

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Chapter 9

Case No. 13-53846

City of Detroit, Michigan,

Debtor.

**INTERESTED PARTY DAVID SOLE'S EXPEDITED MOTION, DUE TO TO
CONFLICT OF INTEREST PURSUANT TO MRPC 1.7, TO DISMISS DEBTOR CITY
OF DETROIT'S MOTION TO APPROVE FOREBEARANCE AGREEMENT [DOC
KET 157] AND TO DISMISS AT LEAST IN PART 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 David Sole, and in support of his motion to Dismiss Debtor's Motion to Approve Forbearance Agreement [Docket 157] and to Dismiss at least in Party Debtor's Motion for a Final Order to Approve Post-Petition Financing [Docket 1520], due to Conflict in Interest Pursuant to MPRC 1.7 states as follows:

1. Debtor's has filed a Motion to Approve Forbearance Agreement [Docket 157] and a companion Motion to Approve Post-Petition (the Barclay's loan deal) [Docket 1520].
2. Under the proposed forbearance agreement, if approved, the City of Detroit would pay Bank of America and UBS 82% of the termination fees on the 2009 Amended Interest Rate Swaps, on top of the over \$250 million Bank of America and UBS have already netted on the Swaps.
3. The termination fees range from \$290 million (amount listed in Debtor's Motion, Docket 1520, to \$343 million, the amount cited by Emergency Orr in his June 14, 2013 Financial Report to Creditors.

4. That means under the forbearance agreement, the City of Detroit will agree to pay Bank of America and UBS somewhere between \$237.8 million to \$287 million.
5. The forbearance agreement removes the interest swaps and associated termination fees from the Chapter 9 bankruptcy case.
6. To pay off the termination fees to Bank of America and UBS, the Emergency Manager has secured a \$350 million loan from Barclay's Bank, with \$237.8 million to \$287 million to be used to pay off the termination fees on the swaps, with the remainder to be used to fund "Quality of Life" services for Detroiters.
7. Interested Party David Sole has filed objections both to the City of Detroit's Motion to Approve the Forbearance Agreement [Docket 361] and to the City of Detroit's Motion to Approve the Barclay's loan. [Docket 1857] The hearing on these motion is currently set for December 17-19
8. In his Objections with attached Exhibits, Interested Party Sole argues that the forbearance agreement was not in the best interest of the people of Detroit because the termination amounts and the Swaps themselves could potentially be crammed down in bankruptcy and be subject to forbearance or disallowance on equitable grounds, especially in light of at the least potential fraud or misconduct by Bank of America and UBS in connection with securing the Swaps and the connected Pension Obligation Certificates, as well as misconduct by the banks in connection with precipitating the financial crisis in Detroit through their predatory mortgage lending practices. See Docket 361. See Docket 1857.
9. The 82 cents on the dollar to be paid to Bank of America and UBS is far greater than the 16 cents on the dollar being offered thus far to unsecured creditors and retirees.

10. In addition, at least at this point the payments of termination fees to Bank of America and UBS is subject to the Automatic Stay provisions of the current bankruptcy, and thus far they are unsecured loans.
11. As a result, Interested Party Sole submits that the forbearance agreement should be rejected and the Swaps should be treated the same as other creditors with their fate to be determined during the fairness hearings after the City of Detroit submits its plan.
12. To the extent that the Barclay's loan is to be utilized to pay the termination fees on the interest rate swaps, Interested Party Sole is asking the court to reject this loan.
13. By its terms, as outlined more fully in Interested Party Sole's objection to the loan [Docket 1857], this loan if adopted will have disastrous effects on Detroiters for years to come, earmarking 20% of income tax revenues for payments to Barclays in order to pay off Bank of America and UBS, thus keeping Detroiters enslaved to the banks for years to come.
14. Interested Party Sole is not opposed to the part of the Barclay's loan earmarked for "Quality of Life" improvements for Detroiters, though cautions the Court to examine this part of the loan closely as its real intent appears to pay tens of millions of dollars to consultants whose benefit to the city is dubious at best.
15. In his August 30, 2013 deposition, Emergency Manager Orr, in questioning about allegations of fraud and wrongdoing by Bank of America and UBS in connection with the municipal bond market, admitted that "we have calculated and analyzed the possibility that there may be issues surrounding potential concerns in connection with the Swap agreement, the answer is yes." Exhibit 1, Orr deposition p 324.

