

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

<i>In re:</i>	)	Chapter 9
	)	Case No. 13-53846
CITY OF DETROIT, MICHIGAN,	)	
<i>Debtor.</i>	)	Hon. Steven W. Rhodes
_____	)	

**THE DETROIT RETIREMENT SYSTEMS' MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS WITHHELD ON THE  
                    GROUNDS OF PRIVILEGE**

Pursuant to rules 26, 34 and 37 of the Federal Rules of Civil Procedure made applicable to this proceeding through rules 7026, 7034, and 7037 of the Federal Rules of Bankruptcy Procedure, the Police and Fire Retirement System of the City of Detroit (“PFRS”) and the General Retirement System of the City of Detroit (“GRS”) (collectively, the “Retirement Systems”) move this Court for an order compelling the City of Detroit, Michigan (the “City”) to produce documents to which it asserts privilege, without factual or legal bases for making such a claim. After a series of communications with the City’s counsel, on October 17, 2013, the Retirement Systems sought from the City’s counsel concurrence in the relief requested in this motion pursuant to E.D. Mich. LBR 9014-1(g). The requested concurrence was denied.

## **Introduction**

Prior to being retained by the City as its restructuring counsel, documents produced in this case demonstrate that Jones Day undertook a concerted effort to position itself to be chosen as the City's official restructuring legal counsel. The privilege log produced by the City reveals that this undertaking included, among other things: (i) numerous communications with state officials and other potential restructuring consultant candidates, (ii) reviewing and commenting on Public Act 4 ("PA 4") and the March 2012 Consent Agreement between the City and the State, and (iii) preparation of memoranda relating to chapter 9 issues, including the treatment of pension obligations and good faith negotiations. A "business development" matter code was opened so that Jones Day could track its efforts. This all took place well before Jones Day was formally retained as legal counsel. The pitch materials eventually prepared for the City acknowledged that Jones Day had spent 1,000 hours making itself familiar with relevant statutes and the financial condition of Detroit in order to demonstrate a working knowledge of the issues involved —so that *if* chosen as restructuring counsel, they would be prepared to begin work right away. These "Pre-Retention Documents," which amount to nothing more than information compiled for the purpose of currying favor with a *potential* client, are now being withheld as "privileged."

Initially, the City and State argued these materials were protected by the attorney-client privilege, but that privilege was unavailing because there was admittedly no attorney-client relationship formed. Accordingly, having thought better of the privilege assertion, the City then produced the documents voluntarily. But after producing the documents in response to a written request by two of the objecting parties and expressly stating that the City would “*no longer claim any privilege with respect to these documents,*” the City recently changed course and is now asking that the documents be clawed back on the ostensible basis of the attorney-client privilege, work product doctrine, and/or common interest privilege.

It is now just days before trial, and the City has persisted in withholding from the Retirement Systems (and the public, for that matter) a number of relevant materials which were shared with third parties and, in many cases, created long before the City ever engaged Jones Day as counsel and before Kevyn Orr was appointed Emergency Manager. And with respect to other documents that were already produced, the City is now seeking to claw them back after it deliberately produced them and after expressly waiving its privilege claims (in writing, no less, and after specifically considering for several days whether to produce the documents in the first place). As set forth in more detail below, the eligibility-related materials that the City now attempts to shield from view were not created as a result of any attorney-client relationship (in fact, it is unclear *who* Jones Day is

even claiming it was representing during that time period—the City or the State), nor were they created as work product prepared in anticipation of litigation.

Moreover, even *if* the documents were somehow privileged, that putative privilege was waived by the intentional and deliberate dissemination of those documents to third parties at the time the documents were created (*i.e.*, by circulating them to state officials, financial advisors, and other restructuring consultants) and/or by producing them to the Retirement Systems and other creditors of the City in this case.

These Pre-Retention Documents (defined below) evidence the City's and the State's stance with respect to many of the issues for trial. Accordingly, the Retirement Systems hereby request a determination that: (i) documents created prior to the time that Jones Day was formally retained as counsel for the City are not privileged and must immediately be produced in their entirety (including all attachments); and (ii) the City's recent re-assertion of any privilege is ineffective due to its express waiver.

### **Factual and Procedural Background**

#### **A. Relevant Factual History**

##### **1. The History of Jones Day's Legal Relationship with the City**

In 2012, the State of Michigan retained the financial advisory firm of Miller Buckfire for a 60-day period (from July 1, 2012 to August 31, 2012) to perform an

analysis of the City's financial condition. (Ex. 6-A, 9/20/2013 Buckfire Dep. at 14-17; Ex. 6-B, 8/29/2013 Buckfire Dep at 11-12). After Miller Buckfire received this engagement in 2012, it got "calls from a lot of law firms who wanted to know if there was a way for us to introduce them to the situation if the City decided it needed a different set of capabilities that it could find locally." (Ex., 6-A 9/20/2013 Buckfire Dep at 165-166). Corrine Ball of Jones Day "was very interested in finding out if there might be a role for Jones Day. . . She wanted me to meet one of her partners who is the lead bankruptcy partner for Orange County, which was a successful Chapter 9." *Id.* at 166-167. At the time, Miller Buckfire was reporting to State Treasurer Andrew Dillon ("Dillon"). Both before and after Miller Buckfire performed its 60-day review for the State, Jones Day, Miller Buckfire, and another restructuring consultant (Huron Consulting Group) were all weighing in on the City's financial crisis and providing State officials with their thoughts on PA 4 and the Consent Agreement between the City and the State. (Ex. 6-C, Dillon Dep at 111-114; Ex. 6-D, 3/2/2012 and 3/3/2012 Emails to Dillon). The hours spent by the Jones Day attorneys in attempting to secure this potential new business was allocated under a "business development" time code internally. (Ex. 6-E, 1/24/2013 Email, "Until Detroit selects counsel next week, I don't believe there is a "billable" CAM. I would just use a business development CAM."). In all, Jones Day devoted substantial time to its business development endeavor and

admits that this work was done for just that purpose—with the goal of winning the contract as the City’s restructuring counsel: “Over the past 18 months, Jones Day has devoted over 1,000 hours of studying these statutes, evaluating related regulations and court rulings in Michigan, and developing an understanding of the City's financial and operational circumstances to be prepared if Jones Day is fortunate enough to assist the City in its restructuring.” (Ex. 6-F, Jones Day Pitch Written Materials, pg. 98)

In January of 2013, Miller Buckfire was re-engaged—this time by the City—to continue its evaluation of the City’s financial condition. (Ex. 6-A, 9/20/2013 Buckfire Dep at 14-16). Treasurer Dillon asked Ken Buckfire of Miller Buckfire to make arrangements for City and State officials to meet and interview Jones Day as well as seven other law firms who were interested in serving as restructuring counsel for the City. (Ex. 6-A, 9/20/2013 Buckfire Dep at 25-26).

On January 29, 2013, City and State officials (and some of their advisors, including Buckfire) interviewed Jones Day and seven other law firms at the Detroit Metropolitan Airport. (Ex. 6-A, Buckfire Dep at 29-31, 195-199; Ex. 6-C, Dillon Dep at 54-55). Based in part on a 24-point law firm ranking system which was created by Buckfire and which favored Jones Day by one point, the City ultimately solicited a Request for Proposal from Jones Day to serve as restructuring counsel on February 27, 2013. (Ex. 6-A, Buckfire Dep at 32-33). Jones Day submitted its

RFP in March of 2013 and the City formalized its engagement with Jones Day on April 23, 2013. (Ex. 6-G, EM Order No. 4, Approval of the Contract for Professional Legal Services Between the City of Detroit and Jones Day).

Prior to this selection, the City had been represented by its “long-time counsel at Miller Canfield.” (Ex. 6-A, 9/20/2013 Buckfire Dep at 155). The City’s Emergency Manager and former Jones Day partner, Kevyn Orr (“Orr”), confirmed that as of January 31, 2013, Jones Day did not have “an official role with Detroit or with the State of Michigan” and that Jones Day was merely “a candidate to be the attorneys for the City.” (Ex. 6-H, Orr 9/16/2013 Dep at 27.)

State officials similarly denied that Jones Day was representing the State during this time frame. Governor Snyder testified that he was not aware of Jones Day providing any services to or being retained by the State from June 2012 through October 9, 2013, and that it was his understanding that Jones Day relationship was only with the City. (Ex. 6-I, Snyder Dep. Tr. at 40 (“[T]he City of Detroit was making a determination to retain Jones Day, and they were making that through their own decision making processes.”). Similarly, Richard Baird testified that he was “not aware” of Jones Day providing “any services paid or unpaid or legal advice to the State” and Treasurer Dillon testified that Jones Day was not “a vendor to the Treasury Department.” (Ex. 6-J, Baird Dep at 15; Ex. 6-C, Dillon Dep at 113).

Thus, the record is clear that before April 2013, Jones Day did not represent or form an attorney-client relationship with either the City or the State.

**B. Relevant Procedural History**

On August 19, 2013, the Retirement Systems, in addition to several other parties, filed an Objection to the City's Eligibility to be a Debtor under Chapter 9 of the Bankruptcy Code [Dkt. No. 519] (the "Eligibility Objection") arguing, generally, that the City cannot satisfy the requirements of sections 109(c)(2), 109(c)(5), and 921(c) of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code") and that this case must be dismissed. An evidentiary hearing relating to the eligibility determination is scheduled to begin on October 23, 2013.

On August 23, 2013, the Retirement Systems served the City with their First Sets of Interrogatories [Dkt. No. 612], Requests for Production of Documents [Dkt. No. 613], and Requests for Admissions [Dkt. No. 611] (collectively, the "Discovery Requests") which sought information and documents relevant to their Eligibility Objection.

On Friday, September 13, 2013, the City served its Objections and Responses to the Retirement Systems' Discovery Requests [Dkt. Nos. 849-850, 852] (the "City's Responses"). The City's Responses were also accompanied by a privilege log listing 10,910 documents and communications as purportedly being



protected by either the attorney-client privilege, work-product doctrine, or the common interest privilege.<sup>1</sup> Hundreds of these purportedly privileged documents and communications, however, consisted of Jones Day communications, memorandums, and marketing materials that were created well before Jones Day was engaged by the City in April 2013 (the “Pre-Retention Documents”). In many cases, the documents Jones Day seeks to claim as “privileged” were never shared with anyone on behalf of *the City*—its present client—at all. Instead, they were sent to certain State officials (such as the State Treasurer) and various financial advisors and restructuring consultants (such as Miller Buckfire and Huron Consulting Group). (*Id.*)

Three days after the production of the City Privilege Log and production of documents (on September 16), Orr’s second deposition took place. During that deposition, Orr asserted the “common interest” privilege for the first time. The City stated the “common interest” applied to “what Mr. Orr’s been doing since he became emergency manager where there was a common interest between the State and the Emergency Manager’s office.” (Ex. 6-H, 9/16/13 Orr Dep at 227).

---

<sup>1</sup> On September 30, 2013, the City served the Retirement Systems with a Supplemental Privilege Log which included a list of 8,347 purportedly privileged documents. The various privilege logs are over 1,000 pages in length and have not been attached in full due to their voluminous nature, but an excerpt from the Privilege Log is attached to Dkt. No. 1234, Exhibit A.

On September 18, 2013, the American Federation of State, County and Municipal Employees (“ASCME”) filed a motion to compel [Dkt. No. 920] Orr’s testimony and argued that the common interest privilege did not apply. In response to AFSCME’s Motion, the City produced a copy of the written common interest agreement, which conveniently, was entered into the day before the City was due to produce its documents and just four days before Orr was to be deposed in this matter. (See Dkt. No. 940, Ex. B thereto, the “Common Interest Agreement”). Under this common interest theory, the City and State sought to prevent disclosure of hundreds (if not thousands) of documents.

At the expedited hearing on AFSCME’s Motion on September 19, 2013, the Retirement Systems appeared and raised concerns regarding the overly broad assertion of the privilege, because hundreds of documents the City claimed fell under the “common interest” umbrella pre-dated the Emergency Manager’s appointment by several years. (See Ex. 6-K, 9/19/13 Hrg. Tr. at 75-78). The Retirement Systems concurred with AFSCME’s Motion and represented to the Court that it would separately attempt to resolve its privilege dispute with the City.

As it said it would at the hearing, the Retirement Systems contacted the City’s counsel by telephone on October 3, 2013 and attempted to resolve the issue. The City informed the Retirement Systems that another objecting party, the International Union, United Automobile Workers (the “UAW”), had sent it a letter

the day before requesting the same documents that the Retirement Systems were seeking. (See Ex. 6-L, 10/2/2013 UAW Letter).<sup>2</sup>

The following morning, October 4, 2013, Kevyn Orr was deposed a third time. At that deposition he testified again that the relationship with Jones Day was not formalized until *after* he became Emergency Manager. (Ex. 6-M, Orr 10/4/2013 Dep at 483-484). He also admitted that at the time leading up to the Jones Day pitch given in the winter of 2013, Jones Day was merely “soliciting becoming legal counsel.” (*Id.*) Finally, he admitted that with regard to the current matter, “I don’t know of Jones Day representing the State of Michigan other than. . . through my [Emergency Manager] office” and when asked if he had any evidence that there was an attorney-client relationship between Jones Day and the State of Michigan, he admitted: “I’m not aware of any.” (*Id.* at 486, 488).<sup>3</sup>

The following day, on October 5, 2013, the Retirement Systems wrote to the City (i) citing Orr’s testimony from the day before, (ii) joining in the UAW’s October 2, 2013 request for documents, and (iii) separately requesting production of specifically identified documents the City withheld on the basis of the work-

---

<sup>2</sup> In the UAW letter, it sought production of specifically identified documents (i) the City withheld on the basis of the attorney-client privilege but which predated the City’s retention of Jones Day; (ii) the City withheld on the basis of the common interest privilege but which failed to identify any attorney; and (iii) the City claimed to be privileged but failed to identify the source or recipient.

<sup>3</sup> This is consistent with other testimony in this case as established above.

product doctrine or attorney-client privilege that pre-dated the City's retention of Jones Day. (Ex. 6-N, 10/05/13 Email to Shumaker). The Retirement Systems attached excerpts from the City's Privilege Log and specifically identified numerous documents that pre-dated any legal relationship between Jones Day and the City. (*Id.*)

The City responded to the Retirement Systems' and the UAW's concerns on October 7, 2013. The City said it was "investigating" certain privileged documents but with respect to other documents requested, it acquiesced, stating: "We are preparing the following Exhibit D documents for production, ***and no longer claim any privilege with respect to these documents.***" (Ex. 6-O, Oct. 7, 2013 Letter from G. Irwin, pg. 1). The next evening, the City produced those documents. (Ex. 6-P, 10/08/13 Email from Irwin to Green). The production encompassed hundreds of pages of documents and the late timing prevented the Retirement Systems and the UAW from being able to review the documents in time for the Governor's deposition slated to begin the next morning. Several emails that the City produced on the evening of October 7, however, were later used at the deposition of Andrew Dillon, and notably, ***the City made no claim of privilege at that time.*** (Ex. 6-C Dillon Dep at 111-114; Ex. 6-D, 3/2/2012 and 3/3/2012 Emails to Dillon, marked as Ex. 6 and Ex. 7 during Dillon Dep). Thus, not only did the City expressly

*disclaim* any privilege on October 7, it also failed to *raise* any privilege objection to these Jones Day communications at Dillon's deposition.

By October 12, 2013, however, the City had still not produced certain attachments affiliated with many of the emails the City had produced. Accordingly, the Retirement Systems sent an email to the City requesting production of the attachments. (Ex. 6-Q, 10/12/13 Email from Green to Shumaker). In response, the City refused to produce the attachments, and in addition, it backtracked and announced that it was now *re*-asserting privilege with respect to certain documents that it had already produced:

The example you provided is a case in point (DTMI002333348-3349).<sup>4</sup> This document has eight attachments. Based on your request that we produce those attachments, we have gone back and reviewed the status of the attachments. The attachments to this email, and the email itself, are all privileged. To the extent any of this email and any of its attachments have previously been inadvertently produced, we request that you return or destroy them pursuant to the reservation of rights regarding the inadvertent production of any documents protected by the work product doctrine, common interest doctrine, the attorney-client privilege or any other applicable privilege.

(Ex. 6-R 10/15/13 Email between Irwin and Green). Thus, the City is once raising the full panoply of potential privileges.

---

<sup>4</sup> The document mentioned in the City's response is an email authored by a Jones Day attorney in June of 2012—almost an entire year before Jones Day was hired by the City.

This last-minute change by the City has made preparation of the exhibit and witness lists (as well as general preparation for next week's evidentiary hearing) extremely difficult. The Retirement Systems were first prejudiced by the City's improper assertion of privilege because it did not have many documents it needed during depositions in this case (namely, Orr's, Buckfire's, and the State officials); then they were prejudiced by the City's production of the documents after business hours the night before the Governor's deposition; then they were prejudiced when the production was missing the attachments; and now they are prejudiced again by the City's eleventh hour flip-flop and reassertion of the privilege on the eve of trial. As of the filing of this Motion, it is still somewhat unclear exactly how many documents the City has withheld and which ones it wishes to claw back. Regardless, now that several documents have already been disclosed and used during depositions, the City cannot request a claw back in the face of an obvious waiver.

### **Argument**

#### **A. The Attorney-Client Privilege Does Not Protect From Disclosure the Pre-Retention Documents Of Jones Day**

"The burden of establishing an attorney-client privilege rests with the person asserting it." *Amway Corp. v. P&G, Co.*, 2001 U.S. Dist. LEXIS 4561, at \*13 (W.D. Mich. Apr. 3, 2001) (*citing United States v. Dakota*, 197 F.3d 821, 825 (6th Cir. 1999)). "Such a showing must be made by deposition, affidavit, or in any

other manner in which facts are established in pretrial proceedings.” *Id.* “The risk of nonpersuasion arising from a failure to establish facts supporting a claim of privilege falls upon the party asserting it.” *Id.* (citation omitted).

The attorney-client privilege is “narrowly construed because it reduces the amount of information discoverable during the course of a lawsuit.” *Ross v. City of Memphis*, 423 F.3d 596, 600 (6th Cir. 2005) (quoting *United States v. Collis*, 128 F.3d 313, 320 (6th Cir. 1997)); see also *United States v. Goldfarb*, 328 F.2d 280, 282 (6th Cir. 1964) (“[T]he attorney-client privilege is an exception carved from the rule requiring full disclosure, and as an exception should not be extended to accomplish more than its purpose.”); *Welch Foods v. Packer*, 1995 U.S. Dist. LEXIS 16158, at \*6 (W.D. Mich. July 14, 1995) (unpublished) (citation and quotation omitted) (“[T]he attorney-client privilege is strictly construed to protect only those disclosures necessary to obtain informed legal advice which might not have been made absent the privilege.”).

The Sixth Circuit has recognized the need to for the narrow application of the privilege to prevent abuse, particularly where (as here) government actors are attempting to shield the free flow of information to the public:

[I]t is appropriate to recognize a privilege only to the very limited extent that . . . excluding relevant evidence has a public good transcending the normally predominant principal of utilizing all rational means for ascertaining truth. Guided by this principle, courts and commentators have cautioned against broadly applying the privilege to

governmental entities. The recognition of a governmental attorney-client privilege imposes the same costs as are imposed in the application of the corporate privilege, but with an added disadvantage. The governmental privilege stands squarely in conflict with the strong public interest in open and honest government.

