ASSEMBLY TRANSPORTATION COMMITTEE

In re:                :
E-ZPass               :   TRANSCRIPT OF
                     :   PROCEEDINGS
______________________:

JUNE 10, 2002

BEFORE:
Chairman John S. Wisniewski
Vice-Chairman Reed Gusciora
Assemblyman Alex DeCroce
Assemblyman Anthony Impeveduto
Assemblywoman Linda Stender
Assemblyman Francis L. Bodine

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TRANSCRIPT of proceedings as taken by

and before SEVA FLICSTEIN, a Certified

Shorthand Reporter and Notary Public of the

State of New Jersey, at the State House Annex,

Trenton, New Jersey, on Monday, June 10, 2002,

commencing at 10:00 in the forenoon.
CHAIRMAN WISNIEWSKI: Thank you.

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

Good morning.

MR. MORASH: Good morning.

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

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

For example, we are currently engaged in arranging financing for the public and private partnership that is being created to manage the London
Underground Transportation System over the next 30 years in the United Kingdom.

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

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

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

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

MR. MORASH: I would be happy to
answer that. Newcourt started out as a Toronto-based company. It was originally a subsidiary of a life insurance company in Canada, and became a public company in 1994.

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

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

CHAIRMAN WISNIEWSKI: Thank you.

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

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

So we had a number of
discussions with MFS about various
projects that they were pursuing,
including when we were at Newcourt a
telecommunications project that MFS was
implementing along the Alaskan pipeline.

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

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

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

CHAIRMAN WISNIEWSKI: Up until
that point in time Newcourt had
essentially been a suitor looking for business from MFS?

MR. MORASH: That's correct.

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

MR. MORASH: That's correct.

And to lay out a menu of their alternatives, and analyze and assess how different types of financing might be used to raise funds for the E-Z Pass project on a basis that was consistent with the award that they received from the state authorities, which was the no money down, no money over the life of the contract award.

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

MR. MORASH: That's correct.
CHAIRMAN WISNIEWSKI: And among those terms in that package was the proposition that the E-Z Pass system would be paid for through toll violation money and through rents on a fiber optic system?

MR. MORASH: Yes.

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

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

CHAIRMAN WISNIEWSKI: When did this take place?

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

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

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

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

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

CHAIRMAN WISNIEWSKI: Which tab would that be behind?

MR. MORASH: That would be Tab E.

CHAIRMAN WISNIEWSKI: Exhibit E?

MR. MORASH: Yes.

CHAIRMAN WISNIEWSKI: So in June of '97, approximately three months after the contract was awarded, Newcourt wrote back to the Executive Director telling the Executive Director that the proposed
financing scheme was speculative?

MR. MORASH: Yes.

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

CHAIRMAN WISNIEWSKI: Why was that limited guaranty required?

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

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

MR. MORASH Any of the markets through which this financing might have
been raised would not have accepted these risks.

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

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

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

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

MR. MORASH: Yes. At the beginning of our discussion -- in fact, there is an early communication in Tab D from Newcourt to prospective investors in the transaction.
Initially we had sought to put typical lender controls for project financing into the transaction. That would include everything from enforcement assurance and a plan of enforcement associated with the collection of revenues. Contract enforcement associated with the construction and operating contract with MFS that would encompass a host of issues, including lender approval prior to disbursement of any funds under the contract, a date certain for completion obligation with liquidated damages for failure to complete in a timely basis, and compliance covenants associated with the performance of the system.

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

CHAIRMAN WISNIEWSKI: Why was that?

MR. MORASH: His -- he -- what's the right answer? He would not accept it,
and would not continue the discussions with us unless we withdrew these requirements.

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

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

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

Point number one was the so-called true up agreement, which was the limited guaranty that the authorities would each pay their pro rata share of any unpaid expenses, including principal and interest, in March of 2008.
Now, that, of course, required the lenders potentially to wait until March of 2008 to get their money. So in addition, there was a very large cash reserve that was established to provide liquidity to be able to fund interest expense and operating expense over the life of the contract. And the third thing that was required was what we call an accounting letter.

The question was how would the authorities account for their commitment to pay off any unpaid expenses at the end of the contract? It's what's called a contingent liability. And we insisted that on an annual basis there be a new forecast made of expected revenues and expenses from the system.

So that although the initial forecast that was made showed that the system would be in the black, that revenues would exceed expenses, including principal and interest, if over time the
situation changed and the expectation was different, that there would be losses from the system, then this would be disclosed by all the authorities and reported in their financials so that they could start to reserve the cash that they would need in order to meet their obligations in March of 2008.

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

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

MR. MORASH: That's correct.

CHAIRMAN WISNIEWSKI: Who else was involved with those negotiations on
the part of the state from the Turnpike Authority.

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

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

MR. MORASH: All Turnpike staff.

CHAIRMAN WISNIEWSKI: The entire staff?

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

CHAIRMAN WISNIEWSKI: Were there other individuals who were at the Turnpike? For instance, we've heard
testimony about the controller having concerns about the financing of this project. Were there other people not necessarily in Mr. Gross' immediate staff who participated in the negotiations?

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

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

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

MR. MORASH: That's correct.

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

MR. MORASH: No. They all took place at night after regular business
hours. Because this was -- needed to be not -- was not the regular business of the Turnpike Authority. So the negotiations -- the entire staff stayed late to work through these negotiations. Typically they would go to 1:00 or 2:00 in the morning.

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

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

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

And when we then actually drafted the documents -- and this goes to late in the summer of 1997 -- White and
Case, who were our attorneys, they drafted the document, they drafted a guaranty agreement that Mr. Gross asked it not be called a guaranty agreement but, rather, a true up agreement.

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

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

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

MR. MORASH: That is what it was.

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

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

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

That was something that was sought; correct?

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

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

MR. MORASH: That is correct.

