

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

individual bond issues turned out to be Walls of Jericho and fell down at the blast of the trumpet of the General Reserve Fund Statutes. In the early financial-legal structure, there was no way for any surplus, if it *had* been cleared by any one of the bridges, to have been used to supplement the revenue flow of any other facility which turned out to be a weak sister needing help to meet the demands under its bond indenture.

And so in 1931 the second phase of the Port Authority's financing began. I looked up some dates this morning and I found that the statute authorizing the General Reserve Fund was adopted on March 5, 1931, and the Port Authority had it pledged on March 9. It only took four days to use the new statutory authorization.

The first use was in connection with new Series D bonds and new Series E bonds. Series D bonds were to finance this Inland Terminal Building in which we now sit. The E bonds were to pay the two States the \$50 million which they had spent to construct the Holland Tunnel, and for which the States were to turn over to the Port Authority the control of the revenues and operation of the Holland Tunnel. These two bond series provided pretty much the same pattern of revenue flow which I outlined for the older bonds, but there was a big new addition. And the big new addition was the General Reserve Fund.

#### GENERAL RESERVE FUND

The General Reserve Fund is the absolute foundation of the Port Authority's whole financial structure. It is what made possible practically every advance after the first faltering steps in the initiation of our financial program with the first bridges. What we have had since 1931 is a statute which directs the Port Authority to pool the

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

revenues of all its facilities and, having pooled them, to use—and to pledge in advance if necessary—the surplus revenues that each facility or group of facilities might produce after it had met the requirements of the revenue flow of its particular bonds, so as to cross the fallen “Walls of Jericho” and to meet the requirements of any financially weak facility which had not yet reached its stride or which for any other reason could not at a particular point of time carry its own load of O&M and debt service.

The General Reserve Fund has an upper limit. Surplus revenues must be paid into it to maintain it at an amount equal to ten per cent of the principal amount of bonds issued to finance Port Authority facilities.

At the time in 1931 when this structure was worked out, the Holland Tunnel was an established facility with revenues in excess of the requirements directly related to it. As you know, it was built by a pair of state agencies working together. When the two States turned it over to the Port Authority in 1931, it was known that from this time on, after the flow of money through operation, maintenance and debt service, a surplus would be produced from the Holland Tunnel which would flow into the General Reserve Fund, and that this surplus in the Fund could be used to flow back up and take care of any deficits which we might have between the revenues of the other facilities and the debt service on the particular bonds issued to finance them.

The Series D bonds, which I mentioned as being to finance the construction of this building, and the Series E bonds for the Holland Tunnel acquisition were sold as a package. You had to buy one to get the other.

So Phase II includes for the first time, beginning with 1931, the Port Authority’s ability to use the surplus funds

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

of any facility that produced surplus funds to meet what the statutes called obligations to bondholders.

BONDHOLDERS' RESERVE

I want to make it clear that the General Reserve Fund is not a grab bag. It is not a pot to be collected for the States to dip into, as they might be impelled from time to time by political or other motivation. The General Reserve Fund, under the statutes, is exclusively a *bondholders' reserve*. It gets the surplus revenues each year which the facilities produce, beyond the requirements to bondholders, and it may be applied only to fulfill obligations to bondholders. Since we covenant with bondholders, in the case of each of our facilities, to operate and maintain them so as to produce revenues and also to pay the debt service—the principal, the interest, the sinking fund payments—on the bonds, the General Reserve Fund is available for O&M and debt service purposes. But, as I say, it is not a source for “dividend” payments to the States. The bondholders, for a modest interest payment, took the risk of insufficient revenues in lean years and accepted the absence of recourse to taxes; but they very naturally insisted that the fruits of any years of plenty remain available for the lean years which might come with depression or with war and gasoline rationing, with uninsurable catastrophes or simply because of over-optimistic estimates.

Now this was about the time, you'll remember, when the two States were also projecting the construction of the Lincoln Tunnel. The transfer to the Port Authority of the Holland Tunnel in 1931, with its obvious surplus revenues, was supposed to be the basis of our having a surplus with which to attract money from private investment sources for building the Lincoln Tunnel.

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

By the time 1931 closed, the Port Authority's financial structure was as follows: We had five facilities, we had five bond issues, we had five revenue flows, and we had the General Reserve Fund. The Holland Tunnel was producing surpluses beyond the requirements of Series E bonds while the General Reserve Fund, by means of the surpluses from the Holland Tunnel, was in a position to meet the deficits on requirements for the other bond issues. And we were exploring ways to finance the proposed new Lincoln Tunnel.

**PHASE III**

The financial structure then had become quite complicated, and it was apparent that it ought to be simplified. So this is the time when we come to the General and Refunding phase for the Port Authority—what we'll call Phase III.

**GENERAL AND REFUNDING BOND PROGRAM**

When the new program was started in 1935, the idea was to replace all of the earlier bonds by refunding them with the new type of bonds, General and Refunding (or G&R), and also to finance the construction of the Lincoln Tunnel by such new bonds.

There were other purposes for which the General and Refunding bonds were permitted, but they were quite limited and I'll refer to them a bit later.

At any rate, with the initiation of the General and Refunding bond issue, in time all of these earlier bonds—Series A, B, C, D, and E—were refunded, replaced with General and Refunding bonds. Also, we financed the Lincoln Tunnel with G&R bonds as was expected; we financed the Grain Terminal, or at any rate we repaid the State advance which came with the Grain Terminal from the State of New York and financed its improvement; we

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

financed our two Truck Terminals and our Midtown Bus Terminal; and we initiated capital improvements to the earlier existing facilities.

The General and Refunding bond structure is not ancient history as the earlier ones are. There are bonds of the General and Refunding bond issue still outstanding, and as long as these bonds are outstanding the Port Authority is bound by the contracts with those bondholders. And they're significant, too, in limiting us in the otherwise available use of our revenues.

**SPECIAL RESERVE FUND**

The revenue flow in the case of the General and Refunding bonds now involved a pot of pooled revenues. The big Walls of Jericho between each separate facility were now down. We now had the money from all the facilities we owned at the time, including the Lincoln Tunnel, in a pooled G&R facilities revenue flow structure. These pooled revenues would be used first for operation and maintenance on all G&R facilities; then for debt service on the G&R bonds; and then put into a new contractual Special Reserve Fund which substituted for the various previous independent statutory reserve funds for each of the early Series A, B, and C bond issues.

What the States found was that in the earlier structure, the statutory reserve funds for each early issue which were to receive a fixed schedule of amounts set up in advance called for more than the Port Authority was able to meet. So when the General and Refunding bond program was initiated, it was felt that the amount of the equivalent reserve fund should be an elastic figure. The way it was worked out was that the Port Authority agreed with the bondholders that we would apply the monies for all of these

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

G&R facilities in this order: first operation and maintenance on all the facilities, then debt service on all the G&R bonds, then we would pay into the new Special Reserve Fund all of the remaining net revenues except those necessary to keep the General Reserve Fund at the 10 per cent figure.

We would use, as needed, all the revenues for operation and maintenance; as needed, all the remaining revenues for debt service; as needed, all the still remaining revenues to bring the General Reserve Fund up to the 10 per cent figure. But all the ultimate remaining balance would have to go into the Special Reserve Fund.

The General Reserve Fund didn't reach its upper-dollar limit of 10 per cent of the par value of the outstanding bonds for fifteen years. It first reached that figure at the end of 1946. But from 1946 to date the General Reserve Fund has always been full and payments could then be made into the Special Reserve Fund. Of course, the 10 per cent figure changes from year to year as the amount of the bonds goes up, or down. To date, it always has gone up at each year end.

Now this is lesson number one in the Port Authority's bond structure: There are no "free monies" in the Port Authority's bond structure; there is no pot of gold into which anyone can dip. The General Reserve Fund, as has been mentioned before, may be used only to fulfill obligations to bondholders—and basically again that means: operation and maintenance, debt service, and some capital expenditures that might be necessary within limitations.

The Special Reserve Fund which is created by contract with the General and Refunding bondholders has a similar limitation on it. We may use the Special Reserve Fund monies, obviously, for operating the General and Refunding bond facilities if any one of them might actually have

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

an operating deficit—I don't think that's been so, in fact. We can use them for various purposes like buying General and Refunding bonds in the open market to retire them, payments into sinking funds on General and Refunding bonds and other purposes relating to the payment of interest on and the retirement—even accelerated retirement—of the General and Refunding bonds.

Then there is a final provision in our agreement with regard to the Special Reserve Fund that we might use a certain amount (which is 50 per cent of the aggregate payments into the Fund) for certain other purposes. This has led to the belief in some quarters that the Port Authority has a residue of monies that is not pledged to bondholders. That is not the case.

The entire agreement with Port Authority General and Refunding bondholders is that the Special Reserve Fund must be used for purposes which will enhance or maintain the security of General and Refunding bonds. Since each facility whose revenue flow can end up in the General Reserve Fund can support each other such facility, the Special Reserve Fund monies need not necessarily be used only for General and Refunding bond facilities—you'll notice that at this point in our narrative we don't yet have air terminals in the picture and among marine terminals, only the Grain Terminal. So although, because of the interdependence of all General Reserve Fund facilities, the balances in the Special Reserve Funds which are not going to be used for General and Refunding bonds and their related facilities may cross over the line of the General and Refunding bond facilities, still they never can get out of the total General Reserve Fund family of facilities—which we can look upon at the present time as all Port Authority facilities.

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

There is no pot of loose gold in the case of the Port Authority. All revenues have been pledged and all reserves have been pledged.

As I have said, the purposes for which the General and Refunding bonds could be used were quite limited. They could be used for refunding, as they were to retire the old Series A, B, C, D, and E bonds. They could be used, and were used, to finance the Lincoln Tunnel. They could be used to *refund* bonds issued to start new facilities but could not themselves be used to start them. That means that if you could start a new facility by using not General and Refunding bonds but some bonds like the old Series A, B, C, D, and E bonds, you could refund them, with some strict roll-over tests, with General and Refunding bonds; but this presented you with the problem of how you were going to finance them in the first place if you didn't have the General Reserve Fund behind the special purpose bonds.

And then there was a limited \$15 million of General and Refunding bonds which could be used for new facilities—not over \$5 million for an individual facility. Now you know how far \$15 million for a group of facilities or \$5 million for a new facility would go in the post-war construction market. Capital improvements could be financed by General and Refunding bonds with very severe limitations. And then there was a meager \$8½ million of possible G&R bonds we didn't have to do very much about justifying.

PHASE IV

And so when in 1947 the Port Authority was confronted with the necessity of financing airports, it was obvious that the General and Refunding bond structure was absolutely unsuitable and could not work. So Phase IV of the Port Authority's financial history came into being. It was a



*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

period during which we pretty much duplicated the General and Refunding bond revenue flow for a new issue of Air Terminal bonds, which could be issued only for air terminal purposes, and then we set up Marine Terminal bonds which again duplicated the flow for projected marine terminals.

We now had Air Terminal and Marine Terminal bonds as well as G&R bonds. We now had three separate families of facilities and bonds, each with a similar pattern, with the General Reserve Fund back of all of them and the ability to take the surplus revenues produced by each family of facilities and feed them back in to meet the shortages that either of the other two families was going to have. It was obvious when we started with the air terminals that they were not going to carry their own weight in the opening years of our management of them—so that the by now more than self-supporting G&R family, which included bridges and tunnels, would be able to contribute surpluses which we needed to support the Air Terminal Bonds and Marine Terminal Bonds in their earlier years.

Remember, however, that the way in which the George Washington Bridge, for example, could contribute surpluses to Newark Airport purposes was through the mechanism of the General Reserve Fund. George Washington Bridge revenues, along with the revenues of all other G&R facilities, were first applied to O&M of this group of facilities, then to G&R bond debt service, then to the Special Reserve Fund for G&R Bonds, and finally to the General Reserve Fund. As General Reserve Fund money, it could then be used to fulfill obligations to the holders of Air Terminal Bonds to operate Newark Airport and pay any debt service on Air Terminal Bonds which the Air Terminal group of facilities couldn't meet by itself.

Therefore, in setting up the Air Terminal Bonds and Marine Terminal Bonds, it was necessary to assure their

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

prospective purchasers that the General Reserve Fund was not going to be depleted in any untoward way. And so we evolved the two years' debt service resolution of November 13, 1947—which, unfortunately, is one of the most misunderstood parts of P.A. financial policy.

There are two sets of teeth in the two years' debt service resolution. One set restricts the purposes to which the General Reserve Fund may be applied. The second set establishes how the General Reserve Fund monies shall be invested. Neither set *requires*—as is so often misstated—that the General Reserve Fund shall at all times have in it an amount equal to the next two years' debt service. Such a restriction would defeat the purpose of a reserve fund which is to be available to be *used* in a financial emergency, even if the use brings the balance below a desirable figure.

Actually the resolution imposed no new limitations on the Port Authority's power to use that portion of the General Reserve Fund which represented an excess in all combined debt reserve funds (General and various special reserve funds) over the next two years' debt service at the time. But except for that excess over the next two years' debt service, the monies in the General Reserve Fund could no longer be used for accelerated debt retirement or for any other purpose for which there might be other funds available at the time.

Similarly, the amount in excess of the next two years' debt service could be invested subject to the ordinary governing contractual limitations—i.e., principally in the P.A.'s own bonds. But the amount up to the two years' debt service figure could now be invested only in U.S. Government bonds, or kept as cash on deposit.

This program of voluntary self-limitation helped to establish a favorable climate for Air Terminal bonds and

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

Marine Terminal bonds. By once again assuring the inviolability of the General Reserve Fund, it strengthened the basic security of these new bond issues until the new facilities on whose revenues they had a first lien should become self-supporting in their own right.

However, with three families of facilities and three related bond issues, we were getting to duplicate on a larger scale the original structure we had with our Series A, B, and C bonds; our structure was getting unwieldy again. So that by 1952, the need was felt to revise the bond structure once more, pretty much along the lines of the need we had felt around 1935 to have the streamlining of the General and Refunding bond issue.

#### PHASE V

The motivation was partly streamlining and partly the fact that we were getting ourselves into a situation where we really didn't have any type of bond that we could put out except for a limited purpose. Air Terminal bonds were available only for air terminals, and Marine Terminal bonds for marine terminals; General and Refunding bonds, with their limitations of \$5 million per project and \$8½ million free, just didn't fit the cost pattern of the post-war age. And so in 1952 we set out to develop an entirely new streamlined bond structure—and that is the one that we're living with now.

#### CONSOLIDATED BONDS

We are now in Phase V, the Consolidated Bonds phase. The first thing we did was to provide that these bonds could be issued for unlimited purposes, that is, any purposes that The Port of New York Authority was authorized by statute to go forward with and to use the General Reserve Fund

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

in connection with. In the second place we came to the problem of the closed bond versus the open-end bond. The Consolidated Bonds, like the General and Refunding Air Terminal and Marine Terminal bonds before them, are an open-end bond. That is to say, there is no dollar amount which limits the amount of them that the Port Authority can issue. In the case of the General and Refunding bonds, the open-end feature had become more theoretical than real because the purposes were so limited; these small dollar limits on the amounts that we could put out to construct new facilities practically made G&R bonds only Lincoln Tunnel bonds or improvement bonds for existing facilities, or refunding bonds.

But as we came to draft the Consolidated Bond structure, we looked forward to the enormous post-war horizons that the Port Authority was facing up to. We needed a new financial device where the purposes would be unlimited, where the dollars would be unlimited, and only legality and financial practicability would impose the limits. You know that our financial program today calls for something like a billion dollars of new capital money to be raised over the next ten years. As of 1952, adding what we've done between that time and now, and what we have left to do, the figures were and are astronomical.

The holder of a Port Authority bond has nothing to look to for the repayment of the principal and interest on his bond except the revenues that the Port Authority can derive from the facilities in a particular year and except for the reserves in which it can impound them—the special reserves and general reserve—from year to year. And so he has to know at any point of time, when he lends us his good money—or the money of beneficiaries of trusts he administers—he has to know that there is not only a good prospect but almost a certainty, as far as those things can be calculated, that he is going to be paid back.

