

**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
SYNCORA GUARANTEE INC.,	)	
	)	
Plaintiff,	)	Adv. Proc. No. _____
	)	
v.	)	
	)	
UBS AG, SBS FINANCIAL	)	
PRODUCTS COMPANY, LLC, and	)	
MERRILL LYNCH CAPITAL	)	
SERVICES, INC.	)	
	)	
Defendants.	)	
	)	

**OBJECTION OF PLAINTIFF SYNCORA GUARANTEE INC.  
TO DEBTOR’S MOTION FOR ENTRY OF AN ORDER ESTABLISHING  
PRE-TRIAL AND TRIAL PROCEDURES AND  
SETTING ADDITIONAL HEARINGS**

Syncora Guarantee Inc. (“Syncora”) files this objection to *Debtor’s Motion for Entry of an Order Establishing Pre-Trial and Trial Procedures and Setting Additional Hearings* (Dkt. 1788). In support of its objection, Syncora respectfully states as follows:

## **PRELIMINARY STATEMENT**

1. By its motion (the “City Motion”), the City of Detroit (the “City”) seeks to expedite this Court’s consideration of Syncora Guarantee Inc.’s state law action (the “Action”) against non-debtor defendant banks over the parties’ respective rights under New York contracts (the “Swap Agreements”) that were negotiated and executed seven years before the City’s bankruptcy.

2. The City contends that its eve of bankruptcy entry into the Forbearance Agreement (as defined below) effectively overrides Syncora’s consent rights. After confirming the automatic stay did not apply, Syncora properly filed the Action in New York state court on July 24, 2013; the defendant banks then removed the Action to federal court in New York, then transferred the Action to the District Court for the Eastern District of Michigan (the “District Court”), and filed a motion to dismiss there.

3. The City chose not to intervene in New York, then sought to intervene and to refer the Action to this Court. The District Court did not rule on any substantive matters and instead permitted the automatic reference to the Bankruptcy Court pursuant to Local Rule 83.50(a)(1) for consideration by this Court. The City is neither a party to the contracts at issue in this Action nor a party to the Action itself. Simply stated, the rights of the City are not at issue in the Action.

4. As a threshold matter, the City lacks standing to seek a scheduling order in an action to which it is not a party. While the City has filed a motion to intervene in the Action, no court, either in New York or Michigan, has found that the City has satisfied its burden of showing that it has a legally sufficient interest in the Action that the defendant banks do not adequately represent.

5. Even if the City did have standing, however, as this Court has previously recognized, the Action does not need to be considered concurrently with the City's motion to assume the Forbearance and Optional Termination Agreement (the "Forbearance Agreement"). This is because, on its face, the Action pertains only to the rights of Syncora and the Banks, *inter se*, under the Swap Agreements and related contracts, not to the City's rights under the Forbearance Agreement.

6. Moreover, given the present posture of the Action, it is not yet ripe for adjudication. In order for the issues in dispute to be heard on a complete record, as Syncora previously notified the Banks and the District Court, Syncora is prepared to file its motion for summary judgment, and will do so once the Action is docketed before the Bankruptcy Court. The interests of judicial efficiency are therefore best served by scheduling a single hearing in the Action after the parties have had the opportunity to fully brief plaintiff's motion for summary judgment.

7. Despite filing the Action in July, Syncora has yet to have one

substantive hearing on the merits of its claims. Rather, in order to delay resolution of the merits of the Action, obfuscate the straightforward issues in dispute and deprive Syncora of its choice of forum (a forum set forth in the underlying agreements), the Banks and the City have engaged in procedural ping-pong tactics as they moved this Action from three different courts. While any one of those courts could have entered a final order in the Action, this Court may not do so, thereby causing further delay in the ultimate resolution of the Action.

8. To the extent the City claims prejudice from such delay, its litigation gamesmanship tactics in New York and in the District Court are to blame.<sup>1</sup> Because the Action is in federal court on mere “related to” grounds, under 28 U.S.C. § 157(c) and the Supreme Court’s decision in *Stern v. Marshall*, this Court is precluded from entering a final order and may only issue proposed findings of fact and conclusion of law. If efficiency were of paramount concern, this Action is therefore ripe for withdrawal of the reference under 28 U.S.C. § 157(d) and/or abstention under 28 U.S.C. § 1334(c).

9. Nonetheless, in order to avoid further motion practice and to expedite resolution of the Action, Syncora is prepared to forego filing a motion for

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<sup>1</sup> Judge Lewis A. Kaplan of the Southern District of New York issued an order on August 14, 2013 directing the City either to move to intervene or have its improperly filed submissions to that court stricken from the docket. *See* Order, Case No. 13-05335 (S.D.N.Y. Aug. 14, 2013) (Dkt. 26). The City declined that explicit invitation and did not file its motion to intervene for another two months.

withdrawal of the reference and/or abstention and to have this Court enter proposed findings of fact and conclusions of law subject to *de novo* review under Rule 9033 of the Federal Rules of Bankruptcy Procedure.

10. Consequently, that part of the City's motion that relates to the scheduling of the Action should be denied.<sup>2</sup>

### **BACKGROUND**

#### **A. The Nature Of This Action**

11. In the Action, Syncora seeks a declaration that, under New York law, the defendant non-debtors UBS AG ("UBS"), SBS Financial Products Company, LLC ("SBS"), and Merrill Lynch Capital Services, Inc. ("Merrill Lynch," and together the "Banks") cannot terminate certain swap agreements (the "Swap Agreements"), to which the Banks are party and Syncora is a named third-party beneficiary, without Syncora's consent and, furthermore, that any purported termination of those contracts without Syncora's consent is void *ab initio*. See Ex. A (Complaint), at ¶7. The City is not a party to the Swap Agreements.

12. Syncora, a monoline insurer that provides bond guarantees to issuers of debt, guaranteed the payment obligations of two Michigan non-profit corporations, the Detroit General Retirement System Service Corporation and the

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<sup>2</sup> This objection relates only to that part of the City Motion concerning the scheduling of a hearing on the Banks' joint motion to dismiss in the Action. Syncora and other parties in interest may make additional objections to the other parts of the City Motion.

Detroit Police and Fire Retirement System Service Corporation (together, the “Corporations”), under the Swap Agreements and certain Pension Obligation Certificates of Participation (“COPs”) issued by the Corporations. Because a termination of the Swap Agreements could expose the Corporations, and consequently Syncora, to higher interest rates that could force the COPs into default, Syncora negotiated express contractual provisions that require the Banks and the Corporations to obtain Syncora’s written consent to any amendment, modification, waiver, or early termination of the Swap Agreements in the event of a termination event or default. *Id.* ¶¶21-25. Consequently, Syncora’s written consent is required for any modification or termination of the Swap Agreements. *Id.* ¶25.

13. The Banks entered into the Forbearance Agreement with the City and the Corporations on July 15, 2013, a mere three days before the City filed for bankruptcy. *Id.* ¶26. Through the Forbearance Agreement, the Banks purported to grant the City a right to direct the Banks to exercise the Banks’ optional right to terminate the Swap Agreements. *Id.* According to the Forbearance Agreement, the Banks claim to have the right to terminate the Swap Agreements without Syncora’s consent. *Id.* ¶28. Because Syncora contends that the Banks have no such right, it initiated the Action against the Banks in New York state court to clarify their respective rights under the Swap Agreements and related contracts.

*Id.* ¶¶31-33.

**B. Procedural History**

14. Syncora filed the Action on July 24, 2013. On July 31, 2013, the Banks removed the Action to the Southern District of New York. That same day, the Banks moved to transfer the case to the District Court. On October 2, 2013, without reaching the question of whether there was federal jurisdiction or if the Action should be remanded to New York state court, Judge Lewis A. Kaplan granted Defendants' motion to transfer. On October 10, 2013, the case was transferred to the District Court.

15. On October 10, 2013, the City filed a motion to intervene in the District Court and requested that pursuant to Local Rule 83.50(a)(1) the case be automatically referred to the Bankruptcy Court to be adjudicated in connection with the City's bankruptcy proceeding. Syncora opposed both the motion to intervene and the reference to the Bankruptcy Court. On October 17, 2013, the Banks filed a motion to dismiss the Action, which Syncora also opposed.

16. On November 18, 2013, the District Court issued an order referring the Action to the Bankruptcy Court pursuant to Local Rule 83.50(a)(1). *See* Referral to Bankruptcy Court, Case No. 13-14293 (E.D. Mich. Nov. 18, 2013) (Dkt. 23). The District Court explicitly declined to rule on either the City's motion to intervene or the Banks' motion to dismiss. *Id.* at 4 (“[t]he matter is referred for

further proceedings, including consideration of the City's pending motion to intervene...and Defendants' pending motion to dismiss"). The District Court's order was also without prejudice to Syncora filing a motion to withdraw the reference. *See id.* at 3 ("Plaintiff certainly is free to file a motion to withdraw the reference following referral").

17. The Action has not yet been docketed in the Bankruptcy Court, as a separate adversary proceeding or otherwise, so no further motions have been filed by the parties. Nonetheless, on November 22, 2013, the City, a non-party to the Action, filed the City Motion seeking, *inter alia*, a hearing on its motion to intervene on December 4 and a hearing on the Banks' motion to dismiss on December 10. *See* City Motion at 9. Through this objection, Syncora opposes the relief requested in the City Motion as it relates to scheduling in the Action.

### **ARGUMENT**

#### **I. THE CITY HAS NO RIGHT TO BE HEARD AT THIS STAGE IN THE ACTION'S PROCEEDINGS**

18. As a threshold matter, the City Motion should not be considered at this stage in the Action because the City is not a party to the Action and therefore has no standing to file motions in the Action.

19. The Action is a case between non-debtor parties, Syncora and the Banks, concerning their respective rights under the Swap Agreements and related contracts. As the City conceded in its motion, the City is not a party to the Action



and its motion to intervene in the Action is currently pending.<sup>3</sup> City Motion at 9.

20. It is well-established that only parties to an action may be heard on issues relating to that action. *See, e.g., Flener v. Monticello Banking Co. (In re Alexander)*, 06-10238(1)(7), 2009 WL 3835038, at \* 1 (Bankr. W.D. Ky. Nov. 16, 2009) (“[n]on-party participation is dependent on intervention” so debtor had no legal standing to seek dismissal of an adversary proceeding where the debtor was not a party and had not intervened); *Stainer v. Latimer (In re Latimer)*, 918 F.2d 136, 137 (10th Cir. 1990) (debtor lacked standing to participate in adversary proceeding, absent intervention), *cert. denied*, 502 U.S. 863 (1991); *Kowal v. Malkemus (In re Thompson)*, 965 F.2d 1136, 1141 (1st Cir. 1992) (“nonparty participation in an adversary proceeding is dependent on intervention”).

21. The City has cited no authority whatsoever that would permit this Court to consider the City Motion as it relates to the Action before this Court considers the City’s motion to intervene. Because the City has no standing to file any motion in the Action, its motion to schedule a hearing in the Action must be denied.

22. Moreover, even if the City was a party to the Action (which it is not)

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<sup>3</sup> Syncora opposed the City’s motion to intervene. The City is not party to the Swap Agreements and has no legal interest in the parties’ dispute and it is therefore not permitted to intervene under either Rule 24(a)(1) or Rule 24(a)(2). *See* Plaintiff Syncora Guarantee Inc.’s Response to the City of Detroit’s Motion to Intervene, Case No. 13-14293 (E.D. Mich. Oct. 24, 2013) (Dkt. 13).

and even if it had standing to file motions in the Action (which it does not), the City has still put the cart before the horse by filing its motion before the Action is even docketed by this Court. In so doing, the City was apparently attempting to thwart Syncora's ability to file a timely motion to withdraw the District Court's automatic reference of the Action to this Court despite Syncora's previously stated intention to file such a motion and the District Court's explicit statement that it "intimate[d] no view on the propriety of withdrawing the reference." Referral to Bankruptcy Court, Case No. 13-14293 (E.D. Mich. Nov. 18, 2013) (Dkt. 23), at 4.

23. The City's improper filing also inappropriately attempts to short-circuit the ability of the actual parties to the Action to seek efficient resolution of the Action. Syncora has prepared, but not yet had the opportunity to file, its motion for summary judgment. And, as discussed more fully below, the Action can and should be decided on Syncora's motion for summary judgment. It is thus most efficient for the Court to schedule a hearing in the Action after the parties have had the chance to file and brief the summary judgment motion. By contrast, it is simply inefficient and an inappropriate use of judicial resources for the City to seek to schedule hearings in an action to which it is not a party.

## **II. THERE IS NO NEED FOR EXPEDITED PROCEEDINGS IN THE ACTION**

24. The City's Motion should also be denied because there is no reason to expedite this Court's consideration of the Action. The City contends that the

Action should be heard concurrently with this Court's consideration of the Forbearance Agreement because "the two proceedings are two halves of the same coin." City Motion at 8. Even if that were the case, which it is not, that alone would not require the Action to be considered on December 10, 2013, particularly when the Action can be more efficiently resolved after the parties have fully briefed Syncora's motion for summary judgment.

25. As this Court has previously recognized, "if the motion to assume is granted, it's granted with all of the warts and questions about the contract. There's nothing about the assumption process that improves a debtor's position vis-a-vis other parties, right? We all understand that." *See* Ex. B (Transcript of Conference, August 2, 2013 at 127:13-17).<sup>4</sup>

26. In the Action, Syncora seeks a declaratory judgment with respect to the parties' rights under the Swap Agreements. Syncora does not seek adjudication of the City's rights under the Forbearance Agreement. Nothing prevents this Court from deciding the Assumption Motion while adjudication of Syncora's dispute with the Banks is pending.

27. Even if there was a reason for this Court to decide the two actions simultaneously, there is still no need to have an expedited hearing on the Banks'

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<sup>4</sup> The written transcript of this hearing indicates that Your Honor used the term "word" and not "warts." This is a transcription error. *See* Audio Recording, available at: <http://www.mieb.uscourts.gov/apps/detroit/DetroitAudio.cfm>.

motion to dismiss. Under the terms of the Forbearance Agreement, the City has until March 2014 to exercise its termination option and the City is required to pay the Banks hundreds of millions of dollars whether it seeks to exercise its rights under that agreement on December 11, 2013 or March 13, 2014. *See* Ex. C (Forbearance Agreement), § 3.5 (defining “Applicable Percentage” as 82% if, *inter alia*, “the Optional Termination Notice Date occurs after [November 15, 2013] and prior to [March 14, 2014]”).<sup>5</sup>

28. Defendants’ motion to dismiss will be fully briefed by November 26, 2013 when the Banks’ reply, should they chose to file one, is due in accordance with Local Rule 7.1. Syncora’s motion for summary judgment can also be fully briefed within the next month. There is more than sufficient time for the Action to progress in due course and still be resolved by the March 2014 deadline arbitrarily imposed by the City and the Banks when they drafted the Forbearance Agreement. *See In re Villareal*, 160 B.R. 786, 787 (Bankr. W.D. Tex. 1993) (“it must appear clearly from the pleadings not only that there is an emergency but also that it is not an emergency of the movant's own making”); *In re Schindler*, No. 09-71199-ast, 2011 WL 1258531, \*2 (Bankr. E.D.N.Y. Mar. 31, 2011).

29. The City Motion to expedite hearings in the Action should therefore

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<sup>5</sup> According to the City, “the termination value of the swaps is approximately \$300 million.” *See* Debtor’s Response to Motion of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. (filed Aug. 1, 2013) (Dkt. 244), at 13.

be denied because there are no exigencies that require expedited proceedings.

### **III. THE ACTION CAN BE MOST EFFICIENTLY DECIDED ON PLAINTIFF SYNCORA'S MOTION FOR SUMMARY JUDGMENT**

30. In the Action, Syncora seeks a declaration that (i) the Banks cannot terminate the Swap Agreements without first obtaining Syncora's consent and (ii) any purported termination of the Swap Agreements without Syncora's express written consent is void *ab initio*. Because the Swap Agreements unambiguously provide Syncora with the right to consent to any purported termination, Syncora intends to file a motion for summary judgment once the Court docketes the Action. With that motion, Syncora intends to file additional documentary evidence, including to support its argument that the City and the Banks entered into the Forbearance Agreement in a transparent attempt to manufacture bankruptcy jurisdiction, modify the Swap Agreements and avoid Syncora's contractual consent rights. At that point, the Court will be able to rule on a complete record that no genuine issue of material fact is in dispute.

### **IV. THIS COURT MAY ONLY ENTER PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

31. The constitutional limitations on this Court's authority also counsel in favor of this Court deciding the Action pursuant to Syncora's motion for summary judgment.

32. The Action is a contract dispute between non-debtors that is, at the

very most, only tangentially “related to” the City’s bankruptcy: it is indisputably not a “core proceeding” because it “does not invoke a substantive right created by federal bankruptcy law and is [an action] that could exist outside of the bankruptcy.” *Michigan Emp’t Sec. Comm’n v. Wolverine Radio Co., Inc. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1144 (6th Cir. 1991); *Bliss Techs., Inc. v. HMI Indus., Inc. (In re Bliss Techs., Inc.)*, 307 B.R. 598, 602 (Bankr. E.D. Mich. 2004) (“[I]f the proceeding does not invoke a substantive right created by federal bankruptcy law and is one that could exist outside of the bankruptcy, then it is not a core proceeding.”).<sup>6</sup>

33. Under the Supreme Court’s decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011), this court may enter proposed findings of fact and conclusions of law in “related to” proceedings but final rulings in such a case must be made by the District Court. *See also* 28 U.S.C. § 157(c)(1) (in related cases, “the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge...after reviewing de novo those matters to which any party has timely and specifically objected”); Fed. R. Bankr P. 9033 (“[i]n non-core proceedings heard pursuant to 28 U.S.C. § 157(c)(1), the bankruptcy judge shall file proposed findings of fact and conclusions of law....”).

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<sup>6</sup> This Court may make the determination that this is a non-core proceeding on its own motion pursuant to 28 U.S.C. § 157(b)(3).

34. Based upon the foregoing, the District Court would be obligated to grant a motion to withdraw the reference because (i) the Action is a state law case between non-debtors that is, at most, “related to” the City’s bankruptcy, and (ii) there is “cause” for withdrawing the reference under 28 U.S.C. § 157(d) because this is a non-core proceeding between non-debtors and it would be both time and cost efficient to adjudicate it in a court that can issue a final judgment.

35. For these same reasons, Syncora submits that it would also be appropriate for either this Court or the District Court to abstain from hearing the Action and remand it to the New York state court under 28 U.S.C. § 1334(c)(2) and 28 U.S.C. § 1452(b). *See, e.g., Lindsey v. Dow Chemical Co. (In re Dow Corning Corp.)*, 113 F.3d 565, 570 (6th Cir. 1997) (even if an action is “related to” a bankruptcy case, it must be remanded to state court where, as here, it: (1) is based on state law claims, (2) lacks federal jurisdiction absent the bankruptcy, (3) was commenced in a state forum of appropriate jurisdiction, (4) can be timely adjudicated in state court, and (5) is a non-core proceeding).

36. Given the current procedural posture, however, rather than delay a decision on the merits any further, Syncora is willing to forego seeking to have the reference of this Action withdrawn or to have the Action remanded to New York state court. Rather, Syncora submits that this Court should, in accordance with *Stern v. Marshall* and 28 U.S.C. § 157(c)(1), issue proposed findings of fact and

conclusions of law in the Action after the parties have had the opportunity to fully brief Syncora's motion for summary judgment. In the event that either party seeks to challenge this Court's ruling, the proposed findings of fact and conclusions of law will be subject to *de novo* review by the District Court in accordance with Rule 9033 of the Federal Rules of Bankruptcy Procedure.

### **CONCLUSION**

37. For the foregoing reasons, Syncora respectfully requests that the Bankruptcy Court deny that portion of the City's Motion for Entry of an Order Establishing Pre-Trial and Trial Procedures and Setting Additional Hearings as it relates to scheduling of the Action.

Dated: November 26, 2013

Respectfully submitted,

/s/ Stephen M. Gross

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**INDEX OF EXHIBITS**

Exhibit A: Complaint

Exhibit B Transcript of Conference, August 2, 2013

Exhibit C: Forbearance and Optional Termination Agreement

# **Exhibit A**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

SYNCORA GUARANTEE INC.,

Plaintiff,

v.

UBS AG, SBS FINANCIAL PRODUCTS  
COMPANY, LLC, and MERRILL LYNCH  
CAPITAL SERVICES, INC.,

Defendants.

Index No. \_\_\_\_\_

**COMPLAINT**

Plaintiff Syncora Guarantee Inc. (“Syncora”), by and through its undersigned attorneys, brings this complaint on knowledge as to its own acts and on information and belief as to all other matters.

**Nature of this Action**

1. Syncora brings this action for declaratory and injunctive relief against UBS AG (“UBS”), SBS Financial Products Company, LLC (“SBS”), and Merrill Lynch Capital Service, Inc. (“MLCS”) as successor to SBS pursuant to certain Transaction Transfer Agreements (collectively, the “Swap Counterparties”), the counterparties to the Detroit General Retirement System Service Corporation and the Detroit Police and Fire Retirement System Service Corporation (collectively, the “Corporations”) in certain interest-rate swap contracts and associated agreements (the “Swap Agreements”). Syncora is an express third party beneficiary of the Swap Agreements, and it insures the Corporations’ payment of amounts due under the Swap Agreements to the Swap Counterparties.

2. The Swap Counterparties and the Corporations entered into the Swap Agreements—and Syncora insured the Swap Agreements—as part of an integrated series of transactions under which the Corporations issued Pension Obligation Certificates of Participation (“COPs”) in order to increase the funding of the City of Detroit’s (the “City”) primary public pension funds. Syncora also insures the Corporations’ payment of amounts due on the COPs.

3. Because the COPs were originally issued primarily with floating rate debt, the Corporations entered into the Swap Agreements in order to fix the amount of interest they would have to pay, providing the Corporations (and Syncora as insurer) with cost-certainty and, accordingly, a more manageable level of risk. For this very reason, Syncora negotiated numerous contractual provisions that require the Swap Counterparties and Corporations to obtain Syncora’s written consent to any amendment, modification, waiver or early termination of the Swap Agreements. Indeed, the Swap Agreements provide that any action taken without Syncora’s consent is void and of no effect.

4. On July 15, 2013, the Swap Counterparties, the Corporations, and the City entered into an agreement (the “Forbearance Agreement”) that, *inter alia*, grants the City the option to issue a direction to the Swap Counterparties to terminate the Swap Agreements at any time prior to March 13, 2014. The Swap Counterparties represent in the Forbearance Agreement that is their “view” that “each of SBS and UBS has the right to designate an Early Termination Date for the related Swap Agreements.” The Swap Counterparties have also asserted in the Forbearance Agreement that SBS “is required to exercise [the right to terminate its Swap Agreements] at the direction of MLCS.”

5. The Swap Counterparties’ representation in the Forbearance Agreement that they have the right to terminate the Swap Agreements is inconsistent with the terms of the Swap

Agreements themselves which provide that Syncora's prior written consent is required prior to the designation of any Early Termination Date for the Swap Agreements. The Forbearance Agreement cannot amend, modify or waive Syncora's rights under the Swap Agreements as any such amendment, modification or waiver would require Syncora's consent which was never sought nor given. Therefore, any termination of the Swap Agreements by the Swap Counterparties—including any designation of an Early Termination Date—would require that they first obtain Syncora's consent as the Swap Agreements expressly provide.

6. In light of the statements by the Swap Counterparties in the Forbearance Agreement, Syncora has serious and well-founded concern that the Swap Counterparties will soon purport to terminate the Swap Agreements without having obtained Syncora's required consent. If the Swap Agreements were permitted to be terminated without Syncora's consent, it would eliminate the cost certainty that the Corporations currently enjoy and, consequently, expose Syncora—as the insurer of the COPs obligations—to substantial interest rate risk for which it did not bargain. That risk to Syncora is acute in the current interest rate environment.

7. Accordingly, by this action Syncora seeks (i) a declaration that (A) the Swap Counterparties may not terminate the Swap Agreements without Syncora's consent, (B) any purported termination of the Swap Agreements by the Swap Counterparties without Syncora's prior written consent will be void *ab initio* and of no force or effect, and (ii) a permanent injunction preventing the Swap Counterparties from terminating the Swap Agreements without obtaining Syncora's prior written consent.

#### **The Parties**

8. Plaintiff Syncora Guarantee Inc. (formerly known as XL Capital Assurance, Inc.) is a New York corporation with its principal place of business in New York, New York, is a

monoline financial guarantee insurer that provides insurance and credit enhancement for various debt issuers.

9. Defendant UBS AG is a Swiss joint-stock company with its principal place of business in Switzerland.

10. Defendant SBS Financial Products Company, LLC is a Delaware limited liability corporation with its principal place of business in New York, New York.

11. Defendant Merrill Lynch Capital Services, Inc. is a Delaware corporation with its principal place of business in New York, New York.

### **Jurisdiction and Venue**

12. This Court has jurisdiction over the Swap Counterparties because they consented to jurisdiction in New York State Court, are authorized to do business in New York, and are doing substantial business in New York with permanence and continuity. Additionally, SBS and MLCS are headquartered in New York.

13. Venue in this county is proper pursuant to CPLR § 503 because at least one of the parties resides in New York County at the time this action is being commenced.

### **The Facts**

#### ***The Corporations Enter Into The COPs Transactions And Swap Agreements***

14. Beginning in 2005, facing a large shortfall in the funding of its public pensions, the City arranged to enter into a series of transactions designed to raise more than \$1.4 billion through a series of off-balance-sheet transactions. To do so, the City first arranged to have the Corporations organized as Michigan non-profit corporations. The Corporations then created and used two funding trusts as vehicles through which the Corporations could issue and sell debt obligations, known as COPs, to the investing public.

15. In very basic terms, investors paid the Corporations for the COPs, and the Corporations forwarded those investment proceeds to the City. At the same time, the City entered into a “service contract” with each of the Corporations, pursuant to which the City paid to the Corporations the amounts owed under the COPs (the “Service Contracts”).

16. In return for their investment proceeds, the COPs investors were promised payments of principal and interest, with a floating interest rate. The Corporations’ ability to pay the COPs is totally dependent on the Service Contracts with, and revenue assignments from, the City. If the City fails to honor those contracts or assignments, the Corporations have no ability to pay COPs holders. To make the COPs more attractive to investors, the Corporations arranged for the purchase of insurance against a payment default on the COPs. Syncora provides this insurance.

17. To protect against what could have been uncapped interest rate exposure on the COPs depending on the movement of interest rates over time, the Corporations hedged that risk by entering into the Swap Agreements with UBS and SBS (with MLCS subsequently assuming certain of the rights and duties of SBS pursuant to certain Transaction Transfer Agreements). The Swap Agreements were structured such that the Corporations were obligated to make quarterly fixed payments to the Swap Counterparties while the Swap Counterparties, in exchange, were obligated to make quarterly floating payments tied to a LIBOR interest rate index, with a net payment being due to either the Corporations or the Swap Counterparties depending on the prevailing interest rates.

18. The basic idea of the Swap Agreements was to set the Corporations’ overall interest rate obligations in respect of the COPs at a fixed amount, regardless of whether the



Corporations paid some or all of that interest amount to the COPs investors or to the Swap Counterparties.

19. So, for example, if the agreed upon fixed amount were 6% and if prevailing interest rates were 4%, the Corporations would, in effect, pay 4% to the COPs investors and 2% to the Swap Counterparties, setting the Corporations' exposure at 6%. On the other hand, if prevailing interest rates rose to 9%, while the Corporations would pay 9% on the COPs, they would receive funds equal to 3% from the Swap Counterparties, ensuring that the Corporations net payment would still be only 6%. As an insurer of the COPs, Syncora also benefits from this arrangement.

20. For the benefit of the Swap Counterparties, the Corporations also acquired from Syncora insurance against the Corporations' non-payment of amounts due under the Swap Agreements.

***Syncora's Protections Relating to the Swap Agreements***

21. Wary of losing the valuable protection that the Swap Agreements provided against the impact of interest rate movements on the Corporation's COP obligations and thus Syncora's potential insurance liabilities, Syncora ensured in the Amended and Restated Schedules to the Swap Agreements (the "Swap Schedules") that it "shall be an express third-party beneficiary ... of this Agreement" with the power to enforce and police the Swap Agreements. See UBS Swap Schedules at Part 5(xi); SBS Swap Schedules at Part 5(k). Syncora also negotiated extensive consent rights as a condition precedent to any termination of the Swap Agreements by either the Swap Counterparties or the Corporations.

22. For example, the Swap Schedules provide that, if there is a Termination Event or an Event of Default (as those terms are defined in the Swap Agreements), neither the Corporations nor the Swap Counterparties "shall designate an Early Termination Date pursuant

to Section 6 of this Agreement ... without the prior written consent of the Swap Insurer.” Syncora is the only Swap Insurer under the Swap Agreements. *See* UBS Swap Schedules at Part 5(i); SBS Swap Schedules at Part 5(a). The Swap Schedules go on to confirm that even if the Swap Counterparties were to designate an Early Termination Date as to other transactions, that designation shall not apply to the Swap Agreements “unless expressly provided in such designation and agreed to in writing by the Swap Insurer.” *See* UBS Swap Schedules at Part 5(xiv); SBS Swap Schedules at Part 5(n).

23. Similarly, Paragraph 8(b) of the Swap Agreements, as amended, provides that “[n]o amendment, modification or waiver in respect of this Agreement or any Credit Support Document will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties and the Swap Insurer.” Accordingly, the Swap Agreements also may not be amended, modified or waived without Syncora’s consent.

24. There have been multiple Termination Events and/or Events of Default under the Swap Agreements arising from recent events in the City of Detroit, including continuing cross defaults caused by the City’s failure on June 17, 2013 to make a \$40 million payment to the Corporations that was necessary for them, in turn, to meet their obligations in connection with the COPs. The existence of these Events of Default and/or Termination Events are not in dispute by any of the parties to this action. Indeed, the Swap Counterparties themselves represented in the Forbearance Agreement that “one or more Events of Default and/or Additional Termination Events has occurred” under the Swap Agreements.

25. Thus, under the plain language of the Swap Agreements, neither the Swap Counterparties nor the Corporations may designate an Early Termination Date for the termination of the Swap Agreements unless they first obtain Syncora’s prior written consent.

*Agreement To Terminate The Swap Agreements*

26. On July 15, 2013, the Swap Counterparties, the Corporations and the City entered into the Forbearance Agreement. Among other things, the Forbearance Agreement provides the City with the option to issue an “Optional Termination Notice” to the Swap Counterparties that would direct them to exercise their so-called “Optional Termination Right” to terminate the Swap Agreements as of a termination date set forth in the Notice. The City must exercise the option on or before March 13, 2014.

