

1 THE STATE OF OHIO,)
2 COUNTY OF CUYAHOGA.) SS: STUART FRIEDMAN, J.

3 IN THE COURT OF COMMON PLEAS
4 CIVIL DIVISION

5 MICHAEL J. SKINDELL,)
6 Plaintiff,)
7 -v-)
8 MARY LOUISE MADIGAN, ET AL.,)
9 Defendants.)

) Case No. CV-855961
) C/A: 103976

10 - - - -
11 TRANSCRIPT OF PROCEEDINGS
12 - - - -

13
14 BE IT REMEMBERED, that at the September
15 A.D. 2015 term of said Court, to-wit,
16 commencing on Monday, December 21, 2015, this
17 cause came on to be heard before the Honorable
18 Stuart Friedman, in Courtroom No. 19-B, Courts
19 Tower, Justice Center, Cleveland, Ohio, upon
20 the pleadings filed heretofore.

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I N D E X

PLAINTIFF'S WITNESSES:	DIRECT	CROSS	RED.	RECROSS
Dean Dilzell	15	19	--	--
Terence Kilroy, M.D.	21	31	44/53	48
Samuel O'Leary	55	--	--	--

- - -

E X H I B I T S

PLAINTIFF'S	OFFERED	RECEIVED
Ex. #1, Ordinance No. 49-15	95	96
Ex. #2, Minutes of 9/8/15	95	96
Ex. #3, Minutes of 9/21/15	95	96
Ex. #4, Minutes of 9/16/15	95	96

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1 MONDAY AFTERNOON SESSION, DECEMBER 21, 2015

2 - - -

3 THE COURT: We have before
4 the Court at this time civil action number
5 855961 which is Michael Skindell versus Mary
6 Louise Madigan, et al. Before we proceed any
7 further I've been asked by the court reporter
8 if all counsel would give their names. Spell
9 the last names for the court reporter for the
10 record. On behalf of plaintiff.

11 MR. KORAN: Sean Koran,
12 S-E-A-N K-O-R-A-N.

13 MR. CAHILL: Robert Cahill,
14 C-A-H-I-L-L. Counsel for city of Lakewood and
15 all the Lakewood defendants.

16 MR. BUTLER: Likewise for the
17 same parties, Kevin Butler, B-U-T-L-E-R.

18 THE COURT: We had some
19 preliminary discussions in chambers concerning
20 one issue which is am I going to hear this.
21 We all are aware that there is, and has for
22 some seven months, been pending an action in
23 this court, No. 846212 in which the plaintiff
24 I believe is Edward Graham.

25 The defendants, they are all

1 different from the parties here although it
2 concerns the same underlying dispute that is
3 the proposal by the Cleveland Clinic to, with
4 regard to the existing Lakewood Hospital.

5 The discussion we had concerned
6 whether this case should be consolidated with
7 that one. A proposal was made by the
8 defendants. Plaintiff apparently is objecting
9 to that.

10 I have had some preliminary
11 discussions on that point with Judge
12 O'Donnell, and our agreement essentially was
13 if there was no objection to that, that he
14 would be glad to take the hearing today, and
15 if there was an objection, I would keep the
16 case, so there being an objection from the
17 plaintiff apparently, I will hear this.

18 It's also been brought to my
19 attention that there is, I don't know if it's
20 been filed or proposed to be filed by the
21 defendants, a motion to consolidate. I would
22 suggest no flash and there was a flash that
23 went off.

24 MR. CAHILL: Your Honor, it
25 has been filed already.

1 THE COURT: Motion to
2 consolidate this hearing with a hearing on the
3 final order, permanent injunction in this
4 case. Shall we discuss that first?

5 MR. CAHILL: Sure, Your
6 Honor. It's anticipated tonight that there
7 will be a third reading of Ordinance 49-15
8 which enables the mayor of the City of
9 Lakewood to sign an agreement that allows the
10 city to enter into contracts with Cleveland
11 Clinic Foundation and the Lakewood Hospital
12 Association by which Lakewood Hospital would
13 be wound down.

14 Efforts will be made to construct a
15 new family health center across the street
16 from Lakewood Hospital. A new emergency room
17 will be constructed as part of that facility.

18 Lakewood Hospital Association which
19 is not a party to this litigation but which is
20 an extraordinarily interested third party is
21 bleeding money as I understand it at a rate of
22 about 40 some thousand dollars a day right now
23 should there be any delay in the ultimate
24 finality of whatever city council will do,
25 whether it's to approve the legislation

1 pending before it tonight or to not approve
2 the legislation.

3 THE COURT: Why don't you
4 wait just a moment. There is no standing room
5 in this court.

6 You may continue.

7 MR. CAHILL: Your Honor, as a
8 point of order we have two of our witnesses in
9 the courtroom right now. Should they be
10 excused?

11 THE COURT: Absolutely.
12 Anyone who may be a witness for either side
13 should leave the courtroom at this time.

14 MR. CAHILL: As I was saying,
15 Lakewood Hospital Association is bleeding to
16 the tune of about \$40,000 a day. The city of
17 Lakewood, Cleveland Clinic are aware from
18 representations going back months now that a
19 bankruptcy filing could be imminent if a deal
20 cannot be reached timely, and the winding down
21 of Lakewood Hospital can begin to stop that
22 bleeding.

23 Should there be any delay in finality
24 of a decision on plaintiff's challenge, there
25 is a very real threat that Lakewood Hospital

1 Association will in fact file for bankruptcy
2 likely killing this deal in its entirety, and
3 instead of a brand new facility, medical
4 facility with an emergency room, the city of
5 Lakewood is facing an empty shell, a building
6 at which nothing is happening and no funds to
7 do anything with it.

8 So for that, principally for that
9 reason, it is incumbent that we have a final
10 decision one way or the other today about
11 whether the Ordinance 49-15 is invalid and
12 whether as plaintiffs seek in what I believe
13 is a remedy whether any other ordinance
14 concerning the same thing could be put forward
15 by city council.

16 Effectively the plaintiffs here are
17 asking to handcuff city council and their
18 legislative prerogative to take any action
19 concerning Lakewood Hospital. It's all the
20 more egregious in light of the fact for the
21 last eleven months city council has been
22 engaging in public meetings at which they
23 heard public comment.

24 They conducted deliberations among
25 themselves. Several months ago they

1 authorized the law director through a
2 resolution to enter into negotiations with the
3 Cleveland Clinic and Lakewood Hospital
4 Association. At the culmination of those
5 negotiations, what the law director believed
6 was a workable document, city council put it
7 up for the public for their reading. They
8 took public comment. That was on December
9 7th.

10 December 14th they had about three
11 and a half hours worth of public comment and
12 deliberations. They anticipate a third of
13 those meetings will happen tonight. This has
14 been an eleven-month process. It should
15 conclude one way or the other today.

16 Thank you, judge.

17 THE COURT: Thank you. Mr.
18 Koran.

19 MR. KORAN: Thank you, Your
20 Honor. I think this motion only goes to show
21 what the entire crux of our case is, is that
22 the decision has already been made. If there
23 was a chance that this decision was not going
24 to be made to close Lakewood Hospital tonight,
25 there would be no reason for there to be an

1 issue of even a short delay.

2 If this case -- if this hearing is
3 consolidated with the trial of this matter, it
4 will greatly prejudice the plaintiff. You'll
5 have no opportunity to conduct discovery. No
6 opportunity to bring forth necessary
7 witnesses. I believe two of the defendants
8 are here today.

9 Obviously the subject of our case is
10 what was discussed in these executive
11 sessions, whether there were deliberations
12 that led to the agreement that was announced
13 on December 7th, and if so, were they
14 appropriate in executive session. We have
15 reason to believe they were not, but we cannot
16 know that for sure until we depose or take the
17 testimony from the people that were in these
18 executives sessions.

19 We have not had the opportunity to do
20 that if this is consolidated and everything
21 has to happen today. We are certainly fine
22 with expediting discovery in this matter,
23 expediting decision in this matter, but this
24 has been pending as they said for eleven
25 months. I don't understand what the rush is

1 that this has to be done today or how another
2 month or so would, that would push them over
3 the edge.

4 This has been ongoing for a long
5 time. It doesn't need to be done today.

6 THE COURT: Thank you. Let
7 me ask Mr. Cahill, if I were to deny the
8 injunction today, what happens immediately?
9 The hospital is operating today, correct?

10 MR. CAHILL: That is correct.

11 THE COURT: There are
12 patients there, both inpatient and outpatient.

13 MR. CAHILL: Correct.

14 THE COURT: If the
15 injunction were denied, would the hospital be
16 closed down tomorrow morning or would the
17 process for closing it down begin in order to
18 have, let's say, an orderly process?

19 MR. CAHILL: The process for
20 winding down will begin, and there will be an
21 orderly process by which inpatient care will
22 be what will be most quickly wound down.
23 There will continue to be other services
24 provided at the hospital while the new
25 facility is built including an emergency room,

1 but it's the inpatient services that are
2 causing the most hemorrhaging.

3 Currently of those patients treating
4 at Lakewood Hospital, only six percent are
5 inpatient. 94 percent are outpatient, so you
6 have a disproportionate amount of facilities
7 for a very small sliver of those being treated
8 at the hospital.

9 THE COURT: Okay. It was
10 just a question that occurred to me. I know
11 that counsel would love to present opening
12 statements, but we have a limited amount of
13 time. I read the massive amount of material
14 that was presented to me, so I suggest that we
15 dispense with opening statements and move
16 directly to witnesses both sides say they have
17 to present.

18 Mr. Koran, I believe since it's your
19 motion --

20 MR. KORAN: We have two
21 rebuttal witnesses to the extent that their
22 argument is this was deliberated in public
23 session so I don't know if it's something we
24 need to do to call them immediately. I am
25 happy to question the two defendants that are

1 present. I don't know if Mr. Cahill will
2 prefer to elicit their testimony first and I
3 cross-examine them or I go first on direct.

4 THE COURT: Mr. Cahill.

5 MR. CAHILL: Plaintiffs have
6 the burden of production here. They
7 ultimately have the burden of proof obviously.
8 Under the open meetings law, there tends to be
9 a shifting on whether the violation occurred
10 but plaintiffs do have the burden of
11 production. If they can make a showing of an
12 open meeting to which -- an open meeting in
13 which it then went into an executive session
14 at which they believe deliberations were made,
15 they can make that showing.

16 Then the burden shifts to us to show
17 we went in executive session for a proper
18 purpose, but they do have that initial burden
19 of proof and production so I think it's
20 incumbent upon plaintiffs to make their case,
21 and if they can't, then I think we should be
22 entitled to a verdict.

23 MR. KORAN: Mr. Cahill, will
24 you not stipulate there have been at least
25 eleven executive sessions since September 8th

1 through the present in which city council
2 recessed into executive session to discuss the
3 general conversation regarding the LOI?

4 MR. BUTLER: Pardon us, Your
5 Honor.

6 MR. CAHILL: Your Honor,
7 that's one portion of what plaintiff's burden
8 is. They are seeking a preliminary injunction
9 so they have to show that there is a
10 substantial likelihood of success on the
11 merits, and that goes to violations of which
12 they're speaking about. They also have to
13 show irreparable injury which they can only --
14 they are presumed to have an irreparable
15 injury but only if they have already
16 established the violation.

17 They also have to show there won't be
18 harm to third parties. Well, as we already
19 discussed, there is significant risk of harm
20 to third parties. They also have to show
21 there won't be harm to the public generally,
22 and there is a grave risk of harm to the city
23 of Lakewood if this deal craters because of a
24 delay. We're left with a possibly empty shell
25 of a building at which no health care is being

1 provided instead of a new facility at which
2 outpatient care and emergency services are
3 being provided, so plaintiffs even on the
4 record's portion on their motion, they still
5 have a full burden here.

6 THE COURT: Correct. You
7 may present your first witness.

8 MR. KORAN: All right. I'd
9 like to call Dean Dilzell please.

10 THE COURT: Okay. Raise
11 your right hand.

12 - - -

13 THE PLAINTIFF, to maintain the issues on his
14 part to be maintained, called as a witness,
15 DEAN DILZELL, who, being first duly sworn, was
16 examined and testified as follows:

17 THE COURT: Very good. Take
18 a seat here please.

19 - - -

20 DIRECT EXAMINATION OF DEAN DILZELL

21 BY MR. KORAN:

22 Q. Would you please state your name for the
23 record?

24 A. My name is Dean Dilzell, D-I-L-Z-E-L-L.

25 Q. Mr. Dilzell, where do you live?

1 A. I live at 1276 French Avenue in Lakewood,
2 Ohio.

3 Q. Thank you very much. And Mr. Dilzell, over
4 the past eleven months, have you been regularly
5 attending the Lakewood city council's meetings?

