

1 ASSEMBLY TRANSPORTATION COMMITTEE

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4 In re: :
5 E-ZPass : TRANSCRIPT OF
6 : PROCEEDINGS

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JUNE 10, 2002

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B E F O R E:

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1 TRANSCRIPT of proceedings as taken by
2 and before SEVA FLICSTEIN, a Certified
3 Shorthand Reporter and Notary Public of the
4 State of New Jersey, at the State House Annex,
5 Trenton, New Jersey, on Monday, June 10, 2002,
6 commencing at 10:00 in the forenoon.

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14 TESTIMONY of FORMER COMMISSIONER OF
15 TRANSPORATION FRANK WILSON - PAGE 84

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1 ASSEMBLY TRANSPORTATION COMMITTEE

2 MONDAY, JUNE 10, 2002

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4 CHAIRMAN WISNIEWSKI: Thank you.

5 We have two witnesses scheduled for
6 today's meeting. Our first witness is
7 Mr. Dan Morash of Newcourt Capital
8 Corporation. And with him at the witness
9 table is his attorney, J. Michael Nolan.

10 Good morning.

11 MR. MORASH: Good morning.

12 CHAIRMAN WISNIEWSKI: Do you
13 have anything, such as an opening
14 statement, you would like to make?

15 MR. MORASH Just to introduce
16 myself. As you said, I am Dan Morash. My
17 title is managing director of global head
18 project finance at Newcourt Capital
19 Securities. We arrange financing for
20 major power, energy and infrastructure
21 projects in North America and Europe.

22 For example, we are currently
23 engaged in arranging financing for the
24 public and private partnership that is
25 being created to manage the London

1 Underground Transportation System over the
2 next 30 years in the United Kingdom.

3 Going back to 1996, we arranged
4 financing for the Highway 104 toll road in
5 Nova Scotia, which was the first major
6 Canadian public/private partnership.

7 And it was on the strength of
8 that transaction as well as a relationship
9 we had with MFS that MFS engaged us in
10 March of 1997 to act as their financial
11 advisor and to evaluate the menu of
12 financing alternatives for the contract
13 they were recently awarded to implement
14 the E-Z Pass system.

15 CHAIRMAN WISNIEWSKI: Just if
16 you could, Mr. Morash, a little bit about
17 the history of Newcourt.

18 One of the issues that was
19 raised at a prior meeting -- you have
20 certainly given us some substantial
21 information about what Newcourt does. One
22 of the issues raised at a prior meeting
23 was who was Newcourt, where did they come
24 from, and where are they today?

25 MR. MORASH: I would be happy to

1 answer that. Newcourt started out as a
2 Toronto-based company. It was originally
3 a subsidiary of a life insurance company
4 in Canada, and became a public company in
5 1994.

6 In 1996 when I joined Newcourt
7 with a group of colleagues from Chemical
8 Bank the company had a 23 billion dollar
9 asset base and was growing rapidly.

10 The company focused on
11 asset-based project financings of the
12 nature that we arranged, done principally
13 with institutional investors.

14 CHAIRMAN WISNIEWSKI: Thank you.

15 Could you explain for the
16 committee how it was that MFS and Newcourt
17 hooked up? Was it just kind of a cold
18 call or did it come through some other
19 contacts?

20 MR. MORASH: When my group was
21 at Chemical Bank prior to joining
22 Newcourt, Chemical was the lead bank for
23 MFS, and I headed up the project finance
24 advisory group at Chemical.

25 So we had a number of

1 discussions with MFS about various
2 projects that they were pursuing,
3 including when we were at Newcourt a
4 telecommunications project that MFS was
5 implementing along the Alaskan pipeline.

6 So we had had a variety of
7 discussions with them. And as I
8 mentioned, since we had closed the Highway
9 104 toll road in Nova Scotia in 1996,
10 based on the strength of that experience
11 as well as our calling relationship and
12 ongoing discussions with MFS, they
13 selected us to act as their financial
14 advisor to assess how they might be able
15 to raise funds on a basis that was
16 consistent with the E-Z Pass contract
17 award which they received.

18 CHAIRMAN WISNIEWSKI: So the
19 first business relationship between
20 Newcourt and MFS was in relation to E-Z
21 Pass?

22 MR. MORASH: Yes. First formal
23 engagement. That's correct.

24 CHAIRMAN WISNIEWSKI: Up until
25 that point in time Newcourt had

1 essentially been a suitor looking for
2 business from MFS?

3 MR. MORASH: That's correct.

4 CHAIRMAN WISNIEWSKI: Now, the
5 initial work or the initial agreement
6 between MFS and Newcourt was to analyze,
7 review the project financing?

8 MR. MORASH: That's correct.
9 And to lay out a menu of their
10 alternatives, and analyze and assess how
11 different types of financing might be used
12 to raise funds for the E-Z Pass project on
13 a basis that was consistent with the award
14 that they received from the state
15 authorities, which was the no money down,
16 no money over the life of the contract
17 award.

18 CHAIRMAN WISNIEWSKI: So when
19 MFS came to Newcourt for financial advice
20 in Newcourt's capacity as a financial
21 advisor, MFS was coming with a package, if
22 you will, of what they needed to
23 accomplish under the terms of the contract
24 that they had been awarded?

25 MR. MORASH: That's correct.

1 CHAIRMAN WISNIEWSKI: And among
2 those terms in that package was the
3 proposition that the E-Z Pass system would
4 be paid for through toll violation money
5 and through rents on a fiber optic system?

6 MR. MORASH: Yes.

7 CHAIRMAN WISNIEWSKI: Was there
8 analysis done on those proposals? And
9 what came of that analysis?

10 MR. MORASH: We very quickly
11 returned an analysis that said that those
12 revenue streams were too uncertain, too
13 speculative to be the basis to raise 300
14 million dollars in financing.

15 CHAIRMAN WISNIEWSKI: When did
16 this take place?

17 MR. MORASH: We were engaged in
18 March of 1997. We immediately reverted
19 that the state authorities would need to
20 ultimately stand behind the transaction if
21 there was going to be any possibility of
22 raising funds for the transaction.

23 We also submitted this
24 information in writing in June of '97 and
25 July of '97, and again in September of

1 '97.

2 So we were consistently on
3 record with the state authorities that
4 state backing for the project would be
5 required.

6 CHAIRMAN WISNIEWSKI: There are
7 documents that you have supplied that
8 members of the committee have. If you
9 could just refer the committee members to
10 those letters that you are referring to.

11 MR. MORASH: There is a
12 June 13th letter to Edward Gross, the
13 Executive Director of the Turnpike
14 Authority.

15 CHAIRMAN WISNIEWSKI: Which tab
16 would that be behind?

17 MR. MORASH: That would be
18 Tab E.

19 CHAIRMAN WISNIEWSKI: Exhibit E?

20 MR. MORASH: Yes.

21 CHAIRMAN WISNIEWSKI: So in June
22 of '97, approximately three months after
23 the contract was awarded, Newcourt wrote
24 back to the Executive Director telling the
25 Executive Director that the proposed

1 financing scheme was speculative?

2 MR. MORASH: Yes.

3 This is the first written
4 indication. We had had a number of verbal
5 discussions on the subject that there
6 would be a requirement for a limited
7 guaranty to be provided by the state
8 authorities on several bases. In other
9 words, each guaranty, their pro rata
10 share. At the end of the contract, any
11 unpaid expenses would be paid by the
12 authorities.

13 CHAIRMAN WISNIEWSKI: Why was
14 that limited guaranty required?

15 MR. MORASH: It would not
16 otherwise have been possible to raise the
17 financing for this project.

18 CHAIRMAN WISNIEWSKI: And just
19 walk me through that. Is that because
20 Newcourt had a problem with it, or because
21 Newcourt perceived the market to which it
22 would sell these bonds would have a
23 problem, or both?

24 MR. MORASH Any of the markets
25 through which this financing might have

1 been raised would not have accepted these
2 risks.

3 CHAIRMAN WISNIEWSKI: You said
4 there were three letters. So it was
5 Exhibit E -- what other exhibits?

6 MR. MORASH: Okay. Exhibit G.
7 This is also a letter to Edward Gross.
8 The second page addresses several reasons
9 why the transaction needed to be
10 structured as it was, including the
11 speculative nature of cash inflows from
12 fiber optic network and violation
13 revenues.

14 CHAIRMAN WISNIEWSKI: On the top
15 of page 2 on that July 24, 1997 letter,
16 one of the items, small case 3, the lack
17 of lender control that is typical in
18 project financing.

19 Could you explain what you mean
20 by that, what was meant by that?

21 MR. MORASH: Yes. At the
22 beginning of our discussion -- in fact,
23 there is an early communication in Tab D
24 from Newcourt to prospective investors in
25 the transaction.

1 Initially we had sought to put
2 typical lender controls for project
3 financing into the transaction. That
4 would include everything from enforcement
5 assurance and a plan of enforcement
6 associated with the collection of
7 revenues. Contract enforcement associated
8 with the construction and operating
9 contract with MFS that would encompass a
10 host of issues, including lender approval
11 prior to disbursement of any funds under
12 the contract, a date certain for
13 completion obligation with liquidated
14 damages for failure to complete in a
15 timely basis, and compliance covenants
16 associated with the performance of the
17 system.

18 None of those typical project
19 finance type covenants were acceptable to
20 the state authorities as represented by Ed
21 Gross.

22 CHAIRMAN WISNIEWSKI: Why was
23 that?

24 MR. MORASH: His -- he -- what's
25 the right answer? He would not accept it,

1 and would not continue the discussions
2 with us unless we withdrew these
3 requirements.

4 CHAIRMAN WISNIEWSKI: Why didn't
5 Newcourt simply get up off the table and
6 say, this is a deal we then can't do?

7 MR. MORASH: Well, there
8 are -- particularly in the early stages of
9 structuring complex transactions, there
10 are many ways to come up with an
11 acceptable structure that the market would
12 accept. Not just -- it's not just a
13 question of what would Newcourt do with
14 its own money, but what would the investor
15 community as a whole agree to.

16 And we ultimately came up with a
17 transaction where investors relied on
18 three things for comfort that they would
19 be repaid.

20 Point number one was the
21 so-called true up agreement, which was the
22 limited guaranty that the authorities
23 would each pay their pro rata share of any
24 unpaid expenses, including principal and
25 interest, in March of 2008.

1 Now, that, of course, required
2 the lenders potentially to wait until
3 March of 2008 to get their money.

4 So in addition, there was a very
5 large cash reserve that was established to
6 provide liquidity to be able to fund
7 interest expense and operating expense
8 over the life of the contract.

9 And the third thing that was
10 required was what we call an accounting
11 letter.

12 The question was how would the
13 authorities account for their commitment
14 to pay off any unpaid expenses at the end
15 of the contract? It's what's called a
16 contingent liability.

17 And we insisted that on an
18 annual basis there be a new forecast made
19 of expected revenues and expenses from the
20 system.

21 So that although the initial
22 forecast that was made showed that the
23 system would be in the black, that
24 revenues would exceed expenses, including
25 principal and interest, if over time the

1 situation changed and the expectation was
2 different, that there would be losses from
3 the system, then this would be disclosed
4 by all the authorities and reported in
5 their financials so that they could start
6 to reserve the cash that they would need
7 in order to meet their obligations in
8 March of 2008.

9 And this process is one I
10 believe that has led to these hearings.
11 Because it was the -- over the last two
12 years the forecast and the increasingly
13 pessimistic forecast of the revenue stream
14 from this system that has created the
15 circumstances of this investigation.

16 CHAIRMAN WISNIEWSKI: If I could
17 go back just for a moment to where we
18 started on this issue, which was those
19 benchmarks, I think as you called them,
20 which Newcourt had asked for, and your
21 testimony is that in negotiations
22 Mr. Gross said they were not acceptable.

23 MR. MORASH: That's correct.

24 CHAIRMAN WISNIEWSKI: Who else
25 was involved with those negotiations on

1 the part of the state from the Turnpike
2 Authority.

3 MR. MORASH: Bill Wolf from the
4 Bathgate firm was sitting at Ed Gross'
5 side through negotiations, which Mr. Gross
6 handled directly with the support of his
7 staff.

8 CHAIRMAN WISNIEWSKI: During the
9 course of these negotiations there must
10 have been a number of other people -- the
11 Turnpike Authority is a fairly busy
12 building. There must have been a number
13 of people in and out during the meeting.

14 MR. MORASH: All Turnpike staff.

15 CHAIRMAN WISNIEWSKI: The entire
16 staff?

17 MR. MORASH: No. I am just
18 saying that all the people involved with
19 the negotiations were either people that
20 reported to Ed Gross as members of the
21 Turnpike staff or Bill Wolf from the
22 Bathgate firm.

23 CHAIRMAN WISNIEWSKI: Were there
24 other individuals who were at the
25 Turnpike? For instance, we've heard

1 testimony about the controller having
2 concerns about the financing of this
3 project. Were there other people not
4 necessarily in Mr. Gross' immediate staff
5 who participated in the negotiations?

6 MR. MORASH: The negotiations
7 principally took place in May and June of
8 1997. And then in July there was an
9 agreed-upon term sheet or tentatively
10 agreed-upon term sheet that was the basis
11 for our arranging credit approved
12 commitments from a group of lenders.

13 And the negotiations stopped at
14 that point while Mr. Gross sought the
15 approval of the other state agencies.

16 CHAIRMAN WISNIEWSKI: And the
17 negotiations that you had, your testimony
18 is basically Mr. Gross negotiated on
19 behalf of the Consortium?

20 MR. MORASH: That's correct.

21 CHAIRMAN WISNIEWSKI: And when
22 did these negotiations take place in terms
23 of were they during the business day?

24 MR. MORASH: No. They all took
25 place at night after regular business

1 hours. Because this was -- needed to be
2 not -- was not the regular business of the
3 Turnpike Authority. So the
4 negotiations -- the entire staff stayed
5 late to work through these negotiations.
6 Typically they would go to 1:00 or 2:00 in
7 the morning.

8 CHAIRMAN WISNIEWSKI: You
9 referred to a document called the true up
10 agreement, and you've also used reference
11 to a limited guaranty.

12 Could you explain for me what
13 the difference is between those two?

14 MR. MORASH: The limited
15 guaranty is the substance of what the
16 agreement is. It was a colloquialism as
17 we were discussing what would need to be
18 done, which was that at the end of the
19 contract, any unpaid expenses, including
20 interest and principal, would have to be
21 paid or trued up, was the colloquial term
22 we used, by the state authorities.

23 And when we then actually
24 drafted the documents -- and this goes to
25 late in the summer of 1997 -- White and

1 Case, who were our attorneys, they drafted
2 the document, they drafted a guaranty
3 agreement that Mr. Gross asked it not be
4 called a guaranty agreement but, rather, a
5 true up agreement.

6 CHAIRMAN WISNIEWSKI: What was
7 your understanding of the reason why he
8 wanted it called something other than a
9 guaranty?

10 MR. MORASH: He didn't want it
11 to be seen to be a guaranty.

12 CHAIRMAN WISNIEWSKI: That's, in
13 effect, what it was?

14 MR. MORASH: That is what it
15 was.

16 CHAIRMAN WISNIEWSKI: And that
17 was necessary because it was Newcourt's
18 opinion and the financial community's
19 opinion that this money could not be
20 raised without some form of guaranty from
21 toll roads?

22 MR. MORASH: Yes. The guaranty,
23 the large cash collateral amount, and the
24 accounting letter were the three legs of
25 the stool, so to speak, from the lenders'

1 perspective.

2 CHAIRMAN WISNIEWSKI: We talked
3 a little earlier of benchmarks. And one
4 of the items that was standard or at least
5 in some of the correspondence we read was
6 that the financial entities, such as
7 Newcourt, would control the disbursement
8 of the funds raised to meet certain
9 benchmarks.

10 That was something that was
11 sought; correct?

12 MR. MORASH: Yes. The reason
13 lenders seek those types of controls is
14 that they serve as an early warning system
15 if there is a problem with the
16 implementation of the project, so that the
17 problem can be fixed early and before the
18 problem compounds and the costs of
19 resolving the problem.

20 CHAIRMAN WISNIEWSKI: But that
21 was not ultimately implemented in this
22 case?

23 MR. MORASH: That is correct.

24 CHAIRMAN WISNIEWSKI: So what
25 happened? When the money was raised,

1 instead of it being retained by the lender
2 and disbursed as benchmarks were made,
3 what happened?

4 MR. MORASH: The state
5 authorities took over management of the
6 MFS contract. So they were directly
7 responsible for disbursing funds according
8 to benchmarks under the contract. And the
9 lenders had no role in the disbursement
10 process.