CHAIRMAN WISNIEWSKI: So what happened? When the money was raised,
instead of it being retained by the lender
and disbursed as benchmarks were made,
what happened?

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

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

MR. MORASH: That is correct.

CHAIRMAN WISNIEWSKI: Would you
explain that for me.

MR. MORASH: Well, as we studied
the question of the nature of violations
revenues, it was clear to us that without
an enforcement plan that would then assure
a high collection rate, that the revenues
would be at risk as to whether they could,
in fact, be collected in a manner to pay
off the cost of the system.
So again, a typical lender’s point of departure for any project financing would be to secure the revenue stream. And the way to secure this revenue stream was to make sure that the violations assessments would be enforced, and that there was a viable plan to do that.

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

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

MR. MORASH: The accounting letter required them to calculate what
their expected obligation was. Reserving money would fall under their general authority and bond indenture provisions. Because if they were going to have operating expenses that were increased, then the provisions of their indentures would require them to provide for that money.

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

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

MR. MORASH: That's correct.

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

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

CHAIRMAN WISNIEWSKI: And what
was Newcourt's role in reviewing those models?

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

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

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

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

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

And that's why we concluded that
those revenue streams were too risky to be used solely -- as the sole support for the project financing.

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

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

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

Again, the cash reserve was the second of the key legs of the transaction. And the worst case scenario showed a deficit of 270 million dollars. So if we had a 300 million dollar
financing, then 270 of that 300 in
principal would need to be paid off by the
authorities after the end of the contract.
But there would be enough cash to pay the
operating expenses and the interest
expenses over the life of the contract in
that scenario.

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

MR. MORASH: Yes.

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

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

In addition, we went back and
looked. In reviewing the earlier testimony, I was shocked to see the number of false-positives that people had testified about. False-positive being a recording of a violation and sending of a violation notice to someone who was not, in fact, in violation.

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

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

MR. MORASH: Well, the allowance was that if the contract was not complied with by the contractor, that there would be liquidated damages provisions or other means of assumed compensation for the failure to perform.
CHAIRMAN WISNIEWSKI: And that would then offset --

MR. MORASH: The cost associated. That is exactly what the concept of liquidated damages is. I have an agreement with you. If I fail to perform and you incur a cost, your liquidated damage is I pay you the cost you incur.

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

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

There were a number of minor revenue streams, such as, you know, parking or customer service center providing services for other toll roads or
what have you that constituted 6 percent
of the projected revenues. They did not
spend any time on those other revenue
streams.

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

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

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

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

CHAIRMAN WISNIEWSKI: Explain
for the committee and myself the
difference, if you can -- or maybe counsel
can -- you are using the term "limited
guaranty." Is there a difference between
that and a guaranty?

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

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

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

So they weren't looking to these
cash flows and the cash reserves to be
able to provide current servicing of interest at operating expenses over the life of the contract.

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

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

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

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

CHAIRMAN WISNIEWSKI: One of the issues that came up in testimony earlier
was the issue that this had been a
privately placed finance as opposed to it
being sold in the public markets. And
there was some controversy surrounding
that in the sense that if this was a
really good issue, if this was truly a
good deal, it would have been publicly
placed as opposed to privately placed.
Can you address that?

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

They have professional
investment managers. They have legal
departments. They have credit
departments. And there is an enormous
amount of due diligence and scrutiny that
takes place.

These are big insurance
companies and banks that themselves are
subject to close regulation. And their
portfolios are audited by their regulators
on a regular basis.

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

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

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

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

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

Well, again, the institutions
that were involved in investing in the
transaction had -- each had their own
lawyers, each had their own credit department review. And then there were sophisticated professional investment managers who sought and obtained the approval to invest in the transaction. And they couldn't do that without doing a detailed review of the structure of the transaction, writing it up internally, presenting it to their management for approval.

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

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

So there was a significant public sector review done at the time by a large number of attorneys, the Treasury,
and each of the individual authorities.

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

MR. MORASH: That's correct.

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

MR. MORASH: Typically, yes.

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

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

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

MR. MORASH: Yes.

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

MR. MORASH: This was a taxable
financing.

CHAIRMAN WISNIEWSKI: Why was that?

MR. MORASH: The first alternative we investigated was the possibility of tax exempt financing. But because the revenue stream on the fiber optic side was a private purpose, it was not possible to get a clean tax exempt that the financing could be done as a tax exempt financing.

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

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

CHAIRMAN WISNIEWSKI: Yes.

MR. MORASH: Yes.

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

MR. MORASH: We looked at that.
And there are two components. Savings, if you stood today and looked back four years.

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

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

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

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

CHAIRMAN WISNIEWSKI: You are saying "make whole"?

MR. MORASH: Make whole to the
existing fixed rate lenders.

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

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

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

MR. MORASH: Yes.

CHAIRMAN WISNIEWSKI: Why is that?

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

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

So they want to make sure that when they put money out on a fixed rate basis, when interest rates decline, that they get protection for having to re-invest at a lower interest rate. And that is the market convention.

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

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

MR. MORASH: Yes.

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

MR. MORASH: Yes.

CHAIRMAN WISNIEWSKI: The people across the table from you when you are negotiating, do they traditionally have expertise and people assisting them of any type or character?
MR. MORASH: There is generally more finance expertise. Particularly, you know, the attorneys involved would be finance attorneys as opposed to litigation attorneys.

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

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

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

MR. MORASH: Correct.

CHAIRMAN WISNIEWSKI: Is he perhaps a financial attorney?

MR. MORASH: No.

CHAIRMAN WISNIEWSKI: Do you know what his specialty was?

MR. MORASH: He is a litigator.

CHAIRMAN WISNIEWSKI: As I understand it, your negotiations with
Mr. Gross on this deal started sometime after March 1997 when the contract was awarded?

MR. MORASH: That's correct.

