

1 A Okay.

2 Q I'm saying the state contributions that are referred to in  
3 section b are still referring to General Treasury Funds?

4 A Right as --

5 Q Okay.

6 A -- as identified in their appropriation.

7 Q Thank you.

8 And then -- but then in subsection c, the monthly  
9 retirement benefits that are mentioned in subsection c, that --  
10 those funds are actually payable from the system itself. Those  
11 are not -- that's -- that's funds that have already been  
12 credited to the trust fund, correct?

13 Because all retirement benefits are paid from the trust  
14 fund?

15 A Correct. So, in -- in larger terms, paragraph a and  
16 paragraph b talk about in -- in go.

17 Q There you go.

18 A And paragraph c talks about out go.

19 Q Now, see, you just had to get it down on my level.

20 MS. BELL: In go and out go.

21 MR. NEWELL: Thank you.

22 BY MR. NEWELL:

23 Q All right. Because all funds that troopers receive in  
24 retirement, whether DROP or otherwise, come from the trust  
25 fund?

1 A Yeah. That is the funnel.

2 Q Right.

3 A That is the mechanism. The revenues of whatever source,  
4 be they statutory contributions or revenues from insurance  
5 premium tax, title fees, court fees, and special appropriations  
6 when there is just not enough money, ultimately end up in the  
7 State Police Retirement System for benefit of the -- of the  
8 members and beneficiaries.

9 Q And once -- and as Mr. Weiss and I were discussing, once  
10 the money is in there, from whatever source, whether it's  
11 license fees or the 22 percent, whatever, once it's in there,  
12 it stays in there, in the trust fund for accounting purposes?

13 A For accounting purposes, yes. As everybody knows, even if  
14 they didn't go to law school, like myself, that a trust is held  
15 in -- in specific benefit -- for a specific benefit of, in this  
16 case members and beneficiaries, but until it is actually paid  
17 to that member or beneficiary, it is part of the treasury.  
18 Now, we have to be part of the state wide CAFR every year, I  
19 have to report all these numbers to DF&A who then puts it in  
20 the larger state annual report.

21 Q Right. But in the annual state report, those same dollars  
22 that you reported are earmarked as part of a trust fund?

23 A Right.

24 Q They are not part of state general?

25 A That's correct. So it cannot be diverted for --

1 Q Right.

2 A -- infrastructure or other kind of economic development or  
3 my wages.

4 Q Right.

5 Oh, the interest that is at the crux of this case, that  
6 comes from the trust fund as well?

7 A Correct.

8 Q Correct? I mean, it doesn't come from what I -- what I  
9 call general -- state general what you -- what Mr. Weiss was  
10 calling the state treasury, it doesn't come from the gross  
11 state treasury account, it comes from the trust fund account?

12 A It --

13 MS. BELL: I'm going to object as to form.

14 BY MR. NEWELL:

15 Q Right. Do you understand my question, though?

16 THE WITNESS: Shall I answer?

17 MS. BELL: Yes. Oh, yes. You have to still  
18 answer.

19 THE WITNESS: Okay. It -- it doesn't come from  
20 unappropriated state just miscellaneous funds --

21 BY MR. NEWELL:

22 Q Right.

23 A -- it comes from funds that have been designated for the  
24 benefit of the troopers.

25 Q Right. Under -- under the appropriation act that -- that

1 was Exhibit 1, it's -- it comes in as some of that money. It  
2 came into the -- it came into the trust fund under -- under, I  
3 guess, personal services matching at some point? It's the  
4 corpus of the State Police Retirement System Trust Fund?

5 A Right.

6 Q Okay.

7 A If I might, just in listening to Mr. Weiss' testimony  
8 here, I -- it needs to be made clear that this, for instance,  
9 in this appropriation, this \$18.7 million, State Police  
10 Retirement System does not get all that, you know, because as  
11 he said, there is also FICA and health in there.

12 Q Right.

13 A But also that's the maximum available. If they don't have  
14 every trooper position filled, I don't get anything close to  
15 that.

16 Q Okay.

17 A Because they are only paid on the active heads.

18 Q Right. Active member payroll, as Weiss called?

19 A Correct.

20 Q All right. Now, I think we've already answered this, but  
21 once they -- once a trooper enters into the DROP, he still --  
22 he or she is still working?