16. Emergency Manager Orr, in response to a question of whether he requested a criminal investigation Bank of America and UBS in connection with the Swap deal, in light of the convictions of three UBS municipal bond executives in 2013 and the indictment of a Bank of America executive in 2012, stated that there are matters under investigation that may or may not implicate this subject matter. *Id.* pp 326, 327.
17. When Emergency Manager Orr was asked with whom discussion took place concerning whether to pursue investigations of potential concerns in connection with the Swap agreements, Emergency Manager Orr stated that he would have had discussions with his counsel, Jones Day. *Id.*, pp 324, 325.
18. Incredibly, Emergency Manager Orr admitted that Bank of America is in fact a client of Jones Day, though he stated he did not see any conflict with Jones Day investigating their own client for fraud or criminal activity. *Id.* p 325.
19. Bank of America is listed on Jones Day's client list. Exhibit 2, attached.
20. Jones Day has also done a great deal of work for UBS, assisting in bond offerings and real estate purchases. Exhibit 3, attached.
21. Michigan Rule of Professional Responsibility 1.7 Conflict of Interest: General Rule, states:
 - (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
 - (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
 - (2) each client consents after consultation.
 - (b) A lawyer shall not represent a client if the representation of that client may be

materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected;

and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include an explanation of the implications of the common representation and the advantages and risks involved.

22. The commentary to MRPC 1.7 states:

Loyalty to a client is also impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Paragraph (b) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

23. The commentary to MRPC 1.17 continues:

Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise, and

the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

For example, a lawyer may not represent multiple parties in a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

24. In the present case, there is clearly conflict between Jones Day's representation of the City of Detroit in negotiations with Bank of America, a client of Jones Day, and possibility UBS as well.

25. One of the factors that should have gone into the negotiation of a forbearance agreement that would remove the interest rate swaps from the bankruptcy proceeding and pay Bank of America and UBS 82 cents on the dollar on their termination fees on swaps, is whether or not the City of Detroit could uncover wrongdoing by Bank of America and UBS in connection with the swaps, that could then be raised as an equitable argument during bankruptcy fairness proceedings for a much lower payment to Bank of America and UBS on the Swaps.

26. Incredibly, while acknowledging the potential basis for such wrongdoing, Emergency Manager Orr relied on Jones Day, Bank of America's lawyers, to conduct such an investigation into wrongdoing and even criminal conduct.

27. Obviously, relying on Jones Day to investigate its own clients for wrongdoing presents a conflict of interest in violation of MRPC 1.7.

28. This conflict is especially critical in the present case, where over 20,000 City of Detroit retirees who worked their entire lives for the city in expectation of a pension

they could live on are now being asked to consider potentially drastic cuts in pensions, and where unsecured creditors are being asked to consider payments of 16 cents on the dollar.

29. In contrast, Bank of America and UBS, two banks who helped precipitate the financial crisis in Detroit with their racist, predatory lending practices which helped result in approximately 100,000 mortgage foreclosures in the city, and who have already profited to the tune of \$250 million for betting that a financial collapse they precipitated would lead to a windfall on the swaps, now stand to garner a further heap of money which city of Detroit taxpayers will paying with 20% of income tax revenues for years after the bankruptcy concludes.
30. The commentary to MRPC 1.7 makes clear that it is the duty of the attorney to report the potential conflict to the court.
31. In fact, in this case Interested Party Sole's attorney raised the potential conflict to Emergency Manager Orr in deposition on August 30, 2013.
32. Interested Party Sole's attorney was prompted to raise this motion in part because of the ruling of this honorable court in the lighting motion on November 27, 2013.
33. In addition, Interested Party Sole does not object to the "Quality of Life" section Barclay's loan in so far as it is utilized to provide needed services to Detroit's residents, as Mr. Sole, his spouse (also a City of Detroit retiree) are all residents of Detroit who genuinely appreciate the need to improve services.
34. Interested Sole will be submitting an Ex Parte Motion for Expedited Hearing on this motion simultaneously with the filing of this motion.

Respectfully submitted,

JEROME D. GOLDBERG, PLLC

By: /s/ Jerome D. Goldberg

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DATED: November 12, 2013

Index of Exhibits

1. Orr deposition excerpts
2. Jones Day Client lists
3. Jones Day dealings with UBS

EXHIBIT 1

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 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 **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, I 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, best, it's not clear that there was fraud with**
 9 **respect to POCs. I think your prior question**
 10 **concerned 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.

EXHIBIT 2



"Every lawyer and staff person in any Jones Day office anywhere in the world knows that the Firm's values are deeply rooted in putting our clients' interests first in everything we do. Excellent client service is a longstanding, overarching objective of our Firm."

- Steve Brogan, Managing Partner

Since our beginning in 1893, client service has been a fundamental value of the Firm. Our highest priority is to deliver the best of the Firm to every client engagement. How do we define client service? At Jones Day, providing quality of service means getting the best possible results for our clients by providing technically accurate, creative, and efficient legal services that correlate with our clients' business objectives.

