

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 RESPONSE TO DEBTOR'S MOTION IN
LIMINE TO EXCLUDE TESTIMONY OF SHARON MCPHAIL**

Now comes Interested Party David Sole and for his Response to Debtor's Motion in Limine to Exclude Testimony of Sharon McPhail [Docket 2159], states as follows:

1. Interested Party Sole's attorney first met Ms. McPhail at an event on Wednesday evening, December 11, 2013, and learned of her role in attempting to oppose the Pension Obligation Certificates (POC's) and related Interest Rate Swaps that are at the core of Debtor's Motion to Approve the Forbearance Agreement and the related Motion to Approve DIP financing.
2. On the basis of that meeting, Mr. Sole listed Ms. McPhail as a rebuttal witness in conformance with the Court's scheduling order relative to the motions scheduled to take place beginning December 17, 2013.
3. Mr. Sole's attorney met with Ms. McPhail at the earliest time possible on Sunday, December 15, 2013.
4. At that meeting, it was clear that Ms. McPhail did not have a great deal of knowledge of the particulars of the POC's and Swaps that are in part at the core of the upcoming hearing.

5. However, she was absolutely clear that she instinctively felt there was a potential risk to the city in assuming these financial instruments.
6. As her statement indicates, she was absolutely clear that she pressed the representatives of the banks, ratings agencies, law firms associated with these entities, and the City Chief Financial Officer, Sean Werdlow, to disclose any risks associated with the POC's and Swaps, and they all repeatedly reassured her and other Council persons questioning the adoption of these financial instruments that there was no risk and that these deals were in the best of interest of the City of Detroit and its residents. **Exhibit 1, attached.**
7. Ms. McPhail made clear that her time was very limited this week as she works as the Superintendent of Detroit Community Schools, a charter school operation, and that she could not be available for a deposition as well as to potentially testify at the hearing.
8. As this is the last week of class before the holiday break, there is tremendous pressure on the teachers and administrators of the District.
9. Ms. McPhail's testimony at the motion hearing, if she testifies at all, is expected to be short and simply to rebut any claims that City Officials were apprised of the risks of the POC's and swaps before they were approved.
10. At the pre-trial conference on Friday, December 13, 2013 this honorable Court explained that this hearing is somewhat of a preliminary character, to ascertain whether it would be in the interest of the estate to keep the swap agreements in the bankruptcy, where during the subsequent fairness hearings the question of potential wrongdoing in connection with these financial instruments could be explored more fully and it could be determined whether they could be subject to equitable subordination.

11. In light of the purposes of this hearing, in light of the limited testimony, if any, that Ms. McPhail is prepared to present, and especially in light of the consequences this Motion has for the people of the City of Detroit who face having approximately \$230 million of their tax dollars, at 8 ½ % interest, diverted over approximately 5 years to profit Bank of America, UBS and Barclay's, at the expense of desperately needed services to revive the City of Detroit, Interested party Sole respectfully requests that the Court entertain Ms. McPhail's testimony if it is appropriate for rebuttal purposes.

Respectfully submitted,

JEROME D. GOLDBERG, PLLC

By: /s/ Jerome D. Goldberg
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DATED: December 16, 2013

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Chapter 9

Case No. 13-53846

City of Detroit, Michigan,

Debtor.

DECLARATION OF SHARON MCPHAIL

State of Michigan)

County of Wayne)

1. My name is Sharon McPhail. I reside at 567 Fiske, Detroit, MI 49214.
2. I was a member of the Detroit City Council from January 1, 2002 to December 31, 2005.
3. I am currently the Superintendent of Detroit Community Schools located in the City of Detroit. We are currently in the last week before the winter break, an extremely hectic time for the students and administration.
4. I was a member of Detroit City Council when Mayor Kilpatrick brought a proposal for the City Council to approve the issuing of Pension Obligation Certificates, a portion of which included Swap agreements, to City Council for approval.
5. I am not an economist and neither were my fellow City Council members.
6. However, for a period of months I recall raising questions as to the risks associated with these novel economic formations which were supposed to help resolve the City's long-term pension debt.

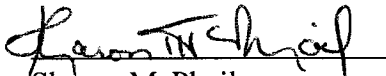
7. I researched other cities that had entered into similar pension obligation certificates and learned that the municipalities' that had entered into them were already encountering financial difficulties as the result. I recall one of the cities was in Pennsylvania but I do not specifically recall the areas involved.
8. During the period of months the City Council was debating the adoption of these financial instruments, I recall representatives of the banking institutions, their law firms and representatives of the ratings agencies appearing before Council. To the best of my recollection, Fitch and Standard and Poors appeared before City Council.
9. The debate between me and them related to the risk associated with Detroit entering into the Pension Obligation Certificates and these financial instruments, in light of the absolute authority of the pension boards to make investments (good and bad) the potential for a financial downturn, and in light of Detroit's precarious financial situation that had existed for years.
10. All of the representatives of the banks continually assured Council members that there would be no risk associated with the City adopting these financial instruments, and they would be a good deal for the City and the only way to address the debt burden of the City.
11. I recall that the City of Detroit Chief Financial Officer, who was a strong proponent of adopting the Financial Obligation Certificates, was Sean Werdlow.
12. After opposing the Pension Obligation Certificates and holding up their adoption for a number of months, under extreme pressure from the media, the Wall Street representatives, and even at the urging of some of the union leadership, and having

been repeatedly reassured by the banks and their agents that these financial instruments carried no risk for the City's future, the Council representatives who had supported me in my opposition to the adoption of the Pension Obligation Certificates, conceded and the administration had the votes for adoption of the issue.

13. This process reminded me of mortgage predatory lending, where unsophisticated homeowners were placed in exotic mortgage loans, assured there was no risk involved, and then lost their homes when the housing bubble burst.

14. After this process was over, Chief Financial Officer Werdlow was given a lucrative job with one of the financial institutions involved in the Pension Obligation Certificates.

FURTHER AFFIANT SAYETH NOT.


Sharon McPhail

DATE: Dec. 15, 2013

Subscribed and sworn to before me
This _____ day of December, 2013.

Notary Public
_____ County, _____
Acting in _____ County
My commission expires: _____