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

And so he must be sure that the Port Authority is not able to dilute the net revenue potential of the facilities to a point where the money that is going to come in—this gross revenue box that we start off with at the head of each column in the revenue flow chart—is going to get too small for the O&M and the debt service that it has to cover. He wants to be sure that we don't balloon the amount of our bonds up so big and get our debt service up so big and, in the case of a facility which wouldn't be carrying itself, like a Hudson & Manhattan Railroad, even get its operation and maintenance expenses up so big, that there wouldn't be enough over-all to meet the debt service on his bonds and on the new bonds that might be put out in connection with new facilities.

### 1.3 EARNINGS TEST

Now the mechanism by which this insurance was given was the 1.3 earnings test. All this test is is a requirement that the Port Authority will not issue new Consolidated Bonds unless it can show, at each point of time it proposes to issue new consolidated bonds, that certain earnings equal 130 per cent of, or 1.3 times certain debt service on certain bonds. For the most part, the earnings that are used in this equation are historical earnings. They are the best twelve months out of the previous thirty-six months and in practice these have always been the last year, which has always been our best year. In certain limited instances we can augment these historical earnings with some estimates, but for the most part you can think of the earnings that we have to use in this test as historical earnings.

On the other side of the equation is the debt service—that is the interest, the amortization on the bonds, the

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

annual maturities, the sinking fund requirements—which we must cover 1.3 times out of these earnings. This debt service is the requirement for that year in the future when our scheduled debt service will be at a maximum. In other words, we must take our peak demand year in the future for combined debt service on already-issued bonds and the proposed new bonds. We know our scheduled sinking fund and principal maturities; we know our scheduled interest requirements. We look up the schedule to figure out in which year in the future our scheduled debt service will be the heaviest, and then we compare this with our historical earnings, and if we can't show that the maximum future year's debt service requirements have been met historically in one of the past three years 1.3 times, we can't issue a Consolidated Bond.

For all practical purposes, that means we can't finance at all at that time. Theoretically, if a proposed new facility could be self-supporting, we might be able to work a financing like the old Series A, B, C, D, and E bonds without using Consolidated Bonds. But the things that the States direct the Port Authority to do these days are not capable of immediate self-support. So we are practically restricted to Consolidated Bonds, and that means we must satisfy the 1.3 earnings test.

We do have alternates in applying this 1.3 earnings test. First, we can meet it on a proposed new facility by itself. In other words, if a new facility which the Port Authority proposed to buy had historical earnings which were 1.3 times the debt service on the bonds we were proposing to put out to buy it, then even if every other facility was in financial trouble at the time, we could put Consolidated Bonds out to buy the new one because this would not dilute an existing coverage and the new facility would be carry-

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

ing its own weight 1.3 times. This is a most unlikely situation, but it is provided for.

We have another alternate under which we can apply this 1.3 earnings test across the family of Consolidated Bond facilities. Now, the family of Consolidated Bond facilities consists of all those facilities which were financed only with Consolidated Bonds and not with the Series A, B, C, D, E, G&R, Air Terminal or Marine Terminal bonds. At the moment this family consists of the Hoboken, Elizabeth, Brooklyn, and Erie Basin Piers, and the two heliports. New facilities so financed would be added—such as the Hudson Tubes, and the new World Trade Center. If that family of facilities could show historical earnings 1.3 times the maximum future debt service requirements on all Consolidated Bonds, including those new ones proposed to be issued, we could put new Consolidated Bonds out to acquire a new Consolidated Bond facility that would be in that family. This alternative is not likely to happen for some years.

The real test, under which we have, in fact, done all of our Consolidated Bond financing to date, is the third test. This measures the financial picture of the entire group of Port Authority facilities—we call it the General Reserve Fund family because at the present time, aside from the commuter car program, every single Port Authority facility can legally contribute to and be supported by the General Reserve Fund.

Under this test, if we want to put out a new Consolidated Bond series, we must show as a practical matter that the historical earnings of all Port Authority facilities will cover at least 1.3 times the debt service we will have on all new bonds in that year in the future when our debt service will be at a maximum. Now that is a rigorous

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

requirement. We have met it easily in the past. But the entire program on which we are embarking contemplates that the coverages that we have produced will come down closer to the 1.3 times test figure—although never really near it, I hope, because with us 1.3 is absolute zero. At the point where we can only show barely 1.3 or a whisker under 1.3, we can't put out Consolidated Bonds. The 1.3 status is not prosperity to us; it is practically the point of enforced stagnation. It is the point at which our ability to finance any future projects, even any capital improvements to existing facilities, ceases. For the Port Authority to continue as a healthy, vigorous organization, doing the job it was set up to do and which it has done so well in the past, we must keep our coverages up as high as we can.

In order to issue our Consolidated Bonds in the first instance, it was necessary, of course, for us to close our General and Refunding bond, our Air Terminal bond, and our Marine Terminal bond issues. This was because it was from the surpluses to be produced by the existing facilities over the debt service on the old-line bonds that we were going to cover the debt service requirements on the Consolidated Bonds for years to come. If we were able to continue to put out increasing amounts of General and Refunding bonds, the Consolidated bondholder would have no certainty that any surplus revenues would be available for his bonds. So when we initiated the Consolidated Bond issue, we agreed with the Consolidated bondholders that we would no longer put out General and Refunding, or Air Terminal, or Marine Terminal bonds.

REVENUE FLOW

At the present time, then, the revenue flow in the case of Port Authority facilities is of two kinds. The existing flows



*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

that we had for the old-line bonds still remain. The General and Refunding bond flow remains as long as there are any G&R bonds outstanding; the latest present maturity dates are well into the 1980's. And similarly, Air Terminal and Marine Terminal bonds flows will continue as long as any of those bonds remain outstanding. In addition, we have the flow for the new Consolidated Bond family.

Since 1952, we have used Consolidated Bonds as the sole medium of general financing. We've used them not only for financing the newer facilities—the Hoboken, Elizabeth, Brooklyn and Erie Basin Piers and the heliports—but also for all the major capital improvements to the pre-existing facilities. We've used Consolidated Bonds to finance the Lincoln Tunnel Third Tube, the GWB Second Deck, NYIA enlargements, LaGuardia rehabilitation and everything else that we have done in the last nine years.

From the point of view of revenue flow, what is actually happening now is that these three older families of facilities—General and Refunding, Air Terminal, and Marine Terminal—are now covering their operation and maintenance, their debt service and their requirements to keep the General Reserve Fund full, with something left over for the three Special Reserve Funds; whereas the new Consolidated Bond facilities, if we thought of them as having to meet solely from their own revenues the debt service on *all* Consolidated Bonds, are deeply in the red.

Of course, this theoretical deficit had to be because the Second Deck of the GWB has been financed through Consolidated Bonds and yet *all* of the George Washington Bridge revenues must go into the G&R revenue flow line; the huge NYIA expansion program has been financed in large part with Consolidated Bonds, but all the revenues thus generated must go into the Air Terminal revenue flow line.

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

As a result, what we really have are downward flows from the old-line facilities into the General Reserve Fund and the Special Reserve Funds, and then a reverse flow back-up to take care of requirements for the Consolidated Bond facilities—to cover any O&M shortage and the shortage on debt service which must exist as long as the old-line bonds remain outstanding. At long last, sometime in the future, when all of these old-line bonds are retired, there will be only one revenue flow. All the facilities will then be in the enlarged Consolidated Bond family of facilities and their revenues will cover directly all related debt service.

The proposals that we be directed to take over railroad operations in both States would involve, without the New York subway system, something like \$30 million of operating losses plus the debt service on bonds that we might have to issue to acquire the properties which produce this headache. These proposals made us take a good look at our financial structure to see to what extent, if at all, we were open to this kind of a financial raid at the sacrifice of the security that our bondholders had bargained for when they had loaned us hundreds of millions of dollars.

We actually found, as I have tried to indicate, that there was no hole in the structure, there was no pot of gold into which to dip. *All* the revenues were pledged to particular families of bonds; *all* of them had to be used either to pay the operating and maintenance expenses of the particular facilities or the debt service on particular bonds, or to keep the General Reserve Fund full, or for the Special Reserve Funds—and the Reserve Funds themselves were available only for things which would maintain or enhance the security of the bonds.

Certainly you could not make the claim that Reserve Fund expenditures would maintain or enhance the security

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

of our bonds if the money was to go outside of the P.A. family of facilities, as was proposed in one suggestion that we simply subsidize the private railroads to the extent of their commuter operating deficits.

However there still was a fear in the financial community that the Port Authority might somehow take *into* its General Reserve Fund family a group of deficit-ridden railroads and then, by having gotten the disease into our own financial body, be in a position legally to apply our monies to their operating and debt service deficits. The fear was that in some such way we might actually dilute our earning and reserve position to a point where we would no longer have the financial capacity to meet the requirements of the existing bonds and of any other bonds we might have to put out for our self-supporting projects.

We in the Law Department have always held the firm opinion that Port Authority *lacks* the power so to dilute the security of its bondholders, and we have advised the Commissioners to that effect. It would be just as ludicrous, to us, to suggest that the Port Authority could accept the New York City public school system as a gift and then, it being in our family of facilities, apply all of our revenues to paying teachers' salaries so there wouldn't be anything left to pay the principal and interest on our bonds. We knew we couldn't do that. However, the fears of the financial community were real, and so we felt that this legal opinion which we have should be codified in a form that would be not only a legal opinion, which could be disputed, but a firm written contract. And so we proposed what we call our Section 7 certification. Ever since the 12th series of our Consolidated Bonds, we have had in each series an agreement with our bondholders that we would not take on a new facility except under circumstances where our Commissioners could certify in good faith that it would not

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

unduly impair the sound credit standing of the Port Authority or the investment status of Consolidated Bonds. To us, this was merely a contractual codification of an agreement and obligation which we had anyhow, but it has helped to allay the fears of the financial community.

As for the future? I don't know . . . but I think you will see there is an intimate connection in Port Authority history between the financial structure and the direction we take.

The differences during 1961 between the State of New York and the State of New Jersey as to how the P.A. can provide some help in solving the railroad commuter problem have been for the most part differences as to the assurances which would be given to our bondholders. The statute which was first passed in the State of New York on the subject of the H&M also included the proposed World Trade Center. But our principal problem with that statute was that it did not provide certain assurances to bondholders which we considered essential to making the sound credit standing certifications that I described, and to holding the P.A.'s credit together and doing the job. The bill in New Jersey, which never was enacted, first started in that direction . . . but it too had some faults. The two States have not resolved their differences—and I hope they will. We're doing our best to bring them together but the only way in which they can successfully come together and keep the P.A. functioning as a worthwhile legal-financial institution is by giving our bondholders the assurances which they need for us to continue financing as we try to do the job\*

---

\* Since Mr. Goldberg presented this summary, the two States have reached agreement along the lines he discussed and the Hudson Tubes-World Trade Center legislation of 1962 contains adequate assurances to bondholders.

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

*Question by Mr. Tobin:* "You might tell us more about the statutory assurances needed in any H&M legislation."

Mr. Goldberg: The assurances which we have suggested be placed in the statutes which would authorize us to do the H&M job are, as we propose them, in the form of an actual contract between the two States and the holders of our bonds. Contracts of this type can be made and cannot be breached by subsequent legislatures. This is because the Constitution of the United States says that no State shall impair the obligations of a contract. It is our opinion, concurred in by our present bond counsel and by his predecessor, and not challenged by anyone, that the contract we propose, if inserted in the legislation, would be binding and would constitute an unbreachable contract by the States.

Now that contract would be an agreement that the P.A. would not be permitted or directed to apply its General Reserve Fund monies to a new commuter railroad after the H&M except under stated circumstances. (It is the General Reserve Fund that we're trying to protect here. If a proposal can be done outside the General Reserve Fund structure, we don't have a problem of preserving credit.) The agreement would be that, before we put out bonds or in any way commit the General Reserve Fund to any application to the deficits of any commuter railroad facilities, the P.A. Commissioners would have to make a formal certification. The certification would be that the estimated deficits after operation and maintenance and debt service requirements of the proposed new commuter railroad facility would not exceed a certain figure. The figure may be thought of generally as one-tenth of the amount in the General Reserve Fund at the time, provided it is full.

*Exhibit V to Stipulation Among Counsel  
Dated December 20, 1974*

At the present time, we have some \$65 million in the General Reserve Fund, and it is full, which means we have a debt of some \$650 million. Ten per cent of that \$65 million—or \$6½ million—would thus be the limiting figure at the present moment, if such a certification had to be made.

That \$6½ million would be used in this way . . . after acquisition of the H&M. We have estimated that the H&M will drain from reserves about \$5 million a year over and above its own revenue take—so that at the present there would be a margin of \$1½ million between that \$5 million estimated deficit and the \$6½ million figure which is 10 per cent of the \$65 million in the General Reserve Fund. As long as those figures prevailed, we could not take an additional commuter railroad into the General Reserve Fund family if its estimated annual deficits exceeded the \$1½ million margin.

Now assuming an agreement between the two States which gets the H&M into the General Reserve Fund family—and assuming this covenant limiting inroads on the General Reserve Fund were enacted by the two States—suppose it were then proposed that we undertake the enlargement of the H&M, or maybe that we take over some additional commuter railroad facility. At that time, we would take whatever the established H&M deficit was, we'd project over the next ten years our estimate of what that deficit would average and then add our estimate of the projected ten year average deficit on the proposed new commuter railroad facility, and we'd have a total. On the other side of the test equation, we'd take 10 per cent of our then General Reserve Fund figure, and if 10 per cent of our General Reserve Fund figure would cover our estimated annual deficit on the now-grouped H&M plus additional commuter railroad facilities, we could take the proposed additional

*Exhibit V to Stipulation Among Counsel*  
*Dated December 20, 1974*

facility into the General Reserve Fund family. Otherwise we couldn't.

After we first proposed this test formula, it was suggested that it was unduly rigid because, theoretically—or even actually, but not in the foreseeable future—our debt would some day decline and as our debt declined, the General Reserve Fund which is based on 10 per cent of the debt would also decline . . . and yet our revenues might not, only remain constant but increase, so that our ability to take on commuter railroad facilities might be greater while our test figure was going down. We acknowledged this might eventuate and so we tried to meet that possibility by proposing an alternative under which the test figure based on one-tenth of our General Reserve Fund would be augmented by one per cent of our equity. By “equity” we meant debt retired from income or reserves. This covers a “someday and maybe” situation. It has been our final proposal. It is in the last draft of the bill which our office produced (and is part of the latest New Jersey bill to be introduced on the subject).

If enacted, it would produce a result which we could live with because, as we now know, the financial community will accept it. We know that to be so because we have canvassed critical investor opinion on the subject.\*

---

\* Final enactment along these lines was accomplished in 1962.

**Excerpts from Testimony of John F. Thompson**

\* \* \*

**[2]** Mr. Meyner: This is a hearing in order to procure testimony with reference to reliance and the effect on the secondary market by reason of the repeal of the 1962 covenant by the 1974 statute. T 2-16 to 2-20.

\* \* \*

**[18]** Q. What has been the nature of your employment with the Morton Company? A. I am vice-president. I am the head of a very small department which we call credit and finance. I have done a good deal of work of the firm in helping to structure new issues of some of the state agencies and authorities which the Morton Company is particularly a manager in the underwriting of.

I have also been responsible for describing and explaining credits of all sorts of municipal issues, not only to our salesmen but to customers of our salesmen both in conversation and in written memoranda which are circulated to both the salesmen and the customers.

**[19]** Q. Describe more specifically the operation of Morton and Company and your role in its operation. A. The Morton and Company is an underwriter and dealer specifically in municipal bonds. We do not have any other business at this time except for a small amount of Federal Agency sales on their new issues, but our specific business is municipal bonds.

In the underwriting of municipal bonds the Morton Company has what it called a major position in many of the syndicates which underwrite large issues. In quite a number the Morton Company is a manager of the syndicates. We have been a manager in part of Port Authority financing, the firm has in the period beginning 1964 and during the period 1967-1968 when the Port Authority issues were first increased to the size of \$100 million each and sold. By



*Excerpts from Testimony of John F. Thompson*

negotiation the Morton firm was one of four managing underwriters in the business.

We also deal in the secondary market, feeling that a good dealer is prepared to make markets in the issues which he has sold to customers, and also is prepared to buy holdings from a customer in the course of distributing in a new issue. The distribution of a new issue in the primary market and the purchase and sales in the secondary are often related in this way.

