

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

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

**MOTION OF SYNCORA GUARANTEE INC.
AND SYNCORA CAPITAL ASSURANCE INC.
FOR AUTHORITY TO ISSUE DOCUMENT AND
DEPOSITION SUBPOENAS TO THE DEBTOR, THE EMERGENCY
MANAGER, AND CERTAIN OF THE DEBTOR’S ADVISORS PURSUANT
TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004**

Syncora Guarantee Inc. and Syncora Capital Assurance Inc. (collectively, “Syncora”) in their respective capacity as insurer and direct holder of certain of the certificates of participation of the City of Detroit (the “City”) and as insurers of the City’s swaps entered into on account of the certificates (the “Swaps”), hereby files this motion for entry of an order (a) directing the City to produce documents identified on Exhibit A on or before November 1, 2013, or by such other date as the Court orders, in the manner and format in which those documents are maintained in the City’s records¹ and (b) authorizing Syncora to examine the City on November 7, 2013, or such other date as the Court orders, regarding (i) the

¹ To the extent any of the documents listed on Exhibit A are kept or are available in electronic format, Syncora requests that the Order require such documents to be produced in native and original electronic format. Moreover, to the extent the City maintains financial records in electronic format, the Trustee requests that the Order require those files to be provided in one of the following formats: Microsoft Excel, Microsoft Access, or CSV (Comma Delimited Text).

process the City employed to solicit, review, negotiate, and make determinations, as well as the substance of the City's negotiations, analyses, and decision making, about all proposals from third-party financing sources, including creditors of the City (collectively, the "Potential DIP Lenders"), submitted to the City for debtor in possession financing and (ii) the nature and substance of the City's communications with the City Council regarding the Barclays' DIP (as defined herein), including the City's compliance with PA 436, including as identified on Exhibit A (the "Rule 2004 Discovery"). In support of this motion, Syncora states as follows:

Background

1. On July 18, 2013, the City filed a voluntary petition for relief in the United States Bankruptcy Court for the Eastern District of Michigan (the "Court") under chapter 9 of title 11 of the United States Code (the "Bankruptcy Code").

2. On July 18, 2013, the City filed its *Motion for Entry of an Order (I) Authorizing the Assumption of that Certain Forbearance and Optional Termination Agreement Pursuant to Section 365(a) of the Bankruptcy Code, (II) Approving Such Agreement Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, and (III) Granting Related Relief* [Docket No. 17] (the "Settlement Motion").

3. The City solicited from Potential DIP Lenders proposals for debtor in possession financing (“DIP Proposals”) that would be used in part to finance the termination of the Swaps contemplated under the Forbearance and Optional Termination Agreement in the event the Settlement Motion is granted.

4. On August 29, 2013, the City sent Syncora a request for a DIP Proposal. Contemporaneously, the City sent a request for DIP Proposals to other Potential DIP Lenders. The stated deadline for submitting DIP Proposals to the City was September 16, 2013.²

5. On September 7, 2013, Syncora submitted a DIP Proposal to the City’s representatives. Syncora and the City discussed the proposal on September 9, 2013. The City ultimately rejected the proposal.

6. On October 3, 2013, Syncora sent a revised DIP Proposal to the City’s representatives. On various occasion since October 3, 2013, Syncora has expressed to the City, through its advisors, its willingness for Syncora and the City to arrive at a beneficial DIP Proposal for the City, including one that addressed the pending litigation among Syncora and the City.

7. In various conversations between the City and Syncora, the City has stated that it received multiple DIP Proposals from Potential DIP Lenders, including from key creditors of the City. On October 7, 2013, the City and

² NTD: Was deadline extended? If so, when did we get notice?

Barclays Capital Inc. (“Barclays”) reached an agreement on the material terms of a DIP Proposal.

8. On October 11, 2013, the City’s emergency manager (the “EM”) posted on the EM’s website proposed order number 17 approving a DIP Proposal provided by Barclays (the “Barclays’ DIP”). Attached to proposed order number 17 were certain of the terms of the Barclays’ DIP. Notably, two of the three term sheets referenced in the Barclays’ DIP were not disclosed, nor were any commitment or fee letters that exist.