6 A. I have.

7 Q. And are you familiar with the ongoing letter
8 of intent and the recently announced agreement to
9 close Lakewood Hospital?

10 A. Yes, I am.

11 Q. Thank you. Were you in attendance at the
12 September 8, 2015 committee of the whole meeting?

13 A. I attended many of them. I don't know if I
14 can speak to that one directly. I'll have to check
15 my schedule to see what was discussed that day.

16 Q. If I were to tell you that from September
17 through the present there have been eleven executive
18 sessions called to discuss the general conversation
19 about Lakewood Hospital, does that number sound
20 correct to you?

21 A. It sounds appropriate.

22 MR. CAHILL: Objection.
23 Leading.

24 THE COURT: It is leading
25 but I will allow it at this point.

1 Q. Would you say you were in attendance at the
2 majority of those meetings?

3 A. Absolutely.

4 Q. At the majority of those meetings, the whole
5 meetings, did they recess into executive session?

6 A. They did.

7 Q. Was there any public discussion of the
8 Lakewood Hospital agreement at those meetings?

9 A. None whatsoever.

10 Q. Thank you very much. In any of the public
11 meetings of city council that were open to the
12 public, did you hear any deliberations regarding the
13 agreement that was announced on December 10th to
14 close Lakewood Hospital?

15 A. Deliberations, I wouldn't call it that.

16 Q. Can you describe what sort of discussion among
17 council you did hear at those meetings?

18 A. It was generally speaking to the audience
19 about what was being done.

20 Q. And what was being done?

21 A. The details of the LOI.

22 Q. And do you remember specifically what
23 meetings?

24 THE COURT: Would you -- you
25 said LOI?

1 THE WITNESS: Which is the
2 letter of intent.

3 THE COURT: Thank you.

4 Q. Do you know what meetings city council
5 discussed the letter of intent?

6 A. Are we talking council on the whole or the
7 city council meetings?

8 Q. Any meeting that you can remember where city
9 council actually shared information with the public
10 and deliberated about the letter of intent or an
11 agreement to close Lakewood Hospital.

12 A. They shared the details of what they would
13 like to do, but as far as a discussion with the
14 public about options, that never happened.

15 Q. And do you remember when the meetings occurred
16 where they wanted to share what they wanted to do?

17 A. They were generally community meetings where a
18 presentation was done to tell us what was going to
19 happen with respect to the agreement between LHA and
20 the Cleveland Clinic.

21 Q. Were you in attendance at the December 7th
22 city council meeting?

23 A. I was.

24 Q. Was that when the first reading was held of
25 the agreement that was recently announced?

1 A. That is correct.

2 Q. Prior to that meeting, had you heard any
3 discussion about an agreement having been reached or
4 the terms of such an agreement?

5 A. No.

6 MR. KORAN: I have no
7 further questions.

8 THE COURT: Thank you.
9 Mr. Cahill.

10 MR. CAHILL: Thank you, Your
11 Honor.

12 - - -

13 CROSS-EXAMINATION OF DEAN DILZELL

14 BY MR. CAHILL:

15 Q. Good afternoon, Mr. Dilzell. My name is Rob
16 Cahill. I represent the city defendants in this
17 suit. At the meetings you attended, at the city
18 council meetings you attended, that took place after
19 the committee in a whole. At those city council
20 meetings, the public was given an opportunity to make
21 comment to city council concerning potential closure
22 of Lakewood Hospital, correct?

23 A. We were allowed to comment, correct.

24 Q. And city council members made statements to
25 the public at those meetings, correct?

1 A. Correct.

2 Q. And city council members made statements to
3 one another at those council meetings, correct?

4 A. I suspect they did, yes.

5 MR. CAHILL: Thank you. I
6 have no further questions.

7 THE COURT: Any redirect?

8 MR. KORAN: No, Your Honor.

9 THE COURT: Okay. You may
10 step down, Mr. Dilzell.

11 MR. KORAN: Next witness
12 will be Dr. Terry Kilroy.

13 THE COURT: Please raise
14 your right hand.

15 - - -

16 THE PLAINTIFF, to further maintain the issues
17 on his part to be maintained, called as a
18 witness, TERENCE KILROY, M.D., who, being
19 first duly sworn, was examined and testified
20 as follows:

21 THE COURT: Very good. Have
22 a seat please.

23 - - -

24

25

1 DIRECT EXAMINATION OF TERENCE KILROY, M.D.

2 BY MR. KORAN:

3 Q. Can you please state your name for the record?

4 A. Dr. Terence Kilroy.

5 Q. And where did you reside, Dr. Kilroy?

6 A. I live at 15431 Edgewater Drive, Lakewood,
7 Ohio.

8 Q. And what is your occupation?

9 A. I'm a physician.

10 Q. What sort of physician?

11 A. I'm a pulmonary critical care specialist.

12 Q. Can you describe your education and background
13 for the Court?

14 A. Went to St. Edward High School. Went to Notre
15 Dame University. Went to University of Cincinnati
16 for medical school. Did my residency in Cincinnati
17 and Cleveland, and did a rotating internship in
18 family medicine.

19 Did a full internal medicine training. Did a
20 fellowship in pulmonary care at Case then I went into
21 practice in 1985 in Lakewood.

22 Q. So how long have you been practicing as a
23 physician?

24 A. Since 1985.

25 Q. And all those years in Lakewood?

1 A. Yes.

2 Q. And do you work in the Lakewood Hospital?

3 A. Yes.

4 Q. Okay. Thank you. Take a step back from your
5 medical background, and just as being a citizen of
6 Lakewood, are you generally aware of the ongoing
7 negotiations for the past eleven months with regard
8 to the future of Lakewood Hospital?

9 A. I know they're happening. I'm not privy to
10 what is actually being negotiated.

11 Q. And are you a regular attendee at city council
12 meetings?

13 A. Yes.

14 Q. Both the regular meetings as well as the whole
15 meetings?

16 A. I tried to attend every one of the meetings
17 since February and every one of the city council
18 since then.

19 Q. Can you describe how the committee of the
20 whole meetings go with regard to discussion of the
21 Lakewood Hospital?

22 A. In February the first meetings began and we
23 were able to ask questions, and since all of them
24 have gone into executive sessions where there are no
25 questions, we have no idea what's going on.

1 Q. So it's fair to say the committee of the whole
2 meetings there has been no open deliberation or
3 discussion regarding the future of Lakewood Hospital?

4 A. Not since February, right.

5 Q. What about the regularly scheduled city
6 council meetings?

7 A. The regular city council meetings, there has
8 actually been no give and take. Essentially what
9 happens is for the first meeting essentially anyone
10 who wanted to speak could get up and address the city
11 council. After that they put up a sign in sheet and
12 limited our time to five minutes.

13 Essentially we would get up and make a
14 statement. The city council people would make their
15 statement but would not allow us to respond to
16 anything that the city council said.

17 Q. Was there any deliberation among city council
18 members, not just simply responding to a community
19 comment regarding the future of Lakewood Hospital at
20 the meetings?

21 A. No.

22 Q. Thank you, Dr. Kilroy. Are you aware that on
23 December 7th a press conference was held announcing a
24 deal had been reached to close the Lakewood Hospital?

25 A. I was aware there was a press conference, yes.

1 Q. Prior to that press conference had there been
2 any deliberation at any community of the whole or
3 open city council meeting that you attended regarding
4 that agreement?

5 A. No.

6 Q. Have you had a chance to review the draft
7 agreement that's currently under reading by city
8 council?

9 A. Yes.

10 Q. I'm going to have this presented as Exhibit 1.
11 Dr. Kilroy, is this a true and accurate copy?

12 THE COURT: Has that been
13 marked yet?

14 MR. KORAN: I ask you to
15 mark this as Exhibit 1.

16 (Thereupon, Plaintiff's Exhibit 1 was marked
17 for the purpose of identification.)

18 Q. Dr. Kilroy, do you believe this is a true and
19 accurate copy of the agreement that's been shared by
20 the city of Lakewood as being the one currently under
21 reading by city council regarding the closure of
22 Lakewood Hospital?

23 A. Yes.

24 Q. I'm going to direct your attention to page 6
25 of the agreement, specifically Article 3.1.

1 A. Okay.

2 Q. Can you please read Article 3.1 for the Court?

3 A. "The parties acknowledge and agree that
4 following the execution of this master agreement, LHA
5 will direct the Clinic to take immediate steps on its
6 behalf to cease inpatient hospital operations and
7 wind-down other operations in compliance with all
8 legal requirements subject to Section 3.1, Subsection
9 B. In consideration of the Clinic's commitments to
10 the new foundation reflected in this master agreement
11 and the significant assumption of risk by the Clinic
12 as more fully described in Section 3.3(b), the manner
13 and timing of the wind-down of the hospital
14 operations shall be determined by the Clinic and the
15 dissolution of LHA shall be determined in accordance
16 with LHA's Code of Regulations, as amended.

17 "Patient safety, quality and experience will
18 be the primary guiding principles throughout the
19 wind-down of the hospital's operation and the
20 dissolution of LHA. Other guiding principles for the
21 wind-down will include, Section (i), treating all
22 hospital caregivers with dignity and respect during
23 the transition. Double (ii), striving to maintain
24 positive community support during the process,
25 particularly with the hospital's residential and

1 commercial neighbors. Triple (iii), being sensitive
2 to the needs of private practice physicians who serve
3 the hospital's patients, and (iv), establishing a
4 communication plan to inform stockholders of
5 important issues and events related to the
6 wind-down."

7 THE COURT: That was
8 stakeholders, not stockholders.

9 THE WITNESS: Correct. Inform
10 stakeholders of important issues and events.

11 THE COURT: I wanted
12 everybody to be aware I'm actually able to
13 read this. There is a big difference between
14 stockholders and stakeholders.

15 MR. KORAN: Absolutely.

16 Q. Can you read Section B as well?

17 A. "(B). In recognition of the need for
18 uninterrupted emergency department care in Lakewood,
19 notwithstanding the cessation of inpatient hospital
20 operations and wind-down of other hospital
21 operations, LHA will continue to operate an emergency
22 department including an emergency room and related
23 ancillary services at the hospital on a 24/7/365
24 basis until the opening of the emergency department
25 at the FHC as described in Section 2.4. Further, LHA

1 currently contemplates continuing to provide a
2 limited set of outpatient services at the hospital
3 following the cessation of inpatient hospital
4 operations, including diabetes care services,
5 congestive heart failure and certain cardio pulmonary
6 services."

7 Q. Thank you. As a practicing physician in the
8 Lakewood Hospital, are you aware of what this
9 wind-down plan is going to look like going forward if
10 this agreement is opted?

11 A. No. I have not seen the plans.

12 Q. Okay. Based on your reading of this
13 agreement, if these inpatient operations, inpatient
14 care and the specialties are removed immediately and
15 this wind-down begins, how is that going to affect
16 the standard of care available for the citizens of
17 Lakewood?

18 A. It is essentially --

19 MR. CAHILL: Objection, Your
20 Honor. This is irrelevant.

21 MR. KORAN: This goes to
22 irreparable harm, Your Honor.

23 THE COURT: I'll allow it.

24 THE WITNESS: Essentially by
25 immediately closing the hospital, first of

1 all, we're entering the flu season which for
2 us is the busiest season of the year. All
3 hospitals maximize their senses in essentially
4 December, January and February at which time
5 we're hard pressed to find beds for people to
6 go.

7 If we close Lakewood right now,
8 particularly at this time at the initiation of
9 the flu season, we're going to have people
10 stacked all over the city in places without
11 having beds to be placed in. The other thing
12 is without an adequate emergency room, meaning
13 one attached to a hospital where we can deal
14 with high grade illnesses such as strokes and
15 heart attacks and septic shock, people are
16 going to die while being transported to other
17 places.

18 Q. So even though Section B of 3.1 contemplates
19 an emergency room remaining open 24/7/365, that's not
20 going to be a real emergency room. Is that what your
21 testimony is?

22 MR. CAHILL: Objection,
23 leading.

24 THE COURT: Sustained.

25 Q. Can you describe the difference between an

1 emergency room contemplated by this agreement that
2 will remain as opposed to an emergency room with a
3 full-service hospital?

4 A. An emergency room attached to a full-service
5 hospital can essentially handle critical illness or
6 at least stabilize because they have ancillary
7 support such as people like me, surgeons, etcetera.
8 A free standing ER doesn't have any of that so at
9 most an ER person can do is attempt to stabilize the
10 patient.

11 Certain diseases are not easily stabilized
12 and, therefore, the patients die. The other problem
13 is delay in treatment for many things like strokes,
14 septic shock, pneumonia, heart attacks. Even a ten
15 or fifteen minute delay can have significant outcomes
16 for the patient as far as mortality and morbidity.

