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Transcript of Richard Louis Baird, Volume 2

Date: March 1, 2017

Case: IN THE MATTER OF: FLINT WATER CRISIS

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STATE OF MICHIGAN

IN THE MATTER OF:
Flint Water Crisis
Michigan Criminal Laws and
Statutes, Including But
Not Limited to Misconduct
In Office.

HIGHLY CONFIDENTIAL

Examination Pursuant to Investigative Subpoena of
RICHARD L. BAIRD, VOLUME II,
Lansing, Michigan
Wednesday, March 1, 2017
1:34 p.m.

Job No: 137228
Pages: 162 - 213
Reported by: Melinda S. Moore, CSR-2258

1 Examination Pursuant to Investigative Subpoena
2 of held at the location of:

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5 525 West Ottawa Street, Suite 101,

6 Lansing, Michigan 48933

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14 Before Melinda S. Moore, a Certified Shorthand Reporter
15 and Notary Public in and for the State of Michigan.

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1 APPEARANCES:

2

3 TODD F. FLOOD (P58555)

4 ALEXANDRA E. EDELEN (P80971)

5 KEVIN G. SIMOWSKI (P34358)

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11 Appearing on behalf of the Michigan

12 Department of Attorney General.

13

14 RANDALL S. LEVINE (P30672)

15 TYLER J. STEWART (P80750)

16 Levine & Levine

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22 Appearing on behalf of the Witness.

23

24 ALSO PRESENT:

25 Jeff Seipenko - Michigan Department of Attorney General

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TABLE OF CONTENTS

WITNESS		PAGE
RICHARD L. BAIRD		
	FURTHER EXAMINATION BY MR. FLOOD	166
EXHIBIT	DESCRIPTION	PAGE
EXHIBIT 18	Handwritten Timeline	191
EXHIBIT 19	6/26/13 Resolution	176

1 Lansing, Michigan

2 Wednesday, March 1, 2017

3 1:34 p.m.

4 MR. FLOOD: This is the continuation of
5 the investigative subpoena that started -- when
6 was the date of that? I'll give it to you right
7 here. -- February 23, 2017, with Mr. Richard
8 Baird.

9 FURTHER EXAMINATION

10 BY MR. FLOOD:

11 Q. Rich, you know you're still under oath?

12 A. Yes.

13 Q. Okay. When we left off, I asked a question about
14 the state paying or making sure people were able
15 to get to DC and lobby for insurance purposes and
16 the like. I don't want to talk about that right
17 now. I want to talk about a few other things.

18 MR. LEVINE: Before we go, Randall
19 Levine appearing on behalf of Baird with my
20 associate, Tyler Stewart.

21 MR. FLOOD: Put your name on the
22 record.

23 MR. STEWART: Tyler Stewart.

24 MR. FLOOD: Very good. Thanks. I just
25 wanted to hear your voice.

1 BY MR. FLOOD:

2 Q. So, Rich, I went through some of your e-mails and
3 documents. And who made the decision -- in your
4 research and your opinion, who made the decision
5 to use the Flint River as a water source?

6 A. I don't know.

7 Q. Did you do some research and come up with an
8 opinion?

9 A. I read some articles and I looked at some minutes
10 of meetings, yeah.

11 Q. The minutes of the city?

12 A. Yes.

13 Q. City council, I should say.

14 A. City council.

15 Q. And that was with -- when the EM was around,
16 Edward Kurtz?

17 A. I believe so, yes.

18 Q. Okay. And what did you conclude after looking at
19 all that?

20 A. I was not able to find any formal minutes of a
21 meeting that dealt with the switch to the Flint
22 River. I just found minutes that dealt with the
23 switch to the KWA water authority.

24 Q. Right. That was in March of 2013, and then later
25 on -- those minutes is what you're speaking of?

1 A. Yes.

2 Q. And then subsequent to that, the treasury, along
3 with Dennis Muchmore, the governor, and others
4 did a lot of work on making a determination one
5 way or the other to go to the KWA. Is that what
6 you researched, or you looked at or -- I'm trying
7 to get a sense of what you saw.

8 A. I didn't see any of those things until discovery
9 and e-mails and press reports and those sorts of
10 things. At the time in realtime I didn't have any
11 line of sight into that.

12 Q. I'm not holding you to the realtime. I'm not
13 focused on you in realtime. We already
14 established early on in your investigative
15 subpoena that you weren't really into the focus
16 of Flint. You had other issues going on with
17 Detroit; right?

18 A. Right.

19 Q. Your focus came into Flint -- although you
20 followed it in the press and the like, your focus
21 came after the crisis started; is that fair?

22 A. It came more consistent with the publicity with
23 the elevated blood lead levels, yes.

24 Q. Right. So I'm picking your brain to help me out
25 to figure out -- you peeled the layers of the

1 onion back in this case. You researched it for
2 11 months. You found the minutes and looked at
3 some of those. You did that on your own for the
4 KWA. You remember doing that?

5 A. Yes.

6 Q. So the KWA, what did you discover, at least what
7 do you think you discovered? Why don't you tell
8 me that.

9 A. I believe that the elected officials as well as
10 the emergency manager had a significant desire to
11 move away from the Detroit water as its source and
12 to become an equity partner in the KWA formation.

13 Q. Okay.

14 (Mr. Simowski present at 1:38
15 p.m.)

16 BY MR. FLOOD:

17 Q. Now, as it relates to that work, you looked --
18 through those desires, there was a lot of work by
19 the state treasury department, questions by the
20 governor, things of that sort to vet it out of
21 whether or not the KWA was good, bad or
22 indifferent. Did you look at any of that
23 material to see the vetting process by the state
24 other than the EM that's appointed by the state,
25 but other than the city?

1 A. I did not research it but I had conversations.

2 Q. And in your conversations -- let's first
3 establish who did you have conversations with?

4 A. The treasury predominantly.

5 Q. Andy Dillon?

6 A. Yes.

7 Q. And Andy Dillon, he told you the process and the
8 vetting of the process? Yes?

9 A. I don't recall exactly what Andy said, but he told
10 me that he wanted to make sure that that move to
11 KWA made sense given Flint's financial position.

12 Q. Fair enough. There was a lot of publicity about
13 Flint joining KWA. Let's just take for argument
14 sake -- good, bad, indifferent, that really
15 doesn't matter to me. For argument sake, that's
16 done, water under the bridge.

17 MR. LEVINE: Bad pun.

18 MR. FLOOD: Don't use "flood" in this
19 question either.

20 BY MR. FLOOD:

21 Q. So, anyway, let's get to the Flint River as a
22 source. I can't imagine that the executive
23 branch of our state didn't try to figure out, you
24 included, about where did the buck stop with, who
25 made that determination, who made the decision.

1 I want you to help me out. Did you talk to
2 anybody about who made that decision?

3 MR. LEVINE: Are you talking about the
4 decision to go to KWA?

5 MR. FLOOD: No, no.

6 THE WITNESS: The decision to go to the
7 Flint River.

8 BY MR. FLOOD:

9 Q. Two distinct things.

10 MR. LEVINE: I just wanted to make sure
11 because we're kind of bouncing around a little
12 bit.

13 MR. FLOOD: No, we're not.

14 MR. LEVINE: Maybe I am.

15 MR. FLOOD: You made a bad pun when I
16 said "water under the bridge." I don't care about
17 the KWA. I'm on to the Flint River. He
18 understood my question.

19 MR. LEVINE: Well, you lost me.

20 MR. FLOOD: I know.

21 THE WITNESS: So your question is did I
22 talk to anybody about the decision-making process.
23 Not in any great depth, no.

24 BY MR. FLOOD:

25 Q. All right. Short depth, how much short depth?

1 Did you talk to anybody about the Flint process?
2 I just want to know did Flint River as a
3 source -- I'm sure the executive office talked
4 about it. I'm sure you talked to somebody about
5 it, looked at it. Did anyone come up with how
6 did we get to the Flint River as a source?

7 A. My understanding, Todd, is that the local elected
8 officials wanted it. They asked for a study to
9 determine whether it was feasible and what it
10 would cost, and at the end of the day, they
11 recommended that the switch be made.

12 Q. It was never voted on. City council never voted
13 on using the Flint River as a water source. Did
14 you know that?

15 A. I did not know whether there was a vote taken or
16 not.

17 Q. So let's just draw this out because I don't want
18 us to be confused. I want you and I to be on the
19 same page. I'm just pulling out my legal pad
20 here. We'll make this No. 18. So if I showed
21 you that the vote by city council to go with KWA
22 was March 25, 2013 -- do you know what the KWA
23 is? That was the -- that was the purchasing of
24 the construction of a pipe coming up from --
25 uphill from Imlay City or Lake Huron up to

1 Genesee County, and using that raw water through
2 Genesee County and that KWA distribution, they
3 voted to go and join the KWA. Is that what your
4 understanding was?

5 A. It is my understanding that there was a vote to
6 join the KWA.

7 Q. 7 to 1. Then from that time frame of 3/25/2013,
8 there were discussions with Andy Dillon, the
9 governor, DEQ and others to -- whether or not
10 they were going to approve it or not and sign off
11 on it. Did you know that?

12 A. I do now.

13 Q. Okay. Not realtime, but in your study of going
14 back and looking at things? Yes?

15 A. Yes.

16 Q. Okay. And suffice it to say, Mr. Dillon, Andy,
17 he signed off on it. Good, bad, indifferent,
18 relying upon the experts and DEQ and the like, he
19 signs off on it. You knew that; correct?

20 MR. LEVINE: Are you asking if he
21 discovered it after the fact?

22 BY MR. FLOOD:

23 Q. Not realtime, but you discovered it after the
24 fact?

25 MR. LEVINE: Do you know if Dillon

1 signed off on it? Yes or no?

2 THE WITNESS: Yes, I know he signed off
3 on it.

4 BY MR. FLOOD:

5 Q. You were pausing. I don't want to interrupt you.
6 You had a pregnant thought. Give me your
7 thought.

8 MR. LEVINE: I don't think he had a
9 pregnant thought.

10 MR. FLOOD: There's no objections.
11 There's no objections.

12 MR. LEVINE: I'm not objecting.

13 MR. FLOOD: He knows what --

14 MR. LEVINE: Okay.

15 BY MR. FLOOD:

16 Q. Help me out. What were your concerns?

17 A. I didn't have any concerns, but I recall that the
18 treasurer had some work done to attempt to verify
19 the work that the city had done.

20 Q. Absolutely. Tucker Young -- he had Tucker Young
21 come into the picture. DWSD was opining. He had
22 DEQ come into the picture. Is that what you're
23 referring to? He had a lot of work done to make
24 the decision. I'm not saying he made the
25 decision independently on his own by flipping a

1 coin. He had a lot of work done.

2 A. My pause was I knew it was not an immediate
3 decision. We had those discussions.

4 Q. Right.

5 A. He had issues that he wanted to vet.

6 Q. And, Rich, you and I -- I've looked through the
7 notes and I see that he vetted it. I'm not
8 challenging the integrity of that process.
9 That's not my concern. So that takes place in
10 April, where he signs off on it after doing the
11 due diligence. Is that what you understood?

12 A. Yes.

13 Q. Okay. Now, May, June 2013, 26 -- so 6/26/2013,
14 there is an expenditure for \$171,000 to study and
15 recommendation by an engineering company to use
16 the Flint River as a water source. Are you
17 telling me -- so we're not confused, I want us to
18 be on the same page. -- that you thought this
19 vote on 3/25/2013 was the same as using the Flint
20 River as a water source?

21 A. No.

22 Q. Okay. That's what I was confused with way back
23 when. June 26, 2013, Rich, that decision to
24 purchase an engineering firm's professional
25 services of 171,000, did you see that order?

1 A. I don't recall if I saw it or not, but --

2 Q. That's okay.

3 A. I do know that there was work done.

4 Q. Okay.

5 MARKED FOR IDENTIFICATION:

6 DEPOSITION EXHIBIT 19

7 1:48 p.m.

8 BY MR. FLOOD:

9 Q. How do you know there was work done?

10 A. In my review of lots and lots of documents, I
11 remember seeing something that referenced the
12 emergency manager approving an expenditure for
13 feasibility to use Flint River water.

14 Q. So I'm going to give you have Exhibit No. 19.

15 MR. LEVINE: Do you have a copy of that
16 for me?

17 MS. EDELEN: No.

18 MR. LEVINE: You're buying into his
19 stuff now.

20 MS. EDELEN: That's the truth. I don't
21 have a copy.

22 MR. LEVINE: Okay. That's fine. This
23 is a short one. I can look with my client.

24 THE WITNESS: I don't recall seeing
25 this, but it's possible I may have seen it.

1 BY MR. FLOOD:

2 Q. Okay. What is your understanding for an
3 emergency manager that wants to spend over
4 \$50,000 in a city? What must he do before he can
5 do that?

6 A. I don't know.

7 Q. Have you ever heard that he had to go through for
8 an expenditure of more than 50,000 to get
9 approval by the treasurer? Never heard that?

10 A. No.

11 Q. Really? Okay. That's pretty commonplace. It's
12 one of those things.

13 A. I don't recall it ever coming up in any discussion
14 I've had with anyone.

15 Q. In the emergency manager situation with Detroit,
16 you worked on that? Yes?

17 A. I did.

18 Q. And you were intimately involved in that?

19 A. I was.

20 Q. And any time the emergency manager wanted to
21 spend more than \$50,000, did you know he had to
22 go through the treasurer?