11 CHAIRMAN WISNIEWSKI: One of the
12 other items that I understand was sought
13 but not agreed to was some form of control
14 over the violation enforcement?

15 MR. MORASH: That is correct.

16 CHAIRMAN WISNIEWSKI: Would you
17 explain that for me.

18 MR. MORASH: Well, as we studied
19 the question of the nature of violations
20 revenues, it was clear to us that without
21 an enforcement plan that would then assure
22 a high collection rate, that the revenues
23 would be at risk as to whether they could,
24 in fact, be collected in a manner to pay
25 off the cost of the system.

1 So again, a typical lender's
2 point of departure for any project
3 financing would be to secure the revenue
4 stream. And the way to secure this
5 revenue stream was to make sure that the
6 violations assessments would be enforced,
7 and that there was a viable plan to do
8 that.

9 Specifically, we were skeptical
10 that the municipal court system would
11 accept the processing role of these
12 violations. And it was really only after
13 we went through the municipal court system
14 that there was -- that there would be any
15 reasonable level of assurance of
16 collection of violations.

17 CHAIRMAN WISNIEWSKI: Going back
18 to the accounting letter that you
19 mentioned earlier, as I understand your
20 testimony, the accounting letter required
21 the constituent authorities to calculate
22 and reserve money for their ultimate true
23 up obligation.

24 MR. MORASH: The accounting
25 letter required them to calculate what

1 their expected obligation was. Reserving
2 money would fall under their general
3 authority and bond indenture provisions.
4 Because if they were going to have
5 operating expenses that were increased,
6 then the provisions of their indentures
7 would require them to provide for that
8 money.

9 So it was an indirect
10 requirement. The accounting letter only
11 required the disclosure of the likely
12 obligation.

13 CHAIRMAN WISNIEWSKI: But the
14 documents that comprise this financing did
15 not specifically say, you must reserve "X"
16 dollars?

17 MR. MORASH: That's correct.

18 CHAIRMAN WISNIEWSKI: Now, there
19 was a base case model submitted of the
20 financial projections, and that model was
21 submitted by MFS?

22 MR. MORASH: That is correct.
23 They used two consulting firms, Vollmer
24 and USPT, in preparing that model.

25 CHAIRMAN WISNIEWSKI: And what

1 was Newcourt's role in reviewing those
2 models?

3 MR. MORASH: We reviewed those
4 models and conducted a sensitivity
5 analysis. In the parlance of project
6 finance, the forecasts were not robust.

7 In other words, if you change
8 the assumptions when you are doing
9 sensitivity analysis, you would get
10 dramatically different results.

11 So for a small change in
12 assumptions, you get a large change in
13 financial results. And there were key
14 assumptions -- there were four key
15 assumptions.

16 First, what is the traffic rate,
17 what's the traffic volume over time?
18 Second, what's the violation rate? Third,
19 what's the citation rate? And fourth,
20 what's the collection rate?

21 So if you change these
22 assumptions significantly, or even in a
23 small way, you change the financial
24 outcome significantly.

25 And that's why we concluded that

1 those revenue streams were too risky to be
2 used solely -- as the sole support for the
3 project financing.

4 CHAIRMAN WISNIEWSKI: As I
5 understand it, Newcourt Capital prepared a
6 set of assumptions, a base case assumption
7 and a worst case assumption, as part of
8 that sensitivity analysis?

9 MR. MORASH: Well, the base case
10 assumptions came from MFS. The worst case
11 assumptions were a combined effort where
12 our staff worked with the staff of the
13 Turnpike Authority and with people from
14 MFS to determine what a worst case
15 scenario would be.

16 We needed to come up with a
17 worst case scenario in order to determine
18 the appropriate size of financing and
19 determine how large the cash reserve would
20 need to be.

21 Again, the cash reserve was the
22 second of the key legs of the transaction.

23 And the worst case scenario
24 showed a deficit of 270 million dollars.
25 So if we had a 300 million dollar

1 financing, then 270 of that 300 in
2 principal would need to be paid off by the
3 authorities after the end of the contract.
4 But there would be enough cash to pay the
5 operating expenses and the interest
6 expenses over the life of the contract in
7 that scenario.

8 CHAIRMAN WISNIEWSKI: You are
9 aware recently there have been estimates
10 that the projected true up amount at the
11 end of the agreement was going to be in
12 excess of 400 million dollars?

13 MR. MORASH: Yes.

14 CHAIRMAN WISNIEWSKI: Can you
15 explain for the committee why those
16 numbers are so much higher today than what
17 was the worst case projection in January
18 of '98?

19 MR. MORASH: The projections
20 assume that the MFS contract would be
21 performing. In other words, construction
22 was to take place in 22 months. And it's
23 now more than four years later, and the
24 project is not yet completed.

25 In addition, we went back and

1 looked. In reviewing the earlier
2 testimony, I was shocked to see the number
3 of false-positives that people had
4 testified about. False-positive being a
5 recording of a violation and sending of a
6 violation notice to someone who was not,
7 in fact, in violation.

8 This was part of the contract,
9 that there would be no false-positives.
10 And so, therefore, the possibility of
11 false-positives was not modeled in the
12 original assumptions that were put
13 together for the transaction.

14 CHAIRMAN WISNIEWSKI: Would I be
15 correct in synthesizing what you said to
16 mean that there was no allowance for
17 error? That the assumption was that the
18 electronic toll collection system would
19 perform at a hundred percent?

20 MR. MORASH: Well, the allowance
21 was that if the contract was not complied
22 with by the contractor, that there would
23 be liquidated damages provisions or other
24 means of assumed compensation for the
25 failure to perform.

1 CHAIRMAN WISNIEWSKI: And that
2 would then offset --

3 MR. MORASH: The cost
4 associated. That is exactly what the
5 concept of liquidated damages is.

6 I have an agreement with you.
7 If I fail to perform and you incur a cost,
8 your liquidated damage is I pay you the
9 cost you incur.

10 CHAIRMAN WISNIEWSKI: In
11 determining these numbers, the worst case
12 numbers, did Newcourt have anyone assist
13 in the preparation? Was there anyone
14 contracted to work with Newcourt to make
15 those -- to come up with those numbers?

16 MR. MORASH: Yes. We retained
17 an independent transportation consultant,
18 which happened to be the consulting arm of
19 Coopers & Lybrand. And they reviewed the
20 fiber optic and the violations revenue
21 streams.

22 There were a number of minor
23 revenue streams, such as, you know,
24 parking or customer service center
25 providing services for other toll roads or

1 what have you that constituted 6 percent
2 of the projected revenues. They did not
3 spend any time on those other revenue
4 streams.

5 They assessed the fiber optic
6 revenues, and they felt that the 120
7 million dollars that MFS had projected was
8 overstated; that the likely realization of
9 fiber optic revenues would be more in the
10 range of 30 to 50 million dollars.

11 And they also assessed the
12 violations revenue stream, and they found
13 the assumptions there to be reasonable.

14 CHAIRMAN WISNIEWSKI: Is it
15 correct, then, to say at the outset, or
16 from very early on in Newcourt's
17 involvement, that it was clear that this
18 was not going to be a zero down, zero
19 payment financing?

20 MR. MORASH: It was clear that
21 the financing could not have proceeded
22 without the limited guaranties provided by
23 the state authorities.

24 CHAIRMAN WISNIEWSKI: Explain
25 for the committee and myself the

1 difference, if you can -- or maybe counsel
2 can -- you are using the term "limited
3 guaranty." Is there a difference between
4 that and a guaranty?

5 MR. MORASH: Yes. A limited
6 guaranty means there are only certain
7 circumstances when you -- where you can
8 draw upon. An unconditional guaranty
9 means if there is any money due, you
10 present for payment immediately.

11 And the risk that the lenders
12 take in this transaction is that there is
13 not enough cash in this escrow account
14 that's been set aside to pay interest
15 currently.

16 And then that means that the
17 lenders would go into an accrual mode, and
18 they would start adding the interest
19 balance to the principal balance. Which
20 is not a desirable outcome for the
21 financial institutions, which are banks
22 and insurance companies, which have
23 provided this financing.

24 So they weren't looking to these
25 cash flows and the cash reserves to be

1 able to provide current servicing of
2 interest at operating expenses over the
3 life of the contract.

4 CHAIRMAN WISNIEWSKI: When a
5 financial institution anticipates the
6 possibility of there being an accrual
7 mode, does that change the cost of the
8 financing?

9 MR. MORASH: The interest rate
10 in the event of accrual is increased under
11 the terms of the contract. And in
12 financial institutions, if a loan goes
13 into an accrual mode, typically it then
14 becomes a criticized credit, and
15 additional reserves need to be set aside
16 against it.

17 CHAIRMAN WISNIEWSKI: Right now
18 this financing is not in accrual mode;
19 correct?

20 MR. MORASH: As I understand it.
21 Although I don't have direct knowledge of
22 it because we no longer hold any of the
23 paper.

24 CHAIRMAN WISNIEWSKI: One of the
25 issues that came up in testimony earlier

1 was the issue that this had been a
2 privately placed finance as opposed to it
3 being sold in the public markets. And
4 there was some controversy surrounding
5 that in the sense that if this was a
6 really good issue, if this was truly a
7 good deal, it would have been publicly
8 placed as opposed to privately placed.
9 Can you address that?

10 MR. MORASH: Yes. The nature of
11 the limited guaranty is the reason it was
12 done as a private placement. It's
13 complicated, and institutional investors
14 have the staff necessary to assess
15 complicated transactions.

16 They have professional
17 investment managers. They have legal
18 departments. They have credit
19 departments. And there is an enormous
20 amount of due diligence and scrutiny that
21 takes place.

22 These are big insurance
23 companies and banks that themselves are
24 subject to close regulation. And their
25 portfolios are audited by their regulators

1 on a regular basis.

2 So they need to do a lot of
3 detailed work, understanding exactly how
4 the transaction works.

5 Public bonds, by contrast, it's
6 more a question of what is the name of the
7 issuer? And the issuer -- there never is
8 any question, is the issuer on the hook to
9 pay? An issuer of public bonds is always
10 on the hook to pay. There are no
11 limitations on that obligation. And that
12 is just a question of rate.

13 So there are good reasons why
14 this transaction as it was structured was
15 really only suitable for the private
16 market.

17 CHAIRMAN WISNIEWSKI: Is it true
18 that because it was private placement it
19 then avoided greater scrutiny?

20 MR. MORASH: No. It had greater
21 scrutiny because it was a private
22 placement.

23 Well, again, the institutions
24 that were involved in investing in the
25 transaction had -- each had their own

1 lawyers, each had their own credit
2 department review. And then there were
3 sophisticated professional investment
4 managers who sought and obtained the
5 approval to invest in the transaction.
6 And they couldn't do that without doing a
7 detailed review of the structure of the
8 transaction, writing it up internally,
9 presenting it to their management for
10 approval.

11 CHAIRMAN WISNIEWSKI: I guess
12 more specifically where I was going was
13 public scrutiny?

14 MR. MORASH: The public
15 scrutiny, there was -- Wolff & Samson was
16 the counsel for the group as a whole on
17 the public sector side. Each of the
18 authorities had their own law firms. The
19 New Jersey Treasury did a complete review
20 of the transaction starting in August of
21 1997. They sought and received competing
22 proposals for the financing.

23 So there was a significant
24 public sector review done at the time by a
25 large number of attorneys, the Treasury,

1 and each of the individual authorities.

2 CHAIRMAN WISNIEWSKI: So at that
3 time they also all were aware that this
4 was a financing that ultimately was
5 guarantied by the toll roads, that it
6 simply was not a perfectly no money down,
7 no payment due?

8 MR. MORASH: That's correct.

9 CHAIRMAN WISNIEWSKI: Is there a
10 difference in the interest rate that is
11 paid if this is a private placement versus
12 it being sold in the open markets?

13 MR. MORASH Typically, yes.

14 CHAIRMAN WISNIEWSKI: What's the
15 difference? Is it higher?

16 MR. MORASH: The interest rate
17 is higher for private placement. Probably
18 20 to 40 basis points. A basis point is a
19 hundredth of 1 percent.

20 CHAIRMAN WISNIEWSKI: So it's a
21 quarter of a percent greater?

22 MR. MORASH: Yes.

23 CHAIRMAN WISNIEWSKI: Was this
24 sold as a taxable or nontaxable financing?

25 MR. MORASH: This was a taxable

1 financing.

2 CHAIRMAN WISNIEWSKI: Why was
3 that?

4 MR. MORASH: The first
5 alternative we investigated was the
6 possibility of tax exempt financing.

7 But because the revenue stream
8 on the fiber optic side was a private
9 purpose, it was not possible to get a
10 clean tax exempt that the financing could
11 be done as a tax exempt financing.

12 CHAIRMAN WISNIEWSKI: Could it
13 have been done as a tax exempt financing
14 if the revenue stream was the guaranty?

15 MR. MORASH: And each of the
16 authorities simply funded their pro rata
17 share of the project?

18 CHAIRMAN WISNIEWSKI: Yes.

19 MR. MORASH: Yes.

20 CHAIRMAN WISNIEWSKI: What would
21 the difference have been for the State of
22 New Jersey or the toll payers had this
23 been a tax exempt financing versus a
24 taxable financing?

25 MR. MORASH: We looked at that.

1 And there are two components. Savings, if
2 you stood today and looked back four
3 years.

4 One is the interest rate would
5 have been lower in tax exempt financing to
6 the tune of about 22 to 24 million
7 dollars.

8 And the second is that if the
9 current transaction were to be prepaid and
10 each of the authorities were to issue new
11 tax exempt indebtedness to fund their
12 pro rata share of the restructuring of the
13 transaction, then there would be a make
14 whole penalty of the fixed rate bonds.

15 The reason for make whole
16 penalty is that today interest rates are
17 lower than they were four years ago, the
18 general level of interest rates. U.S.
19 Treasury bonds are trading at a much lower
20 interest rate today.

21 So the make whole calculation
22 would be approximately 15 million dollars.

23 CHAIRMAN WISNIEWSKI: You are
24 saying "make whole"?

25 MR. MORASH: Make whole to the

1 existing fixed rate lenders.

2 CHAIRMAN WISNIEWSKI: If these
3 bonds were refinanced today, the
4 Consortium would owe 15 million dollars
5 before anything else to compensate the
6 existing bondholders for the reduced level
7 of interest they would receive?

8 MR. MORASH: Right. When they
9 reinvest proceeds. Exactly.

10 CHAIRMAN WISNIEWSKI: Is that
11 something that is customarily put into
12 these types of transactions?

13 MR. MORASH: Yes.

14 CHAIRMAN WISNIEWSKI: Why is
15 that?

16 MR. MORASH: Insurance companies
17 will not invest in 144-A transactions or
18 private placements without make whole
19 protection. Because they have fixed rate
20 obligations.

21 If you have a life insurance
22 policy, for example, and that is what the
23 obligation is of the insurance company,
24 they need to know that they get enough
25 investment income to be able to pay when

1 required.

2 So they want to make sure that
3 when they put money out on a fixed rate
4 basis, when interest rates decline, that
5 they get protection for having to
6 re-invest at a lower interest rate.

7 And that is the market
8 convention.

9 CHAIRMAN WISNIEWSKI: I just
10 have a couple more questions, and then I
11 want to open the questioning up to members
12 of the committee.

13 Is it your testimony that Ed
14 Gross negotiated this financing from start
15 to finish?

16 MR. MORASH: Yes.

17 CHAIRMAN WISNIEWSKI: In those
18 negotiations -- you've done a lot of these
19 type of negotiations; correct?

20 MR. MORASH: Yes.

21 CHAIRMAN WISNIEWSKI: The people
22 across the table from you when you are
23 negotiating, do they traditionally have
24 expertise and people assisting them of any
25 type or character?

1 MR. MORASH: There is generally
2 more finance expertise. Particularly, you
3 know, the attorneys involved would be
4 finance attorneys as opposed to litigation
5 attorneys.

6 CHAIRMAN WISNIEWSKI: And who
7 did Ed Gross have assisting? Did he have
8 a finance specialist assisting him in
9 these negotiations?

10 MR. MORASH: No. He had his own
11 staff. He had finance expertise within
12 his own staff. But he conducted these
13 negotiations.

