

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY  
PENNSYLVANIA

CIVIL DIVISION

\* \* \* \* \* No. 19-000217  
\*  
CHESTER WATER AUTHORITY \*  
\*  
vs. \*  
\*  
CITY OF CHESTER, et al. \*  
\*  
\* \* \* \* \*

Media, PA, January 16, 2020, 9:09 a.m.

\*\*\*

Courtroom Number 10

\*\*\*

TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE JUDGE SPIROS E. ANGELOS  
  
KEVIN KENT, ESQUIRE  
JOSEPH JESIOLOWSKI, ESQUIRE  
MEGAN GUERNSEY, ESQUIRE  
For the Plaintiff  
  
KEVIN GREENBERG, ESQUIRE  
KENNETH R. SCHUSTER, ESQUIRE  
GEORGE FARRELL, ESQUIRE  
JOEL EADS, ESQUIRE  
For the Defendant, City of Chester  
  
JOEL FRANK, ESQUIRE  
JOHN J. CUNNINGHAM, IV, ESQUIRE  
ROCCO P. IMPERATRICE, III, ESQUIRE  
For the Defendant, Aqua Pennsylvania, Inc.

1 ALSO PRESENT:  
2  
3 KATHRYN LABRUM, ESQUIRE  
4 For the Intervenors  
5  
6 WILLIAM E. MAHONEY, JR., ESQUIRE  
7 For the Trustee, Wells Fargo Bank  
8  
9 DENIS A. GRAY, ESQUIRE  
10 For the Chester Water Authority Trust  
11  
12 GINA THOMAS, ESQUIRE  
13 For the PA Department of Environmental  
14 Protection  
15  
16 FRANK EMMERICH, ESQUIRE  
17 For Chester County  
18  
19 JASON OYLER, ESQUIRE  
20 For the Susquehanna River Basin Commission  
21

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

INDEX

DIRECT CROSS REDIRECT RECROSS

ON BEHALF OF THE PLAINTIFF:

[None]

ON BEHALF OF THE DEFENDANTS:

Nafis J. Nichols			
by Mr. Greenberg	83		164
by Mr. Jesiolowski		126	167
by Ms. Labrum		158	
by Mr. Emmerich		162	

ON BEHALF OF THE INTERVENORS:

[None]

EXHIBITS

MARKED      ADMITTED

ON BEHALF OF THE PLAINTIFF:

Tab 26	City of Chester's municipal financial recovery plan dated 8/12/16	124	
Tab 25	City of Chester's exit plan for Act 47 dated 9/17/18	127	
Tab 24	City of Chester's financial statements and independent audit report dated 7/10/19	130	
AW-1	Amendment of agreement of sale	222	223
AW-2	Bank statement	222	223

ON BEHALF OF THE DEFENDANTS:

[None]

ON BEHALF OF THE INTERVENORS:

[None]

## P R O C E E D I N G S

January 16, 2020

1  
2  
3 COURT STAFF: Courtroom 10 is back in -- is  
4 in session, Spiros E. Angelos presiding. Good  
5 morning, Your Honor.

6 THE COURT: Good morning.

7 ALL: Good morning, Your Honor.

8 THE COURT: Good morning, everyone. What  
9 are you in, the isolation booth? Good morning,  
10 everyone. Please be seated. All right. I'm  
11 calling the matter of -- and I'm just going to list  
12 it as Chester Water Authority v. City of Chester, et  
13 al., and all the other matters involved with it.  
14 Good morning to everyone. I guess we should start  
15 with introductions just for the record of  
16 representation. I'm going to start with you, Ms.  
17 Labrum, over here.

18 MS. LABRUM: Good morning, Your Honor.  
19 Kathryn Labrum, Supreme Court ID #36280, for the  
20 Intervenors.

21 THE COURT: Good morning.

22 MS. GUERNSEY: Good morning, Your Honor.  
23 Megan Guernsey, Supreme Court #202065, for the  
24 Chester Water Authority.

25 THE COURT: Good morning, Ms. Guernsey.

26 MS. GUERNSEY: Good morning.

Diaz Transcription Services

2704 Commerce Drive, Ste. D, Harrisburg, PA 17110 ~ (717) 233-6664

1 MR. JESIOLOWSKI: Good morning, Your Honor.  
2 Joseph Jesiolowski, 307323, for the Chester Water  
3 Authority.

4 THE COURT: Good morning, Mr. Jesiolowski.

5 MR. KENT: Good morning, Your Honor, Kevin  
6 Kent from Conrad O'Brien, #85962, for the Chester  
7 Water Authority.

8 THE COURT: Good morning, Mr. Kent.

9 MR. KENT: Good morning.

10 MR. SCHUSTER: Good morning, Your Honor.  
11 Kenneth R. Schuster, 37666, on behalf of the city of  
12 Chester.

13 THE COURT: Good morning, Mr. Schuster.

14 MR. GREENBERG: Good morning and happy new  
15 year, Your Honor. Kevin Greenberg, 82311, for the  
16 city.

17 THE COURT: Good morning to you, Mr.  
18 Greenberg, and happy new year to you.

19 MR. FARRELL: Good morning, Your Honor.  
20 George Farrell on behalf of the city of Chester.

21 THE COURT: Good morning, Mr. Farrell.

22 MR. EADS: Good morning, Your Honor. Joel  
23 Eads on behalf of the city.

24 THE COURT: Good morning.

25 MR. FRANK: Your Honor, good seeing you

1 again. Joel Frank on behalf of Aqua, 46601.

2 THE COURT: Good morning, Mr. Frank.

3 MR. IMPERATRICE: Morning, Your Honor.

4 Rocco Imperatrice, attorney ID #32181, on behalf of  
5 Aqua.

6 THE COURT: Good morning, Mr. Imperatrice.

7 MR. CUNNINGHAM: Good morning, Your Honor.

8 John Cunningham, 70975, on behalf of Aqua.

9 THE COURT: Good morning, Mr. Cunningham.

10 All right. In the back rows?

11 MS. THOMAS: Good morning, Your Honor.

12 Gina Thomas for the Pennsylvania Department of  
13 Environmental Protection, ID 60262.

14 THE COURT: Good morning, Ms. Thomas.

15 MR. EMMERICH: Good morning, Your Honor.

16 Frank Emmerich for Chester County, 76109.

17 THE COURT: Good morning, sir.

18 MR. GRAY : Good morning, Your Honor.

19 Denis Gray, ID #61054, for the Chester Water  
20 Authority Trust.

21 THE COURT: Good morning, Mr. Gray.

22 MR. MAHONEY: And good morning, Your Honor.

23 William Mahoney on behalf of Wells Fargo, 67407.

24 THE COURT: Good morning, Mr. Mahoney.

25 MR. OYLER: Good morning, Your Honor.

1 Jason Oyler for the Susquehanna River Basin  
2 Commission, PA Supreme Court ID #84473.

3 THE COURT: Good morning, sir. All right.  
4 I think everybody is introduced.

5 MR. GREENBERG: Your Honor, just for the --  
6 for the matter of the docket, I believe we're here  
7 in the trust matter today, 217. The other ones have  
8 not been listed. I think there's some  
9 administrative stuff we can do --

10 THE COURT: There are, and I want to --

11 MR. GREENBERG: -- and I just want to be  
12 clear --

13 THE COURT: -- go over them right now.

14 MR. GREENBERG: Okay. Thank you, Your  
15 Honor.

16 THE COURT: Now, first of all, Counsel, I  
17 would like all counsel to forward to my chambers, to  
18 my staff their schedules for the next four months so  
19 that if we need to get some dates set, I'll know  
20 ahead of time who's available when, all right? So  
21 this -- if you could get that to my staff by next  
22 week by email, it would be certainly appreciated so  
23 we know what your calendar's like. Now, secondly, I  
24 think Ms. Labrum has filed motions for a partial  
25 summary judgment, correct?

1 MS. LABRUM: Actually, Your Honor, I  
2 filed --

3 THE COURT: Judgment on the pleadings.

4 MS. LABRUM: And, Your Honor, my office  
5 unfortunately did not serve the city of -- Mr.  
6 Greenberg's office on behalf of the city and Mr.  
7 Frank's office and Mr. Imperatrice's office on  
8 behalf of Aqua. They were reserved yesterday.

9 THE COURT: Right.

10 MS. LABRUM: Giving them another 20 days to  
11 (inaudible) --

12 THE COURT: I understand that. What I was  
13 going to say is any -- any -- any counsel wishing to  
14 file any motions on judgment on the pleadings to do  
15 so within the next 10 days, all right? And then if  
16 any motions are filed, obviously you have 20 days to  
17 respond. That's just some administrative things so  
18 we -- so we can move along on those.

19 MR. GREENBERG: Your Honor, towards that  
20 end, at the same time that 10-day period we're going  
21 to have to file our brief with the Commonwealth  
22 Court. I would hope that maybe it would happen, you  
23 know, till the end of the month because that's due  
24 literally 10 days from today --

25 THE COURT: All right.

1                   MR. GREENBERG: And then towards that end  
2 you -- can we delay any responses --

3                   THE COURT: All right. Anybody have any  
4 objection to that, we give everybody till the end of  
5 the month to file any motion for judgment on the  
6 pleadings?

7                   MR. KENT: No objection, Your Honor.

8                   THE COURT: All right.

9                   MR. GREENBERG: And, Your Honor, towards  
10 that end as well our responses to Ms. Labrum are due  
11 depending on the two different pleadings' earlier  
12 dates. Does it make sense to then have all  
13 responses to anything filed on -- up -- on her  
14 motions or the stuff filed on January 31st all be  
15 filed February 20th so that we all --

16                   THE COURT: Well --

17                   MR. GREENBERG: -- can do one uniform set  
18 of briefs instead of multiples?

19                   MS. LABRUM: Your Honor, if I could just  
20 ask for answers without briefs. I believe that the  
21 motion for judgment on the pleadings will simplify  
22 this matter and save (inaudible) --

23                   THE COURT: I understand your position on  
24 that, but -- well, you have your 20 days after you  
25 -- you get your notice on it, and -- and whenever

1       you've been served --

2                   MR. GREENBERG:   Your Honor --

3                   THE COURT:   -- (inaudible).

4                   MR. GREENBERG:   -- but the one that was  
5       filed earlier to which our objections were struck  
6       last week are going to be due in 14 days.

7                   THE COURT:   Right.

8                   MR. GREENBERG:   We're going to have new  
9       sets coming in 14 days from now.  I'm just trying to  
10      allow one consolidated set of briefs on all of the  
11      JOPs that anybody may choose to file rather than  
12      have --

13                  THE COURT:   Any --

14                  MR. GREENBERG:  -- six or seven, eight sets  
15      of briefs.

16                  THE COURT:   Anybody have an objection to  
17      that?  That makes sense.

18                  MR. KENT:   My only concern, Your Honor, is  
19      we don't know who is filing what --

20                  THE COURT:   Well --

21                  MR. KENT:   -- so --

22                  THE COURT:   -- that's right.  I don't know.

23                  MR. KENT:   Yeah.

24                  THE COURT:   That's why I'm setting a time  
25      frame to try and get it filed at least so we know --

1 MR. KENT: Our --

2 THE COURT: -- some of you may file and  
3 some of you may not file.

4 MR. KENT: Right. I --

5 THE COURT: I understand that.

6 MR. KENT: Certainly our preference would  
7 just be to have the -- whatever the rules provide  
8 for --

9 THE COURT: The standard rules, all right.

10 MR. KENT: Yeah.

11 THE COURT: And if someone needs an  
12 exception or needs an extension of some time, just  
13 file it, and I'll consider it.

14 MR. KENT: Yeah, and we're certainly --  
15 we're certainly open to entertaining a request if  
16 something's filed to do -- you know, at that point  
17 to adjust the schedule.

18 THE COURT: Okay. All right. Now, we're  
19 here on a number of motions, and I guess we might as  
20 well just start. Two of them are actually  
21 intertwined, and that is Chester Water Authority's  
22 motion for an evidentiary hearing, that argument,  
23 and then city of Chester's motion for leave to  
24 conduct discovery, and they're intertwined, so why  
25 don't we -- why don't we proceed with those two

1 first?

2 MR. KENT: Your Honor, I'm happy to proceed  
3 with the CWA's motion. I do agree that they're  
4 intertwined. I think the arguments basically go  
5 together. I don't know whether the city feels  
6 differently.

7 THE COURT: Well, they're certainly  
8 intertwined because --

9 MR. KENT: Yeah.

10 THE COURT: -- you're asking for an  
11 evidentiary hearing. And based upon however I  
12 decide on that, the city of Chester is saying, well,  
13 if we're going to have an evidentiary hearing, they  
14 need discovery, certain discovery. So that's --  
15 that's the

16 MR. KENT: Yes --

17 THE COURT: -- interconnection between the  
18 two.

19 MR. KENT: And I agree that they're  
20 interconnected, which is why I'm suggesting we argue  
21 both at the same time.

22 THE COURT: Sure.

23 MR. KENT: Yeah, for efficiency purposes.

24 THE COURT: Go right ahead.

25 MR. KENT: So, Your Honor, the CWA filed a

1 motion for final hearing. We think we're due for  
2 one. Several -- it's been scheduled several times,  
3 April 24th, July 18th, August 6th, August 14th,  
4 September 26th, and we have them on -- on -- you  
5 know, ready and ready to go. And then it was -- it  
6 was filed for October 16th, and it was only before  
7 that I think the sixth scheduled hearing that we  
8 received a request from the city for discovery  
9 through a motion that at the time, as we've pointed  
10 out we thought was deficient, and then a new motion,  
11 which wasn't filed until four weeks later in an  
12 attempt to cure that. And I think the Court  
13 recognized that this matter ought to be promptly set  
14 for final hearing as well.

15 THE COURT: I do -- I do recall with  
16 respect to all counsel we had a conference meeting  
17 in the conference room upstairs, and at that time I  
18 think we -- I think I only speak for myself. I know  
19 I understood. I thought everyone agreed that this  
20 was a legal issue and we should move this as quickly  
21 as possible, and that was a while back. And  
22 unfortunately, various motions have come in, various  
23 continuances have occurred, and here we stand, but  
24 I'm of the ilk that I want to move this matter.

25 MR. KENT: As does the Chester Water

1 Authority, Your Honor. To that end, I would note  
2 that -- that there may be some relationship, too,  
3 between what -- what is being heard later today,  
4 which is the -- the -- the status quo issue.  
5 Frankly, the status quo order would be mooted by any  
6 decision on a final hearing anyway, so we'd be in  
7 favor of getting that -- that final hearing  
8 scheduled for that reason as well. In terms of the  
9 kind of legal and factual overview here, Your Honor,  
10 the -- the -- and this goes to the city's request  
11 for discovery, as you're aware, in Orphans' Court  
12 discovery is not permitted as a matter of right. We  
13 submit there's good reason for that. We would have  
14 multiple interested parties, as you often do, like  
15 beneficiaries and others who may have an interest.  
16 It's set up for a hearing, and you exchange  
17 materials before the hearing and put your evidence  
18 on. Frankly, to have -- and this is borne out by  
19 some of the negotiations over discovery and  
20 scheduling, it's impractical with this number of  
21 parties to have -- to have any kind of extensive  
22 discovery process in a case like this. And we -- we  
23 agree that the issues are primarily legal. The  
24 issues in terms of factually for a hearing can --

25 THE COURT: Well, that's what I was going

1 to ask you, Mr. Kent.

2 MR. KENT: Yeah.

3 THE COURT: You're seeking an evidentiary  
4 hearing. Most people -- and I can only speak from  
5 what I recall. Most counsel thought this was a  
6 legal issue. What is the necessity of an actual  
7 evidentiary hearing, and what is the -- what is the  
8 scope of the evidentiary hearing that you wish to  
9 present?

10 MR. KENT: It depends on Your Honor's -- I  
11 appreciate the question, Your Honor. It depends on  
12 Your Honor's ruling. CWA obviously has put in the  
13 papers that we think under 5607(d) we have an  
14 absolute right to -- to undertake this transfer, so  
15 that --

16 THE COURT: Oh, I understand that.

17 MR. KENT: -- that's threshold issue #1.  
18 If you rule on the CWA's favor on that point, you  
19 don't need to go any further. To the extent that  
20 parties have raised objections and are claiming  
21 there's some impediment to this being transferred in  
22 -- into trust, that's not legal, and the Court  
23 determines that we can't, as a matter of law for  
24 some reason, transfer those assets into trust  
25 because of the pendency of these objections, we

1 would want to put on evidence to address those  
2 objections. Now, the burden as to those objections  
3 is on the objectors. It's on our opponents in this  
4 case seeking to stop that. So we would want to put  
5 on evidence to address whatever those objections  
6 are. For example, I think it's fairly limited. The  
7 city has said that this is a sham transaction. Now,  
8 if you through the 5607(d) analysis, we would simply  
9 put on our evidence to show from -- you know, from  
10 the board the process that the board went through,  
11 which is laid out in public documents to authorize  
12 what has been put before the Court for approval.  
13 And we would also put on additional evidence because  
14 it ties into their -- to what they've -- they've  
15 laid out, which is a focus on rates as to why it's  
16 -- to the extent there's a challenge that this is  
17 not in the public interest, that the rates that CWA  
18 charges are demonstrably lower than what the  
19 investor-owned utilities charge and would be going  
20 forward. So that's -- those are -- those are the  
21 core issues. But, frankly, a lot of it depends on  
22 what our opponents say they are going to put on as  
23 far as evidence with -- in connection with their  
24 objections. They've said they're mostly legal, but  
25 they've raised these issues which we don't think

1       come into play, and you may have to make some  
2       rulings on like the correspondences about Act 73,  
3       the involvement of the Chester Water Authority in  
4       passing Act 73. I don't think those things are here  
5       or there for purposes of this case. The law is the  
6       law. They also want to get into things like the  
7       salaries of Chester Water Authority employees and  
8       how the management is set up.

9                THE COURT: And that's a discovery request,  
10       sure.

11               MR. KENT: Right. Frankly, that goes to  
12       rates, Your Honor. I mean, that goes to the very  
13       issue I just talked about. So that's what I see the  
14       scope of the hearing as being, subject obviously to  
15       whatever the objectors put on and whether they can  
16       even carry a burden in the first place which  
17       requires us to respond to that evidence.

18               THE COURT: All right.

19               MR. KENT: So I hope I answered Your  
20       Honor's question.

21               THE COURT: You did.

22               MR. KENT: That's --

23               THE COURT: No, you did.

24               MR. KENT: That's -- that's the basic  
25       point. Obviously, we would want to identify the

1 assets very specifically for the Court and say this  
2 is what's being put into trust and here's how the  
3 Authority would continue to operate them even if  
4 they're owned by the trust. It's nuts and bolts-  
5 type stuff.

6 THE COURT: Understood.

7 MR. KENT: Yeah. So there's a clear record  
8 of what it is that's being transferred and what may  
9 not be for -- for licensing purposes. I think I've  
10 already touched on the standard for discovery and  
11 why we don't think it's necessary here. The -- the  
12 -- I will say, just to update the Court, we have  
13 tried. I mean, we really did take Your Honor's  
14 indication in the opinion that you issued in  
15 December to heart. I think from my perspective  
16 we've gone through a good-faith process of trying to  
17 work that out. We're just not there. There are too  
18 many different opinions that are just fundamentally  
19 too far apart. I mean, the CWA would consider some  
20 very limited discovery if we had a hearing that was  
21 in the very near future. The city has a different  
22 take on this and would put a hearing out frankly  
23 looking at their proposed schedule until at least  
24 well out into the -- into the summer and maybe into  
25 the fall with -- with dispositive motions being

1 filed before a hearing is scheduled and things of  
2 that nature. And that's their prerogative. I  
3 disagree with it, and I don't think it's necessary  
4 or called for under the rules, but we -- we have  
5 tried -- we have tried to work that out, primarily  
6 myself and Mr. Eads. From the CWA's perspective,  
7 we're not going to have this be a one-way street.  
8 If the Court determines to allow discovery, then the  
9 CWA should be able to take discovery, too, and that  
10 would include from a lot of the interested parties  
11 here if that's -- if that's the way we're going.  
12 Aqua has objected to any discovery at all, and --

13 THE COURT: Aqua's position, as I  
14 understand it -- and certainly Mr. Frank can speak  
15 for -- speak for Aqua, but based on the documents  
16 I've seen, their position is there's no need for  
17 discovery; it's a legal issue. Correct, Mr. Frank?

18 MR. FRANK: Correct, sir.

19 THE COURT: That's --

20 MR. KENT: So --

21 THE COURT: And I think a representative  
22 from Chester County filed motions saying the request  
23 of discovery of the city exceeds the scope of the  
24 actual area itself. Correct, sir?

25 MR. EMMERICH: Correct, Your Honor.

1                   MR. KENT:  And, Your Honor, just as to the  
2                   -- well, to finish that point, I think that  
3                   highlights what I'll call the difficulty of engaging  
4                   in discovery in a case like this and why it's  
5                   preferable, frankly, to have a date for exchanging  
6                   exhibits, identifying witnesses, and then just  
7                   setting a hearing, which you can see in our request.  
8                   As far as the city's legal basis for seeking  
9                   discovery, the authority they cite really doesn't  
10                  support it.  They cite the -- a *Mulligan* [ph] case,  
11                  which is an appeal from a civil division case.  It  
12                  didn't involve discovery in any manner but had to do  
13                  with trial court's jurisdiction to compel the  
14                  attendance of a nonparty for trial.  If you look at  
15                  that case, that's what it's about.  It has nothing  
16                  to do with discovery in this context.  *Grigori v.*  
17                  *Grigoris* [ph], that's an appeal from a civil  
18                  division case in the Court of Common Pleas in York  
19                  County against -- not in Orphans' Court setting --  
20                  did not involve a request for discovery but rather  
21                  the propriety of a party asserting the attorney-  
22                  client privilege through discovery only to  
23                  voluntarily waive the privilege at trial, creating  
24                  an issue of, quote, "trial by surprise," which is  
25                  what -- which is a term I'm sure you've seen in the

1 city's papers. So that's the only authority they  
2 really cite. The -- with the following exception,  
3 they do cite an estate case --

4 THE COURT: Um-hum.

5 MR. KENT: -- *In Re: Elaine Hyman*. There,  
6 the Court held that the Civil Rules of Procedure  
7 relating to discovery do not apply to an Orphans'  
8 Court matter when the local courts prescribe  
9 otherwise. And that's what you have here. So even  
10 the authority cited by the city doesn't justify  
11 their position here. And just to elaborate a little  
12 more on one of my points earlier, the city hasn't  
13 established cost. I mean, here -- I submit the  
14 request is totally untimely. We tried to engage the  
15 city about discovery in this case and others on July  
16 31st, and I think we've already put that email  
17 before the Court in several contexts. We got no  
18 response at the time. We weren't able to get  
19 anywhere. And -- I apologize; I need to correct  
20 myself. The city did not cite the last case I  
21 mentioned, *Hyman*. That was cited in the --

22 THE COURT: In --

23 MR. KENT: -- Chester Water Authority's  
24 brief --

25 THE COURT: That's what I thought.

1           MR. KENT: -- so I just want to correct the  
2 record on that. Basically, I think, you know, what  
3 you see from the record in this case is the city  
4 citing discovery as a means to continually put off  
5 an ultimate decision on the merits. Now, that's --  
6 that's what I think at least in effect is what is  
7 happening here. And I won't go into a long  
8 description of the procedural history here because I  
9 think the Court is very familiar --

10           THE COURT: We're all familiar with that.

11           MR. KENT: Yeah, I think you're already  
12 familiar with that. And -- as are all of us. I  
13 mentioned the discovery that they're seeking we  
14 think being completely overbroad and going to things  
15 that -- that really they don't need discovery on and  
16 it's not going to help the Court here. Some others  
17 beyond the ones that I touched about, the means for  
18 redeeming Wells Fargo's interests, that's a  
19 condition that we've agreed to. The only issue is  
20 -- is that it be satisfied. How and -- how that's  
21 satisfied is frankly irrelevant to what happens with  
22 -- with whether these assets go into trust or not.  
23 They also want discovery on things like details  
24 about the proposed rate increase related to the  
25 settlement offer to the city. That's not relevant

1 if there's no settlement offer -- if there's no  
2 settlement, and there hasn't -- and I think  
3 everybody's said there hasn't been. So these are  
4 the types of things the city is seeking discovery  
5 on. There's no basis for it, and -- and we would  
6 submit the best way to proceed moving forward, Your  
7 Honor, is simply to set the hearing, set a date for  
8 exchange of exhibits, maybe have two -- two dates  
9 for that if the city is insisting on it because they  
10 bear the burden on the objections, a date for both  
11 parties to submit their exhibits and a supplemental  
12 date for parties to submit basically rebuttal  
13 exhibits and identify the witnesses and go forward  
14 with the hearing. So that's the CWA's position on  
15 discovery, Your Honor. We think it's overdue. We'd  
16 suggest that it -- the -- the final hearing be  
17 scheduled as soon as possible over the next couple  
18 months.

19 THE COURT: Thank you. Mr. Greenberg?

20 MR. GREENBERG: Thank you, Your Honor. I'm  
21 going to speak briefly, and then I'm going to let  
22 Mr. Eads, who's really going to be in charge of the  
23 fact issues at trial --

24 THE COURT: All right.

25 MR. GREENBERG: -- discuss this. I just

1 want to point out a couple of things very quickly  
2 before I turn it over. We just heard in Mr. Kent's  
3 speech that they will identify for the Court the  
4 assets to be put into trust and the terms by which  
5 they would do so. It's something they would present  
6 to the Court at a later date. We don't know what  
7 those documents are. We don't know what those  
8 assets are. We don't even know how to ask for  
9 those. We don't know what the agreements back and  
10 forth they've talked about, which is going to be a  
11 transfer and a leaseback. We haven't seen that  
12 document. So there's some very specific facts that  
13 he just spoke about today that come into play here.  
14 Similarly, while we agree that the issue of the MAA  
15 rights are strictly legal at this point except for  
16 some preposterous assertions as to who created the  
17 Chester Water Authority in 1937 that fly in the face  
18 of admissions on the record. But aside from a few  
19 issues like that that are very, I think, simply  
20 decided, there are very few facts on the core MAA  
21 issues. But this case is not core MAA issues. We  
22 have filed a series of preliminary objections to the  
23 DVPA assertions that are now made in the judgment on  
24 the pleadings by Ms. Labrum with respect to some  
25 factual assertions about the Octoraro Reservoir

1 being a natural resource. Those are factual  
2 questions. Was it manmade? Was it created? There  
3 are some facts that need to be established on the  
4 record as to all of the ancillary claims some made  
5 with respect to the Constitution by the CWA  
6 initially, some made in interventions in new matter  
7 that have come in, some made in an ancillary  
8 petition that's before this Court still as to the  
9 second -- their second attempt to have an ancillary  
10 petition, to which we have filed a P.O. and the  
11 Court is not ruled. So there's a lot of other facts  
12 that are relevant to this that if those are -- if  
13 our P.O.'s were granted as to all of those things,  
14 and some of them have already been overruled, we may  
15 agree that they were just legal, and that's where we  
16 were I think this summer was we said it's just legal  
17 if all the ancillary stuff drops off. But there's a  
18 lot of ancillary stuff that is very fact-intensive  
19 and frankly, if we just deal with legal issues on  
20 those points, we're going to be back before the  
21 Court after the Supreme Court acts for whole other  
22 round of this, and I think nobody wants that. And  
23 with that, I'll let Mr. Eads discuss the rest of  
24 this.

25 THE COURT: Okay. Mr. Eads, good morning,

1       sir.

2                   MR. EADS: Good morning, Your Honor. So  
3 Mr. Greenberg has gone a long way to telling you the  
4 nitty-gritty, but here's where we are. They filed a  
5 petition to create a trust. We opposed with  
6 preliminary objections putting the legal issues  
7 before the Court.

8                   THE COURT: Um-hum.

9                   MR. EADS: The opposition, as the Court  
10 knows, was there are factual issues. It therefore  
11 defies this litigator's understanding of how do you  
12 move to a hearing when you've opposed my preliminary  
13 objections by saying there are factual issues when  
14 we don't know what those are?

15                   THE COURT: And that's the basis for your  
16 request for discovery?

17                   MR. EADS: And that's the basis for the  
18 request. The Orphans' Court rules plainly  
19 contemplate a procedure to apply for discovery. We  
20 followed that. We think the issues are legal. They  
21 have said they're not. There are factual issues. I  
22 don't think that a case involving hundreds of  
23 millions of dollars, significant public and private  
24 interests should reveal the factual basis for the  
25 things they're trying to do at a hearing, right?

1 Forget trial by ambush. How about fundamental  
2 fairness? How about the significance of the  
3 interest in play? Demand a little preview so that  
4 we can prepare our best responses. And frankly, if  
5 we engage in that process at a greater level of  
6 detail, I'm sure we can stipulate to a lot of things  
7 that would save the Court significant amounts of  
8 time. There is this silly issue about whether the  
9 city created the Authority.