*Reed v. Baxter*, 134 F.3d 351, 356-57 (6th Cir. 1998) (citations omitted).

The mere fact that an attorney was involved in a communication therefore does not automatically render the communication subject to the attorney-client privilege. In the Sixth Circuit, the elements necessary to prove the privilege are:

(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) unless the protection is waived.

*Reed*, 134 F.3d at 355-56 (citation omitted). In addition, “to assert attorney-client privilege, an individual must have a ‘subjective belief’ that is ‘reasonable under the circumstances’ that an attorney-client relationship existed.” *United States v. Okun*, 281 Fed. Appx. 228, 230 (4th Cir. 2008) (citation omitted).

In the present matter, the City cannot establish that the Pre-Retention Documents are protected by the attorney-client privilege. First, the Pre-Retention Documents of Jones Day *in no way stemmed from the City’s seeking of legal advice*. These documents were instead created by Jones Day attorneys for the benefit of Jones Day attorneys in their quest to be awarded a lucrative contract.



*Bruce v. County of Rensselaer*, 2003 U.S. Dist. LEXIS 1889, at \*9-10 (N.D.N.Y. Feb. 11, 2003) (unpublished) (“The attorney-client privilege protects from disclosure communications between clients and attorneys actually providing representation, not whose representation is *anticipated*.”) (emphasis added).

The City had neither met with nor solicited legal advice from Jones Day, either directly or indirectly, prior to the January 29, 2013 presentations. Accordingly, the City has not met and cannot meet its burden of establishing that *any* of the Pre-Retention Documents were derived from the City’s request for legal advice. *See, e.g., Poluch v. Am. Fan Co.*, 119 F.R.D. 621, 622 (D. Mass. 1988) (“[N]o attorney/client relationship existed between plaintiff’s counsel and the workers’ compensation carrier at the time of the investigation. Thus, there is no attorney/client privilege.”); *Bank Hapoalim, B.M. v. Am Home Assurance Co.*, 1993 U.S. Dist. LEXIS 1300, at \*16 (S.D.N.Y. Feb. 8, 1993) (unpublished) (holding that documents “prepared *prior* to a showing of the establishment of an attorney-client relationship . . . are not protected by the attorney-client privilege.”) (emphasis added).<sup>5</sup>

---

<sup>5</sup> *See also Nemecek v. Bd. of Governors*, 2000 U.S. Dist. LEXIS 22340, 17 (E.D.N.C. Sept. 27, 2000) (unpublished) (“However, in 1996, Plaintiff had not yet retained counsel. Therefore, Plaintiff cannot invoke the attorney-client privilege as to his prior conversations with O’Dell based on the fact that she now works with his attorney.”).

Second, the putative client must have a ‘subjective belief’ that is ‘reasonable under the circumstances that an attorney-client relationship existed.’ *Okun*, 281 Fed. Appx. at 230. Here, at the time the Pre-Retention Documents were created, the City did not and could not have had a subjective belief that an attorney-client relationship existed with Jones Day. From all accounts, the City did not even *meet* with Jones Day until the January 29, 2013 presentation and the engagement was not consummated until April of 2013.

Third, the Pre-Retention Documents of Jones Day—most of which were created between 2004 and 2012—in no way reflect any confidential communications made by the City (*i.e.*, the client). *See Amway Corp.*, 2001 U.S. Dist. LEXIS 4561, at \*14 (“[T]ransmittal letters from counsel are not privileged where they contain no facts tending to reveal the client’s confidences.”). In fact, none of the documents at issue even relate to communications *with City officials*—rather, the allegedly privileged documents are all between Jones Day and various State officials, financial advisors, and restructuring consultants. Such third-party communications are not privileged. Accordingly, the City has not met its burden of establishing that the Pre-Retention Documents of Jones Day are privileged.

**B. The Pre-Retention Documents Of Jones Day Do Not Constitute Protected Work Product**

The work-product doctrine protects an attorney’s trial preparation materials from discovery to preserve the integrity of the adversarial process. *See Hickman v.*

*Taylor*, 329 U.S. 495, 510-14; 67 S. Ct. 385 (1947). Rule 26(b)(3) protects only documents prepared in *anticipation of litigation* or for trial. Fed. R. Civ. P. 26(b)(3). Two factors are considered when determining whether a document has been prepared in anticipation of litigation:

- 1) whether the document was prepared “because of” a party’s subjective anticipation of litigation, as contrasted with ordinary business purpose; and
- 2) whether that subjective anticipation was objectively reasonable.

*United States v. Roxworthy*, 457 F.3d 590, 594 (6th Cir. 2006).<sup>6</sup> “Because documents are not protected if they were created for nonlitigation purposes, regardless of content, ‘[d]etermining the driving force behind the preparation of each requested document is therefore required in resolving a work product immunity question.’” *Id.* at 595, citing *Nat’l Union Fire Ins. Co. v. Murray Sheet Metal Co.*, 967 F.2d 980, 984 (4th Cir. 1992). Thus, the court “must examine not only the documents themselves, but the circumstances surrounding the documents’ creation.” *Id.*

In this case, the City cannot establish that the Pre-Retention Documents are protected work product because those documents were not prepared as a result of any anticipated litigation by the City. Rather, the documents at issue were created

---

<sup>6</sup> The burden is on the party claiming work product protection. *Roxworthy*, 457 F.3d at 593.

long before any engagement between Jones Day and the City and appear to be based solely on Jones Day's business development efforts. (Ex. 6-A, 9/20/13 Buckfire Dep at 165-167). Thus, the challenged documents were created by Jones Day and *for* Jones Day in the ordinary course of soliciting restructuring business. (Ex. 6-E, 1/24/13 Email, "Until Detroit selects counsel next week, I don't believe there is a "billable" CAM. I would just use a business development CAM.").

Similarly, in *Village of Rosemont v. Priceline.com Inc.*, 2010 U.S. Dist. LEXIS 124559, at \*10-11 (N.D. Ill. Nov. 22, 2010), the district court held a law firm marketing pamphlet sent by counsel to a future client was not protected by the attorney-client privilege. *See also EEOC v. CRST Van Expedited, Inc.*, 2009 U.S. Dist. LEXIS 3621, 2009 WL 136025, at \*4 (N.D. Iowa 2009) ("[T]he Court concludes that contacts by the EEOC in an effort to solicit an attorney-client relationship are not protected by the attorney-client privilege.")

Moreover, Pre-Retention Documents can hardly be prepared in the anticipation of the chapter 9 filing when the City has roundly *denied* that a chapter 9 was reasonably foreseeable until just prior to its actual filing—not for years beforehand. "[T]he mere fact that litigation does eventually ensue does not, by itself, cloak materials with work product immunity." *Nat'l Union*, 967 F.2d at 984; *Resident Advisory Bd. v. Rizzo*, 97 F.R.D. 749, 754 (E.D. Pa. 1983) ("The abstract possibility that an event might be the subject of future litigation will not support a

claim of privilege.”); *In re Dow Corning Corp.*, 2010 U.S. Dist. LEXIS 110644, at \*6 (E.D. Mich. June 15, 2010) (unpublished) (“As to the LMI Claimants’ work-product privilege argument, the Court finds that the privilege does not apply to the December 1999 document since the LMI Claimants did not file the reimbursement claim until 2004.”).

Accordingly, the City has not met its burden of establishing that the Pre-Retention Documents of Jones Day are protected work product.

**C. Even If The Pre-Retention Documents Of Jones Day Were Protected Attorney-Client Communications Or Work Product, The Privileges Were Waived**

“Both the attorney-client privilege and work-product protection are waived by voluntary disclosure of private communications to third parties.” *New Phoenix Sunrise Corp. v. Comm'r of Internal Revenue*, 408 F. App'x 908, 918 (6th Cir. 2010) (citing *United States v. Dakota*, 197 F.3d 821, 825 (6th Cir. 1999); see also *In re Columbia/HCA Corp.*, 293 F.3d 289, 306 (6th Cir. 2002) (“[T]here is no compelling reason for differentiating waiver of work product from waiver of attorney-client privilege.”). “[W]here the moving defendants have waived the attorney-client privilege, they have also waived the protection of the work product doctrine.” *360 Constr. Co. v. Atsalis Bros. Painting Co.*, 280 F.R.D. 347, 353 (E.D. Mich. 2012) (citation omitted).

Once a party has waived the attorney-client privilege with respect to some items, that waiver extends beyond those items to all other communications relating to the same subject matter. *Fort James Corp. v. Solo Cup Co.*, 412 F.3d 1340, 1349 (Fed. Cir. 2005) (“The widely applied standard for determining the scope of a waiver of attorney-client privilege is that the waiver applies to all other communications relating to the same subject matter.”); *United States v. Jones*, 696 F.2d 1069, 1072 (4th Cir. 1982) (“Any voluntary disclosure by the client to a third party waives the privilege not only as to the specific communication disclosed, but often as to all other communications relating to the same subject matter.”); *In re Rospatch Securities Litigation*, 1991 U.S. Dist. LEXIS 3270 at 44 (W.D. Mich. 1991) (“[A]ny voluntary disclosure by the client to a third party waive the privilege, not only to that document, but possibly to all communications relating to that subject matter.”).

In the present matter, any purported claims of privilege to the Pre-Retention Documents have been waived no less than ***three times***. First, many of these documents were knowingly and intentionally disclosed and disseminated to third parties such as the State of Michigan and its advisors such as Miller Buckfire.

Second, Jones Day expressly and knowingly retracted its privilege claims—in writing—with respect to over 300 of the challenged documents. It explicitly stated that the City “no longer claim any privilege with respect to these

document[.]” (Ex. 6-P 10/08/13 Correspondence from Irwin to Green).

Third, several of the Pre-Retention Documents produced by the City in response to the Retirement Systems written request have been used as exhibits at deposition in this matter without objection from the City. (Ex. 6-D, Dillon Dep, Ex. 6 and Ex. 7 thereto).

It is well established that when a privileged document is used at a deposition, and the privilege holder fails to object immediately, courts have found the privilege to be waived. *See, e.g., Nguyen v. Excel Corp.*, 197 F.3d 200, 206 (5th Cir. 1999) (“A client waives the attorney-client privilege, however, by failing to assert it when confidential information is sought in legal proceedings.”); *Brandon v. D.R. Horton, Inc.*, 2008 U.S. Dist. LEXIS 40000, at \*7 (S.D. Cal. May 16, 2008) (unpublished) (“Plaintiffs failure to assert the privilege at Plaintiff Brandon's deposition is clear proof that, even if there was a privilege, it was absolutely and irrevocably waived, regardless of whether disclosure was inadvertent.”). Further, to the extent that the City permitted certain Pre-Retention Documents to be used at the Dillon deposition yet it now wants to claw back others that it perceives as more harmful to its case, this type of “selective disclosure” is also a waiver. *See Jones*, 696 F.2d at 1072 (noting “[s]elective disclosure of a communication may also waive the privilege as to all related portions of the communication, particularly if selective disclosure is used to gain a tactical

litigation advantage.”)

Accordingly, to the extent that Court finds the Pre-Retention Documents to somehow have been subject to the attorney-client privilege or work product protection, those privileges have long since been waived.

### **Conclusion**

For the foregoing reasons, the Retirement Systems respectfully request that the Court enter an Order in the form attached as **Exhibit 1**: (a) granting this Motion; (b) declaring that the Pre-Retention Documents of Jones Day are neither subject to the attorney-client privilege or work product protection or, alternatively, that those privileges were waived; (c) compelling the City to immediately produce all of the Pre-Retention Documents; and (d) granting to the Retirement Systems such further relief this Court finds equitable and just.



Respectfully submitted,

CLARK HILL PLC

/s/ Robert D. Gordon

Robert D. Gordon (P48627)  
Shannon L. Deeby (P60242)  
Jennifer K. Green (P69019)  
151 South Old Woodward Avenue  
Suite 200  
Birmingham, Michigan 48009  
Telephone: (248) 988-5882  
Facsimile: (248) 988-2502  
rgordon@clarkhill.com  
sdeeby@clarkhill.com  
jgreen@clarkhill.com

Dated: October 20, 2013

*Counsel to the Police and Fire  
Retirement System of the City of  
Detroit and the General Retirement  
System of the City of Detroit*

# EXHIBIT 1

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

<i>In re:</i>	)	Chapter 9
	)	Case No. 13-53846
CITY OF DETROIT, MICHIGAN,	)	
<i>Debtor.</i>	)	Hon. Steven W. Rhodes
_____	)	

**ORDER GRANTING THE DETROIT RETIREMENT SYSTEMS'  
MOTION TO COMPEL PRODUCTION OF DOCUMENTS WITHHELD  
ON THE GROUNDS OF PRIVILEGE**

This matter comes before the Court upon The Detroit Retirement Systems' Motion to Compel Production of Documents Withheld on the Grounds of Privilege (the "Motion"); the Court having considered the Motion and finding that good cause exists for granting the relief requested:

**IT IS ORDERED:**

1. The Motion is granted.
2. The Pre-Retention Documents<sup>1</sup> of Jones Day are neither subject to the attorney-client privilege or work product protection and, to the extent such privileges existed, they have been waived.

---

<sup>1</sup> Capitalized terms shall have the meanings ascribed to them in the Motion.

3. The City must immediately produce all of the Pre-Retention Documents.

# EXHIBIT 2

(Not included. Ex Parte Motion Requesting Shortened Notice and Expedited Hearing to be filed concurrently.)

# EXHIBIT 3

(None required.)

# EXHIBIT 4

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

<i>In re:</i>	)	Chapter 9
	)	Case No. 13-53846
CITY OF DETROIT, MICHIGAN,	)	
<i>Debtor.</i>	)	Hon. Steven W. Rhodes
_____	)	

**CERTIFICATE OF SERVICE**

The undersigned certifies that on October 20, 2013, that The Detroit Retirement Systems' Motion to Compel Production of Documents Withheld on the Grounds of Privilege was filed using the Court's CM/ECF system, which CM/ECF system will send notification of such filing to all parties of record.

CLARK HILL PLC

/s/ Robert D. Gordon  
Robert D. Gordon (P48627)  
Shannon L. Deeby (P60242)  
Jennifer K. Green (P69019)  
151 South Old Woodward Avenue, Suite 200  
Birmingham, Michigan 48009  
Telephone: (248) 988-5882  
Facsimile: (248) 988-2502  
rgordon@clarkhill.com

Dated: October 20, 2013

*Counsel to the Police and Fire Retirement  
System of the City of Detroit and the General  
Retirement System of the City of Detroit*



# EXHIBIT 5

(Affidavits - none)

# EXHIBIT 6

*In re:* ) Chapter 9  
CITY OF DETROIT, MICHIGAN, ) Case No. 13-53846  
*Debtor.* ) Hon. Steven W. Rhodes  
)

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
6-A	Excerpt from 9/20/13 Deposition of Kenneth Buckfire
6-B	Excerpt from 8/29/13 Deposition of Kenneth Buckfire
6-C	Excerpt from 10/10/13 Deposition of Treasurer Andrew Dillon
6-D	3/2/2012 and 3/3/2012 Emails to Treasurer Andrew Dillon, marked as Exhibit 6 and Exhibit 7 during Treasurer Dillon's deposition
6-E	1/24/13 Email
6-F	Excerpt from Jones Day Pitch Written Materials
6-G	EM Order No. 4, Approval of the Contract for Professional Legal Services Between the City of Detroit and Jones Day
6-H	Excerpt from 9/16/13 Deposition of Kevyn D. Orr
6-I	Excerpt from 10/9/13 Deposition of Governor Richard D. Snyder
6-J	Excerpt from 10/10/13 Deposition of Richard Baird
6-K	Excerpt from 9/19/13 Hearing Transcript
6-L	10/2/13 Correspondence from Thomas N. Ciantra to Bruce Bennett
6-M	Excerpt from 10/4/13 Deposition of Kevyn D. Orr

- 6-N 10/5/13 Email from Jennifer Green to Greg Shumaker
- 6-O 10/7/13 Correspondence from Geoffrey S. Irwin to Thomas N. Ciantra
- 6-P 10/8/13 Email from Geoffrey S. Irwin to Jennifer K. Green
- 6-Q 10/12/13 Email from Jennifer K. Green to Gregory M. Shumaker
- 6-R 10/15/13 Email from Geoffrey S. Irwin to Jennifer K. Green

# EXHIBIT 6-A

2 IN THE UNITED STATES BANKRUPTCY COURT  
3 EASTERN DISTRICT OF MICHIGAN  
4 SOUTHERN DIVISION  
5 Case No. 13-53846; Hon. Steven W. Rhodes

6 -----X

7 In re: Chapter 9

8 CITY OF DETROIT, MICHIGAN,

9 Debtor.

10 -----X

11  
12  
13  
14  
15  
16  
17 DEPONENT: KENNETH A. BUCKFIRE

18 DATE: Friday, September 20, 2013

19 TIME: 8:30 a.m.  
20  
21  
22  
23  
24  
25



800.211.DEPO (3376)  
EsquireSolutions.com

1 K. Buckfire

2 joined the record.

3 A Since the founding of the firm in  
4 2002.

5 Q 2002. And what is your formal  
6 position with Miller Buckfire?

7 A Co-president.

8 Q Who is the other co-president?

9 A Norma Corio, C-O-R-I-O.

10 Q Does Miss Corio have any roll in  
11 connection with the City of Detroit engagement  
12 of which you are employed?

13 A Yes.

14 Q What is her role?

15 A She is overseeing the process by  
16 which we are securing debtor and possession of  
17 financing for the City.

18 Q And what is your role in  
19 connection with the City of Detroit bankruptcy?

20 A I'm the senior banker at Miller  
21 Buckfire responsible for advising the emergency  
22 manager in the City of Detroit on all aspects  
23 of financial strategy and restructuring  
24 alternatives, including potential exchange  
25 offers, debt for equity conversions, and other



1 K. Buckfire

2 potential transactions that might be required  
3 to effectuate a restructure.

4 Q And this current role began when,  
5 sir?

6 A January of 2013.

7 Q And I believe you indicated in  
8 your prior deposition that you had other roles  
9 in connection with the City of Detroit; is that  
10 correct?

11 Let me rephrase the question if  
12 you don't understand it. Prior to your current  
13 engagement, had you done work for either the  
14 City or the State in connection with the City  
15 of Detroit?

16 A Yes, in 2012 we had a two-month  
17 engagement with the State the Michigan to  
18 evaluate the City's financial condition.

19 Q Was that July 2012?

20 A I believe it was July.

21 Q Prior to that, any engagement if  
22 connection with the City of Detroit?

23 A No.

24 Q And after that was there an  
25 intermediate role prior to your current one?





1 K. Buckfire

2 A No.

3 Q In January of 2013, was the scope  
4 of your engagement changed in any way?

5 A Yes, the scope of our engagement  
6 in January was to continue our role as  
7 evaluating the City's financial condition from  
8 a solvency perspective, and advise the City on  
9 what they might be able to do to create more  
10 liquidity or deal with their liabilities.

11 Q And did you reach any conclusions  
12 in connection with the solvency or how the City  
13 should deal with its liabilities?

14 A Not until May.

15 Q And did you reach any conclusions  
16 in May regarding solvency?

17 A Yes.

18 Q What was that conclusion, sir?

19 A That the City was insolvent.

20 Q And did you report that conclusion  
21 to anyone?

22 A Yes, I did.

23 Q And in what form did that report  
24 take?

25 A It was on oral report to the



1 K. Buckfire

2 emergency manager.

