

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

DOCUMENT  
FOLDER

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Investigation of W.P.  
Water Company, Inc. and  
W.P. Sanitary Company, Inc.  
Petition of W.P. Water  
Company, Inc., and W.P.  
Sanitary Company, Inc.,  
Application of W.P.  
Sanitary Company, Inc., for  
Approval of Abandonment of  
Service  
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Docket No.:  
I-00070114; P-00072313  
A-230550F2000

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100 Lackawanna SECRETARY'S BUREAU  
Scranton, PA

Wednesday, August 20, 2008  
Commencing at 10:00 a.m.

BEFORE:

EMBER S. JANDEBEUR, Administrative Law Judge

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BN-17609

## A P P E A R A N C E S

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JUDGE EMBER S. JANDEBEUR:

This is a continuing hearing in the matter of the application of Washington Park Sanitary and Washington Park Water with regard to a 529 proceeding. And I'm not going to read all the Docket numbers off. But let me go ahead and see who I've got here. I've got Kriss Brown and Rhonda Davidson. Who's going to take the lead for the PUC?

ATTORNEY BROWN:

I am.

JUDGE JANDEBEUR:

Okay. Mr. Brown. And Pennsylvania American Water, Michael Klein.

ATTORNEY KLEIN:

Yes, Your Honor.

JUDGE JANDEBEUR:

I'm going by the old sign-in sheet because I think the --- today's is still out there somewhere. Mr. Niesen.

ATTORNEY NIESEN:

Good morning, Your Honor.

JUDGE JANDEBEUR:

There you are, okay. Good. Okay. Do I

1 have Kim Borland here?

2 ATTORNEY BORLAND:

3 Yes, Your Honor.

4 JUDGE JANDEBEUR:

5 Okay. Good. And Joseph Albert? No.

6 Mr. Preate, I've got you here.

7 ATTORNEY PREATE:

8 Yes.

9 JUDGE JANDEBEUR:

10 Ms. Wong and Ms. Tunilo, I've got you

11 here for OCA. And who else do I have?

12 ATTORNEY GANNON:

13 Your Honor, it's Erin Gannon today.

14 JUDGE JANDEBEUR:

15 All right. Erin, okay. So no Darlene

16 today?

17 ATTORNEY GANNON:

18 Right.

19 JUDGE JANDEBEUR:

20 All right. Which one of you is going to

21 take the lead?

22 ATTORNEY GANNON:

23 I will.

24 JUDGE JANDEBEUR:

25 Okay. And who are the other people that

1 I see? Mr. Lash, I know you. Behind Mr. Lash is ---?

2 MR. KESSLER:

3 Scott Kessler with Pennsylvania America.

4 JUDGE JANDEBEUR:

5 Okay. And behind you is ---?

6 MR. GABAGE:

7 Pete Gabage with Aqua.

8 JUDGE JANDEBEUR:

9 Okay. And sir?

10 MR. KIRKWOOD:

11 This is Dale Kirkwood from PUC.

12 JUDGE JANDEBEUR:

13 Okay. Good morning, sir. And ma'am?

14 MS. ANDERIKA:

15 Joann Anderika with Bank of America.

16 JUDGE JANDEBEUR:

17 Okay. And behind you is with Mr. Preate.

18 Okay. So I know who I've got in front of me. Now, I  
19 think we left off --- you guys have to correct me if  
20 I'm wrong, I think we left off, Mr. Brown, you were  
21 going to finish presenting your case; is that correct,  
22 or had we finished up with you?

23 ATTORNEY BROWN:

24 No. We didn't start, Your Honor. I  
25 think where we were at was the Bank of America

1 encompasses to ---.

2 JUDGE JANDEBEUR:

3 Needed to be subpoenaed?

4 ATTORNEY BROWN:

5 Yes. To deal with those first and then  
6 proceed if need be with our case.

7 JUDGE JANDEBEUR:

8 All right. Well, which attorney wants to  
9 start off today? How do you all want to handle this?

10 ATTORNEY BROWN:

11 He's probably more familiar with the Bank  
12 of America status of that than I am.

13 JUDGE JANDEBEUR:

14 So we'll let you start off, Mr. Preate.

15 ATTORNEY PREATE:

16 Thank you very much, Judge.

17 JUDGE JANDEBEUR:

18 You're welcome.

19 ATTORNEY PREATE:

20 We were last here there was --- if my  
21 memory is correct, there was a short proceeding and  
22 what we were going to attempt to do was file an  
23 amended complaint on the Bank of America mortgages,  
24 there are three of them. On W.P. Water Company, Inc.  
25 and W.P. Sanitary Company, Inc., and these mortgages

1 were dated March 17th, 1990 to Hanover Bank of  
2 Pennsylvania. And there were --- and that's in the  
3 amount of \$55,000 that's recorded in mortgage book 157  
4 page 846 in Wyoming County. There's also a second  
5 mortgage in the amount of \$8,963.51 dated 3/16/1998,  
6 recorded in Wyoming County mortgage book 375, page 898  
7 and the mortgagee is Summit Bank. Then there's a  
8 third mortgage for \$8,963.51 and the mortgage company  
9 --- the mortgagor is W.P. Sanitary Company, Inc. of  
10 W.P. Water Company, Inc. The mortgagee bank is Summit  
11 Bank. It's dated March 16th, 1998 and it's in  
12 mortgage book 375, page 903 in Wyoming County. So  
13 there are two separate mortgages then that were taken  
14 out on the same day, recorded on the same day, June  
15 10th, 1998, but there are two separate --- obviously  
16 there are separate pages in Wyoming County.

17 JUDGE JANDEBEUR:

18 I think you switched the date there. You  
19 went from 3/16 to June 10th. Did you mean to?

20 ATTORNEY PREATE:

21 The date of the mortgages is 3/16/1998.  
22 The date of recordation is 6/10/1998.

23 JUDGE JANDEBEUR:

24 Okay. Got it. Thank you.

25 ATTORNEY PREATE:

1                   And those are the --- that's the last  
2 remaining obstacle to the final signing of the APAs  
3 was this mortgage. This mortgage had to be resolved  
4 in order for --- and that's the words in the document  
5 --- the APAs.

6                   JUDGE JANDEBEUR:

7                   Okay. Just hold one second. Mr. Klein,  
8 do you agree with that, that those are the only  
9 things ---?

10                  ATTORNEY NIESEN:

11                  Mr. Niesen.

12                  JUDGE JANDEBEUR:

13                  Oh, I'm sorry, Mr. Niesen. Excuse me.  
14 Mr. Niesen, do you agree with that?

15                  ATTORNEY NIESEN:

16                  Well, I agree with it to a point. Beyond  
17 that the W.P. Company's Mr. Kresge, as well as Kresge  
18 and Sons, need to file appropriate satisfaction pieces  
19 with the appropriate county offices.

20                  JUDGE JANDEBEUR:

21                  For these or for the one --- for the  
22 other ones?

23                  ATTORNEY NIESEN:

24                  For the large --- for the large mortgage.

25                  JUDGE JANDEBEUR:

1           Okay. Right.

2           ATTORNEY NIESEN:

3           As we understand what the W.P. companies  
4 are suggesting is that in order for them to want to  
5 file the --- or to be able to file these satisfaction  
6 pieces, this needs to be done first.

7           JUDGE JANDEBEUR:

8           This is in these three with Bank of  
9 America need to be done first?

10          ATTORNEY NIESEN:

11          Yes. These need to be done first.

12          JUDGE JANDEBEUR:

13          Okay. Just making sure I know what the  
14 --- this is.

15          ATTORNEY NIESEN:

16          From our perspective as a participant in  
17 the mediated resolution of this, we want to see and we  
18 insist that these large mortgages and mechanics liens  
19 be satisfied in appropriate fashion, I should say with  
20 proper corporate authorization showing that it can be  
21 done. That they be satisfied prior to the execution  
22 of the assets purchase agreement.

23          JUDGE JANDEBEUR:

24          Okay. Has anything happened since July  
25 22nd? What have you all been doing since July 22nd

1 towards that end?

2 ATTORNEY NIESEN:

3 There's been nothing done since July  
4 22nd. Again, what's been suggested is that the  
5 satisfaction pieces can't be recorded until these Bank  
6 of America mortgages are extinguished.

7 JUDGE JANDEBEUR:

8 Okay. So we're still at the right place  
9 where we ought to be. Thank you, Mr. Niesen.

10 ATTORNEY PREATE:

11 There's no question that this piece, this  
12 Bank of America piece has to be resolved. And that's  
13 what this proceeding today in my view is about.  
14 Because we have already signed for all of the  
15 agreements and the leases and satisfactions for the  
16 mortgages so the drilling company and the mechanic's  
17 lien's to the drilling company. Because we already  
18 have them. And I don't know where --- certainly I  
19 sent copies of this to all the participants.

20 JUDGE JANDEBEUR:

21 Okay.

22 ATTORNEY PREATE:

23 By agreement they would be filed once  
24 Bank of America is resolved.

25 JUDGE JANDEBEUR:

1 Let me ask you a question.

2 ATTORNEY PREATE:

3 Certainly.

4 JUDGE JANDEBEUR:

5 Between July 22nd and the subpoena for  
6 Bank of America, have you had discussions with Bank  
7 America on clearing these three encumbrances?

8 ATTORNEY PREATE:

9 I thank you for asking that question,  
10 because I was a little late getting here this morning  
11 because Bank America was calling what they call a  
12 panic fire drill. Here's what I have been --- I've  
13 heard from two --- and I want to put this on the  
14 record, two individuals at Bank America. Joann  
15 Anderika is here, but she's the local bank manager at  
16 507 Linden Street and she doesn't have any personal  
17 knowledge.

18 JUDGE JANDEBEUR:

19 Come on up.

20 ATTORNEY PREATE:

21 She's the boss. Are you the boss?

22 MS. ANDERIKA:

23 No, I'm not.

24 ATTORNEY PREATE:

25 Whatever. You're somebody that's

1 important over there because we do our banking with  
2 Bank America. Just we've known each other for 15  
3 years of something. But in any event here's who ---.

4 JUDGE JANDEBEUR:

5 Mr. Preate, hold on one second.

6 OFF RECORD DISCUSSION

7 JUDGE JANDEBEUR:

8 Continue, Mr. Preate.

9 ATTORNEY PREATE:

10 All right. Since the last meeting,  
11 we've, of course, had an amended complaint filed and  
12 personally served it on Joann Anderika.

13 JUDGE JANDEBEUR:

14 Okay. And then what happened?

15 ATTORNEY PREATE:

16 We also petitioned the Court for  
17 subpoenas.

18 JUDGE JANDEBEUR:

19 And you got them.

20 ATTORNEY PREATE:

21 And the Court gave us subpoenas --- we  
22 personally served them on Joann Anderika; correct?

23 MS. ANDERIKA:

24 Because I got the one subpoena, not the  
25 amended one.

1                   ATTORNEY PREATE:

2                   Well, that's right. There was another  
3 person in your office that got the amended complaint;  
4 correct?

5                   MS. ANDERIKA:

6                   Yes.

7                   ATTORNEY PREATE:

8                   Okay. Ray Colonna is here, he personally  
9 made the service on the bank. We waited and we waited  
10 and we waited. First notification that I had that  
11 there was a response coming from Bank America was late  
12 yesterday afternoon when a Jessica Cook up in Utica  
13 called. She is a quote, subpoena processing clerk.  
14 And she said that she had --- somehow the papers were  
15 lost and it just got to her desk and what are you  
16 looking for. And I told her we're looking for --- we  
17 have a lawsuit pending in the Pennsylvania Public  
18 Utility Commission. We've subpoenaed Joann Anderika.  
19 We want her to appear with the documents indicating  
20 what's the status of these three mortgages. She says  
21 I don't know what the status of the three mortgages  
22 are. I'm just a subpoena processing clerk. So we  
23 moved on. Then she said she would be looking and  
24 talking to some --- look around and talk to people.

25                   This morning about 9:20, 9:25 I received

1 a call from a Mark Zuboff, Z-U-B-O-F-F, in Charlotte,  
2 North Carolina. He is a paralegal. He describes  
3 himself as a paralegal. And he said that he doesn't  
4 know anything about this matter. Knows nothing. He  
5 said what's happening? I told him again it was a  
6 proceeding here. I said we're going to move for a  
7 default judgment at 10:30 this morning against Bank  
8 America for failure to file an entry of appearance and  
9 failure to file an answer to our amended complaint.  
10 He said I'll get back to you.

11                   The next person that called was Jessica  
12 Cook again. That was about 20 to 10:00 this morning.  
13 At which she says as follows. She has been able to  
14 locate the three mortgages on the computer, on the  
15 computer. She said that their computer is showing  
16 that the mortgages were closed, quote, unquote,  
17 closed. She doesn't know what that means, but the  
18 computer is saying closed, July --- the two mortgages  
19 were closed July of 2005 and there was another  
20 mortgage closed in February of 2005.

21                   So their system is showing the three  
22 mortgages are closed. But they could have been closed  
23 earlier she said, but that's the dates that they have  
24 they're closed. She says I need to find an officer,  
25 whoever that would be, who would know more about it.

1 And she said I can't tell you any more than what the  
2 computer is showing. I don't know where the files  
3 are. I don't know who's in charge. She is the  
4 subpoena processing clerk. So that's where we are.

5           And I, therefore, am prepared to move and  
6 will have a motion prepared right now that was --- and  
7 ask this Court to enter a default judgment against  
8 Bank of America deeming admitted the allegations in  
9 our amended complaint and entering an order because  
10 there's --- these mortgages were obviously not  
11 approved by the PUC. They were mortgages that are  
12 marked --- the system has marked them closed. My  
13 client and our allegation in the amended complaint is  
14 that these --- we believe that these mortgages were  
15 already paid off. That the allegation is further that  
16 there hasn't been a single bill, invoice, phone call,  
17 letter from anybody at Bank America, Summit Bank or  
18 Hanover Bank since the beginning of the --- since the  
19 late 1980s, that would indicate that --- or even a  
20 lawsuit, that would indicate that these are continuing  
21 to be viable open mortgages. So you know, banks are  
22 usually very good at --- we heard deficient for a  
23 month or two, they're calling, they're writing to you,  
24 they're sending you letters. My clients have not  
25 received any communication from all three of those

1 banks or any of those banks, indicating that these  
2 matters are still open. They believe, as been heard  
3 here in our amended complaint, that those mortgages  
4 have already been satisfied. So we ask, therefore,  
5 that the --- since there's no appearance entered by  
6 counsel, and no answer that's been filed even though  
7 there's been proper service, that the Court enter a  
8 default judgment against Bank of America on these  
9 matters.

