

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In the matter of:)
)
JEFFERSON COUNTY, ALABAMA,) Case No. 11-05736-TBB
) Birmingham, AL
Debtor.) November 21, 2011, 8:00 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE THOMAS B. BENNETT
UNITED STATES BANKRUPTCY JUDGE

Vol. I - Pages 1 to 390

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1 COURTROOM DEPUTY: Please state your name and address
2 for the record.

3 THE WITNESS: My name is John S. Young, Jr. My primary
4 residence is 109 Kingsdale Avenue, Cherry Hill, New Jersey. I
5 also have a residence at 200 Hallman Hill East, Homewood,
6 Alabama.

7 DIRECT EXAMINATION

8 BY MR. CONNER:

9 Q. Good morning, Mr. Young.

10 A. Good morning, Mr. Conner.

11 Q. Mr. Young, what is your position today as far as your
12 work position?

13 A. I am currently the receiver of the Jefferson County
14 Environmental Services Department.

15 Q. And I think Mr. Childs, in dealing with Mr.
16 Carrington's direct examination, indicated we were referring to
17 you as John Young as the receiver but actually it's your LLC is
18 the receiver and you are the chief member of that LLC; is that
19 correct?

20 A. That's correct.

21 Q. Mr. Young, I want to briefly go over your -

22 THE COURT: Are there other members of the LLC?

23 MR. CONNER: There are no other members, Your Honor.

24 Q. Mr. Young, are there any other members?

25 A. There are no other members.

1 Q. Thank you, Mr. Young.

2 MR. CONNER: If you could, Chandra, would you pull up
3 Mr. Young's bio? It is Exhibit M-66, Your Honor.

4 Q. Mr. Young, you did not go to Auburn or Alabama; did
5 you?

6 A. I did not.

7 Q. Where did you go to get your undergraduate degree?

8 A. I received my undergraduate degree at Duke University
9 with a Bachelor of Science in Civil Engineering.

10 Q. All right. We have your bio pulled up. This isn't
11 a test. So when did you get your undergraduate degree?

12 A. 1975.

13 Q. Did you go to post-graduate education after that?

14 A. I did. I got a master of science in environmental
15 engineering, with an emphasis in water resource engineering,
16 from the University of North Carolina, Chapel Hill.

17 Q. Okay. Again, this isn't a race today. We do want to
18 get through your testimony, but with respect to after your
19 post-graduate education, did you obtain any professional
20 certifications?

21 A. I received a certification as a professional
22 engineer.

23 Q. And do you still hold that certification?

24 A. I do.

25 Q. Mr. Young, if you would, I would like for you to go

1 through your work experience after 1977, from graduation, and
2 just briefly bring us forward. I don't think it will take too
3 long.

4 A. Okay. Upon graduation, after doing some research at
5 the university for a while and doing a master's thesis in water
6 quality issues, I went to work for American Water. American
7 Water is the largest investor-owned wastewater utility in the
8 country. I started there in water quality and then I went into
9 engineering. I actually designed water and wastewater
10 facilities and then went into engineering planning and
11 ultimately ran the engineering department at American Water.

12 After that, I went into some operational areas of the
13 business, got involved with running functions in health and
14 safety and research and environmental compliance and ultimately
15 I became chief operating officer at American Water, as well as
16 president of American Water Works Service Company, which
17 provides shared functional services to all of the utilities
18 that they service across the country.

19 Q. Would you explain just briefly what shared services
20 means or what did it mean in regard to American Water?

21 A. What shared services are, I mean, obviously a
22 utility's primary function is to operate and protect the public
23 health and the environment but, just like any business, they
24 require financial support, legal support, human resource
25 support, IT support and support in other areas, and the shared

1 services are those types of functional support services that
2 you provide utilities.

3 Q. Now, as chief operating officer, what degree were you
4 involved in each of those components of shared services?

5 A. Well, all of those components reported to me.

6 Q. Sometimes it is a little different having something
7 reporting to you and actually having knowledge of how to do the
8 work. Would you agree?

9 A. Absolutely.

10 Q. Did you know how to do the work, Mr. Young, in regard
11 to all of those special service functions?

12 A. Clearly I didn't know how to do the minute work in
13 all of those functions, but I clearly understood how all of
14 those functions interfaced with the utility operations, as well
15 as provide value to those operations.

16 Q. Have you ever done a cost of service study before?

17 A. Yes, I have worked on cost of service studies.

18 Q. And what is that?

19 A. A cost of service study is when you determine what
20 the full costs to serve the public is, and then you also
21 determine potentially how to allocate those costs against
22 various customer classes in your rate design.

23 Q. So that's all involved in rate making; is it not?

24 A. That is correct.

25 Q. Have you been involved for a large portion of your

1 career at American Water, or were you, in rate making?

2 A. I did. In fact, I have probably testified in at
3 least a dozen commissions across the country in rate
4 proceedings.

5 Q. All right. What is a rate proceeding?

6 A. A rate proceeding for an investor-owned utility is
7 when a utility comes forward to recommend a certain amount of
8 rate increase and there is due diligence and rulings by the
9 Public Service Commission within that state.

10 Q. Have you ever been disqualified in any of those rate
11 proceedings as testifying as a witness?

12 A. I have not.

13 Q. Have you been involved throughout your career at
14 American Water, or when you were with American Water, in any
15 capital planning processes?

16 A. I did. As I previously stated, I was involved with
17 the engineering planning process and I ran the engineering
18 function for a number of years. When I left American Water,
19 our spend was somewhere between eight hundred million to a
20 billion dollars a year on capital. So there is obviously a lot
21 of planning associated with those capital programs.

22 Q. And those capital programs would be divided up into
23 various states and subsidiaries that had to prepare their own
24 programs and plans in regard to the assets in those areas?

25 A. That is correct.

1 Q. What is a business plan for a utility, Mr. Young?

2 A. A business plan is a plan that really touches all
3 aspects of a utility. It's a combination of a strategic
4 document, a financial document, and an operational document,
5 but basically it's the road map of both financially,
6 operationally and strategically where a utility is going to go
7 within the next five, ten or fifteen years.

8 Q. All right, sir. As far as environmental compliance
9 is concerned, I understand that your degree, your master's
10 degree is in environmental engineering. To what extent were
11 you involved in environmental compliance for American Water, in
12 both wastewater and water?

13 A. For a number of years, I have the environmental
14 compliance group actually reporting to me and, you know, I
15 originally went into this business because of my concern about
16 public health and the environment, so it was very important to
17 me.

18 Q. So in your environmental compliance area, did you
19 deal directly with EPA?

20 A. Absolutely. I served actually on the National
21 Drinking Water Advisory Council for six years at EPA, which is
22 a body which helps set policy for EPA, and then continued to
23 work with them on various work groups over the years.

24 Q. Were you a participant or have you ever participated
25 as a contributing author in any documents or manuals for EPA?

1 A. Actually on several of them. I have contributed to
2 documents dealing with security of utility facilities, with
3 affordability of water rates and, most recently, I was an
4 author with EPA on a book addressing effective utility
5 management.

6 Q. An effective utility management, has that become a
7 term of art in regard to the utility management area?

8 A. Absolutely. Since the publishing of that document
9 several years ago, EPA, and I have actually helped them, have
10 gone around the country trying to sell that term and explain
11 what effective utility management is to the utility industry.

12 Q. And the utility industry in that regard, does that
13 include more than just the investor-owned utility industry?

14 A. That's the entire industry. I was involved with
15 that, as well as several people from the municipal sector in
16 developing those attributes to effective utility management.

17 Q. Now is there anything magical about having - between
18 an investor-owned utility and a governmentally-owned utility?

19 A. Essentially the operations are very, very similar
20 with respect to protecting public health and the environment,
21 environmental compliance. I think probably you might find a
22 little bit different in culture between the two but, in
23 general, they are pretty much the same.

24 Q. What is the difference typically in culture that you
25 have seen?

1 A. Well, I mean, for example, you know, I worked for
2 American Water, which was a publicly traded company on the New
3 York Stock Exchange. So like any publicly traded company, we
4 had shareholders looking over our shoulder who were driving
5 business performance, driving overall performance, driving
6 reputation, things such as that. So I would have to say, in
7 general, there is a little bit more drive in several areas on
8 an investor-owned utility around performance than there might
9 be on a municipal system.

10 Q. In your various roles at American Water, were you
11 involved in any finance, budgeting, capital, raising capital
12 with respect to the operation of American Water?

13 A. Well, obviously my senior management role, I was
14 involved in putting the business plans together every year for
15 American Water. But also since we raised, like I said earlier,
16 eight hundred to a billion dollars a year in capital, I
17 frequently went to New York and the other markets to raise
18 capital, to talk to investors.

19 And then, in the mid 2000s, we actually took American
20 Water public and I was involved, traveling the world frankly,
21 doing an IPO and met with hundreds of investors associated with
22 that.

23 Q. And then after that initial -

24 THE COURT: When you say public, are you talking about
25 - when you said "we," are you talking about Parmalat?

1 THE WITNESS: Could you ask that question again?

2 THE COURT: You said, "We took it public." Are you
3 talking about Parmalat?

4 THE WITNESS: When I talk about "we," I was talking
5 about the management team traveled and took the company public
6 into the New York Stock Exchange. We were a privately-held
7 company -

8 THE COURT: You were owned by another entity?

9 THE WITNESS: What is what?

10 THE COURT: You were owned by another entity?

11 THE WITNESS: Yes, we were owned by another entity at
12 the time.

13 BY MR. CONNER:

14 Q. Mr. Young, at this time - well, let me ask you. Are
15 you a member of any professional organizations?

16 A. I am a member of several professional organizations.
17 I have served on the Board of Directors for the American Water
18 Works Association. I have served on the Board of Directors for
19 the Water Reuse Foundation. I have served on the board and
20 been Chairman of the Design-Build Institute of America. I am
21 a member of the American Society of Civil Engineers.

22 Q. All right, sir. And I think you have already
23 mentioned you have authored a number of articles, as well as
24 papers with respect to your role in working with EPA?

25 A. Yes, and in all aspects of water utility operations.

1 Q. And water utility operations, are you also equally
2 familiar with the operation of wastewater operations?

3 A. I am. American Water operated hundreds of wastewater
4 treatment plants. So, yes, I am.

5 Q. Were you also involved in the due diligence process
6 when American Water would make acquisitions of various other
7 utilities?

8 A. Yes. American Water, one way American Water grew was
9 by the acquisition of both municipal utilities and other
10 private utilities, and I was involved in those decisions around
11 valuation and acquisition, as well as the integration of those
12 utilities. So, for instance, I spent a year in California
13 working on the integration of three utilities with American
14 Water.

15 Q. All right, sir. Mr. Young, I would like to switch
16 now and go to Jefferson County, in particular. Would you just
17 advise the court in regard to a general description of the
18 Jefferson County wastewater system? And, Your Honor, we have
19 pulled up a document. It's a slide from the county Exhibit 51
20 but it's an individual slide.

21 A. Jefferson County wastewater system is the largest
22 municipal wastewater system in the state of Alabama. It serves
23 about a hundred and forty-four thousand customers, about a
24 hundred and twenty-six thousand residential customers.
25 Obviously it was a system that was kind of the consolidation or

1 the regionalization of a number of municipal systems in 1996.

2 They have nine treatment facilities of various sizes.
3 Most of those facilities have been either expanded or built
4 since 1996 when we went into the consent order. They have over
5 three thousand miles of pipe. Interestingly enough, two
6 thousand miles of those pipes were inherited in conjunction
7 with the consent order and unfortunately were found to be in
8 pretty poor condition.

9 I think the interesting part of the slide we have
10 there is the bottom two numbers. On the average, we treat
11 about two hundred and sixty million gallons a day of wastewater
12 but, under peak conditions, we treat about one point one
13 billion gallons a day, which is four times that. And the
14 reason for that is, when it rains, the ground gets saturated
15 and the water from the ground leaks into the pipes, as well as
16 the surface water flows into the manholes. So the fact that we
17 have that differential between average flows and maximum flows
18 will give you an idea of how bad the infrastructure is in the
19 ground, the pipes that are in the ground and what kind of
20 leakage we have. And unfortunately that's even after spending
21 two and a half billion dollars to improve the system.

22 Q. Mr. Young, the differentiation there between average
23 daily treatment and maximum daily treatment, does that tell you
24 anything in regard to the plan that went into place in 1996 to
25 improve the system as a result of the consent decree?

1 A. Well, first of all, you said a plan. I am not sure
2 the county actually had a plan when they entered into the 1996
3 consent order but, to attack this issue, to attack the issue of
4 sewer overflows and illegal discharges that brought them into
5 the order, they really had a couple of different approaches
6 they could take. One is to try to fix the problem at the
7 source. In other words, try to fix the pipes, reduce the flow
8 to your treatment plants and build properly sized treatment
9 plants or just build massive treatment plants and accept
10 whatever flow you get and then, later on, fix the pipes. And
11 in general, and there are a number of reasons for this, but in
12 general they took the option to build very large treatment
13 plants and then hopefully over the years start fixing the
14 pipes, which would result in excess treatment capacity at your
15 various treatment plants in the long-term.

16 Q. Obviously from your review of this system and the
17 operation of this system, the history of this system that you
18 have been able to determine in your capacity, were they able to
19 or did they make much of an attempt to fix the collection
20 systems?

21 A. They did spend probably a billion dollars on the
22 collection system, you know, over the last past decade. The
23 problem that they had is they inherited two thousand miles of
24 pipe. They really didn't have that pipe characterized, so it
25 was difficult to try to figure out where to best spend that

1 money. So clearly given the condition of the system, a lot
2 more needed to be invested in the collection system in the
3 pipes.

4 Q. Now, who did they inherit the two thousand miles of
5 pipe from?

6 A. Well, there was twenty-one municipalities that dumped
7 their wastewater flow into the trunk mains of the Jefferson
8 County sewer system, and it was the responsibility of Jefferson
9 County to transport and treat those flows.

10 Q. Did the municipalities make any type of financial
11 contribution at all in regard to the subsequent fix?

12 A. They did not and unfortunately they transferred this
13 large liability to the county without any financial obligation.

14 Q. Or responsibility?

15 A. Or responsibility.

16 Q. Mr. Young, did the problem with this system that we
17 are here about today begin with the entry of the EPA consent
18 order?

19 A. No, the problem that we have here today started over
20 a century ago. The system was actually started in 1901 -

21 Q. Your Honor, just so we know, Mr. Young, this is
22 another slide from the same presentation on Exhibit 51 of the
23 county.

24 A. And in 1901, the way the system was originally
25 designed, you had your twenty-one municipalities that had their

1 individual systems, and they were dumped into at the time a
2 large main and, back in the turn of the century, that main
3 would just simply dump sewage into the various water courses.
4 There really wasn't treatment back then. There was no
5 mandatory hookup, so there were issues with respect to revenue
6 from customers because customers did not have to hook up to the
7 system. And unfortunately the only funding they had at the
8 time was the ad valorem tax.

9 So over the first forty-five years of the system, at
10 most they were able to raise about a million dollars through
11 bond offerings. So it was pretty poorly funded. In fact, in
12 the 1930s, it is documented that they were having extreme
13 problems with service and environmental compliance with the
14 system.

15 Q. Okay. Did it get any better in 1950 when the county
16 was given rate-making authority?

17 A. Well, I think everybody hoped it would get better.
18 In, I think 1948, they were given rate-making authority.
19 Unfortunately it took them forty years to actually use that
20 authority to implement rates. They did some studies,
21 determined what needed to be done. Unfortunately they didn't
22 put rates in at a sufficient level to fund the improvements and
23 then they went almost another twenty-five years before they did
24 a second rate increase.

25 So the system just continually was underfunded and

1 continually was recognized as a problem.

2 Q. Were there any moratoriums or litigation associated
3 with the system?

4 A. Yeah, I think the biggest moratorium they had for the
5 longest period of time was in the early 1970s, I believe, where
6 they basically said any new homes can't hook into the system
7 because they don't have the capacity, nor do they have the
8 environmental compliance, and that hurt us big time because
9 there are customers today that still have septic tanks because
10 they couldn't hook into the system, and that has had a negative
11 impact on our overall revenue.

12 Q. So even today, we have an issue of - or is there an
13 issue of residents using septic systems and having a sewer line
14 right beside their property and they are not hooked up to -

15 MR. MAYS: I am going to object to leading, Your Honor,
16 and also basically the question just restates the previous
17 answer. I object.

18 THE COURT: Sustained.

19 BY MR. CONNER:

20 Q. Is there still a problem with mandatory hookups?

21 A. There is. We still do not have mandatory hookup to
22 this day.

23 Q. Mr. Young, with respect to the 1996 consent decree,
24 how did the county address the compliance issue presented by
25 the consent decree?

1 A. Well, they really signed up to the consent decree and
2 it had some performance criteria in there that was, in my mind,
3 almost impossible to achieve. For instance, one of the
4 criteria in the consent order is there shall be no sewer
5 overflows. I don't know of a large system in the country that
6 can meet that criteria. So they basically took off trying to
7 solve the problem but there was really no comprehensive plan
8 and there was no initial budget, and I think that has been
9 documented by several of the consultant studies that also look
10 back at this. And frankly a lot of money was spent and
11 financed for the first five or six years.

12 They got to about 2002, 2003, they had spent a
13 substantial amount of money, a little less than two billion
14 dollars, and they realized they hadn't made a whole lot of
15 progress on the sewer overflow issues or the illegal discharge
16 issues. They had a lot more money to spend. They had, at that
17 time, doubled the rates and the county commission was kind of
18 in a bind there trying to figure out how do we continue to go
19 on, spend money to comply with the order, and try to minimize
20 rate increases, and that ultimately resulted in the 2002/2003
21 refinancing of the debt.

22 Q. All right. And we will talk more about that.
23 Explain to the court how you came to Birmingham, other than
24 your vehicle, today?

25 A. Well, I came to Birmingham based on a phone call I

1 received in 2008. I received a call from a county attorney,
2 Mr. Darby, who asked if I would come down and have dinner with
3 a federal judge because they were having some issues in
4 Birmingham around a utility debt and operations, and he felt
5 that I might be able to come down and help with the issue. The
6 judge had looked for resources.

7 So I took him up on the offer, came down, and I had
8 dinner with the federal judge kind of as a person that was
9 brought down by the county. The creditors also brought a
10 lawyer down on their side, and we spent the evening talking to
11 the judge about how possibly to attack this problem.

12 Q. Which judge was this?

13 A. This was Judge Proctor in the federal courts. By
14 dessert, he stood up and had decided that potentially both of
15 us could help him. He told us both that he didn't feel this
16 issue was going to resolve in the courts, he really needed some
17 expertise outside of the courts, and he felt we both could play
18 a role and asked us - well, actually asked us if we would be
19 special masters or co-special masters and work on a solution.
20 I asked him frankly at the time what a special master did
21 because I had never heard of the term before, but he basically
22 gave me a lot of latitude to take a look at a number of
23 different solutions.

24 Q. And what was Mr. Ames' responsibility in that co-
25 special master role?

1 A. Well, Mr. Ames had some bankruptcy experience and
2 obviously he was a lawyer, so he was focused more on claims and
3 some of the corruption issues. I was focused more on the
4 operations of the wastewater system, its revenue, its rates,
5 its efficiencies, things such as that.

6 MR. CONNER: Your Honor, I will just direct you to an
7 order that we would request that you take a look at as we go
8 through this. It's document number "C," or Exhibit No. C-56.
9 And, Mr. Young, I believe - I am not going to ask you to read
10 this. Obviously the court can. But this was a report that you
11 submitted to the court and it quoted what your responsibilities
12 or what you were being asked to do. Would you agree with that?

13 A. That's correct.

14 Q. And it is consistent with what you just testified?

15 A. That's correct.

16 Q. Mr. Young, this report that you prepared, and I
17 believe it's referred, if we could turn to Exhibit M-3 and just
18 the first page. Is this the report that you prepared, Mr.
19 Young, in conjunction with Mr. Ames that was submitted to the
20 court in January of 2009?

21 A. Yes. After probably about six weeks of work, I
22 submitted this report on January 20th of 2009, to the court.

23 Q. What was the level of your review and investigation
24 for this assignment?

25 A. I would say obviously it had to be done very quickly

1 at a very high level. So I think it was comprehensive but, at
2 the same time, I relied a lot on previous reports that had been
3 done. I relied on information that I got directly from the
4 Environment Services Department. I interviewed some of the
5 existing commissioners. So it was a combination of, you know,
6 review of facilities and using my expertise and some expertise
7 of people that I brought in, as well as previous work that had
8 been done, but there is only so much you can actually do in a
9 six-week time period.

10 Q. I understand. So the county or the trustee provided
11 you with consultant reports for your review that had been
12 commissioned by the county; is that correct?

13 A. Oh, yeah. I mean, since I actually had been brought
14 down by the county, the county Environmental Services
15 Department and the county itself was very cooperative in
16 providing me that information.

17 Q. Do you recall the reports that you looked at?

18 A. Well, there was a number of reports. I looked at a
19 report done by Krebs Consulting Firm, a report done by BE&K.
20 I looked at a report done by Malcolm Pirnie, Red Oak, some work
21 that had been done by Raftelis. There was a number of
22 consulting reports.

23 Q. All right, sir. And you reviewed those reports?

24 A. I did.

25 Q. You also reviewed and talked with the county ESD

1 department, officials, in regard to what actually had been done
2 with regard to the system?