3 Q And when did you give that oral  
4 report to the emergency manager?

5 A In early May.

6 Q Can you be more precise than early  
7 May?

8 A No.

9 Q Would it be before May 7, by any  
10 chance?

11 A It could have been, but I don't  
12 recall exactly.

13 Q You don't recall exactly, okay.

14 And did you give any advice to the  
15 emergency manager on how he should deal with  
16 his creditors in connection with your report on  
17 solvency?

18 A Yes, I advised him that the City's  
19 financial condition was so dire that we had to  
20 take immediate steps to preserve the City's  
21 liquidity so that it would be in jeopardy of  
22 losing essential public services, and we  
23 identified the need to negotiate with the swap  
24 counterparties, which I previously to in this  
25 case, as an immediate and urgent priority of



1 K. Buckfire

2 law firms that we believed would have the  
3 qualifications to advise the City in all  
4 potential outcomes related to a restructuring  
5 of the City of Detroit. So we gave them some  
6 suggestions, we arranged for the City and the  
7 financial advisory board and the State to  
8 interview all the law firms that were being  
9 considered for this role, and at the end of the  
10 process we were requested to provide an  
11 evaluation based on the criteria originally  
12 suggested and the relative qualifications.

13 Q Whose idea was it that you should  
14 do the evaluation of the law firms?

15 A I believe it was Mr. Dillon  
16 actually, State Treasurer.

17 Q And prior to that suggestion by  
18 Mr. Dillon, had you met with Jones Day in  
19 connection with possible City of Detroit  
20 engagement?

21 A I called all the law firms that  
22 were being invited and gave them the  
23 opportunity to ask us questions about the  
24 situation so they could prepare their  
25 presentations.



1 K. Buckfire

2 Q I'm asking specifically prior to  
3 the suggestion by Mr. Dillon, had you met with  
4 Jones Day in connection with possible retention  
5 with the City of Detroit?

6 A No.

7 Q So all of those conversations you  
8 just mentioned came after Mr. Dillon made the  
9 suggestion that you undertake the review?

10 A At the point in time which we were  
11 asked to put together the presentation process  
12 we called them all, including Jones Day.

13 Q So that I am clear, prior to the  
14 creation of that presentation, had you met with  
15 Jones Day in connection with their possible  
16 retention by the City of Detroit?

17 A No.

18 Q Sir, I'm going to ask the court  
19 reporter to mark as Buckfire Exhibit No. 1 an  
20 AmLaw daily report that is dated May 13, 2013.

21 (AmLaw Daily Report dated May 13,  
22 2013 was marked as Buckfire Exhibit  
23 No. 1 for identification, as of  
24 this date.)

25 Q I'm handing you, Mr. Buckfire,



1 K. Buckfire

2 A No.

3 Q Okay. After the instruction by  
4 Mr. Dillon, did you speak with individuals  
5 associated with these four firms?

6 A Yes.

7 Q Okay. Did you communicate with  
8 them in writing as well?

9 A Only to formally invite them to a  
10 meeting at the airport.

11 Q Okay. And were you present at  
12 that meeting at the airport?

13 A The February 27 meeting, yes.

14 Q Who else participated on behalf of  
15 either the City or the emergency -- or the  
16 State in connection with those meetings?

17 A Well, let's see, from the city we  
18 had Chris Andrews, Jack Martin. I don't  
19 believe the mayor came, I believe he was  
20 invited to come. From the State we had  
21 Mr. Dillon, the state treasurer, senior deputy  
22 treasurer for Tom Saxton, Bram Stibbets, senior  
23 advisor to the treasurer. The we had Sandy  
24 Pierce, chairman of the financial advisory  
25 board and Ken Whipple, vice chairman of the



1 K. Buckfire

2 financial advisory board. There might have  
3 been others but those are the ones I remember.

4 Q Can you recall any elected City  
5 officials were present?

6 A The Mayor was invited was I  
7 believe he decided to send Mr. Martin and  
8 Andrews in his place.

9 Q Following that meeting, whose idea  
10 was it to broaden the search?

11 A I don't understand the question.

12 Q Let me ask the question, did you  
13 invite more firms to participate in a review  
14 process by the State on behalf of the City  
15 following that meeting?

16 A I don't understand, we had about  
17 eight firms show up at that meeting. There was  
18 only one meeting.

19 Q Did you review any other firms  
20 other than the ones that participated in that  
21 one meeting on February 27?

22 A We contacted a few other firms we  
23 thought might be qualified. They ultimately  
24 were not invited for different reasons.

25 Q The first sentence in the second



1 K. Buckfire

2 paragraph said, "Mr. Bing's office broadened  
3 the search on February 27 by inviting more than  
4 a dozen firms, including with those with whom  
5 it had already met to submit official proposals  
6 by March 6."

7 Do you see that sentence?

8 A Yes.

9 Q Do you know if that is a true  
10 statement?

11 A Well, this is a newspaper article.

12 Q I'm asking you if you know, I'm  
13 not asking you to say anything else?

14 A We had a meeting at the airport on  
15 January 27 as I recall, at which the people I  
16 mentioned earlier interviewed all the firms  
17 that came in to make presentations. There were  
18 about eight law firms in total who made those  
19 presentations all in the same day.

20 Q Are the eight firms that  
21 participated in the meeting on February 27 the  
22 only ones that were the subject of your review  
23 process?

24 A No.

25 Q Were there other firms that were



800.211.DEPO (3376)  
EsquireSolutions.com

1 K. Buckfire

2 the subject of your review process after  
3 February 27?

4 A No.

5 Q So it's your testimony that all  
6 the other firms were subject to your review  
7 prior February 27?

8 A I don't understand what you're  
9 asking me. I've already testified, we had one  
10 meeting to select a law firm. We invited other  
11 law firms to participate. Some of them were  
12 not ultimately invited to that in-person  
13 meeting because they weren't judged to be  
14 qualified to do so.

15 Q Okay.

16 A That was the beginning of it and  
17 that was the end of my involvement of any  
18 formal interview process of any law firms.

19 Q Did you create a 24-point system  
20 for review of the firms?

21 A At the State's request, I did.

22 Q Okay. And did you reach a  
23 conclusion based on that 24-point review as to  
24 who would be an appropriate selection by the  
25 state?





1 K. Buckfire

2 A We told the State that any of the  
3 firms that they'd interviewed were qualified to  
4 do to so. They asked us to score them all and  
5 put them on a comparison sheet, which we did.  
6 They asked for quantitative analysis, which we  
7 did, and then they made their decision at a  
8 meeting we were not present at.

9 Q Is it accurate that there was a  
10 one point difference between Jones Day and the  
11 next one on your quantitative report?

12 A I believe so.

13 Q Had you ever worked with Jones Day  
14 before engaging with the City of Detroit?

15 A We worked with all the law firms  
16 the City interviewed including Jones Day.

17 Q Can you identify from your memory  
18 a recent engagement on which you and Jones Day  
19 were on the same side?

20 A I have to consult with counsel,  
21 I'm not sure the engagement is public.

22 Q Please.

23 MR. MONTGOMERY: We can give you  
24 the time frame, counsel, if that will  
25 help.



1 K. Buckfire

2 inform their views as to what the City should  
3 be doing to sort out its problems.

4 Q And other than Miller Buckfire,  
5 were there any other professionals retained, or  
6 was that exclusively your role at that point in  
7 time?

8 A E&Y had been retained by the City  
9 before us and, I believe, was providing  
10 financial information to the state about the  
11 City's condition, as well as to us, so we  
12 were relying, to some extent, on the numbers.

13 Q Was Conway on the scene yet?

14 A No.

15 Q And what about counsel?

16 A Obviously, Detroit has its  
17 long-time counsel at Miller Canfield and  
18 others. We didn't talk to them during this  
19 period.

20 Q Did that engagement run until,  
21 say, Labor Day of 2012, September 2012?

22 A No, it was a 60-day engagement. I  
23 recollect we finished sometime in the summer.

24 Q And after -- so let's say end of  
25 August, early September. During September,



1 K. Buckfire

2 and we made this point to Jack and to Chris  
3 several times -- that maintaining liquidity was  
4 the paramount objective the City should have  
5 over the short term. As long as the City had  
6 cash to operate, they would have the ability to  
7 negotiate with the parties and not have to seek  
8 bankruptcy protection.

9 Q Did you, in November of 2012, have  
10 conversations with anyone at Jones Day about  
11 Chapter 9 for Detroit?

12 A No.

13 Q If you look at B13 again,  
14 Mr. Herman says, This could open up an avenue  
15 for Jones Day. Do one of your senior folks  
16 want to send to C or H?

17 Do you see that?

18 A I do.

19 Q Do you know what he's talking  
20 about there in terms of an avenue for Jones  
21 Day?

22 A We had had some conversations with  
23 Jones Day over the past few months because it  
24 was well known we'd been hired to do a  
25 financial review of the City; that was public



1 K. Buckfire

2 information. We had gotten calls from a lot of  
3 law firms who wanted to know if there was a way  
4 for us to introduce them to the situation if  
5 the City decided it needed a different set of  
6 capabilities that it could find locally. And  
7 he's probably referring to a conversation he  
8 must have had with someone at Jones Day about  
9 the state of the claim.

10 Q And would you agree that C  
11 probably stands for Corinne and H for Heather  
12 in that sentence?

13 A I assume so.

14 Q Did you personally have any  
15 conversations with any of the Jones Day  
16 attorneys in November 2012 or around that time  
17 about Detroit Chapter 9 restructuring?

18 A Yes. I spoke with Corinne Ball a  
19 few times starting in the summer about what was  
20 going on in Detroit. She was very interested  
21 in finding out if there might be a role for  
22 Jones Day, particularly in an out of court  
23 restructuring context, which is something that  
24 Jones Day is particularly strong at. She  
25 wanted me to meet one of her partners who is



1 K. Buckfire

2 the lead bankruptcy partner for Orange County,  
3 which was a successful Chapter 9.

4 Q Who was that person?

5 A Bruce Bennett. I didn't know him,  
6 but she wanted me to meet him. I heard of him,  
7 I didn't know him. I never got around to doing  
8 that.

9 So it was one of the many  
10 conversations that we had among other firms  
11 that called inquiring about this.

12 Q Do you specifically recall  
13 conversations with Corinne Ball about out of  
14 court restructuring versus Chapter 9?

15 A Only to the extent that an out of  
16 court restructuring is always the preferable  
17 outcome.

18 Q Do you recall having a specific  
19 conversation like that with her in November of  
20 2012?

21 A No, but I was speaking with  
22 Corinne probably every day on another matter,  
23 so I can't really recall.

24 Q So when you were engaged in  
25 January by the City, who did you work with at



1 K. Buckfire

2 did you first become aware that Mr. Orr was  
3 being considered as the emergency manager?

4 A We had the initial interviews late  
5 January of the firms that the City wanted to  
6 consider. I believe it was a few weeks later  
7 the City picked Jones Day. It was after that I  
8 got a call from Richard Baird who was helping  
9 the governor select the emergency manager  
10 asking for my views whether or not Mr. Orr  
11 would be the right candidate for the job.

12 Q So Jones Day was selected as  
13 restructuring counsel before Mr. Orr was  
14 appointed as the emergency manager, is that  
15 your understanding?

16 A Yes. And the City selected Jones  
17 Day, not the State.

18 Q So when you heard that Mr. Orr was  
19 being considered by the State, did you or was  
20 your opinion solicited with respect to the  
21 selection of Mr. Orr?

22 A Yes.

23 Q Who asked you for your opinion on  
24 that?

25 A Mr. Baird.



1 K. Buckfire

2 Q Anyone else from the State?

3 A Not that I recall.

4 Q And had you known Mr. Orr before  
5 this whole Detroit thing?

6 A No.

7 Q Did you -- what was your opinion?

8 A Well, I had met him for the first  
9 time at the presentations by Jones Day to the  
10 financial advisory board and others and he was  
11 part of the Jones Day team and he spoke about  
12 the relative experience involving Chrysler and  
13 other matters, and that was my only interaction  
14 with him at that point.

15 Q When that presentation was made by  
16 Jones Day, that was part of a presentation  
17 between them and other counsel seeking the job  
18 as counsel to the City, correct?

19 A I believe the City interviewed  
20 eight firms.

21 Q And Jones Day it was one day?

22 A One long day.

23 Q At the airport?

24 A At the airport.

25 Q And as bunch of firms interviews



1 K. Buckfire

2 and Mr. Orr attended with the Jones Day team?

3 A He was part have the team, yes.

4 Q Who was on the other side of the  
5 table, it was you and other people from the  
6 City?

7 A I testified before it was Chris  
8 Andrews, chief restructuring officer of the  
9 City Detroit, Jack Martin, chief financial  
10 office. We did invite the mayor and he didn't  
11 come. From the State we had Treasurer Dillon,  
12 senior deputy treasurer Tom Saxton, Stibitz,  
13 S-T-I-B-I-T-Z, senior advisor to the treasurer,  
14 and then from the financial advisory board we  
15 had Sandra Pierce and Ken Whipple, and I was  
16 president along with Mr. Doak really to  
17 facilitate the meeting.

18 Q At the meeting was bankruptcy  
19 discussed? Did you want to know if these  
20 various law firms had the right bankruptcy  
21 experience and Chapter 9 experience?

22 A That's why this were all invited  
23 because they met the minimum requirements, out  
24 of court experience, Chapter 9, labor  
25 experience, bond holder negotiations, and for





1 K. Buckfire

2 lack of a better word, M and A experience, and  
3 that's the basis for which they were invited.

4 Q So, how long after that meeting  
5 did Mr. Orr's name appear in the discussion  
6 with regard to the emergency manager, was it  
7 days, weeks?

8 A As I remember the selection of  
9 Jones Day was a week or two later. The City  
10 was in a hurry to select counsel. I don't  
11 recall being called about Mr. Orr until after  
12 Jones Day had been picked.

13 Q In your conversation with  
14 Mr. Baird, do you recall discussing with him  
15 the idea of putting the City of Detroit into  
16 Chapter 9 bankruptcy?

17 A Not with respect to Mr. Orr, no.

18 Q With respect to anything?

19 A It was one of the alternatives and  
20 all the law firms discussed the merits of  
21 Chapter 9 because we asked them to do so.

22 Q In your conversations with  
23 Mr. Baird after your engagement in 2013 by the  
24 City, did you ever say words to the effect like  
25 we got to figure out a way to get Detroit into



1 K. Buckfire

2 bankruptcy?

3 A No.

4 (Two-page Document was marked as  
5 Buckfire Exhibit No. 18 for  
6 identification, as of this date.)

7 Q We've marked as Buckfire 18 a  
8 two-page document that is called city  
9 government restructuring program, hot items.

10 Do you see it?

11 A I do.

12 Q Have you seen it before?

13 A No.

14 Q Let me ask you to look at Item  
15 1.6, it says possible contracts for actuaries  
16 and counsel to manage pension issues.

17 Do you see that?

18 A I do.

19 Q On the right-hand side it says  
20 governance issues behind financial issues.

21 Do you see that?

22 A I do.

23 Q Was the priority with respect to  
24 the pension to deal with the financial issues  
25 first and then the governance issue?



# EXHIBIT 6-B

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In Re:

CITY OF DETROIT, MICHIGAN Chapter 9

Case No.13-53846

Debtor. Hon. Steven Rhodes

/

The Video Deposition of KENNETH BUCKFIRE,  
Taken at 1114 Washington Boulevard,  
Detroit, Michigan,  
Commencing at 9:31 a.m.,  
Thursday, August 29, 2013,  
Before Nora Morrissy, RMR, CRR, CSR-2642.

1 City. Prepared to testify to the general condition of  
2 the City's financials leading up to the execution of  
3 the forbearance agreement.

4 Q. Are there any other topics that you intend to testify  
5 at the hearing concerning the forbearance agreement?

6 A. I'll testify at that point to the status of the DIP  
7 form process that will provide the financing to  
8 execute the City's option under the forbearance  
9 agreement to retire the Swaps.

10 Q. Are there any other topics that you have not mentioned  
11 in your answers that you intend to testify about?

12 A. I'm sure there will be other things but I can't recall  
13 at this time what they might be.

14 Q. Mr. Buckfire, what is your position with Miller  
15 Buckfire?

16 A. Co-founder and co-president of Miller  
17 Buckfire & Company.

18 Q. Miller Buckfire currently is employed as the financial  
19 advisor to the City of Detroit, correct?

20 A. As the investment banker to the City, that's correct.

21 Q. And when was Miller Buckfire first engaged by the City  
22 as investment banker?

23 A. We were first engaged in July of 2012 for a 60-day  
24 review of the City's financial condition. We were  
25 re-engaged on January 8th of this year to continue to

1           advise the City on its financial condition and  
2           financial alternatives. Both were -- were hired  
3           pursuant to an RFP process to which we submitted a  
4           proposal.

5    Q.   When you were hired in July 2012, can you describe the  
6           scope of services that Miller Buckfire was engaged to  
7           provide?

8    A.   As I mentioned earlier, we were engaged to do a  
9           general financial review of the City's financial  
10          condition particularly with respect to its ability to  
11          service its debt obligations.

12   Q.   Were there specific tasks that you were asked to  
13          perform in connection with doing a general financial  
14          review of the debt obligations?

15   A.   No, we were engaged to do a general financial review  
16          and advise the mayor and the chief financial officer  
17          as to what those financial conditions implied for the  
18          City's ability to operate in the ordinary course.

19   Q.   That engagement began in July 2012 is what you  
20          testified to, is that correct?

21   A.   Correct, and ended on August 31st.

22   Q.   Very good. I would point out that I would ask you to  
23          wait until I ask the question, though.

24                           Miller Buckfire was then re-engaged on  
25          January 8th of 2013, is that correct?

# EXHIBIT 6-C

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - DETROIT

-----  
In re: Chapter 9  
CITY OF DETROIT, MICHIGAN, Case No. 13-53846  
Debtor, Hon. Steven W. Rhodes  
-----

V I D E O T A P E D D E P O S I T I O N O F

WITNESS: TREASURER ANDREW DILLON

LOCATION: The Treasury Building  
430 West Allegan  
Lansing, Michigan 48909

DATE: Thursday, October 10, 2013  
9:17 a.m.

APPEARANCES:  
FOR PLAINTIFFS FLOWERS:

LAW OFFICE OF WILLIAM A. WERTHEIMER  
30515 Timberbrook Lane  
Bingham Farms, Michigan 48025  
248.644.9200  
billwertheimer@gmail.com  
BY: WILLIAM A. WERTHEIMER (P26275)

FOR INTERNATIONAL UNION, UAW:

COHEN, WEISS and SIMON, LLP  
330 West 42nd Street  
New York, New York 10036-6976  
212.563.4100  
pdechiara@cwsny.com  
BY: PETER D. DeCHIARA, ESQUIRE

FOR THE RETIREES COMMITTEE:

DENTONS US LLP  
1221 Avenue of the Americas  
New York, New York 10020-1089  
212.768.6881  
arthur.ruegger@dentons.com  
BY: ARTHUR H. RUEGGER, ESQUIRE



10:36:07 1 served under both is my memory.

10:36:09 2 Q. Okay. Do you -- were you part of the search team  
10:36:35 3 for the emergency manager?