10 JUDGE JANDEBEUR:

11 Okay. And Ms. Anderika, you are not an  
12 attorney?

13 MS. ANDERIKA:

14 No, I'm not.

15 JUDGE JANDEBEUR:

16 And you didn't come with an attorney for  
17 Bank of America today?

18 MS ANDERIKA:

19 No, I did not.

20 JUDGE JANDEBEUR:

21 So your only intent was to appear as a  
22 witness for Bank of America?

23 MS. ANDERIKA:

24 I was --- I'm here because Bank of  
25 America had urged me to come to see what these filings

1 are about and Ernie had said he wanted me here.

2 JUDGE JANDEBEUR:

3 Okay. What is --- are you familiar with  
4 the process that Mr. Preate would go through to verify  
5 in the Court of Common Pleas that these encumbrances  
6 have been cleared?

7 MS. ANDERIKA:

8 No, I'm not.

9 JUDGE JANDEBEUR:

10 Mr. Preate, are you?

11 ATTORNEY PREATE:

12 Yes, Your Honor.

13 JUDGE JANDEBEUR:

14 What process would you go through through  
15 the Court of Common Pleas to clear these encumbrances  
16 on the title?

17 ATTORNEY PREATE:

18 There is a statute in Pennsylvania, that  
19 regulates how a bank is sued over the closure of  
20 mortgages. And that requires --- that statute  
21 requires that you send by certified mail the various  
22 pieces of information that you have concerning that  
23 mortgage. When it was taken out, who was the  
24 mortgagor, who's the mortgagee. The amounts, the  
25 various pages and the mortgage books. The allegation

1 that it was satisfied. And so there's a list in the  
2 statute that indicates what you have to notify them  
3 of.

4 JUDGE JANDEBEUR:

5 Who's the you? Who's the you?

6 ATTORNEY PREATE:

7 That ---.

8 JUDGE JANDEBEUR:

9 The mortgagee or the mortgagor?

10 ATTORNEY PREATE:

11 Well, we --- that is the mortgage ---  
12 W.P. Water and W.P. Sanitary have to notify by  
13 certified mail the bank, the mortgagor.

14 JUDGE JANDEBEUR:

15 Have you done that?

16 ATTORNEY PREATE:

17 Yes, we have.

18 JUDGE JANDEBEUR:

19 When?

20 ATTORNEY PREATE:

21 We did that the first week of August. So  
22 that's at 60 --- you have to wait 60 days under the  
23 statute for that to expire. If the bank doesn't  
24 satisfy under the statute within 60 days of the date  
25 of receiving the letter, then the mortgages are deemed

1 satisfied --- or you file. You're permitted to file a  
2 cause of action in the Court of Common Pleas and the  
3 damages are the amounts of the mortgages plus costs  
4 and attorney's fees. So that would be approximately  
5 \$75,000 plus costs and attorney's fees. That's what  
6 we're looking at against the Bank of America. To do  
7 that that would be done in March --- excuse me, in  
8 October of 2000 --- first week of October of 2008.

9 JUDGE JANDEBEUR:

10 Okay. I think we discussed this July  
11 22nd, that under the PUC statutory provisions and  
12 under the motion that apparently you've got prepared  
13 in front of you, even assuming we deem admitted all of  
14 the facts you put in your original motion, that Bank  
15 of America failed to respond to, even if you get an  
16 order from me saying these encumbrances are waived or  
17 are void or whatever the word in the statute, my  
18 statutory sections say, it's not going to get you what  
19 you need. You still need exactly what you're talking  
20 about with the Court of Common Pleas. And apparently  
21 you have in the works now with the 60-day turnaround.

22 So we can finish this out, but you still  
23 need to clear the title under civil law, not admin  
24 law. So you still need to finish that action. And  
25 that's what's --- I wouldn't think that the agreements

1 are going to be signed until that happens.

2 ATTORNEY PREATE:

3 It's my understanding, Judge, that doing  
4 a little bit of title work on my own, and you're  
5 absolutely right. Mr. Niesen has indicated and I  
6 agree, that there has to be --- that the PUC's order  
7 doesn't give you clear title. It puts a cloud on the  
8 mortgage, the validity of the mortgage, but you still  
9 have to go through the proceeding of a lawsuit, unless  
10 Bank of America somehow finds these papers that their  
11 system has said has been closed for three years, and  
12 been inactive for over ten, a minimum of ten and  
13 possibly 15 to 17 years, and unless they find them  
14 they'll either come in with a lawyer --- but respond  
15 not here but the appropriate place for them to respond  
16 now is to that certified letter. That's what they  
17 have to --- today is one part of the step. And I  
18 would then move to have the default judgment entered  
19 here.

20 JUDGE JANDEBEUR:

21 Okay. Well, I'm going to have to take  
22 that under advisement. I don't have an immediate  
23 answer for you because there isn't a Bank of America  
24 attorney here to respond either. I'll have to look at  
25 it. Where do you all want to go with this today?

1 This is your action, Mr. Preate, and it's, I guess, a  
2 joint action by you, Mr. Brown. You've got parallel  
3 motions. How do you all want to handle it?

4 ATTORNEY PREATE:

5 I just want to put on the record, Judge,  
6 is this certified letter I sent to the Bank of America  
7 under the statute, Mortgage Satisfaction Act 21 PS  
8 Section 721 was by my letter to Michelle Harrison,  
9 branch manager, Bank of America, 507 Linden Street,  
10 Scranton, PA, 18503. The letter was dated as I said  
11 24 July, 2008. I have the certified mail signed for  
12 on July 25th, 2008. So that after the 60 days runs  
13 from that date and we're looking at October ---  
14 September 25th, not far from here, a little bit over a  
15 month from now.

16 JUDGE JANDEBEUR:

17 Okay. That brings me back to the  
18 question I posed. This is your action, Mr. Preate,  
19 and your action, Mr. Brown. What do you all want to  
20 do with it and what do you want to do with today?

21 ATTORNEY PREATE:

22 I move for a default judgment against  
23 Bank of America.

24 JUDGE JANDEBEUR:

25 There's more to both of your actions than

1 that part. I said I would take that under advisement.

2 ATTORNEY PREATE:

3 Oh, okay. You wanted to know what we  
4 wanted to do. That's what we want to accomplish  
5 today.

6 JUDGE JANDEBEUR:

7 Okay.

8 ATTORNEY PREATE:

9 I don't know of anything else that Kriss  
10 might have but ---.

11 ATTORNEY BROWN:

12 I have no objection to that. But it's  
13 still our position that the tax liens and mortgages by  
14 Kresge and Sons are invalid and should be stricken so  
15 for various reasons.

16 JUDGE JANDEBEUR:

17 Okay.

18 ATTORNEY BROWN:

19 And we are concerned about constantly  
20 pushing this off because they said they got a deal. I  
21 don't know what does it get us in a month when that  
22 action occurs in the Common Pleas Court, what's going  
23 to happen then?

24 ATTORNEY PREATE:

25 We file a complaint and we allege under

1 the Mortgage Satisfaction Act the various things that  
2 I've just described. We sent them certified mail.  
3 It's been received. That they haven't answered in by  
4 the 25th of September, we're going to go collect  
5 \$75,000 plus costs and attorney's fees from them. So  
6 that's a big hammer. And they have now --- the clock  
7 is running. I don't know, what's today's date, the  
8 20th? So we're looking at 35 days they have to do  
9 something. Clearly they can't --- these proceedings  
10 are closed to them in my view. That's why I want a  
11 default judgment here. All right.

12                   And that default judgment, of course,  
13 doesn't clear the title, but at least it puts the bank  
14 again, under a lot of pressure. Now, my co-counsel  
15 has been talking to Bank America since February, Mr.  
16 Borland. And they've always come up with the same  
17 response. Different people come up with the same  
18 response, we'll look in to it. We'll try to find the  
19 documents. You tell them, Kim.

20                   ATTORNEY BORLAND:

21                   During the period since the last time we  
22 were here, Judge, I did speak with Beverly Carson who  
23 specialized at the Bank of America. She was unaware  
24 of the process that Mr. Preate was using and she  
25 wasn't --- I told her that we had accomplished the

1 complaint in the service, but she was disconnected  
2 from that process. And her inquiry was simply trying  
3 to determine whether they would voluntarily do this  
4 based on whether or not there had been any action on  
5 their side of it to prove satisfaction. And you know,  
6 no resolution on a voluntary basis from them just to  
7 do that.

8                   But I concur with what Mr. Preate says  
9 and that is it's not just a matter of now Bank of  
10 America ignoring the process and simply not  
11 participating and not having any risk. Their risk now  
12 is not simply non-collection, the monies that we say  
13 they're not even owed, but their risk is that they're  
14 going to pay an amount of some \$73,000 or some \$83,000  
15 plus attorney's fees and costs, under the statute. So  
16 they're going to have a penalty. And if they fail to  
17 respond, that's what's going to happen. I want to  
18 emphasize, we're aware of no defense the Bank of  
19 America can make. We don't believe there's any  
20 evidence that they have that will support that they  
21 have a claim, period.

22                   JUDGE JANDEBEUR:

23                   Why?

24                   ATTORNEY BORLAND:

25                   Because they haven't presented it.

1                   JUDGE JANDEBEUR:

2                   Well, what is your client's position on  
3 these three mortgages? Have they been paid?

4                   ATTORNEY BORLAND:

5                   The client's position is that they were  
6 paid by the cashing in of certificates of deposit a  
7 number of years ago. And unfortunately, we do not  
8 have documentation or paperwork on our side of it that  
9 concludes that. But that's my client's position and  
10 supported by, you know, evidence from the sons of Mr.  
11 Kresge who were aware of the transaction and knew what  
12 had happened in order to clear some other issues with  
13 Laurel Lakes.

14                   ATTORNEY PREATE:

15                   In all of the property of Laurel Lakes  
16 and that money also was used to pay off these  
17 mortgages.

18                   ATTORNEY BORLAND:

19                   So all of this time we've been dealing  
20 with Bank of America, first informally, second by  
21 means of these complaints, they have never said that  
22 they have any indication that they're owed any money.  
23 And unfortunately, their position has simply been we  
24 don't know, we're not going to deal with it. You  
25 know, we're not --- now we not only have their

1 attention, but they're at risk. They're at risk with  
2 a substantial amount of money. So frankly, I believe,  
3 that this matter will be concluded before we have to  
4 file a complaint. I don't think Bank of America is  
5 going to risk --- unless a complaint is filed, it's no  
6 longer a question of them just walking away and giving  
7 a satisfaction, they're at risk for over \$70,000,  
8 maybe close to \$100,000.

9 ATTORNEY PREATE:

10 That's right.

11 ATTORNEY BORLAND:

12 And so, you know, once that happens the  
13 whole game changes for them. By the end of September,  
14 they will be in the hole, and I don't have any reason  
15 to think that they have any defense to this. They  
16 haven't presented any, either informally or formally.  
17 They haven't shown up today. And if they had  
18 something to say, one would have thought that they  
19 would have said it by now. You know, either on the  
20 Beverly Carson path or this.

21 ATTORNEY PREATE:

22 And Jessica Cook or the Mark Zuboff, none  
23 of these people.

24 ATTORNEY BROWN:

25 Your Honor ---.

1                   JUDGE JANDEBEUR:

2                   Hold on one second. Your motion for  
3 default judgement, did you put --- you did put that in  
4 writing?

5                   ATTORNEY PREATE:

6                   I have it here today.

7                   JUDGE JANDEBEUR:

8                   Okay. Why don't you give a copy to the  
9 attorneys and one to me? And I assume in that you've  
10 got your legal citations for why you think that's  
11 appropriate?

12                   ATTORNEY PREATE:

13                   Yes, Your Honor.

14                   JUDGE JANDEBEUR:

15                   And as I said, I'm not going to give you  
16 a ruling on that. I will take it under advisement.  
17 Okay. Let's continue on. And Mr. Preate and Mr.  
18 Brown, did you discuss who was going to present their  
19 case first?

20                   ATTORNEY BROWN:

21                   No, we didn't. I think, Your Honor, that  
22 our concern is we can't move forward with the process  
23 for the settlement with the mortgages and mechanic's  
24 liens from Carl L. Kresge and Sons still present.

25                   JUDGE JANDEBEUR:

1 I think the Bank of America --- we're not  
2 going to be able to finish addressing today orally.  
3 Number one, I'm not comfortable not reading his motion  
4 and not looking at the law on bumping Bank of America  
5 out because they did not send anyone that can handle  
6 today.

7 ATTORNEY BROWN:

8 Understood, Your Honor.

9 JUDGE JANDEBEUR:

10 The other piece of that is that no matter  
11 what I do with it, he's still got to finish the other  
12 pieces. We've already had that long discussion in  
13 July. Are you saying you don't wish to go forward  
14 with the balance of your case? I'm not sure what  
15 you're saying.

16 ATTORNEY BROWN:

17 Well, that's what --- I would like to  
18 caucus if we could, Your Honor. Because this is new  
19 information. And I'd like to speak with the attorneys  
20 and at least Tom Niesen about this.

21 JUDGE JANDEBEUR:

22 Okay.

23 ATTORNEY BROWN:

24 Because I mean, we want to get this  
25 moving forward. And we'd like to have a hearing so we

1 can get the evidence in and we can have a ruling to  
2 try to move it forward at that time. But if it can be  
3 moved forward much sooner, we'd like that as well.

4 JUDGE JANDEBEUR:

5 Okay. Ten minutes?

6 ATTORNEY BROWN:

7 Yes, Your Honor.

8 JUDGE JANDEBEUR:

9 Okay. Why don't you all --- we'll go off  
10 the record and you all can have the conference room.

11 OFF RECORD DISCUSSION

12 ATTORNEY PREATE:

13 The comment that you just made, I want to  
14 make it clear that it's not that they didn't show, not  
15 that. --- it's number one, a notice the plea under  
16 Pennsylvania law was attached to the pleading.

17 JUDGE JANDEBEUR:

18 You said that. But they did not answer.

19 ATTORNEY PREATE:

20 And they have not entered an appearance,  
21 number one. Number two, they have not filed an answer  
22 in the appropriate days. Thirty (30) days has gone by  
23 since that was served on them. And today is the date  
24 for the hearing on this matter and they haven't shown  
25 up with a lawyer. They haven't appeared with ---

1 filed any documents. So, therefore, under  
2 Pennsylvania Civil Procedure, which I think still has  
3 some validity in the Public Utility Commission Law,  
4 that's a default judgement. And that's why we move  
5 for it. I'd like to caucus with Mr. Brown and others  
6 to see where we are.

7 JUDGE JANDEBEUR:

8 We're back off the record. You all have  
9 ten minutes.

10 SHORT BREAK TAKEN

11 JUDGE JANDEBEUR:

12 Back on the record. Mr. Brown?

13 ATTORNEY BROWN:

14 Yes, Your Honor. I think we've come to  
15 agreement to proceed with the --- on a motion on  
16 mostly documentary evidence. There's going to be some  
17 brief testimony to my understanding by Carl Kresge  
18 regarding the transfer of ownership of Carl L. Kresge  
19 and Sons, that transfer, when that took place and who  
20 has ownership. Now, by doing that, they're not  
21 challenging whether they're an affiliating interest or  
22 not. But we want to get that testimony in.

