

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE:

Chapter 9

Case No. 13-53846

City of Detroit, Michigan,

Debtor.

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**INTERESTED PARTY CENTER FOR COMMUNITY JUSTICE AND ADVOCACY'S  
OBJECTION TO DEBTOR'S MOTION FOR A FINAL ORDER APPROVING POST-  
PETITION FINANCING, GRANTING LIENS AND PROVIDING SUPERPRIORITY  
CLAIM STATUS AND MODIFYING AUTOMATIC STAY [DOCKET 1520]**

NOW COMES Interested Party Center for Community Justice and Advocacy and for its Objection to Debtor's Motion for a Final Order Approving Post-Petition Financing, Granting Liens and Providing Superpriority Claims Status and Modifying Automatic Stay [Docket 1520], incorporating by reference and in concurrence with Interested Party David Sole's Objections, [Docket No. 1857], and further states as follows:

**INTRODUCTION**

The Emergency Manager comes before this Honorable Court seeking bankruptcy eligibility for the City of Detroit, but has failed to comply with the statutory requirements to determine whether criminal conduct has occurred contributing to the financial situation in the City. This crucial component is not only mandatory, pursuant to statute, but necessary to ascertain the accurate amount of the debt owed before any financing or payout to these very financial entities contributing to the debt through potentially improper and illegal financing practices. MCL 141.1556 is clear, unambiguous and mandatory.

## LEGAL ARGUMENT

### **I. THE CLEAR LANGUAGE OF MCL 141.1556 MANDATES A CRIMINAL INVESTIGATION TO DETERMINE WHETHER CRIMINAL CONDUCT CONTRIBUTED TO THE CITY'S FINANCIAL STATUS AND UNDER THE TENENTS OF STATUTORY CONSTRUCTION, MUST BE COMPLETED BEFORE ANY DEBT IS PAID OR FINANCING APPROVED**

MCL 141.1556 is clear in its mandate:

MCL 141.1556 Sec. 16. An emergency manager shall, on his or her own or upon the advice of the local inspector if a local inspector has been retained, make a determination as to whether possible criminal conduct contributed to the financial situation resulting in the local government's receivership status. If the emergency manager determines that there is reason to believe that criminal conduct has occurred, the manager shall refer the matter to the attorney general and the local prosecuting attorney for investigation. MCLS § 141.1556

Michigan law has long adhered to the principals of statutory construction, giving full effect to the unambiguous language of a statute. In *Pohutski v City of Allen Park*, 465 Mich 675, 683-684 (2002), the Michigan Supreme Court held:

When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature's intent as expressed in the words of the statute. *DiBenedetto v West Shore Hosp*, 461 Mich. 394, 402; 605 N.W.2d 300 (2000); *Massey v Mandell*, 462 Mich. 375, 379-380; 614 N.W.2d 70 (2000). We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous. *Turner v Auto Club Ins Ass'n*, 448 Mich. 22, 27, 528 N.W.2d 681 (1995). Where the language is unambiguous, "we presume that the Legislature intended the meaning clearly expressed---no further judicial construction is required or permitted, and the statute must be enforced as written." *DiBenedetto*, 461 Mich. at 402. Similarly, courts may not speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the Legislature. *Pohutski v City of Allen Park*, 465 Mich 675, 683-684 (2002)

In the instant matter, two of the City's largest creditors, UBS and Bank of America, have been implicated in illegal activity involving municipal bonds, and in one case, a City of Detroit

related bond: (1) The Securities and Exchange Commission (SEC) fined UBS **\$47,207,180.00** in civil penalties for municipal bond fraud and deceit, Case No. 11-2539, US District Ct.; (2) The SEC indicted and convicted **three (3) UBS executives of fraud** related to municipal bond bid rigging, NY Southern Division, Case No. 10-1217; and (3) A Bank of America executive was indicted July 19, 2012, for bid rigging and fraud in municipal bonds. US District Ct., Western District NC, Case No. 12-00235.

Making this matter even more egregious and warranting criminal investigation before any approval of financing is the fact that Emergency Manager Kevin Orr knew of this misconduct and has failed to perform any investigation or seek an independent investigation before launching the City into further debt potential, based upon fraudulent debt numbers. In deposition testimony on August 30, 2013, In The Matter of City of Detroit, Mr. Orr admitted under oath his knowledge of these criminal indictments and conviction, yet failed to comply with MCL 141.1556 mandating an investigation of criminal wrong doing. (**Exhibit 1**, Kevin Orr Deposition, pp. 322-323; pp. 326-327; p. 331)

### **CONCLUSION**

The statute enumerating the requirements for the emergency manager, specifically MCL 141.1556, mandates an investigation by its clear statutory language. Moreover, Emergency Manager Kevin Orr had knowledge of the criminal activity of UBS, its executives, and the Bank of America executive related to municipal bond fraud. Failure to comply with the unambiguous language of the statute renders the Emergency Manager in violation of the statute, and request for financing cannot be approved, based upon non-compliance with the mandated requisite of MCL 141.1556 to properly determine the amount of debt owed by the City of Detroit. Moreover, in light of the potential criminal activity related to the largest portion of Detroit's

municipal bond debt, there is no valid debt amount known, hence the inability to finance any resolution based on an unknown amount of debt. In fact, if fraud is determined by the City's largest creditor there may not be a need for the instant refinancing or bankruptcy, and UBS and Bank of America may, instead, owe the City.