3 A. We did. Obviously one of the things we did, we went
4 through the consultants' reports and went over their
5 recommendations and tried to determine what had been done, and
6 also we toured the facilities and got a firsthand view of what
7 was being done.

8 Q. From your review of the consultant reports at that
9 time, Mr. Young, had the county followed the recommendations of
10 their own consultants?

11 A. I think in general, even in specific, they had
12 followed very few of the recommendations of the consultants.

13 Q. Mr. Young, I am not going to take you through the
14 entire report, but I would like to focus on a couple of areas.
15 In your experience, when you are going in to assess this type
16 of situation - you have done this before obviously. You have
17 already testified to that; correct?

18 A. Many times.

19 Q. All right. You want to look at the budget first, the
20 exiting budget, and what did you do? If you would, pull up
21 table three out of this report.

22 A. Well, remember, this was a comprehensive view of the
23 system -

24 Q. Mr. Young, first identify what table three is for the
25 judge.

1 A. Table three was a table that I believe was extracted
2 from the special master's report.

3 Q. It was.

4 A. It is kind of a summary of some recommendations
5 around the budget.

6 Q. What is the fiscal year for Jefferson County?

7 A. The fiscal year runs from October 1 to September 30.

8 Q. So as of November and December of 2008, what fiscal
9 year was the county in?

10 A. They were just beginning fiscal year 2009.

11 Q. And the budget, had it already been approved and they
12 were operating under a budget?

13 A. The budget had been approved; it had been
14 implemented; and they were moving down the road.

15 Q. All right, sir. What did you find with respect to
16 the budget that caused you any concerns?

17 A. Well, actually I was quite surprised when I looked at
18 the budget. There were a number of components of the budget
19 that just frankly didn't make any sense. We looked at both the
20 revenue side of the budget and the operating side of the
21 budget. On the revenue side, a three percent rate increase had
22 been built into the budget. When I asked whether actually a
23 rate increase had been done, they said no. So that surprised
24 me and obviously that showed me that I had significant money in
25 the budget, almost four million dollars that I was not going to

1 - we were not going to see or the Jefferson County
2 Environmental Department was not going to see.

3 They had a significant amount of money on interest
4 income, and I asked them to give me a level of cash reserves
5 and what the interest rate assumptions were and it became
6 apparent, given their financial situation, there were very
7 little in cash reserves and the interest rates had dropped,
8 they probably over estimated their interest income by about ten
9 million dollars, which was a bit of disturbance.

10 When looking at the revenue projections, they actually
11 - and let me explain that. The way you bill sewer is by water
12 use. So you need to take a look at water use to determine what
13 your sewer bill is going to look like. They did not take into
14 account a national trend that per capita water use is declining
15 every year all across the country. In fact, they had had a
16 previous consultant who had recommended them to consider that.
17 They have just shown it as flat. And I have done obviously a
18 lot of work on revenue across the country and recognized that
19 somewhere around a two percent reduction a year was probably
20 appropriate and a very high level and, again, that was another
21 vulnerability -

22 Q. Let me just stop there. You said a consultant. Was
23 that the Raftelis study?

24 A. That was the Raftelis study.

25 Q. And what had the Raftelis study found in regard to

1 the consumption level in Jefferson County from 2003 to 2007?

2 A. They saw it was on a constant decline but that didn't
3 take a consultant to show you that. I mean, that was obvious
4 from just taking a look at the operating records and financial
5 records at Jefferson County.

6 Q. But the budget for 2009 was based on the same
7 consumption level as 2008; is that what you found?

8 A. That was correct. And then finally, you know,
9 certainly economic growth had slowed down in Birmingham over
10 the last several years. They have impact fees. When a new home
11 or development or commercial establishment wants to hook into
12 the system, they have to pay fees based on how many fixtures
13 they have on their home and things such as that. They had
14 again projected that as relatively flat even though we had a
15 declining customer growth in the area. So we made a
16 guesstimate of where, you know, that should end up, as well.

17 But at the end of the day, when you just take a look
18 at those four items, there appeared to be a twenty million
19 dollar hole in the revenue of the system, which actually is
20 about thirty-four percent of the operating budget. So that was
21 quite a concern that I had and, when I presented this to the
22 trustee and the county, they also recognized it as a major
23 concern.

24 Q. Did you also - I think this chart also summarizes
25 some findings that you made with respect to certain

1 vulnerabilities with respect to the expense side?

2 A. Correct.

3 Q. Just briefly go through those.

4 A. Well, very briefly, the biggest area - and this is
5 actually an opportunity. The way the county budgets, they put
6 not only bodies in the seats or people working into their
7 budget, but they put in open positions because the way the
8 system works is you can't bring in a new employee unless you
9 budget it in. So they actually had five million dollars worth
10 of employees in their budget that there was some question
11 whether those employees would actually be hired that year or
12 not. So that's an opportunity. Their expenses were kind of
13 over estimated from that perspective.

14 There was also a line item in there that it appeared
15 should not come out of operating expenses, should come out of
16 capital for over two million dollars. Again, showing that the
17 operating budget could be significantly lower. And there were
18 a bunch of other minor issues. For instance, they had budgeted
19 I think something around a three to six percent increase in
20 electric rates. The actual rate increase on the electric side
21 was fourteen percent. So there was some what we call
22 vulnerabilities or concerns there about the budget.

23 We also took a look at the way they did maintenance
24 and felt that they actually ought to be spending more money on
25 maintenance. So we felt that that line item should go up as

1 much. So that's all reflected on this table three, as well.

2 Q. You had indicated earlier - or let me ask you this:
3 What is an SSO?

4 A. Sanitary sewer overflow.

5 Q. Does the Jefferson County wastewater system have a
6 problem with SSOs?

7 A. They have a significant problem. In fact, that's one
8 of the reasons they are currently in the EPA consent order, and
9 EPA has, for every SSO you have, there is a fine of a thousand
10 dollars from EPA, and they had not accrued in their operating
11 expenses for those fines.

12 Q. Did they have a history of so many SSOs per year that
13 you could actually look at and budget for?

14 A. Yeah, there was about two hundred and fifty to three
15 hundred SSOs each year.

16 Q. Now, Mr. Young, with respect to the - it's not on
17 this chart. Did you also have any information given to you
18 concerning shared services that the sewer system benefitted
19 from, from county general services?

20 A. Yeah. I was actually surprised when I asked the
21 questions regarding the accounting services and the shared
22 services. They told me that, while they use services from the
23 county, the county did not bill them for those services. And
24 as a utility person who understands costs to service, you know,
25 a utility's costs ought to reflect their overall costs to

1 service. So I just said in my report there ought to be a
2 consideration of maybe some of those charges, you know, being
3 allocated to the Environmental Services Department.

4 Q. And I believe your report indicates that you were
5 advised it was close to a six point six million estimate?

6 A. Correct.

7 Q. But you didn't recommend that the county immediately
8 implement those and charge the system operating expense those
9 allocated services; did you?

10 A. No, I just said it was something that ought to be
11 looked at when you do a cost of service analysis.

12 Q. All right, sir. Mr. Young, with respect to revenue
13 enhancements, other than rate increases because I believe your
14 charge was to look at are there ways you can raise revenue or
15 the system can raise revenue. If you would, turn to the next
16 table and highlight the table. Put your glasses on there,
17 John.

18 A. Thank you.

19 Q. It's on page 58 of the report. What non-rate - and
20 when I talk rate, I am talking volumetric rate to residential
21 and non-residential customers, Mr. Young. What opportunities
22 did you see?

23 A. Well, there were a number of things. First of all,
24 there are a number of fees associated outside of residential
25 and non-residential rates that the sewer system charges. One

1 is an impact fee. I talked about that a little bit earlier
2 with respect to new development. They could take a look at
3 possibly increasing that to reflect the true cost to service.
4 Also they charge fees for hauling septage and dumping it at
5 their treatment plants; hauling fats, oil and greases from
6 commercial developments and dumping it at their treatment
7 plants. They charge fees for what they call industrial
8 surcharge. If an industry dumps a waste that's a little bit
9 nastier than what you would have in domestic waste, there is a
10 surcharge for that.

11 So I recommended they take a hard look at that. There
12 had already been some previous consulting reports that said
13 they were undercharging for most of those areas. I thought
14 that was one way to get rates up without - excuse me - revenue
15 up without increasing residential rates.

16 Q. And these are sewer haulers that are not necessarily
17 hooked up to the septic system or to the sewer system itself?

18 A. Yeah, absolutely. I mean, essentially what's
19 happening is the rate payers on the sewer system are
20 subsidizing the sewage haulers or the people that are hauling
21 fats, oil and greases. In fact, they are even subsidizing the
22 industries in the area because they are not paying true cost of
23 service.

24 Q. All right, sir.

25 A. We also talked about, as I said earlier, there is no

1 mandatory hookup here. So those people that are on septic
2 tanks are not paying at all to the system. However, if their
3 septic tank fails or they choose to go on the system, the
4 system is obligated to have capacity to service them. So
5 possibly putting in a reserve capacity fee for those people
6 that are on septic systems but in close proximity to the actual
7 system.

8 I recommended that they take a look at what we call
9 unbilled accounts in the business. Most utilities and my high
10 level view of Jefferson County, it was clear it was true here,
11 have customers that have sewer service but do not receive
12 bills. And they needed to take a good hard look at that area,
13 and fortunately we found a lot there when we actually did a
14 deeper dive.

15 And there are some other things that I recommended.
16 One of the things that's not on the chart here that I
17 recommended was what we call the clean water charge. One of
18 the things that you need to recognize here is, when the county
19 signed up for the consent order, it was to clean up the waters
20 of all of Jefferson County. Hence, everybody living in
21 Jefferson County benefitted from that. So I said maybe you
22 need to consider a clean water fee that hits everybody within
23 the county. It's not on the chart here because, when I
24 presented it in a draft report, the county said this is not
25 politically feasible to implement. So I didn't put it in the

1 chart, but that could have a twenty to twenty-five million
2 dollar a year impact on revenue.

3 Q. Did you make any rate and rate design
4 recommendations, Mr. Young?

5 A. I made several. First of all, I said we really
6 needed to do an updated cost to service study to understand,
7 you know, where rates should be and how those rates are
8 allocated across the various customer classes. I recommended
9 that we needed to take a look at the rate design. We needed to
10 do what is called in the industry de-couple the rates. Right
11 now, the rates are primarily a volumetric charge. So as you
12 have wet years and dry years, the revenue goes up and down
13 because it is all based on volume. The best practices in the
14 industry are having a portion of your charge being fixed and a
15 portion being variable based on volume. That stabilizes your
16 revenue and allows the utility to operate much more
17 effectively.

18 I recommended that they needed to do a rate increase.
19 I recommended that the initial rate increase at a very high
20 level of analysis should be capped at around twenty-five
21 percent, but I also recommended, given the breakdown of
22 customers and the fact that approximately thirty thousand of
23 the residential customers within Jefferson County are at a
24 hundred and fifty percent of the poverty level or below, a low-
25 income assistance program should also be considered.

1 Q. What is a low-income assistance program, Mr. Young?

2 A. It's a program that helps those that may have
3 affordability issues with their rates, and it can help you in
4 many different ways. First, it can help subsidize your bill.
5 It can help you if you are in arrears with your bill to have a
6 payment structure to catch up. It can help you by educating
7 the public on maybe how you minimize water use. You know, low-
8 flow fixtures and showerheads, things like that, to reduce your
9 bill. It can also help people who are looking for these needs
10 and point them to other agencies in the community that can help
11 them with the affordability issue.

12 Q. All right, sir. Have you had any experience with
13 low-income programs prior to this?

14 A. I have put in low-income programs all across the
15 country.

16 Q. All right, sir. Did you make any operational
17 recommendations?

18 A. I made a number of operational recommendations,
19 several pages of operational recommendations. That's some of
20 them. I am going to go through them here at a very, very high
21 level.

22 Q. Sure.

23 A. You need to take a utility - and when you look at a
24 utility, especially a water/wastewater utility, and you want to
25 take a look at operational costs and effectiveness, you need to

1 take a look at the three or four large areas of spend. The
2 biggest spend on almost every water/wastewater utility is
3 labor. So we took a look at labor, and it was clear to us
4 that, especially at the treatment plants, there could be a
5 substantial reduction in the labor force and still maintain
6 environmental compliance.

7 And we took a look at the energy, which is the second
8 biggest spend, and recommended they do an energy audit because
9 there were opportunities to reduce that spend.

10 We took a look at chemicals and what we call treatment
11 process optimization, things that could be done there, and we
12 looked at consolidation of offices and laboratories and things
13 such as that. So there is a plethora of recommendations there
14 to reduce operating expenses.

15 But it wasn't all about saving operating costs. There
16 are several areas we recognized that they probably needed to
17 spend more and/or implement best practices to become more
18 effective because, you know, you need to continually not forget
19 the primary responsibility of a utility manager is not only to
20 take a look at the financial side of the business but protect
21 public health and the environment.

22 Q. Did you also notice that there was a capitalization
23 of labor policy or lack thereof in regard to the system? What
24 does that mean?

25 A. Yeah, I think it's absolutely essential when you do

1 audits of your system, financial audits of your system, to make
2 sure that you use best accounting practices. And when I went
3 there and I wanted to get my hands on a few of them, I asked
4 them specifically about capitalization and capitalization of
5 labor, which is a best practice, and they just didn't do that.
6 So there were several areas that we recommended them developing
7 policies - capitalization of labor, control of overtime spend,
8 and a number of areas.

9 Q. If you have a capitalization of labor policy, what
10 impact will that have on your operating revenues or operating
11 expenses, I am sorry?

12 A. A properly done capitalization will allow you to
13 capitalize some of your operating expenses, reducing your
14 operating budget. So, again, if you are looking at making your
15 operating budget lower, that's one of the things you do but,
16 you know, that's an accounting practice. In my mind it's not
17 optional; it is something you have to do.

18 Q. And were they doing it?

19 A. No.

20 THE COURT: Can I ask a question?

21 MR. CONNER: Yes, sir.

22 THE COURT: The capitalization effectively treats labor
23 for whatever purposes as a capital expense that's amortized
24 over a number of years. The problem is the cash flow side.
25 And so you can capitalize it and effectively, mathematically,

1 you would, all other factors remaining the same, increase net
2 revenues available for distribution. The problem is there is
3 no cash potentially.

4 THE WITNESS: Would you like me to address that?

5 THE COURT: Yes.

6 THE WITNESS: Okay. As I said, there are bond proceeds
7 resulting from the finances, and there was approximately, I
8 think at the time I came in, about two hundred and thirty
9 million dollars of bond proceeds sitting in various banks right
10 now.

11 THE COURT: So you were going to use bond proceeds to
12 effectively offset the -

13 THE WITNESS: Exactly.

14 THE COURT: All right.

15 BY MR. CONNER:

16 Q. So there would be a net increase in revenue?

17 A. The net sewer revenue number would go up because
18 there was bond proceeds available for the capital.

19 Q. Mr. Young, who was in charge of the Environmental
20 Services Department at the time of your special master's
21 report?

22 A. The people involved with operation of the department
23 - the person involved was Mr. Denard. The commissioner over
24 the department was Mr. Carns.

25 Q. All right, sir. And did the Environmental Services

1 Department, Mr. Denard and as well as others in the department
2 that you were dealing with in preparation for this special
3 master's report, agree with your recommendations?

4 A. They did. In fact, I reviewed the recommendations
5 with them before I issued the final report, and then I believe
6 this report actually became the foundation for a lot of the
7 testimony in the federal trial. And I think, if you read that
8 testimony, you will see that they did buy into these
9 recommendations.

10 Q. Mr. Young, at this point in time, in January of 2009,
11 was the ESD department, under the direction and supervision of
12 Mr. Denard, an effectively managed utility?

13 A. In my mind, no.

14 Q. What did you and Mr. Ames do after completion and
15 submission of your initial report as special masters?

16 A. We submitted the report and then we reviewed the
17 report and its recommendations with all of the parties and
18 then, at that point, we got much more actively involved in
19 overall settlement, working with the creditors and the county,
20 can we find a solution, a financial solution to the problem
21 before we actually went to trial in the federal courts.

22 Q. And what was your role in the negotiation process?

23 A. Well, in any of the financial models you develop, you
24 need to have several components. You need to have revenue
25 projections, operating costs projections, capital costs

1 projections, debt service projections. So I worked on those to
2 make sure we had the right input into the models. And then I
3 worked with both the county and the creditors trying to, you
4 know, facilitate some sort of agreement here. To put it very
5 simply, you needed to get to the point where the amount of
6 concessions provided by the creditors would cross the line with
7 the rate increases that the county was willing to do, and
8 somewhere in that area is where you have a solution and I was
9 trying to get there.

10 Q. Did the county at that point in time in the
11 negotiations you participated in indicate, or their lawyers
12 indicate, that they were willing to do a rate increase?

13 A. All I am comfortable in saying is that, through their
14 lawyers, there was some rate increases discussed. I don't know
15 for sure whether the county supported any of those rate
16 increases at the time, but the level was around three percent
17 that they were talking about, a three percent rate increase.

18 Q. As a maximum?

19 A. As a maximum.

20 Q. What level were the concessions at from the major
21 creditors?

22 A. Back then in 2008, I think we were about six hundred
23 million dollars worth of concessions. We were somewhere around
24 two point six billion dollars of debt.

25 Q. Obviously we are here today. You and Mr. Ames were

1 not successful in bringing the parties together and settle the
2 case; were you?

3 A. We were not and we went - you know, this went to the
4 federal trial.

5 Q. After the federal trial, and I think there is already
6 in evidence, it's stipulated what occurred, Judge Proctor, what
7 was his ruling?

8 MR. MAYS: Judge Proctor's ruling is the best evidence
9 of his ruling, Your Honor.

10 THE COURT: Sustained.

11 MR. CONNER: That's fine, Your Honor.

12 Q. What happened as a result of that ruling with respect
13 to your role as special master?

14 A. Not long after that ruling, Judge Proctor dismissed
15 us.

16 Q. Did you submit a final report with Mr. Ames?

17 A. We did.

18 Q. Would you pull up Exhibit C-57, just the first page
19 is fine. And what is the date that this was filed, Mr. Young?

20 A. The date it was filed was July 17, 2009.

21 Q. Okay. So from that point forward, did you do any
22 further work as special master?

23 A. No. I went back to my full-time job as chief
24 operating officer at American Water.

25 Q. Did you take a leave of absence while you were

1 working as special master from American Water?

2 A. I did not. I worked many long hours on both jobs.

3 Q. Mr. Young, did the county implement the
4 recommendations that you had made in your special master's
5 report from the submission of that report in January through
6 your dismissal as receiver - I am sorry - special master in
7 July 2009?

8 A. There were probably a couple of things that they did.
9 I know I worked with them a little bit on an overtime policy.
10 They actually implemented a program around unbilled sewer
11 customers, trying to identify those customers that were
12 receiving service but not getting billed. You know, I was not
13 working with them on a daily basis, so I can't address the
14 rest, but it appears that very little was done on the remaining
15 issues.

16 Q. Did they adopt any of your revenue enhancement
17 recommendations?

18 A. Well, they did, like I said, looked at unbilled
19 customers but they did not implement any of the fees, or
20 charges, or anything else that we put in. Certainly they
21 didn't recommend a rate increase.

22 Q. Mr. Young, what was your next contact with Jefferson
23 County?

24 A. Actually my next contact with Jefferson County didn't
25 occur until September of 2010. What had happened was Judge

1 Proctor said he didn't have jurisdiction, and this went down to
2 state court, and the trustee went to state court with the
3 county, and the trial was supposed to start the day after Labor
4 Day. I think that was the date. And I got a call during the
5 first day of the trial. I got contacted by both the county and
6 the trustee.

7 Q. And what did they ask you or tell you?

8 A. They asked me how quickly I could get to Birmingham,
9 that the judge in the state trial wanted to talk to me about
10 the issue of receivership.

11 Q. Did you comply and come to Birmingham?

12 A. I did. I came down and I met with Judge Johnson and
13 we talked for about an hour and a half on a number of issues,
14 some of them dealing with the receivership.

15 Q. Did you agree at that point in time, Mr. Young, to
16 serve as receiver?

17 A. I did not. In my conversations with the judge, he
18 said - and this is a time there were a number of attorneys down
19 there in his courtroom because they were planning for two weeks
20 of trial and the trial never occurred, but he basically said,
21 "We need a receiver down here, and I am going to appoint a
22 receiver. The only thing I think these two parties here agree
23 upon is that you ought to be the receiver. Do you want the
24 job?"

25 MR. MAYS: I object to that, Your Honor. For one

1 thing, it's hearsay. For another, it's irrelevant.

2 THE COURT: Sustained.

3 MR. CONNER: That's fine, Your Honor.

4 Q. Was it your understanding, Mr. Young, that you were
5 acceptable to both the county and the trustee to serve in the
6 role as receiver?

7 A. Yes, I was told I was.

8 MR. MAYS: The same objection, hearsay.

9 THE COURT: Sustained. You can tell me your
10 understanding but not the basis of it, which he has already
11 answered.

12 MR. CONNER: Thank you, Your Honor.

13 Q. What did you do, Mr. Young, before the order went
14 down on September 22nd?

15 A. Well, what I told the judge was, even though I wasn't
16 sure whether I wanted to be a receiver and I had a very nice
17 job as COO of American Water, I would stay down and help him
18 put together a receiver order that defined the duties and the
19 protections of the receiver. The protections were also
20 important because - I don't know if I can say this but, you
21 know, I asked the judge -

22 Q. Well, don't say what the judge said.

23 A. Okay.

24 Q. Was it your understanding there had been a lot of
25 litigation going on here and just about everybody had been

1 sued?