17 Q. So, for example, if someone had a heart attack
18 and went to Lakewood Hospital emergency room for
19 care, currently what would their prognosis be versus
20 after the service lines are moved away?

21 A. We are talking basically time onset of first
22 symptom to onset of opening the arteries as the key
23 prognostic procedure. For the patient right now if
24 you have a heart attack and come to a free-standing
25 ER that does not have a cath lab, essentially we talk

1 THE COURT: Mr. Cahill.

2 MR. CAHILL: Thank you.

3 - - -

4 CROSS-EXAMINATION OF TERENCE KILROY, M.D.

5 BY MR. CAHILL:

6 Q. Good afternoon, Dr. Kilroy. My name is Rob
7 Cahill. I represent Lakewood Hospital. Over the
8 last eleven months there have been many city council
9 meetings at which city council received public
10 comment concerning the future of health care in
11 Lakewood and potential closure of Lakewood Hospital,
12 correct?

13 A. There have been many statements by citizens,
14 correct.

15 Q. Received by city council members, correct?

16 A. By the clerk.

17 Q. And by the city council members sitting there
18 in attendance, correct?

19 A. They heard it.

20 Q. And those city council members over the last
21 eleven months also made statements to the public
22 generally that the public heard, correct?

23 A. They made statements, yes.

24 Q. And those city council members also made
25 statements among one another during those public

1 meetings, correct?

2 A. I don't remember them disagreeing with each
3 other on anything.

4 Q. I didn't ask if you they disagreed. I asked
5 you if they made statements one to the other during
6 the public meetings over the last eleven months.

7 A. They made general statements to everybody in
8 the room. I don't think they sorted out each other
9 that specifically.

10 Q. You mentioned that on September 21, 2015 you
11 attended a meeting at which a presentation was made
12 by LHA concerning its finances, correct?

13 A. Probably. I don't recall.

14 Q. I thought that was your testimony.

15 A. My testimony is I have been in virtually every
16 one of the meetings but I don't remember that
17 specific one that day since it was three months ago.

18 Q. Do you remember the subject of a meeting at
19 which LHA made a presentation to both the public and
20 city council at which they discussed their finances?

21 A. Yes. At the city council meetings, yes.

22 Q. Were you at the December 7th city council
23 meeting?

24 A. Yes.

25 Q. At that meeting Ordinance 49-15 was read for

1 the first time, correct?

2 A. The highlights of the thing was read on the
3 7th. The actual full master agreement was not
4 available.

5 Q. Okay. I didn't ask you about the master
6 agreement. I asked you about Ordinance 49-15. At
7 the December 7th, 2015 meeting Ordinance 49-15 was
8 read for the first time, correct?

9 A. Correct.

10 Q. And to that ordinance was a list of
11 highlighted terms of a proposed master agreement that
12 was not yet finalized, correct?

13 A. All it said was highlights of the master
14 agreement. I don't know if it was finalized or not.

15 Q. Fair enough. All that was in front of council
16 at that meeting was those highlights, correct?

17 A. Correct.

18 Q. At that meeting on December 7th, the public
19 had an ability to comment on the proposed legislation
20 and on those key terms set forth in the master
21 agreement, correct?

22 A. Well, the way they're running the city council
23 meetings is there is a sign up list, and you have to
24 sign up on that list to speak before the meeting
25 begins, and so what happens is once the city council

1 starts reading this stuff, the speakers's list is
2 already there, and so other people who have
3 statements that they may like based on what the city
4 council said are incapable of getting up to speak at
5 that point.

6 Q. Those people who sign into the sign-in sheet
7 are able to make comments to city council, correct?

8 A. They can make -- basically comments to city
9 council without -- essentially they come to the
10 meeting prepared to make that speech. They can't
11 make anything, you know, extemporaneously because the
12 sign-up list is collected before the meeting starts.

13 Q. Whether it's extemporaneous or prepared, those
14 people who sign in on that sign-in sheet are able to
15 make comments to city council, correct?

16 A. Correct. No one else in the audience can but
17 they can.

18 Q. And at the December 7th meeting city council
19 members made statements to those in attendance at the
20 meeting concerning Ordinance 49-15 and the key
21 highlights of the proposed master agreement, correct?

22 A. They had prepared statements, yes.

23 Q. And city council members were speaking with
24 one another during that meeting concerning their
25 prepared statements and terms of Ordinance 49-15 and

1 the terms of --

2 THE COURT: Excuse me. If
3 you're going to stay in here, stay. If you're
4 going to leave, leave. I don't appreciate you
5 coming and going in the middle of my trying to
6 concentrate on what's being said, so you're
7 seated and now you stay seated.

8 A SPECTATOR: I do have to
9 leave though in 15 minutes.

10 THE COURT: Leave when there
11 is no testimony going on. It's quite
12 distracting.

13 Mr. Cahill, you may resume.

14 MR. CAHILL: Thank you, Your
15 Honor.

16 BY MR. CAHILL:

17 Q. On December 7th -- I'll restart the question.
18 On December 7th city council members made statements
19 generally that both the public and their colleagues
20 heard, correct?

21 A. Yes. Um-hum.

22 Q. Was a vote taken on Ordinance 49-15 on
23 December 7th?

24 A. I don't recall that happening.

25 Q. Well, in fact no vote was taken on Ordinance

1 49-15 on December 7th, correct?

2 A. I don't recall it happening.

3 Q. Were you at the city council meeting on
4 December 14, 2015?

5 A. Yes.

6 Q. And at the December 14th city council meeting,
7 Ordinance 49-15 was read for a second time, correct?

8 A. Yes.

9 Q. And by this time by December 14th, the master
10 agreement had taken a form of an agreement as opposed
11 to highlighted terms, and that master agreement was
12 appended to the ordinance, correct?

13 A. Yes.

14 Q. At that meeting, well, that meeting lasted in
15 excess of three and a half hours, didn't it? Can I
16 have a verbal response please?

17 A. Yes.

18 Q. And that was a special meeting of city
19 council, correct?

20 A. Yes.

21 Q. The only issue on that docket was Ordinance
22 49-15 and the proposed master agreement, correct?

23 A. Yes.

24 Q. No other business of council occurred during
25 that meeting, correct?

1 A. Yes.

2 Q. At that meeting city council heard roughly
3 three and a half hours of public comment on Ordinance
4 49-15 and the proposed master agreement, correct?

5 A. Yes.

6 Q. City council members during the meeting on
7 December 14th made statements to the public
8 concerning Ordinance 49-15 and the proposed master
9 agreement, correct?

10 A. Well, we weren't able to respond to anything
11 that they said, but yes, they did say -- they did
12 sort of pontificate.

13 Q. They made statements to you whether you could
14 respond or not, correct?

15 A. They made statements, and we clearly could not
16 respond.

17 Q. City council members at the December 14, 2015
18 meeting also made statements to one another
19 concerning Ordinance 49-15 and the proposed master
20 agreement, correct?

21 A. I don't remember them responding to questions
22 to each other. I just remember general statements
23 made to the public and to the other people in the
24 room which included their colleagues.

25 Q. So every statement made by one of the council

1 members at the December 14th meeting was not only
2 heard by the public, it was heard by all of his or
3 her colleagues on city council, correct?

4 A. Yes.

5 Q. No vote was taken to approve Ordinance 49-15
6 or the master agreement at the December 14, 2015
7 meeting of city council, correct?

8 A. I don't recall that being done.

9 Q. Currently the proposed master agreement that
10 you read that's been marked Plaintiff's Exhibit 1
11 during your direct examination by plaintiff's counsel
12 has no effect, correct?

13 A. I'm sorry?

14 Q. That has no effect?

15 A. It has not been voted on yet.

16 Q. It is not a binding contract at the moment,
17 correct?

18 A. That is my understanding.

19 Q. It's simply a piece of paper at the moment.

20 A. If that's what you say it is, sure.

21 Q. Do you understand that there will be another
22 city council meeting tonight at 7:30?

23 A. Yes.

24 Q. And is it your understanding that a third
25 reading of Ordinance Number 49-15 will be made

1 tonight?

2 A. Yes.

3 Q. Do you anticipate that city council will once
4 again hear from the public concerning the public's
5 reaction to Ordinance 49-15 and the proposed master
6 agreement?

7 A. They will hear us but I think it's irrelevant.

8 Q. But they will hear you, correct?

9 A. Yes.

10 Q. And do you anticipate that city council will
11 likewise make statements to the public and each other
12 concerning Ordinance 49-15 and the proposed master
13 agreement?

14 A. I don't know that. They all made a statement
15 last week. I'm not sure there will be anything new
16 for them to say.

17 Q. Thus far to date city council has not voted
18 whether to approve or not to approve Ordinance 49-15
19 and the proposed master agreement, correct?

20 A. At the last city council meeting, my
21 understanding is all of them made a statement that
22 they were voting for it so they have not made an
23 official vote but they already made their minds up.

24 Q. Have they voted in public?

25 A. No.

1 Q. And because they haven't voted in public as we
2 discussed before, the master agreement proposed in
3 this ordinance currently has no effect, correct?

4 A. The lawyers have to tell me that. I assume.

5 Q. You discussed with your counsel the threat of
6 the imminent flu season. Doctor, currently what
7 percentage of the beds are being used, if possible?

8 A. Are you talking about licensed beds or staffed
9 beds?

10 Q. Either.

11 A. Of the staffed beds probably about 50 percent.

12 Q. And how about the licensed beds?

13 A. Probably a lot less than that.

14 Q. What would that number be?

15 A. I'm not sure.

16 Q. Is it fair to say that of all patients that
17 Lakewood Hospital currently sees, only six percent
18 seek inpatient care?

19 A. It depends on what you mean by inpatient and
20 outpatient care. So when I go, for example, we talk
21 about encounters at the hospital. That's how it's
22 billed as an encounter, so if I go in for a CBC and
23 just have a blood thing drawn, that's one encounter.
24 If I go in for a heart attack, that's one encounter,
25 so do I think that there are a large number of lab

1 tests that are done as outpatients that count as
2 encounters that are responsible for most of the
3 outpatient business, that's probably true, but when
4 you talk about significant illness which is what is
5 essentially how you have to weight the admission, a
6 30 second blood drawn encounter isn't the same thing
7 as a two month I'm in septic shock in the ICU
8 encounter. In the numbers you're talking about they
9 would be the same.

10 Q. So as you posit the numbers I'm talking about,
11 is it fair so say the ballpark of only six percent of
12 the patients seeking care at Lakewood Hospital are
13 inpatient?

14 A. I've been told that by the LHA and by
15 Mr. Bullock. I don't know if that's true. I know
16 essentially all hospitals do an awful lot of
17 outpatient lab testing and other kinds of
18 interventions that are relatively minor. They've
19 just been shifted from the outpatient and go to the
20 local hospital because it's easy.

21 Q. Doctor, do you have any evidence you can point
22 to that suggests that that six percent inpatient
23 figure is wrong?

24 A. When you're -- again when you're -- are you
25 talking about encounter numbers which is what the

1 hospitals use or are you talking about presence of
2 the person in the building?

3 Q. Yes. Let's talk encounter numbers.

4 A. That may be true. CBC, five minutes; two
5 months in the hospital, they're equivalent when you
6 look at encounter numbers.

7 Q. You discussed should Lakewood Hospital cease
8 inpatient operations leaving in a transition period
9 of a fully operating emergency room and then going
10 into a new operating room across the street where a
11 family health center is constructed, you said there
12 is a risk that people will die because they will go
13 to an ER and there won't be the licensed medical
14 practitioners, practitioners, who are normally at a
15 normal hospital, correct?

16 A. There won't be a lot of services beyond just
17 the specific physicians.

18 Q. Isn't it true that anyone who goes to an ER,
19 the first job of that emergency room is to stabilize
20 the patient?

21 A. Um-hum.

22 Q. Isn't it true that the city of Rocky River
23 does not have a hospital?

24 A. True.

25 Q. City of Westlake does not have an inpatient

1 hospital?

2 A. They have St. John's.

3 Q. Thank you. I forgot about St. John's. Bay
4 Village, no hospital?

5 A. No, they don't.

6 Q. North Olmsted doesn't have a hospital,
7 correct?

8 A. No, they don't.

9 Q. Now the citizens of Rocky River, North
10 Olmsted, Bay Village, they are somehow finding their
11 way to facilities, to emergency rooms, without dying
12 presumably. We don't hear lots of numbers from
13 people dying from those towns, do we?

14 A. I don't know.

15 Q. You mentioned that it would take 20 minutes to
16 travel from Lakewood's ER to Fairview Hospital, is
17 that right?