23 A Uh-huh. Yes.

24 Q And so he or she -- his income is still considered a part  
25 of the active member payroll, for purposes of funding the

1 (WHEREUPON, Deposition Exhibit No. 2 was marked  
2 for identification.)

3 BY MR. NEWELL:

4 Q In the session of 20 -- of 2007, 2007 --

5 A Uh-huh.

6 Q -- when the law -- when Act 404 was passed, was that done  
7 largely as a response to the market, stock market or general  
8 real estate markets or your investment -- the performance of  
9 your investment accounts?

10 A Not at all, it was tied solely to the actuarial or fiscal  
11 status of the plan as demonstrated on this page.

12 Q So how has that helped? How has it helped?

13 A It has helped it bleed less.

14 Q Can you -- can you show that to me?

15 A I -- I cannot quantify that for you.

16 Q Okay. Because since '07, it -- there is -- there is still  
17 a percentage drop, there was a big percentage drop between  
18 '08 and '09, and I assume that's because of the stock market?

19 A That is large -- a large part of it.

20 Q I mean, you had a --

21 A Yes. That is a large input to a plan that's this fully  
22 mature when you have in fact more retirees than you do active  
23 members.

24 Q Right. So you had a -- between 2008 -- actually between  
25 2007 and 2009, you had a 13 percent drop off?

1 Q But it's only 3 -- it's less than 4 percent of the entire  
2 APERS trust fund?

3 A That has nothing to do with it, they are separate trust  
4 funds.

5 Q Okay. Now, is it true that each member of the DROP can  
6 view his statement -- can view his account balance, if you  
7 will, at any time by going online and putting in his  
8 information?

9 A That is incorrect.

10 Q Well, why is it these guys that are my clients have told  
11 me they can do that?

12 A They are -- that is an estimator, and if it -- if they are  
13 putting significant reliance on what that number is -- pardon  
14 me, pardon me, let me roll that back. We do now have that  
15 available to them, but it's only going to show you what you  
16 have accrued through last month, it's not a day to day.

17 Q Right, right.

18 A It wouldn't -- actually, it's applying the rate --  
19 anything that is after July 1st and is not the next  
20 July 1st is -- has not had interest credit applied to it at  
21 all.

22 Q Interest is applied annually?

23 A Correct.

24 Q And it -- and when a member goes online, their monthly  
25 amount is -- that's just simply the annual amount divided by

1 12?

2 A (Nodding head up and down.)

3 Q That's not a monthly accrual, correct?

4 A Correct. In simplest terms, yes.

5 Q And they can -- and, again, simple is best for me, so

6 I'm --

7 And so that is the amount that they can -- they can see?

8 They can see their account balance?

9 A Yes. And it's never going to be different in -- in that  
10 program they are looking at, that portal into the system,  
11 unless we have made an error, an accounting error --

12 Q Uh-huh.

13 A -- that is some part of what they will receive at a future  
14 date.

15 Q Right. And you -- you provided me as part of discovery  
16 the statements --

17 A Which come out once a year. Yep.

18 Q That's my term, statements.

19 A Uh-huh.

20 Q Is that what you call them as well?

21 A Yes, yes.

22 Q So each member gets mailed to him or her an annual  
23 statement?

24 A An annual statement.

25 Q And then in the interim -- and that's the way it's always

1 been, right, since you've been involved?

2 A Yes.

3 Q And so, in the interim if they want to see, they can look  
4 at that same information online?

5 A Yes. In -- in -- in the most general terms, what they  
6 look at on the website is like looking at their annual  
7 statement, but they have brought forth -- forward -- the portal  
8 has brought forward the additional monthly payments that would  
9 be -- stand to their benefit.

10 Q Right. Which, again, is the annual rate divided -- last  
11 year's annual rate divided by 12, last physical year?

12 A Annual benefit, yes.

13 Q Okay. So, in the parlance of the annual report, there are  
14 several different accounts other than the -- there is the --  
15 there is the member -- I mean, there is the DROP reserve  
16 account. Okay?