10:36:38 4 A. I don't think we had an official search team, but  
10:36:41 5 yes, I was involved.

10:36:42 6 Q. Who else was involved with you?

10:36:44 7 A. Primarily Rich Baird.

10:36:48 8 Q. And were you at the meeting on I think it was  
10:36:55 9 January 28th, 2013, at the airport in Detroit where  
10:37:01 10 the law firms were interviewed?

10:37:03 11 A. Yes.

10:37:03 12 Q. And Mr. Baird was there as well?

10:37:09 13 A. Yes.

10:37:09 14 Q. And I think Mr. Buckfire was there?

10:37:11 15 A. Most likely.

10:37:12 16 Q. Anyone else on the side of the City and the State  
10:37:15 17 that you remember?

10:37:16 18 A. I believe Tom Saxton and Brom Stibitz from Treasury  
10:37:21 19 were there. I believe Chris Andrews and Jack Martin  
10:37:24 20 from the City were there. I believe we may have had  
10:37:27 21 some members of the Financial Advisory Board there.  
10:37:33 22 There may have been a few others I don't recall.

10:37:35 23 Q. Had you known or heard of Mr. Orr before that  
10:37:38 24 meeting?

10:37:39 25 A. No.

10:37:39 1 Q. Why was it that people from the State were at a  
10:37:43 2 meeting to select counsel for the City of Detroit?

10:37:47 3 A. Well, the City, as you might recall at the time, was  
10:37:52 4 under a consent agreement, and we were struggling  
10:37:56 5 with that and we were bringing in some professionals  
10:38:01 6 to help with the City. And December it involved an  
10:38:06 7 investment bank and some restructuring firms; E and  
10:38:09 8 Y and Conway MacKenzie, and then the last piece of  
10:38:14 9 the puzzle was the law firm.

10:38:17 10 Q. And before that meeting, where did the search for an  
10:38:27 11 emergency manager stand? How many candidates -- how  
10:38:31 12 many serious candidates did you guys have at that  
10:38:34 13 point?

10:38:34 14 A. Before the -- what meeting?

10:38:37 15 Q. Before the meeting at the airport with the law  
10:38:39 16 firms.

10:38:40 17 A. At the Jones Day?

10:38:41 18 I don't recall specifically but there  
10:38:44 19 wasn't a lot. You know, we -- at that point I would  
10:38:49 20 say we thought we had very few candidates that, A,  
10:38:54 21 could do it and, B, were willing to do it.

10:38:57 22 Q. And how did it develop that Mr. Orr was identified  
10:39:03 23 as a candidate? Did it happen at that meeting or  
10:39:09 24 after that meeting?

10:39:10 25 A. I believe it was after that meeting Rich called me,

12:01:20 1 Q. If there's an email dated 3-2-2012 from Jones Day  
12:01:27 2 that just said we spoke to someone in Andy's office,  
12:01:32 3 do you recall those types of conversations back in  
12:01:34 4 2012?

12:01:35 5 A. Can you show me the --

12:01:39 6 Q. Yeah. I only have one. We just got it a day ago so  
12:01:44 7 I apologize, I don't have copies for everyone. We  
12:01:48 8 copied some of them.

12:01:49 9 MR. SHERWOOD: Is it Bate stamped?

12:01:52 10 MS. GREEN: It is.

12:01:53 11 MR. WERTHEIMER: Can you identify it?

12:01:55 12 MS. GREEN: Yeah.

12:02:32 13 THE WITNESS: Yeah, the only person I  
12:02:33 14 recall knowing prior to 2013 from Jones Day was  
12:02:37 15 Corinne Ball.

12:02:41 16 BY MS. GREEN:

12:02:41 17 Q. What about Heather Lennox?

12:02:44 18 A. I don't think I met her prior to 2013.

12:02:47 19 Q. Yeah, can we mark that -- well, the problem is I  
12:02:54 20 only have one copy and it has my handwriting on it  
12:02:57 21 because we just got the document, but I can state  
12:03:00 22 for the record the Bates number if that's  
12:03:02 23 appropriate. We can have an agreement on that.

12:03:15 24 The Bates number is DTMI 00234878 to 880 is  
12:03:26 25 the last page.

12:03:31 1 MR. SHERWOOD: DTMI 00234.

12:03:35 2 MS. GREEN: 878.

12:03:43 3 MR. WERTHEIMER: Why don't we just mark it  
12:03:45 4 and you can identify that it should not include any  
12:03:49 5 of the underlining and handwriting.

12:03:53 6 MS. GREEN: That's fine.

12:03:53 7 MS. NELSON: Well, why don't we just have  
12:03:55 8 her produce one that doesn't have handwriting on it  
12:03:58 9 and mark it.

12:04:06 10 MR. WERTHEIMER: That would be fine too.

12:04:06 11 MS. NELSON: And mark it -- what's the next  
12:04:15 12 one, six?

12:04:15 13  
12:04:15 14 (Deposition Exhibit 6 marked post deposition.)

12:04:15 15  
12:04:15 16 MS. GREEN: I do have copies of the next  
12:04:16 17 one, which we can mark as Exhibit 7.

12:04:16 18  
12:04:16 19 (Deposition Exhibit 7 was marked.)

12:04:33 20

12:04:33 21 BY MS. GREEN:

12:04:33 22 Q. Do you recognize this email?

12:04:41 23 A. Yeah. Okay. I mean, I forgot about this but I  
12:04:54 24 think when we were working on the consent agreement  
12:04:57 25 we were seeking advice from Huron Consulting and

12:05:01 1 Miller Buckfire. They used various law firms on  
12:05:04 2 occasion.

12:05:04 3 And in this case, I don't know that I ever  
12:05:08 4 actually met Heather other than maybe over the  
12:05:10 5 phone, but we were -- through Huron or through  
12:05:13 6 Miller Buckfire we were getting advice from various  
12:05:16 7 law firms, Jones Day being included.

12:05:23 8 They weren't a vendor to the Treasury  
12:05:26 9 Department.

12:05:28 10 Q. And did Jones Day also weigh in on the drafting in  
12:05:35 11 preparation of the consent agreement?

12:05:38 12 A. From my reading of this, they did.

12:05:40 13 Q. Do you recall receiving a blackline copy from Jones  
12:05:46 14 Day at any time relating to the consent agreement  
12:05:49 15 between the City and the State?

12:05:50 16 A. I don't recall. We may have but we had counsel  
12:05:58 17 representing us, and this may have been just  
12:06:04 18 friendly free advice, but there's other people that  
12:06:09 19 can answer that question more precisely than I.

12:06:12 20 Q. Do you recall getting any free advice, any memos  
12:06:19 21 given to you by Jones Day during this process?

12:06:21 22 A. I'd have to look in my files to know.

12:06:27 23 Q. Do you know if any of those memos have been produced  
12:06:30 24 by the State of Michigan in this case?

12:06:32 25 A. I don't know. I'd have to look.

12:06:36 1 Q. Would you recall if any of those memos were related  
12:06:42 2 to Chapter 9 filing or the pension obligations of  
12:06:45 3 the City of Detroit?  
12:06:47 4 A. I don't recall any memos covering those topics.  
12:06:52 5 Q. During the vetting process for the City of Detroit's  
12:07:05 6 restructuring counsel, were you involved in the  
12:07:10 7 interview on the 29th of the law firms?  
12:07:17 8 A. Yes.  
12:07:17 9 Q. I should have restated it. Were you involved in  
12:07:20 10 putting together the list of questions that would be  
12:07:22 11 asked of the law firms on the 29th?  
12:07:24 12 A. I don't believe so.  
12:07:24 13 Q. Do you recall the interview topics that were asked  
12:07:28 14 of the law firms on the 29th?  
12:07:30 15 A. I don't recall. I mean, we had a group I described  
12:07:37 16 earlier in the deposition who was there. I think  
12:07:40 17 everyone was -- felt free to ask the questions that  
12:07:42 18 they had.  
12:07:42 19 Q. Do you know who was responsible for putting together  
12:07:46 20 the list of interview topics for the law firms at  
12:07:50 21 the 29th meeting?  
12:07:51 22 A. I don't think it was that structured. I think  
12:07:55 23 Miller Buckfire played a significant role in who was  
12:07:57 24 invited, and the City worked with them and may have  
12:08:01 25 added some names to who was invited.

# EXHIBIT 6-D

From: CN=Jeffrey B Ellman/O=JonesDay  
Sent: 3/2/2012 1:35:25 PM  
To: CN=Corinne Ball/O=JonesDay@JonesDay  
CC: CN=Heather Lennox/O=JonesDay@JonesDay; "Thomas Wilson" <tawilson@JonesDay.com>  
Subject: Re: Consent Agreement

> We spoke to a person from Andy's office and a lawyer to get their thoughts on some of the issues. I thought MB was also going to try to follow up with Andy directly about the process for getting this to the Governor, but I am not sure if that happened.

> The premise of this agreement right now and as it is being revised is that the PCA will have fundamental control with the oversight and approval of the Board. I think that is consistent with MB's approach.

> Part of the approach is to fit the powers within PA4 while it is still in effect, which will allow us to argue that the agreements remain valid because they were implemented under a the statute when it was in effect. To that end, if there is a "recovery plan", that will supersede the budget and appropriations ordinance of the local government, and we have given that power to the Board. Controlling the budget gives the FCB broad authority.

> PA4 also allows an officer of the City to have all of the powers of an EM (other than to abrogate CBAs), so we have set this up for the FCB to appoint the PCA and for the City to give him/her an officer title. Then the PCA will have the EM powers, and we can argue that they are vested powers granted when PA4 was in effect.

> One of MB's comments was skepticism about the ability of the FCB to sue and be sued, so we took it out. It can be added back easily enough.

> If PA4 is repealed or suspended, there may be an argument that some or all of this does not work. We have added authority from a couple of other statutes to try to bolster the argument, but those statutes are bit vague and do not specifically authorize the control of the FCB etc.

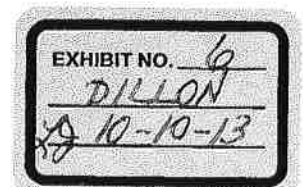
> The cities derive their power from the Michigan Constitution and a Home Rule Act. To take away certain powers from the Cities, we would need at the very least legislation, but may also need to amend the Constitution.

> The cleanest way to do all of this probably is new legislation that establishes the board and its powers, AND includes an appropriation for a state institution. If an appropriation is attached to (included in) the statute to fund a state institution (which is broadly defined), then the statute is not subject to repeal by the referendum process.

Tom is revising the document and should have a new version shortly, with the idea of getting this to at least MB/Huron by lunchtime. Would it be helpful to have a call internally first?

\*\*\*\*\*

Jeffrey B. Ellman  
Jones Day  
1420 Peachtree Street, NE  
Suite 800  
Atlanta, Georgia 30309-3053  
Phone: 404-581-8309  
Fax: 404-581-8330







From: CN=Heather Lennox/O=JonesDay  
Sent: 3/3/2012 4:00:44 PM  
To: "Dillon, Andy (Treasury)" <DillonA2@michigan.gov>  
CC: "Corinne Ball (cball@jonesday.com)" <cball@jonesday.com>; "hsawyer@huronconsultinggroup.com" <hsawyer@huronconsultinggroup.com>; Jeffrey B Ellman <jbellman@JonesDay.com>; "Buckfire, Ken" <ken.buckfire@millerbuckfire.com>; "Herman, Kyle" <kyle.herman@millerbuckfire.com>; "Imarcero@huronconsultinggroup.com" <Imarcero@huronconsultinggroup.com>; "Marken, Sanjay" <sanjay.marken@millerbuckfire.com>; "Stibitz, Brom (Treasury)" <StibitzB@michigan.gov>; "Erickson, Stuart" <stuart.erickson@millerbuckfire.com>; CN=David J. Kates/O=JonesDay;CN=Thomas A Wilson/O=JonesDay@JonesDay  
Subject: Re: Detroit - email list for status updates

Andy:

Attached for your review and consideration is a draft consent agreement, which has been reviewed by Miller Buckfire and Huron. Please let us know if you have any comments or if you'd like to convene a call to discuss anything. Many provisions in here are designed to take advantage of PA4 while it is still in existence, but this also references other state laws that would buttress the FCB and PCA powers, and enhance the chances of this being insulated from attack, in the event of a repeal.

Best --

Heather

Heather Lennox  
Jones Day  
222 East 41st Street  
New York, New York 10017  
Direct: 212-326-3837  
Fax: 212-755-7306  
email: hlennox@jonesday.com

=====  
This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.  
=====

Attachment: CLI\_1966878\_9\_Detroit - Consent Agreement Between City and State Financial Review Team.DOCX

DTMI00234877

# EXHIBIT 6-E

From: CN=Jeffrey B Ellman/O=JonesDay  
Sent: 1/24/2013 4:16:26 PM  
To: CN=Corinne Ball/O=JonesDay@JonesDay;CN=Heather Lennox/O=JonesDay@JonesDay;CN=Bruce Bennett/O=JonesDay@JONESDAY  
CC: CN=Thomas A Wilson/O=JonesDay@JonesDay  
Subject: Fw: Coleman Young airport- history of airline service

See below. Some hurdles to using airport privatization to raise money based on the nature of the airport asset.

\*\*\*\*\*

Jeffrey B. Ellman  
Jones Day  
1420 Peachtree Street, NE  
Suite 800  
Atlanta, Georgia 30309-3053  
Phone: 404-581-8309  
Fax: 404-581-8330  
E-mail: jbellman@jonesday.com

----- Forwarded by Jeffrey B Ellman/JonesDay on 01/24/2013 11:14 AM -----

From: Rebecca B MacPherson/JonesDay  
To: Brian L. Sedlak/JonesDay@JonesDay  
Cc: Jeffrey B Ellman/JonesDay@JonesDay, Naveen C Rao/JonesDay@JonesDay  
Date: 01/24/2013 11:11 AM  
Subject: Re: Coleman Young airport- history of airline service

All,

I think it is unlikely that the City of Detroit would be able to convince a scheduled air carrier to initiate operations at Coleman Young Airport. Accordingly, while it may be possible to privatize the airport under the FAA's pilot program, there is little incentive to do so since the airport would remain a general aviation airport. In order to conduct scheduled service with aircraft capable of carrying more than 30 passengers, a carrier must operate at a part 139, Class I airport. This is because the Class I airports must meet the highest airport safety standards. At one time, Coleman Young would have had a Class I status since as recently as 2000 there was scheduled air carrier service there and Southwest was at the airport in the early 90s. However, Coleman Young was decertified as a part 139 airport 5-6 years ago, likely a result of extended non-use by anyone other than general aviation. Being completely de-certified is pretty drastic -- that indicates that there is very little market for this airport. While the airport has relatively good runway markings, it will not have the more expensive safety equipment necessary to regain part 139 Class I status, and a significant amount of resources would have to be spent to make the needed improvements. If Detroit's main airport was over-subscribed, it might be worthwhile to make the improvements. However, I reviewed the FAA's FACT 2 study, which analyzes projected growth at the nation's top 35 airports. That study does not project any congestion constraints at the Detroit airport through the period of the study (2025). Accordingly, there is room for growth at the main airport.

I understand the overall potential project goes well beyond this issue. However, should we be retained, we will need to advise the client on the value of the airport.

Rebecca

Rebecca B. MacPherson  
Of Counsel  
51 Louisiana Ave. NW, Washington, DC 20001-2113 • Direct: 202.879.4645 • Fax:  
202.626.1700 • rmacpherson@jonesday.com

From: Brian L. Sedlak/JonesDay  
To: Rebecca B MacPherson/JonesDay@JonesDay  
Cc: Naveen C Rao/JonesDay@JonesDay, Jeffrey B Ellman/JonesDay@JonesDay  
Date: 01/24/2013 10:30 AM  
Subject: Re: Coleman Young airport- history of airline service

Rebecca,

Until Detroit selects counsel next week, I don't believe there is a "billable" CAM. I would just use a business development CAM.

Jeff - Would you mind confirming whether the above is correct?

Thank you.

Brian

Brian S. Sedlak • Partner 77 W. Wacker Drive • Chicago, IL 60601  
DIRECT 312.269.4334 • FAX 312.782.8585 • MOBILE 312.404.9426  
briansedlak@JONESDAY.COM

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.  
P Please consider the environment before printing this email.

From: Rebecca B MacPherson/JonesDay  
To: Naveen C Rao/JonesDay@JonesDay  
Cc: Brian L. Sedlak/JonesDay@JonesDay  
Date: 01/24/2013 09:11 AM  
Subject: Re: Coleman Young airport- history of airline service

Looks like it is no longer a part 139 airport, which is problematic to say the least. If someone could give me the CAM, I'll verify with the FAA's regional office.

Rebecca

Rebecca B. MacPherson  
Of Counsel  
51 Louisiana Ave. NW, Washington, DC 20001-2113 • Direct: 202.879.4645 • Fax:  
202.626.1700 • rmacpherson@jonesday.com

From: Naveen C Rao/JonesDay  
To: Rebecca B MacPherson/JonesDay@JonesDay  
Cc: Brian L. Sedlak/JonesDay@JonesDay  
Date: 01/24/2013 09:34 AM  
Subject: Re: Coleman Young airport- history of airline service

I agree.

I was checking out the runways during our call.

<http://www.airnav.com/airport/KDET>

The longest one is 5,000 feet (about the same as the secondary runway at DCA) which more or less limits the airport to narrowbody airplanes on short flights and regional jets.

I was thinking further about candidate airlines that might be interested in serving an airport like DET. The one that came to mind is Allegiant.

Naveen C. Rao  
Jones Day - Washington, D.C.  
Phone: 202-879-3708  
E-mail: ncrao@jonesday.com

From: Rebecca B MacPherson/JonesDay  
To: Naveen C Rao/JonesDay@JonesDay  
Cc: Brian L. Sedlak/JonesDay@JonesDay  
Date: 01/24/2013 08:57 AM  
Subject: Re: Coleman Young airport- history of airline service

I wonder what the runways look like and if they've reclassified the airport as something less than Class I. I'll look into that. If it isn't a Class I, it's not likely to be particularly appealing.

Rebecca B. MacPherson  
Of Counsel  
51 Louisiana Ave. NW, Washington, DC 20001-2113 • Direct: 202.879.4645 • Fax:  
202.626.1700 • rmacpherson@jonesday.com

From: Naveen C Rao/JonesDay  
To: Brian L. Sedlak/JonesDay@JonesDay, Rebecca B MacPherson/JonesDay@JonesDay  
Date: 01/23/2013 05:46 PM  
Subject: Coleman Young airport- history of airline service

Brian and Rebecca,

DET has not had an airline service in a very long time. I recalled during the call yesterday that Pro Air stopped flying more than a couple of years ago.

They actually stopped flying in September 2000.

<http://www.nytimes.com/2000/09/20/business/company-news-pro-air-an-airline-serving-detroit-suspends-flights.html>

According to Wikipedia, Southwest was out by 1993. Even if that is off by a year or two, it has been while.

[http://en.wikipedia.org/wiki/Coleman\\_A.\\_Young\\_International\\_Airport](http://en.wikipedia.org/wiki/Coleman_A._Young_International_Airport)

FYI

Naveen C. Rao  
Jones Day - Washington, D.C.  
Phone: 202-879-3708  
E-mail: [ncrao@jonesday.com](mailto:ncrao@jonesday.com)

# EXHIBIT 6-F

# JONES DAY

Materials Prepared for:

City of Detroit



March 5, 2013



One Firm Worldwide<sup>SM</sup>

The contents of this document are proprietary and should not be duplicated or shared without express permission from Jones Day.