9. After requesting from the City the missing term sheets and any commitment or fee letters that exist, the City turned over one of the missing term sheets but declined to provide the other requested materials. The City subsequently indicated that no term sheet existed for the Replacement Swap Transaction referenced in the Barclays’ DIP term sheet attached to proposed order number 17 despite the discussion of such a transaction therein. Additionally, notwithstanding Syncora’s additional requests to procure the missing information from the City, even on a confidential or redacted basis, the City continues to refuse to disclose the information. To appropriately and comprehensively evaluate the terms of the Barclays’ DIP, including the value it provides the City (both on a stand alone basis and in comparison to other DIP Proposals submitted to the City), its impact on Syncora’s rights, and its compliance with the Bankruptcy Code, it is

necessary to examine the full terms of the Barclays' DIP, including those terms contained in ancillary documents such as additional term sheets, commitment or fee letters, and all other DIP Proposals submitted to the City.

Jurisdiction and Notice

10. Syncora brings this motion pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Rules").

11. The Court has jurisdiction over this motion under 28 U.S.C. § 1334(b). The motion is a core proceeding under 28 U.S.C. § 157(b)(2).

Relief Requested

12. Syncora seeks entry of an order, substantially in the form attached hereto as Exhibit 1, authorizing Syncora to issue document and deposition subpoenas to the Debtor, the EM, and certain of the Debtor's advisors. This authority shall not waive the right of the Debtor or any person to object to, or move to quash, such subpoena.

Basis for Relief Requested

13. Rule 2004(a) provides that "[o]n motion of any party in interest, the court may order the examination of any entity." Under Rule 2004, a party in interest may seek both documents and oral discovery related to "acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter

which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Rule 2004(b), (c).

14. "The purpose of a Rule 2004 examination is to assist a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, examining transactions and assessing whether wrongdoing has occurred." *In re Cardinal Fastener & Specialty Co., Inc.*, 2013 WL 425858, at *5 (Bankr. N.D. Ohio Feb. 4, 2013); *see also In re Lufkin*, 255 B.R. 204, 208 (Bankr. E.D. Tenn. 2000) (finding that the purpose of Rule 2004 is to "determine the condition, extent, and location of the debtor's estate in order to maximize distribution to unsecured creditors"); *In re Almatris*, No. 10-12308, 2010 WL 4877868, at *3 (Bankr. S.D.N.Y. Nov. 24, 2010) (noting that "the purpose of a Rule 2004 examination is to assist a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, examining transactions and assessing whether wrongdoing has occurred"); *In re Countrywide Home Loans, Inc.*, 384 B.R. 373, 400 (Bankr. W.D. Pa. 2008) (inquiry into any matter that may affect the administration of the estate "comfortably falls within the allowed limits under Rule 2004").

15. Unlike discovery under the Federal Rules of Civil Procedure, discovery under Rule 2004 can be used as a "pre-litigation discovery device." *In re Wilson*, No. 07-11862, 2008 WL 304672, at *5 (Bankr. E.D. La. Feb. 6, 2009).

Further, “no contested matter or adversary proceeding need be instituted as a prerequisite to conducting an examination under this rule.” *In re Almatris*, 2010 WL 4877868, at *3. Consequently, a Rule 2004 motion need not be tied to specific factual allegations at issue between parties. *In re Symington*, 209 B.R. 678, 683 (Bankr. D. Md. 1997) (Rule 2004 permits “examination of any party without the requirement of a pending adversary proceeding or contested matter”).

16. The scope of a Rule 2004 examination is broader than that of discovery under the Federal Rules of Civil Procedure. *In re DeShetler*, 453 B.R. 295, 302 (Bankr. S.D. Ohio 2011) (“The scope of examination permitted pursuant to Rule 2004 is wider than that allowed under the Federal Rules of Civil Procedure and can legitimately be in the nature of a ‘fishing expedition.’”). Courts have thus recognized that Rule 2004 examinations may be “extremely broad.” *In re Davis*, 452 B.R. 610, 618 (Bankr. E.D. Mich. 2011).

17. The decision whether to authorize the requested discovery rests within the discretion of the bankruptcy court. *See e.g., In re Hammond*, 140 B.R. 197, 200 (Bankr. S.D. Ohio 1992).

18. Courts in other jurisdictions have approved relief similar to the relief requested in this motion for 2004 discovery of parties in a chapter 9 proceeding. *In re City of San Bernardino, Cal.*, Case No. 12-28806 (Bankr. C.D. Cal. Jan. 15,

2013); *In re Jefferson Cnty, Ala.*, Case No. 11-05736 (Bankr. N.D. Ala. Jan. 27, 2012).