18 A. Once you're in the ambulance and once you're
19 on the road with the sirens going, yeah.

20 Q. What's taking most of that time because it's
21 not the time on the streets, correct?

22 A. I drive that thing every day. It takes me 20
23 minutes a day every time I go at least.

24 Q. The distance between Fairview Hospital and
25 Lakewood Hospital is only 3.5 miles or thereabouts,

1 correct?

2 A. Um-hum.

3 Q. And it takes you 20 minutes to traverse that
4 distance?

5 A. Yes, it does. It's all back street on Rocky
6 River Drive.

7 MR. CAHILL: Doctor, I have
8 no further questions at this time. Thank you.

9 THE COURT: Mr. Koran, any
10 redirect?

11 - - -

12 REDIRECT EXAMINATION OF TERENCE KILROY, M.D.

13 BY MR. KORAN:

14 Q. Dr. Kilroy, Mr. Cahill just asked you
15 questions about the inpatient versus outpatient
16 volume at Lakewood Hospital. Assuming those numbers
17 are correct -- the six percent inpatient, 94 percent
18 outpatient, do you know how that compares to other
19 people in the Cleveland Clinic system?

20 A. I would think it's about the same. The Clinic
21 actually does more outpatient. They even have a
22 higher percentage of outpatient.

23 Q. Thank you. In the event of Lakewood
24 Hospital's closure, will the free standing ER
25 Department be able to handle the current volume of

1 patients that it sees today?

2 A. The proposal with the health center?

3 Q. Yes.

4 A. My understanding is I know we have 22 beds in
5 the current ER in Lakewood Hospital. My
6 understanding from people who have looked at the
7 architectural plans, is they're going to go to six to
8 eight beds.

9 Q. So in terms of patient volume that the current
10 hospital sees per year in the ER versus what is
11 proposed going forward, would the family health
12 center be able to serve --

13 A. No.

14 Q. And do you know where those other ER cases
15 will have to go?

16 A. Well, Chief Gillman who runs the EMS told us
17 at one of his statements that 50 percent is going to
18 have to go somewhere else.

19 Q. And the other hospitals they're going to be
20 sent to, going to be able to accommodate that 50
21 percent you speak on by Lakewood?

22 A. I have doubts about that. I mean walking into
23 Fairview's hospital, they have a nice television
24 screen by the entrance from the doctor's parking lot
25 of the hospital, and they're talking about trying to

1 get their time in the ER down from the low 48 minutes
2 which is a long time in the ER, which to me means
3 they're already pretty packed.

4 When I used to be director of the ICU at
5 Lakewood, we would argue with the ER if it was more
6 than two hours, so my assumption is it's kind of
7 oversubscribing patients right now.

8 Q. As a physician at Lakewood Hospital, have you
9 received any communications from hospital
10 administration regarding the closure of the hospital?

11 MR. CAHILL: Objection, Your
12 Honor. This is outside the scope of my
13 cross-examination.

14 THE COURT: Sustained.

15 Q. As Mr. Cahill was asking you previously, this
16 is to talk about the meetings again. Regarding the
17 public comment session of the December 7th and
18 December 14th meetings, was there any discussion
19 amongst council members at those meetings regarding
20 the pros and cons of this agreement?

21 A. No.

22 Q. What would you say they were doing instead?

23 A. What comes to mind is putting lipstick on a
24 pig. The bottom line is they're just making
25 statements to the public.

1 Q. Did you witness either in person or in video
2 the December 7th press conference announcing this
3 deal?

4 A. No.

5 Q. In the meetings you attended leading up to the
6 announcement of the deal, was there any back and
7 forth discussion between council, pros and cons, of
8 the agreement what they wanted to see and what they
9 didn't want to see, etcetera?

10 A. No. The public didn't even know what items
11 they were discussing.

12 Q. And when council would go into executive
13 session, can you explain the procedure of what would
14 happen in the meeting room?

15 A. Essentially Miss Madigan would stand up, hold
16 up a piece of paper and read us the part from the
17 charter that says we're going into executive session,
18 and that was it.

19 Q. And then what would you do?

20 A. We would all leave. We were asked to leave.

21 Q. And then was there a report on what happened
22 in the meeting?

23 A. Not to my knowledge.

24 MR. KORAN: Thank you,
25 Dr. Kilroy.

1 - - -

2 RECROSS EXAMINATION OF TERENCE KILROY, M.D.

3 BY MR. CAHILL: .

4 Q. Doctor, if you would turn to Plaintiff's
5 Exhibit 1, page 4, paragraph 2.4. Does that
6 paragraph start by saying the parties recognize and
7 agree that there is a present need for an emergency
8 department in Lakewood available on a 24 hour a day,
9 seven days a week, 365 year basis? Did I read that
10 accurately?

11 A. Yes.

12 Q. And the next sentence, does it state: "The
13 Clinic will address this need by opening the FHC, the
14 family health center, with an emergency department
15 that operates (a), on a 24/7/365 basis that has
16 capabilities to treat emergency medical conditions
17 which are those conditions that rise to a level that
18 manifests themselves by acute symptoms of sufficient
19 severity such that immediate medical attention is
20 necessary, and (b), at a level of service generally
21 consistent with or greater than the level of the
22 service that is being offered in the hospital's
23 emergency department as of the effective date".

24 Did I read that correctly?

25 A. You read that correctly.

1 Q. Thank you. So isn't it true that the proposed
2 master agreement contemplates that whatever emergency
3 services are now being offered at Lakewood Hospital,
4 that those same services or better services will be
5 offered at the new emergency department at the family
6 health center?

7 A. Well, to be honest with you, there is no
8 accepted definition of what an emergency department
9 is, and frankly, that statement of services is so
10 vague I don't know what that means. I mean it could
11 mean anything from some place I can put some sutures
12 into a kid, to some place I can do cardiopulmonary
13 bypass, and frankly that's so vague, I can't tell you
14 what they're going to give us.

15 Q. By the terms of the master agreement that has
16 been negotiated thus far, the parties contemplate
17 that the level of services that the family health
18 center will equal what's being offered currently at
19 Lakewood Hospital or will be better. Isn't that
20 fair?

21 A. Contemplates and performance aren't the same
22 thing.

23 Q. I asked if it's being contemplated.

24 A. They're contemplating having an emergency
25 room. My understanding it's six to eight beds

1 compared to 22.

2 Q. But based on the terms in the agreement, the
3 proposed master agreement, you'll agree that the
4 parties contemplated and seek to put forward that the
5 new emergency room provides the same or better
6 services then the current emergency room, correct?

7 A. Again those statements are, like you say, it
8 says they're going to contemplate them but it doesn't
9 say what they are, and frankly, the terms are almost
10 meaningless from my standpoint.

11 Q. Doctor, if at tonight's city council meeting
12 should a vote be taken and city council does not
13 approve Ordinance 49-15 and the proposed master
14 agreement, you don't expect that that six percent
15 number of those patients treating, seeking inpatient
16 care at Lakewood Hospital will suddenly go up, do
17 you?

18 A. I don't see how it will affect that one way or
19 the other. I mean most hospitals probably run at
20 that level.

21 Q. Okay. But you don't see an upturn in those
22 seeking inpatient services if this agreement is voted
23 down.

24 A. If they close our labs, then it will go up
25 because if the inpatient things stay the same and you

1 remove CBC and blood drawing, yeah, it will go up.
2 It's not an official number. It doesn't tell you
3 about the census of the hospital.

4 Q. You're saying it will go up because the mere
5 number of encounters, the total number of encounters
6 will go down but the percentage that deals with
7 inpatient will therefore go up.

8 A. That's why percentages mean nothing. It's not
9 something that medical personnel talk about. I mean
10 it's how many beds you have full and the intensity of
11 care that those people require. That's what a
12 hospital is. How many CBCs you do on the side or
13 chest X-rays on the side is kind of irrelevant as far
14 as viability of the hospital.

15 Q. Going back to your redirect testimony with
16 plaintiff's counsel, you agree that at the city
17 council meetings city council members were making
18 comments to the public, correct?

19 A. They were making statements to the public.

20 Q. Whether they addressed the cons of closing the
21 hospital or not, they made statements -- they made
22 pro statements concerning the potential for closing
23 the hospital and moving to this new family health
24 center, correct?

25 A. I'm not sure what you mean by pro statements.

1 Q. Well, plaintiff's counsel asked did they
2 discuss the pros and the cons of this proposed deal
3 or any proposed deal.

4 A. They didn't really go through pros and cons.
5 They basically made statements.

6 Q. Well, they made statements in support of a
7 physician, correct?

8 A. They just made statements, yes. To be honest
9 with you, I felt kind of -- I don't know how to tell
10 you. I've been doing this 40 years, and with young
11 kids starting to tell me stuff about health care and
12 they don't understand, those kind of statements are
13 irritating.

14 Q. I understand from your perspective they may be
15 irritating. Nevertheless, they were making
16 statements to the public concerning health care,
17 correct?

18 A. Correct.

19 Q. And doctor, isn't it true that city council
20 has not voted yet on Ordinance 49-15?

21 A. All of them got up and said that they were
22 going to do this. Whether they have taken the actual
23 vote or not seems fairly irrelevant.

24 Q. They have not voted in public on this
25 ordinance, correct?

1 A. They all stated they already decided to go for
2 it.

3 Q. Whether they said that to the public or not,
4 they have in fact not yet voted on this ordinance,
5 correct?

6 A. Not initially voted.

7 MR. CAHILL: Thank you. I
8 have no further questions at this time.

9 THE COURT: Okay.

10 Mr. Koran, anything else?

11 MR. KORAN: Very briefly,
12 Your Honor.

13 - - -

14 FURTHER REDIRECT EXAMINATION OF TERENCE KILROY, M.D.

15 BY MR. KORAN:

16 Q. Doctor, as a physician with 40 years of
17 experience, even if this agreement says that the
18 level of emergency room care is going to remain the
19 same, is it possible for the level of care to remain
20 the same if inpatient services are pulled out of the
21 hospital and if the proposed health care center is as
22 stated?

23 A. No.

24 Q. And based on the comments you have heard from
25 city council members at the city council meetings

1 you've been in attendance at, is there any doubt in
2 your mind they have not already reached an agreement
3 to put this into effect and will vote to pass this?

4 A. I think --

5 MR. CAHILL: Objection.
6 Calls for speculation.

7 THE COURT: Sustained.

8 MR. KORAN: Thank you. No
9 further questions.

10 MR. CAHILL: I have nothing
11 further.

12 THE COURT: Doctor, you may
13 step down.

14 MR. KORAN: I'd like to call
15 Sam O'Leary.

16 THE COURT: Raise your right
17 hand.

18 - - -

19 THE PLAINTIFF, to further maintain the issues
20 on his part to be maintained, called as a
21 witness, SAMUEL O'LEARY, who, being first duly
22 sworn, was examined and testified as follows:

23 THE COURT: Okay, Mr. Koran,
24 you may inquire.

25 - - -

1 DIRECT EXAMINATION OF SAMUEL O'LEARY

2 BY MR. KORAN:

3 Q. Can you please state your name for the record?

4 A. Samuel Thomas O'Leary.

5 Q. And where do you reside?

6 A. 14719 Clifton Boulevard, Apartment 3, Lakewood
7 Ohio, 44107.

8 Q. And are you an elected public official?

9 A. I am.

10 Q. What is your position?

11 A. I represent Ward 2 in the city of Lakewood.

12 Q. And how long have you held that position?

13 A. I was appointed initially right about two
14 years ago.

15 Q. And are you still serving that position today?

16 A. I am.

17 Q. When did you first become aware of the letter
18 of intent between the Cleveland Clinic LHA and
19 proposed to the city regarding the future of Lakewood
20 Hospital?21 A. On or about January 15th when it was
22 published.23 THE COURT: Just for the
24 record, you are a defendant in this case.

25 THE WITNESS: That's correct.

1 THE COURT: Okay. I just
2 want the record to be clear that we're talking
3 about the same Samuel O'Leary.

4 MR. KORAN: Yes.

5 Q. And since that January 15th announcement, what
6 has city council done in response to the LOI?

7 A. City council has proceeded to -- I think there
8 has been a number of actions relative to the LOI.
9 Primarily we were faced with the revelation that the
10 hospital's finances were challenged imminently,
11 exigently, and so we undertook to address that
12 situation.

13 Q. And how did you address that? What did you do
14 to address that situation?

15 A. A number of public meetings have been held in
16 which council has heard from members of the public,
17 from retained experts, from legal counsel, from other
18 public officials, etcetera.

19 Q. And how did city council determine to enter
20 into negotiations with the Cleveland Clinic regarding
21 reaching an agreement based on LOI or otherwise?