14 CHAIRMAN WISNIEWSKI: You said
15 he was represented by William Wolf from
16 the Bathgate firm?

17 MR. MORASH: Correct.

18 CHAIRMAN WISNIEWSKI: Is he
19 perhaps a financial attorney?

20 MR. MORASH: No.

21 CHAIRMAN WISNIEWSKI: Do you
22 know what his specialty was?

23 MR. MORASH: He is a litigator.

24 CHAIRMAN WISNIEWSKI: As I
25 understand it, your negotiations with

1 Mr. Gross on this deal started sometime
2 after March 1997 when the contract was
3 awarded?

4 MR. MORASH: That's correct.

5 CHAIRMAN WISNIEWSKI: And did
6 they move continuously to the conclusion
7 so that you negotiated on a regular basis,
8 and then one day these bonds were placed?

9 MR. MORASH: No. There was a
10 hiatus in the negotiations.

11 CHAIRMAN WISNIEWSKI: Why was
12 that?

13 MR. MORASH: As the election
14 approached.

15 CHAIRMAN WISNIEWSKI: Which
16 election?

17 MR. MORASH: The gubernatorial
18 election of 1997.

19 CHAIRMAN WISNIEWSKI: When was
20 that hiatus, what period of time?

21 MR. MORASH: Well, the review
22 conducted by the State Treasurer's office
23 of the transaction, which was supposed to
24 have been what was necessary to getting
25 the approval of all state authorities, was

1 completed in September of '97. And then
2 the transaction went cold until January of
3 1998, when the negotiations began in
4 earnest, leading to the March of --
5 March 10, 1998 closing.

6 CHAIRMAN WISNIEWSKI: Thank you.
7 Assemblyman Impreveduto.

8 ASSEMBLYMAN IMPREVEDUTO: Thank
9 you, Mr. Chairman.

10 You mentioned that the
11 New Jersey State Treasury reviewed the
12 documents and approved these; correct?

13 MR. MORASH: I don't know
14 directly. Because our interface was all
15 with Ed Gross, who in turn had the
16 conversations with New Jersey Treasury
17 Department.

18 So I only know anecdotally that
19 they reviewed the transaction.

20 I know that they solicited other
21 proposals. Because we had a meeting in
22 August of '97 at the Transportation
23 Department where they said they had
24 competing proposals with different terms
25 and better rates, and there was some

1 re-negotiation of the interest rates. The
2 spreads were reduced by 10 basis points
3 for the fixed rate loan and floating rate
4 loan.

5 ASSEMBLYMAN IMPREVEDUTO: Do you
6 have any reason to believe that the
7 treasury department, the Treasurer of the
8 State of New Jersey, was aware of your
9 correspondence with both MFS and Gross
10 indicating that you did not believe that
11 the project could be financed based on the
12 fiber optics and the violations?

13 MR. MORASH: I don't know
14 whether they received any of our letters
15 to Ed Gross or not. I would expect that
16 they at least had our term sheet, which
17 was crystal clear about the need for the
18 limited guaranty of the state authorities.

19 ASSEMBLYMAN IMPREVEDUTO: In
20 your letter to Mr. Thompson -- this would
21 be Exhibit H -- of August 28th, 1997, you
22 talk about the lack of investors.

23 MR. MORASH: We approached 17
24 major institutions, both insurance
25 companies and banks, and we had a

1 syndicate, including ourselves and four
2 other investors.

3 So there were a number of
4 institutions that were not comfortable
5 with the possibility that interest would
6 go into an accrual mode in the
7 transaction, which was the risk of lenders
8 in this transaction.

9 ASSEMBLYMAN IMPREVEDUTO: Is it
10 unusual for roughly 50 percent of the
11 lenders that you approach to walk on this
12 deal?

13 MR. MORASH: No. There were
14 others who thought the pricing needed to
15 be richer than what was there.

16 And, you know, if we are doing
17 our job correctly, if the transaction is
18 structured and priced to market, then
19 there should be enough investors who
20 decline a transaction.

21 ASSEMBLYMAN IMPREVEDUTO: Why
22 the term "true up"? We know he didn't
23 want to use the term "guaranty." But does
24 "true up" mean something that I am not
25 familiar with?

1 MR. MORASH: It began in the
2 conversations as a colloquialism. And the
3 discussion was that at the end of the
4 contract, any and all unpaid expenses,
5 including principal and interest of the
6 bonds and past due interest and what have
7 you, would be, quote, "trued up." In
8 other words, paid.

9 ASSEMBLYMAN IMPREVEDUTO: So,
10 quite honestly, not using the word
11 "guaranty," using this other terminology
12 that was pretty much a colloquialism --

13 MR. MORASH: Correct.

14 ASSEMBLYMAN IMPREVEDUTO: -- for
15 your negotiations, is a deception. I
16 mean, it's a deception to the New Jersey
17 public saying that we are not -- there is
18 no guaranty here. Certainly it may not
19 have been said, but by the fact that he
20 refuses to use the word "guaranty," that
21 says to me that you are, in fact,
22 intending to defraud the public.

23 MR. MORASH: We focused on
24 substance of the agreements which made
25 clear, including the legal opinions issued

1 by all the law firms representing each of
2 the authorities, that they were obligated
3 to make this payment at the end of the
4 contract.

5 It, again, is a limited
6 guaranty. There are only limited
7 circumstances under which the lenders
8 could call on this guaranty. And they
9 could not call on the guaranty prior to
10 March of 2008 unless one of the
11 authorities actually went bankrupt.

12 That was the only circumstance
13 in which the guaranty -- the limited
14 guaranty could be called prior to
15 maturity.

16 ASSEMBLYMAN IMPREVEDUTO: Why
17 did Mr. Gross refuse -- if you know, why
18 did Mr. Gross refuse to use the term
19 "guaranty"?

20 MR. MORASH: That is a good
21 question, to which I don't know the
22 answer.

23 ASSEMBLYMAN IMPREVEDUTO: So we
24 know that he refuses to use the word
25 "guaranty" and prefers to use this term

1 "true up," which is not a business term?

2 MR. MORASH: That is correct.

3 ASSEMBLYMAN IMPREVEDUTO: It is
4 a term made up as you went along. It
5 certainly to me seems like some sort of
6 cover-up as to what this really was.

7 Coopers & Lybrand who did the
8 review felt that the violations -- I think
9 this is what you said -- felt that the
10 violations assumption was reasonable?

11 MR. MORASH: Yes. The series of
12 assumptions, yes.

13 ASSEMBLYMAN IMPREVEDUTO: And
14 the fiber optics assumption of 120 million
15 was much too great, and they felt it
16 should be 30 to 50 million?

17 MR. MORASH: Yes.

18 ASSEMBLYMAN IMPREVEDUTO: Did
19 they give a reason for that?

20 MR. MORASH: There were several
21 reasons. There was a concern about who
22 would be first to market. The rental
23 rates which MFS was assuming were higher
24 than rental rates for other fiber optic
25 systems. And there were competitors that

1 could potentially have offered similar
2 systems.

3 So those three reasons gave them
4 pause.

5 ASSEMBLYMAN IMPREVEDUTO: It
6 seems significant, 120 million is what MFS
7 is suggesting, and Coopers & Lybrand are
8 talking 30 to 50. That is a significant
9 number that should have raised a red light
10 to someone.

11 MR. MORASH: The agreement that
12 we had of getting the independent review
13 done was also a matter of negotiation.
14 And we needed in order to close the
15 transaction to have an independent review
16 of the revenue streams. But the
17 circumstances for that review were
18 proscribed.

19 In other words, the agreement
20 was if it didn't show a variance of more
21 than 30 percent of the base case forecast,
22 that we would be deemed to agree to
23 proceed with the transaction. And that
24 was a provision that Ed Gross negotiated.

25 ASSEMBLYMAN IMPREVEDUTO: So

1 if it didn't vary more than 30 percent,
2 you would move forward?

3 MR. MORASH: That's correct. In
4 the aggregate.

5 So while the reduction on the
6 fiber optic side which Coopers projected
7 was substantial, it was two-thirds, only
8 about a quarter of the total revenues were
9 coming from fiber optic anyway. And they
10 pretty well substantiated based on the
11 work that they did that the violations
12 revenue should materialize.

13 ASSEMBLYMAN IMPREVEDUTO: I
14 don't know if it is a question, but in
15 summary, it just seems to me -- in a
16 letter of September 8 of 1997 you are
17 telling Gross, this is not a good idea,
18 it's not going to work.

19 I think your advice early on
20 that paying for it the way we did early
21 on, no money down, no further payments, is
22 really not good, you should do something
23 else, really fell on deaf ears or
24 selectively deaf ears.

25 I, quite honestly, have heard

1 testimony here saying to me is the smoking
2 gun, that Mr. Gross was aware of it and,
3 in fact, chose to ignore it purposefully
4 and to move forward an ill-fated,
5 ill-conceived idea.

6 And I thank you for your
7 testimony.

8 CHAIRMAN WISNIEWSKI:
9 Assemblywoman Stender.

10 ASSEMBLYWOMAN STENDER: Thank
11 you, Mr. Chairman.

12 Going back to this issue with
13 Coopers & Lybrand, you said that they were
14 not -- they felt that the fiber revenue
15 projection and violation revenue forecast
16 was too great, too excessive?

17 MR. MORASH: Yes.

18 ASSEMBLYWOMAN STENDER: Because
19 in the opening statement that we had from
20 Mr. Gross, he said -- and I quote --
21 Newcourt Capital advised that Coopers &
22 Lybrand was satisfied with the fiber
23 revenue projection and considered the
24 violation revenue forecast conservative.

25 MR. MORASH: We ultimately after

1 the review of the Treasury concluded
2 provided under release letter this -- the
3 Coopers report to the state authorities.
4 It says what it says. We are in position
5 to release it. It is, in fact -- this
6 summary is included in the materials.

7 ASSEMBLYWOMAN STENDER: That we
8 have here?

9 MR. MORASH: Yes. I guess if
10 you define the word "satisfied" as within
11 a plus or minus 30 percent band of the
12 base case projections, then you would use
13 the word "satisfied."

14 ASSEMBLYWOMAN STENDER: He said
15 "conservative," which would sound to me
16 like that is not what you ever represented
17 to him.

18 MR. MORASH: Coopers did use the
19 word "conservative" and also the word
20 "reasonable" in addressing the assumptions
21 used on the violations side.

22 But again, that was all
23 predicated on the system being complete,
24 placed in service in a 22-month contract
25 period, and it did not contemplate

1 significant false-positives.

2 ASSEMBLYWOMAN STENDER: A
3 different subject. I am confused on some
4 of the entities here because there are a
5 number of different ones.

6 Public Resources Advisory Group
7 calculated the base case financial models,
8 I guess, for the Regional Consortium.

9 Can you explain the relation?
10 You were the financial advisor to MFS NT.
11 So did you have any dealings with Public
12 Resources Advisory Group?

13 MR. MORASH: Yes. They were
14 advising Ed Gross and his staff on behalf
15 of the state authorities.

16 ASSEMBLYWOMAN STENDER: So they
17 were supposed to be his -- their financial
18 advisor?

19 MR. MORASH: Yes. And they were
20 betting the reasonableness of the
21 assumptions in the pro forma model on
22 behalf of the state authorities.

23 ASSEMBLYWOMAN STENDER: And did
24 you find that they were in conflict or
25 contradicted what you were -- did they --

1 MR. MORASH: There was always
2 give and take. There was a lot of
3 discussion that went on in determining
4 what the model was.

5 But then we also prepared in the
6 accounting letter the specific methodology
7 and agreed upon the specific methodology.
8 And they participated in that process to
9 determine how the liabilities would be
10 forecast on an annual basis as the
11 situation changed over time.

12 ASSEMBLYWOMAN STENDER: Does
13 that mean if you presented a set of
14 figures to MFS NT as what you thought was
15 going to happen, the base case financial,
16 then they had their version that the
17 Consortium had the option, if you will, of
18 agreeing with what they said as opposed to
19 what you said was going to really happen?

20 MR. MORASH: Yes.

21 ASSEMBLYWOMAN STENDER: So that
22 would explain why in this same testimony
23 he said that the financial advisor
24 presented a model showing a balance due of
25 161 million in 2008 as opposed to your

1 worst case that showed 270 million?

2 MR. MORASH: What was the date
3 of the 161 million dollars?

4 ASSEMBLYWOMAN STENDER: I guess
5 they were supposed to keep redoing it. It
6 says November 2001 the base case model was
7 revised and projected that in 2008,
8 balance of 161 million will be outstanding
9 and due from the member agencies.

10 MR. MORASH: Exactly. That was
11 the process that we specified in the
12 accounting would take place on an annual
13 basis. And it's when Public Resources did
14 that forecast of the 161 million dollar
15 deficit that the whole process that led to
16 this investigation started.

17 ASSEMBLYWOMAN STENDER: Because
18 that discrepancy is so --

19 MR. MORASH: Because the actual
20 violations revenue collection has fallen
21 well short of the original projections.

22 So that when they revised the
23 projections in November of 2001 according
24 to the formulas that we agreed to with
25 them, then it became apparent that the

1 revenues were not going to be there to pay
2 off the bonds, and that there would be, in
3 their calculation, a 161 million dollar
4 shortfall.

5 ASSEMBLYWOMAN STENDER: Thank
6 you.

7 CHAIRMAN WISNIEWSKI: Thank you,
8 Assemblywoman.

9 Vice-Chairman Gusciora.

10 ASSEMBLYMAN GUSCIORA: Thank
11 you, Mr. Chairman.

12 Mr. Morash, I just want to draw
13 your attention to the March 27th letter to
14 William Thompson, Tab C.

15 It's my understanding of this
16 letter, it seems to set up a contingency
17 fee that you had with MFS over the
18 contract, that basically if MFS got
19 awarded the E-Z Pass contract, then you
20 would be paid a contingency fee. But if
21 MFS did not get awarded the contract, you
22 would not be paid for your services?

23 MR. MORASH: That's correct.

24 ASSEMBLYMAN GUSCIORA: Section
25 2.

1 MR. MORASH: That is correct.
2 Although at the time of this letter, they
3 had been awarded the contract.

4 ASSEMBLYMAN GUSCIORA: So your
5 fees to them, one million dollars, was to
6 provide the financing direction of the E-Z
7 Pass system?

8 MR. MORASH: To help advise them
9 on how to proceed with the transaction,
10 what the many financing alternatives were,
11 which approach would be most
12 cost-effective and most successful.

13 ASSEMBLYMAN GUSCIORA: Now, the
14 contingency fee itself, is that standard
15 in the industry --

16 MR. MORASH: Yes.

17 ASSEMBLYMAN GUSCIORA: -- for
18 advising potential clients such as this?

19 MR. MORASH: Yes. Because
20 unless there is closing, there is no
21 success for the customer. So having the
22 fees only be at closing is a way of
23 aligning the advisor's interest with the
24 client.

25 ASSEMBLYMAN GUSCIORA: What I am

1 told about that kind of arrangement,
2 particularly in a government contract, is
3 that there is a great motivation in
4 someone providing good numbers, a rosy
5 scenario so that the contract is awarded
6 to that party.

7 MR. MORASH: Our duty was to MFS
8 as their financial advisor, and when they
9 asked us also to arrange financing to the
10 lender.

11 ASSEMBLYMAN GUSCIORA: My
12 concern, then, is for in future contracts,
13 and often -- it's almost akin to Andersen
14 and Enron, that the financial advisor's
15 only motivation in getting paid is making
16 sure that their contractee is the one that
17 gets awarded the contract.

18 MR. MORASH: There is nothing in
19 this that is anything like Andersen or
20 Enron. So I can't accept that.

21 ASSEMBLYMAN GUSCIORA: Now, in
22 Section 1, in C it says that part of your
23 responsibility -- that same document -- is
24 to outline the structural alternatives
25 available for financing the project. The

1 alternatives examined will include various
2 financing options, ownership structures,
3 as well as risk return analysis.

4 Was that done for MFS?

5 MR. MORASH: Yes.

6 ASSEMBLYMAN GUSCIORA: Is there
7 a document showing the various
8 alternatives?

9 MR. MORASH: There are a variety
10 of documents that discuss various
11 alternatives. There are -- which actually
12 is contained in this book, if you read all
13 the way through it.

14 ASSEMBLYMAN GUSCIORA: Is there
15 a document that you could point to?

16 MR. MORASH: September 2nd
17 letter, which is Exhibit I. On page 2
18 there is an enumeration of alternatives
19 that addresses costs and feasibility.
20 Starts with lowest cost alternatives, and
21 assesses feasibility, and goes through
22 there.

23 ASSEMBLYMAN GUSCIORA: Was this
24 discussed with people solely at MFS, or
25 was Mr. Gross brought into these

1 discussions?