10 THE COURT: I'm familiar with it.

11 MR. EADS: We've got to get rid of that.  
12 Why should we have witnesses here to talk about what  
13 happened in 1937 when we know what happened in 1937?  
14 But by incorporating by reference in opposition to  
15 our P.O.'s every pleading in every case that's  
16 before the Court related to the subject matter, it's  
17 now become an issue. I think with a little legwork  
18 by the attorneys -- not on the dates and timing  
19 because we just can't seem to get there -- I think  
20 we can narrow the scope of the legal and factual  
21 issues.

22 THE COURT: I'd like to see that, but  
23 unfortunately, with all due respect to all counsel,  
24 none of that's occurred yet. And I know you're all  
25 busy counsel and so forth, but I think there's got

1 to be a time where reasonable people could sit down  
2 and start to work some of this out as far as what  
3 can be stipulated to and what cannot be stipulated  
4 to.

5 MR. EADS: I think some of it is less about  
6 busyness and other about what are the scopes of  
7 claims and defenses in the case, right? That  
8 defines discovery.

9 THE COURT: Um-hum.

10 MR. EADS: And we think it's what are the  
11 legal rights under the MMA, and does the ERA apply,  
12 two legal issues. We're ready to take those up and  
13 get the Commonwealth Court to rule on them, but what  
14 happens is they say there are factual issues. Mr.  
15 Greenberg has identified some in specificity. Do  
16 they apply? I don't know, but they want an  
17 evidentiary hearing where they're -- they've  
18 identified witnesses who are apparently going to  
19 offer this type of testimony. Why should we be  
20 surprised? The interests are too big.

21 THE COURT: Well, I --

22 MR. EADS: What's at stake is too large.

23 THE COURT: I understand, and in reviewing,  
24 with all due respect, for the request for discovery,  
25 there seems to be a lot more here than there really

1 needs to be addressed. But I can understand your  
2 position because what -- on the opposite side  
3 they're saying, well, what does Chester Water  
4 Authority intend to present? I understand that.  
5 That's why I think it would behoove everyone if the  
6 attorneys could sit down and say, okay, look, here's  
7 the issues. Obviously, one of the issues, which is  
8 a factual issue -- and I can understand it -- is the  
9 property, the -- you know, this property, this  
10 reservoir and the surrounding property around it.  
11 That's a factual issue, who owns that and where does  
12 it go and how is it part of the thing. I could see  
13 where that can be part of discovery.

14 MR. KENT: And I can address that when -- I  
15 don't want to interrupt --

16 THE COURT: All right.

17 MR. KENT: -- Mr. Eads' argument, but --

18 THE COURT: But that's -- that's one of the  
19 issues that I see. Some of the other issues that  
20 were requested in discovery like salaries of  
21 employees and going into other areas of that, I  
22 don't -- I don't know where that's necessary unless  
23 there is indication from the Chester Water Authority  
24 that they're going to present that kind of  
25 information. I mean -- so I think there needs to be

1 a narrowing quite frankly. I'm not opposed to  
2 discovery, granting discovery on both sides.  
3 Obviously, if I grant discovery to the city, Chester  
4 Water Authority has to have an opportunity to do  
5 some discovery also. But I think, Counsel, we've  
6 got to narrow this down. It's gotten way too  
7 expansive into areas that I don't think are  
8 necessary for the actual hearing and the  
9 determination of what the legal issues are.

10 MR. EADS: Well, we agree with the Court.

11 THE COURT: And I don't know whether you  
12 can do it yourselves or you just -- no, you've got  
13 them before me. I can just rule on them on my own  
14 and decide what I think is necessary, but I -- I  
15 would -- I'm always inclined to let counsel work  
16 things out if they can because I think it's the best  
17 way to do things in order to prepare for a hearing  
18 like this, but if they can't, then I'm just going to  
19 have to rule one way or the other on a number of  
20 these issues. And I -- I'm prepared to do it. I'm  
21 also prepared to give counsel an opportunity to sit  
22 down and try and say okay, look, we're going to  
23 present these witnesses, and these are the factual  
24 issues we believe on behalf of the CWA. And the  
25 city's going to say, well, we need discovery on

1       these areas and these are who we are going to  
2       present on behalf of the city of Chester and what  
3       our factual issues are and allow Chester Water  
4       Authority to do discovery. But I think we have to  
5       -- we have to in some way narrow this down and also  
6       in some manner expedite it because it's -- it's  
7       dragging on and on. And it's costing everybody time  
8       and money. And I know, as all counsel has indicated  
9       before, that when I -- whenever I rule in my  
10      decision on this, the ultimate decision, it's going  
11      to go up to the -- the appellate courts anyway, and  
12      you're going to be waiting even longer up there for  
13      a decision. So I don't know where you want to go  
14      with -- I was actually -- I don't know if you want  
15      to prepare and argue why you need every issue you're  
16      requesting in your discovery. I'm prepared to hear  
17      that. Or if you want to sit down and try and work  
18      it out together first. Now, I know you have tried,  
19      but it apparently hasn't been successful.

20               MR. EADS: So this might be a surprise to  
21      the Water Authority, so I don't need their response  
22      today, but the -- when I hear discovery just being  
23      scope of discovery and time sensitive, I think  
24      discovery master and maybe the Court might want to  
25      think about something like that.

1           THE COURT: I can certainly do that if  
2 you're willing to do that. I would be glad to do  
3 that. And maybe that could help expedite this issue  
4 and see where everybody is and put a deadline on it.

5           MR. KENT: Your Honor --

6           THE COURT: I don't know. I don't know.  
7 Go ahead, Mr. --

8           MR. KENT: We're not -- without committing  
9 to it, we're not necessarily --

10          THE COURT: No, I understand.

11          MR. KENT: -- averse, and I think I raised  
12 that issue before. I mean, you know, we certainly  
13 want to see somebody who's familiar with Orphans'  
14 Court procedure, you know, adept with Orphans' Court  
15 procedure and practice --

16          THE COURT: Right.

17          MR. KENT: -- in connection with that.

18          THE COURT: Well, that would make sense.  
19 If I were to appoint a master, it would be someone  
20 that's experienced in Orphan Court procedure.

21          MR. KENT: And frankly, Your Honor, I think  
22 the process would be substantially helped by having  
23 a final hearing deadline in place to press parties  
24 along to get through what they really need.  
25 Obviously, though, from the CWA's perspective we

1 don't think discovery is necessary or appropriate.

2 THE COURT: I understand.

3 MR. KENT: And much --

4 THE COURT: Nor does Aqua think this --

5 MR. KENT: Yeah.

6 THE COURT: -- discovery is necessary.

7 MR. KENT: Nor does Aqua --

8 THE COURT: I know their position.

9 MR. KENT: -- which is another practical  
10 problem --

11 THE COURT: Nor Chester County to some --  
12 to some limited scope. They -- the petition by  
13 Chester County indicates --

14 MR. KENT: Right.

15 THE COURT: -- that some discovery may be  
16 necessary but it ought to be limited.

17 MR. KENT: Yeah. And certainly from our  
18 perspective because we don't think discovery is  
19 necessary in the first place, most of this stuff  
20 would be turned over well in advance of a hearing  
21 and, you know, you test it. I don't know that we  
22 need to have depositions, you know, of the 12  
23 depositions Chester City intends to take of every  
24 single board member and all of the upper management  
25 of Chester Water Authority. I mean, that -- that's

1 -- those are the types of things that are getting in  
2 the way of working something out. And I'm not  
3 suggesting anything improper on the city's part. We  
4 just have fundamentally different perspectives --

5 THE COURT: I understand.

6 MR. KENT: -- as to what should be done,  
7 just to -- to respond to a couple of the points that  
8 Your Honor raised.

9 THE COURT: All right. Mr. Eads --

10 MR. EADS: The only other thing --

11 THE COURT: -- you may proceed.

12 MR. EADS: -- I would say is --

13 THE COURT: I didn't mean to interrupt you,  
14 but --

15 MR. EADS: No, it's okay. These are --  
16 these are issues worthy of discussion. I -- I'm  
17 attach for trial February 3rd. I'm going to be  
18 running this discovery on behalf of the city --

19 THE COURT: All right.

20 MR. EADS: -- so the proposal was I'm not  
21 looking through the summer. Sixty days in earnest  
22 once my trial is over, which would be mid-to-late  
23 February I'm happy to dive into this. But I think  
24 60 days to exchange documents, identify relevant  
25 witnesses, get those depositions done, and then

1 schedule an evidentiary hearing. I think it's a  
2 little bit of the cart before the horse to schedule  
3 a hearing before a master's set the scope of  
4 discovery because we don't know schedules,  
5 availability, and what we're talking about. But we  
6 have no problem with moving toward the establishment  
7 of a hearing date more quickly than not.

8 THE COURT: All right. Thank you.

9 MR. EADS: Thank you.

10 THE COURT: Mr. Frank?

11 MR. FRANK: Thank you, sir. Again, you  
12 know, Aqua agrees with, you know, what you stated at  
13 the very outset as to what was agreed to, you know,  
14 up in the conference room in the summer. Before I  
15 get into the actual meat of the meeting -- of the  
16 argument, let me just briefly address Mr. Kent's --  
17 one of Mr. Kent's statements. We disagree that it's  
18 the objector's burden. It's CWA's burden as  
19 petitioner to go ahead and prove their entitlement  
20 to the relief requested, et cetera, so I just wanted  
21 to get that on the record at the outset. Now, Your  
22 Honor, in your December 2nd opinion, you identify  
23 the key issues you wanted us to go ahead and  
24 address, you know, those being of course the impact  
25 of the amendment to MAA Section 5610 and the city's

1 ability to, you know, acquire and potentially sell  
2 the Authority's assets under 5622 and whether CWA's  
3 assets are in fact subject to the Environmental  
4 Rights -- Rights Amendment. There are no material  
5 facts that must be resolved in order to go ahead and  
6 resolve those two questions. Let's think about the  
7 facts that -- rather that are not in dispute that I  
8 don't think anyone's in disagreement about, and  
9 those being, you know, the history of the city's  
10 incorporation of CWA initially and the  
11 reincorporation, you know, two times thereafter.

12 THE COURT: I'm not so sure that's all  
13 agreed to, though.

14 MR. FRANK: Well, if you look at -- you  
15 know, you have to --

16 THE COURT: I understand --

17 MR. FRANK: Well, you know --

18 THE COURT: I understand what you're  
19 saying, but I'm not sure everybody's agreed to that.

20 MR. FRANK: Well, I'll -- look at -- I'm  
21 going to get into that because what's -- what's said  
22 in people's filings and then what's -- what's said  
23 in court necessarily aren't the same. I'm talking  
24 about what was actually said in people's filings --

25 THE COURT: I understand where you're going

1 with the pleadings.

2 MR. FRANK: -- that the Court can go ahead  
3 -- and that the record reflect and the Court can  
4 take -- take acknowledgment of. There's no dispute  
5 that CWA is not a joint authority under 5604 of the  
6 MAA, no dispute that Act 73 changed the board's  
7 governance from city alone to three, three, and  
8 three. There's no dispute about CWA's service area  
9 and the percentage of customers that fall within  
10 each of those service areas. There's no dispute  
11 that CWA operated without a trust for 150-plus years  
12 without a trust structure. There's no dispute that  
13 in the service area water is not subject to  
14 diminution or depletion as in fact current -- you  
15 know, constantly naturally replenished, and there's  
16 no dispute that the PUC must approve water rates  
17 charged by an investor-owned utility and that  
18 approval occurs only if the rates are determined to  
19 be fair, just, and in the public interest. Those  
20 facts are the key facts which would enable you to go  
21 ahead and make your decision. Based on those  
22 undisputed facts, the key issues that you identify  
23 are in fact truly purely questions of law, which  
24 have already been addressed in various filings.  
25 Now, Your Honor, before you -- and, you know, you've

1 had the trust petition, various answers, objections,  
2 preliminary objections, new matter, response  
3 thereto. CWA's response to new matter, you've had  
4 the intervenors' petition to intervene and the  
5 answer to -- and the answer thereto. You have --  
6 you have bench memoranda, post-hearing memoranda,  
7 motions to maintain the status quo and the responses  
8 thereto, motions to dissolve injunctions, status quo  
9 order and responses thereto, ancillary petitions for  
10 review and preliminary objections, responses  
11 thereto, and in various transcripts from the  
12 proceedings and the arguments before the Court,  
13 including the extensive one we had before Your Honor  
14 on August 6th of 2019. So the Court can read and  
15 assess the parties' respective positions and the law  
16 cited, read the relevant MAA sections and what Act  
17 73 says and maybe, more importantly, what Act 73  
18 doesn't say. That will readily enable you to  
19 determine, Your Honor, that, you know, that  
20 fundamentally, a municipal authority such as CWA  
21 cannot properly be removed from the regulatory  
22 scheme of the MAA. It's really as simple as that.  
23 There's no need to prolong the matter any further  
24 with any discovery or an evidentiary hearing. The  
25 information is already in front -- we already had

1 testimony. It's all in the transcripts. You know,  
2 it's our position, as you indicated at the outset  
3 and I'd just like to reiterate, that it is ripe for  
4 decision now based on the record as it currently  
5 exists before the Court. So, again, no discovery or  
6 evidentiary hearing from Aqua's perspective. And  
7 you have the information you need in order to make  
8 your decision. Thank you, sir.

9 THE COURT: Thank you, Mr. Frank. Ms.  
10 Labrum, do you have any response?

11 MS. LABRUM: Your Honor, I would just add  
12 that I think if the Court decides the issues  
13 presented by the legislation, the MAA, the  
14 amendments to the MAA, much of this case disappears.  
15 And I think everyone here today agrees that the  
16 question of the legislative interpretation is purely  
17 a question of law for the Court.

18 THE COURT: All right. Thank you.  
19 Counsel? Anyone else?

20 MR. EMMERICH: Briefly, Your Honor --

21 THE COURT: Sure.

22 MR. EMMERICH: -- for Chester County.

23 THE COURT: Absolutely.

24 MR. EMMERICH: As you know from our  
25 response, we've closed discovery primarily because,

1 again, we agree that the issues are legal. The  
2 Court can decide some of the core issues here. And  
3 at the end of the day if there's a factual issue of  
4 the -- the set up here is -- the law is the  
5 municipality runs independent -- or, excuse me, the  
6 authority runs independent of the municipality.  
7 There's nine board members, three of the city. If  
8 there's any factual issue, the term that I think all  
9 of us in this room would be comfortable with, it  
10 comes down to the business judgment rule essentially  
11 is the authority operates as an independent,  
12 separate legal entity. If there's a claim raised by  
13 an objector in this case that they've acted with  
14 fraud, okay, or self-dealing, then, sure, there  
15 could be discovery on those issues of whether those  
16 nine members undertook something in their election  
17 of their fiduciary duties. But outside of that it's  
18 a factual issue, and the evidentiary hearing should  
19 be set. And if a -- if any discovery goes forth, as  
20 argued in our response to the motion, we ask the  
21 Court to put grave limitations on it. It is  
22 obviously this -- these proceedings drag out, a lot  
23 of people, a lot of time, a lot of money on behalf  
24 of clients being here, everyone has just said the  
25 issues -- if there are factual issues, are very

1 simple, and we would ask the Court, if it grants any  
2 discovery, to put in place something as limiting as  
3 maybe three or four depositions of three hours in  
4 duration because if the issues are real simple,  
5 people can go in, conduct a quick deposition, get  
6 that one or two facts that -- that they believe are  
7 at issue and not drag this through, you know, 15  
8 depositions of days -- you know, seven hours of  
9 duration and bring all of this -- these counsel and  
10 parties to those depositions to -- to participate  
11 and spend that time and money.

12 THE COURT: Thank you.

13 MR. GREENBERG: Just -- if Your Honor just  
14 -- I just want to be clear, we do not agree with the  
15 -- with the premise that was stated that this is  
16 about a business judgment rule. The MAA and the  
17 rights of a municipality that are incorporated are  
18 very different than that, and we specifically want  
19 to point out that if the DVPA and the Environmental  
20 Rights Amendments and those other ancillary issues  
21 we talked about in the case, I think we would agree  
22 with everybody with where they are. It's all of  
23 these ancillary issues to which P.O.'s were filed,  
24 in some cases overruled, in some cases are pending  
25 that raise all of these other factual challenges.

1       Otherwise, it is a few very simple facts. The  
2       problem the city has is that if we address the key  
3       issues of law but don't deal with these ancillary  
4       issues that would create another two- or three-year  
5       process later, we're just making this thing -- if  
6       the city prevails, we're setting this thing up for a  
7       six- or eight- or ten-year process where we come  
8       back and deal with each of these ancillary claims  
9       later. We believe these claims are specious,  
10      they're (inaudible), whatever -- however we want to  
11      do it. We made those arguments. But as long as  
12      those other claims are in this case, it is not a  
13      simple question of law unfortunately.

14                THE COURT: All right.

15                MR. KENT: A quick point on that, Your  
16      Honor.

17                THE COURT: Sure.

18                MR. KENT: The ancillary issues that the  
19      city seems to be referring to are issues that have  
20      been engendered by the city's conduct. And they  
21      have been addressed in one order by this Court, and  
22      this Court said it should be addressed in another  
23      case. So this -- this -- it's seeming insinuation  
24      that ancillary issues are being raised by the  
25      Authority are complicating getting to the end line

1 here, that is a premise with which we would  
2 certainly disagree.

3 MR. GREENBERG: And I just want to be  
4 clear, we're speaking about claims mainly raised by  
5 the Intervenors, although they did -- the Authority  
6 did raise the -- the equal -- the Environmental  
7 Rights Amendment and those issues that are raised  
8 there as well. But primarily these are  
9 Intervenors --

10 THE COURT: The Intervenors.

11 MR. GREENBERG: -- and they're -- and  
12 they're -- and they're the attempts to collaterally  
13 attack other actions.

14 THE COURT: All right. Okay. Well, I  
15 think with respect to the -- first of all, as I  
16 said, Counsel, get me all your calendars so we can  
17 have that. I think what I'm going to do with  
18 respect to the discovery is I'm going to get a  
19 master appointed. Hopefully they can appoint a  
20 master quickly and you can sit down and counsel can  
21 go through and decide what are the real factual  
22 issues that we need to address at an evidentiary  
23 hearing, and what discovery is needed on all sides  
24 to do that so that we can move this along, all  
25 right? I guess that brings us -- so I'm going to

1 take those matters under advisement, both the motion  
2 for the evidentiary hearing and the motion  
3 requesting leave to conduct the discovery based upon  
4 the fact that I'm going to get a master appointed on  
5 that. I think -- I think that's where we got to go  
6 so we can narrow this down because I want the issues  
7 narrowed down. We know what the legal issues are.  
8 It's the factual issues, what are going to be  
9 addressed at this hearing regarding factual issues.  
10 And one of them is of course what's been raised by  
11 the Intervenor. So I'm going to do that. Now, I  
12 guess that takes us down to the motion regarding  
13 dissolution of the injunction.

14 MR. GREENBERG: Thank you, Your Honor. So,  
15 Your Honor, I do believe there's going to be some  
16 factual evidence here. I'm happy to present very  
17 briefly what we -- what we're -- what the framework  
18 is, address some legal challenges that were made to  
19 the -- I guess the existence of the scheduling of  
20 this hearing.

21 THE COURT: Um-hum.

22 MR. GREENBERG: And I'm happy to get into  
23 that if Your Honor wants us to. I'm also -- if Your  
24 Honor is comfortable that this hearing is proper, I  
25 don't think we need to argue that issue. I've been

1       trying to save time because we are going to have --  
2       we have one witness to present and some other  
3       testimony to incorporate by reference.

4               THE COURT:   Um-hum.

5               MR. GREENBERG:   So I will -- you know, I --

6               THE COURT:   Well, I'll hear a response on  
7       that part.  Any responses to it?  Mr. Jesiolowski?

8               MR. JESIOLOWSKI:  Your Honor, first, I  
9       think there's a fundamental disagreement about what  
10      is the status quo order.  The city suggests the  
11      status quo order is an injunction.  We disagree.  In  
12      fact, we don't think that's what the Court had in  
13      mind at all when the Court issued the status quo  
14      order.  I'll read for the Court a passage from the  
15      Court's order of December 2 in which the Court  
16      explained the circumstances giving rise to the  
17      status quo order.  After an August 2, 2019, phone  
18      conference with the parties, this Court scheduled a  
19      hearing for August 6th, 2019.  After argument, the  
20      initial order maintaining status quo was entered on  
21      August 6th, 2019.

22              MR. GREENBERG:  Your Honor --

23              MR. JESIOLOWSKI:  This Court --

24              MR. GREENBERG:  -- if I may interrupt.

25              THE COURT:  Go ahead.

1                   MR. GREENBERG: I asked -- I asked whether  
2 I should make my motion or they wanted to get into  
3 this. If they want to get into it, let us make -- I  
4 mean, I'm -- they're -- they're arguing over --

5                   THE COURT: Yeah, I understand.

6                   MR. GREENBERG: Okay.

7                   THE COURT: You may make your -- I mean,  
8 your motion.

9                   MR. GREENBERG: I'm happy to. It's -- I'm  
10 not sure what --

11                   THE COURT: Go ahead.

12                   MR. JESIOLOWSKI: Forgive me. I don't want  
13 to short-circuit Mr. Greenberg's presentation.

14                   THE COURT: No, go ahead.

15                   MR. JESIOLOWSKI: I -- I can wait.

16                   THE COURT: Okay.

17                   MR. GREENBERG: Okay. So, Your Honor,  
18 before the Court is a motion to dissolve the  
19 injunction in the remaining matter. I'm going to be  
20 very brief about the history here because, as Your  
21 Honor knows, you're well aware of it. But what  
22 happened on August 2nd and again on August 6th was a  
23 very limited hearing with respect to this matter.  
24 There was not factual findings made because of the  
25 Sunshine Act violation --

1 THE COURT: Right.

2 MR. GREENBERG: -- which we disagreed with  
3 but it -- but it had been found and was pending.  
4 And so it sort of misunderstands -- as Mr.  
5 Jesiolowski wants -- wanted to talk about what a  
6 status quo order is, let me do that right now.  
7 Under Pennsylvania law, the idea of a status quo  
8 order in Orphans' Court is a very, very narrow  
9 issue. It is designed primarily for child custody  
10 situations and situations where there is a corpus of  
11 assets. Under the -- under the review of the  
12 Orphans' Court, the people should not spend out and  
13 finally transfer to third parties until the Court  
14 has ruled. It is a very narrow set of rules. If  
15 this order had simply said that the Authority shall  
16 not transfer its assets into trust or anybody else,  
17 and the city shall not cause a final transfer to a  
18 third party under 5619, final transfer under 5619  
19 and therefore create a situation where you'd have to  
20 unring a bell, that would be a status quo order. I  
21 think it's probably inappropriate, but if it was  
22 that narrow, it would be a status quo order. But  
23 it's not. This enjoins wide swaths of conduct by  
24 the city unrelated to that question, including  
25 issuing an RFP. So, for example, let's take a

1 family trust case, a typical Orphans' Court case.  
2 You got a bunch of money for the benefit of the  
3 children, and you're squabbling how to spend it. Do  
4 we send the kid to private school or not? If  
5 private school, which school? That's a question for  
6 the Court, and a status quo order would say you  
7 can't spend the money until I tell you. But right  
8 now what that order says is the parents can't go  
9 talk to a school, figure out what those schools are,  
10 ask the schools what their prices are, compare the  
11 benefits and see if their kid can get admitted.  
12 They have to wait until the Court says, well, you  
13 can send the kids to Baldwin and then see if they  
14 get in and spend the money and negotiate price and  
15 see if there's a scholarship. But that's not was  
16 here. What the Court has done with this injunction  
17 -- and this is the problem we've had with these  
18 cases being cross-filed and cross-listed -- is that  
19 we've got Frankenstein's monster. What was a  
20 Sunshine Act injunction about violations of the  
21 Sunshine Act has turned into a question that's not  
22 about solely the corpus of these assets. The Court  
23 would have within its authority as a status quo  
24 order to say the city cannot cause the 5619 transfer  
25 finally and at the end of the day prior to action.

1 We're okay with that. It would also have to say  
2 that they couldn't transfer assets into trust or  
3 some third party outside the ordinary course, but  
4 that's what the Court has in large part done, about  
5 half of that. But to the extent that that was the  
6 issue, that would be fine. But instead what we have  
7 here is an injunction that does eight things, and by  
8 the way, uses the term enjoins over and over again,  
9 the city is enjoined, is enjoined, is enjoined. Let  
10 -- if -- I'm happy to read from the order, but I  
11 think the Court knows it.

12 THE COURT: No, you're correct. It does  
13 say enjoined.

14 MR. GREENBERG: And it enjoins things well  
15 beyond the final transfer of those assets. We are  
16 specifically enjoined by the Court's order from  
17 issuing an RFP, let alone receiving the responses,  
18 evaluating them, negotiating a transaction, deciding  
19 if the city wants to do that transaction. We are  
20 specifically enjoined from all sorts of actions that  
21 do not relate to the preservation of the corpus for  
22 this because their argument as to irreparable harm  
23 has consistently been argument about -- that somehow  
24 the reputation of the Authority was being endangered  
25 by the city's attempt to seek its rights under the

1 MAA. Putting aside the factual issues -- and I'm  
2 going to get there in a second about the way we got  
3 here -- we got injunctions that are very, very broad  
4 based on insufficient evidence and insufficient  
5 findings for the Court. So we also have some other  
6 issues of illegality. But before we get there, we  
7 have the fundamental question of whether or not the  
8 Court has the authority to do this, which has since  
9 been challenged. And I want to read from *Ladner v.*  
10 *Siegel*, which is a 1930 Supreme Court case which is  
11 cited over and over and over again, including by I  
12 think every case the CWA has cited because this is  
13 where the law of injunction comes into play. And  
14 what the Supreme Court said in 1930 and has held up  
15 again and again -- and, coincidentally, the lawyers in  
16 that paid for Owen Roberts and Saul of Saul Ewing,  
17 so it's a pretty cool case when you get to read it.

18 THE COURT: I'm familiar with the case.

19 MR. GREENBERG: The modification of a  
20 decree and a preventive injunction is inherent in  
21 the Court which granted it and may be made, A, if  
22 it's in its discretion to judicially exercise it  
23 believes the end of justice would be served by a  
24 modification. It then has two other reasons  
25 relating to change of law or change in fact, but --

1 and it uses the word "and" instead of "or", but the  
2 case law has been clear that it means "or." But any  
3 one of those three things is the issue. So the  
4 Court has within its discretion to decide what was  
5 issued on August 6th, when there was an overlying  
6 set of facts. The change in facts they're arguing  
7 for is there was an injunction and a Sunshine  
8 action. So there is an underlying set of facts that  
9 have changed. On top of that we've had a series of  
10 city resolutions since then that are there -- that  
11 (inaudible) -- but this case is -- this -- this  
12 motion is properly before this Court. We -- it is  
13 properly before the appellate court, too, but the  
14 Court has within its discretion the ability to  
15 modify this injunction if it wants to do so. That  
16 is expressly contemplated by rule 1531(e) of the  
17 appellate rules and this process. So the question  
18 then becomes now that we're before the Court whether  
19 the injunction should exist and should have issued.  
20 And as a -- as a threshold matter, since this is  
21 injunction, injunctive relief, it's beyond the very  
22 narrow status quo, it's an injunctive relief, the  
23 Court has to hit -- and the -- the burden is  
24 actually on the people seeking the injunction -- in  
25 this case, the CWA -- to hit all six elements of the

1 test. The first is that the harm -- the case is  
2 necessary to prevent immediate and irreparable harm  
3 that cannot adequately be compensated by damages.  
4 We've had some testimony last time in another case  
5 where we have agreed by agreement with CWA to  
6 incorporate --

7 THE COURT: Um-hum.

8 MR. GREENBERG: -- the testimony of Ms.  
9 Woebkenberg and Mr. MacEwen here into this matter,  
10 which I will make a motion later, but that evidence  
11 is here rather than have them come repeat this.