This proposal includes data that shall not be disclosed outside the government and shall not be duplicated, used, or disclosed – in whole or in part – for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of – or in connection with – the submission of this data, the government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in Tab 10 hereto.

Certain sections of this proposal contain trade secret or confidential business or financial information exempt from disclosure under the Michigan Freedom of Information Act ("MI FOIA"), Mich. Comp. Laws § 15.231 et seq., and should be treated as confidential.



**Privasoft Inc.**

Jones Day successfully represented Privasoft as an intervenor to a General Accountability Office bid protest related to the provision of Freedom of Information Act software to the Department of Justice Office of Information Policy.

**Sportsman's Market Inc.**

*Sportsman's Market Inc. v. Federal Aviation Admin. (D.D.C.)*

Jones Day attorneys represented Sportsman's Market in connection with litigation arising under the Freedom of Information Act.

Further, before joining Jones Day, Columbus Partner Mike Gladman served as an Assistant Attorney General in the Ohio Attorney General's Office for approximately five years, and he gained significant experience advising numerous Ohio state agencies regarding Ohio's public records and open meeting laws. Since joining Jones Day, Mike has focused his practice on representing clients in litigation with the government and who are the targets of government investigations, and he has experience with public records and open meeting laws in that capacity as well.

In addition to the foregoing, Jones Day possesses a broad working knowledge of state and local laws applicable to the restructuring efforts of the City of Detroit, including, but not limited to: (a) Public Act 4 of 2011; (b) Public Act 72 of 1990; (c) Public Act 436 of 2012 (Local Financial Stability and Choice Act); (d) the Urban Cooperation Act (Public Act 7 of 1967); (e) the Budgeting and Accounting Act (Public Act 2 of 1968); and (f) the Emergency Municipal Loan Act (Act 243 of 1980). Over the past 18 months, Jones Day has devoted over 1,000 hours to studying these statutes, evaluating related regulations and court rulings in Michigan, and developing an understanding of the City's financial and operational circumstances to be prepared if Jones Day is fortunate enough to assist the City in its restructuring. Jones Day also understands that the City has skilled local lawyers and other professionals who are highly experienced in such matters. Jones Day is fully prepared to collaborate with the City and its professionals to achieve prompt, efficient, and practical solutions to the City's problems.



# EXHIBIT 6-G



---

**EMERGENCY MANAGER  
CITY OF DETROIT**

**ORDER No. 4**

**APPROVAL OF THE CONTRACT FOR PROFESSIONAL LEGAL  
SERVICES BETWEEN THE CITY OF DETROIT AND JONES DAY**

---

BY THE AUTHORITY VESTED IN THE EMERGENCY MANAGER  
FOR THE CITY OF DETROIT  
PURSUANT TO MICHIGAN'S PUBLIC ACT 436 OF 2012,  
KEVYN D. ORR, THE EMERGENCY MANAGER,  
ISSUES THE FOLLOWING ORDER:

---

*Whereas*, on April 16, 2013, the Detroit City Council voted to approve the Contract for Professional Legal Services Between the City of Detroit and Jones Day (including the related engagement letter between Jones Day and the City dates as of March 15, 2013, the "Jones Day Contract"); and

Pursuant to Emergency Manager Order No. 3, contracts entered into by the Detroit Mayor and City Council are not valid or effective unless and until approved by the Emergency Manager or his designee in writing; and

The Emergency Manager believes that, at the present time, retaining the law firm of Jones Day to perform the work necessary for restructuring planning and negotiations is in the best interest of the City of Detroit;


**It is hereby ordered that:**

1. The Jones Day Contract is approved in all respects.
2. Jones Day is authorized to perform work as restructuring counsel to the City on the terms set forth in the Jones Day Contract, effective as of March 15, 2013.

3. This Order is effective immediately upon the date of execution below.
4. This Order shall be distributed to the Mayor, City Council members and the City's Chief Financial Officer.
5. The Emergency Manager may modify, rescind, or replace this Order at any time.

Dated: April 23<sup>rd</sup>, 2013

By:

  
Kevyn D. Orr  
Emergency Manager  
City of Detroit

cc: State of Michigan Department of Treasury  
Mayor David Bing  
Members of Detroit City Council

# EXHIBIT 6-H

Page 1	Page 3
<p>1 IN THE UNITED STATES BANKRUPTCY COURT</p> <p>2 EASTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 In re Chapter 9</p> <p>6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846</p> <p>7 Debtor. Hon. Steven W. Rhodes</p> <p>8</p> <p>9 VIDEOTAPED DEPOSITION</p> <p>10</p> <p>11 DEPONENT: KEVYN ORR</p> <p>12 DATE: Monday, September 16, 2013</p> <p>13 TIME: 10:08 a.m.</p> <p>14 LOCATION: MILLER CANFIELD PADDOCK &amp; STONE PLC</p> <p>15 150 West Jefferson, Suite 2500</p> <p>16 Detroit, Michigan</p> <p>17 REPORTER: Jeanette M. Fallon, CRR/RMR/CSR-3267</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 LOWENSTEIN SANDLER LLP</p> <p>4 By: Sharon L. Levine</p> <p>5 65 Livingston Avenue</p> <p>6 Roseland, NJ 07068</p> <p>7 973.597.2374</p> <p>8 -and-</p> <p>9 AFSCME</p> <p>10 By: Michael L. Artz</p> <p>11 Tiffany Ricci</p> <p>12 1101 17th Street, NW</p> <p>13 Suite 900</p> <p>14 Washington, D.C. 20036</p> <p>15 202.775.5900</p> <p>16 Appearing on behalf of AFSCME</p> <p>17</p> <p>18 CLARK HILL PLC</p> <p>19 By: Jennifer K. Green</p> <p>20 500 Woodward Avenue, Suite 3500</p> <p>21 Detroit, MI 48226</p> <p>22 313.965.8274</p> <p>23 Appearing on behalf of Retirement Systems</p> <p>24</p> <p>25</p>
Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 JONES DAY</p> <p>4 By: Gregory M. Shumaker</p> <p>5 Dan T. Moss</p> <p>6 51 Louisiana Avenue, NW</p> <p>7 Washington, D.C. 20001.2113</p> <p>8 202.879.3939</p> <p>9 Appearing on behalf of the Debtor</p> <p>10</p> <p>11 DENTONS</p> <p>12 By: Anthony B. Ullman</p> <p>13 620 Fifth Avenue</p> <p>14 New York, NY 10020.2457</p> <p>15 212.632.8342</p> <p>16 Appearing on behalf of Retirees Committee</p> <p>17</p> <p>18 COHEN WEISS AND SIMON LLP</p> <p>19 By: Peter D. DeChiara</p> <p>20 330 West 42nd Street</p> <p>21 New York, NY 10036.6979</p> <p>22 212.356.0216</p> <p>23 Appearing on behalf of UAW</p> <p>24</p> <p>25</p>	<p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 WILLIAMS WILLIAMS RATTNER &amp; PLUNKETT PC</p> <p>4 By: Ernest J. Essad, Jr.</p> <p>5 380 N Old Woodward Ave Ste 300</p> <p>6 Birmingham, MI 48009</p> <p>7 248.642.0333</p> <p>8 Appearing on behalf of FGIC</p> <p>9</p> <p>10 SIDLEY AUSTIN LLP</p> <p>11 By: Guy S. Neal (appearing via LiveNote Streaming)</p> <p>12 1501 K St., NW</p> <p>13 Washington, D.C.</p> <p>14 202.736.8000</p> <p>15 Appearing on behalf of National Public Finance</p> <p>16 Guarantee Corp.</p> <p>17</p> <p>18 WINSTON &amp; STRAWN LLP</p> <p>19 By: Bianca M. Forde (appearing via LiveNote Streaming)</p> <p>20 200 Park Avenue</p> <p>21 New York, NY 10166.4193</p> <p>22 212.294.4733</p> <p>23 Appearing on behalf of Assured Guaranty Municipal</p> <p>24 Corp.</p> <p>25 ALSO PRESENT: Mark Meyers, videographer</p>



<p style="text-align: right;">Page 25</p> <p>1 or the city of Michigan (sic) about the possibility of 2 becoming Emergency Manager? 3 A. Absolutely not. 4 Q. And at the top it says, bet he asked if Kevyn could be 5 EM, and that in fact is why he was calling? 6 A. Yes, I see that. 7 Q. And then that's what happened? He did call and -- he 8 had called Corinne Ball to ask about you being the EM? 9 MR. SHUMAKER: Object to the form. 10 A. This document -- I don't know. My testimony is that I 11 believe Rich had called my managing partner, who was 12 Steve Brogan. I don't know if he called Corinne Ball. 13 This seems to be an email exchange between him and 14 Corinne Ball and then Heather Lennox and Amy Ferber. 15 Q. Okay, fair enough. But you recall around that day 16 someone telling you that Baird had called talking 17 about the EM position and then shortly thereafter you 18 in fact got a call; is that right? 19 MR. SHUMAKER: Object to the form. 20 A. Yeah. I don't know if it was -- it was soon 21 thereafter. I don't know if it was that specific day, 22 but it was soon thereafter. 23 Q. And you then got -- did you get a call from Mr. Baird 24 directly? 25 A. No.</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. You've seen this email chain before, Mr. Orr? 2 A. Yes. 3 Q. And in fact you are on both emails; are you? 4 A. I think I wrote the top one. 5 Q. Okay. Now, what is the role of Jones Day at this 6 time? Does it have an official role with Detroit or 7 with the State of Michigan? 8 A. No, at this time, as far as I recall, Jones Day was a 9 candidate to be the attorneys for the City. 10 Q. Now, starting with the bottom email, this is from 11 Corinne Ball to you. 12 A. Yes. 13 Q. And she goes on to talk about food for thought for 14 your conversation with Baird. Obviously referring to 15 a conversation expected between you and Baird. She 16 makes reference to the Bloomberg Foundation and 17 talking about whether someone should ask Baird about 18 financial support for the project and in particular 19 the EM. Can you tell me what that's referring to? 20 A. This is Corinne's email to me and I think she was 21 talking in some form about the Bloomberg Foundation 22 supporting Detroit efforts with the EM. And I think 23 -- I don't know if in this email or subsequently said 24 something along the lines of I don't want anything to 25 be extraordinary, but I think at that point -- as I</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. Who did you get a call from? 2 A. Steve Brogan. 3 Q. Okay, that's your managing partner? 4 A. Yes. 5 Q. And he told you that Baird wanted you to be the EM? 6 A. He told me that they had inquired whether I was 7 interested in applying to become the EM. 8 Q. Okay, and your response was? 9 A. No. 10 Q. Okay. And I take it there were further conversations? 11 A. Yes. That conversation was no. I did not want to 12 leave the firm and that we would tell them that. 13 Q. And did you have a conversation with Richard Baird 14 concerning the possibility of your becoming the EM on 15 or about this time frame at the end of January of 16 2013? 17 A. Yeah, I don't know if it was end of January, here 18 again being in February, but I recall having a 19 conversation with Rich Baird soon thereafter. 20 Q. Okay, let's look at the next document, which we'll 21 mark as Orr 2. 22 (Marked Exhibit No. 2.) 23 Q. What we've marked as Orr 2 is a document ending in 24 Bates number 303. 25 A. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 said, on the 31st, so it wasn't on the 30th, it was 2 the 31st -- that I wasn't interested in the job. 3 Q. Do you know what financial support she's referring to? 4 Did you have a conversation with her about this? 5 A. He we did not have a -- well, we may have had a 6 subsequent conversation about financial support. We 7 -- I don't want to speculate but there may have been a 8 conversation about supplementing the EM salary. 9 Q. An additional salary that would be funded privately? 10 Is that what you're saying? 11 A. Yeah, I think the statute allows the EM to have 12 additional compensation and that may have been what 13 this was referring to or it may have been about the 14 Bloomberg Foundation helping Detroit directly. I'm 15 not sure, but there may have been that discussion. 16 That seems to remind me of something along those 17 lines. 18 Q. The next statement from -- or the last sentence in 19 Ms. Ball's email says, I can ask Harry for contact 20 information. This kind of support in ways 21 nationalizes the issue in the project. 22 Do you have an understanding of what she's 23 referring to? 24 A. I do not. 25 Q. You don't know what she meant when she said -- she</p>



<p style="text-align: right;">Page 225</p> <p>1 said before, I think my family and I were out that</p> <p>2 preceding Friday, Saturday and Sunday and we actually</p> <p>3 ran into the governor's family coming onto the island</p> <p>4 I believe that Sunday so I don't think we had that</p> <p>5 meeting that week so it may have actually been the</p> <p>6 following week.</p> <p>7 Q. Meaning sometime during the week of July 15th?</p> <p>8 A. No, or the end of --</p> <p>9 Q. So it was during --</p> <p>10 A. -- the week of the 8th. The 8th. But I did not have</p> <p>11 a meeting with the governor that week.</p> <p>12 Q. Well --</p> <p>13 A. Now that I look at the calendar.</p> <p>14 Q. Okay.</p> <p>15 A. Okay.</p> <p>16 Q. So just to clarify, it appears more likely than not</p> <p>17 that you did not have a meeting between you and the</p> <p>18 governor the week of July 8th but your understanding</p> <p>19 is that during the week of July 8th, probably the</p> <p>20 latter part of that week, somebody on behalf of the</p> <p>21 Emergency Manager let the governor or the state know</p> <p>22 that you were drafting or starting to draft the July</p> <p>23 16th request and that you had concerns about the</p> <p>24 Flower s/Webster litigations?</p> <p>25 A. Yeah, and here again, I don't know if so much concerns</p>	<p style="text-align: right;">Page 227</p> <p>1 A. Yes, July 18th.</p> <p>2 Q. -- did Lamont Satchel have any meetings with the labor</p> <p>3 organizations?</p> <p>4 A. Do I know? I know that during this time the CBAs,</p> <p>5 some of the City's Collective Bargaining Agreements</p> <p>6 were expiring and I believe that Lamont did have</p> <p>7 meetings during that time not just related with that</p> <p>8 but with other issues as well.</p> <p>9 Q. During your prior testimony -- and I apologize for</p> <p>10 skipping around, but I don't want to duplicate what's</p> <p>11 already been done.</p> <p>12 A. That's okay.</p> <p>13 Q. You spoke about Jones Day doing a presentation or</p> <p>14 interview to the state back in January, the end of</p> <p>15 February.</p> <p>16 A. Yeah, the documents I was shown this morning would</p> <p>17 make it January.</p> <p>18 Q. And with whom did Jones Day meet at that time, who</p> <p>19 physically was in the room?</p> <p>20 A. Treasurer Dillon, then CFO Jack Martin, Rich Baird,</p> <p>21 Kriss Andrews, Ken Buckfire and one of his colleagues.</p> <p>22 Q. Any other outside consultants besides Miller Buckfire?</p> <p>23 A. Well, Rich Baird is on contract to the state, but I</p> <p>24 don't -- I think -- I don't recall if Ernst &amp; Young</p> <p>25 was there. There was a member of the financial</p>
<p style="text-align: right;">Page 226</p> <p>1 -- it wasn't like we were focused on Flowers/Webster,</p> <p>2 we were saying in the universe of the world that</p> <p>3 litigation, whatever name, and the Syncora struggle,</p> <p>4 were creating a situation that was untenable and</p> <p>5 threatening what we had wanted to do.</p> <p>6 Q. Lamont Satchel.</p> <p>7 A. Yes.</p> <p>8 Q. He's your -- what's his title?</p> <p>9 A. He is the, I believe, labor negotiator for the City.</p> <p>10 Q. And what's his scope of authority?</p> <p>11 A. His scope of authority initially as labor negotiator</p> <p>12 was to oversee, monitor and lead labor relationships</p> <p>13 with the City and its labor partners.</p> <p>14 Q. And to whom -- and who is his direct report?</p> <p>15 A. At this point Lamont's direct report -- well, it is --</p> <p>16 the org chart is being revised, but his direct report</p> <p>17 would have been to the chief operating officer.</p> <p>18 Q. And who was that?</p> <p>19 A. At that time it would have been Gary Brown.</p> <p>20 Q. And who is it today?</p> <p>21 A. It still goes through Gary Brown, but I am intimately</p> <p>22 involved with the process.</p> <p>23 Q. And do you know whether or not during the month of</p> <p>24 June prior and up through -- starting with June 1</p> <p>25 through July 18th --</p>	<p style="text-align: right;">Page 228</p> <p>1 advisory board.</p> <p>2 Q. Do you recall who that was?</p> <p>3 A. As soon as you said that, it went out of my head.</p> <p>4 Very, very sharp, as -- Ken -- Ken Whipple was there.</p> <p>5 I'm just going through the room. Andy, Ken Whipple,</p> <p>6 Jack Martin, Kriss Andrews, Rich Baird. That's all</p> <p>7 that I recall off the top of my head and Miller</p> <p>8 Buckfire and one of his colleagues.</p> <p>9 Q. And who was there from Jones Day?</p> <p>10 A. Aaron Agenbroad -- they were all partners. Aaron</p> <p>11 Agenbroad, Bruce Bennett, Heather Lennox, myself,</p> <p>12 Corinne Ball, Steve Brogan, and I think that was -- I</p> <p>13 think that was our team.</p> <p>14 Q. What was Aaron's last name again?</p> <p>15 A. Agenbroad, A-G-E-N-B-R-O-A-D.</p> <p>16 Q. What department is he in?</p> <p>17 A. Aaron Agenbroad is a partner in charge of the</p> <p>18 San Francisco office. He is in the labor.</p> <p>19 Q. He's in the labor group?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Corinne, all the rest of the attorneys on the team</p> <p>22 were bankruptcy?</p> <p>23 A. No. Bruce Bennett is in the bankruptcy group.</p> <p>24 Corinne Ball was in the bankruptcy group. Heather</p> <p>25 Lennox is in the structured finance and bankruptcy.</p>





# EXHIBIT 6-I

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - DETROIT

-----  
In re: Chapter 9  
CITY OF DETROIT, MICHIGAN, Case No. 13-53846  
Debtor, Hon. Steven W. Rhodes  
-----

V I D E O T A P E D D E P O S I T I O N O F

WITNESS: GOVERNOR RICHARD D. SNYDER

LOCATION: The Romney Building  
111 S. Capitol Avenue  
Lansing, Michigan

DATE: Wednesday, October 9, 2013  
8:38 a.m.

APPEARANCES:  
FOR PLAINTIFFS FLOWERS:

LAW OFFICE OF WILLIAM A. WERTHEIMER  
30515 Timberbrook Lane  
Bingham Farms, Michigan 48025  
248.644.9200  
billwertheimer@gmail.com  
BY: WILLIAM A. WERTHEIMER (P26275)

FOR INTERNATIONAL UNION, UAW:

COHEN, WEISS and SIMON, LLP  
330 West 42nd Street  
New York, New York 10036-6976  
212.563.4100  
pdechiara@cwsny.com  
BY: PETER D. DeCHIARA, ESQUIRE

FOR THE RETIREES COMMITTEE:

DENTONS US LLP  
1221 Avenue of the Americas  
New York, New York 10020-1089  
212.768.6881  
arthur.ruegger@dentons.com  
BY: ARTHUR H. RUEGGER, ESQUIRE

09:17:33 1 Q. From June 2012 through the present, does Jones Day  
09:17:43 2 provide any services or is it retained or an  
09:17:47 3 approved attorney for the State?