23 JUDGE JANDEBEUR:

24 Now, before we do that --- and you're  
25 going to start, Mr. Brown?

1                   ATTORNEY BROWN:

2                   Actually, Ernie is going to start with  
3 his client. Are you okay with that, Ernie?

4                   ATTORNEY PREATE:

5                   That's fine, Judge. I just want to get  
6 this brief testimony out on the record. My client  
7 wants to clear up who owns Carl Kresge and Sons.

8                   JUDGE JANDEBEUR:

9                   Before we do that, I have one question.  
10 While you were in your conference, I reviewed your  
11 motion for default judgment. And that leads me to ask  
12 a question of you, Ms. Anderika?

13                   ATTORNEY PREATE:

14                   Anderika (corrects pronunciation).

15                   JUDGE JANDEBEUR:

16                   Are you here in response to the subpoena  
17 to your company?

18                   MS. ANDERIKA:

19                   Yes.

20                   JUDGE JANDEBEUR:

21                   Okay. That leads me to a question to  
22 you, Mr. Preate. Do you want to put on the record  
23 with Ms. Anderika as your witness whether or not she  
24 can provide any of the answers that you needed  
25 answered in the subpoena request?

1 ATTORNEY PREATE:

2 I'd be happy to do that, Your Honor.

3 JUDGE JANDEBEUR:

4 It's your call but ---.

5 ATTORNEY PREATE:

6 I would be happy to do that.

7 JUDGE JANDEBEUR:

8 I think before we move into the balance  
9 you might as well get the subpoena and your motion for  
10 a default out of the way.

11 ATTORNEY PREATE:

12 Thank you, Judge. I will. I'll call  
13 Mrs. Anderika.

14 JUDGE JANDEBEUR:

15 Ms. Anderika, would you come on up,  
16 please? Would you hold your right hand up for me,  
17 please?

18 -----

19 JOANN ANDERIKA, HAVING FIRST BEEN DULY SWORN,  
20 TESTIFIED AS FOLLOWS:

21 -----

22 JUDGE JANDEBEUR:

23 Would you state your first and last name  
24 for the record, spelling your last name?

25 A. Joann, last name Anderika, A-N-D-E-R-I-K-A.

1                   JUDGE JANDEBEUR:

2                   And are you here on behalf of Bank of  
3 America in response to the subpoena issued to Bank of  
4 America?

5 A.   I was told by the legal department to come to this  
6 today, to the hearing.

7                   JUDGE JANDEBEUR:

8                   Did they tell you that you were to come  
9 in response to the subpoena that was submitted to them  
10 or just told you to come?

11 A.   Just told me to come.

12                   JUDGE JANDEBEUR:

13                   So you don't know if you're here in  
14 response to the subpoena or not?

15 A.   True.

16                   JUDGE JANDEBEUR:

17                   Mr. Preate?

18 DIRECT EXAMINATION

19 BY ATTORNEY PREATE:

20 Q.   Your name is, for the record?

21 A.   Joann Anderika.

22 Q.   Spell the last name.

23 A.   A-N-D-E-R-I-K-A.

24 Q.   And your title is?

25 A.   Personal banker.

1 Q. Where?

2 A. At Bank of America on Linden Street in Scranton.

3 Q. 507 Linden Street, Scranton, PA. Were you aware  
4 that an amended emergency petition for expedited  
5 hearing on unauthorized mortgages was filed with the  
6 PUC on July 18 and service was made upon the Bank of  
7 America at your office?

8 A. No, I am not aware of the amendment.

9 Q. Are you aware that --- do you know who Michelle  
10 Harrison is?

11 A. Yes. Michelle Harrison works at the location.

12 Q. What is her title?

13 A. She is a teller/supervisor.

14 Q. She's a supervisor?

15 A. Teller/supervisor.

16 Q. Teller, slash, supervisor?

17 A. Yes.

18 Q. So she would be superior to you in the bank  
19 hierarchy at that address; correct?

20 A. Yes.

21 Q. Were you working on the 22nd day of July at 3:00  
22 p.m. in the afternoon?

23 A. No, I was not.

24 Q. Were you aware that a subpoena was served upon  
25 Bank of America on July 23rd, 2008?

1 A. The only one I'm aware of, Ernie, is the one on  
2 July 31st, I believe I have a copy that I took. I  
3 think it's the only one that I signed for. I believe  
4 it was the 31st of July, I'm not ---.

5 Q. 31st of July, correct.

6 A. Yes.

7 Q. And you were the person who received the subpoena?

8 A. Yes.

9 Q. To bring with you any papers and documents  
10 concerning WP Water, WP Sanitary mortgages?

11 A. The subpoena that I received didn't go into  
12 detail. I faxed that down --- I had one of the girls  
13 fax it down to our department and then sent a hard  
14 copy down to that department.

15 Q. When did you do that?

16 A. That same day, July 31st.

17 Q. So Bank of America in legal received from you the  
18 subpoena for you to appear here today?

19 A. Apparently not.

20 Q. What do you mean apparently not?

21 A. Because when we had called legal when I found out  
22 that we were supposed to appear in court today, the  
23 fax number that we had sent it down to was not the  
24 correct fax. We have different locations for  
25 different states. I did not send the fax down myself,

1 but I retrieved the paper and it was not the correct  
2 fax number.

3 Q. When did you send it through correctly?

4 A. Yesterday.

5 Q. Yesterday?

6 A. Yes. We always keep a file in our file cabinet.

7 Q. Where did you send the fax initially when you got  
8 it?

9 A. To some 404 number that I have at the banking  
10 center.

11 Q. What's a 404 number?

12 A. It looks like that would be --- I have no idea,  
13 area code 404, I don't know the rest.

14 Q. You sent it to a --- did you send a hard copy?

15 A. Yes.

16 Q. Oh, you did?

17 A. Yes, a hard copy and a fax. That's the procedure,  
18 to fax the copy when you receive it and then send out  
19 a hard copy.

20 Q. To whom did you send the hard copy of the  
21 subpoena?

22 A. First of all, I did not send the hard copy. I  
23 signed upon receiving. One of the other branch  
24 personnel faxed it and then sent a hard copy down.

25 Q. They sent it to where; do you know?

1 A. No, I do not. I don't have that on file.

2 Q. But you sent it to someplace in the Bank of  
3 America --- or somebody in your office sent it to ---?

4 A. To a legal department that verified --- the only  
5 thing I can think that she could have done is picked  
6 up the wrong fax and wrong mail code.

7 Q. We don't want you to speculate. All I'm going to  
8 ask is you are a lawful, entitled to receive subpoenas  
9 as a representative of the Bank of America; correct?

10 A. Yes.

11 Q. And after that, it's your job to forward it to the  
12 legal department, whether it's by fax or by mail or  
13 somebody in your office?

14 A. Someone in the office, correct.

15 Q. And you believe that was done?

16 A. Yes.

17 ATTORNEY PREATE:

18 I have no further questions.

19 JUDGE JANDEBEUR:

20 I have a question. Do you know anything  
21 about these encumbrances?

22 A. No, I do not.

23 JUDGE JANDEBEUR:

24 Mr. Brown?

25 ATTORNEY BROWN:

1 Just one follow-up question.

2 CROSS EXAMINATION

3 BY ATTORNEY BROWN:

4 Q. Did you bring any documents related to the  
5 mortgages against W.P. Water or W.P. Sanitary?

6 A. No. I do not have access to those documents.

7 ATTORNEY PREATE:

8 I just want to follow up.

9 REDIRECT EXAMINATION

10 BY ATTORNEY PREATE:

11 Q. You were contacted --- Jessica Cook called you?

12 A. I called Jessica Cook after I was notified by your  
13 office that we were supposed to appear in court and  
14 called her legal department to ask what do I do.

15 Q. You heard my representations about my  
16 conversations with Jessica Cook? You know I spoke to  
17 her?

18 A. Yes.

19 Q. You have no reason to doubt that accuracy of what  
20 I told the court?

21 A. I don't know what transferred between you and her.

22 ATTORNEY PREATE:

23 I have no questions.

24 JUDGE JANDEBEUR:

25 Mr. Brown, anything? Thank you very

1 much, Ms. Anderika. Okay. Continue, Mr. Preate.

2 ATTORNEY PREATE:

3 Carl Kresge, please.

4 JUDGE JANDEBEUR:

5 Mr. Kresge, will you come up, please?

6 And if you'll raise your right hand, please?

7 -----

8 CARL KRESGE, HAVING FIRST BEEN DULY SWORN, TESTIFIED

9 AS FOLLOWS:

10 -----

11 JUDGE JANDEBEUR:

12 Mr. Preate?

13 DIRECT EXAMINATION

14 BY ATTORNEY PREATE:

15 Q. Mr. Kresge, what's your position with W.P. Water

16 Company and W.P. Sanitary Company?

17 A. I've been the president.

18 Q. For how long have you been the president?

19 A. Probably since we owned it in 1985.

20 Q. Who is the owner, the current owner of W.P. Water

21 Company and W.P. Sanitary Company?

22 A. My wife, Sandra Kresge.

23 Q. Is she here in the courtroom?

24 A. Yes.

25 Q. Now, there's a company called Carl L. Kresge ---

1 excuse me, let me get the right file here. Carl L.  
2 Kresge and Sons, Incorporated --- Inc. That's a  
3 company. Is that --- are you the Carl L. Kresge and  
4 Sons, Inc. or is that somebody else, Carl L. Kresge?

5 A. That was my father who started the company in  
6 1937, the year I was born. We incorporated the  
7 company, I believe, in 1977. I have a brother who was  
8 in the business with us and it was hence the Sons,  
9 Inc., Sons, Inc. And about 1982 my dad retired and  
10 that left me with Carl L. Kresge and Sons,  
11 Incorporated and my brother, Dick, with a lot of  
12 grading and excavating equipment and then the company  
13 was taken apart. But from that point on, I was the  
14 president and sole owner of Carl L. Kresge and Sons,  
15 Incorporated.

16 Q. From 1982 until the current time? Until when?

17 A. I'm going to have to say February of 2006. I  
18 don't exactly know the date.

19 Q. What happened on or about February of 2006?

20 A. I had placed --- my boys are ---.

21 Q. Your boys are named?

22 A. Scott and David Kresge. Both of them have been  
23 involved with me over the years. My son, David, is  
24 the driller and head mechanic of the company. And he  
25 and Scott were given the company, or the company was

1 put in their names when the land was transacted. And  
2 that's the date that it was all done. So I would have  
3 to look at that and the deeds and I can tell you when  
4 it was all done.

5 Q. I know you don't have those documents with you  
6 today so it's a little bit --- we'll try and trust  
7 your recollection here. But let me ask you just a  
8 couple of questions. David Kresge, David C. Kresge,  
9 is he the president of Carl L. Kresge and Sons,  
10 Incorporated since February approximately of 2006?

11 A. I believe it's that way. I think Scott is the  
12 secretary.

13 Q. Scott D. Kresge would be the secretary?

14 A. And treasurer, right.

15 Q. And who owns Carl L. Kresge and Sons, Incorporated  
16 right now?

17 A. I would say Scott and David do.

18 Q. You have no ownership interest at all?

19 A. No ownership in it.

20 Q. Do you have any agency or officership in that  
21 company?

22 A. I have no officership, except I did say on the  
23 original document that if the two of them got in some  
24 kind of a row, I would be a tie-breaking vote only. ✓

25 Q. Okay. Now, is there corporate records for Carl L.

1 Kresge and Sons, Incorporated?

2 A. Yes, there is.

3 Q. When this transfer took place, you said there was  
4 a lawyer involved in the transfer of ownership?

5 A. On the land, and it was Mr. Jerry Cohen.

6 Q. Jerry Cohen, C-O-H-E-N?

7 A. Yes.

8 Q. In Wilkes-Barre, an attorney?

9 A. Yes.

10 Q. And he prepared the documents?

11 A. He prepared the deeds and the documents, and we  
12 did the corporate work at the office.

13 Q. The corporate work is what, Mr. Kresge?

14 A. It would mean the pages in the corporate book to  
15 say the transaction from me to the boys.

16 Q. So there are corporate records reflecting the  
17 transfer of ownership of Carl L. Kresge and Sons from  
18 you to your sons?

19 A. Yes, you're right.

20 Q. And where are those corporate records now?

21 A. Last I knew they had them and they were at Mr.  
22 Albert's office.

23 Q. Joe Albert, their attorney?

24 A. Yes.

25 ATTORNEY PREPARE:

1 I have nothing further.

2 JUDGE JANDEBEUR:

3 Mr. Brown?

4 ATTORNEY BROWN:

5 I have nothing, Your Honor.

6 JUDGE JANDEBEUR:

7 Thank you, sir.

8 ATTORNEY NIESEN:

9 Your Honor, may I ask a question or two?

10 JUDGE JANDEBEUR:

11 Yes, you may, sorry. Go ahead, Mr.

12 Niesen.

13 ATTORNEY NIESEN:

14 Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY ATTORNEY NIESEN:

17 Q. Good morning, Mr. Kresge. My name is Tom Niesen.

18 I'm an attorney and I represent Aqua and Little

19 Washington Wastewater Company.

20 A. Yes.

21 Q. I just have a couple questions for you. Today you

22 are not involved in Carl L. Kresge and Sons in any

23 manner; is that right?

24 A. I have to say that I'll answer the phone for them

25 and help out scheduling work and stuff like that.

1 Q. Are you a corporate officer of Carl L. Kresge and  
2 Sons today?

3 A. No, I'm not.

4 Q. Are you on the board of directors?

5 A. Only as I said before, as a tie-breaker vote in  
6 case there's a problem that arises that the two are  
7 arguing. I didn't keep any ten percent. I said I  
8 will be the tie-breaking vote. So if I agree with  
9 Scotty, it's going to be Scott. If I agree with Dave,  
10 it will be Dave.

11 Q. So are you a member of the board of directors of  
12 Carl L. Kresge and Sons?

13 A. No, I'm not.

14 Q. Do you know who are the members of the board of  
15 directors of Carl L. Kresge and Sons?

16 A. Well, there's two people, Scott and David.  
17 They're everything, the treasurer, board of directors.

18 Q. Does the company hold director's meetings to your  
19 knowledge?

20 A. Not really any scheduled basis, there's no need  
21 to. The company is small.

22 Q. When's the last time you participated in a  
23 director's meeting for Carl L. Kresge and Sons?

24 A. Probably when we transacted the business from  
25 myself to the boys in 2006.

1 Q. And prior to 2006, as I understand it, you were  
2 the president and the sole owner of Carl L. Kresge and  
3 Sons?

