,

19 is that correct?

20 A Correct.

21 Q Now was this compiled by you?

22 A Correct.

23 Q And so you take ownership of the allocations that

24 are set forth in Exhibit 38?

25 A Correct.

1 Q We'll go in it in further detail later on, but it

2 appears to be kind of cut off at the top. There's

3 a rent and utilities and building insurance. Is

4 that for the City Hall building?

5 A That is not for the City Hall building.

6 Q Do we know what that's for?

7 A I think that was for -- obviously this spreadsheet

8 is used for multiple allocations, so I think that

9 was for the old Building Department.

10 Q There's actually no amounts allocated to that.

11 A Right.

12 Q So it wouldn't be part of the cost that was

13 allocated, correct?

14 A Correct.

15 Q And then we've got City Hall Building sixty-four

16 thousand square foot. You were in the City Hall

17 building for this entire time now, correct?

18 A Correct.

19 Q And the Water still says eighteen hundred and

20 thirty square feet. Do you see that?

21 A Correct.

22 Q Is that, in fact, the amount of square footage

23 occupied by the Water & Sewer Department?

24 A I would have to double check that number like I

25 said before.

1 Q The allocation of rent and building insurance for

2 15-16 went up from three percent to thirteen point

3 five five percent. Do you see that?

4 A I see a thirteen point five five percent, yes.

5 Q All right. So based upon your prior testimony, the

6 rent and building insurance is based upon

7 percentage of square footage occupied, correct?

8 A Correct.

9 Q So we can assume based upon this that the Water &

10 Sewer Department occupied thirteen point five five

11 percent of the sixty-four thousand square feet?

12 A The square foot that you see under the City Hall

13 and Grounds building is -- again, it's taking the

14 old City building the square foot and timesing it

15 by twelve, a hundred and sixty-two thousand that

16 you see there is the total square foot for the

17 year.

18 Q No, I thought that was the rent for the year, a

19 hundred and sixty-two thousand.

20 A No, the rent for the year if you take it all the

21 way across is -- in this instance is nineteen

22 thousand, seven sixty-four.

23 Q No, that's the rent allocated to Water & Sewer

24 based upon thirteen point five five percent

25 occupancy, correct?

1 A Correct.

2 Q And so this new City Hall Building of sixty-four

3 thousand square feet, so if you're allocating

4 thirteen point five five percent of the rent and

5 building insurance to Water & Sewer, I calculate

6 thirteen point five five percent of sixty-four

7 thousand as eight thousand, six hundred seventy-two

8 square feet.

9 A Okay. Like I said, the calculation that you see

10 there, the one sixty-two oh six zero is the square

11 footage from the old City Hall times by twelve

12 months and you got the thirteen percent and that's

13 where you get the nineteen thousand. So even

14 though it says sixty-four thousand square foot on

15 the new City Hall, the calculations are based on

16 the previous City Hall.

17 Q Okay. But the point is, is whatever it is, it's

18 based on the assumption that Water & Sewer occupies

19 thirteen point five -- or pays thirteen point five

20 five percent of the rent.

21 A Not of the rent. That's the total percent of

22 square foot that the Water occupies.

23 Q No. My understanding is nineteen thousand seven

24 hundred sixty-four is arrived at by taking one

25 hundred and sixty-two thousand and sixty dollars

1 and multiplying it by thirteen point five five

2 percent, correct?

3 A Okay. The one hundred and sixty-two thousand, like

4 I said, is the square footage of the old City Hall

5 times twelve months, so you get a full year -- if

6 you will, you're taking the square foot for one

7 month timesing it by twelve, so you get a hundred

8 and sixty-two thousand square foot in a year and

9 basically what it comes down to is Water is

10 thirteen point five five percent of that square

11 footage.

12 Q Okay. But again on the second page you're

13 allocating twenty-five percent of the City Hall

14 grounds expense to Water & Sewer, correct?

15 A Correct.

16 Q So that stayed the same.

17 A Correct.

18 Q In the insurance and bonds portion of Exhibit 38

19 for 15-16, there's another allocation of fifteen

20 hundred municipal risk reserves, correct?

21 A Correct.

22 Q But now you've changed that percentage from twenty-

23 five percent to thirty-five percent for Water &

24 Sewer, correct?

25 A Correct.

1 Q And what is the basis for that?

2 A I do not recall what the basis is for the --

3 Q Well you increased the expenses allocated to Water

4 & Sewer from three hundred seventy-five thousand

5 dollars in Exhibit 2 to five hundred and twenty-

6 five thousand dollars in Exhibit Number 38,

7 correct?

8 A Correct.

9 Q So that's a hundred and fifty thousand dollar

10 increase?

11 A Correct.

12 Q And you don't recall as you sit here today why you

13 made that adjustment?

14 A No.

15 Q Were there any documents reflecting that

16 adjustment?

17 A I don't recall.

18 Q All right. You're familiar with something called a

19 General Ledger Activity Report, are you not?

20 A Yes.

21 Q These are maintained and compiled in the ordinary

22 course of business for the City?

23 A Yes.

24 (Document Marked for Identification as

25 Smith Deposition Exhibit Number 39)

1 BY MR. HANLEY:

2 Q I'm going to show you what I've marked as Exhibit

3 Number 39 which is a General Ledger Activity Report

4 generated by Ms. Peck on December 2nd, 2015 and I

5 want to refer your attention to the highlighted

6 line items on your Exhibit. There's an October 7,

7 2014 Michigan Municipal Risk Insurance payments of

8 four hundred and forty-seven thousand and eighty-

9 seven dollars. Do you see that?

10 A Yes.

11 Q And then there's on the same day a retention

12 payment in the amount of a hundred thousand

13 dollars, correct?

14 A Correct.

15 Q And then on December 16, 2014 there's another

16 premium payment to the MMRMA of four hundred and

17 forty-seven thousand and eighty-seven dollars and

18 fifty cents, correct?

19 A Correct.

20 Q And on that same day there's another retention

21 payment of a hundred thousand dollars, correct?

22 A Correct.

23 Q And then on May 8, 2015, there's another additional

24 retention contribution of two hundred thousand

25 dollars, correct?

1 A Correct.

2 Q And if this Exhibit 39, General Ledger Activity

3 Report appropriately records these transactions,

4 then the amounts paid to MMRMA during fiscal year

5 14-15 would be one million, two hundred ninety-four

6 thousand, one hundred seventy-five dollars

7 approximately, correct?

8 A Correct.

9 Q Are you aware of any other payments that were made

10 to MMRMA during fiscal year 14-15?

11 A I would have to check. I don't recall offhand.

12 Q Well, if this is correct, you'd agree that the

13 number's approximately one point three million

14 dollars?

15 A Correct.

16 Q All right. And then we talked a little bit earlier

17 about the refunds that you've received over time

18 from the MMRMA and that they're not reflected in

19 the cost allocation as a credit back against that

20 cost allocation, correct?

21 A Correct.

22 (Document Marked for Identification as

23 Smith Deposition Exhibit Number 40)

24 BY MR. HANLEY:

25 Q Let me show you what I'm going to mark as Exhibit

1 40, which is what I understand to be the City of

2 Westland's Proposed Budget for 16-17, which I've

3 pulled from the website. Is the proposed budget

4 that's on the website, has that actually been

5 adopted as of today?

6 A There have been changes, but the budget has been

7 adopted, yes.

8 Q There's a few line items I'd like you to talk

9 about. The first one is on Page 19. The numbers

10 are on the far right bottom corner. There's a

11 category called Miscellaneous Revenue down at the

12 bottom.