09:17:51 4 A. I don't know. My understanding is Jones Day's  
09:17:55 5 relationship is with the City of Detroit.

09:17:57 6 Q. Did you ever consider disqualifying either Jones Day  
09:18:03 7 or Kevyn Orr because Kevyn Orr was a partner at  
09:18:05 8 Jones Day?

09:18:06 9 A. They were separate processes. That the City of  
09:18:11 10 Detroit was making a determination to retain Jones  
09:18:14 11 Day, and they were making that through their own  
09:18:17 12 decision-making processes.

09:18:17 13 We were looking for candidates for  
09:18:21 14 emergency manager, and we specifically asked  
09:18:22 15 permission if we could contact Kevyn Orr and have  
09:18:25 16 that discussion. So I viewed them as separate  
09:18:26 17 discussions.

09:18:27 18 Q. Did you ever consider that the close relationship  
09:18:29 19 between Kevyn Orr and Jones Day created a conflict  
09:18:33 20 or appearance of conflict?

09:18:35 21 A. Kevyn Orr, part of the requirement was is he  
09:18:36 22 resigned as a partner and severed his ties with the  
09:18:39 23 firm as part of becoming emergency manager to avoid  
09:18:42 24 any conflict of interest.

09:18:43 25 Q. Well, were you concerned that he might be

# EXHIBIT 6-J

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - DETROIT

-----  
In re: Chapter 9  
CITY OF DETROIT, MICHIGAN, Case No. 13-53846  
Debtor, Hon. Steven W. Rhodes  
-----

V I D E O T A P E D D E P O S I T I O N O F

WITNESS: RICHARD BAIRD

LOCATION: Dickinson Wright, PLLC  
215 South Washington Street, Suite 200  
Lansing, Michigan 48933

DATE: Thursday, October 10, 2013  
1:56 p.m.

APPEARANCES:  
FOR PLAINTIFFS FLOWERS:

LAW OFFICE OF WILLIAM A. WERTHEIMER  
30515 Timberbrook Lane  
Bingham Farms, Michigan 48025  
248.644.9200  
billwertheimer@gmail.com  
BY: WILLIAM A. WERTHEIMER (P26275)

FOR INTERNATIONAL UNION, UAW:

COHEN, WEISS and SIMON, LLP  
330 West 42nd Street  
New York, New York 10036-6976  
212.563.4100  
pdechiara@cwsny.com  
BY: PETER D. DeCHIARA, ESQUIRE

FOR THE RETIREES COMMITTEE:

DENTONS US LLP  
1221 Avenue of the Americas  
New York, New York 10020-1089  
212.768.6881  
arthur.ruegger@dentons.com  
BY: ARTHUR H. RUEGGER, ESQUIRE

02:09:54 1 all, let me say that this was not a formal pitch.  
02:10:00 2 This meeting was set up to provide the City, the  
02:10:06 3 emergency -- I'm sorry, the program management  
02:10:08 4 director and the CFO with some parameters associated  
02:10:13 5 with what needs to be going into an RFP that had yet  
02:10:18 6 to be completed.

02:10:19 7 So this was simply bringing together a  
02:10:22 8 number of law firms with relevant experience to  
02:10:27 9 discuss things that the City should contemplate  
02:10:30 10 keeping in mind for a future RFP.

02:10:34 11 Q. Okay. Before I -- I have a -- I had asked you a  
02:10:38 12 question about what was said by the Jones Day  
02:10:41 13 people, but before I ask you that, let me ask you do  
02:10:44 14 you know whether Jones Day provided any services  
02:10:47 15 paid or unpaid or legal advice to the State prior --  
02:10:58 16 at any time prior to this meeting?

02:11:00 17 A. I don't know. I was not aware of any such services  
02:11:05 18 provided.

02:11:06 19 Q. Okay. All right. So what's the best of your  
02:11:08 20 recollection of what the Jones Day people said at  
02:11:12 21 the meeting?

02:11:12 22 A. Well, they went through this presentation.

02:11:15 23 Q. You're referring to Exhibit 1?

02:11:17 24 A. Exhibit 1.

02:11:17 25 Q. Okay.

# EXHIBIT 6-K

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
Debtor. . Detroit, Michigan  
September 19, 2013  
3:00 p.m.

. . . . .  
HEARING RE. MOTION BY OFFICIAL COMMITTEE OF RETIREES TO  
STAY DEADLINES AND THE HEARINGS CONCERNING A DETERMINATION  
OF ELIGIBILITY PENDING DECISION ON MOTION TO WITHDRAW THE  
REFERENCE; MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, AND  
SUB-CHAPTER 98, CITY OF DETROIT RETIREES' MOTION TO COMPEL  
TESTIMONY OF KEVYN ORR AND ALL OTHER CITY AND STATE WITNESSES  
REGARDING CITY-STATE COMMUNICATIONS PRIOR TO JULY 17, 2013  
BEFORE THE HONORABLE STEVEN W. RHODES  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day  
By: BRUCE BENNETT  
555 South Flower Street, Fiftieth Floor  
Los Angeles, CA 90071-2452  
(213) 243-2382

For the State of Dickinson Wright, PLLC  
Michigan: By: STEVEN G. HOWELL  
500 Woodward Avenue, Suite 4000  
Detroit, MI 48226-3425  
(313) 223-3033

For Official Dentons  
Committee of By: CLAUDE D. MONTGOMERY  
Retirees: 620 Fifth Avenue  
New York, NY 10020  
(212) 632-8390

For AFSCME, Lowenstein Sandler, LLP  
AFL-CIO, and Sub- By: SHARON L. LEVINE  
Chapter 98, City 65 Livingston Avenue  
of Detroit Roseland, NJ 07068  
Retirees: (973) 597-2374



1 eligibility that the UAW has filed and that other parties  
2 have filed in this case, so the scope of that exception is  
3 very critical because what -- it seems from our perspective  
4 that what is the common interest here is in shielding those  
5 discussions, in shielding those directions, in shielding the  
6 course of action that was decided upon.

7           Second point that I just wanted to briefly make is  
8 that this issue is not only with respect to a dozen questions  
9 that were raised at Mr. Orr's deposition. Reference was made  
10 earlier to document production in this case. Last Friday we  
11 received literally tens of thousands of pages of documents  
12 that were produced by the city on an expedited basis.  
13 Obviously we have not received a privilege log. One could  
14 not expect that. However, I would expect, based on the  
15 position that the city has taken, that that log is going to  
16 be very long and detailed indeed because we are certain that  
17 there are multiple documents, e-mail communications, memos,  
18 other things that would have passed between these parties  
19 that would be comprised by this, so it's not just a question  
20 of a discrete number of questions asked in a deposition. It  
21 really goes to the heart and soul of the eligibility  
22 objections that have been raised. Thank you.

23           THE COURT: Thank you.

24           MS. GREEN: I will also be brief. Jennifer Green on  
25 behalf of the General and Police and Fire Retirement Systems.

1 Speaking of the privilege log, there was a privilege log  
2 produced on Friday, September 13th. There were just under  
3 11,000 documents that are claimed to be privileged. Out of  
4 those 11,000 documents, we have so far determined that there  
5 are roughly 400 to 600 documents that they are claiming are  
6 protected by the common interest privilege.

7 On Monday, during Mr. Orr's deposition, the city  
8 appeared to limit this common interest privilege to -- and  
9 I'm going to quote from the deposition -- "what Mr. Orr has  
10 been doing since he became emergency manager where there was  
11 a common interest between the state and the emergency  
12 manager's office," and I believe today counsel limited it to  
13 that as well. And we all know the emergency manager was not  
14 appointed until March of 2013. The Chapter 9 proceeding  
15 obviously began in July of 2013. The privilege log, however,  
16 asserts the common interest privilege as far back as December  
17 15th of 2011, well before the emergency manager was ever  
18 appointed, and so that raises a concern about whether or not  
19 this privilege is being abused and whether it's being  
20 asserted too broadly.

21 Today in the papers filed by the city they have  
22 characterized the common interest between the city and the  
23 state as, quote, "they share a common interest in rectifying  
24 the financial emergency of the city," which may be a  
25 political or may be a commercial interest, but I don't think

1     that that's necessarily a legal interest that they share in  
2     common.

3             The other thing that's of concern is in the  
4     privilege log these communications are -- there are some that  
5     are without any counsel between -- it'll be, for instance,  
6     Andy Dillon, the state treasurer, or Richard Baird, who is  
7     not even a state employee. My understanding is he is a  
8     consultant who is -- has some sort of contract with either  
9     the State of Michigan or with the governor, and he's all of a  
10    sudden part of this common interest privilege, so that is our  
11    concern. And while we concur with AFSCME's motion and  
12    support the relief requested today, there may be another  
13    issue relating to these documents that may need to be raised  
14    with the Court at an appropriate time, and we would like to  
15    ask that today's ruling perhaps be without prejudice in case  
16    we need to file a motion to compel on the documents  
17    themselves. We would obviously like to raise the issue with  
18    the city. Perhaps we can work something out without having  
19    to involve the Court --

20            THE COURT: Okay.

21            MS. GREEN: -- before that. One last thing  
22    dovetailing with what the UAW mentioned. There is a Sixth  
23    Circuit case called Reed versus Baxter -- it's 134 F.3d 351,  
24    1998 case -- that talks about the need to prevent the abuse  
25    of the attorney-client privilege where it is a governmental

1 entity or a governmental actor that is asserting it. And in  
2 that case they say that courts and commentators have  
3 cautioned against broadly applying the privilege to  
4 governmental entities. The recognition of a governmental  
5 attorney-client privilege imposes the same costs as are  
6 imposed in the application of the corporate privilege but  
7 with an added disadvantage. The governmental privilege  
8 stands squarely in conflict with a strong public interest in  
9 open and honest government. And that's sort of what we face  
10 here is, you know, we have questions about decisions that  
11 were made the day of the filing, and we asked questions about  
12 were contingencies discussed, did you and the governor have a  
13 meeting on July 18th, and they said, "Well, counsel was  
14 there. We're not answering."

15 THE COURT: No, but pause there. Does that Sixth  
16 Circuit case impose any identifiable functional restriction  
17 on the attorney-client privilege in the context of a  
18 governmental officer claiming it?

19 MS. GREEN: In that case it was -- I believe there  
20 was a city council member and another officer of the city,  
21 and the Court said your legal interests were not identical.  
22 They were not aligned. And in this case, even if their  
23 political or maybe commercial interests were aligned, it's  
24 not necessarily clear that their legal interests were  
25 aligned, and that would be our objection.

# EXHIBIT 6-L

COHEN  
WEISS  
AND  
SIMON  
October 2, 2013<sup>LP</sup>

Thomas N. Ciantra, Partner  
Tel: 212.356.0228  
Fax: 646.473.8228  
Cell: 917.748.9423  
tciantra@cwsny.com  
www.cwsny.com

330 West 42nd Street • New York, NY 10036-6979

By E-mail

Bruce Bennett, Esq.  
Jones Day  
555 South Flower Street, 50<sup>th</sup> Floor  
Los Angeles, California 90071

Re: In re City of Detroit

Dear Mr. Bennett:

Pursuant to Local Rule 7.1 of the U.S. District Court for the Eastern District of Michigan and Local Bankruptcy Rule 9014-1(g), I write to advise that International Union, United Automobile Workers ("UAW") intends to file a motion to compel discovery of certain documents identified on the privilege log accompanying the City of Detroit's document production and to seek to narrow the potential issues or documents that would be involved in such a motion. Because of the exigent schedule, UAW requests that the City respond to this correspondence by October 7, 2013.

The City has withheld numerous documents under an assertion of a Common Interest privilege with the State of Michigan. In opposition to the motion of Michigan Council 25 of the American Federation of State, County and Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees' Motion To Compel Testimony of Kevyn Orr and All Other City and State Witnesses Regarding City-State Communications Prior To July 17, 2013 (the "AFSCME Motion"), the City and the State entered into a common interest agreement "at the time of the appointment of the Emergency Manager" (§10) and that "pursuant to PA 436, the City, acting through its Emergency Manager, and State share the same legal interest in 'rectify[ing] the financial emergency' and 'assur[ing] the fiscal accountability' of the City during the Emergency Manager's term of service." (§11).

The September 12, 2013 Common Interest Agreement recites that "on or around the appointment of the Emergency Manager" the City and State entered into a verbal common interest agreement. In its opposition to the AFSCME Motion, the City notes that "Mr. Orr was appointed to the position of "emergency financial manager" for the City by the Local Emergency Financial Assistance Loan Board created under the Emergency Municipal Loan Act, M.C.L. §§ 141.931-141.942, on March 15, 2013, pursuant to Public Act 72 of 1990 of the State of Michigan, also known as the Local Government Fiscal Responsibility Act, M.C.L. §§ 141.1201-141.1291. Mr. Orr formally took office as the emergency financial manager for the City under PA 72 on March 25, 2013."



Accordingly, and at a minimum, documents which antedate March 15, 2013, cannot be covered by the common interest privilege with the State that the City has asserted here. Yet, the privilege log produced with the documents identifies a number of documents dated before March 15, 2013, on which common interest privilege is asserted. UAW requests production of these documents, to wit:

PRIV0349	PRIV10606	PRIV7273	PRIV8825	PRIV8923
PRIV0405	PRIV10621	PRIV7274	PRIV8826	PRIV8924
PRIV0484	PRIV10629	PRIV7280	PRIV8841	PRIV8925
PRIV0565	PRIV10645	PRIV7283	PRIV8898	PRIV8926
PRIV10482	PRIV2930	PRIV7284	PRIV8900	PRIV8931
PRIV10483	PRIV2931	PRIV7287	PRIV8901	PRIV9732
PRIV10509	PRIV3401	PRIV7289	PRIV8902	PRIV9733
PRIV10544	PRIV7219	PRIV7571	PRIV8903	PRIV9749
PRIV10556	PRIV7220	PRIV7596	PRIV8904	PRIV9830
PRIV10557	PRIV7232	PRIV8784	PRIV8905	PRIV4959
PRIV10568	PRIV7242	PRIV8823	PRIV8906	
PRIV10592	PRIV7268	PRIV8824	PRIV8910	

Attachment A to this letter are the entries on the City's privilege log for the above items.

In addition, the City has claimed attorney-client privilege for a host of documents to or from Jones Day which antedate Jones Days' retention by the City of Detroit which we understand to have been March 11, 2013. The possible basis for the assertion of privilege in the case of these documents (most of which are dated 2012) is not clear and we would request their production:

PRIV2930	PRIV2931	PRIV5630	PRIV0414	PRIV0411	PRIV0408
PRIV0407	PRIV9749	PRIV0405	PRIV0399	PRIV0400	PRIV0397
PRIV0398	PRIV0395	PRIV9745	PRIV0394	PRIV0386	PRIV0388
PRIV0378	PRIV0380	PRIV0381	PRIV0382	PRIV0383	PRIV9742
PRIV0375	PRIV0376	PRIV0377	PRIV0373	PRIV9739	PRIV9740
PRIV0369	PRIV0370	PRIV0371	PRIV0372	PRIV9738	PRIV0359
PRIV0348	PRIV0349	PRIV0565	PRIV0566	PRIV0344	PRIV0342
PRIV0335	PRIV0340	PRIV0339	PRIV9731	PRIV0333	PRIV5755
PRIV5968	PRIV9726	PRIV0321	PRIV0322	PRIV9719	PRIV9720
PRIV5698	PRIV5710	PRIV0267	PRIV0523	PRIV0524	PRIV5662
PRIV5663	PRIV5664	PRIV5665	PRIV0308	PRIV0310	PRIV5658
PRIV5660	PRIV0521	PRIV0519	PRIV0520	PRIV0517	PRIV0505
PRIV0506	PRIV0507	PRIV0508	PRIV0509	PRIV0511	PRIV0512
PRIV0513	PRIV0514	PRIV5656	PRIV0301	PRIV0302	PRIV0303
PRIV0304	PRIV0305	PRIV0306	PRIV0307	PRIV9692	PRIV0298
PRIV0502	PRIV5652	PRIV0297	PRIV0494	PRIV0496	PRIV0497

Bruce Bennett, Esq.  
October 2, 2013  
Page 3

COHEN  
WEISS  
AND  
SIMON  
LLP

PRIV0498	PRIV0499	PRIV0555	PRIV0551	PRIV0553	PRIV5649
PRIV5650	PRIV0296	PRIV0493	PRIV9672	PRIV9685	PRIV4890
PRIV0277	PRIV5637	PRIV9661	PRIV9664	PRIV9667	PRIV9660

Attachment B to this letter are the entries on the City's privilege log for the above items.

With respect to a number of other documents identified on the privilege log where common interest privilege is asserted there is insufficient detail for UAW to determine whether the privilege is properly invoked. With respect to the following, no attorney is identified in connection with the document:

PRIV0020	PRIV3012	PRIV4334	PRIV7284	PRIV8416
PRIV0081	PRIV3084	PRIV4335	PRIV7287	PRIV8417
PRIV0086	PRIV3118	PRIV4336	PRIV7289	PRIV8418
PRIV0093	PRIV3142	PRIV4338	PRIV7516	PRIV8419
PRIV0224	PRIV3144	PRIV4403	PRIV7523	PRIV8420
PRIV0458	PRIV3165	PRIV4406	PRIV7524	PRIV8450
PRIV0732	PRIV3185	PRIV4407	PRIV7525	PRIV8530
PRIV0979	PRIV3208	PRIV4423	PRIV7540	PRIV8531
PRIV0980	PRIV3210	PRIV4424	PRIV7566	PRIV8532
PRIV0981	PRIV3211	PRIV4427	PRIV7567	PRIV8542
PRIV10423	PRIV3236	PRIV4461	PRIV7569	PRIV8543
PRIV10635	PRIV3276	PRIV4490	PRIV7674	PRIV8544
PRIV10636	PRIV3332	PRIV6275	PRIV7679	PRIV8567
PRIV10637	PRIV3333	PRIV6483	PRIV7813	PRIV8636
PRIV10730	PRIV3368	PRIV6569	PRIV7814	PRIV8647
PRIV10767	PRIV3415	PRIV6601	PRIV8005	PRIV8664
PRIV10800	PRIV3428	PRIV6645	PRIV8006	PRIV8664
PRIV10801	PRIV3460	PRIV7121	PRIV8152	PRIV8666
PRIV10802	PRIV3602	PRIV7165	PRIV8153	PRIV8667
PRIV10803	PRIV3765	PRIV7173	PRIV8220	PRIV8668
PRIV10804	PRIV3795	PRIV7221	PRIV8223	PRIV8694
PRIV10805	PRIV3798	PRIV7228	PRIV8390	PRIV8695
PRIV10848	PRIV3979	PRIV7234	PRIV8391	PRIV8696
PRIV1351	PRIV3981	PRIV7242	PRIV8393	PRIV8713
PRIV1527	PRIV3991	PRIV7247	PRIV8405	PRIV8823
PRIV2315	PRIV4022	PRIV7248	PRIV8406	PRIV8825
PRIV2316	PRIV4066	PRIV7253	PRIV8407	PRIV8826
PRIV2317	PRIV4079	PRIV7260	PRIV8411	PRIV8890
PRIV2744	PRIV4183	PRIV7267	PRIV8412	PRIV8894
PRIV2750	PRIV4230	PRIV7268	PRIV8413	PRIV8900
PRIV2944	PRIV4233	PRIV7274	PRIV8414	PRIV8901
PRIV2982	PRIV4266	PRIV7283	PRIV8415	PRIV8902





Bruce Bennett, Esq.  
October 2, 2013  
Page 4

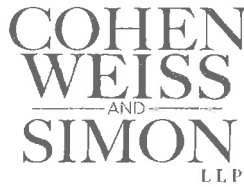


PRIV8903	PRIV8905	PRIV8907	PRIV9018	PRIV9442
PRIV8904	PRIV8906	PRIV8932	PRIV9355	

Attachment C to this letter are the entries on the City's privilege log for the above items.