4 A. That's correct.

5 Q. And who were the members of the Board of Directors  
6 of Carl L. Kresge and Sons?

7 A. I guess I would have to be all those people.

8 Q. All of what people?

9 A. The board of directors, president.

10 Q. Do you know who ---?

11 A. Carl Kresge, me, Carl K. Kresge.

12 Q. You were the only director of Carl L. Kresge and  
13 Sons prior to February of 2006?

14 A. That's correct.

15 Q. And did you own a share of stock at that time?  
16 Were you the only shareholder of Carl L. Kresge and  
17 Sons prior to February of 2006?

18 A. Yes, I was.

19 Q. And at that time in February, it's your testimony  
20 that Scott and David became the sole shareholders of  
21 Carl L. Kresge and Sons?

22 A. This is it, yes.

23 Q. Did you physically transfer your share of stock to  
24 them at that time?

25 A. Yes, I'm sure that was done. We did all of that

1 and they signed an agreement, and I signed for my line  
2 and it's all recorded in the book.

3 Q. You remember signing that share of stock over to  
4 Scott and David in February of 2006?

5 A. I'm sure that you'll find that, yes.

6 Q. Do you remember doing it?

7 A. I'll say with 99 percent certainty, yes.

8 Q. With your 99 percent certainty, you recall signing  
9 that share of stock over to Scott and David?

10 A. Well, they would be pieces to each one. It would  
11 have been signed, yes.

12 Q. And you recall doing that with 99 percent  
13 certainty?

14 A. I have nothing here, Attorney --- I just don't  
15 know how I could answer any different. But I know we  
16 had done all the paperwork to transfer the ownership  
17 to both my sons in 2006.

18 Q. Now, you talked about this being part of a land  
19 transaction and that there was a deed recorded for the  
20 transfer of land?

21 A. Yes.

22 Q. From whom did the deed --- who was the grantor and  
23 the grantee of that deed?

24 A. I am the grantor to the boys who are the grantees,  
25 I guess, you would call them. The boys have it, and

1 that's where the big shop is and where all the  
2 equipment and the maintenance stems from. That's at  
3 1199 Laurel Run Road.

4 Q. Is there real estate owned by Carl L. Kresge and  
5 Sons? Because to the extent that you were giving the  
6 stock to --- or transferring the stock to Scott and  
7 David, there wouldn't have needed to be a recording of  
8 a deed transferring title; would there?

9 A. Well, since it's right next to my parent's  
10 property, they transferred it from themselves to me  
11 personally back in 1982 with all the buildings on it.  
12 And why they did it to me was probably they didn't  
13 think anything different of it when it was done. I  
14 was their son so they were transferring me, my  
15 ownership in the building. However, it was always ---  
16 it was put in the Carl L. Kresge and Sons name with  
17 that transaction and Scott and David became the owners  
18 as they became the owners of the business.

19 Q. Of certain real estate?

20 A. Of the real estate and the company, and the  
21 corporation, yes.

22 Q. Now, this transfer to Carl L. Kresge and Sons  
23 occurred in February of 2006; is that right?

24 A. I believe so. I don't have that paper here and I  
25 don't quite remember, but it was in that time frame.

1 Q. Now, around about the fall of last year there were  
2 mortgages filed and recorded and mechanic's liens  
3 later by Carl L. Kresge and Sons against the W.P.  
4 Water Company and the W.P. Sanitary Company; is that  
5 right? Do you know about that?

6 A. Yes, it was.

7 Q. Did you sign those mortgages?

8 A. I didn't sign them, my sons did.

9 Q. So they signed the mortgages and they're recorded  
10 in the county Recorder of Deeds Office?

11 A. And I personally recorded them.

12 Q. You personally recorded them?

13 A. Yes, I did.

14 Q. And were you recording them on behalf of Carl L.  
15 Kresge and Sons or W.P. Water Company and ---?

16 A. Carl L. Kresge and Sons, Incorporated.

17 Q. And what was your authority to do that at that  
18 time?

19 A. The boys said go do it, we're busy. And they went  
20 to work, and I went to Wyoming County and Luzerne  
21 County.

22 Q. So your name doesn't appear on those mortgages in  
23 the fall of 2007?

24 A. It shouldn't.

25 Q. Because at that time, you wouldn't have been

1 authorized to do anything on the part of Carl L.  
2 Kresge and Sons; isn't that true?

3 A. This is true.

4 Q. And to your knowledge was it Scott or David or  
5 both of them that executed the mortgages that you  
6 recorded against --- in favor of Carl L. Kresge and  
7 Sons back in the fall of 2006?

8 A. Both of them did it.

9 Q. And to the extent that --- in order to list those  
10 mortgages as satisfied, it's your view, you would not  
11 be able on behalf of Carl L. Kresge and Sons to  
12 execute a document satisfying those mortgages and then  
13 have it recorded in the county office?

14 A. That is true.

15 Q. Scott and/or David or Scott and David would have  
16 to do that on behalf of Carl L. Kresge?

17 A. Yes, or let me do it, be the runner.

18 Q. Now, Sandra, Mrs. Kresge, Sandra, is your wife;  
19 correct?

20 A. That's correct.

21 Q. She is the current owner of W.P. Water and  
22 Sanitary?

23 A. That's correct.

24 Q. And at one time were you an owner of either or  
25 both the water or sanitary company?

1 A. Yes, I was.

2 Q. And did you own all of it or did you and Sandra  
3 own it together?

4 A. In 1985 I purchased it through a purchase  
5 agreement with the original owner. That was 1985. It  
6 had been built in 1971. When I purchased it, I had  
7 put a certain amount of shares in my wife's --- I'm  
8 sorry, my name, which was over 50 percent or 50  
9 percent, I believe it was 50, it's been quite a few  
10 years ago. And I put some in Karen's name, my  
11 daughter, and some in my wife's --- I keep saying  
12 wife. No, my first wife. My Karen and my son, David  
13 and my son, Scott, they have equal shares. Over the  
14 years at that point them being young were not helping  
15 me, doing anything with it. So they signed off on  
16 their stock and it was placed then in my second wife's  
17 name, Sandra, which was at that point half and half.  
18 That I'm going to say is probably about 1994, '95. We  
19 married in 1998 and I gave her the rest of the company  
20 at that point.

21 Q. In 1998?

22 A. Yes. So all of that has been duly recorded and  
23 listed in the book and in the stock book.

24 Q. Now, is Scott your biological son?

25 A. Yes.

1 Q. And is David your biological son?

2 A. Yes.

3 ATTORNEY NIESEN:

4 Thank you, Your Honor. Thank you, Mr.  
5 Kresge.

6 JUDGE JANDEBEUR:

7 Any Redirect?

8 ATTORNEY PREATE:

9 Just one point.

10 REDIRECT EXAMINATION

11 BY ATTORNEY PREATE:

12 Q. The mortgage that was filed was last fall in  
13 Wyoming County. I have the document here, and it was  
14 signed by you as president of W.P. Water Company,  
15 Incorporated; correct?

16 A. That might have been one of the --- it might have  
17 been, but I signed to have it filed. I did not sign  
18 to have it done.

19 Q. Well, you signed on behalf of W.P. Water Company  
20 granting Carl L. Kresge and Sons, Incorporated this  
21 mortgage. And then you said that you were the runner.

22 A. Basically, yeah.

23 Q. Because they were busy and you just went up to the  
24 courthouse and filed as a runner; correct?

25 A. It was kind of done by ourselves basically, so it

1 was not the best mortgage that could have been put  
2 together.

3 Q. And it's this mortgage that your sons have signed  
4 a satisfaction for, have they not, already, a word of  
5 satisfaction piece ---?

6 A. Well, that gets to sore point. Mr. Alberts was at  
7 this last meeting, and he's not here today.

8 Q. Well, we're trying to reach him.

9 A. Because he's not their attorney today. Because  
10 when they asked a question why they were going through  
11 all this hoopla, were concerned about a mortgage with  
12 Fox Rothschild's, when they get some kind of  
13 remuneration and Carl L. Kresge is so-called deemed as  
14 an illegal mortgage. Well, Your Honor, there's a  
15 legal mortgage to Fox Rothschild's, and if I had made  
16 illegal mortgages to Carl Kresge and if I had made  
17 illegal mortgages just under the name of W.P. Water  
18 Company, it just really reeks with whose is really  
19 legal and when does P.A. American go to the PUC and  
20 say, won't you let me put a pump in, it failed this  
21 morning. That's because I had to do that as Carl  
22 Kresge and Sons, Incorporated. And the boys are damn  
23 tired about going up there and working for nothing.  
24 And that's what's been going on. Mr. Niski is here  
25 concerned that he's not going to get water and my

1 concern is this has been dragging on for years. How  
2 much do you get from Aqua Pennsylvania as attorney?  
3 How many dollars have you got ---?

4 Q. Wait a minute. You can't ask questions of ---.

5 A. Well, my concern is that could have been paid for  
6 for this company four years ago and Mr. Niski wouldn't  
7 have to worry about getting water to his apartment  
8 building.

9 ATTORNEY PREATE:

10 I have no further questions, Your Honor.

11 JUDGE JANDEBEUR:

12 Mr. Brown, anything?

13 ATTORNEY BROWN:

14 No, Your Honor.

15 JUDGE JANDEBEUR:

16 Mr. Niesen, anything?

17 ATTORNEY NIESEN:

18 I do have another question or two.

19 RE CROSS EXAMINATION

20 BY ATTORNEY NIESEN:

21 Q. Mr. Kresge, the mortgages that were recorded were  
22 a value in the amount of \$1.6 million?

23 A. Yeah.

24 MR. GABAGE:

25 \$1.6 each.

1                   JUDGE JANDEBEUR:

2                   Excuse me. Who was that?

3                   ATTORNEY NIESEN:

4                   That was Mr. Gabage.

5                   JUDGE JANDEBEUR:

6                   The court reporter can't factor in  
7 somebody that isn't either the attorney or the person  
8 that's on the witness stand. So you need to holler to  
9 your attorney and he needs to speak. Don't just  
10 holler out and assume that it's going to be on the  
11 record.

12                   MR. GABAGE:

13                   I apologize.

14                   JUDGE JANDEBEUR:

15                   No problem. That's unusual that the  
16 peanut gallery speaks. Mr. Niesen?

17 BY ATTORNEY NIESEN:

18 Q. Mr. Kresge, can you tell us how the \$1.6 million  
19 figure was decided upon between the W.P. companies and  
20 Carl L. Kresge and Sons to be the amount of the  
21 mortgage to be recorded?

22 A. I was the person who knew what was going on in  
23 both companies. And since I went up there as Carl L.  
24 Kresge and Sons company before 2006, I did keep a  
25 record of it all. It's in my computer. I can get it

1 updated for you today if you'd like another copy.

2 It's more than that today.

3 Q. So it's a number that you had in your computer as  
4 Carl L. Kresge and Sons?

5 A. Exactly.

6 Q. And you gave that number to the new owners of Carl  
7 L. Kresge and Sons?

8 A. Why shouldn't they? They own the company.

9 Wouldn't they own the billing records of the people  
10 that owe them money and have no chance of paying them  
11 back?

12 Q. And was it you who went to Carl L. Kresge and Sons  
13 and said let's record this mortgage against ---?

14 A. No. My boys did because they were damn sick and  
15 tired of going up there and working. And they had to  
16 do that a month ago when we had a problem.

17 JUDGE JANDEBEUR:

18 Mr. Kresge, I'm going to ask you to watch  
19 your language ---

20 A. I'm sorry.

21 JUDGED JANDEBEUR:

22 --- and control your temper.

23 A. I agree. And I'm sorry, Your Honor.

24 ATTORNEY NIESEN:

25 I have no further questions. Thank you,

1 Mr. Kresge.

2 JUDGE JANDEBEUR:

3 Anything else? OCA, anybody? Okay.

4 Thank you, Mr. Kresge. You can step down. Mr.

5 Preate?

6 ATTORNEY PREATE:

7 I've completed my testimony for this  
8 hearing and I believe there's some documents that have  
9 to be submitted that we've agreed to with Kriss Brown.

10 JUDGE JANDEBEUR:

11 Mr. Brown?

12 ATTORNEY BROWN:

13 Yes, Your Honor. We have a stack of  
14 documents. Your Honor, we'll have the pleadings from  
15 the motions here today for this proceeding. I want  
16 them in the record because there's some that no  
17 answers were filed on admissions and verifications.

18 JUDGE JANDEBEUR:

19 I assume there's no objections to the  
20 pleadings being admitted into the record?

21 ATTORNEY PREATE:

22 None.

23 ATTORNEY BROWN:

24 Prosecutory Staff One is the pleading by  
25 --- Emergency Pleading Petition for Expedited Hearing

1 by W.P. Water Companies.

2 JUDGE JANDEBEUR:

3 The original or the amended?

4 ATTORNEY BROWN:

5 This is the original.

6 JUDGE JANDEBEUR:

7 Do we need the original since we've got  
8 the amended?

9 ATTORNEY BROWN:

10 I'll add the amended as well, Your Honor.  
11 The amended is mostly about the Bank of America stuff.  
12 And copies to the court reporter?

13 JUDGE JANDEBEUR:

14 Yes, please.

15 (Prosecutory Staff Exhibit One marked for  
16 identification.)

17 ATTORNEY BROWN:

18 Next, Your Honor, Prosecutory Staff Two  
19 is the Emergency Petition for Expedited Hearing on  
20 Unauthorized Mortgages Against Regulated Utilities  
21 filed by W.P. Water Company.

22 (Prosecutory Staff Exhibit Two marked for  
23 identification.)

24 ATTORNEY BROWN:

25 Now, Your Honor, I have the amended

1 pleading on behalf of W.P. Water Companies as  
2 Prosecutory Staff Two-A.

3 (Prosecutory Staff Exhibit Two-A marked  
4 for identification.)

5 ATTORNEY BROWN:

6 As Prosecutory Staff Three, I have the  
7 motion filed by the Law Bureau Prosecutory Staff.

8 (Prosecutory Staff Exhibit Three marked  
9 for identification.)

10 ATTORNEY BROWN:

11 And Your Honor, we had filed a corrected  
12 and I have that included, I believe, as well.

13 JUDGE JANDEBEUR:

14 Okay.

15 ATTORNEY BROWN:

16 As Prosecutory Staff Four, I have the  
17 Answer filed by Aqua Pennsylvania to the initial  
18 pleadings, petition.

19 (Prosecutory Staff Exhibit Four marked  
20 for identification.)

21 ATTORNEY BROWN:

22 Next, Your Honor, is Prosecutory Staff  
23 Five. I have a Rule to Show Cause filed in Wyoming  
24 County by W.P. Water Companies.

25 (Prosecutory Staff Exhibit Five marked

1 for identification.)