12 THE COURT: Understood.

13 MR. GREENBERG: And we're going to put on  
14 Mr. Nichols, the CFO of the city, to talk about the  
15 city's harm there, so there's that issue. The  
16 second one is that greater injury would result from  
17 refusing the injunction than from granting it, and,  
18 concomitantly, the issue of injunction will not  
19 substantially harm other interested parties in the  
20 proceeding. So, again, Mr. Nichols will testify to  
21 the harm. The preliminary injunction will restore  
22 the parties to the status that existed immediately  
23 prior to the alleged wrongful conduct. We don't  
24 even know what the alleged wrongful conduct is  
25 that's being enjoined here except for the city

1 exercising its rights because, again, it's outside  
2 what's before this Court in this case. If they  
3 wanted to go to all these other things, as the Court  
4 rightfully held in its December 2nd order, they need  
5 to bring them in other actions. In this case the  
6 question before the Court, the jurisdiction of this  
7 Court is whether the assets of the CWA can be moved  
8 into trust and the objections to that. All of these  
9 other issues, what the city does, what the city  
10 wants to do is outside the body of that question.  
11 Four, the party seeking injunctive relief has a  
12 clear right to relief and is likely to prevail on  
13 the merits. I'm going to come back to that one in a  
14 second because that's the slam dunk here. Five, the  
15 injunction is reasonably suited to abate the  
16 offending activity. And six, the preliminary  
17 injunction will not affect the public interest. The  
18 public interest matches some of the other stuff I'm  
19 going to talk about. But first, the injunction is  
20 reasonably suited to abate the offending activity.  
21 Again, it is not the narrow injunction that says we  
22 can't cause a final transfer under 5619 that the  
23 Court could have issued properly. Instead, we have  
24 a massive injunction that enjoins the city from  
25 taking all sorts of steps that it otherwise has the

1 right to do to investigate and decide what it wants  
2 to do. Only if it goes through an RFP process,  
3 decides it wants to -- and negotiate with one of  
4 those bidders, negotiates an agreement, chooses to  
5 adopt an agreement, goes through the process of  
6 arranging a way to pay off the debt, goes to a 5622  
7 motion -- resolution to do that, then we can get to  
8 5619 and cause the transfer. Or 5622 I guess should  
9 cause a transfer to the city and then to a third  
10 party. And then 5619 would be to terminate the  
11 Authority. But it's the 5622, 5619 final actions  
12 that would move the assets from the title of owned  
13 by the Chester Water Authority to the city of  
14 Chester where this comes into play and then  
15 presumably through to a third party. But here's the  
16 piece that I want to talk about. The party seeking  
17 injunctive relief has a clear right to relief and is  
18 likely to prevail on the merits. Right now, there  
19 is an -- a specificity resolution from the city of  
20 Chester under 5607(c) that is conclusively and  
21 finally valid. It's been challenged in another  
22 action, but there is not a finding of invalidity.  
23 It was untimely filed. Those issues are going to go  
24 on, but there is not a finding of invalidity. It is  
25 conclusively valid, and it prohibits the transfer of

1 assets into trust. So on the law as it exists  
2 today, the CWA may not -- there is no legal way  
3 where they can prevail on their petition to put  
4 these assets into trust. And it is not subject to  
5 collateral attack here. They tried a collateral  
6 attack. It was improperly done. It's why the  
7 objection was granted, and they were given leave to  
8 put it someplace else. It's untimely. There's lots  
9 of reasons that we'll deal with it there, but they  
10 did not act to challenge the specificity objection.  
11 They can't. It's clearly within the rights of the  
12 Authority. All of the collateral attacks are going  
13 to fall by the wayside. But it doesn't matter.  
14 Today, it is a valid act of the city of Chester. It  
15 is a governmental act, and it is conclusively valid.  
16 So we don't have to get into all of their arguments  
17 about all of these other issues. We'll go through  
18 the balancing of the harms because we're going to  
19 lay out our whole case here, but I want to be very  
20 clear. They are not entitled to relief on the  
21 merits. So to the extent that there's any  
22 injunction behind the very narrow status quo order  
23 that is within the balance of what the Orphans'  
24 Court can drive, they cannot hit the primary  
25 element, which is likely to have success on the

1 merits. So I'm going to -- with that, I will -- let  
2 me just make sure I hit every one of the other  
3 points, and then I'll put on the evidence as to  
4 what's here I believe. That's -- yes, Your Honor,  
5 I'm -- I think at this point, unless you want to let  
6 them rebut this at this point, I'll put on the  
7 limited witnesses we have.

8 MR. KENT: A fundamental point that I think  
9 I heard Mr. Greenberg say was that some assertion  
10 that we had agreed to the incorporation of certain  
11 testimony by witnesses. And I'm not sure if that's  
12 what you were saying or not, but --

13 THE COURT: I thought that's what he said.

14 MR. KENT: Yeah.

15 MR. GREENBERG: Well, our understanding --

16 MR. KENT: What -- what --

17 MR. GREENBERG: -- is they're here -- are  
18 they here?

19 MR. KENT: What we said is we don't think  
20 those witnesses' testimony is relevant for today's  
21 proceeding, but if the Court disagrees, we would not  
22 object to their testimony coming in by transcript.  
23 So that --

24 MR. GREENBERG: And it --

25 MR. KENT: -- that is -- that is what we

1 proposed. We never reached an agreement with Mr.  
2 Greenberg on that point.

3 THE COURT: Well, I think that's what Mr.  
4 Greenberg said, but I -- I did understand that that  
5 was the issue the way it was presented.

6 MR. KENT: Yeah. And I just want to make  
7 this clear.

8 MR. GREENBERG: It's fine.

9 MR. KENT: I mean, we also have a  
10 fundamental objection to them putting on evidence  
11 because we asked for evidence on December 23rd. We  
12 requested that they -- they identify their witnesses  
13 by January 6th. They have the burden as the moving  
14 party here. They didn't do anything. They -- in  
15 advance until Monday night by phone, and then by an  
16 email telling us that they would be calling their  
17 witness. They never gave us any documents. So we  
18 do object to them putting on evidence in this  
19 fashion. You know, I --

20 MR. GREENBERG: Your Honor, if I may  
21 respond to that.

22 THE COURT: Well, let Counsel, finish.

23 MR. KENT: Yeah.

24 THE COURT: Go ahead.

25 MR. GREENBERG: Okay.

1                   MR. KENT: Yeah. We prophylactically  
2 identified witnesses because we didn't know what  
3 they were putting on, and we didn't want to be in a  
4 position where we somehow waived something. And so  
5 we do object to them putting on evidence in this  
6 fashion when we still have no idea -- we didn't get  
7 an offer of proof. We didn't get any listing of  
8 documents even early this week.

9                   MR. GREENBERG: Okay. Your Honor, I'm  
10 happy to put on an offer of proof if Your Honor  
11 asked me to, but this goes back to the objection  
12 that we heard them object to when we referred to  
13 Judge Jesiolowski. The only order to deliver  
14 discovery information, identify witnesses for this  
15 hearing was -- been an email from Judge Jesiolowski  
16 over there, Joe Jesiolowski, counsel for CWA  
17 ordering us to do it. The Court did not order us to  
18 describe these witnesses earlier. We did nothing of  
19 the sort. There's not a finding. At the last  
20 hearing where this testimony came on they walked in  
21 with a binder of documents we'd never seen and  
22 witnesses we didn't know were going on and we had to  
23 cross-examine them on the fly. We told them on  
24 Monday -- by the way, we did serve notices to attend  
25 on there, too, which is a -- we have three

1 witnesses. We identified them on the phone on  
2 Monday with Mr. Kent and Mr. Jesiolowski. I  
3 explained what Mr. Nichols would be testifying to.

4 THE COURT: Who are the other witnesses?

5 MR. GREENBERG: Ms. Woebkenberg and Mr.  
6 MacEwen from the CWA staff who we want to put in  
7 their testimony by reference to what they did two  
8 months ago. So we have one witness to put on beyond  
9 the two people. And by the way, Ms. Woebkenberg was  
10 on his list of people he said he was going to be  
11 calling.

12 THE COURT: Mr. Kent?

13 MR. KENT: Your Honor, you've seen in our  
14 papers. They haven't even alleged in their  
15 pleadings that they've -- there's a change of  
16 circumstances. There's nothing in the four corners  
17 of the pleadings that they filed which gives any  
18 indication as to what that is. They didn't give us  
19 any notice as to what this witness would be  
20 testifying to other than some sort of harm to the  
21 city. That's it. That's the notice that we have  
22 today, period. So --

23 MR. GREENBERG: So am I right --

24 MR. KENT: So -- wait, let me --

25 MR. GREENBERG: -- we need discovery?

1 MR. KENT: Let me --

2 THE COURT: One at a time.

3 MR. KENT: Let me finish.

4 THE COURT: One at a time.

5 MR. GREENBERG: Sorry, sorry, sorry.

6 MR. KENT: Please.

7 THE COURT: Go ahead, Mr. Kent.

8 MR. KENT: We tried to work this out in the  
9 manner that Your Honor has suggested generally by  
10 reaching out to them about what their witnesses  
11 would be and trying to get an exchange of witnesses  
12 with them. They ignored it. They're talking about  
13 fundamental fairness. That's fundamentally unfair.  
14 I have a problem with that.

15 MR. GREENBERG: And, Your Honor, I'm happy  
16 to undertake a discovery when you tell us to do so.  
17 We've asked for this in this case. I just thought  
18 we just spent an hour with them saying they don't  
19 have a right to discovery, but --

20 MR. KENT: I'm not --

21 MR. GREENBERG: And here's the but --

22 MR. KENT: -- (inaudible). Okay.

23 MR. GREENBERG: Here's the but -- let me  
24 finish now, sir. Here's the but. We have three  
25 witnesses we propose to put on, two of which they

1 even have the testimony because we have proposed to  
2 incorporate by reference their prior testimony in  
3 another action and not have them appear in person  
4 subject to their agreeing to do so, which they  
5 apparently have done so, presuming you find them  
6 relevant. The third witness is the CFO of the city,  
7 and we've -- I was very clear on Monday night when  
8 asked. I said he's going to talk about the economic  
9 state of the city and the harm to the city from the  
10 continuance of this injunction. That's what I told  
11 him, and that's what Mr. Nichols is here to testify  
12 to. If they want to say that he's presenting  
13 evidence that somehow they don't have -- they have  
14 some knowledge of that they need a chance to  
15 examine, that's their right. But remember, the last  
16 time we had a factual hearing on this there was a  
17 binder with 34 exhibits I believe that came in here  
18 that we had not seen. We ended up having to argue  
19 about some of those before Your Honor during the  
20 course of the day.

21 THE COURT: I remember.

22 MR. GREENBERG: We had witnesses that we  
23 did not know were being called. So -- actually,  
24 that's not true. I do apologize. We did know the  
25 witnesses that were going to be called.

1                   THE COURT: You knew who they were going to  
2                   (inaudible) --

3                   MR. GREENBERG: They told us a couple days  
4 before, but we did not -- we saw evidence -- at this  
5 case we have one witness who's going to give verbal  
6 testimony on information he knows in the scope of  
7 his duties. And we have two witnesses who are  
8 incorporating by reference testimony they've had for  
9 three months. I'm not sure where the harm is. And  
10 by the way, Judge, to be clear, this shows the very  
11 reason why this discovery is needed because if they  
12 can't even agree to this kind of testimony without a  
13 long discovery process, without an investigatory  
14 process, what was Mr. Eads just talking about  
15 earlier?

16                   MR. KENT: I think we're mixing apples and  
17 oranges here.

18                   THE COURT: Go ahead, Mr. Kent.

19                   MR. KENT: There's -- there's a couple  
20 things. There's -- one is Mr. Nichols' testimony,  
21 which we know nothing about. It isn't in the four  
22 corners of their motion, so it's not -- and the  
23 second thing is the witnesses from the CWA. The  
24 witnesses from the CWA, as -- that's -- let's take  
25 -- let's take the two issues. We're not seeking

1       discovery of Mr. Nichols. Discovery has nothing to  
2       do with this. We asked to have something by January  
3       6th in terms of who they were putting on and what  
4       they were going to testify to. We got nothing until  
5       a couple days ago. The -- the second issue has to  
6       do with the CWA's witnesses. As I mentioned to Your  
7       Honor -- and this I think is an easy one -- we  
8       didn't think it made sense to drag them down here  
9       either to just have them testify to the same thing  
10      they testified to before. Now, our issue there is  
11      relevance. Your order in August -- of August 6th  
12      had nothing to do with those witnesses' testimony.  
13      They're not going to add anything to the reasons  
14      that that status quo order was entered in the first  
15      place, which had to do with the city's conduct and  
16      preserving the status quo meaning, one, the city's  
17      not going to take action to do anything to harm the  
18      Authority and try to act like it owns it until that  
19      issue is -- is -- is decided. And, two, the  
20      Authority is not going to put anything in the trust.  
21      And that's appropriate. That's an appropriate  
22      exercise of this Court's discretion to control the  
23      proceedings and the conduct of the litigants before  
24      it. And it's proper. Frankly, the testimony of  
25      these witnesses have nothing to do with that when

1 that order was entered, so what relevance it has to  
2 their motion is beyond me. And again, they haven't  
3 pled it in their -- in their pleadings.

4 MR. GREENBERG: First of all, Your Honor --

5 THE COURT: Mr. Greenberg.

6 MR. GREENBERG: -- we discussed changes in  
7 fact. They just talked about change in fact. We  
8 have a change in fact now. I thought they said  
9 there was no change in fact. But let's be real  
10 clear. What we're talking about is the continuing  
11 harm from this injunction that's gone on for six  
12 months.

13 THE COURT: I understand that.

14 MR. GREENBERG: We're talking about --

15 THE COURT: But what is the relevance of  
16 the testimony of the CWA witnesses --

17 MR. GREENBERG: CWA witnesses --

18 THE COURT: -- to your motion today?

19 MR. GREENBERG: Well, no, because one of  
20 the elements of our motion is that this injunction  
21 should be lifted, and it comes to balancing the  
22 harms between the two sides. So we have Ms. -- Mr.  
23 MacEwen, who explained that the hearing that, no,  
24 nothing was imminent, nothing was about to fail,  
25 that there was some time. They wanted to do this

1 for good -- for good, wise management. They wanted  
2 to do it this way, but if it was 11 million versus 9  
3 million versus 7 million, we have testimony as to  
4 what was imminently failing, and the answer was  
5 nothing.

6 THE COURT: Um-hum.

7 MR. GREENBERG: So there was no imminent  
8 harm. As to Ms. Woebkenberg, we went through the  
9 economics, and what she testified to was that there  
10 was 30-some million dollars available, 40-some  
11 million dollars available between the rate increase  
12 and \$4.5 million in accounting money they can move  
13 around. On top of that, they took the annual \$5-7  
14 million in capital money they could get through the  
15 next year. They didn't make their case. So she's  
16 going to -- her testimony, our belief, documents  
17 that there is no imminent harm to the Authority --

18 THE COURT: No irreparable harm.

19 MR. GREENBERG: -- from this delay.

20 THE COURT: All right.

21 MR. GREENBERG: From our perspective the  
22 city is facing imminent harm. It's on the verge of  
23 bankruptcy, state-ordered bankruptcy in two years.  
24 There is a process to this. Mr. Nichols will walk  
25 us through that. Court should hear that. The idea

1 that the Court would issue an injunction enjoining a  
2 party from acting without understanding the harm to  
3 the city from that action is -- is ludicrous to me,  
4 and that's -- I don't -- I can't believe they're  
5 making that argument. The -- it's up to the Court  
6 to decide the weight of Mr. Nichols' testimony, but  
7 the idea that he couldn't -- we couldn't put it  
8 on --

9 THE COURT: Well, no, I don't think it's  
10 that you can't put it on. The objection is that  
11 they -- they didn't have proper notice or discovery  
12 as to -- as to what Mr. Nichols was going to testify  
13 to and any documents he may testify to.

14 MR. GREENBERG: And --

15 THE COURT: I don't know if there's any  
16 documents involved --

17 MR. GREENBERG: Right now we're not  
18 planning any documents unless something comes up.  
19 As to what he's going to testify to, I told them.  
20 And now they said, well, January 6th, again, that  
21 was a Judge Jesiolowski order, not a Judge Angelos  
22 order. So on -- and what happened just so the  
23 Court's clear is I was out ill all last week, so my  
24 first day back in the office was Monday. We figured  
25 out what witnesses we were going to call, and I

1 spoke to them -- I called them that afternoon. We  
2 finally spoke that evening.

3 THE COURT: All right.

4 MR. GREENBERG: But it was not a situation  
5 where we tried to create issues. We did not meet  
6 Mr. Jesiolowski's deadline. I'm not pretending  
7 otherwise. But it's not -- it's not a binding  
8 deadline just because he'd like it.

9 THE COURT: Mr. Kent?

10 MR. KENT: Whether it's a binding deadline  
11 doesn't change the fact that we tried to reach out  
12 to them to get this information in advance. That's  
13 -- that's the issue. And -- and, frankly, the --  
14 these -- these issues that the city is talking about  
15 have nothing to do with the change in circumstance.  
16 I think -- nobody's debating that the city is in  
17 financial distress. They have been for a long time.  
18 The harm from this order, are they saying they want  
19 the order lifted because they want to sell the  
20 Authority? That harm is self-evident and --

21 THE COURT: Well, we don't know that unless  
22 I -- we're going --

23 MR. GREENBERG: Right.

24 MR. KENT: Right. Well --

25 THE COURT: -- to hear from Mr. Nichols.

1                   MR. KENT:  And was already addressed by the  
2                   Court in -- you know, on August 6th.  And, frankly,  
3                   again, the issues pertaining to the -- the CWA  
4                   witnesses, they're not relevant for this hearing  
5                   because they don't go to any change in  
6                   circumstances.

7                   MR. GREENBERG:  So, again, first of all,  
8                   change in circumstance is not the only test,  
9                   although they've admitted there is a change in  
10                  circumstances.  That's not the only test.  The  
11                  question is whether the interests of justice  
12                  dictate.  And, according to the appellate courts  
13                  time and time again, they only look to change in  
14                  circumstances or change in fact because it is up to  
15                  the trial court to determine if the interest of  
16                  justice dictate it.  The time for the trial court to  
17                  make that decision is whether or not to schedule a  
18                  hearing because that's what's been challenged.  
19                  Where Your Honor had refused to schedule this  
20                  hearing, people in my shoes had gone to the  
21                  appellate court and said that he has to schedule a  
22                  hearing, and they said no.  We're not going to  
23                  oversee the Judge below unless there's fact or law.  
24                  It's the Judge below who decides the interest of  
25                  justice.  But Your Honor made this decision back in

1 November when you granted this motion. It's been  
2 continued a couple of times --

3 THE COURT: Um-hum. (inaudible) about  
4 that.

5 MR. GREENBERG: -- but you made this  
6 decision. It is within this Court's discretion as  
7 to whether to go forward. We're going to put on Mr.  
8 Nichols with the Court's permission, but I want to  
9 be very clear, too. At 4:30 last night we got 26  
10 documents mail-bombed on us from them. That's the  
11 first time we saw documents that they said they were  
12 going to put on today, 26 documents at 4:30 last  
13 night while we were preparing for this. It's what  
14 happens. If they put on a document here, I'm going  
15 to ask to see it and look at it and we'll talk about  
16 it, but that's how this case has run. There is not  
17 a rule of this Court, of the local order, of this  
18 Judge, of the Pennsylvania rules of Orphans' Court  
19 or Pennsylvania Rules of Civil Procedure that says  
20 we have an obligation to provide this to Mr.  
21 Jesiolowski on January 6th.

22 MR. KENT: They are the moving. They have  
23 the burden here on -- on their motion to dissolve.  
24 We tried to get these issues worked out. We didn't  
25 get anything from them. We gave them a witness list

1 voluntarily, even though they're the one who should  
2 be giving it in the first place. We produced  
3 documents yesterday because we still don't know what  
4 they plan to do today, and we need to protect  
5 ourselves. Frankly, what -- what would make sense  
6 is for them to give us some advance notice that's  
7 reasonable in order to do this in an orderly manner.  
8 We tried to reach out to do with that with them.  
9 They did nothing. They sandbagged us early this  
10 week. We protected ourselves as much as possible by  
11 doing this.

12 MR. GREENBERG: I object --

13 MR. KENT: We don't know that we'll use --

14 MR. GREENBERG: -- to the language, Your  
15 Honor.

16 THE COURT: Well --

17 MR. GREENBERG: Sandbagging?

18 THE COURT: Sustained. Sustained to the  
19 sandbagging. We don't need to -- gentlemen, we all  
20 know, no characterizations on any side.

21 MR. KENT: Frankly, we -- just to reiterate  
22 my objection, we do object to them putting on  
23 evidence given the circumstances, given that it's  
24 not in their pleadings and that this person was not  
25 disclosed until Monday.

1 THE COURT: Well, Mr. Kent, I'm a little  
2 confused. Are you asking that you need a  
3 continuance because you're prejudiced?

4 MR. KENT: Yeah. If you're going to allow  
5 it --

6 THE COURT: That's -- if that's --

7 MR. KENT: Yes, I would want to continuance  
8 on this hearing if that's the case.

9 MR. GREENBERG: Your Honor, I -- we --  
10 remember, this is -- they talk about us kicking the  
11 can down the road continually. This is the third  
12 time -- remember, we asked for both cases to -- both  
13 injunctions to be lifted simultaneously. The Court  
14 scheduled it on one, not the other I believe at  
15 their request, although I'm not certain about that.  
16 But we -- and we dealt with the Sunshine Act back in  
17 early October.

18 THE COURT: That one was done with.

19 MR. GREENBERG: And then we got to late  
20 October and we said, Your Honor, we still need this.  
21 And then it was scheduled for November and it was  
22 continued to December and then it was continued to  
23 today. They want to do this again. We've got a  
24 brief due at the Commonwealth Court to explain  
25 what's wrong with how we got here on January 27th.

1 My hope is that we don't need to air this before the  
2 Commonwealth Court if the Court looks at this and  
3 makes a decision. If not, we will. But there are  
4 deadlines that are pending --

5 THE COURT: I understand.

6 MR. GREENBERG: -- (inaudible) that we  
7 can't adjust. There's a continuance. What do they  
8 need, two hours? I mean, Mr. Nichols is right here.  
9 They don't get to depose him. They can go look him  
10 up online. He's going to give verbal testimony.  
11 I'm not sure how they prepare for that.

12 MR. KENT: Actually, there's the threshold  
13 issue of whether the Judge -- of whether Your Honor  
14 sees that any change in circumstances is even  
15 alleged in their papers, so that's why --

16 THE COURT: Well, that's a decision --

17 MR. KENT: But --

18 THE COURT: -- I make, and that -- and  
19 that's --

20 MR. KENT: Yeah.

21 THE COURT: -- that clearly goes to the  
22 weight of any testimony I would hear from --

23 MR. KENT: Right.

24 THE COURT: -- Mr. Nichols.

25 MR. KENT: But to the extent you do allow

1       it -- and, yes, we're asking for a continuance. And  
2       we're -- we have no problem with doing it promptly,  
3       but we should have -- we should have reasonable  
4       notice of who's going on.

5               MR. GREENBERG: To what purpose, Your  
6       Honor? I mean, Mr. Nichols is here. He's ready to  
7       testify. We've got a bunch of lawyers. We've got a  
8       bunch of paid -- one, two, three, four, five, six --  
9       at least six paid CWA workers sitting here watching  
10      the court today. We've got other folks from all  
11      these people who are here -- seven, sorry, I see  
12      another -- another uniform over there that we know  
13      from last time -- from Ms. Woebkenberg's testimony  
14      these folks are all getting paid to sit here with  
15      dollars.

16             THE COURT: We don't need to go through  
17      that again. The Court takes notice that we have CWA  
18      workers here. We've -- we've been through that  
19      before.

20             MR. GREENBERG: We -- I mean, I --

21             THE COURT: The real question -- the real  
22      question before me based on Mr. Kent's argument is  
23      whether he's prejudiced or not by not having this  
24      information before this hearing. That's the issue.

25             MR. KENT: Just one --

1                   THE COURT: I mean, that's the issue before  
2 me.

3                   MR. KENT: May I make one statement on  
4 that, please? Mr. Nichols is apparently the CFO or  
5 some similar title of the city. Presumably, he's  
6 going to come in and talk about detailed financial  
7 issues. The -- the -- that requires a fair level of  
8 preparation, including going through a lot of the  
9 city's financial information to do that.

10                  MR. GREENBERG: Your Honor, they brought  
11 their CFO and had her testify without us having  
12 access to the exhibits she was going to talk about,  
13 written exhibits they had prepped.

14                  MR. KENT: We -- we --

15                  MR. GREENBERG: We knew she was coming, but  
16 we didn't know the written exhibits they had  
17 prepped.

18                  THE COURT: Well, Mr. Green -- Mr.  
19 Greenberg said he's -- and I don't want to misquote  
20 you, Mr. Greenberg, but I thought you said you --  
21 you're not really going to present any  
22 documentation.

23                  MR. GREENBERG: That's not our plan at this  
24 point. I mean, if something comes up in cross, we  
25 may ask him to go back to City Hall and get it, but

1 that's not our plan at this point.

2 MR. KENT: And -- and we won't have the  
3 ability on cross to test it because we don't --  
4 we're not in a position to -- to -- to prepare a  
5 cross-examination of the city's financial condition  
6 in a day and a half.

7 THE COURT: All right. I --

8 MR. GREENBERG: You brought the woman in  
9 the courtroom --

10 THE COURT: Let me -- let me --

11 MR. GREENBERG: -- who ran the city's  
12 financial condition who now is their employee.  
13 She's the one who ran -- one of the people who ran  
14 this --

15 THE COURT: I'm familiar --

16 MR. GREENBERG: -- into a ditch.

17 THE COURT: I'm familiar with that.

18 MR. GREENBERG: They're here.

19 THE COURT: Let me take a brief recess.

20 MR. KENT: I move to strike that last  
21 statement. There's no --

22 THE COURT: It's stricken.

23 MR. KENT: -- evidentiary support for that.

24 THE COURT: It's stricken. All right.

25 Gentlemen, let's keep it to the legal issues before

1 us and not any other outside influence of any kind.  
2 You know we've been through this before --

3 MR. GREENBERG: I apologize, Your Honor.

4 THE COURT: -- on both sides. All right.  
5 Let me take a brief recess.

6 COURT STAFF: Recess till the call.

7 THE COURT: It'll only be about 5 to 10  
8 minutes at the most.

9 MR. KENT: We'll wait here, Your Honor.

10 MR. GREENBERG: Thank you, Your Honor.

11 THE COURT: Take us off the record, Terry  
12 [ph].

13 \*\*\*

14 [Off the record from 10:19 a.m. to 10:25 a.m.]

15 \*\*\*

16 THE COURT: Please be seated. All right.  
17 Mr. Greenberg, it's -- it's my understanding you  
18 wish to call Nichols to establish against the -- the  
19 financial condition of the city as part of your  
20 argument as to --

21 MR. GREENBERG: It's a large part of it.  
22 It's a large --

23 THE COURT: -- the harm -- the harm --

24 MR. GREENBERG: The harm to the city --

25 THE COURT: All right.

1           MR. GREENBERG: -- you know, and the -- the  
2 issues with the delay and the RFP and what that  
3 does.

4           THE COURT: And, Mr. Kent, I think you've  
5 indicated that -- I think your position was that you  
6 understand -- or not that you necessarily agree but  
7 you do understand that the city is in financial -- I  
8 mean, it's common knowledge --

9           MR. KENT: I'm --

10          THE COURT: -- the city is having financial  
11 problems?

12          MR. KENT: Yeah, I -- I don't dispute --

13          THE COURT: I mean, as far as that. Okay.

14          MR. KENT: I don't dispute that the city is  
15 having financial problems. I think --

16          THE COURT: Right.

17          MR. KENT: -- everybody recognizes that.

18          THE COURT: All right. What I'm going to  
19 do is since we're all here and rather than delay  
20 this any further I'm going to allow Mr. Greenberg to  
21 put Mr. Nichols on but for a limited purpose. I'm  
22 going to narrow this testimony down. You know, it's  
23 for the limited purpose in which you wish to address  
24 with respect to why the dissolution of my injunction  
25 is necessary because of the alleged financial crisis

1 in the city. And, Mr. Kent, what I'm going to do is  
2 let's see where it goes. I may, after hearing the  
3 testimony -- I don't know how far in the extent it's  
4 going to be. I may after that grant you a  
5 continuance to prepare for cross if you feel that  
6 it's necessary.

7 MR. KENT: And I would request, Your Honor,  
8 that that includes evidence that we may want to --

9 THE COURT: That you may want --

10 MR. KENT: -- produce --

11 THE COURT: -- present and supplement?

12 MR. KENT: And supplement.

13 THE COURT: Yeah.

14 MR. GREENBERG: In rebuttal?

15 THE COURT: In rebuttal, yeah, absolutely.

16 MR. KENT: Yeah.

17 THE COURT: All right. So why don't we do  
18 that? So this --

19 MR. KENT: And let me just make clear to  
20 any of the issues that they've raised in their -- in  
21 their motion that -- from an evidentiary  
22 perspective.

23 THE COURT: Yes, I understand.

24 MR. KENT: Yeah.

25 MR. GREENBERG: Well, just to be clear, I

1 mean, rebuttal would be to the evidence that we put  
2 on, Ms. -- Ms. Wuebkenberg and Mr. MacEwen's  
3 testimony by reference and then Mr. Nichols  
4 presumably.