23 A. No. Well, no.

24 Q. Is there some nuance or something you know that
25 he doesn't have to go through the treasurer?

1 A. My nuance is that I have always presumed that
2 major expenditures of any kind are reviewed with
3 the treasurer, and I didn't know what the
4 threshold was, 50 or any other number.

5 Q. Gotcha. Gotcha. So did you ever come to find
6 out that when this vote took place on the KWA,
7 that it was the understanding that they weren't
8 voting on using the Flint River at that time?
9 Did you know that?

10 A. Could you repeat the question.

11 Q. Sure. It was probably poorly stated. In 2013,
12 on March 25th of that year, there was a 7-to-1
13 vote to join the KWA, and in that process, that
14 was not a vote to use the Flint River. That was
15 only to join the KWA. Did you know that or am I
16 wrong? Do you have a different understanding and
17 knowledge?

18 A. Again, there's a nuance. I recall explicitly
19 there was one "no" vote and that "no" vote was
20 accompanied by a statement that said, "I believe
21 we should go to the Flint River now."

22 Q. Right. Right. But that wasn't the vote. The
23 vote was to join the KWA.

24 A. Correct. I did know that.

25 Q. Not to use the Flint River.

1 A. I don't know that it was a vote to not use the
2 Flint River but it was a vote to join the KWA. I
3 do know that.

4 Q. Do you know at the time of the vote whether or
5 not there was approval for the city to borrow
6 money to join the KWA?

7 A. No.

8 Q. Did anyone in the executive office or in your
9 studies ever come across or discuss the issue of
10 how could the city borrow money to join the KWA?

11 A. Not any conversations that I was a part of, no.

12 Q. Okay. Did you ever come to find out how much
13 money now or any other time it would cost to fix
14 the Flint Water Treatment Plant to service water
15 from the Flint River as a source to the people in
16 the City of Flint?

17 A. Yes, in recent -- you know, sometime in the last
18 year, I remember reading -- I think the number was
19 \$48 million or something like that.

20 Q. So I have the Rowe. LAN -- Rowe engineering
21 report, and I have the LAN report from 2011.

22 MR. LEVINE: Are those two different
23 reports, Todd?

24 MR. FLOOD: Yeah.

25 BY MR. FLOOD:

1 Q. So this report was produced by LAN, and it shows
2 the cost of what it would be to update the plant
3 and what must be updated in the plant to use it
4 to produce potable water from the Flint River.
5 And in that study, the total upgrades were
6 61,498,000.

7 A. Well, I guess my 48 million isn't a good
8 recollection, then.

9 MR. LEVINE: Which is this report? Is
10 it the Rowe report or the LAN Rowe report?

11 MR. FLOOD: This is the LAN report.

12 MR. LEVINE: L-A-N?

13 MR. FLOOD: Let me just put it on the
14 record.

15 MR. LEVINE: Thank you.

16 BY MR. FLOOD:

17 Q. This is the analysis of Flint as a permanent
18 water supply. I'm sorry. Analysis of the Flint
19 river as a permanent water supply for the City of
20 Flint.

21 MR. LEVINE: Authored by?

22 MR. FLOOD: LAN.

23 MR. LEVINE: L-A-N, and it's Lockwood
24 something something.

25 MR. FLOOD: Yes.

1 MR. LEVINE: Thank you. Lockwood,
2 Andrews & Newnam. What's your question
3 specifically?

4 BY MR. FLOOD:

5 Q. Had you ever seen that report?

6 A. Maybe. I've had an awful lot of things sent to me
7 and it's hard to recall all of them, but it's
8 possible I've seen either this report or parts of
9 it. My number wasn't too far off.

10 Q. It's going to get worse. Do you ever remember
11 seeing a more current report that showed to join
12 Karegnondi Water Authority versus using the Flint
13 River that -- as a source, it would cost more to
14 update the Flint Water Treatment Plant to produce
15 potable water than it would to join the
16 Karegnondi Water Authority? Did you ever see a
17 study on that?

18 A. I don't recall.

19 Q. Do you know how much money the city was
20 guaranteeing as it relates to the KWA?

21 A. I believe I do.

22 Q. Tell me what you believe.

23 A. I believe that they committed to \$7 million a year
24 for 28 years.

25 Q. How much did that come out to as a total?

1 A. Somewhere in the \$200 million range.

2 Q. So when the ACO -- do you remember looking at the
3 ACO, administrative consent order between the DEQ
4 and the City of Flint?

5 A. I believe I've seen it, yes.

6 Q. And when they came up with their ability to
7 borrow money to fix the emergency, the lime
8 sludge lagoon, it was approximately of an
9 \$85 million flow-through from the city over to
10 the KWA to allow them to issue bonds for
11 construction of the KWA. Is that your
12 understanding?

13 A. I don't recall anything relative to that.

14 Q. Relative to my explanation, do you have an
15 other -- do you have something else --

16 A. No.

17 Q. -- in your mind?

18 A. No.

19 Q. So the borrowing power as a guarantor was at the
20 time \$85 million. To fix the water treatment
21 plant so it could use the Flint River as a
22 permanent source, which is over a month, it would
23 require over \$85 million. Had you ever heard
24 that?

25 A. I don't recall having heard that, no.

1 Q. How much money has the state, if you know,
2 allocated towards the updates and fixtures and
3 fixing the Flint Water Treatment Plant to date?

4 A. I don't know.

5 Q. Does it make sense to you in the big picture here
6 if you see it, I'm going to fix the Flint Water
7 Treatment Plant here, it will cost me over
8 \$85 million so I can use it during the gap time
9 of waiting for the Karegnondi Water Authority to
10 finish its system as opposed to I could have just
11 stayed on the DWSD and pumped water up there for
12 three years far less than updating \$85 million
13 worth of fixtures? Does that makes sense to you
14 if that were true?

15 A. It depends.

16 Q. What on? I need to know what that would depend
17 on.

18 A. It would depend on whether I'm going to be
19 treating raw water or finished water when I do the
20 Karegnondi. Is there a difference in the raw
21 water from the lake as there is a difference
22 between that and the river?

23 Q. Would you have to do more upgrades on the plant
24 to use river water or raw water from Lake Huron?

25 A. I don't know that. I do know that it requires

1 significant upgrades in order to treat raw water
2 from any source versus finished water from any
3 source, which is what they had been getting.

4 Q. So let's just think about it depends, because
5 that's what you said. At the time the switch was
6 made in April of 2014, do you think you see
7 anywhere in this world that they put \$85 million
8 into the Flint Water Treatment Plant to use it?
9 Let's go on your hypothetical that it's a good
10 idea to fix it up, because we're going to be
11 using it anyway, so go on that hypothetical. Did
12 you see anywhere in the world that they made
13 those upgrades to the plant within one year?

14 A. I don't know. How would I know?

15 Q. I'm asking if you saw. That would be "yes" or
16 "no."

17 A. If I saw what?

18 Q. They spent \$85 million on upgrades on the Flint
19 Water Treatment Plant in one year.

20 A. I don't know.

21 Q. So "you don't know" means you haven't seen it?
22 You haven't seen that kind of expenditures into
23 the plant?

24 A. I have not seen a reconciliation of what was
25 spent. If you want to talk about what's being

1 spent since January of '16, I'm very up on that.

2 Q. Tell me what's been spent from January 2016.

3 A. On total or on the treatment plant?

4 Q. On the treatment plant.

5 A. I'd have to look that up.

6 Q. Where?

7 A. In my records of what's been appropriated and
8 what's been spent and where the support has gone.

9 Q. I got it. So what do you think it's been,
10 ballpark?

11 A. I don't want to speculate. I don't know.

12 MR. LEVINE: Excuse me. Can I consult
13 with him for a minute?

14 MR. FLOOD: Sure.

15 BY MR. FLOOD:

16 Q. Do you have any idea where we could get that
17 number?

18 A. I don't know.

19 Q. Okay. If I pulled it up and Googled it right
20 now, and it came up with a number, would that
21 potentially refresh your recollection of what was
22 spent?

23 A. I don't -- I don't know. I don't believe that I
24 have a line of sight into that number, so if you
25 have something you wish to show me, show it to me

1 and I'll do my best.

2 Q. No, no. I thought -- Rich, I thought you told me
3 that was an area that you know very well as it
4 related to what was being put into the plant from
5 2016 on, and that's what I was wondering. I want
6 to know how much money was spent in the plant
7 from 2016 January to February 2017.

8 A. I would need to consult my records.

9 Q. Not a problem. So you, as you sit here today,
10 have not seen from April of 2013 to April of 2014
11 an expenditure into that plant in that one-year
12 period of \$85 million, have you?

13 A. I do not believe so, no.

14 Q. Okay. And you don't know whose decision it was
15 as we sit here today to use the Flint Water
16 Treatment Plant and the Flint River as a water
17 source during the construction of KWA?

18 A. No, I don't.

19 Q. And in your research and in your investigation
20 into this case, that has to this date not been
21 revealed to you?

22 A. That would be correct.

23 MR. LEVINE: While we're taking this
24 pause, the record should reflect the exhibit
25 that's been marked as 18, the legal pad, bears the

1 writing of Mr. Flood during his questioning, not
2 Mr. Baird. Thank you.

3 MR. FLOOD: No, but I'm going to have
4 him initial it. That will be fine. Don't worry.
5 Thank you very much.

6 MR. LEVINE: Well, as it stands right
7 now.

8 MR. FLOOD: It's not done. We're still
9 drawing.

10 MR. LEVINE: I was wondering because
11 it's kind of underneath other documents there.

12 BY MR. FLOOD:

13 Q. So this document I showed you over there that
14 your attorney has, Exhibit No. 19, you may or may
15 not have seen that; correct?

16 A. Correct.

17 Q. You don't see Mr. Dillon's signature on that
18 anywhere, do you?

19 A. I do not.

20 Q. You don't see anyone from the State of Michigan's
21 signature on that, do you, other than the
22 emergency manager?

23 A. I do not.

24 Q. So when did you become aware that the Flint
25 River -- we talked about this before, but we

1 never got a date on it. When did you become
2 aware that the Flint River was actually going to
3 be used for a water source, if you know?

4 A. I don't recall, Todd.

5 Q. Okay. I'm just guessing right now. Would it be
6 fair to say a little bit of media attention that
7 came from the city -- and I do need to make a
8 correction as I looked at the record. Harvey
9 Hollins was not in the photograph at the turning
10 of the switch. Howard Croft was there, amongst
11 others, along with the emergency manager, but
12 Harvey Hollins was not.

13 MR. LEVINE: Thank you because I think
14 the questioning was the Free Press article that
15 showed the picture of Harvey Collins.

16 MR. FLOOD: Because I went back and
17 looked at the photo.

18 MR. LEVINE: Thank you.

19 MR. FLOOD: I just wanted to make
20 that --

21 MR. LEVINE: Sure.

22 BY MR. FLOOD:

23 Q. Fair enough. Would that be a potential date and
24 time you knew a switch was taking place?

25 A. I recall seeing the photo. I don't recall if I

1 saw it in realtime or later, but I saw the photo.

2 Q. Do you know that was in 2014, that photo was
3 taken? You may not have seen it in realtime,
4 but --

5 A. I accept if you're telling me that's when it was
6 taken. I have no reason to dispute that.

7 Q. It was approximately one year after the vote of
8 joining the KWA in April of 2014. You talked
9 about, with your friends and colleagues, if you
10 remember, hard to believe that they're using the
11 Flint River, it was always orange. Your mom used
12 to tell you or -- you weren't allowed to swim in
13 the water for a period of time, and that the
14 water was not the world's best looking. Do you
15 remember talking about that?

16 A. What I recall is talking about the fact that I
17 drank the Flint River water -- my mother reminded
18 me -- until I was 11 years old, and that I recall
19 her telling me to let the water run in the morning
20 because it came out orange until it stopped coming
21 out orange.

22 Q. There you go. Right.

23 A. And as for swimming in the Flint River, it did not
24 appear to be the kind of a color that we would
25 want to go swimming in.

1 Q. Right. So the correlation of that switch and
2 then your memory and journey in life, you have a
3 reference point, I think you said, or talked
4 about, "I discussed that with some of my
5 colleagues"?

6 A. Yes, I recall talking with some of my Flint
7 colleagues.

8 Q. Okay. In your studies of what's gone on in the
9 City of Flint and using the Flint River as a
10 water source, before I end in this area, you had
11 no idea that it cost so much money to fix up the
12 plant to use it and to take water from the Flint
13 River and distribute it to the citizens of Flint?

14 A. I don't recall having any knowledge at all about
15 what the startup costs of the water treatment
16 plant were.

17 Q. Do you know how much money it cost to purchase
18 water from the City of Detroit per year on a
19 yearly basis?

20 A. Approximately, yes.

21 Q. What was it?

22 A. It ranges between 900,000 and 1.2 million a month.

23 Q. Okay. I'm tearing out that page so we can have
24 it for the record. I have some doodling on
25 there. That's an accurate depiction or timeline

1 of things we just talked about; is that fair?