With respect to the following documents no source or recipient of the document is identified:

PRIV0088	PRIV10627	PRIV8637
PRIV0089	PRIV10628	PRIV8639
PRIV0090	PRIV10631	PRIV8648
PRIV0094	PRIV10632	PRIV8650
PRIV0094	PRIV1955	PRIV8699
PRIV0450	PRIV2697	PRIV8700
PRIV0451	PRIV2698	PRIV8785
PRIV0484	PRIV3060	PRIV8824
PRIV10454	PRIV3401	PRIV8895
PRIV10500	PRIV3417	PRIV8954
PRIV10509	PRIV4416	PRIV8955
PRIV10510	PRIV5371	PRIV9443
PRIV10518	PRIV5372	PRIV9733
PRIV10519	PRIV6131	PRIV9750
PRIV10523	PRIV6139	
PRIV10524	PRIV6232	
PRIV10526	PRIV6315	
PRIV10527	PRIV6390	
PRIV10545	PRIV6984	
PRIV10546	PRIV7148	
PRIV10553	PRIV7225	
PRIV10554	PRIV7505	
PRIV10563	PRIV7571	
PRIV10564	PRIV7602	
PRIV10566	PRIV7680	
PRIV10567	PRIV8008	
PRIV10597	PRIV8339	
PRIV10598	PRIV8399	
PRIV10599	PRIV8431	
PRIV10600	PRIV8432	
PRIV10612	PRIV8433	
PRIV10613	PRIV8534	
PRIV10614	PRIV8535	
PRIV10625	PRIV8537	
PRIV10626	PRIV8538	



Bruce Bennett, Esq.  
October 2, 2013  
Page 5

Attachment D to this letter are the entries on the City's privilege log for the above items. In some of these cases the document description notes that it discusses or contains a privileged communication but it does not identify the participants in that communication. In such cases we would ask that the attorney involved be identified and the documents be produced redacting the material the City contends is privileged.

Our review of the privilege log has been complicated by the fact that while the City has produced a number of documents with redactions, it has not cross referenced the Bates number on the production to the item numbers on the privilege log. Thus, it is not clear (in many cases) the bases for the redaction. Please provide us with a log with the necessary cross-references.

I look forward to reviewing your response.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas N. Ciantra".

Thomas N. Ciantra

TNC:vlf  
Enclosures

# EXHIBIT 6-M

<p>1 UNITED STATES BANKRUPTCY COURT 2 EASTERN DISTRICT OF MICHIGAN 3 SOUTHERN DIVISION 4 -----X 5 IN RE ) Chapter 9 6 CITY OF DETROIT, MICHIGAN, ) Case No. 13-53846 7 Debtor. ) Hon. Steven W. Rhodes 8 -----X 9 10 11 CONTINUED VIDEOTAPED DEPOSITION of 12 KEYVN D. ORR 13 Volume II 14 Washington, D.C. 15 Friday, October 4, 2013 16 17 18 Pages: 308 - 496 19 Reported by: Cindy L. Sebo, RMR, CSR, RPR, CRR, 20 CCR, CLR, RSA 21 Assignment Number: 14008 22 File Number: 105824</p>	<p>Page 308</p> <p>1 APPEARANCES: 2 3 JONES DAY 4 For the Debtor: 5 51 Louisiana Avenue, Northwest 6 Washington, D.C. 20001-2113 7 202.879.3939 8 BY: GREGORY M. SHUMAKER, ESQUIRE 9 gshumaker@jonesday.com 10 BY: DAN T. MOSS, ESQUIRE 11 dtmoss@jonesday.com 12 13 DENTONS US LLP 14 For the Retirees Committee: 15 1221 Avenue of the Americas 16 New York, New York 10020-1089 17 212.632.8342 18 BY: ANTHONY B. ULLMAN, ESQUIRE 19 anthony.ullman@dentons.com 20 21 22</p> <p>Page 310</p>
<p>1 October 4, 2013 2 11:11 a.m. 3 4 5 Continued Videotaped Deposition of KEYVN D. 6 ORR held at the law offices of: 7 8 9 Jones Day 10 51 Louisiana Avenue, Northwest 11 Washington, D.C. 20001 12 13 14 15 16 Pursuant to notice, before Cindy L. Sebo, 17 Registered Merit Reporter, Certified Shorthand 18 Reporter, Registered Professional Reporter, 19 Certified Real-Time Reporter, Certified Court 20 Reporter, Certified LiveNote Reporter, Real-Time 21 Systems Administrator, a Notary Public in and for 22 the District of Columbia.</p>	<p>Page 309</p> <p>1 APPEARANCES (Continued): 2 3 LOWENSTEIN SANDLER LLP 4 For the AFSCME: 5 65 Livingston Avenue 6 Roseland, New Jersey 07068 7 973.597.2374 8 BY: SHARON L. LEVINE, ESQUIRE 9 slevine@lowenstein.com 10 11 COHEN, WEISS AND SIMON LLP 12 For the United Auto Workers Union: 13 330 West 42nd Street 14 New York, New York 10036-6979 15 212.356.0216 16 BY: PETER D. DECHIARA, ESQUIRE 17 pdechiara@cwsny.com 18 19 20 21 22</p> <p>Page 311</p>

Page 480

1 A. Okay.  
2 Q. Okay.  
3 And then the other question I have  
4 for you -- this is referring to the unfunded  
5 pension liability --  
6 A. Um-hum.  
7 Q. -- you're also familiar with the  
8 medical benefits for retirees --  
9 A. Yes.  
10 Q. -- the health -- and I think that's  
11 sometimes referred to as OPEB?  
12 A. Yes, other [sic] employee benefits.  
13 Q. Okay. And for the OPEB is -- are --  
14 is the -- is the situation similar that some  
15 amount of the total OPEB liability that the City  
16 faces is allocable to sources other than the  
17 general fund?  
18 A. You -- you know, I think it is; but  
19 I'm not recalling that mechanism as well as I  
20 recall the pension mechanism, but I think it is.  
21 Q. Okay. And would then some portion of  
22 the total OPEB unfunded liability be allocable

Page 481

1 also to the Department of Water and Sewer to their  
2 retirees?  
3 A. It might well be, but I'd need to  
4 confirm that.  
5 Q. Okay. And have you done any analysis  
6 of that question?  
7 A. Yes --  
8 Q. Okay.  
9 A. -- well, our contractors have done an  
10 analysis of the question.  
11 Q. Okay. And who specifically has done  
12 an analysis of that?  
13 A. Oh, I think our team at -- the entire  
14 team: Conway MacKenzie, Ernst & Young,  
15 Miller Buckfire.  
16 Q. And do you recall their general  
17 conclusions to what percentage of the total  
18 unfunded OPEB liability is allocable to the -- A,  
19 to the Department of Water of Sewer; or, B, some  
20 other fund or entity apart from the general fund?  
21 A. I'm -- I'm not -- I don't recall if  
22 it is, and I don't recall the percentage.

Page 482

1 MR. ULLMAN: Okay. Could I ask for  
2 any documents relating to that to be produced,  
3 Greg?  
4 MR. SHUMAKER: You can certainly put  
5 that in writing and look into it. I'm pretty sure  
6 that that has already been produced, but we'll  
7 certainly look into it.  
8 MR. ULLMAN: Okay.  
9 I don't believe I have anything else,  
10 so --  
11 THE WITNESS: Okay.  
12 MR. ULLMAN: -- anything further  
13 from -- no.  
14 MR. DECHIARA: I think Jennifer  
15 Green.  
16 MR. ULLMAN: Jennifer, are you there?  
17 MS. GREEN: No.  
18 MR. ULLMAN: Okay.  
19 MS. GREEN: My turn?  
20 MR. ULLMAN: Yeah, if you are  
21 ready -- if you have questions and you want to go.  
22 MS. GREEN: I literally have a

Page 483

1 handful. Very quickly.  
2 MR. ULLMAN: Go -- go ahead. I'm  
3 done.  
4 Thank you very much, Mr. Orr.  
5 THE WITNESS: Thank you very much,  
6 Mr. Ullman.  
7 Hello, Jennifer -- hello, Ms. Green.  
8 - - -  
9 EXAMINATION (CONTINUED) BY COUNSEL FOR  
10 GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT AND  
11 THE POLICE AND FIRE RETIREMENT SYSTEM OF THE  
12 CITY OF DETROIT  
13 - - -  
14 BY MS. GREEN:  
15 Q. Hi, how are you?  
16 A. Just fine.  
17 Q. You began acting as emergency manager  
18 as of March 26th, and Jones Day was hired to  
19 represent the City after you became emergency  
20 manager, correct?  
21 A. The relationship was formalized after  
22 I became emergency manager, yes.

Page 484

1 Q. Are you saying there was an informal  
2 relationship before then?  
3 A. No. As -- as I said before today,  
4 the -- the question of when the attorney-client  
5 privilege attaches isn't necessarily based upon  
6 just a formalization of a relationship; it's based  
7 upon one of confidence and reposed and -- and a  
8 relationship is accepted. An exact date of that,  
9 I don't know sitting here today from a legal  
10 perspective.  
11 Q. Can you tell me, from your view as  
12 emergency manager, was the firm of Jones Day  
13 acting as legal representation -- giving legal  
14 representation to the City prior to your being  
15 appointed EM on March 26th?  
16 A. I don't -- I don't know.  
17 I -- as I testified earlier today, I  
18 recused myself from that process, so I don't know  
19 when that relationship arose.  
20 Q. Well, let me ask you this: You  
21 worked at Jones Day, and you worked on the pitch  
22 materials, correct?

Page 485

1 A. Yes.  
2 Q. And so you were involved with the  
3 process of the pitch and the PowerPoint?  
4 A. Yes; but that was in early -- that  
5 was in late January and early February, sometime  
6 in February, and I think the e-mails have been  
7 discussed in my prior deposition.  
8 I -- I pulled myself out of that  
9 process, it was in early February prior to the  
10 meeting we discussed today. So I don't know what  
11 happened after I recused myself.  
12 Q. I understand that. I understand  
13 that.  
14 But what I'm saying is, the pitch  
15 that occurred, you were not acting as legal  
16 counsel when you did the pitch, right?  
17 A. No, no, we were not --  
18 Q. Okay.  
19 A. -- we were soliciting becoming legal  
20 counsel.  
21 Q. Exactly.  
22 So at least it was some point after

Page 486

1 the pitch, correct?  
2 A. Yes.  
3 Q. And similar to that, Jones Day was  
4 never hired by the State of Michigan at any point  
5 for any sort of representation, correct?  
6 MR. SHUMAKER: Object to the form:  
7 Foundation.  
8 THE WITNESS: Yeah, I think I  
9 testified earlier today -- I said earlier today,  
10 I -- I don't know if Jones Day has ever  
11 represented the State of Michigan, but -- but with  
12 regard to this matter, I don't -- I don't know of  
13 Jones Day representing the State of Michigan other  
14 than --  
15 BY MS. GREEN:  
16 Q. Okay.  
17 A. -- through my office.  
18 Q. So in 2011 and in 2012, and prior to  
19 spring of 2013, you have no knowledge of there  
20 being any attorney-client relationship between  
21 Jones Day and the State of Michigan, correct?  
22 A. I have no knowledge.

Page 487

1 Q. Okay.  
2 And, certainly, I would assume if you  
3 were preparing pitch materials in a PowerPoint,  
4 where you were pitching Jones Day to the State and  
5 to the City, you would've, I assume, included any  
6 prior representation of the City and the State,  
7 correct?  
8 MR. SHUMAKER: Objection: calls for  
9 speculation.  
10 THE WITNESS: Calls for speculation,  
11 that's what I was going to say.  
12 It -- you know, I -- I don't know.  
13 It would be speculative on my part to say that --  
14 that it may or may not included it. We -- I would  
15 like to think that we -- before the retention, I  
16 would like to think that any law firm would have  
17 run a conflicts check.  
18 I'm not sure whether or not that  
19 would have been included in the pitch material.  
20 BY MS. GREEN:  
21 Q. Well, during the pitch, was there any  
22 point where any of the Jones Day attorneys that

# EXHIBIT 6-N

**Green, Jennifer K.**

---

**From:** Green, Jennifer K.  
**Sent:** Saturday, October 05, 2013 10:47 AM  
**To:** gshumaker@jonesday.com  
**Subject:** Privilege Log Issue  
**Attachments:** 3631\_001.pdf

Greg:

Pursuant to our telephone conversation on October 3, 2013, I am writing to request copies of certain documents where the work product and attorney-client privilege were asserted on the privilege log produced by the City of Detroit. I have received and reviewed the letter dated October 2, 2013 from Thomas Ciantra from Cohen Weiss and Simon, LLP, and I concur in full with the points raised by Mr. Ciantra and hereby request production of the same documents. Furthermore, Mr. Orr's testimony was quite clear yesterday that Jones Day was not acting as legal counsel to the City of Detroit at any time prior to the spring of 2013—regardless of whether it was acting in that capacity at some point after Mr. Orr was appointed on March 26, 2013 but before Jones Day's formal retention on April 23, 2013. At a minimum, Mr. Orr admitted that Jones Day was not representing the City at the time it was in the process of pitching its services to the City. If there was no attorney-client *relationship*, then there is obviously no concomitant attorney-client *privilege*. In addition, there has been no testimony that Jones Day served as legal counsel for the State of Michigan at any time. Yet, there are numerous documents on the privilege log dating as far back as 2005 where the work product and attorney-client privileges were asserted as a basis to withhold documents involving Jones Day attorneys. Since it is undisputed that there was no attorney-client relationship until the spring of 2013 at the earliest, we request the documents identified on the attached privilege log be produced immediately. I marked the documents that fall into this category with a check mark next to them. This is not to say that I am ignoring the other problematic documents that may be objectionable for other reasons (such as documents where no attorney is listed on the document whatsoever or where the document allegedly "reflects" attorney-client communications but has not been produced in an even partially-redacted form). Rather, because there is no dispute regarding the applicability of the privilege during this time frame, I am requesting that these be produced immediately.

Finally, there are numerous documents where Guarov Malholtra and James Doak are listed as attorneys (there is an asterisk next to their name) and the attorney-client privilege is claimed. My understanding from Mr. Malholtra's deposition (page 115, specifically) is that he is not a lawyer. While Mr. Doak does have a law degree, if Mr. Doak was acting in his capacity as a financial advisor for Miller Buckfire and not as an attorney, then those documents are not privileged merely because an individual with a law degree took part in the communication. Please produce all of the documents where this discrepancy appears, as well.

As outlined in Mr. Ciantra's letter, there are hundreds (if not thousands) of documents where there is no attorney listed as either authoring or receiving the document, yet attorney-client privilege is being claimed. If we do not have a satisfactory response by October 7, we will have no choice but to file a motion to compel these records and seek an *in camera* review of the records that you have refused to produce. Please feel free to email or call if you have any questions. I look forward to speaking with you soon. I am hopeful that we can resolve this short of court interference.

Jen

**Jennifer K. Green**

CLARK HILL PLC



500 Woodward Ave | Suite 3500 | Detroit, Michigan 48226  
313.965.8274 (direct) | 313.309.6944 (fax) | 248.321.8525 (cell)  
[igreen@clarkhill.com](mailto:igreen@clarkhill.com) | [www.clarkhill.com](http://www.clarkhill.com)

# EXHIBIT 6-O

# JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001-2113  
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

October 7, 2013

## BY FIRST CLASS MAIL

Thomas N. Ciantra  
Cohen Weiss and Simon  
330 West 42nd Street  
New York, New York 10036-6979

Re: City of Detroit

Dear Mr. Ciantra:

In our letter yesterday, we informed you that we would get you the results of our analysis of the documents you categorized as Exhibit D documents in your letter of October 2, 2013, as soon as possible. This letter provides the results of that analysis.

### **Exhibit D Documents**

Your letter describes these documents as having no source or recipient listed on the privilege log.

The following Exhibit D documents have already been produced:

3417 - DTMI00211376-380	8537 - DTMI00203327-3328
8538 - DTMI00203329-3348	10518 - DTMI00150711-0855
10519 - DTMI00150856-1012	10553 - DTMI00151050-1071
10554 - DTMI00151072-1213	8824 - DTMI00234951-4956

We are preparing the following Exhibit D documents for production, and no longer claim any privilege with respect to these documents.

0094	0484	5371	5372	6131	3401
5317	5372	6984	7225	7505	7680
8008	8534	8535	8648	8650	8699
8700	8895	8954	8955	9443	9733
10500	10509	10510	10523	10524	10526
10527	10545	10546	10563	10564	10566
10567	10598	10599	10600	10612	10613
10614	10625	10626			

The City of Detroit is asserting attorney-client privilege, but not the common interest privilege, with respect to the Exhibit D documents listed in the chart that follows. We have provided additional information when available, as well as identified corrections to the privilege log.

ALKHOBAR • ATLANTA • BEIJING • BOSTON • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS • DUBAI  
FRANKFURT • HONG KONG • HOUSTON • IRVINE • JEDDAH • LONDON • LOS ANGELES • MADRID • MEXICO CITY  
MILAN • MOSCOW • MUNICH • NEW DELHI • NEW YORK • PARIS • PITTSBURGH • RIYADH  
SINGAPORE • SPAIN • ST. LOUIS • SYDNEY • TAIPEI • TOKYO • WASHINGTON • WILMINGTON • ZURICH

<b>PRIV Number</b>	<b>Additional Information/Comments</b>
0450	The privilege log erroneously reflects no date or author for this document. This draft report is dated 05/29/2013, and was authored by Jones Day. Reference to the parent email, PRIV 449, will reflect the lawyers and advisors involved with this document.
0451	The privilege log erroneously reflects no date or author for this document. This draft report is dated 05/29/2013, and was authored by Jones Day. Reference to the parent email, PRIV 449, will reflect the lawyers and advisors involved with this document.
1955	The privilege log erroneously reflects no author for this document. The author is Oliver S. Zeltner, a Jones Day lawyer. Reference to the parent email, PRIV 1953, will reflect the lawyer this document was sent to.
2697	The privilege log erroneously reflects no author for this document. The author is Oliver S. Zeltner, a Jones Day attorney. Reference to the parent email PRIV 2696, will reflect the lawyer this document was sent to.
2698	The privilege log erroneously reflects no author for this document. The author is Oliver S. Zeltner, a Jones Day attorney. Reference to the parent email 2696, will reflect the lawyer this document was sent to.
6139	The privilege log erroneously reflects no author or date for this document. This document is dated 02/07/2013, and was authored by Michael McGee and Richard Warren of Miller Canfield.
6232	The privilege log erroneously reflects no author for this document. This document was authored by Jones Day.
6315	The privilege log erroneously reflects no author for this document. This document was authored by Jones Day.
6390	The privilege log erroneously reflects no author for this document. This draft letter was authored by John Willems of Miller Canfield.
10454	The privilege log erroneously reflects no author or date for this document. The author is Cadwalader, a firm that does not represent the City. However, the document reflects comments by Miller Canfield. The date of the document is 03/02/2013.