5 THE COURT: Yes.

6 MR. KENT: Let me be clear with Your Honor,  
7 too. The -- the city is claiming that they get to  
8 show things like -- we don't agree that we need to  
9 meet an injunction standard here. The city claims  
10 that we do.

11 THE COURT: I understand that.

12 MR. KENT: And if Your Honor is allowing  
13 testimony that go to those issues, then we would  
14 also put testimony that goes to, you know,  
15 likelihood of success on the merits like -- like our  
16 expert. So we -- we don't want to indicate that  
17 we're waiving that opportunity.

18 THE COURT: No, I'm not precluding you from  
19 that either.

20 MR. KENT: Yeah.

21 THE COURT: So you understand that.

22 MR. GREENBERG: And -- and, again, I --  
23 just in terms of reserving rights, we don't believe  
24 their expert on rate structure is relevant at all  
25 here.

1 THE COURT: I understand.

2 MR. GREENBERG: But -- okay. So with that,  
3 first, as an initial matter, let me move  
4 incorporation by reference the testimony of Ms.  
5 Wuebkenberg and Mr. MacEwen from the hearing --

6 THE COURT: All right.

7 MR. GREENBERG: -- on October 16th in this  
8 matter. It -- sorry, in the -- in the 5400 matter.  
9 We're going to incorporate that by reference into  
10 this matter with two minor corrections that I think  
11 Mr. Kent is going to make.

12 THE COURT: Go ahead, Mr. Kent.

13 MR. KENT: Yeah. Your Honor, we simply  
14 want to submit the documents on two points that Ms.  
15 Wuebkenberg testified to or we can just state what  
16 it is, but it has to do with the purchase price for  
17 the Girl Scout property. We'll submit that the --

18 THE COURT: Um-hum.

19 MR. KENT: -- that -- or the -- the  
20 purchase agreement that shows that that was  
21 approximately 1.5 million --

22 THE COURT: All right.

23 MR. KENT: -- and the balance in the -- in  
24 the -- what was called the developer account, which  
25 was testified to be 5 million, but the balance was

1 1.3.

2 MR. GREENBERG: Neither one of those is  
3 relevant to her testimony, so I have no objection to  
4 their clarifications.

5 MR. KENT: Yeah, we'll put those in at the  
6 end of the hearing --

7 THE COURT: All right. Very good.

8 MR. GREENBERG: Well, I --

9 THE COURT: You may do that.

10 MR. GREENBERG: -- I mean -- I --

11 THE COURT: I'm going to allow it.

12 MR. GREENBERG: Do we want to put them in  
13 or do we just want to say that her testimony is  
14 admitted with those two clarifications?

15 THE COURT: Well, do you want --

16 MR. KENT: I think we should --

17 THE COURT: Do you want to just submit the  
18 documents, Mr. Kent?

19 MR. KENT: Yeah, we just want to submit the  
20 documents --

21 MR. GREENBERG: Oh.

22 MR. KENT: -- so they're part --

23 THE COURT: Just submit the documents.

24 MR. KENT: -- of the record.

25 MR. GREENBERG: That's fine.

1 THE COURT: Yeah.

2 MR. KENT: Yeah.

3 MR. GREENBERG: That's fine.

4 THE COURT: And --

5 MR. KENT: That's all I'm suggesting.

6 MR. GREENBERG: Yeah, I -- I haven't --

7 THE COURT: I -- I'm going to allow that.

8 MR. GREENBERG: I haven't seen the  
9 documents, but I presume that's fine.

10 MR. KENT: We'll show --

11 MR. GREENBERG: (inaudible). You sent them  
12 to me at 4:30. Sorry, but I haven't had a chance to  
13 examine them but --

14 THE COURT: All right.

15 MR. GREENBERG: -- I don't have a problem  
16 with that. So with that -- Your Honor, so Mr.  
17 MacEwen and Ms. Woebkenberg's testimony, are they  
18 deemed admitted? Is that --

19 THE COURT: They're deemed admitted.

20 MR. KENT: Yeah, just our objection I  
21 assume is noted by the Court.

22 THE COURT: It is noted. You objected.  
23 They're admitted.

24 MR. GREENBERG: In that case I call Mr.  
25 Nafis Nichols.



1 position?

2 A Chief financial officer.

3 Q For who?

4 A The city of Chester.

5 Q Okay. And how long have you been CFO?

6 A Approximately three and a half years.

7 Q Before becoming CFO did you have another  
8 position with the city?

9 A I was an elected member of Chester City Council.

10 Q And how long were you an elected member -- or  
11 were you a member of City Council?

12 A Yes.

13 Q How -- for how long?

14 A For four and a half years.

15 Q And before that what did you do?

16 A I was an employee for Crozer Keystone Health  
17 System. I worked with the nonprofit arm and also I  
18 was -- I was an employee with the city prior to  
19 being an elected member of council as the Chester  
20 Weed & Seed coordinator.

21 Q So how long have you been actively involved in  
22 the city of Chester's efforts to manage its  
23 financial affairs?

24 A Approximately eight years.

25 Q Are you the first CFO the city has ever had?

1 A Yes.

2 Q Can you describe your day-to-day job duties in  
3 sort of -- at a conceptual level, not -- not  
4 everything you do?

5 A In short, I am responsible for coordinating  
6 efforts among city departments and institutions to  
7 -- and the Department of Community Economic  
8 Development, which oversees the Act 47 program and a  
9 state-appointed Act 47 coordinator to implement the  
10 Act 47 recovery plan and exit plan for the city of  
11 Chester to get us back on financial good footing.

12 Q And are you involved in long-term financial  
13 planning for the city other than Act 47?

14 A I am.

15 Q How about short-term financial planning?

16 A Yes.

17 Q And day to day do you have involvement in any of  
18 the finance processing or could you describe roughly  
19 what your other -- what I call more routine duties  
20 are?

21 A So I oversee the city's budget process, the  
22 payables process, payroll, pension, anything that  
23 has to do with the -- any financial aspect of the  
24 city of Chester, I oversee that.

25 Q Can you talk a little bit about your three and

1 half years as CFO? What are some of the successes  
2 the city has had?

3 A Well, the city, as everyone knows, has had its  
4 share of financial issues for decades, and we --  
5 over the last -- since my tenure as CFO, we've able  
6 to negotiate -- renegotiate the CBAs for our police,  
7 fire, and Teamster contracts, saving the city a  
8 significant amount of money. We've been able to go  
9 from a fully insured plan to a self-insured plan,  
10 which saved the city approximately \$3 million  
11 annually. We've been able to lower our business  
12 privilege tax to attract economic development and  
13 businesses here in the city of Chester. We've --  
14 we've done things with our utility companies to  
15 reduce energy rates that we pay out. We've  
16 consolidated positions to ensure that we are getting  
17 efficient and effective works for the city of  
18 Chester. We've renegotiated contracts with anyone  
19 you can imagine, vendors that we have to do -- to,  
20 you know, anything for the city of Chester's  
21 constituency.

22 Q And have you moved towards a budget -- a  
23 balanced budget for the city?

24 A We have. 2017 was a good year for the city of  
25 Chester when we had a balanced budget. And of

1 course it's starting to shift a bit back in the  
2 negative.

3 Q So could you discuss more generally the city's  
4 financial state? Are you familiar with that as part  
5 of your job?

6 A I am. So the city has of course financial  
7 issues as it relates to our police pension fund in  
8 particular. We're pretty much on a pay-as-you-go  
9 basis with our police pension fund.

10 Q What does that mean? How -- how funded are you?

11 A We're literally 3 percent funded. Our  
12 pensioners will come --

13 Q I'm sorry. Three percent?

14 A Three percent, yes.

15 Q Okay.

16 A Our pensioners -- payments of pensioners are  
17 \$550,000 on a monthly basis. There is currently  
18 \$2.4 million in the police pension fund, and if you  
19 could do some quick math, that's about a five-month  
20 life-expectancy rate. So the city for the most part  
21 is paying as we go along to stretch that out. Our  
22 O&E pension fund is funded at -- through -- maybe 33  
23 1/2 percent. Again, there, we're -- we're making  
24 strides, but it's still a pinch for the city of  
25 Chester.

1 Q O&E pension fund means?

2 A Officers and other employees.

3 Q Okay. So -- and then your third pension fund is  
4 the fire one, is that correct?

5 A The fire pension fund, correct.

6 Q The fire one's pretty well-funded?

7 A 89 percent.

8 Q Okay. But -- so 89 percent as the CFO is well  
9 within range, is that correct, is well within range  
10 for a governmental pension fund in this state?

11 A Well, you want it at 100 percent, but it's --  
12 it's stable. It's not -- it doesn't have a  
13 distressed status like the other two pension funds.

14 Q But 33 1/2 and 3 percent are distressed or --

15 A Severely distressed actually.

16 Q Severely distressed, okay. And how far behind  
17 -- what would it take in terms of a one-time  
18 infusion just to get those two pension funds up to  
19 an 89 percent level give or take?

20 A The police pension fund alone is close to \$60  
21 million. The O&E pension fund is another \$16  
22 million.

23 Q So it's about \$76 million just to get up to  
24 the --

25 A To get up to the level that you just referenced,



1 A Some. Some.

2 Q -- or are you able some of them sufficiently?  
3 But not -- but -- so you're -- help me understand.  
4 You're barely able to fund some. Does that mean you  
5 can't fund others, you do fund some, you fund some  
6 fully? Help me understand what you're saying.

7 A The city -- the City Council, myself, and other  
8 city officials really have to sit down and  
9 prioritize all of the priorities of the city that --  
10 I don't know if that helps you out, but, you know,  
11 we -- there are many priorities, but we really have  
12 to do a balancing act to see what we can do. We put  
13 Band-Aids on things that need stitches.

14 Q And can you describe some of the places where  
15 you've put Band-Aids where you really need stitches?

16 A Well --

17 Q What are the areas specifically?

18 A The police pension fund, you know, the -- every  
19 year there's an MMO, which is a minimum municipal  
20 obligation, that is set, and if we -- we -- we try  
21 to make it. We of course get our state aid in and  
22 additional monies. You know, last year, we were  
23 able to get a total of \$4.6 million into the pension  
24 fund, but the MMO was \$9.3 million because we had  
25 other issues that needed to be addressed as it

1 relates to our police department. City Hall last  
2 year was without air-conditioning for the entire  
3 summer because we didn't have the money to replace  
4 it until later in the year.

5 Q So you -- so we talked about the police pension  
6 fund and obviously the E&O [sic] pension fund, City  
7 Hall air-conditioning. Do you have adequate money  
8 for other city services?

9 A Yes and no. Again, we prioritize the  
10 priorities.

11 Q Okay. Do you believe that you are providing  
12 services roughly akin to those of your neighboring  
13 communities?

14 A No.

15 \*\*\*

16 MR. JESIOLOWSKI: Object. I'm not sure  
17 what neighboring communities you're talking about.

18 THE COURT: Sustained.

19 \*\*\*

20 BY MR. GREENBERG:

21 Q Are you familiar with the economic state of  
22 other Delaware County communities?

23 A I am.

24 Q Okay. How would you compare the services --

25 \*\*\*



1 are involved in the day-to-day operations of other  
2 municipalities in a coalition of borough managers or  
3 accounting managers.

4 Q So not just -- so Colwyn, Yeadon, and to the  
5 extent you have other information from other  
6 townships in the vicinity, can you compare the level  
7 of services the city of Chester is able to  
8 economically provide to what you see elsewhere in  
9 the community?

10 \*\*\*

11 MR. JESIOLOWSKI: Your Honor, this I think  
12 also gets to Mr. Kent's objection in the first  
13 place. We have no ability --

14 THE COURT: Sustained.

15 MR. JESIOLOWSKI: -- to cross-examine him  
16 because --

17 THE COURT: Sustained.

18 MR. JESIOLOWSKI: -- we have no idea --

19 THE COURT: Sustained, Mr. Jesiolowski.

20 MR. JESIOLOWSKI: Yes, Your Honor.

21 THE COURT: We're not going to go into  
22 that.

23 MR. GREENBERG: Okay. So the fact -- okay.

24 THE COURT: The issue of comparing with  
25 other municipalities I don't think is relevant to

1 our issue here. The issue here is the financial  
2 status of the city of Chester.

3 MR. GREENBERG: Okay.

4 THE COURT: That's what we're having this  
5 hearing for.

6 \*\*\*

7 BY MR. GREENBERG:

8 Q So -- so, are you familiar with the Financial  
9 Distress Municipalities Act, also known as Act 47?

10 A I am.

11 Q Okay. Is the city currently considered a  
12 financially distressed municipality?

13 A It is.

14 Q And how long has it been in Act 47 status?

15 A Since 1995.

16 Q And is the city planning on exiting Act 47 at  
17 any time soon?

18 A We plan on it.

19 Q When is that scheduled for?

20 A Based off of the Act 47 exit plan that was  
21 adopted by City Council August of 2018, the date is  
22 May -- I'm sorry, August of 2021.

23 Q Okay. And so your goal is August 2021. Is  
24 there a state-driven exit date that you must meet?

25 A Yes, that is August of 2021.

1 Q So -- okay. So you don't have -- so the exit is  
2 not optional is what you're saying?

3 A It's not optional, no.

4 Q Okay. And what does a forced exit mean for the  
5 city?

6 A The city would lose some of the preferential  
7 treatment as it relates to grants and things of that  
8 nature if we are no longer an Act 47 community. And  
9 if we meet -- if we don't get on good financial  
10 footing by that date, that leads the city to  
11 bankruptcy. And what happens then is the state  
12 would send a state receiver to oversee the  
13 operations of the city of Chester.

14 Q So if you're not financially stable enough to  
15 exit by August of 2021, you're telling me that it is  
16 mandatory the state appoint a receiver under state  
17 law?

18 \*\*\*

19 MR. JESIOLOWSKI: Objection. This seems  
20 leading, Your Honor.

21 THE COURT: Sustained.

22 MR. GREENBERG: Okay.

23 THE COURT: It is leading, Mr. Greenberg.

24 MR. GREENBERG: That's fine. That's fine.

25 I was just trying to clarify because I thought the

1 answer was ambiguous.

2 THE COURT: It is leading.

3 MR. GREENBERG: Okay.

4 THE COURT: Sustained.

5 \*\*\*

6 BY MR. GREENBERG:

7 Q So let's talk about that. What are some of the  
8 benefits the city gets from Act 47?

9 A Well, of course we get a state-appointed  
10 financial receiver who has expertise in financially  
11 distressed municipalities who help the city's  
12 finance department --

13 Q Receiver today or --

14 A I'm sorry, not receiver. They -- the correct  
15 term that DCD uses is an Act 47 coordinator --

16 Q Okay.

17 A -- which is state-appointed. The city doesn't,  
18 you know, pay for it; the state does. And they help  
19 with financial planning, you know, helping us to  
20 implement the recovery plan that they actually put  
21 together with the input of the city of Chester and  
22 other anchor institutions throughout the city.

23 Q So you said something about an MMO grant. Do  
24 you get other grant money or other subsidies from  
25 the state as well?

1 A Because we are an Act 47 community, we do get I  
2 guess preference when we apply for state funding.

3 Q And do you have the ability to raise taxes  
4 because of Act 47?

5 A We do. Our earned income tax rate can go a  
6 little higher than other municipalities because we  
7 are considered an Act 47 community.

8 Q Has the city taken advantage of that --

9 A We have.

10 Q -- power?

11 A We have.

12 Q Does the coordinator make recommendations on  
13 ways the city can improve its finances?

14 A They do.

15 Q And are those recommendations binding or  
16 advisory?

17 A Advisory.

18 Q Advisory, okay. And you said the city adopted  
19 an Act 47 exit plan when?

20 A August of 2018 was the exit plan adoption.

21 Q And what were some of the recommendations that  
22 were considered in that plan?

23 A To look --

24 \*\*\*

25 MR. JESIOLOWSKI: Your Honor, objection.

1 If he wants to talk about the recommendations of the  
2 report, he should put in the report. Again, it's  
3 not a document he gave to us in advance.

4 MR. GREENBERG: First of all, they've had  
5 it. They've introduced it in prior hearings, so I'm  
6 not sure why I'd have to hand it to them. But I'm  
7 asking him to describe what the recommendations are,  
8 not -- I'm not asking him to give you a 200-page  
9 plan for the plan to speak for itself. I'm asking  
10 him for what those recommendations are and then  
11 whether they've adopted them.

12 MR. JESIOLOWSKI: Your Honor, that's  
13 hearsay. He's asking the witness to describe a  
14 written document. Let's have the written document  
15 and it --

16 THE COURT: Well, do you have --

17 MR. JESIOLOWSKI: -- speaks for itself.

18 THE COURT: -- the written document, Mr.  
19 Jesiolowski?

20 MR. JESIOLOWSKI: We -- we do.

21 MR. GREENBERG: They delivered it to us  
22 last night.

23 THE COURT: Well, if you have it, then  
24 what's the objection? You have the knowledge of the  
25 document.



1 option of monetizing all city assets.

2 Q And those -- all city assets included the water  
3 assets, as well as parking and other assets?

4 A It does.

5 \*\*\*

6 MR. JESIOLOWSKI: Your Honor, again,  
7 objection. I think this is a critical point that we  
8 should see what the document actually says as  
9 recommended related to the Water Authority.

10 MR. GREENBERG: If they want to put that  
11 into evidence, they can. I'm asking him what he  
12 understands the recommendations to be.

13 THE COURT: Overruled.

14 \*\*\*

15 BY MR. GREENBERG:

16 Q You can answer that. Does it include the water,  
17 parking, and other -- other assets --

18 A It does.

19 Q -- that can be monetized? Okay. Thank you.  
20 Have you addressed cost reductions?

21 A We have.

22 Q Can you describe that briefly?

23 A So cost reductions we've looked at, again,  
24 insurance premiums that -- that we were paying. We  
25 now are saving approximately \$3 million annually.

1 We've introduced cost-sharing for employee benefits,  
2 5 percent of the premium. We've reduced our  
3 headcount as it relates to our employees. We've  
4 consolidated positions. We've offered early  
5 retirement incentives. We've -- we've done a lot --  
6 I'll be here all day, and I'm trying to be conscious  
7 of time, but we've done a whole lot of things to  
8 reduce costs as it relates to employees and even as  
9 it relates to services that we provide to our  
10 constituents.

11 Q And, again, you said the -- well, what is the  
12 city's annual budget at this point?

13 A \$53 million.

14 Q And you said the pension obligations were 76, is  
15 that correct, to get to an 89 percent level?

16 \*\*\*

17 MR. JESIOLOWSKI: Your Honor, that's  
18 leading and asked and answered.

19 THE COURT: Well, sustained on both parts.

20 MR. GREENBERG: Okay.

21 THE COURT: It has been asked and answered,  
22 and it's -- and it is leading.

23 MR. GREENBERG: Fine. Fair enough. I --  
24 it's --

25 THE COURT: We're already there.

1 THE WITNESS: So --

2 THE COURT: I have the 76 --

3 MR. GREENBERG: (inaudible) --

4 THE COURT: -- million dollar --

5 \*\*\*

6 BY MR. GREENBERG:

7 Q So -- so -- okay. So the constraint to exit Act  
8 47 in August of 2021, what -- what does that do to  
9 the city's efforts to end up in a financially stable  
10 situation if there's not a large infusion of cash  
11 from monetization of assets?

12 A We'll be bankrupt. Actually, Act 47 have -- the  
13 Act 47-appointed coordinator has to make a  
14 recommendation to DCED later this year. They have  
15 to make a recommendation if the city has made great  
16 financial progress before we can even talk about  
17 August of 2021. An infusion of cash would only  
18 allow us to pay off our, you know, outstanding debt  
19 obligations. When you talk about the pension that  
20 -- the city has failed to put \$27 million into the  
21 police pension fund over the last years because we  
22 just haven't been able to do so, so that's one big  
23 thing that we would do immediately. In 2017 we had  
24 to do unfunded borrowing. We would pay off that.  
25 That's another \$12 million. And we have outstanding

1 vendor payments as well that we need to resolve.

2 Q Were you involved in the city's consideration of  
3 the possible sale of water assets that was  
4 considered in light of the offer from Aqua  
5 Pennsylvania in 2017?

6 A Yes.

7 Q Are you aware of the amount of that offer?

8 A It was approximately 250 million or maybe \$320  
9 million.

10 Q What's the differentiation between those two  
11 figures?

12 A My understanding is that the higher figure was  
13 the offer, and the net proceeds would be the lower  
14 amount --

15 Q Okay.

16 A -- after debt service was taking care of.

17 Q And do you have firsthand knowledge of those  
18 numbers to be accurate or is that your  
19 understanding?

20 A I don't. That's my understanding.

21 Q Okay. Are you -- do you have firsthand  
22 knowledge -- or do you have -- what is the basis of  
23 your knowledge that we're talking about hundreds of  
24 millions of dollars? Has it been reported to by  
25 other officers? What's the basis of that knowledge?

1 \*\*\*

2 MR. JESIOLOWSKI: Objection. I'm not sure  
3 what that question even means.

4 THE COURT: Sustained.

5 MR. GREENBERG: Okay.

6 THE COURT: Yeah, I'm not sure where you're  
7 going.

8 MR. GREENBERG: That's fine. It's not --  
9 it's not important.

10 \*\*\*

11 BY MR. GREENBERG:

12 Q If the city were to pursue monetizing the water  
13 -- we'll come back to the process in a second.

14 Let's be conservative here and say the city were to  
15 hypothetically receive \$250 million for the assets.  
16 What would the city be able to do with that money?

17 \*\*\*

18 MR. JESIOLOWSKI: Objection. I'm not sure  
19 there's any basis for that assumption. What does  
20 that have to do with anything here?

21 THE COURT: Mr. Greenberg, yeah, what does  
22 that have to do -- I don't see the relevance of that  
23 issue.

24 MR. GREENBERG: Because how fast we get to  
25 them having the money -- my offer of proof is that

1 he's going to testify that \$250 million or some  
2 number close to that would satisfy these outstanding  
3 obligations of the city and allow them to exit Act  
4 47 stably on time within the time frame set by the  
5 legislature with the recommendation this year and a  
6 decision next year. And without that, they can't.  
7 And we -- we've -- we have testimony from him that  
8 it was about \$250 million. I'm asking for a  
9 hypothetical. If we wanted to be conservative and  
10 say 200 million, I'm fine with that.

11 MR. JESIOLOWSKI: A few points, Your Honor.  
12 First, nobody has established the city has a legal  
13 right to sell the Authority. That's exactly what  
14 this case is about. Second, if I take Mr.  
15 Greenberg's premise, it's that the city needs \$250  
16 million ASAP or it can't get out of Act 47. That's  
17 exactly the point the status quo order was issued in  
18 the first place, to prevent the city from selling  
19 the Authority until you could reach a ruling.

20 MR. GREENBERG: Your Honor, that's not an  
21 evidentiary argument as to the question. That is an  
22 argument of law of the case. The question is  
23 whether I can ask him whether or not it -- what the  
24 city would do with 200 or \$250 million to achieve  
25 financial stability. He is the CFO of the city, and

1 he's qualified to answer that.

2 MR. JESIOLOWSKI: Again, that has nothing  
3 to do with the harm. It's also not an allegation  
4 contained anywhere in the city's motion. We are not  
5 prepared on that at all. They've given us no  
6 indication of how to prepare for that.

7 MR. GREENBERG: You --

8 THE COURT: Mr. Greenberg, we're getting a  
9 little far afield here. I mean --

10 MR. GREENBERG: Your Honor, I think this is  
11 exactly --

12 THE COURT: -- Mr. Nichols was put on -- I  
13 allowed you to put Mr. Nichols on to explain what  
14 the financial condition of the city is. I think  
15 he's fairly well addressed that. I mean, he's given  
16 us a lot of information as to his knowledge as to  
17 what the financial condition is.

18 MR. GREENBERG: Let me ask a few different  
19 questions then.

20 THE COURT: Go ahead.

21 \*\*\*

22 BY MR. GREENBERG:

23 Q Would \$150 million allow the city to achieve  
24 financial stability?

25 A It will put the city in a great financial

1 place --

2 Q Is that -- is that --

3 A -- to help us exit Act 47, yes.

4 Q Okay. Let alone a higher number would be  
5 better?

6 A Absolutely.

7 Q And a lower number would be solid but it would  
8 -- depending on how low would be --

9 \*\*\*

10 MR. JESIOLOWSKI: Objection.

11 MR. GREENBERG: -- an improvement?

12 MR. JESIOLOWSKI: Leading.

13 THE COURT: It is leading.

14 \*\*\*

15 BY MR. GREENBERG:

16 Q Okay. What would the effect be of --

17 \*\*\*

18 THE COURT: Sustained.

19 MR. GREENBERG: Sorry.

20 \*\*\*

21 BY MR. GREENBERG:

22 Q So how much would you need for the city to be on  
23 adequate financial footing and exit Act 47 in a  
24 reasonable manner?

25 A Me as Nafis Nichols as CFO to do everything that

1 I feel and know that the city needs, hundreds of  
2 millions of dollars. You would need \$250 million at  
3 minimum to start the process.

4 Q Would you as CFO use a one-time infusion from --  
5 for operating expenses or only for long-term  
6 expenses?

7 A Long-term -- operating expenses, no, long-term  
8 expenses.

9 Q But if you were to pay off these long-term  
10 expenses, what would the effect be on the operating  
11 expenses?

12 A Oh, well, it would --

13 \*\*\*

14 MR. JESIOLOWSKI: Objection. Leading.

15 THE WITNESS: -- improve our --

16 THE COURT: Sustained. It's leading.

17 MR. GREENBERG: Well, I said what would the  
18 effect be. That's a --

19 THE COURT: Rephrase the question.

20 \*\*\*

21 BY MR. GREENBERG:

22 Q If you paid off long-term expenses, would there  
23 be an effect on short-term -- on operating expenses?

24 A Absolutely. And it will free up cash flow for  
25 us to do other things and provide essential

1 services.

2 Q And do you have any idea about how much cash  
3 flow would be freed up if just these \$76 million of  
4 pension obligations were paid off?

5 \*\*\*

6 MR. JESIOLOWSKI: Objection. Your Honor,  
7 these are the kinds of things that financial  
8 statements would be necessary to cross-examine him  
9 on. We've not been given the chance to prepare for  
10 this.

11 THE COURT: Sustained.

12 MR. GREENBERG: Your --

13 THE COURT: Sustained.

14 MR. GREENBERG: Your Honor, my question is  
15 whether he knows.

16 THE COURT: Let's move on, Mr. Greenberg.

17 MR. GREENBERG: Okay.

18 THE COURT: Sustained.

19 \*\*\*

20 BY MR. GREENBERG:

21 Q So as CFO, have you been involved in bid  
22 processes for the city of Chester?

23 A I have.

24 \*\*\*

25 MR. JESIOLOWSKI: Objection. What bid

1 processes are we talking about?

2 MR. GREENBERG: I can get there. You can  
3 cross-examine, but I'm not sure --

4 THE COURT: Well --

5 MR. GREENBERG: -- what's wrong with my  
6 question.

7 THE COURT: Well, it's pretty open-ended.

8 MR. GREENBERG: Was he involved --

9 THE COURT: Bid -- bid for what?

10 MR. GREENBERG: That's the next question.

11 THE COURT: (inaudible) --

12 \*\*\*

13 BY MR. GREENBERG:

14 Q Can you describe some of those examples?

15 A Bid processes I've -- I've been involved just  
16 about in every bid process, fire feasibility study,  
17 blighted communities proposals, rock salt, you know,  
18 trash vendors, Stormwater Authority.

19 Q Do more complex -- how much time to the more  
20 complex RFP processes take?

21 A They -- there -- they're fairly long. They're  
22 fairly long. The more complex it is, of course, the  
23 process is longer.

24 Q So the more complex ones, can you give me an  
25 estimate for how long they take?

1 A Six to eight weeks.

2 Q Okay. And that's to what point, from the time  
3 the RFP has started to when -- to -- what happens  
4 six to eight weeks later, decision to contract, the  
5 actual contract?

6 A Correct.

7 Q What is the endgame?

8 A Correct. So, I mean, a typical bid process, of  
9 course Council first has to advertise -- to -- well,  
10 authorize the proper city official to advertise that  
11 there is even a bid available, and then you give  
12 people an opportunity to actually submit a bid,  
13 which takes about -- it could be up to 30 days, and  
14 bids are then received and they're reviewed based  
15 off of the complexity of the bid. It could be  
16 longer, it could be short. At that point we may  
17 need experts to come in and guide the Council on a  
18 decision before they actually award a bid. And  
19 after a bid is awarded, you know, contract  
20 negotiations with the solicitor's office back and  
21 forth to make sure that the contract is airtight and  
22 the work commences. So it could -- it could take  
23 six weeks. It could take up to 12 weeks depending  
24 on how complex the bid process is.