WHEREFORE, Interested Party Center for Community Justice and Advocacy respectfully requests that the City of Detroit's Motion for a Final Order Approving Post-Petition Financing, Granting Liens and Providing Superpriority Claims Status and Modifying Automatic Stay [Docket 1520], be denied.

Respectfully submitted,

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DATED: November 27, 2013

# **EXHIBIT 1**

**In The Matter Of:**

*City of Detroit*

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*Kevyn Orr*

*August 30, 2013*

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1 entered into, correct?  
 2 **MR. JURGENS:** Objection to form.  
 3 **MR. SHUMAKER:** Objection, form.  
 4 **A.** Here again, as I've said a couple of times today, I'm  
 5 going to stay away from legal conclusions as to  
 6 whether or not a lien would or would not have existed.  
 7 There are equitable liens that arise ex contractu  
 8 outside of law. There are other issues, but suffice  
 9 it to say this agreement seemed to impose a lien as a  
 10 matter of the agreement on the casino revenue.  
 11 **BY MS. GREEN:**  
 12 Q. Okay. You're not claiming any equitable lien?  
 13 **MR. JURGENS:** Objection.  
 14 **A.** We're not claiming a lien. We've done an analysis,  
 15 and there have been several memos that have gone back  
 16 and forth from counsel analyzing a number of different  
 17 issues at law and at equity. We -- there's -- me,  
 18 personally, under our agreement, there's no -- been no  
 19 assertion of an equitable lien.  
 20 **MS. GREEN:** I have nothing further then.  
 21 **THE WITNESS:** Sure.  
 22 Do you need -- you need this, don't you?  
 23 Is this -- did you -- excuse me. Did you mark this?  
 24 **MS. GREEN:** We can mark it as an exhibit.  
 25 I don't know that anyone has marked it yet. We can

1 left the deposition at 3:21 p.m.)  
 2 (Back on the record at 3:22 p.m.)  
 3 **VIDEO TECHNICIAN:** We are back on the  
 4 record at 3:22 p.m.  
 5 **EXAMINATION**  
 6 **BY MR. GOLDBERG:**  
 7 Q. How are you doing, Mr. Orr?  
 8 **A.** Hello, Mr. Goldberg. How are you?  
 9 Q. We met before. I'm Jerome Goldberg. I represent  
 10 David Sole, who's an interested party, he's a retiree,  
 11 along with his wife, who's also a retiree.  
 12 **MR. GOLDBERG:** First of all, I want to just  
 13 go on the record and thank Kirkland & Ellis and the  
 14 other attorneys for their patience and their working  
 15 with other attorneys in this case, and especially  
 16 someone like me who represents a very different point  
 17 of view and that they were objective and fair their --  
 18 in accommodating all the objectives here.  
 19 **BY MR. GOLDBERG:**  
 20 Q. Let me begin by asking just a few questions just so we  
 21 can put some of this into perspective. I want to call  
 22 your attention to Exhibit 3.  
 23 **A.** Yes. Okay.  
 24 Q. On page 34 of Exhibit 3, there's a chart here that  
 25 references expenditures from the years 2008 to 2012?

1 mark it as Exhibit 7.  
 2 **MARKED FOR IDENTIFICATION:**  
 3 DEPOSITION EXHIBIT 7  
 4 3:20 p.m.  
 5 (Discussion off the record at 3:20 p.m.)  
 6 (Back on the record at 3:20 p.m.)  
 7 **MS. GREEN:** I thought maybe it was earlier  
 8 and I just didn't know.  
 9 **THE WITNESS:** No, I don't think it was.  
 10 **MS. GREEN:** It's hard to hear down there.  
 11 **THE WITNESS:** We talked about the  
 12 collateral agreement.  
 13 **MS. GREEN:** We did. Okay.  
 14 **VIDEO TECHNICIAN:** Do we need to go off the  
 15 record for the second or are we staying on? Are you  
 16 asking questions?  
 17 **MS. GREEN:** Oh, were we on?  
 18 **THE WITNESS:** We can shut up.  
 19 **MR. SHUMAKER:** Why don't we go off for one  
 20 minute to get ourselves together.  
 21 **VIDEO TECHNICIAN:** All right. Thank you.  
 22 The time is 3:20 p.m. We are off the  
 23 record.  
 24 (Recess taken at 3:20 p.m.)  
 25 (Whereupon Lally Gartel and Stephen Hackney