**[20]** Q. But what is the underwriting liability that Morton and Company undertakes? A. Last year we participated I believe in some four billion of new issues, and our underwriting liability was somewhere around 225 to 250 million in the course of the year.

Q. How many offices does Morton and Company have? A. The Morton and Company operates from just one office. We do a nationwide business but from one office.

Q. How would you characterize the nature of the customers dealt with by Morton and Company? A. The customers dealt with by our firm are largely what are known in the trade as institutional customers, by which we mean commercial banks, life insurance companies, trust departments of commercial banks, investment counsel firms, and the municipal bond funds. T 18-8 to 20-18.

\* \* \*

**[21]** Q. Have you been involved, Mr. Thompson, with any professional associations with regard to your operation? A. Yes, with quite a number. Early or after I came to Morton and Company I was put on the Investment Bankers Association Special Research, and spent a good deal of time in the ensuing year in working on the problem of defending the tax exempt market in the face of the drive for what was known as tax reform in Washington.

*Excerpts from Testimony of John F. Thompson*

And I am now Chairman of the Research Committee of the Public Finance Council of the Securities Industry Association, which is the successor to the old IBA or Investment Bankers Association.

I am a member and past President of the Society of Municipal Analysts, which is a nationwide group with some selected twenty-five or thirty members, professionals in the municipal bond business, particularly attuned to the credit side of the business.

I am a member and past President of the Municipal Forum of New York. I for a considerable number of years [22] was a member of the former Mayor Lindsay's Fiscal Advisory Committee, and I was a member of the Twentieth Century Fund Task Force that did a study of the rating agencies and the rating problem which eventually was published under the title of the rating.

Q. Did that latter publication cover municipal bond ratings or only corporate bond ratings, or both? A. Solely municipal bond ratings.

Mr. Landis: I submit Mr. Thompson as an expert and offer him for cross-examination on his expertise.

Mr. Sovern: We have no question.

The Court: You may proceed. T 21-6 to 22-13.

\* \* \*

[26] Q. What are the different types of municipal bonds that are commonly dealt with? A. Well, classification is done in varying ways in different places, but I think we can say that they are principally four types.

First is the general obligation tax-supported bonds, such as the general obligation of the State of New Jersey [27] or the State of New York or the City of New York, or of any of the cities here.

*Excerpts from Testimony of John F. Thompson*

The second type of obligation is a special obligation payable only from certain specific taxes. Some states have issued highway bonds payable solely from the proceeds of highway revenues which include the gasoline and motor vehicle taxes.

The third type, and this is the type in which the Port Authority bonds fall, is the revenue bonds payable solely from revenues received from the projects operated by either the Authority or the municipality, if it's water revenue bonds issued by a municipality and so on.

There's a fourth group that has come into prominence in the last few years. They are in part at least revenue bonds. That is, there is a revenue source and a flow of funds provided for the bonds but it was felt in issuing them that some stronger security should be given and a device was set up in which a reserve fund was established either by the issuing bond or by—from the proceeds of the bond equal to one year's interest and principal payment.

Then the state of issuance, these are largely state obligations. The state of issuance, by statute, provided that the state should reimburse the reserve fund if it had to be drawn upon in case other funds were inadequate to pay principal and interest.

**[28]** One can call these reserve makeup clause bonds. In the market, they are commonly called moral obligations. This is a term which has some disadvantages but it is a term that is generally used to describe this type of bond.

Principally, because the State as such cannot be compelled to restore the balance in the reserve fund, but has indicated through legislation that it will in case of need.

Q. Are they— these latter category of bonds, are they common in the states of New York and New Jersey?  
A. Yes. They started in the state of New York and there must be, oh, at least five billion bonds of that sort outstand-

*Excerpts from Testimony of John F. Thompson*

ing in the state of New York, perhaps a little more now. They started with the Housing Finance Agency. The same reserve provision was given to the Urban Development Corporation, the Battery Park City Authority and I believe some others.

In the state of New Jersey there is this sort of a provision in the New Jersey Mortgage Authority or Housing Authority, whichever it is called here, that is an agency to assist in the mortgage market. This feature was also belatedly added to the Sports Complex bonds before they were sold.

Q. In the four categories, is there any question as to where among the four types of bonds the Port Authority consolidated bonds come down? [29] A. No question at all. They are revenue bonds. They have no state backup, moral obligation or anything of that sort. They are supported purely by the revenues from the projects which they have undertaken.

Q. Aren't they also supported by reserves? A. Well, the reserves, yes, of course. They are supported by the reserves but I guess the reason I said they were purely revenue, the reserves were all created from the revenues historically. That's where the reserves came from.

Q. Now, generally, Mr. Thompson, has there been an increase in the amount of municipal bonds sold over the years? A. Oh, yes, a very large increase. If we go back to 1948, the total sold was somewhere around two and a half billion including a little over a half a billion of revenue bonds. Last year there were 22,800,000,000 municipal bonds sold of which I believe 9,700,000,000 were revenue bonds or some 42-odd percent were revenue bonds. This, by the way, is not the total dimension of the tax exempt or municipal market because there is also the sale of notes in

*Excerpts from Testimony of John F. Thompson*

large volume and actually last year 28 billion of tax exempt notes were sold. T 26-19 to 29-23.

\* \* \*

**[30]** Q. Could you discuss briefly, please, the ratings of municipal bonds? A. There are two recognized rating services, Moody's and Standard and Poor's. Each of them now rates the credit of an issue when a new issue is sold and charges a fee for so doing. There are four investment grade ratings which Moody states as Triple A, Double A, Single A, and BAA, and Standard and Poor's, the same down to the A., and then Triple B. These are all regarded as of investment quality and in none of those is it anticipated that default is likely to occur. The higher ratings are given **[31]** to qualities of credit where the margin of protection for future payment is larger and in the case of the Triple A, it is at some sort of a maximum.

There are ratings below those that I've stated. Most of them dealing with either bonds that are apt to be in default or that are considered highly speculative. I believe the BA and the Double B, they regard simply as highly speculative. Below that you begin to get toward default. T 30-15 to 31-9.

\* \* \*

**[35]** Q. What is the so-called "secondary market" in municipal bonds? A. The secondary market is a market in which present holders of bonds are able to resell their holdings and the secondary market has become very much larger in recent years because many investors are looking upon bond investments as a more active sort of a business, if a new issue comes into the market which seems especially attractive to them and they can sell one of their former holdings at what they think is a full or adequate price,

*Excerpts from Testimony of John F. Thompson*

they will sell a former holding into the secondary market and buy the new issue.

Sometimes, the secondary market, of course, is used simply to obtain funds, if an institution or an individual wants to liquidate their holdings and use the money for another purpose. T35-4 to 35-19.

\* \* \*

**【36】** Q. How is the market structured in terms of buyers and sellers and intermediaries? A. The dealer firms consist of a commercial bank dealers department, dealers who specialize in municipals or who have the Municipal Department as a part of their overall security base and brokers.

There are, oh, a half a dozen or so brokers who act as intermediaries between dealers and they form a growing part of the market because some of those brokers have wires to all major dealers' offices and one way is if someone wants to sell a municipal holding, this is spoken of as getting somebody to put it on the penny wire and it goes to all dealers and in this way you are sure of getting the best bid because the offering is known to more people.

Q. In fact, are there a number of dealers in the municipal bond market? **【37】** A. There are a great many dealers. The dealer business centers, of course, in the New York financial community, but there are other centers in Chicago, San Francisco and some degree in Boston and there are dealers in almost all of the major and submajor cities in the country who do quite an active business in their local areas. **【38】** Q. Is the secondary market a competitive market? A. It is an exceedingly competitive market. As I indicated the Penny Wire helps to make it more competitive. No investor sells bonds these days without making sure that various firms have a chance to compete for the bonds.

*Excerpts from Testimony of John F. Thompson*

Q. What is the pricing structure of that competition?

A. Municipal bonds are generally sold on a yield basis, to yield a certain amount to maturity or to the first call date if that is the appropriate term to figure.

There are some that are priced on what is called a dollar bond basis, which really is not dollars but is a percentage of par. For example, if one of the outstanding bond issues were said to be priced at 85, it would mean that the buyer, if that were the bid for them, the buyer would be willing to pay \$850 per thousand dollars of face value.

Q. And in fact when they quote and price yields are they calculated in fractions or in what manner? In other words, what are the differences in the calculation of yields when bonds are purchased on the secondary market—sold and purchased on the secondary market? A. Generally the market is stated in the basis points and segments of five basis points. That is, the bid will [39] be six twenty-five let's say, or six thirty-five for a certain issue to yield that much.

Q. What are those basis points? A. A basis point is one-one hundredths of one percent.

Q. Would an issuer of municipal bonds ever purchase bonds for its own account in the secondary market? A. Yes, especially if they had to [purchase] bonds outstanding [for] a required sinking fund; and many issues do, including most of the Port Authority issues.

And the sinking fund is set up in a way that requires the retirement of a fixed amount of bonds each year in order that by maturity the whole issue will be paid off. Now if the market is below the level and the interest rates are at a higher level than they were when the issue was sold, the issuer can go into the market and buy the bonds at a discount to its advantage. So this is always done.

*Excerpts from Testimony of John F. Thompson*

This is an advantage not only to the issuer; it is an advantage to the holder of the bonds because the sinking fund activity is a help to the market for his bonds. T36-9 to 39-19.

\* \* \*

**[40]** Q. In the municipal bond market what are the objectives of an investor? T 40-16 to 40-17.

\* \* \*

**[41]** A. The purpose of investors in investing in municipal bonds is to get the best yield they can relative to quality of the bonds. They are not simply buying something to be put away and the coupons clipped and the bonds to be paid at maturity.

They are looking to something that will cause a favorable relationship of yield to quality, maintaining its relative position in the marketplace. And this I think is the objective of most bond investors particularly the professional investment people and institutions. T 41-1 to 41-10.

\* \* \*

**[42]** Q. Would you explain perhaps with a little more detail the difference between a dealer and a broker in the secondary market in municipal bonds? A. Yes. A dealer in buying bonds either in a secondary or the primary market buys them for his own account and takes the risk that he will be able to sell them to an investor at a price which will afford him some profit and at least not involve him in a loss.

The broker, on the other hand, acts—works on a small commission and at no time do the bonds—are the bonds in the ownership of the broker. He doesn't have an inventory problem as most dealers have had particularly in the last year up until a month or so ago. It's been a serious one. T 42-5 to 42-17.

\* \* \*



*Excerpts from Testimony of John F. Thompson*

**[43]** Q. In your employment at Morton & Company and earlier at Scutter Stevens, have you had any dealings in the Port Authority bond secondary market? A. Yes. And several specific ones in my years at Scutter which I well remember.

On two different occasions through my recommendations **[44]** and advice and actually I think I made the contact with the dealers who then offered the bonds, over a million dollars each was purchased for the clients of Scutter, Stevens and Clark.

Q. And at the Morton & Company what would your involvement be in the secondary market? A. Well, my involvement in the secondary market is keeping in constant touch with the trading desk and the salesmen who are all involved in it as well as being asked from time to time for an opinion on the credit of something that's offered in the secondary market.

The credit judgment being a thing that is left to my responsibility in considerable part.

Q. Is it the practice at the Morton & Company to refer from time to time to credit rating reports prepared by independent credit rating agencies, and I show you P-1 and P-2 in reference to that question?

Would you identify P-1 and P-2, Mr. Thompson? A. Yes.

Q. And then answer the question if you can recall it. If not, I'll restate it. A. These are municipal credit reports prepared by Dunn & Bradstreet which then prepared reports independently of the later merger with Moody's. The question I—

Q. The question was, was it the practice and has **[45]** it been the practice—was it the practice at the time those reports were issued and has it been the practice at Morton & Company to refer to reports of that nature? A. Yes. It's

*Excerpts from Testimony of John F. Thompson*

always been the practice at Morton & Company to use the credit services of Dunn & Bradstreet and to refer to these in arriving at their judgments on the credits.

Q. And more specifically, how are they used? How are these papers, such as P1 and P-2 used? A. Well, they're used in providing information about the credit for those who are about to make the bid if it is a bidding situation; for salesmen, if they're discussing the credit with investor customers.

Q. Mr. Thompson, review, if you will, the situation with regard to the financial condition of commuter rail facilities in the Port district in the early 1960's as you understand it. T 43-20 to 45-17.

\* \* \*

**[46]** A. The situation in mass transit in those years was such that most facilities of this sort were operating at deficits. The Hudson & Manhattan Tubes which later became PATH were at that time bankrupt. There was a general recognition, I think, that the pressures on mass transit to keep fares down and the upward pressures on expenditures through union demands and threats of strikes were especially—were especially conducive to continued deficit operations and to lack of confidence in this type of operation as a vehicle for investment.

Q. What—

The Court: When you say there was a general recognition, by whom?

The Witness: In the investment community, your Honor. I guess I intended to imply that.

The Court: All right.

**[47]** Q. What [projections] were being made for the future of rail mass transit at that time.

*Excerpts from Testimony of John F. Thompson*

Mr. Sovern: By whom, your Honor?

Q. What projections that came to your attention were being made and would you then also answer Mr. Sovern's question, by whom? A. Certainly, the projection for the H and M, you didn't have a projection, you had a bankruptcy. I think then in the investment community that any project[ion] of what would happen in the mass transit was that it could only operate at a deficit.

Q. Do you recall any specific projections, in other words, can you point to anything specific or are you speaking from your general recollection? A. I am speaking from my general knowledge at that time.

Q. And you mention specifically the Hudson and Manhattan. In 1961, did it come to your attention that the Port Authority was proposed to take over the Hudson and Manhattan? A. Yes, this was a discussion and a proposal which was very much in the news in those days.

Q. What was your reaction to that? A. Well, my reaction to the Port Authority getting into that or other mass transit was one of concern because the Port Authority has always gone into projects which it could reasonably ascertain that they would become self-supporting, at least within a period of a few years of development and this seemed to be a different tact for the Port Authority to start on. T 46-3 to 48-5.

\* \* \*

Q. Did you look on the step as the final step of the Port Authority towards mass transit, the final step of the Port Authority towards mass transit? A. No, I think in common with the investment view of most things, anticipation is a key factor and if one step were made into mass transit, the question arose in the minds of most participants in the

*Excerpts from Testimony of John F. Thompson*

investment community, what comes next, what other projects in mass transit will next be undertaken, or projects.

Q. And did you have specific concern of the [49] Port Authority in your work at that time? A. Certainly in this respect, yes. A concern that the Port Authority might be pulled away from the revenue producing type of undertaking which it had up until then, into things that would get it into difficulty.

Q. Were you specifically involved in making recommendations towards clients of your firm with regard to Port Authority bonds at that time? A. I am sure I was, yes. I am sure I was.

Q. And what prospect did you see at that time for bonds of the Port Authority, both new issue and, if you will, the bonds that had already been sold by the Port Authority? T 48-16 to 49-13.

\* \* \*

[50] The Court: Do you have any specific recollection of some definite time period in 1961 when you might have considered what the prospects were for the Port Authority bonds?

The Witness: I do not think I recall a specific time period that far back, your Honor. I do recall that in 1961, this whole concern was being discussed and there were the beginnings of a discussion of what became the 1962 covenant as a device to uphold the credit of the Port Authority, but I do not think I can pinpoint it down as to the specific dates.

The Court: All right.

Q. What did you see at that time as the prospect for the sale of Port Authority bonds if the Hudson and Manhattan was taken over by the Port Authority? A. Well, it depended on what sort of overall restrictions were put on a situa-

*Excerpts from Testimony of John F. Thompson*

tion in that respect. We all knew that the move to take over the Hudson and Manhattan was at least politically related to the construction of the World Trade Center and it could therefore turn out to be an isolated instance, but there was concern that it might not be, and I think this is what [51] eventually developed in the covenant.

Q. If there had been no covenant, what would have been the effect upon the bond market?

Mr. Sovern: Objection, your Honor, if there had been no covenant, there conceivably would have been all sorts of terms and conditions which would have varied and the question as[ks] for an abstract and speculative answer.

Mr. Landis: The question as[ks] for the witness's opinion, it is hypothetical, but I think it is appropriate for an expert.