25 Q So if -- and are you aware of an RFP process for

1 water system assets that was advertised the summer?

2 A I'm aware of that.

3 \*\*\*

4 MR. JESIOLOWSKI: Objection. There were I  
5 think multiple RFPs. I just want to clarify which  
6 we're asking about.

7 MR. GREENBERG: So only one was advertised,  
8 but --

9 THE COURT: Only one was --

10 MR. GREENBERG: -- the one arising after  
11 June 12th.

12 THE COURT: All right.

13 THE WITNESS: Yes.

14 \*\*\*

15 BY MR. GREENBERG:

16 Q Okay. And had -- are you aware that it was  
17 discontinued because of a court injunction?

18 A Yes.

19 Q If the city had not had to discontinue that RFP  
20 process, do you believe that process would be  
21 concluded by now?

22 A Yes.

23 Q Okay. And so the six -- those six to twelve  
24 weeks you discussed for the process that you think  
25 is a reasonable time period, would that allow --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\*\*\*

MR. JESIOLOWSKI: Objection. Leading and characterizing the witness's testimony.

THE COURT: Sustained.

\*\*\*

BY MR. GREENBERG:

Q The six to twelve weeks you've characterized, what would the effect be on -- on if the city were to do that for a \$250 million asset? What would the effect be for the city's ability to exit Act 47 timely?

A It -- it would put us in a better position to exit.

Q And as this RFP -- and this injunction slows down the RFP process obviously -- what is the effect on the city's move towards financial stability?

\*\*\*

MR. JESIOLOWSKI: Objection. Leading.

THE COURT: Sustained.

\*\*\*

BY MR. GREENBERG:

Q Has the injunction slowed down the city's ability to get to that point?

A I use a phrase in City Hall. Don't get afraid unless you see me sweat. I'm starting to sweat.

1 Q And so with any additional delay, would that  
2 make you sweat more?

3 A Absolutely.

4 Q Can the city afford to wait much longer?

5 A No, it cannot.

6 Q And how many months will the Act 47 coordinator  
7 make a recommendation to DCED regarding the exit?

8 A Their recommendation is due the fall of this  
9 year, September of this year.

10 Q Okay. So -- and to the extent the injunction  
11 were to continue for, say, another month, what would  
12 that effect be on the city's ability to move forward  
13 with an RFP process?

14 \*\*\*

15 MR. JESIOLOWSKI: Objection. This is  
16 speculative.

17 MR. GREENBERG: It's -- if they did this,  
18 what would the effect be? It's speculative that the  
19 Court keeps it in place, I agree with that. But  
20 the --

21 THE COURT: I'll allow it. Overruled.

22 THE WITNESS: So the recovery coordinator  
23 most certainly has to make the recommendation in  
24 September, but they have to do due diligence. And  
25 if they -- if they don't do their due diligence in

1 -- well in advance and hold their public hearings  
2 and everything like that, the effect would be  
3 detrimental.

4 MR. GREENBERG: Okay. Nothing further,  
5 Your Honor.

6 THE COURT: All right. I don't know if  
7 it's Mr. Kent or Mr. Jesiolowski.

8 MR. KENT: Well, Mr. Jesiolowski would  
9 handle cross. I mean, we're in this situation, Your  
10 Honor, where I think you've said we'll have the  
11 opportunity to -- to go and look at evidence. I  
12 don't want to do Mr. Nafis's cross piecemeal. So to  
13 some extent I'm looking for the Court's guidance.  
14 But I -- I would suggest that we have that --  
15 reschedule this hearing promptly, whether it's next  
16 week or otherwise, so we can then present our  
17 evidence in response, including Mr. Nichols' cross.

18 MR. GREENBERG: Your Honor, this is a  
19 preliminary injunction hearing. The standards are  
20 -- there is no notice requirement for witnesses.  
21 The rules of pleading are very simple. He is here.  
22 He has testified. I don't believe there's anything  
23 he said that should be surprising to these people,  
24 but that is not the standard. There is no rule  
25 requiring advanced notice. There is no process

1 requiring advanced notice. We have had to  
2 repeatedly in this case cross-examine witnesses we  
3 did not know what they were going to say. They --  
4 they have the documents they've alleged we needed to  
5 give them. They in fact served them on us last  
6 night. So I don't understand where this comes from  
7 or why they would want to delay this further. They  
8 want a half-hour to think about what was said and do  
9 some research? I don't see an issue with that, but  
10 a long continuance seems unnecessary.

11 MR. KENT: I'm not looking for a long  
12 continuance, Your Honor. I'm suggesting like a  
13 week.

14 MR. GREENBERG: Your Honor, this is an  
15 outstanding injunction.

16 THE COURT: And the basis, Mr. Kent?

17 MR. KENT: The basis is he's talking about  
18 the city's financial situation. Yes, we served one,  
19 the Act 47 plan because we didn't know exactly what  
20 he was going to get into, but now we -- we have an  
21 understanding of what his testimony is for the first  
22 time. We want to go back and look at their  
23 financials to vet this.

24 MR. GREENBERG: Your Honor, that's the  
25 whole point we have with discovery with respect to

1 trial.

2 MR. KENT: I'm not talking about discovery.

3 MR. GREENBERG: This is an injunction  
4 hearing. This is not that --

5 THE COURT: No, this isn't a -- this is not  
6 an injunction hearing. This is a hearing to  
7 dissolve an injunction.

8 MR. GREENBERG: Correct.

9 THE COURT: It's not actually a hearing to  
10 impose an injunction.

11 MR. KENT: I would also note a second point  
12 on the city's burden. They have to establish -- and  
13 this goes to a second point. They have to establish  
14 harm from this Court's order. What I'm not hearing  
15 from this witness at all is harm from the order.  
16 It's harm from being able to close on the  
17 transaction, which the city has already said will  
18 not happen until the Court rules on the merits. So  
19 I'm not sure --

20 THE COURT: Well, that's -- Mr. Kent,  
21 you're getting into argument now, and I understand  
22 your position, but that's really argument.

23 MR. KENT: It's basically effectively a  
24 motion for a nonsuit that they haven't met their  
25 burden because this doesn't go -- this doesn't go --

1 MR. GREENBERG: Let --

2 MR. KENT: -- to the harm --

3 MR. GREENBERG: If I may continue my exam,  
4 then, I'll ask him a question on the basis --

5 THE COURT: I thought you concluded.

6 MR. GREENBERG: I got one more that goes  
7 right to that question, though, now that he's  
8 raising this issue.

9 THE COURT: Well, you already concluded --

10 MR. GREENBERG: Okay. That's fine.

11 THE COURT: -- Mr. Greenberg.

12 MR. GREENBERG: I mean, I -- to the extent  
13 that he's raising this --

14 THE COURT: We're on cross -- we're on  
15 cross now, and Mr. Kent's asking --

16 MR. GREENBERG: Okay.

17 THE COURT: -- for a continuance in order  
18 to prepare for the cross-examination. I don't know  
19 where I can squeeze this in next week is my problem.  
20 I don't know what my schedule -- I'm starting -- we  
21 got -- Monday's a holiday. I know I have a three-  
22 day nonjury trial on a zoning matter, Tuesday,  
23 Wednesday, Thursday. I don't know what I have  
24 scheduled for Friday. Does either counsel have an  
25 objection if I ask a question of the witness?

1 MR. GREENBERG: Not at all, Your Honor.

2 MR. KENT: No. No, Your Honor.

3 THE COURT: All right. Mr. Nichols, you  
4 indicated -- I just want to be clear on this -- that  
5 the exit date is -- for the Act 47 is, I believe,  
6 August 2021?

7 THE WITNESS: Correct.

8 THE COURT: Okay. And you indicated that  
9 there's a -- that's -- that comes from a  
10 recommendation from the -- the officer in charge --  
11 well, I forgot how you described it. It wasn't a  
12 financial officer, but it was --

13 THE WITNESS: The recovery coordinator?

14 THE COURT: Recovery coordinator. Does  
15 that come from -- do they make a recommendation as  
16 to that exit date?

17 THE WITNESS: So the state legislature  
18 actually outlines the process.

19 THE COURT: Um-hum.

20 THE WITNESS: The last time when they  
21 passed the legislation back in 2013 they said the  
22 last recovery plan that you adopted, which ours was  
23 actually 2011, they had to do a new recovery plan,  
24 which was done in -- and adopted in August of 2016.

25 THE COURT: All right.

1           THE WITNESS: At that point the state  
2 legislature said that there needed to be a midpoint  
3 review, which the recovery coordinator did in May of  
4 2018. And within six months the Council had to  
5 adopt the exit plan. They -- they said either you  
6 -- you were making progress, you can exit; you  
7 weren't making progress, you had to dissolve the  
8 municipality or merge with another municipality; or  
9 a state-appointed receiver will come in.

10           THE COURT: All right.

11           THE WITNESS: We were granted an extension  
12 of a three-year exit plan --

13           THE COURT: Okay.

14           THE WITNESS: -- and that's how we got to  
15 that point.

16           THE COURT: Okay. So -- so -- and just --  
17 this is for my own clarification. So the -- is  
18 there a process where the city could apply for an  
19 extension of the exit plan?

20           THE WITNESS: My understanding is we  
21 cannot.

22           THE COURT: Okay.

23           MR. GREENBERG: Your Honor, if I may --

24           THE COURT: Well, he answered the question.

25           MR. GREENBERG: Okay. But --

1 THE COURT: His understanding.

2 MR. GREENBERG: It would require -- it  
3 would require state legislation.

4 THE COURT: Right. That's what I thought,  
5 but I wanted to -- okay. All right. So -- well,  
6 Mr. Kent, you're saying you're -- based on the  
7 testimony you've heard, you need time to prepare for  
8 cross?

9 MR. KENT: If the --

10 THE COURT: That's what you're telling me?

11 MR. KENT: If the Court -- if -- unless the  
12 Court makes a ruling that -- that this testimony is  
13 irrelevant to the issue --

14 THE COURT: Well, I'm not making that  
15 decision now.

16 MR. KENT: Yeah. I'm just saying,  
17 that's --

18 THE COURT: I may -- I may make a decision  
19 one way or the other on the weight of the testimony  
20 after I've -- I've heard cross-examination, but I  
21 haven't heard cross-examination. Mr. Frank --

22 MR. FRANK: (inaudible) --

23 THE COURT: -- you're standing, so I'll  
24 allow you to stand --

25 MR. FRANK: Thank you. I appreciate it,

1       sir.

2                   THE COURT:  -- sir, and address the Court.

3                   MR. FRANK:  Not truly our fight, but --

4                   THE COURT:  It isn't.

5                   MR. FRANK:  But, a big but, there's no Rule  
6 of Civil Procedure that requires the notice that  
7 they somehow are requesting or demanding.  They got  
8 information about this witness on Monday night.  
9 This is not Tuesday morning.  It's Thursday morning  
10 where we had the opportunity.  From my  
11 understanding, the vast majority of the material  
12 information that Mr. Nichols testified to was in the  
13 Act 47 plan itself, which, again, they had.  I have  
14 no idea as to what they were going to do in the  
15 interim period of time to cross-examine Mr. Nichols  
16 on information that is not already in there -- at  
17 their disposal -- ready disposal.  I mean, there's  
18 no -- this has gone on --

19                   THE COURT:  This sounds like --

20                   MR. FRANK:  -- and talked about early on --

21                   THE COURT:  -- the city's argument, Mr. --  
22 Mr. Frank.

23                   MR. FRANK:  I'm sorry?

24                   THE COURT:  I said you sound like you're  
25 arguing for the city.

1 MR. GREENBERG: Occasionally, I'm right.

2 MR. FRANK: I mean, the -- Judge, we've  
3 talked --

4 THE COURT: I understand -- I understand  
5 your position.

6 MR. FRANK: We've talked about expense.  
7 We've talked about delay. There's no need or  
8 rationale or legal basis for going ahead and  
9 extending the hearing to now -- for them to prepare  
10 for cross-examination.

11 THE COURT: Well, I'm not going to --  
12 here's what I'm going to do. I'm going to allow --  
13 I'm going to proceed with cross-examination, but I  
14 will allow Chester Water Authority to supplement  
15 their position on rebuttal because they said there  
16 may be documentation they may need to submit. So I  
17 will permit that. But why don't we proceed with the  
18 cross-examination?

19 MR. JESIOLOWSKI: Very well, Your Honor.  
20 Your Honor -- or, Mr. Nichols, your testimony  
21 addressed the city's Act 47 plan of August 2016.  
22 Why don't we take a look at that, and I'll ask you  
23 some questions about that. May I hand up  
24 (inaudible) --

25 THE COURT: You may approach.

1                   MR. JESIOLOWSKI: Your Honor, I should also  
2 say the procedural matter, we here in court  
3 requested a copy of all the pleadings. We have  
4 those.

5                   THE COURT: All right. Does counsel -- did  
6 you receive a copy of them? Another booklet.

7                   MALE SPEAKER: Thank you.

8                   MR. JESIOLOWSKI: Would you like a copy,  
9 Your Honor?

10                  THE COURT: Any objection to my having a  
11 copy, counsel?

12                  MR. GREENBERG: I -- which document are we  
13 looking at --

14                  THE COURT: I think --

15                  MR. GREENBERG: -- which number?

16                  THE COURT: -- Act 47, right?

17                  MR. GREENBERG: Well, I don't have a  
18 problem with the plan --

19                  THE COURT: I don't -- I don't know. I  
20 thought that's what Mr. Jesiolowski said, but I'll  
21 -- I'll wait to --

22                  MR. JESIOLOWSKI: I believe it's tab 26.

23                  MR. GREENBERG: That's an email from  
24 PENNVEST?

25                  MR. JESIOLOWSKI: No, tab 26.

1 THE COURT: Wrong book?

2 MR. GREENBERG: Wrong hearing.

3 MR. JESIOLOWSKI: (inaudible) from October.

4 THE WITNESS: I have tab 26.

5 MR. GREENBERG: Your Honor, I have no  
6 objection to them introducing this. I will say this  
7 is not the report he testified to. He was  
8 discussing the August 2018 midterm plan that was  
9 adopted, not this one. I don't have a problem with  
10 this going in, but this is --

11 THE COURT: All right.

12 MR. GREENBERG: -- the 2016 prior plan.

13 THE COURT: He did mention the 2016 plan --

14 MR. GREENBERG: Yeah.

15 THE COURT: -- and then he mentioned the  
16 2018. Right. So is there any objection to me --

17 MR. GREENBERG: There's no objection to  
18 you --

19 THE COURT: Okay.

20 MR. GREENBERG: -- receiving this. The  
21 weight and -- we want reserved -- there is no  
22 admission to every fact listed in here.

23 THE COURT: Understood.

24 MR. GREENBERG: It is the plan.

25 THE COURT: Understood.

1                   MR. GREENBERG: Well, it may be the plan.  
2 We need to -- I'm not -- I haven't authenticated  
3 this as being the correct one.

4                   THE COURT: All right.

5   \*\*\*

6   CROSS-EXAMINATION (11:05 a.m.)

7 BY MR. JESIOLOWSKI:

8 Q     Mr. Nichols, would you kindly take a look at tab  
9 26?

10 A    Yes.

11 Q     What is this document, sir?

12 A     It appears to be the city of Chester's municipal  
13 financial recovery plan.

14 Q     When was this document adopted?

15 A     August 12th of 2016.

16 Q     Is this the document you referred to in your  
17 testimony a short time ago?

18 A     One of the documents, yes.

19 Q     This document outlines a plan to try to fix the  
20 city's finances, correct?

21 A     Yes.

22 Q     In this document there are over 150  
23 recommendations for the city to adopt in this plan,  
24 correct?

25 A     Correct.

1 Q Not one of those recommendations discusses  
2 selling the Chester Water Authority, correct?

3 A It does not. In the recovery plan and the exit  
4 plan that was the -- a report which came May of  
5 2018. That's what I was referencing --

6 Q I -- I've had an answer to my question.

7 A Oh, no, not --

8 \*\*\*

9 THE COURT: Just --

10 THE WITNESS: -- not -- not in a --

11 THE COURT: Just respond to the question --

12 THE WITNESS: -- recovery plan.

13 THE COURT: -- Mr. Nichols. Okay.

14 MR. JESIOLOWSKI: Well, you mentioned the  
15 exit plan. Let's take a look at that at tab 25,  
16 please. I would like to at this time move Exhibit  
17 26 into evidence.

18 MR. GREENBERG: We haven't -- it hasn't  
19 been authenticated. It appears to be that, but not  
20 -- I mean, again, we -- we have not had a chance to  
21 review this to determine if it's correct, so subject  
22 to us correcting it later on, I don't have a problem  
23 with it, but I want to have the right to review it  
24 to make sure it's accurate and come back to the  
25 Court.



1 get out of Act 47 financial status. Is that  
2 correct?

3 A Correct.

4 Q Would you turn to page 4 of this document,  
5 please?

6 A Yep.

7 Q Do you see the heading "city assets," sir?

8 A Yes.

9 Q Under this heading it says that this plan takes  
10 no position on whether the city should sell the  
11 Water Authority. Is that correct?

12 \*\*\*

13 MR. GREENBERG: Objection, Your Honor.  
14 That's not what it says.

15 THE COURT: Yeah, what is it -- and you're  
16 going to have to direct me, Mr. Jesiolowski, as to  
17 where it says that.

18 \*\*\*

19 BY MR. JESIOLOWSKI:

20 Q It says, quote, "The recovery coordinator has  
21 not taken a position on whether or not the city  
22 should monetize the water system." Did I quote that  
23 accurately, Mr. Nichols?

24 \*\*\*

25 MR. GREENBERG: Your Honor, if I may be

1 heard, that is correct.

2 THE COURT: That's right.

3 MR. GREENBERG: It does not say that the  
4 plan is -- it's says the recovery coordinator.

5 THE COURT: That's the correct quote.

6 THE WITNESS: Correct.

7 \*\*\*

8 BY MR. JESIOLOWSKI:

9 Q Does this document say anywhere inside it that  
10 the city must sell the Authority to get out of Act  
11 47 status?

12 A It doesn't.

13 Q Sir, you testified about the city's current  
14 financial state. Why don't we look at the city's  
15 most recent audit? Would you turn to tab 24,  
16 please?

17 \*\*\*

18 MR. JESIOLOWSKI: Your Honor, I -- before I  
19 forget, I -- same request that Exhibit 25 be moved  
20 into evidence subject to Mr. Greenberg  
21 authenticating it.

22 THE COURT: All right.

23 MR. GREENBERG: With the same caveat and no  
24 objection.

25 THE COURT: All right.

1 \*\*\*

2 BY MR. JESIOLOWSKI:

3 Q Mr. Nichols, what is the document at tab 24?

4 A It's the city of Chester's financial statements  
5 and independent audit report for year-end 2016.

6 Q Do you recognize this document?

7 A I do.

8 Q What was the date this document issued? And  
9 I'll give you a hint. It's the bottom of page 3.

10 A July 10th, 2019.

11 Q So this document was issued in the midst of this  
12 trust proceeding, correct?

13 \*\*\*

14 MR. GREENBERG: Objection. Relevance?

15 MR. JESIOLOWSKI: I'll get to that in a  
16 moment.

17 MR. GREENBERG: It's not his expertise. He  
18 doesn't know when this trust proceeding was going  
19 on.

20 MR. JESIOLOWSKI: I'm just asking him to  
21 verify that this --

22 \*\*\*

23 BY MR. JESIOLOWSKI:

24 Q Do you know when this trust proceeding began?

25 \*\*\*

1 THE COURT: I'll sustain the objection.

2 The --

3 MR. GREENBERG: The date's the date.

4 THE COURT: The date's the date, 7/10 --  
5 7/10/19, correct? Mr. Jesiolowski, that's what you  
6 said, 7/10/19?

7 MR. JESIOLOWSKI: Yes, Your Honor.

8 THE COURT: Okay.

9 \*\*\*

10 BY MR. JESIOLOWSKI:

11 Q In your capacity as the city's CFO, you were  
12 involved in helping to prepare this document,  
13 correct?

14 A At a very, very high level, yes.

15 Q And you were involved in supplying information  
16 that went into this audit, correct?

17 A The deputy CFO was. The deputy CFO was the one  
18 intimately involved. Again, I oversaw the process.  
19 I didn't provide any information, no, I didn't  
20 personally provide any information.

21 Q The city's information was provided to the  
22 auditors to -- to prepare this document --

23 A Yes.

24 Q -- correct?

25 A Yes.

1 Q And the city reviewed this report as it was  
2 being prepared, correct?

3 A Correct.

4 Q And the city received a copy of this audit when  
5 it was completed, correct?

6 A Correct.

7 Q Do you have any reason to doubt the accuracy of  
8 this audit?

9 A I don't.

10 Q Is this the most current audit the city has?

11 A It is.

12 Q Just to clarify, this is for the year 2016. The  
13 city has no audits for 2017 to present?

14 A Not a final adopted audit, no.

15 Q So this audit, does this represent the most  
16 current financial picture of the city?

17 \*\*\*

18 MR. GREENBERG: Objection, Your Honor.

19 It's -- it's -- that misstates the document. It's a  
20 2016 audit, not a current image.

21 THE COURT: Sustained.

22 \*\*\*

23 BY MR. JESIOLOWSKI:

24 Q Is this the most current audit and financial  
25 statement for the city?

1 A Yes.

2 Q Would you turn to page 24, please? Do you see  
3 the subheading "Chester Water Authority"?

4 A Yes.

5 Q Would you read for us what that paragraph says?

6 A "Based on the above criteria, CWA and CUSD are  
7 excluded from the reporting entity. CUSD has a  
8 separate elected governing body. Part of the CWA's  
9 governing board is appointed by the City Council.  
10 CUSD and CWA provide services to residents within as  
11 well as outside the geographical boundaries of the  
12 city. These potential component units are excluded  
13 from the reporting entity because the city does not  
14 have the ability to exercise, influence over their  
15 daily operations, approve spending plans, or provide  
16 funding."

17 Q So for purposes of this audit the CWA was not  
18 considered an asset of the city, correct?

19 \*\*\*

20 MR. GREENBERG: Objection, Your Honor.  
21 That's not what this says. This document speaks for  
22 itself. He's asking him to mischaracterize --

23 MR. JESIOLOWSKI: I'm not asking what the  
24 document --

25 MR. GREENBERG: -- something prepared by

1 somebody else.

2 THE COURT: I'm going to sustain the  
3 objection. It doesn't say what you're saying, Mr.  
4 Jesiolowski. The document says what it says.

5 \*\*\*

6 BY MR. JESIOLOWSKI:

7 Q Do you have any reason to doubt that statement?

8 \*\*\*

9 MR. GREENBERG: Objection, Your Honor.  
10 It's beyond his scope of expertise.

11 THE COURT: Well, I think it's already been  
12 asked and answered. He indicated -- I overruled the  
13 objection, but --

14 MR. JESIOLOWSKI: Withdraw the question,  
15 Your Honor.

16 THE COURT: -- Mr. Jesiolowski, he already  
17 said that this is the current and most accurate  
18 financial statement the city has at this time. That  
19 was part of his testimony.

20 MR. JESIOLOWSKI: Withdraw the question.

21 MR. GREENBERG: It's the most recently  
22 completed one --

23 THE COURT: Right.

24 MR. GREENBERG: -- yes.

25 THE COURT: And he -- and he concurred.

1 Mr. Nichols -- and correct me if I'm wrong, I  
2 thought you said that you -- in your opinion it's  
3 accurate.

4 THE WITNESS: Correct.

5 THE COURT: Okay.

6 MR. GREENBERG: Your Honor, what he was  
7 asked, just to be clear, was that he was asked  
8 whether he had any reason to doubt the accuracy. He  
9 was not asked to vote -- vouchsafe legal  
10 conclusions --

11 THE COURT: Well, they're --

12 MR. GREENBERG: -- that the auditors --

13 THE COURT: -- legal conclusions or  
14 something else, but he's saying that what's in here  
15 Mr. Nichols indicated that his opinion --

16 MR. GREENBERG: To --

17 THE COURT: -- is accurate.

18 MR. GREENBERG: To the best of knowledge  
19 and information --

20 THE COURT: Yeah --

21 MR. GREENBERG: -- and belief.

22 THE COURT: Obviously to his best of  
23 knowledge.

24 MR. GREENBERG: Okay.

25 THE COURT: Go ahead, Mr. Jesiolowski.

1 \*\*\*

2 BY MR. JESIOLOWSKI:

3 Q Mr. Nichols, the city supplied this specific  
4 financial information that led to the statement,  
5 correct?

6 \*\*\*

7 MR. GREENBERG: Objection.

8 THE COURT: Well, I'm going to sustain the  
9 objection, Mr. Jesiolowski, because I don't know  
10 what you mean by this specific financial  
11 information.

12 \*\*\*

13 BY MR. JESIOLOWSKI:

14 Q Does the city of Chester carry the Chester Water  
15 Authority as an asset on any city financial  
16 statement?

17 \*\*\*

18 MR. GREENBERG: Objection.

19 THE COURT: If you -- overruled. If he  
20 knows. He may not know.

21 THE WITNESS: I don't know. It's not  
22 listed as a component unit. They're not included in  
23 our financial statements.

24 \*\*\*

25 BY MR. JESIOLOWSKI:

1 Q Are there any other \$250 million assets you  
2 don't know about on the city's books?

3 \*\*\*

4 MR. GREENBERG: Objection, Your Honor.

5 THE COURT: Overruled. You can answer it.  
6 If he knows.

7 THE WITNESS: I don't know.

8 \*\*\*

9 BY MR. JESIOLOWSKI:

10 Q Do you know if this -- this statement that the  
11 -- in this audit, similar statements are in audits  
12 for prior years for the city, correct?

13 \*\*\*

14 MR. GREENBERG: Objection, Your Honor.  
15 Documents not in evidence.

16 THE COURT: Sustained.

17 \*\*\*

18 BY MR. JESIOLOWSKI:

19 Q Well, why don't we look at some prior-year  
20 audits?

21 \*\*\*

22 MR. GREENBERG: Relevance.

23 THE COURT: Mr. Jesiolowski, what's the  
24 relevance of looking at prior-year audits?

25 MR. JESIOLOWSKI: I'm going to establish

1 that going back at least to 2003 the city audits say  
2 that the CWA is not an asset of the city.

3 MR. GREENBERG: Your Honor, first of all,  
4 that's not relevant to this motion here. Second of  
5 all, that is -- the question of whether it says it  
6 in an audit for an accounting purpose, for reporting  
7 purposes or whether they're accounted for separately  
8 are not determinations of legal questions.

9 THE COURT: Mr. --

10 MR. GREENBERG: But that's not relevant to  
11 today.

12 THE COURT: Mr. Jesiolowski, that may be  
13 documentation for another day --

14 MR. JESIOLOWSKI: Very well, Your Honor.

15 THE COURT: -- when we get to the actual  
16 evidentiary hearing on who owns the assets.

17 MR. JESIOLOWSKI: Very well, Your Honor.

18 THE COURT: So I'll sustain the objection.

19 \*\*\*

20 BY MR. JESIOLOWSKI:

21 Q Mr. Nichols, you mentioned in your direct  
22 testimony the CWA's board. You're familiar with the  
23 current composition of the CWA's board?

24 \*\*\*

25 MR. GREENBERG: Your Honor, I don't believe

1 he did.

2 MR. JESIOLOWSKI: I'll -- then I'll  
3 rephrase.

4 THE COURT: All right.

5 \*\*\*

6 BY MR. JESIOLOWSKI:

7 Q Are you familiar with the current composition of  
8 the CWA's board?

9 A I am.

10 Q You are aware that three members of the board  
11 were appointed by the city of Chester, correct?

12 A I am.

13 \*\*\*

14 MR. GREENBERG: Objection. Relevance, Your  
15 Honor?

16 THE COURT: Overruled. I'll allow it.

17 MR. GREENBERG: Beyond the scope?

18 THE COURT: Overruled.

19 MR. GREENBERG: Okay.

20 \*\*\*

21 BY MR. JESIOLOWSKI:

22 Q Do you have any reason to doubt the competency  
23 of those city appointees on the board?

24 \*\*\*

25 MR. GREENBERG: Objection to relevance.

1 THE COURT: That I'll sustain.

2 \*\*\*

3 BY MR. JESIOLOWSKI:

4 Q Mr. Nichols, are you aware -- you are aware that  
5 the city appointees voted against a sale to Aqua,  
6 correct?

7 \*\*\*

8 MR. GREENBERG: Objection, Your Honor.  
9 Relevance?

10 THE COURT: Mr. Jesiolowski, I don't see  
11 the relevance of that. Sustained.

12 MR. JESIOLOWSKI: Very well, Your Honor.

13 \*\*\*

14 BY MR. JESIOLOWSKI:

15 Q Mr. Nichols, it's fair to say that the city's  
16 ultimate goal is to sell the Chester Water  
17 Authority, correct?