1 **A.** Yes.  
 2 Q. And it indicates -- first of all, I just had a  
 3 question. Under the POCs, it has POC Swap GF, I  
 4 assume that means general fund?  
 5 **MR. SHUMAKER:** Counsel, I think you may be  
 6 pointing to a different page than the witness has in  
 7 front of him.  
 8 **BY MR. GOLDBERG:**  
 9 Q. It's page 34 in mine. Which one did I give you? I'm  
 10 talking about the June 14th, 2013.  
 11 **MR. SHUMAKER:** Yeah, there's an executive  
 12 summary and then there's a bigger one. Are you  
 13 looking at the bigger one?  
 14 **MR. GOLDBERG:** I have copies of what I'm  
 15 looking at.  
 16 **A.** These are the executive summaries.  
 17 **MR. GOLDBERG:** Why don't I mark these and  
 18 that will make it easier.  
 19 **THE WITNESS:** And the larger one is this  
 20 one.  
 21 **MR. SHUMAKER:** The larger one is Orr  
 22 Number 6. Take a look at that.  
 23 **MR. GOLDBERG:** Sure. Yeah, this is the one  
 24 I'm looking at.  
 25 **THE WITNESS:** That's the one, the larger

1 one.

2 **BY MR. GOLDBERG:**

3 Q. Okay. So Exhibit Number 6.

4 **A. Okay. Mr. Goldberg, which page were you at?**

5 Q. Page 34.

6 **A. Of the original document?**

7 Q. Yes.

8 **A. Okay.**

9 Q. Here we go, that chart, 34. And it's a chart that

10 says study that -- lists for fiscal years ended actual

11 expenditures for 2008 to 2012; is that correct?

12 **A. Yes.**

13 Q. I just want to be clear. It has under POC Swaps GF.

14 That means general fund?

15 **A. Yes.**

16 Q. EF, is that enterprise fund?

17 **A. Enterprise fund excluding department of**

18 **transportation.**

19 Q. And I'm trying to understand, does that mean that part

20 of the POC Swaps are paid -- a small part is paid from

21 the enterprise fund?

22 **A. Yes. You'll see the corresponding numbers show for**

23 **those categories.**

24 Q. Okay. And I totaled up the years from 2008, 2012. It

25 appears that \$247.5 million was paid on for the POC

1 to pay the Swap counterparties, correct?

2 **A. Yes --**

3 **MR. SHUMAKER:** Objection to form.

4 **A. -- as we discussed earlier today.**

5 **BY MR. GOLDBERG:**

6 Q. Just so I'm clear, the -- what we're talking about

7 with the optional termination event. The exhibit --

8 the same exhibit you're referencing -- let's just get

9 this -- I want to call your attention to page 28.

10 **A. Of the same exhibit?**

11 Q. Same exhibit.

12 **A. Okay.**

13 Q. Am I correct in the -- that that reflects that as of

14 May 31, 2013, according to your proposal for

15 creditors, the negative fair value of the Swaps was

16 \$343.6 million?

17 **A. That's what it says. Recent valuations established**

18 **the negative fair value --**

19 **COURT REPORTER:** I'm sorry. You're reading

20 way too fast.

21 **THE WITNESS:** I'm sorry.

22 **A. Recent valuations established. The negative fair**

23 **value of the Swaps at approximately 343.6 million as**

24 **of May 31st.**

25 **BY MR. GOLDBERG:**

1 Swaps during those years.

2 **A. I don't have that total in front of me, but I'm going**

3 **to take it that that's the accurate number.**

4 Q. It appears that it's usually about between 45 to 50

5 million a year.

6 **A. Right, if you average 5, 10, 15, 20.**

7 Q. Just so we're clear, I mean, that 247 million, none of

8 that went to turn on any lights in the City of

9 Detroit, did it?

10 **MR. SHUMAKER:** Object to the form.

11 **A. It was legacy expenditures, debt service.**

12 **BY MR. GOLDBERG:**

13 Q. It basically went to UBS and to Bank of America. It

14 was their reward for betting correctly on a hedge bet,

15 right?

16 **MR. JURGENS:** Objection to form.

17 **MR. SHUMAKER:** Objection to form.

18 **A. Yeah, I'm going to stay away from characterizing it as**

19 **a reward. There were payments made pursuant to**

20 **existing certificates of participation at that time.**

21 **BY MR. GOLDBERG:**

22 Q. And it was based on, as we talked about before, that

23 the difference between the interest rate on the

24 floating rate Swaps -- on the floating rate COPs and

25 the fixed rate that the -- that the City was obligated

1 Q. So in the optional termination policy that's part of

2 the forbearance agreement, if the City was to pay the

3 initial payment, the City would still owe 264 -- we'd

4 be paying 264 million approximately on the Swaps?

5 **MR. SHUMAKER:** Objection to form.

6 **BY MR. GOLDBERG:**

7 Q. We'd be paying 75 percent of whatever the termination

8 amount is at that point?

9 **A. Well, it's 75 percent of termination amount at that**

10 **point, which I believe has since declined from**

11 **May 31st.**

12 Q. Why do you say it's declined?

13 **A. Because interest rates have shifted, and so at any**

14 **given time we'd have to value the interest rate**

15 **formula at the time you choose to exercise the**

16 **optional termination provision of the forbearance**

17 **agreement.**

18 Q. The interest rate that we're talking about on the Swap

19 is linked to the LIBOR; isn't that correct?