2 ATTORNEY PREATE:

3 What is that, Kriss?

4 ATTORNEY BROWN:

5 This is a Rule to Show Cause you filed in  
6 Wyoming County.

7 ATTORNEY PREATE:

8 On the mechanics lien.

9 ATTORNEY BROWN:

10 Correct, Your Honor.

11 ATTORNEY PREATE:

12 And then there's another one we filed in  
13 Luzerne County, also.

14 ATTORNEY BROWN:

15 Yes. I don't have that, though. I just  
16 have the Wyoming County. And as Prosecutory Staff  
17 Six I have the Answer filed by Carl L. Kresge and Sons  
18 to that Rule to Show Cause.

19 (Prosecutory Staff Exhibit Six marked for  
20 identification.)

21 ATTORNEY BROWN:

22 Next, Your Honor, I have Prosecutory  
23 Staff Seven. I have the Law Bureau's Prosecutory  
24 Staff's First Set of Interrogatories to W.P. Water  
25 Company.

1 (Prosecutory Staff Exhibit Seven marked  
2 for identification.

3 ATTORNEY BROWN:

4 As Prosecutory Staff Eight, I have the  
5 Law Bureau's Prosecutory Staff Interrogatories and  
6 Request for Documents sent to W.P. Sanitary. Those  
7 are dated June 25th, 2008.

8 (Prosecutory Staff Exhibit Eight marked  
9 for identification.)

10 ATTORNEY BROWN:

11 And Your Honor, for the record, we never  
12 received any documents today. Prosecutory Staff Nine  
13 is a copy of the mortgage filed on October 4th, 2007  
14 with Sanitary Company --- W.P. Sanitary Company as the  
15 mortgagor.

16 (Prosecutory Staff Exhibit Nine marked  
17 for identification.)

18 ATTORNEY BROWN:

19 Prosecutory Staff Ten, I have the  
20 mortgage filed October --- recorded October 4th, 2007  
21 against W.P. Water Company. Those are the \$1.6  
22 million mortgages.

23 (Prosecutory Staff Exhibit Ten marked for  
24 identification.)

25 ATTORNEY BROWN:

1                   Your Honor, next I have the Prosecutory  
2 Staff 12, I'm skipping 11. I'm not going to submit  
3 that. Twelve (12), I have the annual --- the 2007  
4 Annual Report of W.P. Water Company filed with the  
5 Commission. Do you want the original certification or  
6 do I give that to the court reporter?

7                   JUDGE JANDEBEUR:

8                   The court reporter. I'll take a copy.  
9                   (Prosecutory Staff Exhibit 12 marked for  
10 identification.)

11                  ATTORNEY BROWN:

12                  Prosecutory Staff 13 I have the 2007  
13 Annual Report of W.P. Sanitary, I believe, yes.

14                  (Prosecutory Staff Exhibit 13 marked for  
15 identification.)

16                  ATTORNEY BROWN:

17                  Your Honor, I'm going to turn it over to  
18 Rhonda for the next few documents.

19                  ATTORNEY DAVIDSON:

20                  I'm Rhonda. I have Prosecutory Staff  
21 Exhibit Number 14 which is a synopsis of the W.P..  
22 Water Company's Annual Reports from 1990 through 2007.

23                  (Prosecutory Staff Exhibit 14 marked for  
24 identification.)

25                  ATTORNEY DAVIDSON:

1                   Prosecutory Staff Number 15 is just a  
2 condensed version of what I just gave you and it  
3 specifically listed the affiliated interests,  
4 affiliated payments, Carl L. Kresge and Sons to W.P.  
5 Sanitary and Carl K. Kresge.

6                   (Prosecutory Staff Exhibit 15 marked for  
7 identification.)

8                   ATTORNEY DAVIDSON:

9                   Prosecutory Staff Exhibit 16 is the  
10 InfoMAP printout version for W.P. Water Company and it  
11 lists all the applications and all the transactions  
12 filed by W. P. Water Company.

13                   (Prosecutory Staff Exhibit 16 marked for  
14 identification.)

15                   ATTORNEY DAVIDSON:

16                   Prosecutory Staff Exhibit 17 is another  
17 InfoMAP sheet, which is the Commission's new database,  
18 and it identifies security certificate filed by W.P.  
19 Water Company for a note owed to PennDOT.

20                   (Prosecutory Staff Exhibit 17 marked for  
21 identification.)

22                   ATTORNEY DAVIDSON:

23                   And PS Exhibit 18 is the compilation  
24 from 1990 to 2007, W.P. Sanitary Company.

25                   (Prosecutory Staff Exhibit 18 marked for

1 identification.)

2 ATTORNEY DAVIDSON:

3 And Exhibit PS 19 is an Infomap printout  
4 of all the transactions of W.P. Sanitary Company, and  
5 it lists whether affiliated interest agreements were  
6 filed and whether security certificates were filed on  
7 behalf of W.P. Sanitary Company.

8 (Prosecutory Staff Exhibit 19 marked for  
9 identification.)

10 ATTORNEY DAVIDSON:

11 PS 20 is another compilation of long-  
12 term debt of W.P. Water and Sanitary Companies as  
13 compounded from their annual reports. That's all I  
14 have, Your Honor.

15 (Prosecutory Staff Exhibit 20 marked for  
16 identification.)

17 ATTORNEY BROWN:

18 Your Honor, we have the Direct testimony  
19 of Larry Lash plus statement one with attachments A  
20 through H which will be Prosecutory Staff Exhibits 21  
21 through 28.

22 (Prosecutory Staff Exhibits 21 through 28  
23 marked for identification.)

24 JUDGE JANDEBEUR:

25 Do you want to change the date on this?

1 Never mind.

2 ATTORNEY PREATE:

3 Was this testimony or was this an  
4 affidavit of Larry Lash?

5 ATTORNEY BROWN:

6 It was written Direct testimony we had  
7 submitted previously.

8 ATTORNEY PREATE:

9 This is a year ago?

10 ATTORNEY BROWN:

11 Yes. And lastly, Your Honor, I have  
12 Prosecutory Staff Exhibit 29, emergency Order issued  
13 by the Commission back on --- it was entered June  
14 21st, 2007, Docket Number P00072312.

15 (Prosecutory Staff Exhibit 29 marked for  
16 identification.)

17 ATTORNEY BROWN:

18 That's all the documents from Prosecutory  
19 Staff. And for the record, Your Honor, we have Larry  
20 Lash here in case anybody wants to cross examine him.

21 ATTORNEY PREATE:

22 Mr. Kresge is reviewing that Lash Direct  
23 and he's looking to see if it's accurate. In the  
24 meantime, I'd like to for the record, since he's here,  
25 on the subject of Bank of America, call Ray Colonna

1 who actually served the documents.

2 JUDGE JANDEBEUR:

3 Hold on one second, Mr. Klein. Mr.  
4 Brown?

5 ATTORNEY BROWN:

6 Yes, Your Honor.

7 JUDGE JANDEBEUR:

8 Is it your intent to put these 30  
9 documents, 29 documents into the record just like you  
10 just did without any testimony about them?

11 ATTORNEY BROWN:

12 I think the pleadings all speak for  
13 themselves..

14 JUDGE JANDEBEUR:

15 And then your assumption is that I'm  
16 going to somehow hook the pleadings together with  
17 these 29 documents and figure out why you want these  
18 29 documents into the record and what I'm supposed to  
19 use them for? That seems a little odd.

20 ATTORNEY BROWN:

21 I can --- I was going to place Larry Lash  
22 on for testimony regarding some of the documents. But  
23 like I said, the pleadings speak for themselves  
24 regarding the mechanic's liens and the mortgages.  
25 Now, our assertion is that there was an affiliated

1 interest here. They're not challenging that, and that  
2 the contracts should be declared null and void because  
3 the work wasn't done, necessary work was not done.

4 JUDGE JANDEBEUR:

5 And you're assuming that I'm going to  
6 somehow figure this out from this pile of documents  
7 without any explanation from witnesses?

8 ATTORNEY BROWN:

9 Well, they're going to stipulate --- I'm  
10 sorry, are you going to do the stipulation that it  
11 should be declared null and void?

12 ATTORNEY PREATE:

13 We were going to stipulate to admit all  
14 the matters that have been filed of record in the  
15 various courts, all the pleadings. This new  
16 information I don't --- this is the first I've seen  
17 it, all these informations and --- I don't know what  
18 this is. But they're exhibits --- but I just wanted  
19 to --- look, the pleadings that were filed of record  
20 are filed of record. We have no problem with that.  
21 The Department takes judicial notice of those. But  
22 anything else, I'm perplexed, too. I don't know what  
23 these documents mean.

24 JUDGE JANDEBEUR:

25 It's a little bit unusual, Mr. Brown,

1 that you hand over --- typically, you've got a  
2 witness, the witness is up on the stand. You mark a  
3 document, you show it to the witness, you examine the  
4 witness, it either comes in or it doesn't come in. I  
5 didn't know why it's in the record. You can't really  
6 give me a pile, a three-inch thick pile of documents  
7 and hope that I'm going to figure out what your  
8 litigation theory is on why those documents need to be  
9 in my record.

10 ATTORNEY BROWN:

11 Are we going to brief the case, Your  
12 Honor?

13 JUDGE JANDEBEUR:

14 Sure. But again, the problem with doing  
15 it at the briefing point, that's not evidence in the  
16 record. Now, you've submitted this pile, okay? The  
17 assigned judge, that happens to be me, is supposed to  
18 figure out why you want this pile in my record. And  
19 I'm sorry; I'm not going to dig through this pile and  
20 figure out your litigation theory. I know your  
21 litigation theory as far as the mechanic's liens and  
22 the judgments ought to be declared null and void. How  
23 this does --- that is the part that's missing.  
24 Typically an attorney would put on a witness, get the  
25 document, explain why this document says these

1 mechanic's liens, these encumbrances ought to be  
2 cleared. That's the piece that you're not doing. I  
3 don't know how else to tell you, but it's pretty  
4 unorthodox what you're trying to do.

5 ATTORNEY BROWN:

6 I'm trying to expedite and appease them  
7 as far as they've admitted that it's not --- that  
8 those are void, those contracts should be declared  
9 null and void.

10 JUDGE JANDEBEUR:

11 Well, I think at this point, Mr. Preate,  
12 you agree with him on that?

13 ATTORNEY PREATE:

14 Absolutely. I filed motions in the Court  
15 of Common Pleas.

16 JUDGE JANDEBEUR:

17 So again, what are you trying to do with  
18 this pile?

19 ATTORNEY BROWN:

20 I put them in the record to rely upon,  
21 Your Honor, to give you a record to rely upon.

22 JUDGE JANDEBEUR:

23 I can't rely on a record to --- I cannot  
24 rely on a record of a document without a witness that  
25 explains why that document is in the record. That's

1 the piece of the picture that's missing. Now, you may  
2 want to review this. You may not need these  
3 documents, but if you do need these documents in the  
4 record, you have to have a witness that explains why  
5 it's in the record. You just can't throw a bunch of  
6 stuff into the record and tell the Judge, you need  
7 this. I don't know why you need it but you need it.  
8 No, that doesn't work.

9 ATTORNEY BROWN:

10 We can go forward. We've got the  
11 witnesses here, Your Honor.

12 JUDGE JANDEBEUR:

13 It's your case. I don't know how this  
14 case could get this screwed up to be at this point and  
15 still be fiddling with documents. I mean, we're at  
16 the point where this is an emergency petition to get  
17 these encumbrances gone, this should be a streamlined  
18 organization, you put it in front of me, I look at it,  
19 I look at the law, I write the order. The only part  
20 that's squirrely so far to me is the Bank of America  
21 piece that I simply cannot resolve for you all. You  
22 got to do that in Common Pleas. But Kriss, I honestly  
23 don't know what you want me to do with all of this, so  
24 you need to lay that out. Why it needs to be in the  
25 record and why it shows that the encumbrances should

1 be voided. And if these documents don't do that, you  
2 don't need them in the record. That's all I'm here  
3 for today. The rest is up to you guys in mediation.  
4 Do these documents show me that these liens should be  
5 voided?

6 ATTORNEY BROWN:

7 I believe so, Your Honor, yes.

8 JUDGE JANDEBEUR:

9 Okay. You put the witnesses on with the  
10 document, we'll admit them. I've got the evidence.  
11 I'm not going to fiddle through three inches worth of  
12 documents and figure out which ones do it. My  
13 litigation theory may be very different from yours.  
14 You're the assigned attorney. You put it on.

15 ATTORNEY PREATE:

16 Your Honor, we were willing to stipulate  
17 --- we were the ones that filed the petition. We were  
18 the ones that filed the motions to strike the ---.

19 JUDGE JANDEBEUR:

20 Well, I've got two in front of me. I've  
21 got parallel motions in front of me.

22 ATTORNEY PREATE:

23 And I thought that --- yes, they wanted  
24 them stricken and we wanted them stricken. And it  
25 doesn't seem to be any disagreement, the documents

1 either --- either W.P. Water Company or W.P. Sanitary  
2 got PUC permission to enter into these indebtednesses  
3 so they didn't. And that's all we need to say. And  
4 we stipulate. W.P. Water and W.P. Sanitary did not  
5 get PUC approval for these indebtednesses, the  
6 mortgages and the mechanic's liens. That's it.

7 I found verifications in the Courts of  
8 Common Pleas in the mechanic's liens issues signed by  
9 Sandra Kresge, owner of W.P. Water and W.P. Sanitary,  
10 to that effect. The Court can take judicial notice of  
11 that. There's no need for any further information to  
12 get before this Court to declare those mortgages and  
13 those mechanic's liens null and void under the  
14 statute.

15 The only thing left is the Bank America,  
16 and what we're asking here today is for the Court to  
17 enter an order granting our motion for default  
18 judgement. That permits me to sign the mortgage  
19 satisfactions that have already been executed  
20 authoritatively by Scott and David Kresge that I have  
21 in my possession. And to satisfy the mechanic's liens  
22 and to have them stricken from the record up in the  
23 Luzerne and Lackawanna County. That's all. I thought  
24 this was going to be easy.

25 ATTORNEY BROWN:

1                   And Your Honor, as far as the --- in our  
2 pleadings, we allege that the affiliated interest is  
3 present.

4                   ATTORNEY PREATE:

5                   We agree. We agree.

6                   ATTORNEY BROWN:

7                   We agree. And that it's been null and  
8 void because, Your Honor, we weren't --- because of  
9 the contract what we have in the pleading that ---.

10                  JUDGE JANDEBEUR:

11                  Mr. Kresge.

12                  ATTORNEY BROWN:

13                  And it's their burden to prove otherwise  
14 that they were reasonable and necessary and proper  
15 expenditures. They provided no answer to our motion  
16 and they provided no testimony. And I provided Your  
17 Honor with the annual reports to show what they had  
18 reported, what they were owed, and now what they're  
19 claiming are to be owed, such as the mechanic's lien  
20 and the mortgages.