2 A. There had been a lot of litigation. I had spent a
3 lot of time with a lot of lawyers.

4 Q. All right, sir. Did you have an opportunity to meet
5 with what everyone assumed would be the incoming commission
6 prior to the entry of the receiver order?

7 A. I did. When I was working on the receiver's duties
8 and protections, you know, as we progressed and this felt like
9 something I might be interested in doing, it was very important
10 to me, before I took this job, because I wanted to come down
11 here and solve a problem, that -

12 Q. What was the problem?

13 A. The problem was we had an excessive sewer debt and a
14 utility that was failing because of that, and so I wanted to
15 turn around a utility, I wanted to turn around the compliance
16 issues, and I wanted to basically get us going down the road
17 here with an effectively managed utility that was out of debt.
18 This was kind of a black eye to the whole utility industry,
19 what was going on in Jefferson County.

20 But I knew that I couldn't unilaterally solve this
21 problem or a receiver could not unilaterally solve this
22 problem. So I had conversations with both the county and with
23 the creditor groups to see if they were committed to try to
24 solve the problem.

25 Q. Who did you meet with on the county side?

1 A. The county was kind enough to allow me to meet with
2 what we believed to be was going to be the incoming commission.
3 So I spent some time with them. As Mr. Carrington said, it was
4 very much a meet-and-greet, but I asked some pretty pointed
5 questions, were they committed to solve this problem, because
6 clearly the previous commission, in my opinion, was not.

7 Q. And what was the response you were given?

8 A. They were very positive. They said it was going to
9 be a new day in Jefferson County and they were going to work as
10 a team to try to solve the problem, and they convinced me that
11 they were committed.

12 Q. Was a receivership order ultimately entered?

13 A. Yes, it was, on September 22, I think, of 2010.

14 Q. All right. If you would, pull up Exhibit M-2,
15 please? Oh, it's already there. She is way ahead of me.

16 Is this the order, Mr. Young, that was entered?

17 A. Yes, it is.

18 Q. Mr. Young, can you just describe to the court the
19 process for developing this document that you participated in?

20 MR. MAYS: I am going to object to that, Your Honor, on
21 grounds of relevancy. The final product is the document. It's
22 like the parol evidence rule.

23 THE COURT: What's the relevance?

24 MR. CONNER: Your Honor, I would just let Mr. Young
25 testify as to the county's full involvement, with the trustee's

1 counsel, in drafting all of the terms and conditions of this
2 document.

3 MR. DARBY: Your Honor, that's not the case.

4 THE COURT: Bear with me. I mean, look, whatever may
5 have been discussed or not discussed is merged into the
6 document, and so it's really irrelevant at this point.

7 MR. CONNER: I understand your statements, Your Honor.
8 The only thing I would like to get into evidence is that the
9 county did participate in the drafting, their lawyers
10 participated extensively in the drafting of this order that was
11 submitted to Judge Johnson.

12 MR. MAYS: Your Honor, that's just testimony from the
13 lawyer and it's also not true. This document was drafted by
14 the creditors' lawyer. It has got their subscript on it, but
15 it is also not relevant. This is -

16 THE COURT: Who drafted the order is really irrelevant,
17 all right. The order is what it is. My belief is this was
18 probably drafted and reviewed by various lawyers before it was
19 signed by the judge, and I understand that.

20 MR. CONNER: Thank you, Your Honor.

21 THE COURT: I mean, I will give you an example. On the
22 first page or the second page, there is a discussion of the
23 pricing and elasticity of demand. I mean, was there actually
24 ever any evidence presented on pricing and elasticity of
25 demand?

1 MR. CONNER: That was written by Judge Johnson, that
2 paragraph.

3 THE COURT: Well, I understand, but was there any
4 evidence presented?

5 MR. CONNER: There was no evidence - well, there was no
6 trial, Your Honor, and I was not involved -

7 THE COURT: It could have been but no trial by way of
8 people there but was there ever any evidence put in on pricing
9 and elasticity of demand?

10 MR. CHILDS: Yes, sir.

11 THE COURT: And what was the evidence?

12 MR. CHILDS: The evidence included the three days of
13 testimony that Judge Proctor took in the federal case, which
14 was submitted to the judge, and there was discussion about -

15 THE COURT: Evidence submitted by whom?

16 MR. CHILDS: It was submitted by stipulation. The
17 parties stipulated that Judge Johnson could consider the
18 evidence that was in the federal court case, which included two
19 full evidentiary hearings that involved some testimony
20 regarding the effects of elasticity on rates and revenues.

21 THE COURT: But whose testimony was it?

22 MR. CHILDS: Do you mean who the witnesses were?

23 THE COURT: Uh-huh.

24 MR. CHILDS: I think the witnesses were Jefferson
25 County witnesses, I think. I can't remember exactly who talked

1 about elasticity but it was an issue that I am sure - these
2 transcripts are in the record of this proceeding. So we can go
3 back and look and see who testified about it.

4 There was also a fairly extensive discussion in the
5 consultant's reports that were before Judge Proctor and then
6 Judge Johnson regarding the impact of elasticity on raising
7 rates.

8 THE COURT: Let me ask Mr. Young a question, and if you
9 don't know, that's fine. Was the testimony based on price and
10 elasticity or elasticity with respect to sewer services, or was
11 there a consideration of something called cross-elasticity of
12 demand, if you know?

13 THE WITNESS: The only discussions that I had was
14 regarding to elasticity associated with higher sewer rates.

15 THE COURT: And no consideration of any cross-
16 elasticities?

17 THE WITNESS: No.

18 THE COURT: I mean, literally and in fairness, it's a
19 very complex issue on that pricing, and one of the things that
20 I will point out to you is the first sentence that says it's
21 not inelastic is contradicted by the immediately next sentence
22 in the order, if you know what inelasticity is.

23 MR. CONNER: I understand the concept, Your Honor.

24 THE COURT: And so how it got there and the discussions
25 leading up there, and that's my point, the judge put what he

1 put in the order whether it was supplied by himself or by other
2 parties, and what led up to it at this point really is merged
3 into the order.

4 MR. CONNER: That's fine, Your Honor. We will proceed.

5 Your Honor, just for planning purposes of my
6 examination, do you want to take lunch today or - I mean, we
7 can plow right on through. John and I eat -

8 THE COURT: How much more time do you think you need?

9 MR. CONNER: It's going to take a little while longer.

10 THE COURT: Is it a good breaking point?

11 MR. CONNER: Actually it probably is because I was
12 going to get into what specifically the order and what he does
13 under this order and his role, duties and responsibilities.

14 THE COURT: Any objections?

15 (No response.)

16 THE COURT: All right. A quick lunch, thirty minutes?

17 MR. CONNER: That will be fine, Your Honor.

18 MR. MAYS: Your Honor, may we request the court
19 instruct the witness not to be in conference with counsel
20 during the break?

21 THE COURT: The answer is, yeah, I was going to. Mr.
22 Young - just everybody hold on, don't go yet. What they have
23 requested and what I want to point out to you is you are still
24 under oath, you are on the stand, you are on direct
25 examination, and it is very important that you not discuss your

1 testimony while we are on break and not discuss with other
2 potential witnesses your testimony or their testimony. Mainly
3 because, when we come back, you may be asked whether you did
4 and then I will face an issue of whether your testimony gets
5 excluded, and we want to avoid that. All right.

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: Thank you.

8 MR. MAYS: What time will we resume?

9 THE COURT: We will make it 12:45, an extra ten minutes
10 or so.

11 (Recess from 12:06 p.m. until 12:46 p.m.)

12 THE COURT: Let's go forward.

13 MR. CONNER: Thank you, Your Honor.

14 THE COURT: Let me just double check. The people on
15 the court call, are you still there?

16 UNIDENTIFIED PERSON: Yes, sir.

17 THE COURT: All right. We are good to go, then.

18 MR. CONNER: Thank you, Your Honor. Go ahead, Chandra,
19 and pull up the order again, the receivership order. Again, we
20 are on Exhibit M-2 for the record, Your Honor.

21 BY MR. CONNER:

22 Q. Mr. Young, what degree of control over the system did
23 you require in order to accept the job as receiver?

24 A. Well, the only way I could do the job I needed to do
25 was to have total control of the assets, you know, of the

1 employees, of the bank accounts, basically total control, very
2 similar to the control that the county had over the system.

3 Q. Okay. And does that include - do you need control of
4 the revenues, as well?

5 A. Yes, revenues, expenses, capital programs, all
6 aspects of the utility.

7 Q. Including rate-making authority?

8 A. Correct.

9 Q. Mr. Young, if you would, I would like to go through
10 and just - I know it will be methodical, and I don't want you
11 to read the order. Obviously the court can read the order.
12 But I would like to go through and let's spend a little time
13 identifying what your specific powers, and authorities and
14 control consisted of or consist of as receiver.

15 MR. MAYS: I am going to object if it's just the order.

16 THE COURT: You don't need to. I have read it. If you
17 want to point out some things to me, that's fine.

18 MR. CONNER: Okay. I think we just dealt with most of
19 them in regard to his opening - or the first question, Your
20 Honor.

21 Q. Mr. Young, with respect to - let me ask this
22 question. What are you not authorized to do in this order with
23 respect to the system itself?

24 A. I am not allowed to sell or transfer assets.

25 Q. All right. Is the county permitted to sell or

1 transfer assets as long as you are receiver?

2 A. No.

3 Q. Why do you say that?

4 A. Because I have control of the assets.

5 Q. Very good. Mr. Young, with respect to -

6 THE COURT: I am going to take that as his opinion as
7 a non-lawyer.

8 MR. CONNER: Well, Your Honor, I don't think there was
9 an objection.

10 THE COURT: I am just telling you.

11 MR. CONNER: I understand.

12 Q. Mr. Young, let me ask you about the capital fund
13 again or how your capital would be funded in regard to the
14 spend that was being made when you became the receiver on
15 capital improvements, as well as what you ultimately are
16 recommending for the system to invest in. How is that
17 structured?

18 A. How is the - I need to understand the question. You
19 are asking me how the level of spend was or where the money was
20 -

21 Q. Where does the money come from?

22 A. Oh, okay. As I previously mentioned when the judge
23 asked me the question, there are bond proceeds that are
24 available from some of the refinancings that was done. There
25 is in excess of two hundred million dollars available to

1 withdraw from the capital program. So that's where it comes
2 from. It doesn't come out of operating expenses or free cash
3 flow because we don't have any free cash flow.

4 Q. And those funds are already there?

5 A. Those funds are there.

6 Q. Did the county have access to those funds just like
7 you have access to those funds for capital improvements?

8 A. Yes, they did.

9 Q. With respect to the capitalization of labor policy
10 that you recommended in the special master's report, do you
11 have an understanding as to whether or not the lack or failure
12 to capitalize labor was a violation of the indenture?

13 MR. MAYS: I object to form, Your Honor. That's a
14 legal conclusion.

15 THE COURT: Sustained.

16 MR. CONNER: Your Honor, I was asking his understanding
17 - if he had an understanding.

18 MR. MAYS: Then I object on relevancy grounds. His
19 understanding isn't relevant to these issues.

20 THE COURT: Sustained.

21 Q. Mr. Young, with respect to the employees, what is
22 your authority with respect to the employees?

23 A. My understanding is I have complete authority over
24 them subject to state law. I can hire and fire, transfer,
25 discipline employees.

1 Q. Is there such a thing as an appointing authority?

2 A. I am the appointing authority under the personnel
3 board, which is the way the county addresses those human
4 resource issues.

5 Q. Who was the, quote, appointing authority prior to you
6 becoming the receiver?

7 A. Prior to me becoming receiver, it was the
8 commissioner over the Environmental Services Department. So
9 that would have been Jim Carns was the appointing authority for
10 the employees within the Environmental Services Department.

11 Q. Did you immediately take over that role upon
12 appointment as receiver?

13 A. I did.

14 Q. Mr. Young, what I would like for you to do is to go
15 ahead and - well, let's go ahead and deal with another issue
16 with respect to the order. There is a provision in the order,
17 I believe, for you to pay allocated costs for services provided
18 by the county; is that correct?

19 A. Yes.

20 Q. And by the same token, that includes you paying for
21 the costs, the benefits, all costs associated with county
22 employees that provide services under your control at the ESD
23 Department?

24 A. Correct.

25 Q. So you pay for everything that you get from the

1 county; correct?

2 A. I pay for the services of the existing employees with
3 the Environmental Services Department, and I have an obligation
4 to pay for the shared services or the functional support
5 services that I get from the rest of the county, yes.

6 Q. Mr. Carrington testified this morning that you had
7 not paid the allocated costs to the Environmental Services
8 Department for those resources from the county since you have
9 been receiver. Do you remember that testimony?

10 A. I do.

11 Q. Do you have a response?

12 A. He is absolutely correct. When we were in the
13 process of defining the duties of the receiver, that was an
14 issue that was brought up, and the judge made it clear that,
15 you know, I needed to review those and get comfortable with
16 them before paying those allocated costs.

17 I requested that the county, prior to completing the
18 study - and they had an ongoing study that was going on - to
19 allow me to review and have input into the study. I did not.
20 They moved forward with the study. And ultimately I had a
21 meeting with the county, its consultant and other department
22 heads to review the outcome of that study.

23 Upon reviewing that, I had a number of questions and
24 concerns. The study itself was based on allocated costs based
25 on how the county was set up in 2008. And of course obviously

1 the Environmental Services Department management had changed
2 since 2008, and I expressed concerns that, you know, the
3 allocations really were not appropriate, and I asked a number
4 of questions. I never got a response to those questions.

5 Q. When did you ask those questions?

6 A. Those questions would have been asked in early -
7 earlier this year.

8 Q. Do you recall what you had objections to or what line
9 items you may have had objections to?

10 A. Well, one of the objections I had is I didn't think
11 there was enough detail to really do an adequate review of all
12 of the line items but I had a couple of line items I
13 specifically had questions about. For instance, they are
14 allocating to me the cost of the county commission office.
15 Prior to going under receivership, that office supervised the
16 Environmental Services Department. After receivership, they
17 did not. So it was clearly inappropriate to have those costs
18 allocated to me.

19 In 2008, there was a lot of time spent out of the
20 county attorney's office working on issues associated with the
21 Environmental Services Department. Now that I was receiver and
22 had my own counsel, obviously that would change. I am not
23 saying I wouldn't use the county attorney's office, but the
24 level of the services would change. So there was a number of
25 issues like that, that I kind of asked questions about and

1 challenged whether the numbers are right.

2 MR. CONNER: All right, sir. If you would pull up M-
3 132, please, just the first page. Your Honor, this document
4 has been stipulated as to both authenticity and admissibility.

5 Q. Mr. Young, if you would take a look at the first page
6 of this document, and you can look at others if you need it.
7 Is this the study, the full cost allocation plan for fiscal -
8 it says fiscal year 2008, I believe, dated December 17, 2010.
9 Is that the study that you were provided with initially by the
10 county?

11 A. Yeah, I think it was. I was supplied a document that
12 was defined to me as pretty much done, but I don't know if it
13 was the final copy. So I don't know whether this is the final
14 copy or the prior to final copy that I looked at.

15 Q. Is this the only copy you received?

16 A. It is.

17 Q. If you would, pull up C-37. Again, Mr. Young, this
18 is a document on the county's exhibit list, which has also been
19 admitted, and it appears to be the same plan, cost allocation
20 plan. There are some different - there is different writing on
21 it, of course, and there is a different date. What is the date
22 on that document?

23 A. The date is April 20, 2011.

24 Q. Do you ever recall receiving this document from the
25 county?

1 A. I do not recall receiving this document.

2 Q. All right. If you would, Mr. Young, would you take
3 a look at Exhibit C-36? Have you seen this document before?

4 A. I have.

5 Q. What is this document?

6 A. This was a spreadsheet that was prepared by Mr.
7 Hager, who was the - I think his title is financial director of
8 the county. Mr. Hager and I met probably a month or so ago and
9 discussed allocation costs and, as a result of our discussion,
10 this spreadsheet was produced.

11 Q. All right. Allocation costs with respect to the
12 county services that you would agree to pay as receiver?

13 A. The whole issue of - yes, what I should pay as the
14 Environmental Services Department for the county support
15 services, yes.

16 Q. Up until the time of that meeting with Mr. Hager, had
17 the county presented you with an invoice or any type of request
18 for payment of those services?

19 A. They had not.

20 Q. Prior to getting this spreadsheet from Mr. Hager,
21 what was the amount of cost that the county was attempting to
22 - or was set forth in the cost allocation study as being
23 attributable to the Environmental Services Department?

24 A. As I recall, the number was a little more than eight
25 million dollars a year.

1 Q. Now, when you met with Mr. Hager, why was it
2 important at that point in time for you to determine what the
3 number was or reach an agreement on the number?

4 A. We were in the process of developing both a term
5 sheet and the definitive settlement agreement, and I recognized
6 that we needed to address this issue in both of those
7 documents. So I actually went to Mr. Hager and said, listen,
8 we need to resolve this as quickly as possible.

9 Q. And what number is reflected or what did you and Mr.
10 Hager discuss as being appropriate under those conditions?

11 A. I am having trouble reading this sheet but, as I
12 recall, I think we came up with a number of around five point
13 three million dollars for 2010, something very similar to that
14 for 2011, and then moving forward in 2012, we came up with a
15 monthly charge. And then, as I began to drive efficiencies and
16 maybe shed some of the county services, we would have a
17 reduction in that monthly charge.

18 Q. And what was your agreement at that time going
19 forward in regard to those services as far as an amount?

20 MR. MAYS: Agreement with whom, please?

21 THE COURT: The objection is an agreement with whom.

22 MR. CONNER: Mr. Hager or discussions with Mr. Hager.

23 A. My understanding, in the context of this settlement
24 agreement discussions, we would move forward with the numbers
25 on this spreadsheet.

1 Q. Okay. With respect to 2012, what was the level of
2 allocation costs that you were prepared to pay?

3 A. As I recall, it was something in the neighborhood of
4 three hundred thousand dollars a month, plus some direct
5 charges from fleet management.

6 Q. All right. Now, what type of services were you being
7 provided by the county at that time and now?

8 A. I was being provided a number of services - human
9 resource services, county attorney services, HR services, fleet
10 management services, a number of functional support services.

11 Q. And I think you indicated, in driving efficiencies
12 going forward, you would do what in regard to reducing those
13 expenses?

14 A. Well, I mean, I think any good manager takes a look
15 at his costs, both his what I call core business cost, which is
16 running the operation of the utility, and the support services
17 and tries to drive those costs down, as well as drive the
18 performance and the efficiency up. So I was looking at both of
19 those and, you know, here's an example where the county
20 initially came to me with eight point three million dollars of
21 costs and ultimately we were hopefully going to resolve this
22 thing at about five point three. That's three million dollars
23 that the rate payers of the sewer system don't have to incur.

24 Q. Now, Mr. Young, that settlement did not go through.
25 We are aware of that; correct?

1 A. It did not.

2 Q. What is your position today in regard to this
3 spreadsheet?

4 A. Well, you know, we arrived at that five point three
5 in the context of we wanted to move quickly forward with the
6 settlement. Without a settlement, I need to get the
7 information I requested and do a deeper dive on this to protect
8 the rate payers on the sewer system.

9 Q. All right. Why does this have any impact on the rate
10 payers of the sewer system?

11 A. Because this, as I mentioned earlier, this is a part
12 of the full cost of service. The county is charging these to
13 the sewer system. Therefore, this goes into the rate analysis.
14 So the lower these costs are, the lower the overall sewer rates
15 are.

16 Q. All right, sir. Are there any items in particular
17 that, just from this spreadsheet, you would take issue with?

18 A. Well, I mean, I have already mentioned the issues
19 around the county attorney's office and the lawyer's office
20 but, I mean, I need to do a deeper dive in the areas of HR, for
21 instance. While I pay a significant amount for HR services, I
22 don't receive very much in actual services and, other areas, I
23 just need to get a better understanding. It was never provided
24 to me.

25 Q. Are any of these areas and services that are being

1 provided currently by the county capable of being provided by
2 independent third-parties, other companies?

3 A. Essentially all of the services. In fact, even the
4 physical building use, I certainly don't have to stay within
5 the county building, but all of these services can be
6 outsourced.

7 Q. And you are well familiar in your experience at
8 American Water in how to do that and the type of companies,
9 actually the companies that are in those areas?

10 MR. MAYS: Objection, leading.

11 THE COURT: Sustained.

12 A. I -

13 Q. There is no question pending.

14 THE COURT: You can rephrase it.

15 Q. With respect to the provision of those outside
16 services or outsourcing of those services, Mr. Young, where
17 would you go get them?

18 A. You can get them on the open market. In fact, I have
19 already put a request for a proposal on the street for some of
20 those services.

21 Q. Such as?

22 A. Fleet management, collection, things such as that.

23 Q. Mr. Young, would you also take a look at C-35? And
24 if you could blow up the indented portion, just the listing of
25 the amounts. Do you know what this is, Mr. Young?