13 MR. PELLAND: I'm sorry Greg, what page are

14 you on?

15 MR. HANLEY: Page 19. Have you found the

16 page?

17 THE WITNESS: Yes.

18 BY MR. HANLEY:

19 Q There's a category Miscellaneous Revenue and about

20 the fourth one up from the bottom there's something

21 called the Refund from MMRMA, correct?

22 A Correct.

23 Q And this item reflects both historical and planned

24 amounts that are going to be refunded by the MMRMA

25 to the City that had been previously paid in terms

1 of premiums or deposits, correct?

2 A Correct.

3 Q And what it generally does is it reflects the fact

4 that in essence you had overpaid in prior years for

5 the risks that you were assuming based upon your

6 claim history.

7 A I don't believe that to be the case. They refunded

8 all their communities money based on not

9 necessarily the individual community's experience,

10 but the insurance company as a whole.

11 Q Because it's a group that the municipalities

12 collectively contribute to to cover claims that any

13 of them might experience.

14 A A pool, right.

15 Q Right. But the refunds aren't recognition that

16 what the MMRMA ultimately had to cover was less

17 than expected. Fair to say?

18 A Correct.

19 Q And so for fiscal year 2012 to two thousand -- for

20 2-12 to 2-13, 2-13 to 2-14, 2-14 to 2-15 and 2-15

21 to '16, the City received refunds from the MMRMA,

22 correct?

23 A Correct.

24 Q In 2012-2013, the City got eight hundred and

25 seventeen thousand dollars back, correct?

1 A I would have to make sure there's nothing else

2 included in that line item that made up the eight

3 hundred and seventeen thousand.

4 Q All right. But if the document actually reflects a

5 refund from MMRMA for that year, it was eight

6 hundred and seventeen thousand dollars, correct?

7 A That's what the document says, yes.

8 Q And the document for 2013-14 says it was two

9 hundred ninety-one thousand, nine hundred and

10 thirty-three dollars, correct?

11 A Correct.

12 Q And for 2014-15 it was five hundred and thirteen,

13 five hundred and eighty-seven thousand dollars,

14 correct?

15 A Correct.

16 Q And through February of 2016 you already received

17 five hundred and forty-seven thousand, one hundred

18 forty-two dollars for fiscal year 15-16, correct?

19 A Correct.

20 Q And you plan in this budget to receive during

21 fiscal year 16-17, another three hundred and fifty

22 thousand dollars, correct?

23 A That's an estimate.

24 Q Right. But that's the estimate at this point.

25 A Yes.

1 Q And it's an estimate based upon prior history,
2 right?
3 A Not based on prior history. Based on conversations
4 with MMRMA. They've indicated another refund.
5 Q Your three hundred fifty thousand has some basis in
6 reality and in fact it's based upon conversations
7 with a source.
8 A Correct.
9 Q And you'd agree with me that the expense that
10 you've allocated in your Municipal Risk Reserves in
11 both Exhibit 38 and Exhibit 2 and prior years do
12 not reflect a netting of these refunds, but rather
13 reflect the gross amounts paid.
14 A Correct.
15 Q And in fact if we were to apply the one million,
16 two hundred ninety-four thousand dollars that was
17 paid in fiscal year 14-15 and reduce it by the
18 amount of the refund, the actual amount paid to the
19 MMRMA in essence for that year was about seven
20 hundred and eighty thousand dollars as opposed to
21 the one point five million dollars that is set
22 forth in Exhibit 2 and Exhibit 38, correct?
23 A Right.
24 Q And in 2014-15, if we just applied what was
25 actually paid to Water & Sewer, using your twenty-

1 five percent assumption, the amount that would have
2 been properly allocable to Water & Sewer would have
3 been a hundred and ninety-five thousand, a hundred
4 and forty-seven dollars as opposed to three hundred
5 and seventy-five thousand dollars. Does that sound
6 about right?
7 A You have the calculator, so --
8 Q Well, but the point is if you use what you actually
9 paid, it's roughly a little bit more than half of
10 what you've projected it as a cost allocation,
11 correct?
12 A Correct.
13 Q And despite that you've increased the allocation
14 percentage for fiscal year 15-16 to thirty-five
15 percent and not twenty-five percent, correct?
16 A Correct.
17 Q And again, in making that adjustment did you look
18 at a claims history, did you look at whether there
19 was some new fact that justified the increase?
20 A I don't recall like I said.
21 Q Did you seek input from anybody?
22 A I don't remember.
23 Q Did you talk to the MMRMA about how much of your
24 premium should be allocable to the Water & Sewer
25 function?

1 A I don't remember.
2 Q Do you know how much you've paid the MMRMA in
3 15-16?
4 A So far year-to-date, I don't recall.
5 Q Well, the year's almost over, so you're probably
6 not going to pay any more premiums for this fiscal
7 year, right?
8 A Not anymore premiums, but we may pay into the
9 reserve fund.
10 Q Okay. The document that I've marked as Exhibit 39
11 shows that -- it's only for half of the year and it
12 shows that you made additional reserve deposits of
13 two hundred thousand dollars in September, and you
14 made an installment of four hundred and eighty-six
15 thousand, nine hundred three dollars in September
16 as well, correct?
17 A Correct.
18 Q And I'm assuming that based upon fiscal year 14-15
19 that that four hundred and eighty-six thousand is a
20 semi-annual premium that you paid an additional
21 four hundred and eighty-six thousand, nine hundred
22 three dollars some time prior to now.
23 A Correct.
24 Q Did you pay any additional retention fund reserves?
25 A A hundred thousand at the same time that second

1 payment would have been made.
2 Q All right. So for fiscal year 15-16, assuming you
3 don't have to contribute any more reserves, the
4 total amount you have paid the MMRMA is four
5 hundred and eighty-six thousand, nine oh three,
6 fifty times two, that's nine hundred seventy-three
7 thousand, eight hundred and seven dollars, plus
8 three hundred thousand in reserves, right?
9 A Two hundred thousand in reserves, is that what you
10 said?
11 Q Didn't you pay an additional -- you said you paid
12 an additional one hundred thousand when you paid
13 the second --
14 A Yes.
15 Q -- payment.
16 A Yes.
17 Q So there's three hundred thousand dollars of
18 reserves which comes up to one million, two hundred
19 and seventy-three thousand, eight oh seven, okay.
20 And the document that we've -- the budget document
21 that's been marked as Exhibit 40 says that through
22 February of 2006, although you had paid what you
23 paid, you actually received back, five hundred and
24 forty-seven thousand, one hundred forty-two
25 dollars, correct?

1 A Correct.

2 Q So the total amount that you paid on a net basis to

3 MMRMA for this year was seven hundred and twenty-

4 six thousand, six hundred and sixty-five dollars,

5 correct?

6 A This only goes up to December 31st.

7 Q No, but we went through the payments that you made

8 after that. You said you made another --

9 A There's been additional contributions into the

10 reserve up and above the regular premium.

11 Q No, no. I understand that. I thought we went over

12 that. You had two hundred thousand in additional

13 reserves that you submitted in September of 2015,

14 correct?

15 A Correct.

16 Q And four hundred and eighty-six thousand, nine

17 hundred and three dollar premium payment.

18 A Correct.

19 Q And then after the date of this sheet you made

20 another four hundred eighty-six thousand, nine

21 hundred and three dollars in premium payments,

22 correct?

23 A Correct.

24 Q And you contributed another one hundred thousand

25 dollars in additional retention fund reserves,

1 correct?

2 A Correct. And there's been additional reserve

3 contributions up and above that that aren't on this

4 sheet.