17 A Correct.

18 Q And that's what you told me was the amount that any --  
19 any -- any members, any DROP members' benefit rate together  
20 with interest applied, right?

21 A Correct.

22 Q That's what's in that account?

23 A Yes.

24 Q And then after his DROP is ended, his -- then his monthly  
25 payment comes out of which account? The Retirement Reserve



1 refuse to quit, I love my job too much and I'm going to say,  
2 you don't get any of that money, you've forfeited it.

3 Q Has anybody ever done that?

4 A We've had it in APERS. We actually did.

5 Q Can they do that?

6 A I had one guy come before the board and ask to be allowed  
7 to continue his job and keep his money and they said it's a  
8 matter of law, no, you cannot do that. So he quit because he  
9 wanted his money. But it's one or the other. You retire and  
10 take your money or you stay on and forfeit your money.

11 Q And I've used the term irrevocable in my suit and your --  
12 your attorney and I have quibbled over that in some pleadings.  
13 But what is the reason for the choice of a DROP once an officer  
14 selects DROP, what is the reason behind him not being able to  
15 rescind that, if you will?

16 A To -- it -- in designing a DROP, part of the incentive for  
17 an employer to adopt such an idea is to make the employer  
18 liabilities predictable. So if I know that you're setting your  
19 requirement at \$1,000 a month, I've -- I know how to plan for  
20 financing your thousand dollars a month you're going to draw  
21 from me. If it could be a thousand dollars a month and then  
22 you're out and then you're back in because I gave you a raise,  
23 you could -- you know, select against the system, suddenly your  
24 infinity demands, if you're going to live forever, are suddenly  
25 \$1,500 a month. And so I don't have any incentive as an

1 employer to create such a plan unless I am also providing  
2 myself with predictability.

3 Q So it's a planning mechanism, an actuarial necessity, if  
4 you will?

5 A Correct.

6 Plus, and probably more to your point, retirement,  
7 regardless of what plan, APERS, state police, is an irrevocable  
8 act. That was proven by the double dippers as far as with  
9 APERS. Your election to retire cannot be rescinded. And since  
10 this is an act of retirement, you cannot rescind it, unless you  
11 refuse to behave like a retiree and go away at the end of seven  
12 years, then we're going to say you never were.

13 Q Right. So, at least the -- based on the statutory  
14 language, you will agree with me that the DROP is a separate  
15 plan?

16 A No. It is a -- it's a separate device for taking your  
17 benefit.

18 Q Right.

19 A You can take an A 120, an A 60, a B 75, a B 50, or a DROP.

20 Q Even though the statute refers to it as the Arkansas State  
21 Police Officers' Deferred Option Plan?

22 A It could have said program, it could say --

23 Q Okay.

24 A -- any number of things. That was -- the actuaries  
25 actually developed that.

1 payroll?

2 A By the point it had gotten to a hearing, it had already  
3 been tried in the media. There was much misinformation out  
4 there, there was many serious allegations against misdoing of  
5 the APERS staff, which we intended to refute, none of that is  
6 an issue here. It was a -- it was a simpler issue. I want my  
7 interest rate, I think it's a contract, or, no, it's not a  
8 contract, we -- we reserve the right to set it.

9 Q Yeah, but the legal -- it was still a -- it was still a  
10 singular issue involved with Ms. Taylor?

11 A I would disagree and I will continue to do so because I --  
12 it was a big deal, double dipping was a very big deal with lots  
13 of political ramifications in Garland County.

14 Q Well, Ms. Stone, it involved three people --

15 A Ten. That case as named was three people.

16 Q Right. And whereas in the case at hand that I'm here for  
17 today involves probably between 75 and a hundred?

18 A Glenn Sligh, in making his complaint, was talking about  
19 himself.

20 Q Okay.

21 A And that's how it was considered at the time.

22 Q Okay. So we can agree at least on -- that the  
23 November 11th hearing only concerned him?

24 A Yes.

25 Q Okay. Counsel for both sides at the Jo West Taylor APERS

1 hearing, whereas in this case Mr. Sligh did not have counsel.

2 Is that correct?

3 A He was not prevented from doing so, but, no, I don't  
4 believe --

5 Q Okay.

6 A I -- I am not aware that he had any.

7 Q And I'm not asking you to, you know, speculate on why of  
8 anything, I'm just asking you to acknowledge the facts, okay?