With respect to the Exhibit D documents listed in the chart that follows, the City of Detroit is asserting both attorney-client privilege and common interest privilege. Errors in the privilege log as well as additional information about the documents are listed below.

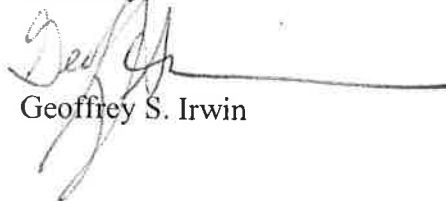
<b>PRIV Number</b>	<b>Additional Information/Comments</b>
0088	The privilege log erroneously reflects no author for this document. This draft presentation was created by Ernst & Young for Jones Day, and was shared with Michigan state officials. Reference to the parent email, PRIV 0087, reflects the attorneys and Michigan state officials involved with this document.
0089	The privilege log erroneously reflects no author for this document. This draft presentation was authored by Jones Day. Reference to the parent email, PRIV 0087, reflects the attorneys and Michigan state officials involved with this document.
0090	The privilege log erroneously reflects no author for this document. This draft presentation was authored by Jones Day, and was shared with Michigan state officials. Reference to the parent email, PRIV 0087, reflects the attorneys and Michigan state officials involved with this document.
3060	The privilege log erroneously reflects no author for this document. This draft report was drafted by Jones Day. Reference to the parent email, PRIV 3058, reflects the attorneys and Michigan state officials involved with this document.
7148	The privilege log erroneously reflects no author, recipient or cc's for this email. The document is an email string among Brom Stibitz, a Michigan state official, Shani Penn, Jeff Ellman*, Laura Bassett* and Michael McGee.* CCs include K. Orr, A. Dillon, T. Saxton, and G. Tedder (the last three are Michigan officials)
8339	The privilege log erroneously reflects no author for this document. The author is Daniel Moss of Jones Day. Although the document is not dated, the parent email, PRIV 8338, reflects a date of 05/09/2013, and also reflects that the original email to which this document was attached was sent to Greg Tedder, a Michigan state official.
8399	The privilege log erroneously reflects no author for this document. The author is Ernst & Young. Reference to the parent email, PRIV 8398, reflects the lawyers and

PRIV Number	Additional Information/Comments
	Michigan state officials, involved with this document.
8431	The privilege log erroneously reflects no author or date for this document. The date is 04/25/2013, and the author is Ernst & Young. Reference to the parent email, PRIV 8429, reflects the lawyers and Michigan officials involved with this document.
8432	The privilege log erroneously reflects this document as undated. It is dated 04/26/2013. Reference to the parent email, PRIV 8429, reflects the lawyers and Michigan officials involved with this document.'
8433	The privilege log erroneously reflects this document as undated. It is dated 04/26/2013. Reference to the parent email, PRIV 8429, reflects the lawyers and Michigan officials involved with this document.

The City of Detroit is still assessing its position with respect to privileges applicable to the following documents: 7571, 8637, 8639, 8785, 8824. We will get back to you shortly on those documents.

In addition, we produced one document, PRIV 4416 – DTMI00209362, that we request you destroy all copies of, pursuant to the terms under which we produced these documents, because it is a privileged document, authored by a Jones Day attorney.

Sincerely,



Geoffrey S. Irwin

# EXHIBIT 6-P

**Green, Jennifer K.**

---

**From:** Geoffrey S Irwin <gsirwin@JonesDay.com>  
**Sent:** Tuesday, October 08, 2013 7:41 PM  
**To:** Green, Jennifer K.  
**Subject:** Fw: In re City of Detroit, Michigan, Case No 13-53846  
**Attachments:** DOC012.PDF

Here is the second letter on the Cohen Weiss requests, with additional documents to follow tomorrow.

We are still working our way through the documents on your list that were not covered by Cohen Weiss. I hope to be able to provide more info on that tomorrow.

Geoff



**Geoffrey S. Irwin • Partner**

Washington Office • 51 Louisiana Ave. NW • Washington, DC 20001-2113  
Direct: 202.879.3768 • Fax: 202.626.1700 • [gsirwin@jonesday.com](mailto:gsirwin@jonesday.com)

----- Forwarded by Geoffrey S Irwin/JonesDay on 10/08/2013 07:39 PM -----

**From:** [sboyce@jonesday.com](mailto:sboyce@jonesday.com)  
**To:** [slevine@lowenstein.com](mailto:slevine@lowenstein.com), [wjung@lowenstein.com](mailto:wjung@lowenstein.com), [pgross@lowenstein.com](mailto:pgross@lowenstein.com), [bceccotti@cwsny.com](mailto:bceccotti@cwsny.com), [pdechiara@cwsny.com](mailto:pdechiara@cwsny.com), [pellis@cwsny.com](mailto:pellis@cwsny.com),  
[lbrimer@strobpc.com](mailto:lbrimer@strobpc.com), [mtaunt@strobpc.com](mailto:mtaunt@strobpc.com), [mfield@strobpc.com](mailto:mfield@strobpc.com), [eerman@ermanteicher.com](mailto:eerman@ermanteicher.com), [czucker@ermanteicher.com](mailto:czucker@ermanteicher.com),  
[bpatek@ermanteicher.com](mailto:bpatek@ermanteicher.com), [rgordon@clarkhill.com](mailto:rgordon@clarkhill.com), [sdeebv@clarkhill.com](mailto:sdeebv@clarkhill.com), [jgreen@clarkhill.com](mailto:jgreen@clarkhill.com), [efeldman@clarkhill.com](mailto:efeldman@clarkhill.com),  
[charlesidelsohnattorney@yahoo.com](mailto:charlesidelsohnattorney@yahoo.com), [gneal@sidley.com](mailto:gneal@sidley.com), [gsirwin@jonesday.com](mailto:gsirwin@jonesday.com), [mlhale@jonesday.com](mailto:mlhale@jonesday.com), [dtmoss@jonesday.com](mailto:dtmoss@jonesday.com),  
**Date:** 10/08/2013 07:16 PM  
**Subject:** In re City of Detroit, Michigan, Case No 13-53846

---

Counsel:

Please see attached.

File(s) will be available for download until **18 October 2013**:

File: 2013.10.08 Ltr. to Counsel re transmittal of document production.pdf, 51.92 KB [Fingerprint: ddf258666167de00f48f08f2ea8d8f53]

File: DTMI008.zip, 135,800.43 KB [Fingerprint: 8b537ce83fa7793aba56b1cbad8e3b8a]

You have received attachment link(s) within this email sent via Jones Day's Secure File Transfer (powered by Accellion). To retrieve the attachment(s), please click on the link(s).

By clicking on any of the links above, you agree that the following terms and conditions govern your access and use of this site. You acknowledge and agree that the materials and information made available to you via this site ("Content") may be protected by the attorney-client privilege and/or the attorney work-product doctrine and



that you will maintain the appropriate level of confidentiality for all such Content. You are responsible for all actions taken by you while logged into this site. Jones Day, to the fullest extent permitted by law, disclaims all warranties and liability related to this site and the Content. In no event shall Jones Day be liable for any damages whatsoever arising from, relating to, or resulting from your use of or inability to use this site or the Content. You covenant not to institute any claim, action or suit against Jones Day relating to, or resulting from your use of or inability to use this site or the Content.

To learn how your company can benefit from Accellion Secure File Transfer, please visit

<http://www.accellion.com>.

[Accellion File Transfer](#)

=====

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

=====

# JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113  
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

October 8, 2013

## *Via Electronic Mail*

Sharon L. Levine  
Wojciech F. Jung  
Philip J. Gross  
LOWENSTEIN SANDLER LLP  
65 Livingston Avenue  
Roseland, New Jersey 07068  
Tel.: (973) 597-2500  
Fax: (973) 597-2400  
E-mail: [slevine@lowenstein.com](mailto:slevine@lowenstein.com)  
E-mail: [wjung@lowenstein.com](mailto:wjung@lowenstein.com)  
E-mail: [pgross@lowenstein.com](mailto:pgross@lowenstein.com)

Lynn M. Brimer  
Meredith E. Taunt  
Mallory A. Field  
STROBL & SHARP, P.C.  
300 East Long Lake Road, Suite 200  
Bloomfield Hills, MI 48304-2376  
Tel.: (248) 540-2300  
Fax: (248) 645-2690  
E-mail: [lbrimer@stroblpc.com](mailto:lbrimer@stroblpc.com)

Robert D. Gordon  
Shannon L. Deeby  
Jennifer K. Green  
Evan J. Feldman  
CLARK HILL PLC  
151 South Old Woodward Avenue  
Suite 200  
Birmingham, Michigan 48009  
Tel.: (248) 988-5882  
Fax: (248) 988-2502  
E-mail: [rgordon@clarkhill.com](mailto:rgordon@clarkhill.com)

Charles Bruce Idelsohn  
P.O. Box 856  
Detroit, MI 48231  
Tel.: (586) 450-0128  
Fax: (248) 827-4106  
E-mail: [charlesidelsohnattorney@yahoo.com](mailto:charlesidelsohnattorney@yahoo.com)

Earle I. Eрман  
Craig E. Zucker  
Barbara A. Patek  
ERMAN, TEICHER, MILLER, ZUCKER  
& FREEDMAN, P.C.  
400 Galleria Officentre  
Suite 444  
Southfield, MI 48034  
Tel.: (248) 827-4100  
Fax: (248) 827-4106  
E-mail: [bpatek@ermanteicher.com](mailto:bpatek@ermanteicher.com)

Babette A. Ceccotti  
Peter D. DeChiara  
ATTN: Peter Ellis  
COHEN, WEISS AND SIMON LLP  
330 West 42nd Street  
25<sup>th</sup> Floor  
New York, New York 10036-6976  
Tel.: (212) 563-4100  
Fax: 212-695-5436  
E-mail: [bceccotti@cwsny.com](mailto:bceccotti@cwsny.com)  
E-mail: [pdechiera@cwsny.com](mailto:pdechiera@cwsny.com)

Anthony B. Ullman  
DENTONS  
221 Avenue of the Americas  
New York, NY 10020-1089  
United States  
Tel.: (212) 768 6700  
Fax: (212) 768 6800  
E-mail: [anthony.ullman@dentons.com](mailto:anthony.ullman@dentons.com)

October 8, 2013  
Page 2

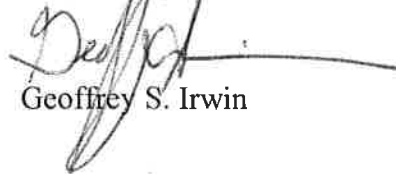
**Re:** *In re: City of Detroit, Michigan*, Case No. 13-53846  
(E.D. Mich. Bankr.)

Counsel:

Enclosed please find the October 8, 2013 supplemental production of documents by the City of Detroit (the "City") in response to your August 23, 2013 requests for the production of documents. The inadvertent production of any documents protected by the work product doctrine, common interest doctrine, the attorney-client privilege or any other applicable privilege shall not be deemed a waiver or impairment of any claim of privilege, immunity or other rights the City might assert.

The City reserves the right to supplement its production as necessary.

Very truly yours,



Geoffrey S. Irwin

# EXHIBIT 6-Q

**Green, Jennifer K.**

---

**From:** Green, Jennifer K.  
**Sent:** Saturday, October 12, 2013 11:40 PM  
**To:** gshumaker@jonesday.com  
**Cc:** Deeby, Shannon L.; Gallagher, Sean P.  
**Subject:** Production Issue

Greg:

Apologies for reaching out to you over the weekend, but given the schedule over the next few weeks, I did not want to wait until Monday to raise this issue and waste another day. Upon review of the documents produced last Tuesday, we noticed that there are certain emails where the attachments were not produced. I assume this was merely an oversight. For example, in one email (Bates numbered DTMI00233349), there are numerous memos listed, including (i) "a summary and comparison of PA 4 and Chapter 9," (ii) "Memoranda on Constitutional Protections for Pension and OPEB Liabilities," and (iii) "Analysis of Filing requirements of section 109(c)(5) of Bankruptcy Code ("Negotiation is Impracticable" and "Negotiated in Good Faith"). Can you please provide copies of these memos to us ASAP? Thanks. See you next week.

Jen

**Jennifer K. Green**

CLARK HILL PLC

500 Woodward Ave | Suite 3500 | Detroit, Michigan 48226  
313.965.8274 (direct) | 313.309.6944 (fax) | 248.321.8525 (cell)  
[jgreen@clarkhill.com](mailto:jgreen@clarkhill.com) | [www.clarkhill.com](http://www.clarkhill.com)

# EXHIBIT 6-R

**Deeby, Shannon L.**

---

**From:** Geoffrey S Irwin <gsirwin@JonesDay.com>  
**Sent:** Tuesday, October 15, 2013 10:49 PM  
**Cc:** slevine@lowenstein.com; wjung@lowenstein.com; pgross@lowenstein.com; bceccotti@cwsny.com; pdechiara@cwsny.com; anthony.ullman@dentons.com; lbrimer@strobipc.com; mtaunt@strobipc.com; mfield@strobipc.com; eerman@ermanteicher.com; czucker@ermanteicher.com; bpatek@ermanteicher.com; Gordon, Robert D.; Deeby, Shannon L.; Green, Jennifer K.; Feldman, Evan J.; charlesidelsonnattorney@yahoo.com; Gregory Shumaker  
**Subject:** City of Detroit

Ms. Green:

I am in receipt of your email on Saturday night to Greg Shumaker regarding privilege claims. As to your general question regarding the production of attachments, each document in the review is analyzed as a stand-alone document for privilege purposes, unless there are circumstances in the cover email or attachment which would make the attachment privileged or work product in the context of the entire collection of documents (for example, the cover email reflects that the markings on the attachment are from an attorney; or the cover email is forwarding a set of documents and requesting attorney advice with respect to those documents). Each document on the privilege log, whether a parent email or an attachment, is designated with its own number, and when counsel sends us a request to produce a document on the privilege log with reference to a specific number, we analyze that document alone, not that document and all the attachments. Of course, the log also reflects if the document is a parent or attachment, to aid you in determining the relationship between the documents. The bottom line is that we did not analyze the privileged status of the documents that you did not request that we analyze, whether they were parents or attachments. Another reason we proceed in this way is that if we assume you are challenging the privileged status of all of the attachments to a document, it increases the time it takes to respond to your request, perhaps needlessly, if you have no intention of challenging the privileged status of the attachment.

The example you provided is a case in point (DTMI002333348-3349). This document has eight attachments. Based on your request that we produce those attachments, we have gone back and reviewed the status of the attachments. The attachments to this email, and the email itself, are all privileged. To the extent any of this email and any of its attachments have previously been inadvertently produced, we request that you return or destroy them pursuant to the reservation of rights regarding the inadvertent production of any documents protected by the work product doctrine, common interest doctrine, the attorney-client privilege or any other applicable privilege.

We will address the status of each of the parent email, as well as each attachment, as they are described at the bottom of the parent email:

(1) Email dated 06/05/2012 from Thomas A. Wilson to Heather Lennox; cc to Corinne Ball, and Jeffrey Ellman. This email appears as PRIV 9731 on our first privilege log, and 2677 on our second privilege log, and the attorney-client privilege is claimed for this document. After further investigation, we believe that this document is shielded from production by the work product doctrine. The document was inadvertently produced at DTMI002333348, and we request its return or destruction.

(2) Document listed as "NYI\_4399007\_4\_Detroit\_Memo Re Public Act 4 and Chapter 9.DOCX." This

document was listed on our first privilege log as PRIV 5621, and on our second privilege log as PRIV 2678. Both the attorney-client and work product doctrine were claimed with respect to this document. After further investigation, we believe that this document is shielded from production by the work product doctrine. The document has not been produced.

(3) Document \_1933683\_13\_Detroit - Memorandum Analyzing Various Aspects of Proposed DWSD Transaction.DOCX." This document was listed on our first privilege log as PRIV 1199, PRIV 9732, PRIV 1204, and PRIV 9681, and on our second privilege log as PRIV 2618. The attorney-client privilege was claimed, as well as the common legal interest doctrine. After further investigation, we believe that this document is shielded from production by the work product doctrine. It was inadvertently produced at DTMI00233350-3404, and we request its return or destruction.

(4) Document listed as "CLI\_1934731\_6\_Detroit - Cover Memo for DWSD Transaction Memo.DOCX." This document was listed on our first privilege log as PRIV 1201, PRIV 1205, PRIV 5625, and on our second privilege log as PRIV 2680. Both attorney-client privilege and the work product doctrine were claimed for this document. After further investigation, we believe that this document is shielded from production by the work product doctrine. It has not been produced.

(5) Document listed as "ATI\_2484061\_2\_City of Detroit - Memo on Michigan Constitutional OPEB Protections.DOC." This document was listed on our first privilege log as PRIV 5708 and on our second privilege log as PRIV 0077, and PRIV 2681, and attorney-client privilege was claimed. After further investigation, we believe that this document is shielded from production by the work product doctrine. It has not been produced.

(6) Document listed as ATI\_2483523\_2\_City of Detroit - Memo on Michigan Constitutional Pension Plan Protections.DOC." This document was listed on our first privilege log as PRIV 5709 and PRIV 5627, and on our second privilege log as PRIV 0076 and PRIV 2682. Both attorney-client privilege and the work product doctrine were claimed. After further investigation, we believe that this document is shielded from production by the work product doctrine. It has not been produced.

(7) Document listed as "CLI\_1933048\_2\_Detroit - Establishing Tri County Authority.DOCX." This document was listed on our first privilege log as PRIV 0482, PRIV 0563, and PRIV 0628 and on our second privilege log as PRIV 2683, PRIV 2619 and PRIV 0139. Claims of both attorney-client privilege and the work product doctrine were claimed. After further investigation, we believe that this document is shielded from production by the work product doctrine. It has not been produced.

(8) Document "Detroit - Seidman Email Memos.pdf." This document was listed on our first privilege log as PRIV 9733, PRIV 5630, PRIV 0399, and on our second privilege log as PRIV 2685. The attorney-client privilege was claimed. On further investigation, we believe that this document is shielded from production by the work product doctrine. It was inadvertently produced at DTMI00233405-3406, DTMI100233441-3442, and DTMI00234872-4873, and we request its return or destruction.

(9) Document "Ability of Various Entities to Enter into Interlocal Agreement.pdf." This document was listed on our first privilege log as PRIV 0564, and PRIV 5629, and on our second privilege log as PRIV 2620 and PRIV 2684. Both the attorney-client privilege and the work product doctrine, as well as the common interest doctrine were claimed. On further investigation, we believe that this document is shielded from production by the work product doctrine. It has not been produced.

Thank you.



Geoff Irwin



**Geoffrey S. Irwin • Partner**

---

Washington Office • 51 Louisiana Ave. NW • Washington, DC 20001-2113  
**Direct:** 202.879.3768 • **Fax:** 202.626.1700 • [gsirwin@jonesday.com](mailto:gsirwin@jonesday.com)

=====  
This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.  
=====