1 A. I assume it's a resolution that was passed by the
2 county commission.

3 Q. Okay. I am sorry. Take that back down, Chandra.
4 What is the date on that resolution?

5 A. October 25, 2011.

6 Q. And is there a provision on that resolution in regard
7 to the charge of allocated services to the sewer department?

8 A. I am assuming what's designated as sanitary
9 operations is the Environmental Services Department and is
10 shown there as five point three million dollars.

11 Q. Did Mr. Hager, Mr. Carrington, Mr. Stephens, anyone
12 at the county send you this resolution or make you aware that
13 it was being passed by the county?

14 A. No.

15 Q. And until today and the testimony from Mr.
16 Carrington, had you ever been made aware that they were
17 contending that you had improperly failed to pay these amounts?

18 A. Mr. Carrington's testimony is the first time that I
19 ever heard that they had asked for these amounts to be paid.

20 Q. With respect, going back to the order -

21 THE COURT: Actually the question was whether you had
22 been or had reason to believe that they were contending that
23 they were improperly not paid, not that they weren't not paid.
24 And your response was basically with respect to them not
25 paying. The question was improper non-payment.

1 THE WITNESS: I am having a hard time hearing the
2 judge.

3 THE COURT: The question was improper non-payment, not
4 non-payment.

5 Q. Have they ever accused you of improperly failing to
6 pay county expenses?

7 A. No.

8 Q. By the same token, Mr. Young, the order itself has a
9 provision for objection to anything you do; correct?

10 A. Ask that question again.

11 Q. I will start back. Since the filing of the
12 receivership order and the control that you have taken over the
13 system, has the county ever gone to Judge Johnson, by motion,
14 either officially or unofficially, and complained about
15 anything you have done or have not done?

16 A. They have not.

17 Q. Have they filed any kind of objection to any
18 applications for payments that you have submitted for approval?

19 MR. MAYS: I object to that. Your Honor, it is
20 undisputed that that was a term of the term sheet that, up
21 until a couple of weeks ago, we thought was going to go
22 forward. So why would we have gone to Judge Johnson when it
23 was part of the term sheet?

24 MR. CONNER: That wasn't my question, Your Honor.

25 THE COURT: The answer is that wasn't the question and

1 you can do that on cross, but go ahead.

2 THE WITNESS: No, they have not objected to anything.

3 BY MR. CONNER:

4 Q. Mr. Young, what I would like to do is ask you how
5 invoices are approved, just physically approved and paid in the
6 Environmental Services area that you control.

7 A. Okay. Let me just briefly go through it. Every week
8 I receive a listing of invoices and vendors that have been
9 signed off by other people within the department, entities that
10 are not working directly for the receiver, and I review that,
11 ask questions regarding it, and ultimately sign off on it,
12 which allows it to then go through the process of getting paid.
13 All employees' direct expenses, what we call cash tickets,
14 outlay of individual employees, I sign all of those, as well.
15 And then anything dealing with direct expenses supporting the
16 receiver - an example, that would be some of the consultants
17 that I use, my legal expenses - I review those invoices. I
18 then send them to somebody in my department who makes sure that
19 the billing rates and the contractual terms are consistent with
20 the contract that has been signed. It then comes back to me in
21 a letter form. I approve the letter. I sent that to finance.
22 Finance puts it into financial systems and then ultimately it
23 goes to the treasurer for the check to be cut or the wire to be
24 made.

25 Q. Is the county authorized to pay any invoices whether

1 it is for your professional services or other operating
2 expenses of the county - of the sewer system - without your
3 authorization?

4 A. No.

5 Q. Mr. Young, the order provides that you control all
6 accounts, all funds. We have already established that. Did
7 the county withhold any assets of the system, funds of the
8 system, in what you viewed in violation of the order after your
9 appointment as receiver?

10 A. Yes, it did. When I went to get signatory control
11 over the bank accounts, they refused to give me that control.

12 Q. And what did you do in response to that?

13 A. Well, I actually had to spend some time and money on
14 doing some research on the issue. We had to file a motion with
15 the court to try to get access to those bank accounts, and we
16 actually had to go down to Phoenix City for a hearing to get
17 control of those accounts.

18 Q. And when we arrived at the hearing with Judge
19 Johnson, what did the county do in regard to the motion?

20 A. They agreed that they would transfer the accounts
21 within the next couple of days.

22 Q. All right. Did they do that?

23 A. They did.

24 Q. If you would pull up Exhibit M-5 please. Mr. Young,
25 is this the order that was entered by Judge Johnson in regard

1 to a turnover of those accounts, a signatory authority on those
2 accounts?

3 A. It is.

4 Q. Mr. Young, what I would like you to do now is - you
5 can take that down, Chandra. Let's go back to September 23,
6 2010, the day after your appointment by order as receiver. And
7 what I would like you to do is advise the court what you did in
8 taking operational control over the system.

9 A. Well, obviously I was walking into a responsibility
10 that really hadn't been done before, so there was really no
11 road map of how to do it. There were a couple of things that
12 I felt were important to address very early on. One was just
13 to try to get a feel for the culture that I was walking into
14 and the employees, where their heads were, what we could
15 actually accomplish. So I spent some time with the leadership
16 team. I spent some time with - had meetings with the
17 supervisory group just to try to get a feel for what the
18 culture was and, probably more importantly, what was going to
19 be easy to change, make more efficient, make more effective,
20 and what might take a little bit more time. There clearly were
21 challenges there. This group had been going through some tough
22 times. They had been under this consent order for a long time,
23 you know, fifteen years, and had some compliance issues and
24 were working toward resolving that, and obviously the
25 corruption issues, you know. The top three officials had been

1 taken out of the office in handcuffs. So there were some
2 concerns about that, as well.

3 So I knew I had to work a good bit on, you know,
4 building the morale of the group.

5 Q. What was the level of the morale at ESD when you took
6 over?

7 A. I would contend it was pretty low. I mean, at the
8 first supervisors meeting, you know, a couple of people
9 expressed, you know, given everything that went on, they were
10 kind of embarrassed to be county employees. And my response to
11 that was, well, from today on, we are going to call yourselves
12 utility professionals and we are going to give you the
13 resources and the training you need to become those utility
14 professionals.

15 Q. Who was in charge, who was on the supervisory team of
16 the system when you took over?

17 A. Mr. Denard was the head of it, and kind of the chief
18 operating officer was Mr. White.

19 Q. And how long had they been in those positions?

20 A. Several years.

21 Q. They were the same people that were in those
22 positions when you did your special master's report?

23 A. Correct.

24 Q. What did you find, Mr. Young, as far as the operation
25 was concerned?

1 A. Well, you know, the other thing when I came in is I
2 needed information. So I walked in and obviously I had done
3 this several times before with other utilities, and typically
4 the first four things you look for is financial information.
5 You ask for a balance sheet, a cash flow statement and an
6 income statement, and then you ask to read the business plan.
7 Unfortunately, because of the nature of the SAP financial
8 systems, none of the financial reports were available to me,
9 and they told me it would be very hard for me to pull them up.

10 Q. Who is they?

11 A. Both the operational group, as well as Mr. Hager.
12 And they had not done a long-term comprehensive business plan.

13 Q. Who was in charge of the financial group for the
14 county at that point in time that you were talking with?

15 A. Mr. Hager. So I knew that I had my work cut out for
16 me, both getting the financial records I needed and then
17 obviously developing the business plans that I needed,
18 addressing operational issues, capital issues, revenue
19 projections, things such as that.

20 Q. Okay. What did you do in that regard?

21 A. Well, we got to work on putting those plans together
22 because, without a plan, you don't really have a strategy
23 moving forward. So -

24 Q. Before you get to the plans, what other things did
25 you find that were inferior as far as operation of the utility

1 at that point in time?

2 A. Well, just a quick overview, I took a look at, for
3 instance, the staffing levels at the treatment plants. They
4 were very excessive. You know, we took a look at issues around
5 revenue and there was just a whole lot of questions. For
6 instance, one of the issues that I even presented in my special
7 master's report is throughout the year the system gets about a
8 hundred million dollars worth of revenue from Birmingham Water
9 Works. And I asked them has anybody ever checked that the
10 check we get in, or the wire transfer we get, is right. That's
11 our biggest source of revenue. Do we know that it's right?

12 Q. Would you explain again just how the billing works?
13 You don't do your own billing for ninety percent of your
14 accounts; correct?

15 A. That's correct. Eighty percent of our billing is
16 done by Birmingham Water Works. About ten percent of our
17 billing is done by Bessemer, and then another ten percent, we
18 do ourselves at the Environmental Services Department. So it's
19 important that all of that is accurate and we needed to make
20 sure that the checks we were getting in from Birmingham were
21 correct. So, you know, that was an issue on the revenue side.

22 They had done some good work on unbilled customers but
23 that program had kind of deteriorated and we needed to jump-
24 start that.

25 So, like I said, this was a utility that had not spent

1 any money on training since 2008. So they really did not have
2 exposure to best practices. So when it got into maintenance
3 practices, revenue enhancement practices, operational
4 practices, they were doing the best that they could but they
5 really didn't have the resources and training to follow what is
6 kind of standard operating practice within the industry.

7 Q. Would you include Mr. Denard in that category?

8 A. Yes.

9 Q. Mr. Young, what I would like to ask you is, very
10 simply, you knew there was a revenue shortfall. That's one of
11 the reasons there was a default. And when you came in as
12 special master, you had the authority to raise rates. Why
13 didn't you implement a rate increase right when you walked in
14 the door?

15 A. That's a question I have actually been asked by a
16 number of people, especially on the creditors' side. I have
17 been in this business for a long time and, at the end of the
18 day, your customers are the people that pay the bill. The
19 customers are the people that will be impacted by the rate
20 increase. I knew, one, that I needed to justify to the public
21 that any rate increase I put in was appropriate, and I knew
22 that I was going to get a lot of push-back on that from the
23 public, but also you need to prove to the public, as well as to
24 the creditors, that you are doing the best you can within the
25 utility. You need to get as efficient as possible. So you

1 need to put together these business plans to determine what
2 would the future operations cost. That all goes into the rate
3 analysis. You needed to do a determination of what a future
4 capital plan looked like. That needs to go into the rate
5 analysis. You have to take a look at additional revenue. That
6 needs to go. There are other sources of revenue besides rate.
7 You need to maximize all of those. So you have to answer all
8 of those questions before you can, in my mind, put in a
9 legitimate request for rates.

10 Q. Would you pull up the slide on effectively managed
11 utilities, Chandra, please? You discussed in the opening of
12 your testimony, Mr. Young, this effectively managed utilities
13 concept and the work that you did with EPA. Does this slide -
14 and it's Exhibit C-51, I believe, Your Honor, from that
15 presentation. Explain what this slide represents.

16 A. Well, the group of us who put together this book got
17 together and said we need to define the ten most important
18 attributes of an effectively managed utility, and these are the
19 ten items that we came up with, that every utility ought to
20 focus on these.

21 Now, you will notice on the slide that we have them in
22 a circle at the bottom, and the reason that we put them in a
23 circle is because the priority of each one of these is not
24 going to be the same for every utility. You need to determine
25 what your challenges are and where your problems are, but at

1 some point along the road you need to address all of these.
2 And I used this as the foundation for assessing the utility,
3 what were we doing and what were we not doing.

4 Q. What were they not doing, Mr. Young, in regard to this
5 template?

6 A. Unfortunately there was a lot on here that was not
7 being done. There was a focus on product quality, which goes
8 directly to the consent order. Of course, we weren't doing a
9 very good job, given the nature of the overflows, so there was
10 a focus on that, and there was a focus on operational issues.
11 Not so much optimizing them but obviously running the
12 facilities. But there was very little focus at all on customer
13 satisfaction. This was not a customer focused utility.
14 Obviously they had stopped spending money on employee
15 development. There was no effective performance management
16 system to drive performance within the utility. They were
17 totally, completely underspending on the capital side. So when
18 you look at issues like infrastructure stability, they had a
19 system that was in very, very poor shape and didn't have a plan
20 to get it where they needed to.

21 And then issues regarding the community and
22 stakeholder involvement, there was almost no communication with
23 their customers and with their investors. In fact, I was
24 surprised to find there was nobody in the entire utility
25 responsible for communications.

1 Q. You mean, they have no customer service department?

2 A. They have a customer - they have people who answer the
3 phone but we didn't have a program in place to proactively go
4 out into the community, which is why I have spent a significant
5 amount of my time writing articles for the newspaper, getting
6 in front of community groups to tell people what we were
7 actually doing.

8 Q. All right, sir. How did you begin to address the
9 issues that you saw?

10 A. Well, what we did is - what I did is, you know, as I
11 said, started focusing on putting these plans together. I
12 recognized the culture there, we couldn't change too much too
13 quickly and be successful.

14 The change management issue of this turnaround of the
15 utility was going to be a challenge. So we selected some low
16 hanging fruit, as I call it, to work on to change. For
17 instance, there needed to be a reduction in staff. There was
18 no question about that. You know, I looked at that and that
19 was a no-brainer and I had been in many utilities that had
20 gotten done with fewer people.

21 Q. What was the level of staffing, approximate level at
22 the time you took office?

23 A. Somewhere around four hundred and fifty people but,
24 specifically, I was focused on the treatment plants. For
25 instance, we had two treatment plants, they are two largest

1 plants that had staffs of fifty, fifty-five, sixty people
2 working at those facilities, and I looked at it very quickly
3 and it was obvious that we could get that staffing down to the
4 twenties.

5 I worked with the management there and they basically
6 said we know we can reduce the staff but, you know, they had
7 never seen plants this large being operated any differently.
8 So I agreed to bring in resources to sit down and work with the
9 operating staff for three weeks to determine where we could
10 actually get on staffing levels of these facilities.

11 The same thing on the maintenance. You know, they had
12 very much of a break/fix approach on maintenance. Something
13 ran, it broke, you fixed it. That's not the way you maintain
14 things most effectively, and we changed that, as well, and I
15 brought in an expert to help their maintenance staff and gave
16 the people the training they needed.

17 So that is just one aspect of it.

18 Q. And what company did you bring in?

19 A. I brought in the company that I used to work for,
20 American Water, one individual on the operations side and one
21 individual on the maintenance side.

22 Q. Did you also have American Water perform a customer
23 demand study?

24 A. We did. The other issue we had is we didn't have a
25 good feel for our revenue. As I mentioned early on in the

1 special master's report, there is a decline in per capita water
2 use every year. I needed to define that specifically for
3 Jefferson County. But, on top of that, there are more
4 abandoned houses in downtown Birmingham every year than there
5 are new homes in the suburbs. So we actually had a declining
6 customer base. I needed to define that, as well.

7 Again, you need to know what your revenue stream is
8 without rate increases so you can determine how high the rate
9 increases need to be to cover the debt service, what is your
10 starting point, and that is what we were trying to define.

11 Q. Now in your special master's report, you had also
12 recommended that they manage vacancies and labor and that was
13 an opportunity, as you viewed it, from the expense side. Had
14 they, in fact, reduced the staffing level at the department
15 since the special master's report before you got there?

16 A. What they had done, and I give them credit for this,
17 they at least recognized the positions that weren't filled
18 weren't needed. So the number of positions that they were
19 budgeting for had been decreased but there had not been a
20 reduction in overall staff. And my job was to actually get
21 more efficient by the actual reduction of staff.

22 Q. Got you. What other professionals did you engage, Mr.
23 Young, and just give us a brief description on what you asked
24 them to do?

25 A. Okay. Well, we brought in a financial modeler to help

1 us once we got the input we needed from the operating plans and
2 the capital plans. Citibank came in and did some modeling
3 around the bond refinancing. They came in and actually their
4 services were at no cost to me. They are one of the leading
5 financial advisors in the muni bond market.

6 Q. How did you manage that?

7 A. They had been actively involved even prior to me
8 coming on board and obviously they wanted a solution to this
9 problem because of the impact it could potentially have on the
10 municipal bond market.

11 After that, once we had a debt service schedule coming
12 out of Citi, we then engaged Black and Veatch to work on rate
13 design and so they worked -

14 Q. Who is Black and Veatch?

15 A. Black and Veatch is a nationally recognized
16 consultant. One of the reasons I picked them is, one, I had
17 worked with them before on a rate design and, two, they had
18 credibility in the New York markets and I knew ultimately we
19 wanted to refinance this debt, so I wanted to take an engineer
20 to market who had name recognition.

21 So they came in and did not only a cost to service
22 study to see how much more revenue we needed but also how you
23 allocate those costs among the various customer groups.

24 We also brought in (indiscernible) Energy, which is a
25 non-profit group. They only charged us eight thousand dollars

1 to help put together a low-income program. We brought in
2 Industrial Economics, who we talked about earlier on, who did
3 a financial impact assessment on rate increases. And I brought
4 in a company called SAIC, who had previously been working for
5 the county with Birmingham Water Works' billing data to do that
6 audit that I talked about of the Birmingham Water Works' bill,
7 as well as work on unbilled sewer customer issues.

8 And I think the final consultant I brought in was an
9 individual from Utility Performance who I needed to come in and
10 manage a number of the projects in the areas that the sewer
11 system really didn't have expertise. For instance, developing
12 policies and procedures around certain customer service issues,
13 leak adjustment policies.

14 Q. You mean Mr. Denard couldn't do that?

15 A. Well, they had a policy in place and it clearly wasn't
16 anything close to what best practices in the industry were. So
17 I needed to bring somebody in who actually understood what the
18 best practices were. Write RFPs to out source of fleet and
19 collections. Work on the unbilled customer issues.

20 You know, one of the things that we needed to get in
21 place that had never been in place is we needed to have
22 contracts with all of the agencies that did water billing for
23 us. Well, first of all, the best way to get your sewer bill
24 paid, if it is not being paid, is to shut off the water. You
25 can't shut off the sewer. And so we needed the agreements in

1 place that allowed us, if the sewer bill wasn't being paid, to
2 get the water shut off, and that is common practices all over
3 the country.

4 Q. And that wasn't being done in this department?

5 A. Not universally across all of it because, understand,
6 we are not the water purveyor; we are the wastewater purveyor.
7 So contractually we needed to get agreements with the water
8 purveyors to do that.

9 Secondly, similar to what I was trying to do with
10 Birmingham Water Works, we wanted to be able to go in on an
11 annual basis and audit the water bills because the water bills
12 influence the sewer. So those are the types of things that
13 just had not been done but are good operating practices to do.

14 Q. Let's take the Birmingham water contract. There had
15 been a contract in place with respect to Birmingham water,
16 hadn't there?

17 A. Yes, there had.

18 Q. What, if anything, did you learn from the SAIC
19 analysis or review with respect to that contract?

20 A. We found a number of things. First of all, there were
21 certain customers that had been misclassified between
22 residential and nonresidential.

23 Q. What impact does that have?

24 A. Well, the residential class, in general, they pay
25 eighty-five percent of their bill, of the water use.

1 Commercial class pays a hundred percent of their bill. In
2 other words, the water use on the residential side, you
3 multiply times point eight-five; on the commercial side, you
4 multiply it times one and that is what the bill is based on.
5 So that was important.

6 Q. So did you have, then, commercial customers being
7 charged - classified as residential?

8 A. To some extent, yes. Probably the most disturbing
9 part was in the contract it talks about how you handle partial
10 payments to bills, and basically what it says, if there is a
11 partial payment to a bill, it gets allocated proportionally
12 across the bill. The practice that was being implemented by
13 Birmingham Water Works is they would take a partial payment and
14 initially put it all against the water bill.

15 And then they have another issue with respect to
16 credits. If Birmingham Water Works gives a customer a thirty
17 dollar credit on their bill because there is a leak in the
18 toilet, or something like that, and you owe thirty dollars on
19 the sewer, they would just credit the sewer the thirty dollars
20 and we would never see the thirty dollars.

21 So there is a number of issues that we needed to
22 address to make sure that we are getting all of the revenue
23 that we needed to get. And, like I said, that was one of the
24 recommendations I made all the way back at the special master's
25 report and we are now getting the information in.

1 But, again, this is the low-hanging fruit. There's a
2 lot of other stuff that needs to be done in the future.

3 Q. Okay. What was the status of the collection operation
4 or the method of collecting your bad debts?

5 A. Well, one of the questions I asked when I got there
6 was can you show me the metrics that tell me the effectiveness
7 of your collection agency. For example -

8 Q. Who did you ask that question?

9 A. I asked that question to the management team in the
10 ESD, to multiple people, and the question they asked, "Well,
11 what do you mean by that?" And I said, "Well, what does it
12 cost us to collect a dollar, the dollar that we have been
13 trying to get from somebody? Does it cost us a nickel? Does
14 it cost us a dime? Does it cost us a dollar?" And nobody
15 could figure it out. The records were so poor and the vendor
16 we were using could not provide us the information, as well.
17 And so we really don't have any idea what our collection
18 effectiveness is. And so that led me to believe that we need
19 to get somebody else in here to work the collections, and we
20 started to prepare a request proposal to do that.

21 Q. So that is something that is in the works but it has
22 not been done yet?

23 A. That is in the works.

24 Q. With respect to the initiative, I think that was
25 started under a pilot program after your special master report,

1 that did find unbilled accounts, did you find that that program
2 was still in place when you arrived or had it been
3 discontinued?