2 MR. LEVINE: The subject of his
3 questioning for the last 15 minutes.

4 BY MR. FLOOD:

5 Q. That's a fair and accurate representation of the
6 subject matter?

7 MR. LEVINE: Not that you put it on
8 there or you gave the facts but that's what we've
9 been talking about.

10 THE WITNESS: Yes.

11 MR. LEVINE: That's 18.

12 BY MR. FLOOD:

13 Q. So all I want to you do, if you would, just
14 initial it and I'm going to put 18 on there.

15 MARKED FOR IDENTIFICATION:

16 DEPOSITION EXHIBIT 18

17 2:14 p.m.

18 BY MR. FLOOD:

19 Q. I want to talk about Legionella for a moment.
20 Have you had discussions with Eden Wells as it
21 relates to Legionella?

22 A. Yes.

23 Q. How often?

24 A. I don't know. I don't recall.

25 Q. Do you remember her coming into your office up in

1 Flint and talking about Legionella?

2 A. Perhaps. We've had conversations at various
3 times.

4 Q. What have those conversations been about?

5 A. They've been about sourcing and selecting a
6 research project to determine if in fact there's a
7 linkage between the switch to the Flint River
8 water and the spike in Legionella cases that
9 occurred in Flint, and then also general --
10 general education to me about Legionella and
11 strains of Legionella and how you get it and what
12 it does to you and how it's treated, general
13 knowledge sorts of things.

14 Q. Did she tell you that the Legionella grows
15 between the biofilm and the service lines of the
16 lead pipes or iron pipes? Did she ever tell you
17 that?

18 A. I don't recall that that was an explicit
19 statement. I may have -- I don't recall her
20 telling me that, no.

21 Q. Where do the -- where did she tell you Legionella
22 grew?

23 A. I don't recall what Eden said about it. I've also
24 read a lot of information, and I'm having a
25 difficult time figuring out where knowledge came

1 from, whether it came from a person or documents I
2 read.

3 Q. Let's go into your knowledge. Do you remember
4 what you read or heard about where Legionella
5 grows?

6 A. Generally speaking, yes.

7 Q. Tell me what that is.

8 A. That it can grow in moist or stagnant, you know,
9 non-moving environments where water has a tendency
10 to puddle up, and that it actually is a very
11 frequent bacteria that probably is found in up to
12 a third of households in any given city.

13 Q. How does it get into the house?

14 A. My understanding is that it's a -- it's a bacteria
15 that grows and there has to be certain conditions
16 precedent for it to grow.

17 Q. So does it grow in the house? Is that what
18 you're saying?

19 A. Wherever the water goes is where it can grow, yes.

20 Q. Can it grow in the service lines?

21 A. I presume. I don't know that I've ever asked
22 that, but --

23 Q. Has Eden Wells told you her opinion of where the
24 outbreak of Legionella has come from?

25 A. Could you be more explicit?

1 Q. Has she opined on any reference to Legionella and
2 what was the cause of the outbreak in Flint?

3 A. No.

4 Q. She hasn't told you what she thinks what the
5 cause was?

6 A. I don't believe that she ever told me that she had
7 a view as to what created the spike.

8 Q. She didn't tell you it was McLaren Hospital?

9 A. Not that it was she who told me that, but somebody
10 did tell me that a predominance of the cases were
11 at McLaren.

12 Q. Someone told you that McLaren held the majority
13 of the cases that was the outbreak?

14 A. Yes.

15 Q. In what year?

16 A. I'm presuming -- I think it was '14.

17 Q. So where was the majority of cases coming from in
18 2015?

19 A. I don't know.

20 Q. So have you talked to Nick Lyon about this?

21 A. About where the cases came from?

22 Q. Yes.

23 A. Yes.

24 Q. And what does he say?

25 A. Nick has said he -- he's mentioned that McLaren

1 had a lot of them.

2 Q. So is it a concerted thought that McLaren -- it's
3 a McLaren problem, a McLaren issue?

4 A. I don't know.

5 Q. Is that your thought?

6 A. I'm not qualified.

7 Q. I understand. I'm not asking your
8 qualifications. I'm asking in your mind is that
9 your thought? I don't care about your
10 qualifications. You could be in 6th grade and
11 tell me your thought.

12 A. I honestly do not have an opinion on the causal
13 relationship. I don't know.

14 Q. Okay. Do you know how you catch legionellosis,
15 the bacteria, how it can affect you?

16 A. I have been told and I've researched that it
17 predominantly occurs through water vapor, or
18 vapor, steam, condensation.

19 Q. You been told that you can drink it and not catch
20 it?

21 A. I've read that, yes.

22 Q. Have you been told that you can ingest it and
23 catch it?

24 A. I've read that there are different ways to ingest
25 beyond drinking it, yes.

- 1 Q. And actually being infected with the bacteria?
- 2 A. I don't recall that piece of it.
- 3 Q. So you've heard of drinking something and having
- 4 it go down the windpipe?
- 5 A. Yes.
- 6 Q. Have you heard that if you drink water and it
- 7 goes down the windpipe and it has Legionella in
- 8 it, and it becomes aerosolized, as you cough or
- 9 regurgitate you can actually be infected with the
- 10 bacteria?
- 11 A. I had not heard that, no.
- 12 Q. This is the first time today?
- 13 A. It is.
- 14 Q. Have you talked to any experts on Legionella?
- 15 A. No.
- 16 Q. Do you know how many cases of deaths there are in
- 17 the City of Flint of Legionella?
- 18 A. Approximately.
- 19 Q. How do you know this?
- 20 A. I think news reports.
- 21 Q. So that's it? You don't have any inside intel
- 22 from the state, just from the Detroit News, Free
- 23 Press or news reports from somewhere else, media?
- 24 A. Yes.
- 25 Q. What's the media told you that you're relying on?

1 A. I think the number was 10 to 12, in that range.

2 Q. Is that a crisis?

3 A. I don't know. I would --

4 Q. How many people have to die before it becomes a
5 crisis?

6 A. I was about to say anything more than zero would
7 be of concern.

8 Q. So would you have any reason to doubt that
9 there's upwards of 21 deaths of Legionella in the
10 city -- caused from the bacteria in the City of
11 Flint? If you're relying upon a news media
12 outlet, you don't believe everything you read in
13 the news; right?

14 A. Is your number a single-year number?

15 Q. Total from '14 and '15.

16 A. I have no reason to dispute it.

17 Q. You don't --

18 A. It's not a number I've dwelled on, no.

19 Q. You don't have any hard data from the Michigan
20 Department of Health and Human Services?

21 A. I'm sure that it exists, but I don't have it.

22 Q. Do you know if there are any deaths that have
23 occurred in Flint where the sputum samples -- do
24 you know what a sputum sample is?

25 A. Yes.

1 Q. What is a sputum sample, for the record?

2 A. It is the phlegm from lower in the throat that is
3 either coughed up or swabbed out.

4 Q. Do you know if there's any sputum samples of
5 deaths from two different individuals that match?

6 A. I don't know that.

7 Q. Have you heard that?

8 A. I've heard something that I think is that, but it
9 talks about DNA comparison and things that I don't
10 know about.

11 Q. Tell me what you're talking about. You heard
12 something --

13 A. If I knew what I was talking about, then I would
14 talk about it. I don't know what I'm talking
15 about.

16 Q. Tell me what you've heard and from where and from
17 who. Where were you and who did you hear it
18 from?

19 A. Hear what from?

20 Q. Your matching of sputum samples. I asked you if
21 you have heard about two individuals that have
22 matching sputum samples and deaths.

23 A. I don't know what that means.

24 Q. So phlegm, we know what phlegm -- you just
25 identified what sputum is.

1 A. I know what that is.

2 Q. Two human beings, distinctly individuals die,
3 victim one, victim two, and their sputum samples
4 that they had coughed up in their phlegm were
5 identical bacteria.

6 A. No, I don't think I know about that. I think I
7 was confused about something I had read.

8 Q. I see. Would you want to know something about
9 that if you were in the executive office for the
10 governor or would you want that kept from you?

11 A. I wouldn't want anything kept from me that is a
12 public health issue, period.

13 Q. I believe that to be true.

14 A. Thank you.

15 MR. LEVINE: Thank you.

16 MR. FLOOD: So I'm going to go off the
17 record for a moment and get some water.

18 (Off the record at 2:26 p.m.)

19 (Back on the record at 2:46 p.m.)

20 BY MR. FLOOD:

21 Q. In December of 2015, there was a task force that
22 was put together. Were you ever part of a
23 meeting with Harvey Hollins and the task force
24 where Harvey Hollins may have learned about
25 Legionella in December of 2015 that you can

1 recall?

2 A. I need to separate those questions.

3 Q. Sure. Go ahead.

4 THE WITNESS: Can I talk to you for
5 just a minute?

6 MR. LEVINE: Of course. I think that's
7 why I'm here. I have to earn my keep.

8 (Off the record at 2:47 p.m.)

9 (Back on the record at 2:48 p.m.)

10 BY MR. FLOOD:

11 Q. I was looking at that December time frame with
12 Harvey Hollins and with the task force. Were you
13 part of a meeting with him on the task force
14 where they learned about Legionella?

15 A. I want to break it down, because --

16 Q. Sure.

17 A. -- there were various tasks forces. I want to
18 make sure we're talking the exactly the same.

19 Q. Sure.

20 A. Are you talking about the Flint water after action
21 task force that was chaired by Ken Sikkema and
22 Chris Kolb?

23 Q. Yes.

24 A. So that task force was stood up in October because
25 I stood it up.

1 Q. I saw the people. You sent out an e-mail. You
2 had all their names. You had everybody's e-mail
3 addresses and telephone numbers. I reviewed that
4 from your documents.

5 A. Okay. So I just want to make sure because I was
6 also involved in setting up the FWICC and so I
7 wanted to make sure.

8 Q. Yeah, I have the distinction between the two.
9 The one that was put together --

10 A. Yes.

11 Q. -- that dealt with the Flint water task force,
12 right.

13 A. And then Harvey or I or sometimes both would be
14 invited to those meetings.

15 Q. Right.

16 A. I don't recall -- I don't recall being at a
17 meeting where Legionella was discussed, but I do
18 recall, as I said when we were together last week,
19 that it was in that December/January period when I
20 became aware of communications inside the
21 department, the HHS Department that I was told did
22 not escalate to a very high level.

23 Q. Did you ever come to find out Nick Lyon knew
24 about Legionella back in January of 2015? I
25 showed you those e-mails last time. Did you ever

1 come to find out that he knew about it?

2 A. No.

3 Q. Okay. To this day have you ever discussed with
4 him when he first found out about it?

5 A. It's been a while, but, yes, I discussed it with
6 him.

7 Q. And what did he say when he first finds out about
8 it?

9 A. That it was that same time period where -- when he
10 found out about it, he -- I don't know if he
11 called me or met me or whatever, but he said you
12 and the governor found out about it at the same
13 time --

14 Q. Okay.

15 A. -- as he did.

16 Q. As he did. He was the one -- just so we have
17 this clear on the record, in
18 December 2015/January 2016 was when you
19 understood Nick Lyon told you that he learned
20 about Legionella?

21 A. Right. I don't recall the exact time, but it was
22 in that time period.

23 Q. And do you remember that conversation? Forget
24 the dates -- you know, the specific date of
25 either December 1st through January 30th --

1 obviously we know that the governor gave an
2 announcement on January 13th of 2016, but
3 December 1st of 2015 -- I'm not going to pin you
4 down to a date in that month, but do you remember
5 the conversation? Was it via phone? Was it in
6 person? Do you remember?

7 A. I don't remember, Todd. I do remember parts of
8 the conversation.

9 Q. Can you tell me a little bit about that?

10 A. The parts I recall about the conversation is that
11 Nick had discovered -- whether it was Nick or Tim
12 or I don't know who, but, you know, they were --
13 everybody was doing a review because the natural
14 question is who knew what when; right? And
15 everybody was asking that from the governor, from
16 me, you know, on down, Dennis, and what Nick had
17 told me is that they had found e-mail
18 correspondence amongst -- I'm assuming it was
19 their epidemiology guys. I didn't recognize any
20 of the names that he mentioned, but had looked at
21 this spike in Legionella cases, and then he said
22 "I'm still doing some review," but he said, "I
23 can't find any evidence that we completed what we
24 were supposed to do to make sure that Genesee
25 County Health Department issued some kind of an

1 advisory." He told me at the time that we had
2 actually drafted something that they were supposed
3 to send and he couldn't find any evidence that it
4 actually went, so that's what I recall, and he
5 said he was going to the governor with it, and I
6 believe he did, and I remember that we then
7 discussed -- it wasn't at that call but it was
8 some point later when it was determined that this
9 communication that should have occurred did not
10 occur, is when the governor said, we need to --
11 it's going to look strange, but we have to go
12 public.

13 Q. Which you did?

14 A. Which is the right thing to do, and that's pretty
15 much everything I remember.

16 Q. All right.

17 MR. FLOOD: Is there a follow-up
18 question from any of you on that issue?

19 MR. SEIPENKO: Do you recall in that
20 December 2015 time period, were you ever advised
21 by Jarrod Agen about anything regarding
22 Legionella?