21                  ATTORNEY PREATE:

22                  We have already agreed ---.

23                  JUDGE JANDEBEUR:

24                  Hold on one second.

25                  ATTORNEY BORLAND:

1           Your Honor, can we have a five minute  
2 recess? Just to talk to Mr. Kresge without  
3 interruption.

4                           JUDGE JANDEBEUR:

5           It seems to me if we can take a lunch  
6 break and Mr. Brown and Mr. Preate and Mr. Borland and  
7 Mr. Kresge, you all figure out between you what is  
8 still left of the two --- your amended emergency  
9 petition, your original emergency petition and for  
10 Prosecutory Staff. You filed it as a motion for an  
11 order declaring the mortgage ---. Okay. So you've  
12 got a motion, and you've got two petitions. You  
13 figure out of your motion and your two petitions what  
14 is left. You figure out what you're stipulating to  
15 that gets rid of pieces of those three documents,  
16 motion, petition, amended petition. If you get rid of  
17 all but Bank of America, fine. If you don't get rid  
18 of all, I want to know which ones are not stipulated  
19 to that are still in front of me.

20                           Now, after you're finished with that at  
21 lunch, I think you're going to need to confer with Mr.  
22 Niesen, because I'm not entirely sure if he's going to  
23 agree with all of that. But nonetheless, he doesn't  
24 have anything in front of me. He's simply a party  
25 because he's a party to the mediation as are OCA. So

1 why don't we do this? It's 12:15. Why don't we come  
2 back at 1:30? Let me know what's left of the case.

3 ATTORNEY NIESEN:

4 Your Honor.

5 JUDGE JANDEBEUR:

6 Mr. Niesen.

7 ATTORNEY NIESEN:

8 Excuse me.

9 JUDGE JANDEBEUR:

10 Not a problem.

11 ATTORNEY NIESEN:

12 May I ask a factual question that occurs  
13 to me?

14 JUDGE JANDEBEUR:

15 Yes. Please.

16 ATTORNEY NIESEN:

17 I think Mr. Preate could confirm it  
18 pretty readily. Is Sandra Kresge --- is she the  
19 natural mother of Scott Kresge?

20 ATTORNEY PREATE:

21 Oh, no. No. The natural mother is  
22 deceased. And Carl has married her about ten years  
23 ago. And she is now the owner of these two companies.

24 ATTORNEY NIESEN:

25 So Sandra is not the natural mother of

1 David Kresge either?

2 ATTORNEY PREATE:

3 That's correct.

4 ATTORNEY NIESEN:

5 Thank you.

6 ATTORNEY PREATE:

7 What's the purpose of asking that?

8 JUDGE JANDEBEUR:

9 Don't know.

10 ATTORNEY PREATE:

11 I don't know, but all I know is ---.

12 JUDGE JANDEBEUR:

13 Hold on.

14 ATTORNEY NIESEN:

15 I think the alleged affiliated  
16 relationship is based upon a blood relationship  
17 between someone, I guess Carl and the sons. The  
18 evidence this morning is that Sandra owns the W.P.  
19 Water Company.

20 ATTORNEY BROWN:

21 Your Honor, it's not just ownership, it's  
22 also officers of the companies ties the affiliated  
23 interest as well.

24 ATTORNEY NIESEN:

25 That's not so.

1                   JUDGE JANDEBEUR:

2                   Well, I'll let you all flesh that out.  
3 You let me know after lunch what is left of the two  
4 petitions and the motion. And then we'll take it from  
5 there. Hopefully you'll get rid of some of the  
6 pieces. I have my doubts. We'll see. We'll see you  
7 all back --- Mr. Borland?

8                   ATTORNEY BORLAND:

9                   Before we adjourn. Your Honor, my  
10 understanding is that on our side of the room, we are  
11 agreed that each of those mortgages and each of those  
12 liens are invalid and should be struck. On their side  
13 of the room, that's what they're asking for. I don't  
14 see any disagreement. I don't see any reason to put  
15 the testimony on that Mr. Brown wants to put in.  
16 There isn't anyone in this room who's taking a  
17 different position.

18                   JUDGE JANDEBEUR:

19                   Okay. If that is the case, then why have  
20 you all not stipulated to that nice and cleanly  
21 earlier today and gotten those pieces of the two  
22 petitions and the order off my docket?

23                   ATTORNEY BORLAND:

24                   We thought we had. We did that ---.

25                   ATTORNEY PREATE:

1 He wanted to put this stuff on.

2 JUDGE JANDEBEUR:

3 Okay. You guys figure it out. You guys  
4 are the runners of your cases. I'm not going to make  
5 --- I'm not going to decide how you're going to run  
6 your case. I have two motions, one motion. I have  
7 two petitions. If you have resolved the issues in  
8 those, you let me know which pieces are resolved, what  
9 is still in front of me at 1:30.

10 ATTORNEY PREATE:

11 How can we get rid of two people here in  
12 just two seconds, Joann ---?

13 JUDGE JANDEBEUR:

14 Ms. Anderika? Well, you may wish to stay  
15 just because she may wish to stay. But you do not  
16 have to stay.

17 ATTORNEY PREATE:

18 And I'd like to call Mr. Colonna to  
19 verify that he served the complaint, the amended  
20 complaint on Bank of America office, because she  
21 wasn't there when it was served. Michelle Harrison  
22 was there.

23 JUDGE JANDEBEUR:

24 Okay.

25 ATTORNEY PREATE:

1 Ray Colonna.

2 JUDGE JANDEBEUR:

3 Mr. Colonna, please raise your right  
4 hand.

5 -----  
6 RAY COLONNA, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
7 AS FOLLOWS:  
8 -----

9 JUDGE JANDEBEUR:

10 Thank you, sir, be seated. Mr. Preate.

11 DIRECT EXAMINATION

12 BY ATTORNEY PREATE:

13 Q. You're an adult male?

14 A. Yes.

15 Q. And you work for ---?

16 A. I work for the law firm of Ernie Preate.

17 Q. All right. And did you get an amended emergency  
18 petition for expedited relief against the Bank of  
19 America that we had filed in this particular case?

20 A. Yes.

21 Q. And did you serve that document on the Bank of  
22 America?

23 A. Yes.

24 Q. Where did you serve it?

25 A. 507 Linden Street, which is the Bank of America's

1 main office.

2 Q. And on whom did you serve it?

3 A. Ms. Harrison, supervisor/teller.

4 Q. Okay. In our motion for the Commission order or  
5 averments deemed admitted granting request for said  
6 relief in that there's attached an affidavit of  
7 service.

8 A. Yes.

9 Q. Is that your signature on there?

10 A. Yes, it is.

11 Q. And is that --- whose signature is there where it  
12 says ---?

13 A. Michelle Harrison signed it in my presence.

14 Q. In your presence?

15 A. Yes.

16 Q. And you swore that you served it on Michelle  
17 Harrison on the 22nd of July at 3:00 p.m. before a  
18 notary, Joy Sposto, S-P-O-S-T-O?

19 A. Yes, I did. Yes.

20 Q. All right. And you're the person that served  
21 Exhibit B which is the affidavit of service on the  
22 31st of July on Joann Anderika?

23 A. That's correct.

24 Q. For the subpoena?

25 A. Yes.

1 Q. All right. You swore to that also?

2 A. Yes.

3 Q. As today you swear to both of those?

4 A. Yes.

5 Q. Thank you.

6 ATTORNEY PREATE:

7 No further questions.

8 JUDGE JANDEBEUR:

9 Mr. Brown. One second, Mr. Colonna.

10 ATTORNEY BROWN:

11 No questions, Your Honor.

12 JUDGE JANDEBEUR:

13 Mr. Niesen?

14 ATTORNEY NIESEN:

15 No.

16 JUDGE JANDEBEUR:

17 Ms. Tunilo? No. Thank you, sir.

18 A. Thank you.

19 JUDGE JANDEBEUR:

20 Any reason not to break for lunch? Okay.

21 We are adjourned until 1:30.

22 LUNCH BREAK TAKEN

23 JUDGE JANDEBEUR:

24 We left off with you, Mr. Brown. Now,

25 before we move into what I asked you all to do while

1 we broke for lunch, let's finish going over what we're  
2 going to go with these 29 exhibits.

3 As I mentioned, there's a couple of  
4 things bothering me. There's no witness at all to  
5 authenticate them. However, I'm not hearing any  
6 objections to them, either.

7 ATTORNEY PREATE:

8 Oh, yes, Your Honor.

9 JUDGE JANDEBEUR:

10 Oh, okay. There are objections.

11 ATTORNEY PREATE:

12 Yes.

13 JUDGE JANDEBEUR:

14 Well, just hold on a minute. Mr. Brown,  
15 did you think through any more of what you would like  
16 to do with them?

17 ATTORNEY BROWN:

18 Yes, Your Honor. With the stipulation  
19 proposed that we leave in the pleadings. That's  
20 Prosecutory Staff One through Six. And then the  
21 annual reports 12 and 13.

22 JUDGE JANDEBEUR:

23 So 1 through 6, 12, 13. You're saying  
24 that Mr. Preate will stipulate to those?

25 ATTORNEY BROWN:

1 You okay to the annual reports?

2 ATTORNEY PREATE:

3 Yes.

4 JUDGE JANDEBEUR:

5 Okay.

6 ATTORNEY BROWN:

7 So then 14 through 28. Twenty-nine (29)  
8 is the emergency Order.

9 ATTORNEY PREATE:

10 All those are withdrawn. That's what I  
11 thought.

12 ATTORNEY BROWN:

13 Twenty-one (21) through 28 was withdrawn.

14 ATTORNEY PREATE:

15 Well, what about the rest, 14 to 21?

16 ATTORNEY BROWN:

17 Correct. Fourteen (14) through 21;  
18 sorry.

19 ATTORNEY PREATE:

20 And then the rest through 28 are  
21 withdrawn?

22 ATTORNEY BROWN:

23 Correct.

24 ATTORNEY PREATE:

25 Okay.

1                   JUDGE JANDEBEUR:

2                   Run that by me again. Fourteen (14)  
3 through 21 what happens?

4                   ATTORNEY BROWN:

5                   Withdrawn.

6                   JUDGE JANDEBEUR:

7                   Okay. And then 21 through 29 what  
8 happens?

9                   ATTORNEY BROWN:

10                  Twenty-one (21) through 28 withdrawn and  
11 29 remains.

12                  JUDGE JANDEBEUR:

13                  Okay.

14                  ATTORNEY PREATE:

15                  That's the order?

16                  JUDGE JANDEBEUR:

17                  Twenty-nine (29) we can take judicial  
18 notice of. You certainly need to put that ---.

19                  ATTORNEY BROWN:

20                  That's the Order.

21                  JUDGE JANDEBEUR:

22                  Twenty-nine (29) we'll just take judicial  
23 notice of. You don't need to admit that.

24                  ATTORNEY BROWN:

25                  And Your Honor, we have a couple other

1 supplemental documents to submit as well.

2 JUDGE JANDEBEUR:

3 Okay. Let me make sure I've got it  
4 correct. One through 6, 12 and 13, Mr. Preate  
5 stipulates to. They are admitted. Fourteen (14)  
6 through 28 are all withdrawn.

7 ATTORNEY BROWN:

8 Yes, Your Honor.

9 JUDGE JANDEBEUR:

10 Go ahead.

11 ATTORNEY BROWN:

12 Let's go with 30. As Prosecutory Staff  
13 30, Your Honor. We got the mortgage satisfaction  
14 pieces that have been discussed.

15 (Prosecutory Staff Exhibit 30 marked  
16 for identification.)

17 ATTORNEY PREATE:

18 Just a second, Kriss. I have no  
19 objection to these being admitted for informational  
20 purposes to let the Court know that there are matters  
21 that are continuing to evolve outside of the PUC  
22 matter.

23 And these are, again, I don't know where  
24 he's going with this, mortgage satisfaction pieces and  
25 the mechanic's liens satisfactions. They're fine in

1 showing the Court, but I have not filed those of  
2 record. I'm not authorized to file those of record,  
3 until the matter of the Bank of America is resolved.  
4 So I don't know what the purpose of ---and what the  
5 relevance is now of having these submitted to the  
6 Court.

7 JUDGE JANDEBEUR:

8 We'll see where he goes with them. I  
9 understand what you're saying is you do not object to  
10 them coming in for information purposes, but what, not  
11 for the truth of what they say?

12 ATTORNEY PREATE:

13 They are matters that have no validity  
14 until such time as the Bank of America matter is  
15 resolved. Our agreement with Counsel for the Carl  
16 Kresge and Sons is that we would not file these until  
17 the Bank of American situation is resolved.

18 JUDGE JANDEBEUR:

19 So basically what you're telling me is  
20 these are useless pieces of paper?

21 ATTORNEY PREATE:

22 At this point in time, they are  
23 contingents, they're contingents.

24 JUDGE JANDEBEUR:

25 That means useless to me.

1                    ATTORNEY PREATE:

2                    Whatever the Court wishes to characterize  
3 it. That's your words. My information is that  
4 they've been executed authoritatively by David and  
5 Scott Kresge, that they reflect a settlement of all of  
6 these matters, for the sum of \$41,000, which has yet  
7 to be paid to them. And it won't be paid until Bank  
8 America is resolved and the APA signed by Aqua and a  
9 closing then takes place, and then they have absolute  
10 validity.

11                    Then they are authorized to take place  
12 because these mortgages, by the way, I would point  
13 out, are in two counties at least consistent with my  
14 position that these matters were improvidently filed  
15 and so attested to by the owners of Kresge and Sons,  
16 Incorporated.

17                    Now, there's also an assignment of  
18 proceeds that covers this, that is between Carl L.  
19 Kresge and Sons and W.P. Water and W.P. Sanitary.

20                    JUDGE JANDEBEUR:

21                    Is that the \$40,000?

22                    ATTORNEY PREATE:

23                    That's the \$40,000 settlement, yes,  
24 exactly. So I mean, the Court is hearing it verbally  
25 from an Officer of the Court that that's there. And

1 we've always said that it's there.

2 JUDGE JANDEBEUR:

3 Okay. Mr. Brown?

4 ATTORNEY PREATE:

5 There's no need to put these documents  
6 in.

7 ATTORNEY BROWN:

8 Your Honor, he keeps attesting that these  
9 documents exist and here they are, Your Honor. Also,  
10 Your Honor, so it can be of record, you had ordered  
11 them to remove these two mortgages previously. And  
12 they still have not complied with your Order.

13 JUDGE JANDEBEUR:

14 ... Okay. Keep going.

15 ATTORNEY BROWN:

16 And the last item is the Prosecutory  
17 Staff 31 which are Praeipie to Vacate signed by Joseph  
18 Albert for the --- these are the mechanic's liens.  
19 Again, this is the averments of the other party:  
20 Again, these are the documents they were discussing.