5 Q So you've made additional reserve contributions to

6 MMRMA more than three hundred thousand dollars in

7 this fiscal year?

8 A Absolutely, yes.

9 Q And when were those made?

10 A I don't recall. They would have been made between

11 December obviously after this report was run up

12 until now and we still have a week and a half left

13 that we could possibly make another payment.

14 Q Well, is one due?

15 A If we fall below a certain reserve, yes, one would

16 be due.

17 Q All right. But I just want to be clear because I

18 thought when you were talking earlier that the only

19 one that -- the only payments that you made that

20 aren't reflected in this sheet are the additional

21 four hundred and eighty-six thousand, nine hundred

22 and three dollar premium payment and one additional

23 payment of a hundred thousand for the retention

24 fund reserves. Are you now saying that that's not

25 accurate?

1 A That's not what I said to begin with. So the

2 premium we pay in two installments and with each

3 premium we pay an installment into the reserves.

4 So it's correct we paid another four hundred and

5 eighty-six thousand, nine hundred and three

6 dollars, fifty cents and we paid another hundred

7 thousand dollars in the reserve after this date,

8 but there's additional contributions that would

9 have been made into the reserves after this date

10 and I don't recall what those are off, you know,

11 the top of my head, but they're --

12 Q What I'm trying to understand is you're sure you

13 made a hundred thousand after the date of Exhibit

14 39, how do you know you made more than that?

15 A The hundred's required as part of the premium, so I

16 know -- you can see the first one has that hundred

17 thousand with it. The second premium payment would

18 have also included a hundred, that's why I know

19 that one was made and I know there's been

20 additional ones made up and above this during the

21 time frame from January 1st up through now.

22 Q You just don't know how much those are and when

23 they were made.

24 A No. Some time during those six months.

25 Q And if we had a general ledger activity report

1 through today, this same report if we updated it,

2 we would be able to know exactly what had been

3 paid.

4 A Yes.

5 Q It would be logged into this report, okay. Do you

6 credit any of the refunds back to Water & Sewer

7 when you do the transfers on an annual basis in

8 recognition of the cost allocation?

9 A Not that I recall, no.

10 Q Well, you'd agree with me that the premiums that

11 were paid initially were allocated between twenty-

12 five and thirty-five percent to Water & Sewer.

13 A Correct.

14 Q And yet you don't feel it's appropriate when a

15 refund comes in to credit that back against future

16 allocations?

17 A What I said was I don't believe it was transferred

18 back.

19 Q If you were doing it right, it would be

20 appropriate, correct?

21 A Like I said, there wasn't any transfers going

22 back.

23 Q I get that, I know that. But for example in 2014-

24 15 you allocated twenty-five percent of what you

25 were paying to MMRMA to Water & Sewer, correct?

1 A Correct.
 2 Q And in 15-16 it was thirty-five percent, correct?
 3 A Correct.
 4 Q And when you got the five hundred thirteen thousand
 5 dollars back, you didn't credit twenty-five percent
 6 of it back to Water & Sewer, correct?
 7 A Not that I recall, no.
 8 Q Continuing on with Exhibit Number 40, the budget, I
 9 want to refer your attention to Pages 51 and 52
 10 which are the revenue and expenditures of the Water
 11 & Sewer Fund.
 12 A Okay.
 13 Q And you're familiar with these line items and
 14 are able to tell me what each of them corresponds
 15 to?
 16 A I'm familiar with a majority of the line items,
 17 yes.
 18 Q Do you recall whether there was any change between
 19 the proposed budget numbers that are like two-
 20 thirds across the page for 16-17 on Pages 51 and
 21 52 between this proposed budget and the final
 22 budget?
 23 A Not that I recall, no.
 24 Q The line item on the second page, 52, that has
 25 operating transfer out and it's three point two

1 million dollars for 2012 and three point four
 2 million dollars for the succeeding years, do you
 3 see that?
 4 A Yes.
 5 Q That reflects the money that's sent from Water &
 6 Sewer to the General Fund in recognition of the
 7 services that are purportedly provided by the
 8 General Fund to the Water & Sewer Fund, correct?
 9 A Correct.
 10 Q And the three point four includes a million, three
 11 seven five for retiree health insurance.
 12 A Correct.
 13 Q So we know that that three point four million
 14 dollars includes as part of it the line item from
 15 Exhibit 2 for retiree insurance that's allocated to
 16 Water & Sewer, correct?
 17 A Correct.
 18 Q All right. Up at the top, fourth from the top
 19 there's a line item for OPEB and I asked Ms. Peck
 20 in her deposition -- by the way is Ms. Peck
 21 knowledgeable about these line items as well as
 22 you?
 23 A She's only been with the City for a year, so I
 24 don't know if she's specifically knowledgeable
 25 about Westland's.

1 Q Well, but she's involved in the budget process at
 2 least since she came here, right?
 3 A Yes.
 4 Q And you hired her from -- you obviously -- the City
 5 believed that she was competent, correct?
 6 A Yes.
 7 Q And you believe she's competent, right?
 8 A Yes.
 9 Q And she testified under oath that the OPEB line
 10 item on this reflects the current period costs for
 11 retiree healthcare for retired Water & Sewer
 12 employees. Were you aware that that was her
 13 testimony?
 14 A No.
 15 Q Do you have any basis to disagree with her
 16 testimony?
 17 A That's for the current portion of the retirees?
 18 Q Yes.
 19 A I would have to check. Actually our auditors do a
 20 calculation every year and they give that to us.
 21 It's not my understanding that it's for the current
 22 retirees portion.
 23 Q And we'll get to some documents about that because
 24 I don't know if you remember, I asked about this in
 25 your first deposition and you said you need to look

1 into it. So I asked Ms. Peck and she explained it
 2 that way.
 3 I understand that there is a process by
 4 which actuaries take a look at on a thirty-year
 5 horizon what your total OPEB, other post-employment
 6 benefits, which consist primarily of retiree
 7 healthcare are going to cost the City on an
 8 aggregate basis, correct?
 9 A Correct.
 10 Q And they do that exercise every five years or so or
 11 every three years?
 12 A Every two years.
 13 Q Yeah. Some periodic basis. But then they then
 14 come up with something called an annual required
 15 contribution or an ARC, right?
 16 A Correct.
 17 Q And that's the amount that they've determined that
 18 you should set aside every year in order to be able
 19 to pay for that obligation over the next thirty
 20 years, correct?
 21 A Correct.
 22 Q And the City's auditors have concluded that the
 23 City's obligation for OPEB over that thirty-year
 24 horizon is in excess of two hundred million
 25 dollars, correct?