2 MR. MORASH: He was also in
3 these discussions.

4 ASSEMBLYMAN GUSCIORA: Is it
5 fair to say that whatever was advised to
6 MFS was also discussed with Mr. Gross by
7 yourself or others?

8 MR. MORASH: It was certainly
9 discussed with Mr. Gross. But he also had
10 his own financial advisor. So he was not
11 relying on us for financial advice.

12 ASSEMBLYMAN GUSCIORA: And who
13 was that financial advisor?

14 MR. MORASH: Public Resources
15 Advisory Group.

16 ASSEMBLYMAN GUSCIORA: Was there
17 a specific individual at Public Resources?

18 MR. MORASH: I do not recall his
19 name. But, yes, there was an experienced
20 professional who was -- who advises public
21 sector authorities on these types of
22 transactions.

23 ASSEMBLYMAN GUSCIORA: Now, in
24 Exhibit K, the letter of September 10,
25 Steven Pizer.

1 MR. MORASH: That sounds
2 familiar.

3 ASSEMBLYMAN GUSCIORA: There was
4 a letter addressed to you on September 10
5 by Coopers & Lybrand. Page 4, it talks
6 about that -- actually, page 3, in the
7 second to last paragraph, violations and
8 fiber revenue constitute 93 percent of the
9 total anticipated project revenue.

10 And then it goes on on page 4 to
11 talk about the violations revenue risk
12 factor. And then there is a -- I guess a
13 summation. It says, risk level high.

14 Could you tell us what that
15 means?

16 MR. MORASH: That means exactly
17 what we said in our letters in June, in
18 July, and September of 1997. That it was
19 not possible for financial institutions to
20 agree to provide money for this project
21 without state support because of the
22 inherent risk level of the revenue
23 streams.

24 ASSEMBLYMAN GUSCIORA: Now, do
25 you know if Mr. Gross was aware of that

1 risk level being high?

2 MR. MORASH: Well, I wrote him
3 three letters.

4 ASSEMBLYMAN GUSCIORA: Did you
5 ever have a personal conversation with
6 him?

7 MR. MORASH: Yes.

8 ASSEMBLYMAN GUSCIORA: Some
9 people don't read letters.

10 So you know he was personally
11 aware that the risk level was,
12 quote-unquote, high?

13 MR. MORASH: Again, when you do
14 these transactions, put a pro forma
15 financial problem together, the financial
16 model is based on a series of assumptions.
17 Sensitivity analysis is when you change
18 the assumptions to see what happens with
19 the results.

20 In this particular case,
21 sensitivities were not robust. In other
22 words, small changes in the assumptions
23 lead to large changes in the financial
24 outcome. That's what made it risky.

25 ASSEMBLYMAN GUSCIORA: And then

1 I draw your attention to page 5. Under
2 fiber revenue risk factor, risk level is
3 high as well.

4 Do you know if Mr. Gross was
5 aware of that?

6 MR. MORASH: We told him
7 specifically that Coopers was much less
8 supportive of the projected level of fiber
9 optic revenues.

10 I guess after the fact, the
11 revenues that have been received -- which
12 are I understand some 80 million
13 dollars -- are about halfway between the
14 120 million that MFS projected and the 30
15 to 50 million that Coopers projected.

16 ASSEMBLYMAN GUSCIORA: Now, do
17 you ever get into the mechanism itself?
18 For instance, what does fiber optics have
19 to do with E-Z Pass to begin with? Is
20 there any causal connection between fiber
21 optics and the E-Z Pass system?

22 MR. MORASH: Well, while there
23 is a large amount of automotive traffic
24 between Atlantic City, Philadelphia and
25 New York, there is also a large amount of

1 telecommunications traffic along those
2 same paths. And in particular, the
3 jumping off point for transatlantic
4 underseas fiber optic cables is New York,
5 Atlantic City.

6 So interconnecting there
7 likewise was a valuable telecommunications
8 link.

9 So it was our view that the
10 rights-of-way inherent in the five state
11 agencies as a group was very valuable, and
12 far more valuable than if any one of those
13 agencies offered up the rights-of-way for
14 telecommunications purposes on a
15 stand-alone basis.

16 ASSEMBLYMAN GUSCIORA: Did any
17 other Consortium members use fiber optics
18 as part of their financing scheme?

19 MR. MORASH: It was a joint
20 financing arrangement.

21 ASSEMBLYMAN GUSCIORA: Did any
22 other member states lay down fiber optics
23 and rent them out and say, this will pay
24 for it?

25 MR. MORASH: The New York State

1 Thruway had done that. MFS, in fact, had
2 been responsible for that job. And it
3 was -- I don't recall exactly the dates,
4 but it was shortly prior to the New Jersey
5 E-Z Pass submissions.

6 ASSEMBLYMAN GUSCIORA: Do you
7 know anything about the status of whether
8 that is successful as far as it being a
9 component of the financing scheme in
10 New York?

11 MR. MORASH: I do not.

12 ASSEMBLYMAN GUSCIORA: No
13 further questions, Mr. Chairman. Thank
14 you.

15 CHAIRMAN WISNIEWSKI: Thank you.
16 Assemblyman DeCroce.

17 ASSEMBLYMAN DeCROCE: Thank you.

18 Can you tell me what was more
19 important to Newcourt, was it the sale of
20 fiber optic cables or was it the repayment
21 based on the fines that were apparently
22 estimated?

23 MR. MORASH: The projected
24 revenues for violations was 441 million
25 dollars versus 119 million for fiber

1 optic.

2 ASSEMBLYMAN DeCROCE: So fiber
3 optic played a large part?

4 MR. MORASH: Yes. But
5 obviously, the violations was far more
6 significant as a source of revenue.

7 ASSEMBLYMAN DeCROCE: Do you
8 know of any other Consortium around the
9 country that based their repayment on the
10 same thing?

11 MR. MORASH: No.

12 ASSEMBLYMAN DeCROCE: Did you
13 advise Gross against this type of
14 situation going any further, looking into
15 other avenues?

16 MR. MORASH: No.

17 ASSEMBLYMAN DeCROCE: Let me ask
18 you this: Would there be any less
19 validity to a signed contract called a
20 "true up" as opposed to "guaranty"?

21 MR. MORASH: I am sorry. Could
22 you repeat the question?

23 ASSEMBLYMAN DeCROCE: Do you
24 feel there is any less legal validity to a
25 signed contract called a "true up"?

1 MR. MORASH: No. It's what the
2 contract says and what the legal opinions
3 of the authorities say about their
4 authority to enter into the contract, and
5 that it is valid, binding and enforceable
6 in accordance with its terms.

7 ASSEMBLYMAN DeCROCE: And to
8 this date, do you know if monies have been
9 placed aside by the State of New Jersey by
10 a Treasurer or by anyone to assure that
11 payment would be made down the line?

12 MR. MORASH: I do not.

13 ASSEMBLYMAN DeCROCE: Thank you.

14 CHAIRMAN WISNIEWSKI: Any other
15 members, follow-up questions?

16 Assemblyman Bodine.

17 ASSEMBLYMAN BODINE: Thank you,
18 Mr. Chairman.

19 Just a couple quick questions.

20 Does Newcourt typically use
21 guaranties when financing projects such as
22 this?

23 MR. MORASH: It's common in many
24 project financings that there are a series
25 of contractual arrangements which when

1 pieced together provide a basis for
2 lenders to have comfort that they will be
3 repaid.

4 Each project has its unique
5 structure and unique circumstances. And
6 typically, transactions are tailored to
7 the circumstances of each.

8 So contractual obligations -- of
9 which the limited guaranties such as a
10 true up is a contractual obligation --
11 contractual obligations are common in
12 project financings to provide support to
13 assure timely payment to the lenders.

14 ASSEMBLYMAN BODINE: Does the
15 Nova Scotia project have a true up
16 agreement?

17 MR. MORASH: It does not have a
18 true up agreement, but it does have an
19 agreement with the authorities regarding
20 enforcement of toll collections, which
21 then gives the lenders comfort that the
22 tolls assessed will actually be collected.

23 The lenders bear some risk in
24 the level of traffic, but not in the
25 question of collection of tolls and

1 violations.

2 So, again -- and we had gone
3 down that path initially in this
4 transaction. And that avenue was closed
5 to us.

6 ASSEMBLYMAN BODINE: Thank you.

7 CHAIRMAN WISNIEWSKI: Thank you,
8 Assemblyman.

9 Just two brief questions,
10 Mr. Morash.

11 When this financing was done,
12 Newcourt arranged for institutional
13 investors, largely insurance companies, to
14 buy the bonds. Newcourt also bought some
15 bonds; correct?

16 MR. MORASH: That is correct.

17 CHAIRMAN WISNIEWSKI: What
18 percentage of the overall issue?

19 MR. MORASH: We acquired 57
20 million fixed rate bonds and 60 million of
21 the floating rate bonds. So that was 117
22 out of 302.

23 CHAIRMAN WISNIEWSKI: So roughly
24 a third?

25 MR. MORASH: Yes.

1 CHAIRMAN WISNIEWSKI: Was that a
2 typical level of participation for
3 Newcourt, to buy a third of an issue or
4 over a hundred million dollars?

5 MR. MORASH: No. That was
6 sizeable for us and larger than we would
7 have liked. But it was necessary for us
8 to do that in order to close the
9 transaction.

10 And we then conducted a
11 secondary offering a couple months later
12 where we syndicated the balance of those
13 notes.

14 CHAIRMAN WISNIEWSKI: So a
15 couple of months later you then resold
16 some of the 110 million that you
17 purchased?

18 MR. MORASH: We sold all of
19 them.

20 CHAIRMAN WISNIEWSKI: You sold
21 all of them?

22 MR. MORASH: Yes.

23 ASSEMBLYMAN IMPREVEDUTO: Why
24 was it necessary to take the 110 some odd
25 million? You said you had to.

1 MR. MORASH: Because the
2 transaction was still being negotiated,
3 and we had to turn our attention to the
4 negotiations and the resolution of all
5 open issues necessary to close the
6 transaction in March.

7 It wasn't possible for us at the
8 same time to put together an offering
9 memorandum for other investors. It's
10 something that we had to do after we
11 closed.

12 ASSEMBLYMAN IMPREVEDUTO: So
13 because you were had to find other
14 investors --

15 MR. MORASH: It was a timing
16 question.

17 ASSEMBLYMAN IMPREVEDUTO: So you
18 bought 100 and whatever it was to close
19 the deal, and you go on?

20 MR. MORASH: Yes.

21 ASSEMBLYMAN IMPREVEDUTO: From
22 that point forward you sold out within how
23 long a period of time?

24 MR. MORASH: Three months.

25 ASSEMBLYMAN IMPREVEDUTO: Within

1 three months you had the financial avenue?

2 MR. MORASH: That is correct.

3 CHAIRMAN WISNIEWSKI:

4 Mr. Morash, I draw your attention to the
5 letter that was written concerning the
6 financial models, which I think is Tab M,
7 memorandum of January 24, '98.

8 Just looking at the numbers,
9 item A, penetration rate, which is the
10 degree to which E-Z Pass is used, was it
11 troubling to anyone that greater use was
12 considered a worst case?

13 MR. MORASH: It had an impact on
14 the violations. Because greater use in
15 compliance, you know, while it was a good
16 thing from the perspective of the
17 objectives of the system, when it came to
18 calculations of how much revenue came from
19 violations, it meant you would get a
20 reduced amount of violations.

21 CHAIRMAN WISNIEWSKI: So the
22 model or the theory of collecting revenue
23 from toll violators became less secure or
24 more sensitive as there was greater use?

25 MR. MORASH: That's correct.

1 CHAIRMAN WISNIEWSKI: Okay.

2 MR. MORASH: That in the
3 sensitivity analysis was one of the
4 factors that we pointed out that could
5 lead to less in the way of violations
6 revenues.

7 CHAIRMAN WISNIEWSKI: So more
8 means less?

9 MR. MORASH: More means less.

10 CHAIRMAN WISNIEWSKI:
11 Assemblywoman Stender.

12 ASSEMBLYWOMAN STENDER: Thank
13 you, Mr. Chairman.

14 On this whole issue of the
15 privately placed bonds and the fact that
16 they were not -- they were taxable. I
17 understood what you went through about how
18 this is a complicated transaction. The
19 fact that there was greater scrutiny in
20 terms of reviewing how this was going to
21 work because everybody was concerned that
22 it wasn't going to work the way it was
23 projected and needed additional guaranties
24 to make sure the investor was protected.

25 But, then, it was certainly

1 easier to cover -- cover up, hide the
2 details of the financing from the general
3 public for the purposes of saying --
4 rather than saying, we've got this
5 covered, we are going to be able to
6 finance this without having to pay a dime,
7 because nobody knew a mushroom policy was
8 growing over here about making sure that
9 it was financed, that it was going to be
10 paid back ultimately by the state, and it
11 didn't work.

12 But isn't that whole issue of
13 privately placing bonds unusual in terms
14 of public projects?

15 MR. MORASH: No. There are a
16 number of public projects that are
17 financed with private debt.

18 For example, in the United
19 Kingdom there is a very vibrant area of
20 the public/private partnerships where 30
21 billion pounds of sterling have been
22 raised in over 300 different
23 public/private partnerships.

24 So it's not unusual for there to
25 be a public/private partnership that

1 allocates risk and responsibility to
2 private sectors.

3 ASSEMBLYWOMAN STENDER: Let's
4 talk about the State of New Jersey instead
5 of the United Kingdom. Have you ever seen
6 that happen? Is that typical in this
7 state?

8 MR. MORASH: It was not typical.

9 ASSEMBLYWOMAN STENDER: The
10 whole issue of it being a taxable bond, in
11 your experience, have you seen public
12 projects financed with taxable bonds?

13 MR. MORASH: Particularly since
14 the 1986 Tax Act, which made it very
15 difficult to issue tax exempt debt except
16 as straight obligations of states or state
17 authorities. There have been a number of
18 taxable project financings, public sector
19 oriented projects, infrastructure
20 projects.

21 ASSEMBLYWOMAN STENDER: You are
22 saying that because of the change in the
23 federal tax law that it's become more
24 common for taxable bond projects to be
25 done publicly?

1 MR. MORASH: Yes.

2 ASSEMBLYWOMAN STENDER: Which
3 ends up costing the taxpayers more money
4 anyway?

5 MR. MORASH: Well, it's either
6 the state taxpayers or federal taxpayers.
7 Because, of course, tax exempt bonds
8 become a cost to the federal taxpayers.

9 ASSEMBLYWOMAN STENDER: Some
10 taxpayers think that they don't know the
11 difference between federal and state, that
12 it ends up costing them more money no
13 matter what.

14 MR. MORASH: No matter what.

15 ASSEMBLYWOMAN STENDER: Thank
16 you for explaining that.

17 But on this privately placed
18 thing, the part that I don't understand
19 about privately placing them, other than
20 to get out of the light of public
21 scrutiny, is why they needed to be
22 privately placed when ultimately, due to
23 the true up agreement, the investor got
24 paid anyway?

25 MR. MORASH: If it had been our

1 intent to try to hide this from the
2 public, we would not have insisted on the
3 accounting letter and procedures that led
4 to these hearings. It was never our
5 intent to hide anything. In fact, it was
6 to our benefit to shine the light of day
7 on everything.

8 And that is why we had all those
9 lawyers there and all those legal opinions
10 at closing that said, these obligations
11 are duly authorized, valid, binding and
12 enforceable on the authorities. That is
13 what the lenders needed.

14 ASSEMBLYWOMAN STENDER: I agree
15 with you to a certain -- I don't think
16 that you were creating this mushroom
17 policy out there for public purposes to be
18 able to go out and stand up on a podium as
19 the governor of the State of New Jersey
20 and try to convince people what a great
21 job you are doing at producing projects
22 with no money down and no cost to the
23 taxpayers. But clearly that is what was
24 going on with this. The state was being
25 duped. We were being deceived.

1 Somebody was making a lot of
2 money, and it wasn't the taxpayers of the
3 state that were getting the benefit.

4 But in the end, I guess the part
5 you did play was to call it a "true up"
6 when it should have been a guaranty.
7 Because I don't think anybody knew what a
8 true up agreement was.

9 MR. MORASH: I can't really
10 respond to that. There were a lot of
11 things that the state authorities were in
12 a position to ask for that as long as we
13 got what we needed, they got what they
14 wanted.

15 ASSEMBLYWOMAN STENDER: Thank
16 you.

17 CHAIRMAN WISNIEWSKI: I think
18 what was clear is that testimony that Ed
19 Gross was deciding what the documents were
20 being called.