21 (Prosecutory Staff Exhibit 31 marked  
22 for identification.)

23 JUDGE JANDEBEUR:

24 Now, this has been filed with the  
25 Prothonotary?

1                   ATTORNEY PREATE:

2                   No.

3                   JUDGE JANDEBEUR:

4                   Still no?

5                   ATTORNEY BROWN:

6                   No.

7                   ATTORNEY PREATE:

8                   Your Honor has the power to declare those  
9 null and void under the statutes of the Pennsylvania  
10 Utility Code.

11                   JUDGE JANDEBEUR:

12                   Yes, we went through that in July.

13                   ATTORNEY PREATE:

14                   Yeah, you did that already.

15                   JUDGE JANDEBEUR:

16                   No, I didn't do that already. We went  
17 through it in July.

18                   ATTORNEY PREATE:

19                   Oh. But you entered an interim order and  
20 our obligation is to --- as we said, to file these  
21 upon the matter of the Bank America being resolved.  
22 And we're halfway there right now. And we got a  
23 default motion pending and a certification letter  
24 that's been sent and it's 35 days to go.

25                   JUDGE JANDEBEUR:

1           Okay. Are you voicing an objection or  
2 are you just chattering at me?

3           ATTORNEY PREATE:

4           No, I voiced an objection of relevance  
5 and authenticity. These haven't been authenticated.

6           JUDGE JANDEBEUR:

7           Okay.

8           ATTORNEY PREATE:

9           You want somebody to come in and  
10 authenticate his documents. We want somebody to come  
11 in and authenticate them. I'm not going to agree to  
12 that. I'm not going to agree to relevance and  
13 authentication because I wasn't there when they were  
14 signed.

15           JUDGE JANDEBEUR:

16           I have heard you.

17           ATTORNEY BROWN:

18           Well, as far as the documents signed by  
19 Scott and Carl and David Kresge, they've been served.  
20 They are party of record.

21           JUDGE JANDEBEUR:

22           You're looking at 30 now?

23           ATTORNEY BROWN:

24           Thirty (30), yes, Your Honor.

25           JUDGE JANDEBEUR:

1 All right.

2 ATTORNEY BROWN:

3 So admission of party opponent. I'm not  
4 the keeper of the --- we are not the keeper of these  
5 records.

6 ATTORNEY PREATE:

7 What are you talking about?

8 JUDGE JANDEBEUR:

9 He is looking at PS 30.

10 ATTORNEY BROWN:

11 PS 30 signed by Scott ---.

12 JUDGE JANDEBEUR:

13 He is responding to your objection.

14 ATTORNEY PREATE:

15 What are they --- they're more  
16 satisfaction pieces that have yet to have any  
17 validity.

18 JUDGE JANDEBEUR:

19 Okay. That's not an objection.

20 ATTORNEY PREATE:

21 I object to that on relevance and  
22 authentication. I don't know how many times I have to  
23 say it. Call these people in, bring them in and see  
24 if they signed this. And you can't --- I don't ---  
25 look, I sent these to you as informational purposes

1 only.

2 JUDGE JANDEBEUR:

3 Okay. That's enough. Mr. Brown?

4 ATTORNEY BROWN:

5 Pardon, Your Honor?

6 JUDGE JANDEBEUR:

7 Did you hear what Mr. Preate said?

8 ATTORNEY BROWN:

9 His relevance and authentication.

10 JUDGE JANDEBEUR:

11 Do you have a response?

12 ATTORNEY BROWN:

13 Authentication, Your Honor, they came  
14 from Mr. Kresge. He acknowledged that they came from  
15 him. And as I said, they're signed by a party  
16 opponent.

17 ATTORNEY PREATE:

18 Who said party opponent?

19 JUDGE JANDEBEUR:

20 Hold on, Mr. Preate. Now it's not his  
21 position, Mr. Brown, that these documents show that  
22 these encumbrances have been satisfied.

23 ATTORNEY BROWN:

24 That's not my intent.

25 JUDGE JANDEBEUR:

1                   That's fine.

2                   ATTORNEY BROWN:

3                   They've been representing that they have  
4 these satisfactions, and here they are of record, Your  
5 Honor.

6                   JUDGE JANDEBEUR:

7                   Got it. Okay.

8                   ATTORNEY BROWN:

9                   And we understand that they don't ---  
10 that they won't be filed until the Bank of America is  
11 resolved.

12                   JUDGE JANDEBEUR:

13                   Then I'm not sure what your objection is.  
14 If he's putting them in simply for informational  
15 purposes and you gave them to him for informational  
16 purposes, then I don't think there's a relevant  
17 objection. Do you agree?

18                   ATTORNEY PREATE:

19                   I just don't think that the --- for the  
20 Court's information to verify what I've been saying,  
21 fine. But it's not probative for what the Court's  
22 deciding to decide here.

23                   JUDGE JANDEBEUR:

24                   Mr. Brown, you're not putting it in for  
25 the purpose?

1                   ATTORNEY BROWN:

2                   No, Your Honor.

3                   JUDGE JANDEBEUR:

4                   Okay.

5                   ATTORNEY PREATE:

6                   Well, that's fine.

7                   JUDGE JANDEBEUR:

8                   You're overruled. Go ahead.

9                   ATTORNEY BROWN:

10                  Your Honor, as far as the stipulation on  
11 the pleads ---.

12                  JUDGE JANDEBEUR:

13                  Okay. So I have already admitted of the  
14 earlier ones. Thirty (30) and 31 are admitted, so  
15 it's clear on the record. And yes, let's go back and  
16 see if there's anything at all that was resolved and  
17 no longer in front of me. And if you don't mind, Mr.  
18 Brown, I'll go through from my notes, so that I'm  
19 clear. Both of you have listed the Fox Rothschild,  
20 \$15,000. Is that resolved?

21                  ATTORNEY BROWN:

22                  Your Honor ---.

23                  JUDGE JANDEBEUR:

24                  The Fox Rothschild is 7(a), paragraph  
25 7(a) in your motion, Mr. Brown. It's paragraph A in

1 your original petition, Mr. Preate. Is that one still  
2 out there an issue?

3 ATTORNEY BROWN:

4 As stated in here, to be resolved.

5 JUDGE JANDEBEUR:

6 Okay. And so there's no stipulation on  
7 that one that needs to be resolved, at least with  
8 regard to whether Chapter 19 or Chapter 21 of the  
9 Utility Code apply and void them; is that correct?

10 ATTORNEY PREATE:

11 I'm trying to understand what he's saying  
12 and what you're saying. A mortgage was obtained from  
13 W.P. Water Company, W.P. Sanitary Company by Fox  
14 Rothschild. It had never been approved by the Public  
15 Utility Commission. Therefore, it ought to be  
16 declared null and void just like the Bank America,  
17 just like the Carl L Kresge and Sons liens and  
18 mortgages. They're all in the same boat.

19 JUDGE JANDEBEUR:

20 Okay.

21 ATTORNEY PREATE:

22 Fine.

23 JUDGE JANDEBEUR:

24 So that one is still to be resolved by  
25 me, if possible.

1                    ATTORNEY BROWN:

2                    Yes, Your Honor.

3                    JUDGE JANDEBEUR:

4                    Then we've got in --- Mr. Preate, this  
5 one is your listing only, and I believe it is  
6 resolved, but I just want to make it clear on the  
7 record. DEP for \$9,270. That is resolved in the APA?

8                    ATTORNEY PREATE:

9                    Resolved in the APA. When the APA is  
10 executed, that will be disposed of. The APA is, I  
11 should say, fully executed by both parties.

12                   JUDGE JANDEBEUR:

13                   Okay.

14                   ATTORNEY PREATE:

15                   Right now it's only partially executed,  
16 but it doesn't mean it's not been executed by Aqua.

17                   JUDGE JANDEBEUR:

18                   The \$1.6 million, the two sets of the  
19 \$1.6 Washington Park Water and Washington Park  
20 Sanitary to Carl L. Kresge and Sons. That is not  
21 resolved; correct? That is still before me; correct?

22                   ATTORNEY PREATE:

23                   Still before you.

24                   JUDGE JANDEBEUR:

25                   All right.

1           ATTORNEY BROWN:

2           Actually, Your Honor, you did already  
3 declare them null and void in your interim order.

4           ATTORNEY PREATE:

5           In the interim order.

6           ATTORNEY BROWN:

7           In the final order ---.

8           JUDGE JANDEBEUR:

9           And you didn't do anything with it. Any  
10 particular reason why your client hasn't done that?

11          ATTORNEY PREATE:

12          What's that?

13          JUDGE JANDEBEUR:

14          Followed my order?

15          ATTORNEY PREATE:

16          We're bound by the agreement that we have  
17 with Mr. --- you made the decision based upon, as I  
18 understand it, the agreement that was entered into by  
19 myself, my clients and Carl Kresge and Sons and ---

20          ATTORNEY BROWN:

21          Your Honor, I think you made that  
22 decision based on the pleadings.

23          ATTORNEY PREATE:

24          --- we're bound by the agreement that we  
25 have with Counsel for Kresge that says those documents

1 have viability only unless Bank America is out of the  
2 way and resolved.

3 JUDGE JANDEBEUR:

4 I understand your position.

5 ATTORNEY PREATE:

6 We keep going back to Bank America.

7 JUDGE JANDEBEUR:

8 I understand your position. We've got  
9 three mechanic's liens. These are mirrored both in,  
10 Mr. Brown, your motion and your original position, and  
11 that's the \$343,000, the \$18,000 and the \$93,000. Are  
12 those still before me or are they resolved?

13 ATTORNEY BROWN:

14 Still before you, Your Honor.

15 JUDGE JANDEBEUR:

16 Okay. Then the only thing that's left  
17 --- that's the end of yours, Mr. Brown. And your  
18 amended petition is the Bank of America and we know  
19 that's not resolved. Okay.

20 Did you come up with anything that was  
21 resolved? I've come up with nothing resolved other  
22 than your position and my position that the \$1.6 is  
23 resolved, his position that they have to honor the  
24 other agreement. So we'll deal with that.

25 ATTORNEY BROWN:

1           And Your Honor, the stipulation we have  
2 is that the mortgages and mechanic's liens were never  
3 approved. Neither W.P. Water or W.P. Sanitary filed  
4 for approval of those encumbrances with the PUC, never  
5 got said approved.

6           In addition, the contract between Carl L.  
7 Kresge and Sons and W.P. Water and W.P. Sanitary,  
8 they're both --- they're all three affiliated interest  
9 companies. The contract between them was never ---  
10 they never sought approval of that contract with the  
11 Public Utility Commission.

12                   JUDGE JANDEBEUR:

13           Okay. And that is in the form of  
14 argument. Are you going to put some witnesses on?

15                   ATTORNEY BROWN:

16           No, Your Honor. I think that's a  
17 stipulated agreement.

18                   JUDGE JANDEBEUR:

19           Is it stipulated to?

20                   ATTORNEY PREATE:

21           Yeah. You heard Mr. Kresge's testimony  
22 that up until February 2006 he was Carl L. Kresge and  
23 Sons Drilling, Incorporated, the drilling company.  
24 And he also was officer and president of W.P. Water  
25 and W.P. Sanitary. There is an affiliation. There's

1 no question about that.

2                   Since that time, he no longer owns the  
3 Kresge Company Drilling Company, and he no longer owns  
4 --- and he has not owned, since he turned it over to  
5 his wife a decade ago, W.P. Water, W.P. Sanitary. So  
6 if that makes him an affiliated company, I don't know.  
7 All I can tell you is that for purposes of resolving  
8 this, we're going to agree that there's an  
9 affiliation. At some point in time, there is an  
10 affiliation here.

11                   ATTORNEY BROWN:

12                   Throughout the ---.

13                   JUDGE JANDEBEUR:

14                   Hold on. Hold on. Is the stipulation  
15 that Washington Park Water, Washington Park Sanitary  
16 and Carl L. Kresge and Sons are affiliated interests?

17                   ATTORNEY PREATE:

18                   Affiliated in terms of --- I don't know  
19 what you mean by affiliations?

20                   JUDGE JANDEBEUR:

21                   Do you know --- have you read the  
22 definition of affiliated interests in the code?

23                   ATTORNEY PREATE:

24                   All I ---.

25                   ATTORNEY BROWN:

1 It's in our pleading, Your Honor.

2 ATTORNEY PREATE:

3 Pardon?

4 JUDGE JANDEBEUR:

5 I'm sorry, Mr. Brown?

6 ATTORNEY BROWN:

7 It's in our pleading, Your Honor.

8 ATTORNEY PREATE:

9 It's vague to me. Whether it covers this  
10 situation ---.

11 JUDGE JANDEBEUR:

12 So we don't we have a stipulation.

13 ATTORNEY BORLAND:

14 Your Honor, Mr. Brown has the stipulation  
15 right in front of him that we agreed to before we went  
16 to lunch.

17 JUDGE JANDEBEUR:

18 Read it.

19 ATTORNEY NIESEN:

20 It's the highlighted area. That's what  
21 we stipulated to.

22 JUDGE JANDEBEUR:

23 Read it to me, Mr. Brown.

24 ATTORNEY BROWN:

25 The stipulation is the affiliated

1 interest.

2 ATTORNEY PREATE:

3 Well, read what we stipulated.

4 JUDGE JANDEBEUR:

5 Read it.

6 ATTORNEY BORLAND:

7 Your Honor, we left for lunch on good  
8 faith. We went over the highlighted material. This  
9 is what we've stipulated to. May I have it?

10 JUDGE JANDEBEUR:

11 The highlighted material in what, the  
12 pleadings?

13 ATTORNEY PREATE:

14 Right here.

15 ATTORNEY BORLAND:

16 The stipulation that when I went to lunch  
17 with Mr. Preate was we would stipulate as follows:  
18 The mortgage liens at issue be stricken as null and  
19 void in violation of the Public Utility Code and  
20 contrary to the public interest pursuant to 66 Pa.C.S.  
21 Sections 1904 and 2105. In addition, the mechanic's  
22 liens are found invalid and ineffective. Lastly, the  
23 contract between W.P. and Carl L. Kresge and Sons are  
24 found void. That's what we stipulated to.

25 JUDGE JANDEBEUR:

1 Read the last part to me one more time,  
2 please.

3 ATTORNEY BORLAND:

4 Yes. Lastly, the contract between W.P.  
5 and Carl L. Kresge and Sons are found void. That was  
6 the stipulation. That's the outcome.

7 ATTORNEY BROWN:

8 Last month, Your Honor, both of them sat  
9 there and said they do not dispute that there's an  
10 affiliated interest.