1 A I don't recall that number.
 2 Q All right. But they've made a recommendation that
 3 the City actually set aside more than what it needs
 4 in the current period for retiree healthcare in
 5 order to accumulate a reserve that can pay for
 6 future retiree healthcare.
 7 A We do not set aside a reserve for --
 8 Q I'm getting to that.
 9 A Okay.
 10 Q They tell you what you should set aside in the
 11 current period to pay for both current period
 12 obligations and some part of the future
 13 obligations.
 14 A They recommend, yes.
 15 Q I'm not suggesting it's required.
 16 A Okay.
 17 Q But the City does something called pay as you go.
 18 Have you ever heard that term?
 19 A Yes.
 20 Q And pay as you go means you pay the current period
 21 expenses for the retiree healthcare in the current
 22 period, but not a dollar more.
 23 A Correct.
 24 Q And so I logically concluded, and Ms. Peck
 25 confirmed, that the OPEB line item in your budget

1 because you're not accruing anything for the
 2 future, must necessarily relate to current period
 3 expenditures for retiree healthcare. Is that a
 4 logical assumption?
 5 A Can you repeat the question.
 6 Q Because the City's financial statements, which by
 7 the way are sworn financial statements that you
 8 have to say are true and accurate, correct?
 9 A Correct.
 10 Q Those financial statements say that the City is not
 11 accruing any money to pay future retiree
 12 healthcare, they are merely paying the current
 13 period obligation in the current period, correct?
 14 A Correct.
 15 Q And so I logically concluded, and Ms. Peck
 16 confirmed in her deposition, that the OPEB line
 17 item in your budget for Water & Sewer was a current
 18 period obligation as opposed to an accrual for
 19 something in the future. Is that your
 20 understanding as well?
 21 A Of her deposition?
 22 Q No. Was that your understanding of what that line
 23 item is.
 24 A No.
 25 Q Okay. What's your understanding of what that line

1 item is.
 2 A This is an entry made by our auditors once a year
 3 and this -- the detail is in their adjusting entry
 4 that they give us to post every year. So that's
 5 what, you know, what my belief what this entry is
 6 for, so --
 7 Q You mean it doesn't get reflected on your financial
 8 statements as an accrual, but it's there telling
 9 you what portion of what should be set aside is
 10 allocable to Water & Sewer.
 11 A I'm not sure. Like I said, they do the entry, so
 12 you have to ask them.
 13 Q But do you know that that entry then becomes part
 14 of the Water & Sewer rate?
 15 A Yes.
 16 Q All right. So when somebody pays their water bill
 17 in Westland, they're paying this -- their portion
 18 of this annual OPEB expense that's on your budget,
 19 correct?
 20 A Correct.
 21 Q Which is nine hundred and fifty thousand in 2015-16
 22 and is projected to be seven hundred thousand in
 23 2016-17, correct?
 24 A Correct.
 25 Q And that money is not on the financial statements

1 being set aside for the future benefits.
 2 A Correct.
 3 Q And so that money is available to pay current
 4 period of expenses of the Water & Sewer Fund.
 5 A Like I said, that's an adjusting auditor entry that
 6 they make at the end of the year. There's no --
 7 nothing flows up to that point through our, you
 8 know, we don't pay any cash out for that number or
 9 anything like that, so --
 10 Q No, no, I understand that. But you put it in your
 11 Water & Sewer rate and ratepayers pay it.
 12 A Agreed.
 13 Q And so that money comes in if people pay their
 14 bill, then collectively if your projection is
 15 correct, you got another nine hundred and fifty
 16 thousand dollars that you've garnered from your
 17 Water & Sewer customers for that OPEB line item,
 18 correct?
 19 A I would have to say -- like I said, the auditors
 20 make the entry and they would have to give you the
 21 details on what it is exactly.
 22 Q Well, no. But I know they make the thing, they
 23 come up with the number.
 24 A Yes.
 25 Q But you put it in your rate and recapture it from

1 the Water & Sewer customers, correct?
 2 A Correct.
 3 Q But there's no corresponding financial statement
 4 impact that reflects that you're using that to
 5 reduce your retiree healthcare liability in the
 6 future, correct?
 7 A Correct.
 8 Q So that money is not in some trust fund or
 9 otherwise restricted for a certain expense,
 10 correct?
 11 A Correct.
 12 Q And so the nine hundred and fifty thousand dollars
 13 can be utilized to support the Water & Sewer
 14 function.
 15 A Correct.
 16 Q And in fact if you wanted to, you could use that
 17 nine hundred and fifty thousand dollars to pay the
 18 General Fund for the current period retiree
 19 healthcare expenses that you're including in the
 20 other line item, correct?
 21 A I'm not sure what you're getting at there, but --
 22 Q What I'm getting at is Ms. Peck said that the
 23 current period retiree healthcare costs for Water &
 24 Sewer employees are meant to be encompassed by the
 25 OPEB line item in the budget, right?

1 A If that's what she said.
 2 Q And do you have any basis to quarrel with her?
 3 A Like I said, that's an auditor entry that they make
 4 at the end of the year, so --
 5 Q Do all auditor entries, whether they're cash or
 6 non-cash, get put into your rate?
 7 A If they make entries to the fund itself, they would
 8 be incorporated into the rate calculation.
 9 Q Do you know why you're not using this to reduce
 10 your unfunded accrued actuarial liability for
 11 retired healthcare?
 12 A I do not know.
 13 Q By the way, is there anything in your budget that
 14 will allow us to determine how much is allocated to
 15 fire hydrants or public fire protection? And if
 16 not in the budget, are there other documents,
 17 source documents that would provide that
 18 information?
 19 A I do believe it's in the line item called Capital
 20 Outlay. It's part of the Capital Outlay Equipment
 21 line item.
 22 Q Okay.
 23 A It's not that total that you see there.
 24 Q Right. But it also may be encompassed in things
 25 like salaries and fringe benefits if people are

1 actually working part of their time on fire
 2 hydrants as opposed to something else, correct?
 3 A If they're working on fire hydrants, yes.
 4 Q I mean if you wanted to do the -- if someone were
 5 to say to you, Mr. Smith, we want to determine what
 6 portion of the City's water supply system the cost
 7 of which is dedicated to public fire protection,
 8 one thing we would look at is actual capital outlay
 9 relating to hydrants, correct?
 10 A Correct.
 11 Q One thing we would look at if we wanted to do it
 12 very accurately was to assess what percentage of
 13 time employees of Water & Sewer and supervisors and
 14 directors spend on the public fire protection
 15 function dealing with hydrants and all that stuff,
 16 correct?
 17 A Correct.
 18 Q And it would be fair for me to assume that that's
 19 never been done?
 20 A Not that I know of, no.
 21 Q And because it's never been done, there isn't any
 22 allocation back to the General Fund in recognition
 23 of the public fire protection services provided by
 24 the water supply system.
 25 A Not that I'm aware of, no.

1 MR. HANLEY: Why don't we take a short break.
 2 VIDEO TECHNICIAN: Off the record 11:52.
 3 (Whereupon a short break was taken)
 4 VIDEO TECHNICIAN: Back on the record 12:08.
 5 BY MR. HANLEY:
 6 Q I want to return our attention to Exhibit 38 which
 7 is the Administrative Cost Allocation Sheet for
 8 Fiscal Year 15-16. Can you tell me when Exhibit 38
 9 was created?
 10 A I don't recall the exact date it was created.
 11 Q Well, would it be fair for me to assume it was
 12 created before June 30th, 2015?
 13 A Yes.
 14 MR. PELLAND: This exact one, and I only
 15 wanted to clarify because like I said, there were
 16 some things on here that were --
 17 BY MR. HANLEY:
 18 Q No, no. I mean the underlying data and the
 19 calculations that are reflected on this sheet would
 20 have been done prior to June 30th, 2015, correct?
 21 A Correct. As far as I know.
 22 Q First of all, why is there an allocation on Exhibit
 23 2 and Exhibit 38 for Sanitation?
 24 A I'm not sure where are you referring to.
 25 Q There's allocations to something called Sanitation.

