

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Chapter 9

City of Detroit, Michigan,

Case No. 13-53846

Debtor.

Hon. Steven W. Rhodes

**MOTION OF THE DETROIT PUBLIC SAFETY UNIONS,
PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE,
FOR ENTRY OF AN ORDER EXTENDING THE CHAPTER 9 STAY
TO ANY ACTION OR CLAIM FOR DAMAGES BROUGHT AGAINST
ANY FORMER DETROIT PUBLIC SAFETY UNION MEMBER,
INCLUDING ANY RETIREE, WHICH ARISES OUT OF THE GOOD
FAITH PERFORMANCE OF HIS OR HER DUTIES
WHILE EMPLOYED BY THE CITY**

The Detroit Fire Fighters Association (the “DFFA”), the Detroit Police Officers Association (the “DPOA”), the Detroit Police Lieutenants & Sergeants Association (the “DPLSA”) and the Detroit Police Command Officers Association (the “DPCOA”) (collectively, the “Detroit Public Safety Unions”), through their counsel, Erman, Teicher, Miller, Zucker & Freedman, P.C., submit the following Motion, Pursuant to Section 105(a) of the Bankruptcy Code, for Entry of an Order Extending the Chapter 9 Stay to Any Action or Claim for Damages Brought against Any Former Detroit Public Safety Union Member, Including Any Retiree, Which Arises Out of His or Her Duties While Employed by the City (the “Motion”) as follows:

1. The City of Detroit (the “City”), Debtor in these proceedings, as part of its preliminary pleadings, brought a Motion of Debtor, Pursuant to Section 105(a) of the Bankruptcy Code, for Entry of an Order Extending the Chapter 9 Stay to Certain (A) State Entities, (B) Non-Officer Employees and (C) Agents and Representatives of the Debtor (the “Stay Extension Motion”) to stay pending litigation against certain city and state individuals involved with the bankruptcy. The Court granted the Stay Extension Motion and by Order dated July 25, 2013 [Docket No. 166] (the “Stay Extension Order”) pursuant to section 105(a) of the Bankruptcy Code and stayed actions against the Governor, State Treasurer, the members of the Loan Board, collectively with the State Treasurer and the Governor and together with each entities’ staff, agents and representatives, the non-officer employees, and the city agents and representatives. The Court also pursuant to the City’s request, entered an order confirming the application of the stays set forth in §362(a) and §922(a) to these proceedings [Docket No. 167].

2. The Detroit Public Safety Unions concurred in the City’s Stay Extension Motion, but, in their response to the Stay Extension Motion [Docket No. 138], also sought that the stay extension that the City of Detroit sought and received, be extended to all former Detroit Public Safety Union members, including those currently employed in other capacities, and retirees, on the grounds that for most, if not all of those current and former employees, the City is their sole source of a defense and/or indemnification for acts allegedly committed by them in

the good faith performance of their duties as a City employee. The right to defense and/or indemnification is included under Ordinance Section 13-11-b, applicable union Collective Bargaining Agreements, and the City Employment Terms (“CET”). It is these persons and actions covered by these referenced provisions that the Detroit Public Safety Unions now seek coverage under the automatic stay provisions of the Bankruptcy Code.

3. At the time of the hearing on the City’s Stay Extension Motion, the City acknowledged that such indemnification is generally required by City Ordinance 13-11-b, *et seq* and those current and former employee’s contractual terms of employment. The Court declined to grant the relief requested by the Detroit Public Safety Unions and requested that, to seek relief beyond that granted by the Stay Extension Motion, the Detroit Public Safety Unions file a separate motion. Since that time, the City and the Detroit Public Safety Unions, through counsel, have been working to resolve the issue of a further extension of the stay as set forth herein.

4. The Detroit Public Safety Unions, whose collective members provide police and fire protection to the City on a daily basis under extremely difficult conditions, seek an extension of the automatic stay set forth in 11 U.S.C. §362(a), made applicable by Section 901 of the Bankruptcy Code and supplemented by Section 922(a), to protect former Public Safety employees, some of whom may be

retirees, who may be subject to legal action as a result of their prior City employment.

5. The Detroit Public Safety Unions agree that the automatic stay set forth in 11 U.S.C. §362(a), made applicable by Section 901 of the Bankruptcy Code and supplemented by Section 922(a), is self-executing and applies to stay actions against the City. As such, the Detroit Public Safety Unions concurred in the relief sought by the Motions that resulted in the entry of the order confirming the applicability of the stay [Docket No. 167] and the Stay Extension Order [Docket No. 166].

6. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334.

7. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

8. The relief sought by this Motion does not seek a determination by or an opinion from the Court as to whether, in a particular case, a person protected by the further extension of the stay sought by this Motion is entitled to a defense or indemnification from the City. Rather, the Motion seeks an order that is expressly without prejudice to the issue of any former or current employee's right to a defense or indemnification in a particular case, and which is without prejudice to any party's right to seek relief from the stay so extended.

9. The Detroit Public Safety Unions rely on the law and facts set forth in and in support of the Stay Extension Motion and now specifically reiterate their

request that this Court enter an Order extending the stay including any action or claim for damages brought against any current or former Detroit Public Safety Union member, including any retiree, which arises out of facts and circumstances that allow such person to obtain defense and/or indemnification pursuant to City Ordinance Section 13-11-b, *et seq*, any Collective Bargaining Agreement or any CET applicable to such person. In addition to other issues they face as a result of the City's restructuring, some former City employees and retirees are and may, in the future, be subject to legal actions for damages arising out of their City employment for which their only source of indemnification is the City. Given the Court's prior orders, which would arguably preclude any current or former employee from seeking a defense or indemnification from the City if he or she was sued, the Detroit Public Safety Unions urge that there is good cause to grant the relief requested by the Motion.