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

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

CHAIRMAN WISNIEWSKI: Why was that?

MR. MORASH: As the election approached.

CHAIRMAN WISNIEWSKI: Which election?


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

MR. MORASH: Well, the review conducted by the State Treasurer's office of the transaction, which was supposed to have been what was necessary to getting the approval of all state authorities, was
completed in September of '97. And then
the transaction went cold until January of
1998, when the negotiations began in
earnest, leading to the March of --
March 10, 1998 closing.

CHAIRMAN WISNIEWSKI: Thank you.
Assemblyman Impreveduto.
ASSEMBLYMAN IMPREVEDUTO: Thank
you, Mr. Chairman.

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

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

So I only know anecdotally that
they reviewed the transaction.

I know that they solicited other
proposals. Because we had a meeting in
August of '97 at the Transportation
Department where they said they had
competing proposals with different terms
and better rates, and there was some
re-negotiation of the interest rates. The
spreads were reduced by 10 basis points
for the fixed rate loan and floating rate
loan.

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

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

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

MR. MORASH: We approached 17
major institutions, both insurance
companies and banks, and we had a
syndicate, including ourselves and four
other investors.

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

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

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

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

ASSEMBLYMAN IMPREVEDUTO: Why
the term "true up"? We know he didn't
want to use the term "guaranty." But does
"true up" mean something that I am not
familiar with?
MR. MORASH: It began in the conversations as a colloquialism. And the discussion was that at the end of the contract, any and all unpaid expenses, including principal and interest of the bonds and past due interest and what have you, would be, quote, "trued up." In other words, paid.

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

MR. MORASH: Correct.

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

MR. MORASH: We focused on substance of the agreements which made clear, including the legal opinions issued
by all the law firms representing each of
the authorities, that they were obligated
to make this payment at the end of the
contract.

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

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

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

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

ASSEMBLYMAN IMPREVEDUTO: So we
know that he refuses to use the word
"guaranty" and prefers to use this term
"true up," which is not a business term?

MR. MORASH: That is correct.

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

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

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

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

MR. MORASH: Yes.

ASSEMBLYMAN IMPREVEDUTO: Did they give a reason for that?

MR. MORASH: There were several reasons. There was a concern about who would be first to market. The rental rates which MFS was assuming were higher than rental rates for other fiber optic systems. And there were competitors that
could potentially have offered similar
systems.

So those three reasons gave them
pause.

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

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

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

ASSEMBLYMAN IMPREVEDUTO: So
if it didn't vary more than 30 percent,
you would move forward?

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

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

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

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

I, quite honestly, have heard
testimony here saying to me is the smoking
gun, that Mr. Gross was aware of it and,
in fact, chose to ignore it purposefully
and to move forward an ill-fated,
ill-conceived idea.

And I thank you for your
testimony.

CHAIRMAN WISNIEWSKI:
Assemblywoman Stender.

ASSEMBLYWOMAN STENDER: Thank
you, Mr. Chairman.

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

MR. MORASH: Yes.

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

MR. MORASH: We ultimately after
the review of the Treasury concluded
provided under release letter this -- the
Coopers report to the state authorities.
It says what it says. We are in position
to release it. It is, in fact -- this
summary is included in the materials.

ASSEMBLYWOMAN STENDER: That we
have here?

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

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

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

But again, that was all
predicated on the system being complete,
placed in service in a 22-month contract
period, and it did not contemplate
significant false-positives.

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

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

Can you explain the relation?

You were the financial advisor to MFS NT. So did you have any dealings with Public Resources Advisory Group?

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

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

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

ASSEMBLYWOMAN STENDER: And did you find that they were in conflict or contradicted what you were -- did they --
MR. MORASH: There was always give and take. There was a lot of discussion that went on in determining what the model was.

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

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

MR. MORASH: Yes.

ASSEMBLYWOMAN STENDER: So that would explain why in this same testimony he said that the financial advisor presented a model showing a balance due of 161 million in 2008 as opposed to your
worst case that showed 270 million?

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

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

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

ASSEMBLYWOMAN STENDER: Because
that discrepancy is so --

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

So that when they revised the
projections in November of 2001 according
to the formulas that we agreed to with
them, then it became apparent that the
revenues were not going to be there to pay
off the bonds, and that there would be, in
their calculation, a 161 million dollar
shortfall.

ASSEMBLYWOMAN STENDER: Thank
you.

CHAIRMAN WISNIEWSKI: Thank you,
Assemblywoman.

Vice-Chairman Gusciora.

ASSEMBLYMAN GUSCIORA: Thank
you, Mr. Chairman.

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

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

MR. MORASH: That's correct.

ASSEMBLYMAN GUSCIORA: Section
2.
MR. MORASH: That is correct.

Although at the time of this letter, they had been awarded the contract.

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

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

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

MR. MORASH: Yes.

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

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

ASSEMBLYMAN GUSCIORA: What I am
told about that kind of arrangement,
particularly in a government contract, is
that there is a great motivation in
someone providing good numbers, a rosy
scenario so that the contract is awarded
to that party.

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

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

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

ASSEMBLYMAN GUSCIORA: Now, in
Section 1, in C it says that part of your
responsibility -- that same document -- is
to outline the structural alternatives
available for financing the project. The
alternatives examined will include various financing options, ownership structures, as well as risk return analysis.

Was that done for MFS?

MR. MORASH: Yes.

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

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

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

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

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

MR. MORASH: He was also in these discussions.

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

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

ASSEMBLYMAN GUSCIORA: And who was that financial advisor?


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

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

ASSEMBLYMAN GUSCIORA: Now, in Exhibit K, the letter of September 10, Steven Pizer.
MR. MORASH: That sounds familiar.

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

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

Could you tell us what that means?

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

ASSEMBLYMAN GUSCIORA: Now, do you know if Mr. Gross was aware of that
risk level being high?