1 A That's not related to the Water & Sewer allocation.
2 Q No, no, I understand that, but Water & Sewer is not
3 the only department that you're allocating General
4 Fund costs to, correct?
5 A Correct.
6 Q There's some at least allocation to DDA, TIFA,
7 LDFA, Police & Fire Retirement, the Library, Cable
8 and the Rental Inspection Program, correct, and to
9 Sanitation.
10 A Correct.
11 Q Why are General Fund costs being allocated to
12 Sanitation?
13 A The City has a separate millage rate for Sanitation
14 so as employees do perform jobs in the Sanitation
15 area, their salaries are also charged to that
16 millage.
17 Q But my understanding is is that there was a point
18 was a Sanitation Department that had a number of
19 employees who were tasked with picking up garbage
20 and other things, correct?
21 A We still have a Sanitation Department, but yes.
22 Q Right. But my point is the bulk of the expense for
23 Sanitation is payments to a private contractor.
24 A Correct.
25 Q But there was a time when the City employed people

1 and had its own trucks and facilities and did it
2 itself, correct?
3 A There were employees charged to the Sanitation.
4 The City never picked up garbage.
5 Q Okay. How did it change between what's going on
6 now and what was going on back in the day?
7 A I'm pretty sure, if I can recall, there were some
8 retirements and they were not filled in the
9 Sanitation Department.
10 Q So for all the time you've been there the City's
11 always had a private contractor doing the
12 Sanitation function?
13 A Weekly garbage pickup, yes.
14 Q But there were Sanitation workers that over time
15 retired and now my understanding is there's really
16 only one dedicated employee to Sanitation, correct?
17 A I don't believe there's -- I'd have to check on the
18 number of employees, but I don't think there's even
19 one employee in there now.
20 Q Well, if that's true, then all of the prior
21 Sanitation folks have either retired or left the
22 City for whatever reason.
23 A Yes.
24 Q On the second page of Exhibit 38 I just want to go
25 over some of your numbers here, there's an

1 allocation of fifty percent of the rent and
2 building insurance for the DPS Building Garage. Do
3 you see that?
4 A Yes.
5 Q Since the lawsuit has been filed has anybody to
6 your knowledge employed by the City done an
7 investigation in order to determine whether these
8 estimates are appropriate?
9 A No.
10 Q In other words, you'd agree with me that your DPS
11 building garage cost allocations assumes that Water
12 & Sewer occupies fifty percent of the space,
13 correct?
14 A Correct.
15 Q It's my understanding that there are a number of
16 other departments that utilize that building garage
17 as well, correct?
18 A There are some other departments in there, yes.
19 Q All right. And so if we wanted to determine
20 whether the fifty percent was appropriate, we could
21 at least theoretically go there and create an
22 analysis of how much space is used by each of those
23 departments, correct?
24 A Correct.
25 Q And to your knowledge that's not been done?

1 A For this allocation?
2 Q Yes.
3 A Not for this allocation.
4 Q Has it been done at any time after the lawsuit was
5 filed?
6 A Not after the lawsuit was filed, no.
7 Q And when was it done?
8 A Like I said originally when this was the whole
9 document was created there would have been
10 conversations with the DPS Director at the time to
11 get -- to determine a number.
12 Q So again we're talking 2004?
13 A Some time after 2004.
14 Q More than ten years ago probably?
15 A Yes.
16 Q All right. And so no one's done an analysis --
17 assuming your original estimate was correct, no one
18 has done, to your knowledge, a reevaluation to
19 determine whether through changed circumstances or
20 otherwise, a different percentage is appropriate.
21 A Correct.
22 Q All right. And then there's an attorney fee
23 allocation of thirty percent of the attorney fees
24 to Water & Sewer. Do you see that?
25 A Correct.

1 Q And how did you arrive at that?
2 A I don't recall how that number was determined.
3 Q Have you done any analysis of the -- first of all,
4 the attorney fee number, the eight hundred thousand
5 reflects amounts that were projected to be paid to
6 Mr. Pelland's firm for their services as outside
7 counsel to the City, correct?
8 A Correct.
9 Q And did you at any time prior to today review their
10 historical billings to determine on a historical
11 basis what percentage of that eight hundred
12 thousand dollar budget was actually devoted to
13 legal services relating to the Water & Sewer
14 function?
15 A Again at one time when this was originally created
16 that would have been done.
17 Q In 2004 around that time?
18 A Approximately, yes.
19 Q But it hasn't been updated in reference to actual
20 experience, correct?
21 A Not that I'm aware of, no.
22 Q We've already talked about the Municipal Risk
23 Reserves. What is the basis for the allocation of
24 retiree insurance to Sanitation?
25 A I'm not sure where you're at here.

1 Q General Government Retiree Insurance there's an
2 allocation in the first column to Sanitation.
3 A That would have been for employees that had worked
4 in Sanitation and the cost of their insurance.
5 Q You'd agree with me that's half of one percent of
6 the total retiree insurance costs is being
7 allocated to Sanitation workers?
8 A Correct.
9 Q And do you know how many workers that that relates
10 to?
11 A I do not recall offhand how many workers.
12 Q Well, when you said this forty-two percent for
13 Water & Sewer would involve people who -- not just
14 people who retired Water & Sewer, but people who
15 had supported the Water & Sewer function, people
16 who have retired not under the Water & Sewer
17 umbrella, but does the calculation for Sanitation
18 reflect the same kind of analysis?
19 A It would have been people that worked in Sanitation
20 at one point in time, yes.
21 Q So anybody that worked for Sanitation would be
22 allocated part of the retiree insurance costs?
23 A Correct.
24 Q Are there any library retirees who are eligible for
25 retiree insurance?

1 A Library retirees don't get paid out of this, but I
2 would not be aware of any library retirees. That's
3 a separate fund all together.
4 Q No, I understand that, but there are allocations of
5 General Fund costs to the library on this sheet,
6 correct?
7 A Correct.
8 Q But there's no allocation of retiree insurance
9 costs to the library on Exhibit 38, correct?
10 A Correct.
11 Q Are there retirees from the library who receive
12 retiree health insurance?
13 A Not from the City, no.
14 Q You mean it's not a City provided benefit like it
15 is for other employees?
16 A Library is its own separate entity, so they would
17 take care of -- they would pay for their own
18 retirees.
19 Q That's my question. So it's just not encompassed
20 within the retiree insurance that's paid by the
21 City and reflected in the three point two seven
22 million dollars that's on Exhibit 38, correct?
23 A Correct.
24 Q Then at the very bottom there's an allocation
25 called MTT Refund/Attorney and the total budget is

1 two hundred and eighty-five thousand dollars for
2 this year. Do you see that?
3 A I do.
4 Q What does that two hundred and eighty-five thousand
5 dollars correspond to?
6 A That represents refunds on Michigan Tax Tribunal
7 cases where the City has to issue a refund where
8 their assessment was lower.
9 Q And you've allocated fifteen percent of that to
10 Water & Sewer?
11 A Correct.
12 Q And what conceivable basis do you have for
13 allocating Michigan Tax Tribunal property tax
14 refunds to the Water & Sewer Department?
15 A That is incorrect. That should not be there. It's
16 a mistake.
17 Q You'd agree with me that there's no correlation,
18 right?
19 A Correct.
20 Q All right. On the first page of Exhibit 38 there's
21 an allocation of costs relating to the Director of
22 the IT Department, correct?
23 A Correct.
24 Q And that's Mr. Bordeaux.
25 A Dan Bordeaux.