20 **A. Yes.**

21 Q. The three-month LIBOR?

22 **A. Yes. I believe so.**

23 Q. I pulled the three-month LIBOR historical index. It

24 indicated that as of -- might as well as mark this as

25 an exhibit.



1 **MR. GOLDBERG:** Can you mark this as an  
 2 exhibit?  
 3 **MARKED FOR IDENTIFICATION:**  
 4 **DEPOSITION EXHIBIT 8**  
 5 3:29 p.m.  
 6 **BY MR. GOLDBERG:**  
 7 Q. It appears that as of August of 2013, the three-month  
 8 LIBOR rate was .2655 percent?  
 9 **MR. SHUMAKER:** Objection, foundation.  
 10 **A. Is there -- if you're talking about --**  
 11 **BY MR. GOLDBERG:**  
 12 Q. Under 2013.  
 13 **A. 2013, a specific category in August which reads**  
 14 **0.26550.**  
 15 Q. Right. So it's actually gone down since July of 2013  
 16 according to this chart.  
 17 **A. Yes. Did I say up before?**  
 18 Q. You had indicated that the interest rates -- right,  
 19 that the -- I mean, if it goes down, the City owes  
 20 more; isn't that correct?  
 21 **A. Right.**  
 22 Q. Just so we're clear again, that 200 -- whatever --  
 23 whether the figure is 247 million or 200 million, the  
 24 optional termination payment is not going to be -- the  
 25 City gets no direct benefit from that payment?

1 yesterday due to an illness of my wife, but --  
 2 **A. Oh, I'm sorry.**  
 3 Q. -- they were talking about a \$350 million bond of some  
 4 kind that is being looked into being floated, correct?  
 5 **A. Here again, I want to be careful. It's unclear**  
 6 **whether or not it is a bond.**  
 7 Q. Okay.  
 8 **A. What is clear is there's some post petition financing**  
 9 **proposal which are quite sensitive, but that number is**  
 10 **not an unreasonable number and it has been mentioned**  
 11 **about in the press.**  
 12 Q. And is it reasonable to say that that 2 -- 350 million  
 13 is not going to come free to the City?  
 14 **A. No. The City will have to finance it in some fashion.**  
 15 Q. I mean, I did a little research myself and looked up a  
 16 bond in Ann Arbor that was recently financed for  
 17 340 million at 4 percent which is, I would think we  
 18 both agree, was a good interest rate --  
 19 **A. Um-hm.**  
 20 Q. -- and the -- Ann Arbor would be paying 230 million in  
 21 interest on that bond over a 25-year period.  
 22 **A. Here again, Mr. Goldberg, I want to be very careful.**  
 23 **Without representing or agreeing that the post**  
 24 **petition financing that's being discussed will take**  
 25 **the characteristic of a bond.**

1 **MR. JURGENS:** Objection.  
 2 **MR. SHUMAKER:** Objection to form.  
 3 **A. Well --**  
 4 **BY MR. HACKNEY:**  
 5 Q. Let me be -- strike that question.  
 6 No lights get turned on from that money.  
 7 That's money that comes out of the City budget.  
 8 **MR. SHUMAKER:** Same objection.  
 9 **A. Well, it's money -- yeah, I would say that it's money**  
 10 **that the City is obligated to pay in some fashion, but**  
 11 **to the extent we get a discount, the City benefits.**  
 12 **BY MR. GOLDBERG:**  
 13 Q. I heard before the testimony, and I think it's pretty  
 14 obvious, that the City does not have the money on hand  
 15 to pay that termination amount, correct?  
 16 **MR. JURGENS:** Objection to form.  
 17 **A. Yes, I'm told that is correct.**  
 18 **BY MR. GOLDBERG:**  
 19 Q. And to do so it's going to have to float another bond  
 20 or some kind of loan?  
 21 **A. Well, it would have to in some fashion derive some**  
 22 **funding from the capital markets, yes.**  
 23 Q. Okay. I read something, and I heard the same figures  
 24 floated here. I read an article in the Detroit News  
 25 and I heard the same -- I wasn't able to come

1 Q. No problem. But either way, we are in agreement that  
 2 that financing -- we don't have -- the City does not  
 3 have a source for -- it doesn't have a relationship  
 4 with the Fed that the banks have where it gets a zero  
 5 qualitative easing and zero percent loans, does it?  
 6 **A. The City does not -- is not a qualified financial**  
 7 **institution to go to the Fed discount window nor does**  
 8 **it have an extra several hundred million dollars in**  
 9 **its funds.**  
 10 Q. Let me ask another question. I want to call your  
 11 attention to the forbearance agreement.  
 12 **A. Yes.**  
 13 Q. Which exhibit is that?  
 14 **A. That's Exhibit 2.**  
 15 Q. Let me call your attention to page 14.  
 16 **A. Yes.**  
 17 Q. And it indicates under mid-market amount --  
 18 **A. Yes.**  
 19 Q. -- am I reading it correctly to say that the -- when  
 20 the optional termination goes into effect, assuming it  
 21 goes into effect, that the calculation on what's owed  
 22 on the Swap that's the basis for the termination is  
 23 based on the ISDA fix 3?  
 24 **MR. SHUMAKER:** Objection to form. The  
 25 document speaks for itself.