11 ATTORNEY BORLAND:

12 It doesn't matter any more.

13 ATTORNEY PREATE:

14 It just doesn't matter. Why do you keep  
15 complicating this thing?

16 JUDGE JANDEBEUR:

17 Actually, I think Mr. Brown is correct  
18 that it does matter and I'll tell you why.

19 ATTORNEY PREATE:

20 All right.

21 JUDGE JANDEBEUR:

22 Because no one has brought in Carl L.  
23 Kresge and Sons. And I can tell you right now if I do  
24 an order against Carl L. Kresge and Sons, and they  
25 have had no one here to defend their interests, it's

1 reversible error to my commissioners. They have got  
2 to be here, no one's brought them in. But I can't  
3 rule against Carl L. Kresge and Sons without them  
4 having an opportunity --- notice and an opportunity to  
5 defend. So you are telling me that you guys are  
6 agreeing to stipulate that these mortgage liens,  
7 mechanic's liens and the contract between Carl L.  
8 Kresge and Sons is null and void without Carl L.  
9 Kresge and Sons having a voice but for Mr. Brown's  
10 argument that Mr. Kresge is the affiliated interest;  
11 is that correct?

12 ATTORNEY BROWN:

13 Your Honor, we did serve Carl L. Kresge  
14 and Sons, and the last hearing Joe Albert was here on  
15 their behalf.

16 JUDGE JANDEBEUR:

17 Yes, it's fine to have an attorney here,  
18 but you still got to have your client if your client  
19 is going to make a statement under oath. I mean, the  
20 attorney can't run the case. Basically what we're  
21 doing here is exactly that, except for when you guys  
22 have had your few witnesses, Mr. Kresge and Mrs. --- I  
23 forgot her name, but Ms. Bank of America. I'm just  
24 telling you. You're going to have a hard time pushing  
25 that --- you'll get a decision from me. My

1 commissioners are going to still reverse it. They've  
2 got to be ---.

3 ATTORNEY PREATE:

4 Do you know what I proposed in that room,  
5 Your Honor? Give us two weeks, get those boys in here  
6 and we can have it resolved. They can testify, object  
7 or don't object.

8 JUDGE JANDEBEUR:

9 That was one of your calls a long time  
10 ago. You're going to ask as a form of relief a ruling  
11 by me against an entity that you did not bring in as  
12 an indispensable party. I cannot make a finding. I  
13 cannot make a ruling against them when they've not  
14 been here to defend themselves. If Mr. Brown is  
15 correct that they were noticed --- and I remember, Mr.  
16 Albert was here. That's fine. But they have to have  
17 the ability to defend their rights in this. You, Mr.  
18 Preate and Mr. Borland, cannot stipulate away Carl L.  
19 Kresge and Sons' rights.

20 ATTORNEY BORLAND:

21 Your Honor, I absolutely agree with your  
22 analysis. They had notice of today's hearing. They  
23 did appear.

24 JUDGE JANDEBEUR:

25 Notice is not really good enough. They

1 have to be made a party to it.

2 ATTORNEY BORLAND:

3 We're not asking to be bound by the  
4 stipulation. We're stipulating as one party with the  
5 PUC that that's the case. The pleadings which have  
6 not been denied and there's no evidence has been  
7 brought forth by Carl L. Kresge and Sons, Inc. to the  
8 contrary are sufficient for your finding.

9 JUDGE JANDEBEUR:

10 I don't know that I agree with that.

11 ATTORNEY BORLAND:

12 What would be missing we can supply it if  
13 necessary. But what would be missing beyond the  
14 pleadings that are deemed admitted because they  
15 haven't filed any response to those ---?

16 JUDGE JANDEBEUR:

17 Well, not really. They did not get a  
18 notice to plead. Same as Bank of America. Mr. Preate  
19 served Bank of America first time around.

20 ATTORNEY BORLAND:

21 They did get a notice.

22 ATTORNEY BROWN:

23 Yes, we did, to our pleading.

24 JUDGE JANDEBEUR:

25 Which one?

1                   ATTORNEY BROWN:

2                   Law Bureau.

3                   JUDGE JANDEBEUR:

4                   Law Bureau sent to Carl L. Kresge and  
5 Sons a notice to plead? Well, you can make that  
6 argument then that you might indeed procedurally get  
7 them out of the game.

8                   ATTORNEY PREATE:

9                   That's our position.

10                  ATTORNEY BROWN:

11                  Prosecutory Staff Three, we did serve  
12 them a notice to plead.

13                  ATTORNEY PREATE:

14                  And they were physically present at the  
15 last meeting.

16                  JUDGE JANDEBEUR:

17                  Mr. Albert was. Needless to say, I don't  
18 remember notices to plead on things so I didn't  
19 realize that indeed they had received a notice to  
20 plead. That will have to be your argument because  
21 otherwise, you wouldn't have a prayer of me issuing  
22 any kind of ruling against somebody that hasn't been  
23 able to come and defend their rights. Okay.

24                  Now, back to the, quote, highlighted  
25 area, Mr. Brown. You did not want to read that into

1 the record. Mr. Borland did. Do you have a problem  
2 with what it says?

3 ATTORNEY BROWN:

4 I do not.

5 JUDGE JANDEBEUR:

6 Then why don't you very clearly read in  
7 for the court reporter the stipulation that you all  
8 had agreed to.

9 ATTORNEY BROWN:

10 I asked that you find that the mortgage  
11 liens at issue --- the parties agree that the mortgage  
12 liens at issue be stricken as null and void in  
13 violation of the Pennsylvania Public Utility Code and  
14 contrary to the public interest pursuant to 66 Pa.C.S.  
15 Sections 1904 and 2105. In addition the Law Bureau  
16 and Prosecutory Staff requests --- in addition, the  
17 parties agree that the mechanic's liens be found  
18 invalid and ineffective. And lastly the parties  
19 stipulate that Your Honor declare the contracts  
20 between W.P. Water, W.P. Sanitary and Carl L. Kresge  
21 and Sons void.

22 ATTORNEY NIESEN:

23 Your Honor, who are the parties in that  
24 document?

25 JUDGE JANDEBEUR:

1 I am assuming --- good question, Mr.  
2 Niesen, thank you. I am assuming the parties to the  
3 stipulation are the two that filed the motion, Law  
4 Bureau, Prosecutory Staff and the petition and amended  
5 petition, Mr. Preate's clients, which are W.P. Water  
6 and W.P. Sanitary; is that correct, gentlemen?

7 ATTORNEY BROWN:

8 Yes.

9 ATTORNEY PREATE:

10 Yes.

11 ATTORNEY BORLAND:

12 Yes.

13 JUDGE JANDEBEUR:

14 So your client is not a party, OCA is not  
15 a party. Do we have anyone else in this case?

16 ATTORNEY KLEIN:

17 Pennsylvania American, we're not a party  
18 either.

19 ATTORNEY GANNON:

20 And DEP, Your Honor, they're not part of  
21 this.

22 JUDGE JANDEBEUR:

23 She told me last time, not this time.

24 Okay. Does that throw a wrench in the system to you,  
25 Mr. Niesen?

1                   ATTORNEY NIESEN:

2                   No, Your Honor. Our position on all of  
3 this is unchanged from what I said at the beginning of  
4 the day.

5                   JUDGE JANDEBEUR:

6                   That my authority goes so far and that's  
7 as far as my authority goes. That's basically your  
8 answer; correct?

9                   ATTORNEY NIESEN:

10                  Well, that's right. While they are  
11 trying to work this out, in the end it's their  
12 obligation to work out the satisfaction and proper  
13 resolution of these mortgages and encumbrances and  
14 liens. That's what needs to be done for our further  
15 participation in the remediation process that was  
16 started almost a year go.

17                  JUDGE JANDEBEUR:

18                  OCA, do you have any problems with that  
19 stipulation? Do you have anything you would like to  
20 say regarding that stipulation?

21                  ATTORNEY GANNON:

22                  We don't have any problem with the  
23 stipulation. I would just note, which I think Your  
24 Honor touched on earlier, that much of the information  
25 that's been exchanged today has been unsworn testimony

1 by Mr. Preate. So to the extent that we have put some  
2 documents into the record and we have this  
3 stipulation, I think that's helpful to the record.

4 JUDGE JANDEBEUR:

5 Mr. Brown, do you have any witnesses that  
6 you want to present or are you basically finished?

7 ATTORNEY BROWN:

8 Finished, Your Honor.

9 JUDGE JANDEBEUR:

10 And Mr. Preate, I think you were  
11 finished?

12 ATTORNEY PREATE:

13 Finished.

14 JUDGE JANDEBEUR:

15 Anything from you, Mr. Niesen, anything  
16 from you, OCA?

17 ATTORNEY NIESEN:

18 Nothing further, Your Honor.

19 JUDGE JANDEBEUR:

20 Then I think we're at the point where I  
21 would like you all to brief your positon. I think it  
22 can be on a fairly quick turnaround, if I'm not  
23 mistaken. We've hashed this out to death. Does  
24 anyone disagree with that? I mean, can you do a two-  
25 week turnaround on briefs and can we do --- there

1 isn't any respondents in this. Can we do  
2 simultaneously briefs from Prosecutory Staff, W.P.  
3 Water, W.P. Sanitary, Aqua and OCA?

4 ATTORNEY NIESEN:

5 Yes.

6 JUDGE JANDEBEUR:

7 I'm getting a yes from Mr. Niesen. So  
8 there doesn't need to --- this is all legal. I don't  
9 really need briefs or reply briefs as long as it  
10 doesn't bother you all that you're not getting  
11 somebody's position and responding to it. Because  
12 it's primarily --- it is almost exclusively legal  
13 argument. I don't have a problem just getting in one  
14 set of briefs from all four of you. Does that bother  
15 anybody?

16 ATTORNEY PREATE:

17 I need three weeks, Judge. I've got  
18 other commitments, Labor Day.

19 JUDGE JANDEBEUR:

20 We are at 20. September 10th.

21 ATTORNEY PREATE:

22 That's fine.

23 ATTORNEY NEISEN:

24 Is that a Monday?

25 JUDGE JANDEBEUR:

1                   That's a Wednesday. Anything else for  
2 the good of the order?

3                   ATTORNEY NIESEN:

4                   Can we have a one-week reply brief  
5 opportunity if need be? I'll withdraw it.

6                   JUDGE JANDEBEUR:

7                   Thank you. It's all legal argument.  
8 There really --- I mean, I understand lawyers can  
9 always have a contra-legal argument, but that's what  
10 I'm going to be fishing through. All four of you are  
11 not going to agree. That's a given. So I'm going to  
12 go with whoever I think has the correct legal  
13 argument. I really don't need argument contra, I  
14 really don't, Mr. Niesen.

15                   If you change your mind and your client  
16 says, geez, you're an idiot, why didn't you get me a  
17 contra argument, well, you call me up and I'll tell  
18 the others I'm going to allow it and then you all can  
19 --- they're all four going to come in at the same  
20 time. If anyone's client says I want you to be able  
21 to respond to it, somebody let me know, I'll give you  
22 a date, you can do it. But it's all legal argument.  
23 You don't need it. I don't need it. It's just more  
24 time and paperwork.

25                   ATTORNEY NIESEN:

1 Very good. Thank you.

2 ATTORNEY PREATE:

3 Just one point of order then. The  
4 question you want us to address is Bank of America  
5 default, or are you talking about the mortgage and the  
6 mechanic's liens? Is that what you're talking about?

7 JUDGE JANDEBEUR:

8 You know what, Mr. Preate, I'm going to  
9 leave it open. Your brief is going to say what you  
10 believe it needs to say. We went through --- less  
11 than five minutes ago we went through what was  
12 resolved and what wasn't resolved. That should be  
13 your touchstone of what your brief needs to say. Now  
14 apply that to our rules, you're going to find out that  
15 you need to submit me Proposed Findings of Fact,  
16 Proposed Conclusions of Law. Simply look at the  
17 transcript, look at the portion of the transcript five  
18 minutes ago where we discussed what's resolved and  
19 what isn't resolved. Then look at the rules on what  
20 needs to be in our briefs.

21 ATTORNEY PREATE:

22 When can we have the transcript?

23 JUDGE JANDEBEUR:

24 We can do a three-day turnaround we do in  
25 rate cases. You'll pay more for that. It's up to

1 you.

2 ATTORNEY PREATE:

3 Right now my client has now paid \$20,000  
4 in costs.

5 JUDGE JANDEBEUR:

6 Mr. Preate, I don't really care. You  
7 tell the court reporter when you want it.

8 ATTORNEY PREATE:

9 It's all realistic. It's all --- Ernie  
10 Preate signs off the check. So the cheapest way  
11 possible for us to get this.

12 JUDGE JANDEBEUR:

13 We're on an automatic 30-day turnaround.  
14 That's our turnaround, unless I request it for the  
15 Commission on a sooner turnaround.

16 ATTORNEY BROWN:

17 Your Honor, our briefs are due in three  
18 weeks. We'll need at quicker turnaround.

19 JUDGE JANDEBEUR:

20 When we go off the record, you all  
21 discuss with the court reporter what turnaround you  
22 want, and that's what you'll get and then you'll get  
23 the bill associated with it. Okay? Anything else?

24 ATTORNEY KLEIN:

25 Your Honor, you were mentioning the four

1 parties submitting briefs. Pennsylvania America  
2 doesn't intend to submit a brief because we don't have  
3 a comment on this issue.

4 JUDGE JANDEBEUR:

5 Thank you.

6 ATTORNEY BORLAND:

7 Your Honor, one other request in terms of  
8 expediting the entire process. I don't think there's  
9 anyone in this room that opposes the taking of the  
10 default judgment with respect to Bank of America. And  
11 if, in fact, you find helpful a brief on that issue,  
12 that would be fine, but I don't think anybody else  
13 needs to brief that issue. And my point is if you do  
14 find in our favor the default judgment should be  
15 taken, that may very well expedite the completion of  
16 that piece which is the last piece that falls into the  
17 puzzle. Because if we can take that to Bank of  
18 America and say you've been defaulted, you know, or  
19 the process has begun to be defaulted because the  
20 Commissioners will have to approve, but nonetheless  
21 you've been defaulted here, that may eliminate the  
22 fight.

23 JUDGE JANDEBEUR:

24 I think that's a good point. So what  
25 you've brought to the floor is that you needed ruling

1 on that piece before any ruling on the rest, and that  
2 was a good point. Thank you. I don't need it  
3 briefed. I know what the issue is. I know what the  
4 law is. I won't commit to getting it out within a  
5 week, but I will do my best to get it out as soon as  
6 possible. I understand the issue. Any more?

7 ATTORNEY GANNON:

8 Your Honor, just a service question. How  
9 would you like the briefs served?

10 JUDGE JANDEBEUR:

11 Same as usual, electronically followed by  
12 hardcopy is great. Anything else? Okay. We are  
13 adjourned. Thank you all.

14

15 \* \* \* \* \*

16 HEARING CONCLUDED AT 2:10 P.M.

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C E R T I F I C A T E

I hereby certify, as the  
stenographic reporter, that the foregoing  
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*Rhonda K. Sharpe*

Court Reporter

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