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

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

MR. MORASH: Yes.

ASSEMBLYMAN GUSCIORA: Some people don't read letters.

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

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

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

ASSEMBLYMAN GUSCIORA: And then
I draw your attention to page 5. Under fiber revenue risk factor, risk level is high as well.

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

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

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

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

MR. MORASH: Well, while there is a large amount of automotive traffic between Atlantic City, Philadelphia and New York, there is also a large amount of
telecommunications traffic along those
same paths. And in particular, the
jumping off point for transatlantic
undersea fiber optic cables is New York,
Atlantic City.

So interconnecting there
likewise was a valuable telecommunications
link.

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

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

MR. MORASH: It was a joint
financing arrangement.

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

MR. MORASH: The New York State
Thruway had done that. MFS, in fact, had been responsible for that job. And it was -- I don't recall exactly the dates, but it was shortly prior to the New Jersey E-Z Pass submissions.

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

MR. MORASH: I do not.

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

CHAIRMAN WISNIEWSKI: Thank you. Assemblyman DeCroce.

ASSEMBLYMAN DeCROCE: Thank you. Can you tell me what was more important to Newcourt, was it the sale of fiber optic cables or was it the repayment based on the fines that were apparently estimated?

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

ASSEMBLYMAN DeCROCE: So fiber optic played a large part?

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

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

MR. MORASH: No.

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

MR. MORASH: No.

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

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

ASSEMBLYMAN DeCROCE: Do you feel there is any less legal validity to a signed contract called a "true up"?
MR. MORASH: No. It's what the contract says and what the legal opinions of the authorities say about their authority to enter into the contract, and that it is valid, binding and enforceable in accordance with its terms.

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

MR. MORASH: I do not.

ASSEMBLYMAN DeCROCE: Thank you.

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

Assemblyman Bodine.

ASSEMBLYMAN BODINE: Thank you, Mr. Chairman.

Just a couple quick questions. Does Newcourt typically use guaranties when financing projects such as this?

MR. MORASH: It's common in many project financings that there are a series of contractual arrangements which when
pieced together provide a basis for lenders to have comfort that they will be repaid.

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

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

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

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

The lenders bear some risk in the level of traffic, but not in the question of collection of tolls and
violations.

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

ASSEMBLYMAN BODINE: Thank you.

CHAIRMAN WISNIEWSKI: Thank you,
Assemblyman.

Just two brief questions,
Mr. Morash.

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

MR. MORASH: That is correct.

CHAIRMAN WISNIEWSKI: What
percentage of the overall issue?

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

CHAIRMAN WISNIEWSKI: So roughly
a third?

MR. MORASH: Yes.
CHAIRMAN WISNIEWSKI: Was that a typical level of participation for Newcourt, to buy a third of an issue or over a hundred million dollars?

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

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

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

MR. MORASH: We sold all of them.

CHAIRMAN WISNIEWSKI: You sold all of them?

MR. MORASH: Yes.

ASSEMBLYMAN IMPREVEDUTO: Why was it necessary to take the 110 some odd million? You said you had to.
MR. MORASH: Because the transaction was still being negotiated, and we had to turn our attention to the negotiations and the resolution of all open issues necessary to close the transaction in March.

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

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

MR. MORASH: It was a timing question.

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

MR. MORASH: Yes.

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

MR. MORASH: Three months.

ASSEMBLYMAN IMPREVEDUTO: Within
Mr. Morash, I draw your attention to the letter that was written concerning the financial models, which I think is Tab M, memorandum of January 24, '98.

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

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

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

MR. MORASH: That's correct.
CHAIRMAN WISNIEWSKI: Okay.

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

CHAIRMAN WISNIEWSKI: So more
means less?

MR. MORASH: More means less.

CHAIRMAN WISNIEWSKI:
Assemblywoman Stender.

ASSEMBLYWOMAN STENDER: Thank
you, Mr. Chairman.

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

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

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

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

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

So it's not unusual for there to
be a public/private partnership that
allocates risk and responsibility to private sectors.

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

MR. MORASH: It was not typical.

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

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

ASSEMBLYWOMAN STENDER: You are saying that because of the change in the federal tax law that it's become more common for taxable bond projects to be done publicly?
MR. MORASH: Yes.

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

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

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

MR. MORASH: No matter what.

ASSEMBLYWOMAN STENDER: Thank you for explaining that.

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

MR. MORASH: If it had been our
intent to try to hide this from the public, we would not have insisted on the accounting letter and procedures that led to these hearings. It was never our intent to hide anything. In fact, it was to our benefit to shine the light of day on everything.

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

ASSEMBLYWOMAN STENDER: I agree with you to a certain -- I don't think that you were creating this mushroom policy out there for public purposes to be able to go out and stand up on a podium as the governor of the State of New Jersey and try to convince people what a great job you are doing at producing projects with no money down and no cost to the taxpayers. But clearly that is what was going on with this. The state was being duped. We were being deceived.
Somebody was making a lot of money, and it wasn't the taxpayers of the state that were getting the benefit.

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

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

ASSEMBLYWOMAN STENDER: Thank you.

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

Assemblyman Gusciora, do you have a brief question?

ASSEMBLYMAN GUSCIORA: Yes.

What I find I just can't resolve right now is your testimony -- and you're Newcourt,
correct -- and the testimony of Ed Gross, who came here only a few weeks ago.

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

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

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

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

So how do we get that quantum
leap from risk factor high to his
testimony? How would you characterize his
testimony as saying that you were
satisfied with the financing scheme?

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

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

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

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

We took that position from the
start, and we never varied from it.
CHAIRMAN WISNIEWSKI: Thank you, Assemblyman.

Assemblyman Impreveduto.