27. At the time the City exercises the option, the Forbearance Agreement provides that it must pay to the Swap Counterparties a specified buy-out amount that is either 75%, 77% or 82% of the value of the Swap Agreements, depending on when the option is exercised. The earlier that the City issues its Optional Termination Notice directing the Swap Counterparties to terminate the Swap Agreements, the lower the buy-out amount, rendering it likely that the City will issue such a notice shortly.

28. As part of the Forbearance Agreement, the Swap Counterparties represent that it is “the view of the Swap Counterparties that ... each of SBS and UBS has the right to designate an Early Termination Date for the related Swap Agreements” and that they have “the right (but not the obligation) to terminate the Swap Agreements as described in” enumerated sections of the Swap Schedules. The Swap Counterparties have also asserted in the Forbearance Agreement that SBS “is required to exercise [the right to terminate its Swap Agreements] at the direction of MLCS.”

29. However, the Swap Counterparties representations in the Forbearance Agreement that they have the right to designate an Early Termination Date for the Swap Agreements is contradicted by the terms of the Swap Agreements themselves which provide, as described above, that neither the Swap Counterparties nor the Corporations “shall designate an Early

Termination Date ... without the prior written consent of the Swap Insurer [*i.e.*, Syncora].” The existence of Syncora’s consent right is not mentioned in the Forbearance Agreement nor do any of the enumerated provisions from the Swap Agreements referenced in the Forbearance Agreement include the sections that provide for Syncora’s consent rights.

30. Nor can the Forbearance Agreement be interpreted as amending, modifying or waiving Syncora’s consent right under the Swap Agreements. As described above, any amendment, modification or waiver of the Swap Agreements would require Syncora’s consent. No such consent was sought or provided in connection with the Swap Counterparties entry into the Forbearance Agreement.

31. Syncora thus has immediate and serious concerns that the Swap Counterparties will imminently purport to designate an Early Termination Date and terminate the Swap Agreements without first obtaining Syncora’s written consent.

32. Syncora would suffer serious and irreparable harm if the Swap Agreements were terminated without its consent. Termination of the Swap Agreements would eliminate the cost certainty that the Corporations currently enjoy and, consequently, expose Syncora—as the insurer of the COPs obligations—to substantial interest rate risk for which it did not bargain. That risk to Syncora is particularly acute in the current environment when interest rates are on the rise and the protection against rising interest rates is thus of paramount importance.

33. Syncora therefore brings this action seeking a declaratory judgment and permanent injunction to protect its important and valuable contractual rights under the Swap Agreements.

**Causes of Action**

**First Cause of Action**  
**(Declaratory Judgment)**

34. Syncora repeats and re-alleges the allegations in paragraphs 1 through 33.

35. An actual and justiciable controversy exists amongst the parties.

36. The Swap Counterparties have asserted in the Forbearance Agreement that “each of SBS and UBS has the right to designate an Early Termination Date for the related Swap Agreement” and that they have “the right (but not the obligation) to terminate the Swap Agreements.” The Swap Counterparties have also asserted in the Forbearance Agreement that SBS “is required to exercise [the right to terminate its Swap Agreements] at the direction of MLCS.”

37. In contrast, it is Syncora’s position that, as set forth in the express terms of the Swap Agreements, the Swap Counterparties may not “designate an Early Termination Date ... without the prior written consent of the Swap Insurer [*i.e.*, Syncora].” Syncora has never consented to an amendment, modification or waiver of this consent right and it therefore remains in force and effect.

38. Upon information and belief, the Swap Counterparties will shortly purport to designate an Early Termination Date and terminate the Swap Agreements in contravention of the express terms requiring Syncora’s prior consent.

39. Accordingly, Syncora respectfully seeks a judgment declaring that (A) the Swap Counterparties may not terminate the Swap Agreements without Syncora’s consent, (B) any purported termination of the Swap Agreements by the Swap Counterparties without Syncora’s prior written consent will be void *ab initio* and of no force or effect.

**Second Cause of Action**  
**(Permanent Injunctive Relief)**

40. Syncora repeats and re-alleges the allegations in paragraphs 1 through 39.

41. The Swap Counterparties have asserted in the Forbearance Agreement that “each of SBS and UBS has the right to designate an Early Termination Date for the related Swap Agreement” and that they have “the right (but not the obligation) to terminate the Swap Agreements.” The Swap Counterparties have also asserted in the Forbearance Agreement that SBS “is required to exercise [the right to terminate its Swap Agreements] at the direction of MLCS.”

42. In contrast, it is Syncora’s position that, as set forth in the express terms of the Swap Agreements, the Swap Counterparties may not “designate an Early Termination Date ... without the prior written consent of the Swap Insurer [*i.e.*, Syncora].” Syncora has never consented to an amendment, modification or waiver of this consent right and it therefore remains in force and effect.

43. Upon information and belief, the Swap Counterparties will shortly purport to designate an Early Termination Date and terminate the Swap Agreements in contravention of the express terms requiring Syncora’s prior consent.

44. Syncora would suffer irreparable harm if the Swap Agreements were terminated without its consent. Termination of the Swap Agreements would eliminate the cost certainty that the Corporations currently enjoy and, consequently, expose Syncora—as the insurer of the COPs obligations—to substantial interest rate risk for which it did not bargain.

45. Accordingly, Syncora respectfully seeks an order permanently enjoining the Swap Counterparties from terminating the Swap Agreements without obtaining Syncora’s prior written consent.

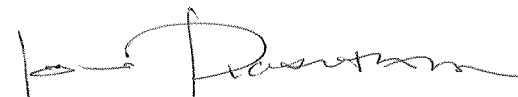
**Prayer for Relief**

Syncora respectfully requests a judgment:

- (a) declaring that the Swap Counterparties may not terminate the Swap Agreements without Syncora's consent;
- (b) declaring that any purported termination of the Swap Agreements by the Swap Counterparties without Syncora's prior written consent will be void *ab initio* and of no force or effect;
- (c) permanently enjoining the Swap Counterparties from terminating the Swap Agreements without obtaining Syncora's prior written consent; and
- (d) providing such other relief as this Court deems just and proper.

DATED: New York, New York  
July 24, 2013

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By: 

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*Attorneys for Syncora Guarantee Inc.*

# **Exhibit B**



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
. Detroit, Michigan  
. August 2, 2013  
Debtor. . 10:01 a.m.  
. . . . .

HEARING RE. STATUS CONFERENCE  
MOTION OF DEBTOR FOR ENTRY OF AN ORDER (I) AUTHORIZING THE  
ASSUMPTION OF THE CERTAIN FORBEARANCE AND OPTIONAL  
TERMINATION AGREEMENT PURSUANT TO SECTION 365(a) OF THE  
BANKRUPTCY CODE, (II) APPROVING SUCH AGREEMENT PURSUANT TO  
RULE 9019 AND (III) GRANTING RELATED RELIEF (DOCKET #17);  
MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER (A) DIRECTING AND  
APPROVING FORM OF NOTICE OF COMMENCEMENT OF CASE AND MANNER  
OF SERVICE AND PUBLICATION OF NOTICE AND (B) ESTABLISHING A  
DEADLINE FOR OBJECTIONS TO ELIGIBILITY AND A SCHEDULE FOR  
THEIR CONSIDERATION (DOCKET #18); MOTION OF DEBTOR FOR  
ENTRY OF AN ORDER APPOINTMENT KURTZMAN CARSON CONSULTANTS,  
LLC, AS CLAIMS AND NOTICING AGENT PURSUANT TO 28 U.S.C.,  
SECTION 156(c), SECTION 105(a) OF THE BANKRUPTCY CODE AND  
BANKRUPTCY RULE 2002 (DOCKET #19); AND MOTION OF DEBTOR,  
PURSUANT TO SECTION 1102(a)(2) OF THE BANKRUPTCY CODE FOR  
ENTRY OF AN ORDER DIRECTING THE APPOINTMENT OF A  
COMMITTEE OF RETIRED EMPLOYEES  
BEFORE THE HONORABLE STEVEN W. RHODES  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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1 THE CLERK: All rise. Court is in session. Please  
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: Good morning, everyone.

4 ATTORNEYS: Good morning, your Honor (collectively).

5 THE COURT: We are going to begin as we did the last  
6 time with the admission of an attorney to the Bar of the  
7 Court. Who would like to be admitted? Step forward, please.

8 MR. ROSSMAN: Good morning, your Honor. Jeff  
9 Rossman.

10 THE COURT: Mr. Rossman, are you prepared to take  
11 the oath of admission to the Bar of the Court?

12 MR. ROSSMAN: Yes, I am.

13 THE COURT: Please raise your right hand --

14 MR. ROSSMAN: Sorry.

15 THE COURT: -- carefully. Do you affirm that you  
16 will conduct yourself as an attorney and counselor of this  
17 Court with integrity and respect for the law, that you have  
18 read and will abide by the civility principles approved by  
19 the Court, and that you will support and defend the  
20 Constitution and laws of the United States?

21 MR. ROSSMAN: I do.

22 THE COURT: Welcome, sir.

23 MR. ROSSMAN: Thank you, your Honor.

24 THE COURT: Before we begin our status conference  
25 today, I need to remind everyone of the rules for the use of

1 cellular phones in the courthouse and the rules for those  
2 listening to these proceedings through CourtCall. District  
3 Court Local Rule 83.31(f) governs the use of cellular phones  
4 and other communication devices. An attorney appearing in  
5 connection with any judicial proceeding may bring a phone  
6 into our federal court facility. However, the phone cannot  
7 be used at all while in a courtroom. In other words,  
8 texting, talking on the phone, recording, or taking pictures  
9 of the proceedings is not permitted in the courtroom.  
10 Attorneys may use cellphones in the approved attorney  
11 conference room on the second floor of this building.

12           Now let me address the use of CourtCall to listen in  
13 on these proceedings. Its use is restricted to attorneys and  
14 their clients who are parties in this case. CourtCall is not  
15 to be used or accessed by the media or the public. The law  
16 prohibits the simultaneous public broadcast of court  
17 proceedings. The Court expects that, as officers of the  
18 court, attorneys will respect this restriction. The Court  
19 understands that this is an important and valuable service,  
20 but it can only continue to make this service available if  
21 this restriction is observed. The audio recording of all  
22 court hearings will be posted on the court's website very  
23 shortly after the hearings are concluded and will in that way  
24 be available to the media and the public without charge.

25           Okay. So now turning to our status conference, I'm

1 going to shuffle the order of the agenda just a little bit.  
2 I've decided to do the review by me of the Court's limited  
3 role in Chapter 9 cases first, and then we'll do the items --  
4 the rest of the items on the status conference agenda pretty  
5 much in the order stated, and then, of course, we will  
6 consider the motions that are on the calendar for today.

7           It is important for the parties and the public to  
8 understand the very limited role that a Bankruptcy Court and  
9 a bankruptcy judge play in a municipal bankruptcy case under  
10 Chapter 9 of the Bankruptcy Code. Let me first try to  
11 describe what that role is and then discuss what that role is  
12 not. Primarily, the Court's role in this case is to resolve  
13 the legal issues that the parties raise as the city moves  
14 through this Chapter 9 process. In general, there are two  
15 main challenges that we can readily expect the city to face  
16 in this case. The first is to establish that it is eligible  
17 for Chapter 9 relief. If it meets that challenge, then its  
18 next challenge is to establish that its plan to adjust its  
19 debts meets the requirements for confirmation under Chapter 9  
20 of the Bankruptcy Code.

21           Beyond those two major issues, the parties may  
22 present other issues to the Court during the case. These may  
23 involve whether to approve the city's assumption or rejection  
24 of its contracts, including its union contracts; whether to  
25 grant creditors relief from the stay against litigation that

1 the Court and the law have imposed; whether to approve of  
2 certain settlements; whether to approve of certain kinds of  
3 proposed borrowings; and, finally, what dates and deadlines  
4 to set as we move the case to its conclusion, whatever that  
5 conclusion might be.

6 In addition, the Court sees three other roles for  
7 it. The first is to facilitate, to the greatest extent  
8 possible, the consensual resolution of disputes. To that  
9 end, I have proposed a process of mediation, which I will  
10 discuss with counsel later. The second is to apply  
11 procedures of judicial management in this case that will meet  
12 the requirement to -- of Rule 1 of the Federal Rules of Civil  
13 Procedure for the just, speedy, and inexpensive determination  
14 of this case. The circumstances of this case make that  
15 requirement imperative and one that the Court intends to  
16 fulfill with the highest degree of commitment, but the Court,  
17 of course, cannot do this alone. In fulfilling this  
18 commitment, the Court requests input from the attorneys as  
19 well as their full cooperation and, indeed, their  
20 partnership. In a few minutes, the attorneys and I will  
21 discuss what dates and deadlines should be set in this case  
22 so that we can meet the requirement for the just, speedy, and  
23 inexpensive determination of this case.

24 The third additional role for the Court is to  
25 recognize and appreciate the enormous public interest in this



1 case and to facilitate, to the greatest extent possible,  
2 public access to the Court's proceedings. However, there are  
3 certain restrictions that the Court must ask the public and  
4 the media to accept. Some of these restrictions are imposed  
5 by law. For example, as I said before, the law prohibits the  
6 simultaneous broadcast of federal court proceedings. Other  
7 restrictions result from security concerns, and we request  
8 your patience in our security screening process as this helps  
9 to protect all of us. Other restrictions will have to be  
10 imposed just to allow the process to function properly. For  
11 example, when and if disputes are submitted to mediation,  
12 that process must be both closed to the public and completely  
13 confidential in order for it to have any chance of success.  
14 Finally, there are simple practical limitations, so, for  
15 example, we only have so much space available in this  
16 courtroom and for overflow courtroom viewing.

17 Now let me address what the Court's role is not and  
18 what the Court will not do. In this Chapter 9 case, as in  
19 all others, the city's elected and appointed officials and  
20 officers remain in full control of the city and its  
21 operations. Whatever their responsibilities for running the  
22 city before the case was filed, they still are. As a result,  
23 the Court has no role to play in managing or running the city  
24 or any of the services it provides. Any compliments,  
25 complaints, suggestions, or requests regarding city services

1 should continue to be directed to the city. There is nothing  
2 the Court can do about any of those matters. The Court does  
3 not displace city government in any respect, and nothing in  
4 Chapter 9 gives the Court any authority to hire, fire, or  
5 supervise anyone in city government. The city's officials  
6 are not accountable to this Court for how they run the city.

7           There is a second way in which it is important to  
8 understand the limited role of the Court in this case.  
9 Chapter 9 of the Bankruptcy Code states that it is the city's  
10 responsibility to propose and file a plan. The Court's role  
11 is only to determine whether the plan that the city proposes  
12 meets the requirements of Chapter 9. It is not the Court's  
13 role to dictate to the city what its plan should state or  
14 even to suggest anything about it. That is entirely for the  
15 city to decide after, of course, discussing and attempting to  
16 negotiate the plan with its creditors.

17           Any questions about what the Court's role is or is  
18 not? Okay. So let's now then move on to the next item on  
19 our status conference agenda. I'll ask the representatives  
20 of the city to address the Court regarding the status of the  
21 filing of the list of creditors under Section 924 and any  
22 potential amendments. Sir.

23           MR. HEIMAN: Good morning, your Honor. David Heiman  
24 from Jones Day on behalf of the city. I hope the microphone  
25 is working properly after the attack on it, but what -- and

1 thank you for those comments. They're very helpful, indeed,  
2 especially about the plan process and understanding that you  
3 have proposed a plan deadline -- a plan filing deadline,  
4 which I will address in a few minutes. As you have  
5 suggested, I will take these one at a time. I assume that  
6 you will want to hear from others, to the extent they wish to  
7 be heard.

8 THE COURT: Yeah. At this point I just need the  
9 record to state the city's compliance with the filing of the  
10 list of creditors and if you intend or foresee any amendments  
11 to it.

12 MR. HEIMAN: Well, we did, I'm happy to say, file  
13 the list of creditors last night, so that's the easy part. I  
14 cannot speak really -- it's 3,500 pages, so I cannot speak to  
15 whether there are amendments. Actually, this list itself was  
16 an amendment for changing of addresses and the like --

17 THE COURT: Um-hmm.

18 MR. HEIMAN: -- and so I hope it's complete, but we  
19 may find during the course of the case that we will  
20 supplement it, so I don't --

21 THE COURT: Okay. My only encouragement to you  
22 would be that if you determine a need to amend that list, you  
23 do so promptly.

24 MR. HEIMAN: Thank you, your Honor. We will do  
25 that.

1 THE COURT: So the next item is the disclosure by  
2 the city of the status of its negotiations with creditors.

3 MR. HEIMAN: Yes, your Honor. That might take a few  
4 more minutes than the last item.

5 THE COURT: Um-hmm, yes.

6 MR. HEIMAN: I'd first like to say we all know that  
7 we are in a very serious situation here, so rather than drag  
8 everybody through the blow-by-blow of how we got to our  
9 proposal and so forth, I'd like to just refer the Court and  
10 others to the Orr declaration that --

11 THE COURT: Um-hmm.

12 MR. HEIMAN: -- I think does that in great detail at  
13 pages 52 to 73. I would like to say that there was a  
14 significant effort that went into preparing that, and that  
15 was followed up by meetings, many meetings with creditors,  
16 informational and issue-oriented meetings. The proposal we  
17 made, as your Honor knows, was 128 pages. It was made public  
18 on the city website for all to see, and from our standpoint  
19 we feel we've done our best to basically lay open the  
20 relevant aspects of the city's finances to everyone, most  
21 particularly to our creditors. In that presentation, we --

22 THE COURT: I have to interrupt you. I don't intend  
23 this to be your opening statement on the issue of whether  
24 your client has negotiated in good faith because that's an  
25 eligibility issue. What I really want to hear is what the

1 current status is and what negotiations, if any, have taken  
2 place since the case was filed.

3 MR. HEIMAN: Yes, your Honor. We have had  
4 discussions in the last week and have discussions even  
5 scheduled today --

6 THE COURT: Um-hmm.

7 MR. HEIMAN: -- and next week, so discussions are  
8 continuing. However, in terms of the status of discussions,  
9 it's clear that there are significant differences between the  
10 city and its unsecured creditors distinguished from its  
11 secured creditors.

12 THE COURT: Um-hmm.

13 MR. HEIMAN: Those differences are not surprising  
14 based on the limited resources that the city has available,  
15 so in our book -- and that's what I was getting to -- there  
16 was a proposal made, so our proposal is out on the table. I  
17 don't mean this in terms of eligibility, and I certainly  
18 don't want to characterize any creditor positions here.  
19 That's not my objective. What I'd like to say is of course  
20 we are continuing to talk. We will hopefully continue to  
21 talk virtually every day as we get through this case or  
22 attempt to get through this case, but there are significant  
23 differences that we feel are going to be difficult to bridge.  
24 We believe those differences, again, are based on our limited  
25 resources to pay our creditors and their perspective on their

1 own positions and rights with respect to their claims, and  
2 so --

3 THE COURT: How would you -- how would you  
4 characterize your client's willingness to continue to try,  
5 however, to bridge those differences?

6 MR. HEIMAN: I would say more than a willingness,  
7 your Honor, there is a commitment not only by Kevyn Orr and  
8 other people in the city but by his team of professionals to  
9 make itself available and, in fact, pursue discussions, as I  
10 say, every day of the week that we can with every  
11 constituency. And I would also like to add I don't want to  
12 mislead anybody. I believe that we've had constructive  
13 discussions and -- civil and friendly, and yet when it comes  
14 to the point of saying, "How do you view our proposal?" no  
15 one likes it, and that's not surprising. It requires  
16 significant -- our proposal requires significant across-the-  
17 board debt relief from our unsecured creditor body. So that  
18 is where we are, and if I may, I know this is another agenda  
19 item, but we welcome the idea of mediation because there are  
20 very serious issues here. We have, as I say, limitations,  
21 and, again, we would like to talk to creditors consistently,  
22 constantly. We have meetings scheduled even today and  
23 several meetings scheduled next week, and we will continue to  
24 schedule meetings, but the --

25 THE COURT: All right. Well, you know, I'll

1 certainly submit -- request your more specific comments  
2 regarding mediation as well as those of others when we get to  
3 that item on the agenda.

4 MR. HEIMAN: Okay. Thank you, your Honor.

5 THE COURT: Let's turn our attention to the proposed  
6 dates and deadlines item on the agenda, and I want to focus  
7 first on the schedule for resolution of the issue of  
8 eligibility. Before we set dates and deadlines and the  
9 extent of discovery, however, it would be helpful for me to  
10 get whatever sense I can from the attorneys involved as to  
11 what the eligibility issues will be, and so from the papers  
12 that have been filed so far, I think we can safely assume  
13 that there will be at least these two: one, did the city  
14 negotiate in good faith; and, two, did the governor properly  
15 authorize the Chapter 9 filing in light of what is argued to  
16 be the constitutional protection of pension rights. Do you  
17 or does anyone here see any other eligibility issues?

18 MR. HEIMAN: I think, your Honor, first of all, let  
19 me say that Mr. Bennett is going to address the motion that  
20 requests the eligibility schedule as well as your proposed --

21 THE COURT: Okay.

22 MR. HEIMAN: -- deadlines, so he may have more to  
23 say about this, but we believe that the statutory  
24 requirements for filing are going to be at issue, and, of  
25 course, we have our position on that. And also we understand

1 the governor's authority issue, especially after the last  
2 couple of weeks, so we are aware of that, but Mr. Bennett may  
3 have more to say about that at the time we get to the motion.  
4 Okay.

5 THE COURT: Okay. So let me ask any other counsel,  
6 can any of you foresee any other eligibility issues?

7 MR. LAROSE: Good morning, your Honor. Lawrence  
8 Larose representing Assured Municipal Finance Guaranty  
9 Corporation, insurer of approximately \$2.5 billion of various  
10 series of the city's indebtedness.

11 Your Honor, with respect to authorization -- we have  
12 made no decision as to objecting to eligibility, but with  
13 respect to authorization, your Honor, I respectfully suggest  
14 that it goes beyond the issue of pensions.

15 THE COURT: In what sense, sir?

16 MR. LAROSE: Compliance with the underlying Act in  
17 connection with the authorization of the Chapter 9.

18 THE COURT: Can you be more specific?

19 MR. LAROSE: No. As I said, your Honor, I'm not  
20 prepared to make an objection today on that issue. I just  
21 need to preserve it for the record.

22 THE COURT: Okay.

23 MR. LAROSE: Thank you.

24 THE COURT: Well, I don't want anyone to think that  
25 they need to address me at the microphone to preserve



1 anything for the record. You will be given an opportunity to  
2 object. That will be your deadline to state your eligibility  
3 objections.

4 MR. LAROSE: Thank you, your Honor.

5 THE COURT: So we don't need that parade.

6 MS. LEVINE: Your Honor, I rose before, so I  
7 don't -- Sharon Levine, Lowenstein Sandler. We really were  
8 concerned that there might be a limitation on some of the  
9 reservations. We gave the Court a preview in the brief in  
10 support of 105, and we don't need to burden the record today.

11 THE COURT: Okay. All right. Mr. Gordon.

12 MR. GORDON: Thank you, your Honor. Robert Gordon  
13 on behalf of the Detroit Retirement Systems. At the risk of  
14 not answering the question that you just asked, I just want  
15 to make sure from a procedural standpoint whether we're going  
16 to be able to go back to other questions that you've asked of  
17 Mr. Heiman that we might want to respond to, such as the  
18 status of negotiations. I didn't know if you wanted to hear  
19 from parties after you've gone through the list or whether we  
20 can weigh in on those issues for the Court at this time.

21 THE COURT: I don't really feel the need to have  
22 everyone respond to that. What I wanted from that was what I  
23 got, which was the city is willing to negotiate.

24 MR. GORDON: And I'm certainly not here to get into  
25 a polemic about it, but I wanted to make sure the Court was

1 aware of the status in a little more detail at the right time  
2 because obviously one of the things that the Court is  
3 considering is mediation, and I would like to have the  
4 opportunity to at least apprise the Court of why the  
5 discussions are where they are at this point with parties and  
6 why perhaps mediation may not be appropriate just yet, so --

7 THE COURT: Okay. Let's save that for --

8 MR. GORDON: Okay.

9 THE COURT: -- that agenda item then.

10 MR. GORDON: Thank you, your Honor.

11 THE COURT: And I will want to hear from you then  
12 regarding that.

13 MR. GORDON: Thank you, your Honor.

14 THE COURT: Any other thoughts -- go ahead, sir --  
15 on what issues may arise in the context of eligibility?

16 MR. BENNETT: I'm Bruce Bennett from Jones Day, your  
17 Honor, and I have responsibility for the eligibility side of  
18 this today.

19 THE COURT: Okay.

20 MR. BENNETT: My reading of the situation in terms  
21 of where the expected objections are is the same as yours  
22 from the pleadings that have been filed. We certainly expect  
23 the objection relating to the constitutionality of the  
24 statute, and we certainly expect the objection relating to  
25 good faith. I'm not aware of the objection Mr. Larose is

1 foreshadowing. One of the reasons for an early deadline for  
2 exclusivity objections, which will hopefully be -- I think we  
3 expect them to be genuine substantive objections -- is that  
4 it will help every subsequent step in the process if we have  
5 a clear and complete statement of what the objections are as  
6 rapidly as possible.

7 THE COURT: Okay.

8 MR. BENNETT: On the schedule in particular, the  
9 schedule is fine with us. I can report -- I want to report  
10 two things. There were really two objections to the whole  
11 scheduling process that were actually filed. One was did we  
12 really need to receive e-mail service of objections or would  
13 we just take them off ECF.

14 THE COURT: Hold on that one. We'll get to that  
15 later.

16 MR. BENNETT: Okay.

17 THE COURT: Right now I just want to talk about  
18 dates and deadlines.

19 MR. BENNETT: Okay. The only comment I'll talk  
20 about dates and deadlines is that we -- in private  
21 discussions, there is one party that has what I think are  
22 genuine special circumstances affecting their ability to  
23 comply with the August 19th and 23rd dates, and under the  
24 assumption that these dates stay the way they are, we've  
25 reached a separate accommodation that would work for the

1 debtor and for that party, and I guess I just wanted to make  
2 clear that -- or ask, your Honor, that when you did set  
3 deadlines, was it possible to make those kinds of informal  
4 adjustments where two sides thought they were appropriate  
5 without offending the overall schedule?

6 THE COURT: Well, the answer is most likely yes so  
7 long as it doesn't result in the delay of the hearing itself.

8 MR. BENNETT: And this one doesn't, and I think  
9 that's an appropriate guideline, and we will govern ourselves  
10 by that.

11 THE COURT: Okay. Fair enough. If those are the  
12 two primary issues -- and I recognize that there may be  
13 others that parties may assert in the meantime -- I have to  
14 ask with all sincerity, because you all know this case better  
15 than I do, what is the need for discovery, and what is the  
16 scope of the discovery that is needed? Now, let me, before  
17 you all answer that question, give you my uninformed  
18 analysis, admittedly uninformed analysis.

19 On the issue of whether the governor's authorization  
20 was proper, it strikes me that that is entirely a legal  
21 issue, and if anyone believes otherwise, I'd obviously be  
22 interested in hearing that, but I think we can all agree that  
23 the governor's authorization did not include a restriction on  
24 the city's ability to seek an impairment of pension rights,  
25 which is the fact that raises the issue.

1           Turning to the good faith negotiation issue, I have  
2 a sense -- and I could be wrong -- that anyone who might  
3 object on that ground has already firsthand knowledge of what  
4 the negotiations were or weren't, so, again, I would ask from  
5 a totally uninformed perspective what the need for discovery  
6 is. I ask this question because if there's not a need for  
7 discovery, we're going to have to think about even advancing  
8 eligibility from where I have tentatively suggested it.

9           MR. BENNETT: Your Honor, since we would concur with  
10 your assessment, I'll cede the podium to others for now.

11           THE COURT: Okay.

12           MS. CECCOTTI: Your Honor, I didn't mean to send Mr.  
13 Bennett away prematurely, but I wasn't clear exactly when you  
14 wanted us --

15           THE COURT: Now.

16           MS. CECCOTTI: -- to rise.

17           THE COURT: Please.

18           MS. CECCOTTI: Okay. Well, speaking for the UAW, I  
19 think what we have in the record certainly on the  
20 bankruptcy -- from the city's filings we have some, you know,  
21 documents that were filed in terms of their qualification  
22 statement, in terms of a memorandum of law, various  
23 declarations. I don't know that -- certainly for the UAW I  
24 don't think -- I wouldn't want the Court to think that we've  
25 scratched the surface in trying to unpack those and determine

1 to what extent any discovery is needed, so I would caution  
2 against perhaps assuming more than the parties or at least  
3 certainly we have had an opportunity to do. We expected to  
4 discuss with the Court, as we're doing today, a schedule for  
5 eligibility but not in the context of -- or not informed by  
6 anything other than an initial look at the papers that have  
7 been filed, so while it may be true that some or more of us  
8 were present at certain meetings, looking at the totality of  
9 what the city has filed, I think we would really need to take  
10 a harder look at that before we could say with any certainty  
11 that no discovery is needed really on any of the  
12 qualifications. So I realize that that is a rather general  
13 statement, but I would not want the Court to be misled in  
14 thinking that we are prepared certainly today with a, you  
15 know, sort of fully indexed and annotated view of the papers  
16 that the city has filed and a sort of plan of how to get  
17 to -- from those papers to a position that we might take let  
18 alone to a litigation schedule position.

19 MS. LEVINE: Your Honor, for the record, Sharon  
20 Levine, Lowenstein Sandler. We would concur that the extent  
21 of discovery that we would need has not yet fully availed  
22 itself to us, but, at a minimum, to the extent that the city  
23 intends to rely on declarations to offer evidence in support  
24 of eligibility, we would want to take a close look at that  
25 evidence and probably seek documents and depositions with

1 regard to those proposed witnesses.

2           In addition to that, one of the things that's  
3 probably going to come to light as we move forward in this  
4 process, your Honor, is there may be a definitional issue and  
5 a dispute with regard to what exactly constitutes  
6 negotiations because our view is that the meetings that have  
7 taken place to date have been more presentations without an  
8 opportunity for give and take. And in addition to that, your  
9 Honor, in reviewing the information that's in the data room,  
10 there's information that we would need even to evaluate just  
11 those presentations that's not yet in the data room, so if a  
12 negotiation over this kind of an economic situation goes as  
13 we've seen others go, the first step of the negotiation  
14 process is the diligence, so, you know, we appreciate the  
15 fact that the city has populated a data room. There's always  
16 stuff that has to get added to it and/or created. We haven't  
17 seen the soft model, if you will, of the debtor's business  
18 plan. And after that then there is the dispute that you have  
19 to work through with regard to what the assumptions are that  
20 underlie that business plan before you can get to whether or  
21 not the asks and the gives are appropriate or not  
22 appropriate, and we would respectfully submit that in  
23 addition to just the litigation aspect of the trial on  
24 eligibility, there may be a second silo of discovery that has  
25 to do with legitimate diligence requests in connection with

1 facilitating better and more meaningful negotiations or  
2 exchanges of information perhaps facilitated by the mediator  
3 who may be helping us with process as well as substance in  
4 order to get through this process constructively. Thank you.