22 A. Well, council again I would say heard numerous
23 times in public meetings from retained experts who
24 provided opinions to council and the public with
25 respect to how negotiations might proceed or the

1 intricacies of the hospital's situation, financial
2 standing, market standing, etcetera.

3 MR. KORAN: Please mark this
4 as Exhibit 2.

5 (Thereupon, Plaintiff's Exhibit 2 was marked
6 for the purpose of identification.)

7 Q. Can you please identify the document I just
8 handed you, Mr. O'Leary?

9 A. Sure. These are the minutes of the Lakewood
10 city council meeting held September 8, 2015.

11 Q. Can you take a moment to review those and let
12 me know if this is a true and accurate copy of those
13 minutes to the best of your knowledge.

14 A. Yes. I believe this is an accurate reflection
15 of that document.

16 Q. And to the best of your knowledge is it also
17 correct that city council had a committee of the
18 whole meeting prior to this meeting on September 8th?

19 A. I believe that there was one noticed. I don't
20 believe that it was held.

21 Q. Okay. I'm going to direct your attention to
22 page five of these minutes. Specifically I'm looking
23 at Resolution No. 8817-15. Can you please read that
24 resolution?

25 A. "Resolution No. 8817-15. A resolution

1 authorizing the director of law to enter into
2 negotiations with the Cleveland Clinic Foundation,
3 Lakewood Hospital Association and Lakewood Hospital
4 Foundation regarding Lakewood Hospital and future
5 health care delivery in Lakewood."

6 Q. Do you see anywhere in this document besides a
7 comment from Mr. Anderson and a comment from yourself
8 where any deliberation is recorded amongst council
9 regarding this decision to engage the law director to
10 begin negotiations with the Cleveland Clinic?

11 A. Yes.

12 Q. Can you point that out to me please?

13 A. Well, in the sense that when council
14 deliberates, it often hears from members of the
15 public in its deliberations so I would include in my
16 view the numerous exchanges between council members
17 and members of the public reflected prior to that
18 resolution as deliberations as we were in an open
19 session of council giving, you know, providing a give
20 and take with the public and each other.

21 Q. Could you just help me out? Give an example
22 of where this give and take was occurring. I think
23 there is public comment and I see some remarks from
24 council but I don't see anything really specific to
25 that issue.

1 A. Sure. I can say that, for example, on page 4
2 there is a series of exchanges. Mr. Essi replied and
3 makes a statement, then Mr. Bullock replies. Miss
4 Harkness makes a statement. President, council
5 President Madigan responded. Council member Bullock
6 then responded to that comment from President
7 Madigan, then Dr. Carl Cully spoke, then I spoke,
8 then councilwoman Marx spoke all relating to the
9 issue that you mentioned.

10 THE COURT: Okay. Bring me
11 the phone. You can retrieve it at the end of
12 the day.

13 Q. I'm looking at the comments you referenced on
14 page four. Can you please read that paragraph
15 beginning with council member Bullock replied at the
16 top of the page?

17 A. You want me to read what that paragraph says?

18 Q. Yes.

19 A. "Council member Bullock replied that
20 Mr. Essi's use of the term lies is irresponsible and
21 inflammatory. He expressed strong disagreement with
22 Mr. Essi's rendering of the facts."

23 Q. Can you explain how that is deliberating on
24 the issue of whether Mr. Butler should proceed with
25 negotiations with the Cleveland Clinic?

1 A. Sure. A number of statements have been made
2 by members of the public throughout the course of
3 discussion of the hospital and related issues.
4 Council members have repeatedly endeavored to search
5 out the truth as to what the matter is, and I would
6 say that our deliberations in line with determining
7 what is factual and what isn't are absolutely
8 relevant to council's eventual action on something
9 because prior to acting, council usually as part of
10 its deliberations endeavors to find the facts.

11 Q. Can you explain to me in these minutes where
12 council is deliberating about the facts and the
13 merits of entering into exclusive negotiations with
14 the Cleveland Clinic?

15 A. Sure. There are a number of assertions made
16 here as to why council shouldn't enter into
17 negotiations with the Cleveland Clinic from some
18 members of the public as well as some members of the
19 public expressing concerns or anxieties as to what
20 might happen if negotiations were not pursued in
21 earnest, and then you see council members responding
22 to those various assertions.

23 Q. Can you point that out specifically for me
24 though for instance?

25 A. Sure. So council member Bullock halfway down

1 the page or so --

2 Q. On which page are we looking at?

3 A. On page four. Refers to the fact that there
4 is an assertion that the Cleveland Clinic voluntarily
5 removed certain services and explained that that was
6 not his view of what the facts were. Following that
7 you see Dr. Carl Cully indicate a concern for the
8 current hospital employees and what their future
9 situation might be if Lakewood were to not reach some
10 kind of conclusion with the Cleveland Clinic as to
11 the fate of those employees. Then you see my
12 response as well as a response from council member
13 Marx.

14 Q. What do those have to do with the merits of
15 entering into exclusive negotiations with the
16 Cleveland Clinic versus say another health care
17 provider opening this up to a competitive bid?

18 A. It's absolutely relevant because when we are
19 trying to take into account what might the fate of
20 the employees of the largest employer in the city
21 might be, we need to discuss what the fate of those
22 employees might be. Kind of a totality.

23 MR. KORAN: Okay. I'll ask
24 if you can mark this as Exhibit 3.

25 THE COURT: Do you have

1 copies of those for the Court?

2 MR. KORAN: I only have four
3 of each.

4 THE COURT: Okay.

5 MR. KORAN: You can have my
6 copy if you'd like.

7 THE COURT: You'll need that
8 to refer to. I'll make do.

9 (Thereupon, Plaintiff's Exhibit 3 was marked
10 for the purpose of identification.)

11 Q. Can you please identify the document that has
12 just been handed you?

13 A. It's a document captioned "Minutes of the
14 regular meeting of Lakewood city council, September
15 21, 2015."

16 Q. And can you review that document and let me
17 know if it's true and accurate to the best of your
18 recollection and knowledge?

19 A. This document is eight pages long but appears
20 to be an accurate reflection.

21 Q. Are you able to identify for me any
22 deliberation documented by these minutes of the
23 September 21st meeting regarding this agreement that
24 was announced on December 7th regarding closure of
25 Lakewood Hospital?

1 MR. CAHILL: Objection to the
2 extent it misstates the testimony concerning
3 resolution that was just discussed.

4 THE COURT: Overruled.

5 THE WITNESS: I'm sorry. Can
6 you repeat the question?

7 Q. Yes. Can you identify for me in the minutes
8 of the September 21st council meeting any
9 deliberations that are documented regarding the
10 agreement that was announced on December 7th
11 regarding Lakewood Hospital?

12 A. No. That agreement didn't exist yet so it
13 wasn't being deliberated.

14 Q. Would that be your response for all future
15 meetings as well that there were no deliberations
16 about the agreement that was announced on December
17 7th?

18 A. The agreement that was announced on December
19 7th did not exist when it was announced and,
20 therefore, it is correct to say that council had not
21 deliberated on the definitive agreement that wasn't
22 in existence yet, absolutely.

23 Q. So there was never any discussion of what
24 council hopes to see in agreement with the Cleveland
25 Clinic, points that were important to council in any

1 agreement that would be reached?

2 A. No. That's not an accurate representation of
3 my testimony.

4 Q. Well, maybe it would be easier if you just
5 describe to me what council's role was in the
6 creation of the agreement that was announced on
7 December 7th.

8 A. Sure. As you know, council directed its
9 attorneys by resolution on September 8th to enter
10 into negotiations with the Cleveland Clinic for a
11 definitive agreement relating to Lakewood Hospital.
12 Council's role to date has included some eleven
13 months of deliberations in public regarding concerns
14 related to the hospital, and council has conveyed
15 concerns both directly to Cleveland Clinic officials
16 as well as through its attorneys.

17 Q. And how has council relayed those concerns to
18 the Clinic officials?

19 A. Directly in person.

20 Q. Okay. Have you done so?

21 A. Yes.

22 Q. So while this agreement was being negotiated,
23 what was council's input? How did you let Mr. Butler
24 and your negotiating team know what you wanted to be
25 in on?

1 A. We had communications with our counsel, our
2 legal counsel, regarding aspects of the pending
3 litigation which entailed a potential closure of
4 Lakewood Hospital, and that was subject to the
5 pending litigation.

6 Q. So is it fair to say you discussed this
7 negotiation process and the development of this
8 agreement that was announced on December 7th with
9 your negotiating team from September 8th through
10 December 7th?

11 A. I would say that individual council members
12 certainly had conversations with our retained
13 attorneys who had been authorized by resolution
14 following public deliberation on that resolution.
15 Those attorneys had been directed by council publicly
16 to pursue that negotiation, and so, yes, we acted in
17 accordance with that resolution that had been
18 publicly enacted on September 8th.

19 Q. Is it fair to say, I got all the notices, but
20 there have been eleven executive sessions since
21 September 8th through December 7th with the stated
22 purpose of general conversation regarding the LOI,
23 Cleveland Clinic, LHA approximately?

24 A. Yeah. I would have to look at a calendar but
25 that sounds as though it could be about right.

1 Q. What sort of things were discussed in those
2 general conversations regarding the LOI?

3 A. Council spoke to its attorneys regarding
4 pending litigation matters and the ongoing
5 discussions.

6 Q. Ongoing discussions about what?

7 A. Pending litigation.

8 Q. How does the development of this agreement
9 have anything to do with pending litigation?

10 A. Well, the pending litigation seeks injunctive
11 relief in the form of an injunction prohibiting city
12 officials from any conversation with the Cleveland
13 Clinic and/or regarding closing Lakewood Hospital,
14 and so discussions relating to negotiating with the
15 Cleveland Clinic and/or closing Lakewood Hospital
16 were unfortunately entailed with the litigation that
17 was ongoing.

18 Q. So is it your belief that every term of that
19 agreement that was announced on December 7th,
20 provided to the public on December 10th, was
21 inexplicably intertwined in the pending litigation?

22 A. Yes.

23 Q. So for instance, I don't want to
24 mischaracterize what you stated, but you were present
25 at the December 7th press conference, correct?

1 A. I was.

2 Q. And did you make statements regarding the fact
3 that you were excited that the agreement entailed
4 demolishing a parking garage and demolishing an
5 office building and having it replaced with an FHC?

6 A. I did.

7 Q. When did you first learn those are going to be
8 part of the agreement?

9 A. Council, I believe the Sunday prior to so it
10 would be December 6th, received a high level terms
11 sheet that included the specific portions of that
12 agreement. In addition, I had been involved in
13 direct discussions as I mentioned previously with
14 Cleveland Clinic officials and had personally
15 witnessed them indicate that that would likely be an
16 amenable outcome for them.

17 However, I didn't know that it was going to be
18 reflected in an eventual master agreement until the
19 high level terms sheet was formalized which was the
20 day before the press conference you referenced.

21 Q. So can you tell me how, for instance, the
22 demolition of a parking garage or the site selection
23 for the FHC had anything to do with the pending
24 litigation against that Cleveland Clinic and the LHA?

25 A. Sure. Those issues were being negotiated with

1 the Cleveland Clinic.

2 Q. So in your view any negotiation with the
3 Cleveland Clinic is exempt from publicity because
4 there is litigation in the Graham case?

5 A. The injunctive relief sought to prohibit
6 council from having any negotiations with the
7 Cleveland Clinic. It meant that negotiations with
8 the Cleveland Clinic were necessarily tied up in the
9 pending litigation that sought to prevent council
10 from having negotiations with the Cleveland Clinic.

11 Q. But no injunction has been issued in the
12 Graham case, has it?

13 A. It has not.

14 Q. So there was no court order that prevented you
15 from having negotiations with the Cleveland Clinic.
16 In fact, you were negotiating with the Cleveland
17 Clinic, correct?

18 A. That's correct.

19 Q. So you said on December 6th you received a
20 high level terms sheet. How was that presented to
21 you?

22 A. I don't remember if I received a copy
23 electronically prior to receiving a hard copy, but I
24 believe I ultimately received both on that day.

25 Q. And were you surprised by what you saw in that

1 terms sheet or had you been -- had those terms been
2 discussed with city council throughout this entire
3 process leading up to the presentation of that term
4 sheet?

5 A. There were aspects of the term sheet that I
6 was not aware of until seeing them in the term sheet,
7 and there were aspects that looked familiar as I had
8 conversations about them with representatives from
9 the Cleveland Clinic and/or our attorneys.

10 Q. Can you explain to me the genesis of the
11 December 7th press conference and how that was
12 decided to be called?

13 A. Yes. As our attorneys had followed our
14 direction to negotiate with the Cleveland Clinic to
15 reach a master agreement, they had been at work on
16 that task. On that Sunday they were at a point where
17 they had finalized a master, I'm sorry, a high level
18 concept sheet.