23 THE WITNESS: No, I don't recall
24 anything from Jarrod on that, but I honestly don't
25 recall. I mean --

1 MR. SEIPENKO: Nor Harvey Hollins?

2 THE WITNESS: All of us talk frequently
3 all the time and I just don't recall.

4 MR. SEIPENKO: And Harvey personally
5 didn't bring up the Legionella to you in
6 December 2015 either?

7 THE WITNESS: No, Harvey and I never
8 had any conversations about Legionella.

9 BY MR. FLOOD:

10 Q. So this is what troubles us a little bit, is that
11 if Nick is telling you the first time he hears
12 about Legionella is in that time frame of
13 December; right? He tells Tim Skubick the first
14 time -- on air the first time he learned about it
15 was in January of 2015, so a whole year goes by,
16 so the two don't square up, what he tells you and
17 what he says on the air. When he testifies in
18 front of our legislative committee here in
19 Lansing, he says the first time he hears about a
20 health concern, health risk was July 22nd, and it
21 was at that time he said he also learned about
22 Legionella. So, again, the question was that
23 lead or was that Legionella because the infamous
24 e-mail, but I'm trying to put all that together,
25 Rich. It doesn't make sense to me. Here you

1 have the Department of Health and Human Services
2 director, outbreak and -- I don't know if you
3 have any thoughts to that, if he was confused,
4 too much pressure, not enough sleep. I'm just
5 looking, how does that happen? To me it's
6 unconscionable. I don't want to say that without
7 knowing all the facts. If you have some other
8 fact --

9 A. I only know what I know, and my awareness level --
10 and the reason I'm so confident about Harvey is
11 that I didn't know Harvey even had any knowledge
12 about Legionella or anything else until somebody
13 else sent me an e-mail for situational awareness,
14 and that was like -- that was well after this.
15 This was in March.

16 Q. Right.

17 A. So I don't -- I honestly -- I don't know the
18 answer.

19 Q. Fair enough.

20 A. Yeah.

21 Q. The next question on that Harvey vein is Harvey
22 was invited to sit on the task force with Kolb
23 and the like on occasion.

24 A. Actually I think both of us were invited to attend
25 every meeting except ones that they specifically

1 said we'd rather not have anyone here.

2 Q. So the question is if Harvey learned through the
3 task force in December of 2015 about Legionella,
4 and at that time felt it to be -- compelled
5 himself and his own thoughts about some stream of
6 consciousness to call up Jarrod Agen and tell
7 Jarrod while he's in Florida with his family over
8 the Christmas break, "By the way, I just learned
9 about there's an outbreak of Legionella in
10 Flint," why would he do it then as opposed to
11 when he learned about it in March and then claim
12 in the paper in February of 2016 and quoted in
13 the Detroit News, "It wasn't my problem. I told
14 all the people that needed to know." There's too
15 many fibs in that story for it to be -- I
16 couldn't sell that to anybody. There's just too
17 many fibs there. You got -- I learned about it
18 in the March? I don't care. I'm not telling
19 anybody, but I learn about it from the task
20 force. The first person I'm going to tell,
21 Jarrod Agen? And that's -- that's while Jarrod
22 is on his Christmas vacay. That doesn't make
23 sense to me. Could you explain why Harvey
24 Hollins may have done those acts?

25 A. My attorney -- you're asking me for an opinion.

1 Q. I am.

2 A. And I want to give you an opinion because I've
3 thought about this and I don't have a great
4 answer, but I've tried to piece together what
5 happened or didn't happen.

6 Q. Right.

7 A. And I'll share with you what I think.

8 THE WITNESS: And you'll probably yell
9 at me.

10 MR. LEVINE: I won't yell at you at
11 this point because I think it's fair. It's a fair
12 question. He's asking you for your opinion for
13 whatever it's worth. It's hard to tell what's in
14 someone else's mind but he values your opinion.
15 Give him your opinion.

16 THE WITNESS: I don't believe that
17 Harvey understood the magnitude of the issue when
18 he had his back-and-forth with Brad Wurfel that I
19 learned about long after the fact, okay.

20 BY MR. FLOOD:

21 Q. Right. Right.

22 A. It's hard for me to know who he told or didn't
23 tell. I know it wasn't me because I know I didn't
24 know and I believe the governor, because he would
25 have told me if he knew, and he didn't know.

1 Q. Right.

2 A. That's not to say that -- you know, I don't know
3 who Harvey thinks he told or if they forgot, but
4 Jarrod wasn't the chief of staff at the time that
5 Harvey would have had a December conversation with
6 somebody. I'm sorry. He was the chief of staff
7 at that time. He wasn't the chief of staff if you
8 go several months earlier.

9 Q. Right.

10 A. So the natural thing would have been for Harvey to
11 go to Dennis, not to Jarrod.

12 Q. That's the point. He goes to Brad -- there's
13 this conversation in March that he gets knowledge
14 and he doesn't go to Dennis Muchmore allegedly
15 about it. And then all of a sudden -- and he's
16 on record about not knowing about it, and then
17 all of a sudden, he learns about it in December
18 and -- allegedly with the task force and instead
19 of -- he goes to Jarrod Agen while he's on
20 vacation. I just can't juxtapose the two things
21 to make any sense in my mind, and I'm trying to
22 figure out -- you've got a deadly bacteria at the
23 same time the Flint crisis and lead is going on.
24 If nothing else -- if I were a politician -- on
25 the record, I am not -- but the optics of that

1 looks insanely bad.

2 A. Right.

3 Q. Now, put a human being in the equation and that
4 makes me crazy.

5 A. That's why -- so you asked me my opinion and my
6 opinion is I don't think these -- first of all, I
7 honestly believe that these two guys, even though
8 they're not scientists and they have no basis to
9 make a conclusion, they just couldn't bring
10 themselves to believe that there might be a
11 connection between the water switch and the
12 Legionella, okay. That's number one. I just
13 don't think they understood. As to -- as to how
14 far they took it, I do remember having
15 conversations where there was an uptick apparently
16 across the country in Legionella but nowhere near
17 the spike that, you know, we saw in Flint.

18 Q. Yeah. When was that? Because I looked for
19 the -- you mentioned that before.

20 A. Right.

21 Q. So I -- from last time we spoke, I've been
22 looking for national studies on Legionella based
23 on that and I'm trying to figure out.

24 A. If you're interested, I'll go back because I do
25 recall somebody sent me something somewhere along

1 the line that basically said that to me. I
2 didn't, you know, pull that out of the sky.

3 Q. I've been looking for it. I want to see if there
4 was some correlation. Listen, there was
5 two cases in 2013 in Genesee County. I'm sorry.
6 Yeah, two cases in Genesee County in 2013. In
7 October of 2014, by the 13th, they had recorded
8 30 within Genesee County. McLaren Hospital at
9 that time, I believe, had 16 cases, so McLaren
10 reported 16. That's all McLaren knew about;
11 right? Genesee County through the Michigan
12 Department of Surveillance System, MDSS, that --
13 MDHSS sees everybody, because McLaren can't see
14 the state surveillance system or the county
15 surveillance system. So they see 30 cases of
16 Legionella, so my uptick, I mean, from two in all
17 of '13 to all of a sudden 30 in 2014, in October
18 and it goes up, spikes up to 47 that they could
19 control, that they know about, that's insane.

20 A. Right. I look back at it now and say, how
21 could -- how could you not at least presume that
22 there's a possibility?

23 Q. Right. Eden Wells in her discussions with you,
24 is it your understanding or do you know when she
25 first learns about it? Is it in the same time

1 frame, that December time frame, or do you know?

2 A. I don't know. I don't know. That would be -- I
3 would presume, yes, but I don't know.

4 Q. Okay. There has been a cluster of fingers being
5 pointed at each other as far as who's been the
6 blame and the reason why of this Flint water
7 crisis. To date, you have no idea as we sit
8 here -- and I'm going to wrap this up -- whose
9 determination it was to use the Flint River as a
10 source of water?

11 A. You mean a single decision-maker?

12 Q. Yes.

13 A. No, I don't. I don't know that.

14 Q. Do you know if the governor -- well, strike that.
15 I could go on for hours with you, Rich,
16 just to hang out with you, but I'm going to stop.
17 It's been a true pleasure.

18 And for the record, I need to place on
19 the record I need a transcript. Thank you.

20 MR. FLOOD: I have no other questions.
21 Thank you.

22 COURT REPORTER: Would you like this
23 rushed?

24 MR. FLOOD: Yes, as soon as possible.

25 (The examination was concluded at 3:08 p.m.)

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CERTIFICATE OF NOTARY

STATE OF MICHIGAN)
) SS
COUNTY OF MACOMB)

I, MELINDA S. MOORE, certify that this examination was taken before me on the date hereinbefore set forth; that the foregoing questions and answers were recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to, either party nor interested in the event of this cause.



MELINDA S. MOORE, CSR-2258
Notary Public,
Macomb County, Michigan

My Commission expires: September 6, 2022

A			
ability	accompanied	181:7, 190:14,	171:23, 174:17,
182:6	178:20	191:13, 201:2,	177:13, 177:20,
able	accurate	204:16, 205:2,	178:2, 178:4,
166:14, 167:20	190:25, 191:5	205:3, 205:24,	179:11, 179:13,
about	aco	206:7, 207:14,	184:2, 185:16,
166:13, 166:16,	182:2, 182:3	209:15, 209:17,	190:14, 193:12,
166:17, 170:12,	across	210:6, 211:10,	194:1, 196:14,
170:24, 171:2,	179:9, 210:16	211:16, 211:17	196:21, 197:8,
171:3, 171:16,	action	allegedly	197:19, 197:22,
171:22, 172:1,	200:20	209:14, 209:18	198:4, 203:19,
172:4, 184:4,	acts	allocated	203:23, 204:3,
184:25, 187:25,	207:24	183:2	204:18, 205:8,
189:9, 189:15,	actually	allow	206:3, 206:11,
189:16, 190:4,	188:2, 193:10,	182:10	209:21
190:14, 191:1,	196:1, 196:9,	allowed	anybody
191:9, 191:19,	204:2, 204:4,	189:12	171:2, 171:22,
192:1, 192:4,	206:24	along	172:1, 207:16,
192:5, 192:10,	addresses	168:2, 188:11,	207:19
192:23, 193:4,	201:3	210:25	anyone
194:20, 194:21,	administrative	already	172:5, 177:14,
195:9, 197:6,	182:3	168:13	179:8, 187:20,
198:9, 198:10,	advised	also	207:1
198:11, 198:13,	204:20	164:24, 192:9,	anything
198:14, 198:15,	advisory	192:23, 201:6,	182:13, 197:6,
198:21, 199:6,	204:1	205:21	199:11, 204:21,
199:7, 199:8,	aerosolized	although	204:24, 206:12
199:24, 200:14,	196:8	168:19	anyway
200:20, 201:24,	affect	always	170:21, 184:11
202:1, 202:4,	195:15	178:1, 189:11	anywhere
202:7, 202:10,	after	amongst	184:7, 184:12,
202:12, 202:20,	167:18, 168:21,	188:10, 203:18	187:18
203:9, 203:10,	173:21, 173:23,	analysis	apparently
204:21, 205:8,	175:10, 189:7,	180:17, 180:18	210:15
205:12, 205:14,	200:20, 206:14,	andrews	appear
205:19, 205:21,	208:19	181:2	189:24
206:10, 206:12,	again	andy	appearances
207:3, 207:5,	178:18, 205:22	170:5, 170:7,	164:1
207:9, 207:11,	agen	170:9, 173:8,	appearing
207:17, 207:19,	204:21, 207:6,	173:16	164:11, 164:22,
208:3, 208:19,	207:21, 209:19	announcement	166:19
209:15, 209:16,	ahead	203:2	appointed
209:17, 211:10,	200:3	answer	169:24
211:19, 211:25	air	206:18, 208:4	appropriated
absolutely	205:14, 205:17	answers	185:7
174:20	alexandra	213:9	approval
accept	164:4	any	177:9, 179:5
189:5	all	167:20, 168:8,	approve
	167:19, 171:25,	168:10, 169:22,	173:10