1 Q Yeah, Bordeaux.
 2 A Yes.
 3 Q And that two hundred fourteen thousand dollars
 4 represents his total compensation, salary and
 5 benefits?
 6 A Correct.
 7 Q Are you aware that he has an annual pension
 8 contribution from the City in excess of a hundred
 9 thousand dollars?
 10 A Depending on the percentages.
 11 Q Well, have you done any analysis as to whether that
 12 kind of -- and in fact his pension contribution
 13 exceeds the amount of his salary, is that correct?
 14 A That could be, yes.
 15 Q And are you familiar with any municipality who
 16 voluntarily makes a similar contribution to a
 17 person -- similarly situated person's pension fund
 18 on an annual basis?
 19 A I couldn't comment on that. I don't know what
 20 other cities do.
 21 Q Well, how did he receive such a benefit? Is that
 22 something that the Council votes on?
 23 A It would be when he was hired, the contract that he
 24 was hired under or if you will, the Director's pay
 25 plan that he was hired under.

1 Q But it's a matter of contract with the City.
 2 A It's not an official contract, it's a Director's
 3 pay plan they call it.
 4 Q Well, I guess what I'm saying is were you involved
 5 in the decision in what Mr. Bordeaux would be paid?
 6 A No.
 7 Q Who dictated that? Who decided that?
 8 A The Pay Plan. So in the pay plan it lists the
 9 directors and it lists their salary. So he was the
 10 IT Director, he would get paid the IT wages.
 11 Q And who establishes that pay plan?
 12 A City Council.
 13 Q So they decide these people -- these department
 14 heads get paid X amount of salary, X plus whatever
 15 in pension and they get their other benefits.
 16 There's a document that they go to and say okay,
 17 you have this position, this is what you get.
 18 A Correct.
 19 Q And have you ever or did anybody else in the City
 20 ever undertook an analysis of what comparable
 21 cities pay comparable people?
 22 A I don't recall of a survey, if that's what you're
 23 asking.
 24 Q Have you ever heard of any other city having a one
 25 hundred percent pension contribution or excess of

1 one hundred percent salary on an annual basis?
 2 A I can't really comment. I don't look at other
 3 individual pension plans from other cities.
 4 Q Well part of your salary benefits is chargeable to
 5 Water & Sewer as well, correct?
 6 A Correct.
 7 Q And what's your annual pension contribution?
 8 A Mine would be -- I'm in the same pay plan as
 9 Mr. Bordeaux, so mine would be similar to his.
 10 Q So in excess of a hundred thousand dollars a
 11 year?
 12 A It could very well be, yes.
 13 Q So your pension contribution is a hundred thousand
 14 dollars a year, in excess of a hundred thousand
 15 dollars a year, Mr. Bordeaux's is in excess of a
 16 hundred thousand dollars a year and then forty
 17 percent of Mr. Bordeaux's pension contribution gets
 18 charged to Water & Sewer, correct?
 19 A Correct.
 20 Q And twenty-five percent of your contribution is
 21 charged as well, correct?
 22 A Correct.
 23 Q And what about Budget Director, what kind of
 24 pension contribution does she get every year?
 25 A Just depends when she was hired. In this case

1 Ms. Peck is probably not under the defined benefit
 2 plan, she's under the deferred comp -- or defined
 3 contribution plan, so hers would be less than
 4 that.
 5 Q How much less?
 6 A It would be a percentage of her salary.
 7 Q What percentage of her salary, do you know?
 8 A I believe it's fifteen percent, but it could be --
 9 you know, that's -- it could be a little lower, it
 10 could be a little higher.
 11 Q And then we've got the Personnel Department
 12 directors getting two hundred sixteen thousand
 13 dollars a year, of which twenty percent is
 14 allocated to Water & Sewer, correct?
 15 A Correct.
 16 Q And of that two hundred and sixteen it sounds like
 17 about -- well, a hundred thousand is going to be
 18 the pension contribution as well, correct?
 19 A Correct.
 20 Q And then there's an administrative secretary in the
 21 Personnel Office, correct?
 22 A Correct.
 23 Q And that person as an administrative secretary
 24 their compensation is a hundred twenty-seven
 25 thousand, five hundred and seventy-five dollars a

1 year?

2 A If that's what it says.

3 Q Are you okay with that?

4 A Am I okay with what?

5 Q With paying a secretary a hundred and twenty-seven
6 thousand dollars a year?

7 A It's not up to me what we pay her. Again, that's a
8 contracted position, so it's under the contract.

9 Q I guess what I'm saying is you would agree with me
10 that the City, like most cities in southeast
11 Michigan has been under financial fiscal stress
12 particularly after the beginning of the Great
13 Recession, correct?

14 A Correct.

15 Q And property taxes have because of declining
16 property values they've either -- property values
17 have either been flat or reduced during this time
18 period, correct?

19 A Correct.

20 Q And at the same time the City's expenses, the
21 overall expenses of city government have been not
22 staying the same, they've been increasing, correct?

23 A I think you're making some assumptions there.
24 There's been a number of things that the City's
25 done over the years to reduce expenses and to go

1 along with the reduced revenue. So it's not like
2 -- what you're saying is the expenses are going up
3 and the revenues are going down.

4 Q No, I'll accept the fact that you made changes to
5 reflect declining revenues, but there's certain
6 items of cost that on a per person basis continue
7 to go up. For example, retiree healthcare, that
8 goes up every year, correct?

9 A It seems to have gone up every year, yes.

10 Q And so there's always a challenge in how that's
11 going to be paid for, correct?

12 A Correct. There's also been changes to those where,
13 you know, we've reduced costs, but, yes, they tend
14 to go up.

15 Q Has the salary -- has the pension contributions of
16 the directors been reduced to reflect the economic
17 issues?

18 A The pension plan that we're in is now closed, which
19 to new hires, which has caused the acceleration of
20 payments on the existing division, so that's why
21 that number has gone up. But --

22 Q So the people who are in the tree house get to pull
23 the ladder up on everybody else basically, is that
24 correct?

25 A I wouldn't word it like that, but --

1 Q Well, the people who are vested in the defined
2 benefit plan are going to continue to do well,
3 right?

4 A When you say continue to do well, I'm not sure --

5 Q They're not having their benefits curtailed in any
6 way.

7 A Pension benefits curtailed?

8 Q Right.

9 A The Directors have had benefits curtailed as far as
10 pay, as far as healthcare, as far as other things.
11 As far as the pension goes, that has remained the
12 same.

13 Q Who's the head of the Department of Economic
14 Development?

15 A That -- currently?

16 Q Yeah.

17 A That position is vacant at the moment.

18 Q Okay. The rain event expenditures, do you recall
19 testimony last time the fact that the City put
20 twenty-four cents in the commodity rate in
21 recognition of the amounts that had to be paid for
22 cleanup for Belfor?

23 A Correct.

24 Q And I understand that that two million dollars was
25 recaptured through that twenty-four cent charge

1 over a period of four fiscal years, correct?

2 A Correct.

3 Q There's some confusion, at least on my part, as to
4 whether the actual costs -- the settlement costs
5 associated with the lawsuit were part of the rate.
6 Is it your testimony that that -- well, let's start
7 more basic.

8 Do you know how the settlement monies, it
9 was approximately five million dollars, correct?

10 A Correct.

11 Q How were those payments financed?

12 A They were not part of the rate calculation. They
13 were paid through credits on the water bills, one
14 point five million and then I think three point
15 five million was paid in installments.

16 Q I'll start even more basic than that. So you had a
17 million and a half of credits that was a non-cash
18 item, but it reduced the cash it took in in that
19 period of time, correct?