Mr. Sovern: The effect, I submit, has to do with the failure to specify, if you will, the hypothesis. As the witness testified, hundreds of conditions go into deals of this character. If there had been no covenant, we don't know what Mr. Tobin might have said about the absence of a covenant.

Mr. Landis: I think that is appropriate for cross-examination and Mr. Sovern will have the opportunity—

The Court: I would like to have all of the fact[s] or assumed facts in the hypothetical set forth in the record. In other words, are you asking him to assume that all of the conditions [52] of the consolidated bond resolution, the General Funding Statutes, the reserves required to remain in effect; are you also asking him to assume that the Port Authority would be continued to be managed by the same personnel

*Excerpts from Testimony of John F. Thompson*

with whom he had experience in evaluating over the years, et cetera, et cetera, and are you asking him to assume also that legislation had been [con]currently pas[sed] by both States authorizing the takeover of the Hudson and Manhattan and the construction of the World Trade Center without any other conditions being imposed?

Mr. Sovern: May I add one condition, your Honor, to submit for your consideration, it is that the Executive Director of the Port Authority in whom he had such confidence at the time, he said the covenant was necessary. Had it not been enacted, it is entirely possible he would have taken a different view, so some specification of the question as to what Mr. Tobin was advising the community on this hypothesis seems to be called for.

The Court: I think you really ought to expand upon the question that you have asked in order to give it any meaning and also so that he [53] knows exactly what you are asking for the purpose of his cross-examination.

Mr. Landis: I will be glad to rephrase the question.

[54] Q. Mr. Thompson, if the Port Authority had been directed to take over the Hudson and Manhattan and build the World Trade Center without the covenant restriction of further involvement in rail mass transit, but assuming all other things have been constant and as they are, what would be the prospect for subsequent Port Authority bond offerings after that legislation?

Mr. Sovern: Actually, your Honor, on that hypothesis we know the answer. The stipulation reveals

*Excerpts from Testimony of John F. Thompson*

the Commissioners would have refused to issue the section 7 certification, and that offering would have had to be renegotiated again on some other term.

Mr. Landis: Your Honor I submit we do not know the answer from the stipulation. I think there was speculation and representations made, but the question never reached the Commissioners. They never had to vote on the question. And it is not stipulated that they did vote on the question. And I would ask that the question be answered.

The Court: I am not certain that the stipulation actually would cover the answer which he hopes to elicit from the witness. Maybe he will get it and maybe he won't.

Do you understand the question?

**[55]** The Witness: I think so your Honor.

The Court: Then I will overrule the objection. You may answer the question.

A. All other things remaining equal and the authorization for the PATH takeover and the World Trade Center without the covenant would have resulted in my opinion in a less favorable market for the Port Authority bonds and a higher interest for the Port Authority bonds.

Q. Again if you will, although maybe it is repetitive, what was the reason for your opinion? A. The possibility of massive deficit operations getting into the Port structure.

Q. And what you referred to as a possibility, in fact was that concern borne out over the years since 1961 in terms of the deficits of rail mass transit? A. It certainly has been. I think it can be stated to be a proposition with tremendous foresight. The deficit of PATH was estimated at the time to be about five million dollars a year. As I understand it, it is running five times that.

*Excerpts from Testimony of John F. Thompson*

The operating deficit of the New York City Transit System during the current year will be \$450 million to which must be added if we are to compare it in this context some \$160 million of debt service on transit bonds, for a total deficit of \$610 million. That is just the [56] Transit System in New York.

And I think this indicates that the fears of the investment community were well taken. In transit you are constantly—as the Port Authority recently found when they hoped to increase the PATH fare to cut the deficit of PATH down a little; great pressure was put on them by the two governors not to do it. There is a type of pressure that is ever present in this mass transit business that just does not exist in other activities.

Q. Of course Mr. Thompson we all know that the Port Authority did in fact take on the Hudson and Manhattan, and the Port Authority did covenant the issuance of bonds in the '60s after 1962, and the interest rates in fact did reflect great faith in the Port Authority credit. How did that all come about? A. It came about by the adoption of the covenant by the two states in which they covenanted and agreed with each other and with the holders of all affected bonds, subject only to bond holders' consent for any change—and this is in the statute—that no deficit producing mass transit facilities would be undertaken save for certain permitted purposes; and those permitted purposes are measured by a fraction of the General Reserve Fund which today has already been exceeded by the deficit of PATH; that is the general reserve fund is 170 odd million, the [57] covenant would permit \$17 million deficits, including PATH, for new projects, and the PATH deficit is in excess of that. So that there is no room there.

I think it was the result of this covenant not to go further in this field that upheld the credit and borrowing power of



*Excerpts from Testimony of John F. Thompson*

the Port Authority over these years, and that was its purpose. It was not to give some bounty to the bond holders. It was to uphold the borrowing power of the Port Authority as an agency of the two States for the enterprises which the two States had assigned to it. T 50-3 to 57-10.

\* \* \*

The Court: . . .

Do you know if anyone knew the terms of the covenant, aside from yourself?

**[58]** The Witness: Yes sir. And as far as investors are concerned, certainly the investors that were advised by Scutter, Stevens and Clark; but I can't say whether they in their own minds were acting on the basis of from my knowledge of the covenant. I remember very well in information meeting at the time I think of the first bond issue to be sold after the adoption of the covenant when this was explained not only to the dealers and underwriters, but to investor representatives, because I was then with Scutter, Stevens & Clark and was invited to this information meeting; and the covenant was explained in very great detail as something that investors could rely on and should rely on.

It was explained to them as a legally enforceable contract between the two States and themselves if they became bondholders.

And certainly the institutional investor had every opportunity to know about this; every offering statement, every official statement of the Port Authority since that time in the offering of bonds has contained a very well expressed explanation of the covenant and what it meant to the bondholder.

*Excerpts from Testimony of John F. Thompson*

Sure there might be an investor somewhere **[59]** who bought a bond without knowing what he was doing. When I was at Scutter, Stevens we used to find out quite a few of those, because later they became clients and wondered what they had done.

But so far as the informed part of the investment community, and given the institutional basis of a large part of the municipal market, a large part of it is informed.

As far as the informed part of the investment community certainly they knew about the covenant and relied on it and were importuned to rely on it.

Mr. Sovern: Your Honor, I ask that the last sentence be stricken as a legal conclusion and unresponsive to the question.

The Court: I don't think it was a legal conclusion.

Mr. Sovern: That they relied on it.

The Court: I think he is expressing it as a factual statement, not legal conclusion, based upon his personal knowledge of his dealings with people in the investment community that bought these bonds. I assume that was the basis of the statement.

The Witness: Yes.

**[60]** Q. The speech you referred to, Mr. Thompson, that [was] made by Mr. Tobin, did you, in fact, obtain a copy of that in writing? A. Yes. I found that there was a copy retained through the years of that speech. When I asked my former associates at Scutter, Stevens and Clark to look in their files for things that related to this, and I found a copy of the speech which I know had been in my hands because the Port Authority had not put a date on the speech as it was printed and I pencilled in the date. I recognized my own handwriting of the date on that copy

*Excerpts from Testimony of John F. Thompson*

of the speech and that speech, by the way, was made to a combined group of the Municipal Forum of New York, the Municipal Bond Club of New York and Municipal Bond Club of New Jersey which includes probably a thousand professionals in this business. T 57-23 to 60-15

\* \* \*

**[61]** Q. At the time that you have been testifying with regard to the 1961, 1962 period you have testified as to the speech by Mr. Tobin which has been introduced as P-36 and described by you as the transcript of that speech, was there discussion by parties other than the Port Authority at that time of the covenant and its meaning and its need **[62]** and meaning. Let me amend that. A. Well, I certainly remember a great deal of discussion within the investment community of this and what it meant and of the necessity for it.

Q. Well, perhaps it would be best to refresh ourselves to the interchange in the investment community that took place on a formal and informal basis.

There are trade associations, as I recall your testimony?

A. Yes. The trade associations, the Municipal Forum, the Municipal Bond club, but, of course, people in one business come together in many ways.

They lunch together, they're on the phone together in making trades. These things get discussed in the course of the trade. There's a constant flow of information back and forth that when I was at Scutter and was doing some of the buying, there were several dozen salesmen that would call me from time to time and these things would have been discussed back and forth with them. There's a constant flow of information between the street and the investment community.

Q. So that when you say that the covenant, its need and its meaning were discussed in the community, are those

*Excerpts from Testimony of John F. Thompson*

the kind of communicating—communications means that you were referring to?

【63】 A. Yes, also the covenant, of course, was discussed in reports like this Dunn & Bradstreet report, a credit report on the—T 61-20 to 63-3

\* \* \*

Q. Describe it by number. A. P-1 and P-2.

\* \* \*

A. These discuss the covenant and what it meant to the credit of the Port Authority.

Q. And— A. Also on the informal discussion, I spoke of this information meeting at which Austin Tobin made the basic presentation. The meeting was not just a formal sit-down meeting. It ended with an informal reception where people moved back and forth and around discussing the subject of the day and I well remember some of those discussions at the time.

【64】 Q. And when the Port Authority bonds were sold subsequent to the adoption of the covenant do I understand your testimony to be that the Port itself made written representations with regard to the covenant?

Mr. Sovern: Objection, your Honor. There's been no such testimony and the question is leading.

Q. Did they, I'll rephrase the question. A. Yes. I think I stated in each official statement there was such a representation, very definitely.

The Court: Unless you're referring to some other written communication.

Q. You're referring to the official statement? A. Yes.

Q. For the identification in the record, a sample of the official statement has been marked in evidence in this stipulation.

*Excerpts from Testimony of John F. Thompson*

Perhaps it would be best if you would explain at this point, the nature and purpose of an official statement and perhaps some of the synonymous terms that are often used to describe it. A. Well, an official statement is the document which an issuing body presents to the investment community to fully describe the issue which they are about to offer and in so doing it, if it's a good official statement they fully describe their financial condition, they fully [65] describe the—either describe or refer to the statutes under which they're operating. If there are resolutions or ordinances which are in fact bond indentures, those are usually put in in full text, they were in the Port Authority official statements, occasionally they are summarized in some official statements that are done less completely. There are financial tables, there are indications of what the money is to be used for, the whole story about the financing is put into the official statement.

Q. What's the purpose of the official statement? A. The official statement is to inform the investment community about the forthcoming issue.

Q. And specifically with reference to purchases of bonds? A. Yes, as dealers in an important bond offering, as dealers we obtain and sent to our major investor customers, copy of the official statement. I might say, your Honor, from time to time, I've tried to write up a summary, so that some of the customers wouldn't have to go through the whole thing.

Q. They're fairly lengthy? A. Yes, an official statement can be [a] 50, 75 page document at times. A full letter-size. T 63-7 to 65-23.

\* \* \*

[67] Q. Getting back to the time in 1962 at the time of the adoption of the covenant, did the acquisition of PATH

*Excerpts from Testimony of John F. Thompson*

change your understanding of the Port Authority's role in the understanding of the two states. A. It certainly was an entry by the Port Authority at the instance of the two states in a field they had not been in before and not an especially happy one. T 67-18 to 67-24.

\* \* \*

**[69]** Q. Were you familiar in 1962 with the projects and facilities that the Port Authority had undertaken prior to that time? A. I was.

Q. And what was the common thread through all those projects and facilities? A. The common thread was that each of these facilities, at least given a time of beginning and getting into operation, would be self supporting and would be able to support the debt incurred to build the facilities.

Q. Did the PATH signify a change in that? A. Yes, because the PATH anticipated a deficit from the start. T 69-13 to 69-25.

\* \* \*

**[70]** Q. Did the Port Authority prior to 1962 have other deficit facilities? A. Yes, from time to time, but I think most of those deficit facilities were in due course related to other facilities. I'm thinking of—my recollection, your Honor, goes back to when there were separate Port Authority issues for each of the Hudson River Crossings and my recollection is there were one or two of those where the amount earned was pretty thin related to the debt [service] but through the flow of reserve money, they were **[71]** taken care of. I think when the Port Authority went into the airport business there were probably some beginning deficits in the airport business, but overall the airports have worked out to operate profitably.

Q. Do you know of any specific project that the Port Authority went into with the prospect that it would over a

*Excerpts from Testimony of John F. Thompson*

period of years operate for a long time at a deficit? A. Only the PATH.

Q. Are you aware of any other bond holder protections bearing upon the question of whether the Port Authority could get at that time, or the current time, get involved in other deficit facilities? A. I'm aware of I believe it's called—of the Section 7 requirement and also of the 1.3 coverage requirement to be qualified in the case of the issuance of additional bonds.

Q. And are there also reserves maintained? A. Oh, yes, the reserves, the general reserve fund was established by Port Authority resolution many years ago and it is maintained at an amount equal to 10 percent of the outstanding debt which, of course, is a strong feature of Port Authority bonds. There is also a Port Authority policy to keep total reserves equal to two years of debt reserves, I believe.

Q. In your opinion, do those tests and reserves [72] render the 1962 covenant superfluous in terms of bond holder protection? A. No, indeed.

Q. And would you explain that? A. Well, the 1962 covenant and its requirements, require more specific determinations by the commissioners, by the staff and the commissioners, as to the earnings or prospects of deficits involved and they are—well, in the case of the Section 7 requirement, the commissioners can simply rule or state their opinion that the requirement would not harm the holders of the outstanding debt. In the case of the 1.3 times [test], they are permitted estimates of future earnings to some degree as well as [of] the historical earnings. This is a test which might be complied with on the initiation of a deficit rail facility, and later be found to have not avoided deficits by any means as given the propensity of these deficits to greatly increase.

*Excerpts from Testimony of John F. Thompson*

The determinations which must be made under the covenant, I believe, are much more susceptible to active testing, by those looking at the Port Authority from the outside, and [give] those in the investment community a much more secure feeling about the future profitability of the Port Authority.

**[73]** Q. Are there any experiences with specific regard to the Port Authority that you would refer to—that when you say experiences, on comparable things? A. Well, the PATH deficit has turned out to be many times—it was estimated at about five million in the years when PATH was taken over and as I understand it, it is some five times that now.

Q. And with regard to the specific structure of the Port Authority and its place in the political realm, are there concerns? A. Yes. The Port Authority is the agent of the two states. They are from time to time susceptible to pressure from the governors and the legislatures of the two states and as I indicated earlier on the mass transit field, it's a field wide open to such pressures and that was indicated when the fare—when there was an attempt to raise the fare on PATH that I believe was passed by the entire Board of Commissioners and then was vetoed by the governors.

Q. Do you recall the nature of that veto? In other words, how it was effected in practice? A. As I understood it, the governors have submitted to them the minutes of the Board of Commissioners and they can veto an item in the minutes. This is my understanding of it.

Q. And, in fact, though, wasn't an application **[74]** actually made for a fare increase? A. Oh, yes. The application was made and it was submitted—the federal government gets into this, too.

The ICC was involved and the application was made to them and, as I recall it—and the fare increase was, I



*Excerpts from Testimony of John F. Thompson*

believe, adopted by the Board of Commissioners itself before it was vetoed.

Q. In fact, doesn't the covenant by its very language permit the Port Authority to involve itself in other deficit rail mass transit operations? A. It does within limits, yes, by its language and I believe that at the time it was adopted the limit was small because 10 percent of the general reserve fund then was somewhere around \$7 million—yes—\$7 million and it was estimated that PATH would incur a deficit of \$5 million a year so that there was a little margin for another operation.

The covenant, of course, also permits mass transit operations that can be self supporting including—including support from the outside as it were.

Q. In that respect, how does it differ from the Section 7 test that you referred to before? A. Well, it's more—it's much more precise. It's based on calculations which have to be made.

The Court: Is that in the statute?

The Witness: Well, it's in the statute that the [75] deficit that is expected to be incurred cannot exceed the general reserve fund.

The Court: Yes, that part of the statute, but the statement which you just made that the certification that the facility would have to be self supporting is more precise as against—I would assume measured against the Section 7 certification? Is that in the statute?

The Witness: I don't know what you mean by more precise. T 70-16 to 75-10.

\* \* \*

[77] The Court: Okay. Before in your testimony I thought you had made the statement that

*Excerpts from Testimony of John F. Thompson*

the certification required to be made by the commission[ers] under the terms of the covenant with respect to a self supporting facility was more precise than the certification that would have to be made under Section 7.

The Witness: Yes, yes.