<p>approving 176:12</p> <p>approximately 182:8, 189:7, 190:20, 196:18</p> <p>april 175:10, 184:6, 186:10, 189:8</p> <p>area 186:3, 190:10</p> <p>argument 170:13, 170:15</p> <p>around 167:15, 171:11</p> <p>article 188:14</p> <p>articles 167:9</p> <p>asked 166:13, 172:8, 193:21, 198:20, 210:5</p> <p>asking 173:20, 184:15, 195:7, 195:8, 203:15, 207:25, 208:12</p> <p>associate 166:20</p> <p>assuming 203:18</p> <p>attempt 174:18</p> <p>attend 206:24</p> <p>attention 188:6</p> <p>attorney 164:12, 164:25, 187:14, 207:25</p> <p>authored 180:21</p> <p>authority 167:23, 181:12, 181:16, 183:9</p> <p>avenue 164:17</p> <p>aware 187:24, 188:2,</p>	<p>201:20</p> <p>awareness 206:9, 206:13</p> <p>away 169:11</p> <p>awful 181:6</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back 169:1, 173:14, 175:22, 188:16, 199:19, 200:9, 201:24, 210:24, 211:20</p> <p>back-and-forth 208:18</p> <p>bacteria 193:11, 193:14, 195:15, 196:1, 196:10, 197:10, 199:5, 209:22</p> <p>bad 169:21, 170:14, 170:17, 171:15, 173:17, 210:1</p> <p>baird 162:14, 165:4, 166:8, 166:19, 187:2</p> <p>ballpark 185:10</p> <p>based 210:22</p> <p>basically 211:1</p> <p>basis 190:19, 210:8</p> <p>bears 186:25</p> <p>became 201:20</p> <p>because 171:11, 172:17, 184:4, 184:10, 187:10, 188:13, 188:16, 189:20, 200:15, 200:24,</p>	<p>201:5, 203:13, 205:23, 208:2, 208:11, 208:23, 208:24, 210:18, 210:24, 211:13</p> <p>become 169:12, 187:24, 188:1</p> <p>becomes 196:8, 197:4</p> <p>been 184:3, 185:2, 185:7, 185:8, 185:9, 186:20, 186:25, 191:9, 192:4, 192:5, 195:16, 195:19, 195:22, 202:5, 209:10, 210:21, 211:3, 212:4, 212:5, 212:17</p> <p>before 163:14, 166:18, 177:4, 187:25, 190:10, 197:4, 210:19, 213:7</p> <p>behalf 164:11, 164:22, 166:19</p> <p>being 184:25, 186:4, 196:1, 201:16, 210:3, 212:4</p> <p>beings 199:2</p> <p>believe 167:17, 169:9, 178:20, 181:21, 181:22, 181:23, 182:5, 185:23, 186:13, 189:10, 194:6, 197:12, 199:13, 204:6, 208:16, 208:24, 210:7, 210:10, 211:9</p> <p>best 186:1, 189:14</p>	<p>between 182:3, 183:22, 190:22, 192:7, 192:15, 201:8, 210:11</p> <p>beyond 195:25</p> <p>big 183:5</p> <p>biofilm 192:15</p> <p>bit 171:12, 188:6, 203:9, 205:10</p> <p>blame 212:6</p> <p>blood 168:23</p> <p>bonds 182:10</p> <p>borrow 179:5, 179:10, 182:7</p> <p>borrowing 182:19</p> <p>both 201:13, 206:24</p> <p>bouncing 171:11</p> <p>brad 208:18, 209:12</p> <p>brain 168:24</p> <p>branch 170:23</p> <p>break 200:15, 207:8</p> <p>bridge 170:16, 171:16</p> <p>bring 205:5, 210:9</p> <p>buck 170:24</p> <p>buying 176:18</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>call 204:7, 207:6</p>
---	--	--	--

HIGHLY CONFIDENTIAL

Transcript of Richard Louis Baird, Volume 2

Conducted on March 1, 2017

<p>called 202:11</p> <p>came 168:19, 168:21, 168:22, 182:6, 185:20, 188:7, 189:20, 192:25, 193:1, 194:21</p> <p>can't 170:22, 203:23, 209:20, 211:13</p> <p>care 171:16, 195:9, 207:18</p> <p>case 169:1, 186:20</p> <p>cases 192:8, 194:10, 194:13, 194:17, 194:21, 196:16, 203:21, 211:5, 211:6, 211:9, 211:15</p> <p>catch 195:14, 195:19, 195:23</p> <p>causal 195:12</p> <p>cause 194:2, 194:5, 213:15</p> <p>caused 197:10</p> <p>certain 193:15</p> <p>certificate 213:1</p> <p>certified 163:14</p> <p>certify 213:6</p> <p>chaired 200:21</p> <p>challenging 175:8</p> <p>chief 209:4, 209:6, 209:7</p>	<p>chris 200:22</p> <p>christmas 207:8, 207:22</p> <p>citizens 190:13</p> <p>city 167:11, 167:13, 167:14, 169:25, 172:12, 172:21, 172:25, 174:19, 177:4, 179:5, 179:10, 179:16, 180:19, 181:19, 182:4, 182:9, 188:7, 190:9, 190:18, 193:12, 196:17, 197:10</p> <p>claim 207:11</p> <p>clear 202:17</p> <p>client 176:23</p> <p>cluster 212:4</p> <p>coin 175:1</p> <p>colleagues 189:9, 190:5, 190:7</p> <p>collins 188:15</p> <p>color 189:24</p> <p>com 164:10, 164:21</p> <p>come 167:7, 172:5, 174:21, 174:22, 178:5, 179:9, 179:12, 181:25, 193:24, 201:23, 202:1</p> <p>coming 172:24, 177:13, 189:20, 191:25, 194:17</p>	<p>commission 213:25</p> <p>committed 181:23</p> <p>committee 205:18</p> <p>commonplace 177:11</p> <p>communication 204:9</p> <p>communications 201:20</p> <p>company 175:15</p> <p>comparison 198:9</p> <p>compelled 207:4</p> <p>completed 203:23</p> <p>computer 213:10</p> <p>concern 175:9, 197:7, 205:20</p> <p>concerns 174:16, 174:17</p> <p>concerted 195:2</p> <p>conclude 167:18</p> <p>concluded 212:25</p> <p>conclusion 210:9</p> <p>condensation 195:18</p> <p>conditions 193:15</p> <p>confident 206:10</p> <p>confidential 162:11</p> <p>confused 172:18, 175:17, 175:22, 199:7, 206:3</p> <p>connection 210:11</p>	<p>consciousness 207:6</p> <p>consent 182:3</p> <p>consistent 168:22</p> <p>construction 172:24, 182:11, 186:17</p> <p>consult 185:12, 186:8</p> <p>contents 165:1</p> <p>continuation 166:4</p> <p>control 211:19</p> <p>conversation 202:23, 203:5, 203:8, 203:10, 209:5, 209:13</p> <p>conversations 170:1, 170:2, 170:3, 179:11, 192:2, 192:4, 205:8, 210:15</p> <p>copy 176:15, 176:21</p> <p>correct 173:19, 178:24, 186:22, 187:15, 187:16, 213:12</p> <p>correction 188:8</p> <p>correlation 190:1, 211:4</p> <p>correspondence 203:18</p> <p>cost 172:10, 179:13, 180:2, 181:13, 183:7, 190:11, 190:17</p> <p>costs 190:15</p> <p>cough 196:8</p> <p>coughed 198:3, 199:4</p>
---	--	---	---

<p>could 178:10, 179:10, 182:21, 183:10, 185:16, 193:25, 195:10, 207:23, 211:18, 211:21, 212:15 couldn't 204:3, 207:16, 210:9 council 167:13, 167:14, 172:12, 172:21 counsel 213:14 country 210:16 county 173:1, 173:2, 203:25, 211:5, 211:6, 211:8, 211:11, 211:14, 213:4, 213:24 course 200:6 court 212:22 crazy 210:4 created 194:7 criminal 162:5 crisis 162:4, 168:21, 197:2, 197:5, 209:23, 212:7 croft 188:10 csr 162:25, 213:22 current 181:11</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>data 197:19 date 166:6, 183:3,</p>	<p>186:20, 188:1, 188:23, 202:24, 203:4, 212:7, 213:7 dates 202:24 day 172:10, 202:3 dc 166:15 deadly 209:22 dealt 167:21, 167:22, 201:11 deaths 196:16, 197:9, 197:22, 198:5, 198:22 december 199:21, 199:25, 200:11, 201:19, 202:18, 202:25, 203:3, 204:20, 205:6, 205:13, 207:3, 209:5, 209:17, 212:1 decision 167:3, 167:4, 170:25, 171:2, 171:4, 171:6, 174:24, 174:25, 175:3, 175:23, 186:14 decision-maker 212:11 decision-making 171:22 dennis 168:3, 203:16, 209:11, 209:14 department 164:12, 164:25, 169:19, 197:20, 201:21, 203:25, 206:1, 211:12 depend 183:16, 183:18</p>	<p>depends 183:15, 184:4 depiction 190:25 deposition 176:6, 191:16 depth 171:23, 171:25 deq 173:9, 173:18, 174:22, 182:3 description 165:7 desire 169:10 desires 169:18 determination 168:4, 170:25, 212:9 determine 172:9, 192:6 determined 204:8 detroit 168:17, 169:11, 177:15, 190:18, 196:22, 207:13 die 197:4, 199:2 difference 183:20, 183:21 different 178:16, 179:22, 195:24, 198:5 difficult 192:25 diligence 175:11 dillon 170:5, 170:7, 173:8, 173:16, 173:25 dillon's 187:17 director 206:2 discover 169:6</p>	<p>discovered 169:7, 173:21, 173:23, 203:11 discovery 168:8 discuss 179:9 discussed 190:4, 201:17, 202:3, 202:5, 204:7 discussion 177:13 discussions 173:8, 175:3, 191:20, 211:23 dispute 189:6, 197:16 distinct 171:9 distinction 201:8 distinctly 199:2 distribute 190:13 distribution 173:2 dna 198:9 document 187:13 documents 167:3, 176:10, 187:11, 193:1, 201:4 doing 169:4, 175:10, 203:13, 203:22 done 170:16, 174:18, 174:19, 174:23, 175:1, 176:3, 176:9, 187:8, 207:24 doodling 190:24 doubt 197:8</p>
---	--	--	---

<p>down 196:4, 196:7, 200:15, 203:4, 203:16 drafted 204:2 drank 189:17 draw 172:17 drawing 187:9 drink 195:19, 196:6 drinking 195:25, 196:3 due 175:11 during 183:8, 186:17, 187:1 dwelled 197:18 dwsd 174:21, 183:11</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e-mail 201:1, 201:2, 203:17, 205:24, 206:13 e-mails 167:2, 168:9, 201:25 each 212:5 earlier 209:8 early 168:14 earn 200:7 east 164:17 edelen 164:4, 176:17, 176:20 eden 191:20, 192:23,</p>	<p>193:23, 211:23 education 192:10 edward 167:16 either 170:19, 181:8, 198:3, 202:25, 205:6, 213:14 elected 169:9, 172:7 elevated 168:23 else 182:15, 196:23, 206:12, 206:13, 209:24 else's 208:14 em 167:15, 169:24 emergency 169:10, 176:12, 177:3, 177:15, 177:20, 182:7, 187:22, 188:11 end 172:10, 190:10 engineering 175:15, 175:24, 179:20 enough 170:12, 188:23, 206:4, 206:19 environments 193:9 epidemiology 203:19 equation 210:3 equity 169:12 escalate 201:22 establish 170:3 established 168:14</p>	<p>even 206:11, 210:7 event 213:15 ever 177:7, 177:13, 178:5, 179:9, 179:12, 181:5, 181:10, 181:16, 182:23, 192:16, 193:21, 194:6, 199:22, 201:23, 201:25, 202:3, 204:20 every 206:25 everybody 203:13, 203:15, 211:13 everybody's 201:2 everything 197:12, 204:15 evidence 203:23, 204:3 exact 202:21 exactly 170:9, 200:18 examination 162:13, 163:1, 165:5, 166:9, 212:25, 213:7 except 206:25 excuse 185:12 executive 170:22, 172:3, 179:8, 199:9 exhibit 165:7, 165:8, 165:9, 176:6, 176:14, 186:24, 187:14, 191:16 exists 197:21 expenditure 175:14, 176:12,</p>	<p>177:8, 186:11 expenditures 178:2, 184:22 experts 173:18, 196:14 expires 213:25 explain 207:23 explanation 182:14 explicit 192:18, 193:25 explicitly 178:18</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fact 173:21, 173:24, 189:16, 192:6, 206:8, 208:19 facts 191:8, 206:7 fair 168:21, 170:12, 188:6, 188:23, 191:1, 191:5, 206:19, 208:11 family 207:7 far 181:9, 183:12, 210:14, 212:5 feasibility 176:13 feasible 172:9 february 166:7, 186:7, 207:12 felt 207:4 few 166:17 fibs 207:15, 207:17 figure 168:25, 170:23,</p>
--	--	---	--