5 THE COURT: Thank you. That is a very helpful  
6 comment to make. Everyone in this room who has been in more  
7 than one bankruptcy case knows that there's very little about  
8 a debtor that's irrelevant to the bankruptcy case and very  
9 few requests that creditors make for information that is  
10 burdensome, and I am sure the city and its counsel understand  
11 that and will act accordingly.

12 MR. BJORK: Good morning, your Honor. Jeff Bjork  
13 from Sidley Austin on behalf of National Public Finance  
14 Guarantee. National insures about 2.5 billion of the city's  
15 debt obligations. I just want to echo the comments of  
16 counsel. We have been exchanging information requests with  
17 the city. We've been in major discussions with them about  
18 information we need, some of which actually goes to issues  
19 that may be pertinent to eligibility, some of which goes to  
20 issues that are beyond the scope of eligibility. While those  
21 discussions are continuing, what we had talked with Mr.  
22 Bennett about was potentially allowing us to participate in  
23 the discovery with eligibility because we think on the  
24 schedule it's tight. We support the schedule. We also think  
25 it might be the most efficient way to get the information



1 that, from our perspective, will help us better understand  
2 where this restructuring is going and, to your Honor's point  
3 about appointing a mediator, I think better inform the  
4 parties quicker on -- sooner in terms of where that mediation  
5 may be going. So just on that, what we had proposed, just  
6 one change in the schedule would be that the pretrial brief  
7 that you've set forth in terms of timing actually be the  
8 substantive objection that would be tied to any evidence that  
9 was intended to be presented at trial based upon the  
10 discovery policies itself.

11 THE COURT: I'm not sure I followed you. What is  
12 your request?

13 MR. BJORK: My request, your Honor, would be that  
14 the August 19th deadline --

15 THE COURT: Yes.

16 MR. BJORK: -- they have proposed that it be  
17 objections tied to specific facts. Our proposal is that we  
18 could participate in the eligibility based -- eligibility  
19 discovery based upon a reservation of rights to the extent we  
20 think that there are issues with an objection to the extent  
21 necessary based upon the facts to be determined through  
22 discovery supplemented and filed as part of the pretrial  
23 brief, so rather than -- so essentially, your Honor, what you  
24 end up with is one objection tied to the record as opposed to  
25 objection, discovery, and then a supplemental objection.

1           THE COURT: That makes me nervous, uneasy, because  
2 if I hear you right, what you're saying is you want to do  
3 discovery first and then decide whether and to what extent to  
4 object to eligibility?

5           MR. BJORK: We want to make a fully informed  
6 decision based upon the discovery that we determined and  
7 received from the city as to whether there is any grounds to  
8 object to eligibility, yes.

9           THE COURT: That's -- sir.

10          MR. BENNETT: We are uncomfortable as well. I think  
11 that there was a number of things said. There's a lot of  
12 information about the city that's already available, and we  
13 log each and every request, and we respond to requests as we  
14 can, and if there are disputes about that, we can deal with  
15 it, but given that there's so much information available, it  
16 kind of is hard for us to understand how it is that one would  
17 not know the grounds on which they are objecting to  
18 eligibility at this time. We fully understand that facts  
19 currently unknown could conceivably surface later, and we  
20 would certainly not object if a fact unknown today found its  
21 way into a subsequent brief, but we think the August 19th  
22 deadline should require and call for an objection -- all  
23 grounds stated and facts then known that support the  
24 objection. And that's the way to narrow disputes and to have  
25 an economical piece of litigation going forward. Short of

1 that, it could be a wide-ranging procedural disaster that  
2 would be ridiculously expensive and we think should be  
3 avoided.

4 THE COURT: I agree, counsel. There certainly are  
5 circumstances in which the law permits amendments to  
6 pleadings. They are limited. They apply here, but as a  
7 general matter, the Court wants to set a firm deadline for  
8 the filing of objections to eligibility.

9 MR. BENNETT: Understood. Thank you, your Honor.

10 THE COURT: Mr. Gordon.

11 MR. GORDON: Thank you, your Honor. Again, Robert  
12 Gordon on behalf of the Detroit Retirement Systems. I will  
13 focus just on the 109(c)(2) issue for a moment because Ms.  
14 Levine already commented on the 109(c)(5) issue of good faith  
15 and what have you. As to the 109(c)(2) issue, I certainly,  
16 in all candor, agree with the Court that it could appear that  
17 it is strictly a legal issue. To that end and consistent  
18 with the comments I've just heard, it would seem to us -- and  
19 this is something that is consistent with what we filed  
20 yesterday afternoon -- that in addition to a deadline for the  
21 filing of an eligibility objection, there ought to be a  
22 deadline for the city to then file some kind of a response,  
23 and then we could see if there is any kind of a discovery  
24 issue that needs to be addressed.

25 THE COURT: Um-hmm, um-hmm, yeah.

1 MR. GORDON: So that's my suggestion --

2 THE COURT: I saw that you submitted that, and that  
3 was not in there, not by intent. It just didn't occur to me  
4 to put that in there, so I would like to hear from the city  
5 regarding that question. Thank you.

6 MR. GORDON: Thank you, your Honor.

7 THE COURT: So the question is should we have a  
8 deadline for the city to file a written response or a series  
9 of written responses to the eligibility objections that are  
10 filed?

11 MR. BENNETT: I certainly don't have a problem  
12 filing any pleading that the Court thinks would be helpful to  
13 it.

14 THE COURT: Um-hmm.

15 MR. BENNETT: I do think it's important to note --  
16 and I hope people didn't miss it in the flurry of filings --  
17 that we had filed a statement of qualifications and a fairly  
18 extensive --

19 THE COURT: Um-hmm.

20 MR. BENNETT: -- brief on the subject of eligibility  
21 already --

22 THE COURT: Um-hmm.

23 MR. BENNETT: -- so it's not as if our position is a  
24 mystery.

25 THE COURT: Um-hmm. All right. I want to give

1 serious consideration to this and see how it can be worked  
2 into the schedule. Okay. But to refocus us here, the  
3 question is what about discovery on the issue of eligibility?

4 MS. PATEK: Your Honor, Barbara Patek appearing on  
5 behalf of the public safety unions. I would echo Ms.  
6 Levine's comments with respect to the definitional question  
7 on negotiation. We concur with the deadline. We think this  
8 is an aggressive and tight scheduling order as it stands now.  
9 We're prepared to abide by it subject to -- you know, for  
10 good cause shown, and it sounds like the debtor has already  
11 acknowledged and agreed to that with one other party, so with  
12 that caveat --

13 THE COURT: Um-hmm.

14 MS. PATEK: -- and the issue of the city's response  
15 being considered, we're prepared to go forward.

16 THE COURT: Um-hmm. Anyone else? Okay.

17 MR. BENNETT: On the subject of good faith, I agree  
18 with your Honor that it doesn't take a great deal of  
19 exploration to figure out whether the parties did or did not  
20 act in good faith, and I would, frankly, think that  
21 there's --

22 THE COURT: Well, whether the city negotiated in  
23 good faith.

24 MR. BENNETT: Well, that's true; however, if your  
25 Honor reads the cases, you'll find that the emphasis quickly

1 shifts to what both sides were doing because it takes --

2 THE COURT: Fair enough, but the eligibility  
3 requirement --

4 MR. BENNETT: Okay. And so --

5 THE COURT: -- is the city.

6 MR. BENNETT: -- just to lay out very briefly, Mr.  
7 Heiman, I think quite properly -- I'm going to do the same  
8 thing. We're very reluctant to say what our negotiating  
9 partners said to us. We feel comfortable telling you  
10 everything about what we said, and, frankly, much of what we  
11 have said is public. It's the other side that your Honor  
12 does not know about and has to find out about on some basis  
13 to make an assessment.

14 THE COURT: Fair enough.

15 MR. BENNETT: And I am submitting that, in fact, if  
16 you had before you what the city proposed and what the  
17 responses were and were there responses in all circumstances  
18 in the negotiating period that we tried hard to make  
19 productive, I think you would, frankly, have all you need, so  
20 I do think that in the context of parties who are going to  
21 object to good faith of the city in the negotiating process,  
22 you need some form of an arrangement, I think, to benefit  
23 your decision-making to find out exactly what that party said  
24 in response to the city's very public proposal.

25 THE COURT: Okay.

1 MR. BENNETT: Thank you.

2 THE COURT: Ms. Brimer. One second, sir. Mr.  
3 Morris, I do want to hear from you, so stand by.

4 MR. MORRIS: All right. I was told I need to get  
5 the --

6 MS. BRIMER: Good morning, your Honor. Lynn M.  
7 Brimer appearing on the Retired Detroit Police Members  
8 Association. It is an association of approximately 240  
9 retired Detroit Police Department personnel who either are  
10 currently or will in the future collect pursuant to the  
11 police and fire-fighters pension.

12 I raise one issue with respect to the Court's  
13 deadlines and the comments this morning, and that is up later  
14 this morning, your Honor, is an issue with respect to whether  
15 or not a committee will be appointed to represent the  
16 retirees. And there are many issues that we have with  
17 respect to that motion, but with respect to the Court's  
18 deadlines, the concern I raise right now and just want to be  
19 sure the Court is cognizant of this is that if there is -- if  
20 the Court does determine that --

21 THE COURT: Um-hmm.

22 MS. BRIMER: -- it is appropriate and within the  
23 authority of the Code for the trustee to appoint a committee,  
24 these deadlines may be extremely aggressive because it's very  
25 possible that a committee would not be constituted, and

1 counsel and what other -- whatever other professionals would  
2 be required would not even be in place by this deadline, so I  
3 just --

4 THE COURT: Um-hmm.

5 MS. BRIMER: -- would like to ensure that the Court  
6 keep that in mind when evaluating the deadlines.

7 THE COURT: Right. I do want to be very sensitive  
8 to that issue and build into our process an adequate  
9 opportunity for everyone to be heard, of course.

10 MS. BRIMER: Thank you, your Honor.

11 THE COURT: Thank you. Sir. And then I'll hear Mr.  
12 Morris next.

13 MR. GOLDBERG: Okay. I just have a brief question,  
14 your Honor. My name is Jerome Goldberg, and I'm on --

15 THE COURT: Mr. Morris, there's a seat for you here.  
16 Go ahead, sir.

17 MR. GOLDBERG: And I represent party of interest  
18 David Sole. I just had a brief question, and I excuse the  
19 Court for my own ignorance in the procedures in this matter,  
20 but the deadline to serve written discovery requests for  
21 August 23rd, just for my own clarification, that specifically  
22 is discovery requests relative to the eligibility question;  
23 is that correct?

24 THE COURT: Yes. All of this discovery is the  
25 discovery needed for the eligibility issues that are raised



1 in the objections.

2 MR. GOLDBERG: Thank you, your Honor.

3 THE COURT: Mr. Morris.

4 MR. MORRIS: Your Honor, Ms. Brimer made my point.

5 THE COURT: Oh, okay. Then you're all set. Would  
6 anyone else like to be heard on this issue of the necessary  
7 discovery? All right. I will take your comments under  
8 advisement and issue an appropriate scheduling order. There  
9 are other deadlines. We've been talking about deadlines  
10 regarding eligibility. I suggested that we might want to  
11 have a deadline for the city to file motions to assume or  
12 reject executory contracts, including collective bargaining  
13 agreements. Sir.

14 MR. HEIMAN: Yes. Thank you, your Honor. I think I  
15 can address that pretty quickly. Most of our collective  
16 bargaining agreements have expired, the large majority. We  
17 have six or seven still remaining in connection with the work  
18 at Detroit Water and Sewer District. It is our view at this  
19 point that we will not seek -- we will not need to seek court  
20 relief on those --

21 THE COURT: Um-hmm.

22 MR. HEIMAN: -- and we will advise you at our  
23 earliest opportunity if that should change.

24 THE COURT: Okay. What about other kinds of  
25 executory contracts, leases, et cetera, et cetera?

1           MR. HEIMAN: We have nothing on tap today for that  
2 in terms of deadlines. As your Honor may know, we have a  
3 list of noncore assets that we're dealing with. They include  
4 water and sewer and the Coleman Young Airport, et cetera, et  
5 cetera, the Institute of Art. There is a list in our book  
6 and our -- and a description about them, and we hope on some  
7 of them, at least, to be able to bring something to your  
8 Honor that will be beneficial to the estate. We are not  
9 anywhere near prepared to do that today, so I don't think we  
10 have anything today specifically in that area.

11           There is one that comes to my mind. There is one  
12 issue right now, and I'm reluctant to raise it slightly, but  
13 I feel I have to so that there's no question of the city  
14 somehow waiving a right to object, but, as your Honor may  
15 know, the attorney general has filed a notice of appearance  
16 which was preceded and followed by public statements.  
17 Without going into a lot of detail, that confuses us a bit  
18 about the role the attorney general expects to take in this  
19 case. We want to try to unravel that and not come to your  
20 Honor unless we have to, but that is something that we have  
21 to look at, and, you know, we won't need any special  
22 hearings. I know that you have a schedule on omnibus and so  
23 forth that, by the way, is perfectly fine with us, so with  
24 that -- and, you know, we're talking about some post-petition  
25 financing that we'd probably like to pursue, and that

1 requires --

2 THE COURT: Um-hmm.

3 MR. HEIMAN: -- a long explanation as well, and we  
4 would hope that sometime in the near term we will know when  
5 we would like to --

6 THE COURT: Um-hmm.

7 MR. HEIMAN: -- seek your Honor's views of that,  
8 but, again, we're not ready today to suggest any deadlines.

9 THE COURT: All right. In other kinds of  
10 reorganization cases, as you well know, courts do commonly  
11 set a deadline for the assumption or rejection of executory  
12 contracts so that the plan confirmation process doesn't get  
13 delayed when such issues are raised just before confirmation,  
14 so I guess I'm willing to grant you some latitude here, but I  
15 don't want to get to plan confirmation and then run into  
16 issues of what contracts are going to be assumed or rejected.

17 MR. HEIMAN: Your Honor, you raise a very good  
18 point, and we have been looking at executory contracts.  
19 Without belaboring the issue, it's a huge job in this city to  
20 look at --

21 THE COURT: Right.

22 MR. HEIMAN: -- those, and at this point we have  
23 nothing specific that we know of that we need to bring to  
24 you, but there are -- in what I call the asset columns there  
25 are some leases and arrangements and whatever that at some

1 point -- I am not talking about, you know, like next year --  
2 at some point hopefully this year we will bring to your  
3 attention if --

4 THE COURT: All right.

5 MR. HEIMAN: -- we think we need to.

6 THE COURT: Well, I think you understand my concern  
7 here.

8 MR. HEIMAN: Yeah. And I appreciate it, and we will  
9 make a special effort to accelerate our evaluation of those  
10 executory contracts. Shall I go on with your agenda, your  
11 Honor?

12 THE COURT: Well, let me just ask the question of  
13 really everyone in the room point blank. I have suggested  
14 these discovery deadlines, the date for a final pretrial  
15 conference, and a date to begin the trial on eligibility.  
16 Assuming I agree that discovery is required, and I'm inclined  
17 to at this point, based on the record we have so far, does  
18 anyone object to any of those dates on lines 8, 9, 10, and 11  
19 of my Notice of Proposed Dates and Deadlines?

20 MR. HEIMAN: Sorry.

21 MS. CECCOTTI: Your Honor, once again Babette  
22 Ceccotti, Cohen, Weiss & Simon, LLP, for the UAW. I'm not so  
23 sure I'm rising specifically to object to those particular  
24 items, but I guess with the open-endedness of -- despite the  
25 efforts here today to try to outline for your Honor some

1 discovery issues -- and I should also point out that from our  
2 perspective, some of the discovery may extend, you know,  
3 beyond the city, so I'm wondering whether it would be helpful  
4 if the Court were to perhaps think about the discovery  
5 schedule and then perhaps build on that because there may not  
6 be enough time. And, again, I don't think anyone here is  
7 looking to delay any of this unduly, but there's a lot here,  
8 and one of the things that I'm sure is not in anyone's  
9 interest is to have some of these issues rushed. One doesn't  
10 know what one is going to find in discovery, so I --

11 THE COURT: Well, let me just ask you. Are any of  
12 the other discovery deadlines that I proposed here, in your  
13 view, too aggressive?

14 MS. CECCOTTI: Yes. I think they might be too  
15 aggressive. They might be too aggressive.

16 THE COURT: Which one or all of them?

17 MS. CECCOTTI: Well, again, if we're looking at the  
18 whole schedule as a package, the whole schedule is fairly  
19 aggressive in and of itself. In addition -- and we've  
20 already had the reference made to the retiree motion -- we  
21 don't know exactly how your Honor is going to view that  
22 motion in the context of the schedule, and there have been  
23 some suggestions that it would be worth considering this  
24 schedule in the context of where your Honor ends up on the  
25 retiree motion, so I wonder if it might be possible to

1 perhaps revisit the totality of the schedule, at least the  
2 block of time, after your Honor has had a chance to hear the  
3 parties on the retiree motion. It might actually inform the  
4 Court rather than to try to set something now and then try to  
5 shoehorn the retiree motion -- the retiree committee process,  
6 assuming your Honor authorizes the motion, into a schedule  
7 that your Honor is saying now it's just a scheduling  
8 suggestion.

9 THE COURT: All right. Does anyone else want to be  
10 heard on the specific dates and deadlines that I have set  
11 forth here?

12 MS. PATEK: Your Honor, I apologize. Not specific  
13 dates and deadlines, but I want -- if I may go back for a  
14 moment to the 365 issue just --

15 THE COURT: Okay.

16 MS. PATEK: -- for the matter of preserving  
17 something. I represent the public safety unions. Barbara  
18 Patek. One of those, the Detroit Police Officers  
19 Association, to my knowledge and understanding -- and I'm not  
20 up to the minute because I'm not their labor lawyer -- does  
21 have a contract in place, at least as of a couple of days  
22 ago, so I don't know if that perhaps with everything they  
23 have on their plate was simply off the city's radar screen,  
24 but we were looking -- I don't have a particular deadline to  
25 propose, and I just want that noted for the record.

1 THE COURT: Mr. Heiman.

2 MR. HEIMAN: Your Honor, that is inconsistent with  
3 our understanding. There may be a CET, what's -- you know,  
4 was something unilaterally opposed by the city, but we don't  
5 view that as an executory contract, so we don't think that  
6 that is correct that there is a CBA on police, fire, or  
7 otherwise that is extant right now.

8 THE COURT: I'm hearing buzzing in the loudspeaker  
9 system, which most commonly means someone has their telephone  
10 on. Please check your telephones and be sure they're off for  
11 me.

12 MR. HEIMAN: I think I might have changed -- do you  
13 still hear it?

14 THE COURT: Oh, you moved the microphone, and maybe  
15 that solved the problem. Well, okay. If that's what it  
16 took, great.

17 MR. HEIMAN: I have -- I am now on 3(b) of your  
18 agenda. Is that correct, your Honor, the plan filing date?

19 THE COURT: Well, before we get to that, I want to  
20 ask whether there are any other potential motions or  
21 adversary proceedings that you or anyone else foresees that  
22 we should address before we get to the issue of setting a  
23 plan deadline. Any other motions --

24 MR. HEIMAN: Not other than what I --

25 THE COURT: -- or adversary proceedings?

1 MR. HEIMAN: No, your Honor, not --

2 THE COURT: Anyone else foresee any other kinds of  
3 motions or adversary proceedings that it would be helpful to  
4 know about now and perhaps set a time schedule for? Sir.

5 MR. HACKNEY: Good morning, your Honor. Stephen  
6 Hackney on behalf of Syncora. I wanted to rise briefly to  
7 say that it is possible that there will be additional  
8 adversary proceedings arising out of the COPs and swap  
9 structure that I think the Court has read --

10 THE COURT: Um-hmm.

11 MR. HACKNEY: -- probably more than it wants to  
12 about, but there is already --

13 THE COURT: Probably.

14 MR. HACKNEY: Probably. Already litigation has been  
15 initiated by the city against Syncora. Syncora has also  
16 initiated litigation against the swap counterparties in New  
17 York.

18 THE COURT: Um-hmm.

19 MR. HACKNEY: I think the Court has been made aware  
20 of that.

21 THE COURT: Okay.

22 MR. HACKNEY: And I cannot be more specific other  
23 than to say that --

24 THE COURT: Right.

25 MR. HACKNEY: -- it's entirely possible as you're



1 resolving -- as the various courts are resolving where this  
2 can proceed, there may be additional adversaries that arise  
3 out of that structure.

4 THE COURT: Right. Good. Thank you for reminding  
5 me of that.

6 MR. HACKNEY: Thank you, your Honor.

7 MR. HEIMAN: I'm sorry, your Honor. I actually  
8 appreciate that supplement because there may be some motion  
9 or adversary arising out of that debt that's not with respect  
10 to what's already being litigated, so --

11 THE COURT: Okay.

12 MR. HEIMAN: -- we don't know today.

13 THE COURT: Well, if so, that would happen fairly  
14 soon and not likely to impact the plan confirmation schedule.

15 MR. HEIMAN: Right.

16 THE COURT: All right. Anyone else with any other  
17 possible motions or adversary proceedings? I have one I'd  
18 like to suggest to you, although we'll address that when we  
19 get to the issue of committees. All right.

20 Let's talk about the deadline to file a plan. I  
21 suggested March 1st.

22 MR. HEIMAN: Your Honor, we enthusiastically accept  
23 that deadline. I would only supplement that acceptance with  
24 a statement of desire on the part of the city, if I may.

25 THE COURT: Please.

1           MR. HEIMAN: And that is that we hope -- and our  
2 view is that time is our enemy and that the facts are not  
3 going to change no matter how long we wait, whether it's on  
4 eligibility or filing of a plan, so we intend or hope to run  
5 our process on parallel paths so that we can move as swiftly  
6 as possible through this case, and, therefore, it is our hope  
7 and desire that we will file a plan by year end, which is  
8 well in advance of the deadline you have set. Now, there are  
9 a lot of issues surrounding that, but that is our own target,  
10 so --

11           THE COURT: Um-hmm. All right. Well, it would be  
12 the Court's intention when a plan is filed to reconvene a  
13 conference like this to set a schedule for litigating  
14 whatever the issues are regarding that plan.

15           MR. HEIMAN: Thank you, your Honor.

16           THE COURT: Would anyone else like to be heard  
17 regarding the deadline that the Court proposed? All right.  
18 Thank you.

19           MR. HEIMAN: Next is item four, the mediation  
20 proposal, your Honor.

21           THE COURT: Yes. Let's turn our attention to that.  
22 Before you commence, I have a little introduction to give.  
23 The Court does solicit the comments regarding its proposed  
24 mediation order. The reason that the Court provided notice  
25 of its proposed mediation order is because it would like

1 comments from you on whether this is a good idea in this case  
2 or not. First, the Court would like to hear from counsel  
3 regarding the concept of mediation in this case. Then we can  
4 discuss the particulars of the order itself. The Court does  
5 strongly encourage mediation in this case in order to  
6 facilitate the consensual resolution of disputes to the  
7 greatest extent possible. Bankruptcy certainly does offer  
8 litigation as a means to resolve disputes, and the Court is,  
9 of course, fully prepared to conduct the litigation of any  
10 issue that the parties decide requires it. However, the goal  
11 of bankruptcy is almost always better served through the  
12 consensual litigation of disputes.

13           What is the goal of bankruptcy? The purpose and  
14 goal of bankruptcy is to give the city a fresh start in its  
15 financial life and to do so in the most expeditious and  
16 efficient way possible. That's the goal of this bankruptcy  
17 and really all bankruptcies. Everyone who practices in the  
18 field of bankruptcy law understands that consensual  
19 resolution will meet the goals of promoting the city's fresh  
20 start better -- much better than litigation. There are two  
21 reasons for this. The first reason is that after this  
22 bankruptcy case is over, however it is resolved, many of the  
23 city's creditors will continue to have long-term  
24 relationships with the city. You know who you are, the  
25 unions, the bondholders, the employees, the trade creditors.

1 Settlements can stabilize and even strengthen those long-term  
2 relationships. On the other hand, litigation is not designed  
3 for that purpose, and experience strongly suggests that it  
4 will not have that effect. It may even be counterproductive.

5           Why is stabilizing and enhancing those long-term  
6 relationships important to the city's fresh start? For the  
7 simple reason that if these relationships are stronger and  
8 more cooperative, it will help the city's recovery and  
9 facilitate the city's ability to become the city that it  
10 wants to be. Strong relationships between the city and its  
11 creditors should also be important to the creditors because  
12 it will place the city in a better position to do more  
13 business with its creditors.

14           Finally and perhaps most important of all is that  
15 consensual resolution of the city's disputes with its  
16 creditors is in the best interest of the citizens of the City  
17 of Detroit. Without addressing their legal rights as such,  
18 the city that they deserve, a city that is strong, vibrant,  
19 and responsive, is more readily achieved after a settlement  
20 between the city and its creditors than after long,  
21 expensive, and potentially bitter litigation. As a result,  
22 the citizens of Detroit also have an important interest in  
23 the outcome of this case that is as prompt and efficient as  
24 possible. Sir.

25           MR. HEIMAN: Thank you, your Honor.

1 THE COURT: Hold on one second, please. Okay. All  
2 right. After all, I do need to ask you to turn that  
3 microphone so that its head is facing directly at you.

4 MR. HEIMAN: Is this better?

5 THE COURT: Turn it like 90 degrees so it's right --  
6 pointed right at you. There you go.

7 MR. HEIMAN: Okay.

8 THE COURT: That's it.

9 MR. HEIMAN: Sorry.

10 THE COURT: Okay. But, again, I'm hearing noise in  
11 the loudspeakers, so please check your phones to be sure  
12 they're all off. Go ahead.

13 MR. HEIMAN: First, the concept of mediation.  
14 Obviously you articulated better than I could possibly why we  
15 support mediation. We want resolution. We don't want  
16 protracted litigation. We want to move swiftly. Time is our  
17 enemy, as I said. We are hopeful that a mediation process on  
18 all important issues that relate to the plan or otherwise,  
19 individual creditors' rights will be better served by  
20 mediation, so, again, we welcome that and appreciate your  
21 comments in that regard.

22 With respect to the order, which is your second  
23 question, we have no desire to change any of the language  
24 presented in the order as you've stated it.

25 THE COURT: All right. Thank you. And I want to

1 solicit the comments of others regarding the concept of  
2 mediation and the particulars of the order. It's probably  
3 not, however, appropriate to seek your comments in this forum  
4 regarding the proposed mediator, and so I am going to ask you  
5 if you have any comments, either -- on either side of the  
6 question about the proposed mediator, I'm going to give you a  
7 seven-day opportunity to submit to my chambers sealed and  
8 confidentially any such comments, and so the actual entry of  
9 the mediation order will be held up for that purpose, but at  
10 this point I would like to hear from others on the concept of  
11 mediation and the terms of the order.

12 MS. LEVINE: Your Honor, Sharon Levine, Lowenstein  
13 Sandler, and I'm not sure because of the informal sort of  
14 nature if I actually entered for whom I'm appearing, so with  
15 the Court's permission, the Michigan Council 25 of the  
16 American Federation of State, County, and Municipal  
17 Employees, AFLCIO, and Subchapter 98, the City of Detroit  
18 Retirees, which is the union's retirement group here in  
19 Detroit.

20 First, we support mediation. We support protecting  
21 our constituents in every way we possibly can within the core  
22 proceedings. We had some discussion in the retiree motion  
23 response about reservation of rights, and we've had some  
24 conversations with the city's attorneys with regard to that  
25 as well. We don't want the fact that we do recognize the

1 city has some serious woes here that it needs to address to  
2 in any way detract from our --

3 THE COURT: Um-hmm.

4 MS. LEVINE: -- ability to go down dual or three  
5 tracks.

6 THE COURT: Um-hmm.

7 MS. LEVINE: Two, with regard to the specific  
8 language of the order, we would just ask for a clarification  
9 with regard to decretal paragraph four, which I alluded to  
10 when I approached the podium earlier. In addition to  
11 mediating the difficult substantive issues that need to get  
12 done, we do seem to be having some issues which we're hoping  
13 that we're working through with regard to actually getting  
14 access to information and the ability to have more of a give  
15 and take in the process. And we're hoping that, to the  
16 extent that there is a mediator, it's a full-service mediator  
17 that can help us with process issues as well as substance  
18 issues. Thank you.

19 THE COURT: Good point. Thank you.

20 MR. GORDON: Your Honor, Robert Gordon again on  
21 behalf of the Detroit Retirement Systems. Your Honor,  
22 without waiver of our position that accrued pension benefits  
23 can't be diminished or impaired under the Michigan  
24 constitution, the systems are not simply standing pat on that  
25 position but are pursuing parallel -- the parallel path of

1 exploring ways in which the systems can be a part of the  
2 solution. Having said that, in the context of discussing  
3 mediation, it's important that -- again, harkening back to my  
4 comments from earlier, that the Court understand a little bit  
5 about where the negotiations actually stand. And this is not  
6 with respect to any comments about whether those negotiations  
7 meet the standard for good bid negotiations at all.

8 THE COURT: Okay.

9 MR. GORDON: This is about whether there's been  
10 negotiations in general. To date there have been, as has  
11 been indicated, several presentational meetings with the city  
12 and the emergency manager and his financial and legal  
13 advisors. There were presentations made at the airport on  
14 June 14th. There was a presentation made on June 20th  
15 regarding modifications possibly to pension and healthcare  
16 benefits. There was a financial due diligence session  
17 conducted in New York on -- I believe it was June 25th.  
18 There were further financial due diligence sessions conducted  
19 just on July 9th and 10th, roughly one week before this  
20 bankruptcy was filed. These were due diligence sessions.  
21 These were sessions to gather information. There were legal  
22 and financial advisors from all the major creditor  
23 constituents in a room asking questions about the cash flow  
24 forecast, for example, and that really is the basis for the  
25 proposal that was made by the emergency manager on June 14th.



1           Your Honor, those discussions made clear that there  
2 are a number of not immaterial but very material financial  
3 analyses that still need to be undertaken, and I want to make  
4 it very clear. I am not by saying this casting any criticism  
5 or aspersion on anyone. The emergency manager's team, as far  
6 as I know, is working very hard, but there is information  
7 that is not available at this time in the data room or  
8 otherwise, and some of that I can even give you an example  
9 because it's public. The emergency manager's proposal on --  
10 that was disseminated on June 14th has those cash flows  
11 available, a ten-year cash flow forecast there.