4 A. It essentially had been discontinued. In fact, they
5 had been piling up records within the customer service
6 department on some things that they needed to go and do field
7 verification of. I have to admit, the Environmental Services
8 Department did a really good job coming out of the special
9 master's report. They found over three million dollars worth
10 of revenue from customers that had not been paying.
11 Unfortunately they only went back a year to collect past
12 revenues.

13 Q. You mean, they didn't go back six?

14 A. No. They could have gone back a whole lot more but
15 they only went back a year. That was disappointing.

16 MR. MAYS: I object to that, Your Honor. That calls
17 for a legal conclusion. There are legal issues in that whole
18 thing. This man is not a lawyer but that calls for a legal
19 conclusion, how far back they could go.

20 THE COURT: Well, I don't know that he satisfied your
21 particular point but the answer was already out before you
22 objected.

23 Q. Proceed, Mr. Young.

24 A. But that program that they had implemented had really
25 just shut down and we needed to jumpstart it. That is

1 something that you need to do almost on a continuous basis.
2 And so one of the things that I asked SAIC and Utility
3 Performance to look at is let's put together a program to - a
4 sustainable program around unbilled customers to make sure
5 that, again, we don't bill the existing customers more than we
6 should because we have people out there who aren't paying for
7 service.

8 Q. And has that program been developed and is it ready to
9 be implemented?

10 A. No, we are still in the process of developing that
11 program.

12 Q. Have you received any pushback from Mr. Denard on that
13 program?

14 THE COURT: Can I just interrupt for a second? I mean,
15 what is the scope of the unbilled customers? What is the
16 scope? I mean, how many -

17 THE WITNESS: How would you do it, in other words?

18 THE COURT: No, no. How many unbilled customers are
19 there?

20 THE WITNESS: If I knew that answer. That's the
21 problem, you don't know. They found three hundred in probably
22 four months back in 2008. That resulted in about three million
23 dollars worth of revenue.

24 THE COURT: So they were mostly industrial users?

25 THE WITNESS: There were a number of large - they were

1 large, what we call nonresidential, yeah. Hospitals, things
2 such as that. I mean, that is the question. There could be
3 very few or there could be very many. We just don't know.

4 THE COURT: I am sorry. Mr. Conner, go ahead.

5 BY MR. CONNER:

6 Q. Is Mr. Denard giving you any pushback in regard to
7 that program?

8 A. No. I think we all agree we need to do that program.
9 There has been some very deep discussions on what is the best
10 way to attack it, and that is why the program hasn't been
11 implemented. We are still trying to figure out how best to use
12 the resources and, in fact, maybe how many additional resources
13 we need to do to implement the program.

14 Q. All right. Are there any other initiatives, Mr.
15 Young, that you have either in process or plan to implement?

16 A. That is a pretty big question. I mean, we have a lot
17 of things in process and there is a lot of things we haven't
18 even touched yet. The biggest of which is probably what is
19 referred to as asset management. As I said earlier on, the
20 condition of this system, the condition of the buried pipe, the
21 buried infrastructure, is in very, very poor condition. Sixty
22 percent of the water that we treat through our wastewater
23 treatment plants comes from leakage into the pipes. That's
24 double what, you know, most sewer systems have and, again, this
25 is after spending two and a half billion dollars to improve the

1 system.

2 Q. Does that have an impact on your chemical cost, your
3 utility cost?

4 A. It has an impact on power, chemicals, the overall
5 operation of the facility, as well as cost of that operation.
6 So we are putting in an asset management program of which the
7 first job or task is to actually identify the condition of the
8 assets. You can't begin to prioritize how you do your work
9 until you figure out not only what the condition of the assets
10 are but what is the risk to the system and the customer if
11 there is a failure of that asset. So that is the first task
12 and then, secondly, you determine where do you spend money to
13 get the best bang for your bucks. And then, finally, since we
14 know it is going to result in a very large capital program, how
15 do you actually deliver those projects and build - and that
16 program will take multiple years to implement.

17 We have gotten request for proposals in from a number
18 of engineers. We have short-listed it. We are down to one.
19 We are in negotiations with that one engineer right now to work
20 through this multi-year project.

21 Q. Will that be the first time that you will have a true
22 understanding of exactly the condition of the collection
23 system?

24 A. Well, we do right now televise portions of the system,
25 and so we have spots of the system that we understand, but this

1 is the first time this will be done on a comprehensive basis,
2 so you can actually prioritize where to best spend your money.

3 Q. Okay. Any other areas that you see that you need to
4 proceed in the future?

5 A. Yes. I mean, we touched the surface on the staffing
6 at the treatment facilities. We have not gotten into staffing
7 in our field crews. We have not gotten into staffing within
8 the administrative offices. We clearly need to do an
9 assessment of all of the support services and determine whether
10 we stay with county services or outsource those services, and
11 that is just simply on the operating side.

12 There's a number of things that we need to do on the
13 revenue side, as well. Remember, rates is not the only way
14 that you increase revenue. You know, you get at unbilled
15 customers, you change policies, you know, on how you collect,
16 leak adjustment policies, things such as that. So there are a
17 lot of things that we need to do with that, as well.

18 Q. Mr. Young, one of the things that you recommended in
19 your special master's report that we talked about was the
20 policy on capitalizing labor. Was that in place when you took
21 office?

22 A. It was not.

23 Q. Is it now?

24 A. It is. Starting with fiscal year 2011, we actually
25 have all of the employees that work on capital type projects

1 fill out a time sheet, and then we use that time sheet to
2 determine how much should go towards capitalized labor.

3 Q. Did the county have any type of time sheets, time
4 clocks, anything along those lines?

5 A. No, and that caused a real problem with the allocation
6 studies. If they actually had time sheets that we could
7 actually document how the support services were being used, the
8 allocation study would have been a whole lot easier to do.

9 Q. Okay. Mr. Young, what type of financial system do you
10 operate with at this time?

11 A. The county works on an SAP financial system.

12 Q. Has that improved at all while you have been there?

13 A. I guess my answer is I don't know. Like I said
14 earlier on, I asked to get a cash flow statement, balance
15 sheet, and an income statement. After I was there for a couple
16 of months, we did come up with a report, a standard report,
17 which is somewhat close to an income statement that I could use
18 to submit to the court. I have an obligation to submit to
19 Judge Johnson every month a financial receiver report. So I do
20 now get somebody sending me every month a quasi-income
21 statement but I really can't do a deep dive underneath the
22 numbers very well right now.

23 Q. And have you submitted monthly reports to Judge
24 Johnson as part of your role as receiver in regard to those
25 financial reports?

1 A. Yes, those reports are this financial statement that
2 I get from the county financial department with a brief
3 explanation of why there is movement on the various line items.

4 Q. With respect to year-end 2011, what were the, if you
5 can recall just generally, the financial results in regard to
6 revenue and expense?

7 A. I think year-end 2011, we were about around a hundred
8 and sixty-one million dollars in our operating revenue and
9 somewhere around fifty-eight, fifty-nine million on our
10 operating cost.

11 Q. With respect to the revenue, did revenues go up or
12 down from 2010?

13 A. The revenues went up.

14 Q. By what amount, do you recall?

15 A. It was about three or four million dollars.

16 Q. Mr. Young, you have told us a number of things. Is
17 there any type of performance measure for employees,
18 performance management system for employees? Do you know what
19 I am referring to?

20 A. I do, and this is one of the things that I really need
21 to implement going down the road. Under the merit system,
22 there is an employee evaluation that's mandated to be done.
23 There is not much to it, let's just put it that way, to be
24 kind, but there is no metrics, there's no incentives. There is
25 nothing that you can really use to drive performance and, if

1 you are going to have a high-performing utility, people need to
2 understand specifically what they need to get done and have
3 metrics to measure that, and that's a system that we really
4 need to put in if we are going to move to the next level within
5 the Environmental Services Department.

6 Q. At some point in time, Mr. Young, you are putting all
7 of this together, do you have one document that is, in effect,
8 your business plan?

9 A. I mean, we did submit the interim receiver report and,
10 within the interim receiver report, we have our operating and
11 maintenance plan, our capital plan, our revenue projections.
12 So I would contend that that is our business plan moving
13 forward.

14 Q. If you would, pull up Exhibit M-4. Mr. Young, is this
15 document that has been admitted represent the interim report
16 that was submitted?

17 A. It is.

18 Q. Your Honor, at this time I just want to make sure that
19 we direct your attention as far as exhibits are concerned. We
20 are not going to go through every one of them but, Mr. Young,
21 M-4 also had twenty-five exhibits in the appendix attached to
22 it, as well, correct?

23 A. It did.

24 Q. What's included in that collection?

25 A. Well, it's a number of the reference documents that we

1 used to support some of our statements within the interim
2 receiver report, consultant's reports that have been done prior
3 to me getting there.

4 Q. Is the cost of service study there?

5 A. The cost of service study is there; the operating
6 plans are there; the various consultant reports - all of the
7 consultant reports that were done for me are in that document.

8 Q. And does it also include consulting reports from other
9 consultants that the county had hired over the years?

10 A. It does. BE&K is an example of one.

11 MR. CONNER: Your Honor, unless you want me to, I am
12 not going to run through each of those. They are all in the
13 record, as far as identifying them. It is up to you, though.

14 THE COURT: Any particular aspects that you want me to
15 look at, in particular?

16 MR. CONNER: Well, I think they are all important from
17 the standpoint of what Mr. Young has done. I wanted to make
18 sure - and I will be glad to go through each page.

19 THE COURT: I mean, if you are using it for purposes of
20 what he has done, that's fine.

21 MR. CONNER: Okay. That is what it is, Your Honor, and
22 really to support his testimony that he has given today as to
23 some of the things that need to be corrected in the system and
24 plans going forward, as well as some of the historical
25 documents that were relied upon.

1 BY MR. CONNER:

2 Q. Mr. Young, one of the things that was done in this
3 report, there was a significant section at the very beginning
4 on the history of the system. Why did you put that in the
5 report?

6 A. Well, when assessing what you need to do moving
7 forward, it is very important that you understand what has
8 happened in the past. And frankly this problem did not start
9 in 1996 with the consent order; it started well before that
10 with an underfunded system. And I felt it was important that
11 that be identified to not only help me in my work but the
12 public needed to understand that, as well, and I knew this was
13 going to become a public document.

14 Q. All right. Can you give us just a broad summary of
15 your findings in the interim report?

16 A. I will try to be very quick on this. We presented the
17 - first of all, we talked about the history and I think I have
18 gone through the history here, and there is probably no reason
19 to repeat that. Then we talked about what I had done as the
20 receiver in putting together the various plans. And ultimately
21 what we talked about is and how we get revenue increase. So
22 what came out of the study, and I think what was the focus of
23 everyone in the study, was the proposed twenty-five percent
24 rate increase, but there was a lot of work done supporting that
25 twenty-five percent rate increase.

1 Q. Again, just a brief summary of that work?

2 A. Well, we actually looked at five or six things to
3 support the twenty-five percent rate increase, and I think just
4 pointing out a couple of them, the important ones, there had
5 always been the concern in the public that the higher rates
6 were being driven by the 2002/2003 refinancing of the debt.
7 And so we did an analysis going back and saying, well, what
8 would happen if we had never done the auction rate swaps in
9 2002 and 2003 and had continued to finance the improvements
10 with just conventional fixed rate debt, where would the rates
11 be today. And the analysis showed that they would be thirty-
12 two percent higher than they are today. So clearly I felt that
13 helped support a twenty-five percent rate increase.

14 We looked at, across the country, what was the typical
15 rate increase that occurred in wastewater systems over the past
16 five or six years. That was about six percent a year. They
17 had not done a rate increase in Jefferson County in four years.
18 Again, very supporting the twenty-five percent rate increase.

19 A number of other things we looked at. One of the
20 last things we looked at is we had the consulting firm that
21 does the financial impact around combined sewer overflows for
22 EPA, Industrial Economics, and said retrospectively look at
23 Jefferson County, even after a twenty-five percent rate
24 increase, you know, what is the financial impact of this system
25 as EPA would look at it. And they determined that the

1 financial impact, even after the twenty-five percent rate
2 increase, was still on the low end of the median range and
3 rates could be raised substantially more after that.

4 We also looked at the definition of rates under
5 Alabama law, which says it should be sufficient to cover
6 operating costs, you know, debt service and the capital
7 program.

8 So we thought we put together a very rigorous support
9 of the initial twenty-five percent rate increase.

10 Q. If you would, pull up C-32. Mr. Young, did you
11 prepare a PowerPoint presentation to be presented to the county
12 commission, as well as the public, to summarize the findings in
13 your interim report?

14 A. I did prepare this document. It is a PowerPoint
15 presentation. I never presented it to the entire commission
16 but I did present it to Commissioners Carrington, Stephens and
17 their legal team.

18 Q. What was the response from Commissioners Carrington
19 and Stephens from that presentation during the meeting?

20 A. There were no comments and there were no questions.

21 MR. CONNER: Your Honor, this has also been admitted as
22 an exhibit.

23 Q. Mr. Young, we won't run through the slide
24 presentation, but did you also present this to the public, as
25 well?

1 A. Portions of it to the public, yeah.

2 Q. Mr. Young, I think you indicated earlier you needed to
3 speak with your stakeholders and inform the public and that had
4 not been done in the past in this system. What have you done
5 in that regard in your role as receiver?

6 A. Well, I have tried to get the word out. As I put it,
7 I have tried to get the hard truths out, to let the public know
8 what actually was occurring. You know, speaking to Leadership
9 Birmingham. I went with Commissioner Carrington and spoke to
10 the leadership at Vestavia Hills. I spoke to the Rotaract
11 group. I spoke to Kiwanis. I have spoken to other
12 professional organizations in town. I have written editorials
13 in the newspaper. I have written series in the newspaper. I
14 have met with the editorial board. Again, I have tried to be
15 as transparent as possible to let the public and the
16 stakeholders know what was happening.

17 Q. As well, have you gone out of state to make
18 presentations?

19 A. I have. I mean, one of the things I have been told,
20 because the plans was to refinance this debt ultimately, is
21 that we had to change the image of Jefferson County not only
22 within Jefferson County but, probably more importantly, around
23 the rest of the industry because ultimately we needed to go to
24 New York and refinance this debt and have meetings with
25 potential investors. So I started that process. I have spoken

1 at a couple of industry functions. I have spoken to analysts
2 and investors in New York, again trying to tell them the good
3 story down here in Jefferson County. They all knew about the
4 corruption. They all knew about the inefficiencies, but I am
5 trying to tell them that it is a new day in Jefferson County
6 and we are turning this thing around.

7 Q. All right, sir. Mr. Young, after the submission of
8 your interim report, did you get sued?

9 A. I had multiple people protest my proposed twenty-five
10 percent rate increase.

11 Q. All right. Well, as far as the - do you recall the
12 motions to, quote, intervene into the receivership action had
13 been filed to contest a rate increase that had not even been
14 approved yet, is that correct?

15 A. There is a process to put the rates in. I -

16 Q. What is that process, Mr. Young?

17 A. I submitted my interim receiver report, talked to all
18 of the stakeholders about that report, talked to the judge
19 about the report, and then filed for a public hearing. I think
20 it was scheduled for June 29. And then after that, I will take
21 what comes out of the public hearing, make a decision on where
22 rates needed to be, and then I actually implement the rate
23 increase.

24 Q. Now, Mr. Young, is there any regulatory authority or
25 commission that you have to present or receive permission from

1 in order to increase rates?

2 THE COURT: Don't even go there. It's a legal
3 conclusion.

4 MR. CONNER: Very good.

5 Q. What happened, though, after - why didn't the rate
6 increase go into effect, Mr. Young?

7 A. Well, it was several days before my public hearing and
8 I got a call from the finance director from the state telling
9 me that they would like me to hold off on my rate increase. He
10 told me that there were rumblings of bankruptcy within the
11 county and, you know, the state would like to get involved and
12 see if they could help solve the problem.

13 Q. And what happened after that?

14 A. I got -

15 THE COURT: Mr. Mays, I understand it's hearsay.

16 MR. MAYS: Yes.

17 A. What happened after that is I was actually pretty
18 excited because we had been trying to get the state involved
19 for quite some time. I recognized that, if we could get the
20 state involved and provide some sort of guarantee behind -

21 MR. MAYS: I object to the rambling narrative. The
22 question was what happened after that, not how excited Mr.
23 Young was.

24 THE COURT: Sustained. You need to be more specific
25 about your questioning.

1 Q. Mr. Young, what happened in regard to the state's
2 entrée into the scene?

3 A. I agreed to enter into a standstill agreement and then
4 work with the state, both the finance director and the attorney
5 general, to see how we could get them engaged in the process to
6 drive value to the process.

7 Q. What did you agree to do in the standstill agreement?

8 A. What I agreed to do was hold off on any rate increase.
9 I agreed to pay the attorney fees of the county as they were
10 applicable to helping with the overall settlement, working on
11 legislation associated with what was needed in the overall
12 settlement and a number of other things.

13 Q. All right. Who was working on the legislation, which
14 law firm?

15 A. I think it was Balch and Bingham.

16 Q. And what is the other firm that was retained by the
17 County that you ultimately received bills from?

18 A. The other firm is typically Bradley Arant.

19 Q. Okay. Mr. Young, with respect to the attorney's fees
20 that you did receive, how would you receive - or the attorney's
21 statements from the county in conjunction with that standstill
22 agreement that you had agreed to pay, who sent those to you and
23 what was the process for approval?

24 A. Typically I would get a folder from Mr. Sewell.

25 THE COURT: Do I really need to know the process? Mr.

1 Conner, do I really need to know the process?

2 MR. CONNER: It's relevant, Your Honor.

3 THE COURT: All right.

4 THE WITNESS: I would get a stack of invoices from Mr.
5 Sewell for my review.

6 Q. And upon your review of those invoices, Mr. Young,
7 were there ever any objections that you raised to those
8 invoices?

9 A. Yes. I mean, if you go through - I had to go through
10 those line item by line item and, you know, frequently there
11 were items there that just weren't appropriate and weren't
12 applicable to what I agreed to in the settlement agreement.

13 Q. Give us an example, Mr. Young.

14 A. Working on bankruptcy issues. You know, they were not
15 directly related to an overall settlement.

16 Q. Well, that would be kind of counter to the settlement;
17 wouldn't it?

18 A. Exactly.

19 Q. Were there other instances that you reviewed the bills
20 - other examples of things that weren't appropriately tied to
21 the settlement?

22 A. Research -

23 MR. MAYS: I am going to object on relevancy grounds,
24 Your Honor. I really don't see the relevancy of all of this.

25 THE COURT: I have given you a little leeway here but,

1 I mean, tell me -

2 MR. CONNER: This is the last question, Your Honor, on
3 this line.

4 THE COURT: What's the relevance?

5 MR. CONNER: Your Honor, I think the relevance is that
6 for what they are -

7 THE COURT: For what I am dealing with.

8 MR. CONNER: From what you are dealing with, we think,
9 Your Honor, is whether or not Mr. Young will stay in place or
10 whether the fox will be in charge of the hen house again if the
11 county gets involved.

12 THE COURT: I think it is a little attenuated. It
13 really is. I mean, you know, I see thousands of fee
14 applications that unfortunately I have to deal with and, yeah,
15 there are things that occur but, unless it is something of some
16 significant dollar value, I just think it is really too
17 attenuated.

18 MR. CONNER: We will proceed, Your Honor. Thank you.

19 BY MR. CONNER:

20 Q. Mr. Young, what percentage of your time was devoted to
21 working in regard to facilitating this settlement that
22 ultimately failed?

23 A. Well, I think you kind of have to divide it into two
24 groups. You know, up until the submittal of the interim
25 receiver report, I spent almost all of my time working on the

1 business plan and the initiatives to drive efficiencies and
2 revenue enhancements within the utility. Once the interim
3 receiver report was submitted and once the state got involved,
4 I probably spent over fifty percent of my time from that point
5 on trying to facilitate an overall settlement between the
6 county and its creditors.

7 MR. CONNER: Your Honor, I don't intend to go into the
8 settlement agreement. There was an issue raised by Mr.
9 Carrington with regard to the rates issue, and I would like to
10 discuss that with Mr. Young if that is appropriate.

11 THE COURT: Ask your question and then we will see.

12 MR. CONNER: Thank you.

13 BY MR. CONNER:

14 Q. Mr. Young, Mr. Carrington indicated that they are
15 fully or that - I am not going to try to paraphrase his
16 testimony, but that the county commission is willing to
17 increase rates in conjunction with this bankruptcy that has
18 been filed. Do you recall that testimony?

19 A. I do.

20 Q. And the basis - you heard the basis he gave you for
21 that testimony. What is your view in regard to that based on
22 the communications that you have had with Mr. Carrington and
23 the other commissioners?

24 MR. MAYS: I object to that question. First of all, it
25 is an unintelligible question but, secondly, what is your view

1 based on your communications, I don't think that is a proper
2 question.

3 MR. CONNER: What is his understanding, Your Honor.

4 THE COURT: You are going to have to simplify the
5 question because I didn't understand it.

6 MR. CONNER: Okay. I will try. I will go back.

7 BY MR. CONNER:

8 Q. Mr. Young, you were deeply involved in the back and
9 forth between the county and the creditors in regard to the
10 settlement; weren't you?

11 A. I was.

12 Q. And in regard to the rates, what was your
13 understanding that the county was contemplating or agreed to do
14 with respect to the term sheet?