19 Given that they had finalized that document,
20 they needed to know whether or not they should be
21 drafting legislation regarding the same for the next
22 day's meeting, so for the practical matter that
23 legislation has to be drafted by someone, we were
24 asked, I was asked whether I was desirous of having
25 that legislation drafted and I indicated that I was.

1 Q. And what about the other members of council?
2 How were you asked and how did you convey that to
3 whomever?

4 A. I was -- it was requested that I attend the
5 meeting that Sunday afternoon with law director
6 Butler, the mayor, development director Siley, I
7 believe finance director Pae, and I was asked in that
8 setting whether or not I would be comfortable, you
9 know, requesting that legislation be drafted. I
10 think that other conversations were held with other
11 council members, and apparently enough council
12 members indicated that they were desirous of the
13 legislation being drafted that the law department
14 drafted the legislation, and so as to the press
15 conference specifically, it was noted that there had
16 been significant media attention and public attention
17 paid to this issue over the course of eleven months
18 as a practical matter given that otherwise there
19 would be no particularly advanced or prominent notice
20 that council was going to be publicly deliberating on
21 this that evening.

22 Council naturally felt it appropriate that the
23 media be alerted somehow to the fact that these
24 public deliberations were to begin that evening and
25 so that's the course of action that we took.

1 Q. So your understanding is that on Sunday,
2 December 6th city administration met with each member
3 of council individually to find out whether or not
4 they wanted to move forward with this agreement?

5 A. I don't know if each member was met with
6 individually necessarily but --

7 Q. But they were polled by city administration?

8 A. No. Council members were asked whether or not
9 they wanted legislation drafted and answered that
10 question one way or the other, so any council member
11 can request that a piece of legislation be drafted.
12 It doesn't require a certain threshold or a certain
13 number or anything like that.

14 Q. I guess at the press conference do you recall
15 council president Madigan stating that council must
16 hear unanimously to announce the agreement?

17 A. I do.

18 Q. So would it be your understanding that all
19 seven council members indicated they wanted to move
20 forward with this agreement either on Sunday,
21 December 6th or the morning of Monday, December 7th?

22 A. No. I honestly can't say that that's true.
23 There were council members that I was not aware were
24 going to be attending the press conference and they
25 attended the press conference, so it was a unanimous

1 press conference in the sense that council was
2 unanimously present for the press conference.

3 I did not know what other council members were
4 going to say about that agreement at that press
5 conference.

6 Q. Who gave you -- who notified you there would
7 be a press conference?

8 A. I believe I was in communication that day I
9 think directly with the mayor and with the city's
10 chief information officer, Collin McCune. I think
11 that Sunday evening we had some kind of notification
12 that the press conference would likely move forward
13 on Monday. I honestly don't remember who that
14 communication came from.

15 The city had retained also outside services
16 for the press conference since there are intricacies
17 involved with contacting the media and putting on
18 those events that Lakewood is frankly unaccustomed
19 to.

20 Q. What do you mean by outside services?

21 A. The city retained the services of an
22 individual to help prepare for that press conference.

23 Q. What individual was that?

24 A. That was Eileen Korey.

25 Q. And what services did Miss Korey provide to

1 the city?

2 A. She provided the city again with assistance in
3 coordinating that media event.

4 Q. When you say coordinating, were there prepared
5 statements that you received? How do you know what
6 order you were going to speak in?

7 A. I don't know if she was responsible for
8 indicating that council president Madigan would speak
9 first. I don't know that was even really a decision
10 that was formally made by anyone. I think there was
11 kind of a presumption that as council president she
12 would likely speak first, and then, I don't know -- I
13 would actually have to go back to the press
14 conference tape and see if it was either Ryan Nowlin
15 that spoke next as council vice-president or if it
16 went to David Anderson being in Ward 1 or at the
17 beginning of the alphabet. I think I spoke second or
18 third. I think that was the result of being Ward 2
19 but, again, I don't really know how all that worked
20 out.

21 You know with respect to services that she
22 provided, again I think contacting various media
23 representatives and assisting the city with
24 identifying a location within city hall that would be
25 suitable for such an event, I can't speak

1 definitively as to every task that she might have
2 completed or that anyone frankly in the
3 administration might have completed on that day, but
4 to the best of my recollection, that's what occurred.

5 Q. Did you receive any prepared materials
6 regarding what you should say at the press
7 conference?

8 A. The city's public information officer, Collin
9 McCune, contacted me that day and asked me whether or
10 not I planned to say anything, and I indicated that I
11 did plan to say something. He offered his assistance
12 in producing those remarks. He produced some
13 material. I made some markups to it, and that is
14 what I said at the press conference.

15 Q. And to the best of your knowledge was that the
16 same procedure for all other members of council as
17 well?

18 A. I don't think so.

19 Q. Do you know how they -- were there prepared
20 statements they read?

21 A. I think that others -- so again for my
22 personal comments, there was some drafted language.
23 I inflicted some of my own language. I think perhaps
24 for other council members they may have simply asked
25 that language be drafted by the city's communication

1 officials. Other council members I think did not go
2 that route and drafted their own remarks without
3 assistance from the city's public information
4 officers, but I don't know for certain as to each
5 individual what the decision process was for them.

6 Q. If the agreement was not finalized on December
7 7th, how did council unanimously know it was ready to
8 move forward to consider it?

9 A. Well, as I said, the seven of us were present
10 for the media event, and again no statements were
11 made as to that council had voted to approve the
12 agreement or something. There was no agreement, so
13 again that day the announcement was that council as a
14 full body would be considering this agreement
15 publicly as soon as it had been drafted.

16 Q. Did you ever meet with council members outside
17 of noticed meetings to discuss the negotiation
18 process that led up to the announcement of this
19 agreement?

20 A. There were meetings that were with members of
21 the public that occasionally other council members
22 attended. However, the purpose of the meeting was
23 not for the council members to discuss Lakewood
24 Hospital or related issues. The purpose of the
25 meeting was to hear constituents give feedback on the

1 Lakewood Hospital issue.

2 Q. Did you ever have any communications outside
3 of council meetings with other members of council
4 regarding your thoughts on the status of
5 negotiations?

6 A. It's probably fair to say that at times there
7 were phone calls between individual, you know,
8 one-on-one conversations between individual council
9 members, but you know I don't think that those phone
10 calls were again necessarily for the purpose of, you
11 know, providing deliberations in any kind of sense of
12 the word on the hospital issue.

13 It could be, you know, we had phone
14 conversations all the time about scheduling and other
15 matters, and so it's possible that those kinds of
16 brief interchanges came up, but I said it would be
17 between one or two council members, you know, between
18 one council member speaking to another council member
19 on the phone.

20 Q. So would -- is it fair to say your testimony
21 leading up to the December 7th press conference and
22 the first reading that evening, that council had not
23 deliberated on the agreement?

24 A. That's correct. There were no deliberations
25 on the agreement that did not exist yet.

1 Q. But there were deliberations regarding the
2 terms that would become that agreement.

3 A. No.

4 Q. So you've done no deliberating at all.

5 A. No. Council has had many, many public
6 meetings in which deliberations regarding the
7 hospital took place, and since the agreement has come
8 out, council has had public deliberations regarding
9 this agreement.

10 Q. Can you explain what those deliberations were
11 on December 7th?

12 A. Sure. On December 7th as was stated, the
13 agreement, the master agreement itself, did not exist
14 yet and was not attached to the legislation.
15 However, we did have the key terms documented, and on
16 the basis of that key terms document, council was
17 able to engage in a productive dialogue and
18 discussion with members of the public and with each
19 other on that day and did so vigorously for a period
20 of I think a couple hours.

21 On that meeting there were other items on the
22 agenda as well so obviously those items were
23 discussed also, but and then in the special meeting
24 that was held the following week, it was the sole
25 item on the agenda, and council heard I think in

1 excess of three hours of public comment and testimony
2 and so forth.

3 Q. I understand both of those meetings, the
4 December 7th and December 14th meeting, council heard
5 a great deal of public comment. Was there any
6 discussion between council members at those meetings
7 regarding their thoughts on the proposed agreement,
8 pros and cons of the agreement?

9 A. Yes, absolutely.

10 Q. Can you briefly describe those back and forths
11 in those deliberations amongst council members?

12 A. Sure. Members of council might interject a
13 point or make a remark then another council member
14 might follow onto that remark or point with their own
15 assessment of that remark or point or, you know, what
16 they need to be a clarification of that or their kind
17 of addendum to that, and then, you know, certainly I
18 think that it does council a disservice to assert
19 that the only time council is deliberating are when
20 remarks are exchanged directly from one council
21 member to another council member.

22 When council members are hearing remarks from
23 members of the public or hearing remarks from their
24 colleagues and considering those in a decision making
25 analysis type context, that's deliberation, so --

1 Q. And so is it your belief that leading up to
2 the announcement that there were deliberations
3 regarding council's thoughts on what they hoped to
4 see in this proposed agreement in public meetings?

5 A. Yes.

6 Q. Do you know what those deliberations were?
7 Just back and forths again?

8 A. I don't know that I follow the question.

9 Q. I'm sorry. Strike that.

10 A SPECTATOR: Your Honor, I'm
11 sorry to interrupt. May I leave?

12 THE COURT: Yes. Anyone
13 else?

14 MR. KORAN: I'd like to mark
15 Exhibit No. 4.

16 (Thereupon, Plaintiff's Exhibit 4 was marked
17 for the purpose of identification.)

18 Q. Can you please identify the document that I
19 just handed to you earlier?

20 A. These are the minutes of the regular meeting
21 of Lakewood city council, November 16, 2015.

22 Q. And can you review that document and briefly
23 let me know to the best of your knowledge is it a
24 true and accurate copy of those minutes?

25 A. Again this document is twelve pages long but

1 it appears to be a true and accurate copy.

2 Q. Is it your recollection that this was the last
3 public meeting before the December 7th press
4 conference of city council?

5 THE COURT: What date is
6 this?

7 MR. KORAN: This is November
8 16, 2015, Your Honor.

9 THE WITNESS: Without looking
10 at a calendar, that seems possible.

11 Q. So at the last public meeting before the press
12 conference, can you let me know where you see in
13 these minutes any note of deliberation regarding the
14 finalization of the terms that would be ultimately
15 presented on the December 7th press conference?

16 A. Sure. Well, again there are several pages of
17 public comment which is interspersed with dialogue
18 from council. Page 10 for example.

19 Q. What was council's dialogue on page 10?

20 A. Well, you have a number of individuals
21 expressing concern with respect to certain aspects of
22 hospital operations, and council members were present
23 to hear those concerns and possibly reflect them in
24 the master agreement.

25 Q. So I'm looking at the bottom of page 10. It

1 looks like council member Bullock is talking about
2 the safety violations at a totally different
3 hospital, is that correct?

4 A. In response to a constituent's concern that
5 the Cleveland Clinic had these safety violations at a
6 different hospital. That's correct.

7 Q. And then what about on page 11, what did Miss
8 Madigan say? It's in the middle of the page.

9 A. Council is still meeting. Council president
10 Madigan responded that council is still meeting and
11 considering the options. Council is trying to make a
12 decision with all deliberate speed and working with
13 its attorneys.

14 Q. What is your comment?

15 A. I remarked that --

16 Q. Just read the first sentence. That's fine.

17 A. "Council member O'Leary remarks that his
18 approach during public comment has been to listen and
19 that he hasn't viewed the forum as one conducive to
20 constructive dialogue but that more opportunities for
21 constructive dialogue need to be available."

22 Q. In these minutes do you see any other comments
23 from council members regarding anything having to do
24 with Lakewood Hospital?

25 A. I'm sorry. Comments from other council

1 members?

2 Q. Yes, besides the three we just discussed.

3 A. Not from council members.

4 Q. So in the last public meeting prior to the
5 press conference there were three comments from
6 council members regarding the Lakewood Hospital.
7 One, Mr. Bullock talking about a lab at Marymount and
8 how that didn't impact Lakewood Hospital. One from
9 Miss Madigan saying council is still working and
10 considering options and trying to make a decision,
11 and one from you saying you think there is a bad
12 forum for public comment.

13 A. That's not a fair characterization of my
14 remarks. My remarks went to the fact that council
15 historically not limited to the hospital issue has
16 always had an opportunity at the end of each meeting.
17 First of all, there is also an opportunity to sign up
18 to comment on specific agenda items that are up for
19 discussion, but at the end of each meeting, we have
20 an opportunity for public comment on whatever issues
21 are salient for members of the public.