The Court: Now, would you please explain that by comparing the terms of the Section 7 certification, if that's what it really is, as against the certification of the terms of, let's call it, the A part of the covenant.

The Witness: The Section 7 certification "Requires that the authority certify [at] the time of issuance of bonds for a new facility for the next ten years or during the life of the bonds, whichever shall be longer, in the light of its estimated expenditures; that it will not materially impair the sound credit standing of the authority or the investment status of consolidated bonds or the ability of the authority to fulfill its commitments."

Now, the covenant, without taking on an additional deficit, mass transit facilities in the [78] 1962 statute, sets up certain amounts which the deficit can reach. That's what I meant by precise.

This [Section 7] is all in general qualitative terms, "Materially impair the sound credit standing or the investment status of consolidated bonds or the ability of the Authority to fulfill its commitments." "Materially impair", I submit, is a phrase subject to considerable variation and interpretation particularly when it might be involved in a field where the political pressures are such as they are in the mass transit field or are such certainly as the investment community believes them to be in the mass transit field.

*Excerpts from Testimony of John F. Thompson*

The Court: Now, would you compare that with the covenant requirement of the certification.

The Witness: The covenant is that they must certify that the project will, one, be self-supporting—

The Court: I'm only concerned with that portion of it.

The Witness: Including the debt service or that it will have a deficit which, combined with the—

The Court: I'm not concerned with that part— what I call the B part of the covenant's authorization of mass— rail mass transit facilities. The only language which I take it that you derive your [79] opinion as to the quality of the certification is that which begins "The Port Authority must determine that the proposed additional passenger railroad facility is self supporting"? Am I correct in that?

The Witness: Yes, but, of course, those of us that are professionals in the field read the statutes also, your Honor.

The Court: Well, I'm quoting the statute. T 77-2 to 79-8.

\* \* \*

Mr. Landis: You're talking about the deficit [80] that is expected to be incurred—

The Court: No, no. I'm talking about the definition of self supporting facilities.

The Witness: Well—

The Court: He said that there was a more precise standard or certification that was required than with respect to the certification required under Section 7.

The Witness: May I answer that further, your Honor?

*Excerpts from Testimony of John T. Thompson*

The Court: Well, taking a look at this—

Mr. Landis: Here is the exact language. This paragraph is what your Honor refers to, I assume.

The Court: I can't—

Mr. Landis: "And other railroad facilities shall be deemed to be self supporting as of the time".

The Court: Right.

Mr. Landis: If you want, Mr. Thompson can read it aloud and then we'll know exactly what he's—

The Court: No. He can read it to himself.

Mr. Landis: All right.

The Witness: Now, self supporting, your Honor—although it sounds as though it can be a qualitative **[81]** phrase is not, at least not in our business.

Self supporting means that the revenues shall be estimated to be at least as much as the operating expenses plus the debt service which is a mathematical requirement that does not appear in Section 7, which only requires certification that it will not materially impair and that's what I meant by more precise. T 79-25 to 81-8.

\* \* \*

Q. Now, specifically, Mr. Thompson, do you know whether the 1962 covenant was looked to in the purchase of Port Authority bonds since 1962? A. Oh, yes, very definitely. T 81-13 to 81-16.

\* \* \*

Q. Would you explain its relative importance since 1962 in the minds of purchasers of bonds? A. Its importance in the minds of purchasers of the bonds **[82]** has been that it prevented the Port Authority from getting into a massive project producing deficits in the mass transit field or several such projects.

*Excerpts from Testimony of John F. Thompson*

Q. And did you personally look to the covenant and depend on it? A. Oh, certainly. That was—that certainly was an important and significant part of what I presumed we were buying for our clients when we purchased those bonds that I speak of.

Q. Which were those, just to make sure it's clarified? A. This is when I was at Scutter and there were at least two instances where we purchased Port Authority bonds for several clients. In each instance, the total amount was at least a million dollars of bonds.

Q. If the covenant had not been enacted, would those purchases have been made?

Mr. Sovern: Objection, your Honor, for the same reasons as before. The other elements in the hypothesis have to be specified for a question like that.

Q. Assuming everything else to be equal, but if the covenant had not been enacted would those purchases have been made? A. Assuming everything else to be—

**[83]** Mr. Sovern: I'm sorry, your Honor. The question has to be with the recommended purchase, not whether they were—

The Court: Right.

Your role then was strictly as an advisor?

The Witness: Yes, yes. It was—I advised the transaction and after consultation with the client sometimes completed the transactions and that's the reason for—

The Court: Well, would you have recommended, then, the purchase of the bonds?

The Witness: I would not have recommended them at the price [at] which they were then offered.  
T 81-23 to 83-13.

*Excerpts from Testimony of John F. Thompson*

\* \* \*

【84/85】 Q. Was there some regard given to the pattern already established by the Port Authority in evaluating the strength of the covenants? T 84/85-7 to 84/85-9.

\* \* \*

A. Your Honor my own opinion and those I associate with in the various professional capacities all felt that this was a binding covenant not only because of the way it was stated and the way it was presented, but also because of 【86】 certain past contracts that the States had entered into with Port Authority bond holders.

Now in the 1931 legislation there was an agreement by the two States that no competitive crossing with the Port Authority crossings be built within a certain distance from those crossings. And that was always regarded as part of the contract with the bond holders.

And it was so highly honored by the state of New York that when they built the Throughway they built the Throughway bridge, the Tappan Zee Bridge over the widest part of the Hudson River in compliance with that contract, which they and the State of New Jersey had jointly made with holders of Port Authority bonds.

Q. If you knew that the covenant would later be repealed would you have recommended the Port Authority bonds during the '60s? A. No.

Q. Is there some relationship with regard to that feeling to the moral obligation bonds of the two States? A. Well there very definitely is in the investment community. There is a strong feeling about this. Let me give you two examples, if I may your Honor.

The repeal of the covenant was recommended by the Governor of New Jersey approximately one week after sale of the \$300 million Sports Complex issue. That issue was

*Excerpts from Testimony of John F. Thompson*

**【87】** saleable at the time only because the Legislature had added the so-called moral obligation to its commitment.

In my opinion—and I have heard no professional investment person who disagreed with this; in my opinion if that recommendation by the Governor had been made one week before the sale of the Sports Complex bonds instead of one week after, the bonds would not have been saleable; because the investment community was saying about the repeal of the covenant, and has said about it: If a legal covenant can be repealed by the States, what confidence can we place in their moral obligation?

We have run onto this in an even broader field. My firm was the number two manager in a syndicate which last week underwrote \$150 million and sold them of Power Authority bonds of the State of New York.

Now the Power Authority is not dependent upon a moral obligation. It is dependent on its own revenues which are from the sale of electric power. It is about as far removed from any emotional, or as far removed from the feeling I just stated as anything could be. And yet we found in several parts of the country that there were many institutional investor portfolio managers who had themselves adopted or their investment committees had adopted a rule that there be no further investment in anything in New York State or New Jersey due to the repeal of the covenant.

**【88】** Q. Mr. Thompson, are there any Port Authority bonds in Morton and Company's ownership at the present time? A. None.

Q. In fact isn't it customary for Morton and Company to carry an inventory of municipal bonds of certain municipal buyers? A. Yes, we generally carry some inventory.

Q. What is the policy now with regard to Port Authority bonds? A. We have not had Port Authority in the inventory since the repeal of the covenant.

*Excerpts from Testimony of John F. Thompson*

Q. Prior to commencement of this litigation did you as part of your duties as vice-president of Morton and Company have occasion to prepare any papers analyzing possible Port Authority involvement in community rail mass transit? A. Yes.

Q. I show you P-3 and P-4 and ask you to describe those in the context of that question? A. P-4 was as noted at the top still in draft form. Some of the people with relation to my firm, especially Mr. Morton himself, have been influential in public affairs over the years. And he asked me to prepare something along the lines feeling that discussion of repeal of the covenant was coming, to prepare something along the lines of what [89] might possibly be done within the boundaries set by the covenant; and to review also the procedure for getting bond holder consent for changes.

In this draft I did this. This draft was being used only for internal discussion. And at some point in it I made some suggestions about an overriding toll on the tunnels and bridges, which later on my lawyer friends advised me was not possible for one reason—and I was even then suggesting that the States do this and not the Port Authority—but they advised me that there was an inter-State commerce constitutional question here, and that probably what I had suggested was not feasible. T 84/85-22 to 89-12.

\* \* \*

Q. Mr. Thompson I believe you described one document. I believe you said, while it was a draft, it was never committed to any further form. [90] A. That is correct, it was never committed to further form. In early 1974 when this, actually after the Governor of New Jersey recommended repeal, and the recommendation of repeal by the Governor of New Jersey was a striking event to the investment community—I almost used the word shocking—for the reason



*Excerpts from Testimony of John F. Thompson*

that years ago when repeal was attempted, it was Governor Cahill of New Jersey who said: No, there is a contract there and we won't do it. So when this Governor of New Jersey recommended repeal it was a considerable shock to the investment community.

And I was asked to write up something in an attempt to be useful in persuading those in power that repeal should not be undertaken. And the memorandum described as P-3 is the memorandum which resulted from that effort.

The Court: Well, the then Governor of New York was also advocating repeal and had recommended it several times, and indeed the New York Legislature had already passed a repeal.

The Witness: In 1972.

The Court: Yes.

The Witness: That is what I mean when I say Governor Cahill was the one who stopped it two years ago.

The Court: Was the investment community equally shocked when the then Governor of New York advocated a repeal and the New York Legislature [91] actually voted a repeal?

The Witness: I think to say equal shock would be unfair your Honor. Let me see if I can explain it. When Rockefeller signed the repeal in 1972 he issued a statement which in its terms was very conciliatory. It had words in it like: I shall be conferring with the Governor of New Jersey to try to work out something here that will not impair the credit of the Port Authority. It was a less final thing.

I agree, it was after that that Governor Cahill definitely decided he would not go along. I won't say there was not shock in the investment community; there was. And the reason I mentioned this

*Excerpts from Testimony of John F. Thompson*

later event is that once the Governor of New Jersey was, from the investment community's point of view the one who stopped it, then to have a new Governor of New Jersey say I recommend it, this is the event I referred to as somewhat of a shock to the investment community.

Q. Mr. Thompson you have indicated shock in February of 1974. But isn't it true in his campaign in 1973 Mr. Byrne at that time mentioned the fact that he intended to repeal the covenant? A. It very likely is. I don't recall—not being a [92] resident of New Jersey I did not follow the campaign as closely as some. It is one thing to make statements in a campaign, if I may say so, and another to come out with a formal recommendation, because there often is leeway.

The Court: Maybe that is why you were shocked because the politicians kept [this promise].

The Witness: I had not thought of it that way your Honor.

Q. What in your opinion has been the effect on the Port Authority's secondary market as a result of the repeal? When I say the Port Authority's secondary market I refer of course to the secondary market in Port Authority bonds. I am using a shorthand term. A. Yes, to be sure. And there had not been a primary market since then because they had not sold a bond issue. The market has been adversely affected by the repeal. It is not possible to measure the adverse effect simply by comparing market prices I believe.

There was a time before the repeal when Port Authority bonds traded in the market very much as some of the other

*Excerpts from Testimony of John F. Thompson*

Authorities, major Authorities of State bonds do. And if a bank or insurance company with a five million dollar holding of those bonds came to a dealer and said: I want to sell these; what will you bid? He could get a bid that would be pretty much in line with the quoted market.

【93】 What we have now is a market that is unusually thin because present holders are not willing to sell. Most of them have been advised by their portfolio managers or their professional advisors to hold on and see what develops here. Most of them believe that the covenant is protected by the Impairment Clause of the Constitution.

Mr. Sovern: I move that that sentence be stricken. He does not know what most of them believe.

The Court: No; I think you really ought to qualify it.

A. I will qualify it and say all of the professional investors I know and have talked to believe that the covenant is protected by the Impairment Clause of the Constitution. Consequently they do not want to sell at a sacrifice. This I believe was the position taken by United States Trust Company after they [launched] this lawsuit.

I have been asked by a number of our customers what my advice is at this time. And I have given the same advice, to hold on.

As a consequence the flow of bonds into the market is much much less than it normally would be.

You could get a flow into the market by one of two things. One would be a brand new issue coming into the market. The other would be some investor who decided not 【94】 to go along with this type of advice, but to sell his five or ten million dollar holdings. In my opinion in

*Excerpts from Testimony of John F. Thompson*

either one of those events the bid for the bonds would be substantially below the market as it is quoted today.

Some of us have discussed the possibility of an interest rate on a new issue if one were to be sold, an—

Mr. Sovern: Your Honor I am going to object to this.

The Court: I will sustain the objection. T 89-23 to 94-9.

\* \* \*

**[100]** The Court: All he wants to do is get the witness to say it would cost the Port Authority more money today in interest to sell a bond with a repeal than it would without the repeal.

Mr. Sovern: He has testified to it twice.

The Court: I agree it might be repetitious, but that is all he wants to get him to say.

Is that your opinion?

The Witness: Yes, it would cost considerably more because of the repeal.

The Court: No matter what the purpose of the bond issue was?

The Witness: At this point, I would say—

The Court: How much of this is an emotional reaction to the shock which was experienced by the repeal and how much of it was based upon a sound intellectual analysis of the financial position of the Authority?

The Witness: I think the latter, your Honor, **[101]** but the sound intellectual analysis also has to include the fact of repeal and the fact that this litigation is not resolved and therefore if the Port were to come to the investment community with a new issue, they would have to present it and expect

*Excerpts from Testimony of John F. Thompson*

to get a bid, assuming that the worst happens from the investment point of view.

Q. Will you explain the worst? A. The worst meaning the United States Trust Company does not win this suit.

Q. Going back, Mr. Thompson, to the point of time at which there was a very serious and active discussion of the repeal, a point of time which you identified as starting in February of 1974, have you kept track of the commentary in the investment community and the press with regard to that activity? A. Yes, in some detail.

Q. And in fact, did you involve yourself in your posture as a trade association representative in the process, the legislative process at that time . . . T 100-6 to 101-20.

\* \* \*

[103] A. Yes. [As shown in] P-5, I was one of a group that conferred with Dr. Norman Hurd, who was a secretary or executive assistant to Governor Malcolm Wilson. I was there as President of the Municipal Forum of New York. Mr. Weeden, as representing the Municipal Bond Committee of the S.I.A. Mr. Pratt was there representing the New York Clearing House Banks; Mr. Beason representing the Dealer Bank Association and Mr. Putman was there as the representative of the New York Area Organization of the Securities Industry Association.

This letter was written after our conference, and as it states, after a conference of that sort, your Honor, you think of several things you wish you said. This letter was to do that.

The second letter to Chairman Ronan [P-14] was the third in a series. I had written a letter to the New York Times which was published, I believe, in early May, urging

*Excerpts from Testimony of John F. Thompson*

that the covenant not be repealed and urging the disadvantages to everyone and everything concerned, including any help the Port might give mass transit.

The letter was answered by Chairman Ronan and P-14 is my response to him. His response was also published in the Times. At that point, I determined I should respond to him but that the public discussion had [104] gone on long enough and I simply wrote this letter to further state the case to him personally. T 103-2 to 104-2.

\* \* \*

[115] Q. Have you had occasion since the repeal of the covenant to also discuss the matter with investors as distinguished from other members of the investment community? A. Yes, yes. I've discussed it with some of our customers at the request of the salesmen who ordinarily cover them, as the expression goes in the trade.

Q. And have you given them advice in response to requests? A. Some of them have asked what do you think, what—should we hold on to the Port bonds we own? Should we buy more at this time? I've given them the advice that I would hold on for the reasons that I stated earlier and I will repeat now—

Q. It's not necessary unless the Judge—

The Court: No, no. He testified as to that.

Q. —requests it. We have it on the record.

And with regard to—you said you also gave them advice with regard to the—A. With regard—

Q. —with regard to the purchase? A. With regard to purchase I simply for the most part agreed with them that it wasn't a very wise thing to in effect buy into a lawsuit.

[116] Q. And did you recommend to your firm a position as regards the inventory of the bonds? A. Yes. I

*Excerpts from Testimony of John F. Thompson*

recommended and I found the rest of the firm in complete agreement that we should not put Port bonds in inventory at this point because of having to be at risk in whatever we carry in inventory.