Today, Jones Day acts as principal outside counsel to, or provides significant legal representation for, more than half of the *Fortune* 500 companies. We also serve privately held companies, financial institutions, investment firms, health care providers, retail chains, foundations, educational institutions, and individuals.

Following is a partial list of our clients, most of whom we have been honored to represent for more than 10 years.

Abbott Laboratories	KeyCorp
Abercrombie & Fitch Co.	Lehman Brothers Holdings Inc.
Alcatel-Lucent	Lennar Corporation
Ameren Corporation	Liberty Media Group
American Airlines	The Lincoln Electric Company
American Greetings Corporation	The Lubrizol Corporation
Amway Corporation	Macy's
Apple Inc.	Mag Instrument, Inc.
Axiail Corp.	Materion Corporation
Bank of America Corporation	MedImmune, Inc.
Bayer AG	Mitsubishi Heavy Industries Ltd.
Beiqi Foton Motor Co., Ltd.	Morgan Stanley Realty
BlackBerry	NACCO Industries, Inc.
BMW AG	Nationwide Insurance Companies
Bombardier	Nikon Corporation
Bon Secours Health System, Inc.	OGE Energy Corp.
Bridgestone Corporation	Omnicom Group Inc.
The British Land Company PLC	Parker Hannifin Corporation
Cardinal Health, Inc.	PepsiCo, Inc.
CBS Corporation	Pershing Square Capital Management, L.P.
Celgene Corporation	Pfizer Inc.
CenterPoint Energy, Inc.	Potash Corporation of Saskatchewan Inc.
Chevron Corporation	Primus Capital Fund
China International Capital Corporation Limited	The Procter & Gamble Company
Chrysler LLC	Purdue Pharma, L.P.
Citigroup Inc.	Reynolds American Inc.
ConAgra Foods, Inc.	Rhodia
Cooper Tire & Rubber Company	Richemont International, S.A.

EXHIBIT 3



UBS acquires two office building in Paris suburbs

June 2007

Jones Day assisted UBS Investment Bank with the acquisition of two office buildings in the Paris suburbs.

For additional information about this matter, please contact:

Jean-Louis Martin

Client(s): UBS Investment Bank

Practice(s): Real Estate

Office(s): Paris

City of South Miami (Florida) Health Facilities Authority Hospital Revenue Bonds, Series 2007 (Baptist Health South Florida Obligated Group).

Hospital Sisters Services issues \$290,510,000 Revenue Bonds, Series 2007
Jones Day acted as bond counsel to Hospital Sisters Services in connection with the issuance by the Illinois Finance Authority of Illinois Finance Authority and Wisconsin Health and Educational Facilities Authority Revenue Bonds, Series 2007A, B-1, B-2 and C of \$290,510,000 (Hospital Sisters Services, Inc. - Obligated Group).

Merrill Lynch underwrites \$450,000,000 bonds for Phoenix Children's Hospital
Jones Day acted as underwriter's counsel to Merrill Lynch in connection with the issuance of \$450,000,000 of the Arizona Health Facilities Authority Hospital Revenue Bonds, Series 2007 (Phoenix Children's Hospital).

UBS Financial Services underwrites bonds for Health East project
Jones Day assisted UBS Financial Services as their underwriter's counsel in the offering of \$195,000,000 The Housing and Redevelopment Authority of the City of Saint Paul, Minnesota Hospital Facility Revenue Bonds (Health East Project) Series 2005.

Merrill Lynch underwrites bonds for Yuma Regional Medical Center
Jones Day acted as underwriter's counsel to Merrill Lynch & Co. in connection with the offering of \$111,205,000 Hospital Revenue Bonds, Series 2004A (Yuma Regional Medical Center) (Auction Rate Securities).

Methodist Healthcare and Methodist Healthcare-Memphis Hospitals issues \$250,400,000 Revenue Bonds, Series 2004
Jones Day acted as bond counsel to Methodist Healthcare and Methodist Healthcare - Memphis Hospitals in connection with the issuance of \$250,400,000 The Health, Educational, and Housing Facility Board of the County of Shelby, Tennessee Variable Rate Revenue Bonds, Series 2004 (Methodist Healthcare) Auction Rate Securities.

RBC Dain Rauscher and J.P. Morgan Securities underwrite tax-exempt bonds for University of Maryland Medical System
Jones Day acted as underwriter's counsel to RBC Dain Rauscher and J.P. Morgan Securities, Inc. in connection with the offering of \$253.86 million Revenue Bonds, University of Maryland Medical System Issue, Series 2004A, 2004B, 2004C and 2004D.