18 \*\*\*

19 MR. GREENBERG: Objection, relevance --  
20 objection, basis. He's speaking for the CFO, and  
21 you limited my direct to a very limited set of  
22 issues.

23 THE COURT: I'm going to sustain the  
24 objection. I don't believe he ever testified to  
25 that, and that was not part of his direct

1 examination. He -- he testified as to -- Mr.  
2 Nichols testified as to what he believes is the  
3 financial -- based on his information what the  
4 financial condition of the city is, so I will  
5 sustain the objection.

6 MR. JESIOLOWSKI: Very well.

7 \*\*\*

8 BY MR. JESIOLOWSKI:

9 Q Mr. Nichols, in your capacity as CFO, have you  
10 conducted any analysis of water affordability on a  
11 -- in a post-sale environment for the citizens of  
12 Chester?

13 A I have not.

14 Q Are you --

15 A Not my area of expertise.

16 Q Are you aware whether the city has conducted any  
17 water affordability analysis --

18 \*\*\*

19 MR. GREENBERG: Objection. Relevance? --

20 MR. JESIOLOWSKI: -- in a post-sale  
21 environment?

22 THE COURT: Mr. Jesiolowski, I don't see  
23 where -- where that is relevant to the issue before  
24 me right now regarding the financial condition of  
25 the city as part of Mr. Greenberg's argument.

1                   MR. JESIOLOWSKI: It's part of Mr.  
2 Greenberg's argument that this is a so-called  
3 injunction, which we disagree with.

4                   THE COURT: I understand that.

5                   MR. JESIOLOWSKI: One of the questions is a  
6 likelihood of success on the merits. And this  
7 question gets to whether the CWA has a likelihood of  
8 success on the merits of the trust petition. And  
9 part of the reason for the trust petition is  
10 squarely around water rate affordability issues and  
11 the potential impact or not of a sale of the Water  
12 Authority.

13                   MR. GREENBERG: Can we get that -- can we  
14 get that in writing? Because this is the first time  
15 in fact they've disavowed this being about rates at  
16 all. They talked about it being because it protects  
17 the environment. So I -- again, we're having stuff  
18 made up at hearings that we've never heard of  
19 before.

20                   MR. JESIOLOWSKI: Your Honor, if I -- if I  
21 may clarify?

22                   THE COURT: Go ahead.

23                   MR. JESIOLOWSKI: The city has said time  
24 and again that the trust was an exercise of  
25 political patronage. Our position is that the trust

1 is an exercise to keep water rates low. That's a  
2 merits question. And I'm asking this witness if the  
3 city has considered water rates because that issue  
4 gets to whether the trust has a likelihood of  
5 success.

6 MR. GREENBERG: Objection. Beyond the  
7 scope of direct. Let's -- that's an easy one. We  
8 can go to a lot more, but that's the easy one.

9 THE COURT: It is beyond the scope of  
10 direct examination. Mr. Nichols is the CFO, and he  
11 testified as to Act 47 and to the -- what his  
12 knowledge is of the financial condition, so I'm  
13 going to sustain the objection.

14 MR. JESIOLOWSKI: Very well, Your Honor.

15 \*\*\*

16 BY MR. JESIOLOWSKI:

17 Q Mr. Nichols, how does the current status quo  
18 order harm the city?

19 \*\*\*

20 MR. GREENBERG: Objection. Scope.

21 THE COURT: Overruled. I'll allow that.  
22 He can render his opinion.

23 MR. GREENBERG: Within his expertise, Your  
24 Honor. I mean, he -- he only knows --

25 THE COURT: Yeah, within his expertise as

1 the CFO.

2 THE WITNESS: Could you elaborate on the  
3 question, please?

4 \*\*\*

5 BY MR. JESIOLOWSKI:

6 Q Can you point to a specific harm to the city  
7 that is being caused by the pendency of the status  
8 quo order?

9 \*\*\*

10 MR. GREENBERG: Objection. Legal  
11 conclusion. Status quo order, I mean if he wants to  
12 talk about do they have to discontinue the RFP, they  
13 can ask specific questions, but what's the effect of  
14 the legal order? It's -- that's a legal question  
15 not for the CFO.

16 MR. JESIOLOWSKI: Your Honor, he called  
17 this witness on the balancing of the harms. I'm  
18 asking what are the city's harm --

19 THE COURT: Well, why don't -- yeah, why  
20 don't you rephrase the question? I understand what  
21 you're asking, but why don't you rephrase it?

22 \*\*\*

23 BY MR. JESIOLOWSKI:

24 Q You can't point to a specific harm to the city  
25 from not being able to issue an RFP, correct?

1 A The city is --

2 \*\*\*

3 THE COURT: Well, first answer yes or no --

4 THE WITNESS: Yes.

5 THE COURT: -- Mr. -- and then you can  
6 expand on your answer.

7 MR. JESIOLOWSKI: I don't need any further  
8 expansion.

9 THE COURT: He's allowed to respond his  
10 answer. Go ahead. You said yes.

11 THE WITNESS: Yes. The city has many  
12 infrastructural issues and -- that -- that have to  
13 do with roadways and everything else and -- yes.

14 \*\*\*

15 BY MR. JESIOLOWSKI:

16 Q But those harms won't be ameliorated until  
17 there's an actual sale of the Authority and cash put  
18 in the city's accounts, correct?

19 \*\*\*

20 MR. GREENBERG: Objection, Your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: Correct.

23 \*\*\*

24 BY MR. JESIOLOWSKI:

25 Q So how does being temporarily blocked from an

1 RFP harm the city's roads?

2 \*\*\*

3 MR. GREENBERG: Your Honor, objection.

4 Again, Your Honor --

5 THE COURT: Overruled. I'll allow it.

6 THE WITNESS: As we're trying to implement  
7 the Act 47 recovery plan that the recommendations  
8 are strongly recommended by DCED. The time  
9 constraints that were put on by the state  
10 legislature to get out of Act 47 and the -- though  
11 it doesn't say to sell or monetize, it asks us and  
12 strongly recommend that we explore our options,  
13 including the -- monetizing the Water Authority. It  
14 has everything to do with it.

15 \*\*\*

16 BY MR. JESIOLOWSKI:

17 Q A few points. You just testified that the plan  
18 you're talking about doesn't take a position either  
19 way. It doesn't --

20 \*\*\*

21 MR. GREENBERG: Objection, Your Honor.

22 MR. JESIOLOWSKI: -- strongly recommend --

23 THE COURT: Mr. Greenberg --

24 MR. GREENBERG: He -- he asked him to read  
25 a sentence. He testified to that sentence. He

1 didn't ask him to read the next two sentences that  
2 say exactly what Mr. Nafis Nichols -- what Mr.  
3 Nichols just said. So if he's going to say he  
4 testified, no, he didn't. He read a sentence, and  
5 he asked him to confirm it was true. That was not  
6 Mr. Nichols' testimony.

7 THE COURT: No --

8 MR. GREENBERG: He read a sentence.

9 THE COURT: -- he -- sustained. Mr.  
10 Nichols verified what was stated in a document.

11 MR. JESIOLOWSKI: I'm still not sure I got  
12 an answer to my question as to how temporarily  
13 blocking an RFP harms the city's roads.

14 MR. GREENBERG: Your Honor, he's testified  
15 it delays by months their ability to move towards an  
16 exit plan. He's -- he did that on direct. He just  
17 did it now. Mr. Jesiolowski may not understand it,  
18 but that's not because Mr. Nichols hasn't said it.

19 MR. JESIOLOWSKI: I'll -- I'll ask the  
20 final question --

21 THE COURT: I'll sustain the objection. Go  
22 ahead.

23 \*\*\*

24 BY MR. JESIOLOWSKI:

25 Q How does delaying an RFP delay moving towards an

1 exit plan specifically?

2 A The city's done everything in its power, no  
3 matter what curveball has been thrown its way, to  
4 remedy the situation, and again, based off of the  
5 line in the recovery plan and exit -- whatever, exit  
6 plan that says that we should explore our options  
7 and -- and get legal and financial advice to see  
8 what we do with all assets is what we're doing. And  
9 the longer it takes for us to do that, it's an  
10 adopted document by the City Council. It delays us  
11 from exiting Act 47.

12 Q How?

13 A There's a --

14 \*\*\*

15 MR. GREENBERG: Asked and answered.

16 THE COURT: Overruled. You may -- you may  
17 answer that, Mr. Nichols.

18 MR. JESIOLOWSKI: There's a question  
19 pending.

20 THE COURT: Yeah.

21 THE WITNESS: Oh, you were --

22 THE COURT: Why don't you restate the  
23 question? It was how. Your question was how.

24 \*\*\*

25 BY MR. JESIOLOWSKI:

1 Q How does the delay of an RFP delay getting out  
2 of Act 47 specifically?

3 A The recovery coordinator has to make a  
4 recommendation. Now, I am not a part of the  
5 recovery coordinator's team, but their  
6 recommendation is probably going to be based off of  
7 if this injunction is lifted or not.

8 Q How do you know that their recommendation is  
9 going to be based off of this being lifted or not?

10 A Based off of conversations -- we meet weekly,  
11 and we don't talk about this particular thing of  
12 course, but we talk about everything, and the  
13 recovery coordinator has said time and time again  
14 that we've explored every option, and we've done  
15 everything in our power to -- to get where we are  
16 today, and we need to, you know, explore this  
17 option. It's not just -- it's not just this option.  
18 We've done everything else, and this is, well, you  
19 know, the next thing that we have to do.

20 Q The city can only get out of Act 47 with a  
21 massive cash infusion, correct?

22 A Yes.

23 Q And that cash infusion could only happen from an  
24 actual sale of the Authority, correct?

25

\*\*\*

1 MR. GREENBERG: Objection.

2 THE WITNESS: No.

3 THE COURT: He answered it anyway.

4 Overruled.

5 \*\*\*

6 BY MR. JESIOLOWSKI:

7 Q Does issuing an RFP provide the city a cash  
8 infusion it needs to get out of Act 47?

9 \*\*\*

10 MR. GREENBERG: Objection, Your Honor.

11 That's not -- that's not his expertise. He's asking  
12 about a legal process. I mean, we can go through  
13 the RFP process, and I will on redirect, but he's --

14 THE COURT: Hopefully not. We know the RFP  
15 process. Sustained. I don't think we need to go  
16 through it again.

17 MR. GREENBERG: Okay.

18 MR. JESIOLOWSKI: Your Honor --

19 THE COURT: I sustain the objection.

20 MR. JESIOLOWSKI: -- he -- he testified  
21 that there's a mid-process review and that a  
22 component of that mid-process review is coming up  
23 shortly.

24 MR. GREENBERG: Actually --

25 MR. JESIOLOWSKI: And I'm trying to explore



1 A Correct.

2 Q So it is not a new development, correct?

3 A Correct.

4 Q This is not a change in circumstances, correct?

5 A Elaborate.

6 \*\*\*

7 MR. GREENBERG: Objection, relevance?

8 MR. JESIOLOWSKI: The deadline for the city  
9 to get out of Act 47 has been known to the city for  
10 at least a year and a half --

11 THE COURT: I'll overrule -- I'll overrule  
12 the objection on relevance, but you say it's not --  
13 your question was it's not --

14 MR. GREENBERG: That's a legal conclusion.

15 THE COURT: -- a change in circumstance?

16 MR. JESIOLOWSKI: The city has known --

17 THE COURT: I think you need to rephrase  
18 the question.

19 MR. JESIOLOWSKI: Yes, Your Honor.

20 \*\*\*

21 BY MR. JESIOLOWSKI:

22 Q The city has known about its deadline to get out  
23 of Act 47 for some time, correct?

24 A Since the -- yes. Not -- since the plan was  
25 adopted, yes.

1 Q And though this plan came out in August of 2018,  
2 the city didn't issue its first RFP until after this  
3 trust proceeding began, correct?

4 \*\*\*

5 MR. GREENBERG: Objection, Your Honor.  
6 First of all, it's beyond his scope of expertise.  
7 It's beyond the evidence before here. It's also  
8 irrelevant.

9 THE COURT: Sustained.

10 \*\*\*

11 BY MR. JESIOLOWSKI:

12 Q Has the city considered other means to value the  
13 Authority other than an RFP?

14 A That's not in my purview. I --

15 \*\*\*

16 MR. JESIOLOWSKI: One moment, Your Honor.

17 THE COURT: Certainly.

18 MR. JESIOLOWSKI: Your Honor, I'll -- I'll  
19 leave it -- nothing further at this time, but we  
20 reserve our right, you know, to do further cross, as  
21 we've already discussed.

22 THE COURT: Do further cross as to --

23 MR. KENT: As to --

24 THE COURT: I'm a little confused.

25 MR. KENT: -- the issues we raised with

1 Your Honor about being able to go back and look  
2 further at some of the issues that -- that have been  
3 raised for the first time today.

4 MR. GREENBERG: I --

5 THE COURT: I think when I granted you --  
6 and correct me if I'm wrong -- was that you have the  
7 right to supplement documentation if you wish.

8 MALE SPEAKER: Correct.

9 MR. KENT: Well --

10 THE COURT: I mean, I'm not going to go  
11 back into cross again.

12 MR. KENT: We certainly want to supplement  
13 documentation --

14 THE COURT: Right. And I granted that. If  
15 there's anything that -- that you wish to place in  
16 rebuttal, right, as far as documentation, I'm going  
17 to grant you that opportunity, so you have the  
18 opportunity after this hearing's adjourned to review  
19 that, subject to any alleged objections by Mr.  
20 Greenberg. I don't know what they're going to be.  
21 We'll have to see what those -- I don't know what  
22 those documents are.

23 MR. KENT: My -- my concern about  
24 objections, Your Honor, would be that there's  
25 somehow like no foundation because they're not being

1 put before this witness.

2 MR. GREENBERG: It depends what the  
3 documents -- what -- what -- I mean, obviously --

4 THE COURT: I'll make the decision on that.  
5 Let's -- let's see what the -- I'm going to give you  
6 the opportunity, and if you feel that you need to  
7 supplement your position based on Mr. Nichols'  
8 testimony with documentation, I'll review that  
9 documentation. I think that's what you had  
10 requested. You had requested that you didn't have  
11 that -- you may need time to get documentation based  
12 on it --

13 MR. KENT: Yes.

14 THE COURT: -- and I'm certainly going to  
15 grant you that time.

16 MR. KENT: Yes.

17 THE COURT: Mr. Jesiolowski, you wanted to  
18 say something?

19 MR. JESIOLOWSKI: Just a minor housekeeping  
20 matter, Your Honor.

21 THE COURT: Okay.

22 MR. JESIOLOWSKI: We move for the admission  
23 of the 2016 audit subject to Mr. Greenberg's --

24 MR. GREENBERG: Objection.

25 MR. JESIOLOWSKI: -- verification.

1           MR. GREENBERG: Your Honor, they -- they  
2           tried to put that in in October and we objected and  
3           you sustained it. It's a document of somebody else,  
4           and it is not -- it is not authenticated, and it is  
5           -- it's not -- it's -- there's no support for it.

6           MR. JESIOLOWSKI: It's not a document from  
7           somebody else, Your Honor. This is the CFO of the  
8           city. He's testified that he's familiar with this  
9           document and he was involved in the preparation of  
10          this document. The information in this document  
11          came from the city. I'm not sure how the city is  
12          disclaiming its own audit.

13          MR. GREENBERG: No, Your Honor. What he  
14          testified to was that he was familiar with -- he  
15          oversaw somebody who did it. He -- we -- he has not  
16          vouchsafed this being the document. It's -- let  
17          alone anything else. But there -- to the extent  
18          that it's for the existence of the audit, I have no  
19          problem with it. To the extent that they're going  
20          to put it in for the truth of the statement of that  
21          accounting argument they've made, it has not been --  
22          in fact, we -- we argued about that. All he has  
23          done is read that paragraph. It is not in there for  
24          any other purpose, and so it cannot stand for  
25          anything substantive.



1 A I have not, but there was an FA who did so.

2 Q I'm sorry --

3 A I'm sorry, financial advisor. We -- I didn't do  
4 that, no.

5 Q But someone in your office did do that?

6 A Outside of our office. It was a --

7 Q And who would that person --

8 A -- proposal --

9 Q -- have been?

10 A Referring to -- oh, so when we -- there was a  
11 presentation and a talk about the money being  
12 divided up amongst the entities so to speak, but I  
13 didn't make that determination or do the analysis.  
14 Someone outside of our office did that.

15 Q And who was that person?

16 A I don't recall who it was. I was really trying  
17 to think, but -- I was going to say a name, but he  
18 was on our side. Someone else presented information  
19 to us.

20 Q So was it someone hired by the city of Chester  
21 or someone --

22 A It was not, no.

23 Q Someone hired by the state coordinator?

24 A I -- I don't know who hired him, but I know that  
25 I sat in a meeting when a presentation was presented

1 to myself and other city officials, and in that  
2 presentation it talked about the potential of the  
3 proceeds being divided up amongst the entities that  
4 represent the board.

5 Q And in that presentation by the unknown  
6 individual, what was his or her estimate --

7 \*\*\*

8 MR. GREENBERG: Objection.

9 MS. LABRUM: -- of the proceeds going to  
10 the city of Chester --

11 THE COURT: Overruled. Overruled.

12 MR. GREENBERG: Wait, Your Honor --

13 THE COURT: If he knows. If he --

14 MR. GREENBERG: Your Honor, they're --  
15 she's presenting it for the truth of the statement,  
16 and is an unknown statement by an unknown person  
17 with no basis.

18 MALE SPEAKER: It's hearsay.

19 MS. LABRUM: Your Honor, the argument is --

20 MR. GREENBERG: It's hearsay, too.

21 MS. LABRUM: -- the \$250 million --

22 THE COURT: Hold on.

23 MS. LABRUM: -- would be sufficient to  
24 remove the city from Act 47, but it's my  
25 understanding that \$250 million would not be the

1 proceeds received by the city of Chester, so the  
2 number of \$250 million is wholly irrelevant to this  
3 proceeding, and I'd like to know what number the  
4 city of Chester is actually using --

5 THE COURT: Well, it --

6 MS. LABRUM: -- for its operating --

7 THE COURT: With all due respect --

8 MS. LABRUM: -- premises --

9 THE COURT: -- Ms. Labrum, it may be  
10 relevant down the road. I don't think it's relevant  
11 to today's hearing. So I sustain the objection.

12 MS. LABRUM: Your Honor, it may be a number  
13 that's insufficient to move them out of Act 47.

14 THE COURT: Well --

15 MR. GREENBERG: Your Honor, again, she's  
16 making stuff up now.

17 THE COURT: That -- that's speculative, so  
18 I'm going to --

19 MR. GREENBERG: If she wants to --

20 THE COURT: I'm going to -- I'm going to  
21 sustain -- I sustained the objection.

22 MS. LABRUM: No further questions --

23 THE COURT: All right.

24 MS. LABRUM: -- Your Honor.

25 THE COURT: I don't know if anyone else has

1 any questions.

2 MR. EMMERICH: Your Honor, for the --  
3 Chester --

4 THE COURT: Absolutely.

5 MR. EMMERICH: -- real briefly.

6 THE COURT: Go ahead. Watch your step  
7 there.

8 MR. EMMERICH: It's a landmine.

9 THE COURT: Yeah, watch your step there.  
10 Do you need the podium?

11 MR. EMMERICH: No --

12 THE COURT: Okay.

13 MR. EMMERICH: -- Your Honor. I'll be  
14 brief.

15 \*\*\*

16 BY MR. EMMERICH:

17 Q Mr. Nichols, we've been talking about balancing  
18 of the interest and balancing of the harms here. Do  
19 you have any information as to how the city not  
20 being able to pursue the RFP would hurt the  
21 ratepayers of the Water Authority?

22 \*\*\*

23 MR. GREENBERG: Objection, Your Honor.  
24 Relevance and beyond the scope.

25 THE COURT: Overruled on relevance, but I

1 don't know if -- I'll allow him to answer it if he  
2 has -- if he can answer it. I don't know if he can.

3 THE WITNESS: I cannot.

4 \*\*\*

5 BY MR. EMMERICH:

6 Q You -- you cannot?

7 A I -- I don't know. I don't know.

8 Q You -- you can only say how -- how the RFP being  
9 held up from going forward affects Chester itself,  
10 correct?

11 A I can -- I'll say this. There -- there has been  
12 conversation about protecting all repairs not just  
13 Chester repairs from some of those proceeds, a trust  
14 that we would establish.

15 Q But the effect of -- of the --

16 A I can't -- I can't answer that.

17 Q You don't know how that affects Chester  
18 County --

19 A No.

20 Q -- Delaware County --

21 A I do not. No.

22 Q -- any of the other ratepayers that are not the  
23 city of Chester --

24 \*\*\*

25 MR. GREENBERG: Objection. Asked and

1 answered.

2 THE COURT: It is asked and answered.

3 Sustained. He said he doesn't know.

4 MR. EMMERICH: Thank you, sir.

5 THE COURT: Okay.

6 MR. GREENBERG: Very simple redirect, Your  
7 Honor, if everybody else is done --

8 THE COURT: Did you say simple redirect?  
9 All right, Mr. Greenberg, go ahead. I'll -- I'll  
10 hold you to that.

11 \*\*\*

12 REDIRECT EXAMINATION (11:36 a.m.)

13 BY MR. GREENBERG:

14 Q I'll turn you to tab 25 of the book that you  
15 just had, page 4.

16 A Okay.

17 Q I'd ask you -- you were asked to read one  
18 sentence out of context. I'd ask you to read the  
19 first two paragraphs under the term "city assets" in  
20 full.

21 A "The city of Chester has two significant  
22 business type assets, the water system owned by the  
23 Chester Water Authority, the Authority, and the  
24 parking system owned by the city. The city and the  
25 Authority are currently in negotiations regarding

1 the future of the water system. The recovery  
2 coordinator has not taken a position on whether or  
3 not the city should monetize the water system or any  
4 other city asset. The recovery coordinator's sole  
5 recommendation has been for the city to retain  
6 qualified financial and legal advisors to help the  
7 city formulate its position with respect to any  
8 potential asset monetization."

9 Q I apologize. I also need you to read the first  
10 sentence of the next paragraph, too.

11 A "Should the city and the Authority come to an  
12 agreement as a result of their negotiations and if  
13 their agreement includes an upfront payment to the  
14 city, then the city should apply that upfront  
15 payment first to address the city's pension  
16 problems; second, to establish and fund a trust to  
17 address the city's OPEC liabilities; third, to fund  
18 the capital improvements of the city's capital  
19 assets; fourth, to establish a general fund reserve  
20 account; and fifth, in cooperation with a nonprofit  
21 economic development corporation, to undertake  
22 economic development projects in the city."

23 Q And the last paragraph, too, please?

24 A "Should the city's pension fund benefit from a  
25 one-time revenue infusion, it would have the dual

1 effect of improving the funding ratio of the plan  
2 and reducing the ongoing annual required  
3 contributions from the city's general fund. Any  
4 reoccurring general fund relief that is achieved  
5 through a one-time revenue and pension funding  
6 should be applied to offset the recommended increase  
7 in the city's earned income tax rates."

8 Q So at the time of this recommendation that was  
9 presented to -- that they just had you read and  
10 testify to and I had you read the rest of it, this  
11 recognizes there was a negotiation between the city  
12 and the Water Authority over a one-time payment that  
13 was relevant to the --

14 \*\*\*

15 MR. JESIOLOWSKI: Objection.

16 MR. GREENBERG: -- analysis of the plan,  
17 correct?

18 MR. JESIOLOWSKI: This is leading.

19 THE COURT: It certainly is leading.

20 Sustained.

21 \*\*\*

22 BY MR. GREENBERG:

23 Q So were you aware at the time this was prepared  
24 of a negotiation between the city and the Water  
25 Authority?

1 A I was. I am, yes.

2 Q Okay. And is that reflected in this plan --

3 A Yes.

4 Q -- in this plan? And was that a one-time  
5 payment?

6 A To my knowledge, yes.

7 \*\*\*

8 MR. GREENBERG: Thank you, Your Honor.

9 THE COURT: All right. Any -- any recross?

10 MR. JESIOLOWSKI: Very simple, Your  
11 Honor --

12 THE COURT: Go ahead.

13 MR. JESIOLOWSKI: -- a few quick questions.

14 \*\*\*

15 RE-CROSS-EXAMINATION (11:39 a.m.)

16 BY MR. JESIOLOWSKI:

17 Q To follow through on what Mr. Greenberg just  
18 asked you, the result of those negotiations would  
19 have been a \$60 million payment from the Authority  
20 to the city.

21 \*\*\*

22 MR. GREENBERG: Beyond the scope of  
23 redirect.

24 THE COURT: Overruled.

25 \*\*\*

1 BY MR. JESIOLOWSKI:

2 Q Correct?

3 \*\*\*

4 THE COURT: He discussed the -- discussed  
5 the -- the sale.

6 THE WITNESS: My knowledge of the  
7 negotiations at this time was that there was going  
8 to be an approximate \$60 million upfront cost, and  
9 there was going to be annual payments to come into  
10 the city as well.

11 \*\*\*

12 BY MR. JESIOLOWSKI:

13 Q And you're aware the city rejected that money,  
14 correct?

15 \*\*\*

16 MR. GREENBERG: Objection, Your Honor.  
17 First of all, it's not true. Second of all, it's  
18 beyond the scope and it's beyond his knowledge.

19 MR. JESIOLOWSKI: I'm not sure how --

20 MR. GREENBERG: It's also a lie.

21 MR. JESIOLOWSKI: -- it's not true. I'm --

22 THE COURT: Well --

23 MR. JESIOLOWSKI: -- just asking a  
24 question.

25 THE WITNESS: I --

1 MR. GREENBERG: He's --

2 THE COURT: Hold on. Your position is  
3 what's the relevance of that?

4 MR. GREENBERG: First of all, relevance;  
5 second of all, his knowledge.

6 THE COURT: Sustained. I don't know what  
7 the relevance is of the city rejecting it or not.

8 MR. JESIOLOWSKI: He asked this witness  
9 about the negotiations --

10 THE COURT: About the negotiations --

11 MR. JESIOLOWSKI: -- between the city and  
12 the Authority.

13 THE COURT: -- and whether the negotiations  
14 -- was he aware of the negotiations. He didn't say  
15 anything about what -- what happened afterwards.

16 MR. JESIOLOWSKI: Very well, Your Honor.

17 THE COURT: I don't think it's relevant to  
18 our hearing here today.

19 \*\*\*

20 BY MR. JESIOLOWSKI:

21 Q One final question. If you would turn back to  
22 the audit at tab 24, would you read the first  
23 paragraph of page 1 following the table of contents  
24 -- I'm sorry, the -- the paragraph under the heading  
25 "management's responsibility for the financial

1 statements."

2 \*\*\*

3 MR. GREENBERG: Objection. Beyond the  
4 scope of redirect.

5 THE COURT: Mr. Jesiolowski, this is beyond  
6 the scope of redirect. You're on recross now.  
7 Nothing -- we -- Mr. Greenberg did not go back into  
8 the financial statement at all on his --

9 MR. JESIOLOWSKI: Very --

10 THE COURT: -- redirect.

11 MR. JESIOLOWSKI: Very well, Your Honor.

12 THE COURT: So I'll sustain the objection.  
13 Anything further?

14 MR. JESIOLOWSKI: Nothing further for this  
15 witness --

16 THE COURT: All right.

17 MR. JESIOLOWSKI: -- at this time.

18 THE COURT: Sir, you may step down. Thank  
19 you, sir.

20 THE WITNESS: Thank you.

21 THE COURT: All right.

22 MR. GREENBERG: Would Your Honor like us to  
23 make a motion to incorporate the specificity  
24 resolution, or is that -- does Your Honor have  
25 knowledge of that resolution from the other hearings

1 at this point? It's before the Court already in  
2 other matters.

3 THE COURT: It already is before the  
4 Court --

5 MR. KENT: It's before the Court in other  
6 matters. It wasn't --

7 MR. GREENBERG: No, it's --

8 MR. KENT: -- part of our papers in this  
9 case.

10 MR. GREENBERG: No -- yes, it is in this  
11 case. We filed the preliminary -- we filed a new  
12 matter specifically saying the specificity objection  
13 in this case was a reason to not grant the trust.  
14 The new matter we filed in the Court in fact  
15 overruled their objection to our -- to our new  
16 matter.

17 THE COURT: As -- that is what I recall,  
18 Mr. Kent.

19 MR. KENT: Your Honor, the specificity  
20 resolution is something that was already at issue in  
21 August before this Court. It's not a change in  
22 circumstance. It says what it says. It's been  
23 challenged. This Court has made legal rulings about  
24 it and frankly, those rulings are up on appeal.