12           THE COURT: Um-hmm.

13           MR. GORDON: The emergency manager's proposal also  
14 references, for example -- and this is just one example --  
15 that there may be an initiative to create a water authority.  
16 And in the root cause document that was issued a couple  
17 months back by the city, there was some indication that such  
18 an authority may free up tens of millions of dollars in  
19 revenues for the city. Those numbers are not in the cash  
20 flow forecast at this time.

21           THE COURT: Um-hmm.

22           MR. GORDON: And it's been readily accepted they  
23 haven't, and the analysis is still ongoing as to what that  
24 number should be. That is very important because if you look  
25 at the cash flow forecasts, the premise of the proposal by

1 the emergency manager begins by -- with the fact that,  
2 according to those cash flow forecasts, there is on average  
3 over the ten years about \$80 million a year available for  
4 payments to what are designated under his proposal as  
5 unsecured creditors. The root cause analysis talks about  
6 tens of millions. I believe it puts a range of maybe 30 to  
7 \$70 million on that, so you can imagine just that item alone,  
8 30 to \$70 million versus \$80 million, these are huge numbers,  
9 and it makes it difficult to sit down and have fulsome  
10 negotiations when there are things that are still in flux  
11 like that. Again, it's part of the process. This is not a  
12 mom and pop convenience store situation. There are a lot of  
13 complexities, and I fully expect that the parties will engage  
14 to resolve those informational issues, but they haven't  
15 happened yet.

16 The Retirement Systems have also -- I feel like I'm  
17 free to report to the Court -- have had discussions with  
18 their actuaries to discuss different issues relative to this  
19 matter. They are very complex issues, very complex issues  
20 with respect to the actuarial calculations, and we have kept  
21 the city --

22 THE COURT: This is the underfunding issue?

23 MR. GORDON: The underfunding issues or how cash  
24 flows might be permitted as they -- whatever the cash flows  
25 may be, how those could permit supporting the existing

1 benefits over time. We have kept the city, their legal and  
2 financial advisors apprised of our progress on that front  
3 with a view to being able to sit down with them, and it is,  
4 indeed, anticipated that later this month we will hopefully  
5 be able to sit down with our financial team and our actuaries  
6 in the same room with the emergency manager's team and his  
7 actuaries and start to have conceptual discussions about  
8 actuarial issues, but that is just at the beginning stage at  
9 this point, so I wanted to be clear about that. As a result,  
10 it is our feeling that while mediation -- we have absolutely  
11 no objection to the concept of mediation, we would  
12 respectfully submit it's premature at this point. We are  
13 going to make formal information requests of the city in the  
14 near future. It's been all informal up to now because of the  
15 out-of-court situation that we were in.

16 THE COURT: Um-hmm.

17 MR. GORDON: But we will be making formal requests,  
18 and, of course, the city will need time to respond to those  
19 requests. And then we would expect that the parties would  
20 engage in negotiations to narrow the issues, and we think  
21 that process needs to play out to some extent before we end  
22 up in mediation. We need better information, and we need to  
23 have had those discussions between the parties. So it would  
24 be our suggestion in that regard, respectfully, the Court  
25 consider something along the lines of perhaps having a status

1 conference every 30 days to see where we are in this  
2 negotiation process to gauge when mediation may be  
3 appropriate.

4 Rule 1001, as the Court has referenced, talks about  
5 both a just and speedy administration of the case. Just is  
6 as important as speedy is. We want to caution against  
7 expediency merely for the sake of expediency. We all have a  
8 sense of urgency. How could we not? But there is proceeding  
9 with all due dispatch, and then there's proceeding in haste  
10 and endangering parties' due process rights.

11 The sound bite that we hear that the city is broke  
12 is a catchy sound bite, but -- we all understand the urgency,  
13 but it is a bit of a sound bite. The city is not paying its  
14 unsecured bond debt at this time. The city is not paying its  
15 employer contributions at this time. The city is meeting its  
16 payroll obligations. So while everything needs to move with  
17 due speed -- we understand that -- again, it should not be  
18 used as an excuse to move through this process faster than is  
19 reasonable.

20 Your Honor, the stakes are high, and the men and  
21 women of this city, current employees and retirees, deserve  
22 to have their rights addressed in a careful and delicate  
23 manner and not in a more --

24 THE COURT: All right. You make really --

25 MR. GORDON: -- blunt fashion all in the name of

1 expediency.

2 THE COURT: You make really important comments, and  
3 I thank you for them. As I see the issue that you raise, it  
4 is this. Who is in a better position to determine when the  
5 actual mediation discussions should begin, either a mediator  
6 or the Court? A mediator could meet with the parties on a  
7 regular basis informally, supervise the expedited exchange of  
8 information, and have potentially a better sense of when to  
9 begin negotiations, or the Court, whose processes are much  
10 more formal, much more public, more constrained. I'm  
11 inclined to think that the mediator is in a better position  
12 to say, okay, now it's time to actually begin discussions.

13 MR. GORDON: Your Honor, I will step back and say  
14 this. What you've just described is a much more three-  
15 dimensional mediation process than perhaps I was envisioning  
16 and has often been the case.

17 THE COURT: Um-hmm.

18 MR. GORDON: What you're describing I think could be  
19 constructive. I would not dispute that.

20 THE COURT: Well, please understand what I'm  
21 referring to here and what I envision here is entirely  
22 facilitative mediation. There's nothing that this mediator  
23 will have the authority to do in terms of compelling any  
24 particular outcome, so it's up to the parties to work with  
25 the mediator on setting the agenda, setting the schedule, and

1 working through the issues. The ultimate deliverable is a  
2 plan, assuming we get past eligibility, which I don't want to  
3 assume, but for purposes of this we want to assume it, a plan  
4 that has the support of enough creditors to be confirmed;  
5 right? And in that regard, there may be other disputes that  
6 should better be referred to a mediation panel than to the  
7 mediator who is working on debt adjustment, and I think we  
8 want to keep that option open also.

9 MR. GORDON: Thank you, your Honor, for those  
10 thoughts and comments.

11 THE COURT: Okay.

12 MR. GORDON: Yeah. Without revisiting my comments,  
13 it is consistent also with our concerns that are expressed  
14 with respect to the retiree committee that, again, the  
15 process not be used in a way that --

16 THE COURT: Right.

17 MR. GORDON: -- allows someone in a perfunctory way  
18 to move --

19 THE COURT: Right.

20 MR. GORDON: -- through this process and say we've  
21 met the obligations, let's just go to a plan confirmation  
22 hearing when the parties really haven't had a real meaningful  
23 opportunity to discuss the issues.

24 THE COURT: Right. You've already heard me speak on  
25 the subject of why a consensual resolution is better than a

1     cramdown.

2             MR. GORDON: To that end, your Honor, the only other  
3     comment I would make is that as to the proposed mediation  
4     order itself --

5             THE COURT: Yes.

6             MR. GORDON: -- it is a little bit, I guess -- you  
7     know, your Honor, I'll strike that comment.

8             THE COURT: Okay.

9             MR. GORDON: Based upon your comments, I'm fine.  
10    Thank you.

11            THE COURT: Well, let me just offer this opportunity  
12    to you, Mr. Gordon, and really anyone. In the seven-day  
13    period that I'm going to allow for additional comments to be  
14    submitted to the Court, you should also take that as an  
15    opportunity to suggest any changes to the language or really  
16    anything about the order that you'd like.

17            MR. GORDON: Thank you, your Honor.

18            THE COURT: Would anyone else like to be heard  
19    regarding the proposed mediation order concept or terms? No?  
20    Sir.

21            MR. HEIMAN: Your Honor, just two quick comments to  
22    what Mr. Gordon said. The first is that I don't intend to  
23    respond today to some of his characterizations. I don't  
24    think that would advance the ball on the subject we're  
25    talking about. And the second is your Honor asked me awhile

1 ago whether the city is willing to continue to negotiate with  
2 its creditors. I think I responded that we're committed to  
3 doing so, and I want to make that clear again in this  
4 context. We do not view mediation as a reason to not  
5 continue our discussions. Quite the contrary. If mediation  
6 is going to be successful at all, it's our obligation -- and  
7 the burden falls on us -- we recognize this -- to move the  
8 ball here with information, discussions, or what have you, so  
9 we, again, endorse the mediation concept as well as the  
10 language of the order.

11 THE COURT: All right. Thank you. Let's move on  
12 then and talk about the proposed order appointing a fee  
13 examiner. Again, I have a bit of an introduction that I'd  
14 like to give you and everyone. In considering and addressing  
15 the issue of whether to appoint a fee examiner in this case,  
16 the Court wants to assure everyone who might be affected by  
17 such an order that it fully recognizes and accepts that  
18 neither Section 330 nor Section 1104 of the Bankruptcy Code  
19 applies in this Chapter 9 case. Those are the provisions of  
20 the Bankruptcy Code that judges commonly rely upon in  
21 appointing fee examiners in Chapter 11 cases.

22 Likewise, the Court states on the record here that  
23 it has no reason to believe that the city's professional fees  
24 in this case either have been or will be either excessive or  
25 otherwise improper, no reason. Still, the Court has



1 concluded that it at least should suggest and discuss with  
2 counsel the merits of appointing an independent fee examiner.  
3 It is easy to predict in this case that there will be intense  
4 media and public scrutiny of the city's professional fees.  
5 Now, this is entirely natural and proper, and, frankly, the  
6 Court encourages the public to remain fully informed about  
7 all aspects of the case, including the professional fees that  
8 the city is asked to pay. There is, however, a blunt truth  
9 that motivates the Court to make this suggestion. It is  
10 this. If the city's professional fees and professional fee  
11 expenses have been processed through an independent fee  
12 examiner, then two things are more likely. First, the city's  
13 professionals will be in a much better position to justify  
14 those fees to the city, and, second, the city will -- the  
15 city itself will be in a much better position to justify  
16 those fees to the public and to the citizens of the city.  
17 Therefore, the Court sincerely hopes that the city and its  
18 professionals will recognize and accept this blunt truth and  
19 agree to some kind of a process for the independent review of  
20 the city's professional fee expenses. The parties and  
21 counsel should understand that the Court is willing to be  
22 quite flexible on the design of the process and is fully  
23 prepared to collaborate with counsel on the process of fee  
24 examination if we agree to it.

25           There are, of course, many possible ways to

1 accomplish the goal. The process set forth in the Court's  
2 proposed order is only one way. Likewise, the Court is  
3 willing to be flexible regarding the process of selecting the  
4 independent fee examiner. If we can agree in principle to  
5 the concept, then I am confident we can work out the details  
6 and identify a qualified individual. Having said that,  
7 however, in order for the fee examiner to be truly  
8 independent, probably the selection should ultimately reside  
9 with the Court rather than with the city and its  
10 professionals.

11 So, again, I'd like to solicit first comments on the  
12 concept of an independent fee examiner and then regarding an  
13 appropriate process. Sir.

14 MR. HEIMAN: Your Honor, the city accepts and  
15 appreciates the concept, and we and the city and its  
16 professionals are committed to working with a fee examiner,  
17 whoever that may be.

18 As to the order, I had one I think very minor  
19 comment, but it's consistent with your comments about  
20 flexibility, which, as I understand your approach, would  
21 be -- this hearing or the entry of an order would be followed  
22 by a discussion between the fee examiner who you appoint and  
23 us, the city and its counsel.

24 THE COURT: Yes.

25 MR. HEIMAN: And so if you look at the first

1 sentence of paragraph 6 and less so to the first sentence of  
2 paragraph 5, there are issues in there, including rate per  
3 hour and so forth -- and that is, in my mind, going to be  
4 whatever it is, but it seems to us that that's somewhat  
5 covered by 4(c) or could be covered by 4(c) at least and that  
6 it might be better to move that to the proposed order that  
7 the fee examiner presents to your Honor.

8 THE COURT: Um-hmm, um-hmm, um-hmm. Okay.

9 MR. HEIMAN: With that minor suggestion -- and I  
10 must say it's not a big deal to us -- it's just a matter of  
11 how the process is going to work -- I think I've responded to  
12 your questions.

13 THE COURT: Okay. All right. Any other comments on  
14 either the concept of a fee examiner or the terms of the  
15 proposed order or any other order?

16 MS. GIANNIRAKIS: Good morning, your Honor. Excuse  
17 me. Maria Giannirakis on behalf of Daniel McDermott, United  
18 States Trustee. Your Honor, I'm here on Mr. McDermott's  
19 behalf to comment on the Court's suggestion that a fee  
20 examiner might be appropriate in this case, and although  
21 we're not asking for the relief, we are offering the Court  
22 information on our experience in Chapter 11 cases, and if the  
23 Court finds this useful, I'd be happy to share it with you.

24 THE COURT: Please.

25 MS. GIANNIRAKIS: Thank you. We've certainly -- we

1 certainly see the utility of a fee examiner in this case. As  
2 the Court has stated, the fee examiner could advance the  
3 public interest and the public confidence by promoting  
4 transparency in this highly publicized case. The U.S.  
5 Trustee has supported the use of fee examiners in complex  
6 Chapter 11 cases, and this endorsement is reflected in the  
7 new fee guidelines for larger Chapter 11 cases that the U.S.  
8 Trustee program has recently issued. The guidelines set  
9 forth several models for the use of fee examiners and fee  
10 committees and have proven effective. Most recently they  
11 have been effected in the GM and American Airlines cases.  
12 The fee examiner has not only proven to be effective and  
13 efficient in identifying problems such as over-staffing, but  
14 they've also raised other important legal issues for the  
15 Court's consideration. Just an example, in the GM case the  
16 fee examiner raised the issue of whether professionals should  
17 give notice of different rate increases. These guidelines  
18 and the information and guidance that's included in them  
19 might be helpful to the Court, the proposed fee examiner, and  
20 the parties. And just an example of some of the guideline  
21 provisions that we think could be useful is the adoption of  
22 professional budgets and benchmarking invoices to the  
23 budgets, the submission by professionals of electronic  
24 billing data, specific disclosure of comparable compensation  
25 through the use of blended rates, the disclosure of whether

1 rate increase -- of whether rates increased post-filing, the  
2 disclosure and calculation during the case of rate increases  
3 and the effect of those increases on compensation, and the  
4 consideration of standards for using co-counsel as efficiency  
5 counsel. We agree with the Court, as the Court commented,  
6 about Chapter 9 different from Chapter 11 but believe that  
7 some of these comments could be useful and thank the Court  
8 for allowing us to share that with you.

9 THE COURT: You're welcome, and thank you as well.  
10 Any other comments?

11 MR. HEIMAN: Your Honor, I'd just like to add one  
12 thing to note that there was a quite voluminous filing by  
13 Godfrey & Kahn, and I have no comment about that except that,  
14 for what it's worth, we don't think General Motors and Lehman  
15 are in any way comparable to our situation. Hopefully we'll  
16 have far fewer retained professionals and the like, and the  
17 process will not be so complicated, but having said that --  
18 and they said they would be in the courtroom. I don't know  
19 if they are and may want to speak, but having said that,  
20 again, we appreciate your Honor's approach and accept it.

21 THE COURT: Let me ask you this question. To what  
22 extent do you think your office or your client or other  
23 parties should be invited to participate in the selection of  
24 an examiner, or do you just want me to do it?

25 MR. HEIMAN: That's an interesting question.

1 THE COURT: Again, there's a range of creative ways  
2 in which we could handle this. We could do what --

3 MR. HEIMAN: I personally --

4 THE COURT: We could do here what we are doing in  
5 the mediation context, which is just to allow you a seven-day  
6 period to submit confidential sealed suggestions or comments  
7 on this question.

8 MR. HEIMAN: I must say, your Honor, I'm just going  
9 to let my hair down on this one. For me to suggest who I  
10 would like to have examine my fees seems unseemly to me,  
11 so --

12 THE COURT: Okay.

13 MR. HEIMAN: -- that's my gut reaction. I don't --  
14 you know, my colleagues may beat me up after this hearing for  
15 saying that, but that's my honest reaction. Your Honor has  
16 expressed --

17 THE COURT: I understand and accept that.

18 MR. HEIMAN: Okay. So with that we have -- I think  
19 I've addressed this already, your Honor. Number 6 on your  
20 amended list is future conferences and hearings, and we  
21 are --

22 THE COURT: Stand by one second. We do have --

23 MS. LEVINE: Sorry. Before we leave the --

24 THE COURT: -- Ms. Levine who'd like to be heard.

25 MS. LEVINE: Before we leave the fee examiner

1 issue --

2 THE COURT: Step forward, please.

3 MS. LEVINE: Your Honor, one of the issues and one  
4 of the themes you've been hearing throughout this is trying  
5 to maintain the credibility of a process that's a very  
6 difficult process for people to have to go through.

7 THE COURT: Yes.

8 MS. LEVINE: So to the extent your Honor would  
9 welcome it, I believe that we would like to have a voice at  
10 least in having your Honor consider some thoughts with regard  
11 to the fee examiner.

12 THE COURT: With regard to the identity of the fee  
13 examiner?

14 MS. LEVINE: The identity, yes.

15 THE COURT: Okay. Will it suit your purposes  
16 sufficiently if I give you seven days to submit to the Court  
17 confidentially and under seal whatever your comments are?

18 MS. LEVINE: Yes. Thank you.

19 THE COURT: Okay. And this is an opportunity open  
20 to everyone. Don't file anything, please. Just submit them  
21 to my chambers directly --

22 MR. HEIMAN: And, your Honor, Mr. Bennett points  
23 out --

24 THE COURT: -- by mail or hand-delivery, whatever  
25 you want to do.

1           MR. HEIMAN: Mr. Bennett points out, as he so often  
2 does, that I spoke for myself and not for the city, my  
3 client, so I don't know what the city's reaction will be to  
4 your invitation, and I just need to --

5           THE COURT: Okay.

6           MR. HEIMAN: -- make that clear.

7           THE COURT: Fair enough.

8           MR. HEIMAN: Thank you. Status conferences and  
9 omnibus, I think I have already said we appreciate the  
10 advance notice on those, and they look good to us, and  
11 nothing further to add to that unless your Honor has a  
12 question about it.

13           THE COURT: Just for notice purposes, the District  
14 Court has requested that we not conduct hearings on the  
15 morning of September 4th because there's another high-profile  
16 matter that morning, so if we do have any hearings of any  
17 kind on September 4th, they would be in the afternoon, and  
18 I'll have to get back to you all on what time in the  
19 afternoon.

20           MR. GORDON: Your Honor, I believe that's actually  
21 Rosh Hashanah that night, so just to be careful --

22           THE COURT: Ah, we will have to be very careful  
23 about that, too, yes. Thank you.

24           MR. HEIMAN: Your Honor, I --

25           THE COURT: On the issue of omnibus hearings, I



1 suggested a motion procedure that was very different from the  
2 one that your office submitted in its motion. You want to  
3 take that up now?

4 MR. HEIMAN: I would like to call on Ms. Lennox for  
5 that purpose.

6 THE COURT: All right.

7 MR. HEIMAN: Thank you, your Honor.

8 MS. LENNOX: Thank you, your Honor. For the record,  
9 Heather Lennox of Jones Day. What we had proposed in our  
10 motion -- we tried to be fairly faithful to Local Rule 9014-  
11 1, so I'm pleased to say that we just have a couple of  
12 questions and clarifications on --

13 THE COURT: Okay.

14 MS. LENNOX: -- what your Honor might propose, and  
15 some of them may be a little parochial or a little minor.  
16 The first one that I view as perhaps a little parochial is  
17 Local Bankruptcy Rule 9014-1(e) imposes a five-page limit on  
18 replies for certain matters, and then the Eastern District of  
19 Michigan rule has a similar blanket seven-page limit on  
20 replies. It is more than likely that as the debtor in this  
21 case, the city, will be doing omnibus replies to many  
22 objections, and we would ask for your Honor's consideration  
23 in waiving that at least as to the city.

24 THE COURT: Well, I'd rather deal with the issue now  
25 than get a motion to waive it on a case-by-case basis. Is

1 there a limit that we can set within reason?

2 MS. LENNOX: I do think it depends on the issue,  
3 your Honor. I mean if we're going to do a general limit, I  
4 would propose a little higher, so it might be up to 20 pages.  
5 For example, replies on eligibility could be quite lengthy.  
6 Replies on minor matters could be much shorter. But I do  
7 expect that there will be several objections that your Honor  
8 would prefer to have one pleading from the debtor rather than  
9 many.

10 THE COURT: All right. Well, then how about if I  
11 put in the order that that is extended to 30 pages and, of  
12 course, without prejudice to your right to request even more  
13 in the context of a specific reply?

14 MS. LENNOX: Thank you, your Honor.

15 THE COURT: What else?

16 MS. LENNOX: There was also a question on  
17 clarification that we had with respect to your Honor's  
18 statement on 4(a) about not conducting an evidentiary hearing  
19 on a motion unless the order and notice setting the hearing  
20 states otherwise, and that is simply a procedural question  
21 about how your Honor would like to proceed about whether we  
22 should notice that ourselves, whether we should put a request  
23 for that in the motion. How would your Honor like to address  
24 that issue so the parties know how to handle it in advance?

25 THE COURT: The more information you can provide to

1 me about what it will take to resolve any given motion the  
2 better, so, for example, if your motion foresees that there  
3 will be factual issues, it would be helpful to identify those  
4 factual issues and request an evidentiary hearing.

5 MS. LENNOX: In the motion. Thank you.

6 THE COURT: Right. At that point, I can decide  
7 whether it's appropriate to conduct the evidentiary hearing  
8 on one of these omnibus days or not, but I have to tell you  
9 that in general I don't foresee conducting evidentiary  
10 hearings at all on omnibus hearing days; that instead when  
11 there are issues of fact, we will identify them and set a  
12 schedule for whatever discovery might be needed, whatever  
13 additional briefing on any legal issues might be needed, and  
14 sometimes even a final pretrial conference and then an  
15 evidentiary hearing, so I like the idea of your telling me  
16 when you think an evidentiary hearing will be required and if  
17 it's possible that it might be an extremely brief one to do  
18 it on an evidentiary hearing day -- on an omnibus hearing  
19 day, but more often than not -- much more often than not, I  
20 foresee it playing out in a more traditional way. Does that  
21 answer your question, or is it too vague?

22 MS. LENNOX: That does in large main, your Honor.  
23 Part of the question -- and perhaps this is a follow-up  
24 question -- is related to your admonition in -- your  
25 perfectly appropriate admonition in Section 1 reminding

1 counsel that when you assert facts in a motion, you should  
2 have an affidavit to support them, so I would expect that  
3 there may be motions filed with affidavits that support facts  
4 in the motion but maybe we don't need a whole full-blown  
5 evidentiary trial on, things like that, so that --

6 THE COURT: Among the things we discuss at the  
7 initial hearing is whether there are genuine issues of  
8 material fact.

9 MS. LENNOX: Um-hmm.

10 THE COURT: And my suggestion or request, which  
11 maybe I should actually incorporate in the order, that  
12 parties advise the Court about whether they believe an  
13 evidentiary hearing will be required applies also to  
14 responses.

15 MS. LENNOX: Thank you, your Honor. Two other  
16 things, your Honor. You mentioned in paragraph 2(c) that the  
17 Court will let parties know at least two days in advance of  
18 the hearing what matters you would actually like to take up  
19 on the hearing. I am assuming for notice purposes in advance  
20 of that two days that the parties should submit a notice of  
21 hearing so that people will be -- people will be on notice of  
22 the hearing date that is proposed for that motion.

23 THE COURT: My concern with that process is that it  
24 has the potential for creating confusion.

25 MS. LENNOX: Um-hmm.

1 THE COURT: I would rather that the Court maintain  
2 complete control over the process of issuing dates. If  
3 you're concerned about two days not being enough time --

4 MS. LENNOX: That's the concern, your Honor.

5 THE COURT: -- we can talk about how to enlarge  
6 that.

7 MS. LENNOX: That is the concern, your Honor.

8 THE COURT: Okay. What would you -- what would you  
9 prefer then?

10 MS. LENNOX: I would propose, if it please the  
11 Court, at least five days, particularly if we're going to  
12 have many matters on for one hearing.

13 THE COURT: Okay.

14 MS. LENNOX: And then the last point that we had was  
15 one of the requests that we had suggested in our motion, and  
16 that is related to motions for relief from the automatic stay  
17 under Section 362. We had suggested a procedure, and we  
18 would ask the Court to consider it, that provides that if the  
19 Court is not able to hold a hearing or is scheduling --  
20 unwilling to hold a hearing within that 30-day period  
21 referenced in Section 362(e)(1) that the stay not  
22 automatically terminate until your Honor can hold a hearing.

23 THE COURT: I saw that in there. My problem with it  
24 is I just don't think it's consistent with the requirements  
25 of Section 362 itself. I can state for the record pretty

1 categorically that it would be my intent to set every motion  
2 for relief from stay -- from the stay within the 30-day time  
3 period because that's what I think the law requires, and I  
4 think our history with motions for relief from stay certainly  
5 suggests that we have been able to do that. I think setting  
6 two motion -- or omnibus hearing days a month will permit  
7 that to happen. In the odd event that it can't happen, we  
8 can select a date that isn't an omnibus hearing date. We can  
9 ask the creditor to stipulate to extend it to an omnibus  
10 hearing date or, if necessary in odd circumstances, conduct a  
11 hearing by telephone, so we have lots of options to comply  
12 with that 30-day time period, and I'd rather do that than  
13 just have an open door.

14 MS. LENNOX: Thank you, your Honor. That definitely  
15 helps with clarification.

16 THE COURT: Okay.

17 MS. LENNOX: And that was all the clarifications  
18 that I had. Thank you.

19 THE COURT: Anyone else have any comments or  
20 questions or suggestions regarding the proposed motion  
21 procedure? Okay. One more second, please. Okay. Are there  
22 any other procedural or administrative questions, comments,  
23 concerns that anyone would like to raise before we go on to  
24 the motions that are set for hearing today? No? Okay.  
25 Let's first address the motion for the order -- for the entry

1 of an order appointing Kurtzman Carson Consultants as claims  
2 and noticing agent.

3 MS. LENNOX: Thank you, your Honor. The city has  
4 filed a motion, as your Honor indicated, seeking to appoint  
5 Kurtzman Carson Consultants or KCC as claims and noticing  
6 agent in the city's Chapter 9 case to, among other things,  
7 serve as the Court's agent to mail notices to creditors,  
8 provide claims processing service, and provide computerized  
9 claims database services, and we seek this relief pursuant to  
10 28 U.S.C., Section 156(c). The city has identified more than  
11 a hundred potential creditors, including, among others --

12 THE COURT: Has identified what?

13 MS. LENNOX: More than a hundred potential  
14 creditors -- oh, I'm sorry -- a hundred thousand potential  
15 creditors in this case. We've got employees, retirees --

16 THE COURT: Just three orders of magnitude up.

17 MS. LENNOX: Yes. Perhaps I should have added  
18 another three zeros to that. In any event, there are quite a  
19 few people that are going to require notices in this case,  
20 and we think it might be burdensome on the clerk's office to  
21 send those notices to all those folks. Before selecting KCC,  
22 the city did solicit bids from third-party vendors to serve  
23 as the claims and noticing agent, and we selected one with  
24 relevant expertise in this district and relevant expertise in  
25 a Chapter 9 case since they served as the claims and noticing

1 agent in the Jefferson County case, and they were the most  
2 economical proposal at the end of the day. Again, we found  
3 it important that KCC had experience working with this  
4 clerk's office and this court, and they have assured us that  
5 they will continue to follow the court's procedures and any  
6 orders that might be entered by this Court. There was a  
7 declaration of Evan Gershbein that was attached to the  
8 motion. If your Honor has any questions of Mr. Gershbein, he  
9 is in the courtroom today. So with respect to the motion, we  
10 would ask for its approval. I don't believe, your Honor,  
11 there have been any objections to it.

12 THE COURT: Okay. Yes. Would you ask him to step  
13 forward, please?

14 MS. LENNOX: Yes. Mr. Gershbein, would you  
15 approach? Would you like him to take the stand, your Honor?

16 THE COURT: No, no, no. Just to stand there is just  
17 fine.

18 MR. GERSHBEIN: Your Honor, Evan Gershbein.

19 THE COURT: What is your name, sir?

20 MR. GERSHBEIN: Sorry. Evan Gershbein with Kurtzman  
21 Carson Consultants.

22 THE COURT: Thank you. One second, please. One  
23 more second, please. My clerk welcomes your participation.  
24 She does, however, have a couple of details that she would  
25 like to work out with you and to work them out in the context



1 of the order itself that the city has proposed.

2 MR. GERSHBEIN: Okay.

3 THE COURT: I'll just give you a heads up on them  
4 and just ask you to consult with her, and then the city can  
5 resubmit the proposed order to the Court. So there are two.  
6 The one is simply creating a link for the court to use to the  
7 claims register that you will keep, and the other is that you  
8 should work with the clerk when it actually comes time to  
9 file the notice of commencement because there's a very  
10 specific ECF event code that's important to use.

11 MR. GERSHBEIN: Right.

12 THE COURT: So these are not details I need to be  
13 involved in and don't want to be involved in, and so I'll  
14 just ask you to work them out with her.

15 MR. GERSHBEIN: Absolutely, your Honor.

16 THE COURT: All right. That was it. Thank you.  
17 Not too tough, huh?

18 MR. GERSHBEIN: Yeah.

19 THE COURT: Okay. All right. So when that's worked  
20 out, Ms. Lennox, would you just submit your proposed order  
21 through the order processing program?

22 MS. LENNOX: Thank you, your Honor.

23 THE COURT: All right. Let's talk next about the  
24 motion for an order directing and approving the form of the  
25 notice of commencement and the manner of service and

1 publication. I think that the deadline part of it we have  
2 already figured out or at least are on the road to figuring  
3 out.

4 MR. BENNETT: Okay. I think that's right, your  
5 Honor. On the notice part, as you know, notice is required  
6 in accordance with the statute notwithstanding the rather  
7 large notoriety the case has already attracted. We propose  
8 publishing the required notice at the required times in the  
9 Detroit Free Press and the Bond Buyer. We've received no  
10 objections, no comments at all to the proposed form of  
11 notice, and so if it's acceptable to your Honor, we'll get  
12 started on the process using the appropriate ECF code.

13 THE COURT: Um-hmm. Anyone have any comments or  
14 questions regarding this motion? Two. Okay. Go ahead.

15 MS. PATEK: Your Honor, just for clarification on  
16 the additional paper notice -- and that is part, I believe,  
17 of the notice of commencement telling people what they have  
18 to serve on the city. We did have a comment on that, and we  
19 think -- we're totally comfortable with e-mail notice, but  
20 given electronic filing and everything, we would --

21 THE COURT: Um-hmm.

22 MS. PATEK: -- prefer that from a cost and time  
23 standpoint that there not be paper.

24 THE COURT: This is a -- this is a concern I share.  
25 What is the need of the city and Jones Day to be mailed paper

1 copies of responses to -- or objections to eligibility in  
2 this electronic age?