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

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

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

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

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

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

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

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

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

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

MR. MORASH: He was the lead, and, therefore, he could take initiatives and ask for things to be done. But he was not in a position to make binding commitments on behalf of the other
That was one of the difficulties of this entire project. There were significant economic benefits associated with authorities working -- there were significant economic benefits associated with the authorities working together. There was one customer service center rather than five. One violations processing center rather than five. And the five together were able to generate more fiber optic revenues than -- as their right-of-way as a package was worth more than the pieces.

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

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

MR. MORASH: No. They were
still pretty independent.

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

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

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

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

MR. MORASH: Ultimately, yes.

ASSEMBLYWOMAN STENDER: Thank you.

CHAIRMAN WISNIEWSKI: Thank you, Assemblywoman.

Thank you members of the committee.

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

(Break taken.)
CHAIRMAN WISNIEWSKI:

Commissioner, thank you for your
indulgence in allowing the court reporter
to exercise her fingers.

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

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

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

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

And ultimately, you were
Commissioner of the Department of
Transportation at the infancy of the
process called E-Z Pass. And I believe it
would be beneficial for us to have a
little exchange about that.

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

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

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

CHAIRMAN WISNIEWSKI: Thank you.

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

COMMISSIONER WILSON: I was
appointed in March of '94, and I left that
post in December of '96.

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

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

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

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

CHAIRMAN WISNIEWSKI: And that
is the firm that you went to immediately
upon leaving as Commissioner?

COMMISSIONER WILSON: Yes.

CHAIRMAN WISNIEWSKI: What is
the name of that firm?

COMMISSIONER WILSON: AECOM.

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

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

And they were developing a whole
series of plans and programs to enhance
congestion relief, air quality, customer
service throughout the northeast corridor
section of I-95, say Boston into
Washington.
And this program had been discussed for some time, my recollection is 12 to 18 months, in a rather serious way before I had arrived.

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

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

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

CHAIRMAN WISNIEWSKI: At some point in time either yourself as Commissioner or someone within the hierarchy of state government decided we should implement electronic toll
Can you speak to when that happened and how that process happened?

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

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

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

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

Who made that decision? Was that something that you made as Commissioner?

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

CHAIRMAN WISNIEWSKI: Who else did?

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

What was required was a discussion with a number of transportation leaders and, say, perhaps officials as well within a number of organizations to get their consent to join this consortium. Because the concept was that this project was not a New Jersey project. Given how frequently and easily our
constituents or residents changed geographic borders, the notion was and the understanding was by virtue of working in this corridor, I-95 Corridor Coalition, a number of independent agencies were going to go ahead and install their version of E-Z Pass.

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

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

CHAIRMAN WISNIEWSKI: Now, in New Jersey the formal organization that was created was a consortium among the three toll road agencies; correct?
COMMISSIONER WILSON: The consortium was the entity that was created to embrace all the constituents in the program.

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

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

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

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

By virtue of my participation
and the toll road participation, this I-95 Corridor Coalition, we certainly were aware of the interest and the plans of these entities to move these programs forward.

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

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

How did that come to pass? Who chose the Turnpike as the lead agency? Who chose the structure of that organization? We've been told from
testimony that there was an executive council comprised I would assume of members of those organizations.

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

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

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

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

CHAIRMAN WISNIEWSKI: It is your testimony Ed Gross was the lead because he
was the Executive Director of the
Turnpike? And the Turnpike -- it wasn't a
conscious point, we need to make Ed Gross
the lead on this?

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

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

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

For instance, my counterparts in
Delaware and the Port Authority did, as
well.
CHAIRMAN WISNIEWSKI: Was it that executive council that then had responsibility for formulating the Request for Proposals that ultimately were sent out to entities like Lockheed Martin and MFS?

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

There were two levels in development of the RFP.

CHAIRMAN WISNIEWSKI: At some point in time after the technical people that worked for the various agencies put together documentation constituting a Request for Proposal, it came to this executive council. And the executive council looked at it and said, yes, this is what we want to do, or no --
COMMISSIONER WILSON: The exact way that would have happened is the proposal would have went to the technical staff to review and make any comments. And at an executive council meeting, the decision would have been made to go with that particular RFP.

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

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

Were you aware at that time when this was being formulated that the Request for Proposal was asking the bidders to suggest or to respond on how the system could generate revenue?
COMMISSIONER WILSON: Yes.

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

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

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

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

CHAIRMAN WISNIEWSKI: Just so I can understand, you are saying your
technical people thought it would be
difficult to assign a cost to this
project?

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

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

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

There were individual roads
around the country that advanced projects
similar to this. And the estimates that
had been prepared were indicative of what
it would cost to put this kind of project
in on a road that had "X" number of lanes,
tollbooths. But comparing "X" to what
this Consortium had amassed was not
appropriate.
So the technical evaluation that had been done was viewed as a data point, a benchmark, but not as something that was indicative of how the market would react.

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

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

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

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

We just assembled this, as the witness before me said, very valuable
consortium in terms of just the real
estate. You know, the message would have
been is there any way to share the
benefits of doing that with the state or
with the consortium?

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

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

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

COMMISSIONER WILSON: Yeah.
Yes.

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

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

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

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

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

And none of the member agencies knew enough about how to be prescriptive and structure a bid, let's say. And so what it really did was it operated to make
a procurement more open so the bidders
could propose those things.

      CHAIRMAN WISNIEWSKI: So

basically, in receiving the responses to
the Request for Proposal, the member
agencies were evaluating a variety of
criteria for which there was no uniform
benchmark?

      COMMISSIONER WILSON: That is
correct.

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

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

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

      COMMISSIONER WILSON: We had an
obligation under that procurement method
not to reveal competitive information or
advantage.
So when the bidder proposed the certain method, there was an obligation on the state to evaluate that method, but not to share that with any other bidder. And the bidders were free to propose any method they wanted.