<p>209:22, 210:23 figuring 192:25 financial 170:11 find 167:20, 178:5, 179:12, 201:23, 202:1, 203:23, 204:3 finds 202:7 fine 176:22, 187:4 fingers 212:4 finish 183:10 finished 183:19, 184:2 firm's 175:24 first 170:2, 196:12, 202:4, 202:7, 205:11, 205:13, 205:14, 205:19, 207:20, 210:6, 211:25 fix 179:13, 182:7, 182:20, 183:6, 184:10, 190:11 fixing 183:3 fixtures 183:2, 183:13 flint 162:4, 167:5, 167:21, 168:16, 168:19, 170:13, 170:21, 171:7, 171:17, 172:1, 172:2, 172:6, 172:13, 175:16, 175:19, 176:13, 178:8, 178:14, 178:21, 178:25,</p>	<p>179:2, 179:14, 179:15, 179:16, 180:4, 180:17, 180:18, 180:20, 181:12, 181:14, 182:4, 182:21, 183:3, 183:6, 184:8, 184:18, 186:15, 186:16, 187:24, 188:2, 189:11, 189:17, 189:23, 190:6, 190:9, 190:12, 190:13, 192:1, 192:7, 192:9, 194:2, 196:17, 197:11, 197:23, 200:20, 201:11, 207:10, 209:23, 210:17, 212:6, 212:9 flint's 170:11 flipping 174:25 flood 164:3, 164:6, 165:5, 166:4, 166:10, 166:21, 166:24, 167:1, 169:16, 170:18, 170:20, 171:5, 171:8, 171:13, 171:15, 171:20, 171:24, 173:22, 174:4, 174:10, 174:13, 174:15, 176:8, 177:1, 179:24, 179:25, 180:11, 180:13, 180:16, 180:22, 180:25, 181:4, 185:14, 185:15, 187:1, 187:3, 187:8, 187:12, 188:16, 188:19, 188:22, 191:4, 191:12, 191:18,</p>	<p>199:16, 199:20, 200:10, 204:17, 205:9, 208:20, 212:20, 212:24 floor 164:18 florida 207:7 flow-through 182:9 focus 168:15, 168:19, 168:20 focused 168:13 follow-up 204:17 followed 168:20 force 199:21, 199:23, 200:12, 200:13, 200:21, 200:24, 201:11, 206:22, 207:3, 207:20, 209:18 forces 200:17 foregoing 213:8 forget 202:23 forgot 209:3 formal 167:20 formation 169:12 forth 213:8 found 167:22, 169:2, 193:11, 202:4, 202:10, 202:12, 203:17 frame 173:7, 200:11, 205:12, 212:1</p>	<p>free 188:14, 196:22 frequent 193:11 frequently 205:2 friends 189:9 front 205:18 full 213:11 further 165:5, 166:9 fwicc 201:6</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gap 183:8 gave 191:8, 203:1 general 164:12, 164:25, 192:9, 192:10, 192:12 generally 193:6 genesee 173:1, 173:2, 203:24, 211:5, 211:6, 211:8, 211:11 getting 184:3 give 166:6, 174:6, 176:14, 208:2, 208:15 given 170:11, 193:12 go 166:18, 168:5, 171:4, 171:6, 172:21, 173:3, 177:7, 177:22, 177:25, 178:21, 184:9, 184:11,</p>
---	--	---	--

<p>189:22, 189:25, 193:3, 196:4, 199:16, 200:3, 204:11, 209:8, 209:11, 209:14, 210:24, 212:15</p> <p>goes 193:19, 196:7, 205:15, 209:12, 209:19, 211:18</p> <p>going 168:16, 173:10, 173:13, 176:14, 181:10, 183:6, 183:18, 184:10, 187:3, 188:2, 191:14, 199:16, 203:3, 204:5, 204:11, 207:20, 209:23, 212:8, 212:16</p> <p>gone 185:8, 190:8</p> <p>good 166:24, 169:21, 170:14, 173:17, 180:7, 184:9</p> <p>googled 185:19</p> <p>gotcha 178:5</p> <p>governor 168:3, 169:20, 173:9, 199:10, 202:12, 203:1, 203:15, 204:5, 204:10, 208:24, 212:14</p> <p>grade 195:10</p> <p>great 171:23, 208:3</p> <p>grew 192:22</p> <p>grow 193:8, 193:16, 193:17, 193:19, 193:20</p>	<p>grows 192:14, 193:5, 193:15</p> <p>guaranteeing 181:20</p> <p>guarantor 182:19</p> <p>guess 180:7</p> <p>guessing 188:5</p> <p>guys 203:19, 210:7</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>handwritten 165:8</p> <p>hang 212:16</p> <p>happen 206:5, 208:5</p> <p>happened 208:5</p> <p>hard 181:7, 189:10, 197:19, 208:13, 208:22</p> <p>harvey 188:8, 188:12, 188:15, 199:23, 199:24, 200:12, 201:13, 205:1, 205:4, 205:7, 206:10, 206:11, 206:21, 207:2, 207:23, 208:17, 209:3, 209:5, 209:10</p> <p>health 197:20, 199:12, 203:25, 205:20, 206:1</p> <p>hear 166:25, 198:17, 198:19</p> <p>heard 177:7, 177:9, 182:23, 182:25,</p>	<p>193:4, 196:3, 196:6, 196:11, 198:7, 198:8, 198:11, 198:16, 198:21</p> <p>hears 205:11, 205:19</p> <p>held 163:2, 194:12</p> <p>help 168:24, 171:1, 174:16</p> <p>here 166:7, 172:20, 183:5, 183:7, 186:9, 186:15, 200:7, 205:18, 205:25, 207:1, 212:8</p> <p>hereinbefore 213:8</p> <p>hhs 201:21</p> <p>high 201:22</p> <p>highly 162:11</p> <p>himself 207:5</p> <p>holding 168:12</p> <p>hollins 188:9, 188:12, 199:23, 199:24, 200:12, 205:1, 207:24</p> <p>honestly 195:12, 204:24, 206:17, 210:7</p> <p>hospital 194:8, 211:8</p> <p>hours 212:15</p> <p>house 193:13, 193:17</p> <p>households 193:12</p> <p>howard 188:10</p>	<p>human 197:20, 199:2, 206:1, 210:3</p> <p>huron 172:25, 183:24</p> <p>hypothetical 184:9, 184:11</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 184:10, 185:16, 190:11, 212:7</p> <p>identical 199:5</p> <p>identification 176:5, 191:15</p> <p>identified 198:25</p> <p>ii 162:14</p> <p>imagine 170:22</p> <p>imlay 172:25</p> <p>immediate 175:2</p> <p>included 170:24</p> <p>including 162:6</p> <p>independently 174:25</p> <p>indifferent 169:22, 170:14, 173:17</p> <p>individuals 198:5, 198:21, 199:2</p> <p>infamous 205:23</p> <p>infected 196:1, 196:9</p> <p>information 192:24</p> <p>ingest 195:22, 195:24</p> <p>initial 187:4, 191:14</p>
---	--	---	---

<p>insane 211:19 insanely 210:1 inside 196:21, 201:20 instead 209:18 insurance 166:15 integrity 175:8 intel 196:21 interested 210:24, 213:14 interrupt 174:5 intimately 177:18 investigation 186:19 investigative 162:13, 163:1, 166:5, 168:14 invited 201:14, 206:22, 206:24 involved 177:18, 201:6 iron 192:16 issue 179:9, 182:10, 195:3, 199:12, 204:18, 208:17 issued 203:25 issues 168:16, 175:5</p>	<p>jarrod 204:21, 204:24, 207:6, 207:7, 207:21, 209:4, 209:11, 209:19 jeff 164:25 job 162:23 join 173:3, 173:6, 178:13, 178:15, 178:23, 179:2, 179:6, 179:10, 181:11, 181:15 joining 170:13, 189:8 journey 190:2 july 205:20 june 175:13, 175:23 juxtapose 209:20</p>	<p>203:14, 208:25, 211:10 know 166:11, 167:6, 171:20, 172:2, 172:14, 172:15, 172:22, 173:11, 173:25, 174:2, 176:3, 176:9, 177:6, 177:21, 177:24, 178:3, 178:9, 178:15, 178:24, 179:1, 179:3, 179:4, 179:17, 181:19, 183:1, 183:4, 183:16, 183:25, 184:14, 184:20, 184:21, 185:11, 185:18, 185:23, 186:3, 186:6, 186:14, 188:3, 189:2, 190:17, 191:24, 193:8, 193:21, 194:19, 195:4, 195:13, 195:14, 196:16, 196:19, 197:3, 197:22, 197:24, 198:4, 198:6, 198:10, 198:14, 198:23, 198:24, 199:1, 199:6, 199:8, 202:10, 202:24, 203:1, 203:12, 203:16, 206:2, 206:9, 206:11, 206:17, 207:14, 208:22, 208:23, 208:24, 208:25, 209:2, 210:17, 211:2, 211:19, 211:24, 212:1, 212:2, 212:3, 212:13, 212:14 knowing 206:7, 209:16</p>	<p>knowledge 178:17, 190:14, 192:13, 192:25, 193:3, 206:11, 209:13 knows 174:13 kolb 200:22, 206:22 kurtz 167:16 kwa 167:23, 168:5, 169:4, 169:6, 169:12, 169:21, 170:11, 170:13, 171:4, 171:17, 172:21, 172:22, 173:2, 173:3, 173:6, 178:6, 178:13, 178:15, 178:23, 179:2, 179:6, 179:10, 181:20, 182:10, 182:11, 186:17, 189:8</p>
<p style="text-align: center;">J</p> <p>january 185:1, 185:2, 186:7, 201:19, 201:24, 202:18, 202:25, 203:2, 205:15</p>	<p style="text-align: center;">K</p> <p>kalamazoo 164:19 karegnondi 181:12, 181:16, 183:9, 183:20 keep 200:7 ken 200:21 kept 199:10, 199:11 kevin 164:5 kind 171:11, 178:2, 184:22, 187:11, 189:24, 203:25 knew 173:19, 175:2, 188:24, 198:13, 201:23, 202:1,</p>	<p style="text-align: center;">L</p> <p>l-a-n 180:12, 180:23 lagoon 182:8 lake 172:25, 183:21, 183:24 lan 179:20, 179:21, 180:1, 180:10, 180:11, 180:22 lansing 162:15, 163:6, 166:1, 205:19 last 179:17, 191:3, 201:18, 201:25, 210:21 later 167:24, 189:1,</p>	

<p>204:8 law 164:6 laws 162:5 layers 168:25 lead 168:23, 192:16, 205:23, 209:23 learn 207:19 learned 199:24, 200:14, 202:19, 205:14, 205:21, 207:2, 207:8, 207:11, 207:17, 208:19 learns 209:17, 211:25 least 169:6, 211:21 left 166:13 legal 172:19, 186:25 legionella 191:19, 191:21, 192:1, 192:8, 192:10, 192:11, 192:14, 192:21, 193:4, 193:24, 194:1, 196:7, 196:14, 196:17, 197:9, 199:25, 200:14, 201:17, 201:24, 202:20, 203:21, 204:22, 205:5, 205:8, 205:12, 205:22, 205:23, 206:12, 207:3, 207:9, 210:12, 210:16, 210:22, 211:16 legionellosis 195:14 legislative 205:18</p>	<p>less 183:12 let's 170:2, 170:13, 170:21, 172:17, 184:4, 184:9, 193:3 level 201:22, 206:9 levels 168:23 levine 164:14, 164:16, 166:18, 166:19, 170:17, 171:3, 171:10, 171:14, 171:19, 173:20, 173:25, 174:8, 174:12, 174:14, 176:15, 176:18, 176:22, 179:22, 180:9, 180:12, 180:15, 180:21, 180:23, 181:1, 185:12, 186:23, 187:6, 187:10, 188:13, 188:18, 188:21, 191:2, 191:7, 191:11, 199:15, 200:6, 208:10 life 190:2 lime 182:7 limited 162:7 line 168:11, 185:24, 211:1 lines 192:15, 193:20 linkage 192:7 listen 211:4 little 171:11, 188:6,</p>	<p>203:9, 205:10 lobby 166:15 local 172:7 location 163:2 lockwood 180:23, 181:1 long 208:19 look 169:22, 176:23, 185:5, 204:11, 211:20 looked 167:9, 168:6, 169:2, 169:17, 172:5, 175:6, 188:8, 188:17, 203:20, 210:18 looking 167:18, 173:14, 182:2, 189:14, 200:11, 206:5, 210:22, 211:3 looks 210:1 lost 171:19 lot 168:4, 169:18, 170:12, 174:23, 175:1, 181:6, 192:24, 195:1 lots 176:10 lower 198:2 lyon 194:20, 201:23, 202:19</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>macomb 213:4, 213:24 made 167:3, 167:4,</p>	<p>170:11, 170:25, 171:2, 171:15, 172:11, 174:24, 184:6, 184:12 magnitude 208:17 main 164:7 major 178:2 majority 194:12, 194:17 make 170:10, 171:10, 172:20, 174:23, 183:5, 188:7, 188:19, 200:18, 201:5, 201:7, 203:24, 205:25, 207:22, 209:21, 210:9 makes 183:13, 210:4 making 166:14, 168:4 manager 169:10, 176:12, 177:3, 177:15, 177:20, 187:22, 188:11 many 196:16, 197:4, 207:15, 207:17 march 162:16, 166:2, 167:24, 172:22, 178:12, 206:15, 207:11, 207:18, 209:13 marked 176:5, 186:25, 191:15 match 198:5 matching 198:20, 198:22 material 169:23</p>
--	--	--	--