3 MR. BENNETT: We have no need, your Honor, and I  
4 think I tried to mention that before. We are prepared to  
5 dispense with it.

6 THE COURT: Excellent. Mr. Gordon.

7 MR. GORDON: Thank you, your Honor. Just one nit.  
8 There is an identification of parties that are already  
9 presumed to be on the special service list, which includes  
10 creditors listed on a list of the 20 largest unsecured  
11 creditors. That would include the two retirement systems.  
12 However, there is no provision for counsel for those  
13 retirement systems to be on the special service list unless  
14 you file a motion, and I'd really like to dispense with  
15 having to file a motion. Hopefully Mr. Bennett would agree  
16 that counsel for those creditors should also be on the  
17 special service list.

18 THE COURT: Sir.

19 MR. BENNETT: That's perfectly fine, and for anyone  
20 else who wants to get on that list, if they want to contact  
21 us informally, that's okay as well.

22 THE COURT: All right. Thank you.

23 MR. BENNETT: Your Honor, are you going to make the  
24 changes to the proposed form of order, or would you like us  
25 to --

1           THE COURT: No. I'm going to ask you to do it and,  
2 again, submit it through our order processing program. Any  
3 other comments or questions regarding this matter? All  
4 right. Please let's give counsel till the close of business  
5 on Tuesday to request to be included, and then you can submit  
6 your order or actually let me ask this. Was your order  
7 constructed such that it can be entered now, or do you need  
8 to wait to find out the names of attorneys who want to be on  
9 the special service list?

10           MR. BENNETT: Well, I think the order encompasses  
11 both the notice part, which I think can -- we can do that  
12 separately. I don't think it requires work on the order at  
13 all.

14           THE COURT: Right. Okay.

15           MR. BENNETT: The deadlines, though, are there.

16           THE COURT: Right. All right. So I need to get  
17 that order entered so that you can pick them up in the  
18 notice. All right. Let's follow that sequence then.

19           MR. BENNETT: Okay.

20           THE COURT: All right. Let's turn our attention to  
21 the motion regarding the appointment of a committee of  
22 retired employees.

23           MS. LENNOX: Thank you, your Honor. The city has  
24 decided to seek relief under Section 1102(a)(2), which is  
25 made applicable to Chapter 9 by Section 901. We seek this

1 relief to assure the adequate representation of our retiree  
2 creditors during this case. As we set forth in the motion,  
3 retiree claims encompass pension benefits, which the city  
4 estimates to be underfunded by about \$3-1/2 billion dollars,  
5 and retiree healthcare benefits, which are pay as you go and  
6 actuarially amount to about \$6 billion. We have  
7 approximately 23,500 former employees with vested pension  
8 benefits. We have almost 20,000 of them receiving retiree  
9 healthcare. It is a very diffuse group of individuals.

10 Many of the city's legacy obligations but not all  
11 stem from old collective bargaining agreements. The city has  
12 47 bargaining units with 28 different unions, and there are  
13 also four formal retiree associations which have voluntary  
14 membership of which the city is aware. There may be more.

15 As we noted in the motion prior to this case, the  
16 city solicited the unions to see if they were interested in  
17 representing their current retirees. The overwhelming  
18 majority said no. I do understand from reading their  
19 pleadings filed yesterday that two of the unions, AFSCME and  
20 the UAW, have reversed course on this issue, but, regardless,  
21 we still have many orphan retirees. We also have  
22 nonrepresented retirees, which comprise about 15 percent of  
23 our retiree population.

24 Given the pressing financial crisis that the city  
25 faces, the city filed this because it wants to have a clear

1 authorized representative who can speak for the city's  
2 retirees and engage in negotiations and discussions with the  
3 city over the issues of resolving legacy obligations in this  
4 case. We don't have the clean guidelines, of course, that  
5 Section 1114 provides, that the unions will represent their  
6 members, and, again, we would have to seek a committee in any  
7 event for the nonunion represented members. So we have  
8 sought relief under Section 1102(a)(2) to provide this  
9 important group of creditors with adequate representation in  
10 this case and to provide a body with which the city can hold  
11 restructuring negotiations.

12           There are a couple of things I want to make clear.  
13 In the papers we commented on who the city thought the  
14 committee should represent, and we defined retirees as a  
15 committee of former employees because we had assumed that the  
16 unions would represent their active employees with respect to  
17 this and other issues. However, the city does recognize that  
18 active employees do have an interest in retiree benefits,  
19 particularly those who have pension rights, so the city is  
20 not opposed to the committee having representation for active  
21 employees that have an interest in retiree benefits as part  
22 of this committee as the U.S. Trustee sees fit, which brings  
23 me to a further point, your Honor.

24           The U.S. Trustee had contacted the city after the  
25 motion was filed to discuss the motion and the procedures

1 proposed. Now, I want to be clear here. The city did not  
2 propose procedures to try to control the process. The city  
3 understands that should your Honor grant the motion, the  
4 formation of the membership and the selection of the members  
5 of this committee are wholly within the purview of the U.S.  
6 Trustee. It was simply suggested -- the city was simply  
7 suggesting some procedures to form a logical process that  
8 might be useful for people to consider. However,  
9 understanding that the appointment of the committee, should  
10 your Honor grant the motion, is within the purview of the  
11 U.S. Trustee, we had discussions with the U.S. Trustee, and  
12 we have agreed to remove the suggested procedures from the  
13 order, and I think a lot of folks had commentary about that  
14 in their objections. So the process to be used, should the  
15 motion be granted, to select a fair and representative  
16 committee will be the U.S. Trustee's own. Yesterday, your  
17 Honor, we did file on the docket a revised form of proposed  
18 order with these revisions reflected that is agreed to by the  
19 United States Trustee. If your Honor needs a copy, I have  
20 one with me that I can hand up.

21 THE COURT: Please.

22 MS. LENNOX: May I approach?

23 THE COURT: Please.

24 MS. LENNOX: That form of filing, your Honor, on  
25 Exhibit A is a proposed new form of clean order to which the

1 U.S. Trustee has agreed, and Exhibit B shows the blackline  
2 from the original order proposed with the motion.

3 THE COURT: All right. Stand by one moment while I  
4 look at this. Thank you. Go ahead.

5 MS. LENNOX: As a final comment, your Honor, because  
6 this also appeared, and there may have been some confusion --  
7 and I think Mr. Heiman echoed this earlier today --  
8 notwithstanding the appointment of the committee, the city  
9 also plans to continue discussions with all of its creditor  
10 groups with whom it's been having discussions. This is not  
11 an attempt to freeze out any party. This is simply an  
12 attempt to provide an authorized representative for folks  
13 that may not have adequate representation in this case as it  
14 stands today.

15 I do have responses to a lot of the objections that  
16 were filed, but perhaps your Honor wants to hear the  
17 objections beforehand.

18 THE COURT: Okay. Thank you. And who would like to  
19 be heard regarding this motion, please?

20 MS. LEVINE: Good morning, your Honor, for another  
21 minute. Sharon Levine, Lowenstein Sandler, for Michigan  
22 Council 25 of the American Federation of State, County, and  
23 Municipal Employees, AFLCIO, and Subchapter 98(c) of Detroit  
24 Retirees. Your Honor, we represent the interests of between  
25 40 and 50 percent of the city's retirees at about 11,943. We



1 represent about 70 percent of the non-uniform union  
2 represented employees. We have 18 units of the locals that  
3 counsel was referring to. We have units in every single  
4 department in the city, including the police and fire  
5 departments.

6           Your Honor, I'd like to address a couple of issues  
7 raised. First and foremost, when we first started drafting  
8 this response, we drafted it like we were answering a law  
9 school exam, and we were originally going to take the  
10 position before your Honor that you can't do this kind of  
11 thing before there's an order for relief, and we have serious  
12 eligibility issues and concerns along those lines. We've had  
13 conversations with the city and are hoping that today they  
14 will affirm that all of this action, mediation, retiree  
15 committee, et cetera, is going to be taken without any  
16 prejudice to any of those rights, constitutional,  
17 substantive, technical, whatever else they are.

18           THE COURT: I agree.

19           MS. LEVINE: But regardless, the goal of our union  
20 is to work as hard as we can for all of our retiree and  
21 active members in every avenue that's available to us to work  
22 through this process. And in addition to that, we appreciate  
23 the city's comments that they recognize that a lot of the  
24 active employees have interests in their pension benefits and  
25 in their medical benefits as well, which brings me to another

1 point, which is there's some -- there's been some concern  
2 raised with regard to whether a union can actually represent  
3 its retirees.

4 THE COURT: Um-hmm.

5 MS. LEVINE: I'd like to respond two ways. First,  
6 legally we believe that the answer -- again, looking at the  
7 law school exam, that the answer is yes, that we have  
8 historically under our internal workings represented our  
9 retirees. In fact, at the International level, we have a  
10 designated person and a group that works with that person who  
11 just deals with retiree issues, so in that regard, we would  
12 fully expect to represent the retirees along with the  
13 actives, especially since a lot of the issues here overlap.  
14 And we've submitted the certification of -- from the union  
15 specifically talking about the fact that we do provide these  
16 services with regard to the retirees on a regular basis.

17 That said, your Honor, as a practical matter, in  
18 handling the situation in other cases -- and while they've  
19 been Chapter 11 cases under 1114 and not the unique situation  
20 we find ourselves in here, we have seen the United States  
21 Trustee's Office deal with this issue three separate ways:  
22 (a) actually appointing the union to the retiree committee;  
23 (b) appointing the retiree group affiliated with the union,  
24 which we represent here, to the retiree committee; or  
25 appointing individuals who are either members of the union or

1 members of the retiree committee. And in either of those  
2 three circumstances, we're committed to bringing the full  
3 support of the union to the process and hopefully  
4 constructively interfacing with the retiree committee's  
5 professionals and working through some of these difficult  
6 issues. With that said, your Honor, we start with the  
7 premise that we don't believe that there's a conflict, and we  
8 don't think that your Honor needs to rule on that issue.

9           Your Honor, the other issue that we did want to  
10 touch on just briefly is with regard to the timing, but we do  
11 think that your Honor addressed it adequately before, but we  
12 just want to state for the record that to the extent that  
13 your Honor enters scheduling orders in this case, we hope  
14 that they're without prejudice to come back to your Honor --

15           THE COURT: Um-hmm.

16           MS. LEVINE: -- in case circumstances change,  
17 including after the retiree committee gets up and running and  
18 its professionals get engaged. And with that, your Honor, we  
19 would just close by suggesting that we represent a large  
20 number of people here. We're very concerned about this  
21 process. It's a nice day today, but it's going to be cold  
22 this winter, and they're very concerned about their pension  
23 benefits, their health benefits, and moving forward  
24 constructively to resolve the issues here because regardless  
25 there's going to be something that has to happen in order to

1 resolve these issues. Thank you.

2 THE COURT: Thank you. Anyone else on this motion?  
3 Ms. Brimer. Oh, Mr. Gordon.

4 MR. GORDON: Thank you, your Honor. Robert Gordon  
5 again on behalf of the Detroit Retirement Systems. Since we  
6 did file papers, if I could at least acknowledge the fact  
7 that we did file papers on this, and there have been other  
8 papers filed subsequently by a number of parties that cover  
9 the same issues, so, from our perspective, the concerns have  
10 been addressed, I believe, by Ms. Lennox as far as not  
11 marginalizing anybody in the process and in the selection  
12 process with the U.S. Trustee's Office and giving the U.S.  
13 Trustee plenty of space to make their own decision.

14 The only other thing that hasn't been raised yet is  
15 we suggested in our papers that there's -- if there is going  
16 to be a retiree committee, it ought to be able to function  
17 properly, and so there should be some provision made for  
18 compensation for reasonable professional fees. Obviously  
19 that's not necessarily imbedded in the Chapter 9 context, so  
20 it seems like if that is something that's desirable to the  
21 city, there ought to be some provision made for that because,  
22 again, Chapter 9 doesn't quite cover it very well. Thank  
23 you.

24 THE COURT: Now Ms. Brimer.

25 MS. BRIMER: Well, good afternoon, your Honor. Lynn

1 M. Brimer appearing again on behalf of the Retired Detroit  
2 Police Members Association. Your Honor, we filed a response  
3 and very limited objections to the city's motion.  
4 Fundamentally we understand perhaps in the long term the need  
5 for committees in order to effectively negotiate a resolution  
6 of whatever disputes may arise with respect to fully funding  
7 the pension rights of the city's retirees. However, we have  
8 several concerns with the motion and the proposed order as  
9 it's presented.

10 First -- and I addressed this earlier, your Honor --  
11 there is a concern with whether or not at this stage in this  
12 proceeding there is authority for the U.S. Trustee's Office  
13 to, in fact, appoint -- to go to the complete step of  
14 appointing a committee. While we believe it may be  
15 appropriate, without waiving any rights to our objection to  
16 eligibility for this Chapter 9 to proceed, for the U.S.  
17 Trustee's Office to begin the process of attempting to select  
18 and appoint the committees that should this Court determine  
19 eligibility should be appropriately appointed, however,  
20 appointment at this point may chill some of the existing  
21 retiree associations from actively pursuing their rights with  
22 respect to eligibility and may ultimately be that the  
23 committees are not properly authorized under Section 1102(a),  
24 which, in fact, does authorize appointment of committees  
25 after an order for relief. And if you look at at least some

1 of the more recent cases that have been filed, they are  
2 instructive to the extent that in the matter of In re. The  
3 City of Vallejo the Court, in fact, found that the  
4 appointment was premature prior to the order of relief. In  
5 the matter of In re. The City of Stockton, California, the  
6 orders were entered, you know. Immediately after the order  
7 for relief was entered, the Court then appointed the  
8 committee, which would tend to indicate the procedures were  
9 in place, and the Court acknowledged what the restrictions in  
10 Section 1102(a) are.

11           With that in mind, your Honor, we still have, should  
12 the Court determine that it is appropriate to appoint a  
13 committee at this point and assuming -- without waiving our  
14 rights to object to eligibility, assuming this case proceeds,  
15 we, nonetheless, still have some concerns with some of the  
16 issues raised in the motion. The procedures issues may have,  
17 in fact, been addressed by the city. We think it is  
18 completely inappropriate for the city not to control. The  
19 issue is influence. They should not even influence the  
20 selection process for appointing committees.

21           We do not believe it's appropriate for any of the  
22 unions or any representatives of current employees to have  
23 representation on committees that represent retirees.  
24 Continuing wages and continuing current benefits may impact  
25 their willingness or their participation in negotiating with

1 respect to pension distributions.

2           That raises the concern we have also with respect to  
3 whether or not one committee for retirees would be  
4 appropriate. As this Court may be aware, police and fire-  
5 fighters do not participate in the Social Security  
6 Administration; therefore, to the extent any of their pension  
7 benefits are reduced in this process, they will not have the  
8 same opportunity to pursue Social Security as perhaps the  
9 retirees of the general retirement system would have. They  
10 may have, therefore, very different interests in pursuing  
11 negotiations and may have to negotiate a different resolution  
12 of their benefits than the retirees who participate in the  
13 general retirement system.

14           Then, finally, the issue that was raised by Mr.  
15 Gordon is extremely important, and that is funding. If there  
16 are committees to be appointed, one or more committee, in  
17 order to properly be able to negotiate and address issues  
18 raised by the city, it must be funded. All of its  
19 professionals must be funded. Legal and any accounting or  
20 other actuarial type professionals that they would require  
21 should be funded. Even though I do understand that funding  
22 is not required, those provisions are not incorporated into  
23 Chapter 9, the fact that this Court recognizes the need for a  
24 fee examiner when, in fact, the fees are not subject to this  
25 Court's review under Chapter 9 is an acknowledgement that

1 this Court understands that funding and the protection of the  
2 public interest is of utmost importance in this case.

3 THE COURT: My question for you is really a process  
4 question. Does the Court have the authority to give  
5 direction and instruction to the U.S. Trustee in an order  
6 granting a motion like this, or is the process that the U.S.  
7 Trustee exercises its discretion, and then the Court, upon  
8 motion, reviews that after the fact?

9 MS. BRIMER: Well, I believe, your Honor, that,  
10 frankly, our U.S. Trustee's Office has the discretion and, in  
11 consultation with the various retirees and other interested  
12 parties, can evaluate what the appropriate procedures would  
13 be for selecting the committee. I can -- I recognize why the  
14 city filed this motion and brought it to the Court's  
15 attention that it would be very important in order to  
16 effectively advance negotiations that they are not  
17 negotiating with multiple retirees, individual retirees;  
18 however, I do believe that at this stage of the proceeding,  
19 it would be appropriate for the U.S. Trustees to exercise  
20 their discretion, move forward with the process for  
21 selection, and then present the Court with an order for the  
22 appointment of the committee.

23 THE COURT: Okay. Thank you. Mr. Morris.

24 MR. MORRIS: May it please the Court, Thomas Morris  
25 of Silverman & Morris. I'm co-counsel with Lippitt O'Keefe,



1 PLLC, representing the Retired Detroit Police and Fire  
2 Fighters Association and the Detroit Retired City Employees  
3 Association. The first organization has been in existence  
4 for more than 30 years, and the General Retirees Association  
5 has been in existence for more than 50 years, and these two  
6 organizations represent -- have as their members  
7 approximately 70 percent of retirees.

8           The reason we filed the response to the motion was  
9 we objected to the city's proposed involvement in the  
10 selection process and also the proposed involvement of the  
11 unions. The present employees of the city, most of whom are  
12 members of unions, have a very significant interest in seeing  
13 that their present wages are protected and their future  
14 benefits are protected, but they have a different interest  
15 than do the retirees. I take the -- we understand the  
16 proposal for a retiree committee to be just that, a committee  
17 of the retirees by the retirees and for the retirees, and  
18 it's not -- there's a lot of interests in this case to be  
19 served. This committee should not be everything to everyone.  
20 That's why we support the appointment of a committee, as I  
21 said, of retirees.

22           As to whether the Court -- whether it's appropriate  
23 for the Court to direct the U.S. Trustee in the details,  
24 that's -- the pared down proposed order is acceptable to us  
25 that leaves the details to the U.S. Trustee. I can

1 understand the Court ruling that way looking at the  
2 separation of powers. The reason for the U.S. Trustee's  
3 Office being separate from the court is to separate powers.  
4 We did submit a proposed order, which has some specific  
5 provisions that we would like to see in the order if the  
6 Court does prepare a more detailed order. I agree with the  
7 other comments that the scheduling order should allow the  
8 retiree committee, if and when it's formed, more time.

9           Your Honor, the associations hope to work with the  
10 committee and with the unions to help to reorganize the city  
11 and reach a deal, but we do think the retirees have special  
12 interests; that that interest has been represented by the  
13 associations with their unique situation, having been in  
14 existence for years representing such a high percentage of  
15 the retirees, having gone through and prepared and adopted  
16 by-laws, elected officers and directors, and we think all  
17 those are important considerations for the U.S. Trustee. We  
18 have submitted and received from members of the associations  
19 proxies, not legal proxies, but written recommendation that  
20 the officers and directors of the associations be considered  
21 as -- for membership in the committee.

22           THE COURT: One second, sir. Letrice, would you go  
23 adjust that mike stand to see if that takes care of the  
24 knocking that we're hearing through the loudspeaker? All  
25 right. Let's try that and see if that will solve our

1 problem, and you may continue, sir.

2 MR. MORRIS: Yes, your Honor. We submitted to the  
3 membership documents for them to sign to recommend for the  
4 inclusion in the committee officers and directors of their  
5 associations. I think it'll be more appropriate for us to  
6 take that up with the U.S. Trustee, but we do have those  
7 available for the Court if the Court decides to get involved  
8 in the process to that detail. Thank you.

9 THE COURT: Thank you, sir. Other comments?

10 MS. PATEK: Your Honor, once again Barbara Patek  
11 appearing on behalf of the public safety unions, the three  
12 police unions, and the Detroit Fire Fighters Association. We  
13 did file a response and a limited objection to the city's  
14 motion. We are looking for four things, and I --  
15 understanding the limitations and the role of the U.S.  
16 Trustee's Office, we're looking for a seat at the table.  
17 We're looking for the U.S. Trustee to control the selection  
18 of the committee, and we are also looking for a mechanism for  
19 this committee to be adequately funded. Otherwise it will  
20 not make it an effective process, and the two things that we  
21 have suggested -- and we understand under Chapter 9 because  
22 of the limitations, it would require the city's consent --  
23 would be that the city consent to pay the reasonable  
24 professional fees of the committee and delegate the  
25 responsibility for determining the reasonableness of those

1 fees to the fee examiner to be appointed by the Court.

2 We filed our response without prejudice to our right  
3 to object to eligibility, of course, and we are not conceding  
4 that the formation of such a committee would make it the sole  
5 negotiator on the issues before the Court.

6 I want to address the Court's question about  
7 1102(a)(2) and (4) and the order in which things should  
8 happen, and it seems as though we have perhaps already leapt  
9 over the obstacle of having an order for relief. And I  
10 suggest, to the extent that the Court finds that it has  
11 authority, that given the -- that everyone in this courtroom  
12 agrees that time is not on its side, that from the standpoint  
13 of judicial economy and the efficiency of the process, that  
14 the Court in this case may be in a position -- ultimately the  
15 U.S. Trustee is going to select this committee, but to give  
16 some direction based upon the information that is being put  
17 before the Court this morning, and to that end I would like  
18 to speak briefly to the circumstances of my constituents.  
19 And appreciating that there -- if we were in a Chapter 11,  
20 there would be specific provisions that would govern both my  
21 clients' rights and the rights of the separate retirees under  
22 1113 and 1114, we are in a very different circumstance in  
23 this case in terms of there's nothing usual about this case,  
24 but from the standpoint of collective bargaining -- and you  
25 heard the city's counsel say it earlier this morning -- from

1 their perspective, all the bargaining units, pursuant to the  
2 Emergency Manager Act, their position is -- and I'm not  
3 conceding this because I don't for sure know the answer to  
4 it -- are under imposed conditions of employment or imposed  
5 terms that have been imposed on them by the emergency  
6 manager. To date, the position has been first under Public  
7 Act 4 and then later after that was repealed under 436 -- the  
8 position of the city has been we have no obligation to  
9 bargain with you. We can pretty much do anything to you that  
10 we want except modify your pension. For that we need  
11 Bankruptcy Court, and now here we are. And we are a group  
12 that -- aside from the fact that our active employees do have  
13 vested benefits, this retiree group is obviously a rolling  
14 group, some by choice and some not by choice, may be moved  
15 very quickly even as this process is proceeding from active  
16 to retiree, and the issue of these pension benefits is the  
17 400-pound gorilla in the room. And so for that reason, we  
18 think -- you know, we are advocating to have a seat at this  
19 table. We understand the Court can't tell the trustee who to  
20 put on the committee, but in terms of making it  
21 representative, there are a lot of different constituencies  
22 from the folks, as I think Ms. Brimer pointed out, who have  
23 no Social Security -- and some of them I understand don't  
24 even have Medicare to fall back on -- to some people who  
25 perhaps have more luxurious pensions and a second career.

1 There's a lot of different constituencies, and the goal will  
2 be to get a representative constituency, and I'm going to  
3 return to, I think, from our perspective, we want not only  
4 representation, but it's critical that this committee, if the  
5 Court is going to appoint it, be adequately funded so that  
6 there can be a real and serious conversation about how this  
7 problem can be solved. Thank you, your Honor.

8 MR. GOLDBERG: Good morning, your Honor. Jerome  
9 Goldberg. I represent party of interest David Sole, who is a  
10 retiree himself and was a former president of UAW SCATA, a  
11 chemist, and whose wife also is a retiree as a bus driver. I  
12 also filed an objection in this case, and we basically cited  
13 that our interpretation and our view of the plain language of  
14 the statute is that this motion is premature, that 11 --  
15 Section 1120 -- 1102(a) states that the trustee has the  
16 authority to appoint committees after a order for relief is  
17 entered, and 11 U.S.C. 921(c) provides that in a Chapter 9  
18 case the Court shall order relief only after objections to  
19 the eligibility issues have been resolved and the  
20 determination on eligibility has been made. That's why we  
21 believe that the appointment of a retiree committee at this  
22 point would be in plain violation of the law.

23 Why we feel that's so important is that the -- as  
24 your Honor stated earlier, that one of the critical issues in  
25 eligibility is the applicability of the state limitation

1 on -- constitutional limitations on impairing pension to this  
2 case. That's a critical question that not only affects the  
3 thousands of retirees in this case, but it also will have  
4 national impact. There are 24 other states that have  
5 guarantees on pension. They're looking at what the decision  
6 is going to be on that issue. And our concern is in  
7 designating a retiree committee, especially the way it was  
8 initially proposed by the city, which would essentially be  
9 the only spokesperson for the retiree, it could have the  
10 effect of dampening the participation of all interested  
11 parties who choose to participate in this critical question,  
12 whether they be retiree associations, the unions, the  
13 retirement boards, all of whom already have done so and whose  
14 participation we fully respect, or individual retirees.  
15 There needs to be the fullest participation in this critical  
16 question that will have implications in Detroit and all over  
17 the country.

18 THE COURT: Why would this committee do that, or how  
19 would it happen?

20 MR. GOLDBERG: Well, just listening to the debate  
21 here, we hear everyone vying for who will be on the  
22 committee, but what we say -- again, we say the plain  
23 language of the statute bars the formation of this committee.

24 THE COURT: No. I understand that, but you asserted  
25 that the formation and participation of this committee in the

1 eligibility question will discourage others from asserting  
2 their issues. Why would that happen? How would that happen?

3 MR. GOLDBERG: Well, let me just say that in the  
4 city's motion for this, the city provided that the retiree  
5 committee would provide a single party to negotiate with the  
6 city on behalf of retirees as a group.

7 THE COURT: They've moved past that; right?

8 MR. GOLDBERG: Well, it does sound like they've  
9 moved past that today, and I appreciate that they've moved  
10 past it today, your Honor.

11 THE COURT: Okay.

12 MR. GOLDBERG: But, again, I really do feel that at  
13 this point it's improper. At this point the critical  
14 question is the eligibility question and the  
15 constitutionality, and, in fact, what would the committee  
16 even be negotiating on at this point? To spend time debating  
17 who should be on a committee when the scope of what the  
18 authority is on the issue of pensions and whether there's  
19 even authority in this question seems to me to be a diversion  
20 from the issue of eligibility that needs to be decided first  
21 under the law, and that is really the significant question in  
22 front of everybody right at this moment.

23 THE COURT: Of course, the statute says the Court  
24 has the authority to order this after an order for relief is  
25 entered; right?



1 MR. GOLDBERG: Yes, it does.

2 THE COURT: It doesn't say the Court doesn't have  
3 the authority to do it before that, does it?

4 MR. GOLDBERG: Well, I think by the language of the  
5 statute, it empowers -- it states when the Court has that  
6 authority, and 921 imputes that right into it, says the Court  
7 shall order relief only after objections to the eligibility  
8 questions have been heard. Thank you, your Honor.

9 I just want to make one other point, too, just for a  
10 point of correction to the city's motion that the city  
11 indicated that the city is the only authority that -- that  
12 the city has the authority to amend pensions, and just to  
13 clarify, I did attach Section 4744 of the Municipal Code 2 as  
14 an exhibit to our brief and which states very plainly that  
15 that authority does not apply to vested pensions. Thank you,  
16 your Honor.

17 MS. CECCOTTI: Good morning again, your Honor.  
18 Babette Ceccotti, Cohen, Weiss & Simon, for the UAW. We did  
19 file a short response to the motion, and I'll touch briefly  
20 on essentially three items that we've covered.

21 First, the UAW is not taking a position specifically  
22 with respect to the 11 -- what I'll just call 1102 issue,  
23 whether the Court should grant the motion now. We are,  
24 however -- to the extent the Court does grant the motion, we  
25 want to emphasize three points, some of which have already

1 been touched on by counsel. First, the funding issue. We've  
2 stated in our motion that the UAW, if such a committee is  
3 formed, would be interested in declaring its interest in  
4 serving on the committee. Critical to the UAW's thinking in  
5 that regard and decision-making would be a sense that the  
6 committee is going to be able to have adequate resources to  
7 adequately perform the job that the committee is being formed  
8 to perform, and you've heard the other speakers. I won't  
9 belabor the point, but we do consider the funding to be very  
10 critical here, funding by the city, and we have suggested in  
11 our papers that the city should indicate its intention so  
12 that the Court has that information before it in terms of  
13 making a decision regarding granting the motion.

14           Second, on the -- we've indicated reservations of  
15 rights issues as well. Ms. Levine touched upon them. Others  
16 have as well. And we understood the Court to be cognizant  
17 and agreeing with us on that point, so I won't --

18           THE COURT: I am and I do.

19           MS. CECCOTTI: Thank you. So that leaves me with  
20 our third point, which is the point of adequate  
21 representation, and I regret that we have -- or being the  
22 U.S. Trustee thinks that we've initiated a disputed with  
23 them -- it was certainly not our intent to do so. We  
24 certainly have respect for the office -- their office, and we  
25 understand their role and respect the role that they play in

1 forming committees. However, that said, we do think that  
2 some guidance by the Court -- if the Court, again, were  
3 inclined to grant the motion, that some guidance just to deal  
4 with just some very practical considerations -- and I think  
5 you've heard some of them here today. When the city filed  
6 its motion, as Ms. Lennox indicated, they at first proposed a  
7 series of rather detailed procedures. The revised order that  
8 has been submitted to the Court has deleted those procedures  
9 with the expectation, and I think appropriately so, that the  
10 U.S. Trustee would be designing the solicitation procedures  
11 and the process by which it would form the committee.  
12 However, let's take a step back and let's assume that the  
13 city had not attached any suggested procedures. One would --  
14 we would have had a motion to appoint a retiree committee  
15 with a definition and, you know, perhaps some very general  
16 definition by the city and nothing more. And without any  
17 further guidance, the U.S. Trustee would have immediately,  
18 I'm assuming, just based on some of the questions that have  
19 been raised here today, have confronted a series of  
20 questions, some of which might be just considered procedural,  
21 but some of them would be quite basic, the scope of the  
22 committee's purview, whether the committee should include or  
23 can include individuals, associations, and labor unions,  
24 questions about -- the questions that you've already heard  
25 discussed before your Honor today about labor unions serving

1 and in what capacity. These questions we could see, as a  
2 practical matter, might bog down the process to the point  
3 where either the parties would be back here before your Honor  
4 anyway or the U.S. Trustee, doing its best to take on those  
5 issues and try to solve them just themselves, would  
6 undoubtedly spur additional proceedings before your Honor  
7 anyway. So our thought was that -- and we understand  
8 normally how the sequencing goes. We've read the statement  
9 submitted by the office. We still think that 1102 does  
10 contemplate a role for the Court and that in terms of -- not  
11 with respect to detailing and wordsmithing procedures and not  
12 with respect to dictating or directing that specific entities  
13 or parties be appointed, but that, nonetheless, the  
14 framework, if you will, or the table that's being set for the  
15 office to perform its functions appropriately resides with  
16 the Court, particularly given the array of comments that the  
17 Court -- that have been filed both with respect to the legal  
18 issues but also with respect to issues of composition. We  
19 state -- we have stated -- and, again, the UAW has a lot of  
20 experience on creditors' committees, on general creditors'  
21 committees and in the Chapter 11 context in the 1113 and 1114  
22 process and outside of bankruptcy, and one of the things that  
23 labor organizations do is engage with employers on complex  
24 matters such as pension benefits, health benefits, retiree  
25 health benefits, other types of benefits as well. It makes

1 the unions, in our view, who take on this role -- and the UAW  
2 is another union that historically does take on this role --  
3 particularly well-suited to a project like this and a  
4 committee like this where their facility with being able to  
5 engage on these matters will aid in the effective functioning  
6 of the committee. So we made the suggestion that we did in  
7 our papers that the Court provide some direction on, again,  
8 the framework and scope and eligibility, if we can put it  
9 that way, in order to make sure that, first, the --  
10 everyone's goal here, if your Honor grants the motion, is  
11 that the committee be effective and be able to function  
12 effectively with -- not only with funding but with members  
13 who can effectively undertake the task. This is an enormous  
14 task, and you've already heard about the human element here.