Q. In that regard, how would you characterize the Port Authority secondary bond market at the present time?

A. Well, as I said earlier, the Port Authority secondary market is very thin at the present time and the supply of bonds coming into the market is much smaller than it has been in the past or than it is for other authorities in the state system. T 115-2 to 116-13.

\* \* \*

Q. Do you have an opinion as to the effect of the United States Trust Company lawsuit that is being heard here today on the secondary market for Port Authority bonds?

A. Yes, I think the lawsuit filed immediately by the U.S. Trust Company had a very sustaining effect on the market in that it indicated to bondholders that their interests [117] were being actively protected and seen to and that if it hadn't been for that, the market probably would have been—would have been worse and it would have moved lower than it has. I think that's had a sustaining effect.

Q. Now, with regard to the specific comparison of Port Authority bonds to other bonds of other agencies, municipal agencies, during the period in question, I would like to show you a series of exhibits which—I'm sorry—not a series but two exhibits.

Specifically P-89 and P-90. These are the ones that you know as the—T 116-20 to 117-11.

\* \* \*

Q. Two bonds are reflected there, are they not? For the record, would you indicate those bonds? A. The bonds are the Port Authority of New York and [118] New Jersey, 6

*Excerpts from Testimony of John F. Thompson*

percent bonds of February 1, 2006, and the Massachusetts Port Authority, 6 percent bonds due July 1, 2011. The bonds are comparable as to coupon rate and both are long maturity so they are comparable [as] to maturity.

Q. Mr. Thompson, going back for a moment, before going on with this specific chart, you previously testified as to what a dollar bond was. Is it true that these are both dollar bonds? A. Yes. These are both traded in the market on a dollar basis which means a percentage of par value.

Q. Is that what's shown in the left-hand—A. That's what's shown on the left-hand margin.

For example, when this hits, when one of these lines hits 85, it means that the market would pay \$850 for \$1,000 par value of bonds.

Q. And in the market what does the bid price mean? A. The bid price is the price offered by a buyer or a prospective buyer. It—sometimes a bid and asked quotations are obtained which doesn't necessary fully reflect the impact of the market but I gather that this is an accurate portrayal of the bid side of the market for these two issues.

Q. I show you an exhibit which has been marked P-93. Do you understand that to be the source of the bid prices?

【119】 A. Yes. This is my understanding that the prices for the Port Authority 6's were from Weeden & Company and the Massachusetts Port Authority are the prices from Clifford Drake.

Q. Are those reliable sources? A. Yes.

Q. Now, would you, before going on to the specific question that we touched on before, the comparability of these two issues, would you describe the Massachusetts Port Authority as you know it? A. Well, the Massachusetts Port Authority like the Port Authority here, operates the airport. They also—they don't have the numerous toll



*Excerpts from Testimony of John F. Thompson*

facilities that this Port Authority has, but they do have one of the leading ones in it—what used to be the Mystic Bridge so that their business is in the same sort of revenue producing projects that the Port of New York Authority—Port Authority of New York and New Jersey is in.

【120】 Q. What geographical area are they in? A. The Boston metropolitan area.

Q. And now with specific reference to the two issues shown on P-89 and the bid prices which are listed on P-90, what other similar and if any, dissimilar characteristics of the two issues are there? T 117-23 to 120-7.

\* \* \*

Q. The two issues that are specifically listed. One I say “issues,” two bond issues? A. The two issues have the same credit rating by their rating agencies, and as I said earlier, they are similar in other respects.

Q. In the marketplace, would the 006 and 011 maturities be considered similar? A. Yes, because when 006 is out over 30 years and when you get beyond 30 years’ maturity, the change in price for a change in yield, does not vary very much from there on out. So they would both sell as long-term issues and be quite comparable.

Q. Could you describe the intrinsic security behind the two issues? A. Well, the intrinsic security is the revenues 【121】 of the projects managed and other aspects of financial security, both of which are involved in the A rating.

Q. Do you find that these two issues are comparable in all characteristics that you feel are important? A. Yes.

Q. And how about the external factors other than the characteristics to which you have testified, market factors and the like, are they comparable or are they subject to the same internal factors in that regard? A. Well, they are each subject to external factors reflected in their own

*Excerpts from Testimony of John F. Thompson*

states, in their own locale, so they might either track together or vary as they have here.

Q. Would you characterize the relationship as demonstrated here between the bid prices of the two issues from July of 1973 to April of 1974? A. Yes, during that period, the two issues, in price, practically tracked each other. The line crossed on occasion. T 120-10 to 121-22.

\* \* \*

[127] Q. How would you characterize the relationship from April, '74, to December, '74? A. There was a growing spread between the two bonds which was unusual compared to their past history as shown.

Q. What factors changed at or during the period in question? A. The fact that changed was the repeal of the 1962 covenant by the two Legislatures and signed by the Governor.

Q. Were there any other changed facts that you know of? A. Not that I know of, no.

Q. Do you have an opinion as to the impact of that fact on the prices as demonstrated on the chart? [128] A. Yes, in my opinion, the spreading out of the two markets was due to the repeal of the covenant.

The Court: Wouldn't it also be due to the opinions expressed by persons such as yourself and their recommendations not to purchase Port Authority bonds?

The Witness: I think our recommendations not to sell are much more important, your Honor, because there were no new issues coming into the market so that a purchase recommendation was not as appropriate as it would be if they were a new issue. The recommendation to hold on, I think, had much more impact on the market.

*Excerpts from Testimony of John F. Thompson*

Q. What was that impact? A. To sustain the market.

Q. For which? A. For the bonds of the Port Authority of New York and New Jersey.

Q. In other words, the red line as shown on the chart would deepen even lower? A. If the market were confronted with large volume sales of bonds of the Port Authority of New York and New Jersey, in my opinion, the Port bonds would dip considerably further. T 127-10 to 128-25.

【130】 Q. What does the chart show from the pattern from July, '73, to April, '74, P-91, I am referring to, for the record? A. It shows the same pattern as the other, that they track through that period.

Q. And what does P-91 show from April, 1974, through December, 1974? A. It shows the same spreading out, showing that the Port Authority of New York and New Jersey bonds suffered more in the market during that period.

Q. What conclusion does P-91 and, of course, P-89 tend to support? A. It supports a conclusion that even with a limited market in supply which has not fully reflected the bad effects of the repeal because of lack of volume, but even the limited market shows that the Port Authority bonds had been adversely affected by the repeal. T 130-1 to 130-18.

\* \* \*

*Cross-Examination by Mr. Sovern:*

【131】 Q. Mr. Thompson, you testified, I believe, that you know of no other reason for the Port to behave as the chart reflects other than the passage of repeal by the two Legislatures and the signatures by the Governors. Is that correct? A. Yes, sir. T 131-19 to 131-25.

\* \* \*

*Excerpts from Testimony of John F. Thompson*

【132】 Q. If you know of any other facts, would you state them now, please, Mr. Thompson. A. No, I don't know of any other facts or causes.

Q. Thank you. If you look at Plaintiff's exhibit 92, you'll see that the—T 132-13 to 132-17.

\* \* \*

Q. —from July 19 to August 23, the price was—the spread was four to five and a half points—

The Court: You're talking about 1974?

Mr. Sovern: Yes.

The Court: July 19 to—

Mr. Sovern: August 23.

【133】 Q. Throughout that period the prices were relatively constant, varying 5, 5½, 5, 5½, 5½. I believe it's accurate to say it was only either 5 or 5½.

Why did it go to 8 on August 30 and still spread further in the weeks immediately following? A. I don't think one can pinpoint that sort of thing, sir. The best answer I can give would be that it was a gradual cumulative effect of recognition of what had happened.

Q. In other words, there was no recognition between July 19 and August 23— A. I didn't say there was no recognition. I said a gradually cumulative effect.

Q. Are you familiar with the story in the *Wall Street Journal* dated August 15, 1974, headed "World Trade Center Is Far Behind Plans For Filling Offices"? A. I probably have seen it, yes. T 132-20 to 133-17.

\* \* \*

【134】 Mr. Sovern: We are marking as State's exhibit 1—well, I better give you this copy—we're marking as State's exhibit 1 the *Wall Street Journal*

*Excerpts from Testimony of John T. Thompson*

story dated August 15, 1974, which says, "World Trade Center Is Far Behind Plans for Filling Offices." Plaintiffs have a copy of this it [135] was produced from their files, your Honor.

The Court: Is there any objection?

Mr. Landis: Your Honor, I assume that this is done with the exact same stipulation that was placed on the newspaper articles that were offered by the Plaintiff in this case; that is, not to be considered as proof of the facts indicated in the article.

Mr. Sovern: I entirely agree with that. We're cross-examining about causes of price decline.

The Court: All right.

S-1 into evidence. T 134-20 to 135-12.

\* \* \*

[136] The Court: In any event, looking at S-1, do you recall having seen that article either in part or in its entirety?

The Witness: Yes, I think I saw it at the time, your Honor.

[137] Q. Well, would it have affected the price of the Port bonds? A. I would doubt it very much. The development of the World Trade Center has been a very gradual sort of thing. The investment community has been aware of slowdowns from time to time, of increases in the capital cost. And I don't think that the article covers anything striking enough to have any impact on the market. Certainly I heard no discussion of it in that respect at the time.

Q. You don't think it would distress bondholders to know that 40 percent of the space is unleased?

*Excerpts from Testimony of John F. Thompson*

Mr. Landis: I object to that. Again we are getting—

The Court: He is not offering it for the truth of that statement; but would a bondholder be affected if he saw such a statement in a publication such as the *Wall Street Journal*?

Mr. Landis: The way you ask the question is fine. That is what is assumed in the question, because we are operating on the stipulation that the facts that are stated in the article are not necessarily true.

【138】 A. With that stipulation, your Honor, may I also answer that the sentence does not say that it is 40 percent unleased. It says about 22 percent of the entire complex. 40 percent of the commercial space is still unleased.

Q. That's correct. A. The rest of it is being paid for in rentals just as well as the commercial space.

Q. Would that trouble the bondholders?

The Court: In his opinion.

Q. In your opinion. A. In my opinion, it would not, because I suspect that there is close to 22 percent of the space that is not fully completed yet. I think the renting and the completion of the space is fairly well parallel. I think most institutional investors have gotten to the point where a news article alone does not frighten them.

Q. Do you know the present investment of the Port Authority in the World Trade Center? A. I know in a general way that it is around 750 million dollars or thereabouts.

Q. If I told you later figures showed it to be 800 million, I take it you would not find fault with this? 【139】 A. No, I won't quarrel with that. T 136-5 to 139-1.

*Excerpts from Testimony of John F. Thompson*

\* \* \*

Q. You recall the original estimate of the cost of the World Trade Center? A. I believe the original estimate was around 350 million dollars.

Q. If I told you it was 250 million dollars would you find that— A. No. I have seen that figure in some of the things that I have been reading if I am just not sure that wasn't the figure before it actually got started, that is preliminary figure, that one perhaps shouldn't fairly go back to.

Q. For the time being, let's take this: 350 million dollars originally projected, not preliminary, currently at 800 million, and the story says it is 22 percent unleased, bondholders unconcerned? A. I have already commented on the story. The rise in costs, I'm sure that some of the renting of the space must be tied to the rise in costs. That is generally the case.

Q. You have no other explanation for the increased drop in Port's at the end of August? A. No other explanation than the repeal of the [140] covenant, no.

Q. That's correct. Take a look at P-92 again, and you will see that in mid-October, 1974, the spread [closed] again, apparently.

The Court: P-92?

Mr. Sovern: Mid-October, 1974, P-92, the same chart we were just looking at.

The Court: Mid-October, that's right.

Q. The spread closed to 4. How would you account for that, Mr. Thompson, if the increase in the spread in August was the product of the delayed reaction of the repeal, why did the spread contract in October? A. I don't think one can pinpoint from week to week or month to month moves

*Excerpts from Testimony of John F. Thompson*

in markets and exhibit them to any particular cause; over a long sweep, one can.

Q. You did attribute it to a cause. A. Over a longer sweep I did attribute it to a cause, yes, sir.

Q. You cannot account for the fact that the spread closed to 4 in mid-October? A. No. There are very often temporary influences that come into markets that have very little to do with developments; that have to do with somebody [141] for some particular reason being in the market or withdrawing a sale or something of the sort. It is not necessarily the result of developments. Markets do not work like computers.

Q. How temporary do you have in mind, daily, weekly, monthly or annually? A. Certainly a period of time such as represented by the widening of the spread here indicates something but—

Q. The spread closed to 4 on P-92, on October 18. And you know—that means it could conceivably have closed to 4 on October 12. This is the first date it is dated for, October 25. It was 4½ on November 1. That is a minimum period of three weeks at which it had closed to 4. Can you explain that? A. I have no particular explanation for, as I say, relatively short-term movements in the market. I don't think one can tie to those.

Q. You will notice the spread opened again in November 15, it is at 11. Can you explain that? A. No, I would not attempt, as I say, to explain these shorter term movements.

Q. That is still attributable to the repeal in June—Governor Wilson's signature in [142] June, Governor Byrne's signature on April 30 and the legislative actions on those signatures are still having their effect on the widening spread in November after contraction in October and having earlier had these other movements—that is your testi-



*Excerpts from Testimony of John F. Thompson*

mony? A. I think that is true as nearly as we can ascertain it, yes.

Q. What is the most significant factor working in the municipal bond market at this time and over the last year?

The Court: The most significant factor affecting prices?

Mr. Sovern: Yes.

Mr. Landis: Is this generally?

Mr. Sovern: Yes, generally.

A. At the present time the most significant factor is the reverse of what it was up until December or thereabouts in 1974.

Q. The bond market was generally depressed? A. Yes.  
T 139-4 to 142-20.

\* \* \*

**[143]** Q. I take it the municipal market like other bond markets were significantly depressed like all other markets in 1974. A. Yes. That is the reason the lines go downward. If the municipal bond market had been relatively firm the change in Port Authority prices would have been much easier to show than it is.

Q. The main determinate of the trend is a downward trend that was affecting all issues of this character, meaning municipal bonds. A. I suppose we could put it into figures here saying that the movement in the black line down to somewhere between 75 to 80 represented that, and the rest of the move of the red lines represented the Port Authority repeal.

Q. That is what I am trying to find out. That is your testimony. Would you come back to my question? You will recall it was your testimony that you could not account

*Excerpts from Testimony of John F. Thompson*

for the increase in the spread to 11 on November 15. Do I accurately [144] state your testimony? A. Yes. I stated that.

Q. Have you seen the New York Times article dated November 10, 1974, and headed: Port Authority has fallen on hard times? A. Yes, I saw the article.

Q. Could that have had an effect on the price in November? Would you like to examine it? A. Yes.

The Court: I think it ought to be offered.

Mr. Sovern: This is marked as S-2 and offered in evidence.

The Court: Is there any objection?

Mr. Landis: Does the exact same limitation apply, your Honor.

The Court: To all of them, any newspaper article.

Mr. Landis: Not considered proof of the facts stated?

The Court: Not considered proof of the facts; unless there is a contrary statement at the time of offering.

Mr. Landis: Thank you, your Honor.

[145] The Court: I assume there are going to be some prices offered, quotations and the like.

Mr. Landis: We have already offered some.

The Court: These are abstracts.

Q. Do you recognize that article, Mr. Thompson? A. Yes, I remember that. T 143-6 to 145-9.

\* \* \*

[146] Q. Could it have affected the price? The price of New York Port Authority bonds? A. It is possible to some degree, but again I don't think there are many holders of Port Authority or other large agency bonds or

*Excerpts from Testimony of John F. Thompson*

prospective buyers who depend on the news media for their information. Also I notice that this article includes among other things a discussion of the repeal of the covenant; so that again it was raising that question.

Q. Do you think that perhaps some bondholders, irrespective of whether they take their advice from the daily news—I apologize; that was [147] inadvertent, the *New York Times*, may fear that the price of their security will be affected by everyone else reading about it in the *New York Times*?

Is that news in the newspaper a fact or factor that an investment advisor takes into account in deciding whether to buy, hold or sell? A. I would say probably only to the extent that he finds that it is proved in the lower market price and he knows better than to have—

Q. Would you say that this was proved in the lower market price? A. I just wouldn't say, because I have never related these two things specifically.