19. Syncora's requested relief is well within the scope of Rule 2004. In light of the City's track record of negotiating deals with select parties to the detriment of creditors generally, an Syncora specifically, and the City's lack of disclosure regarding its DIP process to date, Syncora requires the requested discovery to evaluate the process by which the City solicited, reviewed, negotiated, and made determinations, as well as the substance of the City's negotiations, analyses, and decisions making, about all DIP Proposals and the nature and substance of the City's communications with the City Council regarding the Barclays' DIP, including the City's compliance with PA 436.

Conclusion

20. For the foregoing reasons, Syncora respectfully requests that the Court grant this motion.

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Dated: October 23, 2013

/s/ Ryan Blaine Bennett

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Guarantee Inc., and Syncora Capital Assurance
Inc.*

Exhibit 1
Proposed Order

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

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

**ORDER AUTHORIZING SYNCORA GUARANTEE INC.
AND SYNCORA CAPITAL ASSURANCE INC.
TO ISSUE DOCUMENT AND DEPOSITION
SUBPOENAS TO THE DEBTOR, THE EMERGENCY
MANAGER, AND CERTAIN OF THE DEBTOR’S ADVISORS
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004**

Upon consideration of the motion (the “Motion”)¹ of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. (collectively, “Syncora”) for entry of an order (this “Order”) pursuant to rule 2004 of the Federal Rules of Bankruptcy Procedure authorizing the Rule 2004 Discovery, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the Motion (the “Hearing”); and upon consideration

¹ Capitalized terms used but otherwise not defined herein shall have the meaning set forth in the Motion.

of the record of the Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor, its creditors, and other parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted in its entirety as set forth herein.
2. The Debtor is directed to produce those documents identified on Exhibit A on or before November ____, 2013 in the manner and format in manner and format in which those documents are maintained in the City's records.
3. Syncora is authorized to examine the City on November ____, 2013 regarding the process the City employed to solicit, review, negotiate, and make determinations, as well as the substance of the City's negotiations, analyses, and decision making, about all DIP Proposals submitted to the City and the nature and substance of the City's communications with the City Council regarding the Barclays' DIP, including the City's compliance with PA 436.
4. Syncora may file additional motions seeking authority to obtain discovery under Rule 2004 from other entities or individuals.

5. This Court shall retain jurisdiction to resolve any disputes arising from or related to this Order, and to interpret, implement, and enforce the provisions of this Order.

IT IS SO ORDERED.

STEVEN W. RHODES
United States Bankruptcy Judge

Exhibit A

DEFINITIONS

- A. The term “City” means Detroit, Michigan.
- B. The term “EM” means the emergency manager of the City appointed pursuant to PA 436.
- C. The term “DIP Solicitation Process” means the process undertaken by the City and its advisors to request and solicit proposals from Potential DIP Lenders for a DIP Loan.
- D. The term “DIP Loan” means the debtor in possession financing sought by the City through the DIP Solicitation Process.
- E. The term “DIP Negotiation” means the conversations, negotiations, and interactions with parties participating in the DIP Solicitation Process intended to lead to an acceptable proposal for a debtor in possession financing facility.
- F. The term “PA 436” means Michigan Public Act 436 of 2012.
- G. The term “PA 436 Compliance Process” means the steps taken by the City, the City’s advisors, and the EM to comply with section 19(2) of PA 436, which requires the EM, before authorizing the borrowing of money, to submit the terms of the proposed borrowing of money to the governing body of the local government, which shall then have 10 days from the date of submission to approve or disapprove the borrowing.

H. The term “Detroit Post Petition Financing Term Sheet” means the proposed term sheet circulated by the City to Potential DIP Lenders in connection with the DIP Solicitation Process.

I. The term “Potential DIP Lender(s)” means those parties to whom the Detroit Post Petition Financing Term Sheet was circulated.