15           Second, in terms of participation and scope -- and  
16 we've made this point in our papers -- if there is a group  
17 that feels disenfranchised -- and we think this is -- I would  
18 put this in the heading of guidance that the Court could  
19 provide to the U.S. Trustee in fulfilling its role here. If  
20 there are groups that are left out for some reason or feel  
21 excluded, that will directly affect the credibility of the  
22 process, and it doesn't do the Court any good or any of us  
23 any good to have a committee like this formed, as I've said  
24 already, that cannot effectively complete its task. And if  
25 you have skepticism engendered by exclusions or if some folks

1 have -- some groups have been selected to serve and some  
2 haven't, undoubtedly that will have ramifications. So we  
3 think that, again, with all due respect to the Office of the  
4 U.S. Trustee and with no intention at all to interfere with  
5 their proper function in conducting the solicitation and the  
6 formation, we do think that some guidance along the lines  
7 that we've set forth in our papers in here would be  
8 appropriate and is also appropriate under the statute itself  
9 without crossing -- unduly crossing any lines or  
10 inappropriately crossing any lines in terms of the division  
11 of labor between the Court and the U.S. Trustee's Office.

12 THE COURT: Let me ask you this question.

13 MS. CECCOTTI: Sure.

14 THE COURT: I heard today a concern that a union  
15 which represents by law present employees may have either an  
16 actual or a potential conflict of interest in representing  
17 retired employees. How do you address that concern?

18 MS. CECCOTTI: A couple of ways, your Honor. First,  
19 unions that -- like the UAW that are very familiar with the  
20 bankruptcy process and have served, as I said, in Chapter 11  
21 cases for the most part undertaking those roles, are very  
22 skilled in -- not only very skilled in the substance of the  
23 subject matter but in making the internal institutional  
24 decisions to undertake representation of both actives and  
25 retirees. They do not see an inherent conflict in taking on

1 both -- in taking on that -- I was going to say both roles,  
2 but it really is a continuum. It's really viewed as a whole,  
3 and I'm speaking now really for the UAW. You heard Ms.  
4 Levine speak on behalf of AFSCME. These are decisions that  
5 individual labor organizations make based on their own  
6 institutional history and organization and their own  
7 institutional functioning. We do not think it would be  
8 appropriate for an outsider to simply make a blanket across-  
9 the-board statement that -- statement -- excuse me -- that  
10 simply because we have a labor organization that is  
11 representing a unit of actives, that labor organization is,  
12 per se, disqualified. The first question to ask is what does  
13 that particular union think about that -- what is the  
14 position of that particular union? The UAW does not see an  
15 inherent conflict and hasn't throughout its history. It's  
16 been actively involved in retiree matters as -- with respect  
17 to retiree interests, not simply actives as future retirees  
18 but current retirees. They have -- and that is, again, part  
19 of their history, so I think that it is not possible really  
20 to make a blanket statement to that effect and that each  
21 labor organization answers that question for itself and  
22 should be permitted to do so given its own institutional  
23 operation and history.

24 THE COURT: Next question.

25 MS. CECCOTTI: Um-hmm.

1 THE COURT: You have argued that the Court has the  
2 authority to give the U.S. Trustee's Office guidance.

3 MS. CECCOTTI: Yes.

4 THE COURT: What guidance would you propose?

5 MS. CECCOTTI: Well, I would certainly propose  
6 guidance to the effect of a definition of the scope.

7 THE COURT: Right.

8 MS. CECCOTTI: Right. And I thought I heard Ms.  
9 Lennox -- I couldn't quite hear her too clearly, but to the  
10 extent the scope or anything about the scope has changed from  
11 the time the motion was filed until today, whatever that  
12 is --

13 THE COURT: The scope is an easy one. It's actually  
14 inherent in the process.

15 MS. CECCOTTI: Understood, but I guess my point  
16 would be as long as we have a clear understanding -- as long  
17 as -- the United States Trustee should have a clear  
18 understanding of the scope of the committee.

19 THE COURT: Okay.

20 MS. CECCOTTI: It's also appropriate, I think, for  
21 the Court to provide guidance concerning the pool, the  
22 eligible pool. Is it okay to solicit, particularly in light  
23 of what you've heard today, retiree associations,  
24 individuals, and unions? And we think the answer to that  
25 should be yes, and we --



1 THE COURT: Okay.

2 MS. CECCOTTI: -- think that the guidance would  
3 ultimately help the U.S. Trustee devise its procedures and  
4 make the process work that much more efficiently. To the  
5 extent the Court --

6 THE COURT: So if I gave that guidance, that would  
7 effectively be an authorization to the U.S. Trustee to choose  
8 among those potential participants however it saw fit?

9 MS. CECCOTTI: With one more piece of guidance, your  
10 Honor, which is that -- and anything you'd like to say on  
11 funding, we'd be -- by the city we'd be happy to hear that,  
12 but that wasn't what I was going to say next. What I was  
13 going to say next is to the extent that -- well, not to the  
14 extent. Adequate representation is something that we do  
15 think the Court should comment upon, and in this case,  
16 although it seems like a lot when you say there are 47  
17 bargaining units, I would doubt that there will be 47 people  
18 clamoring to get on this committee, so the suggestion would  
19 be that for adequate representation purposes, any group that  
20 wants to participate should be permitted to participate  
21 because you can't, practically speaking, for example, ask --  
22 tell Unions A, B, and C, who show up ready and willing and  
23 able to serve -- you can't say to them as a practical matter  
24 there's too many of you; therefore, we're going to have Union  
25 A represent the retirees for Unions B and C. So we do think

1 that some adequate representation instruction along the lines  
2 of what we've suggested here is appropriate just to avoid the  
3 exclusion issue that we've suggested would be very  
4 detrimental to the process, not to mention just the practical  
5 implications of asking one -- with respect to the organized  
6 groups, those that are organized, one group to try and  
7 speak --

8 THE COURT: Well, but isn't it appropriate for the  
9 U.S. Trustee's Office to be concerned that in order for the  
10 committee to actually function, it has to have a limited  
11 number of people?

12 MS. CECCOTTI: Understood, and that is certainly  
13 part of their challenge. No question about it. We think,  
14 though, that there is a point to be emphasized that while  
15 there is -- there could be -- there could be a numerocity  
16 issue, there is also very definitely in 1102 an adequate  
17 representation issue so that in balancing those two, the  
18 fundamental concept there should be adequate representation  
19 and if there is an issue with respect to size, that that  
20 would be something that would be taken up in the context of  
21 determining adequacy of representation.

22 THE COURT: Thank you.

23 MS. CECCOTTI: Thank you.

24 THE COURT: Sir.

25 MR. KARWOSKI: Good afternoon, your Honor. Michael

1 Karwoski. I'm representing myself as an attorney who worked  
2 for the City of Detroit Law Department for about 15 years. I  
3 retired about a year ago. I draw a pension from the General  
4 Retirement System of the city. I can speak to -- I'd like to  
5 just address two points briefly because I know it's been a  
6 long morning, and we're into the afternoon.

7           Attorneys for the city who are not in management are  
8 members of Public Attorneys Association 2211, which is  
9 affiliated with the UAW. For the 15 years that I was with  
10 the city and a member of that union, the union did not  
11 represent the interests of retirees. In fact, there were a  
12 number of issues where the union took positions that were  
13 adverse to the interests of retirees because it seemed that  
14 there's a limited amount of money available in the pension  
15 system, and sometimes the active -- the interests of active  
16 employees are different than those of retired employees, so I  
17 would suggest that in terms of the structure of the  
18 committee, that there should be a distinction between  
19 retirees who are drawing a pension and those who are -- and  
20 employees who are -- former employees or current employees  
21 who have vested interests in future retirement benefits,  
22 which may be different.

23           I have not seen the list of creditors that the city  
24 filed yesterday evening. I believe, as a retiree and someone  
25 drawing a pension, I'm probably on -- I'm somewhere in that

1 list of -- in that 3,500-page list.

2           With respect to this motion, the city has given  
3 notice to -- on page 16, paragraph 29, it indicates the  
4 groups that it's given notice to, and I respectfully -- the  
5 last sentence is, "The city submits that no other or further  
6 notice need be provided." I respectfully suggest that this  
7 is essentially an ex parte motion at this point because the  
8 group that has not gotten notice is the group that has the  
9 most important interest in this motion, which are the  
10 retirees themselves. The groups -- not only have they not  
11 gotten notice, but the groups that did get notice have an  
12 interest adverse to the retirees. They include the largest  
13 creditors, the bondholders, the insurers, the large dollar  
14 interests who -- to the extent that pensioners are involved  
15 in the bankruptcy process and there's a limited amount of  
16 money available to satisfy creditors, the less money that is  
17 allocated to retirees through the committee process or  
18 otherwise, the more money there is for the larger -- for the  
19 other creditors. So the groups that have gotten notice are  
20 either the groups that are adverse to the interest of  
21 retirees or the unions and the associations, which the  
22 discussion that we've had so far, you know, is mixed at best  
23 as to whether they have legal authority to represent retirees  
24 and whether, in fact, they have interests that are contrary  
25 to the interests of retirees.

1           My request is that the Court order that notice of  
2 this motion be sent to all of the retirees of the City of  
3 Detroit, the 12,000 who are drawing pensions and the  
4 approximately 12,000 employees who have either a vested  
5 pension or a vested interest in health benefits. It's a  
6 large number obviously. It's about 24,000 people, but it's  
7 24,000 out of a hundred thousand creditors of the city. And  
8 as the city has said, the alleged indebtedness of the  
9 retirement system, the \$3.5 billion, is one of the larger  
10 debts at issue in this case along with the \$6 billion of pay-  
11 as-you-go health benefits.

12           From the standpoint of each individual retiree whose  
13 average pension is \$19,000 a year or less, knowing about this  
14 process and having the basics of due process, notice and an  
15 opportunity to be heard, are as essential or more essential  
16 to those retirees as they are to the bondholders, the  
17 insurers, the credit swap counterparties, whoever they are --  
18 the notice is more important to the retirees because of  
19 their -- the importance of their pension to them even though  
20 the dollar amount of the individual pensions is small.

21           Stockton, California, which had about 2,000  
22 retirees, in the appendix or attachment to its petition  
23 listed the 2,000. They listed the individual names. They  
24 listed the addresses in care of the pension boards to avoid  
25 the privacy issue, which I understand caused the city to

1 withdraw the list that it originally filed. It's certainly  
2 doable to do that kind of a mailing, and, in fact, my  
3 understanding is that the city has proposed doing a mailing  
4 of that type somewhere down the road further in the process  
5 using Kurtzman Carson Consultants to do that mailing. It's a  
6 day late and a dollar short to do the mailing after the  
7 motion has been granted, after the committee has been  
8 appointed, after the process has run its course. It makes  
9 more sense, I believe, in terms of fundamental fairness, due  
10 process, and an opportunity to be heard for the Court to  
11 order the city to send the motion to the retirees through  
12 Kurtzman Carson, give them a short -- in the notice to the  
13 retirees give them a short turnaround time to respond to it.  
14 Some will, and some won't. The city somewhat condescendingly  
15 on page 13 refers to the retirees as basically a bunch of old  
16 fogies who don't know what's going on and wouldn't know what  
17 to do with the notice if they got it. I suggest that that's  
18 presumptuous on the part of the --

19 THE COURT: All right, sir. Thank you. Who else  
20 would like to be heard?

21 MR. KARWOSKI: Thank you, your Honor.

22 MR. TAUBITZ: May it please the Court, Dennis  
23 Taubitz appearing on behalf of myself. I'm a retiree of the  
24 City of Detroit, and I'd like to make the following comments.  
25 I concur with Mr. Karwoski. I believe that this committee,

1 as proposed, would be a denial of the due process rights of  
2 the 20,000 retirees. I also believe it's premature. I want  
3 to assert that the retirees are not a member of a labor  
4 union. They don't pay dues to the union. We don't have a  
5 voice in the union. The union, therefore, does not represent  
6 the retirees. Further submit that all 20,000 retirees  
7 deserve a place at the table. Thank you.

8 MS. GIANNIRAKIS: Good afternoon, your Honor.  
9 Again, Maria Giannirakis on behalf of the United -- Daniel  
10 McDermott, United States Trustee. Sorry. Your Honor, the  
11 United States Trustee does not take a position on the motion  
12 here if an appointment of a committee is appropriate, but,  
13 frankly, we filed a response to the UAW's -- we filed a  
14 statement in response to the UAW's response that was filed  
15 yesterday because what they are asking is that if the Court  
16 does appoint a retiree committee, that it directs the U.S.  
17 Trustee to appoint all labor organizations to that committee  
18 or even some labor organizations, and I think other parties  
19 have mentioned the same thing in court this morning. This  
20 relief is simply not available. 1102(a)(2) states if the  
21 Court directs an additional committee to be appointed, the  
22 U.S. Trustee will appoint a representative committee.  
23 There's nothing that mandates the appointment of a particular  
24 creditor. If parties, after a committee is selected, deem  
25 that it's inappropriate, 1104(a)(4) provides the relief that

1 they need, but that's not appropriate yet because at this  
2 time there's no committee appointed, although the UAW  
3 referenced that. Frankly, 1102(a)(4) says if the committee  
4 is appointed, after the appointment of the committee the  
5 Court directs the U.S. Trustee to appoint, if a party deems  
6 that it is not represented on the committee, then it has the  
7 right to come back to the Court at that time, and then the  
8 Court, if it finds that the committee is not adequately  
9 represented, will direct the U.S. Trustee to change the  
10 committee composition. The request that the UAW is making is  
11 not available at this time and is -- I'm sorry -- and is  
12 premature if they're asking the Court to -- they're assuming  
13 it's going to be a nonrepresentative committee, and that's  
14 not appropriate at this time.

15 THE COURT: If the Court grants the motion, what  
16 would be the time frame for the U.S. Trustee to complete its  
17 responsibilities?

18 MS. GIANNIRAKIS: Your Honor, we have already  
19 started discussions with the city and other parties. We have  
20 been working on doing this as quickly as possible if the  
21 Court does grant the motion today. In cases where there are  
22 exigent circumstances, we have appointed committees almost  
23 immediately, in as little as three days. We don't anticipate  
24 that'll happen here because it's a complicated case, and we  
25 don't think we can quite proceed with that degree of speed,



1 but we will do everything in our power to appoint a committee  
2 as promptly as possible and with a view towards all the  
3 issues that are arising in this case.

4 THE COURT: Thank you.

5 MS. LENNOX: Thank you, your Honor. I think there  
6 are about half a dozen thematic objections that I'd like to  
7 respond to in due course. The first is about the motion  
8 being premature. This motion is not premature. We do not  
9 need to wait for an order for relief to be entered under  
10 Section 1102(a)(2) of the Bankruptcy Code under a plain  
11 reading of the statute's language. The limiter that suggests  
12 that the appointment of a committee should await the entry of  
13 an order for relief is only in Section (a)(1). If Congress  
14 had wanted that limiter to apply to both Sections (1) and  
15 (2), it could have placed the limiter in (a), and then it  
16 would have modified both subsections. It didn't do that, so  
17 the motion from a statutory basis is perfectly proper and  
18 perfectly timely. Moreover, from a practical perspective,  
19 your Honor, as many of the objectors themselves have noted,  
20 the legacy issues in this case are exceedingly important and  
21 complicated, and there's no reason to delay the discussions  
22 of them. In fact, discussions of them have already  
23 commenced. In fact, it would be irresponsible to delay the  
24 appointment of a representative committee for those folks who  
25 are not currently at the table.

1           With respect to the Vallejo case that Ms. Brimer  
2 pointed out, in that case, to the extent it made any  
3 difference to the Court, that was not a case where the debtor  
4 moved for a committee. In fact, the debtor opposed the  
5 committee in that case. Here we are moving for the  
6 committee.

7           Secondly, your Honor, with respect to notice, we do  
8 state and we did in our motion and we did give notice to the  
9 four retiree associations that are voluntary memberships of  
10 currently retired persons that we were aware of. In fact,  
11 three of them have shown up today, and one of them claims to  
12 represent 70 percent of the folks that are retired, so we do  
13 think notice is appropriate. This is a procedural process in  
14 which we asked to appoint a committee to represent some  
15 folks. This is not a substantive process where we are asking  
16 to compromise any claims that retirees may have, so under the  
17 circumstances, we believe notice was perfectly appropriate.

18           Third -- and I've stated this before, so I'll just  
19 make it clear on the record again -- we are not -- the city  
20 is not participating in the selection of members of the  
21 committee nor does the city intend to be involved in who the  
22 committee selects as its professionals if it is appointed, so  
23 we don't believe, as has been alleged in a couple of  
24 pleadings, that there's any violation of Local Bankruptcy  
25 Rule 2014-2 here.

1           Fourth, with respect to the notations and  
2 reservation of rights -- and for this I would like to say  
3 that the city does appreciate the thoughtful response that  
4 was filed by AFSCME on this issue. It was very constructive.  
5 And we do confirm that by this motion the city is not seeking  
6 to preclude a creditor or the committee itself, should it be  
7 appointed, from weighing in on or objecting to any other  
8 substantive issue in this case, including eligibility. We  
9 are not asking parties to waive those rights.

10           Fourth, one of the objectors has suggested there  
11 should be more than one committee, and we submit there should  
12 only be one committee. The retirees in the two pension  
13 systems have more in common than not. Each has an  
14 underfunded pension. Each gets similar retiree benefits from  
15 the city. The legal issues to be addressed are substantially  
16 similar, if not identical, but even if that were not the  
17 case, your Honor, the whole purpose of having a committee is  
18 to bring representatives of differing types of interests but  
19 claims of the same legal priority together in one body to try  
20 to work out a consensual plan. You know, it's one thing for  
21 a committee to negotiate with a debtor, but there are  
22 differing interests on a committee. That's the whole purpose  
23 of it, and part of being on a committee is so that the  
24 creditors can start working out their intercreditor issues as  
25 well. We think it's, therefore -- I mean on a normal regular

1 official unsecured creditors' committee, you have bondholders  
2 and unions and trade vendors and, you know, a host of people  
3 with differing interests. That's the whole purpose of having  
4 a committee. So we think it's perfectly appropriate and  
5 intended for members with different types of views and  
6 interests to sit on one committee, and we think that applies  
7 here as well.

8           And then finally, your Honor, this is the punch line  
9 that everybody seems to have been waiting for. As many of  
10 the objections concede, a Chapter 9 debtor is not required to  
11 pay for professionals of the committee. Nevertheless, in  
12 light of the special nature of this committee that the city  
13 itself has sought, it is the city's current intent to pay for  
14 the reasonable fees and expenses of the retiree committee  
15 professionals, one committee's professionals. If the  
16 committee is formed, the city will have to certainly discuss  
17 with the committee itself what's reasonable and rational  
18 under the circumstances, and like it's done with its own  
19 professionals, the city is going to look to maximize  
20 efficiencies and economies among the committee's  
21 professionals as well as all professionals in the case. So,  
22 accordingly and as most of the objectors have noted, it  
23 wouldn't be inappropriate to put that in an order. However,  
24 the city did wish to make its intentions known on the record.

25           THE COURT: Thank you. In a few moments, the Court

1 will take under advisement the issue raised by this motion.  
2 There is another committee that I think we should think about  
3 here. It would be a committee of tort claimants, tort  
4 claimants, accident claims, civil rights claims, people who  
5 have litigation pending or contemplated to be filed. The  
6 merit of this seems to me to be as much procedural as  
7 substantive. I think the last thing any of us wants is a  
8 flood of motions for relief from stay filed by people with  
9 lawsuits against the city to be permitted to pursue those  
10 claims, and it seems to me there may be merit in the  
11 appointment of a committee for the purpose of working out how  
12 those will be handled. They are quite complex because the  
13 options of where those cases get resolved is quite wide;  
14 right? Under 28 U.S.C. 157(b), you know, personal injury  
15 claims can be filed -- or can be tried in the District Court  
16 or in the court that they were pending in, and it seems to me  
17 that we ought to try to think of some way to manage that  
18 potential chaos.

19 MS. LENNOX: May I respond, your Honor?

20 THE COURT: No. Please think about that. I don't  
21 need a response right now, but at some point I think we need  
22 to think about that issue.

23 MS. LENNOX: Yeah. We have thought about that on  
24 many, many fronts about how to handle that. In fact, we have  
25 inquiries that have been made of us, and we do have what we

1 believe is a perfectly appropriate process at the right time  
2 to resolve those kinds of claims that would not necessitate  
3 the appointment of a committee.

4 THE COURT: Okay. All right. Anybody else have  
5 anything for today?

6 MS. LEVINE: Your Honor, before you deliberate, can  
7 we make one or two comments on the proposed form of order?

8 THE COURT: Yes, please.

9 MS. LEVINE: The order that was filed last night  
10 seemed -- Sharon Levine, Lowenstein Sandler. The order that  
11 was filed last night seems to have resolved a lot of the  
12 issues between the city and the U.S. Trustee, and we  
13 appreciate those efforts. Decretal paragraph one, though,  
14 says the motion is granted, and we would respectfully submit,  
15 as we've seen in a lot of orders in a lot of other cases, it  
16 should just say the motion is granted as set forth herein  
17 because then it would avoid the conflict with regard to  
18 things that haven't been resolved.

19 In addition, at decretal paragraph five there's a  
20 retention of jurisdiction which isn't limited with regard to  
21 the reservation of rights that we've been discussing on the  
22 record, so I just want clarification even if that -- unlike  
23 decretal paragraph one, even if decretal paragraph five stays  
24 the same, there's an understanding on the record --

25 THE COURT: Yeah. Well, let me just --

1 MS. LEVINE: -- that the reservation of  
2 jurisdiction --

3 THE COURT: Let me just say broadly I do not favor  
4 provisions in any order that say the Court retains  
5 jurisdiction to do A, B, or C. They are unnecessary and  
6 confusing. The law sets forth what the Court's jurisdiction  
7 is, and that's what applies.

8 MS. LEVINE: Thank you, your Honor.

9 THE COURT: Okay. It's now one -- something else,  
10 sir?

11 MR. HACKNEY: Sorry, your Honor. I just -- Stephen  
12 Hackney on behalf of Syncora. I wasn't sure if you were  
13 going to adjourn for the day or just for a lunch recess, but  
14 there was a status conference on the motion pursuant --

15 THE COURT: Yes. I want to -- I want to contemplate  
16 this committee issue and then come back and hear yours. I  
17 don't really want to take a lunch break, per se, because  
18 that'll take altogether too long.

19 MR. HACKNEY: Understood.

20 THE COURT: So just give me 15 minutes to think  
21 about this committee issue, come back, give a decision on  
22 that, and then we'll get to the Syncora matter.

23 MR. HACKNEY: Absolutely, your Honor. Thank you.

24 THE COURT: And we'll be in recess for 15 minutes,  
25 please.

1 THE CLERK: All rise. Court is in recess.

2 (Recess at 1:00 p.m., until 1:14 p.m.)

3 THE CLERK: All rise. Court is in session. Please  
4 be seated. Case Number 13-53846, City of Detroit, Michigan.

5 THE COURT: The Court concludes that it is  
6 appropriate to grant the motion of the city for the  
7 appointment of a committee of retired persons. The Court  
8 concludes that the objection that this motion is statutorily  
9 premature should be overruled.

10 As counsel for the city has pointed out, Section  
11 1102(a)(2), which is the section on which the present motion  
12 is based, does not require the Court to wait until after the  
13 order for relief to appoint a committee. Accordingly, by its  
14 plain language, the Court does have the authority to grant  
15 this relief, and so that objection is overruled.

16 It has also been argued here that this motion is on  
17 inadequate notice because most, if not all, of the individual  
18 retirees were not given notice of this motion. The Court  
19 concludes that that objection as well should be overruled.  
20 This is simply a procedural motion that does not affect the  
21 substantive rights of retirees or any other party, for that  
22 matter, and, accordingly, the Court concludes that notice was  
23 adequate, and that objection is overruled.

24 The Court commends and accepts the city's offer to  
25 pay the reasonable expenses of the committee and proposes



1 that all such professional expenses be processed through the  
2 fee examiner process.

3           Regarding the issue of scope, it is an important  
4 part of the process to define the scope of the committee,  
5 and, as noted a moment ago, the Court concludes that the  
6 scope of the committee should be to represent the retirees of  
7 the City of Detroit. If the Court has any discretion on the  
8 issue of whether to give guidance to the U.S. Trustee as to  
9 the issue of adequate representation, the Court concludes in  
10 this case that it would not be appropriate to exercise that  
11 discretion. The Court, rather, concludes that the issue of  
12 who should serve on this committee should be left first to  
13 the discretion of the U.S. Trustee, and if there are issues  
14 or objections to the composition of the committee, there are  
15 procedures in place under the Bankruptcy Code to address  
16 that, and those issues will be addressed to the extent raised  
17 in due course, so the Court will not make any statement on  
18 the record at this time on this issue.

19           On the issue of adjusting the dates and deadlines  
20 that we discussed earlier on in the status conference to  
21 reflect the interest of the committee in participating fully  
22 in the process, the Court concludes that that interest can be  
23 accommodated by granting the committee a period of time after  
24 it selects its attorneys to file objections to eligibility  
25 and participate in the discovery as set forth in the proposed

1 dates and deadlines, so the Court will build that extra  
2 leeway in for this one participant, so with that on the  
3 record, the Court will grant the motion.

4 I do, however, want to address the representative of  
5 the United States Trustee's office one more time. Ma'am,  
6 would you take the lectern for me? I feel the need to take  
7 one more try at pinning you down regarding how long this is  
8 going to take because we have a very aggressive and tight set  
9 of dates and deadlines here, and so I think it's important to  
10 the process that I give your office a deadline as well.

11 MS. GIANNIRAKIS: Your Honor, I appreciate that, and  
12 I appreciate --

13 THE COURT: How much time do you need?

14 MS. GIANNIRAKIS: I don't have a specific answer.  
15 All I can say is we will --

16 THE COURT: If you don't give me a number, I'll make  
17 one up. And honestly, if I do it, it's going to be like  
18 arbitrary and capricious and clearly erroneous.

19 MS. GIANNIRAKIS: May I have a moment to consult --

20 THE COURT: And none of us want that, so -- and I  
21 don't know whether you're talking about three days, seven  
22 days, fourteen days, twenty-one days. I don't know what  
23 you're thinking about.

24 MS. GIANNIRAKIS: Your Honor, I don't think -- I  
25 don't think it's possible to have a committee up and running

1 in three days, to be honest with you. I mean we will --

2 THE COURT: I wasn't asking you to. What I'm  
3 telling you is I don't know what the right answer is. Do you  
4 want time to consult with your colleagues?

5 MS. GIANNIRAKIS: I do want time to consult with my  
6 colleagues. I do know --

7 THE COURT: All right.

8 MS. GIANNIRAKIS: I do know that we are concerned  
9 with giving parties enough time to respond --

10 THE COURT: Um-hmm.

11 MS. GIANNIRAKIS: -- because we are --

12 THE COURT: Right.

13 MS. GIANNIRAKIS: -- we do have retirees here who --

14 THE COURT: Right.

15 MS. GIANNIRAKIS: -- may not have all the electronic  
16 methods that we all have to get information.

17 THE COURT: Right. Okay. Fair enough. So I will  
18 do the status conference on the Syncora motion while you  
19 consult with your colleagues, and then we'll pick this back  
20 up again.

21 MS. GIANNIRAKIS: Thank you, your Honor.

22 THE COURT: Okay. Let's do that.

23 MR. HACKNEY: Good afternoon, your Honor. Stephen  
24 Hackney on behalf of Syncora.

25 THE COURT: Here's my question for you.

1 MR. HACKNEY: Yes.

2 THE COURT: Given the very restricted role that a  
3 court plays in either reviewing the decision of a debtor to  
4 assume or reject a contract or the decision of a debtor to  
5 settle a dispute, why do you need discovery at all?

6 MR. HACKNEY: So you've anticipated the first part  
7 of our argument, your Honor, which was why we filed the  
8 statement yesterday to express concerns that we had when you  
9 take the proposed order that they have submitted to you and  
10 the forbearance agreement and you lay them next to the Orion  
11 agreement from the Second Circuit. We have concerns that  
12 that order would entail the Court making judicial findings,  
13 judicial declarations that could foreclose the rights of  
14 third parties, and you see --

15 THE COURT: Okay. If that's your concern, I will  
16 assure you at the outset that my decision will be nothing  
17 more than to approve the decision of the city to assume this  
18 contract and enter into the settlement or disapprove of it.

19 MR. HACKNEY: And that assurance is very helpful I  
20 would say at the outset. I would still say, though, your  
21 Honor, that this is a sizeable transaction that the city is  
22 proposing to potentially assume and perform under. Whether  
23 they can perform under it is obviously a subject of dispute  
24 that I'll bracket, but whether or not this is within the  
25 business judgment of both the city and potentially the

1 service corporation that's also a party to this contract,  
2 what claims exactly are being compromised, why they're being  
3 compromised now, the likelihood of success, so on and so  
4 forth, where the city will get the money to potentially  
5 perform under this agreement if it is entitled to perform,  
6 bracketing our dispute about that, these are all important  
7 questions that are -- unfortunately, they are fact-intensive.  
8 And while it is true that the Court must defer to the city's  
9 business judgment, to the extent it applies, with a serious  
10 question around whether it applies when two of the three  
11 parties to the transaction appear to be city officers with  
12 duties to the city, the indemnification of the service  
13 corporation directors, a number of factual issues, your  
14 Honor, that's why we need discovery.