<p>matter 162:3, 170:15, 191:6 maybe 171:14, 181:6 mclaren 194:8, 194:11, 194:12, 194:25, 195:2, 195:3, 211:8, 211:9, 211:10, 211:13 mdhss 211:13 mdss 211:12 mean 204:25, 211:16, 212:11 means 184:21, 198:23 media 188:6, 196:23, 196:25, 197:11 meeting 167:21, 199:23, 200:13, 201:17, 206:25 meetings 167:10, 201:14 melinda 162:25, 163:14, 213:6, 213:22 memory 190:2 mentioned 194:25, 203:20, 210:19 met 202:11 michigan 162:1, 162:5, 162:15, 163:6, 163:15, 164:8, 164:11, 164:17, 164:19, 164:25, 166:1, 197:19, 211:11, 213:2, 213:24</p>	<p>michigan's 187:20 might 210:10 million 179:19, 180:7, 181:23, 182:1, 182:9, 182:20, 182:23, 183:8, 183:12, 184:7, 184:18, 186:12, 190:22 mind 182:17, 195:8, 208:14, 209:21 minute 185:13, 200:5 minutes 167:9, 167:11, 167:20, 167:22, 167:25, 169:2, 191:3 misconduct 162:7 moist 193:8 mom 189:11 moment 191:19, 199:17 money 179:6, 179:10, 179:13, 181:19, 182:7, 183:1, 186:6, 190:11, 190:17 month 182:22, 190:22, 203:4 months 169:2, 209:8 moore 162:25, 163:14, 213:6, 213:22 more 168:22, 177:8, 177:21, 181:11, 181:13, 183:23,</p>	<p>193:25, 197:6 morning 189:19 mother 189:17 move 169:11, 170:10 much 171:25, 179:12, 181:19, 181:25, 183:1, 186:6, 187:5, 190:11, 190:17, 204:15, 206:4 muchmore 168:3, 209:14 must 177:4, 180:3</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name 166:21 names 201:2, 203:20 national 210:22 natural 203:13, 209:10 nd 205:20 near 210:16 need 183:16, 186:8, 188:7, 200:2, 204:10, 212:18, 212:19 needed 207:14 never 172:12, 177:9, 188:1, 205:7 newnam 181:2 news 196:20, 196:22, 196:23, 197:11, 197:13, 207:13</p>	<p>next 206:21 nick 194:20, 194:25, 201:23, 202:19, 203:11, 203:16, 205:11 non-moving 193:9 north 164:7 notary 163:15, 213:1, 213:23 notes 175:7, 213:12 nothing 209:24 nowhere 210:16 nuance 177:24, 178:1, 178:18 number 178:4, 179:18, 181:9, 185:17, 185:20, 185:24, 197:1, 197:14, 197:18, 210:12 numbers 201:3</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oak 164:8 oath 166:11 objecting 174:12 objections 174:10, 174:11 obviously 203:1 occasion 206:23 occur 204:10 occurred 192:9, 197:23,</p>
---	---	---	--

HIGHLY CONFIDENTIAL

Transcript of Richard Louis Baird, Volume 2

Conducted on March 1, 2017

<p>204:9 occurs 195:17 october 200:24, 211:7, 211:17 office 162:8, 172:3, 179:8, 191:25, 199:9 officials 169:9, 172:8 often 191:23 okay 166:13, 167:18, 169:13, 173:13, 173:16, 174:14, 175:13, 175:22, 176:2, 176:4, 176:22, 177:2, 177:11, 179:12, 185:19, 186:14, 188:5, 190:8, 190:23, 195:14, 201:5, 202:3, 202:14, 208:19, 210:12, 212:4 old 189:18 one 168:4, 176:23, 177:12, 178:19, 184:13, 184:19, 189:7, 199:3, 201:9, 202:16, 210:12 one-year 186:11 ones 206:25 onion 169:1 only 178:15, 206:9 opined 194:1 opining 174:21</p>	<p>opinion 167:4, 167:8, 193:23, 195:12, 207:25, 208:2, 208:12, 208:14, 208:15, 210:5, 210:6 opposed 183:10, 207:10 optics 209:25 orange 189:11, 189:20, 189:21 order 175:25, 182:3, 184:1 other 166:17, 168:5, 168:16, 169:24, 169:25, 178:4, 179:13, 182:15, 187:11, 187:21, 206:7, 212:5, 212:20 others 168:3, 173:9, 188:11 ottawa 163:5 out 168:24, 168:25, 169:20, 170:23, 171:1, 172:17, 172:19, 174:16, 178:6, 179:12, 181:25, 189:20, 189:21, 190:23, 192:25, 198:3, 201:1, 201:23, 202:1, 202:4, 202:7, 202:10, 202:12, 209:22, 210:23, 211:2, 212:16 outbreak 193:24, 194:2, 194:13, 206:2,</p>	<p>207:9 outlet 197:12 over 177:3, 182:9, 182:22, 182:23, 183:7, 187:13, 207:7 own 169:3, 174:25, 207:5</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 164:3, 164:4, 164:5, 164:14, 164:15 pad 172:19, 186:25 page 165:3, 165:7, 172:19, 175:18, 190:23 pages 162:24 paper 207:12 part 179:11, 199:22, 200:13 partner 169:12 parts 181:8, 203:7, 203:10 party 213:14 pause 175:2, 186:24 pausing 174:5 paying 166:14 peeled 168:25 people 166:14, 179:15, 197:4, 201:1,</p>	<p>207:14 perhaps 192:2 period 186:12, 189:13, 199:12, 201:19, 202:9, 202:22, 204:20 permanent 180:17, 180:19, 182:22 person 193:1, 203:6, 207:20 personally 205:4 phlegm 198:2, 198:24, 199:4 phone 203:5 photo 188:17, 188:25, 189:1, 189:2 photograph 188:9 picking 168:24 picture 174:21, 174:22, 183:5, 188:15 piece 196:2, 208:4 pin 203:3 pipe 172:24 pipes 192:16 place 175:9, 178:6, 188:24, 212:18 plant 179:14, 180:2, 180:3, 181:14, 182:21, 183:3, 183:7, 183:23, 184:8, 184:13,</p>
---	---	--	---

HIGHLY CONFIDENTIAL

Transcript of Richard Louis Baird, Volume 2

Conducted on March 1, 2017

<p>184:19, 184:23, 185:3, 185:4, 186:4, 186:6, 186:11, 186:16, 190:12, 190:16 pleasure 212:17 pllc 164:6 point 190:3, 204:8, 208:11, 209:12 pointed 212:5 politician 209:24 poorly 178:11 position 170:11 possibility 211:22 possible 176:25, 181:8, 212:24 potable 180:4, 181:15 potential 188:23 potentially 185:21 power 182:19 precedent 193:16 predominance 194:10 predominantly 170:4, 195:17 pregnant 174:6, 174:9 present 164:24, 169:14 press 168:9, 168:20, 188:14, 196:23 pressure 206:4</p>	<p>presume 193:21, 211:21, 212:3 presumed 178:1 presuming 194:16 pretty 177:11, 204:14 probably 178:11, 193:11, 208:8 problem 186:9, 195:3, 207:13 process 169:23, 170:7, 170:8, 171:22, 172:1, 175:8, 178:13 produce 180:4, 181:14 produced 180:1 professional 175:24 project 192:6 public 163:15, 199:12, 204:12, 213:23 publicity 168:22, 170:12 puddle 193:10 pull 211:2 pulled 185:19 pulling 172:19 pumped 183:11 pun 170:17, 171:15 purchase 175:24, 190:17 purchasing 172:23</p>	<p>purposes 166:15 pursuant 162:13, 163:1 put 166:21, 180:13, 184:7, 186:4, 191:7, 191:14, 199:22, 201:9, 205:24, 210:3</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualifications 195:8, 195:10 qualified 195:6 question 166:13, 170:19, 171:18, 171:21, 178:10, 181:2, 203:14, 204:18, 205:22, 206:21, 207:2, 208:12 questioning 187:1, 188:14, 191:3 questions 169:19, 200:2, 212:20, 213:9 quoted 207:12</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>randall 164:14, 166:18 range 182:1, 197:1 ranges 190:22 rather 207:1 raw 173:1, 183:19, 183:20, 183:24, 184:1 read 167:9, 192:24, 193:2, 193:4,</p>	<p>195:21, 195:24, 197:12, 199:7 reading 179:18 really 168:15, 170:14, 177:11 realtime 168:10, 168:12, 168:13, 173:13, 173:23, 189:1, 189:3 reason 189:6, 197:8, 197:16, 206:10, 212:6 recall 170:9, 174:17, 176:1, 176:24, 177:13, 178:18, 181:7, 181:18, 182:13, 182:25, 188:4, 188:25, 189:16, 189:18, 190:6, 190:14, 191:24, 192:18, 192:19, 192:23, 196:2, 200:1, 201:16, 201:18, 202:21, 203:10, 204:4, 204:19, 204:23, 204:25, 205:3, 210:25 recent 179:17 recognize 203:19 recollection 180:8, 185:21 recommendation 175:15 recommended 172:11 reconciliation 184:24 record 166:22, 180:14, 186:24, 188:8,</p>
---	---	---	--

<p>190:24, 198:1, 199:17, 199:18, 199:19, 200:8, 200:9, 202:17, 209:16, 209:25, 212:18, 212:19 recorded 211:7, 213:9 records 185:7, 186:8 reduced 213:10 reference 190:3, 194:1 referenced 176:11 referring 174:23 reflect 186:24 refresh 185:21 regarding 204:21 regurgitate 196:9 related 186:4, 213:13 relates 169:17, 181:20, 191:21 relationship 195:13 relative 182:13, 182:14 relying 173:18, 196:25, 197:11 remember 169:4, 176:11, 179:18, 181:10, 182:2, 189:10, 189:15, 191:25, 193:3, 202:23, 203:4, 203:6, 203:7, 204:6, 204:15, 210:14 reminded 189:17</p>	<p>repeat 178:10 report 179:21, 180:1, 180:9, 180:10, 180:11, 181:5, 181:8, 181:11 reported 162:25, 211:10 reporter 163:14, 212:22 reports 168:9, 179:23, 196:20, 196:23 representation 191:5 require 182:23 requires 183:25 research 167:4, 167:7, 170:1, 186:19, 192:6 researched 168:6, 169:1, 195:16 resolution 165:9 revealed 186:21 review 176:10, 203:13, 203:22 reviewed 178:2, 201:3 rich 166:11, 167:2, 175:6, 175:23, 186:2, 205:25, 212:15 richard 162:14, 165:4, 166:7 right 166:6, 166:16, 167:24, 168:17, 168:18, 168:24,</p>	<p>171:25, 175:4, 178:22, 185:19, 187:6, 188:5, 189:22, 190:1, 197:13, 201:12, 201:15, 202:21, 203:14, 204:14, 204:16, 205:13, 206:16, 208:6, 208:21, 209:1, 209:9, 210:2, 210:20, 211:11, 211:20, 211:23 risk 205:20 river 167:5, 167:22, 170:21, 171:7, 171:17, 172:2, 172:6, 172:13, 175:16, 175:20, 176:13, 178:8, 178:14, 178:21, 178:25, 179:2, 179:15, 180:4, 180:19, 181:13, 182:21, 183:22, 183:24, 186:16, 187:25, 188:2, 189:11, 189:17, 189:23, 190:9, 190:13, 192:7, 212:9 rlevine@levine-l- evine 164:21 rowe 179:20, 180:10 royal 164:8 run 189:19 rushed 212:23</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>said 170:9, 171:16,</p>	<p>178:20, 184:5, 190:3, 192:23, 194:25, 201:18, 202:11, 203:21, 203:22, 204:5, 204:10, 205:21, 207:1, 211:1 sake 170:14, 170:15 same 172:19, 175:18, 175:19, 200:18, 202:9, 202:12, 209:23, 211:25 sample 197:24, 198:1 samples 197:23, 198:4, 198:20, 198:22, 199:3 saw 168:7, 176:1, 184:15, 184:17, 189:1, 201:1, 210:17 say 167:13, 173:16, 188:6, 194:24, 197:6, 202:7, 206:6, 209:2, 211:20 saying 174:24, 193:18 says 205:17, 205:19 scientists 210:8 see 168:8, 169:23, 175:7, 175:25, 181:16, 183:6, 184:6, 184:12, 187:17, 187:20, 199:8, 211:3, 211:13, 211:15 seeing 176:11, 176:24, 181:11, 188:25</p>
---	---	--	---

HIGHLY CONFIDENTIAL

Transcript of Richard Louis Baird, Volume 2

Conducted on March 1, 2017

<p>seen 176:25, 181:5, 181:8, 182:5, 184:21, 184:22, 184:24, 186:10, 187:15, 189:3 sees 211:13 seipenko 164:25, 204:19, 205:1, 205:4 selecting 192:5 sell 207:16 send 204:3 sense 168:7, 170:11, 183:5, 183:13, 205:25, 207:23, 209:21 sent 181:6, 201:1, 206:13, 210:25 separate 200:2 september 213:25 service 179:14, 192:15, 193:20 services 175:25, 197:20, 206:1 set 213:8 setting 201:6 several 209:8 share 208:7 short 171:25, 176:23 shorthand 163:14 should 167:13, 178:21,</p>	<p>186:24, 204:9 show 185:25 showed 172:20, 181:11, 187:13, 188:15, 201:25 shows 180:1 sight 168:11, 185:24 sign 173:10 signature 187:17, 187:21 signature-o5gbl 213:20 signed 173:17, 174:1, 174:2 significant 169:10, 184:1 signs 173:19, 175:10 sikkema 200:21 simowski 164:5, 169:14 since 185:1 single 212:11 single-year 197:14 sit 186:9, 186:15, 206:22, 212:7 situation 177:15 situational 206:13 skubick 205:13 sky 211:2 sleep 206:4 sludge 182:8</p>	<p>some 167:2, 167:7, 167:9, 169:3, 174:18, 177:24, 190:4, 190:6, 190:24, 199:17, 203:22, 203:25, 204:8, 206:7, 207:5, 211:4 somebody 172:4, 194:9, 206:12, 209:6, 210:25 someone 194:12, 208:14 something 176:11, 177:24, 179:19, 180:24, 182:15, 185:25, 196:3, 198:8, 198:12, 199:7, 199:8, 204:2, 210:25 sometime 179:17 sometimes 201:13 somewhere 182:1, 196:23, 210:25 soon 212:24 sorry 180:18, 209:6, 211:5 sort 169:20 sorts 168:9, 192:13 source 167:5, 169:11, 170:22, 172:3, 172:6, 172:13, 175:16, 175:20, 179:15, 181:13, 182:22, 184:2, 184:3, 186:17, 188:3, 190:10,</p>	<p>212:10 sourcing 192:5 speaking 167:25, 193:6 specific 202:24 specifically 181:3, 206:25 speculate 185:11 spend 177:3, 177:21 spent 184:18, 184:25, 185:1, 185:2, 185:8, 185:22, 186:6 spike 192:8, 194:7, 203:21, 210:17 spikes 211:18 spoke 210:21 sputum 197:23, 197:24, 198:1, 198:4, 198:20, 198:22, 198:25, 199:3 square 205:16 ss 213:3 staff 209:4, 209:6, 209:7 stagnant 193:8 stands 187:6 started 166:5, 168:21 startup 190:15 state 162:1, 163:15, 166:14, 169:19,</p>
--	--	---	---