15 MR. MAYS: I object. There is no foundation. At what
16 time and what point, you know.

17 MR. CONNER: September 14 term sheet.

18 THE COURT: Does it matter?

19 MR. CONNER: I think it does, Your Honor.

20 THE COURT: In what way?

21 MR. CONNER: Well, I need to get the testimony out
22 first.

23 MR. MAYS: I object, Your Honor. I mean, if you can't
24 state the basis for the relevancy, I think that in and of
25 itself shows it's not relevant.

1 MR. CONNER: Your Honor, the basis for the relevancy is
2 we would like to present to the court the actual rate increase
3 that the receiver was intending to implement should the
4 settlement have proceeded.

5 MR. MAYS: Well, I object to that on the basis of
6 settlement, you know, negotiations are not admissible. The
7 fact -

8 THE COURT: Let me tell you the import I take of Mr.
9 Carrington's testimony.

10 MR. CONNER: That's fair, Your Honor.

11 THE COURT: The import is that they were willing
12 potentially to do a little over eight percent a year for a
13 three-year period and then a little over three percent for
14 maybe an infinite time period beyond that, and they had
15 problems with twenty-five percent a year. Now that is the
16 import that I take from his testimony, all right.

17 MR. CONNER: I understand that, Your Honor, and I agree
18 with you. On its face, that is what it says but -

19 THE COURT: I mean, not that that is what the deal was
20 because there wasn't any deal and the fact that - what the
21 terms of the settlement may or may not have been, or an aborted
22 settlement in this case, or a nonexistent one. I don't know
23 which it is. It really is not admissible; is it?

24 MR. CONNER: Well, I think it goes to the credibility
25 of Mr. Carrington, Your Honor, concerning what level of rate

1 increase would have actually gone into place had this
2 settlement proceeded, and they rejected it.

3 THE COURT: Why don't you just ask him what his
4 position was with respect to the amount of the rate increase
5 that needed to go in place for what time periods?

6 BY MR. CONNER:

7 Q. Mr. Young, what was your position and what were you
8 prepared to do in regard to implementation of rates consistent
9 with the settlement agreement going forward?

10 THE COURT: No, I didn't say consistent. I just said
11 what his position was regarding the rate increases that were
12 required under his analysis for the respective years that may
13 be involved.

14 MR. MAYS: And I object, Your Honor, because that was
15 part of settlement negotiations.

16 THE COURT: No, no, I didn't say what any agreement on
17 the settlement was, just his view of what was required
18 independent of any settlement or anything else.

19 MR. CONNER: Well, let me ask that question, Your
20 Honor.

21 BY MR. CONNER:

22 Q. Mr. Young, disregard the settlement. At this time,
23 you are still the receiver. You are faced with presenting a
24 rate increase at some point in time in the future. What will
25 you do in regard to that under these circumstances going

1 forward?

2 MR. MAYS: I need to know what these circumstances are
3 going forward now, Your Honor.

4 MR. CONNER: The existing circumstances as receiver
5 today, Your Honor.

6 THE COURT: Let me ask the question. Mr. Young - I
7 mean, we can dance around it but, look, if you know the Rules
8 of Evidence, you can get almost anything into evidence. It may
9 have limited utilization theoretically but you can get it in.
10 So let's not dance around this one.

11 Mr. Young, do you currently have a position with
12 respect to a rate increase or rate increases that are necessary
13 with respect to the sewer system?

14 THE WITNESS: That's a very difficult question to
15 answer. It gets to what are the assumptions behind the rate
16 increase.

17 THE COURT: Well, the question is whether you have
18 formulated a position with respect to, initially, whether they
19 are necessary. Now, the answer to that, I think your testimony
20 already is yes. And the next question is, if you have with
21 respect to a rate increase, what is the necessary rate increase
22 going forward, if you do it by year or by multiple years?

23 THE WITNESS: Well, I presented what the proposed rate
24 increase would be without the state's moral obligation - I
25 mean, with the state's - without the state's moral obligation,

1 you know, that would be something in the twenty, twenty-five
2 percent rate increase dependent upon the concession level. If
3 we are able to keep the state moral obligation, if we are able
4 to keep the concession levels where they are today, what I was
5 proposing through a revised cost of service analysis was a six
6 and a half percent rate increase for the residential and non-
7 residential customer classes, and then a substantial rate
8 increase for some of the other fees we have around septage,
9 grease and others that would exceed actually over a hundred
10 percent to bring those rates to actual cost of service.

11 So that is what has come out of my most recent rate
12 analysis, but that assumes the state moral obligation stays in
13 place and assumes that we have approximately one billion
14 dollars of concessions from the creditors.

15 THE COURT: And I take it, it assumes a refinancing?

16 THE WITNESS: It assumes a refinancing because I
17 believe, based on my discussions with the creditors, to retain
18 the billion dollars worth of concessions, I will need to do a
19 refinancing.

20 MR. CONNER: Your Honor, I would like to direct your
21 attention just to the monthly - I meant to do this earlier, the
22 monthly financial system - monthly financial reports of system
23 operations that Mr. Young has filed are County Exhibit Nos. 3,
24 4, 5, 6, 7, 8, 9, 10, and just direct your attention to those
25 because those do reflect the financial operations during the

1 period of time that Mr. Young has been receiver.

2 BY MR. CONNER:

3 Q. Mr. Young, what I would like to do now is -

4 THE COURT: And the particular purpose that you want me
5 to look at those is?

6 MR. CONNER: Your Honor, there are several issues that
7 may be raised and have been raised concerning the level of
8 revenue for 2011 and expense, and so those are accurately
9 reflected in those reports.

10 THE COURT: All right.

11 MR. CONNER: And also explanations for the changes
12 month by month.

13 BY MR. CONNER:

14 Q. Mr. Young, I am sure Mr. Mays is going to get up here
15 and say you have done a great job. With respect to - well, I
16 think he may on some things anyway. But this receiver's report
17 that you have done, and it has operation plans in it, capital
18 plans in it, things of that nature. If you have got the play
19 book, why are you necessary going forward?

20 A. Well, I think there are a number of reasons that I am
21 necessary or somebody in my role is necessary. I talked about,
22 you know, when I first came in the plans that I put together,
23 I talked about the issue of changed management, and I talked
24 about low-hanging fruit. What we have right now is a plan. In
25 that plan is some of that low-hanging fruit around operating

1 staff and maintenance procedures and some revenue enhancements
2 and some other things, as well. Unfortunately that's the easy
3 part because now you have to implement, and that's where the
4 hard part is. That's where you need people with experience who
5 have done this before. And we concede frankly there are many,
6 many consultants' reports sitting on the shelf in the
7 Environmental Services Department that have recommendations of
8 which none of them have ever been implemented, and one of the
9 reasons for that is it's hard. You need to know what you are
10 doing, and you need to have the support, you know, of everybody
11 to do it. I think you need expertise for that, and there's
12 many things in the plans that we are implementing that the
13 Environmental Services Department hasn't done before.

14 Secondly, the plan that we put together is a multi-
15 year plan and, if you notice, the actual operating cost savings
16 that occur, the majority of them start occurring in years
17 three, four and five. Okay. So this is a long plan. A
18 utility - the decisions you make in a utility today, that pipe
19 you put in the ground today, that's going to be there for a
20 hundred years. This is a slow-moving business. I talk about
21 an ocean liner, trying to turn it around. So we need to
22 implement the plan we have and then we need to continue to
23 enhance that plan. Again, you need to do change somewhat
24 slowly. You can't load everybody with everything at once. And
25 then you need to implement the second phase. So this is a long

1 process to get to where we ultimately need to get to.

2 Q. Is there anyone at the Environmental Services
3 Department that has the financial skills or even the complete
4 skill set to fully implement the effectively managed utility
5 standards that you have been testifying about today?

6 A. I have not seen anybody there.

7 Q. Mr. Young, Mr. Carrington on a number of occasions I
8 his testimony, their plan apparently is for the new county - I
9 am not sure what - county manager, the new county manager to
10 supervise Mr. Denard. Have you had a chance to meet with the
11 county manager?

12 A. I had one brief meeting with Tony.

13 Q. Did you offer to give the county manager any
14 information with regard to the sewer system?

15 A. What I really offered to do was kind of give him an
16 update of the whole interim receiver report and where we were
17 on the rates and the settlement agreement.

18 Q. Did he take you up on the offer?

19 A. Not really.

20 Q. When you say not really -

21 A. No.

22 Q. With respect to Mr. Denard - and I have asked a few
23 questions. I am not going to repeat all of these questions.
24 I think it was in regard to who was in charge when you made
25 your ultimate reports and when you came on board. Is Mr.

1 Denard in your opinion qualified to do your job?

2 A. No.

3 Q. Why?

4 A. And there's a number of reasons for that. I mean, I
5 talked about effective utility management before and the ten
6 attributes. You know, when I came to the Environmental
7 Services Department and he was focused on some product quality
8 issues and, you know, keeping the lights on and some
9 operational issues and all of that, but managing a large
10 utility is much like managing any large business. You need to
11 look at the financial side, which basically there was almost no
12 focus on the financial side. You need to take a look at your
13 customers, your stakeholders. You need to take a look at
14 employee development. I mean, we now have people going to
15 training courses around maintenance and other things, which was
16 just never happening.

17 You need to take a look at performance management.
18 You need to drive performance to turn this thing around. That
19 just wasn't happening.

20 Q. You have made, I am sure in your career at American
21 Water, you have supervised many people in this type of
22 capacity; is that correct?

23 A. That's correct.

24 Q. Let's just assume you were at American Water today
25 and you had a system - let's take Tennessee American, it's a

1 single system in Tennessee that American owns today, and that
2 president's role or the chief operating officer for that
3 facility and that asset was open and Mr. Denard applied for
4 that position, what would happen to his application?

5 MR. MAYS: I object, Your Honor. Speculation.

6 THE COURT: It's sustained. It's a hypothetical.

7 MR. CONNER: Okay. I think he has testified
8 sufficiently in regard to that, Your Honor.

9 THE COURT: I think he has said that he is not
10 qualified.

11 MR. CONNER: Yep. Your Honor, may I check with my co-
12 counsel?

13 THE COURT: Sure. Do you need a couple of minutes?

14 MR. CONNER: If you don't mind.

15 THE COURT: We will take about a five-minute break.

16 (Recess from 2:06 p.m. until 2:11 p.m.)

17 BY MR. CONNER:

18 Q. A couple of things, Mr. Young, that my assistants
19 back here reminded me that I needed to ask. It shouldn't take
20 but a minute.

21 With respect to the PowerPoint presentation on the
22 interim report, do you recall also not presenting it on a
23 PowerPoint format but providing the PowerPoint and going
24 through it with Commissioners Knight, Brown and Bowman?

25 A. I did.

1 Q. With respect to -

2 MR. CONNER: And again, Your Honor, I am not going to
3 get into the individual line items at all.

4 Q. To the extent, Mr. Young, you can recall from your
5 recollection of the Bradley Arant invoices, in particular -

6 A. I need to change that last answer. I don't recall
7 necessarily going through it with Commissioner Bowman.

8 Q. Okay. Fair enough. Do you recall the total amount
9 of attorney's fees that you have been presented with - you may
10 not have paid them all - from Bradley Arant in 2011?

11 MR. MAYS: Objection, relevancy.

12 THE COURT: It kind of comes back to what I excluded
13 already. So tell me what we are doing.

14 MR. CONNER: Your Honor, I think - I guess I am
15 anticipating a little bit the cross-examination in regard to
16 receivership expenses. And part of the expenses -

17 THE COURT: Well, why don't you wait until redirect?

18 MR. CONNER: Fair enough, Your Honor.

19 BY MR. CONNER:

20 Q. Mr. Young, Mr. Carrington said that you represent the
21 creditors. Do you take issue with that?

22 A. Absolutely.

23 Q. Why?

24 A. I am not an agent of the county. I am not an agent
25 of the creditors. I represent the interests of the system, and

1 of the public and of the court.

2 Q. With respect to the duties and the control that you
3 have that's presented in detail in the receiver order, Mr.
4 Young, if any of those duties are removed or any of that
5 authority is removed, what is -

6 THE COURT: We are not here on removal of anything.
7 What we are here really is on what the impact of the automatic
8 stay is. There is absolutely nothing in front of me asking me
9 to remove or take away any authority of Mr. Young.

10 MR. CONNER: I guess the question was related, Your
11 Honor, to what extent, if you are making a ruling in regard to
12 the automatic stay, how that may apply to his authority.

13 THE COURT: That's a fair question but you didn't ask
14 that.

15 MR. CONNER: I will try to rephrase, Your Honor.

16 BY MR. CONNER:

17 Q. Mr. Young, with respect to the position - and I am
18 not asking you to take a legal position. To the extent that
19 the county is correct and the automatic stay applies to
20 prohibit you from exercising your authority under the
21 receivership order, what impact will that have in regard to the
22 system?

23 A. Well, I couldn't tell you the specific impact unless
24 I knew what the specific duties that were taken away, but I
25 will say that, you know, we are implementing a comprehensive

1 business plan that touches assets, that touches employees, that
2 touches every aspect of the system. So obviously it would be
3 difficult to fully implement that plan.

4 Q. Okay. Mr. Young, you testified that much of your
5 responsibilities and your duties, your activities as receiver
6 have included, within the last four to five months anyway, a
7 significant amount of time facilitating a settlement; correct?

8 A. Correct.

9 Q. When I asked you if you thought Mr. Denard was
10 qualified to take your job, were you including the facilitation
11 of settlement negotiations with that or simply operation and
12 management of the system?

13 A. I think I did answer that question more from a
14 perspective of operating the largest wastewater system in
15 Alabama.

16 MR. CONNER: Thank you, Your Honor. No further
17 questions.

18 THE COURT: Any cross?

19 MR. MAYS: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. MAYS:

22 Q. Mr. Young, my name is Joe Mays, and I am one of the
23 lawyers for Jefferson County in this proceeding. You and I
24 have met before.

25 A. We have.

1 Q. I want to ask you a number of questions about things
2 you have testified about, and I will try and be as clear as I
3 can but, if you don't understand any of my questions or if I
4 don't do a good job of asking them, you let me know and I will
5 try to do better, and I am sure His Honor will do the same.

6 You testified about the report that you submitted as
7 special master when you were appointed, you and John Ames were
8 appointed as special masters by Judge Proctor. Do you recall
9 that?

10 A. I do.

11 Q. And that report was submitted, I believe, on February
12 10, 2009, although it may have been prepared a month or so
13 earlier; is that right?

14 A. Subject to check, I believe those dates are about
15 right.

16 Q. Yes, sir, and that's Exhibit C-13, Your Honor. It's
17 in evidence. You said you had about six weeks, I believe, to
18 prepare it and so, in your words, it was on a pretty high
19 level; is that right?

20 A. That's correct.

21 Q. But it contained certain recommendations and findings
22 that both you and Mr. Ames had made based on interviews with
23 county personnel and other work that you did?

24 A. I think it was probably entirely my work associated
25 with it, not Mr. Ames.

1 Q. Okay. And you found the county personnel to be
2 cooperative and forthcoming in their interviews with you and
3 they gave you the information you needed to prepare that
4 report; correct?

5 A. They gave me the information that's in that report,
6 yes.

7 Q. Yeah. I mean, they didn't hold back or refuse to
8 cooperate with you; did they?

9 A. They did not, and I think I stated that earlier on.

10 Q. You talked about some of the recommendations you made
11 but I want to ask you about what's not in that report. Nowhere
12 in that report of the special master did you say I found
13 widespread fraud in the way the money was handled; did you?

14 A. No.

15 Q. And nowhere in there did you say I found corruption
16 in the way the county officials are diverting money that's due
17 to creditors and the bond creditors and applying it to other
18 purposes; did you?

19 A. No, but I didn't look at that.

20 Q. Well, if you had found it or found any evidence of
21 it, you would have reported that in your report; wouldn't you?

22 A. I am sure I would have.

23 Q. Because that's part of your job. In fact, you
24 mentioned that one of Mr. Ames' job was to look for fraud and
25 corruption; right?

1 A. That was Mr. Ames' job, that's correct.

2 Q. And as far as you know, Mr. Ames never found any
3 fraud and corruption in Jefferson County either; did he?

4 A. I was not aware of that, no.

5 Q. And he would have told you if he had; wouldn't he?

6 A. I certainly hope so.

7 Q. Okay. Well, then, time passed and you were appointed
8 receiver by Judge Johnson?

9 A. Correct.

10 Q. And you were appointed receiver in September 2010, as
11 I recall; is that right, maybe September 20th?

12 A. September 22nd.

13 Q. And you issued an interim receiver's report after
14 several months on the job. When did that interim receiver's
15 report come out?

16 A. Sometime in June.

17 Q. So you had been there, in place, eight or nine months
18 by then?

19 A. Yes.

20 Q. And unlike the special master's report where you were
21 kind of on the outside looking in and reporting at a high
22 level, when you issued the receiver's interim report, you
23 issued that from inside looking around; right?

24 A. Yes.

25 Q. And you had opportunity to see how the county ran its

1 Environmental Services Department from the inside?

2 A. Yes.

3 Q. And you had opportunity to see how the finances were
4 handled by the county?

5 A. Yes.

6 Q. Now, again, nowhere in that interim report as
7 receiver, issued after you had been on the job nine months, do
8 you say I have found widespread fraud and financial corruption
9 the way Jefferson County handles its money; did you?

10 A. No.

11 Q. And nowhere in there did you say Jefferson County is
12 stealing money that belongs to the bond creditors; did you?

13 A. No.

14 Q. And nowhere in there did you say Jefferson County is
15 improperly diverting money that belongs to the creditors or not
16 paying the creditors what they are due; that's not in that
17 report, is it?

18 A. Well, you know, you take a look at things like
19 capitalization policies, it is.

20 Q. Okay. That's an accounting issue, but I am talking
21 about theft, fraud and corruption.

22 A. Well, I mean, capitalization policies against a
23 general - GAAP principle.

24 Q. If you had found what you considered to be violations
25 of the law, you would have reported it to the authorities;

1 wouldn't you?

2 A. I would have, yes.

3 Q. And you didn't find that; did you?

4 A. I did not.

5 Q. All right. You made some recommendations in the
6 special master's report for things that ought to be done
7 better, such as identifying people that weren't paying their
8 bills and billing them and getting them to pay their bills?

9 A. Correct.

10 Q. And by the time you got on the ground as receiver,
11 some of those recommendations had been implemented; hadn't
12 they?

13 A. On the revenue side, that was the one recommendation
14 they had worked on although they didn't have an ongoing program
15 in that area.

16 Q. But they had already identified, I think you said a
17 hundred customers?

18 A. More than that, yeah.

19 Q. And had recovered three million dollars as a result
20 of that?

21 A. Exactly.

22 Q. Okay. Now, I want to talk a little bit about David
23 Denard. When you were special master, David Denard was the
24 person in charge of the Environmental Services Department?

25 A. Correct.

1 Q. You worked with him and had an opportunity to observe
2 him?

3 A. And I continue to work with him.

4 Q. You know he is a professional person who tries to do
5 a good job?

6 A. He certainly does.

7 Q. When you were receiver, you had the authority to hire
8 and fire?

9 A. That's correct.

10 Q. And you could have fired anybody you wanted to,
11 according to your earlier testimony?

12 A. Yes, I could have.

13 Q. Subject to personnel board rules and so forth. And,
14 by the way, you know David Denard is a merit employee under the
15 personnel board?

16 A. I fully understand that.

17 Q. You have taken no steps at all to fire, or demote, or
18 remove David Denard; have you?

19 A. I have not.

20 Q. He was in charge of the department when you got there
21 and he is still in charge of the department today; correct?

22 A. Well, I would claim that I am responsible for the
23 system today.

24 Q. I understand that, but he is working under you. He
25 is the head or director of Environmental Services; right?

1 A. That's correct.

2 Q. And you know, by the way, that before you got on
3 board, David Denard and his department had won certain awards
4 from industry groups for the way the Environmental Services
5 Department was being operated; correct?

6 A. I don't think that's correct.

7 Q. You don't think he has won awards?

8 A. He has won awards but not on the way that it was
9 being operated. The awards that I saw - and there may be other
10 awards that I didn't see - had to deal with environmental
11 compliance at some of the treatment plants.

12 Q. Well, isn't that the -

13 MR. CONNER: Your Honor, I am going to object. If Mr.
14 Mays has awards he is going to question my witness about, I
15 would like for him to be presented with those documents.

16 THE COURT: Why? Let me tell you, I tell people all
17 the time, you can use a lot of documents and they never have to
18 be put into evidence. It depends on how you use them.

19 MR. CONNER: Well, I think he has just testified, Your
20 Honor, he doesn't know what awards he is referring to.

21 THE COURT: I got that, and so -

22 MR. CONNER: Thank you.

23 THE COURT: Go ahead, Mr. Mays.

24 BY MR. MAYS:

25 Q. Well, you are aware that there are awards for

1 environmental compliance?