9 A (Nodding head up and down.)

10 Q He didn't have a lawyer. Right? Mr. Sligh did not come  
11 with a lawyer?

12 A No.

13 Q All right. Witnesses in Mr. Sligh's case -- Mr. Sligh's  
14 hearing were not sworn to oath, whereas they were sworn to oath  
15 in the Jo West Taylor case, correct?

16 A There -- oh, the only --

17 Q If you know?

18 A They were -- they were sworn in the APERS instance. The  
19 only presenter, other than Mr. Wills, was Mr. Sligh, and was he  
20 sworn in? Not to my recollection.

21 Q Examination and cross-examination of witnesses took place  
22 in the Jo West Taylor case, whereas there was none of that in  
23 Mr. Sligh's appearance before the trustees, was there?

24 A No.

25 Q Okay. There were even questions by the hearing officer of

1 Ms. Taylor and witnesses in that case, whereas there were no  
2 questions -- there was no hearing officer at all in the Sligh  
3 appearance before the trustees. Correct?

4 A I don't recall the hearing officer saying anything, other  
5 than convening the meeting.

6 Q Okay. Well, there certainly wasn't a hearing officer in  
7 Mr. Sligh's meeting, was there?

8 A No.

9 Q The --

10 MR. WILLS: I think that the board chair  
11 conducted the hearing, if you read the transcript,  
12 whereas, she explained to you in the earlier answer,  
13 our board chair at APERS in the Taylor hearing had  
14 been sued so we had to get somebody that would be  
15 perceived as not having any dog in that hunt, so to  
16 speak.

17 BY MR. NEWELL:

18 Q In the Jo West Taylor hearing, the APA hearing, the  
19 system, the APERS, invoked the rule of exclusion of witnesses  
20 in which persons who were there to testify had to leave the  
21 room while the other person was testifying. Do you remember  
22 that?

23 A No.

24 Q Okay.

25 A But if you say so.

1 Q Well, it's in the transcript.

2 A Okay. That was a long day.

3 Q Yeah, I've got it here.

4 A I believe you.

5 Q Okay. Okay. There was a final order entered in the Jo  
6 West Taylor case, including findings of fact and conclusions of  
7 law. Do you remember that?

8 A Yes, there was, and there was going to be one in this  
9 instance and yet, Mr. Sligh filed suit in Circuit Court before  
10 those could be issued.

11 Q Okay. And there was proof in the -- and the APA requires  
12 there be proof of service of a final order upon the appellant.  
13 Are you familiar with that?

14 A In general terms, but again, that would have been  
15 presented --

16 Q Okay.

17 A -- at the February board meeting, and yet he chose to file  
18 suit --

19 Q Right, so it wasn't?

20 A -- prior to that. No, it has not yet been done.

21 Q Okay. What is -- can you explain to me what longevity  
22 [sic] pay is in the context of state police retirement? Is  
23 there such a thing?

24 A Do you mean --

25 Q Does a person get --

1 A Do you mean longevity pay?

2 Q Longevity pay. Is that separate from number of years of  
3 service?

4 A I don't know what that is.

5 Q Is it a part of the component to calculate a retiree's  
6 final average salary?

7 A If you mean the merit or the -- the anniversary pay that  
8 state employees get, yes, that is included in your calculation.

9 Q Okay. I am told by some of my clients that when they --  
10 that take early retirement, they call it early retirement, to  
11 enter the DROP, they give up -- they always give up their  
12 highest five to seven years of pay and they also give up what  
13 they call longevity --

14 A Longevity.

15 Q Longevity. Is that the same thing you're talking about?

16 A I'm presuming it is.

17 Q Okay. It's in the factor -- it's in the statute on final  
18 average compensation, in the formula, it's in the formula,  
19 there is something like that in there?

20 A If it is what I am presuming it to be, which is what is  
21 set forth in state code that says, if you serve -- if you've  
22 been a state employee for at least ten years, you get \$400 and  
23 if you've been a state employee for 20 years, you get \$800.  
24 Yes, those payments are included in your final average salary.  
25 But the fact that they are giving up their very highest final