1 **BY MR. GOLDBERG:**  
 2 Q. Okay.  
 3 A. Yeah, here again, the document speaks to itself and it  
 4 says methodology that is agreed to by the City and  
 5 based upon the present value as it speaks to the rest  
 6 of the document, yes.  
 7 Q. Have you looked into the fact that there's a lot of  
 8 literature out now that's exposing a pretty large  
 9 scandal with reg -- regard to the ISDA fix that  
 10 involves and implicates both Bank of America and UBS?  
 11 **MR. JURGENS:** Object to form.  
 12 A. Without characterizing the nature of the literature, I  
 13 think it's safe to say that I am aware of some issues  
 14 that have been discussed regarding ISDA, fixed.  
 15 **BY MR. GOLDBERG:**  
 16 Q. Are you aware also of issues that have come out with  
 17 regard to the LIBOR, specifically with regard to UBS  
 18 and Bank of America in the setting of using the LIBOR  
 19 as a standard?  
 20 **MR. JURGENS:** Objection to form.  
 21 A. I am aware that in the past years there have been some  
 22 questions raised regarding the LIBOR for certain  
 23 financial institutions, yes.  
 24 **BY MR. GOLDBERG:**  
 25 Q. Has that affected your analysis of how to deal with

1 A. I had heard that. I have not read the final judgment.  
 2 Q. Well, I'd be glad to pass you down a copy.  
 3 **MR. GOLDBERG:** Why don't we mark this.  
 4 **MARKED FOR IDENTIFICATION:**  
 5 DEPOSITION EXHIBIT 9  
 6 3:36 p.m.  
 7 **BY MR. GOLDBERG:**  
 8 Q. Are you also aware that Bank of America has been  
 9 investigated for potential rigging with regard to the  
 10 municipal bond market?  
 11 **MR. JURGENS:** Objection to form.  
 12 A. I am aware that Bank of America has been investigated.  
 13 The exact specifics of the investigation I am not  
 14 aware of.  
 15 **BY MR. GOLDBERG:**  
 16 Q. In light of these investigations that deal with  
 17 rigging of the municipal bond market, was that taken  
 18 into consideration by the City in how to approach the  
 19 question of this forbearance agreement and potential  
 20 action on these Swaps?  
 21 A. Perhaps you could be more specific in what way you're  
 22 asking whether that was taken into consideration.  
 23 Q. I mean, if there, in fact, was fraud -- based on the  
 24 fact there's at least an indication of fraudulent  
 25 activity by both Bank of America and UBS within the

1 the Swap counterparties in terms of the -- the  
 2 forbearance agreement?  
 3 A. No.  
 4 Q. The fact that it's potential fraud was involved in the  
 5 setting of these --  
 6 **MR. JURGENS:** Objection to form.  
 7 **MR. SHUMAKER:** Objection to form.  
 8 A. Mr. Goldberg, I'm going to defer from accepting the  
 9 characterization of potential fraud. It is -- it is  
 10 as reported.  
 11 **BY MR. GOLDBERG:**  
 12 Q. Okay. That's fine.  
 13 Are you also aware that the -- that UBS  
 14 was -- let me find that.  
 15 Are you aware that UBS has been sued by the  
 16 Securities and Exchange Commission for rigging in  
 17 regard to municipal bonds?  
 18 A. In past years?  
 19 Q. That there was a final judgment -- yes, in past years.  
 20 A. Yes.  
 21 Q. Are you aware of the final judgment that was -- there  
 22 was a final judgment on a case that was filed on --  
 23 it's 112539 -- that -- and that one of the bonds that  
 24 actually was involved in that case was the Detroit  
 25 water and sewage bond case?

1 municipal bond market, has there been any  
 2 investigation as to whether or not that was the case  
 3 with -- with regard to the Swaps associated with the  
 4 POCs?  
 5 **MR. JURGENS:** Objection to form.  
 6 **MR. SHUMAKER:** Objection to form,  
 7 foundation.  
 8 A. Yeah, first, it's not clear that there was fraud with  
 9 respect to POCs. I think your prior question  
 10 concerning Bank of America concerned bonds at DWSD  
 11 that as my understanding are not implicated by this  
 12 process, meaning the forbearance agreement, but have  
 13 we calculated and analyzed the possibility that there  
 14 may be issues surrounding potential concerns in  
 15 connection with the Swap agreement, the answer is yes.  
 16 **BY MR. GOLDBERG:**  
 17 Q. And who was -- who were those discussions with in  
 18 terms of whether or not to pursue that?  
 19 A. I would have had discussions with my counsel.  
 20 Q. When you say your counsel, who do you mean?  
 21 A. My attorneys.  
 22 Q. Jones Day, is that --  
 23 A. Well, Jones Day. We also have local counsel that's  
 24 involved that's sitting here, Pepper Hamilton, and  
 25 others.