25 THE COURT: Well, they are.

1           MR. GREENBERG: And -- and that is  
2 irrelevant to whether or not it is a valid  
3 resolution of the city. And, to be clear, when this  
4 Court issued its order on August 6th, that hadn't  
5 happened. The specificity resolution wasn't adopted  
6 until August 14th, and so, no, it was not addressed  
7 by the Court at the time that this -- this order was  
8 issued. It is in fact the epitome of the change in  
9 fact they've talked about.

10           THE COURT: I'm going to allow it.  
11 Overruled. Is there anything else you wish to  
12 address?

13           MR. GREENBERG: Well, no.

14           THE COURT: Okay.

15           MR. GREENBERG: We just want to make sure  
16 the -- I mean, we're not going to move it  
17 separately. We think it's before the Court.

18           THE COURT: It's -- it is before me --

19           MR. GREENBERG: Okay. Then -- well --

20           THE COURT: -- as I -- as I recall it. All  
21 right.

22           MR. GREENBERG: I don't believe it needs to  
23 be introduced further.

24           THE COURT: All right. All right. So that  
25 concludes the hearing for today. Now --

1 MR. KENT: Well, Your Honor --

2 THE COURT: Do you have more?

3 MR. KENT: To the extent that -- well, to  
4 the extent that the Court is somehow considering the  
5 city's argument that we need to go into all these  
6 other factors, which we disagree with, then we  
7 certainly have the ability to put on our evidence as  
8 to the likelihood of success on the merits, like our  
9 expert to talk about rates --

10 THE COURT: Are you ready to do that today?

11 MR. KENT: We're ready.

12 THE COURT: Oh, okay.

13 MR. KENT: We're ready to do that right  
14 now.

15 THE COURT: I didn't know you were ready to  
16 do it.

17 MR. KENT: Yeah.

18 THE COURT: All right.

19 MR. KENT: Certainly. I mean --

20 THE COURT: Then proceed.

21 MR. KENT: -- obviously we want the  
22 opportunity to --

23 THE COURT: No, I wasn't precluding you --

24 MR. KENT: -- do what I said as far as  
25 supplementing --

1           THE COURT:  -- from the opportunity.  I  
2 thought you weren't prepared to do that today.

3           MR. KENT:  Yes, we are.

4           THE COURT:  All right.  Well, you may  
5 proceed then.

6           MR. KENT:  Yeah.  In that instance, Your  
7 Honor, we call our expert Howard Woods.

8           MR. GREENBERG:  We object to relevance,  
9 Your Honor.  The relative rate structure of the  
10 Authority and other unidentified independent --  
11 private businesses is irrelevant to whether or not  
12 the city has the right to force a transfer under the  
13 MAA, which is the ultimate success-on-the-merits  
14 question.  We have no idea why this rate -- this  
15 rate analysis is relevant at all, let alone the  
16 basis for his testimony.  But it -- it's just not  
17 relevant to any issue before the Court.

18          MR. KENT:  It is relevant, Your Honor.  I  
19 mean, first of all, Mr. Frank made reference to  
20 water rates as being -- as being one of the issues.  
21 Secondly, it goes to the prudence of -- of the  
22 Authority in filing the trust petition when you look  
23 at the relative rates compared to the investor-owned  
24 utilities.  So you can't have it both ways and come  
25 in and say you can look at one element but not

1 another.

2 MR. FRANK: That has nothing to do with  
3 whether the status quo order should be continued or  
4 not.

5 THE COURT: Yeah, what is the basis of  
6 that, Mr. Kent?

7 MR. KENT: Because the city is claiming  
8 that it's an injunction. And if -- if the -- the  
9 city has made the claim that those factors like  
10 likelihood of success on the merits need to be  
11 considered. We disagree. We think the Court had  
12 the absolute power to put that status quo order in  
13 place.

14 THE COURT: I understand.

15 MR. KENT: But to the extent the Court  
16 disagrees and somehow thinks we need to meet that  
17 burden, which we don't think we do, then we're  
18 entitled to put on that evidence.

19 MR. FRANK: Rates, Your Honor, have nothing  
20 to do with who owns the assets and the right to take  
21 back assets or sell them, whatever the case may be,  
22 nothing to do it for environmental, you know,  
23 rights, et cetera. Rates have nothing to do  
24 whatsoever with the fundamental issues identified in  
25 your December order.

1           MR. KENT: They go directly to likelihood  
2 of success on the merits --

3           MR. FRANK: No, they don't.

4           MR. KENT: -- overcoming the city's  
5 objections --

6           MR. GREENBERG: No, they don't --

7           MR. KENT: -- and this is somehow a sham  
8 transaction that will --

9           MR. GREENBERG: Either the city has the  
10 right -- sorry.

11          THE COURT: Mr. Greenberg.

12          MR. GREENBERG: Sorry.

13          MR. KENT: And -- and they also go to the  
14 relative balance of interest and the public  
15 interests. They're taking the position, the city  
16 is, that somehow their right to sell this is in the  
17 public interest and that the trust is not. The  
18 rates go direct -- that's the core issue.

19          MR. GREENBERG: Actually, Your Honor, what  
20 we're taking at this point is that the issuance of  
21 an injunction is not in the public interest, not the  
22 city's right to sell it. That is an issue for  
23 another day.

24          THE COURT: Right.

25          MR. GREENBERG: The right to --

1 MR. FRANK: Right.

2 MR. GREENBERG: -- success on the merits,  
3 the question of whether or not the city has the  
4 right to exercise a 5622 claim on the Authority's  
5 assets, in light of 5610(a).1 or whatever that other  
6 language is, that is the question of law that has  
7 nothing to do with rates. There are these other  
8 issues that have to do with facts, but that has  
9 nothing to do with rates. The question of whether  
10 we prevail on the merits has to do with our rights  
11 under the Municipality Authorities Act, and that is  
12 not a rates question. The issue for public interest  
13 in the sense of an injunction has nothing to do with  
14 the rate action.

15 MR. FRANK: And while I don't have it in  
16 front of me today, you recall hopefully, Your Honor,  
17 from last -- one of the last hearings that the PUC  
18 has exclusive jurisdiction over the rates that are  
19 charged.

20 THE COURT: That's what I recall.

21 MR. FRANK: Exactly. So his testimony is  
22 of no consequence or relevance overall, let alone  
23 today.

24 MR. KENT: We're not asking the Court to  
25 review what the PUC should do or should not do.

1 We're putting before the Court what -- what is an  
2 analysis of what -- the CWA's rates versus IOU's  
3 rates. It's in comparison, and what would happen to  
4 those rates if there was a sale.

5 THE COURT: Well, but -- that's if there  
6 was a sale.

7 MR. KENT: Yes.

8 THE COURT: But we're not at that point  
9 yet.

10 MR. KENT: Well, that goes to likelihood --

11 THE COURT: We --

12 MR. KENT: -- of success on the merits.

13 MALE SPEAKER: No. No, it doesn't.

14 MR. FRANK: No, it doesn't.

15 MR. KENT: Your Honor, the city has made  
16 that case that we need to establish that.

17 MR. GREENBERG: No, what --

18 MR. KENT: And they want -- and they want  
19 this status quo order -- I -- I am in complete  
20 agreement with the Court that this should all happen  
21 at a final hearing, but they have said that this is  
22 one of the elements that we have to meet in terms of  
23 somehow keeping this status quo order in place. If  
24 this status quo order remains in place, we'll  
25 address that at the final hearing. But if the Court

1 is -- is in any way inclined to take their evidence  
2 about why it shouldn't stay in place, then we need  
3 to be -- we need to be able to put our evidence in  
4 place that says that the status quo order should  
5 stay in effect because if you sell this asset and  
6 the city's allowed to run rampant, like it has done  
7 since we filed the suit --

8 THE COURT: Well --

9 MR. KENT: -- then --

10 THE COURT: -- but, Mr. Kent --

11 MR. KENT: -- then this is the effect.

12 THE COURT: -- the city cannot -- you know,  
13 even if I were to modify the current injunction, I  
14 can assure both parties that I'm not going to permit  
15 any transfer of the assets until the final  
16 evidentiary hearing. And that's if I were to modify  
17 the current injunction. So there would be no sale  
18 of any assets or any transfer of any assets either  
19 into the trust by the CWA or a sale by the city of  
20 Chester until I make a ruling on the evidentiary  
21 part of this case.

22 MR. KENT: Well, and I understand that,  
23 but --

24 THE COURT: So --

25 MR. KENT: -- my -- but the city is trying

1 to dissolve the injunction -- or the status quo  
2 order, and we don't think it's an injunction --

3 THE COURT: Well, there's -- there's a  
4 distinction, and Mr. Greenberg made the distinction  
5 himself in that there may be certain elements of my  
6 injunction under a status quo order, although he  
7 doesn't agree with them, and others that may go  
8 beyond that in my injunction, that I'm enjoining the  
9 city from doing certain things. And I think the  
10 real key issue is the RFPs.

11 MR. KENT: Well --

12 THE COURT: That's -- that's what the city  
13 wants to proceed with. But even -- even if I --  
14 even if -- and I'm not saying I am, but even if I  
15 were to grant the city's position on the RFPs, I am  
16 not -- I have not been convinced that I should  
17 change my order with respect to any transfer of the  
18 assets --

19 MR. KENT: Well, and I --

20 THE COURT: -- by either party.

21 MR. KENT: And I certainly --

22 THE COURT: So that's the status quo  
23 certainly that's going to be preserved no matter how  
24 I rule on Mr. Greenberg's --

25 MR. GREENBERG: And -- and, Your Honor,

1 honestly, if you narrowed the status quo to say  
2 there won't be a final transfer by either party, you  
3 can take predatory steps. You can get prepared,  
4 but you can't do it on our side or on theirs. We've  
5 never objected to that --

6 THE COURT: But I don't see where that --

7 MR. GREENBERG: -- from the very beginning.

8 THE COURT: I'm a little confused with all  
9 due respect. I'm a little confused as to the  
10 relevance of the rates at this point.

11 MR. KENT: Relevance of the rates goes to  
12 the likelihood of success on the merits and the  
13 balancing of interests and keeping --

14 THE COURT: Well, how does it go --

15 MR. KENT: -- the status quo order in  
16 place.

17 THE COURT: How does it go on the  
18 likelihood of the success?

19 MR. KENT: Because certain objections have  
20 been raised for the trust petition.

21 THE COURT: Right.

22 MR. KENT: Including saying that it's  
23 somehow a sham and designed to --

24 THE COURT: But I'm not ruling on -- that's  
25 not what this hearing is for today.

1 MR. KENT: I understand that --

2 THE COURT: And I understand your position  
3 on that, and I clearly understand -- it may --

4 MR. KENT: We --

5 THE COURT: Your issue may be relevant at a  
6 certain point.

7 MR. KENT: And maybe I'm not being clear,  
8 Your Honor. If --

9 THE COURT: It might not just be you,  
10 Mr. --

11 MR. KENT: If Your Honor --

12 THE COURT: Mr. Kent, it may not be you.

13 MR. KENT: Well -- and I'm trying to do  
14 my --

15 THE COURT: Yeah.

16 MR. KENT: -- best to explain why I think  
17 this is -- could be highly relevant depending how  
18 you rule. They filed a motion to dissolve the  
19 status quo order. They've said you need to meet the  
20 six elements --

21 THE COURT: Um-hum.

22 MR. KENT: -- of an injunction. We don't  
23 think we have -- and we need to, but either way,  
24 that was already done back in the summer. And to  
25 the extent that the Court is entertaining a

1 modification to that order and saying that the basis  
2 for that is because we haven't established the  
3 elements, then likelihood of success on the merits  
4 at the end of the day is one of those elements.

5 MR. GREENBERG: And, Your Honor, that may  
6 all be true, but the issue of rates between the  
7 Chester Water Authority today or whatever they may  
8 choose to mark it up to -- because they are not  
9 regulated by the PUC -- and what an IOP or somebody  
10 else could get approved by the PUC is irrelevant  
11 then, too. The question -- and our objection there  
12 is whether or not we have the right to exercise the  
13 right under 5622 or not. If we have that right,  
14 rates are irrelevant. If we don't, rates are  
15 irrelevant. The rates issue that they're talking  
16 about, again, is irrelevant. Right now, the CWA is  
17 unregulated and can raise rates at its willy-nilly  
18 desire. If we were to take ownership, we could  
19 raise rates at our willy-nilly desire. If we were  
20 to sell it to a private third party, they would be  
21 regulated by the PUC, all of which is simple law.  
22 And the comparative of rates in scenario A, B, or C  
23 is completely irrelevant to the Court's  
24 determination as to whether or not we have the  
25 rights under the MAA to exercise those rights. That

1 is the question -- the ultimate question at issue in  
2 this case we've all identified. It's irrelevant to  
3 the DVPA. It's irrelevant to the Environmental  
4 Rights Amendment. The issue of rates is a red  
5 herring that they have used for political purpose.  
6 I understand why they do it, they're free to do so,  
7 but it is a red herring for the question before the  
8 Court. This is not about rates at all. This is  
9 about who gets to regulate and control the CWA and  
10 its assets.

11 MR. KENT: I don't see how you look at this  
12 case and look at the merits without looking at the  
13 impact on rates and to ratepayers frankly. And if  
14 it's not about rates like the city is claiming it is  
15 now, then it should withdraw all this ridiculous  
16 stuff from the case about patronage and things like  
17 that. I mean, that goes directly to rates. I mean,  
18 if the -- if the -- if the CWA has lower rates than  
19 the investor-owned utilities, then how in any  
20 respect could these allegations about patronage  
21 machine, et cetera, and the board acting in bad  
22 faith be in the case? They ought to take it out if  
23 they don't want anything like that coming in. I  
24 still think it comes in as going to the proper  
25 exercise of the board's duties and giving further

1 guidance to the Court as to why it's relevant and  
2 prudent.

3 MR. GREENBERG: Hence, we need a discovery  
4 master and some decisions on preliminary objections,  
5 Your Honor, because we can't even agree on that. At  
6 the end of the day, the city's position on this has  
7 nothing to do with rates. Our issues about the sham  
8 and the patronage has everything to do with pretext.  
9 It is not about rates; it is about pretext. It is  
10 about their claim that the Environmental Rights  
11 Amendment matter was false. That is why that is in  
12 this case, not because of rates. Rates are not  
13 relevant to your end decision here. That is just  
14 black-letter law. Whether or not they want to talk  
15 about it, it's their prerogative, but it's not  
16 relevant to the final decision on the merits and  
17 then therefore it's definitely not sort of  
18 secondarily relevant to the issue before you today  
19 over whether the interest of justice compel you to  
20 narrow -- to we think dissolve the injunction --

21 THE COURT: I understand (inaudible) --

22 MR. GREENBERG: -- but you say narrow.

23 But --

24 THE COURT: Well, you also said narrow.

25 MR. GREENBERG: Well, we acknowledge that

1 narrow was better than broad. We may -- we don't  
2 like it necessarily --

3 THE COURT: Let me hear from Chester  
4 County.

5 MR. GREENBERG: -- but we understand you're  
6 not the Authority.

7 MR. EMMERICH: Your Honor, I'm confused at  
8 this point. Because the --

9 THE COURT: You're not the only one.

10 MR. EMMERICH: The issue as I understood it  
11 in part Mr. Nichols was called to say on behalf of  
12 the city how the public interest of the city and how  
13 the balancing of harms would play out for the city,  
14 okay? The public interest, the most direct public  
15 interest is the ratepayers, 100 percent of the  
16 ratepayers. That's the most direct public interest.  
17 I'm not saying Your Honor can't look at tangential  
18 public interest on there, but certainly the Court's  
19 got to sit here and say the direct public interest  
20 is those ratepayers, to which the city is a very  
21 small minority of those ratepayers. So now there  
22 was complaints about notice of what was going to go  
23 on here I know at least on behalf of Chester County,  
24 I would guess on Intervenors and some of the others.  
25 We weren't even part of the discussions that were

1       alleged, so I don't know what this testimony is  
2       going to come out. But unless the city is going to  
3       say that Mr. Nichols' testimony wasn't for the  
4       purpose and shouldn't be used by the Court to  
5       evaluate the prongs because they're saying they want  
6       to change this injunction, okay, under the prongs,  
7       so they're saying public interest, balancing the  
8       harms. If they're saying Mr. Nichols' testimony is  
9       not to be used for the Court for those purposes and  
10      establishing their burden on those two elements, you  
11      know, perhaps my statement is misplaced, but that's  
12      not what I understand. Therefore, I think there  
13      should be testimony, there should be evidence if  
14      that's what the Authority plans to present as to the  
15      ratepayers who are the direct public interest this  
16      Court has to look at in accepting the standard that  
17      they're saying you need to look at right now.

18                THE COURT: All right.

19                MR. GREENBERG: And as --

20                THE COURT: Thank you.

21                MR. GREENBERG: As to whether or not to  
22      lift this injunction, which is the relevant question  
23      before you, the impact on the ratepayers of an  
24      eventual transaction that might close 8, 12, 18  
25      months from now is not relevant. The question

1 before the Court -- the six-prong test, one is  
2 whether we're going to likely prevail on the merits.  
3 And, by the way, they have said nothing and they  
4 have presented no evidence against the specificity  
5 resolution, which is conclusively binding and says  
6 they shall not put assets in trust. So as of -- it  
7 sits today, the law today is we're going to prevail  
8 on the merits. They've got arguments to dissolve  
9 it, but right now, it is deemed conclusively valid,  
10 and they can't have a collateral attack on that. So  
11 it doesn't matter. As to the balancing-of-the-  
12 interest question, that does not apply to the  
13 ultimate question. It applies to whether you  
14 dissolve or narrow this injunction. And so the  
15 interest of the ratepayers are not affected by  
16 whether you dissolve or narrow this injunction,  
17 particularly since you have said that you're not  
18 going to dissolve it entirely. So you would just be  
19 narrowing it to prevent us from taking the final  
20 step, you know, possibly. And if you were to --

21 THE COURT: I haven't ruled yet --

22 MR. GREENBERG: No, but you've indicated  
23 that.

24 THE COURT: Hypothetically I've said that I  
25 could -- I could narrow --

1 MR. GREENBERG: Based on --

2 THE COURT: -- or I could keep it as it is.

3 MR. GREENBERG: Correct. But you already  
4 -- but you have said that you're not going to give  
5 me -- you're not going to give me the whole hog and  
6 dissolve it entirely. So -- or at least you've said  
7 that's likely --

8 THE COURT: Well, what I said was I'm not  
9 going to put anybody to transfer the assets of CWA  
10 until the final hearing. And that's both the CWA  
11 and the city.

12 MR. GREENBERG: And we --

13 THE COURT: That's clear.

14 MR. GREENBERG: And we understand that.  
15 And so within the parameters, yes, the question for  
16 -- the question is who's going to succeed on the  
17 merits at the end of the day, but it's not relevant  
18 to that. And -- because the public interest today,  
19 the public interest is whether it's beneficial to  
20 dissolve the injunction, limit the injunction, or  
21 leave it in place and let us deal with it on appeal.  
22 Those are the questions that are there, not whether  
23 the ratepayers are affected by some transaction that  
24 might happen in 18 months from -- 18 from now.

25 THE COURT: Mr. Kent, I'm going to give you

1 the last word.

2 MR. KENT: Yeah. I mean, then I'm not sure  
3 why we heard from Mr. Nichols about the city's  
4 finances and the need for money because they're not  
5 going to get any money until there's a sale and a  
6 determination that they are entitled to money from  
7 the sale, period. And he couldn't identify any harm  
8 from -- from not issuing an RFP.

9 THE COURT: Well, that -- that may be an  
10 issue --

11 MR. KENT: So, I mean --

12 THE COURT: That's an argument and an  
13 issue, I understand --

14 MR. KENT: Yeah, and --

15 THE COURT: -- and whether there's harm or  
16 not.

17 MR. KENT: Yeah, that's the easy way I  
18 think to resolve this is just keep the status quo  
19 order in place. And also, by the way, if we have a  
20 merits hearing sooner, then the status quo issue  
21 gets moot. And I'll leave it at that.

22 MR. GREENBERG: So since he brought up some  
23 other argument issues, I just want to say this.  
24 What Mr. Nichols said was that a delay in this  
25 injunction is a delay of the RFP. We would already

1 have been done if we had not had this injunction --

2 THE COURT: That's all he said.

3 MR. GREENBERG: -- for the last six months.

4 Right.

5 THE COURT: That's basically all he said.

6 MR. GREENBERG: Then it -- then it slowed  
7 us down and moves -- it stops the city from moving  
8 towards the transaction it -- it would like to  
9 theoretically consider -- it contemplates closing.  
10 Let's put it that way. It hasn't decided to do so,  
11 but the transaction it's contemplating closing  
12 before August 2021 so it could exit. Yet he  
13 testified that it slowed him down from doing so, and  
14 it continues to slow down from doing so by having it  
15 remain in place. That was testimony he gave. He  
16 didn't get to the ultimate question because that's  
17 not what's within his scope, but the RFP process  
18 takes time, as you know, and, again, the structure  
19 we've always had is that the RFP process would take  
20 place. We would negotiate a deal. We'd still wait  
21 for the Court to rule, so we do have this outside  
22 clock. We're not -- again, presuming the Court's  
23 going to do what I hear you saying it will do at  
24 most, which is maintain the injunction in place but  
25 narrow it dramatically --

1 THE COURT: I haven't said that.

2 MR. GREENBERG: At most.

3 THE COURT: You're interpreting it.

4 MR. GREENBERG: Okay. What I'm  
5 interpreting --

6 THE COURT: I haven't made a decision. I  
7 said if I were to narrow it down.

8 MR. GREENBERG: Okay. Let me -- you're not  
9 going to -- you would -- I believe I interpret you  
10 correctly saying you are not going to dissolve it  
11 entirely, so --

12 THE COURT: Well, I haven't made that final  
13 decision. It was all hypothetically saying I can  
14 dissolve it or I may not dissolve it, and if I don't  
15 dissolve it, I may narrow it.

16 MR. GREENBERG: You've heard me --

17 THE COURT: But I haven't made the decision  
18 on it yet.

19 MR. GREENBERG: -- and I think our papers  
20 -- you've heard me, Your Honor.

21 THE COURT: Yeah.

22 MR. GREENBERG: Thank you.

23 THE COURT: Okay, Mr. --

24 MR. KENT: Just to quickly address --

25 THE COURT: Go ahead, Mr. Kent.

1 MR. KENT: -- the two points that --

2 THE COURT: Just get back --

3 MR. KENT: Yeah.

4 THE COURT: I really want to get back to  
5 the necessity of hearing the -- the presentation of  
6 the expert on the rates.

7 MR. KENT: I think I've made my point on  
8 that, Your Honor. I mean, the city's position has  
9 to -- it really does go to we're jumping the gun and  
10 assuming they can sell this asset and the  
11 ramifications if they don't. I mean, if we have to  
12 -- if the city is taking the position that we have  
13 to satisfy the prongs of an injunction to keep this  
14 status quo order in place, then we should put it on.

15 THE COURT: All right.

16 MR. KENT: If we're not taking that  
17 position, then we don't need to put it on.

18 MR. FRANK: Where, Your Honor, in the  
19 Municipal Authorities Act, the multiple sections of  
20 it or in Act 73 does it say that rates are in any  
21 way relevant as to who owns the assets, what could  
22 be done with those assets?

23 THE COURT: Well, it doesn't.

24 MR. FRANK: Right.

25 THE COURT: However, Mr. Greenberg is

1 asking me to dissolve the injunction, and that's  
2 where Mr. Kent is arguing that the rate issue may be  
3 important as a result of that --

4 MR. GREENBERG: But -- but it's --

5 THE COURT: -- because you're saying they  
6 have not proved --

7 MR. FRANK: If it's not relevant to the  
8 underlying issue as ownership of the assets, it's  
9 not relevant to the specific issue especially that's  
10 being considered -- the narrow issue being  
11 considered by this Court today.

12 MR. GREENBERG: Mr. Frank has better stated  
13 my position than I can. I agree with that.

14 THE COURT: I'll give you the last word,  
15 Mr. Kent. I told you I'd give you the last word.

16 MR. KENT: And I'll be -- I'll be very  
17 brief. I don't think you can consider the merits of  
18 their objections without considering the rates.  
19 That goes to the likelihood of success on the  
20 merits.

21 MR. GREENBERG: No --

22 MR. FRANK: How does it go to likelihood of  
23 success on the merits, Your Honor, if it's not an  
24 element of the ultimate underlying issue, let alone  
25 today? It's circular reasoning. Please don't give

1 Mr. Kent the last word.

2 THE COURT: I am going to give Mr. Kent the  
3 last word. Go ahead, Mr. Kent.

4 MR. KENT: Mr. Frank's asking me a  
5 question.

6 THE COURT: No --

7 MR. KENT: I feel like I'm under cross-  
8 examination.

9 THE COURT: I'm giving you -- I'm giving  
10 you the last word.

11 MR. KENT: It goes to likelihood of success  
12 on the merits because they're saying this -- this  
13 was being done in bad faith and isn't in -- you  
14 know, isn't being done for purposes of protecting  
15 the ratepayers but for some other purpose. That's  
16 their objection.

17 MR. GREENBERG: And they're objecting to us  
18 deposing their board members so we can find this  
19 out.

20 THE COURT: Well, that's a different issue  
21 for discovery.

22 MR. GREENBERG: Yeah, I know. I know.

23 THE COURT: I'm going allow you to put the  
24 expert on for the rate.

25 MR. KENT: Okay.

1 THE COURT: I overrule the objection.

2 MR. JESIOLOWSKI: Your Honor --

3 THE COURT: I know that this -- make --  
4 this is going to be real long, though, is it?

5 MR. GREENBERG: Oh, Your Honor, we've got  
6 to go over qualifications and everything else. This  
7 is going to be a long process.

8 MR. JESIOLOWSKI: It may make sense to do  
9 this after lunch, Your Honor.

10 THE COURT: That's what I'm thinking of.  
11 It may make sense to do this after lunch.

12 MR. GREENBERG: I guess what I'm asking is  
13 what's the offer of proof? If the offer of proof is  
14 that he's going to testify that in his opinion  
15 investor-owned utilities have higher rates than the  
16 CWA does, I think we would speculate that that's  
17 what he's going to testify to. Whether or not  
18 that's relevant -- I mean, it's irrelevant to the  
19 endgame, but I'm not sure why we're going to go  
20 through the hard process of qualifying an expert,  
21 going through an expert report --

22 THE COURT: Well, let me see counsel. Let  
23 me see counsel at sidebar on this.

24 \*\*\*

25 [Sidebar Discussion, 12:02 p.m.:]

1 MR. JESIOLOWSKI: Your Honor, the -- the  
2 offer of proof is an expert report that we've  
3 disclosed to them a long time ago.

4 THE COURT: All right.

5 MR. JESIOLOWSKI: They -- they know exactly  
6 -- everybody knows exactly what he will testify  
7 about. We could start it now. If it goes long,  
8 we can break for lunch at the time you deem it  
9 appropriate.

10 MR. GREENBERG: And then it's not -- but I  
11 guess -- I guess what I'm -- (inaudible) if Your  
12 Honor has already decided that there will be  
13 some form of status quo order that will keep us  
14 from selling this Authority between now and the  
15 end of the year, which I think you have but you  
16 have not on the record said that is your  
17 decision, then this is completely irrelevant  
18 because you're not dissolving the injunction.  
19 And the question then is it's not -- the  
20 question is what --

21 THE COURT: (inaudible) --

22 MR. GREENBERG: -- the proper narrow scope  
23 is. If you can come to that conclusion, then  
24 this is irrelevant to today's hearing. It may  
25 be relevant later. I disagree with that, but

1           that's an issue for another day.

2           THE COURT: That's true.

3           MR. GREENBERG: But it's irrelevant -- if  
4 -- if you're not going to try motions in full,  
5 then it's irrelevant to today's hearing.

6           MR. JESIOLOWSKI: Your Honor, there's  
7 200,000 ratepayers --

8           THE COURT: I know.

9           MR. JESIOLOWSKI: -- whose rates hang in  
10 the balance. The rate swing is in the billions.  
11 Would it not be helpful --

12          MR. GREENBERG: Objection.

13          MR. JESIOLOWSKI: -- for the Court to  
14 understand the ramifications of the trust or not  
15 the trust on the ratepayers.

16          MALE SPEAKER: That only goes to the  
17 ultimate issue --

18          THE COURT: Yeah, that's --

19          MALE SPEAKER: -- if there's a sale.

20          THE COURT: Well, that really goes --

21          MR. GREENBERG: (inaudible) --

22          THE COURT: That really goes to the issue  
23 of the trust, and I'm not here on the issue of  
24 the trust right now. Go ahead, Mr. Kent.

25          MR. KENT: The city's evidence today goes

1 -- on an RFP goes to the ultimate issue as to  
2 whether they own it. I mean -- yes, it does.