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

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

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

The real lesson of that is the projections made by bidders on the revenue enhancements, on what they would project as being able to be extracted from the system as revenue offsets to the cost,
since it was novel and untried, wasn't there a concern that there is an incentive, in a sense, for bidders to guild the lily, so to speak?

   COMMISSIONER WILSON: No. There was not a concern about that. I didn't have a concern about that.
   I can't say what others were concerned about.
   CHAIRMAN WISNIEWSKI: But you understand --
   COMMISSIONER WILSON: Absolutely. And the reason that I didn't have a concern about that was that there is more leverage that we had rather than to have to make a judgment as to whether this was effective or not.
   We heard a lot of testimony this morning about a private sector vendor coming to the state and saying it needed to accept risk.
   Well, you can just as easily turn that around. The bidders that bid to us were considerable bidders with considerable resources. And the state
could easily have said to them, you accept
the risk. It's your balance sheet
exposed.

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

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

So that was an option.

CHAIRMAN WISNIEWSKI: And
perhaps this took place after you left.
Apparently that was not an option that was
exercised here since the contract that
ultimately was executed carried no risk
for MFS. They were going to get paid
regardless of the performance of the toll
collection.
Is that your understanding of the contract?

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

CHAIRMAN WISNIEWSKI: I just wanted to run by you some of the people that we've heard from or we've heard testimony about, just to see if you have any understanding of what their role was. Clearly you understood what Ed Gross' role was?

COMMISSIONER WILSON: Yes.

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

COMMISSIONER WILSON: Yes, he was.

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

COMMISSIONER WILSON: Yes.

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

COMMISSIONER WILSON: He was the project manager for the consortium.
CHAIRMAN WISNIEWSKI: And he worked for one of the member agencies?

COMMISSIONER WILSON: He worked for the Turnpike.

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

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

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

COMMISSIONER WILSON: No.

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

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

CHAIRMAN WISNIEWSKI: Would it be fair to say that -- as Commissioner you
sit on the Board of Commissioners of the
Turnpike Authority?

COMMISSIONER WILSON: Of all the
toll roads.

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

COMMISSIONER WILSON: Yes.

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

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

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

COMMISSIONER WILSON: No.
CHAIRMAN WISNIEWSKI: So as a matter of course, they all routinely went to the Executive Director before they went out?

COMMISSIONER WILSON: Or the staff.

CHAIRMAN WISNIEWSKI: In August of '96, as I understand your testimony, or December of '96 is when you left the Department of Transportation?

COMMISSIONER WILSON: Yes.

CHAIRMAN WISNIEWSKI: But there was a period of time before you left when you had recused yourself from reviewing issues concerning the electronic toll collection system; is that correct?

COMMISSIONER WILSON: Correct.

CHAIRMAN WISNIEWSKI: Why was that?

COMMISSIONER WILSON: I issued a letter of recusal, a broad general letter of recusal, on any involvement with a specific list of firms. I issued that letter on August 20th of '96.

It wasn't until a few days
later, August 23rd, 25th, in that neighborhood, that I realized that my recusal would have to take effect on this procurement as well.

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

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

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

Daniel, Mann, Johnson and Mendenhall was not a bidder, but they had
corporate relations with another bidder that was on the other contract.

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

CHAIRMAN WISNIEWSKI: And the other firm was?

COMMISSIONER WILSON: Frederic R. Harris.

CHAIRMAN WISNIEWSKI: They were not a bidder --

COMMISSIONER WILSON: They were a subcontractor to MFS.

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

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

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

COMMISSIONER WILSON: Yes.

CHAIRMAN WISNIEWSKI: Was this
issue reviewed by the Executive Committee

on Ethical Standards?

COMMISSIONER WILSON: Yes.

CHAIRMAN WISNIEWSKI: And they

issued an opinion or they issued some

finding?

COMMISSIONER WILSON: Regarding

that recusal and this process?

CHAIRMAN WISNIEWSKI: Yes.

COMMISSIONER WILSON: My

recolletion is the recusal was upheld,

and I had no involvement with the

procurement in any way.

CHAIRMAN WISNIEWSKI: In August

of '96, or August 20 of '96 when you wrote

that recusal letter, at that point in time

had there been any activity in terms of

responses from bidders to the RFP?

COMMISSIONER WILSON: No.

CHAIRMAN WISNIEWSKI: Do you

recall when that RFP was sent out?

COMMISSIONER WILSON: Some

months prior to August, and I can't recall

when.

CHAIRMAN WISNIEWSKI: Our time
line shows that the Request for Proposals went out in April of '96.

COMMISSIONER WILSON: Could be.

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

COMMISSIONER WILSON: No.

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

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

CHAIRMAN WISNIEWSKI: In particular what we are looking for is conversations about the financing and the implementation. But you don't have any recollection of those?
COMMISSIONER WILSON: During that time period I am not certain, no.

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

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

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

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

And that was the extent of my conversations with her about this.
CHAIRMAN WISNIEWSKI: There was no -- outside the Governor, chief of staff, other people who speak for the Governor, was there any indication that this was an issue that the front office wanted to move forward? That this was something that the administration, one aspect or another, thought was important to bring to reality sooner rather than later?

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

So it was just between herself and myself.

CHAIRMAN WISNIEWSKI: When
former Executive Director Gross testified, his testimony was that you had requested or directed that a financing plan be attempted to allow for a financing stream to come from the electronic toll collection system.

Is that testimony accurate?

COMMISSIONER WILSON: Ask the question again.

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

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

CHAIRMAN WISNIEWSKI: When you say "price the project," you are talking about not only what it costs to install,
but what possibly could be generated?

COMMISSIONER WILSON: That's correct.

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

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

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

Assemblyman Vice-Chairman Gusciora.

ASSEMBLYMAN GUSCIORA: Thank you, Mr. Chairman.