20 A Correct.

21 Q And what period of time were those credits applied?

22 A I don't recall. It was over a three-year period
23 though. It ended last --

24 Q And then there was a three and a half million
25 dollar cash payment. Did that come out of the

1 Water & Sewer Fund, the General Fund or some other
 2 revenue source?
 3 A Water & Sewer Fund.
 4 Q So it reduced the fund balance. On one day there
 5 was three and a half million dollars more than on
 6 the next day depending on when that payment was
 7 made.
 8 A There were several payments broken down. It wasn't
 9 all three point five million at once.
 10 Q But collectively there was three and a half million
 11 dollars of cash that came out of the Water & Sewer
 12 Fund.
 13 A Correct.
 14 Q How were those accounted for in your financial
 15 statements?
 16 A It was -- I do believe, if I remember right, it was
 17 booked as an extraordinary item.
 18 Q But was it an operating expense?
 19 A It was extraordinary item. Extraordinary item. It
 20 was not in the operating expense.
 21 Q Okay. But the payments collectively reduced
 22 the fund balance by three and a half million
 23 dollars more than it would have been absent those
 24 payments.
 25 A Can you reword the question.

1 Q Whenever those payments were made and whatever
 2 installments they were made, it resulted in the
 3 fund balance in the Water & Sewer Fund being three
 4 and a half million dollars less than it otherwise
 5 would be.
 6 A The reserves, right. Three and a half million
 7 dollars less, yes.
 8 Q So was there any recognition of those payments in
 9 establishing the rate -- the Water & Sewer rate for
 10 any period either before, after or during those
 11 payment periods?
 12 A Not that I'm aware of, no.
 13 Q Let me show you what we previously marked as
 14 Exhibit Number 8. And I want to refer your
 15 attention to the page that's marked on the bottom
 16 2069. And do you recognize these as the -- first
 17 of all the actual 2012, 2013, 2014 expenses that
 18 went into the rate and the projected for 2-15, '16,
 19 '17, '18 and '19, correct?
 20 A Correct.
 21 Q So what this attempts to do, and let's just go with
 22 the projected for 2015 because this was -- at this
 23 point this is what you were utilizing in order to
 24 determine what the proposed sewer rate, the
 25 commodity rate would be for 2015, correct?

1 A Correct.
 2 Q So up in the top you have the cost of sewer, wages
 3 and fringes, contracted services and administrative
 4 fee. The contracted services and administrative
 5 fee, that one point nine nine million dollars
 6 includes the sewer portion of the three point four
 7 million dollar administrative fee, correct?
 8 A I do believe so, yes.
 9 Q And then there's the OPEB line item, three hundred
 10 and fifty-five thousand dollars that's in the sewer
 11 rate for the OPEB, correct?
 12 A Correct.
 13 Q And then there's capital outlay that create total
 14 expenses six point seven seven million dollars,
 15 correct?
 16 A Yes.
 17 Q And then that's the gross expenses and then there's
 18 some backout in recognition of the fact that you're
 19 receiving revenue from sources other than the
 20 commodity rate, correct?
 21 A Correct.
 22 Q And that would be primarily the fixed charge,
 23 right?
 24 A Fixed charge, correct. For one of them.
 25 Q That's based upon the size of the water pipe?

1 A Fixed cost?
 2 Q Yeah.
 3 A The water meter.
 4 Q I'm sorry. Well, I've learned from some other
 5 cases that meter means different things to
 6 different people. Some people refer to the meter
 7 size as the size of the pipe servicing the
 8 residence and I also understand that meter is a
 9 physical device that measures waterflow.
 10 But your fixed charges are based upon the
 11 size of the pipe servicing the whatever the
 12 occupied dwelling is, correct?
 13 A Correct.
 14 Q And so that amount is backed out of the rate and
 15 then there's an addition of two hundred and fifty
 16 thousand dollars for a reserve fund, correct?
 17 A Correct.
 18 Q And that two hundred and fifty thousand, at least
 19 at this time, was intended to create money that
 20 would be used for future capital improvements to
 21 the sewer system, correct?
 22 A Correct.
 23 Q And so deducting the other revenue and then adding
 24 back this reserve fund meant that the expenses
 25 covered by rates were twelve million, two hundred

1 ninety-five thousand, two hundred and forty-four
 2 units, correct? I mean dollars.
 3 A Dollars, yes.
 4 Q And then you expected to bill two point two two
 5 million units, right?
 6 A Yes.
 7 Q And so what you calculated you needed to set the
 8 rate at in order to break even given those numbers
 9 was five point five four per unit, correct?
 10 A Correct.
 11 Q So all of the expenses in that six point seven
 12 seven million were either recovered through --
 13 MR. PELLAND: Sixteen?
 14 BY MR. HANLEY:
 15 Q Sixteen point seven seven million dollars for 2015
 16 were recovered either through commodity charges,
 17 fixed charges or from other types of charges that
 18 would be included in the eight hundred and five
 19 thousand dollar line item, correct?
 20 A Correct.
 21 Q So moving back a year -- actually moving back to
 22 2012, there is a calculation that includes three
 23 and a half million dollars of rain event
 24 expenditures, correct?
 25 A Correct.

1 Q And those collectively total from 2012, 2013 and
 2 2014, to six million dollars, correct?
 3 A Correct.
 4 Q And so that's more than the two million you paid
 5 Belfor, right?
 6 A Correct.
 7 Q And it appears that the three and a half million
 8 dollars was included in the eighteen million
 9 dollars of total expenses that were calculated for
 10 2012, correct?
 11 A Correct.
 12 Q And then there's a deduction of three point five
 13 million dollars to reflect the fixed charge and the
 14 other miscellaneous revenue and then there's an
 15 addition of two hundred fifty thousand for the
 16 reserve fund, bringing the expenses covered by the
 17 rates to fourteen million, four hundred sixty-one
 18 thousand and seventy dollars, correct?
 19 A Correct.
 20 Q And then again there's two point four six eight
 21 million units that were billed and so the
 22 calculated break-even sewer rate was four point
 23 four three per unit, correct?
 24 A That wasn't the calculated break-even sewer rate,
 25 that was the current proposed sewer rate. There's

1 nothing in the calculated break-even sewer rate.
 2 Q Okay. But what I'm saying is if you take fourteen
 3 million, four sixty-one, oh seven zero and you
 4 divide it by two million, four sixty-eight, eight
 5 sixty-six, that comes to a rate of five point eight
 6 five per unit, right?
 7 A Well, you have to -- I trust you.
 8 Q Because I think I'm now understanding where this is
 9 coming from. So do we -- are we able to figure out
 10 what the actual rate was in 2012? Was it the four
 11 point four three?
 12 A Correct.
 13 Q And the actual rate in 2013 was four point eight
 14 three?
 15 A I do believe that's correct.
 16 Q And then the actual rate in 2014 was five point one
 17 two.
 18 A Correct.
 19 Q So is it fair for me to assume that these numbers
 20 for the rain event expenditures are retroactive
 21 kind of adjustments to what the total expenses were
 22 in those prior periods, but they weren't
 23 necessarily reflected in the rates that apply
 24 during those prior periods.
 25 A That is correct.

1 Q So what would have been the rates for those prior
 2 periods or at least for four fiscal years was the
 3 two million dollars that was recovered through the
 4 twenty-four cent per unit charge.
 5 A Yes, that would have been included in the revenue
 6 as well as the expenditures.
 7 Q Right. In other words you intended to recapture
 8 through rates the amount that you had paid to
 9 Belfor for the cleanup in the amount of
 10 approximately two million dollars.
 11 A Correct.
 12 Q And that was actually done, that revenue came in
 13 and now that element of the rate has been
 14 eliminated.
 15 A Correct.
 16 Q And so on Page 2059 the Executive Summary, you say
 17 the twenty-four cent calculation used for the rain
 18 event expenditure has been eliminated for fiscal
 19 year '16 and going forward, correct?
 20 A Correct.
 21 Q So it would have been in the rate through June 30th
 22 of 2015.
 23 A Correct.
 24 Q And so if it was over a four-year period, it would
 25 have been in the rates since June 30th, 2011?