J. The term “Document(s)” shall be interpreted in the broad and liberal sense and means written, typed, printed, recorded, graphic, or photographic matter or any other medium upon which intelligence or information can be recorded, stored, or retrieved, however produced or reproduced, of any kind and description, and whether an original, master, duplicate, or copy, including, but not limited to, paper, notes, accounts, books, journals, advertisements, catalogs, manuals, publications, correspondence, cablegrams, mailgrams, telegrams, memoranda, letters, documents, communications, including interoffice and intra-office communications, reports, studies, analyses, pamphlets, calculations, projections, contracts, charts, graphs, plans, specifications, drawings, sketches, surveys, agreements, working papers, corporate records, minutes of committee meetings, books of account, ledger books, notebooks, vouchers, bank checks, cashier’s checks, receipts for cashier’s check, canceled checks, check stubs, bills, receipts, invoices, delivery tickets, bills of lading, time sheets, desk calendars, appointment books, log books, diaries, diary entries, photographs, microfilm, microfiche, and

notes, minutes, transcriptions, or sound recordings of any conversations, negotiations, meetings, or conferences, conducted either in person or by telephone, or things similar to any of the foregoing, and all other papers, writings, or physical things containing information, including data compilations from which information can be obtained by detection devices, and including preliminary drafts of or marginal notes appearing on any document, however denominated or described.

K. The terms “and” and “or” shall be construed conjunctively or disjunctively as necessary to make each particular request inclusive rather than exclusive.

L. The term “relating to” means in whole or in part and directly or indirectly relating to, pertaining to, connected with, concerning, commenting on, referring to, responding to, showing, evidencing, describing, analyzing, regarding, reflecting, or constituting.

INSTRUCTIONS

1. All documents should be produced in the manner and format in which they are kept. Thus, to the extent any of the Documents listed below are kept or available in electronic format, such Documents should be produced in their native and original electronic format. Moreover, to the extent financial records are maintained in electronic format, those files should be provided in one of the

following formats: Microsoft Excel, Microsoft Access, or CSV (Comma Delimited Text).

2. These requests encompass all documents in the Debtor's possession, custody, or control, whether or not such documents were prepared by or for the Debtors. Where documents in the Debtor's possession, custody, or control are requested or inquired of, such request or inquiry includes documents in the possession, custody, or control of each of the Debtor's employees, agents, accountants, attorneys, auditors, representatives, consultants, advisors, all other persons or entities acting or purporting to act on behalf of the Debtor, and any other persons or entities from which the Debtor could obtain documents.

3. If the Debtor contends that no documents exist relating to all or part of a request, the Debtor shall state this contention and respond as fully as possible to all parts of the request for which documents exist.

4. If the Debtor claims that any privilege or protection excuses production of any document or part thereof, the Debtor must expressly make such claim in writing and provide a general description of the categories of documents being withheld and the basis for doing so, sufficient in detail for Syncora to determine whether there is an adequate basis for invoking privilege or protection.

5. In the event that any document covered hereunder has been destroyed, discarded, or lost, the Debtors shall inform the Committee of this in writing and

provide a general description of the categories of documents destroyed or lost and the circumstances of their destruction or loss.

6. If any document cannot be produced in full, it shall be produced to the maximum extent possible and the Debtors shall specify in writing the reasons for their inability to produce the remainder.

7. Each document is to be produced with all non-identical copies and drafts thereof in their entirety without abbreviation or redaction (other than for a claim of privilege consistent with the Instructions herein).

8. Unless stated otherwise, the time period applicable to the Documents called for is from [DATE], through the date of the document requests, subject to the Debtors' ongoing obligation to supplement responses under the applicable rules.

MATTERS UPON WHICH TESTIMONY IS REQUIRED

Syncora requires testimony from the City's identified witness or witnesses regarding each of the topics identified in the following document requests.

A. **DIP SOLICITATION PROCESS:** The following Documents relating to the DIP Solicitation Process:

1. All Documents relating to any communication between the City, the City's advisors, the EM, or any other individual or entity regarding the need and/or purported uses for the DIP Loan.

2. All Documents and communication relating to the terms of the Detroit Post Petition Financing Term Sheet that was circulated to Potential DIP Lenders.

3. All Documents containing any opinion, study, inspection, or analysis of the necessity of the DIP Loan.

4. All Documents relating to, supporting, or explaining any changes in the Detroit Post Petition Financing Term Sheet before it was circulated to Potential DIP Lenders.

B. **DIP NEGOTIATION:** The following Documents relating to the DIP Negotiation:

5. All Documents and communication relating to the terms of any DIP Proposal.

6. All Documents and communications relating to, supporting, or explaining the City's reasoning for pursuing or not pursuing negotiations with a Potential DIP Lender, including any analysis of the perceived economic, political, or social benefits or drawbacks of any DIP Proposal.