Welcome, Commissioner. You are residing in Los Angeles right now?

COMMISSIONER WILSON: Yes.

ASSEMBLYMAN GUSCIORA: Are you originally from New Jersey?
COMMISSIONER WILSON: I would like to think so, but I was born in Philadelphia.

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

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

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

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

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

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

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

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

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

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

ASSEMBLYMAN GUSCIORA: And then when New Jersey decided to get on board, did anybody in our state call up another state and say, who's installing your
system there? Who are you using?

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

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

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

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

You said contractor involved. I assume you mean -- I shouldn't assume -- you mean those that implemented the system, not the core technology?
ASSEMBLYMAN GUSCIORA: That is correct. Because my understanding is Mark IV is installed in all the E-Z Pass. I am using E-Z Pass, but in Maryland and New York there is some other euphemistic name. But Mark IV is clearly used in other states.

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

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

In fact, it was the procurement process that really had to dictate which vendor, contractor, and all other subcontractors would be selected to do that. And that was a decision based on a
number of factors, which was experience, qualifications, cost, revenue sharing, a whole range of issues.

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

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

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

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

Did you ever get to the bottom
of that? I know you came before it
was -- you left before it was installed, I
believe. Did you take part in any of
those decisions or when the light bulb
went off in somebody's head that this was
a great idea?

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

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

COMMISSIONER WILSON: Yes.

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

COMMISSIONER WILSON: It's a
painful memory.

ASSEMBLYMAN GUSCIORA: We are
just trying to get to the bottom of this.
I am sure you were on a beach somewhere in
Los Angeles, so you --

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

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

COMMISSIONER WILSON: That's correct.

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

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

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

COMMISSIONER WILSON: Yes.

ASSEMBLYMAN GUSCIORA: But as far as the concept that the toll violations would pay for itself, you did
not even take part in those discussions?

COMMISSIONER WILSON: No, I did not.

ASSEMBLYMAN GUSCIORA: I have no further questions.

Thank you, Mr. Chairman.

CHAIRMAN WISNIEWSKI:

Assemblywoman Stender.

ASSEMBLYWOMAN STENDER: Thank you, Mr. Chairman.

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

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

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

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

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

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

    My recollection was that you couldn't go from the technical baseline to the cost baseline until this group evaluating the bids said, yes, that's what
we want. Yes, you are capable of delivering it. We feel that you understand what we are talking about.

Then you opened the cost proposal.

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

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

And then there were two other steps.

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

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

And the final one, the fourth step, would have been, okay, if you have
any bright ideas, if you have any
wonderful suggestions, if you have
innovative approaches that are going to
mean something valuable to the state, you
can talk to us about it. You can present
it, and we will consider it.

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

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

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

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

Everybody had to know it was
going to cost to implement the system, and
had to have an understanding that one way
or another the State of New Jersey was
going to have to pay for this.

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

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

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

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

Do you mean did we think it
could be completely funded? Or did we
think there was enough value here that
somebody could make serious profit and
might be willing to share some of it with
the state?
Which is your question?

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

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

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

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

We, I, State of New Jersey, had
no way of knowing who they invest with,
how much the float is. But you know at a
certain visceral level that there is some
value there.

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

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

What happened after that I can't
address.

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

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

ASSEMBLYWOMAN STENDER: Thank
you.

ASSEMBLYMAN GUSCIORA: Thank you, Assemblywoman.

Assemblyman DeCroce has questions.

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

Do you recall that?

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

ASSEMBLYMAN DeCROCE: On a daily basis?

COMMISSIONER WILSON: Yes, absolutely.

ASSEMBLYMAN DeCROCE: Wouldn't that have been the basis for some of these people coming up with this method of financing? Not that I am defending it, but wouldn't that be a possibility?
COMMISSIONER WILSON: The short answer is yes. But when you look at the concept that you are dealing with here, there are certain areas where there is clearly revenue. I mentioned float as one. You are mentioning violations as another. There are others.

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

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

ASSEMBLYMAN DeCROCE: Isn't it true that there was a delay in implementing the program because, number one, we didn't have the central collection bank to -- I don't know if you were here for that or not -- to process all the fines, if there were fines, and process the daily receipts.
And beyond that, wasn't it a fact that Whitman really wanted this to be implemented as soon as possible on her watch?

COMMISSIONER WILSON: I think what is fact is that this project was not implemented the way that it was conceived. And apparently, from what I read and from what conversation I've had with people, there are lots of reasons why it wasn't done the way it was originally forecasted.

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

ASSEMBLYMAN DeCROCE: But I think the overriding factor here, I think when people began to show their interest, whether it was Newcourt, MFS, or whoever it may have been, the overriding factor here was the fiber optic network that could have been developed specifically. Because they were considering deregulation or there was some talk about deregulating long-distance telephone. And, of course,
we had the ability to send a cable from
New Jersey overseas.

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

And in fact, my understanding or
recolletion is there was technically.

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

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

And then if you think about the
strategic location of New Jersey in the
northeast corridor. The gentleman before
me said there is substantial value just by
quirk of nature where New Jersey was.
So the point was, again, how does the government assess a value to that? It can't. So you just invite the market to do that and tell you what it's worth.

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

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

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

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

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

ASSEMBLYMAN DeCROCE: Thank you, Commissioner.

CHAIRMAN WISNIEWSKI: Assemblyman Bodine, do you have anything?

ASSEMBLYMAN BODINE: No.

CHAIRMAN WISNIEWSKI: Assemblyman Gusciora.

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

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

Because right now if you go through the E-Z Pass system and you don't have E-Z Pass, if you are not signed up for E-Z Pass, we will fine you $25. And there is only so many times -- but
this -- I guess it's considering that
everyone is going to be repeatedly
violating.

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

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

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

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

ASSEMBLYMAN GUSCIORA: And
signed onto that financing scheme anyway.
Pat Gilbert of the "Bergen Record" quoted you today as saying it was pretty bizarre.