2 A. Sure.

3 Q. And that's part of the operations of the department;
4 isn't it?

5 A. That is a part of it, yes.

6 Q. It is an important part; isn't it?

7 A. It's one of the important parts, yes.

8 Q. It is one of the things you have to do, is comply
9 with the consent decree?

10 A. You do, but those awards were not around complying
11 with the consent decree.

12 Q. You also have to comply with the Clean Water Act?

13 A. That's correct.

14 Q. And other environmental laws?

15 A. That's correct.

16 Q. Well, speaking of the consent decree, the consent
17 decree was entered in 1996; right?

18 A. Right.

19 Q. Jefferson County sewer system is divided into what
20 engineers call basins; is that right?

21 A. That's correct.

22 Q. Explain to the court generally what a basin is.

23 A. A basin is pretty much based on geography. Most
24 sewage flows downhill unless you are pumping it. Sometimes you
25 have to pump it. And kind of the way -

1 THE COURT: Let me tell you my understanding of what
2 the basin is and maybe short-circuit it. It's basically the
3 way the water flow flows and the way the sewer is flowing -

4 THE WITNESS: Where it's ultimately collected and
5 treated and then returned to the river, and there's basins
6 based on geography, topography and things such as that.

7 THE COURT: Which would avoid potential pumping up
8 rather than going down.

9 BY MR. MAYS:

10 Q. And we basically have one treatment plant for each of
11 the basins?

12 A. In general, yes.

13 Q. And how many basins are there?

14 A. Nine.

15 Q. How many basins have been released from the consent
16 decree by the Environmental Protection Agency?

17 A. I think over the fifteen years we have gotten, I
18 think, four basins out of it.

19 Q. And were all four of those released before you came
20 on board?

21 A. They have been.

22 Q. Have any been released since you came on board?

23 A. They have not.

24 Q. And so they were released under Mr. Denard's
25 supervision and control when the department was under his

1 control?

2 A. I am not sure of the timing of all of that. I don't
3 know whether Mr. Denard was in control for all four of those
4 releases but most of them have been done under Mr. Denard's
5 control.

6 Q. After the county declared bankruptcy, you published
7 an op-ed piece in the *Birmingham News*. I believe it was on
8 Sunday, November 13th of this year. Do you recall that?

9 A. I believe I do.

10 Q. And in that you were critical of the decision to file
11 bankruptcy and said some things along that line?

12 A. I did.

13 Q. But you concluded with these words:

14 "Regardless of the commission's decision, the proud
15 men and women who work for the Environmental Services
16 Department will continue to do a professional job of
17 serving our customers and working toward being as
18 efficient as possible."

19 Are those your words?

20 A. They are exactly my words.

21 Q. You meant it; didn't you?

22 A. I meant it from my heart.

23 Q. And the proud men and women of the Environmental
24 Services Department that you were saluting here are David
25 Denard and the people that work for him; correct?

1 A. And I think they will continue to work hard.

2 Q. Now, I don't want to be flippant but, when a sewer
3 overflows in the middle of the night in Ensley, it's not John
4 Young or John Young, LLC, that gets in a truck and drives down
5 there and works to clear the blockage and restore sanitary
6 conditions in the sewer; is it?

7 A. It is not. It is the hardworking people of the
8 Environmental Services Department that do that.

9 Q. Right. Under the direction of their supervisors and
10 ultimately under the direction of David Denard?

11 A. Absolutely.

12 Q. You talked in response to one of Mr. Conner's
13 questions about why you needed to stay in place - I am
14 paraphrasing that - because you have got these long-range plans
15 that's going to take years to implement. Do you recall that
16 testimony?

17 A. I did.

18 Q. Now, on a different note - I am not asking about what
19 you can contribute over five years to implementing these plans
20 that have been put in place. The real question is, during the
21 pendency of this bankruptcy, can the collateral of the
22 creditors be preserved and is there any reason at all to
23 believe that that collateral is going to be wasted or
24 squandered because you are there or you are not there?

25 MR. CONNER: Objection, Your Honor. I think the issue

1 here is maybe what collateral the debtor actually has control
2 of with regard to this proceeding.

3 THE COURT: I am going to sustain the objection but
4 it's based on a different issue. I would like for you to
5 bifurcate or trifurcate your question. You have got a couple
6 of questions in the question. And then we will take up the
7 objections.

8 MR. MAYS: Well, maybe I can ask a different question.

9 BY MR. MAYS:

10 Q. You talked about all of your roles, and I realize
11 they involve making speeches, and going to New York, and
12 talking to creditors, and talking to industry groups and all.
13 How much of your time do you spend doing that?

14 A. Doing what?

15 Q. What I just said. Going to New York, making
16 speeches, writing op-ed articles, talking to industry groups,
17 talking to Leadership Birmingham, negotiating settlements.

18 A. Well, negotiating settlements was a large period of
19 my time. The rest was pretty minor.

20 Q. When you are doing that, the Environmental Services
21 Department goes on its way doing what it does; doesn't it?
22 Treating sewage and -

23 A. It certainly does.

24 Q. Okay. Even when you are doing all of these other
25 activities?

1 A. Right, because we have laid a plan out and they are
2 following the plan.

3 Q. And that plan is going to be in place whether you are
4 here or whether you are gone; isn't it?

5 A. Not necessarily.

6 MR. CONNER: Objection, Your Honor. I will withdraw
7 that objection, Your Honor. I should know better.

8 THE COURT: Mr. Young, you talk much more quickly than
9 some witnesses, and so you may want to give your counsel a
10 chance to say something before you keep going on.

11 THE WITNESS: Okay.

12 MR. CONNER: That answer was fine, Judge.

13 BY MR. MAYS:

14 Q. Well, let me put it this way, Mr. Young: Are you,
15 John Young or John Young, LLC, the only person in the world who
16 can implement these plans that you have paid all of this money
17 to put in place?

18 A. I am not the only person in the world, no.

19 Q. Okay. So if you are gone, somebody else could do it?

20 MR. CONNER: Objection, Your Honor. It calls for
21 speculation.

22 THE COURT: Sustained. I mean, it's self-evident.

23 MR. MAYS: Thank you, Judge.

24 THE COURT: And to be fair to Mr. Young, Mr. Young in
25 his direct testimony was pretty clear that he was not the only

1 one that could do it.

2 MR. MAYS: Well, in fact, he did say me or somebody in
3 my role.

4 BY MR. MAYS:

5 Q. Those were your very words, right, Mr. Young?

6 A. They were.

7 Q. Okay. Do you still maintain an interest in American
8 Water?

9 A. I am a shareholder in American Water, yes.

10 Q. So you are a shareholder in American Water?

11 A. Yes.

12 Q. Are you a director?

13 A. No.

14 Q. Officer?

15 A. No.

16 Q. Are you a more than five percent shareholder?

17 A. No.

18 Q. I want to show you C-24, and I have just chosen one
19 of these because it's just a specimen. This is your
20 application for approval of fees and expenses which was
21 submitted to the court on February 9, 2011. I could have
22 chosen the month before or the month after or month after that,
23 but this is just a specimen. You had four things in it: Your
24 bill, John Young, LLC, American Water invoice, Black and Veatch
25 and Baker Donelson. And that's typically the way you would

1 submit your request for payment; is that correct?

2 A. Yes.

3 Q. All right. Now, they don't follow in exactly that
4 order, but I don't know that that matters. The first one that
5 I have afterwards, and it's two pages over, please, is American
6 Water's bill for ninety-five thousand dollars. Do you see
7 that? Well, it seems to be in a different order than the way
8 they are bound in the book. Actually the John Young bill is
9 not in my binder for some reason, but I want to ask you about
10 the John Young bill.

11 MR. MAYS: Can somebody give me a copy of it? There
12 wasn't a copy in the binder. It is C-20.

13 (Pause)

14 Q. All right. This bill, it is hard for me to read and
15 I don't have a monitor in front of me, but it's for
16 approximately sixty-seven thousand dollars for that month; is
17 that right?

18 A. Yes.

19 Q. And what is the description of services on there?

20 A. Monthly professional services rendered.

21 Q. There is no itemization; is there?

22 A. Not on the front page, no.

23 Q. Is there an itemization anywhere that is submitted to
24 the court?

25 A. Well, every month I submit an itemized bill to Mr.

1 Sewell.

2 Q. You don't submit it to the court or to any of the
3 parties in the litigation?

4 A. No, we just submit the front pages of the invoices to
5 the court.

6 Q. So if anybody who was proceeding to the court wanted,
7 in your words, to dive down, there is nothing for them to dive
8 into there; is there?

9 A. We certainly could provide the backup, yes.

10 Q. Likewise, look at the Baker Donelson summary of
11 seventy thousand dollars, nine hundred and seventy-nine dollars
12 for that month that's on their bill. Is there any itemization
13 there?

14 A. Not on that specific page but there certainly was
15 itemization presented with the bill.

16 Q. But that's not submitted to the court either?

17 A. No.

18 Q. Or to the other people, the other participants in
19 that court proceeding?

20 A. No.

21 Q. I want to look at Exhibit 102, please. It was an
22 exhibit that -

23 THE COURT: Can I back up? You were going to ask about
24 the American Water Works and I don't think you ever got back to
25 it.

1 MR. MAYS: My only question was if he still had an
2 interest in it.

3 BY MR. MAYS:

4 Q. Do you know how much American Water has been paid in
5 the course of your receivership?

6 A. It's a little over two hundred thousand dollars. I
7 recognized, when I became the receiver, that I needed to hit
8 the ground running and that's why specifically in the receiver
9 order it mentioned American Water as a firm that I was going to
10 use, and it's actually called out by name in the receiver
11 order.

12 Q. It's been widely reported that in the nine months or
13 so since you were appointed - well, it's been longer than that
14 now but, in the time since you were appointed receiver, that
15 your bills for your services and expenses have been at or over
16 a million dollars. You are aware of that?

17 A. I haven't added it up but that's probably in the
18 general area, yes.

19 Q. And that the bills of the consultants, and attorneys,
20 and all that you have employed have been another million
21 dollars; correct?

22 A. They have probably been a little bit higher than
23 that, yes.

24 Q. Okay. So that's two plus million dollars that have
25 come out of funds that would otherwise have been paid to the

1 creditors?

2 A. That's correct.

3 Q. And to take it one step further, that's two plus
4 million dollars that has not gone to reduce the debt that
5 Jefferson County is ultimately going to have to pay depending
6 on what happens in this bankruptcy proceeding and how it is
7 adjusted and everything else?

8 A. That's correct.

9 Q. But if those expenses had not been paid to you and
10 your consultants, they would have gone to reduce that debt?

11 A. They would have but obviously the efficiencies are
12 also helping in the same way.

13 Q. Well, let's look at that.

14 MR. MAYS: Would you put up Exhibit 102, please? And
15 that's an exhibit that we looked at earlier.

16 THE COURT: C-102 or M-102?

17 MR. MAYS: Sir?

18 THE COURT: "C" or "M?"

19 MR. MAYS: M-102. I am sorry.

20 Q. M-102 is the exhibit you were examined - actually
21 David Carrington was examined about this by Mr. Childs. Do you
22 recognize the exhibit, Mr. Young?

23 A. It looks like probably the financial report that was
24 submitted with one of my receiver reports.

25 Q. Right.

1 MR. MAYS: And if I could ask you to blow up the
2 portion that was blown up before, please, which is the first
3 two columns. Yes, that part.

4 Q. Mr. Childs made the point that operating revenues had
5 increased from the fiscal year ending September 30, 2010, to
6 the current fiscal year. Do you recall that?

7 A. I do.

8 Q. And that increase is about four million dollars,
9 something in that range, a little over?

10 A. Yes.

11 Q. All right. If you would look, please, and if you
12 could blow it up, at just the columns, the rows below that in
13 the same two columns which show operating expenses as opposed
14 to operating revenues. Do you see there that in that same time
15 period from 2010 to 2011 for the same time period we looked at
16 before, that operating expenses had increased from a hundred
17 and eighty million to a hundred eighty-four million five?

18 A. I do. I would have to make one comment regarding
19 that. The depreciation line item there -

20 Q. Yeah.

21 A. I worked with the finance group. There is not a
22 whole lot of accuracy in that depreciation line item.

23 Q. Okay. Well, what about the outside services line
24 item? You don't question the accuracy of that; do you?

25 A. I do not.

1 Q. Okay. And if we look at that item, outside services
2 would be your bills; wouldn't it?

3 A. Outside services would be my bill, the consultant's
4 bill, the county attorney's bills, a number of bills, yes.

5 Q. Okay. And if we look at that, we see, then, the same
6 time period, outside services went up from eleven point nine
7 million to fourteen point four million; correct?

8 A. That's correct.

9 Q. So that's about a five and a half million dollar
10 increase in outside services - did I do the math wrong?

11 UNIDENTIFIED PERSON: Yes.

12 MR. CONNER: You have got the math all wrong.

13 UNIDENTIFIED PERSON: By double.

14 MR. MAYS: Well, I am a lawyer, not a mathematician.

15 Q. It goes from eleven nine, say twelve, to fourteen and
16 a half. So that's a two and a half million dollar increase
17 just in that area; right?

18 A. Yeah.

19 Q. Okay. Thank you for your mathematical assistance.
20 So there are two sides to that coin, I guess, aren't there?
21 There's a cost - there may be efficiencies but there's also a
22 cost associated with it?

23 MR. CONNER: Objection, Your Honor. I don't fully
24 understand that question.

25 THE COURT: Well, his question is that - what Mr. Young

1 had said five or six answers ago was that, in connection with
2 the monies that were utilized to pay lawyers, Young LLC, and
3 others, that money didn't go to pay debt, meaning net revenues
4 as defined in the indentures. And what the response of Mr.
5 Young was that, well, that has to be offset by efficiencies
6 obtained from operations, among others. And so Mr. Mays has
7 gone in and has pointed us that there may be efficiencies in
8 operations but the expenses that are being incurred and will be
9 incurred are offsetting those.

10 THE WITNESS: Well, Judge, I didn't understand that as
11 his question because I would have responded differently.

12 THE COURT: The answer is I am pretty certain that's
13 what his question was. Was I right, Mr. Mays?

14 MR. MAYS: Yes, sir.

15 THE COURT: And it's pretty obvious -

16 MR. MAYS: It's spot on.

17 THE COURT: - that it doesn't need - I don't need the
18 answer on that one.

19 MR. MAYS: Thank you, Your Honor.

20 THE COURT: However, I do want to ask a question on
21 that exhibit. You said you don't have a lot of faith in the
22 depreciation item on that report. Why?

23 THE WITNESS: As you recall, Judge, we inherited about
24 two thousand miles of pipe in 1996, contributed property, and
25 there has not been great accounting on the asset records for

1 the utility. In fact, when we did the actual cost to service
2 study and we went to allocate the assets to the various class
3 of customers, we had a very, very difficult time doing that.
4 We don't know when it was originally installed.

5 THE COURT: Were they acquired assets booked at some
6 value originally or were they booked at a nominal value?

7 THE WITNESS: That's a great question. I have not
8 gotten an answer to that question and how that is being
9 handled.

10 THE COURT: Is the depreciation - do you know the
11 depreciation allocation with respect to what would have been
12 capitalized by the bond expenditures?

13 THE WITNESS: I have asked a lot of questions around
14 depreciation and I have not gotten satisfactory answers. I
15 don't know, Judge.

16 THE COURT: My real ultimate question is it shows a
17 hundred and thirty million dollars, which would be a cash flow
18 item. Where does it go?

19 THE WITNESS: I am not convinced it's a cash item here.

20 THE COURT: Well, if we are looking at revenues in, and
21 these are operating revenues, they are not total revenues?

22 THE WITNESS: Agreement.

23 THE COURT: All right. And you are looking at
24 operating expenses. If you - you reduce and show basically a
25 net loss based on operating income and expenses, all right, and

1 the big hunk of that is the hundred and thirty million dollars
2 for fiscal year 2011. And so if you got the hundred and sixty-
3 one million in cash in, there would be a hundred and thirty
4 million that would be basically a cash flow item that didn't go
5 out the door. And so my question is what happened to it?

6 THE WITNESS: My question is I don't know. I have had
7 to focus on net sewer revenues. So basically I have taken out
8 the depreciation line item.

9 THE COURT: Well, because it's an operating expense
10 excluded from net revenues?

11 THE WITNESS: Right.

12 THE COURT: And kind of where I am going is, and will
13 go after Mr. Mays finishes, is back to the need for additional
14 - what I think I am hearing is additional capitalization that
15 may be in the form of borrowed monies but I could be wrong.
16 But go ahead, Mr. Mays.

17 BY MR. MAYS:

18 Q. I want to ask you to go with me through the
19 accounting process a little bit that's in place because you
20 have not taken all of the accounting in-house to Environmental
21 Services, you continue to use the county's accounting services
22 and financial services departments to do your billing and
23 collecting and accounting; don't you?

24 A. I really need to do that. I could not have put in a
25 new financial system in that period of time.

1 Q. Okay. And you work with Jeff Hager on that?

2 A. I do.

3 Q. He's the county financial director.

4 A. I do.

5 Q. And you have found him to be an honest, hardworking,
6 decent person to work with?

7 A. I certainly do.

8 Q. Okay. I want to just take you - and I will be brief,
9 Your Honor - through the process of when a bill gets paid.
10 Assume I am a customer, as I am, and I am on the Birmingham
11 Water Works Board. I get a bill from the Water Works Board
12 that contains both water and sewage charges; correct?

13 A. You should, yes.

14 Q. I send a check for that amount and it goes to the
15 Birmingham Water Works Board?

16 A. Correct.

17 Q. That is grossed up how often, every couple of weeks?

18 A. I think from Birmingham Water Works, maybe every few
19 days, yeah.

20 Q. And that money comes into Jefferson County?

21 A. It does.

22 Q. What does Jefferson County do with the money when it
23 comes in, those sewer receipts?

24 A. My understanding is it goes to a sewer revenue
25 account.

1 Q. Okay. And where is that sewer revenue account?

2 A. Do you mean which bank does it sit in?

3 Q. Yes.

4 A. It sits in Regions Bank is my understanding.

5 Q. Okay. Then what happens to it as it sits in that
6 account?

7 A. Well, there are expenses that the system has. So
8 they would draw from that account those to - in the account
9 that the county has from which they pay the expenses of the
10 sewer system.

11 Q. And that is all managed by county employees, by Jeff
12 Hager and people in his department?

13 A. That is correct.

14 Q. Okay. By the way, expenses as they are incurred for
15 sewer matters, gas for the trucks, whatever, chemicals to run
16 the plant, how are those expenses paid? Are they paid out of
17 that revenue account that you just described?

18 A. They are paid out of the money that is transferred
19 from the revenue account, yeah, that's my understanding.

20 Q. But when those checks are written, what account are
21 they written out of is what I am asking?

22 A. Out of the county account, I think.

23 Q. Okay. They are written out of the county's - another
24 county account?

25 A. Correct.

1 Q. And at a certain period of time, those accounts are
2 trued up, right, so that the expenses which the county has
3 paid, or advanced on behalf of the sewers, are paid back to the
4 county?

5 A. Yes, and if you take a look at the second page of my
6 receiver report, you will see kind of a reconciliation at the
7 end of every month that results in the amount of the check that
8 we pay the trustee.

9 Q. And who supervises that process, Jeff Hager?

10 A. Jeff Hager.

11 Q. And, by the way, you made a point earlier about asking
12 the court for signature authority, sole signature authority
13 over certain accounts. The court granted that authority to
14 you, or your designee, right? Yes?

15 A. That's correct.

16 Q. And you made a designee, or two, didn't you?

17 A. I designated three other people besides myself.

18 Q. And who were those three people?

19 A. Two people from the finance department, Jeff Hager and
20 somebody that reports to Jeff Hager, Mr. Denard and myself.

21 Q. Okay. So after you got this sole signature authority
22 from the court, which the county didn't oppose, as you have
23 testified, you designated three people who would have the same
24 authority - Jeff Hager, a county employee, David Denard, a
25 county employee - David Denard, a county employee - and

1 somebody else in the finance department?

2 A. Yes, because I did not have my own financial system.
3 I am going to be transitioning to that and, in the interim, I
4 needed to keep the process the same and Mr. Hager requested
5 that I give them visibility, and I will continue to give them
6 visibility into the accounts because they have to do an entire
7 accounting for the entire county.

8 Q. And you would not have granted those signature
9 authorities to David Denard or Jeff Hager if you didn't trust
10 them, would you?

11 A. No, I trust those people. No question about it. I
12 have never said I didn't.

13 Q. I understand that. Now, after the expenses are paid,
14 the creditors, the bond creditors or warrant creditors, get
15 basically what is left over; right, every month?

16 A. That is correct.

17 Q. And that is the operating revenue net of operating
18 expenses that is paid over to the bond creditors every month?

19 A. That is the net sewer revenues, correct.

20 Q. Yes. And you are not aware of a single instance in
21 which Jefferson County has held up or delayed or interfered
22 with the payment of those net sewer revenues to the warrant
23 creditors; are you?

24 A. I am not aware of any delays, no.

25 Q. That has been done smoothly and without challenge and

1 without interruption the whole time you have been there?

2 A. Yes.

3 Q. By the county employees?

4 A. To the best of my knowledge, yes.

5 Q. Okay. By the way, in your interim report on page 25
6 - it doesn't matter what page - you talk about the criminal
7 history of the system. Do you recall that section?

8 A. I believe it was a brief section, yes.

9 Q. It is on page 23. It begins on page 23. You talk
10 about the history of criminal activity. You talk about county
11 employees who have been convicted of crimes and gone to jail
12 and, in fact, there were several commissioners that that is
13 true of, right?

14 A. I believe so.

15 Q. And in mentioning that, you don't mention the fact
16 that those bribes were paid by some of these sewer creditors,
17 including JPMorgan Bank; correct?