10. Movant has presented this Motion to the City of Detroit for approval and the City concurs in the relief requested herein.

WHEREFORE, the Detroit Public Safety Unions respectfully request that this Honorable Court issue an Order (i) granting the Stay Extension Motion; (ii) extending the protections of the automatic stay set forth in Sections 362(a) and 922(a) to any action or claim for damages brought against any current or former Detroit Public Safety Union member, including any retiree, which (a) arose or arises out of the good faith performance of such former Detroit Public Safety

Union Member's duties while employed by the City and (b) arose or arises out of events or circumstances that entitle such former Detroit Public Safety Union Member to seek the payment of defense costs and/or indemnification from the City pursuant to Ordinance 13-11-b, *et seq*, any applicable Collective Bargaining Agreement and any applicable CET; and (iii) specifying that the Order does not and shall not reduce, impair or otherwise affect any substantive rights that any party may have against any of the individuals against whom an action is stayed as a result of such order and is without prejudice to the ultimate determination of the City's obligation to defend and/or indemnify the affected individual.

ERMAN, TEICHER, MILLER,
ZUCKER & FREEDMAN, P.C.

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DATED: October 4, 2013

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SUMMARY OF ATTACHMENTS

The following documents are attached to this Motion, labeled in accordance with Local Rule 9014-1(b).

Exhibit 1: Proposed Form of Order

Exhibit 2: None [Ex Parte Motion for Expedited Hearing Filed Separately]

Exhibit 3: None [Brief Not Required]

Exhibit 4: Certificate of Service

Exhibit 5: None [No Affidavits Filed With This Motion]

Exhibit 6: None [No Documentary Exhibits Filed With This Motion]

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: Chapter 9
City of Detroit, Michigan, Case No. 13-53846
Debtor. Hon. Steven W. Rhodes

**ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE
EXTENDING THE CHAPTER 9 STAY TO ANY ACTION OR CLAIM FOR
DAMAGES BROUGHT AGAINST ANY FORMER DETROIT PUBLIC
SAFETY UNION MEMBER, INCLUDING ANY RETIREE, WHICH
ARISES OUT OF THE GOOD FAITH PERFORMANCE OF HIS OR HER
DUTIES WHILE EMPLOYED BY THE CITY**

This matter is before the Court on the Motion of the Detroit Public Safety Unions, Pursuant to Section 105(a) of the Bankruptcy Code, for Entry of an Order Extending the Chapter 9 Stay to Any Action or Claim for Damages Brought against Any Former Detroit Public Safety Union Member, Including Any Retiree, Which Arises Out of His or Her Duties While Employed by the City (the “Motion”); the Court having reviewed the Motion and the consent by the City to entry of the relief requested in the Motion; and the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b)

this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) notice of the Motion and opportunity for hearing was sufficient under the circumstances, (d) the unusual circumstances present in this chapter 9 case warrant extending the Chapter 9 Stay to the former Detroit Public Safety Union members, including any retiree, which arose or arise out of the good faith performance of his or her duties while employed by the City; and the Court having determined that the legal and factual bases set forth in the Motion at the Hearing establish just cause for the relief granted herein;

IT IS HEREY ORDERED that:

1. The Motion is GRANTED.
2. Pursuant to Section 105(a) of the Bankruptcy Code, the Chapter 9 Stay hereby is extended to apply in all respects (to the extent not otherwise applicable) to any action or claim for damages brought against any former Detroit Public Safety Union Member, including any retiree, (a) which arose or arises out of the good faith performance of such former Detroit Public Safety Union Member's duties while employed by the City and (b) which arose or arises out of events or circumstances that entitle such former Detroit Public Safety Union Member to seek the payment of defense costs and/or indemnification from the City.
3. The Stay extends to any collection proceeding on any such action.

4. This Order does not and shall not reduce, impair, or otherwise affect any substantive rights that any party may have against any individual against whom an action is stayed as a result of this Order.

5. This order is entered without prejudice to the right of any party to file a motion for relief from the stay imposed by this order using the procedures of and under the standards of 11 U.S.C. § 362(d).

6. In extending the stay to retirees and/or former employees, the Court makes no determination and offers no opinion as to whether, in a particular case, a former employee is entitled to a defense or indemnification from the City, and this order is expressly without prejudice to the issue of any former employee's right to a defense or indemnification in a particular case.

EXHIBIT 4

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: Chapter 9
City of Detroit, Michigan, Case No. 13-53846
Debtor. Hon. Steven W. Rhodes

CERTIFICATE OF SERVICE

The undersigned certifies that on October 4, 2013, the Motion of The Detroit Public Safety Unions, Pursuant to Section 105(a) of the Bankruptcy Code, for Entry of an Order Extending the Chapter 9 Stay to Any Action or Claim for Damages Brought against Any Former Detroit Public Safety Union Member, Including Any Retiree, Which Arises Out of His or Her City Employment and Certificate of Service were electronically filed with the Clerk of the Court for the United States Bankruptcy Court, Eastern District of Michigan, Southern Division using the CM/ECF System, which will send notification of such filing to all attorneys and parties of record registered electronically.

ERMAN, TEICHER, MILLER,
ZUCKER & FREEDMAN, P.C.

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DATED: October 4, 2013

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