1 Q. I mean, isn't Jones Day -- doesn't Jones Day represent  
 2 this Bank of America as one of its clients on its Web  
 3 site?  
 4 **A. Yes, Jones Day does represent Bank of America.**  
 5 Q. How could Jones Day investigate one of its own clients  
 6 for potential fraud?  
 7 **MR. SHUMAKER:** Objection, form.  
 8 **MR. JURGENS:** Objection, form.  
 9 **A. I am today, Mr. Goldberg, a client of Jones Day. The**  
 10 **specific practices of Jones Day regarding its**  
 11 **investigations, I would suggest that you refer to**  
 12 **them.**  
 13 **BY MR. GOLDBERG:**  
 14 Q. Okay. I'm just saying you utilize them --  
 15 **A. Yes, I do.**  
 16 Q. -- for their -- for their advice on whether or not to  
 17 conduct such an investigation. I'm trying to ask you  
 18 as your -- in your independent position as emergency  
 19 manager, wouldn't you think that a law firm that  
 20 represents the precise person you're asking to  
 21 investigate for fraud could not give you an  
 22 objective appraisal?  
 23 **A. No.**  
 24 **MR. JURGENS:** Objection to form.  
 25 **MR. SHUMAKER:** Objection to form.

1 financial crisis in Detroit?  
 2 **A. Yes. To be clear, under 436 I have no independent**  
 3 **prosecutorial authority, but I do have the authority**  
 4 **to make criminal referrals to appropriate**  
 5 **prosecutorial authorities.**  
 6 Q. In light of the cost to the City of the Swaps and the  
 7 continuing costs, which we all acknowledge will be  
 8 substantial even in light of the forbearance  
 9 agreement, have you made any referral to at least do  
 10 a -- conduct an investigation based on the evidence  
 11 that, that -- I'm not accusing them of criminal  
 12 activity in these activities. I have no basis for  
 13 doing that, but on the other hand that fact that  
 14 their -- some of their top executives in this area  
 15 have been convicted would at least lead me to want to  
 16 take a look at that in light of Detroit's situation.  
 17 **MR. JURGENS:** Objection to form.  
 18 **MR. SHUMAKER:** Objection, form.  
 19 **A. Yeah, it is a run-on question, Mr. Goldberg, but let**  
 20 **me say this. We are -- we have an -- analyzed to the**  
 21 **degree and looked at everything significantly related**  
 22 **to this transaction. Any --**  
 23 **BY MR. GOLDBERG:**  
 24 Q. Have or have not? I'm sorry.  
 25 **A. We have. We have.**

1 **A. No. In my experience, having worked now at three**  
 2 **different law firms, I have seen situations where law**  
 3 **firms are fully capable of investigating clients, yes.**  
 4 **BY MR. GOLDBERG:**  
 5 Q. Are you aware that three executives of UBS were in --  
 6 recently jailed that -- who were involved in municipal  
 7 bond division were recently jailed?  
 8 **A. I'm aware that there were prosecutions related to UBS.**  
 9 **I wasn't aware of the exact number or who they are.**  
 10 Q. Okay. I do have -- now, I'm not privy to much on that  
 11 either, but I do have articles that do cite that.  
 12 **A. Okay.**  
 13 Q. And they cited three people who were just convicted in  
 14 July of this year.  
 15 **A. Okay.**  
 16 Q. Are you aware that Bank of -- an executive of Bank of  
 17 America in its municipal bond division was indicted in  
 18 2012?  
 19 **A. I don't recall if I was aware of that.**  
 20 Q. Okay. Let me just ask under -- pursuant to the Public  
 21 Act 436 section 13 -- section 16, aren't you mandated  
 22 to conduct a criminal investigation, or at least to  
 23 refer potential suspicion of criminal investigation to  
 24 the Attorney General in connection with -- if there's  
 25 any kind of criminal activity associated with the

1 Q. Okay.  
 2 **A. If there appears to be a basis for making a criminal**  
 3 **referral of any kind related to anything that falls**  
 4 **under my purview of 436, I will do that.**  
 5 Q. But at this point nothing -- there hasn't even been a  
 6 request for such an investigation?  
 7 **A. I would be careful about -- I -- I have asked -- there**  
 8 **are matters that are under investigation that may or**  
 9 **may not implicate the subject matters you're talking**  
 10 **about. I'm going to defer to speak about them**  
 11 **further.**  
 12 Q. Okay. Are you familiar with the circumstances that  
 13 led to the 2005 Swap?  
 14 **A. I'm familiar with what I've read. I wasn't here in**  
 15 **the City at the time.**  
 16 Q. Do you know why Moody's -- not Moody's -- Fitch and  
 17 Standard & Poor's would have been at the table along  
 18 with UBS when this -- when this was discussed?  
 19 **A. First, I don't know that they were at the table and,**  
 20 **secondly, if they were, I do not know why they would**  
 21 **have been.**  
 22 Q. Well, I do have a photograph of them at the table  
 23 which I'd be glad to share with you --  
 24 **A. Okay.**  
 25 Q. -- from the Michigan Citizen. It was taken at that