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

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

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

If they weren't willing to take the risk -- and I heard today sitting in the audience that the vendor said they wouldn't do it. That is reason for the
state to re-think why it would do it.

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

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

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

COMMISSIONER WILSON: I think
the law or better oversight? Or what
protections can we put in that prevent an
E-Z Pass system from occurring again?

Do we need to have mechanisms in

there has been a lot of good, creative,

hard work done on this program. I know it

sounds kind of perverse given the problem

that we are dealing with here, but it was

a great concept. It was maybe flawed a
But being able to engage a vendor as a public/private partner is very valuable. We are seeing that all over the world. Not just in the states, not just in New Jersey, all over the world, that these partnerships are a preferred way of securing major programs like this.

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

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

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

A lot of things could have been
done here that would have put New Jersey
in a better place and the vendor in a
better place. And those things come in
many different forms.
I will give you an example. If
the vendor didn't want to take the risk
and the state didn't want to take the
risk, there are risk-takers out there. We
know them as insurance companies. They
take risks every single day. They risk on
you. I am sure you have life insurance.
They will do their own
actuarial. Let's say -- for example, this
80 million dollars we accrued on the fiber
side. Take a portion of that 80 million
dollars and buy, what, risk insurance.
Pay somebody to step up and take that
risk.
So if the program is good, and
you want down the road where you are
sharing information, you are sharing
revenues, you have somebody underwrite the
program for the state, which is a good
thing, then just be smart about how you
manage risk.
Every major hundred million, multi-billion dollar deal that is done today has a sophisticated risk management going into it. So you don't have to sit there and say, you take the risk, you take the risk. You bring a risk-taker to the party and have them do what they are engaged to do.

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

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

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

CHAIRMAN WISNIEWSKI:

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

Assemblyman Gusciora mentioned the "Bergen Record" article. I went through it myself. And one of the issues
that was raised, one of the statements,
was that essentially the article said that
if you were approached or if you were
asked to approve something that required a
guaranty, you would have said no.
Is that correct?
COMMISSIONER WILSON: Absolutely
correct.
CHAIRMAN WISNIEWSKI: My
question is, is that something that ever
rises to the level of Commissioner?
COMMISSIONER WILSON: Should
have.
CHAIRMAN WISNIEWSKI: It should
have. Are there mechanisms -- for
instance, in your testimony thus far this
morning we were talking about the creation
of the Request for Proposals, which you
said was done by technical people within
the agencies together at issue. And as
Commissioner, that is not something that
you particularly got involved in or
perhaps even signed off on. That was
their area of expertise.
COMMISSIONER WILSON: That is
CHAIRMAN WISNIEWSKI: And that is essentially what started the ball rolling in terms of the self-financing which ultimately led to the guaranty.

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

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

As Commissioner, at least the way it's structured in this state, sits -- as we mentioned before, as part of the executive committee, council, I was an ex officio member. I didn't own the toll road, they did. They are independent entities with independent boards, notwithstanding the fact that the Governor appoints the board members and the chair.
CHAIRMAN WISNIEWSKI: Isn't it true that the Commissioner of Transportation sits at that meeting and says, I don't think the Governor would be very happy with this --

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

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

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

COMMISSIONER WILSON: I would have thought that it did go before the board, but I don't know that for certain because I wasn't there. But it is the kind of thing you would want to know
CHAIRMAN WISNIEWSKI: At some point in time if it did come before the board, the Commissioner or someone said, let's do this?

COMMISSIONER WILSON: Apparently.

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

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

CHAIRMAN WISNIEWSKI: Yes, it is.

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

CHAIRMAN WISNIEWSKI: Let me back up the clock a little bit. Before the RFP was issued in April of '96 there was a prequalification process in which ultimately Chase Manhattan, Lockheed Martin, MFS NT, Valley National Bank were selected as prequalified bidders. What part in the prequalification process did
COMMISSIONER WILSON: No official part. I think I spoke with a number of those bidders who came by and wanted to talk to me about their interest in the project, the program, who they were, what they were doing, and to let me know that they were going to be participating in this prequalification process.

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

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

COMMISSIONER WILSON: No. My understanding of the strengths and weaknesses come in the form of -- I don't mean to be demeaning because it is a very serious part of the process -- but people coming on marketing calls. And they tell
you how wonderful they are and what they've done before and what they can do for you. And you sit and you listen.

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

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

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


CHAIRMAN WISNIEWSKI: That was the -- MFS submitted its response to the
RFP a month before you departed.

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

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

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

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

COMMISSIONER WILSON: No.

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

COMMISSIONER WILSON: No.

CHAIRMAN WISNIEWSKI: One of the things that is troubling -- I guess I conclude on this note -- is that while we heard the testimony from Mr. Gross, when we asked specific questions about
decision-making, whether it be on the
issue of the guaranty or true up
agreement, issues about the financing,
there was -- except for saying that in
retrospect the financing didn't work out,
there seemed to be a passing of the buck,
that decisions were made elsewhere. Other
people have testified saying that Ed Gross
was a decision-maker on E-Z Pass.

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

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

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

As I understand the process, Ed
Gross was responsible for getting the
Turnpike to accept or reject the offer.
And then on behalf of the consortium, he
would have acted as the -- call him what you want, coordinator, chairman, monitor for the consortium.

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

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

COMMISSIONER WILSON: Yes, absolutely.

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

COMMISSIONER WILSON: Yes.

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

The minutes of the toll road meetings, the commissioner meetings, are
they subject to being approved or
disapproved by the Governor?

COMMISSIONER WILSON: I believe
they are.

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

COMMISSIONER WILSON: Yes.

CHAIRMAN WISNIEWSKI: Thank you.

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

Meeting is adjourned.

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

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

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

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