21 Assemblyman Gusciora, do you
22 have a brief question?

23 ASSEMBLYMAN GUSCIORA: Yes.
24 What I find I just can't resolve right now
25 is your testimony -- and you're Newcourt,

1 correct -- and the testimony of Ed Gross,
2 who came here only a few weeks ago.

3 He said in his testimony -- and
4 I am reading right from his testimony -- a
5 group of private lenders headed by
6 Newcourt Capital Corporation hired
7 Coopers & Lybrand to review the projected
8 revenues set forth in the model.

9 Newcourt Capital -- which is
10 you -- advised me that Coopers & Lybrand
11 was satisfied with the fiber revenue
12 projection, and considered the violation
13 revenue forecast conservative.

14 And what I can't resolve that,
15 then, is with the memo in Exhibit K where
16 Coopers & Lybrand labeled both the
17 violations revenue and the fiber optic
18 revenue -- the risk factor as high.

19 So here somebody is saying that
20 the risk factor is high, and then
21 Mr. Gross saying that you and Coopers &
22 Lybrand were satisfied with the fiber
23 revenue projections and considered the
24 violation revenue forecast conservative.

25 So how do we get that quantum

1 leap from risk factor high to his
2 testimony? How would you characterize his
3 testimony as saying that you were
4 satisfied with the financing scheme?

5 MR. MORASH: Again, you would
6 have to define "satisfied" within the plus
7 or minus 30 percent band which is what we
8 agreed to.

9 And secondly, I would ask you to
10 read the Coopers report in its entirety
11 where they do state that the assumptions
12 are reasonable.

13 It's a question -- it's like
14 being a statistician and talking about the
15 difference between the mean and a standard
16 deviation. The mean assumption was used
17 for reasonable. The standard deviation
18 was large. In other words, there was
19 risk.

20 And that is what we advised
21 Mr. Gross in three different letters as
22 well as in numerous face-to-face
23 conversations.

24 We took that position from the
25 start, and we never varied from it.

1 CHAIRMAN WISNIEWSKI: Thank you,
2 Assemblyman.

3 Assemblyman Impreveduto.

4 ASSEMBLYMAN IMPREVEDUTO: One
5 last question. You made a statement that
6 the deal went dead for a three-month
7 period in the fall of '97, and the papers
8 were signed I guess in January of '98.

9 MR. MORASH: Well, in March.
10 But it was January that the negotiations
11 started in earnest.

12 ASSEMBLYMAN IMPREVEDUTO: Why do
13 you believe the deal went dead for that
14 three-month period in the fall of 1997?

15 MR. MORASH: That was the time
16 for the gubernatorial election.

17 ASSEMBLYMAN IMPREVEDUTO: But
18 does the world still go on? The governor
19 was already the governor. The governor
20 wasn't part of the deal, was she?

21 MR. MORASH: It was complex
22 because there were five different state
23 authorities involved. And while Ed Gross
24 and the Turnpike Authority were in the
25 lead position, they did not speak for the

1 other authorities.

2 So he was not in a position to
3 make commitments on behalf of the other
4 authorities. And he was simply not in a
5 position to have the project proceed.

6 In January, the Transportation
7 Department got more directly involved.
8 And a woman named Caroline Hollows was
9 appointed to make sure that each of the
10 five authorities actively supported the
11 negotiation, closing documents and
12 transaction.

13 ASSEMBLYWOMAN STENDER: As a
14 follow-up on that -- thank you,
15 Mr. Chairman.

16 You said that Mr. Gross was not
17 able to make decisions. I thought he was
18 the designated lead for the Consortium,
19 which meant that he was speaking for all
20 of the agencies involved in this?

21 MR. MORASH: He was the lead,
22 and, therefore, he could take initiatives
23 and ask for things to be done. But he was
24 not in a position to make binding
25 commitments on behalf of the other

1 authorities.

2 That was one of the difficulties
3 of this entire project. There were
4 significant economic benefits associated
5 with authorities working -- there were
6 significant economic benefits associated
7 with the authorities working together.
8 There was one customer service center
9 rather than five. One violations
10 processing center rather than five. And
11 the five together were able to generate
12 more fiber optic revenues than -- as their
13 right-of-way as a package was worth more
14 than the pieces.

15 But coordinating all those
16 activities was a big job. And all the
17 contract enforcement and so on was a big
18 job. Particularly when the Turnpike as
19 the lead authority didn't have the
20 authority to commit the other agencies.

21 ASSEMBLYWOMAN STENDER: All of
22 the agencies were taking his advice and
23 basically voting for whatever he brought
24 back to them?

25 MR. MORASH: No. They were

1 still pretty independent.

2 ASSEMBLYWOMAN STENDER: Isn't
3 the only one that voted against the
4 original deal the Port Authority? Wasn't
5 that the only vote against this project?

6 MR. MORASH: Well, there are
7 votes against, and then there are also
8 delays associated with gaining the consent
9 and participation.

10 The authority for the Atlantic
11 City Expressway, for example, raised a
12 whole series of issues prior to closing
13 that delayed the closing.

14 ASSEMBLYWOMAN STENDER: They all
15 agreed to the deal and closed on it?

16 MR. MORASH: Ultimately, yes.

17 ASSEMBLYWOMAN STENDER: Thank
18 you.

19 CHAIRMAN WISNIEWSKI: Thank you,
20 Assemblywoman.

21 Thank you members of the
22 committee.

23 Mr. Morash, Mr. Nolan, thank you
24 for your time and your testimony.

25 (Break taken.)

1 CHAIRMAN WISNIEWSKI:
2 Commissioner, thank you for your
3 indulgence in allowing the court reporter
4 to exercise her fingers.

5 COMMISSIONER WILSON: She told
6 me I didn't have a choice.

7 CHAIRMAN WISNIEWSKI: I don't
8 think any of us had a choice. And we
9 appreciate your taking the trip out to
10 New Jersey to be with us today.

11 During the four months or so,
12 Commissioner, that we have been looking at
13 E-Z Pass, we have been looking for
14 answers, primarily to follow our
15 legislative mission to make sure that
16 problem systems like E-Z Pass can't happen
17 again.

18 We certainly can't put the
19 toothpaste back in the tube for this, but
20 we can look at the laws, look at the
21 process, and understand them well enough
22 to perhaps change it for the future.

23 And ultimately, you were
24 Commissioner of the Department of
25 Transportation at the infancy of the

1 process called E-Z Pass. And I believe it
2 would be beneficial for us to have a
3 little exchange about that.

4 So unless you have an opening
5 statement you would like to make, I would
6 like to begin questioning.

7 COMMISSIONER WILSON: No. I
8 would just simply say that out of respect
9 for the committee's desire to learn as
10 much as possible about this program, I
11 have come here today to answer any
12 questions the committee has regarding the
13 time period that I was involved, basically
14 events that happened almost six years ago.

15 But within that context, I would
16 be happy to answer any questions or
17 discuss any element that I have any
18 firsthand knowledge about.

19 CHAIRMAN WISNIEWSKI: Thank you.

20 Why don't we start with your
21 tenure as Commissioner of the Department
22 of Transportation. When were you
23 appointed, and when did you serve until?

24 COMMISSIONER WILSON: I was
25 appointed in March of '94, and I left that

1 post in December of '96.

2 CHAIRMAN WISNIEWSKI: And prior
3 to your appointment in '94 as Commissioner
4 of the Department of Transportation, what
5 experience or background did you have in
6 transportation?

7 COMMISSIONER WILSON: Up until
8 that point I had approximately a 23-year
9 career primarily in the transportation
10 industry, working across the country.
11 Starting with the Port Authority of
12 New York and New Jersey, and moving to the
13 City of Philadelphia, New Jersey Transit,
14 Chicago Transit Authority, in the Bay Area
15 the Transit District, which I left
16 immediately before coming to the state.

17 CHAIRMAN WISNIEWSKI: And
18 subsequent to leaving as Commissioner,
19 where have you gone? What is your
20 employment now?

21 COMMISSIONER WILSON: I am
22 working with a substantial architectural
23 engineering and construction management
24 firm.

25 CHAIRMAN WISNIEWSKI: And that

1 is the firm that you went to immediately
2 upon leaving as Commissioner?

3 COMMISSIONER WILSON: Yes.

4 CHAIRMAN WISNIEWSKI: What is
5 the name of that firm?

6 COMMISSIONER WILSON: AECOM.

7 CHAIRMAN WISNIEWSKI: When you
8 became Commissioner of the Department of
9 Transportation, what, if any, plans were
10 in place for electronic toll collection
11 system?

12 COMMISSIONER WILSON: There had
13 been substantial discussion and, say,
14 evolution of this concept nested in
15 something called the I-95 Corridor
16 Coalition, which was an organization of
17 multiple states and other transportation
18 agencies, such as the Port Authority,
19 Amtrak.

20 And they were developing a whole
21 series of plans and programs to enhance
22 congestion relief, air quality, customer
23 service throughout the northeast corridor
24 section of I-95, say Boston into
25 Washington.

1 And this program had been
2 discussed for some time, my recollection
3 is 12 to 18 months, in a rather serious
4 way before I had arrived.

5 When I arrived in March, April
6 of '94, there had already been a
7 demonstration, series of technologies that
8 were likely candidates to be selected and
9 used.

10 The group in the immediate
11 environment -- the I-95 Corridor Coalition
12 was a broad regional organization. But in
13 the immediate environment involving
14 New York and New Jersey was something
15 called the Inner Agency Group, the IAG.

16 They had been working for months
17 defining technology that they thought
18 would be appropriate, and at that point I
19 think had just concluded a demonstration
20 of similar technology.

21 CHAIRMAN WISNIEWSKI: At some
22 point in time either yourself as
23 Commissioner or someone within the
24 hierarchy of state government decided we
25 should implement electronic toll

1 collection system.

2 Can you speak to when that
3 happened and how that process happened?

4 COMMISSIONER WILSON: It came
5 out of the process of assembling the
6 state's transportation plan or program
7 that we would routinely submit to the
8 legislature on an annual basis. And what
9 we would look for would be programs,
10 projects that were ready to move into
11 implementation. And this project appeared
12 to have all the signs of a project that
13 was ready to go.

14 So we looked at what would be
15 required to take it from development stage
16 and demonstration stage to the actual
17 implementation stage.

18 I can't recall the exact month,
19 year, but it was within the '94, '95 time
20 frame.

21 CHAIRMAN WISNIEWSKI: So in the
22 '94, '95 time frame a decision was made
23 that electronic toll collection was a
24 system that was ready to go and needed to
25 get into some planning stages, the capital

1 stage.

2 Who made that decision? Was
3 that something that you made as
4 Commissioner?

5 COMMISSIONER WILSON: I had a
6 hand in making that decision.

7 CHAIRMAN WISNIEWSKI: Who else
8 did?

9 COMMISSIONER WILSON: A whole
10 series of individuals from different
11 agencies. But prior to taking it to the
12 point of the program being funded, there
13 was a fair amount of, let's say, policy
14 agreement that was required before we
15 could take that step. And that took a
16 finite amount of time. It didn't happen
17 overnight.

18 What was required was a
19 discussion with a number of transportation
20 leaders and, say, perhaps officials as
21 well within a number of organizations to
22 get their consent to join this consortium.

23 Because the concept was that
24 this project was not a New Jersey project.
25 Given how frequently and easily our

1 constituents or residents changed
2 geographic borders, the notion was and the
3 understanding was by virtue of working in
4 this corridor, I-95 Corridor Coalition, a
5 number of independent agencies were going
6 to go ahead and install their version of
7 E-Z Pass.

8 What we needed to do was to find
9 out whether there was consensus to have a
10 single technology that would make it
11 easier, more sensible for motorists to use
12 a common system. In other words, have one
13 tag instead of having multiple tags to
14 transfer to different state boundaries or
15 different facilities, transportation
16 facilities, bridges and tunnels.

17 So there was a time period where
18 that coalition and that consensus had to
19 be reached. And then that led to a more
20 formal organization to begin the
21 implementation of E-Z Pass.

22 CHAIRMAN WISNIEWSKI: Now, in
23 New Jersey the formal organization that
24 was created was a consortium among the
25 three toll road agencies; correct?

1 COMMISSIONER WILSON: The
2 consortium was the entity that was created
3 to embrace all the constituents in the
4 program.

5 There was an entity in
6 New Jersey that dealt with the issue, and
7 I cannot recall what they called
8 themselves. It was much like the Inner
9 Agency Task Force, but it involved the
10 three toll roads in New Jersey.

11 The consortium was the umbrella
12 organization that embraced all of the
13 entities. I think there were five.

14 CHAIRMAN WISNIEWSKI: And the
15 formation of that umbrella organization
16 for the five organizations, how was that
17 formed? Who formed that? Was that
18 something formed by you as the
19 Commissioner?

20 COMMISSIONER WILSON: I took the
21 lead in the outreach to these other
22 entities. The State of Delaware, Port
23 Authority. I even had discussions with
24 the State of Pennsylvania.

25 By virtue of my participation

1 and the toll road participation, this I-95
2 Corridor Coalition, we certainly were
3 aware of the interest and the plans of
4 these entities to move these programs
5 forward.

6 So New Jersey took the lead in
7 forming this consortium. And I had a
8 series of discussions with my counterpart
9 in other state governments and with very
10 senior levels of Port Authority staff and
11 board as to whether or not they felt it
12 was in their interest to join in this
13 effort.

14 CHAIRMAN WISNIEWSKI: At some
15 point in time we've heard Ed Gross' name
16 throughout the testimony. He was the
17 Executive Director of the Turnpike. And
18 the Turnpike was the lead agency in this
19 umbrella organization that was charged
20 with the design and implementation of E-Z
21 Pass in New Jersey.

22 How did that come to pass? Who
23 chose the Turnpike as the lead agency?
24 Who chose the structure of that
25 organization? We've been told from

1 testimony that there was an executive
2 council comprised I would assume of
3 members of those organizations.

4 Who picked the individuals who
5 got to serve on that executive council?

6 COMMISSIONER WILSON: The
7 existence of the executive council and the
8 leadership of that council I believe is
9 sort of a legacy decision. The
10 organizations working on the technical
11 development of the technology were such as
12 we know the three New Jersey roads. And
13 the Turnpike had provided leadership in
14 that technical development stage.

15 And I think by virtue of that
16 leadership the Turnpike was providing
17 technically and to some degree
18 administratively, therefore, the policy
19 level of representation tracked that.

20 That is why you see Ed Gross in
21 the lead, taking the lead throughout the
22 efforts that were expended in bringing the
23 concept to where it was.

24 CHAIRMAN WISNIEWSKI: It is your
25 testimony Ed Gross was the lead because he

1 was the Executive Director of the
2 Turnpike? And the Turnpike -- it wasn't a
3 conscious point, we need to make Ed Gross
4 the lead on this?

5 COMMISSIONER WILSON: I think he
6 was the lead by consent of the group, of
7 the members of the group, that Ed was
8 willing to provide that function, and the
9 organization of the consortium was happy
10 to have him do it.

11 CHAIRMAN WISNIEWSKI: Was that
12 something that you weighed in on, saying I
13 would like to see Ed Gross lead this?

14 COMMISSIONER WILSON: I don't
15 ever recall having a vote or a discussion
16 about it. I was a member of the executive
17 council, sort of an ex officio member of
18 the executive council. Probably one of
19 the last, if you want to call it, state
20 officials to join that council. And I
21 accepted Ed's leadership as well as
22 others.

23 For instance, my counterparts in
24 Delaware and the Port Authority did, as
25 well.

1 CHAIRMAN WISNIEWSKI: Was it
2 that executive council that then had
3 responsibility for formulating the Request
4 for Proposals that ultimately were sent
5 out to entities like Lockheed Martin and
6 MFS?

7 COMMISSIONER WILSON: That
8 executive council had the responsibility
9 for dealing with policy level issues that
10 would have governed how the project
11 evolved. There is a different
12 level -- there was a different level that
13 developed the Request for Proposals on a
14 technical level that dealt with all the
15 requirements of that.

16 There were two levels in
17 development of the RFP.

18 CHAIRMAN WISNIEWSKI: At some
19 point in time after the technical people
20 that worked for the various agencies put
21 together documentation constituting a
22 Request for Proposal, it came to this
23 executive council. And the executive
24 council looked at it and said, yes, this
25 is what we want to do, or no --

1 COMMISSIONER WILSON: The exact
2 way that would have happened is the
3 proposal would have went to the technical
4 staff to review and make any comments.
5 And at an executive council meeting, the
6 decision would have been made to go with
7 that particular RFP.