7. All Documents and communication relating to, supporting, or explaining any changes made to the DIP Proposals after their initial submission by the Potential DIP Lenders.

8. All Documents and communication relating to the Barclay's DIP.

C. PA 436 COMPLIANCE PROCESS: The following Documents relating to the City's compliance with PA 436 relating to the DIP Loan:

9. All Documents sent to the City Council relating to the Barclays' DIP.
10. All Documents and communication between the City, its advisors, and the City Council relating to the process by which the City negotiated with Potential DIP Lenders, evaluated the DIP Proposals, and selected the Barclays' DIP.
11. All Documents and communication between the City, its advisors, and the City Council relating to the substance of the City's negotiations, analyses, and decision making about all DIP Proposals, including the Barclays' DIP.
12. All Documents and communication between the City, its advisors, and the City Council regarding the merits and perceived benefits of the Barclays' DIP.

Exhibit 2

Notice of Motion and Opportunity to Object

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

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

**NOTICE OF THE MOTION OF SYNCORA GUARANTEE
INC. AND SYNCORA CAPITAL ASSURANCE
INC. FOR AUTHORITY TO ISSUE DOCUMENT AND
DEPOSITION SUBPOENAS TO THE DEBTOR, THE EMERGENCY
MANAGER, AND CERTAIN OF THE DEBTOR’S ADVISORS
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004**

PLEASE TAKE NOTICE that on October 23, 2013, Syncora Guarantee Inc. and Syncora Capital Assurance Inc. (together “Syncora”) filed the *Motion of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. for Authority to Issue Document and Deposition Subpoenas to the Debtor, the Emergency Manager, and Certain of the Debtor’s Advisors Pursuant to Federal Rule of Bankruptcy Procedure 2004* (the “Rule 2004 Motion”) in the United States Bankruptcy Court for the Eastern District of Michigan (the “Bankruptcy Court”) seeking entry of an order authorizing Syncora to issue document and deposition subpoenas to the Debtor, the emergency manager, and certain of the Debtor’s advisors to obtain additional information regarding the process and substance of soliciting, negotiating, and approving proposals for debtor in possession financing.

PLEASE TAKE FURTHER NOTICE that **your rights may be affected by the relief sought in the Rule 2004 Motion. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.**

PLEASE TAKE FURTHER NOTICE that if you do not want the Bankruptcy Court to grant Syncora’s Rule 2004 Motion, or you want the

Bankruptcy Court to consider your views on the Rule 2004 Motion, by **October 25, 2013 at 4:00 p.m. (EDT)** you or your attorney must:¹

1. File with the court a written response to the Rule 2004 Motion, explaining your position explaining your position with the Bankruptcy Court electronically through the Bankruptcy Court's electronic case filing system in accordance with the Local Rules of the Bankruptcy Court or by mailing any objection or response to:²

United States Bankruptcy Court
Theodore Levin Courthouse
231 West Lafayette Street
Detroit, MI 48226

You must also serve a copy of any objection or response upon:

James H.M. Sprayregen, P.C.
Ryan Blaine Bennett
Stephen C. Hackney
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
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- and -

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¹ Concurrently herewith, Syncora is seeking expedited consideration and shortened notice of the Rule 2004 Motion. If the Court grants such expedited consideration and shortened notice, Syncora will file and serve notice of the new response deadline.

² A response must comply with F. R. Civ. P. 8(b), (c) and (e).

2. If an objection or response is timely filed and served, the clerk will schedule a hearing on the Rule 2004 Motion and you will be served with a notice of the date, time and location of the hearing.

PLEASE TAKE FURTHER NOTICE that if you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the Rule 2004 Motion and may enter an order granting such relief.

Dated: October 23, 2013

Respectfully submitted,

KIRKLAND & ELLIS LLP

By: /s/ Ryan Blaine Bennett

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*Attorneys for Syncora Guarantee Inc. and
Syncora Capital Assurance Inc.*

Exhibit 3

None [Brief Not Required]

Exhibit 4

None [Separate Certificate of Service to be Filed]

Exhibit 5
Affidavits
[Not Applicable]

Exhibit 6

**Documentary Exhibits
[Not Applicable]**