1 time. Let me see if I can find that.  
 2 **MR. GOLDBERG:** Here, I can mark this.  
 3 **MARKED FOR IDENTIFICATION:**  
 4 DEPOSITION EXHIBIT 10  
 5 3:43 p.m.  
 6 **BY MR. GOLDBERG:**  
 7 Q. This is a photograph taken by the -- it was in the  
 8 Michigan Citizen July 31st, 2005, it reflects a  
 9 picture of Sha -- Sean Werdlow, Stephen Murphy of  
 10 Standard & Poor -- Poor's, Joe Keefe -- Joe O'Keefe of  
 11 Fitch, the Deputy Mayor, Anthony Adams, and the -- and  
 12 the -- and -- and the representative of SBS at the  
 13 table.  
 14 **MR. SHUMAKER:** Is there a question?  
 15 **BY MR. GOLDBERG:**  
 16 Q. Sure. I was asking why would Moody -- why would  
 17 Standard & Poor and Fitch be at the table?  
 18 **MR. SHUMAKER:** Objection, foundation, form,  
 19 document speaks for itself.  
 20 **A. Yeah, Mr. Goldberg, this purports to be a document**  
 21 **showing some of these members at counsel table. I**  
 22 **have no idea -- I wasn't here, and I have no idea what**  
 23 **the discussions were and whether or not it's**  
 24 **accurately represented to be something related to**  
 25 **this. This document speaks for itself.**

1 **MR. SHUMAKER:** Object to form, foundation.  
 2 **A. I wasn't here in the City at the time. I have no**  
 3 **idea.**  
 4 **BY MR. GOLDBERG:**  
 5 Q. Okay. That's fine.  
 6 Have you approached the Securities and  
 7 Exchange Commission to conduct any kind of  
 8 investigation of the Swaps in light of their extensive  
 9 investigations of UBS and Bank of America?  
 10 **MR. JURGENS:** Objection to form.  
 11 **A. Yeah, here again, any -- your question is have I? I**  
 12 **think I can answer your question. I think the answer**  
 13 **is no.**  
 14 **BY MR. GOLDBERG:**  
 15 Q. Okay. And you haven't approached them to intervene in  
 16 the bankruptcy which they have a right to do as we  
 17 both know under the bankruptcy code?  
 18 **A. I would hazard a guess that the Security and Exchange**  
 19 **Commission is aware of Detroit's bankruptcy.**  
 20 Q. But you have not approached them to aid you in doing a  
 21 proper investigation of the Swaps?  
 22 **A. No. I -- I think they're fully capable of determining**  
 23 **what they should do within their mission.**  
 24 Q. Have you looked into the mortgage practices of Bank of  
 25 America that -- in light of the financial crisis of

1 **BY MR. GOLDBERG:**  
 2 Q. So you haven't done really any substantive  
 3 investigation on what the circumstances were that --  
 4 that why -- that put the City into the pension  
 5 obligations with certificates and Swap --  
 6 **MR. SHUMAKER:** Objection to form.  
 7 **BY MR. GOLDBERG:**  
 8 Q. -- when they first were initiated in 2005?  
 9 **A. Yeah, all I can say is this -- this picture appears to**  
 10 **be what it purports to be and speaks for itself. I**  
 11 **don't know if it's accurate or not.**  
 12 Q. Let me just ask one quick -- that I was kind of  
 13 curious about, personally. It appears that there  
 14 was -- the first COP and Swap was in 2005. Then they  
 15 were terminated and a new one -- new COPs and Swaps  
 16 were placed in 2006. Is that your understanding?  
 17 **A. I don't know if that's my understanding. I know there**  
 18 **were -- there were two series that went on. I'm going**  
 19 **to be careful with the question of replacing them, but**  
 20 **let's go with your question.**  
 21 Q. Okay. I guess my curiosity is why the banks would pay  
 22 a termination fee of 2.7 million, according to those  
 23 documents, to the City to then have them  
 24 renegotiate -- replaced?  
 25 **A. Mr. Goldberg --**

1 Detroit?  
 2 **MR. JURGENS:** Objection to form.  
 3 **MR. SHUMAKER:** Objection to form.  
 4 **MR. ESSAD:** Objection to relevance.  
 5 **A. I don't think my duties under 436 would specify to**  
 6 **look into the mortgage crisis, so the answer is no.**  
 7 **BY MR. GOLDBERG:**  
 8 Q. But you would agree with me that the mortgage crisis  
 9 and the subprime lending crisis is a major contributor  
 10 to Detroit's financial crisis, would you not?  
 11 **MR. SHUMAKER:** Objection to form,  
 12 foundation.  
 13 **A. Mr. Goldberg, I don't know if it was or wasn't.**  
 14 **BY MR. GOLDBERG:**  
 15 Q. You don't know if it was or it wasn't?  
 16 **A. No. I've -- I've heard reports that there was**  
 17 **disproportionate mortgage foreclosures and so on and**  
 18 **so forth, but I've made no conclusion as to whether or**  
 19 **not that was a major contributor to Detroit's**  
 20 **financial crisis.**  
 21 Q. I've got you. Well, let me -- let me run this --  
 22 (Whereupon Vincent Marriott and Matthew  
 23 Summers left the Deposition at 3:47 p.m.)  
 24 **MS. ENGLISH:** Can we go off the record for  
 25 one second, please?