<p>169:23, 169:24, 170:23, 183:1, 187:20, 196:22, 211:14, 213:2 stated 178:11 statement 178:20, 192:19 statutes 162:6 stayed 183:11 steam 195:18 stenographic 213:12 stenographically 213:10 steward 166:20 stewart 164:15, 166:23 still 166:11, 187:8, 203:22 stood 200:24, 200:25 stop 170:24, 212:16 stopped 189:20 story 207:15 strains 192:11 strange 204:11 stream 207:5 street 163:5, 164:7 strike 212:14 studies 179:9, 190:8, 210:22 study 172:8, 173:13,</p>	<p>175:14, 180:5, 181:17 stuff 176:19 subject 191:2, 191:6 subpoena 162:13, 163:1, 166:5, 168:15 subsequent 168:2 sudden 209:15, 209:17, 211:17 suffice 173:16 suite 163:5 supply 180:18, 180:19 support 185:8 supposed 203:24, 204:2 sure 166:14, 170:10, 171:10, 172:3, 172:4, 178:11, 185:14, 188:21, 197:21, 200:3, 200:16, 200:18, 200:19, 201:5, 201:7, 203:24 surveillance 211:12, 211:14, 211:15 swabbed 198:3 swim 189:12 swimming 189:23, 189:25 switch 167:21, 167:23, 172:11, 184:5, 188:10, 188:24, 190:1, 192:7, 210:11</p>	<p>system 183:10, 211:12, 211:14, 211:15</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table 165:1 take 170:13, 190:12 taken 172:15, 189:3, 189:6, 213:7, 213:13 takes 175:9 taking 186:23, 188:24 talk 166:16, 166:17, 171:1, 171:22, 172:1, 184:25, 191:19, 198:14, 200:4, 205:2 talked 172:3, 172:4, 187:25, 189:8, 190:3, 191:1, 194:20, 196:14 talking 171:3, 189:15, 189:16, 190:6, 191:9, 192:1, 198:11, 198:13, 198:14, 200:18, 200:20 talks 198:9 task 199:21, 199:23, 200:12, 200:13, 200:21, 200:24, 201:11, 206:22, 207:3, 207:19, 209:18 tasks 200:17 tearing 190:23</p>	<p>telephone 201:3 tell 169:7, 181:22, 185:2, 189:12, 192:14, 192:16, 192:21, 193:7, 194:8, 194:10, 195:11, 198:11, 198:16, 203:9, 207:6, 207:20, 208:13, 208:23 telling 175:17, 189:5, 189:19, 192:20, 205:11, 207:18 tells 205:13, 205:16 tendency 193:9 testifies 205:17 tflood@floodlaw 164:10 th 164:18, 178:12, 202:25, 203:2, 211:7 thank 180:15, 181:1, 187:2, 187:5, 188:13, 188:18, 199:14, 199:15, 212:19, 212:21 thanks 166:24 themselves 210:10 thing 204:14, 209:10 things 166:17, 168:8, 168:10, 169:20, 171:9, 173:14, 177:12, 181:6, 191:1, 192:13, 198:9, 209:20 think 169:7, 174:8,</p>
---	---	---	--

HIGHLY CONFIDENTIAL

Transcript of Richard Louis Baird, Volume 2

Conducted on March 1, 2017

<p>179:18, 184:4, 184:6, 185:9, 188:13, 190:3, 194:16, 196:20, 197:1, 198:8, 199:6, 200:6, 206:24, 208:7, 208:11, 210:6, 210:13 thinks 194:4, 209:3 third 193:12 thought 174:6, 174:7, 174:9, 175:18, 186:2, 195:2, 195:5, 195:9, 195:11, 208:3 thoughts 206:3, 207:5 three 183:12 threshold 178:4 throat 198:2 through 167:2, 169:18, 173:1, 175:6, 177:7, 177:22, 177:25, 195:17, 202:25, 207:2, 211:11 tim 203:11, 205:13 time 168:10, 173:7, 177:20, 178:8, 179:4, 179:13, 182:20, 183:8, 184:5, 188:24, 189:13, 192:25, 196:12, 200:11, 201:25, 202:9, 202:13, 202:21, 202:22, 204:1, 204:20, 205:3,</p>	<p>205:11, 205:12, 205:14, 205:19, 205:21, 207:4, 209:4, 209:7, 209:23, 210:21, 211:9, 211:25, 212:1 timeline 165:8, 190:25 times 192:3 today 186:9, 186:15, 196:12 todd 164:3, 172:7, 179:23, 188:4, 203:7 together 199:22, 201:9, 201:18, 205:24, 208:4 told 170:7, 170:9, 186:2, 193:23, 194:4, 194:6, 194:9, 194:12, 195:16, 195:19, 195:22, 196:25, 201:21, 202:19, 203:17, 204:1, 207:13, 208:22, 208:25, 209:3 took 178:6, 210:14 total 180:5, 181:25, 185:3, 197:15 towards 183:2 transcript 212:19, 213:12 transcription 213:11 treasurer 174:18, 177:9, 177:22, 177:25, 178:3</p>	<p>treasury 168:2, 169:19, 170:4 treat 184:1 treated 192:12 treating 183:19 treatment 179:14, 181:14, 182:20, 183:3, 183:7, 184:8, 184:19, 185:3, 185:4, 186:16, 190:15 tried 208:4 troubles 205:10 true 183:14, 199:13, 212:17, 213:11 truth 176:20 try 170:23 trying 168:6, 205:24, 209:21, 210:23 tucker 174:20 turning 188:9 two 171:9, 179:22, 198:5, 198:21, 199:2, 199:3, 201:8, 205:16, 209:20, 210:7, 211:5, 211:6, 211:16 tyler 164:15, 166:20, 166:23</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>unconscionable 206:6</p>	<p>under 166:11, 170:16, 171:16 underneath 187:11 understand 195:7 understanding 172:7, 173:4, 173:5, 177:2, 178:7, 178:16, 182:12, 193:14, 211:24 understood 171:18, 175:11, 202:19, 208:17, 210:13 until 168:8, 189:18, 189:20, 206:12 update 180:2, 181:14 updated 180:3 updates 183:2 updating 183:12 upgrades 180:5, 183:23, 184:1, 184:13, 184:18 uphill 172:25 uptick 210:15, 211:16 upwards 197:9 use 167:5, 170:18, 175:15, 176:13, 178:14, 178:25, 179:1, 180:3, 182:21, 183:8, 183:24, 184:8, 186:15, 190:12, 212:9 using 172:13, 173:1,</p>
---	---	--	---

HIGHLY CONFIDENTIAL

Transcript of Richard Louis Baird, Volume 2

Conducted on March 1, 2017

175:19, 178:8, 181:12, 184:11, 189:10, 190:9	W	196:6, 199:17, 200:20, 201:11, 210:11, 212:6, 212:10	within 184:13, 211:8
V	waiting 183:9	way 168:5, 175:22, 207:8	without 206:6
vacation 209:20	want 166:16, 166:17, 171:1, 172:2, 172:17, 172:18, 174:5, 175:17, 184:25, 185:11, 186:5, 189:25, 191:13, 191:19, 199:8, 199:10, 199:11, 200:15, 200:17, 201:5, 206:6, 208:2, 211:3	ways 195:24	witness 164:22, 165:3, 171:6, 171:21, 174:2, 176:24, 191:10, 200:4, 204:23, 205:2, 205:7, 208:8, 208:16
vacay 207:22	wanted 166:25, 170:10, 171:10, 172:8, 175:5, 177:20, 188:19, 201:7	we'll 172:20	wondering 186:5, 187:10
values 208:14	wants 177:3	we're 171:11, 171:13, 175:17, 184:10, 186:23, 187:8, 200:18	work 168:4, 169:17, 169:18, 174:18, 174:19, 174:23, 175:1, 176:3, 176:9
vapor 195:17, 195:18	water 162:4, 167:5, 167:23, 169:11, 170:16, 171:16, 172:13, 173:1, 175:16, 175:20, 176:13, 179:14, 180:4, 180:18, 180:19, 181:12, 181:14, 181:15, 181:16, 182:20, 183:3, 183:6, 183:9, 183:11, 183:19, 183:21, 183:24, 184:1, 184:2, 184:8, 184:19, 186:15, 186:16, 188:3, 189:13, 189:14, 189:17, 189:19, 190:10, 190:12, 190:15, 190:18, 192:8, 193:9, 193:19, 195:17,	wednesday 162:16, 166:2	worked 177:16
various 192:2, 200:17		week 201:18	world 184:7, 184:12
vein 206:21		wells 191:20, 193:23, 211:23	world's 189:14
verify 174:18		went 167:2, 188:16, 204:4	worry 187:4
versus 181:12, 184:2		weren't 168:15, 178:7, 189:12	worse 181:10
vet 169:20, 175:5		west 163:5	worth 183:13, 208:13
vetted 175:7		whatever 202:11, 208:13	wouldn't 199:11
vetting 169:23, 170:8		wherever 193:19	wrap 212:8
via 203:5		whether 169:21, 172:9, 172:15, 173:9, 179:4, 183:18, 193:1, 203:11	writing 187:1
victim 199:3		whole 205:15	wrong 178:16
view 194:7		windpipe 196:4, 196:7	wurfel 208:18
voice 166:25		wish 185:25	Y
volume 162:14			yeah 167:10, 179:24, 201:8, 206:20, 210:18, 211:6
vote 172:15, 172:21, 173:5, 175:19, 178:6, 178:13, 178:14, 178:19, 178:22, 178:23, 179:1, 179:2, 179:4, 189:7			
voted 172:12, 173:3			
voting 178:8			

HIGHLY CONFIDENTIAL

Transcript of Richard Louis Baird, Volume 2

Conducted on March 1, 2017

<p>year 178:12, 179:18, 181:23, 184:13, 184:19, 189:7, 190:18, 194:15, 205:15 yearly 190:19 years 181:24, 183:12, 189:18 yell 208:8, 208:10 young 174:20</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero 197:6</p> <hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$171,000 175:14 \$200 182:1 \$48 179:19 \$50,000 177:4, 177:21 \$7 181:23 \$85 182:9, 182:20, 182:23, 183:8, 183:12, 184:7, 184:18, 186:12</p> <hr/> <p style="text-align: center;">.</p> <hr/> <p>.0444 164:20 .1032 164:9</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>08 212:25</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 162:17, 166:3,</p>	<p>169:14, 176:7 1.2 190:22 10 197:1 101 163:5 11 169:2, 189:18 12 197:1 13 165:9, 203:2, 211:7, 211:17 136 164:17 137228 162:23 14 164:18, 191:17, 194:16, 197:15 15 191:3, 197:15 16 185:1, 211:9, 211:10 162 162:24 166 165:5 171,000 175:25 176 165:9 18 165:8, 172:20, 186:25, 191:11, 191:14, 191:16 19 165:9, 176:6, 176:14, 187:14 191 165:8 1st 202:25, 203:3</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 191:17, 199:18,</p>	<p>199:19, 200:8, 200:9 2011 179:21 2013 167:24, 172:22, 173:7, 175:13, 175:19, 175:23, 178:11, 186:10, 211:5, 211:6 2014 184:6, 186:10, 189:2, 189:8, 211:7, 211:17 2015 194:18, 199:21, 199:25, 201:24, 202:18, 203:3, 204:20, 205:6, 205:15, 207:3 2016 185:2, 186:5, 186:7, 202:18, 203:2, 207:12 2017 162:16, 166:2, 166:7, 186:7 2022 213:25 21 197:9 213 162:24 22 205:20 2258 162:25, 213:22 23 166:7 248.547 164:9 25 172:22, 173:7, 175:19, 178:12 26 165:9, 175:13, 175:23, 199:18 269.382 164:20</p>	<p>28 181:24</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 212:25 30 202:25, 211:8, 211:15, 211:17 30672 164:14 34 162:17, 166:3 34358 164:5 38 169:14</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>401 164:7 46 199:19 47 200:8, 211:18 48 176:7, 180:7, 200:9 48067 164:8 48933 163:6 49007 164:19</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>50 178:4 50,000 177:8 525 163:5 58555 164:3</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>61,498,000 180:6</p>
--	---	--	---

6th 195:10	
7	
7-to-1 178:12	
8	
80750 164:15	
80971 164:4	
9	
900,000 190:22	