3 MR. GREENBERG: It goes to what --

4 MR. KENT: It absolutely goes to --

5 MR. GREENBERG: -- the impact is to  
6 process.

7 MR. KENT: They're talking about issuing an  
8 RFP when there hasn't even been a determination  
9 of the ultimate issue on the merits.

10 MR. GREENBERG: And I can go investigate  
11 the Baldwin School before I write a tuition  
12 check.

13 THE COURT: Well, I understand your  
14 argument --

15 MR. GREENBERG: And -- and so this -- the  
16 RFP is not the ultimate issue. It is a  
17 predatory step that is overly broad -- that  
18 has been -- that has been -- that is -- again,  
19 as to my ultimate objection to lift it entirely,  
20 I disagree with it --

21 THE COURT: So --

22 MR. GREENBERG: -- but I understand where  
23 this is, but if you're not going to go there,  
24 this -- it's not relevant.

25 MR. KENT: Honestly, Your Honor, I think

1 the easiest solution to this is to tee up the  
2 merits hearing as soon as possible and just  
3 leave the status quo order in -- in place, and  
4 we don't --

5 MR. GREENBERG: Of course you would.

6 THE COURT: I'd -- I'd love --

7 MR. KENT: -- and we don't (inaudible).

8 THE COURT: I would love to tee up the  
9 evidentiary hearing and get to the merits of the  
10 case, believe me --

11 MALE SPEAKER: Your Honor --

12 THE COURT: -- but we have these discovery  
13 issues (inaudible). Yes?

14 MALE SPEAKER: Again, to me, when I've  
15 heard the testimony is if you have a hearing and  
16 make a ruling by, say, May, okay, what the city  
17 has said is that gives them time to do the RFP,  
18 get it approved by the coordinator, and -- and  
19 finish up. So if we go right to a hearing, the  
20 status quo doesn't affect them, as I understand  
21 the testimony, until it gets on the bubble of  
22 where it can't be approved by the coordinator in  
23 time for a sale --

24 MR. GREENBERG: No --

25 MALE SPEAKER: No.

1 MALE SPEAKER: -- on --

2 THE COURT: Well --

3 MR. GREENBERG: -- that's not true because  
4 we still have to go through appellate review on  
5 this because I know this case (inaudible) --

6 MALE SPEAKER: That's not going to happen  
7 by, you know --

8 MR. GREENBERG: No, but -- no, but for  
9 August 2011, which is the real drop-dead  
10 deadline, the coordinator can say you're making  
11 progress, this is where it is. We can aim for  
12 August 2011. We already have the appellate --

13 MALE SPEAKER: 2021.

14 MALE SPEAKER: 2021.

15 FEMALE SPEAKER: It's not 2011, 2021.

16 THE COURT: 2021.

17 MR. GREENBERG: Sorry, 2021. (inaudible)  
18 2021. We already have the Commonwealth Court  
19 taking this case on an expedited process in the  
20 -- in the injunction case, let alone what's  
21 going to happen next. I think they're acutely  
22 aware of the timeline here. The Supreme Court I  
23 know from election cases will take stuff in  
24 weeks when you have a real pressing deadline. I  
25 don't think it would happen in weeks, but I

1 think the August 2021 timeline is achievable  
2 with a decision -- with a process that happens  
3 in May or June, which is what's feasible where  
4 we are. That is -- but there's no way that --  
5 but waiting till then doesn't get us through  
6 this process through some other way. We need to  
7 start the process now because we all know that  
8 -- I can promise you, somebody's going to be  
9 here complaining about the Sunshine process or  
10 the RFP. We've already been down this road. We  
11 anticipate collateral attack after collateral  
12 attack after collateral attack. We need to get  
13 going. And more to the point, there's no legal  
14 basis for keeping us from doing so. There might  
15 be under the status quo idea a legal basis to  
16 keep us from taking the final step. We  
17 understand that I disagree with it, but we're  
18 not yelling and screaming about that. But  
19 there's no legal basis for the intermediate  
20 actions, which is why this status quo order  
21 should be lifted or narrowed. And I agree we  
22 should have an expedited process with this  
23 coming to a hearing (inaudible).

24 MS. LABRUM: Your Honor, before --

25 THE COURT: I'll hear you, Ms. Labrum. Go

1 ahead.

2 MS. LABRUM: Before another -- before  
3 they're allowed to issue another RFP, there  
4 should be a judicial determination if the  
5 legislature, when they repealed the Municipal  
6 Authorities Act of 1945 and they enacted Act 73,  
7 cut of Chester's right to claim this. I mean I  
8 may be missing something.

9 THE COURT: Well --

10 MS. LABRUM: This couldn't be clearer to  
11 me.

12 THE COURT: Well, no, that's -- that --  
13 that is an issue. But before me right now is  
14 the issue about the rates and how that  
15 interjects into this --

16 MS. LABRUM: Right. But they want to --

17 THE COURT: -- dissolution of the  
18 injunction.

19 MS. LABRUM: -- put the rates on --

20 MALE SPEAKER: This --

21 MS. LABRUM: -- because they -- heading  
22 back to allowing Chester to issue an RFP.

23 THE COURT: RFP.

24 MS. LABRUM: Chester should not be allowed  
25 to issue an RFP until there is a judicial

1 determination as to whether they own.

2 THE COURT: No, and that's -- well, that's  
3 their position.

4 MALE SPEAKER: Yeah, I understand.

5 THE COURT: I understand, and you  
6 disagree --

7 MALE SPEAKER: I understand.

8 THE COURT: -- with that. I understand  
9 that. And your position is, Mr. Kent, that you  
10 need to put on the testimony of the expert on  
11 the rates in order to establish your position --

12 MR. KENT: (inaudible) --

13 THE COURT: -- that the city of Chester  
14 should not be able to proceed with an RFP.

15 MR. FRANK: How does that -- how does that  
16 (inaudible) --

17 THE COURT: Well, I'm just asking the  
18 question.

19 MR. FRANK: Yeah, I agree.

20 MR. KENT: No, it does correlate because  
21 they're -- they're assuming that they own it and  
22 can sell it. They're claiming that that -- this  
23 is a step --

24 MALE SPEAKER: No.

25 MR. KENT: -- through it.

1 MALE SPEAKER: How did this --

2 MR. GREENBERG: We are claiming we have the  
3 right to explore whether we own -- we will  
4 monetize it if it turns out we own it.

5 THE COURT: No, I understand your position  
6 on that, but my question is how does --

7 MALE SPEAKER: And -- and --

8 THE COURT: -- their position, by entering  
9 testimony today on the rates, relate to the  
10 city's position that they believe they could  
11 proceed with an RFP even though I would not  
12 permit them to transfer the assets? I mean, I'm  
13 not trying to narrow down to --

14 MR. KENT: Yeah.

15 THE COURT: -- your -- your expert's  
16 testimony --

17 MR. KENT: Because when they take that  
18 appeal up, they're going to say we didn't  
19 establish the prongs for an injunction, which we  
20 don't think we have to, but I have to have a  
21 case that we did, whatever the appeal is of your  
22 order.

23 MR. FRANK: I would think that the city  
24 would stipulate that, you know, they wouldn't  
25 make that issue (inaudible) testimony would be a

1 basis for --

2 MR. KENT: Of course not.

3 MR. FRANK: -- going ahead and --

4 MR. KENT: They'd have to -- they'd have to  
5 stipulate that --

6 MR. GREENBERG: Well, just for record --

7 MR. KENT: -- the six elements --

8 MR. GREENBERG: No, but just --

9 MR. KENT: -- don't come into play.

10 MR. GREENBERG: -- for the record, those --  
11 because the Commonwealth Court --

12 MR. KENT: Just the rates.

13 MR. GREENBERG: -- gets a brief next week  
14 laying out how those six elements were not  
15 (inaudible). That's going to be before the  
16 Commonwealth Court next week. I'm going to  
17 expedite a timetable to review that and throw  
18 out the whole order, which is where this ends up  
19 going if it's not narrowed.

20 THE COURT: (inaudible).

21 MR. GREENBERG: And -- and that may be what  
22 it is.

23 MR. JESIOLOWSKI: Well, if you're making  
24 that argument before the Commonwealth Court,  
25 isn't that just rearguing the same thing here

1           that's already up on appeal?

2           THE COURT:  Yeah.

3           MR. GREENBERG:  On the flip side, if it's  
4 narrowed, that -- then much like --

5           THE COURT:  Technically, it is.

6           MR. GREENBERG:  -- the injunction  
7 (inaudible).

8           THE COURT:  Technically, it is.  
9 Commonwealth Court may overrule me and say I was  
10 wrong.

11          MR. FRANK:  Yeah, but the rates -- still  
12 getting back to the issue --

13          THE COURT:  Oh, we're back to the issue of  
14 rates.

15          MR. FRANK:  Yeah, there's no -- the rates  
16 are of no relevance or consequence to this  
17 specific -- I think overall, but independent of  
18 that, certainly not today.  They're really not.

19          MR. KENT:  Well, as I said, Your Honor, I  
20 think the rates are relevant to likelihood of  
21 success on the merits at the end of the day,  
22 which is part -- which is the city is claiming  
23 is necessary in order for you to have any kind  
24 of injunction or status quo order in place.

25          MR. FRANK:  The only (inaudible) rates are

1 relevant is what, you know, Nichols potentially  
2 said, again, how the timing of it, that the  
3 timing would be -- of the evaluations, you know  
4 (inaudible) by 2021 or whatever (inaudible).

5 THE COURT: Well --

6 MR. FRANK: The rates are really of no  
7 consequence. It's prejudicial. It's  
8 inflammatory. It's of no real consequence.

9 THE COURT: Well, I don't know about --

10 MR. JESIOLOWSKI: It's your public --

11 THE COURT: (inaudible) --

12 MR. JESIOLOWSKI: -- rates from your  
13 website.

14 THE COURT: It's not inflammatory.

15 MR. JESIOLOWSKI: How is that inflammatory?

16 THE COURT: I don't think it's  
17 inflammatory.

18 MR. FRANK: Well, I -- I think -- I  
19 think --

20 THE COURT: It's not inflammatory.

21 MR. FRANK: It's inflammatory to the  
22 underlying issues -- to the underlying issues.

23 MALE SPEAKER: Go ahead. You may be -- you  
24 may be talking.

25 MR. FRANK: (inaudible) they have a right

1 to do it or they don't have a right to do it.  
2 They have a right to keep it or they don't have  
3 a right to keep it, et cetera. Whatever the  
4 rates are, the rates are.

5 MR. GREENBERG: So, Mr. Frank, with all due  
6 respect, I also think Ms. Woebkenberg's  
7 testimony from before and Mr. MacEwen's that  
8 there's no imminent harm to this -- to -- to the  
9 CWA today is relevant, too, that there's harm  
10 eventually maybe someday from the delay of  
11 maintenance, but there's nothing immediate. But  
12 that's all before the Court. For what's --  
13 again, presuming that you've already made a  
14 decision not to grant my motion in full, then  
15 what's before -- this is irrelevant to the  
16 endgame. The question is only what the proper  
17 scope is because you're not granting my motion  
18 to say that there's no right to anything. So if  
19 there's -- if there is a right to an injunction,  
20 if there's a right to some sort of status quo  
21 order that you made a determination as  
22 appropriate, the proper question is to what  
23 scope. The rate's irrelevant to that question.  
24 It's what's -- what are the issues there?  
25 Again, I -- I may disagree with you, Your Honor,

1 but I'm pretty clear where you're going.

2 THE COURT: Mr. Kent, Mr. Jesiolowski?

3 MR. KENT: No, I think I've -- I've made my  
4 point, Your Honor.

5 THE COURT: All right. What I'm going to  
6 do is I'm going to break for lunch, and I'll  
7 consider the matter and whether (inaudible) the  
8 rates or not.

9 MR. KENT: Okay.

10 THE COURT: All right?

11 MR. KENT: Thank you, Your Honor.

12 MS. LABRUM: Thanks, Your Honor.

13 MALE SPEAKER: Do you have other witnesses  
14 besides (inaudible) --

15 THE COURT: Yeah, is there any other  
16 witnesses?

17 MR. KENT: Yeah. The -- the other  
18 witnesses -- the other witness that we would  
19 likely put on is Cynthia Leitzell, the chair of  
20 the -- of the CWA to talk about the process by  
21 which they led -- which led to the establishment  
22 of the trust, which again goes to likelihood --

23 THE COURT: Well --

24 MR. KENT: -- of success on the merits  
25 given the city's objections --

1 THE COURT: Yeah, understood.

2 MR. KENT: -- that it's some sham --

3 THE COURT: That's understood.

4 MR. KENT: -- process (inaudible) --

5 MALE SPEAKER: (inaudible) --

6 THE COURT: No, that's relevant.

7 MR. GREENBERG: And it --

8 THE COURT: That's relevant, yeah.

9 MR. GREENBERG: It -- it isn't the exact  
10 same issue, though. If you're already going to  
11 keep us from the final step --

12 MALE SPEAKER: Well, I think the question  
13 you need --

14 MR. GREENBERG: -- it's not relevant to the  
15 next question --

16 MALE SPEAKER: -- to think about at  
17 lunchtime -- and I don't mean to interrupt,  
18 Judge, but --

19 THE COURT: Yeah.

20 MALE SPEAKER: -- the question you need to  
21 think about at lunchtime is are you going to  
22 withdraw your request. I think the Judge has  
23 identified his potential ruling in this case  
24 where he may maintain the status quo, he may  
25 tweak it, but are you going to withdraw your

1 right to appeal if the Judge maintains the  
2 status quo that you can't try to sell and they  
3 can't try to put it in trust? Because if you're  
4 not going to withdraw your right to appeal that  
5 part of the Judge's thinking, they need your  
6 record.

7 THE COURT: Yep.

8 MR. GREENBERG: And --

9 MALE SPEAKER: I'm not asking. You can  
10 think about it at lunch.

11 MR. GREENBERG: And I got to go talk to my  
12 client --

13 MALE SPEAKER: Okay.

14 MR. GREENBERG: -- but the reality of it is  
15 a lot of it depends on the language because if  
16 it's language like what we have now, which is  
17 you can't take any step towards this --

18 MALE SPEAKER: I understand that.

19 MR. GREENBERG: -- it's a very different  
20 analysis to --

21 MALE SPEAKER: It's about the ultimate  
22 sale.

23 MR. GREENBERG: -- you can't close an  
24 alternate transaction --

25 THE COURT: Yeah.

1 MR. GREENBERG: -- but --

2 MR. KENT: Can I make a suggestion --

3 MALE SPEAKER: Yes.

4 MALE SPEAKER: Yes.

5 MR. KENT: -- along those lines since we're

6 taking a break --

7 THE COURT: Sure.

8 MR. KENT: -- anyway? Let us know where

9 you stand on that, but I'm not agreeing to

10 anything --

11 MR. GREENBERG: Well --

12 MR. KENT: -- but it might be informative

13 as to how to (inaudible) --

14 THE COURT: All right. Why don't you talk?

15 MALE SPEAKER: (inaudible).

16 THE COURT: Okay. Let's be back here at

17 one o'clock.

18 MALE SPEAKER: 1:30?

19 MALE SPEAKER: Sure.

20 MALE SPEAKER: 1:30.

21 MALE SPEAKER: Listen (inaudible) --

22 THE COURT: An hour and a half for lunch?

23 MR. GREENBERG: I -- I don't want to go

24 (inaudible).

25 THE COURT: One o'clock.

1 MR. GREENBERG: Either we agree to take it  
2 to our clients or not.

3 THE COURT: Quick lunch.

4 FEMALE SPEAKER: Quick lunch?

5 [End of Sidebar Discussion, 12:13 p.m.]

6 \*\*\*

7 THE COURT: All right. Counsel, Counsel,  
8 we're going to stand in recess until one o'clock --

9 MALE SPEAKER: Thank you, Your Honor.

10 THE COURT: -- so everyone's excused till  
11 one o'clock.

12 MALE SPEAKER: Thank you.

13 \*\*\*

14 [Off the record from 12:13 p.m. to 1:37 p.m.]

15 \*\*\*

16 THE COURT: All right. We're back on the  
17 record in the matter of Chester Water Authority v.  
18 City of Chester, et al. It's my understanding the  
19 parties have a proposal to present to me.

20 MR. KENT: We do, Your Honor, and I'll take  
21 the lead if it's -- if it's okay. We've worked hard  
22 obviously to try and make this a more efficient  
23 process, and we have a proposal that thinks -- that  
24 we think makes sense as far as the interim status  
25 and the status quo and keeping it in place. And

1       it's as follows with the caveat that certainly my --  
2       my client's board would need to sign off on this,  
3       which we will try and do it expeditiously.  It's my  
4       understanding that the city's -- at least the mayor  
5       will need to sign off as well.  The outlines of the  
6       proposal for this interim situation and the status  
7       of the status quo order is as follows:  The CWA will  
8       hold off on putting on any further evidence or  
9       testimony here today while reserving its rights to  
10      do so should -- should this not get worked out.

11               THE COURT:  Understood.

12              MR. KENT:  The small caveat that we will  
13      still introduce those two exhibits that we need to  
14      have some correct testimony from the last time  
15      around.  The status quo order will remain in place,  
16      including the provisions about no sale of the  
17      Authority by the city or anyone for that matter, no  
18      placement of the assets into trust.  These are all  
19      pending a final hearing.  No attempts by the city to  
20      take action under the MAA to dictate the Authority's  
21      operations using, as an example, the August  
22      resolutions.

23              THE COURT:  Right.

24              MR. KENT:  The city agrees to stay its  
25      appeals of the status quo ordered in -- orders in

1 this case and its appeals of the -- the Sunshine Act  
2 injunctions. The CWA would agree to stay its  
3 appeals, its recently filed appeal on the ancillary  
4 petition under Rule 342 pending a final -- a final  
5 resolution of this matter. The city -- the Court  
6 would be free to modify the provision allowing the  
7 city to engage in an RFP and bid process, but no  
8 further action beyond that such that the status quo  
9 order would be modified to allow that. In other  
10 words, no, you know, seeking PUC approval or  
11 anything like that by the city. The -- it would be  
12 made very clear with Your Honor's agreement and  
13 permission that the -- this order and any results of  
14 a bid process or anything along those lines is in no  
15 way an indication of an indicia of ownership or  
16 rights by the city or any other party or their  
17 actual ability to go through with transactions, et  
18 cetera. And I think the Court has already made this  
19 clear that neither party can transfer the system --  
20 the assets of the system pending a final hearing and  
21 final decision on the merits in this case.

22 THE COURT: Mr. Greenberg?

23 MR. GREENBERG: Your Honor, again, with the  
24 same caveat that this has to go to the mayor --

25 THE COURT: Understood.

1           MR. GREENBERG: -- and if the mayor thinks  
2 necessary, Council, but I think just the mayor at  
3 this point. The city is generally in agreement with  
4 these principles. Some of this is going to require  
5 reduction in language. So I think what Kevin and I  
6 spoke about was trying to have a mutually approved  
7 order -- draft order between the two of us that he  
8 could then submit to the board, we could submit our  
9 leadership and try to get that back to the Court as  
10 soon as possible. But, again, some of this is going  
11 to come down to language at the edges, but in  
12 principle what Mr. Kent laid out is where we think  
13 -- both is where we think is an outcome that's  
14 acceptable to us and where we think the Court was  
15 leaning from our interpretation of your actions.

16           THE COURT: All right.

17           MR. GREENBERG: Okay.

18           MR. KENT: I think that's accurate, and we  
19 obviously felt it would be important to put -- put  
20 the intent on the record here today.

21           THE COURT: Certainly. All right. Well,  
22 thank you, gentlemen. Obviously, it's -- I commend  
23 all of you, working on this very hard. I know this  
24 is -- it's not an easy issue. I know you all worked  
25 -- everybody has worked very hard on this, and I

1 commend all the attorneys. It's -- it's encouraging  
2 to see when reasonable, intelligent, and experienced  
3 attorneys can sit down and actually rationalize and  
4 work things out to some degree than it does -- I  
5 think it not only makes it easier on the attorneys,  
6 it certainly makes it easier on the Court. And I  
7 think it's in the best interest of everybody that we  
8 get to the final decision in this matter, and I  
9 think this does help expedite getting to that based  
10 upon what you've agreed to today, so I commend all  
11 of you and I thank all of you. Now, where are you  
12 as far as -- now, you know my ruling on -- that I  
13 want you to give me schedules next week? Okay. So  
14 we know --

15 MR. KENT: Yes.

16 MR. GREENBERG: (inaudible) --

17 THE COURT: -- where we stand so I can  
18 schedule a hearing on this. And then also any -- I  
19 don't know if you're going to file any other  
20 motions, let's get them in as soon as possible and  
21 obviously responses within -- I think we said the  
22 end of the month for the motions for partial on the  
23 pleadings.

24 MS. LABRUM: Your Honor, I may be  
25 incorrect, but I thought we decided that we would

1 just follow -- each one that was filed would have  
2 the regular (inaudible) --

3 THE COURT: Well, they would have the  
4 regular, but I think Mr. Greenberg needed some  
5 additional time on one.

6 MR. GREENBERG: You -- I think -- I think  
7 the answer is what we agreed to was anybody who was  
8 going to file a new motion for judgment on the  
9 pleadings --

10 THE COURT: Would be standard 20 days.

11 MR. GREENBERG: -- would be still by the  
12 end of the month. And I agree we would follow the  
13 20 days or we would make a motion. We --

14 THE COURT: Right.

15 MR. GREENBERG: I'm just going to put every  
16 -- we intend to file a motion for judgment on the  
17 pleadings at least in part and file a motion to  
18 consolidate all of the briefing in response to Ms.  
19 Labrum's outstanding stuff, the ones we're going to  
20 file and anything else that comes in.

21 THE COURT: Right.

22 MR. GREENBERG: So we will be making that  
23 motion, but the Judge has not decided on that.

24 THE COURT: Right.

25 MS. LABRUM: Your Honor, I did file one in

1 the 5974 as well.

2 THE COURT: I did. I'm aware of that.  
3 Thank you. Anything else, Counsel? Go ahead.

4 MR. KENT: Your Honor had mentioned that  
5 the record was up on appeal. We do have copies of  
6 the pleadings --

7 THE COURT: Okay.

8 MR. KENT: -- if you would like that or  
9 consent -- either you or Mr. -- Mr. Donaghy [ph].

10 THE COURT: Yeah, I'm sure he's -- he gets  
11 some so I can read it over the weekend.

12 MR. KENT: Yeah. I know he's anxious for  
13 it. I could tell.

14 MR. GREENBERG: Mr. Kent, do you have two  
15 documents?

16 MR. KENT: Yes. Oh, we do have the two  
17 documents to put into the record. Thank you.

18 THE COURT: All right.

19 MR. KENT: They are --

20 THE COURT: Oh, you have those documents  
21 ready to put -- place in the record?

22 MR. GREENBERG: Your Honor, before we do  
23 that, do we want to let anybody else weigh in on  
24 this resolution? I thought that --

25 THE COURT: Well, I don't know if there's

1 -- yeah, I didn't want to exclude -- I'm not  
2 excluding anyone. I thought everybody had been in  
3 discussion with it. But if anybody else wants to --  
4 wants to weigh in on that, obviously, go right  
5 ahead. I'm not precluding anyone, any other  
6 counsel? I thought you pretty much were all aware  
7 of it. Is that correct? Everybody -- I don't see  
8 anybody standing up, so I guess everybody's in  
9 agreement with it at this point.

10 MR. FRANK: Yeah, we --

11 THE COURT: Oh, Mr. Frank.

12 MR. FRANK: No, sir, we -- we agree. We'd  
13 like to get -- and obviously have a chance to get to  
14 review and approve the order before it's  
15 submitted --

16 THE COURT: The final written one?

17 MR. FRANK: Thank you.

18 THE COURT: Understood.

19 MR. GREENBERG: For the limited -- I mean,  
20 we -- the -- 19's not the best evidence, but for the  
21 limited purpose of correcting the number, I'm fine  
22 with that as long as that's -- that's all it's  
23 offered for.

24 MR. KENT: These -- these are to correct  
25 the record on the two points I mentioned before Your

1 Honor. I don't know whether you'd like us to simply  
2 mark them.

3 THE COURT: We can have them marked.

4 MR. KENT: Yeah.

5 THE COURT: Everybody's -- everybody's  
6 aware of them?

7 MR. GREENBERG: We are, Your Honor.

8 THE COURT: Okay.

9 MR. GREENBERG: With respect to the bank  
10 statement, that speaks for itself, and we don't have  
11 an objection to it.

12 THE COURT: All right.

13 MR. GREENBERG: With respect to the  
14 amendment of agreement of sale, we don't think it's  
15 the best evidence, but if it's solely offered for  
16 the purpose of correcting the number in that case to  
17 the correct number, we have no objection.

18 THE COURT: Okay.

19 MR. KENT: I think if it's all right with  
20 Your Honor we'll mark them as AW. That's the  
21 witness (inaudible) Greenberg --

22 THE COURT: All right. That's fine.

23 MR. KENT: 1 and 2.

24 THE COURT: 1 and 2?

25 MR. KENT: 1 and 2.

1 THE CLERK: A can be 1 --

2 MR. GREENBERG: And which one is 2, Kevin?

3 MR. KENT: 2 is the bank statement.

4 MR. GREENBERG: Okay. So AW-1 is the one  
5 that --

6 THE COURT: Is --

7 MR. GREENBERG: -- we accept for a limited  
8 purpose.

9 THE COURT: For the purpose of just the --  
10 the change in the amount?

11 MR. GREENBERG: Correct. And it's not --  
12 it's not good evidence for anything else, but for  
13 that purpose --

14 THE COURT: I understand.

15 THE CLERK: (inaudible) they were admitted  
16 during that --

17 MR. KENT: 25 and 26? Yes.

18 THE CLERK: Um-hum.

19 MR. KENT: We'll give you hard copies.

20 They are in the Judge's binder, but we can give you  
21 hard copies --

22 THE CLERK: Yes.

23 THE COURT: Yeah, they're in my binder --

24 MR. KENT: -- as well.

25 THE COURT: -- but they probably should --

1                   THE CLERK: Do you want me to staple  
2                   (inaudible) --

3                   THE COURT: Yeah -- well, I don't have a  
4                   stapler. Just keep them altogether.

5                   THE CLERK: I'll keep (inaudible).

6                   THE COURT: Yeah, why don't you put  
7                   (inaudible)?

8                   THE CLERK: Okay.

9                   MR. KENT: And then, Your Honor, I think  
10                  the only other issue you mentioned was the special  
11                  master, which --

12                  THE COURT: Yes. I'm going to get on that  
13                  right away. In fact, I've already discussed with  
14                  Mr. Donaghy two or three options -- two, three  
15                  people we think might be appropriate for that. One  
16                  I first thought of and so did Mr. Donaghy is Dennis  
17                  Woody, Esquire, who's done a lot of work in Orphans'  
18                  Court over the years, so he would be really I think  
19                  one that has the experience in it. I don't know if  
20                  Bill Halligan is doing any of this anymore, but he'd  
21                  be another one that's fairly -- very experienced in  
22                  it. And if we have to go to a third, I'll think of  
23                  a third, but I think that if we get those two  
24                  already, so we're going to try and contact them as  
25                  soon as possible --

1 MR. KENT: Understood, Your Honor.

2 THE COURT: -- so we can move on this. I  
3 don't think anybody would have any objection to  
4 either one of them. They're both experienced  
5 attorneys.

6 MR. GREENBERG: No, Your Honor.

7 THE COURT: Everybody knows them. They  
8 have extensive experience in Orphans' Court matters.  
9 So I'm hopeful we can get one of those to do it as  
10 soon as possible.

11 MR. GREENBERG: Thank you, Your Honor.

12 THE COURT: Okay? Anything further from  
13 counsel?

14 MALE SPEAKER: No, sir.

15 MR. KENT: No, Your Honor.

16 THE COURT: Thank you all.

17 MR. GREENBERG: Thank you, Your Honor.

18 ALL: Thank you, Your Honor.

19 THE COURT: Thank you all. Thank you all  
20 for participating and all those in the gallery.

21 \*\*\*

22 [End of Proceeding, 1:48 p.m.]

23

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41

C E R T I F I C A T E

I, Richard Coogan, hereby certify that the proceedings and evidence are contained fully and accurately on multi-track recording; that the recording was reduced to typewriting by my direction; and that this is a correct transcript of the same.

\_\_\_\_\_  
Richard Coogan, Administrator  
Court Reporters

DIAZ TRANSCRIPTION SERVICES hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Court of Common Pleas of Delaware County, Pennsylvania, in the matter of:

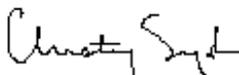
CHESTER WATER AUTHORITY

vs.

CITY OF CHESTER, et al.

#19-000217

BY:



\_\_\_\_\_  
Christy Snyder  
Transcriber for  
Diaz Transcription Services

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.

\_\_\_\_\_  
Judge