1 **VIDEO TECHNICIAN:** We are off the record.  
 2 The time is 3:47.  
 3 (Recess taken at 3:47 p.m.)  
 4 (Back on the record at 3:48 p.m.)  
 5 **VIDEO TECHNICIAN:** Back on the record at  
 6 3:48 p.m.  
 7 **BY MR. GOLDBERG:**  
 8 Q. I'm sorry, I didn't bring that report with me.  
 9 So your public -- your statement to me is  
 10 you're not clear whether the subprime mortgage crisis  
 11 in Detroit was a factor in Detroit's financial crisis?  
 12 **A. No. My statement --**  
 13 **MR. SHUMAKER:** Objection to form.  
 14 **A. My statement to you -- I believe your question was,**  
 15 **was it a major factor, and I said I understand there**  
 16 **have been reports, allegations, and stories that there**  
 17 **was disproportionate mortgage foreclosure in the City**  
 18 **of Detroit. I don't know if that was a major factor**  
 19 **in its financial crisis.**  
 20 **BY MR. GOLDBERG:**  
 21 Q. And you haven't looked into that issue independently?  
 22 **A. No, I've not looked into it independently.**  
 23 Q. Even though the banks -- the same banks that are  
 24 claiming all these Swaps were directly involved in the  
 25 subprime mortgage crisis?

1 **overcharges or obligations that it has to other --**  
 2 **other organizations and entities.**  
 3 Q. Are you aware that chargebacks specifically deal with  
 4 chargebacks to the County that the County buys -- pays  
 5 the City for foreclosed tax -- foreclosed properties,  
 6 then sells them, and the City is responsible for the  
 7 difference between what they're sold for and what  
 8 the -- what originally was paid to the City?  
 9 **A. Yes, as I said --**  
 10 **MR. SHUMAKER:** Objection, form, foundation.  
 11 **A. As I said, it's a process by which the City has**  
 12 **obligations to other organizations and entities.**  
 13 **BY MR. GOLDBERG:**  
 14 Q. Are you aware that the state has hundreds of -- at  
 15 least 200 million dollars available in the Hardest --  
 16 Helping Hardest Hit funds that could be used to pay  
 17 off delinquent property taxes?  
 18 **A. I've heard that representation before in terms of the**  
 19 **Hardest Hit funds. What I am aware of is that the**  
 20 **City is entitled to get 52 million dollars of the**  
 21 **late -- latest one hundred million dollar transfer of**  
 22 **the Hardest Hit funds for blight remediation.**  
 23 Q. That's true. Which affects -- affects your general  
 24 proposal in terms of the cost of blight, correct?  
 25 **A. Well, it helps us in terms of getting at the cost of**

1 **MR. JURGENS:** Objection to form.  
 2 **A. Here again, your characterization was directly**  
 3 **involved. My mission in this forbearance agreement is**  
 4 **look at whether or not this is in the best interest of**  
 5 **the City at the time.**  
 6 **BY MR. GOLDBERG:**  
 7 Q. Sure.  
 8 **A. It seems to be as you and I have discussed before,**  
 9 **several times now, that you have expressed concerns**  
 10 **about a broader issue regarding banks involvement with**  
 11 **the mortgage foreclosure crisis in the City of**  
 12 **Detroit. In my opinion, that's not directly related**  
 13 **to the issue that we have at hand in the forbearance**  
 14 **agreement.**  
 15 Q. Let me just ask you one other question. We've been  
 16 talking about alternative sources of financing.  
 17 You're familiar with the last CAFR?  
 18 **A. Yes.**  
 19 Q. Are you familiar with the -- what the 82 million in  
 20 chargebacks means in this CAFR that the City is  
 21 paying?  
 22 **A. Yes, I think I have some understanding.**  
 23 Q. What is your understanding of it, sir?  
 24 **A. That there's a certain obligation on the City to pay**  
 25 **some money out based upon an analysis of either**

1 **blight as quickly as possible.**  
 2 Q. But my question was a little different on that.  
 3 **A. Um-hm.**  
 4 Q. Have you intervened with Governor Snyder who you --  
 5 who you're -- your appointor --  
 6 **A. Right.**  
 7 Q. -- to secure the release of these Hardest Hit funds to  
 8 pay off property taxes which would both stabilize  
 9 communities to keep people in their homes and  
 10 stabilize the City budget by avoiding the need to pay  
 11 80 million in chargebacks?  
 12 **MR. SHUMAKER:** Objection, foundation.  
 13 **A. It is not -- it is not -- it has been made clear to me**  
 14 **that it is not clear to me that, one, we'd have access**  
 15 **to those funds and that those funds can be**  
 16 **appropriately used for that purpose.**  
 17 **BY MR. GOLDBERG:**  
 18 Q. It's not?  
 19 **A. It's -- it's not clear. That's --**  
 20 Q. Well, I'll send you some literature on that so you can  
 21 clarify that.  
 22 **A. Okay.**  
 23 **MR. GOLDBERG:** Okay. Okay. Thank you very  
 24 much.  
 25 **THE WITNESS:** Thank you very much.