8 And so whether there was a
9 formal vote on it or not, there was
10 concurrence from the executive council
11 that that RFP was the one that was to be
12 used.

13 CHAIRMAN WISNIEWSKI: Part of
14 the Request for Proposal that ultimately
15 led to how E-Z Pass was created was
16 language that talked about the bidders in
17 their response addressing the need for
18 what was called, I believe, revenue
19 enhancements. Perhaps bureaucratic speak
20 for ways that this could generate revenue.

21 Were you aware at that time when
22 this was being formulated that the Request
23 for Proposal was asking the bidders to
24 suggest or to respond on how the system
25 could generate revenue?

1 COMMISSIONER WILSON: Yes.

2 CHAIRMAN WISNIEWSKI: And where
3 did that notion come from? Whose idea was
4 it that we need to have the bidders show
5 how this could generate money?

6 COMMISSIONER WILSON: The
7 general notion was that this type of
8 procurement lends itself to revenue
9 sharing.

10 A more specific genesis, I
11 think, would have been in the
12 prequalification stage to this where
13 discussions had been undertaken with
14 respect to bidders as to their approach to
15 the project and the program.

16 There was a substantial
17 discussion about what this program would
18 cost. And the notion was that it would be
19 difficult for us to assign a cost,
20 although our technical staffs had done
21 that, technical staffs from that work
22 group, Inner Agency Group, had made an
23 effort to do that.

24 CHAIRMAN WISNIEWSKI: Just so I
25 can understand, you are saying your

1 technical people thought it would be
2 difficult to assign a cost to this
3 project?

4 COMMISSIONER WILSON: No.
5 Policy people felt that it would be
6 difficult to understand what a cost level
7 should be. And I will explain why in a
8 second.

9 But there was a cost estimate
10 done by the technical experts on the
11 project.

12 The fact of the matter was that
13 this consortium taken as a whole
14 represented over 40 percent of all tolls
15 taken in the nation. And no one had ever
16 seen a procurement such as that.

17 There were individual roads
18 around the country that advanced projects
19 similar to this. And the estimates that
20 had been prepared were indicative of what
21 it would cost to put this kind of project
22 in on a road that had "X" number of lanes,
23 tollbooths. But comparing "X" to what
24 this Consortium had amassed was not
25 appropriate.

1 So the technical evaluation that
2 had been done was viewed as a data point,
3 a benchmark, but not as something that was
4 indicative of how the market would react.

5 Because the market was never
6 faced with an opportunity to do a program
7 that would embrace 40 percent of all tolls
8 taken in the nation, which was a mass
9 undertaking.

10 So the whole notion of a
11 commonness scale or critical mass had not
12 been factored in there. And the general
13 feeling was that that should present some
14 opportunity for vendors to reap rewards
15 that weren't typical from other projects.

16 And the notion was that if those
17 vendors were willing to share that with
18 the state, then we would be able to
19 discover that as part of this procurement.

20 So rather than using low bid
21 procurement, this was a negotiated
22 procurement, so that conversation could
23 happen around that notion.

24 We just assembled this, as the
25 witness before me said, very valuable

1 consortium in terms of just the real
2 estate. You know, the message would have
3 been is there any way to share the
4 benefits of doing that with the state or
5 with the consortium?

6 CHAIRMAN WISNIEWSKI: Just so
7 that I understand your testimony, because
8 this was, as you say, 40 percent of all
9 tolls collected in the nation, you are
10 saying that New Jersey, the Port Authority
11 and Delaware combined is 40 percent of the
12 tolls?

13 COMMISSIONER WILSON: All the
14 participating agencies, if you took the
15 traffic and the tolls, the statistic I
16 recall -- whether it's true or not I don't
17 know -- but the statistic that I recall,
18 that represented 40 percent of tolls
19 throughout the country, the volume.

20 CHAIRMAN WISNIEWSKI: Is it your
21 testimony that because that represented
22 something novel and unique, there was a
23 view to try to capitalize on that in some
24 fashion?

25 COMMISSIONER WILSON: Yeah.

1 Yes.

2 CHAIRMAN WISNIEWSKI: And to
3 capitalize on it was essentially to find
4 ways to extract revenue from that?

5 COMMISSIONER WILSON: No. No.
6 It wasn't a way to extract revenue from
7 it. It really drove how the procurement
8 was structured.

9 What the objective was was to
10 allow the bidding community to be able to
11 openly present to us options that were
12 available to us.

13 Rather than be prescriptive and
14 tell the vendors how to bid the job, it
15 was done in reverse. It was done in a
16 very open way.

17 Here is the technology we want.
18 You tell us what it is going to cost and
19 any other creative, innovative approaches
20 that you have that would either lower the
21 cost or would raise revenue.

22 And none of the member agencies
23 knew enough about how to be prescriptive
24 and structure a bid, let's say. And so
25 what it really did was it operated to make

1 a procurement more open so the bidders
2 could propose those things.

3 CHAIRMAN WISNIEWSKI: So
4 basically, in receiving the responses to
5 the Request for Proposal, the member
6 agencies were evaluating a variety of
7 criteria for which there was no uniform
8 benchmark?

9 COMMISSIONER WILSON: That is
10 correct.

11 CHAIRMAN WISNIEWSKI: To really
12 put it down in the simplest terms, which
13 proposal sounded the best was the one that
14 was likely to win in terms of technical
15 competence, revenues, et cetera,
16 et cetera?

17 COMMISSIONER WILSON: It was a
18 little more sophisticated than "sounded
19 best."

20 CHAIRMAN WISNIEWSKI: I couldn't
21 think of the technical word.

22 COMMISSIONER WILSON: We had an
23 obligation under that procurement method
24 not to reveal competitive information or
25 advantage.

1 So when the bidder proposed the
2 certain method, there was an obligation on
3 the state to evaluate that method, but not
4 to share that with any other bidder. And
5 the bidders were free to propose any
6 method they wanted.

7 I will say again, the obligation
8 is on the state and the consortium to be
9 able to rigorously analyze what they just
10 received and decide for themselves
11 individually and collectively whether this
12 made sense or whether it didn't.

13 And I think if you look in the
14 RFP, you will find language that says, any
15 unreasonable offers will be rejected.

16 CHAIRMAN WISNIEWSKI: The
17 question I guess that comes to mind when
18 you read that is how you determine in a
19 novel project what constitutes an
20 unreasonable offer.

21 The real lesson of that is the
22 projections made by bidders on the revenue
23 enhancements, on what they would project
24 as being able to be extracted from the
25 system as revenue offsets to the cost,

1 since it was novel and untried, wasn't
2 there a concern that there is an
3 incentive, in a sense, for bidders to
4 guild the lily, so to speak?

5 COMMISSIONER WILSON: No. There
6 was not a concern about that. I didn't
7 have a concern about that.

8 I can't say what others were
9 concerned about.

10 CHAIRMAN WISNIEWSKI: But you
11 understand --

12 COMMISSIONER WILSON:
13 Absolutely. And the reason that I didn't
14 have a concern about that was that there
15 is more leverage that we had rather than
16 to have to make a judgment as to whether
17 this was effective or not.

18 We heard a lot of testimony this
19 morning about a private sector vendor
20 coming to the state and saying it needed
21 to accept risk.

22 Well, you can just as easily
23 turn that around. The bidders that bid to
24 us were considerable bidders with
25 considerable resources. And the state

1 could easily have said to them, you accept
2 the risk. It's your balance sheet
3 exposed.

4 And so if you are uncertain
5 about -- if you really are uncertain about
6 what you've just been offered, then you
7 simply say to the vendor, if you are that
8 secure in what you've offered, then you
9 step up and take the revenue risk or the
10 cost risk.

11 And those things are done
12 routinely in many agencies that I have
13 been in. And currently, clients will do
14 that to us. Because whether they have
15 questions or have doubts or not, they will
16 put the risk on the private sector.

17 So that was an option.

18 CHAIRMAN WISNIEWSKI: And
19 perhaps this took place after you left.
20 Apparently that was not an option that was
21 exercised here since the contract that
22 ultimately was executed carried no risk
23 for MFS. They were going to get paid
24 regardless of the performance of the toll
25 collection.

1 Is that your understanding of
2 the contract?

3 COMMISSIONER WILSON: From what
4 I've heard here today, apparently it is.

5 CHAIRMAN WISNIEWSKI: I just
6 wanted to run by you some of the people
7 that we've heard from or we've heard
8 testimony about, just to see if you have
9 any understanding of what their role was.

10 Clearly you understood what Ed
11 Gross' role was?

12 COMMISSIONER WILSON: Yes.

13 CHAIRMAN WISNIEWSKI: And he was
14 Executive Director while you were there?

15 COMMISSIONER WILSON: Yes, he
16 was.

17 CHAIRMAN WISNIEWSKI: And your
18 testimony is Ed Gross became the lead on
19 the consortium by consensus of that
20 executive committee?

21 COMMISSIONER WILSON: Yes.

22 CHAIRMAN WISNIEWSKI: What was
23 Paul Carris' role in that consortium?

24 COMMISSIONER WILSON: He was the
25 project manager for the consortium.

1 CHAIRMAN WISNIEWSKI: And he
2 worked for one of the member agencies?

3 COMMISSIONER WILSON: He worked
4 for the Turnpike.

5 CHAIRMAN WISNIEWSKI: And Diane
6 Scaccetti, what was her role?

7 COMMISSIONER WILSON: I am not
8 certain. I know she worked for one of our
9 toll roads, but I am not certain which
10 one.

11 CHAIRMAN WISNIEWSKI: Did you
12 have any direct involvement in reviewing
13 the request for proposal before it was
14 ultimately issued to the public, to the
15 bidders? Before it went out did it need
16 the sign-off by the Commissioner of the
17 Department of Transportation?

18 COMMISSIONER WILSON: No.

19 CHAIRMAN WISNIEWSKI: Who had
20 the ultimate sign-off on that RFP?

21 COMMISSIONER WILSON: Each of
22 the participants needed to agree that
23 that's the RFP that they would use.

24 CHAIRMAN WISNIEWSKI: Would it
25 be fair to say that -- as Commissioner you

1 sit on the Board of Commissioners of the
2 Turnpike Authority?

3 COMMISSIONER WILSON: Of all the
4 toll roads.

5 CHAIRMAN WISNIEWSKI: So you
6 have some involvement with those toll
7 roads and some oversight?

8 COMMISSIONER WILSON: Yes.

9 CHAIRMAN WISNIEWSKI: Would it
10 be fair to say that the approval of that
11 RFP was a function or an act that was
12 delegated to the management or Executive
13 Director of those roads?

14 COMMISSIONER WILSON: Typically,
15 yes. If the board knew about an RFP they
16 would have known it through a briefing
17 from the Executive Director of the staff
18 committee meeting. But it is not a team
19 that board members, Chairmen of Boards
20 would actually review an RFP.

21 CHAIRMAN WISNIEWSKI: As
22 Commissioner at the time, did you review
23 any other RFP's that were issued by the
24 Turnpike?

25 COMMISSIONER WILSON: No.

1 later, August 23rd, 25th, in that
2 neighborhood, that I realized that my
3 recusal would have to take effect on this
4 procurement as well.

5 The reason for that is that
6 those specific firms had approached me in
7 terms of association with them in the
8 future. And as this procurement turned
9 out, there was one of those firms on one
10 bidder and one on the other bidder. Which
11 meant I at that point could not have any
12 further conversations with anybody
13 directly involved with that, including
14 people on my staff.

15 CHAIRMAN WISNIEWSKI: So on two
16 of the bidders at some point in time there
17 was a conversation which future
18 association between yourself and those
19 firms were discussed. What were those
20 firms?

21 COMMISSIONER WILSON: Daniel,
22 Mann, Johnson and Mendenhall and Booz
23 Allen.

24 Daniel, Mann, Johnson and
25 Mendenhall was not a bidder, but they had

1 corporate relations with another bidder
2 that was on the other contract.

3 So even though it was an arm's
4 length extended relationship, I didn't
5 even want the appearance of a conflict.
6 And I assumed it was just as good as
7 having the same firm on the list.

8 CHAIRMAN WISNIEWSKI: And the
9 other firm was?

10 COMMISSIONER WILSON: Frederic
11 R. Harris.

12 CHAIRMAN WISNIEWSKI: They were
13 not a bidder --

14 COMMISSIONER WILSON: They were
15 a subcontractor to MFS.

16 CHAIRMAN WISNIEWSKI: Did you
17 ultimately take employment from either of
18 those two firms?

19 COMMISSIONER WILSON: Not Harris
20 or Booz Allen. But I went to work for
21 Daniel, Mann, Johnson and Mendenhall.

22 CHAIRMAN WISNIEWSKI: That was
23 in December of '96 when you left?

24 COMMISSIONER WILSON: Yes.

25 CHAIRMAN WISNIEWSKI: Was this

1 issue reviewed by the Executive Committee
2 on Ethical Standards?

3 COMMISSIONER WILSON: Yes.

4 CHAIRMAN WISNIEWSKI: And they
5 issued an opinion or they issued some
6 finding?

7 COMMISSIONER WILSON: Regarding
8 that recusal and this process?

9 CHAIRMAN WISNIEWSKI: Yes.

10 COMMISSIONER WILSON: My
11 recollection is the recusal was upheld,
12 and I had no involvement with the
13 procurement in any way.

14 CHAIRMAN WISNIEWSKI: In August
15 of '96, or August 20 of '96 when you wrote
16 that recusal letter, at that point in time
17 had there been any activity in terms of
18 responses from bidders to the RFP?

19 COMMISSIONER WILSON: No.

20 CHAIRMAN WISNIEWSKI: Do you
21 recall when that RFP was sent out?

22 COMMISSIONER WILSON: Some
23 months prior to August, and I can't recall
24 when.

25 CHAIRMAN WISNIEWSKI: Our time

1 line shows that the Request for Proposals
2 went out in April of '96.

3 COMMISSIONER WILSON: Could be.

4 CHAIRMAN WISNIEWSKI: And you
5 don't have any recollection of any
6 proposal coming back between April of '96
7 and August?

8 COMMISSIONER WILSON: No.

9 CHAIRMAN WISNIEWSKI: Did you
10 have any conversations with either MFS or
11 Lockheed between April of '96 and August
12 of '96 when you finally recused yourself?

13 COMMISSIONER WILSON: I don't
14 know. I can't say for certain. It was
15 normal for me to talk to all manner of
16 firms hoping to do work for the state, had
17 done work for the state. I am trying to
18 think if we already had work. May have
19 had a conversation. I just don't know. I
20 can't recall.

21 CHAIRMAN WISNIEWSKI: In
22 particular what we are looking for is
23 conversations about the financing and the
24 implementation. But you don't have any
25 recollection of those?

1 COMMISSIONER WILSON: During
2 that time period I am not certain, no.

3 CHAIRMAN WISNIEWSKI: What was
4 the Governor's involvement in trying to
5 put forward this electronic toll
6 collection? Did she have any particular
7 interest? Was this an administration
8 priority to make sure that New Jersey had
9 an electronic toll collection system?

10 COMMISSIONER WILSON: My
11 recollection of the conversation with the
12 Governor was really one unrelated to this
13 but impacting it, and one related to it.

14 The unrelated conversation was
15 to make sure that we are moving all
16 projects that can move to implementation,
17 sort of general conversation about our
18 entire program, this being one of them.

19 And the second one was to be
20 sure that we reached out to the
21 neighboring states and had conversations
22 with them about making them part of the
23 program if they choose to.

24 And that was the extent of my
25 conversations with her about this.

1 CHAIRMAN WISNIEWSKI: There was
2 no -- outside the Governor, chief of
3 staff, other people who speak for the
4 Governor, was there any indication that
5 this was an issue that the front office
6 wanted to move forward? That this was
7 something that the administration, one
8 aspect or another, thought was important
9 to bring to reality sooner rather than
10 later?

11 COMMISSIONER WILSON: No. And
12 even the conversation we had I think was
13 borne out of a meeting that happened
14 periodically between the Governor of
15 New Jersey and the Governor of New York
16 where they talk about programs that
17 impacted both states. And this was a
18 result of that kind of conversation. And
19 it was sort of, well, if we are going to
20 be working with New York and we have other
21 neighboring states, let's be sure we are
22 talking to them as well.

23 So it was just between herself
24 and myself.

25 CHAIRMAN WISNIEWSKI: When

1 former Executive Director Gross testified,
2 his testimony was that you had requested
3 or directed that a financing plan be
4 attempted to allow for a financing stream
5 to come from the electronic toll
6 collection system.