18 MR. CONNER: I am going to object. There is no
19 relevance at all with regard to this testimony.

20 THE COURT: Mr. Mays, any -

21 MR. MAYS: It goes to bias, Your Honor.

22 MR. CONNER: Your Honor, it doesn't -

23 THE COURT: I mean, Mr. Conner, you opened this door or
24 your client opened this door on this one.

25 MR. CONNER: As far as the history of the system,

1 that's fine, Your Honor, but as far as getting into the details
2 that have already been determined by Judge Proctor -

3 THE COURT: I mean, I read dozens of pages that regaled
4 me with the history of what he is asking about. So I think you
5 have opened the door on this one.

6 MR. CONNER: Very well, Your Honor.

7 THE COURT: So overruled.

8 BY MR. MAYS:

9 Q. You do know that JPMorgan was accused of bribing
10 Larry Langford when he was president of the county commission?

11 A. I do know that they were accused.

12 Q. And that Langford was convicted and sentenced to a
13 fifteen year prison term as a result of that; don't you?

14 A. Yes.

15 Q. Okay. But it is also true, isn't it, that none of the
16 current county commissioners have ever been convicted of or
17 even accused of any of that type of criminal activity?

18 A. That is absolutely true.

19 Q. And it is also true, isn't it, that whatever may have
20 happened years past with the Environmental Services Department
21 employees, none of the current Environmental Services' managers
22 or employees have been accused of or convicted of any kind of
23 criminal activity?

24 A. That is true.

25 Q. And you are not aware of any reason why they should

1 be; are you?

2 A. No, I am not.

3 MR. MAYS: A moment if I may, Your Honor.

4 (Pause)

5 Q. Mr. Young, if you stay in place as receiver, what do
6 you foresee as what you are going to do going forward? Are you
7 going to implement rate increases?

8 A. We will do a lot of different things. I am going to
9 continue to implement the plan that we have developed. I am
10 going to initiate new initiatives both in the revenue and the
11 operating side. I see myself trying to get the revenue where
12 it belongs and that would probably include rate increases.

13 Q. Is it going to be a twenty-five percent rate increase;
14 is it going to be use whatever - in your view, you have the
15 sole authority to make that rate increase; right?

16 A. I do, but I need to do an assessment of what the
17 appropriate rate increase, given the conditions, and those
18 conditions are constantly changing.

19 Q. Well, is there an end game? I mean, do you stay as
20 receiver forever?

21 A. The end game is when the judge tells me my job is
22 done, I move on.

23 Q. If the county, as part of the bankruptcy, prepares a
24 plan for consideration by this court, are you going to
25 participate in the preparation of that plan?

1 MR. CONNER: I am going to object, Your Honor. It
2 calls for speculation.

3 THE COURT: Except in your brief, or the Bank of New
4 York Mellon's brief, they argued that he had a veto power with
5 respect to parts of the plan, so - and without his consent, it
6 couldn't be done. So, I mean, I think you opened the door on
7 that one, too.

8 MR. CONNER: Well, Your Honor, I am not sure which of
9 the briefs that we submitted that is in, Your Honor, at this
10 point in time, but I will say this. That to the extent that
11 the stay - I think it would be applicable to - the stay would
12 interfere with what Mr. Young's responsibilities are.

13 With respect to the plan is concerned, this sewer
14 system operates independently of the county. The funding, the
15 revenues - and their special revenue gentleman is right here -
16 but I don't think that's what this proceeding is about, and I
17 would object to the questions.

18 MR. LEMKE: Your Honor, since you referred to the Bank
19 of New York Mellon, I would like to address it. We didn't say
20 in our brief, I don't believe, or anybody did in their brief,
21 that Mr. Young wouldn't -

22 THE COURT: Your supplemental brief, if nothing else,
23 incorporated all of the other arguments.

24 MR. LEMKE: - wouldn't be available if there had to be
25 discussions back-and-forth between the debtor, the county and

1 Mr. Young about operations, and finances and revenues. What we
2 said was, as a legal matter, the net system revenues can only
3 be paid to the warrant holders, and that's not Mr. Young's
4 decision.

5 THE COURT: You did say that, but the brief expressly
6 says that a plan cannot be adopted without the receiver's
7 involvement, in effect approval with respect to rates. And if
8 you didn't say it directly in your brief, you incorporated in
9 your supplemental brief by adopting the position of the party
10 that put it in there, and so that's my whole point.

11 MR. LEMKE: And actually we agree with that. The
12 receiver has the sole authority to set the rates subject to -

13 THE COURT: Well, what's your objection to the
14 question, then? You put it into play.

15 MR. LEMKE: Well, I actually didn't object. I didn't
16 object, and I guess - but it still calls for some speculation
17 about what back-and-forth but, if that's all we are talking
18 about, we agree. The receiver has to set the rates subject to
19 the court's oversight, state court.

20 THE COURT: The question is what's the end game, all
21 right, is what his question is. And then he went on to the
22 plan and whether he was going to participate in the plan.

23 MR. MAYS: Thank you, Your Honor. That is exactly my
24 question because what I am trying to figure out is, if you stay
25 in place, where are we headed.

1 BY MR. MAYS:

2 Q. Now, you say you have got the sole authority to raise
3 rates?

4 A. Yes.

5 Q. And that authority derives from Judge Johnson in the
6 case pending in state court in Jefferson County, although we go
7 down to Phoenix City. It's hard to feel like you are in
8 Jefferson County when you do that. But that derives from that
9 court; doesn't it?

10 A. Under the order, yes.

11 Q. Okay. And if something happens that you don't like,
12 if I do something that you think violates your powers under the
13 order, your remedy is to go to Judge Johnson and seek to
14 enforce his order; right?

15 A. I mean, the order came from his court.

16 Q. Yes.

17 A. I am not a lawyer, so I can't - I don't want to get
18 into all of that.

19 Q. In fact, you already did that. When you thought you
20 were not given signature authority, you filed a motion in Judge
21 Johnson's court to enforce what you thought was being violated
22 in the order; didn't you?

23 A. Correct.

24 Q. Okay. So I guess my question is, if something happens
25 in this bankruptcy proceeding that you think is violative of

1 the order, are you going to go to Judge Johnson and ask him to
2 enforce his order depending on something that happens in the
3 bankruptcy proceeding?

4 MR. CONNER: Your Honor, I think that does go to a
5 legal conclusion.

6 THE COURT: I will sustain that one.

7 MR. MAYS: All I am doing, Your Honor, is pointing out
8 the sort of absurd position that we find ourselves in here.

9 That is all I have. Thank you, Your Honor, and thank
10 you, Mr. Young.

11 THE WITNESS: Thank you, Mr. Mays.

12 THE COURT: Before you start your redirect, so that I
13 don't force you all to come back a third time, let me ask a
14 couple of questions, and that way you both can follow-up.

15 Mr. Young, you indicated that one of the severe
16 problems - I know you didn't use the word severe, but what you
17 said was excessive sewer debt.

18 THE WITNESS: Yes.

19 THE COURT: And have you made an assessment of what the
20 excessive amount is?

21 THE WITNESS: Well, I think excessive is, if you take
22 a look at the sewer debt here on let's say like a per customer
23 basis. In other words, take a look at the investment per
24 customer here and the resulting sewer debt. You know, I have
25 worked in thirty-five different states all over the country.

1 I have never seen that type of investment per customer and the
2 debt associated with it. So when I say excessive, it is not a
3 particular number but it is relative to the customer base here,
4 and we have a big hole here. A large portion of our cost to
5 service in ultimate rate design is being driven not by
6 operating costs, not by capital costs, but by debt service.

7 THE COURT: Debt service, right.

8 THE WITNESS: Yeah.

9 THE COURT: And that's my point. And so, I mean - and
10 I take it, based on - but whether it's a total number or a per
11 capita number, do you have an idea of the difference between
12 what you think is - you called it excessive. I mean, without
13 knowing some amount to compare it to, how would you determine
14 it's excessive?

15 THE WITNESS: Well, I think you need to take a look at
16 the rate requirements to satisfy that debt service, as well as
17 your other operating costs. I mean, clearly if we could take
18 a billion dollars off of the debt service and solve this with
19 single digit rate increases -

20 THE COURT: And that's what you did based on the
21 numbers you gave?

22 THE WITNESS: Right. So that would certainly be
23 reasonable debt service there. I think the interim receiver
24 report that talked about multiple double digit rate increases
25 and had a debt service somewhere in the two point four, two

1 point five billion dollar range, you know, that is kind of
2 getting on the brink of reasonableness here because rates would
3 have to go up over a series of years seventy, eighty percent,
4 but that needs to be determined by the courts whether that's
5 reasonable enough.

6 Three point one billion dollars and three or four
7 hundred percent rate increases, in my mind and my professional
8 judgment, that's excessive. So it's really where we end up
9 with the debt level and the impact of rates that dictates in my
10 mind the excessiveness of the debt level.

11 THE COURT: Would you say that at the three point one,
12 three point two number that it's an unsustainable number by way
13 of getting rate relief?

14 THE WITNESS: I would say to try to get it anywhere in
15 the short term, within the next three to four years and take
16 rates up that quickly, I think that would be very, very
17 difficult and result in some significant affordability issues.

18 THE COURT: When you did your rate analysis, did you
19 look at the pricing of the sewer independent from the pricing
20 of water?

21 THE WITNESS: Well, actually what you do in the
22 assessment, you look at it that way because what you are doing
23 is, in water, there's volumetric uses -

24 THE COURT: What I am looking at is you looked at - you
25 have already testified you looked at the pricing with respect

1 to the sewer, and one of the things you considered was, or
2 someone you hired considered, was the impact of that rate in
3 connection with sewer utilization.

4 And part of the issue that concerns me, or one of the
5 issues, I should say, is that the demand for the sewer is also
6 tied into the demand for water. Likewise, the demand for the
7 water is tied in, in Birmingham, in this area, to the demand
8 for the sewer. And so you have pricing issues that cross over,
9 and my question is whether - and that's what a cross-elasticity
10 of demand is.

11 And so my question is whether you looked at the
12 interrelationship and what's the impact on demand for your rate
13 setting?

14 THE WITNESS: That's a great question and the
15 elasticity issue is really an issue that's really just
16 confronting the wastewater industry because our bills have not
17 been as high as the electric industry and the gas industry.
18 So, you know, water and wastewater services are relatively
19 cheap. But what you really need to take a look at when you
20 look at that is take a look at how much usage do you have per
21 customer. In other words, how much choice does the customer
22 have because that's what really impacts elasticity.

23 And the interesting thing about Jefferson County and
24 Birmingham, if you will look at the per capita water use, it is
25 some of the lowest in the country. So I would tell you that,

1 if you are saying if you raise sewer rates, what impact is it
2 going to have on water use, I think it is going to be
3 relatively minimal unless you are looking at the affluent group
4 that is using it for a lot of lawn watering, but the majority
5 of the customer base on the water and sewer side are already
6 pretty close to the minimal use. I mean, they are down into
7 five, six Ccf level, which is about, you know, half the level
8 you will find in most communities in the south.

9 THE COURT: My question, though, is when you did the
10 rate analysis that you have talked about, did you look at that
11 issue specifically?

12 THE WITNESS: We considered that issue, and I guess
13 what my answer is -

14 THE COURT: You thought about it but you didn't do
15 any calculation -

16 THE WITNESS: There is no systematic way to calculate
17 it that I know of and any of the consultants I work with know
18 of. For instance, when I took a look at the declining per
19 capita water use and, if you read that report, you will see a
20 discussion on elasticity in there, and the higher the water
21 rates get, the steeper the curve in per capita water use
22 reduction is. So we actually considered elasticity in looking
23 at future revenues. So it is taken into account but it's a
24 little bit more objective. I don't know of an equation you can
25 put it into. Excuse me, it's a little bit more subjective and

1 not objective.

2 THE COURT: All right. I want to go back to the
3 depreciation number. When you did your rates analysis, did you
4 use the depreciation numbers that were actually on the fiscal
5 year 2010 or '11 or something else?

6 THE WITNESS: There's multiple ways to do a rate
7 analysis. I come from the investor-owned utility side where you
8 actually take a look at depreciation and use it in the
9 assessment, but there's other ways to do it by just simply
10 looking at revenue stream, and that's what's typically done on
11 the municipal side because they typically do not have very good
12 records on assets. And so the analysis we use, and you can see
13 from the Black and Veatch assessment, did not have to use a
14 depreciation assessment as part of it because of the poor
15 information we have. We tried to do it both ways, but we
16 determined, given the poor asset information we had, we would
17 use a revenue approach as opposed to a depreciation approach.

18 THE COURT: So it's revenue and expense excluding non
19 cash flow items?

20 THE WITNESS: Yes.

21 THE COURT: When you do the net revenues, do you
22 reduce them by depreciation and amortization or is the
23 operating expense non-inclusive for net revenue determinations?

24 THE WITNESS: Let me make sure I understand your
25 question. When we calculate the municipal revenues, it does

1 not include a depreciation component.

2 THE COURT: Does it include amortization?

3 THE WITNESS: No.

4 THE COURT: And so long-term what's - so effectively
5 the non-cash - the cash flow item is paid on net revenues?

6 THE WITNESS: Yes.

7 THE COURT: And effectively that is why you have got to
8 utilize the bond monies for certain capitalization?

9 THE WITNESS: Exactly.

10 THE COURT: Which goes to one of my questions. What's
11 the game plan once you run through the remaining bond monies?

12 THE WITNESS: Well, if you take a look -

13 THE COURT: And let me tell you where I am coming from.
14 When I was reading the receivership order and some of the
15 findings, it appeared to me that what was contemplated was
16 going back to the capital markets for additional capital above
17 and beyond what might have been necessary for a refinancing for
18 purposes of what is called underutilization of the sewer
19 system. Is that a good guess on my part?

20 THE WITNESS: Can you give me a little latitude to try
21 to answer that question?

22 THE COURT: Sure.

23 THE WITNESS: The intent of the refinancing, and we had
24 a forty-year fixed rate refinancing, is if you take a look at
25 the coverages that were required for the refinancing, the free

1 cash flow that's spun off as a result of the one point two, one
2 point two-five coverage levels that we were talking about was
3 sufficient to cover the capital requirement.

4 So in the refinancing, we are not only addressing the
5 existing debt but we are also financing the capital
6 requirements for the next forty years and we are -

7 THE COURT: You are financing by way of debt or by way
8 of free cash flow from operations, or a combination?

9 THE WITNESS: Free cash flow of operations.

10 THE COURT: All right. So you are saying you are going
11 to reduce the capital structure sufficient so that you will
12 have a free cash flow that would finance future capital
13 operations, which right now doesn't look like they have?

14 THE WITNESS: Exactly.

15 THE COURT: Just bear with me for a second.

16 (Pause)

17 THE COURT: What is your understanding of whether
18 depreciation and amortization are reductions - are included in
19 the operating expenses for which - which, if they are included,
20 which would reduce net revenues payable to the bondholders?

21 THE WITNESS: My understanding, and there is a
22 spreadsheet every month that we produce that's a reconciliation
23 of the check we send to the trustee and the bondholders, and
24 the depreciation and amortization is not included in that
25 calculation.

1 THE COURT: I understand that, but what is your
2 understanding of what is required under the terms of the
3 indenture?

4 THE WITNESS: That was my - well, that was my
5 understanding although I have to admit that I haven't read the
6 indenture recently. And that's the way we have always done it,
7 and there hasn't been any objection from any of the parties.

8 THE COURT: All right. I am sorry, I interrupted Mr.
9 Conner at this time. I guess you are up.

10 MR. CONNER: Would you pull up the interim report? It
11 is number two, I believe. Four, I am sorry, Chandra.

12 THE COURT: M-4.

13 MR. CONNER: And would you turn to page 62?

14 THE COURT: M-4?

15 MR. CONNER: Yes, M-4, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. CONNER:

18 Q. Mr. Young, maybe you can remember this from your
19 recollection. You proposed a twenty-five percent rate increase
20 in the interim report. What was the impact, the financial
21 impact on the average customer with regard to that rate
22 increase?

23 A. Do you mean how much per month?

24 Q. Yes.

25 A. I think it was around nine - eight - about nine

1 dollars a month, or something like that, but that's just on my
2 memory.

3 Q. Take a look at the exhibit, page 62. Do you remember
4 -

5 MR. CONNER: Can I just hand him the report, Your
6 Honor? I think it would be quicker.

7 THE COURT: The answer is you can let him look at it,
8 yeah. I don't want him to read it but you can let him look at
9 it and see if it refreshes his recollection, which I assume in
10 this case it will.

11 A. I think the average residential bill was going like
12 from thirty-seven something to forty-six something, which is
13 the nine dollars that I was talking about.

14 Q. Thank you. Mr. Mays stated that the county didn't
15 oppose your signatory authority, the change of signatory
16 authority to you. Is that correct?

17 A. When I asked for it, they didn't give it to me and we
18 needed to do research and file a motion with the court to get
19 it.

20 Q. Did they file briefs in opposition to our motion?

21 A. They did.

22 Q. And were we prepared - were you prepared to testify in
23 court the day in Phoenix City?

24 A. I was.

25 Q. And was that when the county ultimately agreed to

1 changing the signatory authority?

2 A. That's correct.

3 Q. Although from a practical standpoint, who is in charge
4 as far as having the primary signatory authority on the
5 accounts today?

6 A. I am, and I can change access from any - to anybody
7 tomorrow if I chose to do that but -

8 Q. At whose direction does Mr. Hager, Mr. Denard, and Mr.
9 Hager's employee in county finance that has signatory authority
10 act in regard to those accounts?

11 A. My direction.

12 Q. Mr. Mays indicated - I believe it is Exhibit 102, if
13 you would pull that back up, M-102. I think the correction of
14 the math on outside services, there was about two point five
15 million dollars approximately increase from 2010 to 2011;
16 correct?

17 A. Are you talking about eleven point nine to fourteen
18 point four?

19 Q. Yes, sir.

20 A. That doesn't sound like two point five to me. It
21 looks more like four points - well, yeah, okay, two point -
22 okay. Close enough.

23 Q. Two point six, two point seven? I think he said two
24 point five approximately.

25 A. Close enough.

1 Q. How much in attorney's fees have you paid for the
2 county, county attorney's fees this year?

3 THE COURT: Trust me, I understand the expenses
4 involved. I understand what it is and those expenses are not
5 going to necessarily have any determinative basis upon what I
6 have got to decide today.

7 MR. CONNER: I understand that, Your Honor. It was
8 just opened up on cross examination and I was going to ask the
9 question for the record.

10 THE COURT: All right.

11 MR. MAYS: I object on relevancy grounds, Your Honor.

12 THE COURT: I think you opened that one up, Mr. Mays.
13 So it is overruled.

14 THE WITNESS: I mean, I don't know the specific number
15 but it's somewhere over a million and a half dollars or
16 something like that. I don't know the specific number.

17 BY MR. CONNER:

18 Q. Okay. Had you gone ahead and paid the allocated cost
19 that was reflected in the original allocation study that you
20 were presented by Mr. Hager, how much additional expenses
21 should have been reflected for this year?

22 A. Approximately three million dollars a year.

23 Q. Had that been factored into the operating expenses,
24 what would be the impact to the payment to the trustee in net
25 revenues?

1 A. That would have come right off of what the trustee was
2 paid.

3 MR. CONNER: Your Honor, I have no further questions.

4 THE COURT: Mr. Mays.

5 RECCROSS EXAMINATION

6 BY MR. MAYS:

7 Q. Well, you said it would have come right off what the
8 trustee is being paid but the fact that the county has not been
9 reimbursed that means that the county's general fund - I mean,
10 those monies have come out of the general fund; haven't they?

11 A. They will.

12 Q. And that means that the county's general fund has
13 been basically subsidizing these creditors who are only
14 entitled to the net proceeds of the sewer revenues?

15 A. And all along, I have been willing to pay that. All
16 I needed to do was to get information to support the costs.

17 Q. Well, you know, you say you may not agree with the
18 full amount but you didn't make any effort to pay the part you
19 did agree with; did you?

20 A. I didn't even ask to pay a partial, and what brought
21 this to a head was the settlement agreement.

22 Q. In which you agreed that an amount was owed and that
23 you would pay it?

24 A. And I have always agreed that a certain amount needed
25 to be paid. We just haven't agreed on what it would be and, as

1 part of the settlement agreement, to move that forward, I
2 agreed to the five point three million number.

3 Q. Okay. But as of now, you have paid nothing?

4 A. That's correct.

5 MR. MAYS: Thank you, Your Honor. That's all I have.

6 THE COURT: Mr. Conner.

7 MR. CONNER: No further questions, Your Honor.

8 MR. LEMKE: Your Honor, if I may, I just wanted to
9 clarify on the record. You asked if the net operating expenses
10 included capital expenditures, and it does not, and I can point
11 you to the indenture which is Exhibit M-10 if you want that -

12 THE COURT: No, I asked him - I knew what the answer
13 was.

14 MR. LEMKE: Okay. All right.

15 THE COURT: Any reason that Mr. Young may not be
16 excused at this time?

17 MR. MAYS: We are fine with him being excused, Your
18 Honor.

19 THE COURT: All right. Mr. Young, thank you. You are
20 excused.

21 THE WITNESS: Thank you, Judge.

22 MR. CHILDS: Your Honor, our next witness will be Mr.
23 Jeff Sewell. We can either have a really short examination or
24 a bathroom break.

25 THE COURT: Well, I would take it that you would prefer