Q. Isn't this article a little strong for financial reporting, Mr. Thompson? I call your attention to the assertion that the Port Authority is at something of a low point in its long career. As one Commissioner of the Authority said, it is dead in the water. T 146-14 to 147-19.

\* \* \*

[149] Q. . . . Perhaps I should read several, then if you can tell me whether you share my sense that those are strong words to describe a sense of security.

The third paragraph, "Deterioration of the huge agency attributed this statement to officials and commissioners of the Port Authority, the deterioration of the huge agency may be more serious than anyone had previously imagined. The principal problem facing the agency is its inability to sell bonds or borrow money."

*Excerpts from Testimony of John F. Thompson*

Would you say those statements bothered a bondholder?

A. Well, can we go on after that?

**[150]** Q. Anything you would like to read. A. "A bondholder's suit has scared off potential lenders and underwriters."

This is one of those types of newspaper reporting where the reporter stands on his intellectual head. This is nonsense. Bondholder's suit did not scare off potential lenders. The repeal of the covenant scared them off and just because Frank Prial does not know that and does not write in the *New York Times*, does not matter a darn to investors.

Q. Mr. Thompson, we don't hold you to the knowledge of the fine points of evidence.

The story is not being used to establish that these statements are true, but that Frank Prial of the *Times* made them and presumably a million people read them, some of them Port Authority bondholders.

Now, you added a sentence to a number of others I read and there are more to come.

Would they frighten a bondholder? A. I would not think that any professional investor in Port Authority bonds, and the Port Authority bonds are widely held in institution and investment accounts, I would not think any **[151]** professional investment manager would be influenced or get his facts from a newspaper article, and, as a matter of fact, I would think that most of them would get about as far as the passage which I just read back to you, and then say, "Well, this guy doesn't know what he is talking about anyway, forget it."

Q. Did you read this story through to the end when you saw it in the *New York Times*? A. I probably did because I am professionally concerned with all those sort of thing, but I did not read it with any feeling that I was being informed.

*Excerpts from Testimony of John F. Thompson*

Q. Why did you keep all those clippings to which I objected before in your file? A. Most of them dealt with events. This is what the newspapers call "analytical" reporting or news analysis or something like that. Sometimes they mark it as that.

Q. Let's go on.

In the next paragraph, following the one from which you read, "Some of the impressive facilities of the Port Authority have stopped making money or in some cases never started."

That sounds like the description of an event or series of events to me.

**[152]** Would that concern bondholders? A. If bondholders obtained information to that effect from reliable sources, from reports by the Port Authority or from the credit agencies or someone to whom they look for reliable information, it might affect them, but I am not at all sure they would be bothered by a newspaper reporter saying it.

Q. You are not at all sure they would be bothered, but it is possible? A. Well, it is barely possible that the most uninformed might be.

Q. The next paragraph says that it is assumed—

The Court: Before we go further along this line, what percentage of the Port Authority bonds of series such as that which is reported on P-92, the 2008, what percentage would be held by individual investors, let's say, up to the \$50,000 category as against the institutional investor?

The Witness: Your Honor, anything I said in response to that would really be a guess.

The Court: I realize that, but based **[153]** on your experience and knowledge in the underwriting of these issues.

*Excerpts from Testimony of John F. Thompson*

The Witness: I think a larger proportion would be in institutional hands, and I might say that many individuals who would own these Port Authority bonds or own other tax-exempt bonds, really have their accounts professionally managed by bank trust companies or by investment counselling or investment advisors of other types, so that I would think a very large proportion, one way or the other, would be under professional guidance.

The Court: With such a thin market for these bonds as you have described it after the repeal of the covenant, wouldn't the offer of a relatively small quantity of bonds have a greater effect upon the price than would otherwise be the case?

The Witness: I suspect that is true, yes.

The Court: In other words, an article such as this if published, would not have to reach necessarily the institutional investors and have them act upon it, but if a number [154] of individual investors had read it and decided that they should sell, that could have a pronounced effect, given the condition of the market as you have described it?

The Witness: Most of those individual investors who were even without professional investment advice in the sense that they paid a fee for it or something of this sort, most of them, I think would talk to their own dealers from whom they bought the bonds before they arrived at a decision like that. They would have to say, "What do you think of this article, what do you suggest doing?"

I spend a great deal of time calming down fires from articles on a number of things, not necessarily the Port Authority, but somebody asked one of our

*Excerpts from Testimony of John F. Thompson*

salesman, "What about this article on UDC," or something of that sort, and then I have to read it and give them some interpretation of it in terms of what I can find out about the actual situation.

Q. You say you spend a fair amount of time calming down fires when there are adverse press reports.

Are you always successful? [155] A. Generally.

Q. In your opinion, do some investment advisors not choose to put out those fires? A. I don't know that I can answer for all investment advisors. None that I know of would fail to act responsibly.

Q. You would not expect, though, that all investment advisors would be one hundred percent in allaying bondholders concerns in the wake of a newspaper story that was highly damaging in the terms used, would you? A. I don't think I'd have any way of judging that, sir. T 149-12 to 155-13.

\* \* \*

[158] Q. I am asking you whether in your opinion bondholders would be concerned to read a *New York Times* story calling a Port Authority official, to be sure unidentified, as saying the World Trade Center is a white elephant? A. Of course, I can't answer that an absolute no. I have no idea what all bondholders might—any and every bondholder might think. Any bondholder that I know of or have had contact with, would, if he were concerned about that, call up somebody that he thought knew and ask him about it and that's about the size of it.

Q. What would he find out if he called up and asked somebody whether he thought the World Trade Center was a white elephant? A. Well, I was really pushing back to a place where some figures are given there. I don't think

*Excerpts from Testimony of John F. Thompson*

anybody buys and sells on phrases like "white elephant."  
[159] I hope not. T 158-8 to 159-1.

\* \* \*

[160] Q. So your opinion is that this *New York Times* story of November 10, 1974, had no discernible impact on the Port Authority bond prices? A. It had none that I could identify or know about.

[161] Mr. Sovern: I'm sorry.

The Court: Are you saying the article as a whole?

Mr. Sovern: The article as a whole and in its various allegations.

The Court: Because I thought you had testified before that with reference to the article as a whole that it could possibly [have] affected the price to some degree but you weren't prepared to say how much.

Mr. Landis: Well, that wasn't the question that he asked. He asked, would you testify that it has no discernible impact and he said no, none that I can identify, and I think before he just allowed that the possibility existed.

The Court: All right.

The Witness: I believe that is the difference in the two answers. I hope they're not inconsistent.

The Court: No, they may not be.

Mr. Sovern: I'm sorry. I'm absolutely confused.

*By Mr. Sovern:*

Q. I understood your testimony to be that this article had no discernible impact on the price of the Port Authority bonds—[162] A. So far as I can indentify.

Q. And you cannot account for the growth in the spread of price between Port Authority bonds and Mass Ports to



*Excerpts from Testimony of John F. Thompson*

11 on November 15? A. Not in any particular—not by any particular event, no.

Q. And that's because the short term swings are not instructive—how long a trend line do you need before you can effectively identify a cause of a growth in price spread?

A. I don't know that I can state a fixed rule on that but—

Q. Give me a range; year, three months? A. When it gets to six or eight months as this appears to be, then I think you have a trend. T 160-22 to 162-15.

\* \* \*

**[163]** Q. Let's take May 10. What was the spread on May 10, 1974? T 163-8 to 163-9.

\* \* \*

A. Shows five points.

Q. Now, May 10, I take it, you understand followed the passage of the New Jersey legislation and signature by Governor Byrne and the passage of the New York legislation but not yet the signature by Governor Wilson, correct?

A. Yes, I believe that's correct.

Q. So the five point spread, I take it, **[164]** Governor Wilson's signature should have an effect on the spread that would aggravate it over the long term? A. Well, markets are just not that automatic, sir. T 163-18 to 164-3.

\* \* \*

**[165]** Q. On May 10, the spread between the bonds was five points. On May 10, Governor Byrne had signed the legislation—had already signed the legislation passed in New Jersey's legislature and both Houses in New York had passed the repeal and Governor Wilson had not yet signed it.

On your analysis and in your opinion I would anticipate that the signature by Governor Wilson would aggravate

*Excerpts from Testimony of John F. Thompson*

the spread. Am I correct in this? A. If market[s] acted automatically on events, yes, but markets act on anticipation a great deal of time.

Q. So, in other words, Governor Wilson's signature might not have adversely affected the spread? A. If it were already anticipated, it might not.

Q. Governor Wilson, then, would reduce the spread? A. Definitely not.

Q. No. Do you know what the spread is today, seven months after Governor Wilson's signature between the two bonds referred to in P-92?

The Court: You mean today?

Mr. Sovern. Today—yesterday, actually, your Honor; today's *Times*.

A. Well, newspaper quotations?

Q. Yes. [166] A. I wouldn't take that as an accurate reflection of markets.

The Court: Well, do you happen to know yourself—

The Witness: No, I don't know, your Honor.

The Court: Do you have the newspaper

Mr. Sovern: It's three points your Honor.

[167] Mr. Landis: Well, Your Honor, the witness—

Mr. Sovern: Rather than offer the *New York Times*, I would like to do this, Your Honor. It seems to me that you recall that I asked in voire dire and Your Honor expressed a preference to have me raise question about these charts on cross. It is now clear to me that—

First of all, the failure to bring them down to date is a gross deficiency making it impossible for you or

*Excerpts from Testimony of John F. Thompson*

any other tribunal reviewing this record to make an accurate record of the effect so I move at this time—I move at this time to strike the chart in supporting that.

The Court: Well, I might be disposed to make some comment on them if you can show me what the history of this spread has been since the terminal date on the chart.

Mr. Sovern: I respectfully—we have—

The Court: I mean, I'd be very frank to say that if these are chopped off at a certain date and then the subsequent history shows that the spread has narrowed so that it's no longer significant, then I would be inclined to say that the credibility of these charts to prove anything that the witness has been testifying about would be seriously undermined. T 165-3 to 167-25.

\* \* \*

**[170]** Mr. Laulicht: For the record, S-3 will be a two-page chart headed 1975 for the New York-New Jersey Ports, 6 per cent, 2008 and the **[171]** Massachusetts Ports, 6 per cent, 2011 covering the period January 3 through 23.

Mr. Sovern: I think the question I [put] to the witness is, are you familiar with the current—the January price spread between Massachusetts Ports and New York Port Authority bonds?

The Court: Then take a look at this particular document and see if it corresponds to your knowledge of what the prices have been for those issues during the month of January.

The Witness: The latest figures seems to be reasonably consistent with what I have observed in the market.

*Excerpts from Testimony of John F. Thompson*

The Court: The figures reported on S-3?

The Witness: Yes. T 170-23 to 171-15.

\* \* \*

**[172]** By Mr. Sovern:

Q. Now, you'll notice, Mr. Thompson, these numbers go down only to January 23rd; that, of course, is due to the time in which they were prepared.

You'll recall I asked you for the spread on May 10, 1974, before Governor Wilson's signature and you answered that the spread was five. Can you tell me what the spread was on January 23 in light of S-3? A. Yes. The spread is five that day. T 172-1 to 172-9.

\* \* \*

**[178]** Q. Do I accurately recapitulate your testimony, Mr. Thompson? You cannot account for short term changes in the spread between New York Ports and Massachusetts Ports. A. That is correct.

Q. Now as to the long term trend from May 10, 1974 to January 23, 1975 there is no change in the spread between those two bonds, is that correct? A. It happens that there is no change between those **[179]** two dates. But that does not necessarily show that it is a long term trend. There can be short term things happening in January which account for what happened in January.

Q. I asked you earlier, Mr. Thompson, what is the long term trend, and you told me seven or eight months so I picked the period that I thought met your specifications. A. One does not approach these things with academic rules. One judges them by experience and by what happens over a period of time. Taking the long term trend that is shown, sure, back in late October they came together for a time there too. Then they spread out again. We could very

*Excerpts from Testimony of John F. Thompson*

well be in a period just such as that now, where temporarily they pull together for the time being. I don't think that you can say that you establish a long term trend by picking the dates which give you the result you want. T 178-17 to 179-17.

\* \* \*

**[180]** The Court: Wouldn't it be fair to say, Mr. Thompson, that the selection of December 14 for **[181]** the purpose of preparing these two charts then might have been an arbitrary selection?

Mr. Landis: That was just the day that it was made, Your Honor.

The Court: Isn't that an arbitrary date then?

Mr. Landis: It was made at that point in time.

They had asked us for the exhibit and we gave it to them.

The Court: I understood the witness to say, and I understood you to be re-enforcing his testimony, that if you just pick two dates, that that would not necessarily show a long term trend, because there might have been something else going on at that particular time which would affect the spread between the two bonds.

Mr. Landis: Yes.

The Court: It so happens that these charts that were prepared by you on December 14 also happen to coincide so far as the evidence I have before me now is concerned, with the maximum spread between the two bonds. And he has now shown evidence that subsequent to this date, this spread narrowed considerably.

Would you encompass what has happened after December 14 through February 3 of 1975 within the

*Excerpts from Testimony of John F. Thompson*

**[182]** long term trend? Which I take it is a period of some approximately seven weeks.

The Witness: Your Honor, when the long term trend has shown this widening over a period of some six, seven or eight months, and then narrows again in the course of one month or five weeks, this may not be conclusive as to what comes next.

The Court: We would be able to make a lot of money if it were conclusive.

The Witness: We would, and it could be somebody lost a lot of money. It could be somebody sold short through here and then covered in January.

The Court: All I am suggesting to you is this: If this chart—and I am taking 91 as the example—if this chart were continued out through February 3, 1975 showing a gradual narrowing of the spread throughout the rest of December, January and through February 3; would you say that that is deemed to be part of the long term trend with respect to the spread between these two bonds?

The Witness: No.

Mr. Landis: I think he has answered the question.

The Witness: I would be hesitant because of these other points that this has happened before, **[183]** Your Honor. May I point out, that, suppose for the sake of argument we accept the five point spread—incidentally, I looked up during the recess, my trade desk gave me a bid price of 82 on the Port of New York rather than 83 which is used in the paper here.

But if we take a five point spread and look back to when this all started, when there was practically no spread, that five points applied to at least a billion of Port Authority bonds issued under the

*Excerpts from Testimony of John F. Thompson*

covenant and amounts to 50 million dollars. That is quite a tidy sum. T 180-24 to 183-12.

\* \* \*

Q. Let me try it this way: Do you think these charts as amplified by the down to date material, reflect the impact of Governor Wilson's signature of repeal on the difference in prices between New York Ports and Massachusetts Ports? A. I don't think Governor Wilson's signature of repeal can be taken here as one sole event. T 183-18 to 183-24.

\* \* \*

**[184]** A. It is the sequence of events. And the whole process of repeal is reflected here. T 184-3 to 184-4.

\* \* \*

Q. Do I take it correctly that your answer is no that the charts cannot reflect that? . . . T 184-14 to 184-15.

\* \* \*

Reflect Governor Wilson's signature. T 184-23 to 184-24.

\* \* \*

**[185]** A. I think, counselor, that your view of relations of markets to events is much too automatic.

Mr. Sovern: I am asking you for your opinion.  
Mr. Meyner: It is his opinion.

A. It is not a question on which I would feel that one knowledgeable in markets could give an opinion.

Q. Then the charts do not reflect it. If you gave me an opinion—A. The charts are not supposed to reflect one event. T 185-8 to 185-16.

\* \* \*

**[188]** Q. Do you have an opinion on the basis of the exhibits dealing with the prices of Massachusetts Port

*Excerpts from Testimony of John F. Thompson*

Authority and New York Port Authority, all of the exhibits, dealing with that subject, do you have an opinion as to whether the spread between the New York Port's and the Massachusetts Port's was affected by Governor Wilson's signature of the repeal legislation? A. Was it affected? Now, you have left out of the question the current spread. I think Governor Wilson's repeal was one of the events in the course of repeal which affected the general trend of the market, yes. T 188-5 to 188-17.

\* \* \*

**[189]** Mr. Sovern: The witness has declined to answer the question, whether the exhibits you have introduced as amplified by the exhibits we have introduced permit him to have an opinion as to whether the spread between these two bonds was affected by the signature of Governor Wilson.