7 Is that testimony accurate?

8 COMMISSIONER WILSON: Ask the
9 question again.

10 CHAIRMAN WISNIEWSKI: When
11 Mr. Gross testified, he said that it was
12 his opinion and his knowledge that you had
13 directed that a financing plan be
14 attempted that will allow for a revenue
15 stream or streams to be generated from the
16 electronic toll collection system.

17 COMMISSIONER WILSON: What I
18 asked was that we make sure the RFP
19 included an opportunity for the bidders to
20 be as creative as they could be and
21 innovative in terms of how they would
22 price the project.

23 CHAIRMAN WISNIEWSKI: When you
24 say "price the project," you are talking
25 about not only what it costs to install,

1 but what possibly could be generated?

2 COMMISSIONER WILSON: That's
3 correct.

4 CHAIRMAN WISNIEWSKI: Were there
5 any analyses done within the Department of
6 Transportation or any of the toll roads
7 about what possibly could be generated so
8 that whomever received those bids would
9 have some basis of comparing them to what
10 was expected?

11 COMMISSIONER WILSON: No. The
12 simple answer is no. I don't recall any
13 of them.

14 CHAIRMAN WISNIEWSKI: Do other
15 members of the committee have questions?

16 Assemblyman Vice-Chairman
17 Gusciora.

18 ASSEMBLYMAN GUSCIORA: Thank
19 you, Mr. Chairman.

20 Welcome, Commissioner.

21 You are residing in Los Angeles
22 right now?

23 COMMISSIONER WILSON: Yes.

24 ASSEMBLYMAN GUSCIORA: Are you
25 originally from New Jersey?

1 COMMISSIONER WILSON: I would
2 like to think so, but I was born in
3 Philadelphia.

4 ASSEMBLYMAN GUSCIORA: But you
5 were a resident of New Jersey --

6 COMMISSIONER WILSON: I was here
7 for 10 years, yes.

8 ASSEMBLYMAN GUSCIORA: When did
9 New Jersey -- when was the consortium
10 formed to start the E-Z Pass process or to
11 link other states with E-Z Pass?

12 COMMISSIONER WILSON: You know,
13 it was somewhat of a rolling formation.
14 It was formed at a technical level in '94,
15 and a formal policy level sometime in '94,
16 '95 area. I don't know exactly what time.

17 ASSEMBLYMAN GUSCIORA: One thing
18 that struck me from the electronic toll
19 collection system from West Virginia to
20 Maine or New Hampshire, New Jersey seemed
21 to be late on board getting started.

22 I point to other states, and I
23 saw electronic toll collection system in
24 place. Clearly bridges in New York, going
25 into New York had them first, and the toll

1 roads in New York.

2 Was there a reason that
3 New Jersey was late in getting on board
4 into the electronic toll collection
5 system?

6 COMMISSIONER WILSON: As stated,
7 I don't know of any reason why we were
8 late. We were intimately involved with
9 this I-95 Corridor Coalition. They
10 were -- staff were conducting these
11 technical audits and demonstrations, and
12 that took time.

13 I believe what ultimately may
14 have been the good or bad decision was to
15 wait until there was enough consensus in
16 the region -- the region here is
17 multi-state -- to buy one system. So only
18 time will tell whether that was a good
19 decision or not.

20 But I think it was just a
21 process of working through all that.

22 ASSEMBLYMAN GUSCIORA: And then
23 when New Jersey decided to get on board,
24 did anybody in our state call up another
25 state and say, who's installing your

1 system there? Who are you using?

2 COMMISSIONER WILSON: I am sure
3 that the technical committee did.

4 ASSEMBLYMAN GUSCIORA: Because
5 the other thing I am struck in all of this
6 is between West Virginia and New
7 Hampshire, it seems that unlike the
8 operations of other states, New Jersey
9 went with a completely different
10 contractor to install E-Z Pass.

11 I was wondering what the reason
12 is for that, to go with someone else when
13 clearly there is an experience happening
14 in other states?

15 COMMISSIONER WILSON: The only
16 developments that I was aware of is the
17 desire to use a certain technology. And
18 that technology was, to my recollection, a
19 Mark IV technology. And the technical
20 groups wanted to be sure that would be the
21 one we could acquire.

22 You said contractor involved. I
23 assume you mean -- I shouldn't
24 assume -- you mean those that implemented
25 the system, not the core technology?

1 ASSEMBLYMAN GUSCIORA: That is
2 correct. Because my understanding is Mark
3 IV is installed in all the E-Z Pass. I am
4 using E-Z Pass, but in Maryland and
5 New York there is some other euphemistic
6 name. But Mark IV is clearly used in
7 other states.

8 But the contractor itself to
9 install it and to run the system is
10 different than the other experiences in
11 the other states. And I am wondering why
12 New Jersey felt compelled to use somebody
13 different when they are last on board or
14 late in the game and the experience has
15 already been settled in those other
16 states?

17 COMMISSIONER WILSON: I don't
18 know. I don't recall to the point that I
19 was involved any discussion like that what
20 contractor we ought to use.

21 In fact, it was the procurement
22 process that really had to dictate which
23 vendor, contractor, and all other
24 subcontractors would be selected to do
25 that. And that was a decision based on a

1 number of factors, which was experience,
2 qualifications, cost, revenue sharing, a
3 whole range of issues.

4 So that was a decision that was
5 made long after I left.

6 ASSEMBLYMAN GUSCIORA: And were
7 you involved at all in the decision to
8 help finance this project by laying fiber
9 optic lines?

10 COMMISSIONER WILSON: No. Other
11 than trying to ensure that the Request for
12 Proposal or the way that we engage the
13 bidding market allowed maximum flexibility
14 to the vendors, not involving anything
15 specific, any formula or any specific way
16 to do it.

17 ASSEMBLYMAN GUSCIORA: And
18 obviously another reason why we are here
19 is to figure out who is the rocket
20 scientist who came up with the funding
21 scheme, not only with the fiber optics,
22 but that it would pay for itself with toll
23 violations. And that seems to be unique
24 from other states' experiences.

25 Did you ever get to the bottom

1 of that? I know you came before it
2 was -- you left before it was installed, I
3 believe. Did you take part in any of
4 those decisions or when the light bulb
5 went off in somebody's head that this was
6 a great idea?

7 COMMISSIONER WILSON: No. I was
8 not even aware of what was proposed
9 because I couldn't even look at the
10 initial responses coming in. So I have no
11 knowledge of that.

12 ASSEMBLYMAN GUSCIORA: Because
13 at this point you had recused yourself?

14 COMMISSIONER WILSON: Yes.

15 ASSEMBLYMAN GUSCIORA: Because
16 Lockheed, I believe, filed a complaint
17 against you that said the process was
18 unfair? That you had some kind of
19 involvement with MFS or their contractor,
20 subcontractors?

21 COMMISSIONER WILSON: It's a
22 painful memory.

23 ASSEMBLYMAN GUSCIORA: We are
24 just trying to get to the bottom of this.
25 I am sure you were on a beach somewhere in

1 Los Angeles, so you --

2 COMMISSIONER WILSON: I heard
3 the accusation. The accusation was dealt
4 with all the way through the court system.
5 And the ruling was that I had no
6 involvement.

7 ASSEMBLYMAN GUSCIORA: But yet
8 you did settle with the ethics committee
9 to pay some fine?

10 COMMISSIONER WILSON: That's
11 correct.

12 ASSEMBLYMAN GUSCIORA: And what
13 was the reason why you paid the fine?

14 COMMISSIONER WILSON: In brief,
15 there was inability on their part to know
16 whether one meeting I had with this firm,
17 Booz Allen, constituted a conflict or not.
18 And that's all it was.

19 ASSEMBLYMAN GUSCIORA: So you
20 just decided to resolve the thing and put
21 it behind you?

22 COMMISSIONER WILSON: Yes.

23 ASSEMBLYMAN GUSCIORA: But as
24 far as the concept that the toll
25 violations would pay for itself, you did

1 not even take part in those discussions?

2 COMMISSIONER WILSON: No, I did
3 not.

4 ASSEMBLYMAN GUSCIORA: I have no
5 further questions.

6 Thank you, Mr. Chairman.

7 CHAIRMAN WISNIEWSKI:
8 Assemblywoman Stender.

9 ASSEMBLYWOMAN STENDER: Thank
10 you, Mr. Chairman.

11 Commissioner, going back to the
12 whole RFP process, one of the things that
13 I always found kind of puzzling about
14 this, one of the many things, is that as
15 the RFP process was proceeding, that there
16 apparently was no decision by the
17 consortium as to what they thought the
18 best plan would be.

19 In other words, my experience in
20 local county government is that when we
21 are going to implement a project or a
22 program, that first we would come up with
23 a proposal of what we wanted it to look
24 like, wanted it to be, and then we would
25 go out for proposals to actually implement

1 it.

2 But in this case, that's not
3 what was done. You went right out to the
4 bidders and said, use your expertise and
5 tell us what we ought to want or should
6 have to work in this environment.

7 COMMISSIONER WILSON: Not
8 exactly. If you look at the RFP, I think
9 you will find some discussion in there
10 about -- if you look at the process and
11 how it was supposed to evolve, there is
12 something called a baseline offer. And
13 the baseline offer had to come in, I
14 think, two flavors.

15 I think it was the technical
16 proposal. In other words, what hardware
17 and software and systems are you going to
18 put in the ground? You tell us that.

19 And then there was a cost
20 baseline. It was that thing you just
21 proposed to us, what's that going to cost?

22 My recollection was that you
23 couldn't go from the technical baseline to
24 the cost baseline until this group
25 evaluating the bids said, yes, that's what

1 we want. Yes, you are capable of
2 delivering it. We feel that you
3 understand what we are talking about.
4 Then you opened the cost proposal.

5 So you couldn't just open both
6 of them actually.

7 And then once the cost proposal
8 was opened, you were either judged to be
9 still competitive or not.

10 And then there were two other
11 steps.

12 So that would constitute knowing
13 what you want. And the process could have
14 stopped there, my recollection, and go no
15 further. There were two other pieces to
16 it.

17 One was a request for a smart
18 part offer. Because some of the systems
19 that were implemented -- we're talking
20 about using a smart part to do that. And
21 it is important for a whole set of reasons
22 which I won't go into unless you need to
23 go there. That was an option.

24 And the final one, the fourth
25 step, would have been, okay, if you have

1 any bright ideas, if you have any
2 wonderful suggestions, if you have
3 innovative approaches that are going to
4 mean something valuable to the state, you
5 can talk to us about it. You can present
6 it, and we will consider it.

7 So that four-step process was
8 used. And what you would call in good
9 local government knowing what you want,
10 would have been the two baseline
11 proposals.

12 And I believe the RFP was
13 structured so you could disconnect the
14 award, and that was the end of it. You
15 didn't have to go to the other two stages.
16 You didn't have to take the innovative
17 approaches.

18 What happened with those bids
19 when they came in and the decisions were
20 made to do that I am not privy to.

21 ASSEMBLYWOMAN STENDER: My
22 follow-up on that would be this issue of
23 self-financing or self-funding of the
24 system.

25 Everybody had to know it was

1 going to cost to implement the system, and
2 had to have an understanding that one way
3 or another the State of New Jersey was
4 going to have to pay for this.

5 And yet the -- apparently, I
6 gather, you were there when this was still
7 being put into place. And the feature,
8 significant feature, was the self-funding
9 and revenue generating.

10 Did that seem odd, that this
11 could be done that way when no one else
12 had ever done it that way?

13 COMMISSIONER WILSON: No. No.
14 And you stated the question in a way that
15 it's difficult for me to answer.

16 When you say "self-funding," I
17 am getting -- maybe I should ask you a
18 question back to allow me to -- so I can
19 answer the question properly.

20 Do you mean did we think it
21 could be completely funded? Or did we
22 think there was enough value here that
23 somebody could make serious profit and
24 might be willing to share some of it with
25 the state?

1 Which is your question?

2 ASSEMBLYWOMAN STENDER: I mean
3 it was proposed that it was going to pay
4 for itself through this fiber optics
5 network and the violations.

6 COMMISSIONER WILSON: Going in,
7 no one expected -- I am sorry -- I didn't
8 expect that any one scheme could
9 completely pay for anything.

10 As I now here learn and
11 understand, that may have been what was
12 proposed. But going in the concept in
13 the RFP was -- I will give you an example.

14 You are collecting 40 percent of
15 all tolls in the nation, and you
16 understand how this money is collected.
17 In other words, it's paid in advance, you
18 buy a tag, it goes onto your credit card,
19 and we are holding that money. Just think
20 about that for a minute. That is a lot of
21 money sitting in somebody's bank account.
22 And there is this notion, this concept
23 called float. Well, who said the vendors
24 should get all the float?

25 We, I, State of New Jersey, had

1 no way of knowing who they invest with,
2 how much the float is. But you know at a
3 certain visceral level that there is some
4 value there.

5 And all you are asking the
6 bidder to do is if you want to be open and
7 honest about it, tell us in this option
8 section in the bid, tell us what it's
9 worth to you and how much you are willing
10 to share with the state.

11 That was it. That is what the
12 RFP was all about.

13 What happened after that I can't
14 address.

15 ASSEMBLYWOMAN STENDER:
16 Apparently what happened after that is
17 that this true up agreement was done
18 intentionally to confuse or cover that
19 there was a guaranty by the taxpayers to
20 pick up that whole tab knowing that that
21 financing could never work to pay for the
22 system.

23 COMMISSIONER WILSON: I had no
24 involvement or knowledge about that.

25 ASSEMBLYWOMAN STENDER: Thank

1 you.

2 ASSEMBLYMAN GUSCIORA: Thank
3 you, Assemblywoman.

4 Assemblyman DeCroce has
5 questions.

6 ASSEMBLYMAN DeCROCE:
7 Commissioner, if you recall, when the
8 legislation was being put through, it
9 seemed to me that I remember hearing
10 testimony indicating that there were over
11 25,000 toll cheats a day on the Garden
12 State Parkway.

13 Do you recall that?

14 COMMISSIONER WILSON: I don't
15 recall the exact number, but we certainly
16 knew that there were violations.

17 ASSEMBLYMAN DeCROCE: On a daily
18 basis?

19 COMMISSIONER WILSON: Yes,
20 absolutely.

21 ASSEMBLYMAN DeCROCE: Wouldn't
22 that have been the basis for some of these
23 people coming up with this method of
24 financing? Not that I am defending it,
25 but wouldn't that be a possibility?

1 COMMISSIONER WILSON: The short
2 answer is yes. But when you look at the
3 concept that you are dealing with here,
4 there are certain areas where there is
5 clearly revenue. I mentioned float as
6 one. You are mentioning violations as
7 another. There are others.

8 And the issue was, who knew how
9 much they are worth or how much they are
10 not worth?

11 So there was no effort on the
12 state's part going into the market to
13 denominate that and to count on it. There
14 was just an invitation to the bidders to
15 be as forthright as possible as to what
16 was there. We clearly knew that could be
17 a source of revenue.

18 ASSEMBLYMAN DeCROCE: Isn't it
19 true that there was a delay in
20 implementing the program because, number
21 one, we didn't have the central collection
22 bank to -- I don't know if you were here
23 for that or not -- to process all the
24 fines, if there were fines, and process
25 the daily receipts.

1 And beyond that, wasn't it a
2 fact that Whitman really wanted this to be
3 implemented as soon as possible on her
4 watch?

5 COMMISSIONER WILSON: I think
6 what is fact is that this project was not
7 implemented the way that it was conceived.

8 And apparently, from what I read
9 and from what conversation I've had with
10 people, there are lots of reasons why it
11 wasn't done the way it was originally
12 forecasted.

13 You mentioned one, and there are
14 other reasons why it wasn't done according
15 to the plan.

16 ASSEMBLYMAN DeCROCE: But I
17 think the overriding factor here, I think
18 when people began to show their interest,
19 whether it was Newcourt, MFS, or whoever
20 it may have been, the overriding factor
21 here was the fiber optic network that
22 could have been developed specifically.
23 Because they were considering deregulation
24 or there was some talk about deregulating
25 long-distance telephone. And, of course,

1 we had the ability to send a cable from
2 New Jersey overseas.

3 COMMISSIONER WILSON: There was
4 a question and answer here earlier. And I
5 think -- I am trying to remember who on
6 the committee asked that question. But
7 the question was is there any nexus
8 between fiber and the E-Z Pass?

9 And in fact, my understanding or
10 recollection is there was technically.

11 Because you have to communicate
12 over 170 miles north to south, toll plaza
13 to toll plaza. And the way to do that
14 efficiently was the fiber cable instead of
15 telephone wires or wireless.