22 They're given five minutes to speak. It
23 clearly states in the council rules, etcetera, it's
24 not a question and answer period. It's a public
25 comment period, and so there was significant interest

1 from various members of the public or an assertion
2 that council seems somewhat aloof in terms of
3 listening to these comments at the end of the meeting
4 but not engaging in the question and answer form of
5 exchange, and so my comment was that I understood
6 that some members of the public wanted to have an
7 opportunity for additional question and answer
8 exchange, and that I felt that that was appropriate
9 and needed but not in the public comment period of
10 the meeting which as I say is not particularly
11 conducive to that kind of a dialog.

12 Q. I apologize for mischaracterizing your
13 remarks.

14 A. Sure.

15 Q. Besides Miss Madigan's comments of council
16 still considering the option of trying to make a
17 decision, was there any discussion or deliberation by
18 council about the terms that would be included in the
19 proposed agreement that was announced on December
20 10th in this meeting?

21 A. In this meeting's minutes?

22 Q. Yes.

23 A. I'm sorry. What was the question?

24 Q. Besides the comment from Miss Madigan that
25 council is still considering the options and is

1 trying to make a decision with deliberate speed and
2 working with its attorneys, is there any evidence of
3 deliberation between council members, even comments
4 from council members, regarding the terms that would
5 become the agreement you were now considering?

6 A. Yes, in the sense that again I consider
7 council gathering as a united body to hear public
8 comment about the issues that it's considering to be
9 deliberation.

10 Q. But you admit there was no discussion between
11 council members at this meeting just listening to
12 public comment.

13 A. That's correct.

14 Q. Is it correct that on November 23, 2015
15 council had a committee of the whole meeting?

16 A. November 3, 2015?

17 Q. 23rd, the following Monday.

18 A. I believe so.

19 Q. And do you know what the subject of that whole
20 meeting was?

21 A. I believe it was a general conversation
22 regarding the letter of intent.

23 Q. And was that held in open or closed session?

24 A. Executive session may have been called.

25 Q. Did you ever publicly discuss the general

1 conversation regarding the LOI at these whole
2 meetings?

3 A. Yes, over the course of the last eleven
4 months.

5 Q. I'd say from September 8th to the present.

6 A. I believe so.

7 Q. You know what meeting that was at?

8 A. Offhand, no. I surmised many of them.

9 Q. Do you remember even one? I have the notices
10 here and they all say you're going to go into
11 executive session. Do you recall any time that
12 didn't happen?

13 A. I think that executive session was probably
14 called at all of the meetings, but whether or not any
15 public discussion occurred before and/or after, I
16 think that did take place a couple of times, but
17 again, I would have to look at a calendar or
18 something to refresh my memory or the meeting notes
19 or something.

20 Q. So what was the topic of what was discussed in
21 the executive session on the 23rd?

22 A. Council spoke to its attorneys regarding the
23 pending litigation and hospital matters related to
24 the pending litigation.

25 Q. Specifically what?

1 A. Specifically what was said in executive
2 session.

3 MR. CAHILL: Objection, Your
4 Honor. Calls for attorney-client privilege.

5 THE COURT: Sustained.

6 Q. I'm not asking -- I don't want you to tell me
7 anything you discussed with your counsel about the
8 Graham litigation. I would like to know what was
9 discussed with your negotiating team regarding the
10 agreement that was presented on December 10th.

11 A. The negotiations ongoing were subject to the
12 threat of pending litigation, so our discussions
13 regarding the negotiations ongoing were through the
14 lens of the ongoing litigation.

15 Q. Can you tell me were you talking about the
16 case or are you talking about the deal regarding the
17 hospital?

18 A. Yes.

19 Q. Which one? Were you talking about the deal
20 that has been announced on December 10th in those
21 executive sessions? Yes or no?

22 A. Yes.

23 Q. Same thing on November 30, 2015. Did you have
24 a committee of the whole meeting?

25 A. Yes.

1 Q. Did you go into executive session?

2 A. Yes.

3 Q. Did you discuss the terms of the agreement
4 that would be announced on December 10th?

5 A. Within the context of the pending litigation,
6 I believe so.

7 Q. And then on December 7th you held a press
8 conference announcing that an agreement had been
9 reached in the first meeting?

10 MR. CAHILL: Objection.
11 Counsel misstates testimony.

12 THE COURT: Overruled.

13 THE WITNESS: Correct.

14 Q. During that entire time period besides members
15 of the public talking about their thoughts on
16 Lakewood Hospital generally, was there any public
17 deliberation of the terms of the agreement that would
18 be presented on December 10th?

19 A. Between November 30th and December 10th were
20 there public meetings held, is that your question?

21 Q. We just went through the November 16th
22 meeting, November 23rd meeting, November 30th meeting
23 and the December 7th announcement. Was there any
24 public deliberation regarding the terms of those, of
25 that agreement, that was announced outside of public

1 comment at the November 16th meeting?

2 A. I don't believe so.

3 Q. Did the public have any idea of what the terms
4 of that agreement would have been and able to comment
5 on them at these meetings leading up to that?

6 A. You'd have to ask a member of the public. I
7 think that they would from my conversations with
8 members of the public apprising them of what I felt
9 were important priorities in the hospital, assets in
10 Lakewood's community's needs.

11 Q. Up until December 7th the public had no idea
12 that an agreement had been finalized in written form,
13 correct?

14 A. An agreement hadn't been finalized in written
15 form on November 7th.

16 Q. So the public could not have known.

17 A. No. Council didn't know.

18 Q. So all these public comments leading up to
19 that could not be considered deliberations on that
20 agreement, correct?

21 A. No. I would disagree with that
22 characterization.

23 Q. How can the public deliberate on an agreement
24 that they didn't know of physically?

25 A. How can council deliberate on an agreement

1 that they didn't know it existed?

2 Q. I believe you testified that you were speaking
3 with council and your attorneys in executive session
4 regarding the status of negotiations of that
5 agreement.

6 A. Yes, an agreement that we had signaled
7 publicly to all parties was going to be pursued on
8 September 8th when we passed a resolution directing
9 our attorneys to negotiate a definitive agreement
10 with the Cleveland Clinic.

11 Q. And council knew what was going on in those
12 negotiations, correct?

13 A. Yes.

14 Q. And the public did not, correct?

15 A. I think that there are degrees of knowledge
16 involved.

17 Q. There was never any announcement from council
18 or the city regarding the status of negotiations
19 until November 7th, correct?

20 THE COURT: Excuse me,
21 counsel. You have been going for 45 minutes.
22 How much longer are you going to be?

23 MR. KORAN: I'm wrapping it
24 up right now.

25 THE COURT: I don't know

1 what our status is with the court reporter,
2 how late she can stay. We'll discuss that
3 when you're done.

4 MR. KORAN: This can be my
5 last question.

6 THE WITNESS: I do apologize
7 to the Court, but one more time the question
8 was --

9 Q. I'm sorry. Prior to December 7th, had there
10 been any announcement from the city to the public
11 regarding the status of the negotiations?

12 A. Yes. I believe that the mayor may have made a
13 public statement regarding the status of the
14 negotiations. I believe that I made statements to
15 members of the public at various times, perhaps not
16 in a public meeting setting regarding the fact that
17 negotiations were still ongoing, that it was
18 contentious, and that it was very much a live
19 negotiating process.

20 Q. So beyond the fact that negotiations were
21 happening, the public didn't know what was going on
22 specifically with the terms of the proposal though.

23 A. The public was not included in the specific
24 terms of the negotiations or updates from council's
25 attorneys regarding the litigation and negotiations

1 ongoing.

2 MR. KORAN: Thank you. I
3 have no more questions.

4 MR. CAHILL: Your Honor, as
5 Mr. O'Leary is one of the defendants, I
6 presume the plaintiffs proceeded as if on
7 cross. I intend to call Mr. O'Leary in my
8 case in chief. I'm happy to delay my
9 examination of him until plaintiff has met his
10 burden of going forward if it would so please
11 the Court.

12 THE COURT: Do you have any
13 other witnesses?

14 MR. KORAN: One second, Your
15 Honor. We have no more witnesses.

16 THE COURT: We'll take a
17 five-minute break. You may step down.

18 (Recess taken.)

19 MR. CAHILL: Your Honor, if I
20 may move for a directed verdict. Plaintiff
21 has not established, one, a violation of the
22 Sunshine Laws. The testimony has been clear
23 that when city council removed itself to an
24 executive session during the meeting of the
25 whole meeting, there was obviously the real

1 threat of injunctive relief sought in the
2 other litigation that sought to limit, not
3 only limit city council's ability to enter
4 negotiations with the Cleveland Clinic and the
5 Lakewood Hospital Association, but to prevent
6 those discussions themselves from even
7 happening, so how can you negotiate with a
8 party when another party seeking to prevent
9 you from discussing that party and it not be
10 subject to pending litigation.

11 Effectively, the breadth of the
12 allegations set forth in the Graham litigation
13 touches on every single piece of any potential
14 negotiation which the city could have with the
15 Cleveland Clinic and Lakewood Hospital
16 Association concerning the hospital.

17 Moreover, it's very clear from
18 Mr. O'Leary's testimony that city council has
19 deliberated these issues for eleven months.
20 Plaintiffs want to take a very narrow picture
21 of what probably has been the most deliberated
22 piece of legislation in the history of the
23 city of Lakewood. It's been an eleven-month
24 process.

25 All of it has been open to the

1 public. Our expert reports go on the web
2 site. Everything we have goes on the web
3 site. The public knows about it, and they're
4 discussing it and commenting to us, and city
5 council is reacting to it. Quite frankly
6 there has, and as Mr. O'Leary testified and as
7 Mr. Kilroy verified, there has been no final
8 decision here. The deliberations are ongoing.
9 They presumably will continue tonight.

10 Moreover, plaintiff has not shown
11 irreparable harm. He has not shown, they have
12 not addressed third parties will not be heard.
13 As we discussed a number of times, LHA is
14 bleeding money. Mr. O'Leary commented on that
15 briefly, but they are bleeding money at a
16 substantial rate.

17 The Cleveland Clinic has spent many,
18 many, many months trying to propose a deal
19 that will stop the hemorrhaging from Lakewood
20 Hospital and arrive at a new facility that
21 will take care of the citizens of Lakewood,
22 and finally and from the city's standpoint
23 most importantly, the citizenry of the city of
24 Lakewood will be substantially harmed if this,
25 if city council is not able to consider 49-15

1 tonight and either vote for or against it
2 because if a deal is not commenced, the very
3 likelihood is that LHA will go into
4 bankruptcy. The whole deal will crater and
5 the city will be left with no tenant for its
6 hospital and a shell of a building for which
7 they are not receiving any money to do
8 anything with, and under the terms of the
9 proposed master agreement, there are
10 significant funds coming from both the
11 Cleveland Clinic and LHA towards the city by
12 which they can rehab or seek other economic
13 development concerning that building.

14 There is money coming from the sale
15 of property in Westlake that was an LHA
16 property. There is 24.4 million dollars that
17 are going to go into a community health
18 foundation. There is also the matter of I
19 believe up to 2.8 million dollars in rent that
20 will still come from LHA, and if LHA goes into
21 bankruptcy, that money will dry up, so for all
22 those reasons, Your Honor, the defendants
23 respectfully request a directed verdict on
24 plaintiff's motion for preliminary injunction.

25 THE COURT:

 Mr. Koran.

1 MR. KORAN: Thank you, Your
2 Honor. Before I respond to Mr. Cahill, I
3 would like to request to admit Exhibits 1
4 through 4 for the record. I would also like
5 to request to introduce a video exhibit. I
6 don't know if you'll stipulate to the video of
7 the press conference that has been the subject
8 of most of these discussions. If you will
9 not, I ask you to take judicial notice of it
10 as posted on the city's web site for everyone
11 to view, and I think it is very important that
12 it's on the record and considered by this
13 Court because I believe that the testimony or
14 the statements made by all seven council
15 members at that press conference go towards
16 plaintiff's case, that the decision was
17 already made as of December 7th.

18 MR. CAHILL: Your Honor,
19 plaintiff already rested his case in chief.
20 There should be no further evidence offered.

21 MR. KORAN: I said I had no
22 further witnesses, Your Honor.

23 MR. CAHILL: And how do you
24 authenticate a video without a witness?

25 MR. KORAN: If you will not

1 stipulate, I ask that you take judicial
2 notice. This is a video. We can pull it up
3 on the internet if you prefer.

4 THE COURT: I am not going
5 to view the video. I will take notice that a
6 press conference was held and that the members
7 of council did make statements, but go no
8 further then that. With respect to your
9 failure to offer the exhibits earlier, we can
10 overlook that and allow those. They were
11 properly identified so those will be admitted.
12 I don't know if that's over objection or
13 without objection but they will be admitted.