I recall that on direct testimony, he said he knew of only, of no other facts that would spread the market except repeal by the two Legislatures and signature by the Governors. That was the testimony and I am cross-examining as to whether he has— T 189-1 to 189-13.

\* \* \*

Q. Now, we are asking you about one of the only facts that you thought had an effect on the price and I am asking you whether you wish to change your testimony in that respect. A. No, I do not wish to change my testimony.

Q. Then do you have an opinion as to the effect of Governor Wilson's signature on the spread in price between the Massachusetts Port bonds and the New York Port bonds? T 189-17 to 189-25.

\* \* \*



*Excerpts from Testimony of John F. Thompson*

**[190]** A. As I have stated, my opinion that relates repeal of the covenant to the market on Port Authority bonds combines the series of events which occurred in that and I do not think anyone professional in the market would try to tie a market trend to one of those events separated from others.

Mr. Sovern: Your Honor, I respectfully submit the question is susceptible of a yes or no. It asks whether he has an opinion and I respectfully ask—

The Court: Do I interpret your answer to be you do not have an opinion with respect to that particular event having such an impact on the market?

The Witness: Yes, I think it is fair to say that I do not have an opinion as to that particular event and I do not think that an opinion on that point is something that would be professionally looked upon as knowledgeable in the market. T 190-6 to 190-24.

\* \* \*

**[211]** Q. I call your attention to Page 1 of this D & B report [Exhibit P 1], Mr. Thompson. You'll find that this is the offering—this credit report is occasioned by the imminent sale of the 19th series? A. Yes.

Q. Did the 19th series contain a covenant? A. No, because the covenant had not then been passed by the two legislatures.

Q. Was a special premium paid by the Port Authority for the sale of the 19th series? A. Not so far as I know. It was a \$25 million issue. It was not large in connection with the Port Authority financing.

Q. All right. Now, the Hudson-Manhattan legislation was introduced in New York and then cleared the second

*Excerpts from Testimony of John F. Thompson*

house of the New York legislature on March 25, 1961. Governor Rockefeller signed it on April 6, 1961. I stated that for background.

Would you expect the price of Port Authority bonds to be affected by this action during the period, let's say, from the beginning of March to the middle of [212] April? A. This is 1961 you're speaking about?

Q. 1961, the period during which you were concerned and I take it what you were concerned about was Governor Rockefeller's indication that he wanted Hudson & Manhattan picked up by the Port Authority. A. And your question again is?

Q. Would you expect this—I wouldn't—would you expect the legislature's actions and Governor Rockefeller's signature of the legislation requiring—directing the Port Authority to take over the Hudson and Manhattan without a covenant—this is 1961—not [1962]—would you expect that legislation to have affected the price of the bond? A. I think probably not because this was a step along in the discussion and development situation.

Q. Okay. I call your attention now, Mr. Thompson, to P-4. This is the draft of your speech that I guess was never actually delivered as a speech. T 211-5 to 212-18.

\* \* \*

[213] A. Yes. It was not intended to be a speech. It was a draft for internal discussion purposes in considering the question of what some of us in the investment community could do to help in the situation where the Port was being pressed to take on more and more in mass transit and there was the covenant; to see whether there were ways of accommodating to the covenant and still doing something in mass transit.

*Excerpts from Testimony of John F. Thompson*

Q. And one of the ways you discussed was by possible bondholder consent to modification? A. I discussed bondholder consent, yes.

Q. And in your view a meeting of the holders of consolidated bonds would have had to be held in order to modify the covenant? T 213-1 to 213-14.

\* \* \*

A. This is not my opinion. This is what was provided [214] in the consolidated bond resolution.

Q. Is that—let me ask the question. It may be that Counsel may answer it.

We received these documents [with] some attachments or at least they seem to be together in the file; one of which was section—a Xerox copy of Section 16, the modification section. Is that the section to which you're referring? A. Yes. That I believe is attached to the copy I have here.

Q. Now, under that provision as you understand it, there would have to be a meeting of the bondholders. Would there have to be a quorum at that meeting? A. A quorum of 60 percent and any variation would have to be approved by the holders of 60 percent of the bonds then outstanding adjusted for anything that was in the sinking fund and all that sort of thing.

Q. I take it you were relying on Section 16b, would I be correct in that? A. It's been some time since I read this—

Q. Please take your time. A. —Counsellor.

Yes, I think so.

Q. Now, as you look at that provision, I take it that 40 percent of the bondholders may have their rights altered by 60 percent of the bondholders. Is that [215] correct?

A. That's what's provided in the resolution, yes.

*Excerpts from Testimony of John F. Thompson*

Q. Are there any exceptions to the extent to which the 60 percent vote may impair the obligation of the bonds being held by the other 40 percent?

Mr. Landis: Your Honor—

A. I would have to read it fully again but I'm sure one exception is that the interest rate can't be reduced or the maturity changed.

Q. Would you focus on the proviso of Paragraph B and if you read that perhaps that would be helpful. A. Just before the small "i" you mean?

Q. Yes. If you'd read that aloud. A. "Provided that no such amendment or repeal or modification shall alter or impair the obligation of the Authority which is absolute and unconditional to pay the principal and interest of any consolidated bond at the time and place and at the rate or amount and in the medium of payment prescribed therein without the express consent of the holder of such bond."

Q. So that there are several promises made by the Port Authority that cannot be taken away from the bondholders. Is that correct? A. Yes. This is customary in this sort of provision.

Q. In any event, it was your opinion that the [216] approach to the bondholders would fail. Is that correct? A. Yes. Certainly, unless some very substantial quid pro quo were offered and none has ever been suggested.

Q. The way you put it, as I recall—not as I recall it, as I read it is that even if the approach were made with a moderate increase in the interest rate, it would be unacceptable. A. With a moderate increase I then believed that it would be unacceptable and I still do.

Q. Now, you stated— A. A moderate increase being—I was thinking of the Triboro thing where it was a quarter

*Excerpts from Testimony of John F. Thompson*

of one percent, perhaps half of one percent. I'll define moderate for you. T 213-1 to 216-13.

\* \* \*

Q. Now, as you told us, this draft was an effort to find the way to deal with mass transit without repeal of the covenant. You explored one track, modification, found that likely to be unavailable.

【217】 You then offered another alternative, did you not, on Page 4, second paragraph—second full paragraph? A. Well, this is the proposal—the tentative proposal which all of this was being a draft memo, you can understand, of an override toll enacted by the two states, not by the Port Authority and I went on to qualify this somewhat because at that time I felt that that increase in the toll might reduce the traffic and that that might really impair the bondholders' rights to the normal increase in traffic and that therefore some of that should go to them, but this was all a tentative notion which came to naught.

Q. Were you concerned that the security of the bondholders would be damaged by your proposal? A. I was trying to figure out something where it would not be damaging.

Q. You stated on direct that you were subsequently advised that this posed problems of interstate commerce and possible Constitutional objections. Who gave you that advice? A. Well, some of it—some of the municipal bond counsel that I know and have talked to so many of them that going back, I'm not sure which ones.

Q. This was informal rather than retained counsel? A. Oh, yes. This was an informal discussion. T 216-22 to 217-25.

【220】 Q. Your letter to the *Times* has a similar proposal. A. Somewhat, broadened.

*Excerpts from Testimony of John F. Thompson*

Q. Was that because you got some advice and decided to be vague about it? I'll ask the question. Was the difference between this document and the *New York Times* letter attributable to your receiving such advice? A. Not entirely. It is attributable in part to thinking about this proposal for a couple more years and trying to mature my thoughts, and realizing for one thing, that the concern, which is to get some money here, is apt to be for the New York Subway System, and any idea that you could do something like that with a tax only on the crossing between here and Manhattan and without touching the other entries into Manhattan would be ridiculous, and I'm sure any Governor of New Jersey would soon find it so. T 220-1 to 220-17.

\* \* \*

[221] Q. You say in your draft that your plan could be accomplished within the present framework in covenants with the bond holders. Is that correct? A. I then thought so, yes.

Q. Do you now think so? A. There was some statement made then that indicated that there was a divergence of legal view on that, and I would have to respond simply that there was a difference of opinion on that point.

Q. You testified at some length as to the meaning and the effect of the 1962 covenant.

Mr. Landis: Your Honor, I don't think that is correct. I object. He testified as to his understanding, not—I don't think he purported to be an expert on the meaning, and we did not offer him as such with respect—he testified that the salesmen and others relied on his interpretation of the covenant, and he testified as to how and in what respects; it was more precise than Section 7 of the bond resolution.

*Excerpts from Testimony of John F. Thompson*

The Court: I don't think we need to get too far into that, but I will permit you to ask the question.

Q. Doesn't your proposal violate the 1962 covenant, Mr. Thompson [222] A. Which proposal?

Q. Your proposal in P-4 beginning on page 4, the [toll] override. A. I have already said that that was the discussion proposition, that I had long since moved away from; I don't know whether it violates the covenant.

Q. You don't know whether it violates the covenant? Is that your testimony?

The Court: He just said that.

Mr. Landis: Yes, he just said that.

A. At the point of discussion of it, there was a difference of opinion. That is my answer.

Q. Is there still a difference of opinion as to the compatibility of your proposal with the covenant? A. Counsellor, I regard that proposal as two to three years old and quite passe. I doubt if anybody else has thought of it in the last two and a half years.

Q. Do you know the date on your *New York Times* letter? May 1st, 1974, is that correct? A. I don't have it before me, but it probably is. T 221-1 to 222-20.

\* \* \*

[223] Q. I call your attention to the next to the last paragraph, the third sentence in which you say: "A broad view of urban and energy problems suggests that government should act to discourage auto traffic into major cities in favor of the greater use of mass transit. This would probably involve a sizable shifting of funds from charges imposed on automobile traffic to the support of mass transit. To do this is an exercise of the state police power, and

*Excerpts from Testimony of John F. Thompson*

should be done by the two states themselves and applied to all automobile traffic entering Manhattan." That is within the last two and a half years, is it not? A. Yes. That is not the proposal I made.

Q. Is this proposal compatible with the 1962 covenant?

A. I think it could be so arranged, yes.

Q. How would you shift charges imposed upon automobile traffic crossing the Hudson from automobile traffic for the support of mass transit? A. I presume that would be part of it.

Q. How would you do it, consistent with the 1962 covenant? A. I think I have said that it was an exercise of the state police power; and the *Times* incidentally left out the phrase and taxing power that I had it in the letter that I [224] sent.

Q. I have seen that draft, and you accurately describe it.

A. It seems to me that it is up to the states to take action here under their authority, if they want to do it. T 223-2 to 224-5.

\* \* \*

[225] Q. How then, Mr. Thompson, would you follow through on the proposal made in your New York Times letter, without violating the 1962 covenant? T 225-1 to 225-3. A. Well, the 1962 covenant deals with Port Authority revenues and funds. This suggestion, while it might conceivably use the Port Authority as a collection agency on cars going through the tunnels and bridges, still would be something imposed by the states; it might be done simply by a tax levy through the City of New York on all vehicles coming into the city. They might have to buy a sticker to come into the city. There are a variety of ways it could be done, and it would not necessarily flow money through the Port Authority funds that are pledged to the General



*Excerpts from Testimony of John F. Thompson*

Reserve Fund. In fact, the intent of the proposal was that it would not.

Q. Among the possibilities you contemplate, though, was a tax on automobiles at point of entry. A. That would be one way to handle it, yes.

\* \* \*

【227】 Q. Where would a charge imposed on traffic entering into Manhattan be imposed?

\* \* \*

A. I would not consider these tolls. They would be, if you will, taxes on the privilege of coming in.

The Court: Wouldn't you consider that an agreement between New York and New Jersey, Mr. Thompson, or legislation by those states which 【228】 set up a taxing facility as far as entering into New York from New Jersey would impair the basic covenant—forget about the 1962 covenant—but would impair the basic covenant between the states and the bond holders?

The Witness: No, I would not consider that.

Mr. Sovern: Can I call the witness' attention to the Official Statement at page 28 dealing with rate powers and covenants? \* \* \*

Q. You will find in the first paragraph references to legislation including the covenant, that the two states covenant with each other and with the bond holders that the two states will not diminish or impair the power of the Authority to establish, levy and collect tolls, rents, fares, fees or other charges in connection with any facility owned

*Excerpts from Testimony of John F. Thompson*

or occupied by the Port Authority. Does that affect your—  
A. I did not consider the idea affected that power. Perhaps legal counsel would dispute this and want to argue it out. But it did not seem to me action by the states on their own behalf and entirely supplementary to the revenue producing ability of the Authority which is here described would impair the authority's power.

**[229]** Q. Mr. Thompson, if the Port Authority raised the toll on the trans Hudson bridges and tunnels to one dollar and gave the extra fifty cents to mass transit, pursuant to legislation, that would be a plain violation of the covenant, would it not? A. I believe it would, yes.

Q. It would also be a violation of the consolidated bond resolution and each bond resolution. Is that correct? A. Yes.

Q. But you said they can without violating the covenant or any other protection, direct the Port Authority in the exercise of the police and taxing power to collect 50 cents a car for them. Is that correct? T 228-12 to 229-14.

\* \* \*

A. I believe that the states could and that the Port Authority would not be involved in the transaction, except possibly as an agent for the collection of the sums would be separated.

Q. Which do you regard as more inimical to the **[230]** bondholders' security, your proposal or the repeal of the covenant? A. Obviously the repeal of the covenant.

Q. You testified on direct examination, Mr. Thompson, that the effect of the repeal on other bonds was a serious matter. A. Yes, sir.

Q. And you testified, did you not, that if Governor Byrne had recommended repeal, never mind enacting it, but recommended it before the sale of the Sports Authority bonds,

*Excerpts from Testimony of John F. Thompson*

that the bonds would have been unsaleable. Is that correct?

A. I would so testify, yes, sir. T 229-21 to 230-13.

\* \* \*

Q. You also testified New York Power Authority bonds had suffered in their marketability because of the repeal.

A. I did, sir, yes.

Q. New York Power Authority bond holders have nothing at risk from mass transit. The repeal of the covenant does not affect the value of their security. [231] Is that correct? A. Well, as far as subjecting them to the hazards of mass transit, it has nothing to do with their security. As far as indicating that the state of origin might revoke and not abide by something that is in their promise to pay, they have a great deal at stake.

[232] Q. So it is a fact that the state has broken its promise that impairs the market ability of power authority bonds? A. Yes, that's correct.

Q. And even though the specific promise broken has nothing to do with the security they have? A. I presume that is correct, yes.

Q. So the same could be true of Port Authority bonds to, could it not? A. I don't follow you, would you rephrase that?

Q. That market is reacting to the fact, if it is reacting at all, to the fact that the state has broken its promise, that it is a matter not of concern about impairment of security. It is concern about the reliability of state promises? A. Well, that certainly is true of the indirect affect on other things. In the case of the Port Authority it has broken its promise to Port Authority bond holders and I don't see how you can separate them.

Q. We don't need to separate them. I take it it is your testimony that the mere fact of breaking of the promise,

*Excerpts from Testimony of John F. Thompson*

irrespective of any security interest would diminish the values of securities issued by New York and New Jersey and its agencies, including the Port Authority? **[233]**

A. Yes, and indeed it has.

Q. I call your attention now to the exhibit marked P-3, a memo by you to Mr. Morton. T 230-19 to 233-3.

\* \* \*

Q. I call your attention to the first sentence, the provisions of section 6 quoted above are part of the contract with holders of bonds issued between March 27th, 1962 and May 10th, 1973.

Were any series of bonds issued after May 10th, 1973, and before the date of your memo? A. Yes, I believe there were two series of bonds issued in that period.

Q. I take it that the implication of your sentence then is the provisions of section 6 were not part of the contract with the holders of those bonds? A. That's correct, yes.

Q. I call your attention to page 4, first paragraph, same exhibit, next to last sentence.

Would it be a fair paraphrase of your view expressed there to say that the investment status of consolidated bonds would be materially impaired unless the Port Authority's incursion in the mass transit field is limited? T 233-5 to 233-23.

\* \* \*

**[234]** A. Yes, I think so.

Q. [Would] the members of the financial [community] agree?

The Court: If you know.

The Witness: I don't know how to answer that, your Honor. I have not discussed with other members of the financial community your paraphrase of my language so I don't know how to answer it.