16 And the point was if you are
17 going to open the ground and put a fiber
18 cable in the ground, the marginal cost to
19 put in a bundle of cables is next to
20 nothing, and so go ahead and do that.

21 And then if you think about the
22 strategic location of New Jersey in the
23 northeast corridor. The gentleman before
24 me said there is substantial value just by
25 quirk of nature where New Jersey was.

1 So the point was, again, how
2 does the government assess a value to
3 that? It can't. So you just invite the
4 market to do that and tell you what it's
5 worth.

6 You are putting yourself in a
7 position to have to recognize a good deal
8 or bad deal. But at least you've got
9 information that you would not have had
10 before.

11 So that's the sum story that I
12 know on this, what role this fiber played.
13 It played an integral part in making the
14 system work, number one. And then it
15 didn't take a genius to figure out there
16 is some other value.

17 The gentleman that sat in this
18 seat before me I think said it's now
19 accrued a value of somewhere around 80
20 million dollars.

21 So I think that is what was in
22 the heads of people when they structured
23 the RFP. Somebody is going to make a lot
24 of money. Is there a way some of that can
25 be used to discount the cost of the

1 program?

2 And that was as far as anybody
3 could go because you just don't know the
4 true value until you are in the
5 marketplace.

6 ASSEMBLYMAN DeCROCE: Thank you,
7 Commissioner.

8 CHAIRMAN WISNIEWSKI:
9 Assemblyman Bodine, do you have anything?

10 ASSEMBLYMAN BODINE: No.

11 CHAIRMAN WISNIEWSKI:
12 Assemblyman Gusciora.

13 ASSEMBLYMAN GUSCIORA: I just
14 wanted to follow up on that. I know you
15 have excellent credentials, a long,
16 distinguished career.

17 But what is absolutely
18 mind-boggling, not so much the fiber
19 optics method of financing, but the toll
20 violations.

21 Because right now if you go
22 through the E-Z Pass system and you don't
23 have E-Z Pass, if you are not signed up
24 for E-Z Pass, we will fine you \$25. And
25 there is only so many times -- but

1 this -- I guess it's considering that
2 everyone is going to be repeatedly
3 violating.

4 I don't think you have to be
5 that bright to know that after you get
6 whacked a couple of times with a \$25 fine,
7 you may make a calculation, hey, maybe it
8 might be cheaper to sign up for E-Z Pass.

9 So after all these violators who
10 over and over keep violating pay for the
11 system, sooner or later people are going
12 to stop violating. So how do you factor
13 in that as a financing scheme?

14 I can't imagine who actually
15 with a straight face said that that was
16 going to pay for the system.

17 COMMISSIONER WILSON: Apparently
18 from the testimony that you already
19 received here today there was a lot of
20 attention paid to it, there were a lot of
21 assessments, and people had information.
22 It's just a matter of what they did with
23 the information they had.

24 ASSEMBLYMAN GUSCIORA: And
25 signed onto that financing scheme anyway.

1 Pat Gilbert of the "Bergen
2 Record" quoted you today as saying it was
3 pretty bizarre.

4 It says, "Former state
5 Transportation Commissioner Frank Wilson
6 said the controversial funding plan that
7 plunged the state's E-Z Pass program into
8 financial free-fall wasn't his idea, and
9 called the approach, quote, pretty
10 bizarre."

11 COMMISSIONER WILSON: I will
12 have to speak to the reporter, because I
13 tend not to use flamboyant language like
14 "bizarre." But bizarre in this sense.
15 This is just me talking about something I
16 had no involvement in, so it's worth that,
17 essentially nothing.

18 If you are faced with that, the
19 risk doesn't belong on the state. The
20 risk belongs on those who stand to gain
21 substantially from it.

22 If they weren't willing to take
23 the risk -- and I heard today sitting in
24 the audience that the vendor said they
25 wouldn't do it. That is reason for the

1 state to re-think why it would do it.

2 You can receive and routinely in
3 government you do receive all manner of
4 proposals. Your final protection is you
5 walk away from the deal if it does not
6 look good to you, it is not good to you.

7 And that probably what I say
8 meant to say to this reporter. I
9 personally would never have taken that
10 kind of risk, give me a guaranty.

11 ASSEMBLYMAN GUSCIORA: Do you
12 have any advice for the State of
13 New Jersey or this committee how we can
14 prevent a boondoggle like this from
15 occurring again?

16 Do we need to have mechanisms in
17 the law or better oversight? Or what
18 protections can we put in that prevent an
19 E-Z Pass system from occurring again?

20 COMMISSIONER WILSON: I think
21 there has been a lot of good, creative,
22 hard work done on this program. I know it
23 sounds kind of perverse given the problem
24 that we are dealing with here, but it was
25 a great concept. It was maybe flawed a

1 little bit in the execution.

2 But being able to engage a
3 vendor as a public/private partner is very
4 valuable. We are seeing that all over the
5 world. Not just in the states, not just
6 in New Jersey, all over the world, that
7 these partnerships are a preferred way of
8 securing major programs like this.

9 The very first thing and my
10 suggestion to you would be you don't
11 advance a project like this without a very
12 robust risk assessment.

13 We do them now as a private
14 vendor offering. We do the risk
15 assessment. Public entities do risk
16 assessments. And it needs to be done
17 jointly.

18 And the reason for that is to
19 assess -- not to be blind to the risk,
20 because there is tremendous risk in every
21 infrastructure undertaken. The reason you
22 do it is to identify it, assign it, manage
23 it, control it, and in some cases, insure
24 it.

25 A lot of things could have been

1 done here that would have put New Jersey
2 in a better place and the vendor in a
3 better place. And those things come in
4 many different forms.

5 I will give you an example. If
6 the vendor didn't want to take the risk
7 and the state didn't want to take the
8 risk, there are risk-takers out there. We
9 know them as insurance companies. They
10 take risks every single day. They risk on
11 you. I am sure you have life insurance.

12 They will do their own
13 actuarial. Let's say -- for example, this
14 80 million dollars we accrued on the fiber
15 side. Take a portion of that 80 million
16 dollars and buy, what, risk insurance.
17 Pay somebody to step up and take that
18 risk.

19 So if the program is good, and
20 you want down the road where you are
21 sharing information, you are sharing
22 revenues, you have somebody underwrite the
23 program for the state, which is a good
24 thing, then just be smart about how you
25 manage risk.

1 Every major hundred million,
2 multi-billion dollar deal that is done
3 today has a sophisticated risk management
4 going into it. So you don't have to sit
5 there and say, you take the risk, you take
6 the risk. You bring a risk-taker to the
7 party and have them do what they are
8 engaged to do.

9 That is one simple example of
10 what could have happened here or what
11 should have happened going forward.

12 I would urge you not to use this
13 as an example why the state doesn't want
14 to be aggressive and creative on major
15 programs. But just be -- you have to be a
16 little smarter about them. Who is taking
17 the risk, who is paying for the risk.

18 As I said, that is one simple
19 example of what could have been done.

20 CHAIRMAN WISNIEWSKI:

21 Commissioner, I just have a couple
22 follow-up questions.

23 Assemblyman Gusciora mentioned
24 the "Bergen Record" article. I went
25 through it myself. And one of the issues

1 that was raised, one of the statements,
2 was that essentially the article said that
3 if you were approached or if you were
4 asked to approve something that required a
5 guaranty, you would have said no.

6 Is that correct?

7 COMMISSIONER WILSON: Absolutely
8 correct.

9 CHAIRMAN WISNIEWSKI: My
10 question is, is that something that ever
11 rises to the level of Commissioner?

12 COMMISSIONER WILSON: Should
13 have.

14 CHAIRMAN WISNIEWSKI: It should
15 have. Are there mechanisms -- for
16 instance, in your testimony thus far this
17 morning we were talking about the creation
18 of the Request for Proposals, which you
19 said was done by technical people within
20 the agencies together at issue. And as
21 Commissioner, that is not something that
22 you particularly got involved in or
23 perhaps even signed off on. That was
24 their area of expertise.

25 COMMISSIONER WILSON: That is

1 correct.

2 CHAIRMAN WISNIEWSKI: And that
3 is essentially what started the ball
4 rolling in terms of the self-financing
5 which ultimately led to the guaranty.

6 I guess my question is if the
7 RFP can go out without a high level
8 sign-off, then it seems to follow that all
9 of these other things can happen without a
10 high level sign-off?

11 COMMISSIONER WILSON: The
12 unusual part about what happened here was
13 the fact that you had five CEO's, five
14 legal departments, five boards, all of
15 them in this and apparently agreeing to
16 it.

17 As Commissioner, at least the
18 way it's structured in this state, sits --
19 as we mentioned before, as part of the
20 executive committee, council, I was an
21 ex officio member. I didn't own the toll
22 road, they did. They are independent
23 entities with independent boards,
24 notwithstanding the fact that the Governor
25 appoints the board members and the chair.

1 CHAIRMAN WISNIEWSKI: Isn't it
2 true that the Commissioner of
3 Transportation sits at that meeting and
4 says, I don't think the Governor would be
5 very happy with this --

6 COMMISSIONER WILSON: I was just
7 going to finish the point. That is,
8 whether you were there as the Commissioner
9 of Transportation on the executive council
10 or not, you have a role at the board. So
11 there were at least three board meetings
12 that you have to play a fiduciary role,
13 both as a board member and as a
14 representative of the Governor.

15 So there would have been three
16 opportunities to look at that and say, do
17 we want to issue this guaranty? And --

18 CHAIRMAN WISNIEWSKI: You are
19 saying that guaranty should have come
20 before the board?

21 COMMISSIONER WILSON: I would
22 have thought that it did go before the
23 board, but I don't know that for certain
24 because I wasn't there. But it is the
25 kind of thing you would want to know

1 about.

2 CHAIRMAN WISNIEWSKI: At some
3 point in time if it did come before the
4 board, the Commissioner or someone said,
5 let's do this?

6 COMMISSIONER WILSON:
7 Apparently.

8 CHAIRMAN WISNIEWSKI: Okay. And
9 had you been there, you say you would not
10 have --

11 COMMISSIONER WILSON: That is
12 pretty self-serving, I know, but --

13 CHAIRMAN WISNIEWSKI: Yes, it
14 is.

15 COMMISSIONER WILSON: I would
16 like to think I would have said, let's do
17 this a different way.

18 CHAIRMAN WISNIEWSKI: Let me
19 back up the clock a little bit. Before
20 the RFP was issued in April of '96 there
21 was a prequalification process in which
22 ultimately Chase Manhattan, Lockheed
23 Martin, MFS NT, Valley National Bank were
24 selected as prequalified bidders. What
25 part in the prequalification process did

1 you play?

2 COMMISSIONER WILSON: No
3 official part. I think I spoke with a
4 number of those bidders who came by and
5 wanted to talk to me about their interest
6 in the project, the program, who they
7 were, what they were doing, and to let me
8 know that they were going to be
9 participating in this prequalification
10 process.

11 And -- which was pretty typical
12 of people who wanted to do business with
13 the state. Letting the Commissioner know
14 that they are interested in the program
15 and wanted to participate.

16 CHAIRMAN WISNIEWSKI: Did you
17 have any understanding of their strengths
18 or weaknesses or the reasons why they were
19 selected as prequalified bidders?

20 COMMISSIONER WILSON: No. My
21 understanding of the strengths and
22 weaknesses come in the form of -- I don't
23 mean to be demeaning because it is a very
24 serious part of the process -- but people
25 coming on marketing calls. And they tell

1 you how wonderful they are and what
2 they've done before and what they can do
3 for you. And you sit and you listen.

4 But since I didn't have any
5 direct involvement or participation on the
6 prequalification process -- in other
7 words, I didn't cast a vote as to who I
8 thought was qualified or not -- you know,
9 I just accepted what it was as a marketing
10 call, a courtesy call.

11 CHAIRMAN WISNIEWSKI: And I know
12 you recused yourself in August, and I just
13 wanted to confirm this.

14 In July of '96, a month before
15 you officially recused yourself, the first
16 MFS submittal to the RFP came in. Did you
17 have any involvement in the review of
18 that? Or were you briefed on what the
19 proposals contained? Did you have any
20 decision-making ability at that point in
21 time of how that was going to proceed?

22 COMMISSIONER WILSON: What came
23 in? I am not sure I understood.

24 CHAIRMAN WISNIEWSKI: That was
25 the -- MFS submitted its response to the

1 RFP a month before you departed.

2 COMMISSIONER WILSON: No. I am
3 surprised to hear that they submitted it
4 in July.

5 CHAIRMAN WISNIEWSKI: July 26 of
6 '96 in a letter to the Director of
7 Maintenance and Engineering.

8 COMMISSIONER WILSON: I am not
9 certain whether that was the RFP or that
10 was a statement under the prequalification
11 process. But the answer is no.

12 CHAIRMAN WISNIEWSKI: Pleased to
13 submit as prime contractor to submit our
14 response to the regional consortium's
15 Request for Proposals. And it's a binder
16 of some 500 pages.

17 COMMISSIONER WILSON: No.

18 CHAIRMAN WISNIEWSKI: You didn't
19 see that, you weren't involved in that?

20 COMMISSIONER WILSON: No.

21 CHAIRMAN WISNIEWSKI: One of the
22 things that is troubling -- I guess I
23 conclude on this note -- is that while we
24 heard the testimony from Mr. Gross, when
25 we asked specific questions about

1 decision-making, whether it be on the
2 issue of the guaranty or true up
3 agreement, issues about the financing,
4 there was -- except for saying that in
5 retrospect the financing didn't work out,
6 there seemed to be a passing of the buck,
7 that decisions were made elsewhere. Other
8 people have testified saying that Ed Gross
9 was a decision-maker on E-Z Pass.

10 What's your perspective on where
11 the decisions were made on E-Z Pass?

12 COMMISSIONER WILSON: The way
13 the system should have worked was that
14 each of the roads, each of the agencies
15 involved, had to make their own individual
16 decisions as to take the procurement and
17 to write the contract. First the
18 procurement, and second to sign the
19 contract.

20 So there were two decisions that
21 five entities had to make.

22 As I understand the process, Ed
23 Gross was responsible for getting the
24 Turnpike to accept or reject the offer.
25 And then on behalf of the consortium, he

1 would have acted as the -- call him what
2 you want, coordinator, chairman, monitor
3 for the consortium.

4 But as the witness said before
5 me, I completely agree, it was a decision
6 on five entities' parts to advance this
7 work.

8 CHAIRMAN WISNIEWSKI: But when
9 those five entities were making the
10 decision, they were essentially responding
11 to material provided to them by the
12 consortium. There wasn't five agencies
13 making five separate decisions. There was
14 five agencies essentially deciding whether
15 or not to agree to a proposal submitted by
16 the consortium?

17 COMMISSIONER WILSON: Yes,
18 absolutely.

19 CHAIRMAN WISNIEWSKI: And that
20 consortium was led by Mr. Gross?

21 COMMISSIONER WILSON: Yes.

22 CHAIRMAN WISNIEWSKI: Do any
23 other members have questions? Excuse me.

24 The minutes of the toll road
25 meetings, the commissioner meetings, are

1 they subject to being approved or
2 disapproved by the Governor?

3 COMMISSIONER WILSON: I believe
4 they are.

5 CHAIRMAN WISNIEWSKI: So if
6 there was, say, an issue of the guaranty,
7 if that was approved by the board -- which
8 you are giving the opinion that you
9 thought that was a type of decision that
10 should have been -- that would have then
11 been something subject to being vetoed or
12 approved by the Governor?

13 COMMISSIONER WILSON: Yes.

14 CHAIRMAN WISNIEWSKI: Thank you.

15 I don't think we have any other
16 questions. So Commissioner, I appreciate
17 your taking the time out of your busy
18 schedule to come out to us in New Jersey.
19 Thank you for your testimony.

20 Meeting is adjourned.

21 (Time noted: 12:52 p.m.)

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1 C E R T I F I C A T E

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3 I, SEVA FLICSTEIN, a Certified
4 Shorthand Reporter and Notary Public of
5 the States of New Jersey and California,
6 do hereby certify that the foregoing is a
7 true and accurate transcript of the
8 testimony as taken stenographically by and
9 before me at the time, place and on the
10 date hereinbefore set forth.

11 I do further certify that I am
12 neither of counsel nor attorney for any
13 party in this action and that I am not
14 interested in the event nor outcome of
15 this proceeding.

16

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18 _____
19 New Jersey Certificate No. XI 01413
California Certificate No. 8727
Registered Merit Reporter

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