15 THE COURT: Let's assume for a minute -- let's  
16 assume for a minute that for any or all or some of the  
17 reasons you have identified the city cannot demonstrate that  
18 it has exercised appropriate business judgment. Isn't the  
19 answer to deny the motion --

20 MR. HACKNEY: I believe --

21 THE COURT: -- rather than grant all this discovery?

22 MR. HACKNEY: I believe it would be, but I need the  
23 discovery in order to inquire into that because remember,  
24 your Honor, at Syncora we have been excluded from these  
25 negotiations, so we do not know what's happened, what

1 meetings were involved, who discussed what with whom. And we  
2 also have serious questions about the interaction of the  
3 forbearance agreement with the COPs and swap structure that I  
4 discussed -- that I mentioned earlier, and so there are  
5 ambiguities in the way the forbearance agreement works.  
6 There are questions about the necessity of the casino  
7 revenues.

8 THE COURT: Okay.

9 MR. HACKNEY: Yeah.

10 THE COURT: Let's focus on ambiguities. If the  
11 ambiguities are such that it's not in the best interest of  
12 the city to assume this contract or if the ambiguities are  
13 such that the Court cannot say that the city exercised proper  
14 business judgment in proposing to assume the contract, why  
15 doesn't it suit your purposes just to argue the motion should  
16 be denied?

17 MR. HACKNEY: I think that's a fair point, your  
18 Honor, but it's also very possible that parol evidence may  
19 inform the resolution of the ambiguity in a way that leads to  
20 informing the Court's decision about whether it should --  
21 whether it should deny the motion or not, whether it's within  
22 the business judgment or not. I mean, your Honor, we are  
23 talking about the city is purporting to use this --

24 THE COURT: What I'm having a hard time doing is  
25 reconciling your position on the one hand that the Court in

1 its very limited role here should not make any holdings or  
2 findings about what this contract means or does or how it  
3 impacts third parties with your interest in discovery on  
4 those very questions --

5 MR. HACKNEY: Well, I think that --

6 THE COURT: -- unless you have some ulterior motive  
7 because of your other litigation.

8 MR. HACKNEY: And we do not, your Honor. We do not,  
9 but we are concerned that the city is going to attempt to  
10 wrap itself up in the cloak of the order and say, "Now we're  
11 entitled to act consistent with this forbearance agreement,"  
12 and so we do have serious --

13 THE COURT: Well, if the motion to assume is  
14 granted, it's granted with all of the words and questions  
15 about the contract. There's nothing about the assumption  
16 process that improves a debtor's position vis-a-vis other  
17 parties; right? We all understand that.

18 MR. HACKNEY: I agree, and, your Honor, you are  
19 speaking to the large majority of my concerns here, and so  
20 I'm trying to react on my feet. I do appreciate it. I also  
21 appreciate that you have considered our statement already  
22 given the avalanche of information that's filed every week.  
23 I guess what I would say, your Honor, is that we have not had  
24 very much insight into what led to the forbearance agreement.  
25 There are standards under 365 and 9019 that are applicable,

1 and to the extent we do have remaining objections  
2 notwithstanding the Court's emphasis of its limited role, we  
3 don't believe that we can meaningfully prepare for the  
4 hearing without at least some discovery into what happened.

5 THE COURT: All right. I don't see it, so I'm going  
6 to ask you to file a response to the motion within 14 days.  
7 You can argue that the information that the debtor has placed  
8 on the record is not adequate information for the Court to  
9 make the judgments that the city is asking the Court to make,  
10 and the Court will, of course, take that very seriously,  
11 but -- so what I'm proposing is a response by you within 14  
12 days and a hearing on the motion at our first omnibus hearing  
13 date on August 21st. Any objection to that?

14 MR. HACKNEY: I guess subject to our objection to  
15 the fact that our request --

16 THE COURT: Right.

17 MR. HACKNEY: -- for discovery is overruled.

18 THE COURT: Yeah. Apart from that. Sir, did you  
19 want to be heard on this matter as well?

20 MR. MARRIOTT: If I might, your Honor.

21 THE COURT: Go ahead, sir.

22 MR. MARRIOTT: Your Honor, Vince Marriott, Ballard  
23 Spahr. I'm embarrassed to tell you I cannot pronounce the  
24 name of my client. It's also about a paragraph --

25 THE COURT: I'm assuming that's because it's not



1 English.

2 MR. MARRIOTT: That's correct. It's also about a  
3 paragraph long. The first two words look like Erste  
4 Europaische.

5 THE COURT: Okay. That should be enough for our  
6 purposes. Thank you.

7 MR. MARRIOTT: I like to refer to it as EEPK because  
8 that's just easier.

9 THE COURT: Okay.

10 MR. MARRIOTT: We filed a preliminary objection to  
11 the debtor's motion at Docket Number 246.

12 THE COURT: I saw that.

13 MR. MARRIOTT: And at Docket Number 246 you can see  
14 the whole name. Just a couple of additions to what Mr.  
15 Hackney said. First, the forbearance agreement, as I think  
16 all of the papers indicate, isn't simply about -- or the  
17 motion isn't simply about assumption of an agreement. It's  
18 also about settlement of certain potentially significant  
19 claims that the estate might have against the swap parties  
20 either as to the validity of the swaps, the amount that's due  
21 under them, the perfection or priority of the --

22 THE COURT: Um-hmm.

23 MR. MARRIOTT: -- collateral interest in the casino  
24 revenues, and, you know, the city in its motion basically  
25 deals with those issues by saying, you know, they're

1 complicated. They're hard. It would take a lot of time to  
2 litigate them, and we don't want to. Nevertheless, one of  
3 the justifications for the settlement is that it's \$300  
4 million in secured debt and, therefore, to the extent the  
5 city can get out from under \$300 million of secured debt so  
6 that the collateralization and the amount of the claim -- all  
7 of that is significantly relevant to consideration of the  
8 motion.

9           When it comes to considering whether a settlement  
10 agreement is fair and equitable, I think the Court's role is  
11 a little more significant than passing on the business  
12 judgment of the debtor in assuming or not a contract. In  
13 other words, I think the Court's involvement is a little bit  
14 more, and the showing that the debtor has to make is a little  
15 bit more substantial to approve a settlement than assumption  
16 or rejection of a contract. And at least in our view, your  
17 Honor, the forbearance agreement is much more a settlement  
18 than it is your -- what you normally would see as a contract  
19 that a debtor is seeking to assume or reject. And the fact  
20 that the debtor is seeking to assume a settlement agreement,  
21 although it's called a forbearance agreement, and the basis  
22 upon which it is entering into that agreement impacts what  
23 may be significant claims and impacts what may be significant  
24 issues for unsecured creditors insofar as either the debt or  
25 the swap obligations themselves --

1 THE COURT: Okay. But what I'm hearing from you is  
2 the opening paragraph of your argument on August 21st.

3 MR. MARRIOTT: Yes, but I could make that argument  
4 better if I had the opportunity to do some discovery and see  
5 the documents that relate to the swap agreement, see the  
6 documents that relate to the 2009 collateralization and  
7 amendment to the service contract.

8 THE COURT: Is there any reason to believe that  
9 these documents aren't in this data room?

10 MR. MARRIOTT: They may be in the data room, your  
11 Honor, but to get into the data room -- the problem with the  
12 data room is it has a lot of things in there that at least at  
13 the moment my client is not interested in seeing because the  
14 data room may very well contain material nonpublic  
15 information that would put my client in a position of perhaps  
16 impacting its ability to trade. We don't think any of the  
17 documents that we would seek in connection with this motion  
18 would be considered material nonpublic information. I think  
19 they're public record or could be available through public  
20 means, so we would prefer not to have to sign an NDA to get  
21 into the data room for a bunch of stuff we don't want. We'd  
22 rather make a document request for the limited things we do  
23 want that wouldn't create the same issue.

24 THE COURT: Well, all right. I have to say I still  
25 don't see it. Whether the debtor can establish the grounds

1 for its motion it doesn't seem to me to depend on anything  
2 other than what they assert in their motion and what they  
3 offer in court. Now, having said that, as a creditor in the  
4 case you're entitled to see any document you like that's  
5 related to the financial condition of the city. I said that  
6 earlier, and I hope the city will cooperate with you in that  
7 regard, but let's hold a hearing on this on October -- I'm  
8 sorry -- August 21st. Ms. Lennox or whomever, I should ask  
9 you if that date is acceptable to you as well.

10 MR. SHUMAKER: It is, your Honor. Gregory Shumaker,  
11 Jones Day.

12 THE COURT: All right. Is 21 -- excuse me. Is 14  
13 days enough time to file a response?

14 MR. PEREZ: My name is Alfredo Perez, and I  
15 represent FGIC, which is another monoline insurer that's  
16 involved in this transaction. Fourteen days is fine if it  
17 applies to everybody. Obviously that wouldn't preclude us  
18 from arguing that this matter shouldn't be heard at this  
19 time, but we can --

20 THE COURT: Right.

21 MR. PEREZ: -- respond in 14 days.

22 THE COURT: Okay. All right. That will conclude  
23 that status conference. The Court will enter a scheduling  
24 order accordingly. We don't have our U.S. Trustee  
25 representatives back here yet. Was there something you

1 wanted to say, sir?

2 MR. SHUMAKER: Yes, sir, your Honor. Again, Gregory  
3 Shumaker, Jones Day, for the city. Just one thing that  
4 I'm -- I'm sorry.

5 THE COURT: Go ahead, sir.

6 MR. SHUMAKER: I'm sorry. I'd just note that one of  
7 my colleagues asked that we ask that the hearing on the 21st  
8 be an evidentiary hearing as opposed to just a preliminary  
9 hearing. I know it's a formality, but I thought I should  
10 raise it.

11 THE COURT: An evidentiary hearing at which what  
12 evidence would be presented?

13 MR. SHUMAKER: Well, the evidence in support of the  
14 motion.

15 THE COURT: You mean like a witness evidence or --

16 MR. SHUMAKER: Right, exactly.

17 THE COURT: -- or documentary evidence?

18 MR. SHUMAKER: That's right, your Honor.

19 THE COURT: Who would the witnesses be?

20 MR. SHUMAKER: Well, we're not certain of that, but  
21 we're sure there will probably be witnesses, including  
22 potentially the emergency manager.

23 THE COURT: If I grant that request, does that open  
24 the door to discovery by those witnesses or of those  
25 witnesses?

1           MR. SHUMAKER: Well, I believe part of our -- the  
2 presentation of our evidence is going to involve oral  
3 testimony from a witness, so we believe there's probably  
4 adequate opportunity for cross-examination, but that is what  
5 we were planning, your Honor.

6           THE COURT: All right. Thank you for that  
7 information. In light of that -- sir.

8           MR. SMITH: Your Honor, my name is Bill Smith. I'm  
9 counsel -- I've learned to be precise about this -- to U.S.  
10 Bank in its role as custodian of the casino revenues and as  
11 trustee for the certificates of participation. That makes us  
12 a party in interest. It's unclear whether we are a creditor.

13           The dialogue you just concluded underscores, I  
14 think, a relevant factor. This is, as has been suggested to  
15 you by other parties, a complex series of transactions. If  
16 the debtor proposes --

17           THE COURT: I remain to be convinced of that.

18           MR. SMITH: I apologize, your Honor. I'm sorry.

19           THE COURT: I remain to be convinced of that.

20           MR. SMITH: We'd be -- well, I'm not certain we  
21 oppose the transaction, so I'm not sure I'm the right person  
22 to convince you. There are able and capable people who I  
23 believe are going to take a yeoman's shot at trying to do  
24 that. We believe, in the event that the debtor proposes to  
25 present live testimony, it is worthwhile making available to

1 interested parties at least the documents that surround this  
2 transaction, some of which are in the data room, some of  
3 which are not. And so our suggestion is, to the degree that  
4 you are disposed not to grant discovery, that you at least  
5 make -- suggest to the city that it make available to any  
6 person interested in opposing the transaction the transaction  
7 documents themselves. Past that we have no view on  
8 discovery, your Honor.

9 THE COURT: All right. Well, the city's suggestion  
10 that they are proposing evidence at this hearing does cause  
11 me to change my mind about discovery and to allow some  
12 limited discovery, so by the same August 21st deadline, the  
13 Court will ask the city to file a list of witnesses and a  
14 list of documents that it intends to offer at the hearing and  
15 to provide those documents to the city. In the two weeks  
16 following, the Court will order the city to make available  
17 for deposition those witnesses who it intends to call. As a  
18 result, we won't have our hearing on August 21st. We'll have  
19 it on August 28th. Anything further on this matter?

20 MR. GOLDBERG: What does that do to the response  
21 time for the motion?

22 THE COURT: I want responses within 21 days --

23 MR. GOLDBERG: Twenty-one --

24 THE COURT: I'm sorry -- 14 days. Fourteen days.  
25 Sorry. Okay. Let's get back to the issue of appointing a

1 committee of retired persons.

2 MS. GIANNIRAKIS: Thank you, your Honor. Thank you  
3 for allowing us the opportunity.

4 THE COURT: Sure.

5 MS. GIANNIRAKIS: I was able to consult with my  
6 client during that break, and our concern -- and I'll just  
7 voice it briefly -- is --

8 THE COURT: Uh-huh.

9 MS. GIANNIRAKIS: -- unlike when we have a list of  
10 unsecured creditors, we don't have the body of people that we  
11 have to -- well, I guess we do now with 3,500 pages of people  
12 to solicit. And although there are parties here that we know  
13 are interested and we're going to ask them for information,  
14 we don't control how quickly we get those names and that  
15 information. We are going to post the questionnaire on the  
16 website as soon as it's completed, and that will be done very  
17 early, and it'll be available.

18 THE COURT: What website?

19 MS. GIANNIRAKIS: On the U.S. Trustee's Detroit  
20 website. I don't have that address, but it's the U.S.  
21 Trustee's --

22 THE COURT: U.S. Trustee's website?

23 MS. GIANNIRAKIS: Right. And it'll be very --

24 THE COURT: Do you have any objection to posting it  
25 on the city's website and the court's website as well?



1 MS. GIANNIRAKIS: I'm sorry, your Honor.

2 THE COURT: Do you have any objection to posting it  
3 on the city's website and the court's website as well?

4 MS. GIANNIRAKIS: Do not, your Honor. As much as it  
5 could be out there, we are not opposed to that.

6 THE COURT: Okay.

7 MS. GIANNIRAKIS: And we also know that in addition  
8 to that, we're going to be doing mailings, and we're going to  
9 have -- we have a body of constituents here that are probably  
10 not all technologically savvy, so we want to be mindful of  
11 that.

12 THE COURT: Um-hmm.

13 MS. GIANNIRAKIS: So with that said, your Honor, we  
14 are going to endeavor to do this as quickly as possible, but  
15 we believe we need at least the outline of 21 days.

16 THE COURT: Um-hmm. All right.

17 MS. GIANNIRAKIS: And if we can do it sooner, we  
18 will do it sooner.

19 THE COURT: All right. I will set that deadline for  
20 you. If there's cause to extend that, you can file a motion,  
21 and the Court will, of course, give that every consideration.  
22 Anything further for today, or are we done? I just -- I want  
23 to make one more statement. Was there something you wanted  
24 to say, sir? I didn't mean to cut you off. Okay. Give me  
25 one second.

1           This is quite out of the ordinary, but before we  
2 conclude I do want to take a moment to thank the United  
3 States District Court and its judges for very generously  
4 offering us the use of their space and for adjusting their  
5 schedules to allow this and future hearings. I also want to  
6 thank the clerk of the District Court, Dave Weaver, and the  
7 clerk of the Bankruptcy Court, Katherine Gullo, as well as  
8 their staffs for their monumental efforts in arranging and  
9 setting up all of this. It was an extraordinary challenge  
10 with very short notice, and they met that challenge with  
11 grace and with expertise and in the very best spirit of  
12 public service. And I'd like to break our decorum and ask  
13 you to give them a round of applause. And we are adjourned.

14           THE CLERK: All rise. Court is adjourned.

15           (Proceedings concluded at 1:43 p.m.)

## INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

August 9, 2013

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Lois Garrett

# Exhibit C

**FORBEARANCE AND OPTIONAL TERMINATION AGREEMENT**

This FORBEARANCE AND OPTIONAL TERMINATION AGREEMENT (this “**Agreement**”) is entered into as of this 15<sup>th</sup> day of July, 2013, by and among Detroit General Retirement System Service Corporation, a Michigan nonprofit corporation (“**DGRS**”), Detroit Police and Fire Retirement System Service Corporation, a Michigan nonprofit corporation (“**PFRS**” and, together with DGRS, each a “**Service Corporation**” and collectively the “**Service Corporations**”), the City of Detroit (the “**City**”), the Emergency Manager of the City (the “**Emergency Manager**”), and UBS AG (“**UBS**”) and Merrill Lynch Capital Services, Inc. (“**MLCS**” and, together with UBS, each a “**Swap Counterparty**” and collectively the “**Swap Counterparties**”).

Capitalized terms used herein and not otherwise defined have the meanings ascribed to them under the Swap Agreements (as defined below).

**RECITALS**

WHEREAS, the Service Corporations and Swap Counterparties are party to swap transactions under certain ISDA Master Agreements (including, in the case of MLCS, pursuant to Transaction Transfer Agreements and, in any case, including the related Schedule and Credit Support Annex thereto and any Confirmations thereunder) as set forth in Schedule A attached to this Agreement (as applicable, the “**MLCS Swap Agreements**” and the “**UBS Swap Agreements**”) and the Service Corporations are party to transactions under certain ISDA Master Agreements (including the related Schedule and Credit Support Annex thereto and any Confirmations thereunder) entered into with SBS Financial Products Company, LLC as set forth in Schedule A attached to this Agreement (the “**SBS Swap Agreements**” and together with the MLCS Swap Agreements, the “**MLCS/SBS Swap Agreements**”; the MLCS/SBS Swap Agreements and UBS Swap Agreements are referred to collectively herein as the “**Swap Agreements**”);

WHEREAS, the City, the Service Corporations, U.S. Bank, National Association (as custodian) and the Swap Counterparties are party to a Collateral Agreement dated as of June 15, 2009 (the “**Collateral Agreement**”);

WHEREAS, the City is obligated pursuant to the Service Contracts to make certain payments thereunder in an amount equal to the amount due from the Service Corporations to the Swap Counterparties;

WHEREAS, pursuant to the Collateral Agreement, the City has pledged to the Service Corporations a first priority lien upon all of the City’s right, title and interest in the Pledged Property (as such term is defined in the Collateral Agreement) in order to secure the payment of all City Hedge Payables Related Obligations (as such term is defined in the Collateral Agreement);

WHEREAS, pursuant to the Collateral Agreement, the Service Corporations have

granted to the Swap Counterparties a security interest in all of their right, title and interest in, to and under the City Hedge Payable Related Obligations and the City Pledge (as such term is defined in the Collateral Agreement);

WHEREAS, the Governor of the State of Michigan determined on March 1, 2013 that a financial emergency existed in the City, and the Emergency Manager was appointed for the City on March 14, 2013;

WHEREAS, pursuant to the terms of each Swap Agreement, it is the view of the Swap Counterparties that one or more Events of Default and/or Additional Termination Events has occurred, with the Service Corporation as the Defaulting Party or sole Affected Party, and therefore each of SBS and UBS has the right to designate an Early Termination Date for the related Swap Agreements;

WHEREAS, pursuant to the terms of the UBS Swap Agreements, it is the view of UBS that UBS has the right (but not the obligation) to terminate the UBS Swap Agreements as described in Part 5(xx) of the Schedules to the UBS Swap Agreements;

WHEREAS, pursuant to the terms of the MLCS/SBS Swap Agreements, it is the view of MLCS that SBS has the right (but not the obligation) to terminate the SBS Swap Agreements as described in Part 5(t) of the Schedules to the SBS Swap Agreements; provided that SBS may not exercise such right without the consent of MLCS and is required to exercise such right at the direction of MLCS;

WHEREAS, the Service Corporations and City have asked each Swap Counterparty to forbear from exercising certain rights, including without limitation, rights under the Swap Agreements, during a certain period pursuant to this Agreement; and

WHEREAS, each Swap Counterparty is willing to do so upon the terms and subject to the conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Forbearance.**

**1.1. *Forbearance.*** During the period (the “**Forbearance Period**”) commencing on the date hereof and terminating upon the occurrence of a Forbearance Period Termination Event (as defined in Section 1.3 below), each Swap Counterparty shall, subject to the terms and conditions hereof, forbear from:

- (a) issuing any notice designating an Early Termination Date with respect to any Swap Agreement; and

- (b) (i) instructing the Collateral Agreement Custodian to cease making payments to the City from the General Receipts Subaccount in accordance with Section 5.4 of the Collateral Agreement and (ii) giving notice to the Collateral Agreement Custodian pursuant to the Collateral Agreement of its obligation to cease making such payments.

**1.2. *Affirmative Obligations During Forbearance Period.***

- (a) During the Forbearance Period, if a Liquidity Event has occurred and is continuing, the Swap Counterparties shall (a) use their best efforts to take any action reasonably requested by the City to cure such Liquidity Event, including supporting any action by the City or Service Corporations to obtain a turnover to the City of all amounts that would be paid to the City under the Collateral Agreement but for the application, or alleged application, of Section 5.4 of the Collateral Agreement or but for any action by the Collateral Agreement Custodian, whether or not such action has been purported to have been taken pursuant to Section 5.4, to withhold or delay such payments, *provided, however*, such best efforts shall not include any act that would, in the commercially reasonable judgment of the Swap Counterparties, (i) impose material costs, expenses or burden on the Swap Counterparties, (ii) impose reputational risk or material liability on either Swap Counterparty, or (iii) have an Adverse Effect (as such term is defined in Section 1.3(d) below) on the Swap Counterparties, (b) in the event of a bankruptcy with respect to the City, (x) support a motion or adversary proceeding for turnover to the City of all amounts that would be paid to the City under the Collateral Agreement but for the application, or alleged application, of Section 5.4 of the Collateral Agreement or but for any action by the Collateral Agreement Custodian, whether or not such action has been purported to have been taken pursuant to Section 5.4, to withhold or delay such payments, and (y) consent to use of cash collateral by the City of any amounts held under the Collateral Agreement that would be paid to the City but for the application, or alleged application, of Section 5.4 of the Collateral Agreement or but for any action by the Collateral Agreement Custodian, whether or not such action has been purported to have been taken pursuant to Section 5.4, to withhold or delay such payments, and (c) consent to the remittance to the City of the funds contemplated by the letter from the City to the Collateral Agreement Custodian in the form attached as Schedule B hereto.
- (b) For purposes of this Agreement, a "**Liquidity Event**" shall mean that (i) the City has not received payment of any and all amounts under the Collateral Agreement that would have been paid to the City from the General Receipts Subaccount or Holdback Account under the Collateral Agreement but for the application, or alleged application, of Section 5.4 of the Collateral Agreement or but for any action by the Collateral Agreement Custodian, whether or not such action has been purported to have been taken pursuant to Section 5.4, to withhold or delay such payments, or (ii) the Collateral Agreement Custodian has stated that it will not, or the City has reasonable grounds to believe that the Collateral Agreement Custodian may not, (a) make payment to the City from the General Receipts

Subaccount equal to the City Payment for such Month if the City were to pay the Collateral Agreement Custodian for deposit to the credit of the Holdback Account an amount equal to the Standard Holdback Requirement, (b) issue a Monthly Holdback Compliance Notice, or (c) remit to the City daily all amounts standing to the credit of the General Receipts Subaccount after issuance of a Monthly Holdback Compliance Notice. The existence of an outstanding instruction or direction by any person to the Collateral Agreement Custodian to refrain from paying amounts under the Collateral Agreement to the City shall constitute reasonable grounds for such belief.

- (c) Upon termination of the Forbearance Period, any and all rights of the City and the Service Corporations under this Section 1.2 shall terminate immediately without notice and the Swap Counterparties shall have the right to revoke any consents described herein and otherwise exercise any rights or remedies they may have under the Transaction Documents except with respect to amounts previously used by or remitted to the City in accordance with the terms of this Section 1.2.

**1.3. Forbearance Period Termination Events.** Each of the following events constitutes a “**Forbearance Period Termination Event**” upon delivery by a Swap Counterparty to the City and each Service Corporation of written notice of the occurrence thereof (provided that in lieu of such notice, notice of the occurrence of the Forbearance Period Termination Events in Sections 1.3(a), 1.3(l) or 1.3(m) below shall be given as set forth therein):

- (a) Delivery to the City and each Service Corporation of a written notice from a Swap Counterparty (given in its sole discretion and with a copy to the other parties hereto) terminating the Forbearance Period; provided that such notice may not be given prior to June 30, 2014.
- (b) (i) The occurrence of any Event of Default under Section 5(a)(i) of any Swap Agreement, (ii) any Service Corporation seeks to become a debtor under title 11, United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), or (iii) a petition to cause a Service Corporation to become a debtor under the Bankruptcy Code is filed by a Controlled Entity (as such term is defined in Section 2.1(a) hereof) and the City or the Emergency Manager caused such filing to be made.
- (c) A petition to cause a Service Corporation to become a debtor under the Bankruptcy Code is filed by a third party (except as provided in Section 1.3(b)(iii) above).
- (d) Occurrence of any Event of Default under Section 5(a)(iii) of any Swap Agreement, provided that such occurrence has an Adverse Effect on the Swap Counterparties. For purposes of this Agreement, an “**Adverse Effect**” on the Swap Counterparties shall (i) mean the occurrence or existence of any act, event or condition that, in the reasonable judgment of the Swap Counterparties, is likely to adversely affect their rights or



interests under any of the Transaction Documents in any material respect and (ii) exclude (1) any failure or refusal to pay any amounts under the 2006 Pension Funding Securities when due, and (2) the filing of a petition for relief under the Bankruptcy Code by the City.

- (e) Occurrence of any Additional Termination Event under Part 1(i)(ii)(1), (2), (6), or (7) of the Schedule to any Swap Agreement; provided, however, (x) an Additional Termination Event under Part 1(i)(ii)(1) of the Schedule to any Swap Agreement shall not constitute a Forbearance Period Termination Event if it occurs during the continuation of a Liquidity Event and prior to July 31, 2013, (y) the occurrence of an Additional Termination Event under Part 1(i)(ii)(2) of the Schedule to any Swap Agreement shall not constitute a Forbearance Period Termination Event to the extent the appropriation referenced therein equals at least the amount specified in clause (X) of such Part 1(i)(ii)(2) and (z) the occurrence of an Additional Termination Event under Part 1(i)(ii)(6) of the Schedule to any Swap Agreement shall not constitute a Forbearance Period Termination Event to the extent any third party litigation does not have an Adverse Effect on the Swap Counterparties.
- (f) Breach of any of the covenants contained in Section 2.1(a), 2.1(b), 2.1(d) or 2.2(a) herein
- (g) Other than as set forth in Section 1.3(f) above, breach (other than breach solely by the Swap Counterparties) of any of the covenants contained in Section 2 herein or any representations contained in Section 4 herein.
- (h) Without prejudice to Section 1.3(f) or (g) above, issuance by any court of competent jurisdiction of a judgment or order that would (i) render unlawful or invalid any of the Swap Agreements, Collateral Agreement or this Agreement or the performance thereunder or hereunder by the Emergency Manager, the City or a Service Corporation or any party acting for or on behalf of the Swap Counterparties, (ii) render unlawful or invalid any other Transaction Documents or the performance thereunder by the City or a Service Corporation or any party acting for or on behalf of the Swap Counterparties, if the impact thereof would impair the ability of a Service Corporation to make any payments when due under any Swap Agreements or impair any arrangement securing such payments, or (iii) require or allow any payment of principal or interest on the 2006 Pension Funding Securities to be paid prior to the scheduled payment date therefor.
- (i) Proposal of an ordinance by the Emergency Manager or the giving of public notice of a meeting of the City Council of the City at which an ordinance will be considered for adoption (provided the City Council of the City had at such time the requisite power and authority for such adoption), or approval by either house of any federal or state legislature of legislation, that if enacted or adopted into law would (i) render unlawful or

invalid any of the Swap Agreements, Collateral Agreement or this Agreement or the performance thereunder or hereunder by the Emergency Manager, the City or a Service Corporation or any party acting for or on behalf of the Swap Counterparties, (ii) render unlawful or invalid any other Transaction Documents or the performance thereunder by the City or a Service Corporation or any party acting for or on behalf of the Swap Counterparties, if the impact thereof would impair the ability of a Service Corporation to make any payments when due under any Swap Agreements or impair any arrangement securing such payments, or (iii) require or allow any payment of principal or interest on the 2006 Pension Funding Securities to be paid prior to the scheduled payment date therefor.

- (j) The City files a petition for relief under the Bankruptcy Code and any one of the following occurs: (i) within 60 days of filing the City fails to obtain a Court Order (as defined in Section 2.1(d) hereof), (ii) the Assumption Motion (as defined in Section 2.1(d) hereof) is denied, (iii) the petition for relief is dismissed and a new petition is not filed within 30 days following such dismissal, or (iv) the Court Order does not contain a waiver of the automatic stay as specified in Section 2.3 herein.
- (k) The effective date of the confirmation of the plan of adjustment in connection with any bankruptcy proceedings of the City.
- (l) Delivery on or before July 31, 2013 to the Swap Counterparties of a written notice from the City (given in its sole discretion and with a copy to the other parties hereto) terminating the Forbearance Period; provided that on such date a Liquidity Event has occurred and is continuing.
- (m) Delivery to the Swap Counterparties of a written notice from the City (given in its sole discretion and with a copy to the other parties hereto) terminating the Forbearance Period; provided that (A) on such date an event described in 1.3(j)(ii) or (iii) has occurred or (B) the City files a petition for relief under the Bankruptcy Code and any one of the following occurs: (i) within 75 days of the filing the City fails to obtain a Non-Final Court Order or (ii) the City fails to obtain a Court Order prior to the Exercise Period End Date; provided further that the City has used its best efforts to obtain a Court Order in accordance with Section 2.1(d) hereof.

**1.4.** *Rights Following Forbearance Period.*

- (a) Upon the occurrence of a Forbearance Period Termination Event pursuant to Section 1.3(a), 1.3(b) or 1.3(f) hereof, the parties hereto shall be restored to their original rights and positions as they existed immediately prior to the Forbearance Period, and each Swap Counterparty shall immediately be entitled to exercise any rights and remedies in respect of any Event of Default, Termination Event, or Additional Termination Event that has occurred under the applicable Swap Agreement together

with any rights and remedies under the Definitive Documents relating thereto and giving effect to Section 2 of this Agreement.