1 A I'd have to go back and look exactly, but it was
 2 for four fiscal years.
 3 Q Just one more question about Page 2069, the sewer
 4 expenses. Do -- the OPEB line item that got
 5 put into the rates starts in fiscal year 2014,
 6 correct?
 7 A Correct.
 8 Q And that would be the period of time from July 1st,
 9 2013 through June 30th, 2014, right?
 10 A Correct.
 11 MR. PELLAND: Can I just note -- I assume
 12 that's a typo referring to that line item that
 13 actually says on here OBEB?
 14 MR. HANLEY: Yeah, I'm assuming it's a typo.
 15 MR. PELLAND: Okay. I just wanted to make
 16 sure I'm not missing something or that's a
 17 different designation.
 18 MR. HANLEY: I'm sure it's a typo.
 19 BY MR. HANLEY:
 20 Q Is my time frame correct that it would have been
 21 implemented as part of the rates beginning July
 22 1st, 2013?
 23 A I would have to go back and check to see when
 24 exactly it was. To see if it was --
 25 Q Well, if we're relying right on the document it

1 says fiscal years ended June 30th and then it says
 2 actual 2014. So I'm assuming that that period of
 3 time runs from July 1st, 2013 through June 30th,
 4 2014.
 5 A That's correct.
 6 Q Do you know why that began being included as a line
 7 item in the rate structure?
 8 A I do not recall why that was.
 9 Q And you'd agree with me that on the preceding page
 10 where there's a calculation for Water, there's --
 11 the same amount for OPEB expenses for the Water
 12 side beginning in fiscal year 2014.
 13 A Correct.
 14 Q Has the City eliminated the Reserve Fund part of
 15 the rate calculation for this fiscal year?
 16 A I do believe they did, yes.
 17 Q Were you a part of that decision?
 18 A Yes.
 19 Q And what was the basis for the decision?
 20 A We had done it for a number of years prior to that
 21 to increase it and we believed that we were at a
 22 level that --
 23 Q What's the approximate Water & Sewer Fund balance
 24 at this point?
 25 A It's the end of our fiscal year, so it's tough to

1 determine, so it's -- I mean this would just be a
 2 guess, it could be higher, it could be lower. It's
 3 probably in the neighborhood of eight to nine
 4 million.
 5 Q Is it projected -- I mean I understand and
 6 experience can change, but is it projected to
 7 increase from the fiscal year ending June 30th,
 8 2015?
 9 A I don't remember what our projection was, but I do
 10 believe we're going to come in right around the
 11 same.
 12 Q The cash that's been accumulated as part of the
 13 five hundred thousand dollar annual reserve charge
 14 that's in the rate, is that earmarked for any
 15 particular project at this point?
 16 A They're working on a capital improvement plan in
 17 the next year, I do believe.
 18 Q And you'd agree with me that there are capital
 19 outlays that are done as a pay as you go kind of
 20 basis each fiscal year, correct?
 21 A Pay as you go meaning?
 22 Q Meaning it's in the rate and -- for example, you're
 23 projecting to spend a million and a half on capital
 24 improvements to the Water & Sewer system you might
 25 be replacing a main along a certain street, those

1 kind of things are a normal part of your budgeting
 2 process every year, correct?
 3 A Well, replacing a main may not be part of the
 4 budgeting process, repairing mains are in the
 5 budget.
 6 Q Right. But for example on Exhibit 8 you say
 7 capital outlay is estimated at one point seven
 8 million for fiscal year '16. And that's not an
 9 insignificant amount of money, correct?
 10 A Correct.
 11 Q And it probably reflects more than just repairing
 12 lines. It probably has other replacement as well,
 13 correct?
 14 A It has replacements, it has vehicles, it has things
 15 like that.
 16 Q Well, for example there's three hundred and
 17 seventy-five thousand dollars -- this is Page 2072.
 18 For fiscal year 15-16 you've got three hundred
 19 seventy-five thousand dollars for sewer main
 20 replacement with an expectation that that's going
 21 to continue at five hundred thousand dollars a year
 22 through fiscal year 18-19, correct?
 23 A And then you've got water main replacement of five
 24 hundred twenty-five thousand dollars, which is
 25 expected to be financed -- or expected to continue

1 at the five hundred thousand dollar level for the
 2 following fiscal three years, correct?
 3 A Correct.
 4 Q So actual replacement of -- system replacement is
 5 part of the annual capital outlay budget that gets
 6 actually put into the rate, correct?
 7 A Correct.
 8 Q And so whatever the plan for the accumulated
 9 reserves is, is that for something that's
 10 extraordinary, one-time kind of thing, or is it to
 11 be used for the similar types of capital
 12 improvements that are reflected in Exhibit Number
 13 8?
 14 A It would be similar to those, just more expensive.
 15 Q But the numbers that are reflected on Page 2072 of
 16 Exhibit 8, the million seven forty which breaks out
 17 to eight hundred and sixty-seven thousand to Water
 18 and eight hundred and seventy-two thousand to
 19 Sewer, that goes into the rate that is set and paid
 20 for by the water consumers on a -- water and sewer
 21 consumers on an annualized basis, correct?
 22 A Correct.
 23 MR. HANLEY: I think I don't have any further
 24 questions. Subject to -- well, let me say my peace
 25 about -- there's some issue -- there's continuing

1 issue as to the apportionment of the attorney fee
 2 cost and I haven't gone into that in significant
 3 detail because we've been discussing a possible
 4 stipulation as to a percentage. If that
 5 stipulation is not forthcoming, I may need
 6 additional testimony if not from this gentleman
 7 then from somebody else with knowledge of that and
 8 also the issue of the schematic of the DPS and
 9 garage and all that is something that is still
 10 open, so if there's additional testimony needed
 11 from this gentleman on things that there's extant
 12 discovery issues on, then we'd reserve the right to
 13 ask him some further questions, but subject to that
 14 I'm finished.
 15 MR. PELLAND: Attorney fees and the DPW
 16 allocation?
 17 MR. HANLEY: Right.
 18 MR. PELLAND: Anything else just so it would
 19 be limited and --
 20 MR. HANLEY: Well, the problem is as the case
 21 goes, the need for updated information continues.
 22 I mean the idea -- for example, the MMRMA thing is
 23 now another six months of history and there's an
 24 issue as to how much has been paid in terms of this
 25 fiscal year versus what is allocated, so I can't

1 say that the case gets stretched out another year
 2 I'm not going to need additional information, but
 3 as it stands right now, I think that I'm finished
 4 questioning him.
 5 MR. PELLAND: Just to be clear, I have a --
 6 the difference between additional documentation and
 7 additional testimony. You're saying you may need
 8 additional testimony from him on the MMRA cost
 9 allocations?
 10 MR. HANLEY: Yeah, if there's additional
 11 information that needs to be explored, not based
 12 upon what's out there today.
 13 MR. PELLAND: I don't have any problem with
 14 that. I agree to --
 15 MR. HANLEY: I mean I just don't know how long
 16 this is going to go before we get a trial date.
 17 MR. PELLAND: And I think we both agree that
 18 there's obviously updated discovery and things like
 19 that.
 20 I have no questions. Thank you.
 21 VIDEO TECHNICIAN: This completes this
 22 deposition. Off the record at 12:54.
 23
 24
 25

17 , 2016.

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