14 MR. CAHILL: Concerning
15 Exhibits 1 through 4, no objection, Your
16 Honor.

17 MR. KORAN: As to the
18 directed verdict, I believe that Mr. O'Leary's
19 testimony and testimony from Mr. Dilzell and
20 Dr. Kilroy evidences that there was no public
21 deliberation from council of the issues or the
22 terms that would become this agreement that
23 was presented to the public for the first time
24 on December 7th and discussed at the December
25 7th press conference.

1 I think Mr. O'Leary testified there
2 was public comment, and we have no dispute
3 there was lots of public comment but there was
4 no deliberation among council that occurred in
5 public regarding this agreement.

6 I think Mr. O'Leary's testimony made
7 it clear that there was deliberation,
8 discussion among council in private under the
9 guise of pending litigation. Again we have no
10 dispute there is pending litigation facing the
11 city regarding the hospital, but that does not
12 open a blank slate just because an attorney is
13 sitting in the room and because the case
14 exists for them to discuss anything and
15 everything involving the hospital including
16 but not limited to the terms of an agreement
17 that was reached regarding the future of the
18 hospital.

19 You know, Mr. Cahill said that we
20 can't negotiate the hospital, agreement on the
21 hospital, because of the threat of litigation
22 but they have done just that. They did
23 negotiate the agreement. It's here and about
24 to be passed tonight.

25 In terms of irreparable harm, again

1 Dr. Kilroy testified about what's going to
2 happen if the hospital starts shutting down.
3 The standard of medical care in the city of
4 Lakewood is going to be severely diminished.
5 Emergency room care is not going to be nearly
6 the same. There will be fewer beds. There is
7 going to be -- people are going to lose
8 valuable minutes that they will need when they
9 need to have life-saving procedures done.

10 In terms of the LHA position, he has
11 offered, Mr. Cahill has offered they're near
12 bankruptcy. No witnesses testified to that.
13 Our records indicate they have nearly 50
14 million dollars cash or investments that they
15 can use to hold out. This has been ongoing
16 for eleven months. We're only asking for a
17 short delay to go through this procedure, and
18 even if the deal does fall apart, the city is
19 not going to be -- everything is not going --
20 there will be no irreparable harm.

21 There is still a lease in effect at
22 the Cleveland Clinic and LHA has with the city
23 and the Cleveland Clinic as a definitive
24 member or has with LHA to operate the
25 hospital. There will still be the hospital

1 building owned by the city.

2 The city and LHA will still have all
3 the medical equipment. They'll still own the
4 parking garage. They will still own the
5 Westlake facility. They will still not have a
6 non-compete so we can try to get another
7 tenant in to the extent the Cleveland Clinic
8 breaches and leaves.

9 We have all these valuable things
10 that will remain with the city if an agreement
11 is not reached. There is another interested
12 party in the hospital to purchase the hospital
13 that the council has just summarily rejected.
14 That party is still around so there is a lot
15 that can happen.

16 If the agreement is not reached
17 tonight and if the proceeding is delayed a
18 short period of time, there is nothing in the
19 records of evidence that LHA or the Cleveland
20 Clinic will renege on the proposed agreement
21 or that any negative consequences will happen
22 to the city of Lakewood or its residents.

23 THE COURT: Okay. Okay,
24 first I have to state that I find it rather
25 troubling that so much of what is testified to

1 in this hearing was based upon rumor,
2 speculation and hearsay. Dr. Kilroy, for
3 example, understands that the emergency room
4 will consist of only six to eight beds. There
5 has been no testimony and there is no evidence
6 whatsoever that that's all that's
7 contemplated. The hearing was replete with as
8 I say rumor, speculation and hearsay as to
9 what was going to happen, what might happen if
10 this contract or agreement is approved or not
11 approved.

12 The statute requires that public
13 officials take official action and conduct all
14 deliberations upon official business only in
15 open meetings unless the subject matter is
16 specifically accepted by law.

17 The conclusion of this Court is that
18 the official action that is contemplated is
19 what will happen up or down at tonight's
20 meeting. The law does not state open
21 deliberations. It just says deliberations --
22 official action and deliberations upon
23 official business and that the meetings must
24 be open.

25 That means the public must be given

1 an opportunity to be present, and one would
2 expect they must be given an opportunity to be
3 heard. I expect that at tonight's meeting
4 both of those will happen.

5 I find it troubling that the
6 complaint asks for a temporary restraining
7 order which has already been denied by Judge
8 Russo. Preliminary injunction immediately
9 restraining and enjoining city council from
10 formerly acting on Ordinance 49-15 and the
11 agreement to close Lakewood Hospital or any
12 substantially similar ordinance or agreement.

13 Count 3, that the Court issue a
14 declaratory judgment that the executive
15 sessions described therein were unlawful.

16 Court finds that there has been no
17 evidence that the executive sessions
18 themselves were unlawful.

19 Asks with respect to Count 4 that the
20 Court declare, issue a declaratory judgment
21 and that the agreement to close Lakewood
22 Hospital and any substantially similar
23 agreement reached in the future is void and
24 invalid.

25 That strikes me as being beyond the

1 pale. Any substantially similar agreement
2 reached in the future. This Court cannot
3 enjoin a future action based upon even if I
4 were to find that the, that this particular
5 agreement were improperly breached.

6 Count 5, that this Court issue an
7 injunction compelling city council to comply
8 with the provisions of open meetings at and in
9 the future, deliberations regarding Lakewood
10 Hospital, etcetera. Then there is the civil
11 forfeiture of \$500 for each violation, court
12 costs and, of course, reasonable attorney's
13 fees and any additional relief.

14 I find that the meetings, pardon me,
15 the September 8th meeting simply authorized
16 the law director to engage in negotiations.
17 That is standard procedure for any
18 municipality and for any organization. You
19 always want to have, whether if it's a
20 corporation, you want to have an authorization
21 that your chief counsel engage in negotiations
22 to do anything -- to buy equipment, to merge
23 with another corporation, whatever.

24 In the case of a municipal
25 corporation, similarly. The law director

1 should be given that authority in order to
2 begin the negotiations, and negotiations
3 themselves must be conducted in private. You
4 don't have negotiations of this kind conducted
5 in an open forum with members of the public
6 brought in at every stage. Much as we want
7 the democrat process to be open, there are
8 points at which it must be open. There are
9 points at which it should not be.

10 In the law, we require the jury
11 deliberations be secret. Grand Jury process
12 is secret not because we're trying to exclude
13 the public from involvement in public
14 business, but because there are certain
15 aspects of it that cannot proceed in an open
16 forum.

17 What must happen ultimately is that
18 the agreement that has been negotiated should
19 be open to full deliberation in an open
20 meeting with the public given an opportunity
21 to participate. Public will have that
22 opportunity tonight. They now have the master
23 agreement that has been presented and is
24 public. I believe it's on the city's web site
25 so I expect that members of the public will be

1 there, and knowing Lakewood rather well, I
2 expect that those discussions at the public
3 meeting will be heated and they should be.

4 The public should be involved in
5 questioning every aspect of this, but in the
6 end council is going to have an opportunity to
7 vote up or down as to whether this agreement
8 shall take place, so I will grant the motion
9 for a directed verdict.

10 I believe earlier there was a motion
11 to consolidate this with a permanent
12 injunction I believe?

13 MR. CAHILL: Correct, Your
14 Honor.

15 THE COURT: That will be
16 granted as well. If the plaintiff wishes to
17 go to the Court of Appeals, I'm sure they'll
18 want to review everything I heard and done.
19 Is there anything else we need to address at
20 this time?

21 MR. KORAN: Your Honor, I
22 just want -- you know we got this motion to
23 consolidate. I have not seen it until I sat
24 down in this courtroom. We obviously had no
25 time to depose any witnesses, conduct any

1 discovery. They only produced two council
2 members that could have been brought up.

3 I don't know how the case has been
4 consolidated at this point without any chance
5 for us to conduct any discovery or interview
6 all the witnesses or all the defendants.

7 THE COURT: Mr. Cahill.

8 MR. CAHILL: Well, Your
9 Honor, in light of the relief plaintiff seeks
10 to prevent this litigation, this Ordinance
11 49-15 going forward, they waited until the
12 11th hour to file a motion for TRO. We
13 received their complaint and their motion some
14 time on Friday morning.

15 We came over. Because you were
16 unavailable, Your Honor, we argued the TRO in
17 front of Judge Russo. Judge Russo scheduled
18 the preliminary injunction hearing for this
19 afternoon fully understanding time is of the
20 essence. City council is going to vote
21 tonight. It's anticipated that it will vote
22 tonight, and that the deal may go forward from
23 tonight.

24 Because plaintiffs had an opportunity
25 to call their witnesses, they filed the

1 complaint, they filed the motion, they knew
2 this was coming. We didn't. They had an
3 opportunity to prepare their case in chief to
4 the extent that they felt comfortable to
5 establish the violations which they claim.
6 They did so here today. They failed.

7 There can be no other discovery that
8 would change what has happened here today.
9 The testimony is the testimony, and for
10 purposes of going forward, the city deserves
11 the finality of your ruling so that it can
12 proceed forward with the partners with whom it
13 has negotiated a deal, albeit hasn't been
14 approved yet. It may or may not but those,
15 but those entities are going to take action
16 immediately upon a vote tonight one way or the
17 other.

18 Be it a bankruptcy violation, be it
19 starting the winding down of that hospital.
20 Time is of the essence and LHA will start
21 bleeding money if this is delayed at all.
22 While the likelihood is a trial on a permanent
23 injunction would result in the same result, it
24 leaves open that question for the parties who
25 have been working towards an agreement for

1 eleven months, and through those eleven months
2 the negotiations have changed because of LHAs
3 ever decreasing financial stability.

4 The amounts of money that are going
5 to be used from LHA to go to various aspects
6 of the agreement continue to go down.
7 Requiring the Cleveland Clinic in some
8 instances to step up and other instances for
9 those funds to just be depleted, that will
10 continue to happen should this remain open.

11 The parties are entitled to a final
12 decision, and I think your initial decision is
13 appropriate and required by law.

14 MR. KORAN: Your Honor, we
15 were here today on a preliminary injunction
16 hearing, and if you rule that we have not met
17 our burden to receiving a preliminary
18 injunction, so be it, but we are not here
19 today on the trial of this matter.

20 As Mr. Cahill said, yeah, we had a
21 chance to prepare our case over a very short
22 period of time. We have not had a chance to
23 prepare our case in terms of deposing
24 witnesses, finding out -- we don't know what
25 happened in the executive sessions because we

1 weren't in them.

2 We need to conduct discovery to find
3 out what was discussed and what was
4 deliberated on. We have not had that
5 opportunity.

6 THE COURT: My ruling,
7 however, is that deliberations and a decision
8 by Lakewood city council, which is the only
9 one and its members are the defendants here,
10 that that decision will be made tonight.

11 MR. KORAN: It will but
12 RC-121.22(H) provides a resolution, rule or
13 formal action adopted in an open meeting that
14 results from deliberations in a meeting not
15 open to the public is invalid unless they were
16 referred, specifically authorized by Division
17 G or J of this section and conducted in
18 executive session held in compliance with this
19 section, so if the agreement that is very,
20 very, very likely to be adopted tonight
21 resulted from illegal executive sessions where
22 the matter was deliberated improperly, then
23 the agreement is invalid under the law.

24 We need to have the opportunity to
25 find out what happened in those executive

1 sessions, and if our discovery shows that
2 there were no improper deliberations in the
3 executive sessions, we would of course
4 withdraw the complaint. This is obviously,
5 we're only here three days after the
6 complaint. We had an opportunity to conduct
7 no discovery, and obviously we're not able to
8 call all of the witnesses because they're
9 defendants in the case as they need to be by
10 operation of law.

11 So I understand if you don't think we
12 met our burden or there will be no irreparable
13 harm and the agreement needs to be forward
14 tonight. We still may be able to go forward
15 with our case and determine whether the
16 violations did occur.

17 THE COURT: I made my
18 decision.

19 MR. KORAN: Thank you, Your
20 Honor.

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23 (Thereupon, the proceedings were concluded.)

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C E R T I F I C A T E

I, Kathleen A. Kilbane, Official Court Reporter for the Court of Common Pleas, Cuyahoga County, Ohio, do hereby certify that as such reporter I took down in stenotype all of the proceedings had in said Court of Common Pleas in the above-entitled cause; that I have transcribed my said stenotype notes into typewritten form, as appears in the foregoing Transcript of Proceedings; that said transcript is a complete record of the proceedings had in the trial of said cause and constitutes a true and correct Transcript of Proceedings had therein.

Kathleen A. Kilbane
Official Court Reporter
Cuyahoga County, Ohio