- (b) If (i) the City has complied with Section 3.2 hereof but either Swap Counterparty is prohibited from exercising its Optional Termination Right (as defined in Section 3.5 hereof) because an Event of Default or Termination Event is then occurring with respect to which any Swap Counterparty is the Defaulting Party or sole Affected Party under any Swap Agreement or (ii) a Forbearance Period Termination Event (other than as set forth in Section 1.4(a) above) has occurred, the parties hereto shall be restored to their original rights and positions as they existed immediately prior to the Forbearance Period, and each Swap Counterparty shall immediately be entitled to exercise any rights and remedies in respect of any Event of Default, Termination Event, or Additional Termination Event that has occurred under the applicable Swap Agreement together with any rights and remedies under the Definitive Documents relating thereto *without* giving effect to Section 2 of this Agreement.

## 2. Covenants of the Parties.

**2.1.** *Covenants of the City and Service Corporations.* Each of the City and the Service Corporations hereby covenants and agrees, which covenants and agreements shall, except as otherwise provided in Section 1.4, survive the termination of the Forbearance Period, as follows:

- (a) Unless the Swap Counterparties have given their express written consent, and so long as the Swap Counterparties are not in breach of their obligations hereunder, the City and each Service Corporation (i) shall not commence litigation, assert any defense in litigation or take any other judicial, legislative, or executive action that may have the effect of (A) setting aside, avoiding, rejecting, modifying, terminating, amending, revising, disapproving, limiting, or otherwise disrupting or rendering ineffective any of this Agreement, the Collateral Agreement, the Swap Insurance Policies, the Swap Agreements, the 2006 Transaction, the City Pledge, the Service Corporation Security Interest, the Service Corporation Pledge, the lien created by the Authorizing Ordinance, or any other part of the Definitive Documents or the Settlement Transaction (collectively, the “**Transaction Documents**”) to the extent such litigation or action would have an Adverse Effect on the Swap Counterparties or (B) causing any payment of principal or interest on the 2006 Pension Funding Securities to be paid prior to the scheduled payment date therefor, it being agreed and understood that neither (1) any failure or refusal to pay any amounts under the 2006 Pension Funding Securities when due nor (2) the filing of a petition for relief under the Bankruptcy Code by the City shall constitute a breach or violation of this clause (B) and (ii) shall not cause the City, a Service Corporation or any entity or person under the control of the City

or the Emergency Manager (any such entity or person, a “**Controlled Entity**”) to commence litigation, assert any defense in litigation or take any other judicial, legislative, or executive action that may have any of the effects referenced in Section 2.1(a)(i)(A) or (B).

- (b) Unless the Swap Counterparties have given their express written consent, and so long as the Swap Counterparties are not in breach of their obligations hereunder, the City and each Service Corporation shall timely and diligently defend against any litigation or other judicial action that is commenced by a third party (including, without limitation, any Controlled Entity), or any legislative action that is taken, that may have any of the effects referenced in Section 2.1(a)(i)(A) or (B).
- (c) Each of the City and each Service Corporation hereby ratifies and agrees to comply with all applicable provisions of the Transaction Documents to the extent that failure to do so would have an Adverse Effect on the Swap Counterparties.
- (d) If the City or a Service Corporation seeks to become or becomes a debtor under the Bankruptcy Code, the City and such Service Corporation (as applicable) shall (A) (i) file a motion, in form and substance reasonably satisfactory to the Swap Counterparties, to assume this Agreement (the “**Assumption Motion**”) pursuant to section 365 of the Bankruptcy Code on the date of the filing of a petition for relief under the Bankruptcy Code and (ii) use best efforts to obtain entry of a final and non-appealable order, in form and substance reasonably satisfactory to the Swap Counterparties, granting the Assumption Motion (an “**Assumption Order**”) or (B) use best efforts to obtain entry of a final and non-appealable order, in form and substance reasonably satisfactory to the Swap Counterparties, with respect to this Agreement pursuant to Rule 9019 under the Bankruptcy Code (a “**Rule 9019 Order**” and together with the Assumption Order, a “**Court Order**”).
- (e) If the City or a Service Corporation seeks to become or becomes a debtor under the Bankruptcy Code, the City and such Service Corporation (as applicable) shall schedule any amounts due and owing to any Swap Counterparty (or its transferees or assigns) pursuant to or related to the Swap Agreements, the Collateral Agreement and this Agreement as undisputed, fully secured claims pursuant to section 506 of the Bankruptcy Code and treat any amounts due thereunder or hereunder as allowed, fully secured claims for any and all purposes under any plan for the City or such Service Corporation (as applicable).
- (f) The City and each Service Corporation shall provide each Swap Counterparty with immediate oral and written notice of the occurrence of any Forbearance Period Termination Event.

- (g) At the request of the Swap Counterparties following the occurrence of both (i) a Forbearance Period Termination Event described in Section 1.4(a) above and (ii) either a Termination Event or Event of Default under a Hedge where the Swap Counterparty is not the sole Affected Party or Defaulting Party, the City and each Service Corporation shall authorize, approve and consent to payment to the Swap Counterparties from the Pledged Property to meet the obligations owing to the Swap Counterparties under the Hedges and the Transaction Documents; subject to prior appropriation by either the City Council of the City (provided the City Council of the City had at such time the requisite power and authority for such appropriation) or by the Emergency Manager pursuant to Section 2.2 (b)(iv) of the Pledged Property in an amount sufficient to pay the obligations owing to the Swap Counterparties under the Hedges and the Transaction Documents.
- (h) At the request of the Swap Counterparties following the occurrence of a Forbearance Period Termination Event described in Section 1.4(a) above, if the Collateral Agreement Custodian refuses or fails to make a payment from the Pledged Property as provided in Section 2.1(g) above, the City and each Service Corporation shall support any reasonable action by the Swap Counterparties to obtain relief, including relief pursuant to the remedies specified in Section 11.2 of the Collateral Agreement.

**2.2.** *Covenants of the Emergency Manager.* The Emergency Manager hereby covenants and agrees, which covenants and agreements shall, except as otherwise provided in Section 1.4, survive the termination of the Forbearance Period, as follows:

- (a) Unless the Swap Counterparties have given their express written consent, and so long as the Swap Counterparties are not in breach of their obligations hereunder, the Emergency Manager (i) shall not, and shall not authorize or permit the City to, commence litigation, assert any defense in litigation or take any other judicial, legislative, or executive action that may have any of the effects referenced in Section 2.1(a)(i)(A) or (B) and (ii) shall not cause the City, a Service Corporation or any Controlled Entity to commence litigation, assert any defense in litigation or take any other judicial, legislative, or executive action that may have any of the effects referenced in Section 2.1(a)(i)(A) or (B).
- (b) Unless the Swap Counterparties have given their express written consent, and so long as the Swap Counterparties are not in breach of their obligations hereunder, the Emergency Manager shall exercise all powers, authorities and privileges vested in the Emergency Manager under applicable law and, as required from time to time in the performance thereof, shall immediately execute and deliver each authorization, approval, appropriation, direction, instruction or consent by the

Emergency Manager, acting in the official capacity as Emergency Manager, that is necessary:

- (i) subject to Section 2.2(b)(iii) with respect to the City Payments, to cause the City and the Service Corporations to perform all covenants, obligations and duties of the City and the Service Corporations, respectively, under the Transaction Documents, unless the failure to perform will not have an Adverse Effect on the Swap Counterparties,
- (ii) to cause the City or the Service Corporations to avoid the occurrence of a Forbearance Period Termination Event described in Sections 1.3(b), 1.3(d), 1.3(e), 1.3(f), 1.3(g) or 1.3(i) of this Agreement,
- (iii) to cause the City to make all City Payments as and when required under the Collateral Agreement and, to the extent necessary, to make one or more appropriations or make one or more amendments to then existing appropriations in amounts that are sufficient to pay in full, and which may be used exclusively for payment of, such City Payments, and
- (iv) following the occurrence of both (A) a Forbearance Period Termination Event described in Section 1.4(a) above and (B) either a Termination Event or Event of Default under a Hedge where the Counterparty is not the sole Affected Party or Defaulting Party thereunder, to make one or more appropriations or make one or more amendments to then existing appropriations of the Pledged Property in amounts that are sufficient to pay in full, and which may be used exclusively for payment of, the obligations owing to the Swap Counterparties under the Hedges and the Transaction Documents.

**2.3.** *Specific Performance of Covenants.* The City, the Service Corporations and the Emergency Manager acknowledge and agree that the rights acquired by the Swap Counterparties under this Section 2 are unique and that irreparable damage to the Swap Counterparties would occur in the event that any of the provisions of this Section 2 were not performed in accordance with their specific terms as required by the Agreement or were otherwise breached. Accordingly, the Swap Counterparties shall be entitled to an injunction or injunctions to prevent any breach or nonperformance of this Section 2 and to an order or orders of specific performance of the terms and provisions of this Section 2. Furthermore, in the event of nonperformance under this Section 2, it is acknowledged that mandamus is an appropriate remedy and the Emergency Manager shall not contest such mandamus remedy, and if the City is then a debtor under the Bankruptcy Code, the Emergency Manager shall promptly seek to waive the automatic stay with respect to such remedy.

**2.4.** *Further Assurances.* Each party hereto hereby covenants and agrees, which covenant and agreement shall survive the termination of the Forbearance Period, that such party will execute such further documents and take such further actions

as reasonably necessary to implement and carry out the intent of this Agreement.

**3. Right to Direct Termination.**

**3.1. *Optional Termination Right.*** Subject to the terms and conditions of this Agreement:

- (a) UBS and the City hereby agree that the City shall have the right, but not the obligation, exercisable on any Business Day during the Exercise Period, to direct UBS to exercise its Optional Termination Right, under all (but not less than all) of the UBS Swap Agreements (the “**UBS Termination Right**”).
- (b) MLCS and the City hereby agree that the City shall have the right, but not the obligation, exercisable on any Business Day during the Exercise Period, to direct MLCS to exercise or cause to be exercised the Optional Termination Right under all (but not less than all) of the MLCS/SBS Swap Agreements (the “**MLCS Termination Right**” and together with the UBS Termination Right, the “**Termination Rights**”). MLCS hereby acknowledges that MLCS has the right to direct SBS to exercise the Optional Termination Right.

**3.2. *Exercise of Termination Rights.***

- (a) The City may exercise the Termination Rights only once, by providing both UBS and MLCS with written notice (the “**Optional Termination Notice**”) on a day (the “**Optional Termination Notice Date**”) that is at least seven (7) Business Days and not more than ten (10) Business Days prior to the proposed date of termination set forth in the Optional Termination Notice (the “**Optional Termination Date**”). The Optional Termination Date must be the same date for both the UBS Termination Right and the MLCS Termination Right and shall occur prior to the Exercise Period End Date. Such Optional Termination Notice shall be accompanied by evidence reasonably satisfactory to each of UBS and MLCS that the City will have funds on the Optional Termination Date sufficient to pay in cash the Optional Termination Amounts as set forth in Section 3.3 below (the “**Supporting Information**”). Delivery of an Optional Termination Notice, if accompanied by proper Supporting Information, shall be irrevocable.
- (b) Provided that an Optional Termination Notice and the Supporting Information are properly delivered pursuant to Section 3.2(a) above, and provided further that no Event of Default or Termination Event is then occurring with respect to which any Swap Counterparty is the Defaulting Party or sole Affected Party under any Swap Agreement (it being understood that, subject to Section 3.2(d) hereof, the Service Corporations may waive any such Event of Default or Termination Event), each of UBS

and MLCS shall (i) deliver or cause to be delivered written notice to each Service Corporation exercising its Optional Termination Right in accordance with the terms of its Optional Termination Provision as of the Optional Termination Date and (ii) take such other actions as may be necessary or required to give effect to the Optional Termination Provision.

- (c) If the City exercises the Termination Rights and complies with all the terms of this Agreement, (i) no Swap Counterparty will present any payment notice, notice of nonpayment, or other presentation of claim under a Swap Insurance Policy to a Swap Insurer as a result of the exercise of the Termination Rights and (ii) each Swap Counterparty will irrevocably waive all future rights to do so. In furtherance of the foregoing, each Swap Counterparty hereby agrees, severally and not jointly, to indemnify and hold harmless each Service Corporation and the City from any and all claims, damages, liabilities, costs and expenses, including reasonable counsel fees (in each case, regardless of whether such rights arise by way of contribution, reimbursement, subrogation or otherwise), resulting directly from and caused by a breach by such Swap Counterparty of its obligations under this Section 3.2(c).
- (d) The City hereby agrees that if it exercises the Termination Rights with respect to any Swap Agreement, it must exercise the Termination Rights with respect to the full notional amount of all Swap Agreements with respect to the Swap Counterparties simultaneously.
- (e) If the City has not exercised the Termination Rights on or prior to the termination of the Exercise Period, the Termination Rights shall expire.

**3.3. *Payment of Optional Termination Amount.***

- (a) On or before the second Business Day following the Optional Termination Date, the City shall pay to UBS an amount in cash equal to the Optional Termination Amount with respect to all UBS Swap Agreements.
- (b) On or before the second Business Day following the Optional Termination Date, the City shall pay to MLCS an amount in cash equal to the Optional Termination Amount with respect to all MLCS/SBS Swap Agreements.
- (c) For the avoidance of doubt, each party hereto acknowledges that no Service Corporation will owe an amount to any Swap Counterparty under any Swap Agreement in connection with the election to exercise the Optional Termination Right other than any Unpaid Amounts (without duplication of Unpaid Amounts paid by the City as a component of the Optional Termination Amount).
- (d) If a third party (including, without limitation, any Controlled Entity) alleges through litigation, judicial action, or otherwise, that all or a portion of the Optional Termination Amount paid to UBS or MLCS hereunder



must be shared with other creditors of the City or of either Service Corporation (or any person acting for or on behalf of such creditors), then the City shall, at the request of the Swap Counterparties, support any reasonable action by the Swap Counterparties in defending against any such litigation or other judicial action that is threatened or commenced by such third party to the extent such action does not impose any further duty or liability on the City.

- (e) The City, the Service Corporations and the Swap Counterparties agree that the payment by the City and acceptance by the Swap Counterparties of the Optional Termination Amounts shall constitute the application of funds by the Swap Counterparties pursuant to the contract rights granted hereunder.

**3.4.** *Effect of Payment of Optional Termination Amount.*

Upon payment in full by the City of the Optional Termination Amount to each of the Swap Counterparties:

- (a) each of the Swap Counterparties and the Service Corporations shall be released and discharged from further obligations to each other under the Swap Agreements and their respective rights against each other thereunder shall be terminated;
- (b) the City Pledge, the Service Corporation Security Interest and the Service Corporation Pledge shall be satisfied and discharged;
- (c) this Agreement shall terminate *without* giving effect to Section 2 of this Agreement; *provided*, that such termination shall not affect the respective obligations of the parties under Sections 3.3(c), 3.3(d), 5, 8, 10 and 11 of this Agreement, which shall survive; and
- (d) in accordance with Section 14.4(a) of the Collateral Agreement, the Swap Counterparties shall deliver to the Collateral Agreement Custodian, and MLCS shall cause SBS to deliver to the Collateral Agreement Custodian, confirmation of the payment in full of all obligations of the Service Corporations and the City to the Swap Counterparties and SBS under the Swap Agreements and the Collateral Agreement.

**3.5.** *Definitions related to Optional Termination Right.*

“**Applicable Percentage**” shall mean, with regard to the delivery of an Optional Termination Notice by the City in accordance with Section 3.2, (i) if the Optional Termination Notice Date occurs on or prior to the First Payment Adjustment Date, 75%, (ii) if the Optional Termination Notice Date occurs after the First Payment Adjustment Date and on or prior to the Second Payment Adjustment Date, 77%, and (iii) if the Optional Termination Notice Date occurs after the Second Payment Adjustment Date and prior to the Exercise Period End Date, 82%; *provided, however*, that if the City shall have received a Non-Final Court Order and the Swap

Counterparties do not expressly waive the requirement of a Court Order to begin the Exercise Period, the Applicable Percentage shall be determined with respect to the Non-Final Court Order Date rather than the Optional Termination Notice Date.

“**Exercise Period**” shall mean the period from and including the Exercise Period Start Date to but excluding the Exercise Period End Date.

“**Exercise Period End Date**” shall mean the earlier to occur of (i) a Forbearance Period Termination Event and (ii) March 14, 2014.

“**Exercise Period Start Date**” shall mean the date of this Agreement; *provided, however*, that if the City shall have not exercised the Termination Rights and paid in full in cash to each Swap Counterparty its respective Optional Termination Amount prior to the City filing a petition for relief under the Bankruptcy Code, the Exercise Period Start Date shall mean the date on which the City obtains a Court Order, unless the requirement for such order is expressly waived in writing by each Swap Counterparty.

“**First Payment Adjustment Date**” shall mean October 31, 2013.

“**Mid-Market Amount**” shall mean an amount for each Swap Agreement determined by the Swap Counterparties as of the Optional Termination Date according to a methodology that is agreed to by the City and based upon the present value of amounts due under the Swap Agreement using a discount curve calculated from swap rates published on Reuters Screen Page “ISDAFIX3” at 11:30 a.m. New York Time on the Optional Termination Date, as adjusted to take into account three (3) basis points of breakage costs.

“**Non-Final Court Order**” shall mean an order from the Bankruptcy Court that, but for such order not being final and non-appealable, would constitute a Court Order.

“**Non-Final Court Order Date**” shall mean the date on which the Bankruptcy Court issues a Non-Final Court Order.

“**Optional Termination Amount**” shall mean the sum of (a) the product of the Mid-Market Amount and the Applicable Percentage and (b) all Unpaid Amounts due and owing to the Swap Counterparties under the Swap Agreements.

“**Optional Termination Provision**” shall mean (i) with respect to the MLCS/SBS Swap Agreements, Part 5(t) of the Schedule to such Swap Agreements and (ii) with respect to the UBS Swap Agreements, Part 5(xx) of the Schedule to such Swap Agreements.

“**Optional Termination Right**” shall mean a Swap Counterparty’s right to optionally terminate all transactions, in whole, pursuant to the applicable Optional Termination Provision.

“**Second Payment Adjustment Date**” shall mean November 15, 2013.

**4. Representations and Agreements of the Parties.**

(a) Each Service Corporation represents to the Swap Counterparties (which representations shall be deemed to be repeated as of the date on which the City delivers an Optional Termination Notice and on the Optional Termination Date) that:

- i. It is duly organized and validly existing under the laws of Michigan;
- ii. It has the power to execute and deliver this Agreement and to perform its obligations hereunder and it has taken all necessary action to authorize such execution, delivery and performance;
- iii. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- iv. All governmental (including, without limitation, from the Treasurer of the State of Michigan) and Emergency Manager consents and approvals except as otherwise contemplated by Section 2.1(d) hereof that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents and approvals have been complied with; and
- v. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to enforceability to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) The City represents to the Swap Counterparties (which representations shall be deemed to be repeated as of the date on which the City delivers an Optional Termination Notice and on the Optional Termination Date) that:

- i. It is a municipal corporation of the State of Michigan;
- ii. It has the power to execute and deliver this Agreement and to perform its obligations hereunder and it has taken all necessary action to authorize such execution, delivery and performance;

- iii. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and
- iv. All governmental (including, without limitation, from the Treasurer of the State of Michigan) and Emergency Manager consents and approvals except as otherwise contemplated by Section 2.1(d) hereof that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents and approvals have been complied with; and
- v. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to enforceability to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(c) Each Swap Counterparty represents to the Service Corporations and the City (which representations shall be deemed to be repeated as of the Optional Termination Date) that:

- i. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and in good standing;
- ii. It has the power to execute this Agreement, to deliver this Agreement and to perform its obligations under this Agreement and it has taken all necessary action to authorize such execution, delivery and performance;
- iii. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- iv. All governmental consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

- v. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to enforceability to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(d) Each of the parties hereto acknowledges that the representations contained herein relate solely to this Agreement and that nothing contained herein shall be or be deemed to be a representation with respect to any other agreement or transaction.

**5. Forbearance not a waiver.**

Except as expressly provided herein, each party hereby expressly reserves the right to exercise at any time any rights and/or remedies such party has and/or to which such party is entitled under the Transaction Documents. The parties acknowledge and agree that one or more Event(s) of Default, Potential Event(s) of Default and/or Termination Event(s) may have occurred under the Transaction Documents, and may occur from time to time after the date hereof, and this Agreement (except to the limited extent expressly provided herein) preserves, and does not constitute a waiver of any right, power or privilege that the parties to this Agreement are entitled to exercise as a result of any such Event of Default, Potential Event of Default or Termination Event under the Transaction Documents. The failure of a party to exercise at any time any rights and/or remedies it has and/or to which it is entitled under the Transaction Documents, including any right to designate an Early Termination Date or to give notice under, or to insist on the strict performance of the Transaction Documents by any other party to, such Transaction Document (including, without limitation, the Collateral Agreement Custodian) will not be construed as an estoppel, waiver, modification or limitation on any right (including, without limitation, any right to designate in the future an Early Termination Date based upon the occurrence of any Event of Default or Termination Event).

**6. Public Disclosure.** The City agrees to make the terms of this Agreement publicly available not later than July 19, 2013 and shall not object to or interfere with the public disclosure of such terms by the Swap Counterparties on or after such date.

**7. Time is of the Essence** Time is of the essence as to the performance of all obligations herein.

**8. Governing Law and Jurisdiction** THIS AGREEMENT, AS WELL AS ANY MATTER ARISING OUT OF, RELATING TO OR INCIDENTAL TO THIS AGREEMENT, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY PRINCIPLES OF CONFLICTS OF LAW THEREOF THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION, PROVIDED, HOWEVER, THAT THE CORPORATE POWERS AND LEGAL CAPACITY OF THE CITY AND EACH SERVICE CORPORATION SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MICHIGAN.

With respect to any suit, action or proceedings relating to this Agreement, each party irrevocably submits to the extent permitted by law the non-exclusive jurisdiction of the courts of the State of New York and United States District Court located in the Borough of Manhattan in New York City and of the courts of the State of Michigan and the United States District Court for the Eastern District of Michigan.

**9. Notices** Any notice provided for hereunder shall be given in accordance with Section 14.1 of the Collateral Agreement and shall be effective within the time periods set forth therein. A copy of each notice given hereunder shall be given contemporaneously to all other parties to this Agreement. Nothing in this Agreement (including any reference to the Collateral Agreement or otherwise) shall require any notice hereunder to be given to any person not a party to this Agreement.

**10. Successors and Assigns** Prior to the expiration of the Forbearance Period, neither Swap Counterparty may assign its rights or obligations under this Agreement to another party without the prior written consent of the City and the other Swap Counterparty. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective, successors transferees and assigns.

**11. WAIVERS OF JURY TRIAL** TO THE EXTENT PERMITTED BY LAW, THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.

**12. Counterpart Execution** This Agreement may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together, shall constitute one and the same original. Facsimile or other forms of electronic signatures shall be binding, the same of as the original of such document.

**13. Miscellaneous**(a) This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supercedes all oral communications with respect thereto.


(b) No modification, amendment or waiver of this Agreement shall be effective for any purpose unless it is made by written instrument signed by all of the parties hereto; provided that the Emergency Manager shall not be required to be a party to such amendment at any time that the City has full power and authority to sign such amendment without any authorization or approval of the Emergency Manager.

(c) No person or entity, other than the parties who have signed this Agreement, shall have any rights or interests hereunder, regardless of whether such person or entity is a party to, or has any rights or interests under, any agreement or instrument referenced herein, whether as third party beneficiary or otherwise.

(d) A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and (except as expressly provided herein) a single or partial exercise of any right, power or privilege will not be presumed to

preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

DETROIT GENERAL RETIREMENT  
SYSTEM SERVICE CORPORATION

By:   
Name: Cheryl R. Johnson  
Title: President

DETROIT POLICE AND FIRE RETIREMENT  
SYSTEM SERVICE CORPORATION

By:   
Name: Cheryl R. Johnson  
Title: President

THE CITY OF DETROIT

By: \_\_\_\_\_  
Name:  
Title:

EMERGENCY MANAGER OF THE CITY OF  
DETROIT

By: \_\_\_\_\_  
Name:



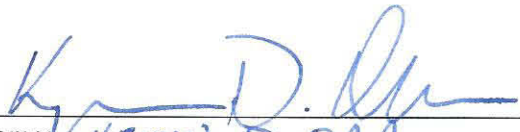
DETROIT GENERAL RETIREMENT  
SYSTEM SERVICE CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

DETROIT POLICE AND FIRE RETIREMENT  
SYSTEM SERVICE CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

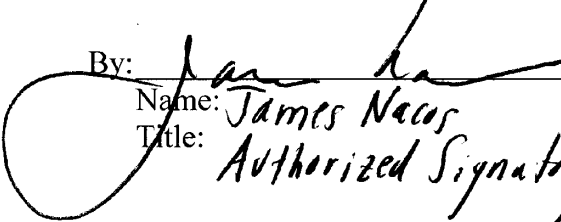
THE CITY OF DETROIT

By:   
Name: KEYYN D. ORR  
Title: EMERGENCY MANAGER

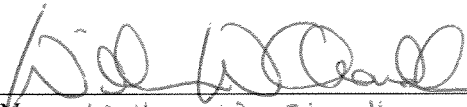
EMERGENCY MANAGER OF THE CITY OF  
DETROIT

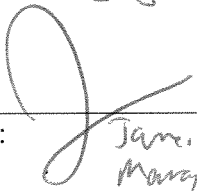
By:   
Name: KEYYN D. ORR

MERRILL LYNCH CAPITAL SERVICES,  
INC.

By:   
Name: James Nacos  
Title: Authorized Signatory

UBS AG

By:   
Name: William W. Chandler  
Title: Managing Director

By:   
Name: James Frey  
Title: Managing Director

[SIGNATURE PAGE - FORBEARANCE AND OPTIONAL TERMINATION AGREEMENT]

## SCHEDULE A

### SCHEDULE OF SWAP AGREEMENTS

1. ISDA Master Agreement (including the Schedule thereto) dated as of May 25, 2005, between PFRS and SBS and the Confirmation thereunder dated June 7, 2006 (bearing Reference No. SBSFPC-0010) and the related Transaction Transfer Agreement by and among PFRS, SBS and MLCS (as amended, modified or supplemented to the date hereof).
2. ISDA Master Agreement (including the Schedule thereto) dated as of May 25, 2005 between PFRS and SBS and the Confirmation thereunder dated June 7, 2006 (bearing Reference No. SBSFPC-0011) and the related Transaction Transfer Agreement by and among PFRS, SBS and MLCS (as amended, modified or supplemented to the date hereof).
3. ISDA Master Agreement (including the Schedule thereto) dated as of May 25, 2005 between DGRS and SBS and the Confirmation thereunder dated June 7, 2006 (bearing Reference No. SBSFPC-0009) and the related Transaction Transfer Agreement by and among DGRS, SBS and MLCS (as amended, modified or supplemented to the date hereof).
4. ISDA Master Agreement (including the Schedule thereto) dated as of June 7, 2006 between DGRS and SBS and the Confirmation thereunder dated June 7, 2006 (bearing Reference No. SBSFPC-0012) and the related Transaction Transfer Agreement by and among DGRS, SBS and MLCS (as amended, modified or supplemented to the date hereof).
5. ISDA Master Agreement between DGRS and UBS, dated as of June 7, 2006, including the Schedule and Credit Support Annex thereto and the Confirmations thereunder, dated June 7, 2006, bearing UBS AG Reference No. 37380291 (as amended, modified or supplemented to the date hereof).
6. ISDA Master Agreement between PFRS and UBS, dated as of May 25, 2005, including the Schedule and Credit Support Annex thereto and the Confirmations thereunder, dated June 7, 2006, bearing UBS AG Reference No. 37380351 as amended, modified or supplemented to the date hereof).
7. ISDA Master Agreement between PFRS and UBS, dated as of May 25, 2005, including the Schedule and Credit Support Annex thereto and the Confirmations thereunder, dated June 7, 2006, bearing UBS Reference No. 37380313 as amended, modified or supplemented to the date hereof).
8. ISDA Master Agreement between DGRS and UBS, dated as of May 25, 2005, including the Schedule and Credit Support Annex thereto and the Confirmations

thereunder, dated June 7, 2006, bearing UBS Reference No. 37380341 as amended, modified or supplemented to the date hereof).

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SCHEDULE B

WRITTEN INSTRUCTIONS TO CUSTODIAN UNDER COLLATERAL AGREEMENT

July [ ], 2013

Via Email, Facsimile and Courier

U.S. Bank National Association  
535 Griswold, Suite 550  
Detroit, Michigan 48226  
Attention: Susan T. Brown

To Whom It May Concern:

Reference is made to the Collateral Agreement dated as of June 15, 2009, among the City of Detroit, the Detroit General Retirement System Service Corporation and Detroit Police and Fire Retirement System Service Corporation, severally and not jointly, U.S. Bank National Association, as Custodian and the Other Persons Party thereto (the "*Collateral Agreement*"). Capitalized terms used but not defined herein have the meanings assigned to such terms in the Collateral Agreement.

The City of Detroit hereby instructs the Custodian to release the amounts in the General Receipts Subaccount to the City in the amount of the City Payment for each Month and, after receipt by the Custodian of the City Payment for that Month and beginning on the second Business Day following the date on which the Custodian gives its Monthly Holdback Compliance Notice to the City and the Counterparties for that Month, remit to the City daily all amounts standing to the credit of the General Receipts Subaccount during that Month.

IN WITNESS WHEREOF, the undersigned has duly executed these Written Instructions to Custodian Under Collateral Agreement as of the date first above written.

THE CITY OF DETROIT

By: \_\_\_\_\_  
Name:  
Title:

[Counterparties' Signature Page Follows]

The Counterparties consent to the remittance to the City of the funds contemplated by the above instructions, subject to the Counterparties' right to withdraw such consent prospectively upon notice to the City and the Custodian.

MERRILL LYNCH CAPITAL SERVICES,  
INC.

By: \_\_\_\_\_  
Name:  
Title:

UBS AG

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:



cc: City of Detroit Law Department  
First National Building, Suite 1650  
660 Woodward Avenue  
Detroit, Michigan 48226  
Attn: Corporation Counsel

Jones Day  
222 East 41<sup>st</sup> Street  
New York, NY 10017  
Attn: Corinne Ball  
Joel Telpner

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attn: Lary Stromfeld

Bingham McCutchen LLP  
399 Park Avenue  
New York, NY 10022-4689  
Attn: Edwin Smith

McDermott Will & Emery  
227 West Monroe Street  
Chicago, IL 60606-5096  
Attn: William P. Smith

Kirkland & Ellis LLP  
300 North LaSalle Street  
Chicago, Illinois 60654  
Attn: Ryan Blaine Bennett  
James H.M. Sprayregen

Syncora Capital Assurance Inc.  
135 West 50th Street  
New York, NY 10022  
Attn: Claude LeBlanc